



PRODUCTIVITY COMMISSION

**INQUIRY INTO SAFEGUARD ACTION AGAINST IMPORTS OF
PROCESSED FRUIT PRODUCTS**

-and-

**INQUIRY INTO SAFEGUARD ACTION AGAINST IMPORTS OF
PROCESSED TOMATO PRODUCTS**

MR P. HARRIS, Chairman

MR P. BARRATT, Associate Commissioner

TRANSCRIPT OF PROCEEDINGS

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INDEX

	<u>Page</u>
AUSTRALIAN CANNING FRUITGROWERS ASSOCIATION and FRUIT GROWERS VICTORIA: JOHN WILSON	5-16
MOIRA SHIRE COUNCIL: GARY ARNOLD	17-21
MEMBER FOR MURRAY: SHARMAN STONE	22-31
KAGOME AUSTRALIA: JOHN BRADY	32-38
SPC ARDMONA: PETER KELLY SHALINA VALECHA SELWYN HEILBRON	39-61
GREATER SHEPPARTON CITY COUNCIL: GERALDINE CHRISTOU MICHAEL POLAN	62-66
SOUTH AFRICAN DEPARTMENT OF TRADE AND INDUSTRY: KEDIBONE MACHIU PEMY GASELA SYED JAFFRY	67-71
SOUTH AFRICAN FRUIT AND VEGETABLE CANNERS ASSOCIATION: RIAN GELDENHUYS JILL ATWOOD-PALM and JAMIESON TRADING: KEN WILSON	72-78

DELEGATION OF THE EUROPEAN UNION: ANDREA NICOLAJ JOHN TUCKWELL	79-87
ASSOCIAZIONE NAZIONALE INDUSTRIALI CONSERVE ALIMENTARI VEGETALI (ANICAV): DANIEL MOULIS ALISTAIR BRIDGES	88-97
EMBASSY OF THE REPUBLIC OF CHILE: PEDRO PABLO DIAZ HERRERA CARLOS MORAN FELIPE DIAZ IBANEZ	98-101

MR HARRIS: I declare this hearing open. Good morning, ladies and gentlemen. Welcome to public hearings for the Productivity Commission's inquiries into safeguard action against imports of processed fruit products and processed tomato products. I'm Peter Harris. I'm chairman of the Productivity Commission and I am the presiding commissioner for this inquiry. Beside me is Paul Barratt. Paul is the associate commissioner on the inquiry, appointed by the Australian government.

We have two inquiries running jointly today. They're into concurrent safeguards inquiries against rules set by the World Trade Organization. The commission, as Australia's designated competent authority to conduct such inquiries, has been asked to inquire into safeguard action and whether it is justified against imports of processed fruit products, including peaches, pears, apricots, citrus, mixtures and other products, and against imports of processed tomato products, specifically referring to pack sizes not exceeding 1.14 litres.

Both inquiries have been asked to report on, and I quote from the terms of reference:

- whether conditions are such that safeguard measures would be justified under the WTO Agreement;
- if so, what measures would be necessary to prevent or remedy serious injury and to facilitate adjustment; and
- whether, having regard to the government's requirements for assessing the impact of regulation which affects business, those measures should be implemented.

The inquiries will be completed by 20 December 2013 but the commission has also been asked to provide an accelerated report for each inquiry by 20 September as to whether provisional safeguard measures should be put in place for up to 200 days. If we can, we will report on the provisional issue before that date of 20 September.

This is the initial public hearing. Further hearings may be scheduled if required. Because of the requirement to report as soon as we can on the provisional issue, one of the larger questions today will be whether there is clear evidence that increased imports have caused or are threatening to cause serious injury to Australian industry and, if that is the case, whether there are critical circumstances such that, if there is a delay in applying measures, damage would occur which would be difficult to repair.

While submissions have closed in response to the issues paper we published on 4 July, further submissions will still be welcome. The Productivity Commission itself will be seeking specific inputs from various parties in the course of this inquiry as matters become clearer.

We would like to conduct all hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken. For this reason, comments from the floor cannot be taken, but at the end of the day's proceedings I will provide an opportunity for anyone who wishes to do so to make a brief presentation. Participants are not required to take an oath but are required under the Productivity Commission Act to be truthful in their remarks. Participants are welcome to comment on issues raised in other submissions.

The transcript will be made available to participants and will be available from the commission's web site following the hearings. Submissions are also available on the web site. For any media representatives attending today, some general rules apply. Please see one of our staff for a handout which explains the rules.

I'm also going to offer you the Commonwealth occupational health and safety legislation requirements in relation to fires and emergencies. You're advised that in the unlikely event of an emergency requiring the evacuation of this building, you should follow the green exit signs to the nearest stairwell. Lifts are not to be used. Please follow the instructions of floor wardens at all times. The assembly point is on the corner of Marcus Clarke and Rudd streets outside. If you believe you're unable to walk down the stairs, it is important that you advise the wardens, who can make alternative arrangements for you.

I'm now ready to call our first participant, which is Fruit Growers Victoria and John Wilson, and John is sitting here, so can we start with your name and position and we'll then bowl on. Thanks very much, John.

MR WILSON (ACFA): My name is John Wilson. I am general manager of Fruit Growers Victoria. In that capacity I am the secretary of the Australian Canning Fruitgrowers Association.

MR HARRIS: Thanks for your submission, John. I think it's a good start to get some grower background for the purposes of this inquiry. I think one of the most important things that we need to ask participants is in relation to this question I alluded to in the opening remarks of imminent damage.

Some of the submissions have referred to the possibility that growers are removing trees and they have also referred to the possibility of perhaps disease outbreaks if growers don't have confidence in the future of the industry, and potentially this might be relevant - we need to determine that - but it might be relevant to this question of imminent damage therefore, and damage that isn't reversible, because in the nature of trees themselves, they're hardly things you can replace overnight. Do you have any comments you would like to make on that particular aspect of this inquiry?

MR WILSON (ACFA): We certainly address that in the submission. Yes, trees are being and have been removed already and that is an irreversible process. However, there is still a significant amount of permanent planting in the ground and there are significant hectares committed to cannery production that remain that will avail for a bounce-back should extra volume be required by the cannery, but for those growers that have been jettisoned by the cannery as suppliers, that is terminal, potentially for their entire business, and that is a demonstration of what could occur for the remainder of the industry should the current conditions prevail without the time frame for an appropriate adjustment.

MR HARRIS: So it's your contention that although there are fruit trees being removed and there's a possible threat that, with the lack of revenue, some growers may choose not to manage their orchards efficiently and therefore create a disease issue, it's not the kind of issue that is so imminent as to cause immediate damage?

MR WILSON (ACFA): The damage will be felt around harvest time next year in the first instance. Because we have a threshold effect with, especially, pests, the populations have to build up. The situation that we're faced with - because we actually surveyed the affected growers - is that a significant proportion of them are at their maximum borrowing capacity with financiers and have been trading at a loss. I think I used the expression "the boiling frog syndrome" as applied to these growers as the cannery has cut back the intake.

The first response was to tighten up to reduce their costs, and eventually they're forced into a loss situation, on the presumption of course that there was going to be a bounce-back, as is normally the conditions which have prevailed over the last 100 years. This situation is different. We have lost some market share. I would suspect some of that has gone permanently and has caused a transfer of consumer demand. However, the remaining market share that has transferred to imported products would be available to Australian production, and that is where we rest hope for the industry, and specifically because the role that the cannery plays in the infrastructure of northern Victoria goes far beyond the direct fruit processing and growing industry, it goes to the fabric of the 10,048 hectares of permanent plantings.

MR HARRIS: And the prices that have been paid for fruit: we have some information, I think published on the world stage by different parties, about the nature of prices being paid growers over a fairly long period, and although there have been some increases in price, they don't look like they are much more than perhaps a CPI rate adjustment, so in real terms prices for growers look like they have been - and I know they have varied across different fruits, but they look like they've been pretty flat for a fair period.

MR WILSON (ACFA): In analysing the survey that I did on the growers, I went to the cannery and I sought the net proceeds per tonne for the growers, which I think is a more accurate expression. That's after culls and defects are removed. The price has been static for the last two years and the forecast is the same price next year, so as the prices remain static, the factor that is affecting them is the drop in volume.

MR HARRIS: So with cutbacks in volume and with prices stagnant, nevertheless growers are probably still going to persist through the coming season, you would think?

MR WILSON (ACFA): No, some of them won't, and some of them won't be able to. The majority, 82 per cent of them, said they want to continue as orchardists. There is a confidence, to a degree, that the future of fruit-growing is very good in northern Victoria, it's a long-term prospect, and that's based on the climate, the soils, the availability of water even through a drought period. We have very good growing conditions for the type of fruit we grow. However, this is forcing some degree of restructure.

In saying that, our industries have been very focused on adopting world's best practice. In the apple and pear industry, for instance, we embarked in 2006 on improving the productivity of orchards. Where a traditional orchard would have around about 800 trees per hectare, a modern orchard has got 3500 to 4000 trees per hectare on dwarf rootstocks, which means that we grow about the same amount of fruit per tree and, as a consequence, the productivity is increased greatly.

MR BARRATT: John, as a result of events in the recent past, some growers, to use your term, have been jettisoned by the cannery, so there are trees being pulled. One of the things we need to get a feel for in looking at the case for short-term protection as against long-term protection is, in the absence of short-term protection, what damage would be done while we're waiting for the final report.

My impression would be that growers have been told they're either needed or not needed and so some trees are marked for destruction, for being pulled, and others will say, "Well, I will have a contract. I will keep my trees." Is there something in the delay of a few months to resolve this issue that would result in more trees being pulled? Obviously, that's one of the most obvious examples of damage that's difficult to reverse.

MR WILSON (ACFA): Very definitely. We have a crisis of confidence, obviously, in the processing fruit industry, from the growers. They've been loyal suppliers. Those that have been jettisoned feel hurt.

MR BARRATT: Yes, sure.

MR WILSON (ACFA): Those that remain that are supplying, they're now wondering what their future is and whether it's better to bail out now, and that's where the risk is from not acting sooner. If we have cut back the supply and those that have gone are removing trees, and then some of those that remain remove the trees, we run the risk of taking away the critical mass that is required to have the industry - - -

MR BARRATT: So you will have decisions at the grower level that - - -

MR WILSON (ACFA): Exactly - that will affect the future of the industry.

MR HARRIS: If I can just stick with that theme, because I think I asked that at the outset. We're quite interested in this. It's obviously a crucial part of the initial thing. In your submission you refer to notes that you took at a meeting three or four years ago where you were forecasting that 35 to 45 thousand tonnes intake was the long-term plan three or four years ago from SPC, and there have been significant reductions way below that level in recent times.

MR WILSON (ACFA): Yes.

MR HARRIS: Your submission therefore leaves the impression generally that anybody who would have been in the industry three or four years ago would have had an expectation that they could share in a much higher tonnage, and now the numbers are quite significantly below that. That's why I referred to prices, and with prices being roughly stagnant, decisions you would have thought would be being taken now by growers to say, "Well, they were forecasting a level 30 to 40 per cent higher only a few years ago and perhaps I've lost some tonnage" - that there would be a crucial decision being made not just perhaps to remain in fruit-growing - I wouldn't doubt that - but in canning-oriented fruit-growing, and I'm still a little unclear as to whether or not that's a probable decision in the coming six months, or a decision that most growers that have still got quota with SPC would want to hang on and see how things turned out.

MR WILSON (ACFA): That question has several levels in it.

MR HARRIS: I know. I've done the whole thing in terms of maybe commenting on each of my impressions.

MR WILSON (ACFA): First and foremost, back to the 2009 meeting. That meeting was at the request of the Canning Fruitgrowers Association because there was an expectation that following the drought things would return to what was perceived as normal, and that was roughly that the cannery would be taking the total

crop. At that meeting we were given that information in confidence, and the reason that I haven't tabled the entire document is for that reason. Should the commission want it, I would be happy to provide those notes.

The projections forward were that they were going to lose some of their throughput to imports, but they felt that they could hold onto other market segments. Growers were cut back at that stage and some growers did do exactly what you said: they started modifying their orchards. It is normal practice that we do turn over our orchards in a given period of time. I make mention of that in the submission.

Five to 10 per cent would be the maximum in one season, because normally it's a balance situation with what else is maturing in full production, and that keeps orchards fresh to market demands, but three, four - especially 2013 and now the projection in 2014 - is an extremely short time frame for our industry. We normally do things with a perspective of - best case would be, going into an apple orchard we get full production in year 4; peaches, year 5 or 6; pears, six to eight years, and so you're always investing a large investment of capital moving forward, and the issue of whether the industry at that point in time had the financial resources to make that quick adjustment is key to, I think, what you're trying to look at.

The answer is that the industry, some of them do have those resources certainly, but there's a proportion that were still in tight financial circumstances as a result of the drought, where they were buying water at very inflated prices to maintain their trees not in production but just to keep them alive, and then that drained the working capital out of their business, let alone their capacity to borrow.

In concert with that, there were changes in the structure of land titles in Victoria, where the government unbundled water from the land titles and that had a change on the debt-to-equity ratios, which meant that some growers' borrowing capacity became far less easy. As a consequence, given a normal run-in they would have preferred to have done a bit more. Some didn't, but nobody expected that we would have had the 5000-tonne reduction this year of peaches and the prospect of 22,000-odd tonne of pears and peaches next year.

I've likened it in some cases to being a group of canoeists heading towards a waterfall: we didn't realise we were that close; some of us have been able to paddle to the side, and others unfortunately are going over the waterfall.

MR HARRIS: In terms therefore of the focus of a safeguards inquiry, which is on the relevance of imports to all this, do you have a view on the nature of imports as a business? We're talking here about the growers who are an essential input, obviously, to the business itself, but the focus of an inquiry like this is on imports and their impact. Do you have a view on the nature of imports as a contributing

factor in this area?

MR WILSON (ACFA): I think the imports are, if not totally, very close to the total cause of the drop in intake by SPC Ardmona. I'm privileged to have attended the last three World Canned Fruit conferences and I do know a lot of the people overseas who run organisations and canneries. I remember at the 2009 conference which we ran in Shepparton, Victoria, how we only had one representative from Argentina and two from Chile. They normally send larger contingents. That was because the United States market had contracted and they virtually had no cash flow those two years.

Things improved. There was a large contingent from both countries at the Greek conference last year, which shows that things did improve for those countries as the United States started to recover, but in those intervening years we went from an equilibrium situation, supply and demand, to an excess, and that coincided with the escalation of the Australian dollar. That simply meant that the Australian retailers had a much stronger buying power; at the same time there were a lot of extra willing sellers on the world market. That time frame coincides with the decline in intake by SPC Ardmona, which coincides with the drop in profitability of fruit-growing businesses.

MR HARRIS: There will always be a question raised in inquiries of this nature as to whether it's the company's strategy to reduce fruit demand because you can't sell it, for example, in the domestic market - that consumer preferences have shifted and all those sorts of factors - versus imports are the source or the primary cause of damage, and you have said you think it's primarily down to imports.

When the company informs growers of loss of quota, is that their explanation or do growers themselves have their own independent advice? Do supermarkets talk to growers, that sort of thing? How do you gather your opinion that imports are the source of the damage versus a decision by the company itself in response, for example, to consumer trends or something like that?

MR WILSON (ACFA): Our primary source of information about quota cuts is the cannery, of course. On 10 April this year SPC Ardmona had a grower meeting and Peter Kelly, the new managing director, advised of the cutbacks and quite clearly he said then that they had lost market share to imports. The figures quoted, I think, were, from memory, that imports had taken a 58 per cent market share and their market share had dropped to about 30 per cent. So that was a clear statement.

We don't just rely on that. As I mentioned, our office is the secretariat for the Australian Canning Fruitgrowers Association. We're also the secretariat and I'm the secretary of the Canned Fruits Industry Council of Australia, which is the peak

industry body for the canned fruit industry, and as such we're in contact with what is going on across the world, and so we have that as a background to what also the cannery is saying.

MR HARRIS: So you say from global sources it's the flow of import and export that is the primary driver rather than necessarily things like consumer preferences?

MR WILSON (ACFA): I'm sure that there has been a change in consumer demand and I've seen the cannery respond to that with the introduction of the screw-top plastic jars. I remember the then managing director Nigel Garrard introducing those and saying that the objective was to move the fruit out of the pantry and into the fridge so it can be snacked on, and that was a very clever marketing ploy. Since then the world has adopted the technology that SPC Ardmona has introduced. So, to their credit, they have been an innovative processor, but this circumstance has overwhelmed those innovations.

MR BARRATT: If we could pursue the question of the damage at the grower level a bit further. We've touched on this, but could you talk to us in terms both of geography - distance from the cannery - and also the varieties being grown. What are the options that growers have to sell into fresh fruit markets as an alternative, to say, "Times are tough, but I can sell my fruit in another way"? Some varieties are dedicated canning varieties and some orchards are more dedicated to the cannery than others in the way the business is run, but could you talk to us a bit about that option at the on-farm level to adjust to sell in the fresh fruit market, and you might touch also on what's the ability of the fresh fruit market to absorb a substantial step-up in supplies.

