

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:
BIODIESEL FROM ARGENTINA
AND INDONESIA

) Investigation Nos.:
) 701-TA-571-572 AND 731-TA-1347-1348
) (FINAL)

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Place: Washington, D.C.
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UNITED STATES OF AMERICA
BEFORE THE
INTERNATIONAL TRADE COMMISSION

IN THE MATTER OF:) Investigation Nos.:
BIODIESEL FROM ARGENTINA) 701-TA-571-572 AND
AND INDONESIA) 731-TA-1347-1348 (FINAL)

Main Hearing Room (Room 101)
U.S. International Trade
Commission
500 E Street, SW
Washington, DC
Thursday, November 9, 2017

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

1 APPEARANCES:

2 On behalf of the International Trade Commission:

3 Commissioners:

4 Chairman Rhonda K. Schmidtlein

5 Vice Chairman David S. Johanson

6 Commissioner Irving A. Williamson

7 Commissioner Meredith M. Broadbent

8

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11

12 Staff:

13 William R. Bishop, Supervisory Hearings and Information

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18 Calvin Chang, Investigator

19 Philip Stone, International Trade Analyst

20 Cindy Cohen, International Economist

21 Charles Yost, Accountant/Auditor

22 Michael Haldenstein, Attorney/Advisor

23 Elizabeth Haines, Supervisory Investigator

24

25

1 Appearances:

2 Congressional Appearances:

3 The Honorable Claire McCaskill, United States Senator,
4 Missouri

5 The Honorable Heidi Heitkamp, United States Senator, North
6 Dakota

7

8 Embassy Appearances:

9 The Embassy of the Republic of Argentina

10 Washington, DC

11 Minister Pablo Rodriguez Brizuela, Head of Economic and
12 Commercial Section

13

14 The Embassy of the Republic of Indonesia

15 Washington, DC

16 Reza Pahlevi Chairul, Commercial Attache

17

18 Opening Remarks:

19 Petitioner (Myles S. Getlan, Cassidy Levy Kent (USA) LLP)

20 Respondents (Daniel L. Porter, Curtis, Mallet-Prevost, Colt
21 & Mosle LLP)

22

23

24

25

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

3 Cassidy Levy Kent (USA) LLP
4 Washington, DC

5 on behalf of

6 The National Biodiesel Board Fair Trade Coalition

7 Donnell Rehagen, Chief Executive Officer, National
8 Biodiesel Board

9 Chad Stone, Chief Financial Officer, Renewable Energy
10 Group, Inc.

11 Paul Soanes, President and Chief Executive Officer, RBF
12 Port Neches LLC

13 Jonathan Phillips, Chief Operating Officer and General
14 Counsel, RBF Port Neches LLC

15 Wayne Presby, Managing Member, White Mountain
16 Biodiesel LLC

17 Elias Petersen, Staff Attorney, Kolmar Americas, Inc.
18 American Greenfuels, LLC

19 Myles S. Getlan and Jack Levy - Of Counsel

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

3 Akin Gump Strauss Hauer & Feld LLP

4 Washington, DC

5 on behalf of

6 PT Wilmar Bioenergi Indonesia

7 Wilmag Oleo North America LLC

8 (collectively "Wilmar")

9 John Cummings, Director of Biodiesel, Wilmag Oleo North

10 America LLC

11 Andrew Szamosszegi, Principal, Capital Trade

12 Incorporated

13 Travis Pope, Associate, Capital Trade Incorporated

14 Bernd G. Janzen - Of Counsel

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16 Greenberg Traurig LLP

17 Washington, DC

18 on behalf of

19 BioSphere Fuels, LLC ("BioSphere")

20 Taylor Dawson, Director of Renewable Fuels, BioSphere

21 Chris Vergona, Supervisor, Fuel Programs Compliance,

22 BioSphere

23 Irwin P. Altschuler and Rosa S. Jeong - Of Counsel

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1 White & Case LLP

2 Washington, DC

3 on behalf of

4 Louis Dreyfus Company Claypool Holdings ("LDC Claypool")

5 Louis Dreyfus Company Agricultural Industries LLC ("LDCAI")

6 Leonard Federico, Vice President, LDC Claypool

7 Kristina Zissis - Of Counsel

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9 Appleton Luff

10 Washington, DC

11 on behalf of

12 PT Musim Mas

13 Douglas Leong, General Counsel, PT Musim Mas

14 Sandra Dunphy, Director, Energy Compliance Services,

15 Weaver Tidwell, LLP

16 Edmund Sim and Kelly Slater - Of Counsel

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1 Curtis, Mallet-Prevost, Colt & Mosle LLP

2 Washington, DC

3 on behalf of

4 Camara Argentina de Biocombustibles

5 Aceitera General Deheza S.A.; Bunge Argentina S.A.;

6 Cargill S.A.C.I.; COFCO Argentina S.A.; LDC Argentina S.A.;

7 Molinos Agro S.A.; Oleaginosa Moreno Hermanos S.A.;

8 Vicentin S.A.I.C. (collectively "CARBIO")

9 Daniel L. Porter and Valerie Ellis - Of Counsel

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11 Vorys, Sater, Seymour and Pease LLP

12 Washington, DC

13 on behalf of

14 Targray Industries, Inc. ("Targray")

15 Vitol Inc. ("Vitol")

16 Frederick P. Waite and Kimberly R. Young - Of Counsel

17

18 Eversheds Sutherland

19 Washington, DC

20 on behalf of

21 Nobile Americas Corp. ("NAC")

22 Mark D. Herlach and Ryan R. Weiss - Of Counsel

23

24

25

1 Rebuttal/Closing Remarks:
2 Petitioners (Myles S. Getlan, Cassidy Levy Kent (USA) LLP)
3 Respondents (Daniel L. Porter, Curtis, Mallet-Prevost, Colt
4 & Mosle LLP; and
5 Bernd G. Janzen, Akin Gump Strauss Hauer & Feld LLP)

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9:45 a.m.

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

CHAIRMAN SCHMIDTLEIN: Good morning again. On behalf of the U.S. International Trade Commission I welcome you to this hearing on Investigation Nos. 701-TA-571 to 572 and 731-TA-1347 to 1348 Final involving Biodiesel from Argentina and Indonesia.

The purpose of these final investigations is to determine whether an industry in the United States is materially injured or threatened with material injury or the establishment of an industry in the United States is materially retarded by reason of imports of biodiesel from Argentina and Indonesia.

Schedule setting forth the presentation of this hearing, notices of investigation and transcript order forms are available at the public distribution table. All prepared testimony should be given to the Secretary. Please do not place testimony directly on the public distribution table. All witnesses must be sworn in by the Secretary before presenting testimony.

I understand that the parties are aware of the time allocations. Any questions regarding the time allocations should be directed to the Secretary. Speakers are reminded not to refer in their remarks or answers to

1 questions business proprietary information. Please speak
2 clearly into the microphones and state your name for the
3 record for the benefit of the court reporter. If you will
4 be submitting documents that contain information you wish
5 classified as business confidential your request should
6 comply with commission rule 201.6.

7 Mr. Secretary, are there any preliminary matters?

8 MR. BISHOP: Yes, Madam Chairman. I have two
9 preliminary matters. With your leave, I would add Ryan R.
10 Weiss and Mark D. Herlach of Everlands Sutherland to page 4
11 of the witness list on behalf of Noble Americas Corporation.

12 CHAIRMAN SCHMIDTLEIN: So ordered.

13 MR. BISHOP: Also I would like to welcome Mr.
14 Robert Sargen from the International Law Institute and a
15 delegation of visiting lawyers from the All China Lawyers
16 Association.

17 CHAIRMAN SCHMIDTLEIN: Very well, thank you
18 very much. Welcome to Mr. Sargen and your associates here
19 today. We will now begin with our first Congressional
20 Witness. Mr. Secretary, will you please announce our first
21 Congressional Witness?

22 MR. BISHOP: Our first Congressional Witness is
23 the Honorable Claire McCaskill, United States Senator from
24 Missouri.

25 CHAIRMAN SCHMIDTLEIN: Welcome, Senator

1 McCaskill.

2 STATEMENT OF SENATOR CLAIRE MCCASKILL

3 SENATOR MCCASKILL: Thank you so much for allowing me
4 the opportunity to speak this morning and as a former
5 courtroom lawyer I know it is important to try to do
6 whatever I can do in the way of home stuff so let me first
7 acknowledge that the Chairman is a Missourian and
8 importantly this morning she is from the heart of soybean
9 country. You cannot get any more soybean than Carroll
10 County and so it is great to be in front of you and also Mr.
11 Williamson who shares my hometown of St. Louis where I live
12 currently. It's great to be in front of all of you this
13 morning.

14 Chairman Schmidtlein, members of the Commission,
15 thank you for allowing me to advocate on behalf of Missouri
16 workers in the soybean and biodiesel industries and the tens
17 of thousands in these industries nationwide. I submit this
18 testimony in support of Missouri's biodiesel and soybean
19 producers and our workers.

20 Nationwide, the biodiesel market supports roughly
21 64,000 jobs with roughly 8,350 of those jobs in Missouri.
22 The state of Missouri is the third largest producer of
23 biodiesel and a major producer of soybeans. We have six
24 active biodiesel plants in Missouri with a combined capacity
25 of 235,000,000 gallons. These plants and their related

1 crushing facilities are located in towns like Deerfield, St.
2 Joseph and Mexico and support hundreds of jobs in rural
3 Missouri.

4 The soybean industry has created 3,000 direct
5 jobs and 6,400 indirect jobs in Missouri and adds 1.75
6 billion in economic benefits to the state. As Chairman
7 Schmidtlein hailing from the Show Me State knows, corn and
8 beans are the cornerstone of my state's economy. These
9 workers and my state's economy are being harmed by the
10 hundreds of millions of gallons of Argentineans and
11 Indonesian biodiesel that is unfairly being dumped into the
12 United States.

13 Due to a favorable export tax regime, Argentinean
14 soybeans cost is less than half of world market prices.
15 Indonesian palm oil prices are severely depressed. These
16 low feed stock prices drastically lower cost for Argentinean
17 and Indonesian biodiesel producers.

18 Additionally, Indonesia's biodiesel subsidy fund
19 provides hundreds of millions of dollars in state grants to
20 its biodiesel industry. A recent countervailing duty
21 decision by the Department of Commerce confirmed these
22 subsidies. These subsidies allow Argentinean and Indonesian
23 producers to dump cheap biodiesel into the United States.
24 Imports from these companies have increased by an astounding
25 463 percent, capturing more than 20 percentage points of

1 market share from U.S. Producers.

2 Total U.S. Imports of biodiesel hit a record 916
3 million gallons in 2016. This is far from a fair playing
4 field from Missouri's biodiesel producers and soybean
5 farmers. While demand for and consumption of biodiesel is
6 growing, Domestic Producers' capital expenditures have
7 declined and they are failing to reinvest in the market. As
8 a result, we are buying fewer American soybeans.

9 These companies have the will and the ingenuity
10 to grow, but can't because international competitors are not
11 playing by the rules. The United States has made a policy
12 choice to promote biofuels to reduce our reliance on oil and
13 decrease carbon but unfair trade practices that threaten our
14 Domestic Industry could result in reductions of biodiesel
15 production that will have a negative consequence in the long
16 run for both our energy independence, our environment and
17 also thirdly and very importantly our economy.

18 Our trade laws exist to prevent this from
19 happening and to protect our American farmers and workers
20 from unfair trade practices. The U.S. International Trade
21 Commission has already wisely preliminarily acknowledged
22 that this dumping is occurring setting preliminary duties on
23 both soy-based biodiesel from Argentina and palm oil
24 biodiesel from Indonesia.

25 The ITC should finalize these duties to ensure

1 fair competition for our biodiesel producers and protect our
2 soybean producers from these distorted markets. Soybean and
3 biodiesel producers in Missouri and across America can
4 compete with anyone in the world but they need a level
5 playing field to do so.

6 The biodiesel and the soybeans we are talking
7 about today aren't just products of Commerce, they represent
8 jobs for folks in my state, they represent thousands of
9 families' livelihood and when those jobs are threatened by
10 unfair trade practices on the part of foreign competitors it
11 is your job to step in.

12 I'm not going to sit by and neither should you.
13 All of the hard work done to expand free and fair trade with
14 other nations, you have the important job to ensure that the
15 U.S. Companies have a level playing field. You have already
16 preliminarily determined that dumping is occurring. I am
17 hopeful that you will now finalize the antidumping duties in
18 this important area in my state's economy and I appreciate
19 so much you giving me a few minutes to testify this morning.

20 CHAIRMAN SCHMIDTLEIN: Thank you very much,
21 Senator McCaskill. Thank you.

22 MR. BISHOP: Our next Congressional Witness is
23 the Honorable Heidi Heitkamp, United States Senator from
24 North Dakota.

25 CHAIRMAN SCHMIDTLEIN: Welcome Senator Heitkamp.

1 STATEMENT OF SENATOR HEIDI HEITKAMP

2 SENATOR HEITKAMP: Good morning, Madam Chairman and
3 Members of the Commission and thank you again for this
4 opportunity to testify today. My name is Heidi Heitkamp. I
5 represent the people of the great state of North Dakota in
6 the United States Senate.

7 I'm appearing today in support of U.S. biodiesel
8 producers, their plant workers and American farmers. In
9 North Dakota we subscribe to all of the above approach when
10 it comes to taking advantage of our energy resources and as
11 part of our energy policy we support the development and
12 production of advanced biofuels such as biodiesel.

13 In Velva, North Dakota ADM operates a biodiesel
14 plant with the capacity to produce 75 million gallons per
15 year using canola oil as a feed stock. The Velva facility
16 directly employs 85 workers and supports upstream jobs
17 across the economy including hundreds of canola farmers
18 across the region.

19 We are also hoping that another company,
20 Minnesota Soy, will soon execute on its plans to build a 35
21 million gallon plant in Spiritwood which would use soybean
22 oil as a feed stock. From what I understand, progress on
23 that investment has been greatly slowed and the outcome of
24 this case will likely be a factor in deciding whether they
25 will get final approval for this project.

1 These jobs are crucial for the prosperity of
2 rural America and many families in North Dakota, both for
3 the biodiesel workers and for oil seed farmers alike. To
4 give you some perspective, consider that the population of
5 Velva is a little more than a thousand people. Spiritwood's
6 population is less than 100 people when we began to work on
7 a new industrial park about one decade ago.

8 In recent years advanced biofuels have rapidly
9 become a key driver for North Dakota's economy and not only
10 support direct jobs in the industry but also result in
11 increased revenue for our farmers as well as research and
12 development opportunities for our state universities.

13 I'm here today because America's biodiesel energy
14 policy is being undermined by unfair import competition. In
15 recent years we have seen a flood of imports from Argentina
16 and Indonesia in unfair subsidized prices. This is a
17 problem you and we need to solve. I know you are quickly
18 becoming experts in this industry but let me give you some
19 context from a federal legislative perspective.

20 In 2007, Congress expanded the RFS, the Renewable
21 Fuels Program to include Renewable Fuels Standards for
22 advanced biodiesels such as biodiesel. The RFS program is a
23 bipartisan Federal energy policy that is designed to
24 increase domestic renewable fuels production, stimulate U.S.
25 Economic activity and reduce harmful emissions.

1 Each year the Federal Government has growing
2 demand for biodiesel as a transportation fuel for the
3 establishment of increasing volume obligations. It's
4 important to note that the RFS system does not, does not
5 discriminate between domestic and imported diesel. Both
6 sources can satisfy the RFS volumes.

7 The other Federal program worth highlighting is a
8 Blender Tax Credit, or the BTC. This program generates a
9 benefit of 1 dollar per gallon when biodiesel is first
10 blended with small amounts of petrodiesel and like the RFS
11 it does not discriminate between domestic and foreign
12 sources.

13 The BTC was originally intended to further
14 incentivize demand for biodiesel but helping to ensure that
15 part of the biodiesel would become competitive with
16 petrodiesel prices but the operation of the BTC program's
17 been spotty. For one thing the BTC has not been
18 continuously in effect. In both 2014 and 2015 the program
19 was not approved until December when it was applied
20 retroactively.

21 The BTC was in effect through the duration of
22 2016 but then again lapsed this year. The BTC I honestly
23 can tell you that I don't know whether the BTC will be
24 renewed, either in its prior form or in some other manner.
25 It may not get renewed at all. We just don't know at this

1 time. One of the challenges of the BTC is that it has not
2 worked exactly as intended.

3 I want you to think about the following: The RSF
4 Program by itself essentially requires companies to buy
5 biodiesel but American companies cannot earn a profit
6 selling biodiesel to them. Without the BTC they are losing
7 money. Why is that? Because they are being forced to
8 compete against subsidized import products and prices. It
9 is perverse. Until it expired the BTC served as a lifeline
10 for U.S. Biodiesel Producers who are struggling to compete
11 against these subsidized imports but that's not what the BTC
12 was intended to do.

13 I can tell you as a Senator, we did not design
14 the BTC to somehow offset the injurious effects of
15 subsidized products coming from Argentina and Indonesia. It
16 is a bad use of hundreds of millions of dollars of taxpayer
17 funds. I think it is worth reiterating the fact that the
18 United States' government incentives for biodiesel do not
19 discriminate between domestic and foreign sources.

20 This contrasts sharply with the subsidies that
21 Argentina and Indonesia producers are receiving from their
22 respective foreign governments. This asymmetry is the
23 reason why we don't have a level playing field in the U.S.
24 Market for biodiesel. Fortunately, we have you. We have a
25 trade remedy law to deal with subsidized imports. That is

1 why this case is so important.

2 We simply cannot have an effective Federal Energy
3 Policy if subsidized imports are allowed to injure our U.S.
4 Producers and our workers. Right now American biodiesel
5 companies are losing money because they cannot compete
6 against the massive subsidies that are being provided by
7 Argentina and Indonesia. It is really quite honestly that
8 simple.

9 In conclusion, let me say as a nation we need to
10 support the efforts of homegrown green energy sources.
11 Advanced biodiesel fuels, like biodiesel are important to
12 the American economy, to the American rural economy which
13 tends to continue to struggle and offers other significant
14 environmental benefits. This is not a partisan issue. This
15 is an area where Congress has found it necessary to reach
16 across the aisle to grow this industry and support rural
17 American jobs.

18 So keep in mind what is at stake here. If the
19 Domestic Industry cannot use the Trade Remedy Law to address
20 subsidized foreign imports then the effectiveness of the
21 entire Federal renewable fuels program is being and will
22 continue to be undermined. Without trade relief rural
23 economies will take a hit. The farmers in my state and
24 across America will feel the blow. If this industry is
25 forced to continue to compete with subsidized imports they

1 will not be able to generate profit and reinvest.

2 I respectfully urge you to create a level playing
3 field for U.S. Biodiesel for the U.S. Biodiesel Industry and
4 for the American farmers who supply them. I want to thank
5 you for taking the time and I want to just reiterate that
6 many times in these challenging times where we know that we
7 have to compete globally, the challenge is convincing
8 farmers in my state that globalization is good, that
9 opening up markets is good because they frequently see that
10 they are being taken advantage of by subsidized imports from
11 other countries.

12 So I ask you to do the work that you are charged
13 with, level the playing field, prevent unfair subsidization
14 and unfair trade practices. Thank you so much, Madam
15 Chairman and I appreciate greatly the opportunity to come
16 and speak on behalf of American farmers and North Dakota
17 Farmers.

18 CHAIRMAN SCHMIDTLEIN: Thank you very much,
19 Senator Heitkamp.

20 Alright, we will now move to opening statements.

21 MR. BISHOP: Madam Chairman, we first have two
22 Embassy Witnesses. Our first Embassy Witness is Mr. Pablo
23 Rodriguez Brizuela, Head of the Economic and Cultural
24 Section of the Embassy of the Republic of Argentina.

25 STATEMENT OF MINISTER PABLO RODRIGUEZ BRIZUELA

1 MINISTER BRIZUELA: Madam Chairman, Members of the
2 Commission. The Argentine Republic appreciates the
3 opportunity to provide some comments on this trade case
4 against imports of biodiesel from Argentina. My name is
5 Pablo Rodriguez Brizuela and I am the Head of Economic and
6 Commercial Section of the Embassy of Argentine.

7 This biodiesel trade case is a matter of serious
8 concern in our country. This trade case puts at risk a full
9 25 percent of Argentina's total exports to the United
10 States. There is no legal or factual justification for this
11 adverse consequence. The primary component of the trade
12 case - that is the allegation that Argentina's tax regime
13 somehow confers a countervailable subsidy on Argentine
14 producers that caused material injury to the U.S. Producers
15 -- is both legally and factually wrong.

16 The allegation is legally wrong because as a
17 matter of WTO law an export tax on soybeans cannot be
18 considered a countervailable subsidy to biodiesel producers.
19 Petitioners' allegation that an export tax on soybeans
20 somehow substitutes government action of entrusting or
21 directing soybean farmers to offer low prices to biodiesel
22 producers is consistent with the WTO agreement on Subsidies
23 and Countervailing Measures.

24 Indeed, not only are there several WTO Panels and
25 Appellate Body rulings rejecting this legal claim but also

1 many of those rulings were issued in cases against the
2 United States Commerce Department. Although the U.S.
3 Commerce Department has not agreed with these WTO findings
4 and you have no authority to change the Commerce Department
5 CVD margin, you can decide how much weight and relevance to
6 give to a Commerce Department determination that is
7 squarely against the United States' international
8 obligations.

9 Which leads me to my second important comment.
10 The underlying factual predicate of Petitioners entire case
11 is also completely wrong. There is really no evidence that
12 the export tax increases domestic supply of soybeans.
13 Moreover, Petitioners own evidence shows the export tax on
14 soybeans results in no material impact on soybean prices.

15 Empirical analysis conducted by economists with
16 the U.S. International Trade Commission and submitted by
17 Petitioners actually shows that elimination of the export
18 tax on soybeans will result in no more than a 1.2 percent
19 increase in the domestic (Argentine) soybean prices.

20 And the Argentine industry has updated this same
21 study based on current data and the result is virtually
22 identical. Eliminating the export tax on soybeans will
23 result in only a 1.6 percent increase in the soybeans sold
24 to Argentine biodiesel products. Or stated differently, the
25 existence of the government tax on soybeans has virtually no

1 effect on the Argentine producers' cost. In short,
2 Petitioners' entire case is legally unsound and factually
3 inaccurate.

4 Moreover and specifically with regard to the
5 injury analysis, it is clear from the Commission preliminary
6 report that the period 2014-2016 was very positive for the
7 U.S. Domestic Industry. In spite of the alleged injurious
8 effects claimed by Petitioners during this period the
9 Domestic Industry increased their production capacity by 28
10 percent and increased their biodiesel production by more
11 than 34 percent.

12 In fact, during 2016, the year when the imports
13 from Argentina reached their highest market share the
14 Domestic Industry was able to increase biodiesel production
15 by 300 million gallons. If this was not enough, in 2016
16 again when the volume of imports were at their highest, the
17 U.S. Producers earned net profits of 330 million dollars.
18 In sum, it is hard to find any sign of injury or threat
19 thereof in the investigation record.

20 My last comment is to note that an important
21 development concerning export of biodiesel from Argentina.
22 As I believe you know, in 2013 the European Union imposed
23 antidumping duties on biodiesel exports from Argentina. The
24 government of Argentina challenged these antidumping duties
25 before the WTO and prevailed. The WTO Appellate Body ruled

1 that the EU violated the WTO Antidumping Agreement and the
2 GATT by failing to calculate the costs of production based
3 on the basis of the record kept by Argentine producers and
4 by not calculating the "cost of production in the country of
5 origin."

6 I note that the U.S. Commerce Department has made
7 the same very mistake in its own antidumping determination.
8 As a result of the WTO case, the EU agreed to change the
9 antidumping duties imposed on biodiesel exports.
10 Specifically, the antidumping duties have been reduced from
11 24.6 percent to 6.7 percent on average. This took affect
12 about a month ago. Accordingly, Argentine Producers have
13 already resumed biodiesel exports to the EU and plan to
14 continue to do so.

15 Again, thank you for the opportunity to present
16 these view. Thank you.

17 CHAIRMAN SCHMIDTLEIN: Thank you, very much, Mr.
18 Brizuela. Are there any questions? No, all right. Thank
19 you very much.

20 MR. BISHOP: Our next Embassy witness is Reza
21 Pahlevi Chairul, Commercial Attache with the Embassy of the
22 Republic of Indonesia.

23 STATEMENT OF REZA PAHLEVI CHAIRUL

24 MR. CHAIRUL: Good morning, Chairman Rhonda and
25 members of Commissioners. I'm Reza Pahlevi, commercial

1 attache at the Embassy of the Republic of Indonesia. And on
2 behalf of the government of Indonesia, thank you for the
3 opportunity to speak today regarding the U.S. anti-dumping
4 and countervailing duty investigations of biodiesel.

5 Our government has been fully cooperative in
6 these investigations, including in both anti-dumping and
7 countervailing duty investigations before the Commerce
8 Department, where we have answer questionnaires, submitted
9 to verifications, and made legal argumentations.

10 Regarding the investigations, your agency is
11 considering, I appear before you to respectfully urge to you
12 to issue a negative injury determinations. The government
13 of Indonesia supports the arguments that will be met later
14 today by the Indonesia respondent companies Wilmar and Musim
15 Mas.

16 Among those arguments is that subject imports
17 from Argentina and Indonesia should not be cumulated and
18 that imports from Indonesia considered alone have not caused
19 and do not threaten material injury to the U.S. domestic
20 industry.

21 The U.S. government renewable fuel standards
22 regulate product from these two countries differently.
23 Biodiesel from Indonesia is pump oil base, known as PME.
24 Indonesian PME is in a different category from imports from
25 Argentina and biodiesel produced in the United States, which

1 are made from soybean oil known as SME.

2 And these products are treated so differently,
3 that the U.S. governments allow SME to be referred to as a
4 biomass-based diesel, whereas Indonesia PME can only be
5 called a renewable fuel.

6 The U.S. EPA also caps the volume of Indonesian
7 PME that may enter the United States. In fact, because of
8 these U.S. regulations, Indonesia has not shipped PME to the
9 United States in December of 2016 or almost a full year ago.

10 This regulation limit the market for Indonesian
11 PME to such a degree that the Commission should consider
12 import from Indonesia separately from import from Argentina.

13 In addition, in accordance with the WTO
14 anti-dumping and subsidies and countervailing measures
15 agreements, the Commission is required to examine all known
16 factors affecting the conditions of domestic industry and
17 must not attribute any injury caused by other factors to
18 subject imports.

19 In this case, other factor such as U.S.
20 environmental regulations, tax incentives, and the price of
21 petro diesel have a major impact on U.S. demand, prices, and
22 the condition of the domestic industry. The effect of these
23 other casual factors should not be attributed to imports
24 from Indonesia.

25 In summary, the government of Indonesia

1 respectfully requests the Commission to consider carefully
2 the facts and analysis from the Indonesian producers and
3 exporters and make a negative determination for this
4 investigation. I thank you, Madam Chair.

5 CHAIRMAN SCHMIDTLEIN: Thank you very much, Mr.
6 Chairul. Are there any questions? No, thank you. All
7 right, now we will move to opening statements I believe.

8 MR. BISHOP: Opening remarks on behalf of
9 petitioner will be given by Myles S. Getlan of Cassidy Levy
10 Kent.

11 Mr. Getlan, you have five minutes.

12 OPENING STATEMENT OF MYLES S. GETLAN

13 MR. GETLAN: Good morning, Madam Chairman,
14 Commissioners. It's -- too tall. Good morning, Madam
15 Chairman, Commissioners. My name is Myles Getlan at the law
16 firm Cassidy Levy Kent on -- appearing today on behalf of
17 the National Biodiesel Board Fair Trade Coalition. The
18 coalition includes 17 U.S. producers, as well the National
19 Biodiesel Board or NBB.

20 This is a case where it is easy to understand
21 why and how subject imports flooded into the market during
22 the period of investigation. Biodiesel imports from
23 Argentina and Indonesia benefit from massive subsidies.
24 Argentina's export tax regime and the market distortion it
25 creates is notorious. USTR has long considered this tax

1 regime to be an unfair trade practice. This program
2 depresses soybean costs to about half the world market
3 price, providing Argentine biodiesel producers with a huge
4 unfair competitive advantage.

5 Indonesia has a similar export tax regime as it
6 relates to palm oil and also has a biodiesel subsidy fund
7 that directs hundreds of millions of dollars to Indonesia's
8 biodiesel producers. These massive subsidy programs have
9 fueled biodiesel exports from Argentina and Indonesia. When
10 the EU and Peru imposed trade remedies, Argentine and
11 Indonesian companies redirected their shipments to the
12 United States. Here, they found a welcoming environment for
13 their cheap subsidized biodiesel.

14 The United States has a robust regulatory
15 framework that incentivizes biodiesel consumption. But
16 importantly, such incentives apply equally to domestic and
17 imported biodiesel.

18 Benefitting from both huge subsidies at home,
19 and incentives in this country, subject imports surged into
20 the United States increasing by 463 percent during the POI.
21 These increased volumes came at the expense of U.S.
22 producers with subject imports taking 18 percentage points
23 of market share from the domestic industry.

24 Respondents argue that imports increased because
25 the domestic industry was unable to supply the market. That

1 is ridiculous. The 24 producers responding to
2 questionnaires had hundreds of millions of gallons of unused
3 capacity and official EIA data confirmed that the industry
4 had enough active capacity to supply the entire market.

5 Purchasers also reported that U.S. producers
6 were reliable suppliers. Given these facts, and considering
7 that biodiesel is a commodity product, the inescapable
8 conclusion is that domestic producers lost share on the
9 basis of price.

10 The pricing data show significant underselling
11 by imports from Argentina and Indonesia throughout the POI,
12 as well as price depression and suppression.

13 These significant and adverse volume and price
14 effects had a negative and material impact on U.S.
15 producers. The industry's lost sales translated into
16 depressed production, depressed capacity, utilization, and
17 depressed sales revenues.

18 Subject import underselling also squeezed
19 margins. When costs began to rise in 2016, sales values
20 continued to decline, creating a cost price squeeze. By the
21 end of the POI, the domestic industry could not even earn a
22 positive gross margin.

23 The industry also experienced anemic financial
24 results. Net income declined from 2014 to 2016 culminating
25 in severe losses by the end of the POI. With such weak

1 financial performance, the industry's investments and R and
2 D spending declined significantly.

3 The only relief came in the form of the
4 Blender's tax credit, which allowed the industry to keep its
5 head above water. But if you exclude the BTC, the industry
6 incurred substantial operating losses, worsening year over
7 year from 2014 to 2016.

8 The industry's tenuous existence absent the BTC
9 is not idle speculation. With no BTC in effect this year,
10 the industry suffered significant losses in the first half
11 of 2017. Subject imports clearly contributed to this
12 condition in the first half of the year, underselling the
13 domestic product, taking share from the industry, and
14 suppressing domestic producer prices.

15 The U.S. biodiesel industry should be leading
16 this country towards the energy independence and a green
17 future, but without any remedy, subsidized imports threaten
18 the very existence of this industry. We're here to urge you
19 to provide this trade remedy and we look forward to
20 presenting our case to you this morning. Thank you.

21 MR. BISHOP: Opening remarks on behalf of
22 respondents will be given by Daniel L. Porter of Curtiss,
23 Mallet-Prevost, Colt & Mosle.

24 Mr. Porter, you have five minutes.

25 OPENING STATEMENT OF DANIEL L. PORTER

1 MR. PORTER: Good morning, Madam Chair,
2 Commissioners, it's good to see you again. With your
3 indulgence, I intend to refer to the handouts during my
4 opening statement. I believe you have them. Now let's dive
5 into the evidentiary record. Conditions and competition,
6 all parties actually agree on this. The single most
7 important and rather unique condition of competition is the
8 fact that U.S. biodiesel market is a creation of federal law
9 policy and regulation.

10 Volume effects. The evidentiary record before
11 you does not support a finding of adverse volume effects.
12 Yes, subject imports did increase quite a bit over the
13 period, but only in response to dramatically rising demand
14 required by the EPA mandate.

15 Now petitioners claim that increasing imports
16 stole sales and shipments from U.S. producers. Petitioners
17 claim that U.S. producers had lots of excess capacity that
18 they could have used to increase production sales. But the
19 evidence tells a different story.

20 I ask you to look at the chart entitled "no
21 adverse volume effects." As you can see, 2015 and 2016 were
22 years in which the EPA government mandated consumption
23 increased a fair amount. And the same years were a time in
24 which U.S. producers earned good profits. These two facts
25 strongly suggest that U.S. producers would have used all of

1 their supposed excess capacity to produce and sell as much
2 as a could, but that did not happen.

3 As you can see, actual U.S. production was
4 dramatically lower than the EPA-mandated consumption. It
5 was dramatically lower because in fact, U.S. producers were
6 actually manufacturing all that they could. U.S. producers
7 were sold out in 2016. Subject imports did not steal sales
8 from U.S. producers.

9 On to price effects. As you can see in the next
10 chart, notwithstanding the large volumes of subject imports
11 in 2016, U.S. producer prices actually increased
12 substantially. And so, there has not been significant price
13 depression from subject imports. Nor is there evidence of
14 significant price depression from subject imports. The
15 relatively stable per unit gross profit margin and
16 operating income margin over the three year period confirm
17 the lack of any significant price suppression.

18 Moving on to impact. Please look at the chart
19 "no adverse impact." The chart provides a listing of
20 virtually every single domestic industry performance metric
21 that the Commission examines. The chart is rather telling.
22 For every single performance metrics, U.S. producers have
23 improved considerably. Indeed, the performance metrics show
24 double digit gains. Double digit increases in virtually all
25 performance metrics in the face of rapidly rising imports do

1 not demonstrate material injury from imports.

2 Now I recognize this chart covers the three full
3 years of data and the staff report shows that the
4 profitability picture changed for U.S. producers in the
5 first half of 2017. However, this change in profitability
6 has to be placed in context. The entire reason for the
7 change in U.S. producer profitability in the first half of
8 2017 was because of the expiration of the biodiesel tax
9 credit at the end of 2016.

10 In fact, if you assume that U.S. producers
11 earned the same per gallon tax credit in the first half of
12 2017 as they did in 2016, U.S. producers will have their
13 best year ever in 2017.

14 Now I know two important points about this
15 dynamic. First, as a factual matter, it is anticipated by
16 many that the biodiesel tax credit will be renewed. As you
17 can see in the subsequent pages, just last month, Senator
18 Grassley went out of his way to reassure the readers of
19 "Biodiesel Magazine" of his belief that the biodiesel tax
20 credit will ultimately be reinstated retroactively because
21 "it always has been."

22 The second important point is that as a legal
23 matter, subject imports did not cause the expiration of the
24 biodiesel tax credit. Accordingly under the law, the
25 Commission cannot attribute any adverse effect from the

1 elimination of the biodiesel tax credit to subject imports.

2 Madam Chair, Commissioners, the evidentiary
3 record before you compels a negative injury determination.

4 Thank you.

5 CHAIRMAN SCHMIDTLEIN: Thank you, Mr. Porter.

6 MR. BISHOP: Would the panel in support of the
7 imposition of the anti-dumping and countervailing duty
8 orders please come forward and be seated?

9 Madam Chairman, this -- all members of this
10 panel have been sworn in. This panel has 60 minutes for
11 their direct presentation.

12 CHAIRMAN SCHMIDTLEIN: Mr. Kelly, you may begin
13 when you're ready.

14 STATEMENT OF MYLES S. GETLAN

15 MR. GETLAN: Thank you, Madam Chairman. We're
16 pleased this morning to present a panel of witnesses
17 representing several biodiesel producers from across the
18 country, as well as the CEO of the National Biodiesel Board.

19 I wanted to first though take a moment just to
20 address the big issue in the room, especially as framed by
21 Mr. Porter during opening statements. I alluded to it in my
22 opening statement as well. And it's this issue of the
23 industry's ability or willingness to supply biodiesel during
24 the period of investigation.

25 They are -- this is a narrative that they depend

1 on to explain away what you see here in Exhibit 1, the
2 volume effects. How can you explain 463 percent increase in
3 imports and 18 percentage point increase in market share?
4 Their explanation is that as they say, the U.S. producers
5 were sold out. They say in their briefs, no ability to
6 increase shipments.

7 With your indulgence, I'd ask you to first take
8 a look at confidential Exhibit 1, which you have in front of
9 you, pink paper. It includes both the public EIA capacity
10 information, which is in the staff report, but as well as
11 the production and capacity, capacity utilization figures
12 that are in the C tables. And so, that's proprietary
13 information.

14 What you see on the top here or at the top of
15 your confidential Exhibit 1 is EIA capacity figures. The
16 staff included this information in the pre-hearing report
17 for good reason. It's reliable government data. It's based
18 on surveys taken monthly from U.S. producers. And it shows
19 capacity, industry capacity, significantly exceeding the
20 entire -- the apparent domestic consumption throughout the
21 POI.

22 It also shows capacity utilization severely
23 depressed throughout the POI. On confidential Exhibit 1, if
24 you refer to the proprietary data, these are the data
25 submitted by U.S. producers in their questionnaire

1 responses. And you see capacity utilization figures falling
2 below 80 percent throughout. In 2016, those 24 producers
3 alone had hundreds of millions of gallons of unutilized
4 capacity.

5 These are even conservative estimates of
6 capacity. Respondents in their briefs refer to EPA all the
7 time. Well, EPA indicated in 2016 that the industry had
8 active biodiesel capacity of at least 2.4 billion gallons,
9 far exceeding ADC in 2016.

10 In short, there is absolutely no issue as to
11 whether or there should be no issue. The facts are
12 absolutely clear that the industry had ample capacity to
13 supply the market. Why did they not produce more? They
14 were losing sales on the basis of price. You have in the
15 record underselling data, quarterly pricing data that shows
16 significant underselling throughout the POI. And it's on
17 the basis of those prices that domestic producers were
18 losing sales and did not -- were not able to maximize their
19 capacity utilization.

20 And so with that, this is -- this issue of
21 trying to run away from the adverse volume effects by
22 reference to some shortage in supply that the capacity data
23 don't support it. And importantly, you also had U.S.
24 purchasers responding to multiple questions on this issue
25 and purchasers confirmed that U.S. producers were reliable

1 suppliers.

2 You see here on Exhibit 2 at the bottom, when
3 purchasers were asked to consider the reliability of supply
4 and availability and delivery time, U.S. producers ranked
5 favorably, comparable or superior to subject imports most of
6 the time. The staff indicated that most firms reported no
7 supply constraints.

8 And again, there is just no factual basis for
9 the argument that U.S. producers were sold out or had no
10 ability to increase shipments. Their only inability to
11 increase shipments was by losing sales to low priced,
12 subsidized biodiesel. And so, we'll hear more from that or
13 on that issue and others from our industry witnesses, but
14 wanted to address that up front before getting there.

15 So with that, I'll turn now to Donnell Rehagen,
16 CEO of the National Biodiesel Board.

17 STATEMENT OF DONNELL REHAGEN

18 MR. REHAGEN: Good morning. My name is Donnell
19 Rehagen and I am the CEO of the National Biodiesel Board,
20 which is a member of the Petitioning Coalition.

21 The NBB is the trade association representing
22 biodiesel in the United States. Our members include
23 biodiesel producers and feedstock organizations across the
24 country.

25 In my remarks this morning I want to provide a

1 brief overview of the product, describe the regulatory
2 environment in which biodiesel producers compete, and
3 outline the challenges our industry is facing from
4 subsidized imports from Argentina and Indonesia.

5 I will then turn things over to our other
6 industry witnesses who can detail for you how these unfair
7 imports have been injuring our industry and how we need your
8 help.

9 So let me start with a description of the
10 product. Biodiesel is a clean, renewable alternative to
11 petroleum diesel made from a wide variety of animal fats and
12 vegetable oils, including used cooking oil, soybean oil,
13 canola oil, palm oil, and tallow. All biodiesel is produced
14 to an ASTM standard and gets used primarily in blends with
15 petroleum diesel as a transportation fuel, or as heating
16 oil.

17 According to the EPA, biodiesel reduces
18 greenhouse gas emissions by up to 86 percent, compared to
19 petroleum diesel. So another way to look at that is that
20 for each 100 gallons of biodiesel that is substituted for an
21 equivalent amount of petroleum diesel, net Co2 emissions are
22 reduced by one metric ton.

23 Biodiesel has other significant environmental
24 benefits, too. It reduces waste in landfills, keeps oil and
25 sludge out of sewer infrastructure and waterways, maximizes

1 the efficient use of agricultural byproducts, and
2 significantly cuts emissions of other air pollutants.

3 In the last 10 years, biodiesel has grown from a
4 niche fuel to a commercial scale industry with a U.S. market
5 of more than 2.2 billion gallons. Building new energy
6 industries is no small endeavor. The U.S. biodiesel
7 producers have made tremendous investments that help to
8 support our country's goal of energy independence through an
9 increased mix of sustainable renewable fuels.

10 Today our industry has plants in nearly every
11 state in the country, in big cities and rural communities,
12 along the coasts and throughout the heartland.

13 These plants and the businesses that they support
14 provide excellent employment opportunities. Every 100
15 million gallons of biodiesel production supports and
16 estimated 3,200 American jobs.

17 Now let me make a few comments about the
18 regulatory environment in which we compete. I will start by
19 describing the renewable fuel standard for the RFS because
20 it is the engine that drives demand for our industry.

21 The key element of the RFS is that it requires
22 that transportation fuels sold in the United States,
23 including minimum amount of biomass-based diesel. To
24 qualify toward the RFS-mandated volumes, the fuel must be
25 made from renewable biomass, and it must also achieve a

1 significant reduction in life-cycle greenhouse gas
2 emissions.

