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

On behalf of A. Zerega's Sons, Inc.; American Italian  
Pasta Company; Dakota Growers Pasta Company, Inc.; New  
World Pasta Company; and Philadelphia Macaroni Company:

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1 that contain information you wish classified as  
2 business confidential your requests should comply with  
3 Commission Rule 201.6.

4 Madam Secretary, are there any preliminary  
5 matters?

6 MS. ABBOTT: No, Mr. Chairman. The  
7 witnesses all have been sworn, and we're ready to go  
8 with opening remarks.

9 (Witnesses sworn.)

10 CHAIRMAN PEARSON: Excellent. Let us then  
11 proceed with opening remarks.

12 Mr. Rosenthal, do you have something to do  
13 with that?

14 MR. ROSENTHAL: I do. Thank you. Good  
15 morning, Mr. Chairman, members of the Commission and  
16 Commission staff. I'm Paul Rosenthal with the law  
17 firm of Kelley Drye Collier Shannon representing the  
18 domestic pasta industry in this case.

19 It's always a pleasure to appear before you  
20 and I'm happy to be here, as is the domestic pasta  
21 industry or the representatives. It's an important  
22 matter for us and for the industry so we are delighted  
23 to be here.

24 I have to comment that of course we were a  
25 little disappointed that the Respondents claimed that

1 they were going to participate in this review and have  
2 not done so. We'll start first with the Turkish  
3 Government who initially caused this case not to be in  
4 expedited review by claiming or representing that they  
5 would supply information to the Commission and defend  
6 the rights of the Turkish pasta industry and that the  
7 Turkish pasta industry would fully participate in this  
8 review.

9 Of course, when the questionnaires were sent  
10 out the Turkish Government then stated it was not  
11 coordinating with the Turkish pasta industry to submit  
12 responses and in fact have no ability to effect their  
13 submission of information to the Commission.

14 Of the 24 questionnaires sent to Turkish  
15 pasta producers, only one response was received, and  
16 of course as you know, the Italian Respondents who  
17 agreed initially to testify withdrew at the last  
18 moment.

19 So it's a little frustrating, and I'm sure  
20 for you, to be spending resources on a proceeding  
21 where the Respondents have provided so little data.  
22 At this point you have basically publicly available  
23 information on the Turkish industry, and you have as  
24 much of that as you did before your staff did all the  
25 efforts to collect foreign producer data.

1           As we'll discuss, however, the publicly  
2 available data shows a huge pasta industry in Turkey  
3 with massive capacity to produce pasta and continued  
4 interest in exporting low-priced pasta to the U.S.

5           The Italian pasta producers were equally  
6 poor in responding to your questionnaires. Of 130 dry  
7 pasta production facilities in Italy, only five  
8 companies representing just 5.5 percent of Italian  
9 pasta production responded to questionnaires.

10           None of the Italian producers identified as  
11 members of the so-called Ad Hoc Coalition that filed  
12 the prehearing brief even bothered to answer any of  
13 the Commission questionnaires. Perhaps that's why  
14 they chose not to appear today.

15           As is true of Turkey, however, publicly  
16 available information on the Italian pasta industry  
17 indicates that it remains a massive capacity to  
18 produce pasta, remains export oriented and continues  
19 to export significant volumes of pasta to the United  
20 States.

21           Our witnesses will describe the numerous  
22 efforts by various Italian producers to circumvent the  
23 existing orders, and those efforts persist to this  
24 day.

25           While they're not here today, the Ad Hoc

1 Coalition who filed the prehearing brief actually  
2 expressly conceded some important points, and we want  
3 to highlight those.

4 First, they acknowledge, as we have alleged,  
5 that the Italian pasta industry has unused capacity.  
6 At present the excess capacity in Italy, a country  
7 that remains the world's largest producer and exporter  
8 of dry pasta, as well as the country targeting pasta  
9 exports at the U.S. market, is a strong indication of  
10 likely increased volumes of imports if revocation  
11 occurs.

12 The Respondents also conceded that the U.S.  
13 industry has unused capacity. Again, we agree with  
14 that. The existence of unused U.S. capacity is  
15 placing this highly capital intensive industry in a  
16 vulnerable condition at present, a condition that will  
17 quickly lead to injury if revocation occurs.

18 Finally, the Respondents, such as they are,  
19 concede that demand for traditional pasta is down. As  
20 the Commission's report reveals, demand for dry pasta  
21 has indeed been flat over the review period,  
22 reflecting reduced pasta consumption due to dietary  
23 concerns.

24 Under these circumstances and given other  
25 difficulties the domestic industry is facing here such

1 as increased wheat costs and increased energy costs,  
2 revocation of these orders would surely lead to a  
3 rapid surge in the volume of low-priced imports from  
4 both Turkey and Italy, causing a continuation or  
5 recurrence of material injury to the domestic pasta  
6 industry.

7 Thank you.

8 CHAIRMAN PEARSON: Thank you, Mr. Rosenthal.  
9 Let me just say that I appreciate the fact that the  
10 domestic industry did come to this hearing because  
11 otherwise we would have a particularly small turnout.

12 I don't know that it's entirely bad to have  
13 a hearing on pasta even without Respondents because we  
14 can learn something about an industry, and that is  
15 certainly a good thing.

16 Enough of my thoughts. Let's turn now to  
17 the panel. I welcome all of you and appreciate the  
18 fact that you've traveled to get here and taken at  
19 least one day off to do this, probably more to try to  
20 get Mr. Rosenthal ready. Please proceed.

21 MR. ROSENTHAL: It takes longer than one day  
22 for them to get me ready.

23 We have a very distinguished panel of  
24 witnesses today. I won't go through their biographies  
25 prior to their speaking, but I would just like to

1 start with our first witness, Scott Greenwood of New  
2 World Pasta.

3 MR. GREENWOOD: Good morning. My name is  
4 Scott Greenwood, and I'm the chief executive officer  
5 of New World Pasta Company, a position I've held since  
6 December 2005.

7 Prior to joining New World I was involved in  
8 food and agricultural businesses at General Mills,  
9 Unilever, Dole Food Company and most recently at  
10 Parados Corporation Worldwide, a supplier to bakeries.

11 Today I'd like to discuss the history of the  
12 antidumping and countervailing duty orders on certain  
13 pasta from Italy and Turkey and the benefits that  
14 these orders have provided the U.S. pasta industry  
15 during the last 10 years.

16 First, however, I'd like to provide a little  
17 background on my company. At the time these cases  
18 were first filed, Hershey Pasta Company was the  
19 largest producer of pasta in the U.S. and a lead  
20 Petitioner, along with Borden Foods, in these  
21 investigations.

22 In 1999, Hershey elected to get out of its  
23 relatively unprofitable pasta lines and sold the  
24 business to a new, privately held company which became  
25 New World Pasta. Shortly thereafter, Borden Foods

1 also decided to get out of the relatively unprofitable  
2 pasta business, selling several of its existing brands  
3 to AIPC and a number of other brands, as well as its  
4 manufacturing facilities, to ourselves, to New World  
5 Pasta.

6           These transactions took place in 2001 around  
7 the time of the Commission's first sunset review of  
8 the orders. Unfortunately, not long after New World's  
9 investments in these new facilities the market for  
10 pasta in the U.S. became even more difficult due in  
11 part to the low carb diet fad, and New World  
12 experienced a severe decline in profitability due to  
13 these and other factors.

14           In an effort to address these changing  
15 market conditions, New World shuttered production  
16 facilities in Chicago, Illinois, and Lebanon,  
17 Pennsylvania, in 2001; Louisville, Kentucky, in 2002;  
18 and in Omaha, Nebraska two years later. Unfortunately  
19 we've eliminated close to 500 jobs in the process.

20           These efforts helped control costs, but our  
21 company could not survive under the prevailing  
22 competitive conditions and so filed for bankruptcy  
23 protection in May 2004. New World emerged from  
24 bankruptcy in December 2005 and shortly thereafter was  
25 acquired by the Spanish food conglomerate, Ebro

1 Puleva.

2           As you might guess, the fair trading  
3 condition afforded New World by the existing  
4 antidumping and countervailing duty orders was a  
5 critical competitive factor in both the bankruptcy  
6 proceeding and in Ebro's decision to purchase New  
7 World not just because of the protection afforded by  
8 the orders, but also because the pasta is New World's  
9 only business.

10           With the orders in place, New World has been  
11 able to invest in modernizing our operations. I  
12 appreciate that many of you took the time to visit our  
13 Winchester facility. As you saw during that tour, our  
14 plant is modern and it's efficient.

15           The production of pasta involves a highly  
16 automated and mechanized process with expensive  
17 machinery. As such, our industry is very capital  
18 intensive and also very energy intensive. These  
19 capital and energy costs are a necessary part of doing  
20 business in the pasta market, costs that must be  
21 recovered through reasonable prices and sustained  
22 volumes if we are to stay in business.

23           As you also observed during that tour, New  
24 World's production also includes whole wheat pasta.  
25 We've made some supply adjustments to produce that

1 product following market demands for healthy whole  
2 wheat foods.

3 New World produces a wide range of types and  
4 brands of pasta, all of high quality. We're well  
5 positioned to compete with any producer in the world  
6 as long as it is on a fair basis.

7 As the Commission is aware, these orders had  
8 the precise effect envisioned under the law and  
9 restored some fairness to the marketplace which in  
10 1995 could best be described as chaotic with low-  
11 priced imports causing retail price wars. Deeply  
12 discounted pasta promotions of four boxes for \$1 or  
13 even five for \$1 were common.

14 As a result of the orders, the volume of  
15 imports from the very lowest priced producers  
16 primarily of Turkish origin fell significantly in the  
17 U.S. market. Turkish imports plummeted by over 80  
18 percent in the first year following imposition of the  
19 order and have never exceeded one-eighth of their  
20 preorder volume.

21 Italian imports continued at significant  
22 volumes in part due to circumvention of the order by  
23 Barilla and Pagani. That several Italian producers  
24 have resorted to circumvention techniques principally  
25 by importing bulk pasta and repackaging bulk pasta

1 into retail package sizes is itself evidence of the  
2 effectiveness of the orders and of the importance of  
3 the U.S. market to Italian pasta producers.

4 Attempts at circumvention of the Italian  
5 pasta orders continues today. In the current  
6 administrative review before Commerce, the domestic  
7 industry has submitted evidence showing that Italian  
8 producer Rumo is currently circumventing the order by  
9 shipping bulk pasta to customers who then repack the  
10 pasta in one-pound packages for retail sale.

11 Even with these circumvention activities,  
12 since the last sunset review Italian import volumes  
13 have generally been lower than during the original  
14 investigation period. The orders have also prevented  
15 the deep discounting that we have seen prior to the  
16 imposition of the duties.

17 The result of continued import volumes  
18 through circumvention efforts or otherwise has led to  
19 continued difficulties for our industry even with the  
20 orders in place. Historical operating profits in the  
21 pasta industry have been extremely thin, causing  
22 several large producers to exit the pasta business.

23 New World's exit from bankruptcy and the  
24 backing of its new parent company have given our  
25 company a chance to succeed and prosper. Our ability

1 to do so, however, is dependent on retaining the  
2 orders to prevent another flood of low-priced  
3 subsidized imports in the world's two largest pasta  
4 exporting countries.

5 Maintenance of these orders is critical,  
6 given our increasing cost for durum wheat, energy and  
7 packaging materials and the inability of price  
8 increases to keep pace with these cost increases.

9 Simply put, our company will suffer severely  
10 if unfairly priced dumped and subsidized imports are  
11 permitted to return to our market without offsetting  
12 orders.

13 Thanks very much.

14 MR. ROSENTHAL: Our next witness will be Mr.  
15 James Fogarty.

16 MR. FOGARTY: Good morning. My name is  
17 James Fogarty, and I am the president and chief  
18 executive officer of American Italian Pasta Company, a  
19 position I have held since October 2005.

20 This morning I would like to talk a bit  
21 about developments in our market and within my company  
22 over your review period. I would also like to discuss  
23 why my company is concerned with the potential removal  
24 of the current unfair trade orders on pasta imports  
25 from Italy and Turkey.

1           American Italian Pasta Company or AIPC is  
2           the largest producer and marketer of dry pasta in the  
3           United States. We have production locations in  
4           Excelsior Springs, Missouri; Columbia, South Carolina;  
5           and Tolleson, Arizona.

6           AIPC is a major supplier to all areas of the  
7           pasta market, including retail, food service and  
8           industrial pasta sold to food processors as an  
9           ingredient in their downstream products.

10           While AIPC had not historically been known  
11           as a major producer of brand name dry pasta, in the  
12           early part of the review period we purchased several  
13           well-known brands of pasta from companies that decided  
14           to exit the business. AIPC now produces well-known  
15           brands such as Mueller's, Golden Grain, Martha Gooch,  
16           Ronco and R&F.

17           From our perspective as a major participant  
18           in all areas of the U.S. pasta market, I can tell you  
19           that we see competition from imported pasta just about  
20           everywhere. The subject imports are sold as branded  
21           and private label products through all types of  
22           retailers and retail distributors, including grocery  
23           chains, warehouse clubs and mass merchandisers.

24           The retail area of the market has been  
25           stagnant at best in recent years with declining

1 supermarket sales partially balanced by growth at  
2 warehouse clubs and mass merchandisers.

3 One of our biggest concerns is that if the  
4 current unfair trade orders are removed the warehouse  
5 clubs and mass merchandisers will be particularly  
6 receptive to aggressive price offers from importers of  
7 Italian and Turkish pasta, forcing us to reduce prices  
8 or lose sales. To date, the orders have been  
9 reasonably effective in restraining extreme price  
10 aggression by the importers at these accounts.

11 Subject imports also have a presence in the  
12 food service area of the market. This part of the  
13 market, which has long been one of AIPC's areas of  
14 expertise, is extremely price competitive. I can  
15 guarantee that if the current orders are revoked there  
16 would be a huge influx of low-priced imports trying to  
17 increase their share of the U.S. market, including the  
18 high volume food service accounts.

19 While we currently don't see much Turkish  
20 pasta in the food service area of the market, be aware  
21 that the Turkish industry is far larger, more  
22 sophisticated and more export-oriented than it was  
23 when first investigated 10 years ago. Without the  
24 unfair trade orders, Turkey would be back in the U.S.  
25 market in large volumes in a heartbeat. The U.S.

1 market for dry pasta remains the largest in the world  
2 outside Italy, and Europe is generally not open for  
3 imports from Turkey.

4 Our concerns on potential harm if the orders  
5 are revoked relate to both lower price and reduced  
6 volume. Pasta production is by nature extremely  
7 capital intensive. In order to make enough money to  
8 cover capital costs and turn a reasonable net profit,  
9 a pasta producer must produce near full capacity.

10 As your staff report shows, the domestic  
11 industry is not producing anywhere near full capacity.  
12 While our industry has restructured and become more  
13 efficient by opening new facilities and closing older  
14 ones, we are still not producing enough to make good  
15 use of our installed capacity.

16 Based on our company's historical growth  
17 patterns and our estimation of future trends in  
18 domestic demand, my firm opened a new production  
19 facility in Tolleson, Arizona, which came fully on  
20 stream in 2003. Unfortunately, this was just about  
21 the time that the dietary fad for reduced carbohydrate  
22 consumption took hold, showing once again the  
23 fragility of the pasta industry.

24 Thus, while AIPC had relatively high levels  
25 of capacity utilization during the 2001 to 2003 period

1 and was anticipating continued growth, by 2004 we were  
2 facing an overcapacity situation as our production  
3 actually fell. In the face of this overcapacity we  
4 were forced to curtail operations at our production  
5 facility in Kenosha, Wisconsin, in 2004, and we  
6 ultimately shut down and sold that facility in 2006.

7 The Commission should understand that such  
8 action is not taken lightly as the closure of a  
9 facility like Kenosha is a difficult and expensive  
10 proposition for us at a cost of over \$20 million and  
11 loss of 55 jobs.

12 The plain fact is that as production volumes  
13 decline we cannot afford to carry plants that are not  
14 producing efficiently. If we were to lose even 10  
15 percent of our sales volume due to the revocation of  
16 these orders we would almost certainly be forced to  
17 close at least two large production lines and, if the  
18 trend continued, another facility.

19 As to the likely price effects of the unfair  
20 imports, our concerns in this area have been greatly  
21 heightened by recent trends in our raw materials and  
22 our energy costs; most notably our primary raw  
23 material, durum wheat.

24 From the beginning to the end of 2006, durum  
25 wheat prices at the Minneapolis Exchange increased by

1 35 percent from \$4.55 to \$6.15 per bushel. As 2007  
2 has progressed, prices have skyrocketed with spot  
3 prices reaching over \$9 per bushel in July, which is  
4 an historical high.

5 Further, there are indications that recent  
6 high durum prices are not a short-term phenomenon.  
7 U.S. production of durum wheat fell from 101 million  
8 bushels in 2005 to just 53 million in 2006, a decline  
9 of nearly 50 percent in a single year.

10 A recent report said that durum stocks in  
11 grain elevators and farm bins are at their lowest  
12 levels since the Agriculture Department began keeping  
13 records in 1970. One of the main reasons for those  
14 dramatic declines in U.S. durum production is that  
15 fewer acres are being planted in durum because the  
16 current push towards ethanol production has boosted  
17 corn prices to extremely attractive levels.

18 We are very concerned about these trends and  
19 their implications for sourcing our most basic raw  
20 material. So far the industry has had mixed success  
21 in pushing through increased costs to its customers,  
22 but we have real concerns about the continued ability  
23 to do so, particularly given the historically high  
24 durum prices we are experiencing right at this minute.

25 If the orders on unfair imports from Italy

1 and Turkey were to be revoked there is little doubt in  
2 my mind that we would be caught between a proverbial  
3 rock and a hard place, facing both downward price  
4 pressures on our finished products at the same time  
5 that we are facing escalating durum wheat costs. This  
6 would not be a tenable situation.

7 Finally, let me address one additional point  
8 on our market. While we have worked hard to develop  
9 new whole wheat and organic pasta products and market  
10 them to consumers looking for healthy alternatives to  
11 traditional semolina pasta, the development of this  
12 area of the market will not be the savior of our  
13 industry.

14 In fact, whole wheat and organic pastas  
15 still only account for a small fraction of the overall  
16 market for dry pasta in the United States, and we  
17 don't envision that will change much over the longer  
18 term.

19 In point of fact, overall sales for the dry  
20 pasta category have been flat for the last few years.  
21 Growth in the health conscious area of the market has  
22 at most offset declining sales in the traditional semo  
23 pasta area of the market, and I would point out that  
24 there are many brands of imported whole wheat and  
25 organic pasta.

1           In summary, our industry has been through  
2           some difficult years and has major concerns about the  
3           future. Pasta is a mature product sold largely on the  
4           basis of price.

5           In light of our industry's excess capacity  
6           and upward trends in durum wheat cost, our industry  
7           would be placed in a very difficult position if the  
8           orders were revoked and imports from Italy and Turkey  
9           were allowed to be sold in the U.S. market once again  
10          at aggressively low prices.

11          Thank you very much. That concludes my  
12          testimony.

13          MR. ROSENTHAL: Our next witness will be  
14          Jack Hasper from Dakota Growers.

15          MR. HASPER: Good morning. My name is Jack  
16          Hasper. I am vice president of Sales and Marketing at  
17          Dakota Growers Pasta Company. I have been with Dakota  
18          Growers for the past 10 years.

19          I have over 40 years' experience in the food  
20          business and 23 years' experience in the pasta  
21          business. I have held a variety of sales and  
22          marketing positions with Borden Foods, Super Value,  
23          Pillsbury and General Mills prior to joining Dakota  
24          Growers.

25          Dakota Growers is an integrated pasta

1 producer with a state-of-the-art durum milling  
2 facility and a pasta manufacturing plant in  
3 Carrington, North Dakota. We also produce pasta at  
4 our plant in New Hope, Minnesota.

5 Dakota Growers was established in 1993 as a  
6 cooperative with over 150 durum farmers who wanted to  
7 add value to their farms and get into the pasta  
8 manufacturing business.

9 In 2002 we reorganized and became a  
10 corporation primarily to give us easier access to  
11 capital so we could continue to invest in the  
12 business, but we are still owned by the same 1,050  
13 farmers who are now shareholders. We are a leading  
14 supplier of retail private label pasta and a leader in  
15 the food service and industrial pasta markets.