MR WILSON (ACFA): I'll deal with each fruit separately because they have different characteristics. Firstly I'll deal with pears. The canning pear is the Williams pear, the WBC, Williams Bon Chretien. It's a pear that can go into the fresh market. It can be stored for the medium term. It is a large green pear, very similar to the Packham pear, which is the main fresh fruit pear that we market.

The WBC, the Williams pear, ripens before the Packham pear, so fruit downgraded by the cannery has normally been diverted into that fresh market. That has happened as we've had the reductions over the last few years as we've been approaching that waterfall. However, what we have had is a situation where there has been an oversupply on that fresh market and for the last three years no pear grower has been profitable on his pears. An extra 10 to 15 thousand tonne of pears really does not have a home and it will just exacerbate a situation not only for the people that try to put fruit into the market that won't trade at a profit but also it will depress the market.

The peaches: there are various varieties of yellow clingstone peach, which is the peach that is used. Different varieties are planted so that the ripening is spread so that the processing can be spread. The yellow clingstone peach does not have a very long shelf life. It's not conducive to storage and for distribution. It bruises fairly easily and there is a preference in the fresh market for a peach that does not have a clingstone. People prefer to split it - - -

MR BARRATT: Freestone.

MR WILSON (ACFA): - - - pull the pip out and just eat it.

MR BARRATT: Yes.

MR WILSON (ACFA): As a consequence, you could try to force some of that fruit into the fresh market, but people who have tried to do that this current season have told me that they lost money on the exercise. It's mindful to consider exactly the volume of fruit. I use the analogy that if we put all the bins of fruit on the playing surface of the MCG, every glade of grass would be covered to a height of two and a half metres. That's the volume of fruit that we're looking to have taken out of production this year and next year. To push that into the fresh market just simply isn't practical.

MR BARRATT: And in terms of consumer preferences, you're talking about pulling trees and planting different varieties.

MR WILSON (ACFA): Yes. There are two options for managing the unwanted fruit that's in trees. One is to simply pick the fruit early and let it drop; it's a cost. You could have a similar effect by spraying with cover sprays to drop the blossoms, so thinning sprays. You would need most likely three passes of the tractor to ensure that all the blossoms were dropped. The cost of doing that is roughly the same as removing the trees. The other alternative is that if the trees are young, you may wish to bud over to a fresh fruit variety and use the rootstock that's there. We are exploring all those options of course.

MR HARRIS: In terms of the options that are in front of us, if we were to gain enough evidence on damage and the requirements of the WTO rules, one of the options is to move to a tariff, but necessarily applying a tariff raises the price, all other things being equal, to consumers, and consumers can react to a change in prices by preferring not to buy the product, obviously.

From a grower perspective do you believe that raising prices is potentially still the kind of course of action that would be supportable? I'm not trying to get ahead of ourselves here, but in terms of consideration, this is one of the directions in which

we'd have to go, I think, if we were convinced of the circumstances, and yet just highlighting the fact that, as I think you and others have tried to point out, the nature of the pricing structure in supermarkets today to the customer at retail level is an attempt to make the product attractive inter alia by having a lower price. So if we increase prices like this, do you think that that would be still viewed positively by growers as a response?

MR WILSON (ACFA): I think it would certainly be viewed positively by growers. The key point is whether consumers would continue to buy. I suspect they would, because I think the prices are artificially low, and I don't know - and I presume the inquiry will find out evidence - as to whether the lower price as a consequence of the imports has generated extra volume. If that's not the case then I'd say that there's a static consumption that would rebound to a slightly higher price point.

In our submission I put a discussion on the retailers and their action and how a scenario has been created that has set about conditions of the law of diminishing returns taking hold, where a smaller volume with a higher spread of overheads increases the unit costs and tends to see you go in a downward spiral. If that were to be reversed, then the price differential would equalise, and I don't think we would necessarily have that big a jump in price that the consumers would therefore abandon the category.

MR HARRIS: Fine. In some senses it's an unfair question to you directly, but since, as you say, you did refer to it in your submission, one of my notes on the side of that had been just that question, so I thought I'd ask it of you while you were here today.

MR WILSON (ACFA): I did consider it, yes.

MR HARRIS: Okay. Well, that's good, because as you say, you do overall come down in your submission in favour of such a level of support and I guess I wanted to look at it from that perspective because of the nature of the way it appears from the submissions being put to us that fruit is being used in supermarkets right now.

Assistance for fruitgrowers if they choose to exit the industry: it goes with this thematic of the nature of change having been as significant as you've suggested in your submission. It is for growers. Is there a current level of support to enable growers to make a choice to exit the industry?

MR WILSON (ACFA): No.

MR HARRIS: So at the moment there's none of the sorts of assistance - well, not sufficient anyway - schemes we've seen in the past that might have actually made an

adjustment difference here?

MR WILSON (ACFA): No, but even the ones in the past were not suitable for orchards.

MR HARRIS: Right, because of the long-term nature of the investment?

MR WILSON (ACFA): Because of the long-term nature of the investment and also the size of the properties. We have a strange situation prevailing at the moment that bare land is at a higher price than an orchard, and in some circumstances the value of their water is greater than the value of the land. The other thing that prevails is that for the majority of the owner-operators the orchard is their home, sometimes generationally so, and should they exit and they have debt, they could be in a situation of being homeless without any assets and so they are at this stage trapped and they need to trade out.

MR BARRATT: The focus of this inquiry, of course, is the cannery at Shepparton, the production of canned fruit and tomatoes, but the inquiry is being conducted at an industry level, so we have to say, "Well, what are producers of like products?" so I'd like your views for apples, peaches and pears on the extent to which fresh fruit and canned fruit are in competition with each other as a consumer choice; that is, the uses to which consumers put the fresh or canned product, whether it overlaps or is distinct.

MR WILSON (ACFA): It's very much a symbiotic relationship. I am aware that in years of oversupply that that can affect the consumption of processed fruit. We had a strange situation at the end of the drought where we had floods in northern Victoria. Those two wet summers had a lot of ramifications. One was the spread of pests. The other was that, whilst the peach trees didn't like wet feet, the pear trees and the apple trees loved it and it was very good for plum trees.

As a consequence, we had two of our better production years, and we didn't have hail, we didn't have any type of storm come through that interrupted, we didn't have a production failure, and we went into a situation where the returns for growers dropped and there was an abundance of fresh fruit on the market and at the same time consumption of the canned fruit dropped.

In a normal circumstance where you have the seasonal vagaries, you do expect that some unfortunate grower will have the bad luck of a hailstorm landing on their property, and of course his bad luck is the neighbour's good luck because it increases the demand for the product. That's a normal circumstance across the state. In those circumstances I don't think it has a significantly great effect, but when you do get the glut on the market, yes, it can affect the consumption of canned fruit.

MR HARRIS: Okay, I have nothing more. Do you have anything that we failed to pick out of your submission that you would like to highlight?

MR WILSON (ACFA): I did have some opening comments, but I think we've covered most of it.

MR HARRIS: Feel free to pick anything out.

MR WILSON (ACFA): I'll just have a quick - - -

MR HARRIS: A minute or two just to be sure that we haven't missed something.

MR BARRATT: And, as you think about that, have we covered adequately the question of what happens to the unwanted trees where farmers don't have the cash resources to either spray or pull?

MR WILSON (ACFA): We are in a very difficult situation with a proportion of those unwanted trees at this moment. Those that can do something to manage them are doing it, but there are some growers that have no resources. They've just been left with no cash reserves, no cash flow and no ability to borrow. They are the ones that, frankly, scare us, because regardless of who can and does do the right thing, because of the contiguous nature of our orchards, especially around the Shepparton area and in the Cobram area, even one orchard left unattended can create the conditions for a serious outbreak, let alone if we have many orchards in that situation.

We are two to three weeks away from budburst. That budburst normally requires the application of fungicide sprays to stop the spread of things like - or the incursion of black spot and brown rot. From then we'll go into the growing season where we'll be looking at controlling the various moths and aphids that attack the fruit, and that will run for some three or four or five months, and then if the fruit ripens we will have the conditions for the spread of Queensland fruit fly.

I presume you're aware that the Victorian government has changed how fruit fly is managed in Victoria. The government does not participate in an eradication program any more and, as a consequence, it's up to the orchardist to control it on their orchard. However, that does not mean that it will be controlled within the townships and so we've got a situation where we have it corralled at the moment, but we do fear a wider spread of that. There was one thing in my notes, if I may go to them.

MR BARRATT: Sure.

MR WILSON (ACFA): I had cause to have a meeting with one of the major retailers just recently and they said something to me which tickled me. My background is retail. I spent 20 years in the music and office products industry before going to work for the Mildura Co-operative Fruit Company to run their rural supplies division. That was also a company that was a major food processor - Sunbeam Foods, Sunbeam dried sultanas. So I have an understanding of retailing and warehousing and logistics.

At that meeting with the major retailer I was told that 80 per cent of their canned fruits range was Australian. I did not doubt the truth of that, but I was well aware of the selective use of such statistics. I asked what percentage of sales were Australian product by weight. I was not surprised to hear the answer was avoided.

During that meeting I also inquired how the performance of their buyers was measured. I did not get a satisfactory response. I suspect price plays a big part in their performance indicators. So when I read the retailers' submissions to this inquiry, I recognised the same rhetoric being employed as I experienced a couple of weeks ago.

The bottom line is how many tonnes of fruit are sold to consumers in Australian processed cans? How many tonnes are sold in imported cans? Regardless of what information is provided and how it is provided, that's the information I'd really like to see come out.

MR HARRIS: Thanks very much for coming to Canberra today. We appreciate your time and your effort in putting in a submission.

MR HARRIS: According to my schedule, even though we're a little early - that's productivity and we're in the Productivity Commission - Moira Shire Council, I think Gary Arnold. So for the record, please state your name and position so we can track you.

MR ARNOLD (MSC): Thank you. Gary Arnold. I'm the chief executive officer of Moira Shire Council.

MR HARRIS: Gary, I jumped in probably a bit early with the questions. Did you want to say anything at the opening of this or shall we just go on with a bit of discussion about what you told us?

MR ARNOLD (MSC): If I could take the opportunity, just by way of explanation, because I think the mere fact that local government is attending a Productivity Commission inquiry is probably somewhat unique, certainly in my experience as a long-serving officer in local government. John Wilson has already touched on some of the contextual background.

During the last decade our municipality, which relies very heavily on irrigated agriculture and orchards, has experienced drought followed by flood in March 2012. Now, that March flood event was one of those good and bad situations. John has alluded to the fact that the floodwaters suited one particular variety of fruit, but what I can tell you is that in the Moira situation, 78 per cent of our total area, which is just over 4000 square kilometres, was in fact underwater and that event lasted 19 days. I stood in an orchard in the south-east area of Cobram at the start of that flood event and the orchardist had already put off 150 pickers. Three weeks later that orchard could still not be accessed. So there were winners and losers because of that flood event. In the Moira situation we were losers.

That flood event was followed by, 12 months later, the first time a F3 tornado had been recorded and registered in Victoria. It hit two areas of Moira very badly - Koonoomoo and Bundalong. Our growers have been, therefore, through drought, flood, tornado, Queensland fruit fly as a result of the two wet summers, and also surviving the impacts of the Basin Authority Plan that's been introduced by the current federal government, which means a reduction in the availability of water for irrigated agriculture. In all of those circumstances, to put this into context, the industry has not been banging on the doors of our council. On this occasion they are. That's why I'm here. The industry is saying they need some respite, they need some breathing space, to reposition for a sustainable future. That's the context in which our submission has been written and that's why I'm attending today.

Perhaps just to finish the contextual background or setting, our council is one of 11 councils in the Hume region of Victoria. It's a large area but in that area of regional Victoria, and indeed regional Australia, there are currently only 39

businesses that employ more than 200 people. Clearly SPC Ardmona is one of them. Whenever there are significant job losses from what is in reality a select group of businesses, the impacts are felt right throughout the region, and again it's in that contextual background that I find myself here today presenting to you. Our people are hurting. Our growers are asking for the council's support and, as I've said, it's the first time in my experience that ostensibly as an industry they've come to local government. That in itself is somewhat unique.

MR HARRIS: The nature of this inquiry, as I made clear earlier, is a focus on whether - because it's a safeguards inquiry - imports are the cause of damage. Again, it's not perhaps a directly relevant point to you because you made quite clear your interest is the community that Moira Shire Council serves. Nevertheless, I guess since you're here I'd like to ask a question. We're in a safeguards inquiry. If we become convinced of the need for some action, the actions that we're potentially assessing relate to, generally speaking, tariffs - although there are other alternatives I guess - which is effectively a price rise, all other things being equal, for fruit in circumstances where that's not necessarily been seen as a sort of consumer trend in recent times, according to submissions put to us.

It's not necessarily something on which you may have an opinion but I'm asking everybody here today: if that were the circumstances, what's your likely feeling of the reaction to such a decision? A rise in prices is not necessarily the smartest way to go about inducing an increasing return of demand for fruit growing, for example. All other things being equal, if you increase the price someone will probably want to buy a bit less of it. Do you have an opinion on that? If you have no opinion, that's fine, because it's not necessarily a matter for the council but I thought I'd ask the question.

MR ARNOLD (MSC): Only from the point of view that I believe if, at the end of your inquiry, that was an action that was taken, my experience would suggest that regional Victoria and regional Australia would very readily and very quickly come to grips with why that decision has been taken. I can't speak on behalf of residents of the capital cities who may, from a distance point of view, struggle with why a decision of that type might have been taken, but certainly locally and regionally I suspect that it would be readily accepted and readily understood.

MR HARRIS: Okay, that was worth asking. Paul, did you have anything on that?

MR BARRATT: Yes. You made a point, which I accept of course, that the variety of disasters have not led to the - you know, the growers have absorbed it. They haven't come to the council seeking help, and now they are, in response to what they see on the horizon. What are they asking council to do? Are they asking you to help them directly or are they asking you to make representations to higher levels of government? What's the nature of the help, and are they coming as an organised

group of growers or individual growers to council? Can you just take us through a bit more of that?

MR ARNOLD (MSC): Okay. It's probably all of the above and I'm happy to respond because John mentioned earlier a crisis of confidence. Clearly that's what I'm observing locally with our orchardists; a crisis of confidence for a number of factors, I suspect. On Friday afternoon as I was driving around our municipality, particularly the Cobram area, I couldn't help but notice a tree pull happening in a number of orchards. The feedback that we're getting is along the lines of there's uncertainty in the minds of the orchardists about their future. I think that will be well documented by the end of today by people better placed than I am. A lot of that uncertainty stems from what is, I suspect, a market for different varieties that needs to be further explored and further investigated.

Earlier this year a member of our executive team was invited by the state government to join a trade delegation to the Middle East. The whole purpose of that exercise was to endeavour to identify new markets and, indeed, product type that might be suitable for export. From a local government point of view we're finding increasingly that as a result of the SPC announcement a few months ago, the cry for help is varied along the lines of, "We need financial assistance with the tree pull." We're concerned that if there is not a coordinated effort by either tree pull or spraying of the budburst that there will be a significant fruit fly issue.

They need assistance to help them to work through their business cases. They need counselling. We have a large staff in the community services area who in recent months have been having increased calls from local business people involved in the industry, seeking advice on where they can get assistance for family members.

MR BARRATT: So this is the social impact of the - - -

MR ARNOLD (MSC): Absolutely, and the crisis of confidence that John spoke of earlier today is the sort of thing that can decimate regional Australia because all of the efforts by federal, state and local government to provide opportunities for people to live and work in regional Australia depend on a whole range of awareness measures. From council's point of view we see this inquiry as part of a package of measures that may be required to transition an industry through a phase where it needs assistance.

MR BARRATT: Can I put to you a question that I put to John that relates to the provisional safeguards. There are two questions before us. Really one is whether the three years of tariff - the enabling adjustment takes place. Is there a critical situation, as Peter said in his opening remarks, that requires provisional assistance of up to 200 days? On the face of it, the canneries had a growers meeting and have told some people, "Your fruit won't be required," told other people, "Your fruit will be

required," so sitting in a comfortable warmish hearing room in Canberra you could say, "Well, everybody knows what their particular future is, and some trees will be pulled and some won't." John suggested to us it's not as simple as that. What's your feeling about the issue? He touched on that some people have been told they'll have a contract but might nevertheless choose to bail out. Are you getting any of that sense from the people that you're seeing, that your council is seeing?

MR ARNOLD (MSC): We're hearing that feedback but, quite conversely and possibly more frightening, we're hearing feedback from growers that are in denial; second and third-generation growers that are suggesting that they're not going to pull their trees. You know, they're clearly in denial. They've been told by SPC that their fruit is not required but they've taken no action on a tree pull. Whether that's because they don't have the financial resources backing or capability to do that is arguable, but what we're hearing is that there are a percentage - - -

MR BARRATT: Who can't face up to it.

