UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	**) Investigation Nos.:**
DRIED TART CHERRIES FROM TURKEY	**) 701-TA-622 AND 731-TA-1448**
	) (FINAL)

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THE UNITED STATES INTERNATIONAL TRADE COMMISSION

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Tuesday, December 3, 2019
Main Hearing Room (Room 101)
U.S. International
Trade Commission
500 E Street, S.W.
Washington, D.C.

The meeting commenced, pursuant to notice, at 9:30 a.m., before the Commissioners of the United States International Trade Commission, the Honorable David S. Johanson, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

Chairman David S. Johanson (presiding)
Commissioner Rhonda K. Schmidtlein
Commissioner Jason E. Kearns
Commissioner Randolph J. Stayin
Commissioner Amy A. Karpel

Staff:

WILLIAM R. BISHOP, SUPERVISORY HEARINGS AND INFORMATION OFFICER

TYRELL T. BURCH, MANAGEMENT ANALYST

Celia Feldpausch, Investigator

Steven LeGrand, International Trade Analyst

James Horne, International Economist

Jennifer Brinckhaus, Accountant/Auditor

David Goldfine, Attorney/Advisor

Nathanael E. Comly, Supervisory Investigator

Kelsey Christensen, Attorney/Advisor

CONGRESSIONAL APPEARANCE:

The Honorable Gary C. Peters, United States Senator, Michigan

OPENING REMARKS:

Petitioner (Christopher T. Cloutier, Schagrin Associates)

Respondent (Ritchie Thomas, Squires Patton Boggs (US) LLP)

In Support of the Imposition of Antidumping and Countervailing Duty Orders:

Schagrin Associates

Washington, DC

on behalf of

Dried Tart Cherry Trade Committee

Donald C. Gregory, Chairman of the Board, Cherry Bay Orchards, Inc.

Chad A. Rowley, General Manager, Payson Fruit Growers

Melanie LaPerriere, President and CEO, Cherry Central Cooperative, Inc.

Tim Brian, President, Smeltzer Orchard Company

Nels Veliquette, Vice President and Chief Financial Officer, Cherry Ke

Elizabeth J. Drake, Christopher T. Cloutier - Of Counsel

In Opposition to the Imposition of Antidumping and Countervailing Duty Orders:

Squires Patton Boggs (US) LLP

Washington, DC

on behalf of

Sanford S.A.

Martin Sanford, Chairman, Sanford, S.A.

Ritchie Thomas and Jeremy Dutra - Of Counsel

REBUTTAL/CLOSING REMARKS:

Petitioner (Elizabeth J. Drake, Schagrin Associates)

Respondent (Ritchie Thomas, Squires Patton Boggs (US) LLP)

I N D E X

P R O C E E D I N G S

(9:32 a.m.)

MR. BISHOP: Will the room please come to order.

CHAIRMAN JOHANSON: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on the Final Phase of Investigation Nos. 701-TA-622 and 731-TA-1448 (Final) Involving Dried Tart Cherries from Turkey.

The purpose of these final investigations is to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of dried tart cherries from Turkey.

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

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

Speakers are reminded not to refer in their remarks or answers to questions to business proprietary information. Please speak clearly into the microphone and state your name for the record for the benefit of the Court Reporter, and for those sitting in the back of the room.

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

Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Yes, Mr. Chairman. With your permission, we will add Jeremy Dutra of counsel with Squires Patton Boggs to page two of the witness list. And I would also note that all witnesses for today's hearing have been sworn in. There are no other preliminary matters.

CHAIRMAN JOHANSON: Very well. Will you please announce our Congressional witness.

MR. BISHOP: Our Congressional witness is The Honorable Gary C. Peters, United States Senator from Michigan.

SENATOR PETERS: (Off microphone.)

MR. BISHOP: Push your microphone button, if you would, please. Help is on the way.

STATEMENT OF SENATOR GARY C. PETERS

SENATOR PETERS: Oh, here. There is one here and one there, so that's great. Thank you.

Well thank you, Chairman Johanson, and members of the Commission, for convening this very critical hearing.

I am honored to stand with cherry growers from my home State of Michigan, and I appreciate this opportunity to testify about an issue that is negatively impacting our State -- the dumping of dried cherries from Turkey.

Michigan produces more than 70 percent of the Nation's tart cherries. Unfortunately, Michigan cherry growers have been forced to compete with heavily government-subsidized cherry products from Turkey.

In Traverse City, which is host to the annual National Cherry Festival, many cherry growers have faced and are continuing to face financial run.

Whether it was during my visit to the Shoreline Fruit in Williamsburg or during my meeting last month in Traverse City, I have heard the same feedback repeatedly from growers.

Michigan producers are suffering from dumping of Turkish cherry products for years, and resulting in a significant drop in the price of their products.

For example, Turkey exported about 1.5 million pounds of dried tart cherries in the U.S. in 2018, more than three times as much as it did in 2016 and at a rate of 500 to 600 percent of what the market would expect.

That is why I applaud the ITC's preliminary determination that confirms what we have long known, that our Michigan cherry growers are being regularly undercut by unfair competition from Turkey.

It is past time that the playing field is leveled, and I am glad that steps are now being taken to protect a key part of Michigan's economy.

However, Michigan cherry growers, who are already under very tight budgets, should not have to pay millions of dollars just so they can compete in what should be a fair marketplace. That is why I reintroduced my bipartisan legislation, the "Self-Initiation Trade Enforcement Act. This legislation would give the Commerce Department greater ability to self-initiate action against trade abuses like those that we are currently seeing from Turkey.

Michigan's farmers, manufacturers, and small businesses should be able to focus on making the world's best products instead of trying to navigate international trade bureaucracy. Moreover, bad actors should be held accountable.

Turkish tart cherry exporters should finally face the stiffest of tariffs for their unfair trade practices that have undermined Michigan's cherry growers.

We must also prevent bad actors from exploiting trade loopholes. To the maximum extent of the law, tariffs should apply to Turkish cherries that have been further processed in a third country.

We know that Turkish cherries have been sent to Brazil where they have undergone minor processing in order to avoid facing the consequences of our laws.

Failure to address this loophole will only encourage what is tantamount to a game of whack-a-mole. If the Petitioners, who are already struggling as it is, are forced to bring a new case like this to address third-party and third-country collaborators, then the bad actors will ultimately win.

I know if trade rules are fair, our businesses and our workers will always win in the global marketplace. When you make your final determination, I implore you to issue them in line with your preliminary decision which would help level the playing field for cherry growers, and Michigan, and across the country.

Thank you for the opportunity to testify today, and I look forward to your final determination.

CHAIRMAN JOHANSON: Thank you, Senator Peters, for appearing here today.

Do any Commissioners have questions for Senator Peters?

(No response.)

CHAIRMAN JOHANSON: No Commissioners do. Thank you, again.

SENATOR PETERS: Thank you.

CHAIRMAN JOHANSON: Certainly.

MR. BISHOP: Mr. Chairman, we will now move to opening remarks. Opening remarks on behalf of Petitioner will be given by Christopher T. Cloutier with Schagrin Associates.

Mr. Cloutier, you have five minutes.

STATEMENT OF CHRISTOPHER T. CLOUTIER

MR. CLOUTIER: Chairman Johanson and members of the Commission, good morning. I am Chris Cloutier of the Law Firm Schagrin Associates. I am here on behalf of the Dried Tart Cherry Trade Committee.

I would like to start out with a few points about this industry. My law firm first heard about the adverse impact of the imports of cherry products from Turkey in the middle of 2018. That was in the context of a review of preferences afforded to imports of tart cherry juice from Turkey.

Shortly thereafter, we heard from the present coalition about the harm domestic producers were suffering as a result of low-priced imports of dried tart cherries from Turkey.

The members of this Committee account for the vast majority of domestic production, and most are either owned by growers or otherwise related to tart cherry growers. Many of the families that own these companies have been in the business for generations.

The members of this coalition have been consistent in what they told us in our initial discussions, with what they have said to the press, with what they have testified at the staff conference, and with what they flew here to tell you this morning:

Low-priced imports of dried tart cherries from Turkey are destroying their businesses.

The phenomenon is not a figment of their imagination, as the one Respondent to appear today suggested in its brief. As you can see from the public version of the C Tables, the losses of the domestic industry have been growing in recent years, and it is difficult to fathom how or why the group before you today would join together to invest their precious resources in this case if there were not a universal belief that imports of dried tart cherries from Turkey were contributing to material injury.

We appreciate the diligence of the staff in trying to compile the most accurate report possible, but the process does have limitations when foreign interests fail to respond, or when they report information that may not be accurate.

You will hear shortly from industry experts that there is very little demand in the United States for dried sweet cherries. If there were significant demand, the companies on today's panel would make this product in corresponding volumes. But by and large they do not make dried sweet cherries because the demand does not exist.

We address this issue at length in our confidential brief, and my colleague, Ms. Drake, will revisit the issue in our affirmative presentation.

In light of the low demand for dried sweet cherries in the United States, we consider that the data reported to Customs under tariff classification O8-1340.3000 for all types of dried cherries overwhelmingly consists of dried cherries, no matter what interests opposed to the imposition of remedial duties might have said in their submissions.

Public import data show that imports of dried tart cherries nearly doubled from 2016 to 2017, and grew by more than 250 percent between 2016 and 2018. That growth reversed after these petitions were filed, a drop that would make little sense if these imports were sweet cherries not potentially subject to duties.

Public import data show us that Turkey's market share grew from about 2 to about 9 percent from 2016 to 2018, and that this growth was at the expense of the domestic industry.

Turkey's increasing share of the U.S. market caused adverse price effects in the performance of the domestic industry suffered, as Ms. Drake will discuss shortly. Suffice it to say for now that the record as we see it demonstrates that the domestic industry has been materially injured by reason of Turkish imports of dried tart cherries.

The domestic industry is also threatened with material injury. The Government of Turkey heavily subsidizes the production and exportation of dried tart cherries, and the more than doubling of imports of dried cherries over the POI demonstrates that Turkey can increase export volumes rapidly.

Members of the domestic industry are also wary of the threat posed by Turkish dried tart cherries in light of the tripling of tart cherry juice concentrate imports from Turkey between 2013 and 2018.

Finally, given the relatively low level of cooperation by Turkish interests, it is worth noting that in the 1991 investigation of tart cherry juice the Commission took adverse inferences against uncooperative domestic interests, assuming that the reason they did not respond was because the requested information would hurt their case.

This is the appropriate standard for noncooperation under the statute. The Commission should not assume that whatever information might have been provided if certain foreign interests had actually cooperated would support Respondent's arguments. Rather, the assumption should be that the reason the information was withheld was because it would make a finding of material injury more likely. This is the standard that Congress intended under the statute.

We look forward to providing more information in support of our claims during the panel presentation and responding to your questions. I thank you.

MR. BISHOP: Thank you, Mr. Cloutier. Opening remarks on behalf of Respondents will be given by Ritchie Thomas of Squires Patton Boggs.

Mr. Thomas, you have five minutes.

STATEMENT OF RITCHIE THOMAS

MR. THOMAS: Good morning. I am Ritchie Thomas, senior counsel in the Law Firm of Squires Patton Boggs, counsel for Sanford A.S. in this proceeding.

Sanford is a producer and exporter of the subject dried tart cherries from Turkey, and here stands in for the Turkish industry.

Faced with the staff's prehearing report showing subject imports from Turkey are not injuring or threatening to cause injury to the U.S. domestic tried tart cherry industry, Petitioners have chosen to attack the report. And, by implication, the Commission staff that prepared it.

False Petitioners claimed to find in the questionnaire data collected by the staff in this final phase also were claimed by Petitioner to be present in the data collected for purposes of the preliminary phase.

In these final investigations, staff altered the pricing products to respond to Commission--to Petitioners objections in the preliminary. The results continue to show no substantial underselling by subject imports from Turkey.

In addition, the staff diligently ran down every objection and supposed inconsistency in the questionnaire import data raised by Petitioners, with whose counsel the staff appears to have been in frequent contact throughout the final investigations.

But the information obtained did not support Petitioners claims of errors. Petitioners now seek to dismiss clarifications of supposed inconsistencies provided by importers and purchasers as mere emails, unworthy of consideration. They prefer speculation to facts.

We encourage the Commission not to follow Petitioners down every "what about" and "what if" rabbit hole Petitioners dig in their efforts to impeach the staff's data. As the staff report states, and I quote, "The U.S. import data presented are based on questionnaire responses from nine firms representing the vast majority of reported U.S. imports from Turkey in 2018 under HTS Statistical Reporting No. 813.40.3000.

The coverage reported in the associated footnote of the report is truly comprehensive and exceeds representation the Commission found adequate for its analyses in other investigations.

This fact, as well as the due diligence conducted by the Commission staff, authoritatively rebuts every anecdotal objection Petitioners raise to the report's import data.

The fact Petitioners attack the staff's report so aggressively itself demonstrates that the data obtained in these investigations do not support Petitioners claims of Turkish subject import caused material injury or threat of material injury.

The domestic industry entered the period of investigation already experiencing poor financial results. Those presumptively were not attributable to subject imports from Turkey. Over the POI's 2016-2018 period, Turkish imports not only decreased in volume, they increasingly consisted of organic tart cherries which in the same period consisted of an extremely small part of the domestic industry's shipments.

In the meantime, nonsubject imports increased and surpassed the volume of imports from turkey. Petitioners have not accused those imports of causing them any injury.

The pricing data show no significant

underselling, and the AUVs of both subject imports and the domestic product increased in the POI. The big event in the POI was a substantial decrease in apparent U.S. demand for dried tart cherries. That decrease, which Petitioners' prehearing brief stubbornly refuses to acknowledge, seems to explain such further deterioration of financial results as the domestic industry experienced in the POI.

In any event, the cause clearly does not lie with the subject dried tart cherry imports from Turkey. When our turn comes, our presentation will be brief. We rely on the staff's prehearing report. Much of its data is confidential, therefore we will present only background information about the production of dried tart cherries in Turkey and a summary of the findings suggested by the Commission's staff report. In the circumstances, that seems sufficient.

Thank you.

MR. BISHOP: Thank you, Mr. Thomas.

Would the panel in support of the imposition of the antidumping and countervailing duty orders please come forward and be seated.

Mr. Chairman, this panel has 60 minutes for their direct testimony.

MS. DRAKE: Good morning, Chairman Johanson and Commissioners. This is Elizabeth Drake of Schagrin

Associates on behalf of the Petitioner, The Dried Tart Cherry Trade Committee.

We would like to begin with testimony from our witnesses and then have a slide presentation.

We will begin with Mr. Donald C. Gregory, Chairman of the Board of Cherry Bay Orchards, Inc.

STATEMENT OF DONALD C. GREGORY

MR. GREGORY: Good morning, Chairman Johanson and members of the Commission. My name is Don Gregory and I am Chairman of the Board of Cherry Bay Orchards. Cherry Bay co-owned Shoreline Fruit, a domestic producer of dried cherries, and one of the members of the Dried Tart Cherry Trade Committee.

Cherry Bay is part of a two-family owned farm that grows tart cherries on over 6,000 acres near the shores of Grand Travers Bay in northern Michigan. My brother, Bob, and I together with our friends, the Veliquette Brothers, started farming cherries out of college in the early 1970s.

We started working together to produce our cherries short -- to process our cherries shortly thereafter. We started pitting the cherries, then in 1988 started an operation to individually quick-freeze them, and we got our first drier in the early 2000s.

Today, Shoreline produces tart cherry juice, powder, and dried cherries. Despite growing into the largest tart cherry operation in North America, we are still family-owned and many of our family members remain involved in the business.

The State of Michigan accounts for about 70 percent of the U.S. tart cherry crop, with additional production in Utah, Washington State, and a few other locations.

Michigan's climate and fresh water provides an ideal environment for tart cherries by keeping orchards cool in the summer and reducing the impact of harsh winds in the winter and spring.

Any of you that have been to that part of Michigan will now how important tart cherries are to the region. The rolling hills along the shores of the bay are dotted with thousands of tart cherry trees. The Traverse City Airport is called "Cherry Capital Airport," and our annual cherry festival attracts hundreds of thousands of visitors.

If you have ever had a real Michigan salad, you have eaten dried tart cherries. There are hundreds of tart cherry farmers in the region, and many families have farmed tart cherries for generations.

In Michigan, tart cherries are typically harvested in the window from late June to mid-August, though peak harvest times will vary from year to year based on the weather and other factors.

Tart cherries are very tender and perishable, and thus almost none of the crop is consumed fresh. Instead, the vast majority of the tart cherries are processed into canned cherries, frozen cherries, and other forms of processed cherries.

We produce dried tart cherries from pitted frozen cherries. Even though the harvest season is short, we have a plentiful steady supply of frozen cherries available to us throughout the year to produce dried tart cherries.

When I first got involved in the tart cherry industry, there was no such thing as dried cherries. Most of the tart cherry crop was processed into pie filling or dessert ingredients. Over the years, the American diet has changed and we no longer eat as many pastries, cakes, breads, and pies filled with tart cherries.

These types of desserts have become a special treat rather than an everyday occurrence. As a result, the fruit filling and frozen segment of our industry has declined. We started making dried tart cherries with an outside drier in 2001, and decided to establish our own drying operation in northern Michigan shortly thereafter. The market for dried tart cherries continues to grow in importance, and we estimate that about 25 to 30 percent of the domestic crop is typically processed into dried tart cherries.

We started a second drier lineup at the end of 2013. In my experience, there is no meaningful market for dried sweet cherries in the United States. Shoreline processes a very small amount of dried sweet cherries, but it is actually less than one percent of our sales.

Tart cherries have the right acidity level and other physical characteristics to produce dried cherries with the desirable flavor profile and texture. Sweet cherries have less acidity, tougher skin which makes them less suitable for drying. Sweet cherries produce a bland dried product with a less appealing texture, which is why they have such a minimum presence in the market.

The only product we use dried cherries for is a blend with tart cherries, where sweet cherries make up less than 20 percent of that blend. This particular blended product is a very small part of our overall sales.

The domestic industry has invested heavily in markets for tart cherries. We constantly experiment with infusion methods and ingredients, drying technologies, and other innovations to develop the best product for our customer.

We have invested heavily in research and marketing to educate consumers about the benefit of tart cherries, and build demand for them. Unfortunately, imports from Turkey are now reaping the benefits of all of those efforts.

The rapid increase in low-priced imports from Turkey has taken market share from domestic producers and harmed our industry. As our shipments of dried cherries declined in 2017 and fell even more sharply in 2018, we were forced to cut production.

In the beginning of 2019, our production level got so low that we were no longer covering overhead and had to idle our second drier. This forced us to lay off 32 employees. This is a hard decision for any company, but especially a family-owned company like ours.

As our sales volume dwindled, our profits also suffered. We have been forced to reduce our capital expenditures and forego needed investments, as well. Not only is our newest drier line no longer running tart cherries, but we have not been able to justify needed upgrades to our freezer area and investments in new infusion methods. Even routine general maintenance has suffered.

This case is important to the survival of our industry. In our industry, it is very difficult to know why a customer leaves or a sale is lost because so many of our sales are through distributors.

One of our main distributors did share with us that it lost a potential bid in 2018 due to a competing bid at a much lower price that we believe to be Turkish product. After the Petitions were filed in April of this year, we have been able to increase our sales back through that distributor.

Another customer that left us long ago, we believe for Turkish product, is now answering our calls and accepting quotes from us.

We are hopeful that many other opportunities will open up for us if this Order is imposed. If not, and if dumped and subsidized imports from Turkey start to increase again, our industry will be very vulnerable to further injury.

I would like to change my hat for just a minute and speak to you as a grower. Today I am watching some of my fellow cherry growing neighbors go out of business. Others are using up their retirement dollars trying to pay the bills on their farms.

As tough as things are at the drier plant, imports are making it even more devastating at the ground level. One of our co-founders' sons who is involved in the growing side of the business, Nels Veliquette, is here with us today to help give the Commission some of that perspective.

The Gregory and Veliquette families are committed to this industry. I have been fortunate to spend more than

40 years of my adult life in the industry. My daughter Emily and son-in-law Mark are now stepping up as the next generation of leaders in the industry.

Mark became president of Cherry Bay last year. For the future of my family and others, our workers and domestic industry, we respectfully request the Commission make an affirmative determination. Thank you.

MS. DRAKE: Thank you, Mr. Gregory. Our next witness is Mr. Chad Rowley, General Manager of Payson Fruit Growers.

STATEMENT OF CHAD ROWLEY

MR. ROWLEY: Good morning Chairman Johanson and the Commission -- members of the Commission. My name is Chad Rowley. I'm the General Manger of Payson Fruit Growers. We produce dried tart cherries in Payson, Utah. I'm a third generation of my family involved in the tart cherry industry.

In the early 1960s, my grandfather, two of his brothers, and some of their neighbors that were growing tart cherries decided to join together to process their own tart cherries. They started with a couple of pitting lines. At that time there were not a lot of tart cherries grown in Utah. That began to change with the advent of mechanical harvesting in the early 1970s, which was much less labor intensive. More trees were planted, more neighbors joined the co-op. They built a freezer to store their raw crop.

Over time, customer taste began to change and there was less demand for the frozen and canned cherries used for desserts and pie filling. In the late 1980s and early 1990s, we were producing more frozen tart cherries than we could sell. American began to experiment with drying the cherries. It took a lot of adjustments and failed starts to finally find a method of producing dried cherries that resulted in a product that was the right balance of tart and sweet at the right texture for snacking as an ingredient in a wide array of foods.

We built our first prototype dryer in the early 1990s. As demand started to take off, we continued to dry and other domestic producers started drying producing dried tart cherries as well. Today we have several dryers and we have gone from nearly 100 percent of what we produce being sold in frozen form to a majority of our product sold dried. In short, the development of dried tart cherries as a product in a market is the only reason Payson Fruit Growers is still in business today.

We've done a lot to educate consumers and build a market for our product and there's always more we can do, but when more and more of the market we built goes to imports instead of domestic producers, it undermines the effectiveness of these efforts. We produce a wide array of dried tart cherries, including cherries infused with sugar, apple juice concentrate infused cherries, and uninfused cherries. We produce cherries from raw cherries that have been pitted and frozen. Frozen cherries can be held in the freezer for at least two years, so we have a steady supply available to produce dried cherries throughout the year.

For infused cherries, we first infuse the thawed cherries in sugar. The infusion sweetens the cherries and improves yield. We use the brick scale to measure sweetness. Once the proper balance of tart and sweet is achieved, the cherries are ready to be dried. We use conveyor dryers, which are common in the industry. The infused cherries are loaded onto the beginning of the conveyor belt and carried through the dryer. As the conveyor belt moves the tart cherries through the drying machine, hot air is blown on the cherries and they lose moisture.

After they are dried, the cherries are typically coated in a very thin layer of oils, such as safflower or sunflower oil to prevent sticking. At the end of the drying process, the dried cherries are scanned and checked for any defects or foreign material before being packaged. Dried tart cherries may also be further processed by being sliced, chopped, or minced.

Payson dries both conventional and

organically-produced dried tart cherries. Our growers have had to make very substantial investments to produce organically and to receive the organic certification. Our grower needs to demonstrate that their trees have been cultivated organically for three years before it can get an organic certification. As a result, the grower needs to lay out all the added expenses for organic fertilizer, for more frequent sprayings with approved organic compounds, added labor, and other expenses for three full years without getting organic premium for their product.

It is only the crop they harvest beginning their fourth year that gets sold with an organic certification and can be marketed at the higher price. Our growers have invested heavily in organic production and we expect substantial new acreage in Utah to be eligible for organic certification in 2020 and 2021 after the years of efforts already undertaken by growers. If Orders are not imposed and imports from Turkey are allowed to enter the market, it will be at the worst possible time. Just as we were hoping to sell more organic dried tart cherries, we will be undercut by imports. This will deprive us of the ability to give our growers the premium for their organic product that they deserve or that they desperately need to make up for the investments they have already made in order to get the organic certification. This will also make it more difficult to incentivize further investments in organic production going forward, harming our ability to serve the market for organic dried tart cherries.

As far as we know, dried tart cherries from Turkey are produced through the same or similar methods as what we use. Both the U.S. and Turkey product, both organic and conventional dried tart cherries, product from the U.S. and Turkey has similar flavor profiles and textures. They would be virtually indistinguishable to the ordinary customers. This is especially the case if the cherries have been incorporated as an ingredient in a finished product, such as trail mix, cereal, granola, or other items.

This makes price a very important factor in purchasing decisions for dried tart cherries. Big retailers especially are moving more and more to a bid process where price is a deciding factor. The retailer will put out a spec and everyone can meet it. The retailer does not differentiate between product that meets the spec based on the producer or country of origin. These bids can be won or lost based on differences of pennies a pound. This makes our market especially vulnerable to competition from low-priced imports.

As imports of dried tart cherries from Turkey have grown since 2016, Payson has seen its shipments and production of dried tart cherries fall. In late 2017, we are forced to cut back to a four-day workweek. This was hard for our employees, but we did everything we could to avoid layoffs. This year we've gone back to a five-day workweek, but we will still give everyone three weeks of paid leave around the holidays because we need to work down our inventories.

As a family-run company concerned about our community, we simply cannot afford to lose good people, but if our sales and production fall even further, it will be difficult to keep them fully employed. Our plant is only running at 60 percent capacity due to declining sales. The loss in sales and production volume has also harmed us financially, leading to falling sales revenue and lower profits. This has forced us to cut our capital expenditures and stall some of the new product development projects we had been planning.

For over 50 years, my extended family and our friends and neighbors in the area have banned together to support Utah tart cherry growers with their own processing operation. Payson Fruit needs a robust dried cherry business in order to fulfill our mission. Unless duties on imports from Turkey remain in place, it will become more and more difficult to maintain a viable dried tart cherry industry in the United States. This will be devastating for the small family farmers that depend on us to find a market for their cherries.

I'm the third generation of my family involved with Payson Fruit Growers and we're working actively to involve the next generation. We hope the Commission will vote in the affirmative to make this vision a reality. Thank you.

MS. DRAKE: Thank you, Mr. Rowley. Our next witness is Ms. Melanie LaPerriere, President and CEO of Cherry Central Cooperative.

STATEMENT OF MELANIE LAPERRIERE

MS. LAPERRIERE: Good morning, Chairman Johanson and members of the Commission. My name is Melanie LaPerriere. I'm the President and CEO of Cherry Central Cooperative. While I have not been yet with Cherry Central for a full year, I have many years of experience in the fruit industry, including marketing, sales, operations, project management, and systems implementation.

Before joining Cherry Central, I was the Vice President and General Manager of Naturite Foods, which is a grower-owned California-based company marketing blueberries, raspberries, strawberries, and blackberries. Cherry Central is a cooperative owned by eight tart cherry grower processors and one apple grower processor. Payson Fruit Growers is one of the grower-owners of our cooperative.

At the cooperative level, Cherry Central owns a fruit dryer in Shelby, Michigan named Oceania Foods. Oceania Foods processes the fruit our owners harvest as well as other purchased products like blueberries and cranberries. Because most of our owners are tart cherry growers, processing tart cherries will always be a strategic core of Oceania's mission.

