

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
FROZEN WARMWATER SHRIMP) Investigation Nos.:
FROM CHINA, ECUADOR, INDIA,) 701-TA-491-497 (Final)
INDONESIA, MALAYSIA,)
THAILAND, AND VIETNAM)

REVISED AND CORRECTED TRANSCRIPT

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 THAILAND, AND VIETNAM)

Tuesday,
 August 13, 2013

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

The hearing commenced, pursuant to notice, at 9:33 a.m., before the Commissioners of the United States International Trade Commission, the Honorable IRVING A. WILLIAMSON, Chairman, presiding.

APPEARANCES:

On behalf of the 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

APPEARANCES: (Cont'd.)

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THE HONORABLE SEAN TINDELL, State Senator, State
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THE HONORABLE JEFFREY S. GUICE, State
Representative, State of Mississippi
THE HONORABLE JOSEPH A. HARRISON, State
Representative, State of Louisiana

Embassy Witness:

PERAPAT UTHAISRI, Minister-Counsellor
(Commercial), Royal Thai Embassy

In Support of the Imposition of the Countervailing Duty
Orders:

On behalf of Coalition of Gulf Shrimp Industries
(COGSI):

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CARSON KIMBROUGH, President, Carson & Co., Inc.
ALAN GIBSON, President and Owner, Tideland
Seafood Co., Inc.
E. RICHARD GOLLOTT, SR., Vice President, Golden
Gulf Coast Pkg. Co., Inc.
LANCE AUTHEMENT, Vice President, Hi Seas of Dulac
Inc.
JOHN D. FOLSE, Chef John Folse & Company and Chef
John Folse & Company Manufacturing, Chair
Louisiana Seafood Promotion and Marketing Board

APPEARANCES: (Cont'd.)

In Support of the Imposition of the Countervailing Duty Orders: (Cont'd.)

On behalf of Coalition of Shrimp Industries (COGSI):
(Cont'd.)

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In Opposition to the Imposition of the Countervailing Duty Orders:

On behalf of Chicken of the Sea Frozen Foods; Eastern Fish Company, Inc.; Mazzetta Company, LLC; Ore-Cal Corporation; Sea Port Products Corporation; Seafood Exchange of Florida; and Stavix Seafoods, Inc.:

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DEEN KAPLAN, Counsel for Publix Super Markets, Inc., Hogan Lovells LLP
DARBY SORBER, General Merchandise Manager for Food and Sundries, Costco Wholesale Corporation, Northeast Region
DINO ORTOLAN, Frozen Food Buyer, Costco Wholesale Corporation, Northeast Region
JEFF STERN, Vice President of Purchasing, Central Seaway Company, Inc. (Censea)
ERIC BUCKNER, Senior Director of Category Management - Seafood, Sysco Corporation

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In Opposition to the Imposition of the Countervailing
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Washington, D.C.

On behalf of The Royal Thai Government:

WALTER J. SPAK, Esquire
JAY C. CAMPBELL, Esquire
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Washington, D.C.

On behalf of Vietnamese Association of Seafood Exporters
and Producers (VASEP):

MATTHEW R. NICELY, Esquire
Hughes Hubbard & Reed LLP
Washington, D.C.

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P R O C E E D I N G S

(9:33 a.m.)

1
2
3 CHAIRMAN WILLIAMSON: Good morning. On
4 behalf of the U.S. International Trade Commission I
5 welcome you to this hearing on Investigation Nos.
6 701-TA-491-497 (Final) involving Frozen Warmwater
7 Shrimp From China, Ecuador, India, Indonesia,
8 Malaysia, Thailand, and Vietnam.

9 The purpose of these investigations is to
10 determine whether an industry in the United States is
11 materially injured or threatened with material injury
12 or the establishment of an industry in the United
13 States is materially injured by reason of subsidized
14 imports from China, Ecuador, India, Indonesia,
15 Malaysia, Thailand, and Vietnam, or to frozen
16 warmwater shrimp.

17 Schedules setting forth the presentation of
18 this hearing, notices of investigation and transcript
19 order forms are available at the public distribution
20 table. All prepared testimony should be given to the
21 Secretary. Please do not place testimony directly on
22 the public distribution table.

23 All witnesses must be sworn in by the
24 Secretary before presenting testimony. I understand
25 that parties are aware of the time allocations. Any

1 questions regarding the time allocations should be
2 directed to the Secretary.

3 Speakers are reminded not to refer to
4 business proprietary information in their remarks or
5 answers to questions. Please speak clearly into the
6 microphone and state your name for the record for the
7 benefit of the court reporter. Finally, if you will
8 be submitting documents that contain information you
9 wish classified as business confidential, your
10 requests should comply with Commission Rule 201.6.

11 Mr. Secretary, are there any preliminary
12 matters?

13 MR. BISHOP: Mr. Chairman, I have two
14 preliminary matters. I would request that Jessica G.
15 Wang of Stewart and Stewart be added to Of Counsel on
16 page 2 of the witness list.

17 I would also note that all witnesses for
18 today's hearing have been sworn in.

19 (Witnesses sworn.)

20 CHAIRMAN WILLIAMSON: Very well. Will you
21 please announce our first state witnesses?

22 MR. BISHOP: The Honorable Jay Dardenne,
23 Lieutenant Governor for the State of Louisiana.

24 CHAIRMAN WILLIAMSON: Welcome, Lieutenant
25 Governor Dardenne. You may begin when you're ready.

1 Your mic?

2 MR. DARDENNE: I'm sorry. Good morning, Mr.
3 Chairman and Commissioners. My name is Jay Dardenne.

4 I'm the Lieutenant Governor of the State of
5 Louisiana. It's an honor and a privilege to appear
6 before you this morning. I'm proud to be here to
7 represent the thousands of Louisianians who work so
8 hard to make our shrimp industry second to none.

9 I appear before you today in order to
10 demonstrate my commitment to this industry and to do
11 my part to articulate the need to address subsidized
12 shrimp imports from foreign countries. Accordingly, I
13 strongly support the imposition of countervailing
14 duties on frozen warmwater shrimp from China, Ecuador,
15 India, Indonesia, Malaysia, Thailand, and Vietnam to
16 offset the anticompetitive behavior of these
17 countries.

18 The focus of my remarks in your hearing
19 today is the impact of an uneven playing field on the
20 shrimp processing industry, which is but one part of a
21 chain that binds fishermen, dock workers, ports,
22 processors, transporters, restaurateurs and
23 customers.

24 I assure you that I'll be happy to appear
25 before your Commission and other tribunals and

1 committees as often as necessary to help champion the
2 cause of the thousands of Louisianians who rely upon
3 the bountiful waters of the Gulf of Mexico and the
4 estuaries of the great Mississippi River to supply
5 America and indeed the world with the God-given
6 aquatic wealth which our waters offer.

7 Growing up in Louisiana, one comes to
8 appreciate the positive cultural and economic impact
9 of the shrimp industry, which has always been a top
10 priority for me serving in elected office. I've been
11 the Lieutenant Governor of Louisiana since 2010.
12 Before that I had the privilege of serving as
13 Secretary of State for four years and 15 years as a
14 member of the Louisiana State Senate.

15 I'm pleased to note that as of July 1 the
16 Louisiana Seafood Promotion and Marketing Board has
17 been added to my office portfolio. In 1985, the State
18 of Louisiana created the Louisiana Seafood Promotion
19 and Marketing Board to support Louisiana's world class
20 commercial fisheries and to respond to changes in the
21 marketplace, changes in the environment. Today it
22 remains the premiere seafood marketing board in the
23 country, reminding America that Louisiana is our
24 country's top producer not only of premium shrimp, but
25 also crabs, oysters, crawfish and, yes, alligators, as

1 any fan of reality TV now knows.

2 Not only is shrimping an industry; it's a
3 way of life for a diverse group of people who form
4 what I like to call the human gumbo of Louisiana,
5 people of different ethnicities who arrived in America
6 not through Ellis Island, but via the Port of New
7 Orleans and for generations have remained in Louisiana
8 and relied upon the teaming waters of the Gulf of
9 Mexico and the Louisiana coast to make a living and to
10 sustain a lifestyle.

11 On a personal note, over the course of the
12 past two years it's been my privilege to chair two
13 initiatives of the Americas Wetland Foundation. The
14 initial program was called Building Resilient
15 Communities, and the second was a study, a careful
16 study of the impact of the Mississippi River on
17 America. In that capacity I had an opportunity to
18 visit with coastal communities not only in Louisiana,
19 but in Mississippi, Alabama, Florida and Texas, and to
20 visit with people whose livelihood was dependent upon
21 the Gulf of Mexico, dependent upon the fishing
22 industry.

23 What struck me most during the course of
24 these series of meetings, which has resulted in two
25 reports, one of which has already been presented to

1 Congress and the second of which will be presented
2 later this fall, was how passionate these individuals
3 in all of these Gulf states were about sustaining
4 their culture and sustaining their lifestyle.

5 The shrimp industry in Louisiana is
6 obviously a business, but it is also a culture. It is
7 also a way of life for the people of Louisiana who for
8 generations have passed on the traditions, the
9 obligations, the benefits of the shrimping industry
10 from father to son, from family member to family
11 member. So I stand before you today not just as an
12 advocate of the industry, but as an advocate of
13 families of Louisianians who for generations recognize
14 the significance of this industry from a cultural
15 standpoint.

16 Gulf shrimp from Louisiana are a substantial
17 source of jobs, income and tax revenues with an annual
18 impact of \$1.3 billion supporting more than 14,000
19 jobs. First and foremost, the shrimp industry creates
20 jobs and economic growth across Louisiana and the Gulf
21 region. In addition, Louisiana's Gulf shrimp caught
22 in our state waters generated \$91 million in state tax
23 revenue and \$83 million in federal tax revenue.

24 Shrimp is much more than economics, as I've
25 noted. The men and women who catch and process our

1 prized Gulf shrimp would call shrimping their way of
2 life. Many of the shrimp-related businesses in
3 Louisiana are family-oriented, owned and operated with
4 relatives working generation after generation.
5 Allowing foreign countries to continue to engage in
6 unfair trade practices will force Louisiana folks to
7 relinquish their heritage.

8 Although fighting for a level playing field
9 for the U.S. shrimp industry and its workers is the
10 right thing to do for Louisiana and the country, it
11 has not been an easy fight over the past decade. In
12 addition to the woes felt by the entire nation
13 following the great recession, the United States
14 shrimp industry, particularly in Louisiana and across
15 the Gulf, has been hit particularly hard.

16 During the past decade, Louisianians have
17 felt the ravages of five major hurricanes and a
18 devastating oil spill. Louisianians are known for our
19 joie de vivre, our love of life, and now for our
20 steadfast resilience. Our fishermen are ready to get
21 off the lifeboats and back on the shrimp boats once
22 and for all.

23 However, the major obstacle that now
24 threatens the industry's long-term viability is the
25 influx of massively subsidized shrimp from China,

1 Ecuador, India, Indonesia, Malaysia, Thailand, and
2 Vietnam. Together these countries exported over
3 883 million pounds of shrimp to the United States
4 worth almost \$3.6 billion. Shrimp imports from these
5 seven countries account for 89 percent of all U.S.
6 shrimp imports and more than three-quarters of the
7 domestic market overall.

8 Since 2009, producers in these seven
9 countries have gained U.S. market share by
10 aggressively undercutting domestic prices. This
11 underselling has restrained the prices that U.S.
12 producers are able to secure for their product, which
13 in turn has made it increasingly difficult to even be
14 able to cover the cost of production.

15 Shrimp producers in China, Ecuador, India,
16 Indonesia, Malaysia, Thailand, and Vietnam are also
17 benefitting from an endless variety of subsidies.
18 Some of these subsidies come in the form of large tax
19 breaks. For example, the Government of Thailand cut
20 taxes for their shrimp producers that commit to
21 exporting their product.

22 The Indian Government provides subsidies to
23 shrimp processors to reduce their ocean freight costs
24 with a bonus subsidy awarded to exports heading
25 specifically to the United States, and the Chinese

1 Government gives subsidized loans to aid its shrimp
2 producers. The list of subsidies goes on and on,
3 including government grants and debt forgiveness, all
4 adding up to about \$13.5 billion.

5 Despite the tough times in the past and the
6 looming threats ahead, I believe in the shrimp
7 industry's business owners, entrepreneurs and workers
8 and their ability to produce the highest quality of
9 shrimp in the world. I'm grateful for the role that
10 this respected Commission has played in enforcing U.S.
11 trade remedy laws to protect our companies and workers
12 against egregious trade practices.

13 I mentioned before that shrimping is a way
14 of life for Louisianians. We celebrate life. We work
15 hard. We have a great deal of pride in the products
16 that are produced. Louisiana is a fun-loving place.
17 We have 400 festivals in Louisiana. If something
18 walks, crawls, flies or swims, we have a festival to
19 salute it. Then we throw it in a gumbo and eat it.

20 And shrimp is among the tastiest of all
21 those delicacies. It's a source of pride for
22 Louisianians. It's a source of economic vitality for
23 our country, and today I urge you to put an end to the
24 ongoing damages to the U.S. shrimp industry that is
25 caused by illegal trade practices by imposing

1 countervailing duties on warmwater shrimp from China,
2 Ecuador, India, Indonesia, Malaysia, Thailand, and
3 Vietnam.

4 American shrimp processors should not have
5 to compete with the deep pockets of foreign
6 governments to stay in business and survive. I thank
7 you very much for the opportunity to appear before you
8 today, and I urge your careful consideration of this
9 case and appreciate the opportunity to stand before
10 you. Thank you very much.

11 CHAIRMAN WILLIAMSON: Thank you very much,
12 Lieutenant Government. Are there any questions?

13 (No response.)

14 CHAIRMAN WILLIAMSON: If not, we want to
15 thank you very much for coming. We very much
16 appreciate having your testimony. Thank you.

17 MR. BISHOP: Our next witness is the
18 Honorable Joseph A. Harrison, State Representative of
19 the State of Louisiana.

20 CHAIRMAN WILLIAMSON: Welcome,
21 Representative Harrison. You may begin when you're
22 ready.

23 MR. HARRISON: Thank you, Chairman
24 Williamson. It is a pleasure and an honor to be here
25 before you today to talk on a subject that I think is

1 near and dear to my heart being from Louisiana and
2 also as the State Representative of Louisiana's
3 District 51. I'm proud to be here on behalf of the
4 U.S. shrimp industry and testify on their behalf about
5 the imports coming into not just the State of
6 Louisiana, but our country.

7 I stand before you strongly in support of
8 imposition of countervailing duties on frozen
9 warmwater shrimp from China, Ecuador, India,
10 Indonesia, Malaysia, Thailand, and Vietnam. These
11 duties are needed to shield the U.S. shrimp industry
12 from the detrimental impacts of unfair trade.

13 I'd like to start by first saying in my
14 district the shrimp industry has a long prominent
15 position in the parishes that I represent, which are
16 coastal parishes of Assumption, St. Mary, Terrebonne,
17 and LaFourche. Shrimping is such a serious business
18 in Terrebonne Parish that it produces the largest
19 amount of shrimp by volume in the entire state, if not
20 the United States.

21 It began in Creole and Acadian settlements
22 of our region in the seventeenth century. As the
23 demand grew over the years, it emerged as the most
24 important industry in our state. Many of the
25 industry's businesses are family owned and operated

1 and have been handed down from generation to
2 generation. The shared experience of our families
3 working together up and down the bayous have made the
4 shrimp industry not only a place to work, but a family
5 tradition and a way of life.

6 In addition to being an integral component
7 of our state's culture, the U.S. shrimp industry is
8 also an integral component of our state's economy, as
9 was said by our Lieutenant Governor. The shrimp
10 industry business has grown to about 14,000 jobs
11 directly and another 6,000 to 8,000 jobs indirectly
12 supporting that industry. They create an economic
13 impact of over \$1 billion of revenue to our state and
14 a large number of revenue tax dollars to the United
15 States Government. The Louisiana shrimp industry also
16 serves as a source of tens of millions of dollars
17 across the nation.

18 Needless to say, the shrimp that are caught
19 in our waters, are processed at our docks, sustain the
20 livelihood of thousands of hardworking Louisianians.
21 Whether stewed, barbecued, boiled, fried, the shrimp
22 are better tasting nowhere in the world than Louisiana
23 and our Gulf shrimp.

24 We must say that we need to look at a level
25 playing field to continue to promote at home and for

1 the rest of the world. I will not belittle or say
2 anything other than that we should be able to support
3 this U.S. industry and its importance to the people of
4 Louisiana and the United States. Our people have gone
5 through a number of tragedies over the last decade
6 from the 2005 hurricane, 2008 hurricanes, the BP oil
7 spill. All of that happened within District 51. At
8 times I call it the disaster district.

9 But the resilience of our people to come
10 back has been something that we can take much pride in
11 knowing that they're not going to give up their
12 culture no matter what is placed before them, and
13 we're very proud of what they've done both for our
14 industry and for their families in being able to come
15 up and fight the fight against the imports and the
16 subsidized departments that they're given year in and
17 year out to be able to compete against those
18 individuals from the domestic industry trying to
19 struggle and make those ends meet. Those countries
20 are given very generous, wide-ranging subsidies from
21 their governments to inundate the U.S. market with
22 cheap shrimp, undercutting our U.S. producers.

23 In conclusion, I came to Washington today
24 because the shrimp industry is a very important part
25 of the way of life in my district. I strongly support

1 every man and women that contributes to the industry
2 that gives so much to our economy and our culture, and
3 I therefore strongly support the imposition of
4 countervailing duties on frozen warmwater shrimp of
5 the imports.

6 We must do everything it takes to level the
7 playing field for the shrimp industry in Louisiana so
8 that it again grows to become a healthy, viable
9 industry and continues to be passed down from
10 generation to generation. I thank you today for
11 having the opportunity to come before you.

12 CHAIRMAN WILLIAMSON: Thank you very much.
13 Any questions for the Representative?

14 (No response.)

15 CHAIRMAN WILLIAMSON: If not, we want to
16 thank you very much for coming this morning. We
17 appreciate your testimony.

18 MR. BISHOP: Mr. Chairman, our next witness
19 is from the Royal Thai Embassy, Perapat Uthaisri,
20 Minister-Counsellor of Commercial from the Royal Thai
21 Embassy.

22 CHAIRMAN WILLIAMSON: Welcome, Minister-
23 Counsellor Uthaisri. You may begin when you're ready.

24 MR. UTHAISRI: Good morning, Mr. Chairman,
25 members of the Commission and Commission staff. I am

1 Perapat Uthaisri, Minister-Counsellor of the Office of
2 Commercial Affairs, Royal Thai Embassy. On behalf of
3 the Kingdom of Thailand, I thank you for the
4 opportunity to offer a few remarks regarding this
5 case.

6 The shrimp industry is important to
7 Thailand's people and economy. Together, the shrimp
8 farming and processing sector generates roughly
9 \$3 billion U.S. each year and employs hundreds of
10 thousands of people. The industry achievements have
11 been built through hard work and innovation over a
12 long period of time. Thailand's shrimp farmers have
13 pioneered advances in healthy and sustainable
14 aquaculture and have become adept in producing high
15 quality shrimp in the size ranges high volume
16 consumers demand throughout the year.

17 Thailand's processing sector also has been
18 innovative. The large shrimp processors that account
19 for the bulk of Thailand's production operate
20 sophisticated facilities with state-of-the-art
21 machinery and freezers and employ thousands of skilled
22 workers to process and transform the raw shrimp. Thai
23 processors have developed high value-added shrimp
24 products, including peeled, cooked and deveined
25 products, as well as shrimp on skewers, in rings and

1 combined with marinade and sauce.

2 Through the combined efforts of the farming
3 and processing sectors, Thai shrimp processors have
4 been successful in developing long-term business
5 relationships with high volume buyers, including
6 restaurant chains and supermarkets. Without the
7 advances achieved in aquaculture and processing it
8 would not have been possible for the Thai shrimp
9 industry to satisfy these customer requirements for
10 consistent quality and year-round supply.

11 The Thai shrimp industry is also known
12 worldwide for its compliance with rigorous standards
13 for food safety, quality and sustainability, including
14 Thailand's good aquaculture practice certification and
15 others like ACC and HACCP. These standards are
16 important for consumers and distinguish Thai shrimp in
17 the marketplace.

18 Despite the Thai shrimp industry's
19 successes, we are concerned about new obstacles
20 unrelated to trade. The EMS issue in particular is
21 serious. This year EMS has reduced Thailand's shrimp
22 output by 40 percent, and it is uncertain when product
23 can be returned to normal.

24 If the United States were to impose a CVD
25 order, this would only add to the challenges already

1 faced by the Thai shrimp industry. We are hopeful
2 that will not be the case, and we trust that after a
3 fair and objective examination of the facts the
4 Commission will agree that imports of farm raised
5 shrimp from Thailand are not harming the United States
6 industry. Thank you.

7 CHAIRMAN WILLIAMSON: Thank you very much,
8 Mr. Counsellor. Are there any questions?

9 (No response.)

10 CHAIRMAN WILLIAMSON: No? I want to thank
11 you very much for coming and presenting your
12 testimony. Thank you.

13 MR. BISHOP: Mr. Chairman, that concludes
14 our state government and embassy witnesses at this
15 time.

16 CHAIRMAN WILLIAMSON: Okay. Before opening
17 statements, just a couple of announcements.
18 Commissioner Aranoff is unavoidably delayed by an
19 appointment, but she will be reviewing the transcript
20 for the part that she missed. But she will be here
21 later today.

22 And this is sort of on a sad note. This
23 will be I believe Commissioner Pearson's last hearing
24 at the Commission. He first came to the Commission in
25 October 2003. He served as chairman from June of 2006

1 to 2008 and then as vice chairman from June of 2008 to
2 2010. And during his chairmanship, he chaired over 53
3 hearings and a number of hearings since then, and as a
4 Commissioner the total number of hearings he's
5 participated in is 172.

6 And on a personal note, I want to say in the
7 last year since I've become chairman there's been no
8 better person to have at my right-hand side because
9 whenever I get the order out of shape, miss something
10 going on in the room or don't turn the microphone on,
11 Commissioner Pearson is always right there to quietly
12 and diplomatically remind me and to keep me straight.

13 So I owe a deep debt of gratitude to him and
14 we all will miss him, but I want to thank you so much
15 for your service to the Commission.

16 COMMISSIONER PEARSON: Mr. Chairman, may I
17 say thank you for those kind comments, but on the
18 other hand it's not too hard to do a decent job when
19 you're surrounded by Commissioners who are working
20 with you and keeping you on track and so it's not so
21 much individual accomplishments, but group
22 accomplishments that I will remember as I leave here.

23 And I'll probably have something more to say
24 at some other time, but this is your last chance to
25 listen to my questions, and I hope it's an enjoyable

1 day. Thanks.

2 CHAIRMAN WILLIAMSON: Thank you.

3 MR. BISHOP: Opening remarks on behalf of
4 Petitioner will be by Elizabeth J. Drake, Stewart and
5 Stewart.

6 MS. DRAKE: Good morning, Chairman
7 Williamson, members of the Commission.

8 CHAIRMAN WILLIAMSON: Good morning.

9 MS. DRAKE: I'm Elizabeth Drake from Stewart
10 and Stewart. I'm here today with my colleagues and my
11 co-counsel, Eddie Hayes of Leake & Andersson, on
12 behalf of the Petitioner, the Coalition of Gulf Shrimp
13 Industries.

14 We are here today because large volumes of
15 subsidized shrimp from China, Ecuador, India,
16 Indonesia, Malaysia, Thailand, and Vietnam are causing
17 material injury to the domestic shrimp industry. The
18 record in this case supports an affirmative
19 determination. Production and exports of shrimp in
20 the seven countries are fueled by explicit government
21 growth plans and backed by billions of government
22 dollars. Shrimp is a key export commodity for many of
23 the countries, and government plans to increase the
24 volume of those exports are central to national
25 economic and development strategies.

1 The Commerce Department preliminarily found
2 that foreign producers benefit from 34 different
3 subsidy programs across the seven countries, including
4 18 export subsidy programs. Subject imports dominate
5 the U.S. market. The U.S. imports six to eight pounds
6 of shrimp from the subject countries for each pound of
7 domestic product.

8 Imports from the seven countries jumped in
9 2010 as the domestic industry was crippled by the Gulf
10 oil spill. They increased again in 2011, even though
11 the spill was over and fishing grounds were reopened.

12 While a temporary disease outbreak, EMS, lowered the
13 absolute level of imports in 2012, they retained their
14 elevated market share at the expense of domestic
15 producers

16 These imports are also causing significant
17 adverse price effects. The Commission has previously
18 found that imported frozen shrimp competes with
19 domestic frozen shrimp and that changes in import
20 prices affect domestic prices to a significant degree.

21 The same is true today. The majority of purchasers
22 agree that domestic and imported product are of
23 comparable quality and consistency and that price is a
24 very important factor in their purchasing decisions.

25 The differences Respondents claim to

1 attenuate competition between the domestic and
2 imported product have all been shown to be of little
3 importance to purchasers, and the Commission should
4 continue to reject these arguments as it has in the
5 past. Indeed, price is so important that over 80
6 percent of purchasers concede that they sometimes or
7 usually buy the lowest priced product.

8 As our panel will testify, domestic
9 producers constantly face price competition from
10 imports, and they face it throughout the market.
11 Their customers frequently quote import prices in
12 negotiations, and if domestic producers cannot lower
13 their prices to meet the import quote they lose sales.

14 When our producers do try to chase import
15 prices to make a sale, they run the risk of driving
16 their company into the red. This cut-throat
17 competition has suppressed the prices that domestic
18 shrimp processors are able to receive, preventing them
19 from keeping up with rising costs of production.

20 By 2012, the domestic industry's cost of
21 goods sold had grown to 93 percent of its sales
22 revenue, and they were earning gross profits of only
23 25 cents a pound. At the end of the period, the
24 domestic industry's production, shipments and market
25 share were all still below pre oil spill levels. In

1 addition, price suppression by imports caused the
2 industry's thin margin of profitability to nearly
3 disappear in 2011 and to turn negative in 2012.

4 Domestic producers have also been forced to
5 delay and forego needed capital investments due to the
6 instability in the market caused by subject imports.
7 These trends are simply unsustainable. If we cannot
8 obtain relief that offsets the subsidies foreign
9 producers are receiving, the future of the domestic
10 shrimp industry and of an entire way of life in the
11 Gulf region is at risk.

12 We are here today to ask you to give this
13 industry the chance to obtain the relief it so badly
14 needs. Thank you very much.

15 CHAIRMAN WILLIAMSON: Thank you.

16 MR. BISHOP: Opening remarks on behalf of
17 Respondents will be by Warren E. Connelly, Akin Gump
18 Strauss Hauer & Feld.

19 CHAIRMAN WILLIAMSON: Welcome, Mr. Connelly.
20 You may begin when you're ready.

21 MR. CONNELLY: Thank you. Good morning.
22 The final record contains three critical pieces of
23 information that by themselves we think compel a
24 negative determination. There are many more pieces of
25 evidence, but I want to focus on three in my opening

1 remarks.

2 First, the domestic processors received
3 \$108 million from BP, and the reporting shrimpers
4 received another \$10 million. BP provided these funds
5 for the express purpose of replacing lost operating
6 income, so the payments really are operating income no
7 matter how their accountants classify them. In
8 addition, an enormous share of the total increase in
9 the processors' SG&A was funded by BP.

10 The Petitioners cannot have it both ways.
11 They cannot claim that their operating profits
12 declined due to increased SG&A expenses and at the
13 same time object to the sources of the funds being
14 treated as operating income. Inclusion of these funds
15 in the industry's reported financial results can lead
16 to only one conclusion, which is that they were
17 extremely healthy during the entire POI and much
18 healthier than they have been for at least the
19 preceding decade. Moreover, their condition improved
20 dramatically during the POI.

21 And the flood of funds from BP is not over.

22 The Federal Court handling all of the BP litigation
23 approved a settlement agreement last December that
24 gave the shrimpers eight times their economic damages
25 and gave the processors three times their economic

1 damages, and the processors are objecting because they
2 don't think it's enough.

3 Now let me turn to the second crucial
4 factor. Cumulated imports from the five above
5 de minimis countries declined substantially during the
6 POI, as did subject market share. Much of that
7 decline is attributable to the disease called early
8 mortality syndrome, which has devastated Asian
9 production. No one knows how or when the disease will
10 be cured, and the Petitioner's claim that the cure
11 will come soon is pure speculation based on random
12 opinions lacking any scientific proof. The record
13 provides absolutely no basis to accept their
14 prediction, and caution is truly advised.

15 Let's talk about the example of Ecuador.
16 Their production declined by 70 percent between 1998
17 and 1999 due to a disease called White Spot. That
18 country's producers needed an entire decade to get
19 their production level back to the 1998 level. Then,
20 as now, everyone hoped for and predicted a rapid
21 recovery. It did not happen.

22 The third crucial fact. There are more
23 instances of import overselling than underselling.
24 That is why the Petitioners felt compelled to conduct
25 additional pricing analyses that we believe are

1 unrepresentative and distortive.

2 Also, prices for domestic and imported
3 shrimp soared by 20 percent or more during the second
4 and third quarters of 2013. You won't hear anything
5 about that from the Petitioners, and that's of course
6 entirely understandable, but the fact is that the
7 condition of the domestic industry got much stronger
8 in 2013, not worse.

9 Now let me talk about interchangeability.
10 The domestic industry treats shrimp as a commodity and
11 sees buyers focused solely on getting the lowest
12 price. This view of the shrimp world is exactly the
13 problem. They still don't realize that many of their
14 prices are low because they have endemic quality
15 problems.

16 The companies that you are going to hear
17 from today include the nation's leading food service
18 distributor, the nation's leading club store and a
19 prominent, employee-owned, regional supermarket chain.

20 These three companies are highly successful because
21 they listen carefully to their customers.

22 Our witnesses will explain why they view
23 wild caught domestic shrimp and farm shrimp as
24 different products that appeal to different market
25 segments. So for the Petitioners to claim that these

1 companies regard all shrimp as substitutable is the
2 same as suggesting that sophisticated retailers and
3 distributors do not understand their own businesses.
4 Of course they do, and that is why they are so
5 successful.

6 Finally, we are awaiting the Commerce margin
7 results later today. We really don't need any of the
8 seven countries to obtain de minimis margins in order
9 to prevail here, but if that does happen the case for
10 import relief against the remaining countries
11 collapses. It simply cannot be the case that the
12 relatively small remaining proportion of subject
13 imports was the cause of material injury or presents a
14 threat. Thank you.

15 CHAIRMAN WILLIAMSON: Thank you.

16 MR. BISHOP: Would the first panel, those in
17 support of the imposition of countervailing duty
18 orders, please come forward and be seated?

19 (Pause.)

20 CHAIRMAN WILLIAMSON: Ms. Drake, you may
21 begin when you're ready.

22 MS. DRAKE: Thank you. Good morning,
23 Chairman Williamson, members of the Commission. My
24 name is Elizabeth Drake from the law offices of
25 Stewart and Stewart on behalf of the Petitioner. We'd

1 like to begin our presentation this morning with a
2 short overview of the record in these investigations.

3 We want to thank the staff for compiling a
4 very strong staff report in the face of a large and
5 complex record. We believe that report and the
6 additional information presented in briefs and
7 testimony today strongly support an affirmative
8 determination in this case.

9 We'll briefly touch on the period of
10 investigation, and we'll discuss cumulation and
11 conditions of competition. We'd then like to focus on
12 the volume of subject imports and their adverse price
13 effects, and then we'll turn to the material injury
14 caused by subject imports and the threat of further
15 material injury in the event orders were not to issue.

16 In terms of the period of investigation, in
17 prior cases the Commission has expanded the period of
18 investigation to better understand conditions in the
19 market where unique circumstances such as an external
20 supply disruption distort the data. Here the
21 Commission should include 2009 in the period of
22 investigation to better understand the market in light
23 of the Gulf oil spill in 2010.

24 The 2010 Deepwater Horizon oil spill was the
25 largest oil spill in U.S. history. It closed fishing

1 grounds during peak fishing season. As a result,
2 landings in 2010 were 22 percent below the annual
3 average, imposing a significant temporary supply
4 constraint on domestic producers.

5 Including 2009 in the period of
6 investigation will allow the Commission to understand
7 the volume of domestic production and shipments and
8 the volume of subject imports in the context of the
9 overall market. Petitioner did ask that 2009 data be
10 collected in the final phase questionnaires, but the
11 Commission already has reliable data for 2009 from the
12 preliminary phase of these investigations. Consistent
13 with its practice in prior cases with similar unusual
14 circumstances, the Commission should consider that
15 2009 data in this case.

16 The Commission should also cumulate subject
17 imports from all seven countries. I'm going to cover
18 all seven countries today. We'll address any changes
19 to that data after we have Commerce's final results
20 today posthearing. The staff report shows there is a
21 reasonable overlap of competition between imports from
22 all seven countries and the domestic like product.
23 The staff report concludes that the domestic and
24 imported product are at least moderate substitutes and
25 shows that all of the other cumulation factors are

1 also met.

2 Regarding supply and demand, apparent
3 consumption fluctuated throughout the period and then
4 fell in 2012 and 2013. These are public data based on
5 the figures included in Exhibit 6 of our prehearing
6 brief, which may differ somewhat from some of the
7 numbers in the staff report, but show similar trends.

8 As you can see from these numbers, U.S.
9 shipments throughout the period, while they rebounded
10 after 2010, have still not recovered to prespill
11 levels, even at the end of the period. Meanwhile,
12 subject imports that rose in 2010 rose again in 2011,
13 even after the Gulf oil spill was over, and maintained
14 elevated market share in 2012.

15 The staff report explains that subject
16 imports are the vast majority of the domestic market.

17 They account for nearly 90 percent of imports and 75
18 percent of domestic consumption. Subject foreign
19 producers have been found to have the ability to
20 respond to changes in demand with large changes in
21 export volume due to high inventories, high excess
22 capacity and a large degree of export orientation.

23 While domestic landings are subject to
24 environmental and biological limitations, the staff
25 report correctly notes that fishermen's decisions

1 whether to harvest are based on whether dockside
2 prices cover cost such as fuel.

3 The Commission has previously found that
4 imported and domestic product are at least moderate
5 substitutes, and the record continues to support that
6 determination in this case. There are no clear
7 distinctions in the markets or customers served,
8 leading purchasers buy both imported and domestic
9 shrimp for the same end uses. Domestic and imported
10 shrimp are available in all forms and all sizes.

11 The majority of purchasers continue to
12 report that they are at least sometimes
13 interchangeable. A majority of purchasers report that
14 domestic and subject shrimp usually or always meet
15 minimum quality standards, and a majority report that
16 they are comparable in quality and in consistency,
17 despite what you may hear from the afternoon's panel
18 later today.

19 Respondents claim that competition between
20 domestic and subject product is attenuated, but the
21 record shows otherwise. First, most purchasers
22 express no preference between farmed and wild caught
23 shrimp, and the Commission has previously found that
24 they do compete. Second, no purchasers ranked species
25 as a top factor in their purchasing decisions. In

1 fact, 13 other factors were frequently cited as more
2 important than species.

3 Third, both domestic and imported shrimp are
4 available throughout the country and serve national
5 markets through the same channels of distribution.
6 Finally, most purchasers and end users report that
7 they never or only sometimes make decisions based on
8 country of origin.

9 An important condition of competition the
10 Commission should consider is the centrality of price
11 in the U.S. market. The majority of sales of both
12 domestic and imported shrimp are on a spot or
13 short-term contract basis, and the majority of those
14 sales are negotiated transaction by transaction.
15 Nearly two-thirds of purchasers report price is a very
16 important factor in purchasing decisions.

17 And price is cited as one of the most
18 important factors more frequently than any other
19 factor except quality. I noted before domestic and
20 subject shrimp are also found to be comparable on
21 quality by most purchasers. As a result, over 80
22 percent of purchasers report that they sometimes or
23 usually buy the lowest priced product.

24 I'd next like to turn to the volume of
25 subject imports, which is significant. Subject

1 imports dominate the U.S. market. Imports increased
2 significantly from 2009 to 2010 during the Gulf oil
3 spill, and they rose again in 2011 after waters were
4 reopened.

5 Respondents try to minimize the significance
6 of subject imports by focusing almost exclusively on
7 an absolute decline in subject imports in 2012. This
8 decline, as Respondents note, is due to a temporary
9 disease outbreak in certain subject countries. Even
10 with this disease, imports in 2012 remained above the
11 2009 level on an absolute basis.

12 In addition, subject imports maintained
13 their elevated market share in 2012, accounting for 77
14 percent of domestic consumption, again based on our
15 public numbers, compared to 73 percent of the market
16 in 2009. Subject imports continued to contract
17 slightly in the first quarters of 2013 on an absolute
18 basis, but again increased by market share compared to
19 interim 2012.

20 Looking at the relative significance of
21 subject imports, from 2009 to 2012, the volume of
22 apparent consumption fell by 2.8 percent. During this
23 contraction, the volume of subject imports rose by 2.5
24 percent, while the volume of domestic shipments fell
25 by 7.5 percent. While subject imports increased by

1 nearly 22 million pounds from 2009 to 2012, domestic
2 shipments fell by 12 million pounds. Subject imports
3 thus seized market share directly from domestic
4 producers and increased their share of a shrinking
5 market.

6 Subject imports are also having significant
7 adverse price effects. The Commission has previously
8 found that changes in import prices affect the prices
9 of the domestic product to a significant degree. As
10 our panel will testify today, market participants
11 constantly monitor prices, which are set on a spot or
12 a short contract term and transaction-by-transaction.

13 Purchasers routinely quote import prices in
14 negotiations with domestic producers, and most
15 purchasers, as noted, report that price is a very
16 important factor in their decisions.

17 This is a statement from a buyer for
18 Mazzetta, a major shrimp buyer in the U.S., in August
19 of 2012 in an article where he was discussing the very
20 low prices available for shrimp from India and how it
21 was affecting the entire market. Explaining how one
22 country could have such a large impact throughout the
23 market, he said most U.S. buyers "only look at price."

24 When looking at price effects, either
25 underselling or price suppression is sufficient, and

1 an industry is not required to demonstrate both.
2 Here, however, the record does show both significant
3 price suppression and significant underselling.

4 Starting with price suppression, domestic
5 processors' cost of goods sold per pound of shrimp
6 rose from \$2.79 in 2009 to \$3.56 in 2012. By far, the
7 largest part of this cost is the price of raw shrimp
8 that processors pay to the boats, and the percentage
9 of processors' costs accounted for by the raw material
10 increased over the period. The boat price in turn is
11 driven by fishermen's own costs, which also rose over
12 the period, fuel being the most significant one.

13 Price suppression by subject imports
14 prevented processors and fishermen from passing these
15 increased costs on. While prices to processors did
16 rise somewhat, they rose more slowly than costs. As a
17 result, processors who were earning 29 to 28 cents a
18 pound in gross profits at the beginning of the period
19 were only earning 25 cents a pound in gross profits in
20 2012. As the staff report explains, when asked about
21 the trends in their gross profits, processors
22 overwhelmingly cited the rising costs for fresh shrimp
23 and the price pressure caused by competition with
24 imports.

