

THE UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:)
)
 CANNED PINEAPPLE FRUIT) Investigation No.:
 FROM THAILAND) 731-TA-706 (Second Review)
)

Thursday,
 January 18, 2007

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

The hearing commenced, pursuant to notice, at
 9:31 a.m. before the Commissioners of the United States
 International Trade Commission, the Honorable DANIEL R.
 PEARSON, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

DANIEL R. PEARSON, CHAIRMAN
 SHARA L. ARANOFF, VICE CHAIRMAN
 JENNIFER A. HILLMAN, COMMISSIONER
 STEPHEN KOPLAN, COMMISSIONER
 DEANNA TANNER OKUN, COMMISSIONER
 CHARLOTTE R. LANE, COMMISSIONER

APPEARANCES: (Cont'd.)

On behalf of the International Trade Commission:

Staff:

WILLIAM R. BISHOP, HEARINGS AND MEETINGS
COORDINATOR
SHARON BELLAMY, HEARINGS AND MEETINGS ASSISTANT
DANA LOFGREN, INVESTIGATOR
DOUGLAS NEWMAN, INDUSTRY ANALYST
JOE KOWALSKI, INDUSTRY ANALYST
CRAIG THOMSEN, ECONOMIST
DAVID BOYLAND, ACCOUNTANT/AUDITOR
GRACEMARY ROTH-ROFFY, ATTORNEY
PETER SULTAN, ATTORNEY
DIANE MAZUR, SUPERVISORY INVESTIGATOR

In Support of Continuation of Antidumping Duty Order:

On behalf of The Domestic Industry:

BRIAN C. NISHIDA, President and Chief Executive
Officer, Maui Pineapple Company, Inc.
STACEY M. JIO, Assistant Treasurer, Maui Pineapple
Company, Ltd.
PATRICK J. MAGRATH, Managing Director, Georgetown
Economic Services

PAUL C. ROSENTHAL, Esquire
DAVID C. SMITH, JR., Esquire
GRACE W KIM, Esquire
Kelley Drye Collier Shannon
Washington, D.C.

APPEARANCES: (Cont'd.)

In Opposition to Continuation of Antidumping Duty Order:

On behalf of The Thai Food Processors' Association-Pineapple Processors' Group; Thai Pineapple Canning Industry Corp., Ltd.; Malee Sampran Public Co., Ltd.; The Siam Agro Industry Pineapples and Others Public Co., Ltd.; Pranburi Hotei Co., Ltd.; Siam Fruit Canning (1988) Co., Ltd.; Great Oriental Food Products Co., Ltd.; Thai Pineapple Products and Other Fruits Co., Ltd.:

GHANYAPAD TANTIPIPATPONG, President, Thai Pineapple Canning Industry Corp., Ltd.
KOJIRO SHIRAIWA, Director of Marketing/Ace of Diamonds Brand, Chicken of the Sea International
ANDREW PARSONS, Vice President, Precision Economics

ARTHUR J. LAFAVE, III, Esquire
Lafave Associates
Washington, D.C.

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IN-CAMERA SESSION: 217-321

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P R O C E E D I N G S

(9:31 a.m.)

CHAIRMAN PEARSON: Good morning. On behalf of the U.S. International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-706 (Second Review), involving Canned Pineapple Fruit From Thailand.

The purpose of this five-year review investigation is to determine whether the revocation of the antidumping duty order covering canned pineapple fruit from Thailand would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Before we begin, I would like to note that the Commission has granted in part a request from Respondents to hold a portion of this hearing in camera. We will begin with public presentations by Petitioners, followed by Commissioners' questions, and then the same for Respondents.

We then will have a 10 minute in camera session by Respondents, followed by a 10 minute in camera rebuttal presentation by Petitioners if so desired. Only signatories to the APO will be permitted in the hearing room during the in camera

1 sessions. Following the in camera presentations, we
2 will resume with public rebuttal and closing remarks.

3 Notice of investigation for this hearing,
4 lists of witnesses and transcript order forms are
5 available at the public distribution table. I
6 understand that parties are aware of the time
7 allocations. Any questions regarding the time
8 allocations should be directed to the Secretary.

9 As all written material will be entered into
10 the record in full it need not be read to us at this
11 time. Parties are reminded to give any prepared
12 testimony to the Secretary. Do not place testimony
13 directly on the public distribution table. All
14 witnesses must be sworn in by the Secretary before
15 presenting testimony.

16 Finally, if you will be presenting documents
17 that contain information you wish classified as
18 business confidential your requests should comply with
19 Commission Rule 201.6.

20 Mr. Secretary, are there any preliminary
21 matters?

22 MR. BISHOP: No, Mr. Chairman.

23 CHAIRMAN PEARSON: Very well. Let us
24 proceed with opening remarks.

25 MR. BISHOP: Opening remarks on behalf of

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1 those in support of continuation of the order will be
2 given by Paul C. Rosenthal, Kelley Drye Collier
3 Shannon.

4 CHAIRMAN PEARSON: Welcome, Mr. Rosenthal.
5 You may proceed.

6 MR. ROSENTHAL: Thank you. Good morning,
7 Mr. Chairman, members of the Commission. If ever a
8 case called out for a field hearing in January when
9 it's 40 degrees this is it, but I guess we were not
10 able to predict the future when this hearing was set,
11 but I'm delighted to be here before you today.

12 Of course, this is the second sunset review
13 on canned pineapple fruit from Thailand, and the
14 Commission has looked at the domestic industry before,
15 but I'm sure you'll agree that it's a unique industry,
16 unlike the industrial products that are often the
17 subject of Commission scrutiny and unlike virtually
18 any other agricultural product that you get to see as
19 well.

20 The conditions in which pineapples are grown
21 and their marketing, both canned and fresh, are highly
22 unusual. So too is the importance of the canned
23 pineapple industry to the Island of Maui and the State
24 of Hawaii.

25 The domestic industry in this case,

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1 comprised solely of the Maui Pineapple Company, is
2 also unique. As you will hear today, the Maui
3 Pineapple Company is part of a company that has an
4 unusual vision of its place in the community and in
5 the state. This is a company that understands and
6 responds to its responsibilities as a good corporate
7 citizen.

8 The Maui Pineapple Company is dedicated to
9 preserving and enhancing the environment. The company
10 is committed as well to its workers and the
11 communities it serves. It's not just another company
12 and is not just in another state. The Island of Maui
13 and the State of Hawaii depend on the Maui Pineapple
14 Company as the biggest employer in Maui and the
15 biggest agricultural company in the state.

16 The Maui Pineapple Company is also one of
17 the biggest industrial producers in the state. The
18 success of Maui Pineapple Company is very important to
19 the diversity of Hawaii's economy.

20 As I said, the Maui Pineapple Company has
21 taken its responsibility to its workers and its
22 community seriously, and the company represented
23 before you is really much different than the one you
24 saw in the previous sunset review. It's taken a
25 different approach to its business and business

1 strategy in an effort to survive in a very, very
2 highly competitive environment.

3 The president of Maui Pineapple Company, Mr.
4 Brian Nishida, will testify this morning about the
5 company's business plan and the intensified efforts to
6 survive the competitive pressure that it faces.

7 He will explain the relationship between the
8 fresh and canned pineapple businesses and the
9 importance of maintaining a healthy processing
10 business for the entire enterprise to thrive. He will
11 also explain the injurious effect of imports on a
12 declining but crucial canned pineapple business.

13 There are a few Respondents participating in
14 this review, and they are represented by counsel. It
15 is notable, however, that the Respondents who chose to
16 participate in this review represent just a small
17 fraction of the productive capacity of the Thai
18 pineapple industry.

19 Indeed, as both Grace Kim and I will discuss
20 in testimony later this morning, the failure by the
21 Thai producers to respond to the Commission's
22 questionnaires has left the Commission with an
23 incomplete picture of the Thai industry and its
24 capacity.

25 The failure of the Thai industry to provide

1 complete information has left the Commission with a
2 distorted record. The Commission must apply adverse
3 inferences if you were to do justice in this
4 proceeding.

5 The Respondents who appear before you have a
6 central argument that is rather curious. Respondents
7 point to the Thai companies that are no longer subject
8 to the dumping order and note that those companies
9 account for the vast majority of imports since the
10 antidumping order was revoked as to them. The
11 Respondents point to the low level of imports
12 accounted for by the companies that are still under
13 the restraints of the antidumping order.

14 Actually, the domestic industry doesn't
15 dispute those facts. Indeed, we embrace them. They
16 demonstrate what will happen if the antidumping order
17 is revoked as to the rest of the companies that are
18 subject to the order.

19 The behavior of the imports now subject to
20 the dumping order will mimic the behavior of the
21 imports that have been unshackled by the order. To
22 argue otherwise is to invite what I hope will be a
23 long and interesting afternoon of questioning for the
24 Respondents.

25 We hope and expect that when the Commission

1 gathers all the evidence available you'll conclude
2 that revocation of the order will lead to the
3 continuation of material injury to this important
4 domestic industry.

5 Thank you.

6 MR. BISHOP: Opening remarks on behalf of
7 those in opposition to the continuation of the order
8 will be given by Arthur J. Lafave, III, Lafave
9 Associates.

10 CHAIRMAN PEARSON: Welcome, Mr. Lafave.
11 Please proceed.

12 MR. LAFAVE: Thank you. Good morning. My
13 name is Arthur Lafave, and I'm here today on behalf of
14 Thai Respondents.

15 There's been a dramatic change in
16 circumstances since the last time the Commission took
17 a look at the antidumping duty order on canned
18 pineapple fruit. In the intervening period, four Thai
19 canned pineapple producers have received partial
20 revocations to the dumping order: Dole, Kuiburi, Siam
21 Food Products and Tipco.

22 As the Thai Food Producers' Association data
23 supplied in our response to the notice of initiation
24 shows, these four exporters account for the lion's
25 share of exports of this product from Thailand in

1 recent years before and after the revocations.

2 The market for canned pineapple fruit in the
3 United States is dominated by nonsubject imports from
4 Thailand, imports from Indonesia and the Philippines
5 and domestically produced product. The remaining Thai
6 companies subject to the order either have never
7 exported to the United States, have not exported to
8 the United States in recent years or have exported
9 only modest quantities of canned pineapple fruit.

10 There's no evidence in the record that
11 subject import volume would increase substantially in
12 the reasonably foreseeable time if the order was
13 revoked. The remaining subject Thai producers are
14 operating at high rates of capacity utilization.
15 Several of them have never exported to the United
16 States, and others have exported only modest amounts.

17 All of the companies have established
18 markets in third countries, including Japan,
19 Australia, Canada, the U.K., Scandinavia, the EU,
20 Russia and several eastern European countries. In
21 many cases, the customers in those markets are major
22 retail supermarket chains. There's no reason to
23 suppose that these markets would be abandoned to
24 increase sales volumes to the United States.

25 Moreover, the canned pineapple fruit that is

1 sold in some markets such as the EU, eastern Europe
2 and Russia is standard grade and would not be
3 acceptable for sale in the United States. Fancy
4 canned pineapple is sold in Japan at higher average
5 unit prices than canned pineapple sold in the United
6 States, acting as an additional disincentive to shift
7 existing export patterns.

8 To the extent there would be any increase in
9 subject import volume after revocation of the order,
10 Maui's repositioning in the market has effectively
11 insulated it from import competition. As disclosed in
12 Maui Land of Pineapple's SEC filings, Maui has sharply
13 increased its sales to the U.S. Government, including
14 the U.S. Department of Agriculture school lunch
15 programs since the last sunset review. Imports cannot
16 supply this segment of the market.

17 The confidential portion of the record of
18 this investigation shows that Maui has insulated
19 itself from import competition in the retail and food
20 service sectors in other ways as well.

21 The record shows that revocation of the
22 antidumping duty order would have negligible effects
23 on the domestic industry's sales volumes, production,
24 pricing and financial performance. To the extent that
25 there would be any increase in the volume of subject

1 imports, those imports would replace nonsubject
2 imports from Thailand and imports from Indonesia.

3 For these reasons, the Commission should
4 find that revocation of the antidumping duty order
5 would not lead to continuation or recurrence of
6 material injury by reason of subject imports from
7 Thailand.

8 Thank you very much.

9 CHAIRMAN PEARSON: Now we're prepared to
10 move to the first panel. Yes, Mr. Secretary?

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

14 Mr. Chairman, all witnesses have been sworn.

15 (Witnesses sworn.)

16 CHAIRMAN PEARSON: Welcome, Mr. Rosenthal.
17 Your panel.

18 MR. ROSENTHAL: Thank you very much.

19 CHAIRMAN PEARSON: Please proceed.

20 MR. ROSENTHAL: Good morning again. For the
21 record, I'm Paul Rosenthal of the law firm of Kelley
22 Drye Collier Shannon. I'm joined today by my
23 colleagues David Smith and Grace Kim of the law firm,
24 who will be able to answer questions, and Grace Kim
25 will also testify in the in camera session on a

1 particular topic.

2 Our lead witness this morning will be Mr.
3 Brian Nishida, who is the president of Maui Pineapple
4 Company. He'll be followed by myself and then by Pat
5 Magrath, who will be testifying in the public session.

6 We also have with us Mr. Stacey Jio from
7 Maui Pineapple Company, who is available to answer
8 questions too.

9 With that, I'll turn it over to Mr. Nishida.

10 MR. NISHIDA: Chair Pearson, Commissioners,
11 good morning. My name is Brian Nishida. I'm the
12 president and chief executive officer of Maui
13 Pineapple Company. I've been employed by Maui Pine
14 since January of 2004, but I'd like to tell you a
15 little bit about my background and really my
16 commitment to the pineapple industry in Hawaii.

17 This begins with my grandfather, who
18 cultivated the Hawaiian pineapple as an independent
19 grower for the Libby Corporation in the early 1900s.
20 The family legacy continued with my father, who was a
21 true entrepreneur and an innovator. As an example, he
22 created individually quick frozen or flash frozen
23 pineapple, which really pushed the Hawaiian industry
24 in a brand new direction.

25 The success of that innovative business led

1 to the acquisition of our family business by Del
2 Monte, which began my 18 year career with that
3 company.

4 I was chosen to become the vice president
5 and general manager of Del Monte's Hawaiian operations
6 in 1994, and I am pleased that in my nearly nine year
7 career with Del Monte, my nine year tenure as the
8 leader of the Del Monte operation in Hawaii, we were
9 able to revise our business strategy and achieve
10 sustained profitability for over a decade.

11 I was saddened by Del Monte's announcement
12 recently that they were going to close all of their
13 pineapple operations in Hawaii at the end of 2006.
14 I'm here today on behalf of Maui Pineapple Company to
15 ensure that we do not meet the same fate.

16 Maui Pineapple Company is the largest grower
17 of pineapple in the U.S. It is the largest
18 agricultural employer in the State of Hawaii and holds
19 a unique holistic position in our community on Maui.
20 The core values of our company are embodied in the
21 three Hawaiian language words we use to guide our
22 actions.

23 These are malama'aina, which loosely
24 translated means love of the land and represents
25 environmental stewardship; ho'ohanohano, which means

1 respect for the community and our employees; and,
2 third, po'okela, striving for excellence. I mention
3 these too emphasize the value and importance that Maui
4 Pineapple Company brings to our community.

5 The primary focus of Maui Pineapple Company
6 over the past three years has been to improve the
7 long-term performance, long-term financial
8 performance, through the design and execution of a new
9 business strategy, which I will speak to in greater
10 detail shortly.

11 As important to our mission has been the
12 employment of a triple bottom line business philosophy
13 where ecological and community impacts hold equal
14 value. That means that Maui Pineapple Company is
15 committed to operating profitable fresh and canned
16 pineapple operations for the benefit of our
17 shareholders and the enhancement of Maui's residents
18 and the thousands of people employed directly and
19 indirectly by Maui Pineapple Company in a holistic and
20 sustainable manner.

21 More broadly, the critical value that
22 agriculture brings is economic diversity, especially
23 to an island and a state that is so dependent on
24 tourism. Agriculture enhances the natural beauty of
25 the Island of Maui, which is so critical to Hawaii's

1 largest industry.

2 Maui Pineapple Company is currently pursuing
3 a unique business strategy characterized by
4 differentiated product positioning, which is made
5 possible because of vertical and horizontal
6 integration of which pineapple processing is an
7 essential component.

8 The fresh product sold under the brand name
9 of Maui Gold is positioned as a premium offering.
10 Achieving the outstanding product attributes of this
11 product requires precision farming and a very high
12 quality of standard obtained in large part by a high
13 cull rate of fruit. This screening process is
14 significantly more rigorous than the industry standard
15 practice. In short, only the best of the best is
16 packed as Maui Gold.

17 Now, the profitable utilization of our
18 culled fruit is essential to the sustainability of
19 this business model. Canned pineapple is the avenue
20 by which Maui Pineapple Company achieves its
21 functionality. In essence, the fresh and canned
22 business lines are not discrete, but rather are
23 mutually supportive. As such, each must be
24 competitive in their respective markets and of course
25 profitable.

1 It is my understanding that the Thai
2 Respondents highlight Maui Pineapple Company's
3 increased focus on fresh pineapple as if Maui Pine had
4 abandoned its cannery operations, but nothing could be
5 farther from the truth.

6 As the prehearing staff report states, in
7 the 10 years the order has been in place per capita
8 consumption of fresh pineapple has more than doubled
9 while consumption of canned pineapple has remained
10 flat. Maui's decision to increase its focus on
11 diversification and the higher margin segment of not
12 just fresh pineapple, but of premium fresh pineapple
13 from Maui, makes good business sense.

14 Respondents have made the same argument
15 about Maui Pine's commitment to canned pineapple in
16 the first review, and Maui's response is as true today
17 as it was then, and I quote, "The fresh business we
18 have now demands the synergies of our cannery." In
19 fact, during 2003 Maui sold its Costa Rican fresh
20 operation in line with pursuing the integrated
21 business model.

22 The ITC site visit this past fall
23 demonstrated that only a portion of any pineapple crop
24 will meet the rigorous standards of fresh market
25 expectations for maturity, color, size and shape. The

1 Commissioners and staff who toured Maui's facility saw
2 firsthand the co-location of Maui Pine's new fresh
3 packing operation immediately next to the current
4 cannery, really a design efficiency.

5 This new, state-of-the-art fresh packing
6 operation illustrates Maui's commitment to modernizing
7 its pineapple business and represents an investment in
8 excess of \$17 million. Maui continues to make
9 investments throughout the pineapple business and has
10 spent nearly \$14 million in the last three years to
11 improve and modernize our field infrastructure and
12 equipment for both the fresh and cannery ends of our
13 business.

14 At the time of the ITC site visit, Maui had
15 engaged Stellar Engineering for the conceptual design
16 of a streamlined cannery. Unfortunately, in the
17 current environment of uncertainty the estimated
18 investment cannot be pursued. Instead, Maui has
19 restructured operations to drive greater efficiencies
20 while allowing for adequate production capacity should
21 market conditions allow for expansion.

22 Although this new configuration yields
23 approximately one-quarter of the former canning
24 capacity, it is at greater efficiency and with
25 manufacturing flexibility. However, it is only a

1 temporary fix.

2 The current 85-year-old cannery, which
3 Commissioners Pearson and Lane visited with staff
4 members, operates at such low capacity that it must be
5 replaced with modernized pineapple processing
6 equipment. Such a significant investment, however,
7 requires a predictable economic environment.

8 The critical importance of a horizontally
9 and vertically integrated business was validated
10 recently by the unexpected and immediate closure of
11 Del Monte's pineapple operations on the island of
12 Oahu, Hawaii.

13 At the time of the ITC site visit, Del Monte
14 had announced ceasing that operation at the end of
15 2008. On the Friday before Thanksgiving, November 17,
16 2006, Del Monte announced immediate closure of the
17 Hawaii operations with the attendant loss of 551 jobs,
18 nearly all full-time positions.

19 This closure likely will mean that many
20 employees will lose their homes because they reside on
21 company property. Further, the closing will result in
22 the exposure of thousands of acres of prime
23 agriculture land to negative environmental impacts
24 such as uncontrolled runoff and weathering.

25 Now, Del Monte did not have an integrated

1 processed fruit component, evidently making the
2 economics of trying to maintain a fresh only operation
3 unsustainable and thus forcing closure.

4 I must emphasize that Maui Pine is still in
5 transition with the full implementation of our
6 business strategy. The company went from an operating
7 loss in the four year preorder period from 1992
8 through 1995 to sustained profitability from 1996
9 through 1999 due in large part to the effects of the
10 antidumping order.

11 Maui Pineapple Company lost \$50 million in
12 that preorder period and made \$17 million in the four
13 year postorder period ending in 1999. Maui operated
14 at a break-even level in the years 2000 and 2001. In
15 2002, however, Maui began a significant downturn in
16 profitability, which has worsened in each of the
17 ensuing years.

18 Notably in 2005, the first full year after
19 Commerce revoked the order for three additional Thai
20 producers, it really was Maui's worst year financially
21 since before the order was imposed with Maui's
22 operating losses climbing as a result of lower prices
23 for canned pineapple. The additional pricing
24 pressures added by the three unrestrained Thai
25 producers in 2004 exacerbated Maui's declining

1 condition.

2 In addition to the near record operating
3 loss in 2005, Maui experienced declines in sales,
4 production, capacity utilization and market share.
5 These financial indicators have deteriorated even
6 further in interim 2006, leaving Maui in its current
7 vulnerable condition.

8 In the original investigation and again in
9 the first sunset review, the Commission found that
10 Maui's sales to the government, the so-called Buy
11 American sales, did not insulate Maui from the effects
12 of unfair Thai imports.

13 Government sales increased in the most
14 recent review period, but the terms governing those
15 sales have not changed. As the Commission has twice
16 concluded, Maui's government sales, and I quote, "do
17 not shield it from the effects of dumped CPF because
18 the sales are generally made at market prices."

19 Although a growing portion of Maui's sales
20 are to the U.S. Government, the prices still remain
21 competitive and, as our financial data indicate, sales
22 to the U.S. Government do not guarantee profitability.

23 In conclusion, Maui is in a financially
24 precarious position that has worsened over the course
25 of the review period. Understand that the Thai

1 Respondents argue that Maui's financial condition is
2 not as bad as it appears because of certain
3 nonrecurring charges, although Respondents concede
4 that Maui is losing money even if the nonrecurring
5 charges are removed.

6 Respondents imply that Maui's financial
7 condition information is unreliable because it is not
8 audited and includes what they call, and I quote,
9 "subjective allocations."

10 My response is twofold. First, Maui's
11 financial data is accurate. However, we wish the
12 results were better. Maui's financial data were
13 compiled with the understanding that its data would be
14 verified with the Commission. Maui's financial data
15 was based on the allocation methods explained and
16 accepted in the first sunset review.

17 Second, Maui's parent company has company-
18 wide audited financial statements, and the assumptions
19 and allocations built into the cannery operation
20 results are consistent with these company-wide audited
21 financial statements.

22 In the first sunset review we demonstrated
23 to ITC staff how the CPF data flowed from the overall
24 Maui Pineapple Company financials to the amounts shown
25 on the consolidated audited financial statements.

1 While I wish I could say that the numbers overstate
2 our precarious position, in fact they do not. The
3 company is vulnerable to the continued injury from
4 Thai subject imports.

5 I thank you for your consideration. Good
6 morning.

7 MR. ROSENTHAL: Thank you, Brian.

8 This morning I want to address directly some
9 of the Respondents' arguments. The first one has to
10 do with the claim that because the revoked producers
11 accounted for the "vast majority" of Thai exports of
12 CPF to the United States in the most recent postorder
13 period, the likely effects on the domestic industry
14 upon revocation would be negligible, claim the
15 Respondents.

16 In support of their claim they argue as well
17 that the Thai companies that remain covered by the
18 order only shipped "modest quantities" of subject CPF
19 and that any adverse impact due to the import
20 competition felt by Maui over the past five years has
21 been caused by the large volumes of canned pineapple
22 fruit shipped from nonsubject sources. You heard that
23 from Mr. Lafave in his opening statement.

24 Those arguments, however, are flawed.
25 Contrary to the Respondents' claims, revocation for

1 the three Thai producers in August of 2004 and the
2 resulting trends in nonsubject Thai import volumes and
3 prices actually provide the Commission with a clear
4 picture of what will transpire in the CPF market if
5 the order were revoked in its entirety.

6 First, it should be no surprise that the
7 vast majority of Thai CPF exports to the U.S. were
8 sourced from the four revoked companies during the
9 most recent postorder period. These companies are not
10 subject to the restraints of the order, and importers
11 that buy from these companies don't face the same
12 liabilities they would if they sourced from companies
13 that are subject to the order.

14 The United States remains a very, very
15 attractive market to Thai producers. Indeed, the
16 staff report indicates that prices in the U.S. market
17 are generally higher in relation to other third
18 country markets, making the U.S. more attractive to
19 subject producers.

20 Contrary to Respondents' arguments, the
21 remaining producers covered by the order similarly
22 would increase their exports to the United States upon
23 revocation of the order just as the four revoked
24 companies did not too long ago.

25 Second, the statement of administrative

1 action or SAA recognizes that the inability of subject
2 producers to maintain preorder volume indicates an
3 inability to sell into the United States without
4 dumping. Thus, it is no surprise that the subject
5 producers exported only "modest quantities" during the
6 postorder period. Indeed, that's exactly what one
7 would expect.

8 Those of you who have or have had teenaged
9 children may have heard the expression "no duh." I
10 hear that or used to hear it all the time. What is
11 the surprise that Thai producers who are subject to
12 the order don't export as much or can't as those who
13 are not subject to the order? That's exactly the way
14 the law is supposed to work. That is not a legal
15 term, for the record.

16 Third, substantial volumes of imports from
17 nonsubject sources, including those from nonsubject
18 Thai producers, make Maui Pineapple even more
19 vulnerable to continued injury from these subject
20 imports.

21 The SAA makes clear that although factors
22 other than subject imports may account for the injury
23 to the domestic industry, "They also may demonstrate
24 that an industry is facing difficulties from a variety
25 of sources and is vulnerable to dumped or subsidized

1 imports."

2 If the order is revoked, the combined effect
3 of reentry into the market of subject merchandise and
4 a growing volume of imports from nonsubject producers
5 would surely devastate Maui's CPF business through
6 declining prices and further shrinking market share.

7 Next I'd like to comment on the record data
8 in this review, which I discussed briefly in my
9 opening statement. As we see too often in sunset
10 cases, the Commission is again faced here with a
11 situation where few foreign producers have been
12 willing to provide the Commission with the information
13 required in the Commission's questionnaires, leaving
14 the Commission to determine what information to rely
15 upon and whether to use adverse inferences.

16 In the in camera session Ms. Kim will give
17 you more details, but, to summarize, the Commission
18 received questionnaire responses from just eight out
19 of nearly 50 known subject producers and exporters.
20 Only six out of the eight subject producers provided
21 usable data.

22 The unresponsiveness of so many of the Thai
23 producers significantly limits the Commission's
24 ability to ascertain the total Thai production and
25 capacity to produce CPF. As we know, in sunset review

1 the foreign producers' information on capacity and
2 capacity utilization is crucial in making your
3 decision about what would happen if the order were to
4 be revoked.

5 This is absolutely crucial information to
6 have, so the failure by the Respondents, many of whom
7 are members of the Thai trade association that is
8 represented and participating in this hearing, the
9 failure for them to provide that information is
10 prejudicial, and we believe that it is important for
11 you to make an adverse inference here with respect to
12 those producers and the information involving capacity
13 and capacity utilization. As I said, we'll go into
14 this a little bit more in our in camera presentation.

15 In our prehearing brief we have tried to
16 fill in some of the missing data. Although we were
17 unable to obtain capacity or production data for all
18 the nonresponding subject producers, the data we did
19 obtain demonstrates that the remaining subject
20 producers have significant capacity to produce CPF.

21 With respect to the four revoked companies,
22 although they have accounted for a large share of Thai
23 CPF exports to the United States, they only accounted
24 for about 35 percent of Thai production, meaning that
25 the majority -- more than a simple majority; 65

1 percent -- of Thai production is still subject to the
2 order. I refer you to Exhibits 8 and 11 of our
3 prehearing brief for that.

4 Based on the production data developed by
5 Respondents in their substantive response at Exhibit 4
6 and by the Thai producer, Seiko, which was attached as
7 Exhibit 11 to our prehearing brief, there is still a
8 significant share of subject production unaccounted
9 for in the Commission's database.

10 In the first sunset review, Respondents --
11 not the Commission staff, not the Petitioners;
12 Respondents -- estimated total production in Thailand
13 at 30 million cases, while capacity was at 60 million
14 cases. By the way, their estimate came from a
15 university in Thailand that published those figures in
16 1999. Yet in this review the very same Respondents
17 reported total capacity of only 12 million cases,
18 which is just 20 percent of what was reported five
19 years earlier.

20 The prehearing report simply adopts the
21 questionnaire information supplied by the Respondents
22 understandably, but this figure severely understates
23 the capacity and is a significant problem, especially
24 when we know that since that earlier figure of 60
25 million case capacity and 30 million case production

1 is understated with the addition of new productive
2 capacity in Thailand, and that information is publicly
3 available.

4 For example, according to the foreign
5 producers' websites, THAICO, which was established in
6 2004, has an annual capacity of 2.7 million cases
7 while Vita Food has the ability to export five to six
8 million cases. In addition, Del Monte recently
9 established a new production facility that includes
10 the production of CPF.

