UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	Investigation Nos.:
LEMON JUICE FROM ARGENTINA	)	731-TA-1105-1106 (Review)
AND MEXICO	)	

Pages: 1 through 254

Place: Washington, D.C.

Date: May 16, 2013

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888
contracts@hrccourtreporters.com

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
) Investigation Nos.:
LEMON JUICE FROM ARGENTINA) 731-TA-1105-1106 (Review)
AND MEXICO)

Thursday,
May 16, 2013

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

The hearing commenced, pursuant to notice, at 9:32 a.m., before the Commissioners of the United States International Trade Commission, the Honorable IRVING A. WILLIAMSON, Chairman, presiding.

APPEARANCES:

On behalf of the U.S. International Trade Commission:

Commissioners:

IRVING A. WILLIAMSON, CHAIRMAN
DANIEL R. PEARSON, COMMISSIONER
SHARA L. ARANOFF, COMMISSIONER
DEAN A. PINKERT, COMMISSIONER
DAVID S. JOHANSON, COMMISSIONER
MEREDITH M. BROADBENT, COMMISSIONER

Staff:

BILL BISHOP, Supervisory Hearings and Information Officer
SHARON BELLAMY, Hearings and Meetings Assistant
MIKAYLA KELLEY, Intern

APPEARANCES: (Cont'd)

Staff:

AMY SHERMAN, Investigator
KATHERINE BALDWIN, International Trade Analyst
AMELIA PREECE, Economist
MARY KLIR, Accountant/Auditor
CHARLES ST. CHARLES, Attorney
ELIZABETH HAINES, Supervisory Investigator

In Support of the Continuation of Antidumping Duties:

On behalf of Ventura Coastal, LLC and Sunkist Growers, Inc.:

WILLIAM BORGERS, Chief Executive Officer, Ventura Coastal, LLC
BARBARA RATCHFORD, Director, Production Scheduling and Planning, Ventura Coastal LLC
MICHAEL J. WOOTTON, Senior Vice President, Sunkist Growers, Inc.
AMY WARLICK, Economist, Barnes, Richardson & Colburn, LLP

MATTHEW T. MCGRATH, Esquire
STEPHEN W. BROPHY, Esquire
Barnes, Richardson & Colburn, LLP
Washington, D.C.
Of Counsel

In Opposition to the Continuation of Antidumping Duties:

On behalf of The Coca-Cola Company and The Coca-Cola Export Corporation, Mexico Branch ("TCCC"):

JIM HORRISBERGER, North American Director, TCCC
JASON MAXFIELD, Procurement Manager, Odwalla

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

APPEARANCES: (Cont'd)

In Opposition to the Continuation of
Antidumping Duties:

On behalf of Citromax, S.A.C.I., S.A. Miguel,
and Citrusvil S.A.:

SUZY NOLAN, Vice President, Commercial
Operations, Citromax, S.A.C.I.

CHRISTOPHER DUNN, Esquire
Curtis, Mallett-Prevost, Colt & Mosle LLP
Washington, D.C.
Of Counsel

On behalf of Procimart SA de CV and
The Citrus Team Company (collectively, "Procimart"):

FEDERICO MARTINEZ, President and General Manager,
Procimart

MARK P. LUNN, Esquire
DANIEL MORRIS, Esquire
Dentons US LLP
Washington, D.C.
Of Counsel

I N D E X

P R O C E E D I N G S

(9:32 a.m.)

CHAIRMAN WILLIAMSON: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on Investigation Nos. 731-TA-1105-1106 (Review), involving Lemon Juice from Argentina and Mexico.

The purpose of these five year review investigations is to determine whether termination of the suspended investigations on lemon juice from Argentina and Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

Schedules setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the public distribution table. All prepared testimony should be given to the secretary. Please do not place testimony directly on the public distribution table. All witnesses must be sworn in by the secretary before presenting testimony.

I understand that parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the secretary.

Speakers are reminded not to refer in their remarks or answers to questions to business proprietary information.

Please speak clearly into the microphone and state your name for the record for the benefit of the court reporter.

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

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Mr. Chairman, I would note that all witnesses for today's hearing have been sworn. There are no other preliminary matters.

CHAIRMAN WILLIAMSON: Okay. Very well. Let's begin with opening remarks.

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

CHAIRMAN WILLIAMSON: Welcome, Mr. McGrath. You may begin when ready.

MR. MCGRATH: Good morning, Mr. Chairman and members of the Commission. It's a pleasure to be here again. I am Matt McGrath of Barnes, Richardson & Colburn appearing on behalf of the Petitioners Sunkist Growers, and its joint venture partner Ventura

Coastal.

At the time of the original investigation these two entities were operating separately, Sunkist as a cooperative owned by Lemon Growers, and Ventura Coastal as a corporate entity which was purchasing lemons for processing from independent growers. They're now producing and selling lemon juice and lemon oil as a joint enterprise.

In 2006 you reached a preliminary determination of a reasonable indication of injury. The Commerce Department then preliminarily ruled that imports from Argentina and Mexico were sold in the U.S. at margins ranging from 85 to 205 percent.

They entered into agreements at that point with exporters from both countries to the U.S. suspending the investigation on the condition that they would submit annual data to calculate their normal values based on their actual cost of production and sales data to confirm that they had been selling above those individual normal values during the period.

So at the outset of this review, unlike in many sunset reviews, we're looking not simply at whether high antidumping duties have restrained imports and how -- that is always a question -- we're also looking at the effects of a different kind of fair value discipline at the outset that does not have the restraining impact of entry deposits up front and potential retrospective additional duties after the fact.

We're looking at whether the revocation of that discipline based on normal values is likely to cause injury or result in injury within a reasonably foreseeable period.

The positive impact of the suspension agreements is undeniable, even if tenuous. Prices for lemon juice in the U.S. increased substantially, unsurprisingly, by roughly the amounts of the preliminary dumping margins.

Now you're asked to project what may happen if the agreements are revoked. We believe that the experience in the underlying period of investigation and in the last two years in this period demonstrates revocation would be harmful.

Since the original investigation, lemon juice production in subject countries has increased and inventories in subject countries have reached threatening levels. You noted in 2006 that these inventories can only be held for a very limited time, a year or less. That is still true, and the clock is now ticking.

Subject imports have already increased over the last two years and have increased their market share to more than half of U.S. consumption. This is a very major presence in the market. Your staff finds no material growth in U.S. demand. It's basically flat.

In the last six quarters that we're looking at here there was both consistent underselling and declining prices of concentrate, indicating price depression. The probability of negative price effects of revocation is clear, we believe.

In 2006 you found that market share was gained by subject imports at the expense of domestic processors and this has occurred again in 2012. You also found that U.S. inventories rose as a share of total imports, or total shipments, and that has risen again in 2012.

Importantly, in 2011 and '12 there hasn't been a lot of talk of lost sales, but there will be some today. Sunkist lost a significant amount of volume to lower priced Argentine sales that will cost a great deal to get back at much lower prices.

There's no doubt that the industry's financial performance has improved since 2007. That is the intent of antidumping relief. However, a cooperative business structure, like Sunkist, requires a different evaluation than the Commission usually applies when looking at industrial products.

Respondents have made much of allegedly high operating margins but the vast majority of the industry, which is Sunkist, has not reported any cost of fruit in their financials. This tremendously distorts the financial picture you're looking at. That's in accordance with the Commission's standard questionnaire. As you've encountered in the past, a co-op looks at profitability differently from other industries. You did state in 2006 that profits are only one of the relevant economic factors the Commission is required to consider.

We'll present testimony today on why you should consider the most recent consolidated joint venture financial data as most representative of the industry's returns. Regardless of how you measure profitability, it will decline rapidly if price discipline is eliminated because sales are now made on short-term or spot sales basis.

Finally, you should continue to cumulate imports of concentrate of NFC and -- I'm sorry -- cumulating imports of NFC and concentrate from both countries, from Mexico and Argentina, and we will address that issue as well.

In closing this beginning statement, we ask that you find that revocation of the suspension agreement will likely lead to the occurrence of material injury within a reasonably foreseeable period of time. Thank you very much.

CHAIRMAN WILLIAMSON: Thank you.

MR. BISHOP: Opening remarks on behalf of those in opposition to continuation of the orders will be by Christopher Dunn, Curtis, Mallett-Prevost, Colt & Mosle.

CHAIRMAN WILLIAMSON: Welcome, Mr. Dunn. You may begin when you're ready.

MR. DUNN: My name is Christopher Dunn, the law firm of Curtis, Mallett-Prevost, Colt & Mosle, on behalf of Respondents.

The Commission has before it today a very unusual case for a number of reasons.

First, the Commission has never previously made a final determination of injury in this case, so in a sense, it's examining the question of material injury for the first time. That rarely happens.

Second, the Commission is confronting a case where the suspension agreements have not in any way impeded subject imports from coming into the country. Imports of Argentine and Mexican juice have not merely increased in volume since the signing of the suspension agreements, in some years there were more than twice the preinvestigation levels. This is also very unlike most cases considered by the Commission where the suspension agreements or dumping orders normally constrict subject imports substantially.

Third, the profitability of the U.S. industry in this case shows levels rarely seen by the Commission. The domestic industry has enjoyed these levels of profitability despite the fact that subject imports have increased significantly.

The domestic industry's profitability in fact has nothing to do with imports and everything to do with the protected market it enjoys for not from concentrate juice, a product that Argentina cannot even make and that Petitioners can sell at premium prices.

These three factors make certain conclusions quite clear. To begin with, the situation that the Commission confronted in the original preliminary investigation is very different from what exists today.

When we came before you seven, six and a half years ago, the market was dominated at that time by the bankruptcy of a large U.S. lemon juice producer named Citrico which had badly managed its inventory.

The bankruptcy proceeding meant that this inventory had to be disposed of as soon as possible at any price, causing market prices to bottom. That inventory has long since disappeared and prices have increased substantially from preinvestigation levels. In 2006 we said this would happen, and it has.

I would like to emphasize that it was the Citrico inventory that created the reasonable indication of injury found by the Commission in the original preliminary investigation. It was not, as Petitioners maintain, subject imports. Thus, ending the suspension agreements with the subject countries will have no adverse consequences on the domestic industry.

In fact, the record in this case and the testimony you will hear today demonstrates that the agreements have had no impact on either the quantity of lemon juice entering the U.S. from subject countries or the prices charged by importers from Argentina and Mexico.

Even if subject imports were to increase as a result of terminating the agreements, there's no reason to believe that increased imports would result in injury to the domestic industry.

There is, of course, no likelihood that imports will increase at all, but for other reasons. Crops in European countries are down substantially, crops in both Mexico and Argentina are down, meaning that Argentina at least will probably have to draw down its supplies of orange juice simply to meet historical demands in Europe and Asia. There simply won't be sufficient supplies of juice for subject countries to increase their exports to the U.S. in the foreseeable future.

To make it short, you will see this afternoon there simply is no reason to continue the suspension agreements in this case, and we ask that they be terminated. Thank you.

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

CHAIRMAN WILLIAMSON: Welcome, to the panel.

Mr. McGrath, you may begin when you're ready.

MR. MCGRATH: Thank you, Mr. Chairman. I'm just making sure I don't spill more water. I've already done that once. Once again, it's a pleasure to be here.

Our panel today, our experts in the industry, and now represent the entire industry, we'll, rather than offering any additional introductory comments, except to observe that, perhaps that it's quite understandable that Mr. Dunn is confusing orange juice and lemon juice. We both worked on the same case.

What they have in common is that they're called juice, but there are significant -- very significant -- differences between the two industries and between the profiles, the performance, all of the data that's connected with those two industries, and we'll be reviewing a lot of that here today.

Our first witness is Mr. Michael Wootton who is the former senior vice president of Sunkist Growers. He was here six years ago when we testified. Sunkist was operating differently at that time, separately, not in the joint venture that it's now in.

He'll be followed by Mr. William Borgers who was, who did appear also as the head of Ventura Coastal. He is now the senior officer, the chief executive officer, of the joint venture which consolidates all of the Sunkist production operations with the Ventura Coastal operations. He will be testifying on the business, the markets. He's got many years in the business and he's probably one of the most authoritative people in the lemon processing industry.

He will be followed by Amy Warlick, our economist, who's going to talk about some of the international dynamics of the foreign industries that are involved and the markets. Then I'll conclude with a few comments.

Also here to respond to questions and testify, as necessary, Barbara Ratchford. Barbara used to be with the processing arm of Sunkist Growers. She is now director of production scheduling and planning at Ventura Coastal, the joint venture operation.

So I'll just turn it over to Mr. Borgers, or, I'm sorry, Mr. Wootton.

MR. WOOTTON: Thank you. Thanks, Matt.

Mr. Chairman, members of the Commission, my name is Michael Wootton and for the past 16 years I've served as senior vice president for Sunkist Growers.

As you may know, Sunkist Growers is a 120 year old agricultural marketing cooperative. We're owned by our 4,000 citrus growers in California and Arizona. The average size of their family farms is approximately 40 acres, so they are truly small farmers.

Sunkist Grower members account for most of the lemons grown in the United States, the majority of which are destined for the fresh market. Lemons that either do not meet the cosmetic standards for fresh market sale or the surplus for fresh market demand will be sent for processing into juice, oils and other byproducts.

Under Sunkist's cooperative three party structure, citrus growers join a packing house that exclusively packs for Sunkist. Essentially, under this agreement the grower dedicates all fruit from certain acreage to be handled by a Sunkist packing house, which is then in turn marketed by Sunkist or sent for processing.

Sunkist and other U.S. processors make two main products from lemons, namely juice and oil. In 2008, Sunkist consolidated our lemon processing operations, closing our older processing plant in Ontario, California, moving the equipment and many of our employees to our newer facility in Tipton. This improved efficiency by having lemon and orange processing co-located.

In February 2012, Sunkist entered into a joint venture with another U.S. fruit processor, Ventura Coastal. The purpose of this joint venture is to create efficiencies and deliver better per ton returns for our cooperative grower/owners who, prior to the JV, were often not able to get their actual costs covered by the returns from juice and oil sales.

Under the new structure Sunkist Grower members are paid soon after fruit delivery based on market value, and subsequently receive a dividend from Sunkist's share of any profits on the sale of lemon products.

Prior to the original investigation the expansion of lemon groves in both Argentina and Mexico was encouraged by soft drink manufacturers who forecast expanded demand for lemon oil. In addition, the World Bank provided low interest loans for Argentina's expansion in anticipation of this increased global demand for lemon oil.

The projected demand for lemon oil resulted in overproduction of lemon juice, and during the four years prior to the suspension agreements, the U.S. market was flooded with an oversupply of lemon juice from Argentina and Mexico at very low prices.

At that time Sunkist lost significant business and was forced to cut prices in order to maintain the balance. Its production and shipments were falling. Inventories were rising to historic levels. Storage capacity limitations forced us to reduce prices significantly and extend payment terms to our customers in order to survive. The production of lemon juice had become so unprofitable that Sunkist would probably not have continued processing lemons if disposal did not present serious environmental issues.

Since the imposition of the suspension agreements in 2007, lemon juice prices have increased significantly and the returns to our growers from lemon juice have correspondingly increased. However, as you will hear, income to growers was still insufficient to cover their costs during this period.

U.S. production of lemons has been flat since at least 2005. While U.S. bearing acreage has declined and weather events have impacted crop size in certain years, yields, that is tons per acre, have increased and overall production of lemons in the United States has remained steady.

While U.S. production has been steady, production in Argentina and Mexico have continued to increase. Argentina is the largest producer of lemons in the world, and unlike the U.S., their growers are focused on sales of fruit to the processing industries instead of the fresh fruit market.

Argentina produced a record lemon crop in 2011 of 1.6 million metric tons of lemons. The 2012 crop was smaller, but still significant, and we project that the 2013 crop will be larger than the 2012 crop, at approximately 1.5 million metric tons.

The ability of the Argentine industry to sell all of these lemons on the fresh market is limited due to the phytosanitary restrictions in the United States, China and elsewhere. Argentina's exports of fresh lemons fell by 28 percent between 2007 and 2012, which in part is also due to the dramatic increase in lemon production in Turkey for the EU and Russian markets, markets that Argentina focuses on.

This decline in exports of fresh lemons has resulted in an increasing share of Argentina's lemon production being processed into lemon juice. Between crop years 2006/'07 and 2011/'12, an average of 73 percent of the country's lemon crop was used for processing, and it is projected that Argentina will process 79 percent of its 2013 crop.

Our market intelligence indicates that the large crops and increasing production of lemon juice in Argentina has resulted in the accumulation of large inventories and that processors in Argentina are very concerned about the situation.

Demand has declined, particularly in their largest market in Europe, and they are looking for an outlet for these inventories. The situation will become even more urgent as Argentina gets deeper into its 2013 season, which began in April and will continue through early fall.

The likely outlet for this excess production and inventories is the United States, a large market, relatively stable demand. Without the suspension agreement to set a floor in their prices, Argentine processors will dump these inventories on the U.S. market at extremely low prices which will negate everything Sunkist and Ventura Coastal have tried to accomplish over the past five years to create an efficient and profitable U.S. industry.

Finally, while Argentina is obviously the larger threat, Mexico cannot be ignored. Their production of lemons is also growing. The majority of these lemons are sent for processing, and the United States is their most important market. They are also increasing the volume of fresh lemons into the U.S. market.

We respectfully urge the Commission to keep the order in place, and at the appropriate time, we'll be pleased to answer any questions. Thank you, Mr. Chairman.

MR. MCGRATH: Mr. Borgers?

MR. BORGERS: Good morning, Mr. Chairman and members of the Commission. My name is Bill Borgers. I'm the president of Ventura Coastal, LLC, a citrus processing company headquartered in Ventura, California. I've been with Ventura for 31 years, an owner of the company for 26 years, and the company's president for almost eight years now. I'm the CEO of Ventura Coastal, LLC, the joint venture between Ventura and Sunkist, which became effective on February 1, 2012.

The joint venture processes lemons which it purchases from Sunkist and other independent growers and buys on the cash market and converts into lemon juice, lemon oil, and various lemon byproducts.

The joint venture operates two processing plants in Visalia, California, and in Tipton, California, and a storage and distribution center in Ventura, California. Ventura Coastal used to operate in Indio, California, but we were forced to close that plant in 2003, at least partially due to the low lemon juice prices caused by unfairly priced imports.

Ventura Coastal produces two main products from lemons, juice and oil. Historically, about half the revenue comes from the juice side and half the revenue comes from oil.

Lemon juice is used primarily in the beverage industry where it's sold in the form of lemonade or bottled lemon juice. Lemon oil, on the other hand, is primarily used as a flavoring ingredient in the carbonated beverages and some nonfood consumer products. Lemon oil is a very potent flavor ingredient, unlike lemon juice. Therefore, their applications are totally separate and they're not readily interchangeable.

Lemon juice is made in both concentrated and not from concentrate forms. The extraction and manufacturing processes are identical until the point where juice is diverted either to an evaporator for concentration or to pasteurization oil reduction for not from concentrate.

Concentrated lemon juice may be used in lemonade or reconstituted form as lemon juice sold to the consumer. NFC is generally used in premium lemon beverages and lemonades which advertise a more fresh, natural taste and have a higher percentage of lemon juice. Since there's no minimum required juice in lemon beverages, a beverage producer can control costs by either switching to cheaper bulk concentrate or by decreasing the overall percentage of the juice in its product.

Ventura produces lemon concentrate in both cloudy and clear forms depending on the demands on the customer. The difference between cloudy and clear is the amount of natural suspended pulp and cloud content, which can be filtered out to achieve a more transparent appearance. Both products are used primarily in the beverage industry. Clarified juice goes into shelf-staple product typically packaged in clear bottles, and cloudy juice goes into refrigerated product packed in opaque packages.

I note that while lemon oil is not part of this investigation, in order for a lemon processing operation to be profitable, the operation must be profitable with respect to its combined lemon oil and juice sales. In some cases, the low price of one co-product may need to be offset by a higher price for the other co-product in order for the operation to be profitable.

As I testified five years ago, Ventura experienced ever-worsening lemon juice profit margins through 2005 when it decided that it had to change its business strategy.

In the face of unfair competition from subject imports, Ventura decided that it simply could not compete with the imports from Argentina and Mexico based on price. Instead of lowering our prices to a level where we couldn't recover cost, we abandoned most of the market.

Mainly, we put our emphasis on the sale of value added lemon juice products such as ultra low pulp and clarified lemon juice where the margins are higher, but the customers are fewer and there's less overall volume available. While we were able to retain some customers using this strategy, we lost many others.

Furthermore, while we were able to make profit on our sale of the value added product, our overall shipment of lemon juice declined by approximately two-thirds and our inventories more than doubled.

After the imposition of the suspension agreements in 2007 prices increased significantly, sales volume increased, its profitability increased, and our pay prices to our growers increased significantly.

Sunkist prices also increased, although

Sunkist still had certain long-term contracts to major customers at the beginning of the period that were entered into prior to the suspension agreements and reflected pre-suspension agreement price levels. It was only after these significant contracts expired that Sunkist was able to gain the full benefits of the suspension agreements.

I would note one thing regarding the calculation of profitability for Sunkist and the combined industry. As Mr. Wootton has stated, Sunkist is a cooperative. I note that as a result of this structure the questionnaire required that Sunkist not report any cost for lemons in their cost, in their cogs. This of course results in significantly overstated profitability for Sunkist during the period 2007 through February 2012. These figures should not be taken at face value. A cooperative like Sunkist must evaluate its profitability based on whether its return to growers cover at least a portion of their costs.

During the period 2007 through 2011 the average Sunkist return to growers from the sale of lemon-processed products averaged less than half of the cost of picking the fruit from the tree. This does not represent a high profit, it represents a loss on sales.

The closest the record comes to presenting a true profitability figure for the U.S. industry is 2012, which includes only one month prior to the formation of the joint venture.

However the Commission calculates the current profitability of the U.S. industry, and however high that number appears to be, the Commission should not take this to mean the industry is immune from injury.

Today, sales in this industry are made mainly on the basis of short-term contracts, with the balance of sales made on a spot basis. The joint venture does not currently have any long-term contracts for the sale of lemon juice, and I do not believe the Respondents have either.

In addition, the peak sales period for lemon juice in the United States is the same as the Argentine processing season. As a result of this, price levels in this industry can change quickly and dramatically and last year's profits can turn into this year's losses.

As Mike testified, today we're extremely concerned by the size of the industry in Argentina and the size of their current inventories. Argentine exports to Europe have declined as demand in Europe has declined. Projections indicate that the recession in Europe will persist into the foreseeable future and that demand for lemon juice in that market will remain low.

As a result, Argentine exports have already shifted some of this volume to the United States at lower prices, and the price of Mexican lemon juice has followed the Argentina even lower. The only thing preventing Argentine exporters from increasing their exports to the United States even more and at even lower prices is the suspension agreement, which requires them to sell lemon juice at fair value and above their cost of production.

Ventura and Sunkist compete with imports from Argentina and Mexico for the same customers, and that competition is based on price. There is no significant difference in the quality of lemon juice from Argentina or Mexico and the U.S. lemon juice. We have always competed with Argentina and Mexico for our highest volume cloudy lemon concentrate sales. We have also experienced competition from Argentina on clear lemon juice and from Mexico on not from concentrate, or NFC.

We now understand that one Argentine

producer has received a normal value from Commerce for the sale of NFC in the United States and we expect even greater competition in that market very soon.

The impact of Argentine overproduction is already being felt in the United States. We lost significant volume at major customers in 2012 to lower priced imports from Argentina, and Ventura has had to offer lower prices to other customers in order to keep their business. As a result, my inventories have increased dramatically and have continued to increase since December 31, 2012.

Neither Ventura nor Argentine producers can keep lemon juice in inventory indefinitely. Concentrate can generally be kept in inventory from one to two years, and we can only keep bulk not from concentrate in inventory for a week. Furthermore, inventories sell at significant discount as they approach their expiration date after a year in storage.

Absent the suspension agreements, the volume of imports from Argentina will increase dramatically at the expense of our market share, and the price-based competition we are currently facing will only intensify. The improvements in the condition of the U.S. industry experienced since the imposition of the suspension agreement will disappear in a matter of months.

We respectfully urge the Commission to keep the order in place. I'll be pleased to answer any questions you may have.

MR. MCGRATH: Now we'll hear from Mr. Warlick.

MS. WARLICK: Good morning, Commissioners and staff. My name is Amy Warlick and I'm an international trade economist with Barnes, Richardson & Colburn.

As you've likely surmised by now, the global lemon juice industry is unique and rather complicated. It's complicated because lemon groves were planted in various countries for different reasons.

In the United States, lemons are grown for the fresh market, with eliminations from that market becoming available for processing into lemon oil and juice. Sales of oil and juice help U.S. lemon growers recover some of their costs of production.

But in Argentina and Mexico the fresh market, although lucrative, is much less significant. In these countries, lemon groves were primarily planted to produce lemons for processing into oil, and consequently, juice. The lemons grown there are not necessarily unsuitable for fresh consumption.

Another complicating factor is that the ever rising global demand for lemon oil is the chief driver of lemon processing. Steve will put a -- okay. This chart shows Argentine exports of lemon oil exports to the world which indicates the rising demand. Exhibit 1 -- yes. From 2005 to 2011.

Lemon oil demand is primarily dictated by global consumption of carbonated soft drinks which continues to climb primarily in Asia and Latin America.

Since oil and juice are co-products processed simultaneously from lemons, the higher demand for oil creates overproduction of juice. Lemon juice is highly acidic, and therefore difficult and costly to dispose of when overproduced. It's also expensive to store. In addition, lemon juice is perishable, even when frozen, so it rapidly loses value in inventory.

These facts all indicate that the price of lemon juice is highly responsive to oversupply, so when an imbalance in the global demand for oil over juice creates overproduction of juice, that overproduction in turn quickly translates into juice price erosion and injury to U.S. lemon processors and growers.

Another complicating issue in this industry, hence, in this investigation, is the historical structure of most of the U.S. lemon juice industry as an agricultural cooperative. Until February 2012 when Sunkist and Ventura Coastal established joint venture, Sunkist operated as a cooperative and not a corporation.

As a cooperative, Sunkist did not pay for the lemons they processed so the cost of raw materials does not include their fundamental raw material, lemons. Instead, all proceeds from the sale of the lemon juice were distributed by the cooperative back to its patron growers who used those funds to help cover the multitude of costs associated with growing, harvesting, and transporting their lemons to market.

Much has, and will be, said by Respondents about the profitability of the U.S. lemon juice industry but I trust that the Commission understands that they're looking at only half the equation. If this industry was really as profitable as it appears when lemon costs are not considered, then none of us would be here today defending these suspension agreements.

Instead, lemon growers must receive

distributions from lemon juice, lemon oil, and fresh lemons that together will cover their rising costs. However, due to the definitions of domestic industry and like product in this review, these grower costs have not been requested. That does not mean that the cooperative goal of recovering these costs should be ignored and the distributions to growers merely understood as profits.

The Commission has recognized the need to examine cooperatives separately from corporations and to develop an appropriate analytical methodology. All of that said, the U.S. lemon juice industry's financial performance has improved significantly since the implementation of the suspension agreements.

At least until 2010, their production and shipments were up and their inventories were down. Also, they're employing more workers to work more hours and their productivity was up as well. These improvements have clearly resulted from the recovery in the price of lemon juice to levels that covered a greater portion of both the lemon processors' and the lemon growers' costs. However, that improvement is largely contingent on the maintenance of stable prices.

Over the past two years we've seen some

price erosion due to sustained high levels of imports in 2011 and 2012 stemming from the overproduction of lemon juice, particularly in Argentina.

U.S. prices of frozen concentrated lemon juice peaked in late 2010 and 2011, as can be observed in Sunkist's and Ventura's product one and two pricing data. However, when U.S. imports from Argentina spiked, the import unit values of imports from both Argentina and Mexico fell between 23 and 56 percent between 2010 and 2012.