16 Dakota Growers is very concerned about the  
17 possible revocation of the antidumping and  
18 countervailing duty orders on pasta from Italy and  
19 Turkey. Since the last sunset review we have  
20 continued to see the benefits of the orders in the  
21 retail trade. The orders have allowed us to increase  
22 our production and employment and also to reinvest in  
23 our company.

24 During the past two years, Dakota Growers  
25 undertook a \$15 million capital project at our New

1 Hope facility in Minnesota to better balance our pasta  
2 production capabilities and improve our operating cost  
3 which allows us to continue to compete in today's  
4 very, very competitive market.

5 A main component of this project was the  
6 installation of a new, state-of-the-art short goods  
7 production line. Our investment efforts will be  
8 significantly undermined if the orders are revoked.  
9 The result of revocation would be a surge of unfairly  
10 low-priced imports from both Italy and Turkey with a  
11 devastating impact on pricing in the U.S. market.

12 As a person responsible for sales and  
13 marketing of pasta, I cannot overemphasize the  
14 importance of price in purchasing decisions. Pasta is  
15 a fungible product. Consumers by and large are not  
16 able to discern whether the pasta was produced  
17 domestically or imported from Italy, Turkey or other  
18 countries. Their decision to buy pasta in many cases  
19 comes down to price.

20 Although quality is always important, the  
21 quality of domestic pasta is comparable to the pasta  
22 from Italy and Turkey, thereby making price the  
23 critical factor on which purchasing decisions are  
24 made. Without the offsetting effects of the orders,  
25 Italian and Turkish pasta will use low pricing to

1 increase market share at our expense.

2 The types of sales that occur in the U.S.  
3 pasta market also increase the importance of price and  
4 purchasing decisions. Most sales of pasta are not  
5 subject to long- or short-term contracts, so any  
6 proposed price increase by us can cause our customers  
7 to look at alternative suppliers.

8 Because Dakota Growers' sales are focused  
9 largely on prime label products as opposed to name  
10 brands, we face an even greater risk of price  
11 variability and price fluctuations due to market  
12 pressures than some of the other producers.

13 As my private label retail customer base has  
14 consolidated to fewer and fewer players, the pressure  
15 on price buying has intensified. The retail trade  
16 today has gone to reverse bid auctions where price is  
17 a dominant factor.

18 Given these market conditions, I am very  
19 concerned about what will happen if the orders against  
20 Italy and Turkey are revoked. Both Italy and Turkey  
21 have enormous capacity to produce pasta. Left  
22 unrestrained, low dumped and subsidized import prices  
23 will undercut our pricing and take sales, as well as  
24 depress our prices.

25 The deterioration in prices that would be

1       caused by revocation of the orders would lead to  
2       reduction in our revenue, our profits and our ability  
3       to continue to invest in capital improvements. Our  
4       production and shipment levels would also suffer,  
5       which would in turn force us to reduce our workforce.

6                In summary, these orders have been and  
7       continue to be very important to Dakota Growers.  
8       These orders provide an important price corrective  
9       effect in the highly competitive and price sensitive  
10      pasta market. The continuation of fair pricing under  
11      these orders is crucial to the domestic pasta  
12      industry.

13               Thank you.

14               MR. ROSENTHAL: Next we'll hear from  
15      Kathleen Cannon of Kelley Drye Collier Shannon to talk  
16      about some of the legal issues in the case.

17               MS. CANNON: Good morning. I'm Kathleen  
18      Cannon of Kelley Drye Collier Shannon, and I'd like to  
19      briefly address a few of the legal issues presented  
20      here.

21               First, the U.S. industry. The domestic like  
22      product definition is not in dispute, but Respondents  
23      have argued that certain domestic producers should be  
24      excluded from the U.S. industry under the related  
25      party provision.

1           Appropriate circumstances do not exist to  
2           exclude any U.S. producer under this provision based  
3           on the factors the Commission has identified as  
4           relevant to its analysis. Dakota Pasta Growers and  
5           AIPC are the two companies that Respondents state  
6           should be excluded.

7           Dakota Pasta is not related to a subject  
8           producer, is not a direct importer of pasta and  
9           purchases only a very small volume of subject pasta  
10          from Italy in relation to its production. These very  
11          small purchase volumes are insufficient to deem Dakota  
12          Pasta a related party at all.

13          Even if it were considered to be a related  
14          party, record evidence demonstrates that Dakota  
15          Pasta's overwhelming focus lies in domestic  
16          production, not purchases of Italian pasta, that those  
17          purchases are simply a small supplement to its U.S.  
18          production and that it is not benefitting from its  
19          purchases in a way that would skew overall industry  
20          data so should not be excluded from the industry.

21          With respect to AIPC, although it is related  
22          to an Italian pasta producer and imports a very small  
23          volume of pasta relative to its production from that  
24          producer, the Italian producer at issue is Pasta  
25          Lensi. Lensi has been excluded by Commerce from both

1 the antidumping and countervailing duty orders. Given  
2 that Lensi is currently not a subject producer, any  
3 relationship to AIPC or imports of Lensi product by  
4 AIPC are not relevant to a related party analysis.

5 The only company that is truly a related  
6 party here is Barilla. Without getting into  
7 confidential data, I would just say that a review of  
8 the relevant factors indicates that its interests lie  
9 more in domestic production than importation and do  
10 not warrant its exclusion from the U.S. industry.  
11 Respondents have stated they agree with this  
12 conclusion.

13 A second legal issue I would like to address  
14 is whether the Commission should consider trade only  
15 industry data in addition to total industry data that  
16 includes captively consumed pasta.

17 In the U.S. pasta industry, several  
18 companies that produce pasta do not sell it on the  
19 open market, but instead consume it internally in the  
20 production of other products such as canned soup or  
21 spaghetti and meatballs. As such, these companies are  
22 not competing with subject import sales of dry pasta.

23 The Commission has recognized that such  
24 captive consumption is a significant condition of  
25 competition. Further, the Commission found under

1 similar facts in the Hot-Rolled Steel case that it was  
2 appropriate in a sunset review to consider the likely  
3 effects of revocation with respect to both the  
4 merchant market and the total market.

5 Accordingly, we urge the Commission to  
6 consider the trade only data, in addition to the  
7 overall industry data, in projecting the likely  
8 effects of revocation.

9 A third legal issue is cumulation. The  
10 Commission found it appropriate to cumulate imports of  
11 pasta from Turkey and Italy in its original  
12 investigation and in the first sunset review, and we  
13 believe that cumulation is justified here as well.

14 First, there is no indication that imports  
15 from Turkey or Italy will have no discernable adverse  
16 impact if revocation occurs. Mr. Kerwin and Ms. Beck  
17 will address in more detail the massive capacity and  
18 unused capacity available in both countries, their  
19 export orientation and the likelihood that imports  
20 from each country will increase significantly in  
21 volume at very low prices if the orders are revoked,  
22 injuring the U.S. industry.

23 No serious argument could be made that there  
24 would be no discernable adverse impact from either  
25 country.

1           Second, there likely will be a reasonable  
2           overlap of competition between imports from Turkey and  
3           Italy and between those imports and the U.S. product.  
4           Questionnaire responses from U.S. producers, importers  
5           and purchasers indicate that dry pasta from the United  
6           States and subject countries is normally  
7           interchangeable. Purchasers differentiate pasta  
8           largely based on price, finding the product fungible  
9           regardless of source.

10           In terms of channels of distribution, pasta  
11           from all three sources overlap in the retail channel  
12           of distribution. Pasta from the United States, Italy  
13           and Turkey is also sold in common geographic markets  
14           throughout the United States and has been  
15           simultaneously present in the U.S. market in every  
16           year of the review period and almost every month as  
17           well.

18           In terms of other conditions of competition,  
19           evidence that both Italy and Turkey have maintained or  
20           increased capacity since the orders were imposed, have  
21           continued to sell into the U.S. market and have  
22           remained export oriented indicates likely common  
23           behavior by both Italy and Turkey if the orders are  
24           revoked to warrant a cumulative analysis here.

25           The fourth and final legal point I will

1 mention is the Commerce Department's finding that  
2 export subsidies are likely to continue or recur for  
3 both Italian and Turkish pasta producers if the orders  
4 are revoked.

5           These export subsidies are relevant not only  
6 to the Commerce analysis, but also to the Commission's  
7 analysis. The law expressly requires the Commission  
8 to consider the nature of the subsidies and whether  
9 the subsidies are export subsidies.

10           If the orders are revoked, Italian and  
11 Turkish pasta producers would have incentive to  
12 increase exports to the United States to take  
13 advantage of the export subsidies that continue to  
14 exist today. This factor provides a further  
15 indication of likely increased subject import volumes  
16 from both countries if revocation occurs.

17           That concludes my statement. Thank you.

18           MR. ROSENTHAL: Next will be Michael Kerwin.

19           MR. KERWIN: There we go. We have power.

20 Good morning. I am Michael Kerwin of Georgetown  
21 Economic Services. This morning I'd like to address  
22 the conditions of competition in the U.S. market for  
23 dry pasta and the likely volume effects of the subject  
24 imports in the event of revocation.

25           The key conditions of competition facing the

1 domestic dry pasta industry include recent trends in  
2 supply and demand and the expanded presence of  
3 nonsubject imports in the U.S. market.

4 Over the course of the period of review U.S.  
5 demand for dry pasta trended up and down, but overall  
6 remained relatively flat. After increasing from 2001  
7 to 2002, apparent consumption fell in the following  
8 two years before ticking up in 2005 and 2006.

9 For the period of review as a whole,  
10 consumption increased by just 5.2 percent or about one  
11 percent a year. For most of the years of the POR,  
12 consumption was about the same or below that shown in  
13 1995, the last year of the original period of  
14 investigation.

15 The U.S. market for dry pasta is mature and,  
16 as you have heard, growth and demand for whole wheat  
17 pasta and organic pasta has not acted to increase  
18 overall consumption.

19 The domestic industry has gone through  
20 substantial restructuring since the time of the  
21 original investigation. Domestic capacity to produce  
22 dry pasta is now more efficient but also notably  
23 smaller than in the mid 1990s.

24 Some of the fixtures of the domestic  
25 industry at the time of the original investigation

1 have fallen by the wayside, having concluded that it  
2 would be more cost effective to exit the pasta  
3 business completely than to make the massive capital  
4 investments needed to replace aging production  
5 facilities with modern, state-of-the-art plants.

6 While the industry is now leaner and more  
7 efficient, it still struggles to turn sufficient  
8 operating income to cover the capital costs incurred  
9 in building these more efficient facilities.

10 Since the time of the original  
11 investigation, imports from nonsubject countries have  
12 come to account for a significantly greater share of  
13 the U.S. pasta market. Since 1995, nonsubject country  
14 import volumes increased by 132 percent, expanding  
15 their share of the market from 4.3 to 10 percent.

16 Because imports from subject countries have  
17 not faded from the market, the domestic industry held  
18 a market share of just 79.9 percent in 2006, as  
19 compared to 84.4 percent in 1995, the high point of  
20 injury during the original period of investigation.  
21 This contraction in market share is an indication of  
22 the ongoing vulnerability of the domestic industry.

23 On the topic of likely volume of subject  
24 imports in the event of revocation, I would first  
25 point out that the near complete lack of participation

1 by the Italian and Turkish industries in this review  
2 justifies the drawing of adverse inferences by the  
3 Commission.

4 Despite this lack of participation, there is  
5 ample public information indicating that both the  
6 Italian and the Turkish industries are extremely  
7 export oriented and have ample reason and capability  
8 to shift to the U.S. market in substantial volumes if  
9 the orders are revoked.

10 Italy is the world's largest producer of dry  
11 pasta, despite having a declining population that is  
12 only about one-fifth the size of the United States.  
13 According to the data of the Italian Pasta  
14 Association, the total capacity of the Italian  
15 industry expanded from 8.8 billion pounds in 2000 to  
16 10.1 billion pounds in 2005, a 15 percent increase.  
17 That means that the Italian industry is on the order  
18 of three times the size of the U.S. industry.

19 Oddly enough, as Italy's capacity increased  
20 by 1.3 billion pounds its production expanded by just  
21 200 million pounds. This industry has over three  
22 billion pounds in excess capacity, but it apparently  
23 feels compelled to keep adding to that massive  
24 overhang.

25 Turkey is no shrinking violet when it comes

1 to pasta production either. Turkish pasta production  
2 increased in each year of the period of review and by  
3 nearly 500 million pounds or 58 percent in just five  
4 years. Capacity of the Turkish industry is now  
5 roughly double that at the time of the original  
6 investigation.

7 From the public sources we estimate that  
8 Turkey has an excess capacity of at least one billion  
9 pounds. Given that U.S. imports from Turkey in the  
10 original investigation topped out at 64 million  
11 pounds, obviously the industry has ample room to  
12 expend export shipments in the event of revocation.

13 Not surprisingly, both the Italian and  
14 Turkish industries are extremely export-oriented.  
15 Italy is the world's leading exporter of dry pasta,  
16 accounting for 67 percent of total global exports of  
17 dry non-egg pasta in 2006. Italy's exports in 2006  
18 were significantly higher than the entire output of  
19 the U.S. industry.

20 In comparison to peak shipments at the time  
21 of the original investigation, Italy currently has  
22 enough capacity to increase its exports to the United  
23 States nearly tenfold simply by using its installed  
24 capacity.

25 The Italian industry has almost no option

1 but to export its increased production as its home  
2 market is almost completely stagnant as consumption  
3 increased by just a total of one percent between 1995  
4 and 2005.

5 Turkey is the world's second largest  
6 exporter of dry pasta, and between 2001 and 2005  
7 exports of dry non-egg pasta from Turkey expanded more  
8 than fivefold. The export orientation of the Turkish  
9 pasta producers is front and center in almost every  
10 company's website, which are filled with claims of  
11 world class product quality, use of the most modern  
12 production technologies and aggressive export sales  
13 activities.

14 In stark contrast to the time of the  
15 original investigation when it was nearly impossible  
16 to find any information on the Turkish industry, the  
17 electronic marketing of these firms is extensive and  
18 savvy with essentially every Turkish producer  
19 maintaining an attractive website with English  
20 versions readily available.

21 It is also clear that the Turkish industry  
22 would be ecstatic if the current orders were to be  
23 revoked and they could once again have unfettered  
24 access to the U.S. market.

25 Despite an obvious export orientation, many

1 attractive markets such as those in Europe are simply  
2 not open to imports from Turkey. While the major  
3 export markets for Italian pasta include large  
4 economies in Europe and Japan, Turkey's major export  
5 destinations are predominantly small developing  
6 economies with its two largest export markets being  
7 the United Arab Emirates and Iraq.

8           Despite proximity with the European Union  
9 and periodic discussion of Turkish membership in that  
10 institution, it is very clear that with the sole  
11 exception of Germany, a market that has never  
12 accounted for more than four percent of -- pardon me.

13           Turkish pasta is kept out of European  
14 markets with the sole exception of Germany, a market  
15 that has never accounted for more than four percent of  
16 Turkish exports during the period of review.

17           If Turkish pasta was allowed to enter the  
18 U.S. market without the constraints of the current  
19 orders, it is a safe assumption that Turkish producers  
20 would prefer to be shipping to the United States, the  
21 second largest market in the world, rather than  
22 markets like Djibouti and Cameroon.

23           Finally, there is solid evidence that  
24 relatively high prices and low general tariffs make  
25 the U.S. market very attractive to subject producers.

1 As shown in the prehearing report, the average unit  
2 value of Italian exports of dry non-egg pasta to the  
3 United States in 2006 was higher than or equal to the  
4 eight other largest export markets.

5 Over the period of review as a whole, U.S.  
6 prices were at least 22 percent higher than those in  
7 Italy's next three largest export markets. Similarly,  
8 Turkish exports to the U.S. market were at or above  
9 average unit export values from Turkey.

10 Not only are U.S. pasta prices relatively  
11 high for these export markets, but U.S. import tariffs  
12 on dry pasta are generally low. In contrast to major  
13 economies of the world, most of which maintain  
14 substantial general tariffs on imports of dry non-egg  
15 pasta, the product enters the U.S. market duty free.

16 These duties in third country export markets  
17 are not insignificant and indeed act to completely  
18 preclude imports in some instances as is apparently  
19 the case in relation to Turkish imports into most of  
20 Europe.

21 In summary, the U.S. market is extremely  
22 attractive in terms of its size, its pricing and its  
23 tariff structure. Pasta producers in Italy and Turkey  
24 are well aware of this, which is why Italian producers  
25 have continued to export here in significant volumes

1 and why Turkish producers are looking forward to  
2 selling into the U.S. market without the worry of the  
3 unfair trade orders.

4 These producers have the capacity to ship  
5 here immediately if this change is made. It is not  
6 hyperbole to say that in the event of revocation  
7 producers in Italy and Turkey have the capability to  
8 ship to the United States in quantities large enough  
9 to destroy the U.S. industry.

10 Thank you very much. That concludes my  
11 testimony.

12 MR. ROSENTHAL: Our last witness this  
13 morning will be Gina Beck.

14 MS. BECK: Good morning, Mr. Chairman,  
15 Commissioners and staff. I am Gina Beck of Georgetown  
16 Economic Services.

17 This morning I would like to discuss the  
18 factors that indicate imports of certain pasta from  
19 Italy and Turkey will undersell and suppress prices of  
20 U.S. produced pasta and will cause injury to domestic  
21 producers of the like product in the event of  
22 revocation of the orders.

23 In the original investigations the  
24 Commission not only found underselling by both Italy  
25 and Turkey, but also that the underselling was

1 extensive and by substantial margins.

2 For Italy, underselling occurred in the vast  
3 majority of instances by margins up to 35 percent  
4 while underselling for Turkey occurred in all possible  
5 comparisons with margins ranging up to 65 percent.

6 The Commission also concluded that the low-  
7 priced subject imports depressed U.S. prices of pasta  
8 to a significant degree. These past pricing behaviors  
9 are likely to occur if the orders are revoked.

10 Even with the orders in place, cumulated  
11 subject imports have undersold the domestically  
12 produced pasta in many instances during the review  
13 period. Pasta imports from Turkey undersold the U.S.  
14 produced pasta in every possible quarterly comparison  
15 during the POR for shipments to distributors, as well  
16 as to retailers.

17 Underselling margins for the Turkish product  
18 averaged between 40 percent and 55 percent across all  
19 products. Although the orders led to a decline in the  
20 volume of imports from Turkey and as a result  
21 benefitted U.S. producers in volume terms, they have  
22 not led to a change in pricing behavior.

23 This continued underselling by Turkey  
24 indicates that absent the discipline of the orders  
25 Turkish exporters would simply increase their volume

1 of sales at the same prices or likely even lower  
2 prices.

3 Pricing information for imports from Italy  
4 shows underselling in all but two of 39 possible  
5 comparisons on sales of Products 1, 2 and 3 to retail  
6 grocers between the first quarter 2001 and first  
7 quarter 2004. Beginning in second quarter 2004,  
8 however, the data show more overselling by Italy.

9 The Commission's prehearing report correctly  
10 notes that the instances of overselling by Italy for  
11 shipments to retail grocers in the later years of the  
12 POR may not reflect the import pricing situation for  
13 reasons such as relatively high prices reported by one  
14 importer.

15 In addition, as noted in the prehearing  
16 report, the underselling by Italian imports for  
17 shipments to distributors is likely skewed upward by  
18 the inclusion of specialty pasta.

19 It is also important to note that the  
20 response rate to the Commission's questionnaires by  
21 importers of Italian product was abysmally low, so the  
22 very high prices reported by one importer may not  
23 necessarily be reflective of imports from Italy as a  
24 whole, leading to more instances of overselling than  
25 there actually may be.

1           In terms of domestic pricing trends, U.S.  
2 producer prices rose somewhat from preorder levels,  
3 reflecting both the ability to price at higher levels  
4 due to the beneficial effect of the orders, as well as  
5 increases in raw material costs during various  
6 periods.

7           Over the POR, domestic prices for Products 1  
8 and 2 increased slightly for shipments to both retail  
9 grocers and distributors, while prices for Products 3  
10 and 4 remained relatively stable. The price increases  
11 recorded during the POR, especially in the later  
12 quarters, however, do not necessarily indicate good  
13 health for the industry given rising raw material  
14 costs.