11 Moreover, C&A Products Company established a
12 new plant in 2005 that's dedicated to the production
13 of processed pineapple, including CPF. Notably, this
14 company recently requested a new shipper review at the
15 Commerce Department.

16 Thus, we urge the Commission to look at the
17 entire record to determine total capacity and
18 production of CPF by the subject producers and not
19 just the data submitted by Respondents in their
20 questionnaire responses.

21 We will submit for the record one more time
22 -- it's referred to in our testimony and in the
23 transcript of the first sunset review so I know it's
24 on the record of this case, but we'll give you another
25 copy of the excerpt from the Thai university report to

1 make sure you have a direct source on that.

2 I'd like to discuss one or two other points
3 this morning. That one point has to do with the
4 existence of trade barriers and other third markets.
5 We referred in our prehearing brief to the recent
6 action by Australia to continue with an antidumping
7 order against imports of canned pineapple from
8 Thailand, and that Australian decision provides strong
9 support for continuing the order in the instant
10 review.

11 We've described in our prehearing brief and
12 appended as exhibits detailed findings of the
13 Australian Customs Service as to the problems that
14 Thai producers and exporters would likely cause to the
15 Australian pineapple industry if the order were
16 revoked.

17 Notably, in assessing the relevance of
18 Australia's trade action in this case, the Commission
19 should focus on the findings in those official
20 documents by Australian Customs. Those findings
21 specifically are that the Australian industry has
22 continued to lose sales and market share; that Thai
23 imports have continued to undercut Australian prices.

24 By the way, you can see when you read the
25 Australian Customs report many of the very same

1 arguments made by the Thai Respondents in this case
2 were made in the Australian case and properly rejected
3 there.

4 The agency concluded that the removal of the
5 antidumping order would result in a decrease in the
6 cost or pricing of CPF imports and would exert
7 downward pressure on prices in Australia and that the
8 reduction in prices would lead to further price
9 undercutting, losses of sales volume and market share
10 and/or price suppression, as well as reduced profits
11 and profitability.

12 Again, I commend that Australian report for
13 your review. The parallels between the situation in
14 Australia and the U.S. are striking. There's every
15 reason to believe that similar behavior by Thai
16 producers and exporters that was found by Australia
17 would occur also in the United States if the order was
18 revoked.

19 Finally, as noted in the staff report, as
20 well as in our prehearing brief, subject producers
21 also face trade barriers in other third country
22 markets. For example, Japan has refused to open its
23 markets to Thai canned pineapple by enforcing a tariff
24 rate quote against such imports.

25 Other countries such as China, Korea, Mexico

1 and the EU have imposed high import tariffs, making
2 those markets much less attractive compared to the
3 United States. These trade barriers are significant,
4 especially the TRQ limiting Thai exports to Japan, the
5 other higher priced market besides the United States.
6 Because of this, Thai subject producers will export
7 even greater and more injurious volumes to the United
8 States and at lower prices if the order is revoked.

9 Thank you for your attention this morning.
10 I'll turn the mic over to Pat Magrath.

11 MR. BISHOP: You have 29 minutes remaining.

12 MR. MAGRATH: Thank you very much.

13 Good morning, members of the Commission,
14 Commission staff and ladies and gentlemen. My name is
15 Patrick Magrath. I'm managing director of Georgetown
16 Economic Services.

17 My testimony today will cover briefly the
18 likely volume, price and impact on the canned
19 pineapple industry in the United States to a
20 revocation of the antidumping duties on Thai imports.

21 Since the U.S. industry is comprised of only
22 Maui, we are utilizing the Commission's offer of an in
23 camera session to give some specific examples to the
24 points we are making here on both Maui data and
25 subject and nonsubject Thai import data.

1 In 2001, the Commission in its first sunset
2 review unanimously recognized the vulnerability of
3 Maui Pineapple, the lone U.S. producer, in a market
4 opposed by an array of much larger foreign processors.
5 This competition is so formidable that Maui has never
6 attained even a quarter share of its own market. I'm
7 referring here now to the public Chart 1.

8 Through much of this period, however, Maui
9 has held its own as you can see in that chart and read
10 in the staff report, and the orders helped Maui in the
11 marketplace.

12 In the postorder period, Maui was able to
13 successfully exploit its nonprice advantages of higher
14 quality pineapple or perceived higher quality
15 pineapple, made in the USA brand loyalty, the 100
16 percent Hawaiian logo that's stamped on the top of
17 every Maui can and, most important, its strategic
18 product placement in the first private label tier.

19 Now, as we emphasize in our brief, Maui has
20 to contend not only with price competition from the
21 national brand above it and the regional and second
22 private label tiers below it in Tier 1, but with
23 significant volumes of subject imports invading Maui's
24 first private label tier.

25 This encroachment in Maui's own tier is new

1 to the conditions of competition in this case and has
2 been so complete that one significant market
3 participant stated that private label sourcing had
4 switched from Hawaii to Thailand as of 2005.

5 Thus, Maui has seen an alarming decline in
6 its already minority share of the U.S. market over the
7 period of review. In fact, in the last three years
8 Maui's market share declined dramatically as shown in
9 Chart 1. As of the latest year-to-date period
10 measure, as you can see from this chart, Maui is
11 currently hanging onto only a very small share of the
12 U.S. market. The exact number will be given in
13 camera.

14 Although Respondents emphasize the much
15 greater volumes of nonsubject imports that are
16 currently in the market, they are wrong in this
17 emphasis for two reasons. First, the staff report
18 shows that the subject imports in the market are now
19 targeting this first private label tier, Maui's price
20 tier, as Table II-1 of the prehearing staff report
21 would show.

22 Second, as we have emphasized in our brief,
23 the formerly subject import sources whose orders were
24 revoked at the end of 2002 and then the three of them
25 in mid 2004 have responded by greatly increasing the

1 volume of their imports and becoming more aggressive
2 in their pricing strategies.

3 In this hypercompetitive market, the other
4 50 or so Thai pineapple producers/exporters who are
5 still subject to the order are likely to exhibit the
6 same behavior upon revocation as those four.

7 As Mr. Rosenthal has just mentioned and as
8 we will mention again in these testimonies,
9 unfortunately because the vast majority of these
10 approximately 50 Thai producers ignored the ITC's
11 request for data, the Commission knows little or
12 nothing about them, a theme on which we will expand in
13 camera.

14 Fortunately, however, in determining the
15 likely volume and effect of revocation one needs to
16 look no further than the track record of those four
17 producers whose orders have already been revoked.
18 Imports from these canneries have surged in the most
19 recent period following their revocations, as we will
20 show in private session.

21 In addition to the above, there are several
22 other factors that are likely to result in significant
23 volume effects of imports from Thailand if the order
24 is revoked. Ms. Kim will detail in camera that the
25 record lacks information of well over half of Thai

1 capacity. The percentage Mr. Rosenthal just gave to
2 you.

3 The Commission data based on foreign
4 capacity, which is among the most probative evidence
5 in a sunset review, is significantly understated
6 therefore in the staff report.

7 Secondly, Thai capacity has expanded over
8 the period of review as foreign producer
9 questionnaires and company websites show. We have
10 submitted this material in our brief.

11 Third, there are new CPF producers that have
12 recently come on stream in Thailand; as Mr. Rosenthal
13 mentioned, C&A Products and Del Monte, the latter of
14 which will have easy access to the U.S. market thanks
15 to its brand name.

16 Add to these factors the undisputed fact of
17 the Thai industry's export orientation, virtually all
18 of its production of canned pineapple, which is the
19 world's largest, is exported and that several Thai
20 producers have admitted they are looking forward to
21 revocation to increase their U.S. shipments.

22 Looking back on all these facts then, the
23 Commissioners should have overwhelming evidence that
24 the volumes of Thai imports will increase
25 significantly if the restraints of the orders are

1 removed.

2 As to the price effect if the orders are
3 revoked, the staff report in this investigation is
4 clear on the paramount role price plays in purchasing
5 decisions as a first matter. The results of purchaser
6 questionnaires here are consistent with those that we
7 got in the original investigation and in the first
8 review. In fact, purchasers found no real difference
9 between domestic and subject canned pineapple except
10 for the factor of lower price.

11 Consistent with the great majority of sales
12 comparisons showing underselling in the original
13 investigation, the comparisons in the present case
14 show significant underselling margins from Thai
15 subject imports selling into the first private label
16 tier to retail grocery, as well as underselling in
17 comparisons of Thai second label and Thai regional
18 tier products.

19 The results in the food service channel are
20 even more ominous with uniform underselling of Maui
21 not only from second private label and regional brand
22 Thai suppliers, but from the national brands as well.

23 The staff report has provided clear evidence
24 of the likely effect of subject prices by its data
25 tracking the average unit value of imports of those

1 four Thai canneries whose orders were revoked. The
2 tables at page IV-27 of the staff report show
3 nonsubject AUVs after revocation compared to that of
4 Thai CPF still subject to the order.

5 There are important differences here that we
6 wish to emphasize in the in camera session. We will
7 present another chart, for example, comparing subject
8 with nonsubject prices at that time. The likely price
9 effect of general revocation then will be further
10 declines in Thai prices from the present levels,
11 levels at which they already undersell Maui by
12 significant margins.

13 Finally, as to the impact on Maui of the
14 removal of the order, you can see this with reference
15 to the revocations of mid 2004 as well. As with
16 Maui's market share, this watershed event and
17 aggressive reaction to it by those Thai producers
18 whose orders were revoked has resulted in an
19 accelerated decline in Maui's trade and financial
20 performance. This is in Chart 2 of the public charts
21 that we have distributed.

22 Satisfactory in some areas, declining
23 somewhat in others throughout the postorder period,
24 Maui's indicators have fallen off a cliff in 2004,
25 2005 and 2006 as the company has been rocked by the

1 huge increase in volume and the aggressive pricing of
2 formerly subject imports.

3 Some of these trends are shown in that
4 second chart, an index of market share, production,
5 production related workers and net sales trends. Note
6 especially the acceleration of these declining trends
7 in 2004, 2005 and 2006. Perhaps most important, these
8 deeply declining trends led to Maui operating losses,
9 which aren't on that chart, but these operating losses
10 ballooning over the review period and worsening each
11 year.

12 In conclusion, the Commission should keep in
13 mind that the significant dropoff in Maui's
14 performance in these last three years was caused
15 primarily by the huge increase in volume and
16 aggressive pricing of four -- only four -- Thai
17 processors formerly subject to the order.

18 Some 50 or so processors remain under order,
19 processors which we must emphasize again have ignored
20 ITC's request for information. The revocation of the
21 restraints on these remaining Thai processors will
22 likely result in Maui's termination of canned
23 pineapple production and eventually, as was the case
24 of other Hawaiian producers cited by Mr. Nishida,
25 cessation of all pineapple-related operations in the

1 United States.

2 Thank you for your attention.

3 MR. ROSENTHAL: That concludes our direct
4 testimony for the public session. We're happy to
5 answer questions.

6 CHAIRMAN PEARSON: Okay. Thank you very
7 much for those presentations.

8 We will begin the questioning in this public
9 portion of the hearing by Vice Chairman Aranoff.

10 VICE CHAIRMAN ARANOFF: Thank you, Mr.
11 Chairman, and thank you to everyone on this panel for
12 being with us this morning and especially to those of
13 you who traveled so far to come to nasty weather.

14 I want to start with a general question
15 about Maui's marketing strategy for canned pineapple
16 and then ask some more specific questions.

17 Mr. Nishida, you testified that going up
18 market to the high end of the market with your fresh
19 product has been a good strategy for your company.
20 Why is that not a good strategy for your canned
21 pineapple product where you have had less of a focus
22 on fancy grade product?

23 MR. NISHIDA: You're absolutely correct.
24 Our strategy in moving up market, if you will, with
25 our Maui Gold product is the key to our success.

1 Fresh produce items have the ability to be
2 differentiated by various product attributes and as
3 well branding. I think everyone will agree that Maui
4 holds a special place in many people's heart, and it
5 makes the fruit taste a little bit better sometimes,
6 all kidding aside.

7 In the case of canned pineapple, however,
8 it's truly a commodity item, and in that market price
9 is the overall driver. Maui is a very, very small
10 player, and our positioning is such that we cannot --
11 we have not been allowed to increase pricing.

12 We have made the attempts over the years of
13 emphasizing the Made in USA product and the Hawaii
14 origin and many of the other attributes. However, the
15 market simply dictates pricing restraints.

16 VICE CHAIRMAN ARANOFF: Are the pineapples
17 that you would previously have used to pack fancy
18 grade canned pineapple, are those the same pineapples
19 that are of sufficient quality to sell in the fresh
20 market?

21 Are the canned and the fresh competing for
22 those same pineapples, or is there another reason why
23 it doesn't make sense to pack as much fancy grade as
24 it may once have done?

25 MR. NISHIDA: I hope I understand your

1 question. I'm not sure.

2 I think an important component in examining
3 our current and go forward strategy, number one, is
4 that we've invested heavily in a new variety, one
5 which allows us to position for the premium fresh
6 pineapple business.

7 That being said, an essential component is,
8 as I described, a high cull rate. Essentially
9 although we're growing tons of pineapple, the amount
10 that we ultimately select as our Maui Gold product is
11 a percentage, and the resulting remainder are still
12 very good eating fruit, but for various quality
13 standard reasons in the fresh market we then utilize
14 for our cannery operations.

15 VICE CHAIRMAN ARANOFF: Okay.

16 MR. MAGRATH: Excuse me. The quality
17 difference that Mr. Nishida is talking about though, I
18 mean it could be, as he said, perfectly good quality
19 pineapple, could be the fancy grade pineapple, but it
20 might be a little bit differently shaped.

21 The crown may not be formed correctly. It
22 may be off-color. You know, those kind of pineapples
23 cannot be sold in the fresh market so they go to the
24 canned operation.

25 MR. NISHIDA: A great example would be the

1 crown.

2 MALE VOICE: Yes, the crown.

3 MR. NISHIDA: The degree of tilt, if you
4 will, of the crown. We would not put that into our
5 Maui Gold product. The fruit is perfectly edible.
6 That would go to our cannery.

7 VICE CHAIRMAN ARANOFF: Okay. I understand
8 that point. What I'm still not understanding is my
9 understanding is that your company used to can a fair
10 bit of fancy grade product, and you've trended away
11 from that toward the next grade down, choice.

12 I'm trying to understand whether that
13 phenomenon is related to the way you're marketing your
14 fresh product or whether there's another explanation.

15 MR. NISHIDA: The change is really not a
16 matter of adjusting or making a grade choice, if you
17 will. It's really a matter of what will the market
18 allow us? What volume levels will the market allow us
19 to produce?

20 It's not a function of a difference in
21 production grading or quality of fruit that's driving
22 the change in the marketplace. It's the market that's
23 driving the situation.

24 VICE CHAIRMAN ARANOFF: So you're saying
25 that there's less demand now for fancy grade product

1 in the United States than previously? That it's not a
2 supply issue; it's a demand issue?

3 MR. NISHIDA: As consumption is flat in
4 regard to canned pineapple is concerned and really the
5 pricing situations -- again, because the market is
6 establishing the price and essentially the
7 profitability levels, that's driving our decision on
8 not being able to produce more canned pineapple.

9 VICE CHAIRMAN ARANOFF: Okay.

10 MR. MAGRATH: The purchaser questionnaires
11 will show that the only difference to purchasers, and
12 this was true from the original case and it's even
13 more so in this second review. No one will pay for
14 this quality difference.

15 The only differentiating variable between
16 Maui pineapple and the other pineapple in the market
17 is the issue of price, so that would be the factor.

18 VICE CHAIRMAN ARANOFF: Okay. Going to this
19 issue of product differentiation as a way to maintain
20 a premium, in some other agricultural cases that we've
21 seen recently we've seen companies explore strategies
22 that involve several things that I wanted to ask you
23 if you've looked into.

24 One is promoting a kind of a buy American
25 promotion like we saw, for example, with Alaskan

1 salmon to persuade consumers that the American product
2 is better.

3 We've seen people turn to greater organic
4 production as a way to get a price premium. We've
5 seen people look at different kinds of fancier or more
6 convenient packaging or packaging that consumers
7 somehow view as more upscale than a can.

8 Have you done marketing studies to look at
9 those kind of options and rejected them as not likely
10 to improve your pricing situation or your market
11 share?

12 MR. NISHIDA: Those are great examples. I
13 think Maui Pineapple's effort in promoting the made in
14 the U.S. attribute is a strategy that has been
15 deployed with limited I guess at best success.

16 Organic pineapple? Interesting that you
17 would mention that. We currently have an endeavor
18 underway, but that's really a research effort.
19 Organic pineapple is not an easy crop to develop.

20 As well, both incorporating such an item
21 and, if you can imagine, a packaging conversion change
22 require significant investment both from an agronomic
23 perspective, as well as a manufacturing perspective.

24 VICE CHAIRMAN ARANOFF: If you go into your
25 grocery store, for example, you see plastic jars of

1 fruit, and you see the little individual servings,
2 which I know I put in my kids' school lunches.

3 Why are those not viable options for your
4 company? Is it a cost issue with respect to the
5 packaging, or is it just too small a market to be
6 worth investing in?

7 MR. NISHIDA: From our perspective it's the
8 investment cost and the market development costs are
9 unaffordable for us.

10 VICE CHAIRMAN ARANOFF: Okay. I appreciate
11 all those answers.

12 Since my light is yellow, I'll wait for the
13 next round. Thank you, Mr. Chairman.

14 CHAIRMAN PEARSON: Commissioner Hillman?

15 COMMISSIONER HILLMAN: Thank you. I, too,
16 would join my colleagues in welcoming you and thanking
17 you for taking the time to be with us and for
18 traveling all the way from beautiful Hawaii.

19 Let me follow up a little bit on this issue
20 of trying to understand where you see yourself
21 positioned in the canned pineapple segment of it. Our
22 data tends to break down the market by sales to the
23 retail sector, sales to the food service sector and
24 sales to the industrial sector, and so I'm trying to
25 understand from your business perspective where you

1 see yourself positioned in each of those segments.

2 Describe for me how you see yourself in the
3 retail segment of the canned pineapple market.

4 MR. NISHIDA: Let me back up a little bit.
5 Obviously the key to our strategy is the mutually
6 supportive component of our processing business or
7 canned pineapple business to our overall pineapple
8 business.

9 That being the case, the key objective on
10 our processing operations is to drive for stability.
11 Towards that end, historically we have found that the
12 food service business, for example, provides us a bit
13 of a higher degree of reliability in that orders are
14 placed well ahead of time, and you can develop
15 customer relationships, things like that.

16 In contrast, in the grocery sector it's
17 extremely, extremely price competitive, and really
18 recent history has shown that we cannot garner the
19 pricing that we need, that the retailers are not
20 willing to pay, and as a result we've retracted.
21 Really we've been forced to retract from that
22 business. The margins have not supported us there.

23 COMMISSIONER HILLMAN: Okay. Help me
24 understand this because obviously this is one of the
25 big arguments that the Respondents are making, and

1 they've quoted a number of purchasers who have clearly
2 said we can no longer get product from you. It's not
3 available. You're not willing to do it. You're not
4 canning what we want. You're not willing to sell to
5 us.

6 Obviously I'm trying to make sure I
7 understand from your perspective how we got to the
8 point we are in terms of the level of your sales in
9 the retail sector.

10 MR. NISHIDA: Certainly Maui Pineapple was a
11 supplier to that channel for many years, but for many
12 years the margins were in the red.

13 We have had to make the hard decision of
14 first testing to see whether or not prices can be
15 taken up and have not been successful in that regard
16 so as a result the need to therefore make the hard
17 decision of no longer supplying that marketplace.

18 I'll give you an example. As we all know,
19 the cost of energy has gone up significantly.
20 Commodity pricing on things like very fundamental raw
21 materials for our business, steel, has gone up
22 significantly.

23 We've attempted, as perhaps other
24 commodities and products have been able to pass on
25 fuel surcharges, for example. We've not been able to

1 succeed in that matter at all. As a result, we
2 clearly came to the conclusion that there's a ceiling.
3 Given the market conditions, there's a ceiling.

4 COMMISSIONER HILLMAN: Okay. When would you
5 say you came to this conclusion that you're really not
6 able to remain in the retail end of the canned
7 business?

8 MR. NISHIDA: I would say the analysis and
9 our conclusion was in 2003-2004.

10 COMMISSIONER HILLMAN: Okay. Now, from a
11 cost perspective describe for me the differences in
12 terms of trying to sell into the retail business
13 versus into the food service business.

14 Obviously different sized cans, different
15 numbers of labels, but help me understand from a
16 producer standpoint what difference it makes whether
17 you're selling retail versus selling food service.

18 MR. NISHIDA: I can speak in general terms.
19 Certainly in the food service business, for example,
20 the No. 10 can, the one gallon size can, is the
21 predominant item.

22 From a production perspective, the
23 throughput, focusing in on such an effective SKU from
24 a production perspective makes it a lot easier,
25 certainly easier in the case of distribution.

1 Generally the customers take full truckloads, the
2 whole stocking cycle. It's much easier to work with
3 the food service sector, who they themselves have, in
4 my opinion, more sophisticated demand projections,
5 mechanisms.

6 Retail is a very different game. It is not
7 uncommon to have small lot sizes and so the
8 warehousing costs, the distribution costs, the selling
9 costs are significantly higher. Again, as well the
10 pricing pressures of the multinationals and the rest
11 of the tiering certainly creates higher competition
12 levels as well.

13 COMMISSIONER HILLMAN: Okay. Now, I think I
14 heard the testimony, and certainly I read it in the
15 briefs, in your brief, that there is price effects
16 across all of these various distribution mechanisms.

17 I can certainly understand price pressure
18 within the retail sector. In other words, I can
19 understand that the prices that the national brands
20 are charging could have an effect on the primary label
21 or the secondary private label product.

22 I'm having a little more trouble
23 understanding the relationship between prices in the
24 retail sector versus prices in the food service
25 sector. Do the prices in one of those segments affect

1 the prices in the other? If so, how?

2 MR. NISHIDA: May I take a moment to think
3 about this?

4 COMMISSIONER HILLMAN: Sure.

5 MR. NISHIDA: I want to make sure I
6 understand the question.

7 COMMISSIONER HILLMAN: Well, basically what
8 I'm asking is do the Syscos of the world in essence
9 know what is being charged or what is being paid to
10 the Safeways or the whatever?

11 MR. NISHIDA: Okay.

12 COMMISSIONER HILLMAN: Do prices in the food
13 service side have any relationship or effect on prices
14 in the retail side or vice versa?

15 MR. NISHIDA: Sure. Sure. Sorry. Yes.
16 Certainly I don't know what level of intelligence each
17 buyer or sector would have, but my supposition is no,
18 they're more discrete.

19 COMMISSIONER HILLMAN: They are more
20 discrete? Okay. All right. I appreciate that.

21 If I can then go to this issue? As I heard
22 your testimony in this effort to go to the Maui Gold
23 and marketing it as a real premium product, and I will
24 confess that when my friends from California come the
25 one thing I ask them to always bring me is a Maui Gold

1 pineapple.

2 MR. NISHIDA: Great.

3 COMMISSIONER HILLMAN: They are not
4 available here on the east coast.

5 I can understand that. I'm just trying to
6 understand whether what you are doing is so
7 fundamentally different from what others are doing.

8 In other words, is your portion of what you
9 deem going into the fresh market, your percentage of
10 product that goes fresh as opposed to goes canned,
11 significantly different than other pineapple
12 producers? If so, again how and what effect does that
13 have on the relative prices of the fresh versus the
14 canned?

15 MR. NISHIDA: I believe your question is do
16 we do things differently in our crop utilization in
17 regard to fresh.

18 COMMISSIONER HILLMAN: Correct.

19 MR. NISHIDA: We certainly do cull at a much
20 higher rate than let's call it industry standards.
21 The multinational --

22 COMMISSIONER HILLMAN: What would you say
23 the industry standard is? That's what I'm trying to
24 understand.

25 MR. NISHIDA: Okay. In relative terms, I'd

1 say we cull at perhaps 2X, two times a greater cull
2 rate than the industry standard.

3 COMMISSIONER HILLMAN: Okay. So the
4 industry standard, what percentage of their product
5 would typically go fresh versus canned?

6 MR. NISHIDA: Well, there's an important
7 distinction. The other producers of fresh pineapple,
8 to my understanding none of them have canneries;
9 certainly as it pertains to the U.S. market. As a
10 result, the general business strategy calls for
11 grabbing as much of the crop as possible for their
12 fresh pack.

13 In our case, the ability to utilize that
14 portion of the crop for our canning operations allows
15 us from a model perspective to have a significantly
16 higher cull rate.

17 I'm sorry. I'm probably not connecting.

18 COMMISSIONER HILLMAN: No. I understand
19 that, but I'm struggling with you have a lot of
20 canning capacity, and you have the Del Montes and the
21 others that used to be in Hawaii and certainly others,
22 as you say, that do not have a canning operation.

23 What I'm trying to understand is why then
24 are you not canning what Del Monte couldn't put into
25 the fresh market or what any of the other Central

1 Americans or others?

2 I'm struggling with if everybody needs to
3 can the stuff that can't go into the fresh market, why
4 not more fully utilize your canning operations to can
5 somebody else's product that can't go fresh?

6 MR. NISHIDA: Great question. I guess on
7 one level the potential producer would simply be other
8 pineapple producers in Hawaii, and we compete on the
9 fresh market.

10 More importantly, and perhaps this is an
11 aside, when Del Monte announced their closure of their
12 operations, their immediate closure, I did make an
13 offer directly to assist in salvaging their crop over
14 the two-year period and to have it processed in our
15 cannery, but unfortunately, you know, I made the offer
16 on Friday afternoon. At break of dawn on Saturday
17 they had their tractors and their plows out plowing
18 the fields under.

19 COMMISSIONER HILLMAN: My red light is on.
20 I may come back to this issue to try to understand.

21 MR. ROSENTHAL: I wish you would because
22 there are a few more things to say on this topic.
23 Most important is it's not a lack of pineapples for
24 canning. They've got plenty of capacity and plenty of
25 pineapples within Maui, Maui Pineapple's operations.

1 The problem is, and this goes back to your earlier
2 question, what price can you get once you can those
3 pineapples.

4 The reason why they've been squeezed out of
5 the retail market is not because they don't have
6 enough capacity to supply it. It's because the
7 pricing they can get there when they're dealing with
8 the low-priced Thai subject imports and the
9 multinationals, they can't get the price to justify
10 putting the pineapples in cans.

11 I wish you'd come back or someone will
12 because this is a crucial question to address.

13 COMMISSIONER HILLMAN: I appreciate that.
14 Thank you very much.

15 CHAIRMAN PEARSON: Commissioner Koplan?

16 COMMISSIONER KOPLAN: Thank you. I'm sure
17 it'll get covered.

18 Mr. Rosenthal, this is just for the
19 posthearing. If I am seeing correctly, that tie
20 you're wearing has pineapples on it I take it?

21 MR. ROSENTHAL: For the record, it does.

22 COMMISSIONER KOPLAN: It does. But they're
23 all fresh, so for the posthearing maybe you could
24 explain why you couldn't come up with a single can.
25 I'll let you handle that.

1 Mr. Nishida, let me start with you and with
2 our staff report, the public version of it. "The
3 number...", and I'm quoting from chapter 2. It states
4 as follows: "The number of acres of pineapple planted
5 for the fresh and canned markets decreased from 20,700
6 acres in 2000 to 13,000 acres in 2004, then increased
7 to 14,000 in 2005." It cites a table in chapter 3.

8 It goes on to say, "Though some of the
9 decrease in acreage led to decreased production for
10 the fresh market from 122,000 short tons in 2000 to
11 104,000 short tons in 2004 and 106,000 short tons in
12 2005, most of the decline was in the processed portion
13 of the crop."

14 Now, you referred to your business model
15 several times I think in your direct testimony. On
16 the one hand, as I see this, you have decreased
17 overall pineapple acreage, which disproportionately
18 affects the amount of fruit for processing CPF, but,
19 on the other hand, you continue to invest in the
20 canning operation.

21 You made mention today of this new facility,
22 the \$17.2 million facility that I believe you said
23 should be fully operational this year. Just out of
24 curiosity, do you expect the processing component to
25 be fully operational this year?

1 MR. NISHIDA: That \$17 million plant that we
2 refer to is our fresh fruit packing operation.

3 COMMISSIONER KOPLAN: Yes.

4 MR. NISHIDA: Not to be confused with a
5 canning operation. In fact, it is on line. Actually
6 we commissioned it in midyear '06.

7 COMMISSIONER KOPLAN: When you said in the
8 brief and made reference to the processing component,
9 are you talking about fresh there?

10 MR. NISHIDA: The \$17 million plant? I'm
11 sorry.

12 COMMISSIONER KOPLAN: Yes. I think you
13 described it was going to be coming on line, and you
14 said in there that the processing component would be
15 fully operational in 2007 you thought.

16 MR. NISHIDA: That plant refers to our fresh
17 fruit operation.

18 COMMISSIONER KOPLAN: To fresh?

19 MR. NISHIDA: Yes.

20 COMMISSIONER KOPLAN: Okay. Could you do me
21 a favor and submit the documentation for that business
22 model for me for purposes of the posthearing, anything
23 that you would have on that?