As others have testified, nearly all tart cherries are sold in processed form and dried tart cherries are the form in which about 25 to 30 percent of the raw crop is ultimately sold and consumed. Dried tart cherries are used in a wide array of applications. They can be sold as a stand-alone snack item at the retail level, either under a brand name or the retailer's private label.

They can also be sold as ingredients in mixes of dried fruits, trail mixes, or granolas in retail stores. Dried tart cherries are sold to food manufacturers who incorporate them as an ingredient in finished products like breads, cakes, cereals, and bars, as well as finished confections like chocolate covered cherries. They are also consumed in the food service industry where they are used in a wide variety of sweet and savory applications.

Many sales of dried tart cherries first go through distributors, including distributors that may re-bag bulk cherries into smaller packages or even combine dried tart cherries from several different producers into one package. As demand for dried tart cherries has grown over the years, Oceania has also expanded to add capacity. The most recent dryer we added at Oceania came online in last 2015 and we completed an expansion in 2016, adding a new infusion system. Unfortunately, we've not been able to reap the benefits we envisioned from this important investment.

Just as we were hoping to ramp up sales and production on our new equipment, imports from Turkey ramped up instead. Our production and shipments have fallen as a result and our capacity utilization is unsustainably low. We were forced to curtail production in 2018 and we have also had to let some of our employees go. As sales revenue has fallen, Oceania's financial performance on dried tart cherries has become increasingly dire. The situation has only gotten worse in 2019. We were forced to have broad layoffs in January of 2019 and our workforce is less than half of what it was a year ago.

Our financial performance for the first half of 2019 is even worse than it was in 2018. Despite these challenges, I'm optimistic about our chances to turn things around if the duties on dried tart cherries from Turkey are kept in place. We are investing heavily in new product development and we are determined to increase our sales so that we can move more product through that plan.

In September of this year, the same month preliminary duties were announced, we got an inquiry from a customer that we've never sold before. Cherry Central had frequently called on this company and sought its business with no success. We know from publicly available information that this company was highly reliant on Turkish tart cherries. In September, we were finally able to make our first sale to this customer. We hope to make many more sales to this customer and others if Orders are imposed on Turkish imports.

I see many opportunities for our business. We have great products and a wonderful group of committed cooperative growers. We are investing in product development and ready to serve new customers. I am confident that our co-op will have a bright future if conditions of fair trade can be restored. If not, imminent increases in imports from Turkey will only further injure an industry that is also already very vulnerable. Thank you.

MS. DRAKE: Thank you, Ms. LaPerriere. Our next witness is Mr. Tim Brian, President of Smeltzer Orchard Company.

STATEMENT OF TIM BRIAN

MR. BRIAN: Good morning, Chairman Johanson and members of the Commission. My name is Tim Brian and I am president of Smeltzer Orchard Company in Frankfurt, Michigan. My family first homesteaded land in Michigan in 1872 and started planting fruit trees. Nearly 150 years later, we are processing dried tart cherries across the street from the original homestead.

My great-grandfather and his two brothers established Smeltzer Orchard Company in 1942 and started pitting cherries in 1946. We started drying tart cherries in 1992. I have been working fulltime at Smeltzer Orchard Company ever since I graduated from college more than thirty years ago. I became president in 2004.

Smeltzer Orchard Company is a independent processing company. We're not a cooperative. While some of my family members still do own orchards, our company does not own any orchards directly. We buy all of our raw cherries from independent growers in the State of Michigan. We pit and freeze them so we can hold the frozen cherries in inventory throughout the year.

While we do sell cherries in frozen form, we also use frozen cherries as the input into our drying process. We generally infuse the cherries prior to drying for higher moisture, softer texture and a better flavor profile. Our driers are oven conveyors and the drying process is similar to what has already been described.

Unfortunately, Smeltzer Orchard Company is operating far below capacity due to the lack of market opportunities for our product. While imports from Turkey have increased, we have mostly been left standing still. Our sales prices and revenue have also suffered. As a result, we have not been able to contemplate any significant new investments, even though one of our two driers is more than twenty years old.

With all the time and money our domestic industry has invested in building a market for dried tart cherries, we should be able to see some benefits in terms of higher sales and prices. Dumped, subsidized imports have used low prices to penetrate our market and take the demand that we helped to create. We jointed with our fellow domestic producers to file these petitions because imports threaten an even greater injury if we do not act now.

We also produce some organic dried tart cherries. We have been producing organic dried tart cherries for over fifteen years. Historically, sales of organic product were seen as a growth area. Growers must make significant additional investments in order to produce organic product and gain the organic certification. But they have done so to serve what they thought would be an emerging part of the market.

We are deeply concerned that our opportunities to serve the organic market will be especially at risk if orders are not imposed on imports from Turkey. This will not only harm our business, but also growers who have invested so heavily in organic production methods.

Turkey is one of the largest producers of tart cherries in the world. Any value-added product our industry develops, they follow right behind. They have already come to dominate the market for tart cherry juice, and we cannot let the same thing happen to the market for dried tart cherries. Cherry farms and producers in Turkey are supported through an array of government subsidies, including payments for new saplings, export credits, forgiveness of government debts for processed fruit exports, and investment incentives and capital product subsidies.

As a small, family-owned business, we simply cannot compete against the foreign government. Based on public data, imports from Turkey more than tripled from 2016 to 2018. They continue to grow in 2019 until our petitions were filed. If orders are not imposed, the growth will resume. Our industry is in no position to withstand such an increase. Our company is still family-owned. Two of my brothers are actively involved in the company, and we are already involving one of their sons, my nephew, to ensure we can pass this company down to the next generation.

The Commission's vote in this case will help determine whether a fifth generation of our family will have the opportunity to succeed in this industry. Thank you.

MS. DRAKE: Thank you, Mr. Brian. Our last witness is Mr. Nels Veliquette, Vice President and Chief Financial Officer of Cherry Ke.

STATEMENT OF NELS VELIQUETTE

MR. VELIQUETTE: Good morning, Chairman Johanson and members of the Commission. My name is Nels Veliquette. I would prefer not to be here today. I should've been home with my family for dinner last night and to drop my son off at school this morning. I should be finalizing a 2020 financial plan for the farm and convening our marketing team at Shoreline Fruit to determine the best utilization for our upcoming certified organic production. But I know I need to be here today, given the gravity of the situation our industry is facing. And I appreciate the Commission's willingness to hear our testimony. You have my gratitude.

I'm the vice president and chief financial officer of Cherry Ke. Cherry Ke Farms tart cherries on 2,300 acres of land on the eastern side of Grand Traverse Bay in Northern Michigan, and in the counties of Cass and Van Buren in Southwest Michigan. As Mr. Gregory testified, his family and my family, the Veliquettes, have been farming tart cherries in Michigan for nearly fifty years. We also jointly own Shoreline Fruit, which producers dried tart cherries and other processed cherry products.

My father and uncle started farming tart cherries with the Gregory brothers in 1969 and I have been involved with tart cherries my entire life. I grew up planting and pruning cherry trees. I took over financial management of our company seven years ago and my younger brother, Bruce, is president. My aunts, uncles and cousins are involved in the business and we are bringing up the next generation to carry on farming tart cherries. The site where Shoreline Fruit now sits was first operated in the 1930s by my great-grandfather on my mother's side as a warehouse for seed potatoes and has been employing people in our local community ever since.

Tart cherry farming is not just a business for me. It is an essential part of who I am. And farming cherries is central to my family's history and its future. For tart cherry farms to survive, they need to be able to successfully market their crop in processed form. If the market for processed tart cherries becomes distorted by unfair trade, it has a direct negative impact on cherry farmers.

Tart cherry trees are an enormous investment for farmers. After planting, it takes seven years until a tree can produce its first marketable crop. It takes thirteen to fifteen years for a tree to produce enough cherries to pay back on that original investment. The trees' total life cycle is about thirty years.

Because tart cherries are so perishable, they are overwhelmingly consumed in processed form, whether frozen, as juice or concentrate or as dried fruit. Farmers are thus totally dependent on the markets for processed tart cherries to make a return and recoup their long-term investment in cherry farming. In our case, about half of our crop is ultimately processed into dried tart cherries.

The investment involved in organic tart cherry farming is even more intense. Cherry Ke has been managing two hundred and ten acres organically for several years. In order to get the organic certification, we are required to show that we have managed the trees organically for at least three years with no residual level of pesticides. Only after that certification is achieved can we market our cherries as organic. After years of effort, we will produce our first certified organic cherry crop in July of 2020.

To manage organically, you have to plan far in advance and have dedicated equipment. Synthetic fertilizers are prohibited and organic fertilizers, especially full-year applied, are typically more expensive and harder to source. It is vital that the soil continues to have enough nutrients to feed the tree to grow without the use of the artificial fertilizers.

Pest control is another challenge. There are organic sprays that can be used to control pests, but they are typically not as long-lasting as synthetic sprays and they need to be re-applied more frequently. The labor and equipment involved in the more frequent spraying is significant. Despite these added costs and challenges, we are optimistic about the opportunities for our organic cherry crop if the playing field is level.

In addition to the trees that will produce certified organic cherries next year, we have another 5% of our total acreage going through the transition process so that they can eventually be certified as well. In order for these investments to make sense economically, we expect we will need to be able to market our raw organic cherries at twice the price of conventional. If duties on imports of dried cherries are not kept in place, I am concerned about our ability to earn the return we need.

Going forward, increased imports could greatly reduce, or even eliminate, the incentive to keep making these investments in the future. Imports of dried cherries from Turkey pose a direct threat to our industry. I've been to Turkey, I've visited tart cherry orchards and even a dried fruit processing facility in Izmir. The government of Turkey has a policy to promote agriculture and particularly further processed agricultural products for export, to support its economy and employment.

For example, the Turkish government pays farmers up to four thousand lira per hectare for new fruit saplings, depending on the nature of those saplings. The Turkish government also provides financial support for organic farming, good agricultural practices and subsidies for fuel and fertilization. Tart cherry trees in Turkey have the same thirty-year life cycle that our trees do. Once those subsidized saplings are in place, Turkish farmers have every incentive to keep finding a market for their crop every single year.

There're also strong government incentives to add value by further processing those cherries and exporting them. Exporters of processed agricultural products in Turkey are eligible for reductions to the amount of government debt they owe, equal to a set amount per ton of exports. Turkish dried cherry processors have also received government subsidies to reimburse up to 50% of their new investments in equipment and upgrades. Again, once this infrastructure is in place, it needs to find a market, and the U.S. is a highly attractive one.

I've grown up in the tart cherry industry and my family is committed to growing the best tart cherries for years to come. We have made continued investments to produce excellent products, educate consumers and develop new markets. Now, imports from Turkey put all that at risk.

For the sake of my family, our employees and the many other farmers that depend on a viable domestic dried tart cherry processing industry, we ask the Commission to make an affirmative determination in this case. Thank you.

MS. DRAKE: Thank you Mr. Veliquette. We'd now like to do a PowerPoint presentation. And I'd like to ask our law clerk, Mr. John Hefflin to come to the front to help with these product samples. So, our presentation is going to first look at import data and then cover some of the statutory factors that the Commission considers on import data.

Contrary to -- on the next slide, contrary to Respondent's claims, we are not attacking the staff report, nor, of course the staff. The staff has done an excellent job, been incredibly diligent as they always are, in terms of following up with foreign producers and importers to get the most complete and accurate data possible, despite all these efforts because of a lack of cooperation, we believe the staff report fails to reflect the full volume of imports that have been present in the market.

Therefore, HTS categories under which imports may enter, the largest of which is the first one, dried cherries, 08-13-43000. Reasons -- and so we believe this category is the best one for the Commission to rely on for its analysis.

Reasons that import data has been understated in the staff report include a lack of responses, some claims about no imports or different kinds of dried cherry imports coming in under that first category, and other discrepancies in the data.

On the next slide, you can see that we identified -- sorry this is hard to read, but you have a hard copy, more than 2,000 importers based on bill of lading data of dried tart cherries from Turkey, and all of the product descriptions say dried cherries. Many say dried sour cherries, dried tart cherries. None of them say dried sweet cherries. But staff did a great job, sending out -- the next slide, questionnaires to 23 importers of those, only 9 provided full questionnaire responses, 8 claimed that they had no imports, and 6 did not respond at all.

Page 1 of the confidential pink handout that you have goes through some of the importers that either claimed no imports, or did not respond, and identifies other data of record regarding those importers which leads us to believe that the staff report import data is understated.

The next slide, I'm going to cover a couple of companies that sell dried tart cherries in the U.S. market, and this is based on internet searches and other things. This is a company called Made in Nature, and on their website, they have two categories of dried fruit mixes, and two categories of dried fruit and nut mixes that include cherries. All four of them specifically include dried tart cherries.

You can find more information about this company on the second page of your confidential handout. There's an excerpt from its website, "The first dried fruit mix includes tart cherries." And if you look at the packages that are being handed out as seen on the next slide, on the back it says, "Products of Turkey include tart cherries." This is the blue flag on the back of your package will show where it says that.

The second dried fruit mix from this country on the next slide is the super berry fruit fusion, which is made with, as the website says, tart cherries. And on the next slide, it can be seen at the back of that package, also identified as products of Turkey included in this tart cherry product cherries. That's product 1B being handed out.

The same company with its dried fruit and nut mixtures, while it doesn't identify the country of origin on the packages itself, its website confirms that these products are made with tart cherries and that can be seen on the packages themselves, including the last fruit and nut mix from this company where the very cover of the product says that it's made with tart cherries.

Another seller of tart cherry -- dried tart cherries that can be found on the internet is a company called Fruit Bliss. Again, you can refer to your pink handout for any confidential information about this company. As can be seen on the packages of this product, it is a product of Turkey, and Uzbekistan. So, again more dried tart cherries available in the U.S. market.

Turning to the next slide, there are various other public sources of information about dried tart cherries being offered for sale. This first is from H&F Foods, which says it can export pallet loads from warehouses in the U.S. and with the help of its Turkish production facilities, and these are dried tart cherries.

Kariba Farms, similarly, advertises delicious dried tart cherries. Again, more information can be found on these companies on your pink handout. And the next slide, these are additional companies just found through internet searches that we have some samples from that offer dried tart cherries, dried sour cherries, from Turkey.

So, the -- our belief that the public import data is the correct data to rely on is supported not just by the fact that that only covers dried cherries, but there's no significant market for dried sweet cherries as our witness has testified. But there are numerous other data points in bills of lading websites, et cetera, that confirm that there is not insignificant presence of dried tart cherries from Turkey in the U.S. market competing with the products produced by domestic producers.

So, we hope the Commission will take this into account when considering the volume of imports. Turning to the conditions of competition. Supply has been plentiful throughout the period of investigation. Even though the domestic industry has a marketing order, this is really to smooth out supply, and does not overall reduce supply as our witnesses testified.

They have frozen cherries available throughout the year from which to make dried cherries, and there have been no major weather or pest-related events, or disruptions during the POI. Demand based on public data included in our brief, has contracted slightly from 2016 to 2018, but rose in the first half of 2019.

The domestic industry has made numerous efforts to invest heavily in new products and in consumer education to increase demand, and according to public sources, demand for dried fruit is projected to grow in the future as consumers become more health conscious and search out more convenient foods.

Another important condition of competition is the high degree, on the next slide -- is the high degree of interchangeability between domestic and imported dried tart cherries. A majority of firms report that they're always or frequently interchangeable, and a majority of firms report that non-price differences are only sometimes or never significant.

And therefore, we agree with the staff's assessment that there's a high degree of substitutability between domestic and imported dried tart cherries from Turkey. Another important condition of competition is the presence of both conventional and organic dried tart cherries in the market.

Two of our processer's here today testified that they process organic tart cherries. Mr. Veliquette testified as the grower's efforts to increase the supply of organic cherries, but we do not believe that any differences between conventional and organic cherries attenuate competition between imports and the domestic-like product to any extent.

According to the Commission's staff report, purchasers report that 99 percent of their sales do not require organic certification. Obviously, there is organic and conventional available both from domestic suppliers and from Turkish suppliers and as we discussed, there's been a great degree of investment in organic production, which takes some time to become organic certified, according to the certification rules, but is growing each year and projected to continue growing in the near future.

Because -- on the next slide, because there is a high degree of interchangeability between domestic and imported dried tart cherries, price is a very important factor in purchasing decisions. Every single purchaser reported price or cost as one of their top three factors, none listed organic certification.

Every single purchaser reported price was a very important purchasing factor, only half reported that organic certification was very important. Most purchasers report that their customers only sometimes or never make purchasing decisions based on the country or supplier. And only half of all purchasers reported that they usually purchase the lower-priced product, so highly interchangeable products competing largely on the basis of price.

Turning to the volume of subject imports, this is based on public data. Of course, imports from 2016 to 2018 more than tripled, exceeding one and a half million pounds in 2018. And based on the next slide, you can see that they continue to increase in the interim period until these petitions were filed. The red bar is imports in 2018 for the two different halves of the interim period, and the yellow bar is 2019.

You can see in the January to April segment of the interim period before the petitions were filed, imports from Turkey were already increasing by about a third. Yet after the petitions were filed at the end of April, you say dramatic reversal and imports made through June of 2019, were more than 80 percent lower than they had been in May through June of the prior year.

There's no reason for this dramatic reversal, other than the filing of these petitions. While Turkey, as a country, did lose DSP status in May, that did not apply to dried cherries. Turkey never enjoyed DSP benefits for dried cherries.

Those benefits are only for the least developed countries, and so Turkey has been paying normal MSN rates on dried cherries throughout the POI. The only thing that changed in the interim period was the filing of these petitions, again, strongly supporting the conclusion that these imports are dried tart cherries, and not dried sweet cherries, which would not be subject to duties as a result of these petitions.

Finally, again, looking at public data on volume, finally on volume, you see also an increase in market share of dried tart cherries from Turkey. Their market share, based on public data increased from 2 percent in 2016, to 9 percent in 2018, and remained elevated in 2019. All of that increase came at the expense of the domestic industry. Non-subject imports increased a small amount, but not nearly by -- at the rate that imports from Turkey increased.

Turning to price effects. We believe that there are also adverse price effects caused by imports of dried tart cherries from Turkey. Again, due to a lack of importer responses, we have very limited examples of pricing data, limited data points, despite the best efforts of staff.

We also believe that differences in the channels, that distribution would understate underselling. We have attempted to account for this by splitting the pricing products between bulk products and retail packaged products, but apparently that didn't sufficiently account for differences in channels.

More than 90 percent of U.S. sales are to distributors, while most of importer sales are to retailers or end users, so their prices will be at a more advanced level of trade than domestic producers based on those differences and channels.

And even taking the underselling data at its face, even though there is not a majority of instances of underselling, we encourage the Commission to look at the trends in underselling overtime, and how those may correlate with trends in volume to determine whether or not that underselling, even the limited data that we have is nonetheless significant.

As our witnesses testified, it is difficult in this industry to identify lost sales and lost revenue allegations, because so much of the sales are through distributors, but our witnesses have testified at least to one instance of a distributor telling them they have lost a sale to Turkey, and to two examples, or three examples, of gaining new sales after these cases were filed, including from distributors or customers that were previously sourcing from Turkey, evidencing the lost opportunities that the domestic industry suffered during the POI.

We believe the record also shows evidence of price depression and price suppression. The pricing product data is of course, confidential, but we believe support to finding a price depression. We believe the data also show price suppression as based on public data, imports increased and took market share. The domestic industry's ratio of cogs to sales revenue increased from 93 percent to 96 percent from 2016 to 2018 and increased again in the first half of 2019.

Turning to impact. There can be no debate that this industry has been materially injured during the period of investigation. We saw large declines in production, capacity utilization, shipments, large increases in ending inventories, declines in employment, hours and wages, and as we discussed, an increase in the ratio of cogs to sales, if we use public data for to look at what the trends in apparent consumption were that don't understand imports, many of these declines exceed -- in fact, most of them would exceed any decline in consumption, supporting a determination that it was subject imports that contributed to these declines over the POI.

The industry's financial performance has been dismal over the period. They have suffered losses in every year, and those losses have grown in every period. The red bar is operating income margins, the yellow bar is net income margins. And again, based on public data, this coincided with an increase in imports, and we think if the Commission looks at confidential data regarding trends and underselling, and trends in domestic pricing products, it would see a correlation between these items.

So, for all these reasons, we hope the Commission will find that the domestic industry has been materially injured. But if not, we believe that there is a strong case for threat of material injury on this record. The foreign producer data is confidential, but we believe supports a finding of threat, even though it is understated due to a lack of response.

As we have testified, Turkey is the second larger producers of tart cherries in the world. Turkish producers enjoy a benefit from a number of government subsidy programs, and that will be Commerce's subsidy determination was of course, based on adverse facts available, due to a lack of cooperation.

Our petition went to great lengths to document these subsidies based on information from the government of Turkey itself, or from a USDA and other sources, or from other cases on subsidized Turkish imports.

Here's an example of one of the subsidy programs. It's hard to read on the screen, but hopefully easier to read in the PowerPoint. The EU has underwritten a program to reimburse 50 percent of capital projects undertaken by Turkish processors of agricultural products, and these are two Turkish producers of dried tart cherries, listed on the Turkish government website that benefitted from this program.

The first is New Tova, and the second is SDA Gita Tarim, these are identified in our petition as foreign producers, and both of them benefitted from these 50 percent capital subsidies, making additional processing equipment available.

Finally, on threat, obviously we believe based on public data, that the Turkish exporters have shown the ability to rapidly increase their exports to the United States. We believe your foreign producer data would certainly support the same conclusion, and that those exports will continue to increase in the absence of relief.

As we've reviewed before, on the next slide, the only thing that has stopped the increase in imports has been the filing of these petitions. This is average monthly imports in January through April of this year, and then in May through September of this year. So, a huge, huge decline and the only change being the filing of these petitions.

Finally, the domestic industry's experience with imports of tart cherry juice concentrate from Turkey have given it reason for concern about imports of dried tart cherries. Imports went from 1.7 million liters in 2010, to 5.8 million liters in 2012, and have stayed near or above 5 million liters every year since then except for one.

And so, while our industry may be facing an increase that's at the beginning of that curve, in terms of dried tart cherries, clearly there's -- this is a very attractive market for tart cherry products from Turkey and Turkish producers have shown their ability and willingness to rapidly ramp up exports to that attractive market.

For all these reasons we hope the Commission will reach an affirmative determination and we look forward to your questions. Thank you.

CHAIRMAN JOHANSON: I'd like to thank you all for appearing here today. We will now begin Commissioner Questions with Commissioner Stayin.

COMMISSIONER STAYIN: Thank you. Looking at apparent U.S. consumption, it appears that demand has declined over the period. When you look at the U.S. consumption numbers and you look at the U.S. producers' shipments, they track very closely, almost identical. So, is it not the decline in U.S. consumption, the decline in demand that has caused whatever injury the industry has endured?

MS. DRAKE: Thank you, Commissioner Stayin. We believe that that apparent decline and apparent consumption in the staff report is a result of the fact that you have a very full response from domestic producers and an inadequate response from importers. So, understandably, the trends in apparent consumption almost completely track the trends in domestic shipments because those are the market participants that provided full responses.

We believe that if the Commission had more complete data from imports or even used foreign producers reported data, if that were more complete, you'd see that the domestic shipments declined more quickly than apparent consumption. On page 20 of our pre-hearing brief, we compared U.S. domestic shipments to subject and non-subject imports based on public data. And based on that apparent consumption only declined about 8.5 percent, from 16 to 18; whereas, U.S. domestic shipments declined by much more by about 16 percent.

So, we think what looks like simply shipments tracking apparent consumption is due to the fact that apparent consumption is understated and does not reflect the full increase in imports that occurred over the POI.

COMMISSIONER STAYIN: So, you're basically saying that the numbers that we have are not accurate in being able to assess the condition of the industry.

MS. DRAKE: I believe that there are so many importers who have not responded that other information of record indicates did import dried tart cherries. There are characterizations of certain imports that are contradicted by other information we have and there are discrepancies, even between the questionnaires that have been received in official, government import data with no explanation.

And staff did a great job. They had an additional question for importers in the final phase and said did you import anything other than dried tart cherries under this category, this 081343000. And I think if the Commission looks at their responses to that questions and looks at the official government statistics for imports under that category for those companies you'd see that it raises some questions.

And so, yes, we do think that it is appropriate for the Commission to look at those official Customs import statistics, which are separated by importer and not just rely on the partial response that they've received from importers to date.

COMMISSIONER STAYIN: So, you know there are significant data issues with respect to import volumes and pricing data. As we go through the process here in the final, I think it's important to understand the differences. I notice that Respondent Sanford in their responses -- their position on this -- this is on -- if you look at page IV-4 in the staff report you'll see that Sanford claims that the volume of subject imports to the United States relative to domestic production were insignificant and that's a big issued.

MS. DRAKE: Certainly. And that's exactly the same issue that we're concerned about in terms of a lack of importer response and a lack of foreign producer response. I would note that in Sanford's foreign producer response there was a question where they were asked to estimate how much of domestic Turkish dried tart cherry production they account for and how much U.S. exports of the product they account for. And I think if one were to compare those estimates to Sanford's own reported production and export data there'd be much more significant volume than what we're seeing in the importer responses to date.

COMMISSIONER STAYIN: So, what do you suggest we do?

MS. DRAKE: Well, I think that there are a few options. One is to use public import statistics, unless there is a confirmed, explained, verified reason for deviation from those statistics. Simply reporting a different number without any explanation and while also confirming that everything in import under that number is dried tart cherries shouldn't be enough to reduce the import statistics the Commission relies on.

Simply not responding shouldn't be an excuse not to rely on the public import statistics. And when there are claims that it's a different product, in some cases that may be true, but in other cases where there's contradictory information, including a bag of the product itself from the company that contradicts their claims, I think the Commission should be highly skeptical of those claims.

COMMISSIONER STAYIN: What do we do about the lack of response? When you have foreign producers -- in this case Turkish producers -- not responding to the questionnaires from the Commission how should we deal with that?

MS. DRAKE: Thank you, Commissioner. Obviously, the Commission has the ability to apply adverse facts available in response to a lack of cooperation. As my colleague, Mr. Cloutier, mentioned, and in fact, did do that. But to the domestic industry on the last tart cherry product the Commission investigated. Here, I think at a minimum the Commission should rely on facts available. Even if it doesn't find it justified to apply an adverse inference, there are other facts of record that the Commission should rely on in terms of import volume.

Now, where something is reported is directly contradicted by other information from that same company I believe it's more warranted to apply adverse facts available. I understand the Commission is very reluctant to do that. I understand you know that it's difficult for small companies, including our own clients and small companies in Turkey and others to respond to these questionnaires, but it's central to the integrity of the process that the Commission have good data. And so, I would hope, at a minimum, the Commission would rely on facts available for imports, looking at public import data, looking at confidential Custom net import file data by importer, looking at exporter data to determine what the true volume of imports is.

COMMISSIONER STAYIN: Thank you. With respect to the conditions of trade, there's difference between where you sell yours and where the imports. The domestic production is sold through distributors. Importers sell either directly to the end user or in other places and to what extent do those differences in terms of channels of trade have an impact?