15           The resumption of low-priced imports would  
16 again cause deterioration to the U.S. industry's  
17 performance at an extremely rapid pace as shown in the  
18 original investigation.

19           Particularly now as costs are rising further  
20 and projected to remain high, subject imports would  
21 quickly resume price undercutting practices to  
22 increase their U.S. market share, and U.S. prices  
23 would be suppressed and likely even depressed.

24           It is particularly significant that many  
25 purchasers' and importers' questionnaire responses

1 confirmed the injurious price effects to U.S.  
2 producers are likely if the orders are revoked.

3 Now I will turn to the condition of the  
4 domestic industry and the impact of subject imports.  
5 During the original investigations, the Commission  
6 found that the increasing volumes of low-priced  
7 imports had a significant adverse impact on the  
8 industry's profitability with income declining rapidly  
9 to a loss at the end of the POI.

10 In particular, the Commission noted that the  
11 increasing subject import volume took market share  
12 from domestic producers, caused sales to decline and  
13 placed pressure on the domestic industry to restrict  
14 price increases. If the orders were to be revoked, it  
15 is very likely that the U.S. producers' profitability  
16 would once again plummet.

17 In assessing the trade and financial  
18 performance of the domestic pasta industry in these  
19 reviews, the Commission should not determine that  
20 there is no vulnerability or no likelihood of a  
21 recurrence of injury simply because the U.S. industry  
22 has recovered to some degree after the imposition of  
23 the orders.

24 The discipline imposed by the orders has  
25 permitted some improvement in the industry's

1 condition, as it should. Further, although industry  
2 operating profits have improved this modest  
3 improvement will quickly reverse if unfair imports  
4 return to the domestic market. For the reasons  
5 described by Ms. Cannon, the Commission should focus  
6 on trade only results in examining the financial  
7 situation of the industry.

8 The domestic pasta industry has experienced  
9 a series of ups and downs since the orders were issued  
10 with weak operating profits and declining trade  
11 variables in some years and increases to reasonable  
12 profit levels in others. Overall, despite a higher  
13 level of operating profit earned in 2006 than in past  
14 years, the pasta industry remains vulnerable to a  
15 recurrence of material injury.

16 It was only beginning in 2006 that the  
17 industry really rebounded to a higher level of  
18 profitability after many years of insufficient  
19 operating income to sales ratios. Moreover, the  
20 domestic industry is still operating at an inadequate  
21 capacity utilization level.

22 Other factors also point to the  
23 vulnerability of the domestic industry such as  
24 increasing raw material costs for wheat that are  
25 projected to increase further and increasing energy

1 costs, as you have heard from industry witnesses.

2 Although the domestic industry remains  
3 vulnerable to injury if the orders are revoked, U.S.  
4 producers were able to benefit from the orders with  
5 overall increases in production, shipments and net  
6 sales revenue over the POR, to name a couple examples.

7 The industry also increased capital  
8 expenditures, as well as R&D, in order to make  
9 necessary improvements and become more efficient.  
10 These benefits would never have been achieved absent  
11 relief from imports.

12 After several years of improvement, it would  
13 be devastating to the domestic industry and its  
14 workers if unfairly traded imports from Italy and  
15 Turkey once again returned to the market.

16 That concludes my testimony. Thank you for  
17 your attention.

18 MR. ROSENTHAL: That concludes our direct  
19 testimony. We do have other witnesses available to  
20 answer questions, two from the companies, Cary Metz  
21 from New World Pasta and Bob Schuller from AIPC, and  
22 two from the law firm, Grace Kim and David Smith.  
23 We're happy to answer your questions.

24 I think I have about 15 minutes left for  
25 rebuttal. Is that right, Mr. Bishop?

1 MR. BISHOP: Yes.

2 MR. ROSENTHAL: Okay. Thank you.

3 CHAIRMAN PEARSON: No doubt you'll want to  
4 rebut some of what your panelists say in response to  
5 questions.

6 Thank you very much for your testimony. We  
7 will begin the questioning this morning with  
8 Commissioner Lane.

9 COMMISSIONER LANE: Good morning. Welcome  
10 to all of you. I'm assuming that the lasagna samples  
11 will be served after everybody testifies. Is that  
12 correct, Mr. Rosenthal?

13 MR. ROSENTHAL: They'll be delivered  
14 sometime.

15 COMMISSIONER LANE: Thank you. I'd like to  
16 have some additional information on the changes in the  
17 industry's profitability from the original period of  
18 investigation to now.

19 Focusing on Table I-1 at page I-8 in the  
20 prehearing report, which is combined data that is not  
21 proprietary, the AUVs of the industry sales in the  
22 current period of review is around 47 to 48 cents per  
23 pound.

24 Looking at the 1993 to 1995 data for the  
25 original period of investigation, it looks like the

1 AUVs of the industry sales were considerably higher  
2 than the AUVs or around 60 cents per pound.

3 How do you explain the considerable  
4 difference in the AUVs of net sales from the original  
5 period of investigation to the current numbers? That  
6 would probably be best answered by Ms. Beck or Mr.  
7 Kerwin.

8 MR. KERWIN: Those numbers are a reflection  
9 of what's gone on in the marketplace. It's been a  
10 very difficult environment. Pricing has actually in  
11 some instances declined, and it's been generally  
12 pretty flat.

13 What's gone on with the industry is a lot of  
14 restructuring, as we've talked about. The industry  
15 has become more efficient, been able to produce a  
16 product that can be sold at a lower price and that the  
17 industry continues to make some type of operating  
18 profit on that. It's really a testimony to the  
19 improved efficiency of the industry, but it's also an  
20 indication of just how competitive this market is.  
21 Those are rather extraordinary declines.

22 It's pretty unusual for a 10-year period  
23 when you consider the inflationary effects. These are  
24 not adjusted prices, but these are actual prices and  
25 unit values that are substantially lower than at the

1 time of the original investigation.

2 This is a very challenging, difficult  
3 competitive environment, and this is a very low profit  
4 product in which price is a very, very key element and  
5 which customers are constantly pushing for lower  
6 prices.

7 COMMISSIONER LANE: Okay. Although the unit  
8 costs of SG&A expenses are not shown on Table I-1,  
9 they can be derived from the numbers shown on that  
10 table.

11 The data indicates that the SG&A expenses in  
12 the original period of investigation were around 20  
13 cents per pound, yet in the period of review these  
14 costs are down to around seven cents per pound. How  
15 do you explain SG&A expenses of 20 cents per pound in  
16 1993 to 1995 going to seven cents per pound?

17 MR. KERWIN: I'm not absolutely sure what  
18 the answer to that question is off the top of my head.  
19 This is a product that has a fair amount of marketing  
20 funds that are devoted to it. A lot of the product is  
21 sold on promotion.

22 It could be a question of that the product  
23 that's being sold is reflecting fewer marketing  
24 expenses, but that's really conjecture at this point.

25 COMMISSIONER LANE: Do you want to do that

1 posthearing?

2 MR. KERWIN: I think that would be the best  
3 way to answer that question, yes.

4 COMMISSIONER LANE: Okay. It would appear  
5 that the current profitability of the domestic  
6 industry is mostly related to reduced costs. It is  
7 not apparent how the orders contributed to the  
8 improvement in the domestic industry.

9 I would like your explanation of how the  
10 orders have helped the domestic industry.

11 MS. BECK: Commissioner Lane, I think to  
12 start with to a certain degree the increase in capital  
13 expenditures and research and development that --

14 COMMISSIONER LANE: I'm sorry. Could you  
15 get closer to your mic?

16 MS. BECK: Yes, Commissioner Lane. The  
17 increase in capital expenditures and R&D that the  
18 industry was able to make in large part had to do with  
19 the orders.

20 If it hadn't been for those expenditures  
21 they would not be in a position now where the costs  
22 have been cut and they've been able to become more  
23 efficient.

24 MR. GREENWOOD: One of the things I wanted  
25 to just provide some explanation on that is it's my

1 belief that aside from the efficiency measures in  
2 terms of the cost, which I think we've all talked  
3 about today in terms of closing plants and such, that  
4 without the order you would have had significant  
5 margin compression because the price competitiveness  
6 would have been that much more significant.

7 I've been in the food industry for 25 years,  
8 and I've worked across a lot of food categories,  
9 including commodity categories. The price elasticity  
10 and the price effect of this particular category is  
11 for me by far the most significant I've ever come  
12 across in coffee and baking and others, so I think  
13 this price effect would have occurred.

14 COMMISSIONER LANE: Okay. Let's focus on  
15 the elasticities. The prehearing report discusses the  
16 elasticities of U.S. supply, subject supply, U.S.  
17 demand and substitution. I would like your comments.

18 First, with regard to U.S. supply the report  
19 indicates a relatively high elasticity in the range of  
20 three to six. Do you agree with that range, or do you  
21 think that the U.S. supply is likely to be more or  
22 less responsive to price changes?

23 MR. KERWIN: I think that characterization  
24 of the industry is a reasonable one. There is a fair  
25 amount of overcapacity in the industry, and I think

1 that that estimation of the elasticity is a reasonable  
2 one.

3 COMMISSIONER LANE: Okay. The report  
4 indicates an even higher elasticity in subject supply  
5 with Turkey responding to changes in the U.S. market  
6 more than Italy.

7 Do you agree with the ranges of four to six  
8 for Italy and six to eight for Turkey?

9 MR. KERWIN: I agree with the  
10 characterization that they do have substantial excess  
11 capacity. I would actually say that the range might  
12 even be a bit higher than that.

13 The overcapacity in the Italian industry  
14 exceeds that of the Turkish industry, so I think those  
15 numbers could be a bit higher, but the  
16 characterization is reasonable.

17 COMMISSIONER LANE: Okay. I'd like for you  
18 to comment on the demand elasticity.

19 Do you believe that demand for pasta is  
20 likely to be as responsive as .75 to .15 to changes in  
21 domestic market prices?

22 MR. KERWIN: I might throw that out to one  
23 of the industry witnesses.

24 MR. FOGARTY: Let me. On the elasticity I  
25 would say we would think of the market in perhaps two

1 pieces.

2 On the branded business I think we have a  
3 level of elasticity that our work with Nielsen would  
4 show in the one area, if not a little north of one,  
5 and I would say that in the other areas of the  
6 business where brand equity is less important, the  
7 private label parts of the business, the food service  
8 parts of the business, the elasticity on price would  
9 be more than that.

10 I don't know what it would blend out to, but  
11 just to characterize it I'd say one would be what we  
12 would think the branded side would play out at, 1X,  
13 and on the nonbranded or private label and food  
14 service pieces I would say it would be even more  
15 elastic for us.

16 COMMISSIONER LANE: Okay. Finally, the  
17 prehearing report suggests a moderate degree of  
18 substitutability in the range of two to four.

19 Do you agree with that range, or do you have  
20 any comments with regard to the substitutability  
21 between domestic pasta and subject imports?

22 MR. KERWIN: I think that that is a rather  
23 low range. This is basically a commodity product.  
24 It's a product that very few consumers can discern any  
25 difference between the product, whether it's sourced

1 from the U.S. or Turkey or Italy.

2 In my opinion, I think that range would be  
3 higher because these products are very, very  
4 comparable, and I think that that's a bit low of a  
5 range, but it's my opinion.

6 MR. ROSENTHAL: One of the things we were  
7 remiss about was arranging a taste test, which  
8 probably would have been fun, and we actually had the  
9 time today.

10 Back when the original investigation was  
11 taking place, the *Washington Post* did their own taste  
12 test. Some people claimed that the domestic industry  
13 and their counsel had arranged that, but we had  
14 nothing to do with it.

15 It turns out that the *Washington Post*  
16 conclusions were that the domestic and Italian pasta  
17 were comparable in terms of taste, sometimes the U.S.  
18 doing better in fact.

19 That pretty much was consistent with other  
20 studies that have been done, other blind tastings that  
21 have been done showing that the U.S. and the Italian  
22 product in particular, where there has always been a  
23 contest, were comparable, bottom line being there is a  
24 lot more substitutability than would be suggested by  
25 some of the Respondents' comments in your

1 questionnaire responses.

2 I think there are some folks who would like  
3 to believe that there is a greater difference, but  
4 that's not what the facts bear out.

5 COMMISSIONER LANE: Okay. Thank you.

6 Thank you, Mr. Chairman. I'm sorry I went  
7 over.

8 CHAIRMAN PEARSON: Well, it was really Mr.  
9 Rosenthal who went over.

10 COMMISSIONER LANE: So we'll take it from  
11 his 15 minutes that he has left over?

12 MR. ROSENTHAL: You can keep whittling away  
13 at that during the course of the day.

14 CHAIRMAN PEARSON: Commissioner Williamson?

15 COMMISSIONER WILLIAMSON: Thank you, Mr.  
16 Chairman. I want to express my appreciation to the  
17 witnesses for the testimony this morning.

18 I'd like to begin with Mr. Fogarty. I note  
19 in your Petitioners' brief you imported the pasta from  
20 Italy during the period of review, and I was wondering  
21 if you could give some explanation for why you would  
22 be doing that?

23 MR. FOGARTY: Yes. As a company, we own a  
24 small facility in Italy, Pasta Lensi as was referred  
25 to earlier, and we do have business actually first and

1 foremost into Europe, so we try to compete in private  
2 label pasta and ingredient pasta inside the European  
3 market.

4 And then we also when accounts want an  
5 imported pasta -- in other words, there are certain  
6 areas of the market, the specialty part of the market,  
7 where an account will want an imported pasta. It  
8 allows us to have a way to deliver that to the  
9 retailer.

10 COMMISSIONER WILLIAMSON: Thank you.

11 MR. FOGARTY: Sure.

12 COMMISSIONER WILLIAMSON: It appears that  
13 apparent consumption is not appreciably different from  
14 what it was at the time of the original investigation,  
15 which would seem to indicate that per capita  
16 consumption has declined.

17 Now, you've all mentioned the Atkins diet  
18 period, but it seems that this decline has continued.  
19 I was wondering if you wanted to give any additional  
20 explanations for why that has happened.

21 I know every study we see about our  
22 waistline doesn't show that that's declining in any  
23 respect, so I was just wondering what explanations you  
24 might have.

25 MR. GREENWOOD: I think the explanation --

1 first of all, your assumption is generally correct  
2 that there's pretty static, if not declining,  
3 consumption.

4 In fact, in the branded retail sector,  
5 looking at the consumption there, we look at the  
6 penetration of the marketplace, and there has been  
7 some decline in the penetration of the marketplace,  
8 about four points in the last five years.

9 I would say there's some macro trends going  
10 on. The low carb diet in large part has rebounded.  
11 There's probably some residual effect and some  
12 diehards, but it's largely come back.

13 There's a broader macro trend that's putting  
14 pressure on the industry, and that is really at the  
15 end of the day pasta is still an ingredient. As quick  
16 as it is to assemble pasta and sauce if you think of  
17 that 20 minutes, 15 to 20 minutes, that more and more  
18 of the consumers are moving towards convenient  
19 solutions in food eating.

20 So I think that's a broader, longer term  
21 pressure that is being applied to the industry in the  
22 U.S. and probably for me would be the bigger  
23 explanation of why you're not seeing growth and  
24 penetration.

25 The other thing that was mentioned earlier

1 was the movement and the efforts on behalf of the  
2 domestic industry to try to capitalize on the other  
3 key trend in food consumption, and that is health.

4 We as an industry I think have done quite a  
5 lot of good things to work hard and capitalize on  
6 that, but unfortunately the cannibalization rate of  
7 health-oriented pasta is pretty much almost one-on-one  
8 against the base pasta so that's not helping your  
9 consumption trending.

10 MR. FOGARTY: I was just going to add that I  
11 think you're right that if you look at the trend for a  
12 period of time the per capita consumption was  
13 declining post Atkins, and I think, what Scott is  
14 indicating, what we as an industry fought real hard to  
15 do -- if you look at per capita consumption of basic  
16 semolina pasta it's down, and we expect it to continue  
17 to trail down.

18 So what we're fighting to do is to introduce  
19 healthier alternatives of pasta just to get back to  
20 even because we might have this same back and forth  
21 with our own board, for instance. You know, the  
22 population is growing. Why isn't our consumption in  
23 pasta growing?

24 It's because of the inherent core of pasta,  
25 the semolina pasta continues to trade down on us, and

1 we're fighting just to get back to even again with the  
2 healthy pastas.

3 MR. ROSENTHAL: Just a couple historical  
4 notes. I've been representing the pasta industry  
5 since about 1981 and have waged a one person battle  
6 against low carb diets since that time.

7 But what was interesting was watching the  
8 industry in the 1980s and the first part of the 1990s.  
9 It was growing about three percent or four percent a  
10 year based on the view that pasta was healthy and  
11 certainly was an alternative to meat as a more healthy  
12 lifestyle.

13 What's now happened is pasta is now being  
14 viewed by some, partly because of the anti-  
15 carbohydrate diets, as unhealthy so there is a shift  
16 to a new healthy pasta which would be made with whole  
17 wheat or organic or something like that, so healthy  
18 has been redefined for pasta and the result has not  
19 been an increase in consumption. It's been a  
20 flattening as you've heard described.

21 COMMISSIONER WILLIAMSON: I was also  
22 wondering whether to what extent the immigration  
23 patterns and the sort of composition of our population  
24 has implications for the future of the industry?

25 MR. GREENWOOD: That's a good point.

1 Certainly as we see the change in immigration  
2 patterns, the growth of the Hispanic consumer in the  
3 U.S., they do use certain levels of pasta, just  
4 choosing that one.

5 But the level of per capita consumption is  
6 not what the traditional market has been in North  
7 America so there is definitely some effect as you see  
8 that, and I think alternative food choices, that more  
9 and more people are -- you know, pasta still in the  
10 American economy, it's one of the top 30 for the  
11 retail grocer categories and a very critical one for  
12 the retail grocer.

13 But as people have gotten more and more  
14 alternatives I think that that -- across all sectors,  
15 not just the immigration question -- is having some  
16 effect as well.

17 I think one other adjunct that I'd just like  
18 to say too, and I think this references the health and  
19 it sort of references the question that Ms. Lane had  
20 earlier that when we look at a lot of food categories  
21 and the extension of innovation/renovation that a lot  
22 of companies have tried to do and the marketing  
23 efforts, the consumer marketing efforts, of course  
24 with price becoming such a -- not becoming. It has  
25 been a very critical component to this category.

1                   That compresses the amount of consumer  
2                   marketing dollars that a lot of the companies probably  
3                   put in 20 years ago, 15 years ago, and that has a  
4                   residual effect over time of again not bringing  
5                   consumers to the category, whatever immigrant status  
6                   they have.

7                   COMMISSIONER WILLIAMSON: Thank you. We've  
8                   known from other cases about the effect of Wal-Mart  
9                   has become a dominant player in the food industry and  
10                  changing the traditional relationship between  
11                  manufacturers and retailers, and I was wondering have  
12                  you seen any of this Wal-Mart effect in the pasta  
13                  industry?

14                 MR. FOGARTY: Let me. Wal-Mart happens to  
15                 be our largest customer at American Italian Pasta.  
16                 You know, they're in business to try to provide value  
17                 to their consumer and for sure prices are a real part  
18                 of the equation. In my testimony in particular we  
19                 service Wal-Mart.

20                 We also do business with Sam's Club, so both  
21                 in the mass channel and in the club, the warehouse  
22                 club channel, price is perhaps even more important  
23                 than it is in the grocery space so we are very  
24                 concerned about those channels that are really  
25                 important to us and making sure that we continue to

1 have a very fair playing field with the importers  
2 because if we didn't we'd be very concerned about  
3 losing what for us is really critical, big chunks of  
4 volume.

5 COMMISSIONER WILLIAMSON: What about in  
6 terms of I guess private labeling is also becoming  
7 increasingly important not just for the large volume  
8 stores. What effect is that having?

9 MR. FOGARTY: Yes. I think if you look at  
10 Europe and in particular the U.K. private label,  
11 roughly 50 percent of volume is being done in private  
12 label, if not more, closer to 60 perhaps.

13 If you look in the U.S. today, private label  
14 continues to grow slowly as a percentage of the  
15 overall category. We happen to be in both the branded  
16 and the private label business and so we're enjoying  
17 growth on the private label side as store brands set  
18 about strategically growing their penetration against  
19 commercial brands.