24 What I'm trying to balance for myself is the
25 fact that this reduction in acreage cuts back on the

1 amount that you would have for canning purposes, so
2 maybe you could provide that if you would.

3 MR. ROSENTHAL: There's not a single
4 document.

5 COMMISSIONER KOPLAN: I didn't think so.

6 MR. ROSENTHAL: But we will get you a fuller
7 explanation.

8 COMMISSIONER KOPLAN: That will be great.
9 Thank you. If there is accompanying documentation,
10 that's what I'm particularly interested in.

11 MR. ROSENTHAL: Certainly.

12 COMMISSIONER KOPLAN: Thanks.

13 Mr. Nishida, in your brief at page 16 it
14 stated, and I'm quoting, "The primacy of low price,
15 virtually to the exclusion of all other factors, is
16 the most salient of the conditions of competition in
17 the U.S. canned pineapple fruit market."

18 It appears to me that purchasers, by number
19 of responses, and I'm quoting here numbers, ranked
20 quality of product, 22 of them responded as to
21 quality, 24 responded as to availability, 24 responded
22 as to consistency, and 22 responded with respect to
23 reliability of supply. In each of those categories we
24 had more responses to that than the importance of
25 price. Only 13 responded that price was.

1 I'm wondering if you could reconcile for me
2 the statement in the brief with the numbers of the
3 responses that we got from purchasers? They seem to
4 put these other categories in a more prominent place
5 for them.

6 MR. NISHIDA: I think from a perspective of
7 interpreting the criteria, certainly there is a level
8 of minimum quality, which I'm sure the Respondents or
9 I would imagine the Respondents are addressing the
10 need for a certain minimum quality of product as
11 opposed to a comparative level of quality.

12 COMMISSIONER KOPLAN: Maybe I can help maybe
13 to clarify. Based on what I've just looked at and
14 read to you, would you at least rank these other
15 categories on an equal basis with price?

16 MR. NISHIDA: No. Price would be number
17 one.

18 COMMISSIONER KOPLAN: You would still --

19 MR. NISHIDA: Absolutely. That's a diver.

20 COMMISSIONER KOPLAN: How do you account for
21 the number of responses, though, that we're hearing
22 from people with these other categories?

23 MR. NISHIDA: Again, I would imagine that
24 the fundamentals -- from a procurement perspective,
25 the fundamental benchmarks of minimum quality, of

1 minimum service level, are of course important, but
2 assuming that the overall availability and minimum
3 standards are met, which is the case I believe in the
4 marketplace, price is the driver.

5 COMMISSIONER KOPLAN: Thank you.

6 MR. MAGRATH: Commissioner Koplan?

7 COMMISSIONER KOPLAN: Mr. Rosenthal, for
8 purposes of the posthearing could you just take a look
9 at Tables II-6 and II-7 at chapter 2, page 20, of the
10 confidential staff report and expand on the response
11 to my question?

12 MR. ROSENTHAL: Sure.

13 MR. MAGRATH: Commissioner Koplan, you
14 actually face this in most investigations. What Mr.
15 Nishida said is the right answer.

16 What we're talking about and what is the
17 critical point is what purchasing variable
18 differentiates in this case Maui from the subject Thai
19 suppliers?

20 Of course, to get into the game, to get your
21 can on a grocery shelf, you have to meet minimum
22 quality. You have to have the product available. If
23 you look at the staff report, Maui and its Thai
24 competition will be equally ranked in terms of the
25 availability, the product consistency, the product

1 quality.

2 Everybody has to meet those standards to get
3 into the game. Then it becomes what is the
4 differentiating variable? What is the difference in
5 the purchasing decision?

6 COMMISSIONER HILLMAN: Are you saying all
7 things being equal, it comes down to price?

8 MR. MAGRATH: And all things equal it comes
9 to price.

10 COMMISSIONER KOPLAN: Right.

11 MR. MAGRATH: That's in the staff report
12 where they ask the purchasers. It's a very valuable
13 table that's usually in the staff reports.

14 They ask purchasers to differentiate the
15 Maui product from the Thai product in terms of
16 superior, inferior or comparable. The only variable
17 where the two differ is lowest price, in which Maui is
18 ranked inferior.

19 COMMISSIONER KOPLAN: Okay. Thank you.

20 Let me come back to Mr. Nishida again. The
21 staff report in chapter 2 states, "The farm prices
22 received for pineapple fruit for the fresh market are
23 much higher than farm prices for pineapple fruit for
24 the processed market, 3.7 to 5.1 times as high since
25 1994 according to USDA figures. Even a large change

1 in the price of CPF would likely have little impact on
2 the share of pineapple allocated to fresh pineapple
3 sales."

4 The staff cites to USDA 2006 Fruit and Nut
5 Situation in *Outlook Yearbook*. How do you respond to
6 that?

7 MR. NISHIDA: I'm sorry. Could you rephrase
8 the question?

9 COMMISSIONER KOPLAN: Do you want me to read
10 it again?

11 MR. NISHIDA: Yes, please.

12 COMMISSIONER KOPLAN: Sure. "The farm
13 prices received for pineapple fruit for the fresh
14 market are much higher than farm prices for pineapple
15 fruit for the processed market, 3.7 to 5.1 times as
16 high since 1994 according to USDA figures."

17 It then goes on to state, "Even a large
18 change in the price of CPF would likely have little
19 impact on the share of pineapple allocated to fresh
20 pineapple sales." The staff is citing this USDA 2006
21 yearbook.

22 MR. NISHIDA: The perspective Maui Pineapple
23 takes is, you know, being a vertically integrated
24 company we look at total pineapple production. We
25 don't isolate fresh versus canned as far as a return

1 on farm value, if you will. It comes down to best
2 utilization of the crop.

3 Now, that being said, an adequate increase
4 in processing prices would allow us to take advantage
5 of the diversification that having increased canned
6 pineapple sales would bring us.

7 MR. ROSENTHAL: I'm not sure how cognizant
8 that USDA report is of the kind of different position
9 that Maui Pineapple is in versus there are folks who
10 grow just for the fresh market in Costa Rica and
11 elsewhere. The canneries in Thailand are growing
12 essentially for the canned market, and all their crop
13 is going into canning for export.

14 There's no shipments of fresh Thai pineapple
15 to the U.S., for example, and so it's hard to make a
16 comparison between those entities that are growing
17 pineapples exclusively for canning versus those
18 exclusively for fresh to the Maui situation where
19 you've got one crop, the best of the best go into the
20 fresh and the others go into the cannery operation.

21 COMMISSIONER KOPLAN: If you could take a
22 look at the report?

23 MR. ROSENTHAL: Yes.

24 COMMISSIONER KOPLAN: If you want to expand
25 on that in the posthearing, I'd appreciate it.

1 MR. ROSENTHAL: Certainly.

2 COMMISSIONER KOPLAN: Okay. Thank you.

3 Thank you, Mr. Chairman.

4 CHAIRMAN PEARSON: Commissioner Okun?

5 COMMISSIONER OKUN: Thank you, Mr. Chairman,
6 and I join my colleagues in welcoming all of you here
7 today, particularly those of you who have traveled to
8 Hawaii to what now finally feels like winter in
9 Washington. I appreciate your being here.

10 I'll start with an aside. Mr. Nishida, with
11 regard to the organic question that Vice Chairman
12 Aranoff raised, which I don't know if you saw this,
13 but there was a *Wall Street Journal* article on Tuesday
14 talking about when you should pay the money to buy
15 organic and when you shouldn't. Pineapple was on the
16 spend more money for organic.

17 I looked back on it. It was the most e-
18 mailed and most viewed of all the *Wall Street Journal*
19 articles for that day, so it may be worth looking at a
20 little bit more.

21 MR. NISHIDA: Absolutely. We haven't given
22 up.

23 COMMISSIONER OKUN: I want to return for a
24 moment to some questions that Commissioner Hillman had
25 with regard to price competition in the different

1 tiers and then in the different channels of
2 distribution. I was interested in your response.

3 One of the things the Commission found in
4 the first review was that we could see there was
5 competition within the tiers. There was effect from
6 prices in the different national and second private
7 label on where the domestic industry competed.

8 We didn't in the first review talk about
9 price effects from one channel, food service to
10 retail. You had a chance, Mr. Nishida, to respond to
11 that when Commissioner Hillman asked you about it.

12 I guess my question is in terms of price
13 effects in the food service sector if the orders were
14 lifted would you expect to see price effects because
15 the subject imports would move increasingly into the
16 food service sector?

17 Perhaps Mr. Magrath can help out. What
18 would we look at on this record to see the effect of
19 the imports on prices in the food service sector?

20 MR. NISHIDA: Yes, we would expect to see
21 that. Imports already do supply many or every one of
22 the major food service distributors. Maui's product
23 is positioned as top tier in any one of these major
24 food service providers.

25 Perhaps similarly to the grocery channel,

1 that tiering and really the ripple effect of lowering
2 pricing or the dragging effect on pricing would be our
3 expectation as well.

4 COMMISSIONER OKUN: Okay. I don't know.
5 Mr. Magrath, you might be able to respond to this. In
6 Table II-1 of the staff report, you know, we have the
7 U.S. shipments by market segments, tier and suppliers
8 for 1994, 1999 and 2005. It include subject imports
9 and Maui's imports.

10 Can you comment at all here or for
11 posthearing? If we had the nonsubject imports plugged
12 into this table, including what are now nonsubject
13 imports from Thailand, what would we see? Do you have
14 any idea of that, where they moved into?

15 MR. MAGRATH: Well, we will do this at the
16 posthearing, but the general comment is that the Thai
17 industry is the world's largest producer of pineapple
18 and canned pineapple.

19 They have an immense capacity. Even their
20 unused capacity, which Respondents have said, you
21 know, they're practically at full capacity, that's not
22 true. Their unused capacity, as small relative to
23 them that it is, is much more than Maui produces each
24 year.

25 I would expect it would be extremely likely

1 that they will move into food service. As a matter of
2 fact, I think the table you referred to, although it's
3 APO, the table you referred to, you may already be
4 seeing that phenomenon of them moving both into food
5 service and continuing to move more into the retail
6 chain.

7 I'm sure it's nonsubject as well as subject.
8 You have much more supply here from Thailand than you
9 have buyers worldwide.

10 COMMISSIONER OKUN: Okay. I think the other
11 thing that would be useful on that table for
12 posthearing is I know or I understand when I asked
13 this question to staff that we had asked for the
14 information for '04 and '05 for shipments.

15 You had said, Mr. Nishida, in response to
16 Commissioner Hillman that kind of this business
17 decision by Maui to stop supplying purchasers in the
18 retail segment occurred in '03 and '04.

19 Would it be possible to supply that
20 information to us so that we can see that in this
21 timeframe? You know, we can't really see what went on
22 there, whether that coincides with what you've said.

23 MR. MAGRATH: I think once again, Mr.
24 Rosenthal tried to correct this misstatement or this
25 misimpression.

1 I mean, Maui didn't make it a conscious
2 decision to stop servicing the retail chain. They
3 retreated from the retail chain because of the volumes
4 and prices of the imports, specifically the Thai
5 subject imports.

6 Mr. Nishida would be happy to supply all
7 these people tomorrow -- he has the capacity -- if the
8 prices were such that they could make a reasonable
9 profit. There wasn't any conscious decision like
10 telling Kroger well, we're not going to ship you any
11 pineapple.

12 COMMISSIONER OKUN: Okay. I'm not sure.
13 You may be able to direct me here, Mr. Rosenthal.

14 It may be better for the confidential
15 portion of this hearing because there are in the
16 financial section as well discussions of the business
17 plan and what that might mean on different products
18 being supplied or how Maui was looking at its
19 business. It might be that all that needs to be done
20 confidentially.

21 MR. ROSENTHAL: We will get you the
22 documentation, but I just want to restate what Mr.
23 Magrath said, and that is there were customers who
24 said we'd like to buy from you, and Maui said we can't
25 supply you.

1 The reason was not because we didn't have
2 the capacity, but we couldn't supply you at the prices
3 you're willing to pay. We've been beaten up enough,
4 and we've decided to not lose as much money on each
5 sale and try to find those customers who are willing
6 to pay us the prices we need in order to make a
7 profit.

8 COMMISSIONER OKUN: So is it your testimony
9 that none of those customers that we see, the
10 purchasers, it was for anything like one of the things
11 I read this morning was the move out of fancy into
12 choice?

13 There were no customers to which you were
14 supplying fancy that you said we're no longer going to
15 supply fancy anymore?

16 MR. NISHIDA: No. I mean, it's simply a
17 matter of affordability for the customers.

18 COMMISSIONER OKUN: Okay. In terms again of
19 these different channels, the food service versus the
20 retail sector, if we look at the pricing data in
21 chapter 5, and again sometimes pricing data in sunset
22 reviews is more relevant than others, so you can also
23 count on what you see or how you would have us
24 evaluate it.

25 Just generally without getting into the

1 proprietary tables here, there's a difference in the
2 pricing of the subject imports in food service versus
3 in retail vis-à-vis the domestic product. If the
4 order were lifted, would what we see here change? If
5 so, why?

6 MR. ROSENTHAL: Mr. Nishida doesn't have
7 access to --

8 COMMISSIONER OKUN: Right, but I assume he
9 has a perception of price. No?

10 MR. ROSENTHAL: No. He does, but I'm just
11 saying, without referring to that, I think he can
12 maybe address this in camera.

13 COMMISSIONER OKUN: Okay. We'll do that in
14 camera. Okay.

15 I guess I'm going to go back then to you,
16 Mr. Rosenthal, which is set aside volume for a moment.
17 You've got volume. I'm trying to figure out. You
18 expect if the order were lifted that the volume from
19 subject imports would come in equally in all sectors,
20 more in the food service, more in retail or it doesn't
21 matter for us to figure out there would be price
22 effects?

23 MR. ROSENTHAL: I don't think it matters,
24 but it is hard to know whether it's equal or not.

25 As Mr. Nishida testified a few minutes ago,

1 you see current competition in the marketplace by Thai
2 subject and nonsubject imports are certainly less than
3 the subject imports, given the recent increases by the
4 nonsubject Thais.

5 They've penetrated in areas where they
6 hadn't been just a few years ago. They're making much
7 more of an effort to get into the first tier private
8 label, which is the area that Maui had been
9 traditionally in and now has beat a retreat under
10 hostile fire not because they wanted to withdraw from
11 certain accounts there.

12 I think you'll see more competition there,
13 making it even harder for Maui to go back in and say
14 we have the product for you, but we need a better
15 price.

16 Then you will see, because there's only a
17 certain number of customers out there. You're going
18 to see intensified competition where Maui remains,
19 which is certainly in the food service sector.

20 Right now Maui has been trying to find the
21 customers willing to pay the price for what they've
22 been demonstrating as higher quality and some of the
23 attributes that Commissioner Aranoff was saying as
24 what you should be doing to market your product.

25 There's a limited number and a smaller

1 number of customers willing to pay more for a product
2 that is either actual or perceived higher in quality,
3 so you'll see competition intensify in all sectors.

4 COMMISSIONER OKUN: Thank you.

5 CHAIRMAN PEARSON: Commissioner Lane?

6 COMMISSIONER LANE: Thank you.

7 Mr. Rosenthal, I want to compliment you on
8 your tie, and I want you to notice that I tried to
9 dress like a pineapple today by green and yellow, so
10 I'm not going to be outdone. I have a number of
11 questions that may be better for the confidential
12 session, but I'm always reluctant to put off for that
13 then finding that maybe I waited too late, so I'm
14 going to try to ask some now and hopefully they'll be
15 able to be answered.

16 They're mostly financial questions relating
17 to the financial and the operational aspects that are
18 both in the record and in the SEC 10-K for 2005.
19 First I will note that on page 7 of your 10-K you
20 reported that your agricultural operations employed
21 370 full-time employees and approximately 365 seasonal
22 or intermittent employees.

23 Can you explain to me where those
24 agricultural employees worked and how you determined
25 which of those employees are production and/or

1 production related workers for the purpose of the
2 number you reported in your questionnaire responses?

3 MR. JIO: My name is Stacey Jio. I work for
4 Maui Pineapple Company.

5 COMMISSIONER LANE: I'm sorry. I can't hear
6 you.

7 MR. JIO: My name is Stacey Jio, and I work
8 for Maui Pineapple Company and on that part on the
9 PRW, the production related record, what was done is
10 it was allocated based on the percentage of CPF to the
11 total canned pineapple.

12 COMMISSIONER LANE: I'm sorry. Allocated on
13 the basis of what?

14 MR. JIO: The CPF production cost to the
15 total production cost.

16 COMMISSIONER LANE: Can you give me that
17 percentage?

18 MR. ROSENTHAL: We'll give you that in
19 camera.

20 COMMISSIONER LANE: Okay. Can you provide
21 comparable numbers for your employees involved in your
22 agricultural operations as reported in your 10-K for
23 2000 through 2004?

24 MR. JIO: Yes.

25 COMMISSIONER LANE: Okay.

1 MR. JIO: In camera.

2 MR. ROSENTHAL: Now that we have the
3 question we'll get the numbers and we'll present them
4 to you in camera.

5 COMMISSIONER LANE: Okay. Thank you. I
6 must admit that I'm having trouble reconciling some of
7 the breakdown of your revenues and expenses that are
8 described in your 10-K and what is reported in your
9 questionnaire responses as revenues and expenses for
10 the canned pineapple fruit segment of your
11 agricultural division. Your 10-K on page 19 reported
12 total agricultural revenue of \$74.5 million.

13 You also reported that \$3.1 million of that
14 number represented CBSOA or bird money distributions,
15 so that leaves \$71.4 million, which I presume must
16 represent sales of pineapple in one form or another.
17 Is that correct?

18 MR. JIO: That is correct.

19 COMMISSIONER LANE: Okay. On page 20 of
20 your 10-K you report that in 2005 revenues from fresh
21 pineapple sales was approximately 34 percent of your
22 net agricultural revenue. If I apply that 34 percent
23 to the \$71.4 million reported sales excluding bird
24 distribution I get revenues from fresh pineapple sales
25 of about \$24 million. Is that correct, and does that

1 sound like a good number for fresh pineapple sales in
2 2005?

3 MR. JIO: I would have to look it up.

4 MR. ROSENTHAL: We'll have to look it up,
5 and I hope we'll be able to get those answers for you
6 in camera session.

7 COMMISSIONER LANE: Okay. Thank you.

8 MR. ROSENTHAL: If you have more questions
9 along these lines it would be good because then Mr.
10 Jio can actually do the research I hope in the ensuing
11 hour and get the information for you in camera. It
12 may be that he may not have all the documents right
13 here with him and it may have to go into a post-
14 hearing brief, but we'll do our best to answer it
15 while we're present today.

16 COMMISSIONER LANE: Okay. Thank you. The
17 next question is even more complicated, which goes to
18 show you my confusion when I was trying to read these
19 documents and make sense out of them. On page 7 of
20 your 2005 10-K you discuss research and development
21 expenses. In that report you state that research and
22 development expenses were approximately \$530,000 in
23 2005, \$695,000 in 2004, and \$800,000 in 2003.

24 In comparing these numbers to your
25 questionnaire responses and the R&D data shown in the

1 staff report at Table 3-12 I notice that there is
2 quite a difference between total agricultural division
3 R&D and what you assigned or allocated to the canned
4 pineapple fruit business. Is this an item of expense
5 that you decided to directly assign to the various
6 agricultural segments of your business rather than the
7 allocating based on revenues as you described in your
8 responses?

9 MR. JIO: It's just that they do in the
10 consolidation is different than what I considered
11 research and development. You have to take a lot of
12 things.

13 MR. ROSENTHAL: We will get you this answer.
14 It's a complicated question and a complicated answer,
15 so probably best either for the in camera or the post-
16 hearing brief.

17 COMMISSIONER LANE: Okay. Whichever you
18 think would be more beneficial is fine with me.

19 MR. ROSENTHAL: Well, probably the best
20 thing to do actually is to put this in writing so you
21 can see the numbers in the 10-K and Mr. Jio can
22 translate or explain the relationships between the
23 questionnaire response and the 10-K. Some of them he
24 can answer off the top of his head, others he has to
25 go back and look at the calculations as to what

1 precisely was done there.

2 COMMISSIONER LANE: Okay. Here's a further
3 clarification. Also, if I assume that your SG&A
4 numbers include only the R&D separately reported in
5 your questionnaire responses then would that mean that
6 there might be other items of expense that are not
7 allocated as you described in those responses?

8 MR. ROSENTHAL: He'd prefer to answer that
9 in camera as well.

10 COMMISSIONER LANE: Okay. The next question
11 is also about cost allocation or the direct assignment
12 process. In your questionnaire responses you have a
13 standard canned pineapple fruit cost of goods sold and
14 a total canned pineapple including price standard
15 cost. Now, I'm not sure that I understand that, and
16 I'm not sure why you don't have a standard cost for
17 the fresh pineapple segment also?

18 MR. JIO: We do have a standard cost for the
19 fresh pineapple segment.

20 COMMISSIONER LANE: Can you describe that,
21 please?

22 MR. ROSENTHAL: I'm not sure you asked for
23 the standard cost for fresh pineapple, did you?

24 (No response.)

25 MR. ROSENTHAL: We do have that. I'm not

1 sure it's been asked for, but if it has been asked for
2 I'm not sure where.

3 COMMISSIONER LANE: Okay. I said I wasn't
4 sure why you don't have a standard cost for the fresh
5 pineapple segment and he said that he does.

6 MR. ROSENTHAL: He does. The answer is he
7 does have the standard cost, but is the question where
8 is it or what is it?

9 COMMISSIONER LANE: Yes. What is it?

10 MR. ROSENTHAL: I don't think we want to
11 talk about the costs in a public session.

12 COMMISSIONER LANE: Okay. Okay, fine. So
13 we'll get to that in the closed session.

14 MR. ROSENTHAL: Yes.

15 Do you have that with you?

16 (No response.)

17 MR. ROSENTHAL: He'll check to see if he has
18 that information with him, if not we'll put it in the
19 post-hearing brief.

20 COMMISSIONER LANE: Okay. Thank you.

21 Thank you, Mr. Chairman.

22 CHAIRMAN PEARSON: It's my turn. I just
23 want to start by saying that I learned a great deal in
24 my short visit to Maui about the pineapple business,
25 and I appreciate very much the efforts that were made

1 to help me and the staff people understand it better.
2 Having said that I still have some questions, so let
3 me begin.

4 I'd like to go back to, take a different
5 attack on what I think the Vice Chairman was asking
6 initially. What determines whether an individual
7 pineapple once it is processed is going to be graded
8 as fancy, choice or standard?

9 MR. NISHIDA: The primary criteria between
10 the grades would come down to color, defects, for
11 example specks within the -- if you can imagine a
12 pineapple with all the eyes, in some cases the root of
13 the eye if you will protrudes rather deeply into the
14 flesh, and so in the processing methodology some of
15 those specks are left over. It's primarily color,
16 defects and to a degree other items such as the piece
17 integrity through the cutting process.

18 If it's not done well you may get more
19 broken pieces, bruised pieces, less sharp corners if
20 you will.

21 CHAIRMAN PEARSON: Does the maturity of the
22 fruit also play a role?

23 MR. NISHIDA: It should not if the
24 agriculture and the harvesting practices are up to
25 snuff, so in general the maturity will not be as

1 critical. Again, you've got to do it right on the
2 farm to begin with.

3 CHAIRMAN PEARSON: All right. Okay. So am
4 I correct to understand then that any given pineapple
5 coming into the processing plant has the capability of
6 coming out of there being graded fancy, choice or
7 standard depending on how the processing operation
8 itself is conducted?

9 MR. NISHIDA: You're correct. As long as
10 the farming is done properly you should have an
11 ability to produce -- obviously, you'd want to produce
12 a top quality product.

13 CHAIRMAN PEARSON: Is there a trade off in
14 terms of yield coming out of the pineapple if you're
15 producing fancy as compared to choice or standard? Do
16 you get more pineapple if you process so that it comes
17 out standard?

18 MR. NISHIDA: I guess the best way of
19 describing that is the causes that would downgrade a
20 piece of fruit may impact your yield. For example if
21 you're not cutting the fruit properly you may get a
22 higher degree of juice loss if you will, but in
23 general if your manufacturing process is proper, you
24 know, a ton of fruit if you make the fancier choice
25 grades you should get roughly the same yields. You

1 should get the same yields.

2 CHAIRMAN PEARSON: Okay. Then is it more
3 time consuming to get the fancy grade? If you get the
4 same yield out of a pineapple processing it for fancy
5 versus choice, why not process them all as fancy?

6 MR. NISHIDA: Yes. You'd want to go for the
7 highest grade.

8 CHAIRMAN PEARSON: Okay, but on the record
9 if I understand it correctly we have an indication
10 that over time Maui has processed less as the fancy or
11 at least has marketed less as fancy and more as
12 choice.

13 MR. NISHIDA: I think an important component
14 would be understanding what the different market
15 channels are looking for. In the case of fancy
16 primarily the draw, the pull comes from the grocery
17 end, less so the distinction in the other channels.
18 Yes. I'm sorry. That's the obvious. I mean, because
19 we've not been able to really compete on the grocery
20 end the total bin allocation between choice and fancy
21 or where the product ultimately goes is driven by the
22 demand.

23 If we're not selling to the grocery side
24 we've got to put it someplace, and so therefore by
25 default it's choice product, but it's more driven to

1 our ability to sell the product.

2 CHAIRMAN PEARSON: Yes. Okay. So do you
3 end up actually producing some product that could be
4 graded fancy, but yet because it's going to the food
5 service sector they just want to buy choice, and so
6 choice --

7 MR. NISHIDA: Yes. You're correct. Choice
8 is an acceptable standard. Right. Yes. We're
9 selling fancy product as a choice product.

10 CHAIRMAN PEARSON: Selling fancy product as
11 choice to move it into a market segment that wants the
12 choice. Okay.

13 MR. NISHIDA: Because that's the only place
14 we can go.

15 CHAIRMAN PEARSON: That makes more sense.
16 Perhaps our data were a little bit confusing because
17 the perception from what we have in front of us is
18 that there has been somewhat of a downtrend in the
19 quality of product coming out of the processing
20 operation and that's what we've been trying to
21 understand, what was going on to lead to that.

22 If I understand you correctly the quality
23 coming out of the processing operation over time has
24 been relatively constant and relatively high-end, but
25 because you have been selling fancy pineapple, at

1 least some of it, into the food service market that
2 wants the choice grade our data picked it up as
3 choice.

4 MR. NISHIDA: That's correct.

5 CHAIRMAN PEARSON: Do I have that correct,
6 Mr. Rosenthal?

7 MR. ROSENTHAL: That is correct. Yes. Mr.
8 Nishida is nodding affirmatively, and the answer is
9 yes.

10 CHAIRMAN PEARSON: Okay.

11 MR. MAGRATH: I don't even think it's a fair
12 characterization to say it's the same over time. I
13 mean, Maui as an input to its pineapple business has
14 switched varieties and the new variety pineapple that
15 they're now growing is we were told on the field trip
16 and we could taste the results, that it was superior
17 to the variety Maui was selling both in canned and as
18 fresh in the first review.

19 CHAIRMAN PEARSON: Yes, but that's a taste
20 issue, isn't it, rather than a grading issue that has
21 to do with kind of the visuals of the fruit after
22 processing, if I'm correct?

23 MR. ROSENTHAL: Yes.

24 CHAIRMAN PEARSON: Okay. It may be hard to
25 capture in the processed product the value of the

1 better tasting fruit that's gone into it. Are you
2 getting anyone to pay you for that better taste for
3 the processed product?

4 MR. NISHIDA: Hopefully that's on the
5 horizon, but right now, no.

6 CHAIRMAN PEARSON: Okay. Okay, good. Well,
7 I think I've exhausted that issue. To what extent was
8 the decision to shift the business models toward
9 greater reliance on the fresh market driven by subject
10 imports?

11 The reason for asking that is that it
12 appears to me entirely possible that it would have
13 been also driven by a desire just to get the highest
14 value out of the pineapple and that there was a chance
15 to capture greater value by marketing it as fresh
16 rather than as processed. Could you address that,
17 please?

18 MR. NISHIDA: I guess the perspective would
19 be causative. You know, given the highly competitive
20 nature of the canned pineapple market, primarily not
21 being able to get the pricing that we need in our
22 opinion because of the low end, the behavior by the
23 Thai subject imports restricting profit potential
24 thereby driving the need. Okay, we're going to be in
25 the pineapple business.

1 How do we then optimize the total farming
2 and agricultural operation such that we can have
3 essentially a blended sustainable position? By
4 extension that meant getting into the fresh fruit
5 business with the higher margins.

6 So if you can imagine we're essentially
7 leveraging all of the infrastructure, much of the
8 infrastructure that is in place, had been in place to
9 produce canned pineapple and doing essential line
10 extension or line enhancement of pineapple per se by
11 getting into fresh fruit market.

12 CHAIRMAN PEARSON: Mr. Rosenthal?

13 MR. ROSENTHAL: Commissioner, I'm sure you
14 know this, but if you look back at -- obviously this
15 is making the best out of necessity because of the
16 intense competition in the canned market, but Maui
17 Pineapple's acreage has declined quite a bit. There's
18 plenty of capability to continue to supply and
19 actually grow back the canning business and go back
20 into retail, expand further in all of their markets,
21 so they could replant the thousands of acres that have
22 been taken out of production.