MS. DRAKE: Thank you, Commissioner. Again, Elizabeth Drake, and I welcome any witnesses to testify, but since so many of their shipments are through distributors they don't have as much experience shipping straight to retail or to end users. So, the fact that the importer shipments are at a more advanced level of trade would mean that basically the importer is already acting as its own distributor. So, its sales that it's reporting on the pricing product data already have that markup; whereas, the sales of the domestic industry is reporting to distributors don't have any markup because it's the distributor that makes the market. So, again, we attempted to address this when we initially set out the pricing products and then we said, well, maybe it's an organic issue and tried to deal with it that way. But now, we still see a differential and we see a very large difference between the share of domestic product being shipped to distributors and the share of imported product being shipped to distributors.

COMMISSIONER STAYIN: With respect to the actual product we're dealing with are we dealing with regular cherries or organic cherries and what difference does that make?

MS. DRAKE: So, the product includes both conventional and organic and the domestic-like product also includes both conventional and organic and both kinds are available for domestic producers, as our witnesses testified, and also from producers in Turkey. And so we don't think while there is a premium for organic cherries or there should be a premium, other than that, we don't think there's any domestic-like product issue or attenuation of competition issues with regard to organic product.

COMMISSIONER STAYIN: Alright, thank you. My time has run out.

CHAIRMAN JOHANSON: Commissioner Karpel.

COMMISSIONER KARPEL: Yes, thank you. I just wanted to ask a couple points of clarification on your presentation just a few moments ago. And I'm looking at the confidential slide, so I don't want to say too much. But one thing I wanted to ask is, is there a difference between sour and tart cherries; are they the same thing, synonyms.

MS. DRAKE: Thank you, Commissioner Karpel. They are the same thing. Sour and tart cherries are the same and our scope refers to both sour and tart cherries.

COMMISSIONER KARPEL: And also, with respect to that slide, do you consider -- what do you consider unresponsive importers? Is that for you those who didn't file any response to the questionnaire or does it also include importers who responded, but said they didn't import subject merchandise?

MS. DRAKE: So, most of the companies on this, page 1 of the handout, are companies that provided no response whatsoever or just provided the first page saying "none." There's only one company on here that claimed it imports from a different country than Turkey and that was covered in some of the samples that were handed out.

COMMISSIONER KARPEL: And so, I guess my next question is it seems we have a pretty high level of coverage in terms of importers that either responded to the questionnaire and said here's the amount of subject imports that we imported or that responded and said, look, we don't import subject merchandise at all. And so, what'd we make of that in connection with your argument that we have a lot of unresponsive importers? It seems to be a disconnect.

MS. DRAKE: Thank you. So, yes, there's nine importers that responded and provided data. There's a couple that said it was a different product. With these that reported "no" or that didn't respond at all, I think the Commission should look closely at why were they sent a questionnaire to begin with. They were either identified in our petition through bill of laden data. This is from the government that's FOIA'ed and available to users as a pay-for service.

Exhibit 2 of our pre-hearing brief also contains copies of these bills of laden showing companies importing subject product from Turkey during the POI. That is confirmed by Customs -- owned Customs net import file data, which was reproduced at Exhibit 5 of pre-hearing brief, which are official government statistics for imports under this category. So, I think in the face of official government statistics stating they imported in this category, bill of laden data also indirectly from the government showing that they imported this product during the POI, their websites advertising this product, the fact that they simply didn't respond or chose to check "no," we don't think should outweigh all of that other record evidence.

COMMISSIONER KARPEL: And maybe this is for post-hearing, and I think we could have staff look at this too, but generally, I mean these importers that you were saying are unresponsive do you have a sense that they make up a large portion of the imports?

MS. DRAKE: The largest discrepancies that are of most concern to us -- well, this is obviously of concern to us -- the largest would be discrepancies between questionnaire data and the Customs net import file data for those importers, which are unexplained and which, again, as I said, staff sought confirmation that everything they imported under the category was covered product. And the second largest would be importers that say that what they have imported are a different product and that's what we tried to address through this presentation this morning in some of the packages from those companies.

COMMISSIONER KARPEL: And then, one other data question on this issue, looking at the AUVs -- if you look at the official Customs data and you calculate the AUVs, they're very different than the AUVs, for example, we're seeing the pricing data or that we would see based on the questionnaire data. What'd you make of that?

MS. DRAKE: Thank you, Commissioner. I don't have a good explanation for that. When we were putting together the petition were surprised at how low the AUVs were. And so tested at you know by port, by month, every way to see if there was some discrepancy, something strange driving the overall data and there wasn't. They were largely consistent. I note there is also you know quite a large variety in both import prices reported by importers in their questionnaire responses and shipments prices, so maybe we can look at that a little bit more post-hearing, but we certainly you know tried to test that AUV data and couldn't find any reason why it was what it was.

COMMISSIONER KARPEL: Is your sense that the actual prices that dried tart cherries are being sold in the U.S. market are closer to the prices we see in the pricing data and based on the questionnaires? Or is it closer to what we see in the AUVs in the official customs data?

MS. DRAKE: So I think that, probably somewhere in between? I think that the pricing data from the importers is, again, at a more advanced level of trade. So the prices that our producers are confronting when they're selling to distributors -- as Mr. Gregory testified, they had a distributor in 2018 lose a major potential bid to a much lower-priced bid from what they believe to be Turkish imports, and we have additional information on that transaction.

So their experience in the market has been that they are lower-priced than their product, which is of course why they were concerned enough to bring these cases. But obviously they don't need to be as low as the official import AUVs to be problematic, and I think we also discussed in our brief, looking at, even if there's not, you know, 100% underselling, looking at trends in underselling and comparing those to trends in imports is another important way to test whether or not that underselling is significant.

COMMISSIONER KARPEL: All right, thank you. Appreciate that. So moving onto a different set of questions, I wonder if you could talk a little bit about how prices are set and negotiated for dried tart cherries in the

U.S. market?

MR. GREGORY: This is Don Gregory and I am one of the owners of Shoreline Fruit, not necessarily directly involved in the day-to-day operation, but my understanding of the prices that are negotiated, when you're working with the people you're selling to, you know, are varied on a lot of things. Now, we also have a group that works together to, under the Capper-Volstead Act, that allows us to put minimum pricing into place.

MS. DRAKE: It's my understanding when we were talking yesterday, though, that most of the transactions are on the spot market, transaction-by-transaction, is that correct?

MR. ROWLEY: This is Chad Rowley. In our marketing, it's a lot on the spot market. Daily, you're watching trends in the market place, you're watching what imports are doing. You're -- as Mr. Gregory reported, we do have an organization that sets guidelines for us to try to meet those guidelines and be within those, but we adjust to market conditions and what's happening in the market daily.

MR. VELIQUETTE: Commissioner, thank you for the question. Most of the sales are made on a spot market basis, based on the supply and demand.

COMMISSIONER KARPEL: Do you have a sense of what other market participants are selling their product for?

Whether they're importers or other U.S. competitors?

MS. LAPERRIERE: This is Melanie LaPerriere from Cherry Central. Our experience is that, typically customers will tell us whether we were awarded the business or not awarded the business, but would not provide insight into who was awarded the business and what price it was awarded. So we were told "no" or "yes", but not much more.

MR. VELIQUETTE: Commissioner, Nels Veliquette again. Typically, especially when it comes to bidding, it's not in the best interest of the buyer to indicate what better price they got somewhere else, and to keep that as ambiguous as possible. But we have the sense that, when competing in the market, the exports from Turkey are putting significant pressure on that bidding process. Thank you.

COMMISSIONER KARPEL: I guess I'm trying to get a sense of, how do you know -- I mean, do you have purchasers coming to you and saying, "Can you go lower than the price you offered me, because I could buy from importers and it would be cheaper"? I mean are you having these kind of conversations? How do you get the sense that your competition is really coming from subject imports versus coming, maybe from another U.S. competitor, who is also trying to win that bid?

MR. VELIQUETTE: Nels Veliquette again. I have some experience in the sales market. I worked in the precursor to Shoreline Fruits as the international sales manager for Atwater Foods, which is the precursor of the dried fruit company. And typically, you're not told who you lost the business to. And the factors that are involved often depend on shipping rates, whether that's an FOB price at your dock.

And in general, at the NADC level, which is the dried cherry cooperative, what we saw happening was there would be a loss of sale, for example, in one of the members of the group. And for a while, the expectation was, well, maybe we just lost that to another member of the group.

It took a while before we--all the members of the NADC Group realized that those sales were not just sort of changing between each of the members, but actually just disappearing from the entirety of the domestic supply. So there's some inference that has to go on there. And if we go right back to the sales calls that I used to make, I would routinely have people beat me up on price and tell me, you know, "It needs to be lower," but not who or why I was competing against. Just simply, "I can get it cheaper and if you can't match the price, then you're not gonna get the business." Thank you.

COMMISSIONER KARPEL: Thanks. My time's expired.

CHAIRMAN JOHANSON: Once again, good morning and thanks for appearing here today. Yeah, this is a really complex situation, right? I've been here a few years and I haven't seen an investigation quite like this one, as far as numbers go. You all have argued for relying on CNIF data. What share of imports reported under the relevant codes would you estimate are subject cherries?

MS. DRAKE: Thank you, Commissioner, Elizabeth Drake. So the CNIF data is based on the ten-digit HGS code, so the ten-digit HGS code we're principally concerned with the 081343000 which is dried cherries. So it's not some broad basket category like all steel products not elsewhere specified, it's dried cherries. And there's only two kinds of potential dried cherries: dried tart cherries and dried sweet cherries.

As our witnesses testified, there's no real market in the U.S. for dried sweet cherries, otherwise, they would produce them. Not only, as Mr. Gregory said that their production of dried sweet cherries is only 1% or less than 1% of total production, but I believe Mr. Rowley and Mr. Brian have tried producing dried sweet cherries in the past and there was simply no market for it. So it's reasonable to conclude that the vast majority of imports under that category were dried tart cherries. That's also supported by bill of lading data for importers listed in the CNIF data by their website information and by the fact that Commission staff have now explicitly asked importers whether they imported anything other than dried tart cherries under that category. So we think all of those data points support concluding that the vast majority of what's coming in under that category is dried tart cherries and not any other kind of dried cherry.

CHAIRMAN JOHANSON: Did y'all consider just bringing investigation under dried cherries, if it would've incorporated most of the universe, at least?

MS. DRAKE: We did talk about that and I said, you know, are we concerned about dried sweet cherries? And everyone shook their heads and said no, you know, that's not really a real thing, that's not a market. Anything that's coming in that way would be totally different from what we make. So we targeted the case on the imports that were of concern, and where the market is, which is on the dried tart cherries, due also to some of the physical differences that Mr. Gregory described that make dried sweet cherries really not a viable product area, one with a lot of demand.

CHAIRMAN JOHANSON: And how certain are you that the product in Turkey is dried tart cherries, as opposed to possibly sweet cherries?

MS. DRAKE: So for the importers where we can identify bills of lading, where the bill of lading says it's a dried sour cherry or a dried tart cherry, we're pretty certain where the packages of product that we bought said that they are tart cherries, that makes us pretty certain. Where the websites say that their product is tart cherries or sour cherries, we take that as good evidence that it's tart or sour cherries.

I mean we can address in more detail post-hearing, you know, confidential information about any claims that they're not, but we tried to address that in, without getting too much into APO here today. But we think that where there's other record evidence that all of this is dried tart cherries, or the vast majority, the Commission should find that as a reasonable assumption.

CHAIRMAN JOHANSON: And so for that reason, we should use that one HGS number, in your opinion?

MS. DRAKE: I believe that using that one HGS number, unless there is, you know, specific verified, non-contradicted evidence that it is nonsubject product, is the best approach. I think that that public import data is the most reliable and has the best coverage. I think there may be some dried tart cherries coming in under a different category, so where an importer says, "Well, I actually brought it in under a different category," you know, we can include them, but we think that first category is the main one.

CHAIRMAN JOHANSON: Right. As far as the precedent for the Commission, combining questionnaire and official import statistics or individual CNIF data to measure volume?

MS. DRAKE: Yes, actually in the preliminary phase, it's my understanding that that is what staff did, that they took the reported data from the questionnaire responses that were received and added the CNIF data for unresponsive importers. And we'd be happy to look and see if we can find that that's happened in other cases.

CHAIRMAN JOHANSON: Yeah, I'm kinda curious about that. Because, once again, this is difficult material for us, trying to figure out the numbers. I would appreciate that.

Mark-up participants had widely varying views of what was happening to demand in the U.S. market over the period of investigation, as shown in Table II-5 of the prehearing staff report. To what do you attribute this lack of consensus?

MS. DRAKE: Well, I think there is -- it's actually interesting that domestic producers felt a decrease or a fluctuation. Importers--and again, these are very low response rate--importers were evenly split between increase, no change or fluctuation. And purchasers, most reported an increase or no change. So, if anything, that supports the conclusion that the decline in apparent consumption reported in the C-Table is over-stated due to a lack of importer response.

Because you have more importers and purchasers who are kind of closer to the entirety of the market, saying that there was an increase or no change, whereas you had more domestic producers, who were losing shipments, we believe, faster than demand, finding a decrease or fluctuation.

So it's a little hard because of the small number of importers and purchasers that responded, but we don't think there's any, you know, strong agreement of this sharp decrease that's shown in the C-Table. We think, instead, that sharp decrease is a reflection of the lack of importer responses or inconsistencies in the responses.

CHAIRMAN JOHANSON: Okay, thanks, Ms. Drake. To what do you attribute the decline in apparent U.S. consumption?

MR. GREGORY: The American stomach changes over time. And one of the things we have had to do with our cherry products is to try to adapt to that change in the American stomach. And as we look at dried fruit in general, particularly in fused dried fruit in the last couple of years, we as Americans have become a little bit more obsessed with sugar and the amount of sugar that we intake.

And the bricks level of dried tart cherries is relatively high. So that is one of the things. And one of the changes, for example, that we have made in our operations, that we now have, we produce now a dried cherry that is not infused with any type of sugar to make it soft, a completely different product but it is going after that segment of the market where the consumer has changed again.

So I think that has been one of the biggest issues that we have watched as the American stomach has changed. And it does fluctuate. We find this fluctuates year over year. But the trend, the trend has been more towards the mature market with dried cherries in the last couple of years than it had been prior to that.

MS. DRAKE: Chairman Johanson, if I may, I know that Respondents have claimed that decline in demand may be due to substitute products of other dried fruits, and those other dried fruits have been in the market for years. Some of our processors also process those fruits, and there has been no significant change in dynamics between, you know, suddenly everyone wants dried cranberries instead of dried cherries, or suddenly everyone wants dried blueberries; that these have been competing in the market for years. So that can't support the kind of large apparent decline in consumption that is seen in the C Table.

CHAIRMAN JOHANSON: Right. But the decline in consumption is fairly high. That must have had a very negative impact on your businesses, correct?

MR. DRAKE: Certainly. And I think that the question is did imports also contribute to that? And so when we look at, again, the public import data, consumption declined about 8.5 percent from '16 to '18, whereas domestic shipments declined by 16 percent, while subject imports tripled.

So obviously there is some negative impact from decline, but it can't fully explain the decline in shipments once there's more fulsome coverage in the import data.

CHAIRMAN JOHANSON: Okay, thanks for your responses. My time is about to expire.

Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: Okay, thank you.

I would like to thank you all for being here today, as well. Is there a seasonality to this market in terms of purchases? Sales and purchases? In other words, do you see an increase in sales in anticipation of the warmer months? Or is production pretty steady all year around?

MR. BRIAN: Well there's a number of -- with all food there's a seasonality to it. I assume more people eat chili today than they do in July type of thing. And with dried cherries, there's a number of different seasons. It actually has multiple seasons spread throughout the year.

In the springtime, you've got kind of a salad season. Everybody's gained weight over the wintertime, and so salads. You'll see an increase in shredded cheese. You'll see an increase in dried cherries for salads come springtime, and it carries over into the summer.

In the fall, you've got your baking season starting to ramp up for the holidays, and there's multiple products that dried cherries can go in for the baking season because people bake more products for the holiday season.

So it varies through the year, but there's -- in a way, there's a number of many seasons throughout the year that kind of consistently flows throughout the year.

MR. ROWLEY: Chad Rowley. It's not like the fall's apple season. Everybody thinks it's apple season, it's the fall cherries when they're processed, and we can freeze them. We can target seasons throughout the year, holiday this, holiday that, chow mixes, hiking summer, cooking in the fall. There are just different -- it just goes up and down throughout the year when we see different trends.

COMMISSIONER SCHMIDTLEIN: Okay. Anyone else like to add to that?

(No response.)

COMMISSIONER SCHMIDTLEIN: Okay, so you don't have a -- I hear you say the spring and the fall. Is it enough that we would notice it in the shipment data? In other words, would we expect to see increases, big increases in certain months because of that? Or because there are so many little mini-seasons does it sort of even out across the year?

MR. ROWLEY: Well probably the one period of time that we see the least amount is the first few months of the year, and the data show that the imports were significantly high during that time period. And that is probably our slowest time of the year.

But, yeah, it's like Chad says. It's not like the fruit season, that's when everybody buys it. So it's spread throughout the year.

COMMISSIONER SCHMIDTLEIN: Okay. So I wanted to ask a couple questions about pricing. I know that's been covered to some extent.

Ms. Drake, you mentioned I think in your presentation that the pricing products you were attempting to capture the difference between distributors and retailers end users by the size of the packaging that you proposed.

I wondered why didn't you ask the Commission for pricing products based on sales to distributors versus end users or retailers? Would that be impossible to gather? Because we have done that in other cases.

MS. DRAKE: Certainly. No, thank you, Commissioner, it would not have been impossible to gather.

We just believed that those larger bulk packages would all go to distributors, and the smaller retail packages would all go to retailers. As we've discussed, you know, over 90 percent of our shipments go to distributors. So we were not aware that so many of the imports were going directly to end users and retailers.

After the preliminary phase when we saw the pricing data that was collected, we were more concerned about breaking out organic versus conventional to try to get better comparisons rather than focused on the channels of trade issue.

But now that it's been further refined and we see that there's still a mixture of different channels of trade in the different, you know, both bulk and retail, it certainly probably would have been better to do that. But we weren't aware that that would be a problem.

COMMISSIONER SCHMIDTLEIN: Okay. You have argued that there's price suppression during the Period of Investigation. Given that demand was going down, at least I know that you dispute by how much, were domestic producers actually trying to raise prices during the POI and you were unable to? Were there price increases that you were attempting to push through?

MR. ROWLEY: This is Chad Rowley. During this period, I would say there were not significant price increases we were pushing through, no. We are always wanting to get more for your product because your costs are going up, but we also realize the competition, and we realize the product we have, and our pricing was fairly stable through this period of time.

COMMISSIONER SCHMIDTLEIN: Okay. Mr. Gregory?

MR. GREGORY: Yes, I would agree. This is Don Gregory. I would agree with Mr. Rowley that during this time frame I do not believe we raised any prices.

COMMISSIONER SCHMIDTLEIN: Or were you attempting to raise prices, though?

MR. GREGORY: Did we attempt to raise prices? We probably attempted to raise prices but were unsuccessful to do so.

COMMISSIONER SCHMIDTLEIN: Well I know you say you probably. My question is, were you? Because one of the claims you are making here is that the imports from Turkey were preventing price increases that would have otherwise occurred. So I am trying to get at were domestic producers actually trying to raise prices, and you couldn't?

MR. GREGORY: I think that's accurate. I think that we would work with customers and try to raise prices, but it was not possible because of the competition. If we wanted to keep the customer, we weren't going to be able to raise that price.

COMMISSIONER SCHMIDTLEIN: And were you all--I know there were some questions about the discrepancies in the perceptions about demand. But for the witnesses sitting here today, were you all aware that the market was softening?

MR. ROWLEY: Chad Rowley. Yes --

COMMISSIONER SCHMIDTLEIN: You were?

MR. ROWLEY: --we were aware that the market was stable, and what we were trying was stable, and may be softening slightly, yes.

MR. VELIQUETTE: Commissioner Nels Veliquette. I would also add that, just to tag onto what Mr. Gregory testified to earlier, that this market continues to change. And my experience in the past, as a sales agent selling all types of dried fruits, including dried cherries, that that market, we try to push through price increases as sales people, that's how we make our commissions, and one of the things that's been absent over the last several years that generally precipitates an attitude of willingness to accept price increases would be a short crop.

And so in the absence of any short crops over the last seven years, and the presence of foreign competition, it has been very, very difficult to broach that subject of price increases on dried cherries, specifically. Thank you.

COMMISSIONER SCHMIDTLEIN: And I'm sorry if this was covered before, but why did we see a decrease in consumption over the POI? Do you think it was a reflection of consumer taste? Or was there some other item that was being used instead of the tart cherries in some of these mixes? Or for desserts or, you know, other uses?

MR. ROWLEY: Chad Rowley. I refer back to what Mr. Gregory said. You know, our tart cherries do have a certain amount of sugar in them, and that has been at times in certain parts of our market a negative, not in all but in some.

COMMISSIONER SCHMIDTLEIN: The carbohydrates?

MR. ROWLEY: Yes. And so we have had to deal with that. In dealing with that, we have gone to other products with no sugar added to try to combat that feeling out there. There are lot of dried fruits in the world that are being introduced now, and everybody wants something new, and dried tart cherries are kind of -- they're coming into the mature markets right now. And it's not the new thing on the block anymore, is probably another reason.

COMMISSIONER SCHMIDTLEIN: Okay. Alright, anybody else have anything to add to that?

(No response.)

COMMISSIONER SCHMIDTLEIN: No? Okay. Alright, one other question. Again I apologize if this has been touched on. When I was looking at the AUVs for U.S.

shipments, U.S. producers' U.S. shipments, the AUVs for organic shipments go down over the POI, but nonorganic AUVs go up, at least over the full years. And I guess in the interim period, non-organic also go up, and organic go down.

I wonder if someone could speak to the reasons for the difference in this trend, just for the U.S. producers' U.S. shipments.

MS. DRAKE: I believe there's some concern about price compression between organic and non-organic, and the premium that is being received for the organic. I don't know if Mr. Veliquette or someone else would want to speak to that.

MR. VELIQUETTE: Nels Veliquette. Yes, the acceptance of organic in the marketplace and becoming a norm has caused more of a market for organic, but it also has caused some compression in the market in terms of the willingness to pay the price.

So while we make the investments at the farm level to manage organically, we are not guaranteed any pricing until we actually produced a certified organic crop, which can be up to four years later.

So in the meantime, one of the things that we have seen in the marketplace in some of the major retailers is that they have substituted conventional dried cherries with organic dried tart cherries, and brought what was a substantial premium down to something in the range of 10 to 15 percent above conventional rates.

So we are seeing pressure on the organic side in terms of price compression domestically, as well.

COMMISSIONER SCHMIDTLEIN: So the non-organic is pulling down the price of the organic?

MR. VELIQUETTE: No.

COMMISSIONER SCHMIDTLEIN: No?

MR. VELIQUETTE: No, organic is --again, when we talk about bringing a -- you asked about bringing a price increase. What we're typically faced with is if you want us to carry this product you need to figure out a way to get it in here at X price so that we can make the number of points of margin that are necessary for us to carry it in the store. That is the reality of the marketplace these days.

COMMISSIONER SCHMIDTLEIN: But what I am trying to understand is why did organic go down? And so I thought I was understanding you to say, in a way, that consumers now have accepted organic and that's what they want, so the demand is there but they are no longer willing to pay the premium for it.

And I guess I assumed that meant, and if they weren't going to pay the premium they would then go to non-organic, which is lower priced. So by virtue of that, you are going to have to lower the price of the organic to be closer to the non-organic in order to get them to buy that organic.

In other words, because the non-organic is such a perfect substitute almost, and that's what they're going to, so in my world like that would be pulling down that price somewhat. But you said, no, that's not what is going on.

MR. VELIQUETTE: Nels Veliquette again. Getting into the psychology of the consumer is difficult. So while organic has definitely become the norm, and there is a general sense of a price premium that's required for organic, it is not what it used to be.

So while consumers can substitute with a conventional product, and I think that was shown in the data, that it can be substituted very easily for conventional. So while it may be an emphasis for some retailers, others it's very margin driven.

MR. GREGORY: This is Don Gregory.

COMMISSIONER SCHMIDTLEIN: Go ahead.

MR. GREGORY: If I could just add to that a little bit, one of the things that we also saw with the organic is, even though it had been a very small market, there was a certain segment of the consumer that was willing to pay a higher value for that. But not the mass sales of that.

And when we did -- when all of a sudden more organic cherries hit the market and they came in at a much lower price, it took that premium value that we were getting for organic and it drove that price down because there were now organic cherries, imported organic cherries, that were available at a much lower price, more in line with what we were getting for our conventional.

So that where we have watched that organic price continue to work its way down, one of the things that has happened with some of the early organic production is the cost was so high that some of those cherries we could not compete with -- growers could not grow for the price that we have. Hopefully there is some technologies and stuff that have come along that's going to allow us to compress that cost of organic and get back into the market.

But basically we lost some of that premium market when some low-priced organic cherries hit the market, primarily imports.

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

CHAIRMAN JOHANSON: Commissioner Kearns?

COMMISSIONER KEARNS: I thank you all for appearing before us today.

Just a follow-on question to something Commissioner Schmidtlein asked you about. I think a few of you indicated that you probably were trying to raise prices during the last three years, the POI. If you can provide any documentation to that after the hearing, that would be helpful.

MS. DRAKE: Thank you, Commissioner Kearns, we will.

COMMISSIONER KEARNS: Okay, thank you.

I want to ask a few questions about the import data. Your slides seemed to suggest that the most important problem with the data is the failure by many importers to complete the questionnaire. Is that right?

MS. DRAKE: Most important in terms of number of importers, but not in terms of volume of imports. So the biggest gaps in the volume of imports, and again I don't want to get into confidential data here, are importers claiming that they import a different product. And, importers reporting import volumes that are wildly different from the official customs net import file volumes.

And I'll just note in that regard that there's no consistency in those discrepancies. You know, some importers have matching numbers. Some importers have very different numbers. Even the same importer will match one year and not the other year.

So given the fact that staff followed up to confirm everything under this category is subject product, we think those official government statistics are the most reliable, even for those importers that did respond.

COMMISSIONER KEARNS: Okay, thank you.

Staying on the subject, though, of those who didn't respond at all, if you look at CNIF data for importers that have either certified importing tart cherries or have certified that they have not imported tart cherries, and if you compare that to the total CNIF data, which I think aligns with the HTS category data, it seems you've got a pretty high percentage coverage.

Have you looked into that? Do you agree with that?

MS. DRAKE: I agree, and I believe we in our prehearing brief, an alternative import volume market share analysis based on, okay, let's assume that these companies that say they bring in a different product are telling the truth. And let's just look at the CNIF data for those who did respond and those who did not respond. And we think even that analysis would show a significant absolute increase and an increase in market share.

COMMISSIONER KEARNS: Okay, thank you.

Okay, you -- we were just --this is an issue that you just mentioned. It looks to me like for some importers at least the CNIF data and questionnaire data are pretty close on a value basis, but there's a discrepancy between

CNIF data and questionnaire responses with respect to volumes.

Have you looked at that? Do you see something similar to that in your analysis?

MS. DRAKE: There does not appear to be any rhyme or reason in terms of whether the volume matches or the value matches, but perhaps since it is confidential that is something we could dig into a little bit more posthearing.