MR ARNOLD (MSC): They just can't face up to it, yes.

MR HARRIS: We've asked John this question - and whether you concur with his remarks - but the impact is potentially therefore that even though the fruit may not be perfectly suited for the fresh fruit market, it may end up on the fresh fruit market regardless and potentially affect prices in that market too.

MR ARNOLD (MSC): Again, clearly I'm not in the fruit industry but I would suspect that there would be a strong case to suggest that that would occur because, from where I sit, at this point in time it's hard to see an alternative rather than let it rot.

MR BARRATT: The alternative might be a catastrophic breakdown where people just go broke and then you've got untended trees, I guess.

MR ARNOLD (MSC): Yes.

MR BARRATT: That was the only two pathways, properly tended trees putting extra fruit on the fresh fruit market or untended trees.

MR HARRIS: I didn't have anything more for the council. Do you have anything more for the council?

MR BARRATT: No.

MR HARRIS: We're ahead of time Gary, nevertheless, but you did say what you needed to say at the outset. Is that the position?

MR ARNOLD (MSC): Yes. I just wanted to make the point that despite everything that's occurred in the previous decade, this is the first occasion the industry have actually come to the councillors and to myself, as an officer of the council, with a cry for help.

MR HARRIS: We take that point. What you're really saying in your description at the outset of what might be considered to be a sequence of naturally occurring circumstances is that the farming community was capable of absorbing the naturally occurring circumstances but more recent events aren't the same, in their perception, as naturally occurring circumstances that they're set up to manage or resiliently cope with.

MR ARNOLD (MSC): Correct.

MR HARRIS: Okay, thanks, Gary. We appreciate your time here today.

MR ARNOLD (MSC): Thank you.

MR HARRIS: We have the member for Murray, Ms Sharman Stone. Sharman, are you okay to start now? We're running ahead of time.

DR STONE: No, that's fine.

MR HARRIS: I'll drag you up early. For the record, state your name and position and all that sort of thing.

DR STONE: Sure. I'm Sharman Stone. I'm the federal member for Murray, which includes the Murray and Goulburn Valleys where most of this fruit is grown.

MR HARRIS: I jumped in too early with John this morning and I asked questions and didn't let him do his opening statement till the end, so I disappointed myself, and I'm asking everybody if they want to make some opening remarks.

DR STONE: Yes, I'd like to, commissioner. I think it's important to put on the record in the first instance that, in the case of the climate, the soils, the topography, the infrastructure, we're looking at an area of fruit-growing in northern Victoria that is world's best practice. We have a Mediterranean climate which is perfectly suited for the summer fruits, the pome fruits. We grow over 80 per cent of Australia's pears in that area and have for over the last 50 or 60 years. Some of those trees are 90 years old now and still bearing. We have over 80 per cent of kiwifruit of Australia grown in that area.

Some of the irrigation infrastructure is over a century old now, but there's just been invested over \$2 billion in modernising that irrigation infrastructure. We've got very highly trained and skilled human capital, in that we've had now some three generations of orchardists; in one case four generations. You don't learn orchard-growing overnight and you don't learn it by going and doing a cert III at a TAFE college.

So you've got human capital, you've got the infrastructure for transport, you have more than 20 food factories in the area, but particularly this fruit preserving industry is based in the Goulburn and Murray Valleys. The area has attracted over the years a huge population of new settlers who could work in the orchards for cash, who could prune, pick, pack, work in the transport sector. So the economy is finely tuned to fresh fruit and export fruit production, and it's done extraordinarily well in the past; produced a rich, vibrant economy.

Then out of the blue a couple of years back we had the global financial crisis and the extraordinary hike in the Australian dollar; way above parity, as we all know. Suddenly it became very, very profitable for our big duopolies, Coles and Woolworths, to import preserved fruit, particularly canned fruit, but also vegetables - things like tomatoes - at less than half the price of the local Australian grown

product. This was an enormous temptation, of course, to be able to fill your generic home brands with product half the price of the local, and our labelling laws in Australia helped to disguise and confuse the fact of the source of that product.

When you have a label on a can which looks almost the same as Goulburn Valley - in fact, you call it "Golden Valley"; the label is virtually a mirror of the home grown product - that says, "Made from local and imported ingredients," and it's cheaper than the Australian product, well, no surprise you have plummeting Australian demand for your Goulburn Valley and Murray Valley product.

The problem is, of course, that there are no alternative markets for Australia pretty well in terms of the domestic market for preserved fruit. We have this huge concentration of buyer power in Australia in the form of Coles and Woolworths, and they were able to increase their generic home brands over that period with that amazing opportunity that was given to them, via the dollar in particular; I understand a 58 per cent increase in private labelling over that period of time. One of those two supermarkets says publicly it's going to go to 80 per cent private labelling, because that's where all their profits are, of course.

As you can imagine, the capacity of SPC Ardmona to export during that time was similarly affected. They went from about 30 per cent exports plus before the GFC to virtually zero now. So they had no capacity to say, "All right, we're being competed out of the business on our domestic market with the cheap imported product. We can now just focus on our exports." They couldn't do that either, of course, with the value of the dollar.

So the outcome of that was that in April this year, a horrific time - I think people are still in shock - SPC Ardmona, which is owned by Coca-Cola Amatil, an Australian owned company, went from orchard to orchard where they had contract agreements in place and personally face to face said, "We're terribly sorry, your contract is completely finished. We will take no more fruit next year," and that was about half of their 114 or so growers. The other half were told, "We're terribly sorry, we can take less than half of what you've been supplying us; what you expected to supply us with."

If you were told that news and you have already gone through, as you've heard, nearly 10 years of drought, two years of catastrophic flood, a tornado, low prices and you've been trying to survive with some fresh fruit varieties as well perhaps off your property - but the fresh fruit market is equally very low priced at the moment - then you can imagine that that is just economic catastrophe for those properties. Numbers of them had no borrowing capacity left or, because they had no contracts, they had no prospect at all when they'd go to a borrower and say, "Will you please lend us now to replant." The banks just look at them and say, "Well, excuse me, what's your viability?"

So we have this shocking situation where we've got a magnificent industry; there is a growing demand for clean, green, healthy preserved fruit type product, a growing demand for juices, and we can produce that but we have been totally decimated by circumstances totally beyond the control of these growers. SPC Ardmona, I have to say, has tried very hard. It's gone to alternative packaging, like plastic bubble packs and glass jars and squeeze tubes, away from the canning, but if it doesn't have some time to swing more into alternative packaging methods, then it just simply can't survive. That is our last Australian preserved fruit factory or manufacturing enterprise in Australia.

MR HARRIS: That's a good point to end on, because I was going to ask you about prospects for adjustment. As you know, a safeguards inquiry is a relatively narrow issue in its own right, focused on import impact. In your presentation - and there are a number of others we've already heard - we can see there's a wider variety of influences that are affecting communities that are supplying to the industry that's the subject of this safeguards inquiry.

But the adjustment question is a pertinent one. I said at the outset of the opening remarks that we have to focus on a provisional level of assistance as well, but certainly for the medium term, for the prospect of safeguards action that might last some years, there's a need to consider whether that's likely to provide the circumstances of adjustment for the industry which would suggest a recovery and a sustainable industry in the long term.

DR STONE: Yes.

MR HARRIS: I guess, given your particular position - although we will ask others who've got much more detailed knowledge, presumably, of prospective plants - I thought I would ask you about adjustment planning more generally, because it is relevant to this inquiry, although it's relevant more to that medium-term question rather than the immediate question.

DR STONE: Yes. Let me say, in terms of my own personal expertise, my doctorate was in international food trade. So I do have a lot of experience of how food trade functions over the longer term.

In terms of adjustment, the point about this is that we're talking about fruit trees, not vegetables. It's a long-term investment before you get your returns, if you're changing variety, for example. If these growers suddenly said, "Now we'll grow nuts, now we'll do persimmons, now we'll try pineapples with climate change" - the problem is we've got a lag time before they plant the new varieties and they're commercially returning for them and a huge investment along the way.

We can write that off and say, "Well, Australia is no longer going to grow fruit commercially; it's all too hard." If we're deciding that, well, let's just walk away from these people. That's what's going to happen. But if we understand that Australia has a competitive advantage in fruit-growing if we get this right now, then we can bud those trees - they can be budded to different varieties right now - or, alternatively, we can develop right now different markets for that output, including, for example, cider, the perry industry. I have people now coming to my office saying the fastest growing new beverage fashion is brewed cider; perry, the pear juice product. There is a growing interest in snack foods which are fruit, not just sugar confectionary based type sweets.

So there is potential and real demand in the north, we're told continually, where we've got markets in India, China, all through South-East Asia, where the populations are becoming better fed, better informed about nutrition, who do want fruits - better product - rather than the traditional things they've done on just a sugar based confection. So there's enormous market potential. That's been identified in the National Food Plan that was released very recently.

But we have this hiatus right now where the value of the dollar, the massive influx of imports and the supermarket duopoly market power have all come together to potentially stop us in our tracks. Our adjustment will require at least a minimum of two to three years, if not five years, of breathing space where people tweak their varieties, perhaps have different systems of growing, where they go away from less dense plantings to more dense plantings, use some of the Tatura trellis type processes. You're familiar with those if you've been to the area.

We also have to give the industry time to change its own packaging technologies and its own product offerings. All of that needs some time. As I say, it's not like growing lettuces. They can't change in six months and say, "Well, lettuces were washed out, let's do carrots." It takes five or six years.

The other thing I mentioned to you at the beginning was human capital: our local workforce, our local owners and operators. They have been in the business, many of them, for many years. Some of them don't have any debt. They're still broke right now but they don't have much debt, because they bought these properties years before. A lot of those are younger. I was stunned. When I went to the first grower meetings, after SPC Ardmona announced the catastrophe - I'm used to seeing older farmers, I have to say, in the wheat industry, the wool-growing industry, the beef industry - sitting in those sheds hearing that shocking news were young men and women, in their 40s, with little children.

They're a young generation, who need now to have some breathing space, as they call it, so they can adjust into a new industry pathway, whether it's different types of trees or whatever. They're not 115 75-year-old growers who are looking for

an easy retirement package. These are young agribusiness people - farmers - who are superbly skilled, who have massive cool stores, picking machinery, packing machinery. They've got incredible investment on their properties. They've got cooperative arrangements with their neighbours, where they work with one another in their infrastructure and their picking and pruning activity. We've got some 10,000 contractors, who include pickers and pruners, who are all geared up to handle this industry.

So, yes, they can adjust. They're very, very tough-minded. They're used to floods, fires, famines, tornadoes, pestilence and disease. They're resilient, but they can't survive a zero contract or half a contract where their costs are the same.

MR HARRIS: I have asked everybody to date, and I guess I'll continue to do it: one of the responses that an inquiry like this might end up with if we find the circumstances justify it is a tariff increase.

DR STONE: Yes.

MR HARRIS: In fact, the firm has sought such a thing, which is a price rise.

DR STONE: Yes.

MR HARRIS: It means the product that comes from farmers that you represent may therefore enter the marketplace at a higher price, all other things being equal. I'm asking everybody their view about that as a potential response.

DR STONE: Yes.

MR HARRIS: Do you have an opinion on this?

DR STONE: Yes, I do.

MR HARRIS: If you don't, that's fine. Some people will have an opinion, some won't.

DR STONE: Commissioner Harris, I do have an opinion. I think in Australia our two big supermarkets, Coles and Woolworths, make a big marketing drive about price. We've got the "down, down, down" marketing campaign from one and the "half price" from the other. They are competing on price - not quality or choice, but price - and they are unashamedly aggressive about that. That's what their shareholders see is in their best interests.

I think the Australian consumer actually is a little different. They want good value for money, absolutely, but they also want a choice of Australian grown

product. The Australian consumer actually has a very, very strong sense that they want safe food. They're concerned about imported products' food safety. They read with horror stories about the Chinese babies who had the infant formula disasters in their country. They get concerned about information in Australia about our quarantine service contraction and inspections at the ports now. In fact, the supermarkets do understand this and in their marketing take advantage of it as well. You'll see the pictures of the farmers, and the supermarkets try and say, "Look, we are supporting our farmers," and they have photos of a farmer and his children. They're aware of this public perception of a preference for Australian product.

So I think if the Australian public understood that their home grown were going to be a few cents more but the cost - the problem is, if they are not a few cents more, no Australian options, the Australian public will say, "We'll go with supporting our Australian farmer." I don't think, "Oh, cheap," is the only driving force in the Australian psyche when it comes to buying food. It's having an Australian option, it's having clean, safe food, fresh food, and it's also a sense of a fair go.

I think a lot of Australians are quite worried about the fact that Australian farmers are, many of them, trying to live where they can't put food on their own tables. I have big food banks now in Murray, in my electorate. Numbers of my farmers are receiving food parcels, and that is just shocking to contemplate but it's the reality. There are a number of our farm families whose children can't afford to go to university any more. We've had a plummeting of those being able to apply for a tertiary education, because the costs of leaving home to study are just beyond the family. We've had a contraction of people putting their hand up for higher education. We've got over 200 empty shops; empty shops in Shepparton now. The retail sector is hit for six.

The ongoing impacts of the farm impoverishment are absolutely, I think, unacceptable in a country like Australia. When you talk about that with metropolitan based people, they're sympathetic. They don't say, "Oh, bad luck. We need cheap food. Just get over it and let's bring it in." No. I think there is an empathy and I think in Australia the supermarkets understand that, but they are locked into a competition on price. They've had this fabulous opportunity with the high dollar to bring in this dirt-cheap product from South Africa, China; Italian tomatoes. A lot of it's subsidised. That's another story. So they've taken advantage of that. As I said before, the labelling laws have enabled them to obscure those sources and, at the end of the day, that's meant the collapse of our Australian preserved fruit industry.

The timing is critical. That 200 days is of critical importance. Every day that goes by, a farmer in the Goulburn and Murray Valleys has to say, "Do I push my trees out today?" The budburst John talked about - there are already blossoms. On the way to Echuca on the weekend I saw fruit trees in blossom. Those farmers know

their responsibility to their neighbours and for other product on their own orchards in terms of spraying. They don't have the dollars. They have no more credit left with the farm supply merchants.

You can imagine the stress on those farmers, as responsible agribusiness people. So we need this support urgently, because we need SPC Ardmona to be able to go back to those farmers and say, "Listen, it was catastrophic. We told you we couldn't take any fruit next year. The good news is, Coles and Woolworths are buying again, and luckily you saved those trees because we can take a bit more again," or, alternatively, we'll have those Beechworth cider brewers or those other manufacturers coming along and saying, "Wow, you've got 7000 hectares of pear trees here. We can take your juice."

But at the moment we're on this cusp where those growers have to push those trees in or face prosecution, in fact, for failing to properly pest manage their trees. There's legislation in place in the state - and it's been used before - if you don't spray your trees. Imagine the shame of some of these families being prosecuted because they haven't sprayed their trees, but that's what I'm told by some state government officials is what they have in line. That is just shocking to contemplate.

MR BARRATT: Could we see this question just a little further. We've got to look at two issues. One is the case for safeguards as defined under the agreements of a period of up to four years.

DR STONE: Yes.

MR BARRATT: In order to recommend that, you have to have confidence that an appropriate transition would take place so that at the end of the four years, or a lesser period, you have an industry that doesn't require that level of protection.

DR STONE: Yes.

MR BARRATT: Otherwise you've just delayed the inevitable and you've imposed higher prices for no particularly good reason.

DR STONE: That's right, yes.

MR BARRATT: The second question we have to address, which you've just touched on, is whether there's a case for provisional safeguards, and that swings around the sorts of things you've mentioned, or the partial answer to it. But that swings around the question of whether, while we're coming up to 20 December, or whatever our deadline date is to write a report on the full safeguards, there's damage that's difficult to reverse occurring in the meantime.

DR STONE: Yes.

MR BARRATT: As I put it to previous witnesses, ostensibly the cannery has told some people that their fruit is not needed and it's told other people that their fruit is needed. So, however bad the news is, people have certainty about what their particular fate is. So some people will be pulling trees, or doing the best they can, and others won't.

If we could take the first part first, looking at the long-term situation, do you have confidence that the cannery can make that adjustment and are there other factors we ought to know about that would support that adjustment process? Are there state or federal programs or other things going on in that region that would add to whatever confidence you get from looking inside the boundaries of the plant that form part of this picture? Are we on a burning deck and what is the nature of the damage that you see? Just elaborate a bit more on what we saw.

DR STONE: I will, yes. There's no point in just prolonging pain, I agree with you. If this is a dead industry, then there's no point in giving them another couple of years of hanging on with food parcels. That would be cruel and ridiculous. The point is, this industry is now nearly a century old. They have never before had massive industry support or any industry support. As you know, Australia and New Zealand are the two countries in the world who do not subsidise their agriculture.

So these growers have been making it alone until this catastrophe. SPC Ardmona was an old cooperative. You know the history of it, I'm sure. They have been eminent in exporting in the past. They've been innovative. The Ardmona factory, which is in Mooroopna, which is part of SPC Ardmona, was the first to introduce the plastic bubble packs for preserved fruit, so they were very innovative. They have been always seeking out new markets, new ways to do things.