23 They have right now their canning at 25
24 percent of their capacity. They could actually do a
25 lot more canning and still maintain their strategy of

1 focusing more on the fresh market, too. So they're
2 not only not incompatible, one is driven by the other,
3 but you could still be much more highly successful in
4 the canned business if pricing were better.

5 CHAIRMAN PEARSON: Right, but we'd be
6 correct to understand that the price pressure on the
7 canned product is one of perhaps several factors that
8 has led to the evolution in the business model?

9 MR. ROSENTHAL: I would say it's the most
10 important factor. It's actually one of two most
11 important. The first is that and the second one is
12 high return. I mean, you're comparing the low returns
13 per can versus the high returns for fresh. If the
14 returns were higher for canned you would still drive
15 the model in that direction, but the choices wouldn't
16 be quite as stark.

17 CHAIRMAN PEARSON: Okay. My apologies to my
18 fellow Commissioners for asking for clarification when
19 the red light was on.

20 Madam Vice Chairman?

21 VICE CHAIRMAN ARANOFF: Thank you, Mr.
22 Chairman.

23 As a follow-up to what I was asking in my
24 first round of questions I just want to ask you for
25 the post-hearing to the extent that you have not

1 already put them on the record if you could please
2 submit any marketing studies that Maui has done either
3 on some of the product differentiation issues that I
4 raised earlier or with respect to the viability of the
5 various possible channels of distribution?

6 MR. ROSENTHAL: We'll do that. Some of
7 these decisions have not been the result of marketing
8 studies, they've been the result of trial and error
9 and we could maybe give you some narrative on that.

10 VICE CHAIRMAN ARANOFF: Be happy to have
11 that. That would be very helpful, particularly
12 following up on some of Mr. Nishida's remarks about
13 what they're trying with respect to organic. Thank
14 you.

15 I was interested in reading the materials
16 preparing for this hearing and some of the parallels
17 between this case and our ongoing investigation of
18 lemon juice, again a product where the biggest returns
19 are found for lemons in the fresh market and there's
20 been questionable profitability of the processed
21 product in that case, the lemon juice.

22 In that case one of the issues was whether
23 the lemon juice was ever really intended to be a
24 profitable product or it was just the least costly way
25 of disposing of lemons that couldn't be sold in the

1 fresh market. I'm interested, and we may have to come
2 back to this in the in camera session, in the
3 economics of disposing of pineapples that can't be
4 sold in the fresh market.

5 Obviously Maui's model is unique globally in
6 that other fresh market producers do something else
7 other than can what they can't sell in the fresh
8 market. What are the alternatives if one does not can
9 pineapples that are not sold in the fresh market?

10 MR. NISHIDA: I guess one alternative, and I
11 say this very carefully, is to see what Del Monte was
12 forced to do on Oahu. So essentially the viability of
13 the operation is jeopardized because you cannot, you
14 do not have an alternative. The decision is simply
15 leave it in the fields. So that's one.

16 VICE CHAIRMAN ARANOFF: When you leave them
17 in the fields you just plow them under and then plant
18 the next crop?

19 MR. ROSENTHAL: No. What Mr. Nishida means
20 by leaving it in the fields, in a place like Hawaii it
21 is not a good long-term strategy. You cannot sustain
22 that over time is the point. So you leave them in the
23 field that means that you abandon the field and you go
24 to Thailand or you go to the Philippines. There are
25 folks who produce for canning if you will, not for

1 fresh, in Costa Rica and South America and their model
2 is different.

3 I'll let Mr. Nishida expand this, but that
4 model is you produce as much as you can, you don't do
5 the culling that Maui Pineapple does, so you don't
6 have the high-quality product, but you have higher
7 yields, and you just put as much in the marketplace,
8 and get as much as you can and lower returns.

9 You can do that if you low land costs, low
10 labor costs and you're selling to a market that
11 doesn't necessarily care a great deal about the
12 quality of the product.

13 I'll let you expand on that, Brian.

14 MR. NISHIDA: Paul, that's all true as well.
15 In having the strength of multi-national brand allows
16 certain fresh fruit producers to lever the ability to
17 sell into the market of their fresh fruit. The key
18 difference is in mostly, in nearly every fresh fruit
19 operation, fresh fruit business, fresh pineapple
20 business, the strategy is to put as much of the crop
21 into the fresh fruit box and sell it through that
22 channel.

23 MR. SMITH: Commissioner Aranoff?

24 Excuse me, Brian.

25 We also included in our prehearing brief

1 there was some evidence that the fresh pineapple
2 prices in Thailand had reached one baht per pineapple,
3 and so the Thai growers were plowing under the fields
4 rather than expending the energy and cost to harvest
5 that. Now, that's not a cost to the canners in
6 Thailand because they're not vertically integrated.

7 The grower takes the hit there, but that's
8 not a down side to the processors in Thailand
9 virtually because all fresh pineapple is virtually
10 canned in Thailand and ultimately exported, so that
11 happens quite a bit in Thailand when the prices come
12 down.

13 VICE CHAIRMAN ARANOFF: Right. Right. I
14 understand the marketing arguments that all of you are
15 making, but I'm actually asking sort of a technical or
16 physical question. If you grow a pineapple and you
17 don't harvest it or if you pick a pineapple that's no
18 good for the fresh market and you don't can it, what
19 happens to the pineapple?

20 MR. ROSENTHAL: Thank you. I was mishearing
21 your question. Thanks.

22 MR. NISHIDA: I think there are a few fresh
23 pineapple producers who sell their fruit, the culled
24 fruit issue over the nonfresh quality fruit, for juice
25 production. It's my understanding that is generally

1 at a loss lower than production costs, flooring costs.
2 In fact in the case of some of the Latin American
3 growers they simply do not use the fruit. It is
4 disposed of. Those are the two primary uses.

5 VICE CHAIRMAN ARANOFF: Del Monte was
6 operating a fresh only in Oahu. What were they doing
7 with the fruit that they couldn't sell in the fresh
8 market?

9 MR. NISHIDA: They had a pineapple juice
10 concentrate operation, but unfortunately that
11 apparently did not sustain or provide the adequate
12 returns for the utilization of that culled fruit.

13 VICE CHAIRMAN ARANOFF: Are there
14 environmental restrictions on what you can do with
15 fruit that you don't find another use for? I know
16 because I'm comparing it to the lemon juice case and
17 in the lemon juice case you couldn't just leave them
18 on the trees and you couldn't just sort of dump them
19 in a landfill. They had to be specially composted
20 because of their acidity and that was very expensive.

21 It's obviously very cheaper if you can just
22 let them fall on the ground and then plow them under
23 when you plant the next crop.

24 MR. NISHIDA: To my knowledge there's no
25 regulatory restriction. However, just from a good

1 farming practice perspective, you know, it's very
2 important to have good field hygiene and certainly
3 from our perspective that's not a desirable option
4 simply to leave the fruit there.

5 VICE CHAIRMAN ARANOFF: So you're saying
6 it's not healthy for the land over the long run to be
7 plowing under unharvested pineapples?

8 MR. NISHIDA: Well, if I may I'll back up a
9 little bit with a bit of pineapple 101. Pineapple is
10 a long cycle crop and from one planting generally two,
11 sometimes three harvests are made over between a four
12 and five year period, and the first cropping occurs
13 generally about 18 to 22 months after the planing.

14 The subsequent second crop occurs
15 approximately a year later, and so in the case of
16 harvesting fruit off of the initial crop it is not
17 desirable to leave fruit back because you will impact
18 your subsequent harvests given the plant health, the
19 development of the subsequent plant. So, yes, you
20 don't want to leave the fruit back there.

21 VICE CHAIRMAN ARANOFF: Okay. Okay. That's
22 helpful. In addition to canning are you making other
23 products with your culled pineapples?

24 MR. NISHIDA: Yes, we are. As a part of our
25 processing operation we do produce a variety of

1 pineapple juice products, and we do a little bit of
2 frozen pineapple, but that's more of an accommodation
3 for one of our accounts.

4 VICE CHAIRMAN ARANOFF: Okay. When you
5 follow-up by showing me your sort of marketing
6 research and things you've tried if you could also
7 comment on the extent to which you've explored other
8 value added products that can be made with pineapple
9 either sort of oils, fragrances, perfumes, those sort
10 of things or other downstream edible products, that
11 would also be helpful.

12 MR. ROSENTHAL: We'll certainly do that.

13 VICE CHAIRMAN ARANOFF: Thank you very much.
14 Thank you, Mr. Chairman.

15 CHAIRMAN PEARSON: Commissioner Hillman?

16 COMMISSIONER HILLMAN: Thank you.

17 If I could I'd like to start where we left
18 off, which is again trying to help me understand why
19 it is that again you're unique in terms of being an
20 integrated producer, why not can all of the leftovers
21 from all of the other growers of fresh pineapple whose
22 pineapples are not suitable for the fresh market? Why
23 did that not become part of the way in which your
24 company or others that do canning operate?

25 MR. NISHIDA: Let me start with the

1 fundamentals, I mean, real basic stuff. Our operation
2 is located on the island of Maui. The Del Monte's
3 operation and Dole's operation are located on the
4 island of Oahu, so just the fundamental number one,
5 movement of product from island to island is
6 problematic. I think as well we're competitors in the
7 fresh pineapple business

8 Certainly I'd love to be able to can their
9 fruit, but it's certainly their decision and that
10 opportunity has not provided itself. Am I answering
11 your question?

12 COMMISSIONER HILLMAN: Well, I'm just
13 curious. Why not then can the pineapples out of Costa
14 Rica or other places? That's what I'm trying to
15 understand is why you let that high a percentage of
16 facility remain idle or significantly under utilize
17 your canning capacity if their are pineapples out
18 there to be canned, presumably if the alternative for
19 these folks is to throw them away, which is what I'm
20 hearing you say?

21 The option is you either can it or you waste
22 it. Presumably you wouldn't pay very much for these
23 pineapples since folks' alternative is to throw it
24 out. I'm just trying to understand why it doesn't
25 make sense to go ahead and can it?

1 MR. ROSENTHAL: Well, start with this
2 proposition. Maui has plenty of pineapples to can
3 itself. They've reduced their acreage not because
4 they don't have canning capacity, which you recognized
5 they have plenty of, the problem is selling the canned
6 pineapple. They've got to get customers willing to
7 buy the canned pineapple at a price that is
8 profitable. It is not a question of having enough
9 canned pineapple available to sell or pineapples to go
10 into the cans.

11 They have an enormous capacity to produce
12 pineapples and can pineapples for the market. The
13 problem has been customers not wanting to buy. It
14 just so happened when the Del Monte closure was
15 announced Mr. Nishida mentioned he offered to buy up
16 to 5,000 acres worth of the Del Monte pineapples that
17 they were just going to abandon in the fields because
18 they were there and it was a one time opportunity.

19 Del Monte decided not to take him up on
20 that. It's not a question of supplying the market.
21 They have plenty to supply and much more market share.
22 You need to get all those purchasers who responded to
23 your questionnaires to say I'll pay you a little bit
24 more money to make this a profitable exercise.

25 COMMISSIONER HILLMAN: Okay. Then help me

1 understand on the flip side the Thais basically don't
2 produce for the fresh side. That's what I'm trying to
3 understand, why the economics of this work the way
4 they do. Why in Thailand is there not the same
5 concept that you've gone to, which is to sell into the
6 higher priced fresh market as much product as is
7 suitable for fresh, and to then can all the remainder?
8 Why not do that?

9 MR. ROSENTHAL: They don't have a fresh
10 market there. They are producing essentially for
11 their canneries. They don't have a premium fresh
12 market where people are going to pay more money for
13 pineapple in Thailand if it's fresh, and they're not
14 going to ship it here because what they're producing
15 is pineapple designed if you will to go into their
16 canneries, which are 100 percent export oriented, so
17 they have a totally different model.

18 Produce as much pineapple as you can because
19 it's going to go into the canned product. It doesn't
20 have to be the high-quality, good looking product
21 without the bent crowns because no one is going to see
22 it in that form. They're not going to ship fresh
23 pineapple all the way from Thailand to the U.S. It's
24 not economically feasible especially when you're not
25 producing the better looking, higher-quality product.

1 MR. MAGRATH: Commissioner, it's less
2 expensive for Maui. As you know from the prehearing
3 staff report Maui is in a very difficult financial
4 position. Think of what we'd be asking them to do.
5 It costs money to make canned pineapple. The cans are
6 the most important thing.

7 It is less expensive for them to leave that
8 capacity idle than it would be to purchase all the raw
9 materials for the cans, put on the workers and have to
10 pay them wages and salaries to produce the cans, and
11 then the inventory carrying costs of carrying the cans
12 in your warehouse. That would drive their costs
13 through the roof.

14 What we have here is a demand constraint.
15 They cannot sell the pineapple for a profitable price.
16 It's not a supply constraint.

17 COMMISSIONER HILLMAN: All right. If I
18 could then go to the issue of if you will the grades
19 or the quality of the product. Again, from our data
20 it appears that it used to be the case that Maui
21 produced and canned a fair amount of so-called fancy
22 product and that somebody out there at least seemed to
23 think that it mattered the choice versus fancy. It
24 mattered that they got a higher grade of product in
25 their canned pineapple.

1 I'm trying to understand whether that has
2 fundamentally changed or whether it is again simply a
3 price issue. So I guess what I'm trying to say is is
4 anybody out there selling fancy grade product in the
5 United States market or has there been a change in
6 demand between fancy, versus choice, versus standard?

7 MR. ROSENTHAL: Let me just start with this,
8 and I'll let Mr. Nishida answer the last part of your
9 question. You may have been out of the room when
10 there was a partial answer to Chairman Pearson's
11 question along these lines and that is that Maui
12 Pineapple continues to produce comparable levels of
13 the fancy grade as it always has.

14 The problem is that the customers for that
15 have been in the retail market and they've been
16 essentially squeezed out of the retail market, so
17 they're still producing fancy grade product. What
18 they're doing now is selling more of that product as
19 choice because that's what the customers are asking
20 for.

21 Now, as to the question are there still
22 customers out there who specifically demand fancy and
23 will pay for that? I think the answer is yes, there
24 is a segment in the retail market that still will
25 demand it. The question is whether they will pay for

1 that. I'll let Mr. Nishida take over from there.

2 MR. NISHIDA: Yes. The fancy grade product,
3 the grocery or the retail sector called for a fancy
4 grade product. As Paul had mentioned that channel is
5 no longer available to us. Now, to your question do
6 people want a fancy grade product? The answer is
7 absolutely yes. By specifications the retailers do
8 call for a fancy grade product. It's simply a matter
9 of affordability on their part.

10 COMMISSIONER HILLMAN: Where do they get it?

11 MR. NISHIDA: Imports.

12 COMMISSIONER HILLMAN: Okay. Thailand? As
13 I heard it Thailand isn't really producing that much
14 fancy. Where are they getting their fancy product?

15 MR. NISHIDA: Again, across the board
16 imports. It's our understanding that in the private
17 label, the store brand if you will, that the Thais
18 have been making end roads into that sector.

19 COMMISSIONER HILLMAN: Okay. Now, if I hear
20 Respondents' argument they're saying that the volume
21 of product that would come in from the subject Thai
22 producers is constrained because to the extent that
23 they're producing standard product it's being sold in
24 Europe, where for reasons I've never understood the
25 Europeans want standard, that to the extent that they

1 have fancy it's going to Japan and therefore the
2 limited amount that is in the choice area comes to the
3 U.S., but it's limited because all of their standard
4 doesn't come here, that nobody here will buy standard
5 and that there is demand in Europe for standard.

6 I just wanted to get your response to that.

7 MR. NISHIDA: My response would be that in
8 any operation you would want to optimize your value
9 yield, and so from a production standpoint, be it
10 farming or processing, it is incumbent on the producer
11 to strive on that end. So beg the question, why would
12 you limit your operation simply to a standard grade
13 product?

14 My supposition would be that they had
15 available product that could meet grade for the U.S.
16 market.

17 COMMISSIONER HILLMAN: Okay. Would you
18 agree with their characterization that the European
19 Union likes standard and that the U.S. will not
20 purchase standard? That the U.S. market demands at
21 least choice?

22 MR. ROSENTHAL: The answer is no, we don't
23 agree with their characterization. In fact the
24 European market does buy choice as well as the
25 standard and it is possible to divert some of that

1 European choice product to the U.S. That's point
2 number one. Will the U.S. market accept more
3 standard? That I don't know, but there's plenty of
4 Thai capacity for choice going to Europe and other
5 markets that could come to this market.

6 COMMISSIONER HILLMAN: Appreciate those
7 answers. Thank you.

8 CHAIRMAN PEARSON: Commissioner Koplan?

9 COMMISSIONER KOPLAN: Thank you.

10 Thank you for your answers to our questions
11 thus far.

12 Mr. Rosenthal, let me walk through something
13 with you if I can. Our staff report informs us that
14 sales of subject product to No. 10 cans to first
15 private label brands oversold domestic CPF in all 27
16 quarters and the margins of overselling averaged minus
17 10.3. That's at Chapter 5, page 7. Now, you
18 acknowledge this in a paragraph on page 36 of your
19 brief and you describe it as an anomaly, okay?

20 This morning Mr. Nishida testified that what
21 happens with pricing in Product 2 does not impact on
22 Product 1 since he defined these as discreet markets.
23 Given that what I'm wondering is how can I not
24 conclude then that Maui's sales to USDA are not being
25 impacted by Thai prices?

1 Let me say this if I could. I don't
2 understand given his testimony earlier your statement
3 at page 17 of your brief that there is intense price
4 competition in the CPF retail and food service
5 distribution chains and that this corroborates the
6 primacy of price because what I'm looking at here is
7 this overselling. I don't know how much of this you
8 can get into in the public session, but I want to set
9 the table for you because frankly I'm troubled by
10 this.

11 MR. ROSENTHAL: Understandably. I'll start
12 with repeating what we said in our brief and that
13 overselling --

14 COMMISSIONER KOPLAN: Well, I know what's in
15 the brief in the paragraph.

16 MR. ROSENTHAL: Well, and that number is an
17 anomaly. There's something wrong with that. There's
18 no possible way that can be correct.

19 COMMISSIONER KOPLAN: Let me say to you if
20 you have some counter table that you want to prepare
21 for purposes of the post-hearing dealing with what I'm
22 looking at in the overselling table I'm happy to get
23 that, but I can't just take what's in that paragraph
24 and say that answers the question for me. You follow
25 me?

1 MR. ROSENTHAL: Yes. The basic problem is
2 you've got data from one other producer there who is
3 driving this --

4 COMMISSIONER KOPLAN: I know what you wrote.

5 MR. ROSENTHAL: -- and so I would like you
6 to go back to that producer and get the accurate
7 information. That would be the way to solve that
8 problem.

9 COMMISSIONER KOPLAN: But not the problem
10 I'm raising with you right now?

11 MR. ROSENTHAL: Now, I want to go on to that
12 other one. Put aside the bogus overselling
13 information and go to the question of competition in
14 that channel. Mr. Nishida did not say anything that
15 contradicts what was in the brief.

16 What he said earlier was that there was
17 intense competition in the retail segment, probably
18 less visibility between the institutional market sales
19 if you will and the retail sales, but still
20 competition within the food service or institutional
21 markets there because there is a tiering that goes on
22 within the food service sector as well. That was his
23 testimony.

24 So you will have Maui trying to be
25 positioned at the upper tier within the food service

1 market, but still facing competition from imports in
2 food service as well. Now, that is something apart
3 from the USDA sales, which we really haven't talked
4 about at all today. I suspect we'll talk about that
5 at some point, but there is no reference if you will
6 in Mr. Nishida's testimony or any other at least this
7 morning on USDA sales.

8 COMMISSIONER KOPLAN: No. I'm just trying
9 to tie our list together for myself --

10 MR. ROSENTHAL: At least the way you phrase
11 your question or at least the assumptions there don't
12 tie well. There is no contradiction is what I'm
13 saying between: (1) our view that you've got
14 inaccurate information for comparison purposes on that
15 overselling chart; (2) that there is nevertheless very
16 intense competition both in the retail segment and in
17 the food service segment.

18 It is I would say incredible that there
19 would be anybody selling at a higher price in either
20 of those segments at this point based on our knowledge
21 of the marketplace.

22 COMMISSIONER KOPLAN: Would you expand on
23 this for me through a post-hearing?

24 MR. ROSENTHAL: Certainly.

25 COMMISSIONER KOPLAN: I'm just not there at

1 this point.

2 Mr. Magrath?

3 MR. MAGRATH: Well, I was going to add then
4 you've got the background factors of underselling
5 being consistently found in the original investigation
6 and in the first review, you've got underselling of
7 Maui from all other tiers including in product to the
8 No. 10 cans, the food service, including underselling
9 by the national brands in the food service channel and
10 you've got all these background factors of this being
11 recognized as a commodity product in which price is
12 the most important differentiating variable in
13 purchasing decisions and that the U.S. product and the
14 Thai product are interchangeable.

15 Those are responses from the vast majority
16 of purchasers. So all the background factors and all
17 the pricing information go one way.

18 COMMISSIONER KOPLAN: Let me just break here
19 for a second.

20 MR. MAGRATH: I'm sorry.

21 COMMISSIONER KOPLAN: I appreciate what
22 you're saying about the first review, but one of the
23 things that I have to do here is look and see what's
24 happened since -- and of course I participated in the
25 first review -- the first review. So I know what the

1 basis for my findings then were, but I'm trying to see
2 what's new and that's what I'm pursuing with you.

3 I'm not trying to cut you off, but you
4 understand?

5 MR. MAGRATH: Yes, sir, I understand. What
6 we were trying to do here is merely put this one
7 series by one Respondent that shows this overselling,
8 put that in the context of all these other factors
9 both currently and from the other reviews just to
10 illustrate that it is an anomaly in our opinion.

11 COMMISSIONER KOPLAN: Okay. Thank you. As
12 I say I do look forward to getting more from you post-
13 hearing on this.

14 MR. ROSENTHAL: You have a lot of questions,
15 Commissioner Lane asked a lot of questions about the
16 financials. I assume that at some point there will be
17 a verification of the Maui data, but I would urge you
18 to ask again, actually verify some of the submissions,
19 particularly this submission you're referring to with
20 respect to this other producer, and find out whether
21 that data is correct.

22 COMMISSIONER KOPLAN: Well, staff is present
23 to hear your request, and I see that Ms. Mazur is
24 nodding in the affirmative.

25 MR. MAGRATH: Yes. Mr. Koplan, there are

1 other problems with this particular response. The
2 staff knows what they are, and I'm sure the staff is
3 further investigating this response.

4 COMMISSIONER KOPLAN: Thank you.

5 Thanks for all that, and I look forward to
6 the post-hearing submission on this point.

7 Mr. Nishida, I'm curious. You put an
8 article in your brief at Exhibit No. 9, page 2, which
9 noted that Maui was considering stepping in to salvage
10 Del Monte's existing crop and look into other uses for
11 the more than 5,000 acres of pineapple that it farmed
12 after that company's closure in I guess it was
13 November 16 of last year.

14 I heard you testify about what happened
15 unfortunately with Del Monte, but what I haven't heard
16 is what's the current status of your stated
17 willingness to do what you said you were considering?
18 Have you stepped in?

19 MR. NISHIDA: No. Not at all.

20 COMMISSIONER KOPLAN: You haven't?

21 MR. NISHIDA: Yes. As I mentioned the very
22 next morning Del Monte began to plow the fields under.

23 COMMISSIONER KOPLAN: Okay. So what will be
24 done with that acreage?

25 MR. NISHIDA: I believe it's going to be

1 kept out of agricultural use.

2 COMMISSIONER KOPLAN: Won't be used for
3 agricultural use?

4 MR. NISHIDA: That's my understanding.

5 COMMISSIONER KOPLAN: So what will it be
6 used for? Do you know?

7 MR. NISHIDA: Ultimately I would suppose it
8 will be developed.

9 COMMISSIONER KOPLAN: Redevelopment?

10 MR. NISHIDA: I'm not certain.

11 COMMISSIONER KOPLAN: Mr. Rosenthal?

12 MR. ROSENTHAL: I just said to him don't
13 guess if you don't know, so the answer is he doesn't
14 know.

15 COMMISSIONER KOPLAN: I'll take an estimate.

16 MR. ROSENTHAL: He really doesn't know what
17 they're going to do with it at this point.

18 COMMISSIONER KOPLAN: But not for
19 agricultural use apparently from what he just said?
20 Okay. Thank you. I see my yellow light is on.

21 Mr. Chairman, I'll wait until my next round.
22 Thank you.

23 CHAIRMAN PEARSON: Commissioner Okun.

24 COMMISSIONER OKUN: Thank you.

25 Again, thank you for all the responses

1 you've given thus far. Let me ask about the USDA
2 sales and Buy America. As you know in the first
3 review the Commission did not find those insulated the
4 domestic industry from competition. The Respondents
5 in this case point to a percentage change from the
6 first review to this review in terms of what's being
7 sold into the Buy America market, so I wanted to give
8 you a chance to respond to that.

9 If you could in doing that, how we should
10 evaluate it if you can just remind me again how when
11 it says they're set by market prices or by referenced
12 market prices can you remind me how that's done? Is
13 there a benchmark out there, because I don't recall
14 there being one for canned pineapple prices. So if
15 you could reply to that, too, Mr. Nishida?

16 MR. NISHIDA: I'd be happy to provide you
17 the detail of those dynamics in camera if that would
18 be okay?

19 COMMISSIONER OKUN: Okay. That would be
20 helpful. Is there anything for public session you'd
21 like to say just in terms of the relative amount of
22 yourselves going to Buy American that the Commission
23 should look at in this review versus the last review?

24 MR. NISHIDA: Maybe we'll address it in
25 camera.

1 COMMISSIONER OKUN: Okay. Fair enough.
2 We'll turn to that in the in camera. It would shorten
3 if it I wouldn't ask the question here.

4 Then maybe, Mr. Magrath, perhaps for you in
5 terms of the relevance of AUVs in this case, and
6 particularly for the nonsubject AUVs versus the
7 subject AUVs, what should we be aware of in evaluating
8 those?

9 MR. MAGRATH: Well, that this case sometimes
10 AUVs aren't a good proxy for price. In this case
11 because of the specific HTS categories we think they
12 are, and we think that the AUVs especially the pricing
13 table, I think it's on page 427 if I'm not mistaken of
14 the staff report, revealed very interesting facts
15 about the AUVs specifically of subject versus
16 nonsubject imports and once again I'm sorry,
17 Commissioner Okun, that we're going to talk about in
18 camera.

19 COMMISSIONER OKUN: Okay. All right, but I
20 was just curious on your general reference to AUVs in
21 terms of how useable they are here.

22 Then just a follow-up, Mr. Rosenthal, with
23 regard to how much of the subject imports would be
24 available to ship into this market and the question
25 about standard. Obviously we're going to ask the

1 Respondents about that to help us better understand
2 that, but you had I think said in response that
3 there's plenty of choice product available in
4 Thailand.

5 What would you have us look at in making
6 that determination or looking at that evidence?

7 MR. ROSENTHAL: Number one I'd look at
8 overall capacity. As Mr. Nishida testified earlier if
9 you employ normal regular agricultural standard to
10 produce the pineapples in the first place and have
11 reasonably good manufacturing practices in the cannery
12 you will end up with a significant amount of choice
13 product available. So unless you're messing up you'll
14 have a fair amount available.

15 If you go back and you look at the actual
16 capacity, which is not the 12 million cases that have
17 been reported by the Respondents thus far, but closer
18 to 60 million, you'll see that there's more than
19 enough choice available from Thailand that could
20 supplant or more than supplant the amount of choice
21 supplied by Maui Pineapple.

22 COMMISSIONER OKUN: Okay. I will look at
23 that. Then I was not able to locate this, but do you
24 know during the original investigation whether the
25 Thai industry was in fact supplying choice product or

1 a lot of choice product?

2 MR. ROSENTHAL: To the U.S. market?

3 COMMISSIONER OKUN: To the U.S. market.

4 MR. MAGRATH: Yes, they were. That was
5 their and remains their supply to the U.S. market. I
6 would also like to add to this that Japan has this
7 tariff rate quota. Japan is very particular and most
8 of the pineapple that comes into Japan is fancy grade,
9 higher than choice, and Japan has the tariff rate
10 quota basically to restrain Thai exports.

11 So finally another factor is the TFPA
12 company websites are replete with illustrations of
13 programs they are engaging that enhance the quality of
14 their product. So that is all evidence that they can
15 produce plenty of both choice and fancy product.

16 MR. ROSENTHAL: One last fact is just take a
17 look at the behavior of the four Thai companies who
18 got revocation from the order. They were able to ramp
19 up their imports into the U.S. quite dramatically in a
20 relatively short period of time supplying choice
21 product. They're not the only ones who can do that.
22 As we said they represent 35 percent of the Thai
23 productive capacity. There were 65 percent who were
24 unaccounted for and able to supply choice.

25 COMMISSIONER OKUN: Okay. Mr. Smith, you

1 wanted to add something?

2 MR. SMITH: Yes. Commissioner Okun, I was
3 going to mention that, you know, when the Commerce
4 Department does its price comparisons the Thais have
5 to come in and give a comparison market and often that
6 is the European community. The Commerce Department
7 has always been able to find sales of both grades or
8 all the range of grades to make comparisons to both
9 sales that are sold in the United States and sales
10 that are sold in either the Netherlands or Germany.