20 COMMISSIONER WILLIAMSON: Okay. Thank you,  
21 Mr. Chairman. I see my time is about to expire.

22 CHAIRMAN PEARSON: Commissioner Pinkert?

23 COMMISSIONER PINKERT: Thank you, Mr.  
24 Chairman. I'd like to join my colleagues in thanking  
25 the panel for appearing here today before us.

1 I'd like to start with Mr. Rosenthal and  
2 acknowledge your point about perhaps the perception of  
3 quality differences between Italian pasta and domestic  
4 pasta does not reflect the reality of quality  
5 differences or lack thereof.

6 But in looking at the purchaser  
7 questionnaires there is this perception of quality  
8 differences between Italian and domestic pasta, and  
9 I'd like to ask you how we should take into account  
10 that perception even if it's not based on actual  
11 differences in quality?

12 MR. ROSENTHAL: Well, I've actually read the  
13 excerpts from the questionnaires on that, and it's  
14 clear that some consumers have that perception, but I  
15 don't think all do.

16 It's hard to know how great the percentage  
17 is, and that's why I responded on the question of  
18 elasticities. Your staff attempts to make an  
19 adjustment for this perception issue, but it's really  
20 hard to measure. It's a total guesstimate.

21 If you go and you ask people, a lot of  
22 people will say I don't know where my pasta comes from  
23 and I don't care. Some will say gee, I have to have  
24 Italian pasta, and therefore I'm going to go buy  
25 Barilla, which of course is made in Ames, Iowa, today.

1           The short answer to your question is that it  
2 is really totally a subjective issue when you adjust  
3 your elasticity. Is it two to four? Is it four to  
4 six elasticity substitution because you have some  
5 purchasers who you believe have this perception and  
6 you know others don't have that. There's no hard and  
7 objective answer to that question, I'm sorry to say.

8           COMMISSIONER PINKERT: Thank you. I'd now  
9 like to turn to Mr. Kerwin and ask about this  
10 phenomenon that he described where the Italian  
11 industry continues to add capacity at a significant  
12 rate while not adding to production at that same rate.

13           What do you think accounts for this? You  
14 said that they seem to feel compelled to do that.  
15 What do you think accounts for that phenomenon?

16           MR. KERWIN: Hello?

17           MR. ROSENTHAL: You can take that out of my  
18 time too.

19           MR. KERWIN: I wish the Italian industry  
20 were here this morning to answer that question a  
21 little more directly than I could.

22           It is definitely an odd phenomenon, and we  
23 have an industry here that's truly market based and  
24 has made every effort to become more efficient and has  
25 closed down relatively inefficient facilities.

1           In many cases those facilities were probably  
2 more efficient than some of the facilities in Italy  
3 that remain open. I've read nothing. I've seen no  
4 indication of any closures of any facilities in Italy  
5 from the information that I've been able to locate.

6           Then the other aspect of it may be the fact  
7 that there is subsidization going on here. That is  
8 something that is not available to domestic producers  
9 in the United States. It's our opinion that kind of  
10 subsidization skews the signals in the marketplace,  
11 and you have the actors in the industry who are doing  
12 things that are not particularly rational.

13           It's not a rational action for the industry  
14 overall to continue to add capacity in a situation  
15 where there's already tremendous overcapacity and so  
16 when you see actions like that to me that's an  
17 indication that there's something in the system that  
18 is derailing the normal market actions that would be  
19 taken by rational actors such as subsidies.

20           COMMISSIONER PINKERT: Mr. Fogarty?

21           MR. FOGARTY: Yes. Just to add to that, we  
22 have a facility in Italy, and I would tell you that in  
23 that facility when we compete in the European market  
24 it is brutally price competitive and in particular we  
25 always ask ourselves that very question when we

1 understand new manufacturing capacity is coming on  
2 line in Italy.

3 The answer as we understand it is a subsidy  
4 question. The social costs get subsidized by the  
5 government particularly in southern Italy, and that's  
6 what makes them ferocious price competitors against us  
7 in the European marketplace and Italian marketplace  
8 and particularly worries us if they're not kept on  
9 that level playing field competing back here  
10 domestically.

11 COMMISSIONER PINKERT: Mr. Kerwin, do you  
12 have any estimate for the amount of capacity in Italy  
13 that is not subject to the order currently?

14 MR. KERWIN: Not off the top of my head, and  
15 of course it's a question of there are two orders  
16 here. There's both an antidumping and a  
17 countervailing duty order. I don't have the answer to  
18 that off the top of my head, no.

19 MR. ROSENTHAL: We'll try to give you an  
20 estimate in our posthearing brief.

21 COMMISSIONER PINKERT: That would be helpful  
22 because what I'm wondering is is it possible that this  
23 expansion of capacity is occurring with respect to  
24 companies or with respect to volumes that are not  
25 covered by the orders?

1           MR. ROSENTHAL: There are relatively few  
2 companies not covered by the orders, and the  
3 expansions that we've talked about are much more  
4 widespread than those. Again, we'll get you that  
5 answer in our posthearing brief.

6           MS. CANNON: Commissioner Pinkert, to my  
7 knowledge the only company not covered by both orders  
8 is Pasta Lensi.

9           There are some companies excluded from the  
10 dumping order, but they are under the CVD order, so to  
11 look at companies that would not be subject to any  
12 orders at all I think it's only Pasta Lensi.

13           We could give you that capacity, but that  
14 certainly doesn't even come close to accounting for  
15 what Mr. Kerwin was describing.

16           COMMISSIONER PINKERT: Thank you.

17           I would now like to turn to the issue about  
18 Turkey, and in particular there were references I  
19 believe in Mr. Fogarty's testimony and in Mr. Kerwin's  
20 testimony to limitations on the Turkish ability to  
21 sell into Europe.

22           I recognize that you have elaborated on this  
23 to some degree at page 31 of your brief, but I'd like  
24 you to explain if you would what those limitations are  
25 in selling into Europe. Is it only the tariff rate

1 quota, or is it something else?

2 MR. KERWIN: I'd have to say this is not the  
3 most transparent area of regulation. It's difficult  
4 to even fully understand exactly how the tariff rate  
5 works.

6 Our conclusion is, and again it's  
7 unfortunate that we don't have some representatives  
8 from the European industry to answer this more  
9 directly, but it's clear from looking at the export  
10 numbers from Turkey that other than the German market  
11 that market is not open to them. Otherwise why would  
12 they not be shipping there?

13 Turkey is making efforts to be included  
14 within the European Union, so clearly there are  
15 definite ties there between the Turkish and the  
16 European economies.

17 Obviously Italy is the largest market in the  
18 world for pasta, and there's no reason why Turkey  
19 wouldn't be shipping there if they were capable of  
20 shipping there.

21 I'm not really sure. As I say, it's not a  
22 transparent question as to how it is that the European  
23 countries preclude these shipments from Turkey to  
24 Europe, but certainly the export numbers bear out the  
25 fact that for one reason or another, whether it's

1 simply the tariff structure or some other type of  
2 nontariff barriers, these products are not making it  
3 into the European market.

4 COMMISSIONER PINKERT: One additional  
5 question about Turkey. Is there a perception in the  
6 U.S. market of a quality difference between Turkish  
7 pasta and the domestic product?

8 MR. ROSENTHAL: Again, I guess it depends on  
9 who you ask. I think when you really get down to it  
10 most pasta we're talking about is flour and water.  
11 Most of it is 100 percent durum semolina flour and  
12 water. The Turks make to that recipe, as do the  
13 Italians and the Americans.

14 So do some people perceive it to be a lower  
15 quality? Perhaps. Do some people perceive it to be  
16 higher quality or comparable? Certainly. That's why  
17 they've made great inroads prior to the order. I  
18 don't think there had been any objective surveys on  
19 that or the perception issue in general in the last 10  
20 years or so.

21 I do want to come back at another point to  
22 the general issue of perception and brands and  
23 switching brands at a later opportunity.

24 COMMISSIONER PINKERT: Thank you.

25 Thank you, Mr. Chairman.

1                   CHAIRMAN PEARSON: I'm curious to know why  
2 the industry is seeing capacity expansions despite  
3 overcapacity and relatively modest earnings. The  
4 economist in me admires Jupiter. Here we have  
5 creative destruction once again going on within an  
6 industry right in front of our eyes.

7                   The part of me that has still some empathy  
8 for people who work in food related businesses, you  
9 see a new plant coming on line and you think ouch.  
10 There go the bonuses for the next three years as the  
11 marketplace figures out how to absorb that capacity.

12                   So explain to me why have we seen such  
13 meaningful capacity expansions, new investments in  
14 this industry over the period of review?

15                   MR. GREENWOOD: We may both have an approach  
16 on this.

17                   I think that first of all, the industry in  
18 the U.S. has consolidated obviously over the last  
19 decade. Part of the efforts that I think the industry  
20 is taking upon itself to become more efficient from a  
21 market standpoint is to close down plants. You heard  
22 of a number of those today.

23                   The other factor is that the equipment with  
24 the legacy of family-run pasta companies, which is  
25 really the legacy of the industry in the U.S. You had

1 a lot of plants that were older, and as the industry  
2 has tried to become more efficient and upgrade the  
3 plants of course the machinery -- you know, a pasta  
4 press, a pasta drier today can do up to 16,000 pounds  
5 an hour versus the availability many years ago was far  
6 lower than that.

7 That doesn't necessarily mean you buy a  
8 16,000 pound press, but as you modernize certainly  
9 look for better throughput in terms of labor hours and  
10 such, and that typically is in our case and I believe  
11 others looking at trying to upgrade the machinery, so  
12 that in part is increasing the efficiency, but  
13 possibly has some effect on the capacity.

14 I know certainly in terms of our capacity  
15 utilization as a company our utilization factor from  
16 where we were has improved dramatically, and I believe  
17 the industry has improved that capacity utilization  
18 factor in the U.S., but I'm not sure, but I know  
19 certainly I can speak on behalf of our company.

20 I don't know if Jim has anything?

21 MR. FOGARTY: Yes. I would just add briefly  
22 that I think the overall industry numbers that we were  
23 looking at had improved utilization from about 70 to  
24 80 percent during this timeframe, so there have been  
25 ups and downs in the manufacturing capacity for sure.

1                   New World reduced manufacturing capacity.  
2                   We reduced manufacturing capacity with our Kenosha  
3                   facility. Like every other industry, there's strong  
4                   competitive dynamics taking place as well, and there's  
5                   one particular formerly Italian based now with a  
6                   manufacturing base here, Barilla, that is adding, that  
7                   is in a net add position.

8                   If you look at the industry in total, the  
9                   utilization has improved in this timeframe from what I  
10                  can tell.

11                  MR. KERWIN: Could I just add two points?  
12                  One, and this is really in follow-up to what Mr.  
13                  Fogarty just said.

14                  Examining the figures from the original  
15                  period of investigation, even by the end of the  
16                  current period of review the total domestic industry  
17                  capacity was a lower figure than actually the last two  
18                  years of the original period of investigation, so  
19                  while there may be an increase over the period of  
20                  review the ultimate number there during 2006 is lower  
21                  than those years in the period of investigation.  
22                  That's the first point.

23                  Second point, as is typical in some of  
24                  the --

25                  CHAIRMAN PEARSON: To your first point, Mr.

1 Kerwin, just help me understand where you're finding  
2 those data because I'm looking at the capacity  
3 utilization data. I believe these are publicly  
4 available. This is in Table I-1.

5 MR. KERWIN: Yes. This is on page I-7 of  
6 the staff report.

7 CHAIRMAN PEARSON: Yes.

8 MR. KERWIN: U.S. producers' capacity  
9 quantity.

10 CHAIRMAN PEARSON: Perhaps I misunderstood  
11 what you're saying. You're saying that the capacity  
12 utilization has increased over time?

13 MR. KERWIN: No. I'm saying the absolute  
14 capacity and volume capacity in 2006 of the domestic  
15 industry --

16 CHAIRMAN PEARSON: I see.

17 MR. KERWIN: -- was lower than that in 1994  
18 and 1995.

19 CHAIRMAN PEARSON: Okay. Thank you for that  
20 clarification. Yes. Okay.

21 MR. KERWIN: And then my second point is as  
22 often occurs in the Commission's investigations, the  
23 companies that choose to leave the business that we're  
24 examining typically often times do not submit  
25 questionnaire responses because they're no longer in

1 the business.

2 So to the extent you have a company like an  
3 ADM that got out of the pasta production business,  
4 their closure of their facility is not going to be  
5 reflected in these numbers to the extent that they  
6 have not responded to the questionnaire because they  
7 are no longer in the business.

8 That's not unusual in the Commission's  
9 investigations or reviews that the companies that have  
10 fallen by the wayside, we don't have their numbers so  
11 those numbers, had they been included, for example, in  
12 the early part of the period of review might have  
13 increased the overall capacity figure.

14 Is that clear?

15 CHAIRMAN PEARSON: Not completely. So  
16 you're saying that if we had complete data for the  
17 U.S. industry over the entire period going back to  
18 1993 that we would see a more significant decrease in  
19 actual capacity as some of those firms have closed  
20 operations?

21 MR. KERWIN: Depending on when the companies  
22 exited the pasta business. In some instances these  
23 companies sold their brands off, but did not sell  
24 their production facilities. The companies that  
25 bought the brands solely bought the brands and did not

1 buy the production facilities.

2 In other instances the companies did buy the  
3 production facilities such as in the case of New  
4 World. They did buy some of Borden's existing  
5 production facilities, and some of those were  
6 subsequently closed.

7 On the other hand, in the case of ADM, who  
8 did exit the business, to my understanding the only  
9 thing that conveyed was the brand as opposed to the  
10 production facilities that were there.

11 So those capacity volumes at those  
12 production facilities that were shuttered would not be  
13 reflected in the aggregate data in the staff report to  
14 the extent that those companies did not report to the  
15 Commission.

16 CHAIRMAN PEARSON: Okay. So what you're  
17 saying is the capacity figures that we have for the  
18 most current year, 2005-2006, those are accurate, but  
19 you think we might be understated back in our figure  
20 for 2001?

21 MR. KERWIN: That's not at all unusual in  
22 Commission cases where companies have dropped out of  
23 the market and have not submitted a questionnaire  
24 response on the basis of no longer being a producer.

25 CHAIRMAN PEARSON: Okay. But there's not an

1 expectation that any of those closed facilities would  
2 be reopened? I mean, there are reasons they were  
3 closed. They are going to stay closed.

4 MR. KERWIN: Correct, but I guess my point  
5 is that had those numbers been in at the beginning of  
6 the period of review -- let's say hypothetically there  
7 was a production facility that closed in 2002. Well,  
8 if that production facility had been reflected in the  
9 aggregate number for 2001 it would have gone from some  
10 volume, 40 million pounds to zero as of the next year.

11 In other words, as you're looking at the  
12 trend over the period to the extent you don't have the  
13 data reported from companies that have exited the  
14 business then the initial capacity figures are  
15 understated.

16 CHAIRMAN PEARSON: Right. Okay. We've been  
17 discussing here the experience that the pasta industry  
18 has had in dealing with excess capacity and  
19 rationalizing and consolidating and whatnot.

20 The question that I have now is would the  
21 effect of revoking the orders actually have an  
22 influence in the domestic marketplace that is  
23 fundamentally different than the opening of another  
24 world class production facility in the United States?

25 I mean, the market is going to have to deal

1 with some more product, but is the revocation of the  
2 order somehow fundamentally different than just  
3 dealing with the new plants that you've dealt with so  
4 admirably over the period of review?

5 MR. GREENWOOD: You know, my perception is  
6 yes because it's not exclusively a capacity question.  
7 It's how the manufacturer deals with that excess  
8 capacity in terms of their pricing.

9 Moreover, we talked a little bit today about  
10 subsidization and such, so if you have a domestic  
11 manufacturer that adds capacity -- for instance, one  
12 of our competitors is doing that -- and dealing in the  
13 retail branded market with the formula by which they  
14 price and they market and such, that could be a very  
15 different and would be a very different scenario than  
16 revoking and having an Italian manufacturer who's  
17 licking their chops at the ability to come into the  
18 U.S. and has a subsidy, but also may price very, very  
19 differently and has shown us that they've done that  
20 before, whether it's Turkey or Italy.

21 So I think a lot of it is not just  
22 exclusively the capacity question, but what does  
23 somebody do and how do they treat their variable or  
24 gross margin.

25 CHAIRMAN PEARSON: Mr. Fogarty, did you have

1 a thought on that?

2 MR. FOGARTY: I basically agree with what  
3 Scott indicated. I just would add to that point that  
4 obviously the scale -- Barilla has opened a plant in  
5 New York rated for about 100 million pounds.

6 That's a far different number than the three  
7 billion Italian pounds and the billion Turkish pounds  
8 that would be facing us, and to Scott's point, in a  
9 serious price way as opposed to perhaps a more  
10 thoughtful, rounded approach that our branded  
11 competitor has taken.

12 CHAIRMAN PEARSON: And then perhaps we'll  
13 come back to this later, but the issue that I'm  
14 wrestling with is the domestic marketplace somehow is  
15 going to have to deal with 100 million additional  
16 pounds coming out of Barilla.

17 How different is that from dealing with  
18 potentially 100 million pounds of imports?

19 MR. FOGARTY: Yes. That's a good question.  
20 We certainly think a lot about it and worry about that  
21 extra capacity, and I would say to you we worry about  
22 that and we worry a lot about the increase in the  
23 durum prices and all of those.

24 Yes, our operating margin has improved a  
25 little bit, but that leaves us vulnerable, and the

1 last thing we need is to have the order removed and  
2 have massive volume coming at us with price on top of  
3 what's already a tough business.

4 CHAIRMAN PEARSON: Yes. Okay. Well, thank  
5 you very much, and I appreciate the indulgence of my  
6 fellow Commissioners for letting me go on just a bit.

7 Vice Chairman Aranoff?

8 VICE CHAIRMAN ARANOFF: Thanks, Mr.  
9 Chairman. I join my colleagues in welcoming all of  
10 you here this morning.

11 I want to start by taking another twist on  
12 where the Chairman left off and ask you in terms of  
13 conditions of competition what is the effect of  
14 intrabrand competition on your ability in particular  
15 to raise prices as your costs have gone up?

16 A number of you manage multiple brands. You  
17 also compete against other smaller producers, so in  
18 the retail market how is that having an effect on your  
19 ability to keep your prices consistent with your  
20 costs?

21 MR. GREENWOOD: Can I just ask  
22 clarification? When you say intrabrand, do you mean  
23 within a company like the brand portfolio that a  
24 company like myself or Jim's company has? Is that  
25 what you're referring to?

1                   VICE CHAIRMAN ARANOFF: Well, both. Both  
2 between your own brands within the company and also  
3 between domestic brands that are owned by two  
4 different companies.

5                   MR. GREENWOOD: Okay. All right. Well, I  
6 think to Jim's point, it's a highly competitive  
7 industry and that certainly I'll just deal with the  
8 first part of the question.

9                   Within the company, one of the other  
10 pressures that has been applied to the domestic  
11 industry over the last five years particularly has  
12 been the continued consolidation of the retail trade,  
13 but commensurately the pressure to reduce redundancy  
14 with regard to brands within those channels of  
15 distribution, particularly the retail.

16                   So whereas you might have had in the old  
17 days multiple families owning multiple pasta brands  
18 and having four, five or six brands within a  
19 particular retail customer, that's not the case  
20 anymore. That has compressed. So a lot of that,  
21 actually a good portion of that has already occurred.  
22 You know, that redundancy has been worked through.  
23 There's still some.

24                   You know, in pricing a portfolio of brands  
25 we really look at -- and the other factor is Wal-Mart.

1 Wal-Mart has come in fundamentally as a national  
2 account, so from a pricing standpoint you have to be  
3 conscientious of both of those and be very, very  
4 cautious. As it relates between companies, brands  
5 between companies, I think it is a respectful, strong,  
6 but difficult competitive environment.

7           Again I guess trying to answer Mr. Pearson's  
8 question, the one difference between excess capacity  
9 overseas of four billion pounds and excess capacity in  
10 the domestic market of a few hundred million pounds is  
11 that the best way to maintain the static nature of the  
12 consumption, and we did say it was relatively static,  
13 is to do your best to find the right mix between  
14 price, advertising, consumer promotion and other  
15 elements to at least have the consumers keep coming to  
16 the shelf. Our respected competitor does that. A  
17 Turkish importer or an Italian importer does not.  
18 It's strictly very, very, very low pricing.