3 An exception exists for palm-based biodiesel
4 produced in grandfathered facilities in Indonesia.
5 Biodiesel from these plants has an inferior environmental
6 footprint but it can nonetheless be used to satisfy
7 RFS-mandated volumes in another renewable fuel category.

8 The way in which these RFS mandates get enforced
9 is through renewable identification numbers, or RINs. The
10 RFS system does not discriminate between domestic and
11 imported biodiesel. Both domestic and imported biodiesel
12 can generate RINs. Obligated parties such as refiners
13 are the parties responsible for achieving the RFS volume
14 targets through the acquisition and retirement of RINs.
15 Through these RFS mandates, Uncle Sam essentially requires
16 companies to buy biodiesel.

17 In this context, it is nothing short of stunning
18 that virtually every biodiesel producer in America is losing
19 money today because they don't have the leverage to charge a
20 price that earns them a profit. Now why is that? It's
21 simply because domestic producers are competing against
22 imports that are being heavily subsidized by their own
23 foreign governments, and these are massive subsidies.

24 It is simply not a fair fight--not even close.

25 The other major federal program is the Blenders

1 Tax Credit, from the BTC. And like the RFS this program
2 does not discriminate between domestic and imported
3 biodiesel. Under the BTC, a company can claim \$1 per gallon
4 when biodiesel is blended with as little as .01 percent
5 petroleum diesel.

6 The purpose of the credit was originally to
7 further support expansion of the biodiesel market by helping
8 to ensure that the price of biodiesel would be competitive
9 with petrodiesel. In practice, the BTC has served as a
10 lifeline helping domestic producers to simply keep their
11 head above water.

12 The BTC was retroactively applied in 2014 and
13 2015, but was in effect through the entirety of 2016. So
14 2016 should have been a banner year for domestic producers
15 because RFS volumes were known in advance and increasing
16 feedstock costs were fairly stable, and the BTC was in place
17 for the whole year.

18 But the industry's performance in 2016 actually
19 got worse, with market share declining sharply, capacity
20 utilization depressed, despite a huge increase in demand,
21 and weak financial performance.

22 There should be no question that subsidized
23 import competition from Argentina and Indonesia was to
24 blame.

25 So today our industry is truly at a crossroads.

1 While U.S. energy policy sought to create a level playing
2 field for domestic and imported biodiesel, foreign
3 government subsidies have made it nearly impossible for U.S.
4 producers to compete.

5 The BTC was designed to spur investment in the
6 sector, but instead it is now used as a life support system.
7 And now in 2017, the BTC has lapsed. That life support is
8 gone.

9 We are working hard to lobby for a new tax credit
10 opportunity, but right now we have no ability to say that it
11 will materialize this year. What we can say is this: In the
12 absence of a remedy, the U.S. producers cannot charge prices
13 that allow them to earn a return on their biodiesel sales.
14 Our producers cannot charge a fair price, even though
15 obligated parties are required under federal law to buy
16 biodiesel.

17 It is simply an impossible situation when we are
18 being forced to compete against Argentinean and Indonesian
19 producers who are receiving massive subsidies from their
20 foreign governments.

21 With the EU imposing trade remedies on imported
22 biodiesel from Argentina and Indonesia in 2013, and Peru
23 doing the same in 2016 on Argentine biodiesel, the United
24 States is by far and away the most attractive biodiesel
25 market in the world for these producers.

1 Without a remedy there will be nothing to stop
2 these foreign producers from destroying America's biodiesel
3 industry. But I know that a remedy will create a level
4 playing field and put our industry back on solid footing.
5 How do I know that? Because since preliminary duties were
6 imposed in late August, prices have begun to recover and NBB
7 members are expressing sighs of relief.

8 We need your help to ensure a level playing
9 field. Thank you. And with that I'll turn things over to
10 Paul Soames of RBF.

11 STATEMENT OF PAUL SOANES

12 MR. SOANES: Good morning. My name is Paul
13 Soanes. I am the CEO of Renewable Biofuels for RBF. RBF
14 owns and operates a single biodiesel plant located in Port
15 Neches, Texas, just east of Houston. Along with my
16 colleague, Jonathan Phillips, who is here today, I
17 co-founded RBF in 2007, which was right about the time when
18 President Bush signed into--signed legislation enacting the
19 RFS which deals with biodiesel.

20 RBF is the largest biodiesel production plant in
21 the Western Hemisphere, with the capacity of 180 million
22 gallons per annum. Our scale, superior logistics, and
23 location make us a unique and industry-leading asset.

24 Our plant is co-located on a Hunstra
25 petrochemical site in Port Neches and enjoys important

1 logistical advantages. Simply put, we have superior
2 trimodal logistical capabilities that allow us to ship
3 biodiesel via marine vessels, rail, or truck to customers
4 throughout the U.S., including the Northeast.

5 In addition, our location puts us within a short
6 distance of the largest refineries in North America, which
7 by themselves represent a very large market for biodiesel,
8 for the highly efficient, low-cost producer of high quality
9 biodiesel. In short, we are world class.

10 RBF Biodiesel production uses a wide range of
11 feedstocks, predominantly soybean oil or canola oil, but as
12 market conditions dictate we can also use corn oil, tallows,
13 or cooking oil, which allows us to optimize our raw material
14 costs.

15 RBF also has a very low conversion cost as a
16 result of our continued investment in our very efficient
17 production process. Yet despite all these logistical and
18 cost advantages, we simply cannot compete against highly
19 subsidized imported prices from Indonesian and Argentinian
20 biodiesel.

21 I mentioned earlier that RBF is located in close
22 proximity to a number of the largest refineries in the
23 country. And as you would expect, these refiners, or
24 obligated parties are a major customer base for RBF.

25 We also sell biodiesel to biodiesel traders and

1 discretionary blenders, which include national truckstop
2 chains. Without the obligated parties, these buyers, these
3 customers typically buy biodiesel based on price. That is,
4 they will purchase biodiesel when the price of biodiesel is
5 lower than the price of petroleum diesel.

6 These companies are always telling us about the
7 low prices from imported biodiesel from both Argentina and
8 Indonesia, putting significant pressure on our prices and
9 their operating margins.

10 In addition to selling biodiesel in and around
11 the Gulf Coast where we are located, we also supply the
12 Northeast market. The Northeast is a large market for both
13 transportation fuels and heating oil, and RBF can
14 efficiently ship biodiesel via marine vessels to the
15 Northeast in large quantities, as we can to all of the
16 markets that are serviced by Indonesia and Argentina.

17 The huge increase in low-priced imports from
18 Argentina and Indonesia coming to the Gulf Coast and East
19 Coast markets has taken significant volume from RBF's
20 traditional customer base in our natural sales regions, and
21 this large influx of imports now supplying those markets has
22 forced us to move to different markets and have displaced
23 our product. And as a result, we have had to look for
24 customers in new markets like the Southwest and Western
25 region of the country.

1 Serving those markets are less efficient for RBF
2 and more expensive for us to do so, and as a result it has
3 further constrained our margins and profitability.

4 Turning to prices, there is great transparency in
5 the biodiesel market in terms of pricing. Brokers and
6 traders on a nearly daily basis are telling us the price of
7 imported products. Prices for biodiesel are typically
8 communicated at a discount off of NYMEX, heating oil price,
9 and we are continually frustrated by the level of discounts
10 that we face from these heavily subsidized products.

11 Regrettably, we are often compelled to meet those
12 prices, as we are still better off producing than shutting
13 down our plant. We have a continuous process plant and it
14 is expensive and inefficient to shut the plant down and
15 restart production.

16 While we can't slow down production, and while we
17 do store significant volumes, at the end of the day we are
18 forced to sell at low prices in an effort to defend our
19 market share.

20 You have already heard testimony from Donnell
21 that subject imports have taken significant market share
22 from U.S. producers. We are one of those producers, and
23 things have gotten progressively worse over the last few
24 years.

25 This is reflected in the fact that RBF has

1 significant, unused plant capacity. Our goal since day one
2 in designing a large scale plant was to run it at full
3 output and significantly reduce our per-unit cost on a
4 go-forward basis. We are not realizing those savings.

5 I understand the other side is arguing that we
6 did not have the capacity to grow with the market in 2016.
7 They are basically saying that we lost market share because
8 we could not supply any more. That is 100 percent false and
9 untrue.

10 I can tell you today, under oath, that during
11 2016 our operating capacity was in the 75 percent range, and
12 we had the ability to produce an additional 30 million
13 gallons, had we been able to receive appropriate price
14 signals from the market.

15 We did not do so because, quite frankly, we could
16 not compete against the heavily subsidized biodiesel being
17 imported from Indonesia and Argentina.

18 No matter how you measure it, our operating
19 margins during the POI have declined significantly, to the
20 point that we were at barely break-even in 2016, which was a
21 year where we enjoyed the benefit of the Blenders Tax
22 Credit. When raw material costs began to increase late in
23 the period, we simply could not increase our prices due to
24 the surge of low-priced subsidized imports.

25 This year, without the benefit of the BTC, the

1 situation has gone from tenuous to impossible. Imports from
2 Argentina and Indonesia continue to undercut us on price,
3 and we could not increase prices to a level that will
4 restore us to profitability.

5 When the Respondents claim that the U.S.
6 producers are simply less efficient, what they really mean
7 is that we have an inferior cost structure when compared to
8 their highly subsidized prices.

9 This is not a level playing field. But the trade
10 remedy will address the situation. Since August when the
11 CBD ruling was first announced, we have started to see
12 relief in the market and we are seeing an increase in demand
13 for our product, and as a result we are seeing an increase
14 in margins.

15 We need your help to sustain this recovery. With
16 that, I will now turn it over to Chad.

17 STATEMENT OF CHAD STONE

18 MR. STONE: Thank you, Paul, and good morning. My name
19 is Chad Stone. I'm the Chief Financial Officer of Renewable
20 Energy Group, usually referred to as REG. I am also a past
21 chairman of the Iowa Biodiesel Board.

22 REG has multiple plants across the country, and
23 the sum total of these plants makes us the largest biodiesel
24 producer in the U.S. REG supports the imposition of duties
25 on biodiesel imports from Argentina and Indonesia.

1 These subsidized imports have taken market share
2 from REG, put downward pressure on prices we can charge,
3 eroded margins, undermined the economics of past
4 investments, and stifled our ability to make future
5 investments.

6 REG currently operates 11 complete biodiesel
7 plants across the United States. Each location is
8 strategically located based on proximity to feedstock
9 supplies and distribution channels.

10 REG's biodiesel plants use a wide variety of
11 feedstocks. While REG still uses vegetable oils such as
12 soybean oil as a feedstock, about 80 percent of our
13 feedstock that we use is lower-cost animal fats, waste
14 greases and oils, including used cooking oil.

15 Regardless of which feedstock we use, the end
16 product is biodiesel. It's a commodity. All biodiesel
17 meets the ASTM D-6751 standard. It's nontoxic,
18 biodegradable, and can be blended with petrodiesel.

19 The United States consumes about 60 billion
20 gallons of diesel every year, with biodiesel accounting for
21 about 2.2 billion gallons. That's less than 4 percent. Of
22 the 60 billion gallons of diesel, about two-thirds of that
23 is consumed on highway, mostly in 18-wheelers where you see
24 carrying and delivering cargo across the country.

25 Significant volumes of biodiesel are also used in

1 heating oil, particularly in the Northeast United States.
2 Heating oil is simply diesel fuel. Beyond transportation
3 fuel and heating oil, smaller volumes of biodiesel are
4 consumed in machinery and equipment used in various
5 industries such as mining and agriculture.

6 In all of these applications, biodiesel is
7 blended with conventional diesel or petroleum diesel at
8 varying levels.

9 In regards to pricing, when we negotiate the
10 price of biodiesel, the price is typically expressed in
11 relation to the NYMEX Diesel price. For example, if you're
12 talking about B-100 with RINs, you're likely talking about a
13 premium to NYMEX.

14 I understand the other side is claiming that
15 biodiesel prices are dictated by the petrodiesel price. In
16 their brief they say all suppliers of biodiesel into the
17 U.S. market are price takers at the mercy of petrodiesel
18 prices.

19 Let me say that that is flat wrong and totally
20 ridiculous. We make quote prices in relation to NYMEX but
21 the biodiesel price is influenced by other important
22 factors. In my experience, the price of biodiesel is based
23 on three primary factors.

24 First, we have the value of the liquid fuel
25 itself. And here you'll want to recover your manufacturing

1 costs, the most important of those being feedstock and
2 chemicals, which can account for up to 90 percent of
3 cost-of-goods-sold.

4 Second, the biodiesel price may reflect the value
5 of the RIN.

6 And third, biodiesel price may reflect the value
7 of the Federal Biodiesel Tax Incentive, or some portion of
8 it. Some states also provide additional incentives.

9 While those are the primary drivers of biodiesel
10 price, we do not invoice these elements separately. Rather,
11 the final price to the customer is a negotiated bundled
12 price that reflects some combination of these three
13 elements.

14 But it is absolutely insane for the Respondents
15 to say that we are completely at the mercy of petrodiesel
16 prices. Remember that the RFS requires obligated parties to
17 purchase biodiesel or the RIN associated with it. So in
18 this regulatory environment, we expect to earn a profit on
19 the sale of biodiesel.

20 There's no doubt that imported biodiesel from
21 Argentina and Indonesia has placed significant downward
22 pressure on biodiesel prices. It's also no surprise why.
23 We all know that biodiesel industries in those countries are
24 notoriously subsidized. As biodiesel is a commodity
25 product, purchasers are buying the cheapest biodiesel

1 available, and that is imported biodiesel from Argentina and
2 Indonesia.

3 Let me assure you, REG is a low-cost producer.
4 We have an efficient, centralized shared service arrangement
5 covering all of our production. We are a leader in using a
6 broad array of lower cost feedstocks, and have made
7 investments to enhance the efficiency of our production
8 process.

9 Yet in this environment, we are constantly having
10 to choose between selling at low prices to meet cheap import
11 prices, or losing sales volumes.

12 Like RBF, we have not been able to fully utilize
13 our installed capacity, although I believe we've done a
14 better job than many in the industry, or the industry
15 average. It's worth nothing that REG owns four partially
16 completed plants. We acquired two partially completed
17 plants, one in Atlanta, Georgia, one in Clovis, New Mexico,
18 and we have also constructed but not completed two other
19 plants in New Orleans, Louisiana, and Emporia, Kansas.

20 You would think that with RFS mandates in effect
21 and demand rising 58 percent, we'd be able to earn a
22 sustainable profit and complete these projects. But
23 subsidized import competition is squeezing our margins.

24 This year our biodiesel business is sustaining
25 operating losses. As a result, we've not been able to get

1 reasonable financing from banks to complete these plants.
2 Indeed, just last year REG fully impaired property plant and
3 equipment value on the Emporia facility by \$16 million.

4 Unless market conditions improve, REG cannot move
5 forward with completing these plants. And we're not alone.
6 There are distressed plants across the industry due to
7 market conditions creased by subsidized imports.

8 If we can get trade relief, REG would definitely
9 consider acquiring these assets to support continued growth.
10 But in the current environment, our board has good reason to
11 be rejecting such proposed acquisitions.

12 I also want to be clear in saying that REG is not
13 looking to block imports from the U.S. market; we're just
14 looking for fair pricing in the market. And at this point,
15 imports are capturing most of the growth in the U.S. market
16 but only because they are illegally subsidized.

17 We are looking for fair pricing so that we can
18 generate adequate returns on our investments, reinvest in
19 our business, and play an important role in this growing
20 market.

21 Thank you for your time, and I'll now turn things
22 over to Wayne Presby of White Mountain Biodiesel.

23 STATEMENT OF WAYNE PRESBY

24 MR. PRESBY: Good morning, Madam Chairman and members of
25 the committee. My name is Wayne Presby and I am the

1 managing member of White Mountain Biodiesel.

2 White Mountain is a small biodiesel producer in
3 New Hampshire. White Mountain was forced to shut down
4 operations earlier this year, and I put the blame squarely
5 on cheap subsidized imports from Argentina and Indonesia.
6 Before I detail our current circumstances, let me provide
7 you some background on myself and White Mountain.

8 I'm a lawyer by training, but I've also been a
9 business owner for several decades. Since 1983, I've owned
10 the Mount Washington Cog Railway. The Cog was founded in
11 1869 and was the first mountain climbing train in the world.
12 It climbs to the summit of Mount Washington, the highest
13 peak in the Northeast.

14 The railway has been designated a National
15 Historic Engineering Landmark by the American Society of
16 Mechanical Engineers, and is the top tourist destination in
17 New Hampshire.

18 One of our biggest achievements in recent years
19 was replacing our fleet of coal-fired steam locomotives with
20 environmentally friendly biodiesel locomotives, which we
21 designed and built ourselves.

22 Along with my partner we founded White Mountain
23 Biodiesel in 2008 out of concern for the environment and our
24 country's energy security. We have always been extremely
25 cost conscious since we founded White Mountain. In building

1 the plant, we developed our own proprietary technology.
2 Where possible, we did the construction ourselves, and we
3 purchased used equipment when feasible.

4 We produced our first commercial batches of
5 biodiesel in 2011. From that point, we enjoyed rapid
6 growth, almost doubling our production year over year, going
7 from 300,000 gallons to 3.4 million gallons in 2015.

8 Unfortunately, 2015 was our high-water market as
9 our production declined significantly in 2016, before having
10 to shut down this year.

11 The rapid decline in our business was the result
12 of low prices for imported biodiesel from Argentina and
13 Indonesia. White Mountain sells B-99 RINless biodiesel. In
14 2016, our customers told us repeatedly that they were
15 unwilling to pay the prices we were asking for our biodiesel
16 because they could buy imported biodiesel priced at lower
17 levels.

18 A number of our customers stopped buying from us,
19 or only agreed to continue to do business with us if we
20 agreed to match or beat the prices of the imported
21 biodiesel.

22 Imports are undercutting the market badly, and
23 it's easy to understand how they do this. They get huge
24 subsidies from their foreign governments, don't have the
25 same regulatory burdens, and then also take advantage of our

1 own renewables policy to undercut U.S. production.

2 Even with increasing RFS volumes and the BTC in
3 place in 2016, we could not make a profit in this market.
4 We have lost millions in this business, and ultimately could
5 not afford to produce any more. We shut the plant down in
6 March of this year.

7 These subsidized foreign producers are hurting
8 real people. White Mountain is located in an area with a
9 high rate of unemployment. Every job matters in our
10 community. When we were operating, we employed 24 people,
11 paying full benefits. We are now down to 4 people. Twenty
12 families in our corner of the world are now struggling
13 because White Mountain shut down the plant.

14 I am told the importers are making assertions
15 about challenging logistics and high transportation costs
16 for domestic production. These arguments make no sense in
17 our case.

18 White Mountain produces biodiesel from used
19 cooking oil, and there is more of that in New England than
20 anywhere in the country. We can truck our fuel to New York
21 in four hours, and deliver the fuel to large terminals just
22 like imports do.

23 The reason distributors prefer getting biodiesel
24 from Argentina and Indonesia rather than four hours up the
25 Interstate is because it is cheaper.

1 MR. PETERSEN: Good morning. My name is Elias
2 Petersen, and I'm here -- and I'm an attorney with Kolmar
3 Americas, and I'm here today representing both Kolmar and
4 its subsidiary, American Greenfuels. Kolmar is located in
5 Bridgeport, Connecticut, and is a marketing, trading and
6 manufacturing company whose products range from oil, oil
7 derivatives, gas products, petrochemicals, renewable fuel
8 and its feedstocks and blendable diesel fuels.

9 In this regard, Kolmar considers itself
10 uniquely positioned to provide testimony, as Kolmar
11 functions both as a marketer of biodiesel and a producer of
12 the fuel. My role at Kolmar as several facets. I work as a
13 transactional lawyer for both Kolmar and American
14 Greenfuels, but I also have accountability for regulatory
15 compliance and governmental affairs as these disciplines
16 related to our renewable fuels business.

17 To that end, I'm embedded within the Renewable
18 Fuels business team, and provide advice and counsel on a
19 range of topics. As noted, Kolmar participates in the
20 biodiesel market in two ways. First, Kolmar purchases used
21 cooking oil and other feedstock products for conversion into
22 biodiesel. Second, Kolmar markets biodiesel produced from
23 its subsidiary production facility, as well as biodiesel
24 that Kolmar purchases from other sources.

25 In this context, Kolmar works closely with

1 industry partners to provide sourcing, marketing, financing,
2 logistics optimization and other functions in support of
3 refiners, producers and other market participants. In 2013,
4 Kolmar entered into a commercial agreement with, and
5 provided engineering and other assistance to a biodiesel
6 plant in New Haven, Connecticut, which was a start-up at the
7 time, having an initial annual capacity of 10 million
8 gallons.

9 Kolmar acquired the facility in 2015 and
10 renamed it American Greenfuels. This was the first
11 acquisition in Kolmar's history. It demonstrates Kolmar's
12 deep commitment to the environment, the U.S. biodiesel
13 industry and to the more than 40 employees at the plant.
14 Since the acquisition, Kolmar has invested in upgrading all
15 of the plant's systems, processes and practices. Capacity
16 expansions have taken the plant to a 30 million gallon
17 annual capacity.

18 Kolmar made these investments because it
19 believes in the biodiesel business and the plant's strategic
20 location and ability to serve the Northeast market.
21 Kolmar's investment, however, has been adversely affected by
22 the unfair trade practices of Argentina and Indonesia. The
23 economic impact of Argentine and Indonesian imports on the
24 biodiesel market in the Northeast and throughout the U.S.
25 has been substantial, having both harmed the domestic

1 industry during the period of interest, and threatening to
2 harm it in the future.

3 Kolmar understands that Respondents' argument
4 is that the domestic industry was not in a position to
5 supply greater volumes during the period of interest,
6 particularly in 2016. That assertion is absolutely wrong.
7 The U.S. biodiesel industry had the capacity to supply far
8 greater volumes of product in the U.S., and it continues to
9 have such capacity.

10 Kolmar purchases large volumes of biodiesel
11 from domestic producers, and many of them report that they
12 have available supply and unutilized capacity. These
13 producers see little purpose in producing additional volumes
14 to sell at the low prices permeating the market due to
15 subsidized imports. Kolmar's own experience purchasing
16 low-priced biodiesel from Argentina supports this view.

17 Our experience is also supported by EIA data,
18 which shows U.S. biodiesel production capacity during 2016
19 to be in excess of 2.2 billion gallons annually, which
20 Kolmar views as a conservative estimate or projection. To
21 restate and for the avoidance of doubt, U.S. producers are
22 capable of supplying 100 percent of the U.S. biodiesel
23 demand.

24 Since our entry into the biodiesel market a
25 decade ago, Kolmar has purchased and sold domestically

1 produced biodiesel throughout the country. There are no
2 significant impediments, logistical or otherwise, in
3 delivering fuel to all corners of the country. There is
4 only one reason sales of domestic biodiesel are challenged.
5 That is because of economics. Domestic producers are
6 simply not eager to sell at uneconomical prices caused by
7 unfairly subsidized low import prices.

8 Kolmar has been in this business from its
9 inception, and continues to demonstrate its commitment to
10 this industry. Based on Kolmar's holistic perspective, we
11 believe that subsidized imports from Argentina and Indonesia
12 benefit from an unfair advantage over domestic producers,
13 and we support the industry in seeking a remedy that levels
14 the playing field and fosters growth in this important
15 energy sector. Thank you for your time. I'll now turn
16 things over to Jonathan Phillips of RBF.

17 STATEMENT OF JONATHAN PHILLIPS

18 MR. PHILLIPS: Good morning. My name is
19 Jonathan Phillips. I'm the co-founder, chief operating
20 officer and general counsel of RBF. Our CEO Paul Soanes
21 testified previously, and I just want to add a few final
22 points for your consideration. First, I want to stress that
23 RBF is doing everything within its control to compete in
24 this market.

25 For example, we have created partnerships with

1 several distributors where we offer them favorable credit,
2 just in time delivery and other enhanced customer support
3 services in an effort to maintain and develop new markets.
4 We have the largest plant in the western hemisphere, and at
5 full capacity would be the most efficient. But in an
6 environment of growing demand, we are not prospering.
7 Instead, we are injured. We're fighting every day just to
8 survive in this commodity market where the lowest price
9 wins.

10 The effect of subsidized imports from
11 Argentina and Indonesia has had a crushing effect on our
12 margins. REG testified earlier about the impacts of imports
13 on their investment activity, and I would echo the same
14 point. The core of our capital projects over the past years
15 has been related to logistical and operational
16 efficiencies.

17 For example, we spent money to build out our
18 capabilities to more efficiently produce and ship biodiesel
19 by truck, rail and marine vessel. Since we became
20 operational, we have always shared a dock with Hunton
21 Petrochemical, our co-location partner. To expand our
22 marine capacity, we have been seeking to build our own dock.

23 In this regard, we have obtained from the U.S.
24 Army Corps of Engineers a permit for this build out. But we
25 have not been able to move this project forward. This is

1 one major project that is very difficult to undertake given
2 the presence of subsidized imports. The level of investment
3 required for this type of project is in excess of \$25
4 million, and requires a great deal of certainty in the
5 market to proceed.

6 But with recent import volumes and prices, the
7 operating losses we experienced in the first half of this
8 year, there is no way we could get the financing needed to
9 move this project forward. I think the other side is saying
10 the reason we have lost money is simply because the BTC has
11 lapsed. I would not quarrel with the point that the BTC has
12 been important for us in past years, but imports are to
13 blame for our failure to raise prices to profitable levels.

14 With the BTC expired, we should be able to
15 charge a fair price that allows us to cover our costs, and
16 earn a return on our investments. Instead, we have a
17 negative gross margin. Believe me, this is not our choosing
18 and it is not sustainable. At the end of the day, the core
19 problem is not the lapse of the BTC. The problem is that we
20 cannot compete against imports that are benefitting from
21 massive subsidies.

22 If the imports were not subsidized, we'd be
23 able to charge a fair price and succeed. That is why this
24 case is so important. We need a level playing field. Thank
25 you so much for your time and consideration.

1 MR. GETLAN: Madam Chairman, that concludes
2 our affirmative presentation. We'd be happy to take your
3 questions.

4 CHAIRMAN SCHMIDTLEIN: Okay. Thank you very
5 much. I'd like to thank all the witnesses for being here
6 today, and to help us understand the issues in this case.
7 We're going to begin with Vice Chairman Johanson.

8 VICE CHAIRMAN JOHANSON: Thank you Chairman
9 Schmidtlein, and I would like to begin by thanking all of
10 you for appearing here today. This is a very interesting
11 topic, but there are many variables involved, which makes it
12 somewhat difficult. I'll begin with one topic which I find
13 a little confusion, and that is the transportation of
14 biodiesel.

15 Respondents contend that domestic producers
16 cannot supply a sufficient amount of biodiesel to the
17 coasts, as most production is located in the U.S. Middle
18 West. Respondents write on the costs of shipping biodiesel
19 by rail to the east and west coasts, see Carbio's prehearing
20 brief at pages 17 to 18.

21 I have a basic question for you. Can
22 biodiesel be shipped via pipeline, and I'm asking this, as I
23 know that another biofuel, ethanol, cannot be shipped via
24 pipeline due to technical reasons.

25 MR. SOANES: Thank you for your question.

1 Sorry, Paul Soanes from RBF. There were a number of
2 questions in your question, and I'll try to deal with them,
3 but perhaps not sequentially, and if I miss something,
4 please correct me and I'll come back and do my best. First
5 of all at present, biodiesel cannot be shipped by pipeline
6 through the country. There are initiatives underway to try
7 to allow that to happen, but at present that is not
8 possible.

9 VICE CHAIRMAN JOHANSON: Is that a technical
10 reason or is it a legal issue?

11 MR. SOANES: It's a standard issue.

12 VICE CHAIRMAN JOHANSON: Okay.

13 MR. SOANES: The spec on the pipeline does not
14 allow biodiesel to be included at present. But there is
15 work underway to alter that.

16 VICE CHAIRMAN JOHANSON: So in effect you
17 can't ship blended biodiesel via rail or via pipeline?

18 MR. SOANES: Via interstate pipelines,
19 correct. You can on local pipelines and a lot of our
20 customers do do that in Texas, but on their own proprietary
21 pipelines.

22 VICE CHAIRMAN JOHANSON: Does that raise the
23 cost of shipping biodiesel if you have to ship it via rail
24 as opposed to pipeline? I assume that it makes it more
25 costly?

1 MR. SOANES: I'm not familiar with the cost
2 structure of pipelines, but clearly if it could move via
3 pipeline it would be more efficient. But at present, that's
4 not really an option. With regard though to volume, more
5 specifically to your question, RBF is located in the Gulf
6 Coast, which is a large demand sink for biodiesel.

7 You know, we're a very large plant and we're
8 right in the demand center, and we can provide biodiesel in
9 large quantities into that market. We also routinely ship
10 biodiesel via marine vessel to the northeast market, where
11 we maintain storage facilities, and we can ship those at a
12 very similar scale to the shipments from Indonesia and
13 Argentina.

14 MR. STONE: This is Chad Stone. I just wanted
15 to add that so REG has invested in lots of supply chain and
16 infrastructure to distribute throughout the country, and
17 we've sold in 47 states and into the four or five lower
18 provinces of Canada. So we can get product nationwide.
19 We've got a demand footprint that is coast to coast, and
20 have again sold into 47 states and into Canada and into
21 Mexico.

22 So our investment there has been significant
23 and pipeline-specific, the restriction for biodiesel is
24 related to pipelines that ship jet fuel. There's a jet fuel
25 restriction that won't allow that. But our, the way we have

1 moved product around is by barge, but inland and ocean
2 vessels, truck and rail. So I just wanted to add that.

3 MR. GETLAN: Commissioner Johanson, just to
4 add a couple of other points on that. You mentioned ethanol
5 in your question. Ethanol is a far larger market in the
6 United States. I think production recently was at about 13
7 billion gallons, and as you noted that's not distributed by
8 pipeline.

9 But somehow 13 billion gallons of ethanol has
10 been distributed throughout the country. The two billion
11 gallons of biodiesel would be distributed in a similar
12 manner. So it's not, there's no constraint on distribution
13 of biodiesel per se. As Paul Soanes and Chad Stone
14 mentioned, they have a history of serving the coasts by
15 vessel and otherwise. Other companies do, and there are
16 plants in the northeast. I mean you have here two
17 northeastern plants represented by Wayne Presby for White
18 Mountain Diesel in New Hampshire, Elias Petersen for
19 American Greenfuels.

20 These are plants located in the northeast. Of
21 course, they can serve these markets. It's probably worth
22 taking a step back and think about what we're talking about
23 here in terms of distribution. It's so difficult, they say,
24 the other side argues, to ship biodiesel from the Midwest to
25 Houston or to New York or by truck somehow.

1 But look at this distance that has to be
2 traveled in shipping biodiesel from Argentina to the United
3 States. It's not an easy trip. You look at Indonesia, and
4 you're reminded of the distance that has to be traveled.
5 This is -- this comes down to a matter of price. When the
6 Respondents argue that there's a challenge in shipping
7 biodiesel from inland to the coasts or otherwise, what
8 they're saying is that it's more expensive to buy domestic
9 product than it is imported product, and we agree.

10 The reason it's cheaper is because it's
11 subsidized and it's being dumped in the market. So it's not
12 -- there is no evidence of any logistical constraint.
13 Purchasers were asked these questions a number of different
14 ways and there's just no evidence of it.

15 MR. PHILLIPS: Commissioner Johanson, Jonathan
16 Phillips from RBF. I would also add that as was highlighted
17 by my colleague earlier, at RBF we have trimodal logistical
18 capabilities. Meaning that we service the Gulf Coast via
19 marine, rail and also by trucks. Throughout the Period of
20 Investigation, we invested in and developed truck rack
21 system. We move in excess of 50 trucks per day through that
22 truck system.

23 We lost all of that business at the height of
24 subsidized Argentine product. Following the initial duties
25 coming out, we started to get that business back and were

1 able to move a very significant quantity through our truck
2 rack system throughout the Gulf Coast.

3 VICE CHAIRMAN JOHANSON: I have a follow-up
4 question to my first question. Can you please address the
5 testimony provided by Mr. Whitney at the preliminary phase,
6 the staff conference, and this is quote in Carbio's
7 rehearing brief at page 18, that "Certain end users prefer
8 to use biodiesel from large sea containers at what they call
9 big fuel cell terminals, rather than those offloaded from
10 rail cars due to efficiency."

11 MR. GETLAN: I'll just make a quick comment on
12 that, and I'll let others speak to that issue. It's
13 interesting since Biosphere was talking I think in terms --
14 in the context of its own use for its fueling stations, the
15 Love's Truck Stops, which are located across the country, as
16 are other truck top chains.

17 And so it's as if they're arguing Biosphere
18 was asserting and Respondents continue to argue that all of
19 the biodiesel shipped from Indonesia landing in Houston, or
20 all of the biodiesel shipped from Argentina landing in
21 Houston, it just stays there and they prefer to get it that
22 way and it's cheap, it's easy, and that's it. Biosphere and
23 others are taking that product and distributing it on their
24 own throughout the country.

25 You know, how do we expect the biodiesel

1 blends or the biodiesel itself to be blended at the retail
2 station, which actually Mr. Whitney testified occurred, that
3 most of the blending for the Love's Truck Stops was being
4 done at the local retail station. So it doesn't stop in
5 Houston or New York. This product gets distributed
6 throughout the country. But I'll let others chime in.

7 MR. STONE: Yes. It's Chad Stone. I just
8 wanted to add to that. We have three facilities
9 representing 195 million gallons that have barge capacity to
10 move that type of volume, Houston, Gray's Harbor,
11 Washington and then inland in Seneca, Illinois that's on the
12 Illinois River. It goes down to the Mississippi, gets to
13 the Gulf, can go ocean vessel to anywhere.

14 So we've got that type of capacity. It's not
15 a matter of getting fuel around the country. Again, we've
16 sold in 47 states. We can get it there, and with that I'll
17 defer.

18 MR. PHILLIPS: Yeah. This is Jonathan
19 Phillips from RBF. I would highlight that this is known as
20 breaking bulk. So for example if we do, which we frequently
21 do move it, shipping a chem class carrier to the northeast,
22 we then deliver it into our storage tanks. From there,
23 that's known as the breaking bulk. From there, it would be
24 distributed throughout the system that Mr. Stone is
25 referring to.

1 So just as an Indonesian or Argentinian ship
2 would pull up to a port, whether it's in the Gulf Coast,
3 East Coast or some other ports, they would break bulk and
4 then subsequently distribute it throughout the system from
5 there. That's exactly the same thing that we do at RBF for
6 a number of customers.

7 VICE CHAIRMAN JOHANSON: Thank you for your
8 responses. My time has expired.

9 CHAIRMAN SCHMIDTLEIN: Commissioner
10 Williamson.

11 COMMISSIONER WILLIAMSON: Thank you, and I do
12 want to express my appreciation to all the witnesses for
13 coming today. Let me continue along this line of
14 questioning, because of logistics. I used to work at the
15 Port Authority in New Jersey, so logistics is a big thing.
16 So at what point normally does the biodiesel get blended
17 with the petrodiesel? Is it at the gas station, at a
18 refinery or some intermediate point? It may vary, but I'm
19 just trying to get a better feel for this.

20 MR. STONE: So it's typically blended at a
21 wholesale level. It can either be blended at production or
22 at a wholesale level before it's further distributed, it's
23 kind of blended up and down throughout these supply chain.
24 So typically in the U.S., a biodiesel producer will sell a
25 B-100 or B-99, which is the percentage of biodiesel relative

1 to diesel blend, and then it will go to either a
2 distributor, an obligated party, a refiner, a terminal and
3 they may break it down further because the goal or their
4 customer wants a B-20 blend, a 20 percent blend or a ten or
5 a five percent blend, and that's where that would occur in
6 the supply chain.

7 COMMISSIONER WILLIAMSON: Okay. Does anyone
8 else want --

9 MR. PHILLIPS: This is Jonathan Phillips from
10 RBF. If I may add, I mean I think as Mr. Soanes
11 highlighted, typically this is the sort of, at least in our
12 case, this is the second step where you break bulk and you
13 distribute to the actual terminal. Then it's subsequently
14 blended with the petroleum diesel and distributed from
15 there. Very rarely is it distributed or blended at a gas
16 station, where you're trying to combine the infrastructure
17 necessary to have two supports right there, where you have
18 the blending operation.

19 COMMISSIONER WILLIAMSON: So I go to New York
20 City every Friday night normally. I'm on 95.

21 MR. PHILLIPS: Correct.

22 COMMISSIONER WILLIAMSON: You know, and just
23 before you get to the Goethals Bridge, you know, there's all
24 those -- is that where a lot of the refining -- is that
25 where a lot of that blending would take place in those

1 refineries in Jersey there?

2 MR. PHILLIPS: There are a number of
3 refineries that have built blending operations. For
4 example, a number of customers that we sell to have spent
5 the infrastructure necessary to have blending operations at
6 their refineries. They take our product in and blend it at
7 those refineries and then subsequently distribute it out to
8 the gas stations.

9 COMMISSIONER WILLIAMSON: Okay, thank you.
10 What is -- in our staff report, where is it, page 2-4, where
11 they talk, it seems like for domestic producers they ship
12 more of their product to petroducer-producers, whereas the
13 imports, almost all of them go to distributor-blenders.
14 What's that distinction mean?

15 MR. STONE: This is Chad Stone. So what I
16 would say is that in our example, our largest customer
17 segment, our distributors, our travel centers, they are not
18 obligated parties. But they facilitate getting gallons out
19 into the marketplace. So as I mentioned earlier, about
20 two-thirds of the gallons of diesel consumed in the country
21 are consumed on highway through long haul trucking and that
22 type of pattern.

23 And so a lot of that fuel then is -- along the
24 interstates, in large travel centers where it's either
25 blended there at the travel center or at the terminal before

1 it got there. We also sell directly to refiners and
2 importers of oil because they have an opportunity --

3 COMMISSIONER WILLIAMSON: Can I stop you for
4 just a second?

5 MR. STONE: Yes, absolutely.

6 COMMISSIONER WILLIAMSON: That first group,
7 are those distributor-blenders or are those the petrodiesel
8 producers?

9 MR. STONE: I consider those distributors.
10 They can be blenders or they can buy blended fuel that we've
11 gotten to that.

12 COMMISSIONER WILLIAMSON: Okay.

13 MR. STONE: But they are not obligated
14 parties. They don't need RENS for compliance with the
15 renewal fuel standard. On the other hand, large refiners of
16 oil and importers of oil are obligated parties, and that's
17 our next largest segment of customers, because they want the
18 fuel and the REN for compliance with the renewable fuel
19 standard.

20 COMMISSIONER WILLIAMSON: Okay, thank you.

21 MR. SOANES: This is Paul Soanes from RBF.
22 Like REG, we supply both the obligated parties or refiners,
23 as well as the blenders. Frankly, we've lost a lot of
24 market share, a lot of the blenders market share in the last
25 few years, predominantly as a result of the low-priced,

1 dumped, subsidized product coming into the U.S.

2 Since the countervailing duties went into
3 effect in August, we've seen a substantial increase in
4 demand and supplies by our company to blenders.

5 MR. GETLAN: This is Myles Getlan. Just to
6 put a finer point on what Paul just said, it's important
7 this distinction between obligated parties and discretionary
8 blenders. Obligated parties under the regulatory regime,
9 they're required to blend biodiesel, and that's what it's
10 all about. Discretionary blenders, the truck stops of the
11 world, the Loves and others, they're discretionary blenders.
12 They're only going to blend if it's economically viable.

13 Meaning only if they can make money by
14 blending biodiesel with petrodiesel. They're not required
15 to under the law. So they're only going to do it if the
16 economics support it. On that basis, for discretionary
17 blenders, price is king. The low price wins, and to the
18 extent that RBF and others are losing share and losing sales
19 to discretionary blenders, it's simply on the basis of
20 price.

21 COMMISSIONER WILLIAMSON: So what percentage
22 of the consumption goes to obligated parties and what
23 percentage goes to discretionary, and I was wondering how
24 many obligated parties are there in the country? I'm just
25 -- this is one of the most complicated cases we've had, just

1 because of the regulatory regimes. So there are a whole lot
2 of sort of fundamental questions I have before we really get
3 to the substance.

4 MR. STONE: Sure. I guess I can only speak to
5 our company, because I don't think that's -- I'm not aware
6 of that factor figure being out there. But about a little
7 over a third of our volume goes directly to discretionary
8 blenders or travel centers, and about a third go to refiners
9 and importers or obligated parties.

10 MR. PETERSEN: So Elias Petersen from
11 Kolmar. I think I can answer this question a little better.
12 I can't give you exact numbers --

13 COMMISSIONER WILLIAMSON: Well, it's not that
14 I -- relative, yes.

15 MR. PETERSEN: Right. So obligated parties
16 are the people defined under RFS as having the obligation to
17 acquire the RENS, to assure that the renewable fuel is
18 blended. An obligated party is someone that produces diesel
19 or gasoline or imports diesel or gasoline. So that's a more
20 limited pool of companies. These are your bigger refiners
21 mostly in the U.S. and anyone that imports, as opposed to
22 the blenders, which are the people that essentially
23 distribute the product throughout the system.

24 A lot of obligated parties have distribution
25 capabilities. They go all the way down to retail. They're

1 integrated, so they have that same capability. But anybody
2 that wants to operate a truck stop or distribute heating oil
3 throughout the country, that has an entirely separate like
4 business model, right, and those people are just the
5 consumers or distributors of the fuel.

