UNITED STATES
INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	
	)	
CERTAIN FROZEN FISH FILLETS	)	Investigation No.:
FROM VIETNAM	)	731-TA-1012 (Final)

Pages: 1 through 293

Place: Washington, D.C

Date: June 17, 2003

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

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FROM VIETNAM) 731-TA-1012 (Final)

Tuesday,
June 17, 2003

Main Hearing Room
Room 101
500 E Street, S.W.
Washington, D.C.

The hearing commenced, pursuant to notice, at 9:33 a.m., before the Commissioners of the United States International Trade Commission, the Honorable Deanna Tanner Okun, Chairman, presiding.

APPEARANCES:

On behalf of the International Trade Commission:

Commissioners:

DEANNA TANNER OKUN, CHAIRMAN
JENNIFER A. HILLMAN, VICE CHAIRMAN
MARCIA E. MILLER, COMMISSIONER
STEPHEN KOPLAN, COMMISSIONER

Staff:

MARILYN R. ABBOTT, SECRETARY
WILLIAM R. BISHOP, STAFF ASSISTANT
GEORGE DEYMAN, SUPERVISORY INVESTIGATOR
LARRY REAVIS, INVESTIGATOR
MICHAEL HALDENSTEIN, ATTORNEY
ROGER COREY, INDUSTRY ANALYST
JOHN GIAMALVA, ECONOMIST
JAMES STEWART, ACCOUNTANT

APPEARANCES: (Continued)

Congressional Appearance:

THE HONORABLE BLANCHE L. LINCOLN
UNITED STATES SENATOR, STATE OF ARKANSAS

Foreign Government Appearance:

NGUYEN HUU CHI, DIRECTOR GENERAL, COMPETITION MANAGEMENT ADMINISTRATION, MINISTRY OF TRADE GOVERNMENT OF VIETNAM

In support of the Imposition of Antidumping Duties:

On behalf of Catfish Farmers of America and its individual members, America's Catch, Inc., Consolidated Catfish Company, LLC, Delta Pride Catfish, Inc., Harvest Select, Heartland Catfish, Pride of the Pond, Simmons Farm-Raised Catfish, and Southern Pride Catfish:

VALERIE A. SLATER, ESQUIRE
J. DAVID PARK, ESQUIRE
THEA D. ROZMAN, ESQUIRE
Akin Gump Strauss Hauer & Feld LLP
Washington, D.C.

DANNY WALKER
CEO, Heartland Catfish

RANDY RHODES
Senior Vice President, Chief Sales and Marketing Officer, American Pride Seafoods

JACK PERKINS
Vice President, Sales and Marketing, Consolidated Catfish Cos., LLC

BILL ALLEN
Senior Vice President, Bank Plus

JEFF DAVIS
COO, American Seafoods Group LLC

DAVID PEARCE
Owner, Pearce Catfish Farm, Inc.

APPEARANCES: (Continued)

SEYMOUR JOHNSON
Owner, Marie Planting Co.

DANIEL W. KLETT
Economist, Capital Trade, Inc.

THOMAS L. ROGERS
Economist, Capital Trade, Inc.

In Opposition to the Imposition of Antidumping Duties:

On behalf of Vietnam Association of Seafood Exporters and Producers (VASEP) and its individual members:

LYLE B. VANDER SCHAAF, ESQUIRE
EDMUND W. SIM, ESQUIRE
ALBERT LANDOWNER, ESQUIRE
JONATHAN SEIGER, ESQUIRE
White & Case LLP
Washington, D.C.

DR. NGUYEN HUU DZUNG
General Secretary, VASEP

VO DONG DUC
Director, Can Tho Agricultural
and Animal Products (CATACO)

VIRGINIA B. FOOTE
President and Co-Founder, U.S.-Vietnam Trade Council

MATTHEW FASS
Vice President, Maritime Products International

HOWARD M. JOHNSON
President, H&M Johnson Associates

WALLY STEVENS
American Seafood Distributors Association
and President and COO, Slade Gorton Co., Inc.

SAL DIMAURO
Head Buyer, Porky Products

APPEARANCES: (Continued)

ERWIN HUERKAMP
Buying Agent, Barnhill's, Inc.

MIKE SABOLYK
Buyer, Piazza's Seafood World

BRIAN C. BECKER
President, Precision Economics, LLC

On behalf of Foodcomm International:

KEVIN M. O'BRIEN, ESQUIRE
LISA A. MURRAY, ESQUIRE
Baker & McKenzie
Washington, D.C.

I N D E X

I N D E X (CONT'D)

P R O C E E D I N G S

(9:33 a.m.)

CHAIRMAN OKUN: Good morning. On behalf of the United States International Trade Commission, I welcome you to this hearing on Investigation No. 731-TA-102 (Final) involving certain frozen fish fillets from Vietnam.

The purpose of this investigation is to determine whether an industry in the United States is materially injured or threatened with material injury by reason of less than fair value imports of subject merchandise.

Schedules setting forth the presentation of this hearing and testimony of witnesses are available at the secretary's desk.

I understand that parties are aware of the time allocations. Any questions regarding time allocation should be directed to the secretary.

As all written material will be entered in full into the record, it need not be read to us at this time.

All witnesses must be sworn in by the secretary before presenting testimony.

Copies of the notice of institution, the tentative calendar, and the transcript order forms are all available at the secretary's desk. Transcript order forms are also located on the wall rack outside the secretary's office.

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

Madam Secretary, are there any preliminary matters?

MS. ABBOTT: No, Madam Chairman.

CHAIRMAN OKUN: Very well. Would you please announce our congressional witness?

MS. ABBOTT: The Honorable Blanche L. Lincoln, United States Senator, State of Arkansas.

CHAIRMAN OKUN: Good morning, Senator Lincoln, and welcome back. If you can just turn your microphone -- there you go.

MS. LINCOLN: Is that right?

CHAIRMAN OKUN: Yes.

MS. LINCOLN: Great. Thank you all so much for your attention this morning and for the opportunity to be here with you to testify before the commission today on behalf of the catfish producers across my state.

Catfish is not simply an important component of Arkansas' rural economy. In some counties, where unemployment rates have spiked to levels much higher than the national average, the industry serves as one of the sole sources of employment. In Chico County, Arkansas, for example, catfish processing companies comprise the single largest manufacturing industry. In 2001, the catfish sector generated $384 million in total economic output, $22 million in tax revenue and nearly 3000 jobs for this county alone.

This commission itself has reported the volume of Vietnamese fish grew over 400 percent between 1999 and 2001 to have an incredible impact on this industry and our state.

Unfortunately, due to the surge of imports of Vietnamese fish, our producers have suffered greatly. It's worth pointing out that some 70 percent of the employees in this industry are in their very first job. Many, in fact, are mothers coming off government assistance, single moms who have never had a job before, breaking a cycle of poverty. This is an industry that means a tremendous amount not only to the economy of our state, but to the changes that we want to make socially in order to remove that cycle of poverty among many of our low income families.

As a member of the Senate Finance Committee, I brought this matter to the attention of my colleagues and our U.S. trade negotiators during the consideration of the U.S.-Vietnam Free Trade Agreement. I pointed out that farmers in my state had sought out new uses for their land when prices for their traditional commodities fell and their reliance on government assistance had grown. This new use was raising catfish in the most efficient and safe way possible.

I think it's so critical when we do have industries where we become so efficient and so effective as we have in farming in this great nation that we give credit to our producers when they actually become more efficient and effective in looking at new and different ways to use their cropland, both environmentally as well as production.

Along with my persistence in numerous committee hearings, I joined several of my Senate colleagues in letters to the President and various administration officials addressing specifically our concerns with the growing imports of fish from Vietnam. Today, having exhausted what I feel is every diplomatic effort to resolve this devastating occurrence, I am here today to encourage you to enforce our trade laws designed to protect our domestic industries from actions such as these.

This overwhelming flood of Vietnamese imports led to a significant decline in catfish prices. The loss in revenue from the fall of prices has impacted our entire state. It's hurt local banks, whose loan portfolios consist of catfish farms and the processing plants that service this industry. Also, the corner grocery store, the farm implement dealers, the service stations and local retailers of all stripes. Even local schools suffer because of the erosion of the local tax base.

Simply put, the serious injuries suffered by the catfish industry as a result of the flood of Vietnamese fish imports has rippled across the entire region, impacting everyone. Unfortunately, the injury has come at a point of general economic downturn, thus exacerbating the already difficult times that we're experiencing in rural America.

Some people on the other side of the debate like to point out that Congress passed a labeling law which mandates that only genuine catfish can be sold as such. While this law has been important both to the industry and to consumers alike, because it requires the product to be sold under a truthful label, it has not been and was not meant to be a solution to the dumping problem. For that we have the trade laws, which I strongly urge you to enforce today.

Commissioners, the catfish industry is suffering and their injury is a direct result of the Vietnamese imports dumped into our domestic market. I've tried to share with you this morning a little bit of the personal impact it has made to our state, the fact that it's not just another industry, but an industry that's relatively new, created by innovative farmers who realized that their subsistence on government subsidies was not a way to go, but that they wanted to use innovative ideas and ways to look for new markets to use their land in an environmentally safe way to try and capture that new market and again be able to produce a product where they could grow in their marketplace, as well as provide for their families and the region of their country without having to use government assistance.

I urge you to recognize this injury and to rule in the affirmative. It has tremendous impact on Arkansas, the Mississippi delta and the entire southern region where have multitudes of aquaculture that is a potential industry that means a great deal to a very impoverished region of the nation.

Thank you, Madam Chairman. I appreciate the opportunity to be before you today.

CHAIRMAN OKUN: And thank you, Senator Lincoln. Let me ask my colleagues whether there are any questions.

(No response.)

CHAIRMAN OKUN: Thank you again for your appearance here today.

MS. LINCOLN: Thank you very much.

CHAIRMAN OKUN: Nguyen Huu Chi, Director General, Competitive Management Administration, Ministry of Trade, Government of Vietnam.

CHAIRMAN OKUN: Welcome, Director General Nguyen.

MR. NGUYEN: Chairman Okun and Honorable Commissioners, thank you for this opportunity to testify before you today. My name is Nguyen Huu Chi. I am the head of the Competition Department of the Ministry of Trade of Vietnam.

Last July, I testified before your staff and stated my government's hope that this first U.S. antidumping action against Vietnam might be resolved amicably and without sacrificing the good will that led to a historic Bilateral Trade Agreement (BTA) between our countries. A year later, I stand again before your commission with the hope that Vietnam's basa and tra exporters will, in the end, receive a fair hearing in this case.

Madam Chairman and Honorable Commissioners, 18 months ago, the BTA entered into force opening a new era in the relations between our two countries, an era in which trade between our two countries would flourish with market access made increasingly easy through the removal of trade barriers. The BTA embodies a fundamental commitment on the part of both governments and countries to work toward the unimpeded movement of goods, services, and investments between Vietnam and the United States. It also embodies the aspirations of the people of both countries to replace the conflicts of the past with the promises of a future of prosperity through trade.

And, indeed, trade between Vietnam and the United States has grown rapidly as a result of the BTA. We were pleased that our basa and tra products were well received in the U.S. market, particularly given that there is no production of these products in the U.S. This trade represented a win-win solution for producers in Vietnam and consumers in the U.S.. Our textile exports also increased rapidly.

Trade, however, has not been, and cannot be, solely a one-way street. Vietnamese tra and basa exporters purchase American soybean and corn. Vietnamese garment manufacturers import U.S. cotton. Vietnam Airlines is purchasing four Boeing 777-ER aircraft as a key part of its fleet expansion program. Many types of goods and services from the U.S. have been entering the Vietnamese market. And we see that American technology and investments will lay an increasingly important role in the modernization of Vietnam's economy as it embarks upon the process of WTO accession.

Yet the progress of the past 18 months is threatened today and the optimism that followed the ratification of the BAT is being slowly but surely replaced by deep concerns that the commitment of the United States to free trade only exists when it conveniently serves the interest of the U.S. exporters. We are concerned that the U.S. antidumping laws are being used and abused to protect U.S. firms who have not been and will not likely be injured by our tra and basa exports and to penalize our exporters for the hard won competitive advantage they achieved through focused development of an integrated production process.

Madam Chairman and Honorable Commissioners, the Minster of Trade, Mr. Troung, sent a statement to the Chairman of the USITC, Madam Okun, where he stated your calculation of the market share of the subject imports from Vietnam is too high because of the underestimated other source of the subject imports from other countries as Chile, China, Canada, New Zealand and others. This really made a very big impact on the conclusion of the ITC about the existing market situation in the U.S. during the period of investigation of the case. We hope that all you have a chance to read this statement. In this case if anyone need more information and the data to support the fact that we are talking about it now, so we can submit them to you in the request time by the law.

On behalf of the government of Vietnam, we again would like to ask Madam Chairman and the commissioners to take due reconsideration and make a fair final determination that the 5 percent market share cannot be a threat to the U.S. domestic producers as the subject imports from other sources with the market share of 62 to 66 percent.

We respectfully urge the commission to issue a negative injury determination because a fair reading of the record before the commission compels such a determination. In doing so, the commission will demonstrate that the Vietnam-U.S. trade relationship can be a true partnership defined by fairness, transparency and, most importantly, goodwill. The government of Vietnam believes that free market forces should be the principal regulator of basa and tra trade and hopes that this will be the result of your vote in this case.

Thank you.

CHAIRMAN OKUN: Thank you, Director General Nguyen and thank you for your appearance here today. Let me ask my colleagues if they have questions.

(No response.)

CHAIRMAN OKUN: Seeing none, again, thank you for your appearance here.

MR. NGUYEN: Thank you.

MS. ABBOTT: The first panel in support of the imposition of antidumping duties will be seated. The members have been sworn.

Opening remarks for the petitioners will be made by Valerie A. Slater, Akin Gump Strauss Hauer & Feld.

CHAIRMAN OKUN: Good morning, Ms. Slater. Would you like to do your opening statement from the table? That's fine.

MS. SLATER: Good morning, Madam Chairman, members of the commission and members of the commission staff. My name is Valerie Slater and I am pleased to appear here today on behalf of the petitioners in this investigation.

I am accompanied at the table this morning by a catfish named Clyde. While Clyde appears to be simply a cute little puppet, he is in fact one of the many very clever promotional campaigns that have been used by the U.S. farm-raised catfish industry to raise awareness of and build a market for U.S. farm-raised catfish and particularly for frozen fillets.

Clyde was part of a promotional package sent to some 150 top tier media targets such as major network morning shows, leading national magazines and to food editors at major newspapers. He was sent to 150 weather persons across the country to help generate coverage of National Catfish Month. Clyde has appeared on national television with well known figures such as Willard Scott and I can tell you he is very excited to be here today.

But he's also here to make a point. The U.S. frozen catfish fillet industry has over the last 20 years built a vibrant market for U.S. farm-raised catfish from the ground up. The market has grown by virtue of an excellent product that has been very cleverly marketed using campaigns such as that for which Clyde was recruited and at substantial expense.

In particular, the industry has spent many, many tens of millions of dollars changing consumer and purchaser perceptions of catfish and fostering demand for this product. As a result, the industry today is the largest aquaculture industry in this country and employs more than 13,000 direct workers and many additional jobs have been created, as you heard this morning from Senator Lincoln, in some of the most economically depressed regions of our country.

The growth in this market has been steady and strong, but today this self-created market has been flood with Vietnamese basa and tra fillets. They started entering in the late 1990s, initially being labelled with names like China Sole, Orange Ruffy, White River Cobbler. Those names were not known to the market, the volumes did not begin to grow until exporters and importers began to tap the market for farm-raised catfish, a market that thanks to Clyde and the industry's other successful marketing efforts that was extremely robust.

The Vietnamese product, a very distinct species of fish, used packaging that pictured U.S. channel catfish and used names like Cajun Delight, Delta Fresh and other names mimicking those of processors in the U.S. industry.

The commission's data, which we think actually understates the story, tells what happens next. The frozen basa fillets increased from 5 million pounds in 1999 to over 34 million pounds last year. As anyone in the seafood industry will tell you, and they will tell you today, 34 million pounds is a lot of fish even by seafood industry standards.

We often speak in these cases of imports flooding a market, but in this case the term is by no means an overstatement.

You're going to hear today that this phenomenal growth in Vietnamese basa fillet imports occurred due to ever declining prices which substantially have undersold U.S. catfish fillets. And make no mistake about it, the Vietnamese fillets have grown by being sold as catfish, as substitutes for catfish, and to buyers of catfish. Marketing materials both pre- and post-labelling laws, marketing materials that are available as of yesterday, make clear how these fillets are positioned in the market and where they are going. These fillets have ridden the coattails of the U.S. frozen catfish fillet industry and have captured substantial market share and destroyed this industry's profitability.

Frozen fillet prices have fallen by more than 18 percent over the last three years and have forced processors to lower the price they pay for food size catfish and have reduced the processors' profitability to the point where since you saw the processors last summer the profitability across the industry has been eliminated.

We're here as a last resort, as you heard from Senator Lincoln, and with thousands of jobs and the economic foundation of many poor rural communities at stake, the industry has taken the difficult step of seeking relief. This was not the route the industry chose, it was the only one left. We believe as you listen today you will find that you will have no choice at the end of this hearing and at the end of your consideration to make an affirmative finding of material injury.

Thank you.

CHAIRMAN OKUN: Thank you, Ms. Slater.

MS. ABBOTT: Opening remarks on behalf of the respondents will be made by Mr. Edmund W. Sim, White & Case, LLP.

CHAIRMAN OKUN: Good morning, Mr. Sim.

MR. SIM: Good morning. It's been a while. My name is Ed Sim and I'm a partner in the Singapore office of White & Case, counsel to the Vietnam Association of Seafood Exporters and Producers, known as VASEP. VASEP members grow, process and export frozen basa and tra fillets to the United States and oppose the antidumping petition filed by the CFA.

As Senator Lincoln and I guess Senator Session is supposes to know earlier today, the commission has been delegated authority by the Congress to impose import duties to ameliorate the damage caused by so-called dumped imports on a domestic industry. Thus, in almost all antidumping investigations the commission is tasked with speaking on behalf of the United States Government on the issues of material injury and causation. But in this case, Congress has already spoken.

By passing legislation that imposes labeling restrictions of what can and cannot be called "catfish" in this country, Congress has already moved to address the economic impact related to labelling that may have occurred with regard to frozen basa and tra fillets.

That action has already had an effect on the market and will continue to have an effect by formalizing a market distinction between basa and tra and United States catfish, a distinction that has already been recognized by the market, thanks to years of negative advertising and publicity campaigns by the petitioners.

This distinction is recognized by Senators Lincoln and Sessions as well. According to Senator Lincoln, with all due respect, "This Vietnam fish is not even part of the same taxonomic family as the North American channel catfish. This Vietnamese fish that is coming into our country is no closer to a catfish than a yak is to a cow."

And Senator Sessions misstated that the labelling law would allow basa and tra to remain in the United States market so long as the fish complied with its requirements, "Nothing in the legislation imposes any restriction on the importation of Vietnamese fish of any kind, nor does it prevent Vietnam or its importers from establishing a market for Vietnamese fish. I encourage them to expand their market, just don't substitute it for something that it is not."

We believe that the good senators had it right the first time: basa and tra are indeed different from U.S. catfish.

Not only has Congress spoken, but the market has also spoken, but the market has also spoken. Basa and tra compete with catfish, but only to the same extent that other white fish such as talapia, trout and orange ruffy compete for customers.

I believe the commission staff has handed out a copy of an insert from June 4th Washington Post for Safeway, I guess this is the big market other than Giant, and which we've handed out. And if you look on the front page, on the second page of your handout, I'm not making this up at all, there's a picture of a fish fillet. And the caption reads, "For half price, $3.99 a pound." It says "Fresh talapia fillet." And then underneath it says "Or basa fillet or bay scallops."

This confirms that consumers associate talapia with basa, yet I don't see the word catfish, I don't see any catfish being marketed against this product.

On the second page over here, you look under this caption "From the Sea" and you see another fish fillet, $3.99 a pound. It says "Basa fillet." And it says "Perfect, hearty white fish. Compare to ruffy fillets."

And, underneath that, is a picture of

another fillet which says "Fresh rainbow trout fillet. Skin on, boneless fresh fillets delivered fresh daily."

Again, no mention of catfish.

Do you need more proof? Go to your own supermarket and do your own comparison shopping. I have. I moved to Louisiana when I was two. I was raised and educated in Louisiana. I've eaten in catfish joints all up and down the Mississippi delta and I've also had the privilege of eating in floating cafes up and down the Mekong River. I know my catfish. I know my basa. And basa ain't catfish.

The commission has also spoken on the issue of whether farmers are part of the domestic industry. In the preliminary determination, you ruled that they are not part of the domestic industry because the petitioners could not demonstrate that they met the statutory requirements for inclusion. Your staff report confirms the same thing. I urge you to follow that staff report and the findings in the preliminary determination in this investigation.

Now, our panel will testify about the differences, about basa and tra and catfish, which have been advertised by the CFA, recognized by the market and legislated by Congress, all limiting competition. Our panel will also testify that to the extent there is competition, it is within a basket of white fish types that include talapia, ruffy, whiting and that basket has been affected by macroeconomic factors unrelated to basa and tra.

Thus, our panel will explain that the U.S. industry is not being injured by basa and tra imports, nor is it threatened by basa and tra imports.

Thank you.

CHAIRMAN OKUN: Thank you, Mr. Sim.

MS. ABBOTT: Madam Chairman, the first panel has been seated and is sworn.

CHAIRMAN OKUN: Thank you.

You may proceed.

MS. SLATER: Thank you, Madam Chairman. Good morning, members of the commission. Again for the record, my name is Valerie Slater of Akin, Gump, Strauss Hauer & Feld. I am pleased to be here with you this morning.

We've brought forward a panel of industry participants and others who are in a position we hope to deal with all of the issues that have been raised in this case. Let me introduce them briefly and then we'll get to their testimony.

Sitting behind me is David Pearce of Pearce

Catfish Farms. He is a catfish farmer from Alabama.

Randy Rhodes from Southern Pride Catfish, also in Alabama.

Danny Walker from Heartland Catfish, a processor in Mississippi.

Jack Perkins with Consolidated Catfish, another large Mississippi processor.

Mr. Jeff Davis of the American Seafoods Group is here. American Seafoods has recently purchased Southern Pride, but Mr. Davis has quite significant and extensive experience in the seafood industry at large.

We also have some individuals who we've brought here that may help to answer your questions who won't be giving direct testimony.

Mr. Bill Allen, who is presently a senior vice president for Bank Plus, which is very heavily involved with bank financing of catfish, but also from 1998 to 2002 was the president and CEO of Delta Pride Catfish and prior to that, between 1986 and 1998 was the president of the Catfish Institute, which is the industry's promotional organization.

We also have Mr. Seymour Johnson of Marie Planting Company, a farmer from Mississippi.

I'd like to also recognize David Park and

Thea Rozman of Akin Gump, who are here today and have worked very, very hard on this case, and Dan Klett and Tom Rogers of Capital Trade.

I'd like to begin the testimony this morning with David Pearce of Pearce Catfish Farms.

MR. PEARCE: Good morning. My name is David Pearce. I am a catfish farmer with over 1000 acres of catfish ponds in Browns, Alabama. I have been in the catfish farming business for 32 years and am a past president of the Catfish Farmers of America. I appreciate the opportunity to talk to you this morning about the very difficult situation that has been created by frozen basa fillets from Vietnam from the perspective of the catfish farmer. Some of the catfish farmers that were in business last summer when I testified to the commission staff are now out of business and many more are on the verge of bankruptcy.

I have traveled to Washington today to talk with you about this because we are all at risk of losing everything that we have worked very hard to build.

Let me start by giving you some background on our industry. Catfish farming is the largest aquaculture industry in the United States. Catfish are raised in man-made ponds. Farm-raised catfish are fed a diet of high protein feed made primarily from corn and soybeans. The feed floats on the surface and the catfish swim to the top to eat. They are not bottom feeders like their wild cousins. It takes one and a half to two and a half years to grow a catfish from fingerling to food size. Normally, farmers will add fingerlings each year so that there will be a constant supply of food size fish to harvest throughout the year.

The largest cost component of catfish farming are feed expenditures and the capital needed to build and maintain the farm.

When my family began catfish farming 32 years ago, the catfish industry was relatively new and the market for farm-raised catfish was a fraction of what it is today. Over the years, U.S. catfish farmers have literally built an industry, pond by pond and built a market for the catfish produced in those ponds. Since 1986, catfish farmers have spent well over $50 million promoting and building demand for farm-raised catfish. Processors have spent even more. Our efforts have been extremely successful and farm-raised catfish now has name recognition and a vastly expanded market of which we are very proud.

All catfish farmers depend on one or more of the approximately 24 U.S. catfish processors to move our fish to market. These processors, most of whom are wholly or partially owned by farmers, were created for the sole purpose of producing high quality processed products from the fish we are raising. They don't process anything else and almost all the fish that we produce is sold to these processors.

As a result, healthy competitive processors are essential for the catfish farming industry. There is nowhere else for us to move our fish. If processors cannot sell their products, we cannot sell them our fish. This is particularly the case for frozen fillets. These fillets have been the largest, fastest growing and by far the economically most significant processed product of our industry and when processors receive less money for their frozen catfish fillets we receive a lower pond bank price.

My catfish farm expanded with the industry. I reported to the commission last summer that from our original 40 acres of ponds in 1971 our farm had grown to 1425 acres. Our most recent expansion, which seemed prudent at the time, given the continuing and steady growth of the catfish market was in 2001. This investment has turned out to be unfortunate only because of the expected level of imports from Vietnam.

As of February, we were forced to take 170 acres out of production. We have contemplated cutting back an additional 130 acres as well.

Until the summer of 2001, the processor that had been buying most of my fish, 200,000 pounds each week, suddenly cut us back to half that amount and a few months later cut us off all together. The processor was not able to sell as much of its product due to the lower price of the Vietnamese fish. We had no place to sell the fish that were growing in our ponds. By the end of 2001, our inventories were well above the previous year's level and we were operating at a loss. Both sales volume and sales revenue had dropped significantly from 2000 levels.

In 2002, we pushed our sales volume up as far as we could, selling 40 percent more fish than 2001. To do so, we had to accept prices so low that our revenue increased only marginally over 2001. Even with such a large increase in sales in 2002, my farm had a negative cash flow.

In 2000, we averaged just over 70 cents per pound for our fish. In 2001, the pond bank price dropped to around 62 cents per pound, and in 2002 it dropped to current levels of 50 cents per pound. It has been over 20 years since the price was this low.

At 50 cents per pound, catfish farming is unsustainable.

In addition to driving down the pond bank price, Vietnamese imports have driven up our inventory levels. Because processors have not been able to take our fish, we often cannot sell our fish when they reach the optimum processing size, so they stay in the pond and consume more feed. Feed efficiency decreases as they stay in the pond, too. When the fish get to a certain size, they convert the feed to meat at a slower rate, so we grow fewer pounds of fish for the additional feed added. Also, when fish remain in the pond for longer than the optimum time, mortality rates increase and other problems lead to increased costs.

More and more, because farmers are strapped for cash, many are cutting their costs by feeding their fish less. This results in skinny fish, which hurts the processors' yields, adding additional costs to processors already coping with severe price side pressures.

I can also tell you as a member of the board of a local bank that has outstanding loans to a number of catfish farmers that many farmers have maxed out their lines of credit and are having a difficult time feeding their families, much less their fish. They are not reinvesting in the farms or buying equipment. At my farm, too we have placed all expansion plans on hold and are only making expenditures that are absolutely necessary. We have also been forced to lay off two of our 17 employees and to lower the salaries of a few others.

Farmers have no choice but to accept the lower pond bank prices that our processors have been forced to offer. It is important to us that the processors be able to sell product, even at the lower prices brought about by Vietnamese competition. Their success in moving product is the key to our ability to be efficient and generate revenues.

Finally, I would like to point out that there are definite economies of scale in this business. Even as a larger and relatively efficient farm with little debt, I have been unable to maintain a positive cash flow. Smaller farms have been the hardest hit by lower prices. Those farms do not have the same economies of scale as larger farms and have been hit the hardest.

To the extent that the commission did not send questionnaires to any of those farmers, even to the depressing picture that you have of the industry's health does not show how bad things really are for those farmers.

I hope the commission will recognize the devastating impact that unfair imports are having on our industry and provide us some relief. We have invested so much time and money in our farms and in our industry, we would simply like to once again make a reasonable return on our investment.

Thank you.

CHAIRMAN OKUN: Thank you.

MS. ABBOTT: I'd like to turn to Randy Rhodes of Southern Price Catfish.

MR. RHODES: Good morning. My name is Randy Rhodes and I am the Senior Vice President and Chief Sales and Marketing Officer for American Pride Seafoods, the marketing arm of Southern Pride Catfish Company, located in Greensboro, Alabama.

I have been in the catfish industry for almost 20 years and can honestly say that the industry has gone through some remarkable changes. Back in 1986, when we first started Southern Pride Catfish Company, catfish was still considered a local or regional product, with limited demand and name recognition outside of Mississippi, Alabama, Arkansas and Louisiana area. Through the considerable commitment of time and resources, catfish farmers and processors steadily developed a significant national market for catfish, particular frozen catfish fillets.

In the past couple of years, the market we worked so hard to develop has seriously been affected by imports of frozen basa and tra fillets from Vietnam.

By specifically marketing their product as farm-raised catfish and selling at prices well below our own, importers of Vietnamese basa and tra have taken a large portion of our frozen fillet market. In doing so, they have eroded frozen fillet prices paid to catfish processors and consequently pond bank prices paid to catfish farmers to such an extent that the entire catfish industry is literally on the brink of collapse. Already one major processing plant located in Arkansas has closed its doors.

In an effort to assist the commission to better understand these circumstances, I will briefly describe today important characteristics of the frozen fillet market and the impact of unfairly priced imports of frozen basa and tra fillet from Vietnam.

first, it is important for the commission to understand that frozen fillets are by far the single most important processed catfish product. Sales of fresh fillets are a distant second and all other products have minor value. In fact, much of the fresh and frozen whole fish and steaks are processed from the live fish that either are too small or too large to fillet.

Frozen catfish fillets are our flagship product and drive the profitability of our industry. Our plants are typically geared to produce frozen fillet and we have invested in costly freezing equipment. To operate efficiently and cover our capital costs, we must be able to sell this high volume product. As frozen fillet prices have declined, we have been forced to lower the price paid to farmers for our main input, the live fish.

Pricing is important because frozen catfish fillets are bulk commodity products and are purchased primarily based on price. If a customer can get cheaper frozen fillets from somewhere else, that customer will likely stop purchasing from us all together or will cut back his purchases. As imports from Vietnam have increased, this is exactly what has happened to our sales to several large customers and to avoid losing other sales and customers, we had to steadily drop our price over the last couple of years.

Moreover, the very large volume of imported basa fillets which at the very minimum totalled 34 million pounds in 2002 means that U.S. buyers have been able to secure a consistent supply of Vietnamese fillets. Since the product is frozen and has a six-month shelf life, importers and distributors can stock the imported product, therefore offsetting the location advantage that you might expect U.S. producers to enjoy.

It is important to recognize that frozen catfish fillets are distinct from fresh fillets. From a production standpoint, frozen fillets incur the additional processing step of being individually quick frozen in spiral freezers, which are large and expensive pieces of equipment that are not required for fresh fillet production.

The IQF fillets are packed in 15-pound boxes and have a shelf life of approximately six months. Fresh fillets, in contrast, are produced to order, packed in ice in 10 to 30-pound boxes and have a shelf life of approximately 10 to 14 days.

Frozen and fresh catfish fillets are also sold, by and large, to different types of customers. Frozen fillet are sold primarily to food service distributors and large restaurant chains, while fresh fillets are principally sold to retail stores and grocery chains. In this regard, food service customers who buy the bulk of the frozen fillets do not want and cannot handle fresh fillets. On the other hand, fresh fillet customers typically do not want frozen product.

Furthermore, the pricing is also different for frozen versus fresh fillets. IQF fillets are sold primarily on a spot basis. The customer calls up and places an order for certain quantity of fish at a negotiated price. Pricing on fresh fillets, however, is more typically contract based.

Second, I want to briefly talk about the impact that the Vietnamese imports have had on Southern Pride as well as on our industry as a whole.

As with other U.S. processors, IQF fillets are Southern Pride's largest volume product and historically account for a considerable share of our total revenue and profit.

The steep drop in frozen fillet prices from $2.82 in 200 to $2.31 at the beginning of 2003 has forced us to lower the price we can pay our farmers for their fish. While we have not done this lightly, the fish is the most important cost element in the production of frozen fillets. Therefore, the farmers felt the first impact as we struggled to keep our prices competitive with the Vietnamese basa.

We also have lost significant frozen fillet volume as the massive quantity of Vietnamese product has pushed its way into our markets. Although shipments of frozen fillets increased slightly over the last year, this increase in volume was well below the historic rate of growth and the growth that the industry has prepared itself for. Between 2000 and 2002, we saw about a 4.5 percent increase in frozen fillet shipments, compared to an average of 8.5 percent growth over the period 1990 to 2000, based on the NASS data. The market continued on its growth trend and may have exceeded its long term trend, but the Vietnamese fillets grabbed this share through aggressive pricing.

In 2000, based on anticipated market growth, Southern Pride internally financed an investment to increase frozen fillet production. In addition, in 2001, we determined that our processing operations had to be as modern and efficient as possible to compete with the Vietnamese product. While we do not normally borrow money based on market conditions and not wanting to reduce working capital, we ultimately borrowed a significant amount to modernize our plant. Unfortunately, when the anticipated market growth for frozen catfish fillets occurred, imports from Vietnam captured the growth. This left us with excess production that we had to sell at much lower prices than were forecasted when we first made our investment decision.

In addition, many farmers have gone out of business and others have had to reduce their acreage. This means that our supply of fish is diminishing. We're in the impossible situation of having to lower frozen fillet prices, yet we desperately need to raise our pond bank prices to keep our farmers in business.

Finally, I would like to make a few brief points about the labelling laws. For the past few years, importers of Vietnamese basa have dramatically increased their volumes by taking advantage of our industry's successful marketing campaign. Indeed, the Vietnamese fish have been sold in the United States in a way clearly designed to confuse the buyer by the use of names and symbols suggesting that the product is a U.S. farm-raised catfish.

While the labeling laws were intended to remedy this situation, they have not been effective for a number of reasons. Producers, importers and distributors continue to market and sell the Vietnamese product as catfish. Despite the enactment of the labeling laws, at the most recent International

Boston Seafood Show held this past March, the Vietnamese producers listed themselves as offering catfish. This is but one of the many such examples and we might be able to tell you about this even further if there are questions.

Also, sellers of the Vietnamese product have had two to three years to offer basa as a cheaper substitute for frozen catfish fillets. Food service distributors have bought this product and made it available to many buyers who use it as a substitute for catfish. Restaurant chains are also among the most price sensitive buyers and have found basa to be an acceptable substitute. With a price that continues to be well below our own, users will continue to substitute it for catfish, no matter what the importers call it.