25 As a result of this price suppression, the

1 domestic industry has suffered a growing cost/price
2 squeeze. In 2009, the industry's COGS as a percentage
3 of sales was already an extremely high 91 percent. It
4 increased to 92 percent in 2010 and 2011 and then rose
5 again to 93 percent in 2012 as subject imports
6 maintained high market share.

7 While Respondents seek to minimize this
8 increase, it is a very significant one for the
9 domestic industry. When you already have only
10 marginal returns, any increase in costs that you can
11 not pass on to your customers threatens to drive your
12 industry into the red. That is exactly what has
13 happened in this case.

14 Regarding underselling, we believe the
15 record also shows significant underselling. For six
16 out of the seven products reviewed in the staff
17 report, imports undersold the domestic product in 52
18 percent of comparisons with margins reaching as high
19 as 49 percent.

20 The seventh product is the one with the
21 lowest rate of underselling. This is Product 1. The
22 Commission has previously found that pricing trends
23 for this product may be distorted by differences in
24 product mix; namely the domestic producers tend to
25 sell this product in an undeveined form, while

1 importers sell it more often in a deveined form, which
2 is a higher value added form and therefore can
3 understate the amount of underselling.

4 Even so, a record of mixed over and
5 underselling is consistent with a market where a large
6 number of producers compete on the basis of price on a
7 transaction-by-transaction basis. No one can afford
8 to be undersold for long without losing sales, and
9 therefore a mixed record is consistent with
10 significant underselling.

11 We also examined underselling by looking at
12 public price data in our prehearing brief. The
13 Department of Commerce reports weekly frozen seafood
14 prices in the New York metropolitan area. The
15 Commission reviewed this price data in its changed
16 circumstance review on shrimp under the antidumping
17 orders.

18 The price reports permit you to compare
19 prices by form and count size for product being
20 offered from specific countries in the same market, in
21 the same week and on the same terms. The New York
22 frozen prices show underselling by subject imports in
23 over 80 percent of comparisons with an average margin
24 of nearly 12 percent.

25 We also looked at the Urner Barry price

1 data, which allows you to compare prices by size and
2 by form, but the import prices are regional and not
3 country specific. However, because subject imports
4 account for 90 percent of all imports, we believe this
5 data is still representative.

6 This price data shows underselling in 90
7 percent of monthly comparisons over the period with
8 underselling margins ranging from 8 to 22 percent. In
9 addition, the public price data indicate that
10 underselling intensified over the period as a smaller
11 volume of subsidized subject imports fought to hold
12 onto their elevated market share. This is the New
13 York frozen price reports. As you can see, the
14 frequency with which subject imports undersold
15 domestic product increased over the period as did the
16 margins of underselling.

17 The high volume of subsidized imports
18 suppressing and undercutting domestic prices has
19 caused material injury to the domestic industry. The
20 Commission should evaluate material injury by looking
21 at data from 2009 through 2012 in order to ensure that
22 trends are not distorted by the 2010 oil spill.

23 While we present data pertaining to injury
24 to both processors and fishermen, we note that we
25 continue to believe that the domestic like product

1 should be limited to processed frozen shrimp. Should
2 the Commission have any questions on this issue, I
3 would be happy to answer them.

4 While production and sales of domestic
5 shrimp rose from 2010 to 2012, they did not rise
6 enough to make up for the loss in production and sales
7 experienced from 2009 to 2010. Production, for
8 example, fell by 18 percent from 2009 to 2010, yet
9 only recovered by 13 percent by the end of 2012.
10 Domestic sales fared even worse. They fell by 14
11 percent during the Gulf oil spill and have stagnated
12 since that time, rising by only 1 percent through the
13 end of 2012. Fishermen's volumes were also lower
14 during this period. As a result of these lost
15 volumes, the domestic industry also lost market share
16 over the period and was carrying increased inventories
17 at the end of 2012.

18 As a result of intensifying import price
19 suppression, the industry's very small operating
20 margin of 1.8 percent in 2009 fell to less than
21 1 percent in 2010 and 2011 and then became negative in
22 2012, the year the cost/price squeeze caused by
23 imports was at its worst. Fishermen's operating
24 income also fell from 3.2 percent in 2010 to 1.6
25 percent in 2012.

1 Respondents argue that processors' 2012
2 operating income is not reliable because SG&A expenses
3 also increased in 2012, but even if you hold 2012 SG&A
4 expenses flat at 2011 levels the industry still would
5 have suffered a loss in 2012 -- it's the last red bar
6 on the graph -- and would still have had its worst
7 returns of the period that year when price suppression
8 was at its worst.

9 Finally, Respondents argue the Commission
10 should include below-the-line income such as CDSOA and
11 BP payments in its review of the industry's financial
12 performance. These amounts are properly classified
13 below the line, and the Commission should adhere to
14 its normal practice and disregard such amounts.

15 Finally, with regard to threat of material
16 injury we note that the Commerce Department
17 preliminarily found subject producers benefit from
18 34 different subsidy programs, including 18 export
19 subsidies, and these subsidies are implemented as part
20 of foreign governments' explicit plans to expand
21 domestic shrimp production and increase shrimp
22 exports. Subject producers will also have large
23 volumes available to ship if duties are not imposed.

24 Subject producers' inventories dwarf
25 domestic production. In 2012, inventories alone are

1 nearly double our total domestic production in 2012.
2 These high levels of inventories are projected to
3 remain significant in the imminent future. Subject
4 producers also have significant excess capacity and
5 plan to expand that capacity in the future.

6 In addition, the disease that has been
7 temporarily lowering imports from some countries will
8 abate in the imminent future. The cause of EMS has
9 been identified. Control measures are being
10 implemented in all of the countries, and a recovery
11 and resumption of growth is expected this year or
12 early next year. This is not based on random reports,
13 but is based on statements from foreign producers and
14 foreign governments themselves that are documented in
15 our prehearing brief. This increased volume will
16 surge into the U.S. market if no duties are imposed.

17 Subject producers are highly export
18 oriented, and the U.S. is an important and attractive
19 market. The U.S. will become even more attractive in
20 the imminent future. This chart shows the combination
21 of the subject countries' exports to the EU and Japan
22 compared to the U.S. in 2012.

23 The EU is set to increase duties on imports
24 from Thailand when it graduates from GSP next year and
25 on Ecuador the year after. Japan is already imposing

1 import barriers based on health and safety issues that
2 are not regulated here in the U.S. These barriers
3 threaten to divert significant volumes from the EU and
4 Japan, the most important alternative markets to the
5 U.S., to our market.

6 In addition, arranged imports are already
7 significant, and actual imports will be much higher as
8 importers can quickly ramp up volumes through spot and
9 short-term contract purchases. Indeed, importers have
10 already demonstrated their ability to quickly ramp up
11 volumes to the U.S.

12 The importance of the CVD orders in
13 disciplining import volumes is apparent in monthly
14 import statistics for this year. In May, right before
15 Commerce announced its preliminary results, subject
16 imports -- that red line is 2013; the other lines are
17 previous years -- rushed in to beat duty liability,
18 jumping by an unprecedented 17 million pounds or 27
19 percent in just one month.

20 May imports this year were 24 percent higher
21 than last year. After bonding requirements were
22 imposed at the beginning of June, subject imports
23 plummeted, falling by 21 million pounds to a level
24 significantly below anything seen in the month of June
25 for the past four years.

1 When imports do come surging in, they will
2 cause further material injury to the domestic
3 industry. Subject imports are already having
4 significant adverse price effects, and these will
5 continue. The domestic industry will not be able to
6 withstand these continued adverse effects as its
7 financial condition is very weak and fuel prices are
8 projected to stay high, making domestic producers
9 vulnerable to further injury if duties are not
10 imposed. Therefore, we respectfully request that the
11 Commission make an affirmative determination in these
12 investigations.

13 With that, I will turn to our panel. Our
14 first witness is Carson Kimbrough, president of Carson
15 & Company.

16 MR. KIMBROUGH: Good morning. My name is
17 Carson Kimbrough, and I'm the president of Carson &
18 Company and a member of the Coalition of Gulf Shrimp
19 Industries. I founded Carson & Company in Bon Secour,
20 Alabama, in 1976. Prior to that I worked for another
21 shrimp processor, and then I bought and operated a
22 shrimp boat for four years.

23 At Carson & Company we process a wide range
24 of shrimp products, including headless shell on,
25 peeled and undeveined, and peeled and deveined shrimp.

1 We sell through distributors that serve customers all
2 over the country. While we predominantly process and
3 distribute domestic shrimp, we also process and
4 distribute some imported shrimp. We do this because
5 our customers buy both domestic and imported shrimp
6 for the same use, and when they need to meet a lower
7 price point they demand that we satisfy that price
8 point by supplying imports instead of domestic shrimp.

9 I would like to be able to supply my
10 customers with all domestic product, but if I can't
11 meet the price of imports in the market I lose the
12 customers altogether. Because I process both domestic
13 and imported shrimp, I can tell you firsthand that
14 they are comparable in quality, consistency and in
15 every other way except for price. My customers feel
16 the same way, and they decide whether or not to use
17 domestic or imported shrimp based on price.

18 Imported price has consistently undersold
19 domestic over the past several years. After 2010,
20 importers and foreign producers used even more
21 aggressive price undercutting to keep hold of the
22 increased market share they seized while the Gulf
23 shrimp fishery was closed during the oil spill. Since
24 imports dominate the market, their prices determine
25 what we can get for our own product and what we can

1 pay for fresh shrimp from the fishermen.

2 I see import competition in the market every
3 day. Although I have some short-term contracts, the
4 vast majority of my business is spot sales. I set
5 prices weekly based on the cost of raw materials and
6 my processing. My company purchases shrimp from docks
7 all over the Gulf and the South Atlantic.

8 Over the past few years, I would typically
9 get 15 to 40 responses from customers quoting lower
10 prices when I sent out my weekly prices. Nine times
11 out of 10, the lower prices were from imports. When I
12 would visit my customers, it was not unusual for them
13 to tell me they were being offered imports at prices
14 below what I could possibly offer. When that
15 happened, I was forced to either lower my prices or
16 lose the customer.

17 Three extraordinary events happened in our
18 industry over the past few years. The Commission
19 should look at the condition of our industry in the
20 context of these events. First, in 2010, the largest
21 oil spill in our country's history closed our shrimp
22 fishery during several weeks of the prime fishing
23 season. My company's production dropped sharply.
24 Banks cut back on our credit facilities, and we had to
25 sell a large, individual quick frozen operation that

1 we had invested over \$1 million to acquire.

2 But by 2012, two years after the waters
3 reopened and the fishermen went back to work, we've
4 still not been able to return to the level of
5 production and sales we had before the spill. The
6 reason was that imports never went back to normal
7 levels. They clung on stubbornly to their increased
8 market share by undercutting prices and holding our
9 prices below the levels we needed to make any
10 reasonable margin. And I still haven't been able to
11 get back into the IQF business that I lost.

12 Second, more recently and particularly in
13 2012, Thailand and some of the other Asian countries
14 were hit with EMS, a devastating disease that wiped
15 out a lot of their production. As a result, imports
16 from these affected countries fell in 2012 and 2013.
17 But the cause of the disease has been identified, as
18 well as measures that help to control and prevent it.

19 Publicly available reports out of the affected
20 countries indicate they expect to recover by the end
21 of this year or in 2014.

22 I've been in this industry for a long time.

23 I can tell you that these countries will come surging
24 back as fast and as big as they can. For example,
25 when Thailand had White Spot Disease in the '90s,

1 their production and exports fell significantly,
2 hitting their lowest level in 1997. By 1998, they
3 were back up exporting more than ever before, and they
4 kept increasing after that.

5 Shrimp farming and shrimp processing are
6 strategic industries in these countries that earn
7 large amounts of export revenue. That's why foreign
8 governments have targeted them for subsidies,
9 particularly export subsidies, and that's why these
10 governments are doing and will continue to do
11 everything they can to make sure their shrimp
12 producers recover. And they won't be satisfied by
13 just regaining their lost volume. They will continue
14 to grow and expand year after year.

15 Finally, a third important event happened at
16 the end of last year. We filed these petitions. The
17 market reacted. Anyone in the industry can tell you
18 that we are seeing good prices and good demand for our
19 product right now, and even the most importer-friendly
20 commentators will admit our petitions have had an
21 impact.

22 I have seen customers come back and new
23 customers come to call, customers that have been lost
24 to imports for years. We are finally able to pay a
25 price for fresh shrimp that puts a smile on

1 fishermen's faces because they can cover their fuel
2 cost, pay their crew and even have some money left
3 over to fix their boats or upgrade their equipment.
4 And when they're happy we're happy because it means
5 they now have the extra incentive to go out more
6 often, go out for longer periods and bring in more and
7 more shrimp. That means more volume for our plants
8 and a healthier industry for everyone.

9 But this situation is extremely fragile.
10 Just as quickly as prices went up they can come right
11 back down again -- and hard -- if duties are not put
12 in place. Our industry simply cannot afford to be
13 thrown back on the mercy of a market dominated by huge
14 volumes of subsidized imports. We have been operating
15 on razor thin margins for too long, putting off
16 capital investments for too long and hollowing out our
17 fishing industry for too long.

18 My company and the rest of the domestic
19 shrimp industry can only survive and thrive again if
20 the competition in the market is fair. Foreign
21 governments are providing massive subsidies while I
22 have to finance my company's operations out of my own
23 pocket.

24 If the price distortions and the instability
25 in the market caused by subsidized imports are

1 corrected, we can increase production and sales,
2 regain lost customers, get back on our feet. This
3 will make all the difference for me, my business, and
4 the people I have worked with at Carson & Company for
5 over 30 years. Thank you.

6 MR. GIBSON: Good morning. My name is Alan
7 Gibson. I am the President and owner of Tidelands
8 Seafood Co., Inc., a member of the Coalition of Gulf
9 Shrimp Industries. We are located in Dulac,
10 Louisiana, and I am the fourth generation of my family
11 to be in the shrimp industry. The shrimp industry is
12 one of the biggest employers in the Dulac community.
13 I have committed myself to helping promote the
14 industry by serving on the Louisiana Shrimp Task Force
15 and the Louisiana Seafood Promotion and Marketing
16 Board. Subsidized imports are severely distorting the
17 U.S. market and countervailing duties are needed to
18 bring relief to the domestic industry.

19 Imports from the seven countries in this
20 case jumped in 2010 as the domestic industry was
21 grappling with the BP oil spill. Once the waters
22 reopened, however, the injury continued. Imports rose
23 again in 2011 and maintained their elevated market
24 share in 2012.

25 How did foreign producers and importers hold

1 on to their market share after the BP oil spill was
2 over? By aggressively undercutting prices and holding
3 down the prices we were able to get for our product.
4 I see import competition affecting my business every
5 day. It is just a daily fact of life in our business.
6 Many of our customers purchase domestic, as well as
7 imported product.

8 Primarily all of our business is spot sales.
9 Contracts do not give me any protection from price
10 competition, and I have not had much success with
11 them. Contract customers will demand price discounts
12 when import prices fall and they will even refuse
13 delivery if import prices fall below, significantly
14 below our product.

15 Every week I publish a price list based on
16 the prices that I have to pay boats for fresh product.

17 Over the past three to four years, my customers and
18 brokers have been quoting me prices lower, lower
19 prices for imported shrimp on a weekly basis. In
20 2012, for example, shrimp from India and Ecuador were
21 selling at \$1 or more below our prices. When import
22 prices get this low it makes it nearly impossible for
23 us to pay the boats what they need to remain fishing,
24 while also covering our own cost.

25 Also, in 2012 one of our brokers who was

1 quoting cheaper prices on cheaper product from India
2 told us that we had to get real and wake up to
3 reality, lower our prices if we wanted to sell shrimp
4 in our own country.

5 During the oil spill some of our customers
6 were forced to use imports for the first time. When
7 they saw that their own customers, the ultimate
8 consumer, could substitute the imported product for
9 domestic shrimp, those customers now want to pay
10 import prices for said domestic shrimp. This has
11 still continued after the oil spill has been over.

12 Because the U.S. processors have to bid
13 against imports to sell our shrimp and our costs are
14 based on boat prices, our margins are extremely thin.

15 Over the past few years, some processors have been
16 making only a few pennies a pound. The margins have
17 become so minimal over the years that I'm not sure how
18 much longer we ultimately can stay in business if we
19 do not get lasting relief from subsidized imports.

20 I will tell you the prices in the market
21 today are much better than they were in 2012, and
22 we're paying much more to our shrimpers as a result.
23 There are two reasons for this.

24 One of the reasons is the EMS disease in
25 some Asian countries. This is temporary. The

1 production and imports are expected to recover at some
2 point in the near future.

3 The second reason is the petitions we filed.

4 Importers ramped up their imports in May of this year
5 to get in before the duties hit. After duty liability
6 was put in place on June 4, import volumes from these
7 countries dropped by 21 million pounds in just one
8 month. And this was at a time, in June, at a time of
9 the year when imports are typically on the rise.

10 The situation in the market today shows how
11 beneficial relief can be and it confirms that the
12 health of our domestic industry depends on
13 disciplining these imports. If that relief is not
14 maintained, imports will start flooding in again,
15 especially when the EMS-affected countries fully
16 recover, which is expected by the end of this year or
17 early next year.

18 When they do flood back in, we can expect
19 the same price undercutting and price suppression we
20 have seen for the past few years, if not worse.

21 Finally, I want to emphasize to you that the
22 few good months we've had thanks to these petitions
23 are not going to be enough to protect us from
24 continued injury if duties are not imposed. Because
25 our margins have been so low for the past few years we

1 haven't been able to afford critical investments to
2 maintain and expand our production facilities.

3 We have freezing equipment that is more than
4 25 years old and needs to be replaced, and at one
5 point our company was planning on putting in an IQF
6 line to grow our business, but I can't be sure that I
7 will get a return on these investments if I do not
8 know where the market will be in a few months, or a
9 few years from now. Getting enduring relief from
10 subsidized imports and a fair price for our product
11 will go a long way towards helping us justify these
12 needed investments.

13 Like my great grandfather, grandfather, and
14 father before me, I've committed my career to
15 producing gulf shrimp. I would like to see the
16 industry survive for generations to come and I am
17 committed to helping the Louisiana shrimp industry's
18 efforts to promote the long term viability of our
19 industry, but we need to take action against these
20 unfair foreign subsidies if we want an opportunity for
21 our efforts to pay off. I urge the Commission to
22 ensure that we have that opportunity. Thank you.

23 MR. GOLLOTT: Good morning. I'm Richard
24 Gollott, Vice President of Golden Gulf Coast Packing
25 Company, Incorporated, which is located in Biloxi,

1 Mississippi. I have appeared before this Commission a
2 few times in the past to discuss the harm unfair
3 imports cause to our industry. I am here today to ask
4 that the Commission now find that subsidized imports
5 are severely injuring the U.S. shrimp industry.

6 My family has been in the seafood processing
7 business for three generations. I personally got
8 started in the seafood business when I was 13 years
9 old. In 1983, I acquired a dock in Biloxi and started
10 unloading shrimp. Then we built a facility to process
11 that shrimp in 1984. Today, my son, two brothers, and
12 two sisters are all in the business.

13 My company processes and sells both IQF and
14 block frozen shrimp. Most of my company's sales are
15 through brokers. All our brokers deal with both
16 domestic and imported shrimp. When one of our brokers
17 gets a customer's order for shrimp, the broker will
18 contact suppliers of both domestic and imported shrimp
19 to get the best price for the customers.

20 We send our brokers our price list, and
21 other suppliers, including importers, do the same.
22 The brokers compile the range of prices available for
23 particular products from different domestic and
24 foreign sources. They consult this list when they
25 need to fill an order.

1 When our brokers call us with an order to
2 fill they sometime tell us what prices are available
3 for the imported product and tell us we need to lower
4 our prices to compete for the sales. Other times, the
5 brokers will tell us customers are not willing to pay
6 above a certain amount. Usually, that amount is the
7 price of the imported product.

8 Sometimes the importers' prices are so low
9 that we cannot meet them without losing money. When
10 this happens, we lose sales. For example, an
11 importers' price list that was sent to me June the
12 10th quotes the price for headless, shell on 16/20s
13 from India at \$6.25 a pound, which was about 80 cents
14 to \$1 below prices for the same domestic product at
15 that time.

16 My company consistently monitors import
17 price lists like these. We have to know what prices
18 importers are selling for in order to make our prices
19 competitive. Far too often over the past few years we
20 simply haven't been able to match these subsidized
21 prices. If we do, we risk running a loss because we
22 also need to be able to pay a price for raw shrimp
23 that's high enough to ensure our fishermen can cover
24 their own rising cost of production.

25 We of course recognize that this market

1 needs imports since the domestic industry cannot
2 supply 100 percent of the demand. All we ask is a
3 chance to compete on a fair, on fair terms. When the
4 playing field is level, the domestic industry can be
5 competitive.

6 I'll give you an example. We had one
7 customer that my company had lost to Malaysia because
8 Malaysian shrimp prices were much lower, and we
9 couldn't meet those prices while also covering our
10 production cost.

11 At the end of May, the Commerce Department
12 announced its preliminary determination that Malaysia
13 is heavily subsidizing its shrimp industry, and
14 bonding requirements began in June. Just as quickly
15 as that customer dropped us for cheaper imports, he
16 was back on the phone calling to see if he could start
17 buying from us again. If duties are imposed, I am
18 hopeful I will hear from many more customers with the
19 same request.

20 We can compete if the prices are fair. The
21 only way to make them fair is to impose duties that
22 offset the big government subsidies these foreign
23 producers receive.

24 If subsidized imports are permitted to flood
25 the market and hold down prices, then the fishermen

1 won't be able to afford to go out and harvest shrimp,
2 and processors will not be, will not have any shrimp
3 to process. The boats will be tied up at the dock,
4 workers will be laid off, processors will simply close
5 their doors and a unique American way of life and
6 culture will cease to exist.

7 As someone whose family has been in the
8 business for three generations, and the fourth
9 generation taking over, I ask you not to let this
10 happen. Thank you.

11 MR. AUTHEMENT: Good morning. My name is
12 Lance Authement. I own Hi Seas of Dulac, a shrimp
13 processor in Dulac, Louisiana, and a member of the
14 Coalition of Gulf Shrimp Industries. We were happy to
15 host Commissioner Broadbent and staff at our facility
16 last week and to have the staff visit us a couple of
17 years ago during the sunset review.

18 Those of you who have been to Dulac know it
19 is the heart of shrimp country. The bayou is lined up
20 with shrimp processing plants and the waters are home
21 to shrimp trawlers, big and small. People in Dulac
22 have been catching and processing shrimp for
23 generations, and we hope to do so for many more.

24 I, myself, am a fourth generation of my
25 family in the shrimp industry. My dad started Hi Seas

1 in 1980 and I have owned it for eight years. Even
2 though my dad is retired, he still comes to the plant
3 many days. My mom works in the front office, and my
4 brother helps me run the plant.

5 We produce block frozen shrimp, both
6 headless and peeled, and we sell to distributors, to
7 customers all over the country. We monitor import
8 prices on a daily basis. Imports are such a huge part
9 of our market that we cannot simply survive if we
10 cannot stay competitive with import prices.

11 We keep track of import prices through
12 market news services. Importers also fax price lists
13 to us and we hear about import prices from our
14 customers and brokers. We put out our price list
15 every Monday and then we spend the week on the phone
16 with our customers, negotiating to try to get the
17 orders filled by Friday. We know our customers are
18 price shopping across the board, comparing our offers
19 with those they get from everyone else, including,
20 most importantly, importers.

21 Seventy-five out of every 100 pounds in the
22 market are from the seven countries we're discussing
23 today. The product they sell and the product we sell
24 are the same. It all comes down to price. When
25 import prices and our prices are different, believe

1 me, we hear about it.

2 Just one example is a broker we work with
3 that was looking to fill an order for 71/90 peeled
4 shrimp. We quoted a price of \$3 a pound. He said he
5 can get the same product from Malaysia for \$2.80 to
6 \$2.85 a pound, and he told us we had to bring our
7 price down if we wanted to get the sale.

8 Last year we were forced to carry a lot of
9 inventory at the end of the year because we simply
10 could not sell at the prices the market would take,
11 while also meeting our cost of production. Our
12 margins have gotten thinner and thinner as imports
13 have kept squeezing our prices, while the costs have
14 kept going up.

15 This year things are different. Since we
16 filed these petitions and while some countries have
17 been working through their temporary disease issues,
18 we have finally been able to get prices that can give
19 boats a reason to keep fishing and allow us to move
20 more volume we need to stay afloat, but we know these
21 days are not guaranteed to last.

22 These imports will be back next year and if
23 we don't have duties in place to offset foreign
24 subsidies, we'll be right back in the hole that we
25 have just started to climb out of. Our company simply

1 cannot afford to let this happen.

2 While the market has been better for a
3 couple of months, we have stated, we have started to
4 make down payments on new machinery for our facility.

5 We need to upgrade to survive and these are
6 investments that have been put off far too long.

7 We recently had made a down payment on a new
8 bagging machine and we're also looking to invest in
9 new automatic scales, sorters, boxing machines, and
10 new picking machines. These are significant
11 investments that will allow us to further automate our
12 production and assure to continue to meet the highest
13 industry standards for quality and consistency.

14 These investments also carry significant
15 risks. If duties are not in place, the competition
16 will just become as fierce as it was before. Imports
17 will start hammering down our prices and eating at our
18 market share once again. Our margins will shrink and
19 the prices we are able to pay to the boats will
20 suffer.

21 With stubbornly high fuel costs, this will
22 make it more and more difficult for fishermen to
23 justify their efforts, and I could have a lot new
24 machinery and a lot of bills to pay for equipment with
25 not enough shrimp to run and not enough sale revenue

1 to justify my investments.

2 Without duties, imports pose a huge threat
3 to our business. We cannot control how quickly the
4 Thais and other producers are going to ramp up their
5 production and flood back into our markets. We cannot
6 control how much foreign governments are going to
7 support their shrimp producers with low cost loans,
8 tax breaks, grants, and cheap land. We cannot control
9 the price of fuel, the single highest cost of our
10 fishermen.

11 What we can do is fight for fair conditions
12 in our market and require countervailing duties to
13 level the playing field. That is why we filed these
14 petitions, and that is why I am here today, to
15 respectfully ask for your help in combating these
16 unfair imports.

17 Relief from these imports will give our
18 industry in Dulac and the shrimp industry across the
19 Gulf a chance to compete and to invest in our future.

20 Thank you.

21 MR. FOLSE: Chairman Williamson, members of
22 the Commission, staff, thank you so very much for the
23 opportunity to be here with you today. My name is
24 Chef John Folse. I've been in the restaurant
25 business, in the food service business for over 40

1 years in Louisiana.

2 Earlier this year I was proud to be
3 appointed to the Louisiana Seafood Promotion and
4 Marketing Board by Governor Bobby Jindal, and now I'm
5 happy to serve as that board's chairman.

6 I am deeply, deeply committed to the shrimp
7 industry in our region, and I strongly support
8 imposing duties on imported shrimp to offset the
9 unfair subsidies foreign shrimp producers receive.

10 I first opened Lafitte's Landing restaurant
11 in Donaldsonville, Louisiana in 1978, and I've
12 launched my latest restaurant venture, Restaurant
13 R'evolution, in the heart of the French Quarter in New
14 Orleans this past year.

15 I've had the extreme honor of bringing Cajun
16 and creole cuisine to the world, first accompanying
17 President Reagan with the Gorbachev summit to Moscow
18 in 1988. I have brought Louisiana seafood to
19 restaurant openings to promote our wonderful cuisine
20 and culture to Japan; Seoul, Korea; Taipei; and even
21 The Vatican, having served seafood gumbo to Pope John
22 Paul, who is now on his way to sainthood.

23 I've been in the food manufacturing business
24 since 1991, producing regional cuisine for companies
25 globally. Our manufacturing company produces over 60

1 tons of processed foods every week for the food
2 service industry, retail, and restaurant chain
3 accounts nationally. We're so proud to have received
4 numerous awards of recognition for our product,
5 including TGIFriday's food vendor of the year for
6 2009, 2011, and 2013.

7 Shrimp is a key ingredient in many of the
8 items we manufacture, including soups, gumbos, and of
9 course that wonderful shrimp creole people talk about.

10 I have built my career on my commitment to
11 Louisiana's unique cuisine and culture.

12 My philosophy is that the best cuisine is
13 the one that is built not only on our heritage, but on
14 the ingredients that set us apart from the rest of the
15 world. Our rich culinary heritage draws its tradition
16 on the unique cultures that first came to settle our
17 coast lands: The Native Americans who were here
18 first, the French, Spain, Germany, Italy, Africa, the
19 West Indies, and Haiti.

20 Our cuisine is built on some of the best
21 ingredients in the world, the wonderful bounty of
22 shrimp, oysters, crawfish, crab, wild game,
23 vegetables, and herbs that we are blessed with from
24 our swamp floor pantry.

25 I'm here today because some of the people

1 that make this cuisine possible, our domestic shrimp
2 producers, are actually getting destroyed by
3 subsidized shrimp imports. Foreign governments, as we
4 continue to hear, are pouring significant resources
5 into their shrimp industries, which are major
6 exporters in these countries.

7 When this foreign shrimp enters the U.S.,
8 the subsidized prices they offer are often below our
9 own industry's cost of production. Our domestic
10 shrimpers and processors simply cannot survive for
11 much longer if they do not get relief from these
12 unfairly traded imports.

13 As a chef, and as a food processor, my
14 personal success depends on having the absolute best
15 ingredients and ensuring absolutely consistent quality
16 that meets the stringent specifications of our
17 customers.

18 I know the Gulf shrimp is of the highest
19 quality, has a great flavor and texture, and can meet
20 the tightest specifications anywhere. Unfortunately,
21 many of my food service and retail clients, and
22 certainly their customers, the ultimate consumers,
23 simply don't care about that. To them, a shrimp is a
24 shrimp, no matter where it comes from. To be honest,
25 some of the big chains, most of the big box retailers,

1 have an interest in keeping the customer uninformed,
2 but ultimately, at the end of the day, it all comes
3 down to price.

4 This creates a huge dilemma for me in my
5 business. I want to use Gulf shrimp, I want to
6 support my coastal communities, and I know our product
7 can meet, or exceed, the quality and consistency of
8 any import, but I also need to meet my customer's
9 price points. This is an extremely competitive
10 business we're in, with very, very thin margins, and
11 customers will beat us down to the final price penny
12 to penny.

13 Our prices unfortunately are driven by
14 imports. Imports from the seven countries we're
15 looking at make up over three-quarters of the market
16 and they set the bar for prices for everyone else.
17 The substantial subsidies foreign producers get allow
18 them to charge such low prices that our producers
19 simply cannot compete in the marketplace.

20 I can tell you from my personal experience,
21 buying shrimp every day for my business, that the
22 price quotes we get from imported shrimp are always --
23 always -- and without fail below the prices quoted for
24 our domestic product.

25 A processor cannot keep selling shrimp at

1 prices that don't cover their own costs of production,
2 much less allow them to reinvest, as you have heard,
3 in their plants and equipment and to upgrade their
4 facilities. A processor also has to be able to pay
5 fishermen enough to give them the incentive to go out
6 every day to catch the shrimp.

7 A fishermen has no incentive to do so if the
8 price he gets at the dock cannot cover the cost of
9 fuel, maintenance, labor, food, and other costs, and
10 eventually the shrimper has to make the only rational
11 business decision he can: tie up the boat. This
12 deprives the processor and consumer of the product,
13 and eventually will cause the industry to collapse.

14 Any time you have to buy imported shrimp to
15 meet customers' demands of price, it sends a hot knife
16 through my heart. Being born and bred in Louisiana, I
17 understand the frustration of this industry. As long
18 as imports are allowed to come in at these subsidized
19 prices, I, as well as everyone else, will be forced to
20 make the gut wrenching decision to stay in business.

21 If you impose duties on these imports, it
22 will help stabilize the market and bring prices to
23 rational levels. It will allow our processors to
24 cover their costs, invest in their plants, and sustain
25 these beautiful, family-owned business, generational

1 businesses. It will allow our fishermen to go out to
2 sea with the confidence that they can catch as much of
3 this wonderful resource as they can and earn a price
4 that rewards their labor and sustains the industry.

5 The future of this vital and cherished
6 industry depends on your decision in this case, and I
7 ask you to give our domestic shrimp industry the
8 relief they so desperately need. I thank you so much
9 for your attention.

10 MS. DRAKE: Thank you, Chef Folse.

11 That concludes our presentation. We'd be
12 happy to take any questions.

13 CHAIRMAN WILLIAMSON: Thank you. I want to
14 express the Commission's appreciation for all of the
15 witnesses who have come, especially those who have
16 come from out of town, Louisiana, the Gulf Coast
17 region, to appear today. Your testimony is very
18 valuable to us. This morning questioning will begin
19 with myself.

20 So I guess the one question, the first
21 question I have, and no one's mentioned this, what's
22 been the impact of the existing antidumping duty
23 orders on some of these subject countries, and how do
24 we factor that into our analysis?

25 MS. DRAKE: Maybe I'll briefly begin and

1 then let others add in. The antidumping orders have
2 certainly had an important disciplining effect. I
3 believe in the Commission's sunset review it was found
4 that the huge surge that was seen in volumes before
5 the orders tapered off, to a certain extent, and it
6 appeared that it also put a floor on prices.

7 Part of the problem we have is that a number
8 of major producers in those countries have now escaped
9 from those orders, either in the original
10 investigation or subsequent administrative reviews.
11 Another Thai company just got its third zero recently
12 and is now out from the Thailand order.

13 The other issue we have, of course, is
14 nonsubject countries. Ecuador got out from the
15 antidumping order altogether, and Indonesia and
16 Malaysia have never been subject to the order. So
17 while they have had some beneficial effect that is a
18 limited effect, that doesn't fully address the problem
19 of subsidies.

20 Again, the dumping analysis is limited only
21 to the price discrimination and does not capture the
22 additional unfair impact of the subsidies that these
23 foreign governments are providing. So while I think
24 everyone would agree that those orders are very
25 valuable, they have not been sufficient to offset the

1 harm caused by the subsidies both to the subject and
2 the nonsubject imports.

3 CHAIRMAN WILLIAMSON: Okay. So what should
4 we sort of say? That those existing duties are
5 imposing some discipline, but that's not enough, or
6 has there been a change?

7 MS. DRAKE: Correct. It's not enough
8 because it doesn't cover all of the producers, even in
9 the countries that are subject to the orders, and it
10 doesn't cover all of the countries that are being
11 looked at here today.

12 In addition, it only addresses price
13 discrimination that's addressable through the
14 antidumping statute. It doesn't address
15 subsidization, which is an additional form of harm, an
16 additional unfair trade practice that the statute is
17 designed to remedy.

18 We actually looked at a number of cases,
19 much of them quite older, where there had been an
20 antidumping order in effect on a product from a
21 country and a year or two later or a few years later,
22 industry sought a countervailing duty order on the
23 same product from the same country, and there really
24 wasn't a lot of discussion in the Commission's latter
25 decisions about what the antidumping orders meant or

1 what they, how they affected the analysis.

2 Really, in all of those decisions -- and
3 we'd be happy to provide more of this posthearing --
4 it looked like the Commission was really focused on,
5 you know, what is the harm that the subsidized imports
6 are causing. So we weren't ourselves able to find a
7 lot of guidance about how the Commission has looked at
8 this in the past. It certainly hasn't been a central
9 issue in any of the decisions that similarly have a
10 lag between the two types of orders.

11 CHAIRMAN WILLIAMSON: Okay. Thank you.
12 because there's just -- that was my first question
13 that I asked when, you all filed a year ago.

14 MS. DRAKE: Certainly.

15 CHAIRMAN WILLIAMSON: I think there was some
16 mention about orders, are the orders going on, are the
17 Europeans expected to impose orders on shrimp.

18 MS. DRAKE: What's happening in Europe is
19 the number of the subject countries enjoy GSP benefits
20 in Europe and two of the major producers, Thailand and
21 Ecuador, are set to graduate from GSP, which will lead
22 to an increase in import duties.

23 Thailand is set to graduate from GSP on
24 January 1 next year, and that will raise the duties on
25 the frozen shrimp from I believe four to 12 percent,

1 and on the cooked shrimp from I believe seven to 20
2 percent. Then Ecuador is scheduled to graduate in
3 2015.

4 So it's not an order, it's not an unfair
5 trade remedy, it's just simply graduation from the
6 current tariff preferences that they enjoy.

7 CHAIRMAN WILLIAMSON: Okay. Thank you.
8 Given that for a number of countries the staff report
9 shows more overselling than underselling, and
10 considering that the analysis in Part 2 of the staff
11 report seems to indicate that price is far from the
12 most important factor in terms of the criteria that
13 influence distributors' and purchasers' choices, now I
14 know you've all talked about price, but if you look at
15 the factors and you looked at the other things that
16 are talked about, usually price stands out much more
17 than it does in this particular case, so I was just
18 wondering if you can maybe talk a little bit more
19 about how the subject imports are causing injury, you
20 know, given what we have in the report.

21 MS. DRAKE: Absolutely. So what's in the
22 report certainly shows that price, and I think, as
23 consistent with the Commission's prior determinations,
24 that price is at least a moderately important factor
25 in the market.

1 While the majority of purchasers report it's
2 a very important factor, it is true that they, it's
3 only ranked as the most, one of the top three most
4 important factors, second to quality. That has to be
5 looked at in the context of the fact that most
6 purchasers also report that domestic and imported
7 product is of comparable quality and that they usually
8 or always meet minimum quality standards.

9 So when that's the case, then your most
10 important factor is met and your second most important
11 factor is price. We do think, also, the fact that
12 purchasers reported that they usually or sometimes buy
13 the lowest priced product, in fact, 80 percent of
14 purchasers is very significant and does show the
15 importance of price.

16 We agree that the underselling data is a
17 little bit more unclear and we think a lot of that is
18 due to Product 1 which has the vast majority of the
19 overselling instances for any of the products. Again,
20 that product unfortunately is one that has a little
21 bit of a product mix that may understate the amount of
22 underselling that's going on.

23 CHAIRMAN WILLIAMSON: What's the mix? I
24 mean what's the -- I think that's the smaller shrimp,
25 isn't it? The 71/90?

1 MS. DRAKE: Yes. So the Product 1 is the --
2 excuse me. Let me just get to the exact description.
3 Product 1 is the 71/90 count, headless, peeled, tail
4 off, block frozen, whether deveined or not deveined,
5 and that's the difference that the Commission looked
6 at in the original antidumping investigation and found
7 that the domestic producers were more likely to sell
8 this product in undeveined form, whereas the importers
9 were more likely to sell it in a deveined form, which
10 is a higher value added form for this particular
11 product. So that really led to a lack of
12 comparability and potentially understated the amount
13 of underselling.

14 Now, the Commission did not completely
15 disregard the data for this product, but did say they
16 didn't give it controlling weight because of these
17 concerns.

18 I think even if Product 1 is included,
19 what's interesting about this record is that it does
20 show, you know, very mixed, varying overselling and
21 underselling, and it also shows the prices fluctuating
22 within a very narrow band over the entire period.
23 This is something the Commission has looked at before.

24 I think that's consistent with the story and
25 the testimony that our panel gave that they really are

1 constantly monitoring prices, constantly hearing about
2 import prices, and so if they're being undersold by an
3 import, they're then going to decrease their own price
4 to get that sale. So maybe they'll be overselling for
5 a quarter, but then it will undersell again.