COMMISSIONER KEARNS: Okay, that would be helpful. And as a follow-on to that, the AUVs seem to make more sense for the questionnaire data than the CNIF data. In other words, you know, if we -- well, I think that question makes sense. And if you could answer that, as well, posthearing that would be helpful.

And then also, given these issues, should we consider relying upon value data for apparent consumption and market share as opposed to the volume data?

MS. DRAKE: Thank you, Commissioner. We will take a look at that posthearing. Also, that we only got the, thanks to the staff's efforts which I very much appreciate, we only got the CNIF data for the interim periods on the last APO release, so I have not had a chance to analyze that.

COMMISSIONER KEARNS: Okay. Okay, thank you. And can you identify what you believe are significant importers that have not submitted a questionnaire response?

MS. DRAKE: Yes. They would be a couple among page one of the APO handout, but we will identify that more specifically with the missing volumes.

COMMISSIONER KEARNS: Okay, thank you.

And I guess along those same lines, the recent APO release and the EDIS contained communications between Commission staff and importers regarding their questionnaire responses. Posthearing can you comment on our import data in light of those communications?

MS. DRAKE: Certainly we will.

COMMISSIONER KEARNS: Thanks. Can you point us to any investigations in which, despite having certified questionnaire responses from importers accounting for similar shares of customs data, we have relied on customs data instead of the questionnaire data?

MS. DRAKE: We will look. I know that, I believe it was the Caisson Racks where the Commission relied on foreign producer export data rather than importer data due to concerns about a lack of response from importers.

Typically when the Commission is relying on importer data instead of public data, it is because the public data is a broad basket category that really is not reliable. That was the case in the Racks case, for example. And so it only had two choices: importer data or foreign producer data. Obviously importer was understated. So it used foreign producer.

Here, by contrast, again this category is not a broad basket category. It is just dried cherries. And, you know, for all the reasons that we laid out, we think that, you know, absent other completely verified evidence to the contrary, it is reasonable for the Commission to find that those imports are tried tart cherries and not dried sweet cherries, and staff have followed up and gotten a lot of confirmation of that, with a couple of exceptions.

COMMISSIONER KEARNS: Okay, thank you.

You referred to the bills of lading, and pointed out that many of them indicate imports of tart cherries. Can you provide us with all bills of lading for each importer you list? And do any indicate imports of sweet cherries, too?

MS. DRAKE: We will do that posthearing.

COMMISSIONER KEARNS: Okay, thank you. Let's see. I guess, turning to price, just a very general question to start.

Even if we rely upon the data that you propose, it seems that there are some particular purchasers that you suggest--where you suggest there is underselling. But in general, I think isn't it the case that if you look at AUVs, and if you look at the aggregated data, we still don't see much in the way of underselling?

MS. DRAKE: Correct, based on the data that the Commission has today, whether looking at AUVs or looking at pricing product data, there is not a lot of underselling. Part of this reflects the fact that you have, at least for the AUVs, you know, different importers reporting at different times. So it is not really tracking over time.

One of the -- and even that can happen in the pricing data where it's importer A for this year, importer B, importer C. And in one example where it was a single importer with consistent pricing data, that's where we found a shift to underselling and greater margins of underselling, just as we also saw greater volumes.

So we think that is helpful to look on an importer by importer basis, since there is such a variety. In terms of price depression, we also looked at the importer by importer shipments where they had shipments in more than one year, to look at trends that way. So that would get rid of the noise that may be distorting AUV trends. And there we found there were, you know, pretty significant declines that coincided with increases in volume for individual importers that had shipments over time and not just, you know, here and there.

COMMISSIONER KEARNS: Okay, thank you.

And again, sort of a follow-on to Commissioner

Schmidtlein's question where she discussed some of the problems with pricing product data. And I think you all agreed there's problems with that.

But what do you suggest we do about this, given that we've collected the data the way you had suggested it? What's the next step for us on that? I'm referring to the distributor issue.

MS. DRAKE: So I believe one thing we can do is try to compare prices to different segments of the same product. But again those are often at different time periods. Part of the challenge is that there are few data points in the pricing data. And so it is hard. In other cases, again in the Racks case, the Commission was able to say, okay, here's a big importer that sells this way. Here's a big importer that sells that way. And we can see differences.

But here we've only got a few that actually have any consistent data, but we would be happy to see if we can come up with a similar analysis.

COMMISSIONER KEARNS: Okay, thank you.

On page 23 of your brief, you argue that one importer may have misreported pricing data. I note that staff is looking into this. However, even if you are correct, don't the data still show predominant overselling? How can we look at our pricing data and find underselling, or significant price effects?

MS. DRAKE: Alright, so even if those sales are correctly classified, all it does it reduce the instances of overselling. And so the share of overselling versus underselling changes slightly, but again we believe, you know, given the lack of data points, that looking at the underselling that was reported did occur and at what margins the trends in that data when lined up with the volume data we think shows what we believe is understated underselling is not insignificant.

COMMISSIONER KEARNS: Okay, thank you. My time is up.

CHAIRMAN JOHANSON: Commissioner Stayin.

COMMISSIONER STAYIN: Yes. In your posthearing brief, please do address the underselling/overselling issue. Obviously the data we have indicate that there has been overselling, and that the underselling has been limited in terms of its impact. As well as the market share issue.

As we look at the data we have, take us through that because there is significant concerns there. And please provide us with any past cases where we were dealing with situations where the petitioners' market shares were low in comparison.

On another subject, supplier certification. To what extent does this have any impact? Does it have an impact on conditions in the marketplace? Do the supplier certifications, is that somewhat of a barrier?

MR. GREGORY: I'm not sure I complete understand the question you had. This is Don Gregory.

COMMISSIONER STAYIN: There are supplier certifications. In order to be able to sell to purchasers, there are certifications that are required according to the data and information we have in our staff report. Would you go into that for me? Are supplier certifications required? If you are buying products, a purchaser is going to buy products, are they going to want a certification as to the product itself, the quality?

MS. LAPERRIERE: Yes. This is Melanie LaPerriere with Cherry Central. It is typical for customers to require both food safety and quality certifications from their suppliers. And speaking for Cherry Central and Payson, and I'll let our colleagues speak for themselves, we are certified to the highest level of qualifications, including SQF certifications, BRC, which are all part of what's called "The Global Food Safety Quality Initiative" umbrella that was instituted in the early 2010 time frame.

COMMISSIONER STAYIN: Do the imports from Turkey also qualify at that same level?

MS. LAPERRIERE: I would let Turkey speak for themselves in that area.

MS. DRAKE: Commissioner Stayin, I might say, as one of the website excerpts we put up mentioned, BRC, you know their BRC qualified facility in Turkey, and that none of the purchasers reported that any of their suppliers had a problem getting or keeping their supplier certifications. So I don't see that that would be a barrier to the imports from Turkey.

COMMISSIONER STAYIN: And with respect to purchasing patterns, is there any preference among U.S. purchasers to buy cherries that are produced in the United States versus imported cherries?

MR. ROWLEY: This is Chad Rowley. We hear that. We hear U.S. producers want to buy domestic. We hear that, and they've asked us to increase our organic in some ways. And so we're responding to that. And so I think there's a preference. I don't believe it's all, but I believe there are some that have a preference for U.S.-produced.

COMMISSIONER STAYIN: Okay.

MS. DRAKE: Excuse me, Commissioner Stayin. I think what is also helpful on that regard is in the staff report where purchasers themselves reported that they might have a preference for a particular producer, or a country of origin, but that their customers did not. And so you can see a lot of these samples here don't even have country of origin marked on them, and so there's not a strong effort to differentiate on that regard.

COMMISSIONER STAYIN: Excuse me. Go ahead.

MR. BRIAN: I would like to add. Yeah, for the most part a lot of the proprietorships prefer to buy domestic. But we're living in a world today that you've got a lot of equity groups or investment groups that are purchasing companies. And when it gets down to margin, those investors really don't care where their product comes from.

And so they will source whatever the least expensive product is out there.

COMMISSIONER STAYIN: Okay, thank you. Counsel, with respect to a consideration of threat of material injury, what are your thoughts in that regard?

MS. DRAKE: Thank you, Commissioner Stayin. So, with regard to threat we believe the foreign producer data, while it's of incomplete coverage, supports a finding that foreign producers had growing capacity, had growing excess capacity, and were very focused on the U.S. market as opposed to their home market or other markets. We think all of those support an affirmative threat determination.

Obviously, if you look at public import data, you see rapid increase, but if you're in threat you're probably not looking at the public import data. So, what you do, even on the Commission's data that it does have, show an increase in imports and market share; particularly, in the interim period. The most recent period we have evidence of export subsidies and other subsidies provided by the Government of Turkey. We have a very vulnerable domestic industry which performance has been dismal over the period of investigation and really it has been disinvesting in itself, laying off employees, idling equipment, is really in the poorest possible shape to withstand any further increase in imports from Turkey.

We have a market that's highly susceptible to an increase in imports, given the high degree of interchangeability between domestic and imported product and given the importance of price in the market. In terms of efforts to develop new products, we have an industry that's invested a lot in organic production. As Mr. Veliquette and others testified, these are investments that take at least three to four years to pay off and so to have an increase in imports from Turkey just as those new crops are coming online would be especially harmful to the domestic industry, which, of course, is only limited to the processors, not the growers. But would be very harmful to the processors being able to recoup that amount and pay it back to their growers.

So, we think all of these factors support an affirmative threat determination.

COMMISSIONER STAYIN: Tell me about the capacity in Turkey to produce and to ship these products.

MS. DRAKE: So, in terms of the raw crop capacity, obviously, it's very large. They're the second largest producers of tart cherries in the world. There's also a large amount of capacity -- dryer capacity that may be currently being used for other products that can be shifted to dried tart cherries. And then, even within the capacity for dried tart cherries, there's a significant amount of excess capacity that's being reported.

So, again, while we think the total capacity in Turkey is much larger than just what's represented in the foreign producer responses, and as those slides from those two producers showed, you know they got 50 percent subsidies from the Government of Turkey funded by the EU to increase their capacity. We do think that that large and growing capacity supports an affirmative threat determination.

COMMISSIONER STAYIN: Alright, thank you very much. My time is almost up and I think you very much for your answers.

CHAIRMAN JOHANSON: Commissioner Karpel.

COMMISSIONER KARPEL: Thank you. I wanted to go back to some of the questions I ended on about prices and how they're set and negotiated in the U.S. market. Could you just walk me through a typical price negotiation you might have with your average purchaser? Like how you're approached, what the back and forth might typically be like, what the feedback is about whether you got the sale or not might look like.

MR. BRIAN: Well, typically, first off, you start off with your cost and want a margin on top of those costs. And you push for you know a decent margin, but in the end the market will dictate itself and so there'll be some pushback. Sometimes there's some give and take with customers. Other times there's a bid basis only and there is no give and take. Either you win it or you lose it. And if the price is too high, you don't get it and so the next time you bid on something you lower your price a little bit until you get some volume. So, there's all sorts of factors when you talk to pricing.

You know quality issues or volume. I don't know, obviously, if you're going to discount a large volume purchasers versus somebody that only buys a couple cases a week type of thing. So, all those factor into pricing.

MR. VELIQUETTE: I can tell you from my own personal experience you have to call on them and you have to continually call on them. Buyers typically do not call the supplier and ask if they've got a price. The seller has to call the buyer and typically three to four times, depending on how much you think you might be annoying them because there's a relationship that's involved there. So, you know, first of all, you have to make contact with the potential customers. Then you have to give them all the reasons why they should buy from you. Then you have to continually follow up with them until they tell you we already bought it from somebody else or you have to do better on that price and then you start into other options.

If you have a package you can bundle together, they you know many times you'll say, well, if you're not willing to pay that price on the blueberry, what if I put some cherry with that and some cranberry with that. So, it's really a hustle job when it comes to sales. The sales do not walk in the door. The salesmen and saleswomen walk out the door and they're expected to come back with business. Thank you.

COMMISSIONER KARPEL: Mr. Rowley, you mentioned sometimes there's bids and sometimes it's more of a negotiation like Mr. Veliquette just described. What's your sense of how many of these sales are in a bid process and how many are more on a back and forth negotiation?

MR. ROWLEY: I think the electronic bidding process is becoming more accepted. I think the last couple years we've had some major customers go to an electronic bidding process where you don't have the opportunity to go back and forth with pricing. You give it your one shot, then they tell you, you got it or you didn't get it and that's all you receive. You either get the order or you don't.

You ask for a percentage. I still think that's a small percentage. It's not the majority of the buyers, but it is becoming more popular, more accepted.

COMMISSIONER KARPEL: And do you know if it's more or less popular with respect to importers selling their product into the market versus domestic producers selling their product to distributors?

MR. ROWLEY: I don't know. I don't.

COMMISSIONER KARPEL: Okay.

MS. LAPERRIERE: I'd say based on my experience it's really customer specific and not where they're sourcing the product from.

COMMISSIONER KARPEL: And along those lines, you've noted that domestic producers are selling primarily to distributors. Why is that? Have you not looked at or consciously made a decision not to sell more to retailers or end users directly versus using distributors?

MR. ROWLEY: Our organization is trying to sell to all of them and I think as the cherry industry -- the dried cherry industry started 25 years ago. It initiated with industrial users or distributors. That market continues to evolve and change and those distributors -- now we're looking at end users, these retailers and we're trying to sell to them. We're not having as much success as we'd like, but we are attempting to sell to them and identify them.

MS. LAPERRIERE: I would refer to some of Tim Brian's comments earlier. There are companies that, frankly, are now in business to create retail products to bring to market that are really focused on bringing the lowest-cost goods possible. So, for example, some of the products you saw were typical of those types of retail products. And so, the decision-makers that go into purchasing raw material that go into those finished products that, in turn, gets sold to the retailer are all about purchasing the lowest cost possible.

MR. VELIQUETTE: Also, the development of brands. The brand is more important than usually what's inside the package and so the marketing effort that goes behind the development of a brand is very important. So, as companies like ours have our own small, branded products that we are able to sell directly to retail; the reality is that the volumes are much greater and you have a much more opportunity to sell to someone who has an existing brand that's willing to carry your product and put it under their label that's recognized. Thank you.

COMMISSIONER KARPEL: Okay, thank you. And circling back to one other point mentioned in my earlier set of questionings, sort of trying to get some more specific information from you about how you know you're facing competition from imports, given that your purchasers often don't tell you that you lost the business to imports versus lost it from another U.S. competitor.

One thing I believe that Mr. Veliquette said was that for those producers who are part of a group or cooperative they may talk amongst each other and say, look, we're all losing sales. It must be that imports are who we're losing it to, but for those U.S. producers who aren't part of a group like that how do you have a sense that you're losing sales to imports if there isn't this transparency from your purchasers about why you're not getting sales. How are you confident that you're not losing it to other U.S. competitors who are willing to give distributors a better price than you?

MR. ROWLEY: I know of examples -- I don't sell every day. This was our sales teams often and examples where we've tried to get with customers our product and they tell us we're too high. We don't get the business. And it's not long after that you see a package on the shelf that has dried cherries in it and it just says "Product of Turkey" and you kind of just have to put the facts together and say you know we had a chance at that. Now, it's on the shelf of that consumer and it says "Product of Turkey" on there.

MR. BRIAN: It's not uncommon for all of us to walk the aisles of the stores to kind of monitor what's going on. And it's like Chad says, you see that product of Turkey in the stores it's quite a (0:12:17.1) what's going on.

The other thing is I have a friend who's a Customs agent out of Chicago and he kind of lets me know the shipments that are coming in to him. There's enormous amount of shipments being flown in to Chicago coming from Turkey's dried cherries, so those are the informational type of things that we see.

And going back to sales, you know sales have developed over time and have changed over time. You know we've got files in our office from where my grandfather used to send you know mailings out or letters out trying to do sales. And then the phone came, the fax came, and now the Internet. You're bidding online, so things have -- the personnel changed too drastically. I mean it's not uncommon that the major corporations you're dealing with a different buyer every six to twelve months.

In the old days, I was in envious of my father. You know he dealt with companies where he had the same buyer that he developed a relationship for, gosh, 10 to 12 years at a time and he could have a lot of give and take. You know in today's world there isn't give and take or the relationship building because the buyer turnover is quite rapid in today's world. So, things have changed over time.

MS. LAPERRIERE: I'd just like to underscore what Chad Rowley indicated earlier, which is there are offers for product. We are either awarded the business or not and then we all -- every single one of us walk the grocery store aisles to see new products and who we're currently trying to sell to. And if we see that we did not get awarded the business, the very first thing we do is flip to the back of the box to look for a country of origin on products. And when we see that it's country of origin, Turkey, we know that we lost to an import.

COMMISSIONER KARPEL: Just a quick follow up, I mean and maybe you want to answer this post-hearing if you don't want to talk specifics, but are some of the products that you gave us samples of, which say "Product of Turkey" on the back are these some of the same purchasers you feel you've lost sales to?

MS. DRAKE: There is some confidential data that we can submit post-hearing on that, Commissioner Karpel, if that's okay.

CHAIRMAN JOHANSON: Okay, as we read in the staff report, and I believe the Respondent's brief as well, Turkey's been growing cherries or tart cherries for a thousand years -- something like that -- right? Why would we see a ramp up of imported tart cherries at this time in particular?

MR. VELIQUETTE: I could speak to that. The plantings in Turkey have been going up over the last 15 years. There are extensive regional products in central -- in Anatolia to divert water to open up more farmland. The Government of Turkey has a goal to be the supplier of fresh fruit to the European Union and the world. And so, as those plantations come online -- I spoke earlier they take about seven years to become mature and productive. And then they've got -- after that they've got another 23 to 30 years of life. So, what we're seeing now is the effect of large plantings going on through the late nineties and early 2000s coming online and they need a place for that to go.

Right now, about 100 million raw pounds -- and this is important when we talk about the pounds that come off the cherry tree. Somewhere in the neighborhood of about 100 million raw product equivalent pounds coming into the country in the form of juice concentrate, so that soaks up a lot of fruit. The net effect is this has been a longstanding project for the Government of Turkey to support the economics of the rural regions. They have the water. They have the climate. They have the space and they want to do it. Thank you.

MR. CLOUTIER: As the principal author of the accompanying countervailing duty petition, it is apparent to me that the Government of Turkey some years ago, as Mr. Veliquette indicated; decided that it was going to become a world-class exporter of agricultural products. And the Government of Turkey has put in place a number of government -- or a number of programs to subsidize the exportation of agricultural products and in particular processed agricultural products like a dried tart cherry. And the timing of this can all be traced back to those government plans and if you -- forgive the pun -- they're coming to fruition at this time. Thank you.

CHAIRMAN JOHANSON: Okay, thanks for that explanation. And I'm trying to remember was that cited in the gain report that you all had from USDA? I believe that might've been one of your exhibits?

MS. DRAKE: Yes, thank you, Chairman Johanson. The gain report cited a number of different government policies in Turkey to support agriculture and processed agricultural exports. There was also a WTO report where Turkey had to report its export subsidies and one of those export subsidy programs was a forgiveness of government debt based on exports of processed agricultural products, which included some processed cherry products. They got questions from the European Union and others. We think this applies to even more processed agricultural products. And of course, export subsidies are particularly pernicious in terms of encouraging for their exports as you know lira per ton in terms of the product that's exported.

CHAIRMAN JOHANSON: Okay, thanks, Ms. Drake. I appreciate it. At page 17 of your pre-hearing brief you cite two investigations, IQF Raspberries and Lemon Juice to support the proposition that the Commission should find that organic and non-organic products are interchangeable and that competition between the two types is not attenuated.

Both of those investigations are more than a decade old. Has demand for and awareness of organic products risen since then? And if demand has, indeed, risen would that mean competition is more attenuated?

MS. DRAKE: Thank you, Chairman. I would expect that demand for organic products has risen since then. I don't think we were able to find any more recent cases that squarely addressed the issue, but the mere fact that demand has increased would not necessarily lead to more attenuated competition. As Mr. Veliquette testified, to some extent, as organic gains more acceptance in the market, it becomes more interchangeable, to an extent, at least on a price basis. It's not -- the premium is high. You still have the situation where the organic product can always be used in conventional application, even if conventional can't be used in all the organic applications. And you still have most responding firms reporting that these cherries are interchangeable and that organic only half of purchasers saying that it's very important that it be organic, whereas, all 10 purchasers said price is a very important factor. So, we think you know logic, but the actual data that the Commission staff have collected support a finding that organic versus conventional did not attenuate competition.

CHAIRMAN JOHANSON: Okay, thank you. And getting back to a question that Commission Stayin asked, if you look at Table II-6 of the staff report, it indicates that country of origin is an important factor in purchases of this product. And I've been here several years now and I don't recall that ever really being a major issue. I'm wondering why that might be the fact.

MS. DRAKE: Thank you, Chairman Johanson. So, we might want to look at the individual purchaser responses to determine why that might be and to do that post-hearing. But I would note that despite that fact most of the purchasers report that country of origin is only sometimes or never significant to their customers, so there is a difference there.

CHAIRMAN JOHANSON: Okay, it just struck me because I haven't -- I had not seen anything to that effect before, I don't think. So, I don't know if it surprised you all as well.

What is your explanation for the inconsistent imports of dried tart cherries into the United States and why are companies not importing year after year?

MS. DRAKE: Thank you, Commissioner. I think it's because we have a number of importers over time -- and again, maybe we can do this analysis confidentially based on importer responses -- that you see importers that tend to be growing over time and the types of customers they're serving are you know large, important customers to get a foothold with or kind of customers that our domestic producers would very much like to serve or did serve in the past.

So, I think while you have some you know imports here and there where you see imports increasing over time you see that they're kind of increasingly targeting these large, important customers and that maybe it would be helpful if we break it out on a importer-by-importer basis. And I think part of the kind of helter/skelter nature is also due somewhat to some of these inconsistencies that we discussed before, but I really think it depends by importer. And where you see a more consistent increase you see that they have these large, important customers that are household names that we would all recognize.

CHAIRMAN JOHANSON: But don't inconsistent imports have to deal with production in Turkey as well? I used to work with California cherry growers with who I know produce a different product and they were called like the Cowboys of Ag Production or Fruit Production in California because if there was a big wind to blow the blossoms off the trees and to have like very little production. These are kind of fickle products, right, and so I'm wondering about production variations, U.S. compared to Turkey.

MR. ROWLEY: Yes, I haven't really studied the data, but yes, the tart cherries can -- crop sizes can fluctuate year-over-year and you know if you look at production, look at older production charts you'll see that that production fluctuates and was pretty tremendous. Over the years, where the tart cherry industry is located has changed somewhat and since we are so weather related in terms of the crop coming in the fact that it's geographically in some different locations today we don't see quite that same fluctuation that we once did, but we still see the fluctuation. And, in fact, if we look at -- if we go back to 2002, virtually Michigan had no cherries at all. We had a complete freeze out that year with no cherries. We haven't had that since.

As weather patterns have changed, more recently we have not seen the total fluctuation in the crop size that we had in the last -- in the last five or six years we've not seen the crop size fluctuation as much as we did in the previous five or six years. That's probably going to change again over time, but yes, we can wake up one morning in the spring after cherries have started to come out of dormancy and get a super cold night and not end up with a crop at all, so we see the same thing that you saw in California.

CHAIRMAN JOHANSON: Is Turkey affected to the same extent? I mean Michigan's a lot colder than Turkey, right? Of course, it is.

MR. ROWLEY: I, personally, can't talk to the --

CHAIRMAN JOHANSON: I'm just curious about their production problems as well and if that might explain some of the variations in imports.

MR. VELIQUETTE: Commissioner Johanson, I'd like to speak to that. Yes, on a regionally-specific basis in any given year regions can experience weather patterns that will affect the crop. That could happen in the United States. That could happen in Turkey. And as a most recent example, there were issues with the European crop, Poland being an extremely large producer, generally, serving the German and the Russian market. So, when the European crop is down, U.S. producers have an opportunity to sell their and so do Turkish producers. Thank you.

MS. DRAKE: Chairman, I would just say we haven't seen any evidence of the Turkish dried tart cherry industry has been impacted by any kind of crop failure or anything to that extent. Obviously, the crops will fluctuate from year-to-year, but again, this is just one use of the crop and can also be derived from frozen product that's kept in inventory.

CHAIRMAN JOHANSON: Okay, thanks. Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Okay, thank you. I guess I want to talk a little bit about some of the approaches you take to pricing in analyzing the potential for price depression and price suppression. Leading into that, one question I had was I think I heard one of the witnesses say that over -- at least over the POI and maybe even for the last seven years there hasn't been a short year in terms of tart cherry production. That's correct, right? Has there been an oversupply, if you will, of tart cherry production from growers?

MS. DRAKE: Perhaps I could speak just briefly to talk about the Federal Marketing Order and how that works because it is specifically designed to smooth supply because the industry, historically, has been very vulnerable to these swings in the crop size and when it's oversupplied obviously prices crash.

And so, the way the Federal Marketing Order works is that it's set up a cherry industry administrative board each year sets a volume of free supply of tart cherries and that is based on looking at the prior three years and taking an average to try to smooth out the supply that's free that can be used however they want. And again, this applies to the whole crop, not just to dried tart cherries. And then there's a restricted amount that's designated that can be kept in inventory or it can be exported or it can be used to develop new products for new product development projects that are approved by the board. So, there's a little room for growth, if needed, a little flexibility, but the entire purpose of the marketing order is to smooth out the supply -- variations. And so, if there is excess supply above what the board says, those cherries are destroyed precisely because they do not want them to impact the market and cause this price volatility that had historically been a problem.

COMMISSIONER SCHMIDTLEIN: Okay. Okay, so having that in mind, in terms of trying to get at -- and I understand your explanation just now, but trying to get at what was really impacting prices over the POI. And so I'm looking at your brief, page 27, where you suggest that we look at individual importer U.S. shipment data with the values reported in the calculated AUVs to demonstrate that when those particular importers increase their value or their volume, I should say, their unit values went down, right?

And so, I guess one question I had is you know I don't think the Commission's ever done something like this before, right, where we would not look at the pricing products because it's underrepresented, according to Petitioners, but we would break apart the individual importers and look at what they reported their quantity and value was on their importer questionnaire. So, I guess one question I had was when you look at these particular importers that you've broken out and you exclude one that was liquidating its inventory, but these particular importers don't -- there's only one of the three largest importers, which I assume that means the other two didn't report quantities and value for every year on their importer questionnaire; is that right, the other two large importers?

MS. DRAKE: That's correct. We took those who reported quantity and value for more than one year and excluded the one who was liquidating and this is what we were left with. And I understand that the Commission doesn't typically look at you know importer-by-importer. I think our concern with the pricing product data is it really did reflect importer-specific prices in different time periods. So, we were just trying to look at the data every way we could, but we're not saying the Commission should ignore the pricing data, but just try to kind of tease it apart and see if there are other ways to look at the data that would show price declines.

COMMISSIONER SCHMIDTLEIN: So, I guess what I'm--I don't know if I want to use the word "struggling"--but what I'm trying to understand is, in a market where the U.S. has the vast, vast majority of the market share--right?--even if you take your calculation, even if we use official import statistics, still, the vast, vast majority of the market share, market was stable or maybe even softening over this time, right?

