

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
CERTAIN PRESERVED MUSHROOMS) Investigation Nos.:
FROM CHILE, CHINA, INDIA,) 731-TA-776-779
AND INDONESIA) (Review)

Pages: 1 through 238

Place: Washington, D.C.

Date: September 9, 2004

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:

)

)

CERTAIN PRESERVED MUSHROOMS

) Investigation Nos.:

FROM CHILE, CHINA, INDIA,) 731-TA-776-779

AND INDONESIA

) (Review)

Thursday,
September 9, 2004

Room 101
U.S. International
Trade Commission
500 E Street, SW
Washington, D.C.

The hearing commenced, pursuant to notice, at 9:28 a.m., before the Commissioners of the United States International Trade Commission, the Honorable STEPHEN KOPLAN, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:Commissioners:

STEPHEN KOPLAN, CHAIRMAN (presiding)
DEANNA TANNER OKUN, VICE CHAIRMAN
MARCIA E. MILLER, COMMISSIONER
JENNIFER A. HILLMAN, COMMISSIONER
CHARLOTTE R. LANE, COMMISSIONER
DANIEL R. PEARSON, COMMISSIONER

APPEARANCES (continued):

MARILYN R. ABBOTT, SECRETARY TO THE COMMISSION
WILLIAM R. BISHOP, HEARINGS AND MEETINGS
COORDINATOR

Staff:

CHRISTOPHER CASSISE, INVESTIGATOR
TIMOTHY McCARTY, COMMODITY ANALYST
AMELIA PREECE, ECONOMIST
CHAND MEHTA, ACCOUNTANT
MARC BERNSTEIN, ATTORNEY
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR

In Support of the Continuation of the Antidumping Duty Orders:

On behalf of Fair Preserved Mushrooms Trade:

ROBERT W. SHELTON, President,
L.K. Bowman Company
SHAH KAZEMI, President,
Monterey Mushrooms, Inc.
DENNIS NEWHARD, President,
Mushroom Canning Company
GARY CALIGIURI, President,
Sunny Dell Foods, Inc.
PATRICK J. McGRATH, Director,
Georgetown Economic Services, LLC
MICHAEL T. KERWIN, Economist,
Georgetown Economic Services, LLC

Of Counsel:

MICHAEL J. COURSEY, Esquire
ADAM H. GORDON, Esquire
KATHLEEN W. CANNON, Esquire
Collier Shannon Scott, PLLC
Washington, D.C.

In Support of the Revocation of the Antidumping Duty Orders:

On behalf of General Mills, Inc.:

DUANE LARSON, Mushroom Buyer, General Mills, Inc.

Of Counsel:

GEORGE W. THOMPSON, Esquire
Neville Peterson, LLP
Washington, D.C.

On behalf of P.T. Dieng Jaya, P.T. Surya Jaya Abadi Perkasa, P.T. Karya Kompos Bagas, P.T. Eka Timur Raya, P.T. Indo Evergreen Agro Business Corp.:

Of Counsel:

FRANK H. MORGAN, Esquire
JAY C. CAMPBELL, Esquire
White & Case, LLP
Washington, D.C.

I N D E X

	PAGE
OPENING STATEMENT OF MICHAEL J. COURSEY, ESQUIRE, (Collier Shannon Scott, PLLC, on behalf of The Coalition for Fair Preserved Mushrooms Trade)	7
OPENING STATEMENT OF JAY C. CAMPBELL (White & Case, LLP, on behalf of P.T. Dieng Jaya, P.T. Surya Jaya Abadi Perkasa, P.T. Karya Kompos Bagas, P.T. Eka Timur Raya, P.T. Indo Evergreen Agro Business Corp.)	11
TESTIMONY OF ROBERT W. SHELTON, President, L.K. Bowman Company	14
TESTIMONY OF SHAH KAZEMI, President, Monterey Mushrooms, Inc.	19
TESTIMONY OF DENNIS NEWHARD, President, Mushroom Canning Company	24
TESTIMONY OF KATHLEEN W. CANNON, Esquire (Collier Shannon Scott, PLLC on behalf of Fair Preserved Mushrooms Trade)	31
TESTIMONY OF PATRICK J. McGRATH, Director, Georgetown Economic Services, LLC	39
TESTIMONY OF MICHAEL T. KERWIN, Economist, Georgetown Economic Services, LLC	45
TESTIMONY OF GEORGE W. THOMPSON, Esquire (Neville Peterson, LLP, on behalf of General Mills, Inc.)	138
TESTIMONY OF DUANE LARSON, Mushroom Buyer, General Mills, Inc.	141
TESTIMONY OF FRANK H. MORGAN, Esquire (White & Case, LLP, on behalf of P.T. Dieng Jaya, P.T. Surya Jaya Abadi Perkasa, P.T. Karya Kompos Bagas, P.T. Eka Timur Raya, P.T. Indo Evergreen Agro Business Corp.)	153

I N D E X

	PAGE
TESTIMONY OF JAY C. CAMPBELL, Esquire (White & Case, LLP, on behalf of P.T. Dieng Jaya, P.T. Surya Jaya Abadi Perkasa, P.T. Karya Kompos Bagas, P.T. Eka Timur Raya, P.T. Indo Evergreen Agro Business Corp.)	221
CLOSING STATEMENT OF GEORGE W. THOMPSON, Esquire (Neville Peterson, LLP, on behalf of General Mills, Inc.) and FRANK H. MORGAN (White & Case, LLP)	223
CLOSING STATEMENT OF MICHAEL J. COURSEY, ESQUIRE, (Collier Shannon Scott, PLLC, on behalf of The Coalition for Fair Preserved Mushrooms Trade)	229

P R O C E E D I N G S

(9:28 a.m.)

1
2
3 CHAIRMAN KOPLAN: Good morning. On behalf
4 of the United States International Trade Commission, I
5 welcome you to this hearing on Investigation Nos. 731-
6 TA-776-779 (Review) involving Certain Preserved
7 Mushrooms from China, Chile, India, and Indonesia.
8 The purpose of these five-year-review investigations
9 is to determine whether the revocation of the
10 antidumping duty orders covering certain preserved
11 mushrooms from China, Chile, India, and Indonesia
12 would be likely to lead to a continuation or
13 recurrence of material injury to an industry in the
14 United States within a reasonably foreseeable time.

15 Notice of investigation for this hearing,
16 list of witnesses, and transcript order forms are
17 available at the secretary's desk. Transcript order
18 forms also are located in the wall rack outside the
19 secretary's office.

20 I understand the parties are aware of the
21 time allocations. Any questions regarding the time
22 allocations should be directed to the secretary. As
23 all written material will be entered in full into the
24 record, it need not be read to us at this time.
25 Parties are reminded to give any prepared testimony to

1 the secretary. Do not place testimony directly on the
2 public-distribution table. All witnesses must be
3 sworn in by the secretary before presenting testimony.

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

8 Madam Secretary, are there any preliminary
9 matters?

10 MS. ABBOTT: Yes, Mr. Chairman. With your
11 permission, we will add Adam H. Gordon of Collier
12 Shannon Scott to page 2 of the calendar.

13 CHAIRMAN KOPLAN: Without objection. Let us
14 proceed with the opening remarks.

15 MS. ABBOTT: Opening remarks in support of
16 continuation of orders will be by Michael J. Coursey,
17 Collier Shannon Scott.

18 CHAIRMAN KOPLAN: Good morning, Mr. Coursey.

19 OPENING STATEMENT IN SUPPORT OF CONTINUATION

20 MR. COURSEY: Thank you. As noted, I am
21 Michael Coursey of Collier Shannon Scott, and I am
22 appearing today on behalf of Petitioners, the domestic
23 producers of preserved mushrooms. I would like to
24 make a few observations about key points in these
25 sunset reviews that we will discuss further in our

1 testimony.

2 First, the domestic industry is in an
3 extremely vulnerable condition. The record data show
4 an industry that is suffering operating losses and
5 declines in many trade variables, even under the
6 restraint of the four dumping orders. Given the
7 industry's precarious present condition, a further
8 increase in dumped imports at low prices as a result
9 of revocation of the orders will result in serious
10 injury to this industry.

11 Second, in assessing whether the likely
12 volume of subject imports upon revocation would
13 increase or would have a negative effect on the
14 domestic industry, bear in mind that the sunset
15 inquiry is prospective. Respondents have presented
16 arguments more appropriate to an original
17 investigation, addressing whether the industry's
18 present condition is due to imports. The question for
19 the Commission is not whether imports have injured the
20 industry under the discipline of an order but whether
21 removal of that order would lead to an increased
22 volume of imports and would cause injury. The answer
23 to that question is yes.

24 Third, in examining the likely volume and
25 price effects of subject imports, the Commission

1 should cumulate imports from the four countries:
2 Chile, China, India, and Indonesia. No country,
3 including Indonesia, is in a position to argue no
4 discernable adverse impact, given the record evidence
5 of the likelihood that imports from each country will
6 increase and will be sold at low prices and will
7 seriously injure the U.S. industry if the orders are
8 revoked.

9 The Indonesian producers' argument that
10 cumulation is inappropriate because there is no
11 reasonable overlap of competition with the domestic
12 producers or with other subject imports, particularly
13 in the retail sector, has no support in this record.

14 Fourth, and finally, we ask that you look
15 closely at the data presented to you before drawing
16 conclusions in this case. Three of the four countries
17 under review have not entered an appearance at all in
18 this proceeding, and two of those countries, Chile and
19 China, have refused to even respond to the Commission
20 questionnaires. This refusal to participate should
21 not inure to their benefit where other record
22 information indicates likely injury from those imports
23 if revocation occurs.

24 The one country that is chosen to
25 participate, Indonesia, presents data issues of its

1 own, notably, not until its prehearing brief was filed
2 last Thursday did the Indonesian Respondents announce
3 that pricing data they had submitted to the Commission
4 in July in their questionnaire responses was wrong and
5 that they would be changing this at some time in the
6 future. As a result, they did not address the issue
7 of price at all in their briefs. How can the
8 Commission have a meaningful hearing if the Indonesian
9 producers are still changing their pricing data at
10 this late hour?

11 We urge the Commission to review any of the
12 Respondents' price revisions carefully and to verify
13 the revised Indonesian pricing data in this case to
14 the extent that it is significantly different from
15 that previously submitted.

16 On the basis of data that accurately
17 portrays the present U.S. market, we are confident
18 that the Commission will find compelling evidence that
19 the likely volume and impact of subject imports will
20 cause continued material injury to the U.S. industry
21 if revocation of any of these orders occurs. Thank
22 you.

23 CHAIRMAN KOPLAN: Thank you, Mr. Coursey.

24 Mr. Campbell?

25 MS. ABBOTT: Opening remarks in support of

1 revocation of orders will be by Jay C. Campbell, White
2 & Case.

3 CHAIRMAN KOPLAN: Thank you, Madam
4 Secretary.

5 MR. CAMPBELL: Good morning.

6 CHAIRMAN KOPLAN: Good morning.

7 OPENING STATEMENT IN SUPPORT OF REVOCATION

8 MR. CAMPBELL: My name is Jay Campbell. I'm
9 an attorney with White & Case. I am here today with
10 my colleague, Frank Morgan, and we appear today on
11 behalf of the Indonesian Respondents. Also here today
12 is Duane Larson, who is the manager of contract
13 operations for General Mills, and, thankfully, he will
14 be doing the majority of the speaking today.

15 General Mills is an importer of Indonesian
16 preserved mushrooms and a longtime participant in the
17 U.S. market for preserved mushrooms. General Mills is
18 represented by George Thompson of Neville Peterson.

19 Together, we respectfully urge the
20 Commission to determine that revocation of the
21 antidumping order on Indonesian preserved mushrooms
22 would not be likely to lead to material injury.

23 In this sunset proceeding, we ask the
24 Commission to address two key issues: first, whether
25 to exercise its discretion to decumulate the

1 Indonesian subject imports from the imports from the
2 other subject countries; having decumulated, second,
3 we ask the Commission to address whether revocation of
4 the Indonesian order separately would be likely to
5 lead to material injury.

6 With respect to each issue, our case is
7 simple and straightforward. With respect to
8 cumulation, the facts that support decumulation of the
9 Indonesian subject imports cannot be disputed. Over
10 the period of review, the Indonesian subject imports
11 have exhibited significantly divergent trends in terms
12 of volume, capacity levels, average unit values, and
13 antidumping rates than the imports from the other
14 subject countries. On the basis of these facts, it
15 is, therefore, likely that the Indonesian subject
16 imports would face significant different conditions of
17 competition in the U.S. market after revocation than
18 the subject imports from the other countries.
19 Accordingly, the Commission should decline to cumulate
20 the Indonesian subject imports.

21 In asserting that there is a likelihood of
22 injury, however, Petitioners have relied on a
23 cumulated analysis, cumulating the effects of the
24 Indonesian subject imports with those from the other
25 subject countries. As we will point out in greater

1 detail, however, several Petitioners' key arguments
2 rely on aggregate trends that do not apply to the
3 Indonesian subject imports. This flaw in the
4 Petitioners' reasoning illustrates why cumulation of
5 the Indonesian subject imports is not appropriate in
6 this case.

7 With regard to the likelihood of injury, the
8 record demonstrates a lack of correlation between the
9 performance of the domestic industry and the
10 Indonesian subject imports. On this basis, then, the
11 record shows that revocation of the antidumping duty
12 order on the Indonesian subject imports would not be
13 likely to lead to material injury. Thank you.

14 CHAIRMAN KOPLAN: Thank you, Mr. Campbell.

15 Madam Secretary, if you would call the first
16 panel.

17 MS. ABBOTT: The first panel, in support of
18 continuing of orders, please come forward and take
19 your seats. All witnesses have been sworn.

20 CHAIRMAN KOPLAN: Thank you.

21 (Pause.)

22 CHAIRMAN KOPLAN: Mr. Coursey, you may
23 proceed.

24 MR. COURSEY: Thank you, Mr. Chairman, and
25 good morning once again. One of the nice things about

1 a sunset review like this is that we have on your
2 panel, I believe, three commissioners who were at
3 these proceedings in the original injury
4 investigation, so we know that you have interest and a
5 long memory that you bring to your analyses.

6 We have a seven-person panel on behalf of
7 the domestic industries, and our first three witnesses
8 will be industry witnesses. Let me begin by
9 introducing Mr. Bob Shelton of L.K. Bowman.

10 MR. SHELTON: Good morning.

11 CHAIRMAN KOPLAN: Good morning.

12 MR. SHELTON: My name is Robert Shelton. I
13 am president of L.K. Bowman Company, one of the
14 original petitioners in this case. We are based in
15 Nottingham, Pennsylvania, and have been producing
16 canned mushrooms since 1962. I personally have been
17 involved in the canned mushroom industry for over 39
18 years.

19 When I sat here more than five years ago, I
20 testified about the health of our domestic industry
21 and the enormous impact of imports on our company and
22 other companies. I described to you how we had lost
23 two members of the domestic industry in 1996 and 1997
24 and how a third producer had closed an entire modern
25 production facility.

1 As I sit here today, I can update those
2 discouraging statistics. Even with the four dumping
3 orders in place over the past five years, the U.S.
4 canned mushroom industry has continued to struggle.
5 Since the dumping orders were put in place in 1998 and
6 '99, two more domestic producers, United Canning and
7 Southwood Farms, have closed. Another company, Modern
8 Mushroom, whose president testified here beside me
9 five years ago, has stopped producing canned
10 mushrooms. These three companies have either gone out
11 of business or stopped producing preserved mushrooms
12 despite the help we have received from the dumping
13 orders, and those that are still in business are
14 collectively suffering financial losses.

15 The four dumping orders that went into place
16 in 1998 and '99 gave our industry some badly needed
17 relief. In 1999, we were able to regain our footing
18 as imports dropped off dramatically. Even with the
19 dumping orders, foreign producers have been unable to
20 control themselves and have continued to ship more and
21 more product into the United States at dumped prices.
22 Over the past two years, in particular, we have seen
23 imports return to levels not seen since 1997 despite
24 high margins on many of the foreign producers. We
25 have also seen U.S. market prices remain very low,

1 with prices of imported product keeping them down.

2 The Indonesian Respondents would like you to
3 believe that they are not part of the continued
4 problems that affect our industry. I respectfully
5 suggest that they want you to fixate on the trees
6 while completely ignoring the forest. Our industry
7 has been hurt by imports from China, Chile, India, and
8 Indonesia. The Chinese have surged back into the U.S.
9 market as they have exploited the bonding loophole of
10 the new shipper law. The Chileans have dumped their
11 product on the U.S. market by trans-shipping it in
12 through Colombia and Canada. The Indians have
13 continued to dump year after year, frequently at
14 higher rates than before, and the Indonesians have
15 also continued to dump year after year.

16 We know these things because we see them
17 every day in the marketplace. Producers in all four
18 countries make and ship the same things the same way
19 and compete with our companies in the same markets,
20 and producers from all four countries have continued
21 to dump their preserved mushrooms in the United States
22 and undercut U.S. prices.

23 This has hurt my company's ability to keep
24 customers. In fact, we lost most of the volume of our
25 largest single customer to imports from one of the

1 countries after the orders went into place. Other
2 companies having hurt even more. Southwood Farms,
3 which was primarily retail, went out of business since
4 the orders went into place, as did United Canning.

5 The continued low prices hurt our ability to
6 do such basic, important things as modernizing our
7 facilities or growing our businesses. For example,
8 every six months, L.K. Bowman does an internal review
9 to decide whether we should get back into the retail
10 channel. We see Indonesian and Chinese product had
11 prices so low we cannot justify the investment we
12 would need to make to get back to retail. If retail
13 prices were returned to a profitable level, however,
14 we would be glad to sell retail customers.

15 More to the point, however, is my concern as
16 to what would happen if the orders were lifted. Let
17 me ask you this: If these orders are revoked, do you
18 seriously doubt that imports will be dumped at even
19 more and that our industry will be hurt even more than
20 it is now?

21 While our industry has continued to struggle
22 over the past five years, the orders have helped us
23 stay afloat and have helped us retain the customers
24 and market share that we have. If we didn't have
25 these orders, we would have lost even more customers,

1 and if the order is revoked, I personally don't see
2 how L.K. Bowman could survive.

3 CHAIRMAN KOPLAN: Mr. Shelton, how much do
4 you have left to read? I'm asking because --

5 MR. SHELTON: One paragraph.

6 CHAIRMAN KOPLAN: Why don't you do the one
7 paragraph? I'm trying to figure out what that noise
8 is in the room. I can't tell where it's coming from,
9 and I hope it's not a distraction. If you want to
10 finish that paragraph -- it is a distraction, yes. We
11 have a consensus up here. This will not count against
12 your time, my conversation with you, so if you would
13 read the paragraph, and let's find out what's going
14 on. Go ahead.

15 MR. SHELTON: When I sat here five years
16 ago, our industry had nearly completed a difficult and
17 expensive process of obtaining relief from the
18 Department of Commerce and from this Commission. Over
19 the last five years, we have invested even more time
20 and effort in defending our industry from the
21 continued flood of dumped imports. As we sit here
22 today, we are simply asking the Commission to
23 recognize that our industry needs the orders to
24 continue in order to survive. We ask that the
25 Commission vote to leave these orders in place so that

1 they will continue to help us fight unfair foreign
2 competition in our markets. Thank you.

3 CHAIRMAN KOPLAN: Thank you. I don't hear
4 it any longer. Was it the microphone, Madam
5 Secretary?

6 MS. ABBOTT: We're hopeful.

7 CHAIRMAN KOPLAN: Okay. I hear a moment of
8 silence, so why don't we proceed to the next witness
9 and start the clock again?

10 MR. COURSEY: Mr. Chairman, we will proceed
11 cautiously.

12 CHAIRMAN KOPLAN: Thank you, Mr. Coursey.

13 MR. COURSEY: Our next industry witness is
14 Mr. Shah Kazemi. Shah?

15 MR. KAZEMI: Good morning. My name is Shah
16 Kazemi. I'm president of Monterey Mushrooms, Inc., an
17 original petitioner in this case. I appeared as a
18 witness at the Commission hearing six years ago.

19 Monterey has been in business for over 30
20 years, and I've been its president since 1980.
21 Monterey has been a producer of canned mushrooms since
22 1983.

23 First, I have been asked to describe the
24 customers to whom canned mushrooms are sold and the
25 U.S. market generally. When I say "canned mushroom,"

1 I'm also talking about preserved mushrooms in glass
2 jars, a product Monterey makes.

3 Canned mushrooms are valued primarily as an
4 ingredient for a wide range of food products and for
5 their ability to be stored for up to three years.
6 There are three types of customers for canned
7 mushrooms: industrial, food service, and retail.
8 U.S. producers value and are eager to sell all three
9 types. The reason is that we realize we are all in
10 one finite market, the processed mushroom market.

11 We are suffering from low capacity
12 utilization and lack of sales, with imports taking
13 well over half of our markets. Although some U.S.
14 producers currently sell primarily to the food service
15 and industrial channels, we cannot afford to concede
16 the retail channels to the imports, as that will
17 intensify competition in other channels.

18 Monterey has another line that produces
19 retail cans, and we would be eager to put that line to
20 work, but because of unprofitable low prices in the
21 retail channel, it just doesn't make sense to produce
22 more for retail and lose money on each can produced.
23 Customers are typically large companies that use
24 canned mushrooms as an ingredient for products they in
25 turn sell into food service or retail trade. Examples

1 of industrial customers include Nestle, who produces
2 the Stouffer brand, and Unilever, who produces the
3 Ragu brand. Obviously, these industrial customers buy
4 large-sized containers of canned mushrooms, and they
5 buy in large quantities.

6 Food service customers typically provide an
7 entire range of products that entities like
8 restaurants and institutional kitchens, such as
9 schools and hospitals, need to serve meals. Like the
10 industrial channel, food service customers buy canned
11 mushrooms in large containers, typically 68-ounce
12 cans.

13 The third type of canned mushroom customer
14 is the retail customer, such as grocery store chains
15 like Safeway or distributors that sell to such chains.
16 Of course, grocery chains sell to individual shoppers
17 for home consumption. Canned mushrooms come in
18 relatively few container sizes, but those sizes are
19 distinct to channels they serve. The larger sizes,
20 the great majority of which are 68 ounce, or what we
21 call No. 10 cans, are sold exclusively to the food
22 service and industrial customers. Retail customers
23 purchase canned mushrooms in the smaller container
24 sizes, that is, four- and eight-ounce cans and jars.

25 As you all know, in recent years, so-called

1 "club stores," such as Costco and Sam's Club, have
2 grown in popularity in the U.S. market. These types
3 of stores are category killers because they blur the
4 line between different channels of trade. The
5 Commission should recognize that U.S. producers and
6 imports sell both the large No. 10's and retail size
7 in case lots to club stores. Small food service
8 businesses, for example, pizza shops and small, local
9 food distributors, will buy large cans. Costco
10 actually targets these mom-and-pop merchants.

11 Individual consumers, however, will buy the
12 smaller cans by case to use as required. It is absurd
13 to claim, as the Indonesian Respondents have, that
14 their No. 10 cans are sold in retail channels through
15 club stores and don't compete with our No. 10's. At
16 Safeway, there are no No. 10's. Households do not buy
17 68-ounce cans of mushrooms for individual consumption.

18 We sell to all three types of mushroom
19 customers, either on a spot or a short-term contract
20 basis, reflecting the ongoing intense price
21 competition between subject imports and domestic
22 producers. Our contracts, when we can sign them with
23 the buyers, are for shorter periods than in years
24 past, sometimes for only a few months. Each domestic
25 producers believes that its product is the best

1 offered. We have an excellent quality product, and we
2 provide excellent service to our customers.

3 However, the fact is that canned mushrooms
4 are a commodity product sold primarily on price where
5 the supplier, whether import or domestic, who offers
6 the lowest price usually gets the sale. The
7 information the Commission received from purchasers
8 makes this point as well.

9 Although quality is also mentioned as an
10 important purchasing factor, it must be put in
11 context. It is true that all customers are considered
12 about quality, but the really chief and fundamental
13 issue is involved with food safety rather than any
14 subtle distinction between products supplied by
15 individual producers. All products must meet FDA and
16 USDA standards.

17 Once a customer knows the product of your
18 company, whether foreign or domestic, acceptable
19 quality becomes a given. Purchase decisions come down
20 to relative pricing. That's the major variable on
21 which customers choose one supplier over another.

22 Finally, I would like to say something about
23 competition from Indonesia specifically. At the time
24 of the original case, Monterey sold into retail
25 channels but experienced intense price competition

1 from imports from subject countries. After the orders
2 were put in place, that price competition did not
3 stop, and we sell less to the retail channels now.
4 One major source of low-priced offering in retail was
5 Indonesia, and that country is still a major
6 competitor today. Our prices have continued to be
7 depressed, and our operations have suffered as a
8 result of competition from products supplied by the
9 Indonesian canners.

10 Given our past experience in competing
11 against aggressively priced products from Indonesia,
12 we are certain that if their producers are let out of
13 antidumping duty order, they will quickly become price
14 leaders in their market, driving prices down even
15 further.

16 That concludes my statement. Thank you.

17 MR. COURSEY: Thank you, Shah.

18 Our third industry witness is Mr. Dennis
19 Newhard. Mr. Newhard's company was also an original
20 petitioner in this matter. Dennis?

21 MR. NEWHARD: Good morning. I am Dennis
22 Newhard, president and CEO of Mushroom Canning
23 Company. My company has one functional location.
24 Mushroom Canning was located in Kennett Square,
25 Pennsylvania. In 2002, we had an opportunity to

1 purchase a facility that had formerly been owned by
2 Kraft Foods, and we moved our production equipment
3 from Kennett Square and increased our processing
4 operations at the new, much larger facility in
5 Maryland.

6 I wish I could tell you that the prime
7 motivation for pursuing a new, larger production
8 facility was our booming canned mushroom business, but
9 actually we moved for a variety of reasons. Our plant
10 in Pennsylvania was aging and of insufficient size to
11 accommodate any expansion of our operations. We were
12 located in several different facilities scattered over
13 20 square miles. There were also issues of waste
14 water capacity in the borough of Kennett Square. And
15 we were hoping to set the stage for future growth in
16 product lines other than canned mushrooms.

17 Our canned mushroom operations saw some
18 improvements in the response to the imposition of the
19 dumping orders in this case, but since 1999 we have
20 generally seen declines in production, sales volumes,
21 and prices. The numbers in your staff report show
22 that these declines have not been due to any downturn
23 in demand for canned mushrooms in the U.S. market;
24 rather, they have been attributable to larger and
25 larger volumes of subject imports entering our market.

1 Mushroom Canning produces canned mushrooms
2 in four- and eight-ounce sizes which generally go to
3 the retail grocery chains and 16-, 62-, and 68-ounce
4 sizes which generally are sold to food service
5 distributors and industrial accounts. While the
6 representatives of the Indonesian producers in this
7 case would have you believe that the members of the
8 petitioning group do not produce preserved mushrooms
9 for the retail side of the market, that is simply not
10 true.

11 At the time of the original investigation,
12 my company did not produce canned mushrooms in retail
13 sizes, although we had done so for many years before
14 the onslaught of imports in the 1990's. After we won
15 our cases and the dumping orders were put into place,
16 we expected to see significant renewed opportunities
17 in the retail side of the business. For that reason,
18 Mushroom Canning invested in new canning equipment and
19 installed a new production line to handle small retail
20 sales. We installed that canning line in Kennett
21 Square and moved it, along with the rest of our
22 equipment, to Maryland.

23 Despite our best intentions, Mushroom
24 Canning's retail sales have not taken off as
25 envisioned and account for just a small part of our

1 overall business. While we have made investment in
2 new retail size production equipment and have made
3 major efforts to expand our marketing to the retail
4 side of the market, we have been disappointed with our
5 degree of success in that effort. So far, we have not
6 been able to justify the investment in this new
7 equipment.

8 Our disappointing retail sales have been
9 largely due to the increase in dumped imports since
10 the time the antidumping orders were put into place.
11 While these orders worked effectively for the first
12 couple of years, it didn't take long for the foreign
13 producers from these countries to figure out ways
14 around the orders.

15 We have had major frustrations and expenses
16 in trying to protect our industry from various end
17 runs around the dumping orders. These attempts have
18 included minor reformulations of product ingredients
19 in an attempt to pass of the product as marinated
20 mushrooms, blatant manipulation of the new shipper
21 review process, and trans-shipment of the product
22 through third countries.

23 While the procedures under the law generally
24 have worked to plug these holes, these defenses have
25 taken time. In the meantime, these schemes have

1 resulted in substantial and growing import volumes.
2 The latest bit of absurdity to be put forward by the
3 foreign producers is the argument that if the order
4 against Indonesia is revoked, there will be no impact
5 to the U.S. industry. The Indonesian producers claim
6 that there really is no one in our industry producing
7 to serve the retail side of the market. That argument
8 is completely unfounded.

9 In addition to my firm, other U.S. producers
10 of mushrooms for the retail include Giorgio Foods and
11 Sunny Dell Foods. We would all be hurt by the
12 increased volumes in Indonesian imports that would
13 follow any revocation. Further, I have seen imports
14 from Indonesia in No. 10 cans, which are typically
15 used in food service and industrial applications, so
16 the impact of Indonesian revocation would certainly
17 not be limited to the retail side of the market.

18 My firm, because of its recent capital
19 investment in retail-sized production, would be
20 severely affected by increased Indonesian imports. I
21 have seen the competitive efforts of the Indonesians
22 at retail accounts firsthand. Indonesian imports are
23 sold as completely comparable to the U.S. product in
24 terms of quality but lower in price. We sell
25 primarily to private-label retail accounts. While

1 years ago there may have been some concern on the part
2 of private-label buyers as to the potential quality
3 issues in relation to imported canned mushrooms, that
4 is no longer the case.

5 Competition at these accounts centers on
6 price. Without the dumping order in place, the
7 Indonesians would push us out of the retail business
8 altogether.

9 While we have been disappointed with some
10 aspects of the antidumping orders, that does not mean
11 we would be better off without them. Since the orders
12 were put into place, the mushroom canning industries
13 in China, India, and Indonesia have grown
14 substantially, and Nature's Farm in Chile continues to
15 produce and export product. Indeed, over the past
16 five years, U.S. Customs and Commerce have stopped two
17 major fraud schemes by Nature's Farm to ship its
18 mushrooms into the United States through Canada and
19 Colombia, and the U.S. importer for the Colombia-
20 circumvention scheme has yet to pay over \$2 million in
21 dumping duties finally assessed by the agencies two
22 years ago.

23 Further, the Bank of China, which Nature's
24 Farm used to fund the Canadian scheme, last September
25 agreed to pay \$5 million to settle the Justice

1 Department's lawsuit against them.

2 The bottom line is that Nature's Farm has
3 shipped millions of pounds of product in the United
4 States market through fraud during the past five
5 years.

6 If the orders were to be revoked, imports
7 from all four of the subject countries, including
8 Chile, would not only return to the volumes they
9 shipped at the time of the investigation; they would
10 far surpass those volumes.