Just next week we'll be celebrating the fact that SPC Ardmona is now, for the first time, going to use Australian grown navy beans in their baked beans. This is a bit of a secret: we've always imported the contents of Australian baked beans. SPCA has now got the Kingaroy area growing them, and this is a major advantage up in that region and, of course, for Australia's own food self-sufficiency.

So they are moving and they're doing a very good job. Being part of Coca-Cola Amatil, that's a very experienced company in terms of marketing; the beverage sector, as well as the snack sector. So they do have the intellectual capacity, I believe. They also are now in the process of working on ways to improve their energy efficiency in the factory. Food preserving is very energy-intensive, as you know. It depends on cooking, steaming, washing and all sorts of things. So they've substantially improved - in fact, I think they totally now recycle all their water use in the factories, and their energy use is now being totally reconfigured so

they're going to be very low energy use.

Put all that together - and I've talked about the demand from the more affluent populations to our north; the National Food Plan. We've got a \$2 billion investment in our irrigation infrastructure happening in the area. We've got new varieties coming on all the time with the fruit. We learnt a long time ago how to pest manage. It's a catastrophe waiting to happen right now, because we can't afford it, but we know how to do it. So Australia's chemical use in our fruit is world's best practice. When you check our fruit, we have some of the lowest levels of chemical use. We are so proud of that record, which is why it's so heartbreaking at the moment with this spray catastrophe.

You talk about the future. There are two programs, and John helps administer these through the Canned Fruits Council or through APAL, Apple and Pear Australia Ltd. One is called Future Orchards and the other one is an innovative young agribusiness farmer initiative, where our orchardists participate together to change and evolve their on-farm business. These are quite successful and they can be expanded. They tend to focus on fresh fruit at the moment but they can very easily be directed so that our farmers can focus on the preserved fruit side as well. We also have the Goulburn Ovens TAFE and we have La Trobe University in our local area, so we have the training capacity to further evolve what we do.

So I have no doubt that, if we don't have an emergency safeguard action, yes, it is over. We can't survive. There's no doubt about that. As you drive around the orchards now and see the smoking heaps of burning trees, there's no question of what that is going to deliver to us. But if we get this swift action, we will be able to save these orchards - which in turns saves, of course, the industry - so that they can be budded to a different variety or they can be hibernated with sprays which give them a blossom drop. It gives them 12 months to work out what to do next, or they can replant.

They will need some additional assistance financially to do that, many of them, because they've been hit so hard with this catastrophe, but when you think of the automotive industry, you think of Ford, you think of Holden, you think of other industries in Australia where we say, "This is an investment. This isn't charity, this is an investment in jobs, in innovation. It's an investment in a regional economy," then why wouldn't you do this? It's just extraordinary to think we even have to ask the question.

We haven't really talked about numbers. I'm sure others have given you these numbers as well. We have 650 effective full-time positions in the factories alone. If you multiply that, we're talking about billions of dollars worth of income generated out of this industry per annum and we're talking thousands of jobs. So it's not just the sadness of this orchardist pushing his trees over. The multiplier impact of that on

our regional economy is very significant, and you can't imagine many governments wanting to walk away from that when the investment in the form of some duties for several years is not catastrophic, you would think.

I would argue that the World Trade Organization understood that when they introduced these measures, understood you can have these problems, and deliberately set about creating these measures so industries weren't decimated and destroyed when they needed some time to adjust to a new economic or other environment.

MR BARRATT: Thanks.

MR HARRIS: Okay. I didn't have anything else. Is there anything that we failed to draw out that you needed to get onto the record? We're on the record here, so - - -

DR STONE: Yes, that's right. I think the timing I just need to restate, because you are here talking about an emergency action. December is too late. I've said that before. I need to urge you to hasten your deliberations because of the seasonality of this problem. The buds are bursting. Not to put it too dramatically, but literally the biosecurity issue is critical. As well, every month that goes by while Coles and Woolworths feel unconstrained and have that wonderful cheap product that they can access means more generic brands filled with imported product and less capacity for our home grown product to survive commercially.

MR HARRIS: Great.

MR BARRATT: Thank you.

MR HARRIS: Thank you very much for your attendance here today.

DR STONE: Thank you.

MR HARRIS: We're going to break for morning tea now, for a short period anyway. I think then SPC is next up. Let's break now.

MR HARRIS: Just for everybody's benefit while we wait for Paul to join us, John Brady from Kagome - I don't know whether we're circulating a list of participants. John is not on the list but he's come up today and he's put in quite a useful submission on the nature of the tomato industry, so I think with Peter Kelly's kind permission - who was next up - we'll just hold Peter back for the moment, restrain him and let John have a - I'm just explaining how I've changed the batting order, Paul. So we'll let John Brady from Kagome appear on the record. John, you're on, if you could just identify yourself for the purpose of the record.

MR BRADY (KA): John Brady, CEO, Kagome Australia. Thank you, Peter; thank you, Paul. Thank you to the commission for allowing me to step in. Thanks to Peter also for letting me take your spot. Given we've also made a submission, I'd like to repeat some of the points that we made at the first hearing and back up some of the documentary evidence that we've put into the submission. So I'm here today to speak on behalf of Kagome as a grower and processor, also Billabong as a grower and processor, and also 10 independent growers who grow on behalf of Kagome. We submitted a joint industry submission reflecting really the impact on us, of course, of the issues that SPC Ardmona are going through, since they are an important and large customer of ours.

Let me just talk about the points that we raised previously. Defining the industry, we looked at the performance of our industry in this country, particularly on the growing side, and we identified, when we spoke in Mooroopna, index versus the USA. Australia does very well in terms of yield indexed against the USA as well as in terms of price per brick indexed against the USA, which is the world leader, and particularly well against Italy, which is one of the source countries for these low-price imports. Just to give you some quantum, in terms of if we indexed against 100, Italy in terms of yield would be 71 and Australia in 2012 was 93. Indexed against price, Italy was 109 and in 2013 Australia will be 91.

MR HARRIS: John, could you clarify the source of this?

MR BRADY (KA): Tomato News, which is an international organisation and publication. It's freely available. You can get it on the Internet and all tomato processing countries contribute their figures, which are audited by their local industrial associations, to this organisation. So, as I said, on the indexation in terms of the performance of Australia to be able to produce competitively-priced tomato products for both paste and dice, we stand well, particularly against the Italians and quite close to the Americans. In terms of yield we're almost exactly the same as the Americans and a long way ahead of the Italians.

In terms of the damage to the industry, I think I quoted the Weekly Times article on 20 March of this year of the number of food processing industries or food processing companies that have either let go people or have actually closed in the

Victoria/New South Wales area since 2009, and the list is quite extensive. I think in terms of the hurt that the industry has suffered, it's a good indication and of course the names include Heinz and Rosella, McCains, Windsor Farms, Sunbeam Foods, Berri, even SPC themselves in Mooroopna, as well as National Foods. So for us as a processor and for us as a grower, that's a reduction in the number of customers that we have and that's a significant hurt.

In terms of question 3, "Was it unforeseen?" today the point I would like to make is that this was a perfect storm. You've got world production peaking in 2009, you've got an exchange rate that started its run in 2009, you've got a GFC that really began to bite in 2009, and you've got the severe weather conditions that we faced with the floods in 2010-11. I'm not sure how many people could have foreseen those four factors all playing as one at that time, hence we hope we've addressed the question of, "Was this unforeseen?" Certainly for our industry. In terms of, finally, the hurt on us and our growers - I think I quoted these numbers when we spoke in Mooroopna - our sales to SPC Ardmona in terms of the Australian dollar is up, index versus 2009 - 135. Our average sales price stands at 89.7 and our volume stands at 56.5, so almost half our volume, which is quite significant.

I also put into the document the proportion of paste and dice by customers and obviously I didn't indicate which customers were which, but in terms of the output of our factory, and therefore the output of the growers that submit their tomatoes to us, our paste production since 2009 is up 19 per cent but today a quarter of that is what we would call speculative sales. That's product that doesn't have a customer, whereas in 2009 there would have been no speculative sales. Our dice production is down 32 per cent, and again about a little more than a quarter of that is in speculative sales, ie the constraints and the concentration of the industry has meant that we've got fewer customers competing for very much the same sort of marketplace. So I hope that sort of confirmed what we spoke about in Mooroopna and backs up some of the content of the submission we made.

MR HARRIS: If I could just start out, the diced product - the other thing that I think was useful clarification in your oral advice when we spoke to you - I can't recall specifically whether it was in the submission or not, but the diced product is the actual higher-margin product.

MR BRADY (KA): That's right.

MR HARRIS: So when you're saying that Kagome has invested locally and shows confidence therefore in Australian tomato production, and your figures on global comparators show that therefore there's a logic for that, tomato production seems quite efficient in this country - but the bulk of your product is going into paste, which is growing but is a low-margin product, and what's declining is diced product, which is the high-margin product.

MR BRADY (KA): Yes.

MR HARRIS: So ultimately I think you're expressing a view which is that if this continues, this pressure on your business model because the high-margin product is obviously sustaining the low-margin product across the complete suite of - - -

MR BRADY (KA): That's right, and of course it's the dice product that's being imported, particularly in cans, that I guess is the feature of this commission inquiry.

MR HARRIS: Right. And in terms of the perfect storm that you alluded to and we've heard quite a lot about today, of course the focus for safeguards is on imports themselves, and so while there are multiple factors that you've alluded to that can cause damage to the nature of the industry, it's the imports that's the focus primarily for us. In recent times what's your perception of the import presence in the marketplace?

MR BRADY (KA): My perception is that it's growing and it's an ever-increasing factor in the marketplace that other customers, other than SPCA, are actually having difficulty with addressing as well. SPCA are not unique in this situation but they're the feature of this inquiry. But across other product sectors and outside of the tariff code that is restricted within this inquiry, other customers are facing exactly the same situation.

MR HARRIS: Right. John, your business isn't really at the retail level, if I understand correctly.

MR BRADY (KA): No, we have no retail product today.

MR HARRIS: A lot of the information given to us to date has been at the retail level and I think we'll subsequently get into that with other submitters, but to the best of your knowledge - you're talking about the wholesale market. When you sell into the wholesale market has the same import presence been obvious?

MR BRADY (KA): Well, it's not the wholesale market. We sell to food manufacturers like SPCA, like Mars, like Simplot and others, so the food manufacturers obviously reflect the imposition of imports in their marketplace, in their end markets, back to us in terms of the orders that they give us for paste and dice. So it's how they're reflecting the impact that imports are having on their sectors is how it impacts negatively on us. The point I was making on the price and our performance productivity-wise is that we are not the issue. The processing or the growing of tomatoes is not the issue for our customers in terms of their competitiveness in the marketplace. That's, I think, the critical point.

MR HARRIS: I think I recall from some submissions a suggestion that also the tomato industry is subject to occasional glut of global production but I don't recall that from your submission. Kagome is a global firm and I think you explained - certainly explained to us anyway, but for the purposes of those who are otherwise using the transcript, Kagome is a global firm so it has a perspective on the global industry.

MR BRADY (KA): Yes.

MR HARRIS: Is this occasional glut issue a significant driving factor or is it the sort of thing that most businesses that want to be sustainable in the processed tomato market have to just absorb from time to time, that there is going to be this - - -

MR BRADY (KA): It's cyclical, no doubt, globally, but I guess what happened in 2009 was the last significant peak in global production. Obviously combining that with the GFC, particularly with what happened in Europe, there would be many European producers and processors who would have had to look for markets outside of Europe in order to sell the inventory that they had produced, based on the glut that they had. So I guess Australia looked like an attractive market to send product to at a pretty low price in order to send it elsewhere outside of the EU, given the GFC that was impacting retail food and other consumable sales in Europe.

MR HARRIS: Right.

MR BARRATT: John, in looking at the issue of short-term damage, the three people that we had up before you, for intuitively understandable reasons the focus was on fruit trees because we understand that when you pull a fruit tree, if you want another fruit tree it's going to be some years before you have it, whether you're replacing existing ones or going for a new variety. I think a lot of people would assume that, tomato being an annual crop, you can enter and leave the industry pretty quickly. From reading the submissions I get the impression it's not as simple as that but I'd like you to describe to us what's involved in entering and leaving the commercial production of high-quality tomatoes.

MR BRADY (KA): It's a good question.

MR BARRATT: I'm not talking about backyard stuff.

MR BRADY (KA): We're in the processing tomato business. To enter it it's about \$6000 a hectare of investment, and effectively why we're able to produce the numbers that I've just quoted in terms of yield and price is that we're 100 per cent subsurface irrigation. There's no place in the world like that. In fact, in Italy the number would be only 10 or 15 per cent. Even California, which has actually copied or taken our idea from Australia, is still only maybe 60 to 70 per cent subsurface

irrigation. So I guess the investment that the growers, ourselves, and government in this country has made in subsurface irrigation, in utilising in order to drive tomato processing and production, would be lost if our growers moved on and used that infrastructure for other products which are much lower both in revenue and in income, and lower value from the consumer's perspective.

For example, we have one ex-grower, quite celebrated ex-grower, who's growing now maize for basically cattle feed, using the same subsurface irrigation, because of the risk profile and return profile that processing tomatoes don't deliver today because we've had this drop in the higher-margin products and that move from dice to paste. That's a reflection of what's happening in the marketplace. That domino effect back from the retail market is having that sort of impact. As a community we're getting a lower-class product with lower revenues and lower income being grown on very high technology and high infrastructure in terms of cost and capability.

MR BARRATT: What would it involve for him to come back to growing tomatoes if he made a decision he wanted to? What would it involve?

MR BRADY (KA): He's still very much involved in the industry. In fact, he's just been over to California to have a look at what's happening over there because they're currently in the process of their harvest. He, I'm sure, will come back to the industry once the proportion of dice and paste changes. If our ability to sell more dice to customers like SPC Ardmona increases, he'll be back because that will ensure the return on investment.

MR BARRATT: It's a fairly simple step to go back?

MR BRADY (KA): Once the infrastructure is there and it's been maintained, and he's one of the growers that's actually maintained it, the maintenance of the subsurface irrigation means you just don't let mice and other things at it, but if you do that it can last 20 years.

MR BARRATT: Okay, thanks.

MR HARRIS: Just to stick with that theme then, the reason a grower exits the industry is not that the price for tomatoes per tonne has remained pretty stable, which it has for a long period. It's not really the price, it's just the volume. It's the question of insufficient volumes being taken by a processor, either yourselves or SPC itself, that has caused exit of growers.

MR BRADY (KA): It's obviously always going to be the margin too. It's the margin of profit that we can deliver back to the grower in terms of the mix of the products that we're able to then sell. So that's why the paste/dice ratio is so critical.

We're looking to grow volume in this marketplace. The total market absorbs about 550,000 tonnes and we're only 200-odd thousand of that, so there's plenty of scope, particularly if and when safeguards are imposed. We believe there will be more of the market that we can capture. I think you asked the question earlier about if this meant a price increase - - -

MR HARRIS: Yes.

MR BRADY (KA): I think that the consumer today - and I heard the points made by Sharman Stone earlier - the consumer's expectation is that the product they're getting right now is an unreasonably low price, I believe. If you compare against a can 400 grams of other food produce in the marketplace, diced tomatoes at 80 cents doesn't make sense.

MR HARRIS: Yes, but nevertheless the thematic would be that price could rise and yet at the same time volume could rise as well.

MR BRADY (KA): Yes, because it would be an equal playing field.

MR HARRIS: Yes. Okay, it's a relevant and pertinent point, I think, as we go on. I appreciate your view. I haven't done the preparation on your submission, I'm afraid, John, but I think we've been through the majority of it. Perhaps can you just tell me then the nature of - no, it's a retail question, it's not really - my residual question is on retailing and you're not at the retail level, are you?

MR BRADY (KA): No.

MR HARRIS: So I really can't ask you that either. Okay, Paul, did you have anything else other than that for - - -

MR BARRATT: No, I think that's it.

MR HARRIS: Okay. Things we have missed that you didn't pick up right at the start?

MR BRADY (KA): There's nothing that I think we've missed at this stage. I think the unforeseeable nature of what's taken place, particularly for my company which bought in in 2010 and paid a significant amount of money for the then-called Cedenco, looking at the industry at the time and the array of customers that were available at that time, you would have thought this was probably not a bad investment. Since then of course things have dramatically changed and it's changed primarily because of what's happening at retail, and therefore the injury that's been suffered by our customers.

MR HARRIS: Okay. Thank you very much for your time today.

MR BRADY (KA): Thank you very much.

MR HARRIS: Next we have SPC. If you could all identify yourselves for the purpose of the record, and then we'll go on.

MR KELLY (SPCA): Thanks, Mr Chairman. Peter Kelly is my name, SPC Ardmona's managing director, and I have with me today Shalini Valecha from SPC and our consultant Dr Selwyn Heilbron, who advises us on economic and policy matters. If it's okay, I'll make a few comments at the start.