And so we would be left with looking at individual importers' data, only one of which includes the largest importer--two other large importers didn't report--to say, notwithstanding all of that stuff, we're going to conclude that subject imports caused prices to go down, right? Do you think that's substantial evidence? I guess that's what I'm really trying to get at.

MS. DRAKE: I understand, and I mean, I think we look at a combination, both of price declines in the two pricing products with the largest domestic volume. And --

COMMISSIONER SCHMIDTLEIN: Which is the non-organic, right?

MS. DRAKE: Right. And that combined with price declines, where we only have the importer pricing data that we have. And looking at, on a product-specific basis or an overall AUV basis, seeing declines for those, most of those products as well. And then we also see, in terms of price suppression, which I understand if demand was declining, you may not've been able to raise prices --

But again, pricing product prices declining and overall, you're having an increased COGS to sales ratio that was already an extremely ratio, such that the industry was already suffering a loss at the beginning, and yet they endured an even bigger cost-price squeeze as imports increased and as, according to certain confidential metrics, import prices declined and, according to even overall pricing data, overselling started to become more frequently and to become more severe.

COMMISSIONER SCHMIDTLEIN: Okay. I mean I am concerned about importers not responding to questionnaire requests from the Commission, because, of course, this is what we have, we only have the record, that's what we have to make the decision on. If we were going -- what would you -- if the Commission were to consider taking an adverse inference -- it's a bit of an unusual provision, right? In the statute, the way it's read.

You don't just assume that they were underselling. You know, we don't just assume away underselling, right? Or assume that there is underselling, I should say. How would we do that, if we were going to apply that statutory provision here in light of the fact that two of the three largest importers didn't provide us with information on a year-to-year basis.

MS. DRAKE: Right. So, I appreciate that question. Certainly, I think it's easier to do with the volume data, because you have other available information to rely on.

COMMISSIONER SCHMIDTLEIN: Right.

MS. DRAKE: And so therefore, we're left with the pricing data we do have, and again, I would just reiterate, you know, that there may be issues with the channels, but even notwithstanding that, the underselling does become more frequent and greater when you have an importer that actually reports it for the whole period. And we do have price declines for importers that reported during the period.

And so those reasonably support either as available information or as an adverse inference that other information that crossed the period would display similar trends, that when you have importers that are able to increase their volume because they lowered their prices, and then you have importers who increased their volume, but didn't tell you anything, that it's reasonable to conclude that they were able to do that by lowering their prices as well.

COMMISSIONER SCHMIDTLEIN: Okay. One other topic I'm not sure has been touched on, is nonsubject imports here. Which, again, depending on what data you look at, the trends are very different, right? So, maybe the first question is, have any of the witnesses had any information--I understand that this is a very nontransparent market, it seems like, so it's hard to understand who's buying from who--but have you experienced an impact from nonsubject imports? I guess I can ask it that way. Other countries. Imports from other countries besides Turkey.

MR. BRIAN: Well, Serbia is one of the countries where there's a lot of data showing in, but a lot of that product that's coming in is freeze-dried cherries, so it's a different product than what we're producing and a different product that's coming in from Turkey.

COMMISSIONER SCHMIDTLEIN: But it falls under the same HTS number, I assume?

MR. BRIAN: I would assume so. It's still considered dried cherries --

COMMISSIONER SCHMIDTLEIN: Still considered dried cherries?

MR. BRIAN: -- but it's a totally different type of product.

COMMISSIONER SCHMIDTLEIN: Okay.

MS. DRAKE: And we'd be happy to look, I mean, obviously, we believe that if the Commission uses public data for subject imports, it can do the same with nonsubject imports if it continues to rely on importer responses, it can do it for both.

COMMISSIONER SCHMIDTLEIN: Okay.

MS. DRAKE: But we would say that both nonsubject and subject are underrepresented. Looking only the importer responses, we haven't done the same, kind of, CINF comparison for nonsubject, but we'd be happy to do that.

COMMISSIONER SCHMIDTLEIN: Okay, all right. I think that would be helpful. Okay, thank you.

CHAIRMAN JOHANSON: Commissioner Kearns?

COMMISSIONER KEARNS: Thank you. I think I just have a few short questions here. One is, is Turkey a major producer of sweet cherries? Do we have any information available on that?

MS. DRAKE: Thank you, Commissioner Kearns. Yes, they do produce a lot of sweet cherries. The USDA GAIN report that Chairman Johanson referred to is on both sweet and tart cherries, and discusses programs available to both or trends in both. I'm not quite sure where they rank in the world in terms of sweet cherry production. I know they're second largest in terms of tart cherry production. But as Mr. Gregory and others have testified, there's no significant U.S. market for the dried form of sweet cherries.

And really, you know, if you think about it, sweet cherries, to me is, you know, when I go to the grocery store, the farmer's market and buy at summertime, a big juicy bag of sweet cherries, that's where the value is in a sweet cherry crop. Drying a sweet cherry into a bland product with not a lot of good texture just really doesn't make a lot of economic sense.

COMMISSIONER KEARNS: And the USDA information we have, that distinguishes between sweet and tart?

MS. DRAKE: Some places it does, some places it doesn't.

COMMISSIONER KEARNS: Okay.

MS. DRAKE: The FAO data has production data split between tart and sweet, so you have the tart, we can provide the sweet if you're interested.

COMMISSIONER KEARNS: Okay, yes, I'm curious, just to get a sense of how the two markets compare in Turkey, how much production from one versus the other.

On Page 25 of your brief, you refer to a declaration from Mr. Sommavilla, the CEO of Shoreline. Can you provide us with any contemporaneous documentation to support that declaration post-hearing?

MS. DRAKE: I believe we did ask him for that and he did not, it was more of a telephone transactions rather than -- but we will, of course, follow up and see if there's anything we can provide.

COMMISSIONER KEARNS: Okay, thank you. And also, if you can tell us post-hearing, how important this issue is, in terms of the overall market. And there's a little bit of that in the exhibit, but I think if I could get a better sense of how important the things that he's saying are in terms of the overall market, that would be helpful as well. I'm trying to be careful with APO --

MS. DRAKE: Understood.

COMMISSIONER KEARNS: Okay.

MS. DRAKE: Yes, we'll do so.

COMMISSIONER KEARNS: And then just a couple questions about organic cherries. How do costs of production differ between organic, dried tart cherries and conventional product? Is it mainly just insecticides and that sort of thing? Is that the difference? And then, just along with that, I guess, can Michigan produce organic cherries? I think I saw somewhere that it's harder to do so in Michigan than it would be in Utah.

MR. VELIQUETTE: Commissioner Kearns, Nels Veliquette. I'd speak to that. We can grow them in Michigan. We've been doing it for the last three years. I just don't have the certification yet. So yes, we can grow them in Michigan. Basically a number of climatic factors every year will determine how much more it costs than that the conventional. This last season, very wet, very cold, very difficult on all fronts in terms of insects and fungicides. Last year, very dry, very hot, much less pressure.

So there are regions that have maybe more regional advantages when it comes to weather, but we can grow them in Michigan. And so, depending on the season, this season our costs over conventional are about 36%. Last year, the cost to run the same program was about 20%. And then, when it comes -- that's just on the raw side.

For the drying, then the certification for the plant, the plant has to be certified to actually produce organic product, so there's some compliance that's involved with that, little bit of extra cost there. The sourcing of the organic sugar, that's also important, and then the handling and the package and the chain of custody. So incremental costs all the way along the line in order to get those dried organic tart cherries to market.

COMMISSIONER KEARNS: Okay. Anybody else wanna add anything on that?

MR. ROWLEY: We grow them in Utah. It's a little different climate than Michigan, and have been growing them for over five, six years now. And our costs are, the growing costs are usually 30-35% greater than conventional. It's less than that in the plant. There's some certification like Nels said, but the major increase in our areas is the fertilizer, trying to get the right amount of nutrients to those trees and the special chemical or special compounds you need to use to organically the pests we have.

COMMISSIONER KEARNS: Okay, thank you. And has capacity or produced organic dried cherries been increasing in the United States? And is there sufficient capacity to meet U.S. demand?

MR. VELIQUETTE: Commissioner, Nels Veliquette, I would say yes.

MS. LAPERRIERE: This is Melanie LaPerriere, I'd say absolutely yes.

COMMISSIONER KEARNS: Okay, thank you. I have no further questions right now.

CHAIRMAN JOHANSON: Commissioner Stayin?

COMMISSIONER STAYIN: No.

CHAIRMAN JOHANSON: Commissioner Karpel?

COMMISSIONER KARPEL: Yeah, I think I'd just like to follow up on your response to that. In your opening statements, a couple of you mentioned you're increasing your capacity to produce organic cherries, that these new crops are expected to get to the organic certification stage in 2020, or in 2021. So how do we square that with your statement just a moment ago that there is sufficient capacity in the U.S. to produce organic cherries to meet demand?

MS. LAPERRIERE: I'm not sure I understand your question. My response just a moment ago was specific to processing capability, processing capacity, so definitely significant processing capacity to manage organic input material.

COMMISSIONER KARPEL: Okay, so sorry, I misunderstood that. So can you explain then, is there enough organic cherry production to meet the demand for organic dried cherries? And please answer that in connection with statements you shared in the opening about your interest and your efforts to increase organic cherry production in the U.S.

MR. VELIQUETTE: Commissioner Karpel, Nels Veliquette. I'll answer that. Yes. You can buy organic frozen cherries today on the spot market. They're available. And the largest buyer of dried tart cherries in the country switched over to organic. And what is happening is that more and more of this, as this market grows, more and more growers see an opportunity to gain a little bit of market back, and so that's why they're switching over to organic production.

So organic production has been happening in the United States for a long time, principally in the Northwest, in Washington, but as things go, you see somebody doing something that works, you try to copy them. And so for many years in Michigan, I think the prevailing attitude and the one that has been put forth by Turkey is, that you can't grow them in Michigan.

And I can tell you right now that, since we started back in 2016, as an example, the conventional list of applications that we use in our spray program has not grown at all. The organic list has grown -- I would say it's basically tripled at this point. The market for organic produce is so big that the chemical companies are finding brand-new ways to bring new organic applications to the market all the time.

We have several different test plots within our organic growing complex that are testing out these products, just so we can see which one works best in our climate. So we didn't have the tools, even just five years ago, and especially ten years ago, that are available today to help with organic production. Thank you.

COMMISSIONER KARPEL: I'm sorry, just a couple more on price. Your price suppression argument states that it's not based on raw material costs increasing, but rather on other factory cost increases due to producers having to absorb more fixed costs on a smaller volume of production and sales. Are these types of fixed costs ones producers typically expect to pass on to their customers, particularly in a time of falling demand?

MS. DRAKE: Mr. Brian testified that some of their pricing practices flow from looking at the total costs of the product and trying to make sure that there's a margin made on that product. And it's to be understand also that some of these companies work in a way where their suppliers and, therefore, their raw material prices, are determined by the processors and price minus their processing cost. So you might not see raw material prices go up, but that's just a function of how those supplier prices are paid. Is that an accurate description?

MR. GREGORY: Yes, I would say that that's an accurate description of how it operates.

COMMISSIONER KARPEL: Thank you. And then on Page 26 of your pre-hearing brief, you contend that subject imports appear to have depressed and/or suppressed domestic prices. Is that sufficient to satisfy the statutory directive that the Commission consider whether imports depressed or suppressed prices to a significant degree?

MS. DRAKE: Thank you. Again, I think that formulation was because we believe the data doesn't provide full coverage, so it's to say that the data that, even if you just concern yourself to the data that we do have, there is enough evidence of price suppression and price depression to find that those occurred to a significant degree. The peer language was more to say that, you know, we think more fulsome data would show even more. Excuse me, and/or data corrected for, or adjusted for potential differences in level of trade.

COMMISSIONER KARPEL: I think that's all I have. Thank you.

CHAIRMAN JOHANSON: I believe Mr. Cloutier touched on this briefly, but I wanted to get a little bit deeper into it. Why do the domestic industry have difficulty providing lost sales or lost revenue allegations?

MS. DRAKE: Chairman Johanson, the primary reason is that most of their sales are through distributors and, as you've heard our witnesses testify today, when they lose a sale or even when they're negotiating to get a sale, their competitor is not identified by that distributor. That's a very opaque market. It's not transparent. That distributors do not have an interest in sharing that specific identify information with their suppliers and so that's what made it difficult to identify lost sales, lost revenue.

I think that it was also the situation that there were perhaps customers who were being called on that were not responding that we didn't know why, and so we couldn't feel competent saying "this is a lost sale," or "this is a lost revenue," but then, once these cases are filed, they're suddenly responding to those inquiries and even, you know, putting in orders for sales that they didn't before.

CHAIRMAN JOHANSON: Okay. Thanks, Ms. Drake.

MR. BRIAN: I'd like to also add that, you know, in today's world, everybody's so busy and most of it's all done by e-mail and everybody, you don't wanna put things in e-mail that can be shown to people. And so I think it's, in today's world, we're less transparent than what we used to be.

CHAIRMAN JOHANSON: Okay, thanks, Mr. Brian. And I have just one more. At Page 21 of its pre-hearing brief, respondents make arguments regarding the performance of specific domestic producers. Could you all please address these arguments in your post-hearing brief?

MS. DRAKE: Thank you, Chairman, we'll do so.

CHAIRMAN JOHANSON: Okay, thanks, Ms. Drake. That concludes my questions. Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: I just had a couple questions here. In looking over these samples that you sent up, it made me wonder -- I'm not sure if it's been discussed that much today, the dried cherry point. And the respondents, I think, seem to argue that, you know, dried cherries are a bigger part of this market, and I know that you all testified there really isn't a commercial market for dried cherries? Is that correct? Just to confirm.

MS. DRAKE: Excuse me, Commissioner. For dried sweet cherries?

COMMISSIONER SCHMIDTLEIN: Dried sweet cherries, I'm sorry. Dried sweet cherries, yeah-yeah.

MS. DRAKE: Yes, the only domestic producer that we're aware of that produces it, as Mr. Gregory, where it's 1% of his production, Mr. Rowley and Mr. Brian had tried producing dried sweet cherries at some point, but didn't find a market for it, and it's really just due to the physical differences between the product.

COMMISSIONER SCHMIDTLEIN: But there are some dried sweet cherries being imported, correct?

MS. DRAKE: There may be some, yes, but I think what we were trying to demonstrate today is that, at least in one case, that product is being sold as a dried tart cherry, including being labeled as a dried tart cherry from Turkey.

COMMISSIONER SCHMIDTLEIN: Oh, okay. So consumers can't really tell the difference between them? Is that why they're able to do that?

MS. DRAKE: I can't speak to whether the importer that we looked at today is -- all I know is that the product says "dried tart cherry", it says Turkey. We know that the vast majority of the market is for dried tart cherries. Our producers don't get inquiries saying, "Why aren't you giving me dried sweet cherries?"

COMMISSIONER SCHMIDTLEIN: Okay.

MS. DRAKE: The physical characteristics are different and not as appealing for dried sweet cherries. And so there's a confidential issue with this company that I'd feel more comfortable --

COMMISSIONER SCHMIDTLEIN: Okay.

MS. DRAKE: -- addressing it --

COMMISSIONER SCHMIDTLEIN: You can address that in the post-hearing.

MS. DRAKE: Yes.

COMMISSIONER SCHMIDTLEIN: What would be some of the uses for dried sweet cherries? Would it be this similar trail mix product? Or is it in other types of desserts or --

MR. GREGORY: In our infinite wisdom, as we tried to get a bigger part of the market, we thought, hey, if we could put together a product that has a blend of different kinds of dried cherries, and we have the dried tart cherry, which our traditional U.S. tart cherry is a Montmorency cherry, which has its own characteristics. We also have another dried tart cherry that there's a few around that's called the Balaton cherry.

And we said if we could put those two together, and if we could find something else, let's try a sweet cherry, and in our case, we said, let's try a light sweet cherry and put the three together and call them a cherries jubilee as a blend. And we have a very, very, very small market segment that uses that.

I am not aware of other -- you know, we do every once in a while, see some dried sweet cherries possibly coming from the West Coast, a very small amount. Sometimes used in some types of specialty products, but very, at least we don't run into it very often.

MR. VELIQUETTE: Commissioner Schmidtlein, Nels Veliquette. I am aware of a product that is produced in Turkey as a sweet cherry that has the pit in it. It is dried with the pit and used as bird food. That would not be something that would be utilized in any kind of human consumption food product. Thank you.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. ROWLEY: Chad Rowley. We dried dark sweet cherries eight, nine years ago, a very limited amount, and the market wasn't very strong. We are aware of a very small amount of dried sweet cherries that come out of California, but that's very limited.

COMMISSIONER SCHMIDTLEIN: And they're used in specialty products?

MR. ROWLEY: Yeah, they're used different than we use our tart for. I'm a little biased, but I just don't prefer them.

MR. GREGORY: I think the dried sweet cherries, some of them, particularly some of the dried dark sweet cherries are much more, much closer resemble a dried purple plum, or dried plum, or like a prune. So it's a completely different product than what we look at in terms of a dried tart cherry.

COMMISSIONER SCHMIDTLEIN: Okay, all right. Thank you very much. I have no further questions.

CHAIRMAN JOHANSON: Commissioner Kearns? Commissioner Karpel? Okay.

COMMISSIONER KARPEL: Yeah, I just, and if you want to respond to this in your post-hearing, that's fine, too. But it looks like your price depression argument focuses on decline in net sales AUVs, instead of declines in U.S. shipment AUVs. Is that what the Commission typically looks at? And is it what we should be looking at in this investigation instead of the lack of decline in AUVs in shipments?

MS. DRAKE: Thank you, Commissioner. So I think for price depression, probably our strongest data points are the pricing product data for the two largest volume domestic pricing products. Net sales, I think would be a more appropriate contrast to look at the COGS versus sales ratio, because, for a price suppression argument.

COMMISSIONER KARPEL: That was my only question.

CHAIRMAN JOHANSON: Do any other Commissioners have questions? None do. Do staff have any questions for this panel?

MR. COMLY: Nate Comly, Office of Investigations. Staff has no questions.

CHAIRMAN JOHANSON: Do respondents have any questions for this panel?

MR. THOMAS: We do not.

CHAIRMAN JOHANSON: Okay, respondents have no questions. Then, why don't we take a break until 1:30. I'd like to remind -- let's be in recess until 1:30. I'd like to remind parties that the room is not secure, so please be sure to take any confidential business information with you, and we'll see you back here at 1:30.

(Whereupon, at 12:40 p.m., a luncheon recess was had to reconvene at 1:30 p.m.)

AFTERNOON SESSION

(1:34 p.m.)

CHAIRMAN JOHANSON: Mr. Secretary, are there any preliminary matters?

MR. BISHOP: Mr. Chairman, I would note that the panel in opposition to the imposition of the antidumping and countervailing duty orders have been seated. This panel has sixty minutes for their direct testimony.

CHAIRMAN JOHANSON: You may begin whenever you'd like.

MR. THOMAS: Thank you very much, Mr. Chairman. For the record, I am Ritchie Thomas of the Law Firm of Squires Patton Boggs, counsel for respondent Sanford, A.S., a producer and exporter of dried tart cherries in Turkey. Mr. Sanford and I appreciate this opportunity to present the views of the Turkish cherry producers in these investigations.

The Turkish dried cherry producers come late to these proceedings. The amount of trade involved is relatively small and Title VII proceedings are expensive to defend. Turkish producers did not contest the proceedings at the Commerce Department. The result was findings by Commerce of very high dumping and subsidy margins, based wholly on petitioners' allegations.

The Commerce findings threatened to impose substantial potential barriers to trade as petitioners intend. However, the very magnitude of Commerce's facts available margin demonstrates there their artificiality. To the extent they are relevant to the Commission's analysis in these final investigations, they should be taken with more than a grain or two of salt.

Petitioners would prefer the Commission, like Commerce, to base its determination on petitioners' allegations and suppositions. They yield the results petitioners want, but in its investigations, the Commission has collected an extended record of facts and data that bear on the issues. The Commission's determinations therefore will be based on facts, not mere allegations.

Petitioners' claims in these investigations run aground on the shoal of the staff pre-hearing report. The report was prepared after diligent investigation by the staff. It included collection and compilation of importer, purchaser and foreign and domestic producer questionnaire responses. The staff also ran down petitioners' assertions of deficiencies in the record, who virtually without exception found them to be without merit. Please see Page IV-1 of the pre-hearing report.

We will address what appears to be petitioners' featured efforts to impeach the staff data in a few minutes. It bears repeating at the onset, however, that the staff report states the import data that it reports, "U.S. imports are based on questionnaire responses from nine firms, representing," and this is the staff's words, "the vast majority of reported U.S. imports from Turkey in 2018 under HTS statistical reporting number 813.40.3000." Report at I-4 and IV-1.

We direct the Commission's attention to Footnote 3 in Section 4 of the pre-hearing report. It shows that the aggregate import volumes reported in response to the Commission's importer questionnaire, constitutes an extraordinarily high percentage of the dried tart cherry imports from Turkey in 2018, reported by the proprietary customs data obtained by the staff. Those are highly representative and therefore highly reliable results.

I would like now to introduce Mr. Martin Sanford of Sanford, A.S., a Turkish producer and exporter of dried tart cherries. Mr. Sanford will speak about the Turkish dried tart cherry industry and his experience as an exporter. Mr. Sanford.

STATEMENT OF MARTIN SANFORD

MR. SANFORD: Thank you, Mr. Thomas. Dear Chairman Johanson and members of the Commission, good afternoon. I am Martin Sanford, Chairman and Owner of Sanford Foods, and also a board member of the Aegean Exporter's Association for the food and vegetable producers and exporters in Turkey. As you can notice, I'm a British man. I'm a businessman living and working in Turkey in the production and export of value-added dried fruits, mainly dried cherries and sour cherries.

I moved to Turkey in 1995 to head a dried fruit packing plant that we established to supply the UK market with finished product, as the majority of tree fruits and vine fruits that we processed in the UK were from Turkey and Turkish origin. At the same time, I identified the need for the services of export professionals in the sector of environmental hygiene and food safety. As there was none in Turkey, I established the first national service company called National Britannia, which I later sold to Rentokil Initial in 2010.

I remained in Turkey, and in 2011, I purchased controlling shares in the company, VSM Foods. That was an abbreviation for Valley Sun Med, then producing sun-dried tomatoes. We had formed a strategic alliance with VSP, Valley Sun Products in Newman, California, and expanded its operations in Chile and Egypt also.

Our entry into the dried fruit sour cherry production began in 2012. This was following a request to produce and supply a dry tart cherry to back up the purchases from the U.S. with my UK customer. It was also to keep supply to a major UK retailer that required a tighter stone tolerance.

We won the business, as I was told, the U.S. producers were unable, unwilling to change the specification to include the tighter pit stone tolerance and I since began transforming the business from tomatoes to more value-added fruits. As a result of becoming the fruit supplier to this account, our company was recommended to all their supplies in Europe, including manufacturers and packers of product containing sour cherries.

When we decided to develop a range of dried fruits focusing on Turkey strengths and that's cherries and sour cherries were both grown in large quantities, we developed a global customer base where our customers buying criteria was focused on quality, food safety and ethics to match.

To date, we are approved by many importers, distributors and retailers in areas including food safety, hygiene, ethical trading, fruit security, together with fruit defense. We are a BAC AA-grade approved plant and seddex registered to the 4-point program. I have built all my businesses with quality as the main selling point, as opposed to price.

Unlike other dried fruit, it is particularly important that cherries are processed correctly. Those customers that are experienced, know that a cheap product can result in a total loss. If the cherries of a higher pit count than specified, it can result in claims or product recalls that can affect the value of the brand and loss of customers by the purchaser.

While we have been successful in getting our company approved and the product offering trusted, of course, it's not all been plain sailing. The Turkish Morello sour cherry is darker by nature and hand-harvested. These and other features of Turkish origin cherries can either be advantages or disadvantages. Most especially, our specifications are different, as we tend to use beet sugar, as opposed to cane sugar, which I believe is the source of non-GMO sugar in the U.S.

With the exception of the UK, where we developed a healthier perceived, that is, apple juice-infused sour cherry, which became the preferred choice in the UK. The sales of U.S. Montmorency in mainland Europe and the UK is still the preferred tart cherry choice to the major repackers as the customers is used to the redder-looking Montmorency cherry, which was the incumbent. Healthy snacks with a difference became the new offering. And in the berry range, we focused on organic apple juice-infused sour cherries where we could differentiate, and there was a demand, and the product sufficiently and sell well.

However, due to the very high cost of production and the use of organic apple juice, as opposed to organic cane sugar, our sales following 2014 have been low and sporadic, and mostly reactive. Hence, yearly sales volumes have been difficult to predict and have decreased over the period of investigation.

Like the five largest U.S. cherry companies, we are also family-owned businesses. And so are all the Turkish companies in the dried cherry sector. We are not integrated like the U.S. companies and are not supported by an army of growers. We need to work with frozen fruits companies in Turkey that in turn buy the fresh fruit from small family growers that own, on average, one acre plot of cherry tree orchards. And then the frozen fruit companies, once they purchase the fruit, they wash, they grade, they pit and individually quick-freeze and then either export or sell to companies like us.

We do not have sales as frozen IQF or huge sales in cherry juice concentrate. And we do not produce or sell in Turkey sour cherry filling for cakes, which I believe is the main businesses where most of the sour cherries in this case are traditionally sold in the U.S. Our income of profitability in Turkey and the future of our business is solely based on the production of export of dried fruits.

Many companies in Turkey produce sour cherry concentrate, but our plant is focused on dried sour cherries for snacking and/or ingredients. Our plant is located in Izmir, approximately 300 miles from the major growing areas of Afrionkitaka. In addition to cherries, we also process other berries with straight dried fruit such as peaches, pears, kiwi, banana, which are all locally grown.

Our main area for growth besides dried fruits, has been in the dry fruit puree products and derivatives thereof, where we're talking the younger generation to help them snack on no-sugar-added, no-preservative-added snacks.

We are doing our best to create new markets and sales channels and markets for the new products that we develop, produce and sell. In addition to the first grade fruits that we buy, we also purchase the misshapen, broken fruits where we help to get more money for the farmer, who would normally maybe not've been able to sell that product.

With reference to sour cherries, the cost of our IQF sour cherries is direct link to the Polish crop, the largest suppliers of IQF sour cherries to the European market. If they have a short year, their prices go up and our prices follow.

Although we invested in additional drying facilities in 2015 to streamline production and also increase capacity to meet the potential demand. We have not seen the increase in sales, but unfortunately, totally the opposite. The price of infused dried sour cherries in general are much higher than other fruit available. And this, together with the fact that they contain added sugar, has led to them being replaced by other cheaper and healthier alternatives.

However, we have faith in R&D and the taste of the sour cherry and as the important ingredient in the global dried fruit market, we believe it will recover. In summary, as far as I can determine, these proceedings are based on fear rather than fact. As the largest infused-dried fruit producer in Turkey, I can state that we do not sell below market and we receive no Turkish government support that would enable us to so-call dump sour cherries onto the U.S. market or any market thereof.

Moreover, we're not seeking to penetrate the U.S. market as a low-priced source, as we do not have the cost advantage of being the grower-processor, but I believe many U.S. producers of tart cherries have. From my experience, facts speak louder than words. And if our exports to the U.S. of dried sour cherries have decreased substantially since 2016, it's obvious that customers have found alternatives to replace our expensive dried sour cherry with a suitable alternative, whether it's cranberries, goji berries, or whatever new fruits there are.