Finally, the very large industry that has quickly developed in Vietnam has a tremendous incentive to continue shipping massive quantities to the United States. There is currently little or no market here for basa. Therefore, the only way that Vietnamese can ship significant volumes over the next few years is to continue to sell to our customers, displacing our product. We have every reason to believe that that will continue.

We therefore need the help of the commission to address the unfair pricing that continues to impact our market.

Thank you.

CHAIRMAN OKUN: Thank you.

MS. SLATER: Our next witness is Danny Walker of Heartland Catfish.

MR. WALKER: Good morning. My name is Danny Walker and I am the CEO of Heartland Catfish Company, a catfish processor located in Itta Bena, Mississippi. I have been in the catfish industry for 18 years and have been the CEO of Heartland Catfish since we started our operations in 1996. Our plant, which is a state-of-the-art processing facility, was designed to produce principally frozen fillets, the key product for our operations.

We are one of the largest, most modern, and, we believe, one of the most efficient processors in the industry. Yet despite our efficient production and economies of scale, we can no longer maintain our profit margin in this industry. I reported this reality to the commission's staff when I testified last July. Today, I can tell you that our situation has gotten worse. If the market continues to be flooded with low cost Vietnamese imports, Heartland

and other processors will not survive.

In order to completely understand the impact of Vietnamese imports on the U.S. catfish industry, it is critical that the commission understand the relationship between the U.S. farmers and processors. U.S. catfish farmers and processors are essentially two sides of the same coin and each depends on the other.

Like most processors, Heartland is owned by farmers and purchases a large percentage of our live catfish from our related farm.

The negative effects of Vietnamese basa hurt catfish farmers first. Decreases in frozen fillet prices forced us to lower the prices paid farmers for live catfish. As low cost imports pressed pond bank prices lower and lower, farmers have had to cut back on operations, stop stocking their ponds or go out of business entirely. In addition, with the lower price of fish, farmers are feeding their fish less and holding onto fish longer before harvesting. As a result, the fish are yielding less meat. For processors, lower yield fish is a significant cost because we spend the same amount of money to produce less meat.

Although Heartland to date has been able to slow its declining profit margin through increased production volume, added operating efficiencies, and paying lower pond bank prices, we have reached the end of the line. As of the end of May, our margins continue to erode. The reality is that even the most efficient processors, such as Heartland, will not survive if imports continue to erode the price of frozen fillets and the price of live catfish.

This year, in the period since the commission collected data, things have taken a turn for the worse. Although we saw a brief improvement late in the first quarter due to a strong Lenten season and perhaps the market's reaction to the Commerce Department's ruling, the bright spot was only fleeting. Pond bank prices increased in March, but by May had declined again. Because we were unable to sustain increases in our frozen fillet prices, pond bank prices also dropped.

We believe the frozen fillet market is still being negatively affected by larger inventories of Vietnamese fish as well as by reduced processing yields directly related to stressed farmers. It will take some time for import inventories to be worked off and for the farmers to resume normal feeding rates, but the fundamentals are there that will allow our industry to recover if relief is granted.

Finally, I want to comment briefly on the notion that the Vietnamese frozen basa fillets do not compete with our catfish fillets. We have always been a very competitive industry, with numerous processors vying for sales. And we have had some down cycles in our industry. What has been happening over the last three years, however, is not simply a downturn. The tremendous volume of Vietnamese basa fillets that have been moving into our market have been driven by their very low and declining price. It is important to note that when the Vietnamese first entered the U.S. market they unsuccessfully attempted to market their fish under various names unknown to U.S. purchasers and consumers. It was not until they started calling the Vietnamese product catfish that their sales took off. Even now, we see it being marketed as catfish and when it is called basa, it is offered as a cheaper alternative to catfish.

We hear about the pricing of this product from our customers. While we do not always know precisely which of our customers' customers are buying the Vietnamese product, we know that we are losing sales and that the price pressure from this competition is being directly brought to bear on us.

We do not, and let me clear about this, we do not face pricing pressures from any other species of fish. Our market is very much a catfish market and our food service buyers are not using pricing of pollock, tilapia, or any other fish in their negotiations with us. The price of catfish and the price of basa are what matter in our discussions with our customers.

Thank you for your time.

CHAIRMAN OKUN: Thank you.

MS. SLATER: I'd like to turn now to Mr. Jack Perkins of Consolidated Catfish Companies and I might add that he will be mentioning in his testimony something that has been provided in our pre-hearing brief at Exhibit 5.

MR. PERKINS: Thank you and good morning. My name is Jack Perkins, I'm Vice President of Sales and Marketing for Consolidated Catfish Companies, commonly known as ConFish. We operate out of Isola, Mississippi and our company is the largest employer of Humphries County. I've been employed at ConFish for the last 17 years and I've been employed by the catfish industry since 1975. In my position as Vice President of Sales and Marketing, I have the responsibility of my company's sales of frozen fillet.

The purpose of my testimony is to give you an idea of what is happening in the market from the perspective of someone who has been out there every day.

It's important to understand that catfish processors sell most of our frozen fillets to food service distributors and to restaurant chains. These are our direct customers, although the industry's marketing efforts have been aimed at consumers, restaurant operators and chefs. We've been very successful in building a catfish market and, as a result, the distributors and restaurant chains have increased their frozen catfish fillet purchases.

Over the last three years, however, they also began offering Vietnamese product to their customers. The Vietnamese fillets have displaced our sales and the distributors' customers have substituted basa for our frozen fillets. ConFish has lost a significant sales volume and revenue to the Vietnamese product. Some of our key frozen fillet customers switched to selling the Vietnamese basa and no longer buy frozen catfish fillets, or they have insisted on lower prices for the frozen catfish fillets they purchase from us, drastically lowering our profitability.

One example you may already be familiar with involves Picadilly, a national restaurant chain. This company was one of our biggest customers for frozen fillets. In 2000, when Picadilly switched to the Vietnamese basa, it was a serious blow for us. Picadilly was the largest purchaser of 2 to 3 ounce frozen catfish fillets. We used to sell 20,000 pounds of these fillets to Picadilly every week, but once they started buying the Vietnamese basa, we lost the entire account.

Picadilly returned to the domestic catfish briefly last year, but then reverted to basa when the price of the U.S. product was still higher than the basa. To the best of our knowledge, Picadilly continues to use mostly basa outside of Mississippi.

The substitution of frozen basa fillets for frozen catfish fillets by restaurants, institutions and the ultimate user of the fish has not ended as a result of the labeling laws. Those laws were meant to stop misleading labeling of basa in ways that would lead purchasers to believe that they were getting U.S. farm-raised catfish. That practice has not stopped, however. In addition, the labeling laws do not stop exporters, importers, and resellers from marketing the basa as a substitute for our fish, even if it's called basa.

Let me give you a recent example that illustrates the continued improper labeling the direct competition between catfish and basa, even where basa is identified.

On March 21st of this year, I attended a food show for restaurants in Springfield, Missouri. Our company had a booth at the show where we displayed our products and marketing materials, as did many other suppliers. Approximately 300 to 500 restaurant buyers attended the show. In walking through the show, I noticed a broker, Thompson & Son, at their booth with a large sign that said "Catfish Catfish Catfish." The proprietor told me that she was selling catfish, but after seeing the ConFish logo on my shirt, she acknowledged that the fish was Vietnamese and that the importer, Piazza Seafood, had told them that it was appropriate to advertise and to sell it as catfish.

The same broker had a handout displaying basa fillets. On the back of this brochure was a catfish fact sheet that compared basa and U.S. catfish. Basa clearly continues to be advertised as catfish in contravention of labeling laws and to be marketed in competition with catfish.

Vietnamese basa, whether it's called catfish or basa, is marketed as a substitute for our frozen fillets. Our food service customers offer it to their buyers and use the availability of lower priced Vietnamese fillets to ratchet down the price they'll pay for our catfish fillets.

Our customers tell us that since they are carrying basa they intend to eliminate one of their domestic catfish suppliers. We are then forced to lower our price if we want to keep the account. While it's hard for us to know which of the distributors' customers have chosen basa instead of our fish, we know that we're losing sales and we feel the impact of the lower prices.

Imports from Vietnam have pushed down our prices to the lowest levels we've seen in 20 to 25 years and these lower frozen catfish fillet prices have significantly affected our bottom line. Over the past two years, our frozen fillet business has operated at a loss and we've not paid a dividend to our farmer owners.

Due to the lower demand for our frozen fillets, we've been forced to idle a new spiral freezer at our Isola, Mississippi plant. Frozen fillets used to be our single largest product, accounting for nearly 40 percent of our revenue as recently as 2000. Faced with pressure from low priced imports, we have been forced to try to move more fresh fillets. We've also been forced to reduce the price that we can pay our farmers for the live catfish.

Our major customers are sophisticated distributors and retailers and they track the pond bank price. When they see the pond bank price fall, it doesn't take them long to ask for lower prices on all of our catfish prices. The lower catfish prices have had a devastating effect on our farmers. Twenty of our stockholders have ceased their catfish operations in the last year and a half. Many of our stockholders are cutting acreage. In addition, because of the low prices, many farmers did not earn enough last year to pay back their loans and began 2003 with much smaller available lines of credit. Lacking this capital, many of our farmers have cut back on stocking and feeding rates. These cutbacks have short and long-term negative effects.

In the short term, lower feeding rates mean fish that are yielding less meat. The fish that are coming to our plants today are giving us the lowest yields we've seen in several years.

In the longer term, if these trends continue, more farmers will go out of business. Even if market conditions improve and farmers start feeding their fish normal amounts of feed, it will take some time before yields are back to normal.

We've seen cycles before and we expect good years and bad, but this time it's different, as the price and volume pressure caused by the Vietnamese fillets has put the industry in a tailspin that will prevent any natural rebound.

Our industry has been successful at promoting and selling catfish as a unique product, not as a generic frozen fillet. In our largest markets, the southern and the midwestern United States, customers demand catfish. There are numerous restaurants that specialize and serve only catfish. In broader seafood restaurants such Captain D's and Long John Silver's, white fish, such as pollock or cod are simply sold as fish, while catfish is sold at a higher price point and is clearly identified as catfish. Similarly, in developing new markets in the northeast, we promote U.S. farm-raised catfish as a distinct branded product.

In my many years of sales experience, a customer has never asked us to lower our price to compete with cod, pollock or any other white fish. In contrast, the Vietnamese fillets often described as catfish compete with our product. Significantly, while pollock and cod and other white fish have been present in the United States market for many years, often in increasing quantities, we did not experience the painful drop in our prices until the Vietnamese fillets began flooding the market.

I've been in this industry for over 27 years and we've been successful in promoting our product and growing the market. All this hard work is being undercut by the unfairly traded imports. Unless this trend is reversed, more farmers and processors will go out of business.

Thank you for your attention.

CHAIRMAN OKUN: Thank you.

MS. SLATER: We're going to hear now from Mr. Jeff Davis of the American Seafoods Group.

MR. DAVIS: Good morning. My name is Jeff Davis. I am the Chief Operating Officer of the American Seafoods Group. I've been with American Seafoods since 2000 and have worked in the seafood industry for approximately 30 years. Our company is one of the largest harvesting and processing seafood companies in the United States. My work in the seafood industry has made me extremely familiar with the structure of the industry, the nature of the competition in the industry and the way in which seafood products are promoted and sold.

American Seafoods harvests wild catch fish of a variety of species and processes them at our processing plant in New Bedford, Massachusetts and on board our state-of-the-art processing vessels, which are floating processing plants in the Bering Sea that allow us to immediately process fish as they are harvested.

We also import processed seafood products of various species to round out our product offering to customers who are food service distributors, restaurant chains, seafood distributors, retailers and supermarket chains.

As of December 16, 2002, we became the owner of Southern Pride Catfish, one of the largest U.S. processors of farm-raised catfish. This is our first venture into the processing of farm-raised seafoods.

Prior to purchasing Southern Pride at the end of last year, American Seafoods had imported Vietnamese swai fillets. Swai is one of the names used for basa and tra fillets. Simply put, we purchased these Vietnamese frozen fillets in order to supply some of our customers who wanted a catfish fillet. The Vietnamese product was a good product that was much cheaper than the domestic catfish and allowed us to provide catfish at a better price. With our decision to purchase Southern Pride, we ceased importing the Vietnamese fish and offer only Southern Pride products. I want to make five brief points here today.

First, it is clear to everyone in the seafood industry whether or not they will say so to this commission that the vast majority of frozen catfish fillets sold in the United States is sold into a very distinctive market. Most frozen catfish fillets are consumed in restaurants that catfish on a buffet or in specialty restaurants or restaurants whether or not in the south that feature regional southern fare.

Second, because of its distinct market and because of its particular flavor and texture, frozen catfish fillets are not competing to any significant degree with white fish fillets other than the Vietnamese basa and tra. Vietnamese fish, while it is a different species, when filleted and frozen, and particularly when fried, to the average palate is remarkably similar in taste and texture to catfish, to U.S. farm-raised catfish. As a result, when catfish is sold, the prices of other white fish fillets are simply not relevant. These products do not come into play in the catfish market.

Third, American Seafoods is the largest harvester and processor of Alaskan pollock. I can tell you quite definitely that Alaskan pollock is not a substitute for catfish and it is not viewed or treated that way in the marketplace.

Now, let me be clear on this point. Pollock is a very inexpensive, low end white fish that sells typically at about $1.00 a pound. It is this fish that is used, for example, in fast food sandwiches. It has a very different texture and flavor profile from catfish or from the Vietnamese basa fillets. We sell about 150 million pounds a year of pollock. The price of catfish is not relevant to those sales or vice versa.

Fourth, contrary to what the respondents are arguing in this case, American Seafoods' acquisition of Southern Pride was not undertaken so that catfish could make up for the limits in the amount of pollock we can process. Our decision to purchase Southern Pride was a strategy to diversify our operations and grow our company through investment in a new sector of the seafood industry. Indeed, an important consideration in our decision to purchase Southern

Pride was the fact that Southern Pride's distribution network to a large extent complemented but did not duplicate our own.

By this I mean that Southern Pride had developed a customer relationship with many food service distributors and others who bought catfish. Southern Pride, now referred to as American Pride, sales staff now offers a full seafood product line to these buyers along with catfish.

Finally, I would like to make a comment on the argument that you will hear today that the Vietnamese frozen basa and tra fillets do not compete with catfish and they are being sold into separate markets. Simply put, this is hogwash.

Aside from the direct competition that we see every day in the marketplace, I can tell you that the type of growth we have seen in the imports of the Vietnamese IQF fillets has not been supported by the type of marketing campaign that would create this level of demand in the United States.

In the United States, demand growth for new seafood products typically requires sophisticated marketing and advertising strategies to develop both distributor and consumer awareness. To date, the marketing of Vietnamese frozen basa and tra fillets remains very much targeted at the U.S. catfish market. We have not seen substantial marketing and promotion of basa as basa. Basa is not a product that consumers are aware of and, as a result, this product is not generally going onto menus as basa. There is a limited recognition of basa in some ethnic markets, but the 35 to 45 million pounds of basa fillets that were imported last year were not and are not being delivered to consumers as basa.

I thank you for your attention.

CHAIRMAN OKUN: Thank you.

MS. SLATER. Thank you, Commissioner Koplan.

And I wonder if you can identify the particular southern state from which Mr. Davis hales.

COMMISSIONER KOPLAN: I think that might be the southern part of Massachusetts.

MS. SLATER: Possibly.

I would like to turn now to Dan Klett who is going to go over a little bit of economic testimony, including addressing some of the points in a very interesting econometric study submitted by the respondents.

Mr. Klett.

MR. KLETT: Good morning. My name is Daniel Klett. I am an economist with Capital Trade, Incorporated. My testimony this morning will focus on three issues:

First, trends that demonstrate that the deterioration in the U.S. industry's condition since 2000 is unprecedented and cannot be explained by the alternative causes claimed by respondents; second, interpretation of the purchaser questionnaires; third, the statistical findings contained in respondents' economic analysis.

U.S. consumption of catfish products, and frozen catfish fillets in particular, have experienced strong growth since at least 1988. Based on NASS data, from 1990 to 2002, U.S. producer shipments of frozen catfish fillets grew at a rate of eight percent per annum compared to annual average consumption growth of less than two percent for other fish products.

Although frozen catfish fillets have experienced periodic ups and downs in volume or price, it can be seen by Exhibit 1 the value of sales increased without interrupt from 1986 to 2000, which by the way includes some recessionary periods. The situation for U.S. catfish processors changed dramatically in 2001 and 2002. U.S. processor sales of frozen catfish fillets declined absolutely for the first time in 2001, and were well below long-term trend in 2001 and 2002.

The same is true for U.S. catfish growers. As can be seen by Exhibit 2, catfish farmers' revenue similarly declined during the POI, and for the first time since at least 1986 experienced two consecutive years of revenue declines with revenue being well below long-term trend.

Respondents assert that U.S. catfish industry is subject to continuing boom and bust cycles, and that the downturn during the POI is normal. As you can see from the charts, the downturn during the POI in both volume and price and the effects on the industry's revenue and profitability was anything but normal.

The long-term grown in U.S. processor shipments is an important baseline fact for two additional reasons:

First, the declines experienced by U.S. processors during the POI are not the result of a exogenous demand decline for frozen catfish fillets. Rather they reflect in large part competition from subject imports from Vietnam which appropriated the growth and demand during the POI as shown in Exhibit 3.

Respondents claim that subject imports are sold as basa, not in competition with U.S. frozen fillets. Yet you heard testimony this morning and have been presented evidence that subject imports were and still are being marketed in competition with catfish at all levels of distribution.

Second, the capacity increases during the POI made by U.S. processors and then water acreage to grow catfish were consistent with the long-term growth and demand for frozen catfish fillets and all processed catfish products.

Respondents compare capacity expansion with flat or declining shipments by U.S. producers during the POI as evidence of a supply/demand imbalance. What this gap is reflects U.S. producers losing market share and volume to subject imports.

As shown in our prehearing brief, the growth in U.S. processors' fillet capacity as well as pond acreage were consistent with long-term demand growth. Also, to put the capacity increase in perspective, from 2000 to 2002, U.S. processors' frozen catfish fillet capacity increased by 19 million pounds. Subject import volumes grew by 21 million pounds, and probably more over the same period.

Regarding Respondents' arguments that the U.S. recession adversely affected demand for all seafood products, including catfish, the data just don't support the claims. Your prehearing report shows that U.S. apparent consumption continued to grow during the POI, and data on revenue and U.S. eating and drinking establishments published by U.S. Bureau of Census similarly show continuous increases during the POI.

Regarding consolidation, evidence for the retail grocery sectors put forth by respondents is not relevant to frozen catfish or fillets, since the large majority of sales are to food service distributors or restaurants.

In the food distribution sector, there has been consolidation in recent years, but it is still a widely dispersed sector, and CISCO, the largest food service distributor, purchases on a decentralized basis.

Respondents cite extensively to purchaser questionnaires to support their claim that subject imports from Vietnam compete in a separate basa market from frozen catfish fillets. In evaluating the purchaser questionnaires, it is important to consider where the purchaser fits in the distribution chain.

For example, I found three instances of distributor purchasers saying basa and frozen catfish fillets do not compete because their customers consider the products to be different. Yet customers to these same distributors also purchased -- also submitted purchaser questionnaires, and stated that U.S. frozen catfish fillets and basa do compete.

Many purchasers confirmed that subject imports from Vietnam are sold in direct competition with U.S. origin frozen catfish fillets.

I want to address the argument the

competition with other whitefish, not frozen catfish fillets from Vietnam which explains U.S. producers' price declines.

As a preliminary matter, respondents' position is logically inconsistent. They argue that subject imports don't compete with U.S. produced frozen catfish fillets because it is marketed and sold as basa. They then claim that fish sold as pollock, tilophia flounder and others does have an effect. Yet basa is sold as catfish and is closer with respect to flavor profile, fat content, and texture to frozen catfish fillets than the other fish products respondents claim to be the cause of price declines.

Respondents rely heavily on econometric analysis of Precision Economics to support their contention that competition with other frozen whitefish products explains the price declines for U.S. frozen catfish fillets and prices of subject imports do not. I will address the technical problems with this analysis in our post-hearing brief, but will summarize some key deficiencies here.

The Commission is well aware from other investigations that econometric analyses evaluating an industry can yield different results due to differences in model structure and which variables are included or excluded. Any econometric model purporting to explain price movements for a particular market or industry at the very least must attempt to include as variable the major supply and demand factors that are believed to affect price.

Although the Precision Economic study posits that prices of other whitefish explain changes in U.S. catfish prices, the study is not precise regarding the basis for selecting the 13 HTS items used to derive the import AUVs used as price proxies for the other fish products.

In this study, Precision Economics notes that, "We considered the primary popular fish in the United States, pollock, cod, salmon, perch, whiting, sole and trout." However, under the HTS categories from which the 13 items were selected, there are 53 individual 10-digit items.

Salmon, which is not a whitefish, was included, yet the excluded many HTS categories such as one large category for Alaska pollock, one for orange ruffie, and others. This selected and unsupported approach presents serious questions about the validity of the results.

One test of an econometric models' validity is the sensitivity of its key findings to slight variations on model structure or alternations in the variable included or excluded. I replicated Precision Economics model, but because salmon is not a whitefish, I removed it as an explanatory variable. The results under this formulation show a statistically significant relationship between prices of U.S. frozen catfish fillets and subject import price.

I am not advocating that this statistical relationship alone under this alternative model formulation proves anything; just that the econometric model upon which respondents relies is not particularly robust.

In addition, I looked more closely at the three fish categories found in the Precision Economics study as having statistically significant relationship between their price changes and the price changes for frozen catfish fillets. For two of these three categories, salmon and pollock, import volumes increased significantly during the POI and prices declined. It is just as likely that any correlation between the declining prices for frozen catfish fillets and the declining prices for these fish categories reflect independently occurring supply increases rather than the products being substitutes.

Finally, regarding the model structure itself, respondents allege in their brief a multitude of other supply/demand factors affecting the price of frozen catfish fillets. Yet these factors are not included as explanatory variables in the Precision Economics study. Omission of relevant variables in an econometric model is a serious specification error, one result being that the standard test of the statistical significance of explanatory variables are unreliable.

Since Precision Economics stresses the

statistical significance test and its conclusions, this specification error is a serious problem with the results and the conclusion of the study.

Thank you.

CHAIRMAN OKUN: Thank you.

MS. SLATER: Thank you, Mr. Klett.

I am advised that I probably have about 12 or 13 minutes left, and knowing that this particular Commission will not hesitate to ask questions about legal issues, I am going to just touch very quickly on one or two, and try and same some time for rebuttal.

Let me just mention, I think there is not an issue about like product in this case. We will be glad to answer questions if you do believe there is one. Respondents haven't proposed a different like product from the preliminary round, didn't take up the Commission's invitation to do so in their questionnaire comments.

I want to spend just one minute talking about the quantity data that you have before you. This has been a particularly difficult case because of the fact that you have basket HTS categories involved, number one. You have very, very poor importer response rate in your questionnaires, which is typically your source of total import data. So we have -- in this case the staff has reasonably relied on information provided by the Vietnamese exporters and foreign producers.

However, we have given the Commission our best information which suggests that that information is -- that that data is far from complete.

Now, why is that relevant? Obviously, the trends concerning import data are significant. But we believe that the numbers are even greater; that the total quantity of fish imported under the four HTS categories composes almost entirely of the subject merchandise, so the 34 million pound figure that you have for imports, for example, in 2002, is probably somewhere closer to the 46 million pound total that you get when you total up those categories.

And one good indication of this, and we have put this in our brief and also you can see it in some of the other data, when you look at what happened followed the Commerce Department's preliminary ruling at the end of January and you look at the fall-off in those HTS categories, it was so severe, there was very little left in any of them, and what that suggests to you is that indeed most of what was coming in was product impacted by this proceeding.

We put a letter into the Commission on June 4th in advance of the briefs to give the staff and the Commission as much time as possible, and frankly, the respondents as much time as possible to respond to what we had found, which included very specific information about missing, if you will, foreign producers and exporters.

But keeping in mind even though the trends are dramatic as you see them, those numbers are particularly important where you have respondents telling you that their product is going somewhere else. Frankly, even if there is some small portion of this fish that is going into other markets, when you're talking about somewhere between 34 and 46 million pounds of fillets, which translates into over 100 million pounds, between 100 and 150 million pounds of live fish, all you have to realize is that a goodly portion of that is remaining in competition, and will always be in competition in the catfish market. Those numbers are very telling to you for what reason.

Let me just quickly address the domestic industry issue, and then I will leave for questioning, I think, some of the other legal issues that may be here.

We believe very strongly that this Commission should include both farmers and processors in the domestic industry in this case. Frankly, there seems to be only one of the statutory criteria which is at issue, and that is whether the live catfish is substantially devoted to the production of the processed produce. And we don't think any of the other criteria are really a question, or I will be happy to answer questions, of course, if you have them.

But we have, first of all, expressed in our brief the view that the staff comments in the report was a very good one, the suggestion that you rely on value, the relative value in this case of the different products. And the reason for that is fairly simple, and that is, you have an unusual circumstance where a goodly portion, about half of the weight of the raw product is virtually of no value, little or no value, the offal, the bones, the part of the fish that doesn't get consumed, doesn't translate itself.

So if you operate on a volume basis the weight of the catfish, you then have to deal with how you adjust for yield losses, or how you account for the volume of fish. And we can do that, but I think the staff is correct that the value approach makes a lot of sense in that instance, and involves having to make assumptions and calculations concerning weight.

Secondly, we would ask you in looking at the value to recognize two -- in making that calculation on a value basis to recognize two things. One, that there is a significant quantity percentage of the fish that comes into the processing plant, and almost all of it does go into processing plants as you know, that is not suitable for filleting.

And just as in the raspberries case you

discounted the raspberries that were not IQFable, if that is a verb, when harvested, you should also put aside the fish that is simply too big or too small, and we have given you pretty good data on that, on the average amount of fish that that accounts for.

Secondly, you need to realize on a value basis that the imports have impacted the relative value of these imports in terms of -- of the frozen fillets in terms of the overall catfish process product, because the imports have affected frozen fillets, and the value has been dramatically negatively impacted over this POI.

At the beginning of the POI the value of the frozen fillets was greater than at the end. And so we have suggested to you an adjustment based on information in your record to account for that, using data in the staff report, using data that you have collected, that's available from NASS.

When you do that, you come up with a figure which says that the frozen fillets are over 60 percent, about 61.2 percent, I think, or .3 percent of the total value of the products.

Now, the argument has been made that's just not enough. You need to have much bigger numbers. Well, let me just say that the Commission has consistently in every single case where you face this issue said that we will look at each case on a case-by-case basis, and look at the particular circumstances.

The circumstances that are relevant to you here are the ones that are shown in that nice, colored chart that we attach to the brief. Unfortunately, that is based in NASS data and not the calculations we have done.

But what you can see is that unlike other industries you have looked at -- do you have that? We can actually put it up for you. The percentage of the value accounted for by the frozen fillets, and here it is understand because we had to use NASS figures to be able to get all of the other processed products, it is so much greater than any other product.

The next largest product is the fresh fillets, which is by far running behind the frozen fillets, the driver of the profitability of the industry, of the pricing of the industry, and let me make this point: The driver of the pond bank pricing because of the size of that wedge of the pie is the frozen fillets.

That's different from the situation in the table wine case, for example, that the respondents cite to you where there were three major outlets for the grapes; one was for the table one; one was for raisons; and I think one was for table grapes for eating. Two of them were relatively close. The use of the grapes for the table wine and for the raisons were very similar, each being about in the high forties.

So this is an unusual situation. We haven't found it in another case. It very clearly explains to you what has happened with the bond bank price, and we urge the Commission to take account of the particular circumstances of this case which, combined with the very close integration of the processors and growers in this case, should lead you to include the farmers.

I am going to stop there. I know the Commission will have lots of questions for us on this and other legal issues, and I would like to reserve the rest of my time for rebuttal. Thank you much for your attention today.

CHAIRMAN OKUN: Thank you. And before we begin the questioning let me thank all the witnesses who are appearing here today for, especially those from industry who have traveled to be with us today. We very much appreciate your willingness to come to the Commission to answer our questions and to provide more information about your industry.

I'm going to begin the questions this morning. Let me start, if I could, I want a little clarification with regard to labeling law, and I know, Mr. Rhodes, you spoke about it, but I know there are probably a number of people on the panel, and that's just in terms of trying to determine when it actually, in your view, had an impact if it did.

In other words, the staff report includes when the appropriation, the FY-02 appropriations bill was passed and the public law, the November 28, 2001, public law took effect. But I am just trying to understand in terms of the FDA regulations and when it was implemented.

For the customers you were selling to, when would it have mattered to them that they now have this label, or they have this labeling line in effect?

MR. RHODES: It was enacted last year, and we know it was supposed to be placed on the boxes in different ways of marketing. But as far as what was already in country, I'm not sure what the effect -- how long it took to affect of what was coming in versus what was already here. You know, you had to play out what was currently in inventory.

I'm not sure if that answered your question.

CHAIRMAN OKUN: Okay, and in terms of what the food service was doing with them -- I mean, one of things that you have pointed out, and I think Mr. Davis and some of the others, your points went to that, of whether basa is still being marketed to compete with catfish; this idea of, you know, continue to be in the same -- competing for the same customers if you were.

Has there been a change in what you have seen anywhere else in terms of the marketing?

In other words, the respondents have used several things. I mean, today they are using -- I see they had the handout this morning from the grocery stores which again is a different channel of distribution than the food service where your sales are focused primarily, and I'm just trying to figure out if there is any other information about that.

MR. RHODES: Well, I am glad you asked because just two weeks ago I was traveling to a retail customers, and the box that came to mind here, and we actually have a copy of it that was e-mailed to us yesterday, digital camera, it was distributed by Harvest Fresh Catfish Company, that's the way it is listed on the box, but the actual description on the box says "Contents farm raised basa," which is, according to the labeling law, product fillets, so we had that most recently came up.

MS. SLATER: But I think the point is when you see this box, even though the product label says "basa," the name of the company includes catfish, and so on this box which includes a logo picturing catfish, it still says Harvest Fresh Catfish Company. So the name is still there. You know, I don't think anyone would tell you that this is a violation of the labeling laws to the extent that the product is appropriately identified as basa on this box, but it nevertheless has the word "catfish," this is Harvest Select Catfish Company -- Harvest Fresh, sorry, Harvest Select, of course, is the U.S. processor, which happens.

I wanted also just since you're asking about recent examples, I think, one of the things that was mentioned and we didn't actually have a copy, we will be glad to provide a copy to the Commission, this is the catalogue from the Boston Seafood Show. There are two major seafood shows each year; one in Los Angeles, one in Boston. And at the seafood show, and these gentlemen can tell you more about it than I can, but it is the central sales and marketing arm or event, I guess, of the seafood industry each year.

And in Boston 2003, just this past March, there was a catalogue of all the exhibitors. Under catfish, we do have a few entries under basa. Under catfish, one of the major entries is the Vietnam Association of Seafood Exporters; and in their listing, a copy of which we pulled off of the website because we didn't have the book, they are listed -- there are various products, one of the first ones is catfish. The Vietnamese producers are continuing to offer themselves as catfish producers.

The same thing happened in Los Angeles last fall. CATACO, which I believe is one of the companies that will be testifying today, was handing out at the seafood show last year in Los Angeles these brochures, which include pictures and information about various products, including catfish, and here is their list of products at the end of the brochure. This is November 2002, well after the labeling laws had come into play. The very first product is basa, IQF basa bacordi, basa catfish fillets, skinless and boneless. And there are other examples from that show that we could give you.

AFIEX, which is a large exporter of Vietnamese basa fillets, has actually a picture of the basa, which is very different than channel catfish, inside is pushing, not pushing, advertising the availability of basa catfish.

And understand clearly the issue here and for this Commission is not really whether labeling laws are being violated. The issue is to what extent these fish labeling laws or not labeling laws are being marketed in the catfish market and as a substitute for catfish.

And there is no question about it, particularly -- the reason we put that one flyer in the brief is that the front of that flyer said "Basa." There was no issue about the labeling on the flyer. The back is a detailed comparison with farm-raised catfish, and that is how the product is still being sold. People are still going to the restaurant who then purchase through the distributors, and I will let them tell you more about the chains, and saying, I'll take the less expensive stuff for my catfish.

CHAIRMAN OKUN: Okay, I do want to hear that description about the change, but the references you just gave to the catalogues, those are the catalogues you have not yet submitted; is that correct?

MS. SLATER: We have given you some examples, but these are additional ones. There are many, and so we would be happy to provide you additional examples. I brought a few with us today.

CHAIRMAN OKUN: Okay. For the ones you want to put in, make sure they get into the record. I guess there might be a question if respondents want to respond to any of the ones you have referred to today, they would not have had a chance to see them.

MS. SLATER: We mostly do that. We will supply it for the record in advance of the post-hearing briefs.

CHAIRMAN OKUN: Okay. And to the extent you were talking about the seafood shows, that is what we are talking about, the food service, the distributors who would be purchasing, correct?

Okay, and Mr. Rhodes, did you want to talk some more about the chain?

MR. RHODES: Actually, she referred to an incident that just happened to me last week. My family and I were going out, and we haven't eaten in a restaurant chain in quite awhile, and we thought we would go in and see what they are serving at the buffet line, and what they called it. As we got into the buffet line, it was called southern fried fish.

And my boys, obviously, grown up in the catfish industry all their lives, they decided they wanted catfish, and I kept trying to tell them it wasn't catfish. And the girl behind the counter kept telling them it was catfish. Actually it was basa catfish, southern fried catfish.

And I didn't want to get into a debate with her and embarrass her in front of everyone, and the boys were determined to eat catfish, and so I just said buy it, I want you to try it, I want you to see what it was like.

As we got to the end of the counter, I knew it was basa. I could tell the way it was cooked and the way it was on the counter. The store manager came up and I said I want you to be honest with me. I still had not told him who I was. He said, sir, I'm sorry she said it was southern fried, it's actually basa, and Piccadilly does serve basa as southern fried fish.

And as we left, I noticed three or four other couples come by with what they considered catfish in Tuscaloosa, Alabama, and Mississippi and Arkansas is considered when you eat southern fried fish, it's not pollack, it's not tilapia, it's catfish, and that was the most recent example I can bring to you.

CHAIRMAN OKUN: Okay. And so the labeling laws don't impact that because even though the distributor would be buying something that was labeled as basa, what the restaurant chains can market that as is not impacted by the labeling law? I just want to make sure I understand that.

MR. RHODES: That's correct. It can be substituted by the salespeople or their representatives of the distributors and/or the restaurant chains, yes. It can still be substituted, in other words.

CHAIRMAN OKUN: Okay.

MS. SLATER: And just to be clear, sometimes it will be called catfish and sometimes it will be as in the case of the Piccadilly chain they call it southern fried fish, but they replaced the catfish that was on the menu.

CHAIRMAN OKUN: Okay. And then just with respect to the Piccadilly Cafeteria, because what was in the staff, we have this reference, the April 15, 2003 article on Farm Press stating that Piccadilly Cafeterias of Mississippi had pulled Vietnamese basa from their menus, and replaced it with catfish.