6 So there's lots and lots of blenders. There's
7 less obligated parties just by numbers. But the obligated
8 parties are the ones that have to buy the RENs.

9 COMMISSIONER WILLIAMSON: Okay, or the others,
10 they don't need the REN?

11 MR. PETERSEN: No. I mean it's more about
12 -- it's more about ensuring that the fuel is blended. So
13 the REN represents that gallon that was blended near the
14 fuel supply, and the obligated parties are the ones that buy
15 the REN.

16 COMMISSIONER WILLIAMSON: Okay, okay. Thank
17 you. Anything else on that?

18 MR. SOANES: I'd just add that -- Paul Soanes
19 from RBF. We're right around 50-50, distribution to
20 obligated parties and blenders.

21 COMMISSIONER WILLIAMSON: Okay, thank you. So
22 does that mean that most of the imports don't go to
23 obligated parties? Is that a fair statement?

24 MR. GETLAN: I'm not sure the record makes
25 that clear. I think it is less -- they are less

1 concentrated in the obligated party space. I think they
2 sell more to the discretionary blenders.

3 COMMISSIONER WILLIAMSON: Okay, thank you.
4 One other kind of logistics question. For Argentinian and
5 Indonesian shipments, are they coming in on specialized
6 vessels or specialized containers? How is that done? I was
7 working on a banana case and Chiquita had its great white
8 fleet vessels.

9 MR. PETERSEN: Eli Petersen from Kolmar. I
10 think I can help with this one too.

11 COMMISSIONER WILLIAMSON: Sure.

12 MR. PETERSEN: To be clear on your prior
13 question, just to finish that thought, even if the blenders
14 are getting more of the imported product, it's still the
15 same biodiesel. It doesn't really matter. It's a flush
16 market. So it's -- it may be true, but I'm not sure there's
17 a distinction to be made there.

18 COMMISSIONER WILLIAMSON: Okay.

19 MR. PETERSEN: As to the vessels, no. I
20 mean it's a pretty standard vessel arrangement. Biodiesel's
21 pretty easy to ship on any vessels. Kolmar moves product
22 all around the world, and I think it's the same type of ship
23 that you would do ethanol or diesel or anything like that.
24 In fact, I know you can do it on a cargo of diesel. So it's
25 not a specialized ship.

1 COMMISSIONER WILLIAMSON: So you just have
2 containers? There are specialized containers that go on the
3 ship?

4 MR. PETERSEN: No. I mean it would be a
5 liquid container ship. It would be ship that has -- I'm not
6 an expert on this, but yes. It would just be a ship that
7 carries liquids like gasoline, diesel, other things like
8 that. It wouldn't be on the ship; it would be contained
9 within the ship.

10 COMMISSIONER WILLIAMSON: Okay. My time is
11 expired. But thank you. That helps clear away a lot of
12 things for me. Thanks.

13 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

14 COMMISSIONER BROADBENT: So if the duties go
15 in place and the prices increase, how much of the demand is
16 basically mandatory because of this RIN situation that
17 you'll have to be buying some imports to satisfy whatever
18 this RIN requirement is.

19 MR. STONE: The renewable volume obligation for
20 this year is 2 billion gallons and next year that is
21 scheduled to go to 2.1 billion gallons. Now that's a
22 minimum and the industry every year has exceeded the
23 renewable volume obligation target.

24 MR. SOANES: I think the evidence shows very
25 strongly that domestic production can meet the entire

1 mandate. There's no need for imports to meet the minimum
2 mandate of 2 billion or 2.1 billion gallons.

3 COMMISSIONER BROADBENT: Okay, so how does the
4 RVO translate into the RIN market; what's the relationship
5 there?

6 MR. STONE: So for every gallon of biodiesel,
7 you generate 1.5 RINS. So 2 billion gallons of biodiesel
8 would be the equivalent of 3 billion gallons of biodiesel --
9 3 billion RINS of biodiesel.

10 MR. PETERSON: However, I think it could get
11 more directed, what I believe the Commissioner's asking.

12 So the RVOs are set at billions of gallons,
13 which is the target for the blending and then based on what
14 the production of your diesel gasoline or your imports of
15 diesel gasoline that's then broken down to a percentage. So
16 based on your production of diesel, you have "X" percent.
17 You multiple that percentage times your production and
18 that's your obligation. That's your RVO for your company
19 based on what you did and that's calculated by EPA based on
20 government data to ensure that that percentage is going to
21 result in the full RVO number.

22 COMMISSIONER BROADBENT: Okay, so if a domestic
23 producer wants to produce diesel, he has to get the bio
24 blended stuff in order to support his production?

25 MR. PETERSON: Yes, the amount of biodiesel RINS

1 is in parallel to their production. It's based on a
2 percentage.

3 COMMISSIONER BROADBENT: Okay. What's been the
4 trends in the costs of RINS over the last four or five years
5 or just over the period of investigation?

6 MR. PETERSON: I think other people might be
7 more equip to answer this, but it's -- I don't know if
8 there's been consistency.

9 MR. SOANES: You know the price of RIN during
10 the period of investigation has remained somewhat consistent
11 with the proviso that you know there's extreme volatility in
12 our business from time-to-time and RIN values move
13 accordingly. So you know that being within that reasonably
14 tight range, but have moved up and down, depending on
15 seasonal factors.

16 MR. GETLAN: I think in the record you could see
17 -- well, first of all, when you're talking about RINS you're
18 talking about both categories, D-6 and D-4 RINS. And I
19 think since 2014 you'll see some increase in the value of
20 the D-4 RINS and the D-6 RINS, except very late in the
21 period of investigation, the first half of 2017. They are
22 very close. The D-4 RIN is slightly more valuable than the
23 D-6 RIN, but the trends track.

24 Just as I noted earlier with respect to ethanol
25 being a much bigger market, more significant in the

1 renewable fuels space, the D-6 RIN is what drives really the
2 value and it's ethanol that drives the D-6. So trends in
3 D-4 RINs values, for example, that is largely following
4 what's happening in the market for ethanol RINs.

5 COMMISSIONER BROADBENT: So you're saying the
6 price of ethanol drives RINs in D-4 and D-6 both?

7 MR. GETLAN: It's an influence.

8 MR. STONE: The price of the D-6 RINs are
9 affectively a floor for the D-4 RINs because you can use D-4
10 biodiesel RINs for any shortage of D-6 RINs. You can't use
11 an ethanol RIN for the D-4 category.

12 The other thing I would highlight is that the
13 value of RINs have been suppressed as a result of access
14 supply and it doesn't matter if that supply is in the coasts
15 or the middle of the country. So you might have a small
16 biodiesel producer in the middle of Iowa completely unaware
17 that there's tremendous amount of supply in the Gulf Coast,
18 but they know that their RIN price was lower than what it
19 should be relative to other supply and demand factors.

20 MR. GETLAN: Just one other point on that.
21 Respondents suggested in their brief that -- one of their
22 briefs that the value of RINs increased during the POI
23 because of a shortage of domestic supply and there's just no
24 evidence to support that. There was no shortage of supply
25 during the POI. We've discussed that.

1 COMMISSIONER BROADBENT: So why did they
2 increase?

3 MR. GETLAN: Well, I think we just heard that
4 there were other macro factors attributable to that.

5 MR. STONE: The major reactions that the D-4
6 RINs have had is when the dollar tax credit, the biodiesel
7 tax credit as that lapses and is in effect -- when it's in
8 effect, RIN prices can be lower. The other big event that
9 happened -- so for example, in 2013, there was an
10 expectation or a fear that there would be a shortage of
11 ethanol and you saw in 2013 before the POI a massive run-up
12 in the D-6 RINs. And again, being a floor for the D-4 RINs,
13 you saw our RINs or the biodiesel RIN also go up along side
14 that.

15 MR. STONE: And if I can just add one other
16 thing, Commissioner Broadbent, when we're talking about
17 RINs, obviously it's relevant to pricing. But just as our
18 other witnesses testified -- the Congressional witnesses
19 testified earlier, when we're talking about the RIN market
20 everyone's sort of playing by the same rules. It's the same
21 market as it relates to domestic product and imported
22 product and so when producers and importers are pricing
23 their product in the market if they're selling you know
24 B-100 with RINs they're making an assessment of the RIN
25 market as it exist that day and they're pricing the product.

1 They're accounting for that, but both imports and domestics
2 are accounting for that, the RIN market, the RIN value. And
3 what you found, though, is that during the POI importers
4 were pricing their product lower than domestic producers.

5 COMMISSIONER BROADBENT: Okay. What happens to
6 this industry if the BTC is not extended in the tax bill?

7 MR. STONE: I think the number one impact would
8 be a resulting decline in the value of the feedstock that we
9 support by buying that to buy biodiesel, so I think like
10 soybean oil, animal fats, waste greases and oils, used
11 cooking oil -- used cooking oil used to be -- restaurants
12 used to pay to have that taken away. Now it's a valuable
13 feedstock for our production process and we would see supply
14 and demand adjust that way, but the important thing is that
15 would apply to both imports, domestic production in the same
16 way.

17 And you know we don't have any guarantee that
18 it's going to be reinstated. We're working hard to get it
19 reinstated. We're cautiously optimistic, but again,
20 throughout the period of investigation that has supported
21 both imports and domestic production.

22 MR. PHILLIPS: If I could simply just add and
23 more directly address the question, to the extent that the
24 tax credit is not reinstated and we don't have the price
25 pressure that's associated with the Argentinean or

1 Indonesian dumped product under the terms of the RVO, which
2 sets a mandated volume for biodiesel, you would have to
3 assume that we can price to the next marginal gallon of
4 availability of biodiesel; thus, that we could actually
5 make a margin if we're not being under this price suppressed
6 nature.

7 MR. LEVY: Just elaborate on that point, I mean
8 rarely have I seen a market where demand -- minimum demand
9 set by the RFS system is so inelastic. You have a
10 requirement to buy roughly 2 billion gallons of biodiesel, a
11 requirement to buy. And in that environment if you have
12 biodiesel to sell, one would think that you could charge a
13 price that puts you in the black. But this year without a
14 BTC, this industry has negative gross margins. The only
15 explanation is price suppression by reason of subsidized
16 imports.

17 So I think the answer to Commissioner
18 Broadbent's question is that without a BTC this industry can
19 be viable, but only if there's a level playing field.

20 MR. SOANES: I underscore that by saying since
21 August when the preliminary CBD's went into effect, since
22 that date up until now, we've seen a return of margin that
23 are supportive of the industry with or without a BTC.

24 COMMISSIONER BROADBENT: Yes, but that's when --
25 I mean it seems like you're pushing two initiatives here,

1 hoping one will work. Either you'll get the BTC extended or
2 you'll get the duties.

3 MR. SOANES: I would categorically say with or
4 without the BTC this industry can be profitable, provided we
5 are not forced to compete against subsidized imports from
6 Indonesia and Argentina.

7 MR. STONE: REG has been producing biodiesel for
8 over two decades, well before there was a tax credit and
9 this industry can produce profitably both in the event -- we
10 have produced profitably prior to that.

11 COMMISSIONER WILLIAMSON: Okay, thank you very
12 much.

13 MR. PRESBY: One moment. We operated during the
14 years when both there was a blender's tax credit in effect
15 and wasn't in effect. And up until the most recent years
16 where imports really started ramping up into this country,
17 we were able to make profits. We were profitable from
18 basically 2012 through 2014 and then as these imports surged
19 it started driving down the prices that our customers were
20 willing to pay for the product and that's what put us into
21 the red.

22 COMMISSIONER BROADBENT: Okay. Okay, that's it.

23 CHAIRMAN SCHMIDTLEIN: Are you finished? Okay,
24 alright, let me just follow up on the question about the RIN
25 values and you mentioned that the supply was suppressing the

1 value of the RIN and that somebody in the Midwest you know
2 may not know about the oversupply on the Coast, but would
3 know that the RIN was being -- the value of the RIN was
4 being pushed down. And I guess my question is where is that
5 transparency? Is it because -- and I'm looking at this
6 chart in the staff report where it talks about the MTS. I
7 mean is there a publication or a market that people are
8 looking at to see what RINs are trading for? I assume there
9 must be.

10 MR. STONE: So once biodiesel was blended below
11 80 percent, you can separate the RINs and sell them separate
12 from the field, from the wet gallon. And there is a spot
13 market you know so the oil --

14 CHAIRMAN SCHMIDTLEIN: I'm sorry; once it's
15 blended below 80 percent.

16 MR. STONE: Correct.

17 CHAIRMAN SCHMIDTLEIN: So explain what you mean
18 by that; once it's blended with diesel?

19 MR. STONE: Diesel, correct.

20 CHAIRMAN SCHMIDTLEIN: Okay.

21 MR. STONE: And that it's moving towards it's
22 retail ^^^^ so we sell a wholesale fuel that goes to
23 terminals, distributors, sometimes gets blended down further
24 and then ultimately goes to, say, a B-5 to 10 to 20 and
25 that's what available at a pump for a truck pulling into a

1 truck stop, for example.

2 At a wholesale level, the fuel has been blended
3 below 80 percent. The RINs can be separately traded from
4 the fuel. Before that I have to sell the RINs with gallons.

5 CHAIRMAN SCHMIDTLEIN: That was another one of
6 my questions was if these things were separately tradable
7 then where was the requirement that you actually use the
8 biodiesel. Couldn't a diesel producer just buy RINs, but I
9 guess --

10 MR. STONE: So an obligated party let's say they
11 have capacity to blend their own and buy their own RINs of
12 about 50 percent of their requirement they're going to need
13 a travel center or some other distributor to separate those
14 RINs to get that to the marketplace so they can buy the RINs
15 discretely.

16 And to your specific point earlier, so what I
17 trace is the Oil Price Information Service. It's a
18 subscription service and every day they quote the value of
19 the D-4 RINs, D-5 and D-6 RINs.

20 CHAIRMAN SCHMIDTLEIN: Okay, that's helpful to
21 understand.

22 MR. LEVY: Commissioner Schmidtlein, Mr. Stone
23 referenced the OPIS resource, which I believe has daily
24 market prices for RINs. There are other resources as well.
25 I think Argus is one that comes to mind.

1 In the Indonesian Respondent's pre-hearing
2 brief, they provide for the duration of the POI the OPIS RIN
3 prices, both the D-4 and the D-6 RIN prices. And they make
4 a point -- and frankly, we agree with them. And I think
5 it's important just to call this out as a valid point that
6 they make and a point of agreement and you're looking at
7 four pricing products. Product One and Product Three are
8 pricing products that have RINs embedded in them. The
9 others don't. And the point that they make, in essence, is
10 for those two pricing products if you want to make an
11 apples-to-apples comparison between the all-in-price for
12 domestic product and the all-in-price for Indonesian product
13 where the domestics have a D-4 RIN and the Indonesians have
14 a D-6 RIN you need to account for that difference in market
15 value between those two RINs and so frankly, it's in our
16 confidential exhibit.

17 We take the RIN differential that Indonesian
18 Respondents propose and it's summarized in confidential
19 Exhibit 3 and the backup for it is the page behind it, but
20 frankly, our position is I think their position, which is if
21 you want to make an apples-to-apples price comparison for
22 Product One and Product Three, you need to account for the
23 difference between the D-4 and the D-6 RIN value in those
24 pricing products. And so I just wanted to be clear those
25 data exist. It's transparent. It's objective and you have

1 the ability to make that apples-to-apples comparison with an
2 adjustment.

3 CHAIRMAN SCHMIDTLEIN: Okay. You anticipated
4 sort of my next question was with regard to Indonesian
5 product, which is only D-6 type product, right, palm oil. I
6 guess it's not technically called biodiesel.

7 MR. LEVY: I'd dispute that.

8 CHAIRMAN SCHMIDTLEIN: Okay, alright. But
9 anyway, the Indonesian product is it because of the
10 limitations associated with that particular product in terms
11 of the Cloudpoint? Does that make it inherently less
12 valuable and therefore priced less because of that?

13 MR. SOANES: Indonesian biodiesel does have a
14 higher Cloudpoint than soy-based biodiesel, but it has a
15 similar Cloudpoint to biodiesel made in the U.S. from tallow
16 and animal fats and so it's a consistent product in that
17 regard. Our view is biodiesel is biodiesel. When
18 Indonesian biodiesel comes into the market, we are competing
19 against it in that market at all times.

20 CHAIRMAN SCHMIDTLEIN: But is it limited,
21 geographically, to a certain extent because of that
22 temperature requirement?

23 MR. SOANES: So because of the high Cloudpoint,
24 it is typically sold in warmer climates or in warmer months,
25 from a seasonal perspective, but it competes against

1 soy-based biodiesel and drive down the price of soy-based
2 biodiesel directly.

3 With regard to the D-4 versus D-6 RIN, the
4 Indonesian biodiesel qualifies for a D-6 RIN because it
5 doesn't meet the requirements under the RFS for a D-4 RIN.

6 CHAIRMAN SCHMIDTLEIN: And what is that?

7 MR. SOANES: It's more to do with environmental
8 issues associated with palm oil as opposed to soybean oil.

9 CHAIRMAN SCHMIDTLEIN: But it's not the
10 characteristics of the oil that's causing that
11 differentiation?

12 MR. SOANES: Correct. It is not the
13 characteristics of the oil. It's the environmental
14 implications of the oil.

15 MR. PETERSON: It's the greenhouse gas
16 reductions that have to be analyzed into the biomass, say it
17 has to be a 50 percent greenhouse gas reduction. In a
18 regular fuel like ethanol or the palm methyl ester doesn't
19 meet that greenhouse gas requirement.

20 CHAIRMAN SCHMIDTLEIN: Okay.

21 MR. LEVY: Commissioner Schmidtlein, just to add
22 a little more color, so when we're talking about Indonesian
23 biodiesel all biodiesel is produced to the same ASTM spec.
24 It is true that Indonesian biodiesel is made from a palm oil
25 feedstock, but at the end of the day the end product is

1 still what is called FAME, Fatty Acid Methyl Ester. In that
2 regard, it's all the same.

3 To be sure, Indonesian biodiesel has a higher
4 Cloudpoint than many other biodiesel, although very similar
5 to tallow-based biodiesel. And that higher Cloudpoint gives
6 it different cold flow properties. It limits its usability
7 in certain cold weather climates or regions, but the overlap
8 in competition is substantial. And as a practical matter,
9 what you see in the market is if there's a difference in
10 price it's attributable solely to the difference between the
11 prevailing D-4 and D-6 RIN.

12 Is that a fair summary, Mr. Phillips?

13 MR. PHILLIPS: Yes, that's correct. For
14 example, we would see this in our Gulf Coast competitive
15 markets where palm methyl ester would land and drive down
16 the price for our products, pushing us out of that market.

17 CHAIRMAN SCHMIDTLEIN: Okay, so before we leave
18 this, so you all -- your position is -- your argument is
19 that RIN value is affected by supply in the market. I mean
20 demand is sort of set, right? You don't have demand beyond
21 the statutory or the EPA mandate; is that correct?

22 MR. GETLIN: Certainly supply and demand impact
23 the market prices for RINs. Again, there is D-4 and D-6, so
24 they're different supply and demand indicators or influences
25 on those values that are separate and apart even from

1 biodiesel production. Like I said, the ethanol market has
2 an impact on that.

3 CHAIRMAN SCHMIDTLEIN: Right. Okay.

4 MR. LEVY: Commissioner Schmidtlein, I just want
5 to make sure there's no misunderstanding. So there is a
6 base minimum demand in the market that's set because of the
7 RFS.

8 CHAIRMAN SCHMIDTLEIN: Right.

9 MR. LEVY: But above and beyond that, if you're
10 a discretionary blender, let's say you have you know retail
11 truck stops, if the price of biodiesel -- you know after the
12 RINs are stripped out, right, I mean the net price for the
13 liquid fuel is materially lower than the prevailing
14 petro-diesel price. You have an economic incentive to blend
15 that into the bloodstream of whatever you're putting in
16 trucks. And so in an environment where prices are
17 sufficiently depressed for biodiesel, there will be in the
18 aggregate more discretionary demand.

19 CHAIRMAN SCHMIDTLEIN: Okay.

20 MR. LEVY: So demand is not fixed. There's a
21 base minimum demand, but there's an opportunity for
22 incremental demand in the discretionary market.

23 CHAIRMAN SCHMIDTLEIN: Do you see that where you
24 don't have subsidized or less-than-for value imports?

25 MR. LEVY: Well, I'll let the industry witnesses

1 speak to that.

2 CHAIRMAN SCHMIDTLEIN: I mean is that based on
3 soybean prices or what?

4 MR. SOANES: I'm sorry. I didn't quite get your
5 questions.

6 CHAIRMAN SCHMIDTLEIN: Beyond the mandate like
7 what are the economics when you take away the RIN and the
8 BTC, right, beyond the mandate. Like what would cause
9 biodiesel blended fuel to fall below the price of regular
10 diesel, petro-diesel if you're not facing suppressed prices
11 from imports as you cite in this case? In other words, does
12 it happen outside of this case? Did it happen in prior
13 years where you had more apparent consumption than the
14 mandate?

15 MR. SOANES: Throughout the period of interest
16 and prior to the period of interest, biodiesel has been with
17 RINs being a lower price than diesel.

18 CHAIRMAN SCHMIDTLEIN: Oh, it is, even without
19 unfair trade?

20 MR. SOANES: Correct, even without unfair trade.

21 CHAIRMAN SCHMIDTLEIN: Okay.

22 MR. GETLAN: That is sort of the essence of a
23 discretionary blender market, right? If they're not
24 required to blend or acquire RINs there's no need for them
25 to blend biodiesel or more biodiesel unless it was cheaper

1 than the diesel fuel that they're already distributing.

2 CHAIRMAN SCHMIDTLEIN: Right, right, okay.

3 MR. LEVY: Commissioner Schmidtlein, just to
4 add, one of the legislative purposes behind the blender's
5 tax credit when it was in affect was to stimulate additional
6 demand by making biodiesel an attractive alternative to
7 petro-diesel. So you know if you think about those two
8 legislative schemes, the RFS sets a minimum volume that
9 shall be purchased and consumed in the U.S. market. But
10 then, in addition, the BTC, in effect, was designed to be
11 sort of icing on the cake and create additional ^^^^
12 stimulate additional demand by making biodiesel an
13 attractive alternative to petro-diesel.

14 CHAIRMAN SCHMIDTLEIN: Okay, alright. Thank
15 you. I'll pass to Vice-Chairman Johanson.

16 VICE CHAIRMAN JOHANSON: Thank you, Chairman
17 Schmidtlein.

18 I'd like to get back to the issue of differences
19 between Indonesian product and other biodiesel products.
20 Indonesian Respondents write that Indonesian palm-based
21 biodiesel is not biodiesel as a matter of U.S. environmental
22 regulation and they state this at page 19 of their brief.

23 How you respond to this claim and does this
24 matter for purposes of this investigation?

25 MR. GETLAN: I cannot disagree more with the

1 assertion that Indonesian or palm-based biodiesel is not
2 biodiesel, as we've talked about here, our witnesses have
3 testified, all of this product, whether it's from Indonesia,
4 Argentina, or U.S.-produced meets the ASTM specification for
5 biodiesel.

6 I have to assume that what they are referring to
7 is the term "biomass-based diesel." That is a term-of-art
8 under the RFS system, the RFS regime. In that regard
9 biomass-based diesel includes biodiesel, but it's not
10 exclusively biodiesel. It actually includes renewable
11 diesel as well, a different product not part of this
12 investigation, so biomass-based diesel under the RFS regime
13 includes biodiesel. It does not include the Indonesian
14 biodiesel. Under the RFS regime, that is renewable fuel in
15 the D-6 RIN category, but that is a regulatory distinction
16 that we've been talking about. It's a different RIN, D-4
17 versus D-6. The only difference there really is a minor
18 price difference, but as a product it is biodiesel. There's
19 no slight of hand, as they say in the brief, of calling it
20 biodiesel. It's ASTM spec biodiesel and it competes on a
21 gallon-for-gallon basis with every gallon of biodiesel that
22 these producers sold into the market.

23 VICE CHAIRMAN JOHANSON: Given that Table C-1 of
24 the staff reports shows zero imports from Indonesia in
25 interim 2017, could you all please speak to the market

1 factors that precipitated the exit of subject imports from
2 Indonesia at the end of the period of investigation?

3 MR. SOANES: As Mr. Getlan pointed out,
4 Indonesia biodiesel qualifies for a D-6 RIN. Through time,
5 you've seen a very close relationship between the D-6 RIN
6 and the D-4 RIN. As a result of market distortions in early
7 2017, the D-6 RIN dropped precipitously relative to the D-4
8 RIN. That was as the result of a rather large short
9 position that Mr. Icahn put on, on the belief that the
10 renewable fuel standard would be adjusted as it applied to
11 ethanol. That did not transpire and as a result the D-6 RIN
12 has now come back up to a very similar value to the D-4 RIN
13 and absent the countervailing duties that are being levied
14 we would see a significant import of palm-based methyl ester
15 as a result thereof.

16 VICE CHAIRMAN JOHANSON: Thank you, Mr. Soanes.

17 And I have one more question involving Indonesia
18 product. To what extent do state regulations preclude
19 Indonesian palm-based biodiesel from competing with
20 domestically-produced biodiesel? And in particular, I'm
21 thinking about the coastal regions of the United States,
22 such as Oregon, which I believe that Oregon's regulations
23 effectively bar the participation of any palm-based
24 biodiesel in the U.S. market. And also California's
25 low-fuel carbon standard program allegedly disfavors the use

1 of this product.

2 MR. GETLAN: I'll start and see if others want
3 to comment.

4 As you noted, Commissioner Johanson, there are
5 state programs, state incentives where palm-based biodiesel
6 is disfavored or may not be eligible to partake in those
7 incentives, but that is a very limited market. I think even
8 the Indonesian Respondents in their brief concede that 87
9 percent of the market does not include any such disincentive
10 and so the vast, vast majority of the market is Indonesian
11 biodiesel and other biodiesel competes on an equal basis.

12 MR. SOANES: You know we're located in the Gulf
13 Coast where the vast majority of Indonesian palm methyl
14 ester is imported and we compete directly against it day in
15 and day out.

16 MR. GETLAN: Now that we have a map from
17 Indonesia, I think Indonesian buyer diesel does find its way
18 to the United States, irrespective of the fact that it might
19 be disfavored in certain states on the West Coast. It just
20 finds its way to Houston where it's competing with the RBF's
21 and RAG's of the world.

22 VICE CHAIRMAN JOHANSON: Thank you Mr. Getlan
23 and Mr. Soanes.

24 Okay, so I've asked a few questions on
25 Indonesian biodiesel. Now I have one regarding Argentinean

1 biodiesel. Respondents claim that available capacity in
2 Argentina is not a threat because only certain suppliers and
3 certain EPA-approved soybeans can be used to produce for the
4 U.S. market and much of the excess capacity in Argentina
5 therefore cannot be exported to the United States. And
6 this is discussed in Carbio's pre-hearing brief at page 47.

7 To what degree does the availability of
8 additional volumes of EPA-approved soybeans in Argentina
9 affect future supply of subject imports from that country?

10 MR. GETLAN: The Argentine Respondent's Carbio
11 does not provide any evidence that demonstrates this
12 limitation. From our understanding that the soybean supply
13 in Argentina vastly exceeds the crushing capacity in
14 Argentina and that most of the soybean farms in Argentina
15 preceded 2007, which is the date that's relevant for EPA
16 registration or EPA approval of the beans and so based on
17 what we understand there is no limitation -- no real
18 limitation or effective limitation of the supply of
19 EPA-compliant beans for the Argentine producers. And
20 frankly, based on the data that's in the staff report from
21 existing producers and existing capacity, there need not be
22 sort of any further increase in supply of soybeans for them
23 to be a threat.

24 MR. SOANES: Commissioner Paul Soanes from RBF.
25 I don't necessarily view by these were made from Argentinian

1 soybean as a threat, provided it's priced on a consistent
2 basis and is not subsidized and dumped into our market.

3 VICE-CHAIRMAN JOHANSON: Thank you for your
4 responses. How do you respond to respondents' claim that
5 most of the increase in subject imports can be explained by
6 increasing purchases by one major customer who supposedly
7 bought imports to serve coastal markets when there was not
8 more available and reliable domestic supply? And this can
9 be seen in CARBIO's prehearing brief at Pages 1 to 2.

10 MR. GETLAN: Well, I think others on the panel,
11 our industry witnesses, can speak to their -- of course, the
12 CARBIO is talking about BioSphere, a very significant
13 purchaser, but one of dozens of purchasers in this market.
14 What we have said on a high level is that there's been no
15 limitation of supply or ability to sell to any purchaser,
16 including BioSphere, the only limitation being the low
17 prices that they demanded. But let's hear from our
18 industry witnesses in terms of their ability to supply first
19 the coasts, and BioSphere's desire to get product there.

20 MR. SOANES: We are located in the coast, in the
21 Gulf Coast, just east of Houston. We have the largest plant
22 in the Western Hemisphere, 180 million gallons per annum
23 capacity. We can supply anywhere on the coastal region of
24 the Gulf Coast and East Coast in similar quantities that
25 have come from Argentina to those markets.

1 It's also worth noting that there are a number
2 of other large-scale biodiesel plants located on the Gulf
3 Coast that are currently idled that could also ramp up and
4 provide supply to those regions. And prior to the subject
5 imports, we routinely used to send large shipments of
6 biodiesel by vessel to the Northeast market to help meet
7 demand in that market.

8 MR. STONE: I would echo that. Chad Stone. So
9 in the 2012-2013 timeframe, we were sending feedstock out to
10 the Northeast. We had invested a lot in supply chain in
11 terms of getting fuel out to the Northeast heating oil
12 market and we love that market because it's
13 counter-seasonal. So when transportation demand and blends
14 of biodiesel are lower in the colder winter months, that's
15 when the heating oil market is ramping up.

16 We also have under-utilized assets, much like
17 Mr. Sloane said, in the Gulf area, not just the industry --
18 us alone, we've got two plants in Texas that have been
19 impacted and harmed by the subsidized imports. I would say
20 during the period of investigation, we've also had what used
21 to be large customers not willing to take our call because
22 our price-point was above the price available of the
23 subsidized imports.

24 MR. PHILLIPS: Commissioner Johanson, this is
25 Jonathan Phillips from RBF. It's also worth noting that,

1 while you suggest BioSphere imported a significant amount of
2 this product for their own use, they actually sold it to
3 third parties and became a competitor of ours, so it wasn't
4 completely imported only for their own use.

5 This highly subsidized product then subsequently
6 was sold to third parties and that further pushed the
7 competition out of the market, driving our price down. So
8 we had a significant price oppression throughout the market
9 because of the fact that there was such a large quantity
10 imported and the competition against us.

11 MR. PETERSON: Elias Petersen, Kolmar. And I
12 just reiterate those comments. We've sold biodiesel
13 throughout the country, particularly on the coast. We
14 sourced it domestically prior to the influx of imports
15 because the imports were so much cheaper, that then became
16 the predominant source. But we've done both and we prefer
17 the domestic, and the logistics are there. It's just a
18 price issue.

19 MR. GETLAN: Commissioner Johanson, just a final
20 point, following up on what Mr. Phillips said. He mentioned
21 that BioSphere purchased enough supply where they were
22 selling into the market and became a competitor of domestic
23 producers. That is in conflict with the narrative that
24 BioSphere perpetuated -- they testified at the staff
25 conference, CARBIO is talking about it in their prehearing

1 brief -- that BioSphere purchases only for their own use.

2 They couldn't get product for their own truck stops.

3 CARBIO wrote in their brief, BioSphere does not
4 resell biodiesel in the open market. It also said BioSphere
5 consumes all of its purchased biodiesel through its
6 affiliated nationwide truck stops. What Mr. Phillips just
7 described is absolutely in conflict with that.

8 That narrative is a fiction. They overbought.
9 They couldn't get enough of the cheap, subsidized biodiesel.
10 They wound up unloading it in the market, as others said,
11 putting further price pressure in the market and so that's
12 something I think would be worth following up this afternoon
13 with the representatives from BioSphere.

14 VICE-CHAIRMAN JOHANSON: I wanted to follow-up
15 on that. So you contend that BioSphere does indeed sell in
16 the open market?

17 MR. GETLAN: I don't know if others besides Mr.
18 Phillips would like to comment on it, but that's we're
19 hearing.

20 VICE-CHAIRMAN JOHANSON: Okay. If you all have
21 any demonstrated, anything in writing on that, that might
22 help out.

23 MR. GETLAN: And we'll certainly provide further
24 information or detail in our post-hearing.

25 VICE-CHAIRMAN JOHANSON: Okay. Thank you. I

1 appreciate your responses to my questions.

2 CHAIRMAN SCHMIDTLEIN: Go ahead.

3 COMMISSIONER WILLIAMSON: Thank you. Just going
4 back to Indonesia. Was there a post-petition effect on
5 imports from Indonesia?

6 MR. LEVY: I think what you've heard from the
7 panel is that they're beginning to see some traction in
8 terms of their ability to charge a higher price in relation
9 to their cost, but only since the implementation of CBD
10 deposits in late August. Prior to that time, what we see is
11 actually stockpiling behavior from Argentina in particular.

12 And so we didn't see, if you will, a
13 post-petition effect until there was a prelim. Indonesia,
14 to be sure, was out of the market in the first half of 2017.
15 That was a unique, kind of, non-recurring event. It was
16 being referred to in the press as the "mother of all short
17 [squeezes]" courtesy of Mr. Icahn, but that is a thing of
18 the past, and there's been now a new, a convergence between
19 D4 and D6 RINs, thus making Indonesian biodiesel very much
20 an attractive offering, but for the imposition of cash
21 deposits.

22 COMMISSIONER WILLIAMSON: So they're coming back
23 in, but you're saying they're not coming back as much as
24 they would've if they hadn't, if the --

25 MR. LEVY: So again, it's a timing issue, right?

1 In the first half of 2017, Indonesia was out because of the
2 sudden gap between the D6 and the D4 RIN price, I think that
3 chart is illustrated in our pre-hearing brief. Then, when
4 things kind of get back to normal, for lack of a better
5 word, in terms of the relationship between the D4 and the D6
6 RIN, cash deposits are implemented.

7 So I think we see, perhaps, a small volume of
8 imports from Indonesia, but frankly, just a trickle, because
9 the imposition of CBD deposits make their re-entry into the
10 U.S. market more challenging. So our position is that, but
11 for the imposition of deposits, we would see a resurgence of
12 Indonesian biodiesel in the U.S. market.

13 COMMISSIONER WILLIAMSON: Thank you. That was
14 the clarification I was looking for. Thank you. This is a
15 question on apparent consumption. The observed trends in
16 apparent consumption over the POI reflect changes in
17 underlying demand. Or were they affected by regulatory
18 development such as the BTC?

19 MR. SOANES: I've viewed the RFS drives them on
20 for biodiesel. And during the POI, you've seen a steady
21 increase in the mandates. And that has driven demand for
22 our product.

23 COMMISSIONER WILLIAMSON: Okay. And was
24 consumption inflated in 2016 because of the impending
25 expiration of the credit? And did the extra amount end up

1 in inventories?

2 MR. SOANES: Typically, when the blender's tax
3 credit is said to expire, and there's uncertainty about
4 whether or not it will be in place for the following year,
5 you typically see an increase in blending tools at the end
6 of the year, to take advantage of the blenders tax credit.
7 And 2016 was no different than any other year where the
8 credit has expired. So yes, there was an increase in
9 blending and credit creation.

10 COMMISSIONER WILLIAMSON: So the blended
11 product, then it ends up in inventory as opposed to the
12 unblended product?

13 MR. SOANES: Yes. Every producer or importer
14 will try to blend all the gallons that they have on hand
15 prior to year-end to capture the economic incentive inherent
16 in the blender's tax credit.

17 MR. LEVY: And so Mr. Phillips, if you can just
18 elaborate, but I think Commissioner Williamson's asking two
19 questions. I mean, one is, given the expiry of the
20 blender's tax credit at the end of 2016, was there a boost
21 in aggregate demand for biodiesel, be it domestic or
22 imported?

23 And then the second question is, if there was
24 this boost in demand, was the biodiesel simply sort of held
25 in inventory? Or did it make its way in sort of the

1 bloodstream of the fuel supply fairly quickly into 2017?

2 MR. PHILLIPS: Fair enough. Yes, Commissioner,
3 so I think it's worth noting one thing first. We talked a
4 lot about blends, and as Mr. Stone pointed out before,
5 talked about B5 blends, B20 blends -- to actually qualify
6 for the tax credit, you have to blend 0.01% of petroleum
7 diesel into this product, so you're talking about a very
8 minute amount of petroleum diesel that's blended into the
9 biodiesel.

10 COMMISSIONER WILLIAMSON: That's the B1?

11 MR. PHILLIPS: In essence, yes.

12 COMMISSIONER WILLIAMSON: Okay, thanks.

13 MR. PHILLIPS: So 99.9%, so you see B99.9 or any
14 of that percentage or the like B99, so that's the 1%, so
15 specifically, as Mr. Soanes highlighted, you would see
16 product coming in, being blended or splash-blended to claim
17 that dollar tax credit.

18 And then that product will move out into the
19 system subsequently from there. So it comes in as a matter
20 of course, while you have that tax credit coming in, it
21 would come in, but it's not necessarily going to change the
22 demand per se for that product.

23 COMMISSIONER WILLIAMSON: Okay, so it may get
24 blended -- it might be the B99 and then later get blended
25 down further when you actually go to the --

1 MR. PHILLIPS: Just like any other biodiesel
2 that would otherwise enter the system.

3 COMMISSIONER WILLIAMSON: Okay. So that's where
4 the inventories may be?

5 MR. PHILLIPS: Absolutely. Correct.

6 COMMISSIONER WILLIAMSON: Okay. I think I got
7 it.

8 MR. GETLAN: And just to add on.

9 COMMISSIONER WILLIAMSON: Sure.

10 MR. GETLAN: I think it's always worth reminding
11 ourselves that when we're talking about the BTC and
12 producers blending towards the end of the year to get the
13 tax credit, it's the same circumstance with imports, right?
14 The imported product is coming in. That gets blended.

15 The importers are getting the BTC or getting the
16 value of the BTC, so in this regard, it's definitely an
17 interesting dynamic and somewhat unique for the Commission
18 to consider this industry. But in this regard, it's a level
19 playing field between imported product and domestic product.
20 They both benefit from the RFS regime and the BTC credit.
21 What creates the unfair advantage for imports is the massive
22 subsidies they're receiving in their home markets.

23 COMMISSIONER WILLIAMSON: The first WTO case the
24 U.S. lost was the EPA case where they had treated imports
25 less fairly than domestic product. It seems like in this

1 loss, they learned a lesson. So everything applies to the
2 imports as well as the --

3 MR. GETLAN: There's been no challenge, nor it's
4 hard to see a credible challenge to the RFS regime at the
5 WTO, that's for sure.

6 COMMISSIONER WILLIAMSON: Okay, thanks. In
7 regard to U.S. production capacity, you argue that the
8 Commission should look at the official statistics of the
9 energy information agency rather than questionnaire data.

10 The EIA data show higher capacity but lower
11 production than our questionnaire data. Is your position
12 that there are U.S. producers that our data do not cover?
13 Because of the difference in the capacity that EIA shows.
14 And if you want to do it post-hearing, that would be fine.

15 MR. GETLAN: Can I ask for clarification? This
16 is Myles Getlan. Commissioner Williamson, did you mention
17 that EIA production was higher than production in
18 questionnaire responses?

19 COMMISSIONER WILLIAMSON: No, production
20 capacity.

21 MR. GETLAN: Okay. So as an initial matter,
22 we're not asking you to disregard questionnaire data by any
23 means. We are simply giving you several data points
24 actually, in terms of establishing that the domestic
25 industry had plenty of capacity and un-utilized capacity to

1 be able to sell more, and they would've sold more but for
2 the subsidized imports.

3 EIA capacity surveys all active plants on a
4 monthly basis, and so they're certainly picking up
5 additional plants that did not submit questionnaire
6 responses to the Commission. And so that's what you're
7 seeing the difference in. And I don't think it's surprising
8 that the EIA data show capacity utilization a little lower
9 than what you're getting from the questionnaire responses.

10 In effect, what you get in an investigation, a
11 good number--certainly not exclusive--but a good number of
12 those submitting questionnaire responses to you are members
13 of the petitioning coalition. There are, of course, a
14 number of others, but you know, they're remaining. They're
15 on their feet. And motivated to seek the remedy they need.

16 Unfortunately, there are a number of plants --
17 Mr. Stone was talking about distressed assets that are out
18 there. There are other plants that have capacity with
19 un-utilized capacity. They're apparently submitting survey
20 responses as they're required to do, under the Department of
21 Energy regulations, and that's what you see in the EIA
22 figures. And so we submit that both sets of data are
23 relevant, and they both unambiguously establish that the
24 industry has ample capacity to supply the market.

25 COMMISSIONER WILLIAMSON: Okay. Now, it's

1 interesting. Apparently our questionnaire data show higher
2 production than the EIA data. And I guess that was a
3 discretion about missing producers?

4 MR. GETLAN: Commissioner Williamson, I'm
5 looking at our confidential Exhibit 1. Can I refer you to
6 that? Just because both of them are put there together. I
7 think it's a helpful way of examining it.