19           So I think it's a combination of factors. I  
20 don't know if that answered your question.

21           MR. FOGARTY: Just to frame up the branded  
22 business maybe just to make sure, the way the branded  
23 business works, just to explain, it's extremely price-  
24 oriented even though, yes, there's a brand, yes,  
25 there's some brand equity relative to product level,

1 but it's extremely price-oriented.

2 If you look at, sort of, on average, in the  
3 branded business, about half the time, half the volume  
4 is done on promotion, so there will be a list price on  
5 the shelf in the grocery store, and so if you walk  
6 through the grocery store, you will -- virtually half  
7 the volume done off of that shelf will be done where  
8 somebody puts a different tag up on top of what that  
9 list price is, so very -- in food, it's one of the  
10 more promotionally oriented categories, i.e., price is  
11 really important in that space.

12 And then, let me answer the question this  
13 way. If you look at other categories, branded  
14 categories, if there is a leader in a category, the  
15 category tends to want to see the leader move its  
16 price first. So if I could answer the question that  
17 way, in other words, it's hard, it's so elastic that  
18 if the leader in a branded space doesn't move its  
19 price, the amount of volume one can lose if you are a  
20 secondary player can be fairly dramatic.

21 MR. ROSENTHAL: If I might, this might be a  
22 time to wed some of your question to what Commissioner  
23 Pinkert was asking about. There have been studies  
24 done about the pasta industry and brand loyalty, which  
25 I would argue also has to do with country of origin

1 loyalty, and that is, traditionally, people, consumers  
2 tend to buy whatever pasta their parents bought, and  
3 people have some unconscious sense -- I grew up in New  
4 England, my parents bought Prince, that's what I am  
5 going to buy.

6           And unless the price of Prince gets way out  
7 of whack with the price of the San Giorgio's or the  
8 Barilla or something else coming in, you'll go back  
9 and buy Prince. But if you buy another product  
10 because it's on promotion because it's 50% of what the  
11 Prince product was charging, and you say I'm going to  
12 try this, and it turns out that it's okay, now it's an  
13 acceptable brand, you will expand your list of brands  
14 that you will find acceptable.

15           Well, that's happened more and more over  
16 time as people have, because there's so much promotion  
17 going on in pasta, in fact, pasta is used as a loss  
18 leader at a lot of supermarkets. They don't care  
19 necessarily to make money on pasta; they want to get  
20 people in the door. So you'll see lots of  
21 advertisements in the newspaper promoting pasta, get  
22 people in the door. More and more pasta product is  
23 sold on promotion, which has made more and more people  
24 who previously would be loyal to a brand that their  
25 parents bought open to other brands, and it's all

1 based on price now, because they've found out that I  
2 can pay less and have a comparable eating experience.

3           And that is true across origins. It used to  
4 be, well, some people might have thought that San  
5 Giorgio or Ronzoni were Italian products until they --  
6 or Barilla, which is now made in Iowa, are Italian  
7 products, and said well, Italian is better, but  
8 they've found out that well, gee, San Giorgio is made  
9 in Winchester, Virginia. All these other famous  
10 Italian names were actually domestic names. So there  
11 is really a -- price has become the great equalizer or  
12 the great opportunity for people to try things and  
13 realize that they are all pretty comparable.

14           VICE CHAIRMAN ARANOFF: Well, actually,  
15 that's a really good segue into my next question,  
16 which is, given that people are maybe less tied to  
17 brands than they were in the past, and also that they  
18 tend to move to other parts of the country where the  
19 same regional brand isn't there anyway -- I also grew  
20 up in New England, and I remember Prince spaghetti,  
21 but you can't get it here.

22           But I guess, so my question is, Barilla has  
23 successfully launched a national brand. None of the  
24 other companies has done that. It seems to me that  
25 there is a lot of cost savings that would be

1 associated with having a national brand in terms of  
2 packaging, logistics, advertising, all kinds of  
3 things. What are the costs and benefits that have led  
4 you to not attempt the same thing?

5 MR. GREENWOOD: Well, having the number of  
6 regional brands that we do have around the country,  
7 we've asked these questions of ourselves many a time,  
8 and previous CEOs have as well, and I would tell you  
9 where we have come back after research is, there are  
10 definitely certain cost benefits. We could say  
11 advertising breaks in terms of not having to break  
12 your print advertising between different regions, but  
13 at the end of the day, pasta is also a business where  
14 transport as well as the manufacturing are important  
15 components of it.

16 And for us, we have very strong, and  
17 continue to have very strong equity, for instance in  
18 Middle America, Creamette, up in the Midwest, or  
19 Skinner in Texas, very strong, strong brand equity  
20 there, even in the face of Barilla going national.  
21 And what our customers have told us, the big guys, the  
22 Krogers, the Wal-Marts and such of the world, have  
23 told us is that there is absolutely, in their mind, a  
24 strong role for the legacy and the strength of a  
25 regional brand in conjunction with a national brand.

1           MR. ROSENTHAL: By the way, in the original  
2 investigation, this question came up, because there  
3 hadn't ever been a national brand before. Barilla was  
4 just coming into the marketplace. There had been a  
5 number of attempts, or at least a couple of attempts  
6 to make a national brand from a domestic product and  
7 it had been unsuccessful, in large part because of  
8 consumer loyalty to their regional brands.

9           Barilla has spent a lot of money trying to  
10 create this national brand. You can see from the  
11 questionnaire responses, recently, what that means for  
12 them, but it is an expensive proposition to do that,  
13 and this comes not from their questionnaire response,  
14 from knowledge of the industry. You have to spend a  
15 lot of money in slotting fees and a lot of money in  
16 advertising to get yourself in the door.

17           VICE CHAIRMAN ARANOFF: Okay. I'll have to  
18 come back to this in my next round since my time is  
19 up. But I guess, I mean, my impression, and correct  
20 me if I'm wrong, looking at the data is that, although  
21 they have spent a lot of money, it's paid off for  
22 them, and that's the origin of my question of why  
23 aren't other people trying it. So thank you, Mr.  
24 Chairman.

25           CHAIRMAN PEARSON: Commissioner Okun.

1                   COMMISSIONER OKUN: Thank you Mr. Chairman,  
2                   and I join my colleagues in welcoming all of you here  
3                   today. It's been a very interesting discussion thus  
4                   far. You'll be happy to know that in my house, this  
5                   is the one thing I can cook, so we've never had an  
6                   Atkins diet craze in our house. We just throw that  
7                   pasta in there and the sauce. It's convenient and my  
8                   kids then think I cook something.

9                   I was very interested in kind of the  
10                  responses on this branded name issue versus a national  
11                  brand, because I found that discussion very helpful in  
12                  understanding why one would still expend the costs  
13                  that are associated with keeping multiple brands  
14                  going, and Mr. Greenwood, maybe I could just follow up  
15                  with you. When you mentioned Wal-Mart, and I think,  
16                  Mr. Fogarty, you also sell to Wal-Mart, you are  
17                  indicating that Wal-Mart also wants you to send in  
18                  these separate branded products? They are not going  
19                  with their own label that they want to make, a Wal-  
20                  Mart national brand of pasta?

21                  MR. GREENWOOD: Well, first of all, they do  
22                  have a private label, and Mr. Fogarty's firm actually  
23                  produces that for them. Most retailers in the realm -  
24                  - not just in pasta, but in most food categories, in  
25                  the realm of trying to build their own loyalty as a

1 retailer, put a lot of emphasis between trying to  
2 build and push the private label. In the face of all  
3 that, though, private label is still less than 25% of  
4 the pasta category in the North American marketplace.

5 I would acknowledge that Barilla has built a  
6 national brand, and I give them good respect on that.  
7 They've done a good job, spent many, many, many, many  
8 millions of dollars doing that. The interesting thing  
9 is, when you really go around the country and you look  
10 market by market at where their strength is, 35% of  
11 their business is in the Northeast, but you do look  
12 across the country as a whole and you really see what  
13 share penetration they have had in many markets, the  
14 South, the Midwest, the Southeast.

15 The national brand comes from the fact -- we  
16 actually have a national brand. We talk about Barilla  
17 a lot, and something gets lost in the equation here  
18 that we have a strong national brand called Healthy  
19 Harvest, Ronzoni Healthy Harvest, that is nationally  
20 penetrated across all customers in the country, that  
21 is a sub-segment of whole wheat.

22 But no, there is still, the customers are  
23 very accepting and very understanding, and we've  
24 really had -- I can't think of any one customer that  
25 has said, we only want to go with our private label

1 and one national brand. I can't think of one customer  
2 that's approached us and said that.

3 COMMISSIONER OKUN: Okay. Mr. Fogarty, do  
4 you want to comment on that? And if you could also,  
5 just remind me, I know we've talked to Wal-Mart in  
6 other cases, do they also have the same slotting fees  
7 issues or is that part of the way things get marketed  
8 for them?

9 MR. FOGARTY: Sure. First, they do not  
10 operated the way the other grocers do with slotting  
11 fees. They do not have slotting fees. Maybe the way  
12 I'd answer, I'd say it's an ongoing balance. Wal-Mart  
13 itself has a concept of, of course, they have a very  
14 strong supply chain and they are very focused, as you  
15 know, on synergies and logistics, so that's sort of  
16 one side of -- it's the yin and yang -- one side of  
17 the house.

18 And the other side of the house, they need  
19 to figure out how to present a store of the community,  
20 because it isn't just peanut butter across the United  
21 States, as you well know. There are different sort of  
22 focal points within different geographies. I would  
23 say, for instance, our Mueller's brand in the  
24 Southeast is incredibly strong with that consumer base  
25 and Barilla, the national Barilla platform may not

1 make sense for that local regional demographic.

2 So Wal-Mart goes through this. Sometimes  
3 they'll push the lever too far towards simplification  
4 and synergies and they will sort of bounce back and  
5 forth. So I think I agree with Scott that the  
6 regional brands have a place into the future and it  
7 will be an ongoing balance between making sure we  
8 provide enough equity in those regional brands so that  
9 they are a very good alternative to the national  
10 brand.

11 And then, just to reiterate the point, I'd  
12 like to have both. I'd like to have the national  
13 brand and a set of regional brands. We, as well, have  
14 attempted a health platform via Heartland, which has  
15 national distribution through Wal-Mart, our brand  
16 within Wal-Mart and we've tried to expand it from  
17 there, again, a health platform not dissimilar to  
18 Healthy Harvest.

19 But we can't afford -- Barilla had the cash  
20 flow of its European based business to make a bet and  
21 grow a national brand, and it was a big bet. We,  
22 speaking for our company, we can't afford to do that,  
23 simply put.

24 COMMISSIONER OKUN: Okay, well, then let me  
25 ask you this question about Barilla, and Mr.

1 Rosenthal, I think you had made a Toyota remark, so  
2 I'll use that as my starting base. Is Barilla  
3 becoming the next Toyota or maybe a forklift truck for  
4 what we've seen as a change in the industry, where  
5 Barilla has decided, serve the U.S. from the U.S.?  
6 They've got the Italian cache. People, I think, still  
7 think it's from Italy if they hadn't looked at the  
8 box, and if the order was lifted, they are a big  
9 player in Italy too. There wouldn't be much incentive  
10 for the other Italians to run in here and try to knock  
11 out a big national player like Barilla.

12 MR. ROSENTHAL: I don't think that that  
13 would be their intent. They would try to knock out  
14 the other U.S. brands, which they were trying to do  
15 before Barilla moved here. Certainly, I'm not going  
16 to suggest that Barilla, which has just announced this  
17 new plant, that they are going to decide to abandon  
18 their investments here, but there are another 129  
19 pasta producers in Italy with a great deal of excess  
20 capacity who would love to come in here and try to, if  
21 they can't emulate Barilla as a national brand, they  
22 can certainly emulate other Italian producers who were  
23 making great inroads in the market prior to the  
24 imposition of the order.

25 And if you go back and you look at the

1 original order, prior to 1995, Barilla was not much of  
2 a presence in this market. They were a threat and we  
3 talked about them at the final injury hearing, but in  
4 fact, the rising and dramatically surging imports from  
5 Italy in the original investigation were not  
6 represented by Barilla. They were represented by all  
7 these other Italian companies.

8 So Barilla, another 100 million pounds of  
9 capacity, I think can be a responsible domestic  
10 producer. They certainly have the same cost structure  
11 as the other domestic producers. They are buying the  
12 same high priced, record high wheat here. They have  
13 the same labor costs, and they don't have the domestic  
14 subsidies here. The U.S. producers who are  
15 represented in this case can compete against a Barilla  
16 with that sort of cost structure.

17 What they worry about is the other 129  
18 Italian companies who want to simply export to the  
19 U.S. on price, cover their variable costs at most, and  
20 use up their excess capacity. That's the fear, and  
21 the same thing is true of the Turks who don't even  
22 have the panache of an Italian brand necessarily, and  
23 will sell only on price.

24 COMMISSIONER OKUN: And obviously we are  
25 hamstrung by not having the European producers here.

1 The brief that was filed, I think, as you noted in  
2 your opening remarks, would support I think that view  
3 of the other smaller players, that they don't like the  
4 Lensi company and Barilla having all this power to  
5 keep them out of the U.S. market, so --

6 MR. HASPER: Madame Commissioner, may I just  
7 add a comment to your question?

8 COMMISSIONER OKUN: Yes.

9 MR. HASPER: The other issue about the  
10 incentive --

11 COMMISSIONER OKUN: Please identify yourself  
12 for the court reporter. I can't see your name tag.

13 MR. HASPER: Jack Hasper from Sales and  
14 Marketing with Dakota Growers.

15 COMMISSIONER OKUN: Okay, thank you, Mr.  
16 Hasper.

17 MR. HASPER: The other issue is they may  
18 choose to come to the market, not compete in the  
19 branded segment with Barilla, but compete in the  
20 private label segment. I just went through a review  
21 just two weeks ago, which was about a three-month  
22 process, with Safeway. When you walk into Safeway,  
23 you buy the Safeway label, spaghetti, rigatoni,  
24 whatever, you don't know who packs it.

25 I happen to be the packer right now at

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1 Dakota Growers, but at that review, Safeway, at their  
2 corporate office, invited several suppliers to come in  
3 and bid in the business, including my competitors  
4 here, but also they invited an Italian company to bid  
5 in that business. They presently do buy Italian  
6 product for one of their pasta segments, their whole  
7 wheat and their organic.

8 So we feel that if the order is lifted that  
9 we would have a lot more competition from that 3  
10 billion excess capacity competing for the private  
11 label business, and we have other instances where that  
12 does occur today.

13 COMMISSIONER OKUN: Okay, and if that  
14 information is not on the record in your brief, if you  
15 could add that for post-hearing, Mr Rosenthal, what he  
16 testified to?

17 MR. ROSENTHAL: Certainly.

18 MR. KERWIN: Commissioner, could I --

19 COMMISSIONER OKUN: Yes.

20 MR. KERWIN: Just one more point, which is  
21 that Barilla has approximately a 50% market share in  
22 the Italian market, and somehow these 129 other  
23 companies in Italy are competing in the Italian market  
24 with Barilla, so I don't think the presence of Barilla  
25 in the U.S. market would in any way keep them out of

1 our market in the event of revocation.

2 COMMISSIONER OKUN: Okay, that was helpful.  
3 I was going to ask, I couldn't remember if that figure  
4 was in the record, of what share of the European  
5 market Barilla had as well, so that was very helpful.

6 Well, with my light about to change, I'll  
7 save my other questions for my next round. Thank you  
8 very much.

9 CHAIRMAN PEARSON: Commissioner Lane.

10 COMMISSIONER LANE: Thank you. The  
11 prehearing report shows that the price of durum wheat  
12 has increased from approximately \$3 per bushel in 2001  
13 to around \$5 per bushel in early 2007. Although this  
14 represents a significant increase, I note that the  
15 price is still well below the prices that were  
16 incurred in the original period of investigation. In  
17 1995, the price for durum wheat was around \$7 per  
18 bushel. What factors led to the increases in wheat  
19 prices in 1995 and then the significant declines to \$3  
20 per bushel in 2001, and do you see the current price  
21 increases as being part of a normal price cycle,  
22 similar to those seen in historic data?

23 MR. FOGARTY: I could start there. The  
24 price, just to add on to, you mentioned 3 and 5. In  
25 my testimony, the numbers were a little higher than

1 that because we were using Minneapolis Exchange  
2 prices, which are different than just sort of the  
3 farmer level of the supply chain, and at those levels,  
4 my number were 4.55 at the beginning of '06, went to  
5 6.15, and just for clarity for everybody, it then  
6 averaged approximately \$6.50 in the month of June of  
7 2007.

8 It's now north of \$9 in the month of July of  
9 2007, so --

10 COMMISSIONER LANE: Just a second. The \$9  
11 in July, is that an average, or was that just a  
12 limited spot price?

13 MR. FOGARTY: It's a limited period of about  
14 a couple of weeks where it's been trading now above  
15 \$9, but it's a function of now the harvest information  
16 that's come forth globally, and the harvest  
17 information has been terrible globally. Particularly  
18 in Europe and North Africa, the crops have not come in  
19 well. And so that is putting pressure now. Now we  
20 have, that marketplace, the Italians and the  
21 Europeans, now reaching over into our own supply, our  
22 own raw material, and competing with us for our own  
23 raw material here in North America. North America and  
24 Canada are net exporters of durum into the European  
25 market.

1                   And I would say the 'why' is that, and as  
2 we've mentioned, we think there has been somewhat of a  
3 structural shift upward in the market due to the  
4 biofuel, the alternatives that farmers now have to  
5 plant, so that greatly concerns us that now we have  
6 bad crop, but also this structural shift that these  
7 prices are going to now stay fairly high for some  
8 time. The North American crop will come forth now in  
9 the August period, August to early September. We  
10 believe a notion of a decent crop is already baked  
11 into the pricing we are seeing, and our next check-in  
12 point won't be until mid-next year when the European  
13 crop cycles through again.

14                   MR. GREENWOOD: Just to add to that, and Mr.  
15 Rosenthal can probably put a little bit more color on  
16 this, but as I recall looking back at the historical  
17 data, in the mid-90s, there was some issue in free  
18 trade with Canada that actually drove up, for a very  
19 short period of time, I think it was two years, less  
20 than two years, that drove up the price of durum at  
21 that time.

22                   The other factors that we have seen in the  
23 marketplace over the last decade have largely been  
24 weather related. The change, and I mirror what's been  
25 said here with Jim, and we have folks in our firm that

1 have been there for 30 years, we believe there is a  
2 seminal change that has gone on here, a structural  
3 change for two factors. One is, without question, the  
4 ethanol is absolutely having an effect on the durum  
5 market particularly, but other commodities as well.

6 The other one is just the growing regions.  
7 There is a certain level of contraction in some cases  
8 in terms of where durum can be grown, and as it  
9 relates to the Dakotas and also up in -- the Canadian  
10 Wheat Board has a big play in durum. So we absolutely  
11 mirror what's been said here in that the fact that  
12 when I came on board January of '06, durum could be  
13 bought for 4.35, 4.66, EX Minneapolis, and right now,  
14 it wasn't just a one-week or a one-day period.

15 I mean, the market is, as we speak today,  
16 trading well above \$9, and so that is a dramatic and  
17 seminal change which we believe, at least as far as  
18 anybody can have a crystal ball, is certainly a two-  
19 year plus, if not more, event.

20 MR. ROSENTHAL: Just going back to the  
21 period of the mid-90s, I had the honor, if you will,  
22 of participating in the very last Section 22  
23 Agricultural Stabilization Act case here at the  
24 Commission on durum wheat. The result was a mixed  
25 recommendation by the Commission, and ultimately, the

1 Clinton Administration negotiated a, I believe it was  
2 a one-year tariff rate quota with Canada on imports of  
3 durum wheat.

4 It may have been extended a little bit, but  
5 that clearly had an impact on the market price, and  
6 the, I want to say '94, '95 period. My recollection  
7 is a little hazy on the precise timing there. There  
8 is one other point when it comes to the raw material  
9 cost I think is worth contemplating. Back in the 90s  
10 and prior to that, the Italians and the Turks were not  
11 using much domestic or North American durum wheat to  
12 make their pasta.