11 So I don't think the impression that we're
12 leaving that it's all one type of one grade in each
13 market is really clear. You may have the predominance
14 of one grade, but you have sales of all grades in all
15 markets.

16 COMMISSIONER OKUN: Okay. Appreciate all
17 those responses. Then if I could just return to this
18 issue of the decisions that were made in 2003 or 2004
19 as you would argue it that in fact you were driven out
20 of the retail market at that point.

21 One thing that I'm trying to understand in
22 evaluating that argument is what is your sense, Mr.
23 Nishida, of what was going on there? Was it pressure
24 coming from the imports that came out from that order,
25 so nonsubject for purposes of our consideration here,

1 or was it subject imports that are still in the
2 market? Do you have any sense of that or anything you
3 could discuss?

4 MR. NISHIDA: Well, I think first just a
5 point of clarification. The 2003/2004 period is when
6 we made the decision to pursue our strategy, but
7 certainly a lot of it was based on historical
8 performance within the grocery channels. Secondly I
9 can't comment as to the refinement of that analysis to
10 subject or nonsubject supply.

11 It was really where is our position in the
12 marketplace? What's our opportunity to get pricing?
13 It was really on that level that we drew the
14 conclusion that in spite of attempts to raise prices
15 we would not be able to sustain our sales in that
16 channel.

17 COMMISSIONER OKUN: Okay. I appreciate
18 that.

19 Then maybe that brings me to I guess a legal
20 question for you, Mr. Rosenthal, which is if I look at
21 the data on the record during this review period in
22 trying to evaluate what will happen if there's
23 revocation and if I see that the indicators you talked
24 about have gone down during the period, a period when
25 the biggest portion -- well, a large portion of the

1 market is the nonsubjects that came out from under the
2 order. I understand your argument on those trends
3 should inform me for purposes of revocation. I
4 understand that part.

5 What I'm struggling with more is how do I
6 evaluate the impact of those subject imports if I see
7 them dwarfed by nonsubject imports?

8 MR. ROSENTHAL: Well, as you know,
9 Commissioner, what you're trying to do in a sunset
10 review is a little different than that. What you're
11 trying to do is project what will happen if the order
12 is revoked. The impact of the subject imports who by
13 definition are subject to restraint is going to be a
14 lot different than if the order were revoked and they
15 were unrestrained.

16 That's why we point to the four who have
17 been revoked as the models if you will of the behavior
18 that will take place if the order is revoked in total.
19 What we're saying is things have gotten worse in the
20 last few years with the current situation with the
21 order in place because several companies have been
22 revoked and there are other imports in the
23 marketplace.

24 The company is in a vulnerable position, and
25 so your analysis has to be are things going to get

1 worse? Will injury continue? Because I think it's
2 fair to say the company is suffering injury now. Will
3 injury continue or recur, but continue if the order is
4 revoked?

5 COMMISSIONER OKUN: Okay. My yellow light's
6 on, but let me just ask in the argument of is it
7 suffering material injury now does it matter if I find
8 that it's suffering material injury now by reason of
9 nonsubject imports versus subject imports? Does that
10 matter?

11 MR. ROSENTHAL: Well, I don't think you
12 should be making that finding. That's not required
13 under the sunset statute. What you're supposed to be
14 doing is determining whether the industry is
15 vulnerable and if injury would recur, continue, if the
16 order is revoked.

17 COMMISSIONER OKUN: By reason of?

18 MR. ROSENTHAL: That is will the subject
19 imports turning into nonsubject imports make the
20 injury continue? In my view that will make matters
21 worse, but that is not the statutory term. Assuming
22 that injury is taking place right now with the order
23 in place what will happen when it's revoked? I think
24 that things can only get worse if you will when you
25 unleash the vast majority of subject Thai productive

1 capacity on an already vulnerable industry.

2 COMMISSIONER OKUN: Thank you.

3 I know my red light's on, Mr. Chairman.
4 I'll try to keep the rest of my questions for the in
5 camera session.

6 CHAIRMAN PEARSON: Commissioner Lane?

7 COMMISSIONER LANE: Just to clarify what
8 prompted my questions regarding standard costs.

9 Yes, Mr. Rosenthal?

10 MR. ROSENTHAL: May I inquire about the
11 timing if any of a biological break or a lunch break?
12 We have some folks here who have not been able to
13 leave the table for a few hours. I didn't know what
14 the plans were.

15 CHAIRMAN PEARSON: Well, it is my intention
16 to take a lunch break when the questions of this panel
17 are concluded unless any Commissioner had a different
18 idea.

19 MR. ROSENTHAL: Would you then mind if we
20 existed as the questioning was going on leaving the
21 people here to answer questions as appropriate?

22 CHAIRMAN PEARSON: That would be fine.

23 MR. ROSENTHAL: Thank you.

24 CHAIRMAN PEARSON: We won't take offense.
25 Please continue, Commissioner Lane.

1 MR. ROSENTHAL: Sorry.

2 CHAIRMAN PEARSON: Please restart
3 Commissioner Lane's clock.

4 COMMISSIONER LANE: Okay. Just to clarify
5 what prompted my questions about standard cost I was
6 basing my question on your questionnaire response to
7 Question 3-4. In that response you did not mention a
8 standard cost for total pineapple including fresh.
9 Instead you refer only to a canned pineapple fruit
10 standard cost and a total canned pineapple including
11 juice standard cost.

12 I would have thought if you had a total
13 pineapple including fresh standard cost you would have
14 used that as the basis for your allocation or at least
15 mentioned it in your questionnaire response.

16 MR. JIO: Okay. In the Questionnaire 3-3 I
17 have there that we use a standard cost accounting
18 system where the production costs are allocated to CPF
19 canned juice, concentrated whole fruit, which is the
20 fresh fruit. In 3-4 I'm just taking the standard cost
21 associated with the canned pineapple, which includes
22 pineapple juice and concentrate. I exclude the fresh
23 portion when I do the allocation.

24 COMMISSIONER LANE: Okay. Thank you. Now,
25 a final question on allocation and standard cost

1 process. Could you describe your standard cost system
2 including what the standard costs are for canned
3 pineapple fruit and total canned pineapple and how you
4 developed those costs?

5 MR. ROSENTHAL: The answer is susceptible to
6 the time limits. We'd be glad to get you that in a
7 post-conference brief.

8 COMMISSIONER LANE: Okay. That's fine.
9 Then the rest of that question is also please describe
10 how often these standard costs are recalculated, and
11 how that is done and finally explain how you determine
12 what portion of your overall cost of goods sold
13 including the growing costs should be assigned or
14 allocated to the fresh fruit segment of your business.

15 MR. ROSENTHAL: We will do that as well.

16 COMMISSIONER LANE: Okay. One more question
17 I have relating to this and it is probably best for
18 post-hearing because I don't know that it can be done
19 quickly enough for the in camera. In the data
20 reported in Part 311(a) of your questionnaire, which
21 is the financial data that is summarized on Table 3-10
22 of the staff report, can you provide a schedule that
23 shows the total agricultural division financials for
24 the same line items that you reported financials for
25 the canned pineapple fruit business?

1 That detail would simply be the total
2 agricultural division numbers that correspond to the
3 net sales, raw materials, direct labor, other factory
4 costs, selling expenses, GNA expenses and the other
5 income and expenses listed on Table 3-10.

6 MR. ROSENTHAL: You sure you don't want to
7 do that now, Stacey?

8 (No response.)

9 MR. ROSENTHAL: No. Just kidding. We'll do
10 that in the post-hearing brief.

11 COMMISSIONER LANE: And I would like that
12 for the years 2000 through 2005.

13 MR. ROSENTHAL: Certainly.

14 COMMISSIONER LANE: Okay. Now, a more
15 simple question. The staff report talks about the
16 acreage dedicated to pineapple production, and I know
17 some of these questions may have been asked, but the
18 total number for dedicated for pineapple production is
19 a lot different than the number that actually is
20 growing pineapple, and so I just wondered what is the
21 distinction between acres dedicated to pineapple
22 production and acres actually producing pineapple?

23 MR. JIO: I have the total acres that we use
24 for production of pineapple for the years 2000 to 2003
25 was 8,000. This includes acres in fallow, acres that

1 is in production and acres that are being harvested.
2 In the year 2004 and 2005 it's 6,000 acres. I don't
3 know, I mean, what is the total dedicated to
4 production, but I know what we are using only. That's
5 how I base the financials off.

6 COMMISSIONER LANE: I know what the numbers
7 are, but I can't remember if they are BPI, but there
8 is a substantial difference in the total dedicated
9 acreage and the acreage actually planted with
10 pineapple.

11 MR. JIO: Yes. I don't know that answer.

12 MR. ROSENTHAL: We'll get you that in the
13 post-hearing brief.

14 COMMISSIONER LANE: Okay. Thank you. On
15 page 2 of the 2005 10-K it states that the company
16 sold 640 acres in 2005 and will reinvest \$28.2 million
17 net cash to strengthen its agricultural segment
18 operations, its resort operations and increase
19 community development. How much of that money went to
20 the agricultural operations?

21 MR. ROSENTHAL: We will get you an answer in
22 the post-hearing brief as well.

23 COMMISSIONER LANE: Okay. Can you show me
24 where that is reflected in your financials?

25 MR. ROSENTHAL: Certainly.

1 COMMISSIONER LANE: Okay. Now, I would like
2 to talk about the Buy America program. Do the federal
3 regulations require school districts and perhaps other
4 entities to buy domestic food products when using
5 federal funds?

6 MR. NISHIDA: I'd be happy to get into
7 greater detail in camera. However, to answer at a
8 higher level the school programs are not required --
9 the product sold through the USDA must be of U.S.
10 origin. The schools themselves or the users if you
11 will are not necessarily required to only buy those
12 products.

13 MR. ROSENTHAL: So if they want to buy from
14 another food service distributor a non-U.S. product
15 they are allowed to do that. It's only if they're
16 buying through the USDA that they are buying a U.S.
17 only product.

18 COMMISSIONER LANE: Okay. Is it true that
19 even if the cost of domestic food products are higher
20 than the cost of foreign products the Buy America
21 requirement when using federal funds would still
22 apply?

23 MR. ROSENTHAL: When using federal funds
24 would still apply. That is correct. There's no
25 exemption there, and Mr. Nishida will get into this in

1 the in camera session if you would like, as a
2 practical matter and as the USDA has said the market
3 information that they have makes it impossible for
4 there to be too wide a gap between the market prices
5 and the prices that USDA will pay to certainly Maui
6 Pineapple. I assume it's true for other commodities
7 as well.

8 COMMISSIONER LANE: Okay. How are the
9 prices set for the United States government or
10 federally funded agencies?

11 MR. ROSENTHAL: That's something I think Mr.
12 Nishida would like to at least with respect to
13 pineapple pricing discuss in the in camera session.

14 I don't know if you want to say something
15 more generally about that right now?

16 MR. NISHIDA: I think as a general statement
17 the functionality of the USDA purchase is very much
18 geared towards, well, their primary mission is really
19 geared towards crop stabilization. As a result their
20 purchasing practices do not reflect extraordinary from
21 market pricing situations. Does that help?

22 COMMISSIONER LANE: Yes. Thank you.

23 Thank you, Mr. Chairman.

24 CHAIRMAN PEARSON: Okay. I would like to
25 learn a little bit more about the question of supply

1 availability of pineapple on Maui for processing
2 because if I understood you correctly earlier, Mr.
3 Magrath, I wrote down you saying something to the
4 effect that Maui has the capacity to ship more canned
5 pineapple tomorrow.

6 Now, that may have been somewhat rhetorical,
7 but Mr. Rosenthal, I think you've also indicated that
8 there's really no supply constraint in terms of what
9 Maui Pineapple could do to run its cannery and to
10 produce more to sell into the marketplace.

11 MR. MAGRATH: Well, if it's rhetorical it
12 came from Mr. Rosenthal.

13 CHAIRMAN PEARSON: Okay. My question is is
14 there actually pineapple available for processing on
15 Maui without cannibalizing the fresh fruit business in
16 the near term?

17 MR. NISHIDA: We have the capacity to
18 produce more pineapple, but if the question is can I
19 tomorrow or next month simply add another 10,000 tons
20 of fruit to canning that would be not true because
21 obviously from a cropping perspective we're trying to
22 gear our supply to what we anticipate the market to be
23 to make a profit.

24 That being said there's acreage available,
25 very good pineapple growing lands, we have the seed

1 stock available to cultivate those lands, we have the
2 equipment and manpower available to bring that into
3 full production, our cannery operation has the
4 capacity to process the fruit, so in that regard if
5 the market would allow us to have a profitable
6 business we would certainly expand into that.

7 MR. MAGRATH: Mr. Chairman, you're quite
8 right. The supply of canned pineapple is dependent on
9 the raw material. Because it's a crop cycle that goes
10 from 18 to 22 months is characterized by inelastic
11 supply. Maui has some inventory, so it could ship
12 some more tomorrow, but if I said tomorrow I'm sorry.
13 I mischaracterized the nature of it.

14 MR. ROSENTHAL: If Dr. Magrath said tomorrow
15 I'm sorry, too. I may have said that and it is not
16 tomorrow. I guess Mr. Nishida made the point that the
17 acreage was there and it's been reduced. It can come
18 back over not too long a period of time and certainly
19 the cannery capacity is there.

20 CHAIRMAN PEARSON: Mr. Nishida, does Maui
21 own or control enough land suitable for pineapple
22 production that it would be at least theoretically
23 possible to produce the current level of fruit for the
24 fresh market plus enough to run the cannery at full
25 tilt? I'm giving you two or three years now to get

1 this in operation.

2 MR. NISHIDA: Yes. Yes, we do. Not only
3 just land mass alone, but certainly as we are moving
4 more and more to a type of cropping cycle where we're
5 focused on, as I mentioned earlier, the two fruitings
6 which generally give us more tons per acre versus
7 previous practices of the third or the fourth harvest
8 which have lower tons per acre, we certainly are in
9 that position to be able to produce more.

10

11 CHAIRMAN PEARSON: Okay. Now, Mr. Rosenthal, as
12 we consider the reasonably foreseeable future in this
13 investigation, we'd pretty much have to assume that
14 Maui is constrained in terms of its ability to expand
15 pineapple output during that reasonably foreseeable
16 future. How do we take that into our analysis? You
17 can respond in the post-hearing too, if you want, but
18 any thoughts now would be welcome.

19 MR. ROSENTHAL: Sure. Again, what we're
20 looking for in a sunset review is what will happen if
21 the order is revoked. If the order is revoked the
22 reasonably foreseeable future focus I think ought to
23 be on what the imports will do as opposed to whether
24 Maui will be able to increase production over the 18
25 to 22 months. I'm pretty sure if you look at it that

1 way you'll say increasing production is not one of the
2 choices that Maui is likely to make because it's going
3 to be deluged with more imports. So the reasonably
4 foreseeable future for Maui if there's revocation is
5 probably taking more land out of production and being
6 able to ship fewer cans out of the cannery, not the
7 other way around.

8 CHAIRMAN PEARSON: Mr. Nishida, a somewhat
9 technical question. What would be the economics of
10 transporting pineapple from Oahu to Maui for canning,
11 assuming there was supply available on Oahu. Can one
12 move it quickly enough in an economical way so that
13 you could process it and it would still meet your
14 standards in the plant?

15 MR. NISHIDA: Yes, that is possible. The
16 transit time is probably six hours. So the impact of
17 shelf life is minimal. It is practical to do that.
18 The economics certainly come down to what do I end up
19 buying the fruit for from the grower.

20 CHAIRMAN PEARSON: Thank you.

21 My last question before we would get into
22 the in camera session has to do with the allocation of
23 raw material costs between the fresh market and the
24 canned market and I know Commissioner Lane has touched
25 on this to some degree.

1 What I want to understand is, is the raw
2 material cost division between fresh and processed
3 pineapple, is it based on the tonnage of pineapple
4 going to each use? Or is it divided on some other
5 basis?

6 MR. JIO: It's based on tonnage that's being
7 used by processed or fresh.

8 CHAIRMAN PEARSON: For purposes of this
9 investigation where we have a really interesting
10 market in that the fresh and processed products are so
11 closely intertwined on the agronomic, the agricultural
12 end of the business, is there a rationale for thinking
13 of dividing the raw material costs on some other
14 basis? Perhaps relative to value of the end product
15 instead of the costs on the farm?

16 The reason for asking this, you have to
17 forgive me for having been a farmer at one time, Mr.
18 Nishida. You have a business model that is focused
19 primarily on the fresh and I think very appropriately
20 so. Then the processing operation comes in and bats
21 cleanup, so to speak, and makes sure all useable fruit
22 is utilized well. Okay? But I assume that if we look
23 at the value, most of the value has to be captured by
24 the fresh fruit.

25 So if we allocate the raw material costs

1 based strictly on tonnage then we have a situation
2 where fruit that we know is going to be relatively low
3 value in terms of its end use is bearing a somewhat
4 disproportionate share of the agricultural costs.

5 Comments, please?

6 MR. ROSENTHAL: You actually hit on one of
7 the central issues that the Commerce Department
8 struggled with in doing the original dumping
9 calculations in this case and in subsequent
10 administrative reviews. In essence what the Commerce
11 Department does is take whatever, in this instance,
12 the Thai producers books and records as they are, and
13 go with that unless there's some reason to believe
14 that there's something wrong.

15 All the accounting references that we
16 resorted to during the dumping side of this said you
17 can do either one. You can do something based on
18 tonnage or net realizable value.

19 You'll see in the pineapple industry some
20 companies doing na NRV approach, some doing a tonnage
21 approach, and there's no one right way.

22 So what you're saying makes sense and some
23 companies do it that way and others don't. It's a
24 flip a coin type of approach.

25 CHAIRMAN PEARSON: For our purposes here as

1 we try to understand the financials, would I be
2 correct to understand that using the allocation based
3 on tonnage of fruit going each way does have to some
4 degree an effect of making the operating income
5 numbers look a little worse in our data than might
6 actually be the case in terms of viewing the operation
7 as an integrated operation, both fresh and processed?

8 Sorry for the long question. Mr. Jio?

9 MR. JIO: Yes. let me retract on that. In
10 the year 2000 to 2003 it was based on tons and that
11 was primarily because fresh wasn't a major factor in
12 our company revenue. Then in 2004 and 2005 it was
13 based on the net sales of each. As we built the fresh
14 we felt the fresh should be allocated more of that
15 cost.

16 CHAIRMAN PEARSON: Let me make sure I
17 understand.

18 You're saying toward the end of the period
19 of review you did make an allocation that was weighted
20 where the raw material costs were weighted more
21 heavily to the higher value --

22 MR. JIO: That's correct.

23 CHAIRMAN PEARSON: Perhaps Staff, we can
24 work on this over time and try to understand it a
25 little better. It was an issue that was of deep

1 interest to me last night when I was finally getting
2 into the record far enough to understand it.

3 That concludes my time and I have no further
4 questions for the public session.

5 Madame Vice Chairman?

6 VICE CHAIRMAN ARANOFF: Thank you, Mr.
7 Chairman. One or two, hopefully for post-hearing.

8 First, in Exhibit 6 of your brief you
9 describe a number of Thai export promotion and
10 government plans. Given that this is not a
11 countervailing duty investigation and given that the
12 division of labor under the trade remedy law says this
13 agency is not the expert in deciding whether something
14 is an export subsidy or promotes exports, or whether a
15 program is actually even in use in a foreign country,
16 how should we be taking that information into
17 consideration in making our determination?

18 MR. ROSENTHAL: The reason it's relevant to
19 your analysis in a sunset review is that you're trying
20 to figure out what are the intentions, what are the
21 capabilities of the foreign producers if the order
22 were to be revoked.

23 The information on the export promotion
24 programs, the subsidies, the encouragement of
25 production and export in Thailand should tell you that

1 they are being encouraged by their government to
2 export, that there is indeed additional danger, if you
3 will, to the domestic industry if the order is
4 revoked. That's why it's relevant. Not for the truth
5 of the amounts of subsidy, just that they have the
6 government encouraging them to export.

7 So when you compare that to some of the
8 questionnaire responses or some of the arguments by
9 Respondent's counsel saying well, we don't have the
10 capability and we don't have the interest in exporting
11 more to the U.S., we regard that as very probative.

12 VICE CHAIRMAN ARANOFF: I appreciate that,
13 and I would just add a second layer to the question
14 which is given that the Thai government is in some
15 degree of disarray right now, to what extent can I
16 rely on what has happened in the past as a guide to
17 what the Thai government may be able to afford or be
18 interested in supporting going forward?

19 MR. ROSENTHAL: Obviously no one knows, but
20 unless you see a renouncing of these public
21 statements, I don't think you should assume that the
22 political turmoil otherwise will result in a reduction
23 in interest in promoting the Thai pineapple industry
24 which is one of their primary export industries.
25 Indeed to the contrary, if you want political

1 stability in your country you want to promote the
2 producers there and be able to earn export dollars. I
3 would expect there will be a continuation of these
4 programs. I don't want to go further and say an
5 enhancement, because I don't know that.

6 VICE CHAIRMAN ARANOFF: I appreciate those
7 answers and I would certainly, if I don't remember to
8 ask the question again, invite Respondents to answer
9 those as well in their post-hearing brief.

10 Finally, I guess I would ask, and maybe
11 we'll hear this in the in camera session this
12 afternoon but I think this is mostly public. If we
13 could get in your post-hearing just some more basic
14 detail about who buys pineapple from USDA. We've sort
15 of been assuming that the whole program goes into the
16 school lunch program, but it was unclear to me whether
17 there were other customers, for example military
18 bases, federal prisons, that sort of thing, and
19 whether there are differences in terms of how those
20 different potential customers might purchase through
21 USDA or what their other choices are.

22 MR. ROSENTHAL: If you don't mind, we'll do
23 that in camera.

24 VICE CHAIRMAN ARANOFF: Okay.

25 Thank you, Mr. Chairman. I have no other

1 questions.

2 CHAIRMAN PEARSON: Commissioner Hillman?

3 COMMISSIONER HILLMAN: Thank you. Just a
4 request for the post-hearing brief.

5 We've had a lot of discussion about this
6 issue of Maui in essence exiting the retail market and
7 I've heard a lot of the descriptions and statements
8 that this was based on price. My request for the
9 post-hearing is anything you can do to help document
10 that. In other words, offers that you made to any of
11 these retail folks, anything that would help us
12 understand this issue given the statements that are in
13 the Respondent's brief and are in some of our
14 purchaser questionnaire responses in terms of whether
15 there was in fact product on offer or not, and to help
16 us understand this issue that price was the driver. I
17 think any documentation would be helpful.

18 MR. ROSENTHAL: Certainly. Thank you.

19 COMMISSIONER HILLMAN: With that I have no
20 further questions at this point.

21 Thank you, Mr. Chairman.

22 CHAIRMAN PEARSON: Commissioner Koplan?

23 COMMISSIONER KOPLAN: Thank you, Mr.

24 Chairman. I have just one.

25 Mr. Rosenthal, when discussing the Thai

1 industry at page one of your brief you state, "Lacking
2 vertical integration, fresh pineapple is produced by
3 local growers according to the vagaries of weather and
4 fresh pineapple prices without regard to demand
5 leading to regular shortages and surpluses. This boom
6 and bust cycle is well documented in the original
7 investigation and for a sunset review. Just this year
8 Thai pineapple producers determined to let fresh
9 pineapple rot in the fields rather than incur the cost
10 to harvest due to over-supply and particularly low
11 prices for fresh pineapple." And you have an Exhibit
12 1 which indicates some of the growers were in fact
13 doing that.

14 My question is simply, when I look at the
15 staff report, Chapter 5, it appears that Thai prices
16 for CPFs generally appear to be higher in 2006 than in
17 2005. Tables 5-1 to 5-4 of the Staff Report.

18 I wonder how you'd respond to that.

19 MR. ROSENTHAL: There are two things that I
20 think might be going on there to explain that. One is
21 the lag between the time of the crop and the time of
22 the pricing in the U.S.; second is the exchange rates.
23 The dollar has weakened obviously, as compared to the
24 Thai bat, and I think that may make a difference in
25 the pricing that you're seeing from 2005 to 2006.

1 That's what I can speculate right now sitting at this
2 table, and I'll certainly give it some more thought
3 for the post-hearing brief.

4 COMMISSIONER KOPLAN: Would you do that for
5 me? Thank you. I appreciate that.

6 With that, thank you all for your responses.
7 I have nothing further, Mr. Chairman.

8 CHAIRMAN PEARSON: Commissioner Okun?
9 Commissioner Lane?

10 COMMISSIONER LANE: Yes, thank you.

11 I'd like to go back to some questions
12 relating to domestic like product and the domestic
13 industry.

14 I noted that in your response you indicated
15 that pineapple in plastic or glass containers is not a
16 substitute for the like product which is fruit packed
17 in metal cans.

18 As a consumer it seems to me that there has
19 been an increase in the availability of fruit packed
20 in glass and plastic containers. Has the use of glass
21 and plastic increased in recent years?

22 And in answering that, could you provide any
23 data regarding the volume of domestic sales of
24 pineapple in glass and plastic jars over the last
25 several years?

1 MR. ROSENTHAL: I think with respect to Maui
2 Pineapple, I think you can be safe in assuming, and
3 we'll get you the details, that there hasn't been an
4 increase in shipments in that product form.

5 As far as the rest of the market goes we'll
6 have to get you something in a post-hearing brief.

7 And the first part of your question had to
8 do with like product. We still believe that they are
9 not the same like product?

10 COMMISSIONER LANE: Yes.

11 MR. ROSENTHAL: The answer is yes, in large
12 part because you don't see -- We can go through the
13 like product analysis too, but the different factors
14 that one looks at continue to -- The six factors that
15 you look at in deciding whether the two products are
16 like or should be in the same like product still have
17 mixed directions, but in our view the majority of
18 those factors point to keeping those separate rather
19 than together. There are obviously similarities in
20 production process up to a point and then there's a
21 breakoff, but there's differences in pricing, there's
22 differences in consumer perceptions of a product that
23 comes in these different packages and the like and we
24 can certainly detail those. But what's happened to
25 the extent that there's been much that's happened in

1 the marketplace on those has not led us to believe
2 there should be a revisiting of the like product
3 definition.

4 COMMISSIONER LANE: Okay.

5 Dr. Magrath in one of the answers to an
6 earlier question you discussed the high input of cans
7 for Maui, that that was a high cost factor. Do you
8 know, do the Thai subject producers source their cans
9 from the same place that Maui sources its cans?

10 MR. MAGRATH: I have no knowledge of where -
11 - Perhaps Mr. Smith does, since he does the commerce
12 side of these cases, where the Thais get their raw
13 materials to make the cans.

14 MR. SMITH: Commissioner Lane, actually that
15 came up a couple of years ago and it turned out that
16 at least for Thai producers they were buying from the
17 same supplier in Japan that Maui buys from. So
18 theoretically then the cost of the cans or this part
19 of the raw material costs would be the same for the
20 Thai producers as it is for Maui? Theoretically.

21 MR. SMITH: Theoretically, yes. Given
22 volume purchases and things, but theoretically you're
23 correct, yes.

24 COMMISSIONER LANE: Thank you.

25 That's all the questions I have.

1 CHAIRMAN PEARSON: Any further questions
2 from the dais?

3 Does Staff have questions for this panel?

4 MS. MAZUR: Mr. Chairman, Staff has no
5 questions.

6 CHAIRMAN PEARSON: Mr. Lafave, do
7 Respondents have any questions for this panel?

8 MR. LAFAVE: No we don't, Mr. Chairman.

9 CHAIRMAN PEARSON: Mr. Secretary, am I
10 correct to understand that there may be an opportunity
11 for inspecting and sampling products subject to this
12 investigation?

13 MR. BISHOP: That is correct, Mr. Chairman.

14 CHAIRMAN PEARSON: In that case, let's take
15 a full hour for lunch and reconvene at quarter to
16 2:00. Permit me to excuse this panel with great
17 thanks for your answers to the questions, for your
18 willingness to travel so far. It's been an extremely
19 interesting morning.

20 This hearing is recessed.

21 (Whereupon, at 12:45 p.m. the hearing was
22 recessed to reconvene at 1:45 p.m. this same day,
23 Thursday, January 18, 2007.)

24 //

25 //

1 //

1 I'd like to turn the microphone over now to
2 Ginny Tantipipatpong.

3 MS. TANTIPIPATPONG: Good afternoon,
4 Chairman, Commissioners.

5 My name is Ghanyapad Tantipipatpong and I am
6 the President of Thai Pineapple Canning Industry
7 Corporation, Ltd., or TPC.

8 Founded in 1967, TPC was the first factory
9 in Thailand to produce canned pineapple fruit. TPC
10 factory is located in Gerikank Province in the south
11 of Thailand. It's headquarters are located in
12 Bangkok. I am also the current chair of the Thai Food
13 Processor Association, Thai Food Processors Group.

14 I'm here today to discuss the likely effects
15 of a revocation of the U.S. antidumping duty order on
16 canned pineapple fruit from Thailand.

17 In my view the effects of revocation on the
18 domestic industry would be minimal. As detailed in
19 our response to the ITC's questionnaire, TPC plans to
20 increase its production by about ten percent. If the
21 order was revoked we would devote over half of this
22 increase to the U.S. market, however we do not believe
23 that these shipments would adversely affect Maui.