8 COMMISSIONER WILLIAMSON: Okay. We can take a
9 look at that, if there's any --

10 MR. GETLAN: And so when I look at -- if you
11 have it in front of you, the EIA production is Line 2 on
12 that --

13 COMMISSIONER WILLIAMSON: Yeah, I noticed it
14 earlier. Good.

15 MR. GETLAN: So we're happy to comment on that
16 further.

17 COMMISSIONER WILLIAMSON: Okay, fine, thank you.
18 And my time has expired. So thank you.

19 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent?

20 COMMISSIONER BROADBENT: Okay. Mr. Rehagen, why
21 was the domestic industry, as a whole, unprofitable in
22 interim 2017?

23 MR. SOANES: At the end of 2016, the blender's
24 tax credit expired. And as a result of a significant surge
25 in Argentinian imports, in particular, in the first half of

1 2017, we were not able to adjust our price structure to
2 cover our costs. The Argentinian imports created a
3 substantial price ceiling that prevented us from covering
4 our costs.

5 And it's worth noting that after August, when
6 the countervailing duties began to apply, that we were able
7 to charge prices at that point in time, that enabled us to
8 cover our costs and we've had a subsequently a much better
9 operating period from a profitability perspective.

10 MR. GETLAN: Just to add -- when you look at the
11 data, the staff report for the interim periods, across the
12 interim periods, you see on a financial basis, the industry
13 earning some profit in H1 2016 and it goes to significant
14 losses in 2017. Respondents are asserting that is entirely
15 the result of the lapse in the BTC. And of course, the
16 lapse of the BTC plays a role. It's a factor in what you
17 see there.

18 But the evidence that subject imports
19 contributed importantly to that declining performance, that
20 transition from profitability to losses, is abundant. You
21 have -- actually across the interim periods, you actually
22 see consumption declining a bit. You see imports, subject
23 imports, increasing across the interim periods. You see
24 subject imports increasing share across the interim periods.
25 You see this cost price squeeze in interim 2017 that Mr.

1 Soanes was just mentioning.

2 So clearly, subject imports, and you have
3 significant underselling in H1 2017, and so you look at the
4 volume of the imports, the price of the imports. You look
5 what's going on in the P&L, there is very clear evidence
6 that subject imports contributed significantly to those
7 losses in 2017. It is not just the lapse in the tax credit.

8 COMMISSIONER BROADBENT: How should the
9 Commission reconcile the statutory language and the Clean
10 Air Act? And I think there is some other legislation that
11 includes, to recognize imports as a means of satisfying
12 demand requirements of the RFC mandates?

13 MR. GETLAN: So respondents cite frequently to
14 the EPA statements and I'll certainly let Donnell and others
15 speak to the commentary on EPA, but the way we read that and
16 understand it, is that EPA permits imports, or accounts for
17 imports, allows for imports in its assessment of RFS volumes
18 and when it sets the volumes.

19 It does not distinguish between imported volume
20 and domestic volume, and so to the extent that EPA is
21 considering increasing imports in the last few years in them
22 setting RFS volumes, by definition, they also need to be
23 accounting for the fact that domestic producers lost share
24 during that period. And so they're looking at it as a
25 whole, the volumes as a whole, in terms of setting RFS

1 volumes.

2 They're acknowledging that import supply can be
3 a supply of product, and of course, it can be. As Mr.
4 Soanes mentioned, there's no effort here to block imports if
5 they're coming at a fair price, those imports are welcomed.
6 And frankly, the reason Argentina and Indonesia dominate the
7 market is because of the subsidies.

8 There are hundreds of foreign producers
9 registered with EPA that would be eligible to supply the
10 market. There are other countries of supply. So this idea
11 that EPA requires Argentinian and Indonesian subsidized
12 imports to supply the market is absurd.

13 MR. STONE: I just wanted to repeat -- we're not
14 looking to block imports. As a matter of fact, it helps us
15 when we're working with the EPA trying to prove where the
16 renewable volume obligations should be going. What we are
17 trying to stop is unfair trade. We're looking for a level
18 playing field and basically, fair pricing in the market.

19 COMMISSIONER BROADBENT: Okay. Can you talk to
20 me about the subsidies in Argentina? The export tax itself
21 is a WTO legal support, right? Under the subsidies
22 agreement?

23 MR. GETLAN: So it's not, I do not believe that
24 the WTO has ever opined on whether Argentina's export tax
25 regime is a subsidy. What they were referring to, or what

1 the representative from the Embassy of Argentina was
2 speaking to, was the WTO's perspective on export restraints
3 and whether an export tax is an export restraint that
4 equates to a countervailable subsidy, but Argentina's system
5 has not been considered as a subsidy at the WTO. The WTO
6 decision concerning Argentinian biodiesel -- it's important
7 to note -- that was a dumping case actually.

8 COMMISSIONER BROADBENT: Right.

9 MR. GETLAN: Exclusively a dumping case. And so
10 interestingly, reports are that the industry is now
11 considering bringing a separate subsidies' case against
12 Argentina, the European industry is. But in our view, and
13 as the Commerce Department has established, Argentina's
14 export regime confers massive subsidies on the biodiesel
15 producers. It completely changes and reduces their cost
16 structure.

17 The export tax regime has held tight to this
18 regime for decades. It's notorious. The USTR once targeted
19 it as an unfair trade practice. They identify it as a
20 foreign trade barrier. Year after year the OECD has
21 considered the market distortion caused by Argentina's
22 export tax regime. The differential that they have in
23 taxing soybeans at a high rate, biodiesel at a low rate, the
24 evidence is unambiguous. It reduces the cost of soybeans,
25 which is about 80% plus of the cost of producing biodiesel

1 in Argentina.

2 COMMISSIONER BROADBENT: So why haven't we
3 challenged it under the WTO? Why has the U.S. not
4 challenged it?

5 MR. GETLAN: I haven't been part of those
6 discussions. I do not know why USTR has not targeted that
7 as an illegal subsidy at the WTO. It's now obviously being
8 considered. We expect the final determination today, to be
9 announced by the Commerce Department, and fully expect it'll
10 basically confirm what it preliminarily found, which is that
11 soybeans in Argentina cost half the world market price of
12 soybeans.

13 All of these purchasers, they're purchasing --
14 those that produce biodiesel with soybeans, which by the way
15 is only about half the industry now. It's declined over the
16 last few years. But about half the industry uses soybean
17 oil in the production of biodiesel and they are acquiring
18 soybeans at effectively the world market price. Argentina
19 producers? They acquire it at 50% less. That's why they're
20 able to flood the market with cheap biodiesel imports.

21 COMMISSIONER BROADBENT: Okay. How should we
22 analyze the four different pricing products in looking at
23 pricing trends? Is the pricing of B100 versus B99 and
24 biodiesel with or without RINS any more or less probative of
25 the impact of import pricing on domestic prices?

1 MR. GETLAN: I don't believe one is less
2 probative than the other. It's interesting in this case
3 now, by virtue of -- in the preliminary phase, the staff
4 collected pricing data on three of the four and in this
5 final phase, you know have essentially all four
6 configurations of biodiesel that could be sold.

7 And so you're covering all of the bases. You
8 have complete product coverage. And so the different
9 producers, depending on their place in the market, who
10 they're selling to -- will concentrate sales in one category
11 versus another. But industry-wide, we wouldn't say that one
12 product is more or less probative than the other.

13 MR. LEVY: And Commissioner Broadbent, just to
14 elaborate. With regard to Product 1 and Product 3, which
15 are RIN-containing products, B100 with RINs and B99 with
16 RINs, our position today is that Indonesian respondents have
17 got it right. And in order to make apples to apples price
18 comparisons, you need to make an adjustment between the D4
19 and the D6 RIN and the adjustments that Indonesian
20 respondents propose, we defer to those adjustments.

21 COMMISSIONER BROADBENT: Okay. Thank you very
22 much.

23 CHAIRMAN SCHMIDTLEIN: Okay. Back to the
24 questions about capacity. I think Commissioner Williamson
25 was asking this. On the confidential exhibit that you all

1 provided where you include nameplate capacity, which I
2 understand is the capacity that's designated when a facility
3 is first constructed, is that right?

4 MR. GETLAN: That's my understanding. I'll let
5 the industry witnesses speak to that. We include that --
6 that's data that the staff collected as well. They
7 collected both nameplate and average. And so we put those
8 in there.

9 CHAIRMAN SCHMIDTLEIN: Okay.

10 MR. LEVY: And Commissioner Schmidtlein, just to
11 elaborate. These are concepts that were delineated by the
12 staff in developing the questionnaire. Our understanding,
13 based on the questionnaire instructions, is that the
14 nameplate capacity is the--if you will--the nominal capacity
15 of the plant at the time it was commissioned.

16 Interestingly, when you look at individual
17 questionnaire respondents, when asked to report the average
18 production capacity, this is sort of essentially in
19 operation, what's the capacity? Taking account of things
20 like downtime for maintenance.

21 Not surprisingly, for many questionnaire
22 respondents, the capacity number is lower because of
23 accounting for maintenance. For a couple of questionnaire
24 respondents, it's actually higher. And you might look, just
25 scan through that and say, what's up?

1 And the answer that we found for some companies
2 is that they have identified additional productivity gains
3 since the time of the acquisition of the facility. That
4 allows them to achieve actual production levels above and
5 beyond the original nameplate.

6 CHAIRMAN SCHMIDTLEIN: So what's the
7 petitioners' view as to which data we should rely on in
8 terms of analyzing capacity? Should it be the EIA? Should
9 it be average? Should it be nameplate? Or should it be the
10 EPA numbers that you cite in your brief?

11 MR. GETLAN: So in terms of the industry
12 capacity that's sort of the most complete picture of what
13 the biodiesel industry in the United States has in terms of
14 its capacity and what capacity utilization has been over the
15 years. We think EIA is the most complete, because it's
16 surveying plants across the country and getting responses
17 clearly on a monthly basis, as they're required to do,
18 beyond what the staff is getting in questionnaire responses.

19 So we think that's a fair representative view of
20 the industry. But just as I had mentioned earlier, we're
21 not challenging the questionnaire response data. We think
22 that's fair as well. I mean, when we look at this, and you
23 see in the confidential record, the questionnaire data on
24 capacity and capacity utilization, you have very significant
25 un-utilized capacity.

1 You've heard testimony that these plants are --
2 and that's based on average capacity, so you know, taking
3 into account maintenance, these plants are built to run
4 24/7. Paul Soanes testified that RBF had 30 million gallons
5 that he could've produced if he was getting it at a fair
6 market. Think about the capacity utilization figures in the
7 context of the market during this period of investigation.

8 You had demand increasing by 58% from 2014 to
9 2016. You had declining costs from 2014 to 2016. You had
10 greater regulatory certainty at the end of the period
11 relative to 2014. And look at that minor increase in
12 capacity utilization in 2016 versus 2014 and, more
13 importantly, just look at how much unused capacity is
14 represented here, and this is by those questionnaire
15 responses alone.

16 And we suggest that this is extremely depressed
17 capacity utilization, considering the market dynamics going
18 on in 2016. And of course, these producers and others
19 would've produced more and sold more if they weren't
20 competing with subsidized low-priced imports.

21 CHAIRMAN SCHMIDTLEIN: Let me just follow-up on
22 that, in terms of what was happening in 2016. So switching
23 gears a little bit. But the respondents included in their
24 slides, they're confidential, but Mr. Getlan, you could have
25 a look at them. The price on Page 2.

1 So my question is, they point out -- if you look
2 at the pricing data -- that prices started to increase from
3 where they were at the end of '15, they started increasing
4 in '16 and increased from there through the end of '17. Why
5 were prices increasing in each of the pricing products over
6 that period?

7 MR. GETLAN: -- nominal -- excuse me, Myles
8 Getlan. On a nominal level, you know, I'm sure some of it
9 has to do with petro diesel pricing going up. The -- what
10 you see in the slide that respondents put forward for the --
11 for their opening statement, first of all, they're looking
12 at a change in pricing from Q1 2016 to Q2 2017. And I'm not
13 sure why that -- why they, you know, cherry pick that
14 comparison period. But importantly, if you're going to
15 focus on 2016 and 2017, our -- we submit that the key
16 aspect of or key data to analyze are prices in relation to
17 costs. What's important here is that --

18 CHAIRMAN SCHMIDTLEIN: Well, but my question
19 though is -- and maybe the industry witnesses --

20 MR. GETLAN: Sure.

21 CHAIRMAN SCHMIDTLEIN: -- should respond to
22 this. Why were prices going up during that period?

23 MR. STONE: So in 2016, that should have been a
24 record year for profitability. The tax credit was
25 reinstated in December of 2015 and extended through 2016.

1 So it's the only year in those three years where the tax
2 credit was known and in place, but yet profitability
3 declined. So our costs increased. Our operating results
4 were not as good. And even when you think of 2014 --

5 CHAIRMAN SCHMIDTLEIN: Okay, my question and if
6 you don't all don't want to answer, you don't have to, but
7 the question is from an industry perspective, why are the
8 prices going up on those pricing products? I understand
9 what's going on with cost. I understand what's going on
10 with the BTC. I understand what's going on with
11 profitability. I have all those numbers in front of me.
12 What's your explanation for why costs are going up or prices
13 are going up in that particular period?

14 MR. SOANES: Commissioner, this is Paul Soanes -
15 -

16 CHAIRMAN SCHMIDTLEIN: Yeah.

17 MR.: -- from Renewable Bio Fuels. Quite
18 simply, you saw a rise in the price of petroleum in that
19 period. And ultimately, our product is priced at a discount
20 to petroleum and as petroleum price increases, you will see
21 a higher price reflected in the data.

22 CHAIRMAN SCHMIDTLEIN: Okay. So it's just
23 because it's indexed to petroleum prices?

24 MR. SOANES: Correct, Commissioner.

25 CHAIRMAN SCHMIDTLEIN: Okay. All right. Thank

1 you very much. It wasn't that hard. Another question along
2 the lines of price is when you look at the AUVs for
3 nonsubject imports over the course of the POI, you see that
4 they are generally higher than the AUVs of U.S. domestic
5 shipments. But yet, from 15 to 16, nonsubject imports were
6 able to gain market share. So since this is a commodity
7 product --

8 MR. GETLAN: Yeah.

9 CHAIRMAN SCHMIDTLEIN: The question would be why
10 are they gaining market share and they're priced higher at
11 least under the AUVs?

12 MR. GETLAN: Sure. It's an interesting
13 question, a fair question. The -- some of this, I think,
14 will be best discussed post hearing because a good -- a
15 significant portion of that volume we understand was imports
16 from Canada. Canada was a --

17 CHAIRMAN SCHMIDTLEIN: Yeah.

18 MR. GETLAN: -- more significant supplier of
19 nonsubject product and a good or a significant portion of
20 that volume went to California. So from the western Canada
21 into California, where you have the LCFS program in place.

22 And there is a premium associated with product
23 that's eligible for California's LCFS program. And so, that
24 sort of eligibility for that imported product I think
25 translates into the higher average unit values you see for

1 nonsubject imports.

2 Again, I think we can provide you more detailed
3 information on that in post hearing as a particular producer
4 has insight into that.

5 CHAIRMAN SCHMIDTLEIN: Do imports from Argentina
6 Indonesia qualify for the California LCFS program?

7 MR. GETLAN: We understand that the Indonesian
8 product palm based biodiesel is disfavored in California.
9 Soy-based product is eligible. I think during the period of
10 investigation, it was -- it was eligible for the same level
11 of credits as other biodiesel like based from used cooking
12 oil. I think there might have been a change in the scoring.
13 I'm not an expert in California's LCFS program. Those
14 others have additional comments on that.

15 MR. SOANES: Commissioner, this is Paul Soanes
16 from RBF. Simply put, soy-based biodiesel whether from
17 Indonesia -- sorry whether from Argentina or domestically
18 produced would qualify under the LCFS program in California.

19 CHAIRMAN SCHMIDTLEIN: Okay, but Indonesian
20 product would not qualify?

21 MR. SOANES: I'm not familiar with Indonesia
22 product enough to know. And I will revert to Mr. Getlan's
23 answer.

24 CHAIRMAN SCHMIDTLEIN: Okay, okay.

25 MR. PETERSEN: I can provide a little bit of

1 context. Eli Petersen, Kolmar. It's similar to the D-6 D-4
2 issue I believe. I'm not 100 percent sure where palm fits
3 under LCFS, but the LCFS credits work on the basis of carbon
4 intensity score that each biodiesel gets and it has to do
5 with the amount of greenhouse gas savings from production to
6 tailpipe emissions.

7 So just by the fact that the palm methyl ester
8 is deemed less economically, environmentally advantageous,
9 it would be disincentivized there.

10 CHAIRMAN SCHMIDTLEIN: Okay.

11 MR. PETERSEN: So you would see soy has slightly
12 better or better environmentally and then the used cooking
13 oil even more so. It generates more LCFS credits per
14 gallon.

15 CHAIRMAN SCHMIDTLEIN: Okay. My last question
16 for the post hearing is a couple of witnesses have talked
17 about the final price of the product being a negotiated
18 price with the customer. And I wonder if any of you have
19 any, and I don't know whether you do these negotiations all
20 by phone or whether they are by email or other written
21 contemporaneous documents, that you would have that reflect
22 the customers using imports to put pressure on your prices.
23 Would you have anything like that? Are these negotiations
24 done in writing via email or any other, you know, proposals?

25 MR. SOANES: Commissioner, this is Paul Soanes

1 from Renewable Bio Fuels. Typically, price discovery is
2 through brokers. And they will indicate, you know, what the
3 offer is in various markets. And then you inquire from the
4 broker, well, who's making that offer. And you can see
5 whether it's domestic product or imported product.

6 And from that, you get your price discovery.

7 CHAIRMAN SCHMIDTLEIN: Okay. Well, anything
8 that you have that documents that, you know, on a
9 contemporaneous basis would be helpful. And if not, that's
10 fine, too. That -- okay.

11 MR. LEVY: Commissioner Schmidtlein, we'll
12 certainly endeavor to get you that material. It's also
13 worth reminding the Commission that this record does contain
14 some very direct evidence in the form of responses to the
15 lost sales, lost revenue survey and subsequent purchaser
16 responses confirming instances of lost sales by reason of
17 lower priced subject imports as well as lost revenue for the
18 same reason.

19 CHAIRMAN SCHMIDTLEIN: Uh^^huh.

20 MR. LEVY: So we have corroboration from
21 purchasers as well on the record.

22 CHAIRMAN SCHMIDTLEIN: Thank you. Okay. We're
23 back to Vice Chairman Johanson.

24 VICE CHAIRMAN JOHANSON: Thank you, Chairman
25 Schmidtlein. How much of the reported capacity expansion

1 that occurred during the period of investigation was
2 actually capable of producing biodiesel during the period
3 investigation?

4 MR. GETLAN: Commissioner Johanson, can you
5 clarify when you're speaking to capacity expansion, what
6 you're referring to? Are you referring to EIA capacity
7 questionnaire response capacity?

8 VICE CHAIRMAN JOHANSON: What I refer back to is
9 the prehearing staff report at Table 33. And I'm not
10 entirely -- I don't remember exactly where that data is
11 from. Maybe you could find out. I see you have the report
12 right in front of you.

13 MR. GETLAN: I do. So Table 33?

14 VICE CHAIRMAN JOHANSON: Right.

15 MR. GETLAN: Okay. So a lot of these we
16 provided some further detailed information to the staff
17 during the course of the investigation. A substantial
18 volume of associated with the capacity increase is from
19 basically through consolidation. These were distressed
20 assets that were acquired.

21 REG, I spoke to this and there was significant
22 volume there. So that maybe, Chad, you can speak to the
23 extent to which the capacity you acquired, which shows up as
24 increased capacity in the staff report, was available for
25 use.

1 MR. STONE: Sure. This is Chad Stone from REG.
2 So we've been in a process of throughout the last 10 years
3 really rolling up distressed assets within the industry. I
4 think there's an example and I'm not looking at the table
5 you're referring to, but I can give you example.

6 We bought a plant that was a 100 million gallon
7 nameplate plant in the state of Washington as a -- the prior
8 company had never run that more than 50 percent of
9 nameplate. That's a plant that we brought on line and had
10 sufficient working capital and a national footprint of
11 customers. So we would have -- we've ramped that plant to
12 be capable of nameplate capacity. That's an example of the
13 other plant in the period of investigation that we brought
14 on line was already running biofeed stock supplier of ours.

15 MR. GETLAN: And so just to kind of follow up on
16 what Mr. Stone is describing, it's an acquisition of
17 distressed assets. If you think about it, these are plants
18 that weren't covered by -- their original owner did not
19 submit questionnaire responses. So what you see is the
20 capacity of these plants being accounted for in the new
21 owner's questionnaire response. And so what you see is a
22 significant increase in capacity when you're looking at the
23 questionnaire data.

24 But really, what you're seeing is essentially a
25 change in ownership. This capacity existed. Mr. Stone just

1 described 100 million gallon plant. That accounts actually
2 for a significant amount of this increase that you're
3 referring to, Commissioner Johanson.

4 It was active, it was available. But overall,
5 if you consider the fact that these plants were in
6 existence, and you know, active capacity or available
7 capacity, what you see is there isn't actually a very
8 significant increase in capacity. In fact, the EIA data,
9 when you look at the capacity increase across the period
10 from that data set, it's about what you would see when you
11 account for these acquired plants in the questionnaire data.

12 Essentially, a capacity increase of just a few
13 percent over the POI, which just further supports this
14 notion that there wasn't a lot of significant investment
15 going on. In fact, during the POI, from 2014 to 2016,
16 investment declined significantly. We submit that's a
17 bellwether really of the health of the industry.

18 Again, you have a market that grew by 58 percent
19 since 2014. Cost declined. Regulatory certainty at its
20 greatest in 2016. Mr. Stone talked about 2016 should have
21 been a banner year, robust profitability. A time for
22 reinvestment.

23 What do you see here? You see declining
24 investment. Capex and R and D spending during the POI
25 declined significantly. So the financial health that the

1 respondents will be talking about this afternoon with you
2 didn't exist. If they were so healthy, they would have been
3 investing much more significantly than you see in the
4 record.

5 VICE CHAIRMAN JOHANSON: So is it safe to assume
6 that what you're saying is that there is now reported
7 capacity as opposed to de facto capacity?

8 MR. GETLAN: What I'm --

9 VICE CHAIRMAN JOHANSON: Than in the past.

10 MR. GETLAN: Yeah, just to clarify.

11 VICE CHAIRMAN JOHANSON: During the POI?

12 MR. GETLAN: Myles Getlan. The -- what I'm
13 suggesting is that the capacity that's reflected at the end
14 of the period if you will in your questionnaire responses,
15 that is -- that shows in the questionnaire data as greater
16 capacity than existed in 2014. It would suggest that
17 there's, you know, sort of a buildup of capacity.

18 And all I'm saying is that it was -- most of
19 that capacity increase is a reflection of existing companies
20 submitting questionnaire responses acquiring plants during
21 the period. So it's just a transfer of capacity essentially
22 from one owner to another.

23 VICE CHAIRMAN JOHANSON: Thanks, Mr. Getlan and
24 Mr. Stone. Okay, this question might have been already
25 answered, but if it was, I didn't get it. You had a similar

1 discussion earlier with Commissioner Williamson. What is
2 the difference if any in the cost of shipping biodiesel to
3 petroleum refiners for blending compared to the costs of
4 distributing blended biodiesel to end user all over the
5 country?

6 MR. SOANES: Commissioner, this is Paul Soanes
7 from Renewable Bio Fuels. I think, you know, I think your
8 question was is there a cost difference between shipping
9 biodiesel from point A to point B versus shipping biodiesel
10 blended with diesel from point A to point B?

11 VICE CHAIRMAN JOHANSON: Is there a difference
12 between shipping biodiesel that's already blended versus
13 just shipping biodiesel and blending it at a site? Let's
14 say to the individual --

15 MR. SOANES: Yeah.

16 VICE CHAIRMAN JOHANSON: -- fueling station.

17 MR. SOANES: So from point A to point B with the
18 same modes of transportation available, the costs would be
19 identical regardless of product whether it was biodiesel,
20 high percent version, biodiesel, or a blended biodiesel and
21 diesel product. From point A to point B, the cost would be
22 the same on the various modes of transportation.

23 VICE CHAIRMAN JOHANSON: Okay. I might ask this
24 question later on too this afternoon. But thank you for
25 your responses.

1 Okay. I had just one more question. I know
2 we've been here a while, but please bear with me just a
3 minute or two. Then you got to bear with the other three
4 commissioners. So we'll get you out of here at some point.
5 The retail fuel prices graph at page 27 of CARBIOS'
6 prehearing brief shows that diesel gasoline and biodiesel
7 price as follow the same trends. And Exhibit 7 of CARBIOS'
8 prehearing brief notes that at the retail level, biodiesel
9 prices are entirely determined by fluctuations in U.S. and
10 global petroleum markets wholly unaffected by U.S. imports
11 of biodiesel. Could you all please respond?

12 MR. LEVY: Commissioner Johanson, could we --
13 I'm sorry could we click to Exhibit 6? I think an important
14 thesis that respondents advanced is this assertion that, and
15 we heard it earlier today, that biodiesel prices are
16 entirely at the mercy of petro diesel prices.

17 And to be sure, biodiesel prices are quoted in
18 relation to the prevailing Nymex price for petro diesel.
19 But the notion that the two are irrevocably in lockstep is
20 utterly absurd and it's belied by this chart, which comes
21 straight from the staff report.

22 These lines are not parallel. They are
23 different. And one of the reasons they're different is
24 frankly because biodiesel and particularly the minimum
25 volume obligation is subject to an entirely demand curve

1 than petro diesel. There's a requirement to buy this
2 product. Demand is highly inelastic.

3 And so the notion that subject import pricing
4 has no impact on the prices that domestic producers can
5 charge is utterly false. And so, I think that's the short
6 answer to that question.

7 MR. GETLAN: And just to follow up, Myles
8 Getlan. The graph or table or chart that you're referring
9 to, Commissioner Johanson, on page 27 of CARBIOS brief, that
10 is not representing biodiesel price to be sure. It is B-20
11 and diesel and gasoline. And the price of B-20 versus B-100
12 is very different. So what they're presenting here is as by
13 alignment of biodiesel pricing and petro diesel pricing,
14 it's not true.

15 VICE CHAIRMAN JOHANSON: All right, thank you
16 for your responses. My time has expired and that concludes
17 my questions. I'd like to thank all of you for appearing
18 here today.

19 CHAIRMAN SCHMIDTLEIN: Commissioner Williamson?

20 COMMISSIONER WILLIAMSON: Thank you, just a few
21 additional questions. Post hearing, could you take a look
22 at the AUVs for Argentina on the C table and the AUVs for
23 the domestic production. And there's a -- the relationship
24 in the 2016 and 2017 is different than the relationship
25 before that. And if you could address that post-hearing.

1 MR. GETLAN: Sure we'll do that.

2 COMMISSIONER WILLIAMSON: Thank you. I don't
3 think this has been asked. The staff report indicates that
4 the -- that most domestic shipments are with RINs, whereas
5 most of the shipments of subject imports are without RINs.
6 Why is there a difference and is it significant?

7 MR. PETERSEN: Eli Petersen, Kolmar, again.
8 Most of the imports at least from Argentina that I'm aware
9 of are shipped without RINs, even though the plants register
10 under RFS, because the importer that brings them into the
11 U.S. is the one that generates the RINs. So the price you
12 see quoted FOB Argentina has the RIN value included, but
13 it's not "with RINs." It's just a B-100 price. Does that
14 make sense?

15 MR. LEVY: And Commissioner Williamson just to
16 add to that. Essentially I think what Mr. Petersen's saying
17 is that the importers of the subject merchandise, they make
18 a decision, a business decision to blend a small amount of
19 petro diesel, qualify for the blender's tax credit, separate
20 the RIN from the biodiesel, and sell in many instances
21 RINless fuel, and then separately sell RINs into the
22 marketplace. That is one modality of their participation in
23 the market.

24 But with respect to the various pricing
25 products, we see domestics in all four pricing products and

1 we see subject imports in all our pricing products. The
2 overlap is quite palpable, actually.

3 COMMISSIONER WILLIAMSON: Okay, thank you. I
4 think I got that, but thanks. Indonesian respondents assert
5 that to value a cost price squeeze, the Commission should
6 look at the ratio of raw materials to net sales and not
7 include the other components of cost of goods sold. And I
8 was just wondering what is your position on this? And if
9 you want to do it post hearing, you can.

10 MR. GETLAN: We'll certainly follow up post
11 hearing. You know, I'm sure that the argument is results
12 oriented, but we see no issue with the Commission's standard
13 analysis in terms of assessing price suppression by
14 reference to cost of goods sold in this market and in
15 relation to net sales.

16 COMMISSIONER WILLIAMSON: Okay, thank you. This
17 is also for post hearing. Indonesian respondents assert
18 that a key indicator of industry financial performance is
19 the bean oil -- the bean oil heating oil spread. And they
20 claim that the increase in the spread in 2015 and 2016 helps
21 explain the flat industry financial performance. Is this an
22 indicator used in the biodiesel industry?

23 MR. SOANES: You know, the relationship between
24 bean oil and heating oil is an important factor in the
25 industry, but it's one of many factors, right? So we would

1 contend that -- we do content, not that we would, you know,
2 the reason we had flat performance in 2016 was because our
3 margins got precipitously squashed as a result of the huge
4 increase in imports.

5 So if I could talk to my own company in 2014, we
6 produced probably 20 percent less than what we did in 2016,
7 but we had lower utilization, but much higher margins. In
8 2016, where we produced 20 percent more than in 2014, and as
9 a consequence has a much lower cost structure, our margins
10 were lower as well.

11 COMMISSIONER WILLIAMSON: Okay, thank you.

12 MR. GETLAN: If I can just follow up,
13 Commissioner Williamson?

14 COMMISSIONER WILLIAMSON: Sure.

15 MR. GETLAN: I mean, if you look at respondents'
16 briefs, they throw a lot at you in terms of pricing and
17 different factors, different influences. And you can't, you
18 know, you can't compare imports to domestics for various
19 reasons. And frankly, it's all quite complicated, but the
20 evidence is clear that as others have testified here, that
21 biodiesel prices are priced as a, you know, in reference to
22 ULSD or Nymex and low price wins.

23 I mean, the purchasers -- everyone agrees,
24 importers, domestic producers, purchasers agree that
25 biodiesel is a product that is sold the way I just

1 described, in reference to ULSD, but lowest price wins. I
2 mean, that is what the purchasers say overwhelmingly. And
3 they said that imports are the lowest -- the low price
4 leaders. I mean, they purchased imported product instead
5 of domestically produced product because they were lower
6 priced.

7 COMMISSIONER WILLIAMSON: Okay.

8 MR. GETLAN: And that's what you have on the
9 record.

10 COMMISSIONER WILLIAMSON: Okay. Thank you. I
11 don't think this has been asked either. Does the on or off
12 nature of the BTC have negative effects on the ability to
13 invest? I don't know if anybody's addressed that.

14 MR. STONE: The way I think of the BTC is it
15 helped the industry to grow from a small level to over a
16 couple of billion gallons quickly. So it has encouraged
17 lots of investment over the years. So when it's in place,
18 it does encourage investment and expansion.

19 MR. SOANES: Commissioner, this is Paul Soanes
20 from RBF. As I look at how our company views investments,
21 ultimately, if you can see a revenue stream that depends
22 your capital investment, then you're willing to invest that
23 capital.

24 We strongly believe the biodiesel industry is
25 sustainable with or without a BTC. And we've provided there

1 is an RFS. And we have great -- take great comfort in the
2 support of the RFS by the administration.

3 You know, provided we can get a fair price for
4 our product, we're going to earn profits. And we'd be
5 content to invest on that basis.

6 COMMISSIONER WILLIAMSON: Okay.

7 MR. GETLAN: If I can just add, Myles Getlan.
8 The -- if you look at the financial data on the record, you
9 see and including what we presented in our prehearing brief,
10 what you see very clearly is that the BTC during the period
11 of investigation at least, was a life line. It was the only
12 thing that saved the domestic industry from really financial
13 ruin. If you see what -- exclusive of BTC revenue, what
14 their bottom line looks like, it's a disaster.

15 So the BTC did keep the industry above water
16 during the POI, but it was inadequate to support investment,
17 because what you see is that during the period, in fact,
18 from 2016, you had greater certainty with the BTC. It was
19 in place all year. What you see in the POI -- during the
20 POI is that investment plummeted. And that's off of a mark
21 in 2014 that was no, you know, great shakes for the
22 industry.

23 So you know, we would submit that the BTC is not
24 the sort of -- will not bring investment by itself. What is
25 limited investment really is the impact of imports and -- on

1 the bottom line of these companies.

2 COMMISSIONER WILLIAMSON: Okay, but I assume
3 you're -- a certainly in the problem will be better than the
4 uncertainty that you've had?

5 MR. GETLAN: I would imagine all of our clients
6 and industry representatives would agree.

7 COMMISSIONER WILLIAMSON: Okay. Just last
8 question on critical circumstances. Should the Commission
9 take seasonality into account when assessing critical
10 circumstances?

11 MR. LEVY: Thank you, Commissioner Williamson.
12 As we understand it, well, first of all, I think it's worth
13 noting that we haven't had a chance to review the Commerce
14 Department's final determination on critical circumstances
15 to understand the coverage of the imports that subject to an
16 affirmative final affirmative determination. So we look
17 forward to providing a full briefing of this issue post
18 hearing.

19 As we understand it, the staff report did not
20 provide adequate data to permit that kind of year over year
21 seasonal analysis. But what's important to note is that if
22 you're looking at the April through August period in
23 relation to the preceding November through March period,
24 there's a palpable surge in imports. And it's stockpiling
25 behavior as far as we can see. And we believe it seriously

1 undermines the remedial effect of the orders.

2 If there were additional data that would allow
3 us to do that kind of year over year comparison, we look
4 forward to providing argument on that basis. And it's an
5 alternate way of analyzing the data.

6 COMMISSIONER WILLIAMSON: Okay, thank you for
7 those answers. I have no further questions.

8 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent?
9 No, no further questions. Okay, that concludes Commissioner
10 questions. Do staff have any questions for this panel?

11 MR. COMLY: Nate Comly, Office of Investigation.
12 Staff has no questions.

13 CHAIRMAN SCHMIDTLEIN: Okay, thank you. Do
14 respondents have any questions for this panel?

15 MR. PORTER: No questions.

16 CHAIRMAN SCHMIDTLEIN: Okay, thank you. All
17 right, that brings us to our lunch hour. So we will take a
18 full 16 minutes for lunch. If you could back at 2:10. Let
19 me remind you that the hearing room is not secure. So
20 please take your documents and confidential information with
21 you and we will stand in recess until 2:10.

22 (Whereupon a lunch recess was taken to be
23 reconvened this same day.)

24

25

1 A F T E R N O O N S E S S I O N

2 MS. BELLAMY: Will the room please come to order.

3 CHAIRMAN SCHMIDTLEIN: Good afternoon. Ms.
4 Secretary, are there any preliminary matters?

5 MS. BELLAMY: No, Madam Chairman.

6 CHAIRMAN SCHMIDTLEIN: Alright, thank you. I
7 believe we are ready for the Respondent's direct
8 presentation.

9 Mr. Porter, you may begin when you're ready.

10 MR. PORTER: Thank you, Madam Chair. We will
11 begin with Taylor.

12 STATEMENT OF TAYLOR DAWSON

13 MR. DAWSON: Taylor Dawson. Good afternoon.

14 My name is Taylor Dawson. I am the General
15 Manager of Renewable Fuels for BioSphere Fuels. Also here
16 with me today is my colleague Chris Vergona who is our
17 Supervisor of Fuel Compliance. Chris does not have a
18 prepared statement but will be available to answer any
19 questions you may have.

20 BioSphere is an importer and purchaser of
21 biodiesel. BioSphere is related by common ownership to
22 Musket Corporation, which is a distributor of biodiesel, and
23 also to the Love's Travel Stops and country stores.

24 The Love's Travel Stops is the second largest
25 truckstop chain in the United States, operating a nationwide

1 network of over 430 truckstops in 41 states, and selling
2 approximately 5 billion gallons of diesel fuel.

3 These companies are part of a 54-year-old family
4 owned privately held business. BioSphere is one of the
5 largest producers of--purchasers of biodiesel in the United
6 States. We buy from the majority of U.S.-based producers,
7 as well as from imported sources. We are the largest
8 purchaser of subject imports.

9 Biodiesel imported and purchased by BioSphere is
10 sold to its affiliate company, Musket. Musket then
11 distributes the fuel primarily to the Love's Travel Stop
12 locations. As the General Manager of Renewable Fuels, my
13 responsibility is to procure and trade various biofuels and
14 arrange logistics.

15 I have been in this position for seven years, and
16 have been involved in all aspects of the biofuels business.
17 I know and deal with all major U.S. producers of biodiesel.
18 I have personally visited many of the U.S. plants and have a
19 fairly good knowledge of each producer's operations.

20 I also visited and worked with all major
21 producers in Argentina and Indonesia. So my goal today is
22 to explain exactly what went into our purchasing decisions.

23 As you know, biodiesel is not a regular commodity
24 traded in the free market with normal rules of supply and
25 demand. There are many aspects of the biodiesel market and

1 industry that are unique, starting with the fact that the
2 entire market is a creation of the U.S. Government which
3 controls the supply and demand through the RFS mandate.

4 Over the period of 2014 through 2016, there was a
5 large increase in demand due to a higher RFS mandate set by
6 the EPA. Biodiesel demand is created from the D-4 and D-5
7 mandate as it is the primary fuel in each category. The
8 demand was particularly strong in 2016 due to a 500 million
9 gallon increase year over year.

10 This was followed by a proposal for 2017 adding
11 600 million gallons. This demand for RINs could only be met
12 by imports. It is worth noting that the EPA set these
13 aggressive targets by looking at the anticipated imports.

14 As a result, our purchases of biodiesel increased
15 significantly in 2016 from all sources, both domestic and
16 imports. We purchased as much as we could from all domestic
17 suppliers. We bought imports for under-served locations
18 that were not effectively served by domestic suppliers.

19 The only way to meet the sharp increases in the
20 mandate was through imports. Almost all the biodiesel
21 producers in the U.S. are located in the Midwest, closer to
22 feedstock production locations, and they cannot serve
23 coastal markets efficiently.

24 The only practical way to transport biodiesel
25 from the Midwest to coastal locations would be by rail,

1 which is inefficient, expensive, and frequently unreliable.
2 Railcars carry 25,000 gallons of fuel at a time, which then
3 has to be placed into a transloader, loaded onto trucks, and
4 then driven to stores.

5 In comparison, imports arrive at ports and ships
6 containing 9 million gallons of fuel placed in special
7 terminals which allow more efficient loading onto trucks.

8 Given these factors, we established new terminal
9 capacity in Florida, North Carolina, Maryland, and Virginia,
10 where none of the Petitioners or responding U.S. producers
11 even have production.

12 We also established new terminals in Alabama and
13 Georgia, each of which has only one domestic producer who
14 can't serve that entire region. There are important
15 qualitative reasons in purchasing biodiesel such as quality
16 and reliability. While we are constantly looking for new
17 U.S. sources of fuel, some of the plants represented are so
18 unprofessional we cannot take on the quality risks involved
19 with them shutting down our trucking customers.

20 Another important consideration is the
21 reliability of RINs. As you know, RINs are attached to each
22 gallon of biodiesel and could be traded to refiners which
23 are obligated parties under the RFS. RINs have value and
24 must be validated. This means that the names and the
25 credibility of the supplier supporting the RINs matter in

1 purchasing biodiesel.

2 Some of the U.S. producers have been convicted of
3 RIN fraud. You can understand why we don't deal with them
4 anymore. I want to stress that within these constraints we
5 bought every single gallon of biodiesel from domestic
6 suppliers that we practically could.

7 I reviewed the list of U.S. producers shown on
8 page 3.3 of the public staff report. In 2016, virtually all
9 of our regular suppliers on that list were completely sold
10 out and could not give us any more volume.

11 As I mentioned, there are some suppliers from
12 which we refuse to buy due to past quality and reliability
13 reasons. Let me give you some specific examples.

14 First on the list is ADM. We are one of their
15 largest customers. ADM is considered integrated because
16 they have--they also have soybean crush capabilities. So
17 they actually usually sell out well in advance of each and
18 every month.

19 AGP, Ag Processing, is another producer that
20 consistently sells out all of the product that they can
21 make. Cargill is another integrated supplier, and I can
22 guarantee you that they have been maxing out their
23 production to the point that they're even searching for ways
24 to expand.

25 Crimson is a plant in California that has no

1 problem selling out. It is also worth nothing that this
2 plant benefits from additional LCFS credits, and the subject
3 importers have not shipped a gallon to this market.

4 Future Fuels, they're a nonintegrated supplier
5 and I can tell you first hand they also max out production.

6 High Plains BioEnergy. Their Oklahoma plant was
7 sold out all of 2016, and every year since I can remember.
8 And then they acquired a broken plant in Missouri which
9 needed some investments. This is a good example of a plant,
10 while broken, could be overstating their capacity. But in
11 reality, it just needed an investment and better management.
12 Once this happened towards the end of 2016, it quickly sold
13 out.

14 REG, sold out. We even sold REG product in
15 markets like Houston because their sales were beyond their
16 production capabilities. In other words, they had more
17 demand in an imported market like Houston, so they came to
18 us to try to buy product.

19 RBF. Their trader told me they had a profitable
20 year in 2016, and we both purchased and sold to them. This
21 is a large plant. They mentioned that they I think did 150
22 million gallons, and a lot of their problems are around
23 logistical bottlenecks. I think that they said that they
24 were going to invest \$25 million into probably helping with
25 some of those bottlenecks.