6 When you're changing your prices every week,
7 quarterly data from a lot of sellers in a very
8 volatile, price-sensitive market that shows a mix of
9 underselling and overselling doesn't necessarily mean
10 there isn't fierce price competition in the market
11 that's being led by imports.

12 I believe there's a case on silicomanganese
13 that talked about this and a similar mixed record said
14 that there is significant underselling in products
15 like these where there's constant price competition
16 and price negotiations.

17 CHAIRMAN WILLIAMSON: Thank you.

18 Chef, I was wondering, these are pretty
19 small, Product 1 is pretty small, 71/90, and since
20 food service is an important consumer shrimp, what do
21 people use that for in a restaurant?

22 MR. FOLSE: Chef John Folse. Just about
23 everything other than the majority of our frying. All
24 of our soups, our gumbos, all of our etouffees, all of
25 our, anything with sauces over rice or pasta will be,

1 that shrimp will be the majority of the shrimp going
2 into those products. When we get into our larger
3 shrimp, from the 21/25 on up, then you're looking at
4 center of the plate products.

5 So naturally the majority of the sauce-based
6 dishes will always use the smaller shrimp, because
7 they're significant enough inside to be able to show
8 up prominently on the plate, and certainly we want it
9 to do that, but it's the larger varieties that are the
10 center of the plate attraction that is more so for the
11 restaurants.

12 If you've ever had one of my seafood gumbos,
13 or as the Pope called it, gumba, then it's full of the
14 71/90 count shrimp.

15 CHAIRMAN WILLIAMSON: Okay. Are you going
16 to have a booth at Jazzfest next year?

17 MR. FOLSE: I will.

18 CHAIRMAN WILLIAMSON: Okay. I'll be there
19 looking for it then.

20 MR. FOLSE: In fact, I'll have my little
21 shrimp po' boy, so I cannot wait to serve you.

22 CHAIRMAN WILLIAMSON: Okay. Thank you.
23 I'll be looking forward. My time has expired. Thank
24 you.

25 MR. FOLSE: Thank you.

1 CHAIRMAN WILLIAMSON: Commissioner Pearson?

2 COMMISSIONER PEARSON: Thank you, Mr.

3 Chairman.

4 I also would like to welcome all of you.

5 You know, as someone who has spent a considerable
6 portion of his life involved in businesses that are
7 attached to biology, and nature, and things that are
8 hard to control, I have considerable empathy for your
9 business and appreciate the sincerity of your
10 testimony.

11 I'm curious how you evaluate the trend in
12 shrimp landings. The information that we have on the
13 record indicates that between 1970 and 2009, that an
14 average harvest was about 260 pounds live weight, and
15 there was some considerable variation around that.

16 The recent landings within the period of
17 investigation have been within the historical range,
18 and even the harvest in 2010 with the oil spill
19 appears not to have been the lowest harvest that we've
20 had on this record.

21 What does this tell us about the domestic
22 shrimp business? I mean is there some insight we can
23 glean from this? As a practical matter, don't all the
24 shrimp that are harvested subsequently get processed
25 and then are sold into the U.S. market despite

1 whatever level of imports might be in the marketplace?

2 MS. DRAKE: I believe that because shrimp
3 can be held in inventory after it is processed, while
4 eventually that processed shrimp will be sold, there
5 may be situations where because of the prices that
6 processors are able to get, they're not able to sell
7 the shrimp at that time and have to hold inventories
8 at the end of a year, which is a significant risk.

9 The other effect that our folks testified
10 about is that it's not as if fishermen every year just
11 go out and catch as much shrimp as they can catch, and
12 then processors just sell as much as they can sell
13 regardless of the market. At a certain point the
14 processor needs to tell the fisherman this is all I
15 can afford to pay you, and if that is not enough to
16 justify the fishermen's efforts, they're not going to
17 keep fishing indefinitely at a loss. That's something
18 the Commission has found previously.

19 Mr. Gollott was talking about some of the
20 fishermen he works with when we were talking yesterday
21 and he said, you know, last year, 2012, when prices
22 were bad, guys weren't going out. This year, after
23 the petitions were filed, 2013, they're going out. So
24 they do respond to price. It's not merely a function
25 of what's naturally, biologically available.

1 COMMISSIONER PEARSON: Okay. Well, I'm glad
2 you raised the issue of fishing effort because my
3 first exposure to the shrimp business was in 2004 in
4 the original investigation, and then I had the
5 opportunity to visit the Gulf Coast and learn a little
6 bit about shrimping, go on a boat, and all that very
7 interesting stuff.

8 That was at a time when we were advised that
9 it was really difficult for the boats to operate
10 because the economics were so bad. It was pointed out
11 to us that a number of boats were tied up.

12 So I understand how those pressures can
13 build, and yet it's so interesting to look at the
14 record because with boats tied up in 2004, that year
15 still provided the highest harvest in a decade.
16 There's not been a higher harvest since based on the
17 data that I have in front of me.

18 So I went into that hearing thinking, boy,
19 these fishermen, they're really having a hard time,
20 and then still somehow they caught all these shrimp.
21 So if I seem a bit mystified, I am. What does this
22 tell me? What ought I to understand from it?

23 Mr. Kimbrough?

24 MR. KIMBROUGH: I've been a fisherman, and
25 not to come across wrong, but fishermen fish for

1 dollars, not pounds, so it's relative. You know, when
2 you look at pounds, you may have a big poundage year,
3 but the price that year may be so low that the dollars
4 don't compute, and overhead fluctuates as well,
5 especially the fuel. That would be my take.

6 COMMISSIONER PEARSON: Yes. Well, and that
7 could well be, but in that tour the processors were
8 concerned about fishermen not bringing in shrimp, and
9 indeed, at least by the end of the year, they had done
10 so in spades.

11 MS. DRAKE: I think 2004 was also, I believe
12 those petitions were filed at the end of 2003, so we'd
13 be happy to go, you know, look at the data in detail
14 and respond in posthearing since we were focused on
15 the landings in the more recent period.

16 But, you know, after the petitions were
17 filed, I don't know if there might have been a
18 difference between earlier in the year when you've had
19 the opportunity to talk to fishermen and later in the
20 year as they continue to fish and what was happening
21 in the market after the filing of those petitions, but
22 certainly there are a number of factors that do
23 influence landings each year. One of the important
24 factors from our industry's perspective is economic
25 incentive that fishermen have.

1 We'd be happy to go back and look at the
2 earlier data, if that would be helpful to the
3 Commission.

4 COMMISSIONER PEARSON: Well, in 2003 the
5 harvest was almost as high as 2004. Not quite, but
6 you know. You may look at it, and if there's
7 something that we should understand about it, by all
8 means, let us know.

9 Let me back up just a bit and first make an
10 observation, and then I'll get to a question. In 2004
11 the record showed, you know, volume effects, I believe
12 there were price effects. I saw impact. I voted in
13 the affirmative, along with the rest of the
14 Commission. We were unanimous, okay?

15 However, I also offered some additional
16 views, raising a question about with the degree of
17 liquidity in the global shrimp market and the U.S.
18 shrimp market, would putting an order on certain
19 countries actually have any effect in the marketplace
20 that would make a difference to the U.S. shrimp
21 industry?

22 Five years later we did the review on that
23 order. I concluded that there really hadn't been any
24 effect that one could discern in the marketplace from
25 the orders, so I voted to revoke them. That did not

1 prevail.

2 As I look at this record, I'm seeing a very
3 different record than in 2004, I think. Just going
4 through and talking trends, we have subject import
5 quantity and market share are down on this record, the
6 value of subject imports is down, net sales by U.S.
7 processors are higher in 2012 than in 2010, U.S.
8 market share has risen, most pricing products have
9 seen price increases so it's hard to argue that
10 there's price depression, the COGS to sales ratio has
11 fluctuated within a narrow range, which is a little
12 bit surprising given the biological nature of the
13 process, but at any rate, that's what the record
14 shows, so it's hard to find price suppression. I know
15 you're pointing that there might be a little bit.
16 Okay.

17 There's a predominance of overselling by
18 subject imports, there's a rather, a dearth of
19 allegations of lost sales and lost revenues, the
20 number of workers in the industry is up, the hourly
21 wages are up, capital expenditures are up quite
22 substantially. Operating income declined in 2012, but
23 that appears to be largely explained by some of the
24 accounting issues that Respondents have referred to.
25 So on this record how do I get to a finding of

1 material injury by reason of subject imports?

2 MS. DRAKE: Thank you, Commissioner. As we
3 tried to lay out in our brief and our presentation, we
4 believe that the Commission should reach an
5 affirmative determination by looking at these trends
6 in the context of overall market.

7 2010 was an extraordinary year for the
8 industry. The largest oil spill in history depressed
9 landings more than 20 percent what they had been on
10 average for the past 10 years. That can't help but
11 impact the volume trends you're looking at.

12 If we start the period of investigation
13 solely by looking at 2010, not taking into account the
14 effects of the oil spill in the context of the oil
15 spill, you're going to start with a depressed level of
16 domestic production and a heightened level of subject
17 imports.

18 What is remarkable to me about this record
19 is by the time you get to 2012, two years later,
20 domestic sales had hardly increased from one of the
21 worst years, in terms of volume of sales, ever.
22 Hardly increased from a year that had the largest oil
23 spill in U.S. history. That, to me -- and looking at
24 the 2009 data helps to make that clear -- is something
25 that's an indicator of injury.

1 The fact that subject imports had maintained
2 a heightened market share based on our public data of
3 77 percent in 2012, two years after the oil spill was
4 over, that, to me, is an indicator of injury,
5 especially if you look at the pre-oil spill levels.
6 The market share data, we think, should also be looked
7 at with reference to 2009.

8 We're not alleging price depression.
9 Clearly, prices are up. We are alleging price
10 suppression. Yes, maybe an increase from 91 percent
11 or 92 percent to 93 percent at the end of the period
12 doesn't look significant in isolation, but those
13 ratios are extraordinarily high, so domestic producers
14 really could not afford to have any increase in an
15 already very high COGS to sales ratio.

16 Even if you leave SG&A out of it altogether,
17 that change in gross profits alone, that three cents a
18 pound, is enough to drive the industry into the red.
19 That, again, to us, clearly shows material injury.

20 In terms of the capital expenditures, yes,
21 they have gone up over the period, but as our
22 witnesses testified, there are many more capital
23 expenditures they would like to do, to replace their
24 25 year old freezers, to get an IQF line, that they
25 simply can't do without stability in the market.

1 So we believe there are strong indications
2 of injury. We believe the Commission should look at
3 the record in light of the oil spill and look at the
4 2009 data. This is what has been done in previous
5 cases, on orange juice, on other products where there
6 has been sort of a unique, one off event that impacts
7 the first year of the period. That needs to be taken
8 into account as you examine the entire record.

9 COMMISSIONER PEARSON: Okay. Thank you very
10 much.

11 Mr. Chairman, my time has expired.

12 CHAIRMAN WILLIAMSON: Thank you.

13 Commissioner Aranoff?

14 COMMISSIONER ARANOFF: Thank you, Mr.
15 Chairman.

16 Welcome to all this morning's witnesses. I
17 apologize again for being a little late, but I did
18 arrive in time to hear just about all the testimony
19 and I'll review the transcript for the rest.

20 Let me start with a question that I think
21 picks up where Commissioner Pearson left off. In
22 their brief, some of the Respondents assert that the
23 domestic industry's processing capacity increases
24 during the period of investigation have to be
25 considered irrational in light of limits on the shrimp

1 supply and expressed concerns of the domestic industry
2 about pricing.

3 Can you explain the rational basis behind
4 the investment decisions that have been made during
5 this period? I'm particularly interested in the
6 extent to which the investments have involved IQF
7 capacity.

8 MS. DRAKE: I don't believe anyone on our
9 panel has increased their IQF capacity. You lost your
10 IQF capacity in 2010, Richard does have IQF capacity.

11 I believe that, and we can maybe get into
12 some BPI examples of any processors that have
13 increased their IQF capacity over the period, but as
14 Mr. Authement testified, this is an industry that
15 knows it needs to upgrade to survive, and for far too
16 long they've been unable to do that, so an increase in
17 capacity may also reflect adding a different kind of
18 capacity. You're not going to get rid of your block
19 capacity, but you may add an IQF line. You may add
20 some peelers if you want to do more peeling.

21 So there may be increases in capacity that
22 don't really show, reflect a huge amount of optimism
23 about where the market is, but rather reflect an
24 understanding on the part of the industry that they
25 need to stay current, they need to be where the demand

1 is, and they need to add the different kinds of
2 capacity. That maybe they think they'll be able to,
3 you know, make a margin here if they're not able to
4 make it there. So, you know, certainly these are
5 businessmen that need to make rational decisions.

6 But we'd be happy to supplement the record
7 with more description of those who have had capacity
8 increases, why, what justified that, and whether it
9 was really a different type of capacity rather than
10 overall capacity.

11 COMMISSIONER ARANOFF: All right. That
12 would be helpful, and so if you're talking about
13 things like, you know, old freezers that need to be
14 replaced. I guess one thing I'm curious about is if I
15 see an increase in capacity, am I seeing that you got
16 a new freezer but you kept the old one and you're
17 counting that as idle capacity instead of throwing it
18 away.

19 MS. DRAKE: Right.

20 COMMISSIONER ARANOFF: Okay. Looking again
21 particularly at the issue of IQF capacity, this is not
22 that new a technology, I don't think, because we've
23 been hearing about it for as long as we've been
24 handling these shrimp cases.

25 Can you just speak a little bit, maybe some

1 of the processors can speak a little bit about what
2 the barriers are to more widespread adoption of that
3 technology in the U.S. Is it just about financing it
4 or are there other issues involved?

5 MR. GIBSON: We had an IQF tank back in the
6 '80s and due to competition and just the cost of
7 operating and having to sell against products that
8 were priced at the same amount of our cost, we took
9 our line out. Now the market has kind of had a demand
10 for us to push that way.

11 The problem is to try to go -- and some do
12 still operate IQF -- is to try to go back at that, but
13 it's to overcome the costs. It's more expensive than
14 what we're already doing in block in my facility, so
15 I've decided to stay with block. We'd like to do IQF,
16 we have paperwork on the desk and looking at it, but
17 it's just been something to justify the added cost for
18 a return at this point in time.

19 COMMISSIONER ARANOFF: Does the IQF product
20 sell at a premium over block frozen or not really?

21 MR. GIBSON: Not really. At certain times
22 -- I know that when we've had IQF in the past, and
23 we've had it done at other facilities, I've had to
24 sell it the same price at block. I may be able to
25 sell the IQF before the block, but I haven't been able

1 to get the extra investment back for the funds,
2 sometimes. It's a more expensive process than the
3 block. So that's why we haven't -- it doesn't always
4 guarantee that there's more money in it.

5 COMMISSIONER ARANOFF: Typically, you know,
6 a purchaser who would want the IQF product would be a
7 purchaser who doesn't intend to use the whole bag or
8 whatever of the product at the same time, right? Or
9 are there other factors?

10 MR. GIBSON: That would definitely be one.
11 There may be other factors just for, you know, weight
12 concerns or something like that and shipping, but that
13 would be something I really don't think I have the
14 expertise to answer because I'm not doing it right
15 now.

16 COMMISSIONER ARANOFF: Okay. Does anybody
17 else want to speak on that subject before I switch to
18 another one?

19 MR. GOLLOTT: Lately, we have started
20 selling some retail outlets and they wanted IQF in one
21 or two pounds bags. It does cost more for the gases
22 and stuff to instantly freeze the stuff than it does
23 block frozen.

24 COMMISSIONER ARANOFF: Okay. Thanks. So
25 the data that the Commission collected in this case

1 showed that U.S. shrimp consumption is down overall
2 during the period, the three year period that we're
3 looking at. Is that, do you think, still a lingering
4 effect of the impact of the oil spill, or is it
5 because shrimp is competing with other protein
6 sources, or what do you think most accounts for the
7 decline in demand that we've seen?

8 MR. GIBSON: I think that we've had, as far
9 as shrimp-wise, the spill -- as serving on Louisiana
10 Seafood Promotion and Marketing Board, we've well-
11 addressed that. There still are some concerns out
12 there, but not at the level that we have had concerns
13 with. We think we've done a great job of bringing
14 attention to that and letting them know when there's
15 more testing and getting our message out of what's
16 going on. I don't know that that is affecting the
17 consumption over the overall economy.

18 COMMISSIONER ARANOFF: So you think it's
19 that shrimp maybe is a relatively more expensive
20 protein than some other things that consumers might be
21 buying that's probably more responsible at this point?

22 MR. GIBSON: Probably at the retail level I
23 would say yes.

24 COMMISSIONER ARANOFF: Okay. Has there been
25 any reaction amongst consumers in the U.S. market to

1 the disease outbreak in some of the Asian-producing
2 countries, or is that something that the U.S.
3 consumer, unlike the oil spill, is totally unaware of?

4 MS. DRAKE: As I understand it, and please
5 correct me if I'm wrong, the disease is not
6 communicable to humans. Live or raw shrimp, they're
7 cannibalistic, and if they eat an infected shrimp,
8 that shrimp itself will become infected. All of the
9 processed shrimp that's frozen, everything that we
10 consume is frozen processed shrimp, so as far as we
11 understand it, there's not a legitimate proven safety
12 concern with, on the consumer side.

13 There have been countries that have imposed
14 some barriers on imports of EMS-affected shrimp but
15 that's really out of concern that it might infect
16 their own shrimp farming operations rather than a
17 consumer health and safety concern.

18 COMMISSIONER ARANOFF: Can that disease
19 affect wild shrimp?

20 MR. VEAL: David Veal. It certainly can,
21 but it's less problematic with wild shrimp than it is
22 with any type of farm-raised product, as are all
23 diseases. In agriculture, that is a very typical
24 thing. When you provide spacial, space to an animal,
25 you minimize its risk for diseases. Wild crops

1 typically are much less dense than a pond-raised
2 product and disease incidences tend to be less.

3 You see that in concerns, in some countries
4 -- none of these countries, but in other countries
5 that have a wild caught stock -- a concern about
6 trench locating or moving that to their wild stocks.

7 COMMISSIONER ARANOFF: Okay. Thank you.

8 Ms. Drake, let me go back. You were
9 speaking about the COGS to net sales ratio earlier on
10 the issue of price suppression. As you know, the
11 statute refers to price increases that otherwise would
12 have occurred, preventing price increases that
13 otherwise would have occurred. So here we have a
14 market where apparent consumption was declining and
15 where consumers have a range of protein sources to
16 choose from.

17 In that case, should the Commission find
18 that domestic processors' prices should have increased
19 to cover their rising costs over the period, or
20 alternately, I mean the other way to phrase that would
21 be how do we know that the prices of subject imports
22 are a, you know, more than de minimis cause of the
23 failure of domestic prices to increase to cover costs?

24 MS. DRAKE: Thank you, Commissioner. Yes,
25 we believe that the domestic industry would have been

1 able, or would likely have been able to increase their
2 prices to cover their increased costs absent the
3 injurious effects of imports.

4 In addition to the absolute price
5 suppression, even in that declining market, subject
6 imports retained a larger market share than they had
7 prior to the spill. So it wasn't just the level of
8 demand itself, it was also the relative volume of
9 subsidized subject imports that was at this heightened
10 level and was thus sort of increasing the intensity of
11 the price suppression.

12 I think that conclusion is also supported by
13 the public underselling data we put on the record
14 regarding the increase in the frequency and intensity
15 of underselling, at least based on the New York frozen
16 prices which really reached its peak in 2012 and 2013,
17 and we think that reflects, you know, a more
18 aggressive fight for a smaller market that did prevent
19 our producers from increasing prices that they
20 otherwise would have been able to do to cover their
21 rising costs.

22 COMMISSIONER ARANOFF: Okay. Thank you very
23 much for that answer.

24 Thank you, Mr. Chairman.

25 CHAIRMAN WILLIAMSON: Thank you.

1 Commissioner Pinkert?

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

4 I thank all of you for being here today to
5 help us to understand these issues. I want to begin
6 with a question that is probably more properly
7 directed to the Ad Hoc Shrimp Industry Committee, but
8 I want to give you a chance to comment on it, and
9 perhaps they'll comment on it in the posthearing.

10 What is the practical significance to the Ad
11 Hoc Shrimp Industry Committee of including the on-
12 board, brined, frozen shrimp in the domestic like
13 product?

14 MS. DRAKE: That is a very good question
15 that I would also like to know the answer to. In the
16 Commission's proceedings we don't see any practical
17 difference to any individual parties. The main
18 difference is that it forces the domestic processing
19 industry to demonstrate injury not only to itself, but
20 also to a broader industry that includes the fishermen
21 that supply us. That's why we have opposed the
22 request to expand the domestic like product beyond the
23 scope.

24 In terms of whether there may have been some
25 interest at the Commerce Department side, we note that

1 the group submitted an excerpt from the Commerce
2 hearing that reviewed these issues and we would be
3 happy to submit the full transcript of that hearing
4 where the first question that the Commerce officials
5 asked of that group is why do you care? So we could
6 submit that for the record, if that would be helpful
7 to the Commission.

8 Again, in terms of the Commission's
9 proceedings, the only practical impact of expanding
10 the domestic like product is increasing the burden
11 that we bear in terms of demonstrating injury to our
12 industry.

13 COMMISSIONER PINKERT: It would be helpful
14 to submit that additional information.

15 Has anybody else on the panel gotten any
16 insight into what's going on here? I'm seeing heads
17 shaking in the negative, just for the record. Okay.

18 If Commerce grants your request to exclude
19 that particular product from the scope, then does that
20 affect what we do for purposes of the domestic like
21 product?

22 MS. DRAKE: Clearly, the Commission makes
23 its own determination of the domestic like product.
24 While the Commission is bound by Commerce's scope
25 determination, they're not bound to adopt the same

1 definition of domestic like product as Commerce.

2 We do think that it is something that the
3 Commission should look at again to the extent that the
4 scope clarification is requested and that's because
5 the Commission's preliminary decision to include
6 fishermen was based, in part, on its understanding
7 that this on board, brine, frozen product was included
8 in the scope.

9 If Commerce clarifies that it's not included
10 in the scope, we would urge the Commission to look at
11 the issue again. We submitted additional arguments on
12 this issue in Exhibit 2 of our prehearing brief.

13 We believe that it would not be appropriate
14 for the Commission, if the scope clarification is
15 granted, for the Commission to apply its discretionary
16 semi-finished like products analysis to include
17 upstream fishermen if their product is not included in
18 the scope.

19 That analysis has overwhelmingly been used
20 only when the semi-finished and finished product are
21 themselves both included in the scope. Therefore, it
22 facilitates, it serves sort of a remedial purpose by
23 allowing the Commission to look at injury at the semi-
24 finished and finished products, both of which are
25 being imported and are of concern.

1 It's also primarily used in integrated
2 industries, which would make sense if the Commission's
3 concerned about data being distorted, if only part of
4 an integrated industry is reporting its data. This is
5 not an integrated industry, so that's not a concern.

6 Finally, I would direct you to our
7 discussion of one of the low enriched uranium cases
8 where the Commission, in prior cases the semi-finished
9 product had been included in the scope and the
10 domestic like product.

11 A later case, the scope only included the
12 finished product and the Commission said we see no
13 compelling reason to go with our prior domestic like
14 product determinations, we're instead going to go co-
15 extensive with the scope and only include the finished
16 product.

17 We also don't see compelling reasons in this
18 case for the Commission to feel bound by any of its
19 prior determinations regarding this product.

20 COMMISSIONER PINKERT: Is there anything
21 that we've said about the semi-finished analysis that
22 would suggest that it cannot be applied when looking
23 at a product that's not part of the scope?

24 MS. DRAKE: That's never explicitly been
25 stated by the Commission. We spent a lot of time

1 looking at all of the Commission's cases to try to
2 understand how this test first arose, what the
3 justification was for it, and really, all we could
4 find was a very long record of it mostly only being
5 used in cases where both products were included in the
6 scope.

7 So we do think it requires some additional
8 analysis from the Commission to think about whether
9 application of that discretionary test, to include a
10 nonscope product and a nonintegrated industry, is
11 really consistent with this prior practice and what we
12 believe at least initially appeared to be sort of a
13 remedial purpose of this discretionary analysis that
14 allows the Commission to look at injury on a holistic
15 basis when both products are being imported.

16 COMMISSIONER PINKERT: Thank you. Now,
17 turning to an issue that has been raised by the
18 Respondents, although they wouldn't characterize the
19 question this way, I think that one question that
20 occurs to me is assuming that the BP compensation was
21 intended to cover losses in operating income during
22 the period, does this investigation represent attempt
23 by the domestic industry to secure a double remedy for
24 the same underlying commercial situation?

25 MS. DRAKE: Thank you very much,

1 Commissioner. I very much appreciate that question.
2 No. Their conclusion, or their allegation is
3 incorrect and doesn't have any merit.

4 Any BP payments that have been received were
5 designed to compensate producers for lost revenue
6 during the oil spill, and then a fixed multiplier was
7 applied to that because there was uncertainty about
8 whether there would be lingering effects from the oil
9 spill.

10 What's very important to understand is that
11 those payments were then doubled to include punitive
12 damages, so half of the payments that you're looking
13 at are punitive damages, not compensatory damages.
14 Therefore, you know, both of those are properly
15 recorded as below the line income, not as operating
16 income. This is consistent with GAAP principles, and
17 also specific instructions from the IRS about how to
18 record these payments.

19 Even to the extent that some of those
20 payments were compensatory in nature, they were to
21 compensate producers for their lost revenue in 2010
22 while the fishing waters were closed. They don't
23 compensate those producers for price suppression, for
24 continued lost market share due to aggressively
25 subsidized imports, to the deteriorating financial

1 condition that happened after the spill was over, due
2 to import penetration and due to the adverse price
3 effects of imports.

4 So these are, while there is certainly a
5 relationship in 2010 between the closure of the Gulf
6 and the increase in imports, that does not explain the
7 continued injury by imports that endured through the
8 end of the period and the different forms that injury
9 has taken.

10 COMMISSIONER PINKERT: Well, without getting
11 into the whole idea of separating and distinguishing
12 between causes, is there any reason to think that the
13 entire problem in terms of operating losses during the
14 period is attributable to the oil spill rather than to
15 the impact of the subject imports?

16 MS. DRAKE: There's no reason to think that,
17 Commissioner, because the oil spill ended in 2010, but
18 imports went up in 2011 in absolute volume. That
19 increase could not have been due to the oil spill.
20 That was due to aggressive targeting of our market by
21 subject subsidized producers.

22 In 2012, even as they were affected by
23 disease, they retained their heightened market share.
24 This is two years after the oil spill ended. Now,
25 there may have been some of our processors' customers

1 that switched over during the oil spill, but the
2 reason they stayed with those imports after the spill
3 was over was price.

4 And as our producers testified, when these
5 petitions were filed where bonding requirements were
6 put in place, where new pricing reality was put in
7 place, those customers came back, and so none of that
8 had anything to do, none of that was caused solely by
9 the oil spill itself. It instead reflects the
10 aggressive price competition between the subsidized
11 imports and the domestic product.

12 COMMISSIONER PINKERT: Thank you. It's the
13 end of my round.

14 CHAIRMAN WILLIAMSON: Thank you.
15 Commissioner Johanson.

16 COMMISSIONER JOHANSON: Thank you, Mr.
17 Chairman. And I would like to thank all of you for
18 taking the time to appear here today, especially those
19 of you who came a long way. I'm a relatively new
20 member of the Commission. I know there have been
21 several investigations before the ITC involving shrimp
22 in the past several years, and this is my first time
23 to participate in one and I have enjoyed learning
24 about your industry.

25 My first question involves SG&A expenses.

1 Respondents take the position that the Commission
2 should discount high SG&A expenses in 2012 and in
3 interim 2013 when evaluating the domestic processors'
4 financial data. Could you all please respond to their
5 stance on this issue? And in addition, what is your
6 response to their allegation that the industry's
7 operating loss in 2012 was mainly the result of an
8 aberrational 40 percent increase in SG&A expenses?

9 MS. DRAKE: Thank you very much,
10 Commissioner Johanson. As the staff report notes,
11 different processors' SG&A varies from year to year,
12 and there are normal fluctuations. In response to
13 followup questions from the Commission about SG&A
14 expenses, our processors explained the reasons for
15 variations in those expenses in detail.

16 While we don't believe it is necessary or
17 appropriate for the Commission to adjust those
18 expenses as Respondents urge, even if the Commission
19 were to do so and eliminated -- based on public
20 information, we'd be happy to address BPI information
21 limited to some of their BPI arguments.

22 But even if one were to assume that the
23 domestic industry could keep operating without
24 increasing SG&A expenses at all from 2011 to 2012,
25 they still would have run at a loss. And so the

1 Respondent's argument that these increased expenses
2 are the main reason for the loss is not true. Even
3 without an increase in the expenses, the industry
4 would have operated at a loss, and that is driven
5 solely by the decrease in the gross profit margin,
6 which again we believe represents the increasing price
7 suppression by subject imports.

8 So we recognize that there does seem to be
9 an increase. We don't think that that's something
10 that can be ignored or taken out of the reality of the
11 operating income of our producers. But even if one
12 were to eliminate that increase, they would still be
13 operating at a loss due to increased price
14 suppression.

15 COMMISSIONER JOHANSON: All right. Thank
16 you for your response. And how do you respond to the
17 argument that the domestic industry's profitability
18 during the period of investigation was consistent with
19 its historical experience and is therefore not
20 attributable to subject imports? And this is raised
21 by the National Fisheries Institute.

22 MS. DRAKE: Thank you. Well, the historical
23 experience that Respondents look at is one that is
24 dominated by subject imports, and therefore looking --
25 just because the industry was injured five years ago

1 and ten years ago doesn't mean it's not injured today.

2 And you actually do see a decline in that operating
3 income at the end of this period, as we have
4 discussed.

5 But we'd be happy post-hearing to go more
6 into detail and really look at the numbers more
7 closely in terms of what the historical experience has
8 been. But the short answer is, yes, this industry has
9 unfortunately been only marginally profitable for many
10 years. But that got worse over the period of
11 investigation, and that's why they filed the petition
12 seeking relief from the imports.

13 COMMISSIONER JOHANSON: All right, yes. And
14 if you could follow up once again in the post-hearing.

15 MR. STEWART: Commissioner Johanson?

16 COMMISSIONER JOHANSON: Yes.

17 MR. STEWART: This is Terry Stewart. If I
18 could just add to that, part of the demonstration of
19 the harm that has been caused by the imports is what
20 happens when you get to the provisional relief. And
21 while the Commission has not -- as it was outside its
22 period, it has not looked at it. Opposing counsel
23 said that no one was talking about what was happening
24 in the second and third quarter. Some of our
25 witnesses have spoken of what is happening in the

1 second and third quarter, and what is happening since
2 the bonding requirements is that the market has gotten
3 much more robust.

4 In answer to Commissioner Aranoff's
5 question, prices have gone up since the bonding
6 exactly because the market can bear it and exactly
7 because prices have been depressed and suppressed
8 because of the high volume of imports that have been
9 heavily subsidized.

10 COMMISSIONER JOHANSON: Thank you, Mr.
11 Stewart.

12 My next question came to my mind when I was
13 speaking with State Representative Harrison before the
14 hearing this morning. We had an opportunity to speak
15 right outside here in the hallway. He mentioned that
16 in his district the number of -- the size of the
17 shrimping fleet has decreased pretty significantly in
18 recent years.

19 With that in mind, could one of you all
20 please describe the overall condition of the shrimp
21 fleet at this time? And in particular, the quality of
22 the vessels and equipment on board, et cetera.

23 MR. GIBSON: I'm from his district, so in
24 the Dulac area. In our area, we were an area that had
25 a lot of smaller vessels, skip-sized to lugger-type

1 boats. And then over the years the shrimping
2 progressed back in the late seventies, eighties. The
3 boats began to become larger fiberglass or steel
4 hulls, up to the 80-foot range for larger shrimping
5 capacity.

6 Because of expenses -- or rising expenses
7 and lowering shrimp prices, those vessels came across
8 a situation where they could not operate with rising
9 fuel and lower shrimp prices. So our industry began
10 to shuck out boats. Larger boats were put for sale.
11 Many of them were sold outside the country. Guys that
12 stayed in the business tried to get a smaller boat.
13 From there, they've gotten to where they've either
14 sold out of that boat or we've ended up with a much
15 smaller larger fleet, and a little bit probably
16 maintained size medium fleet. And it has to do with
17 operating expenses. The larger the boat, the larger
18 the expense, versus the volume of shrimp.

19 Our area had I think at one time 13
20 processors in our area. We're down to three. So the
21 entire industry is down. The equipment is older, the
22 vessels are older. There are no new boats really
23 coming into the industry, and many of our newer boats
24 that were in the industry were the ones that were sold
25 off first.

1 So we have an older fleet, and we have older
2 facility, and we're much less in size and fishing
3 effort in our industry, in our area. I can't really
4 speak for the other guys in those areas. But in
5 Louisiana, in our area, we are definitely
6 significantly smaller than what we were before.

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

9 Could you all please discuss any differences
10 in the quality, costs, et cetera, between processed
11 shrimp that has been frozen via block freezing versus
12 individual quick freezing, the IQF process? Is there
13 a quality difference?

14 MR. GOLLOTT: No, sir. There is no quality
15 difference. The difference is an IQF shrimp is frozen
16 and then glazed with water, where a block is frozen,
17 and it's frozen in a block of water. The IQF will
18 probably last about six months, where a block frozen
19 will not start deteriorating for a year. It becomes a
20 life -- a shelf-life thing.

21 IQF is a lot more convenient to handle, but
22 the block frozen is a lot safer to store, and you
23 don't have to worry about its freezer life. In my
24 opinion, that's the only difference.

25 COMMISSIONER JOHANSON: Is it safer because

1 the product keeps longer, or --

2 MR. GOLLOTT: The product keeps longer, yes.

3 You can store it longer. If you buy it, you can
4 store it for up to a year and not have to worry about
5 it, where an IQF product, the glaze leaves it pretty
6 fast in these freezers, changing temperatures and
7 stuff, and it's not as stable.

8 COMMISSIONER JOHANSON: All right. Thank
9 you. Yes, sir.

10 MR. FOLSE: Chef John Folse. For us it's a
11 matter of convenience in the process business and in
12 the restaurant business. There is no appreciable
13 difference between the two other than ease of use and
14 convenience of the product. IQF is also shell-on.
15 IQF can also be shell-off. IQF can be available to us
16 in different ways.

17 The overall difference once it's cooked and
18 put into the dish cannot be seen at all by a consumer.

19 COMMISSIONER JOHANSON: All right. Yes, Mr.
20 Gibson.

21 MR. GIBSON: Yes, sir. Just for
22 clarification on that, I'm sure it may be known, but
23 the IQF is each individual shrimp is frozen
24 individually and glazed individually, and would be
25 basically marbles in a bag. So that is why it does

1 not hold the glaze as long as a five-pound block that
2 is encased in a complete brick of ice, which would
3 have a much thicker glaze. It could be, you know
4 quarter-inch, half-inch, around it all the way through
5 the product, versus the IQF, which would just be a
6 thin glaze on the outer shelf, which adds to the shelf
7 life in the freezer.

8 But as a convenience, you can open the bag
9 of IQF, take one, two, or three out, whereas the block
10 you have to thaw the entire block. Just for
11 clarification.

12 COMMISSIONER JOHANSON: All right. Thank
13 you. And actually, Mr. Gibson, I had one question to
14 follow up on the previous question that you answered,
15 and that is dealing with the declining number of
16 boats. And I wanted to ask you this before, but I
17 didn't really think it was relevant, but maybe it is,
18 and that is, with the number of boats significantly
19 lower than it was, let's say, like a decade or so ago,
20 what do you do if you have a boat and you can't sell
21 it? I mean, what happens to that?

22 MR. GIBSON: I presently have two at my dock
23 that are for sale and have been for sale for quite a
24 while and have not sold. They are older boats that
25 have of course had wear and tear from operations, but

1 some of these boats in the boat market now are sitting
2 around.

3 A lot of these boats, people have revamped
4 them and been much more efficient. Spent a lot of
5 time in different tackle nets, gear, engines,
6 clutches, different things for fuel economy being one
7 of the highest costs to try to get these boats back in
8 operation.

9 But many of these boats that are -- that get
10 reduced end up being sold, and went overseas for other
11 things, where they became dive boats or lobster boats,
12 or something. A lot of them came out of the fleet.

13 COMMISSIONER JOHANSON: Okay. Well, thank
14 you. My time has expired.

15 CHAIRMAN WILLIAMSON: Thank you.
16 Commissioner Broadbent?

17 COMMISSIONER BROADBENT: Thank you. I
18 wanted to welcome the witnesses to Washington. We
19 really appreciated the hospitality our small group had
20 down there in Dulac on Thursday, which was a terrific
21 lunch and delicious and lots of true tales about pet
22 zebras and slayed alligators and all of that. So we
23 had a great time and really appreciate you making us
24 feel so much at home.

25 I had a question for Chef Folse in terms of

1 kind of the work on the Louisiana Seafood Promotion
2 and Marketing Board. How much educational effort do
3 you do about the -- I think the more attractive the
4 U.S. product is versus the imports. And it seems to
5 me that it's healthier and less disease threats and
6 so forth. Does that word get out to consumers, and
7 are consumers being continually educated on the
8 differences between the imports and the domestic?

9 MR. FOLSE: Chef Folse. Well, thanks for a
10 great question. Absolutely, the board which is now
11 over 30 years old, was founded for the express purpose
12 of educating not only the public but assisting the
13 industry, assisting the industry in the form of
14 marketing its product, and sustainability of the
15 industry itself.

16 So certainly a major part of sustainability
17 is educating the consumer, educating the public, and
18 the educational facilities, such as the universities
19 that have sea grant programs or other programs within
20 the systems, but ultimately to go out to -- whether
21 it's the supermarket industry, whether it's the
22 retailer in general.

23 So absolutely, we have two or three firms
24 that are hired, again especially for the creation of
25 materials, educational materials, brochures. And the

1 commission itself, which is made up of members that
2 represent each one of the fisheries, myself sitting on
3 that commission, appointed by the governor in the role
4 of marketing because my background is marketing. So
5 I'm chairing the board not as a fisherman, but as a
6 marketer to assist the fishing community members
7 around the table with these issues.

8 So to answer your question, absolutely. A
9 major role of the Seafood Promotion and Marketing
10 Board is exactly as its name implies. We're a
11 marketing firm, and probably your visit to Louisiana,
12 you would have come in contact with some marketing
13 board members.

14 COMMISSIONER BROADBENT: And what is the
15 gist of the message on the difference between the
16 wild-caught and the farm-raised?

17 MR. FOLSE: Well, since there is such a
18 small difference actually in the quality or even the
19 visual of the product, it's certainly the crossover
20 ability and the cooking or the consumer interest in it
21 is pretty much the same. I think it's more of an
22 emotional issue, to make sure that we in our regions
23 of the world certainly promote our industries, we
24 promote our fisheries. Part of our message is the
25 fishing families. We've heard testimony here today of

1 four and five generations of families in the industry.