11 My company has particular concerns about
12 what might occur if the orders were revoked. We have
13 just made some very substantial capital investments in
14 our new facility, resulting in major increases in our
15 debt service. The only way for us to service this
16 debt is to keep substantial volumes of mushrooms
17 flowing through our process lines and selling it in
18 the marketplace. Our facility is not set up for
19 processing other food products. We need to process
20 and sell canned mushrooms in order to service our debt
21 and remain viable.

22 If the subject imports were allowed to
23 return with no restrictions, we would anticipate we
24 would lose a large part of our sales volume, and
25 prices would decline substantially. As we processed

1 fewer mushrooms, our indirect and fixed costs would be
2 spread across fewer pounds, thereby increasing our
3 cost per pound. Given our significant debt-service
4 costs, it is probable we would join the ranks of many
5 former domestic producers who have ceased operations
6 over the past few years.

7 These antidumping orders, though not
8 perfect, have been beneficial to our industry. The
9 last thing we need is their revocation. Revocation of
10 these orders would be the beginning of the end for our
11 industry. What we need is for the manipulation of the
12 orders to stop. We are making progress in that
13 direction. We have made substantial investments in
14 the future of our industry and cannot afford to lose
15 any more of our market, including the retail side, to
16 unfairly priced imports. Thank you.

17 MR. COURSEY: Thank you, Dennis.

18 My colleague, Kathleen Cannon, will address
19 the facets of the cumulation issue in these reviews.
20 Kathy?

21 MS. CANNON: Thank you. Good morning. I'm
22 Kathleen Cannon with Collier Shannon Scott, and I
23 would like to address the major legal issue presented
24 in this case, which is cumulation.

25 Before discussing that issue, let me just

1 mention the domestic industry definition. The
2 domestic industry should not be defined to exclude any
3 company from the industry as a related party for the
4 reasons we set forth in our prehearing brief.
5 Although the Indonesian producers stated in initial
6 comments that one of the U.S. companies should be
7 excluded from the industry as a related party, they
8 did not present any further arguments on this issue in
9 their prehearing brief, apparently recognizing that
10 the record does not support exclusion of any company.

11 With respect to cumulation, we believe the
12 Commission should cumulate imports from all four
13 subject countries in this sunset review. Before
14 examining the reasonable overlap of competition that
15 is present in this case, the Commission must determine
16 whether there would be no discernable adverse impact
17 of revoking any of the individual orders, a non-
18 numeric, negligibility question.

19 In the Usinor Industeel case, the court held
20 that the no-discernable-adverse-impact test was not
21 the same as the ultimate question of whether imports
22 from each country would be likely to cause injury in
23 the event of revocation. Such an approach, the court
24 stated, would "defeat the purpose of cumulation by
25 failing to guard against the hammering effect of

1 imports, which, in isolation, do not cause material
2 injury."

3 The Indonesian producers would like the
4 Commission to equate the no-discernable-adverse-impact
5 test with the ultimate injury question here. Given
6 the fungible, price-sensitive nature of the market
7 where low-priced imports can quickly regain sales, as
8 well as the evidence of likely increased volumes of
9 low-priced imports from Indonesia, in particular,
10 there would be a discernable, adverse impact from
11 Indonesian imports if revocation occurs. Indonesia is
12 not a country that has exited the market, has shut
13 down its production, or has shifted its exports
14 elsewhere.

15 An examination of the reasonable overlap of
16 competition standards shows that each of the four
17 factors the Commission traditionally examines --
18 fungibility of imports, common channels of
19 distribution, geographic overlap, and simultaneous
20 market presence -- is met in this case. I don't think
21 there is any real issue as to the fungibility of the
22 product or the likely geographic overlap or
23 simultaneous presence, so I will focus on distribution
24 channels.

25 Evidence of record establishes significant

1 volumes of sales by imports from China, India, and
2 Indonesia, as well as by U.S. producers, during the
3 review period in the retail sector, as well as sales
4 by all countries in the No. 10 cans sold to the food
5 service and industrial sectors. Despite arguments by
6 the Indonesian producers that domestic producers
7 simply have no presence in the retail market, the
8 record shows that that is far from the case. In fact,
9 as the U.S. producers testified today, domestic
10 companies would like to sell more product in the
11 retail sector but are unable to do so due to the low
12 prices prevailing there.

13 The only real question presented on the
14 retail channel is whether Chile would be likely to
15 sell to that sector if revocation occurred.
16 Information from the Chilean producers' Web site
17 indicates that despite minimal sales of the smaller
18 four- and eight-ounce cans to the retail sector at the
19 time of the original investigation, Nature's Farm is
20 now marketing those products for export.

21 We have obtained additional information
22 indicating that Nature's Farm installed a line for
23 producing retail-sized cans after these orders went
24 into place, as well as evidence that Nature's Farm is
25 presently selling these small cans into the retail

1 sector in Mexico. We will provide that information to
2 the Commission in our post-hearing brief. This
3 information indicates likely retail sales from Chile
4 as well if revocation occurs.

5 Nor is the overlap of subject imports
6 limited to the retail sector. Sales of preserved
7 mushrooms from China, India, and Indonesia, as well as
8 the U.S. product, in 68-ounce or 10-ounce cans that
9 are sold to the food service or industrial sectors is
10 demonstrated by the pricing data in the prehearing
11 report. Moreover, while no imports from Chile are
12 reported for the review period, evidence of Chile's
13 product offering from the Nature's Farm Web site also
14 shows that the No. 10 cans that are sold to the food
15 service and industrial sectors are offered for export
16 sale by Nature's Farm.

17 Further, as Mr. Newhard testified, Nature's
18 Farm has tried to export its product to the United
19 States through various circumvention schemes involving
20 the trans-shipment of the product through Canada and
21 Colombia, so it's likely that its exports would come
22 here in the event of revocation.

23 Whether or not Indonesian imports are
24 particularly sizable in the food service or industrial
25 sector, however, the evidence of consistent sales of

1 these No. 10 cans, coupled with the evidence of likely
2 overlapping imports in the retail sector with Chile,
3 justifies reconsideration of the Commission's original
4 decision not to cumulate imports from Indonesia with
5 imports from Chile.

6 Apparently recognizing this overlap in
7 competition among subject imports in the U.S. product,
8 at least between imports from Indonesia, India, and
9 China, the Indonesian producers argue that other
10 factor should be considered here to avoid cumulation.
11 In particular, the Indonesian producers allege
12 different volume trends among subject imports,
13 different trends in production capacity, different
14 average unit values, and different dumping margins.
15 None of these factors outweighs the evidence of a
16 reasonable overlap in competition among subject
17 countries or justifies a refusal to cumulate in this
18 case, particularly where, as our prehearing brief
19 demonstrates, the conditions of competition are the
20 same for all imports.

21 The discussion of volume and capacity trends
22 by the Indonesian producers focuses on past trends in
23 volumes and capacity and not on likely future imports.
24 Different countries react in different ways to the
25 imposition of an order. The issue of whether imports

1 should be cumulated, however, needs to examine the
2 likely future volume from each country and not simply
3 past behavior or trends. Factors such as capacity
4 utilization and present capacity levels are more
5 relevant to likely future volumes than are trends
6 under the discipline of an order. India, Indonesia,
7 and China have all exported consistent and significant
8 volumes to the United States following imposition of
9 the order and, as our prehearing brief demonstrates,
10 are likely to increase exports to the United States
11 even further if revocation occurs.

12 The Indonesian producers' contention that
13 different AUVs among subject products justifies a
14 refusal to cumulate is similarly unpersuasive.
15 Information from purchasers in comparing actual market
16 prices of different sources is more useful than
17 average unit values in a case of this type involving a
18 product mix of sales. Record evidence from purchasers
19 in the prehearing report indicates that prices of
20 Indonesian products are comparable to prices of
21 imports from China and India supporting a cumulative
22 analysis.

23 Finally, the Indonesian producers contend
24 that Indonesian imports should not be cumulated with
25 those of other countries because the Indonesian

1 producers have not dumped or have dumped at only small
2 levels. The Commerce Department found in this sunset
3 review, however, that if the order against Indonesia
4 is revoked, the Indonesian producers would be likely
5 to dump mushrooms into the United States at a level
6 ranging from roughly 8 to 11 percent. Commerce did
7 not find that Indonesia dumping would not continue or
8 recur.

9 In effect, what the Indonesian producers are
10 arguing is that they have been able to achieve some
11 findings of zero dumping levels at Commerce during the
12 course of administrative reviews, and on that basis
13 the Commission should consider revoking the order in
14 this sunset review. If the Indonesian producers want
15 revocation from this order on the basis of not
16 dumping, there is a forum for that issue, but it is
17 before the Commerce Department, not here.

18 In short, an exporter can get excluded from
19 the order after three consecutive Commerce reviews
20 finding no dumping. Indeed, one Indonesian producer,
21 P.T. Zeta, did just that. The other Indonesian
22 producers have been unable to consistently sell
23 product into the United States without dumping to
24 justify revocation. If they are able to do so in the
25 future, they should make their case to Commerce.

1 The Commission, however, should not refuse
2 to cumulate imports from Indonesia in this case where
3 Commerce has found that dumping is likely to continue
4 if revocation occurs and where the other factors
5 supporting a cumulative analysis are met. Thank you.

6 CHAIRMAN KOPLAN: Thank you, Ms. Cannon.

7 Mr. McGrath?

8 MR. COURSEY: Dr. McGrath will now discuss
9 conditions of competition.

10 MR. McGRATH: Thank you, Mike. Thank you,
11 Mr. Chairman. Could I have a time check?

12 MS. ABBOTT: Twenty-six minutes remain.

13 MR. McGRATH: Good morning, members of the
14 Commission, ladies and gentlemen. My name is Patrick
15 McGrath, Georgetown Economic Services. With me is
16 Mike Kerwin, also of GES.

17 CHAIRMAN KOPLAN: Could you move that
18 microphone a bit closer?

19 MR. McGRATH: Yes, sir. I would like to
20 make a few observations about the conditions of
21 competition in the processed mushroom market in the
22 United States.

23 First, in the original cases, the Commission
24 observed that apparent consumption of canned mushrooms
25 had declined while that of fresh mushrooms had

1 increased. In the five-year period of review
2 following the imposition of the orders, however,
3 demand for processed product has actually increased,
4 as the staff report shows. The increases have been
5 irregular over the period but undeniably present. It
6 is true that if one takes as a reference point the
7 mid-1990's, as the original cases did, consumption
8 shows a decline from that point.

9 There is one component of consumption,
10 however, that has been consistent, and that is the
11 decline and continued unhealthy condition of the U.S.
12 industry and what is relevant in the present context,
13 the continued vulnerability of that industry to
14 unfairly traded imports. In fact, despite the orders,
15 subject imports have continued to grow. Indeed, they
16 have taken all of the growth in consumption in the
17 period of review that we just referred to.

18 U.S. industry shipments and sales have
19 declined, as has U.S. producers' share of the market,
20 despite this period of increased demand. Less than
21 one-fourth of the industry's productive capacity was
22 used in the review period, despite consolidations,
23 closures in the industry. U.S. producers' prices
24 declined, and the industry as a whole reported
25 negative operating profits in each of the last four

1 years of this period of review, all within the context
2 of this growing market for the products it produces.

3 The vulnerable condition of the industry
4 five years after relief is going to be detailed by
5 Mike. But in the context of this growing market, this
6 hammering effect of the subject imports, to borrow a
7 phrase, is brought into sharper relief, we believe,
8 and the vulnerability to still greater material injury
9 if the orders are revoked becomes even more apparent.

10 The only Respondent party who chose to
11 participant in these reviews appears to agree with
12 this point on the U.S. industry vulnerability, if only
13 unwittingly. A Respondent brief confused certain USDA
14 data on U.S. industry declines with that of the
15 general U.S. market to posit a false theory of neglect
16 by U.S. producers of the processed market in favor of
17 fresh mushrooms. Both their data and their
18 conclusions are wrong, as these producers at this
19 table and their presence here today demonstrates.

20 U.S. producers, whether also fresh growers
21 or whether only canners, have defended these orders
22 vigorously over the five years, even as certain
23 foreign suppliers, as you have heard, have frustrated
24 the orders in various ways and swamped the market with
25 more dumped imports. The ITC prehearing report, at

1 Roman numeral 120, lists what percentage of the U.S.
2 industry, both Petitioner and non-Petitioner, both
3 fresh grower, vertically integrated fresh grower and
4 canner, support continuation of these orders, and that
5 includes all of these orders, including that of
6 Indonesia.

7 The second condition of competition
8 identified in the original determination was that of
9 the existence of three channels of distribution. Mr.
10 Kazemi detailed these channels earlier. It remains
11 for us to point out that the U.S. industry produces
12 canned mushrooms in commercial quantities in all three
13 of these channels, that there are multiple producers
14 of these products that service each channel, and that
15 subject imports also are sold in all three channels in
16 commercial and, we would maintain, injurious
17 quantities.

18 The competitive fact of U.S. and subject
19 importer sales to all three channels and the
20 competition therein is well settled therefor.
21 Domestic shipments and imports by channel are reported
22 in the price comparison tables in your staff report,
23 and they show significant quantities sold by
24 Indonesian importers in all three channels of
25 distribution. In fact, the staff was able to make

1 more price comparisons between U.S. and Indonesian
2 products than for any other import source. This is in
3 spite of the fact that price comparisons represent
4 less than 30 percent of total imports from Indonesia.

5 We would also refer the Commission to the
6 results of the other information it customarily
7 examines in the context of conditions of competition
8 in all its cases, especially that gathered from
9 industrial, food service, and retail purchasers of
10 these products. These purchasers confirm the
11 continued characteristics of this market first found
12 in the original investigations: first, that price is
13 an important variable in purchasing decisions, in
14 fact, second only to quality; that lowest priced is a
15 "very important factor" in purchases; that the U.S.
16 product, in comparison to each of the subject
17 countries' products, was judged superior or equal to
18 imports in almost all market factors. The only
19 advantage that the majority of purchasers gave to
20 subject imports was lowest price, the one that really
21 counts.

22 The primacy of this factor is confirmed by
23 the trends in market share of U.S. versus subject
24 imports. These purchasers' comparisons are, indeed,
25 telling, specifically for the results vis-a-vis

1 Indonesia. Despite Respondents' strained attempts to
2 create some kind of a market-segmentation issue in
3 this case, comparisons between Indonesian products and
4 U.S. producers' products and other subject imports
5 consistently characterized the imports from Indonesia
6 as ordinary. For example, imports from Indonesia,
7 according to purchasers, were comparable to imports
8 from China in all 22 comparison factors. Indonesian
9 product was found superior to the U.S. product only in
10 terms of discounts and lowest price, and all
11 purchasers reported that Indonesian and U.S. products
12 were either always or frequently interchangeable.

13 So it is against this Himalaya of evidence
14 that Indonesian Respondents try to patch together some
15 kind of market-segmentation argument. The statement
16 to the effect that "U.S.-processed mushroom companies
17 continue to focus on food service and industrial
18 product segments and remain out of the retail market
19 segment," as you have heard, and as the staff report
20 and the record plainly show, is just wrong.

21 Finally, their attempt to differentiate
22 Indonesian from other subject imports on the basis of
23 average unit values is not relevant, as Indonesian
24 average unit values would, in any case, be higher,
25 given their concentration in small, canned, retail

1 products.

2 In short, the record in this review agrees
3 with the original case in all factors the ITC
4 customarily examines. The conclusion of the original
5 case, not only as to cumulation, as Ms. Cannon spoke
6 to, but also that the U.S. product and subject import
7 sources compete with each other in the marketplace,
8 and they compete primarily on price in all three
9 channels of distribution should be affirmed in this
10 review. Thank you.

11 MR. COURSEY: Mr. Kerwin will present the
12 remainder of our analysis.

13 MR. KERWIN: Good morning. I'm Michael
14 Kerwin of Georgetown Economic Services. This morning,
15 I would like to address issues of the likely volume
16 and price effects and the likely impact of imports of
17 the subject merchandise in the event of revocation.

18 Since the time the orders were put into
19 place, cumulated import volumes from the subject
20 countries have remained below those seen in the
21 original investigation. The year of the lowest volume
22 was the first year that the orders were in place,
23 1999. Since that year, however, subject imports have
24 shown generally increasing volumes. In fact, by 2003,
25 subject imports reached their high point of the post-

1 order period.

2 The individual countries under order showed
3 disparate volume trends in the post-order period,
4 although all made clear their continued focus on the
5 U.S. market. Official imports from Chile fell to zero
6 and remained there throughout the post-order period;
7 however, Chilean producer Nature's Farm continues to
8 produce, and its exports have increased dramatically
9 since bottoming out in 1999. Given the Chilean
10 producers' efforts to circumvent the order, it is
11 clear that this producer has designs on returning to
12 the U.S. market and that it would shift its output in
13 the event of revocation.

14 Imports from China initially fell
15 dramatically in response to the imposition of the
16 order, declining to almost zero in 1999. In each year
17 since that time, however, Chinese imports have
18 increased, more than doubling between 2000 and 2001
19 and doubling again in 2003. In fact, by 2003, Chinese
20 import volumes actually exceeded those in 1998, the
21 last year of the original POI. The growth in Chinese
22 import volumes has been due to the emergence of new
23 producers and the manipulation of the new shipper
24 review process.

25 While the Commission received no response

1 whatsoever to its questionnaires distributed to the
2 Chinese industry, it can reasonably be assumed from
3 the proliferation of new shippers that the industry's
4 productive capacity has more than doubled since the
5 time of the original investigation. The public data
6 in the prehearing report support this assumption, as
7 Chinese exports have expanded dramatically since the
8 time the orders were imposed. In the event of
9 revocation, therefore, it can be safely concluded that
10 Chinese import volumes would be significantly larger
11 than at the time of the investigation.

12 Imports from India have remained
13 significantly higher throughout the post-order period
14 than during the original POI. This reflects the
15 expansion of the Indian industry which began during
16 the original POI and continued into the post-order
17 period. As a result, average annual import volumes
18 from India since the imposition of the order were more
19 than four times higher than during the POI.

20 While the Commission received two
21 questionnaire responses from Indian producers, at
22 least 13 other Indian producers of the subject product
23 have not been heard from. On the basis of this
24 inadequate response and the information that is
25 available from responding producers, the Commission

1 should conclude that U.S. import volumes from India
2 would increase substantially in the event of
3 revocation.

4 Finally, subject imports from Indonesia
5 increased initially after the imposition of the
6 antidumping duty order. Indonesian producer P.T. Zeta
7 Agro became a nonsubject producer in 2002, resulting
8 in a predictable impact on total subject import
9 volumes, but all other producers in Indonesia remained
10 subject to the order, and the Commerce Department has
11 found that those producers are likely to dump their
12 product in the U.S. market at significant margins in
13 the event of revocation.

14 Further, two new producers of subject
15 merchandise have opened processing facilities since
16 the original investigation. As noted in the
17 prehearing report, the industry's overall production
18 capacity remained relatively stable from 1998 to 2003,
19 but production declined, with a resultant decline in
20 capacity utilization. While two other Indonesian
21 producers claim to have ceased production of canned
22 mushrooms, for the reasons outlined in our prehearing
23 brief, those claims should be examined carefully by
24 the Commission, as should the methodology for
25 reporting capacity employed by all Indonesian

1 producers. Indonesian producers remain focused on the
2 U.S. market, and in the event of revocation, volumes
3 imported from Indonesia are likely to increase
4 substantially.

5 In sum, imports from each of the four
6 subject countries are likely to increase dramatically
7 in the event of revocation. Notably increasing the
8 likelihood of this expansion is the fact that the
9 European Union continues to maintain a severe quota
10 on imports of preserved mushrooms from all countries
11 outside of the EU. While China, Romania, and Bulgaria
12 are provided separate volume quotas under the EU
13 system, all other countries of the world, including
14 Chile, Indonesia, India, and, for that matter, the
15 United States, must share a minuscule, rest-of-the-
16 world quota. This quota is currently set at the
17 equivalent of 7.3 million pounds, which translates to
18 only about 4 percent of the total U.S. consumption of
19 preserved mushrooms.

20 While the EU quota on imports of preserved
21 mushrooms from China is larger than that for all other
22 countries, it is nevertheless not much higher than the
23 volume of imports that actually entered the United
24 States from China in 2003. Indeed, the EU quota on
25 China is reported to fill up within days of its annual

1 allocation announcement. Further, aside from a small
2 adjustment in acknowledgement of the expansion of the
3 EU in 2004, the quota on imports from China has
4 remained at the same volume since the original
5 investigation.

6 In light of the EU's draconian quota system
7 on imports of preserved mushrooms, exports to this
8 major market are severely limited, and any future
9 expansion of such trade is essentially ruled out.
10 Thus, if revocation were to occur, exports of
11 preserved mushrooms from China, Chile, India, and
12 Indonesia would be extremely likely to enter the
13 United States, the most attractive and open market in
14 the world.

15 On the issue of the likely price effects of
16 the subject imports in the event of revocation, the
17 prehearing report makes clear that such impact would
18 be extremely damaging. General Mills has announced
19 that it is going to change its pricing data on imports
20 from Indonesia at some later, undisclosed date, so we
21 have been precluded from drawing concrete conclusions
22 in that regard currently. Nevertheless, the data that
23 are currently on the record show that there was
24 widespread underselling of the domestic industry by
25 the subject imports in the post-order period.

1 For the three pricing products examined, the
2 subject imports undersold domestic prices in 82
3 percent of possible comparisons. Average prices
4 during the post-order period declined on all three of
5 the pricing products for Indian imports and two of the
6 three products imported from Indonesia. While Chinese
7 imports did not show price declines on these products
8 during the post-order period, the Commission should be
9 wary of drawing conclusions in this regard because
10 coverage for Chinese imports was extremely poor, with
11 the reported pricing information accounting for less
12 than one percent of all imports from China in 2003.

13 Data available elsewhere to indicate that
14 prices of Chinese imports have fallen substantially
15 since early in the post-order period. The average
16 unit values of Chinese imports fell from \$1.35 per
17 pound in 1999 to just 90 cents per pound in 2003, the
18 lowest in the post-order period and a 33-percent drop
19 in relation to 1999.

20 Moreover, evidence that subject imports are
21 priced lower than U.S. producer prices is not based
22 only on pricing comparisons but on information from
23 purchasers. Purchasers reported that prices of
24 subject imports from China, India, and Indonesia are
25 comparable to one another and lower than the prices of

1 U.S. producers. To the extent that the revised
2 Indonesian pricing data do not show underselling,
3 these data would be at odds with the information
4 obtained from purchasers.

5 Thus, prices for the subject imports have
6 generally declined in the post-order period and have
7 undersold domestic producer prices. This underselling
8 has caused price depression, as the average unit value
9 of domestic shipments fell by 15 percent between 1999
10 and 2003. As was the case during the period of
11 investigation, the subject imports during the post-
12 order period continue to have severe price effects.
13 If the price-restraining effects of the antidumping
14 duty orders are allowed to disappear and the subject
15 imports return in higher volumes, the downward price
16 effects in the U.S. market far more severe.

17 Finally, I would like to discuss the likely
18 impact of the imports in the event of revocation. As
19 you can see from the staff report and have heard from
20 the industry representatives, the U.S. preserved
21 mushrooms industry has benefitted from the imposition
22 of the antidumping orders but remains in a very
23 precarious position.

24 Three producers have ceased producing the
25 domestic like product during the post-order period,

1 and while industry production capacity has fallen,
2 utilization remains very low. After peaking in 1999,
3 the domestic industry's shipments showed declining
4 trends through 2003. Because imports were generally
5 rising during this period, the domestic industry saw
6 its market share fall from 40 percent in 1999 to just
7 26 percent in 2003, an all-time low.

8 Prices, as reflected in dollar-per-pound
9 shipment value, have also been declining. After
10 peaking at \$1.37 per pound in 1999, unit shipment
11 values have fallen almost consistently to just \$1.17
12 per pound in 2003. Bear in mind, these price declines
13 occurred as apparent consumption of preserved
14 mushrooms in the United States was generally
15 increasing.

16 The combined impact of declining shipments,
17 depressed pricing, and increased production costs via
18 reduced throughput has been a substantial decline in
19 domestic industry profitability. While operating
20 profits improved in 1999 after the imposition of the
21 orders, returns declined almost consistently since
22 then and fell to substantial losses in the last few
23 years. All of these declines occurred as the subject
24 imports were increasing substantially, and the
25 domestic industry was losing market share.

1 In the face of this picture of an extremely
2 vulnerable domestic industry, the Commission must
3 decide whether the four antidumping duty orders should
4 be revoked. As I discussed earlier, import volumes
5 from each of the subject countries are likely to
6 increase substantially in the event of revocation.
7 Further, the subject imports continue to undersell the
8 domestic industry and have caused price depression
9 with the strictures of the dumping orders in place.
10 So it is clear that without the orders in place, the
11 price effects on the domestic industry will be far
12 more severe.

13 Even if the Indonesian order alone were to
14 be revoked, as advocated by the Respondents here
15 today, there would be a substantial price and volume
16 impact on the domestic industry in both the retail and
17 food service areas of the market. Remember, with the
18 Indonesian order in place, it is wise for exporters to
19 modify their pricing and limit their antidumping duty
20 liabilities. Without an order in place, a very
21 different market dynamic will prevail. Indonesian
22 importers and foreign producers will compete among
23 themselves in a free-for-all of downward price
24 competition, and the result will be massive
25 underselling of the domestic industry.

1 This is why you must rely on the dumping
2 margins determined by the Commerce Department in this
3 sunset review was likely to prevail in the event of
4 revocation in assessing the likely future actions of
5 the Indonesian producers.

6 The combined impact of reduced market share
7 and further price depression would be more than the
8 domestic industry could withstand in its current,
9 vulnerable condition. The domestic industry needs to
10 have all four orders extended and given an opportunity
11 to work properly through the tightened administration
12 of Commerce and Customs. Thank you very much.

13 MR. COURSEY: Mr. Chairman, let me make one
14 final note. On our witness list, the name of Mr. Gary
15 Caligiuri appears. Mr. Caligiuri is president and CEO
16 of Sunny Dell Foods. Mr. Caligiuri had a family
17 emergency develop earlier this week and was, as a
18 result, unable to attempt the hearing. He is planning
19 on submitting a statement that we would attach to our
20 post-hearing brief addressing issues that may arise in
21 response to questions from the Commission here. Mr.
22 Caligiuri had planned to testify on matters including
23 his participation in the retail sector.

24 I just wanted to note that for the record.

25 CHAIRMAN KOPLAN: Was his testimony prepared

1 in advance of today's hearing, though?

2 MR. COURSEY: No. We did not submit it.

3 CHAIRMAN KOPLAN: And he had no prepared
4 statement for today.

5 MR. COURSEY: We have none to submit at this
6 time. My point is, Mr. Caligiuri is available. If
7 there are questions that arise that he could respond
8 to from the Commission, we can submit his response as
9 an attachment or as part of our response to Commission
10 questions, limiting his response to those issues.

11 CHAIRMAN KOPLAN: The only reason I'm asking
12 that, Mr. Coursey, is the fact that at the conclusion
13 of this panel's testimony, one of the things that can
14 happen is that the other side can inquire. Out of
15 their 16 minutes, they can ask questions of your
16 witnesses.

17 MR. COURSEY: I understand.

18 CHAIRMAN KOPLAN: He is not going to be here
19 for that. Let me think about that. You go ahead and
20 do what you need to do, and I'll decide that at the
21 time.

22 MR. COURSEY: Certainly, Thank you, Mr.
23 Chairman.

24 CHAIRMAN KOPLAN: You understand where I'm
25 coming from.

1 MR. COURSEY: Absolutely. I had not
2 considered that fact. We will abide by your decision.

3 CHAIRMAN KOPLAN: Well, you might confer
4 with the other side during the break and see whether
5 they have any objection to that --

6 MR. COURSEY: Very good.

7 CHAIRMAN KOPLAN: -- and let us know. Thank
8 you. With that --

9 MR. COURSEY: We're ready for questions.

10 CHAIRMAN KOPLAN: I thought you were. I
11 want to thank the witnesses for their testimony, and
12 we will begin the questioning with Commissioner
13 Miller.

14 COMMISSIONER MILLER: Thank you, Mr.
15 Chairman. Let me join in thanking and welcoming back
16 particularly the industry witnesses. We appreciate
17 your willingness to be here today and to explain to us
18 what has happened during the time that the order has
19 been pending. It is always interesting to find out
20 after the fact what has been the effect of the order.
21 It's more satisfying when you see improvements in the
22 industry than the picture that you've described,
23 obviously, but we appreciate your willingness to be
24 here to help us understand it.

25 I think I would like to begin my questioning

1 with asking you to talk a little bit more about any
2 changes in demand that have occurred since the order
3 went into place. There have been a couple of comments
4 referencing our consumption numbers going up over the
5 particular period that we're looking at most
6 carefully, the period since the order occurred, but I
7 know, in the original investigation, we had this issue
8 about the competition between fresh and canned
9 mushrooms as well. That was something we considered
10 just as a condition of competition.

11 I'm just interested in understanding what's
12 been going on in the market in general but also
13 perhaps with a particular eye to explaining how the
14 competition between fresh and canned mushrooms has
15 occurred over the last five years. Mr. Newhard?

16 MR. NEWHARD: Yes. I think what we saw from
17 10 years ago to five years ago was the change in the
18 national pizza chains, such as Papa John's and Pizza
19 Hut, going from canned to fresh, so there was a large
20 drop in the canned volume because of that one sector
21 of the industry. Since that conversion, which
22 happened between five and 10 years ago, there hasn't
23 really been a continued move of people buying canned
24 mushrooms moving to fresh. It was pretty much that
25 one segment, which is very dramatic. A very large

1 portion of the mushroom market is that.

2 So after losing that, I would say that the
3 market has been consistent. It's not growing
4 particularly well. It's not shrinking. Obviously,
5 what growth there has been has been to imports, not
6 domestic, but the whole industry of canned mushrooms
7 is no longer shrinking.

8 COMMISSIONER MILLER: So essentially stable
9 since '98, '99. Do either of the other industry
10 representatives want to comment? I see you shaking
11 your head, Mr. Kazemi, in agreement.

12 MR. KAZEMI: I do agree. The category is
13 growing probably with the population, but what's
14 happening is our share of the market is declining.
15 That's the difference. The market, in totality, is
16 growing at one or two percent, but if you look at the
17 U.S. portion of the market, I would say our production
18 is -- versus four years ago or five years ago.

19 So in one sense, the market is growing in
20 totality, but our share of the market is declining.

21 COMMISSIONER MILLER: No other major shifts
22 in demand in that sense. Basically, you're describing
23 a more or less stable market. I understand your
24 market share point, but the demand as a general --

25 MR. KAZEMI: The demand in general is

1 growing.