24 The total increase in TPC's shipment would,
25 we believe, account for less than one percent of the

1 total United States market. There are several reasons
2 why I do not expect a large increase in sales volume
3 to the United States if the order is revoked.

4 First, as Mr. Lafave has said, there is
5 product differentiation in the products bound for the
6 USA and the EU, Russia and Eastern Europe. The U.S.
7 market demands choice, quality canned pineapple fruit
8 while the EU, Russia and Eastern European customers
9 will accept standard quality.

10 For this reason we could not ship the
11 standard quality product normally sold to the EU,
12 Russia and Eastern Europe to the United States, even
13 if we wanted to.

14 Over the years more than 50 percent of our
15 pineapple that TPC produces is standard quality due to
16 the lack of farm labor to care for the plantations and
17 harvesting of the fruit. This problem will continue
18 as there is currently a tight labor supply situation
19 in the farming sector that is not expected to improve
20 in time.

21 Products bound for Japan, Scandinavia and
22 the UK could in theory be redirected to the U.S.
23 market. However, such a move would produce a lower
24 profit margin for the company as Japanese,
25 Scandinavian and UK customers are willing to pay a

1 higher price.

2 Another reason why TPC would not increase
3 its export to the United States if the order were
4 revoked by more than a modest amount is that TPC has
5 well established markets in Australia, Japan and
6 Europe that it has no intention of giving up. Most of
7 our customers are major retailers in each market such
8 as Lito in Germany and Tesco and Astar in UK.

9 We would like to see the U.S. antidumping
10 duty order revoked so that we can further diversify
11 our client base and supply our European retail clients
12 as they expand into the U.S. market. However, it
13 would not be a sensible marketing strategy to give up
14 our established customers in the other markets.

15 Furthermore, there has been significant
16 growth in world market demand for canned pineapple
17 fruit over the past five years. According to the data
18 compiled by the Thai Food Processors Association, in
19 volume terms, import demand in the United States has
20 grown by 15 percent; demand in Europe has grown by
21 12.4 percent; and demand in Russia has grown
22 explosively at 128 percent. These increases in demand
23 are the reason why TPC is expanding its production and
24 why there is high capacity utilization in Thailand.

25 It seems that these trends will continue.

1 Now I would like to make some comments on
2 the information presented in the Petitioners'
3 prehearing brief. First, Petitioners have claimed
4 that in 2004, the Thai government adopted a strategy
5 to employ a centralized committee to oversee the
6 processing and marketing of pineapple and a policy to
7 extend soft loans to pineapple growers. While it is
8 true that the Thaksin Cabinet has adopted this policy,
9 it's met with substantial opposition from the Thai
10 Food Processor Association. The policy was in fact
11 never implemented.

12 Second, Petitioners have claimed that the
13 Thai government has a slush fund to assist the Thai
14 Food Processor Association to lobby foreign
15 governments. As chair of the Pineapple Processors
16 Group, I have never heard of such a program.
17 Moreover, I'm certain that there has been no financial
18 support for our legal defense in this proceeding.

19 Third, Petitioners have claimed that the
20 government is providing financial assistance to
21 pineapple processes on their sales to newly emerging
22 markets. I have never heard of this program either.

23 Fourth, Petitioners have claimed that the
24 Thai government provided marketing support to 5,000
25 pineapple farmers in Withurdi [ph] province in the

1 north. It should be pointed out that Withurdi
2 province produces many fresh pineapple for local
3 consumption in Thailand.

4 Furthermore, according to the Thai
5 government, total production in that province was
6 3,665 tons in 2005. It seems therefore that the
7 figure mentioned in the newspaper article of 60,000
8 tons being produced in 2006 is quite inaccurate.

9 Petitioners have also made several claims
10 regarding new production capacity in Thailand that are
11 inaccurate. For example, Petitioners claim that Del
12 Monte recently established a production facility in
13 Thailand after entering a joint venture with Samroyan
14 [ph]. However, to my knowledge no canning facility
15 has ever been set up at Del Monte's Thai plant. This
16 factory packs sweet corn vegetables and pineapple in
17 triple pack paper boxes.

18 The Petitioners' brief claimed that Tipco
19 acquired another factor whose production was not
20 reported in the response. In fact it was TPC and not
21 Tipco that acquired another factory. TPC has recently
22 acquired Seiko, a company that had responded to the
23 Commission's foreign producer questionnaire.

24 The Petitioners' brief claims that Japan has
25 refused to open its market to Thai canned pineapple.

1 This is also incorrect. As Thai Respondents'
2 questionnaire responses show, the tariff rate quota in
3 Japan is designed to ensure that all of the canned
4 pineapple fruit production in Okinawa is sold by tying
5 the right to purchase imported product to purchases of
6 Okinawa product. That being said, product from
7 Okinawa account only for about two percent of Japanese
8 market.

9 Finally, Petitioners claim that the EU
10 import duty on canned pineapple fruit is 25.6 percent
11 ad valorem. However, that duty rate applying only to
12 canned pineapple containing added liquid. This is not
13 a product that we are shipping to EU. With the GSP
14 benefit the import duty rate on Thai products sold to
15 the EU ranges from 14.1 percent to 15.7 percent ad
16 valorem.

17 It is clear that whatever the duty, the
18 quantities sold to the EU by Thailand is and will
19 continue to be quite substantial.

20 Thank you for your attention.

21 MR. SHIRAIWA: Hello, my name is Kojiro
22 Shiraiwa. I'm the Director of Marketing for Ace of
23 Diamonds and Three Diamonds brand canned pineapple
24 fruits at Chicken of the Sea International. I have
25 held that position since 2002 and before that I was

1 involved in sales of canned pineapple in Japan at
2 Mitsubishi Corporation, Tokyo.

3 All Chicken of the Sea sales of canned
4 pineapple fruits are choice quality, 20 ounce cans
5 sold to supermarket chains for resell to individual
6 customers. All these sales are to the stores in
7 northeastern, midwestern, and south central part of
8 the United States. We sell a very small quantity on
9 the west coast. We don't believe that we currently
10 compete with Maui canned pineapple because we don't
11 see Hawaiian canned pineapple in the retail stores to
12 which we sell.

13 Chicken of the Sea used to purchase canned
14 pineapple imported from TPC until the antidumping duty
15 became too high. After that we switched to non-
16 subject Thai and Indonesian sources. We have never
17 purchased canned pineapple from Maui. In the event
18 that the order is revoked we would resume our purchase
19 of canned pineapple from TPC, however we don't expect
20 our overall volume of sales to increase as a result of
21 this change.

22 I'd be happy to respond to any questions
23 that the Commission may have. Thank you.

24 MR. LAFAVE: Thank you.

25 Most of our economic presentation today must

1 rely on confidential information released to us under
2 administrative protective order. We will reserve that
3 for the in camera session to be held later.

4 During this part of the public hearing I
5 would like to address a couple of issues raised by
6 Petitioners' pre-hearing brief.

7 As they did in the first sunset review, the
8 Petitioners have tried to portray the Thai pineapple
9 industry as being subject to constant intervention and
10 subsidies provided by the Thai government, however the
11 facts do not support that interpretation or the
12 conclusion that the government is currently providing
13 any form of export subsidy on canned pineapple fruit.

14 For example, the Petitioners cite an article
15 from The Nation, an English language daily in Bangkok,
16 for the proposition that the Thai government is
17 providing "marketing assistance" as support for 5,000
18 Thai farmers in Utradit province. However, the brief
19 note on the subject in an article devoted to a variety
20 of subjects does not indicate what form of assistance
21 that might have taken, nor does it indicate any form
22 of price support or direct aid.

23 Furthermore, Utradit province, as you just
24 heard, normally produces pineapple fruit for fresh
25 consumption, not canning.

1 In addition, the total pineapple produced in
2 that province is only a fraction of the figure
3 mentioned in the article.

4 Next, Petitioners allege that the government
5 created a fund to assist exporters in hiring lobbyists
6 to fight trade actions by foreign governments. If
7 such a fund exists, as you just heard, TFPA is unaware
8 of it. There has been no government support for the
9 legal fees incurred by Respondents for this sunset
10 review.

11 Petitioners also allege that in 2004 the
12 Thai government adopted a strategy to employ a
13 centralized company to oversee the processing and
14 marketing of pineapple coupled with soft loans to
15 pineapple growers. In fact as you just heard, this
16 plan was never implemented.

17 Next, Petitioners alleged that Thai
18 exporters received financial support in connection
19 with their exports to newly emerging markets citing a
20 2004 report of the Foreign Agricultural Service. As
21 you've just heard, the chair of the Pineapple
22 Processors Group at the Thai Food Processors
23 Association has never heard of such measures.

24 It seems, moreover, that this program was
25 terminated by December 2003 and it would have had no

1 affect on exports to the United States except perhaps
2 to act as a disincentive to export here.

3 Petitioners also allege that canned
4 pineapple producers may be receiving benefits from the
5 Thai Board of Investment or BOI in the form of income
6 tax holidays, however the Petitioners have not shown
7 that any of the Thai producers of canned pineapple
8 fruit are receiving benefits under this program.
9 Moreover, these benefits usually last only five to
10 seven years from the date a company starts operations.
11 Most of the Thai pineapple producers have been in
12 operation for more than 20 years.

13 The authoritative U.S. source on subsidy
14 programs maintained by the Thai government is the
15 United States Trade Representatives report on foreign
16 trade barriers. According to the 2005 report, and I
17 quote, "The Thai government terminated its packing
18 credit program in compliance with WTO commitments but
19 received an extension of its WTO exemption period for
20 the industrial estate authority of Thailand and the
21 Board of Investment until December 2005. Low interest
22 loans provided under the Export Market Diversification
23 Program for Exporters targeting new markets ended in
24 December 2003."

25 The 2006 USTR report on Thailand makes no

1 mention of BOI or industrial estate benefits. Thus
2 all benefits considered to be subsidies provided by
3 the BOI and the industrial state authority were
4 terminated at or before the end of 2005.

5 The low interest loans on exports to newly
6 emerging markets mentioned in Petitioners' brief have
7 also been terminated. What is more, the Thai
8 government is constrained from enacting any new export
9 subsidies by its commitments to the disciplines
10 imposed by the WTO agreement on subsidies and
11 countervailing measures.

12 One of the most laughable claims made in
13 Petitioners' case brief is the assertion that the Thai
14 government has been lax in approving inefficient new
15 production facilities for the production of canned
16 pineapple fruit. The source for this particular
17 allegation is an unsigned letter to the editor of The
18 Nation newspaper. Hardly a credible source.

19
20 In short, Petitioners have pieced together a
21 few bits of incorrect, unsubstantiated or outdated
22 information from several newspaper reports and older
23 government studies in an attempt to paint a picture of
24 massive government intervention in the sector. That
25 simply does not hold water. The Thai government is

1 not providing massive subsidies to the sector and is
2 constrained from providing export subsidies in the
3 future as a result of its commitments to the WTO.

4 Petitioners try repeatedly in their case
5 brief to confuse the distinction between subject and
6 non-subject imports. They argue that the trends for
7 subject imports will mirror trends for the non-subject
8 imports in terms of future import volumes and pricing
9 if the order is revoked. This contention is simply
10 absurd.

11 The subject imports represent a narrow
12 sliver of the U.S. market that is controlled by non-
13 subject imports from Thailand, imports from Indonesia
14 and the Philippines, and products sold by the domestic
15 industry. The non-subject Thai exporters are,
16 according to the data in Petitioners' pre-hearing
17 brief -- these are the non-subject Thai exporters --
18 the largest producers of canned pineapple fruit. And
19 according to TFPA data, which you have in our response
20 to the notice of initiation, they are the companies
21 that have been by far the largest exporters to the
22 United States over the last five years -- both before
23 and after the individual revocations.

24 As Maui has reduced its production of canned
25 pineapple fruit in order to pursue its strategy of

1 producing and selling fresh pineapple fruit, it is
2 only natural that these exporters would with imports
3 from the Philippines and Indonesia, step in to fill
4 the void.

5 But that does not mean that the subject
6 imports would follow the same path if the order were
7 revoked. As I mentioned in my introduction, the
8 subject producers have either never exported to the
9 United States, have not exported recently, or have
10 exported only modest quantities. These producers are
11 operating at high levels of capacity utilization and
12 often cannot operate at higher levels due to
13 unavailability of fruit supply or shortages of the
14 necessary labor.

15 These producers have established third
16 country markets that they will not abandon and they
17 can only export choice grade pineapple to the United
18 States. A large portion of their total production is
19 standard and fancy grade canned pineapple that is not
20 suitable for sale here.

21 Accordingly, it is unlikely that there will
22 be a significant increase in import volumes in the
23 event the order is revoked as compared to a situation
24 in which the order remains in place.

25 As support for our contention that the

1 revocation of the antidumping order would have
2 negligible effects on the domestic industry, I would
3 direct the Commission to the results of the
4 application of the Commission designed compass model
5 to the facts of this case. While those results are
6 confidential, it is clear that the effects predicted
7 by the model are virtually inconsequential.

8 That concludes our public testimony. Thank
9 you.

10 CHAIRMAN PEARSON: Thank you very much.

11 We will begin questioning of the
12 Respondents' panel with Commissioner Hillman.

13 COMMISSIONER HILLMAN: Thank you very much
14 and I would like to welcome our afternoon panel and
15 thank those of you that have traveled a long way to be
16 with us for being here today.

17 I wondered if I could start on the issue
18 that you touched on in terms of what's happening in
19 terms of demand for canned pineapple. I noted, Ms.
20 Tantipipatpong, that you mentioned in your testimony I
21 believe it was an increase in U.S. consumption of
22 canned product of about 15 percent and EU consumption
23 up something like 12, and then 128 percent increase in
24 Russia.

25 Tell me how do you know that? Is that based

1 on what you're seeing in terms of orders for your
2 product? Or where do you think this increase, how do
3 you know about this increase in demand?

4 MS. TANTIPIPATPONG: Actually it's in our
5 response, that is the import statistics of the EU, 25
6 countries, U.S. and Russia.

7 COMMISSIONER HILLMAN: So you're basing that
8 not on what you see sa demand for your product or
9 orders coming into you, but as more just general
10 import or export statistics. Okay.

11 In terms of, you mentioned for example that
12 you could see increasing your production by ten
13 percent with 50 percent of that going to the U.S.
14 market. I take it that applies simply to TPC, that is
15 applying only to your company?

16 MS. TANTIPIPATPONG: That's correct.

17 COMMISSIONER HILLMAN: Obviously the
18 difficulty for the Commission is we're trying to look
19 at the situation for all of the Thai producers that
20 remain subject to the order. Do you have any sense of
21 whether other companies in Thailand would be similarly
22 able to increase their production levels as well?

23 MS. TANTIPIPATPONG: Actually I would like
24 to direct that to Mr. Lafave because he would have the
25 data from all the responses. I believe that in each

1 of the foreign producer response we would indicate
2 whether we would have increased production or whether
3 we have any intention of selling to the U.S. market.

4 COMMISSIONER HILLMAN: Okay.

5 From your country's perspective, you
6 mentioned a ten percent increase in production.
7 That's due to what? To capacity that you're currently
8 not using? Or would you be doing something to your
9 company in order to be able to raise your production
10 by ten percent?

11 MS. TANTIPIPATPONG: That is the capacity
12 that we are not currently utilizing. There will be no
13 additional investment.

14 COMMISSIONER HILLMAN: Help me understand
15 why you're not currently using that capacity.

16 MS. TANTIPIPATPONG: What happened, over the
17 past many years there has been some shortage of fruits
18 in Thailand. Mainly the production volume is limited
19 by the availability of fruit and the availability of
20 labor. Last year TPC had a plan that we would like to
21 expand or increase the production volume because we
22 had demand from our customers in Europe. We were able
23 to increase the volume because of the availability of
24 fruit, but yet we have certain constraints on the
25 availability of labor. But because the demand from

1 our customers in Europe, we feel that we will be able
2 to have the market to take the volume should we
3 increase it by ten percent.

4 COMMISSIONER HILLMAN: The issue of fancy
5 versus choice versus standard product, I just want to
6 make sure I understand it.

7 In your view the distinction comes solely
8 from what happens to the pineapple after it's already
9 been planted. In other words, it isn't the particular
10 variety or the quality of the pineapple as planted,
11 it's how it's cultivated over the first 18 months and
12 then the next that determines whether it's standard,
13 choice or fancy?

14 MS. TANTIPIPATPONG: It's actually
15 depending, the fruits in Thailand, depending on the
16 farmers, how they care for the plantation and also the
17 time of the harvesting. But the grading what is
18 standard, choice or fancy is actually depending on the
19 maturity of fruit. We've seen that a lot of fruits
20 have been delivered to the factory, they come in, they
21 have very pale yellow to very dark yellow, and that's
22 depending on the maturity. The darker color wouldn't
23 go into the fancy and the choice. The paler color
24 will go into the standard quality. But we all follow
25 the USDA standard for canned pineapple which gives us

1 the standard of how we do the grading which is
2 including the defects, the character -- the character
3 means the percentage of core that is allowed, and the
4 taste, the flavor.

5 COMMISSIONER HILLMAN: You heard I think
6 some of the discussion this morning about this issue
7 of the U.S. market wanting choice product, the
8 European Union wanting standard, and the Japanese
9 wanting fancy. I'm just trying to understand why do
10 you think that's the case?

11 MS. TANTIPIPATPONG: For Japanese consumer,
12 as we all know, they always like -- they buy with
13 their eyes. They always like the good, nice color
14 because they believe that that will be the best
15 quality. With the disposable income, the cost of
16 living in Japan, they can afford to pay higher price
17 to buy the best quality available for any type of
18 product, not just for pineapple.

19 In Europe they would like to buy anything
20 but because of the limitation on availability of the
21 choice quality, the European customer is willing to
22 buy and accept a standard quality.

23 COMMISSIONER HILLMAN: And the U.S. side?

24 MS. TANTIPIPATPONG: On the U.S. side we're
25 actually referring to the USDA standard. It's

1 actually specified that if we ship anything, we should
2 only sell, there is a standard for fancy and choice
3 quality. Anything below choice quality we have to
4 declare that it's standard, substandard on the label.

5 COMMISSIONER HILLMAN: Mr. Shiraiwa, more on
6 the sort of sales and marketing side of it, are most
7 consumers either here or in Japan or in Europe aware
8 of whether what they're buying is fancy, choice or
9 standard?

10 MR. SHIRAIWA: Consumers?

11 COMMISSIONER HILLMAN: Yes.

12 MR. SHIRAIWA: I do not think so.

13 COMMISSIONER HILLMAN: You do not.

14 MR. SHIRAIWA: But if they get different
15 quality they would probably notice. Especially in
16 Japan. Because we are so used to the fancy grade
17 product, which I think we just saw fancy grade
18 product, and if they start seeing such as choice or
19 even standard which has paler color, we will
20 definitely get some consumer complaints and then we
21 will probably end up recalling the product and so
22 forth.

23 COMMISSIONER HILLMAN: Tell me about the
24 relationship then between the grade of the product and
25 the brand name. I'm trying to understand on these

1 prices we've seen in our pricing data, a price
2 relationship between the national brands here in the
3 U.S. versus the private label first tier and the
4 private label second tier regional.

5 Do you see a relationship between the brands
6 and the prices versus the standard, choice or fancy
7 grade?

8 MR. SHIRAIWA: I would say most of the
9 product in the United States is choice grade. We do
10 have basically the same grade level. Of course
11 national brands such as Dole, they are mainly from
12 Philippines, and the private brand may be coming from
13 Indonesia and Thailand. Because of those different
14 locations you might find a little bit different taste
15 or texture, but on the overall, basically same
16 quality. But I do see really, really cheap products
17 such as you find product in like Dollar Stores and
18 stuff, are sometimes standard grade, but usually they
19 don't last long. I see them come and go all the time.
20 I assume consumers would like to buy choice grade.

21 COMMISSIONER HILLMAN: Tell me about the
22 price relationship. Is it always the case that the
23 national brand, in your view, carries a price premium?
24 And if the national brand is still choice product,
25 why? If it's the same grade of product, why pay more

1 for a national brand as opposed to a first tier, tier
2 one private label?

3 MR. SHIRAIWA: I believe that is purely on
4 the brand marketing. I think Dole did a really good
5 job of promoting their brands and enhancing their
6 brand image with all these promotions and commercials
7 versus like my brand, Three Diamonds, Ace of Diamonds,
8 is almost equivalent to Dole quality, but yet because
9 our brand is not so known in the market and we used to
10 be between the national brand and the private label
11 brand, people expect that we are economical product so
12 therefore they won't pay for premium, but they will,
13 you know.

14 COMMISSIONER HILLMAN: You said you've never
15 purchased from Maui?

16 MR. SHIRAIWA: In United States, no.

17 COMMISSIONER HILLMAN: Ever tried to?

18 MR. SHIRAIWA: No.

19 COMMISSIONER HILLMAN: I appreciate those
20 answers, thank you.

21 CHAIRMAN PEARSON: Commissioner Koplan?

22 COMMISSIONER KOPLAN: Thank you, Mr.

23 Chairman.

24 If I could, let me start with you, Mr.
25 Lafave. At page six of your brief you are commenting

1 on Maui's repositioning strategy and I quote, you say
2 "Part of this repositioning strategy has involved
3 increasing sales to the United States government,
4 mainly the U.S. Department of Agriculture, USDA. The
5 proportion of U.S. end user shipments accounted for by
6 U.S. government buy American sales increased from,"
7 and you've got a bracketed percentage there,
8 "increased in 2000 to 2005." And you've also got a
9 bracketed figure for 2005 there.

10 You say, "Under current law all fruit
11 commodities that the USDA purchases must be of 100
12 percent domestic origin."

13 I went back to the first reviews that I
14 participated in and I just want to read this brief
15 passage to you from that. It states as follows at
16 page nine of what I'm looking at. "The Commission
17 also found in the original determination that a number
18 of the domestic industry sales were to the U.S.
19 government and therefore subject to Buy America
20 requirements, but those sales were usually made at
21 market prices. As in the original determination, the
22 record in this review indicates that Maui's Buy
23 America sales to the U.S. government do not shield it
24 from the effects of dumped subject CPF because the
25 sales are generally made at market price."

1 That's what we found in our first review and
2 it's also what we found in the original determination.
3 So why would I be evaluating that differently now?
4 What's changed?

5 MR. LAFAVE: I think to answer that question
6 I'd have to refer to a proprietary questionnaire
7 response.

8 COMMISSIONER KOPLAN: You can either do that
9 in the post-hearing or --

10 MR. LAFAVE: But I'll note that I don't
11 think that pricing data was requested for government
12 sales, so I'm not sure that the record will really
13 establish one way or the other the truth of that
14 claim.

15 COMMISSIONER KOPLAN: Are you talking about
16 in the current review, in the first review, or in the
17 original determinations, or all three?

18 MR. LAFAVE: I can't really speak to the
19 original investigation or the first review, but in the
20 current review I don't believe that you have
21 comparison pricing data to show how these prices
22 compare to other prices.

23 COMMISSIONER KOPLAN: So what you're saying
24 is that today these sales are not being made at market
25 price?

1 MR. LAFAVE: Once again, I'd have to refer
2 to information in the proprietary record to support my
3 statement.

4 COMMISSIONER KOPLAN: Okay, I appreciate
5 that. I can either take it in the next session or I
6 can take it post-hearing, but I am curious on that.
7 So if you can help me out on that later.

8 The domestic interested party states in its
9 brief that, and I'm quoting, that "Pricing practices
10 in the marketing of canned pineapple fruit also
11 illustrate the primacy of price and allow for quick
12 price adjustments in response to market conditions or
13 response to competitors' price. These pricing
14 practices demonstrate that market power lies not with
15 sellers like Maui or individual producers, but with
16 the large retail outlets such as," and that's BPI,
17 "and food service distributors," and those identified
18 are BPI as well.

19 How do you respond to that? I'm happy to
20 hear from either Mr. Lafave or our industry witnesses.

21 MR. LAFAVE: Since I'm not an expert on that
22 I'll turn that over to Mr. Shiraiwa.

23 MR. SHIRAIWA: I'm sorry, I don't think I
24 understand the question.

25 COMMISSIONER KOPLAN: Do you want me to read

1 it again?

2 MR. SHIRAIWA: Can you restate it?

3 (Pause.)

4 MR. SHIRAIWA: I think yes, in certain
5 extent that large retailer will be responsible for
6 deciding the market price.

7 COMMISSIONER KOPLAN: You believe that. And
8 what about food service distributors as well?

9 MR. SHIRAIWA: I cannot really speak for
10 food service as I'm not involved in food service.

11 COMMISSIONER KOPLAN: But you do agree with
12 respect to the large retail outlets.

13 MR. SHIRAIWA: Generally we get a lot of
14 people exchange information and usually those will
15 come out first.

16 COMMISSIONER KOPLAN: Thank you for that.

17 Let me stay with the industry witnesses.

18 Maui lists in its brief several responses
19 from subject Thai exporters that admit that upon
20 revocation they would increase their shipments to the
21 U.S. and in some cases significantly, and that's at
22 pages 28 and 29 of their brief. The details of that
23 are business proprietary information.

24 They also list a number of purchaser and
25 importer responses on pages 32 and 33, many of which

1 indicate that if the order is revoked they would
2 purchase more low priced Thai CPF.

3 Without getting into the BPI, assuming that
4 those statements have been made, why wouldn't that
5 happen?

6 MR. LAFAVE: I think that the main reasons
7 that we would give are the same ones that I've stated
8 a couple of times. That is that these other
9 companies, we've heard a number that there might be 50
10 companies out there. Most of those companies have
11 never exported to the United States and seem to have
12 no interest in exporting to the United States. In
13 fact Ms. Tantipipatpong tried to interest a number of
14 other producers in participating in this proceeding
15 and had a very tough time coming up with the eight who
16 did. But a number of those have never exported to the
17 United States.

18 COMMISSIONER KOPLAN: Could you provide some
19 detailed documentation on that for purposes of post-
20 hearing?

21 MR. LAFAVE: We can provide a statement, but
22 I don't know if there's anything more than that. It
23 was done orally.

24 COMMISSIONER KOPLAN: So there's nothing you
25 could expand on that. Thank you.

1 Let me stay with you if I could, Mr. Lafave.
2 You claim in your brief, and I'm quoting, "The subject
3 producers have established markets in Europe, Japan,
4 Canada, Russia, Eastern Europe and Australia that they
5 will not relinquish if the antidumping duty order is
6 revoked."

7 That assumes that there aren't any price
8 incentives to shift to U.S. purchasers. Tell me, how
9 do U.S. prices for CPF currently compare to prices for
10 the same products in those third country markets? Are
11 you able to provide me with --

12 MR. LAFAVE: I think actually Ginny may be
13 able to expand on this, but if the price to Europe is
14 lower, it's also a standard grade product. It's also
15 a lower quality product that's being sold there. And
16 also a product that cannot be shifted to the United
17 States markets because it's not a choice quality
18 product.

19 Also Ginny testified that the markets that
20 do take choice quality products, which she identified
21 as the UK and Scandinavia, in fact the pricing there
22 is higher than it is in the United States so there
23 would not be an incentive to shift product from those
24 markets to the United States either.

25 COMMISSIONER KOPLAN: Thank you.

1 I don't think I have anything further for
2 this session.

3 CHAIRMAN PEARSON: Commissioner Okun?

4 COMMISSIONER OKUN: Thank you, and let me
5 join my colleagues in welcoming you here this
6 afternoon. We appreciate the long distances you've
7 traveled to be here and your willingness to respond to
8 our questions.

9 Let me turn back to this question of the
10 different, whether the fact that mostly standard is
11 going to the EU prevents shifting back to the United
12 States market in the event the order was lifted. And
13 maybe Ms. Tantipipatpong, maybe you could help me.

14 Is there anything further you can provide on
15 the record to show that everything going into the EU
16 is actually standard or what the breakdown is between
17 standard, choice and fancy in the EU market? I don't
18 think I recall seeing that in the brief. Mr. Lafave,
19 you can correct me if it's wrong.

20 MS. TANTIPIPATPONG: I will be able to do it
21 on behalf of TPC but it will be difficult to do it for
22 all the industry.

23 What I can do possibly is to show maybe a
24 few specifications from the customer to say in what
25 quality grading they are willing to accept.

1 COMMISSIONER OKUN: And to the extent there
2 might be, I don't know how readily available this is,
3 but large customers in the EU who could provide
4 anything on what they purchased, that might help as
5 well in trying to understand that.

6 MS. TANTIPIPATPONG: I will submit that to
7 Mr. Lafave for the post-hearing.

8 COMMISSIONER OKUN: Terrific.

9 I'm not sure if you mentioned this in your
10 direct, but does your company ship to Australia? And
11 what grade do you ship to Australia?

12 MS. TANTIPIPATPONG: We have both standards
13 and choice quality.

14 COMMISSIONER OKUN: In the public session
15 can you give me a percentage breakdown of what percent
16 standard versus choice into that market?

17 MS. TANTIPIPATPONG: At this time the choice
18 represents about 20 percent of our sales to Australia;
19 80 percent still in standard quality.