2 And one of the most important stories we like to tell
3 is the fact that we have a rich heritage in our
4 coastline. We have a rich heritage in our fisheries,
5 and our raw materials are the raw materials that we
6 identify with best.

7 So it's not so much the differences in one
8 shrimp from another. It's the location, where, why.
9 Why do we honor the fisheries the way we do. So the
10 promotion board is as much about that as educating the
11 consumer on the fact that we do have a rich industry
12 or a rich fisheries industry that must be maintained,
13 promoted, and preserved. And that's what we're all
14 about.

15 COMMISSIONER BROADBENT: Okay. Does anyone
16 else have any comment on that in terms of the benefit
17 of the wild-caught -- health benefits of wild-caught
18 versus the farm-raised?

19 (No response.)

20 COMMISSIONER BROADBENT: Ms. Drake, I had a
21 question looking at volume. Does the fundamental
22 nature of your argument change if these *de minimis*,
23 potentially *de minimis*, countries are actually
24 excluded by Commerce?

25 MS. DRAKE: Thank you, Commissioner. No.

1 While the scale of the imports changes if certain
2 countries are found *de minimis* in the final results,
3 the fact that they account for a significant portion
4 of the domestic market does not change. There may be
5 some minor change in the trends, but overall we think
6 whether those two countries are included or not, the
7 volume of imports is significant.

8 COMMISSIONER BROADBENT: But it won't be
9 increasing, right?

10 MS. DRAKE: On an absolute basis or on a
11 relative basis?

12 COMMISSIONER BROADBENT: Both.

13 MS. DRAKE: I think if you compare to 2009,
14 which again we think is the right year to start in,
15 that you would still see an increase. But I'd be
16 happy to address that post-hearing to make sure -- you
17 know, depending on what happens, that we provide the
18 analysis and the numbers based on who is included and
19 who is not.

20 COMMISSIONER BROADBENT: Okay. It just
21 would seem to me that your graphs would look a lot
22 different in terms of the bars.

23 We have recently investigated a lot of cases
24 where the base year is 2009, and really it was
25 generally a terrible year for most U.S. industries.

1 But despite the recession in that year and how deep it
2 was, we have not extended our period of investigation
3 to prior, earlier years before the period of
4 investigation when we're looking at material injury.

5 Why would you advise us to extend our period
6 of investigation to 2008 for shrimp when we didn't do
7 it to prior years for industries like steel?

8 MS. DRAKE: Thank you, Commissioner. That's
9 a very good question. Yes, the cases that we looked
10 at where the Commission decided to either extend the
11 period of investigation to a prior year or to at least
12 take that prior year into account in terms of setting
13 an overall context for the market did not deal with
14 sort of economy-wide issues like a recession.

15 Instead, they dealt with sort of unique
16 industry-specific situations that disrupted production
17 in the first year of the normal three-year POI and
18 thus made that first year sort of an unreliable
19 benchmark on which to measure the rest of the period.

20 So in the orange juice case, for example,
21 the Commission was concerned about how cyclical the
22 production was and how it could be affected in any
23 given year by hurricanes, frost, or disease. In the
24 magnesium case, one of the major producers in the
25 first year -- some of this from the public report;

1 obviously we don't have access to the BPI -- were
2 engaged in modernizing their plant. So it appears
3 that might have suppressed their production that year
4 and made it an unreliable first year.

5 And in the polyvinyl alcohol case, a couple
6 of the domestic producers had *force majeure* events
7 that caused a decline, a sort of unusual one-off
8 decline in production in that first year. That was
9 one where the Commission didn't formally expand the
10 period of investigation, but it did look at the prior
11 year in order to get a better understanding of trends
12 during the period of investigation.

13 COMMISSIONER BROADBENT: And it's funny
14 because as I'm learning here how you kind of decide
15 when to file a case -- because the period of
16 investigation is something that's generally fixed so
17 that we can figure out where the numbers are going.
18 Now, do you wish you had filed earlier?

19 MS. DRAKE: Well, I think that we had no
20 doubt when we filed this case that the domestic
21 industry was being injured by subject imports. I
22 think that while we knew that 2010 would be the first
23 year of the period in the final phase, we were also
24 aware of these other cases where the Commission would
25 take things like that into account.

1 We also, you know, as the petition was being
2 prepared, of course, you had this temporary EMS issue.

3 So at the time we filed in December, we didn't really
4 know what the full end-of-year import volume would
5 look like. What we did know from our client is that
6 they felt that they were being seriously injured by
7 subject imports, that they in all of their
8 conversations with their customers were hearing about
9 import prices, that they needed to bring their own
10 prices down to compete with these, and that that
11 really wasn't sustainable for them. And that was what
12 drove them to retain us and drove them to file the
13 case.

14 COMMISSIONER BROADBENT: Okay. Our staff
15 report says that there is some U.S. processors that
16 are kind of questioning what sort of regulatory
17 enforcement imports are being subjected to. Can
18 anyone speak to that, the regulation imposed on
19 imports versus regulation imposed on the domestic
20 industry?

21 MS. DRAKE: I'll start quickly, then let
22 others join in if they'd like to. The FDA rules
23 require all imports to meet FDA standards. You may
24 hear this afternoon about HACCP plans, for example.
25 FDA requires every processor, domestic and foreign, to

1 have HACCP plans if they're going to sell product in
2 the domestic market.

3 COMMISSIONER BROADBENT: And that stands for
4 hazardous --

5 MS. DRAKE: Hazard Analysis and Critical
6 Control Point.

7 COMMISSIONER BROADBENT: Got it.

8 MS. DRAKE: And there has been a concern
9 about the FDA not inspecting very large volumes of
10 imported seafood, which I think has been -- sort of
11 rankles our guys when they have inspectors that come
12 to their plant every quarter, some as frequently as
13 every quarter from the Department of Commerce, those
14 who are involved in that program.

15 SO they're certainly, you know, knowing
16 about some of the practices. There certainly can be
17 some concerns. But in terms of the actual
18 requirements that apply, they're the same for the
19 domestic product and the imported product in terms of
20 the FDA standards and having to have a HACCP plan.
21 And the FDA and the U.S. Department of Commerce will
22 actually go and investigate those producers and make
23 sure they have those plans and are complying with
24 them.

25 COMMISSIONER BROADBENT: So FDA is doing

1 plant visits in some of the exporting countries?

2 MS. DRAKE: I think it's the Department of
3 Commerce, the National Marine Fisheries Service --

4 COMMISSIONER BROADBENT: That's right, yes.

5 MS. DRAKE: -- that does that.

6 COMMISSIONER BROADBENT: Great. Thank you
7 very much, Mr. Chairman.

8 CHAIRMAN WILLIAMSON: Thank you. Our two
9 other state government representatives have arrived,
10 so we will sort of interrupt the questioning to hear
11 them now. So, Mr. Secretary, could you please our
12 third state government witness?

13 MR. BISHOP: The Honorable Sean Tindell,
14 State Senator, the State of Mississippi.

15 CHAIRMAN WILLIAMSON: Okay. Welcome,
16 Senator Tindell. You may begin when you're ready.

17 SENATOR TINDELL: Chairman Williamson, ITC
18 Commissioners, thank you for the opportunity to
19 testify before you here today. I'm here on behalf of
20 the people of the Mississippi Senate District 49 and
21 in support of the Gulf Coast, and indeed the entire
22 U.S., shrimp industry.

23 The shrimp industry in Mississippi has a
24 real and positive impact throughout our community and
25 across the country, and that is why I strongly support

1 the imposition of countervailing duties on frozen,
2 warmwater shrimp from China, Ecuador, India,
3 Indonesia, Malaysia, Thailand, and Vietnam.

4 I was born and raised in South Mississippi,
5 so I know firsthand the importance of the U.S. shrimp
6 industry. Everywhere you look along our coastline,
7 there is evidence of an industry's unique tradition
8 and lifestyle that have sustained the people of
9 Mississippi, especially along the Mississippi Gulf
10 Coast, and fed the nation for centuries

11 Dating back to our earliest settlers,
12 generations have continued to pass down their expert
13 knowledge to preserve and extend the precious
14 industry, from where to find bountiful regions or the
15 best trawl nets, or the secret recipes of Mama's
16 Mississippi shrimp and grits, and the shrimp industry
17 is a time-honored way of life in our community.

18 Many of the shrimp-related jobs in my home
19 state are performed by families that have worked
20 together for generations to operate and maintain their
21 own businesses. Growing up, I spent a lot of summers
22 and weekends at my family's small business, so I
23 appreciate the conviviality that exists when families
24 and communities create a heritage together by working
25 together.

1 Now as a small business owner myself, I
2 further recognize and appreciate all of the effort
3 that these entrepreneurs and workers pour into the
4 shrimp industry every single day. A solid work ethic
5 is a staple in Mississippi and our values, and there
6 is no lack of it on the boats, docks, and plants that
7 pepper our coastline.

8 One of the best parts about growing up in
9 Gulfport and Biloxi was that I was lucky enough to
10 have a front row view to see all the great events
11 celebrating our beloved shrimp industry. Every year
12 Biloxi hosts what is called the blessing of the fleet
13 and the Biloxi shrimp festival. This year marked the
14 84th anniversary of the blessing of the fleet, where
15 shrimp boats come out to the Mississippi Sound and are
16 blessed with holy water by the pastor of St. Michael
17 Catholic Church and the bishop of the Biloxi diocese,
18 to invoke a prosperous season.

19 As a child, I remember being on my own
20 family's boat and being a part of the parade of shrimp
21 boats that made their way along our coastline. The
22 festival takes place the day before the blessing and
23 is always a lively event featuring Mississippi's
24 finest shrimp dishes and very popular crowning of the
25 shrimp queen and king for the blessing.

1 Not only does the shrimp industry play a
2 huge role in Mississippi's rich history, it also plays
3 a significant role in our state's economy. Last
4 year's shrimp catch in Mississippi amount to 13
5 million pounds, and was valued at more than \$24
6 million.

7 Furthermore, the shrimp industry in
8 Mississippi supports more than 2,000 jobs, and
9 provides \$44 million in annual income to our state.
10 Overall, our shrimp industry had an estimated economic
11 impact of well over \$100 million.

12 Unfortunately, the survival of all of the
13 wonderful historical, cultural, and economic aspects
14 of Mississippi shrimp industry that I've talked about
15 here today is threatened by subsidized imports from
16 China, Ecuador, India, Indonesia, Malaysia, Thailand,
17 and Vietnam.

18 These nations are not playing by the rules
19 of international trade, and their unfair and egregious
20 practices need to be stopped. Last year these
21 countries exported over 883 million pounds of shrimp
22 to the U.S., worth nearly \$3.6 billion.
23 Additionally, these countries account for 89 percent
24 of the U.S. shrimp imports and over three-quarters of
25 the domestic market overall. The numerous subsidies

1 provided by these governments cover all aspects of
2 their shrimp industries.

3 For example, in China the government
4 maintains tax incentives for aquaculture and shrimp
5 processing facilities. Export subsidies are provided
6 by the Malaysian government in the form of tax
7 incentives for promoted products intended for export,
8 and by the government of India as special duty
9 remissions for shrimp exports.

10 The government of Indonesia writes writ of
11 debts owed by shrimp -- writes off debts owed by
12 shrimp processors. And in Vietnam, the government
13 provides land rent discounts and exemptions to shrimp
14 farmers.

15 Over the past decade, the Gulf region has
16 been plagued by Hurricane Katrina, the BP oil spill,
17 and the great recession. It is hard to believe that
18 those devastating events were the calm before the
19 storm. Subsidized imports from seven subject
20 countries are poised to be the most damaging blow to
21 the region yet.

22 Luckily, there is a cure for this
23 problematic situation, and it comes in the form of
24 countervailing duties. It is time for the hardworking
25 boats, docks, and processors in Mississippi and

1 throughout the Gulf to finally obtain some relief.

2 In closing, I came all the way to Washington
3 today to do everything in my power to support the U.S.
4 shrimp industry and protect it from the continuation
5 of anti-competitive behavior from abroad. As a
6 lifelong resident of district 49, I am passionate
7 about serving the citizens of our district and the
8 entire Mississippi Gulf Coast.

9 I believe in taking concrete steps to lead
10 Mississippi's shrimp industry to great prosperity. An
11 important and tangible step forward for this vital
12 industry is the imposition of countervailing duties on
13 frozen warmwater shrimp from China, Ecuador, India,
14 Indonesia, Malaysia, Thailand, and Vietnam.

15 This action will allow the shrimp industry
16 to survive now and into the future. And I'll say
17 this. When I campaigned a couple of years ago for my
18 senate seat, I remember specifically talking to a
19 group of citizens about growing up on the Mississippi
20 Gulf Coast, and looking out over the water early in
21 the morning before the sun would come up as my
22 grandfather and I would go out and fish for mullet.
23 Biloxi bacon is what they call it back home.

24 And you would look out over the water, and
25 you would see shrimp boats, and it would look like

1 Christmas lights out on the Gulf of Mexico, and it
2 would be from one end of the view all the way down to
3 the other, shrimp boats.

4 I've got a five-year old son who I take
5 fishing with me from time to time. And you look out
6 there now, and you don't see that. You don't see near
7 the boats, and you don't see near the shrimpers. And
8 it's an industry that has been under attack, and we've
9 had a lot of setbacks there on the Mississippi Gulf
10 Coast, as I mentioned, since Hurricane Katrina.

11 So I thank you. Thank you for the
12 opportunity to testify before you today. And I ask
13 for your help in anything you can do to help save that
14 industry along the Mississippi Gulf Coast. If you
15 have any questions, I'll be glad to answer them.

16 CHAIRMAN WILLIAMSON: Thank you, Senator.
17 Are there any questions for the senator?

18 (No response.)

19 CHAIRMAN WILLIAMSON: No? Okay. We want to
20 thank you very much for coming. We really appreciate
21 your coming this distance to testify. Thank you.

22 MR. BISHOP: Our next witness is the
23 Honorable Jeffrey S. Guice, State Representative, the
24 State of Mississippi.

25 CHAIRMAN WILLIAMSON: Welcome,

1 Representative Guice, and you may begin when you're
2 ready.

3 REP. GUICE: Chairman Williamson,
4 Commissioners, thank you for the opportunity to be
5 here today to testify. I'm here on behalf of the
6 people of Mississippi in support of the Gulf shrimp
7 industry.

8 The shrimp industry in Mississippi is
9 important beyond measure. It has a profound impact on
10 our community, both economically and culturally, and
11 that is why I strongly support the imposition of
12 duties on frozen, warmwater shrimp from China,
13 Ecuador, India, Indonesia, Malaysia, Thailand, and
14 Vietnam.

15 Throughout this hearing today, I'm sure that
16 you heard testimony detailing billions of dollars of
17 unfair foreign government subsidies provided for
18 shrimp exported from these seven nations. Let me
19 start at a different place by citing some numbers that
20 illustrate the importance of industry to the
21 Mississippi Gulf Coast.

22 Last year shrimp catch in Mississippi
23 amounted to 13 million pounds, and it was valued at
24 more than \$24 million. Furthermore, the shrimp
25 industry in Mississippi supports more than 2,000 jobs

1 and provides \$44 million in annual income to our
2 state.

3 Overall, our shrimp industry had an
4 estimated economic impact of well over \$100 million.
5 Of course, the impact of the shrimp industry in my
6 district and state go far beyond the economic numbers.

7 Our state's earliest inhabitants quickly realized the
8 abundance of shrimp beneath our waters.

9 Unfortunately, the subsidized shrimp imports from
10 China, Ecuador, India, Indonesia, Malaysia, Thailand,
11 and Vietnam are adversely affecting the cultural
12 foundation that Mississippi has relied on for
13 centuries.

14 In Mississippi, the establishment of the
15 seafood industry in the early 1860s gave our citizens
16 access to the highest quality and best tasting shrimp
17 in the world. The establishment of this industry also
18 provided a way of life for all of the countless
19 Mississippians who took a ride on a shrimp boat, long
20 before they took a ride on a bike.

21 For generations, the hardworking people of
22 my state have passed down their craft to their loved
23 ones, which makes this culture so unique. To get
24 these tasty treasures from local waterways to hungry
25 people across our country, it takes a team of women,

1 men, that are dedicated to the demanding work that it
2 requires.

3 In Mississippi, we have people doing the
4 harvesting, the unloading at the docks, the peeling,
5 the freezing, and packing of our shrimp. These are
6 not easy tasks. But our workers get satisfaction from
7 shipping our shrimp all over the country to
8 appreciative customers.

9 The shrimp industry is vital to the well-
10 being of the Mississippi Gulf Coast. And whether that
11 importance is tied to folklore or finances, one thing
12 is clear. Subsidized shrimp imports from China,
13 Ecuador, India, Indonesia, Malaysia, Thailand, and
14 Vietnam are gravely threatening our domestic shrimp
15 industry.

16 These seven countries together exported over
17 83 -- excuse me, 883 million pounds of shrimp to the
18 U.S., worth \$3.6 billion. Shrimp from these countries
19 account for 89 percent of U.S. shrimp imports and over
20 three-quarters of the domestic market.

21 The governments of these countries maintain
22 subsidy programs inconsistent with international trade
23 rules that provide numerous benefits like tax
24 incentives, loans at or below market rates, export
25 duty remission, and debt forgiveness. Regardless of

1 these types of subsidies provided by each country, the
2 result is all the same.

3 These foreign subsidies drive down the price
4 of shrimp. The export of shrimp to the United States
5 makes it nearly impossible for our industry to
6 compete. These trade practices in China, Ecuador,
7 India, Indonesia, Malaysia, Thailand, and Vietnam are
8 not only unfair, but they're also illegal.

9 In closing, I hope that I've been able to
10 shed light on the impact the shrimp industry has on my
11 district, my state, and this country. The good people
12 of Mississippi saw this industry decimated in the
13 recent past with events far outside their control,
14 including a catastrophic hurricane, a catastrophic oil
15 spill, and our catastrophic recession.

16 Today the catastrophic damage that is caused
17 by subsidized shrimp imports is thankfully within our
18 control. Today this damage can be countered and
19 remedied with the imposition of countervailing duties
20 on frozen, warmwater shrimp from China, Ecuador,
21 India, Indonesia, Malaysia, Thailand, and Vietnam.

22 I'd like to thank you again for the
23 opportunity to testify before you today, and I'm happy
24 to answer any questions.

25 CHAIRMAN WILLIAMSON: Thank you,

1 Representative Guice. Are there any questions for the
2 representative?

3 (No response.)

4 CHAIRMAN WILLIAMSON: If not, I want to
5 thank you so much for coming

6 REP. GUICE: Thank you.

7 CHAIRMAN WILLIAMSON: We appreciate having
8 your testimony. Thank you.

9 MR. BISHOP: Mr. Chairman, that completes
10 our state government witnesses for the day.

11 CHAIRMAN WILLIAMSON: Okay. Thank you.
12 Okay. It's I guess my turn for questions.

13 I was wondering if the domestic product gets
14 about, you know, 10 percent of, you know, U.S.
15 consumption -- this seems kind of traditional. Is
16 there sort of a niche markets for domestic shrimp?
17 And the reason I ask this, I know when we had the
18 catfish hearing, you know, another product from the
19 Gulf Coast region, they were developing certain sized
20 cuts for market for restaurants. And so they were
21 trying to distinguish their product by having a higher
22 premium, larger-sized fillet that could be sold in
23 restaurants.

24 I haven't heard any talk about any kind of
25 ways that the domestic industry might be

1 distinguishing its product. Clearly, I mean, all is
2 wild-caught, almost all is wild-caught, and clearly
3 there is a market for that. But I don't know if there
4 is any market research to tell us anything about how
5 significant that is.

6 And also, is there any market research
7 regarding, you know, where is the demand going in the
8 U.S.? I mean, are we doing a lot larger sizes or more
9 varieties, or anything like that that gives an
10 indication of how the imports may be impacting or
11 starting to impact the domestic industry?

12 MS. DRAKE: I know that Chef Folse has done
13 a lot of work trying to educate chefs around the
14 country about the product in the Gulf and get them to
15 support it. Maybe he could talk a little bit about
16 that.

17 MR. FOLSE: Chef Folse. I think that the
18 Seafood Promotion and Marketing Board has done a
19 really good job since the BP spill, and certainly
20 previously I think the attention and the direction has
21 been a little different since then, just to educate
22 the public more about the quality and the safety of
23 our seafood.

24 We have done also a tremendous job of
25 bringing the nation's largest shrimp users in the

1 culinary field, not only from the U.S., but also
2 Canada, to come in and first and foremost understand
3 the fishing families of this region and why are they
4 so important to sustain.

5 So I think we've done a really great job of
6 making that happen in the last few years. However, as
7 always, the greatest demand for our raw materials
8 continue to be not the fine dining restaurants, which
9 are certainly great consumers. But they continue to
10 be the larger consumer, whether it be the retail
11 industry, whether it be the fast food, casual
12 concepts. And our efforts to capture the attention of
13 those as it applies to using the domestic product is
14 always challenged by price, always challenged.

15 So we're certainly moving in a great
16 direction marketing-wise to -- again I use the word
17 emotional a while ago, not so much emotional as an
18 issue, but tying into the cultural and emotional issue
19 of where our products come from. And I think if this
20 industry is to survive as well as it should survive in
21 this country, it's again just attaching ourselves to
22 that new and growing interest in seeking out our
23 regional products and seeking out the products of this
24 nation first, whereas costs will always be a
25 consideration. We're hoping that in this particular

1 case that subsidies being placed on our competitors
2 will not only give us a fair and competitive edge in
3 all of these marketplaces, but certainly put our
4 product more competitively placed in the largest
5 volume users' warehouses.

6 And that's the emphasis that we're focused
7 on now, making sure that the customers who already
8 know that the quality of our product and the
9 availability of our product is certainly there. You
10 certainly can have it in all sizes and shapes and all
11 value-added availabilities as well, and that now it's
12 more a matter of being able to compete in the price
13 arena.

14 So I think, yes, we are doing a good job of
15 getting the message out and understanding that if
16 you're going to do shrimp and grits on every menu in
17 America, which so many restaurants are doing now, that
18 you need a 16-20 or a 21-25 head-on shrimp to do it.

19 We're educating the public that these are
20 available, and that you can get them any single day.
21 But at the same time, it's the larger consumers that
22 we want to go after, and the larger consumers
23 realizing that price will always be the difference.
24 So that's our challenge now.

25 CHAIRMAN WILLIAMSON: Is there any

1 indication that these larger consumers will say, yeah,
2 if I can market it as wild-caught, as long as the
3 price difference is not too great -- do you have any
4 practical consideration?

5 MR. FOLSE: Mr. Chairman, I think the
6 greatest issue is the perception of the public as to
7 differences. If the public perceives that there is no
8 difference, even with wild-caught, because, of course,
9 the salmon industry has done a great job up in the
10 Northeast to market the uniqueness of that product,
11 and so have we. We've put a fair amount of investment
12 in marketing the fact that we are a sustainable wild-
13 caught industry.

14 But as the consumer who constantly is being
15 bombarded with costs, cost analysis, the economy --
16 they have a changing economy -- families, large
17 families shopping and trying to figure out that, yes,
18 we do want to use shrimp as part of the protein mix in
19 our homes, at the end of the day, the attraction of
20 the wild-caught, the attraction of even -- the
21 lieutenant governor mentioned this morning the great
22 television interest on Louisiana and all of our
23 coastal products lately still has not been enough to
24 garner the interest in paying the extra price for the
25 wild-caught product.

1 So it continues to be a great, great
2 challenge that must be met by price equalization, I
3 think.

4 CHAIRMAN WILLIAMSON: Okay. Thank you. I
5 was wondering because I live in New York City, so I
6 have been affected by the wild-caught idea. Thank
7 you.

8 Mr. Kimbrough, you mentioned that I guess
9 you do sometimes process imported shrimp. And I was
10 curious, what does a processor do with imported
11 shrimp, since I assume it has already been processed?
12 I mean what does a domestic processor do with it?

13 MR. KIMBROUGH: It's Carson Kimbrough. In
14 my market, what we do -- when I say we process and
15 redistribute, we are taking a shell-on farm-raised
16 shrimp and peeling it and freezing it, peeling the
17 vein or peeled. We only do that I'd say most of the
18 time to keep from losing the customer. We have
19 dedicated customers that expect us to deliver shrimp
20 to them 52 weeks a year, and because of the
21 seasonality of our season, you know, sometimes we
22 don't -- we aren't able to carry the inventory for the
23 off-season months. So they demand that you get me
24 something, and we do. It's extremely hard to compete
25 with the imported shrimp because this customer

1 typically has the same product offered to him from an
2 importer, and my niche is really just being there for
3 many years, personal relationships with customers, and
4 they'll give me a chance any way I can to deliver for
5 them until things pick up.

6 CHAIRMAN WILLIAMSON: Okay. Thank you.

7 I think the Respondents mentioned this
8 morning -- Mr. Connelly mentioned something about the
9 experience of a white-spot disease on fish from
10 Ecuador and how long it took them to recover from
11 that. And I was wondering, is the EMS, is there a
12 distinction between that and -- how should we weigh
13 that analysis?

14 MS. DRAKE: That's a great question,
15 Commissioner -- Chairman. I would note that we looked
16 at the example of Thailand's recovery from white spot,
17 which was much faster than the example cited by Mr.
18 Connelly this morning. And we'd be happy to provide
19 more information post-hearing. But my initial
20 understanding is that white spot often involved having
21 to completely revamp the ponds to ensure that the next
22 crop would not be infected with the virus, whereas the
23 EMS disease does not require a complete
24 reconstruction, revamping of the ponds in order to
25 develop a disease-free crop.

1 Vietnam says that it has already recovered
2 from the disease. The measures that are being
3 implemented with respect to EMS now that the cause has
4 been identified are largely quarantining the post
5 larva before it gets stocked in the ponds and
6 screening it for any disease and eliminating any
7 disease post-larva to ensure that the ponds are
8 stocked with the disease-free post larva, and then
9 there is continued very close monitoring of those
10 ponds, so if there is any early signs that perhaps
11 they missed some of the disease. They will eliminate
12 that very quickly.

13 But the infrastructure is there, the
14 capacity is there. It doesn't require, you know,
15 rebuilding ponds that have been destroyed by a
16 tsunami. It really is just a control measure issue
17 that, as I mentioned, many countries are now
18 implementing and are hopeful, you know, with the
19 stocking of the next crop, as soon as that, there can
20 be a quick recovery.

21 But we'd be happy to provide more details on
22 the differences post-hearing.

23 CHAIRMAN WILLIAMSON: Okay. Thank you.
24 Commissioner Pearson?

25 COMMISSIONER PEARSON: Thank you, Mr.

1 Chairman. Earlier there was mention made of punitive
2 payments from BP in addition to compensatory payments.

3 Could you clarify who receives the punitive payments?

4 Do they go to the processors or do they go to some
5 government entity?

6 MS. DRAKE: Perhaps my co-counsel, Mr.
7 Hayes, can provide more details, but my understanding
8 is that if a processor got a \$100 payment, \$50 of that
9 was compensatory and \$50 of that was punitive.

10 MR. HAYES: Commissioner Pearson, Eddie
11 Hayes on behalf of the Petitioner. The payments go to
12 all claimants. So the punitive damages part of the
13 payment is paid to the claimant. So the fishermen,
14 the processors, anyone who was affected and who has a
15 valid claim, part of their payment is compensation for
16 punitive damages that BP would otherwise be liable for
17 in court.

18 So part of the compensation is for punitive
19 damages under -- I can give you the name of the case
20 post-hearing, but I think it's the M/V Testbank, the
21 Motor Vessel Testbank, is the case that established
22 punitive damage liability for oil spills.

23 COMMISSIONER PEARSON: Is there any
24 restriction on how the recipient might spend the
25 punitive funds?

1 MR. HAYES: Not to my knowledge,
2 Commissioner. It's just paid pursuant to the release
3 that the claimant would have to sign. But to my
4 knowledge, there is no restrictions on how the money
5 can be spent.

6 COMMISSIONER PEARSON: Okay. So it's
7 fungible. It's money in the bank, basically.

8 MR. HAYES: Absolutely. And the payments
9 aren't -- yeah, absolutely.

10 MS. DRAKE: And that's true, of course, with
11 all other below-the-line income items. They can be
12 spent however the business wishes to spend them
13 usually.

14 COMMISSIONER PEARSON: Thank you.

15 What is the average length of time between
16 when you buy shrimp at the dock and when you sell it
17 to a customer? I mean, can you buy one day and sell
18 the next?

19 MR. GIBSON: There is really no average of
20 time. In our daily works, we may buy shrimp that is
21 moved the following day. In my facility, where I do
22 primarily headless, I may move the head-on product to
23 another facility to peel. We may have a standing
24 order for certain sizes that will process that day
25 that will have to, of course, be processed, put in the

1 freezer, come out of the freezer to be cased out. So
2 within two or three days it may be ready go to a
3 truck. Or it may be pertaining to a customer base
4 that we have that we have to build inventory to keep
5 seasonal.

6 So it can be anywhere from bought today and
7 moved this afternoon on some minor product. But in
8 the processing side, most of that product can be there
9 from three to five days to three to six months. There
10 is no average.

11 COMMISSIONER PEARSON: Okay. Any idea what
12 percentage of the harvest is held in processor
13 inventories for more than a month?

14 MR. GIBSON: I would have to say that's
15 probably pretty high. I don't -- I wouldn't know --

16 COMMISSIONER PEARSON: Okay.

17 MR. GIBSON: I mean, not everything is moved
18 that quickly because you have an ongoing customer base
19 that you have to supply a lot of times year-round that
20 we hold product for, or we have to -- when we process,
21 we have different sizes, so some sizes may be moved
22 quicker for this customer. Some may have to be held
23 for a later shipment.

24 COMMISSIONER PEARSON: Okay. So it's not
25 unusual to have shrimp in inventory for three months,

1 six months, that sort of thing.

2 MR. GIBSON: No.

3 COMMISSIONER PEARSON: Okay. So when you
4 purchase shrimp at the dock, how good a sense do you
5 have of what your customer might be willing to pay you
6 for the processed shrimp that you provide to them?

7 MR. KIMBROUGH: Carson Kimbrough. We try to
8 price our purchasing off of what the existing frozen
9 shrimp market is that we're able to sell on that day.
10 There is a lot of factors in there, Commissioner:
11 how much shrimp is coming in, what size they are, is
12 that size marketable now? Are the customers of that
13 particular product, are they spot buyers, or are they
14 buyers that is going to buy throughout the season,
15 being that particular day that size may be available
16 to us for maybe two weeks to four weeks the entire
17 season. In other words, we have to inventory there.

18 The previous question you asked, my
19 situation with my distribution and my production and
20 my procurement, we sell real hard from May about when
21 school lets out through the vacation period, and we
22 really slow down after Labor Day. Well, by the time I
23 get to when the boats tie up around Christmas, New
24 Year, the only thing that stops me from processing and
25 inventorying is money.

1 I literally -- when I stop, when the boats
2 tie up at Christmas, I'm literally maxed out 100
3 percent with my personal liquidity and my credit
4 lines. So it takes me from there until May to move
5 that product. I hope that helps you.

6 COMMISSIONER PEARSON: All right. So I
7 think that makes sense because in December you have an
8 inventory that you've compiled over the year, over the
9 season, and then you're marketing that until May when
10 the next harvest begins basically.

11 MR. KIMBROUGH: That is correct.

12 COMMISSIONER PEARSON: Okay. So there has
13 been some discussion about the COGS-to-sales ratio,
14 cost of goods sold to sales. And, you know, for a
15 business like yours, you know, this is a processing
16 business. And so we're thinking about the processing
17 margin, and that's really the reflection of COGS to
18 sales.

19 Is the real problem the amount that your
20 customer is willing to pay, or is it the amount that
21 your competitor is willing to pay at the dock to buy
22 those shrimp that you really would like to process?
23 How does that work? You must compete against each
24 other somewhat actively, don't you, to acquire shrimp
25 to be sold -- shrimp to be processed rather?

1 MR. KIMBROUGH: Carson Kimbrough. It's
2 extremely competitive. Just about -- well, all of us
3 are -- outside of here, we're extreme competitors
4 amongst ourselves.

5 COMMISSIONER PEARSON: Yes. You look so
6 friendly here, but I can imagine --

7 (Laughter.)

8 MR. KIMBROUGH: We get along very good.
9 Yes, sir. It's very competitive. We all have
10 different customer bases, different markets, different
11 situations, different financial situations within our
12 companies. But basically, what I said earlier, my
13 buying, my pricing this morning to the boat goes back
14 to what I hope and think I can get for product, now or
15 what I think I can get for it, which price keeps
16 coming, that word I know you're tired of hearing, but
17 price is king.

18 You know, it's a huge gamble when we
19 determine what we have to pay.

20 COMMISSIONER PEARSON: I appreciate that.
21 My experience with the processing business is it has
22 primarily been those in which there are futures
23 markets for both inputs and products, and you can deal
24 with somewhat greater certainty, obviously not perfect
25 certainty, but it gives a different -- there is a

1 different degree of knowledge in the market of what is
2 going on.

3 It sounds to me like you guys are in kind of
4 tricky business where you don't know exactly what is
5 going to show up at the dock in terms of quality and
6 size and all that. Then you've got to figure out
7 whether you can find a customer for it. So it sounds
8 to me like not the simplest business one could
9 envision.

10 MR. KIMBROUGH: Carson Kimbrough.
11 Absolutely right. It's a gamble. It's a very
12 volatile market. And most of the time I would say
13 just speaking here off my head, probably 80 percent of
14 what I pack I don't know exactly who I'll sell it to
15 or where I'll sell it to or what I'll sell it for. So
16 it is -- we're gamblers. And the thing about us is,
17 what you said and what you've learned, we don't have a
18 faucet or a valve that we can close off a certain size
19 shrimp that the boats keep bringing that we really
20 don't need, you know, as opposed to farm-raised, where
21 you can really place orders.

22 So we're kind of at the mercy of -- I call
23 ourselves farmers of the Gulf. We have to take what
24 the Gulf gives us every day. We have to take the
25 weather, the climate, everything into our season and

1 react accordingly.

2 COMMISSIONER PEARSON: So on this record,
3 how do we evaluate whether the COGS-to-sale ratio has
4 narrowed marginally? Has it been due to price
5 pressure in the downstream market, where imports might
6 be suppressing prices? Or really has it been more
7 active competition at the dock, where various
8 processors with their new capital investments that we
9 see on this record have wanted to have shrimp to run,
10 and thus they have paid rather aggressively and
11 narrowed the COGS-to-sale ratio for that reason.

12 MS. DRAKE: I think that's a great question,
13 Commissioner, and I think part of the fisherman data
14 that the Commission collected show that they were also
15 experiencing an increased COGS-to-sales ratio, and
16 increased price suppression, if you will.

17 So even though the prices for the dockside
18 prices were going up, they were not going up enough to
19 fully account for the increase in the fishermen's
20 cost. And so I think when the Commission looks at
21 price suppression by reason of subject imports, it
22 should look at, you know, clearly the processors' data
23 shows that they're not able to pass along those
24 increasing costs. But those increasing costs appear
25 to be driven largely, if not entirely, by the

1 increased costs to the fishermen. The price of fuel
2 went up from \$3 a gallon in 2010 to \$4 a gallon, and
3 has stayed at that level. And even those costs
4 haven't been fully passed on.

5 So it certainly appears that the driver of
6 the inability to pass along those costs is the price
7 suppression by the subject imports.

8 COMMISSIONER PEARSON: Okay. Thank you very
9 much.

10 CHAIRMAN WILLIAMSON: Thank you.
11 Commissioner Aranoff?

12 COMMISSIONER ARANOFF: Thank you, Mr.
13 Chairman. One question which is for post-hearing and
14 is a followup to some questions that Commissioner
15 Pinkert was asking about SG&A expenses, there are a
16 handful of cases in which the Commission has
17 considered income below the operating level that
18 companies have received for particular reasons, and I
19 wanted to ask you to take a look at those and comment
20 on whether they're analogous to the facts here.

21 MS. DRAKE: Thank you, Commissioner. Just
22 for clarification, we discussed the Coated Paper case
23 to some extent in our brief. Are there any cases in
24 particular that are of interest? Certainly we'll look
25 at -- but that's the one that we're aware of that --

1 COMMISSIONER ARANOFF: Yeah. I'm
2 remembering at least one other. We may not in the end
3 have looked at it, but we discussed it. I think it
4 was a steel case.

5 MS. DRAKE: Okay, wonderful. Thank you.
6 Yes, we will answer that fully post-hearing.

7 COMMISSIONER ARANOFF: Okay. Thank you.
8 And my second question, which you can take a crack at
9 now or address post-hearing, looking at the arguments
10 that in particular the Indian and Vietnamese
11 Respondents had in their brief about but-for causation
12 and the presence of non-subject imports, they argued
13 that the Commission could see, as EMS reduced imports
14 from some subject countries, and the Commission could
15 see other imports taking the place of those imports in
16 their view, with no -- I think they would say with no
17 benefit to the domestic industry. If the Commission
18 were going to write an affirmative causation argument
19 in light of these facts, what is the argument that we
20 would want to put forth that subject imports are a
21 more than *de minimis* cause of injury, notwithstanding
22 the significant presence of non-subject imports that
23 during the period were substituting for subject
24 imports at some points?

25 I'm searching for an explanation, not just

1 that you and I would accept, but one that the
2 Commission's reviewing courts would find persuasive.

3 MS. DRAKE: I'll do my best. Thank you,
4 Commissioner. I think part of the arguments that
5 Respondents make depend in part on what you -- what is
6 defined as non-subject imports. If those include the
7 countries that were preliminarily determined to be *de*
8 *minimis*, and so my answer in part would depend on what
9 Commerce's final determination is. And so I would
10 hope to be able to supplement this post-hearing.

11 Of course, the Commission has not been
12 required to, you know, isolate causes of injury, but
13 the Commission should look at non-subject imports and
14 the role they play in the market. Non-subject
15 imports, as I am defining them, being not within the
16 seven countries that we're at, we do not believe play
17 a very significant role in the market.

18 They have also lost some of their market
19 share to subject imports, which are the overwhelming
20 majority of the market. So we do think that when the
21 Commission is looking at injury, the subject imports,
22 which are the largest portion of the market, really
23 are the leading cause, and I think also the examples
24 that our witnesses have given in terms of hearing from
25 their customers about, I'm getting subject imports for

1 this price. You need to reduce your price to that
2 price. It just further confirms that subject imports
3 are a direct cause of material injury to the domestic
4 industry. But we'd be happy to provide more
5 information on that post-hearing, depending on what
6 the final group of non-subject countries ends up
7 being.

8 COMMISSIONER ARANOFF: Okay. Thank you very
9 much. I appreciate that. With that, I don't have any
10 further questions, but I do want to thank everyone on
11 the panel for your answers this morning.

12 Thank you, Mr. Chairman.

13 CHAIRMAN WILLIAMSON: Thank you.
14 Commissioner Pinkert?

15 COMMISSIONER PINKERT: Thank you, Mr.
16 Chairman. A followup to a question that Commissioner
17 Aranoff asked in her first round. She was asking
18 about the movement in the COGS-to-sales ratio and
19 whether or not that -- whether or not the domestic
20 industry could have covered its cost increases in the
21 absence of the subject imports.