2 COMMISSIONER MILLER: And retail versus
3 institutional; would you describe that as a sort of
4 stable relationship as well, or is there more
5 volatility there? Any differences, just to
6 understand, since that was, again, another issue that
7 we looked at pretty closely?

8 MR. KAZEMI: We don't see a significant
9 change in either sector. They are both growing at
10 minute levels.

11 COMMISSIONER MILLER: Well, let me ask a
12 little bit about price. You've noted the declines in
13 prices that we see, I think, reflected in our AUVs and
14 in our pricing data. I understand the comments you've
15 made about the continuing impact that you have felt
16 from imports. Are there any other factors affecting
17 prices in this time frame, general economic
18 conditions?

19 Understanding the snapshot that you've
20 portrayed today is of a vulnerable industry, I just
21 want to make sure I understand everything that has
22 gone into making it a vulnerable industry. Obviously,
23 you focused on imports, but I also wanted to
24 understand if there was anything else. Does the price
25 of canned mushrooms reflect general economic

1 conditions? Did that tend to drive prices down or
2 affect it in any way? And, again, if there are any
3 distinctions in retail versus institutional, help me
4 understand that. Mr. Shelton, you look like you were
5 reaching for the microphone there.

6 MR. SHELTON: I said that we lost the bulk
7 of our major customer even after this went in, and it
8 was simply because they could buy imported product to
9 replace our product at a significant amount of what we
10 could do and, in fact, today would come back if we
11 could produce product that could compete price-wise
12 with that particular country. So --

13 COMMISSIONER MILLER: So, for you, imports
14 are what's affecting price and nothing else out there
15 in the market.

16 MR. SHELTON: Well, keep in mind that as we
17 said previously, we got out of the retail business
18 years ago because we couldn't make --

19 COMMISSIONER MILLER: Right.

20 MR. SHELTON: -- a profit, and we went
21 basically over to the industrial. Our customers are
22 still producing the items and still putting it into
23 the cafeterias and still putting it into the retail
24 stores; they have just replaced the canned mushrooms
25 they were buying, in large degree, from our company to

1 another company. We're still on their list. We still
2 sell them some, but instead of selling them large
3 quantities, we now sell them small quantities, and
4 it's simply because we can't compete price-wise.

5 COMMISSIONER MILLER: Okay. Mr. Newhard or
6 Mr. Kazemi, anything else just to help me understand
7 what affects the prices for your product, whether
8 there's any other economic conditions that affect
9 them?

10 MR. KAZEMI: Actually, the costs are
11 continuing to go up. If you look at the energy costs,
12 the labor costs, the benefit costs, the workmen's
13 comp. costs, all of our costs are escalating, some of
14 them in double digit. We would love to pass those
15 costs on to our customers or a portion of it, but in
16 the face of competition, we are forced to lower our
17 prices. Either meet or beat those prices; that's
18 what's happening in the marketplace. If you cannot
19 meet competition or beat them, then you lose the
20 sales.

21 COMMISSIONER MILLER: Mr. Newhard, anything
22 to add?

23 MR. NEWHARD: What Shah said is exactly
24 right. The other component would be the cost of fresh
25 mushrooms. Are fresh mushrooms lower in cost today

1 than they were before? You really have to view the
2 cost of fresh mushrooms. A big factor in what is the
3 cost of fresh mushrooms really has to do with what we
4 can get for our product, and since we, unfortunately,
5 kind of refuse to admit, but the reality is we're a
6 minority player in processed mushrooms, you know, due
7 to price, so the imports really set the stage for
8 pricing, and everything else has to come down, to a
9 large degree, to that level. And so, you know, that's
10 going to mean we're going to pay less for mushrooms,
11 so our mushroom cost has gone down, yes, okay, but
12 it's only gone down because that's all we can afford
13 to pay for the mushrooms.

14 So really what caps the whole thing is the
15 import pricing.

16 COMMISSIONER MILLER: The price that you can
17 receive for your product, and that, as you've
18 described, is dictated by the import competition.

19 MR. KAZEMI: I might just add -- excuse me --
20 -

21 COMMISSIONER MILLER: Yes, please do,
22 because I don't have time to go on to my next question
23 anyway.

24 MR. KAZEMI: -- what happened in the
25 marketplace, the imports established a floor pricing.

1 Now, some few customers are willing to pay a little
2 premium for domestic product, but they are few and far
3 in between, but that's when that floor was
4 established. You cannot be asking a premium for your
5 product because it's a commodity product. When you
6 open a can of mushrooms, you couldn't tell this is
7 from my company or from Dennis's company or it's from
8 Indonesia or it's from China. It's an interchangeable
9 product.

10 COMMISSIONER MILLER: All right. I
11 appreciate that. Mr. Newhard, your comments about the
12 cost of the fresh mushrooms that you're processing; I
13 have some questions on that line, but given the red
14 light, I'll hold them until later if no one asks
15 questions about them in the meantime. I appreciate
16 your responses. Thank you.

17 CHAIRMAN KOPLAN: Thank you, Commissioner
18 Miller. Commissioner Hillman?

19 COMMISSIONER HILLMAN: Thank you, Mr.
20 Chairman, and I would, too, welcome this panel and
21 thank you very much for all of the information that
22 you've provided, both in the prehearing information as
23 well as this morning.

24 If I can follow a little bit along the lines
25 that Commissioner Miller was asking because I, too,

1 share some of the same questions in terms of looking
2 at the information. I believe that this is the first
3 vote that I cast as a final vote that has now come
4 back to the Commission for a sunset review, so it is
5 an interesting exercise for all of us to look at what
6 happened as a result of putting an order in place. We
7 obviously spent a lot of time with you leading up to
8 the vote for this final to try to understand your
9 industry and the dynamics going there.

10 Obviously, it is, to some degree, I think,
11 troubling to us and obviously very troubling to you to
12 see the financial picture of the industry not having
13 improved to the degree that all of you, no doubt,
14 hoped, and we would have assumed when an order goes in
15 place. So I'm trying to understand from your
16 perspective kind of what happened. I've obviously
17 heard your story in terms of the imports not really
18 coming out of the market, and obviously we have the
19 data there. But I'm still struggling, too, with this
20 issue of what's gone on on the price side of things
21 and this issue of the relationship between the fresh
22 market and the canned market.

23 Out of curiosity, how does the fresh market
24 have an effect on the prices in the canned market, or
25 are they completely separate? From a purchaser's

1 perspective, do the prices in the fresh market affect
2 in any way what you can sell your product for?

3 MR. KAZEMI: There is no correlation between
4 fresh and processed because our company is vertically
5 integrated, so we sell fresh mushrooms, and we sell
6 canned mushrooms, and the consumer that buys fresh
7 mushrooms is only interested in the fresh mushrooms.
8 So there is no substitution taking place between
9 fresh, and the only relationship that exists is when
10 there is excess fresh mushrooms that don't have a
11 home, the price that is transferred to the cannery
12 might get depressed. That's the only relationship.

13 COMMISSIONER HILLMAN: Okay. What I'm
14 trying to understand is it's your choice to either
15 sell into the fresh market or to can that product.

16 MR. KAZEMI: Actually, you cannot grow
17 mushrooms for process segment in this country. You
18 would not stay in business for one day because you
19 cannot produce mushrooms cheap enough to put them in a
20 can. That's --

21 COMMISSIONER HILLMAN: So, in other words,
22 what you're saying is you are trying to push
23 everything you can into the fresh market, --

24 MR. KAZEMI: Right.

25 COMMISSIONER HILLMAN: -- and it's only when

1 you've exceeded --

2 MR. KAZEMI: Right. The second grade goes
3 into the cannery.

4 COMMISSIONER HILLMAN: Okay.

5 MR. KAZEMI: All of the stuff you cannot
6 sell in the fresh market goes to the can. You cannot
7 have a dedicated farm growing --

8 COMMISSIONER HILLMAN: Right. Okay, okay.
9 Mr. Shelton?

10 MR. SHELTON: Our company buys all of the
11 mushrooms that we process from local growers, and
12 while I would love to say, and it did happen 15, 20
13 years ago, you would sit down with a customer, and you
14 would correlate the cost-plus basis, if you will.
15 Fresh mushrooms cost 50 cents a pound, so we're going
16 to charge you \$25 a case for your mushrooms. In the
17 last 15 years, that hasn't happened. The major buyers
18 could care less about what's happening to the price of
19 fresh mushrooms, and it's one of those deals where I
20 usually say there is not much correlation between cost
21 and selling price.

22 When you sit down with a customer, you're
23 looking on what the customer wants, and then, you
24 know, it comes down to, "This is our price. If you
25 can meet it, fine." If not, they are going to buy

1 somewhere else, whether fresh mushrooms are abundant,
2 fresh mushrooms are short, whether they are cheap or
3 high priced. So it all comes down to what the
4 finished price is.

5 COMMISSIONER HILLMAN: Okay. I appreciate
6 that. Mr. Shelton, you had testified on the issue of
7 getting back into the retail market, that you had been
8 in that market, that you shut down that line, as I
9 understood your testimony, and that basically you've
10 gotten out of it but would or could get back into it
11 if it made financial sense. I'm trying to understand
12 what the capital costs would be or the timing would be
13 if you were to choose to get back into retail.

14 MR. SHELTON: The capital cost would be
15 putting in the new capping machines and processing
16 lines for the smaller cans. We process retail sizes,
17 and that was our major item from 1962 to 1984. At
18 that time, we slowly got out simply because we
19 couldn't compete. That's why we keep going back
20 reviewing it on an every-six-months basis because we
21 could use the same cookers. We would use the same
22 mushrooms. We would use the same blancher. It would
23 just be putting in new capping machines and new
24 processing lines that go from the slicers on down.

25 COMMISSIONER HILLMAN: And what's the cost

1 to do that?

2 MR. SHELTON: Right now, we figure somewhere
3 around \$300,000.

4 COMMISSIONER HILLMAN: Okay. I appreciate
5 that. A couple of clarifications --

6 MR. COURSEY: Mr. Newhard wanted to respond.

7 COMMISSIONER HILLMAN: I apologize. Mr.
8 Newhard, go ahead.

9 MR. NEWHARD: It's simply that we have the
10 lines sitting there. They are ready to go and exist;
11 we just haven't used them very much.

12 COMMISSIONER HILLMAN: You have the lines.

13 MR. NEWHARD: Yes.

14 COMMISSIONER HILLMAN: All it would take
15 literally was a demand and a price that would make
16 sense for you to, in essence, turn that line on.

17 MR. NEWHARD: They currently run
18 approximately one day a month.

19 COMMISSIONER HILLMAN: Okay. I appreciate
20 that. Just a couple of legal clarifications. On the
21 issue of product going into the European Union, just
22 to make sure I understand it, that is a quota
23 affecting imports from all sources. And, again, it's
24 not a duty issue; it's a quota, and there is no LOME
25 or other exemptions to it. It's a pure, across-the-

1 board quota. I'm just trying to make sure I
2 understand.

3 MR. COURSEY: Sure. We can provide more
4 information in our post-hearing brief. What the EU is
5 doing -- as you know, they are very clever at these
6 things. This is a process where they are rebinding
7 their tariffs. In a number of commodity agricultural
8 areas, they have identified import sensitivity, and
9 under existing international norms, which I couldn't
10 go into here, but we could in the post-hearing brief,
11 they are required to go back to the time when they
12 first gave their bindings for a particular category
13 and negotiate with the major suppliers to their market
14 at that point if they are WTO members and give them
15 compensation or renegotiate the bindings by, for
16 example, giving them large quotas or large
17 accommodation as to whatever results.

18 In the rebinding, the rebinding is not just
19 limited to tariffs, but it goes over into quotas.
20 They have done this with garlic, fresh garlic, for
21 example, and what happens is they go back 20, 30
22 years, whenever they had the particular binding on
23 this product, they see who were the suppliers at that
24 time, and they tend to come up with a factor of three
25 countries and say we're going to give the brunt to the

1 three major suppliers at that time, sort of ancient
2 history, and the rest of the world gets the remainder
3 of the quota we come up with.

4 No one has challenged this yet at the WTO
5 largely because no one can really figure out how it
6 works. It's fairly complicated. But the net result
7 is they announce in their journal, their equivalent of
8 the Federal Register, that we've rebound our tariffs,
9 and we've completed our negotiations.

10 They go through a negotiation process. They
11 alert all of the WTO members when they are starting
12 the process, and the U.S. has been aware of this at
13 the USTR, and they are sort of left on the outside
14 banging on the door while these negotiations take
15 place, and what ends up is the U.S., on canned
16 mushrooms and other products now, has to scramble for
17 a minute share of their quota with virtually all
18 countries outside of a couple.

19 COMMISSIONER HILLMAN: Again, I just trying
20 to make sure I understand. Whether it's a quota,
21 whether it's a tariff-rate quota in theory -- a lot of
22 these were supposed to have been converted into
23 tariff --

24 MR. COURSEY: We can look for further
25 information. I don't know if there is a tariff

1 component.

2 COMMISSIONER HILLMAN: And I didn't know
3 whether if there's LOME suppliers, they get a
4 differential treatment. I'm trying to make sure I
5 understand exactly whether these subject countries,
6 the level of their access into the European Union
7 market.

8 MR. KERWIN: It is a strict volume quota,
9 and then within the quota there are tariffs as well.
10 Those are just straight, ad valorem tariffs. So, in
11 other words, you are absolutely limited to the amount
12 of the quota, and then within that quota you pay a
13 tariff as well.

14 COMMISSIONER HILLMAN: And is the quota
15 allocated?

16 MR. KERWIN: They are strict quotas.

17 COMMISSIONER HILLMAN: Country-by-country
18 allocations?

19 MR. KERWIN: Well, in the instance of China,
20 Romania, and Bulgaria, they have their own specific
21 quotas, and then there is a rest-of-the-world quota
22 that's a free-for-all.

23 COMMISSIONER HILLMAN: Again, just quickly,
24 if there is something that could be added to the post-
25 hearing just to lay out exactly this issue. Thank

1 you.

2 MR. COURSEY: We'll do what we can.

3 COMMISSIONER HILLMAN: Okay. Thanks.

4 CHAIRMAN KOPLAN: Thank you, Commissioner.
5 Commissioner Lane?

6 COMMISSIONER LANE: Good morning. I've
7 listened to your testimony and, of course, have read
8 the record. This is an industry that was struggling
9 prior to the imposition of the original order, and,
10 according to your testimony today, this is still a
11 struggling industry. What steps is the industry
12 taking other than seeking a continuation of this order
13 to make the industry profitable?

14 MR. COURSEY: Maybe I could start off by
15 addressing what may be the sort of 800-pound gorilla
16 here, which is China and the China imports. As you
17 heard Mr. Kerwin say, and it's in the staff record,
18 the first year of the order, China imports went to
19 zero, 1999. Beginning in 2000, the Chinese importers
20 started exploiting what's called the "new shipper
21 administrative review" at the Commerce Department.
22 This is a process which has resulted in huge amounts
23 of product being brought into the United States
24 virtually without restraint, without a real
25 application of the dumping order.

1 We have estimated, based on public
2 information, that 50 to 70 percent of all Chinese
3 products that have come into the market since 2000 are
4 from so-called "new shippers." In a nutshell,
5 importers for new shippers are allowed to satisfy
6 their duty-deposit requirement with a bond as opposed
7 to cash.

8 They have been able to fool the Customs
9 Service, fool bonding agencies by either not getting a
10 bond at all or getting a bond, shipping millions of
11 pounds of product during the new shipper review
12 process, which can go on for 18 months. At the end of
13 that process, if they lose, they walk away. It's not
14 until a regular administrative review of that period
15 gets finished a couple of years from then that Customs
16 will ultimately issue a bill, and the bonding agency
17 will find out that they have got a huge liability, or
18 Customs will find out they didn't get the bonds.

19 It's breathtaking what is happening in that
20 area. The industry has taken steps with other
21 industries because this affects four major ag.
22 industries in the U.S., in fact, the only four
23 industries which have Chinese dumping orders, to get
24 the law modified, and that's proceeding. The Commerce
25 Department has also toughened up its regulations in

1 its processing of new shipper reviews.

2 For the first several years, Commerce was
3 processing these sort of blank checks to the
4 applicants to bring this product in. Anybody could
5 apply for a new shipper review. Very little trade.
6 But there are efforts being expanded there, and we are
7 confident that if this particular loophole is closed,
8 the order against China will be rehabilitated, and the
9 effectiveness of that order will come back.

10 It's a very serious matter. I only
11 mentioned this because your question sort of implies,
12 well, maybe there is something the domestic industry
13 could be doing. You're looking at very cost-efficient
14 producers who have been trying to do everything they
15 can, really going back through a six-, seven-year
16 period, to lower costs. I know that's the sort of
17 thing you're looking -- to hear from, but I wanted to
18 point this out so it's in your minds as you listen to
19 this.

20 COMMISSIONER LANE: You got to my second
21 question, which was exactly what you answered, what
22 was going on with China. How long do you expect this
23 process to take to get it corrected, as you are
24 seeking?

25 MR. COURSEY: We're trying to have it

1 corrected through legislation. In short, our law was
2 amended in '95 to allow for new shipper reviews. The
3 law requires Customs to give the importers of new
4 shippers an option to use bonds as opposed to cash to
5 cover the duty-deposit requirement. That is not
6 required by the WTO dumping agreement. An irony here
7 is that China, in its own new shipper law, requires
8 cash deposits in all of its proceedings. There is a
9 bill, Senate 2425, sponsored by Senators Cochran and
10 Byrd, which is pending, and we're hoping to have
11 action on that by the end of this session.

12 COMMISSIONER LANE: So to correct the
13 problem that you are addressing requires legislation,
14 not administration.

15 MR. COURSEY: That's one aspect of the
16 problem. The other aspect: The Commerce Department,
17 for a period of about 18 months, has been addressing
18 deficiencies in its handling of these reviews, and we
19 can give you information on this. These are matters
20 that were discussed in part by a hearing Senator Frank
21 Wolf held on Capitol Hill back in May of 2003.

22 In essence, what the Chinese have done with
23 this new shipper review process is the new shipper
24 review process is supposed to give legitimate
25 exporters who did not have an opportunity to be

1 investigated in the original investigation an
2 opportunity to come in and get a quick review and get
3 its own cash deposit rate.

4 What the Chinese have been doping, and the
5 law was in effect from '95 forward, starting in about
6 2000, there were very few new shipper reviews. In
7 about 2000, the Chinese discovered this.

8 What, in essence, happens is you get
9 somebody in Hong Kong with a room, a fax, a computer.
10 He becomes an exporter, buys a tiny amount of product.
11 All of these ag. products are traded by the container
12 in 40,000-pound lots. He buys a few cases or pallets,
13 sells them to someone that they have set up in the
14 U.S. at an artificially high price, and they will go
15 to the Commerce Department and say, "We're a new
16 shipper. You've got to go forward."

17 For 2000 through 2002, Commerce really
18 pretty much rubber stamped these things. Not only did
19 they rubber stamp them; they then let the new shipper
20 reviews go on for up to 18 months. During the entire
21 period, importers could bring product in.

22 COMMISSIONER LANE: Okay. Let me ask this,
23 and maybe the industry might want to respond. If the
24 new-shipper-review process is tightened up, and the
25 order is continued, is this industry going to get back

1 on its feet?

2 MR. KAZEMI: Yes, it will. As Mr. Coursey
3 has stated, we are continuing to invest in our
4 businesses. I think Mr. Newhard testified that he is
5 building a more modern facility. Our company is
6 investing a lot in improving productivity, training
7 our employees, working on recovery. It's like an
8 eternal vigilance. But we have limited resources, and
9 when we have to spend most of our funds fighting the
10 new shippers, that doesn't leave much to invest back
11 in the facility. So we're caught in this vicious
12 cycle that, hopefully, if that portion of it stops, we
13 can invest in our businesses and become more
14 efficient.

15 MR. NEWHARD: Well, I would just say that
16 the Mushroom Canning Company has invested \$5 million
17 over the past 2 years in processing mushrooms. So
18 obviously we and our financiers would hope that there
19 would be some future in the business.

20 Now what we have done is taken a core
21 business and our trying to compliment that with some
22 other mushroom processing businesses, but the core
23 business is still canned mushrooms.

24 COMMISSIONER LANE: Mr. Newhard, you
25 testified that you moved your facility from

1 Pennsylvania down to Maryland.

2 MR. NEWHARD: Correct.

3 COMMISSIONER LANE: And at the Maryland
4 facility do you do all different sizes of mushroom
5 cans, and do you sell to all three segments; the
6 retail, the industrial, and the food?

7 MR. NEWHARD: Yes.

8 COMMISSIONER LANE: Okay. I guess I have
9 one more question. I would like to ask you about the
10 nonsubject imports. They have increased during the
11 period that the order was in effect. What effect has
12 that had upon your industry?

13 MR. KAZEMI: I think basically the need is
14 in the market. They come in and they still -- I think
15 the prices are higher in the subject countries. When
16 the exchange rate was favorable, when the euro was
17 weak as compared to U.S. dollars, we saw an increased
18 shipment from Holland and from France.

19 But as the euro has become stronger, those
20 shipments have basically disappeared, or have been
21 minimized.

22 COMMISSIONER LANE: Okay. Thank you. My
23 time is up.

24 CHAIRMAN KOPLAN: Thank you, Commissioner
25 Lane. Commissioner Pearson.

1 COMMISSIONER PEARSON: Thank you, Mr.
2 Chairman. I would extend my welcome to the panel
3 also. I probably should confess that I have a certain
4 fondness for mushrooms. I have had the opportunity in
5 the past to spend a little time around Kennett Square,
6 and so I appreciate the importance of the industry for
7 the communities where it is located.

8 I would like to go back to an issue that was
9 touched on my Hillman, and explore a little bit the
10 relationship between the fresh mushroom business and
11 the processed mushroom business.

12 The basic question is to what degree, if
13 any, is the processed mushroom business a byproduct?
14 Does it deal with a byproduct of the fresh mushroom
15 business? In other words, to look at a hypothetical
16 situation in which there is going to be another
17 trilogy of the Rings movie coming out. You know,
18 Tolkien and his hobbits, they really liked mushrooms a
19 great deal.

20 So let's assume that one of these movies
21 comes out, and every kid in the country goes to it,
22 and comes home and says, mom, we have got to buy some
23 mushrooms. So all of a sudden there is an increase in
24 demand for fresh mushrooms.

25 Will that affect the amount of mushrooms

1 that you have available for processing? Will you see
2 reduced run times in your class? Pardon the long
3 question.

4 MR. NEWHARD: Okay. I think generally most
5 people look at the supply of mushrooms as fresh and
6 canned, saying that these are -- that it is a black
7 and white issue. Very definite.

8 Okay. It's not. I believe correspondingly
9 that there is a correlation between the low prices
10 that we can pay for processed mushrooms and the amount
11 of total mushrooms grown.

12 COMMISSIONER PEARSON: Okay.

13 MR. NEWHARD: Let me go further and say that
14 if you -- to say that the supply of mushrooms is a
15 very elastic thing given a year to respond, there is
16 much that can be done to expand capacity.

17 The growers have been very cautious to do
18 so, and they have been very cautious to do so in
19 recent years because whatever they can sell to the
20 fresh market is going to go to a processor at such a
21 reduced rate that he is not going to take the chance
22 that he is going to have over-production.

23 So very definitely if we paid more for
24 mushrooms -- we do not need to pay enough for
25 mushrooms for the entire mushroom farm to be dependent

1 upon a cannery, okay?

2 We need to pay enough for mushrooms for them
3 to take the majority of their mushrooms to the fresh
4 market, but also be assured that they can have
5 somewhat of a return on what comes to processing, and
6 if that occurs, you would find that they would grow
7 more mushrooms.

8 The fresh growers will grow more mushrooms
9 if they can get 60 or 75 percent of what they would
10 get on the fresh market, and if they can get that for
11 processed grade mushroom, they are going to grow more
12 mushrooms to make sure that they in particular always
13 have the nicest, best, freshest mushroom to serve
14 their individual accounts for fresh.

15 And that is going to make more processed
16 mushrooms available for the rest of us in this room.
17 Now, as the price of fresh mushrooms going to
18 processing has been very depressed, and continues to
19 be depressed, growers will find every way in the world
20 to avoid us, okay?

21 Because they are going to get everything
22 that they can to the fresh market and they may even
23 conceivably explore some -- you know, there might be
24 some quantity issues as to what they would have done 5
25 or 6 years ago, and is this mushroom good enough for

1 this particular customer, or isn't it.

2 Okay. As these supply or as the pricing for
3 the fresh mushrooms has been lowered, there becomes
4 some changes in that fresh marketplace, and some could
5 argue that those are not good things overall.

6 But they are real, and do occur, and so our
7 expectation would be that the supply of fresh
8 mushrooms, we know that to be very elastic. We know
9 that more can be done if we can pay somewhere closer
10 to what they can return on the actual cost of growing
11 those mushrooms.

12 COMMISSIONER PEARSON: And you referenced
13 the prices for fresh mushrooms and mushrooms for
14 canning. What is the normal price spread there? Give
15 me some sense of that.

16 MR. NEWHARD: Probably about half.
17 Recently, it has been less than that. Recently, it
18 has been much less than that.

19 MR. KAZEMI: It depends on what you consider
20 fresh mushrooms. If it is packaged, then the
21 difference could be as much as a dollar a pound. Now,
22 if you are talking bulk, which doesn't have the
23 packaging costs in it, you are looking at maybe 70
24 cents difference.

25 The price -- we have transfer pricing

1 between our fresh and processed, and it has been the
2 same for the last 20 years, because that is what they
3 can afford to pay for it.

4 And we are selling mushrooms for 35 cents to
5 our cannery, and our average price on the fresh side
6 is about \$1.40. So based on that, we have a lot of
7 packaged 8 ounce tails (sic), and so there is about 70
8 to 95 cents difference in the price.

9 But further to the point, we would love to
10 see that movie come out by the way, because the
11 consumption goes up. Fresh market quality standards,
12 like everything else in this country, is continuing to
13 go up.

14 And I think as the demand for fresh
15 mushrooms increases, the availability for processed
16 grade will also increase, because certain mushrooms
17 you cannot sell in the fresh market, no matter what
18 the price is.

19 And fresh growers don't want to move that
20 lower priced product into the market because that is
21 going to establish a precedent for next week, and it
22 is going to bring the whole market down. So they
23 refrain from doing that generally, and they send it to
24 the cannery for even lower prices.

25 COMMISSIONER PEARSON: Mr. Shelton.

1 MR. SHELTON: Yes. I think one thing that I
2 would like to add is you are talking about the
3 potential shortage of mushrooms because of all of them
4 going to the fresh market.

5 I think to point out here is that mushrooms
6 are a crop that is not seasonal, and like we have been
7 listening to the hurricane problems and the citrus
8 problems in Florida, and so we are going to have a
9 shortage of citrus for next year.

10 Well, mushrooms usually get five crops a
11 year, and so our big problem now is only going to
12 create a shortage short term, because if you buy fresh
13 mushrooms tomorrow, you are not going to go out next
14 week and buy three tons as many because you didn't get
15 them.

16 So the crops are there, and I think that if
17 the growers knew that we could pay them at least half
18 of their production costs, they would put in more
19 pounds, and grow more, and we wouldn't have that
20 problem.

21 COMMISSIONER PEARSON: You indicated that
22 there is no seasonality in the supply side. How about
23 the demand side for fresh mushrooms; is there any
24 seasonality or other surge factors there?

25 MR. KAZEMI: There is seasonality. You have

1 the holiday periods where the demand goes through the
2 roof, and the week after Thanksgiving, you couldn't
3 give mushrooms away. So this is where the processing
4 comes in. And the same thing happens with all major
5 holidays.

6 And there is a seasonality in terms of fall,
7 winter, summer. The summer months, we compete more
8 with fresh fruits, stored fruit, melon, and the
9 retailers don't promote as much fresh mushrooms
10 because they have cucumbers, and grapes, and other
11 products that they are going to promote.

12 So mushroom consumption actually is thought
13 to wrap up starting in October, and it goes all the
14 way through March.

15 COMMISSIONER PEARSON: Okay. So I would
16 infer from that then you do see some fluctuation in
17 capacity utilization on the processing side of the
18 mushroom business, as the fresh side responds to
19 whatever might be going on among consumers at that
20 moment?

21 MR. KAZEMI: Well, I mean, it just depends
22 on how you assume that curve, because maybe the week
23 before Thanksgiving, you cannot send anything to
24 processing, and the week after Thanksgiving, you
25 triple your shipment to the cannery, and so it

1 averages out.

2 COMMISSIONER PEARSON: Okay. Before it goes
3 red, could someone give me an idea of what percentage
4 of mushrooms that are canned could have been used as
5 fresh if demand for fresh had been strong enough?

6 MR. KAZEMI: I would say a very small
7 portion. The only thing that can happen if you sell
8 fresh is the product that you send to the cannery
9 right after the holidays. The day after Thanksgiving,
10 everybody is eating leftovers, and you cannot sell
11 good quality fresh mushrooms on the fresh market.

12 So maybe a week or two out of the year, you
13 send good quality mushrooms to the cannery. But those
14 products don't necessarily go to the same pieces.
15 They could go to the marinated product, or they could
16 go into different product lines.

17 COMMISSIONER PEARSON: Okay. My time has
18 expired. Thank you.

19 CHAIRMAN KOPLAN: Thank you, Commissioner
20 Pearson. I don't usually -- well, anecdotal, but in
21 listening to the testimony this morning, I will tell
22 you that within the last several days, I happened to
23 be at a California Pizza Kitchen to order a vegetarian
24 pizza. My wife and I were there.

25 And the manager circulated around asking

1 everybody if they were happy, and I said that I was,
2 and then I started to think, and my wife said that you
3 are not going to do it, and I said I've got to.

4 So I called him back and I said these
5 mushrooms on the pizza, are they fresh or preserved,
6 and he proceeded to defend vigorously the fact that
7 they were fresh, and sliced every morning, and he left
8 I think wondering whether I had a problem with the
9 product.

10 So on the way out, I tried to explain to
11 him, and I watched his eyes glaze over, and I have
12 been sitting here saying to myself if I had just
13 listened and waited rather, Mr. Newhard, to hear you
14 concede that pizza chains have gone from canned to
15 fresh, I could have saved that fellow a lot of pain
16 and myself some time.

17 So I had to share that with you this
18 morning. Now I will get to my questions. This is for
19 Ms. Cannon and Mr. Coursey. On page 46 of your
20 prehearing brief, you state that -- and I quote --
21 "Since the year since the imposition of the order,
22 imports from Indonesia have not changed dramatically
23 in relation to the period of investigation."

24 Now, Indonesian respondents assert on pages
25 16 to 17 of their prehearing brief that imports of

1 subject products from Indonesia declined even as cash
2 deposit rates declined, and that this indicates that
3 were the order to be revoked, imports from Indonesia
4 would not significantly increase.

5 They point to the example of PT. Zeta Agro,
6 and I quote, "In each administrative review, the DOC
7 determined that PT. Zeta Agro did not dump, and thus
8 imports from the company into the United States free
9 of AD deposits during the POR. As would be expected
10 then, PT. Zeta Agro's behavior did not significantly
11 change after the DOC revoked the order with regard to
12 imports from the company."