13 Over the last decade or so they have been  
14 relying more on North American wheat from Canada, from  
15 North Dakota, being shipped to Europe to make pasta.  
16 That increased demand, if you will, for North American  
17 durum wheat has had an effect on the ability of U.S.  
18 pasta producers to get their supply of raw material  
19 here.

20 COMMISSIONER LANE: Okay. Thank you.

21 MS. BECK: And Commissioner Lane, if I could  
22 just add one other point, just to take it one step  
23 further. I think you make a good observation about  
24 how the levels have approached and are even increasing  
25 further to the levels they were back in 1995, and back

1 in '95 when the industry was faced with the low prices  
2 from the imports at the same time, the industry was  
3 operating at a loss.

4 So here now, we find the industry in a  
5 situation where they are again faced with rising and  
6 further rising raw material costs. They may have  
7 improved, but what's to happen if the imports are to  
8 come back into the market at those same prices when  
9 they are at those similar levels for raw material  
10 costs? It's likely that they would be back in the  
11 operating at a loss position within a very short  
12 amount of time.

13 COMMISSIONER LANE: Okay, thank you.

14 The major raw material cost for dry pasta is  
15 the cost of durum wheat, which has increased recently.  
16 The staff prehearing report notes that some U.S.  
17 producers use long-term contract and hedging  
18 instruments to manage the cost of durum wheat. Do the  
19 firms that are represented here today use long-term  
20 contracts or hedging instruments to manage the cost of  
21 durum wheat?

22 MR. FOGARTY: I could start. The market for  
23 durum is a fairly small market, so there isn't a sort  
24 of well-developed derivatives market for managing  
25 risk. What we do, and I think a number of us do, is

1 we do buy forward to some level, so buy a few months  
2 forward. We try to have some level of coverage out  
3 into the future, but we can't buy contracts to do  
4 that. We have to engage and contract with a farmer,  
5 effectively, through an intermediary.

6 So that's on that front, and then on  
7 contracts, I would say, for us in the retail space, we  
8 have some contracts, and I would say though, in  
9 general, when we do have a contract, we try to have  
10 durum be something that can pass through in the  
11 pricing relationship.

12 MR. HASPER: This is Jack, again, from  
13 Dakota Growers. We, Dakota Growers, do not have the  
14 opportunity to the hedge, because there is no forward  
15 market for durum. Durum is a cash market. When you  
16 buy it, you pay for it. It's only 8% of the total  
17 wheat crop of the United States, and if I buy durum,  
18 to Jim's point, you pay for it at that point in time.

19 Now, we can buy out one, two or three months  
20 depending upon how far the farmer is willing to sell  
21 us. When you do do that, you pay what is called a  
22 carrying charge, because the farmer will not deliver  
23 right away, but he'll charge you for the inventory,  
24 the warehousing cost, the interest cost, et cetera.  
25 There was a hedging opportunity which was several

1 years ago which lasted for about a year to a year and  
2 a half. That went away because it wasn't a big enough  
3 market to be any players, so that thing got dissolved.

4 COMMISSIONER LANE: Okay, thank you.

5 Thank you, Mr. Chairman.

6 CHAIRMAN PEARSON: Commissioner Williamson.

7 COMMISSIONER WILLIAMSON: Thank you, Mr.  
8 Chairman.

9 The Respondents in their brief argue that  
10 the Italian pasta industry has been targeting its  
11 marketing at other export markets. I was wondering  
12 whether or not you agree with that, and if not, why?  
13 Any of you.

14 MR. FOGARTY: Well, just to start, I think  
15 that they have this 10 billion of production, and if  
16 they have 3 billion of excess, there are 7 going  
17 somewhere, and I guess just to frame it, the -- what's  
18 the size of the Italian consumption? It's escaping me  
19 now, but it's certainly substantially less than the  
20 seven. So the seven is, they target Japan, we know,  
21 and they target Europe for sure, and that's kind of my  
22 high-level take on it.

23 They certainly need to take that capacity  
24 and do something with it. Yes, they leave 3 billion  
25 unspoken for, but they are, as you know, a net

1 exporter, a substantial net exporter.

2 MR. KERWIN: I guess I would add, as a  
3 member of the European Union, it's not surprising that  
4 the largest export markets or among the largest export  
5 markets from Italy are the major economy to the  
6 European Union, but there are obvious limitations to  
7 the consumption in those markets, and with the kind of  
8 excess capacity that Mr. Fogarty just mentioned, there  
9 is a clear incentive to explore, further explore the  
10 U.S. market if the constraints of the order are done  
11 away with.

12 MR. ROSENTHAL: One of the things that I  
13 think is worth noting is that the Respondents -- first  
14 of all, I think I'll stop calling them Respondents  
15 because they never responded to any information  
16 requests from the Commission, so those other guys who  
17 submitted something fundamentally misapprehend the  
18 nature of this investigation.

19 What you are trying to do as a Commission is  
20 figure out what's going to happen if the orders are  
21 revoked, and they really don't address that except in  
22 a way that reinforces our point. The fact that the  
23 Italian producers export to other places in addition  
24 to the U.S. now under order is interesting, but what  
25 will happen if they no longer have the restraint of

1 the order? The other guys who filed the submission  
2 basically said they want to bring their products here.  
3 They don't want to be constrained by the order.

4 The efforts at circumvention were a good  
5 example of the desperate attempts by other producers  
6 to get into this market. It's clear that the  
7 producers represented by the so-called Ad Hoc  
8 Coalition want to ship their product here, and that's  
9 just a tiny handful of the companies who have the  
10 capacity and the ability to ship to the United States,  
11 and will do that if unrestrained.

12 COMMISSIONER WILLIAMSON: Thank you. On  
13 that subject of circumvention, you mention on page 22  
14 of your brief that Commerce is weighing new evidence  
15 of circumvention, as the Petitioners submitted.  
16 Please describe this new evidence and what effect, if  
17 any, it should have on our analysis.

18 MR. ROSENTHAL: I'll let Mr. Smith describe  
19 the new evidence, but I would just say that we point  
20 to this as just one more example of the desire by the  
21 Italian producers to get around the order and their  
22 interest in the U.S. market. So with that, I'll turn  
23 it over to Mr. Smith.

24 MR. SMITH: This is David Smith, Kelley  
25 Drye. Yes, in the current administrative review,

1 Commerce is looking at a couple of companies, and one  
2 of them we had anecdotal evidence of repacking on.  
3 And so last July at this time, this is the anniversary  
4 month of the orders, and last July we requested a  
5 review on that company. I would say that most of the  
6 information at Commerce on this subject is proprietary  
7 in nature and I can't share it here, but we have  
8 levied the charge that this company, Rumo, is  
9 circumventing the order now.

10 They have denied it in the public record at  
11 Commerce, and Commerce has yet to issue its  
12 preliminary determination, but we included it in our  
13 brief because we have had a history since the order  
14 was first imposed in 1996, there has been a history of  
15 circumvention of this order, first with Barilla, then  
16 with Pagani, after that with a company that was  
17 shipping seven one-pound packages and tying them  
18 together and suggesting that it was seven pounds of  
19 bulk pasta rather than one-pound covered merchandise.

20 So we bring that out as a never-ending  
21 battle that the U.S. industry has to fight. I can't  
22 tell you specifically what the Commerce Department  
23 will find in this case, but I can tell you that we are  
24 even aware of other examples beyond this company that  
25 we have identified that may be doing this in the

1 marketplace now, and we are going to take appropriate  
2 action when we can.

3 COMMISSIONER WILLIAMSON: Thank you. I can  
4 understand how you can take, say, seven packages and  
5 untie them and sell them, but what do they do with  
6 these -- they bring in five-pound bags and then  
7 reprocess their -- watching the production process,  
8 you have an awful lot of breakage there.

9 MR. SMITH: Well, in the very first  
10 circumvention case that Commerce found, Barilla was  
11 bringing in these totes that are called 40-pound totes  
12 into Syracuse, New York, and Barilla America, its  
13 affiliate here, would repack those 40-pound totes into  
14 one-pound packages. And of course, when the 40-pound  
15 tote came in and crossed the border at Customs, they  
16 were declaring it non-subject merchandise.

17 By repacking it into one-pound packs and  
18 selling it at retail, the Commerce Department made the  
19 obvious conclusion that that was indeed circumvention,  
20 and was able to reach that and stop that.

21 Unfortunately, they purposely did that just long  
22 enough until they opened their facility in Ames, Iowa.  
23 So it's the repacking of bulk pasta, for which duties  
24 are not paid, duties are not levied on any packages  
25 greater than 5 lbs, 4 oz., so these larger bulk

1 packages can be brought in, repacked here, and then  
2 shipped to the retail market and have the advantage of  
3 not having had to pay AD/CVD duties.

4 MR. ROSENTHAL: And even with some breakage,  
5 it's still cheaper than paying duties, apparently.

6 COMMISSIONER WILLIAMSON: Okay, thank you.  
7 One last question. How would you respond to the  
8 argument of the other guys that the volume of non-  
9 subject Italian imports is so large that it renders  
10 the orders ineffective?

11 MR. ROSENTHAL: Again, I think they have  
12 things a little confused. The volume of non-subject  
13 imports from, if they are referring to Italy non-  
14 subject imports, it's not so large compared to what  
15 might be. Again, they are forgetting that this is  
16 supposed to be an analysis of what will happen if  
17 there is a revocation, and again, there is a lot of  
18 unused capacity. We'll get the precise amount on the  
19 covered versus non-covered with respect to Italy in  
20 response to Commissioner Lane's request, but they are  
21 missing the point on that, that we are trying to  
22 figure out what will happen in the future.

23 If they are talking about the non-subject  
24 imports from other countries, that kind of non-  
25 subject, which I am not sure they are talking about,

1 but as suggested by Mr. Kerwin earlier, all that does  
2 is make the competitive situation in the U.S. a little  
3 bit more intense and create greater vulnerability for  
4 the domestic industry.

5 COMMISSIONER WILLIAMSON: Thank you. Just  
6 one last question. I was wondering, there has been  
7 some talk about the industry's consolidation, and I  
8 was wondering what role either the subject or non-  
9 subject imports play in that. How does that affect  
10 that process? And also, how will the -- yes?

11 MR. ROSENTHAL: I just want to make sure I  
12 understand. So what role do subject imports or non-  
13 subject imports play in the consolidation of the  
14 industry over time?

15 COMMISSIONER WILLIAMSON: Yes, I mean, does  
16 that make that strategy more difficult, or does it,  
17 what?

18 MR. GREENWOOD: No, I think that as it  
19 relates to branded consolidation, if that's what you  
20 are referring to, there has been overarching branded  
21 consolidation. The retailer still will look for price  
22 propositions, so if you go into the metro New York  
23 market, for instance, you might find half a dozen  
24 imported products in Brooklyn, for instance, in a  
25 particular store that would each be different brands.

1           So it very much depends on the area, again,  
2           but I don't think that the subject companies have had  
3           anything really to do with the way that Wal-Mart or  
4           Kroger or Safeway is looking at their business.  
5           That's my opinion.

6           COMMISSIONER WILLIAMSON: Thank you.

7           CHAIRMAN PEARSON: Commissioner Pinkert.

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

10           There has been a lot of talk about Barilla  
11           and the big bet that they placed on the production in  
12           the U.S. market. I'm wondering, do we know whether  
13           that bet had anything to do with the orders  
14           themselves?

15           MR. ROSENTHAL: Well, in the original  
16           investigation, we said it did, and we provide a fair  
17           amount of information to suggest that the decision by  
18           Barilla to invest in the U.S. was triggered by the  
19           filing of the antidumping/countervailing duty  
20           petitions. Barilla denied that, and I believe  
21           continues to deny that.

22           What they cannot deny is that after the  
23           order went into effect, that they did attempt to  
24           circumvent the order through the repackaging facility  
25           in Syracuse, New York that Mr. Smith referenced, but

1 in our view, the record is pretty clear that had it  
2 not been for the investigation, they would not have  
3 made the investment they did.

4 COMMISSIONER PINKERT: I'd also wonder if  
5 anybody can respond to the argument, I'm not going to  
6 say the Respondents' argument, but to the argument  
7 that U.S. producers have significant control over  
8 sales in the retail segment of the U.S. market, and in  
9 particular, can keep what they call 'alternative  
10 brands' off the shelves in the U.S. market.

11 MR. FOGARTY: I'm not so sure we have  
12 control. The guys that have the control of the real  
13 estate are the retailers themselves, to a degree, and  
14 in listening to their consumers, because at the end of  
15 the day, one needs to have a good idea, a good brand  
16 to put forward, but certainly on the grocery side of  
17 the retail space, slotting is important, so there is a  
18 slotting investment one needs to make to get posted on  
19 a shelf, and I don't know that we have any particular  
20 control of that.

21 We simply hope when we are trying to put  
22 something on the shelf that that slotting investment  
23 will be as low as possible.

24 MR. HASPER: If I can add a comment there,  
25 in the private label segment, we basically have no

1 control. Again, in this market, if you go to Safeway  
2 and buy the Safeway label, you have no clue as to who  
3 that packer is. Control is done by the retailer,  
4 Safeway Corporate out in California, who will decide  
5 who will be the packer for that Safeway label.

6 MR. GREENWOOD: Yes. I think the only  
7 additional comment to that is that in the food  
8 industry, in the consumer package goods industry, most  
9 every company does back bay selling to some degree.  
10 Some companies are more adept. Some retailers are  
11 more adept at category management.

12 So I would certainly say that we all do our  
13 best in pulling IRI or AC Nielsen data and trying to  
14 help the retailer with facts, but that's where it  
15 stops. At the end of the day the retailer manages the  
16 category, chooses their vendors, and I concur with  
17 Jim, there's absolutely control over Kroger or  
18 WalMart. They're tough cookies. But that's what we  
19 do do to try to provide them the insights to make the  
20 decision the way we see it.

21 COMMISSIONER PINKERT: Mr. Kerwin?

22 MR. KERWIN: Just a couple of points. An  
23 observation that at the time of the original  
24 investigation there certainly were imported brands  
25 that were paying slotting fees and were paying

1 slotting fees and were making full efforts to get into  
2 major retail grocery chains.

3 The other observation is that retail  
4 groceries also, in some instances we have grocery  
5 chains that are more inclined to go with every day low  
6 pricing. That's their policy, as opposed to doing  
7 periodic promotional specials. Certainly retailers  
8 that have those types of policies are more than  
9 thrilled to carry whatever brand is going to be able  
10 to be sold at the lowest price point because they want  
11 to pull customers into their stores. At the time of  
12 the investigation, again, we did have major retail  
13 chains selling product, three pounds for a dollar,  
14 four pounds for a dollar, because the importers were  
15 allowing them to set that kind of a low price point  
16 which was, in the retailer's mind, a wonderful thing  
17 to get traffic into their stores. We certainly  
18 believe that will happen again if the orders are  
19 revoked.

20 COMMISSIONER PINKERT: I'd like to close  
21 with a couple of questions about whole wheat and  
22 organic pasta. First of all, I understand the  
23 argument that was made earlier today that the  
24 expansion in those categories may be coming at the  
25 expense of other categories, but do you have a

1 projection about the continued increase in the share  
2 going to those categories?

3 MR. FOGARTY: When we've looked at some  
4 other food categories from a volume standpoint, the  
5 health offering has gotten into a range of 15-20  
6 percent of the category. I think as somebody  
7 mentioned earlier, right now it's, for pasta it's at  
8 about 10 percent.

9 So if you extrapolate from other categories  
10 you'd say it has a little bit more room to move yet,  
11 but again, we think that movement that's coming or has  
12 come is only offsetting the decline we're seeing in  
13 our traditional semolina pasta and thus our overall  
14 call for the category is a flattish call for the  
15 category.

16 MR. GREENWOOD: We would concur. Our  
17 projections looking at the overall category, the next  
18 three to five years would suggest a continued small  
19 single digit decline in the overall category. I think  
20 the 20 percent is a good number.

21 COMMISSIONER PINKERT: Is there resistance  
22 on the part of subject producers to making these what  
23 I'll call new category products? Is there some  
24 cultural resistance? Is there some other reason why  
25 subject producers might not compete in these segments?

1           MR. ROSENTHAL: Are you talking about the  
2 Italian or Turkish producers?

3           COMMISSIONER PINKERT: Correct.

4           MR. ROSENTHAL: First, perhaps it was a  
5 mistake, but at some point earlier in the period, I  
6 want to say maybe 1997, we were approached by an  
7 Italian producer of organic pasta who requested an  
8 exclusion from the order. It was not a category that  
9 was of any importance to the domestic MG at that  
10 point, and the domestic industry went along with that,  
11 so organic was excluded.

12           That suggests a couple of things. One, not  
13 only is the domestic MG reasonable but that there were  
14 and are Italian producers who were capable of  
15 producing organic and selling it in the U.S., and  
16 that's an important point to make.

17           I think the same is true of whole wheat  
18 pasta and every other category of so-called healthy  
19 pasta you can imagine.

20           MR. HASPER: Just one further comment. If  
21 you shop at Whole Foods in this particular market,  
22 their label which is the 365, I believe, is an Italian  
23 organic product.

24           COMMISSIONER PINKERT: Thank you.

25           Thank you, Mr. Chairman.

1           CHAIRMAN PEARSON: In response to the  
2 question from Commissioner Lane, you discussed a  
3 little bit the pricing of durum wheat and the  
4 potential for hedging it. Is there any futures market  
5 anywhere in the world that actively trades durum?

6           MR. GREENWOOD: No.

7           MR. FOGARTY: No.

8           MR. HASPER: To my knowledge, none.

9           CHAIRMAN PEARSON: So it's not something  
10 that is possible in Winnipeg or anywhere else?

11          MR. GREENWOOD: No.

12          CHAIRMAN PEARSON: Is it ever feasible to  
13 use another category of wheat as a proxy for hedging  
14 durum? Perhaps hard red spring or hard red winter?

15          MR. GREENWOOD: You mean in correlation?

16          CHAIRMAN PEARSON: Yeah

17          MR. FOGARTY: No, in the most particular  
18 last few months it's completely not correlated.  
19 They're very unique drivers to their flow there in  
20 durum wheat, and it hasn't correlated particularly  
21 well.

22          CHAIRMAN PEARSON: So historically there's  
23 not been --

24          MR. HASPER: We did attempt to do that at  
25 one point in time. I can't speak to how that was

1 done, but it was a disaster, it didn't work.

2 CHAIRMAN PEARSON: That's kind of what I was  
3 interested in knowing.

4 So who is most subject to the price risk  
5 that is inherent in dealing with durum wheat? Is it  
6 the pasta manufacturer, or rather the miller of  
7 semolina?

8 MR. GREENWOOD: It's a little different for  
9 each of us, but I would tell you that in our case we  
10 don't own our own mills. It's a pass-through, so at  
11 the end of the day it's the manufacturer. We get the  
12 compression between the ability to take price and the  
13 cost flow through.

14 CHAIRMAN PEARSON: So the miller then in  
15 some respects is either in a toll relationship or  
16 something similar to that where the miller is for some  
17 margin diverting the durum into semolina and the way  
18 the marketplace works it's the pasta producer who is  
19 living with the price risk.

20 MR. GREENWOOD: Right, and in the case of  
21 most of the rest of the industry, many of who own  
22 their own mills or have that -- it's the same dynamic.  
23 If you own your own mill, at the end of the day if the  
24 cost flow-through is going to come through the  
25 combined mill/processing arm, then you're still going

1 to get the net effect of the cost increase.

2 MR. FOGARTY: I would just add to that, we  
3 own our own milling operation in Missouri and South  
4 Carolina, our two largest facilities, and we still  
5 have the problem.

6 CHAIRMAN PEARSON: Mr. Hasper, did you have  
7 something to add?

8 MR. HASPER: No, I was just going to concur,  
9 but we own our own mill too, but we pay the farm what  
10 we pay, and we make the small cost for the conversion  
11 from the durum into the semolina, and my company even  
12 charges our pasta company a slight small profit which  
13 is very small.

14 CHAIRMAN PEARSON: Has there been any effort  
15 to contract directly with growers to produce durum?

16 MR. GREENWOOD: Yes. Yes there is. So as  
17 we move away from the concept of derivatives or  
18 hedging, certainly I know of a number of us in the  
19 industry who do contract. For instance for us we  
20 contract directly with growers in San Joaquin Valley  
21 out on the west Coast and we're able to, for a portion  
22 of our needs, cover ourselves for a crop cycle. But  
23 of course the growers, when you can't sort of hedge or  
24 do the futures, the growers are pretty astute and  
25 follow the market very closely and manage their

1 pricing from that perspective.