22 For the post-hearing, I would ask that you
23 also look at the elasticity of U.S. demand and tell me
24 how that's relevant to your answer to that question.

25 MS. DRAKE: Thank you, Commissioner. I

1 will, and I note that the staff report did conclude,
2 based on those that domestic processors did have the
3 ability to respond to changes in demand with moderate
4 changes in supply. Obviously what we've seen since
5 the filing of the petitions and the imposition of
6 bonding requirements confirms that. But we will
7 provide more information post-hearing. Thank you.

8 COMMISSIONER PINKERT: Thank you. Now,
9 we've talked a lot about sustainability. Particularly
10 Chef Folse has talked about that. But the staff
11 report at least contains a hint that the domestic
12 shrimp resource might be a depleting resource over
13 time. And I'm looking in particular at Roman II-9 of
14 the staff report, at the bottom of the page.

15 Is it in fact a depleting resource if you
16 look at it over a 20-, 30-year time frame rather than
17 just the period of investigation?

18 MS. DRAKE: Mr. Veal? Dr. Veal might be
19 able to add some to this. But there is no scientific
20 basis that the natural resource itself is depleting.
21 Shrimp is an annual crop that regenerates itself every
22 year. There will be fluctuations from year to year
23 based on weather and salinity and other conditions.
24 But the period where they are saying that the average
25 was 250 million pounds instead of 260 million pounds

1 prior to that, remember that 2001, the first year of
2 that period, was also the first year of the period of
3 investigation in the antidumping cases, where there
4 was a large increase in imports. And though the
5 antidumping orders did discipline that volume of
6 imports somewhat, there still is a large volume of
7 imports in the market, particularly subject imports
8 over the past three to four years.

9 But I don't know if Dr. Veal wanted to add
10 anything about the resource.

11 DR. VEAL: You're absolutely correct. It is
12 an annual crop, and it is economically impossible for
13 us to deplete a crop that is an annual crop.
14 Physically, you cannot -- financially you cannot
15 afford the effort that it would take to harvest --
16 over-harvest that resource. It's just the nature of
17 an animal that reproduces on a one-year cycle.

18 COMMISSIONER PINKERT: Thank you. Now I
19 have a couple of questions about threat analysis in
20 this case. First off, does the BP compensation issue
21 have any role to play for purposes of analysis of
22 threat of material injury?

23 MS. DRAKE: Excuse me. We don't believe
24 that it should. This again is below the line and
25 commonly properly classified as below the line, and

1 therefore would not provide meaningful information as
2 to whether or not the domestic industry's operating
3 income and operating margins are threatened with
4 further deterioration and further injury in the event
5 that orders are not imposed.

6 Nevertheless, we did discuss to some extent
7 in our prehearing brief in anticipation of
8 Respondents' arguments this issue. And as the
9 questionnaire responses that were summarized by the
10 staff report show, they specifically ask what future
11 payments are expected, and the overwhelming answer was
12 unknown. And that's simply because there is a lot of
13 uncertainty in the process right now.

14 The Gulf claims facility run by Mr. Feinberg
15 has shut down. There is a court-supervised settlement
16 process that has become complicated by allegations
17 that BP has made about certain improprieties. They
18 have repeatedly sought injunctions on payments through
19 that program, and even threatened that they would pull
20 out of the agreed settlement program if they don't get
21 those concerns addressed. And then anyone who is not
22 participating in that program -- there are those who
23 have opted out -- as far as I understand it, their own
24 litigation has held up pending the resolution of a
25 consolidated litigation. So there really is no

1 concrete information indicating how, when, or even
2 whether folks will receive any further payments from
3 BP if they haven't already received their payments.

4 We note that the Commission in its -- I
5 believe it was preliminary determination. It might
6 have also been in the sunset review -- looked at this
7 issue and said that, you know, this was a one-of
8 payment for a one-of event, and it's not going to, you
9 know, immunize the industry from further injury --
10 this was the sunset review -- in the event that the
11 orders would be revoked.

12 COMMISSIONER PINKERT: Thank you. Another
13 question about threat. Back in the day, there was a
14 commissioner who used to say that where the imports
15 were already substantially present in the U.S. market,
16 that it didn't really make sense to talk about threat
17 of material injury. I want to give you an opportunity
18 to either apply that theory or not apply that theory
19 in the context of the current market share of imports
20 in the U.S. market.

21 MS. DRAKE: Thank you, Commissioner. That's
22 a great question. Certainly the current market shares
23 of subject imports is very substantial. But there is
24 no indication that this is in any way, shape, or form,
25 an upward limit on the amount of the market that they

1 might be able to seize if orders are not imposed.

2 The governments of these countries have
3 explicit growth plans that they want to continue to
4 grow their industries and continue specifically to
5 grow their exports. Most of the subsidy programs that
6 were found by Commerce are export subsidy programs,
7 and these countries have shown their ability to ramp
8 up exports to the U.S. We think that will only
9 increase as other third-country markets impose
10 additional barriers, and enforce those barriers going
11 forward.

12 I think the Commission when it looks at
13 threat obviously looks at the threat of volume and
14 increased volume and increased market share but also
15 looks at whether or not there are significant adverse
16 price effects and indications that those price effects
17 will continue. And if these imports continue to enter
18 at subsidized prices without discipline, we think the
19 trend in increasing price suppression we've seen over
20 the period will only continue, and the domestic
21 industry really can't afford that at all.

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

24 CHAIRMAN WILLIAMSON: Thank you.
25 Commissioner Johanson.

1 COMMISSIONER JOHANSON: Thank you, Mr.
2 Chairman. Ms. Drake, you spoke on EMS a few minutes
3 ago, and unfortunately I was just walking back into
4 the room and so I didn't get the full conversation,
5 but my staff has informed me what you said, so I think
6 I got it down, but I wanted to follow up on what you
7 stated before. On farms that have implemented
8 treatment solutions for EMS, as far as you know, about
9 how long has it taken them to recover post-treatment?

10 MS. DRAKE: It really depends on what their
11 crop cycle is, as far as I understand it. Some farms
12 stock two cycles a year, some may do three cycles a
13 year, depending on where they are, and the solutions
14 really are crop specific in terms of which larva are
15 going to be stocked in the ponds. There are some
16 environmental steps that can be taken in terms of
17 controlling pH and other things like that.

18 But it seems like a lot of the focus is on
19 the larva themselves, and that's something that
20 changes every cycle, so two, three times a year
21 depending on how frequently they do it. There is
22 nothing fundamental about -- as far as we understand
23 about having one disease crop that prevents you -- as
24 long as you can control the disease in the next crop
25 from having a healthy crop in the next cycle or the

1 next season.

2 COMMISSIONER JOHANSON: And do you know if
3 farms which have been treated, if they have been able
4 to make full or close to full recoveries and the
5 impact of that on their production levels?

6 MS. DRAKE: The information that we have
7 been able to find is that there have been some
8 successful examples in Malaysia and in Vietnam of
9 fully being able to control the disease in farms that
10 had had it. Vietnam as a country, the public reports
11 are saying that they have recovered. And certainly
12 while an individual pond may be subject to certain
13 production constraints, there are no -- that doesn't
14 mean that you can't add more ponds or increase your
15 production or, you know, have better feeding practices
16 and other things that increase production.

17 And we put in a number of examples in our
18 prehearing brief of steps that are being taken on that
19 end of things as well to not only recover, but to
20 actually increase production in the future. And there
21 is, you know, more than enough capacity in these
22 countries to process the increased production, and
23 even the processors themselves are also engaged in
24 capacity expansions.

25 COMMISSIONER JOHANSON: All right. Thank

1 you. And, Ms. Drake, this morning you mentioned that
2 there has been a decline in consumption in 2012 and in
3 2013. Do you know what has brought that about?

4 MS. DRAKE: I don't think we have a
5 definitive reason. Apparent consumption is obviously
6 domestic shipments plus subject imports plus non-
7 subject imports. As some of the major suppliers have
8 been affected by disease and the absolute level of
9 their imports has gone down, that affects apparent
10 consumption.

11 What is worrying to us is that domestic
12 producers haven't really seen as much of a volume
13 benefit from that as we would have hoped because of
14 the increased price undercutting and price
15 suppression, even as the absolute volume was going
16 down.

17 COMMISSIONER JOHANSON: Has there been an
18 increased -- I should know this from looking at all
19 that I've read. But has there been an increase
20 overall in consumption over the years for health
21 reasons? And what do you see for going forward what
22 consumption might be? I know it's very hard to
23 predict that, but --

24 MS. DRAKE: Certainly when people look
25 ahead, if you look at longer-term projections of

1 consumption, trends -- and we'd be happy to put more
2 of this on the record post-hearing. There is a hope
3 that increased health consciousness would be one of
4 the factors helping to increase demand for shrimp.
5 And I think there was a study looking forward to, you
6 know, 2020 and 2030 with some predictions of these
7 with, you know, not huge, but some additional demand
8 entering the market if these trends hold true.

9 But, you know, I think the question for our
10 client is whether they're going to be the ones to meet
11 that demand or whether it's going to be the subject
12 imports.

13 COMMISSIONER JOHANSON: Do you still see --
14 and this might be a better -- this might be a better
15 answer by one of the people actually in the industry.

16 But do you see a continued reluctance amongst some
17 consumers to purchase shrimp given the whole BP
18 situation? Or has that abated? Is that no longer an
19 issue?

20 MR. FOLSE: I think -- Chef Folse. I think
21 initially certainly it was a cause. We've done a
22 great job of diminishing the whole conversation with
23 testing and, of course, all of those results we've I
24 think equalized the playing field with that. In
25 answer to the question about consumption, I might

1 mention that the American public has become much more
2 savvy in their own ability to cook at home, wanting to
3 cook at home, entertain at home, and certainly they're
4 looking for unique opportunities to do it. And shrimp
5 and seafood has certainly garnered its place because
6 of Food Network, because of all of the food television
7 that has just made these more accessible, given us
8 more opportunity to showcase how to cook these items.

9 So to answer your question, certainly we've
10 seen growth -- or I should say desire to cook these
11 products and to have these products more a part of
12 everyday diet, and the availability is certainly there
13 as well. So the consumer now has choices to be able
14 to put these proteins in place where they may have
15 used beef, pork, veal, et cetera, prior to the
16 explosion of television, giving them a more -- a
17 higher level of confidence in being able to use these
18 products now that they are available in most of the
19 grocery store shelves.

20 COMMISSIONER JOHANSON: All right. Thank
21 you. Well, that is my last question, but I would like
22 to thank you all for appearing here today. And for
23 those of you who came a pretty long way here, we
24 doubly appreciate it. Thank you.

25 CHAIRMAN WILLIAMSON: Thank you.

1 Commissioner Broadbent.

2 COMMISSIONER BROADBENT: Thank you. Let's
3 see. I had a few more questions here. The staff
4 report indicates that the domestic industry harvests
5 three species of shrimp. Can you give me a sense -- I
6 don't know which witness would be best to answer this
7 -- of the different prices between the three species,
8 what they are and how they compare in price?

9 MR. GIBSON: Yeah. I can probably speak for
10 two that predominate in Louisiana. Predominantly our
11 two species are white and brown. Historically the
12 white shrimp have garnered a premium over the years,
13 but with the advent of aquaculture and the pond,
14 increases overseas in the like product, the vannamei,
15 the vannamei and the other species, we seem to have a
16 lot more competition in the marketplace with a white
17 substitute-type product, thus that white shrimp has
18 reduced in product -- in cost at this time, where our
19 brown shrimp from the offshore fishery, which is not
20 produced in ponds at this time, ends up being more of
21 a premium product, or brings more of a premium price
22 at this time, sometimes 20-30 cents than the white.

23 But I can only speak for two. I'm
24 interested in what the other -- the third one was
25 because there are numerous species, but some of it we

1 don't harvest. There is pink. There is rock shrimp.

2 COMMISSIONER BROADBENT: I'm not sure what
3 our staff report -- they may be thinking of the black
4 -- what is the black tiger?

5 MALE VOICE: Black tiger.

6 COMMISSIONER BROADBENT: But that's an
7 invasive --

8 MR. GIBSON: Correct. The black tiger, that
9 is there, something that we see very few at this time,
10 no marketable numbers. Some vessels don't catch any
11 for months, and then they may catch two or three on a
12 trip, just nowhere near something that's a marketable
13 product for us to --

14 COMMISSIONER BROADBENT: And that -- are you
15 concerned about that growing? I mean, what is the
16 effect of this? Can the species cohabitate with the
17 black tiger?

18 MR. GIBSON: There was a lot of concern
19 right at the beginning. Right now it has kind of been
20 put back on the shelf because in the shrimp being an
21 annual crop and mother shrimp are laying up to a
22 million eggs a year, we're not seeing an overabundance
23 of this shrimp showing it. We're not seeing it
24 increase. We've seen it probably higher two years
25 ago. It hasn't continued to increase. So we don't

1 know that it's getting a foothold and don't know if it
2 was weather conditions or salinities that caused it to
3 reproduce or show up more.

4 We've seen it in-shore and offshore, but not
5 in any abundance at this time. So it's really not one
6 that we're -- we're concerned, but we're watching, but
7 it's not something that we're seeing. They're kind of
8 a most-wanted at our dock. The fisheries have, you
9 know, most wanted. If you get one of these, we want
10 to know what information you can give us about them.

11 So they're not in numbers at this time.

12 COMMISSIONER BROADBENT: Yeah. They're kind
13 of scary looking and big, right? I mean, they're
14 really big.

15 MR. GIBSON: They're not super pretty, but,
16 you know, but they're actually, you know, pretty
17 exotic looking and pretty neat looking, the ones that
18 we see. And I have seen some that were quite large.
19 I've seen some that went up to, you know, a quarter of
20 a pound.

21 COMMISSIONER BROADBENT: So that species
22 that's imported, where is that mostly coming from, the
23 black tiger?

24 MR. GIBSON: The black tigers would be from
25 the Thailand-Indonesia area.

1 COMMISSIONER BROADBENT: Okay. And they're
2 much meatier, right, bigger and meatier? Does that
3 make them hard to compete against?

4 MR. GIBSON: No. I wouldn't say -- they're
5 fairly interchangeable. there is maybe a little
6 different body shape and neck thickness and length and
7 all. Shrimp, I know we grade whites and browns. We
8 have to set our graders separately. But I don't see
9 anything that would make them -- I haven't had enough
10 experience with them handling them in my plants to
11 make that delineation.

12 COMMISSIONER BROADBENT: Okay. So what you
13 were saying about the white and brown was that the
14 white is being more impacted by the imports to some
15 degree. Price is coming down there, less price
16 pressure on the brown?

17 MR. GIBSON: Well, the brown shrimp is a
18 shrimp that originates offshore, the eggs are laid,
19 they come into the marshes. And then as they start to
20 grow, they gravitate back offshore. They don't do
21 well in a pond type environment. I'm unaware at this
22 point in time of anyone actually farming offshore
23 brown shrimp or that species in a pond.

24 COMMISSIONER BROADBENT: So that's only
25 local to the U.S. then.

1 MR. GIBSON: There is some down in the
2 Central and South American. It's a little bit
3 different shade of color. Sometimes it's called a
4 pink shrimp. It has substituted for the domestic
5 brown when there is price differences. But as far as
6 the white shrimp and the vannamei, they have been very
7 conducive to raise in shallow water confined areas,
8 where the brown just have not been at this point in
9 time, to my knowledge.

10 COMMISSIONER BROADBENT: Okay.

11 MR. GOLLOTT: Commissioner, can I add
12 something?

13 COMMISSIONER BROADBENT: Sure.

14 MR. GOLLOTT: The imported shrimp affect
15 both the brown and the white shrimp. There is usually
16 maybe a dime or something like difference in the white
17 or the brown, depending on the demand, and it will
18 swap places. Sometimes the white becomes more in
19 demand. But imports affect both species, all three
20 species, including the pink.

21 COMMISSIONER BROADBENT: Okay. There is a
22 statement in the Respondent's brief, the National
23 Fisheries Institute brief, that says that imports from
24 subject countries provide products to the U.S. market,
25 that domestic processors do not provide or only

1 provide in limited quantities. And the examples they
2 use are black tiger shrimp, smaller peeled shrimp,
3 easy peel shrimp, peeled and deveined shrimp, and
4 tail-on shrimp.

5 If you could address that statement and then
6 also their position that domestic processors use
7 machine peelers, which produce inferior product
8 compared to imported hand-peeled shrimp.

9 MR. GOLLOTT: Commissioner, I personally
10 produce easy peel myself in my own plant, so I don't
11 think that's true. And we -- and I've seen shrimp
12 coming out of our peeling machines that count over
13 300. So I don't think they can peel a smaller shrimp
14 than we can peel.

15 Our Lathram peeling machine has been
16 perfected, and they can produce a shrimp that comes
17 out even with the little tail fins on the meat, you
18 know. So that's just not true.

19 MS. DRAKE: I think, Commissioner, on your
20 site visit you saw some of the different kind of
21 products that were produced at that plant that
22 includes the potential for easy peel and also
23 deveining. We have other producers that produce tail-
24 on. And in terms of the use of machines, I mean, our
25 understanding is that these machines are used all over

1 the world.

2 There may be some hand peeling that happens
3 overseas, but a lot of what you see throughout the
4 market is machine-peeled product, and that doesn't
5 destroy the product. It doesn't rip it up. It
6 doesn't do anything to make it less marketable or less
7 usable.

8 COMMISSIONER BROADBENT: Okay. And then I
9 wanted to give you a chance to respond to Respondent's
10 arguments that competition between subject imports,
11 which are primarily farm-raised, are sold to high
12 volume national purchasers, and domestic shrimp, the
13 wild-caught shrimp, is sold to smaller volume
14 purchasers that cater to consumers who just have a
15 special affinity for the wild caught, sort of
16 resulting in an attenuated competition situation. If
17 you could address that, just what the customer profile
18 is generally.

19 MR. FOLSE: Chef Folse. I think I can
20 address that this way. As a food manufacturer seeking
21 out different varieties, but certainly peeled,
22 deveined, and smaller varieties, it's interesting to
23 note that even though I sit at this table with these
24 friends and fellow Louisianans and having a Louisiana
25 plant hiring over 250 employees to produce value-added

1 foods with seafood, I think it would shock most people
2 to know that these are not my vendors.

3 They certainly supply those products.
4 However, when I'm signing annual contracts with some
5 of the largest food companies that depend on my price
6 consistency throughout the year, it's imperative that
7 I sign contracts that we can survive by over the
8 years.

9 So when I look at these men and women of the
10 industry, those even testifying here today, nothing
11 would please me more as a manufacturer to walk up to
12 one of these companies as a vendor and say, I have a
13 couple of million pounds of product that I need for my
14 marketplace this year, and we have selected your
15 quality, your consistency, your availability of
16 product to us.

17 Unfortunately, we can't do that because of
18 the price. So my major national customers that are
19 buying the millions of pounds of products from us that
20 are required to sustain their restaurants and value-
21 added products in retail demand that we do our job in
22 the price end.

23 So it's never, ever for us a matter of
24 availability. It's never. It's never a matter of
25 quality. It's never a matter of the domestic product

1 being upper end. It's unfortunately subsidies that's
2 keeping the prices unequal in the marketplace and
3 forcing my customer to demand that 12 to 15 cents of
4 difference that make me, whether I like it or not,
5 move toward the imports. It's an unfortunate thing,
6 and it's not what I want to do. It's not the way I
7 like to run my business because I, as most Americans,
8 would love to support our local economies and our
9 American economy.

10 It's not about product. It's not about
11 availability. It's not about quality. It's about
12 pricing.

13 COMMISSIONER BROADBENT: Okay. I appreciate
14 that. And I thank the witnesses for their time and
15 their testimony today.

16 CHAIRMAN WILLIAMSON: Okay. Thank you.
17 Just a couple of questions. Just assuming, if the
18 Commission were to find as a result of the BP payments
19 the condition of the domestic industry was relatively
20 healthy, would this finding preclude a determination
21 of material injury by reason of the subject imports?

22 MS. DRAKE: I don't believe that it would.
23 I think that there would still be the significant
24 volume. There would still be the significant adverse
25 price effects. Going back to 2009, there would still

1 be a depressed level of shipments and sales and market
2 share. All of those negative effects would be there.

3 Even if the Commission were going to look at the BP
4 payments, we believe they should also be looking at
5 the narrowing gross profit margin, the declining and
6 negative operating margin. And if it wanted to also
7 look at the BP payments, we believe that shouldn't be
8 -- we don't believe it should be looked at at all, but
9 it certainly should not be the only indicator of
10 financial health that's there, especially when all of
11 the other indicators of financial health show that the
12 industry is being injured by subject imports.

13 CHAIRMAN WILLIAMSON: Okay. Thank you. My
14 last question is just out of curiosity. And Dr. Veal
15 maybe ought to address this, about use of -- why in
16 the U.S. we don't have farm-raised shrimp farms. I
17 mean, I can see the culture and traditional reasons,
18 but I was just curious if there was anything else that
19 would limit --

20 MR. VEAL: Why we don't have pond-raised
21 shrimp, farm-raised shrimp?

22 CHAIRMAN WILLIAMSON: Yeah, yeah.

23 MR. VEAL: Well, it's a complex set of
24 issues, but primarily it's the cost of doing business.
25 One, waterfront property here in the U.S. is almost

1 prohibitive for any kind of farming operation.

2 CHAIRMAN WILLIAMSON: Okay.

3 MR. VEAL: It would be possible to raise
4 them in tanks, and you do see some isolated instances
5 where somebody will have some tanks in a warehouse. I
6 had a guy in Pennsylvania call me a few weeks ago.
7 But those are -- they're not going to produce enough
8 shrimp to make any difference in the market ever,
9 maybe not even the local market.

10 But the issues are cost of land,
11 environmental regulations, water quality regulations,
12 all of those things that may not exist in another
13 country or certainly don't exist at the level that
14 they do in this country. And it prohibits us from
15 having any wide-scale production.

16 We see some limited production in Texas. We
17 see a little bit of limited production in Florida, and
18 occasionally some in South Carolina. But it's limited
19 to acres, not hundreds of thousands of acres.

20 CHAIRMAN WILLIAMSON: Okay. Thank you. I
21 was just wondering about that. Good. Thank you. And
22 I have no further questions.

23 Commissioner Pearson, any further questions?

24 (No response.)

25 CHAIRMAN WILLIAMSON: Any other commissioner

1 have questions for this panel?

2 (No response.)

3 CHAIRMAN WILLIAMSON: Okay. Does staff have
4 any questions for the panel?

5 MS. HAINES: Elizabeth Haines. Staff has no
6 questions.

7 CHAIRMAN WILLIAMSON: Thank you. Do those
8 in opposition to imposition of the orders have any
9 questions for this panel?

10 MR. CONNELLY: No questions.

11 CHAIRMAN WILLIAMSON: Okay. Thank you.
12 Well, it looks like that should conclude our morning
13 session. We'll just take a lunch break, and we will
14 resume at 2:15.

15 I just want to remind everyone that this
16 room is not secure, and if you have any business
17 proprietary or business confidential information, be
18 sure to take it with you. So we'll see everybody at
19 2:15. Thank you.

20 (Whereupon, at 1:10 p.m., the hearing in the
21 above-entitled matter was recessed, to reconvene at
22 2:15 p.m. this same day, Tuesday, August 13, 2013.)

23 //

24 //

25 //

26

1 state of injury. Viewed accurately, they're not
2 injured at all. Consider my slide one.

3 The domestic producers have manufactured a
4 decline in performance in 2012 as a result of a huge
5 increase in SG&A expenses that they paid for using BP
6 compensation funds that totaled \$108 million. They
7 want you to use their BP-funded SG&A expenses to show
8 them losing money in 2012, but they don't want you to
9 include the BP settlement as operating income because
10 it inconveniently shows that they were healthier than
11 ever last year.

12 That approach is illogical, unfair, and
13 distortive of the real operating results and financial
14 condition of this industry. Combine these facts with
15 other indicia of injury, and their case completely
16 falls apart. Consider slide two.

17 Over the course of the POI -- and bear in
18 mind here I'm using percentage changes in light of the
19 -- several of the things I'll talk about here are
20 actually BPI. Domestic industry production increased.

21 Domestic industry sales volume increased, as did its
22 total value of its sales.

23 Domestic industry market share rose. Their
24 prices rose, including both their AUVs and their
25 pricing product prices. Domestic industry prices

1 undersold more often than they oversold import prices.

2 Their employment numbers are up, and the industry
3 invested in new capacity. This is not your typical
4 affirmative injury case.

5 But let's suspend reality for a moment and
6 accept their rendition of indicia of injury. Assume
7 they are injured. The question then is what caused
8 it. Let's consider subject imports. Assuming subject
9 imports were all the sources the Petitioner originally
10 targeted, here are the facts. See slide three.

11 From 2010 to 2012, subject import volumes
12 fell. Subject import market share fell. Subject
13 import prices rose. And subject import prices
14 oversold more often than they undersold domestic
15 prices.

16 Now, as of a half hour ago, the facts have
17 changed a bit. I don't know if the commissioners have
18 learned of this, but subject imports are now a much
19 smaller universe than they were this morning.
20 Literally a half hour ago we learned that the first
21 and third suppliers, the first and third largest
22 suppliers to this market, Thailand and Indonesia, are
23 now out.

24 The Commerce Department has issued a
25 negative determination for these countries.

1 Critically, this reduces subject import penetration
2 from around 75 percent to less than 40 percent of the
3 market. Total non-subject imports now are about 50
4 percent of the market.

5 Even though the remaining subject imports
6 grew over the POI, so did domestic sales and market
7 share. What is fascinating about this is that it
8 happened while subject import prices declined between
9 2011 and 2012. Consider slide four.

10 Domestic prices rose while these import
11 prices fell, yet they gained market share. The
12 pricing product data show a similar disconnect between
13 domestic and imported product pricing. Product one,
14 for instance, which in our view is the most
15 representative product among all the pricing products
16 by far, given its size -- so consider the trend in
17 particularly the domestic prices. It shows -- and
18 when you're thinking about underselling and
19 overselling, it shows massive import overselling and
20 opposite trends for domestic versus imported product.

21 The connection between domestic import
22 pricing is just not there, nor is there a connection
23 between domestic volume and subject import volume,
24 what is now what we now understand to be subject
25 import volume.

1 Petitioner keeps coming to the Commission
2 claiming to be injured by imports, but the fact is
3 that even when operating at its best, the industry can
4 only service a small portion of demand in this market.

5 They are environmentally and biologically limited by
6 the amount of shrimp available for capture in the Gulf
7 of Mexico.

8 So although the domestic industry's
9 production and sales volumes increased over the POI, I
10 think everyone in the room agrees that these increases
11 reflect the industry's recovery from the effects of
12 the BP oil spill. That recovery puts them nearly back
13 to historical levels. They won't be able to increase
14 their production in shipments much further, as they
15 cannot produce -- they cannot process what can't be
16 fished out of the Gulf.

17 Meanwhile, they can't ignore that their
18 performance has improved from 2010 to 2012, all while
19 the volume of subject import volumes -- subject import
20 volumes are actually quite low now, and although those
21 now -- subject import volumes increased, they are at a
22 much lower level of import penetration. And by the
23 way, again import prices overall are higher than they
24 were in 2010.

25 Whether we look at this as a price case or a

1 volume case, on current injury grounds it's a losing
2 case for the domestic industry. Our sense is that the
3 industry is hanging its hat on its threat claims.
4 They recognize that their current injury case is weak,
5 so they fashioned an argument that all the factors
6 that contributed to a restraint on subject import
7 volume during the POI, including EMS, are somehow
8 already resolved. Therefore they argue exporters from
9 subject countries are ready to pounce on the U.S.
10 market again.

11 This is pure speculation and insufficient to
12 support an affirmative threat determination. First,
13 for the same reasons the industry is not currently
14 injured, it is also not vulnerable. With increased
15 operating income the industry gained from BP and the
16 CDSOA, by the way, this industry is on as solid ground
17 as it has ever been.

18 Second, Petitioner's analysis completely
19 ignores not only record evidence of continued EMS
20 problems in the subject countries, which Censea's Jeff
21 Stern will discuss today. It also ignores, critically
22 important again as of a half hour ago, non-subject
23 imports.

24 With DOC's final determination today,
25 Thailand and Indonesia are out. The presence of

1 fairly traded imports from these large supplying
2 countries will prevent subject imports from having the
3 effect Petitioners claim they will have. So on this
4 score, we think we win both on the BRAC committal
5 analysis as well as on the threat analysis.

6 Furthermore, evidence from the POI
7 undermines Petitioner's theory of threat. Ecuador,
8 Indonesia, and India all increased shipments to the
9 U.S. during the POI, as they did not suffer EMS the
10 way their competitors did. Yet both overall and
11 subject imports still were now slight increase, but
12 their subject imports are far lower.

13 If underutilized capacity -- let's talk
14 about what we were talking about this morning, subject
15 imports as defined as of earlier. If underutilized
16 capacity in these countries really means that imports
17 will flood the U.S. market whenever the opportunity
18 arises, why didn't it happen already? The imports
19 targeted by the petition in this case declined during
20 the POI. Some countries increased their exports to
21 the United States, but these merely sought to replace
22 imports from other sources.

23 Even with underutilized capacity and no EMS
24 issues to hamper their exports, Ecuador, India, and
25 Indonesia could not make up for the decline in imports

1 from other sources. The facts of the POI simply belie
2 the Petitioner's theory. The facts on this record
3 really speak for themselves and compel the conclusion
4 that this is not a winning case for the Petitioners.
5 But some of the commissioners may still be curious.
6 How could it be that a domestic industry with barely
7 over 10 percent of the market -- how could it be that
8 they're not somehow negatively affected by imports?

9 Well, we think we have the answer for you
10 today. Among our witnesses are companies that buy and
11 sell both imported product and domestic product. They
12 will tell you firsthand why domestic and imported
13 products don't compete head-to-head, which explains
14 why this industry's fortunes are tied to things like
15 landings or the BP oil spill, and their own spending
16 decisions rather than to imports.

17 I'll let Warren introduce our panel of
18 industry witnesses, after which we'll hear from our
19 economist, Jim Dougan, and then Jon Freed, who will
20 take a few minutes to explain why imports from China
21 are negligible. Thank you.

22 MR. CONNELLY: Thanks, Matt. We brought
23 with us a panel of witnesses today that we hope can
24 give you a very broad and deep overview of how
25 purchasers see this industry. So I'm going to just

1 give you the order of our witnesses and let them go.

2 So our first witness will be Guy Pizzuti
3 from Publix. Our second witness will be Dino Ortolan
4 from Costco, and he is accompanied by Darby Sorber.
5 Our third witness will be Eric Buckner from Sysco.
6 Our fourth witness will be Jeff Stern from Central
7 Seaway. And then as Matt mentioned, Jim Dougan will
8 speak on behalf of all Respondents, and then Jon Freed
9 may have some brief remarks on behalf of the Chinese
10 Respondent and the negligibility argument that has
11 been raised by the Chinese.

12 So without further ado, we'll let Guy start.

13 MR. PIZZUTI: Thanks, Warren. Good
14 afternoon, Chairman Williamson and fellow
15 commissioners. My name is Guy Pizzuti, and I'm
16 category manager for seafood at Publix Supermarkets.
17 With over 160,000 associates, we are the largest
18 employee-owned supermarket chain in the United States,
19 and we are also one of the top ten supermarkets in the
20 United States. We operate 1,072 locations in the
21 states of Florida, Georgia, South Carolina, Alabama,
22 and Tennessee, and we're excited about our entry into
23 the North Carolina market in 2014.

24 As category manager for Publix, I'm
25 responsible for all aspects of our seafood operation.

1 That would include supplier selection and sourcing,
2 procurement, promotional planning, merchandising
3 planning, specification development, and several other
4 tasks as time permits. I've been with Publix,
5 responsible for seafood, for the past 17 years, have
6 over 20 years of experience in the seafood industry,
7 and I am currently cochair of the FMI Seafood
8 Sustainability Council with the Food Marketing
9 Institute.

10 In my years with Publix, it has not been my
11 experience that the domestic and the imported products
12 compete head to head. In fact, in our business, we
13 view them as two distinct categories that have
14 separate promotional and merchandising plans within
15 our business. Our imported suppliers compete for our
16 imported business. Our domestic suppliers compete for
17 our domestic business. At no point in time do we ask
18 them to compete with each other for our business.

19 And to really look at that, when it comes
20 down to why we have to do that, a company of our size
21 with the volume that we purchase, we have to do our
22 promotional planning well in advance. We can't just
23 on the spot grab product to honor our promotions. So
24 we plan our promotions well in advance. Both domestic
25 and imported products are included in that promotional

1 plan for the course of the year.

2 What that allows my procurement team to do
3 is focus solely on securing the raw material at the
4 quality level necessary, and we define quality by
5 meeting our specification to honor that promotion. So
6 that really frees our procurement team up at that
7 point.

8 Now, we have to go about it in two different
9 ways between the domestic industry and the import
10 industry, or farmed and wild. On the wild side, we
11 work with our suppliers to build inventory. So over
12 the course of the fishing season, they will build
13 inventory for us across the sizes that we use. We
14 currently use eight domestic products. They will
15 build that inventory for us.

16 Once it hits a point that we can honor a
17 promotion, we execute that promotion. We'll pull that
18 product out of their inventory, put it in our
19 warehouse, and we will promote that product. It takes
20 some time for them to build that inventory up. It
21 also adds a layer of uncertainty to our promotional
22 plan because we never know what sizes are going to be
23 available or exactly when we're going to hit that
24 inventory bill date.

25 Outside of that, the expectation we have for

1 our domestic suppliers is they provide a product that
2 meets our specifications and that is competitive for
3 that size and species of domestic shrimp. At no point
4 do we expect them to compete with an imported product.

5 Now, on the imported side, we operate a
6 little bit differently. We work off long-term
7 contract purchasing. Typically 8- to 12-week lead
8 times is what we're working on. It has been my
9 experience that product is readily available and will
10 meet our quality standards through our specification.

11 Like the domestic industry, we held them to
12 the same standard, have the product available that
13 meets our specification, and we ask them to stay
14 competitive for that size and product form within farm
15 shrimp. Again, never do we look for these two to
16 compete side by side.

17 Publix remains and will continue to be a
18 proud supporter of the domestic seafood industry. We
19 are one of the, if not the, largest supporter and
20 purchaser of Florida pink shrimp in the United States.

21 Recently -- it would be three years ago -- we added
22 five new domestic SKUs to our product mix, and over
23 that three-year period our imported sales have
24 declined, where our domestic sales have showed a
25 tremendous increase.

1 In addition to our support of the Florida
2 shrimp industry, we are also strong supports of the
3 Florida grouper industry. We are the only retailer
4 that is 100 percent committed to selling fresh Florida
5 grouper out of our service cases, despite the fact
6 that there are cheaper Mexican imports readily
7 available in the marketplace.

8 There are several factors I'd like to go
9 into that limit our ability to purchase more domestic
10 products. Several of them were mentioned this
11 morning. The first one I'd like to cover is the lack
12 of value-added product availability. We utilize a
13 tremendous amount of peeled and deveined and cooked
14 product. That represents a majority of our product
15 shrimp sales for our company overall.

16 While the domestic market will say they have
17 product available, it is not available in the time
18 frame necessary for our promotions or in the
19 quantities necessary for our promotions so that we can
20 execute that. So there is some availability, but for
21 a company of our size, they would be unable to support
22 that effort.

23 Secondarily is the availability of IQF
24 shrimp that meets our specification. It simply does
25 not exist, and I believe three of the four panelists

1 today mentioned they did not produce IQF product.

2 The last piece is our supplier
3 qualification. We work as advocates for our consumer,
4 and we want to make sure that we're bringing a safe a
5 wholesome product to the marketplace for them to
6 purchase when they come into our stores. We have what
7 we feel is a high but a fair standard that we apply
8 equally across all our suppliers. Our suppliers are
9 required to meet the Global Food Safety Initiative,
10 the GFSI standard for food safety and good
11 manufacturing practices.

12 In addition to that third-party process, we
13 also firsthand visit several facilities around the
14 world and across the U.S. with myself and our
15 corporate quality department to make sure that our
16 suppliers are meeting our expectations for food
17 safety.

18 As a result of those travels over the years,
19 we have been able to authorize less than ten foreign
20 suppliers and only a few domestic suppliers that meet
21 our food safety standards.

22 As I look at the issue today, we're talking
23 about imported and domestic, but in my eyes the real
24 discussion is aquaculture versus wild. And the
25 reality of the situation is aquaculture has inherent

1 advantages over wild harvested product, whether you're
2 talking about production capacity and efficiency or
3 the ability to deliver a quality product at a set time
4 frame within a narrow size range.

5 Those are advantages that simply don't exist
6 in the wild because for the most part you're tied to
7 Mother Nature in terms of the availability on any
8 given day, but also at times even the quality can be
9 impacted because it's a wild harvested product.

10 And again, I appreciate your time, and that
11 ends my comments for this afternoon.

12 MR. ORTOLAN: Good afternoon. My name is
13 Dino Ortolan, and I'm the frozen foods buyer for
14 Costco Wholesale's northeast region. I've held this
15 position for 19 years, and my job responsibilities
16 include category and item development and sourcing of
17 commodities.

18 Costco operates 650 membership warehouse
19 clubs, of which 450 are in 41 U.S. states. We buy a
20 lot of shrimp, mainly from Indonesia, Thailand, and
21 Vietnam. Everything we buy is individually quick
22 frozen, and most of it is peeled. Our members expect
23 the highest quality in every food product that we
24 sell. That is what we give them, and that is one key
25 reason why Costco has been successful.

1 We sell shrimp platters as well as a variety
2 of cooked and raw products from a display case. Over
3 the years we have purchased domestic shrimp, mainly
4 pinks from Florida and brown shrimp from the Texas
5 waters. We would buy more, but we could not find
6 nearly enough of the quality of the shrimp that our
7 customers demand.

8 I know the Petitioners have claimed that
9 domestic wild caught shrimp is interchangeable with
10 imported farm-raised shrimp and competes on the basis
11 of price. This is most definitely not the case with
12 Costco. We see dramatic and longstanding distinctions
13 between those two products.

14 For example, for Costco to buy farm shrimp,
15 once harvested and removed from the pond, our product
16 specification requires the shrimp be ice-chilled to 4
17 degrees centigrade within 10 minutes. This is how we
18 ensure that every shrimp that we buy is absolutely the
19 freshest it can be. Most domestic shrimp fishermen
20 cannot achieve this same standard.

21 Consider the fact that the shrimpers drag
22 their nets along the Gulf, and the shrimp that are
23 caught in those nets get bounced around and damaged
24 while the hours pass. Then once the nets are hauled
25 in, the shrimp sits at ambient temperature on the deck

1 while the crew further processes it.

2 When we explain to domestic shrimp
3 processors what we expect of shrimp farmers, they tell
4 us that is almost impossible to get wild shrimp or
5 brine frozen as quickly as our spec requires. The
6 U.S. facilities we have visited do not meet our
7 standard. A large number of domestic shrimp fishermen
8 processors cannot meet our freshness specification.
9 In fact, when we buy domestic shrimp, we don't hold
10 those processors to this standard. We can't.

11 Due to the handling practices on the boat
12 and in the plants, we find that domestic shrimp lacks
13 consistency from one container or bag to another. For
14 this reason, time, temperature, and quality control
15 becomes even more critical in the production of high-
16 quality shrimp. This is an important distinction
17 between domestic and imported shrimp processing.