20 COMMISSIONER OKUN: Eighty percent of those
21 sales to Australia are standard quality.

22 MS. TANTIPIPATPONG: Yes.

23 COMMISSIONER OKUN: In terms of, one of the
24 arguments made by the domestic industry, and I'll put
25 this first to you Mr. Lafave, although Mr. Shiraiwa,

1 you might be able to have first-hand knowledge of it.
2 Which is on this record as opposed to the first review
3 we actually see more direct competition in retail in
4 the first private label than we did during the first
5 review. That there's actually been product moved into
6 there.

7 I wanted you to comment on that. Again, in
8 the event the order is lifted whether that competition
9 there would further increase, or whether you dispute
10 domestic industry's argument that there is more
11 competition on this record than we saw during the
12 first review?

13 MR. LAFAVE: That came as a surprise to us
14 as well, and we don't have an explanation for it.

15 COMMISSIONER OKUN: The surprise being the
16 numbers themselves in that --

17 MR. LAFAVE: Yes.

18 COMMISSIONER OKUN: So meaning that you
19 don't represent --

20 MR. LAFAVE: These characterizations were
21 made by the importers, not by us. The foreign
22 producers. We don't know whether the importers are
23 putting a different interpretation on those terms this
24 time than they put on them last time, or whether there
25 has been a real change in the market, frankly.

1 COMMISSIONER OKUN: What about, and I think
2 you started to respond to this, Mr. Shiraiwa, in
3 regard to the food service sector. You don't sell to
4 food service, was that your response?

5 MR. SHIRAIWA: That's correct.

6 COMMISSIONER OKUN: One of the, as you
7 probably heard, one of the issues we discussed with
8 the panel this morning is that to the extent during
9 the first review we saw and commented on the fact that
10 there was price competition within a tier, we didn't
11 at that point comment on or make observations about
12 whether one channel influenced another channel.

13 As I understand the domestic industry's
14 argument, it's that if we look at the record evidence
15 we see increased imports into the food service sector
16 and therefore if the order is lifted we will see
17 increased price competition.

18 You might not be the right person to comment
19 on it, but my question is, is there anything about the
20 imports that would limit them going into the food
21 service sector, versus the retail sector?

22 MR. SHIRAIWA: There is a huge difference
23 between retail and food service because retail is
24 mainly 20 ounce can size versus retail is what we call
25 18 which is, I don't know how much but is probably

1 around 108, which is a very different can size. So
2 it's unlikely to see the shift between those two
3 categories.

4 COMMISSIONER OKUN: Maybe it's best to you,
5 Ms. Tantipipatpong, the Thai industry has the
6 capability to make the larger size cans?

7 MS. TANTIPIPATPONG: Yes, we do. If I
8 answer your earlier question, for the food service of
9 course some customers may want to take lower quality,
10 standard quality, and some customers want to take
11 choice quality. Depending on who are the users. But
12 today with the concern on the food safety, retailers
13 of industrial uses or food service, like large
14 restaurant chain, they have very detailed
15 specifications on the product. At the end they do not
16 want to compromise on the quality and get into the
17 problem of the food safety issue.

18 So the concern of Petitioner when they
19 mention about 60 million cases of production capacity
20 in Thailand, I think it was exaggerating. We have to
21 look into what is the fruit availability in Thailand,
22 and also the labor availability. As of today with the
23 economy growing in Thailand we experience a lot of
24 labor shortage. We will not be able to increase the
25 labor so easily.

1 The government is also controlling on the
2 import of the foreign workers to work in Thailand. We
3 all need to get licensed in the court in order to find
4 enough workers to work in the factories or even for
5 the farm.

6 So within that 60 million cases as claimed
7 by the Petitioner, we would never achieve that level.
8 We can look at what is the historical export volume
9 from Thailand and you will see that we do not think we
10 would ever get close to that number.

11 COMMISSIONER OKUN: On that, and I don't
12 know if this goes to you Mr. Lafave or not, but one of
13 the domestic industry's argument has been that if we
14 look at those imports that came out from under order
15 and the fact that they increased, the import numbers
16 increased into the market, that those trends are
17 indicative of what would happen to subject imports if
18 the order were lifted.

19 I've heard your argument with regard to this
20 particular point, shipping standard or shipping
21 choice, that we're not shipping choice so we therefore
22 couldn't ship to these markets.

23 Is there anything about those companies who
24 came out from under the order that is different, that
25 distinguishes why they behaved as they did when the

1 order was lifted, vis-a-vis the rest of the subject
2 imports that you can speak to.

3 MR. LAFAVE: First of all, I've tried to
4 make this point a couple of times. They've been the
5 largest exporters both before and after the
6 revocations. By far the largest exporters from
7 Thailand. So I'm not sure that there's actually been
8 a significant increase as the numbers that the staff
9 report shows indicates. The reason is that the staff
10 chose, over our objections I might add, to treat as
11 subject imports the imports from companies that are
12 now non-subject producers. So you can't really see
13 what their historical shipments have been as compared
14 to their current shipments.

15 The only data we really have is the TFPA
16 data which is incomplete as to Dole but which shows
17 that those companies have always been the major
18 companies in the market.

19 Another thing that's happened here, this
20 morning the Petitioners tried to say they were beaten
21 out of the market after the orders were revoked by
22 this increased volume from Thailand. But then it was
23 admitted that they developed this policy of
24 repositioning themselves in the market starting in
25 2002. First he said 2003, then he said 2002.

1 COMMISSIONER OKUN: Hopefully we'll have a
2 chance to go back on that, but before my time expires,
3 for purposes of post-hearing if you could look at
4 Table 4-7 in the staff report which are the subject
5 imports and where they were shipped to, and 4-8 which
6 includes non-subject and the markets they went into,
7 and tell me how you would have me view that. Because
8 if I look at it, it shows there's been a fair amount
9 of market shifting going on among subject imports, and
10 I guess I need more from you on why I wouldn't expect
11 that to happen if the order were lifted given the
12 price differentials.

13 With that, we may have time to go back to
14 that. I appreciate that for post-hearing as well.

15 Thank you, Mr. Chairman.

16 CHAIRMAN PEARSON: Commissioner Lane?

17 COMMISSIONER LANE: Thank you.

18 Mr. Lafave, my first question is for you.

19 It has been strongly suggested by the
20 domestic industry that the Commission should take an
21 adverse inference against the Thai producers that did
22 not respond to the questionnaires. Is there any
23 reason that I should not assume that the companies
24 that did not respond have both the capacity and the
25 intent to re-enter the U.S. market in large volumes

1 and at low prices?

2 MR. LAFAVE: Commissioner, all I can tell
3 you is to repeat what I told Commissioner Koplan which
4 is that we tried very hard to get these companies to
5 participate. Many of them have never exported to the
6 United States. Others have exported only a small
7 amount. And I took their decision not to participate
8 as an indication of lack of interest in the U.S.
9 market.

10 COMMISSIONER LANE: Thank you.

11 In your opinion, have there been any changes
12 since the last review that would warrant the
13 Commission revisiting the definition of like product?
14 And in answering, could you address whether to your
15 knowledge there is any domestic production of
16 pineapple in plastic or glass jars or any significant
17 amounts of Thai or other imports in plastic or glass
18 jars.

19 MR. LAFAVE: I believe there are imports in
20 plastic and glass jars, but Mr. Shiraiwa can speak to
21 that more directly. I believe that, but those of
22 course are non-subject merchandise.

23 In response to your first question, no, we
24 have not requested the Commission to revisit its like
25 product definition.

1 MR. SHIRAIWA: Your question was whether the
2 jars and cups took part of the --

3 COMMISSIONER LANE: Glass jars or plastic.

4 MR. SHIRAIWA: What's the effect of those to
5 the canned pineapple imports.

6 Yes, I believe many of the plastic cups you
7 see on the shelves are mostly imported right now.

8 COMMISSIONER LANE: Have there been any
9 changes since the last review that would warrant the
10 Commission revisiting the definition of domestic
11 industry?

12 MR. LAFAVE: No, I don't believe so.

13 COMMISSIONER LANE: In the original
14 investigation, in the first five year review the
15 volatility of Thai CPF supply was a factor in the
16 Commission's determination. Has the Thai industry
17 decreased the volatility of supply? And is there a
18 movement toward greater integration between producers
19 and farmers?

20 MS. TANTIPIPATPONG: The association has
21 tried to discuss among our members, and I have to
22 explain that our members are not every producer in
23 Thailand but the major producers including the four
24 non-subject producers. There has been some effort in
25 order to do contract farming so that the growers for

1 each of the factories will understand the demand and
2 try to tie between the producer and the growers, they
3 will try to eliminate the fluctuation in the supply.

4 But we have a problem about doing the
5 irrigation, so therefore sometimes we still rely on
6 the weather. Especially with the pattern of el Nino
7 that we saw in 1998, and you see that even in the
8 document from the Petitioner, saying that the market
9 share in 1998 has jumped up. But that's because the
10 supply, because of the weather pattern, the adverse
11 weather phenomena that has affected supply from
12 Thailand.

13 In fact we expect that in the year 2007 this
14 year we may experience another el Nino.

15 COMMISSIONER LANE: Thank you.

16 In the original investigation, CPF from
17 Thailand was considered by purchasers to be of a lower
18 quality than domestic CPF. More currently, Exhibit 1
19 of the domestic interested parties' brief includes a
20 Thai news article that suggests that the 2006 Thai
21 pineapple harvest tasted a bit sour.

22 Are there problems with uniformity or
23 quality of the Thai product? What steps, if any, has
24 the Thai industry taken to improve the quality of its
25 CPF?

1 MS. TANTIPIPATPONG: To improve the quality,
2 we have to improve the seeding which is the fruit
3 itself. If the fruit that comes into the factory does
4 not have a good quality, the processing in the factory
5 will be another step in order to select and do the
6 uniform grading in the processing. But in this case
7 we would have even more standard quality because only
8 the good quality pineapple, the pieces of the slicing
9 will be put together as choice.

10 In fact for Thailand to increase more choice
11 quality it would have to come from the plantation. If
12 we have good quality fruit then we have possibly
13 higher choice quality. But that still is coming back
14 to the fundamental of the lack of the labor in
15 Thailand that will prevent us from getting good
16 quality fruit.

17 MR. LAFAVE: I would just add to that, I
18 think this goes back to a question that Commissioner
19 Okun raised. I think the concept of second private
20 label was of a lower quality product. That's the way
21 it has been defined. And first private label being a
22 higher quality product.

23 The importers this time apparently
24 interpreted that question differently than they did
25 last time. That's why I say there may not be anything

1 that's really changed, but there may be. I just don't
2 know.

3 COMMISSIONER LANE: Thank you.

4 Could you please comment on your views of
5 the role of China in the canned pineapple fruit market
6 including its affect on market price?

7 MR. SHIRAIWA: I have started seeing more
8 and more Chinese pineapple products in my retail
9 section. Generally their quality is very low and they
10 tend to stay around on like Dollar Stores, on these
11 segments. They haven't really come up to the regular
12 retail stores probably because of the quality
13 difference.

14 I have opened their cans several times.
15 They are definitely in the standard grade level,
16 although they might call it choice.

17 COMMISSIONER LANE: That's all the questions
18 I have.

19 CHAIRMAN PEARSON: I'm curious about the
20 cyclical production pattern that we apparently see in
21 Thai pineapple production as illustrated in Figure 2-1
22 of the staff report on page 2-7.

23 Can anyone explain to me what causes that
24 cycle? Is it weather? Is the production cycle up and
25 down over perhaps four or five years from peak to

1 peak? It could be weather, it could be biological
2 factors, it could be economics. I'm just not sure
3 what it might be.

4 MS. TANTIPIPATPONG: In general, as I
5 explained earlier, that is true. The weather pattern
6 would affect the harvest volume of Thailand. We
7 experienced a very serious shortage back in 1998.
8 After that we, then we had slightly increase from the
9 year 2000, but then we experience a little bit of
10 shortage again.

11 In the year 1998 when we have the drop in
12 the export volume, that is due to, in the production
13 volume, that is due to the el Nino that affected Asia
14 at that time. Subsequent to that, then after the el
15 Nino it's followed by la Nina which is then another
16 wet year. So that's when the production volume has
17 increased, from the year 1999 to about 2000.

18 The weather pattern of this el Nino is
19 likely to repeat itself every four to five years, so
20 we see another dip in the year 2002 and that's why we
21 are expecting another round of reduction in 2007.

22 CHAIRMAN PEARSON: So it would be correct to
23 understand that the el Nino pattern is having an
24 influence on the weather in Thailand that is reflected
25 directly in what we see for production of pineapple in

1 Thailand.

2 Thank you. It wasn't clear to me exactly
3 what was leading to that.

4 Mr. Shiraiwa, are certain companies or
5 countries seen as price leaders in the U.S. market?

6 MR. SHIRAIWA: Certain countries?

7 CHAIRMAN PEARSON: I think I understood you
8 to say that you will purchase pineapple from several
9 different countries to bring to the United States, so
10 tell me a little more about the dynamics of the
11 competition in the U.S. market, where the product is
12 coming from and why.

13 MR. SHIRAIWA: First of all I don't think
14 there's any particular country that affects one or the
15 other. It depends on each country's condition,
16 whether they have a good crop, bad crop. In Thailand
17 they might have el Nino while the other places might
18 have less effect on that. So the market just
19 continuously fluctuates.

20 For myself I constantly look for good price
21 products in all of the areas including Indonesia and
22 Thailand and I have looked into Kenya one time. So
23 that's how we constantly look for the price. At the
24 same time I do focus on the quality of the product and
25 also the reliability of the supplier. Even if I get

1 the best price I don't want to get in trouble with our
2 customers because that will definitely end our
3 business with our customers.

4 CHAIRMAN PEARSON: Do you see relative
5 stability in the demand base in the United States in
6 terms of the purchasers and their requirements from
7 year to year? Do you have long term relationships
8 supplying certain firms in the United States?

9 MR. SHIRAIWA: Yes, and they have been
10 pretty stable. As for retail, we see actually a
11 little decline on the canned pineapple ads. I've seen
12 more and more cups and plastic jars taking over the
13 shelves.

14 As you know the supermarket has limited
15 space to sell the product and if these jars and cups
16 come into these places, obviously someone is going to
17 lose their volume.

18 CHAIRMAN PEARSON: So the requirements of
19 the retail customers have been changing in recent
20 years as there has been some development of a
21 preference for plastic packaging or packaging other
22 than steel cans?

23 MR. SHIRAIWA: They are different. Well for
24 canned pineapple I would say the requirements are the
25 same. They haven't changed. But they are looking

1 into more value added products, organic products,
2 those kind of, they are constantly looking for more
3 profitable items, so that is probably going to affect
4 in the future.

5 CHAIRMAN PEARSON: And it would be correct
6 to understand that your firm will procure pineapple
7 that's packaged in plastic cups if that's what the
8 customer wants?

9 MR. SHIRAIWA: Yes, and we currently are
10 purchasing cup fruits from China right now. Not
11 necessarily pineapple, but we are also looking into
12 launching a new innovative item on pineapple to get
13 that kind of business.

14 CHAIRMAN PEARSON: So from year to year your
15 shift in sourcing, emphasizing first one country and
16 then another, that will be primarily in response to
17 the supply conditions in those countries. Supply and
18 price conditions.

19 MR. SHIRAIWA: Yes. I wouldn't switch
20 everything, switch them back and forth, but I have a
21 good partner basically that we work with, a couple of
22 suppliers, and it depends on -- sorry price. The
23 share goes back and forth. But my overall volume
24 wouldn't change because of that.

25 CHAIRMAN PEARSON: Is it correct that you do

1 not view Maui Pineapple as being a competitor in this
2 segment of the marketplace that you're serving? Are
3 you serving exclusively the retail sector?

4 MR. SHIRAIWA: Yes, retail sector only. The
5 reason I said I don't compete with them is because I
6 do constantly hear about my pricing to customers.
7 They always compare my pricing is a little high
8 compared to who and who. Nobody speaks that, well
9 compares with Maui's price against our price, so I
10 don't hear their name. When I go to store I don't see
11 them any more.

12 MR. LAFAVE: I think we heard this morning
13 that they'd exited that segment of the market so it's
14 not surprising that he doesn't consider himself to be
15 in competition at this moment.

16 CHAIRMAN PEARSON: Okay.

17 So it's a market in which it's difficult to
18 characterize either a company or a country as being a
19 price leader to take the price up or down from one
20 year to the next.

21 MR. SHIRAIWA: It's a little complicated on
22 the retail side. On the brand side, there's
23 definitely, the brand leader Dole is definitely number
24 one and there is a trend that U.S. retail is going
25 through what they call the vendor elimination, is that

1 they want a reduced number of brands that carry on
2 their stores. Usually they go to one national brand
3 and one private brand, and usually the one national
4 brand is Dole.

5 So that is really tough part. Maui is
6 having difficulty, I am having difficulty selling
7 canned pineapple as well because of this very
8 competitive issue we have right now.

9 Private segment is again, the retail stores
10 try to differentiate themselves from the other
11 retailers by having high quality yet they want to have
12 economical price compared to national brand. So price
13 is important, but at the same time they do ask that we
14 need to provide them, basically match the quality of
15 national brands because they don't want to lose their
16 consumers by selling the cheap product.

17 CHAIRMAN PEARSON: And the major retail
18 customers that you work with, do any of them say I'll
19 accept pineapple from any location except not country
20 X because I had a bad experience?

21 Are the major purchasers willing to take
22 pineapple from any location? Or do they have some
23 restrictions?

24 MR. SHIRAIWA: Most of them will take
25 basically any origin, except I had one case that the

1 customer refused to take a product from Kenya and that
2 was when they had terrorist attacks and stuff so they
3 were concerned about security.

4 CHAIRMAN PEARSON: My light's about to
5 change. Thank you very much.

6 Madame Vice Chairman?

7 VICE CHAIRMAN ARANOFF: Thank you, Mr.
8 Chairman. And I'd like to join my colleagues in
9 welcoming this panel here this afternoon and thanking
10 you for traveling so that you could spend this time
11 with us.

12 Ms. Tantipipatpong, I want to clarify one
13 thing I thought I heard you say to one of my
14 colleagues. You were being asked about restrictions
15 on shipping standard grade to the United States
16 market. And I thought I heard you say that the reason
17 people wouldn't buy it in the U.S. was because under
18 USDA regulations anything less than choice grade had
19 to be labeled as sub-standard? Was that what you said
20 or did I mishear you?

21 MS. TANTIPIPATPONG: Let me clarify.

22 Actually what USDA has mentioned about the
23 labeling is that if it's below the choice it should be
24 declared on the label. But it's true that in the
25 market today you may see some standard quality but the

1 consumer may not understand the quality so much. But
2 at the end, reflect to whether they like the product
3 they buy or they don't like it, then of course it
4 would affect their next purchase.

5 Basically what we see in the U.S. market
6 today is the choice quality. Compared to what we
7 would ship to the EU.

8 VICE CHAIRMAN ARANOFF: I know that Mr.
9 Shiraiwa said that sometimes you might see a standard
10 quality product, for example in a Dollar Store,
11 somewhere at the low end of the market. If I went to
12 the Dollar Store and I picked up a can that was
13 standard quality, would it say FDA Standard Quality,
14 or would it say pursuant to U.S. law we must inform
15 you that this product is -- What would it say?

16 MS. TANTIPIPATPONG: Actually it doesn't say
17 anything at all. We just say the canned pineapple
18 sliced or chunks or crushed in juice or in syrup.

19 VICE CHAIRMAN ARANOFF: So you're not
20 actually required to put the fancy, standard or choice
21 on the label. Okay. Thank you for that
22 clarification.

23 Mr. Lafave indicated earlier in answering
24 questions about the number of subject producers in
25 Thailand, he said there may be 50 producers out there

1 are Petitioners claim. As the head of the Producers
2 Association, and I understand that it's a voluntary
3 membership organization, do you know how many
4 producers of this product there are in Thailand?

5 MS. TANTIPIPATPONG: The number may not be
6 very accurate. In fact a lot of factories producing
7 many different types of fruits using the same
8 facility, and maybe because of that, the Petitioner
9 may be adding up all the numbers of producers of
10 canned fruits. But the members of the Thai Food
11 Processors Association who are producing canned
12 pineapple fruit for export is about, if I remember
13 correctly, but if I can just submit that just for the
14 post-hearing, but around 25.

15 VICE CHAIRMAN ARANOFF: Okay, I appreciate
16 that answer.

17 During your testimony, Mr. Lafave, I
18 actually wrote this phrase down but you were making
19 the point that the subject Thai producers were never
20 the largest exporters to the U.S., either before the
21 orders went into effect or since. You used the phrase
22 they either never shipped to the U.S., not recently,
23 or in modest quantities.

24 MR. LAFAVE: I believe I said that before
25 and after the revocation they were not the major

1 exporters.

2 VICE CHAIRMAN ARANOFF: What I wanted to ask
3 you is there have been a number of recent sunset cases
4 in which arguments have been made to the Commission
5 along those lines, and also the arguments about having
6 established customers in third country markets. In
7 each of those cases what we have asked the parties
8 making those arguments to do is to provide us with
9 information on a company by company basis. For each
10 company that you represent, rather than making the
11 generalized statement that characterizes all subject
12 Thai production, especially considering that you don't
13 represent all subject Thai production. If you could
14 provide us for each of the companies that you
15 represent what their volume has been to the U.S.
16 before and after. I'd prefer to look back even before
17 the orders were in place, if that's possible, and with
18 respect to -- Well, let me ask you that first. Is
19 that something you think you can do?

20 MR. LAFAVE: No, I don't think we can get
21 data before 2000. I've tried. People don't retain
22 documents that long.

23 VICE CHAIRMAN ARANOFF: Not from the
24 questionnaires --

25 MR. LAFAVE: In their questionnaire

1 responses, I don't believe we have the questionnaires
2 from the original investigation on the record of this
3 case, and I don't have access to them.

4 From their questionnaires you can see what
5 they've been exporting since 2000 and you will
6 certainly see that the other Respondents are shipping
7 product to those other markets that I mentioned.

8 VICE CHAIRMAN ARANOFF: I understand that.
9 Obviously one of the arguments that you made is that
10 they wouldn't have an incentive to divert those
11 shipments. We have some pricing information on the
12 record which is relevant to that argument, but a lot
13 of times we also look at things like the existence of
14 long term contracts or absent contracts, long term
15 customer relationships where individual companies can
16 demonstrate that they've been selling around a certain
17 volume to particular third country market customers
18 over a period of years which is stronger evidence than
19 the generalized statement that one has third country
20 market customers.

21 So if there is anything that any of the
22 individual companies can submit that would bolster the
23 claims about the depth and extent of their
24 relationships with their third country market
25 customers, that would be very helpful.

1 MR. LAFAVE: We'll see what we can come up
2 with. It's a little bit late in the day to try to put
3 that together, but we'll see if we can come up with
4 something by the post-hearing brief.

5 I will just say that from my own experience
6 of looking at how TPC has organized its affairs, it
7 typically sells through one or two customers in each
8 market and has done so for years.

9 VICE CHAIRMAN ARANOFF: Okay. I appreciate
10 that, and any further detail that you can add.

11 How do transportation costs to the U.S.
12 market for Thai canned pineapple compare with
13 transportation costs to other major markets such as
14 the European Union or Japan or Russia?

15 MS. TANTIPIPATPONG: The freight rate from
16 Bangkok to EU at the moment is around 1,300 to 1,500
17 U.S. dollars per container. The freight to Japan is
18 less than that because of the distance. Of course the
19 freight to the U.S. is even more expensive because
20 it's further away from Thailand, especially if we have
21 to ship to the east coast.

22 VICE CHAIRMAN ARANOFF: One last question.

23 Mr. Lafave, in your brief you argue that
24 Maui is motivated by Byrd Amendment disbursements to
25 work to keep this antidumping duty order in place. Of

1 course the benefits of the Byrd Amendment are set to
2 expire later in 2007. In light of that, what weight
3 should we give to that argument?

4 MR. LAFAVE: It's too bad that we're not
5 meeting this time next year, then we'd know.

6 VICE CHAIRMAN ARANOFF: Okay.

7 I don't think I have any further questions
8 but I wanted to thank everyone on the panel for your
9 answers this afternoon.

10 Thank you, Mr. Chairman.

11 CHAIRMAN PEARSON: Commissioner Hillman?

12 COMMISSIONER HILLMAN: Thank you. A couple
13 of issues that I wanted to make sure I understand, Mr.
14 Shiraiwa.

15 I'm trying to understand the issue of how in
16 the retail segment, again, just sort of how the
17 contracts work for getting your supply. I'm trying to
18 understand, we heard testimony this morning about the
19 issue that at least from Maui's perspective they've in
20 essence been pushed out of the retail market and on
21 the other hand I've heard a lot of other statements
22 that would suggest that this was a conscious decision
23 on theirs to get out of the retail market.

24 I'm wondering if you can help me understand
25 how it works. In other words, if I'm trying to sort

1 out whether a company like yours or a company like
2 Maui, what would I be looking at in terms of do you
3 normally have a contract? Does it specify the volume
4 you're going to purchase, the exact can size that
5 you're purchasing? Do you specify what grade the
6 pineapple has to be? How long a term a contract is
7 that typically? Anything you can help me understand
8 about how the retail end of it does its purchasing of
9 pineapple.

10 MR. SHIRAIWA: First of all there is no
11 quantity contract except I'd say private label do have
12 buy in quantity, but my brand, we basically review the
13 price quarterly and it depends on market situation.

14 COMMISSIONER HILLMAN: How do you decide who
15 you're buying from? Do you go out there and in
16 essence request bids? I'm ready to buy X amount in Y
17 can size and give me an offer?

18 MR. SHIRAIWA: Purchasing, we keep
19 contacting the suppliers, constantly asking for
20 prices. Probably every two to four months we
21 constantly ask.

22 COMMISSIONER HILLMAN: How many people would
23 you typically contact?

24 MR. SHIRAIWA: At this moment probably two.

25 COMMISSIONER HILLMAN: So you go to two

1 different suppliers and say I'm looking to buy a
2 certain amount and please give me a price quote?

3 MR. SHIRAIWA: Yes. Basically we give them,
4 this is how much quantity we need for the next three
5 months, what is the price. Usually they give two
6 different prices. Not necessarily I push everything
7 to this one supplier. Usually I keep the other
8 suppliers as well just to have a communication and to
9 understand what the market price will be.

10 COMMISSIONER HILLMAN: For that quarter will
11 you give all of that bid to the one supplier that was
12 the lowest?

13 MR. SHIRAIWA: No. As I said, I would like
14 to keep getting all this information from different
15 suppliers so I can see overall the situation market
16 price. For instance, I will bid between Thai and
17 Indonesia. If Indonesia has a cheaper price they will
18 get the larger share, but I will still be buying from
19 Thailand just because I want to keep track of what
20 Thai price would be.

21 COMMISSIONER HILLMAN: When you say
22 Thailand, are yo contacting more than one company in
23 Thailand or are you going to multiple --

24 MR. SHIRAIWA: Currently one only.

25 COMMISSIONER HILLMAN: One Thai company and

1 one Indonesian company?

2 MR. SHIRAIWA: Yes.

3 COMMISSIONER HILLMAN: If somebody else, say
4 Maui or somebody else wanted to get your business, how
5 would they have to -- What would they do to do that?

6 MR. SHIRAIWA: If Maui wants the business I
7 will be open to --

8 COMMISSIONER HILLMAN: If they come to you
9 and say we'd like to start supplying you.

10 MR. SHIRAIWA: Yes. I would definitely look
11 into that.

12 COMMISSIONER HILLMAN: Do you typically get
13 that from other producers in Thailand or Indonesia or
14 elsewhere? We'd like to supply you?

15 MR. SHIRAIWA: Yes, I do.

16 COMMISSIONER HILLMAN: Would you say that's
17 pretty typical of how that works? In essence
18 quarterly contracts, if you will, based on their
19 soliciting you, not your soliciting them.

20 MR. SHIRAIWA: Yes, but for canned pineapple
21 actually soliciting is not really good for me. First
22 of all, I don't have a huge quantity that I may be
23 able to allocate to these customers, but moreover,
24 it's risky to start business with people I don't know.
25 For people I've dealt with or the factory I'm buying

1 from right now, is reliable. That's why I go to
2 there. That's why I constantly buy from them.

3 COMMISSIONER HILLMAN: When you're selling
4 product at retail you're selling it under a single
5 brand name?

6 MR. SHIRAIWA: Yes, Ace of Diamonds is my
7 brand. I only supply to one private label, that's
8 all.

9 COMMISSIONER HILLMAN: So one private label
10 and then your own brand?

11 MR. SHIRAIWA: Yes.

12 COMMISSIONER HILLMAN: Would you say that's
13 typical? Or again are a lot of the companies from
14 whom you might purchase also supplying you but also
15 supplying lots of other labels?

16 MR. SHIRAIWA: Yes.

17 COMMISSIONER HILLMAN: If you go into the
18 factory where you're purchasing your product, will you
19 see labels, many many different labels?

20 MR. SHIRAIWA: Lots of labels, yes.

21 COMMISSIONER HILLMAN: No other differences?

22 MR. SHIRAIWA: No.

23 COMMISSIONER HILLMAN: Same can, same
24 product, same everything, just putting a different
25 label on it.

1 MR. SHIRAIWA: Correct.

2 COMMISSIONER HILLMAN: In terms of the
3 relationship between the retail price versus your
4 price. Do you watch what's going on in the retail
5 market in terms of pricing?