One cannot deny that discount stores are increasing market share, and the need to find more competitive alternatives to attract the customers, especially of sour cherries, are one of the ingredients in the dried mixed fruit range and nut range that increase the cost of the mix. It's probably the largest single expensive ingredient.

And also a decision for Turkey producers in these investigations would not only hurt our business, but it also would be a nail in the coffin for many Turkish farmers and their families who will be unable to sell their sour cherries to a value-added sector that currently pays the highest price per kilo, compared to the juice or the jam sector. Our best year for U.S.-dried tart cherry sales was in 2014-15, where we sold the largest volume of organic sour cherries, but since then, over the POI, our production and sale of sour cherries have decreased substantially.

In conclusion, I don't believe that my company's exports to the U.S. or, in fact, those of other Turkish dried sour cherry producers are having any significant impact at all on U.S. producers. We are selling a more expensive, superior and robust Morello cherry, that we believe is attracting new customers and creating demand. I thank you for your attention and I'm happy to answer any questions that the Commission may have.

MR. RITCHIE: Thank you, Mr. Sanford.

To address two routine questions, Sanford does not contest the Commission's preliminary phase finding of a single domestic like-product consisting of dried tart cherries conforming to the scope of the Commerce Department investigations.

It also does not oppose a finding of a single U.S. industry producing the domestic like-product.

Turning to the issues that are contested, it is readily apparent that the information regarding the levels of imports of subject dried tart cherries form Turkey, and of domestic sales of the imported product collected by the Commission staff are not favorable to Petitioners' claims.

In the preliminary phase, the Commission had noted that there appears to be a significant discrepancy between the U.S. import data compiled from responses of the Commission's importer questionnaires and official U.S. import statistics.

For these preliminary determinations, for subject imports we have used data from questionnaire responses, together with official U.S. import statistics corresponding to importers that did not submit questionnaire responses. For nonsubject importers, we have mainly used official U.S. Government import statistics.

And in the final phase of these investigations, we will continue to try to ascertain the most accurate data set for subject and nonsubject imports.

In this final phase, the staff obtained new importer questionnaire data, diligently scrubbed it, and ran down every claimed discrepancy Petitioners asserted. The result was twofold.

First, staff found the importer questionnaire response volumes represent a very high percentage of imports of subject dried tart cherries from Turkey reported by proprietary customs data.

The second result was to debunk the anecdotal website and vessel manifest report based claims raised by Petitioners. In footnote after footnote in the prehearing report, and email after email in the confidential record, those claims were addressed by the staff, claimed discrepancies resolved and, where appropriate, the resulting information taken into account in the analysis and data presented in the prehearing report.

In their prehearing brief and here today, Petitioners dispute the staff, claiming the prehearing report's import data are under-reported. To avoid repetition and disclosure of competition -- of confidential information, we will address only their featured examples.

These are two instances where Petitioners claim imports of subject merchandise must have been unreported or misreported. In one of these instances Petitioners assert that a firm makes a statement on its website that does simply not appear there. We refer the Commission to page one of Petitioners brief and their Exhibit 6.

In another instance, Petitioners claim a particular kind of transaction must not have occurred, and a different product then reported must have been involved because the kind of transaction reported is not mentioned in the website of the company. We direct attention again to page one of Petitioners brief. The company concerned yesterday granted us permission to read its explanation at today's hearing.

The proprietor states as follows, and this is in response to an inquiry from staff:

"Thanks for your call. I have reviewed the spec sheet and discussed this internally. After this review, it is clear to me now that our website is correct, because we do offer tart cherries that are pitted. We trade those from time to time, but they are only sourced domestically. We inventory those to hold as inventory if any of our customers want that specific product. We purchase these products from a supplier in Washington State, and please note that it is a dried tart pitted product which agrees with the spec sheet. In fact, we build our spec sheet to mirror our supplier's spec info where these are sourced." And then it cites a website.

"Again, we have never distinguished sweet from tart, as our commodities go into birdseed and pet food products. It is a safe assumption that animals don't care. In support of this, I have attached all fruit commodities listed straight out of our ERP system. I have highlighted the cherries in this section. This info flows through our invoices and, interestingly, you will note that the only one with a packing size of 'container' are cherries with pits.

"The product that we import from Turkey is a dried sweet cherry that still has the pit. We don't advertise this product on our website because we only bring it in at the request of our customers that want a product with the pit. This is known as back-to-back trade, as we aren't interested in holding onto the product. The fact is that there are only a very small number of our customers positioned to handle the volume of an entire container of dried sweet cherries with pits. We don't hold this product in inventory in hopes that a customer will demand it. When we import sweet cherries from Turkey, it is because we have already in effect sold that product to a customer on a back-to-back trade. Please be reassured that this isn't a gotcha moment, as the other side might think."

I think that speaks for itself. These statements in this case have been backed up with shipping documents by the distributor concerned. In general on this subject we refer the Commission to page roman IV-1 of the staff's prehearing report at footnote 3.

Still, Petitioners press their demands that the Commission base its determination in these investigations on Census import data that include not only imported dried tart cherries but also imported dried sweet cherries. And, by the way, God only knows what else.

That database is obviously inappropriate for proceedings that involve dried tart cherries only. Although Petitioners claimed to have extracted imports of dried sweet cherries from the Census database, it is apparent that the efforts have fallen far short of that objective.

The Commission's database in these investigations includes, one, imports of Turkish dried tart cherries reported in sworn questionnaire responses. Two, U.S. shipments of imports of dried tart cherries from Turkey reported in sworn questionnaire responses.

Three, Exports of dried tart cherries from Turkey reported in its sworn questionnaire responses.

These are reported, respectively, at among other places pages roman IV-4, roman IV-3, and roman VII-7 of the prehearing report.

In an effort to reduce timing differences, we aggregated each of these data series over the three full years of the POI. The results are broadly similar with the aggregated 2016-2018 quantities of subject imports from

Turkey, U.S. shipments of subject Turkish imports, and subject Turkey's exports, varying from each other by no more than 20 percent.

Petitioners' import data, in contrast, is greater than the largest quantity reported by any of these individual databases in every year of the POI by orders of magnitude.

Over the entire three-year period, their aggregate is many multiples greater than the largest aggregate volume in the Commission's subject merchandise import shipments export databases.

Petitioners' preferred numbers are simply not credible, and we will consider them no further.

In the remainder of my remarks, I will address briefly the staff's data with respect to volume. Data collected by the Commission shows that the volume of imports from Turkey during the POI both in absolute terms and relative to U.S. production and consumption is insignificant.

This is dramatically shown by Figure roman IV-2 at page roman IV-11 of the staff report. Major dried tart cherry purchasers reported purchasing no subject product from Turkey.

Moreover, from 2016 to 2018, the quantity of dried tart cherries imported from Turkey decreased by 26 percent, while imports from nonsubject sources, including Uzbekistan and Serbia, increased.

During the same period, the ratio of subject imports to U.S. production decreased by nearly 17 percent, while the ratio of nonsubject imports to U.S. production increased by over 33 percent. Imports from Turkey increased during the first half of 2019 as compared with the first half of 2018. However, the increase was general for all suppliers, and imports from nonsubject sources far outpaced the increase in Turkey's imports.

As a result, imports from nonsubject sources exceeded imports from Turkey during the first half of 2019, and yet Petitioners have not accused them of causing them injury.

According to the staff report, quote, "Apparent U.S. consumption by quantity decreased." Closed quote. Substantially between 2016 and 2018, driven virtually exclusively, quote, "by the decrease of U.S. producers' U.S. shipments" closed quote.

Although importers' share of shipments increased marginally in this period, the increase was equally divided between shipments from Turkey and shipments from other import sources. And again, the latter has been without complaint from the domestic producers.

Price. Pricing data collected by the Commission shows no substantial underselling. This is consistent with the data collected in the preliminary phase where the questionnaire data not only showed no substantial underselling in the pricing products selected, presumably with input from Petitioners, they also revealed no competitive pricing at all in three of the five products.

Petitioners claim those results are unrepresentative because they contained a mix of prices for organic and non-organic dried cherries. In this final phase, the staff took care to differentiate between organic dried tart cherry sales and sales of non-organic dried tart cherries, and to collect separate data for sales presumptively representative products for each.

The pricing data reported by responding U.S. producers and by importers of dried tart cherries from Turkey, to quote from the report, "accounted for approximately 78.7 percent of U.S. producers' commercial shipments of dried tart cherries, and 54.9 percent of commercial U.S. shipments of subject imports from Turkey in 2018."

It is, consequently, a highly representative sampling. The results shows, as the staff report notes, prices for product imported from Turkey were below those for U.S.-produced product in 5 of 23 instances. Margins of underselling ranged from 27 to 42 percent. In the remaining

18 instances, prices for product from Turkey were between 1.2 and 152 percent above the prices for the domestic product.

The instances of reported underselling represented only a very small portion of the total number of instances of price comparisons. Moreover, if account is taken of the additional instances where the Commission sought to make price comparisons but none were available, and therefore no underselling was shown, the five instances of apparent underselling constitute a minuscule percentage of the total.

The record also does not support Petitioners claims of price depression or suppression. The prehearing report notes: Although reported prices of the domestic producers pricing products decreased from January 2016 to June 2019, quote, "the prices of Turkish dried tart cherries generally increased from January 2016 to June 2019. The average unit value of U.S. producers' U.S. shipments as a whole increased from 2016 to 2018."

And let me emphasize, this is from producers' own data. And they were higher in the first half of 2019 than in the same period of 2018. These trend data rebut Petitioners' claims of subject import caused domestic price depression or suppression.

This is not surprising. No U.S. purchaser of dried tart cherries identified subject imports from Turkey as price leaders in the dried tart cherry market.

In contrast, purchasers who identified price leaders in the market pointed to particular domestic producers.

In the preliminary phase of these investigations, and again in this final phase, Petitioners have asserted that alleged increasing volumes of subject imports and declining import prices at a time when the domestic industry's ratio of costs of goods sold, COGs, to sales increased, evidence of a quote "cost/price squeeze" closed quote, and price suppression.

The data collected in the final investigation show that in fact the postulated conditions did not exist. Over the period of the domestic industry's COGs to sale ratio reached its highest level in the POI, subject imports fell and their average unit value increased. These are the opposite of Petitioners' claims.

In the same period, U.S. shipments of dried tart cherries from Turkey increased only marginally and, again, their average unit value increased.

It is clear from these and other data in the staff's prehearing report that any cost/price squeeze being experienced by Petitioners is not due to imports from Turkey. Its origin must lie elsewhere.

The substantial decrease in absolute demand for dried tart cherries that occurred over the POI, a decrease that dwarfed the volume of subject imports, would be the most likely culprit.

Finally, Petitioners did not submit any lost sales or lost revenue allegations in the Petition. They admitted they had difficulty finding any U.S. producers' lost sales to subject Turkish imports, or instances of their lowering prices to compete with subject imports from Turkey.

At a late date in the final phase of these investigations, Petitioners finally alleged a few lost sales. However, U.S. dried tart cherry purchasers' responses to the Commission's questionnaire show a very different picture.

They show the domestic producers actually increased, and subject imports lost share of the responding purchasers' total dried tart cherry purchases from 2016 to 2018.

The domestic dried tart industry entered the POI already experiencing poor financial results. Those presumptively are not attributable to subject imports from Turkey, and their cause must lie elsewhere.

The prehearing report makes clear the dried tart cherries from Turkey are similarly not responsible for any significant adverse results experienced by the U.S. dried tart cherry industry in the POI.

U.S. shipments of imports of dried tart cherries from Turkey rose by only a de minimis degree from 2016 to 2018, never accounting for a significant percentage of apparent domestic consumption.

Over that period, the average unit values of dried tart cherries from Turkey skyrocketed. In the same period, the average unit values of U.S. produced dried tart cherries also increased. As previously discussed, the prehearing report provides no evidence of substantial underselling or of price depression or suppression attributable to subject imports from Turkey.

In the circumstances, imported dried tart cherries from Turkey could not be responsible for the financial results of the domestic dried tart cherry industry. Responsibility appears to lie with the fall in apparent U.S. domestic consumption that occurred between 2016 and 2018. The domestic industry accounted for the overwhelming share of U.S. shipments of dried tart cherries throughout the entire period.

Thus, the demand fall was necessarily absorbed by the U.S. industry. For an industry that began the period in financial straits, adverse trends and capital expenditures, return on assets and investment would not be unexpected results. But they are not caused by subject imports, which were minimal in comparison with consumption, domestic production, and domestic producers' sales, and with their declines.

Further, the impact of the drop of U.S. consumption seems to have fallen unevenly on the domestic producers. Petitioners have not acknowledged, much less explained, the divergent and counter-intuitive results of their members' operations, nor established any tie between the results experienced by particular producers and subject imports.

Turning to threat of injury considerations, let me first ask how much time I have left?

MR. BURCH: You have 30 minutes.

MR. THOMAS: 30 minutes. I promise you I will not take nearly that long.

Statutory threat of injury considerations were addressed in our prehearing brief, and I will speak of them here only briefly.

As regard capacity issues like U.S. producers, U.S. Turkish dried tart cherry producers produce and sell a variety of dried fruits. The same equipment is used in processing all kinds. A producer's capacity to produce dried tart cherries, therefore, depends on the capacity of its production equipment minus the capacity used or committed to production of other dried fruits that it processes.

The prehearing report states the Turkish producers had substantial apparent excess capacity at the end of 2018. However, to put that in context, U.S. domestic producers in that same year had a far, far greater volume of capacity in excess of their dried tart cherry production.

Excess capacity is common in the dried tart cherry industry generally. The issue is whether excess capacity of the Turkish producers is likely to result in substantially increased imports in the immediate future.

Experience shows it is not. Similar levels of excess capacity existed in the Turkish dried tart cherry industry throughout the POI, but a flood of imports from Turkey did not result. Imports of subject product from Turkey actually fell despite apparently growing Turkish excess capacity.

In the circumstances, apparent excess capacity in Turkey is not a useful predictor of any threat to the U.S. dried tart cherry industry. Moreover, a substantial portion of Turkish dried tart cherry production is exported to markets other than the U.S.

Turkish producers project that exports to these other markets will increase substantially in 2019 and 2020, dwarfing their exports of dried tart cherries to the United

States.

Trends data shows no imminent threat. Shipments of subject imports from Turkey increased as a share of U.S. consumption over the POI, but in the 2016-2018 period never rose above a de minimis level.

In the first half of 2019, subject imports volume and market share rose in comparison with the comparable period in 2018. But in the same period, domestic producers' shipments also increased, and by a far greater amount.

Nonsubject imports increased as well while, like subject imports, never constituting a significant portion of U.S. domestic consumption.

With these data as context, it is apparent imports from Turkey do not evidence a threatening trend. Our earlier discussion of price effects shows the Turkish dried tart cherries are not, and in the future not likely to depress or suppress domestic product prices.

Price of the Turkish product overall trended upwards, significantly so, and generally have oversold domestic producer prices for the same products. The AUVs of the domestic producers' shipments, as reported by Petitioners own data, are trending upwards.

Turkish producers typically do not maintain substantial inventories of dried fruit because, unlike frozen fruit, it cannot remain in inventory -- it can remain in inventory only a relatively short period before spoiling.

Typically the fruit is dried when their order is received. As a result, inventories are not large. That was the case at the end of the POI when Turkish producers' inventories of dried tart cherries represented only a fraction of a percent of 2018 apparent U.S. domestic consumption.

The staff report shows the same was true of U.S. importers' inventories of dried tart cherries from Turkey. Product shifting is possible in the dried tart cherry industry, as in other dried fruit industries, but the prehearing report contains no data suggesting there is any imminent threat like product shifting by Turkey's dried tart cherry producers, or that any such shift would pose an imminent threat to the U.S. industry.

In the case of the Turkish dried tart cherries industry, such product shifting would not materially change the amount of available capacity which has been shown to be nonthreatening.

The prehearing report does not indicate or suggest that subject imports from Turkey in the immediate future would have any adverse impact on the domestic dried tart cherries industry's development or production efforts.

To conclude, the record in these investigations fails to show that imports of dried tart cherries from

Turkey threaten the U.S. dried tart cherry industry with imminent material injury. To the contrary, it shows there is no such threat.

That concludes my remarks. I will be happy to take questions.

CHAIRMAN JOHANSON: I would like to thank the three of you for appearing here today, and also thank you, Mr. Sanford, for coming all the way in from Turkey. It certainly adds to the hearing and we appreciate it.

We will begin Commissioner questions with Commissioner Karpel.

COMMISSIONER KARPEL: Thank you for being here.

I think this question you will have to answer posthearing, but I am very much curious about your response to the first slide in Petitioners' confidential slides this morning that lists several importers that claim either didn't respond to the questionnaire, or that said they did not import any subject merchandise during the Period of Investigation. And they listed information about things they reported in bills of lading. I would like your response posthearing, in terms of what we should make of these bills of lading, and what is said in them, versus what has been represented to us in the questionnaires.

MR. THOMAS: We'll be happy to respond in the posthearing submission. I might say that if we're talking about the privately produced bill of lading databases that are upheld, my own personal experience with these is that they are not wholly reliable.

As Petitioners counsel, we have on a number of occasions tried to use them, sometimes with success, in a number of other instances regrettably not. For what it's worth, and I don't think it's really relevant in these proceedings, the tariff classifications, for example, that are assigned in those databases are assigned by the companies that put together the data from vessel manifests.

The vessel manifests do not contain tariff classification data. Therefore, it is whatever the proprietor of the database thinks it might be. As I say, I don't think it is all that useful, but we will be happy to respond. Thank you.

COMMISSIONER KARPEL: I appreciate that, and I appreciate the thoughts you just shared, too. So if you have more to elaborate on some of the limitations of that database, I would appreciate you doing that posthearing.

So my next question is, if we look at the official customs data -- and I asked this question this morning -- we see quite different unit values for tart cherries than we, or for the basket category, than we do looking at the AUVs we might see from the pricing data, or from the questionnaire data.

What do you make of that difference? In the official customs data, the AUVs are less than a dollar per pound versus, you know, the different values we are seeing in the pricing data.

MR. THOMAS: Again, I think I would prefer to try to address that in the posthearing submission, but as we know from what I just quoted, there is a substantial volume of material reported in the customs database that consisted of sweet cherries for bird feed. Obviously the unit value-- with pits. The unit values of that material is going to be very low. And so when you average it out with other unit values, you are going to get potentially the kind of number you were just talking about.

In sum, though, I would say that we have no reason to believe that the staff's data and the data in that report is not accurate. Therefore, I am of the impression that the comparisons between that and a database which we know contains things other than the subject merchandise is a waste of time.

COMMISSIONER KARPEL: I want to talk a little bit about pricing, and I was asking a series of questions this morning as well, about how prices are set.

So perhaps you could talk a bit about how prices are negotiated with respect to your product coming into the U.S. with importers, or with other purchasers in the U.S.

market?

MR. SANFORD: Sure. Thank you, Commissioner Karpel. Sixty-eight percent, roughly, of the cost of the product is down to the raw material. The raw material is the frozen sour cherry. As I mentioned, we do not set the price. The price is actually set by the, let's say, the larger consumers, which would be the concentrate companies. And they set the price internationally, I guess.

But we have to buy a better quality than the sour cherry that is used for dosing, because that is a very soft cherry and it does not matter. Ours has to be quite robust. So we do pay a premium for the cherries I selected. And then they are frozen, pitted and frozen, and then they are stored for us.

So the price is actually negotiated between us and the frozen food companies based on international demand, and mainly based also on how Poland has fared, and other countries.

MR. THOMAS: Martin, I think the Commissioner is asking about how the prices of the dried tart cherries that you sell are determined.

MR. SANFORD: Okay. Yeah, it's determined by the price of the raw material. The medium we infuse the product with, whether it's either sugar or apple juice, or organic apple juice, depending on whether it is organic or commercial product. We then look at the exchange rate, because that's obviously been a difficult thing for us.

We look at the shipment terms of the customer with the contract, whether it's over five months, or over ten months. So we look at the storage cost of the actual cherries. And then we calculate that. We try and work with the bank forward. So we try and forward the exchange rate when we'll be paid, when we ship the product. And then we put in our overheads, and on top of that a margin.

We make the offer to the customer, and we hope we get the business.

COMMISSIONER KARPEL: And do you have--and how does that work, once you are putting forward a price to a potential customer? Are they going back and forth with you, saying can you offer a lower price? Or is it basically more of a bid process where you put in your number and they will take it or will pass?

MR. SANFORD: I think they actually are in that position where they actually do offer the price that we go to -- with their profit on top, to their customer. And then they know whether or not they have been successful and they come back to us. So we don't obviously enter into a bid, as such.

COMMISSIONER KARPEL: So there is not really a back and forth. It's just they let you know whether or not they can accept it or not.

MR. SANFORD: Yes. Absolutely. We are told whether we've won the business. We don't go back and say, oh, you're too expensive, can you be cheaper. No.

COMMISSIONER KARPEL: So, you would agree with what Petitioners were saying this morning that when a purchaser gets back to you they don't really give you much information about why they didn't accept your price or your offer. They don't say, well, we bought from somebody else who gave us a better price. They sort of give more of a basic answer. No thank you. We'll buy somewhere else.

MR. SANFORD: Absolutely.

COMMISSIONER KARPEL: And so, just to confirm, you would tend to agree that there's a lack of transparency about pricing in the U.S. market when you're selling product into the U.S. market I mean in terms of knowing what your competitors are offering?

MR. SANFORD: Our product is different. I mean we don't compare our product, as a cherry with beet sugar. It's used in certain instances. I don't think there is a like-to-like, as such. You can make the sour cherry cheaper by using glucose or other cheaper mediums which is not what we're about and the actual -- the important criteria besides price really is the stone count. So, the customer buys based on their trust with you and the price that they believe they can work on.

MR. THOMAS: Martin, I'm going to try to help here again. I think the Commissioner is asking when you offer a price to a customer does the customer come back and say, no, I have a lower price from somebody else and do you engage in a negotiation of that sort, typically?

MR. SANFORD: Yes. No, we don't. Sorry.

COMMISSIONER KARPEL: And I guess, since you mentioned it, you did mention it just now, and you mentioned it in your opening, a reference to a stone pit tolerance or stone pit count.

MR. SANFORD: Yes.

COMMISSIONER KARPEL: What is that?

MR. SANFORD: Essentially, unlike other dried fruit, cherries all contain stones. That's pits inside and there's a chemical process where the pit is removed. But unlike, for example, sour cherry concentrate where you can actually produce thousands of tons, you cannot produce an edible, salable, dried tart cherry or a sweet cherry without the danger of getting the pit count wrong. And if you can think of a customer -- yourself and you take a handful of dried sour cherries and throw them in your mouth you'd like to be able to chew them without crunching on a stone. If you do, there's huge claims based on you know you've lost your tooth.

So, to be successful in this business is basically you have to have a very good, stringent system in place. So, to ramp up the volumes and you know we're going to flood the world with tart cherries is just impossible. You know whatever the capacity is you know it's more than that. So, that's what I was saying about pit and stone tolerance.

COMMISSIONER KARPEL: So, is that an actual one-for-one count that you're counting the pits that come out or the cherries that go in or what is that?

MR. SANFORD: There is a mathematical process, but the international, let's say, for frozen pitted sour cherries is one stone per thousand. And on average, there's 300 cherries per kilo of frozen pitted sour cherries. It ranges from 270 to 330. When you infuse and dehydrate, you end up with -- well, for us it's around three to one, maybe three and a half to one, depending on the sugar level that you infuse the product to. So, you take the 300 kilos you make it -- sorry, 300 count you make it 1,000 count.

So, if it's, for example, one stone per thousand fruit of let's say frozen product, then when you take the carton you could increase that by four. So, you need to make sure that those additional stones that may be embedded in the fruit, which you cannot see, because when you drive them down, unless you're lucky that they come to the surface, you've got to remove them. So, we have a process which is by exception where we literally hand inspect every single dried tart cherry to make sure that they don't contain a stone. So, that's the -- thank you.

CHAIRMAN JOHANSON: Alright, thanks again to you all for appearing here today. Let me go back to a similar question to what I asked the Petitioners this morning and that is -- well, to your knowledge, what is the main HTS number being used by Turkish companies for exports of dried tart cherries to the United States?

MR. THOMAS: The HTS number would be determined by the importers and I haven't spoken to any importers. I'm afraid I can't address that.

CHAIRMAN JOHANSON: I assume it would be in the overall dried cherries category. I don't remember the number on that?

MR. SANFORD: Yes, I looked at the straight dried cherry tariff code, 0813, and then going down in the tariff codes that were mentioned in the dried tart cherry petition, 2006, and then 2008. For the product that we're talking about and that is the dried tart cherry industry, which we sell very little straight dried cherries because they're very tart and they're like the cranberry, no good to eat unless you infuse it.

So, the 0813 really is negligible because that's has to do with the dried tart cherry or dried cherry, sorry, whether it's tart or dried it's a straight dried. The one we should be looking at is 2008. That's where the infused fruit comes in and 2006 is Class A cherries. Now, Class A cherries aren't talked about at all, but we know and everyone knows here that you don't produce a Class A cherry from a sour cherry. It's produced from a white Napoleon or whatever the variety is in the UK -- in the U.S. cherry.

So, we've got three classifications of dried cherries, from straight dried, infused, and Class A. And the only one that I know of that is used in this format is the 2006 -- sorry, 2008.

CHAIRMAN JOHANSON: Okay, thank you. Mr. Ritchie.

MR. THOMAS: I'll be happy to address that in the post-hearing submission. Thank you.

CHAIRMAN JOHANSON: Yes, that'd be very helpful.

MR. THOMAS: See if we can straighten it out a little bit.

CHAIRMAN JOHANSON: That would be helpful. Domestic Respondents argue that the Commission should rely on CNIF data to measure import volume rather than questionnaire responses. How do you respond?

MR. THOMAS: It would be our view that the data that the staff has collected and reported in the staff report is the appropriate data for the Commission to make its decision on.

CHAIRMAN JOHANSON: In going back to the HTS number, was that the 8803, was that the basket category for dried cherries; is that correct? I'm trying to recall from this morning.

MR. THOMAS: I'm sorry. I really am not going to be able to answer off the top of my head questions about the various tariff categories here. As I say, we have made our presentation based on the staff report and are relying on that. If you would like us to address some questions about the classifications, we can do that, but it'll have to be in the post-hearing submission.

CHAIRMAN JOHANSON: Because this morning -- I spoke to Petitioners this morning and the number which they referred to is 0813.40.3000 for dried cherries. And they seemed confident that that would -- that was the best measure --

MR. THOMAS: I understand those are the data they're relying on. Yes, sir.

CHAIRMAN JOHANSON: Okay.

MR. THOMAS: And I have no basis to dispute the fact that dried tart cherries are injuring under the classification as well as dried sweet cherries. And as I say, if one could rely on importers always correctly classifying their material that would be one thing, but if they don't there may be other things in those data as well.

CHAIRMAN JOHANSON: Why would you expect them not to correctly classify the data? If they're importers, this is what they do, right?

MR. THOMAS: I would say from a lifetime of experience with importers.