18 Imported shrimp can meet our product
19 specifications because of the controlled conditions in
20 which the shrimp is harvested, transported, and
21 processed.

22 We also indicated in our questionnaire
23 responses from each of the characteristics where we
24 found domestic shrimp to be inferior to imported
25 shrimp. But that doesn't mean that we've given up on

1 the domestic shrimp. We are still pursuing domestic
2 suppliers who can meet our standards because we have a
3 lot of members who want wild-caught domestic shrimp.
4 But to say that they are comparable is wrong, and it
5 is equally wrong to say that they compete for Costco's
6 business on the basis of price.

7 We have never looked at farm-raised and
8 wild-caught shrimp side by side and said that we would
9 not buy the wild-caught because it's too expensive.
10 That is just not how we buy shrimp. If wild-caught
11 shrimp is properly handled from the boat to bag, it
12 can be world-class product, and the customers will pay
13 more for it, and Costco and its members benefit when
14 that happens.

15 It makes no business sense for us not to buy
16 domestic shrimp when there is demand for it. But we
17 will not compromise our quality and standards to do
18 it. Also, we don't always buy the lowest price
19 imported shrimp when we are considering two or more
20 potential suppliers. We have found suppliers in
21 Thailand and elsewhere that consistently meet our
22 higher standards. And as long as we continue to do
23 that, we're going to buy from them, even though we
24 might find cheaper product elsewhere.

25 So where is the domestic shrimp going since

1 Costco and many other retailers are frequently
2 reluctant to buy it? We don't know for sure, but we
3 think it's mainly consumed in the Gulf Coast, where
4 locally-caught shrimp is a tradition, and the
5 different taste has a much greater appeal.

6 In conclusion, I hope that I've been able to
7 give you some insights today as to how Costco buys
8 shrimp. From my company's perspective, adding
9 countervailing duties to the price of imported shrimp
10 is not going to do anything to benefit the domestic
11 industry. In fact, all it's likely to do is
12 perpetuate their current operating methods and raise
13 prices to our members. Thank you.

14 MR. BUCKNER: Good afternoon. My name is
15 Eric Buckner. I'm the senior director of category
16 management for seafood in Sysco's corporate office in
17 Houston, Texas. I've been deeply involved with the
18 seafood industry for the last 15 years, and in my
19 current position I manage the seafood department at
20 our Sysco corporate office, and I'm responsible for
21 the entire product assortment within the category.

22 Sysco strongly supports the American shrimp
23 industry. We buy an enormous amount of wild-caught
24 shrimp. It would not surprise me if we are the
25 largest U.S. buyer. Last year we worked with the

1 Louisiana Seafood Promotion and Marketing Board to
2 promote Louisiana wild-caught shrimp. We also buy
3 even more farm-raised imported shrimp, from six of the
4 seven countries that you're investigating today.

5 For this country's largest broad-line food
6 service distributor, we have to do that in order to
7 satisfy the demand of our customers, which includes,
8 restaurants, hotels, healthcare and educational
9 facilities, and institutions. The Petitioners made a
10 point in their brief of trying to use some of our
11 promotional materials to establish that we do not draw
12 meaningful distinctions between wild-caught and farm-
13 raised shrimp. They also claim that our customers do
14 not care about the country of origin that they buy
15 from. This would suggest that they really don't
16 understand how we do business.

17 The Sysco documents that they attached to
18 their brief are promotional materials that do not list
19 the country of origin. However, we don't sell
20 products to customers using these materials. These
21 are product lists. Instead, we have our marketing
22 associates who sit down face to face with our
23 customers. They have with them on their laptops very
24 detailed information about each of the Sysco branded
25 products that we sell, including country of origin,

1 whether the product is wild-caught or farm-raised.

2 So you should not rely on our operating
3 company product list to conclude that the origin or a
4 particular type of shrimp doesn't matter to us or our
5 customers. I can assure you that it matters very
6 much. For that reason, we feel the Petitioners have
7 also mischaracterized the purpose of the statement in
8 our product catalog. That statement is that whatever
9 your choice, tigers, whites, browns, domestic, China,
10 Vietnam, Indonesia, Thailand, Ecuador, cooked,
11 breaded, raw, peeled, Portico has you covered.

12 Well, Portico is Sysco's own house brand,
13 and we're trying to reach as many customers as we can
14 with this brand. And what that statement is really
15 meant to offer is that we do offer something for
16 everyone because we know that preferences vary widely
17 as to species, product form, and country of origin.
18 We sell a lot more domestic shrimp in the Gulf Coast
19 region and on the East Coast, and we want our
20 customers there to know that they can find that shrimp
21 with us.

22 In the West, people largely want farm
23 shrimp. We've got that as well. That's what we're
24 trying to convey with this statement. In fact, the
25 four product lists that are shown in the Petitioner's

1 exhibit represent only 6 percent of our total shrimp
2 volume, with only 4 percent of that coming from
3 domestic suppliers. However, in the Gulf region,
4 which is a much higher percentage of our total shrimp
5 volume, 36 percent of the product is domestic, the
6 point being that our product mix as between domestic
7 and imports varies greatly by each market's
8 preference.

9 So the Petitioners mistake the intent of
10 this statement when they claim that we sell the exact
11 same shrimp to the exact same customers. It's really
12 just the opposite. Preferences do matter, and we have
13 to be able to meet those preferences as much as we
14 can.

15 For example, when it comes to domestic
16 shrimp, we cannot obtain sufficient quantities of the
17 peeled and deveined, tail-on shrimp, or cooked shrimp
18 from the domestic suppliers. We frequently try to buy
19 the value-added shrimp from the domestic processors,
20 but have had little if any success. When this
21 happens, we have no alternative but to look for import
22 sources.

23 In the last year, we underwent a major
24 initiative in category management. For shrimp
25 specifically, we developed a format for an RFP that we

1 now use to source our shrimp, and this RFP specifies
2 for various species, count sizes, volumes, and whether
3 we're seeking price quotes for domestic wild-caught or
4 imported farm shrimp. If we didn't care about whether
5 the product was farmed or wild-caught, then why would
6 we specify exactly what we want?

7 Obviously, it does matter greater to us
8 because it matters greatly to our customers. In
9 summary, we view farmed and wild-caught shrimp as
10 different products. We prefer to buy both. That
11 doesn't mean that they're the same thing. If you vote
12 in favor of the Petitioners, you will not strengthen
13 the domestic industry in our opinion. They will get
14 stronger by engaging in more of the types of
15 promotions that we did in conjunction with Louisiana
16 last year.

17 Our questionnaire shows that we buy every
18 pound of Gulf shrimp that we can, and that won't
19 change as long as our suppliers can continue to
20 provide us with the products that our customers
21 demand.

22 This concludes my remarks, and I look
23 forward to your questions.

24 MR. STERN: Good afternoon, Commissioners.
25 My name is Jeff Stern. I'm the vice president of

1 purchasing for Censea, Inc. Censea is a Chicago-based
2 importer and distributor of frozen seafood, primarily
3 shrimp. We source shrimp from 10 different countries,
4 and we have hundreds of customers throughout the
5 country. We sell to restaurants, distributors,
6 supermarkets, wholesalers, and processors.

7 Censea's business model is straightforward.

8 We aim to provide our existing customers and
9 potential customers with the best quality seafood at
10 the best possible price. This is the approach we have
11 taken long before antidumping duties were issued, and
12 this is the approach we will follow regardless of the
13 outcome of this investigation.

14 While I testified before the Commission at
15 the sunset review in 2011, I said that Censea
16 purchased very little domestic shrimp because we were
17 unable to secure the volume and quality that our
18 customers require. This has not changed in the past
19 two and half years. Rather we continue to depend on
20 suppliers in Indonesia, Vietnam, and other countries
21 to provide shrimp throughout the year that is
22 consistent from one container to the next.

23 I cannot emphasize enough the importance of
24 consistency to our customers. Our restaurant chain
25 customers want the same size and species of shrimp

1 with every order because their customers demand
2 consistency from plate to plate and the ability to
3 serve the same shrimp anywhere in the country or the
4 world. They often model -- use that model as a basic
5 part of their business.

6 So we have to have -- we have to be sure
7 that the quality and consistency do not differ from
8 load to load and from country to country. This means,
9 for example, no soft shell, no broken pieces, properly
10 trimmed throat meat, and no black spots.

11 When I appeared here last time, the U.S.
12 industry was reeling from the Gulf oil spill. Now
13 Censea and many other importers face their own crisis
14 because of EMS, which has spread rapidly throughout
15 Asia since 2009.

16 Thailand has suffered the most from EMS so
17 far. Thai exports to the United States have fallen
18 substantially, by over 50 percent as compared to two
19 years ago. This has caused a real shortage in our
20 supply, especially our supply of cooked shrimp and
21 small peeled shrimp. It looks to us like the
22 situation in Thailand will get worse before it gets
23 better.

24 It took over three years to find the cause
25 of EMS, which was discovered this past April. But

1 there is no known cure for it yet, although various
2 solutions are now being tried. No one knows how long
3 it will take for Asian supplies to recover. We are
4 extremely concerned about the EMS situation. We have
5 been unable to supply customers that we have served in
6 the past, and we have lost opportunities to expand our
7 business.

8 We have turned to suppliers in India, pushed
9 our suppliers further in Indonesia, and have even
10 turned to Bangladesh and the Philippines to make up
11 for the shortfall. With no solution for EMS in sight,
12 world shrimp prices will escalate even further due to
13 the shortages.

14 Turning to domestic shrimp is not a
15 realistic option for most of our customers or for us.

16 Our customers seem to strongly prefer farm-raised
17 shrimp. They don't see wild-caught shrimp as an
18 acceptable long-term solution. The quality of
19 domestic shrimp varies widely, and does not have the
20 flavor profile or the year-round availability that
21 many of our customers require.

22 For example, I recently asked a domestic
23 processor if he could sell us smaller counts of peeled
24 shrimp. He said it was too early in the season for
25 him to provide any assurance about the quantity that

1 they could supply, and if we wanted the product IQF as
2 opposed to block-frozen, that it would be even more
3 difficult. We found that this is not unusual. In my
4 experience, domestic suppliers cannot produce IQF
5 peeled and deveined, tail-on products, and they have
6 limited capacity to freeze IQF in general and to
7 produce cooked shrimp in the form the markets require.

8 For these reasons, we rarely if ever
9 encounter a competition from domestic wild-caught
10 shrimp. Certainly there are customers out there that
11 would rather buy domestic product or will consider
12 both. Smaller and medium-sized buyers may be more
13 open to switching from imports to domestic, or the
14 other way around. But that is not typical in our
15 experience.

16 Even with Thailand's current problems, there
17 is still a fair supply of shrimp throughout the world.

18 But it could easily be two, three, or even four years
19 until we see Asian production recover sufficiently
20 from EMS. Censea's suppliers tell me that Asian
21 shrimp farmers are hesitant to stock their farms with
22 densities for fear of the shrimp dying before they
23 reach a marketable size.

24 Banks are hesitant to provide loans to
25 farmers for fear they won't be repaid if the shrimp

1 die before growing to a marketable count. We are also
2 very concerned about rapidly growing demand in Asia,
3 particularly in China, which is already hurting our
4 ability to maintain adequate supply. Chinese demand
5 is so strong and still growing, that Chinese buyers
6 are importing unprecedented quantities of shrimp from
7 other countries, like Ecuador and India.

8 As economies in other countries improve,
9 they will consume more seafood at prices comparable to
10 U.S. prices. The added demand outside the U.S.
11 coupled with declining imports has caused prices in
12 the U.S. market to surge. For example, one of our
13 best selling items is 16-20 count, peeled and
14 deveined, tail-on shrimp. We listed this item in our
15 January price list at 5.60 per pound. Today our list
16 price is 8.50 per pound, which is an increase of over
17 50 percent.

18 Another top seller is a 31-40, peeled and
19 deveined, tail-off vannamei shrimp. The price in
20 January was 4.65. The price today is 6.55, a 40
21 percent increase. It is difficult to say whether U.S.
22 consumption will increase or decrease in the next two
23 or three years. Frankly, we are in uncharted
24 territory.

25 However, regardless of demand trends,

1 additional duties will not affect U.S. supplies or
2 prices. The U.S. industry's experience will be the
3 same as it was when antidumping duties were imposed.
4 These duties have had virtually no effect on the U.S.
5 industry in pricing.

6 World shrimp markets adapt to changing
7 situation in consuming countries. Shrimp from new
8 sources will fill any gaps in supply from covered
9 countries. Imported farm-raised shrimp has a stable
10 presence in the U.S. market for many years, regardless
11 of weather, disease, business cycles, or even the
12 recession.

13 If imports decline in the future, it will
14 not be because of new duties. There will always be
15 suppliers -- and there will always be suppliers in the
16 world ready to meet U.S. demand.

17 This completes my testimony. Thank you.

18 MR. DOUGAN: Good afternoon. I'm Jim Dougan
19 of ECS. As laid out by Mr. Nicely, and as supported
20 by the industry witnesses' testimony, the record in
21 this case overwhelmingly supports a negative
22 determination. The domestic industry is not currently
23 suffering material injury, and it is not threatened
24 with future injury.

25 First, with respect to Petitioner's argument

1 that the Commission should extend the POI back to
2 2009, the reason this request arises is because of the
3 BP oil spill. It was an enormous market shock, and
4 hopefully a once-in-a-lifetime event.

5 Essentially, Petitioners are asking that the
6 Commission consider conditions pre-oil spill as a
7 basis for looking at current performance. As Ms.
8 Drake said this morning, you have to look at trends in
9 the context of the overall market. But the question
10 is, what is the most reliable guidance as to that
11 context.

12 Often the Commission only has the first year
13 of the POI from the prelim phase for data for a given
14 industry. But here, for this product, in this
15 industry, the Commission has a long track record from
16 which to analyze data. That is what I've done in my
17 presentation by showing the 2005 to 2009 averages from
18 the first sunset review.

19 The selection of any single-year comparison
20 is problematic, as a single year may not be
21 representative of the context of the overall market.
22 First, it's because of the annual variation in
23 landings and shipments. Petitioners have selected the
24 2009 data, which shows volume trends that are
25 favorable to their case. U.S. shipments in that year

1 were between 150 and 160 million pounds, depending on
2 what data source you used from the Commission record,
3 which looks large and would show a decline based on
4 current volume of around 140 million pounds.

5 But if you were to look at 2008, just one
6 year before, it would show the opposite. Shipments
7 that year were around 124 million pounds, which is low
8 relative to the current level of shipments. And this
9 is just natural variation that's attributable to
10 biological factors. So again, relying on one single
11 year may not be a reliable guidance.

12 The same is true with respect to financial
13 performance, and especially true with regard to 2009.

14 Petitioners would like the Commission to use the
15 benchmark of the operating margin of 1.8 percent from
16 the prelim phase. But the operating margin for 2009
17 reported in the sunset review was 0.9 percent, which
18 is essential identical to the industry operating
19 margin in 2010 and 2011 in this case.

20 So which margin is the more reliable
21 reference point? Both are influenced by the
22 composition of the processors who respond to the
23 questionnaires, and this reduces the reliability of
24 any one year.

25 So if the Commission wishes to compare the

1 current POI and performance for the industry to the
2 pre-oil spill levels, a multiyear average would
3 provide more reliable guidance.

4 Now, with respect to the indicia from the
5 current POI, looking at volume, over the 2010 to 2012
6 period, the domestic industry's production increased
7 by 13 percent. As shown in the confidential
8 prehearing staff report, U.S. shipments and market
9 share also increased by substantial amounts over the
10 period. This is not a case in which the industry can
11 credibly claim to have been able to capture higher
12 volumes and greater market share but for the effects
13 of subject imports.

14 As the Commission is well aware, the
15 domestic industry's production and sales volumes are
16 determined by biological factors, that is, by how many
17 shrimp can be harvested from the Gulf of Mexico and
18 the South Atlantic. Consequently, the domestic
19 industry's shipment volume and market share have been
20 remarkably consistent since at least 2005.

21 As shown on slide one, domestic shipments
22 from 2005 to 2009 averaged 140 million pounds, and
23 domestic shipments during the current POI are
24 consistent with this average. After a drop in 2010,
25 owing to the effects of the BP oil spill, shipments in

1 2011 rose to 140 million pounds, essentially
2 equivalent to the 2005 to 2009 historical average.
3 While 2012 shipments are confidential, I can say that
4 they remained at a similar level.

5 As shown at slide two, apparent U.S.
6 consumption of shrimp has remained stable at 1.2
7 billion pounds, both over the 2005 to 2009 period and
8 during the current POI. Similarly, as shown at slide
9 three, the industry's market share averaged 11.1
10 percent between 2005 and 2009, and varied by only 1 or
11 2 percentage points from the average during that time.

12 The BP oil spill in 2010 led to a drop in
13 U.S. processors' market share to 9.6 percent, but by
14 2011 it had recovered to a level of 10.8 percent,
15 which is comparable to the historical average. Again,
16 2012 market share data are confidential, but I can say
17 that domestic industry market share continued its
18 upward trend.

19 The evidence therefore suggests that for the
20 reasonably foreseeable future, the domestic industry's
21 U.S. shipments will likely be between 140 and 150
22 million pounds, and its market share will be roughly
23 10 to 12 percent, regardless of the volume and trends
24 in imports.

25 Petitioners have argued that their capacity

1 utilization figures are low, but the Commission should
2 give this argument little or no weight. Even allowing
3 for the necessity to accommodate processing needs at
4 peak harvest times, idle capacity resulting from total
5 capacity figures of 500 million pounds is not evidence
6 of volume injury when well-known biological factors
7 restrict industry production to roughly 150 million
8 pounds.

9 Subject import volume is simply not a
10 significant causal factor in the Commission's injury
11 assessment. Now, since the Commerce's final
12 determination, some of the numbers in our earlier
13 analyses have been updated. But as Mr. Nicely said,
14 subject import penetration has now dropped below 40
15 percent of the market, and below non-subject imports'
16 market share.

17 Whatever increases by any subject import
18 sources over the POI, they came at the expense of non-
19 subject imports, not the domestic industry, whose
20 share increased over the POI, and is limited in any
21 case by the biological factors.

22 With respect to price, there are likewise no
23 adverse price effects by reason of subject imports.
24 Again, while the totals on the following slides will
25 change based on the composition of countries in the

1 Commerce's final determination, the picture will
2 remain broadly similar as to what is shown in these
3 slides.

4 First, subject imports oversold domestic
5 producers in 54 percent of comparisons. See slide
6 four. Moreover, the average margin of overselling at
7 34.6 percent was more than double the average margin
8 of underselling at 16.7 percent. At the prelim, as
9 shown in slide five, subject imports oversold domestic
10 producers in 60 percent of comparisons, an average
11 overselling margin of 21.9 percent, nearly double the
12 average underselling margin of 12.6 percent.

13 Petitioners then asked staff to change the
14 selection of pricing products between the prelim and
15 the final to exclude the pricing products, prelim
16 product three, in which subject imports were
17 overselling the domestic industry in an overwhelming
18 84 percent of comparisons, and to include two new
19 pricing products, which they no doubt hoped would show
20 the reverse.

21 The results in aggregate, however, are
22 pretty much the same as at the prelim, as seen back on
23 slide four, subject import overselling in a majority
24 of comparisons by average margins far greater than
25 average underselling margins. That the underselling

1 results remained so consistent between the prelim and
2 the final, even after the change in the pricing
3 products, should give the Commission confidence that
4 the pricing data are robust and that they provide
5 strong evidence that persistent or injurious
6 underselling did not occur.

7 Petitioners claim that the frequency of
8 underselling increased late in the POI, but they
9 engineer this increase, one, by using data other than
10 those collected by the Commission; and two, by
11 starting their analysis from the quarter representing
12 the absolute trough of underselling frequency, and
13 then counting up from there.

14 A view of the entire POI using the
15 Commission's pricing data is instructive in these
16 respects and will be provided in Respondent's post-
17 hearing brief.

18 Second, domestic industry prices increased
19 significantly during the POI. U.S. commercial
20 shipment AUV increased from \$3.61 a pound to \$3.88 per
21 pound, or 7.5 percent. Average unit net sales value
22 increased from 3.70 a pound to 3.81 a pound, or 3
23 percent. And as shown at slide six, five out of the
24 seven pricing products increased by double-digit
25 percentages over the POI.

1 The only pricing product that we can discuss
2 publicly and that did not experience this robust
3 double-digit price growth over the POI, product one,
4 was oversold by subject imports in 88.5 percent of
5 comparisons, by an average margin of 58.4 percent.
6 Therefore, the price declines shown there for product
7 one cannot have been caused by subject imports. The
8 confidential analysis of product seven is presented in
9 our prehearing brief. For these reasons, Petitioners
10 do not even really contend that price depression has
11 occurred.

12 Third, the domestic industry is suffering no
13 price suppression by reason of subject imports. As
14 shown at slide seven, its COGS-to-sales ratio remained
15 essentially flat between 2010 and 2012 at 92.2 percent
16 to 93.3 percent, and highly consistent with historical
17 experience, wherein the 2005 to 2009 average ratio was
18 92.2 percent.

19 Finally, there were a truly insignificant
20 amount of lost sales and lost revenue allegations by
21 the domestic industry. And after hearing the
22 testimony of the industry witnesses on this panel,
23 it's easy to understand why. It's not because of the
24 reasons outlined in the domestic industry declarations
25 attached to the Petitioner's prehearing brief. It's

1 because they don't actually compete that much head to
2 head.

3 So with no adverse volume effects and no
4 adverse price effects, the only record evidence that
5 reasonably can be said to show any sign of injury is
6 the domestic industry's decline in operating profit
7 margin from 0.9 percent in 2010 to -3.6 percent in
8 2012. See slide eight.

9 But a closer examination shows that the
10 decline really only happened in 2012. Domestic
11 producers' operating margins of 0.9 percent in 2010
12 and 0.8 percent in 2011 were actually higher than
13 their 2005 to 2009 average of 0.4 percent, which means
14 they cannot really be viewed as evidence of injury.

15 The Commission might wonder why the
16 industry's only real decline in financial performance
17 came in 2012, not in 2010, when it was suffering the
18 effects of the BP oil spill, and subject import market
19 penetration was at its highest point of the POI, but
20 two years later, in 2012, when subject import volume
21 and market share were at much reduced as an overall
22 comparison to non-subjects, and after enough time had
23 passed for the industry to begin receiving its
24 reimbursement payments from BP for the lost operating
25 profits in the aftermath of the oil spill.

1 The reason is simple and is illuminated
2 clearly in section 6 of the prehearing staff report.
3 The domestic industry's 2012 decline in operating
4 profit was driven almost entirely by an increase in
5 its SG&A expenses. As discussed in the staff report,
6 these expenses were largely funded specifically with
7 BP oil spill compensation, which totaled \$108 million
8 over the POI.

9 The implication is that these expenses were
10 charged against operating income, yet funded with non-
11 operating income. For this reason, the staff report
12 says that to the extent that some expense items
13 included in operating results are connected to, quote,
14 "other income," end quote, reported below operating
15 results, the Commission's traditional division between
16 operating and non-operating other categories may be
17 somewhat less meaningful.

18 The Commission cannot look at operating
19 income as reported in isolation as an indicator of
20 injury. In fact, Respondents contend that the BP
21 compensation payments are for the purposes of the
22 Commission's determination operating income, and should
23 be treated as such, which is consistent with GAAP.

24 When the BP compensation payments are
25 considered, the Commission will find that the domestic

1 industry's operating income margin increased from 3.5
2 percent in 2010 to 8.2 percent in 2012. Both the
3 level of the operating income margin and its upward
4 trend are counter to the position that the domestic
5 industry is suffering injury of any kind.

6 Other indicia provide further rebuttal to
7 the domestic industry's claims of injury. See slide
8 nine. Employment increased from 1,980 PRWs in 2010 to
9 2,050 PRWs in 2012, and hourly wages increased by 6.1
10 percent over the same period.

11 Moreover, as shown at slide 10, capital
12 expenditures increased by 40 percent from 2010 to
13 2012, and exceeded depreciation in every period, even
14 2010, indicating that the industry has invested and
15 continues to invest in its future.

16 In summary, the evidence before the
17 Commission strongly rebuts the contention that the
18 domestic industry is injured at all, and it shows that
19 any injury that it may have suffered cannot be
20 attributed to subject imports.

21 What is more, the record evidence
22 demonstrates that the domestic industry is not
23 threatened with future material injury by subject
24 imports. With overselling in a majority of instances,
25 no price depression, no price suppression, there is no

1 evidence that subject imports will enter the U.S.
2 market at injurious prices. With the level of what is
3 now subject market share, there is no evidence that
4 subject imports will surge into the market at
5 injurious volumes.

6 Whatever the level of supposedly available
7 capacity among foreign producers, in aggregate, they
8 had significant third-country export markets. Those
9 will continue to be significant. And in any event,
10 this available capacity existed throughout the POI,
11 and producers in subject countries did not use it to
12 increase their subject exports to the United States
13 market in a significant fashion. In fact, they may
14 have done the opposite.

15 Finally, thanks at least in part to the
16 funds available from the BP oil spill, the domestic
17 industry is not vulnerable and has increased its
18 capital investment substantially over the POI. In
19 summary, the domestic industry is not threatened with
20 injury. Thank you.

21 MR. FREED: Good afternoon. I am Jon Freed
22 of Trade Pacific here on behalf of Zhanjiang Guolian
23 Aquatic Products Co., Ltd., the largest exporter of
24 frozen shrimp from China to the U.S. As presented by
25 the witnesses this afternoon, Guolian agrees that the

1 allegedly subsidized imports targeted by this petition
2 have not had a material adverse impact on the domestic
3 industry and that evidence available for the final
4 phase of this investigation supports a negative
5 determination by the Commission.

6 That said, in our brief, we focused on one
7 issue, that imports from China are negligible. I will
8 keep my comments brief. In the prehearing report, the
9 staff examined data for the 12-month period that
10 preceded the filing of the petition and determined
11 that subject imports from China account for 3.2
12 percent of all imports. This percent share was
13 calculated using the quantity of imports into the U.S.
14 under 34 different harmonized tariff schedule
15 classifications, i.e., the Commerce statistics.

16 But information on the record of this
17 proceeding indicates that the Commerce statistics for
18 imports from China do not accurately reflect the
19 actual quantity of subject imports from China. As
20 described in our brief, the CINF data, when considered
21 together with the presence of the anti-dumping order
22 on frozen shrimp from China, makes it relatively easy
23 to see that the Commerce statistics include nonsubject
24 merchandise.

25 This morning, I think one of the first

1 questions asked was how does the antidumping order --
2 how should it influence who we analyze this
3 investigation. We submit that the presence of the
4 dumping order is relevant or at least useful to make a
5 negligibility determination in this case. I'll make
6 two points. First, the dumping order again China had
7 resulted in the drastic shrinking of eligible
8 exporters to the U.S.

9 For the 12-month period examined, all but
10 two or three exporters had dumping rates of 113
11 percent. Thus, we know the subject import quantities
12 by examining the two to three exporters that did have
13 rates that would have enabled them to ship to the
14 United State. Second, the customs data should
15 identify imports as either subject Type 3 entries or
16 nonsubject Type 1 entries, so in this case, we should
17 determine the quantity of subject imports by looking
18 at Type 3 entries from China.

19 We respectfully urge the Commission to
20 carefully examine the available data in reaching its
21 negligibility determination. I welcome any questions
22 on this issue. Thank you.

23 MR. CONNELLY: That completes our
24 presentation. We'll be happy to take the Commission's
25 questions.

1 CHAIRMAN WILLIAMSON: Okay. Thank you. On
2 behalf of the Commission, I want to express our
3 appreciation to all of the witnesses for taking time
4 from their businesses to come to present their
5 testimony this morning. This afternoon, we'll begin
6 with the questioning with Commissioner Pearson.

7 COMMISSIONER PEARSON: Thank you, Mr.
8 Chairman. I also welcome all of you. I look forward
9 to your answers. Going to the issue of how the BP
10 payments might be factored into the case, is it
11 necessary that we count them above the line as part of
12 operating income, or in the alternative, would it be
13 sufficient just to note that there are accounting
14 issues that are affecting operating income negative in
15 2012 and kind of leave it at that, so in other words,
16 discounting the operating income in 2012 rather than
17 formally shifting the BP payments from below the line
18 to above the line?

19 MR. CONNELLY: Well, it is not necessary as
20 a legal matter for you to treat it as operating
21 income. Our concern, of course, was that the
22 precedence that have been cited by the other side and
23 relied on very heavily by them would cause you not to
24 consider the information at all. We would like the
25 information considered. We think it is completely

1 relevant, but to the extent that it matters to the
2 Commission's analysis as to whether or not it's
3 treated as operating income, then we feel like it
4 absolutely should be treated as operating income.

5 I want to make one other point. The
6 Petitioners have not stated that GAP prohibits the
7 treatment of the BP money as operating income. What
8 they have said is that GAP permits the treatment of
9 the BP money as nonoperating income, but as far as we
10 understand it, GAP permits the treatment of those
11 funds as operating income. It's just an elective
12 choice that was made.

13 Now, with respect to the issue of punitive
14 damages, I learned something today. I did not know
15 that. We'd like to see some documentation of that.
16 We'd like to understand the formula. We think the
17 Petitioner have avoided this issue, and so I think
18 we're entitled to have in their post-hearing brief a
19 complete explanation of how the money was calculated.

20 COMMISSIONER PEARSON: Let me clarify. Are
21 you saying that on the basis of this record you're not
22 certain whether the amounts of BP payments included by
23 the domestic industry include both the compensatory
24 and the penalty monies?

25 MR. CONNELLY: No, Commissioner Pearson.

1 What I'm saying is they said that the payments they
2 got had two components: Fifty percent economic
3 damages, 50 percent punitives. That was news to us.
4 We don't know that. It would just be nice to
5 understand what the basis for that assertion was.
6 We'd like to understand the basis for their assertion
7 that there is a punitive damage component of the BP
8 payments.

9 There's one other point. There is a
10 settlement agreement that purports to resolve all of
11 the BP claims that have been filed in litigation.
12 That settlement was approved by the federal judge in
13 Louisiana in December of last year. There is some
14 discussion of that in their testimony this morning.
15 It's not clear to us if the BP payments that have been
16 made and reported so far are from the Gulf Coast
17 claims facility which is separate from the settlement
18 or whether there is some money from the settlement
19 agreement, which is a separate document approved by
20 the Court, so we'd like some clarification of that,
21 too.

22 COMMISSIONER PEARSON: Just to clarify,
23 you're thinking there might still be some money coming
24 that's not yet on this record?

25 MR. CONNELLY: Absolutely. Absolutely.

1 Their brief says that, and their testimony this
2 morning as I heard it was, it is uncertain and unknown
3 as to how much money might be forthcoming because the
4 settlement agreement is being contested. BP is
5 concerned about various aspects of the implementation
6 of the settlement, and so it may not be the case that
7 they know right now how much money they are going to
8 get or when, but we do know the formula.

9 That's in the settlement agreement, and if
10 that settlement agreement ultimately is implemented,
11 we know that the shrimpers, the shrimp fishermen, get
12 a multiple of eight times their economic losses, and
13 the processors get a multiple of three times their
14 economic losses. Now, they're being represented, the
15 processors, by counsel present in this room, so
16 they're in a good position to explain to you how this
17 works, the processors who are represented by counsel
18 in this room are seeking more than three times the
19 multiple, so we think the record just needs some more
20 clarification in that regard.

21 That settlement agreement, by the way, is
22 over 1,000 pages long. It's pretty complication.

23 COMMISSIONER PEARSON: Please then don't put
24 the whole thing on the record. Mr. Nicely, you had
25 something to say, and you were too gracious to

1 interrupt your fellow counsel, so please go now.

2 MR. NICELY: I just wanted to point out I
3 don't think you can divorce the discussion of the BP
4 compensation fund from their treatment of SG&A. You
5 have to treat them consistently, I guess, is my point.
6 I think you ought to be considering them both above
7 the line, but if you're going to consider the BP
8 compensation funds below the line, then let's remove
9 those extraordinary SG&A expenses that they reported
10 and that created the losses that they complain about.

11 COMMISSIONER PEARSON: Okay. Thank you. So
12 in case we get to an analysis of threat, would it be
13 correct to find that the domestic industry is
14 vulnerable for one reason or another?

15 MR. CONNELLY: Absolutely not. We don't
16 think there is any threat. Now, obviously the threat
17 analysis -- well, first of all, you can throw out all
18 their analyses in their brief because every single one
19 of them --

20 COMMISSIONER PEARSON: Just to clarify.

21 MR. CONNELLY: Sorry.

22 COMMISSIONER PEARSON: Assuming we vote
23 negative on present injury, we're required to analyze
24 threat, so for purposes of threat, if we get there,
25 should we find the domestic industry vulnerable?

1 That's what I was trying to say.

2 MR. CONNELLY: Right. The answer is no. We
3 don't think you should find the domestic industry
4 vulnerable for basically all the reasons that we have
5 given you as to what their current condition is. This
6 industry is in the strongest position it has been in
7 in memory.

8 COMMISSIONER PEARSON: Okay. Those of you
9 who are involved in the business of purchasing shrimp,
10 have you ever had a shrimp processor tell you when
11 discussing a short-term contract that they needed a
12 higher price to ensure that they could actually
13 purchase shrimp so that their competitor didn't get
14 it? They need to buy it on the dock and pay enough
15 money so that they could control it rather than it
16 going to their competitor? Have those sorts of
17 considerations ever entered into their discussions
18 with you?

19 MR. PIZZUTI: I'll step up on that one. Guy
20 Pizzuti with Publix. I've never had that happen to me
21 on the shrimp side of the business, but I have had
22 that on other domestic products where if we've got a
23 large grouper add where my primary suppliers had to go
24 out and fight against another dock 50 miles down the
25 road. Yes, that has happened, but I've never had that

1 occur on the shrimp side.

2 COMMISSIONER PEARSON: Mr. Buckner?

3 MR. BUCKNER: No, we have not seen that in
4 relation to the dock prices.

5 COMMISSIONER PEARSON: Do you fairly
6 commonly seek short-term contracts with domestic
7 processors to get enough supply so that you can do one
8 of your promotions, or are you buying just spot?

9 MR. BUCKNER: On behalf of Sysco, we source
10 their product for periods of time and award to
11 different suppliers based on the RFP that I mentioned
12 in my comments, and those RFPs are for a duration of
13 extended periods of time with specific formulas for
14 our cost.

15 COMMISSIONER PEARSON: Okay. But just in
16 terms of our understanding of things, would that be
17 considered then spot purchases under the RFP, or is
18 that a contract by its nature?

19 MR. BUCKNER: It is a contract.

20 COMMISSIONER PEARSON: And would it be short
21 term as we have it defined here, or would that be a
22 longer-term contract?

23 MR. BUCKNER: It would be longer term.

24 COMMISSIONER PEARSON: So 12 months more or
25 less?

1 MR. BUCKNER: And potentially longer.

2 COMMISSIONER PEARSON: Okay. Mr. Pizzuti?

3 MR. PIZZUTI: Yes. Again, with our aspect
4 of how we handle domestic shrimp, as I mentioned in
5 the testimony because of our volume requirements, we
6 work with our suppliers to build that inventory over
7 time. Now, the way we will handle that is a cost
8 average at the time it is harvested and put away and
9 then to the end time, so if they're building inventory
10 for three months, we will ultimately purchase that off
11 a cost average over that time.

12 COMMISSIONER PEARSON: Okay. So you are
13 taking all or part of the price risk on that product
14 as they're building inventory?

15 MR. PIZZUTI: Yes, we will. Yes, we will,
16 and once it gets to that quantity level that we need,
17 we purchase 100-percent of that product.

18 COMMISSIONER PEARSON: Okay. I'm out of
19 time, but I'm curious then about the pricing
20 arrangement in the contract, how you negotiate the
21 contract such that they can do business and know that
22 they're passing through to you at least some of the
23 price risk?

24 MR. PIZZUTI: Again, with that, we'll work
25 primarily off cost plus formulas so they know what

1 they pay the vessel. They know what their processing
2 costs are. We negotiate a profit that's comfortable
3 for both sides of the business, so if they're paying
4 \$3 today and \$3.50 a month from now and \$4.00 down the
5 road, that just becomes a blended cost in that total
6 purchase at the end of the day.

7 COMMISSIONER PEARSON: Okay. Thank you.
8 Any other comments directly on that issue? Okay.
9 Thank you very much. Mr. Chairman, my time has
10 expired.

11 CHAIRMAN WILLIAMSON: Okay. Thank you.
12 Commissioner Aranoff?

13 COMMISSIONER ARANOFF: Thank you, Mr.
14 Chairman. Welcome to this afternoon's panel. We
15 appreciate your all being here this afternoon. A
16 number of the arguments that you all have presented
17 this afternoon and that were presented in your brief
18 go to the issue of attenuated competition between the
19 domestic product and the subject imports. These are
20 all issues that have come up every time that that
21 Commission has considered this product ever since the
22 original investigations.

23 So I wanted to try and pin you down on
24 whether there is new information in the record of the
25 current investigations that should lead the commission

1 to reconsider it's prior findings that domestic and
2 imported shrimp do compete head to head in the market
3 and that subject import prices do affect domestic
4 shrimp prices or alternatively to tell me whether you
5 are asking the Commission to reconsider its findings
6 based on essentially the same evidence?

7 MR. NICELY: Commissioner, this is Matt
8 Nicely. I think that the evidence on the record in
9 this particular investigation is stronger than it's
10 been in the past, and I've been involved in all of
11 them all the way back to the original investigation,
12 stronger than it's been in the past with respect to
13 differing trends, for instance, pricing. For
14 instance, what I showed up on the screen where import
15 pricing even declined from '11 to '12, and yet
16 domestic prices went up, the volume distinction, the
17 domestic volumes increasing while the total subject
18 declined.

19 Even now, that subject is different, the
20 point is the countries that they targeted in this
21 investigation overall showed a decline, yet they
22 gained, and they gained, but they gained while the
23 pricing was changing as well, so I think the other
24 aspect of this that's critical is that we have with us
25 today witnesses that we didn't have with us before.

1 The fact that you got two, three significant
2 purchasers with us telling you, explaining to you some
3 of the attenuated competition points that we've talked
4 about before but which we haven't had the support of
5 certain witnesses to talk with you, they weren't with
6 us before, and I think that's different.

7 COMMISSIONER ARANOFF: I do see that as a
8 difference, and it does raise one question in my mind
9 which is I have a panel of very persuasive and
10 engaging domestic industry witnesses who tell me that
11 the people they are trying to sell to are asking them
12 to meet import prices, and I have a panel of very
13 informed and interesting witnesses here again who tell
14 me that they never do that, that's not the way the
15 market works, at least from their perspective, and I
16 think they're large enough to represent some decent-
17 sized percentage of domestic consumption. How am I
18 going to resolve the credibility issue? How am I
19 going to know who to believe?

20 MR. CONNELLY: I don't think it's a
21 credibility issue, Commissioner Aranoff. I think
22 there are honest disagreements. I think there are
23 differences. I don't think it is possible to conclude
24 that there isn't attenuation. We've struggled with
25 quantifying it. That is certainly the case. We have

1 tried in every way to quantify it. It has been
2 quantified in certain ways. It's been quantified with
3 respect to geographic differences.