13 I am wondering what your response is to that
14 argument. I note that Mr. Kerwin argued earlier that
15 revocation of the order in Indonesia alone would lead
16 to a free for all price war.

17 And I am wondering whether the experience of
18 PT. Zeta Agro resulted after the order was revoked on
19 them in 2002, does that support your argument, or I am
20 trying to see how you can respond to that for me if
21 you would? Either one or both of them.

22 MR. COURSEY: I'll let Ms. Cannon go first.

23 MS. CANNON: The order on PT. Zeta Agro is a
24 little difficult to address in this public forum,
25 because what PT. Zeta did, in terms of their volumes,

1 is all proprietary.

2 CHAIRMAN KOPLAN: Would you rather do it in
3 the post-hearing brief?

4 MS. CANNON: So I might need to address it
5 in the post-hearing brief, I think.

6 CHAIRMAN KOPLAN: That's fine.

7 MS. CANNON: Most of the arguments we made
8 in terms of why we think the imports are going to be
9 increasing really have to do with a lot of the
10 capacity in other figures. So I would like to address
11 it in the post-hearing in confidence.

12 CHAIRMAN KOPLAN: That's fine.

13 MS. CANNON: Thank you.

14 MR. COURSEY: I would like to make just one
15 observation, and Ms. Cannon touched on it in her
16 testimony. To have an order revoked against a
17 particular exporter, that exporter has to go through
18 three administrative reviews with a zero dumping rate.

19 CHAIRMAN KOPLAN: She did say that, yes.

20 MR. COURSEY: And PT. Zeta Agro did so, and
21 if the proposition by the Indonesians is that this
22 demonstrates what would happen to the fact that PT.
23 Zeta did not increase hits imports over this period,
24 indicate what would happen if the order were revoked.

25 And I don't think that necessarily follows.

1 What you have is a company operating under the
2 discipline of an anti-dumping order that is trying to
3 demonstrate to the Commerce Department that it is not
4 dumping for three consecutive periods so that you can
5 get the discipline removed.

6 What will happen after it is removed is an
7 entirely different question. That's why it is
8 inappropriate for the Commission -- I think the law is
9 structured to not --

10 CHAIRMAN KOPLAN: I appreciate that, and I
11 don't want to get into BPI. The reason that I asked
12 it is because it seemed to be me enough time has
13 elapsed for you to look back and see what has happened
14 since that order came on. Do you understand what I am
15 saying?

16 This didn't happen yesterday. It happened
17 in 2002. The fact that it happened in 2002 is public.
18 So the rest of it you can address in post-hearing
19 briefs.

20 MS. CANNON: That is the difficulty; is the
21 rest of what happened after the order was removed then
22 was proprietary, and that's why I would prefer to
23 address in a post-hearing briefs.

24 CHAIRMAN KOPLAN: Absolutely.

25 MR. KERWIN: Mr. Chairman, if I could add

1 one observation. The post-order period that we have
2 been looking at, of course, for the last couple of
3 those years, PT. Zeta Agro has become a nonsubject
4 producer.

5 But there is still at least 4, 5, 6 other
6 producers within Indonesia, and the issue is that if
7 the order is revoked, and the constraint of the order
8 is taken away, you won't have an analogous situation
9 where there was a single producer that was not
10 subject, and therefore not in competition with anybody
11 else, because every other producer in Indonesia was
12 subject to the anti-dumping duty order.

13 If the order is revoked, you are going to
14 have 5, 6, 7 producers that are suddenly in
15 competition with each other, once again on the basis
16 of price and with no concern as to their potential
17 dumping duty liabilities. So I think it is a very
18 different situation if the order were to be revoked.

19 CHAIRMAN KOPLAN: Okay. Well, maybe you
20 could join with them in the combined response for the
21 post-hearing. I would appreciate it. Thank you for
22 that. Mr. Newhard, let me just ask you, and leading
23 into my next question. Is your company an integrated
24 company?

25 MR. NEWHARD: No, we are not.

1 CHAIRMAN KOPLAN: You're not? Okay. Then
2 this will be for Mr. Kazemi, because I know that your
3 company is. The Indonesian respondents' prehearing
4 brief argues -- and I quote -- "Therefore, all the
5 demand for fresh mushrooms has increased at the
6 expense of preserved mushrooms, the overall financial
7 picture of each of these firms has no doubt benefitted
8 from the shift, as the fresh market is more lucrative
9 than the processing market."

10 "Consequently, it would be anomalous to
11 conclude that the decreasing U.S. consumption of
12 preserved mushrooms as rendered the domestic industry
13 more vulnerable to injury from subject imports." I am
14 omitting the footnote there.

15 Indonesian respondents seem to be arguing
16 that domestic production of processed mushrooms is
17 simply a residual byproduct of fresh mushrooms. What
18 I am wondering, Mr. Kazemi, is are you able to offset
19 at least in part losses that you incur with regard to
20 preserved mushrooms with gains from your sales of
21 fresh mushrooms as an integrated company?

22 MR. KAZEMI: There is a fundamental flaw in
23 that supposition. It assumes that you are making
24 money on the fresh side of the business, which may or
25 may not happen. There are a lot of fresh companies --

1 CHAIRMAN KOPLAN: That I understand.

2 MR. KAZEMI: -- that are going bankrupt. So
3 we treat our businesses as stand alone businesses,
4 fresh mushrooms. If we don't make money in the
5 processed area, we are going to shut down that
6 segment, or vice versa.

7 So they are independent, and we don't try to
8 balance the two because we are losing money here, and
9 we are making money on the fresh side.

10 CHAIRMAN KOPLAN: So the fresh mushrooms
11 command a higher price?

12 MR. KAZEMI: And they also cost a higher
13 price to produce it. As we speak, there are three
14 fresh mushroom companies going bankrupt, and because
15 the industry is growing, that doesn't mean that the
16 participants in the industry are all profitable.

17 CHAIRMAN KOPLAN: Thank you. I appreciate
18 that. Now, let me turn to the three -- well, I see
19 that my yellow light is on, and so I won't start
20 another question. Thank you for your response. Vice
21 Chairman Okun.

22 VICE CHAIRMAN OKUN: Thank you, Mr.
23 Chairman, and let me join the comments of my
24 colleagues in welcoming all of you here. I did not
25 participate in the original investigation, and so I

1 particularly want to thank the industry witnesses for
2 your willingness to be back here for this review and
3 to help us understand your industry.

4 It is extremely important in these reviews
5 to have that description. And let me start on an
6 initiative that has been covered in various places,
7 and in your briefs as well, but one that I usually
8 like to start with on these reviews, which is changes
9 since the original investigation.

10 And I know both in your brief and today that
11 I have heard you talk about, and I think we have had a
12 good exchange on what was going on with consumption
13 and demand in the original investigation, and what is
14 going on now.

15 And I think that has been helpful to hear
16 that, as well as the channels of distribution and the
17 description that you have given, and the staff has
18 also collected additional information.

19 So it has been helpful. I also found it
20 helpful to hear about the fresh versus preserved, and
21 the prices, and whether there has been any change. So
22 I think I understand your testimony with regard to
23 that, and what is going on in the industry.

24 Let me then I guess pose my questions first
25 in terms of changes since the original investigation

1 for the other countries. And in your briefs, you went
2 through them, and we have talked about some of them in
3 the EU, and you will get some additional information
4 on this quota.

5 And I guess the last thing that I heard,
6 which is the one that I was interested in, was whether
7 it was country specific, and if it is, then you have
8 this all other rate, and I think that is helpful to
9 understand.

10 What about for the countries where we don't
11 have participation, but certainly there has been a
12 U.S.-Chile free trade agreement, and there have been
13 other changes. Is there anything about the market now
14 in the United States that you would point us to for
15 the countries -- and let's take July 1st -- since they
16 haven't been here, other than they are not
17 participating, and you have the original
18 investigation.

19 Is there anything else that you could point
20 me to in terms of why the U.S. would remain a more
21 attractive market to them if the order were lifted?

22 MR. KAZEMI: The U.S. market is probably the
23 largest. There are six countries who account for 85
24 percent of the consumption, and the U.S. is 30 percent
25 of the total consumption, and also the highest prices.

1 So it is a very attractive market for all producers,
2 regardless of country of origin.

3 So by definition invites everybody to this
4 market. If Chile could come to the U.S., they would
5 get a higher price for their product than they are
6 receiving in Mexico.

7 VICE CHAIRMAN OKUN: And do they sell the
8 same product in Mexico that they would sell here? Is
9 there any difference in what they sell?

10 MR. KAZEMI: No, they are basically
11 identical products. You have certain standards for
12 canned mushrooms, which are really the USDA standard
13 that is being applied on the international level. So
14 that product has to be meeting all the food safety
15 standards.

16 Mexicans are humans also, and if they want
17 to consume the product, then they are subject to the
18 same type of food safety issues that we are. So it is
19 an identical product.

20 VICE CHAIRMAN OKUN: Okay. Ms. Cannon, did
21 you ant to add something?

22 MS. CANNON: Yes, thank you. The one point
23 that I wanted to add was the change that I think is
24 most significant on Chile, is the new information that
25 indicates that Chile is now selling smaller retail

1 cans that they were not exporting into the United
2 States at the time of the original investigation.

3 But indication is that they have installed a
4 new line, and we actually have labels that we were
5 able to obtain from retail product that they are
6 currently selling actively in Mexico that we are going
7 to supply to the Commission later.

8 VICE CHAIRMAN OKUN: And that is in addition
9 to what you have in the exhibit to your pre-hearing
10 brief with additional information on it?

11 MS. CANNON: Exactly.

12 VICE CHAIRMAN OKUN: Well, I will appreciate
13 seeing that. Anything else with regard to sales in
14 Asia for the Indonesians, or for the Chinese?

15 MR. COURSEY: If I could just point out.

16 VICE CHAIRMAN OKUN: Sure.

17 MR. COURSEY: On Chile again, going back,
18 there was testimony -- and I just want to emphasize
19 that the Chilean producer, the single producer, has
20 over the past 5 years on two occasions been thwarted
21 in a major circumvention scheme, and I say thwarted.

22 This is the first scheme that involved a
23 company in Canada, where its mushrooms were in essence
24 debrined, and canned, and then shipped into the U.S.
25 as country of origin, Canada. That went on for over a

1 year, with huge amounts of product coming in.

2 This was back in the early part of the five
3 year period. Once that was thwarted -- and there is
4 litigation right now that the Justice Department has
5 brought against the players in that matter, and when
6 that was thwarted, they started working with a
7 Columbian company to do the same thing.

8 So there is an animist there to get in the
9 market, in the U.S. market, no matter what, and to go
10 around the order. And as far as the others, the
11 Indonesian and Chinese, I hate to sound like a -- you
12 know, beating a dead horse, but this new shipper thing
13 cannot be underestimated, in terms of what the Chinese
14 have done.

15 I mean, in essence, that procedure and the
16 abuse of that procedure resulted in up to 70 percent
17 of their shipments during or since 2000 into this
18 country. Anything else?

19 VICE CHAIRMAN OKUN: Mr. Gordon.

20 MR. GORDON: With specific regard to imports
21 from India, I would note that Indian companies have
22 remained very active in the United States market, and
23 if you were to review the Department of Commerce's
24 findings through the now four completed administrative
25 reviews, you would see that Indian respondents have

1 frequently been dumping at rates higher than they were
2 previously.

3 They are highly motivated to remain active
4 in this market, and have also gone to great lengths to
5 do so. Not the same lengths that the Chinese have
6 gone through the new shipper reviews, or the Chilean
7 producers or producer has gone in its circumvention
8 schemes.

9 But nevertheless they have been -- they are
10 highly motivated to remain in this market.

11 VICE CHAIRMAN OKUN: I appreciate all of
12 that, those additional comments. Commissioner Lane
13 had asked a question regarding nonsubjects, and I
14 think it was you, Mr. Kazemi, who had commented in
15 response to that question.

16 And I think what I heard you say was they
17 are in the market, and prices are better than -- well,
18 what did you say about prices. And I guess my
19 question is if I look at the record and see what
20 nonsubjects have done -- I mean, they have captured a
21 large share.

22 So to me they are in a different place than
23 they were during the original investigation, and I
24 wondered if there is any additional information that
25 you could help me with in terms of why they have been

1 able to capture this market share.

2 And then the second part of the question
3 would be if the order is lifted would subject imports
4 simply be competing with nonsubjects, or would it come
5 out of the domestic industry?

6 MR. KAZEMI: The reason the nonsubject
7 countries increased their shipment to the U.S. was
8 three-fold. Number 1, if you look at Eastern Europe,
9 Holland is the largest producer and Holland is sort of
10 competing with Poland, because Poland is putting a new
11 -- supporting the mushroom industry, and they were
12 losing their market share.

13 The Dutch were losing their market share in
14 France to the Polish, and having the orders in place
15 opened the doors, or presumed opportunity for the
16 Dutch to ship to the States.

17 The euro was weak compared to the U.S.
18 dollar, and so that was pretty attractive for them,
19 and if you look at it, you know, as I mentioned, six
20 countries account for 85 percent of the consumption.
21 Where are the Dutch going to sell their mushrooms,
22 because they sell it to England, Germany, Canada, the
23 U.S., or Italy.

24 And although they are part of the EU, and
25 they can ship within those countries, but as the

1 production goes up, the only place they can sell their
2 product would have been the States.

3 Since then the production has been cut back
4 in Holland, and I think their shipment to the States,
5 if you get the records, the shipments are declining.
6 So if the orders were lifted, then you really would
7 have a free-for-all, because more people competing for
8 a finite market, and who knows where the price is
9 going to go.

10 VICE CHAIRMAN OKUN: Okay. And I think I
11 heard you say that it would be the competition on
12 price, but affects you regardless of who they are
13 competing against. And I see somebody maybe on the
14 back row. Mr. McGrath.

15 MR. MCGRATH: Okay. Well --

16 VICE CHAIRMAN OKUN: Mr. Shelton.

17 MR. SHELTON: I just wanted to add one
18 point.

19 You were saying if it was lifted would the nonsubject
20 companies be competing with subject companies, and it
21 is my belief that since most of the canned product is
22 sold on price is nonsubject and subject would have the
23 competition, and it would all come at the loss of the
24 domestic industry.

25 VICE CHAIRMAN OKUN: Okay.

1 MR. MCGRATH: Commissioner, the staff report
2 shows the nonsubject imports did rise after the
3 orders, as would be natural, because the subject
4 imports were cut back. But lately, since 2000, they
5 have also decreased as the subject imports have come
6 roaring back unfortunately.

7 VICE CHAIRMAN OKUN: I didn't know that, and
8 I appreciate those additional comments and my red
9 light is on. Thank you.

10 CHAIRMAN KOPLAN: Thank you, Madam Vice
11 Chairman. Commissioner Miller.

12 COMMISSIONER MILLER: Thank you, Mr.
13 Chairman. I think there was a good bit more
14 discussion about the fresh and canned, and the
15 relationship as an input, and so I won't -- I
16 appreciate those earlier answers, and I won't go to
17 that issue anymore. I think I wanted to ask one
18 question regarding cumulation, which is in-part a
19 legal question, but it is also in-part a question to
20 the companies.

21 And you focused on changes that you have
22 seen in Chile, and I just wanted to ask that the
23 companies, whether there have been any changes in the
24 way any of the other countries compete, institutional
25 versus retail; China, Indonesia, or India.

1 And if you have seen any changes in the way
2 they compete in those two markets since the order has
3 been in place. If you are aware or do you see them in
4 both channels of distribution still, all three
5 countries?

6 MR. KAZEMI: Again, going back to having a
7 finite market, and if you have the capacity to produce
8 a retail sized product or a food service institutional
9 size, you look at where the opportunity is.

10 So there is a shifting and trying to
11 optimize where the opportunity is. So it is kind of a
12 dynamic market, and depending on the demand sector, or
13 the opportunities, and people trying to basically go
14 after whatever sector is available at that given point
15 in time.

16 If a Chinese producer can compete in the
17 whole segment, they are going to go after every
18 customer they can gather in retail or food service.

19 COMMISSIONER MILLER: I guess in-part I
20 asked the question because I wondered if there is
21 anything about either one of those markets that would
22 have them react differently to an anti-dumping order;
23 more sensitive, or less sensitive, or do you see what
24 I am saying?

25 MR. KAZEMI: I do. I think -- again, being

1 a commodity product, price really becomes the
2 differentiating factor here. I would say maybe the
3 food service is a little bit more price sensitive
4 because it is a faster business, and retail might be a
5 little bit less subject, but again that could change
6 also, depending on the customer.

7 COMMISSIONER MILLER: Okay. Mr. Kerwin, you
8 looked like you wanted to say something.

9 MR. KERWIN: Yes, thank you. I just wanted
10 to point out that the official statistics, the
11 official import statistics do show that the three
12 countries other than Chile, that the product that they
13 are bringing in is in both the small sized cans and
14 the large sized cans, because the tariff schedule
15 differentiates on the basis of size, which you can
16 essentially read into that the small sizes are retail,
17 and the large sized cans are going to food service and
18 industrial.

19 And the official statistics show that all
20 three companies remain in both channels. They are
21 bringing in both sizes of -- both large and small
22 cans, and in fact to the issue that the Indonesians
23 have brought up that somehow the retail side of things
24 is really almost exclusively theirs.

25 In 2003, Chinese imports in smaller sized

1 cans exceeded those from Indonesia. And India had
2 very significant sales of that small sized can as
3 well. So the official import statistics certainly
4 bear out that all three of these countries remain in
5 both --

6 COMMISSIONER MILLER: Both areas.

7 MR. KERWIN: -- large and small sized cans.

8 COMMISSIONER MILLER: And you think that is
9 the most informative data to us on the channels of
10 distribution? I mean, given the fact that we don't
11 have complete responses in terms of importer or
12 foreign producer questionnaires.

13 MR. KERWIN: I think you can use it as a
14 surrogate certainly. I mean, given the very weak
15 response they have gotten out of the Indians and the
16 Chinese in particular. I think you can draw
17 conclusions from the import numbers. You would prefer
18 to have those borne out elsewhere, but of course the
19 purchasers information also shows information that
20 supports these conclusions, I think.

21 COMMISSIONER MILLER: Okay. And, Ms.
22 Cannon, I just sort of asked -- I began by asking
23 myself the question -- and particularly when a country
24 is not participating, do I stick with what I did
25 originally on cumulation, or do I change it, and I

1 understand the information that you have presented
2 that is coming from the Chilean producers website, and
3 I asked myself I wonder if that website existed
4 before.

5 I will look very carefully at the
6 information you provide, but I guess I would go into
7 it with sort of a cautious attitude.

8 MS. CANNON: Well, the information that we
9 had at the time of the brief was limited to what was
10 on the website, but as I mentioned, since then we have
11 actually indicated -- and Mr. Newhard might want to
12 address this further, Mr. Kazemi, that the Chileans
13 apparently installed a new line after the orders went
14 into place that produced retail product.

15 And we actually have been able to get our
16 hands on some samples, and I have some labels that I
17 am going to put in our brief, of the retail product
18 that they are selling in Mexico right now.

19 So we have one more indication beyond simply
20 a website that indicates likely sales into the retail
21 sector now that weren't the case at the time of the
22 original investigation, which I think is a little more
23 telling than the picture on a website. That was the
24 best that we had at that time.

25 COMMISSIONER MILLER: Okay. All right. I

1 will take a close look at it. I don't believe I have
2 any further questions at this point. I appreciate all
3 the answers that you all provided today. Thank you.

4 CHAIRMAN KOPLAN: Thank you, Commissioner.
5 Commissioner Hillman.

6 COMMISSIONER HILLMAN: Thank you. A couple
7 of questions for the post-hearing brief, because I
8 have a feeling that they would involve confidential
9 data. Mr. Coursey, I was struck by your response to
10 Vice Chairman Okun, in terms of the percentage of the
11 Chinese imports that are coming as a result of these
12 new shipper reviews.

13 And I would ask for both the issue of the
14 new shipper reviews, and for the transshipped product
15 from Chile. If you can help us with sort of time and
16 quantity, just to make sure that I understand how big
17 a volume are we talking about that is subject to the
18 New Shipper Reviews, and how much volume are we
19 talking about that has been found to be transshipped
20 on the Chilean side.

21 You mentioned the Canadian and the Columbian
22 product, and then just to make sure that I understand
23 how our data gets reflected, presumably the product
24 that you are talking about that was transshipped from
25 Chile coming in from Canada and Columbia is showing up

1 in our data as a nonsubject import, product of Canada,
2 product of Columbia.

3 And that is basically what's happening, is
4 that it is going into these countries, and being
5 relabeled?

6 MR. COURSEY: No, the scope of the orders
7 covers in addition to canned mushrooms, mushroom in
8 brine, which is the essential input into canned
9 mushrooms. It is basically fresh mushrooms that have
10 been harvested, cleaned, and then put in a
11 preservative, brine, heavy salt brine medium, and
12 shipped in large barrels.

13 It can then, once it is put in brine, you
14 can put it on the shelf and not can it for an
15 indefinite period. To can it, you have to debrine it,
16 and then put it in the cans. What the Chilean
17 producer started to do, and this is something that the
18 Chinese are doing before, and continue to do, is put
19 their product -- to divert their product from the can
20 to the brine, brine product, and then ship it to third
21 countries, and have canners in those countries
22 complete the process.

23 Under the scope as defined by Commerce, and
24 also under Customs own country of origin rules, the
25 country of growth of the mushroom is the country of

1 origin.

2 COMMISSIONER HILLMAN: Okay. That was
3 exactly what I was going to say, is -- you know, does
4 canning constitute a substantial transfer or change.

5 MR. COURSEY: Well, it does not under the
6 dumping order, and we brought -- Commerce, in a couple
7 of places, has pronounced this, particularly with
8 respect to a scope request that we filed early in the
9 five year period involving the Canadian situation.

10 And the Customs service -- and we can put
11 this in our brief -- has -- well, it is quite clear
12 that they have --

13 COMMISSIONER HILLMAN: So canning does not
14 confer origin, and --

15 MR. COURSEY: No, it does not.

16 COMMISSIONER HILLMAN: And in theory
17 everybody has to know where their mushrooms came from,
18 so that when they put them in the can, they are
19 labeling them product of --

20 MR. COURSEY: Correct.

21 COMMISSIONER HILLMAN: -- wherever the
22 mushrooms were grown.

23 MR. COURSEY: Correct.

24 COMMISSIONER HILLMAN: And but for this
25 order is that a typical practice, to grow mushrooms,

1 brine it in one country, and can it in another?

2 MR. COURSEY: Well, my understanding is that
3 it is not. What happens with the Chinese is -- you
4 know, prior to the dumping procedure, you would have
5 the Chinese brining product because they were perhaps
6 processing too much fresh mushroom, and it didn't have
7 enough of a through-put on lines to can it right then.

8 And they wanted to save and finish the
9 canning process later, but what happened is a producer
10 would hold the product in brine and not ship it, but
11 as the dumping orders came into place -- and this is
12 something that we anticipated before we filed the
13 case, and one of the reasons that we asked Commerce to
14 structure the scope to include ground mushrooms was
15 that this is a known process and easily accomplished
16 to ship this product in brine to third-countries.

17 COMMISSIONER HILLMAN: Just to make sure
18 that I understand. Would you normally brine a product
19 before you canned it, or would you normally not do
20 that, and go straight to the can? So this brining is
21 an unusual process?

22 MR. COURSEY: Brining is unusual.

23 COMMISSIONER HILLMAN: Mr. Newhard.

24 MR. NEWHARD: Not actually. I mean,
25 historically in China, they have brined mushrooms

1 simply because they do not grow them to my
2 understanding with a lot of air-conditioning year
3 round as we do.

4 So basically when the weather conditions are
5 proper, then they will grow mushrooms, and they will
6 get them in -- they will get an awful lot of mushrooms
7 in a short time period, and there is not enough
8 processing to get that done.

9 So historically China has brined a lot of
10 mushrooms, not in an attempt to circumvent anything,
11 just because they didn't have enough processing
12 because it came in such heavy production in such a
13 short time period.

14 In fact, U.S. canners years ago would
15 actually buy Chinese brined mushrooms and can them in
16 the States. They haven't done it in many years, but
17 years ago they did. So the fact that the brined
18 mushrooms are in China is not unusual.

19 The fact that they then take those brined
20 mushrooms to another country, can them, and call them
21 a product of Canada, is unusual.

22 COMMISSIONER HILLMAN: Okay. And has the
23 fact that growth of the mushroom confers its origin
24 always been the case? Has there ever been an issue
25 that again canning confers origin, or has always been

1 true that it is where the product is grown that
2 confers origin?

3 MR. COURSEY: Customs has followed that
4 concept for a long time, and we could put it in the
5 post-hearing brief. They have -- it confers not just
6 to canned mushrooms, but other types of fruits and
7 vegetables that are canned, or preserved in some
8 fashion.

9 COMMISSIONER HILLMAN: Okay. I appreciate
10 this. As I said, I am just trying to make sure that I
11 understand the sort of size, and magnitude, and
12 context of this whole transshipment issue just to
13 understand it. Mr. Kazemi, did you want to add
14 something?

15 MR. KAZEMI: Yes. I would just like to add
16 something to Mr. Newhard. Processing a mushroom, you
17 have two cooking steps. One is the blanching, which
18 is the front end, and then when you put it in the can,
19 then you would cook them also.

20 Brined mushrooms are already blanched, and
21 so you cannot put fresh mushroom in a brine. So they
22 have gone through the blanching operation, and you add
23 brine to it, because you are going to have enough
24 brine capacity to put them in a can, or do the
25 cooking. So it is a semi-process product.

1 COMMISSIONER HILLMAN: Okay. Now I
2 appreciate that. Actually, speaking of the capacity,
3 it kind of reminds me of the other issue that I wanted
4 to talk a little bit about. Obviously as I said, you
5 know, one of the things that strikes me with this case
6 is, okay, we have put an order on, and then we
7 actually see the industry do worse than it was at the
8 time of the vote.

9 One of the numbers that is clearly gone
10 worse if you will is the capacity utilization number,
11 and it strikes me as quite a low number. I wondered
12 if you can help me understand why that is, and what it
13 is about canning mushrooms that has you all operating
14 at very low levels of capacity utilization.

15 And give me a sense of what would be a more
16 desirable or optimal, or realistic range of capacity
17 utilization.

18 MR. SHELTON: Well, I won't answer for the
19 other two gentlemen, but I can answer for our company.
20 Be it as I said earlier, we lost one customer right
21 after the orders went in, and we lost a major customer
22 that bought tremendous quantities of product, and took
23 the product overseas, and so if you can't sell the
24 product, you aren't going to keep on canning it.

25 So our utilization factor is probably -- I

1 think it is somewhere around 50 percent of what it was
2 five years ago, simply because we continue to lose
3 business to canned sales. But the plant is still
4 there, and the equipment is still there.

5 If we could do the selling, we would go out
6 to look for product to start canning more. That is
7 why ours is down, simply because we have lost that
8 volume of business.

9 MR. KAZEMI: I would conclude that you
10 cannot afford to produce mushrooms in a canned
11 environment and hope to sell. So you take some risk
12 and you build some inventory, but you don't want to
13 have a five year supply of canned inventory tying up
14 your capital. So if you don't have a home for them,
15 then you don't produce them.

16 MR. SHELTON: I guess I would like to re-add
17 to what I said. In our case, for instance, our plant
18 runs -- can run 1,500 cases of number 10s a day, but
19 when we used to run six days a week on one shift, and
20 now we don't have the sales for it, the same plant --
21 the plant hasn't changed, but not we are not running
22 six days a week anymore.

23 COMMISSIONER HILLMAN: Okay. I appreciate
24 that. The last thing is on third-country prices. Do
25 you have a sense of where U.S. prices are in

1 comparison to prices in -- you mentioned somewhere
2 before that there were six countries that were 85
3 percent of the consumption.

4 Where are U.S. prices in comparison to the
5 prices in any of those large consuming countries? Do
6 any of you know?

7 MR. KAZEMI: I don't know the specific
8 numbers, but I would say that U.S. prices are higher
9 than all other countries, because one of the -- I can
10 compare it to Canada, and our prices are probably 15
11 percent higher than Canada, and part of it has to do
12 with the exchange rates.

13 I mean, it gets pretty complicated because
14 of the exchange rate differentials.

15 COMMISSIONER HILLMAN: Okay.

16 MR. KAZEMI: But the U.S. is the highest
17 priced market.

18 COMMISSIONER HILLMAN: Okay. If there is
19 anything else that could be added for a post-hearing
20 that would help us understand what you think third-
21 country prices are and why -- I mean, any data to
22 support that, I think that would be extremely useful
23 information. Thank you.

24 CHAIRMAN KOPLAN: Thank you, Commissioner.
25 Commissioner Lane.

1 COMMISSIONER LANE: Have the U.S. producers
2 maintained the same product since the original
3 investigation or have the product mixes changed? For
4 example, do U.S. producers produce fresh mushrooms,
5 chilled mushrooms, frozen mushrooms, dried mushrooms,
6 and if so, how has the product mix changed since the
7 original investigation, if at all?

8 MR. NEWHARD: In our case, we have added the
9 retail lines, and so we have actually expanded into
10 that area for canned. As far as the -- you know, in
11 our case, some of the other areas have been less
12 impacted.

13 We would also say that there is a tie
14 between all mushroom products to some extent. In
15 other words, if canned mushrooms prices go down, which
16 they have, you can expect that chilled mushrooms and
17 frozen mushrooms go down also, which they have.

18 MS. CANNON: Commissioner Lane, if I might
19 just add. When you are talking about product mix, we
20 usually refer to that within the scope of the case,
21 and I just wanted to make clear that these other
22 products, including chilled mushrooms and frozen, are
23 outside of the scope of the case.

24 So those would be other products that some
25 other clients might produce, but within this case, the

1 product mix, to the extent that there would be any
2 shift, would really be between whether they were just
3 going to a small sized can, the retail can, as opposed
4 to a larger or vice versa.

5 Those are just basically just different
6 sizes of cans, and that is really all the product mix
7 that exists within the scope.

8 COMMISSIONER LANE: Okay. Thank you. And I
9 appreciate what you said, and so my next question is
10 probably going to cause you some concern, too, but I
11 am just sort of curious.

12 As I understand the industry saying that
13 about 90 percent of mushrooms go to the fresh market,
14 and I am just curious as to whether or not there is
15 any difference between the quality of mushrooms that
16 go to the fresh market, or what about the quality that
17 goes to freezing mushrooms?

18 MR. KAZEMI: Essentially, the number is more
19 like 83 percent going to the fresh market, and 17
20 percent going to processing. The quality of the
21 mushroom going to freezing depends on the customer's
22 need, and if they are a sliced number one mushroom,
23 that would be a quality that is comparable to fresh
24 market or a fresh market standard.