These increased imports at lower prices in turn caused a swift loss of U.S. market share for U.S. producers to shares even lower than those experienced during the initial period of investigation.

Petitioner understands that the U.S. industry does not satisfy all U.S. lemon juice demand and import supplies play a role in the U.S. market, but we need to ensure that that role is complimentary and not destructive.

Imports should enter the United States because they're demanded by the U.S. lemon juice market. They should not enter because fast growing global lemon oil demand necessitates the overproduction of lemon juice in Argentina and Mexico and creates a glut of distressed lemon juice inventories in the global market which are looking for an outlet. This is exactly what led to the liquidation of Citrico's inventories during the initial period of investigation, and aside from the suspension agreements, there's nothing that would prevent this from occurring again.

Mr. Dunn remarked that the Citrico debacle was caused by bad management. Citrico's liquidation did not result from bad management, but it was a symptom of an underlying problem of overproduction that became destructive. The suspension agreements have helped to discourage these destructive imports without inhibiting the beneficial imports, and that is precisely why we ask the Commission to maintain the suspension agreements.

Like all agricultural products, there are boom years, bust years and many in between. Looking at individual years can cloud the big picture. However, the capacity of a lemon industry can be approximated by its dedicated acreage and number of lemon trees.

The Argentine industry has continued to expand both its acreage and its tree count throughout the period of review. In addition, they produced a record crop in 2011 and anticipates in 2013 another very large crop, with the second largest Argentine processing volume ever. The vast amount of Argentine lemon juice about to be processed will join the already large inventories of Argentine juice, and that juice will weigh down global prices as it searches for a market.

Respondents will tell you that that excess juice will be exported to the EU to satisfy EU demand in the wake of Spain's short 2012/'13 crop. However, EU lemon and lemon juice consumption are both down on the whole because of the EU recession which has dampened restaurant and beverage sales.

During the period of review, EU import data show rapidly declining imports of both fresh lemons and lemon juice from Argentina. At the same time, U.S. import data show rapidly increasing imports of lemon juice from Argentina. It's only logical to conclude that Argentine juice has been diverted away from the EU market and into the U.S. market, so we are not at all confident that the current large stocks of excess Argentine juice will be exported to the EU. Recent trade patterns suggest that they'll be exported to the United States, where prices are already on the down swing.

Few lemon industry data are available on the

Mexican industry. Exhibit 9 shows what little we've been able to extract from USDA's GAIN reports. It would appear from these data that Mexico is now able to produce nearly 147,000 metric tons of lemons per year and process well over one million gallons of lemon juice at 400 GPL. This, as well as the data on the record, indicate that after its rapid expansion during the initial period of investigation, Mexico's capacity is still growing.

Mexico has also proven its ability to produce NFC for sale in the United States. However, NFC represents only about 10 percent of U.S. lemon juice imports from Mexico.

It is the cumulative effect of high volumes of U.S. lemon juice imports from Mexico starting in 2010 and from Argentina starting in 2011, in addition to the building of inventories in Argentine and Mexican juice during these years, which caused U.S. prices to begin their down slide in 2012 and the domestic industry to build inventories and lose its fragile market share. While Sunkist/Ventura has very recently succeeded in winning back a significant lost customer, it's been forced to do so by reducing its prices to mere Argentine levels.

Respondents have suggested that the U.S.

lemon industry is shrinking and has lost market share because it doesn't have enough lemons. While the frost of 20, excuse me, 2007 was quite damaging to U.S. lemon production, the damage was only temporary. U.S. production has recovered nicely since then, producing robust lemon crops throughout the period of review.

There was some frost damage to the smaller Arizona crop during 2011/'12, but ERS estimates a full recovery for Arizona with the 2012/'13 crop. While the U.S. lemon crop is susceptible to various citrus diseases, the California and Arizona lemon growing regions do not have severe disease problems such as citrus canker or greening.

As U.S. demand for fresh lemons has recently recovered following the U.S. economic downturn, there has been a greater portion of the U.S. crop sold fresh. However, that's not the reason why U.S. lemon juice shipments have declined in recent years. U.S. lemon juice shipments have slowed down because lemon juice prices have declined and U.S. processors are reticent to sell at such low prices, so instead, they've held back significant volumes in inventory, hoping for restored prices in the near future.

Industries that do not have enough product to sell do not have burdensome inventories. Industries facing the threat of high import volumes at low prices have burdensome inventories.

That will conclude my remarks. Thank you for your attention. I'd be happy to answer any questions you may have.

MR. MCGRATH: Thank you to our witnesses. I would like to offer some concluding remarks here concerning the issue of cumulation. Since cumulation is discretionary in sunset reviews, I know that that's generally an issue.

We did cover the issues I think pretty thoroughly in our brief, but just to summarize, the first question on that, that you faced on statutorily is whether any subject country of these two would be precluded from cumulation in your review because of the issue of having no discernable effect if it were excluded.

I think we've covered the data in demonstrating, mostly it's confidential, but the size of the two industries are not the same. Clearly, Argentina is much larger, but Mexico is not insignificant. It is a recognizable producer of lemons, its exclusion from coverage would have a discernable impact, and it should remain cumulated.

The factors that you generally do look at, whether there's a reasonable overlap of competition, I think they all fall down in favor of including both of these countries and continuing to cumulate.

The issue of fungibility of product, the concentrate and the NFC are fungible. The staff report indicates that responses from customers look at them as interchangeable. They are present in the same geographic markets at the same time. There's very little doubt about that.

There are common, or similar, channels of distribution, one major difference of course being that a portion of the product imported from Mexico is directly imported by Coca Cola for their use, which is one of the reasons why you don't have a lot of price comparisons with respect to NFC. There are no importer prices to report in many years.

As Mr. Borgers has testified, he sells to Coca Cola. Coca Cola certainly buys NFC from Mexico. Coca Cola also buys -- I'm not picking on Coca Cola -- lots of purchasers buy lemon juice from all three suppliers, the U.S., Argentina, Mexico, in competition with each other. If you look at the customer lists that were provided, I think you see significant overlap. And they're simultaneously present in the market.

We find that there's really no significant difference in the conditions of competition, other than some slight difference in the processing seasons and the growing seasons between the different countries, but they do overlap.

The product is not immediately disposed of, especially if it's concentrated, so the availability of the concentrate, of the juice, is pretty much coincident among all there of the countries.

So the condition of competition we don't think is sufficiently different to make a finding of decumulation, so we would urge you to make that discretionary decision in this case to continue to cumulate them. They're both significant suppliers. The conditions of their growth, and growth of product availability, growth of inventories, they're all, they're both similar and should continue to be assessed together.

So, with that, we'll close our direct presentation, and we're all available for questions.

CHAIRMAN WILLIAMSON: Thank you very much.

I want to express our appreciation to the panel for taking time from their businesses to come across the country to testify this morning.

This morning we will begin our questioning with Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

My welcome to all of you. I have had the opportunity some years ago to see a lemon packing facility in Ventura County and it was quite interesting. This was fresh fruit and not processing, but at least I've had the pleasure of being in a warehouse that smells very good with fresh lemons.

Mr. McGrath, let me start with you. It's a little bit unusual for me but I'm troubled by a legal issue and I want to begin by raising that. I participated in the preliminary determination in this case in the fall of 2006 and on the basis of that preliminary record I was comfortable enough with one eye on American Land voting affirmative, okay? So we had a unanimous affirmative Commission.

Then, before we could get to a final determination, of course the suspension order went into effect, and so to this date a final determination has not been made. What guidance does the statute provide us in this situation? My question is whether we shouldn't now be making that final determination rather than reviewing to see whether there would be continuation or recurrence of material injury on a finding that we never made. It's not unimportant in my way of thinking. Sometimes I benefit from not having training in the law because I can ask these questions, in all sincerity, trying to understand it.

If we do this as a review, we of course would use a counterfactual analysis and we would try to ask ourselves what would happen if an order was revoked? If we do this as an original final determination, we would use a different standard and we would look over the record at what had happened in trends in volume, price and impact. I think if we analyze this record in one way we might make a different determination than if we did it in another way.

So I'm interested in what you can tell me about this basic question. I can assure you that we've had some communications with the General Counsel's Office and that issue is not yet resolved to my satisfaction. So tell me what you could.

MR. MCGRATH: Thank you for that very interesting first question. It is something of a conundrum; however, it can be overanalyzed.

The statute requires that you conduct a sunset review of orders and suspension agreements and says specifically with respect to either orders or suspension agreements whether the revocation is likely to lead to continuation or recurrence of injury, so at the time that the statute was written they clearly intended this to apply to suspension agreements, with the understanding that you may never have had a final injury determination.

But we also believe that the finding of a reasonable indication of injury is a finding. It's not as if there's been no finding. There has been an evaluation of the data presented at the outset. There's been a finding that there is a reasonable indication of injury.

Our view is that given the mandate of the statute that you have to conduct this, your options are two. One is simply treat it as if there was a finding of injury because you had a preliminary determination and do what the statute says, do a counterfactual review and determine whether or not revocation is likely to lead to injury.

The other option is to simply make a finding that there is no way to fulfill the statutory mandate because there was never an original finding of injury, and therefore the sunset review should be terminated and the suspension agreement should remain in effect.

I vastly prefer that option, actually, but I don't think that's something that the statute really anticipates.

I think the statute does anticipate that you do make a finding as if there were a decision since there would have to be a preliminary determination at any time before a suspension agreement could be entered into with the Commerce Department.

So I don't know that it's as deeply troubling as it might appear to those who are looking for perfect logic in the structure of the statute. I think you should simply approach this as the usual way that you do. There's an order in effect or a suspension agreement in effect. It's anticipated by the statute that they be treated the same and that you find whether there would be continuation or recurrence of injury.

I don't think they're asking you in the statute, they're clearly not asking you in the statute to find whether there is current injury. The two words recurrence or continuation offer both as options, but they're, you're not to be applying a standard to find whether there is actual injury.

COMMISSIONER PEARSON: Now, and if I think that I would have voted in the negative on final in

2007, and if I think there's a reasonable probability that the full Commission would have found in the negative, does that affect my thinking now?

MR. MCGRATH: We believe that you should approach this as if there was a finding of injury because there was a preliminary determination. You did not reach the point of being able -- I understand what you're asking. You didn't reach the point of being able to find that there was a final decision on injury, but you also aren't sure how you would have voted in the final.

COMMISSIONER PEARSON: But I do recall that I didn't think this was the strongest prelim I'd ever seen, you know?

MR. MCGRATH: Well, but it was, there was an injury standard --

COMMISSIONER PEARSON: It met the standard, given a little help from American Land is my recollection. Yes.

MR. MCGRATH: Okay. Then I would suggest that you terminate the sunset review and let the suspension agreement remain in place. The only other option, really, I think is the one that's anticipated by the statute is to treat this as if there were a finding of injury since there was a preliminary finding of injury -- that's as close as you can come -- and determine whether or not the revocation is going to lead to injury. There's really no other way to approach it.

COMMISSIONER PEARSON: You may be familiar with the one other order in effect that is somewhat similar to this involving uranium from Russia which, long before my time here at the Commission, there had been no, only a preliminary finding, order put in, suspension agreement put in place, and then before I got here the Commission had done a first review and basically did what you're suggesting, just following the statute as if we had made a final determination. Then I've twice voted to continue that because it's been in front of us, with the Commission having previously acted in the first review.

This is my first time to be in this situation on first review, which is why I'm so concerned about it.

MR. MCGRATH: I think the drafters didn't anticipate that specific question, but they did anticipate, obviously, that a suspension agreement could be reviewed by the ITC. If someone had gone back and stopped and thought about it, they might have said that, well, there's only going to be a preliminary, but given the fact that that's how it's structured, I think that that's what you're compelled to do is treat it as if there were a finding of injury and evaluate the situation now.

Obviously the results of the suspension agreement had some effect in the industry. We're all going to testify as to what that was.

COMMISSIONER PEARSON: Right.

MR. MCGRATH: Prices went up, performance went up. So it's difficult to make a decision, you know, an original decision of injury right now. I think that the --

COMMISSIONER PEARSON: We've got a record.

MR. MCGRATH: We've got a record.

COMMISSIONER PEARSON: It allows us to make an injury determination, I think. I mean I don't know whether it's more difficult on a six year record than it would be on a one year record that we normally would.

MR. MCGRATH: Well, but you can't make a determination of current injury since the statute requires you to evaluate whether the revocation of the suspension agreement will lead to injury, not whether there's injury right now.

COMMISSIONER PEARSON: Which position makes us less vulnerable on appeal? You know, if we do as you are suggesting and just go ahead and make a normal review determination here, could parties on the other side challenge that determination as being incorrect because there was no initial final determination on injury?

MR. MCGRATH: I think treating it as I suggested is the only possible way of reading the statute. Parties on the other side could challenge it, and if you treated it otherwise, parties on this side could challenge it as well.

COMMISSIONER PEARSON: Yes. How would you assess vulnerability? If we had to make one --

MR. MCGRATH: I think it's safer -- in terms of withstanding legal challenge, it's safer for you to treat it as you would a normal sunset review and rather than looking at it as an original injury determination now since that's the way the statute's written and that's more likely to be how it's going to be looked at in a review Court.

COMMISSIONER PEARSON: Okay. Well, I thank you very much for engaging in this discussion because it's been on my mind. Thank you.

Mr. Chairman, my time has expired.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Aranoff?

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. Good morning, and welcome to all of the witnesses on this panel.

So as you mentioned, Mr. McGrath, in your opening, the Commission has conducted a number of investigations and reviews involving orange juice. I understand that one key difference between orange juice and lemon juice is that the juices for orange juice are grown for that sole purpose, they're not sold in the fresh market, so there's a difference on the front end of the process.

I'm more interested in hearing from you about similarities and differences on the back end of the process in terms of how the process is, or how the product is stored and how it's shipped. I've visited the facilities for orange juice where they have those million gallon tanks for the frozen or not from concentrate product. How is the lemon juice industry similar, or different?

Also, is the lemon juice that's imported -- I know when orange juice comes from Brazil it comes in those ships that are purpose-built to hold entirely orange juice. If you could compare and contrast how lemon juice is shipped.

MR. MCGRATH: I'd like to ask Mr. Borgers first to comment -- and I'm happy to comment as well -- since Mr. Borgers also handles the orange juice side of the business.

MR. BORGERS: There are significant differences between the transportation logistics on not from concentrate lemon and lemon concentrate as opposed to orange. Essentially, it's a much smaller industry and it hasn't scaled up to the same methods of handling.

The primary shipment of lemon concentrate is in drums, essentially, so 55 gallon drums. The vast majority of my sales are done on that basis, and most of the imports arrive in this country in drums.

On not from concentrate, because of the water content we ship quite a bit of our not from concentrate in bulk tankers. Those are 5,000 gallon tankers. We produce the juice into 50,000 gallon silos, standardize our batches, and then load our tankers out. That's for our bulk customers who use bigger gallonage.

We also have a very significant not from concentrate business in drums where we take the product, drum it off, 45 gallons, freeze it solid, and then freeze it. The customers receive these drums frozen, they temper them, chop them, and use them in their production process.

So the imports, the logistics of bringing the imports in, product arrives from Mexico via, I'm aware of it coming in in bulk tankers. I suspect it's also packaged in drums. The not from concentrate that would ship up from Argentina would come in frozen drums because there isn't a scalable system to bring that in in boats because of the size of the holds and the logistics necessary to load that in the ports.

So the Argentine lemon industry doesn't have those facilities, where the Brazilian orange juice industry clearly has significant assets to transport juice that way.

COMMISSIONER ARANOFF: Just as an aside, you just mentioned not from concentrate product coming in from Argentina, but I had understood from the Respondents' brief that there wasn't any not from concentrate product being made in Argentina and sent to the U.S. Am I incorrect in that understanding?

MR. BORGERS: I believe the, at least one producer has asked for a nominal value. So I'm not aware that it has arrived, but we fully anticipate their arrival soon.

MR. MCGRATH: Commissioner, the position

that's been taken by the Respondents is implying that it's not possible for some reason. That the cost, the scale, the investment is just too great to ever expect Argentina to be able to ship NFC.

There's nothing magical or secret about making NFC. They can definitely make it. The question is whether the infrastructure and the investment is there to be able to make it, to freeze it, to ship it -- you say they ship it frozen, right -- and sell it in the United States.

There are offsetting expenses in shipping NFC in the other, from the other standpoint. When Ventura needs to ship NFC across the country, it's very expensive to be able to do that, probably more so than shipping NFC over an ocean distance depending on the circumstances. If they had to ship it across the country, it is expensive.

So it's not that it's not doable, and apparently, it is being done or else San Miguel would not have requested a normal value to be assigned for NFC.

I remember some years ago, I don't know, I forget who all was on the Commission at the time, but it wasn't that long ago that in the orange juice cases the argument was posed that NFC was somehow a protected special market for the United States, that Brazil never posed a threat, and it was simply a matter of logistics and investment. If the value was there, if the price is there -- as Mr. Borgers said, it's a premium product -- the price is there, they will come.

COMMISSIONER ARANOFF: Okay. Well, I don't disagree with that argument, but it would be helpful to have some understanding on the record. Just because the technology is known and the market exists, there's still an investment to be made which involves having the funds to make the investment, deciding to make the investment, carrying out the investment, and that takes time. I don't know whether that falls within the reasonably foreseeable future for somebody who hasn't done that yet.

So to the extent that the industry in Argentina is already heading down this road -- and I'll ask them this afternoon as well -- you know, it would be helpful to know the extent of the investment that's been made that can result in, you know, product available for shipment to the U.S. within the reasonably foreseeable future as opposed to theoretically someday.

MR. BORGERS: The assets that would be

required to produce NFC are very similar to those that make concentrate. Instead of sending the juice to an evaporator, one sends it to a pasteurizer. A pasteurizer to pasteurize not from concentrate juice, somewhat less than half a million dollars.

You would simply pasteurize the juice and then send it to a drumming line, fill the drums, freeze the drums, put them in a container. The process would be very, very similar to how concentrate is brought to the United States.

COMMISSIONER ARANOFF: So everything that you're storing either for shipment or in inventory you're holding in frozen form? You're not holding anything in a 40 degree chilled type of state?

MR. BORGERS: That's a very good question. We hold all our concentrates in frozen form. Our not from concentrate, we have refrigerated silos that we maintain at about 34 degrees, and then prior to loading we'll slush that product to chill it additionally.

But no, the not from concentrate is held as close to freezing as we can to preserve quality, whereas the concentrate is all kept 100 percent frozen. That's the bulk not from concentrate. Not from concentrate in drums of course is kept frozen.

COMMISSIONER ARANOFF: Okay. Let me just ask, why do you keep some frozen and some not frozen? is it something about how the purchasers use it?

MR. BORGERS: Ma'am, it freezes like a huge ice cube, so if you freeze that, you'll get the expansion and it will cause damage to the equipment if it's in a bulk tank, right? So we get it as cold as we can but keep at liquid if we're storing in bulk.

If we're storing it in a drum, we allow space for the expansion on freezing in the drum and then immediately -- so we short fill the drum, if you will, then send it into a freezer, product expands to fill the drum, and now we have our unit.

COMMISSIONER ARANOFF: Okay. So it's a matter of convenience for transportation as opposed to something that the customer needs to receive in one form or the other.

MR. BORGERS: It's not only convenience, it's the safety, because if we freeze not from concentrate in anything larger than a drum, a drum of not from concentrate can weigh about 500 pounds, maybe 400 to 500 pounds, so as you're handling these units, if it was bigger you'd have quite a mass that you'd be attempting to dump and chop and get into usable form.

COMMISSIONER ARANOFF: Okay. Appreciate

those answers.

MS. WARLICK: Commissioner Aranoff, I just wanted to add one thing. On NFC from Argentina, we do see in the trade data, the official data under the not concentrated heading, which I believe is 2093141, that there are volumes coming from Argentina of a not concentrated product. It's fairly low, but maybe 500,000 liters single-strength equivalent a year. Sometimes less.

COMMISSIONER ARANOFF: Okay. So that's helpful to know. So I have just a little time left. I want to ask, well, what I hope is a short question. Are there markets outside the United States that are consuming not from concentrate lemon juice in significant quantities or is that a U.S. phenomenon?

MR. BORGERS: There are markets. We export product to Canada, we export product into Asia, Japan, and at times Australia and New Zealand.

COMMISSIONER ARANOFF: Is the not from concentrate product on principles a lemonade?

MR. BORGERS: Yes. Premium lemonade.

COMMISSIONER ARANOFF: Is there anything else that it's used for in any significant quantity?

MR. BORGERS: Lemon beverages, in total. Perhaps not a simple lemonade. It might go into a product that's perhaps a blend of iced tea and lemon juice. It's used within premium beverage applications. The vast majority would go into premium lemonade, though, by volume.

COMMISSIONER ARANOFF: Okay. Thanks very much for those answers.

Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Mr. Chairman, and I thank all of you for being here today to help us to understand these issues.

I want to begin, I want to preface my first question with a statement that I understand there is not an effects test under the statute, so our mission, or our determination here is going to be oriented toward what is likely to happen in the future, or in the reasonably foreseeable future, but having said that, I understand your testimony that the suspension agreements have had an impact on the industry's fortunes and so I want to help to, I want to understand what the mechanism, what the economic mechanism has been that has produced this up turn in your fortunes.

Is it your testimony that there's been a limitation on supply to the U.S. market? Is it your testimony that there's been an effect on price in the U.S. market? What is the economic mechanism that's generated this up turn in performance for the industry?

MR. MCGRATH: Well, let me start with that and maybe turn to Mr. Borgers. The mechanism is clearly different from a dumping order, as I said at the outset, one of the main differences being that a dumping order from most of experience here, an antidumping order, especially with high margins, tends to severely restrict volume for various reasons.

One is simply the cost and the risk that's involved, the cost being the up front deposits that importers must put down which they may, or may not, get back, and the risk being the fact that dumping duties are assessed on a retrospective basis after the fact.

So you may end up depositing 20 percent rate, hoping that you'll get it back in a review later on, two, three years goes by and the review is completed and the Commerce Department decides to throw out your data and assess the all other rate for the country and it's 80 percent. Suddenly, you've got a bill three years later that in some cases puts people out of business. That tends to restrict volume at the outset for any commodity.

In the case of this situation, there are a couple of reasons why there's a different impact here. I'm not going to claim that a suspension agreement alone is the sole reason why there's not a real severe volume impact here, but the suspension agreement approach doesn't assess duties. It's certainly preferred by the foreign producer that's being targeted by the investigation.

It allows the producers who sign on to equally have their product evaluated, have their costs evaluated, have a normal value set, basically a floor price, at which they can sell to the United States and be permitted to sell.

If there's a demand for it -- and as we said in our testimony, the U.S. does not serve the entire demand in the United States so some imports are needed -- then that product that comes in is not necessarily going to be restrained in volume, but it will be sold at a fair value price so that the U.S. price can rise as well.

What we're saying, though, is that the data in this situation that you've assembled are showing that -- and I don't want to downplay the discussion of profitability and profits. There was an improvement there, but we're going to have to talk about that some more because it's not these cartoonishly high numbers that the Respondents are relying on. It has to be evaluated differently.

The effects of the order were to make sure that prices were sold, they went up to a level that were fair value, the Petitioners could stay in business and expect to see a profit that was reasonable as a return to their suppliers of fruit that was coming in, the exporters could expect to sell their product to supply that additional demand in the United States at levels that were policed and that were kept even, that were predictable and were not going to result in a penalty three years later that might be three times what they deposited.

So the effect on volume of what's coming in, the combination of those two things, the need for some volume and the fact that it's more predictable for the exporter, are very different circumstances here than what you face in a case where there's a dumping duty that's assessed on imports or a deposit assessed on imports and then a duty assessed retrospectively. That's likely to have a much clearer restraint on volume in a different fashion.

Perhaps you can explain what you experienced when the suspension agreement went into effect.

MR. BORGERS: What we saw is significant change in the market in that not only did the volumes, the accumulation of surplus inventory within the United States stop essentially so the inventory pressure was alleviated, but more importantly, the product coming to the United States was coming at a value that was now reflecting production costs.

I would say that the production process within Argentina and Mexico and the United States, the extraction process is very similar. The juices are actually very similar also. So with the suspension agreement, what we saw was the discipline that came in, that that product was reflecting true cost, and our costs, and as such, it closed a void between our costs and what market values were that let us get back to the point where we didn't have negative value on the fruit. That's a powerful concept.

Pre-suspension agreement there were years the Sunkist growers were handed a bill for delivering their fruit. We're not talking about the absence of a return, we're talking about a negative return. A bill. So in that situation, obviously the proceeds from the product did not equal the costs. We've seen that reversed.

MR. MCGRATH: And if I could just add, this is a situation where, I mean obviously the United States' supply of lemon juice is not, on a volume basis doesn't serve the entire demand for lemon juice in the United States. There's more of a demand than the U.S. produces. We understand that.

If the suspension agreement discipline were eliminated, we believe that the product that's coming into the United States, some of it would increase because, as you've seen, there's inventories that have built up. There will be some increase in volume, but the biggest impact is likely to be a decline in price, both for the imports and for the United States.

What will happen eventually is less and less of the U.S. supply is going to be served by U.S. producers. That declining price for the continuing higher imports coming from abroad will serve more and more of the fairly steady demand. The market share is going to shift even further.

At the time that you lifted this originally, it was maybe 50/50. I think the domestic industry may have had half of the market. This industry now has a lower proportion of the market. Subject imports have gone up, they're more than half of the market, so they have considerable market power, especially for a fungible commodity.

Eliminating that discipline on a co-product or a secondary product of what really is coming out of a line that's focused on producing oil more than juice is simply going to make this a disposal market that's much easier to avoid that build up of inventory.

U.S. lemon growers will probably try to sell more to the fresh market if the price keeps going down and the returns on processing are not sufficient. I think Mr. Borgers probably will find other products to get involved in probably have to get out of lemons.

COMMISSIONER PINKERT: Just a quick follow-up. Staying with this period since the investigation, has the demand for the not from concentrate product increased dramatically in the U.S. market?

MR. BORGERS: During the review period from the beginning, say that 2006 period, there has been significant pickup in demand, yes. However, what we have noticed is in the last three years the growth rate has slowed, and we have really reached a situation where the demand has more or less plateaued.

COMMISSIONER PINKERT: But going back to my original question about the improvement in the fortunes of the industry, is this a significant factor, the increase in demand, albeit perhaps leveling off recently, but since the orders went into effect? I mean the agreements.

MR. BORGERS: Yes. I don't want to overemphasize the percentage because to keep this in perspective, over this time period roughly 19 -- the range is 19 to 40 percent of our sales volume is coming out of this product. So from a low of 20 percent to a high of 40 percent is the growth of the sales market share.

However, the growth in the most recent to the 40 is because the concentrate sales declined. So absolute volume, we've plateaued. But as a percent of our sales, it has gone up as our concentrate sales have declined.

COMMISSIONER PINKERT: Thank you. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Johanson.

COMMISSIONER JOHANSON: Yes. Thank you, Mr. Chairman, and I would also like to thank all of the witnesses for appearing here today, and especially Mr. Borgers. I believe you came all the way from California. Is that correct?

MR. BORGERS: Yes.

COMMISSIONER JOHANSON: And to any of the other witnesses who might have come a long way.

Mr. Borgers, are you based in Visalia by chance?

MR. BORGERS: No. Our corporate headquarters is in Ventura.

COMMISSIONER JOHANSON: Okay. I had the opportunity to visit Visalia many years ago, and I think I toured Terminus Dam, which is on the Kaweah River. Is that close by?

MR. BORGERS: Yes, it is.