4 It's been quantified, I think, with respect
5 to purchaser preferences to some extent, and it's
6 certainly been -- not quantified, but it's certainly
7 been commented upon with respect to quality, so we
8 have never asserted that there isn't competition from
9 time to time. I want to comment though, and maybe
10 Jeff stern can comment about this a little bit with
11 respect to some of the testimony we heard this morning
12 about the use of brokers by the domestic industry.
13 That makes a difference when you're using a broker.
14 Jeff, can you talk about that a little bit?

15 MR. STERN: Brokers?

16 MR. CONNELLY: Brokers.

17 MR. STERN: Brokers. Okay. At Censea, we
18 sell probably 95 percent of our product directly to
19 our customers. We don't have a third party in the
20 middle. We have some long-term contracts. We have
21 some short-term contracts. We have a lot of customers
22 that want to buy Censea brand, and we may negotiate
23 the price directly with them every single week. Price
24 is a factor. On the other hand, we're not going
25 through some third party whose interest is in making a

1 sale, period.

2 The interest of our sales people is to get
3 Censea the best possible price and to take care of and
4 to supply shrimp to their customers so that they have
5 supply throughout the year. A broker, who's a third
6 party, doesn't work for the company producing it,
7 doesn't work for the company that's buying the shrimp,
8 is only trying to earn a commission in the middle.
9 Therefore, they're going to do what they have to to
10 make the sale, and the if the only leverage they have
11 is price, that's what they're going to use, and if we
12 only sold based on always being the lowest price in
13 the market, we couldn't survive.

14 Our margins would be squeezed, and they
15 already are squeezed, so we try to have long-term
16 relationships with our customers where price is not
17 the primary object. We have to be competitive, but we
18 don't have to be the lowest.

19 MR. CONNELLY: So you're not building a
20 brand when you're going through a broker. You're not
21 building a relationship that involves more than price
22 for the reasons that Jeff says, and we think that's a
23 very important difference, and also, we think they're
24 relying very heavily with their four declarations
25 attached to their brief that talk about use of

1 brokers, and that's a distinct difference.

2 MR. NICELY: Commissioner Aranoff, I'd like
3 to add also I agree with what Mr. Connelly said about
4 there not necessarily being an issue here of
5 credibility. There are differences. What you heard
6 Mr. Buckner talk about, for instance, today, was that
7 in different regions, you've got different
8 preferences, right? And that's perfectly consistent
9 with what you heard Chef Fulls talk about this
10 morning, right?

11 In the region in which they're selling,
12 domestics are more important. In a significant
13 portion of the rest of the country, they're not there
14 as much. They're not being sold as much, and so you
15 by definition have a sense of attenuated competition
16 there.

17 COMMISSIONER ARANOFF: Okay. To this
18 morning's panel, I had asked a question about price
19 suppression, and specifically the issue is even if the
20 COGS to net sales ratio was high and went up a little
21 bit for the domestic industry, can we meet in this
22 case the statutory criterion that pricing increases
23 that otherwise would have occurred were prevented by
24 subject imports? What do you think is the best
25 argument that could be made against a finding of price

1 suppression in this case?

2 MR. DOUGAN: This is Jim Dougan. I'd like
3 to comment on that, and by the way, the
4 characterization of the COGS to net sales ratio is
5 high is as compared to what? I mean, compared to
6 their own experience, it's pretty much the same as
7 it's been in recent history. It may be higher
8 relative to other industries, but that's not relevant.

9 I think a good argument in our argument
10 against this idea is not only there's not change in
11 the COGS to net sales ratio, but their top-line prices
12 have been increasing fairly substantially, I mean, for
13 five of the seven pricing products, double digit price
14 increases. I mean, what more price increase would
15 they be getting? I just don't know. What is being
16 suppressed there, and with respect to the product, the
17 one I can discuss publicly where there was a decline
18 in the price, I mean, they were being oversold in
19 almost 100 percent of cases.

20 So the pretty large amount of data that the
21 Commission has collected to show that domestic prices
22 increased, not just on an average unit-value basis for
23 their shipments or net sales, but on individual
24 pricing products that they largely selected, so I just
25 don't think there's evidence to suggest that they

1 would have gotten better increases in the absence of
2 subject imports.

3 MR. CONNELLY: Commissioner, could I comment
4 on the product 1 issue? I don't want to take any more
5 of your time, and we can do it later.

6 COMMISSIONER ARANOFF: No. Go right ahead.

7 MR. CONNELLY: Okay. They want to have you
8 disregard product 1. A couple of points about product
9 1, and the argument is well, there are products mix
10 issues in there because there are some P&D, Peeled and
11 Deveined, and there's peeled undeveined. Now, first
12 of all, product 1 was in the preliminary. Everyone
13 had an opportunity to comment on the pricing products
14 for the final phase. They asked the Commission not to
15 collect information on product 3 from the preliminary,
16 but they endorsed the use of product 1 again in the
17 preliminary, so we think they waive the argument to
18 try and distinguish product 1 as somehow
19 unrepresentative.

20 Two, peeled and undeveined involves a worker
21 in a processing plant in Asia taking out the vein.
22 I've been in 15 processing plants, at least, around
23 the world. I can tell you that I'm overstating it if
24 I tell you it takes three seconds to take out the
25 vein. The cost difference therefore isn't even

1 tracked. There is no cost difference, and so the
2 product mix issue we think is a bogus issue.

3 MR. DOUGAN: Commissioner, I know your time
4 is expired, but can I add on the product 1? Not only
5 was product 1 a product in the prelim, it was also a
6 product in the sunset review, and in that review it
7 undersold the domestic prices in 33 out of 50
8 comparisons, so there doesn't seem to be any kind of
9 structural difference in terms of the peeled and
10 deveined ones are always more expensive because the
11 record in the sunset suggests that wasn't true, and
12 I'm willing to bet they didn't argue it should be
13 removed from the sunset.

14 COMMISSIONER ARANOFF: Okay. Thank you,
15 all. I appreciate those answers.

16 CHAIRMAN WILLIAMSON: Commissioner Pinkert?

17 COMMISSIONER PINKERT: Thank you, Mr.
18 Chairman, and I too join my colleagues in welcoming
19 you and thank you for being here today. I want to
20 begin by giving you a chance to respond to something
21 that Ms. Drake maintained on the earlier panel. I had
22 raised the question of whether this case represented a
23 possible double remedy for the domestic industry in
24 terms of getting the BP compensation and then getting
25 the relief on the kind of really duty side for the

1 same adverse circumstances that the domestic industry
2 is facing.

3 She pointed out, or she argued that the
4 adverse developments for the domestic industry don't
5 completely coincide with the oil spill, that the
6 timing isn't quite at the same point, so I wanted to
7 give you an opportunity to respond to that.

8 MR. NICELY: This is Matt Nicely. I think
9 what Jim Dougan talked about today helps explain that.

10 MR. DOUGAN: Sure. Jim Dougan from ECS.
11 The timing of the change in domestic industry
12 performance is interesting, and it appears to be drive
13 almost entirely, if not entirely, by investments that
14 they've made in back compensation, various different
15 SG&A items that were funded with the BP payments. I
16 think what it comes down to overall is what it does is
17 it shows the downward decline in their financial
18 performance can't have been attributable to subject
19 imports if it was essentially self-engineered with
20 these investments.

21 So the idea is not a characterization of
22 what it is that they're seeking, but they just don't
23 really seem to be injured.

24 MR. NICELY: Matt Nicely again. I think the
25 other point that I was pointing to in terms of what

1 Mr. Dougan was talking about was there that if you
2 looked back to their historical experience from '05 to
3 '09, it shows that they're already back to where they
4 were, so they're not showing the kind of injury they
5 claim that they're showing. They have recovered from
6 the BP oil spill largely because they're back to where
7 they were during a prior period.

8 This speaks to Ms. Drake's argument about
9 using 2009. If you use 2009, yes, they look like
10 they're not doing so hot, and it looks like there's
11 more going on than merely the oil spill, but in fact,
12 if you look at historical experience, not merely that
13 single year, look at historical experience, then they
14 have recovered from the oil spill, and there isn't any
15 other injury to worry about. Yes, and in that regard,
16 I guess, to answer your question, they have already
17 recovered, and they would be seeking an additional
18 remedy on top of what they've recovered from the oil
19 spill.

20 MR. LUNN: Excuse me. Mark Lunn. Can I
21 just add one more thing? I think this might help with
22 the analysis. If you assume, and I think it's correct
23 that there was injury due to the BP oil spill, and the
24 compensation funds were given to remedy lost profits
25 due to that injury, if you move those compensation

1 funds from below the line to above the line, that
2 corrects for that injury, and then you start your
3 analysis as to CVD at that point because then you've
4 corrected the record for any BP oil spill injury, and
5 then you ask yourself is this industry injured by
6 reason of subsidized imports from subject countries?

7 I think that way you can do the analysis
8 that way to assure that you're not double counting.

9 COMMISSIONER PINKERT: Thank you. Now, I
10 understand that you made some points about what
11 happened at the Commerce Department today, and I don't
12 want to characterize that in public session, but I do
13 want to offer you the opportunity to explicate your
14 theory about how what happened at the Commerce
15 Department would affect a Bratsk type analysis that
16 might be performed in this case? I'm not quite sure I
17 get the linkage, so I want to give you the opportunity
18 to explain that.

19 MR. NICELY: Well, the linkage is, this is
20 Matt Nicely, we'll address this in some detail in our
21 post-hearing brief because obviously there's a lot of
22 new information as a result of the decisions today,
23 but briefly, I think the point, when I mentioned
24 Bratsk earlier, my point was to say look, you've got
25 two significant suppliers to this market, who they

1 intended to be subject to CVD orders that will not be
2 subject to CVD orders, which means they're nonsubject
3 imports.

4 Because they're such large suppliers, one of
5 them Thailand, which is, even with its EMS problems,
6 it is huge compared with any other supplier. You can
7 therefore not ignore the impact of Thailand and
8 Indonesia together when doing your analysis of
9 whether, for instance, and this is the whole point of
10 Bratsk, middle or whatever we're calling it these
11 days, of analyzing if you put CVD orders on the other
12 five countries, what will happen in the meantime?

13 The fact is, and we think this always
14 happens, but here even greater evidence to show that
15 what would happen is that imports would simply be
16 replaced by other imports, which has always happened
17 as our historical analysis has shown you, even when
18 some imports from some countries have declined, other
19 imports fill in. The domestic industry doesn't gain
20 anything more because they only have a certain amount
21 they can fish out of the Gulf.

22 So we think that the real competition that's
23 going on, and this again goes to our attenuated
24 competition point, the real competition that goes on
25 is between imports or amongst imports. Now that

1 you've got two huge countries that will not be subject
2 to this CVD order, one of whom, by the way, is also
3 not subject to the AD order, and a significant portion
4 of Thailand's no longer subject to the AD order
5 either. You've got them essentially unfettered. The
6 only thing that's fettering them is EMS in Thailand,
7 but in fact, even with EMS in Thailand, Thailand
8 continues to be the largest supplier, so it's nothing
9 to sneeze at.

10 MR. CONNELLY: I just want to add briefly to
11 that, so the benefit replacement test, the but-for
12 cost, we'll obviously discuss in a lot of detail in
13 our brief because we really think now we have a
14 compelling argument. One fact that supports it, the
15 question is, among other things, what would have
16 happened with Thai imports had the subject imports
17 that now are much less, not been present in the U.S.?
18 Thailand, for just the reporting producers according
19 to the prehearing report, total shipments from
20 Thailand in 2010 were 695 millions pounds.

21 One country alone, 695, and that's a subset.
22 That's not all of Thailand. That's just the
23 reporting producers. Thailand has always been the
24 largest producer by far. When you start to add in
25 Indonesia and nonsubject imports, you get close to a

1 billion pounds of capability and actual shipments in
2 2010, so if those subject imports from Ecuador,
3 Vietnam, et cetera, had not been here, there's no
4 question that the nonsubject countries could have
5 supplied all of the 1.1 billion pounds which we have
6 said every year it's 1.1 billion of total imports.

7 Even if there was some subject imports that
8 would have come in, the overwhelming majority would
9 have been non-subject in a but-for world.

10 COMMISSIONER PINKERT: Two points I think
11 you should keep in mind for purposes of addressing
12 this question in the post hearing, I notice that Mr.
13 Connelly referred to a backward looking Bratsk
14 analysis, and I believe, Mr. Nicely, you may not have
15 intended it, but you seemed to be talking about a
16 forward-looking analysis, so for purposes of the post
17 hearing, I would ask that you do the analysis on a
18 retrospective basis rather than prospective basis.

19 Secondly, you talked a lot about whether
20 they could replace or would have replaced the subject
21 imports had they been not present in the U.S. market,
22 but please also address the question of pricing.
23 Would the pricing have been comparable for the non-
24 subject imports had they been in the U.S. market
25 replacing the subject imports during the period of

1 investigation.

2 MR. CONNELLY: Yes, we will. That's
3 absolutely right. We totally agree with that.

4 COMMISSIONER PINKERT: Okay. Thank you.
5 Thank you, Mr. Chairman.

6 CHAIRMAN WILLIAMSON: Thank you.
7 Commissioner Johanson?

8 COMMISSIONER JOHANSON: Thank you, Mr.
9 Chairman, and I'd like to return to the issue of EMS,
10 and actually, I read an article in the *Wall Street*
11 *Journal* last month on this, so it really caught my
12 attention, although the *Wall Street Journal* doesn't
13 always get it right, so I would like to get some more
14 information from some real experts on the subject.

15 We heard this morning from the Petitioners
16 that outbreaks of EMS are temporary and that
17 industries in countries which are affected EMS are
18 able to control the disease. I was wondering if one
19 of you could discuss on this issue further as to what
20 the outlook is for countries affected by EMS given the
21 ability to control the disease? Yes, Mr. Stern?

22 MR. STERN: Jeff Stern. I don't claim to be
23 a biologist or an expert on EMS, but my understanding
24 is that the source of the virus has been identified,
25 but no known cure, other than some pond management,

1 treatment of larvae, et cetera, have been prescribed.

2 The problem that I see, and this is from talking to
3 the actual producers, is that the farmers are afraid
4 that if they invest all their money in their ponds and
5 the shrimp die, they may not have a future at all, and
6 so the recovery may take a number of years if the
7 solutions that had been found or they think they may
8 have found are actually viable. No one knows that.

9 There are still outbreaks of EMS in Thailand
10 in ponds that again supposedly have taken these new
11 precautions, so I think the recovery period is going
12 to be long. I think it's going to be difficult to say
13 the least because the banks are not willing to lend
14 money as aggressively as they have been in the past.

15 MR. CONNELLY: I want to add just a little
16 bit to that. I would urge the Commission to read the
17 articles that the Petitioners have submitted with
18 respect to their opinion about when EMS will be
19 solved. Ms. Drake testified as a scientist today,
20 although I don't think she is one, and she gave a very
21 cogent explanation of how the thing had been solved.
22 I urge you to read those articles that she is relying
23 on because all she knows is what she reads in the
24 papers, and what the papers say is they use the word
25 hope. They use the word expect. They use the word

1 project, but they never use the word cure. They never
2 use the word solve.

3 There is absolutely no evidence on this
4 record that this problem has been cured, solved and
5 that the so-called temporary problem -- by the way,
6 they use that adjective in every bit of testimony,
7 temporary. You won't find that word in any of those
8 articles. It's not there. No one knows. There is
9 absolutely no scientific evidence as to when this
10 problem will be over.

11 COMMISSIONER JOHANSON: And could one of
12 your refresh my memory as to when EMS became a major
13 problem?

14 MR. CONNELLY: 2009 in China is where it
15 first started.

16 COMMISSIONER JOHANSON: And it's spread
17 since?

18 MR. CONNELLY: And it's spread since.

19 COMMISSIONER JOHANSON: Through other
20 countries in Asia of course and now Mexico perhaps
21 also.

22 MR. CONNELLY: Mexico, perhaps.

23 COMMISSIONER JOHANSON: Okay. All right.
24 Thanks for your responses. Mr. Pizzuti, I wanted to
25 speak for a moment on what you stated this afternoon.

1 You stated that wild caught shrimp and farm shrimp do
2 not compete. I assume that Publix is very aware of
3 what its customers want, of course that's what your
4 job is is trying to determine that. Has Publix polled
5 customers as to their preferences with regard to
6 shrimp, or how to do you make your determinations as
7 to what customers want?

8 MR. PIZZUTI: We utilize several different
9 factors. We haven't really gone out and done focus
10 group studies or anything along that line. We rely on
11 those folks that are front and center on the front
12 lines with our customers. That's our store
13 associates, the people sitting behind the seafood
14 counter. They're the ones dealing with the consumer
15 every day, and they bring that feedback back to us, so
16 we rely on that.

17 We also listen to customer letters that are
18 coming across asking for certain different types of
19 products on a daily basis, so that's really the
20 primary things that we look at from our driver, and
21 then secondarily as a category manager, we're going to
22 look at the performance of the products once they're
23 on shelf, and that will determine who we move forward
24 from that standpoint, so it's really listening to our
25 customer that drives those decisions.

1 COMMISSIONER JOHANSON: I believe you've
2 stated that farm shrimp has advantages over wild
3 caught shrimp with regard to quality and size, et
4 cetera?

5 MR. PIZZUTI: Well, again, with my comments
6 there, I think there's inherent advantages to
7 aquaculture over wild, period. In terms of the
8 sizing, I was more talking if I'm looking at a 41-50
9 cooked, peeled and deveined ad where I'm going to need
10 15 loads, there's an advantage to an aquaculture. I
11 can make a phone call. I can send an email, and I've
12 got that product in eight to 12 weeks sitting in my
13 warehouse ready to go. I can't do that on the
14 domestic side, so that's kind of where -- in terms of
15 the production, that's what I was talking about. In
16 terms of single size, single product form
17 availability.

18 COMMISSIONER JOHANSON: But I believe you
19 also stated that imported sales have declined and wild
20 caught sales have increased recently. Is that the
21 case?

22 MR. PIZZUTI: Yes. If you go back to what I
23 reported on the survey questionnaire, since 2010, our
24 domestic shrimp have increased, and our imported has
25 fallen, and we'd be happy to share details with that

1 post hearing if you'd like.

2 COMMISSIONER JOHANSON: You can't do any of
3 that now? Is that proprietary?

4 MR. PIZZUTI: Yes, because it will involve
5 percentage of change in dollar sales and those types
6 of things.

7 COMMISSIONER JOHANSON: Yes. That's fine.
8 Yes, I'd be interested to see that. If you could
9 provide that, I would appreciate it.

10 MR. PIZZUTI: We'd be happy to.

11 COMMISSIONER JOHANSON: And kind of
12 following up on this issue, do some customers domestic
13 prefer wild caught shrimp over farm shrimp for health
14 reasons?

15 MR. PIZZUTI: I would not say it would be --

16 COMMISSIONER JOHANSON: Or perceived health
17 reasons, rather?

18 MR. PIZZUTI: Yes, it may be a perceived
19 health benefit when you look at the nutritional panels
20 on shrimp. They're very similar. What's going to
21 change nutritional panel is the level of treatment
22 that's done with tripolyphosphate both on the domestic
23 and on the imported side. That's going to really
24 start to impact the sodium levels, so when you're
25 looking at the health concern, for the most part, all

1 the different species of shrimp are very similar.
2 It's what happens after harvest and within the
3 processing treatment that may change that nutritional
4 panel quite a bit.

5 COMMISSIONER JOHANSON: Mr. Buckner, you
6 stated that a number of your customers specifically
7 prefer U.S. produced shrimp. Is that due to perceived
8 health reasons, or do you know what drives that?

9 MR. BUCKNER: I think the drive is based on
10 the originality of the product. The majority of our
11 Gulf shrimp, our wild caught domestic shrimp are sold
12 in the Gulf region, and that is a shrimp that they've
13 grown accustomed to the flavor, the texture, and it's
14 their home-grown shrimp, and that is what they want
15 and they want to serve in their restaurants whether
16 it's Alabama wild caught, Wild American certified,
17 there's a lot of opportunities for promotability
18 within the region, and that's the preference.

19 Through our RFP, we actually develop the
20 attributes for the different species, sizing, all from
21 customer insights to kind of to Mr. Pizzuti, the
22 customer drives what we sell and what their demand are
23 through interviews, through surveys dictates what we
24 sell in every market.

25 COMMISSIONER JOHANSON: All right. Thank

1 you. Petitioners contend the declining demand and
2 import barriers and third-country markets indicate
3 that other markets will not absorb additional exports.

4 What is your position on the attractiveness of the
5 U.S. market as the export destination for subject
6 imports in the imminent future in light of demand
7 trends and import barriers in other markets? Mr.
8 Stern, or whoever wants to speak on this.

9 MR. STERN: It's my believe that the world
10 shrimp supply will find a home somewhere, you know, if
11 because of GSP considerations duty rates for Ecuador
12 and Thailand will go up in Europe, then that shrimp
13 will find a home into China or Japan. If rates in a -
14 - if one country becomes subject here with a
15 prohibitive rate, the shrimp that was produced in that
16 country will go into those other markets, will go into
17 France and to Europe, and Indonesian shrimp, when the
18 first antidumping order came out, the Indonesian
19 preferred to ship to Japan and Europe.

20 When there was no antidumping duty on
21 Indonesia, a vast majority of their product ended up
22 in the United States because it was not subject to
23 duties, so I think that in the long run, whatever
24 markets demand, they will get. The countries that
25 supply that can change.

1 COMMISSIONER JOHANSON: And to follow up on
2 that, my time has expired, but I'd like to just take
3 another minute or so on this, I believe the
4 Petitioners wrote that consumption is down in the
5 European Union. Is that product coming to the United
6 States? It has to go somewhere?

7 MR. NICELY: This is Matt Nicely. On the
8 contrary, I think that the data will show, and we can
9 talk about this in our post-hearing brief, but I think
10 the data will show that in fact these countries,
11 third-party export markets and home markets, have
12 increased over the course of the POI rather than
13 reduced.

14 COMMISSIONER JOHANSON: Okay. I'm relying
15 on my memory here, so perhaps I didn't get that right,
16 but if you could maybe just address that in your post-
17 hearing brief, I'd appreciate it.

18 MR. NICELY: Sure.

19 COMMISSIONER JOHANSON: Thank you for your
20 answers.

21 CHAIRMAN WILLIAMSON: Thank you.
22 Commissioner Broadbent?

23 COMMISSIONER BROADBENT: Thank you, Mr.
24 Chairman. Let's see. Are you all seeing any change
25 in consumer preference? I guess I've been seeing

1 things on the internet in terms of kind of what a
2 green shrimp consumer is and little more a negativity,
3 I think, on the farm-raised process. Can anybody
4 identify a change in consumer preferences in the U.S.?

5 MR. PIZZUTI: Yes. I mean, I can jump in.
6 Again, speaking on behalf of Publix, again I'll submit
7 post hearing, over the last two years, we've had a
8 significant increase in our domestic shrimp
9 requirements, and again, that is being driven by
10 customer demand, so I think there is a shift that is
11 happening in that case.

12 COMMISSIONER BROADBENT: Would you have
13 anything on the record that would be a consumer report
14 or just kind of what a mom would read going to the
15 grocery store trying to figure out what the best type
16 of shrimp is to buy?

17 MR. PIZZUTI: Nothing that I've seen.
18 Again, I routinely answer some of the questions from
19 customers regarding the articles you're seeing online.

20 COMMISSIONER BROADBENT: Right. Yes.

21 MR. PIZZUTI: And that's typically the same
22 issues that we're dealing with on a daily basis with
23 any customer that contacts us asking those question.
24 We'll provide information back. I'd be happy to share
25 our customer response with you as kind of post hearing

1 if you'd like.

2 COMMISSIONER BROADBENT: Does it discuss how
3 you certify your suppliers?

4 MR. PIZZUTI: Yes. Our response to our
5 customer does.

6 COMMISSIONER BROADBENT: Okay. Can you
7 describe that here, or is that for --

8 MR. PIZZUTI: I'd be happy to do that post
9 hearing.

10 COMMISSIONER BROADBENT: Okay. Good.

11 MR. CONNELLY: Let me just add one point,
12 Commissioner Broadbent.

13 COMMISSIONER BROADBENT: Yes.

14 MR. CONNELLY: WE made a point of looking at
15 demands for imported shrimp since 2006, maybe 2005.
16 It's been 1.1 billion pounds year after year after
17 year. Demand for imported shrimp in this country is
18 1.1 billion pounds.

19 COMMISSIONER BROADBENT: Right.

20 MR. CONNELLY: As Jeff said, the suppliers
21 switch, but there doesn't seem to be a growing demand
22 much to the industry's dismay. I mean, it would be
23 nice to see a growth in demand, but I've got the
24 answer, and our experts would have a far better idea
25 than I would about why that is, but that's the fact.

1 It's 1.1 billion pounds. It doesn't move. The supply
2 shifts. Things change. The recession comes and goes,
3 and it just stayed at 1.1 billion pounds.

4 COMMISSIONER BROADBENT: So there wasn't a
5 demand say in the restaurant sector during the
6 recession for shrimp as being a high-priced meal? No?
7 Anybody supplying restaurants, yes?

8 MR. STERN: Actually, our restaurant
9 business picked up because prices during the recession
10 worldwide, prices declined and shrimp became a more
11 promotable commodity as compared to other proteins,
12 and, you know, when we look at competition, we don't
13 look at domestic shrimp, we look at other proteins,
14 and if a restaurant can promote shrimp because it's
15 more attractive than beef or poultry or pork or other
16 seafood even, they're going to promote more, and
17 there's going to be more consumption, so we actually
18 saw during the recession a pickup of business in terms
19 of tonnage.

20 COMMISSIONER BROADBENT: Okay. Switching
21 back to the EMS issue a little bit, where could we
22 find the best scientific assessment of where the
23 disease is at this point?

24 MR. CONNELLY: I can think of two places to
25 go. One is Don Lightner. I think he's at the

1 University of Arizona. He is the guy who discovered
2 the cause. He's been written up in all of the
3 articles. He's got a team of scientists. The other
4 place you might try is the Global Aquaculture
5 Alliance. That's an association of farm producers and
6 other industry members who are dedicated to promoting
7 best aquaculture practices, and they are involved
8 deeply in trying to help out on this problem.

9 COMMISSIONER BROADBENT: Now, how did the
10 University of Arizona get so involved in such a marine
11 product?

12 MR. CONNELLY: I've told you all I know.

13 COMMISSIONER BROADBENT: Okay. Talk to me
14 about volume now that Thailand and Indonesia are kind
15 of out of the picture?

16 MR. NICELY: Well, as I mentioned in my
17 testimony, from an import penetration perspective,
18 we're talking about subject imports going from a 2012
19 level of 75, around 75 percent, down to around 40
20 speaking in generalities here, so as a result, I think
21 it's critical. The nonsubject imports now are right
22 around 50, so from an import penetration perspective,
23 we have a very different picture than we had earlier
24 today if we included all seven, which I think for the
25 most part the Petitioners were talking about all

1 seven. There's a slight increase, and again, we're
2 put at a disadvantage because we haven't had a chance
3 to study this data in detail having just learned about
4 this news, but from 2010 to 2012, there would be a
5 slight increase of subject imports.

6 COMMISSIONER BROADBENT: Right.

7 MR. NICELY: But with prices overall going
8 up, although again we need to study all of that, but
9 the primary point obviously we're going to focus on is
10 the fact that the import penetration is far lower.

11 COMMISSIONER BROADBENT: Okay. But we are
12 seeing an increase in volumes of imports of subject
13 imports.

14 MR. NICELY: But overall, we can't get
15 around that. The trend is definitely going to go up.

16 MR. DOUGAN: Commissioner Broadbent, if I
17 may? Jim Dougan, and the point being that whatever an
18 increase there was was basically a switch out between
19 import sources, so, I mean, the domestic industry --
20 again, it's tricky because the 2012 numbers have been
21 treated as confidential, but it did not come at the
22 expense of the domestic industry. Let's put it that
23 way.

24 MR. NICELY: This is Matt Nicely again,
25 critical that you not just simply look at trends

1 obviously in a vacuum. They have to be looked at in
2 the context of whether or not they're affecting the
3 domestic industry, and we stand by what we said before
4 when we thought we were talking about a different
5 group of countries, which is what happened with the
6 domestic industry is that they gained, so even if now
7 subject imports of these five countries also show an
8 increase, well so did the domestic industry.

9 COMMISSIONER BROADBENT: Okay. Some of the
10 purchasers on the panel, if you were to give the
11 domestic industry some advice on how to be more
12 attractive, what do we do to help this industry
13 domestically?

14 MR. BUCKNER: Eric Buckner with Sysco. I
15 think it comes down to promotion and education, and as
16 I mentioned, the promotion and education materials
17 that were created with the Louisiana Seafood Promotion
18 and Marketing Board, the greater information that we
19 give to the consumer to talk about features,
20 advantages and benefits of a domestic product versus
21 an imported product, then I think we have an
22 opportunity to advance the consumption, but to the
23 point of many folks in today's discussion, can the
24 Gulf fishery sustain substantial increase in demand?
25 I think that comes to a different question.

1 MR. PIZZUTI: On behalf of Publix, again I
2 think the biggest issue for us is, and they even
3 mentioned it a little bit this morning, it's the
4 modernization of the equipment. It's moving into IQF
5 production. Those are the type things that the larger
6 retailers are looking at is the ability to pass a GFSI
7 audit and to be able to produce the products that
8 we're looking for.

9 COMMISSIONER BROADBENT: Okay. And then,
10 Mr. Connelly, what's the situation on the payments
11 that were made under the Byrd amendment, and how
12 should they be treated to the extent that they were --

13 MR. CONNELLY: Well, I mean, we think it's
14 money. Money is money. They've gotten hundreds of
15 millions of dollars, I think, under the Byrd
16 Amendment, and we understand that the Commission's got
17 a different view of that, and I guess we must
18 respectfully disagree with that, but we certainly
19 think that even if you fairly, or under GAP you can
20 treat it as non-operating income, it still goes to the
21 condition of the domestic industry.

22 COMMISSIONER BROADBENT: And what was the
23 extent of the payments to this industry?

24 MR. CONNELLY: Honestly, I don't recall what
25 the payments were during the POI. I just know it's

1 been substantial over the course of many years.

2 COMMISSIONER BROADBENT: Were they in the
3 range of the BP?

4 MR. CONNELLY: I don't think so.

5 COMMISSIONER BROADBENT: Anybody else?

6 MR. DOUGAN: Commissioner Broadbent, this is
7 Jim Dougan. According to the public staff report,
8 page VI-17, Footnote 46, CDSOA receipts were \$5.8
9 million in 2010, \$17.7 million in 2011 and \$17 million
10 in 2012, so still substantial, but less than the BP.

11 COMMISSIONER BROADBENT: Okay.

12 MR. LUNN: And if I could just add one last
13 thing? To the extent that these funds are used to
14 finance any expenses, so they go into the operating
15 costs of the company, then that money should go above
16 the line as well, so it's the same argument or
17 discussion we've had about the BP and the SG&A, so if
18 it's going to be paying salaries or any other expenses
19 that are going into the costs, then the receipt of
20 that revenue should be treated similarly.

21 COMMISSIONER BROADBENT: Okay. And is your
22 sense that any of this money, the BP money or the Byrd
23 money has gone into investments in the IQFS machinery?

24 MR. CONNELLY: You'd have to ask them,
25 Commissioner. We really don't know.

1 COMMISSIONER BROADBENT: Okay. Thank you,
2 Mr. Chairman.

3 CHAIRMAN WILLIAMSON: Thank you. This
4 morning, I asked the Petitioners what should we make
5 of the existing ADCVD audits and how should that
6 factor into our analysis. Do you have any comments on
7 that?

8 MR. CONNELLY: Yes. We think that it's very
9 important to look at the conditions of the domestic
10 industry between 2005 and 2009 as a number of our
11 exhibits here that Jim talked about did. The period
12 2005 through 2009 was a period in which the domestic
13 industry was protected by antidumping orders on a
14 number of countries, so they were either nonsubject
15 imports or there were antidumping orders in effect,
16 and so in that period, we would regard that as a
17 normalized period, a period when the domestic industry
18 could and should have performed at a level that would
19 have allowed them to improve their performance or not
20 depending on what they did.

21 It wasn't subject imports that were a
22 problem in that five-year period, and so what we tried
23 to show you is in that period from 2005 through 2009,
24 compared to our POI here, nothing's really changed,
25 and if that's the case, then subsidized imports cannot

1 be the problem, so we think the 2005 through 2009
2 period, which is the antidumping order period
3 including right up through the present although more
4 and more companies are getting out is a highly
5 relevant fact and a useful background.

6 MR. LUNN: If I could just add one more
7 thing? I do think you also have to take into
8 consideration when a lot of what you heard this
9 morning was that absent this order, the countervailing
10 duty order, there would be a flood of imports that
11 will depress prices. Obviously, the antidumping case
12 has a disciplining effect on prices, so I think you
13 have to discount the likelihood that there will be any
14 price depression in the future even if there is an
15 increase in subject imports going forward because the
16 majority of the subject imports are covered by the
17 antidumping order.

18 CHAIRMAN WILLIAMSON: You're saying that
19 there was a disciplining effect, and I guess Mr.
20 Connelly's saying there's no effect. That's what I
21 heard him saying.

22 MR. NICELY: This is Matt Nicely. I think
23 those are two very different points. I'm glad you
24 asked that followup. I mean, on the one hand you can
25 say it has a disciplining effect not to allow prices

1 to go down further, right? On the other hand, the
2 point is they didn't have that much of an impact, so
3 prices didn't move all that much, but they certainly
4 haven't fallen considerably because obviously that
5 would result probably in considerable dumping duties
6 during the next administrative review.

7 So I think it's disciplining in the sense
8 that it's keeping prices at a certain level. It's not
9 allowing them to go down further, but keeping prices
10 at a certain level is not what the domestic industry
11 wanted or what they feel like they need. They feel
12 like they need a significant increase in pricing.

13 CHAIRMAN WILLIAMSON: Which raises another
14 interesting question. What been happening to cost in
15 the subject exporting countries? We know the domestic
16 industry talks about the rising cost of fuel and
17 rising cost in the U.S. Of course, in farm raising,
18 we can't feel, but maybe use differently. Any
19 comments on that?

20 MR. CONNELLY: That's a hard question to
21 answer because that gets into company and country-
22 specific information, and so I just think that would
23 be very hard to give you any real feel for that,
24 Commissioner, but let us think about that and let us
25 see if we can't come up with some way to deal with

1 that in the post-hearing brief.

2 CHAIRMAN WILLIAMSON: Because we do have
3 shipping costs to and things like --

4 MR. CONNELLY: Yes.

5 CHAIRMAN WILLIAMSON: Because since you've
6 got to refrigerate that stuff all the way across the
7 Pacific. Okay. Anything you could say post hearing
8 about that because that would get to the question of
9 whether or not exporting countries, are their costs
10 reflecting costs they have at home. Let's see. Mr.
11 Dougan, I think on your chart, No. 10, where you talk
12 about the BP oil spoil payments, does that blue line
13 include the punitive as well as compensatory damages?

14 MR. DOUGAN: It does. It includes the full
15 amount that was reported in the questionnaires. Until
16 the testimony this morning, we hadn't heard of the
17 distinction and still don't actually know for certain
18 what it is beyond the testimony that it was about 50
19 percent.

20 CHAIRMAN WILLIAMSON: So it could be
21 possible that the punitive damages should go below,
22 and you would argue that the compensation should go
23 above the line?

24 MR. DOUGAN: We would argue that it really
25 should all be above the line, especially if it's all

1 fungible and being used to fund operating expenses.

2 CHAIRMAN WILLIAMSON: Okay. I think you all
3 disagree on that. Okay.

4 MR. DOUGAN: I'm sure there is some
5 disagreement with the other side.

6 CHAIRMAN WILLIAMSON: Yes. Okay. Mr.
7 Pizzuti, you mentioned in talking about I guess
8 consumer preferences and greening that some fish
9 there's more salt, is saltier. I forgot the --

10 MR. PIZZUTI: What I was referring to is
11 most products post harvest, especially on a peeled or
12 a peeled and cooked have some sort of treatment like a
13 tripolyphosphate, and based on the level and
14 percentage of tripoly utilized, the soak time that's
15 utilized, whether it's agitated or not, it will
16 develop a different sodium level at the end, so
17 essentially picking up more moisture that would again
18 serve to raise the sodium level.

19 CHAIRMAN WILLIAMSON: So if you're concerned
20 about sodium consumption, you look at a package of
21 frozen, peeled, then you might see a higher sodium
22 level than frozen?

23 MR. PIZZUTI: Yes. Typically, a P&D product
24 will carry a higher sodium contend than an easy-peel
25 product or a just shell-on product.

1 CHAIRMAN WILLIAMSON: Okay. What you buy in
2 the package that's frozen, is that an IQF?

3 MR. PIZZUTI: Yes. Most frozen bags are all
4 IQF products.

5 CHAIRMAN WILLIAMSON: Would that have a
6 higher sodium content than say --

7 MR. PIZZUTI: Not necessary because it's
8 IQF. It would be because of the post-harvest
9 treatment that's done.

10 CHAIRMAN WILLIAMSON: Okay. I was just
11 trying to understand that.

12 MR. PIZZUTI: Okay.

13 CHAIRMAN WILLIAMSON: Thank you. Is there
14 any seasonality in the species of farm-raised shrimp,
15 and does this affect the availability of some species
16 of shrimp, and partially I ask this question because I
17 know when I go into Costco, there's some weeks when I
18 don't see the Tiger Shrimp for a few weeks, but that's
19 a subquestion of the general question.

20 MR. PIZZUTI: I'll jump in because
21 apparently I'm answering the questions today. From
22 our standpoint no. I mean, one of the big things when
23 you're looking at that imported product or the farm-
24 raised product is you're typically working off lead
25 times, and they will also tend to cycle the various

1 ponds, so they're not going to go through and harvest
2 an entire farm on a given day, so there's typically
3 always ponds that are available to be harvested on a
4 daily basis that cycle through, and as was referenced
5 earlier, some farms will do one cycle a year . Some
6 will do two. Some will do three, so it all depends on
7 that given individual, but when you're looking at a
8 processing company, they may be utilizing multiple
9 farms, so that availability issue just doesn't exist
10 because of the number of people they're able to go to,
11 so if you want a 31-35 easy peel, you're going to be
12 able to get a 31-35 easy peel 12 months out of the
13 year.

14 CHAIRMAN WILLIAMSON: Okay. Thank you.

15 MR. STERN: May I add something?

16 CHAIRMAN WILLIAMSON: Sure.

17 MR. STERN: Jeff Stern. Different
18 countries, whether it's in Asia or South America, have
19 different cycles based on their weather patterns. In
20 Thailand, which we think is very tropical, the
21 northern part of Thailand in the winter gets a little
22 cooler. They really can't grow shrimp as quickly.
23 Somewhere, like Indonesia, that's right on the
24 equator, tends to produce almost all year around, but
25 because of rain patters, they do have peaks and

1 valleys. What the gentleman from Publix said is
2 correct that if he needs to get one size, if one
3 country isn't producing it, more than likely some
4 other country is, and again, that's one of the
5 advantages of farm-raised shrimp is that we do have
6 52-week availability, and that's why we source from
7 multiple countries.