1 I think it is also worth noting that a plant that
2 can run profitably in 2016, the largest year of imports, you
3 know, that would be I believe the largest plant in the
4 United States, 150 million gallons right where imports are
5 occurring, can still run at very high volumes in a
6 profitable way.

7 Integrity, we did not buy from because they sold
8 us off-spec fuel which caused many of our trucking customer
9 vehicles to shut down on the side of the road.

10 Western Dubuque was convicted of RIN fraud.
11 However, they still have managed to sell out for the past
12 several years, and we did start buying from them again.

13 World Energy. We don't deal with this company
14 because they owed us millions of dollars that they refused
15 to pay back when we had to start a legal proceeding to get
16 the money back.

17 There are a couple of small companies on this
18 list that I'm not very familiar with. It is expected that
19 they have unique challenges from being small and having to
20 fight for U.S. feedstock. However, imports stealing their
21 demand is not a problem.

22 One that we don't deal with, but they're a small
23 plant that testified, I guess, White Mountain, they said
24 that they make 3 million gallons, or made 3 million gallons
25 of biodiesel. To put that into perspective, we have a

1 truckstop in Gary, Indiana, that could consume their entire
2 plant. So this is tiny.

3 In summary, we were trying hard to buy from all
4 sources in 2016 and did increase year-over-year. With the
5 domestic producers virtually all sold out, the only
6 additional source of biodiesel was imports. It really was
7 an issue of supply rather than any favorable pricing from
8 imports.

9 Of course pricing is always a consideration, but
10 in our experience imports were not generally priced lower
11 than the domestic products.

12 I understand that an important part of the
13 Commission's analysis is comparing prices of domestic
14 products with that of imports. Let me tell you a bit about
15 how we buy and set prices of biodiesel so that you can make
16 a fair comparison.

17 An important point to note is that there can be a
18 relatively long time between the time we buy biodiesel and
19 when the product is shipped to us. For imports, we execute
20 fixed price contracts months before the actual shipment is
21 made. On average, the time between contract and shipment is
22 around four to six months, but can be much longer. After we
23 buy and ship the product, it is sold to Musket which blends
24 the fuel into a retail blend of up to B-20, and then
25 distributes to the--the fuel to the Love's retail locations.

1 Thus, it often takes 9 to 12 months from the time
2 the fuel is purchased and priced until delivered into our
3 truckstops. The time frame is much shorter for domestic
4 products.

5 We generally enter into floating contracts with
6 domestic producers against heating oil months before
7 shipment, but we don't fix the price until a month or a few
8 days before shipment.

9 For example, an import contract that shipped in
10 October 2016 could have been priced in March 2016; whereas
11 the pricing of a domestic product shipped at the same time
12 would have likely been set in September or October 2016.
13 These time spreads could easily represent 50 cents per
14 gallon.

15 Our importers questionnaire which shows the
16 quarterly quantity and value of our imports was based on
17 date-of-import and not based on when prices were actually
18 set. It would not be correct to compare this data with
19 domestic purchases for the same quarters because you're not
20 looking at purchases made and prices set in the same time
21 period. To make a better apples-to-apples comparison, I
22 would suggest comparing the importers prices based on
23 contract dates to the domestic prices based on shipment
24 dates.

25 It is also important to recognize pricing

1 differences by region. Many of the domestic producers
2 listed are selling into states that have additional
3 incentives that the importers do not even capture. These
4 state incentives are built into the prices paid to
5 suppliers. Examples of state incentives occur in
6 California, Minnesota, Illinois, Oregon, Washington, Iowa,
7 and some others.

8 In California alone this biodiesel credit can be
9 worth over \$1 per gallon. In Illinois it can be worth over
10 \$2 per gallon, which means that prices for domestic products
11 are generally much higher in these states.

12 Subject imports have never touched a single state
13 mentioned above. On many key points the Petitioners have
14 misstated facts and misled the Commission. This is the case
15 in their brief on Critical Circumstances. Virtually all
16 imports by BioSphere that were imported after the filing of
17 the Petition were from contracts that were signed prior to
18 the filing of the Petition, and in fact we booked and
19 shipped significantly less biodiesel after the filing of
20 the Petition in 2017 compared to the same time period in
21 2016.

22 There is absolutely no rush to beat the clock,
23 and there is no basis for a finding of Critical
24 Circumstances.

25 Thank you. Chris and I look forward to answering

1 any questions that you may have.

2 STATEMENT OF LEONARD FEDERICO

3 MR. FEDERICO: Good afternoon. My name is Len
4 Federico, and I am a vice president at Louis Dreyfus,
5 Claypool Holdings LLC, or LDCCH.

6 LDCCH is a subsidiary of Louis Dreyfus Company
7 Agricultural Industries LLC, LDCAI, a significant U.S.
8 producer. LDCCH resells LDCAI's biodiesel produced in the
9 U.S. and also imported biodiesel from Argentina in 2016 and
10 2017.

11 I have been in my current position since 2006,
12 and in the biodiesel and related business sectors for over
13 10 years. I will address two points today from my unique
14 perspective, given that the two entities are a U.S. importer
15 and a U.S. producer.

16 First, imports increased because mandated volumes
17 increased and the U.S. industry could not readily supply
18 this demand.

19 Second, the Commission correctly found in the
20 preliminary decision that LDCAI is a significant U.S.
21 producer whose views and data should be considered in this
22 investigation along with others in the U.S. industry.

23 LDCAI is a profitable U.S. producer, and its
24 success has nothing to do with its import business. In
25 fact, LDCCH imported in 2016 because it could not meet all

1 of its customers' demand with its U.S. production. The same
2 can be said more generally.

3 Why did U.S. demand for biodiesel increase? The
4 reason is increasing mandate levels; specifically,
5 increasing demand for RINs by obligated parties to certify
6 their compliance with rising advance biodiesel mandates.

7 Why have imports increased? Biodiesel imports
8 increased to meet demand that the U.S. biodiesel industry
9 could not feasibly supply. This increased demand for RINs
10 and related increase in prices bid for RINs pulled imports
11 of Argentine biodiesel to the United States.

12 Why couldn't this increased demand be supplied
13 from the U.S. industry? And why were imports necessary?
14 Here we have to talk about not just productive capacity, but
15 the ability to load out, ship, and deliver the product cost
16 effectively to the customer's delivery location. Louis
17 Dreyfus Company chose to build an integrated soybean crush
18 and biodiesel facility in the United States and completed
19 construction in 2007.

20 In the decade since, increases in mandated demand
21 have caused some periods of extraordinary margins,
22 notwithstanding imports. If a plant could not run fully
23 during one of these high-margin periods, especially in the
24 fourth quarter of 2013 and the fourth quarter of 2016, we
25 suspect that the various measures of capacity the

1 Petitioners cite overstate the U.S. industry's practical
2 capacity to supply domestic customers.

3 Out of the U.S. biodiesel producers, what creates
4 such a spectrum of capacity utilization and profitability
5 across plants, with some running at full operating capacity,
6 some at reduced capacity, and some almost never running at
7 all? It comes down to location, quality, and size.

8 Let's start with location. Proximity to
9 feedstock and to demand is critical in this industry.
10 Domestic transportation, whether in truck or railcars, is
11 expensive. The long-term success rate of a stand-alone
12 biodiesel facility is relatively low because that extra cost
13 of domestic transportation is material, versus variable
14 costs and therefore long-term industry margins.

15 Quality is critical for both the biodiesel and
16 the RINs. The cost to a refiner or a distributor of
17 poor-quality biodiesel or RINs from just one transaction can
18 quickly run into millions of dollars of outright cost, as
19 well as reputational costs.

20 Essentially, the break-even value of biodiesel is
21 the value of the conventional diesel fuel it replaces, plus
22 the value of compliance with the RFS, represented by the
23 RIN, plus any tax credits, less the cost of transporting,
24 handling, and blending the biodiesel with renewable fuel.
25 It's an equation.

1 Since the prices of all the components are
2 dynamic and only partially dependent on one another, the
3 margin derived from blending biodiesel can be highly
4 volatile, and net positive blend margins to truckstops and
5 other end users can be highly transient.

6 For example, if Saudi Arabian political
7 developments result in the price of ultra-low sulfur diesel
8 futures going up by 5 cents per gallon, the blending margin
9 opens and demand appears. This is not a hypothetical. It
10 happened on Monday.

11 Size, therefore, creates the ability to transact
12 when blend margins are open. For example, if a given USDA
13 crop report forecasts increased soybean production, the
14 price of soybean oil and therefore the biodiesel from which
15 it's made, falls relative to diesel, all other things being
16 equal. RIN prices being among the other things unchanged,
17 margins for the hypothetical blend are widened, leading him
18 to want to purchase large quantities while the arbitrage is
19 open.

20 The relative value of biodiesel to conventional
21 diesel fuel thrives the transaction, and on the date the
22 transaction is agreed, rather than on the date on which
23 goods are shipped or the fuel is burned in someone's vehicle
24 or furnace.

25 If the hypothetical large truckstop wants to buy

1 six months of biodiesel on the crop report day because the
2 blend margin has opened, we need to be able to sell six
3 months' worth of biodiesel on that day. Our size permits
4 this and provides production economies of scale that are
5 normal in the commodity business.

6 We built the biodiesel plant, sized the process
7 all of the soybean oil produced by the co-located soybean
8 processing plant. This is the same model seen at successful
9 biodiesel and food oil plants globally. Co-locating saves
10 domestic transportation costs and also saves significantly
11 on fixed costs. One plant manager oversees both facilities.
12 Material handlers unload beans and load out meal in
13 biodiesel. Maintenance services both facilities. The list
14 goes on.

15 So to sum up, LDCAI is a profitable U.S. producer
16 because of location, quality, and size. LDCCH began
17 importing in 2016 because imports were necessary to satisfy
18 customers' demand for RINs in excess of LDCAI's domestic
19 production.

20 The final critical point is that LDCAI is a U.S.
21 producer focused on domestic production. Petitioners have
22 argued that LDCAI should be excluded from the domestic
23 industry. LDCCH resells the biodiesel that LDCAI process
24 produces, and it also imported some biodiesel starting in
25 2016 to meet the demand.

1 The Commission correctly concluded that these
2 limited imports that began in 2016 did not in any way shield
3 LDCAI from subject imports. As I said before, LDCAI built
4 and operates an integrated soybean crush plant, biodiesel
5 and glycerine refinery in Claypool, Indiana, that can
6 produce in excess of 95 million gallons annually. LDCAI has
7 invested over \$70 million U.S. dollars in the biodiesel
8 facility since it began operations in 2007, \$25 million of
9 that in the last 3 years because of its profits from and its
10 view of the forward prospects for biodiesel production in
11 the U.S.

12 Frankly, we also believe the assertions that
13 imports will harm the domestic industry are overwrought and
14 unjustified. The EPA Administrator has recently indicated
15 that final 2018 Mandate levels are likely to be equal to or
16 greater than what the agency proposed. While the biodiesel
17 tax credit is currently lapsed, it has been continuously,
18 though not always punctually, renewed since its inception.
19 And bills have been introduced in both Houses of Congress to
20 reinstate the credit again.

21 We therefore respectfully disagree with the
22 Petitioner's forecast of imminent doom. Regardless of
23 imports, the future of the domestic indicia is promising.
24 Thank you. That concludes my direct testimony. I look
25 forward to your questions.

1 STATEMENT OF ANDREW SZAMOSSZEGI

2 MR. SZAMOSSZEGI: Good afternoon. I'm Andrew
3 Szamoszegi, a principal at Capital Trade. I will be
4 delivering the economic presentation on behalf of the
5 Argentine and Indonesian Respondents.

6 Slide two is an overview of my testimony. First
7 I will discuss the cumulated subject imports. Then I will
8 discuss the economic factors as they relate to the
9 decumulated imports from Indonesia.

10 Slide three summarizes the main conditions of
11 competition.

12 First, the market biodiesel is a regulated market
13 where demand is set by federal mandate. Second, the BTC
14 reduced compliance costs and supplemented the earnings of
15 domestic producers during 2014 to 2016.

16 Slide four shows consumption tracked the rising
17 mandates over the Period of Investigation. It also shows
18 the large spikes in consumption that occurred during the
19 second half of 2013 and 2016 when the BTC was set to expire.

20 Third, the cost of complying with the RFS mandate
21 is reflected by the value of the RINs that are attached to
22 biodiesel that is produced or imported.

23 Slide six--slide five shows the D-4 RIN values
24 trended upwards during the POI, but particularly in 2016.

25 Fourth, there is a geographic mismatch between

1 the production and consumption of biodiesel in the U.S.
2 market. Production is concentrated in the Midwestern United
3 States, while a large proportion of consumption occurs on
4 the Coasts.

5 Fifth, a number of factors prevent existing U.S.
6 capacity from fully supplying RFS-mandated consumption
7 levels. Consequently, imports are necessary to meet demand
8 and the EPA provides pathways that enable imported biodiesel
9 to participate in the U.S. market.

10 This slide summarizes the EPA's concerns
11 regarding U.S. supply constraints. And they are: feedstock
12 sourcing and related infrastructure; feedstock pricing;
13 transportation infrastructure; distribution capacity.

14 And there's also industry literature that
15 examines these constraints more closely and comes to the
16 same conclusions as the EPA.

17 The cumulated subject imports had no adverse
18 volume effects. The subject imports were drawn into the
19 market because the domestic production facilities were
20 unable to meet rising RFS mandates under prevailing
21 conditions of competition.

22 The lack of adverse volume effects is underscored
23 by the relationships in the following slide.

24 Going clockwise, the first panel to the left
25 shows a positive and statistically significant relationship

1 between the price spread between biodiesel and petrodiesel
2 and the volume of subject imports. This suggests that
3 increasing volumes of subject imports were associated with
4 an increasing price spread, and therefore increasing demand
5 for them.

6 The second panel shows the relationship between
7 the subject imports and the price of the D-4 RIN. The
8 larger volumes of the subject imports are associated with
9 higher D-4 RIN values.

10 The third panel demonstrates higher import levels
11 are associated with higher domestic production. And the
12 final panel in the lower left-hand corner shows that the
13 highest levels of the subject imports tend to occur in
14 months when domestic sales are also high.

15 If the subject imports were having injurious
16 effects, one would expect these relationships to be
17 negative. Yet in every case the slope is positive, and the
18 relationships are statistically significant. Collectively,
19 these graphs demonstrate the subject imports entered the
20 market in response to favorable demand signals and did not
21 have adverse volume effects.

22 Indeed, the domestic industry could not have
23 supplied growing U.S. demand on its own. The domestic
24 industry's capacity constraints are underscored by
25 Petitioner's nonsubject imports which generally service

1 areas far away from their domestic plants.

2 The next slide illustrates that ADM services
3 coastal and northern demand with nonsubject imports.
4 Biodiesel imports from Germany entered through New Jersey
5 and Connecticut. Imports from Canada entered through 13
6 northern and coastal states. The public data also show that
7 REG serviced coastal demand in the Southeast with imports
8 from Australia and demand in New York, Michigan, and
9 Minnesota with imports from Canada.

10 Now why wasn't this demand serviced by U.S.
11 plants with excess capacity? As you're hearing from this
12 panel and will hear further, the major producers do not have
13 excess capacity. And as the EPA concludes, reported excess
14 capacity cannot economically service domestic demand for a
15 number of reasons.

16 To assess the price effects, the Commission looks
17 at the frequency of underselling and whether the subject
18 imports depressed or suppressed prices for the domestic like
19 product.

20 Based on the data in the prehearing report,
21 underselling is mixed. As an initial matter, many of the
22 underselling observations occur in the product category that
23 is unimportant to the domestic industry.

24 Second, several of the underselling observations
25 are explained by the fact that Indonesian Biodiesel is sold

1 with the less valuable D-6 RIN, rather than the D-4 RIN, and
2 is a less valuable product. Thus, the frequency and volume
3 of underselling has not been significant. As was the case
4 in the preliminary investigation, the record does not
5 indicate the domestic producers suffered from a cost-price
6 squeeze, either. In fact, the industry's raw materials to
7 net sales ratio expanded over the POI.

8 The profitability of the domestic biodiesel
9 industry is dependent on the interaction among the price of
10 diesel and feedstock costs, and the presence or absence of
11 BTC revenues.

12 Slide 10 provides a longer term perspective on
13 fluctuations in retail prices, including a biodiesel blend.
14 The key points are that biodiesel price is a function of the
15 price of petrodiesel and that diesel prices declined over
16 the Period of Investigation.

17 Slide 11 shows this decline for unblended heating
18 oil, a product that many industry players tie the prices to.

19 Slide 12 shows the price trends in soy oil over
20 the POI. Soy oil is a primary input for many U.S. producers
21 of biodiesel. This price also declined during the POI, but
22 the decline was less pronounced than it was for heating oil.
23 This relationship between input costs and the price of
24 petrodiesel is what determines industry profitability, and
25 importantly these factors are determined independently of

1 the subject imports.

2 The disconnect between the subject imports and
3 the industry performance is underscored by the record in the
4 prehearing report.

5 To summarize, nearly all of the commercial and
6 financial and employment indicators improved over the POI,
7 despite the growth of the cumulated subject imports. This
8 fact pattern is consistent with the rising tide of increased
9 demand drawing in the subject imports and generating
10 positive outcomes for the domestic industry as a whole.

11 Our threat arguments are made in the Respondent's
12 brief, so I'm just going to focus on vulnerability. The
13 domestic industry is not in a vulnerable state.

14 First, it has been profitable for at least three
15 straight years.

16 Second, it's interim performance is not due to
17 the subject imports, but due to regulatory uncertainty. The
18 near-term absence of the BTC and the advanced buying that
19 took place in 2016.

20 Third, if the BTC is retroactively imposed, the
21 domestic industry actually will be profitable as REG
22 indicated in their recent press release which you see on
23 this particular slide.

24 Fourth, if the BTC is not retroactively imposed,
25 compliance costs will rise as reflected by an increase in

1 the D-4 RIN, leading to higher prices for domestic
2 biodiesel. And I think I heard you--you heard the same
3 thing this morning.

4 Fifth, federal mandates ensure stable to rising
5 demand for biodiesel.

6 If the Commission analyzes subject imports for
7 Indonesia on a decumulated basis, it should consider a
8 number of additional factors that support a negative
9 determination. These factors are treated more
10 comprehensively in Indonesia's prehearing brief.

11 Conditions of competition. Imports from
12 Indonesia are subject to additional conditions of
13 competition summarized in slide 15. These will be discussed
14 by Mr. Cummings and Ms. Dunphy.

15 The next slide shows from an economic perspective
16 the lower value of PME due to its geographical and physical
17 limitations, and the fact that it is attached to a lower
18 value of the D-6 RIN. These are important factors that
19 distinguish PME from Argentine biodiesel that is produced
20 from soy oil.

21 Most importantly, demand for PME is tied to the
22 overall RFS due to the ethanol blend law. As Ms. Dunphy
23 will describe, the blend wall is effectively equal to 10
24 percent of the amount of gasoline consumed. In recent
25 years, this point is reached before the RFS-mandated 15

1 billion gallons of ethanol are consumed. This blend wall
2 leads to a shortfall of D-6 RINs which in turn creates
3 demand for the D-6 RIN generated by PME.

4 This blend wall has a significant impact on
5 imports from Indonesia. It provides a separate rationale
6 for the importation of Indonesian biodiesel into the U.S.
7 market, apart from the separate mandate and domestic
8 capacity constraints that pull Argentine biodiesel into the
9 U.S. market.

10 Since the imports from Indonesia were drawn into
11 the market in part by market dynamics related to the ethanol
12 blend law, they could not have had significant adverse
13 volume effects on U.S. producers of biodiesel who are
14 supplying biodiesel to meet a different mandate.

15 The imports from Indonesia did not have
16 significant price effects, either, as detailed on the
17 Indonesian Respondent's prehearing brief. Any underselling
18 in the Commission's data reflects two fundamental factors.

19 First, PME must be discounted relative to SME
20 because it is a less valuable fuel.

21 Second, the D-6 RIN is worth less than the D-4
22 RIN, as you heard this morning. These two facts alone will
23 generate underselling, but this underselling has no impact
24 on domestic producers.

25 These producers sell a product that allows

1 purchasers to comply with the Advance Biofuel Mandate which
2 cannot be met by purchasing Indonesian PME. This analysis
3 matters for both the current injury analysis and the threat,
4 if the Commission decides to cumulate.

5 Third, the Indonesian presence in the pricing
6 products most important to the domestic industry was
7 limited. The end of the BTC and the sharp declines in the
8 value of the D-6 relative to the D-4 RIN during 2017 provide
9 a natural experiment as to the impact of the Indonesian PME
10 on domestic average unit values and domestic profitability.

11 The next two confidential slides juxtapose
12 semiannual Indonesian imports with domestic net sales AUVs
13 and operating income. The first slide shows that the
14 absence of Indonesian PME during 2017 did not lead to an
15 increase in domestic unit values.

16 The next slide shows that the absence of the
17 Indonesian PME did not lead to an increase in domestic
18 operating profits in 2017. Domestic profits are determined
19 by other factors such as the price of petrodiesel, feedstock
20 costs, and the status of the BTC, not by the presence or
21 absence of PME from Indonesia.

22 This concludes my testimony. I look forward to
23 your questions.

24 STATEMENT OF BERND JANZEN

25 MR. JANZEN: Thanks Andrew. Good afternoon

1 Chairman Schmidlein and members of the Commission. I'm
2 Bernd Janzen with Akin Gump, appearing on behalf of Wilmar.

3 Wilmar is one of only two Indonesian producers
4 qualified to supply the U.S. market under the RSF Program.
5 With me here today are Ed Sim and Kelly Slater of Appleton
6 Luff, appearing on behalf of Musim Mas, the only other
7 qualifying Indonesian producer.

8 Mr. Szamesszegi just shared with you some
9 observations about the conditions of competition, generally,
10 and what they mean for the statutory injury and threat
11 factors, but he has also raised a number of issues specific
12 to the Indonesian subject imports.

13 We would now like to continue the focus on
14 Indonesia and turn it over to two witnesses who will discuss
15 commercial and regulatory issues unique to Indonesian
16 palm-based methyl ester or PME.

17 First, John Cummings will speak from Wilmar's
18 perspective about the distinct market conditions and the
19 limitations faced by suppliers of Indonesian PME. Then
20 Sandra Dunphy, of Weaver, will address the particular manner
21 in which the RFS Program circumscribes and defines the
22 participation of Indonesian PME in the U.S. market. And
23 with respect to Ms. Dunphy, I just want to note that she is
24 neutral, is not taking any position in this litigation, and
25 is appearing here today at the request of the Indonesian

1 Respondents solely in her capacity as a leading expert on
2 the RFS Program and its compliance mechanisms.

3 John, please go ahead.

4 STATEMENT OF JOHN CUMMINGS

5 MR. CUMMINGS: Good afternoon Madame Chairman
6 and members of the Commission. My name is John Cummings and
7 I'm the Director of Biodiesel for Wilmag Oleo North America,
8 LLC, or Wilmar. I appreciate the opportunity to appear
9 before you today.

10 Wilmag is a U.S. importer of palm-based methyl
11 ester biodiesel, in short, PME, from our related Indonesian
12 producers. I've spent most of the last 10 years dealing day
13 in and day out with the regulatory framework for PME, which
14 is fundamentally different from the framework for other
15 biofuels, including soy methyl ester or SME.

16 I'd like to start with a couple of general
17 points. The Petitioners claim that they can satisfy all the
18 rapidly growing U.S. demand for biodiesel. That's nonsense.
19 I've visited many U.S. production plants doing due diligence
20 for potential investments and there are many factors that
21 limit their ability to run at their full nameplate capacity.

22 One of the main factors is location. Seventy
23 percent of U.S. production is in the Midwest, far from the
24 locations with the greatest demand along the coast.
25 Transportation costs and logistical constraints

1 substantially limit the ability of these plants to supply
2 coastal demand.

3 A second major factor is the inability for many
4 U.S. biodiesel producers to obtain financing to ride out the
5 uncertain timing of the BTC reinstatement. Remember that
6 nobody will purchase biodiesel unless it's cheaper than
7 petro-diesel on a RIN-less basis; meaning, after the RIN has
8 been separated from the physical fuel.

9 The market price floor is less set by
10 petro-diesel and has nothing to do with imports, much less,
11 the relatively small volume of PME for Indonesia that has
12 occasionally supplemented the main source of supply in this
13 market.

14 I'd now like to move to a couple of
15 Indonesia-specific points. Sandra will be providing an
16 overview of the regulatory framework for PME. I would like
17 to focus on what it means from the perspective of Wilmarg's
18 participation in the market.

19 First, the Petitioners have presented you, the
20 Commission, with a seriously distorted picture of the role
21 of PME in the U.S. market. They claim that the U.S.
22 biodiesel market is a normal commodity market, but it's not.
23 What the Petitioners have done is totally obscure the very
24 limited and legally distinct role that Indonesian PME has
25 had in the U.S. market. I put this in the past tense

1 because not one gallon of PME has been imported into the
2 U.S. market since the expiration of the BTC at the end of
3 last year. 2017 is now like some earlier years in which
4 Indonesian PME did not participate in the U.S. market at
5 all. PME is in a unique and fundamentally different
6 position than other biodiesels in the U.S. market.

7 As Sandra will explain in greater detail, the
8 value of the D-6 RIN, the only kind of RIN that PME can
9 generate, is always less than the value of a D-4 RIN, which
10 is the kind of RIN SME generates. The premium of the D-4
11 over the D-6 RIN exists for a number of reasons, but a major
12 one is that the D-6 RIN can never be used to satisfy the D-4
13 mandate, while the D-4 RIN can always be used to satisfy
14 both the D-4 and the D-6 mandates. In short, the D-6 RINs
15 are relegated to a second-class status and are always
16 inherently worth less.

17 Another difference is that PME is not even
18 deemed to constitute biomass-based diesel for the purposes
19 of the RFS. Why does that matter? Because it means that
20 the EPA has ruled PME to be unqualified for the purposes of
21 filling the mandate for biomass-based diesel and has blocked
22 PME from participation in the RFS Program, except for a very
23 restricted grandfathered volume from only two Indonesian
24 plants. To use an analogy, if the biomass-based diesel
25 category of the RFS is compared to a toll highway, PME has

1 been driving on the feeder road since the beginning
2 searching for an onramp, but instead hitting one red light
3 after another. In short, PME does not compete with SME for
4 the same RFS mandate.

5 Also, Petitioners claim that non-RFS qualified
6 Indonesian producers could potentially supply the U.S.
7 market. This is also nonsense. Under the RFS framework, it
8 would be economically irrational to forego the value of the
9 RIN generated under the RFS. It is the value of the RIN
10 that makes it economic to import PME into the U.S. market.
11 I cannot imagine Wilmarg or any other Indonesian producer
12 choosing to lose money to do such a thing.

13 Also, physical differences between PME and SME
14 limit participation of PME in the U.S. market. PME has
15 different cold properties than SME. The temperature at
16 which it starts to congeal and those starts to inhibit flow
17 and fuel filters, also known as a Cloudpoint, is in the
18 range of 55 to 60 degrees Fahrenheit. On a day like today,
19 you could not use PME. SME, by contrast, has a Cloudpoint
20 around 32 to 35 degrees Fahrenheit. So on a day like
21 today, you could use SME. Because of this physical
22 difference between PME and SME the geographic zone into
23 which we sell our product is limited to the southern tier of
24 the country and along the southeast and Gulf Coast.

25 Also, many of the major chains you know, such as

1 Exxon, Chevron, Marathon, Philips 66, and Tesoro to name a
2 few, refuse to take PME. They certainly don't agree that
3 PME is a part of the biodiesel commodity market. Finally,
4 many fuel storage companies do not allow our product in
5 their terminals due to Cloudpoint restrictions.

6 The factors I just mentioned have important
7 implications for pricing. Again, PME is worth less than SME
8 for both regulatory and physical reasons. Due to this
9 double whammy on the value of PME; Wilmarg's customers seek
10 significant discounts, ranging from 5 to 30 cents per gallon
11 on the physical volume alone, not taking into account RINS
12 or BTC.

13 For all these reasons, Indonesian PME is a
14 fundamentally different product than SME. Do not believe
15 the Petitioners when they tell you otherwise. With that,
16 I'll conclude and look forward to answering your questions.

17 STATEMENT OF SANDRA DUNPHY

18 MS. DUNPHY: Thank you, John.

19 Please let me reiterate what Mr. Janzen had said
20 previously. I am here as an impartial witness on behalf of
21 both sides actually. My client list includes both the
22 Petitioners and the Respondents, so I am here -- and
23 petroleum refiners as well. So I am here as an impartial
24 witness.

25 Let me start with my official testimony. Good

1 afternoon, Chairman Schmidtlein and members of the
2 Commission. My name is Sandra Dunphy and I am the Director
3 of Energy Compliance Services at Weaver and Tidwell based in
4 Houston. Weaver is a professional services firm and our
5 energy compliance services practice is the largest provider
6 of RFS and gasoline at a station and consulting services in
7 the U.S.

8 I'm here today to highlight a few major points
9 in the white paper that Weaver prepared for our clients,
10 Wilmargin and Musim Mas, on the RFS Program. The white paper
11 provided an overview of the RFS Program, a detailed
12 description of RIN, information related to palm methyl ester
13 or PME, and RINs generated by U.S. importers of this
14 product.

15 In December of 2007, Congress included
16 provisions in the Energy Independence and Security Act,
17 known as EISA, that requires all renewable fuel production
18 facilities to make fuels that met a minimum 20 percent
19 greenhouse gas reduction versus the petroleum fuels they
20 displaced in order to be able to generate RINs.

21 EPA determined that PME did not meet that
22 greenhouse gas reduction requirement and so PME is not
23 considered to be biomass-based diesel for the purposes of
24 the RFS Program. However, Congress also allowed renewable
25 fuel production facilities that had commenced construction

1 prior to the passage of EISA on December 19, 2007, known as
2 grandfathered facilities, to have the ability to generate
3 RINs for renewable fuels using a broad range of feedstocks
4 even though these fuels may not meet the minimum 20 percent
5 greenhouse gas reduction; thus, EPA only allows PME produced
6 by grandfathered facilities, such as those operated by
7 Wilmarg and Musim Mas to qualify for the RFS.

8 The only type of RIN that can be generated by a
9 grandfathered facility is a generic renewable fuel or D-6
10 RIN, the same type of RIN that cornstarch ethanol plants
11 generate, whether they be new or grandfathered facilities.

12 Biodiesel produced from soybean oil, as John as
13 pointed out, on the other hand is able to generate an
14 advanced or D-4 RIN. D-4 RINs can be used by obligated
15 parties to satisfy the RFS requirements for D-4, D-5, and
16 D-6 categories; however, D-6 RINs can only be used to
17 satisfy what we call the conventional biofuel category. As
18 a result, D-4 RINs have higher value than the D-6 RINs
19 because of their greater utility. Because qualifying PME
20 can generate D-6 RINs when imported to the U.S. these RINs
21 help the obligated parties fulfill the largest part of their
22 annual compliance needs, the conventional biofuel that's
23 sometimes called corn ethanol portion of the total RFS
24 category.

25 Since 2013, it has become increasingly difficult

1 for obligated parties to fulfill this requirement because
2 the market has hit the ethanol blend wall, the point at
3 which all gasoline in the U.S. is blended with the federal
4 maximum volume of 10 percent ethanol. The mandated RFS
5 annual volume for conventional biofuel of 15 billion gallons
6 exceeds what can be achieved through ethanol blending alone,
7 which this year is approximately 14.5 billion gallons.

8 The obligated parties turn to qualifying PME
9 from Indonesia because not only did it not impact the blend
10 wall, but it had the ability to generate D-6 RINs. Also,
11 during this time the blender's tax credit of a dollar per
12 gallon was in effect, which therefore improved the economics
13 for blending and using biodiesel, in general. That, when
14 combined with the ability to garner 1.5 D-6 RINs per gallon
15 that could be used to cover at least a portion of the
16 shortfall in the volume of D-6 RINs made qualifying PME
17 attractive for compliance purposes.

18 The other factor that made these D-6 RINs of
19 further interest to obligated parties was the fact that all
20 of the D-6 RINs that were generated by importers of
21 Indonesian PME were verified under a Quality Assurance Plan
22 or QAP. The QAP was established by EPA to provide a means
23 for ensuring that RINs are properly generated through audits
24 of renewal fuel production conducted by independent third
25 parties.

1 Weaver, my company, was the first QAP auditor
2 approved by EPA after publication of these regulations.
3 Weaver was hired by Wilmarg's and Musim Mas's biodiesel
4 production facilities to be their QAP auditor. Weaver must
5 also contract with each of these companies U.S. importers
6 for each individual shipment as the importers are the actual
7 RIN generators for the biodiesel. Our initial work was to
8 confirm that Wilmarg's and Musim Mas's facilities did, in
9 fact, qualify as grandfathered facilities.

10 We then had to confirm that their PME met the
11 definition of renewable biomass. In other words, it was
12 produced from palm fruit harvested from existing
13 agricultural land cleared or cultivated and non-forested and
14 either actively managed or fallow as of December 19, 2007.
15 The QAP imposes stringent requirements on the land and
16 feedstock which limits the quantity of PME that can be
17 produced by Wilmarg and Musim Mas for export to the U.S. If
18 either Wilmarg or Musim Mas were to attempt to secure their
19 palm oil feedstock solely from third parties, such as
20 brokers or palm oil traders, the resulting PME would very
21 likely not qualify under the RFS QAP Program.

22 Tracing the palm oil back to the estate in which
23 the individual qualifying palm tree was grown is difficult
24 enough when the estates and crushing mills are owned by one
25 single entity, no less when dealing with several third

1 parties who do not fully understand the regulations or the
2 importance of complying with them in their entirety. For
3 this reason, the only entities that Weaver has agreed to
4 perform QAP work for in Indonesia to date are integrated
5 companies who own the palm tree estates, crushing mills,
6 and biodiesel plant.

7 That concludes my statement and I would be happy
8 to answer any of your questions.

9 MS. JEONG: Good afternoon, this is Rosa Jeong
10 of Greenburg Traurig and counsel to BioSphere in this
11 proceeding. I just want to provide a very quick, but
12 important update regarding the issues of critical
13 circumstances. Shortly before lunch, the Department of
14 Commerce announced its final determination in the
15 countervailing duty investigation of biodiesel from
16 Argentina in which Commerce Department found no critical
17 circumstances with respect to any exporter producer from
18 Argentina.

19 We're obviously still awaiting for Commerce's AD
20 determination, final determination of the AD investigation,
21 but looking at the basis of the Commerce's decision, we
22 believe that Commercial will reach either negative critical
23 circumstances or the volume of imports subject to the
24 critical circumstances finding will be drastically reduced,
25 which will make it even less likely that subject imports

1 will undermine any effects of any AD or CBD order to be
2 issued.

3 Happy to answer any questions on this issue.
4 And we also have our colleagues from the law firm of Vorys,
5 Sater. Kimberley Young and Fred Waite will be here to
6 answer any questions about the critical circumstances issue.
7 Thank you.

8 MR. PORTER: And Madam Chair with that -- and
9 that concludes respondents formal presentation. We'd like
10 to reserve to the extent we have any time, we'd like to
11 reserve that for rebuttal. Thank you.

12 CHAIRMAN SCHMIDTLEIN: Okay, thank you very
13 much. Again, I'd like to thank the witnesses from this
14 afternoon's panel for being here to help us understand this
15 case. And we are going to start with Commissioner
16 Williamson.

17 COMMISSIONER WILLIAMSON: Thank you, Madam
18 Chairman.

19 I too want to thank all the witnesses for coming
20 today and presenting their testimony. Do the observed
21 trends and apparent consumption over the POI reflect changes
22 in underlying demand or were they affected by regulatory
23 development, such as the status of the BTC?

24 MR. PORTER: Commissioner, this is Dan Porter.
25 To just -- are we talking about 2014 and 2016 or just --

1 what period of time would you like us to focus on in
2 particular?

3 COMMISSIONER WILLIAMSON: The period of
4 investigation. 2014, '15, '16, and also the interim period.

5 MR. PORTER: Okay, and your question is what
6 affected changes in demand, correct?

7 COMMISSIONER WILLIAMSON: Right.

8 MR. PORTER: Okay, thank you. I guess, Taylor,
9 do you want to start and then we can go around?

10 MR. DAWSON: Sure. Taylor Dawson. The primary
11 driver of demand would be the mandate. That's the largest
12 incentive. And that really sets the tone. So we saw large
13 increases in the mandate. The Blender's tax credit has an
14 effect, but not the largest effect.

15 COMMISSIONER WILLIAMSON: What effect does the
16 Blender's tax credit have?

17 MR. DAWSON: I would say it adds stability. It
18 can sort of give a windfall of profits to some others and
19 but for the most part, it's not the driving force behind
20 biodiesel.

21 COMMISSIONER WILLIAMSON: Did the pending
22 expiration of 2016 have an effect?

23 MR. DAWSON: On 2015 or '16?

24 COMMISSIONER WILLIAMSON: I guess in 2016, yeah.

25 MR. DAWSON: Uh --

1 COMMISSIONER WILLIAMSON: I mean, it was expired
2 at the end of -- it was scheduled to and it expired at the
3 end of 2016?

4 MR. DAWSON: Not in terms of total production
5 volumes. I mean, it -- a minimal effect.

6 COMMISSIONER WILLIAMSON: Okay. What about in
7 terms of inventories that end 2016?

8 MR. DAWSON: There -- yes, so you --

9 COMMISSIONER WILLIAMSON: Or -- ?

10 MR. DAWSON: -- stockpile right at the end of
11 the year --

12 COMMISSIONER WILLIAMSON: Yeah.

13 MR. DAWSON: -- to capture the tax credit. And
14 you do have a higher production total in December. So there
15 are distortions that it causes, yes. A lot of details that
16 I'm not going to go into, but a plant might have maintenance
17 that -- and they usually plan on that maintenance occurring
18 in, you know, January or February. And they, you know, are
19 going to run as hard as they can in those last months with
20 the tax credit, things like that.

21 COMMISSIONER WILLIAMSON: Any harder than they
22 would have run if the tax credit wasn't expiring?

23 MR. DAWSON: Right, like if you're going to go
24 down for maintenance for three weeks, don't do that when the
25 tax credit's available.

1 COMMISSIONER WILLIAMSON: Okay. What about who
2 holds the -- who holds that increased inventory? Yeah, I
3 raised the same questions this morning, but I --

4 MR. DAWSON: You know, it -- technically, it has
5 to be the buyer, because of the Blender tax credit rules.
6 So to declare for the tax credit, you have to actually
7 invoice the product. Now if some entities have marketing
8 groups, so there could be like a, you know, Louis Dreyfus
9 Marketing or an REG Marketing that they sell it to, I -- so
10 the producer might -- I would just say the buyer. It's a
11 little fuzzy, but --

12 COMMISSIONER WILLIAMSON: Uh-huh. And this came
13 up this morning as to what form. Is it I guess B-90 or B-20
14 of -- I think this morning, they made the point that often,
15 this was before it's blended, or you know, it's blended just
16 a little bit, but not much, and you might then blend it for
17 further later. Is that --

18 MR. DAWSON: That's accurate.

19 COMMISSIONER WILLIAMSON: Is that your
20 experience about how --

21 MR. DAWSON: That is accurate. You splash it
22 with a little bit of diesel, .001 percent or .001, one-tenth
23 of a percent.

24 COMMISSIONER WILLIAMSON: Okay. It's a nice
25 descriptive way --

1 MR. DAWSON: Yeah.

2 COMMISSIONER WILLIAMSON: Thank you. Okay.

3 MR. SZAMOSSZEGI: Commissioner Williamson?

4 COMMISSIONER WILLIAMSON: I'm sorry.

5 MR. SZAMOSSZEGI: If I -- I'm sorry.

6 COMMISSIONER WILLIAMSON: And --

7 MR. SZAMOSSZEGI: Andrew Szamosszegi from
8 Capital Trade.

9 COMMISSIONER WILLIAMSON: Yeah.

10 MR. SZAMOSSZEGI: If I may, I think the record
11 does show, and one of the slides that we put up, did show
12 that the BTC, when it expires, does in the second half of
13 the year incentivize demand and apparent consumption of
14 biodiesel at the end, just before the expiration date.

15 COMMISSIONER WILLIAMSON: Okay.

16 MR. SZAMOSSZEGI: And that subsequent to that,
17 in the first quarter of the following year, if the BTC is
18 not in effect, time is spent drawing down the inventory
19 that's accumulated, so there's less production and
20 consumption at the beginning of the following year after the
21 BTC expires.

22 COMMISSIONER WILLIAMSON: Okay. Good. And
23 going back to the larger question, so the regulatory regime
24 at RFS, those limits are much more important than underlying
25 demand changes or not?

1 MR. DAWSON: Taylor Dawson. Those are the
2 demand changes, the macro demand changes.

3 COMMISSIONER WILLIAMSON: Okay.

4 MR. DAWSON: I would think -- I would say things
5 like expiring tax credit on again, off again are micro and
6 affect quarterly differences, but the underlying macro
7 demand factor is the RIN in RFS and what the mandate is set
8 at.

9 COMMISSIONER WILLIAMSON: Good, okay, thank you.
10 Anybody else want to answer that?

11 MR. JANZEN: Commissioner Williamson?

12 COMMISSIONER WILLIAMSON: Sure.

13 MR. JANZEN: Going back to your original --

14 COMMISSIONER WILLIAMSON: Mr.?

15 MR. JANZEN: Mr. Janzen.

16 COMMISSIONER WILLIAMSON: Yeah.

17 MR. JANZEN: Going back to your original
18 question about what are the key drivers of demand during the
19 POI, the Indonesian respondents agree absolutely it's the
20 RFS mandate, but it's useful to remember that there are
21 different volumetric obligations within the mandate that are
22 separate for the D-4 and D-6 categories. And I would invite
23 John to speak to that.