25 However, I don't think that there is much --

1 I don't know of much demand for that particular
2 category. Otherwise, frozen mushrooms would be
3 similar to what you would use in the canning industry.

4

5 MR. NEWHARD: I just also think that there
6 might be a little bit of a misconception as far as
7 quality. When the United States industry has been so
8 strong in the fresh market, they really grow much
9 nicer mushrooms -- it sounds odd, but it is true --
10 than when they grew them for processing.

11 Such as to my knowledge in Europe, where
12 they have entire farms relegated directly to
13 processing, and they will mechanically harvest the
14 mushrooms. So they will take all the mushrooms off in
15 one day.

16 The ones that are properly matured, and the
17 ones that are immature, and the ones that are way past
18 their maturity point, they all come off in one day. A
19 very mixed bag of quality.

20 So for us to sit here and portray that we
21 only process the mushrooms that are not comparable to
22 what other countries process really isn't true.

23 COMMISSIONER LANE: Okay. Thank you.

24 That's all the questions that I had.

25 CHAIRMAN KOPLAN: Thank you, Commissioner.

1 Commissioner Pearson.

2 COMMISSIONER PEARSON: I'm curious to learn
3 whether some of your firms import mushrooms from other
4 countries either for processing in your plants here,
5 or ready for sale.

6 MR. COURSEY: Since that could get us into
7 the area of confidential business information, could
8 we answer that question in the post-hearing brief, in
9 terms of what the actual business practice is of -- I
10 mean, just generally the --

11 MS. CANNON: Could I just ask for a
12 clarification, Commissioner Pearson? Do you mean
13 whether we purchase fresh mushrooms for import, or are
14 you talking about importing the canned mushrooms?

15 COMMISSIONER LANE: Well, I was thinking
16 that the most form of import for processing in the
17 United States would be the brined form that was
18 discussed a few minutes ago.

19 But if there are fresh mushrooms imported
20 for processing in the United States, I would also be
21 curious about that.

22 MS. CANNON: So, you're not asking about
23 whether anybody imports the actual product. You are
24 asking about the input?

25 COMMISSIONER PEARSON: Well, I ask this as a

1 two-part question then, and I did not do so very
2 clearly.

3 MS. CANNON: Okay.

4 COMMISSIONER PEARSON: I also am curious to
5 learn whether any of the firms here import mushrooms
6 that have been processed in other countries, and --

7 MR. KAZEMI: I can speak on my company's
8 behalf, We don't bring any brined mushrooms into the
9 country or fresh mushrooms. On a very rare occasion,
10 we might bring some product from Canada. We have an
11 operation in Canada, which is right on the border.

12 This is Eastern Canada, or Western Canada,
13 that we might bring down a load every nine months. So
14 it is minute quantities.

15 COMMISSIONER PEARSON: But no Mexican
16 mushrooms?

17 MR. KAZEMI: Mexican mushrooms, we have
18 maybe on 3 or 4 occasions, we have brought a couple of
19 those from Mexico because we did not have processing
20 capacity in Mexico for those products, and we brought
21 them here.

22 But that is just a rare occasion rather than
23 a common practice.

24 COMMISSIONER PEARSON: Not wanting to draw
25 anyone into the area of confidentiality and where we

1 ought not to go, but I am curious, too, to know
2 whether -- the countries that you just mentioned are
3 nonsubject countries. Do any firms have experience in
4 importing from subject countries? So in the post-
5 hearing brief, you might -0-

6 MR. COURSEY: We will look at that in the
7 post-hearing brief, and again you are interested in
8 both brined production grade mushrooms and subject
9 country canned mushrooms?

10 COMMISSIONER PEARSON: Sure.

11 MR. COURSEY: Actual -- okay.

12 COMMISSIONER PEARSON: Yes, because I am
13 curious to try to understand whether the U.S. industry
14 is able somehow to take advantage of what otherwise
15 are imports that could cause problems by using them to
16 an advantage, and helping the condition of the U.S.
17 industry.

18 MS. CANNON: Let me just add. The question
19 on whether any of the subject producers actually
20 import the subject product from any of these four
21 countries was addressed in the related party section
22 of our brief in pretty extensive detail with respect
23 to those producers that actually are importing, and as
24 to why they are importing, and what they are doing
25 with the product.

1 Anyone not mentioned there is obviously not
2 importing from these countries.

3 COMMISSIONER PEARSON: Okay. Fair enough.
4 Thank you.

5 MR. SHELTON: I don't mind answering that
6 just a little bit really. One of the cases that we
7 had, and I mention in our brief, and what I said was
8 if imports get worse, we may go away.

9 Right now when we do our studies, we are
10 also looking that maybe we will get in the import
11 business. I mean, if imports are going to be cheap,
12 we may be forced to have to join them. Right now we
13 are not.

14 MR. KERWIN: If I could make an observation.
15 I participated in a lot of investigations involving
16 agricultural products, both fresh and processed, and
17 where you have a situation of distress that has been
18 caused in-part by imports, it is not unusual -- and in
19 fact it is rare -- to not see some members of the
20 domestic industry importing merchandise from the
21 targets.

22 Part of the dynamic of sales in this kind of
23 business is that you have got customers who are being
24 offered the product, the target product, at very low
25 prices all the time, and in order to maintain customer

1 base, often times there is a need to bring in product
2 in order to satisfy a customer on a small amount in
3 order to keep them buying some of your own domestic
4 product.

5 So it is very unusual to see -- and in fact
6 I have never been involved in a case where there isn't
7 some degree of -- I would call it distress importing.

8 COMMISSIONER PEARSON: Okay. Thank you.
9 Let me shift to Indonesia if I could. The imports
10 from Indonesia basically have come down a bit over the
11 period of view. Yet, nonsubject imports from other
12 countries, and not Indonesia, have risen in a
13 meaningful way.

14 Obviously in this case, you have placed a
15 lot of emphasis on Indonesia, and maintaining an order
16 on that country. But as I look at what is going on
17 with the nonsubjects, I am wondering are you somewhat
18 barking up the wrong tree?

19 I mean, is it the Indonesian product that is
20 hurting or is it more the nonsubject?

21 MR. KAZEMI: I think if you look at the
22 statistics, I think Mr. Kerwin mentioned that the
23 imports from nonsubject countries are declining in
24 recent years. Is that true, Mike?

25 MR. KERWIN: Yeah. The non-subject imports

1 peaked in 2000, and since that point from 2000 and
2 2003, they have fallen by about a third.

3 MR. MCGRATH: And not coincidentally, they
4 have fallen as subject imports have come back.

5 COMMISSIONER PEARSON: Over the period of
6 review though the statement that Mr. Kerwin has made
7 would not be correct given the data that I have in
8 front of me at any rate. There has been an increase
9 in nonsubjects over the period of review.

10 MR. COURSEY: Again, that is -- you know,
11 looking at what happens in these cases, that would not
12 be unusual for a processed agricultural case. These
13 producers are not complaining about not having the
14 U.S. market all to themselves.

15 Historically, imports have been an important
16 part of the U.S. market. Fairly traded imports have
17 been a part of the U.S. market. The dumped subject
18 imports not only injure the domestic industry, but did
19 a fair job of driving fairly traded imports out.

20 It is normal to see a return of imports in
21 the wake of the imposition of the dumping order.

22 MR. KERWIN: Commissioner --

23 COMMISSIONER PEARSON: Okay. Go ahead.

24 MR. KERWIN: -- if I could point out one
25 thing. The dataset at the back of the staff report

1 that shows -- the first year that is shown there is
2 1998, which depending on how you want to define it, I
3 would say that was the last year of the period of
4 investigation.

5 And 1999 being the first year that the
6 orders were fully in place. In 1998, if you use that
7 as the base year, you are correct that from 1998 until
8 2003, nonsubject imports about doubled.

9 On the other hand, if you use 1999 as the
10 base year, there is actually a slight decline from
11 45.6 million pounds to 42.8 million pounds. So I
12 guess it is a question of definition, and whether you
13 want to say that the period of review began in 1999,
14 or whether you want to look back to the final year of
15 the period of investigation.

16 COMMISSIONER PEARSON: Could I clarify? Is
17 that information, is that CBI, Mr. Chairman, the
18 information that is just being discussed? Is that
19 bracketed information?

20 CHAIRMAN KOPLAN: It's bracketed, I believe.

21 MR. KERWIN: No, I am looking at the public
22 version of the staff report. Now, caveat, I am not
23 looking at the nonsubject Indonesian imports. These
24 are all other imports. So that category of non --
25 i.e., PT. Zeta Agro's, imports are not included in

1 that number.

2 CHAIRMAN KOPLAN: I am advised that you are
3 okay.

4 MR. KERWIN: That is a caveat.

5 CHAIRMAN KOPLAN: Mr. Deyman.

6 MR. DEYMAN: Yes. I am George Deyman,
7 Office of Investigations. Indeed, that 42.8 percent
8 number was bracketed in the confidential version of
9 the report, but we made it public in the public
10 version of the report. So that number is public and
11 no problem.

12 COMMISSIONER PEARSON: Okay. Thank you for
13 that clarification. I was just concerned. I didn't
14 want to draw anyone into where we ought not to be.
15 Okay. But if I could quickly go back, Mr. Coursey, to
16 your point, that competition against fairly traded
17 imports is an okay thing.

18 Given that Indonesian producers have a
19 relatively small anti-dumping duties, and have a
20 history of seeking administrative reviews from
21 Commerce, how do you respond to the argument that they
22 see themselves as producers that should not be subject
23 to the order?

24 That they are trying to compete fairly in
25 the U.S. market, and would want to compete like

1 nonsubject producers. I mean, doesn't their behavior
2 suggest that they are more in that mold than the other
3 subject producers?

4 MR. COURSEY: To the extent that they are
5 trying to show the Commerce Department that they are
6 not dumping, they can get out of the dumping order by
7 doing so before Commerce by showing three years of no
8 dumping.

9 In terms of having what they are doing
10 during this period impact the Commission's analysis,
11 the law doesn't point you in that direction because
12 the law I think correctly doesn't want you to look at
13 activity that is influenced by the existence of the
14 order.

15 That's why Commerce in its review here has
16 advised you that if the order were revoked that
17 dumping would likely return at the margins indicated
18 in the original investigation.

19 Again, what -- the fact that they are not --
20 that some exporters are seeking administrative
21 reviews, and some are getting lower margins, is
22 perhaps positive, and could perhaps could lead to a
23 revocation of the order for them if they continued to
24 pursue that course.

25 But again that is not particularly relevant

1 in my view to what is the Commission's analysis here
2 with respect to the five year Sunset analysis.

3 COMMISSIONER PEARSON: Okay. Well, my time
4 has expired, and so I will not discuss whether that is
5 a condition of competition or not.

6 CHAIRMAN KOPLAN: Thank you, Commissioner
7 Pearson. As an aside, before I begin, let me just say
8 that I remember in the beginning that you noted, Mr.
9 Coursey, that three of us here participated in the
10 original investigation.

11 I just for the record would like to say that
12 I am glad that there are six of us up here deciding
13 this one, and I surely hope to keep it that way. Let
14 me begin -- and this is an area that my colleagues
15 have been getting into, too, and that is I am trying
16 to evaluate myself to what extent the domestic
17 industry has benefitted from these orders.

18 Given the various market shares reflected in
19 Revised Table C-1, which is confidential, and so I am
20 just telling you that is the purpose for the question
21 that I am about to ask, and it is as follows.

22 Table 1-3 in the confidential staff report,
23 that table is a confidential table, and so I can't get
24 into the numbers that are in it. But generally it
25 indicates that in 2003 some domestic producers

1 imported what I would call appreciable quantities
2 without getting into numbers of preserved mushrooms
3 from nonsubject countries.

4 I know that according to the confidential
5 staff report, Revised Table C-1, which is
6 confidential, the U.S., market share held by domestic
7 producers, and without getting into the number, has
8 declined since '98. And the share held by non-subject
9 imports has increased.

10 I know the question was asked -- well, I am
11 not sure if it was asked this way, but I would like to
12 know whether any of the domestic producers import
13 preserved mushrooms from nonsubject sources, and if
14 so, why.

15 And if that is the case, wouldn't that at
16 least explain in part increases in nonsubject imports
17 during the period that I am looking at? Now is that
18 something that you can respond to in the open session
19 in-part, or do you want to do the whole thing post-
20 hearing?

21 MR. COURSEY: It's -- I think we are going
22 to respond to this in the post-hearing brief if you
23 would allow. It requires discussion of confidential
24 information.

25 CHAIRMAN KOPLAN: You understand the

1 question?

2 MR. COURSEY: We understand the question,
3 and we will be able to give you a response.

4 CHAIRMAN KOPLAN: I would appreciate that
5 very much. Mr. Kerwin, you are reaching for your
6 mike?

7 MR. KERWIN: Yes, and I am looking at the
8 same public table that does have market shares, and
9 again this comes back to the issue of you want to use
10 1998 as a base year, the last year of the POI, or do
11 you want to use 1999 as the base year, the first year
12 of the post-order period?

13 If you use -- and again you are correct that
14 the '98 numbers -- and again these are public -- show
15 an increase to 2003. If you use 1999 as the base year
16 the market share for nonsubject imports other than PT.
17 Zeta Agro, declined by three percentage points.

18 So I don't mean to flog a dead horse, but it
19 does depend on which year you use as your base point.

20 CHAIRMAN KOPLAN: I'd be using '98.

21 MR. KERWIN: Fair enough.

22 CHAIRMAN KOPLAN: Okay. Thank you. And I
23 am glad that you asked so that that part is clear,
24 that I would be using '98. I would like you to use
25 '98. Now, Dr. McGrath, Indonesian respondents assert

1 at pages 8 and 9 of their pre-hearing brief that a
2 difference in average unit values constitutes a
3 difference in conditions of competition important to
4 the Commission's discretionary decision whether and
5 which countries to cumulate, and that AUVs for
6 Indonesian imports were higher than for other subject
7 countries.

8 AUV data in the confidential prehearing
9 report, Revised Table C-1, does indicate that since
10 2000, AUVs for Indonesian imports were higher than
11 AUVs of imports from China and India.

12 Does that reflect a difference in product
13 mix, and I am referring to food service versus retail,
14 stems and pieces, versus sliced; or does it reflect
15 higher prices for the same mix of products? I am
16 asking you because I note that earlier you mentioned
17 differences in product mix when you were testifying.

18 MR. MCGRATH: Yes, Mr. Chairman. It simply
19 represents the different product mix that Indonesia
20 primarily, or the majority of its imports, are the
21 smaller retail cans, which are higher priced products
22 all the way along the line than the number 10 can.

23 Of course, we could provide definitive data,
24 and we could talk about it on a much more exact basis
25 if we had any actual pricing information from

1 Indonesia, which has all been thrown into confusion
2 from this information that Mr. Coursey mentioned that
3 was filed after everyone filed their prehearing
4 briefs.

5 I will say this. That the staff report that
6 was given to us shows very clear and consistent under-
7 selling by the Indonesian product in those price
8 comparisons for both the retain sizes and the number
9 10s.

10 CHAIRMAN KOPLAN: Thank you.

11 MS. CANNON: Could I add, Commissioner
12 Koplan, also on the average unit value issue with
13 respect to cumulation.

14 CHAIRMAN KOPLAN: Certainly.

15 MS. CANNON: That if you look at what the
16 purchasers had to say, the purchasers generally said
17 that the prices were comparable, and I think that is a
18 better indication than an average unit value, and that
19 includes a product mix, in terms of whether these
20 prices are trending along the same lines for purposes
21 of a accumulative analysis.

22 CHAIRMAN KOPLAN: Thank you for that. If no
23 one else has anything to add, that concludes my
24 questioning. I want to thank you very much for your
25 answers. Vice Chairman Okun.

1 VICE CHAIRMAN OKUN: Thank you, and again I
2 appreciate all of the answers that you have given this
3 morning and this afternoon on a number of issues that
4 are important.

5 For post-hearing, Mr. Coursey, I think I
6 know that in your opening and talking about
7 cumulation, you have focused I think more on
8 Indonesia's no reasonable overlap argument. I think
9 the Indonesians in their prehearing brief, and
10 certainly what we heard -- and what I think we will
11 hear this afternoon, are focused more on the
12 discretionary aspect of cumulation.

13 So, for purposes of post-hearing, if you
14 could go into detail on that. And I know that you
15 touched on it in response to some questions, but just
16 in terms of Commission practice in these reviews, and
17 how that addresses the Indonesian's arguments
18 regarding cumulation here, as well as the one that I
19 heard Commissioner Miller raise about -- well, how
20 Chile is treated and why in this, even though I didn't
21 participate in the original.

22 But I would like you to look at those
23 differences as you see them. And I think with that, I
24 don't believe -- I think that covers my questions, and
25 again I want to thank you all for being here today.

1 Thank you, Mr. Chairman.

2 CHAIRMAN KOPLAN: Thank you, Vice Chairman.

3 Are there any further questions from the dais?

4 Commissioner Hillman.

5 COMMISSIONER HILLMAN: If I could just
6 mildly embellish the Vice Chairman's question, because
7 it is exactly the question that I wanted to ask also.
8 Just to specifically help us if there is precedent in
9 this issue of the discretionary factors for
10 cumulation, it would go to this issue of changes in
11 trends, because obviously the Indonesians are arguing
12 that they have been a consistent, but significant
13 presence.

14 Have we ever -- again, I am looking for any
15 precedent, anything that you would have us look at in
16 terms of whether there is a reason and Commission
17 precedent to treat a country differently because they
18 have been if you will the steady presence, while
19 others have changed their volumes.

20 So it is specifically to help us on sort of
21 Commission practice or Commission precedent with
22 respect to the discretionary factors, particularly the
23 volume trend factor, as part of this response to the
24 Vice Chairman's question would be very helpful. Thank
25 you.

1 CHAIRMAN KOPLAN: Thank you, Commissioner.
2 No further questions from the dais? If not, does the
3 staff have questions?

4 MR. DEYMAN: George Deyman, Office of
5 Investigations. The staff has no questions.

6 CHAIRMAN KOPLAN: Thank you, Mr. Deyman.
7 Yes?

8 VICE CHAIRMAN OKUN: I'm sorry, there was
9 one other thing that I had wanted to say because I
10 don't think it has been said, which is, Mr. Coursey,
11 that you started with in your opening about the
12 pricing data, which we do not have. It has been
13 revised by General Mills, and I think if I hadn't
14 mentioned it, and I don't think I have, I think that
15 is -- you know, I wish we had that here, and I wish
16 you had the ability to comment on it, and which we
17 would have seen in their brief.

18 At this point, I will look at what we have,
19 and obviously you will have the comment to do it post-
20 hearing, but I did want to make sure that -- I don't
21 think it has gone by any of us that we don't have that
22 data in front of us right now, and so I wanted to add
23 that.

24 MR. COURSEY: Thank you very much.

25 CHAIRMAN KOPLAN: Thank you for that, Madam

1 Vice Chair. I won't take that off the lunchtime. Do
2 those in support of revocation have any questions for
3 this panel before I release the panel? Mr. Campbell?
4 Mr. Morgan?

5 MR. CALIGIURI: No, Chairman Koplan, we have
6 no questions.

7 CHAIRMAN KOPLAN: All right. Thank you.
8 Well, then we will recess for lunch. We will come
9 back at -- this is a matter of discussion. We will
10 come back at 1:30. Remember that all of the materials
11 in the room -- the room is not secure, and so anything
12 that is business confidential, you should take with
13 you. Are my colleagues satisfied with the 1:30 time
14 frame? Thank you very much. See you at 1:30.

15 (Whereupon, at 12:22 p.m., a luncheon recess
16 was taken.)

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

1 Caligiuri that we intended to submit in the brief.
2 All we were going to do was answer any questions that
3 you might have directed to Sunny Dell on his behalf in
4 the brief. So it wasn't written testimony that we
5 would submit.

6

7 CHAIRMAN KOPLAN: Well, I misunderstood. I
8 thought you were going to submit his statement?

9 MS. CANNON: Yes, I think that was not quite
10 correct.

11 MR. COURSEY: I just wanted to note that
12 Mr., Caligiuri's willingness to appear, and his
13 inability to appear, and his willingness to answer any
14 questions the Commission might have.

15 CHAIRMAN KOPLAN: Okay. So you weren't
16 seeking to submit written testimony on his behalf?

17 MR. COURSEY: No.

18 CHAIRMAN KOPLAN: I misunderstood you, or
19 you changed your mind?

20 MR. COURSEY: I was not clear.

21 CHAIRMAN KOPLAN: Okay. Thank you. Well,
22 with that, I think that closes that matter.

23 MR. COURSEY: Thank you, Mr. Chairman.

24 CHAIRMAN KOPLAN: Thank you. And now, Madam
25 Secretary, if the witness have been sworn, I guess we

1 can proceed.

2 MS. ABBOTT: The witnesses have been sworn.

3 CHAIRMAN KOPLAN: You may proceed.

4 MR. THOMPSON: Good afternoon, Mr. Chairman,
5 and Madam Vice Chairman, and Commissioners, and
6 members of the staff. My name is George Thompson,
7 from the law firm Neville Peterson, LLP.

8 I am appearing today on behalf of General
9 Mills, Incorporated. And I am accompanied by Mr.
10 Duane Larson, of General Mills. He will present the
11 bulk of the testimony this afternoon, but before
12 turning it over to Mr. Larson, I would like to note
13 that as we had stated in our prehearing brief, General
14 Mills discovered a number of errors in the data
15 reported in its importer questionnaire.

16 We have since corrected those errors, and
17 filed the amended responses, and served them on the
18 parties yesterday. So the corrected information is on
19 the record. We would be happy to address any
20 questions the Commissioners may have concerning the
21 nature of the errors, or the corrected data, if you
22 have any questions along those lines.

23 That said, I would like to turn the
24 microphone over to --

25 CHAIRMAN KOPLAN: Let me just understand

1 something as a housekeeping matter.

2 MR. THOMPSON: Certainly.

3 CHAIRMAN KOPLAN: My understanding is that
4 the information submitted is not complete though. Is
5 that correct, Mr. Deyman?

6 MR. DEYMAN: I am told that it is complete.

7 CHAIRMAN KOPLAN: It is complete?

8 MR. DEYMAN: The investigator says that it
9 is complete.

10 MR. THOMPSON: Mr. Chairman, what had
11 occurred was that we -- I received the information in
12 two stages. The second stage arrived earlier than I
13 had anticipated. So I had alerted staff that it would
14 be coming in later, and events overtook my initial
15 pessimism on the timing of the filing.

16 CHAIRMAN KOPLAN: Thank you. I'm sorry, you
17 may proceed.

18 MR. THOMPSON: Thank you. I'd like to ask
19 Mr. Duane Larson of General Mills to present his
20 testimony.

21 CHAIRMAN KOPLAN: Welcome, Mr. Larson.

22 MR. LARSON: Thank you. My name is Duane
23 Larson. My function is co-pack team leader within
24 General Mills. Within that function, mushrooms is one
25 of the products that I am responsible for in the

1 purchase of outside produced products.

2 I have been with Green Giant, and then
3 Pilsbury, then Grand Met, and then Diageo, and now
4 General Mills, for 32 years. All of that time either
5 associated directly with or on the side with Green
6 Giant, as well as other product lines.

7 I think that General Mills is -- and I voice
8 this for the Green Giant label, we are a branded
9 mushroom sales company, branded only. We only sell
10 under the Green Giant brand, either glass jar, sliced
11 whole, in 4-1/2 ounce, 2-1/2 ounce, or 6 ounce jars.

12 We also sell pieces of stem mushrooms in 4
13 ounce, 8 ounce, and 68 ounce containers. The 68 ounce
14 containers are not for food service sale, or outside
15 industrial sale. They are strictly for our internal
16 use, and/or for retail sale through club stores.

17 We do not have any food service, quote,
18 customers, or outside industrial customers. We also
19 have a small line of mushrooms under the B in B
20 product name oiled in butter, and that is in 3 ounce
21 and six ounce size. Those are sliced and whole as
22 well.

23 I think what differentiates us along with
24 other branded players is we are not a spot market. We
25 are not in and out of the business. We have been in

1 the mushroom business for over 40 years.

2 We have always been branded, and we have
3 always been viewed as high quality and consistency in
4 our product. All of our products bear an 800 number
5 that consumers can call in if they find our product to
6 be defective in any way to their expectations.

7 We, to maintain our product quality, we have
8 on-site at our foreign operations, we have staff that
9 are paid for by General Mills on-site at these
10 operations, controlling the product that is put under
11 the Green Giant label.

12 We have been in the Indonesian market since
13 the mid-1980s. We have been in addition to there, we
14 have also been in the Indian market, which I will
15 discuss at a later point in time; and we also back in
16 the early '80s were in the China market.

17 I think as you look at what we are -- and we
18 are not in the fresh business. You will occasionally
19 see in the fresh market in the grocery store, you will
20 see Green Giant mushrooms. Those are not Green Giant.
21 We licensed the brand for fresh products. That is not
22 part of General Mills or the Green Giant portfolio
23 today.

24 Indonesian pricing. Since the dumping
25 order, our pricing, our commitment, our volume within

1 Indonesia has not relatively changed before or after
2 the imposition of the dumping duties, and in fact also
3 in the case of Zeta Agro, who is a major supplier of
4 ours, our volume has not changed because of them
5 getting a zero dumping duty.

6 Indonesian prices for us as a branded
7 player, yes we are able to command a higher price for
8 our product because we are branded, or we feel that we
9 can command a higher price.

10 And we are able to get the quality that we
11 want and demand out of the Indonesian market because
12 they are growing or processing the fancy product that
13 is needed for retail whole and sliced, more than they
14 are growing mushroom product for the pieces and stems
15 market, which is more of a commodity market than the
16 sliced and the whole.

17 The changes in the last five years with the
18 dumping order as you will see from our data, there
19 have not been dramatic changes. You will see some
20 spikes, and I would like to explain the spikes on the
21 front and the back end of our data.

22 In 1998, we were still -- our product volume
23 was down, and in '99, we spiked up in product from
24 Indonesia. The reason for the spike up was that we
25 had product from Mexico, and in 1998, we were still

1 getting product out of Mexico.

2 That arrangement was terminated in '98. So
3 to get our volume that we had the prior year, volume
4 in Indonesia did increase in 1998. You will also
5 notice that our volume shows a dip in 2002. We had a
6 disruption in service in 2002 out of India.

7 We had an issue of a pesticide or an
8 unapproved chemical in the product that caused us to
9 cease taking product out of India. And subsequently,
10 we left India, but in the interim, losing that large
11 share of our volume, we had service issues for the
12 year 2000.

13 So you will see that our volume is down in
14 2002, and then in 2003, the volume is increased again
15 dramatically. The increase in 2003 is to supplement
16 and get our inventories back in line from our shortage
17 of mushrooms that we had during the 2002 year.

18 I would also like to talk about what has
19 changed in the U.S. market in my view and our view
20 from 1968 to current. I think we have seen -- we have
21 seen within the branded business a decrease in fancy
22 sliced and whole mushroom volume.

23 We view that to be the result of increases
24 in fresh market, and the fresh market is the slice
25 market, and the whole market. It is fancy tissue,

1 just like the fancy tissue that is in the can. I
2 think you are seeing more and more consumers switching
3 from a preserved product to a fresh product in
4 household use.

5 Less so as an industrial use, other than
6 like you said, and which was brought up earlier this
7 morning with the pizza business switching from
8 predominantly a preserved product to a fresh product.

9 But the fresh industry in our review has
10 certainly caused a decrease in the demand for sliced
11 and whole branded fancy mushrooms at retail. If you
12 look at our historical volume, our volume is down
13 dramatically today versus what it was before the
14 dumping duties were imposed, and certainly now after
15 they have been in place for five years.

16 The change I think is that as other -- a big
17 change that has impacted raw product within the U.S.
18 in my mind is the advent of the club store, and that
19 was brought up earlier.

20 A club store is a huge sales vehicle for
21 pieces and stems in multi-packs. There is very little
22 fancy product that is sold in club stores, like multi-
23 packs of sliced product, or multi-packs of whole
24 product. It is mainly multi-packs of pieces and
25 stems.

1 And then they also do have the gallon
2 mushrooms, either of pieces and stems, and that is the
3 gallon market that we participate in occasionally, and
4 not consistently. At this point in time, we are not
5 in that market.

6 Because of pricing, we are unable to compete
7 in that market today. The industrial demand for
8 product, I can't speak to, because again we don't sell
9 product to the industrial users.

10 But we as an industrial user, have certainly
11 seen our volume decrease for industrial use as well.
12 We use it in a couple of frozen products and a couple
13 of canned products as a byproduct.

14 A little bit on to -- I'll switch to trying
15 to differentiate the foreign producers from each
16 other. As I said, we are in Indonesia. We've been
17 there since '84. We currently buy from three
18 different processors in Indonesia. To my knowledge,
19 there are only four active processors in Indonesia.
20 The fourth processor, we never have purchased from in
21 the past and do not view that we will purchase from
22 them in the future.

23 There are a couple of suppliers that we did
24 purchase from in Indonesia who are no longer in
25 production. Those two have ceased production, as far

1 as I know, since 2002.

2 And as I said, we have staff on site at each
3 one of our locations in Indonesia. The overall
4 manager of that group reports to me, and they oversee
5 the actual quality of the product as it's being
6 produced.

7 Since our product is heavily skewed to
8 fancy, the growing process is certainly a little
9 different in Indonesia than it would be. They are not
10 in the fresh market business; they are growing
11 strictly for processing. And since the majority of
12 the product that we desire is fancy in nature, their
13 growing and harvesting practices are different than
14 some of what you might have heard earlier this
15 morning. Their requirements are for a much smaller
16 mushroom. For glass jar, for small retail containers,
17 you want a smaller button mushroom, you want a smaller
18 slice than what you would necessarily put in a 68-
19 ounce container or an eight-ounce container.

20 Therefore, their yield is lower than some
21 other foreign suppliers, which I will elaborate on a
22 little bit further. With their yield lower, their
23 cost of growing mushrooms is higher; and, therefore,
24 their competitiveness to, say, India and China, they
25 are at a disadvantage to both of those locations in

1 price in that regard.

2 The two processors that I said had ceased
3 production in 2002 were Dieng Jaya and P.T. Evergreen,
4 and those had been -- Dieng Jaya had been a major
5 supplier of ours going back to when we originally were
6 in Indonesia. P.T. Evergreen had been a minor
7 supplier of ours for a number of years.

8 I mentioned India, that we were in India.
9 We were in India from 2001, from February of 2001
10 until February or March of 2002. The process in India
11 is entirely different than it is in Indonesia where
12 the major processors there are very high volume, and
13 they are definitely skewed to producing gallon
14 containers of pieces and stems, less skewed to small
15 retail containers. Their percent of their product
16 that would make fancy grade is much lower in India
17 than it is in Indonesia.