Is that inaccurate based on what you are saying or did they do it in Mississippi, but not other places? I am just trying to make sure I understand this reference.

MR. PERKINS: It is our understanding that in most of the Mississippi units they are serving catfish. They have come under so much pressure, but I have heard similar stories as Randy's where even though it's listed as southern fried fish, employees are telling people that it's catfish.

Now, they may truly not know that they have changed, but it's being misrepresented. Even though we have the labeling laws, I believe that they virtually have had little effect or no effect on what is going on.

The point is that for nearly two years this product, 100 percent of the efforts were to replace or to sell this product as catfish by the distributors, the distributor sales reps, and the restaurant operators. And so even now there are some labeling issues, it is still being represented all the way back up in many cases to the distributor level, and there may be many people at the restaurant level that don't understand the labeling laws, but it is causing tremendous hurt to our industry.

CHAIRMAN OKUN: Okay. Well, Ms. Slater, also, if you would just for purposes of post-hearing in terms of the lost sales issues regarding different restaurant chains, if you can just make sure that we have the best information in terms of who may have been providing that product to the restaurant chains, and what they believe the situation was with that, if they lost any product.

I have many more questions but I see my yellow light is on, so rather than start another line let me turn to Vice Chairman Hillman.

And if I could ask everyone, I forgot to do this, but if you can just say your name when you respond to questions just with the second rows. Sometimes it's hard for us to see your names up here, and it's easier for the reporter. Thank you very much.

Vice Chairman Hillman.

VICE CHAIRMAN HILLMAN: Well, thank you very much, and I too would join the Chairman in thanking all of you for being here this morning. It is extremely helpful to have you here, and we appreciate the very substantial amount of information that was provided to us in the prehearing brief. We appreciate it very much.

I guess I just want to make sure I understand the last response to Chairman Okun's question, which is, in your view does the labeling law permit, lawfully permit a restaurant to put on its menu -- again I'm not talking about what the food service person puts on its box, I'm talking about what the restaurant says in its menu or whatever it puts up on its buffet line, is it lawful for them to say catfish if the product is in fact basa? Or would it be your view that that is a violation of the law?

MS. SLATER: I think it partly depends on which law you are talking about.

Certainly, the law that is going to be effective next year concerning country of origin labeling exempts food service establishments, but that one won't be effective until 2004. That's a general country of origin labeling that includes --

VICE CHAIRMAN HILLMAN: That means the restaurants do not have to comply?

MS. SLATER: Right, right. I think retail outlets such as supermarkets are covered, but my reading of that is that the restaurants -- food service establishments are exempted.

Now, currently there is in effect a misbranding law, and this is part of the FDA legislation that deals with all kinds of appropriate branding from everything to nutritional branding; you know, what you can label according to low fat and so on. We have spent some time trying to untangle that law.

Our best reading of that is that it is intended, that the catfish provisions are intended to apply to restaurants. Because the restaurants are not the food service establishments, they are not specifically exempted. That is a very different question from whether that is actually being followed and enforced, however.

VICE CHAIRMAN HILLMAN: Okay, I appreciate that. Thank you.

I guess if I can then turn to your chart, your pie chart in terms of, you know, the portion of the product that goes into the frozen fillet, and you're, I think, quite correctly reading the concern of the Commission over this one prong of the statute.

I'm just trying to make sure I understand your argument in terms of the analogy to IQF raspberries. When I look at this piece of the chart that is fresh fillets, I'm trying to make sure I understanding it, is it your view that everything in the fresh fillets is not, as you term it, IQFable, meaning that these are fish that are too large or too small to go into the frozen market, or is there some portion of them that go into the fresh market because they are not IQFable?

I'm just trying to make sure I understand.

MS. SLATER: No, no, and correct me here if I fall off the edge, but my understanding, Commissioner

Hillman, is that the argument really doesn't have to do with what's in the fresh fillet slices of pie.

We are talking about what's in the denominator; that you need to remove from the denominator fish which couldn't ever be sent for filleting to begin with.

VICE CHAIRMAN HILLMAN: Okay. And in this chart have the fresh -- the fish -- I'm sorry -- that are too small or too large to be IQFable, are they included in this chart or not? They have already been removed?

MR. KLETT: No, they have not been removed. That is from NASS data which doesn't -- you know, doesn't break that out separately. We collected from our companies information as to the whole fish that were not filletable, and so we essentially took a number similar to that that was in the staff report. The staff report, I think, came up with 57 percent based on the questionnaire data as compared to what's from NASS.

And we then made an adjustment by removing the non-filletable whole fish from the denominator.

MS. SLATER: The problem that we have in part is that the complete data set for giving you this type of a picture of the relative importance, which won't change really by any significant degree, is the NASS data which is year by year.

Your staff report looked at, first of all, data for the whole POI, the percentages were POI-wide. And so we started with that, and made the adjustments.

This is simply for the purpose of giving you visually orders of magnitude of the various products.

VICE CHAIRMAN HILLMAN: Okay. Then I guess if I can go to the processors on this. In terms of how and when you make a decision as to whether you are going to process a product and freeze it versus sell it into the fresh market.

MR. RHODES: I'll start out with what Danny said. Different processors have different priorities. Some more frozen and maybe some more fresh, and a lot of us would obviously do fresh. Fresh will be an order by order, day by day production cycle that demands it from the customers of what you have to pack for that particular day. And so the rest might be frozen.

VICE CHAIRMAN HILLMAN: But the fish itself is pretty much exactly the same? You are not producing the fresh product out of larger or smaller, any other --

MR. RHODES: The larger and the smaller you're referring to, we cut the larger fillets into steaks, or maybe even into fillets, the larger fish. The smaller fish that cannot be filleted are frozen, small, whole fish, or maybe even fresh, but very little of that is fresh. Most of that is all frozen, the small, whole fish.

VICE CHAIRMAN HILLMAN: Okay. And are you looking at prices on a daily basis to figure out whether you think you are better off in the frozen side or in the fresh side, or it's truly based on whatever demand is that day, Mr. Walker?

MR. WALKER: What we -- Danny Walker. What we do when we build our processing plants we basically are focused on a certain segment of the marketplace, and we're looking at a large investment in what we are going to put into that processing plant to be able to produce that product, and that large investment you cannot turn away from on a day-to-day basis.

So our production is geared towards -- for our plant, for instance, we are geared towards the frozen food market, and we have got our investment in that marketplace. It requires increased specialized equipment to be able to focus on that marketplace.

As Randy was saying, a fish below a pound, when you sign up all the fish, you are going to have some in there that are less than a pound. They cannot go across a fillet machine, so they are whole frozen fish. A fish above four and five pounds is too large to go across that fillet machine, so that fish is going to go to the whole market.

But our plants gear for the long term on one specific market. In order to switch from one year to the next from frozen to fresh is a move that is not a very wise move because when you turn away from a customer it is hard to ever get that customer back. Our customers tend to be for the long term. So to be able to switch on a daily, monthly or yearly basis is not a prudent thing to be able to do.

MR. RHODES: Frozen catfish, frozen fillets would still be the primary product that we are selling, all of us focus on that.

VICE CHAIRMAN HILLMAN: Okay. All right. I appreciate that.

I guess if I can focus just a minute on this issue of the ads that we saw from the newspapers today in terms of, you know, the argument the respondents are making that, you know, this is competing with a series of other, you know, whitefish.

Now, a number of you touched on it. But I am trying to understand whether there is a distinction in the fresh market. I mean, as I read these ads, and you know, stop at the grocery store, they are largely selling fresh product. I mean, occasionally it is thawed for customer convenience, but it is largely, you know -- I think that's the term they use, conveniently thawed for your -- whatever. In any event, it's largely a fresh market, okay, which is different from the market as I understand it that you are selling to me. You are primarily, almost entirely in the kind of food service end. You know, maybe some direct restaurant, but largely in the food service end.

On the fresh side of it, is there a difference in the way these products compete with other whitefish on the kind of retail end of it?

I mean, is that why we are seeing these ads coming in where they are listing a multiple number of, you know, it could be orange ruffie, it could be this, it could be that, you know, all sold at the same price in an ad?

I am just trying to understand this. There is a difference on the fresh side.

MS. SLATER: Are you asking about fresh catfish fillets?

VICE CHAIRMAN HILLMAN: Yes.

MS. SLATER: And how they are sold as opposed to --

VICE CHAIRMAN HILLMAN: Well, and whether -- again, whether there would or would not be greater distinctions made, and again in a retail fresh setting between these various species of fish as opposed to what happens on the frozen side?

MR. DAVIS: Yes, Jeff Davis.

When we look in the fresh market, I think when you go to the counter, first of all, by the labeling laws alone they have to be labeled exactly what it is.

In the presentation that was made here today about tilapia being similar to basa, and then the next statement was bay scallops. Well, a bay scallop and a tilapia and a basa are three different species of fish, and would have a different market up to the buyer.

So there is no relevance in the way that was presented, I think, in that advertisement. That was just strictly you go to your fish counter, and there are a number of different species, and which species do you prefer.

What we do know is that the catfish buyer, the person who goes to a restaurant or to a supermarket to buy catfish is a very loyal buyer of catfish, and we have these regional fisheries around the country where, for instance, in New England, where I happen to be from, you would typically see in the supermarkets a lot more cod because that's the regional fishery that people are used to eating.

In a certain section of the country, particularly through the Midwest and the South, catfish is a traditional species that is eaten, and it would be shown in those restaurants as catfish.

I hope that answers your question.

VICE CHAIRMAN HILLMAN: No, that's very

helpful. Thank you very much.

CHAIRMAN OKUN: Commissioner Miller.

COMMISSIONER MILLER: Thank you, Madam Chairman, and thank you as well to all the panel for being here and helping us understand your industry. It is very helpful.

I was going to start someplace else, but I want to follow on Vice Chairman Hillman's question a little bit because I want to make sure that I do understand the channels of distribution because you talk about your fresh versus frozen. I know frozen is predominant, and I understand your pie chart and such.

But what channel is serving the retail level? I mean, how do I see -- for example, the basa that is listed in the Safeway ad didn't arrive there fresh. I mean, it has to have been marked previously frozen. When you sell to the retail grocery stores are you only selling fresh or are the retail grocery stores also buying some frozen which they may thaw, or does that depend on location? Are they served directly by you or through the food service distributor perhaps? Is that where we pick up some of the retail market? Yes?

MR. PERKINS: Jack Perkins. I will try to address that.

Most of the part we sell to the retailers by far is sold directly to the retail chain be it Safeway or Kroeger, Wal-Mart.

There are some retail chains and retail stores that will buy from a local distributor. Very little of it comes from a food service distributor.

As you mentioned, the large majority of the catfish that we sell to retailers is fresh, but we do sell some frozen products to retailers, and it is sold in the frozen case and also in many cases it could be thawed, but we do have competition against the basa there also, but we focused on the frozen food service. That's where the majority of what we have seen happen.

COMMISSIONER MILLER: Okay, that is where the majority of the competition from the basa has occurred as opposed to in the retail counter?

MR. PERKINS: The majority by sheer numbers.

COMMISSIONER MILLER: Okay.

MR. PERKINS: But we have had competition, no question, at the retail level also where basa has been promoted as catfish. In the early days the retailers would, before any laws went into effect, the retailers would put it out as catfish, and in many cases stopped selling catfish.

MS. SLATER: I might note, Commissioner Miller, that you can also see in your aggregated questionnaire responses from the processors, and to the extent you have responses from importers, the channels through which this certain fish is moving. And I think that supports what Mr. Perkins is telling you, that by and large the frozen fillets move through the food distributor, food service distributor channels into their customers, not into the retail sector, and the aggregate data definitely bears that out as well.

COMMISSIONER MILLER: All right. Let me go to a little bit back to just the question to make sure I understand one thing, and that is wanting to understand how much of catfish is really sold as catfish as opposed to fish.

Mr. Perkins, I think you in your testimony talked about the industry having promoted itself as selling a unique project, not a generic frozen fillet. And let's see, Mr. Perkins is there.

MR. PERKINS: Right here.

COMMISSIONER MILLER: Yes. Mr. Davis, I know Mr. Davis also made some comments to that effect, about, you know, you're not selling -- the basa isn't selling as basa. It is selling -- well, obviously, that's what we are trying to understand.

How much of catfish -- put aside the whole basa issue. How much of catfish pre the basa competition was being sold only as catfish, or is there a market for catfish that is just fried fish?

MR. PERKINS: Well, let me answer. First though, most of the catfish is sold as catfish outside of a very few restaurants where someone will buy a catfish and put it on the menu as fish. We have tried to encourage that over the years, to make a bid deal about the fact that it's catfish, and merchandise it as cajun fried or southern style or kentucky fried or whatever, but it's catfish, because we are different from the other species. We did not try to replace them, and the price points have never come into discussions when we were trying to sell restaurant accounts or restaurant distributors or restaurants chains.

So it's hard to think of any restaurant that just has catfish on the menu -- has catfish but they call it fish.

COMMISSIONER MILLER: Okay. Other than the Piccadilly Cafeteria example you gave recently.

MR. RHODES: But prior to the basa interruption it was always catfish.

COMMISSIONER MILLER: It was always catfish.

MR. RHODES: Right. Right.

COMMISSIONER MILLER: Okay.

MR. DAVIS: Yes, I would like to confirm what Randy just said that previously to basa coming in catfish is a very distinctive and would always be advertised as catfish on a menu. In other species of fish if we looked at pollack, you may seen pollack on a menu as unidentified because it's a low price point, and it would then possibly be on the menu as whitefish. If you go into a restaurant like Appleby's you often see something like whitefish on the menu, and that would be -- it could be a pollack, it could be a tilapia, but it's not going to be a catfish because catfish is very distinctive in that are.

COMMISSIONER MILLER: And was this in part because -- I mean, in carrying this special cache to catfish, does it command a higher price than some of the fish that you would typically --

MR. DAVIS: Yes.

COMMISSIONER MILLER: -- see labeled as just whitefish?

MR. DAVIS: Yes. If we look at just a typical whitefish, or as was mentioned in the discussion earlier was whiting or pollack, these species of fish are selling in the range of between 85 to $1.25 per pound. They go to mass markets, and they generally go unidentified. The only place you may see pollack as an example is if you go to the frozen food counters in a store as one of the branded products like a Gorton's products, or Mrs. Pauls, it will probably state Alaskan pollack on the box, but in general you're not going to see Alaskan pollack advertised when you go to McDonald's and buy a fish sandwich. That is probably Alaskan pollack, and you're not going to see it advertised.

But if you go into, for instance, Long John Silvers, the base fish that they would use would be a hokey or a Alaskan pollack and they are fried, but on the menu what you are going to see is catfish if they offer catfish. It will be separated specifically because that buyer who comes in for catfish is specifically looking for a catfish, much more directed market.

COMMISSIONER MILLER: Okay. Mr. Walker.

MR. WALKER: Danny Walker.

I might want to add that many of our customers, especially up and down close to the Mississippi River in the southern regions of Mississippi, Louisiana, Alabama, Texas, many of our customers are catfish houses where they strictly serve nothing but catfish, and it's Vernon's Catfish House. So not only are they advertising it as catfish, they even have catfish in the name of their restaurant itself because it's basically the primary and only product that they serve.

COMMISSIONER MILLER: Okay. Now what that means for us now, Ms. Slater, if I understand where this puts us, is that for basa to continue to take the catfish market, it either has to be mislabeled or they have to change the name of what they are selling. Is that fundamentally where that puts us?

MS. SLATER: No, and the reason is that, first of all, we do know that there is quite a bit of noncompliance with labeling laws. But putting that aside, what's happening is very much what you are seeing in the distribution chains in that example of a marketing brochure that Mr. Perkins was wise enough to pick up a few months ago, and that is, someone will technically -- and aside from the catfish, catfish, catfish inappropriate labeling on the booth, the brochure said basa, but this basa has been marketed as something that's a good substitute for your catfish.

It would be the analogy I have been sort of using to myself to make sure I understand it is if Fuji apples were called -- couldn't be called apples, would have to be called Fujis, which is maybe not the best analogy. I could still say to you, you know, these Fujis would be really good in your pie instead of apples, they would work really well.

And so the same thing is happening in addition to we have got different levels here, but one is that the labeling laws are not being complied with, but even if they are, it doesn't matter. People understand that this fish has a similar flavor profile; that when it's fried up consumers in general -- Mr. Rhodes notwithstanding -- can't tell the difference, and it is a suitable and workable and much cheaper substitute, and that's what is happening.

MR. ALLEN: Can I make a comment too? I am Bill Allen. I am currently a banker, catfish banker.

COMMISSIONER MILLER: Yes, Mr. Allen.

MR. ALLEN: But formerly a catfish processor and promoter. The problem we are seeing here and the reason the labeling law alone is not going to help us is that we have allowed 30 something million pounds of fillets to already get into our distribution channels, which converts like to like 100 million live pounds a year that our farmers have been displaced with.

We are now in 21 months of constant prices under 60 cents a pound, which is catastrophic for farmers. I can tell you more about banking details and condition of farmers if you like. But these fish have already slipped into the traditional catfish markets. And even at that current levels keeps coming in at the same price, 60 to 80 cents a pound below ours, we are almost out of business based on what has already come in here.

We need some help to adjust those prices up near to our cost of production for what's already come in as well as what future growth there may be.

COMMISSIONER MILLER: Okay. I appreciate your answers. The red light is on so I will have to hold back for now. Thank you.

CHAIRMAN OKUN: Commissioner Koplan.

COMMISSIONER KOPLAN: Thank you, madam Chairman. I too want to join with my colleagues in thanking the witnesses for their direct presentations as well as their prepared statements this morning.

Let me just note before I start that the Commission has not yet received Commerce's final determination that had a schedule date of yesterday, so I'm still operating with a preliminary determination from Commerce. That is not a question; it's a statement. Thank you. Thank you though, Ms. Slater.

If I could start, I note from Table C-1, and this is coming back very briefly to the labeling question that has already been raised during prior questioning, but I note from Table C-1 of the staff report that during interim period January through March of 2000, and 2003, the quantity of subject product dropped from 6.5 million pounds to 2.3 million pounds, and dropped in value from $9 million to $3.4 million.

I am assuming that in the first quarter of 2002 the labeling laws had not -- you know, the effect of the labeling laws were not seen, but I would assume that by the first quarter of this year they would have been in effect.

I noticed that Ms. Slater is already nodding her head in the negative. I assume that you're not going to attribute any of this then to the effect of the labeling laws in the first quarter of 2003?

MS. SLATER: Commissioner, two things. If you take a look at the effective dates of the labeling laws, the first of which was November of 2001.

COMMISSIONER KOPLAN: Right.

MS. SLATER: And has been in effect since then. And you also look at the publication issuance of the Commerce Department's preliminary determination right at the end of January 2003, it's very clear what led to the drop in import levels as reported here in 2003.

And if you look at that data on a monthly basis, the correlation between the publication of the preliminary rule and the import change is striking.

COMMISSIONER KOPLAN: Thank you. I appreciate that but I needed to ask the question.

Let me come back to Mr. Perkins now if I could.

MR. PERKINS: Yes, sir.

COMMISSIONER KOPLAN: Mr. Perkins, you referred to this in your testimony today when you said that in the face of pressure from the low priced imports you have been forced to try to move more fresh fillets.

According to the staff report in Chapter 2 at page 2, domestic processors have some ability to respond to changes in the relative price of frozen fillets which changes in the product mix of frozen and fresh product. Although the production of frozen product requires specialized freezing units, according to Mr. Bill Dawa, Vice President of Sales in New Business Development of Consolidated Catfish Companies, and I am quoting, "A law of processors have tried to shift some production into fresh product in response to increased imports of the subject project." And it was he that referred to "a lot of." That's at staff conference transcript at page 83.

Can you provide me with the details of instances when domestic processors have made attempts to change the product mix of frozen and fresh products?

MR. PERKINS: Prior to the Vietnamese fish coming in in the late nineties, we had made a long-term strategic plan to develop more frozen sales. We felt like that that was where the premier price would go, and that was, as Randy indicated, the flagship of our products. We had invested in a new spiral freezer, so we had been making plans to continue growing our frozen side.

When the Vietnamese product came in, we have made some concerted efforts to try to shift more to the fresh market, and have had some success. We have had to spend quite a bit of money. For our company and my competitors to make a major shift to fresh, the fresh goes to the consumer, it costs millions of dollars, as you see with the major corporation, to reach the consumer, to change the consumer buying habit at the retail stores.

It would take millions of dollars in plant renovations to change their packaging equipment, their flow of products, and then we have to encourage the consumer, Mrs. Consumer or Mr. Consumer to buy catfish three times a month instead of once a month. That takes millions of dollars and it's a very slow process.

So over many, many years we could perhaps make a significant swing to the fresh market, but we don't have the time nor the -- the farmers own this industry, the farmers own the processing plants, they don't have the money today to make these conversions, and frankly, they don't have the time to do it.

So our only resource is to continue as an industry to barrel ahead and try to maintain our frozen market and continue our long-term strategic plan to grow the frozen business. Even though we have personally made a shift to try to sell more, we think long term 10 years from now I think the majority of my business should be frozen, and that's what we would like for it to be.

COMMISSIONER KOPLAN: Thank you.

Is that similar experience of the rest of the domestic industry witnesses?

MR. RHODES: I agree, but I guess there is a couple of things I might add.

COMMISSIONER KOPLAN: If you could identify yourself.

MR. RHODES: I'm sorry. Randy Rhodes. I'm sorry.

The logistics and the shelf life of the fresh product and the slower growth in the fresh business, typically we spent the time and effort and the marketing dollars to promote frozen fillets. So it costs us more to ship the fresh product, and the shelf life is only 10 to 14 days versus the frozen six months, so we prefer to move the frozen product.

COMMISSIONER KOPLAN: Thank you. Mr. Davis, you had your hand raised?

MR. DAVIS: Yes. I think the other thing we have to recognize that historically, and I think this will be proven out, that seafood is not an item that's typically consumed at home, particularly if it has to be cooked. Its primary market for seafood has always been restaurants, the food service business.

So if we didn't have that food service business, this industry could not exist on a fresh basis.

COMMISSIONER KOPLAN: Thank you. Yes?

MR. ALLEN: Bill Allen.

One other comment. As a former processor to my colleagues, when we talk about a strategic plan to shift from frozen to fresh on Randy's part or Danny's part or Jack's part, it's a shift to cannibalize the competitor in the catfish industry. We are talking about short-term plans to I need some fresh business now because Vietnam has taken my frozen away, so I'm going bid more aggressively against Consolidated Catfish or Southern Fried or Delta Fried. So it's a short-term fix the cannibalize ourselves to change our market mix.

We can't change in the intermediate term the consumer's propensity to buy frozen or fresh, so it's a short-term cannibalization that only takes prices down further.

COMMISSIONER KOPLAN: Thank you.

MR. ALLEN: Do you all agree, the other processors?

MS. SLATER: I am going to officially adopt the word "cannibalization." Cannibalization is the word, I like it.

I just wanted to also point out that in the staff report your staff has done a very, very sound analysis, I think, of the limited ability of the processors to shift between fresh and frozen at page 2-3 of the report. It's a nice, concise and well done analysis.

COMMISSIONER KOPLAN: Thank you for that, so I'll stay with you for this next question, Ms. Slater.

Coming back to the definition of the domestic industry, I would like to hear a little bit further. Let me change your argument and you have talked about this morning and in your briefs, you know, but the catfish farmers and growers be included in the domestic industry in the final phase of this investigation.

In the preliminary determination, the Commission did not apply Section 771(4)(e) of the 1988 Omnibus Trade and Competitiveness Act, because we found that the processed agricultural product, live food-size catfish is not substantially or completely devoted, that is the quote, "substantially or completely devoted," to the production of the processed agricultural product, and thus was not produced through a single continuous line of production.

The report of the Committee on Ways and Means, that's Report 100, No. 40, at page 121 defines "substantially or completely" as follows, and I quote:

"The Committee intends that substantially or completely to mean all or almost all."

At the present time I'm still inclined to define the domestic industry the same as before unless you can point to data other than your argument thus far that will cause me to find that the first prong of the processed agricultural provision is satisfied.

I would like you to respond now or elaborate further in your post-hearing submission if necessary.

MS. SLATER: We will definitely elaborate further in the post-hearing brief, but I think that language passed in 1988 also accompanied with it some other language which we have cited in our brief, suggesting that the Commission does need to look at each industry on a case-by-case basis.

COMMISSIONER KOPLAN: Well, I have read your brief, but I wanted to include this language in your analysis.

MS. SLATER: We will do that.

COMMISSIONER KOPLAN: Thank you very much. I see my light has come on. Thank you, Madam Chairman.

CHAIRMAN OKUN: Thank you. And I didn't get to hear all of the responses on the agricultural provision, so I will review that. I may have a question further, but I will skip that question for right now.

Let me turn to the processes if I could and talk a little bit about the capacity expansions during the period of investigation. And I know that at least, I think, a couple of you in your direct testimony did focus on this. And Mr. Klett, actually, Mr. Klett, I think it was you who focused on what capacity expansion meant during the period of investigation.

But I guess the one period, and what you cited, I think, Mr. Klett, was between 2000 and 2002 was where you have subject import volumes increase more absolutely in absolute relative terms. That was your 21 million pounds versus 19 million pounds. That was correct?

MR. KLETT: That's correct.

CHAIRMAN OKUN: Thank you.

If you look, however, at the 2001 - 2002 period, that was a period where domestic capacity growth outstripped the increase in subject import volume.

I mean, do you read that the same way for that period?

MR. KLETT: Well, I think that that in part that depends on what is the correct subject import volume. But based on the staff report that is -- the numbers do so that over those two years capacity did increase on an absolute basis more than import volume. But the 2002 import volumes in the staff report of 33 million, we believe they may be closer to 46 million; in which case exports would have increased more than capacity.

CHAIRMAN OKUN: Okay. So for that particular question, and I do want to come back to data issue, but from your alternative data you don't think that happened during that period?

MR. KLETT: No, but I also think that that doesn't necessarily mean that the capacity increases totally explain price declines and subject imports don't.

I mean, I think when you look at capacity increases you have to look at it in the context of demand growth. And if capacity is increasing in line with long-term demand growth, then even if on an absolute basis capacity increased more than subject imports, I think it was justified capacity increases and can't be -- you know, adverse price effects can't be attributed to overexpansion. I don't think capacity increases can be characterized as overexpansion if they are in line with demand growth.

And I think what happened was that U.S. producer shipments, as I showed in my charts, you know, there was a supply and demand imbalance in the sense that U.S. producer shipments that had grown continuously since, you know, '86 took a big hit in both 2000 and 2001 while U.S. processors had expanded capacity based on no long-term growth projections.

And I think also, and the processors can confirm this, that when plants make capacity expansions, you know, there is a lead time between when you make that decision and when it comes on stream, and I think the decisions to expand were based on, you know, on actual long-term growth.

I mean, the increase in U.S. producers' shipments from '86 to 2000 were almost -- were eight percent, pretty much on trend with very little deviation from that trend, and I think their capacity extensions were based on looking at that.

CHAIRMAN OKUN: Okay. Well, I appreciate that, and I do think it is important to know what apparent consumption was doing over the period. I was interested in that period just in terms of also the response of what was going on in pricing, and I do want to turn just to the pricing during that period for a moment. But it is with that in mind, which is, you know, if capacity increases were in line with growth but during the period where, you know, you see changes in pricing or maybe the most impact, depending on how you would characterize it, if that was a period where again capacity happened to come on in that period to a greater extent, how we should evaluate that, and that's one thing that I'm still interested in.

MR. KLETT: Yes, I mean, I -- I think it just has to be evaluated in the context if capacity increases are one supply side factor, that obviously effect the market and effect price. But again if the capacity increases were justified based on demand, I don't think that the capacity increases by U.S. producers can be blamed for the price declines compared to a situation where producers expanded capacity but demand was flat.

And I don't have capacity data going back to '86, but the other gentlemen here maybe have -- probably have experience with respect to when they expanded in the past, and whether during those periods of time that resulted in price declines.

CHAIRMAN OKUN: Okay, Ms. Slater, and then I will hear from the processors.

MS. SLATER: I just wanted to note that the capacity expansions didn't translate in every case or in many cases into additional production, and I think that is an important fact, that a lot of that capacity never had the opportunity to really come on stream and be fully utilized because of the market situation.

So in making this assessment it is important to look at actually what the production levels were.

CHAIRMAN OKUN: Okay, I appreciate that.

Do the processors want to comment at all for those who experienced capacity increases? And again, I think you did reference this in your testimony, but if there is anything further you want to say. Mr. Walker?

MR. WALKER: Danny Walker.

Commissioner Okun, it's like I said earlier, we are owned by the farmer and the farmer is owned by us, so we are both sides of the coin. Early in 2000, we made some decisions to expand our operations. Those decisions at that time were made on our anticipated growth of the industry. You know, even the expansions we were taking on represented only a portion of the anticipated growth that the industry was going to be experiencing over the next three to four years. So we were looking down the road in the future.

When we made those decisions and made that expansion basa fillets came into the marketplace, and quickly eroded profit margins, and at that time we were looking at the situation going from a profit on the farm side to a loss.

In light of that, even on the processing side we saw our margins coming down, but when faced with that we felt like we needed to continue on the production and capacity expansion on the process side in order to survive this situation, to be able to -- even though we're making less per pound, by increasing that production capabilities we could offset the losses on the other end. That's purely a business decision to try to survive the circumstances that we were facing.

CHAIRMAN OKUN: Okay. Appreciate those further comments.

Mr. Rhode.

MR. RHODES: Randy Rhodes.

I concur with that. I think he said it pretty well clear for all of us the way we expanded as well.

CHAIRMAN OKUN: Okay. Can anyone share a comment, there was a Southeast Georgia Times article in November or December of 2002, and I'm going to -- in Willachoochee, Georgia, Sweetwater Catfishing, currently renovating an existing building in an industrial park to process and distribute catfish throughout the southeast. And I wondered if anyone here as any information on that, the status of that operation.

MR. RHODES: It never made it off -- Randy Rhodes. It never made it off the ground as far as we can tell. That was a local issue caused that to fall apart before it ever got started.

CHAIRMAN OKUN: Okay. So nothing to that. Okay, appreciate that comment.

Also, Ms. Slater, just for you I did want to make the point, and then to start with this, but not all the U.S. processors or indeed all the members of the CSA have yet responded to the Commission questionnaire, and I wanted to get your comment on whether we are going to be able to raise our coverage among U.S. processors.

MS. SLATER: We feel, Commissioner Okun, that the coverage is actually excellent in light of -- once you understand who it is that you are missing. There are very few processors that have not responded to the questionnaire.

One large processor, the largest of the list that was provided to you of missing processors by the respondents is a processor who is importing, and so we have never throughout this process been able to have cooperation from that fellow, and we have given you some evidence that he is importing and relying on imports.

There are a number of very small processors, and I couldn't knowledgeably expand on this very much other than to tell you these are family-run Mennonite operations, and there is apparently some religious objection to participating in government processes. I have called them and tried to speak with them, but this is not something they could do. I could try, if the Commission is interested, to get an explanation of exactly what the religious objection is, but they were not interested, and we can identify for you with processors those are.

Additionally, there is a processor which is no longer operating, and I want to make sure I get the right name, Springwater -- is Springwater the one that has closed its doors?

MR. KLETT: Springwater, correct.

MS. SLATER: Its assets were purchased by another processor which has responded, but the financial records were basically lost when they closed their doors.

So in terms of the industry that's capable of responding to your questionnaire, and willing, without religious objection you pretty much have full coverage, and your 75 percent processor coverage looks much, much higher when you remove the one importing processor.

CHAIRMAN OKUN: Thank you very much. Vice Chairman Hillman.

VICE CHAIRMAN HILLMAN: Thank you. I guess I want to follow up a little bit on some of the questions that the chairman was asking in terms of the price competition. And I'm trying to understand from your perspective sort of where and how you see the price competition. I mean, a number of you have commented on it and commented on the differences. But I'm just trying to understand, when you're out trying to sell one of your large food service customers, again how does the issue of the Vietnamese price come up, and kind of what is your response, and how have you seen the competition in terms of exactly on prices.

I mean, if you offer to cut your prices, what does that do? Are folks trying to be loyal to purchasing from you, or is it -- again, I'm wanting to get a little bit better understanding of how the price competition is working these days?

MR. RHODES: I think in the past, when it first -- excuse me. Randy Rhodes. I think the past, when they first started coming into the country, we were probably not as aware of the consequence of it at the time. It was slipping through. The buyers were bringing it in, trying it, and it was slowly just moving around and saturating different buffet lines or small mom and pop operations.

The price at that time, they would bring it up to us and say, you know, you're a dollar too high compared to what I can buy a substitute product for. And we would compete with that to a certain extent, but there was no way we could meet to that price because of our farmers and the level that we were paying for lot fish.

As we speak today, it has become, you know, common for those buyers to substitute and/or use that price as a reason for substitution. We have hurt ourself and our pricing and lowered our price to on-the-street, as all -- I guess also on the farmer level as well -- to try to compete with that. But it has been very difficult because as soon as we lower our prices, the price of the basa would drop as well. So we've always had a margin between 75 cents and a dollar a pound to the greatest extent trying to compete and lower our pricing.

VICE CHAIRMAN HILLMAN: And when you have lowered your price, have you been able to keep sales? Or is it --

MR. RHODES: The loyalty in some cases helps, but there is a lot of it out -- I think as well as has been represented is a priced product, and people believe they're buying catfish. Even some of the local people in our town were using basa, and they didn't know it because the representative was saying it was catfish. And we found it to be basa, and we told that particular small store owner that he was buying someone else's fish, or basa from Vietnam, and he stopped it. But that was because he was a hometown store. That doesn't happen all over the country. And he is being represented as one thing.

MS. SLATER: Let me just quickly ask Mr. Davis to take a cut at that question, then we'll go around to the other processors.

MR. DAVIS: One of the -- we really did sell basa fillets before we bought Southern Price. And we were approached by a number of the customers that were looking for this substitute that they could put in. They encouraged us to go to Vietnam to get the fish, bring it in, and market it. And as it was being sold -- I mean, it was clearly entering the channels that we were selling it as what we refer to as swai. It was clearly entering the channels and moving on as catfish into the final menus.

All of the things that we've looked at when we look at the catfish consumption -- and actually getting back to the labeling as well -- is that we're talking about 35 to 45 million pounds of fillets that come into the market. And I think that needs to be put into perspective, how big that is in terms of the seafood industry. When you get to the top 10 species -- the top five are fairly numbers, but when you get below that fifth, it starts to drop off rather rapidly. And I think the 11th place fish right now is I think scallops, which is about an 80 million pound market.

So when we look at basa coming in at 35 to 45 million pounds, it has got to be positioning itself somewhere in the 14th, 15th place. And I would ask you -- since you've been involved with this, you probably know the name a little bit more. But to the general consumer, basa is not a known product like scallops are or mahi-mahi or snapper or some of these other species. So this product is entering the market as basa. It is being sold as basa, but it is not ending up being made as basa. And that's pretty evident just by the fact that it is just not being recognized out there. And I don't think the industry is trying to make it recognized. Let's put it that way. It's very expensive to enter a new species into the system.