COMMISSIONER JOHANSON: Okay. Anyway, I remember that very well, and I remember going through Orange Cove and Lemon Cove and seeing citrus trees growing on the edge of hills. It was very pretty there. Anyway, that brings back some very good memories. So thank you again for coming all the way out here.

My first question deals with lemon oil, which I know figures in the production of lemon juice and fresh lemons as well. What do you all see as the demand trends for lemon oil? And the reason I ask this is because it's my perception, and perhaps this is incorrect, but it's my perception that consumption in soft drinks are leveling off or maybe even declining in the United States.

Can any of you please address this issue?

MR. McGRATH: I think maybe Amy.

MS. WARLICK: Yeah, I can take that. I had that graph up, which had some information from Coke's annual report, and Coke is the world's largest beverage manufacturer. So their data is somewhat representative, and they just show their unit volume case sales of the soft drinks. And we're looking at carbonated for the lemon oil demand because that's where most of the lemon oil is used, and actually very little lemon juice is used in the carbonated soft drinks.

And so you can see that while the United States and Europe, their demand -- or let's just say in Coke's case, case sales -- have been increasing very slowly from 2010 to 2011. They actually declined in 2012. But the rest of the world is still drinking a lot of carbonated soft drinks.

So from our perspective, we see that segment going down as iced teas and still drinks and juice drinks and energy drinks, that all goes up. But the rest of the world looks very different in terms of carbonated soft drink sales.

Brazil is not on here, but, I mean, it's part of Latin America. It's also a very fast-growing market for this. India, very fast growing, and China a huge market and fast growing. So and then you can see in Argentina's exports of the lemon oil how fast that has grown. So there seems to be growing demand well into the future.

COMMISSIONER JOHANSON: Okay. I was just thinking -- I know it can be in the U.S. -- as you demonstrate --

MS. WARLICK: Yeah.

COMMISSIONER JOHANSON: -- production is not increasing of soft drinks. I assume that in the long run, the rest of the world will probably follow U.S. trends, I would think. Maybe I'm wrong there, but I think that would be beyond -- that's probably far off in the future.

MS. WARLICK: Well, we have read a lot of the concern is diabetes, obesity in this country. And, you know, the trends are very different when you go to China and India and Brazil.

COMMISSIONER JOHANSON: Right, okay.

MS. WARLICK: So I don't know how --

MR. McGRATH: Commissioner, notwithstanding the 32-ounce cup restrictions here, I think the rest of the world is continuing to grow. This is one of the areas of concern that both Sunkist and Ventura have talked about, is oil demand continues to rise. The main reason that much of the Argentine industry and the Mexican industry even exists is to serve that oil demand for soft drinks from not just intermediaries, but large soft drink manufacturers.

The projections from the beverage companies are that other parts of the world, China, India, the continuing growth in soft drink demand there is going to keep oil going. Oil is a necessary coproduct, or juice is a necessary coproduct of oil. If you're making oil to meet that demand, you're going to be making juice.

Our juice demand has remained steady over the period that you're looking at. That's creating an imbalance. We've got a demand for oil that's creating too much juice.

COMMISSIONER JOHANSON: All right. Thank you for your responses. And on that, I'm going to ask you this question, and perhaps I'll address the Respondents this afternoon as well, as the would have knowledge on this.

To your knowledge, what are the differences in how the domestic industry and how the industries in Argentina and Mexico dispose of lemons after processing? I know here in the United States, or perhaps especially in California, there is specific regulations which deal with this.

MR. BORGERS: Yeah, certainly. In both Argentina and in Mexico, the peel after the juice and oil is extracted is washed and then chopped into smaller pieces and dried, and eventually pectin is recovered from the peel.

In California, the spent peel is actually sold to the dairy cattle. So we go into the food -- we sell our spent peel into a food channel for animals. So those processes are different, and there is value derived from the pectin side of the chain.

COMMISSIONER JOHANSON: Okay. And what do you do -- if you have excess inventories of lemon juice that is getting old, what do you do with those inventories? Because I'm getting back at the whole issue of disposal of oil product or residues.

MR. BORGERS: Well, it's simply not -- it's not possible to dump it. There is no way --

COMMISSIONER JOHANSON: It has to enter the market, essentially.

MR. BORGERS: It has to enter the market.

COMMISSIONER JOHANSON: Okay.

MR. BORGERS: If we tried to put that into our wastewater stream, it would knock our wastewater levels way out of specifications, and we'd be outside our permits.

COMMISSIONER JOHANSON: Okay. Yeah, I know you're part of California issues with water. The last thing you need to do is make more water unusable. That wouldn't make you very popular. So anyway.

MR. McGRATH: If I could add one thing to that, Commissioner.

COMMISSIONER JOHANSON: Yes.

MR. McGRATH: That's another way in which I think it's reasonable to observe that orange juice and lemon juice have different profiles. Orange juice is a food. Lemon juice and lemon oil, these are coproducts, secondary products, that are food ingredients.

Excess orange juice can be moved by movement in price. I'm not misstating it. You can cut a couple of cents off of food product and create some volume movement. Excess food ingredients are very difficult to move by a couple of cents. You need to cut off a lot in order to move a food ingredient if the food ingredient or the food manufacturer doesn't need that ingredient.

And that I think is a different competitive situation. There is still fungible products between the imports and the domestic. But being able to get rid of that excess, as you observe, it has got to be removed, disposed of within some reasonably short period of time. It's hard to do by just going a few pennies lower. In some cases, you have to go considerably lower.

COMMISSIONER JOHANSON: Well, I thank you for your responses. Do you all have an answer as to why prices have increased so much since 2007? And also, did Citrico's bankruptcy in 2004 suppress prices back in January of 2007?

MR. McGRATH: Well, let me start with that, and let me think. We'll have other witnesses.

The Citrico bankruptcy, I mean, we heard the same story from Respondents six years ago, that it was all about Citrico. It's a one-off deal. And then this morning I think I heard Mr. Dunn say that Citrico was a U.S. producer. They're not a producer. They were a distributor. They purchased imported product and resold it.

They were liquidated in bankruptcy because they had excess inventory, for various reasons. They went into bankruptcy, but they had accumulated excess inventory from around the world. So what I think needs to be recognized is that Citrico is not a cause. They're a symptom of excess inventory and what happens when you have too much.

The fact -- you know, I looked back again at the record, and I think Respondents felt that because that excess inventory was sold by bankruptcy liquidators that somehow it wasn't the same thing as import threat to the United States. That's not true. It's import volume that was sold, and, yes, it did have an effect.

What it did, it was reflected excess inventory. We're here again today warning that this could happen again. It might not manifest itself in Citrico. It might manifest itself in some other way. But excess inventories will have that impact.

COMMISSIONER JOHANSON: Maybe Mr. Borgers has --

MR. BORGERS: No. I would strongly support what Matt just said, that essentially when this buildup in inventories needs to be liquidated, those are the things we see. And really, who is doing the selling is not as relevant as the fact that the inventories must be sold because again this is not a product that we can just dispose of.

COMMISSIONER JOHANSON: All right. Thank

you for your responses. And, Ms. Warlick, were you going to say something? I'm sorry.

MS. WARLICK: I'm satisfied with what they have said and what I gave in my testimony.

COMMISSIONER JOHANSON: Okay.

MS. WARLICK: It's more of a symptom of the problem than -- yeah.

COMMISSIONER JOHANSON: All right. Thank you. My time has expired.

CHAIRMAN WILLIAMSON: Commissioner Broadbent.

COMMISSIONER BROADBENT: Thank you. Welcome to the witnesses. Nice to see you all here today. I wanted to kind of get a specific request down in the record for the posthearing briefs, and would ask that you all provide briefing that discusses the legal authorities to do some precedents in prior Commission determinations that set out the appropriate legal analysis for the Commission's determinations under the circumstances that we're discussing here today. And where the Commission's record -- if we've done this before, if there is any precedent for it.

I know Dan mentioned the uranium situation. But I'm just real uncomfortable sort of where we are legally and what kind of a determination we have to make based on the record for us.

Could you talk to me a little bit about how suspension agreements actually operate in practice? How do they set the normal value? How often do these prices change? Are they sort of backward, forward-looking? How transparent are they to the folks in the market trying to understand the mechanics of these?

MR. McGRATH: I'd like to ask my colleague, Steve Brophy, to respond to that, and then I'll have some additional comments.

MR. BROPHY: I think as to how it's calculated, it's similar to a dumping analysis. In dumping, you would calculate -- you have the U.S. price and you have the normal value, and you can't sell in the United States below your normal value. So here they calculate the normal value ahead of time and basically give the Respondents prices based on, you know, is it concentrate, is it NFC, what is the pulp level, and there are different prices for each type of product, and they can't sell below those prices in the United States.

It's calculated once a year. Argentina, I believe it's released in December, applies January 1 to December 1 of the next year. Mexico is a different fiscal year. I believe it's released in May, and it's effective -- I think it's June 1 or -- yeah, June 1 through -- no, sorry, July 1 through June 31st [sic]. Mr. Clark will correct if I'm wrong about that.

And it's based on largely their cost of production from a prior year as supplied to the following year after it's calculated.

MR. McGRATH: If I could also add, this only applies to the specific exporters that have signed on to the suspension agreement. At the beginning, the Commerce Department follows a legal standard to try to cover at least 85 percent of all exports from that country to the United States. That can shift over time, obviously. So there is leakage in a suspension agreement.

Those who aren't covered by it can ship unburdened by any kind of floor price to the United States. They can sell at whatever price they want. There is no volume restriction, unlike with a dumping order where there is an all-other rate and the only way out is to get a specific revocation for a specific company.

In the case of a suspension agreement, if it falls below 85 percent, as it has once or twice in this case, the Commerce Department goes out and tries to sign up other producers. Now, this poses a problem both for us and for the Respondents, quite frankly. Respondents are trying to abide by the rules and by the agreement, so they're selling at normal values. And other producers who haven't signed on the agreement are selling around the lower prices.

It hurts the industry, and it puts the players who are playing the normal value rules at a disadvantage as well. We think that what should be happening now is that additional suppliers should be approached and should be signing onto the agreement as well because the only options are if an insufficient number have signed onto an agreement, and they can't get back to the 85 percent level, I'm not sure exactly what would happen, but the suspension can be lifted and the investigation resumed.

So we'd be going back to a point in time back in 2007, I guess, and resuming it from that point going forward, and dumping duties would suddenly be imposed on everybody shipping from those countries. So you'd go from a normal value situation with a floor price to overnight depositing 85, 90, 100 percent deposits on importation. It's not something that certainly the final suppliers want to see. It's not something that the U.S. industry wants to see. It would be disruptive to the market.

COMMISSIONER BROADBENT: Mr. McGrath, help me -- how do you sign up other producers? I mean, how do you approach another producer and say, sell at a certain price, and what is the leverage that Commerce has?

MR. McGRATH: The leverage that the industry as a whole has -- say we use Argentina as an example -- is that those who are refusing to sign onto the agreement may find themselves locked out of the market by having the resumption of an order and being required to deposit dumping duties. The others would also be required to deposit dumping duties. The larger producers would probably seek to try to recover those duties through the annual review process. But if too many continue to sell around the suspension agreement, the leverage is that they can be completely stopped from selling by the imposition of the -- the re-imposition of the preliminary dumping margin.

So the times it has come up, it's the Commerce Department -- it's not us, not the industry, that's reaching out to these people. It's the Commerce Department that has to get them to sign and to get them to agree to participate. And they've been able to get back to the 85 percent with respect to Mexico.

I think they've been exploring and trying to get back to the 85 percent on Argentina.

COMMISSIONER BROADBENT: I mean, what is the role of the Mexican government and the Argentine government in this process?

MR. McGRATH: Well, since the agreement is between the exporter and the U.S. Commerce Department, the foreign governments may help facilitate communications. I'm not sure. Maybe Steve has some comment on that.

MR. BROPHY: I mean, maybe they would facilitate communications, but they have no role. They're not signatories to the agreement, unlike some other suspension agreements, where the government -- I think Russia has been a signatory. But in this case, it's just the exporters.

COMMISSIONER BROADBENT: Yeah. I was just looking at the list that are in effect, and you've got -- the tomato is one that was just reviewed, carbon steel plate from Ukraine. But you say -- and then the ones on uranium are -- the Russia government is party.

MR. BROPHY: I'll have to look at that again. But in this case, yeah, the government is not a signatory. It's not involved directly.

COMMISSIONER BROADBENT: Okay. So these are

-- basically, these are sort of ad hoc arrangements that Commerce develops, and there is not a lot of rules for how you negotiate a suspension agreement. It's sort of consenting adults come up with something that seems to work with everybody.

MR. McGRATH: More or less. I think there are guidelines as to how they would -- they use the basic approach they use in calculating a dumping margin with respect to cost of production. There are some differences actually in this case between the way that that normal value is calculated between Argentina and Mexico. The agreement negotiated with Mexico had a different allocation of fruit cost between products than the agreement negotiated with Argentina.

COMMISSIONER BROADBENT: Okay. Sorry for just one second. I had one further question here.

Can you all tell me what the domestic industry's approaches to exports -- seeing some of the growth in the export markets out there, how much do you export or how much do you plan to export in the future?

MR. BORGERS: Yeah. Geographically, if you look where California is located, we're very well positioned to export into Asia. And because the Japanese market is a beverage market, it's dominated by a packaging form. It's popular to put this into PT bottles and to sell clear beverages.

So we focus our energy on the high value-added products and try to market more technical products into those countries, if you will. So, yeah, more sophisticated due to the demands of the packaging systems that they use there.

We have a business also for the standard cloudy product, but the primary demand in those markets is for the clarified products, and we do some business of not-from-concentrate exports, but it's primarily clarifieds.

COMMISSIONER BROADBENT: Thank you very much.

CHAIRMAN WILLIAMSON: Okay. Thank you. Can you sort of address what factors other than weather may contribute to high-crop years for lemons?

MR. McGRATH: Maybe -- what factors other than weather contribute to high-crop years? I think I'll defer to Mr. Wootton.

MR. WOOTTON: Well, of course, weather is the principal factor impacting crops. But we could also suffer consequence as a result of pests, disease issues, and that type of thing. Certainly weather patterns such as drought would reduce crop size. If you have severe heat, for example, or adverse weather activity at bloom that knocks the bloom off the tree, hail events, that type of thing, that could, you know, significantly affect the amount of fruit that ultimately is going to be produced.

When you have a freeze episode, as we experienced I think in 2007 in our desert production areas, that typically carries over for the succeeding season as well because it's going to take a couple of years for the trees to recover. So those are all factors that get into impact of the fruit, and then would also likely affect the quality of the fruit, the bricks, sugar/acid ratios, and that type of thing.

CHAIRMAN WILLIAMSON: Okay.

MR. McGRATH: And if I could also add, the phytosanitary problems, pest infestations, some issues affecting the fruit itself adversely affect the Argentine crop more than the U.S. This doesn't affect the availability of the product for processing into juice, but it does have an impact on its availability for fresh market sales.

So Argentina can't sell as much of its crop to some markets, including the United States, because of those phytosanitary restrictions. And more of its -- the percentage of its crop is going into processing.

CHAIRMAN WILLIAMSON: Okay. And I assume that affects its ability to sell fresh lemons in the EU, that they would have similar restrictions that we do. Do you know?

MR. McGRATH: I don't think they're restrained with respect to getting into the EU. They're just restrained in selling to the EU right, is the recession. It's had an adverse effect. They have a problem selling fresh lemons here. Where else?

MR. WOOTTON: Here and in China. I think they're working to try to overcome that. They've petitioned for market access for their fresh lemons in the United States. But because of things like citrus variegated chlorosis, spreading ACP, HLP issues, canker, citrus black spot, other pest disease-related concerns by the United States, so far they have been precluded from entry.

CHAIRMAN WILLIAMSON: Okay. Thank you for those answers.

I think Commissioner Johanson asked this. I'm not sure you fully answered the question. To what do you tribute the demand and increase in pricing for lemons during the period of review? We do see prices going up?

MR. McGRATH: My initial response to that, I don't want to speak as a non-industry witness, but the price went up, as I said in my opening statement, by a significant amount that was not surprisingly very similar to the initial findings of what the dumping margins were.

One of the big reasons for the price increase was there is no a suspension agreement in place where the major suppliers were selling at much higher prices. I fully understand that the Respondent's position is that the price went up because the Citrico liquidation was completed. But our position is that that Citrico liquidation was getting rid of excess inventory. But Mr. Borgers has any other thoughts on that.

MR. BORGERS: Well, again, I think what you're seeing in that phenomena is that the pricing for the output came up to reflect the production cost.

CHAIRMAN WILLIAMSON: Okay. Thank you. Can you just give us a little bit more background on why Ventura Coastal entered into the joint venture with Sunkist, and explain how the joint venture impacted Ventura's settlement practices, prices, and other relevant factors? And I'm also curious. You mentioned 2012 as maybe being the one year where you could see this fact of not including the cost of producing the fruit that affect the coops was not -- I guess was not a factor. I didn't fully understand that.

MR. BORGERS: Well, I'll start with the purpose of why we combined our efforts and formed the JV.

CHAIRMAN WILLIAMSON: Yeah.

MR. BORGERS: We essentially had very complementary assets in that Sunkist had assets that would lend themselves to the storage of certain types of orange juice and lemon juice. We had production capabilities of different types of products. And when we put the two pieces together, we had a supply of fruit and raw materials that came with the Sunkist side of the equation. We had production assets that technical capabilities in management systems that came from the Ventura side. And when we put the two entities together, what we saw was we could realize additional efficiencies and drive improved returns for the fruit and increase the pay price to the growers.

So that was the strategic purpose behind the combination. The way that manifests itself in the 2012 numbers is that once the JV was formed, as part of this, we became an at-length purchaser of fruit from the Sunkist growers. So in this case now instead of the fruit value being a residual at the end of the process, there was an established fruit price so the raw material was now being priced into the equation.

So the fruit price that we paid for the lemons was reflective of -- is reflective of the market conditions. So now when we look at the 2012 results, we see fruit cost included in those results, and that's why our position is that those results indicate the financial kind of going forward perspective on the JV far better than any of the historical combinations because we've been able to combine the operations. We're working on that. But most importantly, we have the cost of the fruit now into the cost of the production of the products.

CHAIRMAN WILLIAMSON: Okay, good. That was the first -- is there any -- and we may have to do posthearing any sort of forecast. What do you see being, say, the possibility of this enterprise going forward, given that you're now sort of consolidated to become more efficient. Now, you may have to address that posthearing, but that could be relevant.

MR. McGRATH: I think that the joint venture, certainly the intent is to capitalize on those efficiencies --

CHAIRMAN WILLIAMSON: Yeah.

MR. McGRATH: -- and continue to be profitable going forward. That depends on projections that prices remain at reasonable levels that permit the recovery of costs. When you say recovery of cost, by the way, the time period before 2012, we're not talking about just recovery of the processing and extraction costs. We're talking about the recovery of some portion of the cost of growing that fruit and delivering it as the raw material for all of this process.

So what we're suggesting here is that the data that you have on profit is very difficult to allow you to reach some conclusion that, you know, we have an operating margin of X percent because of the fact that a large portion of it -- you have data for two entities throughout the period, Sunkist and Ventura. The combined period is more reflective, which is only 2012, more reflective of actual performance.

CHAIRMAN WILLIAMSON: Yeah.

MR. McGRATH: And because of the fact that the fruit is costed upfront and a decision is made as to what the value of that fruit should be based on what the output is going to be at the end of the line.

The previous years, in terms of figuring out what does this represent, is this profitable or not -- you know, the prices seem to be high, so shouldn't you be making profit?

There are a couple of ways of looking at that. We've been struggling on this issue with your staff since the last time we went around on this six years ago. We've tried the approach of simply putting the returns to growers in the slot for cost of inputs. And you don't want to accept that, plus it's somewhat distorted because the return to the grower is not necessarily the same fiscal year as the year that you're looking at in terms of revenues.

So you don't want to do that entirely. So we suggested six years ago that the approach that you might want to take is looking at whether the return to the grower, which we do have those numbers, and they are audited every year -- that return to the grower you can look at each year to see whether or not they recovered the cost of their pick and haul, at least.

Numbers are available on what the cost of pick and haul is. There are public numbers available on the cost of pick and haul that UC-Davis has done studies. That's one index that you can use that you could take a look at.

Another way of doing this might be to take a look at the return to the grower each year in the Sunkist-only financials, and compare them to the fruit cost that's reported by Ventura Coastal. Ventura Coastal was buying lemons throughout that period of time. So that was a market price. So you can compare what the return was to the grower for the Sunkist entity with the market price of the fruit that Ventura Coastal was -- so there are a couple of different approaches, and we're happy to try each one of these to see whether they might meet the needs of doing the evaluation.

But as it stands now, the figures on operating margin are just meaningless.

CHAIRMAN WILLIAMSON: Okay. Thank you. My time has expired. To the extent posthearing you have some suggestions on what -- now that we have the joint venture, and what does that mean in the next year or two, in the foreseeable future that should be relevant to our evaluation here. That's kind of the bottom line that I'm looking for.

Okay. Thank you. Commissioner Pearson.

COMMISSIONER PEARSON: Thank you, Mr. Chairman. Mr. McGrath, you had just indicated that you think the operating income figures are relatively meaningless. Can you clarify, please, does that apply both to Sunkist and to Ventura during the part of the period of review in which the firms were operating independently?

MR. McGRATH: I think that the figures for Ventura, we were looking at to see if they do accurately reflect what the financial performance might be. I'm not sure that -- as far as I know, they've been -- the products have been allocated between oil and lemon, right?

MALE VOICE: Yeah, they are.

MR. McGRATH: So that those figures are accurate. For the period leading up to 2012, of course, they only account for 25 percent or less of the industry. But that is -- which is one of the reasons I suggest at least using them as an index to see how that compares to Sunkist in terms of return to growers and the cost of fruit. So that is one measure. I would not suggest measuring the entire performance of the industry just on that.

COMMISSIONER PEARSON: Right. I actually thought that our staff must have gotten us fairly good financial data here because as I compare table 3-7 and table 3-8 on pages 3-10 and 11, all of which is confidential, I really don't discern a big difference between the operating income and the bottom line, the operating income year to year between the two firms. They look to me pretty similar, and so I'm thinking, okay, if we've got the results for Sunkist roughly tracking the results for Ventura, maybe our staff have this right. But you think not.

MR. McGRATH: Well, we don't. Definitely Ventura was a more profitable enterprise than Sunkist was able to accomplish, for various reasons. And that's one of the reasons why they're now in a joint venture, to improve the performance.

I don't think they -- I mean, they track to the extent that they show an increase in the same year. But I think that the numbers from what I'm looking at for Ventura are -- the figures for operating returns for Sunkist during that period are much higher than for Ventura. Ventura does have reasonable operating margins, and that is a basis that you can look at for comparison. But I'd have to check with Mr. Borgers here on whether that's --

COMMISSIONER PEARSON: Well, the results that I'm seeing indicate that in most years the returns to Ventura were higher than the returns -- the operating income for Sunkist. And so I'm just not -- I'm not following your logic here. I mean, you keep talking about this fruit issue and not paying the cost, but I'm wondering if it's kind of a red herring, or if there is really something there that we should understand.

MR. McGRATH: I'm not sure what you're saying. Our operating income is not much higher for Ventura. It's much lower.

COMMISSIONER PEARSON: Well, right. But maybe I misheard you. I thought you said that Sunkist was having artificially inflated operating earnings because of not having the fruit in. And yet I look at the --

MR. McGRATH: No. I --

COMMISSIONER PEARSON: -- operating revenues for Sunkist, and I'm not seeing them in many years higher than the earnings for Ventura.

MR. McGRATH: Well, perhaps we need to look at this or define the question a little bit better. I'm not talking about -- I'm talking about the operating income ratios, okay?

COMMISSIONER PEARSON: Yeah.

MR. McGRATH: And the operating income ratios are showing up as higher for Sunkist, from what I'm looking at here. And the operating income is showing up as much higher. But the cost of goods sold --

(Simultaneous discussion.)

COMMISSIONER PEARSON: Mr. McGrath, I apologize. I was not looking at the operating income ratio, but rather the value in dollars per gallon of -- operating income expressed in values per dollar -- dollars per gallon. The bottom line on tables 3-10 -- or tables 3-7 and 3-8.

MR. McGRATH: Right. And for -- certainly for the last two years before the joint venture, we're seeing, you know, a much higher figure for operating income in dollars per gallon for Sunkist.

COMMISSIONER PEARSON: Right. What does that tell us about the previous three years? I mean --

MR. BORGERS: Well, Commissioner, the Sunkist entity prior to the initiation of the suspension agreement had entered into several long-term contracts with customers. So there was also a freeze and a supply interruption in the domestic supply during the early years of the suspension.

So if you look, there were extraordinary circumstances in the front years as we kind of normalize. I did not have those contracts in place on the Ventura side. So the Ventura Coastal was able to better adapt early on. That's why I think that the two years prior to the formation of the JV, and then the JV itself, is really where you're going to see numbers start to kind of equivalate, and that's where you would see the differences that we're talking about.

COMMISSIONER PEARSON: Okay. Well, I think these data are confidential. Since you operate a combined firm now, I suppose you could make them public if you wanted to, but I would leave that to your consideration.

A related question. If this issue of fruit value and returns to grows is an issue that we should consider, are you advocating that we expand the domestic industry to include the growers? Because clearly we do that in some agricultural investigations.

MR. McGRATH: No, we're not advocating that the growers be included as part of the industry, one of the main reasons being I don't think the statute would permit that. You don't have the conditions here like you did in orange juice to be able to include the growers as part of the industry, nor do you have the database to do that evaluation.

But the point we're making with return to the growers is that the major input cost here for this product is obviously lemons. The return to the grower is the goal of the sale of these end products, both of them together, these co-end products, oil and juice. The return to the grower is the goal to maximize that return that helps them recover some of their costs of producing that particular product.

So what we're suggesting is that you at least look at the cost that the grower is trying to recover in this secondary product. We all admit that the main product that the growers would like to sell into, the main market is fresh fruit. I think Respondents have said there is a better return on fresh fruit. We've said there is a better return on fresh fruit.

But we all have to rely on the processed product to help recover costs as well. And we're suggesting that you take a look at that, at least that one element of recovery of costs and returns to the grower. You could choose other elements in recovery of cost as well, but that's one that has constantly been a goal of Sunkist before the joint venture anyway, was to try to recover a profit that returned to the grower at least some portion of their cost of getting that fruit off the tree and into the packing house.

COMMISSIONER PEARSON: But at least the industry that is being investigated here is indeed the domestic processing industry. We really should focus on that and try to avoid getting distracted with discussions about the growers, shouldn't we? I mean, that's part of my concern. I have the sense that you keep trying to lead us somewhat offtrack.

MR. McGRATH: No. I agree entirely. I'm not asking that you include the grower as part of the evaluation of the industry. All we're doing is giving a suggestion for another way to go about trying to identify what the fruit cost is in the financial status of the processor.

I would prefer that you calculate -- what you do have from Sunkist is returns to the grower. You can take that return and calculate a unit cost for the fruit and compare -- or unit cost -- or unit return to the grower per metric ton or per gallon of juice, and compare that to the market rate that Ventura had each year. That's one way to evaluate what their performance is like.

COMMISSIONER PEARSON: But don't we tend to look at collapse much the same as we look at tollers and do the analysis that way? So the stuff they put through the plant there and certain revenue on, and that has them as part of the domestic industry and gives us financials that are good -- I mean, isn't this a largely analogous situation?

MR. McGRATH: I'm not sure how this compares to the tolling analysis. I know you did that with one coop. I think you may have done that in the preliminary as an alternative evaluation here too. We'll have to address that. Whether the tolling approach is the proper one or not, there is no tolling here. So the situation -- the concern we have is that the financials simply don't reflect the actual cost of this industry, the juice industry, which is a coproduct of oil.