8 CHAIRMAN WILLIAMSON: Okay.

9 MR. ORTOLAN: Yes. My name is Dino Ortolan
10 from Costco.

11 CHAIRMAN WILLIAMSON: Sure.

12 MR. ORTOLAN: I'll speak to your Black Tiger
13 Shrimp.

14 CHAIRMAN WILLIAMSON: Okay. Thank you.

15 MR. ORTOLAN: One of the results of EMS,
16 it's Early Mortality Syndrome. One of the
17 difficulties they have in the ponds is growing the
18 shrimp to the larger sizes, so the effects you're
19 seeing in your local Costco shelf are that of
20 essentially EMS. There's a larger quantity of the
21 smaller sizes and fewer of the larger.

22 CHAIRMAN WILLIAMSON: Okay. Thank you.

23 Actually my time has expired, so thank you.

24 Commissioner Pearson.

25 COMMISSIONER PEARSON: Thank you, Mr.

1 Chairman. Mr. Lunn, you mentioned I think that you
2 have seen a disciplining effect of the orders on
3 prices, and I'm wondering if you could elaborate on
4 that, because, frankly, in both this record and in the
5 preliminary record in this case and in the review of
6 the previous order I had not seen a disciplining
7 effect of the order on prices as they affected the
8 domestic like product. There may be some affect on
9 orders for the marginal million pounds that a large
10 purchaser needs to bring in, if indeed then they have
11 to buy it from a firm that's paying an antidumping
12 duty, but otherwise I thought the market was
13 sufficiently liquid that it was just really hard to
14 see pricing discipline from the order. So please
15 explain to me what you've seen.

16 MR. LUNN: I guess I was misunderstood a
17 little bit. I agree with what you've said. I don't
18 know that I could say I've seen price in discipline.
19 What I was speaking to was a prospective view in that
20 this morning we heard that without these orders there
21 would be a flood of imports and prices would plummet.
22 But they really can't plummet too much because most
23 of them are going to be under the dumping order.

24 You see very low margins in most of the
25 countries we're dealing with. I think most of the

1 suppliers that I'm aware of are selling at market
2 prices and that's definitely true right now. So there
3 isn't, they're selling -- Effectively what they're
4 doing is selling above normal value, if you think of
5 it in that term. That the dumping orders effectively,
6 if you look at the cost of production of the
7 suppliers, that provides some sort of a floor. They
8 can sell below that, obviously, and pay the dumping
9 duties, but what we're seeing is that the market
10 prices are above those floors. At least that's the
11 case in India and some of the other countries I'm a
12 little bit more familiar with.

13 So I wasn't speaking -- I was speaking
14 prospectively in the sense that there won't be this
15 crash of prices if you don't find in the affirmative
16 in this case.

17 COMMISSIONER PEARSON: Okay, if there's
18 anything I should know about that for the post-
19 hearing, let me know.

20 Mr. Freed, you raised the issue of
21 negligibility for China. Have you had any discussions
22 with the Commission Staff about that issue?

23 MR. FREED: Yes, just very briefly. I
24 appreciate how quickly they responded to our request
25 to release the CNIF data. And you likely may receive

1 a letter tomorrow. That data while it identified
2 entries, it didn't really identify whether or not they
3 were subject to an order or not. It wasn't exactly
4 clear to determine which products were subject and
5 which weren't. I think if we had that same CNIF data
6 with the type information included in it, then we
7 could do an analysis and determine what the exact
8 subject quantity is from China.

9 COMMISSIONER PEARSON: So you think you may
10 be providing some additional information in the post-
11 hearing submission?

12 MR. FREED: Yeah. The CNIF data was
13 released I think the day before the pre-hearing briefs
14 were due, so we kind of quickly analyzed that and
15 linked it to the Commerce statistics that were relied
16 on but they don't quite give us everything we need to
17 say exactly what the number is. What we were able to
18 show is that I think if you look at our brief you'll
19 see that information that's in the CNIF data must be
20 non-subject. But we have a difficult time quantifying
21 the exact quantity that is from China that was
22 subject.

23 COMMISSIONER PEARSON: I would just observe
24 that it's interesting to have a situation in which
25 China might be negligible as an exporter to the United

1 States in any product, it seems. So this is
2 interesting, and if you have more that you can put on
3 the record to help us in the final, by all means do
4 that.

5 MR. FREED: We will.

6 COMMISSIONER PEARSON: Have any of the firms
7 that buy shrimp been contacted regarding a lost
8 sales/lost revenue allegation? In this case. We have
9 a procedure where the domestic industry will say I
10 lost a sale to imports from Indonesia to Company X and
11 they bought that product because it was lower in
12 price. Any discussions on those issues?

13 MR. FREED: Not from us.

14 MR. PIZZUTI: Oh behalf of Publix, we have
15 not.

16 COMMISSIONER PEARSON: Okay. And counsel,
17 you would be aware if there had been any?

18 MR. CONNELLY: Yeah, I think we would be.
19 But I think there's a reason for it. I think it's the
20 testimony we heard that these farm-raised and wild
21 really aren't competing against each other when they
22 go out to buy. So it wouldn't be surprising that
23 there would be lost sale and lost revenue allegations.

24 COMMISSIONER PEARSON: On the strength of
25 that observation, then, are you offering that as an

1 additional indication of attenuation of competition?

2 MR. CONNELLY: Yes, I am.

3 COMMISSIONER PEARSON: Okay. Obviously if
4 the domestic industry has something we should know
5 about that in post-hearing, I'd be glad to see it.

6 With that, Mr. Chairman, I believe I have no
7 further questions.

8 CHAIRMAN WILLIAMSON: Thank you.

9 COMMISSIONER PEARSON: I would thank all
10 panelists for the time today.

11 CHAIRMAN WILLIAMSON: Commissioner Aranoff?

12 COMMISSIONER ARANOFF: Thank you, Mr.
13 Chairman.

14 I just have one question and it follows up
15 on the discussion of EMS and its affect on supply.
16 And the question is, if the Commission were to agree
17 that EMS is going to continue to be a has-been and is
18 going to continue to be a significant problem with
19 respect to supply from some Asian producers and
20 particularly Thailand, does that weaken the non-
21 attribution or Bratsk Mittal argument that you've been
22 making now that Thailand needs to be treated as a non-
23 subject source.

24 MR. CONNELLY: I don't think it does because
25 as Commissioner Pinkert pointed out when we apply

1 Mittal we're looking at the period of the POI. We
2 were looking retrospectively to see what would have
3 happened hypothetically back then. Not prospectively,
4 what might happen in the future with EMS.

5 COMMISSIONER ARANOFF: Okay. With that I
6 don't think I have any further questions, but I do
7 want to thank this panel for your answers.

8 CHAIRMAN WILLIAMSON: Thank you.

9 Commissioner Pinkert?

10 COMMISSIONER PINKERT: Thank you, Mr.
11 Chairman. I just have a few more questions.

12 In your brief you talked about marginal
13 profitability being a longstanding characteristic of
14 the domestic industry. Can you help me to understand
15 how marginal profitability could in an economic sense
16 be a longstanding characteristic of the domestic
17 industry?

18 MR. CONNELLY: You're asking why?

19 (Laughter.)

20 MR. CONNELLY: How could it be a
21 longstanding characteristic? Well --

22 COMMISSIONER PINKERT: Does it make economic
23 sense, is what I'm asking.

24 MR. CONNELLY: You know, it's very difficult
25 I think for us to explain the how and the why of the

1 what. As opposed to asking the domestic industry why
2 that is. All we know is that this is a business that
3 has never been very profitable.

4 Now we suggested some reasons for that.
5 We've suggested over the years, and including up to
6 this investigation, that they failed really, I'm not
7 saying everybody by any means, but as an industry they
8 failed to capitalize to the maximum extent possible on
9 some of the inherent advantages that wild caught
10 shrimp has. No one denies that there is a different
11 taste. No one denies that people prefer that taste.
12 Some buyers prefer that taste. The question is, how
13 have you attempted to maximize the inherent advantages
14 you've got of producing wild American shrimp?

15 So what we've suggested and which they of
16 course resist, is the fact that the advantages of wild
17 caught shrimp haven't been exploited to the extent
18 they could have been and should have been.

19 That's about the best I can do, Commissioner
20 Pinkert.

21 MR. LUNN: If I can just add one last thing.

22 Yes, the profits are historically low compared to
23 other industries, but as Mr. Dougan said, you don't
24 have to compare them to other industries. This is a
25 historically profitable industry. I don't know that

1 we should be part of, in balance, this should be why
2 would anybody be in this industry with such low
3 profits? This is the industry that we're looking at
4 and historically these are what the profits are.

5 I think that's how it happened.

6 COMMISSIONER PINKERT: Thank you.

7 Now I asked the panel this morning whether
8 BP compensation payments are relevant for purposes of
9 our threat analysis and I don't want to put words in
10 their mouth, but I think basically what they said was
11 that if you look simply at the threat issue, leaving
12 aside the question of whether it's relevant for
13 purposes of the present injury analysis, that we
14 should view the compensation payments as a one-off
15 that doesn't have any bearing on the threat going
16 forward.

17 Is that your view as well?

18 MR. CONNELLY: No. That's not our view.
19 For two reasons.

20 One, that's a lot of money and that money's
21 available into the future. That's not -- We don't
22 know what they've done with it. We don't know if they
23 paid themselves bonuses, dividends, deferred
24 compensation. We don't know. All we know is it's a
25 lot of money compared to their historical

1 profitability. So in our view looking at the worst
2 case it completely mitigates threat. Secondly,
3 there's more money to come. We don't know how much,
4 as I said earlier. We don't know when. They know
5 that, but there's more money to come and that money,
6 whatever it happens to be also directly mitigates the
7 threat.

8 MR. DOUGAN: This is Jim Dougan. I think
9 also to the degree that this money has helped increase
10 capital investments, which appeared to be fairly
11 substantial, even in 2010, but did increase over the
12 POI by something like 40 percent, if that has allowed
13 them to modernize or change capacity, add different
14 types of capacity like IQF or something that allowed
15 them to respond better to customer needs into the
16 future, it absolutely reduces their vulnerability. It
17 allows them to play perhaps in different markets with
18 different customers that maybe a long time in the past
19 they may not have had the ability to do.

20 COMMISSIONER PINKERT: Thank you.

21 Mr. Connelly, you just talked about the
22 possibility of more money to come. Does that help to
23 explain the dispute between the two groups in the
24 domestic industry, domestic groups, having to do with
25 the domestic like product in this case?

1 MR. CONNELLY: I have a personal opinion
2 about what that dispute is all about and I would
3 actually prefer to provide that in confidence, but
4 it's all about the money.

5 COMMISSIONER PINKERT: You know, they say
6 that when they say it's about the money, it's not
7 about the money, but I'll let you address that in the
8 post-hearing.

9 Finally, based on what happened at the
10 Commerce Department today, would it be fair to say
11 that the present injury case is weakened because of
12 the causation issue that you've talked about, but that
13 the threat case is strengthened because now the market
14 penetration of the subject imports is not as great as
15 it was until Commerce took its actions?

16 In other words there's now more running room
17 for the subject imports because they're not as big a
18 percentage of the U.S. market.

19 MR. NICELY: I don't follow your question.

20 There's still a market in which all of these
21 countries are participating, right? I guess my point
22 being that you still have Indonesia, a huge supplier;
23 Thailand, another huge supplier albeit affected by
24 EMS. But two suppliers that are so significant along
25 with Mexico and others that account together for 50

1 percent. They are going to have an impact on the
2 extent to which these other countries that are now
3 technically subject to this investigation will be able
4 to take over a larger position in this market.

5 The point being that non-subject imports
6 will have a restraining effect on subject imports'
7 ability to grow and to pose a threat. You can't
8 ignore in this conversation either what has been
9 happening with price. Right? You can't divorce
10 volume from price entirely. So any time you talk
11 about volume let's think about what's going on with
12 price. I point you again to my last slide which
13 showed that domestic prices were going up even while
14 import prices were going down from 11 to 12. So why
15 is there a threat if that phenomenon was going on?

16 COMMISSIONER PINKERT: Thank you.

17 With that I have no further questions for
18 the panel. I thank you for the testimony today and I
19 look forward to the post-hearing submission.

20 CHAIRMAN WILLIAMSON: Commissioner Johanson?

21 COMMISSIONER JOHANSON: Thank you, Mr.
22 Chairman.

23 Mr. Dougan, going back to your chart number
24 ten on which the Chairman questioned you earlier, this
25 number includes a full BP payment, but if you assume

1 that only 50 percent of that amount is compensatory,
2 how would that change your analysis?

3 MR. DOUGAN: I will provide an answer in
4 post-hearing. In fact there may even be an answer in
5 our pre-hearing. I'd have to take a look. But I
6 certainly may have treated it as confidential. I
7 can't do the math in my head, but I will give you an
8 answer in post-hearing.

9 COMMISSIONER JOHANSON: Okay. That would be
10 helpful. Thank you.

11 MR. DOUGAN: I imagine the trend would be
12 very much the same, but just --

13 COMMISSIONER JOHANSON: I can imagine what
14 it would look like, but it would be helpful if you
15 would provide that to us, to the Commission.

16 MR. DOUGAN: I'm sorry, can you repeat that?

17 COMMISSIONER JOHANSON: I can imagine what
18 it would look like, but it would be helpful if you
19 could actually provide that to the Commission.

20 MR. DOUGAN: Will do.

21 COMMISSIONER JOHANSON: For National
22 Fisheries Institute, you state that domestic producers
23 have been slow to adapt to the new paradigm in which
24 high quality farm shrimp has raised the bar for
25 everyone. Could you just please explain what the new

1 paradigm is in this statement? And this was in your
2 pre-hearing brief at page four.

3 MR. CONNELLY: The new paradigm is shrimp
4 farming. Shrimp farming is a lot less costly, it
5 costs a lot less to farm a pound of shrimp than it
6 does to go out in the ocean and catch it. So there
7 are inherent cost advantages that farmers have.
8 Number one.

9 The other paradigm is everything that
10 everybody has talked about. Consistent, size, it's
11 the ability to manage a shrimp farm, shrimp pond in
12 such a way that you can grow the sizes that are in
13 most demand, and you can be consistent.

14 Bear in mind also that these plants are hand
15 -- They use hand peelers. They use workers who peel
16 the shrimp to a much higher standard than a machine
17 peeler can do. I'm no expert on this and I will let
18 others talk about the difference between machine
19 peeling and hand peeling, but it's in all the
20 questionnaire responses from the purchaser. There is
21 a distinct difference. So this is all part of the
22 paradigm which is shrimp farming, the rise of shrimp
23 aquaculture around the world.

24 Maybe others would want to talk about that.

25 MR. BUCKNER: When comparing the two, the

1 processing, again on the domestic side there's limited
2 availability of the value-added shrimp, peeled and
3 deveined as is done mechanically, primarily in the
4 U.S. and to the point the product that's peeled and
5 deveined coming out of the farms is done by hand
6 primarily in the imported countries produces a cleaner
7 product, the machine tends to, it does not clear the
8 devein as much, it does not provide as consistent a
9 product in the quality. Guy, you may want to touch on
10 that.

11 MR. PIZZUTI: I would second that as well.
12 The biggest issue would be on the consistency. When
13 you're doing the hand peeling and the hand deveining,
14 very, very consistent. With the machine peeling you
15 see different depths of the cut, you see veins that
16 are left into the product, and those are some of the
17 primary concerns. When you look at a deeper cut
18 product, when we talked about the tripoly earlier,
19 that product that's cut a little deeper is going to
20 soak up a little more tripoly and when from shrimp to
21 shrimp you have an inconsistent devein like that, you
22 have an inconsistent product at the end for the
23 consumer.

24 COMMISSIONER JOHANSON: Actually I think I
25 have deveined shrimp before, now that I think about

1 it, and I wasn't very good at the hand peeling part
2 myself, but I can now visualize it very well. So
3 thank you for your responses.

4 That concludes my questions for today. As I
5 mentioned this morning, this is the first time that I
6 have worked on an investigation involving shrimp and I
7 found your answer to both the Petitioners and
8 Respondents very useful. So thank you for informing
9 me better on the subject.

10 CHAIRMAN WILLIAMSON: Thank you.

11 Commissioner Broadbent?

12 COMMISSIONER BROADBENT: Thank you. I just
13 have a few more follow-up questions, I guess.

14 This would be on the underselling issue.
15 I'm not sure of the best person to ask, but I'll just
16 throw it out there.

17 In your experience, how transparent are
18 import prices within the U.S. market? I'm asking this
19 because I think one of the arguments that I heard this
20 morning was that there was this preponderance of
21 overselling by subject imports because U.S. prices
22 just remain low in order to meet the very well known
23 import prices.

24 Can you respond to that? Anyone on the
25 panel.

1 MR. CONNELLY: Maybe we can talk about it in
2 terms, and my guess is that people don't want to talk
3 in a great deal of detail about how they analyze
4 prices. It might give away their strategy. But maybe
5 we can talk a little bit, some of our witnesses, about
6 what you look at when you're trying to figure out
7 where the market's going.

8 COMMISSIONER BROADBENT: It sounds to me
9 like it's not transparent.

10 MR. BUCKNER: The availability of indexes
11 out there to attract both the domestic and the
12 imported markets are out there. We utilize those, and
13 in similar fashion to some of the other folks on the
14 panel, we also look at the actual cost of the product
15 and do cost buildups in agreement with our awarded
16 suppliers, if you will.

17 MR. DOUGAN: Commissioner Broadbent, this is
18 Jim Dougan. The idea that there's overselling because
19 the import prices are well known and the domestics
20 somehow voluntarily keep their prices lower to meet --
21 The average margins of overselling and underselling
22 don't support that theory at all. The average margin
23 of overselling is more than twice the average margin
24 of underselling. So if this was really what was going
25 on, the overselling wouldn't be by 37 percent. It

1 just doesn't make sense.

2 COMMISSIONER BROADBENT: Okay.

3 This may be for Mr. Stern from Censea. You
4 may not know this. But are there import restrictions
5 on shrimp going into the EU market or the Japan
6 market?

7 MR. STERN: Yes. There are restrictions. I
8 don't know the exact details.

9 COMMISSIONER BROADBENT: Is anybody on the
10 panel familiar with what's going on in those markets?

11 MR. CONNELLY: We'll take a look. I think
12 what we heard the testimony was is that the GSP rates
13 are going to change in 2014 for Thailand and 2015 for
14 Ecuador. I think that's what we heard.

15 COMMISSIONER BROADBENT: But there's been
16 talk that there are import restrictions in Japan being
17 considered. I understand the GSP point, but any kind
18 of --

19 MR. CONNELLY: Sorry, import restrictions.

20 COMMISSIONER BROADBENT: Import restrictions
21 going into Japan or going into Europe.

22 MR. CONNELLY: We'll have to check. I just
23 don't know.

24 COMMISSIONER BROADBENT: That would be
25 helpful. I appreciate that.

1 What do you think is the primary driver
2 behind the attenuation in this market, Mr. Connelly?
3 Is it the final customer? Or the purchasers which
4 sell to these customers?

5 MR. CONNELLY: The point of attenuation is
6 at the point between the importers and the processors.
7 That's where the attenuation is. At that point. In
8 other words, that's where the distinctions are made by
9 buyers when they are approached by importers. In
10 other words, the importers have a way of selling, they
11 have a product they're selling, the buyers have a way
12 of deciding what they want, how much they want to
13 offer, what types of products they want to offer. So
14 I think the attenuation is, as I said, the importers
15 versus the processors.

16 It is not necessarily at the consumer level
17 except to the extent, as we heard this afternoon, that
18 they're listening to their customers. This is what
19 they're trying to do is meet the demand of their
20 customers.

21 COMMISSIONER BROADBENT: Just a final
22 question, just so I understand. What's your advice to
23 the Commission on cumulating imports from the subject
24 countries for analysis?

25 MR. CONNELLY: For purposes of current

1 injury I think we don't oppose cumulation, and for
2 purposes of threat we feel like each country should be
3 considered individually.

4 MR. NICELY: This is Matt Nicely. Obviously
5 with the news that we heard today we'll take a look at
6 the new data and we'll address this in the post-
7 hearing brief.

8 COMMISSIONER BROADBENT: Okay.

9 Then anything else anybody else wants to
10 mention that we're not asking. You can do that in
11 your summary statement.

12 Thank you very much. I really appreciate
13 all your testimony.

14 CHAIRMAN WILLIAMSON: Just a few questions.

15 I was wondering if you could respond to the
16 point in the Petitioner's brief on page 74 on which
17 they cite the expansion of aquatic quarantine
18 facilities in Chennai, India, and that this may
19 increase India's shrimp production by five-fold.

20 Any comments on that? Any evidence on that?

21 MR. LUNN: I can address it.

22 MR. CONNELLY: Can you repeat the question,
23 please?

24 CHAIRMAN WILLIAMSON: The question is,
25 Petitioners point to expansion of aquatic quarantine

1 facility in Chennai, India. They say it may increase
2 Indian shrimp production I guess on a revenue basis by
3 five-fold.

4 MR. LUNN: I can address it in more detail
5 in the post-hearing brief, but I can assure you that
6 they're not going to increase aquaculture in Chennai
7 by five-fold.

8 A lot of the increase that occurred over the
9 last several years is because India has switched from
10 Black Tiger to vannamei which has proven itself to be
11 very adaptable to the climate essentially in India.

12 I don't see a similar type shift coming up
13 in the future, so I don't know that we'll see that
14 similar type of increase. But as I said, I'll address
15 it more in the post-hearing brief.

16 CHAIRMAN WILLIAMSON: What drove the switch?
17 Was it a shift in demand? Or they found the vannamei
18 more suitable?

19 MR. LUNN: There were disease issues with
20 Black Tiger that they were having. They realized that
21 they could bring in vannamei and that it would work
22 well. It did increase the capital requirements from
23 what I was told recently. The farming techniques are
24 actually substantially different. The farmers even in
25 areas where there is no electricity need to have

1 generators, they need pumps, they need to bring in
2 diesel fuel. So there's an increased cost to
3 production that goes with the vannamei, but the
4 farmers have made it work, so to speak.

5 CHAIRMAN WILLIAMSON: Thank you.

6 Mr. Nicely, can you respond to the
7 Petitioner's brief on page 76 where they assert that
8 Vietnamese companies like CP Vietnam and Canon Mex are
9 investing large amounts of capital to expand food
10 processing operations in Vietnam?

11 MR. NICELY: I'd be happy to in the post-
12 hearing brief.

13 CHAIRMAN WILLIAMSON: Thank you.

14 Does anyone have any idea about the share of
15 shrimp that is sold fresh, never frozen?

16 MR. CONNELLY: No imports are sold fresh,
17 never frozen.

18 CHAIRMAN WILLIAMSON: That's understood.

19 MR. CONNELLY: That we know for sure.

20 MR. PIZZUTI: Speaking on behalf of Publix,
21 not of the industry. Very little. Fresh is readily
22 available. Depending on your definition of fresh. As
23 Publix defines fresh, it's a product that has never
24 been frozen which limits us to ice boat shrimp only.
25 Which when you look in our market area is a very small

1 percentage of the shrimp. I can share post-hearing
2 what our numbers look like for you on fresh versus
3 frozen. But there is a lot of product that is in the
4 marketplace that came off of freezer boats that is
5 being sold daily as fresh.

6 CHAIRMAN WILLIAMSON: Meaning it's not
7 frozen.

8 MR. PIZZUTI: Yeah, meaning it's not frozen,
9 but that is --

10 CHAIRMAN WILLIAMSON: They're selling to you
11 unfrozen, I guess is what I mean.

12 MR. PIZZUTI: They're selling it unfrozen,
13 but our definition, again, this is talking about
14 domestic. On the imported side it's all frozen, but
15 on the domestic side if you're looking at truly fresh
16 never frozen coming off of an ice boat, very small.
17 Higher percentage of product coming off a freezer boat
18 that is being sold into the marketplace as fresh.

19 CHAIRMAN WILLIAMSON: Thank you.

20 Just one last question. Some of you have
21 talked about sort of like the domestic industry, if it
22 has a niche of where it is promoting the wild caught
23 and things like that. But I was just wondering, given
24 the fact that the domestic industry produces some of
25 you say the full range of types of shrimp, at least

1 the, not necessarily process farmed but at least in
2 terms of species and sizes and all that.

3 To what extent would the viability of such a
4 strategy of promoting wild caught depend somewhat on
5 the prices of the imported shrimp in general?

6 It seems like at some point you can market
7 something and say this is more attractive, but there's
8 a gap between the prices of that and something else
9 gets too great.

10 MR. PIZZUTI: I can get into that again
11 post-hearing in terms of the volume that we sell of
12 domestic and the number of SKUs that are involved
13 versus the volume of import and the number of SKUs,
14 and the impact to warehouse space, storage space in
15 the stores, those type things that also prohibit our
16 ability to try to buy across three different domestic
17 species in ten different size ranges. I'll be happy
18 to speak to that post-hearing.

19 CHAIRMAN WILLIAMSON: Thank you.

20 Does anyone else have any other comment?

21 MR. BUCKNER: There are different species.
22 I guess the first point you made was if they're all
23 the same species, how is -- So there are different
24 species all together.

25 CHAIRMAN WILLIAMSON: What I mean is they're

1 producing the same, by and large mostly the same
2 species are similar and comparable, different size
3 ranges. They have a range of sizes. Not like they
4 all concentrate in the large or the very small or
5 something that you could say is unique.

6 MR. BUCKNER: I think the biggest difference
7 in marketability of the wild caught shrimp versus the
8 farmed shrimp. The flavor profile of the domestic
9 wild caught shrimp, the texture of the wild caught
10 shrimp is preferred by some of our customers.

11 The product sized and product form is
12 preferential to the other customers.

13 In the domestic wild caught product, we
14 can't obtain sufficient quantities to service
15 everybody that wants a PND 21-25. I couldn't get
16 enough domestic product to service my customers. My
17 customers that demand Gulf shrimp, I get all I can get
18 and sell every bit I get.

19 CHAIRMAN WILLIAMSON: Thank you.

20 I have no further questions.

21 Do any Commissioners have any further
22 questions?

23 (No response.)

24 CHAIRMAN WILLIAMSON: Does Staff have any
25 further questions?

1 MS. HAINES: Elizabeth Haines. Staff has no
2 questions.

3 CHAIRMAN WILLIAMSON: Do Petitioners have
4 any questions for this panel?

5 (No response.)

6 CHAIRMAN WILLIAMSON: Okay, I want to thank
7 the panel for their testimony. It will be time for
8 closing statements.

9 I see that those in support, the Petitioners
10 have ten minutes direct and five closing for a total
11 of 15 minutes; and those in opposition have seven
12 minutes direct and five in closing for a total of 12
13 minutes. Generally we combine those.

14 So it's 15 minutes for the supporters and 12
15 minutes for those in opposition.

16 I want to thank this panel for their
17 testimony, and once we get everybody set up we'll have
18 closing statements.

19 (Whereupon, a brief recess was taken.)

20 CHAIRMAN WILLIAMSON: You may begin when
21 you're ready.

22 MS. DRAKE: Thank you, Chairman.

23 First I would like to thank the
24 Commissioners and the Staff for their attention
25 throughout the day. And for all of their work on

1 these investigations over the past nine months. The
2 efforts are truly appreciated on behalf of the
3 Petitioner, and we thank you.

4 For the domestic industry, the outcome of
5 today's hearing is critical. The testimony the
6 Commission has heard today confirms that subsidized
7 shrimp from China, Ecuador, India, Malaysia and
8 Vietnam are causing material injury to the domestic
9 shrimp industry. Respondents have sought to distract
10 the Commission from the record evidence that supports
11 providing relief in this case.

12 First, they argue that competition between
13 domestic and subject imports is attenuated. Their
14 testimony this afternoon is contradicted by the data
15 collected by the Commission and reported in the pre-
16 hearing staff report. The differences they point to
17 in support of their arguments either don't exist, are
18 marginal at best, or are simply of no importance to
19 purchasers in the market, at least the purchasers that
20 responded to the Commission's questionnaire responses.
21 Questionnaires, excuse me.

22 Most purchasers, for example, express no
23 preference between farm raised and wild caught shrimp.

24 Sixty-four percent of purchasers report that they
25 consider wild caught versus farmed as an issue in

1 their purchasing decisions only sometimes or never.
2 By contrast, sixty-five percent of purchasers report
3 that price is a very important factor in their
4 purchasing decisions.

5 The Commission has previously found that
6 this is not an important distinction in the market.
7 There is nothing different in the record today to
8 compel a different conclusion.

9 In the Sunset Review the Commission found
10 that three times as many purchasers bought farm raised
11 and wild caught shrimp for the same end users as those
12 that reported not doing so.

13 The Commission also found persuasive
14 evidence that price changes for the farm caught
15 subject imports affect the pricing of the wild caught
16 domestic like product. There are also not significant
17 differences in terms of availability, amounts
18 available from inventory throughout the year, or
19 consistency based on the different methods by which
20 the raw material is produced.

21 As we heard today, farms also have disease
22 outbreaks. Those disease outbreaks affect
23 availability. Those disease outbreaks can even affect
24 the sizes that are available from the farms. These
25 disruptions can happen to both domestic and foreign

1 supply and they do not attenuate competition.

2 In addition, not one single purchaser listed
3 species as one of their top purchasing criteria in
4 response to the Commission's questionnaires.

5 In addition, most purchasers never or only
6 sometimes make decisions based on origin. We heard a
7 lot today about the important difference between
8 product that's processed by hand and product that's
9 peeled by machines. In the pre-hearing staff report
10 only four out of 25 purchasers reported that this was
11 a factor of any importance to them. It seems like
12 three out of those four were here today.

13 In addition, most purchasers rate domestic
14 and imported product as comparable in quality and
15 consistency, and they report that both domestic and
16 imported product usually or always meet minimum
17 quality standards. Both domestic and imported
18 products serve national markets. Both do so largely
19 through distributors, and both do so mostly through
20 spot or short term contract sales. And both domestic
21 and suppliers of imported product provide all forms
22 and all sizes.

23 In short, it all comes down to price.

24 In a price sensitive market such as this
25 one, domestic producers simply cannot survive if there

1 is no discipline on the subsidies that non-subject
2 producers receive.

3 I'd like to review some new data on volume
4 based on the final determinations from Commerce
5 regarding the group of subject countries.

6 This graph shows the pounds imported into
7 the U.S. in millions of pounds from the five subject
8 countries and their market share. This data is based
9 on the data in the pre-hearing staff report which
10 includes cold water shrimp in 2009, 2010 and 2011, but
11 does not include cold water shrimp in 2012.
12 Therefore, the actual increase in subject imports is
13 likely understated in this graph.

14 As this graph shows, subject imports rose by
15 70 million pounds from 2010 to 2012 and 131 million
16 pounds from 2009 to 2012. This is an increase of 17
17 percent from 2010 to 2012, and an increase of 37
18 percent if 2009 is used as the first year.

19 Subject imports also increased relative to
20 the rest of the market. Subject imports went from 28
21 percent of the market in 2009 to 33 percent of the
22 market in 2010, to 36 percent of the market in 2011
23 and were at their highest level at 40 percent of the
24 market in 2012.

25 Subject imports took market share from

1 domestic as well as subject producers from 2009 to
2 2012.

3 The next slide shows that while apparent
4 consumption contracted slightly from 2009 to 2012, and
5 domestic shipments contracted even more sharply,
6 subject imports rose by 37 percent.

7 The afternoon panel said that the market
8 share or the market penetration of subject imports is
9 much less than it would be if all seven countries are
10 included, but they are still significant compared to
11 domestic production.

12 In fact subject imports were 2.3 times as
13 large as domestic shipments in 2009; and there were
14 3.4 pounds of subject imports in the domestic market
15 for every one pound of domestic product in 2012.

16 These subsidized imports have held onto the
17 heightened market share they gained during the Gulf
18 oil spill through continued price undercutting and
19 intensifying price suppression. We look forward to
20 examining the price undercutting data for the new
21 group of subject countries in our post-hearing brief.

22 As we discussed this morning, that price
23 suppression has eaten into the domestic industry's
24 already thin margins, turning them negative at the end
25 of the period. This is true whether you look at a

1 period that includes 2009 or that starts in 2010.

2 In terms of the price effects of subject
3 imports, the Respondents admitted today that orders on
4 unfairly traded imports do discipline prices. That is
5 why the domestic industry is seeking orders on these
6 imports.

7 The market will clearly pay more for shrimp
8 if prices are higher. That fact is confirmed by the
9 fact that when bonding requirements went into place
10 earlier this year, the prices in the market changed.
11 We want to maintain that price change by ensuring
12 countervailing duty orders are imposed in this case.

13 When it comes to injury, Respondents seek to
14 distract the Commission from the record of injury by
15 claiming that the industry's woes are their own fault
16 or BP's fault or someone else's fault, but have
17 nothing to do with the subsidized imports that make up
18 40 percent of the market and have increased at the
19 expense of the domestic producers. These claims are
20 not supported by the record.

21 The issue of subject versus non-subject
22 imports that was raised this afternoon is one that the
23 Commission should look at, but when you look at what
24 is now considered the non-subject imports, you will
25 see that they fell from 763 million pounds in 2009 to

1 714 million pounds in 2010, the year of the Gulf oil
2 spill. There was a small increase of two million
3 pounds from Thailand and Indonesia, but that was
4 overwhelmed by the decrease from other non-subject
5 countries.

6 Total non-subject volume continued to fall
7 in 2011 and it fell again in 2012. Therefore it's
8 difficult to understand how these non-subject imports
9 could be creating an impenetrable barrier to the
10 subject imports which have risen significantly over
11 the period.

12 Finally, looking at the actual financial
13 data of the industry, it is clear that there is injury
14 in this case. Respondents hope to cover up this
15 record of injury by asking the Commission to ignore
16 the industry's operating results, contrary to its
17 longstanding practice. They admitted this afternoon
18 that the way for the Commission to reach this result
19 is to reject what it has done in every other case when
20 it's been asked to look at non-operating income.

21 In the Coated Free Sheet Paper case, the
22 Commission explicitly said that operating income more
23 accurately reflects the results of production
24 operations than does net income. Yes, net income
25 includes money. Other income by definition is money.

1 That does not mean that the Commission should reject
2 its longstanding practice and include that below the
3 line other income in the financial condition of the
4 domestic industry.

5 The Coated Paper case is also
6 distinguishable from this case. I'm surprised we
7 didn't hear more about that this afternoon. In the
8 Coated Paper case the Commission found that the below
9 the line income created an incentive for the domestic
10 industry to increase the volume of pulp they produce
11 and therefore these increased volumes were likely also
12 to lead to lower prices of their final product. Thus
13 the Commission found it was difficult to conclude that
14 the industry's increasing cost price squeeze was due
15 to subject imports when there was also this other
16 cause that could have been suppressing prices, namely
17 the Black Liquor Tax Credit. The Commission did not
18 include that below the line income in the industry's
19 operating results. Rather it found that the way that
20 that income likely was related to price effects made
21 it difficult to find significant adverse price effects
22 by reason of subject imports.

23 In this case no one has alleged and there is
24 no record evidence establishing nor do we believe
25 there could be that below the line BP payments have

1 affected prices at all. Therefore, they provide no
2 reason to reject the industry's actual operating
3 results. Moreover, even if the Commission did want to
4 try to isolate any above the line effects, it was not
5 able to do that in Coated Paper. It can do that in
6 this case.

7 The Commission Staff did a wonderful job
8 working individually with all of the processors to
9 document all of their non-recurring expenses,
10 including those that were included in SG&A. And the
11 Commission, if it wishes to do an alternative analysis
12 isolating those costs, it has the ability to do so as
13 we showed earlier this morning. We believe it will
14 show the industry's still operating at a loss.

15 For all these reasons, we encourage the
16 Commission to make its final determination on the
17 basis of the record of these cases which we believe
18 strongly supports an affirmative determination for the
19 domestic industry.

20 Thank you for your time and attention.

21 CHAIRMAN WILLIAMSON: Thank you.

22 MR. LUNN: Thank you very much. My name is
23 Mark Lunn with Denton's, providing the closing
24 statement for the responding countries.

25 I found it interesting that this is

1 Commissioner Pearson's last hearing because given his
2 tenure, I suspect that the first hearing in the
3 original investigation was probably one of your first.

4 It should provide you with an interesting insight
5 into this industry unlike most of the other people in
6 this room.

7 I want to start off, I want to compliment
8 Petitioner's counsel for putting those slides together
9 that quickly. We did try and we weren't able to put
10 everything together during the lunch break.

11 But I want to address one point that she
12 made right away. She claimed that we're trying to
13 distort the record in this case. Indeed, that's
14 exactly the opposite of what we tried to do.

15 Yes, we do continue to believe that the
16 competition between the aquaculture shrimp and wild
17 caught shrimp is attenuated. Today you had three
18 witnesses from three of the largest purchasers of
19 shrimp in the United States testify as to how they
20 purchase shrimp and the differences between wild
21 caught and farm raised. Publix sells both. And they
22 market them differently. There are differences.

23 But if you look at our briefs, and it will
24 be the same in the post-hearing briefs, we've tried to
25 focus as much as possible on the record before this

1 case. It's Petitioners that have tried to distort the
2 record or distract the Commission from the facts
3 before it.

4 The facts before it are during the period,
5 and that includes 2010, 2011, 2012 and the interim
6 periods, the industry has done well. Shipments are
7 up. The market share is back. They've recovered well
8 from the BP oil spill. And they're back to their
9 historic levels. Again, these historic levels may be
10 low but they are back to their historic levels. This
11 fact can't be denied and they can't cherry-pick where
12 they want to start as the base. If you want to look
13 back and you want to see how the industry is doing
14 during the period of investigation, look at the
15 historic data. This is one case where you have it.
16 You can go back to 2005 and look through the Sunset
17 Review and get comparable data.

18 This is not a case where we should be
19 leaving the period of investigation.

20 Moreover, this is a period, though, where
21 we've had a substantial shock to the system. The BP
22 oil spill was a tragedy for the country, the
23 environment and the shrimping industry. I don't doubt
24 that. However, it is an issue that they have been
25 compensated well for. They've been provided with \$100

1 million in compensation for that. That injury that
2 they've suffered due to that oil spill can not be
3 attributed to subject imports. This is not a case
4 where there is any indicia of material injury or
5 threat of injury. Thank you very much.

6 CHAIRMAN WILLIAMSON: Thank you.

7 Post-hearing briefs, statements responsive
8 to questions, and requests of the Commission, and
9 corrections to the transcript must be filed by
10 August 20, 2013.

11 Closing of the record and final release of
12 data to parties is September 12, 2013.

13 Final comments are due September 16, 2013.

14 With that, I want to thank all the parties,
15 everyone who participated in today's hearing, and the
16 hearing is adjourned.

17 (Whereupon, at 5:04 p.m., the hearing in the
18 above-entitled matter was adjourned.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Frozen Warmwater Shrimp

INVESTIGATION NO.: 701-TA-491-497

HEARING DATE: August 13, 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: August 13, 2013

SIGNED: Raymond Vetter
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).

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I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

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Signature of Court Reporter