VICE CHAIRMAN HILLMAN: Okay. Then a couple of you commented in your testimony about the pond bank prices. And again, I'm just trying to understand generally whether, you know, the relationship between the prices at which you're selling your processed product and the pond prices -- I mean, a number of you have commented that your purchasers look at the pond prices to try to figure out what they should be paying.

I'm trying to understand the sort of chicken and egg, or sort of what is driving what in terms of whether -- is there historically a certain amount of mark-up between the pond price versus the processed frozen price or -- again, I'm trying to understand sort of what drives the prices, who is leading the prices, and how the relationship between the pond price versus your prices.

MR. WALKER: Danny Walker, Heartland Catfish, Commissioner Hillman. In the early days, like Randy said, we saw a lot of direct, here is the price of this basa that I can buy. It's much cheaper than what you're selling me right now. And we were forced to work with that on a daily basis. And we had big customers who would switch to it openly. Then from a marketing standpoint and from labeling laws and things of that nature, it became more covert.

End user customers did not want myself or my representatives out there to know that they were using that product. And so it became less of a direct confrontation on a pricing standpoint. If I had a customer -- a typical food service customer that I may be selling 8,000 pounds of product a week to, then I look back for the past four weeks, and it's down to 5,500 pounds per week, and talk to that food service distributor, what is going on? Well, you know, there is a lot of cheap products out there, and you've got to move your price if you expect to get that back.

They're not going to be saying -- talking about the basa as directly as they were before because they're afraid to in that context. But it still -- that's how that product is moving out there in the marketplace. It's hard for us to pinpoint which customers of our customers are using that product.

On the big-end users, it's easy to see. But a little mom and pop grocery store, which there are worlds of those out there, those individual sales reps for that distributor, you know, they're going to that person that's buying two boxes a week, and they're saying, you know, here is the same stuff I brought you a year ago. It's a dollar cheaper, and it works great, and it's catfish. And they'll buy it right there.

VICE CHAIRMAN HILLMAN: And how about the pond price? Again, I'm trying to make sure I understand it.

MR. PERKINS: Let me make a comment. In my testimony, I made mention that many of our large buyers, the retail end food service, are very sophisticated. Now many of these guys have been buying catfish for 20, 25 years. They toured our plants, our farms. They subscribe to the Catfish Journal. They watch the live market, and they've seen over the years how the live market has changed with the market prices. So many of our customers ask us daily, weekly, what is going on with the live market?

If it goes down, they're quickly on it, talk about when is that price going down. If it goes up, they don't want to talk about it because they know we're talking about an increase. But many do try the live price on a frequent basis.

VICE CHAIRMAN HILLMAN: And is it trackable? I mean, does everybody know what the price is, and is it pretty much the same throughout the Mississippi Delta?

MR. PERKINS: It is. It's published in the monthly USDA crop report, and it's very easily trackable, yes.

VICE CHAIRMAN HILLMAN: Okay. And certain ponds can't get -- you know, if they considered their fish to have a better flavor or anything else, there is not really a variance or, you know, better consistency of size, et cetera. It's pretty much a flat price?

MR. PERKINS: It generally is a flat price. The market -- if the market starts moving within a few days or a few -- generally a few days, it's pretty much widespread throughout the industry the same price, within a cent or two of each other.

VICE CHAIRMAN HILLMAN: And is there historical sort of mark-up between the pond price versus the processed frozen price?

MR. PERKINS: I think you see the trend lines move together probably. So --

VICE CHAIRMAN HILLMAN: Okay, okay. I guess if I can just finish really quickly on this issue of the other white fish. I mean, some of you have described, you know, this issue of whether there is or isn't competition. I'm curious. Is there a distinction among the consumers as between whether it's a freshwater fish or an ocean fish? Does that matter to anybody? I mean, you mentioned cod and pollack and all of these other more ocean-going fish as opposed to the trout or the catfish or other freshwater fish. Does that matter?

MR. DAVIS: Yes, it does. I mean, consumers definitely have preferences, and they also have traditions. And based upon what they're used to eating in the areas is typically what they're going to consume. If you're from the Pacific Northwest, halibut or salmon are expected. And if you're eating salmon, you'd be expected to eat Alaska or West Coast salmon, not farm-raised salmon. So, yeah, I think that there is definitely a difference in those markets.

When you look at the overall white fish market, it's driven much more by international trade as well. When we sell pollack, we sell pollack all across the world. We sell it to Europe. We're selling it to Japan. So it's locked much more into an international market. But it's also locked more into a lower end market.

So every species of fish has sort of its own little spot that it stays in the channel. If we're talking about Chilean sea bass, which is a high-end product, you know, it's going to have specific markets that it goes to.

VICE CHAIRMAN HILLMAN: Okay. All right. I see that the red light has come again. Thank you.

CHAIRMAN OKUN: Commissioner Koplan.

COMMISSIONER KOPLAN: Thank you, Madame Chairman. Mr. Perkins, if I could come back to your testimony about that food show you attended on March 21st in Missouri.

MR. PERKINS: Yes.

COMMISSIONER KOPLAN: The exhibit that you refer to, Exhibit 5 that accompanied the brief, and your testimony this morning -- I realize that the reason that was introduced, as you stated in your direct testimony, was to give us an example of continued improper labeling and direct competition between catfish and basa, even when basa is identified. That's what you testified to this morning.

MR. PERKINS: Yes, correct.

COMMISSIONER KOPLAN: But there is something else in that exhibit that I'd like to take up with you if I could. In that so-called catfish fact sheet that was introduced with it, Thompson and Sons, who were distributing that, they also claim that according to the U.S. Department of Agriculture, at certain times as much as 60 percent of the U.S. farm-raised catfish are considered, quote, "off-flavor," end quote, due to exposure in pond water to blue-green algae containing the compound jasmine and 2-methylase borneol, that impart a muddy taste.

You might not have gotten the word "impart" because of my accent. But that impart a muddy taste. They also allege that sometimes these odd flavored catfish reach the market.

While I realize why you introduced the exhibit, I'm particularly interested in the allegation that in July of 1999 the Environmental Protection Agency granted U.S. catfish farmers an emergency exemption to use the pesticide diurin to rectify this situation, and that that exemption doesn't expire until the 30th of this month. Can you tell me what the current situation is with regard to that particular problem?

MR. PERKINS: Yes. Off flavor has been a

problem. There are times in our industry where it may be at more than 60 percent.

COMMISSIONER KOPLAN: Would that have impacted on the price you can sell the product for?

MR. PERKINS: No. You know, we raise over 600 million pounds of catfish. Even if 90 percent of the catfish were off flavor, we only need 10 percent to be on flavor to supply our industry for a full month. And I think the term sometimes -- that they use -- sometimes off-flavor fish reaches the market is over-exaggerated. That may have been the case 15 to 20 years ago. Today, I believe our industry does a very good job of flavor testing and making certain that this -- if it's 60 percent or 70 percent off flavor, that it does stay in the pond. It doesn't reach the consumer. I think we do a very good job of that. And it is a problem to the farmer.

Now the reason that we need the chemical that you mentioned to help the farmer -- a farmer may have a certain pond -- he may have 10 ponds that he needs to sell. Three of them are on-flavor, but one that is off-flavor may actually be the one that he really needs to sell more so. So if he had a way or a mechanism or something or some way he could bring that product on-flavor, it would help him.

So those types of aids are needed. But as far as the processing and marketing, even with the off-flavor issue, there is always more than enough on-flavor fish to fulfill the current demand for our product.

COMMISSIONER KOPLAN: So do I understand that you do not see the need to apply for a further extension of that exemption on June 30th?

MR. PERKINS: I'm not sure I understand that.

COMMISSIONER KOPLAN: Well, my understanding is that this exemption expires the end of this month to use that pesticide. Have you applied to have the exemption extended?

MR. PERKINS: I'm not in the farming side of the industry.

COMMISSIONER KOPLAN: Okay.

MR. PERKINS: I think Mr. Pearce would probably answer that.

MR. PEARCE: David Pearce. Each year we have gotten a special exemption to use that. It's just for a 12-month period. And there are other compounds that we use, copper sulfate being the most prevalent, to fight off flavor with. I mean, it is a useful tool, but it's not like the industry is going to wait, you know, if we don't have that exemption to use it. But it has just been given to us for a year at a time. We have to reapply each year through EPA.

COMMISSIONER KOPLAN: Okay. I didn't understand that. Thank you very much. I appreciate that.

Now the Respondents, at page 25 of their prehearing brief, say that Vietnamese basa and tra are not treated with tripolyphosphate prior to freezing, and that this as well as other differences in processing results in correspondingly different costs that in turn lead to lower prices for the subject product. Can you explain to me whether you do use tripolyphosphate, and if so why, and how does it affect your costs? Should I stay with you, Mr. Pearce or Mr. Perkins? Mr. Rhodes.

MR. RHODES: Yeah. Randy Rhodes. I guess to answer that, the tripoly is used, yes. It has been commonly used in frozen fillets and whole fish even. It's a shelf-life preservative because the product as we ship it -- as we send it through this final freezer will dehydrate and will lose quite a lot of weight through the processing procedure. So that helps it maintain that weight and gives us a shelf life that we bring here, and we will say six months with.

As far as their saying they're not using it, I'm not sure, you know. I didn't know -- I did not realize they were not using it. I thought they had been using it.

COMMISSIONER KOPLAN: If they weren't using it, what do you estimate their shelf life would be? You get six months out of it.

MR. RHODES: Yeah. We'll say six months. We prefer to move it to two or three probably. But I would think their shelf life is much less than that. I'm not -- I don't know. I know normally we would think that would help.

COMMISSIONER KOPLAN: Okay. If I could continue, Respondent Foodcomm states at pages 17 and 19 of their prehearing brief that among other things, critical circumstances is extraordinarily relief, and that the Commission cannot find critical circumstances where the imports have remained stable.

In support of their stability argument, they state that the increase of subject imports has been level at 56 percent increases in each year of the period examined, but are not terribly significant when absolute volume are small. I'd like to hear from Ms. Slater or Mr. Klett to respond to their argument that foreign producers have not attempted -- have thus not attempted to circumvent the potential antidumping duty order by generating a surge in imports.

MS. SLATER: Actually, I'm going to have you from Mr. Park on this one since he is our resident critical circumstances expert.

COMMISSIONER KOPLAN: Oh, fine.

MR. PARK: David Park. In terms of the rise in imports, the period of time that the Respondents looked at were the six-month periods before and after the filing of the petition. As Petitioners noted in our prehearing brief, there was a period of time about a month or two before the filing of the petition where knowledge of the filing of the petition was known. And in fact, we have attached articles from Vietnam as well where they have noted that they had hired counsel in anticipation of the case, and that these articles appeared approximately in April of 2002.

Looking at the monthly imports of subject merchandize, you see a dramatic growth between April 2002 and May 2002 where imports rose from approximately 2.6 million pounds -- rose about 60 percent to 4.2 million pounds in one month in the following month in May 2002. Those imports remained at about the 4 million level -- they had never been at that level before -- for most of the year, until immediately before the preliminary determination of the Department of Commerce was released in January.

So in December, before the preliminary determination, that rose to 6 million pounds, and then in January of 2003, that rose to 8 million pounds. And then following the announcement of the Commerce determination, that fell back to 1.3 million pounds, a level that we haven't seen in about two years.

So when you look at the actual period of time comparing the period of time from when the Respondents had knowledge of the filing of the case, and you compare the period between May and January 2003, you see a rise of over

100 percent in imports. Just comparing a month to month, the April 2002 levels to the May 2002 levels, that was a rise of about 60 percent. In comparing the April 2002 level to the January 2003 level, it was a rise of over 200 percent.

So when looked at in that context, the Petitioners believe that there was a huge surge of imports.

COMMISSIONER KOPLAN: Thank you for that. I see my red light is about to come on. I do have some questions left, but I'll save it for the next round. Thank you all very much.

CHAIRMAN OKUN: Just a follow-up on critical circumstances. So really it's about this April data that you're asking the Commission to look at a period beyond what we usually would have considered in critical circumstances.

MR. PARK: David Park. That's correct.

CHAIRMAN OKUN: Okay. And based on the articles that in your view coincide with the increase in imports.

MR. PARK: Absolutely.

CHAIRMAN OKUN: Okay.

MR. PARK: And this is also -- although the Commission is not bound, this is the period that the Commerce Department also looked at for its critical circumstances determination.

CHAIRMAN OKUN: Okay. And obviously there has been a lot of information submitted in this case, and we very much appreciate everything you've done. In terms of the critical circumstances, if you haven't done so, will you make sure that you address how we should evaluate the increase in demand during the period in evaluating critical circumstances, you know, whether imports are less likely to undermine seriously the effects of a remedial order where demand is increasing.

MR. PARK: We'll address that in the posthearing brief.

CHAIRMAN OKUN: Okay. I appreciate that. Let me return, if I could, to some questions with regard to price, and helping me understand the relationships among the different sizes of fish fillets, and if it's an accurate description, the marketplace. And while the information obviously is confidential that we collected, I just want to understand from the processors just in terms of where you have the different products where we collected information, and you have smaller -- I think the smallest one being the two- to three-ounce size range -- and then there being the three to five and the bigger sizes. Is there a relationship among the different sizes of fillets, typical or not?

MR. WALKER: In typical -- Danny Walker. Typically, our machines in our industry process pieces, not pounds. So it costs us more to process a smaller fish than a larger fish, strictly because if you run a one-pound fish across a machine, you're going to get a .34-ounce fillet. If you run a two-pound fish across that machine at the same time, you're going to get a .68-ounce fillet. So the smaller fillets typically we try to sell for a higher price than the larger fillets because the cost of producing those smaller fillets is greater.

CHAIRMAN OKUN: Okay. And do I take from that -- and I think this is consistent with the data -- that the U.S. industry tries to focus in on the larger fillets, whether you sell more of the larger fillets or not? I mean, just so you're all in -- and I should ask the different processors because it might be different.

MR. WALKER: The driving fillets in the marketplace are two to threes to a lesser extent, but mainly three to five, five to seven, and seven to nine-ounce fillets. And those are produced from between a one and four-pound fish.

CHAIRMAN OKUN: Okay. So those middle ranges, three to five, five to seven, seven to nine, are the meat of what you would produce or the -- "meat" might not be the right description, but -- Mr. Rhodes.

MR. RHODES: Yeah. I think I agree with that. I think that's also where the effect of the imports have had the most bearing down on us, and that is at that small three to four, four to five, five to six, seven to nine-ounce fillet type size that we have that what is being imported. And that is a prevalent size for the restaurant, for the food service. You know, the food service focuses on a smaller fillet portion for the center of the plate. But a retailer might take a little larger fillet, maybe a seven to nine or a 9 to 11-ounce fillet.

CHAIRMAN OKUN: Okay. Mr. Allen.

MR. ALLEN: I'd like to follow up on a price question that is partially yours and partially Ms. Hillman's on the correlation between pond bank and fillet prices. This is really essential to what we're talking about here.

The frozen fillet price drives the price for everything, including the pond bank price. And there is a very direct correlation between frozen fillets and pond bank prices. For every three-cent movement in frozen fillet prices, there tends to be about a one-cent movement in the live pond bank prices. It's strictly a function of the yield. You get about 34 percent of a fish to a frozen fillet.

So we've seen our frozen fillet prices drop since Vietnam came into the picture from 2.86 to about 2.29, somewhere around a 55, 60-cent drop. We've seen our pond bank prices drop correspondingly from about 76, 78 cents down to 56 cents, about a 20-cent drop. So that's what put our farmers in such desperate straits. And I'm kind of feeling like I need to follow up on the senator from Arkansas who is here. We're talking about 10 or 12 processors here. But I represent several thousand farmers and economies in local areas in Mississippi, Alabama, Arkansas, Louisiana that -- I mean, these people are going broke because of Vietnamese competition on the frozen fillet market.

CHAIRMAN OKUN: Mr. Rhodes, let me come back to you, or Mr. Perkins. Does anyone else have a comment on --

MR. PERKINS: I really can't add -- Perkins. I really couldn't add much to that. But I concur with what they said about the sizes. That's the -- those are the premium products. Those are the most efficient for our equipment to process, the sizes that they mentioned.

CHAIRMAN OKUN: Okay. And in terms of where you see the Vietnamese competition, or where you see their imports concentrated -- Mr. Rhodes, I think I took from your response that it's your impression that they concentrate as well in these larger sizes as opposed to the smaller sizes. Was that accurate?

MR. RHODES: No. Actually, we see the smaller size a three to five or a five to seven, and our middle maybe --

CHAIRMAN OKUN: Okay. But for the Vietnamese, what would you --

MR. RHODES: That's the same type of product that they're bringing in as well, also a seven to nine maybe. But that's the more food size type product of frozen fillet that we would normally sell, and that's where their focus was.

CHAIRMAN OKUN: Okay. Ms. Slater.

MS. SLATER: One point of clarification that may be helpful to you, Commissioner, is that the four sizes for which pricing data was collected are for the most part all on the smaller end of fillets. And those sizes were recommended and used in the pricing data because that's where most of the competition occurs. Most of the Vietnamese product has been coming in in these smaller sizes.

So that's not the full range. What you've got in that mix of pricing data tends to be the smaller end. There is not that much direct competition, or we didn't think the pricing data would show -- give you the kind of comparisons you were looking for in terms of volumes at the upper end.

CHAIRMAN OKUN: Okay. Well, I guess what -- kind of the crux of my question -- and some of it I guess probably needs to be addressed posthearing. But it's just that if I look at the different products where we collected data and where the U.S. has higher volumes, you know, relative to where the Vietnamese imports bigger volume fish were, or bigger volumes of sales, were -- I'm just trying to understand whether looking at those different pricing products, whether we should assume to see the same type of price effects where the Vietnamese have the heavier volume.

MR. KLETT: Could I respond?

CHAIRMAN OKUN: Yes, Mr. Klett.

MR. KLETT: This is Dan Klett. I think that, number one, when you have the coverage from the importer questionnaires -- and I think it's public in your staff report that it represents 23 percent of the 33 million pounds -- that the importer questionnaire coverage is very poor. So, number one, the reliability of the importer pricing data, especially in terms of the volumes, is just not very good.

Number two, if you were to look at, for example, whether prices for two to three fell by more than prices for three to five because, you know, there may have been more import volume in the two to three than three to five, that assumes that two to three and three to five are in a sense completely separate markets. And according to my discussions with the processors, that the prices for the different sizes can't really get that much out of whack with each other.

In other words, customers know that if prices for two to three are going down, that you can't keep your price for three to five or five to seven, you know, at a higher level. And perhaps they can confirm that.

CHAIRMAN OKUN: Could the -- yes, Mr. Rhodes.

MR. RHODES: Thank you. Randy Rhodes. Jack made a comment in his testimony, a statement, that the two to three business that we once had or he had per week, 20,000 pounds a week to one particular customer, left us when they went to basa. And that was a small size fillet that has completely been disrupted due to that. And so that price, for instance, at one time was very much higher, and we have had to reduce that price to try to drive sales toward that particular product. And that's really a real damaging part of it as well.

CHAIRMAN OKUN: Okay. Mr. Walker, others -- comment anymore on the interrelationship between these prices? In other words, I guess for posthearing I think, Mr. Klett, the points that you were making, if you could elaborate on those because I think there are some differences in what is going on with pricing on the record, and I need some more information to understand what I should make of that in terms of competition with the subject imports.

MR. KLETT: We'll do so.

CHAIRMAN OKUN: Okay. I appreciate that. And then, Ms. Slater, you can do this for posthearing, just in terms of threat, if you would make sure that you give a description on whether you believe the industry is vulnerable based on the most recent data that we have in the record. And with that, let me turn to Vice Chairman Hillman.

VICE CHAIRMAN HILLMAN: Thank you. I hope just a couple of follow-ups. First, I just want to understand. We've throughout the hearing and throughout the staff report refer to sort of basa and tra sort of somewhat interchangeably or not. I wondered if any of you can comment. I mean, are there significant distinctions between basa and tra, or is it again very much sort of one product?

MR. DAVIS: I can tell you from our experience that there is some difference in what was originally referred to as basa. A number of years ago, when we looked at this product, the mid-90s, late 90s, the product was being introduced as basa at that time. It was a very decent tasting product, a very nice flavored product, kind of buttery. We actually thought it was very, very good fish that should be positioned very strong in the marketplace.

Later on -- we didn't really get into it at that point. But later on, as the imports were growing and that we had demand from our customers, and we went back to Vietnam and spoke to them about having the possibility of bringing in some basa, at that time they told us they really couldn't supply us basa. They had to supply us tra, which was a little bit different fish. I'm not really sure of all of the details behind it, but there was a little bit of difference in the fish. It didn't have the same taste profile as the basa did at that time that we had experienced earlier. The quality was a little bit more -- it wasn't as consistent as we had tasted before.

So there was a difference. When we started in the marketplace to market the product, it was clearly a question that people just more or less -- we were allowed to call it either bass, tra, swai. I think there were several others names that it was allowed to be marketed under at that point. So it was what you chose really to enter in the market.

VICE CHAIRMAN HILLMAN: Now is there a distinction in price between the basa and the --

MR. DAVIS: There was. From the real basa to the tra, there was a difference in price at that time, from the early days. And what it is today I don't know because I think pretty much we don't really see real basa come in very much anymore.

VICE CHAIRMAN HILLMAN: That's just what I was going to ask. In terms of the current imports, do you have a sense of how much of it is basa versus how much of it is tra?

MR. DAVIS: I couldn't give you figures, but my understanding from our purchasing people is that we almost couldn't get basa anymore at all. It had to be tra that we were dealing with.

VICE CHAIRMAN HILLMAN: Ms. Slater.

MS. SLATER: I just wanted to point out, Commissioner Hillman, two things. In the Commission's preliminary staff conference, there was testimony provided by Respondents that basically there has been a significant shift into the tra. But in the prehearing brief from White and Case, if you look in Exhibit A at page 7, there is a very clear statement that the distinction in the U.S. market is blurred, and it's all being marketed as basa.

VICE CHAIRMAN HILLMAN: Okay. I appreciate that. Then I guess the next thing I wanted to make sure I understood is the Respondents are also making an argument in terms of some of the condition of the domestic industry related to the decelerating rate of growth in terms of demand for catfish. And so I just wanted to make sure I understood from your perspective -- we obviously have consumption numbers for 2003 that are obviously very much affected by what are we counting in terms of imports. And it would arguably show a decline if you're looking at import data from questionnaires and would show a different picture if we're looking at trying to figure out something on official statistics.

But I just wanted to understand from your perspective, what do you think has happened in terms of consumption of catfish, demand for catfish in 2003, and what is your sense going forward of what the demand for the product looks like?

MR. RHODES: I think that the effort that we have taken over the last 18 years to promote catfish through the Catfish Institute continues to reap rewards due to the consumption levels increasing. And I think what I have read and what I can see here, it looks as though our consumption level and our overall numbers seem to be steadily climbing, but that basa has taken a piece of that away from us, and our growth continues to have, or has continued, on the farming level to be able to handle that if we had not had the basa involved.

I guess the TCI at this point is a little -- we're concerned about, you know, our next level of marketing, what our next level should be, and how we promote the product, and that will help our growth as well.

VICE CHAIRMAN HILLMAN:

MR. GOLDBERG: And what do others see? What do you think that the increase in demand for the product is likely to be in this year?

MR. PERKINS: Jack Perkins. You know, you turn a lot from just in our industry. I have been for many, many years, and I've got to hope that long-term we'll continue to see the demand for catfish to continue to grow. And our sales may actually continue to grow even with the basa here, but the main issue is price. Even we grew this past year, but we lost our shirts. That's the main issue here.

Consumers like catfish, and I think they'll probably want to eat more and more of it. Hopefully, they will. But if the basa continues to come into this country at the prices that we've had to fight it, our industry will not be there to fulfill the demand.

VICE CHAIRMAN HILLMAN: But you're all suggesting that you think the demand itself is continuing to grow.

MR. PERKINS: Yes, ma'am.

VICE CHAIRMAN HILLMAN: I see a lot of heads nodding. Anybody have a sense of how much? I mean, as opposed to last year, what do you think? How much is demand likely to grow for the product in 2003?

MR. ALLEN: Bill Allen. I just think we've been on a pretty constant curve around 6 to 7 to 8 percent for 15 or 20 years. I think we're probably still growing at that 6 to 8 percent. But I think Vietnam took more than half of our growth the last two years.

VICE CHAIRMAN HILLMAN: Okay. All right. That's very helpful. Another comment from Respondents is that there has been some effect on the industry as a result of again a general recession in the economy, and therefore a slowdown in the demand. I'm just curious. I mean, is catfish a product that, you know, is consumed less when the economy is not as good?

MR. DAVIS: No. I don't think so. Jeff Davis, by the way. What we found in looking at -- because we sell a number of different species. We sell some very high-end species such as Chilean sea bass, which is, you know, a $10, $12 a pound item. We sell scallops. We sell low-end products such as pollack. What we saw happen in the general economy was certain species of fish, particularly when the economy slows down, tends to actually do a little bit better. As people move away from the white tablecloth restaurants and move into the casual dining area, or down to the family area, we see those species grow.

Catfish fits well into that price point. So it is in a -- I think it's in a position that the economy itself is not slowing it down. And it also is a very dedicated buyer of catfish in general, too. It is more a buy that goes with the destination to buy catfish.

VICE CHAIRMAN HILLMAN: -- Chairman asked in terms of fillet size. I'm trying to understand whether again demand is driven to some extent also by this issue of fillet size. You have talked about some of these other white fish products. I at least think of them as a much larger fish producing a much larger piece of fish. Now maybe it's not the case. But my sense is I don't think you can substitute some of these products if what you're looking for is a fillet of a particular size. But I'm needing some help here understanding how kind of fillet size translates into, you know, demand, usage.

I mean, obviously I have my own perception of when you eat catfish what you're getting. But I'm just curious how that translates into the fillet size and whether these other white fish out there can produce a fillet size that is comparable and that can be cooked, if you will, and marketed in the same way as the catfish product.

MR. WALKER: Danny Walker. The typical restaurant in the catfish industry is looking to serve about an eight-ounce portion to a typical customer. If you're looking at a three to five-ounce fillet, then they're going to be putting two fillets on a plate, where they're going to average four ounces. If they're looking at a seven to nine-ounce fillet, they would typically cut that fillet into pieces, and then fry it, and it would be one fillet serving a plate.

In a lot of cases, on a five to six-ounce fillet or five to seven-ounce fillet, they split it down a lateral line and serve those two pieces there so that the plate presentation is still of two pieces, but now it's about six ounces on a plate. And so those different restaurants are looking to get that plate coverage at an economical cost, and also to fit what their consumer wants.

VICE CHAIRMAN HILLMAN: Now but how -- your point is -- I mean, that is exactly what I need to hear. But I'm trying to understand from the restaurant perspective whether, you know, they're wanting to purchase a product that is literally ready to go to into the fryer where they don't have to do any of the kind of portion control cutting, you know, thinning, anything else, or whether it really is not much of a labor issue for them to try to take any kind of fish and cut it into the size that they need in order to end up with this eight ounces on a plate. I understand that. But I'm just trying to understand how important is it to the sort of restaurant consumer -- I mean the restaurant owner -- to have it literally ready to be used or not.

MR. RHODES: Randy Rhodes. I guess there is a distinction here. Most of the product is coming in sized already, all the fillets. The restaurant does very little preparation at the back of the restaurant in the kitchen. Our product is a natural fillet, so when we say fillets, it's a natural -- normally a natural fillet cut out of a certain size whole fish, and it's natural, so it's not chopped the way you might see a salmon or a pollack or other cut-up large chunks to create a size range that fits the particular restaurants' needs. Ours will be more natural, and you know --

VICE CHAIRMAN HILLMAN: And that's exactly what I'm trying to understand, is whether that natural size -- I mean, is that something -- I mean, is that worth a lot to a consumer, or do they really not -- it doesn't really make any difference because they can take any fish they want and cut it into --

MR. RHODES: Catfish is normally looked at as a natural fillet. So in that particular case, for our product, it is considered natural, and they want it that way. In other products, they believe they're going to get chunks or they're going to get strips or they're going to get nuggets or whatever from the other product. Does that --

VICE CHAIRMAN HILLMAN: Okay. All right. I see the red light is on. Thank you.

CHAIRMAN OKUN: Commissioner Koplan.

COMMISSIONER KOPLAN: Thank you, Madame Chairman. I've got three questions left that are triggered by what I've read in Respondent's brief as their arguments. Let me come back to you if I could, Mr. Davis. The Respondents, at page 4 of their prehearing brief, state that Vietnamese producers also produce a wide variety of products other than the subject imports on which they focused their operations, and as such are not dedicated solely to the production of subject merchandize for export to the United States, while I've seen the staff report, in chapter 1 at page 6, that processors in the U.S. process catfish exclusively, but into many commercial products other than frozen fillets.

Please discuss other products you produce and explain whether these other products are being processed at the same facilities where fresh frozen catfish is processed.

MR. DAVIS: In our plants, in the Southern Pride plants, we specifically process catfish. That's all we do process. But we do process it in a number of different forms. We do breaded products there. We do do strips. We do different varieties, from fillets to the whole dressed fish.

I read the brief, and I had some questions about that as it was raised in their response because as I understand it, most of this fish is coming out of the Mekong Delta, which is fairly far inland that we're talking about, where the species of fish that were also mentioned, as I saw it -- some of those were actually -- such as scallops and these other things -- were sea products, which seem a pretty far distance from where the plants that would process this product. So I had a little hard time. When I read it, I didn't clearly understand where they were coming from on that point, to be honest with you. It didn't seem practical to me that you could process scallops, which would be an ocean-caught product, in the same plant that is going to be inland processing, you know, basa.

So I don't know. I couldn't respond to their question.

COMMISSIONER KOPLAN: Thank you. Any other processors that want to add to that? Okay. Let me stay with you again, if I could. One of the reasons given by Respondents for depressed prices in the seafood industry is increasing end user consolidation in the seafood industry. That's their prehearing brief at pages 37 to 39. I'd like to hear from the industry witnesses -- I'd like to hear their comments on that allegation. I'll stay with you first, Mr. Davis.

MR. DAVIS: I can speak through the period of time -- and I looked at 2000 as an example where we saw prices of catfish falling. We also at that same year were selling pollack. We sell a lot of pollack around the world. And our prices at that time were climbing for pollack around the world.

So I don't think that we can say categorically that the economy or other species were influencing -- you know, the white fish species were affecting that.

COMMISSIONER KOPLAN: Thank you. Mr. Walker.

MR. WALKER: Danny Walker. In the food service industry, even though we have some large food service distributors such as Sysco, who gets larger every day, the vast majority of those food service distributors still buy their product on a decentralized basis. Memphis, Tennessee, Sysco, is going to negotiate separately from Nashville, Tennessee, Sysco. So each one of those houses within those corporate companies operate autonomously. And they found that this works in most cases.

There has been some consolidation on the U.S. food service side where they went to centralized purchasing. I think that the industry has already found out that that was not the best way to approach the business. And we're seeing those few industries that -- corporations that did go to centralized buying are not having a very good time of things, and they're approaching decentralizing even now.

Even in looking at that, that is still a very small percentage of the industry out there. And overwhelmingly, decentralized buying is still out there in the marketplace.

COMMISSIONER KOPLAN: Thank you, Mr. Walker. Mr. Rhodes.

MR. RHODES: Yes. I would say, too, the consolidation that has taken place took place at the middle of 2002 and the latter part of 2002. So much of this that we're discussing is some of the damages that we are saying happened earlier than that. So yes, food service -- actually, more of that was being done, centralized buying, late December -- late 2002.

COMMISSIONER KOPLAN: Thank you. Anybody else? Okay. And this is my final question. This is a follow-up to a question that Vice Chairman Hillman was asking. The Respondents argue that the condition of the domestic industry has as its nexus an overexpansive increase in production and capacity by the domestic industry that was not matched by a similar expansion in market demand. That's their brief at page 3. And they further argue at pages 36 and 48 that over-capacity for the production of catfish and the imbalance between supply and demand caused a decline in the value of catfish production.

I'd like to have your comments on the extent to which any over-expansion and a supply/demand imbalance were responsible for the declines in prices.

MR. PERKINS: Jack Perkins. Thank you. Well, I'd like to refer back to the chart, where the graph went straight up. If you took that graph back to 1975, put it on one page, the line would even be straighter. Our industry has been through steady expansions every year, both at the farm level and the processing plant, and we've anticipated that those similar-type growths would continue happening throughout the next decade.

Prior to the Vietnamese fish coming in, we weren't anticipating any oversupply situation. And I don't think the over -- we just never looked at the over-expansion in the industry as having any -- or expansion in our industry having any future effect on the pricing that we've encountered this last two years.

COMMISSIONER KOPLAN: Thank you. Mr. Klett, I saw you reaching for your microphone.

MR. KLETT: Commissioner Koplan, I just wanted to say that one advantage you have in this industry is you do have data going back, you know, fairly far, so you can actually look at kind of long-term demand trends. And I think, you know, we've looked at the data in terms of acreage expansion at the farm level and the capacity expansion at the processor level in the context of what the long-term demand trends have been. And they were clearly consistent with those trends.

I don't see where, just based on looking at the numbers, Respondents can say that the expansions were out of line with demand growth because I think they were in line. And you can look at the numbers and show that.

COMMISSIONER KOPLAN: Thank you. With that, I have no other questions, and I want to thank the panel very much for both its direct presentation and the answers to our questions. Madame Chairman.

CHAIRMAN OKUN: Thank you. I just had one final question, Mr. Davis, and that's for you. In terms of -- I just thought it was interesting. Your company has purchased Southern Pride. I guess in December 2002 it became final. And as you've testified to, prior to that you were purchasing Vietnamese swai -- is it pronounced swai?

MR. DAVIS: Swai.

CHAIRMAN OKUN: Swai -- at a cheaper price than the domestic catfish. And I'm just curious if you could share with us in the open session -- I mean, for a business decision, what were you looking at? I mean, there was this Puget Sound Business Journal article which says American Seafood vies to corner catfish market, but in its description was describing this purchase more as allowing American Seafood to have a wider range of white fish, if you were, to offer all its customers, although there are other points in there saying that from Southern Pride's perspective it opened new catfish markets.

I'm just curious in terms of the market that you saw that you were trying to get synergies for and how the Vietnamese, which you already were familiar with because you were purchasing some -- how that played from a business perspective.

MR. DAVIS: We made a decision to purchase Southern Pride, as I said in my presentation, based upon really its distribution network. We were very impressed with the distribution network that Randy's group had built. They had very good connections to their customers, and our customer base that we sell to in what we call broadline distribution is similar. Randy was selling to Sysco; we were selling to Sysco. We were selling Sysco breaded portions, cod fillets, cod loins, and he was selling catfish products to them. So that type of product, we get a synergy by bringing our sales organizations together and being able to go in and talk to a national account or to a national distributor and offer a broader line of products. So there is a synergy in that.