CHAIRMAN JOHANSON: That you would question.

MR. THOMAS: That I would say there's always a possibility that there is material in there that is not correctly classified.

CHAIRMAN JOHANSON: Okay. And one more question on this matter. Assuming the Commission were to rely on CNIF data to measure import volume, would you still argue that subject import volume was not significant?

MR. THOMAS: We'll have to respond to that in the post-hearing brief. And the reason for that is that we made no analysis on that basis. I think that the Commission staff has made -- worked very hard to give the Commission solid data. I believe they've done that and so we have made our presentation on that basis. We will be happy to address a "what if" if you would care for us to do so, sir.

CHAIRMAN JOHANSON: Yes, if you wouldn't mind, that'd be helpful. What I'm trying to do is to get at the Petitioner's argument of this morning.

MR. THOMAS: I absolutely understand.

CHAIRMAN JOHANSON: And it might be beneficial for us just to hear a response to that.

MR. THOMAS: It would be our pleasure.

CHAIRMAN JOHANSON: Okay. Getting back to the gain reports, which are -- I don't know if you ever look at the USGA gain reports, but they're very useful for figuring out what's going on in foreign markets. USGA Agricultural Gain Reports from U.S. Embassy staff in Turkey state that the sweet cherry industry in Turkey has undergone some dynamic shifts in recent years. These include new orchards planted on modern dwarf root stalks and with new varieties, expanding production, new market opportunities, including shipping fresh sweet cherries by air freight to new markets. But for tart cherry production, the report paint a picture of a static industry with limited changes in acreage and little to no investment in modern root stalks and growing practices with the majority of such production being on smaller orchards. Is this an accurate assessment of the industry in Turkey -- pardon me -- of the two segments of the cherry production in Turkey.

MR. THOMAS: We will definitely have to respond to that with the post-hearing submission.

CHAIRMAN JOHANSON: Okay. Mr. Sanford, are you aware? You work with the cherry industry, just off the top of your head, comparing the sweet cherry versus the tart cherry production.

MR. SANFORD: Yes, definitely, in fact, some of the areas where the tart cherries are being grown the trees are being cut down and replaced with walnuts as they believe the farmers can make more money from them.

CHAIRMAN JOHANSON: Okay, so you would believe that the description of our U.S. Foreign Agricultural Service of the sweet tart cherry -- pardon me -- that the tart cherry industry in Turkey is static, that that would be accurate?

MR. SANFORD: Yes.

CHAIRMAN JOHANSON: Okay, thanks, Mr. Sanford. Is it appropriate, per pages 40 to 41 of the Petitioner's brief, to regard imports of tart cherry juice as a guide to likely imports of dried tart cherries if no Order is imposed?

MR. THOMAS: We cannot see it has any relevance at all, sir.

CHAIRMAN JOHANSON: Okay. I'll leave it at that. At page 7 of your pre-hearing brief, you note the recent removal of GSP benefits from Turkey. Does that impact our analysis?

MR. THOMAS: I do not believe it does, sir. It was simply provided as an example of governmental action that affects products of this kind.

CHAIRMAN JOHANSON: Okay, thanks. How do you explain the low capacity utilization of Turkish dried cherry producers and the declining trend between 2016 and 2018 in capacity utilization?

MR. SANFORD: I don't know how the exporters or the producers have actually calculated their capacity. Within infused fruit there's infusion capacity and there's oven capacity and very few companies -- in fact, what I know only two or three are producers, although there were 17 or so exporters, but all those exporters maybe 10 of them were transport companies and the others were small exporters that didn't export enough. So, in answer to your question, only myself and maybe one other company have capacity which is basically infusion and oven capacity, but that's not dedicated just to tart cherries. It's dedicated to all the other fruits that we can produce, whether it's apple juice, infused kiwi segments, whether it's mandarin segments, whether it's other products. So, unlike in the U.S. where they're dedicated to those cherries, we don't have that luxury. So, we look to produce 12 months a year other products as well.

CHAIRMAN JOHANSON: Okay.

MR. SANFORD: And it's a very expensive product. A container of tart cherries compared to other fruits is maybe four or five times as much, so --

CHAIRMAN JOHANSON: Why is that; the drying process or the overall production?

MR. SANFORD: The overall -- well, the fruit itself is expensive and the process, when you add sugar it's expensive because you're consuming all the sugar and you've got the oven process, the heat, the energy, the electricity. So, we're not using the sun like everyone else and just drying fruit. We're using the factory. And then you have the overheads as well, so it's an expensive item and no one that I know produces product and keeps it there. We sell to order.

CHAIRMAN JOHANSON: Okay.

MR. SANFORD: And we produce to order. Thank you.

MR. THOMAS: Martin, do you know what was used as the limiting production factor for the purposes of calculating your own production capacity?

MR. SANFORD: Yes. The limiting factor for my facility was number of trays.

CHAIRMAN JOHANSON: And not energy?

MR. SANFORD: No. No, it was the number of trays you could use at any one time after you've infused, put into the oven, and taken out again. That's where we calculate the capacity of the business.

CHAIRMAN JOHANSON: Okay. Alright, thanks for your answers. Commissioner Schmidtlein.

COMMISSIONER SCHMIDTLEIN: Okay, thank you very much. I'd like to also thank you, Mr. Sanford, for being here. It does help.

MR. SANFORD: Thank you.

COMMISSIONER SCHMIDTLEIN: So, Mr. Thomas, I know that you have said you can't answer questions about the HTS off the top of your head, but since this is one of the main issues in the case at least when it comes to volume I wondered if you couldn't help me understand your position a little bit better. I know you've said you trust the questionnaire data that's been completed by the importers for the Commission in this and that that's what we should rely on, but you don't trust the importer information that's been provided to Customs. I wonder why do you trust importers to provide us correct information, but not correct information to Customs when they're bringing in their product.

MR. THOMAS: Okay, I have not said, and I certainly don't intend to say that I have no regard whatsoever for the Census Bureau import data. What I have said is that it is sometimes not wholly accurate. What I am saying about the import data in which they are relying is that it clearly contains products other than subject merchandise. They maintain that they have done a great job of sweeping the non-subject merchandise out of the database and left only subject merchandise. When I compare the data that they produce as a result of their sweeping with the data that the Commission staff collected through questionnaire responses there is a difference and I have to -- my own belief is, based on experience with the staff's work product is that the difference must be accounted for by there being other non-subject merchandise in the data that the Petitioners are using here. Are those sweet cherries, are they sweet cherries with pits that are being used as bird seed or bird food, possibly. We have not attempted an examination which would allow me to respond to that.

COMMISSIONER SCHMIDTLEIN: So, where do you get the notion it might be sweet cherries pitted for birdseed then?

MR. THOMAS: In my presentation, I read you an account from an importer who said that that is exactly what they import in container lots, which is very substantial volumes. That's in the database. That was not removed, to the best of my knowledge, by Petitioners in the database that they advanced here today.

COMMISSIONER SCHMIDTLEIN: Okay, maybe you could follow up and put that in your post-hearing.

MR. THOMAS: I'd be very happy to.

COMMISSIONER SCHMIDTLEIN: That would be helpful. Maybe Mr. Sanford maybe you can speak to this since you have industry experience and knowledge. Is there a commercial market for dried sweet cherries here in the United States, besides for birdseed?

MR. SANFORD: Yes, there is. Basically, as I mentioned, the trend is changing. People basically are looking for more healthier alternatives. And if you compare the straight dried cherry versus the infused sour cherry, maybe you'll have the rack units of the tart cherry that makes it healthier, but there is a big push against sugar. And that push against sugar has made my business reduce its sales in sour cherries, whether it's apple juice infused or sugar infused. And actually, I have now sold -- I am selling more sweet cherries organic directly dried because they can be consumed. It may not be as nice, as they say, as the sour cherry or as robust. The skin is tough. No, it's not the case. We have a very good sweet cherry and we sold quite a lot of sweet cherries straight dried, organic and conventional.

COMMISSIONER SCHMIDTLEIN: In the United States.

MR. SANFORD: In the United States, yes.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. SANFORD: In the United States.

COMMISSIONER SCHMIDTLEIN: And maybe you could put that evidence on the record in the post-hearing. We would invite you to do that.

MR. SANFORD: Absolutely.

COMMISSIONER SCHMIDTLEIN: And what those quantities are so we can get a perspective on that.

MR. SANFORD: Yes.

COMMISSIONER SCHMIDTLEIN: Do you know are there other importer -- what other importers? I don't know if there's a way for you to know, Mr. Thomas, of what other importers out there are importing dried sweet cherries. I mean the Petitioners have put on the record from the bill of ladens, which I understand that you're not fully comfortable with either in terms of that database, I guess; but where it shows that many of those bill of ladens include dried sour cherries, dried tart cherries. I would assume there must be some out there for dried sweet cherries, if there is a commercial market here in the United States.

MR. THOMAS: We would be happy to take a look, but I think that's something that's better taken up by the staff than by us.

COMMISSIONER SCHMIDTLEIN: Okay. You're asking us to vote in the negative so -- and I'm asking you for evidence supporting that and you're telling me you'd rather not. You'd rather have our staff do it.

MR. THOMAS: Commissioner, I --

COMMISSIONER SCHMIDTLEIN: We can do that.

MR. THOMAS: We do not have access --

COMMISSIONER SCHMIDTLEIN: I recommend you do it.

MR. THOMAS: We do not have access to all the importers. I cannot ask them questions about what their importing.

COMMISSIONER SCHMIDTLEIN: Well, I assume you have access to this database where the bill of ladens came from.

MR. THOMAS: We can certainly look at that, yes.

COMMISSIONER SCHMIDTLEIN: Okay. I'll leave it up to you. You do what you'd like.

MR. THOMAS: We'd be happy to address that with the post-hearing brief.

MR. SANFORD: Commissioner Swenson, may I just add --

COMMISSIONER SCHMIDTLEIN: It's Schmidtlein.

MR. SANFORD: Schmidtlein, I'm sorry.

COMMISSIONER SCHMIDTLEIN: There you go.

MR. SANFORD: I can't read from here.

COMMISSIONER SCHMIDTLEIN: That's alright.

MR. SANFORD: I did call the exporters and producers in Turkey on the list and asked them to complete the questionnaire so we could gather some information. And

I made sure that they put the data into the drop box for the -- and looked on the other side to make sure that the exporters had done it. I also contacted, if you're the importers, and made sure that they also put in the data. But of course, the data is confidential, so except what I produce and what I've sold, I don't have that information and I don't think it would be appropriate for me to contact those importers or maybe Ritchie can, definitely, and ask them.

COMMISSIONER SCHMIDTLEIN: If he wants to; it's up to you all.

MR. SANFORD: If they'd be happy to share that information, I'd be more than happy to try.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. SANFORD: Okay, thank you.

MR. THOMAS: It's a question of whether they would be willing to share it with me. I can certainly make the effort, but normally, one doesn't do that.

COMMISSIONER SCHMIDTLEIN: It's up to you, Mr. Thomas.

MR. SANFORD: Thank you very much.

COMMISSIONER SCHMIDTLEIN: Alright, so before my time runs out here, one last question I thought I'd ask in this round is with regard to Slide 21 that Petitioners put up this morning which shows the volume in the interim period, but broke out between January to April and May to June. So, my first question is even if you look at just the questionnaire data that's on the C Table, you see a big increase from interim 2018 to interim 2019. I wonder if you have any insight as to why imports from Turkey increased so much in the interim period in 2019.

MR. THOMAS: I do not.

COMMISSIONER SCHMIDTLEIN: Mr. Sanford, do you have any insight as to why imports from Turkey of dried tart cherries might've increased so much in January to June of 2019?

MR. THOMAS: I said I don't. I can speculate. My speculation would involve the fact that domestic shipments rose in exactly the same time, so there may have been an increase in demand.

COMMISSIONER SCHMIDTLEIN: Okay, but this was quite a bit more than the increase in demand. I mean have you looked at the numbers, how big it was?

MR. THOMAS: We have not tried to analyze it, other than to say the increase was much smaller than the increase in domestic producer shipments at the same time.

COMMISSIONER SCHMIDTLEIN: Okay, maybe that's true. I have not -- let me see here; is that right? That is not true.

MR. THOMAS: That's not true? Well, I --

COMMISSIONER SCHMIDTLEIN: That is not correct, according to questionnaire -- well, I mean U.S. producer data based on the same, whether --

MR. THOMAS: We'll resolve that in the post-hearing submission.

COMMISSIONER SCHMIDTLEIN: Okay, well, I guess what I'm asking for is an answer to the question as to why -- why imports spiked in the interim period.

MR. THOMAS: I'm sorry. I have said that I don't know and I don't.

COMMISSIONER SCHMIDTLEIN: No, I know. So, there -- never mind. The next question is from May to June, which was after the petition was filed, if you look at the HTS category, the 813; I think it is -- 0813 -- imports dropped dramatically. So, I wonder if you have any insights -- of course, the Petitioners argue this is because the petition was filed in April and that since the vast majority, if not all of what's coming in under that 0813 category, is dried tart cherries that's' why you see such a decline. So, I wonder if you have any insight since you all maintain there's a lot of other products, besides dried tart cherries coming in under 0813. Why did that all decline after this petition was filed?

MR. THOMAS: I think that if I were to try to answer that question I'd be speculating and I believe

Petitioners are speculating as well. I have no -- I do not have any facts to present at this time on that question.

COMMISSIONER SCHMIDTLEIN: Okay, well, I would invite you in the post-hearing to provide any facts that you might gather in the interim period.

CHAIRMAN JOHANSON: Commissioner Kearns.

COMMISSIONER KEARNS: Thank you. Thank you again for appearing before us today. I appreciate your testimony. So, can you tell me, Mr. Sanford, do you sell -- I'm sorry if you covered this before? I don't think you did. Do you sell dried sweet cherries from Turkey?

MR. SANFORD: Yes, I do.

COMMISSIONER KEARNS: You do? And what are your proportions, basically, if you can tell us that, sweet versus tart?

MR. SANFORD: At the moment, compared to tart cherries, probably it's more.

COMMISSIONER KEARNS: Okay, dried sweet cherries.

MR. SANFORD: Dried sweet cherries, yes.

COMMISSIONER KEARNS: And are they exported to the United States?

MR. SANFORD: Yes, they have been. I'm not exporting at the moment, but we go through seasons. Normally, what happens is we start talking before the new season, so we'd start talking in, for example, April/May and then we'd make the contracts and start shipping during the season all the way to next year.

COMMISSIONER KEARNS: Okay. And you're a fairly big source of imports from Turkey when it comes to both sweet and tart?

MR. SANFORD: Was.

COMMISSIONER KEARNS: Was.

MR. SANFORD: Was, yes.

COMMISSIONER KEARNS: I'm sorry; why is it was?

MR. SANFORD: It's declined tremendously.

COMMISSIONER KEARNS: Okay.

MR. SANFORD: So, it's not the case anymore.

COMMISSIONER KEARNS: I see.

MR. SANFORD: Yes.

COMMISSIONER KEARNS: If you could put on the record post-petition more information to give us an idea about what your percentage of dried sweet cherry exports to the United States are versus dried tart cherries that would be helpful.

MR. SANFORD: I definitely will.

COMMISSIONER KEARNS: Okay, thank you.

MR. SANFORD: Not a problem.

COMMISSIONER KEARNS: And also, could you just tell us a few more things off the top of your head now as to what the market is for dried sweet cherries in the U.S. I know you've said this to some extent, but -- and we know about the birdfeed customer, but besides that what are your -- who are your other customers in the U.S. for sweet cherry product?

MR. SANFORD: Well, the predominant customers would be the organic dried fruit companies. The companies that are producing and want to sell products with less sugar, so they cannot have that infused with organic cane sugar or what have you, they'll be looking for sweet cherries as an alternative.

COMMISSIONER KEARNS: So, are you saying if I want dried cherries and I don't want them to be too incredibly tart my options are sweetened tart cherries, dried tart cherries, or sweetened -- not sweetened, but sweet dried cherries.

MR. SANFORD: Dried sweet cherries, correct.

COMMISSIONER KEARNS: I see. So, if I'm in the market for unsweetened then I might purchase dried sweet cherries?

MR. SANFORD: Yes. Or you'd also -- I mean -- yes, you'd look to other fruits -- other fruits as well, but if it's cherries alone without infusion, although there are dried sour cherries being sold without infusion, especially, from East Pakistan, et cetera, the alternative is dried sweet cherries.

COMMISSIONER KEARNS: Okay. One thing that's interesting about that is this exhibit we received from Petitioners -- I guess it's 1-A -- is a Made of Nature product that says "no sugar added" and then on the back it says that it has tart cherries from Turkey and so I'm curious. Maybe we can look into why that's the case. We might have to ask Made of Nature to better explain what's going on there.

MR. THOMAS: Mr. Commissioner, Martin did bring with him some dried sweet cherries, if you'd care to taste them.

COMMISSIONER KEARNS: I'd love to, yes. Thank you. We can do it later. Thank you.

MR. SANFORD: Sorry.

COMMISSIONER KEARNS: That's okay. And then, Mr. Thomas, I asked a question this morning. I don't know if you heard all this, but if we look at the CNIF data for those importers who have provided questionnaire responses and if we compare it to the questionnaire responses, in some cases, at least, you see pretty significant differences between the CNIF volume data and the questionnaire response volume data, but you see much more similarity in terms of value data. And I'm curious whether you've taken a look at that and if you have any analysis of what that might mean.

And I think I suggested to the Petitioners this morning that maybe that suggests we should look at the value data in determining market shares and other factors in this case as opposed to the volume data. Do you have any thoughts on that?

MR. THOMAS: We'll have to supply those with the post-hearing submission, I'm afraid.

COMMISSIONER KEARNS: Okay. Okay, thank you. So, I wanted to ask about Turkish exports. The data we have, both from questionnaires and from global trade outlets, show that overall exports from Turkey of dried tart cherries fluctuated pretty noticeably from year-to-year. Do you know what explains that?

MR. SANFORD: The customers' buying habits that would be one. Two, the price would be too high.

COMMISSIONER KEARNS: Okay. Okay, so I guess what you're -- so, you don't have and you don't think other Turkish suppliers have sort of a set stable of customers in the U.S. that they routinely supply to. It's more spotty; is that what's going on there?

MR. SANFORD: I think -- well, there's two types. There's the importers and then there's the packers of product. There's quite a bit of product that's coming as mixed dried fruit in a retail bag. That would contain sour cherries, 10 percent or 15 percent of the bag. I'm not sure. But for our business where we sell bulk, we sell to the importers and to the repackers.

COMMISSIONER KEARNS: Okay. And I guess -- another question that I think Chairman Johanson touched upon and I had raised this morning with Petitioners, but if you have any information you can provide to us about exports of dried sweet cherries versus dried tart cherries from Turkey; in particular, dried sweet cherries from Turkey. I don't think we have a lot of information on our record right now that substantiates that a lot of the imports that may be coming under this HTS category that we're focused on you know the extent to which those are sweet cherries. So, if you can help us find more information to substantiate that possibility, that'd be helpful because, again, as you've heard from Petitioners you know they've questioned how large of a market there really is for dried sweet cherries. So, any information, official data, or what not you can provide to us would be helpful on that post-hearing. I guess that's more for you, Mr. Thomas, I think, yeah.

MR. THOMAS: I'm getting a line assignment list, I think.

COMMISSIONER KEARNS: Yes, thank you. I don't have any other questions for now. Thank you.

CHAIRMAN JOHANSON: Commissioner Stayin.

COMMISSIONER STAYIN: With respect to the capacity to produce dried sour tomatoes -- I'm talking tomatoes just last week. We're talking about the capacity in Turkey to produce the subject product and not just yours, but do you have any sense of the capacity with your competitors in Turkey to produce; what the volume of product in a year, any way to know that?

MR. SANFORD: Being a member of the -- on the Export Union, I do talk with two or three companies. I was shocked, literally, with the number that I saw and the price of 0.87 cents and we had emails from customers and so did my so-called competitors saying have you got these cheap sour cherries. The facts basically are, as I mentioned, we're the only company that's dedicated to infused fruits. Turkey, as you know, is the largest grower of dried apricots and dried figs and saltanas and hazelnuts and most of those companies are based in the region where we are. And we're the only company that, as I said, is dedicated to infused fruits, which is totally different from sundried apricots, which is a packing house, let's say, where you clean the fruit and you have x-rays and that's it.

Like me, there's one other company, but their infusion capacity is much, much lower and then there are two other companies which I spoke to, to complete the questionnaire for this tart cherry petition, and they said the last time they produced was in 2016, so it's very small.

Now, the only statistics I could go on was on the millions of pounds that were imported into the U.S. and look at the percentage of my capacity versus that. But I would not say it's more than -- and it's again totally guessing, but the capacity would be no more than a million or two million pounds. It's very, very low. We're talking about infused fruits and that was all dedicated to sour cherries.

COMMISSIONER STAYIN: And you are the only one that is shipping to the United States?

MR. SANFORD: No. No, there are --

COMMISSIONER STAYIN: We're talking about these dried tart cherries.

MR. SANFORD: No, there are a number of companies that -- who buy from another company that would dry for them or they would do it themselves in a small amount and ship it. But in terms of dedicated, infused processor where you have the tanks and you have the trays and you have the ovens and you have the vacuum tanks for the syrup to concentrate, no, I'd say probably there's only two or three companies with very limited capacity.

COMMISSIONER STAYIN: About a million, maybe.

MR. SANFORD: Sorry?

COMMISSIONER STAYIN: About a million, did you say?

MR. SANFORD: Well, I'm talking myself in terms of how much I can do and thinking I'm the largest, so if I said there were two that were half the size of me, maybe two million pound.

COMMISSIONER STAYIN: Two million pounds.

MR. SANFORD: Yeah, it's negligible.

COMMISSIONER STAYIN: Okay. The data that the Petitioners have provided relies on import data that suggests that your market share here in the United States grew from 2.2 percent in '16 to 9 percent in 2018. The domestic industry's market share fell 92.4 to 84.7. And counselor, you're saying that these are not numbers that we can rely upon?

MR. THOMAS: That is correct.

COMMISSIONER STAYIN: And the basis for that is?

MR. THOMAS: The basis for it is that it's wholly inconsistent with the data that the staff has developed through its questionnaires and it relies on manipulation of a database which includes products other than subject merchandise. That is Petitioners' manipulation, which, as we have said, which they maintain they have extracted from the database of non-subject merchandise. From what I have seen, that abstraction has been short of complete.

COMMISSIONER STAYIN: Can you put this into your post-hearing brief.

MR. THOMAS: We'll be happy to do that, but I cited one example in the testimony this afternoon.

COMMISSIONER STAYIN: Yes, I appreciate your giving us that analysis. We appreciate it.

MR. THOMAS: We'll be very happy to do that. We'll also be very happy to include in our post-hearing submission an analysis of what Petitioners have said about what the database -- I should say what the website show and don't show with respect to what particular distributors or producers are selling. From the preliminary work that we've done, our impression is that those statements are not wholly accurate.

COMMISSIONER STAYIN: I welcome that. Do -- please put that into your post-hearing brief. What do you say to the failure of response to the questionnaires that have not gotten back to us with data that has been requested? How should we deal with that issue?

MR. THOMAS: I would understand you would be asking about importer questionnaires, sir, and there are, I believe --

COMMISSIONER STAYIN: Importer questionnaires and I think they were also sent, were they not, to producers?

MR. THOMAS: Yes. Yes, sir. Well, you have producers -- you have purchaser questionnaires as well. And

I would have to be speculating. My speculation would be that for the companies concerned they didn't feel that they were involved and didn't want to spend the time even to fill out the first sheet of the questionnaire.

COMMISSIONER STAYIN: Yes.

MR. THOMAS: I certainly have encountered that experience before, but again, that's just wholly speculation, sir, on my part.

COMMISSIONER STAYIN: Would that failure be a basis for finding having adverse inferences with respect to the data requested?

MR. THOMAS: I would not regard it as such.

COMMISSIONER STAYIN: You may want to respond to that as well in your post-hearing brief.

MR. THOMAS: We'll be happy to do so.

COMMISSIONER STAYIN: Thank you. I think that is all that I have. My colleagues have asked some of the others. Thank you.

CHAIRMAN JOHANSON: Commissioner Karpel?

COMMISSIONER KARPEL: Okay. Just to be comprehensive about what we've asked you to respond to in the post-hearing brief in terms of some of the Petitioner's arguments about the data that we've been looking at, particularly on import volumes. They lay out a number of discrepancies with the data in the questionnaires versus the data in the official custom's statistics, on pages 5 to 11 of the brief.

So, if you could sort of march through some of their arguments there and give your response to the extent you have one to the main points they're raising on those pages of their brief, and that they've also talked about today, earlier in this hearing.

MR. THOMAS: Yes, we will do that. I had one question about the previous question if I may ask it. I am not sure that we know which companies were the subject of questionnaire requests and did not respond. If somebody could give me that list, I might be able to speculate further as to the basis for the non-response. Is it possible for the Commission to provide me that list?

COMMISSIONER KARPEL: I don't know. We can get back to you on that.

MR. THOMAS: I would appreciate it because otherwise I'm being asked to speculate about something that I don't really know what it is.

COMMISSIONER KARPEL: Just to clarify, a lot of the discrepancies they're pointing out are not with respect to importers who did not respond at all to the questionnaire, but with respect to importers that did respond, but then discrepancies they're pointing out in respect to their response, so. And then emphasize that in their briefs.

MR. THOMAS: I believe I would agree that's the case, but the discrepancies are discrepancies that Petitioners are claiming. Again, we'll take a look at what they're asserting here, but I have not seen anything as yet which would cause me to doubt the validity of the staff's data.

COMMISSIONER KARPEL: What we're asking now, is we just want a little more information.

MR. THOMAS: We'll do our research on that question.

COMMISSIONER KARPEL: And maybe that will convince us that we should be certain too, so that's why we're asking.

MR. THOMAS: Yes.

COMMISSIONER KARPEL: Alright, so you read, in your opening statement, you read an email talking about a purchaser who was buying sweets, dried sweet cherries for bird food. Is that the same entity that's mentioned in footnote 4 on page 4-1 of the staff report, or is that an additional entity?

MR. THOMAS: No, that I don't have the footnote to which you refer in front of me, but I am -- I know that that particular firm was mentioned in a footnote to the -- in the staff report.

COMMISSIONER KARPEL: Alright. I want to turn to something Mr. Sanford, that you were talking about in terms of Turkish dried tart cherries. And you mentioned, and correct me if I'm wrong, using cane sugar to infuse them, as well as apple juice? No, the other way, beet sugar -- beet sugar and apple juice. Do we not give it different characteristics that your customers are specifically seeking? Or, I guess I'm trying to understand how some of those descriptions you gave might fit in with some of the claims that there's attenuated competition between Turkish tart -- dry tart cherries and domestic product.

MR. SANFORD: Yes. There's two types, there's sugar infused, or juice infused. The sugar that Turkey has is beet sugar. We don't have cane sugar growing in Turkey as we have no swamplands. Whereas, in America, I believe in Florida, you have the cane sugar which is used because it's non-GMO.

But, especially for the exported tart cherries sugar infused. The UK for VAT purposes, valuated tax purposes, they put additional taxes on a product that is more-unhealthy, let's say. So, for drinks that contain sugar. And the industry has basically said, okay, let's not use sugar in our dried fruits.