COMMISSIONER PEARSON: Okay. Thank you. Mr. Chairman, my time has expired.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Aranoff.

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. We have an indication in the record that Coca-Cola has indicated that it views the lemon juice market in the U.S. as currently being in a tight supply situation. What do you think they mean by that? Because you all have indicated that there is a great deal of supply currently in the inventory, either in the U.S. or in subject countries. But they didn't make that up. What is about the market that they're describing?

MR. BORGERS: Given my current heavy inventory position, I'm a little unsure. I don't -- I can't project what would lead them to say the supply is tight. It's not a situation that --

MR. McGRATH: They may be referring primarily to NFC. I saw that same reference as well, and it's certainly not a tight market situation. There is more inventory both here and Argentina and Mexico than there has been in a long time.

COMMISSIONER ARANOFF: Now, with respect to NFC, I thought I heard one of you to say this morning that that can only be held for a few weeks before it has to be sold.

MR. BORGERS: That's correct. So we continually produce that product. So fortunately, with the volume of lemons and the supply of lemons now being a 12-month supply for the JV, we've got fruit available to produce NFC 12 months of the year. So we're not having any -- we don't have any difficulty producing not-from-concentrate when it's needed. But it is a product that's produced per shipping schedule and per customer demand.

COMMISSIONER ARANOFF: How come NFC lemon juice has such a short shelf life when NFC orange juice can stick around for about a year, right?

MR. BORGERS: We don't currently have any aseptic tanks configured to store not-from-concentrate lemon juice. And just a quick review: aseptic tanks -- aseptic storage basically means that we're going to sterilize the juice, and then put it into a tank that has also been sterilized. The tanks that we have in our facility are million-gallon tanks. So we would need significant demand that can't be met from fruit receipts before we would commit those assets to store that volume.

But there certainly is nothing that says that NFC lemon cannot be stored in the same tanks that NFC orange. You'd merely need to have a system of making sure your lines were clear and you weren't cross-contaminating products, but that's easily achievable.

COMMISSIONER ARANOFF: Okay. All right. Do beverage manufacturers hold their own supplies of lemon juice in stock, or do they depend on just-in-time delivery and have very little on hand?

MR. BORGERS: That will vary by the customer and their facilities and their arrangements. We have customers that have both types of systems that you're talking about. One of our large customers has storage not only at their facility, but in outside storage also to hold the NFC. There are other customers that we literally will load tankers in time slots to get that juice to the plant in an exact time because the load direct from the tanker.

So it really varies by the customer.

COMMISSIONER ARANOFF: In the orange juice industry, there was some very sophisticated data available that tracked availability of inventories at various locations on a -- I think it's like a weekly basis, right? Is there anything like that in the lemon juice industry?

MR. BORGERS: No. The data you're talking about, I believe, is produced each week by the Florida Department of Citrus. And we don't have a central body in California that monitors lemon data like that. It's symptomatic that it is a much smaller scale industry than the orange juice.

COMMISSIONER ARANOFF: Okay. Turning to a slightly different subject, I think one of my colleagues raised this a little bit, but not entirely. In the original investigation, the evidence suggested that disposing of surplus lemons through composting was more expensive than turning them into juice or juice and oil, and that that was the case even if the sale of juice was not profitable due to oversupply. And I wanted to ask whether there are any changes in that now. If you go out, you observe that there are a lot of restaurants and other food service institutions that are composting everything now. So has the availability of facilities or the cost of composting come down to the point that it's an alternative you could consider?

MR. BORGERS: Well, I think what that reference was talking about was the scale of the effort that would be required to compost something like this. There are periods -- because we sell our byproduct -- our spent peel to the cattle dairy sheds, there are abilities that at certain times of the year, if there is surplus peel production, the dairy folks will dig pits and store the product within the pits, the spent peel, and then feed that later to their animals as the demand comes up with the time.

When you're talking about whole fruit, simply the volume and the scale of this, and then with the acidity of the lemons, I don't think it would be possible to store any significant volume of whole fruit in that same manner. What we're talking about is we'll process 20,000 tons in a month of that, 20- to 25,000 tons, which essentially is a thousand double trailers of fruit. And when you look at the scale of that and the fact that -- you know, just the volume of that material, logistics would be overwhelming to come up with something that you could store that in or dispose of it in without having the acidity leaking into the environment.

COMMISSIONER ARANOFF: So you're saying that existing commercial composting facilities are just not large enough.

MR. BORGERS: Yes.

COMMISSIONER ARANOFF: Okay. Since the Commission's original investigation, have there been any changes in the technology or the cost for disposing of juice in terms of the way that it would have to be treated or neutralized before being put into the wastewater stream? Or is that exactly the same as we had it on our record?

MR. BORGERS: There are none that I'm aware of.

COMMISSIONER ARANOFF: Okay. Another issue that came up in the orange juice investigation that I just wanted to check on here was the issue of blending, that when the product was prepared, there was blending of juices from different varieties of lemons to achieve certain product profiles, and that could be done either at the bulk stage or sometimes at the stage where it was reconstituted for retail.

Is blending something that is performed in the lemon juice industry, or you can just use straight juice from whatever kind of lemons are being harvested at the moment?

MR. BORGERS: Well, our fruit supply comes from the packing houses. So the varietal control of the lemons coming from the fields, the loads are coblended there. So I'm not able to segregate varietals of common lemons. We do segregate some specialty lemons like Meyer lemons or certain different types of fruit. But that's less than 1 percent of the volume we see. The fruit that comes to our house is commingled, so we don't really designate or track that separately.

What we do do in a -- because we produce products at different pulp levels, there may be a time when we would look at producing to a certain specification for a customer, some attribute they desire, say a pulp level or a bricks level or some acidity. We might at that point blend two juices together. But I would tell you that's a very small percentage of what we do. Probably less than 2 or 3 percent of our sales are blended. We typically produce the product, put it up, and then ship it to a customer.

COMMISSIONER ARANOFF: Okay. How about the reconstitutors who are repackaging the product for retail sale?

MR. BORGERS: Yeah. Because of the cost, if it's a reconstituted product, it's coming out of a concentrate product. So they will control the final specification going into the bottle at the point where they reconning it and bottling it. So we have a broad specification for the concentrate. We'll produce concentrate to meet those specifications, and then they'll add the water and reconstitute that back at the point of their bottling facility.

COMMISSIONER ARANOFF: Okay. Do your purchasers, particularly the soft drink manufacturers, but you can answer for other purchasers as well -- do they tend to purchase lemon juice from a single supplier, or do they tend to purchase from multiple suppliers?

MR. BORGERS: The majority of my customers have multiple suppliers.

COMMISSIONER ARANOFF: And do they tend to purchase their lemon juice and lemon oil from the same supplier, or do they handle those transactions entirely separately?

MR. BORGERS: That's a good question. It's customer-dependent, and it tends to correlate with the size of the operation. So my large customers would tend to buy those products separately, whereas a smaller manufacturer, a mid-sized beverage manufacturer, would probably add -- they'll purchase a truckload of lemon concentrate and ask you to put two drums of oil on the truck.

So as they go down in size and sophistication, they'll typically buy both pieces at the same time. But the large-volume customers will buy them very much separately.

COMMISSIONER ARANOFF: Okay. Thank you very much. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Pinkert.

COMMISSIONER PINKERT: Thank you, Mr. Chairman.

I understood the testimony about the current level of inventories. But as a general matter, is the supply of lemons that are available for processing severely limited both by alternative uses and other market phenomena?

MR. BORGERS: No. I would tell you there is a ready -- there is a supply of processing -- of lemons to process. I don't think those crops are constrained. I'm sorry. I don't think I understand the question.

COMMISSIONER PINKERT: Well, you have a supply of fresh fruit. That's one element of the equation. You have alternative uses for that fresh fruit. So as a general matter, do you find that you have a very limited amount of fresh fruit that is available for processing?

MR. BORGERS: No, I do not have a limited amount. We process significant volumes of lemons, and with current inventory positions, I don't have problems with fruit supply.

MR. McGRATH: Some of the fruit in some years, more of it may go to fresh and less to processing. It depends on -- somewhat on the market dynamics, the prices. There is plenty of fruit available. But in the normal course of going through the process of growing lemons, a certain amount of it is expected to be available to the fresh market at a higher value, and a certain amount of it is normally expected to go into the processing side of the business.

There is no limit on the volume. Theoretically, you could take it all for processing. But that would not be efficient for the growers, who are the ones who are producing the raw material.

COMMISSIONER PINKERT: Well, I noted in the answers that I just received that one aspect of the answer was given current inventory levels, the supply of fresh fruit for processing is not constrained. I can read that statement a number of different ways. You know, okay, you've got high inventories right now. And so you're not demand a lot of that fresh fruit for processing. Is that what is going on?

Under normal inventory conditions, would the supply of fresh fruit for processing be severely constrained?

MR. BORGERS: No. I think -- and again, if we go back to the intent of the JV, with Sunkist having a strong market position in the fresh lemon, and with about 60 percent of a normal crop going into the fresh and 40 percent, that fruit supply that became available to the entity is sufficient to meet our demands. And we don't have -- we have our -- we're in balance. We have raw materials. We have processing time. We have lines to run those lemons across, and our assets are in balance.

Those were part of the efficiencies we were looking for in the JV. If what you're asking about is are there periods where we would like more lemons, yes, there are. But they would be due to extraordinary events. There was a freeze in 2007, and when you have a crop interruption, then of course you're struggling to come up with the volumes.

But I'm assuming your question is talking about a normalized crop. And in a normalized crop, I would tell you our assets and our fruit supply are in balance.

COMMISSIONER PINKERT: That's helpful. And perhaps you could revisit this, Mr. McGrath, in the posthearing and talk about the situations that have occurred where there has been a shortfall in the supply of fresh fruit for processing.

MR. McGRATH: We'd be happy to do that.

COMMISSIONER PINKERT: Thank you. Now, in terms of our determination in this case -- and I know there has been some discussion about what the standard is. But assuming that the standard is a normal sunset review standard for the likely events or the likely phenomena that will occur in the event of revocation, what would be the significance of imports from the subject countries that are not covered by the agreements?

So there are some producers in Argentina and Mexico that are not covered by the agreements. How should we view those using the normal sunset review standard?

MR. McGRATH: I think the shipments that are not currently covered by the sunset review -- I believe the data concerning them are already included in your database, especially on import figures. The only place they're not included is where you're looking specifically at importer questionnaire answers for certain data.

But in terms of exports, imports, the public data, they're already included. I think you have to look at them for purposes of this review as being subject imports that could cause injury.

At this point, they probably are having slightly more impact than those that are covered by the suspension agreement simply because they're not covered by the suspension agreement. So they're able to sell at lower prices. But their volumes are lower than the ones that are covered by the suspension agreement.

I don't think there is any way to really distinguish them for purposes of the evaluation. I think you have to look at all the imports, look at all of the production of exports and imports from the covered countries and evaluate them. Certainly in a vast majority of what is coming from the covered countries is covered by the suspension agreements.

The ones that aren't covered by the suspension agreement are obviously able to take advantage of the impact of those agreements by selling at higher prices. But they are able to sell at prices lower than the suspension agreement prices. So they do have some impact. The percentages are not such that I would say that they are causing injury by themselves, but they are having some impact.

COMMISSIONER PINKERT: Thank you. And finally, what accounts for the spike in U.S. consumption in 2011?

MR. BORGERS: There was a large fast food chain that launched a strawberry lemonade, and we would -- I would describe that demand in the ramp-up for the inventories that were necessary to launch that product is probably the spike that you're seeing. Very difficult to know on an aggregate basis, but it was a significant amount of volume and a significant event. And that ramp-up happened in the first two quarters of 2011.

COMMISSIONER PINKERT: Looking to the future, is demand likely to continue to grow significantly as a result of the introduction of new hybrid products, lemon juice and other products, whether it's iced tea or fruit products or, you know, any kind of hybrid product that involves lemon juice?

MR. BORGERS: Commissioner, that's a very good question. The disappointing news about that spike-up in demand from 2011 is that much of that product is reentering the market because it wasn't consumed fully. So we see demand for these products as relatively steady. So there is a turnover of products and brands, and in each year there are new product introductions that use lemon. But we haven't seen significant new demand from new product lines that have significantly spiked up demand for lemon juice.

It tends to be more of a shift within established markets. So perhaps some concentrate will move to not-from-concentrate, or a line extension will happen, or they'll decide to launch it in a different package, and now instead of packaging it in an opaque package, they'll want to put it in a clear bottle, so they'll switch some of the demand from cloudy product to clarified product. But overall, we haven't seen significant growth.

COMMISSIONER PINKERT: Thank you. And with that, I conclude my questions, and I appreciate the testimony today.

CHAIRMAN WILLIAMSON: Thank you. Commissioner Johanson.

COMMISSIONER JOHANSON: Thank you, Mr. Chairman. My next question is somewhat similar to a question I believe of Commissioner Pinkert.

If the suspension agreement -- well, if the suspension agreements were terminated, in what ways would the joint venture help moderate any potential adverse impacts on revenue and profitability of lemon producers or lemon juice producers?

MR. BORGERS: Yeah. I think there is -- at the end of the day, the value we can return for the lemons is a function of the value we realize on the sale of products. So if the suspension agreement were lifted and pricing fell, it would certainly impact our fruit returns. What we would do to try to mitigate that is to -- again, we'd look at strategic options similar to the last time, which would be shifting demand to other technical products. Perhaps we'd pursue some regional markets.

But the overall ability to mitigate price drops, significant price drops, which we saw the last time would be limited.

COMMISSIONER JOHANSON: All right. Thank you for your response.

Okay. Mr. McGrath, I believe you stated earlier on, perhaps in your opening statement, that there has been a decline in consumption of lemon juice, in your opinion.

MR. McGRATH: Yes. That was our information. There has been a decline I think in juice and fresh because of the -- due to the recession.

COMMISSIONER JOHANSON: Is all of that due to the recession? Because I don't -- it seems to me somewhat -- it does not make much sense to me that it would decline that much because of the recession. Do you have any further information on that by chance?

MR. McGRATH: We can get some more information about the market there. The point that we're trying to make about Europe -- and again, here is another distinction between this and orange juice. Respondents in orange juice pointed to Europe as being this exploding market, lots of product was being drawn to that market, and so therefore orange juice wasn't threatening the U.S.

That's not the case here. I think that they have said that there were plenty of other markets that they're going to sell to. But the European market demand for lemon juice is down due to the recession, and I think that the numbers that Ms. Warlick put up showed that.

We'll certainly provide whatever else we can.

COMMISSIONER JOHANSON: I'm just kind of curious as to how much the recession has caused that and what other factors might be involved with that, similar to the factors in the United States of -- and this is perhaps something that Ms. Warlick touched upon earlier, but with the decline or leveling of consumption of soft drinks in the United States, if that might be happening in Europe as well, which will have reduced demand for at least lemon oil there.

MS. WARLICK: Yeah. The soft drink consumption -- the carbonated soft drink consumption probably wouldn't affect the lemon juice demand much there. From what I know, Spain has had a lower crop in I think the most recent year.

COMMISSIONER JOHANSON: Is that due to weather, or do you know what that is?

MS. WARLICK: Yeah, I think it is drought-related.

COMMISSIONER JOHANSON: Okay.

MS. WARLICK: Italy is pretty even. Turkey is lower right now, but Turkey has been increasing its production. So for awhile, Turkey might have been exporting to the EU. They're an EU supplier. But most recently I think they have been affected by the same drought conditions as Spain.

Also, South Africa has had a good year. But, you know, those -- some are up, some are down. So they kind of cancel each other out in a way. But they have been importing much less from Argentina. So we would conclude that the EU recession has had quite a bit do with that.

Lemon juice is a culinary ingredient, as are lemons. So the lemon imports, EU lemon imports from Argentina, are down as well. And that often is going to be tracking the culinary trade as well as grocery stores. But the lemon juice would be tracking more of the beverage consumption.

COMMISSIONER JOHANSON: Okay. Thank you. And do you know, is there a market for organic lemon juice in the United States?

MR. BORGERS: There is a market for organic lemon juice.

COMMISSIONER JOHANSON: And do you know if a product in Mexico and Argentina are certified?

MR. BORGERS: There are producers --

COMMISSIONER JOHANSON: Who ship that to the United States?

MR. BORGERS: There are producers certified in both the countries -- in both Mexico and Argentina. We also produce organic lemon, but it's a relatively small segment of the overall market for lemon products.

COMMISSIONER JOHANSON: Do you have an idea as to about what the percentage is off the top of your head?

MR. BORGERS: I do not.

COMMISSIONER JOHANSON: Okay, okay.

MS. WARLICK: I do see in the manifest data that there are a lot of shipments of organic from Argentina by Citromax's public data.

COMMISSIONER JOHANSON: Okay. Thank you. Because in a number of the other agricultural cases we have looked at since I have been here, this has been an issue or organics with the growth in the U.S. market, as far as preference from consumers go. That's why I brought that up.

Well, that concludes my questions, and thank you all for appearing here today.

CHAIRMAN WILLIAMSON: Commissioner Broadbent.

COMMISSIONER BROADBENT: Thank you. I just wanted to get an estimate from you sort of realistically what you think is the maximum amount of volume of lemon juice that the U.S. industry could produce in a given year, given the size of your acreage and your peak production, your experience with peak production volumes.

MR. BORGERS: If we look at the last five years and look at kind of the peak crops over those five years, the production of lemon juice, if at all, that went to concentrate would be somewhere around 3-1/2 million gallons.

COMMISSIONER BROADBENT: Okay. As I was looking through the staff report, there was some instances where purchasers were unable to receive shipments of lemon juice from suppliers due to I guess some sort of supply constraints. Have you ever not been able to supply lemon juice when it was requested?

MR. BORGERS: The instances that you're referring to I believe were generated by a freeze that happened in 2007. We were fortunate enough in the

Ventura side of the equation not to have any customers that we interrupted supply on. But it was -- that required quite a bit of planning and foresight. And it's not unusual to have temporary stock-outs after a freeze of that kind of magnitude.

COMMISSIONER BROADBENT: Okay. I had a couple of questions on cumulation. As you know, both parties are requesting to be decumulated from each other. And the Mexicans are arguing that sort of different conditions of competition -- Argentina is a large producer of lemon juice compared to Mexico. Argentina is globally diversified in its export shipments compared to Mexico. Mexico has access to the fresh lemon market, where Argentina doesn't.

Any comments on the cumulation question that we have to deal with?

MR. McGRATH: Commissioner, the similarities and differences, some of those issues we've tried to address as much as possible in our brief. The differences that are being identified are not so great as to justify decumulation. We feel both of them are present in the market. The staff report indicates the fungibility of the product as viewed by the customers. They both provide both types of juice, less of the NFC, of course, from Argentina. But the customers here are buying NFC and concentrate from both countries.

The customer lists show an overlap of customers and demand, significant overlap. And the other elements that you look at in terms of overlap of competition are all there. I think that both of them -- even though one of them is smaller than the other, the question of whether or not either one would be precluded from decumulation because there would be no likely discernible impact, I think there would be a likely discernible impact, as we've addressed in our brief, by precluding either one. And so we think that the elements are there and justify cumulation.

We understand it's discretionary in a sunset review, and the elements that show that they're both in the market, they're both providing to the same customers are there.

The differences in marketing are minor, frankly. A lot of the Mexican product comes to the U.S. directly, to Coca-Cola, for instance. They're not importing it, and it's not being imported and resold to Coca-Cola. But Coca-Cola also buys a lot of product that is imported from the same -- from processors in Argentina. And so we don't think that those differences are sufficient to decumulate.

COMMISSIONER BROADBENT: Thank you, Mr. McGrath. I don't think I have any more questions. I thank the witnesses very much.

CHAIRMAN WILLIAMSON: Thank you. Just to continue on with the question of cumulation, Mr. Brophy, I think you made reference to a difference in the way the margins would be calculated for Mexico and for Argentina. Does that represent the kind of significance that should be relevant in the cumulation decision?

MR. BROPHY: I mean, there is a difference in the way their fruit costs are allocated, but I don't -- if anything, I think that leads to lower lemon juice prices from Mexico and a greater adverse impact. I don't think it's a difference in the condition of competition per se.

CHAIRMAN WILLIAMSON: Okay. I was just wondering.

MR. McGRATH: If I might, I think it represents a difference in the negotiation of the deal between the exporters and the Commerce Department when it was first set up. It's a difference in how the fruit cost is allocated between oil and juice, and that has an impact basically on the normal value. The result is there is lower normal values for Mexico.

But as Steve says, it seems to result because of those lower normal values for Mexico. It makes Mexico even more of a threat.

CHAIRMAN WILLIAMSON: Okay. Thank you. Another one of those things that may not be relevant in this case, but posthearing could you look at -- let's see, I'm sorry -- table 3-5 on page 3-7, which deals with the workers and all that? And there is significant change between 2011 before and 2012. And I'm just wondering if you'd maybe just posthearing address that. And is there any relevance to our analysis? It may just be because the joint venture got formed. But I just wanted you to take a look at it posthearing and tell us whether there is anything.

MR. BROPHY: You're talking about the PRWs between 2011 and 2012?

CHAIRMAN WILLIAMSON: Right, yeah.

MR. BROPHY: We've actually corrected that with the Commission staff. I don't think we corrected it in time to get it into the staff report, but the 2012 number is inaccurate.

CHAIRMAN WILLIAMSON: Okay. That makes sense. That took care of that one.

Okay. Could you please elaborate on the lost sales you describe in your brief and how you know those sales were lost to Argentine imports? And it may have to be done posthearing, but --

MR. McGRATH: We'd be happy to provide the details. We have specific volumes and circumstances. Lost sales information was not part of our questionnaire process, but they were fairly significant, and we have good information that it was Argentine volume that took that volume from Sunkist. So we can give you the details.

CHAIRMAN WILLIAMSON: Okay. Thank you. Just to follow up with Commissioner Pinkert, especially about changes in demand for lemon juice. It got a feeling that maybe fads are out there, but they don't seem to change the overall demand. For example, a couple of years ago it looked like everything was lemon-scented and stuff like that. Are those kind of -- shall we say faddish things in taste and how things get marketed, do they have any really impact on your demand?

MR. BORGERS: I think that the scale of the launch of the effort in 2011 that created the demand spike really would have defined, had that product sold through, that you get to see the power of a success in that product, what that might have generated, right? But in spite of all that ramp-up and in spite of marketing by very sophisticated food marketers, that product has not succeeded. It has not really changed. And so it seems like there is a certain level of demand for lemon-based products, and they rotate within the different product offerings that are out there, and the lack of the ability of the lemonade product, the frozen lemonade product, and the new product launch to really drive demand was disappointing. And I think it may be somewhat telling of the difficulty of really significantly expanding demand in that category.

CHAIRMAN WILLIAMSON: Okay. Thank you. Good.

I was wondering if you could explain your rationale for arguing in your brief that competition between subject imports and the domestic product is largely based on price. According to the staff report, price is the third most important factor in purchasing decisions.

MR. BORGERS: Well, I can only reflect on my experience when I'm in front of customers. And in that circumstance, assuring -- and both Respondents produce quality products. So let's assume that we have the quality that's required. In today's markets and with today's buyers, my impression is that once the quality is in the rotation, it's all about price.

CHAIRMAN WILLIAMSON: Okay. So you've got the quality and you've got the product available.

MR. BORGERS: It comes down to price.

CHAIRMAN WILLIAMSON: Okay. Thank you. Good. I think with that I have no further questions. Commissioner Pearson. Thank you.

COMMISSIONER PEARSON: Thank you, Mr. Chairman. I question for Mr. Borgers and Mr. Wootton. Should we think of the U.S. lemon processing as something that would exist in its own right, or is its fundamental reason for existence to support the fresh fruit business by taking off the market a percentage of the fresh fruit that's not cosmetically appropriate or that's in excess supply? I mean, just untangle for me, if you can, the juice processing business from the fresh fruit business.

While you're thinking about it, let me explain that the question is motivated to some degree by our experience years ago with a case involving canned pineapple from Thailand, which was an order that was in support of a business on Maui that was largely a fresh fruit pineapple business, and they ran a canning operation for that percentage of the fruit that cosmetically really couldn't go into the domestic market. And we looked at it and extended the order, and then interestingly, within a year or two after we had done that, they closed down the canning operation anyway because it was somewhat high cost, and it was enough of a distraction from the fresh fruit business, which was their business that, you know, they just closed it.

So kind of what I'm asking is, if you had other alternatives for excess lemons, would it make most sense just to close down lemon processing in the United States, given your concerns about the economics and import those products from countries that may have more favorable cost structures?

MR. McGRATH: Well, an interesting question. I don't know if there is a but-for kind of analysis that's called for here. But the processing side of the business, I guess, has grown differently between the U.S. and the foreign producers. But what is common between them is that for a lemon crop in any country, some of that crop is necessarily going to be directed to fresh consumption.

It's the same lemon, so it's not a different type of lemon. It's not grown solely for that one use. In order for it to be economical, some of it is going to have to go fresh, some of it is going to have to go to the coproduct, the processed coproducts. The two industries probably grew up differently. In the U.S. the oil and juice, certainly there was a demand for them. So it made sense to take the product that wasn't appropriate for fresh sales and have that as an outlet.

In the subject countries we're looking at, a lot of the push for growth of the size of those industries was the demand by food processors for ingredients. They wanted some processed ingredients. But in order to justify the size of the grove investment necessary for that, some of that product naturally finds its way into the fresh market.

But I think your premise is that perhaps the one industry should just focus on fresh, and then the foreign industries might just focus on the processed because the economics are better for one or the other. What is going to happen is that if the U.S. industry throws out the processed, then that means they're going to have a lot of fruit that's not appropriate that needs to be disposed of somehow.

If the foreign industry focuses entirely on processing, then they're going to have, you know, a different economic structure that's -- and they're still going to have fruit to -- excess fruit to dispose of. So I don't know if it's an easy question to answer in those terms.

The proposition I suppose is that we should perhaps get rid of doing of processing. And I think we have to just take the simple fact that the industry being what it is, we got to dispose of fruit. And this is an economic way to --

COMMISSIONER PEARSON: You actually brought me to -- you brought greater clarity to the question than I was able to manage the first time through. Many industrial businesses have to do waste stream processing. I used to be involved with some of them. And they don't see that as a profit center. It's a cost center, and they try to get the water stream or whatever cleaned up in the lowest cost way. They may well generate some byproducts that they can sell, and they often do. But they don't expect to cover the full cost of the processing. Rather, they're doing that waste stream processing in order to support the basic business, which is where they make their money.

Is that how we should see lemon processing? It may or may not make money in the United States as a standalone business, but it is absolutely essential in support of the overall lemon industry in the United States.

MR. WOOTTON: Maybe I could try to answer this, at least in part. In the case of Sunkist, I mean, we produce millions of cartons, 38-pound cartons, standard cartons, of lemons a year, principally, as has been noted, for the fresh market.

But because of either cosmetic issues with some of that fruit, size issues with some of that fruit, or lack of demand for fresh supply in the marketplace, we have literally tens of millions of cartons of lemons annually that don't go to the fresh market, that go to the processed products market. And it is our mandate as a cooperative to try to capture for our growers value for their fruit, for their production.

COMMISSIONER PEARSON: Right. But am I correct to understand from previous testimony that at times they actually capture negative value from the lemons that they provide to be processed? In other words, they have to pay you to take those lemons away.

MR. WOOTTON: The cost of pick and haul oftentimes exceeds what the value is returned to the grower. So they have in effect, at least with that part of their crop, a red-ink crop. And so what we try to do is to ensure that through the end use of these processed products, the lemon juice, for example, and lemon oil, that they're going to at least recover some of that cost to them, the cost of cultural production, the cost of pick and haul, and those type of activities.