The second part of it to us was we looked at -- we have a value-added plant in Massachusetts. We take and we bread products, and we create new -- different types of products that are not commonly used in the catfish industry. And we looked at some of the byproducts that could come out of Randy's operation, out of Southern Pride's operation, and utilize some of that raw material in our Massachusetts plant.

So we looked at those synergies as coming together. We see these as distinctively different markets, though. When we look at our cod market, we have a specific market that that goes to, a certain customer base that drives that purchase in the form that they want that product in. When we look at Alaskan pollack, we have a certain set of customers that will want that product. When we looked at catfish, it was a different set of customers. But a lot of them in the distribution system use the same methods to get that to an end user.

I think one thing that wasn't clear in the presentations here -- we talked about customers. We have different customers. In some cases, our customers are a national account such as a food store that you would know, like an Applebee's or, you know, an Olive Garden, or a restaurant like that. Those are what we call national accounts. And we make our arrangements directly with those customers.

In the other part of the industry, where we talk about the moms and the pops, we use a broadline distribution network where we sell our products to a distributor who then goes further out and sells them to the smaller restaurant chains. And that's how the network works through the country.

For us to get to those people, to get to all of those little customers, we need to have the ability as a company to offer a vast amount of products. And that was the reason American Seafood looked at how do we grow our business, and let's look for a strong distribution company. And that was the reason we purchased Southern Pride. I hope that answers your question.

CHAIRMAN OKUN: Yes. And I guess what I was curious about is in making that determination -- in other words, if you knew you had a cheaper product that you could bring in and compete with, was it just the fact that even with the cheaper product you couldn't get into those same distribution that the catfish was selling in? In other words --

MR. DAVIS: No. It was redundant. From our point of view, it was a redundant product, and we just didn't -- and it was competing against each other, and we didn't want it. We didn't want that redundancy. We had committed to the catfish industry.

CHAIRMAN OKUN: Once you purchased.

MR. DAVIS: Once we purchased --

CHAIRMAN OKUN: Right.

MR. DAVIS: -- we're committed to the catfish industry. And that was the way we were going to go.

CHAIRMAN OKUN: Right. Okay. I see the redundancy. I guess I was just trying to figure out whether it was this distribution system that Southern Pride offered was an advantage even over you importing cheaper Vietnamese basa to try to --

MR. DAVIS: On a long-term basis, the strength of distribution is extremely important for us. And that's the -- I think that what Danny Walker was alluding to earlier is that once you lose that distribution base, you don't get it back so quickly. So in our business, this is one of the areas we have to struggle for, is to make sure we can keep good national distribution going.

CHAIRMAN OKUN: Okay. All right. I appreciate those further comments. I don't have any other questions. Let me check with my colleagues. Vice Chairman Hillman.

VICE CHAIRMAN HILLMAN: I hope just a couple of quick follow-ups. Ms. Slater, in your testimony about the import data, I just wanted to make sure I understand it. Obviously, we are looking at basket categories. But is your testimony that it's your understanding that the basa and tra is in essence the vast majority, if not the entirety, of what is coming in from Vietnam? I mean, understanding that from the rest of the world there may be a greater mix of product, but that your understanding is that for those particular -- the HTS numbers that we're looking at, that the imports from Vietnam are exclusively basa and tra or --

MS. SLATER: No. I don't think we'd say exclusively. But we believe that a much greater portion of the Vietnamese imports obviously under those HTS categories are accounted for by basa and tra. The proxy that the staff has used -- and I think there wasn't a lot of alternative. But the proxy they have used are the exporter questionnaires and the foreign producer questionnaires, which are not complete. You don't have all of the exporters. You don't have all the foreign producers. And that fact, taken along with -- and we have given you, by the way, piers' reports showing a fairly high quantity of exporters that you don't have covered in your data.

Taken together with some circumstantial evidence, such as the changes in the levels in those various categories at points in time when this case, for example, would have been expected to affect it, like February of this year, you can begin to infer that the volumes are greater than what you have picked up.

VICE CHAIRMAN HILLMAN: Okay. Not exclusively, but 90 percent are we saying, 80? I mean, I'm just trying to get a sense from you of --

MS. SLATER: You know, I don't like to overstate things, so I'd like to say, gee, it's probably close to all of it, probably somewhere in the 85, 90 percent range. I mean, the people who would know that are probably sitting in the room behind us and could tell you. They had used a 46 million pound figure for imports in 2002 in the context of suspension agreement negotiations and all of that. That was the total HTS number. And I understand that negotiations are negotiations, so I'm not overstating that fact. But I think, you know, there is -- that the truth, the true number, if you will, lies somewhere between what you have in your exporter questionnaires and what that HTS Vietnam total is for those four categories.

VICE CHAIRMAN HILLMAN: Okay. And the last question. The Respondents also made an argument in their brief that there is some insulation in competition in terms of basa and tra being precluded from participating in the educational and military markets due to Buy America provisions. And I'm just trying to understand the significance of any exclusive Buy America markets for catfish product. Do any of you have any sense of sales into the educational -- I mean school lunch type or military markets, and how large a percentage that may be of the total market.

MR. PERKINS: Jack Perkins. Thank you. It's very, very little. The military buys very little U.S. farm raised catfish. Some goes into commissaries or officers' clubs. But we don't reach the mass market, the troop feeding.

VICE CHAIRMAN HILLMAN: School lunch?

MR. PERKINS: Very minute, a very minute part of our overall business.

VICE CHAIRMAN HILLMAN: Anyone else?

MR. DAVIS: Yeah. I'd just like to answer -- to add on to what Jack said. The military, of course, is a very small percentage. The school lunch -- the price point on catfish is a little bit high for the school lunch programs. So it really does not really attempt it very much. In the school lunch program, we look for a fish that has to go in there at around 85 to 90 cents a pound.

VICE CHAIRMAN HILLMAN: Okay. Mr. Walker, did you have a --

MR. WALKER: I concur with Jeff there. We basically don't have any military or school purchases directly. If there are some going through the distributors, then we would not know that amount.

VICE CHAIRMAN HILLMAN: Okay. All right. I think with that I have no further questions. But I'd like to thank this panel for all your answers. It has been extremely helpful. We appreciate it.

CHAIRMAN OKUN: Commissioner Koplan.

COMMISSIONER KOPLAN: Thank you, Madame Chairman. I just have one quick question. I noticed that -- I know you don't have a large quantity of export shipments, but that in the interim period it dropped by 50 percent. Could you tell me what is happening there?

MR. RHODES: I'm not sure I caught it all, but I think I'll say this in the export. We all tried to export -- if that's the right answer -- to the European Germany area. You're talking about our exports?

COMMISSIONER KOPLAN: Yes, yes.

MR. RHODES: I'm sorry. Then --

COMMISSIONER KOPLAN: And in case you didn't catch it, I was referring to the interim period, comparing January to March of 2002 to January to March of 2003. I saw there was a drop-off. I know it's a small quantity that is exported. But I saw it was a drop-off of 50 percent from our table C.

MR. RHODES: I'm not sure that I can answer that, but I will say that I know that we attempted to do a lot of exporting in the past, and we have all probably pulled back on that because that domestic market has been in the turmoil it's in. Plus, as we tried to go outside the market, the basa was replacing us in the German market and the European market. So as far as immediately, I know that we're moving product into Canada. I didn't see any change in our Canadian markets. I'm not sure.

MS. SLATER: We can, Mr. Koplan, look at the individual processors who showed declines and give you some specific company information in the posthearing if you'd like.

COMMISSIONER KOPLAN: Thanks, Ms. Slater. I appreciate that. I have nothing further.

CHAIRMAN OKUN: Let me turn to staff and see if staff has questions of this panel.

MR. DEYMAN: I'm George Deyman, office of investigations. The staff has no questions. Thank you.

CHAIRMAN OKUN: Do Respondents have questions for this panel?

MR. VANDER SCHAAF: Lyle Vander Schaaf from White and Case. We have no questions, Chairman Okun.

CHAIRMAN OKUN: Okay. Then this looks like a good time to take a lunch break. Before we go, I want to thank this panel of witnesses very much for all your testimony today and for all the answers you've given to our questions. It has been very helpful.

Two reminders for everyone. First, I know you're all anxiously, counsel, awaiting to hear from the Department of Commerce on your margins. But if you can please put your phones on buzz, especially the really obnoxious ringing ones -- we do have a sign out there. It is disruptive to hear the phones going off. So, please, if you could put them on a buzz or something else so that it doesn't disrupt the witnesses. I'd appreciate that.

And then finally, if you have any information with you that is business proprietary, please take it with you, as the room is not secure. And with that, we will resume at 1:45.

(Whereupon, at 12:47 p.m., a luncheon recess was taken.)

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

(1:48 p.m.)

CHAIRMAN OKUN: This hearing of the United States International Trade Commission will please resume. Mr. Secretary, I see that the Respondent's panel has been seated. Have all witnesses been sworn?

MR. ABBOTT: Yes, Madame Chairman. Those in opposition to the imposition of antidumping duties have been seated. All witnesses have been sworn.

CHAIRMAN OKUN: Thank you very much. You may proceed.

MR. SIM: Thank you. Again, thank you to the Commission for allowing us to speak. I'm Ed Sim from White and Case, counsel to VASEP. And our first speaker will be Dr. Nguyen Huu Dzung, who is the general secretary of VASEP.

DR. DZUNG: Madame Chairman, Commissioners, good afternoon. My name is Nguyen Huu Dzung. I am the general secretary of the Vietnam Association of Seafood Exporters and Producers, known as VASEP. I again come before the Commission on behalf of VASEP and its members, who grow, produce, and export frozen basa and tra fillets not only to the United States, but to other 26 markets over the world.

VASEP is completely disappointed with the final determination announced this morning by the U.S.

Department of Commerce that would impose drastic tariff of 26 to 64 percent on Vietnamese seafood exporters. By this unfair, unseemly protectionist decision, U.S. appears to go against very free trade again, often expressed by the United States, and gain renew the embargo against Vietnam.

Ms. Chairman and Commissioners, our members employ thousands of farmers and workers in the Mekong River area devoted to the production of basa, tra, and other seafood products. For several years, we have endured a negative lobbying and public relations campaign against our basa and tra exports. This campaign led to the passing of the catfish labeling law by the U.S. Congress. The U.S. Congress intended that this labeling law would end confusion in the market and any competitive harm that might have resulted. Since the implementation of the labeling law, VASEP, its members, and our importers have complied with the new law.

Thus, the labeling law has already had its intended effect. Basa and tra are marketed separately and distinctly from catfish and the U.S. catfish industry has recovered as a result. We therefore urge the Commission to let the labeling law continue to take their full effect and correct the market. We do not need antidumping duty to do this.

Even before the petition, VASEP and its

members have had to increase marketing efforts in other countries to gain bigger market shares for tra and basa products and decrease the U.S. market share of these fishes. Ironically, the public controversy related to this case and the labeling law has given basa and tra worldwide attention and invaluable publicity. This has helped us increase our shipment of tra and basa to other markets. So in the most recent period examined by the Commission, the first quarter of 2003, our exports of frozen basa and tra fillets to markets other than the United States exceeded our exports to the United States, and these third-country exports are expected to significantly exceed exports to the United States in full-year 2003 and next year, 2004.

Thus, seafood producers and exporters in Vietnam are not dependent on exports of tra and basa frozen fillets to the United States for their livelihood. In fact, until the bilateral trade agreement with the United States, we could export very little to the U.S. Tra and basa products have been exported successfully to Australia, Hong Kong, Japan, China, E.U., and Asian countries long before their export to the U.S.

In addition, we have a very strong market for basa and tra in Vietnam. Basa and tra are integral to the southern Vietnamese diet, as much of our production is consumed locally. We therefore will always have a strong and growing demand for both fresh and processed basa and tra in Vietnam. In fact, many of our members are developing value-added products for consumption in Vietnam and elsewhere, such as ready-to-serve meals, smoked fish and other products. Per person consumption of those fishes in Vietnam is much higher than per person consumption of channel catfish in the United States. We therefore do not need the US market to absorb any excess production.

The VASEP members that produce basa and tra also process a variety of other seafood and aquaculture products. In fact, basa and tra are a small portion of our members' overall production operations. Processors in Vietnam produce significant quantities of shrimp, scampi, tuna, scallops, froglegs, which are much higher valued products than basa and tra and bring a greater amount of revenue to the producers than basa and tra. So there is no merit to Petitioners' claim that Vietnam can shift to greater production of basa and tra.

Capacity utilization of frozen basa and tra fillet producers in Vietnam is high and expected to remain high in the next few years. The Commission's staff report shows that Vietnamese frozen basa and tra fillet producers were operating at about 84 to 86 percent capacity utilization throughout the period of investigation. And as a general matter, the Vietnamese frozen basa and tra fillet producers do not tend to carry significant quantities of the product in inventory.

The Commission has this opportunity to demonstrate to the Vietnamese people that the voice of the U.S. government is one of reason. By rejecting the imposition of antidumping duties, the Commission can give the labeling laws time to remedy the difficulties that were caused by any early market misunderstandings about our tra and basa. The Commission can also give the bilateral trade agreement time to develop and foster better ties between our countries. We therefore urge the Commission to terminate this investigation by issuing a negative injury determination. Thank you.

MR. SIM: Thank you, Dr. Dzung. Our next speaker will be Mr. Wally Stevens, who is the head of the American Seafood Distributors Association and the president and CEO of Slade Gorton and Company, Incorporated.

MR. STEVENS: Thank you. And I'm sorry I don't have a name tag, but my name is Wally Stevens. I am the president of Slade Gorton and Company and chief operating officer, and I also serve the American Seafood Distributors Association, of which I am president. I have worked in the seafood industry for more than 33 years and have taken on various leadership roles in our leading industry organization, the National Fisheries Institute, including a term in 2001 as chairman.

Slade Gorton and Company is a family-owned business. It was founded 75 years ago. Today, our company carries the widest line of fresh and frozen seafood products of any company in the United States. We sell over 100 million pounds annually to food service and retail supermarkets in all regions throughout the United States. Our customer base includes more than 1,500 companies, including many names you would easily recognize because you have dined in their restaurants or shopped in their retail stores.

Our company today is one of the largest, if not the largest, marketers and distributors of imported and domestic seafood products, fresh and frozen, in this country. Slade Gorton represents the entire mass market basket in terms of fresh and frozen seafood, including 120 different species of seafood products provided in thousands of sizes, packs, labels, et cetera. Included in our market basket being discussed today are catfish and basa and several other similar products, such as pollack, cod, tilapia, flounder, hake, hoke, whiting, and grouper.

The second organization that I represent today, ASDA, includes more than 55 member companies and major food and logistics trade associations, identified in my hearing statement, which has been handed out. I am summarizing my remarks on that statement to save some time.

Our members are extremely concerned about the protectionist threats that we are now seeing, particularly in regard to Vietnam and the seafood products that Vietnam is exporting to the U.S. marketplace. Today it is catfish or basa. Tomorrow we fear that we will stand before you talking about shrimp from Vietnam, from China, from subtropical countries all over the world, because we all know that dumping suits have become the default drive of domestic industries that are in trouble for reasons that have nothing to do with imports, particularly when the so-called Byrd Amendment rewards domestic processors with refunds from the U.S. Customs Service for filing these cases.

We all know that the product we are here to discuss today must be called "basa" because the Congress of the United States passed a law that said basa was sufficiently different from domestic catfish as to warrant another name. To argue now that basa is really catfish after all seems to me, as well as to our ASDA members, to be either a case of food politics at its worst, or double jeopardy, or both. Other examples of protectionism for domestic seafood manufacturers are recent country of origin labeling requirements that extend all the way to the display case in your local grocery store.

We at ASDA are, quite frankly, gravely concerned about the decision by the Catfish Farmers of America to file this case after the Congress of the United States directly addressed the issue with federal legislation. Basa and catfish are different products. In our view, basa is no more like catfish than it is like any other type of white, mild flavored, boneless, skinless fish such as pollack, tilapia, flounder, cod, grouper and other species. Moreover, these other fish compete just as much, if not more, with catfish than basa does.

The food business today is a global one. Frankly, I am concerned as the leader of ASDA and its members about the rush to protectionism that we are seeing on a number of fronts. Changing the name of Vietnamese catfish to basa should have been sufficient grounds to protect the market name of the domestic catfish producers and thus give them the product differentiation that should have ruled out the need to pile on with a dumping suit as well. The fact that we are here today to perform the alchemy of turning basa back into catfish strikes me and the organization that I lead as nothing short of a convoluted action to serve only one master. It's protectionism, pure and simple.

Politics aside, however, we do not believe that catfish-turned-basa-turned-catfish again is really the source of the market woes faced by the domestic industry. All major seafood species, Slade Gorton’s market basket, declined in price from 2001 to 2002, whether or not they had a significant market presence, as the attachment on my prepared remarks shows.

If you look at the entire seafood market basket, which in my view is the proper basis of comparison, you will note that basa represents a small percentage of the products consumed in the United States in 2001. If you also look at the price of all seafood products prior to 9/1l, what becomes clear is the fact that 9/11 had a major impact on all the market basket items, not just on catfish. Let's look at it another way. Do any of us in this room believe today that a product that represented in 2001 26 million pounds can significantly drive prices up or down when compared with the hundreds of millions of pounds of catfish and tilapia that are sold in the U.S. market each year?

Basa represents just 1 percent of the seafood consumed in the country in 2001. In my 33 years working this industry, I have never observed the phenomenon that underlines the case before us today. Let me put it another way. It simply is not reasonable to think that 30 million pounds of imported basa products could affect prices of a different product, catfish, in the market basket of seafood in the United States.

I hope that my comments to you today will play a role in taking all of us away from the slippery slope of protectionism measures that masquerade as solutions for domestics industry in trouble. A strong and vital seafood industry depends upon free and fair trade. In this case, we believe it is time to accept the decision of Congress and consider Vietnamese basa as a unique product, that despite the negative campaigning against it by our government and by the domestic catfish industry has caught on with chefs and is catching on with consumers.

We hope the decisions made at this hearing will send a strong signal to other domestic producers that trade actions do not solve the problems that industries need to solve. Thank you.

MR. SIM: Thank you, Mr. Stevens. Our next speaker will be Mr. Matthew Fass, who is the vice president of Maritime Products International.

MR. FASS: Good afternoon. Thank you for this opportunity to testify. My name is Matt Fass. I am vice president of Maritime Products International, a fourth generation family-run seafood company based in Newport News, Virginia. My family has been in the seafood business for over 100 years. Our business is focused on the distribution of both imported frozen seafood products, as well as domestically-sourced seafood items. Our business depends on selling a diverse mix of products, including the subject import that is the focus of your investigation.

I speak to you today with a deep understanding of the U.S. seafood marketplace and with years of experiencing working on the international seafood market. As Senator Lincoln discussed this morning and as the Commission is well aware, the catfish labeling law had ensured that basa imports from Vietnam must be labeled as and compete as a product distinct from catfish.

I should mention, as I did to your staff when I testified almost a year ago that my company has imported and distributed basa for over four years, and we have never -- I repeat never -- sold basa as anything other than basa. My company has never seen the need or desire to market industry basa by any other name. We don't deal in U.S. farm-raised catfish. But at the same time, we do not pretend to have an imported product that can replace farm-raised catfish on our product list. They are two different and distinct seafood products, and we have never told our customers otherwise.

I should also mention that although we haven't dealt in U.S. farm-raised catfish, I have a lot of respect for what the CFA has done over the years, especially with their marketing campaign. They have done a good job telling the American consumer that farm-raised catfish is a good, clean, healthy product.

I should also mention, however, that CFA's marketing machine took a wrong turn when basa imports from Vietnam became the focus of a xenophobic effort to eliminate all competition. Phrases like, "Don't trust a catfish with a foreign accent," just aren't appropriate, and they don't do anything other than play on the fears of the American consumers. In my view, the American farm-raised catfish industry is doing just fine thanks to their positive marketing efforts, and is only doing a disservice, like turning to the use of superficial, offensive assaults on imported seafood.

The labeling law has only helped to solidify CFA's competitive position. Demand for catfish in the United States appears to be growing, and the CFA's members seem to be in an great position to continue meeting that demand.

I spend a good amount of time in Vietnam looking closely at their growers and processors, identifying reliable suppliers, and have watched that very impressive industry evolve over the years. My customers have exacting standards, and I've had to work hard in Vietnam with our suppliers to ensure that the basa we are importing will meet our customers' expectations. It has been a good product for my company, and we have seen basa begin to find its own place in the U.S. seafood market.

In fact, a month ago, by complete coincidence, I was in a restaurant in Michigan where basa was featured as a seafood item. I kept a copy of the menu and brought it here with me today. Basa is featured as Thai-styled Vietnamese basa for $24 an entree. I spoke with the chef about his familiarity with basa and how he came to feature it on his menu, especially in Michigan, where it might seem exotic or unfamiliar to his customers. He told me he was looking for a high quality fish, and was having a difficult time finding a stable supply of Chilean sea bass. He had been thinking about orange roughy, but was shown basa for the first time, and this fish won him over in a big way.

Other customers, including grocery store chains and retail outlets, have discovered the same thing that the Michigan chef has found. Basa from Vietnam stands on its own as an appealing, tasty, easy-to-prepare, mild fish to sell to American mainstream customers. Our customers in fact label and market basa alongside U.S. farm-raised catfish. I have never seen basa that our company has sold end up in a grocer's freezer or on a table under the name "catfish." Basa is a seafood product that is distinct from catfish.

Never one single time has a customer bought basa from us based on a price comparison between domestic catfish and basa. In fact, we have never once been asked for such a price comparison. Basa is basa, and catfish is catfish. The truth is that our customers have come to view basa as a completely different product than U.S. farm-raised catfish.

As I testified last year, grocery stores are always looking for the next niche seafood product. And to that end, we have never hesitated to market basa on its own terms. We work with one of the nation's strongest retailers in the heart of domestic catfish country. This retailer sells more domestic catfish today than ever before, and yet basa has been an extremely exciting item for this retailer as a new addition to their seafood case. It sells side by side with catfish and other fish, and has never been marketed as anything other than basa.

I do not have a copy with me today of a recent flyer from this supermarket advertising basa as basa because I have encouraged them not to promote it during the last few months during this difficult time, when procurement has been difficult. But again, by coincidence, I was down in Louisiana recently, and I happened to read inserts from newspapers from supermarkets as part of my job. And from a local supermarket chain down in Louisiana, IQF basa fish fillets.

You've heard extensive testimony today from catfish farmers and others in the farm-raised catfish sector that are struggling a bit, especially in these tough economic times. I know a number of people in the U.S. catfish business, and I understand their struggles. But please remember that their struggles are not unique. The seafood business, especially in the last few years, has been tough for all of us. Americans in particular have less disposable income than they had in the late 1990s, and we all, producers, processors, and distributors alike, are having to adjust the way we do business in response to a dramatically different economic landscape in the United States.

As evidence of this changing landscape, the vast majority of all seafood items, whether imported or domestically produced, are lower in cost today than they were three or four years ago. The largest food distributor in the United States continues to buy smaller regional distributors at a lightening pace, and the second largest national distributor recently bought the third largest. These kingpins of the industry have massively overhauled their purchasing system to centralize procurement using the latest technology, such as online auctions. And this kind of leveraged purchasing power, along with similar consolidation and centralization on the retail side, as had enormous pricing effects in our industry. Arguments by

Petitioners that this consolidation and powerful centralized buying is not taking place is simply not accurate.

As I conclude my testimony, I ask that you think carefully about whether there is in fact a causal nexus between basa imports and a struggling U.S. catfish industry. The answer in my opinion is no. Basa imports into the United States remain modest. Demand for catfish into the United States remains strong. The U.S. catfish farmers have done a great job of marketing their product, and they do have an excellent product, and one that is now protected like no other seafood product has ever been protected by our legal system by very rigid federal and state labeling laws.

Why then is the U.S. catfish industry blaming basa for their troubles? Because it is always easy to blame imports, and basa, especially because it is from Vietnam, is an easy target. This, along with the recent changes caused by the Byrd Amendment, are why we are here today.

Madame Chairman, Commissioners, I ask respectfully that you review the facts and determine that basa imports from Vietnam have not injured and cannot injure the U.S. catfish industry. Thank you.

MR. SIM: Thank you, Mr. Fass. Our next speaker will be Mr. Ron McCartney who is the President of Black Tiger Company, Incorporated.

MR. McCARTNEY: Good afternoon. My name is Ron McCartney. I am President of Black Tiger Company. Black Tiger Company is based in Sag Harbor City, New Jersey and was formed in 1988. We are a full-line seafood distributor in that we purchase a wide variety of seafood products from all over the world. You name it fresh or frozen we deal in it. We sell products as different as octopus, salmon, founder, catfish and, yes, Vietnamese basa. Our customers range from institutional food users such as the casinos of Atlantic City and elsewhere, broad-line distributors such as Sisco and U.S. Food and large supermarket chains in the Northeast.

I am here today to let the Commission know my views on this investigation and particularly on the issue of whether sales of frozen basa from Vietnam are displacing U.S. sales of frozen catfish fillets. The simple fact of the matter is that they are not and there is a simple reason for that, basa is not catfish. They are completely different fish.

Not only are they technically different species but basa fillets for example are whiter than catfish, have a milder flavor, have a higher fat content and tend to be sold in different size ranges than catfish. Basa fillets also tend to be thinner which means that they can be rolled up more easily than catfish fillets. Finally when you cook basa it doesn't dry out as easily at catfish or other types of white fish. The easiest way to see all this is to throw the two types of fillets in the microwave without any sauce or seasoning and take a taste. You will definitely notice the difference.

This is why it astounds me that the U.S. catfish farmers should be the ones complaining about the impact of basa on their business. From the standpoint of physical characteristics basa is far more similar to talapia or flounder than it is to catfish. It really should be the flounder or talapia industry along with grouper and maybe striped bass that should be before this Commission today at least it seems that way to me.

In my business catfish and basa are just two fish in a larger category of fish known as white fish. These include species such as orange roughly, Chinese pollack, flounder, hake, cod, etcetera. All of these fish although they have certain similar characteristics they are distinct enough from each other that it makes no sense to speak of sales of one variety displacing or substituting for another variety.

Anyway with regard to basa if any displacement were to occur it would probably displace flounder. There are many kinds of flounder and basa looks like it could be just one more type of flounder. By contrast people in my neck of the woods that want catfish are looking specifically for catfish and will not substitute another fish. In general none of my customers that buy both catfish and basa will substitute one for the other. They use both because they want the variety.

Over the past few years basa has made its own special niche in the marketplace at least in the Northeast region it has become quite popular because of its attractive flavor profile and other characteristics that I've already noted but there are some areas of the country where customers prefer catfish to basa and will not buy basa under any circumstances.

For instance a while back I tried to sell basa to the gambling casinos in Tunica, Mississippi they told me, no way, we're not going to buy that stuff. This is catfish country. The funny thing is they were getting catfish at prices much lower than I could see basa for. Anyway they wouldn't choose basa as an alternative choice let alone a substitute product.

On the other hand many people in the Northeast will buy basa but are very reluctant to buy catfish although the farm raised catfish people have done a great job marketing their product nationwide it has never been all that popular in the Northeast. Right now basa is the third most popular fish among the customers I sell to and catfish was never anywhere near that high on the list with them. In other words basa hasn't knocked catfish off it's perch as a popular fish with my customers instead what basa does is increase the overall size of the seafood market.

After all we seafood mongers realize that what we are really competing with is alternative protein sources such as beef, pork and chicken. I just can't understand why the catfish farmers and processors don't see that if they keep basa out of the market it hurts everyone in the seafood market including themselves. The catfish farmers attempts to keep basa out of the market through lobbying for passage of labeling legislation is also very interesting to me.

You know, I've had somewhat of a change of heart about the labeling law. When I first heard about it I didn't think it was a good idea because I thought it was inappropriate for the government to tell businesses like mine how they should advertise their product. But the funny thing is that the laws have actually helped people that sell basa. This is because when my competitors were writing catfish on the labels of basa packages that turned off a lot of people in my market to their product who didn't like catfish to begin with. Now that it's basa people are more willing to try it.

Anyway with regard to the labor union law my company has never labeled, advertised or marketing basa as catfish in any way. In fact I tell my customers that they must market the basa products I sell them as white river basa. As whole however I think that the laws have had their intended effect although my experience in selling basa has been very profitable I have to say that in the last few years especially since 9/11 it's been tough selling seafood in the U.S. market. My sales declined dramatically in 2001 and 2002. All of the seafood varieties I sell in the market basket I mentioned above, hake, pollack, flounder, cod, have declined some more than others but no variety of fish is recession proof, not basa and not catfish.

In conclusion basa and catfish are different products. My customers recognize this difference. I hope that all of you understand and recognize this difference. There is absolutely no rational reason why we have to be here today. Thank you for the opportunity to present my views and I'd be glad to answer any questions you may have.

MR. SIM: Thank you, Mr. McCartney.

Our next speaker will be Mr. Sal DiMauro who is a head buyer at Porky Products.

MR. DiMAURO: Good afternoon, Madame Chairman, Commissioners. My name is Sal DiMauro. I am the head seafood buyer for Porky Products, a New Jersey-based meat and seafood distributor. Our company was formed in 1955 and as a major player in the Northeast regional food distributor sector each we distribute over six million pounds of meat, poultry and seafood products including frozen basa, the focus of this investigation. We sell our products to over 1,000 independently-owned grocery stores in virtually every ethnic and socioeconomic segment of the market.

We've heard a great deal today about a famous labeling law enacted by Congress last year. As you know the law essentially locks up the catfish name for exclusive use by the U.S. farm raised catfish industry. Porky Products has been distributing frozen basa fillets for over two years. The labeling law as it turns out has had virtually no effect on my company's business. Whether before or after the labeling law we have not sold basa to our customers without making it clear to them that the product is basa and is a product of Vietnam.

We have sold and continue to sell basa as itself and not under any other name because there is no advantage commercial or otherwise in calling it catfish. I agree with others who have testified today that basa fits into a broad product category that includes a variety of other white fish. It just isn't accurate to oversimplify and claim that basa competes only and directly with U.S.

farm raised catfish. I buy plenty of U.S. farm raised catfish and I continue to buy it and my suppliers on the other side of the aisle can tell you that my basa business is not cutting into the amount of farm raised catfish that I'm purchasing from U.S. suppliers.

I sell basa and I sell farm raised catfish and neither part of my business has suffered as a result of the other. I've never come across a customer that sold basa as catfish. I have plenty of customers who sell both but none who replaced one with the other. U.S. catfish sector as others have discussed has built a good name for its product. It's a good industry backed by creative marketing and a growing consumer base. Farm raised catfish in my opinion is doing quite well in the U.S. market. Basa has never been and will not be a problem in the U.S. catfish business. Catfish is catfish and basa is basa. As Senator Lincoln might say, "A yak is a yak and a cow is a cow." That's the way Noah would have it and I suppose.

Some would like to suggest that Vietnamese exporters and importers and distributors in the United States have tried to sell basa as U.S. farm raised catfish and use the CFA's good name to our advantage. Based on my experience this just isn't true. Porky Products for example has invested a great deal of time and resources in seeking out new and innovative and quality products for our customers. It takes a lot of work to convince old customers to try something new.

Our customers like basa. It has appeal as mild, white, easy to prepare, fish. As others have testified today my company markets frozen basa fillets in the same product category that it might include hybrid striped bass, talapia, flounder, cod, or other white, mild tasting fish. It's as simple as that. We've had great success with this product and benefit from a well developed and trusted supply chain that starts in Vietnam's Mekong Delta. We have a lot of respect for VASEP and its members and the Vietnamese seafood sector in general. We've worked hand-in-hand with the Vietnamese industry to get the word out about all their products.

The million dollar question for all of us is whether imports of frozen basa fillets have caused U.S. catfish farmers and processors harm. The labeling law discussed today is a clear indication that our own U.S. Congress has solved the only problem that in a few isolated cases might have caused Vietnamese importers to effect sales of U.S. farm raised catfish. The labeling law in place with catfish and basa regulated to their own independent places in the grocer's freezer I cannot for the life of me understand why we are here today.

The labeling law as I understand it makes it clear to importers, distributors and consumers alike that basa and catfish cannot compete with one another. Congress has spoken. U.S. farm raised catfish has no equal from Vietnam or otherwise. Senator Lincoln who testified this morning has made a number of colorful statements on the Senate floor about yaks and cows, salmon and tra, emphasizing the process that basa and catfish are different, too. I agree with her, absolutely, so I must ask again why are we here today? Thank you for this opportunity and I will accept any questions you have.

MR. SIM: Thank you, Mr. DiMauro.

Our next speaker will be Mr. Mike Sobolyk who is a buyer with Piazza's Seafood World.

MR. SOBOLYK: Good afternoon. My name is Mike Sobolyk. I'm the Chief Financial Officer of Piazza's Seafood World. I have work for Piazza's Seafood World as a part owner since 1994. The Piazza family has been in the seafood business for over 100 years and is one of the largest seafood companies in the New Orleans area. I personally have been in the seafood business for over 20 years. Piazza's Seafood World sells to the food service industry. We import product from South America, the European community, Asia and to my knowledge Piazza's Seafood World was one of the first companies to start importing basa into the United States.

When we first began selling the product we were one of the importers that labeled it as catfish. This was a new product with no English language name. To introduce this new fish to our customers it was necessary to give our customers a reference point that they would understand because it was a type of Vietnamese catfish we thought the label catfish worked.

In any event at all times we and our customers of basa immediately recognized a number of differences. Basa tends to be whiter than U.S. catfish, basa makes a thinner fillet than U.S. catfish, basa has a milder, blander taste than U.S. catfish, basa has a better plate presentation when cooked as it does not curl and since it is a thinner fillet will cover more of the plate than the same weight of U.S. catfish.

Basa's whiter color gives it a good presentation in your grocery store sales counter, good presentation is also provided by the fact that basa fillets do not have the bloodlines and excessive skin that some U.S. catfish tend to have. In sum there is significant commercial differences between domestic catfish and basa and we and our customers recognized this even when the product was labeled Vietnamese catfish before the labeling law.

However the difference certainly does not mean that basa's preferred over catfish. In fact on several occasions we have had customers return basa because they had purchased it thinking that they could substitute it for a U.S. catfish and they could not because of the milder taste. People in the south love their catfish, love its taste, thus the milder and blander taste of basa is not appealing to catfish traditionalists. Also some customers due to their PR campaign of the catfish farmers will not even touch basa.

I think that it's also important for the Commission to understand how the demands of our customers impact our sales of basa. The fact of the matter is many of our customers began purchasing basa when they could not obtain certain consistent fillet sizes of white fish in the United States catfish or otherwise. As an example one of Piazza's Seafood World's largest customer of basa is Picadilly which is a large cafeteria chain. Back in about 1999 Picadilly through its purchasing facility began requesting that we supply it with certain sizes of white fish fillets when Picadilly could not a consistent supply in the domestic market.

The Vietnamese were willing to provide with basa consistently in the fillet sizes requested by our customers. Picadilly and our decision to purchase basa had nothing to do with price. However simply because Picadilly began purchasing basa fillets from us does not mean that they've quit purchasing catfish fillets. They sell catfish as catfish and basa as white fish. They also sell talapia and cape capenzas as white fish. Why aren't those products being investigated?