24 MR. CUMMINGS: Yeah, I think, you know, the PME
25 from Indonesia plays a different role in the RFS. While we

1 don't supply product that generates RINs to go to the
2 biomass-based diesel category, we generate the D-6 RIN,
3 which is important. Sandra touched on the fact that there's
4 this blend wall concept that, you know, we don't want to go
5 over, you know, where ethanol becomes more than 10 percent
6 of the gasoline pool. But what we provide our D-6 RINS that
7 are not ethanol that can be used for compliance in that
8 category. So it's -- it's really -- you know, we sort of
9 help alleviate that blend wall issue with our category of a
10 RIN if that makes sense.

11 COMMISSIONER WILLIAMSON: When you say a blend
12 wall, are you talking about the total amount of say gasoline
13 that's available in ethanol shouldn't be 10 percent more
14 than that?

15 MR. CUMMINGS: Yeah, I guess the --

16 MS. DUNPHY: So yeah, this is Sandra Dunphy.

17 COMMISSIONER WILLIAMSON: Yeah, go ahead. Yeah.

18 MS. DUNPHY: So the blend wall is where every
19 gallon of the gasoline sold in the United States has 10
20 percent ethanol in it.

21 COMMISSIONER WILLIAMSON: Right.

22 MS. DUNPHY: I mean, there's a few gallons of
23 E0, which is clear gasoline, no ethanol in it at all. And
24 there's also some gallons that have 15 percent ethanol, but
25 only in the early months of the year, not in the summer

1 months. It's not allowed in the summer months.

2 So when we say that 10 percent blend wall is on
3 average across all the United States, pretty much every
4 gallon has 10 percent ethanol in it, every gallon of
5 gasoline.

6 COMMISSIONER WILLIAMSON: Okay.

7 MS. DUNPHY: So when you go to the pump on the
8 pump, it says "may contain 10 percent ethanol," that's what
9 they're talking about.

10 COMMISSIONER WILLIAMSON: Okay. And if you go
11 the gas station next door, it's probably going to be -- it's
12 going to be the same?

13 MS. DUNPHY: Yeah.

14 COMMISSIONER WILLIAMSON: Okay.

15 MS. DUNPHY: Possibly so.

16 COMMISSIONER WILLIAMSON: Okay. Okay, thank
17 you.

18 MR. VERGONA: Commissioner?

19 COMMISSIONER WILLIAMSON: Yeah.

20 MR. VERGONA: Sorry, this is Chris Vergona. I
21 just wanted to clarify something, too. I heard you mention
22 B-90 versus B-20.

23 COMMISSIONER WILLIAMSON: Yeah.

24 MR. VERGONA: Just to clarify, you're going to
25 hear the term blending multiple times when people mention

1 blending of B-100. That's to get as Taylor mentioned the
2 .01 percent ULSD --

3 COMMISSIONER WILLIAMSON: That's a splash, yeah.

4 MR. VERGONA: That's a splash for the tax credit
5 purposes.

6 COMMISSIONER WILLIAMSON: Uh-huh.

7 MR. VERGONA: Any time you hear blending "below
8 B-80, that's what is allowed of blender such as ourselves or
9 an obligated party that they can separate the RIN from that
10 molecule of biodiesel.

11 COMMISSIONER WILLIAMSON: Okay.

12 MR. VERGONA: So you're going to hear different
13 terms regarding the blend.

14 COMMISSIONER WILLIAMSON: Okay, thank you. This
15 has been a fascinating lesson today. We didn't know
16 anything about. Turn to the question to overland
17 transportation. This is BioSphere. In the preliminary
18 conference, you asserted that BioSphere's purchase of
19 subject imports -- because domestic producers cannot deliver
20 biodiesel to its Houston facility economically. And I was
21 just wondering, how did you supply your Houston facility
22 prior to 2015 when the subject imports began to enter in
23 significant quantities? So what was happening before 2015?

24 MR. DAWSON: Taylor Dawson. So before 2015, we
25 had numerous different ways of supplying Houston. Thinking

1 back, we actually did have product come in with a tax credit
2 without RINs. Imports have played a part in that market for
3 a longer time than this case even brings up.

4 And we added a lot of capacity and a lot of
5 demand. So we've actually made investments at our different
6 truck stops. And it's approximately a \$200,000 investment,
7 where we break ground, put a bulk tank at the store level,
8 and that's where the blending takes place.

9 So in conjunction with imports, we rolled out a
10 strategy all across coastal markets of putting in these what
11 we call jungi blending systems.

12 COMMISSIONER WILLIAMSON: Interesting. Did you
13 use any domestic biodiesel in Houston before 2015?

14 MR. DAWSON: We used it before and we used it
15 after.

16 COMMISSIONER WILLIAMSON: Okay, so it's -- are
17 you saying that supply was -- I mean, that that -- those
18 import -- that consumption was not economical?

19 MR. DAWSON: So how the market -- Taylor Dawson.
20 How the market actually worked, it's, you know, a moving
21 place. And it doesn't really have to do with economics. It
22 has to do with mixing and matching of supply. So as we're
23 bringing ships and large boats, we're finding terminals
24 where we can put it into our system and building out this
25 system.

1 So we continued buying domestic supply in
2 markets like Houston from companies like REG and RBF, who
3 are petitioners here today. We just bought a lot more of
4 other supply as well. And the market easily could handle
5 it. Because at the end of the day, just because you have --
6 and it's kind of funny to me that out of all of the, you
7 know, dozens or so of biodiesel plants, you know, they
8 picked their, you know, their petitioner, their key
9 witnesses are like the only two plants, you know, two or
10 three plants that are along the coast. So you're really
11 talking about a tiny amount of production compared to where
12 it all truly sits, which is in the Midwest.

13 COMMISSIONER WILLIAMSON: But since I take it
14 they don't use -- can't they ship that down to Mississippi
15 like they ship all those soybeans and all those -- all that
16 other grain that gets exported?

17 MR. DAWSON: Well, there's plenty of demand in
18 the Midwest as well. So like I mentioned earlier, you're
19 going to sell it to your highest market. And your highest
20 priced market is usually in terms of location. It's going
21 to be closer to your plant. And we buy as much as we can in
22 Iowa from all of, you know, the petitioners.

23 And then they also send it to California. I
24 mentioned some of the other states with these additional.
25 Illinois with these large state incentives. And so, they

1 capture even higher subsidies. So I mean, they're grabbing
2 state subsidies. They're grabbing Blender tax credits, RIN
3 subsidies. They're -- I think they made a comment that
4 they're, you know, one of the most, if not the most
5 subsidized market in the world.

6 COMMISSIONER WILLIAMSON: Okay. Okay.

7 MR. FEDERICO: Commissioner?

8 COMMISSIONER WILLIAMSON: Yes.

9 MR. FEDERICO: Len Federico with Louis Dreyfus.

10 I just wanted to pick up on your point about sending
11 soybeans down.

12 COMMISSIONER WILLIAMSON: Okay.

13 MR. FEDERICO: Down the river.

14 COMMISSIONER WILLIAMSON: Yeah.

15 MR. FEDERICO: Soybeans going down --

16 COMMISSIONER WILLIAMSON: I'm sure you know
17 something about that.

18 MR. FEDERICO: They generally -- they're
19 generally going to get exported once they -- so it is a
20 different just to illustrate that it's a completely
21 different supply chain, right? It's also just a fact that
22 interior transportation, whether rail or truck --

23 COMMISSIONER WILLIAMSON: Uh-huh.

24 MR. FEDERICO: -- is going to be considerably
25 more expensive than ocean freight, especially non-U.S. flag

1 ocean freight, which is what you can use when you're coming
2 from a non-U.S. port to a U.S. port.

3 COMMISSIONER WILLIAMSON: Yeah, I don't want to
4 challenge that.

5 MR. FEDERICO: So --

6 COMMISSIONER WILLIAMSON: Okay.

7 MR. FEDERICO: -- sorry.

8 COMMISSIONER WILLIAMSON: Okay, so my time has
9 gone over, but thank you for that point.

10 MR. FEDERICO: Yeah.

11 COMMISSIONER WILLIAMSON: Okay, thank you.

12 MR. VERGONA: This is Chris Vergona with Musket,
13 I just wanted to add one piece on the freight. You were
14 mentioning the cost to ship it down as we stated in the
15 previous hearing, it's about two to three times. You're
16 looking at rail costs to get from the Midwest down to
17 Houston on average about 28 and a half to 31 and a half
18 cents a gallon. I can do that same thing through a ship
19 for about 11 and a half to 13 and a half cents gallon
20 freight.

21 COMMISSIONER WILLIAMSON: And barge traffic is
22 not -- you don't ship these things back on barges?

23 MR. VERGONA: No, it's through ship.

24 COMMISSIONER WILLIAMSON: Okay.

25 MR. VERGONA: Yes, sir.

1 COMMISSIONER WILLIAMSON: Okay, thank you. I
2 was thinking about coming down to Mississippi. Okay, thank
3 you.

4 COMMISSIONER BROADBENT: Okay, Mr. Dawson, why
5 were imports so much lower priced than the domestic product
6 that you were buying?

7 MR. DAWSON: Taylor Dawson. Honestly, I cannot
8 say they were lower priced. As the trader that was actually
9 out in the market buying that product from importers and
10 from domestic producers, I didn't experience that.

11 If you were comparing apples to apples, and if
12 you were to actually take the cash price of heating oil on
13 the day that the product was transacted, it was, you know,
14 very much the same. I would even say that and I don't know
15 who would disagree with this, but the domestic producer sets
16 the price in the United States. They're the driving price
17 force. And you know, smaller amount of volume, which is
18 imports, comes in and fills, you know, a remaining gap and a
19 remaining need.

20 So the prices were driven by the U.S. guide. We
21 didn't pay much cheaper now. The data, because of the
22 differences in heating oil timing could -- I'm not sure what
23 it shows, but you know, mentioned that and we also mentioned
24 that you know, if you're say REG who sells a lot of
25 biodiesel into California, you know, they're getting even

1 more subsidies like the LCFS credit. So they're getting the
2 RIN credit, which makes their biodiesel more expensive, the
3 tax credit, and the LCFS credit. So all of that subsidy
4 makes their price in California expensive.

5 MR. FEDERICO: Commissioner, Len Federico. It
6 should also be noted that biodiesel ex Argentina in
7 particular, all the biodiesel plants in Argentina are
8 integrated plants. They are soybean crushing facilities
9 with integrated biodiesel plants. They do not pay to move
10 their feedstock.

11 And as I was saying before, the ocean freight
12 from Argentina to the United States is cheaper in a lot of
13 cases than the freight from the Midwest to the coast. And
14 that's a fact of life and it has nothing to do with
15 government policy, at least not government policy in
16 Argentina.

17 MR. PORTER: Commission Broadbent, four post
18 hearing, I'm going to try to explain what you will to answer
19 your direct question. So as Taylor discussed, BioSphere is
20 one of the largest purchasers of biodiesel in the United
21 States, one of the largest if not the largest.

22 In fact, BioSphere is the largest by far the
23 purchaser of subject imports. We made this point in our
24 brief. And BioSphere alone, the person sitting before you,
25 accounts for the overwhelming majority of the increase in

1 subject imports in 2016.

2 BioSphere's also a huge purchaser of domestic.
3 So BioSphere itself has data in which you can do an apples
4 to apples comparison.

5 Now what -- there was a bit of sort of confusion
6 with because the questionnaire asks something that really
7 didn't apply to BioSphere. BioSphere answered the question
8 was asked, but it wasn't really proper for the comparison.
9 And that's what Taylor was trying to describe earlier.

10 When Taylor buys imports, he commits to a fixed
11 price on what's called the contract date. That's not
12 shipped to him for many months later and he doesn't ship it
13 to his customer, Musket until few months later after that.
14 Huge, he said about six months difference.

15 Yet when he filled it out, he said this is a
16 quantity that I shipped, and he put the price that he paid
17 for it six months earlier. That of course doesn't make any
18 sense. You want to compare what he's paying for the imports
19 at the same time as what he's paying for the domestics.

20 So over the last few days, we had BioSphere take
21 the very data that they used to give in their question,
22 purchaser questionnaire response, and just rerun it based on
23 a proper comparison, which is the contract date for imports,
24 because that's when the price is being set compared to the
25 shipment date from domestic. So that's when the domestic

1 price is set.

2 And when you do that, you'll see that every
3 single quarter in 2016, the -- what BioSphere paid for
4 Argentine was higher than what they paid for domestics. And
5 BioSphere will give all of that data, tie it to their
6 questionnaire response in the post hearing.

7 COMMISSIONER BROADBENT: Well, I mean, the
8 pricing data's pretty crucial to this case. I'm not sure
9 how we at this late date redo it.

10 MR. PORTER: Okay, just to be clear, we're
11 talking about BioSphere. BioSphere's data is not in your
12 pricing product data. The Commission staff makes that
13 point. That's why they actually had a special table a
14 couple pages after the pricing product, you know, with
15 respect to BioSphere. It's confidential, can't but -- but
16 it's a whole page devoted to BioSphere in the staff report.

17 It's that table that we're going to redo on a
18 proper basis. Quite honestly, the pricing product data is
19 the pricing product data. We're not, you know I've been
20 here in other cases, we're not challenging the pricing
21 product data at least with respect to Argentina. That's --
22 we see it's just mixed and we have arguments to make about
23 that, but we're not challenging underlying data.

24 And if you look, you can see the -- in terms of
25 the volume, the volume of the pricing product data for

1 Argentina is substantially less than the total imports.
2 Why? Because of BioSphere. BioSphere's imports are not in
3 the pricing product data.

4 So the Commission staff attempted to do a
5 BioSphere kind of comparison between Argentine and U.S.
6 price. And it was just some confusion on how the questions
7 were asked. And now we're going to give you in post hearing
8 the BioSphere information to show a proper apples to apples
9 comparison.

10 MR. CUMMINGS: And to speak to Indonesia, John
11 Cummings with Wilmar, sorry. To speak to the Indonesia part
12 of that, I mean, I think that the petitioner's counsel
13 touched on it that the category 1 and 3, you know, were
14 indeed lower, due to the price differences between the D-4
15 and the D-6 RIN, because the Indonesian product only gets to
16 do six RIN.

17 And then, you know, for the reasons I kind of
18 stated in my testimony, that there are a number off quality
19 differences between the products that sort of compel us or
20 our customers really demand a discount versus the higher
21 quality, if you will, SME.

22 So we'll have a, you know, anywhere. And it's
23 generally seasonal, but anywhere from like 5 to 30 cent
24 discount, you know, depending on what time of year it is.

25 COMMISSIONER BROADBENT: Ms. Dunphy, if you

1 could just from your independent analysis, just sort of talk
2 broadly about the role that imports play in this market and
3 where we'd be if we didn't have the imports?

4 MS. DUNPHY: Yes, absolutely, this is Sandra
5 Dunphy with Weaver. The original law that EISA actually
6 envisioned that there would be imports to the United States
7 to help fulfill the mandate of the program. The role of
8 imports is an important one. It provides flexibility in
9 supply that's required to meet the annual demand. It
10 enables different products to come to the United States that
11 might not otherwise come in. You know, imports, they -- one
12 thing I wanted to mention is that all of the imports from
13 Argentina, virtually all of the imports from Argentina and
14 the ones I mentioned before are also covered under QAP.
15 Only one of the petitioner's plants is covered under the QAP
16 program.

17 So the imports also play a role in providing
18 what we call verified RINS into the market place. And they
19 are -- they provide obligated parties with assurances of the
20 affirmative defense for not having to pay penalties in the
21 event the RINS are ever found to be invalid at any point in
22 the future.

23 So the imports play an important role,
24 especially if U.S. supply is -- has difficulties in one year
25 or another. In other words, if there is a severe drought

1 that caused a shortfall in corn production or soybean
2 production, imports are there to help alleviate that, the
3 same way the obligated parties can use some prior year RINS
4 if flexibility was built into the market.

5 And when EPA approves pathways for crops and for
6 all the different feedstocks, those are approved for
7 worldwide use. So they look at the impact of soybeans grown
8 in other countries or canola from Canada and all of these
9 different things. So imports play an integral role and
10 they've always been considered right from the beginning of
11 the program as per Congress' intent.

12 COMMISSIONER BROADBENT: Okay. I missed the
13 QAPP.

14 MS. DUNPHY: Uh-huh.

15 COMMISSIONER BROADBENT: What is that? Can
16 you --

17 MS. DUNPHY: Yeah, so --

18 COMMISSIONER BROADBENT: I'm sorry.

19 MS. DUNPHY: No, that's a great question.

20 Sandra Dunphy with Weaver again. So because of the RIN
21 fraud cases that became -- they began to surface in late
22 2010. In fact, there's an American Greed TV program. And
23 they did -- actually did a story on the very first RIN fraud
24 case. And it was in Maryland. And this producer was making
25 RINs out of thin air. There was no production facility.

1 There was nothing. And the RINs were being sold to
2 obligated parties. And this individual was making a lot of
3 money.

4 And there have been many RIN fraud cases since
5 that time as well. So Congress and EPA decided they wanted
6 to do an -- something on the affirmative side to eliminate
7 the RIN fraud. So they decided to enact the quality
8 assurance plan program. And this was in early '13. It was
9 proposed. It wasn't finalized till late 2014.

10 It's an optional program for producers of any
11 type of renewable fuel. They can hire an EPA-approved
12 auditor. And right now, I believe there's three or four of
13 us who are approved by EPA. And as I mentioned in my
14 testimony, Weaver is an EPA-approved auditor. We were the
15 first ones approved by EPA.

16 So the producer elects to participate in the QAP
17 program. They hire the auditor. And it's our job to make
18 sure that the feedstock they use is qualifying feedstock,
19 that the production process is as described to the EPA at
20 the time of registration, that the fuel that they make meets
21 certain quality standards, and that the RINs that they
22 generate are valid RINs and were generated in accordance
23 with the regulations. It is a very stringent program.

24 COMMISSIONER BROADBENT: Thank you.

25 MS. DUNPHY: You're welcome.

1 CHAIRMAN SCHMIDTLEIN: Okay, thank you. Okay,
2 so going back to this question about the capacity and so
3 forth, I just want to make sure I understand the argument,
4 because we have these capacity numbers from various sources.
5 The questionnaires, the EIA, the EPA, the nameplate capacity
6 and so forth, right, which shows that the domestic industry
7 has excess capacity in each of the years of the POI or
8 unutilized capacity I should say.

9 And the respondents response to that is that's
10 essentially not true, because Mr. Dawson has testified that
11 BioSphere attempted to purchase supply from the domestic
12 industry over each of the years of the POI and was told that
13 they were sold out. Is that -- am I getting this right?

14 MR. PORTER: Yes, Madam Chair. Essentially,
15 you're getting it right. Let me make a point and then I
16 will turn over the microphone to Taylor.

17 First, with respect to the data, the Commission
18 notes a sort of variety of different types of data. I would
19 submit though that this is the first time doing this more
20 than 30 years, first time I've ever heard petitioners walk
21 away from their own questionnaire data. Okay, the staff
22 report makes very clear they got 24 U.S. producers usable
23 questionnaires and those 24 producers accounted for 90
24 percent of production.

25 We're using the staff report data, what's called

1 the C-1 data. That's the capacity data. And that's sort of
2 the practical capacity.

3 CHAIRMAN SCHMIDTLEIN: Yeah.

4 MR. PORTER: So with all due respect, I do think
5 we should just say we're using that data. Now that --

6 CHAIRMAN SCHMIDTLEIN: Okay. Well, I'm looking
7 at that.

8 MR. PORTER: Okay, so fine. So we're looking at
9 that data because that is the data that you got from the
10 questionnaire responses. I honestly don't know how EIA gets
11 their data, but you know how get your data and that's good
12 data from U.S. producers.

13 CHAIRMAN SCHMIDTLEIN: Yeah.

14 MR. PORTER: Now the -- to your second point,
15 yes, that is our argument. That is basically -- we were
16 focusing on 2016 mainly because one, the imports increased
17 sort of the most. And also, there was a little bit of
18 change in profitability. And so, that's what petitioner's
19 base in argument.

20 So what we had Taylor go through is producer by
21 producer, his own experiences buying from each of the
22 producers of the 24 and telling you when they told them that
23 they were sold out or what was going on.

24 Taylor?

25 MR. DAWSON: So to kind of give a different

1 perspective, you have to understand we do have a unique
2 industry here. And it is set by the EPA, right? That
3 mandate is set by the EPA. Okay, so we have, and I'm a part
4 of it, a bunch of producers that are represented by the MDB.
5 And they're notorious, I mean, every year, I mean, it's
6 laughable. They go into the EPA every year and say our
7 production is huge. Give us a giant mandate.

8 So they're great at doctoring numbers, first of
9 all. Their entire industry has been created by engendering
10 this idea that everybody needs to report high numbers. And
11 these are small little plants. And it's really difficult to
12 determine, you know, all the different bottlenecks and what
13 represents real production.

14 So the reported numbers in our industry are
15 always bogus. And the EPA has to fight them every single
16 year when they set, you know, the mandate. Now --

17 CHAIRMAN SCHMIDTLEIN: But you understand, like
18 for us to say -- I mean, for us to say that those capacity
19 numbers are just meaningless, which suggests that the
20 petitioners have intentionally lied on those questionnaire
21 responses, which would be a pretty serious allegation, I
22 mean, at least in my view, right? Like you're accusing the
23 -- I mean, essentially. So I understand your experience,
24 but like Mr. Portman, right? Like if that's what you're
25 saying --

1 MR. PORTER: Okay --

2 CHAIRMAN SCHMIDTLEIN: Which is a slight
3 difference between --

4 MR. PORTER: No, Madam Chair, please. They're -
5 -

6 CHAIRMAN SCHMIDTLEIN: I mean, he just said like
7 they're submitting bogus numbers to the Environmental
8 Protection Agency. I mean, that's --

9 MR. PORTER: He was -- Dan Porter. With all due
10 respect, he was making a general comment about a different
11 regulatory process. Okay? He was making a general comment
12 about sort of arguments that are made with -- to the EPA
13 about what the mandate should be and how sort of the
14 industry goes in and says we couldn't satisfy it all,
15 increase amount. He's making a general comment about that.
16 Okay?

17 I am not accusing petitioners of giving you
18 wrong information about their practical capacity as they
19 reported it. I'm not doing that. I'm saying they filled
20 out what they believe is their practical capacity. What I'm
21 saying is that the -- you can have capacity and still not be
22 able to use it for a variety of reasons.

23 CHAIRMAN SCHMIDTLEIN: Okay.

24 MR. PORTER: And what we're saying is in the
25 real world market, Taylor tried to buy product for them and

1 was told they're sold out. And he went through every one of
2 the 24. So taken as an industry, he's saying I'm told
3 they're sold out. He's just saying I'm not going to -- he
4 can't comment on what they put, but he's just saying they
5 told me he sold out. That's what we're saying.

6 CHAIRMAN SCHMIDTLEIN: Okay.

7 MR. PORTER: We're not -- than the two actually
8 can both exist we're saying. Okay?

9 CHAIRMAN SCHMIDTLEIN: Okay. So let's go back
10 to that.

11 MR. VERGONA: Commissioner, sorry.

12 CHAIRMAN SCHMIDTLEIN: And --

13 MR. VERGONA: My name -- Chris Vergona with
14 Musket just to give you some background. Prior to my time
15 at Musket, I spent time with a couple of downstream
16 refiners. And to add to Mr. Porter's comments, as a
17 refinery, oil refinery, we had to do the same thing. So we
18 go through every process unit. And we have what's called a
19 nameplate capacity. That nameplate capacity comes in when
20 conditions are perfect. That means I can supply all my
21 feedstocks. I can keep my units up and running. I can do
22 turnarounds effectively like I'm supposed to. Any
23 interruption in any of those things is going to lead to me
24 reducing my nameplate capacity.

25 Now in theory, that capacity is still there, I

1 just can't effectively run that. That is more what we're
2 saying is happening on the biofuel producer side. They just
3 don't have the feedstock and the unit efficiency to run at
4 that full capacity that they state.

5 CHAIRMAN SCHMIDTLEIN: Okay.

6 MR. CUMMINGS: And this is John Cummings. I
7 just want to make a short comment that the EIA data is --
8 and Len could maybe speak to this as a U.S. producer, that's
9 a voluntary submission that's really never audited and to
10 the EIA.

11 CHAIRMAN SCHMIDTLEIN: Uh-huh.

12 MR. CUMMINGS: And so --

13 CHAIRMAN SCHMIDTLEIN: Okay.

14 MR. CUMMINGS: For what it's worth.

15 CHAIRMAN SCHMIDTLEIN: Okay, well, we're looking
16 at the data that was submitted through the questionnaires,
17 okay. So that's what's on the C-1 table.

18 So I know you said you were focused on 2016, but
19 the increase of subject imports was actually greater from
20 '14 to '14 as a percentage basis, right? So subject sources
21 increased 173 percent from '14 to '15 and then 105 percent
22 from '15 to '16. So did you have trouble every year
23 sourcing from domestic producers?

24 MR. DAWSON: So it's more of a reflection. As a
25 percentage basis, if you're going from 50 to 200 to 500, you

1 know, that 50 to 200 might be 4X, but I would say the 200 to
2 500 was the greater year. So we've really started from a
3 small number and gone up to a reasonable number.

4 CHAIRMAN SCHMIDTLEIN: But in '15, when they
5 went from 97 to 267, and this is not confidential, the
6 quantity of subject imports, in that year you were also
7 having problems sourcing from any U.S. supply?

8 MR. DAWSON: Absolutely. And it can be seen
9 through the growth of the EPA targets.

10 CHAIRMAN SCHMIDTLEIN: From the sense that
11 they're telling them they have capacity, that goes back to
12 your earlier comments?

13 MR. DAWSON: A different way to say this is,
14 this has been a very healthy industry for domestic
15 production. They have made good money producing each and
16 every year for the last few years. So if there was a plant
17 that was not running at max capacity, the only reason was
18 because they had to logistically make investments or do
19 things, increase production.

20 A quick example is, REG mentioned Clovis and
21 Bulldog as biodiesel plants they owned. I would hope those
22 are not in the questionnaire because those are pieces of
23 junk that have not run in, like, ever. And only very small
24 volumes way in the past. And they might as well need to be
25 completely built from scratch. I've asked them repeatedly,

1 "Hey, please supply me."

2 CHAIRMAN SCHMIDTLEIN: Mr. Dawson, I'm sorry.
3 Do you have any documents? When you negotiate, do you
4 request supply from domestic suppliers? Do you have any
5 contemporaneous documents you could put on the record that
6 support the statement that U.S. suppliers were refusing you
7 because they were unable to supply? And that it didn't have
8 to do with price?

9 MR. DAWSON: I can absolutely look for that,
10 sure.

11 CHAIRMAN SCHMIDTLEIN: Okay. Well, I think that
12 would be helpful since this is a bit of a "he said-she said"
13 scenario here where we have the U.S. industry has presented
14 information that they have un-utilized capacity and we have
15 a importer here who's saying that you've actually solicited
16 them for supply and were told that they were unable to
17 supply you. So if you have any -- if there's anything in
18 writing that supports that contemporaneously, I think that
19 would be very helpful to put on the record.

20 MR. DAWSON: Yes, and one other note is you can
21 look at their production facilities and look through their
22 financial statements and see that they had maxed out
23 production everywhere they could.

24 MR. PORTER: Madame Chair, can I just make one
25 quick point about the years? I don't know. Do you happen

1 to have our brief in front of you? I apologize.

2 CHAIRMAN SCHMIDTLEIN: Yeah, sure.

3 MR. PORTER: If you could look at Page 15 of our
4 brief and then turn the page, I apologize, and look at Page
5 16. If you look on Page 15, this is U.S. Biodiesel
6 Production Capacity as reported to the Commission, was
7 called the C-1, okay? Look at 2014 and 2015, turn the page,
8 compare that to the mandate, okay? So even if we take these
9 numbers and assume 100%, it was less than the mandate. For
10 those two years.

11 CHAIRMAN SCHMIDTLEIN: Right. But I think the
12 petitioners would say that's because we were being --

13 MR. PORTER: This is capacity. This is not
14 production. This is capacity.

15 CHAIRMAN SCHMIDTLEIN: No, but you're making the
16 point that the difference between the production --

17 MR. PORTER: No-no. I'm talking about capacity
18 now. I'm talking capacity.

19 CHAIRMAN SCHMIDTLEIN: Okay.

20 MR. PORTER: So if you look, and I apologize, on
21 the Page 15 very top line, "Production Capacity", not
22 production.

23 CHAIRMAN SCHMIDTLEIN: Right.

24 MR. PORTER: Capacity.

25 CHAIRMAN SCHMIDTLEIN: Right.

1 MR. PORTER: This is their reported capacity.

2 CHAIRMAN SCHMIDTLEIN: Okay.

3 MR. PORTER: So this is their numbers.

4 CHAIRMAN SCHMIDTLEIN: Right.

5 MR. PORTER: When you compare that, turn the
6 page to the mandate. How can they say they can supply the
7 mandate when their own reported numbers don't show that?

8 CHAIRMAN SCHMIDTLEIN: Well, but they ended up
9 supplying less than what their capacity was. So --

10 MR. PORTER: No, the capacity is less than the
11 mandate.

12 CHAIRMAN SCHMIDTLEIN: Okay. But there's still
13 a gap between capacity and production.

14 MR. PORTER: So that's exactly our point, okay?
15 And so, if there's that gap, perhaps the capacity numbers
16 aren't true useable, everyday capacity. That's exactly our
17 point, Madame Chair. Okay? They were claiming today, "We
18 can and always could supply the mandate." Look at their
19 numbers. Not using anyone else. I'm using their own
20 numbers here to say they couldn't supply the mandate even if
21 you assumed all of their capacity was useable. And that's
22 the point I wanted to make.

23 CHAIRMAN SCHMIDTLEIN: Okay.

24 MR. FEDERICO: Madame Chairwoman? Could I add
25 to that, please?

1 CHAIRMAN SCHMIDTLEIN: Sure.

2 MR. FEDERICO: Len Federico. I would submit
3 that I think we need to keep in mind that we're not talking
4 about an industry in which, at one time, we ran 2.1 or 2.2
5 -- or whatever the number is -- billion gallons, and now
6 we're running less than that. We're talking about, we've
7 never run anywhere near that.

8 So in essence, we're talking about capacity
9 that's never run. I would submit that it's inherently
10 difficult to precise what max capacity is when you've never
11 approached it. So I personally wouldn't accuse anybody of
12 any wrongdoing in this or, you know, or being misleading.
13 But I would submit that that's not provable. Okay? And it
14 can't necessarily be taken at face value.

15 The second thing I would submit is that there
16 are practical constraints to executing. To be able to
17 produce something physically, to manufacture it, is not the
18 same thing as being able to execute it. Maybe you can
19 produce it, but if you can't load it or store it, you're not
20 gonna produce it. And I would submit as well, I cannot cite
21 specifics, so consider it a speculation.

22 But given the history and a history of
23 underutilization that predates Argentine imports, I would
24 submit that there is a lot of that in the industry, that
25 there's a good portion of this industry that could produce

1 more than it does today, but would need capital to actually
2 be able to execute it. And again, that's not a matter of
3 the subject imports. That's a matter of a deficiency.

4 CHAIRMAN SCHMIDTLEIN: Okay. All right. Thank
5 you very much.

6 VICE CHAIRMAN JOHANSON: All right, thank you,
7 Chairman Schmidtlein. Some blenders source imported
8 biodiesel in the Gulf region and then ship it to their own
9 retail outlets, presumably via rail and truck. These retail
10 outlets are located throughout the country, including in the
11 interior of the United States.

12 Does not this type of distribution from the Gulf
13 Coast to the rest of the country mirror the practice of
14 distributing biodiesel from the U.S. Middle West and then
15 shipping it to the U.S. Coastal regions?

16 MR. DAWSON: To a small degree, that does
17 happen, yes, and that does mirror the U.S. producer in the
18 United States. I don't have the exact percentage, but we
19 could put together the data to show how small of a volume
20 that represents.

21 VICE CHAIRMAN JOHANSON: Okay. So would not
22 necessarily be an impediment then to -- to turn this on its
23 head, it would not necessarily be an impediment to ship from
24 the Middle West to other parts of the country, if it's being
25 done vice versa, correct?

1 MR. DAWSON: It's an impediment to both.

2 VICE CHAIRMAN JOHANSON: Okay.

3 MR. PORTER: And Commissioner, just to be clear,
4 no, he is saying it is an impediment. That's why it's not
5 done. He's being very clear that BioSphere does not do that
6 very much. And he's gonna get actual data for you to back
7 that up in the post-hearing, but they just don't do that
8 because it really is an impediment. It doesn't make any
9 sense to do that.

10 That's what Taylor's testimony is. And I just
11 wanna reiterate something that Taylor's colleague, Chris
12 said. Okay? When they pulled up the -- I can't do it
13 because it's not my graph, but the petitioners exhibit with
14 the map and Argentina to Houston and Indonesia to Houston.
15 Well, the distance doesn't matter.

16 What does it cost per gallon to ship it? It
17 costs 30 cents a gallon to ship it from Iowa to Houston, but
18 only costs 12 cents a gallon to ship it from Argentina to
19 Houston. That's the key thing to focus on, not the
20 distance. The cost to ship it. And the reason for this is
21 the tremendous quantities that you can ship when you put it
22 into this huge tanker ship versus a small rail car.

23 MR. CUMMINGS: And it's a similar metric from
24 Indonesia to Houston. Maybe a little more expensive,
25 because it's a little more of a distance, but it's still

1 well below the cost of transporting by rail and certainly
2 truck is even more expensive.

3 VICE CHAIRMAN JOHANSON: Okay. Thank you, Mr.
4 Cummings and Mr. Dawson and Mr. Porter. And Mr. Dawson, I
5 might note that I'm pretty familiar with your Love's truck
6 stops. There's one close to Woodstock, Virginia on I-81.
7 Matter of fact, I drove by it on Sunday. So anyway. It
8 has, I think it has a truck wash, is that correct?

9 MR. DAWSON: I've never been there, to be
10 honest.

11 VICE CHAIRMAN JOHANSON: Oh, okay.

12 MR. DAWSON: But I can tell you there is -- I
13 think that's actually one location that does not blend
14 biodiesel. It's in a unique hard-to-get-to spot there.

15 VICE CHAIRMAN JOHANSON: I was gonna say, I was
16 wondering how you supplied that one.

17 MR. DAWSON: Both the domestic guys and the
18 importers can't hit that store. Unfortunately.

19 VICE CHAIRMAN JOHANSON: Yeah, I was actually
20 thinking that when I was posing my question.

21 MR. DAWSON: Not really in the Midwest or along
22 a Coastal spot, so --

23 VICE CHAIRMAN JOHANSON: Okay. So it's out kind
24 of, yeah, it's very isolated. Okay. Now, I'm gonna move on
25 to, I guess, Mr. Cummings, and talk a little bit about

1 product coming in from Indonesia, or at least formally
2 coming in from Indonesia.

3 In describing the commercial views of palm
4 oil-based biodiesel relative to soybean oil-based biodiesel,
5 at Page 22 of their brief, Indonesian respondents cite to
6 Mr. Whitney's testimony during the preliminary phase staff
7 conference where he stated that "the customers don't want
8 this fuel." Would this also be true, though, of animal
9 fat-based biodiesel? Don't they both -- they both have
10 similar characteristics in how they have cloud points,
11 correct?

12 MR. CUMMINGS: That was a little bit of an
13 embellishment by the petitioners. The metric that you look
14 to is what I've described in my testimony as a "cloud point"
15 and the cloud point of a soy-based biodiesel is near
16 freezing, like -- we think in Celsius, can I talk in
17 Celsius?

18 VICE CHAIRMAN JOHANSON: Sure, that's fine.

19 MR. CUMMINGS: Okay, so it was 0- to 2-degrees
20 Celsius is soy, and animal-fat biodiesel would be anywhere
21 from maybe an 8- to a 10-degrees Celsius. Whereas a
22 palm-based biodiesel is significantly higher than that, you
23 know, generally like a 14- to 16-degrees C.

24 So tallow methyl ester is half generally of a
25 cloud point. So, for example, I mentioned that there are

1 tank terminal companies that won't accept our biodiesel and
2 one of the biggest ones is a company called Kinder Morgan,
3 which you may have heard of. They have a summer cloud point
4 restriction of an 8C. So tallow methyl ester can actually
5 go into that terminal, you know, whereas we can't. So
6 there's all these practical constraints and times of the
7 year when -- you know, a 16 is a pretty high cloud point.

8 VICE CHAIRMAN JOHANSON: I'm sorry? 16 is palm
9 oil-based?

10 MR. CUMMINGS: Yeah, 16C.

11 VICE CHAIRMAN JOHANSON: And animal tallow is 8
12 or so?

13 MR. CUMMINGS: 8 to 10? Is that fair?

14 MR. DAWSON: Sorry, I think it's actually closer
15 to 15, but I'm not sure exactly, so that may be --

16 VICE CHAIRMAN JOHANSON: So this is the
17 tallow-based?

18 MR. CUMMINGS: Tallow, I think, does have a
19 range.

20 VICE CHAIRMAN JOHANSON: Okay. It's just that
21 I'm wondering, it would appear to me that palm-based
22 biodiesel, animal fat-based biodiesel, basically are
23 competing with each other in the market. Maybe, not
24 necessarily with soy-based always, but it would seem between
25 the two, the tallow and the palm-based, they would indeed be

1 competing in the market.

2 MR. CUMMINGS: We could probably collect COS of
3 some of the domestic TME producers and submit that. That
4 might be the best way to --

5 VICE CHAIRMAN JOHANSON: That would help out.

6 MR. CUMMINGS: -- do it, and compare that to our
7 COS. So I think it's significantly lower.

8 VICE CHAIRMAN JOHANSON: Okay. If you could
9 check into that, I would appreciate it.

10 MR. CUMMINGS: Okay.

11 VICE CHAIRMAN JOHANSON: Because I'm looking at
12 the whole issue of cumulation here.

13 MR. CUMMINGS: Okay.

14 VICE CHAIRMAN JOHANSON: As to how much these
15 two products, palm-based versus tallow-based, compete in the
16 market.

17 And sticking on the issue of Indonesia, about
18 half of all responding purchasers noted that domestic
19 product was inferior to Indonesian product in terms of
20 discounts. And this is shown at Page 226 of the staff
21 report. Could you maybe provide some insight into this?

22 MR. CUMMINGS: Why is worth less? So I think,
23 you know, PME is, I guess, the customers are the ones that
24 basically demanded the discount to use it and to entice
25 their customers to accept using it. I mean it's PME coming

1 from another part of the world, so just by itself people get
2 a little anxious about that. That it's not made in the U.S.

3 It has a high cloud point, which makes them a
4 little anxious about using it as well. I think that, you
5 know, handling it in trucks, handling it in their tanks,
6 because generally you need a heated tank, you know, for
7 handling PME. Most of the year. You know, there's some
8 customers that have bought PME and put in their tank and it
9 wasn't heated, and it starts getting kind of slushy at like
10 60 degrees, something like that, so I think there's --

11 In addition to that, in the winter months, it
12 generally can't be used, so if somebody's gonna be buying a
13 PME from me in, say, November or December, they're not gonna
14 use that until March, April, May, probably in April or May,
15 so they've got to lease a tank. They've got to have
16 time-value of money, they've got tank storage, they've got
17 heating costs for four to six months to pay for it.

18 So they needed a discount to pay for, you know,
19 that process to store it. So I think there's a number of
20 reasons where PME, you know, the customers at least demand a
21 discount, versus other varieties that are easier to handle.

22 VICE CHAIRMAN JOHANSON: Okay, yes, Mr. Sim?

23 MR. SIM: Yeah. Edmund Sim, Appleton Luff,
24 counsel to Musim Mas. Just to follow-up on what John was
25 saying and then take it back to your previous question, you

1 know, part of the difference is the difference between D4
2 and D6, which in and of itself, has a price differential.
3 And with regard to tallow, tallow falls under the D4
4 category. So under the RFS, it is treated differently than
5 the PME because that PME is a D6.

6 VICE CHAIRMAN JOHANSON: Do you know why it's
7 treated differently? I assume that's a EPA issue?

8 MR. CUMMINGS: It's an EPA issue in that, you
9 know, someone will buy a tallow because they can separate
10 the RIN and they have a D4 RIN. They can't buy my PME and
11 have a D4 RIN.

12 MS. DUNPHY: Yeah, this is Sandra Dunphy with
13 Weaver. When EPA set out their regulations, they have what
14 they call pathways. And there's a number of pathways for
15 different renewable fuels. So there's a tallow to using
16 transesterification to biodiesel. They might have
17 cornstarch, fermentation to ethanol.

18 So when they did each of these pathways, they
19 conducted greenhouse gas analyses on each one of them. And
20 if they met the 50% greenhouse gas reduction, they earned a
21 D4. So when they did the analysis for animal fats using
22 transesterification to make biodiesel or even renewable
23 diesel, they determined it did meet the 50% so it garnered
24 the D4 RIN.

25 When they did the analysis for palm, it came out

1 at 17%, so it didn't even meet the 20%, which is palm is not
2 in the approved pathway table, but it is still allowed to be
3 used at grandfathered facilities as you heard mentioned
4 earlier.