2 CHAIRMAN PEARSON: So are the contracts with  
3 growers just quantity contracts? Or do they establish  
4 price prior to when the growers would be planting?

5 MR. GREENWOOD: Price. Price and quantity.  
6 But it's a very, very small portion. And of course,  
7 again, we're talking to the domestic industry with  
8 North Dakota being the big purveyor of wheat, but also  
9 the Canadian wheat is a significant portion here. I  
10 think they have 75,000 growers that they deal with.

11 So to get to an overarching program in which  
12 you're contracting out 100 percent of your germ needs  
13 is pretty challenging.

14 MR. FOGARTY: Just to add to that, we also  
15 lock down, via price, some of our needs, calling it  
16 desert durum for our Tolleson, Arizona facility, that  
17 being one of our smaller facilities. When I made the  
18 comment earlier that directionally we can get out of a  
19 few months that blends in, you can sort of lock in  
20 with desert durum or with the farmers directly for a  
21 cycle, a season, which if you blend that in, still,  
22 because it's a small piece of the overall requirement,  
23 at least for us, it allows us to get out a little bit,  
24 a few months out, in terms of protection.

25 CHAIRMAN PEARSON: Mr. Hasper, did you have

1 something you were going to add?

2 MR. HASPER: We also do a very small  
3 percentage of our business by contracting directly  
4 with the farmers, but part of the issue there is the  
5 logistics. When we do that we actually bring the  
6 trucks in from the farmers, but you can only unload so  
7 many trucks a day because you just can't keep up with  
8 it. You have to get the big rail cars in which come  
9 from the elevators, et cetera, et cetera.

10 CHAIRMAN PEARSON: So as a strategy to  
11 maintain durum production in the United States is it  
12 feasible to more actively contract with farmers so  
13 that you keep the acreage all from going to some other  
14 crop?

15 MR. GREENWOOD: Yeah, I think more recently,  
16 because a lot of the phenomena that we've talked about  
17 today as it relates to ethanol and corn and such is  
18 pretty recent, and I would say as an industry I've  
19 heard a lot of discussion particularly in those areas  
20 where corn is not -- for instance, we talked about  
21 desert, desert wheat. Corn is not a viable crop in  
22 some areas. So if I was to project I'd say there's  
23 going to be more and more push towards trying to do  
24 contracts like that. The challenge is the logistics.  
25 Of course with wheat the cost of the transport and the

1 rail and such, you can't bring all your supply for the  
2 East Coast from the West Coast. It would not be a  
3 viable option, and frankly, you would never be able to  
4 contract that much anyway.

5 So I think there will be a push towards  
6 that, more and more.

7 CHAIRMAN PEARSON: And perhaps the  
8 combination of nine dollar durum, the invisible hand  
9 of Adam Smith will have the effect of expanding the  
10 durum triangle and maybe making it a quadrilateral or  
11 something. I'm not sure.

12 (Laughter.)

13 Growers do tend to respond to incentives and  
14 it seems to me like there may be one now for durum.

15 Mr. Hasper?

16 MR. HASPER: Certainly you're right, it is  
17 economics in terms of what does a farmer get per acre.  
18 But even in North Dakota which is not a high yield  
19 area for corn, they do have new varieties of corn that  
20 will now be able to be grown there without being  
21 subjected to the risk of having frost damage and so  
22 that is an issue. There are more farmers going to  
23 corn.

24 But when you grow corn, even North Dakota, I  
25 believe the number is you get like 100 bushels per

1 acre, so even at four bucks, that's \$400 off that  
2 acre. Durum, which averages around 30, 33, even at  
3 nine, nine times three is 270, and the cost of growing  
4 durum exceeds the cost of growing corn because you  
5 have to add a lot more H to it, et cetera, in terms of  
6 fertilizers, plus you have a lot more risk in terms of  
7 the scab damage and potential damage during the crop.

8 CHAIRMAN PEARSON: I'm with you on the last  
9 part. Are the per acre costs of growing durum higher  
10 than growing corn?

11 MR. HASPER: Yes, they are. I don't know  
12 the exact numbers, but I do know that corn is an  
13 easier crop and costs less in terms of fertilizer, et  
14 cetera, to grow the corn. We can get back to you with  
15 that if you'd like to get that.

16 CHAIRMAN PEARSON: It probably isn't  
17 terribly relevant for our investigation, I'm just  
18 curious. Durum, it's kind of like grass. You throw  
19 the seed out and it grows. Like wheat or oats,  
20 they'll grow as weeds if you don't watch out. But  
21 you're saying to grow durum well it requires a more  
22 sophisticated program of fertilization and pest  
23 control than corn does.

24 MR. HASPER: Plus durum is much more  
25 susceptible to weather and damage. During the harvest

1 if it rains you get potential falling numbers which  
2 means the germ starts to, da, da, da, da. You're  
3 familiar with that.

4 CHAIRMAN PEARSON: Okay. Thank you.

5 Let me switch gears here before we get too  
6 far down the farm road there.

7 Are you aware of any other countries that  
8 have antidumping or countervailing duty orders in  
9 place against imports of pasta from Italy or Turkey?

10 MR. ROSENTHAL: No, we're not.

11 CHAIRMAN PEARSON: I wasn't either, but in a  
12 way I was a little surprised if they are indeed as  
13 aggressive as you've indicated that there wouldn't be  
14 other countries where imports have caused some type of  
15 material injury.

16 Any ideas why other countries haven't been  
17 hurt by exports from Italy and Turkey?

18 MR. ROSENTHAL: I don't want to speculate on  
19 that, and I don't want to assume they're not hurt,  
20 although it's obvious that there aren't as well-  
21 developed pasta industries, if you will, in a lot of  
22 areas. Kerwin, correct me, would you say Iraq and  
23 there's one other major export destination for Turkey.  
24 I don't believe that there's as well developed pasta  
25 producers there. But I ought to stop with that

1 speculation because I don't know.

2 CHAIRMAN PEARSON: My red light's come on,  
3 but Mr. Kerwin, if you had something to add.

4 MR. KERWIN: I guess one thing I would add  
5 to that, I think Paul's right, there are a relatively  
6 limited number of countries that have pasta industries  
7 compared to some other industries.

8 The other factor is these incredible general  
9 tariffs that are put into place in the vast majority  
10 of major economies that work to limit the flow of this  
11 product, and in many instances the general tariffs in  
12 these countries are higher than what we have in place  
13 here in relation to the antidumping and countervailing  
14 duty duties.

15 For us to go to a situation where we do away  
16 with the orders and have no general tariff whatsoever  
17 puts us at an extremely attractive position vis-a-vis  
18 these other economies.

19 CHAIRMAN PEARSON: Thank you. Once again,  
20 thanks to my fellow Commissioners for my indulgence.

21 Boy, I'm going to get myself into trouble  
22 here if I'm not careful.

23 Madame Vice Chairman.

24 VICE CHAIRMAN ARANOFF: Thanks, Mr.  
25 Chairman.

1                   In looking at the data on non-subject  
2 imports, other than non-subject imports from Italy,  
3 you see a number of countries such as Mexico, China  
4 and Thailand being modest sized suppliers. Are those  
5 the same durum semolina pasta? Is that something else  
6 that falls under the same HTS category?

7                   MR. ROSENTHAL: They are pastas, but not  
8 necessarily 100 percent durum semolinas and we believe  
9 that a lot of the pastas that are in there from those  
10 countries are going to ethnic markets in the U.S..  
11 Certainly there are Asian noodles that are more  
12 popular, and that I think accounts for some of the  
13 growth from the non-subject that you've mentioned.

14                   VICE CHAIRMAN ARANOFF: But rice pasta  
15 wouldn't be included in the numbers, the HTS numbers  
16 that we have.

17                   MR. ROSENTHAL: Correct.

18                   VICE CHAIRMAN ARANOFF: Whatever they are,  
19 they're still wheat based.

20                   MR. ROSENTHAL: That's my understanding.

21                   VICE CHAIRMAN ARANOFF: Okay. And I can  
22 understand how that might be the case with respect to  
23 some of the Asian suppliers. I'm not quite sure  
24 what's going on with Mexico.

25                   MR. GREENWOOD: I think there are two

1 factors on Mexico. It's a different, to Mr.  
2 Rosenthal's point, it's a different type of pasta.  
3 It's what we call padello. It sells for four for a  
4 dollar. Used in soups, probably isn't semolina. And  
5 Mexico has a very poor germ protein base within their  
6 germ, the quality of their germ is very weak. So it's  
7 really almost a different product. It's not  
8 spaghetti, generally it's not spaghetti and the types  
9 of things we're talking about here today.

10 VICE CHAIRMAN ARANOFF: I just wanted to  
11 check that because I know, for example, that what's  
12 coming in from Canada is related to a U.S. producer,  
13 but that's not the case with respect to Mexico.

14 MR. GREENWOOD: Yes.

15 VICE CHAIRMAN ARANOFF: That's helpful.

16 I'll ask this at the point of belaboring  
17 something you may not be able to answer, but on a  
18 global basis there was a significant decrease in  
19 Turkish exports, pasta exports, in 2006. Does anybody  
20 have any idea why that happened?

21 MR. KERWIN: No, and unfortunately we have  
22 so little information, almost no information's been  
23 placed on the record by the industry and the public  
24 sources are rather limited, as you can see, in terms  
25 of aggregate data.

1           No, I don't know what explains that, quite  
2 honestly. Before that year you'd seen very  
3 substantial and fairly consistent growth in Turkish  
4 exports. So no, I have no explanation for why that  
5 should be, but it certainly seems an anomaly.

6           VICE CHAIRMAN ARANOFF: I appreciate that.

7           Mr. Hasper, back in your direct testimony  
8 you talked about the consolidation of purchasers,  
9 retailers, and you also talked about growing use of  
10 reverse auctions as a purchasing method. I was going  
11 to ask you to expand on that and then perhaps ask some  
12 of the others to comment as well.

13           Are reverse auctions actually becoming a  
14 significant way of selling product in this industry?

15           MR. HASPER: They certainly have in the past  
16 couple of years. Reverse auctions actually were,  
17 let's take Aho which owns Stop and Shop and Giant.  
18 And they own Tops and a few others. They would come  
19 to you and invite you as a supplier and other  
20 suppliers, and you fill out previous paperwork, then  
21 you actually go on a computer and if their business  
22 is, I'll just pick a number, 10 million pounds, and I  
23 add up my pricing for spaghetti and rigatoni and da,  
24 da, da, da, and we come up that maybe we're 40 cents  
25 average or \$4 million, so we actually submit all our

1 pricing and it comes to be \$4 million. There are  
2 three or four other people bidding on the same thing  
3 at the same time, and I can see on my computer screen  
4 that the other, it could be A, B, C, D, I don't know  
5 who it is, but B bids \$3,900,000 and along comes C, he  
6 bids \$3,800,000, et cetera, et cetera. So that is  
7 becoming, obviously we don't like it because it puts  
8 the focus 100 percent on price and not on quality or  
9 service or other issues, but that has been a  
10 significant factor.

11 Part of the reason that my pricing today on  
12 private labels is significantly below what it was 20  
13 years ago. I constantly tell my customers kiddingly,  
14 but seriously, I would love to roll back pricing on  
15 private label to my pricing 20 years ago.

16 In terms of consolidation, and you mentioned  
17 WalMart previously to that. One of the secondary  
18 affects of WalMart is that it puts profit pressure on  
19 the Krogers and the other competitors out there to  
20 lower their pricing. WalMart, in my view, has a  
21 different business model. A lot of it to do with  
22 their logistics of how they handle product so they can  
23 save some money which they pass on to the consumer.  
24 The Krogers and the Safeways and the Ahos say we want  
25 to be competitive, and they don't have the same

1 business model, so they put pressure back on us as  
2 suppliers to lower our cost so they can try to make  
3 the same margins, while they try to compete on a price  
4 basis with WalMart. That's becoming more and more as  
5 they consolidate.

6 I used to have 40 customers ten years ago.  
7 Today I have five. This would be, Safeway bought Tom  
8 Thumb in Texas and Randalls and Genardi's out East,  
9 and Dominics in Chicago and what have you. Kroger  
10 bought Fred Meyer and Fred Meyer had just bought  
11 Smitty's and Smiths and Food 4 Less and Ralphs out on  
12 the West Coast. So that's what's going on right now.

13 Did that answer your question?

14 VICE CHAIRMAN ARANOFF: Partially. I want  
15 to follow up on that by maybe asking, can you estimate  
16 for me, for example, how much of your sales now are  
17 being made through these reverse auctions? Is that  
18 all going into the retail as opposed to industrial or  
19 food service?

20 MR. HASPER: The second part is yes. The  
21 reverse auctions are being used on the retail side.  
22 We do have, obviously, price competition in food  
23 service. They haven't got into that reverse auction  
24 procedure, but you will submit your pricing and  
25 they'll come back and they'll talk well, the other

1       guy's a little bit cheaper, and you kind of go through  
2       this dance, if you will. But in the retail side,  
3       that's where it is.

4                   I would say in the last five years I would  
5       say probably 70-80 percent of our business has been in  
6       reverse auctions.

7                   VICE CHAIRMAN ARANOFF: Is that true for the  
8       other two companies that are represented?

9                   MR. FOGARTY: I would just say, I think  
10       we're having a conversation around the private label  
11       retail part, not the branded retail part, but in the  
12       private label retail part, as a tactic we see it,  
13       reverse auction, but for me it's just a tactic. For  
14       sure there's always auction processes taking place,  
15       meaning whether it's on the telephone or in the  
16       computer, it doesn't matter so much to us, but for  
17       sure the private label retail accounts that we have,  
18       we are very concerned about somebody coming. We try  
19       to give a fair price to our customers, but we're  
20       always concerned about price and somebody coming to  
21       compete with us on price. And every few years  
22       retailers will do what they call put it out for bid.  
23       They will look around to make sure, even if they like  
24       us a lot as the incumbent, they will want to make sure  
25       that they look around and see what other prices are

1 available. Of course the last thing we need in that  
2 instance would be having Italy and Turkey showing up  
3 to those same processes.

4 VICE CHAIRMAN ARANOFF: Mr. Greenwood?

5 MR. GREENWOOD: I would concur. It's  
6 fundamentally the retail private label business, and  
7 we have experienced the same thing. For us that's  
8 where it stops, but it is definitely much more  
9 prevalent today.

10 VICE CHAIRMAN ARANOFF: We haven't talked  
11 that much about the food service or the industrial  
12 segments of the market. You've talked about the fact  
13 that as you introduce new products at retail they just  
14 take the same customers away from your traditional  
15 product.

16 What is consumption growth or lack thereof  
17 looking like in the other two segments of the market?

18 MR. FOGARTY: Food service I would say is in  
19 the very low single digits, one or two percent kind of  
20 area, and industrial similar. So maybe modestly  
21 better than we're seeing in just sort of the pure  
22 retail end, but not very much.

23 So when I say, when Scott called out that  
24 the retail end was down a bit, the total category, I'm  
25 including these other spaces when I say that it's

1 about flat.

2 VICE CHAIRMAN ARANOFF: Given the testimony  
3 earlier that people are finding even pasta just not  
4 convenient enough to get dinner on the table fast, do  
5 you find that you are now competing with your  
6 industrial customers who are producing downstream  
7 products that are maybe even more convenient?

8 MR. GREENWOOD: I believe so. At the end of  
9 the day meal solutions and ready-to-eat meal solutions  
10 are becoming a bigger and bigger part of what we call  
11 share of stomach. Similarly, that's why you see,  
12 they're mass sectors, but that's why you see Jim talk  
13 about food service being at plus one, plus two, versus  
14 the retail sector being negative one, negative two,  
15 largely because better than 50 percent of the share of  
16 stomach, the American consumer now, is out of home  
17 consumption.

18 So between the downstream meal solution and  
19 the out of home, I would say that's definitely having  
20 an impact.

21 VICE CHAIRMAN ARANOFF: Thanks very much.

22 Thank you, Mr. Chairman.

23 CHAIRMAN PEARSON: Commissioner Okun?

24 COMMISSIONER OKUN: Thank you, Mr. Chairman.

25 I think I just have a couple of things left.

1           For the industry, you've had a chance to  
2           comment on future demand and in particular the organic  
3           and multi-grain. Can you also talk on the macro  
4           level, whether you've seen any changes with regard to  
5           fresh pasta, refrigerated pasta as opposed to dry  
6           pasta having any affect on future demand? Any changes  
7           on that?

8           MR. GREENWOOD: We don't compete in the  
9           refrigerated pasta sector, but our knowledge of that  
10          is that it's pretty static. It grew in the last five,  
11          seven years. There has been recent growth in the  
12          frozen pasta sector, but a gain to the point about  
13          meal solutions, so not exclusively. So I think  
14          refrigerated pasta is not, from our perspective we  
15          don't see that as a huge strategic thrust within the  
16          consumption. I don't know, Jim --

17          MR. FOGARTY: I would concur that the frozen  
18          pasta, Bertolli has a very convenient meal solution  
19          today, as an example. So there is some growth taking  
20          place there. Our challenge is to take the commodity  
21          oriented category, dry pasta, and figure out how to,  
22          investing in a refrigerated process is very expensive  
23          for companies like us, but is there a way we can move  
24          the dry pasta category a little closer toward meal  
25          solutions, as Scott points out.

1 COMMISSIONER OKUN: That's interesting.

2 Thank you.

3 And then maybe this is for you, Mr. Fogarty.  
4 You I know talked about your parent company who does  
5 business in the European Union, Italy. I just want to  
6 make sure that the record is complete with regard to  
7 the inward processing relief issue. Are there any  
8 changes that are going on with that that you're aware  
9 of? You may not even be aware of, but with regard to  
10 EU reforms on their common agricultural policy. Do  
11 you think any of that's affected the ability of others  
12 to sell into the European market?

13 MR. FOGARTY: I'm not particularly aware of  
14 anything.

15 MR. ROSENTHAL: Having worked on the  
16 attempted reforms on the inward processing regime  
17 starting about 1987, and having not seen much progress  
18 in the ensuing 20 years, I wouldn't hold out hopes.

19 Indeed when we first filed the then 301 case  
20 to deal with the European export restitutions on pasta  
21 in 1981, we were told by the folks at USTR, don't  
22 worry, the common agricultural policy is costing the  
23 European Union a billion dollars a year. They can't  
24 keep this up.

25 So we're here 26 years later. I don't have

1 a lot of expectation that things will change  
2 dramatically for the better.

3 It is such a way of life there. The  
4 protection tariff and non-tariff production subsidies,  
5 it's not something I think we can count on.

6 COMMISSIONER OKUN: Finally, for you Ms.  
7 Cannon, I think you fairly well anticipated most of  
8 the legal questions with regard to captive production  
9 and you gave us a good example on how you would have  
10 us look at the trade only data here. Although I could  
11 look at this case and think I may have had a lot more  
12 cumulation questions. Without any more information on  
13 the record I'm going to spare you my cumulation  
14 question.

15 Mr. Chairman, with that I have no other  
16 questions.

17 CHAIRMAN PEARSON: Commissioner Lane?

18 COMMISSIONER LANE: Thank you.

19 I want to go back to wheat prices. The  
20 price chart shown on page 5-2 of the pre-hearing  
21 report shows wheat prices fairly flat, around 3.50 per  
22 bushel in 2005, but increasing from below \$3.50 per  
23 bushel in January 2006 to nearly \$5 per bushel by the  
24 end of 2006. Yet the average unit raw material cost  
25 for the industry is shown on Table 3-9 actually

1 declines between 2005 and 2006.

2 How do you explain that?

3 MR. ROSENTHAL: I think we may need to  
4 confer and get back to you on this in a post-hearing  
5 brief.

6 COMMISSIONER LANE: Thank you.

7 How do company-specific average raw material  
8 costs differ between those companies that have  
9 integrated milling production and distribution  
10 facilities and those companies that purchase wheat  
11 milled by someone else?

12 MR. FOGARTY: The difference at the end of  
13 the day would be, in Scott's example at New World  
14 Pasta where the miller is a third party, they would  
15 have to pay a little bit of margin to that miller to  
16 have him do that work. We as an integrated process  
17 and similar to Dakota Growers, we own our mills at  
18 AIPC, at least in our two main plants, and so we don't  
19 have to pay that conversion margin to the miller.