18 The reason that we left India -- I
19 elaborated that we had an issue with a chemical that
20 was not allowed on mushrooms. We worked with Agro
21 Dutch for almost a year, determined the source of
22 their problem; however, still had to terminate the
23 relationship due to them not acknowledging money that
24 was owed us, so we parted company with India in 2002.

25 I think you will notice, in the product

1 coming out of India, you saw a dip down in product out
2 of India in 2002. That was definitely driven to the
3 factor of what happened with Agro Dutch in 2002. They
4 had a significant period of time when they could not
5 import product into the U.S.

6 The China market is entirely different than
7 India or Indonesia. In China, you're growing mainly
8 in -- one province has 90 percent of the volume of
9 mushrooms coming out of China. It's a southern
10 province.

11 Since China is a four-climate, four-season-
12 climate country, they actually only grow mushrooms
13 from December to May. It isn't a year-round business.
14 The other thing that is unique about the majority of
15 the China market is that there are lots of small,
16 very, very small growers, farmers, and there are a
17 number of processors, but product isn't necessarily
18 under contract. It isn't grown for a specific
19 customer. Thereby, on a processing day, a Chinese
20 processor today may have five metric tons to process.
21 That's all that the farmers brought in today.
22 Tomorrow, they may have 300 metric tons to process.
23 They don't have the capacity to process that range of
24 product; thereby, there is where the brand product
25 comes in, with the China market.

1 Their quality and consistency -- while
2 others maybe stated that there is no discernable
3 difference between quality in the U.S., in Indonesia,
4 in India, or China, I would disagree with that, that
5 there is definitely a difference. Can you get good,
6 high-quality product out of any of these locations I
7 mentioned? Yes. Can you get it consistently,
8 regulatory-wise, from a size, texture, color? No. It
9 is variable, and that's the part we, as a branded
10 player, found it impossible to deal with in China.
11 Also, we left in China before they had -- the year
12 after we left China is the year that they brought to
13 light the issues with E. coli back in the mid-
14 eighties.

15 At this point in time, we are 100 percent
16 volume sourced out of Indonesia, and we do not have
17 any plans that would say that's going to change. We
18 would like to think that our volume would continue to,
19 at least, flatten out or increase, but our volume as
20 it is today continues to decrease. As far as data
21 that is not even in the data submitted 2004, again, it
22 shows that our volume continues to decrease.

23 Our price lists, as were submitted within
24 the data, our price lists to retail have not changed
25 in the five-year span that is in question. Retail

1 pricing remained the same throughout that span of
2 time.

3 The other customers -- we talk about
4 Indonesia. Are there any other major customers? To
5 my knowledge, it is all brokered. There aren't any
6 other major players that are in Indonesia other than
7 Green Giant. We are the importer of record on 100
8 percent of the mushrooms that we import. We do not go
9 through brokers like a number of participants.

10 The house brands that I know do get product out
11 of Indonesia are Kroger for their private label,
12 Libby's for their branded label.

13 I forgot to mention, as we look at the
14 revocation of the order for Indonesia and talk about
15 free fall and flood on the market, again, I can give
16 voice to our experience in Indonesia. Our pricing is
17 basically flat to where there's been minor changes,
18 but our prices did not change with the imposition.
19 They have not changed with Zeta Agro no longer under
20 restraint.

21 Lastly, George was kind enough to be the
22 first one to say that we had some errors. You are
23 looking at the person who is responsible for all of
24 those errors. The questionnaire, when I first
25 received it, I was daunted by the detail and depth of

1 the request. With the merger of Pillsbury being sold
2 to General Mills during this time frame, access to the
3 historical records necessary to fill out this
4 questionnaire were not available; they were in
5 storage, and time was of the essence. I was able,
6 through my staff in Indonesia, to get the data that I
7 did get. I, unfortunately, misinterpreted what the
8 request was as far as pricing, what price was supposed
9 to be on the one page. Therefore, I listed the price
10 out of the country rather than the retail sales price.

11 Secondly, I also indicated we had industrial
12 sales and food service sales, which, in fact, we
13 really do not. We have industrial sales to ourselves
14 for internal use. What I was calling food service was
15 club, and that was my interpretation of what gallons
16 were. So I put club into the retail market.

17 And the third piece that was in error within
18 the report was we in Indonesia pay for some of the
19 packaging. It isn't part of the price of the product,
20 and that inadvertently was left off of the price of
21 the product, and in the haste to get the report out in
22 a timely fashion, we did not have enough review of the
23 data that was submitted, and I apologize for that.

24 Thank you.

25 MR. MORGAN: Thank you, Mr. Larson.

1 Good afternoon, Chairman Koplan and
2 Commissioners. My name is Frank Morgan, and I'm an
3 attorney at White & Case. I'm joined by my colleague,
4 Jay Campbell, and we are here today on behalf of the
5 Indonesian Respondents. At the outset, my apologies
6 that you have to endure the testimony from two
7 lawyers. Our clients regret not being able to be here
8 today. They have trusted us to make their case and,
9 hopefully, have not trusted us unwisely.

10 The case today really does involve objective
11 facts and trends from those facts. You heard this
12 morning that our brief focused, in large measure, on
13 current conditions existing in the industry. We
14 submit to the Commission that those current existing
15 trends and information are highly relevant for looking
16 towards what would happen in the event of revocation,
17 particularly in light of the fact that the Indonesian
18 subject imports have largely been able to enter the
19 market without the strictures of an order at low and
20 de minimis rates.

21 I will discuss the factors that we believe
22 warrant the Commission exercising its discretion not
23 to cumulate, and my colleague, Jay Campbell, will
24 discuss the factors that show no likelihood of the
25 continuation or recurrence of material injury from

1 subject Indonesian imports if the order is revoked.

2 The Commission, in the context of a future
3 analysis, has had a fairly consistent practice of
4 looking at volume trends, production capacity levels,
5 AUVs, as well as the margins that Commerce has found
6 to exist in the subject countries with the subject
7 producers. Now, we cited some of those cases in our
8 brief, and we'll certainly continue to review
9 additional cases, particularly in the threat context
10 where the Commission has also undertaken this
11 analysis. I would note that it's also been upheld in
12 the judicial system.

13 With respect to volume trends, I think even
14 this morning you heard from the Petitioners that, in
15 fact, there are divergent volume trends. You can't
16 hide from it; it's right there glaring at Roman
17 numeral i-1 of the staff report, the chart that I like
18 to say is worth a thousand words for us. It shows,
19 particularly in 2002 to 2003, subject imports from
20 Indonesia declining in contrast to those from China
21 and India, and it also shows divergent trends
22 throughout the other periods in the POR.

23 Chilean subject imports ceased altogether,
24 or at least officially subject imports coming in from
25 Chile ceased, but the fact remains that that, too, is

1 a quite divergent condition of competition than what
2 you see with respect to the Indonesian subject
3 imports.

4 On production capacity levels, the
5 information of record suggests that Indian levels of
6 production capacity have increased while subject
7 levels from Indonesia have declined. You heard this
8 morning from Petitioners, as well as in their
9 prehearing brief, that Chinese production capacity has
10 most likely doubled and would lead to volumes well in
11 excess of those seen in the original investigation,
12 and Chile, at a minimum, has maintained the same level
13 of capacity, and the addition of a four-ounce canning
14 line, if that is the case, would suggest that they
15 have increased their capacity versus that which was
16 seen in the original investigation, so you have,
17 again, a diverging trend. You have a slight decline
18 in Indonesian subject capacity and increases in the
19 other subject countries.

20 On AUVs, we don't submit that it should be
21 used in lieu of pricing data, but it does suggest
22 differences in the conditions of competition that
23 exist. Either way you look at it, the AUVs either
24 suggest that -- AUVs being much above those from the
25 other subject countries -- either Indonesia has a

1 higher-priced product in the mix and sells more of
2 that than all of the other subject countries, and I
3 would also note, Indonesian AUVs were above those for
4 nonsubject imports consistently throughout the period
5 of review. So it either suggests a different product
6 mix, or it suggests that if, in fact, it was
7 reflective of one product, that Indonesian prices for
8 that product were higher, but either way, it cuts. It
9 goes to a difference in the conditions of competition
10 that currently exist and will prevail in the future.

11 Finally, on the dumping margins Commerce has
12 found, there is a wide divergence. The Indonesian
13 producers consistently have been found to be selling
14 at or near fair values, and as has been mentioned,
15 P.T. Zeta Agro, in fact, on three successive
16 administrative reviews, proved that it had not been
17 selling at less than fair value, and Commerce revoked
18 the order.

19 In contrast, the other subject countries
20 have all undergone administrative reviews, and with
21 one or two exceptions, Commerce has consistently found
22 that subject producers in China, in India, and Chile
23 have been selling at significant dumping margins. So
24 that, too, suggests a difference in the conditions of
25 competition, and I think you've heard some of the

1 reasons that sort of reaffirm or corroborate that
2 based on the differences in the nature of the
3 industries themselves. You just heard that from Mr.
4 Larson.

5 The reason, it seems to us, that the
6 Commission looks to the conditions of competition in a
7 forward-looking analysis is whether in the future the
8 imports will compete such that a cumulated analysis is
9 appropriate. If one subject country follows different
10 trends from the rest, then when you're cumulatively
11 assessing the impact of imports from that country, it
12 would seem to be unreasonable to consider a decline in
13 Indonesian imports but then to base a decision as to
14 future likely injury on the fact that, overall,
15 subject imports increased. So those kinds of things
16 where you have divergences between trends for one
17 country and those for subject imports cumulated would
18 suggest that decumulating in that circumstance is the
19 reasonable course to take.

20 Now, on this point, I would note that the
21 Petitioners' prehearing brief is illustrative, and a
22 lot of the case that they make, based on a cumulated
23 analysis, does not apply, again, to the objective
24 record evidence as to Indonesia. For instance, on
25 pages 18 to 19, the Petitioners argue as factors that

1 support continuing the order as to China and India,
2 that there have been rapid and significant increases
3 in volumes of imports from those countries, and as
4 I've discussed and as Petitioners would have to
5 recognize, that has not been the case with respect to
6 subject imports from Indonesia.

7 On page 41, the Petitioners cite to the
8 decline in nonsubject imports since 2000 and a
9 corresponding rise in subject import volumes. You
10 have also heard that testimony this morning, but,
11 again, those facts don't correspond to what is seen
12 for subject Indonesian imports. Subject Indonesian
13 imports since 2000 have been declining. They have
14 also declined, I would note, as a share of apparent
15 consumption from 2000 to 2003, so both in absolute and
16 relative terms.

17 On page 41 of the Petitioners' prehearing
18 brief, the heading is titled "Subject Import Volumes
19 Declined in Response to the Imposition of the Order."
20 While this appears to be true with respect to China,
21 India, and Chile, it certainly is not true with
22 respect to Indonesia. In fact, in the year following
23 the imposition of the order, -- in fact, I believe it
24 to be the only time where subject import volumes from
25 Indonesia increased -- there was an increase, and then

1 in subsequent years, subject import volumes from
2 Indonesia began to decline.

3 The final thing to note in respect to the
4 Petitioners' arguments in their prehearing brief and
5 why it would be appropriate for the Commission to
6 consider Indonesia individually is the impact that
7 they talk about, the likely impact if the orders are
8 revoked, and, again, it's on a cumulated basis.

9 And they note that domestic prices and
10 average unit sales values increased initially after
11 imposition of the orders, and you heard that testimony
12 again today. That initial period was the only period
13 in which subject imports from Indonesia actually
14 increased. In the latter parts of the period where
15 there have been subject import increases, they have
16 been from China, and I believe you heard China
17 referred to as the "800-pound gorilla," as at almost
18 every hearing where China is at issue it is; so, too,
19 in India.

20 And the corresponding facts with respect to
21 Indonesia are that those subject import volumes have
22 declined, and we illustrated the lack of relationship
23 between the subject import volume trends in Indonesia
24 and those for the domestic industry's operating
25 performance in our prehearing brief, which is

1 confidential.

2 At this point, I will turn it over to my
3 colleague, Jay, who will discuss the fact that there
4 would be no likelihood of recurrence of injury. Thank
5 you.

6 MR. CAMPBELL: Thanks, Frank. As Frank
7 noted, I will discuss why there revocation of the
8 antidumping order on Indonesian preserved mushrooms
9 would not be likely to lead to material injury. I
10 will start with the likely-volume prong of the
11 statute.

12 As an initial matter, in preparing for this
13 hearing, we noticed that the prehearing staff report
14 actually overstates the total volumes of Indonesian
15 subject imports for the years 2002 and 2003. The
16 total quantities of subject imports provided in the
17 prehearing staff report for these years exceeds the
18 quantities reported by the Indonesian Respondents.
19 For this reason, we think that the prehearing staff
20 report must be in error for years 2002 and 2003
21 because we represent all of the Indonesian producers
22 of subject merchandise in this review.

23 The only other producer of preserved
24 mushrooms from Indonesian is P.T. Zeta Agro, for which
25 the company received a revocation. We will be

1 prepared to demonstrate this in our post-hearing
2 brief.

3 In terms of the reason we think the
4 prehearing staff report overstates the total subject
5 imports from Indonesia for these two years, 2002 and
6 2003, we've reviewed it, and it appears that in
7 calculating the total quantities of Indonesian subject
8 imports for 2003, -- I'll start with 2003 -- it's the
9 same approach for 2002 -- the Commission staff
10 subtracted the reported imports from P.T. Zeta Agro
11 from the total quantity of imports of Indonesian
12 preserved mushrooms provided in the import statistics.
13 We think that it's highly doubtful that reported
14 imports from P.T. Zeta Agro account for all of the
15 imports from this company, given that most likely not
16 all importers actually responded to the
17 questionnaires.

18 Hence, we believe that the quantities
19 provided for total Indonesian subject imports for 2003
20 include imports from P.T. Zeta Agro and, thus,
21 overstate the quantity of total subject imports. And
22 again, we believe the Commission took the same
23 approach for 2002.

24 This would explain why total U.S. shipments
25 reported by the Indonesian Respondents are less than

1 the figures provided for total Indonesian subject
2 imports for 2002 and 2003 provided in the prehearing
3 staff report. And again, we will flesh this out in
4 greater detail in our post-hearing brief.

5 In any event, even using the import data
6 provided in the prehearing staff report, it is clear
7 that the likely volume of Indonesian subject imports
8 would not increase significantly following revocation
9 of the order.

10 First, the volume trends exhibited by the
11 subject imports from Indonesia during the period of
12 review indicate that the Indonesian subject imports
13 are unaffected by the order. After imposition of the
14 order and the establishment of positive deposit rates,
15 the Indonesian subject imports increased.

16 Conversely, during the second half of the
17 period of review, Indonesian subject imports decreased
18 despite very low-to-de minimis deposit rates.
19 Moreover, even after revocation of the order on P.T.
20 Zeta Agro, after this revocation was published in
21 2003, total imports of preserved mushrooms from
22 Indonesia did not increase.

23 These facts demonstrate that the behavior of
24 the Indonesian subject producers is unaffected by the
25 order. Accordingly, revocation of the order would not

1 be likely to lead to significantly increased subject
2 exports from the subject producers.

3 On page 46 of their prehearing brief, the
4 Petitioners argue that continued subject imports have
5 been possible during 2002 and 2003 "despite the
6 imposition of the order through the entrance of new
7 shippers." At page 66 of their prehearing brief, the
8 Petitioners go so far as alleging that Chinese and
9 Indonesian exporters have manipulated the new-shipper-
10 review provisions in order to ship product to the
11 United States, and the Petitioners don't provide much
12 support for this assertion, particularly with regard
13 to the Indonesians.

14 With respect to the Indonesian imports, I
15 remind the Commission that the deposit rates against
16 Indonesian subject producers were at very low-to-de
17 minimis levels during the period of review or the
18 latter half of the period of review. In fact, no
19 Indonesian subject producer faced a deposit rate
20 greater than one percent during 2002 and 2003. So the
21 notion that Indonesian subject imports were only
22 possible through new shippers is unconvincing because
23 Indonesian subject producers have been largely
24 unaffected by the order.

25 With respect to production capacity, the

1 record indicates that there will not be any likely
2 increases in Indonesian production capacity after
3 revocation of the order. On this issue, we have three
4 affirmative points to make.

5 Initially, we note that the prehearing staff
6 report understates Indonesian subject producers'
7 industry-wide, capacity-utilization rate for the most
8 recent period, 2003. This is because the prehearing
9 staff report includes the utilization rates of the
10 Indonesian companies that ceased production in 2003:
11 Dieng Jaya and Indo Evergreen. And as these companies
12 were phasing out production in 2003, the reported
13 capacity-utilization rates for this year are, not
14 surprisingly, aberrantly low.

15 In conducting its prospective analysis,
16 however, the Commission should only consider the
17 production capacities of the subject companies that
18 continue to produce. When only the utilization rates
19 of the operational subject producers is considered, it
20 is apparent that the Indonesian industry operated at a
21 high level of capacity in 2003.

22 Second, when the availability of raw
23 mushrooms is factored into the equation, the total
24 capacity-utilization rate of the Indonesian subject
25 producers is even higher. As we will explain in more

1 detail in the post-hearing brief, one of the
2 Indonesian subject producers faces constraints on its
3 ability to source raw mushrooms. Consequently, its
4 true capacity-utilization rate is much higher than its
5 reported rate for 2003, as well as its projected
6 rates.

7 Third, even without factoring in the
8 availability of raw mushrooms, Indonesian subject
9 producer capacity is projected to decline in the
10 future. The Indonesian subject producers, in response
11 to the questionnaire requesting business plans,
12 reported its projected shipments and capacities for
13 the years going forward. The projected capacity for
14 the operational Indonesian subject producers is lower
15 than that reported for 2003 and lower than the amounts
16 reported for the years 1998 through 2000, and these
17 are the years in which Dieng Jaya and Indo Evergreen
18 were fully operational.

19 When considering the fact that the earlier
20 periods of review do not reflect the production
21 capacity of P.T. Zeta Agro, the projected decline in
22 subject capacity is even greater.

23 At pages 53 to 56 of their prehearing brief,
24 Petitioners call into question the Indonesian
25 Respondents' reported capacities. The Petitioners'

1 arguments are superficial and can be readily
2 dismissed. To the extent I can do so without
3 divulging APO information, I will explain why
4 Petitioners' arguments are without merit; otherwise,
5 we will address these arguments in our post-hearing
6 brief.

7 For now, I have three points to make.
8 First, Petitioners' claim that P.T. Eka Timur's Web
9 site states that the company has "a processing
10 capacity of 25,000 kilograms per day" and suggests
11 that the company thus misreported its true capacity.
12 This is not so. The Web site actually states that the
13 company has the capacity to process about 25,000
14 kilograms of fresh mushrooms per day. The capacity to
15 process a given quantity of fresh mushrooms does not
16 translate into the capacity to produce the equivalent
17 quantity of canned mushrooms.

18 I point the Commission to Exhibit 3 of P.T.
19 Eka Timur's questionnaire response. There, the
20 Commission will find a calculation of raw mushrooms to
21 processed mushrooms which shows that the Web site
22 fully corroborates the capacity data that P.T. Eka
23 Timur reported. In fact, P.T. Eka Timur actually
24 reported a capacity figure that is even slightly
25 higher than that listed in its Web site.

1 Second, Petitioners attempt to impeach the
2 credibility of P.T. Eka Timur's questionnaire response
3 by pointing to the year that the company reported
4 requesting a new shipper review. I note that both
5 P.T. Eka Timur and Karya Kompos, the two new shippers,
6 requested new shipper reviews in August 2002. To
7 confirm this, I just went to the published preliminary
8 results in the Department of Commerce's new shipper
9 review, which is at 68 Federal Register 16,469. It
10 took me about 30 seconds to look this up. Anything to
11 the contrary in the company's responses was a typo,
12 for which we apologize.

13 Finally, Petitioners question whether two of
14 the Indonesian Respondents, Dieng Jaya and Indo
15 Evergreen, have actually exited the production of
16 certain preserved mushrooms. First, I would point out
17 that neither of these companies stated that it exited
18 production; rather, each stated that it ceased
19 production. I cannot get into specifics without
20 disclosing confidential information, but we will
21 provide additional information regarding the status of
22 each of these companies in our post-hearing brief.

23 Second, although it is possible that these
24 companies will be able to resume production someday in
25 the future, the question for the Commission to address

1 is whether this would be likely. At this point, it
2 does not appear likely that both will be able to
3 resolve the problems they face and resume production.

4 Finally, even if each of these companies
5 could resolve the problems they face, if and when they
6 are able to, it would take over two years before
7 either would be fully operational. Again, we will
8 provide greater detail in our post-hearing brief.

9 With respect to likely price effects, as
10 noted in our prehearing staff report, we did not
11 discuss this factor in light of General Mills'
12 reporting error. We did receive a service copy of
13 General Mills' corrected data yesterday afternoon and
14 have not had time to study it in depth, but based on
15 some rough calculations, we do believe that when
16 General Mills' corrected information is incorporated
17 into the analysis, the underselling analysis or the
18 price-comparison analysis, the record will show
19 significant overselling by the Indonesian subject
20 imports.

21 A comparison of the AUVs of the Indonesian
22 subject imports and of the domestic like product
23 supports this estimation. Indeed, in three of the
24 last four years of the period of review, the AUVs of
25 the Indonesian subject imports were higher than the

1 AUVs of the domestic product. Accordingly, we are
2 confident that the revised record will show that
3 revocation of the antidumping order on Indonesian
4 subject imports would not be likely to result in
5 significant price effects.

6 Finally, with respect to likely impact, in
7 three key respects, the record provides strong
8 indication that revocation of the Indonesian order
9 would not be likely to lead to significant adverse
10 harm to the domestic industry. First, during the
11 period of review, Indonesian subject imports did not
12 account for the decline in the domestic industry's
13 shipments. Indeed, during the periods in which the
14 domestic industry suffered its two greatest losses in
15 shipments, from 1999 to 2000 and from 2002 to 2003,
16 Indonesian subject imports either held steady or
17 declined. Conversely, imports from other sources
18 increased during these periods.

19 Second, the record shows no correlation
20 between the domestic industry's market share and
21 Indonesian subject market share.

22 And finally, as discussed in our prehearing
23 brief, the record reveals no causal relationship
24 between the domestic industry's operating performance
25 and the Indonesian subject imports.

1 Together with the evidence that the likely
2 volumes and price effects would not be significant,
3 the lack of correlation between the Indonesian subject
4 imports and the performance of the domestic industry
5 during the period of review provides strong indication
6 that revocation of the order against Indonesian
7 subject imports would not be likely to result in
8 significant adverse harm. Thank you.

9 MR. MORGAN: That concludes our
10 presentation.

11 CHAIRMAN KOPLAN: Thank you. We'll begin
12 the questioning with Commissioner Hillman.

13 COMMISSIONER HILLMAN: Thank you very much,
14 and I would thank all of our panelists for taking the
15 time to be with us this afternoon and for all of the
16 information that was provided in both questionnaire
17 responses and in your briefs. We appreciate it very
18 much.

19 Let me start with just trying to make sure I
20 understand what you're telling me about how the
21 Indonesian industry operates. Are the Indonesian
22 producers integrated, meaning they grow their own
23 mushrooms and process all of the mushrooms that they
24 grow?

25 MR. LARSON: In most cases, that is correct.

1 In the cases at Agro and the case of KKB, I know that
2 to be the case. I'm not positive about -- if it's 100
3 percent that way, but mainly they grow on site. In
4 the compound, they grow the mushrooms that they
5 process.

6 COMMISSIONER HILLMAN: Okay. All right. So
7 in terms of thinking about their capacity numbers, is
8 the capacity limited, I guess, is what I'm trying to
9 get at, by the volume of mushrooms that they can grow
10 or by their processing capacity?

11 MR. LARSON: It could be either one. You
12 could be limited to the number of growing units that
13 they have on site, or you could be limited to the
14 amount of mushrooms they can actually process in a 24-
15 hour period.

16 COMMISSIONER HILLMAN: Okay. All right.
17 Then, Mr. Larson, I presume that you sell product in
18 markets outside the United States.

19 MR. LARSON: We have an international sales.
20 We have a limited volume of mushrooms that we sell
21 internationally. I'm not privy to the sourcing of
22 that product, where that's sourced, what countries.

23 COMMISSIONER HILLMAN: How about pricing?
24 Do you have a sense of where third-country prices are
25 vis-a-vis U.S. prices?

1 MR. LARSON: No, I do not. The European
2 market certainly is viewed as a higher-cost market
3 certainly than the Far East markets.

4 COMMISSIONER HILLMAN: Higher cost meaning
5 higher priced or higher cost to produce?

6 MR. LARSON: Higher price. Cost to produce
7 and, therefore, a higher-priced market. The cost of
8 purchasing mushrooms for the retail consumer is higher
9 in the EU markets than it is here.

10 COMMISSIONER HILLMAN: Okay. We heard
11 discussion this morning of the EU quota. You're
12 assuming that you have to produce in the European
13 Union in order to effectively be able to sell in the
14 union.

15 MR. LARSON: I believe that is correct in
16 the case of Europe. Certainly, what portion of volume
17 we, as a company, sell internationally in Europe is
18 produced in Europe.

19 COMMISSIONER HILLMAN: Okay. Then another
20 issue. I just want to make sure I understood your
21 response. I think you may have heard the discussion
22 that Commissioner Miller had this morning with Mr.
23 Kerwin. On this issue of as we're looking at our data
24 to try to understand this issue of the industrial
25 segment, the retail segment, and the food service

1 segment, in the absence of any other data, we had
2 assumed that we could use the issue of can size as a
3 proxy for whether product is going into the retail
4 market or whether it's going into industrial or food
5 service, with the presumption being anything that's in
6 the 64-ounce cans, which is a separate tariff schedule
7 number, we could assume was going into the industrial
8 or food service segment and the small cans going into
9 retail. And yet something that you said in your
10 testimony suggested to me that perhaps you don't think
11 that's correct.

12 MR. LARSON: Well, there is a certain amount
13 of volume, and I don't know the exact amount of it,
14 that is sold through club stores that are gallons.
15 Club stores, by definition, are viewed as retail;
16 however, they are strong -- food service or small
17 restaurants, small establishments buy product through
18 club stores versus going through food service
19 distributors. That volume of gallon mushrooms that is
20 sold in club, and that is the portion we sold -- what
21 gallons we sold other than for internal use were sold
22 through the club store channel.

23 COMMISSIONER HILLMAN: Okay. But you're
24 saying you do not have a sense of how significant that
25 market is.

1 MR. LARSON: With the level of product that
2 we sold when we were in it, it's fairly insignificant.

3 COMMISSIONER HILLMAN: Okay. Then just help
4 me understand your overall purchasing. Had you been a
5 purchaser of U.S. product?

6 MR. LARSON: Going back a number of years,
7 yes. We were actually U.S. producers.

8 COMMISSIONER HILLMAN: During this period of
9 review, though, --

10 MR. LARSON: No. We exited U.S. production
11 in, like, 1980 or '81.

12 COMMISSIONER HILLMAN: Okay. And then, in
13 terms of helping me understand why Indonesia, you were
14 describing that their process is one where they are
15 growing this higher percent of fancies that are going
16 directly into processing. Is that what drives you to
17 Indonesia? Again, I'm trying to understand, why
18 choose Indonesia over China or India or Chile or U.S.?

19 MR. LARSON: We've never been involved in
20 the Chile market. As I said, we were in the China
21 market. We determined that the consistency, the
22 control, the regulatory concerns and issues -- this
23 was long before antidumping was an issue -- determined
24 that that was not a market that we wanted our branded
25 product to be coming from.

1 In the case of India, would we still be in
2 the Indian market today had we not had the issue that
3 we did? I'm not sure. I would question that we would
4 still be there because, again, the consistency of the
5 product that we were getting was also an issue.

6 COMMISSIONER HILLMAN: Okay. But this issue
7 of the percentage of, as you described it, the fancy
8 product that's more what you want, --

9 MR. LARSON: And I think, as you look at the
10 processing, we are the number-two branded player
11 today. We used to be number one; we are no longer.
12 Giorgio is number one on a branded basis.
13 Interestingly, Giorgio has a significant amount of
14 product from India, a significant amount of product
15 from China. Giorgio does not have any product from
16 Indonesia.

17 As I said, with our requirement on
18 specifications of the raw product that we require to
19 put in under our label, the Indonesian market of the
20 markets that are out there today fit best for the raw
21 product that we're after.

22 COMMISSIONER HILLMAN: Okay. Then you also
23 testified that prices were flat over this period. I
24 just wanted to make sure I understood that. That's
25 prices coming out of Indonesia or retail sales prices

1 in the U.S.?

2 MR. LARSON: Retail sales prices have been
3 flat. Prices out of Indonesia have been close to
4 flat, minor fluctuations up and/or down.

5 COMMISSIONER HILLMAN: Okay. And then you
6 were very helpful in sort of going through the changes
7 that you've seen in the market in terms of (a) the
8 pizza market going to the fresh product. I just want
9 to make sure I understood from your testimony when you
10 think that occurred, the shift out of canned product
11 into fresh.

12 MR. LARSON: The domestic processors
13 probably are better able to answer that question than
14 myself. I know we, as an industrial user, switched
15 out on pizza, Totino's pizza, back in the eighties.

16 COMMISSIONER HILLMAN: All right. You also
17 mentioned this issue of generally a decrease in the
18 fancy, whole-sliced volume over to fresh for
19 consumers, just your average consumer. Again, I just
20 trying to make sure I understand the timeline on that.
21 When would you say that shift occurred?

22 MR. LARSON: I think it's been occurring all
23 along. I don't have a trend other than I know that
24 our fancy volume has continued to decrease. Now, some
25 of that is due to losing volume to the competition,

1 either to other branded players or private label, but
2 I think that a larger portion of it is lost to the
3 fresh market because that market has -- there is no
4 data that I saw presented today, nor do I have
5 possession of the data, that would say what the
6 increase in fresh market is over the span of time, but
7 it has been significant.

8 COMMISSIONER HILLMAN: Okay. And then,
9 finally, just to get a time frame, you mentioned that
10 you think the industrial volume has decreased. I
11 presume that means the volume of mushrooms going into,
12 I presume, Ragu or whatever it is that it's going
13 into, Stouffer's frozen dinners, et cetera, et cetera
14 -- you're saying there has been a decrease in the sort
15 of use of mushrooms going into that product or a
16 decrease in the use of canned mushrooms going into
17 that?

18 MR. LARSON: Certainly, using us as an
19 industrial user as well as a seller of retail, our
20 industrial use of mushrooms has continued to decrease.

21 COMMISSIONER HILLMAN: Just meaning there's
22 less mushrooms in whatever you're producing.

23 MR. LARSON: We're either using frozen
24 mushrooms, which we purchase domestically, or we've
25 eliminated mushrooms from the product.

1 COMMISSIONER HILLMAN: Okay. All right. I
2 appreciate those answers. Thank you.

3 CHAIRMAN KOPLAN: Thank you, Commissioner.
4 Commissioner Lane?

5 COMMISSIONER LANE: Good afternoon. My
6 first question is for Mr. Larson. You indicated that
7 the demand for your sliced or whole canned mushrooms
8 is down significantly, maybe as much as 50 percent.
9 What about the demand for your pieces-and-stems
10 product? Is that also significantly down?