MR HARRIS: Absolutely.

MR KELLY (SPCA): My company certainly welcomes the opportunity to be here today providing our application for safeguards. We have requested the immediate application of provisional safeguards, which are different from full safeguards, and we requested 30 per cent for the retail canned tomatoes and 45 per cent for a specified subset of multi-serve fruit products, and we've asked for this for 200 days, consistent with the WTO Safeguard Agreement.

Should the commission support our application, it would be followed by full safeguards which we propose would be phased out over three years whilst SPC undertakes an adjustment plan that aims to enable us and the industry to be more competitive against imports without the tariffs. We believe even a higher level of tariff could actually be supported should the commission wish to ensure that the safeguard measures have immediate and full impact on fixing the damage.

Of course, the full details of our request and all the information that supports it have already been disclosed for everyone to read and so I'll just focus on some of the key points.

The retail market for processed tomatoes and multi-serve fruit in which we operate has been hit by a perfect storm, as many of the previous presenters have said. We are now virtually the last remaining and last major, at least, processor in Australia. There are a couple of reasons that created this perfect storm. First there was the rise in the Australian dollar to record levels, which in turn fuelled imports to record levels.

The exchange rate movement that we have seen was both completely unexpected and unforeseen because it was driven by three factors: a once-in-a-lifetime boom in Australia's mining sector, the Australian dollar effectively becoming a reserve currency of other countries and, perhaps most unexpectedly, the printing of money - or quantitative easing, which is a term I never even knew the meaning of - on a large scale by overseas central banks. None of these factors were foreseen by, I'd put it to you, almost anyone in business.

It's our contention as well that many of the products at issue in this case have

been further cheapened by being dumped in Australia and this, of course, is against the WTO rules. SPC has only had time to prepare two antidumping cases and both have been submitted to the Anti-Dumping Commission, who have already agreed that SPC has a prima facie case for dumping of retail canned tomatoes from Italy and multi-serve peaches from South Africa. They have agreed to investigate and this process is currently under way but could take up to six months to conclude, which is too long for us.

The last factor that caused the perfect storm was major supermarket chains moving strongly from 2010 to import products which had been cheapened by the exchange rate and, I would say unknowingly to them, also cheapened by dumping, to progress their internal objectives of developing private label brands in the supermarkets.

The consequence of these three drivers is that imports took a significant market share from SPCA, reducing SPCA volumes and scale, which then in turn increased our cost to manufacture. At the same time, SPC has had no option but to provide increased promotional payments to supermarkets in a desperate attempt to prevent even worse share losses and more damage to our industry.

It's important to point I think to the commission that SPC has unique access to information in this market. We are a supplier to every retailer in Australia, every retailer including Aldi, and we buy all scan data in Australia. As well, unlike even the retailers themselves, we are a very large consumer brand organisation and we do research on consumer consumption behaviour of these products in Australia and in the Australian context and as such we have information on consumer behaviour that no-one else has.

It is clear that imports have risen significantly and in relative terms in recent years, causing serious damage to SPCA, as we are the only significant processor. Let me give you a few stats. In the case of the tomato category, imports as a share of the retail canned tomato business have gone from, in 2009, 63 per cent to the end of 2012, 83 per cent, a 20 share point increase in the relative contribution of imports. In multi-serve fruit it has gone from 17 per cent to almost double at 32 per cent, and one of the important subcategories of multi-serve fruit for us is the canned multi-serve fruit segment, where it has gone from a 21 per cent share of the business to a 41 per cent share of the business, which is a 41 per cent growth over that time. So it's very clear that imports have been entering the market and entering very, very quickly.

As a result of these imports, SPCA's profitability has evaporated and a continuation of these trends threatens to overwhelm the industry in 2013, with permanent implications. Critical investment decisions have to be made now, both at the farm gate and at plant level. At farm gate, trees are a long-term investment, as

we've already heard from the Growers Association today and, as a result of the damage caused by imports, trees are being removed which would not otherwise need to be removed. These trees are highly unlikely to be replaced if they are removed and an urgent decision on safeguards is required to prevent this long-term and permanent damage to our industry's productive capacity.

In addition, fruitgrowers are facing the critical decision on whether to spray their trees. This is occurring at a time when their financial position has been undermined by imports. Unless farmers spray their trees in the coming weeks or pull trees out altogether, there is a risk of severe insect infestation and biosecurity damage across the region.

At a plant level, SPC is facing critical decisions on whether to continue its operations. We have a potentially sound future in this industry with the backing of one of Australia's most successful manufacturers in CCA. We have been a major innovator in processed food production despite the damage that has been caused and we have more innovations in the pipeline - many of which, I might add, the commission might have seen on a confidential basis during a recent facility tour in our facilities in Shepparton.

Importantly, our parent company, Coca-Cola Amatil, is seen as being one of the great innovators in our industry. CCA has been rated the fourth most innovative company in Australia. You will see from many submissions the innovation topic is brought up. There will never be a presentation that I give where I don't say innovation is one of our highest priorities. It always has been and always will be, and we have a great history of being an innovator.

Importantly, our parent company though cannot continue to support these innovations and investment in the face of mounting losses year on year. It is our view that if we fail in this application for safeguards, no other food manufacturer in Australia will invest on an SPC scale again. Closure of SPCA's facilities is in prospect unless provisional safeguards provide us with a breathing space, followed by full safeguard measures and the implementation of our adjustment plan. This is precisely the purpose of WTO safeguards agreements.

We note that many submissions made to the inquiry from other countries' trade officials include implied threats of action against Australia if the commission finds in favour of our application. The countries involved are, of course, doing their best to protect their industry, as all good trade officials probably should. It is revealing to note, however, that some countries protest strongly against our application whilst at the same time continuing to impose tariffs of up to four times higher than Australia does on products SPC might seek to send to their markets. We urge the commission to resist any undue pressure that may be being applied in this way so the commissioner can assess our case impartially and on the underlying facts and against

the WTO safeguard rules.

MR HARRIS: Thanks, Peter. Stop me if I get into confidential information, because of course I have read the submission in its confidential version and non-confidential version and - - -

MR KELLY (SPCA): They're similar.

MR HARRIS: Yes, and occasionally if I stray, you need to say, "Well, I can't respond to that in this open session," but what I'll then probably do is say, "Well, can we talk about that separately and can you maybe provide us a bit of information?"

A lot of the information in your submissions is cast at this retail level and one of the jobs the commission will have to do is take the generic import data and assess that, and there's quite a differentiation in some years between the impacts that your information very much characterised, and if I can keep characterising, as the retail level - there are differences between that and, if you like, the global import data for Australia as a whole, and we will have to do something about bridging that gap. The focus though for you is on the retail level, I am assuming, because the bulk of your production does go to retail.

However, we did come across one piece of information which suggested that it probably wasn't as large as I had initially guessed from the factory visit and stuff like that. So do you have some comments about how much goes into - if I could stick with that retail-level production, and how much goes into other? I think I said to John Brady earlier from Kagome that he was in wholesale and he said he wasn't in wholesale, so I'm going to get that descriptor wrong, but what I mean is retail versus everything else. Can you give us a feel for how - - -

MR KELLY (SPCA): Yes. I would describe it as, we don't really have very much industrial. We don't supply to industrial companies as John would. John would supply to Simplot, who would then add it into another product that they're making. We typically split our market into supply to supermarket retailers who sell to the final consumer or to, as Peter said, catering companies or larger food preparation people who might make meals for other people in the catering environment.

I think of our business mainly on a profitability basis and it's almost entirely a retail profitability. We don't make very much money at all out of supplying caterers; it hardly has any impact. The same goes with our export markets of old. They were mainly to caterers. Rarely were they directed to retailers overseas.

MR HARRIS: So retail level drives your profitability, and so in terms of the data you supplied us - and again I'll just refer to it generically, but you did supply us with profitability data - it's driven from retail level because that's your primary source of

profit to sustain the business?

MR KELLY (SPCA): That's correct.

MR HARRIS: Okay. I think that's quite an important matter.

MR BARRATT: Could I just pursue this, because we also have to look at what the production level is, so I guess with the annual cycle of the production of raw fruit, you're getting a few weeks a year out of a cannery and you've got contracts with growers, so you purchase against the contract and can the fruit and put it into inventory and then it remains to be seen how that performs at the retail level.

MR KELLY (SPCA): Right.

MR BARRATT: So in that sense I guess a retail measure of what's sold is a better indicator of what's happening.

MR KELLY (SPCA): Absolutely.

MR BARRATT: How much you're buying and canning.

MR KELLY (SPCA): Yes.

MR BARRATT: And we have to look at how much is produced.

MR KELLY (SPCA): Absolutely.

MR BARRATT: But we'd just like to go into that question.

MR KELLY (SPCA): The swings are very large because it's a very short season for fresh fruit and fresh deciduous fruit in Australia, so we would be predicting now the volume that would be grown next year, that would be canned and maybe sold over the course of a year after that, or even longer, so perhaps a two and a half year time frame - very, very long - but all the action is around the scan share, otherwise you're just measuring inventory lumps in someone's supply chain.

If people were importing cheap or dumped products from overseas and just keeping them in their warehouse until they threw it away, I'd have no problems at all. I mean, I'd have a moral problem, but I wouldn't have a market problem. It's because the market share has been taken from us, and that's why the scan information is so critical to the analysis.

If it's brought in and doesn't sell very well I wouldn't have a problem, but unfortunately it's brought in and the cheapest imported, say, multi-serve fruit in a can

retails for \$1.59, including a 30 per cent margin, including being brought around the world to Australia. That's below our on-floor cost, and I can tell you we are not an inefficient manufacturer.

There is something very, very wrong in how that math flows out and, very similar to what John just said about cans, it's an impossibility that that's being done on a fair trade basis, that a can can land here and maybe retail for 80 cents, including a 20 or 30 per cent retail margin, and I guess that's why the Anti-Dumping Commission is investigating so thoroughly.

MR HARRIS: As you observe, that's more a matter for them than would directly be for us.

MR KELLY (SPCA): Yes.

MR HARRIS: But just in terms of the Anti-Dumping Commission, you've spoken to them and you will be supplying them with, I presume, data on costs and possibly profitability. I'm not sure how far they go into that. But for our purposes we will need to get some evidentiary support.

MR KELLY (SPCA): Absolutely.

MR HARRIS: And what I was thinking: presuming you'll be supplying them with information, at least if we could get access to information in support of - - -

MR KELLY (SPCA): Mr Chairman, the investigation into antidumping has been completed with SPC. They are satisfied with the information they had from us, so we'd be more than happy to show you any, all, extra things, whatever you would like.

MR HARRIS: For us it's a question of verification, if you know what I mean.

MR KELLY (SPCA): Absolutely.

MR HARRIS: So, your submission, and therefore there will be some supporting documentation of that, and I was just thinking certainly you will have supplied information, so that would be readily available.

MR KELLY (SPCA): Yes.

MR HARRIS: And we're interested in trying to do this as swiftly as possible, but there may be other factors that we'll need to come back and talk to you about in terms of verification, because it's our job to substantiate, obviously, the evidence put in front of us.

MR KELLY (SPCA): Yes.

MR HARRIS: Can I ask you about measures, sticking with profitability for a moment. When you refer to profitability in your submission, without referring to the numbers that you place in there, there are various measures of profitability that firms use. Can you tell me, when you're using profitability for the purposes of that information you supplied to us, what kind of measure are you using? Is this an NPAT or is this an EBITDA?

MR KELLY (SPCA): EBIT, before interest and tax.

MR HARRIS: Earnings before interest and tax.

MR KELLY (SPCA): Yes, sorry, earnings before interest and tax.

MR HARRIS: Yes, okay. And the same thing for overhead. In your information to us, it's obviously pivotal that - I don't want to explain your case to you, but it's quite clear from the information you're providing to us that overhead includes more than what I might call traditional factory floor level overhead, because it seems to be a very big swing factor, so as you lose throughput the numbers seem to move quite significantly, so again without referring to them in case there's a confidentiality issue, how is overhead calculated?

MR KELLY (SPCA): Perhaps this is best handled by going - - -

MR HARRIS: Okay. Talk about it internally?

MR KELLY (SPCA): A total open-book approach. You can see, just as the Anti-Dumping Commission asked the same questions, you will be just as satisfied, I think.

MR HARRIS: Okay. And can I ask then about production, since we're on this. One of the things that we will have to establish is the nature of production for the Australian industry itself. We've got some particular follow-up questions to ask about that and again I'm a little unsure about what I should ask openly and what I shouldn't, given the confidentiality nature of this, but I guess we'd be hoping to get access to your best assessment of the industry-level production for each of the products that's relevant, probably for say a five-year period, probably for 2008 through to 13, just so that we can get a benchmarking from you on that. If that's possible, then - - -

MR KELLY (SPCA): Given that we almost are the industry, there should be no problem at all.

MR HARRIS: Sure. I understand that. I'm asking you in a sense because we have to look for industry-level data, and we'll be looking outside ourselves anyway to other sources to try and supplement your information.

MR KELLY (SPCA): No problem.

MR HARRIS: Yes, it just would be good to get that sort of level of information provided to us. Can I ask about tomatoes. We're in an interesting area with tomatoes, because your proposition is relating to a particular pack level, and again that seems driven very much by what is called the retail perspective. Would we be right in assessing that as the case?

MR KELLY (SPCA): Yes. It's actually driven by a consumer perspective really. I mean, they're almost the same thing. If you don't have a proper consumer in sight, then you don't have a product to sell to retailers. But, yes, the tomatoes that we're talking about have a specific consumption occasion with consumers and they have a specific place in the store where they're sold and they're sold for a specific purpose, so they behave differently from, for example, tomato sauces that might be made for a pre-made spaghetti sauce, or indeed from a fresh tomato. They behave very differently. They're a cooking base for our customers and the can size is important because that's the standard content that is used in most recipes for a cooking base.

The Ardmona tomatoes that we sell are actually preferred by Australian consumers. I did see in a submission that I read where someone mistakenly said that Italian tomatoes are preferred. That is absolutely incorrect. We have market research which we're happy to show you that shows that 55 per cent of consumers actually prefer Australian tomatoes. Only 5 per cent of consumers prefer Italian tomatoes. The rest are undecided or don't care or don't see a difference. So we actually have an overwhelming preference for Australian tomatoes and I think the same applies for Australian multi-serve fruit.

One of the things SPC has done just recently since I have taken over is to put in very large letters on the front that this is a product grown in Australia and made in Australia, and we have received overwhelming consumer support, public support, media support for that, because people actually have been tricked a bit and sometimes thought that products were made in Australia and found out that they weren't. They've been a bit miffed. But, yes, SPC's Ardmona tomatoes are preferred by consumers and are used in that cooking-base occasion.

MR HARRIS: I'm getting a bit out of order with my questioning here, but since you're on this theme, it's relevant to the question I've asked everybody else about the potential. If we were to go down the path and found the case might be substantiated, one of the options obviously is a tariff increase, which is a price increase in the market, all other things being equal. So I've asked everybody else and I'd be

interested in your perspective on this: a price rise would tend to discourage consumption, yet you're looking to recover volume here in order to get throughput to support a facility which is substantially fixed in its nature. Just rationalise if you could for me why the price rise is likely to be helpful in those circumstances. I was particularly interested in your comment, obviously, about whether consumers have a preference for - - -

MR KELLY (SPCA): Yes.

MR HARRIS: Because the two would link to each other.

MR KELLY (SPCA): Yes.

MR HARRIS: But in principle it would be good to hear the rationale.

MR KELLY (SPCA): Yes. They actually operate reasonably similarly, both categories, in this regard. They're not highly elastic categories; they're actually highly inelastic. They're almost a staple in people's pantries. For example, the consumption of meals that would use tomato as a base: Australians have a reasonably high - and growing, actually - consumption occasion for tomatoes as a cooking base.

If the price of the cheapest-tier imported tomatoes from Italy were increased by the tariff, the consumer would switch their volume from those lines to our lines. We actually have proof of this. We buy a service called Brand Scan, which is a home scan where the actual pantries of individual homes are scanned and you can see, as the price changes, whether volume goes up because of increased field buying, decreased field buying or switching from other brands.

It's an expensive piece of research and only consumer companies like Coca-Cola, our parent company, buy that sort of stuff, but that shows that in both those categories there has been switching from our brands to the cheap imported brands and, by deduction, I assume when those prices are more evenly set, the volume will switch back in turn. The category won't materially increase or decrease in size but there will just be a simple switching from/to, and of course the scale argument comes back to us. We're happy to provide that.

MR HARRIS: Yes. We would be certainly interested in your data on price elasticities, if you have that, and consumer preferences. So the logic for that in terms of a recovery circumstance here would be that if you were provided with some form of protection for a reasonable period, consumers might switch their preferences as a result of a rise in the lowest-priced product in the market, and that might reflect itself in volume that you're able to then purchase, but how does that become sustainable after the tariff is then phased out?