And so we try to -- you know, through channeling it to a processed products facility, try to help recover at least some of those costs.

COMMISSIONER PEARSON: Have there been instances when growers have actually had to pay a processor to take the lemons in addition to absorbing the other costs, Mr. Borgers?

MR. BORGERS: Yes, Mr. Pearson, there were. However, I would bring a different perspective to this.

COMMISSIONER PEARSON: Please. Mine hasn't been very --

MR. BORGERS: I'm a food processor. That's the business I'm in. I'm in this business to buy raw materials, convert those to outputs, and sell those outputs profitably and generate returns for my stakeholders.

In this instance, these lemon growers happen to be my stakeholders. And so that's essentially who I work for, okay? The objective of this enterprise is to process food and produce products that we sell, obviously generating returns. That's the mission that my company, my employees, my team, and I work on. So that's our perspective that we bring to it.

But again, this is a JV that has evolved over the time period of the suspension agreement. So it's a bit difficult to evaluate with hindsight and project that forward. But I want to be very clear that my mission is to purchase and process fruit, turn that into finished goods, and sell that product and generate a return for my stakeholders. That's what I do.

MR. McGRATH: If I could also add, it's not just processing a waste stream. The example that you gave initially, it is a secondary quality. I mean, they have to still recover the cost of growing all the fruit, and they don't know it's going to be secondary quality until it gets to the packing house.

So that's part of the effort here, is selling a processed product as a secondary use, and because it's secondary quality, but it's still a good input for this particular use. It's not a waste.

COMMISSIONER PEARSON: Okay. I couldn't clarify it. I happen to like both lemon juice and lemon oil, as it flavors lots of things, and so I may be sounding a little harsh here when I compare it to an industrial waste stream. But it's just I'm trying to get my arms around this industry in a way that makes sense to me, and I'm not quite there yet.

Mr. Chairman, my time has almost expired.

CHAIRMAN WILLIAMSON: Commissioner Aranoff? Commissioner Broadbent?

COMMISSIONER BROADBENT: Just one more question for the record. Can you all give us or point us in the right direction of data sources that would give us a sense of what external demand your expecting in major markets that consume lemon juice worldwide?

MR. McGRATH: I don't know if we have anything available today, but we do -- the company does have projections. Ms. Warlick also has some data.

MS. WARLICK: Yeah. There are a few sources we can put in our posthearing brief. I'm thinking about -- *Euro Monitor* does a lot of projections on the demand for carbonated soft drinks and other beverages.

COMMISSIONER BROADBENT: Right.

MS. WARLICK: Yeah. I can't think of more than that right now off the top -- and *Beverage World* and all of those sorts of journals in that industry.

COMMISSIONER BROADBENT: Yeah. I'd just appreciate that.

MS. WARLICK: For the culinary side, for lemons, I'm not -- *Food News* is probably -- which is Agra Europe as the publisher.

COMMISSIONER BROADBENT: Okay. Well, if you could pull that together for this, that would be terrific.

MS. WARLICK: Yeah.

COMMISSIONER BROADBENT: Thank you very much again.

CHAIRMAN WILLIAMSON: Okay. If there are no other questions from commissioners, does staff have -- oh, excuse me, Commissioner Pearson.

COMMISSIONER PEARSON: Apologies, Mr. Chairman. I have two more, if I can.

CHAIRMAN WILLIAMSON: Oh, no. Go ahead.

COMMISSIONER PEARSON: I'm curious about the 2012 data for U.S. inventories and AUVs. To me, the shift from 2011 to 2012 for those items is counterintuitive. And all or part of that data is confidential, so you can comment if you want, but otherwise for purposes of the posthearing could you explain what is going on there, why we see a change in U.S. inventories that seems inconsistent with the change we observed in U.S. average unit values?

MR. McGRATH: One possible answer -- I think we were looking at this the other day -- is a difference in product mix. Average unit values are likely to reflect a difference in the relative volume of sales of NFC and concentrate. The inventory figures are going to be more concentrate, right?

MALE VOICE: Yes.

COMMISSIONER PEARSON: So I mentioned AUVs. But if one looks at the pricing products, the analysis there, it's not entirely off-point either. So, you know, there is -- as a matter of fact, there might have been more of a price reaction to what I saw as a change in inventory. But it doesn't --

MR. McGRATH: Well, we'll take a closer look at it and --

COMMISSIONER PEARSON: Okay. And when you do, if you could give some thoughts on whether it might reflect any change in market power of the domestic industry with the consolidation of Sunkist and Ventura, that would be helpful.

MR. McGRATH: We'll certainly comment on that. I think we've tried to be as specific as we can here on what the -- and in fact, the public statements from Sunkist and Ventura were an attempt to try to state what the reason was for that, and it wasn't so much --

COMMISSIONER PEARSON: I think they're good reasons --

(Simultaneous discussion.)

MR. McGRATH: It was an attempt to try to --

COMMISSIONER PEARSON: I think it makes a lot of sense. You can handle the supply chain for lemons and products more conveniently and effectively, I would think, with a combined operation. So I don't have any problem with that. But I'm just wondering if there are other effects that we are seeing on this record that relate to the consolidation.

MR. McGRATH: We'll comment on it.

COMMISSIONER PEARSON: Okay. My last question has to do with causation. Normally we would expect -- well, when we see an increase in subject imports, we would lead that effectively to some decline in performance of the domestic industry. And we note that relationship in only one year of the -- well, there are five interim -- five periods between years in this record. And the others would suggest lack of causation rather strongly.

Can you comment on now or in the posthearing, give it more of an explanation?

MR. McGRATH: It depends on the year, actually. We were looking at it. I know that's something Respondents have argued. Correlation does not always equal causation. In many causes, some of the correlations that are being pointed out are either inaccurate or irrelevant.

The argument I think you're referring to relies heavily on that profitability data, which we take issue with how that's being interpreted. So we have to look at that.

Another issue is that this bulge in imports, certainly 2011, where there was an increase, there was an explanation having to do with a product introduction. But I would just caution that, you know, we'll look at them again, but some of the correlations are really not relevant to causation. I know that the argument is that somehow increase of imports makes your profit go up when the explanation for a change in profit -- and given that we don't accept that profit calculation, but the increase in sales could be product mix because the company sold more NFC in that particular year.

So we do have comments on that. We haven't had the chance to do a submission, a counter-submission. We'll try to cover each one of those points.

COMMISSIONER PEARSON: Okay. Well --

MR. McGRATH: We think that the likelihood of there to be an immediate drop in price is the most important thing to be considering here, and what effect that's going to have.

COMMISSIONER PEARSON: Okay. Well, you understand why the causation picture is muddied on this record.

MR. McGRATH: Oh, absolutely.

COMMISSIONER PEARSON: So any clarification you can provide would be helpful. Mr. Chairman --

MR. BORGERS: I'd also add to that that on the early years after the suspension agreement, the Sunkist production was under some longer-term contracts. And so part of what you see in the change is merely the expiration of old contracts and values coming. So it was coincidental that it happened with time.

So again, what I would say is this. It's coincidence, and some of the trends you're seeing don't necessarily reflect what the current market blend at that time was. It was merely the expiration of the older contracts that allowed things to kind of normalize over the time.

COMMISSIONER PEARSON: Okay, fair enough. That's a perfectly plausible explanation, so tell us what you can in the posthearing.

Mr. Chairman, with that I believe I have no further questions. Thank you.

CHAIRMAN WILLIAMSON: No other commissioner has further questions. Does staff have any questions for this panel?

MS. HAINES: Elizabeth Haines, Office of Investigations. Staff has no questions.

CHAIRMAN WILLIAMSON: Okay. Do those in opposition to continuation of the suspension agreement have any questions for this panel?

(No response.)

CHAIRMAN WILLIAMSON: Okay. And with that, it seems like it would be an appropriate time to take a lunch break. So we will reconvene at 1:35. Just a reminder to everyone that this room will not be secure, so if you have business proprietary or confidential information, be sure to take it with you. And with that, we'll see everyone at 1:35. Thank you.

(Whereupon, at 12:31 p.m., the hearing in the above-entitled matter was recessed, to reconvene at 1:35 p.m. this same day, Thursday, May 16, 2013.)

//

//

//

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

(1:36 p.m.)

CHAIRMAN WILLIAMSON: Good afternoon. Welcome. You may resume when you're ready.

MR. DUNN: Mr. Chairman and members of the Commission, you'll be hearing testimony today from three witnesses representing all aspects of the Respondent's case. We'll begin with testimony from Mr. Jim Horrisberger, the North American procurement director for Coca-Cola. And then we'll proceed to Suzy Nolan, who is the VP Commercial for Citromax, the largest Argentine exporter. And then we will go to Mr. Federico Martinez, who is a director of Procimart, one of the large Mexican producers. Jim?

MR. HORRISBERGER: First of all, good afternoon, Mr. Chairman and members of the Commission. I'm happy to be back. I was here, oh, about 15 months ago on the orange sunset review, so hopefully it goes as well, I would hope.

To go a little bit over my background, the same as it was about a year ago, except one more year added on. Five years as a North American procurement director for the Coca-Cola juice business for the Coca-Cola Company. Prior to that, 30 years with Cargill, including 13 years in management positions in the juice business.

My responsibilities for Coca-Cola include purchasing juice for Coca-Cola, including lemon juice; overseeing the purchase of both concentrate and not-from-concentrate lemon juice from all sources, domestic, Mexican, Argentina, and other sources; maintaining -- and this is key -- maintaining a reliable source of supply to support the production and marketing of our products, including our very successful Simply Lemonade NFC product that was just being introduced when the suspension agreements were signed, and also our Minute Maid Lemonade from concentrate business, which is also very, very successful.

But once again -- and I thought you focused this morning about the NFC business. We basically built that business from ground zero, well, 2006-2007, to probably the most successful lemon product in the U.S. right now, and it's an NFC product.

What is Coca-Cola's role in the marketplace? We're the largest consumer of lemon products, including juice, in the world. We are probably the largest consumer of all the companies in this room. So, I mean, we would like to see a win-win come out of this, whether it's with Ventura-Sunkist in the joint venture, or it's with Argentina, whether it's with Mexico. I think in all cases we've probably given more revenue than any other single company. So to us, we need to get this settled, and hopefully settled so that it makes it a win-win for everybody.

We have billion dollar brands in the U.S., and the main two that you've heard of are Minute Maid and Simply in the Simply Lemonade brand. Beyond that, we have a marquee brand, that's why Jason Maxfield is here with Odwalla. To most people's surprise, we've owned Odwalla for 11 years. And the procurement of Odwalla reports through me. And it happens to be, oh, about 20 miles from the Ventura plant or the Ventura-Sunkist plant. So he has given us a lot of good inputs on what is going on.

Also, our continued innovation of our products such as introducing not-from-concentrate lemonade through the Simply Lemonade products -- and we've added new products: Simply Lemonade with blueberries, Simply Lemonade with mango, and so far everything has been very successful.

But the key to that is it's basically over 90 percent lemon, and you just put a little blueberry or a little mango, and it gives it that extra key flavor, and it's marketed. It's all marketing.

We are the largest supplier of food service lemon juice in the world, including McDonald's, Wendy's, Darden, and others. So not only do we -- and you'll see our label on these products in McDonald's. It says Minute Maid, Minute Maid Lemonade. You'll see at Darden's. You'll see it at Wendy's. And that makes us the largest customer of Ventura Coastal that you heard from -- as you heard from earlier today.

In my opinion, the termination of the suspension agreements on lemon juice from Argentina and Mexico will not lead to continuation or recurrence of material injury to the domestic industry. There are three points I would like to make today that form the basis of my opinion.

First, from Coca-Cola's perspective, Ventura Coastal-Sunkist Growers are the only real source of lemon juice in the United States, and they cannot and have not been able to supply all the needs of the United States. They stated that this morning. They said they cannot meet all the U.S. needs. So it's kind of interesting. So we do need a foreign source, okay?

Second, Ventura produces a premium not-from-concentrate lemon juice product, which insulates it from import competition.

Third, the joint venture between Sunkist Growers and Ventura has created a cost-efficient processing facility for the growers, which has given the growers better returns due to more efficient operations, as both Sunkist and Ventura confirmed this morning.

First I'd like to build on the point about that Ventura Coastal-Sunkist Growers are the only real source of lemon juice in the United States, and they cannot and never have been able to supply all the needs. We're the largest purchaser of lemon juice in the U.S. The amount of lemon juice produced in the U.S. is limited by the amount of fresh lemons available for processing.

If Sunkist Growers could sell all the lemons on the fresh market, it would. It wouldn't put one into the secondary market. The fresh market yields the greatest return for the growers. Lemon juice is a byproduct of its fresh lemon business, as Mr. Pearson asked about this morning. I mean, that's the fact. I mean, if they could sell everything fresh, they would. I mean, that's where the money is made.

Lemons, like all agricultural products, are subject to the vagaries of weather, pest, and competition for land use. The supply of whole lemons and demand for them greatly impact production of lemon juice. If lemon juice growers have a bad season due to weather, freeze, storms, they will not be able to meet the supply commitments to us, and we will not be able to supply our customers.

So we need a second source. We need a third source because the one thing our brand -- it has to be on the shelf. It has to be at Walmart. It has to be at McDonald's. It has to be at Darden.

Second, Ventura produces a premium not-from-concentrate lemon juice product that insulates it from import from competition. Coca-Cola's need for not-from-concentrate lemon juice increased dramatically over the period of the review due to the success of the Simply Lemonade. In 2006, I believe we bought zero at the beginning of the year, zero lemon NFC. Now we buy significant amounts. We've bought up to over 6 million gallons recently in one year.

Prior to the joint venture last February, Sunkist would not meet 100 percent of our needs for the not-from-concentrate lemon juice necessary to support the Simply brand. And as a matter of fact, Mr. Borgers knows this because about three or four years ago, we went to Ventura and told him we needed more NFC, and he spent -- and I don't know the exact numbers. I'm going to say upwards of a million dollars to put some equipment in to supply Coca-Cola lemon NFC. So now he's doing the same.

Since the joint venture, Mr. Borgers has said he will supply 100 percent of our needs. Unfortunately, we found out this February -- and it gets very, very involved. We have got to let our marketing team know by like the middle of the summer for next year's season because you've got to build everything.

But prior to this year, Sunkist could not meet 100 percent of our needs. And because of that, we had to push back the growth of the Simply Lemonade NFC products.

And once again, Coca-Cola relies on Ventura Coastal for the vast majority of its not-from-concentrate purchases. And Ventura produces a premium not-from-concentrate product, and Coca-Cola pays a premium for that juice.

Mexican producers can only produce not-from-concentrate juice for a short time period, and it's outside of the window of our needs. Our needs -- 80 percent of our lemonade or lemon needs of NFC are between Memorial and Labor Day. The product we would get from Mexico comes in in September. So we have very, very little need for that. I mean, it's a good off-season product, but it doesn't meet our needs when, you know, 80 percent of our sales are during the summer.

Argentina producers, listen to this, cannot produce not-from-concentrate lemon juice that meets the Simply product specification. So, I mean, I'm sure they're selling to someone in the U.S., but it's not us, and we're the major NFC producer -- or consumer in the U.S.

Third, the joint venture between Sunkist Growers and Ventura has created a cost-efficient processing facility for the growers, which has given the growers better returns due to more efficient operations. Between the growers that Ventura always purchase from and the members of the Sunkist Growers coop, Ventura Coastal now processes in excess of 90 percent of all the lemons in the United States, which allows the processing plant to run more efficiently instead of dividing it into two separate processing plants. And Mr. Borgers has done a very good job of finding those efficiencies, and those efficiencies, a good share of them are being passed back to the growers.

The higher quality not-from-concentrate

juice is sold at a premium price to Coca-Cola. That allows higher returns to Ventura Coastal and the growers. The decision to form the joint venture had nothing to do with the suspension agreements.

Conclusion. We greatly value our relationship with Ventura Coastal, from whom we purchase lemon juice, lemon oil, and other products. We rely on Ventura Coastal for its premium not-from-concentrate lemon product. We do not see any risk of material injury to Ventura Coastal if the suspension agreements are terminated because Ventura Coastal simply cannot produce enough lemon juice to satisfy the U.S. demand, so purchasers must look to imports.

Also, Ventura Coastal effectively has no competition for not-from-concentrate lemon juice, and will not have any competition for that product in the foreseeable future because the Mexican season is the wrong time, and Argentina cannot meet our product specifications, and will not be able to.

The joint venture is a cost-efficient processing facility which has given Ventura and the growers better returns because of more efficient operations. Ventura Coastal sells a premium not-from-concentrate lemon juice product, and since the joint venture, Ventura Coastal has committed to us once again to supply 100 percent of our needs.

So in conclusion, the suspension agreements have no effect on these considerations. Termination of the agreements will not cause material injury to Ventura Coastal and the Sunkist Growers. And I look forward to answering any questions the commissioners may have.

MS. NOLAN: Good afternoon. My name is Suzy Nolan, Vice President, Commercial Operations, for Citromax, one of the oldest and largest lemon processors in Argentina. Citromax was founded by Jacob Glueck. He was a flavor specialist and the father of our current president, Vivian Glueck, who is unable to attend today due to a religious conflict.

In the almost 60 years since its founding, Citromax has become of the largest processors and exporters of lemon juice in Argentina, accounting for, we believe, about 15 percent of Argentina's worldwide exports of lemon juice. We also have an affiliated importing company in New York, East Coast Flavors. So we believe we understand the American lemon juice market as well as anyone in the country.

I have worked for Citromax as vice president of commercial operations for the past year and a half. I also served as the U.S. agent for Citromax for 2003 to 2005, and for San Miguel from 1998 to 2002. So I was in the industry when this case was originally brought.

Let me begin by saying that the market situation today is very different from what it was back then. At the time the case was brought, a large amount of inventory was being held in the U.S. by a marketing company called Citrico, a company incidentally that Sunkist was part of.

Citrico managed its inventory very poorly, and ultimately ended up in bankruptcy. That meant its inventory had to be sold off as quickly as possible at almost any price. The result of this poor management was that prices plummeted. But that situation no longer exists.

The Citrico inventory was completely worked off by the middle of 2008, causing prices to rise back to their normal levels, and that's where prices are today.

Let me now turn to the supply and demand situation we face today. As the Commission is aware, Argentina is the world's largest producer of lemons and lemon products, and the largest exporter of lemon juice to the United States. Argentina's presence in the U.S. market is often larger than that of the U.S.

industry, although the exact percentages vary from year to year depending on relative sizes of the U.S. and Argentine crops.

Argentina's lemon juice industry is dominated by four or five large industrial producers who commonly account for three-quarters or more of total production. The remainder of the industry consists of a number of rather small processors.

As vice president of commercial operations for Citromax, I am required to assess the level of lemon juice production in the United States, Argentina, Mexico, and other lemon-producing countries. This provides us with an idea of likely supplies available for sale to the U.S. market, and provides data for our contract negotiations with our customers.

Every six months, I produce an estimate of the quantities of lemons likely to be processed in the major producing countries known as *The Lemon Update*. This report is widely circulated throughout the industry, both juice and essential oils, and is relied on heavily by our customers, including Coca-Cola. A copy of my recent report has already been submitted to the Commission. I believe *The Lemon Update* to be a very accurate projection of the amount of lemons processed, and therefore the amount of lemon juice likely to be available on world markets.

My projections show that the total world availability of lemons for processing in 2013 will be about 1.66 million metric tons of lemons, which equates to about 19.33 million gallons of juice. This is the drop of 150,000 metric tons, or between 1-1/2 and 2 million gallons of juice from 2012. This is a 6 to 7 percent decrease. So from 2012 to 2013, a 6 to 7 percent decrease.

Perhaps more importantly, this represents a drop of more than half a million gallons -- half a million tons of lemons or over 6 million gallons of juice when compared to 2011, which is a 22 percent decrease.

The reduction in world supply will keep lemon juices stable, if not firmer, throughout the world, including the United States. It is my opinion that Argentina's production of lemons in 2013 will also be down from 2012, as persistent dry weather in the growing region, such as Tucumán and Salta, is likely to suppress lemon production, and more importantly reduce yields. I believe that Argentina's production will be down by more than half a million gallons of juice from 2012.

The production of lemon juice both worldwide and in Argentina in 2013 represents an even more drastic drop in supply when compared to 2011. As the Commission probably knows, 2011 was an extraordinary crop year for Argentina, with ideal weather conditions prevailing after a poor crop in 2010.

Argentine production of lemons for processing in 2011 was over 1.23 million metric tons, equivalent to 14.3 gallons of juice. In contract, my projection of Argentine production in 2013 is only 950,000 metric tons, equivalent to about 11 million gallons.

In other words, Argentine production of juice in 2013 is likely to be down more than 3 million gallons from 2011, a 23 percent reduction. There is simply no chance that Argentina will be able to approach its 2011 production levels this year.

The Commission has undoubtedly heard that inventories of lemon juice in Argentina are up substantially, and that these inventory levels of juice will force Argentina to export more juice to the United States. I simply do not believe that to be true. On the contrary, the European market has historically been the destination of more than half of Argentina's exports, in some cases much more than half of Argentina's exports.

Argentina's customer relationships in Europe have been painstakingly developed and nurtured over many years and represent a long-term demand base. Neither Citromax nor its Argentine competitors are likely to abandon these relationships merely to ship to the United States market.

More significantly, I project production in Italy, Spain, and South Africa to be about 1.7 million gallons lower in 2013 than in 2012. This means that there will be a shortfall in supply in our non-U.S. markets that will have to be met from somewhere. Since I also project Argentine production to be down over half a million gallons this year, the shortfall will not be able to be made up by production from our 2013 crop. The only way the shortfall can be made up will be from Argentina's current inventories.

Putting together the drop in both Argentine and non-North American production, I believe that Argentina may have to draw up to 2.2 million gallons of juice from its inventory just to make up for the supply shortfall in the rest of the world. In short, I just don't see the Argentine lemon juice industry having a large excess of juice available for shipment to the United States this year.

There are other reasons why Argentina won't be increasing exports to the United States in the foreseeable future. First, Argentina's long-term ability to process juice has not changed significantly in recent years since the area of cultivation and a number of lemon-producing trees remain quite stable for the past three years. Although it's not possible to project a crop size for more than a year out because of weather variability, I believe it's extremely unlikely that Argentina will see another crop as big as 2011 for many years to come.

Second, the cost of production and transportation have increased significantly in the recent years, meaning that Argentina must charge prices that are as high or higher than those charged by producers from other producing countries. These cost constraints, as well exchange rate restrictions, make it increasingly difficult for Argentina to export to the United States.

As a final point I want emphasize that the suspension agreements in this case have not meaningfully restricted Argentina's exports to the United States over the past six years. Although the agreements have significant administrative burdens on Citromax and other Argentine producers to monitor prices and costs and varied by new detail required by the U.S. Department of Commerce, we have been able to sell as much or much juice to the U.S. over the past four years, as we did before the suspension agreements were signed.

But the Argentine lemon industry consists of profit-driven companies. We do not receive government subsidies. We cannot afford to sell our lemon products, including juice, at a low cost.

Fortunately, the drop in worldwide lemon supplies in 2013 means that we should have stronger pricing this year, permitting us to sell our juice to the United States at a profit. We are not however going to be able to increase our juice exports to the United States significantly in the near future even if the suspension agreements are terminated. Thank you.

MR. LUNN: Good afternoon. My name is Mark Lunn with the law firm of Dentons. The Mexican producers support the revocation of these two agreements as to both countries. However, the Mexican producers believes that there are significant differences between the two markets that would allow revocation or decumulation as to Mexico.

As the Commission is well aware, the statute says that it shall not cumulatively assess the volume and effects of imports of subject merchandise in a case in which it determines that such imports are likely to have no discernible adverse impact on the domestic industry. We believe that the facts in this case support a finding that termination of the agreement as to Mexico will have no discernible impact on the U.S. industry.

With me here today is Mr. Federico Martinez. Mr. Martinez, as I like to say, knows the Mexican lemon industry from the ground up. His family was one of the first commercial producers of lemons in Mexico. He's run and owned the major processor in Mexico, he's a signatory to the suspension agreement, and he's a U.S. importer. There's nothing about the Mexican industry that he doesn't know.

He's here today to discuss with you the differences between Mexico and Argentina and why termination of the order or the agreement as to Mexico will have no discernible impact on the U.S. industry. And I'll turn it over to Mr. Martinez.

MR. MARTINEZ: Thank you. Good afternoon, Mr. Chairman, members of the Commission, and staff. My name is Federico Martinez. I come from a family that has been growing citrus for three generations. My previous family generation were among the first lemon growers in Mexico in the late '80s. I have 17 years of experience in the citrus industry, processing oranges, lemons, limes, and other citrus varieties. But besides being a processor, I am a grower and a packer for the fresh market.

If this suspension agreement and the lemon juice case goes away, I do not see how Mexico be of any trade to the U.S. lemon juice industry for three very simple reasons.

One, Mexico is a small lemon processing country, irrelevant to the market, and with different industry conditions now in the present than in the past. Two, Mexico is already sending all its lemon juice to the U.S. Three, Mexico is not growing. Let me elaborate on each of these three points.

First, I said Mexico is a small irrelevant and with different industry conditions in the present. Let's look at the statistics. Mexico does not appear on the top five producing countries of the world for lemons and depending on the source, sometimes not even in the 10 largest lemon producers in the world.

In 2010, when Mexico had its largest lemon crop in history, the prices of lemon juice were at its highest level that I can remember. Our high production had no influence on price. Our largest production was irrelevant to the market.

The lemon growing and processing in Mexico is not about lemon oil anymore. Coca-Cola is not promoting new plantations or giving fruit contracts. Now we purchase the lemons we process on the open market, where the highest bidder gets the fruit. To get the highest bidder, we need to maximize all our returns, whether come from oil or juice or any other byproduct.

Today, the Mexican lemon growers have also a different alternative to pack and send the lemons to the fresh market. Some growers made that their priority and main business. Let me give you an example. The largest producers of lemons now a days is an American company from California by the name of Paramount. Its main focus is packing for the fresh market. The lemon groves that they now own and dedicate primarily to fresh was in the past contracted with Coca-Cola sending the production to the industry, but nothing more.

It is not a surprise to see on the statistics higher percentage of lemons in Mexico are going to the fresh market. In 2000, there was no fresh lemons being packed. I estimate that four years ago about 50 percent of the production in Mexico was going to the fresh market and last year was close to 25 percent.

My second argument, Mexico is sending very much all its lemon juice to the U.S. already. So we don't have additional juice to send if this case goes away or the suspension agreement.

Between Procimart and the plant in Akil, who does all processing for Coke, in Yucatan, I estimate that we have processed every year between 85 to 99 percent of the lemons going to the U.S. plants. And from that, around 95 percent of the juice obtained have been sent to the U.S. every year. So we have already been sending pretty much all the juice to the U.S.

December is the month of the year when we have the highest inventory of lemon juice because it is the end of our lemon season that normally runs from August, September, until December. Normally, we do not carry inventories of lemon juice into the following season, which means that by every August, all of our lemon juice has been sold. That was the case since we had started to process lemons on our own account.

Third and last argument, Mexico is not growing. Just look at the statistics. In the past four years, we have produced hundred thousand tons, plus, minus twenty five percent of various accounts from the weather conditions. Acreage has been stable as well. Although we have seen in Tamaulipas, the main producing state in Mexico, small new plantations, which are limited by the availability of land with water. And the production from these two plantations have and will be upset by the decrease of production from Yucatan.

About two years ago, our company looked at building a new plant in the Yucatan area. But we backed up from this project when we found out that the growers in that region, mainly three, were not interested in investing on the gross and had already started to abandon growth or part of them.

Also, we have the big threat of greening, a deadly disease without cure that affect citrus, that was first detected in Mexico about three years ago, that most probable will decrease productivity in Mexico, as it has done on every place where this disease has appeared.