5 VICE CHAIRMAN JOHANSON: Okay, so just to
6 clarify. The reason tallow has a D4 is due to greenhouse
7 gas regulations?

8 MS. DUNPHY: Yes, sir. Because it met a 50%
9 greenhouse --

10 VICE CHAIRMAN JOHANSON: And not performance?

11 MS. DUNPHY: No, sir.

12 VICE CHAIRMAN JOHANSON: Okay.

13 MS. DUNPHY: It has to do with greenhouse gas
14 reduction, versus the diesel is displaced.

15 VICE CHAIRMAN JOHANSON: All right. Well, thank
16 you for your responses. My time has expired.

17 COMMISSIONER WILLIAMSON: This is for
18 post-hearing. Mr. Federico, Louis Dreyfus. You refer to
19 LDC's AIs imports from Argentina and wanting to know, did
20 LDC Argentina export biodiesel to U.S. entities other than
21 LDC AI?

22 MR. FEDERICO: Yes.

23 COMMISSIONER WILLIAMSON: Okay. And so did LDC
24 AI coordinate or communicate with LDC Argentina about those
25 exports to the U.S.? And you can actually do that

1 post-hearing if you want. But that's the question I'm
2 posing.

3 MR. FEDERICO: I think to fully describe our
4 mechanics, we'd prefer to do that post-hearing because it
5 maybe involves confidential business information.

6 COMMISSIONER WILLIAMSON: Understand. I
7 appreciate that. Thank you.

8 MR. FEDERICO: Thank you.

9 COMMISSIONER WILLIAMSON: Good. Talking about
10 EPA's approval of imports from Argentina, when do the
11 producers in Argentina obtain EPA approval to ship biodiesel
12 under the U.S. regulatory scheme? And how long does
13 approval take? And are there any other producers now in the
14 process of obtaining approval?

15 MS. DUNPHY: All renewable fuel producers who
16 are going to participate in the RFS program, who want to
17 have RINs generated for their product, either by themselves
18 or by an importer, have to be approved by EPA.

19 So they go through a registration process. That
20 involves an independent third-party engineering review, so
21 it's a site visit by a professional engineer licensed for
22 that country or the state. They file a report. The company
23 is set up electronically with the EPA. For every package we
24 do a process heat supply plan and sometimes we do a
25 wind-generation protocol.

1 So the registration process can take four to six
2 months between scheduling the engineer to come to the site,
3 doing the review, writing the report, getting all the
4 information together, sending it into the EPA, and then EPA
5 alone takes 60, 90, 120 days for approval. And that
6 approval lasts for three years.

7 So every three years, the engineering review
8 must be conducted all over again to keep your registration
9 current.

10 COMMISSIONER WILLIAMSON: Okay, thank you. So
11 with respect --

12 MS. DUNPHY: Oh, when did Argentina --

13 COMMISSIONER WILLIAMSON: Yes.

14 MS. DUNPHY: The Argentine plants, I believe,
15 and Len, correct me if I'm wrong here, they registered in
16 about 2013 or 2014 under the EPA program.

17 MR. FEDERICO: Oh, so it wasn't all at once, I
18 think.

19 MS. DUNPHY: Yeah, they kind of -- you know,
20 over time. By the end of '14, I think almost all of them
21 were registered with EPA.

22 MR. PORTER: And just to be clear. All the ones
23 that are exporting now --

24 MS. DUNPHY: That are exporting now. Yes.

25 MR. PORTER: Okay. I mean just to be very

1 clear, this huge regulatory certification requirement
2 essentially means that the only ones who have exported over
3 the period are able to export in the future.

4 COMMISSIONER WILLIAMSON: Okay. I take it they
5 started in 2013. Some of these are, I guess, up for
6 renewal, or been renewed now?

7 MS. DUNPHY: Well, they would've, if you
8 registered in '13, your three-year engineering review would
9 be done and due into EPA by January 31st of 2016, and then
10 January 31st of 2019.

11 COMMISSIONER WILLIAMSON: Okay. Is there much
12 change as far as anybody knows in the number of firms? I
13 mean -- is every year, new people coming in?

14 MS. DUNPHY: Every year there are new
15 registrants under the program. They could be ethanol
16 plants, biodiesel -- biogas is a very popular pathway right
17 now, so a lot of landfills are registering, and they take
18 the methane that they collect and if it's used as a
19 transportation fuel in the form of CNG or LNG, those
20 companies are registering. So there's companies registering
21 at all times, all throughout the year.

22 MR. PORTER: But just to be clear that I don't
23 believe there's been any new Argentine producer exporter
24 since they were approved when we're talking about --

25 MS. DUNPHY: That's correct.

1 MR. PORTER: -- it in 2000-- OK.

2 COMMISSIONER WILLIAMSON: Sounds like a great
3 industry though.

4 MS. DUNPHY: It's an interesting industry, for
5 sure. And I should mention, also, that there are no new
6 grandfathered facilities being registered. EPA has put all
7 of those registrations on hold, since the middle of 2014.

8 And the reason they did that is because there's
9 a clause in the regulations that says that, as of the middle
10 of 2013, EPA has the right and sole discretion to determine
11 whether they wanna continue to register a grandfathered
12 facility. And the facility must show that they have all the
13 same documentation they would've had prior to that deadline.

14 But EPA kind of put a hold on all grandfathered
15 facilities' applications. So they have probably 13 to 15
16 applications still in-hand, where those plants have not yet
17 been registered. So you don't see any new Argentine or
18 Malaysian grandfathered facilities since middle of 2014.

19 COMMISSIONER WILLIAMSON: What does that mean,
20 for the Indonesian facilities that --

21 MS. DUNPHY: Well, they'd have to be
22 grandfathered to use palm methyl, to be able to make palm
23 methyl ester and that was the fuel that they want to make.

24 MR. SIM: So the discussion you just had? That
25 also applies to Indonesia. We only have two companies.

1 MS. DUNPHY: Right. Well, yeah. There's very
2 few Indonesian producers. Two plants. Yeah.

3 MR. PORTER: Just to also add. So there's an
4 entire certification process that Sandra talked about for
5 the producer exporter. But also, once you're even in the
6 program, you can only use EPA-certified soybeans. And so
7 there's a whole process that you need to show that you're
8 only using EPA-certified soybeans. Maybe, Sandra, you could
9 talk a little bit about that.

10 MS. DUNPHY: Yeah. So that falls under the
11 definition of renewable biomass. So when Congress
12 established the RFS program, they were concerned about
13 companies or countries turning over fresh soil for the
14 purpose of growing a crop to make a fuel to send to the
15 United States.

16 So they basically said that in order to qualify
17 as renewable biomass -- and this is a term defined in the
18 regulations -- that the land that is used to grow the crop
19 had to have been in service or fallow, cleared or
20 cultivated, all the things in my testimony, as of December
21 19th, 2007.

22 So today, if an Argentine producer, for example,
23 wants to participate in the RFS program, and they're fully
24 registered and their registration's up-to-date, they still
25 have to track every individual soybean from a qualifying

1 field. So we have to get the land history records, the
2 boundary of that land to determine whether that field
3 actually was in service back in 2007.

4 And there's only certain records that the EPA
5 allows. For example, you can't use satellite imagery to
6 prove that the land was in service. They don't accept that.
7 You actually have to have land records of sales of crops or
8 fertilizer or something. So we track that soybean as it
9 leaves the field.

10 We actually have all the Bill of Lading records
11 from fields. And a typical shipment from Argentina could
12 have 1,000 farms, so we're collecting the data from 1,000
13 farms. I think one vessel that we audited had 4,000 farms.

14 COMMISSIONER WILLIAMSON: Okay, thank you.

15 MS. DUNPHY: So tracking every soybean from the
16 farm to a silo where it gets stored and dried to another
17 silo. To the crushing plant. And I might add that every
18 soybean that comes from a qualifying field can never get
19 close to a soybean that doesn't come from a qualifying
20 field. So these have to be segregated.

21 So trucks will line up at the crushing station
22 that are EPA-qualified beans versus non-EPA. From the
23 crushing plant, we track the oil. The oil goes to the
24 biodiesel plant. And you can see this is a huge process.
25 And we do this for every single vessel. We've actually

1 reviewed this process with EPA and they were kind of blown
2 out of the water that we do as much as we do to track every
3 single soybean.

4 MR. PORTER: I think you see, Commissioner
5 Williamson, the idea of new entrance into the U.S. market is
6 the very high barrier, at least if you are Argentine.

7 COMMISSIONER WILLIAMSON: No one is going to go
8 out and move --

9 MR. CUMMINGS: This is John Cummings. I just
10 wanted to make a comment that you know as far as Indonesia
11 goes, the process that Sandra described collecting RSF
12 qualifying palm oil that you can segregate. So the
13 segregation is an important thing because you can have RSF
14 qualifying palm oil but if you can't get it to the plant in
15 a segregated way, it's not good for you.

16 So there's a constraint that's even lower than
17 the already -- the capacities -- the grandfather capacity of
18 the two plants. That is the actual feedstock you can get
19 your hands on in Indonesia so yeah.

20 COMMISSIONER WILLIAMSON: Does the EU have
21 comparable types of regulations -- Argentina and Indonesia?

22 MR. SIM: This is Ed Sim, Counsel to Musim Mas.
23 They're -- if you look in the pre-hearing Brief there's an
24 Affidavit from an employee of Musim Mas named Jurn Schneider
25 and he describes the ICSS which is a certified

1 sustainability for palm oil and palm oil products.

2 If you qualify for the RFS that means you're not
3 just a biodiesel but also the feedstock of the oil qualifies
4 the RFS. That same oil -- that same fruit that goes into
5 that oil that John is talking about can go to Europe and
6 that commands a high price because Europe has these
7 restrictions.

8 They're also sensitive about the use of palm oil
9 and the sustainability. So our clients -- Musim Mas and
10 Wilmar, we follow sustainability -- international
11 sustainability standards that allow us to meet the RFS of
12 the United States and the ICSS of the European Union.

13 COMMISSIONER WILLIAMSON: Okay, thank you, my
14 time has expired, thank you.

15 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent?

16 COMMISSIONER BROADBENT: Mr. Porter does the
17 Commerce Department talk to EPA about this system? Is there
18 much coordination between the two agencies as they try to
19 assess it all?

20 MR. PORTER: Do you mean with respect for this
21 case? There is nothing on the Commerce Department -- I
22 guess you call it docket record, they have a similar docket
23 system to EDIS it's called ACCESS.

24 We have not seen anything that they had
25 discussions with EPA. They have their, you know, the

1 Commerce has their own sort of statutory criteria
2 requirements --

3 COMMISSIONER BROADBENT: Right.

4 MR. PORTER: That they have to do and sort of
5 what EPA is doing in the U.S. market is only, you know,
6 somewhat relevant. It's relevant because there's a U.S.
7 sales part of the anti-dumping calculation and that is a
8 little bit relevant.

9 But as you know the Commerce Department is a
10 little bit more focused on the foreign country side of
11 things.

12 COMMISSIONER BROADBENT: Right, sure.

13 MR. SIM: Commissioner Broadbent?

14 COMMISSIONER BROADBENT: Yes?

15 MR. SIM: Commissioner Broadbent we were asked in
16 our part of the case with the Commerce Department about how
17 the RFS program worked. In reply I submitted a PowerPoint
18 presentation and white paper which have been done by Sandra
19 Dunphy because she was the most knowledgeable person about
20 the RFS available and that's on the record of the Commerce
21 case.

22 COMMISSIONER BROADBENT: Okay. And is our -- I
23 guess this follows along Commissioner Williamson's question,
24 is our system probably the most complex globally compared to
25 any place else we'd be exporting these products?

1 MR. SIM: Edmund Sim. I would -- for
2 certification? For certification are you talking about for
3 in terms of in terms of RFS in general?

4 COMMISSIONER BROADBENT: I'm talking about just
5 kind of the whole system and how it stacks up to other
6 countries.

7 MR. SIM: So Commissioner Broadbent I was one of
8 the lawyers in the European dumping and countervailing duty
9 case on Biodiesel. I personally experienced that so I can
10 give you my own experience comparing the two.

11 The U.S. system is more complex because demand
12 date is handled in a way that relies on the RIN. The RIN is
13 inherently a form of trying to create a market for the
14 mandate -- for compliance of the mandate.

15 In Europe you don't have a market. You have a
16 mandate, you follow it. So, in that regard the European
17 system is more complicated because they have the power of
18 the Commission and the European institutions to enforce it.

19 On the other hand you could say it's less complex
20 because there's no such thing as a RIN. So it all depends
21 on your point of view.

22 COMMISSIONER BROADBENT: Right, that's
23 interesting, thank you.

24 MR. JANZEN: Commissioner Broadbent, this is
25 Bernd Janzen. What I think all the systems have in common

1 is that it is government created market. It is a mandate.
2 It is the government stepping in and creating a market that
3 would not otherwise exist.

4 We have often paused it -- well what would the
5 U.S. market look like absent the RFS program? Well, likely
6 you would have a few garage tinkerers and inventors but
7 certainly no meaningful industry and that is true for every
8 one of the major markets globally that is trying to promote
9 the use of biofuels.

10 In each case the biofuels are more expensive to
11 produce than petrol fuels hence the need for government
12 intervention to create the demand. Going back to
13 Commissioner Williamson's question at the beginning --
14 what's the origin of demand?

15 It's the government decreeing of the demand and
16 that is what all of these countries are doing in one way or
17 another but how they do it is different.

18 COMMISSIONER BROADBENT: Okay, given the new
19 administration, has there been talk that any of this will be
20 adjusted or reformed or updated?

21 MS. DUNPHY: That's a very interesting question.
22 This is Sandra Dunphy with Weaver. There have been a few
23 attempts to try to change the structure of the program.
24 Prior to the new administration Petitions had been received
25 by EPA for example to change the point of obligation.

1 In other words today refiners and importers of
2 gasoline and diesel are the obligated parties and there was
3 a proposal put forth to EPA -- a Petition to move that point
4 of obligation to the blender at the rack where the gasoline
5 and the ethanol are blended together.

6 COMMISSIONER BROADBENT: Yes.

7 MS. DUNPHY: And just recently in the letter that
8 Mr. Pruitt sent out a couple of weeks ago he indicated that
9 the EPA would not be changing that point of obligation and
10 again in September the administration came out with a
11 proposed Notice of Data Availability having to do with
12 setting RVO's for 2018 and possibly reducing them due to
13 imports of renewable fuels.

14 And again, in the letter that Mr. Pruitt came out
15 with he indicated that that was not going to happen. I
16 guess most recently was the kind of rumor that was floating
17 around that renewable fuels, especially ethanol that gets
18 exported from the United States for which a RIN is
19 generated, that that RIN might not have to be retired.

20 Which, under the current program -- if a fuel is
21 made in the U.S. a renewable fuel for which RIN's are
22 generated and it's exported outside the United States then
23 that RIN must be what we call "retired" or turned back into
24 the EPA. It's not usable for compliance.

25 Again, in the letter that Mr. Pruitt wrote he

1 said, "No, we're not going to go forward with that program."
2 So, there's been a lot of proposed kind of changes to the
3 structure of the program especially recently that have not
4 come to fruition.

5 COMMISSIONER BROADBENT: Yes, understood. Okay
6 that's interesting. Mr. Dawson you distinguished in your
7 testimony between fixed contracts with the imports versus
8 floating contracts with domestics. Can you discuss what
9 elements are the same in those two different kinds of
10 contracts and what distinguishes them?

11 MR. DAWSON: Sure. So an example would be
12 purchasing a cargo, 9 million gallons at say \$700 a metric
13 ton, you know, convert that. You know you can convert that
14 into a cents per gallon and you can compare that to the
15 heating oil price.

16 Now when I execute that deal I instantly have my
17 fixed price. So there are similarities. It is a comparable
18 product but at that point of purchase if I'm buying it as a
19 fixed price, I go sell my heating oil futures in my you
20 know, J.P. Morgan account and it's going up and down and so
21 part of the profitability of the deal is separated somewhere
22 else.

23 So my fixed price could be compared very easily
24 you know if you were to assume a fixed price purchase from
25 an Argentina -- or from a domestic plant at the same time.

1 However, it is more normal to buy off of a heating
2 differential in the United States so I float all the way up
3 until the time of movement and then we fix the futures so
4 that there's less hedging involved.

5 COMMISSIONER BROADBENT: If the orders are
6 imposed and go final at Biosphere how would your sourcing
7 change?

8 MR. DAWSON: We wouldn't be making as many RIN's
9 first of all so a lot of supply would be taken out of the
10 market. The sourcing would change to some degree but for
11 the most part our overall volumes would drop.

12 And I will add that there is the possibility
13 that, you know, you pull the carpet, the rug from
14 everybody's feet and you leave the mandate set very high RIN
15 prices could go to the moon which might be the desired goal
16 here and in that environment maybe our supply sources look
17 fairly similar except that the oil is going to go to places
18 like Europe, be produced and come to the United States.

19 And these supply chains are already being talked
20 about. One of the Petitioners is actually trying to buy EPA
21 oil from Argentina today.

22 COMMISSIONER BROADBENT: Okay, I'm done with this
23 round thank you.

24 CHAIRMAN SCHMIDTLEIN: Okay, can we just go back
25 to your explanation just now where you're talking about I

1 guess how you judge the price where it's floating and I
2 thought you were saying you're hedging your fixed price
3 contract with heating oil futures, is that what you're
4 saying?

5 MR. DAWSON: Taylor Dawson, so heating oil is --

6 CHAIRMAN SCHMIDTLEIN: B-100?

7 MR. DAWSON: Futures contract for diesel fuel.

8 It is diesel fuel.

9 CHAIRMAN SCHMIDTLEIN: Okay, okay so and you're
10 hedging your contracts to purchase biodiesel with --

11 MR. DAWSON: Diesel fuel futures.

12 CHAIRMAN SCHMIDTLEIN: Futures right. And is
13 that part of the contract you have with the purchasers
14 that's built in to that?

15 MR. DAWSON: So it will be off of a floating
16 differential with our suppliers, with Louie Dryfus, with
17 ADM, with AJP that's very common, yes.

18 CHAIRMAN SCHMIDTLEIN: Okay, so even the U.S.
19 producers usually index their contracts this way?

20 MR. DAWSON: It's more normal with the U.S.
21 producers because the Argentinian producers have a different
22 set of payment terms and from the accounting standpoint,
23 much bigger transaction. You know, we just like to -- we
24 have currently transactions, you have, you know you have to
25 work with big banks to secure a title of the cargo and so we

1 like to just say to keep it simple let's just do it as a
2 flat price and we'll handle the futures ourselves.

3 So it's just a unique market difference.

4 MR. POINTER: If I may, Madam Chair. This really
5 shows that the very different purchasing between the imports
6 and the domestics. What Taylor is saying is just so the
7 hassle -- a combination of the hassle in dealing with the
8 currency differences and also the ability to buy such large
9 quantities.

10 The import is what very traditional -- fixed
11 price at a time doesn't change no matter when it was
12 shipped. Whereas the domestic is this sort of complicated,
13 they're agreeing but they're agreeing to set it closer to
14 shipment and so what they're really agreeing is kind of
15 based on this floating index, but the actual price is not
16 going to be set right before the shipment, it's just a very
17 different dynamic when purchasing from U.S. producers than
18 when purchasing from imports.

19 CHAIRMAN SCHMIDTLEIN: So I guess I'm still
20 confused. You're indexing it to diesel, the future price of
21 diesel?

22 MR. DAWSON: For the domestics.

23 CHAIRMAN SCHMIDTLEIN: For the domestics but your
24 contracts for Argentine biodiesel -- you're not, it's just a
25 fixed price?

1 MR. DAWSON: There are exceptions but for the
2 most part yes so it is done as a fixed price with Argentina,
3 yes, at the time of contract.

4 CHAIRMAN SCHMIDTLEIN: Right.

5 MR. DAWSON: And then for the most part with the
6 U.S. producers it is done on a floating differential to
7 heating oil and then fixed before movement.

8 CHAIRMAN SCHMIDTLEIN: So your criticism of the
9 pricing data, and I guess this is for Biosphere because your
10 data is not in the general products right -- is that the way
11 you reported it is not an apples to apples comparison
12 because -- and this is where in your testimony I didn't
13 quite follow it.

14 MR. PORTER: Sorry, let me just be very clear as
15 a matter of fact just to be really clear I believe it is on
16 -- if you have the staff report, I'm only talking about page
17 521, okay? I am not talking about the pricing product data.
18 Okay I want to be very, very clear about that.

19 CHAIRMAN SCHMIDTLEIN: Okay.

20 MR. PORTER: At least, you know, I may have
21 arguments about the pricing data but I have no complaints
22 about the data as the data with the pricing product data.
23 I'm only talking about this page 5-21.

24 CHAIRMAN SCHMIDTLEIN: Right.

25 MR. PORTER: And if you look at it it's asking

1 for landed duty cost, okay at a particular time. Well
2 landed duty cost at a particular time at least is
3 interpreted as when did the import come into the country?

4 Okay when did the import come in? It came in
5 this last quarter of 2016 okay, fine. Here's the quantity
6 that it came in. Okay you asked for the quantity and you
7 asked for the total value and you derive AUV. The thing is
8 that price according to Taylor, was set six months earlier.

9 So if that price was set six months earlier you
10 shouldn't be using it to compare to a U.S. price in that
11 same quarter. It's a mismatch and so what Taylor's offered
12 to do is to --

13 CHAIRMAN SCHMIDTLEIN: Both are being delivered
14 in that quarter, why is it a mismatch? I mean just because
15 they finalized their sale a little bit closer to delivery
16 you are still delivering it at the same time and presumably,
17 customers are looking for a product to be delivered in a
18 certain amount of time?

19 MR. PORTER: Madam Chairman I respectfully
20 disagree okay? Because you are talking about -- if you are
21 talking about comparing imports to domestics and you're
22 talking about lost sales because that's what they're sort of
23 saying because of the price there's a lost sale, you need to
24 say when was that sale consummated?

25 That sale was consummated six months earlier,

1 Taylor can't change anything he's locked in six months
2 earlier so he bought the import six months earlier that's
3 the time we need to compare. He could have bought
4 domestics, he could have bought imports, he chose to buy
5 import you should compare it to that period of time when he
6 locked in the contract, not when it was shipped.

7 CHAIRMAN SCHMIDTLEIN: I see and this is the
8 information that you're going to provide and this is going
9 to be price comparison provided by Biosphere?

10 MR. PORTER: It's simply going to be the same
11 table.

12 CHAIRMAN SCHMIDTLEIN: Right.

13 MR. PORTER: But it's simply going to be, it's
14 going to essentially as this is -- sorry, confidential.
15 This is quarterly averages right and as you could imagine
16 underlying the table is individual kind of shipments,
17 individual orders.

18 That same data that was used to generate this is
19 -- the same as saying we've taken the data, we've now redone
20 the quarterly averages based on the time he locked in the
21 price and then we compare that to that same time he locks in
22 the price on the U.S. side and that's a little better
23 comparison.

24 MR. DAWSON: Taylor Dawson, I would say it
25 doesn't matter if diesel prices were flat but for example in

1 2016 diesel prices were going higher so if you were floating
2 it all --

3 CHAIRMAN SCHMIDTLEIN: So you're hedging some
4 other way because you're not taking all of that risk?

5 MR. DAWSON: You're right that's why I'm selling
6 the futures.

7 CHAIRMAN SCHMIDTLEIN: Okay right, so all right
8 Mr. Porter this is probably a question for you. Along the
9 lines of the supply problems if you look at the staff report
10 at page 227 where it has the purchaser's comparisons between
11 U.S. produced and imported product in the staff report and
12 two of the factors that we ask about are availability and
13 reliability of supply.

14 And when you look at what the purchasers said in
15 U.S. verses Argentina, U.S. was comparable -- 14 purchasers.
16 Six of them said U.S. was superior in terms of availability
17 and then down under reliability of supply 14 purchases said
18 U.S. was comparable to Argentina and 5 said superior, 2 said
19 inferior and up above on availability.

20 So how does this square with your argument that
21 all the domestic producers were sold out if purchasers are
22 reporting that they're comparable?

23 MR. PORTER: Madam Chair, I understand this
24 table. I understand this table is used in many cases, many
25 questionnaires. I respectfully submit that there could well

1 be some confusion in filling this out because there's not a
2 lot of sort of explanation about how this should be done,
3 what does availability mean, what does supply mean and
4 someone could say, okay once I locked in my order it came
5 from so forth.

6 Don't forget this is non case necessarily in
7 which where in the other cases where you have an order
8 locked in for a long period of time and there were sort of
9 missed on time deliveries. You have heard about those in
10 other cases.

11 Here it's very raw. Taylor is saying he called
12 up, he wanted more product and they told him he couldn't get
13 it. So I just -- I have to tell you I don't know how these
14 purchasers interpreted that, all I can tell you is Taylor is
15 one of the biggest purchasers in the United States and he's
16 telling you the problems that he's had buying from these
17 U.S. producers.

18 MR. DAWSON: Taylor Dawson --

19 CHAIRMAN SCHMIDTLEIN: Okay, well that's what I
20 think any contemporaneous documentation you have would be
21 very helpful.

22 MR. DAWSON: One quick point most producers in
23 the U.S. are actually -- I'm sorry in the U.S. are in the
24 Midwest. So if you ask somebody -- I don't know what those
25 questions are. Did I fill it out? I don't even know if I

1 -- you know, but anyways if you are asking somebody a
2 question about Argentina in Iowa, maybe rethink about those
3 questions with the Iowa context, so. Is like Argentina
4 available or reliable in Iowa? Probably not.

5 CHAIRMAN SCHMIDTLEIN: Okay, well my time is
6 almost up. So the -- I'll wait and go into that in my next
7 round so I don't go over. Vice Chairman Johanson?

8 VICE CHAIRMAN JOHANSON: Thank you Chairman
9 Schmidtlein. This is going to get into something
10 proprietary so I assume you'll want to answer it in your
11 post-hearing Brief.

12 Pages 15 to 21 of Petitioner's Brief, Petitioners
13 allege that the domestic industry should not include LDCAI
14 which is Louie Dryfus Company Agricultural Industries, LLC
15 and Cargill.

16 I would specifically like to draw your attention
17 to the sentence on page 17 beginning with the words between
18 2014 and 2016 LDCAI then I believe the rest is proprietary.
19 How would you respond to Petitioner's arguments here -- and
20 once again if you want to answer this in the post-hearing
21 Brief that would be fine.

22 MS. ZISSIS: Commissioner Johanson, Kristina
23 Zissis, White and Case. We can answer in the post-hearing
24 Brief what the benefit of the confidential information.

25 VICE CHAIRMAN JOHANSON: Certainly I appreciate

1 that Ms. Zissis.

2 MS. ZISSIS: Mr. Federico has already responded
3 factually to the point that LDCAI is a U.S. producer. It's
4 been in business since 2007, it's an affiliated reseller LDC
5 Clay Pool Holdings also has been in business since 2007.
6 That entity resells LDCAI's biodiesel in the U.S. and only
7 in 2016 did it import a small amount of biodiesel from
8 Argentina because it couldn't meet its customer's
9 requirements.

10 MR. FEDERICO: I should say requirements in that
11 context is the demand. Our demand from our customers
12 exceeded our own domestic production.

13 VICE CHAIRMAN JOHNSON: All right thanks to both
14 of you Miss Zissis and Mr. Federico. I look forward to
15 seeing that in a post-hearing statement, thank you.

16 And this is probably best directed to Mr.
17 Cummings although anyone else is -- should be able to answer
18 it if they would like to. Given that table C-1 of the staff
19 reports shows your imports from Indonesia in interim 2017 --
20 can you please speak to the market factors that precipitated
21 the exit of subject imports from Indonesia at the end of the
22 period of investigation?

23 MR. CUMMINGS: I think there are a couple of
24 things that happened. You know the expiration of the
25 blender's tax credit was the primary one. Then the

1 differential between the D4 and the D6 increased and the
2 profitability of bringing biodiesel into the United States
3 went to negative.

4 And so it was no longer -- we couldn't compete in
5 the market and you know, we exited. We had this argument we
6 didn't exit we just can't participate in the market because
7 of economics and we don't -- we come in this market and come
8 out of the market when we can do it in a way we provide a
9 good product to the customers at a competitive price.

10 If we can't do that price we don't participate.

11 And if you look at our participation over the
12 last five years, there have been years that we were
13 completely not in the market, and then years when we did
14 participate.

15 VICE CHAIRMAN JOHANSON: Right. Thank you for
16 your response, Mr. Cummings.

17 I would like for you all to provide your
18 perspective on a statement in Petitioner's prehearing brief
19 at page 12. Petitioners state that, quote, "Subject imports
20 benefit from massive foreign government subsidies and then
21 double dip by partaking in the benefits afforded them
22 through the U.S. renewable fuels program." Close quote.

23 In examining this investigation on the basis of
24 threat, would what was referred to by the Petitioners as
25 "double dipping" of subsidies make it more likely that

1 imports from Argentina and potentially Indonesia be
2 particularly strong in the U.S. market?

3 MR. JANZEN: This is Bernd Janzen. Maybe I can
4 start and I'm sure Dan will want to address it with respect
5 to Argentina.

6 Speaking with respect to Indonesia, just several
7 comments on the Commerce Department CVD analysis. And of
8 course I understand that the Commission's role is not to
9 look behind what the Commerce Department reports to you, but
10 what we're dealing with here is really in our view egregious
11 over-reach by the Commerce Department, and some absurd and
12 rather punitive findings that distort what is really going
13 on in Indonesia.

14 So this morning the Petitioners referred to a
15 so-called "Subsidy Fund" that is part of how the Indonesian
16 Government promotes the use of biodiesels domestically. The
17 payments that Petitioners referred to and that the Commerce
18 Department countervailed, are in fact payments made under
19 the Indonesian Government program for the purchase of
20 biodiesel by mainly the state-owned oil and gas company.

21 So LoMar is selling biodiesel domestically in
22 Indonesia, and it is receiving payment for that biodiesel.
23 Those are not grants. That's payments for a product being
24 sold. That's one component of what the Commerce Department
25 did.

1 The other has to do with an export tax regime.
2 There is a modest export tax and export levy on various palm
3 products, including CPO, crude palm oil, but in fact there
4 is a massive market with many participants for CPO, many
5 private parties in Indonesia, and many of them do in fact
6 export.

7 So there really isn't a meaningful restraining
8 impact. All of the market participants in Indonesia--I can
9 really only speak for WilMar--are acquiring their inputs on
10 the open market, or from their own facility's plantations
11 that they own.

12 And in addition to that, we have a series of WTO
13 determinations that export restraints--and we don't even
14 think this is a restraint in Indonesia--are not properly
15 treated as countervailable subsidies.

16 So I think if you look carefully at how the
17 Indonesian programs operate--and we're happy to elaborate
18 posthearing--you don't see the alleged massive subsidy
19 scheme that Petitioner described at work; you just see a
20 different kind of arrangement that a different country has
21 adopted to make a biodiesel market happen. They've done it
22 differently from the U.S., but effectively it's the same
23 because the government is basically dictating the existence
24 of a market for biodiesels like in the U.S. They just do
25 it differently, and we'll explain more posthearing.

1 MR. DAWSON: Taylor Dawson. Just maybe to ask
2 John a question to explain that better. The product that
3 you sell to me, does that collect from same fund? That
4 would be the double dipping to exports.

5 MR. CUMMINGS: That's correct. You know, this
6 fund that they refer to is for the domestic Indonesia
7 biodiesel mandate. And it's basically a mechanism to
8 compensate the biodiesel producers for selling biodiesel to
9 Pertamina, which is the Indonesian National Oil Company.

10 So it's within this domestic mandate. And it was
11 mischaracterized to call it a "grant." I think they called
12 it. And, you know, it's completely separate from anything
13 that we would export to the United States.

14 MR. SIM: This is Edmund Sim. So to add one more
15 point to this, the money that was supposedly paid, that was
16 paid, subsidized to our clients, actually, as Bernd
17 explained, didn't go to our clients. I mean, the money
18 actually is our clients' money, because you have a export
19 tax on crude palm oil. It's paid by Wilmar and Musim Mas

20 . That money was collected by the fund.

21 The fund then used that same money to pay back
22 Musim Mas and Wilmar for the sales to Pertamina. So
23 essentially the Commerce Department has found the subsidy to
24 be based on funds that came from the companies themselves.
25 So we're being accused of subsidizing ourselves, at least

1 from the client's point of view.

2 So again, this is something we can explain in the
3 posthearing brief.

4 MR. PORTER: Commissioner Johanson, for Argentina,
5 my colleague Bernd characterized the Commerce Department's
6 CV tonation for Indonesia as egregious over-reach, absurd,
7 and punitive. That applies 100 percent equally well to
8 Argentina. Okay? The CVD finding that the Commerce
9 Department found is utterly lacking in legal justification
10 and factual--and factual because we're not going to get into
11 CVD law now.

12 The ultimate--the predicate for the entire
13 subsidy is that Argentina has a tax on soybeans, a tax on
14 soybeans, that they impose for revenue generation purposes.
15 Petitioners claim that that tax constitutes a direction from
16 the government to farmers to sell a lower price to biodiesel
17 makers. That's just literally just made up. Okay?

18 More importantly, economists here at the
19 International Trade Commission looked at this in 2007 and
20 said, if you eliminate that tax on the soybeans, what would
21 the difference in price to biodiesel producers be?
22 Argentine biodiesel producers. And they calculated 1.6
23 percent difference.

24 Our client, Cargill, redid that study for the
25 purposes of the CVD case using updated data. What did they

1 find? 1.9 percent.

2 So the idea that the export taxes causes--export
3 taxes on soybeans causes biodiesel producers to have much
4 lower costs than otherwise is simply not true.

5 VICE CHAIRMAN JOHANSON: Alright, thanks for your
6 responses. I didn't mean to look behind the decision of
7 Commerce because I know it turned out to be rather a loaded
8 little question, I guess. But the reason for my asking was
9 because I do think it could be relevant in a threat
10 analysis.

11 MR. PORTER: I'm sorry, I apologize,
12 Commissioner. Just one more point I want to make that's
13 very important.

14 VICE CHAIRMAN JOHANSON: Okay.

15 MR. PORTER: Under U.S. law you can only generate
16 a REN in the United States. So our clients are not able to
17 get independent REN revenue. Argentine producers cannot get
18 independent REN revenue. Argentine producers also cannot
19 get the biodiesel tax credit.

20 So I'm not exactly sure how there's double
21 dipping going to Argentine producers when the staff did a
22 very nice job of listing the different revenues that go into
23 the biodiesel sales. There's sale of the biodiesel.
24 There's independent REN revenues. And there's a biodiesel
25 tax credit.

1 Two of those three our clients can't get, yet
2 Petitioners can get all three.

3 VICE CHAIRMAN JOHANSON: Is that because the
4 blenders get the independent--

5 MR. PORTER: It's because the RENs can only
6 generate in the United States. Under the system, only U.S.
7 blenders or the--you know, can get the biodiesel tax credit.

8 Our Argentine exporters do not get the blenders
9 tax credit when they cannot sell independent RENs.

10 VICE CHAIRMAN JOHANSON: Okay, thanks for your
11 responses. My time has expired.

12 COMMISSIONER WILLIAMSON: Thank you.

13 The staff report indicates that most domestic
14 shipments are with RENs, whereas most shipments of subject
15 imports are without RENs. Why is there a difference? And
16 is it significant? And if it's not significant, if you
17 could--

18 MR. JANZEN: Commissioner Williamson, I would
19 invite Mr. Cummings to address this. I think what you're
20 really getting at is the REN separation phenomenon.
21 Speaking for Wilmar, and I think it's equally true for Musim
22 Mas, all of the imports of PME did generate REN, but in some
23 cases the RENs are sold separately.

24 COMMISSIONER WILLIAMSON: Well that's the question
25 I'm asking. Why is that, whereas the others do not?

1 MR. JANZEN: Mr. Cummings can explain.

2 MR. CUMMINGS: Okay, I think this comes down to a
3 customer preference, and it kind of goes back to this REN
4 fraud issue that Sandra was talking about. There are some
5 customers that simply don't want to deal with a REN.

6 COMMISSIONER WILLIAMSON: Okay, and so the
7 purchasers of the imports are more likely to be in that
8 category than domestic?

9 MR. CUMMINGS: Well the purchase of imports are
10 always--the biodiesel is a B-100 with REN. It's a function
11 of do you separate the REN before you sell it to that first
12 customer, or not?

13 In some instances you would separate the REN
14 already because the customer just wants a B-100 with no
15 RENs. Where the customer wants a B-99 with no RENs. So you
16 need to look at the three buckets, and even in the case of
17 California the fourth bucket where you've got the physical
18 product, the REN, the BTC, and then an LCFS credit that's
19 applicable. All four of those buckets make up the total
20 value. And if they sell B-100 without RENs, they got some
21 money with RENs. So you've got to look at the whole picture
22 in order to get the whole value.

23 COMMISSIONER WILLIAMSON: Okay, thank you.

24 What is the trend in REN values over the POI?
25 And how is this significant for this case?

1 MR. SZAMOSSZEGI: Hi. This is Andrew Szamosszegi
2 from Capital Trade. We had a couple of slides, one that
3 showed D-4 REN values, and one that showed D-4 and D-6 REN
4 values over the POI. And you can see that they trended
5 upward during the period. You also see that there are gaps
6 between the D-4/6 and the D--the D-4 REN and the D-6 REN
7 that emerge at various times.

8 One way--and Sandra can vouch for this/ The value
9 of the REN represents the cost of compliance with demand
10 date. So the signal that that rising REN is giving you is
11 that there is an increased cost of compliance above the cost
12 of diesel in order to meet the mandate. This is a strong
13 signal for demand from the U.S. market saying we need more
14 biodiesel because we need more REN.

15 COMMISSIONER WILLIAMSON: So why does it drop at
16 the end of--it looks like it drops--

17 MR. SZAMOSSZEGI: The D-6 drops, and there is some
18 speculation as to why that happened. But Petitioners have
19 said that that drop in the D-6 was caused by the Carl Icahn
20 short. I've also heard that the EPA has been considering
21 making RENs from exports. I guess--

22 COMMISSIONER WILLIAMSON: No, but it looked like
23 it dropped in '15, in the end--yes, it seemed like it
24 dropped at the end of '15, at the end of '16, at the end of
25 '17--

1 MR. SZAMOSSZEGI: Right. And I think what you see
2 at the end of '17 are those additional factors for also the
3 use of RENS if you export--

4 COMMISSIONER WILLIAMSON: Okay.

5 MR. SZAMOSSZEGI: Because that would reduce the
6 value of the RENS because that would put more of them on the
7 market.

8 COMMISSIONER WILLIAMSON: Okay--

9 MR. SZAMOSSZEGI: So what you see are two things
10 there. One is that, you know, the ethanol REN market is a
11 lot larger, so it is in many cases controlling. But there
12 are other times when you have a different market dynamics
13 that are reflected in the D-4 market.

14 And so that's when you tend to see a gap
15 emerging.

16 COMMISSIONER WILLIAMSON: Okay, thank you.

17 MR. DAWSON: Commissioner, may I say something?

18 COMMISSIONER WILLIAMSON: Sure.

19 MR. DAWSON: Taylor Dawson--

20 COMMISSIONER WILLIAMSON: I don't have much time
21 left, that's why I'm rushing.

22 MR. DAWSON: I'll try to be really quick, and it
23 is a tricky topic. But the REN is driven primarily by three
24 things. It's heating oil, bean oil, and then the dollar a
25 gallon tax credit. And those things are always moving,

1 coming and going. So you constantly have these
2 fluctuations.

3 And then injected within that you have, you know,
4 the big macro what is the EPA going to do? Are they going
5 to lower the mandate? Raise the mandate? Where are they
6 going to set it? Is Carl Icahn actually going to influence
7 the President?

8 So you will never truly make sense of that market
9 other than the one thing that I will note is that it has
10 always done its job to incentivize production and help us
11 meet our mandates.

12 COMMISSIONER WILLIAMSON: Good. Okay, thank you.

13 How should we analyze the four different pricing products
14 in looking at the pricing trends? Is the B-100 versus the
15 B-99 and the biodiesel with and without RENs any more or
16 less probative of the impact of import pricing on domestic
17 prices?

18 MR. DAWSON: Taylor Dawson. Can you say the very
19 end real quick?

20 MR. SZAMOSSZEGI: Andrew Szamosszegi from Cap
21 Trade. I think what you--the picture you get from the
22 under-selling is that when you look at it properly you
23 really have a mixed picture, okay? Because there are many--
24 there are certain under-selling observations that take place
25 in product categories where the domestic industry doesn't

1 participate.

2 When you look at the products where the domestic
3 industry does participate and you take account the fact that
4 the Indonesian under-selling observations exist because they
5 carry a D-6 REN rather than a D-4 REN, and in fact are also
6 sold at a discount because it's a lower value product in the
7 market, you really get a mixed under-selling picture in the
8 products that are important to the domestic industry.

9 And I think that's a big difference from--well,
10 that's a difference from what you saw in the prelim.
11 Because in the prelim you said, well, there's under-selling.
12 We're having trouble judging the price trends, and we know
13 there are these REN values and BTCs and things like that.

14 But I think what emerges now when you take into
15 account the RENs and you have another product, I think you
16 get a mixed under-selling picture.

17 MR. PORTER: Commissioner Williamson, I agree And
18 just sort of very quickly, to answer your direct question,
19 I'm not so sure there's anything inherently sort of one is
20 better than the other. Often I know Ben here, and we've
21 sort of been arguing, we're not making that argument.