The same is true with one of our largest grocery store clients. It buys basa from us and in their stores they sell both basa and catfish and many other similar white mild flavored fillets. In these sales basa does not supplant, displace, catfish because the grocer and the customer both know these products and there's plenty of room in the market for both. I find the allegations raised in Exhibit 5 of Petitioners June 12, 2003 prehearing brief Mr. Perkins' testimony today to be baseless.

As the Commission may recall in that exhibit it recounts an event at a small seafood show where a proprietor was advertising catfish however the affidavit then states that the proprietor of the booth stated that the product was actually from Vietnam but that Piazza's Seafood World, and I quote, "Had told them they could advertise it as catfish." Well, that simply is not true. They were told no such thing and I resent the accusation.

When the United States law became such that the use of the word catfish in connection with basa was prohibited Piazza's Seafood World ceased using the word catfish in connection with basa and has never counseled anyone to say or do otherwise since that time. IN sum I ask the Commission to look carefully at the underlying facts of this case. Basa imports are not individually competing with catfish and injuring them. Basa and catfish are two different products, they occupy two different niches and they're not substitutes.

It is my personal feeling that any economic injury being experienced by the catfish producers is due to their over-expansion and production and a poor economy. That is they are cutting each other's throats. It has nothing at all to do with the Vietnamese fish. I wish to thank the Commission for listening to my comments today. If you have any questions I'm available to answer them.

MR. SIM: Thank you, Mr. Sobolyk.

Our next speaker is Mr. Howard M. Johnson who is the President of H.M. Johnson Associates.

MR. JOHNSON: Good afternoon. My name is Howard Johnson. I'm President of H.M. Johnson and Associates which is a consulting firm specializing in market research concerning the seafood industry. I am pleased to have the opportunity to testify before you today regarding my views concerning the seafood industry today and in particular the role of imports of basa and the domestic farm raised catfish business play in that industry.

I've been involved in the seafood industry since 1970 initially in seafood sourcing which is the identification and development of seafood from various parts of the world and shipments to markets in Europe and the United States. Later in my career I was involved in sales and marketing and for the past 15 years I have had my own consulting practice specializing in seafood marketing and market research. I eat a lot of seafood and I love it.

So far today you've heard much talk about whether imports of basa and tra from Vietnam are either like domestic farm raised catfish or substitutes for catfish or otherwise compete with catfish. The way I view basa and tra is a little bit different. I believe that basa and tra are alternatives to catfish just as any other moderately priced white fish that is skinless, boneless and relatively mild in flavor.

My experience has been that most U.S. seafood consumers want their fish to be white fleshed, skinless, boneless and relatively tasteless. By tasteless I mean they want the basic fish to have little taste but could be flavored with sauces and marinades to suit individual tastes. Many fish species currently fit this profile including Alaska pollack, talapia, basa, tra and hake among others.

With regards specifically to the catfish industry the Commission should bear in mind that the catfish industry is still relatively healthy when compared to some of the other seafood industries. The catfish industry has really enjoyed unparalleled growth over the past few decades as we saw displayed this morning. It was very significant thing several years ago when catfish passed cod in terms of U.S. per capita consumption.

In fact between 1988 and 2001 catfish consumption on a per capita basis increased 92 percent while during this same period total per capita seafood consumption in the United States actually declined. I would add that talapia consumption was ranked in the top ten seafoods consumed in the United States for the first time in 2001 and to my knowledge there is no talapia marketing organization.

The Commission heard from the domestic industry this morning that currently the suffering economic industry. The available public statistics however tell a somewhat more mixed story in terms of production, farm sales to processors and processing sales have all increased during the last three calendar years. Also as I indicated per capita consumption of catfish rose in both 2001 and 2002. Any price declines experienced by catfish farmers and processors during this period are due not to Vietnamese basa and tra but in my view to the following factors; (1) the post-September 11th effect on seafood markets and the ensuing economic recession; (2) increased supply of white fish other than basa and tra that are equally good alternatives to catfish; and (3) increased supply of domestic farm raised catfish.

In the future I believe the catfish industry will benefit from demographic trends that favor increased consumption of seafood in general. According to a recent report by the United States Department of Agriculture Economic Research Survey demographic factors particularly increases in the U.S. population over age 50 will create greater demand for seafood pushing per capita consumption by the year 2020 to 16 pounds from the present 14.8 pounds per capita. In contrast according to the USDA protein sources such as beef are projected to decline.

Under these circumstances there's certainly room for imports of Vietnamese basa and tra in the U.S. market and such imports would not constitute a threat of injury to the domestic farm raised catfish industry or any other white fish industry. Based on that per capita consumption projection you're looking at an increased requirement of supply of four billion pounds by the year 2020 and the question is where is that going to come from? Well, it's going to come from aquaculture both domestic and foreign. That concludes my testimony. Thank you for the opportunity to present my views and I'd be glad to answer any questions.

MR. SIM: Thank you, Mr. Johnson.

Our next speaker will be Dr. Brian Becker who's the President of Precision Economics.

DR. BECKER: Good afternoon. My name is Brian Becker. I'm President of Precision Economics, L.L.C. an economic consulting firm based in Washington, D.C. I am pleased to have the opportunity to testify before you today summarizing our economic report attached behind Tab A to Respondent's prehearing brief.

In the prehearing staff report briefs and testimony today the parties generally agree that the domestic industry's condition during the POI can be described in the following manner (1) domestic industry volume increased during the POI. For example Mr. Klett's Exhibit 3 showed that U.S. shipments increased more in 2002 than in any of the last 13 years; and (2) prices declined by approximately 15 percent during the POI. Of course these conditions had a counteracting effect which led to modest levels of positive profits during the POI.

The facts also show that other catfish and other frozen products "have not been directly affected by the Vietnamese frozen basa and tra fillets," I'm quoting from Petitioners prehearing brief, "despite the fact that these products are witnessing a similar price decline as frozen catfish fillets over the POI." For example as seen in Table 2-A fresh catfish fillet prices dropped as much as frozen over the POI. Of course this begs that question if these other products were not affected by subject imports why did their prices decline in a similar manner to this domestic industry? The simple answer as I will discuss today is that the domestic frozen catfish fillet industry is not affected by subject imports either.

The focal point of this investigation and our analysis is on the price decline in the domestic industry. The price decline over the POI has at least two competing potential explanations; (1) the domestic frozen catfish fillet industry was similar to the industries for many other seafood products during the POI which saw significant price decline which were not affected by subject imports.

That is these other seafood products also fell off of their historical trends in a similar manner to that shown in Mr. Klett's Exhibit 1. Our reports Table 6-A and 6-B statistically show that the decline in frozen catfish fillet prices as compiled in the staff report was indistinguishable from the price decline of more than 15 other seafood products over the POI.

Potential explanation two is that the domestic frozen catfish fillet industry was not affected by the industry factors that caused other non-subject catfish and other seafood prices to decline during the POI. Rather the price decline may have been due to imports of frozen basa and tra fillets from Vietnam. Our report in this testimony attempts to determine which of these two explanations is the correct one.

Before summarizing our economic or our econometric analysis it's helpful to understand how industry participants that is purchasers view the relative prices of basa and tra versus catfish. Question 4-7 of the purchaser's questionnaire is perhaps the best or the only question which really allows the purchasers to quantify to the Commission how substitutable basa and tra are for catfish fillets. In asking purchasers what type of price change it would require of basa and tra in order to switch to catfish and vice versa the majority of purchasers essentially replied that the question was inapplicable.

The purchaser said that these were two different products and that relative prices were not relevant. In fact only five of 24 purchasers stated that any price change would cause them to shift product. The staff report compiled 39 monthly prices for four separate products for both the domestic industry and subject imports. These data would be useful for econometric analysis in any injury determination but particularly important when the analysis focuses on choosing between two independent potential causes of price decline as we are faced with in this case.

Despite staff's compilation and the importance of an econometric analysis to mathematically analyze the central theme of this case Petitioners failed to analyze these prices except to simply report irrelevant underselling margins much less perform any standard econometric analysis. Our economic report uses standard econometrics to mathematically answer what caused the domestic price declines.

We first tested whether the prices of other seafood with available data could largely explain domestic prices over the 39 months of the POI. As seen in Table 13-A most of the monthly domestic price changes for product one were explained by the prices of seafood products besides subject imports. That is the r^2 statistic which quantifies explanatory power is nearly 100 percent. Similar and stronger results are seen for products two through four in Table 14-A. Thus domestic products can largely be explained by other seafood prices.

We tested whether subject import prices could incrementally provide any explanatory power to domestic prices by comparing the statistical results with and without the consideration of subject imports. For product one we compared the results of Table 13-A and Table 13-B and found two convincing statistical results regarding the lack of relationship between subject imports and the domestic product; (1) the inclusion of subject imports worsens the explanatory power of the price series. That is the adjusted r^2 and r^2 statistic adjusted for the number of variables that can be used on an apples to apples comparison actually declined once we considered subject imports.

Thus this would lead a statistician or an econometrician to conclude that subject imports were not one of the determinants of domestic industry price; (2) there is not a statistically significant relationship between subject imports and the domestic prices. That is the coefficients for subject imports were not statistically significant. For products two through four very similar results are seen in Tables 14-A and 14-B. Well, I'll continue from here. I should say thus for all domestic products the prices are influenced by other seafood products and not by subject imports.

Perhaps anticipating Mr. Klett's comments earlier we performed dozens of sensitivity analysis iterations and found the same fact pattern in all. In fact we could not find any evidence that subject imports had any incremental explanatory power on domestic prices. We'd be happy to present the results of these additional regressions in the post-hearing brief. That concludes my testimony. Thank you for this opportunity. I'd be glad to answer any questions you might have.

MR. SIM: Thank you, Dr. Becker.

Our next speaker will be Ms. Virginia Foote who is the President and co-founder of the U.S./Vietnam Trade Council.

MS. FOOTE: Madame Chairman, Commissioners, my name is Virginia Foote. I am President and co-founder of the U.S./Vietnam Trade Council a non-profit membership organization of American companies. We have offices in Washington and Vietnam. Founded in 1989 the Council and its members have played a key role in the normalization of U.S./Vietnam relations and in the establishment of the historic bilateral trade agreement that was brought into force in December 2001.

In short the Council has been at the center of a remarkable decade of establishing post-war U.S./Vietnam commercial relations and have worked hard to provide technical assistance on international best practices and WTO standards in Vietnam as they work hard to exceed to the WTO. It is therefore with some regret that I sit in front of you today. The optimism, the hope, that flowed from the signing of the BTA in bringing it into force has been somewhat soured by this continuing fight over catfish or basa.

When Congress decided to overrule FDA determinations and passed the catfish labeling law it ensured that Vietnamese basa and tra would not be called catfish in the United States. But in spite of this action and I thought we were back on track we continued to work on developing fair and thorough implementation of the BTA but the labeling change was followed by the dumping case. The Commerce Department announcement today of extremely punitive duties against basa and tra imports we risk derailing some of the good will that we have worked so hard to establish for the benefit of both countries.

The Council member companies are worried. Business meetings that should focus on new trade and investment plans or issues such as transparency and intellectual property rights too often are dominated by the discussion of cat fish. Our counterparts in Vietnam ask what this dispute means for fair trade relations overall. I do believe that the new bilateral relationship with Vietnam is strong enough to weather this battle if neither side sees this as a trend or uses it to establish undue leverage but at the same time I wonder why this dispute goes on.

With the protection from labor lien laws and therefore legal control of the catfish market why must the American industry also demand tariff protections from the modest volume of imports from Vietnam of a fish now with a different name, a fish not even produced in the United States? Why should Vietnamese exporters, U.S. importers and consumers face this double punishment? This case will be a lose/lose for everyone, for the U.S. Government trying to build two-way trade, for the Vietnamese Government trying to implement the bilateral trade agreement, for the Vietnamese exporters, for the U.S. importers, for the U.S. consumers and U.S. businesses in Vietnam overall.

The only winners are those who have already successfully established the legislative process in the United States to protect their product. The U.S./Vietnam bilateral trade agreement was forged on the basis of bilateral commitments to open our markets to one another to make procedures fair and more efficient with WTO standards as the basis for the BTA. I'm sure there are good things in store for both sides still but because the relationship is new this case looms large for all of our members. On their behalf I thank you for the opportunity to testify here today.

MR. SIM: Thank you, Ms. Foote.

I would like to yield some time to Lisa Murray from Baker & McKenzie who's here representing FoodCom International.

MS. MURRAY: Good afternoon. I am Lisa Murray of Baker & McKenzie and again we're appearing on behalf of FoodCom International and my comments this afternoon are limited to the issue of critical circumstances. The purpose of a critical circumstances analysis is to consider whether by massively increasing imports prior to the effective date of relief importers have seriously undermined the remedial effect of the order. If it would not seriously undermine the order to follow an ordinary schedule then the Commission must make a negative critical circumstances finding.

By this standard it is apparent that critical circumstances do not exist for the following reasons; (1) thus far Petitioners have not been able to prove that they have been actually injured and without current injury critical circumstances cannot exist; (2) publicly available statistics show that import volumes are low both in absolute terms and relative to domestic production and consumption; (3) because import volumes are low claims based on import increases expressed as percentages are deceptive; (4) these same statistics show that import increases were the same after the petition was filed as they were in the months and even years before the petition was filed; (5) importer inventory levels demonstrate that imports have been fully absorbed by increasing U.S. consumption; (6) a comparison of importer inventory levels to inventories held by domestic producers suggest that past imports could have no continuing influence on future sales or pricing; (7) Petitioners testified this morning that the shelf life of their product is two to six months at most and less for the Vietnamese product.

By their own testimony all entries made during the critical circumstances period have already been consumed and cannot affect the remedial effect of the order. Products and inventory now would be subject to an order even without a critical circumstances finding; and (8) there is no other evidence suggesting that imports during the critical circumstances period could seriously undermine the remedial effect of the order.

This analysis unlike Petitioners is based on the Commission's standard practices for evaluating import levels. Standard procedure regardless of the comparison period used by the Commerce Department is to examine the six month periods before and after the filing of the petition. We ask the Commission to disregard Petitioners odd suggestion that it deviate from this usual practice by comparing two nine month periods before and after the seemingly random date of May 1, 2002.

There is no logical basis for this request. It is neither the five month comparison period used by Commerce nor the standard comparison that the Commission prefers. May 1st is not even the date on which Petitioners claim the first press reports about the petition emerged. There are no special circumstances in this case that suggests that there's anything wrong with the Commission's usual method of comparison.

We also ask the Commission to base its critical circumstances determination on the effect of only 50 percent of the imports entered during the comparison period. Only half of the Vietnamese producers are even eligible for critical circumstances treatment because of the mixed results at Commerce. It would not be appropriate to inflict the effect of all subject imports on only half of the producers. By dividing the import data to be considered in half the Commission can estimate the effect of imports from producers subject to Commerce's affirmative critical circumstances findings.

Once the Commission isolates the relevant data it will see that imports during the critical circumstances period have no continuing effects on the U.S. market therefore retroactive duties are unnecessary and the Commission's critical circumstances finding should be negative. Thank you.

THE COURT: Thank you very much.

I'd just like to conclude at least our testimony before we go to questions with bringing back to the main point which is, you know, that Congress has already spoken, yes, there's a labeling law and, yes, basa and catfish are regarded as distinct. Now this morning people said, you know, from the other side said that this is inconsistent with our statement that the other white fish all compete. Well, yes, in fact they all compete to the -- I mean this is not inconsistent. Basically all food competes.

Whether you're going to pick up a piece of cheese or a piece of fish or a cracker it's all food. The distinction is is that at what level of competition are we talking about? Our point is that at the distinct level between catfish and basa there is no competition. It is because of the labeling law and the PR campaign. Our point is that the distinction was drawn by the Petitioners and by those who supported the Petitioners years before the labeling law went into effect but the labeling law formalized what already existed in the market.

But there is competition at a higher level in that we're all dealing with white fish. In fact we're dealing with meat to go back to my prop from this morning if you look at the front page you'll see a picture of pork chops, beef, beef roast and talapia fillet. Now we're not saying that pork chops and beef roast compete directly with fish fillets. The point is that to some extent all food is interchangeable in that you cook it, you put it on a plate, you slice it up and you eat it.

Our point is simply that in the white fish market as, you know, confirmed by the display from this morning these products all compete at that generalized level and that is a competition that has affected the catfish market not subject basa and tra imports. Thank you.

CHAIRMAN OKUN: Thank you.

Before we begin our questioning let me thank all the witnesses for appearing here today, for presenting your testimony and for your willingness to answer our questions. We particularly appreciate the efforts of industry to be here with us and for those who have come from Vietnam both from industry and from the government. We appreciate your willingness to participate as well. With that Vice Chairman Hillman will begin the questioning this afternoon.

VICE CHAIRMAN HILLMAN: Thank you and I would join the Chairman in welcoming this panel and thanking you all for being here and I'll particularly welcome back Mr. Fass who is brave enough to be here not only for crawfish but again here today. We appreciate your testimony.

I guess I'd like to start again with an issue that I raised in this morning's panel and that is to help understand a little bit of what has happened in 2003. If I look at our data which again is taken only from questionnaire data which has some issues connected to it it would suggest a fairly significant decline in imports in 2003.

I'm wondering for those of you out there that are in the business would you -- again if I look at official statistics they would tell me a different story, that in fact imports have continued on the trend that they had been on. From those of you that are in this business what would you say has happened in 2003? Has there been a big change in the volume of basa and tra imports coming in from Vietnam in 2003?

MR. McCARTNEY: Ms. Hillman, I can't speak for the entire industry but I can I think speak for the Northeast and I would say that my basa imports have increased somewhat in 2003.

VICE CHAIRMAN HILLMAN: Have increased?

MR. McCARTNEY: They have increased.

VICE CHAIRMAN HILLMAN: Okay.

MR. McCARTNEY: They have increased and the reason that they have increased is that my company has spent a tremendous effort in sending sales people out with our main customers, the broad line distributors, and our supermarket chains and we have spent a lot of time, money and effort in introducing basa to one customer at a time. We go to individual restaurants, we go to supermarkets where we make samplings, and people tend to like the very mild flavor, the fact that it is moist and the fact that it is not catfish.

Again I represent people from the Northeast.

The people in the Northeast do not have a good feeling about catfish. It's not a Northeast fish. It's a Southern fish and I can't speak to that very much but in the Northeast the people don't like catfish that much but they do love basa and in fact basa has now become the number three selling fish for our major customers.

VICE CHAIRMAN HILLMAN: Okay. Thank you, Mr. McCartney.

MR. McCARTNEY: All right.

VICE CHAIRMAN HILLMAN: The Chairman has asked me just to remind people because you're stacked three deep it's a little hard for the court reporter to see who's speaking. So if you don't mind just identifying yourself so that the transcript accurately reflects who's speaking would be much appreciated.

MR. FASS: This is Matt Fass. I think imports are down a little bit in the first quarter of 2003 for a combination of factors. We're in a cyclical business, a big, strong time of year for sales especially fish sales is around Easter or Lenten time and a lot of the fish comes in for those sales in November and December otherwise they're coming in too late to set up ads and things like that. There has been a strong PR campaign. There's been a little bit of uncertainty because of the stages of the duty case. So there are a variety of factors which I think have led to a little bit of decreased imports in the first quarter of 2003.

VICE CHAIRMAN HILLMAN: When you say little bit would you have a sense of, you know, are we talking ten or 15 percent or more like 40 or 50 percent.

MR. FASS: Closer to 10, 15.

VICE CHAIRMAN HILLMAN: Anyone else have a view on this?

MR. McCARTNEY: Well, I agree with Matt.

VICE CHAIRMAN HILLMAN: Okay. Thank you.

Another issue raised this morning is this issue of basa versus tra. I mean again throughout a lot of the testimony here you all have used the word basa and some of you have mentioned the word tra. Tell me a little bit about what you see as the distinctions between the two, the competition between the two. You heard testimony this morning from Ms. Slater that it's their view that the vast majority of what's coming in today is actually tra and not basa. So I'm just wanting whatever you can help me understand about the distinctions between the two and what is going on in the U.S. market today in terms of basa versus tra?

MR. McCARTNEY: This is Ron McCartney. I'll try that one. I've spent a considerable amount of time in Vietnam and at the time when we first began to import basa we called it white river basa. When we first came up with our name the FDA had put out a letter saying you're allowed to call a fish anything you want as long as it's descriptive and not misleading. I got some documents from the Vietnamese Government and in Vietnam in the Vietnamese language the word is pengacious forcati. The Vietnam is cah basa. The word for pengacious hypothalamus is cah tra. So if you're speaking in Vietnamese you can actually distinguish the two fish.

However when you take those two words and you translate them and they become an English language word they no longer have the distinctive meaning and in fact the Vietnam Government a long time ago published a document that said, "Pengacious forcati is cah basa is basa. Pengacious hypothalamus if cah tra is basa." They also called it swai and some other name but the word basa was used in the English language column to show that both fish in the English language are called basa.

In fact the fish are once filleted indistinguishable to anyone except those who have a really, really, really highly developed palate. So the word basa has become generic for the fish that's both pengacious forcati and pengacious hypothalamus which are -- and some people today were using the words basa and tra but in fact when you speak English basa and tra is basa. If you can speak Vietnamese cah basa and cah tra are different. I hope that helps.

VICE CHAIRMAN HILLMAN: Well, then in terms of what is being imported do you have a sense of it? I mean do you --

(Multiple voices.)

MR. McCARTNEY: Yes. I have a very good sense of it.

VICE CHAIRMAN HILLMAN: -- have a sense that it's cah basa or cah tra that's coming in?

MR. McCARTNEY: The great majority of fish I would say 90 to 95 percent of the fish are pengacious hypothalamus.

VICE CHAIRMAN HILLMAN: Tra.

MR. McCARTNEY: Cah tra.

VICE CHAIRMAN HILLMAN: Okay. Fair enough.

MR. McCARTNEY: In fact on my boxes at least it says white river basa and in parenthesis (pengacious hypothalamus).

VICE CHAIRMAN HILLMAN: Okay.

Mr. Fass?

MR. FASS: That is true. The vast majority of the fish being imported today is pengacious hypothalamus and there really is very little difference between hypothalamus and forcati to the average consumer even the more seasoned seafood eating consumer. There's a little bit of difference in look but not even much there. They cook up very similar and most of the fish coming in are the hypothalamus and there is a little bit of confusion. You have to put it into a little perspective. It's extremely -- it's difficult enough as it is in our business to introduce a new fish to the United States and it's especially difficult when that new fish goes by three or four different names.

So there's some efforts to adopt the word basa for anything in the pencacity family and that makes sense personally to me. We're not sure how this is going to develop but it's similar to salmon. You have lots of different types of salmon, Copper River Salmon, King Salmon, Atlantic Salmon. We see the word basa being used to associate with either pengacious hypothalamus or pengacious forcati. This is a personal opinion again and this is all developing now in the marketplace but most of the fish coming in now is the hypothalamus.

VICE CHAIRMAN HILLMAN: Okay. Again I'm trying to get a sense of what the import data should tell us. As you all know and maybe this is more a question for counsel, you know, we're looking at a basket, you know, a series of HTS numbers that are a basket. We heard Ms. Slater's sense this morning of how much of what's coming in from Vietnam under those particular tariff lines would be subject product meaning would be basa or tra, however we're going to describe it would be these two species of fish.

I'm wondering if again either counsel or those of you out there would have your own sense of what is coming in from Vietnam under these HTS numbers? What portion of what's coming in do you believe is likely to be subject product?

MR. SIM: Well, Commissioner, I would like to know on the issue of the coverage which you've pointed out. We have filed a document this morning with the Commission in which we to the best of our ability tried to address all of the complaints that counsel to the CFA has made about the coverage in the foreign producers questionnaire responses. We believe we've covered all of them. I apologize we didn't, you know, the various factors related to communication and unfortunately even things such as like the SARS outbreak and such is hard to get some information but we have done it and it is on the record. I will let the buyers have any comment on the other question.

MR. FASS: Quick comment. We do a lot of work other than basa in Vietnam and we have imported a fair amount of scarlet snapper, of mahi, of scallops. There's a fish at the Boston Seafood Show which I think Petitioners referred to one of the big shows in our industry I think one of the blue ribbon winners this past year in terms of new product introduction was something going by the name of channa which is a different species of fish in Vietnam. We've also never seen which I think is actually -- I don't have the latin name on the tip of my tongue I think it's actually snakehead fillets they call it but there are a variety of different species in Vietnam that are coming into the United States that are not basa.

VICE CHAIRMAN HILLMAN: Okay.

MR. FASS: I wish I could provide better figures as to what they are.

VICE CHAIRMAN HILLMAN: Again obviously we then have to compare it to the tariff schedule to figure out whether they would or would not come in under these particular tariff lines but that's helpful to know if there's anything and, Mr. Sin, I will obviously take a look at the submission and try to square, you know, a sense of how much reliance we should be placing on questionnaire data as opposed to official statistical data. So I thank you for those answers.

MR. SIM: That's the same snakehead fish that we had the problem with last year.

MR. FASS: Only the fillets.

MR. SIM: Yes, but only filleted so it's much tastier.

VICE CHAIRMAN HILLMAN: Thank you.

CHAIRMAN OKUN: It's not going to crawl across our table and into my fish tank, okay.

MR. SIM: No.

VICE CHAIRMAN HILLMAN: Commissioner Miller?

COMMISSIONER MILLER: I may lose it with this one. I can't wait to find out what name you use to sell those fillets because I know that's not going to go across the Safeway flyer as snakehead so anyway --

MR. VANDER SCHAAF: You compare it to roughy actually.

COMMISSIONER MILLER: I'm sorry?

MR. VANDER SCHAAF: I said I was just kidding but you compare it probably to roughy.

COMMISSIONER MILLER: Oh, right.

MR. SIM: Yes, actually you could.

COMMISSIONER MILLER: Okay. All right. Well, I hate to say with a name game a little bit longer but I'm going to -- let me ask there was one thing that struck me in listening to the purchasers and distributors here, you know, as much as we've heard about the issue and of Congress passing the law I heard basically all of you except for Mr. Sobolyk I guess, Sobolyk, saying that you had never marketed the basa as anything other than basa am I right? I mean, Mr. Sobolyk, you're the only one who said you had marketed it. I mean it's almost as if you're saying this really wasn't going on and I just want to make sure that is really what you as a panel are saying?

MR. SOBOLYK: I didn't hear them say that they marketed it as catfish. I used the term because it was in the catfish family.

COMMISSIONER MILLER: Right.

MR. SOBOLYK: Even the FDA recognized it.

COMMISSIONER MILLER: Right.

MR. FASS: I would suggest that it's going on what went on especially before the labeling law was a far, far lesser extent than has been presented by the Petitioners so the people --

COMMISSIONER MILLER: That's what I wanted to make sure I understood whether it was just the selection of the distributors that we have here today or if you're saying that you don't think there was as much representation of basa as catfish as is claimed by the Petitioners?

MR. STEVENS: Yes, this is Wally Stevens. I can only represent for our company, Slade Gordon and Company, that we do not sell basa as catfish and never have and don't sell catfish as basa. They're two different species of seafood so I can only represent for our company though.

COMMISSIONER MILLER: I mean that's what I understood from -- I heard you all as I say with the exception of Mr. -- you know, all of you are basically saying you only sold basa you did sell basa as catfish and I was just trying to make sure I understood if that meant you as a panel to your counsel perhaps this is the question of whether or not what you're saying is this wasn't going on as much as has been represented or that's just the selection that I'm looking at?

MR. McCARTNEY: This is Ron McCartney. I sell in the Northeast and in the Northeast the catfish just isn't a really favorite fish. I believe that there are some people in the South who may have labeled it as catfish because at the time the FDA allowed that word to be used for basa. At this juncture I don't know of anybody, absolutely nobody that I know of, is selling basa as catfish and frankly there's really no commercial advantage to any of the people in my sphere to do that.

COMMISSIONER MILLER: Okay.

Mr. Vander Schaaf?

MR. VANDER SCHAAF: Lionel Vander Schaaf. In one case just to, you know, point out to the record there was a witness in the preliminary investigation, Christine Ngo, from H&N Seafood who also testified that her company had never labeled the product as catfish. She wasn't able to attend this final investigation hearing but I think there are other people out there and I think she addressed some of that in her preliminary investigation testimony.

COMMISSIONER MILLER: Okay.

MR. VANDER SCHAAF: So it's not like these are the only people out there.

COMMISSIONER MILLER: No, obviously.

MR. VANDER SCHAAF: Obviously our point is that to the extent anybody was the labeling law took care of that situation.

COMMISSIONER MILLER: Right. Okay. Then let me ask this question and that is for those of you selling basa as basa to your customers, your food service customers, what are they calling it when they resell it? Are they calling it basa or are they calling it fish? I mean what are they calling it?

MR. McCARTNEY: My customers call it white river basa. I have a very large supermarket chain that advertises it that way in the newspapers and my seafood distributors the broadliners all sell it as basa and they have to in fact because it's right on the box it says white river basa, pengacious hypothalamus and I absolutely 100 percent Vietnamese jump for jump tell you that the supermarkets are advertising it as white river basa and I have a deal with them that that's what they have to advertise it as.

MR. FASS: This is Matt Fass. We do some work with a company called HEB Grocers. They're actually I believe the largest privately owned supermarket chain the country and while statistics aren't kept on this they believe they're the largest seller of domestic catfish in the United States. They sell different species of domestic catfish. They sell basa as basa and have from day one and they have a completely different customer base for that.

Harris Teeter here on the East Coast sells basa as basa. This add from Robert's Fresh Market in Louisiana is not an anomaly basa is sold in supermarkets as basa, Safeway, Winn Dixie, basa, and on the food service side you are seeing basa more and more basa. There is some especially on the restaurant side white fish or fish or the grilled fish of the day. So I would say those are by far the two ways that basa sold mostly in this country.

COMMISSIONER MILLER: So you're saying you see it as basa or you might see it as white fish --

MR. FASS: I think for supermarkets you're seeing almost exclusively if not completely exclusively basa. I know some restaurants more and more every day that basa is basa. It's the new trendy fish oftentimes starting on the West Coast and makes its way East but you will see some restaurants that sell it as just fish, the grilled fish, fried fish of the day but that is almost exclusively a food service thing.

COMMISSIONER MILLER: Okay.

Mr. Stevens, when your company sells basa I should see it in the stores I would think. Maybe I haven't been in that right counter I don't know. Do you sell it as a frozen product?

MR. STEVENS: We sell basa as a frozen product. We've seen an increase. While the imports may be down in the first part of this year I don't import the product myself but we've seen an increase in sales of basa in the first part of this year and we've seen that increase both at food service and at retail. A lot of our food service customers are seafood distributors who in turn redistribute products into the restaurant trade throughout the United States so I can't attest as to what those restaurant operations label the product but I can assure you that the retail customers that we sell to frozen basa label it as basa.

COMMISSIONER MILLER: Okay.

Mr. Sin, help me. I want to make sure I understand your like product argument or not. I mean your brief pointed as to your post-conference brief that your position is that you think the -- well, what is your position on like product?

Mr. Vander Schaaf, would you like to answer that question?

MR. VANDER SCHAAF: I get all the good questions. Look, you've got to find a like product and we know that, okay. You concluded in the prelim that talapia is only sold as fresh fillet or live fish. We know your precedent. You know, you look for a frozen fillet. We know from your salmon precedent when it's farm raised that's an important factor for you. We don't control the data for this issue the Petitioners do.

I've come into this Agency and tried to argue like product to see all of the information in the hands of the petitioners completely wipe away all my arguments. We believe probably that there is a good argument that these other white mild tasting, easy to prepare, inexpensive, fillets should be considered like basa but we know what your precedent is and we recognize that precedent so we're not prepared to climb this mountain of data which is controlled by them with respect to production process and producer perceptions and channels of distribution to try to argue that this like product should be expanded to include other products.

We're willing to accept the fact that the CFA has prepared a petition, got the Department of Commerce to do a preliminary investigation, got the Department of Commerce to do a final investigation, and we're not prepared to disrupt all that to come in and say these guys should leave and another industry should come in and sit there and argue this case for them because I don't think you guys would buy it, okay, but we do believe that with respect to causation they are not the masters of domain of that information and that evidence and that argument and we do believe with respect to causation these other fish do play a part in the market and in competition and whether the imports cause injury to their purported industry.

So we're not in a position to argue that the industry should be a different type of fish. We have argued obviously that marinated and breaded should be included but the like product argument is difficult for Respondents to make when all of the information is controlled by the Petitioners and they're given a lot of deference by this Agency and Commerce in defining what's a like product and what's a domestic industry.

COMMISSIONER MILLER: All right. I think that leaves us where we are and the data set that we have one way or the other. It does lead to a question that I want to ask more broadly about the U.S. aquaculture and U.S. fish industry but I'm going to have to do it on the next light so thank you.

CHAIRMAN OKUN: Commissioner Koplan.

COMMISSIONER KOPLAN: Thank you, Madame

Chairman. I, too, want to thank the witnesses for their testimony thus far. Let me pick up if I could with Commissioner Miller's last question and walk through this with you on like product. In your prehearing brief at pages five and six you continue to argue that a correct definition of like product should include frozen white fish fillets such as talapia. In our preliminary determination at page six footnote 17 the Commission did not include frozen talapia fillets in the domestic like product because the record indicated that domestic producers of talapia only serve the fresh market and the only frozen talapia fillets sold in the United States are imported.

The domestic industry says all U.S. farmed talapia is sold fresh only and virtually all is sold whole, that's Petitioners prehearing brief at page five. We stated in our preliminary determination that we would consider at this stage any specific arguments made to broaden the like product definition but your prehearing brief simply incorporates by reference your arguments in your post-conference brief that was filed on July 4th of 2002.

I listened to the direct testimony and I have the post-conference brief here and I'll tell you what's troubling me. I'm looking at page 16 and I'm going to read this one paragraph to you. It says, "There are a number of seafood products including frozen fillets that like frozen catfish and the subject import fillets are white in color, mild in taste, low in cost and easy to prepare. These products include talapia, cod, halibut, grouper, striped bass, founder," I think you mean flounder there, "pollack, whiting and others. All of these products can be considered alternative products to consumers."

Then it says this, "However due to the unique dynamics of the seafood market and the unique criteria upon which purchasers base their purchasing decisions discussed immediately above the Commission's traditional analysis of substitutability may not be directly applicable to the nature in which these products interact in the U.S. market" and then you go on to conclude, "because a particular end user might want a particular product."

So that sentence, "Due to the unique dynamics" kind of leaves me hanging and at this point I'm where I was in the preliminary determination. I appreciate, Mr. Vander Schaaf, that you don't want me to climb the mountain and at this point I'm not about to do that based on what I've looked at in your post-conference brief as well.

MR. VANDER SCHAAF: Yes. I can confirm we looked at the talapia information since the prelim and I have to admit in speaking with people about this some people say I'm not sure they don't produce frozen but we couldn't find any record information of frozen fillets being produced by the talapia producers. We do have anecdotal comments by people that they're surprised and I'm going to defer to Mr. Johnson to see if he knows directly anything about this. He might be one of the people who confirmed there wasn't frozen but we were not able to find any written recorded information about frozen fillet production by the people who produce talapia.