So for the foreseeable future, we see the production of lemons in Mexico to stay at the same level of 100,000 tons, plus or minus 25 percent, as it has done in the past four years. So for these reasons, if the suspension agreement and the whole lemon juice case goes away, I do not see how Mexico can represent any threat to the lemon juice industry. Thank you.

MR. DUNN: That concludes our testimony today, Chairman.

CHAIRMAN WILLIAMSON: Thank you. I want to express our appreciation to all the witnesses for coming today, especially those who had to travel a long way, but their presence here is very important to us in these proceedings. This afternoon we'll begin our questioning with Commissioner Aranoff.

COMMISSIONER ARANOFF: Thank you, Mr. Chairman. Let me start -- well, thank you all for being here today, I should start with that. I appreciate your willingness to take time away from your businesses and answer our questions.

Let me start with the comments that were just being made about greening. I thought I took from the domestic industry's comments this morning that citrus greening was not a problem right now for the lemon industry in the United States. But you're suggesting that it has become a problem in Mexico only in the last year, was that correct?

MR. MARTINEZ: Yes. We found the first, the vector about five years ago. Two or three years later, the disease was detected as well. And we are not on that five-year period, which I understand it takes for an infected tree to develop the symptoms.

COMMISSIONER ARANOFF: So it has the same effect on trees as it does on orange trees?

MR. MARTINEZ: Excuse me?

COMMISSIONER ARANOFF: Well, you know, in our orange juice case, we learned a lot about citrus greening and the effects that it's had on orange trees, particularly in Florida and also in Brazil. So I'm just trying to figure out it is the same disease with approximately the same effects.

MR. MARTINEZ: Yes, the same disease and we don't know what is going to be the effect that it's going to provoke in Mexico. But if there is going to be any, for sure it's going to be a negative effect in the productivity of the crops that we are already producing.

MR. HORRISBERGER: Yeah, I would like to add to that. We do know the orange has been an issue for sure. And we also know the lime industry I won't say has been wiped out in Mexico, but mostly. So we suspect that it will do the same to lemon being a citrus also, but they don't know that for sure.

COMMISSIONER ARANOFF: Okay. And I also wanted to clarify, Mr. Martinez, your comment about your December inventory levels. You said December is the end of your processing season and then you said -- did you say you dispose of all of those inventories in the normal course before the start of the next processing season?

MR. MARTINEZ: Yeah. Normally December is the end of the season, so we normally have inventories. And the highest levels of inventories normally it's at the end of the season, so it's December. For example, this year we still have some inventories at our factory. Most of those inventories have been already committed. And if happened what have happened in the past five years, we will begin the new crop, the new processing season with zero inventories of lemon juice.

COMMISSIONER ARANOFF: So just to continue you with you for a moment, Mr. Martinez, you indicated -- I thought I understood you to say that while some of the industry in Mexico was initially the result of efforts by some of the soft drink companies to encourage lemon oil production, that while it was not true of the entire industry, is that how your family's business got its start?

MR. MARTINEZ: Yes. We were citrus growers and we were introduced to produce lemons because Coca-Cola was promoting the planting of that variety of lemons. But now a days, we don't sell the fruit to Coca-Cola. Those contracts have expired. And all the contracts in my growing region have expired, so we don't sell fruit to Coca-Cola anymore. Coca-Cola is not promoting new contracts and is not promoting new plantations of lemon anymore.

COMMISSIONER ARANOFF: So when you say that the contracts that used to be in effect involve selling the fruit to Coca-Cola, Coca-Cola actually contracted for the lemon crop?

MR. MARTINEZ: Yes.

COMMISSIONER ARANOFF: So not for the lemon juice?

MR. LUNN: Perhaps I can help explain this. The contracts were with the growers. The groves were set up and they agreed to supply 100 percent of the crop for processing. It went to Procimart's facility, but the crop was owned by the Coca-Cola Company and Procimart processed it on a toll basis. There was also another facility in the Yucatan that does something similar. That was the situation in the original investigation. So 100 percent effectively of the commercial lemon crop went for processing.

As those contracts started to expire in 2005, 2006, Procimart took over the plant. They started buying fruit on their own account. As of now, there's approximately one or two contracts that are still in existence in the Yucatan. In his area there are no more contracts. He's buying fruit on the open market and processing it.

MS. NOONAN: And this is Nancy Noonan. If I may add, so the Coca-Cola Export Corporation, Mexico branch, is wrapping up these last few contracts with growers, but they are still a toll processor for just those last few contracts. So that's why you saw the Coca-Cola Company also participating as a foreign producer and exporter, but those are going to be ending, you know, within the next couple of years.

COMMISSIONER ARANOFF: Okay. If I looked at the industry in Argentina, would its origins be the same, that they were producing fruit under contract, or is there a different background story?

MS. NOLAN: Are you referring to the past years or the whole industry or -- I mean, in the whole of production of Argentina, as I understand it, there are some contracts with certain processors, not all of them, only selected one, and the details of it, I would have to leave to somebody else.

COMMISSIONER ARANOFF: Did producers in Argentina get into the business at the behest of soft drink manufacturers or was there always lemon production in Argentina?

MS. NOLAN: There's been lemon production in Argentina since the 1950s. So, I mean --

MS. NOONAN: If I may add, Commissioner, certainly, you know, five-and-a-half, six years ago when this case was getting started, the Coca-Cola Company was not any sort of producer in Argentina.

MR. DUNN: Commissioner Aranoff, I don't know for the entire industry, but as far as I know Coca-Cola was not responsible for the Argentina industry to the extent it was in Mexico, if at all. I know certainly for Citromax, that they were not started at the behest of or with the -- at the urging of Coca-Cola.

COMMISSIONER ARANOFF: Okay. Well, with respect to the industry in Argentina, because the argument that you made today and in your brief has been that, you know, you have regular customers in Europe and Asia who you're committed to supplying. And I want to get some more detail about that either today or if it's confidential, in the posthearing, the extent to which those customer relationships are contractual and actually call for regular volumes from year to year or some -- normally in a sunset review like this one where the Commission is faced with an argument that volumes are committed to customers in other countries, we look for some kind of evidence that makes it really clear that some fairly specific volumes are committed to some fairly specific customers year after year, either through contracts or through shipping data that shows very regular sales of the same types of volumes to the same customers.

So I don't know if that's on the record already or that's something you can put on the record, but in general, I think we found that to be considerably more persuasive than a generalized statement that there are other customers out there.

MR. DUNN: Commissioner Aranoff, we don't have -- as we stated in our briefs, we don't have long multi-year contracts. The contracts are shorter term. And I don't think that I would be able to get from my clients lists of their customers and how much they ship to each customer over the past six years. What I can tell you is that they have exported a large amount, more than half of their juice to Argentina throughout the period, every single year of the review, and that those -- and Suzy may be able to add on this, those are long-term customer relationships that they have. But I can't give you long-term multi-year contracts.

COMMISSIONER ARANOFF: I understand that. Well, if you can persuade your client to show its customers they've been shipping to on a regular basis, it's going to help their case. You know, you've read enough of our sunset reviews to know that the more concrete you can be about third-country customers and what they're getting and how consistently they're getting it, the more persuasive is the argument that volume is committed elsewhere and is not likely to be redirected to the U.S. So it's in their interest to see what they can provide.

I've run a little over my time now, so I'll turn it back to the Chairman. Thanks.

CHAIRMAN WILLIAMSON: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Mr. Chairman, and I join my colleagues in thanking all of you for being here today and taking time out to answer our questions.

I apologize that my first question is a legal question. I will have questions for the business people on the panel. But I wanted to ask Mr.

Dunn, Mr. Clark, and perhaps others on the panel, should we consider in this review whether we think the investigation would have gone affirmative had there been a final determination in the investigation?

MR. CLARK: For the record, Matt Clark of Arent Fox, counsel for the Coca-Cola Company. Commissioner Pinkert, I'd like to answer your question in a slightly different fashion than you've phrased it, if I may.

COMMISSIONER PINKERT: If you can answer my question, then you can rephrase it.

MR. CLARK: All right. So the answer to your question is under the statute, we don't take the view that you need to make an independent determination of what you would have done six-and-a-half years ago and then compare that to what should happen now had you made a certain decision six-and-a-half years ago. Instead the framework here is a little bit different.

As you know under the statute, there are two types of suspension agreements. There are suspension agreements that are designed specifically to eliminate injurious effect. Then there are suspension agreements that are designed to eliminate sales at less than fair value. In both instances, there is also an option for continuation of a case to a final injury determination.

What type of suspension agreement do we have here? Here, we have a price undertaking agreement. We do not have an agreement that calls for the elimination of injurious effect. It is not structured for that purpose.

So in the normal sunset context, what was referred to earlier as the counter-factual called for under the statute and in the statement of administrative action, you don't have a counter-factual to lean against, to counter. There was no continuation of the case to an injury final and you don't have by operation of law an agreement to eliminate injurious effect.

So the question is how do you conduct your analysis. Our view, in contrast to the argument you heard earlier, is this is very much an approach that is akin to making a final determination now on the very full record you have, looking at the five years of data that you have collected. So instead of imaging what you might have done had either -- had there been on suspension agreement or had there been continuation following the signing of the suspension agreement, you make an independent decision now because you don't have a factual predicate to counter for the counter-factual analysis.

You're not doing this type of typical analysis, what would happen had we made a determination. You didn't because you couldn't. So now you're making that determination now and you're making it in a manner that we view as being much closer to a final determination, the final determination that was not made. I hope I answered both your question and I managed to sneak in my alternate rephrase.

COMMISSIONER PINKERT: All good in that respect. Mr. Dunn, do you have anything to add?

MR. DUNN: Commissioner Pinkert, I couldn't have said it better.

COMMISSIONER PINKERT: All right. Then I'll proceed to less of a legal type of a question. Ms. Nolan, you were talking about the inventories in Argentina and whether they might be coming to the United States. And in that discussion, you talked about the commitments to Europe and to supply Europe from that production. What I'm wondering is whether you have any testimony about the buoyancy of demand in Europe given current economic conditions over there?

MS. NOLAN: I think the demand in Europe is affected by many things. I think obviously the recession is one. There are also other factors, for example, there are some very large users that buy juice on most of the continents. And so if an event takes place that puts a ripple into their needs, then perhaps it affects global demand in lemon juice. And I think that there are other product formulations in Europe that may ebb and flow with other juice concentrates, because a lot of lemon juice concentrate in Europe is used as an acidulant in juice blends.

So while demand might be down in Europe overall in the household, in terms of drinking juice, that's one factor. And then the other factor would be if a formulation utilizes different juice concentrates of varying acidities, based on the prices of those, you may need more or less lemon juice concentrate. I think that has been a factor over the last I know 12 to 18 months.

COMMISSIONER PINKERT: Is anybody on the panel, either here or in the posthearing, able to give us projections for EU demand in the reasonably foreseeable future?

MR. HORRISBERGER: We can work with Argentina on it because we're one of the largest customers in Europe, meaning Coca-Cola. So, I mean, we'll work on that for you, for the EU; correct?

COMMISSIONER PINKERT: For the EU.

MR. HORRISBERGER: Yes.

COMMISSIONER PINKERT: Thank you. This next question perhaps may require some economic analysis in the posthearing. But as you know, we heard this morning from Petitioners that in their view the suspension agreement has had a substantial positive impact on their profitability, and I know that you disagree with that. But given that there's a particular trend in profitability that happens to coincide with the existence of the suspension agreements, how are we able to sort out cause and effect?

MR. HORRISBERGER: We believe there were two major developments that affected California. One was the combination of Ventura and Sunkist, very efficient operations. And they said it themselves. They said, we were asking growers for money at the end of the year and now we're returning funds to growers. So that by itself is one major item.

The other major item is the NFC. I believe Mr. Borgers said up to 40 percent of his product goes to NFC now. Six years ago I think he said zero. And if we understand and he can supply us, it will probably be 60 percent of his product. As I remember, 40. He'd have to correct me if I'm wrong. But up to 50 to 60 percent of his product could be going to NFC next year once we get with their marketing team and that's a product that didn't exist.

And the major item there is simply lemonade. As he has said, since we put that in the market, others have followed and that's fine. But, we continue to be the major supplier of that. And there are major suppliers.

So we believe those are the two major positive effects for the growers, Sunkist growers.

MR. CLARK: One other consideration that you heard reference to and then I'll put this all together temporally. There was discussion earlier around the bankruptcy of Citrico International, which was discussed very heavily at the time of the Commission's preliminary conference. We never did get to have a final hearing. But if you were to go back in your records and look to see what the prices were, had we gone into that hearing what you would see is prices for lemon juice had recovered very materially within the handful of months in which the Citrico inventory was burned off. So the price performance, had there been a final hearing, would have been very different than was the circumstance at the preliminary conference.

Shortly after the time when there would have been that final hearing is when the suspension agreement is signed. And the Coca-Cola company is just beginning to introduce Simply Lemonade. Simply Lemonade is not just a premium NFC product, but we pay a premium price for the NFC juice that goes into it.

The success of that brand, the demise of the Citrico inventory, the restoration of prices, Simply Lemon comes into the marketplace. And then as you move to the end of this period, we have the creation of Ventura Coastal, which we know because of the efficiency of that operation relative to the two that had existed before, has increased returns.

The other evidence of this that you can see, and we can go into greater detail posthearing, if you look at the performance of the Department of Commerce review process for normal values, one part of it is to set normal value every year, but the other part of it is to confirm compliance with the prior year's normal values. We, as Coca-Cola Export Corporation, have participated in that exercise every year and we will detail it for you. We have easily exceeded by large amounts the normal values.

So while it is understandable that Petitioner or the domestic industry would characterize the normal values as a floor, in fact no one is standing on that floor. The market has moved far beyond it and that is really the result of demand has been created in large part, though not exclusively by Coca-Cola with the success of Minute Maid, which is a concentrate-based product, and Simply Lemonade, which is an NFC-based product, that by the way did not exist when this case began.

MR. DUNN: Commissioner Pinkert --

COMMISSIONER PINKERT: Thank you.

MR. DUNN: -- I'd like to add one other thing to that and that is look at the prices. The Petitioners have all morning did a long dance about their profitability and why you shouldn't accept the numbers that they've given you for profitability. But they agree on -- even at that level, they agree that the profits are a lot better than they were before the investigation.

Amazingly if you thought that imports were the cause of that profitability, you would think that you would have reduced imports. But you have in fact substantially higher imports since the suspension agreement went into effect and, as Matt has said, at prices that are well above normal values. So that it is not the imports. There appears to be no relationship there. Something else caused those prices to rise, not the suspension agreements. And I think Matt's statement that the most likely cause would be the working off the Citrico inventory and returning to normal price levels is probably the best answer.

COMMISSIONER PINKERT: Thank you, very much. As I said this morning, I recognize that there's not an effect's test under the statute. But nevertheless, the argument is being made that the suspension agreements have had this positive impact on the domestic industry and I think it's worthwhile for us to explore what the mechanism for that might be or might not be. So I appreciate those answers and I would encourage you to give us any additional detail on that, that you can in the posthearing. Thank you very much. Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Sure. Commissioner Johanson?

COMMISSIONER JOHANSON: Thank you, Mr. Chairman. I would also like to thank all the witnesses for appearing here today. My first question is for Mr. Horrisberger and you mentioned that

Argentina cannot provide NSF that meets your specifications, Coca-Cola's specifications. Why is that the case and could they meet those specifications at some point in time?

MR. HORRISBERGER: I will address it in the posthearing brief, but the answer is not.

COMMISSIONER JOHANSON: They cannot?

MR. HORRISBERGER: Cannot.

COMMISSIONER JOHANSON: And you don't see it happening in the future?

MR. HORRISBERGER: And we'll address it in the posthearing brief.

COMMISSIONER JOHANSON: Oh, I understand, okay.

MR. HORRISBERGER: Yeah, the answer is they cannot.

COMMISSIONER JOHANSON: Okay, thank you. And this is also a question for Mr. Horrisberger. Why can't U.S. lemon juice producers satisfy all the demand in the U.S. market? Is it simply reasons -- can they not expand production?

MR. HORRISBERGER: If they expand production, it would be for the fresh market. I mean they last thing they want to sell to is to Ventura Coastal. I don't think they appreciate me saying that. But the growers get significantly higher returns from the fresh market. They're a byproduct. I mean Jason could give you better the numbers. I mean, I don't know the exact numbers, but if they had a choice, they wouldn't sell it. They're only selling what they can't go to fresh. And at least for the time period I know, there has not been enough byproduct supplied by Sunkist and Ventura to meet U.S. needs. It has required imports and it has required imports above the floor.

Now one would assume that would continue in the future and if you have a weather event for sure. I mean if you have a freeze, we'll need more imports to supply -- to keep ourselves on the shelf. And we cannot afford not to be on the shelf. Once again, we need McDonald's. We need Darden. We need Walmart. I mean, we need our customers. So, I mean, that's our driver and there's enough in the U.S. at present.

COMMISSIONER JOHANSON: Yes, Mr. Maxfield?

MR. MAXFIELD: Yeah. The reason they won't be producing more is, like I said, the grower primarily is for the fresh market. So growers are sending about 30 percent of their products to Ventura Coastal, but 90 to 95 percent of their income is actually coming from the fresh market. So it's an extremely small portion of a grower's returns that are coming from the product side of the business and even at the highest levels that lemons ever got to. It may return a little money to the ranch, but it would never -- never support a farm --

COMMISSIONER JOHANSON: Okay.

MR. MAXFIELD: -- land costs and farming costs in California.

COMMISSIONER JOHANSON: All right. Thank you for your response. And this is something that I don't think has been addressed today and that is what drives demand for fresh lemons? Do you all know the increase in consumption of those products? Or do producers in the U.S. simply produce as much as they can and they are purchased?

MR. HORRISBERGER: I think you'd have to address that to Sunkist.

COMMISSIONER JOHANSON: I understand, okay.

MR. HORRISBERGER: And I can help you maybe on Coca-Cola products, but probably not --

COMMISSIONER JOHANSON: If I thought of this question this morning, I would have asked it, but I did not. So I apologize to you all in that area.

And this might have been addressed in the staff report and I apologize if it has, but there's quite a bit of information that we have had to go through. And this is probably best answered by Mr. Horrisberger. Are there non-U.S. NFC suppliers that are available to you besides Mexico, outside of the United States?

MR. HORRISBERGER: No. And Mexico, once again, basically we sell 80 to 90 percent of our product between the holidays, Labor and -- Memorial and Labor Day, let's get it the right way, and Mexico comes in, in September. So we have very little need, if any need. And once again, it goes into these tanks. I mean we spend $100 million on tanks. The same tanks that you saw that were painted orange are the same tanks that -- although you think there's orange in them, there's lemon in them at different times.

So it's the exact same characteristics of the orange. But rather than coming from central Florida, it's coming from the central valley of California and it's there within a week. And then it's stored aseptically. It could be up to a year. We'd prefer not doing that. But it's the same characteristics. We have the same investment as we do.

And once again, as we've done in orange, the growers have to make money. As I said last time I was here in the orange, we just announced a two billion dollar investment in the orange groves in Florida. I mean we're committed to this business and the growers in California have got to make money. I mean we do no good -- I mean, we've got to make money. Sunkist has got to make money. Ventura has to make money. And the growers all have to make money. Otherwise, we won't be in the business.

COMMISSIONER JOHANSON: All right, thank you. And this next question is perhaps best answered by Ms. Nolan and this is a very simple question. And I think I already know the answer, but I figured I'd ask you anyway. Are there export taxes on lemon juice that is sent out of Argentina, as far as you are aware?

MS. NOLAN: An export tax?

COMMISSIONER JOHANSON: Right.

MS. NOLAN: I believe there is.

COMMISSIONER JOHANSON: Do you know what that is and if so, could you provide that to us? Or if you know now, you can tell us. That would be great. If you don't --

MR. DUNN: We don't know, Commissioner Johanson, exactly what it is, but we'll find out.

COMMISSIONER JOHANSON: Okay. That's been a big issue at other commodities and I think Mr. Pearson is probably more familiar at export taxes in Argentina than I am. But it's been a big issue at least with the export of processed -- certain processed products from Argentina. The part that comes to mind for me is soy oil. So if you could check on that, I would appreciate it.

And this is also another question regarding Argentina and this is -- there's a sentence in the Curtis Mallet joint Respondent's brief, which states that Argentina's main markets outside of the United States -- I'm sorry, Argentina's main markets are outside of the United States and they account for a majority of Argentina's exports throughout the period of review. So most exports from Argentina are going to places other than the United States. Could that not be attributable to a larger -- at least some extent to the suspension agreement, the fact that Argentina exports primarily to countries other than the United States?

MR. DUNN: I don't believe that to be the case. I haven't really looked at it. Those are customer relationship that are built up over time. And as far as I know, that was -- the Argentines have been in that, in those markets for a long period of time and they didn't say, oh, gee, we can't sell to the U.S., let's sell to Europe. By the way, they can and have sold to the U.S., so that hasn't been a problem. I think it's really a question of they're a global supplier and they've always wanted to be and have long had those third-country markets.

COMMISSIONER JOHANSON: Does anybody happen to know what exports to the United States were percentage-wise compared to exports in other countries prior to the suspension agreement from Argentina?

MR. DUNN: I don't know, but I should be able to find out.

COMMISSIONER JOHANSON: If you could look at that, I'd appreciate it for the posthearing brief. I think that would be helpful.

And my next question regards transportation costs. And Mr. Martinez, I assume the most orange juice or perhaps all orange juice that ship from Mexico comes via land, via trucks, or rail. I think the staff report might have addressed this to some extent. Could you address this, please?

MR. MARTINEZ: On orange juice?

COMMISSIONER JOHANSON: Well, I'm sorry, most lemon juice.

MR. MARTINEZ: On lemon juice.

COMMISSIONER JOHANSON: I apologize.

MR. MARTINEZ: Yeah. Most of lemon juice is sent on drums.

COMMISSIONER JOHANSON: In trucks?

MR. MARTINEZ: In trucks.

COMMISSIONER JOHANSON: Okay.

MR. MARTINEZ: Refrigerated trucks or frozen trucks, yes.

COMMISSIONER JOHANSON: And once again of course lemon juice that comes from Argentina comes via ship. Do you all know the relative costs of shipping from Mexico as opposed to Argentina? Because sometimes I've been very surprised since I've been on the Commission is the very low cost of shipping via sea, as opposed to over land.

MR. HORRISBERGER: I can make -- I'd like to comment. I at least know for California, via truck, whether drums to Florida, as compared to Argentina versus vessel, it's more expensive to send a truck per ton product from California to Florida, than it is from Argentina versus vessel. I know that for sure. And it's significantly cheaper to vessel out of Argentina.

It's offset, and I don't know the exact duty amount, by more than the duty. So the cost of freight is higher, but the cost of duty is out of Argentina, as compared -- there is no duty out of California. So it's a very complicated formula and I think we can address most of that in the brief.

COMMISSIONER JOHANSON: All right. I appreciate it.

MR. DUNN: Commissioner Johanson?

COMMISSIONER JOHANSON: Yes?

MR. DUNN: I just wanted to add on that. Argentina, the producers are located a long way away from the port, so their juice has to be transported by truck.

COMMISSIONER JOHANSON: It can't come down the river --

MR. DUNN: No.

COMMISSIONER JOHANSON: -- like the Parana or the Rio De Plata?

MR. DUNN: No. It comes by truck. It's one of the reasons, by the way, why it's impractical for them to produce NFC because they would have to ship in frozen containers to the port and that's quite expensive as you heard this morning.

COMMISSIONER JOHANSON: Okay, thank you. I appreciate that. And I'm going to ask one more question. My time is about done. And this is a question for Mr. Martinez. I thank you for coming a long way today. I thank the witnesses this morning for coming from California and you probably came -- probably may even further than they did. So thank you for appearing here today before us.

I have a very basic question for you. Mexico produces little in the way of fresh lemons from what I understand, as opposed to the United States and Argentina. Why is that the case? Why is most used for processing?

MR. MARTINEZ: Well, it used to be all for processing because all the groves that were planted --

COMMISSIONER JOHANSON: Specifically for production or orange -- lemon juice for Coca-Cola, correct?

MR. MARTINEZ: Yes.

COMMISSIONER JOHANSON: Okay.

MR. MARTINEZ: But once the contract expire, the grower had the alternative to look at the fresh market and that's being shifting on that direction. That's why it has -- I believe that has been growing and last year accounted for almost one quarter of the total production in Mexico lemons went into the fresh market.

COMMISSIONER JOHANSON: Do you see that growing, the percentage going to fresh as opposed to processing?

MR. MARTINEZ: Probably will continue, not at the same speed.

COMMISSIONER JOHANSON: Okay, thank you. Thank you all for --

MR. HORRISBERGER: I'd like to make one comment.

COMMISSIONER JOHANSON: Oh, yes, Mr. Horrisberger?

MR. HORRISBERGER: Basically all of the lemon contracts that Coca-Cola entered into Mexico, and we probably -- I wouldn't say 100 percent, but close, it was for the oil.

COMMISSIONER JOHANSON: Okay.

MR. HORRISBERGER: So it was oil, not -- I mean the juice was a byproduct of the oil in that case.

COMMISSIONER JOHANSON: Right.

MR. HORRISBERGER: But, yeah, I don't know if 100 percent, but we were probably close to 95 to 100 percent of the groves in Mexico were planted for Coca-Cola for oil.

COMMISSIONER JOHANSON: All right, thank

you.

CHAIRMAN WILLIAMSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: Thank you, Mr. Chairman. I wanted to -- I appreciated Mr. Clark's perspective on the legal determination that we're making here in this case and I just wanted to reiterate what I said to the earlier panel, that in the posthearing briefing, if you could provide with a thorough discussion of all the legal authorities and precedence and prior Commission determinations, that will give the context in which to make this legal analysis for the circumstances that are presented here. That would be very helpful.

I wanted to know sort of what -- this is probably for Mr. Dunn and Mr. Lunn, the counsel from Mexico, and then Mr. Dunn. Is that right, Mr. Lunn and Mr. Dunn? Okay.

MR. DUNN: We make a great dance team.

COMMISSIONER BROADBENT: What benefits do your countries get from the suspension agreement at this point, or your clients? Anything? And why did you agree to it to begin with?

MR. DUNN: Well, strange to say, I was just answering that question to a reporter at the break.

And the reason that you sign a suspension agreement is that you don't have to pay dumping duties or estimated dumping duties. If you sell above -- you've got a normal value in these agreements. If you sell above that, the juice enters into the United States. So no money goes to Uncle Sam. You keep it in your pocket. And that's a very attractive option.

COMMISSIONER BROADBENT: Okay.

MR. LUNN: If I could add, going back to -- I helped negotiate the agreements. I guess the reason they were signed was the basic tenet, that business is like predictability. And at the time we signed the agreement, we felt like we had a strong argument here at the Commission, at least in the case of the Coca-Cola Company. On the Commerce side, we were in a situation where depending on the accounting that was done for the final margin, we could end up with either a zero margin or 146 percent. So it was kind of a big rolling of the dice that was involved. So at the time when we were offered the suspension agreement by the Department of Commerce, considering all the factors, we decided, in consultation with our clients, to sign the agreement. That's why we did it then.

In terms of what Mexico gets from it now, I would say nothing, other than they -- Ms. Nolan mentioned, it's a large administrative burden. They have been able to sell above the normal values. Hundred percent of the juices is coming to the United States anyway. So, I mean, I guess if the choice is a dumping order or not a dumping order, there's certain benefits to it because it is predictable. And since they've always been able to sell above the normal values, it hasn't been restricted. So there's a certain benefit to that. If the choice is no dumping order or no suspension agreement, they would be much happier with no suspension agreement.