22 All we're saying is that the staff has done a
23 nice job of giving you quantities with respect to pricing
24 products. So you're able then to analyze which pricing
25 product was sold more by U.S. producers, which pricing

1 product was sold more by importers selling Argentine
2 products. And what you have is these, what we submit the
3 data show, as Andrew said, is that in those pricing products
4 which were less important to the domestic industry, that's
5 where you had sort of more your under-selling.

6 That's just a fact. So what do you do with that?
7 And to finally note that for Argentina it's completely
8 mixed. It's literally half and half. Half under-selling,
9 half over-selling, and in fact on a volume basis there are
10 more gallons of biodiesel that were over-sold to domestics
11 than under-sold.

12 COMMISSIONER WILLIAMSON: Okay, thank you for that
13 answer.

14 Please comment on the relationship between
15 petrodiesel and diesel prices. And will purchasers buy
16 biodiesel if it is higher priced than petrodiesel? I think
17 the Petitioner said no, that's always a discount. Do you
18 disagree with that?

19 MR. CUMMINGS: I can talk to that a little bit.
20 Generally when buyers are looking at buying a biodiesel,
21 they look at it on a REN-less basis. So you take the REN
22 away. And generally it needs to be a discount to petroleum
23 diesel or they won't--there's no money in blending it. They
24 just simply won't buy it.

25 So, you know, the discount to petroleum diesel

1 goes from, you know, two cents, to fifty cents, and sort of
2 fluctuates to the negative of it. And sometimes it goes
3 above, and then the REN has to adjust in order for it to
4 come back below the petroleum diesel. But it's still all
5 relative to that petroleum diesel.

6 So petroleum goes up to \$4, it's going up there
7 as well. But if it goes down to \$1, there's less room on
8 the down side for a discount.

9 COMMISSIONER WILLIAMSON: Got it.

10 MR. CUMMINGS: So the elasticity may be the bust
11 but it generally needs to be at a discount for the biodiesel
12 to sell.

13 COMMISSIONER WILLIAMSON: Okay.

14 MR. DAWSON: Taylor Dawson. Just to put it a
15 little bit differently, we don't like--our customers do not
16 like biodiesel. Refiners do not like biodiesel. It is an
17 inferior product to diesel. That's why it is blended at a
18 small amount.

19 It is a--the biodiesel we purchase is just a
20 vehicle to acquire credits. And so those credits have to
21 make it profitable. And, you know, whether it's a D-6
22 credit, or a D-4 credit, we're essentially--this industry
23 wouldn't be what it is today except for the fact that we're
24 truly just buying compliance credits.

25 COMMISSIONER WILLIAMSON: Okay, thank you.

1 Looking at the lapse of the BTC, and you show the expiration
2 of the BTC in 2017 affected the national farmers in the
3 domestic industry. Petitioners claim that paying the price
4 of the price to raise--to offset the loss of the credit is
5 their sign of injury. And I think you are arguing that the
6 expiration of the credit is an alternative cause of injury
7 unrelated to subject imports. And I was going to say, could
8 you explain why you believe your position is correct?

9 MR. PORTER: Sure. Commissioner, I would like to
10 take this in sort of two parts. I would like to have my
11 colleague, Valerie Ellis, to discuss what we call the
12 evidence of whether the biodiesel tax credit will be
13 renewed. And then I'll answer your legal question.

14 COMMISSIONER WILLIAMSON: Okay, fine. My time has
15 expired, so go ahead.

16 MS. ELLIS: Valerie Ellis for Curtis Mallet on
17 behalf of CARBIO. I just want to go a little bit over the
18 history of the BTC. Very quickly, it has expired four
19 times. Roughly 12 months pass, 12 to 13 months pass before
20 it's renewed. It is traditionally renewed in December or
21 January.

22 You heard the Junior Senator from North Dakota
23 here today say she wasn't sure if it would be renewed--

24 COMMISSIONER WILLIAMSON: Yes, I understand.

25 MS. ELLIS: --but Senator Grassley is the senior

1 Senator from Iowa and has assured his industry that, yes, it
2 will be renewed. And if you don't believe him, you can look
3 at industry analysts who are suggesting a buy on renewable
4 energy. Or you can look at the quarterly report of the
5 renewable energy groups themselves where they predicted a
6 mid-December renewal that they are fairly confident that
7 they're going to get.

8 And it really kind of--you know, you've heard a
9 lot about a rosy--you've heard this idea that the
10 Petitioners are putting forward this kind of rosy capacity
11 scenario to the EPA. And, you know, the snapshot in time
12 that they're bringing to the ITC by not aligning ABCD is
13 this pre-BTC renewal low profit snapshot that may not really
14 be the accurate picture were you looking at this industry in
15 February as you ordinarily would be with a BTC renewal.

16 And I'll let Mr. Porter talk a little bit more.

17 MR. PORTER: Sorry, did you have a follow-up
18 question?

19 COMMISSIONER WILLIAMSON: No, I was just--

20 MR. PORTER: Real quickly, what I mentioned this
21 morning was true. And it's not just what I'm saying. REG
22 is telling inventors the same thing: that if you take the
23 biodiesel tax credit from 2016 and put it in 2017, REG says
24 they had their best year ever. Okay?

25 And we can do the same thing for the entire

1 industry and you would get the same result. And so that's
2 the reason for the injury in 2017. It's the termination of
3 the, or the elimination of the biodiesel tax credit.

4 Subject imports had no effect on that. So I'm
5 saying as a legal matter then you cannot attribute harm
6 absolutely caused by something else to subject imports.

7 COMMISSIONER WILLIAMSON: Okay. Thank you. Thank
8 you for those answers.

9 CHAIRMAN SCHMIDTLEIN: Okay, thank you. Let me go
10 back to something that, Mr. Dawson, I think you said I think
11 in response to Commissioner Broadbent when she asked if the
12 Commission goes affirmative in this case, what would happen
13 to your purchasing patterns?

14 And I thought I heard you say you would no longer
15 buy from Argentina and Indonesia. Is that correct? That
16 your sourcing from that, from those sources would go down?

17 MR. DAWSON: I apologize. "Affirmative" means
18 that--

19 CHAIRMAN SCHMIDTLEIN: Means that duties would go
20 on at the Commerce Department.

21 MR. DAWSON: Commerce duties the way DOC presented
22 them, and again this is forecasting what I predict so it's
23 not backed, it's futuristic expectations, but the changes
24 probably will--I mean, you have to look at the veg oil
25 markets globally. And who has enough veg oil, and then

1 biodiesel production, to meet our mandate. We still have a
2 high RVO. So either the oil from Argentina needs to come to
3 the United States and it would actually go to Europe
4 because Europe has a ton of truly idle biodiesel capacity.
5 So--

6 CHAIRMAN SCHMIDTLEIN: So who would you buy from,
7 though?

8 MR. DAWSON: ADM.

9 CHAIRMAN SCHMIDTLEIN: You would end up buying
10 domestic?

11 MR. DAWSON: No, ADM has a plant in Europe.

12 CHAIRMAN SCHMIDTLEIN: I see. And so that you
13 would import it from Europe.

14 MR. DAWSON: Bungi, as well. Bungi is already
15 talking to me. They're texting me right now trying to see
16 if we're going to get to an event where he can sell me
17 European product.

18 CHAIRMAN SCHMIDTLEIN: Okay. And that's because--
19 and you know that because the U.S. suppliers are unable to--
20 you predict that the U.S. suppliers will be unable to supply
21 you?

22 MR. DAWSON: Oh, right. Correct. I mean, they
23 will marginally increase as they've been doing for the past
24 several years. But one thing that I will say, REG and Chad
25 Stone made a comment about them potentially investing more

1 in biodiesel. That's very unlikely. I think you could also
2 go through their investor statements and look. Biodiesel is
3 an antiquated technology now, and even REG is only looking
4 at investing--maybe not "only" but primarily looking at
5 investing in renewable diesel.

6 So we have seen significant increases in
7 renewable diesel investments, you know, by companies like
8 Velaro and others, but not biodiesel.

9 CHAIRMAN SCHMIDTLEIN: Okay. And do you disagree
10 with Petitioners that the final price here is a negotiated
11 price?

12 MR. DAWSON: I mean it's negotiated. Do I
13 disagree with the fact that it's negotiated? I do not
14 disagree.

15 CHAIRMAN SCHMIDTLEIN: Okay. So when Indonesia
16 left the market, who filled in for them? Right? I assume
17 the position is that Indonesia was pulled into the market.

18 MR. DAWSON: Taylor Dawson. Within the D-6 pool,
19 they just weren't filled. There wasn't a filling. There's
20 just less D-6s and that category is going to have a more
21 difficult time meeting that mandate with respect to blend--

22 CHAIRMAN SCHMIDTLEIN: But does that mean people
23 are going to use D-4s to meet that mandater?

24 MR. DAWSON: That's up in the air. There are
25 talks about E-15 and other things.

1 CHAIRMAN SCHMIDTLEIN: Talks among who?

2 MR. DAWSON: EPA, Congressmen, Grassley, a bunch
3 of--

4 CHAIRMAN SCHMIDTLEIN: So that would require
5 legislation to change?

6 MR. DAWSON: There are a lot of question marks
7 around that, the E-15 waiver and I'm not an expert to go
8 into that.

9 MR. CUMMINGS: I can give you my comment. This is
10 John Cummings.

11 CHAIRMAN SCHMIDTLEIN: Okay.

12 MR. CUMMINGS: Wilmar. The volume was 100 million
13 gallons at its peak, and a little bit less than that. So in
14 the grand scheme of the RFS it wasn't that much volume. And
15 I mean as far as who will fill that volume, the speculation
16 comes from largely other ethanol sources. But that
17 exacerbates this blend wall issue. So--

18 CHAIRMAN SCHMIDTLEIN: Would that require action
19 by Congress or other ethanol sources to be able to fill that
20 mandate, or just EPA?

21 MR. CUMMING: I don't think so, because I mean
22 you've got E-15 that is being sold seasonally. It's not
23 available to be sold in the summer because of a vapor
24 pressure issue. Then you've got other E-85 that's being
25 sold. So I mean theoretically making up 100 million gallons

1 for ethanol is really nothing.

2 MS. DUNPHY: Sandra Dunphy with Weaver. I believe
3 that the new head of the office of Air and Radiation was
4 announced today, and he said that he would look into whether
5 EPA has the authority to approve year-round use of E-15.

6 CHAIRMAN SCHMIDTLEIN: I see. Okay.

7 MR. VERGONA: Madam Chairman, on more thing.
8 Chris Vergona. Something else to note is that they do not
9 have to necessarily meet the obligation this year. If a
10 refinery or an obligated party is short, they are allowed to
11 carry their obligation over for one calendar year.

12 CHAIRMAN SCHMIDTLEIN: Oh, is that right? Okay.

13 MR. VERGONA: Yes, ma'am.

14 CHAIRMAN SCHMIDTLEIN: Okay. Alright, well that's
15 helpful. That's interesting. Okay.

16 Alright, I--

17 MR. JANZEN: And, Chairman Schmidtlein, I just--
18 Bernd Janzen--I just wanted to note quickly that we do agree
19 with your characterization of our position about a unique
20 confluence of circumstances having drawn in the Indonesian
21 PME. The combination of the REN value for the D-6, the
22 availability of the DTC, and the physical prices, the
23 different elements of value aligning during the POI until of
24 course the end of 2016, enabling Indonesia and PME to
25 participate. It was economic during that period. Then it

1 became uneconomic to do so as of 2017, as had occurred
2 previously as Mr. Cummings described earlier today.

3 CHAIRMAN SCHMIDTLEIN: And that was just the
4 expiration of the BTC?

5 MR. JANZEN: I think I should let Mr. Cummings
6 address this further, but I think we never speak of the BTC
7 in perfect isolation. It's really a combination of
8 availability of the BTC and REN values, and the confluence
9 of these different market factors, including of course the
10 petrodiesel price. All of these things have to come
11 together in one form or another for it to be economic for
12 the Indonesian PME to participate.

13 CHAIRMAN SCHMIDTLEIN: And so the D-6 REN value
14 went down as well, I guess, at that time?

15 MR. CUMMINGS: Yeah. In the beginning of '17,
16 you're referring to? This is John Cummings.

17 CHAIRMAN SCHMIDTLEIN: Okay. Um-hmm.

18 MR. CUMMINGS: Yes. And it's more the relative
19 spread--

20 CHAIRMAN SCHMIDTLEIN: I see.

21 MR. CUMMINGS: --between the D-6 and the D-4 that
22 was I guess made it economically unviable, combined with the
23 tax credit. I mean you'll see in the--well, I won't get
24 into the profitability of the U.S. industry, but I mean the
25 BTC was devastating for everybody.

1 You know, the REN value was sort of the nail in
2 the coffin for us.

3 CHAIRMAN SCHMIDTLEIN: And what was it? Is this
4 the Carl Icahn short that you were referring to that caused
5 that increased spread? Or no one knows exactly why the D-6
6 REN--

7 MR. CUMMINGS: Why the REN market does what it
8 does is like the mystery of the universe.

9 CHAIRMAN SCHMIDTLEIN: I see.

10 MR. CUMMINGS: It's not a--you know, we as
11 commodity traders like to have supply and demand models, and
12 predict things, and the REN market just does not behave like
13 that. It will move on a rumor. It will move on a
14 speculation of this is going to happen, or that's going to
15 happen, and it goes down.

16 So I mean it's probably the most volatile, if you
17 want to call it a commodity, it's probably the most volatile
18 thing out there. I mean it goes like up and down amazing
19 amounts in a very short time.

20 CHAIRMAN SCHMIDTLEIN: Okay. Alright, thank you
21 very much. Vice Chairman Johanson.

22 VICE CHAIRMAN JOHANSON: Thank you, Chairman
23 Schmidtlein. Sticking on the issue of RENs, Petitioners
24 suggest at pages 60 to 61 of their prehearing brief that in
25 assessing the impact of subject imports on the financial

1 performance of the domestic industry, the Commission should
2 exclude the Blenders Tax Credit revenue from net sales in
3 part because the Blenders Tax Credit is not revenue
4 generated biodiesel production related activities.

5 How do you respond to this?

6 MR. PORTER: We do not agree and more
7 importantly, your staff did not agree, which is why the
8 staff included that revenue in the profitability line.

9 VICE CHAIRMAN JOHANSON: Okay.

10 MR. CUMMINGS: I would say you wouldn't have a
11 blended tax credit without the physical biodiesel so it has
12 to be included and you wouldn't have a RIN without the
13 physical biodiesel so all three components have to be
14 considered.

15 VICE CHAIRMAN JOHANSON: Okay, we'll leave it at
16 that. And I have just one more question, which is a very
17 basic one. I assume that there is a price difference for
18 biodiesel made from different feedstocks, from biodiesel
19 made from soy, canola, corn, and palm and animal fats and
20 recycled product as well; is that correct?

21 MR. DAWSON: I think we've brought up that there
22 are a lot of different factors that go into the price of
23 biodiesel. Feedstock is definitely one of them and it
24 becomes more severe in the colder months.

25 VICE CHAIRMAN JOHANSON: Right, with regard to

1 animal fats.

2 MR. DAWSON: Exactly, animal fats and palm oil
3 can see discounts. We've seen them as steep as 60, 70 cents
4 per gallon for both tallow and palm.

5 VICE CHAIRMAN JOHANSON: Okay, I just want to
6 clarify that. That concludes my questions. I would like to
7 thank you all for being here today. I know it's been a long
8 day, but this has certainly helped us to better understand
9 the investigation materials. Thanks.

10 CHAIRMAN SCHMIDTLEIN: Commissioner Broadbent.

11 COMMISSIONER BROADBENT: Yes, just a couple more
12 questions. Ms. Dunphy, what happens if the RFS mandate is
13 not met for a given year?

14 MS. DUNPHY: As Mr. Vergona pointed out, the
15 obligated parties do have the ability to carry forward up to
16 100 percent of their obligation to the next year, okay, but
17 when EPA sets the standards every year it's a goal. It's a
18 target. And sometimes if gasoline and diesel demand aren't
19 what EPA forecasted, then no matter what happens in the
20 market the goals aren't met, usually, because the obligated
21 parties take their gasoline and diesel production times the
22 percentages that were set based on EPA's estimate and so
23 there's always going to be a difference. Sometimes will
24 exceed if gasoline demand is higher than what EPA thought it
25 was going to be when they set the target -- will exceed the

1 requirements. If gasoline demand comes lower, then we may
2 not meet that target.

3 COMMISSIONER BROADBENT: Okay, that's helpful.

4 MR. VERGONA: Just to add to that, to put a
5 little bit more context on what Ms. Dunphy said, every year
6 when the EPA evaluates these volumes what would probably
7 happen is that they meet with the Secretary of Department of
8 Energy and the Secretary of Department of Agriculture. And
9 when they meet with those two departments and they come up
10 with the volumes, they would more than likely include the
11 missed volume from this current year and reduce the next
12 year by that exact volume to make sure that they can meet
13 the mandate.

14 COMMISSIONER BROADBENT: I'm sorry; who meets
15 with the Secretary of Energy and the Secretary --

16 MR. VERGONA: The head of the EPA.

17 COMMISSIONER BROADBENT: I see.

18 MR. VERGONA: That's in the rules for the RFS.
19 Every year they have to meet with Secretary of Department of
20 Energy to talk about the actual fuel consumption and they'll
21 use EIA data during June of the previous year for gasoline
22 and diesel and then they also meet with the Secretary of
23 Agriculture to make sure that because of crop reports
24 whether things like that that different farms can actually
25 produce the renewable fuels that would be needed to meet the

1 mandate.

2 COMMISSIONER BROADBENT: Okay, great. And then
3 just one more question for Mr. Dawson, and you've been a
4 trooper here in terms of answering all of these questions.
5 Something you said earlier, if the orders are imposed, the
6 dumping duties go in effect as Commerce envisions and
7 there's a corresponding supply shortage, do we assume that
8 the price of RINs go up?

9 MR. DAWSON: There's a lot of speculating. I
10 can help speculate. So one theory is that the EPA, who has
11 said that they're going to set mandates in accordance with
12 -- I think they call it domestic supply, which includes
13 foreign production that is brought in domestically. But if
14 you eliminate a large piece of imports, it is very likely
15 that that number could be taken out and you could actually
16 see no impact on RINs. However, there probably will, from
17 my opinion, be a very aggressive spike in the short term,
18 mostly because of how the EPA sets mandates. We are
19 currently in the month of November and by November 30 the
20 EPA will be finalizing their 2018 mandate.

21 So what has already happened, right, is we set
22 the mandate before even learning about things like this
23 case, so a bunch of different things could happen. You
24 could see no impact of RIN. You could see you know the
25 mandate sort of become a little screwed up, if you will; but

1 at the end of the day I'm not exactly sure.

2 MR. PORTER: Just one clarification, Taylor. I
3 believe the mandate for biomass -- biodiesel is done for
4 2018 and that will be set at an increase of 2.1 billion
5 gallons; is that correct?

6 MS. DUNPHY: So the biomass-based diesel mandate
7 or RVO is set prior to all the other RVOs with the different
8 categories -- the cellulosic, the advanced, and the
9 renewable fuel and that was by law. Congress said you're
10 going to set this far enough in advance. And the mandate
11 for '17, as we've pointed out, is 2 billion. The mandate
12 for '18 could be 2 billion. It could be 2.1 billion, and
13 that will be finalized by the end of November and they will
14 also set the 2019 RVO for biomass-based diesel. So again,
15 it's one year ahead of all the other RVOs.

16 COMMISSIONER BROADBENT: We thank the panel for
17 coming. We really appreciate all your information.

18 CHAIRMAN SCHMIDTLEIN: No more questions. Okay,
19 that concludes questions from the Commissioners. Do the
20 staff have any questions for this panel?

21 MS. HAINES: The staff has no questions.

22 CHAIRMAN SCHMIDTLEIN: Okay. Do Petitioners
23 have any questions for this panel?

24 MR. GETLAN: Madame Chairman, Myles Getlan for
25 Petitioners, we do not have any questions for Respondents.

1 CHAIRMAN SCHMIDTLEIN: Alright, thank you very
2 much. And I will dismiss this panel at this time. Again,
3 thank you all very much for bearing with us. It's been a
4 long day. We appreciate it very much.

5 Alright, we're now ready to move to closing
6 statements. Petitioners have 16 minutes from direct, plus 5
7 minutes from closing for a total of 21 minutes, Respondents
8 have 8 minutes from direct, plus 5 minutes for closing for a
9 total of 13 minutes, and we will begin with the Petitioners.

10 MS. BELLAMY: Closing remarks on behalf of
11 Petitioner, Myles S. Getlan, on behalf of Cassidy, Levy,
12 Kent, U.S., LLC. Will the room please come to order?

13 CLOSING STATEMENT OF MYLES S. GETLAN

14 MR. GETLAN: Madam Chairman and Commissioners,
15 thank you very much. It has been a long day, another long
16 day for all of you. We appreciate your time and
17 consideration.

18 Before beginning, some rebuttal comments, I do
19 want to take the chance to thank the staff. The staff has
20 prepared a report for this industry that is on point and
21 we've all learned today that this is a very interesting
22 industry. It's an industry with complexities that the
23 Commission doesn't typically face, but the staff collected
24 information, has followed up on the issues that the
25 Commission had identified at the preliminary phase and

1 developed a robust record and it's an excellent pre-hearing
2 report.

3 We would submit it's a pre-hearing report that
4 supports an affirmative determination, but again, I just
5 want to thank the staff for their hard work. We understand
6 it's a -- there are challenges associated with schedules and
7 competing priorities and we just think they did an
8 outstanding job.

9 Let me begin just on the issue of accumulation.
10 I think we can dispose of this rather quickly because,
11 frankly, there's a fair amount of agreement on the facts.
12 It's really just a disagreement on the implications of what
13 those facts mean.

14 The Commission, in terms of cumulation,
15 considers whether the subject imports from a particular
16 country compete with other subject imports in the
17 domestic-like product and you're looking at whether there's
18 a reasonable overlap of competition and not complete or
19 perfect fungability, but a reasonable overlap. And of
20 course, here you have not heard any evidence and the staff
21 report doesn't contain any evidence that suggest that there
22 is no significant limitation in that level of competition.
23 Again, we repeat all biodiesel, including PME from
24 Indonesia, meets the same ASTM specification as other
25 biodiesel. It's used in the same end uses.

1 There's evidence on the record that even a
2 significant purchaser importer commingles biodiesel from
3 different sources, regardless of origin, including PME. You
4 have in the pre-hearing report purchasers, most of which
5 found Indonesian biodiesel interchangeable with biodiesel
6 from other sources. We agree Indonesian biodiesel is
7 eligible for a D-6 RIN versus a D-4 RIN, but that's still a
8 valuable commodity, if you will. A D-6 RIN, as Ms. Dunphy
9 explained, is important in satisfying the RFS mandates in
10 the D-6 category, the renewable fuel category. There's
11 value there. There's a minor price difference, but that
12 doesn't mean that the two products don't compete. And in
13 terms of if you're looking at price comparisons, you could
14 make an adjustment there. But again, it doesn't affect the
15 level of competition.

16 Indonesian biodiesel has a higher Cloudpoint.
17 We agree. So does tallow. The staff report shows that
18 tallow actually has an equivalent Cloudpoint or thereabouts
19 to PME and at the end of the day that higher Cloudpoint all
20 it does is present a limitation in terms of certain cold
21 weather states during the winter -- it's ability to compete,
22 just like tallow and some other high Cloudpoint biodiesels,
23 but in the rest of the country and the rest of the seasons
24 tallow or PME competes with all other biodiesel. In short,
25 the Indonesian Respondents try to paint this story that

1 nobody wants it.

2 It's a product that just doesn't compete with
3 any other biodiesel, but clearly there's a market for it.
4 Imports doubled during the POI from Indonesia and took
5 market share from U.S. producers. Again, every gallon of
6 biodiesel from Indonesia competed with domestic product and
7 Argentine product, for that matter, so the Commission should
8 cumulate on that basis.

9 Let's turn to the issue of volume because this
10 really is the key issue and this is what Respondents spend a
11 lot of time trying to run from, the data on the volume
12 affects. The volume affects here are extraordinary and
13 they're undeniable. A 463 percent increase in imports that
14 took 18 percentage points of market share from domestic
15 producers.

16 At the outset of our affirmative panel, I said
17 that Respondents were desperate to you know concoct a story
18 on supply to run away from those volume figures. What I was
19 not prepared for were the outrageous statements and
20 suggestions made, in particular, by Mr. Dawson from
21 Biosphere. They were nothing short of offensive to me and I
22 know our clients as well.

23 Let's step back for a second and think about
24 Biosphere. Biosphere is not an obligated party. They're a
25 discretionary blender. Their purchases of biodiesel are on

1 the basis of price because the only reason they would be
2 doing this is to make a profit. Again, they're not
3 obligated to purchase biodiesel or to retire RINs. They
4 have participated in this proceeding from the beginning;
5 Biosphere has, in the preliminary phase and now in the
6 final phase.

7 They've been represented by counsel and they
8 submitted a pre-hearing brief. What did that pre-hearing
9 brief contain, arguments on critical circumstances. It
10 didn't speak to any of these issues in substance. So what
11 you're hearing today in this hearing were arguments made for
12 the first time and these are bald allegations of essentially
13 calling domestic producers frauds.

14 On the issue of capacity, they are suggesting
15 that U.S. producers did not submit accurate capacity data in
16 their questionnaire responses. Mr. Dawson doubled down by
17 suggesting that domestic producers submit erroneous data to
18 the Department of Energy in their EIA survey data. We
19 submitted with our pre-hearing brief the forms that are
20 required to be submitted to EIA for purposes of these
21 monthly surveys and I will refer you to Exhibit 4 in our
22 pre-hearing brief. It's the instructions for the EIA Form
23 22-M and in it, it says "Title 18, U.S.C. 1001, makes it a
24 criminal offense for any person knowingly and willingly to
25 make to any agency or department of the United States any

1 false, fictitious or fraudulent statements as to any matter
2 within its jurisdiction."

3 To suggest that our clients and other U.S.
4 producers submit fraudulent information or erroneous
5 information to the Department of Energy or to this
6 Commission is simply outrageous without any factual support
7 for it.

8 When we talk about capacity, we've established
9 that the EIA data are reliable in terms of industry-wide
10 capacity and frankly, this is not a unique case. The
11 Commission in many cases, particularly in agriculture cases,
12 relies on government data to look at industry capacity and
13 capacity utilization. We're not asking you to do anything
14 unusual. And again, we're not asking you to discard
15 questionnaire data for the issue of capacity and capacity
16 utilization. We consider the EIA data as corroborating the
17 questionnaire data.

18 No matter how you look at there was hundreds of
19 millions of gallons of unutilized capacity in this market
20 and EPA -- again, they speak to EPA quite a bit. EPA itself
21 in a final rulemaking clearly stated that biodiesel --
22 active biodiesel production capacity in 2016 was 2.4 billion
23 active capacity. There should just be no further dispute in
24 terms of the ability or the capacity of domestic producers.

25 Biosphere for the first time today was talking

1 about quality of product and RIN integrity. Again, this was
2 not in their pre-hearing brief. That was all about critical
3 circumstances. But Chairman Schmidlein, you referred to
4 Table 210 of the pre-hearing report. Table 210 you were
5 looking at in reference to availability and reliability of
6 supply. We had that in our exhibit as well and it's
7 compelling information.

8 Well, let's look at Quality Assurance Program,
9 which goes to RIN integrity. Let's go to quality meets
10 industry standards. Let's go to quality exceeds industry
11 standards. And what you see here is 19 out 21 purchasers
12 found U.S. product comparable or superior. All 21, in terms
13 of purchasers in respect of quality meets industry
14 standards. You go to Indonesia and it's even stronger. I
15 mean there is simply no evidence in the record for these
16 allegations that Biosphere is making that there is a
17 quality difference or RIN integrity issue.

18 In terms of geography, we hear that there are
19 these -- again, these limitations on the ability to supply
20 product to the coast as if all demand is on the coast. The
21 interstate highways where these 18-wheelers are traveling
22 and stopping at the Love's Truck Stops or any other truck
23 stops all across the country demand is country-wide.
24 Consumption is not focused just on the coast. It's across
25 the country.

1 It's interesting -- I guess during the period of
2 investigation, RVF had geographic limitations. They weren't
3 able to supply the Northeast, but once duties go back in --
4 or are in place, Mr. Soanes testified this morning that
5 they're shipping biodiesel by marine vessel again back to
6 the Northeast. Was it suddenly that there are no more
7 geographic mismatch or logistic constraints, of course not.
8 The Respondents refer to whether it's economically efficient
9 to serve the market. What they're talking about here is
10 price. I mean they're saying it's cheaper to get
11 subsidized biodiesel from Argentina and Indonesia. We
12 absolutely agree with that.

13 Chad Stone of RAG testified that they had a
14 history of serving the East Coast and the Gulf Coast from
15 their multiple facilities. The only change was when the
16 flood of subsidized imports came in. Those customers no
17 longer wanted product shipped there. It was cheap. You
18 have 72 percent subsidy rates announced by the Department of
19 Commerce with respect to Argentina, significant subsidy
20 rates for Indonesia. These reflect massive benefits to
21 Respondents and it is why they're able to flood the market
22 with biodiesel and they're able to take market share from
23 U.S. producers and that turns to the price affects for this
24 case where the evidence is just as compelling as the volume
25 data.

1 Respondents point to a whole lot of factors and
2 frankly presented a pretty complicated picture on the
3 pricing of biodiesel, but whatever they're talking about
4 it's the same for U.S. and domestic-produced product. And
5 the straightforward answer on price was you know Biosphere
6 actually here they agreed with domestic producers or didn't
7 take issue. It's a negotiated price. It's a negotiate
8 premium or discount off of NYMEX. It's pretty
9 straightforward when it comes down to that. And what
10 purchasers overwhelmingly told you through their
11 questionnaire responses is that low price wins and the data
12 support that. The quarterly underselling data support that.

13 We didn't have a change to really look at this
14 during our affirmative presentation, but if you still have
15 in front of you our confidential exhibits Confidential
16 Exhibit 3 presents the underselling story and it is
17 absolutely compelling. We submit, as we described in our
18 pre-hearing brief, there are some adjustments that need to
19 be made to the pricing data. There are certain submissions
20 that contained clear errors. We discussed that with the
21 staff. One of the parties who submitted the erroneous data
22 conceded that that was the case and so what you see here in
23 Confidential Exhibit 3 is with the adjustments we have in
24 our pre-hearing brief. It's pretty straightforward, but
25 when you look at the level of understanding either on a

1 quarterly basis or a volume basis in the margins of
2 underselling you understand how they captured 18 percentage
3 points of market share and it's a commodity product. It's
4 the low price. Purchasers said it's the low price. That
5 subject imports are the low price leaders. They said they
6 purchased subject imports in lieu of domestic product on the
7 basis of price or because the prices were lower and the
8 underselling data support that.

9 There's also evidence in this case of price
10 depression. If you take a look at it, subject import prices
11 are declining more steeply than domestic producer prices and
12 the evidence on price suppression is even clearer. Late in
13 the period costs started to increase, prices continued to
14 decline in 2016, 2017 the cost price squeeze is even
15 greater. Domestic producers were not able to earn a
16 positive gross margin on their sales.

17 All of these factors, the volume and price
18 affects, had a significant negative, material impact on the
19 domestic industry. We talked about the lost market share.
20 We talked about how that's resulted in depressed capacity
21 utilization. The industry was deprived of additional
22 revenues, sales revenues. On the financial statements, you
23 have declining net income. You have operating income
24 results that are anemic. When you think about an industry,
25 again, where you have a 58 percent increase in demand from

1 2014 to 2016, declining costs from 2014 to 2016, and great
2 market certainty in 2016 than any time prior you would
3 expect robust growth, robust results and you do not see that
4 in the operating income of this industry.

5 When you look behind the BTC and whatever
6 success or whatever profitability you see in those margins
7 that is clearly the result of the BTC. And if you just take
8 out the BTC and put it below the line you see the
9 year-over-year worsening of margins that are stunning. The
10 investment figures, the declining capital expenditures, and
11 R&D spent during the period confirm that this is not a
12 healthy industry. They're not in a position to invest.

13 So the evidence is clear that the industry is
14 materially injured by reason of subject imports and the
15 industry is threatened with material injury by subject
16 imports. The future is bleak without a remedy here. We
17 talk about in our pre-hearing briefly certainly all of the
18 statutory factors are satisfied here with respect to threat,
19 but I will come back to and end really where I began and it
20 is about the subsidies because you know I heard a lot of
21 quarrel about the mechanics of a subsidy calculation or
22 definition of a subsidy, but what I did not hear was any
23 dispute that in 2016, the period of investigation, soybean
24 in or costs in Argentina were half the world market price.
25 There is a reason that imports are able to come in so

1 cheaply and it is through these subsidies.

2 Indonesia subsidized as well. These imports are
3 low priced on the basis of those subsidies. They have a
4 fundamentally different and lower cost structure than our
5 domestic producers here in the United States. There's a
6 reason other countries impose trade remedies. If our
7 industry does not get the benefit of a remedy, its very
8 existence is threatened.

9 We thank you for your time today and we ask for
10 an affirmative determination. Thank you.

11 CHAIRMAN SCHMIDTLEIN: Alright, thank you very
12 much, Mr. Getlan.

13 MS. BELLAMY: Closing remarks on behalf of
14 Respondents, Daniel L. Porter, Curtis, Mallet-Prevost, Colt
15 & Mosle, LLC and Edmund Sim on behalf of Appleton Luff. You
16 have 13 minutes.

17 CLOSING STATEMENT OF DANIEL L. PORTER

18 MR. PORTER: Madam Chair, Commissioners, this is
19 Dan Porter. Thank you for a another very long day, but we
20 think it was a productive day and I also want to thank the
21 staff for their hard work and their very good staff report
22 in what everyone admits is a very different and difficult
23 industry.

24 As you know, Respondents go second, so we have
25 the opportunity a live rebuttal during our panel, so Ed and

1 I are absolutely determined to finish before our 13 minutes.
2 So here we go.

3 First, Petitioners' counsel ended by saying this
4 is a very unhealthy industry. I like to kind of just go
5 back to the chart. This is from the staff report. Okay,
6 2014, 2016 every single performance indicator that the
7 Commission looks at. They look at whether the industry is
8 healthy by looking at performance metrics. Every single one
9 had double-digit gains. I just don't think that squares
10 with an industry that's not healthy.

11 Next, and this, I believe, is quite important.
12 Madame Chair, you asked a very -- a good question. You said
13 you're struggling. This sounds like a he said/she said with
14 respect to the idea of whether domestic producers were sold
15 out. I respectfully submit the "he's" and "she's" here are
16 not equal. Okay, you have Biosphere, which is one of the
17 largest purchasers in the United States and the single
18 company that accounted for the overwhelming majority of
19 subject imports.

20 On the other side, we have 24 U.S. producers --
21 that's what the staff said -- accounting for 90 percent of
22 production. Of those 24, I can't remember whether it was 17
23 or 18 are Petitioners. So that means they supported the
24 petition, yet, only four showed up today. And of the four
25 there was White Mountain and American Greenfuels.

1 Madame Chair, please look at page 3-3 and look
2 at the right-hand column of those two producers' share of
3 production. I respectfully submit those two producers are
4 representative of the industry and so the discussion has to
5 be taken in that context.

6 Next, on the same issue about the sort of
7 capacity, quite honestly, Petitioners' counsel spent a lot
8 time on a complete red herring. Okay, Mr. Dawson had his
9 views on the facts and figures given to the EPA. This case
10 is not about the facts and figures given to the EPA or the
11 EAI -- sorry, EIA, apologize. Okay, we have a staff report
12 here that says what the practical capacity is, what
13 production is by producers accounting for 90 percent.
14 That's the data we're going to use. We submit that's the
15 data that you should use. And so the question is not this
16 issue about which capacity data to use because the staff
17 report did a very nice job. It's all here. Really the
18 question is, is there evidence whether the U.S. producers
19 were effectively tapped out. Regardless of what the
20 practical capacity, could they actually produce more than
21 they could and we heard someone -- the largest purchaser or
22 one of the largest purchasers in the country say that he
23 called up and they told him they were sold out?

24 And by the way, his comment, if you look -- I
25 don't have it right in front of me, but the staff did a nice

1 -- each individual of the main, significant producers and
2 they put their capacity utilization. Look at that on that
3 page and you can see that actually corresponds to what
4 Taylor Dawson said about whether they were tapped out.

5 Two last points, prices, I think we all can
6 agree that prices in this market are extremely complicated.
7 Even Petitioners admit you have perpetual diesel price
8 affecting by biodiesel prices. You have soybean prices
9 affecting biodiesel prices. You have independent RIN value
10 affecting biodiesel prices and you have the BTC affecting
11 biodiesel prices. With all due respect, how Petitioners
12 really maintain that subject import prices affected the
13 entire U.S. market to a significant degree because that is
14 what the statute requires. And in other case, the
15 Commission said you know there's a lot of stuff affecting
16 prices and we can't conclude that there's substantial
17 evidence that subject import pricing is having an affect on
18 U.S. prices and they said therefore we don't make that
19 finding. That is what is going on here. There are a lot of
20 other things, other than subject imports, that affect U.S.
21 producer prices and that needs to be taken into account.

22 Finally, on the biodiesel tax credit, this is
23 just one of those things that the Commission needs to come
24 up with. You know what does the Commission think is going
25 to happen with this. We submitted our evidence that we

1 think this is going to come back and many, many, many agree.
2 But here's the thing, even if it doesn't come back, there's
3 not going to be big affect on the U.S. producers and
4 Petitioners admitted it themselves.

5 I believe it was Chad Stone of REG and the
6 Commissioners asked a question what happens if the biodiesel
7 tax credit is not renewed. What did he say? He said the
8 number one thing is to have lower soybean costs. That's
9 actually really bad for farmers, but with all due respect,
10 that's not your concern. Low soybean costs is beneficial to
11 biodiesel producers. So ironically, he is saying he's going
12 to have better margin if this goes away and that's actually
13 corroborated by other times when the biodiesel tax credit
14 was eliminated. The RIN values go up and things actually
15 become whole. So whether you think the biodiesel tax credit
16 is going to be renewed and they have their best year ever or
17 it's not renewed and things will adjust, in either
18 situation the domestic industry is going to be just fine.
19 Thank you.

20 CLOSING STATEMENT OF EDMUND SIM

21 MR. SIM: I'm Edmund Sim. I just want to
22 correct the record. I'm not from Akin Gump. There are two
23 job rejection letters from the Dallas/D.C. offices of Akin
24 Gump that prove that. I'm from Appleton Luff.

25 The last time I gave the closing at the staff

1 conference I gave a joke which I paraphrased Joyce Kilmer
2 and I said only God could make a palm oil tree, but it takes
3 Congress to make a RIN and the EPA to make a biodiesel tax
4 credit. I think to be on a serious note I think that's
5 true. That defines your product. You have the liquid which
6 remember comes from a living being, so it is alive and the
7 attributes of that live product are inferior. They're
8 different. They're different from the SME, okay. So in
9 terms of various aspects that you know I'm not going to go
10 into again they're different.

11 So unlike people -- people can overcome their
12 limitations. We see it all the time. That PME is not going
13 to overcome its limitations from nature. Similarly, that
14 PME is not going to overcome its limitations under the RFS.
15 It's not going to overcome its differences. It's never
16 going to be a D-4. It's always a D-6. And so it's on those
17 two bases and other bases that we presented in the
18 pre-hearing brief, the staff report collects it, we talked
19 about here, they're different products.

20 And so that's why the Indonesia Respondents have
21 put forward that Indonesian PME should not be cumulated with
22 Argentine and SME for injury purposes or for threat
23 purposes. We think that when you consider Indonesian PME by
24 itself and you look at the conditions of the competition,
25 Indonesian PME was not a cause -- was not the cause of

1 material injury to the domestic industry. So that's a way
2 of making it what -- you know as a relatively -- people have
3 said it's a complicated case. Yes, as I said in exchange
4 about -- you know complication is based on your point of
5 view.

6 You look at the European system it looks
7 relatively simple because there's no such thing as a RIN.
8 But as I said in the response, it is complicated because
9 you've created a whole other government entity that can
10 impose fines and could collect money and impose penalties on
11 people who don't follow the mandate. That's complicated.
12 So it's all in your point of view.

13 I put forward with the point of view of the
14 market, which Mr. Cummings put forward. From the point of
15 view of the regulatory system, which Ms. Dunphy put forward.
16 From the point of view of economics, which Mr. Szamoszegi
17 put forward. It's a different product. We hope that you
18 agree with us and we hope that you find that there's no
19 injury or threat of material injury from Indonesian PME.
20 Thank you.

21 CHAIRMAN SCHMIDTLEIN: Thank you very much, Mr.
22 Porter, Mr. Sim.

23 This now brings us to the close of the hearing.
24 Post-hearing briefs, statements responsive to questions and
25 requests of the Commission and corrections to the transcript

1 must be filed by November 16. Closing of the record and
2 final release of data to parties will be November 29 and
3 final comments are due December 1.

4 Again, thank you to all the witnesses and their
5 counsel for being here today. And with that, this hearing
6 is adjourned.

7 (Whereupon the meeting was adjourned at 5:38
8 p.m.)

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CERTIFICATE OF REPORTER

TITLE: In The Matter Of: Biodiesel from Argentina and Indonesia

INVESTIGATION NOS.: 701-TA-571-572 and 731-TA-1347-1348

HEARING DATE: 11-9-17

LOCATION: Washington, D.C.

NATURE OF HEARING: Final

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 11-9-17

SIGNED: Mark A. Jagan

Signature of the Contractor or the
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