11 MR. LARSON: Our percent of our volume on
12 pieces and stems versus historical is actually up
13 because of the club store market. The only product
14 that they compete in or that is present within the
15 club in any substantial volume is the four-ounce
16 pieces of stem product. So if you're going to compete
17 in the club market, that's the product you're going to
18 sell, not sliced or whole product.

19 COMMISSIONER LANE: Okay. Thank you. Now,
20 my next question is for Mr. Morgan or Mr. Campbell or
21 both. You state that subject imports from Indonesia
22 in recent years are declining. How much of that
23 decline can be attributed to the removal of P.T. Zeta
24 Agro from the subject import category?

25 MR. MORGAN: There is certainly a portion of

1 it, Commissioner Lane, that's attributable to P.T.
2 Zeta Agro. We're going to try to figure it out. One
3 of the problems we had was Zeta Agro had kind of no
4 interest in providing data to help its other
5 Indonesian competitors out, so we have to extrapolate
6 out what we think Agro has shipped. So,
7 unfortunately, we don't know the numbers for that.

8 As a proxy for that, what you do have are
9 the Indonesian producers who have responded their
10 export levels to the United States. Now, for reasons
11 of timing, you may have slight differences, but in
12 general you have an annual reported export volume
13 total for the Indonesian industry, and I think what
14 you would see in looking at that is that there has
15 been a decline because of Zeta Agro but also within
16 the individual subject producers there has been a
17 slight decline. Because some of that involves
18 confidential information, I think we'll get into it in
19 our post-hearing brief, if that's okay.

20 COMMISSIONER LANE: Okay. Thank you.

21 Now, Mr. Larson, back to you. As I
22 understand it, General Mills buys its mushrooms in
23 Indonesia and cans their mushrooms in Indonesia and
24 then ships them over here for sale. Is that correct?

25 MR. LARSON: That is correct.

1 COMMISSIONER LANE: In the past, during this
2 period that the order has been in place, have you seen
3 a change in your costs in Indonesia, for instance, the
4 energy costs, the transportation costs? How would you
5 define them: stable, increasing or decreasing or
6 however?

7 MR. LARSON: Transportation costs certainly
8 have increased. Ocean freight certainly has become
9 higher, and certainly more recently, as you get into
10 the world political situation, it has become more
11 costly from a hazard standpoint of vessels into
12 certain ports, so those costs have escalated as well.

13 Energy costs in Indonesia are not immune, as
14 anybody else is, from increased costs.

15 COMMISSIONER LANE: Do the cost going into
16 cans or glass have an effect upon how you package your
17 product?

18 MR. LARSON: No. How we package the
19 product, whether it goes into a four-and-a-half-ounce
20 glass jar or a six-ounce glass jar or four-ounce or
21 eight-ounce can is strictly driven by our marketing
22 plan and demand of the consumer market that we're
23 after. That's what drives -- when we come up with
24 annual sales and forecasts, the market splits and then
25 adjusts depending upon revised forecasts as we go

1 through the year.

2 The industry of Indonesia; we have always be
3 a major part of Indonesia, of the overall market
4 within Indonesia. As new players have established
5 themselves within Indonesia, we have generally been a
6 part of it. That's why I'm saying their product
7 format is different than what maybe is in India or
8 China or even here in the U.S., where they are
9 specifically trying to maximize fancy at the cost of
10 throughput; and, therefore, their costs are higher.

11 COMMISSIONER LANE: Are you the only U.S.
12 captain that gets its mushrooms from Indonesia, or are
13 there other companies involved in that market?

14 MR. LARSON: There are other players in the
15 market. As to are they branded and do they have on-
16 site staff, I believe we are the only one that has on-
17 site staff within the country. But I know of two
18 brokers. I know of other customers because I've seen
19 their labeled product in the warehouses.

20 COMMISSIONER LANE: Okay. Thank you.
21 That's all the questions I have, Mr. Chairman.

22 CHAIRMAN KOPLAN: Thank you, Commissioner
23 Lane. Commissioner Pearson?

24 COMMISSIONER PEARSON: I, too, would like to
25 welcome the afternoon panel. Mr. Larson, would I be

1 correct to assume that you're from Minnesota?

2 MR. LARSON: That's where I live today. I'm
3 originally from South Dakota.

4 COMMISSIONER PEARSON: I won't hold that
5 against you. As a transplanted Minnesotan, permit me
6 to welcome you.

7 MR. LARSON: Thank you.

8 COMMISSIONER PEARSON: Do you live in
9 Minneapolis somewhere or down in LaSueur?

10 MR. LARSON: Originally when I started with
11 Green Giant I lived in LaSueur. This is my fourth
12 time into Minneapolis. I lived in California three
13 different times and Indiana and New Jersey.

14 COMMISSIONER PEARSON: Not outside the
15 United States?

16 MR. LARSON: Not outside the United States.

17 COMMISSIONER PEARSON: Yet anyway?

18 MR. LARSON: No. Hopefully not in this
19 career.

20 COMMISSIONER PEARSON: Okay. Tell me,
21 because I follow them only so much from a distance.
22 The Minnesota Twins look as if they are poised so that
23 they are likely to get themselves into the playoffs.

24 For the benefit of my colleagues, I note
25 that this is likely; as Commissioner Hillman might

1 define it, more likely than not, but it's not yet to
2 the level of probable.

3 CHAIRMAN KOPLAN: For the record, since I'm
4 from Massachusetts, I welcome their entry into the
5 playoffs.

6 COMMISSIONER PEARSON: The question really
7 is are they going to be materially injured in the
8 first round of the playoffs?

9 MR. LARSON: We hope not. It all depends on
10 their pitching.

11 COMMISSIONER PEARSON: Okay.

12 MR. LARSON: If Santana can pitch every
13 other day, they're world champions.

14 COMMISSIONER PEARSON: Okay. Well, I would
15 gladly have them as world champions even though the
16 Chairman has a different team that he'd prefer.

17 Where was I here?

18 CHAIRMAN KOPLAN: I'm not going to help you
19 out here.

20 COMMISSIONER PEARSON: I wanted to express
21 appreciation for your explanation of the data issues
22 because, frankly, we had been wondering what exactly
23 what was going on.

24 Having had some experience myself dealing
25 with large corporate hierarchies, I can appreciate the

1 challenges you found. I'm sure you had to deal not
2 only with in-house counsel in sorting out the numbers,
3 but probably also corporate archivists and others who
4 keep the records.

5 MR. LARSON: Yes.

6 COMMISSIONER PEARSON: Let me finally get
7 onto this here.

8 Does General Mills sell Indonesian mushrooms
9 into countries other than the United States, or is it
10 very much a U.S. focus?

11 MR. LARSON: It's U.S. only. Is there any
12 product that we might sell that I'm not aware of or
13 product that we brought into the U.S. that might go
14 back like to Mexico or to some other close offshore
15 country in very small volume? Maybe there is, but
16 other than commissary -- we have some product going on
17 military sales to commissaries throughout the world.
18 That's very small.

19 COMMISSIONER PEARSON: You have not been a
20 part of trying to crack the European Union market --

21 MR. LARSON: No.

22 COMMISSIONER PEARSON: -- and getting in on
23 the quota there?

24 MR. LARSON: No.

25 COMMISSIONER PEARSON: Okay. For others on

1 the panel, would your customers have any knowledge if
2 any of the Indonesian producers have been able to get
3 product into Europe?

4 MR. MORGAN: Commissioner Pearson, I think
5 it's safe to say from the data that the U.S. market is
6 certainly the place where the Indonesians are selling
7 the product. The quotas in the EU, at least as far as
8 I'm aware, have been in place since before the
9 original investigation period, so it's always been a
10 condition of competition or always been a fact of life
11 for the Indonesian producers.

12 It's not as though they've recently been
13 imposed. They date back to the 1960s or something
14 like that, so these have always been in place, and
15 sort of I think the industry hasn't shifted the way
16 you would kind of see in response to an antidumping
17 order being imposed or something along those lines.
18 This has just been a fact of life for at least the
19 last 20 or 30 years.

20 COMMISSIONER PEARSON: Okay. The record
21 does show fluctuating Indonesian sales to other Asian
22 countries. Is anyone able to explain some of the
23 reasons for those fluctuations, especially in the face
24 of what have been relatively stable sales into the
25 United States?

1 MR. MORGAN: I'd have to go back and take a
2 look at this, but I recall at one point that there
3 were some sales, and I think the fact is just demand
4 is not there in the other markets and that there was
5 either a short-term arrangement for a particular
6 purpose, but I would have to go back and more
7 certainly ask our clients for why that was.

8 Really the demand in other markets just
9 isn't there and actually I think highlights the fact
10 that the Indonesian producers do view this as a market
11 in which they want to participate as responsible
12 market participants because it is their market.
13 They're not here for the short term. They're not here
14 to just dump product into the U.S. They're here to
15 participate, and they benefit from price increases
16 just as domestic producers do.

17 COMMISSIONER PEARSON: We all recall the
18 economic difficulties in Asia half a dozen years ago.
19 The reason for asking this question is if there is
20 some financial problem in Asia again what happens to
21 the Indonesian mushrooms that had been going there?
22 Do they come to the United States? As you've
23 indicated, the United States is the preferred market.

24 MR. MORGAN: If there was a problem in Asia,
25 would there be an increase in Indonesian subject

1 imports to the United States based on the volume
2 they're currently going to?

3 COMMISSIONER PEARSON: Correct.

4 MR. MORGAN: I would have to take a look at
5 the numbers, but I think in absolute terms -- I do
6 have them. I think in the last year of the period it
7 was a very small number in terms of the export volumes
8 to the Asian market.

9 I think going forward, the projections and
10 the business plans submitted by the Indonesian
11 producers similarly show no significant increases in
12 exports to Europe versus the 2003 number, so I think
13 as far as looking towards the future the Indonesian
14 industry at least in terms of the data you have with
15 their business plans is not anticipating great
16 shipments to Asia.

17 As a result, what you sort of see in their
18 projections for their U.S. shipments are based on the
19 understanding that most of the shipments will be going
20 to the United States.

21 COMMISSIONER PEARSON: And at this point we
22 are not seeing increased investment in the industry in
23 Indonesia that would suggest some likely import surge
24 into the United States within the coming years?

25 MR. MORGAN: No. I think Mr. Larson is

1 uniquely situated because he did do business with
2 Dieng Jaya and Indo Evergreen, and particularly with
3 respect to Jaya our understanding is the investment
4 interest is simply not there for any number of
5 reasons.

6 They're confidential, I think, and we can
7 deal with them in a posthearing if you'd like. Simply
8 put, Jaya is not going to be able to resume production
9 at least under current circumstances and Indo
10 Evergreen similarly.

11 COMMISSIONER PEARSON: Okay. Thank you.

12 Mr. Larson, perhaps you could comment a bit
13 based on your experience on the cost advantages of
14 producing mushrooms in Indonesia. I understand you're
15 not actually in the production business, but still you
16 have relationships there.

17 Is labor cost advantage the main reason for
18 preferring Indonesian mushrooms compared to U.S.
19 mushrooms?

20 MR. LARSON: Labor is certainly a piece of
21 it, availability of raw product year round, quality.
22 They're a year-round producer -- their elevation,
23 temperature, climate -- so that they're able to
24 minimize the amount of actual heating and/or cooling
25 that is necessary because of the climate that they're

1 in.

2 COMMISSIONER PEARSON: So they are up from
3 sea level then?

4 MR. LARSON: Yes.

5 COMMISSIONER PEARSON: They're roughly what
6 elevation?

7 MR. LARSON: Six to eight thousand feet.

8 COMMISSIONER PEARSON: Okay. So they have
9 kind of structural cost advantages that are unlikely
10 to go away in the near term at any rate? They would
11 be expected to be competitive producers of mushrooms
12 for some period of time?

13 MR. LARSON: I would expect them to be, yes.
14 They are certainly never going to be -- in my mind,
15 they will never be the low-cost producers. That's the
16 only concern that I would have for them within the
17 market.

18 They are going to be competitive with fancy
19 product. They will not be competitive with pieces and
20 stem product. They will not be the ones coming with
21 gallon mushrooms. I know that.

22 COMMISSIONER PEARSON: If I understand
23 correctly from your experience as a producer of a
24 high-quality branded product --

25 MR. LARSON: Right.

1 COMMISSIONER PEARSON: -- or a marketer of a
2 high-quality branded product in the United States,
3 dealing with the Indonesians it's a balance between
4 absolute cost, if you will, and maintenance and
5 quality, this assurance of supply, factors for which
6 one frankly has to pay something, and so it's those
7 reasons that have left you firmly planted in
8 Indonesia?

9 MR. LARSON: Yes, they are.

10 COMMISSIONER PEARSON: Okay. My light has
11 changed, so I will pass. Thanks.

12 CHAIRMAN KOPLAN: Thank you, Commissioner
13 Pearson. I also want to thank you all for your
14 answers to our questions.

15 Let me begin, Mr. Morgan and Mr. Campbell,
16 by asking you this. Do you have a copy of Collier
17 Shannon's confidential prehearing brief with you?
18 While you're getting it, I'll point you to where I am
19 just so you can follow me, though some of this is BPI.

20 I'm directing you to page 56 of that brief,
21 specifically Footnote 34. A lot of that is bracketed
22 so I can't read it in the open room, but not all of it
23 is. It begins by saying, "The Commission should
24 review the questionnaire responses of the Indonesian
25 producers with a jaundiced eye." The balance of that

1 paragraph is bracketed.

2 Then it goes on in the next paragraph. This
3 is not bracketed. "The Commission has previously
4 expressed concern where the accuracy of questionnaire
5 responses is called into question based on the
6 activities of counsel."

7 Do you have that in front of you? Okay.
8 I'm directing you particularly to the last sentence in
9 that footnote which is virtually all bracketed. For
10 purposes of the posthearing, I would like very much
11 for you to respond to what is contained in that
12 footnote.

13 MR. MORGAN: We'll be happy to do that,
14 Commissioner Koplan. One thing I would note is that
15 the information that we submitted, there are answers
16 that are the same. If you look at the answers that
17 are the same, they're the ones that define very
18 general, generic, and we certainly did assist our
19 clients in preparing responses.

20 Did we counsel them to manipulate any data
21 or otherwise false report anything to the Commission?
22 Absolutely not. We would not do that. We have not
23 done that. In fact, we submitted business plans to
24 the Commission showing projections for 2004, 2005 and
25 2006. I believe we were the only party in this

1 investigation to have done that, which somewhat puts
2 us on the hook, if you will, because there's your
3 future evidence.

4 We'll make our arguments about what those
5 business plans show, but I'm somewhat disturbed by the
6 fact that rather generic answers which were answered
7 the same were used as a sword to suggest that somehow
8 the credibility of the responses to this Commission
9 were in question.

10 In fact, if you look at the data and you
11 look at the answers to other questions that don't sort
12 of speak to similar types of issues, those are
13 answered by the companies, and each of the companies
14 did in fact certify the accuracy of their responses
15 and each reviewed them, so to the extent that language
16 that's similar is the same, the companies still
17 certify that that was accurate as to them.

18 I would say that now, and we will elaborate
19 further in our posthearing brief.

20 CHAIRMAN KOPLAN: Mr. Morgan and Mr.
21 Campbell, I want to make very clear the reason for my
22 question was neither judgmental nor accusatory. I
23 didn't want the record to close without flagging this
24 and giving you an opportunity to respond to it.
25 That's the reason I asked the question.

1 MR. MORGAN: Chairman Koplan, I certainly
2 appreciate that opportunity. We will certainly
3 address that.

4 CHAIRMAN KOPLAN: Thank you. Let me stay
5 with you if I could.

6 In your prehearing brief at page 28 it
7 states, and I quote, "Therefore, although the demand
8 for fresh mushrooms has increased at the expense of
9 preserved mushrooms, the overall financial picture of
10 each of these firms has no doubt benefitted from the
11 shift as the fresh market is more lucrative than the
12 processing market.

13 "Consequently, it would be anomalous to
14 conclude that decreasing U.S. consumption of
15 preserved..." -- I know. I had a problem with that
16 this morning, Madam Vice Chairman. I understand that.
17 "...that decreasing U.S. consumption of preserved
18 mushrooms has rendered the domestic industry more
19 vulnerable to injury from subject imports." I'll miss
20 the footnote.

21 I'd like you to respond to the answer the
22 domestic producers gave me when I asked them to
23 comment on your argument this morning. Specifically,
24 Mr. Kazemi, who was the only integrated producer who
25 testified, stated unequivocally that his company, as I

1 recall, he stated that they keep both operations
2 completely separate and so you can't reach that
3 conclusion. I'm curious what you might respond to
4 that.

5 Mr. Campbell, your microphone?

6 MR. CAMPBELL: Thank you.

7 CHAIRMAN KOPLAN: Yes.

8 MR. CAMPBELL: I think certainly we have to
9 take that response at face value. I think this is a
10 minor point for us --

11 CHAIRMAN KOPLAN: Okay.

12 MR. CAMPBELL: -- so our case really isn't
13 affected by this. It's just that based on ITC
14 precedent and in terms of the definition of what a
15 byproduct is and our understanding of that, the demand
16 or the fresh mushrooms command a much higher value
17 than preserved mushrooms in the United States market
18 and that this of course would give U.S. growers of
19 mushrooms an incentive to supply as much as they can
20 to the fresh market rather than to processors.

21 It just seemed to us a question to raise at
22 a minimum that perhaps the extent U.S. preserved
23 companies are also involved in or integrated and also
24 grow fresh mushrooms that the fact the condition of
25 competition in the U.S. market, there is this high

1 consumption and higher value use of fresh mushrooms
2 that that should not be viewed as a factor rendering
3 the domestic industry more vulnerable.

4 Again, this is a minor point for us, and I
5 don't think we have any choice but to take the
6 testimony at face value.

7 CHAIRMAN KOPLAN: Thank you. I appreciate
8 that response.

9 The confidential prehearing report at page
10 5-12 reports that sales of all three pricing products
11 from Indonesia were reported in all 24 quarters for
12 which data were collected. Products from China and
13 India were reported for the majority of comparisons
14 except Product 2 from China for which data were
15 collected for 11 out of the 24 quarters.

16 That kind of overlap in competition between
17 subject products from Indonesia and subject products
18 from China and India, coupled with the degree of
19 underselling that I see there -- I can't get into the
20 details of that, of course, because it's BPI, but the
21 degree of underselling provides me with at least a
22 basis, I think, of cumulation.

23 However, I understand from your testimony
24 that we have not factored this revised data from
25 General Mills yet. The question I have is whether the

1 General Mills revised data has been submitted in a
2 fashion that tracks the three products for which we
3 made price comparisons in the staff report.

4 Mr. Larson, you're the one who put that
5 together. Can you tell me?

6 MR. LARSON: It tracks the same product.
7 The caveat is that your request says for four-ounce
8 cans of sliced mushrooms, and I presume that to be a
9 24 pack, four-ounce case of product. We don't have
10 any four-ounce sliced product. Our only sliced
11 product is a two-and-a-half ounce glass or a four-and-
12 a-half ounce glass or a six-ounce glass.

13 What I reported in the report and
14 highlighted it as a four-and-a-half ounce glass is the
15 comparison is a 12 count case, not a 24 count case.

16 CHAIRMAN KOPLAN: Thank you. I'll tell you,
17 I haven't seen this information yet so I'm inquiring
18 without having had an opportunity to look at it, but
19 what I'm wondering is since the conclusion you want us
20 to reach is what we're going to find after we've
21 factored that in is we're going to find overselling
22 rather than underselling.

23 I'm wondering whether, counsel, you all can
24 provide us with what you would suggest those tables
25 should look like, factoring in the General Mills

1 information. Are you able to do that for staff, or
2 are you leaving that up to us?

3 MR. THOMPSON: Mr. Chairman, that was an
4 open question. We'd be happy to take our best shot at
5 putting it together. I infer that you would like that
6 as part of our posthearing submission, or would it be
7 before that?

8 CHAIRMAN KOPLAN: No, as part of your
9 posthearing submission.

10 MR. THOMPSON: Certainly, yes, in that
11 amount of time. I just got the data yesterday, took a
12 quick look at them, and I haven't attempted to put
13 them into context.

14 CHAIRMAN KOPLAN: I appreciate that. I
15 appreciate that, but it would be at least for me
16 helpful if you'd take a crack at that, and then we'll
17 be doing the same, but we'll have a detailed basis for
18 your argument that way.

19 MR. THOMPSON: We'd be happy to, sir.

20 CHAIRMAN KOPLAN: Thank you very much.

21 MR. MORGAN: Chairman Koplan, just so the
22 record is clear, the four-and-a-half ounce container
23 was for just one of --

24 MR. LARSON: The four-and-a-half ounce
25 container is for one of the three products.

1 CHAIRMAN KOPLAN: No. I understand that. I
2 was looking for that kind of response with regard to
3 each of the products, the three, if you could do that.

4 Thank you. I see my red light is on. I
5 will turn to Vice Chairman Okun.

6 CHAIRMAN OKUN: Thank you, Mr. Chairman, and
7 thank you to the witnesses. I join my colleagues in
8 welcoming you here, and I appreciate your
9 participation.

10 Mr. Larson, I think we're all sympathetic to
11 the fact that the questionnaires are complicated.
12 When you're doing them, it's just tough. I don't want
13 my comments to seem like we don't want you to be here.
14 We do.

15 Mistakes do get made, and we just ask that
16 they be corrected as quickly as possible and that
17 counsel helps you get things there. Again, the fact
18 that you're here is greatly appreciated, and we look
19 forward to looking at the revised data as well.

20 Let me ask. I'll start with a legal
21 question both for Mr. Thompson and Mr. Morgan and Mr.
22 Campbell, which is the Petitioners have said the
23 domestic industry is possibly in a weaker condition
24 than during the original investigation as part of
25 their brief and their presentation going to the issue

1 of vulnerability for purposes of this review.

2 I wondered if you could comment on how you
3 view the domestic industry in the context of the
4 vulnerability issue. Mr. Thompson, I'll start with
5 you.

6 MR. THOMPSON: Well, factually I'm not at
7 this point in a position to compare their status today
8 with how it was in 1998. They certainly reported some
9 adverse changes, but whether these increased their
10 vulnerability or, in the case of say production
11 capacity, whether they are reflective of conditions in
12 the fresh market that may limit the supply that they
13 can use so that really it's an artificially
14 constrained number is something that we'd like to
15 explore.

16 As a legal standard, the notion that they
17 have enhanced vulnerability over the original
18 investigation, I don't see that as -- let's assume the
19 facts show that to be true, which of course we do not
20 concede. That does not invite an overall affirmative
21 determination at least in the sense of, if you would,
22 to decumulate, or not cumulate rather, Indonesia.

23 You would have to look at the alleged
24 vulnerability in terms of the relationship with the
25 Indonesia industry, and with its imports and the

1 effect of those imports, so vulnerability in the
2 abstract, I don't think that you can isolate that in
3 your analysis from the likely impact of removing an
4 order on a particular country on the industry. Their
5 condition I don't think can be considered in a vacuum
6 apart from the likely trends in imports if the order
7 resourced it.

8 Certainly as you know, our position is that
9 the Commission should not cumulate Indonesia. We
10 believe that if you take the Indonesian trends and
11 focus on those that whatever the condition of the
12 domestic industry you will find that it's not caused
13 by Indonesian imports and will not be exacerbated by
14 imports in the future if the order were to be lifted.

15 VICE CHAIRMAN OKUN: Okay. For purposes of
16 posthearing, I would appreciate you looking at that
17 and looking at vulnerability in terms of how to factor
18 it out and consider it in terms of --

19 MR. THOMPSON: Certainly.

20 VICE CHAIRMAN OKUN: -- making our
21 determination. I would appreciate that.

22 Mr. Morgan and Mr. Campbell?

23 MR. CAMPBELL: I just have one point.

24 Certainly in the posthearing brief we will, to the
25 extent it's considered important, address

1 vulnerability and how it should impact the
2 Commission's analysis.

3 Just in brief, I think for our case we
4 think, one, again the record is compelling that the
5 Commission should exercise its discretion to
6 decumulate the Indonesian subject imports from the
7 imports from the other subject countries. Once the
8 Commission does so, I think it doesn't really matter
9 if the Commission chooses to view the U.S. industry as
10 vulnerable.

11 We think if the Commission conducts a
12 separate analysis of likelihood for Indonesian
13 imports, even if the Commission views the U.S.
14 industry as vulnerable we think the record shows that
15 there's a lack of correlation between performance of
16 the domestic industry and the presence of the
17 Indonesian subject imports.

18 Based on that evidence, we think
19 prospectively the Commission can determine that
20 there's no likelihood of injury that would result from
21 revocation of the antidumping duty order on the
22 Indonesian subject imports.

23 VICE CHAIRMAN OKUN: Okay. I apologize. I
24 had to step out of the room, but you've made your
25 argument in terms of the decumulation and in terms of

1 what you stated here if Indonesia is looked at alone
2 how you would view it.

3 Do you intend to make any arguments on if
4 the Commission does not exercise its discretion to
5 decumulate and in fact cumulates whether as part of
6 the cumulated imports that there's no likelihood of
7 reoccurrence of injury?

8 MR. MORGAN: Vice Chairman Okun, we haven't
9 conducted a cumulated analysis yet. To be honest, I
10 don't know whether time constraints and some of the
11 other issues that we really want to address will
12 enable us to do an effective job of that, so at this
13 stage I anticipate that we will stick to our argument
14 for decumulation and no injury on that basis, no
15 future injury on that basis.

16 VICE CHAIRMAN OKUN: Okay. It's good to
17 know that in advance and understand that.

18 Mr. Larson, let me go back to you. I was
19 interested in hearing you talk about the different
20 countries and the fact that General Mills had actually
21 I guess at this point been in China and purchased from
22 these other countries.

23 The one thing I don't know if I heard you
24 say; when you were talking about the sourcing problems
25 that I think you had mentioned 2002 and 1998 as times

1 when you had sourcing problems. Are those the right
2 years?

3 MR. LARSON: 2002 was sourcing. In 1998, we
4 switched from getting product from Mexico.

5 VICE CHAIRMAN OKUN: Okay.

6 MR. LARSON: That was the last we had
7 product out of Mexico.

8 VICE CHAIRMAN OKUN: Okay.

9 MR. LARSON: That was an operation which we
10 sold to Monterrey Mushroom.

11 VICE CHAIRMAN OKUN: To Monterrey Mushroom.
12 Okay.

13 In the 2002 period when you had sourcing
14 problems, did you buy from other subject countries to
15 make up for that or domestic producers or non-subject?

16 MR. LARSON: We did not buy from other
17 countries, nor did we buy from the U.S. We lost
18 sales.

19 The amount of time that we felt it would
20 take for us to establish another country, another
21 processor, with our requirements, we deemed that was
22 -- we kept thinking we would solve the problem sooner
23 than it was, and by that time we were able to get back
24 to Indonesia with KKB and get additional volume.

25 Unfortunately, we did have significant loss

1 of sales during the year 2000.

2 VICE CHAIRMAN OKUN: 2000 or 2002?

3 MR. LARSON: 2002. Excuse me.

4 VICE CHAIRMAN OKUN: 2002. Okay. You're
5 saying for you, you couldn't turn to a domestic
6 producer because your quality or your canning or your
7 --

8 MR. LARSON: Our requirements for contract
9 operations, the rigor that is put into -- we do not go
10 out and spot purchase mushrooms. We never have, and I
11 don't believe we ever will.

12 Therefore, the requirements of going through
13 and setting up a co-packer, confirming their thermal
14 processes, confirming their growing practices,
15 confirming their pesticide programs and their ability
16 to provide us the quantity and quality that we're
17 after, we viewed that it was not worth the risk of
18 going to new suppliers.

19 VICE CHAIRMAN OKUN: This may need to come
20 in post, but the length of the contracts that you
21 usually have?

22 MR. LARSON: We have annually renewed
23 contracts.

24 VICE CHAIRMAN OKUN: Annually renewed.
25 Okay. Okay.

1 MR. LARSON: But they are not volume
2 guaranteed contracts.

3 VICE CHAIRMAN OKUN: Not volume guaranteed.
4 They are on price?

5 MR. LARSON: Right.

6 VICE CHAIRMAN OKUN: Right. Okay. I know
7 you had responded to Vice Chairman Hillman, and you
8 put some emphasis on these fancy cut mushrooms and
9 whether you could source them elsewhere. Maybe you
10 responded to me on that, which is the type of
11 mushrooms you get in contract and you just stick with
12 one supplier, as opposed to spot buying.

13 I guess I didn't know if you had responded
14 to her of whether fancy cut mushrooms are available.
15 You guys just don't spot purchase, but you're not
16 purchasing them that way?

17 MR. LARSON: We choose as a corporation not
18 to spot purchase because you're not going to be
19 consistent on a spot purchase basis. You're going to
20 show your consumer different quality variation and
21 appearance of product. It may be good product, but it
22 may be different than what they're used to seeing.

23 VICE CHAIRMAN OKUN: Okay. I appreciate
24 those answers. I see my red light has come on. Thank
25 you.

1 CHAIRMAN KOPLAN: Thank you, Vice Chairman.
2 Commissioner Miller?

3 COMMISSIONER MILLER: Thank you, Mr.
4 Chairman, and thank you to all of the witnesses for
5 being here today and to you, Mr. Larson, in
6 particular. We appreciate your willingness to take
7 time away from your business and be here to help us
8 understand your industry.

9 I found your testimony to be very helpful,
10 so don't be too surprised if most of my questions are
11 for you, starting with I'm trying to reconstruct in my
12 head. You've mentioned the Pillsbury/General Mills
13 merger or whatever and something that complicated your
14 ability to gather the data.

15 Green Giant, am I correct, was part of
16 Pillsbury? Help me on the corporate structure of
17 things and when they happened just so that I
18 understand.

19 MR. LARSON: Green Giant 101.

20 COMMISSIONER MILLER: Yes. Thank you.

21 MR. LARSON: Green Giant was an independent
22 company until 1978, at which point in time we merged
23 with Pillsbury. In roughly 1986-1987, we were
24 purchased by Grand Metropolitan.

25 Later in the 1990s, Grand Metropolitan

1 became Diageo with the merger of Grand Met and
2 Guinness, and in 2002, 2001 -- I forget when it was
3 actually official -- Pillsbury was sold off by -- the
4 Pillsbury brands, the Food Products Division of
5 Pillsbury, was sold to General Mills, who in turn then
6 had to divest the Pillsbury cake mix and potatoes
7 because of the conflict with Betty Crocker cake mixes
8 and potatoes, and today Green Giant is now part of
9 General Mills.