6 MR. SHIRAIWA: Yes.

7 COMMISSIONER HILLMAN: I'm trying to
8 understand, is your price that you're willing to pay
9 for your pineapple more set by what's going on in the
10 retail market for canned pineapple? Or is it more set
11 by the price of canned pineapple, the cost from your
12 supplier?

13 MR. SHIRAIWA: Definitely the cost will
14 affect the retail price as the price we offer to the
15 retailers, the retailers add onto a certain percentage
16 of their profit and then put on the shelf. But if I
17 go too much above, there will be a limit of what I can
18 do with the canned pineapple, as a limit of pricing
19 that, for instance for my brand I cannot go over
20 Dole's price, so Dole's price will be like a maximum
21 price for me.

22 COMMISSIONER HILLMAN: I understand that.

23 If that were to happen, if you were to try
24 to go over Dole's price then the retailers simply
25 don't purchase any from you? Or they come back to you

1 and say you have to lower your price?

2 MR. SHIRAIWA: It probably will not happen,
3 but if we were to do that, I think my sales will drop
4 significantly and retail will probably ask me to
5 discontinue the product. They will stop buying from
6 me.

7 COMMISSIONER HILLMAN: Then once you've lost
8 that shelf space, then what? What would you have to
9 do to get it back?

10 MR. SHIRAIWA: Usually the retailers will
11 replace with the other brands if there is space. If I
12 want to get it back then I need to go back with
13 basically some offers, including the price and
14 probably some promotional programs to support our
15 sales at the retail stores.

16 COMMISSIONER HILLMAN: Okay. And the last
17 question on this. Do you have a sense of the portion
18 of canned pineapple sold at retail that has now
19 shifted into these plastics or jars? Any ball park
20 percentage of how much has moved?

21 MR. SHIRAIWA: I don't have the number with
22 me, but as I said before, if you look at the shelf of
23 the retailers you start seeing all these, especially
24 plastic cups taking over the spaces. It definitely
25 affects not only pineapple, all this canned food

1 section.

2 COMMISSIONER HILLMAN: Would you say that is
3 an add-on or it's a direct displacement of the canned?

4 MR. SHIRAIWA: Not direct replacement, but
5 there is some affect on the canned fruits.

6 COMMISSIONER HILLMAN: Five percent, ten
7 percent, or smaller than that?

8 MR. SHIRAIWA: I may be able to get back
9 with that number. In my region I have number. For
10 New England I do have IRI statistics that shows some
11 of the numbers, but --

12 COMMISSIONER HILLMAN: It can be provided in
13 the post-hearing brief.

14 MR. SHIRAIWA: Probably.

15 COMMISSIONER HILLMAN: If that's a
16 confidential number that would be very helpful. Thank
17 you.

18 With that, I have no further questions, but
19 thank you very much for your answers.

20 Thank you, Mr. Chairman.

21 CHAIRMAN PEARSON: Commissioner Koplan?

22 COMMISSIONER KOPLAN: I have nothing
23 further.

24 CHAIRMAN PEARSON: Commissioner Okun?

25 COMMISSIONER OKUN: Just a couple more

1 things for this session.

2 Ms. Tantipipatpong, you had discussed your
3 demand projections going forward. If there's anything
4 else you can put on the record to supplement what's in
5 the staff report at 4-24. You talked about, you were
6 basing them on the export numbers, and if your
7 association has any projections for future demand, if
8 you could put those on the record as well in those
9 markets.

10 MS. TANTIPIPATPONG: I'll see what we have
11 and I'll submit that in the post-hearing brief.

12 COMMISSIONER OKUN: Okay.

13 To the extent you've talked a fair amount
14 about Japan, does the Japan-Thai FTA have any
15 implications for pineapple?

16 MS. TANTIPIPATPONG: I understand that in
17 the FTA negotiation it's actually reciprocal. So one
18 product for the same product.

19 In this case in Okinawa, the production
20 volume of Okinawa is so small that we have asked the
21 Japanese counterpart whether they would want to lift
22 the quota, but the outcome from the negotiation as we
23 understand, they would still like very much to protect
24 the Okinawa producers. But the volume does not really
25 affect the trade because at the end almost entire

1 demand in Japan, they have to rely on the imports from
2 Thailand and Indonesia and Philippines.

3 COMMISSIONER OKUN: I appreciate that.

4 Mr. Lafave, I did want to give you the
5 opportunity, you had wanted to comment I believe on
6 the discussion we were having about what went on
7 during the '03, '04 time period.

8 MR. LAFAVE: What I wanted to say is that
9 Mr. Nishida testified this morning that they started
10 repositioning their, when he was asked when was the
11 decision made to exit the retail segment, he first
12 said 2003-2004, and later I heard him say 2002-2004.

13 So it's sort of a chicken and egg question
14 but it certainly doesn't seem to be true as Mr.
15 Magrath claimed that they exited it being hurried by
16 producers that had been revoked from the order because
17 that took place in August of 2004. They'd already
18 made their decision to limit their sales in certain
19 segments, and obviously one of those decisions was to
20 exit the retail segment.

21 COMMISSIONER OKUN: You're using the
22 information you used in your brief with regard to what
23 specific purchasers --

24 MR. LAFAVE: No, I'm not. I'm relying on
25 Mr. Nishida's statement earlier and the SEC filings of

1 Maui Land and Pineapple. Because they also, I have
2 their statement in their 2004, which I believe was,
3 which says, "Maui's current strategy is to expand its
4 presence in the fresh pineapple market while
5 selectively reducing its reliance on the processed
6 pineapple market. Therefore over recent years the
7 company has decreased the tonnage of fruit going into
8 the cannery and in 2004 began to commensurately reduce
9 the number of markets for processed pineapple that it
10 serves."

11 That's what it said in their SEC filing. So
12 this is obviously not a reaction to something that
13 happened in the middle or towards the end of 2004.
14 This is something that was in the works before that.

15 So when they withdraw from the retail market
16 that leaves unmet demand and if the established Thai
17 exporters to this market saw that opportunity and
18 expanded their shipments in order to meet that demand,
19 that can hardly be put down to constitute evidence A,
20 of injury by reason of subject imports; or B, the
21 evidence of what subject imports would do in another
22 year if this order were revoked.

23 COMMISSIONER OKUN: I appreciate you
24 clarifying what the point was on that. I appreciate
25 that.

1 I think my final question for you for the
2 open session, Mr. Lafave, you had begun your testimony
3 taking issue with some of the Petitioners exhibits
4 which go to whether the Thai government is or isn't
5 helping exports.

6 I guess the question is, even if I agree
7 with you that I don't think those are something that
8 presents a lot of evidence for us to rely on,
9 increased exports from Thailand because of government
10 policies, and even if I take the capacity data, don't
11 agree with Mr. Rosenthal that we should take adverse
12 inferences and go with the existing capacity based on
13 questionnaires, I still see a Thai industry that is
14 export oriented by any definition I've ever used in
15 any case I've ever done up here.

16 So my question for you is, I think for post-
17 hearing, is to address that for me. Let's say I'm not
18 relying on those two points that Mr. Rosenthal makes,
19 I still want to understand your arguments of where
20 this data, goes, and a lot of that I've already asked
21 for, which goes to can the products shift, would these
22 markets shift around. That's what I'm particularly
23 interested in in the post-hearing.

24 MR. LAFAVE: I think we've given our best
25 answer on that but we'll reiterate it in the post-

1 hearing.

2 COMMISSIONER OKUN: Best answer with more
3 evidence. If you just look at the data, and again,
4 you can look back at other cases we've done, if you
5 just look at the numbers out there of where subject
6 exporters are exporting, and they're not in their home
7 market and if they're not tied to long term markets.
8 Again, you've been asked to present evidence on that.
9 That's what I'm trying to understand. I think you
10 can't just look at a heavily export oriented Thai
11 industry and say the U.S. isn't an attractive market
12 when they were here before. Before the order.

13 MR. LAFAVE: Right. I think the answer is
14 that perhaps partly because of the order and perhaps
15 also because of increasing demand, these other
16 exporters have focused on these other markets. Our
17 best answer as to why they wouldn't ship here is that
18 the product that's sold in the EU is not of the right
19 quality that ships to the United States. The pricing
20 in the markets that do take choice quality product is
21 higher than the pricing in the United States. And
22 that they have relatively high capacity utilization
23 and growing demand in those markets that they have
24 traditionally served. Whereas the non-subject Thai
25 exporters have traditionally served this market.

1 So it was easy for them to increase their
2 volume when the opportunity presented itself. It's
3 not so easy for these others. That's one of the
4 questions I think would be confidential.

5 COMMISSIONER OKUN: Thank you very much for
6 those responses. I have no further questions.

7 CHAIRMAN PEARSON: Commissioner Lane?

8 COMMISSIONER LANE: I just have a few follow
9 up questions to Commissioner Hillman's questions about
10 plastic and glass.

11 Are the sales price of the product in glass
12 or plastic comparable to the prices in cans?

13 MR. SHIRAIWA: No, they are higher, and they
14 probably have a higher profit, too.

15 COMMISSIONER LANE: So they're higher and
16 have a higher profit?

17 MR. SHIRAIWA: Higher price per ounce.

18 COMMISSIONER LANE: What about the shelf
19 life of the plastic or the glass? Is it as long as
20 the canned?

21 MR. SHIRAIWA: No, canned will be much
22 longer than cups or glass. I know because I handle
23 cups, cups are generally about one year shelf life
24 versus pineapple could be two to three years.

25 COMMISSIONER LANE: Do the plastic or the

1 glass require refrigeration in the stores?

2 MR. SHIRAIWA: No.

3 COMMISSIONER LANE: And you're going to
4 provide us with what percentage you think of the Thai
5 product is now being sold in cans as compared to
6 plastic or glass?

7 MR. SHIRAIWA: Yes, but this is going to be
8 a limited area so I'm not sure if that's going to help
9 you, but I'll be able to provide that data.

10 COMMISSIONER LANE: Is there any difference
11 in shipping the product either in can or plastic or
12 glass?

13 MR. SHIRAIWA: No.

14 COMMISSIONER LANE: Thank you.

15 CHAIRMAN PEARSON: I have a couple more for
16 the open session.

17 Ms. Tantipipatpong, whenever there is a
18 review case and we see that some firms have worked
19 with the Department of Commerce to get the orders
20 lifted, I find myself wondering well, are other firms
21 considering doing that same thing? Do you know
22 whether companies in Thailand are currently working to
23 demonstrate to the Department of Commerce that they
24 are pricing fairly and thus should have the order
25 revoked?

1 MS. TANTIPIPATPONG: Are you referring to
2 doing this administrative review?

3 CHAIRMAN PEARSON: Yes.

4 MS. TANTIPIPATPONG: I believe so, but
5 information is confidential to each producer so they
6 do not disclose it. We would only know it when there
7 was the publication on the Federal Register.

8 CHAIRMAN PEARSON: If the order stays in
9 place we could expect continued efforts by firms that
10 currently are subject producers to become non-subject
11 producers?

12 MS. TANTIPIPATPONG: I do not really believe
13 that everybody would pursue on that, doing the
14 administrative review because actually the cost of
15 doing it is very expensive. The procedure is quite
16 complicated and we may need to retain legal counsel to
17 do that so that would add to the cost.

18 In such case, if some of the firms, some of
19 the producers that have good contacts with buyers in
20 Europe or some other countries, then they don't
21 benefit by incurring those costs in trying to get to
22 the U.S. market.

23 The same holds true for doing the sunset
24 review, when we're trying to ask all the producers to
25 respond to it. We said the cost will be born by the

1 association, there is no extra cost for each of the
2 producers to pay, but in fact some of them, this is
3 personal to the contact on the phone calling,
4 everything, they would just say they have no interest,
5 why would they have to reveal some of the confidential
6 information in order to submit to the sunset review?

7 CHAIRMAN PEARSON: Those points are well
8 taken, that for the smallest firms it would be
9 difficult to go through the process at Commerce to
10 have the order revoked, so this might be an approach
11 that would only be of interest to the larger and more
12 sophisticated firms.

13 The last question has to do with the
14 packaging of product. This order applies only to
15 pineapple that's packed in steel cans and we've talked
16 some about other forms of packaging.

17 If firms wanted to come to the U.S. market
18 without being subject to the order could they switch
19 packaging? Is there some of that work being done by
20 firms in Thailand?

21 MS. TANTIPIPATPONG: Yes, actually Dole
22 supplies both the plastic cups and the bigger plastic
23 jar out from Thailand and Philippines. There are also
24 other Thai producers who put in additional investment
25 in the plastic cup line. They do export it into the

1 USA.

2 CHAIRMAN PEARSON: As an example,
3 occasionally I go to a large big box retailer and I
4 buy a one gallon glass jar of dill pickles. This is
5 about four liters, so a large glass jar.

6 It occurred to me that if producers subject
7 to the order wanted to have access to the food service
8 market in the United States perhaps they could package
9 in large jars like this and there would be no
10 restriction from the order. Is this a strategy that's
11 possible?

12 MS. TANTIPIPATPONG: Yes, alternative
13 packaging, plastic or glass jar may not be an option
14 for food service because they consider food safety,
15 especially in the glass jar. They don't want to have
16 any glass pieces in case it's broken in the processing
17 line.

18 Another alternative is packing in aluminum
19 pouch. I'm sorry to maybe quote Dole again, but in
20 fact Dole has the product on the web site that they're
21 offering to their food service customers here in the
22 U.S. and also in Canada.

23 CHAIRMAN PEARSON: Thank you.

24 I have no further questions for the public
25 session.

1 Madame Vice Chairman?

2 Any other questions from the dais?

3 Do staff have questions for this panel?

4 MS. MAZUR: Mr. Chairman, staff has no
5 questions.

6 CHAIRMAN PEARSON: Do representatives of the
7 domestic industry have questions?

8 MR. ROSENTHAL: Yes we do, Mr. Chairman.

9 CHAIRMAN PEARSON: Please proceed.

10 MR. ROSENTHAL: Ms. Tantipipatpong, would
11 you say that TPC is typical of the other Thai
12 producers when it comes to the percentage of products
13 you produce that are choice versus standard?

14 MS. TANTIPIPATPONG: Yes. It also depends
15 on the growers that each of the factories have the
16 relationship. But in fact I have to say this, let me
17 backtrack a bit. There are two growing areas in
18 Thailand. The east and the south. The east tend to
19 have a bit better quality and that would include,
20 there are about three factories in the east at the
21 moment and they have on average better quality.

22 On the south, on average, the quality is not
23 as good as on the east. So you're talking about in
24 terms of production volume of TPC, that is typical of
25 the industry, I would say yes for the packers that are

1 located in the same area.

2 MR. ROSENTHAL: Thank you.

3 Are you familiar with Chulalonghorn
4 University in Thailand?

5 MS. TANTIPIPATPONG: Yes, I am.

6 MR. ROSENTHAL: Is it a university with a
7 good reputation?

8 MS. TANTIPIPATPONG: Yes.

9 MR. ROSENTHAL: Thank you.

10 A question for Mr. Shiraiwa, please.

11 I believe your statement in direct was that
12 you used to source from TPC until the antidumping duty
13 got too high and then you switched to non-subject
14 imports. Is that a correct characterization?

15 MR. SHIRAIWA: Yes.

16 MR. ROSENTHAL: Would you switch back to TPC
17 or a non-subject importer or one who is subject now if
18 the antidumping duty order were revoked?

19 MR. SHIRAIWA: As I said, I will switch to
20 TPC but not saying that I'm going to switch everything
21 to TPC. The reason for that is because TPC I know, we
22 dealt with and they have a very high quality product
23 and very reliable shipments that are supplied that I
24 can trust and they have a high quality. Price wise
25 sometimes they are kind of high. But yes, we'll

1 switch. But I would probably not consider other
2 subject suppliers as I don't know them or they might
3 be unreliable. It would take some time if I want to
4 start new business with other subject suppliers.

5 MR. ROSENTHAL: The last question.

6 How long have you been selling to the retail
7 market?

8 MR. SHIRAIWA: In the United States?

9 MR. ROSENTHAL: Yes, in the United States.

10 MR. SHIRAIWA: Since 2002.

11 MR. ROSENTHAL: When you began selling in
12 the retail market in 2002 was Maui Pineapple selling
13 in the retail market at that time with you, or against
14 you?

15 MR. SHIRAIWA: Again, I've never seen, there
16 is no competition, I didn't see any competition
17 between Maui and ourselves.

18 MR. ROSENTHAL: Thank you. That's all the
19 questions I have.

20 CHAIRMAN PEARSON: Thank you.

21 Let me express my appreciation to this panel
22 for the time and energy that you've devoted in
23 traveling here to help us learn more about this
24 product.

25 I'm well aware that all of those of you who

1 are involved in business have lots of other things you
2 could be doing if you weren't here, so I genuinely do
3 appreciate your presence.

4 Mr. Secretary, would it be reasonable to
5 have a five minute recess to set up the room for the
6 in camera session?

7 MR. BISHOP: Yes, Mr. Chairman.

8 CHAIRMAN PEARSON: Good. We are recessed
9 for five minutes.

10 (Whereupon, at 3:36 p.m. a recess was taken,
11 to resume in camera.)

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CHAIRMAN PEARSON: Okay. Let's see. Time check. The parties in support of continuation have a total of 13 minutes available. That's five for closing plus it would be nine remaining from the earlier proceedings. And in opposition to continuation have a total of 41 minutes left.

Is it the intention of parties to use all of their time, or would there perhaps be less required?

MR. ROSENTHAL: I don't know yet. It's my intention not to use all of my time, but I have a few points for rebuttal that I want to make.

CHAIRMAN PEARSON: You would like to offer rebuttal and then break --

MR. ROSENTHAL: If you don't mind, I'll just do it all right here at once. I think I'll probably have a total of 10 minutes.

CHAIRMAN PEARSON: Okay. Good. Well, we'll cut him off at 13 if he goes over that. Please proceed, Mr. Rosenthal.

MR. ROSENTHAL: Thank you. I want to respond to a few points made earlier, or amplify some. It's hard to imagine that anyone has more to talk about at this point, but I believe I do.

First of all, I want to highlight what I

1 regard as the admissions by Respondents on the record
2 concerning the primacy of price in the marketplace for
3 canned pineapple. In a series of questions by
4 Commissioner Hillman about how the pricing process
5 works to Mr. Shiraiwa, he made it very, very clear
6 that he would switch suppliers to him based on price.
7 They all had to be qualified, but price was important,
8 and if one source had too high a price, he would
9 switch to the other one. He wouldn't get rid of the
10 other one because he wanted to have multiple sources,
11 but price was paramount to his purchases.

12 He also made it clear that price is
13 paramount when it comes to reselling that product to
14 the retail segment of the market. He made it very
15 clear, and the statement was along the line that if
16 his price got too high with respect to a retail
17 customer, for example, if the Dole national brand
18 price were lower, he would lose the sale or have to
19 lower his price.

20 Similarly, he was facing direct competition
21 by others in the tier that he was selling, and he had
22 to compete on price. Notably, he dismissed Maui as
23 competition there because their price was much higher
24 than the pricing that he is seeing from other Thai and
25 other sources of imports.

1 So it's very clear that despite what you
2 might have seen in some of the purchasers'
3 questionnaires or other testimony presented, price is
4 crucial in the retail segment, as it is in the rest of
5 the pineapple market.

6 Along those lines -- I'm sorry if I
7 mispronounce names -- I apologize -- he made it very
8 clear, Mr. Shiraiwa, that you are able to get shelf
9 space at the retail market by lower price and price
10 promotions, and you lose shelf space, and you lose
11 sales by going over Dole and your other competitors.

12 Mr. Shiraiwa made a similar comment in
13 response to a question by Chairman Pearson when he
14 admitted that he sometimes had trouble competing on
15 price, and he admitted that, again, Maui, from his
16 perspective, hadn't been able to be competitive on
17 price. He kind of dismissed them because their price
18 was so high, not because price wasn't important.

19 As promised, we will try to provide you the
20 documentation that, I understand, is so crucial to
21 your decision-making when it comes to the chicken-and-
22 egg question, whether the Maui decision to retreat
23 from the retail market was driven by price
24 competition, or was it driven by other factors?

25 Moving from the issue of the primacy of

1 price and the issue of Maui's participation in the
2 retail segment, let me turn to the issue of whether
3 revocation of the order would change the behavior of
4 the producers that are currently subject to the order.

5 Commissioner Okun asked several different
6 times and several different ways, what would prevent,
7 for example, the Thai producers moving in a greater
8 way into food service? There really wasn't a good
9 answer presented by any of the witnesses. Mr.
10 Shiraiwa, I think, offered can size as a possible
11 reason. I don't think he had real conviction in that
12 answer, and I think most people would believe that can
13 size was a real impediment to the Thai producers.
14 They know how to make cans of different dimensions.

15 The witness for the Thai producers, the
16 association, really didn't answer, other than to say
17 that there wasn't enough capacity. Interestingly
18 enough, on that capacity issue, as not only is she
19 president of the TFPA; she is also with the TPC
20 Company, and she said that she anticipated that if the
21 order were revoked, that TPC would increase their
22 production by about 10 percent. What she also said
23 was that half of that, or 50 percent, would go to the
24 U.S. market, and half for the other markets, including
25 Europe.

1 One of the questions that raises is that if
2 50 percent would go to the U.S. market, by definition,
3 50 percent of that has to be at least choice. She
4 claimed that there wasn't enough choice to go around
5 or supply this market, but 50 percent is choice.

6 When I asked her, Is your production of
7 choice versus standard typical for the industry? she
8 said, yes. So if you extrapolate the TPC experience
9 to the other Thai producers who are capable of
10 supplying the market, at least 50 percent of their
11 production should be choice and able to be directed to
12 the U.S. market.

13 Let's see here. One of the interesting
14 aspects of the TPC comment on the increase of the
15 exports of 10 percent, where they said it wouldn't
16 hurt Maui, one of the things that is interesting is
17 that the TPC is not alone in their ability to increase
18 their exports. If every one of the companies that is
19 currently subject to order just increased by 10
20 percent, that would amount to what is exactly Maui's
21 current market share of the U.S. market.

22 So what claims to be a small increase by
23 that one company, if extrapolated to the other Thai
24 producers, would essentially wipe out Maui, at least
25 when it comes to the volume issue.

1 We spent a lot of time talking about the
2 nonresponsiveness of the producers. We will submit
3 for the record the 1999 study by the Thai University
4 that indicates that there are 60 million cases of
5 capacity and 50 percent capacity utilization as of
6 1999. The Thai industry hasn't shrunk since then; it
7 has grown, and I urge you to take a look at that.
8 Whether or not you want to rely on adverse inferences,
9 what you cannot rely on, based on this record, are
10 simply the questionnaire responses supplied by the
11 Thai producers.

12 The rest of the rebuttal that we have we'll
13 provide for in a post-hearing brief. I just want to,
14 first of all, thank you for your attention to this
15 matter.

16 Commissioner Koplan, I agree with you. At
17 least, the in-camera session was perhaps the only
18 useful in-camera session I've ever participated in.
19 I'm glad you think it was useful. It allowed, I
20 think, both parties to get on the record some
21 important information. Of course, I always get
22 nervous when a commissioner, such as Commissioner
23 Aranoff, says, I don't get a chance to usually do
24 this. When she starts that way, I get very anxious.

25 But I'm hoping that the candor that we've

1 been able to provide will do a couple of things:
2 number one, demonstrate the absolute conviction that
3 the Maui Pineapple Company has about the facts here
4 and the belief in what will happen to the company and
5 its workers if revocation takes place. Maui is not in
6 this for the short-term dollar, not for the CDO money.
7 They brought this case well before the Byrd Amendment
8 was ever even conceived of.

9 Now, I would love to come back, at Mr.
10 Lafave's invitation next year, and see whether we have
11 something to talk about there. I don't think we'll
12 have that opportunity. But the fact of the matter is,
13 as unsatisfying as the state of events are today and
14 as difficult the financial situation that Maui is in
15 today, if you revoke this order, things will get
16 worse, and that's how you have to look at it.

17 It is not a current injury analysis. It is
18 what's going to happen if the order is revoked, and I
19 don't think that anyone can look at the nature of the
20 Thai industry, the nature of the subject producers,
21 their behavior pre-order, and the nature of the U.S.
22 market, and conclude that anything but disaster will
23 befall the domestic pineapple industry if the order is
24 revoked.

25 I urge you, when the Commission has a

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1 complete record, to reach an affirmative determination
2 in this case. Thank you.

3 CHAIRMAN PEARSON: Thank you, Mr. Rosenthal.
4 Mr. Lafave, please come forward.

5 MR. LAFAVE: Thank you.

6 CHAIRMAN PEARSON: Do you expect to use
7 something less than 41 minutes?

8 MR. LAFAVE: I expect to be brief.

9 CHAIRMAN PEARSON: Excellent. Will you
10 combine rebuttal with closing?

11 MR. LAFAVE: Yes, I'll combine.

12 CHAIRMAN PEARSON: Excellent. Okay. Thank
13 you.

14 MR. LAFAVE: First of all, I just need to
15 respond to a couple of things that were just said.
16 When he spoke of Ms. Tantipipatpong's testimony about
17 choice and standard, I think he mixed up 50 percent of
18 an increase in production with the quantity that would
19 be choice, and that's not exactly what she said. What
20 she said is that they would increase production by
21 about 10 percent, and about 50 percent of that would
22 be available for the U.S. market, which she quantified
23 as being less than one percent of the U.S. market.

24 That was not a comment on what was choice
25 and what wasn't, and it didn't mean that it's always

1 50 percent is choice. What they are saying is that,
2 of the total quantity that they have there, about 50
3 percent of that 10 percent increase would be available
4 for the U.S. market, which, obviously, would have to
5 come out of their choice production.

6 She also testified separately that more than
7 50 percent of her production is standard. She didn't
8 testify as to how much is fancy. So it's quite clear
9 that what's choice is considerably less than 50
10 percent.

11 Secondly, Mr. Rosenthal emphasized Mr.
12 Shiraiwa's comments on competition based on price, but
13 I heard him say something very different. I heard him
14 say, first of all, that he uses established suppliers.
15 He doesn't take bids from lots of different people.
16 It's not a true commodity market because he doesn't go
17 out and ask for bids from 10 or 20 suppliers and
18 simply accept it. No, he relies on established
19 suppliers.

20 It indicates that there is a barrier to
21 entry here because you have to become an established
22 supplier before importers will buy from you. You have
23 to establish your reliability, and he also expressed a
24 lot of concern about quality, not the qualities that
25 Mr. Nishida was talking about, the so-called "fancy,

1 choice, and standard," and maybe it would be a case of
2 whether the pineapple fell below choice standard to a
3 standard grade when it was represented as being
4 choice.

5 But I think what he was concerned about was
6 whether the pineapple was other than what it is
7 represented to be and whether that would create
8 customer complaints that might cause him to lose shelf
9 space. That was of great concern to him, it's quite
10 obvious. So there are other factors here besides
11 price.

12 With respect to the capacity in Thailand,
13 these capacity numbers are difficult to evaluate
14 because we know, from the testimony of Ms.
15 Tantipipatpong and from the foreign producers'
16 questionnaire responses, that the actual capacity now
17 is constrained by shortages of labor in Thailand and
18 by fruit availability.

19 I think there is a great deal of reason to
20 question that 60 million case figure. It's probably
21 considerably less than that. Something considerably
22 less than 50 percent of it is choice. Those people
23 who are producing that product are exporting it to
24 established markets of their own.

25 I'm not going to repeat everything that we

1 said, or anything that we said, earlier except to say
2 that the Compass model strongly suggests that there
3 would be no price effect if the order was revoked and
4 that the volume effect would be negligible and that
5 the effect on gross revenues would be negligible.

6 Two really important things that happened
7 today is Mr. Nishida admitted in open session that he
8 has exited the retail segment. That means that they
9 are no longer producing and selling 20-ounce can sizes
10 or eight-ounce can sizes to supermarket chains.

11 I would propose to the Commission, if it
12 weren't inclined to continue the order for other
13 reasons, that it consider partially revoking the order
14 as to can sizes of 20 ounces or less. That would
15 continue protection in the segments that Maui
16 continues to participate in while freeing the Thais
17 who are currently subject to this order to compete in
18 a market in which Maui is not participating. Thank
19 you very much.

20 CHAIRMAN PEARSON: Thank you, Mr. Lafave.
21 Mr. Secretary, are we ready to go to
22 closing?

23 MR. BISHOP: Yes, sir, the closing
24 statement.

25 CHAIRMAN PEARSON: Is it okay for me to read

1 the closing statement?

2 MR. BISHOP: Yes, please.

3 CHAIRMAN PEARSON: It's been a long day.

4 Okay.

5 Post-hearing briefs, statements responsive
6 to questions and requests of the Commission, and
7 corrections to the transcript must be filed by January
8 29, 2007. Closing of the record and final release of
9 data to parties is March 6, 2007, and final comments
10 on March 8, 2007. Thank you very much. This hearing
11 is adjourned.

12 (Whereupon, at 6:30 p.m., the hearing in the
13 above-entitled matter was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Canned Pineapple Fruit from
Thailand

INVESTIGATION NOS.: 731-TA-706

HEARING DATE: January 18, 2007

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: January 18, 2007

SIGNED: LaShonne Robinson
Signature of the Contractor or the
Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

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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: Bernadette Herboso
Signature of Court Reporter