20 COMMISSIONER LANE: I think I really wanted  
21 to know specifically how the raw material costs, the  
22 difference in prices. So your integrated facilities,  
23 the raw material costs are less than where you have to  
24 purchase the wheat?

25 MR. ROSENTHAL: You mean the prices from the

1 farmers themselves? Or at what point in the process?

2 I want to make sure we're answering the question.

3 COMMISSIONER LANE: Our charts show what  
4 you're paying for raw material costs.

5 MR. ROSENTHAL: On an individual company  
6 basis.

7 COMMISSIONER LANE: So I guess what I was  
8 really asking is are the costs basically the same  
9 whether or not it's an integrated facility or whether  
10 you're purchasing the wheat?

11 MR. HASPER: I would argue that they're  
12 actually the same. Because we have our own mill, but  
13 having our own mill we have to invest in that  
14 equipment, so we have to get some return on the  
15 equipment or pay the interest depreciation. So the  
16 bottom line is we're going to do it as efficiently or  
17 some outside miller will do it efficiently. So I  
18 don't think there's really any advantage or  
19 disadvantage.

20 There's an advantage somewhat in terms of  
21 quality and availability, but I don't think there's  
22 any in cost.

23 Does anybody else agree or disagree with  
24 that?

25 MR. GREENWOOD: The raw material flow-in to

1 the front of the mill, i.e. the germ that rides in the  
2 train, is predicated on the buying ability of each  
3 company and we pretty much buy all the same way, as we  
4 talked about earlier.

5 So the difference between the companies  
6 would really be predicated on the margin that an out-  
7 sourced miller would take versus if you own your own  
8 mill. But then obviously the return on equity  
9 calculation that that would be worked into against a  
10 fairly highly capital intensive, very, very low margin  
11 area of the industry, the milling sector. That would  
12 be the only difference. We would all buy  
13 fundamentally at the same raw material in the front  
14 end of the mill.

15 COMMISSIONER LANE: Thank you.

16 Now I have some questions about the  
17 employment numbers.

18 In 1993 to 1995 the industry was producing  
19 around 3.5 billion pounds of pasta per year and  
20 employing over 4,000 production workers. Currently  
21 you are producing over three billion pounds per year  
22 but employing less than 2500 workers.

23 Productivity has gone from 250 to 280 pounds  
24 per hour, to over 450 pounds per hour. Can you  
25 explain these differences?

1                   MR. GREENWOOD: From my perspective it's  
2 what I mentioned earlier about the investment in  
3 equipment. If you walk through plants today versus  
4 ten years ago, I think for most any manufacturer you  
5 would see far less employees. For instance in our one  
6 facility in St. Louis, we have almost a third of the  
7 employees that we did a number of years ago. Granted  
8 that reflects some volume shift in that plant too, but  
9 a lot of that productivity is coming out of more  
10 efficiency in packaging equipment and more efficiency  
11 in through-put on the press. The press and the dryer.

12                   COMMISSIONER LANE: Can you quantify the  
13 capital investments that were necessary to gain that  
14 productivity?

15                   MR. FOGARTY: For our company specifically,  
16 I think we might have to in a post-hearing, that might  
17 be a little bit proprietary.

18                   COMMISSIONER LANE: Yes, that would be  
19 acceptable.

20                   MR. FOGARTY: I think for our company, we  
21 took out a manufacturing facility in Kenosha during  
22 the timeframe, so that's partially what's helping  
23 enhance, at least in the most recent period for us,  
24 enhance our productivity and I think just from an  
25 industry standpoint, getting that utilization up from

1 directionally 70-80 percent, that is critical for us  
2 to be able to operate at a reasonably high level of  
3 utilization of our facilities. It lets us spread the  
4 fixed costs in our manufacturing plant to more pasta  
5 pounds. We've sort of gotten, as an industry, to that  
6 level, that improved level, thanks to this order.  
7 That again is the concern that if we have all this  
8 volume come in we will no longer be able to operate at  
9 those levels and we'll then find our utilization going  
10 down and be in this downward spiral of having to worry  
11 about can we keep the work forces at their current  
12 level.

13 MR. ROSENTHAL: Commissioner Lane, we'll try  
14 to get you some numbers on the amount of investment  
15 over time. Do you want to just focus on this most  
16 recent five year period? Is that what you would like  
17 us to focus on?

18 COMMISSIONER LANE: Yes.

19 MR. ROSENTHAL: Let me just add as well,  
20 responding to your previous question, there has been a  
21 lot of capacity taken out, older capacity taken out of  
22 line or off line or closed, and then new capacity,  
23 more modern and efficient capacity added. We had a  
24 number of exchanges on that. But I remember going  
25 into some facilities that were perfectly nice, very

1 beautiful, they just operated more slowly. And those  
2 have gone by the wayside as the more modern facilities  
3 with the more expensive machinery and faster through-  
4 put have come on-line.

5 I would venture to say that some of the  
6 facilities that were closed in the U.S. were no more  
7 antiquated or slower than the ones that continue to  
8 produce in Italy at this point. But the reason that  
9 we've closed here versus why they haven't closed in  
10 Italy, we've talked about as well, but it's kind of  
11 sad to see some of these smaller, family-owned  
12 businesses, I'm thinking of one that I visited, Casta  
13 Macaroni in Los Angeles. Not exactly a household  
14 name, certainly not here, but a perfectly nice  
15 facility. And I'm betting there are Casta Macaroni  
16 counterparts in Italy that are producing today, won't  
17 close because of government limitations on closure,  
18 government subsidies, and will be very, very happy to  
19 sell their output to an importer or a broker and help  
20 to put more efficient businesses in the U.S. at risk  
21 if this order is revoked.

22 COMMISSIONER LANE: Thank you.

23 Mr. Chairman, I think that's all the  
24 questions I have.

25 CHAIRMAN PEARSON: Commissioner Williamson?

1                   COMMISSIONER WILLIAMSON: Thank you, Mr.  
2 Chairman.

3                   I want to thank the panel for their  
4 participation today, and I have no further questions.

5                   CHAIRMAN PEARSON: Commissioner Pinkert?

6                   COMMISSIONER PINKERT: Just one  
7 clarification. When you put together information for  
8 us about the volume from Italy that is not subject to  
9 the order, please distinguish between the antidumping  
10 and the countervailing duty order in that analysis,  
11 because obviously the exclusions might not be the  
12 same.

13                   Thank you.

14                   MR. ROSENTHAL: Certainly.

15                   CHAIRMAN PEARSON: I do have a couple more  
16 questions.

17                   Following up on what Commissioner Lane was  
18 discussing regarding the very impressive increases in  
19 labor productivity that we've seen since the '93, '94  
20 period in the original investigation, are there  
21 further gains coming? Or have those productivity gains  
22 pretty well plateaued out?

23                   MR. GREENWOOD: I certainly will speak on  
24 behalf of our company, but we have an absolute  
25 embedded culture of continuous improvement. We don't

1 have massive levels of Capex to be putting in  
2 industry. It's a low margin industry. But  
3 absolutely.

4 Every year we are continuing to look at  
5 initiatives and work initiatives that increase our  
6 productivity.

7 MR. FOGARTY: I would just add to that, we  
8 are blessed with perhaps a base of equipment that's a  
9 little more modern than the average in the industry  
10 just based on when our company sort of came forward.  
11 But it is costly to continue to maintain that. For  
12 us, like Scott is indicating on behalf of New World,  
13 with these inflation pressures it's got to be part of  
14 everybody's strategic plan to figure out how do we  
15 continue to improve the efficiency of the operation,  
16 whether it's in the press lines or in the packaging  
17 lines. We've got to keep working all aspects of the  
18 business.

19 CHAIRMAN PEARSON: Okay, good. Continuous  
20 improvement is a concept with which I'm familiar, so  
21 it doesn't surprise me that it applies in the  
22 manufacture of pasta.

23 A different question, and we've talked about  
24 this in different ways. Is there any straightforward  
25 explanation for why the average unit values of pasta

1 from Turkey are so much lower than what we see for  
2 average unit values either for Italy or for the United  
3 States? Mr. Kerwin? Ms. Beck? Do you have any  
4 thoughts on that?

5 MS. BECK: Since the original investigation  
6 if anything I think the perceived quality of the  
7 Turkish pasta is even better. I think they are just  
8 not capable of selling into this market at a higher  
9 price.

10 They've definitely lowered their volumes  
11 with the effect of the orders, as a result of the  
12 effect of the orders, but I think it's a big fear for  
13 the industry that without the orders the volumes would  
14 go way back up as they were in the original  
15 investigation.

16 CHAIRMAN PEARSON: The Turks have to buy  
17 durum too, and unless they have some special pricing  
18 regime in Turkey which they easily could, if they're  
19 paying a world price they're managing to manufacture  
20 pasta at a lesser margin than would be the case for  
21 the U.S. industry. I don't know that I know enough  
22 about what's going on there to be comfortable with  
23 what we have on the record.

24 If there is a way, for purposes of the post-  
25 hearing, to give a clearer explanation of what is

1 going on in Turkey to allow this level of pricing,  
2 that would be helpful.

3 Mr. Kerwin?

4 MR. KERWIN: I'll address a couple of  
5 points.

6 First of all there is a significant quantity  
7 of durum wheat that's grown in Turkey. Most of that  
8 durum wheat, to my understanding, stays within Turkey.  
9 I'm not totally familiar with how the pricing  
10 structure is set and what influence government  
11 policies have on the pricing of the durum within  
12 Turkey, but there is a substantial amount of durum  
13 that is grown within Turkey.

14 The second point I would make is that I  
15 think it's a pretty safe assumption that when you're  
16 selling into small, developing countries like  
17 Cameroon, and Djibouti, and Iraq, that you're not  
18 going to be able to command the kind of prices that  
19 you might be able to command in a more developed  
20 economy. And it's specifically for that reason that  
21 we think the Turkish industry is particularly  
22 interested in having these orders go away because the  
23 U.S. would be essentially one of the only major  
24 developed economies that would be willing to accept  
25 this product and would be willing to pay a higher

1 price for it than the Turks are receiving in their  
2 less developed export markets.

3 CHAIRMAN PEARSON: Although our record does  
4 not indicate that U.S. importers are paying an  
5 incredibly high price for it. That's why, there's some  
6 of it coming in now and it's not being priced at a  
7 terribly high level.

8 MR. ROSENTHAL: I actually have shared your  
9 mystification about the Turkish pricing for a long  
10 time. I don't understand why it is where it is other  
11 than the risk involved now for importing, fear of  
12 additional duties as a result of administrative  
13 reviews. I recognize that some would have the same  
14 fear with respect to the Italian product too, but the  
15 Turks were into the market in a big way, left the  
16 market rather abruptly after the imposition of the  
17 orders, maybe importers are a little more risk averse  
18 concerning the Turkish product and are only willing to  
19 take a risk if they can get a really low price. But  
20 how the Turks can afford to sell at that price, I  
21 don't have the answer.

22 CHAIRMAN PEARSON: Okay. If it is possible  
23 to elaborate in the post-hearing please do so and help  
24 me understand a little bit more about what's going on  
25 in Turkey. Thanks.

1           My last question I think I can blame on  
2 Commissioner Okun who pulled back from asking a  
3 cumulation question, and now I'm in the always  
4 uncomfortable situation of asking about cumulation,  
5 and of course I'm the least learned of the panel up  
6 here when it comes to that issue.

7           Ms. Cannon, I agreed with your assessment of  
8 no discernable adverse impact. I think I'm  
9 comfortable with what you were saying there. But  
10 aren't you pushing us to use our discretion to  
11 cumulate a little harder than perhaps the record  
12 justifies? I'm talking about the discretionary  
13 factors here. There actually are quite a number of  
14 differences between Turkey and Italy that would seem  
15 to me to argue in favor of treating them separately  
16 rather than cumulatively, including the pricing  
17 differences we were just discussing now.

18           You can address that, but the question is if  
19 we should decide to deal with these countries  
20 separately would you still suggest voting in the  
21 affirmative? Or does the record better argue for a  
22 negative if they are treated decumulatively?

23           MS. CANNON: Thank you, Chairman Pearson, I  
24 was getting bored over here, so even though I didn't  
25 get asked by Commissioner Okun, I'm happy to address

1 that.

2 The conditions of competition that the  
3 Commission considers appreciate that there are some  
4 differences between Italy and Turkey in the way they  
5 reacted to the orders. But I think what's important  
6 is to, in a sunset review, to look at what's likely to  
7 happen if the orders are revoked.

8 When you're projecting what's likely to  
9 occur I think you have a lot of commonality. When you  
10 listen to the testimony of Mr. Kerwin, he described  
11 two countries that function very similarly. They both  
12 have huge capacity. They're the two biggest exporters  
13 in the world. They remain heavily export oriented.  
14 And they have a lot of excess capacity. They're both  
15 driven by looking at the U.S. as one of the most  
16 attractive markets in the world with very high prices.

17 The other factor is in terms of their likely  
18 pricing behavior as opposed to current pricing  
19 behavior, look at what they did pre-order, before the  
20 orders were imposed. Both of them were in this market  
21 in a big way underselling. So while the data that you  
22 have now show underselling at present by Turkey, and  
23 on a more limited basis by Italy, and there were some  
24 problems with that data as Ms. Beck described, we  
25 think it's very likely that if the orders go away in

1 this type of a market with a very fungible product  
2 you're going to see the same pricing behaviors.

3 So I think when you look at, in a sunset  
4 context what's likely to happen in terms of volume,  
5 what's likely to happen in terms of price, you have a  
6 very strong record showing likely common behaviors  
7 that would warrant cumulation that the Commission has  
8 considered those types of factors in other cases.

9 With respect to your second question. Yes,  
10 I think even if you find there isn't ground to  
11 cumulate here, the record is extremely strong to make  
12 a separate analysis of likely injury by each country  
13 on an individual basis as well.

14 CHAIRMAN PEARSON: Thank you for that.

15 I would note just for the record that some  
16 of the differences that you didn't mention, different  
17 import trends in the original investigation. We have  
18 a different pattern of over-selling versus under-  
19 selling during the period of review. Different  
20 performance in the U.S. market in terms of volumes  
21 during the pendency of the orders. And different  
22 average unit values.

23 So there are some factors there, some of  
24 which have influenced my thinking in other cases  
25 regarding cumulation. So I was just trying to wrestle

1 with all of this.

2 My yellow light is on, and this time I'm  
3 going to stop on yellow and turn to the Vice Chairman.

4 (No audible response.)

5 CHAIRMAN PEARSON: Are there any further  
6 questions from the dais? People are getting tired of  
7 me talking. I can tell. Okay.

8 Do members of the staff have any questions  
9 for this panel?

10 MS. MAZUR: Mr. Chairman, staff has no  
11 questions.

12 CHAIRMAN PEARSON: Okay, then I've got to  
13 find the materials I need for closing here.

14 Madame Secretary, there are no other matters  
15 prior to closing, are there? Fine.

16 Under Title 7 of the Tariff Act of 1930 I  
17 can advise that post-hearing briefs, statements  
18 responsive to -- Oh.

19 There is one matter prior to closing.

20 MS. ABBOTT: Sorry, closing statements.

21 CHAIRMAN PEARSON: Yes, I'm sorry. I used  
22 the language inaccurately.

23 Do you wish to make closing statements?

24 MR. ROSENTHAL: Just a couple of closing  
25 comments. I obviously don't have to rebut, I don't

1 even have to rebut my own witnesses, which is a happy  
2 event.

3 I just want to summarize a few points and  
4 maybe I'll start with the issue of cumulation.

5 I know there are differences, as you've  
6 described, but there are a great more similarities I  
7 would argue. Not just in the channels of  
8 distribution, normal things that you look at. But  
9 let's take a step back about what is the purpose of  
10 cumulation for a minute.

11 You look at the product, it's all physical  
12 characteristics. I don't think anyone's going to  
13 argue that these products, the pastas from Italy and  
14 Turkey, look any different. They don't really perform  
15 any differently. And I cannot believe that an average  
16 consumer won't say that they don't compete in the  
17 marketplace against one another.

18 Yes, there are these differences. Yes,  
19 there are differences in pricing. But ultimately when  
20 you go to a Kroger, when you go to a Safeway, all of  
21 these products are competing against one another in  
22 the marketplace. That's the reason why you cumulate  
23 it. You want to look at the cumulative effects, the  
24 hammering effects of one import source versus another  
25 and against the domestic industry.

1           So I recognize it's discretionary in this  
2 context, but I urge all the Commissioners to step back  
3 and say should we be looking at pasta, the most basic  
4 of commodity products, as a fungible product, as a  
5 product we should cumulate or not? I would argue that  
6 despite the differences that are there, that there are  
7 many more similarities and many more reasons to  
8 cumulate.

9           So I didn't want to use up your yellow light  
10 time, but I did want to urge that last conclusion on  
11 you.

12           But to summarize for this hearing, again,  
13 focusing on what it is the Commission has to look at.  
14 It's not what's happened really only in the last five  
15 years, it's what's likely to happen in the future.  
16 And how do we know what the future is going to be  
17 like? We don't know that. But you can get a glimpse  
18 of that by looking back at what happened prior to the  
19 time the orders were first put into effect.

20           You had rapidly increasing imports from both  
21 Turkey and from Italy. You had very, very pervasive  
22 underselling by both of those countries, and the  
23 exporters from those countries. You had pretty  
24 significant dumping margins and subsidy margins.  
25 Those are projected by the Commerce Department to

1 continue or recur if there's revocation.

2 And as Commissioner Lane pointed out, you  
3 had a cost/price squeeze going on at the time of the  
4 original investigation. That price/cost squeeze is  
5 even worse now and is projected to persist for quite  
6 a long time, even absent any revocation of the order.

7 I heard Mr. Fogarty refer to this, to the  
8 industry being between a rock and hard place. Maybe a  
9 better way to put it would be between a rock and a  
10 hard wheat.

11 If durum wheat continues at the prices we're  
12 seeing now for any time in the future, this industry  
13 is going to be in jeopardy. If you overlay that with  
14 the lack of restraint on pricing by hundreds of  
15 exporters, potentially, from Italy and Turkey, plus  
16 the other factors we've talked about. Energy costs  
17 rising. Other domestic pressures. Consolidation of  
18 the buying groups. This is an extremely vulnerable  
19 industry and an industry that has very, very severe  
20 difficulties ahead of it.

21 Nothing could be worse for this industry  
22 than to unleash the unrestrained forces in Italy and  
23 Turkey who would do great damage to the domestic  
24 industry if the orders were revoked.

25 So we urge you to reach an affirmative

1 determination in this case and we will be obviously  
2 responding to all your questions and looking forward  
3 to a happy conclusion.

4 Thank you.

5 CHAIRMAN PEARSON: Thank you, Mr. Rosenthal,  
6 and accept my apology for almost cutting you off there  
7 in advance.

8 If it's any consolation, I come by my absent  
9 mindedness honestly. My grandfather was just  
10 legendary in terms of his inability to keep track of  
11 what was going on.

12 MR. ROSENTHAL: I take no offense, but I was  
13 offended by having the yellow light go on when I  
14 thought I had an unlimited amount of time.

15 (Laughter.)

16 CHAIRMAN PEARSON: I trust you made your  
17 main points.

18 My thanks to this panel. It's been a very  
19 interesting morning and I appreciate the participation  
20 of all of you.

21 Now I can read the closing statement.

22 Post-hearing briefs, statements responsive  
23 to questions and requests of the Commission and  
24 corrections to the transcript must be filed by  
25 July 25, 2007. Closing of the record and final

1 release of data to the parties on August 23, 2007.

2 Final comments on August 28.

3 Thank you very much. This hearing is  
4 adjourned.

5 (Whereupon, at 12:45 p.m., the hearing in  
6 the above-entitled matter was concluded.)

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**CERTIFICATION OF TRANSCRIPTION**

**TITLE:** Certain Pasta from Italy and Turkey  
**INVESTIGATION NO.:** 701-TA-365-366 & 731-TA-734-735  
(Second Review)  
**HEARING DATE:** July 17, 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:** July 17, 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

I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceeding(s) of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker-identification, and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceeding(s).

**SIGNED:** Carlos E. 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:** Christina Chesley  
Signature of Court Reporter