COMMISSIONER BROADBENT: Well, can't you say that it's done its purpose and it's time to not participate anymore?

MR. LUNN: Do you mean not participate in the --

COMMISSIONER BROADBENT: In the suspension agreement.

MR. LUNN: No, because at that point the dumping order would go into effect.

MR. CLARK: Just to --

COMMISSIONER BROADBENT: Yeah.

MR. CLARK: Just offer one comment. There is the opportunity for the signatories to terminate the agreement, to say that signatories believe that the agreement has outlived its utility. They can terminate the agreement at that moment in time. The original investigation that was suspended would snap back into existence. The Department of Commerce would be confronted with a dilemma because the agreement was signed the even of when their final determination was due to be released. So they would very quickly have to dust that off and issue it.

Mark is correct, that's certainly with respect to the Coca-Cola Export Corporation and Mexico. The margins were -- we were either not going to be participating in a final determination or we were going to be. We're very much of the view that we would have gotten a de minimis result. So that's what was being sacrificed, along with the opportunity to have an argument at that moment in time as to whether the domestic industry was being injured.

We do have that opportunity. The agreement could be terminated. And then we would be back here in very short order having exactly the discussion that we are having now, which loops back into the earlier discussion of what is your analytical framework.

COMMISSIONER BROADBENT: Right. That's helpful. How have the prices behaved under this current suspension agreement? Can you give me kind of history of how prices have gone in the market based on the regulation of this agreement?

MS. NOONAN: Nancy Noonan. From the perspective of the Coca-Cola Company, and we'll provide this posthearing, but you can see that actually our normal values have been set within a very small range of each other. They've changed very little from year to year and yet our actual reported selling prices to the U.S. Department of Commerce have been significantly higher because the market has been so much higher.

COMMISSIONER BROADBENT: Okay. And then so we can get maybe a time series of the normal value prices, that would be very helpful.

MS. NOONAN: Sure. We'd be happy to do that. And as I think was mentioned earlier today by the Petitioner's counsel, the normal value process is set using costs. So, they look at what your costs were for a 12-month period. They add in some profit and direct selling expenses and all sorts of extra stuff. And then that's what they use to set the new normal value that would be in effect for the next year. So, again, at least from our perspective in Mexico, the costs have actually been very much the same year to year; a slight increase, but nothing dramatic and yet the prices have gone up significantly.

COMMISSIONER BROADBENT: Okay. What can you tell me, this would be to any other witnesses, what the behavior of the non-subject imports have been over the period of review?

MR. HORRISBERGER: We'll have to address that. I do not -- at least for the last three or four years, we haven't had any non-subject imports into the U.S. I mean, there might have been something I missed, but nothing of any size, who ought to address it then, because I don't know the answer.

COMMISSIONER BROADBENT: Okay, all right, good. I had a question, an extra question for Ms. Nolan from Argentina. We had something in our staff report talking about -- and I couldn't place this, so I'm sorry for the vagueness of this question -- but a connection between plantings for sugar and ethanol in Argentina and citrus. Are you aware of any link there where some of the ethanol plan -- I mean some of the sugar plantings for ethanol may be converted to more citrus plantings?

MS. NOLAN: I'm not aware of the current situation, but many times with the ebb and flow of demand and supply, when growers become disgruntled, no, I'm going to take out the trees and put in sugar cane, and then when sugar cane goes bad, I'm going to take out the sugar cane and put lemon trees. But at the moment, I haven't heard that.

MR. HORRISBERGER: I'd like to address that because in Brazil, on the orange business, that's exactly what happened. About I'm going to say a third to 40 percent of the groves in the San Paulo area have switched to sugar cane. And believe it or not, it ends up -- it worked out well because they go to areas where you can control greening. So that has been a phenomena in Brazil with the orange business. I'm not aware of it in Argentina, but it's been huge in Brazil.

MR. DUNN: I just wanted to point out that that's -- changing those things is a long-term decision. When you decide to -- if one were to decide to tear up their sugar cane plantings and plan lemon trees, it's going to be five years before that comes into production. If you do the reverse, you can go to sugar pretty quickly, but you give up the remaining productive life that you had on those trees. So it's -- you have to -- it's not something that you just - - it's easier to go from lemon to sugar planting, than it is to go from sugar to lemon planting. But either way, you have long-term consequences that you have to consider. It doesn't happen over night.

COMMISSIONER BROADBENT: So it really takes five years to go from sugar to lemon groves?

MR. DUNN: well, you have to plant the trees. It's five years before the trees reach a really productive stage. They're planted, but they're not productive.

COMMISSIONER BROADBENT: Okay. Then just one more quick question here. For Argentina and Mexico representatives, are there regulations regarding lemon juice disposal that similar to those in the United States? How do they govern that in Mexico and Argentina?

MR. MARTINEZ: I'm not very familiar with what the laws are here in the U.S. But in Mexico, I know that we cannot do it because of the acidity levels. So I would imagine that has the same type of negative impact and the same reasons. But I'm not familiar with the laws either way.

MS. NOLAN: In the case of Argentina, it's also prohibited. In fact just this last year for our own production we've installed an Anaerobic Digester simply for the wastewater treatment.

I think as someone mentioned before, if you were to try to put lemon juice even to your Anaerobic Digester, it would be a disaster because it's a delicate balance of waste.

So disposing of lemon juice in Argentina or the United States, you would really have to find someone that can dispose of it properly. It can't simply be put to a river or put into a yard or something like that.

I wanted to follow up on your previous question.

Within our operations we have, we're from seed to bed. So some of our trees are in a greenhouse for two years before they're even planted. So when you talk about the conversion from sugar or back and forth, a tree, we have some of them two years before they're even planted and then they need to be about five years before they're producing any sort of productive level.

COMMISSIONER BROADBENT: Thank you, I appreciate that.

CHAIRMAN WILLIAMSON: Thank you.

Mr. Horrisberger, you mentioned that a few of the contracts in Mexico were mainly for the oil. I was wondering, what do you do with the juice since you can't dispose of it? How would you factor that into the --

MR. HORRISBERGER: I don't know the exact yields back then. In the last five years there's very few contracts left. We were buying the juice, I'm sure, well, Export Corporation out of Mexico was, I assume, importing into the U.S., is that correct?

MS. NOONAN: Yes. Let me follow up on that.

The company had contracts with growers to take possession of the entire whole fruit. Then they paid a total processor to process that fruit into lemon oil and lemon juice, but still retained possession of the lemon oil and lemon juice, which then the Coca-Cola Company was selling into the United States, most of it to itself, to Coca-Cola North America, but some of it to unaffiliated customers.

CHAIRMAN WILLIAMSON: Your wanted the oil, you were dealing with the juice as --

MS. NOONAN: Of course the oil is very important to the company, but the company is an innovative company that's going to make money wherever it can, and it developed these products to use the lemon juice.

MR. HORRISBERGER: To me it's the same as Sunkist. Sunkist, one of their by-products was the juice. Same difference in my mind. We were interested in the oil, the by-product was the juice.

CHAIRMAN WILLIAMSON: -- ingenuity.

MR. CLARK: Mr. Chairman, in an environment where, as Mr. Horrisberger said earlier, the domestic industry has never been able to supply 100 percent of the demand for lemon juice. So for the small amount of juice that came out of the quite modest sized industry in Mexico, that could easily come into the U.S. market as other imports did.

CHAIRMAN WILLIAMSON: Okay.

Going back to the situation, Mr. Horrisberger, the situation in Mexico, I don't know if you can now or in your posthearing, but why did you get out of the long term contracts? What was the motivation for that?

MR. HORRISBERGER: We'll have to address it because, as Mr. Borgers said, that's another part of our business. I could guess, but I don't know for sure. We'll address it in the posthearing.

CHAIRMAN WILLIAMSON: Thank you.

Mr. Martinez, you mentioned I think production in Yucatan. And I think you mentioned another area that was also important for lemon production for you. Where is that?

MR. MARTINEZ: The northeast of Mexico,

south from Texas. That's where Tamaulipas state is, and that's actually the largest growing lemon region in Mexico. That's probably where 80-85 percent of the lemons are grown.

CHAIRMAN WILLIAMSON: Thank you. I've bene in the Yucatan and I saw all those citrus groves, so I thought it was down there. I understand now why it's also coming by truck too. Thank you.

Mr. Horrisberger, you had talked about you were going to give posthearing reasons why you don't expect any nonconcentrated juice to come from Argentina. Also in addressing that, address the question of whether would investment make a difference. And I guess what I'm asking, I think the trade in orange juice, there has been growing trade in the nonconcentrate from Brazil I believe. That's because people have made the investment to get it here.

MR. HORRISBERGER: Yes.

CHAIRMAN WILLIAMSON: So in addressing that question of --

MR. HORRISBERGER: It's a specification reason. We'll address it in the brief.

CHAIRMAN WILLIAMSON: Thank you.

MS. NOONAN: Commissioner, one thing we

might be able to add right now though, the orange juice is just a much, much bigger market than lemon juice. I think that's going to answer some of your investment questions.

MR. DUNN: Commissioner Williamson, I just wanted to point out, the Petitioners this morning made a big presentation about one Argentine company, San Miguel, getting a normal value for their juice. For their not from concentrate juice.

That is something that the Commerce Department pretty much for the asking. They have a percentage add-on. So if you have a normal value for Product X, they add on a percent, so that will be your normal value for not from concentrate.

That doesn't mean that they produce it. They don't. I have been told by all three companies that I represent, and that includes San Miguel, they don't produce it, they are not building the facilities to produce it, and in addition, you have -- It's not just building a pasteurizer. you have to be able to transport it. As I said, it's a long way from the state of Tucamán in Argentina to Buenos Aires. That's very expensive transportation. And the market, as Nancy stated, the market for lemon juice is not big enough to justify what was done in Brazil which was to create tankers, aseptic tankers, because the product has to be kept aseptically if it's not from concentrate, to build. They don't have the commitment to build aseptic tankers, and there are no aseptic tankers to transport lemon juice from Argentina.

is it theoretically possible for them to do so? Yes. The market cost situation, transport cost situation, doesn't make sense for them.

CHAIRMAN WILLIAMSON: I understand the special infrastructure you have to move orange juice around, and you don't have those volumes for lemon juice. So are we talking about, like the shipments to Europe, are they going in the same boats that maybe soy beans or beef or other stuff is going in? Because you're putting it in the containers. Or is there a special infrastructure for moving lemon juice around?

MS. NOLAN: Are we talking about the infrastructure for NFC then?

CHAIRMAN WILLIAMSON: No I've switched to just lemon juice.

MS. NOLAN: So we're on concentrate.

CHAIRMAN WILLIAMSON: Right. Sorry, we're on concentrate. Correct.

MS. NOLAN: The vast majority of concentrate is shipped in 20 to 40 foot reefer containers in 55 gallon drums to the major ports around the world.

CHAIRMAN WILLIAMSON: So that's --

MS. NOLAN: The same as beef would be or --

CHAIRMAN WILLIAMSON: As opposed to orange juice which I guess, then it goes specialized vessels?

MS. NOLAN: Some of it still goes that same way. But they have built these huge ships which again, going back to the scale between orange and lemon, I'd have to get out my calculator but to fill one of those tankers with lemon, it would take some doing.

CHAIRMAN WILLIAMSON: I hear you. Enough on that subject. I get the answer.

This morning those in favor of continuation pointed out that price is really the key thing because the quality and availability was pretty much the same from all three areas of supply. You talked about selling above the normal value. But I was wondering if you could address posthearing, if you take a look at our pricing data and what does that say about the nature of the competition between the domestic and the imported product? That raises some different questions, that has some different implications and I don't think that question has been addressed. So I appreciate that.

I don't think anybody's talked about today, and I'd also ask those in favor of continuation to address this, the question of non-subject imports and what role, if any, do they play in this market.

I think you hadn't been bringing it in, but I assume there must be other folks somewhere and there's been no discussion about what, how we should factor those imports into --

MR. HORRISBERGER: I'm not so sure there's been any non-subject imports and basis saying that there might have been some from Italy recently for a different reason.

I don't think there's been much, if any, for the last five years.

MR. DUNN: Commissioner Williamson, you're talking about NFC specifically?

CHAIRMAN WILLIAMSON: No, I'm talking about the subject product.

MR. LUNN: Are you talking about non-subject countries or --

CHAIRMAN WILLIAMSON: Yes.

MR. LUNN: -- nonsignatories to the agreement?

CHAIRMAN WILLIAMSON: Non-subject countries.

MR. LUNN: Okay.

CHAIRMAN WILLIAMSON: you can address it posthearing.

MR. DUNN: You have the data on the imports from non-subject countries of all lemon juice, and they're not insignificant.

CHAIRMAN WILLIAMSON: So what do you make of that? How do you factor that into our consideration?

MR. DUNN: In fact what we said in the brief was you can look to some extent and see that Argentina has, in particular, a lot of their competition has been with the non-subject countries more than with the domestics.

CHAIRMAN WILLIAMSON: Thank you.

My time has expired. Commissioner Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

Allow me to also offer my welcome to your panel. One of the great things about being last in the questioning order is you can learn a lot by listening to the other questions and answers. So allow me just to follow up with a couple of clarifications.

Are U.S. imports of lemon juice best understood to result from demand/pull pressures in the U.S. market? Or is it more supply/push pressures in foreign markets? Or both.

MR. HORRISBERGER: I would say it's demand. If they don't have a customer it doesn't do any good to bring it to the U.S.

COMMISSIONER PEARSON: So we don't wee a situation, unlike some commodity products, where you'll have vessels arriving in U.S. ports with product unsold, you put it on the dock and then figure out later how to sell it. That is not the case with lemon juice?

MR. HORRISBERGER: They'd have to speak to that.

MR. MARTINEZ: In my case it's very much about demand. If I don't see the possibility to find a customer for my products, I just simply don't have to buy lemons, to process them.

COMMISSIONER PEARSON: With Argentine product, does it happen occasionally that a vessel will end up in Rotterdam or the Port of New York or whatever, with unsold lemon juice?

MS. NOLAN: I would say that in general most companies have a small volume in a warehouse for customers that never put in a contract. There are small customers that buy 40 drums or one container. I think there are many processors that have an account at X Warehouse and will have some product there.

But as a general rule to ship mass volumes to one destination, no.

COMMISSIONER PEARSON: So any product that would be in a warehouse in the United States still owned by an Argentine producer would be in that position with the expectation that it would be moved into the marketplace to existing customers in the near future. It wouldn't be sitting there for months waiting for a buyer.

MS. NOLAN: Right. For us, we might make the decision to move product into the U.S. that we have for a customer under contract, but not move a massive volume in unsold. No.

COMMISSIONER PEARSON: Mr. Dunn?

MR. DUNN: Just to add to that. I was speaking a while back with the President of Citromax who told me that virtually all of what they sell is committed to a, in the United States, it's certainly committed to a customer. Most of the time they deliver straight to the customer or the customer picks up at the dock, whatever. A small amount of time the stuff will be put into the warehouse, but that is generally committed to the customer. The customer says I want that, I just can't take it right now.

Have it available for me when I call. But that's not a significant quantity of juice.

COMMISSIONER PEARSON: So the U.S. market is not currently set up to accommodate some rogue shipment of a large quantity of lemon juice that would then have to be moved into the marketplace? We just haven't seen that happen. It's not something we should worry about in the context of this investigation, is that correct?

MR. DUNN: No. And once again, to distinguish from the famous orange juice case, none of these companies has tank farms in the United States where they can store large quantities of juice.

COMMISSIONER PEARSON: And there's on futures market for lemon juice?

MR. DUNN: Not that I know of.

COMMISSIONER PEARSON: I don't either, but if there was one, someone would no.

MR. HORRISBERGER: The answer is no. There is apple and there is orange.

COMMISSIONER PEARSON: Thank you.

Would I be correct to understand that from your point of view the marketplace has almost moved entirely beyond the Suspension Agreement such that there's been enough growth in demand that there are neither price effects nor volume effects from the suspension agreements?

MR. CLARK: We'd answer that question in the affirmative. It's not that the market has moved beyond the suspension agreement. From essentially the moment it was signed the suspension agreement was irrelevant to what was developing in the marketplace. The marketplace had already turned so the suspension agreement has not had any bite, except as clients are wont to remind us, the lawyers do sometimes bite rather deeply. That's the only consideration that has really been visited on our clients from the suspension agreement.

COMMISSIONER PEARSON: You've testified in recent minutes about administrative and regulatory costs of living with the suspension agreements, but that's just kind of a cost of doing business that's on the side and it's not really having an effect on the volume or price of trade that happens --

MR. CLARK: The cost of doing business under the suspension agreement each year is the process of requesting and then obtaining normal value as part of that. We also demonstrate compliance with the prior year's normal value. that is the extent of the compliance cost. Depending on the particular year you're in, the Department of Commerce will conduct on-site verification as they would in the context of a normal dumping review or dumping investigation. That's the other component of the compliance cost.

So you have an internal cost. The company staff who already have full time jobs have to prepare questionnaire responses. They're subject to verification. We've been verified and the verifications are all clean as you've seen on the record. Then we get the normal values for the following year. But those normal values have not had a restraining effect on the ability to sell as the record demonstrates.

COMMISSIONER PEARSON: So that is one of the key issues in your fundamental argument that these suspension agreements could be revoked and there in essence would be no effect in the marketplace, or no noticeable effect. Is that -- I'm putting words into your mouth. don't let me do that.

MR. CLARK: That's certainly the view of the Coca-Cola Company as the single largest purchaser in the United States and in the world.

COMMISSIONER PEARSON: Mr. Lunn?

MR. LUNN: I just wanted to add to that and correct something that was said this morning.

The Coca-Cola Company suspension agreement does have some unique aspects to it, but in terms of Procimart which is the largest exporter of lemon juice to the United States now, theirs is essentially exactly the same as the Argentinians. It's the allocation of --

First off, it's a fully loaded cost of production including the fruit cost. They look at what they're paying for fruit on the open market. We allocate that fruit cost across all the different products they produce. It's exactly the way that I believe Ventura is doing it now. Sunkist didn't previously. So it is a fully loaded cost of production.

This morning you heard some things that said that the Mexican normal values were artificially low. Now that is no longer the case for the majority of the exports from Mexico.

COMMISSIONER PEARSON: I have a question then, both for Mr. Martinez and Ms. Nolan.

In the event that you are not finding sufficient customers to purchase lemon juice, would you make the decision then not to buy lemons and to cut back production in the plant? I think you commented on that earlier, Mr. Martinez.

MR. MARTINEZ: Yes. That has to do a lot I think with the way we like to do business in our company. We try to forecast the sales, make contracts, and based on that go out and keep certain volume, processors in volume of fruit. We sometimes process additional volumes that we expect that could be sold during the rest of the year. That would be in accordance with what I mentioned. We have never carried inventories over the next season, working with that strategy.

COMMISSIONER PEARSON: Ms. Nolan, a similar situation in Argentina or somewhat different?

MS. NOLAN: What we would do in a situation where there was slack demand, we would only process the lemons from our own groves. We're also a grower. So in that case we would have to work with people that we have long term fruit contracts with and we definitely wouldn't buy any fruit on the open market.

COMMISSIONER PEARSON: And in that instance the disposal problem for surplus lemons would be mitigated because those lemons would be staying out at or near the groves where they were grown? I don't know whether that situation ever exists, but the fruit would never be brought together in a single place because it wouldn't be harvested and brought to a processor. Is that correct?

MS. NOLAN: Right. Some would drop to the ground. It wouldn't be an ideal situation because it is quite acidic, but that does cover a very large area. It's one of the largest growing regions in the world. It wouldn't be a big compost, as I think we were discussing before.

COMMISSIONER PEARSON: How would you know if you were building up too much inventory? What would be the signals to your company that you needed to think about cutting back on production?

MS. NOLAN: For us, for example the season just started. We would take a look at our carry-over from the previous year if that existed, and try to make some determination about all of the customers that we serve year in and year out, what we thought their needs would be, and try to make a plan accordingly. But for us, you have to proceed with caution. You wouldn't want to just process and process and process without -- That's where you get into trouble.

COMMISSIONER PEARSON: My time has expired. Any further comment, Mr. Martinez? Or have we said enough about this?

MR. MARTINEZ: In our case since we started to sell lemon juice in 2008, we have found a relatively good demand in the U.S., so we have not faced much, that type of trouble.

COMMISSIONER PEARSON: Thank you both very much.

CHAIRMAN WILLIAMSON: Thank you.

Commissioner Aranoff?

COMMISSIONER ARANOFF: I think I just have a few follow-ups

One of my colleagues asked a number of questions about NFCGs in Argentina and I know there's been some commitment to respond posthearing, so I'm just going to add some questions to the request to make sure, because we can't follow up if we're getting the responses in the posthearing. I want to make sure that the responses cover everything we want to know.

I'd like to have in the record what countries other than the United States, Mexico, and possibly whatever we're going to hear about Argentina, are currently producing not from concentrate in the same sort of relative sense of the sizes of those production relative to what's produced in the U.S.

MR. HORRISBERGER: Is that Coca-Cola you're talking about?

COMMISSIONER ARANOFF: For the whole market.

What countries there are that are producing not from concentrate lemon juice.

MR. HORRISBERGER: I don't know if that's available, because we don't know who else in the world makes it necessarily. I mean I can speak for Coca-Cola.

COMMISSIONER ARANOFF: Please speak for whatever knowledge you have.

MR. HORRISBERGER: We have two. Mexico and California, the U.S. No NFC anywhere else in the world.

COMMISSIONER ARANOFF: I'd like to get as much information as anyone can provide about whether or not it's produced in other countries and approximately how much.

MS. NOLAN: I just wanted to add, I'm not exactly sure of the size but it would be relatively easy to figure out. There is some processed in both Italy and Spain, but it's for their regional markets. But in any case we can find out pretty easily how much is processed there.

COMMISSIONER ARANOFF: That would be very helpful.

That kind of answers my next question which was also asked this morning which was whether there were any significant uses of not from concentrate juice outside of North America, and it sounds like there is. I think this morning they said yes in Europe and yes in Asia as well. I think that's what I heard this morning. So that sounds like that's consistent with your experience.

Then Mr. Dunn, you indicated that the Argentine producers that you represent have all told you that they are not making any NFC juice, lemon juice, right now and apparently don't have any intention to do so. But we do have information on the record that someone is shipping NFC juice from Argentina to the United States. So if there's any information that anyone on either panel would like to submit to help us figure out who's making that and who's buying it, that would be helpful.

MR. DUNN: We'll do what we can. I would just point out, Commissioner Aranoff, that the quantities were so small that the Petitioners advanced this morning, that that can be accounted for by simple errors.

I don't know that it is, I'm not saying that it is, I'm just saying it could very well be.

COMMISSIONER ARANOFF: Fair enough.

Some of my colleagues have touched on this, but just to round this out for the record. The evidence that we have suggests that suppliers in Argentina and Mexico who are not signatories to the suspension agreement are increasing their exports to the U.S. perhaps beyond the coverage, the relative coverage levels that were provided for in the suspension agreement.

My question to you is for the companies that have signed the suspension agreement. How are those exports to the U.S. affecting your own companies' products, sales and prices in the U.S. market?

MS. NOLAN: For us, there are various tiers of customers in the United States and all over the world. Our experience so far has been that the very strong branded products, those buyers are more likely to stick with their long-term supplier base, be it Citromax or whoever the other suppliers might be. I think for a lot of those buyers this suspension agreement is difficult for them to understand.

That being said, they realize that we're in a difficult position and have been supporting us at the few times where the price approaches the NV. But for most of the time prices are such that everybody's been able to sell at a price well above the NV.

I think there also have been instances where some of the suppliers in Argentina that aren't traditionally shipping goods here, perhaps they have made some inroads with customers that aren't so focused on long-term relationships and partnerships and history together.

To say that they have had no impact would be not right. Have they had a huge impact so far? Not so far.

COMMISSIONER ARANOFF: Thank you.

Did you want to add anything from the perspective of the Mexican industry?

MR. MARTINEZ: I might just say that we normally don't encounter competition from other Mexican suppliers on lemon juice. That tells me there are not that many competitors or processors processing lemons in Mexico and sending it to the United states.

COMMISSIONER ARANOFF: Thank you very much.

I think that was all of my questions. I do want to thank the panel for all your answers.

Thanks, Mr. Chairman.

CHAIRMAN WILLIAMSON: Commissioner Pinkert?

COMMISSIONER PINKERT: Thank you, Mr. Chairman. I just have a few follow-up questions.

Commissioner Aranoff just elicited information about the factual circumstances surrounding the non-signatory producers from the subject countries. But the question, going back to my very first question about what sort of legal analysis are we supposed to be doing here? How do the nonsignatories fit into the framework that you elucidated, Mr. Clark, at the beginning of the discussion?

MR. CLARK: If you take the structure that I described, in a situation like the one we're in where there was no continuation after the suspension agreement so we never had a final injury determination.

What the suspension agreement represents is the Department of Commerce's final determination. That's the thing that did not go forward.

Your final determination did not go forward because there was no Commerce final. That's the statutory structure.

The legal consequence of that is that the nonsignatories, at least my view, is the non-signatory companies are non-subject producers. They would be the equivalent of producers had Commerce gone final and issued negative determinations as to those producers.

COMMISSIONER PINKERT: Let me get a

clarification on that. Couldn't those nonsignatories become part of the suspension agreement at some point?

MR. CLARK: Yes, they could. Just as you could have a situation where, let's imagine a dumping order goes into effect and somebody begins to ship. They would be subject to the order and they would eventually get their own margins.

In a situation such as this, the determination was made by the signatories to the agreement which includes the Department of Commerce, that they had sufficient signatories to eliminate sales at less than fair value. There is the opportunity for others to join or to be asked to join the agreements, but there have been no such requests made.

COMMISSIONER PINKERT: But your view that so long as they have not actually become signatories to the agreement, that they should be treated as equivalent to non-subject producers.

MR. CLARK: With respect to the question of subject imports that can cause relevant material injury under your analysis.

If we imagine that you are doing the equivalent of a final determination, that's what these imports would resemble because they are not subject to the final action by the Department of Commerce which in this instance is the suspension agreement.

The alternative structure is that you would say we analyze the totality of the subject imports and what the signatories represent are simply the individual producers who were scrutinized. That would be the alternative formulation.

But I think if you reflect on the structure of the statute and what the suspension agreement represents, and there's always the opportunity and you will find I think historically, not that there are many suspension agreements but a large number of them have covered 100 percent of exports, you would have a different situation.

So the query is really if we have suspension agreements at 100 percent of exports, 90 percent or 85 for purposes of your analysis, are all three of those scenarios identical? I submit that they are not identical.

COMMISSIONER PINKERT: Mr. Lunn, I see you looking rather puzzled.

MR. LUNN: No, not puzzled.

I think you would have to think about what we're considering here which is termination of the agreement or continuation of the agreement. I think within that analysis you have to assume that the non-signatory companies will be there.

So if you terminate the agreement, they will have no impact on the whole thing. They were there, they're going to be there.

When you look at the analysis, what happens when you terminate the suspension agreement? The nonsignatories, it will have no impact on them. So as Matt said, effectively they become non-subject imports.

COMMISSIONER PINKERT: I would ask both sides to comment on that issue if you have anything additional. I did ask a similar question of the earlier panel, but if you have anything to add to this, whether it's legal precedent or some other reflections on this issue for the posthearing, I think that would be helpful. Thank you.

Does the fact that Sunkist operates as a cooperative result in questions about how to consider their cost structure?

MR. HORRISBERGER: It seems to, to them.

COMMISSIONER PINKERT: Please elaborate.

MR. HORRISBERGER: I do have an accounting degree way back when and I couldn't figure out what was going on as an outsider, so I really don't understand.

They should address it and I don't understand how they were doing the accounting.