So, instead of sugar they're using apple juice which gives you the same effect, the sweetener comes from apple juice which is from the fructose of the sugar, of the apple, that the ingredients are basically sour cherries and apples as opposed to sour cherries and sugar. So, it's perceived healthier, although it is a much more expensive item.

And of course, Turkey -- we only grow beet sugar, and the beet sugar is more expensive. We pay a lot more than cane sugar in the U.S.

COMMISSIONER KARPEL: Are U.S. purchasers are the importers that you're selling to seeking out product that doesn't have added beet or cane sugar, but are looking for products that may be infused with apple juice or other juices for their sweeteners?

MR. SANFORD: Yeah, that's what we do. We do apple juice infused sour cherries, but we tend to put juice, the organic version, with organic apple juice. That's the main item that we would be working on.

COMMISSIONER KARPEL: I guess I'm trying to get at whether your customers, or the companies you're selling to in the U.S. care in particular, about that. And I'm also, and Mr. Thomas, maybe you can help me out here too. I'm looking at some of the information in section 2 of the staff report talking about different factors and whether they're comparable as between domestic and imported product.

So, I'm trying to get at is this a real distinguishing feature that purchasers are looking at in making the decision of which tart cherries, dried tart cherries, to buy?

MR. SANFORD: Well, I think as a tart cherry, they're both a tart cherry. But the characteristics of the Morello is very different to the Montmorency. If it's used its ingredient in a bar, then maybe you'd get away with it. But if it's a cherry in a single bag, then the Montmorency is a much redder cherry and it's obvious.

And for example, for our German customers, you know, if they looked at the dark Morello, they would be thinking is this old, compared to the bright red that you get with the Montmorency, so.

MR. THOMAS: Martin, do you -- are you aware of any customers that preferred dry tart cherries that are infused with apple juice as compared with cane sugar or beet sugar?

MR. SANFORD: Not so much in the United States. Definitely in England, and in some of Europe, but not so much in the U.S.

COMMISSIONER KARPEL: Okay. So, moving on to some price questions and getting the sense of your views on Petitioners' price suppression arguments, or I guess price depression arguments. They suggest that we should look at price trends over the period of investigation based on individual importer's prices, rather than looking at AUVs. And do you think there's merit in doing that? Especially given the different pricing we see among the various importers, and perhaps you can give your explanation of why as well.

MR. THOMAS: Well, I would say that the Commission should look at the AUV data as it does in just about in every other case I have ever experienced before the Commission. I see no reason. I'm not aware that they have provided one, except they don't like the AUV data, that they would like to have the Commission look at something else.

I really have not heard a specific rationale from them as to why that would be appropriate. My preference is that the Commission use the AUV data that it has.

COMMISSIONER KARPEL: I think some of the explanations they gave is that not all importers imported in every year, so you can't compare those importers prices across the POI and that when you start averaging them out, you lose some of the trends that you would see if you looked at individual importers who have been importing consistently throughout the POI?

MR. THOMAS: I don't believe that's an unusual circumstance.

COMMISSIONER KARPEL: Do you, on the price suppression argument, they encourage us to look at rising other factory costs, as the basis for the price suppression argument and the argument that they haven't sufficiently been able to pass on increasing other factory costs. Are these types of fixed costs ones we should be expecting producers to be able to pass on, especially in a time of decreasing demand? What is your response to their approach on that?

MR. THOMAS: My response is that I would expect members of any industry to want to pass on anything that they possibly can to purchasers. Is it perhaps economically unreasonable to expect to pass on higher fixed costs that are incurred because of a fall in demand? In the face of a fall in demand, any expectation that you're going to increase price seems to be to be unreasonable.

COMMISSIONER KARPEL: My time is up.

CHAIRMAN JOHANSON: Mr. Sanford, I spoke a few minutes ago about the USDA game report, talking about how the situation in the tart cherry production area in Turkey is static. Can you respond if there have been any notable changes in the Turkish dried industry, dried cherry industry, in recent years?

MR. SANFORD: Yes, as an alternative dried fruit, where Turkey has raw material in sufficient volumes, I'd say there's an interesting new product that has been added to the portfolio of dried fruits that are available from Turkey.

And, but, the actual production process and the plant itself is very expensive as an initial investment, and there's not that many that have I'd say, the ability to do it. So, I remained on the largest since 2012 and I haven't seen many others trying to enter except coming to me and saying, "Can you please sell us some sour cherries, we would like to add it to a mix, or send it to one of our customers." And that's what I've seen.

But I haven't seen any huge investment in companies trying now to enter the dry sour cherry arena as such.

CHAIRMAN JOHANSON: Okay, thanks for your response. I have just one more question. And this is one I asked the Petitioners this morning. Do you know why Turkish exports of dried cherries fluctuate from year to year?

MR. SANFORD: We're reactive. I mean we have other products that we sell as well. And our sales are not proactive but reactive. If we were sitting on an orchard, maybe with 25,000 acres of trees, then we'd be forced to go with our salesmen to the doors to say the sales don't come to you, you go to them, and we'd try and sell more.

But that isn't the case. We've had a couple of bad years in Turkey, definitely where crop in Poland has failed and that's had a knock on effect and made our sour cherries extremely expensive. So, no, I won't say probably it's market forces.

MR. THOMAS: May I add one thing sir? And please correct me if I get the year wrong. I believe I'm correct in saying in 2012.

MR. SANFORD: Correct.

MR. THOMAS: There was a bad crop over here in the U.S., and as a result there was a significant amount of increased demand in the U.S. for Turkey's dried tart cherries, and there was -- there were, there was a substantial increase at that time in exports to the United States. And then the exports fell off following that, so that would be one -- a bad crop in the U.S. might be one reason why there would be a fluctuation.

CHAIRMAN JOHANSON: Okay, well thank you. That concludes my questions. I appreciate you all being here today. Commissioner Schmidtlein?

COMMISSIONER SCHMIDTLEIN: Thank you. Mr. Sanford, I wondered, have you seen an increase in demand for dried sweet cherries since the petition was filed, or the prelim duties went into effect in this case?

MR. SANFORD: No, I haven't.

COMMISSIONER SCHMDTLEIN: You haven't. And do you have any other market knowledge as to whether or not there's been an increase in demand for those types of cherries from Turkey since the petition was filed or since the prelim duties went into effect?

MR. SANFORD: Well, I think there, in general, has been a concern about what would happen. I mean the dried fruit sector, some of our customers who are big importers from other parts of the world as well, have seen suddenly a 25 cent tariff come on their nuts, or whatever they were buying, or goji berries from China. And it's made their buying purchasing very difficult.

So, you know, as a buyer and if they're selling on, they want to make sure they're not going to have a problem. And it's certainly the U.S. buyers that know that when the Trade Commission put this petition in, they immediately said, "Hold it one second. What if they retroactively put taxes onto this product. How can I buy it?" So, the reality is, you know, if I was an importer, I would also not buy because there's a risk of taxes being applied. So, this is your business. In terms about the products, you know, that we're doing to the U.S. now, we're sending still quite well. But in the cherry, let's say arena, itself, there was a big concern.

COMMISSIONER SCHMIDTLEIN: Have you seen a switch to dried sweet cherries because --

MR. SANFORD: No, I haven't. But we're not in the season yet. I mean, literally, we have to come towards June and July, maybe a little bit earlier they'll start talking about cherries and berries. We're in the winter months right now and basically all the contracts that were done last year are being shipped and that's why probably at the beginning of 2019 you saw an increase of the products that were already contracted last year, because they have to come to the U.S. and be packed here and then go into the market, so whatever, so, yeah.

COMMISSIONER SCHMIDTLEIN: Okay.

MR. SANFORD: Well I haven't said anything yet, but I hope to.

COMMISSIONER SCHMIDTLEIN: Okay. Alright, thank you. Mr. Thomas, I know Commissioner Karpel asked about the pricing analysis that the Petitioners do in their brief where they look at the individual importers. I wasn't sure if she touched on the argument that the Petitioners make that the pricing data isn't instructive or probative because of the different levels of trade.

And when we look at the channels of distribution you see U.S. product as being sold overwhelmingly into the distributor channel and that Turkish product goes to retailers and end users, and because of that it's not useful to compare the prices and the pricing products. How do you respond to that argument?

MR. THOMAS: I believe the Commission had that same information at the time of the preliminary investigations. And I also believed that that was not an issue that was raised by Petitioners at the time they were talking with the staff about development of the questionnaires for the final phase and the circumstances. I don't find that argument persuasive.

COMMISSIONER SCHMIDTLEIN: So, do you think it is a different level of trade though, selling to a distributor versus selling to a retailer or end user?

MR. THOMAS: Certainly, I would assume that it would seem to me to be technically a different level of trade. But again, I would have to say I don't, I do not know this business well enough to know whether major purchasers, such as -- I'm picking this out of the air, Trader Joe's or Costco, are effectively buying -- going to be at the same price, general price levels and volumes as distributors might.

If that were the case, there might effectively be any real difference between the two.

COMMISSIONER SCHMIDTLEIN: Okay. And I think Commissioner Karpel asked you this, but if not, if you could respond to the Petitioners' arguments in their brief where they present the analysis, which is at pages -- well, their pricing section is basically page 22 to page 28 of the brief. If you could respond to that argument in your post-hearing brief, that would be helpful.

MR. THOMAS: We will. Thank you.

COMMISSIONER SCHMDITLEIN: Thank you. I have no further questions.

CHAIRMAN JOHANSON: Commissioner Kearns?

COMMISSIONER KEARNS: Yes, I think I have just two questions remaining. One is -- just to kind of return to a subject that Commissioner Schmidtlein asked you about a while ago, there's this chart on page 21 of the Petitioners' slides. And I think what it suggests to me, clearly, is that there looks to be post-petition effects that imports under this HTS category that's our focus today, declined from May to June in 2019 versus 2018, by quite a bit.

And so, I kind of take that as a given, but then I think the question is if this HTS category is really mostly about sweet cherries, as opposed tart cherries, then why would we see the imports decline so much after the petition is filed? You know, you'd think that if you're importing dried sweet cherries you'd say, "Well, that doesn't cover me. I can just continue to import." So, if you have any thoughts on why we're seeing this, because it does seem to me to say there must be something to the argument that this HTS category is predominantly tart cherries.

If you have any thoughts on that now or post-hearing, I would appreciate it.

MR. THOMAS: We'll have to address that in the post-hearing, thank you.

COMMISSIONER KEARNS: Okay, thank you. And then the only other question I had, and this is again something I touched earlier, and based what you had said Mr. Sanford, that I thought it was very interesting that -- and I have got to back up. When I was growing up, we had a few cherry trees, tart cherry trees, on our land. And I bit into one when I was a kid and realized that there is quite a big difference between a tart cherry and a sweet cherry.

And but, you mentioned before that you know, that tart cherries probably need to be sweetened, if I heard you correctly. Is that -- I mean, you can sell it the other way, but it's going to be a pretty limited market, I guess, is that right?

MR. SANFORD: I apologize. It surprised me too, if you took straight dried cherries, you'd probably need 10 kilos to make 1 kilo of straight dried. If you use apple juice, you'd probably need 3 kilos to make 1 kilo of dried. So, this is of course, this is a commercial way to decrease the cost, to increase the margin.

Sweet cherries, slight different, because sweet cherries have higher bricks, so you're normally looking at bricks, as the fruit bricks, with the sugars. So, when you dry it, you'll have less amount that you would need to make one kilo of dried as opposed to sour cherries, which is not so much as sweet or as much bricks in the product.

COMMISSIONER KEARNS: Okay, okay. Thank you. So, and I had mentioned before that Petitioners have, I think as their Exhibit 1-A, which is a Made in Nature product, fruit fusion, mountain gold super fuel blend, and this says, "no sugar added." But it says, "tart cherries from Turkey." And then I just noticed too, there is this other product they gave us, I guess it's Exhibit 2, Fruit Bliss. It says, "tart cherries", but it says, "no sugar added." I mean it's just water, water and organic dried tart cherries.

I don't know if it indicates whether they're Turkish or not. But I guess I'd be curious if you all could look post-hearing. I'm curious whether these really are, I mean it sounds like you could maybe taste them and say, "That's not a tart cherry. This is actually a sweet cherry." Because if there's no sugar added, then this has to be a sweet cherry. So, I'm just trying to get a sense of maybe these things could be mis-described in some way, now or post-hearing.

MR. SANFORD: Post-hearing, I think we could clarify that. But the apple juice sweetened, is no sugar.

It's apple juice.

COMMISSIONER KEARNS: Okay. Alright, although in this particular case, there's no apple juice either it looks like.

MR. SANFORD: And I don't know the company.

COMMISSIONER KEARNS: Yeah, okay. So, I would appreciate your thoughts on that because I mean I think if I were you, I would say you know, look, this is not, you know, this does not appear to be a tart cherry, even though it's labeled that way, but it can't possibly be if it has no apple juice added, or anything else. But I'm just trying to get a feel for that, if you could help us out with that post-hearing, that would be great.

MR. SANFORD: Absolutely.

COMMISSIONER KEARNS: Okay, thank you. I have no further questions.

CHAIRMAN JOHANSON: Commissioner Stayin? Do any of the other Commissioners have questions? No Commissioners do have questions. Do staff have any questions for this panel?

MR. COMLY: Nate Comly, Office of Investigations. Staff has no questions.

CHAIRMAN JOHANSON: Okay. Do Petitioners have any questions for this panel?

MS. DRAKE: Elizabeth Drake, Schagrin Associates, we do not.

CHAIRMAN JOHANSON: Alright. Then this panel is dismissed, and we can prepare for the rebuttals and closings. Let me just note, however, that Petitioners have 9 minutes of direct, 5 minutes of closing, for a total of 14 minutes. Respondents have 22 minutes of direct, 5 minutes of closing for a total of 27 minutes. And we thank this panel for appearing here today.

MR. BURCH: Closing and rebuttal remarks on behalf of the Petitioner will be given by Elizabeth J. Drake of Schagrin Associates. Miss Drake, you have 9 minutes.

CLOSING REMARKS OF ELIZABETH J. DRAKE

MS. DRAKE: 9 plus 5, right?

CHAIRMAN JOHANSON: Yes, 9 plus 5.

MR. BURCH: A total of 14 minutes.

MS. DRAKE: So, hopefully I won't take them all. Thank you very much. Commissioners, thank you for your time and patience and attention today. This is Elizabeth Drake of Schagrin Associates for the Petitioner, the Dried Tart Cherry Trade Committee. I also want to take a moment to thank the staff for all of their work on these investigations. Petitioners, especially small companies, they are family-owned companies, sincerely appreciate the fact that the U.S. government takes their concerns so seriously and investigates these cases with such diligence and care.

And I hope that any concerns we have risen about the staff report are taken as concerns about the responsiveness of importers and not at all, any concerns whatsoever about the efforts of the staff, which have been excellent.

Rather than throwing around unsupported allegations as Respondent's counsel has claimed, our efforts, both in our pre-hearing brief, and here today, were to make sure that the Commission looks at the record as a whole, as it determines whether or not the volume of imports is significant.

They've had significant adverse price effects. They've had significant adverse effects on the domestic industry, where they threaten the domestic industry with further injury. First, with regard to the issue of import data, Mr. Thomas read an email from an importer of sweet cherries that said they still contained pits and were for bird food.

Without getting into APO that was as Commissioner Karpel suggested, a company that was referred to on page 401 of the staff report, and footnote 4 confidentially. There is another company referred to on the same page on footnote 3, which is the company that we focused a lot of our presentation on today regarding whether or not its product is tart or sweet.

So, even if the bird food importer is legitimately importing sweet cherries, and of course, that email only came to light after our pre-hearing brief was filed, and you would have noticed that we did not focus on that company in our presentation today. Even if we concede and take out those imports as being legitimately sweet, we don't get anywhere near to where we are in the staff report. We still have the vast majority of imports in the public data that do not show up in the questionnaire responses of those importers who have responded.

So, this sweet versus tart issue does not come close to explaining all of the discrepancies in the import data. And again, this isn't a broad basket category. It's dried cherries. It's either dried sweet cherries, or dried tart cherries, so if that issue on its own cannot explain the discrepancies, the Commission should look at the CNIF data, compare it to the responses it has received, and determine which is more probative.

And we believe the CNIF data as official government statistics, are more probative. Mr. Thomas also mentioned -- excuse me, with respect to this argument about sweet versus tart, Mr. Thomas also mentioned that we never manipulated the public data to exclude sweet imports or claims to the imports. That's on page 21 of our pre-hearing brief.

It is a review of what import data would be even conceding that what is claimed to be sweet is sweet, based only on CNIF data for other importers. So, we did perform that exercise, and we believe it shows that subject import volume would still be significant and a significant increase.

Mr. Thomas also made much of a statement in the staff report that the reported imports represent a high percent of imports. This statement was based on the value of imports, and not the volume, and as we've discussed, there's been discrepancies in the official value and volume and so that statement does not conclusively resolve whether or not the importer questionnaires received to date represent a significant or reliable volume of subject imports from Turkey.

In terms of claims about whether or not bill of lading data is reliable, we agree we would love to have more reliable bill of lading data, but if anything what it does, is it understates imports because importers can choose to enter their product undisclosed, and so even what is FOIA'd by these private services from the government will include large categories of undisclosed.

So, we feel lucky when we're able to find something in the bill of lading data. And it is also true, as Mr. Thomas said, that the HTS Code is one informational item that can be assigned by staff of these companies, but you will see what we focused on in the bill of lading data was the name of the importer, the source and the name of the product.

Those are data points provided in the bill of lading by the importer, not added to it by staff for these data aggregation companies. And so, we think we -- when we look at that data, if anything, it understates what's actually out there and the data points we highlighted, are the ones that actually come in the bills of lading.

With respect to the interim data, there was some argument made in Respondent's pre-hearing brief and mentioned briefly today, but maybe was abandoned that the sharp decline in imports under that category we're all talking about, 08-13 in May, may have been due to the fact that Turkey lost GSP benefits in May as we discussed this morning.

Turkey never had GSP benefits under that category. It's only the least developed beneficiary countries that get those GSP benefits. So, that loss of GSP can't have absolutely nothing to do with the dramatic decline in imports, which as we've discussed, is strong evidence that everything coming in under that category, or almost everything, is dried tart cherries, and not dried sweet cherries, which were not the subject of the petition.

Finally, with respect to the application of adverse facts available, we do not believe that the Commission needs to apply an adverse inference to expand the import data beyond what is in the staff report. The Commission often includes CNIF data where it doesn't get a response from importers. We think it's also justified here where those importer responses show unexplained discrepancies and inconsistent discrepancies with the CNIF data.

And absent any explanation and in fact, in conflict with the explanation that has been given, about those importer's practices under that HTS Code, we believe the full amount of data reported by Custom's in official government statistics, is the most appropriate basis for import data.

Turning to conditions of competition, there were a couple points raised about darker Morello cherries versus lighter Montmorency cherries, but again there's a full array of infusions that can be used, some processors will only infuse once with a clear infusion, some will use that infusion over and over until it becomes darker over time.

As our witnesses testified, they do sugar infused, they do apple juice infused, they do uninfused, so the full array of products in the market are made both by domestic producers and foreign producers, and they are interchangeable. In terms of pit counts, the domestic industry, everyone has to comply with the same pit count standards, and purchasers said everyone met our standard specs, no one failed to meet it. This isn't an issue, they're interchangeable.

With respect to volume, of course, all of this depends on what data the Commission uses for volume. I will say that Mr. Sanford claimed that their company had low and sporadic sales, but I hope the Commission will take the time to look at their foreign producer response and look at their volume of exports to the United States and the trends in that volume.

And I think that even looking at the data that the Commission has, which vastly understates imports. Imports are up absolutely from '16 to '18, they increased in market share. And then in the interim period where they had the strongest increase in the most recent period, both in terms of an absolute increase and an increase in market share.

So, we believe the volumes are greatly understated, but we believe that both the public data, adjusted public data, and that data show increases and increases in market share. In terms of the price data, Respondents claim that we simply don't like the AUV data.

Clearly, that's not our only concern. We have concerns about how representative averages are when you have different players with different periods of time.

Also, Respondents said that the Commission staff found that pricing product data accounted for 54.9 percent of imports. Obviously, staff were referring to 54.9 percent of reported imports, not total imports, so that's if one believes that reported imports are vastly understated as we do, that metric is not a meaningful metric.

As we've already discussed, we believe the underselling data is understated, due to different channels in trade, and that the Commission should at a minimum, look at correlations between underselling trends and volume trends, to determine if its significant.

When we look at individual pricing products, there have been declines in prices, and we do see a cost price squeeze. In terms of lost sales and lost revenue, and the difficulty the domestic industry has had in identifying those due to the market structure, Mr. Sanford this afternoon absolutely agreed that this is not a transparent market, that there's no information that he gets from customers about who he's lost the sales to, or how much lower or how different their prices were, simply doesn't make the sale.

And so, that is at the heart of why the domestic industry has had trouble making lost sales, lost revenue allegations to a greater extent than they have.

In terms of impact on the domestic industry, we do believe that decline in demand in the Commission's staff report is overstated at this point, because it's so reliant on domestic shipments and there are so few imports reported, and while our witnesses discussed yes, maybe demand is maturing. Maybe the market is maturing. It certainly wasn't declining that quickly, especially when imports were increasing much more quickly.

Obviously, the domestic industry saw declines across every indicator, some quite significant over the period. And whether different producers had different trends, is really inapposite, because the Commission looks at the industry as a whole, but we'll address those arguments post-hearing.

And then we also heard the argument that excess capacity is common in this industry and if that were true, the question is why is excess capacity increasing? Why was the domestic industry having lower and lower rates of capacity utilization? And we believe that's because of an increase in subject imports.

Finally, I'd like to turn to threat because I do think that is going to be an important issue in this case potentially. In terms of whether or not the tart cherry industry in Turkey is stagnant, as USDA characterized it in 2017. Even a stagnant tart cherry industry in Turkey is huge.

At Exhibit 4 of our brief, we have FAO statistics showing that Turkey produced 182,000 metric tons of tart cherries in 2017. That's 400 million pounds of tart cherries available to dry and send to domestic market export markets. And as Mr. Sanford testified, they have the raw materials.

So, even if they're not increasing their raw crop, they have a huge amount of raw crop available to dry and to export. And as Mr. Sanford testified, and you know, just a few short number of years since they've taken over -- or, he's established his company. They've established the global customer base. They've been approved by many customers.

They're doing their best to develop new products and markets. They made a new investment in 2015 to increase capacity in sales. They meet all the pit contents standards, and that other producers have reached out to them to see if they can enter this market as well.

And again, we believe there are far more foreign producers in Turkey with this capacity submitted both with our petition and in the CNIF data than have responded to the Commission's questionnaire.

And the idea that these are minimal or tiny imports, just look at the foreign producer data in terms of the volume and trends, compare it to what's in the importer data, and we think it's clear that there are much larger volumes available.

And finally, another point on threat was that inventories and the idea that the Turkish industry doesn't keep inventories of dried tart cherries. That may be true, but importers do keep inventories and at page 7-7 of the Commission's staff report, you can see the ratio of importers inventories to shipments and imports from Turkey and it's quite a striking number.

And finally, this industry is extremely vulnerable to injury from imports from Turkey. They have already seen a massive increase in imports of tart cherry juice, and they were unable to bring action in a way that would bring them relief when those imports increased.

They're seeing in the public data, a similar astronomical increase in dried tart cherries from Turkey. They're losing sales. They're having price pressure. They're operating at a loss and a worsening loss every single year. They're idling equipment, they're laying off workers.

And so, if they cannot get relief from these imports, they face a very serious threat in the very imminent future from this very large source of tart cherries in Turkey. Thank you very much.

MR. BURCH: Thank you Miss Drake. And rebuttal and closing remarks on behalf of the Respondent will be given by Ritchie Thomas of Squires, Patton and Boggs. Mr. Thomas, you have 27 minutes.

CLOSING REMARKS OF RITCHIE THOMAS

MR. THOMAS: I promise Commission, I will not take it. I have only some very brief remarks. I must not have heard Petitioner's counsel correctly, because I thought I heard her say that the value data of the Custom's import data, aren't accurate. I couldn't have heard that because they're relying on the Custom's import data for accuracy.

I also don't believe we made any argument about the loss of GSP having affected volumes. Again, perhaps, I misunderstood that. I will just finally mention one thing. The discussion of the amount of tart cherries that are grown in Turkey seems to me to relate to an industry which is not the one before the Commission.

So, I'm not at all sure where that takes us. And as for a ratio of importer's inventories to their imports, it seems to me that the smaller the volume of imports, the larger that ratio is likely to be given a set inventory number. So, I don't think that takes us very far either.

We based our case on the staff report. As I have said, I don't think I need to say more about the staff report. My impression and understanding is the staff has worked very hard to get accurate numbers in its report. Petitioners have tried very hard to stir up dust. I'm not persuaded. I hope the Commission is not persuaded either.

I will ask you to permit me to tell a war story. Many years ago, as Petitioner's counsel, we were asked by a group of Portland hydraulic cement producers on the west coast to file an anti-dumping petition for them.

In the course of investigating whether or not a petition was warranted, we got together in a room above an Italian restaurant in Northern California with the chief sales managers for all of the Portland hydraulic cement companies involved. And we couldn't talk about prices in that meeting, but I did go around and ask everyone of those sales managers if the imports with which they were concerned were in fact, adversely affecting their sales.

Were they losing sales? Were they losing revenues? Were the imports price leaders so far as they were aware? Affirmative answers to all of those questions. On the basis of that and our other research, we filed a petition. We survived the preliminary phase of the investigation.

In the final phase, the Commission found A -- very low volumes of imports from the countries concerned.

And found that in fact, the imports were not the price leaders, that the sales managers who all thought they understood their own market, weren't really who the actual price leaders were.

And they lay in the domestic industry. I think this may well be another case where very well intentioned companies, have brought a case without really, I think in this case, fully appreciating the extent of the fall in demand for their product and have attributed to that fall due to imports, the adverse effects of that fall in demand.

But again, that's speculation on my part, but it does seem to explain a lot of what we see going on in the Petitioners' financial results. That concludes my remarks. I want to thank you all for your attention. And I will do my best to try to respond to all the questions we've been asked. Thank you.

CHAIRMAN JOHANSON: I would again like to thank all the parties for appearing here today. I will now make the closing statement. Post-hearing briefs, statements responsive to questions and requests of the Commission, and corrections to the transcript, must be filed by December 9th, 2019.

Closing of the record and final release of data to parties occurs on January 6th, 2020 and final comments are due January 9th, 2020. With that this hearing is adjourned.

(Whereas, the hearing adjourned at 3:46 p.m.)

CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Dried Tart Cherries from Turkey

INVESTIGATION NOS.: 701-TA-622 and 731-TA-1448

HEARING DATE: 12-3-19

LOCATION: Washington, D.C.

NATURE OF HEARING: Final

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: 12-3-19

SIGNED: Mark A. Jagan

Signature of the Contractor or the Authorized Contractor's Representative

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings 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 proceedings.

SIGNED: Duane Rice
Proofreader

I hereby certify that I reported the above-referenced proceedings 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 proceedings.

SIGNED: Larry Flowers
Court Reporter