What we found confirmed that it was either fresh or live from our search for the information. I don't mean to say there isn't any I can only say that our search did not produce any and we decided to put this issue behind us but with respect to the one sentence what we mean to say by that is, you know, the Commission has the six like product criteria which are not the same as necessarily causation criteria and some of the criteria if you look at it from the perspective of consumer perceptions you probably would expand the like product but when you look at it from the perspective of production process and you start with what's farm raised that eliminates flounder and pollack.

When you look at frozen fillets and the IQF process that would eliminate fresh and live and so you are directed to because of the production process criteria frozen catfish fillets but the consumer probably doesn't have any idea first of all whether it's a salt water product or a fresh water product or how its produced. They're looking at flavor, texture, and that sort of thing, mild in flavor, easy to prepare and so forth, so on those criteria you would expand.

COMMISSIONER KOPLAN: I appreciate what you're saying but to me what I'm hearing is that from the time that you filed your post-conference brief to now what you might have is some anecdotal material but not really specific data?

MR. VANDER SCHAAF: That's correct.

COMMISSIONER KOPLAN: Am I correct?

MR. VANDER SCHAAF: That's correct.

COMMISSIONER KOPLAN: Thank you.

MR. JOHNSON: If I might? Howard Johnson.

COMMISSIONER KOPLAN: Yes.

MR. JOHNSON: I've been a member of the American Talapia Association for about five years and basically its a producer organization similar to CFA and to my knowledge there's no production, domestic production, of frozen fillets within the domestic talapia industry.

COMMISSIONER KOPLAN: Thank you.

Staying with the -- well, let's see, let me come to this. I note that with the exception of the interim period consumption has increased during the period examined. I'm talking about consumption of this product. Now usually when consumption goes up prices also go up. The trend in this case is otherwise. I'm wondering why prices went down if not caused by the 56 percent annual increase in subject imports during the period examined?

Let me stay with this if I could because, Mr. Becker, in your apples to apples comparison I'm wondering whether the other white fish products whose prices you say were declining similar to catfish are also experiencing increases in domestic consumption as we see as to this particular industry and Mr. Stevens and others this afternoon testified that after 9/11 many of the products such as talapia experienced declines in consumption which is contrary to the trends for catfish over the period examined that I'm looking at. So I've heard the arguments about 9/11 but it doesn't seem to apply to the facts of this particular case to me. Can you help me out there?

DR. BECKER: I'll try. I don't have all those data with me but --

COMMISSIONER KOPLAN: You've got our C Table and that's public. You've seen that?

DR. BECKER: That's right.

COMMISSIONER KOPLAN: Okay.

DR. BECKER: I think there's a couple of different things, it's not always the case that when volume goes up price goes up. In fact general supply and demand tables go the other way, as volume goes up price will go down.

COMMISSIONER KOPLAN: I appreciate that and not to break in but --

(Multiple voices.)

DR. BECKER: Okay.

COMMISSIONER KOPLAN: -- what I'm saying is I got a different trend here --

DR. BECKER: I understand.

COMMISSIONER KOPLAN: -- than the trend that you were talking about in your --

DR. BECKER: Well, I think the trend you're talking I think the general trend --

COMMISSIONER KOPLAN: With regard to consumption.

DR. BECKER: -- with regard to supply and demand is when supply goes up then price will go down. So I think our market is fairly common that if you look at a general economics textbook and you increase the quantity the price will go down all else being equal. The fact that there may have been quantities going down on some of these other products as well as price that could very well be but, well, I don't think we want to look at it totally in an absolute sense in terms of whether the quantity went down relative to exactly where it was the year before. We want to look at where the quantity would have gone and what the pattern was before.

We have to remember catfish fillets were on a huge, huge growth pattern well beyond what other seafood was. Before this period they were at, you know, seven and eight percent whereas other seafood products may have been at one or two percent. So catfish did fall a little bit in quantity relative to where it would have gone. That's part of what Mr. Klett was showing that their quantify did decrease relative to where it was going.

My guess is and I don't have all those numbers with me that you'll find the same pattern with these other seafood products that they were probably on a pretty flat growth pattern going into this period and they went from being flat to being slightly negative. So my guess is that all of the seafood products experienced a small relative decline in their growth or in their consumption relative to where they would have been. So it's just the fact that catfish happened to be on a very high level relative to others before this I think brings you above the zero and below the zero over the POI.

COMMISSIONER KOPLAN: Well, let me come at it this way with you.

DR. BECKER: Okay.

COMMISSIONER KOPLAN: If you believe that basa and tra could compete on a level playing field with a domestic like product why were the Respondents so keen in adopting brand names for subject product such as Delta fresh farm raised catfish, Harvest Fresh catfish, Farm Select catfish and Cajun Delight that contributed to the unusual step that resulted in changes to the U.S. labeling laws? They weren't marketing the subject product as Alaskan pollack, orange roughy, rock fish, striped bass, cod, talapia or halibut.

DR. BECKER: Certainly. I certainly don't know the mind set of everyone that was marketing this but anyone in marketing will market the best way they can and if you're in an area where you can market as catfish you'll market as catfish and if you're in an area where salmon -- whatever is legal and reasonable is what you will do in the marketing area so I don't really know. The only thing I can say is that the numbers that I've analyzed don't show the relation between the two products and ultimately that's the focal point is whether there's any numerical causality from what I'm analyzing.

COMMISSIONER KOPLAN: But the 56 percent increase in each year of the period examined between the subject product and the domestic product is explained by Respondents as simply having been dealt with by the new labeling laws and that's supposed to explain it away. I see my time has expired. You might think of that --

DR. BECKER: Okay.

COMMISSIONER KOPLAN: -- before you come back to the next round.

DR. BECKER: Thank you.

COMMISSIONER KOPLAN: Thank you very much and thank you, Madame Chairman.

CHAIRMAN OKUN: Thank you and I thank you again to the witnesses.

Mr. Becker, I'm going to go back to you and I'm the last person on this panel who likes to engage in an economic debate late in the afternoon but I'm going to have to just because something you just said it just missed it for me. I thought the question Commissioner Koplan was focusing on was the increase in apparent consumption, in demand. The response you gave back to me was a supply side response. So the disconnect appears that in a period of increasing consumption that prices would go up not what I thought you heard which was, well, if supply is increasing prices would go down. That's the question that I'm interested in.

DR. BECKER: Okay. So I guess the question -- then I guess to some degree supply and consumption are interrelated. The more the domestic industry supplies into the market the higher potential there is for consumption but we'll focus on the consumption side of things. The consumption for domestic product, for frozen catfish fillets, the percentage increase in consumption was higher in that product going into the POI, the years proceeding the POI, than it was for other products.

I don't have all the numbers with me but if I remember correctly it's somewhere in the neighborhood of eight percent for this product and probably one or two percent or even less maybe for some of the other product. So during the POI this particular product dropped from that eight percent growth to maybe four or five percent and other products in terms of consumption dropped from say one or two percent down to maybe zero or minus one or minus two percent. So my point is that they all dropped in terms of consumption relative to the pattern they were on it's just that catfish happened to be on a better pattern so to speak than the others. I don't know if that's the question you were after.

CHAIRMAN OKUN: Well, yes, I see the argument that you're making it's just, well, there are a couple of other points with relation to capacity and imports and I'll go to those but let me just make this point which is to the extent then the argument about what prices were doing over that period and what you were just saying that maybe they were on a flat. I think you said the other products were flat and then decreased versus this one.

It seems to me to make, you know, for this argument and we have the chart here that I guess here the Slade Gordon, Mr. Steven's, this is your prices per pound and you show the different species and the consumption and the prices during that time period. You know, it's hard to do that in isolation. Say those prices are all what's impacting catfish to me when I don't know with any certainty at this point what was going on in the consumption patterns for those other products and that's why I'm having difficulty, you know, with trying to figure out what weight to give that argument in terms of --

(Multiple voices.)

DR. BECKER: Sure.

CHAIRMAN OKUN: -- what the prices are doing --

DR. BECKER: Sure.

CHAIRMAN OKUN: -- overall.

DR. BECKER: Sure. We can add some of that. That's certainly some of the sensitivity analysis we did to see whether quantities of other products were affecting the prices of catfish but clearly numerically the drivers and we're certainly explaining almost all of the price change for domestic catfish is from the prices of these other products and it may be the fact that I don't want to get into too much of the mathematics but that these other factors were already wrapped up in what the prices of those other products were so the quantities and other competitive factors already set the prices of pollock and whiting. So I think that that might be what we're seeing.

CHAIRMAN OKUN: Okay.

Mr. Stevens, did you want to say something on that?

MR. STEVENS: Yes, ma'am. My confusion is with the like product versus competitive product and the lawyers and you folks talking like products and I live in competitive products and I live in that market basket of 120 different species of seafood that we bring into the marketplace and what I was attempting to show in my chart was really the influence of September 11, 2001 and the economy for the major seafood items that were consumed in 2001. We consumed 969 million pounds of shrimp.

In that shrimp category 41/50 is the size that I chose, 41/50 whites, to show what happened the six months prior to 9/11, what happened the six months after 9/11 and that same trend took place with key species in salmon, pollock, catfish and talapia. The marketplace for all seafood products my entire market basket of products went downhill after 9/11. It and the economy impacted all of the competitive seafood products. It was not 26 million pounds of basa that drove the prices of all of these other items down. This is in the face of increased supplies of many of these items coming into the marketplace.

CHAIRMAN OKUN: Okay.

Mr. Fass?

MR. FASS: This is Matt Fass. I think it is extremely important to look at to what is happening in our industry in the last three or four years. We have very, very different purchasing mechanisms especially from the major end users in our industry just in the last three or four years. So in other words Wal-Mart has become somebody who has not been somebody who has distributed food to probably one of the kingpins in the food and service industry now on the retail side done in a very short period of time.

The centralized movement to purchasing for many of the other retailers and the centralized purchasing for the largest food service distributors in this country, frankly Sisco and U.S. Food Service, are very, very new phenomena and they would help to explain why when those players stepped in and really began to see basa as an exciting new species their mechanism, their way of buying, is very different than anything our industry has seen in the last 50 years and that has had a major effect on pricing.

So that can help to explain why consumption is increasing but yet they are putting pressures on things, on pricing, in a way that may seem a little bit odd when you see an increase in demand over here and I would mention specifically some of the we have what's called on-line auctions now. It used to be that catfish, domestic catfish, was distributed in this country from a domestic catfish processor to a Sisco unit of which there are multiple Sisco units in every state in this country.

Now Sisco has a private label branding system for catfish and if you want to sell into that system you do it out of Houston, Texas. If you want to sell to Wal-Mart you don't do it unit by unit or regionally and this is how relationships had been developed in the past you now go to Bentonville, Arkansas and you make very centralized contracts and those buyers are very, very powerful in our industry and they've had a major, major effect on pricing and that combined with the economy over the last couple of years has got to be the statistically significant reasons why we've seen pricing go where it has for the whole basket of seafood.

CHAIRMAN OKUN: Mr. Vander Schaaf?

MR. VANDER SCHAAF: If I could just add one point. Mr. Klett did a very good job of what I would consider a good job for an economist in this proceeding. He changed the focus of the analysis. We are here to decide one thing with respect to pricing and that is whether basa imports have been a cause of significant price depression of frozen catfish fillets. That's all we have to decide. Was basa a cause of significant price depression? The answer to that is no. What caused the significant price depression? We don't have to answer that question.

I resent the fact that they have shifted the burden to us to prove something that we don't have to prove and it's not even part of the Commission's analysis. Now I know as inquisitive minds when it ain't basa you're going to ask what was it? We have presented a number of different paradigms to help explain what we have heard from purchasers and importers as to what they see is the cause for price declines.

We haven't necessarily argued that other fish are causing catfish prices to go down. What we've argued is that all seafood products are declining at the same trends at the same rates as catfish so something obviously has to be happening in the seafood market which includes catfish other then basa and tra imports and that's really the essence of our argument and these guys have presented some viable explanations that we've put in our brief and that's really -- I don't want to change the focus from is it basa imports?

Each one of these guys will tell you that they have never, ever used basa prices to exert a price decline on catfish and they have never used prices of catfish to exert a price decline on basa. Ask each one of them they will tell you exactly that. It's never happened with any one of them.

CHAIRMAN OKUN: With respect to purchases and obviously we have collected information in the staff report on that particular question but one thing I would note that not all the purchasers who are appearing here today have responded to the Commissioner's questionnaires so again to counsel if that information is correct if you can help us and let us know what the situation will be and whether we'll get further cooperation on that?

Mr. Sim, I did hear that there has been something filed this morning with respect to the other importers and exporters.

MR. SIM: Yes, the exporters questionnaire. That's right.

CHAIRMAN OKUN: Okay. Well, I will take a look at that. I have not seen that and I believe I guess my yellow light's on and I'm not sure if I can get anything else out there so I will -- let me just to ahead and turn to Vice Chairman Hillman.

VICE CHAIRMAN HILLMAN: Thank you, very much. I guess just a little argument about the relationship of the prices of other seafood products. I just want to make sure

I'm understanding it. Is it your sense that there is kind of a sort of always existing hierarchy among the prices of fish and that, again, the seafood market tends to move in general in it, or there may be some variations in these margins between pollacks versus cod, versus shrimp, versus scallops, versus whatever; that there is, more or less, a fairly narrow -- I mean, what I'm hearing you say is that it all moves and that there is a hierarchy that kind of remains. Is that fair to say?

Mr. Stevens, in particular, I mean, your chart, in essence, would tend to show us that there is --

MR. STEVENS: No, it never was the case. We used to -- there used to be a much more greater degree of predictability in our mind, in terms of where markets were going to go. In the last couple of years, we've sold more units of seafood every year than we did the preceding year and probably our sales value of what we've sold has gone down across the full spectrum of the products that we sell.

It used to be a part of our strategy is the diversity of our products, so that when one product is declining something else is improving in value. That hasn't happened in a couple of years across the board, because of the pressures being brought with consolidations of procurement that Matt mentioned with the 800 pound gorilla called WalMart, because of the growth of agriculture around the world, particularly with salmon and with shrimp. They may not be "like products," but at some level, they compete in the seafood market basket with -- in front of 200 American consumer.

And aquaculture, thank God for it. It's giving us increased volumes of product that's giving it to us at lower prices, that we're passing on to the American consumer.

I've never seen, in my years, such uniform across the board, plus the 120 species, for me, consistency and price erosion. And more recently, seen some strength in coming back into the marketplace. It's falling all together for us.

VICE CHAIRMAN HILLMAN: Mr. Fass?

MR. FASS: I just have to concur 100 percent, that we have seen that kind of movement together in the last couple of years and sought of laughed at a little bit in preliminary hearing for talking about this. But, you've got these ads -- and this is how seafood sells in this country and supermarkets, is what they decide to promote. So, we are really competing with other proteins.

And, for example, the price of poultry has been unbelievably low in the last few years at various times. And supermarkets, they realize they're only going to sell so many items of food to a consumer that comes in. So, they have decided, at times, to promote much more heavily a much cheaper protein, where they can make much higher margins than any seafood items. And this has had an effect absolutely across the board on every fish, scallops, shrimp.

And it really is a new phenomenon. But, it is something that we are seeing and so, I concur with Mr. Stevens completely.

VICE CHAIRMAN HILLMAN: Which then gets to me to -- I'm trying to understand the relationship between the frozen market and the fresh market, because, certainly, if I understood it, particularly in terms of the domestic frozen product, it's not going to grocery stores. I mean, that is not where, you know -- I mean, 90 whatever percent of it is, in fact, going into food service, restaurants, et cetera. It is not ending up in the grocery store, at least, as I heard the testimony. This is not a product that is heavily ending up in a grocery retail store.

So, how relevant is it, what is going on in the WalMarts, the Safeways, the Giants, for the frozen product that is being produced for and sold through sort of restaurant, food service, institutional service markets.

MR. MCCARTNEY: This is Ron McCartney. I'd like to address that briefly. The basa situation is different than the catfish, the frozen catfish fillet situation. There's been some discussion about marketing a new fish. The tilapia is a really good example of what happened in the past.

At Black Tiger Company, we have our routes in Taiwan, where tilapia has been long farm raised. We were one of the first to introduce tilapia to the northeast region. We got it into some supermarket chains. Other people brought it in from different parts of the country. It almost exclusively went into supermarket or retail outlets first before any of the national restaurant chains would even consider putting it on its menu. Why? Because, there was no recognition by the consuming public of what a tilapia was. It's a strange sounding name. It's actually a Filipino word. People just didn't know what tilapia was. Now, probably everybody in this room knows what a tilapia is, okay.

People still don't know what basa is all over this country. However, you've heard testimony this morning, both from myself and other people, that basa is now being sold in many, many supermarket chains. As the supermarket people advertise basa, as the general public gets to know basa, more and more institutional uses will begin to use basa. The restaurants will start putting it on its menu and other people will start putting it into retail restaurant chains or whatever.

So, I think that the catfish people talk about selling their fresh fish into the supermarket chains, because they have that capability. And, generally speaking, people prefer to buy fresh versus frozen. However, basa does not have that ability on an economic basis. You have to fly it across the Pacific Ocean. So, the supermarket chains put basa into their cases, they market it as basa, previously frozen, and people are buying it.

That's where I think you get the comparison of the basa, as a frozen product, being sold at the same time as the fresh catfish in the same case.

VICE CHAIRMAN HILLMAN: Okay. Help me understand two things. One, do you have a sense of the amount of, again, the frozen imports from Vietnam -- I understand everything that's coming in is coming in frozen -- of what portion of it ends up in the grocery stores -- I mean, ends up being sold at retail?

MR. MCCARTNEY: I would -- just backing up answering that question, but one of the misconceptions, I jumped out of my seat a little bit here, is a tremendous amount of shell fish that is sold at supermarkets is brought in frozen. I think --

VICE CHAIRMAN HILLMAN: No, no, no. I was saying that the domestic catfish --

MR. MCCARTNEY: Right, okay.

VICE CHAIRMAN HILLMAN: -- industry. Frozen catfish, as I heard the testimony this morning, the IQF frozen fillets, as I heard their testimony and read our record, is not, by and large, ending up in retail stores. I'm not just saying it none of it; but, by and large, again, to the extent that you're finding catfish in grocery stores, it is coming as a fresh product, not an IQF frozen --

MR. MCCARTNEY: That's correct, for domestic cats. But, I thought I heard you say that perhaps the basas coming into play that much for supermarkets, because of the theory that most of the fish sold in supermarkets overall is fresh.

VICE CHAIRMAN HILLMAN: No, no, no.

MR. MCCARTNEY: I'm sorry.

VICE CHAIRMAN HILLMAN: I was only speaking of the domestic catfish. Again, I'm just trying to understand -- I mean, I've heard your testimony about this whole WalMart factor, et cetera. Trust me, we hear about WalMart in a lot of our cases. I'm just trying to understand whether, you know, kind of what the relevance is. In other words, what is the price translation, if you will? I mean, should I care at all?

If frozen domestic catfish are not entering the retail grocery market in the U.S., does it matter, when I'm looking at this data and trying to figure out what is happening to frozen catfish prices, does it matter what's going on in the fresh grocery store market, in terms of is that having an impact on the price of a frozen catfish fillet that is going to be sold into the institutional food service market? That's the piece I'm trying to understand.

I hear what you're saying about what's happening on the retail side. It's just not clear to me whether it's particularly relevant for the pricing data that we're looking at for U.S. price catfish fillet.

MR. DIMAURO: This is Sal DiMauro from Porky Products. I sell to only retail store supermarkets in the northeast and we bring in the frozen basa and we put it in the stores. My basa sales have doubled from the first quarter of 2002 to the first quarter of 2003, into the supermarkets, mainly because of like the gentleman in front of me from the northeast, also.

The supermarket consumer is the last to really get educated to a new product. It's hardest to get the word out to them. The frozen catfish and the frozen basa, the lowest fruit on the trees were the food service. You have an inexpensive product. They're going to fight their inexpensive product into food service companies. It's a white fillet, good tasting fillet.

The hardest fruit is the supermarket to get into, to promote it and get into the supermarkets. So, it's taken longer there. But, yes, there's going to be a long-term commitment to basa in all the supermarkets and it's going to be a major fish in all the supermarkets around the country, once everyone is educated to it.

So, it will have an affect on the fresh catfish and it will have an affect on fresh salmon and flounder and cod all through the markets. And going back to the fresh and frozen catfish -- I know that was what your question was -- the fresh and the frozen market catfish, it all comes from the same fish. A certain percentage go to fresh; certain percentage go to frozen. That may have to change and just turn. That grass may have to turn over time. The catfish people, they have to go back out and advertise more in the supermarkets, which they haven't been doing in the recent years, in a big way, in the northeast anyway, and that's just a changing of the market.

MR. JOHNSON: Could I take 10 seconds to attempt to answer your question?

VICE CHAIRMAN HILLMAN: Yes.

MR. JOHNSON: Your question dealt with the relationship between fresh and frozen and why should you care about retail, because we're talking about food service. If the price of catfish fillets in the retail store was four dollars a pound, you'd see a lot more catfish going out of frozen food service into fresh retail. But, this basket of prices, that has this dampening affect, keeps that fresh price roughly the same level. So, you're not seeing a major advantage in marketing to retail versus food service.

VICE CHAIRMAN HILLMAN: Okay. I appreciate that and I appreciate my colleagues indulgement. Thank you.

CHAIRMAN OKUN: Commissioner Miller?

COMMISSIONER MILLER: Thank you, Madam Chairman. Let me sort of pick up where I left off and asking probably Mr. Stevens, or any of you could, actually. I want a little bit more of that education about the U.S. fish industry. I mean, in terms of aquaculture, obviously, the Commission is familiar with farm salmon, farm catfish. Tilapia, we've learned a little bit about, to know that basically -- is tilapia farmed fish, as well? It's fresh, okay. I mean, it's sold fresh, we believe, for the most part, as you've said.

MR. STEVENS: Yes, exactly; that's correct.

COMMISSIONER MILLER: Okay. Help me beyond that. The other kinds of white fish that you all sell as a frozen fish, where does it come from? Is it a farmed fish? Give me a little bit more of an education about the industry.

MR. STEVENS: Okay. Mr. Wally Stevens again. Probably 30 percent of the seafood we consume is raised on a farm. The vast majority of that is imported. Of the key items that we consume, shrimp being number one, probably 50 percent of that is raised through aquaculture.

Second is salmon. A very dramatic growth has taken place with salmon. I know it doesn't meet the white criteria of like products; but, frankly, a major competitive factor to the frozen catfish at food service has been frozen salmon, which have seen dramatic increases in imports into the U.S. marketplace. Again, it doesn't make the like category; but in the marketplace, it's what's happening.

So, salmon is a major growth area. Catfish, of course, is primary. Trout is primary here in the United States. Oysters, clams, tilapia -- thank God for aquaculture, because the oceans are not going to give us the biomass to continue to fund any increase in per capita consumption of seafoods. We've tapped out the world's oceans, in terms of resources to feed us, to increase our per capita consumption. We rely upon, we depend upon aquaculture. We thank God for the catfish people. They've done a wonderful job. They've got a wonderful future in front of them, in terms of meeting any increase in per capita consumption, because it is not going to come from wild sources.

The cod fishery is not a growth fishery, a wild fishery. The pollack fishery is a well managed fishery that folks spoke to this morning. The halibut fishery, a wild fishery, is a well managed fishery. They're in the northwest. The scallops are on a big comeback. Relatively speaking, the biomass in the ocean is not where it's at, in terms of funding, supporting increases in per capita consumption. It's got to come from aquaculture. And the catfish people are just one of many industries that are well poised to support any increase that we see in per capital consumption increases.

COMMISSIONER MILLER: Okay. You mentioned trout. Tell me a little bit more about the trout industry.

MR. STEVENS: Trout is raised in Idaho, primarily. There's some raised in the southeast on farms. But more and more, we're seeing trout raised in Chile, broad in fresh and frozen, as well, and it's marketed both in the fresh and frozen area. It's a high quality product. It just doesn't make the top 10 in per capita consumed items.

COMMISSIONER MILLER: Okay. It's a smaller slice of what we're looking at here.

MR. FASS: If I could mention just one or two other fish, to just follow up. Everything Wally Stevens said is absolutely correct. But, there are so many others that the average consumer doesn't even know that's flowing through our market as a mild white fish. We have haik, some of it which is caught from the west coast of this country. We have haik from South America, Uruguay, Chile. We have haik from South Africa and Namibia. It's a fish, which often makes up fish sandwiches on menus all around the country.

Pollack, of course, you've heard a lot about and pollack is a wild fishery. And we have pollack coming from Alaska and we have pollack being pushed over in China.

One thing about tilapia, which is, I think, also important to realize is that the vast majority -- not all the tilapia produced in this country is sold fresh. But, there is a very, very healthy and growing amount of frozen tilapia imported and sold into this country. And it's a wonderful fish, which is, also, again a mild white fish, which is making its way to menus everywhere. So just because we're not producing a lot of frozen in this country, there actually is a very health tilapia market in this country for frozen.

COMMISSIONER MILLER: Okay. All right, I appreciate that. Mr. Vander Schaaf, I understand your point about like products earlier. I think this is one -- I've been here six years -- if it's not the first, it's almost the first case where we didn't have a direct like product, but we're having to apply the most similar in characteristics and uses part of the law. And that's one of the reasons, I think, that I'm struggling with this, in particular. It's a different kind of -- it's a little different than when we have the exact same product. And I understand the mountain that you felt wasn't worth climbing. And I do usually take the scope of the case as my point of departure. But, in this case, we don't have exactly the same product on the other side; so, it complicates the analysis.

MR. VANDER SCHAAF: It does and it, also, permeates through to this additional Commission analysis. If you think about your market share analysis, what do you put in your market share? Subject domestic products, like products, which would be catfish, and the subject imports, basa. And these guys can't understand why we are focusing on two products, putting them in a bundle and saying, there's your market share.

Well, Ron McCartney talked about how his basa is sold in places where catfish doesn't sell. The Petitioners have assumed that every time the basa sales increase, they're taking away from catfish. If you're selling cold-rolled steel or cut-plane plate, maybe that's the case. Imports from France and domestic products probably are interchangeable like that. But, I'm hearing that basa is expanding a market, not taking away from the catfish. And it's being used in applications where catfish is not used.

Mr. Sobolyk talked about Piccadilly, selling their catfish as catfish and selling basa as white fish and tilapia as white fish and compensas as white fish. In that situation, basa took sales from compensas and tilapia. They still kept catfish on their menus.

Is it appropriate for the Commission to issue an affirmative determination, because a restaurant adds tilapia to the menu, to give consumers a choice; instead of having eight items on the menu, one of which is catfish, to add basa and having nine items on the menu?

And Mr. Stevens, he sells 120 different species of fish. Are the catfish producers going to increase their market share and their sales so much that by making Mr. Stevens sell, instead of 120, 119 species of fish, they're going to be better off? He's not selling his basa to applications where catfish is sold.

That's why I'm so troubled by this case. You're struggling with the like product and I'm struggling with concept of substitutability and interchangeability and market share, where I see the two increasing independently, the two products and their market shares. I think it's unfair for the market share to be only catfish and basa. I think it's a distorted analysis.

COMMISSIONER MILLER: But, it flows from an analysis that is using, and we have to define the U.S. product that's comparable and like the imported product, or, in this case, most similar. And our record right now only gives us information on catfish, basically. So, at least in terms of what are in our charts, in terms of the data. I understand all the information that you're providing on a broader basis. I don't mean to say that that's not in the record. It is. Mr. Becker, you wanted to say?

MR. BECKER: I just have one thing. It kind of gets back to the quantity argument. I wasn't as quick to think on my feet with Mr. Koplan's question earlier. But, at Tables 18 and 19, and what you have here do analyze what affected domestic quantities and I do want to have on the record that it was not subject imports.

The difference here, and I've been involved in a lot of these cases, is in a lot of these cases, we have an elasticity of substitution. Even if you have the same products, foreign and domestic, there could be an elasticity of substitution of one to two, or it could be 10 to 12. It could be a total -- even in those cases, the level of substitutability from one product to the other can vary. And it's the same here. We don't know of it and that's one thing the staff report didn't estimate in this case. There was no elasticity of substitution in this matter.

And that's part of what we're trying to do here in Table 18 and 19, to see if one is substitutable for the other. And by showing that there was no impact from subject imports, that should show a lack of substitutability. It's not a black and white, are they substitutable or not. Everything is substitutable to some degree. But, it's showing a lack of substitutability between these two products. Thank you.

COMMISSIONER MILLER: I appreciate your answers. Thank you.

CHAIRMAN OKUN: Commissioner Koplan?

COMMISSIONER KOPLAN: Thank you, Madam Chairman and, again, I thank the witnesses. I'm going to leave you alone for a minute, Mr. Becker. Let me come back this time to distributors and retailers. Coming back to the following up of Commissioner Miller, the quality issue and substitutability, the domestic industry argues that basa and tra are substitutable for and compete directly. That's page 30 of their brief and referred to this morning.

Would the frozen catfish fillets inside the staff report that describes their physical characteristics as follows -- this is from our staff report in chapter one, page four: "although basa, tra, and catfish come from wholly separate families of fresh water fish with distinct physical characteristics, when processed into frozen fish fillets, they are generally similar in appearance, price, texture, and taste."

Now, I'd like to hear from the industry witnesses on this. If my recollection serves me right, Mr. McCartney, I think that you said this morning that basa has a higher fat content than catfish. Did you say that?

MR. MCCARTNEY: I said that basa has a higher fat content. It's a center fillet. It's whiter, has a much milder taste. You could roll it, where you cannot roll a catfish. I'm sorry to disagree with your staff report, but I really don't see it that way.

COMMISSIONER KOPLAN: I hear you. Let me just stay with you for a second, if I could.

MR. MCCARTNEY: Certainly.

COMMISSIONER KOPLAN: If it's got a higher fat content, then that would make it higher in cholesterol and calories, too, wouldn't it?

MR. MCCARTNEY: Not necessarily. Salmon has a very high fat content and it's high in omega three.

COMMISSIONER KOPLAN: What about with basa, though? If you say it's got a higher fat content, what would be the result be with basa, as far as cholesterol and calories it contains?

MR. MCCARTNEY: I'm not an expert on that. I can't answer the question.

COMMISSIONER KOPLAN: Okay. Let me just raise this with you, if I could. I'll stay with you. And I'm reading from this Exhibit 5 that everybody has been referring to and this catfish fact sheet that was a part of that, that Petitioners put into the record. That was distributed at the March 21st food show in Missouri by Thompson and Sons Brokerage Company, okay. And I'm looking at this: "Harvest fresh, basa fillets are 35 percent lower in calories, 28 percent lower in cholesterol, and 57 percent lower in fat, and 33 percent lower in saturated fat, in comparison to U.S. farm raised catfish fillets. Choosing the right fish to eat has never been easier."

Now, that's not Petitioners marketing. That is someone, who is selling basa. So, I've got two folks involved with basa and I'm getting a totally different answer, in terms of fat content.

MR. FASS: If I could address that quickly. I think generally what is sold --

COMMISSIONER KOPLAN: Could I finish with him first, because you kind of brought this into play for me, Mr. McCartney.

MR. MCCARTNEY: Fine. If you take a catfish fillet and you lay it down next to a basa fillet and you look at both fish and then you cook them off at the same time, you will find that the basa fillet is moister, has more moisture. If you look at it, you can clearly see -- identify the fat lines in the basa, as opposed to the catfish. And I'd just ask you to go get one fillet of each and put them in a microwave and you'll see that what I'm saying is correct.

COMMISSIONER KOPLAN: Okay. So, you're saying Harvest Fresh is incorrect in --

MR. MCCARTNEY: That's Harvest Fresh, then you assumed I'm saying that they are incorrect, yes.

COMMISSIONER KOPLAN: Thank you. I appreciate that.

MR. FASS: Could I quickly address that?

COMMISSIONER KOPLAN: Certainly.

MR. FASS: There are many different ways to fillet a fish, I'm sure you can imagine. And one very distinct difference, when you look at actually a whole basa and a whole catfish, you will see a much larger belly on the whole pangasia. So, pangasia is the corta; pangasia is hypothomas. How much fat ends up in a basa fillet is really quite dependent on how a certain packer fillets a fish, and if they choose to leave a little bit more of the fat on there, then it will have a higher fat content. But, actually, many of the basa sold in this country and quite possibly those sold by Harvest Fresh, the belly is completely trimmed off the fish, which leaves it with a much lower fat content than domestic catfish. And domestic catfish don't generally have that type of variance with the amount of fat left on the fillet.

COMMISSIONER KOPLAN: Okay, let me come back to you. Let me stay with you, Mr. Fass. The staff report says that when you take basa, tra, and catfish, and you process them, that when they are processed into frozen fish fillets, they're generally similar in appearance, price, texture, and taste. Are you saying that's incorrect?

MR. FASS: I think that is a matter of opinion and is somebody in the seafood business, I would say that they are not so similar in many ways. They have --

COMMISSIONER KOPLAN: Generally similar in each of those characteristics.

MR. FASS: I would call them generally similar in the way that all red wine is red. And to those, who don't drink much wine, probably couldn't discern the difference between many different types of grades. For the average seafood consumer, I think -- and certainly the average seafood purchaser from major corporations, they're quite different.

COMMISSIONER KOPLAN: Well, if there is additional information that the industry could submit post-hearing dealing with this particular aspect of the staff report, I'd welcome it.

MR. VANDER SCHAAF: We'll try to pull that data together, Commissioner Koplan.

COMMISSIONER KOPLAN: Thank you. Now, let me come back to the question that I asked Mr. Becker at the end of the last round, but I'd like to hear from the industry witnesses. That question dealt with the marketing adopting brand names for the subject product during our period of examination, such as Delta Fresh Farm Raised Catfish, Harvest Fresh Catfish, Farm Select Catfish, and Cajun Delight, and using those names to market basa, which resulted in the congressional legislation taking place. And my question was, why weren't you marketing such things as Alaskan pollack, R.N. Druffy rockfish, striped bass, cod, tilapia, or halibut, in the same fashion? I'd like to hear from the industry people, Mr. Vander Schaaf. I believe you said that none of these people did that, that came with you today.

MR. SOBOLYK: No, I did, sir. Mike Sobolyk --

COMMISSIONER KOPLAN: You did?

MR. SOBOLYK: -- with Piazza's Seafood World.

COMMISSIONER KOPLAN: Okay.

MR. SOBOLYK: When we first brought the fish in over four years ago, we didn't know what to call it. We asked the FDA. The FDA said it was in the catfish family. We looked at the pictures of the fish. It had whiskers. So, they called it a catfish. There were no rules or regulations against that, at the time. And when the label all came out, we no longer call it catfish.

COMMISSIONER KOPLAN: But, you do concede that it was being marketed as though it was catfish --

MR. SOBOLYK: The Vietnamese --

COMMISSIONER KOPLAN: -- and that led to the --

MR. SOBOLYK: -- catfish.

COMMISSIONER KOPLAN: Okay. Anybody else on that?