I do understand that a coop accounts differently, but it sounds like they had no cost of goods sold for something that Mexico's required to have a cost of goods sold. That's the way I look at it, but I don't understand.

MR. LUNN: My understanding is that they've excluded the value of lemons in their cost of goods sold when they calculated the profit for juice, which is an acceptable by-product approach. It was the approach that the Coca-Cola Company used in the original investigation.

So I believe, from what I heard this morning, I am of the opinion they want it both ways. They want to limit the subject merchandise to lemon juice, but they really want you to go out and look at the lemon growers and see what their total return is and their profitability. And I don't believe the statute allows you to do that. I think if you're going to look at lemon juice you need to look at the profit as the company reports it on their books for lemon juice.

COMMISSIONER PINKERT: I would just ask you to, not to change your answer to that question, Mr. Lunn, but to include in your answer either here or in the posthearing, an analysis of how we should look at that cost question if we determine that these are co-products.

MR. LUNN: We will do that in our posthearing brief.

COMMISSIONER PINKERT: Thank you.

Anybody else?

MR. CLARK: Just one quick comment. We'll do the same thing, but let me analogize to a co-operative agriculture case that you did look at which was the production of sugar.

We had in the United States, among beet sugar producers there were several cooperatives, the largest one is up in the Red River Valley in Minnesota. The analysis that was done there when you undertook an examination was to include the complete production stream. There are some by-products that come out of the production even of beet sugar. But when you look at the primary product, the sugar, you did trace it all the way back to the returns to the growers. But the product we were looking at is the product for which the co-operative was created. It was created for the production of granular sugar.

Why was the Sunkist cooperative created? It was created for the production of whole fresh fruit.

What you happen to be looking at here in this instance is a by-product that emerges from the production of the fresh fruit.

Lemon juice is not a co-product of fresh fruit. It's a by-product. It is part of the disposal of the lemons that don't qualify for the primary product. As Mark correctly described, standard GAAP accounting would assign that a realizable value of zero. It is a by-product and you simply credit to the main product accounts all the revenue that comes.

So what Sunkist has reported in fact is the way that you would have and you did account in some other coop cases where you're looking at the primary product and the revenue that got returned to those growers who were growing for the primary purpose was reduced by the amount of revenue that came from the by-products.

COMMISSIONER PINKERT: Just to clarify my question. When I asked you to consider how we should do this cost accounting in the event that we determined that these are co-products, I was referring to lemon oil and lemon juice as the potential co-products. Just to be clear.

MR. CLARK: That's what I imagined. Looking to be clear, to say from an accounting standpoint, I believe that when you're talking about the Sunkist cooperative, there is not a by-product, there is not a co-product relationship between the reason for the cooperative, the fresh fruit, and any of pulp, peel, juice, oil or other products that emerge from the lemon. Those things are all by-products. Although one of them, in the case of oil, may be particularly desirable and expensive, nevertheless, the cooperative exists for the fresh fruit. That's really the distinction.

COMMISSIONER PINKERT: Thank you.

With that, I have no further questions unless there's another comment on that issue on the panel. No?

Thank you very much.

Thank you, Mr. Chairman.

CHAIRMAN WILLIAMSON: Commissioner Johanson?

COMMISSIONER JOHANSON: Mr. Chairman, I have no further questions.

CHAIRMAN WILLIAMSON: Commissioner Broadbent?

COMMISSIONER BROADBENT: I just want to thank the panel. I really appreciated your questions and your thoughtful answers.

CHAIRMAN WILLIAMSON: No further questions?

COMMISSIONER BROADBENT: No.

CHAIRMAN WILLIAMSON: Thank you.

Witnesses this morning, I guess from the situation in Mexico and the U.S., I think one of the reasons why you have a cooperative is you say to maintain the standards of the primary product. I assume there's a market for lemons. And one reason that you have the product that you can make lemon juice out of, because you can't sell those lemons.

I don't know whether there's any kind of sort of formula. Does someone say maybe 10 percent or 20 percent of the lemons that you grow are probably not going to meet the standard. I was wondering if anyone wanted to address that question. Those in favor of continuation could address it posthearing if you want.

I don't know what the situation is in Argentina and Mexico regarding --

MR. HORRISBERGER: Sunkist should probably address that.

CHAIRMAN WILLIAMSON: That's why I offered them to do it posthearing.

MS. NOLAN: In Argentina, for example, and I think for the United States as well, it matters how the weather is year to year. That's a big factor.

For our calculations, in Argentina, you can pretty much say that no more than 25 to 30 percent maximum would ever go to the fresh market. There are other factors involved in that, but in terms of quality and so forth, no more than that will go.

CHAIRMAN WILLIAMSON: So quality is the primary driver but there are other factors.

MS. NOLAN: Quality and demand. We have a completely different market. We're supplying a market where there's a lot of competition. But in terms of quality, it usually comes at a -- when we start the season in March through May or early June is our window for fresh. And that goes primarily to Eastern Europe and some to Asia and so forth. But no more than 25 to 30 percent of the entire crop will go.

In the case of California, I know that Jason said that 70 percent, but I think some years it can be as high as 90 percent of the California crop can go to the fresh market. But obviously it varies from year to year based on demand, demand in the markets that Sunkist serves and also the weather.

I'm not sure there's an exact formula but we can take a look at that and see if there's any --

CHAIRMAN WILLIAMSON: I assume that it might vary, but the quality if the first thing.

MS. NOLAN: Yes.

CHAIRMAN WILLIAMSON: One of the biggest ones.

MS. NOLAN: The size and the quality. Yeah.

MR. LUNN: I would just add for Mexico, this is sort of an evolving thing because ten years ago none of it went to the fresh market. Now, in the last five years, that has been growing. Packing houses have bene put up. They didn't have the infrastructure when they first could export to the United States. They didn't have the infrastructure to do it. That infrastructure is being put in place now. We're at close to 25 percent goes to the fresh market. But that's, as I said, an evolving or growing market.

CHAIRMAN WILLIAMSON: Are you anticipating as infrastructure develops it may be a higher percentage of that would go to fresh? I know there are other variables like demand and all that.

MR. MARTINEZ: There might be a little bit spare capacity for packing. Not much. And in Mexico because of the limited history I think the other factor has been that a certain point the prices that the industry pays might be better, so the growers decide to stop doing their producing the fruit on the fresh market and send it to the industry.

CHAIRMAN WILLIAMSON: Thank you for that. It hadn't been addressed.

I think that's all my questions.

Mr. Pearson?

COMMISSIONER PEARSON: Thank you, Mr. Chairman.

Mr. Horrisberger, would Coca-Cola in the United States prefer to have a single source supplier of lemon juice? Or is this a product for which it would be easier to manage the risks if you had multiple suppliers?

MR. HORRISBERGER: I do not -- This is my believe and I've expounded on the people who work for me, we cannot afford to be single source for any product. They could have something happen. Their plant could burn down. That's the first issue. That's the easy issue. We've seen that happen.

There could be a weather concern like in Florida when the hurricanes went vice versa and versa vice which basically shut the whole orange juice industry down there for about a month.

So we cannot afford to single source. Now that doesn't mean we don't have a major supplier of 80 to 90 percent of our product from a single source. In fact it's probably more with Ventura with NFC and they know that.

But if something was to happen, their plant burned down, we have another source that can formulate a response, because it isn't good for either of us. I would not like to be single sourced in any product.

COMMISSIONER PEARSON: That's basically a matter of corporate philosophy and risk management in an uncertain world?

MR. HORRISBERGER: It's a philosophy that we've implanted in the U.S. so I guess it's corporate.

COMMISSIONER PEARSON: As a practical matter then, with there being more or less just one supplier in the United States for lemon juice, particularly the not from concentrate lemon juice, you need to have some off-shore supply in order to have a second supplier or a third supplier.

MR. HORRISBERGER: And we do. The second one is Mexico. It's a very small percentage. We bring it in and we store it in the tanks. We make sure we have it there in case there was an interruption from Sunkist. Then as we build up Sunkist we bring that down slightly But it's less than ten percent of our total needs.

But we do have it there because during the off season that ten percent could get us through for two or three months. During the season it would get us through for a week maybe.

But yes, that's the exact reason we have a second supplier. And it's not price, either.

COMMISSIONER PEARSON: I just wanted to ask that. I know some companies in some industries have been comfortable with single source supply arrangement and I wasn't sure whether that would apply here.

MR. HORRISBERGER: We like a large supplier because Coke is difficult to do business with because of our requirements, our specifications, our social audits, our compliance audits, and you can go on and on and on and on. So once we find someone who does a good job for us we want to continue to do that because of the cost of doing business with us.

COMMISSIONER PEARSON: Thank you.

Mr. Martinez, Mr. Lunn, I have a question that I think you could help with regarding the production of lemons in Mexico.

We have some conflicting information on the record. In our staff report, page 4-13, and this relies on data from a Mexican government agency SIAP. We have an estimate of 78,000 metric tons of lemon production capacity in Mexico, about half of which would be in Yucatan, about one third in Tamaulipas, and about one-sixth in San Luis Potosi.

But then the domestic industry has put on the record USDA's GAIN report for Mexico which shows as much as 142,000 metric tons of lemon growing capacity, more than half of which is in Tamaulipas. Somewhere around 80,000 metric tons.

Which of these figures sounds reasonable to you, if either? And you can comment now and maybe clarify in the posthearing because I'm sure you have better knowledge of the industry in Mexico than what we have on the record currently.

MR. MARTINEZ: That's a good question. Most of the confusion, I think, comes from the fact that in Mexico the limes are called limon, which means lemon. So when someone in Mexico exports limes or lime juice, they write it in Spanish limon. If you translate that, it's lemon.

So I think a big part of the confusion comes from that.

But I have to agree that most of the production in Mexico comes from Tamaulipas. And the north part of San Luis Potosi which I would consider the same region. And only about 15 percent of the production is grown in Yucatan.

In Yucatan grows limes. So I would think that that's one of the reasons why the volume might be inflated on that part. In Tamaulipas, we don't produce limes, only lemons. So the number from Tamaulipas and San Luis I think is more accurate.

MR. DUNN: Commissioner Pearson, just to add to that. We had a footnote in our brief on this. When we were looking at supply, overall supply area, acreage and so forth, we did not include Mexico on acreage and trees because the GAIN report for Mexico says specifically lemon/lime. And it's our information that anywhere between 85 and 90 percent of the growth, of growing in Mexico is limes.

COMMISSIONER PEARSON: Perhaps for the posthearing if you could give us your best estimate of lemon, not lime, production in Mexico and what the trends might be. I think you indicated there's some growth in Tamaulipas and probably not growth in the Yucatan. So just to help us understand what the Mexican market might look like over the reasonably foreseeable future.

MR. MARTINEZ: Yes. As I said earlier today, what we see is the production levels are going to stay stable and they have been averaging 100,000 tons plus/minus 25 percent on the past four years, and that is the same volume that we see for the coming years. We foresee some production shifting from Yucatan to Tamaulipas, but always maintaining those same levels of production.

COMMISSIONER PEARSON: Thank you very much.

Mr. Lunn, if you wish to put any clarification on in the posthearing, go ahead and do that. If there are data sources that we don't now have.

I appreciate very much the comments of Mr. Martinez.

With that, Mr. Chairman, I believe I have no further questions. So allow me to thank very much the afternoon panel for your patience in answering all our questions. It's been good to have you here.

CHAIRMAN WILLIAMSON: thank you.

Does any other Commissioner have questions?

I just have one. It was partly addressed before, but maybe just to make sure. I was wondering how do you respond to the domestic industry's argument that their financial performance is overstated since Sunkist does not include the cost of lemons?

I assume the answer, from I've heard, is that's because that's the proper accounting way to do it, but --

MR. DUNN: Commissioner Williamson, there are some interesting -- One is always put in a difficult position when one side or another backs away from its own data and says you can't rely on that.

But leaving that aside, I think you need to look at a couple of things.

First of all, I would presume that they used the same methodology in the preliminary investigation back in 2006-2007 that they use now. Or at least up until 2012.

The profits, as they say, have increased. They've increased significantly since before then. So there's no doubt that they're very profitable.

In addition, I can't obviously discuss the number, but if you look, they say well, you can't rely on any of our numbers except for 2012. Look at what their profitability was in 2012. That's a profit level that the Commission doesn't often see.

It's one thing to say the profits are exaggerated. Okay, maybe I'll give them that. But you don't get to the point of saying that they're not making a good living over the past several years.

CHAIRMAN WILLIAMSON: Does anyone else have anything to add to that?

Okay.

Thank you, with that I have no further questions and no other Commissioner does.

Does staff have any questions for this panel?

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

CHAIRMAN WILLIAMSON: Do those in favor of continuation have any questions for this panel?

MR. McGRATH: No questions, Mr. Chairman.

CHAIRMAN WILLIAMSON: With that I guess it's time for closing statements.

Those in support of continuation have 24 minutes for direct and 5 for closing for a total of 29 minutes.

Those who oppose the continuation have 30 minutes from direct and 5 for closing, a total of 35 minutes.

Our custom is usually to combine those times, so I assume that's okay here.

I just want to thank this panel for your testimony. We appreciate particularly those who have had to travel a long ways to come here. We will ask you to step back and then we'll have our closing statements.

(Pause.)

CHAIRMAN WILLIAMSON: Mr. McGrath, you can begin when you're ready.

MR. McGRATH: Thank you, Mr. Chairman, and thanks to all for taking a long, hard look at this unique market, this unique situation. Thanks to the staff for the work that they did in not only collecting the data but trying to analyze a very unusual industry. We will continue to try to struggle with them and you to find the right way to evaluate this and to look at what the profit level, what the returns are for this industry.

We have certainly two different kinds of enterprises who have now combined together into a hybrid enterprise. There are ways to evaluate that which are better.

I just want to clear up that a couple of times I think I just heard characterizations of what we were saying this morning as don't use our data. We're not saying don't use our data. We submitted our data as it's kept. We're asking that it be evaluated in a different manner than the way it's been laid out which fits into a format under the structure that you usually use to evaluate these things and we're asking that you use a different format.

There are a few points that we'd like to review and rebut in a couple of instances.

First I'd like Mr. Borgers to comment on a few issues having to do with NFC.

MR. BORGERS: Thank you.

I'd like to just clarify as far as the volume of NFC, in my normal processing year with a normalized crop, my existing level of sales to NFC is 18.2 percent by volume. By volume of all the gallons I produce. This year approximately 18.2 percent will go to NFC.

By sales, if concentrate sales fall and NFC sales stay constant, then as a percentage of sales volume you would see that go up, but by production volume my range of production volume is currently about 18.2 percent by volume, and with different growth scenarios that we've looked at, that number in future crops could rise to approximately double that with some of the growth opportunities that may be in that beverage. But that's the range of the current, is 18 percent and we would see that rising to a potential of 36 percent by volume.

The second clarification I'd like to make on NFC is that while there certainly are very efficient large-scale transportation logistics to transport NFC juice products that we see in the orange arena, i.e. the aseptic transportation, aseptic tankers, aseptic tanks to receive this and import. The transportation of NFC lemon juice can be as simple as putting five gallon into a pail, putting that pail in the freezer, loading that pail into a container and shipping it up to the United States. Be it a pail or a drum. There's really no difference between transporting frozen single strength lemon juice and frozen concentrated lemon juice.

So we can look at this industry on a scale basis but there are certainly ample opportunities to sell and transport NFC lemon in drums. We have a significant business volume now where we do ship NFC in drum units.

MR. McGRATH: In keeping with the NFC theme for a moment, I noticed that Mr. Horrisberger had indicated actually two things that sounded somewhat inconsistent but I think reveal the market better than we possibly could. That is he is certainly trying to project that Sunkist, the joint venture, is insulated from being harmed by having 100 percent of the commitment of Coke to buy NFC.

At the same time he's saying that the, quite reasonably, that the Coke policy is not to have single source commitment and to have as many additional suppliers as possible. He described what the Mexico supply is there for.

But the gist of what he's saying is long term, even short term, a company like Coke can't afford to be relying entirely on Sunkist.

Mr. Borgers is well aware of the fact that it doesn't take as much to produce and ship NFC from Argentina as was being described. It does cost something to freeze it and to ship it, but there's no need for giant tank ships, there's no need for big aseptic storage units. It can be frozen and shipped in that fashion. It's not a specialized kind of container ship that moves the product.

I think as was also pointed out, and Commissioner Johanson observed, that the cost of shipping from Argentina is cheaper than the cost of trucking across the United States. It was actually Mr. Horrisberger who pointed that out, and I think you admitted that that's what you had found as well.

Another issue that I wanted to mention was with respect to the -- We had noted in our briefs and this morning that a lot of the development of the global industry that is now producing juice was started and continues to be focused very heavily on production of oil.

Mr. Horrisberger did mention that, that it was really mostly about oil initially. That the early contracts were for oil. Then I think a little bit later Ms. Noonan pointed out that the contracts originally in Mexico were for oil and juice. And Mr. Horrisberger said the oil is important, juice is a by-product. Then Mr. Clark finished it off by saying that the juice is coming in to meet U.S. demand.

So it was a polite pivot, but the point is that oil is the driving force. In order to make oil, you have to make juice. There's going to be juice that's developed with that. We've seen the inventory growth in the market. We've also seen the oil production and demand going up.

You didn't really hear very much this afternoon about oil from any of the respondents, with good reason. Because oil is very much of a driving force and Mr. Horrisberger admitted that. Coca-Cola was very active in the industry a decade ago, trying to make sure that it had alternative sources of oil around the world. And they do.

I think it's also worth noting that on this question of how to do the evaluation of Sunkist's financials. We have argued that the way it was set up of course reflects no fruit costs. Mr. Horrisberger indicated that well, the Commerce Department requires Mexico to show a cost of fruit. It certainly seems logical that a coop would have to show a cost of fruit as well. Mr. Lunn disagreed with that and said it should be treated as a by-product, no cost, and that's the end of that.

I failed to note this morning that the Commerce Department certainly doesn't treat the production and sale of lemon juice as something that has no cost. As a matter of fact it's been a very important element in the determination of what the normal values are. As was noted this afternoon, normal values include all fully absorbed costs. The Commerce Department assigns a cost of fruit based on the reported cost of the individual company.

There was a very big difference at the outset, and I apologize if I misstated with respect to Mexico. It was Coca-Cola, or Coca-Cola's entity that benefitted from a fruit cost allocation in the initial suspension agreement that resulted in that company getting a much lower normal value than others. And it's no wonder, as Mr. Clark testified, that nobody is selling at that floor. They're well above that floor. That's because at least initially his client had an extremely low floor based on the benefit of that particular contract.

But the point is, those suspension agreements did assign fruit values in calculating normal values for the foreign producers. We think it's incumbent upon the Commission to also assign a fruit value to the U.S. industry when it's evaluating whether or not it's profitable and by how much.

We also heard, there has been some disagreement on data and numbers. We tend to rely on the USDA government figures when it comes to reports on foreign production. We understand that others have their own sources of estimates, but the estimate that we heard from Ms. Nolan about the amount of lemon production projected for Argentina for 2013, she is saying that it's going to be down from 2012. The GAIN report says it's going to be up from 2012.

Normalcy the Commission accepts the USDA data as the primary source. I would look very closely at the individual company projections and not just assume that that is the most reliable source of information about the crop that's coming.

One other -- Did you want to say something about Citrico?

MR. BORGERS: We wanted clarify that the

Citrico event and the collapse of Citrico as a marketer of lemon, it was said earlier that Citrico was a part of Sunkist. It was not a part of Sunkist. Sunkist was not affiliated with Citrico in any way other than it had an obligation that it entered into through another party that ended up using Citrico to sell some product, but it was not an entity or any affiliation of the Sunkist growers.

MR. McGRATH: With that, I would like to summarize.

The situation that we're facing here is one in which I think everybody has admitted that the market is on a short-term spot basis. There is a market for a premium product which has been benefitted Sunkist and the joint venture with Ventura Coastal. That is obviously one that can decline rapidly since others are capable of producing the product and capable of shipping it. It's not rocket science, as I said earlier. And since Coca-Cola, the one who's buying it, really wants to have more sources, that's what's likely to happen.

Inventories of the concentrate, the bulk commodity product, the non-premium product, are climbing. We've seen that in the records. We've seen declining prices in the last two years. The last six quarters. We've seen increasing oil demand. We've seen foreign lemon production at considerable highs. And once the U.S. returns, the U.S. profit levels are looked at in the proper light of day, I think that you should find that this suspension agreement not only has been effective but the elimination of the suspension agreement is likely to result in price declines and immediate negative effects for the industry.

I also want to clarify that we're certainly not trying to take the position that anything that Petitioners are doing is to try to keep volume out of the United States. I don't know how much more I can emphasize, we're concerned about price. We definitely are concerned about what price it's coming in at. There is a demand for juice. That demand can be complementarily filled by domestic producers and by imports. Even if the market share of the domestic producers is continuing to decline, there's still a place for imports being sold at fair value.

But we don't agree with the claim that the suspension agreement had no effect on balancing out prices and creating a market that could at least be assuredly counted on to be returning a profit to the processors.

We're just simply concerned about having to compete as the only remaining U.S. producer with foreign producers that are focusing on making their profit on other products and really are treating lemon juice as a by-product, just to be sold off, whereas we're treating it as a true co-product.

We look at it as being an alternative product not for waste, it's not a waste stream, it's a use of secondary quality input.

As I said before, the industry doesn't know how much of the fruit that they're growing is going to be second quality until it gets to the packing house. Perhaps that's a distinction that needs to be made.

It is first quality fruit for the processing use, but it's second quality fruit for a grower that's seeking to supply the fresh market.

With that, we would like for you to look closely at these figures on profitability. We think that you'll find that there is a threat, especially with the recent decline in prices and the recent increase in inventories in the market, and find in the affirmative.

Thank you.

CHAIRMAN WILLIAMSON: Thank you.

MR. CLARK: Once again for the record, Matt

Clark of Arent Fox, counsel for the Coca-Cola Company.

I'm just going to address two points in the nature of rebuttal commentary and then Mark will conclude our presentation.

First, with respect to Citrico which has been talked about a fair bit. The testimony that Ms. Nolan provided earlier was not that Citrico was part of Sunkist. Citrico's been portrayed here as an entity that was purchasing imported juice and bringing imported juice into the United Stats. That is an incorrect description.

It certainly was purchasing large volumes of imported juice. We also know that it purchased large volumes of lemon juice from Sunkist. So the role that Citrico played as a marketer and broker of juice was to purchase juice from all available sources, inventory that juice, but then because they did not dispose of it in a beneficial manner, they ended up in bankruptcy and there was a fire sale and that entire inventory of juice from all sources including domestic hit the market and had a predictable effect on price because it was disposed of by a bankruptcy liquidator in the space of only a month or two.

A second point relating to not from concentrate, the NFC product, and Mr. Borgers' testimony about the level of NFC that is being produced by Ventura Coastal.

What he neglected to comment on is the premium, the margin that is earned on NFC. It is our information that the margin, the markup for NFC relative to concentrate is in the neighborhood of 30 percent and that is not accounting for the lower cost of production. In the case of NFC you do not have to freeze it. It's chilled, but it doesn't have to be frozen and it doesn't have to be concentrated. So there's no evaporation.

So you have a product with a lower cost of production and a substantially higher price. So while it may only represent in the neighborhood of 18 percent, but growing, as a volume matter, as a value matter, and therefore as a profit matter, it is a rapidly growing contributor to Ventura's profit and hence one of the reasons you see the performance of the domestic industry's profit over time.

Remember, simply lemonade, which is Coca-Cola's NFC product, is created at the time the suspension agreement is created, not in response to the suspension agreement. It's just coincidental in time.

Now that premium product is driving the

performance of Ventura. It's not just a volume story which is increasing, it is also a premium story. The markup for NFC is substantial and it's costs are lower.

Thank you.

MR. LUNN: Thank you very much.

Again, Mark Lunn from Dentons.

Having the last word is a curse and a blessing but I'm going to keep it short.

Mr. McGrath talked a lot about the differences between an antidumping order and a suspension agreement. I've had the opportunity to work on almost every suspension agreement that the Department of Commerce has existing right now and I've seen the differences between different suspension agreements. One of the major ones is that the way prices are calculated, if the normal values go above market, you don't ship. If you have a dumping order, you can always ship to the United States. You can incur the dumping duties, and you can always ship. It will not restrict your access to the U.S. market. A suspension agreement will.

If the normal value, the reference price that you have is above the market price, you will not ship. I can point to several suspension agreements that are in existence right now where that is exactly the case that we have.

That's never been the situation in this case.

As Mr. Clark said, the normal values are a floor that nobody's ever stepped on.

This agreement has never stopped a gallon of juice from coming into the United States. Therefore it has not caused any prices to go up. There's no reason to believe that this agreement was what caused the prices to go up.

You look at the timing of when the prices started to go up. Mr. Clark went through them, and we'll put it in our posthearing brief. It was before what would have been the final determination in this case. Prices were already shooting up and then demand conditions changed and we saw substantial increases in prices. This is not the suspension agreement.

The issue before you today is what happens if we get rid of these? Nothing. It's not going to increase -- Mexico has no more juice to send to the United States. It won't have for the foreseeable future.

Argentina has multiple markets. They're not going to start flooding the U.S. market with lemon juice and kill the market. It's not in their economic benefit. This will have no effect on it.

Second, Mr. McGrath would like you to think that this is 2004 where everything is driven by oil. It is not the case anymore.

Yes, during the original investigation 100 percent or approximately 100 percent of the fruit in Mexico was dedicated to processing, and it was dedicated for the purpose of obtaining oil. Now Mr. Martinez, Ms. Nolan said the same for Argentina. They look for the demand for those products. What is it? They have a choice. do I want to buy that fruit? What can I sell the juice for? They're going to maximize their return. They always have a choice of going, prices are getting too low, there's no reason for me to be producing this. They don't have to produce to get oil. They have a choice of not producing.

When they buy that fruit, in this case it is going to be looking at a co-product analysis. When they buy that fruit they're going to go, what is my return on the oil? What is my return on the juice? Is this profitable? If it is, they'll go ahead and buy it and process the fruit. Otherwise, they won't.

That is the market, at least I can speak with authority on the case of Procimart. For years they've been able to do this such that they don't have inventory overhang. They don't have much production anyway, but they don't have any inventory overhang.

Mr. Martinez told you today, by May his remaining inventory is basically sold already. By July it's going to be gone. That's the situation we have now. This is no longer 2004. Oil is an important product, but it is not the driving factor. People aren't processing fruit simply to obtain oil and then decide what to do with the juice afterwards. They're no longer in a position to do that. They have to maximize their total returns on all the products that they're going to be using to obtain that.

Again, going back to the prices. I'm going to ask, we'll go through this again in the thing. Look at the timing of the prices. During the original investigation prices were low. There's no doubt about that. They didn't dramatically increase when the suspension agreement was signed. They were increasing up to that point. Demand didn't drop off once those suspension agreements were put in place. Prices were much higher, always above the normal value. But demand never dropped off. I think that's a central point that I'd like to leave you with today, and why I believe that termination of these agreements will have no adverse effect on the U.S. industry.

Thank you.

CHAIRMAN WILLIAMSON: Thank you for the closing statements.

Posthearing briefs, statements in response to questions and the requests of the Commission, and corrections to the transcript must be filed by May 28, 2013.

Closing of the record and final release of the data to parties is June 28, 2013.

Final comments are due by July 2, 2013.

With that, I want to thank everyone who participated in this hearing. The hearing is now adjourned.

(Whereupon, at 4:15 p.m., the hearing in the above-entitled matter was adjourned.)

//

//

//

//

//

//

//

//

CERTIFICATION OF TRANSCRIPTION

TITLE: Lemon Juice from Argentina and Mexico

INVESTIGATION NO.: 731-TA-1105 and 1106 (Review)

HEARING DATE: May 16, 2013

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: May 16, 2013

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