MR KELLY (SPCA): Basically, a couple of things. Firstly, if the prices were - I would actually be a bit stronger: the research we've got says, given that the brand is preferred and Australians prefer the Australian product, it actually would switch back if the prices weren't a 100 per cent differential on shelves. I think that two things will happen. I also think we're going to win our antidumping case and there will be a substantial tariff put on for those products for having failed that test, and that will level the playing field quite substantially.

But CCA and SPC via CCA, and the federal government, are also coming out with a transition plan for our industry which we're working on, and that would involve a significant investment in innovation, cost-out, and we've shared some of those details with you as well in the past. More details on that I'd want to be a little bit confidential about, given that our competitors are in the room, but it's a substantial investment plan to transition the business during the period of the protection.

MR HARRIS: Okay.

MR KELLY (SPCA): I really think if we call out this - simply putting our Australian heritage on the front of the can and telling people that we are made in Australia will cause the consumption behaviour to change already, because it already is happening. Consumers are starting to really notice that this isn't a level playing field, that this isn't right. They don't want products where they don't know where they come from, what the standards of production or the standard of manufacture were.

We're sort of voting with our feet here. I think Sharman might have mentioned that we're buying all Australian navy beans in our baked beans. It actually costs, I think, 9 per cent more to buy Australian navy beans than Canadian or North American navy beans. Now, unless your position is that we're just foolish, we're doing that because we think there's an advantage for us. We think that the consumer will react. We have a very loyal consumer, actually, in Australia and they will react, and we think as an investment that's well worth it. So for all those reasons I think that we will actually have a sustainable shift back to us in volume and share.

MR HARRIS: Okay. Import figures: I referred to them earlier and we'll need to do some kind of cross-proofing between the generic import figures for Australia and the retail import information that you have emphasised in your submission, in order to prove all that up.

This may be an impression I've gained from reading all of the submissions and mentally merging them, but one of the impression I have gained is that effectively SPC made a decision in the relatively recent past to stop supplying private label

product, that the margin on offer was not sufficient, and it can be suggested that as a consequence of that - in other words, as a consequence of your own decision to not supply private label - imports increased rather than the other way around, if you know what I mean, and of course causation is a tremendously important issue that we're going to have to address here. So do you have an opinion on that that you could venture on record here?

MR KELLY (SPCA): Yes. I am actually not aware of us walking away from any private label contract. In fact we've won a few small ones of recent time. We've always tendered. I'm not aware. We will look back through history. It depends on what time zone you're talking about, what year you're talking about, but I don't know of any. In fact we've been perhaps too aggressively trying to go after them, to win them, in a desperate attempt to keep this scale in the business, so one of the reasons we had such losses is that we've tried to keep pace with some of the import prices, much to our economic loss.

MR HARRIS: So those private label sources then are presumably contracts that are not offered necessarily to all producers, because another part of your submission is that private label has nevertheless jumped up with the big imported products.

MR KELLY (SPCA): Yes.

MR HARRIS: So you're saying you still tender for it.

MR KELLY (SPCA): There could be occasions where we don't win, of course.

MR HARRIS: Occasions where you don't win because the price is not that attractive.

MR KELLY (SPCA): Yes, that's right. I do think one of the consequences particularly if we survive, again, is that consumers are going to expect retailers in this country to supply Australian-grown private label and I think that will be another advantage. I think you will start to see them calling out on shelves. I notice Woolworths just launched a variation in the category of private label and all of their shelf-ready trays have Australian flags all over them because they do produce that one from Australia, so you can see that even the retailers think that having an Australian-sourced brand is increasingly important, and if we are successful in our bid to get consumers to care more about that in the coming years, that will be a big factor too.

MR HARRIS: I asked Fruit Growers Victoria a little earlier about how the impact of reducing quota over time might affect sustainability of growers in the marketplace. That is, in a circumstance where you were given the opportunity to recover volumes, will the volumes actually be there from fruitgrowers? And you were present for John

Brady's commentary earlier about tomato-growing also being something that you needed to invest in long term. Nevertheless, it's pretty clear that fruit-growing is even longer term, if you like.

MR KELLY (SPCA): It is, yes.

MR HARRIS: And therefore the question I've got for you is, in reducing quota for fruitgrowers as has happened over time, and particularly with these relatively recent, very substantial reductions that we've heard about today, what's your view of the prospect of recovery? You must have done some business assessment of this before you went out there with that advice to growers.

MR KELLY (SPCA): Sure. The way that we conducted the case was such that we gave ourselves some room to grow back if we could get the playing field to be more level over time from all the things we were talking about. For example, we could have taken our entire peach requirement for next year from six growers but instead we're taking it from 50 growers, so every grower got a bit of a haircut, if you like, in that process so that there was room to grow back if we can get these actions taken.

Another point that I'm making: all the trees aren't yet removed. They're being removed as we speak and if there were signs of faith that we could get this situation back in order, I think some trees that would otherwise be removed will not be removed, and that's important because there are techniques to stall the crop for a year and when the volume is back in our camp, we can be buying from them again.

So the prospects are okay for there to be increased growth, but it's very dependent on the speed with which action is taken, because the prospect diminishes as time goes by.

MR BARRATT: That's a very important point from the point of view of the short-term action.

MR KELLY (SPCA): Yes.

MR BARRATT: I'm not sure exactly when you arrived. You probably heard me say to some of the earlier people that on the face of it, it was a simple picture: SPCA has told people, "We need your fruit," "We don't need your fruit," so they know that they need to pull their trees or they know to keep their trees. What we need is a secure feel of how fuzzy that actually is, because we need to assess what irreversible damage takes place, ahead of 20 December when we have to put in our final report.

MR KELLY (SPCA): Clearly we made a judgment call, as we could.

MR BARRATT: Why do we need to take action quickly, as well as take action

decisively, is an important question.

MR KELLY (SPCA): Yes, and just to expand a little bit further on my answer, clearly we also chose growers who had the better financial capacity to invest again, the better techniques, the better scale - a whole range of other factors as well. But we do think there is the ability to recover that growth again through those 50 growers that we have kept.

MR BARRATT: Earlier in the morning Dr Stone was painting a picture that, with timely action, there could be trees saved or more trees come back or what have you, and you would support that?

MR KELLY (SPCA): I would. Very much so, yes.

MR HARRIS: Can you tell me a little bit about production costs. Again, I won't refer to the numbers, but in your submission - and this links back to that overheads question - effectively you were saying that because of the decline your production costs have gone up. I can understand a production cost that goes up because there's a lower throughput and because you've got a higher fixed overhead and so that number automatically flows on. Are we talking that kind of production cost, in effect, rather than - - -

MR KELLY (SPCA): Yes, we are. In fact many of our other production costs have gone down. SPC gets to leverage fully the Coca-Cola Amatil procurement network, which is the largest in Australia. We are of a huge scale in procurement in Australia, so our packaging costs I think would be second to none in the world, so many of our costs - and of course that's what you do when you're under pressure; you try to take production, your other variable costs, down. We are exemplary with that. That's why we're such a successful company at a group level. So we've been benefiting from that. Yes, so it really is the scale issue that you referred to, Paul and Peter.

MR HARRIS: Okay. We might come and get a little bit more information from you on that, because again that's quite pertinent to the nature of an inquiry like this.

MR KELLY (SPCA): Yes.

MR HARRIS: We're also going to have to ask you about productivity in the processing activity. It's a hard thing necessarily to measure. Being the Productivity Commission, we know a lot about productivity, and we know it's not hard to measure if you pick a particular kind of measure that's easy to measure, if you know what I mean, but at the end of the day what productivity actually equates to in processing - but you just referred then to the fact that you spent an awful lot of time examining your costs and taking advantage of your lower distribution costs through ownership

by Coca-Cola Amatil and that sort of thing. So would you have productivity measures that we could observe, and see how productivity has varied over time; again, through roughly that period, maybe 2008 through 13 and that sort of thing?

MR KELLY (SPCA): Yes, I'm sure.

MR HARRIS: I assume metrics like that are relatively common within the company.

MR KELLY (SPCA): Yes.

MR HARRIS: It's only a question of what the metric is that's available.

MR KELLY (SPCA): We're more than happy to take you to that.

MR HARRIS: We would like to get some access to that information. And employment levels: now, you have told us about employment shrinking over time as a consequence of lower throughput, and I think it would be good to turn that into data that's potentially able to be made available publicly. Obviously you will want to consider whether that can or can't be done, but we will need to actually get access to those sorts of information levels over a not dissimilar period.

MR KELLY (SPCA): No problem.

MR HARRIS: What I'm trying to suggest is, we're trying to pick a period where I think we can get relatively contemporary information and see year-by-year trends and, as a consequence of that, relate it not necessarily perhaps to any particular period that you're arguing about, but we think 2008 to 13 is relatively contemporary and we may wish to understand the trends in the marketplace, not necessarily therefore just pick between this year and that year. That's the way we'll probably undertake our assessment work, and we'd be thinking that across both tomatoes and fruit in the same sorts of circumstances.

I think this is public information: there is reference in your submissions to further restructuring of the plant to undertake in terms of concentration of facilities into the main centre at Shepparton.

MR KELLY (SPCA): That's correct.

MR HARRIS: I don't know how sensitive this is in terms of public information available in the smaller communities that you might have to concentrate on, but can you tell us in the context of this potential for adjustment what's likely to happen, in your view - you know, without binding you to anything? We will have to look at this whole adjustment question over time and it wasn't clear to me what was necessarily

likely to be brought in. I think you referred to jam-making when we were up there at one stage.

MR KELLY (SPCA): Yes.

MR HARRIS: But I don't know how significant jams would be in terms of things like capacity utilisation in a plant like Shepparton.

MR KELLY (SPCA): Perhaps I'll just talk about it generically again, because I don't want to give competitors too much information, and then share with you more privately. The SPC business and the Ardmona business and the Taylors jam business are three businesses that are really within a 40-kilometre circle of each other in the same region, three factories in the same region, and part of our transition plan would be to consolidate those together onto one site in Shepparton. That's something we've spoken about with our employees as well, that we would like to do that. It's expensive to do. It's part of that transition plan that we've put together.

One of the benefits that you get is, the various products that we make have different seasonality and so your full-time labour force can be spread between the different peak loads more efficiently rather than having a whole bunch of your structure stand still for most of the year and then hit a peak, so from a productivity point of view that's the main benefit, apart from sharing facilities and sharing boilers and all the other nice things that you normally get from plant consolidation.

Just to break that down a bit more, products like jams and sauces, of course, are completely unseasonal. We could stockbuild those, get everyone to stop that line for a month, go and work on fruit-processing and then go back to that line, whereas you can't do that if the sites are separate and covered by separate enterprise agreements, et cetera.

So they're the types of things that we'd be planning in that, apart from upgrading all the equipment to be more energy-efficient and more efficient generally. All those activities are part of that transition plan, which we'll be happy to share with you in detail, as we have with AusIndustry. All that work has already been done and it can be provided quickly.

MR HARRIS: Okay, that would be useful, I think. Price: this is a somewhat problematic question, but the way the business has operated with its growers has been to reduce the volume it takes. It doesn't seem to reduce the price it offers. Obviously it's not advocacy for me, what you should do, but it's an interesting question as to - - -

MR KELLY (SPCA): Price to the growers?

MR HARRIS: Price to the growers. So in a circumstance where you're facing competition for whatever reason, you would normally consider whether you would continue to take volume and try to drive price down or whether you'd cut volume and keep the same price. So am I right in assuming that the way you set the business up to run and the way you would, more importantly probably, continue to run this is that volume throughput gets to a level where it's the essential driver because the facility couldn't operate on tiny volumes even if price was used as - - -

MR KELLY (SPCA): That's right.

MR HARRIS: Can you explain that a bit to me, the difference between why you would not use price and why you have used volume as a way of managing the business?

MR KELLY (SPCA): Price for the growers though, right?

MR HARRIS: Price for the growers.

MR KELLY (SPCA): Just fundamentally, the growers have been giving price in real terms. They haven't been putting up their prices. I think the curve is quite flat for five years. So we have a symbiotic relationship with our growers. If we were to just put all of our pressure onto them, they would all be out of business already. If SPC didn't have the financial strength to be absorbing the losses that we've been making - and we've shared with you before how we've been taking in stock and then not being able to sell it, et cetera - the business would have closed. If SPC was a stand-alone company, not part of a greater and stronger Coca-Cola Amatil, it would have closed years ago, in my view.

The price that we pay to the growers at the moment is the lowest price, I think, that they can accept, that they could stay in business for, and so it's incumbent on us to find savings in other areas, but I would say to you that they've been accepting a real price decrease because they have had inflation on all their costs and labour and other things over the years as well, so they've been holding their prices fairly static.

I think also the Growers Association would have details on that. The growers themselves are very efficient on a world basis, when you go back to the prices that were paid for fruit some years ago. I think they shared that in the first submission.

MR HARRIS: Yes. I guess I'm interested in it because it goes ultimately to this margins management question and how you manage margins. It says you're using volume as your primary mechanism for controlling inputs and therefore it's almost a choice to lose market share in those circumstances rather than fight for price and maintain market share. Different businesses operate in different ways and it's not for me to judge it. I just want to be sure I'm understanding.

MR KELLY (SPCA): I think we're at the tipping point. If you're in a normal industry, that is exactly right. For example, the attitude that I said that we're taking with all of our packaging suppliers: they have all contributed to SPC's declining margins by declining their own margins themselves, because they have margins to give. My point with the growers is that they don't have margins to give and I've put enough of them out of business this year already.

MR HARRIS: No, no, I wasn't - - -

MR KELLY (SPCA): Yes.

MR HARRIS: To me it's necessary to understand the nature of this, particularly for the adjustment question going forward. I presume, because you would have gone through the other submissions that we have received, that you will have seen that the Canned Fruits Industry Council of Australia published a nice thing internationally - Mr Simon Mills I think it was - and it has capacity utilisation figures for Australia. It only has one producer and so I presume you might be familiar with the nature of this, and it shows capacity in the industry declining quite significantly - at a point in 2010, I would guess.

For those who are not familiar with this, this is all up on the web site. It's a graph which shows total industrial production capacity in basic cartons, and I'll just take the peaches example. It has one producer in Australia as the industry and it goes from production capacity of 1.6 million to a million in around 2010, so in 2010, according to this graph, there's a reduction of 600,000 basic cartons, which again is a nice interesting measure, but nevertheless. Now, that suggests a conscious decision being made by that single producer. I'm assuming the producer is you.

MR KELLY (SPCA): Yes, it would have been.

MR HARRIS: What was the rationale behind the decision to reduce capacity at that stage?

MR KELLY (SPCA): I'm not actually familiar with exactly what the - - -

MR HARRIS: No. We can have this circulated to you and perhaps we can discuss it separately, but it's quite an interesting question for us, and it may be that the Canned Fruits Industry Council of Australia's version of productive capacity is not necessarily yours, but it will be a relevant question that we will need to clarify.

MR KELLY (SPCA): Yes, it could be production of peaches, it could be - - -

MR HARRIS: I don't know.

MR KELLY (SPCA): I don't know what the exact number is, but - - -

MR HARRIS: No. So you're not conscious of anything specific that occurred in around the 2010 period - - -

MR KELLY (SPCA): No.

MR HARRIS: - - - which said there was a conscious reduction in capacity at the plant?

MR KELLY (SPCA): Our capacity is way up there. We'd be more than pleased to make every pack, and more than capable.

MR HARRIS: Sure.

MR KELLY (SPCA): I think you will see from the plant tour that you went on, there's a lot of capacity.

MR HARRIS: Yes. I'm trying actually mentally to make it match.

MR KELLY (SPCA): Yes. I don't think that's a match.

MR HARRIS: It's obviously a matter of interest to a number of submitters and it would be good to get that clarified, but we'll come and do that with you separately. Sorry, just let me start going down the list to see what I've dealt with. I didn't ask you about tomatoes. I think I asked about fruit, but tell me a bit about tomatoes. The same question arises about the potential for altering uptake if you were in a circumstance where you were able to gain access to some form of protection and wanted to take this. Am I right in understanding that you think it will be a relatively swift revival of tomato production?

MR KELLY (SPCA): I think our market share would be almost instantaneous. The only thing between us is this huge differential in price. The consumer wants the Australian product, prefers it. It would be almost instantaneous.

MR HARRIS: But particularly from a producer perspective. I'm thinking of the growers themselves, because you contract directly with a set of growers as well?

MR KELLY (SPCA): And with Kagome.

MR HARRIS: And with Kagome?

MR KELLY (SPCA): Yes, and their capacity to switch from paste to whole

tomatoes that we would then process into our chopped and diced would be instantaneous, because they make higher margins out of it as well.

MR HARRIS: Because of the margins issue.

MR KELLY (SPCA): Yes.

MR HARRIS: Yes.

MR BARRATT: And John said 25 per cent of their recent paste production has been speculative. They make it and go looking for somewhere to sell it to.

MR KELLY (SPCA): Yes, that's right. Store it.