MR. FASS: Again, I'd reiterate, we did not market it that way. And I think you may have in front of you the entire universe of companies, who, especially at the beginning of the POI, did attempt to do some creative marketing. We're in an industry, again, where it's been difficult in the last several years and one of the attempts to try to spur sales a little bit has been more and more branding and marketing. And what you're referring to, I think, again, is maybe a smaller subsection of a few folks, who did that, and that was, again, prior to the legislation, which is in place today.

COMMISSIONER KOPLAN: Well, Mr. Becker indicated that he thought, when I asked this, that anything that was legal and reasonable was fair game, in terms of marketing. Would you concede that given the change in the U.S. law, that this is no longer fair game, with regard to this product, in terms of marketing?

MR. FASS: Yes.

COMMISSIONER KOPLAN: Thank you.

MR. JOHNSON: If I might add a short comment, Commissioner Koplan?

COMMISSIONER KOPLAN: Certainly.

MR. JOHNSON: What we're talking about here are really trade brands. These are not consumer brands.

There's no marketing to the consumer of any of these and, to my knowledge, I think these are names on boxes, as much as anything else. And I would add that many years ago -- this is not uncommon in the industry, to play these sort of name games -- there was an attempt to market or position Alaska pollack as something called snow cod, which, you know, taking advantage of the panache, if you will, of cod. And, of course, the FDA took a dim view of that and that was stopped. So, we play these name games from time to time, but I don't think there was any attempt of fraud or anything. These were trade names on boxes, if you will, not consumer brands that were promoted to the consumer.

COMMISSIONER KOPLAN: If that continues now that the law is in effect, you would concede that would be fraud?

MR. JOHNSON: Absolutely.

COMMISSIONER KOPLAN: Okay. I see my red light is about to come on, so I'll end at this point and save the rest for later. Thank you, Madam Chairman.

CHAIRMAN OKUN: Thank you. I guess at the end of my last round, I was thinking, Mr. Vander Schaaf, about your comments on -- I guess your complaints about whether the burden had been shifted -- not in a legal sense, the burden, but I always think the burden is on the Commission to sort through the evidence and, in this case, I think the contradictory evidence on the record, regarding competition and otherwise. And so, I think that has gone to the heart of a number of the questions today and some of the things that I still am looking over.

But, just, I guess, on this last question that Commissioner Koplan had raised with regard to the marketing and what happened before and the situation prior to labeling and what that means now. And the one thing I was struck by, in listening to Commissioner Miller's question, which is, I'm not sure we actually do have represented -- Mr. Fass, you might be able to help me. Do we have the distributors, who are distributing in the south? And I thought most of the comments we have heard were Mr. McCartney, who is northeast, and Mr. Sobolyk, who, I believe, is north --

MR. SOBOLYK: Sobolyk.

CHAIRMAN OKUN: Sobolyk, sorry, northeast; is that right?

MR. SOBOLYK: South central, Louisiana.

CHAIRMAN OKUN: Okay. So, you are south. You do a southern distribution, okay. All right. I had misheard that, then, before. So, that was my question, was whether we were actually getting distributors, who were still distributing in the south, presently.

MR. FASS: Yes. And we're located in Newport News, Virginia, and we distribute on a national level, but for basa, we distribute from Florida, all throughout the south of Texas, including some points out west and midwest and northeast, but a tremendous amount to the southeast and southwest.

CHAIRMAN OKUN: Okay. So, to the extent -- I mean, Exhibit 5, which refers to this one company that we've heard of several times, the Harvest Fresh, I believe it was, that has made the comments about -- the allegations were about what Piazza's Seafood had or had not told them, and Mr. Sobolyk, you had already responded to that.

But, I guess my question was, Ms. Slater, also, raised a number of pamphlets, which are not yet in the record and that we have not seen. But, the implication, from what she testified to, was at all these major seafoods, there are still basa out there being marketed to distributors as catfish. And I wondered if there -- you, obviously, haven't seen them, nor have we, but whether you can respond to what that means, because I assumed that that's accurate, what she was telling us. She was pointing to them. What does that mean, in terms of what's going on out there? Is it still an effort to market basa in the same category as catfish?

And I'll preface that with one other point, which is, if you look at the price for these different baskets of fish and if you were going to come in with a new fish, like the basa, would you try to -- it seems to me, if I were just looking at these prices, I would say, well, I'd rather have something that's like catfish than like tilapia, because you get a higher price. And this may be completely taken out of context from just looking at this one thing, but that's kind of still my question: what's basa competing with in this market, if, in fact, there are these price differences among this basket of fish?

MR. SOBOLYK: Sobolyk, again, Piazza's Seafood World. Basa is competing for the consumer dollar. There's only so many dollars out there to be sent on seafood. All the seafoods compete against each other. If I was going to introduce a new type of seafood, if it had characteristics that were exemplary, that's what I would point out. If it was white flaky meat, I'd point that out.

CHAIRMAN OKUN: Okay. And if you are a big distributor, like Mr. McCartney, you said for the northeast, catfish isn't the fish of favor, so you would not market it like catfish. If you were southeastern, because catfish are the preferred fish, would you want to market it more like catfish, than if you were in the northeast?

MR. FASS: I would not and I guess I would point to my own experience as a consumer. When I walk into a restaurant in Florida, anywhere, really, one of the things that catches my eye first is something a little bit new and different. And we're in an incredibly, again, competitive time in this industry and restaurants especially are looking for that new item. So, we're seeking chalk board items. We're seeing basa in many different places, as sort of the fish of the day.

So, again, in my experience, I think in this random restaurant in St. Joseph, Michigan, was not atypical, where the chef told me, he was actually looking for something. He was having a difficult time with Chilean sea bass and he, also, mentioned orange ruffy. So, we would be hurting ourselves, I think, to try to market this fish only as catfish, even in the south, because that has a very specific segment where it goes to and all we're doing is fighting each other and we'd be only cutting each other's throats. Out effort is to try to expand the markets and we see basa, as a new fish, as the way to do it, even throughout the south.

CHAIRMAN OKUN: Okay. Mr. Johnson, do you have any -- I mean, you followed this industry. When you're advising people on marketing, do you advise different for --

MR. JOHNSON: No, I intend to agree with them. I'm thinking back to when orange ruffy was first introduced to this country. It was relatively inexpensive. It was actually a retail item. And, really, the market will establish the value of the product, based on people's perceptions, based on the price, based on their experiences when they try it and if they like it and it doesn't smell up their kitchen or whatever it is. And orange ruffy was one of those fish that came into the market, was unknown. What was the other name for orange ruffy? It was pretty bizarre. But, they were able to call it orange ruffy. It came from New Zealand. And, slowly, that demand picked up and the price picked up and pretty soon, it was a victim of its own success, in a sense, because it almost priced itself out of the market. It went up to $6.99 a pound or something.

So, my feeling is that basa is going to do the same thing. It's going to find its niche in the market and it's going to probably move up in the market. And, you know, maybe there will come a day when catfish will try and compare itself to basa; I don't know. But, my view is that the market is going to establish that value over time.

CHAIRMAN OKUN: Okay. And then just going back, Mr. Fass, to one of the points you were making about what impact the increased consolidation that the distribution level has on seafood prices and the reference to WalMart. And as Vice Chairman Hillman observed, we certainly are very familiar with the number of cases where whether it's the WalMart, the big boxes have been a key point.

Here, I guess, looking at the record, I'm trying to see if that is the record we have in front of us, in this case. In other words, I think the testimony this morning was -- I mean, you still have a broad base of purchasers out there. There are some big players. And I just wondered if there was anything else you would point us to, to look at, in terms of what impact the purchasers have on prices.

MR. FASS: Frankly, perhaps a bigger or just as large a factor on the retail side as WalMart, the food service side, with the largest food service players. Again, the last 50 years, what we had in this country, again, are multiple food service outlets in every single state in this country and they might have been owned by a central operating office by Cisco or U.S. Food Service, and I can pick other examples. But what has changed on the food service side is -- again, it's sort of a complicated program, but they have gone to branding centrally, even what they consider more commodity like items, such as basa. When you think of Cisco, they're not selling to a consumer on the street; so, you might ask why they would put their own brand on something. But, there are all sorts of reasons that have to do with incentives for salespeople and things like that.

So, what we've had in the past 50 years were individual units around the country negotiating with different catfish processors. And they were long-term relationships and, frankly, probably not a lot of negotiating that went on, at times. Now, we have -- probably some of those individual units all over the country are still allowed to do maybe a little bit of their own purchasing. But, by far -- and this, I really took issue with in the Petitioner's brief; they mentioned that this type of centralization was not going on. That's just not accurate. By far, with Cisco and others, what you have is a central office, which has branded the largest items, like catfish or crab legs or other items like that, and have negotiated with one or two or even three large catfish processors for that business, and that has had an enormous effect on prices all over the country. You don't have all of these individual houses with their long-term relationships negotiating prices.

CHAIRMAN OKUN: Okay. Did anyone else have comments on that particular point? Mr. McCartney?

MR. MCCARTNEY: Yes. I certainly agree with Matt. We do business with two of the largest broad line distributors and we find that they are highly centralized. We're finding that there's a lot of centralization going on, in our other business, too. In the cruise line business, Palmer Cruise Line is bought up, Pallet America, and other cruise lines, and all of a sudden what has been 18 ships is now 66 ships and there's one central buyer. So, all of a sudden, this tremendous big time gorilla is coming beating on our door, beating the prices down. And that's just the way America is going.

The on-line auctions, where you now have to go on-line. One of our host is doing that. We have to go in and bid, bid, bid, bid, until who wants to give it away the cheapest. So, that's absolutely happening. There's absolutely consolidation in the buying.

CHAIRMAN OKUN: Thank you for those comments. I see my red light has come on. I'll turn to Vice Chairman Hillman.

VICE CHAIRMAN HILLMAN: Thank you. I have just a couple of questions. I wanted to go back right at the end of my last question. Mr. Fass, I think you had somewhat of a response for just to try to help me understand. Where the prices in the fresh market and, again, in the grocery store, do they affect prices in the frozen industrial service market and how -- I mean, if so, how?

MR. FASS: I do not think they do, no. And I guess we heard some comments about, well, they do, because we're all generally competing to feed people. So, in a very, very general sense, over a year, there's some particular fish or some item that really starts to become more and more popular, that's going to have some sort of very general affect on other items. But, in terms of daily, weekly, monthly, the prices in the fresh catfish market affect basa sales, frozen, to supermarkets, or sales in the frozen institutional market. Absolutely, I've never seen that at all or have been asked that pricing question by any customer.

VICE CHAIRMAN HILLMAN: I appreciate that answer. Just a couple quick follow-ups, perhaps for you, Mr. Vander Schaaf. Do you agree with Petitioners, to the extent that we are looking at this issue of whether the farmer should be included within the industry, that we should be looking at the ratio of the value of the frozen product, to the value of all the catfish products. Is that the best measure of the share of the live catfish that's devoted to the frozen product? In terms of looking at the process aquaculture provision, is that -- would you agree that that's the most appropriate way for the Commission to look at it?

MR. VANDER SCHAAF: No, I wouldn't, and I'll defer to Albert Lo. But, I, also, don't agree with their comment. I'll search through the staff report again, but I don't see staff endorsing that. They said that this was staff's approach and I'm not sure I read it that way. But, let me defer to Albert Lo, as the basis for what we think the best comparison is.

MR. LO: Albert Lo, White & Case.

VICE CHAIRMAN HILLMAN: Mr. Lo, could you pull that microphone a little bit closer?

MR. LO: Okay. How is that?

VICE CHAIRMAN HILLMAN: Good; thank you.

MR. LO: Albert Lo, White & Case. I think the Commission's standard on this issue is very straightforward and simple. I think, essentially, what we're talking about is the first criteria, whether the raw material or the raw product must be substantially or completely devoted to the production of the processed product.

Now, to put it simply, if you think about, let's have 100 fish, and the question really is how many fish will be dedicated to the production of catfish fillet. And I think in that respect, it's not fair to make the comparison using value, because value is a very distorted measure. What you really want to look at is the absolute quantity, in terms of the amount of number of fish that's dedicated to a particular production process. And as the staff report, even as the Petitioner has acknowledged, at most, no more than half of the fish or raw product is dedicated to the production of frozen fish fillet. And that simply just doesn't match the Commission standard.

VICE CHAIRMAN HILLMAN: When you say half -- I'm trying to understand the distinction you're making here. The Petitioners are arguing, relying on the precedent from the IQF Raspberries case, that we should be excluding from the denominator, if you will, the product that is not of a sufficient size, either too large or too small, to appropriately go through that IQF process. Are you --

MR. LO: No, the --

VICE CHAIRMAN HILLMAN: And I'm just trying to make sure, do you agree with that application?

MR. LO: The Petitioner misread the IQF decision. If you read the IQF decision carefully, you will see that IQF Raspberries is what the Commission was referring to as those raspberries that physically cannot be used for IQF process, because if the raspberry is not in perfect shape, it will not be able to produce the -- go through the IQF process without being damaged.

And, here, we are not making that same comparison here. If you look at all the frozen -- all the raw live catfish, they can all go through the IQF process. The only difference is whether they are market demand for different sizes, as they acknowledged. The restriction to them has nothing to do with whether this particular fish can go through the IQF process, simply because there is no demand for a certain size of fish. And that's not a Commission standard.

VICE CHAIRMAN HILLMAN: I guess I heard a little bit of a different response from the Petitioners, that there were some fish that were literally physically too small or physically too large to be able to go through the process. And you're --

MR. VANDER SCHAAF: We have witnesses, who I think would like to contradict that testimony, Your Honor -- Commissioner Hillman. Why don't you go ahead, Mr. Stevens.

VICE CHAIRMAN HILLMAN: I haven't seen Your Honor in a while.

MR. VANDER SCHAAF: I've been doing too many 337 cases.

MR. STEVENS: Yes, this is Wally Stevens. I don't see anything on this Exhibit 4 that's not IQF-able for catfish products. The size of the fillet, the size of the fish, whole round fish, whatever it may be, they're all IQF-able, individually quick frozen. They're not going to fall through the belt. They're not going to fall off the belt.

VICE CHAIRMAN HILLMAN: Okay.

MR. STEVENS: They're going to freeze. Whether it makes economic sense to do that is really the question.

VICE CHAIRMAN HILLMAN: Okay. I appreciate that.

MR. SIM: Plus, there's four lists: frozen nuggets, frozen whole dress, and fresh and frozen steaks. These are IQF products. Their own exhibit lists frozen items and they list frozen nuggets and fresh nuggets. Well, those are two things on their pie chart. They're IQF. So, I'm not sure if they said those are not IQF-able. That's sort of what we heard from them. Maybe, they need to correct that.

VICE CHAIRMAN HILLMAN: Okay. No, I appreciate those answers. And I guess the last question is, again, to just help me understand, in terms of the data that we're looking at in 2003. The export data provided by the Vietnamese Association of Seafood Exporters and Producers, again, would suggest a significant decline in imports in 2003. The official statistics, you know, which the Petitioners cite in their brief, which show an increase. And I've heard from the producers and the importers, their sense of what actually happened. I'm just trying to get from counsel an understanding of why do you think the data diverges. Why does the official data go one way and the questionnaire data go the other?

MR. SIM: Well, first of all, I'd like to -- again, we believe that after you review today's submission, you'll see that it still goes down. That's the first thing I'd like to say.

Second is there are a lot of products. Yes, I mean, there's not stuff that you're going to see -- I mean, you're going to have to go to Falls Church and go to a supermarket; but, you'll see some stuff like mud fish or the sand gobi, the snakehead fish. I mean, I've even seen things like the sheep heads -- not sheep heads. There's all kinds of fish that fall into this category. A lot of the clients sell mahi mahi, leatherback. You know, it's basically --

VICE CHAIRMAN HILLMAN: All right. But --

MR. SIM: It's a whole bunch of fish that go in the category, which is not subject.

VICE CHAIRMAN HILLMAN: I understand that. But for there to be this divergence in the two sets of data would assume that there has been a fairly explosive growth, if you will, in the imports of these non-subject products within these HTS categories from Vietnam. I'm just trying to make sure that you're telling me that you think that is, in fact, what happened. I understand that they are there; but, presumably, they have been there over the entire POI. It is only in this last quarter that we have seen this significant divergence between the official data and the questionnaire data. And I'm just trying to make sure that that's sort of what you're telling me, that there has really been something very different going on with the non-subject products that's included within those HTSs.

MR. SIM: I think the thing is that the subject product before the labeling law was in 1-HS number. I mean, you know, people, who were -- I mean, it was not in all 4-HS numbers. But when you go and broaden it to all 4-HS number, you can't. And given the fact that you were going to basically zero exports from Vietnam to the U.S., you will see a large trend. And if you see all the products coming in, yes, you -- I mean, I don't think it was a surge of all these products. I think it's stuff that was already there and because of the labeling law and all of that, people have tracked it better. And, frankly, you know, there's a lot of stuff coming in from Vietnam that really people were not buying until a year or two ago.

MR. FASS: I'd like to -- the BTA just being signed, Vietnam is really just breaking into this market for the first time, in the last couple of years, I mean, more and more all the time. And, again, referencing fish such as snapper and mahi, these are items that are sold in large quantity in this country, but have just now being up from Vietnam.

This snakehead fish, while I agree with Commissioner Miller, may want to think about the name, for the general public, actually, we have an obviously very large and growing Asian American population, as extremely familiar with this fish, and it's actually quite a delicacy over in Vietnam. So, in ethnic markets, it's selling tremendously well. So, there's just a variety of fish that is just making its way here for the first time.

VICE CHAIRMAN HILLMAN: Okay. I appreciate that. Mr. Fass, I only comment finally, as someone, who has spent a lot of time on Lake Michigan over my summers, I'm going to want you to put that menu from St. Jo, Michigan, on the record, so I can figure out where it is that you purchase this basa.

MR. FASS: I'd be happy to. I was there with my fiancé and this truly was a coincidence a few months ago, and she's heard me talk incessantly, of course, about this, and, of course, had -- she's had basa many times before from me, but, of course, had to order it and it was delicious.

VICE CHAIRMAN HILLMAN: Like I said, I will spend a lot of time this summer about three miles from there; so, please do put it on the record. Thank you.

CHAIRMAN OKUN: I'm going to call on Commissioner Miller, but that comment, Mr. Fass, reminds me of why most people don't really like to go out with Commissioners to have dinner, because we usually have this long discussion with the waiter and everyone else there about what they're eating. So, it may not be good for, you know, your fiancé. You might want to think about this.

Commissioner Miller?

COMMISSIONER MILLER: I have no further questions. Commissioner Hillman asked about a couple of things I was curious about. So, I have no further questions. And I appreciate all the testimony today, very much. Thank you.

CHAIRMAN OKUN: Commissioner Koplan?

COMMISSIONER KOPLAN: Thank you, Madam Chairman. I just have a couple of matters left. First, let me come back, Mr. Vander Schaaf, to Vice Chairman Hillman's question regarding the statement in Petitioner's brief, I guess it's at page 19, that says, as follows: "In the present case, the Commissioner staff has indicated the ratio of the value of frozen fillet sales to the value of all catfish products is a uniform measure of the share of whole catfish devoted to frozen fillets." And goes on to say, "Petitioners agree that this value-based comparison provides the best measure of the share of live food size catfish devoted to frozen fillets."

You said you had a problem finding it in the staff report. It's in chapter 2, page one, footnote two. So, I just thought I'd help you out on that.

MR. VANDER SCHAAF: Thank you, very much, Commissioner Koplan.

COMMISSIONER KOPLAN: But, it is there. Okay.

In your pre-hearing brief, you state that all of the allegations of loss sales occurred before the passage of the federal legislation outlawing the labeling of subject imports of catfish. I would ask that -- not now, because it's BPI information, but, counsel, if you would take a look at Chapter 5, at page 16, and the tables that are there, and see if you might end up modifying that for purposes of the post-hearing.

And, then, I just have this one last point while I'm on that. I, frankly -- I don't understand how a change in our labeling law erases the -- and this is not BPI -- erases the six million dollars in loss sales that were verified by nine purchasers during the period that we examined and if you could address that for me, as well, in the post-hearing, including what your authority would be for arguing otherwise.

MR. VANDER SCHAAF: We'll do that. Thank you.

COMMISSIONER KOPLAN: Thank you, Mr. Vander Schaaf, and I see that Mr. Sim is, also, indicating that he will, also, address that in the post-hearing. I want to thank you all, very much, for your testimony. I have nothing further.

CHAIRMAN OKUN: Let me turn to staff, to see if staff has questions of this panel.

MR. REAVIS: I have one question, Madam Chairman. Larry Reavis of the Commission staff. On this issue of the adequacy of foreign producer data substituting for import data, in our analyses. I refer you to the letter provided by petitioners on June 4, page five, where they list individual companies, who might be possible producers of the subject product, other than those for which we already have data. Could you, please, address each one of those in turn, in your post-hearing brief, as to whether you think they're producers or exporters; and if exporters, do they deal with producers for which we do not have data. I've already talked to some of you on this issue and we've been able to eliminate some, for one reason or another. But, could we address the others, please?

MR. SIM: Mr. Reavis, today's submission addresses each and every one of the companies identified in the Akin Gump letter by name. Companies, which did export, have filled out a questionnaire. Companies, which did not export, but produced, have provided data on their shipments, showing it did not go to the United States. Companies, which may have sold to another company, which did answer a questionnaire, have provided the information, as well. So, I believe that -- I hope we have covered the issue in that letter. And to the extent that there is still an issue, we will continue to cover it, in the post-hearing.

MR. REAVIS: Well, it may not be an issue. Did you provide something today that addresses that?

MR. SIM: Yes, this morning.

MR. REAVIS: I'm sorry, I missed that.

MR. SIM: No, that's okay. I mean, we had a lot of problems getting that from Vietnam, due to a lot of things; so, yes.

MR. REAVIS: Wonderful.

MR. DEYMAN: I'm George Deyman, Office of Investigations. I have a question for counsel for the Vietnamese Association. In order to obtain data for any determination on critical circumstances and, also, just simply to better examine monthly import trends, could you provide in your post-hearing brief each of your member firms' exports to the United States, in 1,000 pounds, for each of the months during calendar year 2002, up through March 2003?

MR. SIM: We have a lot of that data already submitted to the Department, going up to, I believe, November. We'll have to update the data and get it to you, in the post-hearing.

MR. DEYMAN: Thank you. And the staff has no further questions.

CHAIRMAN OKUN: Thank you for those questions. Do Petitioners have questions for this panel? Ms. Slater?

(No verbal response.)

CHAIRMAN OKUN: For the record, Ms. Slater has no questions for this panel. Well, then, I want to thank this group of witnesses, very much, for your testimony, for all your answers. It's been very helpful this afternoon. And you're going to be able to return to your seats in the back of the room. While you're doing so, let me note that Petitioners have a total of 10 minutes, including five minutes for rebuttal left, and Respondents have a total of five minutes for closing left.

MR. SIM: Thank you.

MR. VANDER SCHAAF: Chairman Okun, may Mr. Stevens correct one thing for the record, in terms of where their sales where? He perceived a misperception of his distribution area. I'd rather he do it than I do. I was going to do it in closing, but can he just explain?

CHAIRMAN OKUN: Just very short, Mr. Stevens.

MR. STEVENS: Yes, ma'am. Just 30 percent of our sales are in the south, as well, and we --

CHAIRMAN OKUN: Thirty percent in the south?

MR. STEVENS: Yes. We were not listed in that group and 30 percent are in the southeast.

CHAIRMAN OKUN: Okay, that's helpful. Thank you.

Ms. Slater, five minutes of happier and higher times. Can you take a two-minute break? Thank you.

(Whereupon, a brief recess was taken.)

CHAIRMAN OKUN: You're not going to read all those documents, Ms. Slater, in five minutes, although you do have 10. But, you're worrying me.

MS. SLATER: Thank you, Madam Chairman. I brought my security fish with me, just in case here. There are just, as usual, so many things that need to be said, at this point. What I'll try and do is synthesize it, maybe, for some of the most important and some of the more disturbing things that we heard this afternoon.

I want to, right off the bat, before we get into anything else, is clarify and correct something that Mr. Fass said, concerning consolidation and central purchasing by Cisco. Purchasing has not centralized at Cisco. What is happening in Houston -- he mentioned all sales are now being made through Houston -- what's happening in Houston, if you, as a frozen fillet producer, would like to have Cisco carry your frozen fillets in their private label, you must get qualified, in essence, by the central office in Houston, and you then get what Mr. Rose calls the "hunting license." You may, then, with that qualification, go and seek purchases for the private label, in the individual Cisco houses. So, the negotiation and the sales are still highly decentralized.

In addition, of course, there's no need to get that central qualification, if you're simply selling not for the private label through Cisco, if they're carrying your brand in their stores. There has not been, in terms of the catfish industry, any consolidation of the buying at the Cisco level.

Now, I want to insert, before I forget, one other thing. There was a mention of on-line auctions and I know the Commission is always interested in the extent to which things are being done through the Internet. The only place where we're seeing on-line auctions have been for some fresh catfish. This does not affect the frozen fillet market at all.

Now, let's talk for a minute about this fish called basa. You heard a lot of things this afternoon about all of the things that are causing problems for the U.S. industry producing frozen catfish fillets. It's pollack. It's white fish. It's salmon, which is not really a white fish. It's all kinds of things. But, we're not talking about basa, this wonderful fish that's growing the market.

Take a look at what's happening to the price of basa. The price of basa has dropped tremendously over the last three years. Why is that, if it's suddenly this great new fish that's in demand and it's a wonderful new product that everyone wants to see?

Well, the fact of the matter is that basa is not going to into the market to the consumers as basa. Some of it is in the supermarket at the retail level, and you heard a lot this afternoon about the retail level. And the reason is that whatever portion of this -- and by the way, the record doesn't reflect anywhere how much of this is winding up in supermarkets. And I submit to you, when you're talking about at least 34 million pounds last year, it's not all in supermarkets. We know it's not all in supermarkets. A lot of it is going -- you know through your questionnaires, a lot of it's winding up through the broad line food service distributors.

You've heard about supermarkets. You've heard that it's going as basa. Most of this stuff is not going in to the consumer level as basa. People are getting it and consuming it and being served it in restaurants as something else.

How do we know that? In June, this month, earlier this month, we had a survey done of over 1,000 consumers, to test their recognition of various fishes. We asked them -- and this was done by a professional company that does this for marketing firms, and we'll be glad to submit this for the record -- we asked them to test consumer familiarity with various fishes: salmon, farm raised catfish, skate, basa. We put tra on there, although, as you've heard today, it's not being -- basa is not being marketed as tra. And we made up a fish, called red carlin, just to sort of test the false percentages or the extent to which people would guess.

Well, here are the results: 94 percent of over 1,000 consumers to respond to this survey recognized salmon; 74 percent recognized farm raised catfish; skate, which is fairly exotic, I would think, 23 percent. Basa had a 10 percent recognition. Red carlin, the fictitious fish, had nine percent. People don't know basa. Basa is not winding up on menus.

Mr. Fass was very excited to see basa on the menu in Michigan, because it's not that big an occurrence. His fiancé heard all about it a lot, because it's not an everyday occurrence. All of this basa is not winding up on menus.

Where is it going? A lot of it is going into the frozen catfish fillet market. And that's what people didn't want to talk to about today, where is all of this fish going. Now, you've had distributors, who say, we're not displacing; we carry basa. Think about the extent to which, and I think you've picked up on this, they're talking to about retail markets, number one. Think about the layers that you've heard from both panels, explaining about the way this market operates. Distributors may very truthfully fill out your questionnaires at the distributor level and say, we don't substitute; we still buy catfish and we're buying basa. Yes, they are; but, their customers are the ones making a choice.

And we saw that in your questionnaires. We pointed out the examples to you. We didn't get a tremendous number of questionnaires. But, you see in those questionnaires the substitution is happening and they're describing it to you very clearly. It's happening whether the fish is called catfish; it's happening whether the fish is called basa. And the simple reason is that consumers know that it's substitutable. You see marketing materials. It's being marketed as something substitutable. Even if it's called basa, it's being compared to catfish.

And I would note that in addition to that Exhibit 5, we did supply, in our pre-hearing brief, a number of other items, including the listing from the Boston Seafood Shell for VASEP, showing the listing of catfish.

So, this is something that could have been responded to today. We're going to provide additional materials, but there were a number of marketing examples attached to our pre-hearing brief. You didn't hear comment on that today and for good reason.

I, also, want to take up on note to you something that you, also, noted, and that is that you haven't heard a lot about -- a lot of the focus has been on what is happening in the northeast. People are giving you examples, we don't substitute. People are buying basa up there. This is the way it's working. That may be true and I was very interested to see, for whatever reason, that the gentleman from Barnhill's, who was supposed to be here today, did not testify. That would have been a very interesting bit of testimony.

Take a minute, when you have a chance, and look on the Barnhill's website. Barnhill's is a chain restaurant in many southern states, featuring catfish on the menu. You see catfish all over that menu. You don't see basa. And I think it would have been very interesting to hear his testimony and I think the questions would have been, but you don't really have southern distributors in the southern area, where the heart of catfish country is, who come here to you today, to talk about what goes into the chain restaurants, into the seafood distributors. You had someone here, who could talk to you about the retail level.

I think there are a number of other things we can touch on. I want just to include by asking you to exercise, what I know you will, some kind of sense about all of this. And I want to, before I finish up, talk about the labeling law, in terms of commonsense.

The labeling law shouldn't be taken for more than it was and that it is. You heard, actually, I think from both panels today, that mis-branding in the seafood industry is a common problem; that people will take a species -- and these gentlemen speak in terms of species, species and how you market them and what you call them. And one species would be called -- marketed as one thing and the various names will be attached to it, which may be somewhat misleading. You had some examples, unrelated completely to catfish or to basa.

This situation, with respect to basa and catfish, was exactly that. We had a different species of fish, and I wish I had pictures to set for you side by side these fish. And you heard it today, the fish are physically very different. There are different species. The fillets are very similar. And this industry found that these species of fish were being passed off as their own. I don't want to say a panic ensued, but when you spend $50 million getting consumer confidence in a product, which they previously thought was dragged out of the mud, the reaction was very strong. So, the very first thing they wanted to do was make sure, don't call it our fish; don't put the pictures of our fish on that box; don't you sell it as our fish.

Getting it labeled correctly doesn't mean it can't compete. At this point, not only in many cases is it not being labeled correctly, but even when it is, it's still competing. But, we would just encourage you to look at this record as a whole, listen very carefully to what you're hearing in your questionnaires, look at where 34 million pounds minimum of these fillets are going -- and there's more than that, but the submission today, Mr. Sim didn't mention it, indicates to you that you're going to be getting some additional exporter questionnaires.

That is the story that is there for you. This fish doesn't have another market to go into. It continues to go in increasingly larger quantities, into the catfish market, and that's what explains what's happening today in the U.S. catfish industry.

Thank you for all of your attention today and for your good questions and probing questions. And we thank you for your time.

CHAIRMAN OKUN: Thank you. We'll now have Mr. Sim's closing remarks.

MR. SIM: Well, I appreciate the opportunity this Commission is giving to us. As I said, in the opening statement, I used to do this quite a lot, but these days, about once a year, I come out to do a Commission hearing.

Basic things just to go through, one is, again, basa is not taking market share away from catfish. It's expanding into applications that are not catfish applications, in regions of the country and in sectors, in which catfish has never been supplied and is not marketed.

Second, there is no price-based competition. When people want catfish, they want catfish; and when they want another fish, they'll get another fish. Again, to the extent that all fish compete simply because they have fins and can be filleted and all of that, there are some competition. But, it's not direct competition, simply because they're different fish.

Again, the labeling law was not intended to say that -- I mean, the labeling law really, really memorialized as something that was in effect before the labeling law was there. People already knew that the fish was different, mainly because of the impact of the CFA listing campaign, you know, people claiming that the fish had Agent Orange, people claiming the fish was grown in the muddy Mekong River, which is not muddy.

So, catfish is catfish and basa is basa. I've eaten probably 10 tons of hush puppies in my life. I've had chitterlings. I've had all kinds of fish. I can tell the difference. I think people, who want catfish, know that catfish is different from basa. So, that is a condition of competition that should be recognized by the Commission, in the determination.

Now, with regard to the labeling law, again, we're not -- this is a dumping case. It's not an investigation into whether companies have or have not engaged in violations of the labeling law. It's a dumping case, in which the labeling law is a condition of competition. It's a fact of life that you have to examine in your analysis. So, the labeling law has stopped any activity for which basa was labeled as catfish.

Now, you're going to have stories here and there. But, frankly, you had one allegation here. You have a denial there. A lot of it is going to be -- this is such a cost of leberra -- I've mispronounced the French -- that both in this country and Vietnam, that people know that you're not supposed to call basa catfish.

And in terms of enforcement, there is enforcement at all levels. Some of the people here have received inquiries from various people, at all levels of the government. And as the Petitioners, themselves, said, they go out and they self-enforce. So, people know that there is a ratification; there is a penalty, if you engage in any sort of labeling confusion. And this will remedy -- this labeling law has remedied a lot of the confusion that existed in 2001.

So, again, this is not a labeling law violation investigation. This is a dumping investigation. And, basically, we want to see whether these are two distinct products, and they are.

So, at the end of the day, the question is, what exactly are we dealing with. Are we dealing with a fish, which last -- you know, up until June 28th of last year, was completely different, was yak and cows and ducks and gees and cat and cattle? Are we dealing with the same fish, as basically the Petitioner is saying today?

Petitioners can't have it both ways. And it is really confusing to people in Vietnam and around the world, that we have a law that says that catfish and basa are completely different; yet, at the same time, we have an implementation, a dumping law, where people are arguing that they're the same fish or that they directly compete. It's mind boggling to a lot of people in Vietnam and around the world.

So, in conclusion, I'd just say, use your commonsense. As I said in the opening statement, go to your grocer's freezer; take a look at what's there. And you'll see that there's all kinds of fish there, but there's a basa and there's other stuff. And the basa and the catfish don't really compete, except at a generalized level.

I appreciate your time and we'll address your points in the post-hearing brief. Thank you.

CHAIRMAN OKUN: Thank you. Post-hearing briefs, statements responsive to questions and requests of the Commission and corrections to the transcript must be filed by June 24, 2003; closing of the record and final release of data to the parties is July 11, 2003; and final comments are due July 15, 2003. With no other business before the Commission, this hearing is adjourned.

(Whereupon, at 4:50 p.m., the hearing was concluded.)

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CERTIFICATION OF TRANSCRIPTION

TITLE: Certain Frozen Fish Fillets from Vietnam

INVESTIGATION NO.: 731-TA-1012

HEARING DATE: June 17, 2003

LOCATION: Washington, D.C.

NATURE OF HEARING: Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceeding(s) of the U.S. International Trade Commission.

DATE: 6/17/03

SIGNED: LaShonne Robinson
Signature of the Contractor or the Authorized Contractor's Representative
1220 L Street, N.W. - Suite 600
Washington, D.C. 20005

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

SIGNED: Carlos Gamez
Signature of Proofreader

I hereby certify that I reported the above-referenced proceeding(s) of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceeding(s).

SIGNED: Gabriel Rosenstein
Signature of Court Reporter