10 COMMISSIONER MILLER: Okay. Thank you. I
11 appreciate that. You've been with Green Giant through
12 all of these?

13 MR. LARSON: Yes. I have lived through all
14 of these.

15 COMMISSIONER MILLER: All right.

16 MR. LARSON: I'm either bad or whatever.

17 COMMISSIONER MILLER: All right. To the
18 extent that General Mills has a canned mushroom
19 business, it is the Green Giant business essentially?

20 MR. LARSON: Yes.

21 COMMISSIONER MILLER: I mean, did they have
22 anything independently before they acquired Pillsbury?

23 MR. LARSON: No. They had nothing in
24 mushrooms.

25 COMMISSIONER MILLER: Okay. All right.

1 Now, I also perhaps have a little more sympathy with
2 you for what you have to go through in terms of data.
3 We always have sympathy with those who have to fill
4 out our questionnaires. I do at least. I appreciate
5 how hard it is.

6 We appreciate the work that you have to do
7 to help us do our jobs. It's necessary to do our
8 jobs, and we know it's a big burden, so thank you for
9 doing it. At the same time, understand the problems
10 that some folks have had in the process. Because of
11 not having it earlier, it makes it hard for everyone
12 involved to get a handle on the data and present their
13 side of the case. That's why there's the concern
14 there.

15 A lot of my questions flow from things I
16 heard you say. You mentioned that you used to be the
17 number one branded product, and Giorgio is now number
18 one. Who is two, three and four? I mean, give me a
19 little bit more of the big players.

20 MR. LARSON: Beyond that, I believe it's
21 private label. Certainly private label is bigger than
22 either of us.

23 COMMISSIONER MILLER: Okay.

24 MR. LARSON: They're a larger percent of the
25 market than any branded product.

1 COMMISSIONER MILLER: As a whole. Okay.

2 MR. LARSON: Who's the next biggest private
3 label? I don't really know. We don't track the
4 private label business.

5 COMMISSIONER MILLER: Okay. You mentioned
6 that Green Giant was a producer, a U.S. producer --

7 MR. LARSON: Yes.

8 COMMISSIONER MILLER: -- up until 1980-1981.
9 The decision to not produce in the U.S. was driven?
10 Can you explain that decision to me a little bit?

11 MR. LARSON: We had an operation in the U.S.
12 At the same time we were importing mushrooms. Our
13 cost of production, our ability to maintain the
14 quality, deal with the byproduct that wasn't fancy --
15 again, we were a branded fancy marketer, not a private
16 label marketer. It was a small operation, and the
17 decision was made to cease production there in the
18 early 1980s.

19 COMMISSIONER MILLER: It was basically too
20 high cost relative to what you could do importing?

21 MR. LARSON: Relative to other branded
22 players in the market.

23 COMMISSIONER MILLER: Okay. When you have
24 described your operations in other countries, and as I
25 listened in particular to your response to

1 Commissioner Lane at one point, your operations in
2 Indonesia. You're not a producer there, correct?

3 MR. LARSON: No.

4 COMMISSIONER MILLER: Okay. You have on-
5 site monitoring of the production operations that are
6 owned by other companies, the Indonesian companies?

7 MR. LARSON: That is correct.

8 COMMISSIONER MILLER: Is that right? I know
9 at one point you said you buy the mushrooms, process
10 them, market them, but you don't really buy the raw
11 product?

12 MR. LARSON: We buy finished labeled
13 product.

14 COMMISSIONER MILLER: To your
15 specifications?

16 MR. LARSON: To our specification. Not all
17 product that they pack for us necessarily ends up
18 going to us because it may not meet our requirements.
19 Therefore, they have to label it something else.

20 COMMISSIONER MILLER: You don't own any
21 production operations worldwide at this point?

22 MR. LARSON: No. No.

23 COMMISSIONER MILLER: Okay. I too
24 appreciated the way you addressed the different
25 countries and the operations and your view of the

1 different countries.

2 You mentioned a couple of other major
3 brands. I don't know if you want to characterize them
4 as major. A couple of other brands in Indonesia, I
5 think. I heard you mention Kroger and Libby.

6 MR. LARSON: Those are two of the labels
7 that I know come from Indonesia.

8 COMMISSIONER MILLER: Come from Indonesia.
9 Can I assume that we have a fair amount of private
10 label coming from Indonesia as well, or are they
11 mostly coming from China?

12 I'm trying to understand if there's any
13 difference in Indonesia in terms of Indonesia being
14 more a brand name producer because they have higher
15 quality requirements like you do. Do you understand
16 what I'm trying to --

17 MR. LARSON: Yes. I unfortunately can't
18 talk to the volume that doesn't go to General Mills in
19 absolutes because I'm not there, and it's not our
20 product, and it's not information that we're in
21 control of.

22 They certainly have a good portion of their
23 total output comes to the United States. Does it all
24 come here? No, I know it doesn't all come here. Who
25 all of the customers are that end up private label

1 wise or label wise for that product I'm not aware of
2 other than the couple of names that I did mention.

3 COMMISSIONER MILLER: Okay. I think I
4 remember going to a supermarket during the last case
5 at some point and looking through the mushrooms. They
6 have to be labeled where they're from --

7 MR. LARSON: Yes.

8 COMMISSIONER MILLER: -- on the jar or the
9 can, I assume? I recall going and looking at
10 different cans and seeing where they were coming from.

11 I'll get back to it again, but I'm just
12 trying to get a sense whether there are any
13 differences, any general, broad characterizations
14 about the kind of purchaser that is buying from
15 Indonesia versus India and China.

16 MR. LARSON: My only point to that is I look
17 to again the major players that I'm aware of in the
18 marketplace, and they are not in Indonesia. They are
19 in other markets -- India, China. That's what I see
20 on their label.

21 COMMISSIONER MILLER: Right. One last quick
22 question. You talked about selling the gallon cans.
23 I guess they're the gallon cans. Selling the gallon
24 market for the club stores at one point, but you said
25 in your initial testimony that you can't compete in

1 that market today. You don't do that. You can't
2 compete in that market today.

3 MR. LARSON: We are not currently selling in
4 that market because other customers have got the
5 market today at a price point lower than we are
6 willing to go.

7 COMMISSIONER MILLER: When you say that, do
8 you mean other foreign producers have gotten that
9 market or U.S. producers?

10 MR. LARSON: I can't tell you who's got
11 them. I know that we haven't got it.

12 COMMISSIONER MILLER: Okay.

13 MR. LARSON: I know that if you go to Sam's,
14 go to Costco, you'll see various labels, some of which
15 you recognize as a player and some I have no idea who
16 they are.

17 COMMISSIONER MILLER: My red light is on. I
18 appreciate your answers to my questions and your
19 sharing of all of your knowledge of the market. Thank
20 you.

21 CHAIRMAN KOPLAN: Commissioner Hillman?

22 COMMISSIONER HILLMAN: Thank you. I hope
23 just a couple of quick questions, first for counsel.
24 For your posthearing briefs, if you could just I hope
25 briefly address both the issue of whether you agree

1 with the definition of the like product in this
2 determination and, secondly, whether you have anything
3 that you would want us to note with respect to the
4 definition of the domestic industry, particularly
5 whether there are any domestic producers that ought to
6 be excluded as related parties.

7 If you could, again I don't need a lot, but
8 I would like you on the record in terms of both of
9 those issues if you could.

10 MR. MORGAN: We will do that.

11 COMMISSIONER HILLMAN: Okay. And then
12 secondly, Mr. Larson, I just want to make sure I
13 understand your overall take on the issue of what's
14 happened to demand in the U.S. market for preserved
15 mushrooms.

16 You had described in your own company's
17 situation a decline in the industrial segment, a
18 decline in the use of mushrooms. If you step back
19 from it overall, what is your sense of what has
20 happened to demand or use of the product in the U.S.
21 market over this period?

22 MR. LARSON: I think if you look at industry
23 data, Nielsen data, which I don't have available and
24 handy to me, but if you would look at that I'm sure
25 that you would see there has been a definite decrease

1 in the volume of fancy sliced and whole mushrooms in
2 the retail market.

3 There may be an increase in pieces and stems
4 in the retail market over what it was historically,
5 but the fancy product has definitely declined, and
6 that's the segment that we compete in.

7 COMMISSIONER HILLMAN: Okay. And in that
8 response you really are focusing solely on retail? In
9 other words, you're not telling me that you really
10 have a sense of if you put it all together and tried
11 to understand total demand for preserved mushrooms
12 what it would be?

13 MR. LARSON: I'm not privy, since we're not
14 in the food service and industrial sales, to really be
15 a good source of making a judgment.

16 COMMISSIONER HILLMAN: Okay. I mean just
17 for counsel, part of it is one of the briefs -- I
18 apologize; I don't remember which one -- noted that
19 demand has declined since the order went into place,
20 relying on that for NASS data, which as the
21 Petitioners point out does not include the import
22 data.

23 Obviously our staff report, in trying to
24 understand what's going on in the market, is looking
25 at overall consumption, which we would generally

1 define as domestic production plus imports minus
2 exports, to get to an overall consumption figure, and
3 that would show an increase.

4 I'm just trying to make sure there's not a
5 big difference of view here on this fundamental issue
6 of what's happened as a sort of condition of
7 competition in the market in terms of overall demand
8 or consumption for the product.

9 MR. CAMPBELL: I can speak to that. Again,
10 I think it doesn't ultimately -- it's not crucial to
11 our case. We don't view it as terribly important
12 whether or not demand for U.S. preserved mushrooms has
13 increased or decreased. We recognize that according
14 to the staff report apparent U.S. consumption of
15 preserved mushrooms has declined, has decreased.

16 Nevertheless there is anecdotal evidence,
17 statements from I think at least one domestic producer
18 and other purchasers and importers, that they
19 perceived that the demand for preserved mushrooms in
20 the United States has increased.

21 As far as the NASS data goes, we fully
22 understand that the NASS report doesn't include
23 imports in their figures. We basically drew an
24 inference from the NASS data. What the NASS data
25 shows is the prices that U.S. growers, the quantities

1 and the prices that the U.S. growers -- the quantities
2 that U.S. growers of mushrooms sell, supply to the
3 fresh market, as well as the quantity that U.S.
4 growers of mushroom supply to domestic processors.

5 It also shows that the relative prices that
6 they receive for selling product to the fresh market
7 versus processors and, based on the trends, showing
8 increased sales to the fresh and declining sales to
9 processed, as well as increased prices to fresh versus
10 declining prices to processors.

11 We just inferred from that that the demand
12 for fresh continued to increase relative to the demand
13 for preserved mushrooms.

14 COMMISSIONER HILLMAN: Okay. I appreciate
15 that answer.

16 I think with that I have no further
17 questions, Mr. Chairman. Thank you.

18 CHAIRMAN KOPLAN: Thank you.

19 Commissioner Lane?

20 COMMISSIONER LANE: Mr. Larson, I want to go
21 back to the industry in Indonesia. The mushrooms that
22 are grown there, are all of the mushrooms grown to be
23 processed, or is there also a fresh market for
24 Indonesian mushrooms?

25 MR. LARSON: To my knowledge, the majority,

1 if not the entirety, is more processing. Distribution
2 for fresh is not very conducive location-wise where
3 the growing units are relative to getting to the
4 population centers of Indonesia. They're certainly
5 not products that are exportable from a quality
6 standpoint.

7 COMMISSIONER LANE: Okay. Thank you.
8 That's the only question I have.

9 CHAIRMAN KOPLAN: Thank you, Commissioner.
10 Commissioner Pearson?

11 COMMISSIONER PEARSON: Mr. Chairman, I have
12 no further questions. I'd just like to thank this
13 panel and particularly Mr. Larson for his indulgence
14 of my warped sense of humor.

15 CHAIRMAN KOPLAN: Thank you, Commissioner
16 Pearson.

17 I do have some matters left I'd like to
18 cover. First, I'm going to make a request of Mr.
19 Coursey similar to what I made to the panel. This is
20 actually for Mr. Coursey, Dr. McGrath and Mr. Kerwin.

21 For the posthearing, I would like you also
22 to factor in the new General Mills information and
23 take that into account in looking at the price
24 comparisons that we made for Products 1, 2 and 3.

25 If you could indicate any changes you think

1 should be made to those tables, taking that
2 information into account, that would be helpful I
3 think to staff as well, so if you would do that.

4 If you could respond with the microphone?

5 MR. COURSEY: Mr. Chairman, we will do that.

6 CHAIRMAN KOPLAN: Thank you very much.

7 Mr. Larson, you testified that your better
8 grade mushrooms for sale as sliced or whole mushrooms
9 are more costly because they're harvested at a smaller
10 size. Can you quantify the difference in cost to grow
11 and harvest the smaller size?

12 MR. LARSON: Not exactly, but in rough I
13 would say the growing costs, there's probably a 10
14 percent differential between say an Indonesian cost of
15 raw product versus Indian or Chinese cost of product.

16 CHAIRMAN KOPLAN: Thank you.

17 Mr. Campbell, in early 2003 P.T. Dieng and
18 in July 2003 P.T. Indo Evergreen, allegedly ceased
19 production. I'm referring to the portion of the
20 prehearing report at pages 4-13 and 15.

21 My question is were their production
22 facilities dismantled, sold to other Indonesian
23 producers or simply remain idle? What happened to
24 them?

25 MR. CAMPBELL: I believe this is

1 confidential information.

2 CHAIRMAN KOPLAN: Do you want to submit it
3 posthearing?

4 MR. CAMPBELL: We will gladly submit it
5 posthearing, Mr. Chairman.

6 CHAIRMAN KOPLAN: Okay. I appreciate that.
7 Let me stay with you.

8 In the first full paragraph on page 18 of
9 your prehearing brief you report a factor that limited
10 the capacity of one Indonesian producer in the latter
11 part of the period under review. Domestic producers
12 assert at the bottom half of page 54 of their brief
13 that the same factor does not limit production
14 capacity for domestic producers.

15 The question is what share of Indonesian
16 production of subject preserved mushrooms is affected
17 by this factor, and why does it serve to limit the
18 capacity of only one Indonesian producer?

19 MR. MORGAN: Again, I'm going to try to
20 answer this to the extent I can here at the hearing,
21 but I believe some of this will involve confidential
22 information.

23 CHAIRMAN KOPLAN: Would you rather do that
24 posthearing?

25 MR. MORGAN: We'll provide that in the

1 posthearing. Yes, we will do that. Let me just give
2 you a quick response here to the extent I can.

3 CHAIRMAN KOPLAN: Sure.

4 MR. MORGAN: The reason why only one of the
5 Indonesian producers is affected by this shortage is
6 because of its location in Indonesia. We'll provide
7 further data to flush that out in the posthearing
8 brief.

9 CHAIRMAN KOPLAN: Okay. Thank you.

10 Mr. Morgan, as a followup from a previous
11 question, Table 4-4, the confidential prehearing
12 report, which is BPI, indicates that from 1999 to 2002
13 responding Indonesian producers decreased the
14 percentage of their shipments exported to the U.S. and
15 increased the percentage of their shipments exported
16 to Asia.

17 By contrast, from 2002 to 2003, the
18 percentage of shipments exported to the U.S.
19 increased, and the percentage of shipments exported to
20 Asia declined.

21 Can you explain in your posthearing
22 submissions if necessary the reasons for these changes
23 in export patterns?

24 MR. MORGAN: We will do that, Chairman
25 Koplan. I suspect one of the reasons will be sort of

1 the exit of old players and the entrance of new
2 players as reflected in the 2003, but we'll fully
3 address that in our posthearing brief.

4 CHAIRMAN KOPLAN: Thank you.

5 Mr. Morgan and Mr. Thompson, in your
6 respective prehearing briefs I don't believe you
7 directly discussed the issue of domestic like product.
8 Do you agree with the domestic producers' position
9 that there should be a single domestic like product
10 identical to Commerce's scope definition?

11 MR. THOMPSON: Yes. Yes, we would agree.
12 We had argued in the original investigation for
13 several variances.

14 CHAIRMAN KOPLAN: That's what I'm asking.

15 MR. THOMPSON: Being more or less a realist,
16 I didn't expect that the result would be any different
17 if I were to raise it again so I believe that the
18 definition would be correct.

19 CHAIRMAN KOPLAN: Mr. Morgan and Mr.
20 Campbell, do you agree with that?

21 MR. MORGAN: We would not take any position
22 on the like product being any different, though the
23 Commission is free to revisit that if it should on its
24 own, but we will not be arguing that.

25 CHAIRMAN KOPLAN: Thank you.

1 Mr. Larson, has General Mills ever attempted
2 to purchase preserved mushrooms from domestic
3 suppliers? If not, why not?

4 MR. LARSON: Fairly recently, in 2002/early
5 2003, we did approach both L.K. Bowman and Mushroom
6 Canning about purchase of gallon sliced mushrooms. By
7 the time we worked everything out to be able to do so,
8 the need disappeared so did not pursue it.

9 CHAIRMAN KOPLAN: Thank you. I don't
10 believe I have anything else except before I call on
11 the Vice Chairman I will tell you that around this
12 time there will be an APO release available to be
13 picked up from the Secretary's Office before you
14 leave.

15 I made reference this morning to a revised
16 Table C-1 that accompanied another document as well,
17 and that material will be available in an APO release
18 that you can pick up on your way out of the building.
19 Both sides can get that APO release.

20 With that, I'll turn to Vice Chairman Okun.

21 VICE CHAIRMAN OKUN: Thank you, Mr.
22 Chairman, and again thank you to all the witnesses
23 and, Mr. Larson, in particular to you. I have no
24 further questions for this panel, but I appreciate
25 your being here today.

1 CHAIRMAN KOPLAN: Thank you.

2 Commissioner Miller?

3 COMMISSIONER MILLER: Mr. Chairman, I have
4 no further questions of this panel. I appreciate all
5 their testimony. Thank you.

6 CHAIRMAN KOPLAN: Let me see if there is
7 another round of questions.

8 (No response.)

9 CHAIRMAN KOPLAN: Apparently not.
10 Mr. Deyman, does the staff have any
11 questions for the panel?

12 MR. DEYMAN: Yes, Mr. Chairman, I believe
13 the staff does have some questions.

14 CHAIRMAN KOPLAN: Good.

15 MR. BERNSTEIN: This is Marc Bernstein from
16 the Office of General Counsel. I have one rather
17 technical legal issue I'd appreciate if the parties
18 would address in their posthearing brief. This is
19 addressed principally to Mr. Morgan since it pertains
20 to a matter he raised in his presentation, but the
21 other parties can respond to this as well.

22 I'm aware that the Commission has
23 occasionally used results from administrative reviews
24 in five year review investigations to analyze
25 historical volume trends. As I understood your

1 argument earlier this afternoon, it appeared that you
2 are advocating we use this in an additional manner;
3 that the Commission use the results of the
4 administrative review to aid in the analysis of what
5 will likely happen in the foreseeable future.

6 I have two questions that I would like you
7 to address in your posthearing submission. First, if
8 you can give any instances where the Commission has
9 actually engaged in such an analysis. Of course, all
10 this is assuming I understood your argument correctly.

11 Secondly, if you could explain how such an
12 analysis can be reconciled with revisions of the
13 statute that define the magnitude of the margin of
14 dumping that the Commission has viewed in five year
15 reviews.

16 Thank you.

17 MR. MORGAN: We will address that, Mr.
18 Bernstein.

19 MS. PREECE: Amelia Preece, Office of
20 Economics.

21 You've said here that the product you've
22 provided the pricing for for the product, the sliced,
23 is in cans rather than jars as was specified in the
24 questionnaire.

25 I just want both sides to be able to tell me

1 whether or not they believe that these are comparable,
2 the jars and cans should be seen as comparable pricing
3 products. If they think that they should be, how
4 should they be compared? That would be for both
5 sides.

6 Thank you.

7 MR. LARSON: The four-and-a-half ounce
8 glass, our competition has four-and-a-half ounce glass
9 sliced mushrooms as well, Giorgio and other private
10 label packers. It's just that we as a packer do not
11 have a four-ounce can product. Therefore, I think
12 it's comparable product.

13 The pricing structure is slightly different
14 because packaging cost is slightly higher for glass
15 than it is for can because of the glass jar and the
16 lid.

17 MR. DEYMAN: George Deyman, Office of
18 Investigations. The staff has no further questions.
19 Thank you.

20 CHAIRMAN KOPLAN: Thank you, Mr. Deyman. I
21 thank the staff for the questions that they did ask.

22 With that, let me tell you what the time
23 remaining is. Those in support of continuation have
24 no questions. I've just been signaled by Mr. Coursey.
25 You had three minutes and five for closing, so I

1 assume you'll go directly to closing.

2 Those in support of revocation have 10
3 minutes plus five minutes for closing.

4 First, since there are no questions of the
5 panel, I would release the panel.

6 (Panel excused.)

7 CHAIRMAN KOPLAN: Then I would ask Mr.
8 Thompson and Messrs. Morgan and Campbell whether you
9 wish to use the 10 minutes left you have for direct to
10 question or use rebuttal or whether you're just going
11 to do closing.

12 MR. MORGAN: We'll just proceed to closing,
13 Chairman Koplan.

14 CHAIRMAN KOPLAN: Closing? All right.
15 Thank you both. With that, I'll take a moment for the
16 witnesses to leave the table.

17 Mr. Coursey, do you want to close from --

18 MR. LARSON: I'd just like one last time to
19 apologize for all the inconvenience I may have caused
20 this Commission, as well as the other members present,
21 for the data as I prepared it. Hopefully the revised
22 is more directed at what was requested.

23 CHAIRMAN KOPLAN: Mr. Larson, I'm going to
24 take the opportunity to tell you that I appreciate you
25 coming in and taking direct responsibility for that,

1 and I look forward to evaluating the material that you
2 have submitted. Thank you for coming and for taking
3 that responsibility.

4 MR. COURSEY: Mr. Chairman, may we take a
5 five minute break?

6 CHAIRMAN KOPLAN: How about a one minute
7 break?

8 MR. COURSEY: That would be fine.

9 CHAIRMAN KOPLAN: Okay.

10 (Whereupon, a recess was taken at 3:41 p.m.)

11 MR. COURSEY: Mr. Chairman, Commissioners,
12 thank you for your attention this afternoon, and
13 staff. I'm just going to focus on the testimony of
14 the Respondents, particularly on the Indonesia issue,
15 briefly.

16 The testimony we heard was very interesting.
17 I think it's more interesting for certain statements
18 that undercut the Respondent's case more than for
19 anything else. One major one you heard is that
20 General Mills claimed to be in the branded business.

21 We also learned, though, that it's not the
22 number one brand for canned mushrooms in the United
23 States. The number one brand is Giorgio, a domestic
24 producer. How can the Indonesian product be so
25 different from the domestic product if the main

1 competitor of General Mills/Green Giant at the brands
2 level is a domestic producer itself?

3 Mr. Larson I think in his testimony was
4 trying to create a separate category, a new category
5 called something like fancy mushrooms. In essence,
6 what he's talking about is this very common, well-
7 known category of No. 1 sliced product. Everyone
8 makes it, everyone who is in this business. It can be
9 made by everyone. There's nothing special about it.

10 A third thing we learned is that General
11 Mills/Green Giant is not Indonesia. The impression
12 that we believed was being made through the briefing
13 process, but it turns out not to be the case, is that
14 in essence all product produced in Indonesia that came
15 to the United States was Green Giant product.

16 What we heard is that a substantial amount
17 of product goes to private label companies, which in
18 essence are bigger in this country than Green Giant
19 and Giorgio, private label companies such as Libby and
20 Kroger.

21 Foreign products. I think if you look at
22 the record you'll find and listen back to the
23 testimony that what you're seeing is a competition in
24 the U.S. of an Indonesian produced branded product,
25 Indonesian produced private label product, U.S.

1 produced branded product and U.S. produced private
2 label product. There is a substantial overlap here in
3 the conditions between Indonesia, other countries and
4 the U.S.

5 Another thing we learned is that the
6 Indonesians have nowhere to go with their product but
7 the United States. This is it. What is the
8 likelihood? Where will this product go if the order
9 is lifted? It can't go to Europe. It doesn't go to
10 Europe. It doesn't go to the Asian market. It will
11 come here.

12 On cumulation, the factors that the
13 Respondents cite to distinguish the countries, such as
14 climate or manufacturing differences, simply don't
15 justify a refusal to cumulate. As the record evidence
16 establishes, regardless of any such differences the
17 product produced by each country is the same.

18 Purchasers on record here do not corroborate
19 the alleged quality differences that are cited by the
20 Respondent. The product is a fungible product
21 produced by General Mills, by Indonesians and the
22 domestics. The only difference is price.

23 Now, Mr. Larson spoke about the General
24 Mills/Green Giant sales of No. 10 cans to club stores.
25 He would have you believe that those are retail sales.

1 As we discussed before, as our witnesses testified,
2 think about it. When have you ever in your household
3 capacity purchased a No. 10 can of mushrooms? It
4 simply is not done by the typical shopper at a retail
5 outlet, a grocery store.

6 Household purchasers buy small cans. Who is
7 buying the No. 10s at the Krogers? At the Costcos?
8 The small merchants or the small chain shops that used
9 to buy from distributors like Sysco. They have found
10 it cheaper to go to Costco than to have the Sysco
11 truck come to their house. These are not retail
12 sales. It shows that Green Giant is selling its brand
13 to the food service producers.

14 Retail, as you heard, is one of the three
15 channels of distribution for this product. It's a
16 very important one. You also heard our witnesses
17 testify that they must be in this channel. They must
18 be in every channel. You can't survive in the
19 business without being in all the channels in some way
20 or another.

21 Green Giant is a major potential customer.
22 It's a major player in the U.S. market. You heard Mr.
23 Larson say that Green Giant is prepared to purchase in
24 a pinch from the domestic producers. Why doesn't
25 Green Giant purchase? There's one reason. It's

1 price. They've got a good price with the Indonesian
2 product.

3 Let me just mention the discussion that you
4 heard about the purported exit of Indonesian producers
5 from the market. I would refer you to the staff
6 report in the original investigation. I don't have
7 the page here. I can give it to you. There we had an
8 Indian producer named Agro Dutch who was reported by
9 the staff to have reported that they were out of
10 business. They had gone out of business prior to the
11 Commission's final determination.

12 Agro Dutch today in India is the largest
13 producer of canned mushrooms in India. These claims
14 have a way of not really holding up over time. I
15 would ask you to be very cautious in looking at those
16 claims.

17 Finally, I would ask the Commissioners not
18 to lose the forest for the trees here. With respect
19 to Indonesia, what you're being asked to focus on is
20 everything on the Indonesian side -- trends,
21 production, dumping margins. The focus should start
22 with the domestic industry. This industry is in
23 terrible shape. It's extremely vulnerable.

24 In a situation like this where there are
25 doubts where it may be a close call, shouldn't a

1 balance be struck by the Commission in retaining an
2 order, in considering what would happen to this very
3 vulnerable industry? This isn't the same situation
4 that you would have where you are confronted with an
5 industry with healthy primes.

6 The last point I'd make would have to do
7 with the new shipper review aspect. I won't go into
8 it in detail, but counsel for the Indonesians claimed
9 that throughout the last five years no Indonesian --
10 I'm sorry. We'll put it in our brief.

11 Thank you.

12 CHAIRMAN KOPLAN: Thank you very much, Mr.
13 Coursey, for finishing on time.

14 Let me turn to those in support of
15 revocation. How do you wish to divide your five
16 minutes? You're going to do all of it, Mr. Morgan?

17 MR. MORGAN: I don't think there's much by
18 way of wrapping up except for a few cleanup items.

19 You've heard our case comes down to
20 Indonesia is a different type of industry than the
21 other industries, than the other subject countries.
22 We think when you see the revised pricing data that
23 will confirm it.

24 We would also note that you if look back at
25 the instances of overselling and underselling in the

1 original investigation with respect to Indonesia, I
2 think you'll see about five years it was about the
3 same. You'll see that there was a lot of overselling
4 in the original investigation by Indonesian subject
5 imports. That hasn't changed, we think, once you see
6 the revised pricing data.

7 You have an Indonesian subject producer
8 exiting the market or rather having the order revoked
9 as to it, but yet you've heard that producer's prices
10 have not changed since it's no longer subject to the
11 strictures of an order. We think that's a very
12 positive and strong indication of the Indonesian
13 pricing behavior in the absence of an order.

14 You just heard about No. 10s, the larger
15 cans sold into retail. It was Petitioners who asked
16 that the Krogers and Costcos and the Sam's be included
17 as part of the definition of the retail segment, so
18 for them now to say that products that are sold into
19 the Sam's of the world are not really part of the
20 retail is a bit disingenuous given their request to
21 the Commission that those stores, sales to those
22 stores, be included in retail.

23 On cumulation, we have made our points. We
24 think the trends strongly support the Commission
25 exercising its discretion to cumulation. On that we

1 would note that the Commission has found reasonable
2 overlap and then goes on to the disparate trends and
3 so on and so forth, so you could find reasonable
4 overlap in competition and still exercise your
5 discretion to decumulate. That's been the
6 Commission's past practice, and that's what we believe
7 the facts warrant in this review.

8 As far as price, Mr. Coursey just made
9 reference to the fact that General Mills doesn't buy
10 from the domestics. It buys from Indonesia because of
11 the price. When you evaluate the prices, you're
12 looking at what is being charged to the customer.
13 That's where all the problems with the pricing data
14 started originally, so it's the price that General
15 Mills is selling to versus the price that the domestic
16 industry is selling. Again, when you take a look at
17 the revised data we think that will support our case
18 on price.

19 Mr. Coursey also made an interesting point
20 that we'd just like to note, which is that you tend to
21 see distressed buying from the target countries in
22 these types of cases. One thing I think you will find
23 when you look at the record is that there has not been
24 the kind of distressed buying from Indonesia.

25 Giorgio, who happens to be the number one

1 player in the branded market, does not source product
2 from Indonesia, as you heard from Mr. Larson. Without
3 disclosing anything, although Mr. Larson I believe
4 notes or had mentioned the fact, Giorgio buys from
5 China and India. Indonesia is not the same type of
6 country. It does not have the same type of producers.
7 This is reflected in what you see in consecutive low
8 to zero margins at the Department of Commerce.

9 We would ask the Commission to decumulate
10 Indonesia and to find that there is no likelihood of a
11 continuation of injury.

12 Thank you very much.

13 CHAIRMAN KOPLAN: Thank you.

14 Posthearing briefs, statements responsive to
15 questions and requests of the Commission and
16 corrections to the transcript must be filed by
17 September 20, 2004. Closing of the record and final
18 release of data to parties is by October 8, 2004.
19 Final comments are due October 12, 2004.

20 Thank you all very much. With that, this
21 hearing is adjourned.

22 (Whereupon, at 3:55 p.m. the hearing in the
23 above-entitled matter was concluded.)

24 //

25 //

CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Preserved Mushrooms
INVESTIGATION NO.: 731-TA-776-779 (Review)
HEARING DATE: September 9, 2004
LOCATION: Washington, D.C.
NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: September 9, 2004

SIGNED: LaShonne Robinson
Signature of the Contractor or the
Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

SIGNED: Carlos Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Renee C. Miskell
Signature of Court Reporter