MR HARRIS: I did ask you earlier, did I not, about the nature of what you sell aside from at the retail level? I think your answer was it's for throughput reasons rather than for profitability reasons.

MR KELLY (SPCA): Yes.

MR HARRIS: But I don't think I got a feel for the break-up.

MR KELLY (SPCA): The volume break-up?

MR HARRIS: Yes, the volume break-up. Like, is retail 75 per cent of your business not just in terms of the returns but in terms of - - -

MR KELLY (SPCA): 70:30 by volume, and by profit it would be 90-something, and the rest.

MR HARRIS: Okay. Rebates: this is more of a question from having read it as it went through. I noticed that you were talking about the fact that your rebate costs had gone up. I guess you were saying that as a sign of your attempting to compete in the marketplace, but they went up as a percentage of revenue, which was obviously going down because you were losing market share. So would I be right in assuming that the way you use rebates is to attempt to maintain market share but not at the overall long-term cost of margins? In other words, is it really a margin maintenance type of rebate strategy? Would that be correct? Are you consciously high-margin?

MR KELLY (SPCA): Firstly, the most common rebate structure is a percentage of the dollar sales, so the ratios actually do apply even though you're on a smaller volume.

MR HARRIS: Right.

MR KELLY (SPCA): Most of our trading terms are defined in that way. Sorry, what was the second question?

MR HARRIS: Well, I'm trying to work out really whether your strategy - - -

MR KELLY (SPCA): We certainly sacrifice margins. Absolutely.

MR HARRIS: You do sacrifice margins?

MR KELLY (SPCA): They have been sacrificed. They're gone.

MR HARRIS: Okay, yes. No, it was more of a technical question, I think, about the percentages. I was more interested in whether that - - -

MR KELLY (SPCA): Yes.

MR HARRIS: So it's not actually a major thing. I'm just noting it down here for my purposes in understanding it. We have talked about production data, so that's relevant. We talked about productivity. We talked about capacity utilisation and employment, and you're going to give us information on those. You spoke to the Anti-Dumping Commission; we've done that. And I've asked about the facilities that will be restructured and we're going to get some information on that. I think I've finished my questions. I don't have anything else. Paul, do you have anything else?

MR BARRATT: I'd just like to indulge my mathematical inclinations for a moment. To shine a light on something, I just might get your comment on it. You referred at one stage to imported canned fruit going from 60 per cent to 80 per cent. Let's take a very simple model where imports are 60 per cent and you're 40 per cent and then it goes to 80 per cent. The consequences of reciprocals or residuals or whatever is that that 60 per cent goes to 80 per cent - the imports have increased by a third. What's happened to you is, you've lost a half, and that gain of a third, that represents 25 per cent of the importers' new market share, right?

Now, that's all very simple, but I use that simple illustration to go to the question of tomatoes, where if you look at the various parts of the charts, imported tomatoes have been a big part of the market for a long time and so, on quite a lot of data, there's a less dramatic picture of the increase of tomatoes, but it seems to me that the impact revolves around that very fact. Again, to keep the numbers round, if imports are 80 per cent and they increase by 1 per cent, that's just over a 1 per cent gain to the importers but it's 5 per cent of what you've got left, so there's that amplification of impact, and so I guess what I'm interested in is where the tipping point comes. There is some point at which you can say, "Well, okay, imports are dominant but we're struggling" - - -

MR KELLY (SPCA): We're at that point.

MR BARRATT: - - - but there comes some point where you say - - -

MR KELLY (SPCA): Absolutely. Today is the tipping point.

MR BARRATT: Well, today or two years ago or - - -

MR KELLY (SPCA): If not for our overall parent company's financial strength, we could easily have made an economic decision to walk away from it, but I live in faith that the rules of the game can be made fair. If you take tomatoes, if you go back long enough actually, Paul, we were the dominant player.

MR BARRATT: Yes, sure.

MR KELLY (SPCA): I actually believe tomatoes have been dumped here for a long, long time. We just haven't been able to avail ourselves of antidumping protection because the rules were too complicated until recently changed. The second that they were changed, we were the first - - -

MR BARRATT: There was antidumping protection around the turn of the century, the late 90s until about 2002?

MR KELLY (SPCA): Yes. If you draw the chart back to then, we had a significant market share. So I'm quite cranky that the government hasn't been in a position to allow people to defend themselves properly from that. I really believe we're going to win this antidumping case and then I think a lot of people will look back and say, "What the hell happened then? How was that damage let go?" But you're right about - - -

MR BARRATT: I'm posing the question of - - -

MR KELLY (SPCA): Yes, sure.

MR BARRATT: (indistinct) against this criterion of "recent enough" and "sharp enough" and all that.

MR KELLY (SPCA): Sure. The last 20 per cent certainly hurt us disproportionately more, as your maths - - -

MR HARRIS: We're interested, obviously, in the data, to the extent it's relevant, that might be available in the antidumping, but it's not our primary focus obviously. Well, it's not our focus at all.

MR BARRATT: I guess the relevance of antidumping, where the two points come together, is in making an assessment of the prospects for successful adjustment.

MR KELLY (SPCA): Yes.

MR BARRATT: Does this protection have a point, is whether there's going to be a change in your floor as well as - - -

MR KELLY (SPCA): Yes, exactly. I think you combine the information that John gave about Kagome - you either take the facts as true or not, but his showed that the Australian producers are fantastic at producing tomatoes on a very good cost basis. They're only about 30 kilometres from our factory, we have the cheapest packaging costs in Australia and, damn it, we can't make an 80-cent can of tomatoes, so something is going wrong. I don't know; it just doesn't stack.

We are excellent at putting things into packages as a group, we're excellent at distributing it and we've got the best logistics network in Australia. I really can't understand how you could ship stuff from Italy and then ship it around Australia from Italy and beat us, beat the Coca-Cola distribution system. I find that very, very hard to accept. So that's why I think we can survive, because I think those things will be addressed, and when they are, I think we're going to have a better future and we'll get back that volume.

MR HARRIS: Okay. My remaining questions are relatively minor, but can you just clarify a small issue, but possibly pertinent. We understood that tomatoes with the addition of vegetables are not included in the relevant tariff subheading for the purposes of this inquiry and I just wanted to know whether the data that you had been providing us to date had included tomatoes with the addition of vegetables. I'm treating this as primarily that it wouldn't have, but we will need to clarify that with you, because our purpose obviously with a safeguards inquiry is to stick to the tariff subheading requirement. So unless anybody has got an answer here today about tomatoes with the addition of vegetables - - -

MR KELLY (SPCA): I doubt it.

MR HARRIS: No.

MR KELLY (SPCA): But we'll have it.

MR HARRIS: Therefore we will need to just check what data you've provided us and whether it's relevant to that question.

MR KELLY (SPCA): Certainly the scan data we've provided is not, because we

don't even make those products.

MR HARRIS: No. I just want to confirm on the record, but we understand it to be the case, that you're the only producer of whole or chopped processed tomatoes in these less than 1.14-litre packs in Australia. To your knowledge, is that correct?

MR KELLY (SPCA): Yes.

MR HARRIS: I think that's it. The only other question I've got is clearly going to be a confidential one rather than an open hearing one. Is there anything that you would otherwise like to get on the record here in closing?

MR KELLY (SPCA): No, thank you, but thvery much for your time.

MR HARRIS: Okay. Thank you very much. Nominally speaking, we're going to lunch, according to my thing here. Does everybody agree we're going to lunch? Excellent. We're going to lunch.

(Luncheon adjournment)

MR HARRIS: Council is the next attendee. For the record, if you could state your names and capacities, that would be very good.

MS CHRISTOU (GSCC): Geraldine Christou, the manager of investment attraction at Greater Shepparton City Council.

MR POLAN (GSCC): Councillor Michael Polan.

MR HARRIS: Thanks, Geraldine.

MS CHRISTOU (GSCC): Good afternoon and thank you for very much for providing time for us to present this afternoon. Councillor Polan and I present today on behalf of Greater Shepparton City Council and we're addressing question 7 of the issues paper, outlining the public interest in imposing safeguards and highlighting the economic impacts that would be felt in the Goulburn Valley region if SPCA were not supported with safeguard action and were consequently forced to withdraw from the region.

If we may, we'd like to just begin with a little bit of background about the Greater Shepparton community.

MR HARRIS: Sure.

MS CHRISTOU (GSCC): I'll hand it over to Councillor Polan to do that.

MR POLAN (GSCC): Thanks for the opportunity. Greater Shepparton has a current population of approximately 62,000 residents. Shepparton's combined socio-economic index disadvantage ranks in the municipality as the 15th most disadvantaged in Victoria - that's out of 79 - having declined from the 25th most disadvantaged in 2006. The most disadvantaged municipality is ranked number 1.

We have 25 per cent of residents on income support, compared with the Victorian average of 16 per cent, and one in five families are jobless. The completion rate in year 12 is 62 per cent, compared to the Victorian average of 79 per cent. That's 17 per cent lower than the state average. Transition from year 12 to higher education is 26 per cent, compared with the Victorian average of 56 per cent. Our Indigenous unemployment is at 20.9 per cent.

Concerns exist that following the contraction in output from SPCA, resulting in downgrading of the Mooroopna plant and a significant reduction in the amount of fruit sourced from the growers and these operational conditions - the precursor to a much larger contraction operation in the region.

Council commissioned Essential Economics to assist in the economic

implications of the scenario where SPCA ceased all operations in the region, and I believe you have that report.

MR HARRIS: Yes.

MR POLAN (GSCC): The Goulburn Murray Irrigation District is one of the most important agriculture areas in Australia, with a reputation as Victoria's food bowl. It supports a large number of irrigation based industries, including dairy, horticulture, viticulture and dryland farming.

MS CHRISTOU (GSCC): Thanks, Councillor Polan. SPCA has a significant supply chain linkage within the region but mainly with businesses located in both Shepparton and Moira municipalities. SPCA has supplied information to council that they currently have supply contracts with 560 regional businesses, including approximately 230 fruitgrowers and packhouses and with the value of supply contracts in excess of \$100 million annually.

The main growing areas from which SPCA sources fruit in the region are Shepparton, Cobram, Invergordon, Bunbartha, Ardmona, Tatura and Kyabram, all located within one hour of SPCA's operations.

Commercial pressures stemming from a range of economic factors, especially Australia's high currency levels leading to cheaper imports of tinned product, have led to a reduction in production over recent years from approximately 180,000 tonnes in 2009 to 135,000 tonnes in 2012. The situation has already led, as we heard earlier, to a 50 per cent reduction in supply contracts to regional fruitgrowers, leading to a contraction in employment of approximately 600 permanent jobs, with a reduction of 500 seasonal picking workers anticipated in the coming year.

If SPCA was to withdraw from Greater Shepparton, the following economic impacts are estimated: job losses, as I said, of about 1000 FTE positions, including 360 jobs at SPCA and 640 full-time equivalent jobs in supporting sectors such as agriculture, transport and logistics retail, and an additional 1050 casual seasonal positions at SPCA will also be lost; Greater Shepparton's unemployment rate will rise from 8.6 per cent to 11 per cent, and already the unemployment rates for Greater Shepparton are well above the unemployment rates for regional Victoria, which sit at 5.7 per cent; reduction in regional economic output of 165 million per annum, including 150 million associated with SPCA's suppliers and 50 million in other spending in the economy through the multiplier effect; reduced viability for proposed major infrastructure projects such as the Shepparton bypass and the Goulburn Valley freight logistics GV link, which are premised on sustaining and growing regional industrial outputs and freight volumes.

We also would envisage a reduction in construction investment. SPCA has

already invested significantly in our region, including \$25 million in their national distribution centre and the Mooroopna facilities. These projects alone are estimated to have generated 200 full-time equivalent jobs. As you heard this morning, the plan is, if they are supported by the federal government, to consolidate their sites into one.

There will be reduced council rates revenue of \$700,000 per annum, which represents 15 per cent of all annual industrial rates revenue that currently comes to council; an increase in vacant industrial land supplies by 36 hectares, which will raise the already high vacancy rate to approximately 40 per cent, creating a significant surplus of land, which will negatively impact on property and land values and also investor confidence in our region.

Also the \$2.2 billion Food Bowl Modernisation Project represents a significant investment and commitment by our state and federal governments for large-scale modernisation works in the Goulburn Murray Irrigation District, removal of stranded assets and inefficient systems losses and has delivered 214 gigalitres of water savings, providing benefits to farmers in the region, including fruitgrowers. This significant investment that's been undertaken by both our federal and state governments would be undermined if major food processors such as SPC Ardmona ceased operations in our region.

SPCA is the largest donor to the United Way Goulburn Valley Community Fund in our community. It raises funds locally to distribute locally. In the 2010-11 period the Workplace Giving program included 275 employees who donated over \$20,000, with a \$15,000 community investment donation as well. SPCA also partnered with United Way Goulburn Valley to start a local breakfast program for thousands of regional schoolchildren, which, as you've heard by the statistics that were provided by Councillor Polan, is much needed within our community. They provide 10 primary and secondary schools with supplies of juice, jams, muesli bars, baked beans and spaghetti, to assist underprivileged children to start the day on a full stomach.

SPCA also donated over the past 12 years 350,000 to Kidstown Adventure Playground, located on the causeway between Shepparton and Mooroopna, to allow free or gold coin donation entry for all children. SPCA employees also assist Meals on Wheels on the second Tuesday of every month.

The Essential Economics report that was provided as part of our submission is confidential, but we're happy to provide further information on that report outside of this forum if you prefer. SPCA is under intense pressure at the moment and, as you can see, it would be a very dire situation if they were forced to withdraw if they weren't supported with safeguard measures.

MR HARRIS: No, I wasn't proposing to go into the detail of the Essential

Economics report here in the public hearings. In one sense it's necessarily speculative, because it talks about impacts that might occur if certain things happen. I don't want to talk the community down in any way, but we have taken note of what you've put in.

The element that I didn't hear which I usually hear from councils: SPC would presumably be quite a large ratepayer for the council as well.

MS CHRISTOU (GSCC): Yes. Sorry, \$700,000 annually.

MR HARRIS: Sorry, I missed that. \$700,000 annually? Aside from all the community work and the employment impacts and impacts on suppliers, there's a direct financial impact on the council itself - - -

MS CHRISTOU (GSCC): Absolutely.

MR HARRIS: - - - from loss of employment. Some of the other closures that have occurred in the region, they've been primarily outside Shepparton, if I understand correctly.

MS CHRISTOU (GSCC): They have. Heinz Girgarre is in the Campaspe Shire. Even though it was outside of our municipality, it certainly had an impact on investor confidence and retail spending as well.

MR HARRIS: In a sense it's hard to separate out the individual impacts here, but you mentioned in passing that you're quite conscious and aware of the idea of concentrating their future business on the Shepparton facility. I haven't seen any comment on how that would be viewed within the region, but is it intended to preserve the jobs? Is the council involved in this in terms of a regional development strategy in terms of preserving employment and that sort of thing?

MS CHRISTOU (GSCC): We are. From an investment attraction point of view, we're in constant discussions with SPC Ardmona and we support their decision to consolidate their footprint, because obviously it leads to sustainability and their long-term future in the region, and they have assured us that no permanent positions would be lost as part of that consolidation.

MR HARRIS: Okay. Paul, do you have anything for the council?

MR BARRATT: Only this question that I've asked others about the urgency of action as distinct from taking four-year safeguard action; whether provisional safeguards should be taken. I've asked others to comment on the question of whether earlier action would result in less trees being pulled or other consequences. Would you like to comment on that?

MS CHRISTOU (GSCC): I certainly agree with that. As we sit here having this hearing, people are pulling their trees out. SPCA obviously needs certainty of supply within the region to continue, so I think the earliest possible decision is obviously ultimately going to be better for the region.

MR HARRIS: Okay. I don't have anything more specific. Thank you very much for your presentation here today.

MS CHRISTOU (GSCC): Thank you very much.

MR HARRIS: Now I think we have the South African Department of Trade and Industry as the next presenters. I realise we're running a bit early, so if we're too early for somebody you should wave your hand and say, "I need more time." Perhaps you could identify yourselves for the purpose of the transcription.

MS MACHIU (SADTI): Ms Kedibone Machiu on behalf of the South African government.

MS GASELA (SADTI): Pemy Gasela, South African government.

MR JAFFRY (SADTI): Syed Jaffry from the South African government as well.

MR HARRIS: Thanks for your attendance here for the hearings. Do you want to talk at the outset, opening statement style, or shall we follow on straight into questions on your submission?

MS MACHIU (SADTI): Opening statement, please.

MR HARRIS: Opening statement, okay.

MS MACHIU (SADTI): The government of South Africa welcomes this opportunity to present its views on the safeguard investigation. The government would like to place on record certain concerns it has about this safeguard investigation. It is important to note that our agro-processing sector plays an important role in the South African economy, being the third-largest contributor to GDP within the manufacturing sector, as well as an important provider of jobs. Should safeguard measures be put in place, this will undoubtedly have a material effect on the South African agro-processing sector, and in turn on the South African economy, especially with regard to the employment sector.

The South African government has already made a written submission before the deadline of 18 July and the government would further like to bring to the attention of the commission the following points that we hope will be taken into account in making a determination. Our first point is with regard to the procedure. It is noted that this investigation was initiated on 21 June in accordance with a provision of the WTO Safeguards Agreement. The initiation of a safeguard investigation should immediately be notified to the safeguards committee. We wish to express our concern that the notification of this investigation was only made on 2 July 2013. This, according to us, does not meet the requirements of immediate notification, as the panel found in the Korean dairy case, where there was a 14-day period of initiation and notification, and also in the wheat gluten case, where there was a 16 days' delay of notification.

The issues paper is in large part a procedural guide to safeguards investigation

conducted by the Productivity Commission. While a thorough understanding of the procedures to be followed by the commission is important, additional information is necessary for interested parties to fully participate and defend their interests in this investigation. The issues paper does not contain the necessary elements, including findings and reasoned conclusions on all pertinent issues of fact and law with regard to the safeguard agreement.

Issue number 2, domestic industry. As acknowledged in question 1, a determination must be made as to the relevant domestic industry. The first step in determining the domestic industry is the identification of the products which are like or directly competitive with imported products. Only when those products have been identified is it then possible to identify producers of those products. According to the issues paper, the commission may need to look across tariff classifications and determine that the relevant domestic industry is broader than producers within a particular tariff classification. This will change the scope of the initiation notice and it might also affect the scope of the products.

Issue number 3, unforeseen developments. There has been no analysis of unforeseen developments on which interested parties could comment. Specifically, the issues paper does not provide an explanation that is supported by facts and reasoning with regard to the determination on unforeseen developments and how this led to increased imports. Article 3.1 of the WTO Safeguards Agreement requires competent authorities to set forth findings and reasoned conclusions on all pertinent issues of fact and law in their published report. As article XIX of the GATT 1994 requires that unforeseen developments must be demonstrated as a matter of fact for a safeguard measure to be applied, the existence of unforeseen development is, in our view, a pertinent issue of fact and law. This omission raises the question whether the commission has acted consistently with article XIX of GATT 1994 by initiating an investigation without any consideration of the existence of unforeseen developments.

Serious injury. Although the most recent data suggests a decline in the domestic industry, that decline may be attributable to factors other than the increase in imports. The issues paper refers to the public statement that SPC Ardmona, the applicant, had made about the challenges facing the company, including the appreciation of the dollar and the growth of the market share of imported private-label canned foods. However, information from the Australian 2011 WTO trade policy review indicates that the domestic processed fruit industry has been facing other problems during the period of investigation. Weather conditions are such a factor. Drought, which dominated the Australian weather between 2007 and 2009 was followed by La Nina rains, which drenched the region in 2010 and 2011.

Further, according to the 2020 Industry at Crossroads report produced in November 2011 by the Australian Food and Grocery Council, Australian manufacturers have also had to absorb record high electricity and water price

increases over the last three years. Since 2008 the price of utilities has increased at rates between 10 to 45 per cent more than the general inflation as a result of growing demands, ageing underlying assets and historic underinvestments. These price increases have undoubtedly affected the performance of the domestic industry. The commission should carefully consider all factors that may have contributed to the recent performance of the industry. This will allow the commission to determine if serious injury is the result of imports or other factors.

The period of investigation ends in 2012 with a final determination to be made by December 2013. In other words, this determination will be made approximately 18 months after the end of the period of investigation. The WTO Appellate Body has held that the period of investigation must not only end in the recent past but must be the recent past. Only with such a period of investigation is an investigating authority in a position to determine whether imports are entering the domestic market at increased level. The commission should give a date for an interim period that narrows this gap to a far shorter period.

It should further be noted that the imports of all subject products in 2012 was substantially lower than the imports in 2011. In this regard the commission will have to explain how this information meets the requirements of article 2.1 of the WTO Safeguards Agreement. Since South African exports have a share of less than 3 per cent of the total exports to Australia of citrus fruit and other fruits, South Africa should be excluded from the application of any possible safeguard on these products.

To conclude, the South African government would like to emphasise that the safeguard investigation into processed fruits raises certain issues of concern. We would also request that South Africa be exempted from this investigation because the share of its imports of certain processed fruits is less than 3 per cent of total imports, and also because there is currently an antidumping investigation against South African imports that are also the subject products in this investigation.

We would like to reiterate that the agro-processing sector has a central role to play in building a strong economy in the process, reducing inequalities by increasing incomes and employment opportunities for the poor. Should safeguard measures be put in place, this valuable sector will be compromised, especially with regard to unemployment. As such, South Africa would welcome a mutually satisfactory solution being reached whereby we are exempted from the safeguard investigation on these products.

Thank you for allowing the South African government to provide the commission with an oral presentation. We would like to reserve the right to make further comments when a determination is made in the form of an accelerated report. Thank you.

MR HARRIS: Thanks very much for that. As I think I said in the opening remarks, we're happy to receive further submissions. The deadline for getting submissions in in response to the issues paper of 18 July was primarily to ensure that we had something in order to start a public inquiry process, but we're happy to take further submissions on a continuing basis. So if there is additional information that comes to hand and you would like to provide us with that, we're happy to take that as soon as you're ready and able to offer it.

In terms of your comments on the period under investigation, I think we've put the trade data up now for 2013 - or 2012-13 financial year is now up on the web site for the affected products. Unless someone advises me to the contrary, we will be taking that into account in the terms of this inquiry. So I think that responds to one of your points. I'm not trying to do a blow-by-blow response to everything you've said, just to assure you that we did hear what you said and some of that information is certainly going to be made available.

I would like to ask you about - and you may not have this information and you may need to go back to obtain advice, obviously, from home authorities, but I'm interested in the performance of South African exports in recent times. You are a significant exporter, I think, to Australia in certain of the products and we're interested in the circumstances by which South African exports have effectively made their market share in Australia. I think this is particularly relevant to sliced peaches. So if there's additional information that you could supply us with in relation to the likelihood of future growth in exports and the nature of the kinds - if you like, the global market circumstances, not just the Australian market circumstances but the global market circumstances in these products.

You may have heard in some of the earlier exchanges we were discussing processed tomatoes, how the global market actually works. We're interested in understanding the global market and if you have information in relation to sliced peaches in particular, because I think it's an important product for South Africa, we'd be interested in receiving that information. I'm not sure whether it will be ultimately relevant in the end but what we're trying to do here is understand the circumstances of the markets in which this inquiry is being held.

So I didn't have any other questions on your submission other than those, but I might ask Paul if he has specific questions to offer.

MR BARRATT: No.

MR HARRIS: Do any of your colleagues need to make further remarks?

MS MACHIU (SADTI): No.

MS GASELA (SADTI): No.

MR HARRIS: Do you have other comments you'd like to make?

MS MACHIU (SADTI): With regard to the peaches market, we have representatives from the association. They will make representation and maybe they'll touch base on that. If not, we can also put in our comments in the accelerated report whenever - - -

MR HARRIS: That will be fine. Perhaps we'll touch base with you after this hearing today and see what's the most practical way of proceeding.

MS MACHIU (SADTI): Okay. Thank you very much.

MR HARRIS: Thank you very much.

MR HARRIS: We're running ahead of my schedule still. We have the South African Fruit and Vegetable Canners Association next, if people are available, and they are available, which is very good. You probably heard my earlier question, so if anybody wants to jump right in and volunteer a description of global market circumstances in relation to peaches, I'm tremendously interested in it. If not, please don't feel obliged to do so. But we'll talk to you further after this if we can. Perhaps people can identify themselves for the purpose of the record.

MR GELDENHUYS (SAFVCA): My name is Rian Geldenhuys. I'm a legal adviser for the South African Fruit and Vegetable Canners Association.

MS ATWOOD-PALM (SAFVCA): Good afternoon. I'm Jill Atwood-Palm from the South African Fruit and Vegetable Canners Association.

MR WILSON (JT): Good afternoon. My name is Ken Wilson. I'm from a company called Jamieson Trading and I represent one of the manufacturers.

MR HARRIS: Thank you very much for your attendance here today. Do you have initial comments that you wanted to make at the start?

MR GELDENHUYS (SAFVCA): Actually, I have quite a number of comments I wanted to make, but the South African delegation made quite a number of those comments already. In fear of repeating what has already been said, I've quickly made some notes to try and stay away from the initial submission that we have made, as well as the submission from the South African delegates thus far.

I'll maybe just mention a couple of things. Firstly, we would also like to take the opportunity to give a supplementary submission. We had very limited time in terms of which we could make the initial submission - literally a couple of hours - before the deadline was met. In the meantime we have looked at some of the data and some other information that we have and we definitely would like to submit further proof of what's been said here today, as well as what's contained in our supplementary submission.

One of the first things is, we'd just like to echo something that the South African delegation has said, and that is for the 2011-2012 financial year the import data that's been relied on seems to be contradictory in terms of the fact that it doesn't seem to be enough of an increase for initiation to have taken place and it doesn't seem to support a conclusion that such increases are enough to support the imposition of any safeguard measures.

Then, as regards the 2012-2013 data that is currently on the commission's web site, we've analysed that, because the last time I checked it was only up until May of 2013. It may now be further - - -

MR HARRIS: Nevertheless - - -

MR GELDENHUYS (SAFVCA): We just analysed it to see exactly what is happening in that respect, and on all of the products we've seen quite dramatic decreases save for two. The first one is mixtures, and the reason for that - that you've seen an increase in that - is due to the fact that tropical fruits - that tariff heading has been repealed and that was included under the mixtures tariff heading. So that would probably go a long way towards explaining why there would have been an increase in that particular product. Then apricots: on apricots the increase there is, according to the data and the information we have, almost entirely made up of imports by SPC Ardmona from South Africa.

So it's a strange anomaly that a company would be complaining about imports coming into the country when they are the actual importer of that particular product. My colleague has some of the cans. It's also a little bit misleading. If you just quickly look at it, it says "SPC" on it. I'd assume, as an Australian, that it's an Australian made thing, but if you look at the back of it it says, "Product of South Africa." There are many other examples in the supermarkets that we went to last night just to have a look at that.

A further point: we've heard many submissions thus far today - and of course also what's been submitted that's available on the Productivity Commission's web site - and a lot of them state that there have been some climatic conditions that may have had dramatic effects within the industry. What we haven't found yet in any of the information that's available to us is what the positive or the negative effect of those climatic factors may have been on the Australian industry. It seems that instead reliance is placed, or blame is placed, rather, solely on imports, yet the import data states, as we mentioned earlier, either slight increases, decreases or, where there has been some substantial increase, that a chunk of that has been due to imports from SPC Ardmona.

If you look at all the data and you look at it on a country-by-country level, you will see rightly that there are some major players in your market. The biggest player in most of the products for most of the years would be the Chinese imports coming into your market. You'll also recall, and you also mentioned it in your safeguard notification to the WTO, that there used to be antidumping duties and countervailing measures against those imports coming into the market. We'd like to see further information or perhaps investigation on what the effect of those imports into your country may be. Maybe it's not that there's an increase in the volume of imports but that you do face once again subsidised or dumped products coming into the Australian markets.

In short, therefore, we believe that the import data simply does not suggest that

there's a sudden increase in imports as required under the WTO rules. Furthermore, we're not 100 per cent sure whether the injury factors specifically relate to any imports causing the actual serious injury or perhaps a threat of serious injury that may result from those imports.

I also just want to mention to the commission that we should be cognisant of the fact that the subject product here seems to be processed fruit and tomatoes. Of course there will be an impact on the growers, particularly because they would be supplying the raw fruit in order to make those particular products. However, what we haven't found any information on is the effect of SPC Ardmona's foreign operations on their specific exports traditionally from the Australian market.

We suggest that it could be that their operations in, for instance, Spain and China could be used to currently service the traditional export markets that you had from Australia and that could possibly also explain why the growers are seeing a reduction in the volumes of fruit that they are able to deliver to SPC Ardmona, because they are now sourcing those particular fruits and tomatoes specifically from those regions where they have the foreign operations. Like I say, we'd like the commission to investigate this particular aspect, because there isn't a lot of information on that.

Something that was also alluded to in an earlier submission is the fact that Coca-Cola's ownership of SPC Ardmona - their strategy is very much one surrounding building of brands, whereas the retailers have an opposing strategy, where they want to build their particular brands. We have information which, like I mentioned in the beginning, we will make available showing that up until recently SPC Ardmona was not keen to provide a private label to the retailers, and it's only as of the recent past that they have been looking at doing that.

On that particular aspect, from the South African perspective we know of one contract that's been cancelled with one of the retailers, from a South African. So in that particular aspect SPC Ardmona would be providing that private label to that particular retailer, and we have it on good authority that the other retailer would soon follow suit. So it would seem that, in the near or foreseeable future at least, the Australian market could definitely see a decrease in South African products coming into the market. I won't be surprised if the same kind of pressure would have the same kind of effect on other foreign products coming into the market.

There have also been quite a number of submissions referring to the fact that the products coming into the market are cheap. Whether that is true or not I think is not relevant. What is relevant, remember, is that the safeguard action is about an increase in imports and whether the increase is really a surge and whether that surge in imports does cause serious injury or threat thereof. The cheapness thereof or not is irrelevant.

On that point, on peaches South Africa has been accused - and the Anti-Dumping Commission of Australia has initiated an antidumping investigation on peach products coming into South Africa. We've all been making the submissions. We have already completed the first part of the two exporters questionnaires that may be required. For this commission's purposes, you may note the date that we will submit that is 19 August. We will be very happy to also supply our information in that respect to you so that you may perhaps use that information to perhaps look at any concerns that you may have in terms of the price that our products come into the market.

Perhaps just on that, one thing that wasn't clear from some of the submissions: it seems to be that there's the perception that, if a product lands here and Australians can't make it for that particular price, that means it's been dumped. The definition of dumping as for South African, in my fictitious example, sells in the Australian market for less than they would sell in their own domestic market. So there's a bit of a difference in terms of the actual definition of what would be considered as dumping or not.

In terms, commissioner, of your question initially as regards the global data on perhaps some of these products - I'm now specifically referring to fruit and not tomatoes. In terms of fruit - and once again we will substantiate this in our supplementary submission - what we noted is that there's been quite a significant decline globally in the processed fruit category. From our information I'll present you also with the actual percentages, both a confidential and a non-confidential version. This could definitely also have an influence within Australia while they're seeing that type of decline in the actual market. So it's not necessarily due to the fact that imports are causing any injury. That's the opening statement, thank you.

MR HARRIS: Thank you very much for that. They're some comprehensive initial remarks. Yes, we would like to follow up that information on the nature of the global fruit market. We think it may be important to assessing trends.

In terms of your comments on safeguards, as I said, I'm not going to go through them blow by blow, but we understand entirely what a safeguards inquiry is meant to pick up and how the Dumping Commission will handle its task. We're also quite happy to take information from you, if you wish to submit it, on anything that you may think is relevant. We certainly don't restrict anybody from submitting information to us. We'll ultimately have to decide what is relevant, but we'll be quite happy to receive information that you think is certainly relevant to a case you'd make here.

I guess the generic nature of the question I asked earlier of your government authorities is the only real question I had set up here for you as well, but it is quite

clear to us that you are a significant presence in the international market and thus your view on how the markets are unfolding is something we'd certainly like to take into account. That information, as and when you have it available, will be useful to us.

Paul, do you have any questions?

MR BARRATT: No.

MR HARRIS: No-one has specifically mentioned tomatoes, and I'm not sure whether this is a highly pertinent product from your perspective or not. I guess, in going to and reading the submissions, I've been trying to put people into one stream or the other, and I've primarily put you into the fruit category. Would that be roughly right?

MR GELDENHUYS (SAFVCA): Roughly right, yes. Fruit is the major concern for us. Tomatoes are also a concern. We do export quite a number of cans every year, so it's still a significant contribution.

MR HARRIS: Okay, but I've sort of mentally seen the tomato presence as being dominated by other countries rather than necessarily - - -

MR GELDENHUYS (SAFVCA): Yes, that's correct.

MR HARRIS: But I just thought I'd mention that in case there's something specific you had to offer, because I primarily was looking at peaches, because I think that is a market in which you have a strong international presence.

MR GELDENHUYS (SAFVCA): Yes.

MR HARRIS: I'm just doing a check down here of what other people have asked me, but I think you answered quite a few things. This is sort of a leading question, but, as you might have heard me note earlier, and you certainly would have read from the submission, SPC's advice is - a lot of it is structured in terms of impact in the retail market, and I think you were probably present for some of my earlier questions about that.

Would you have information available, or would you be able to consider information available, about how supermarket strategies out of Australia affect the nature of import practice here? If you have no information or if it's confidential, we entirely understand, but if there was something in this area, primarily because - although, as I think I've said previously, as a commission we will be assessing this on a basis that meets the requirements of the WTO rules, so we'll look at the full scope of imports, not just retail oriented imports. Nevertheless, the retailing issue comes

up continuously in a number of submissions, and I guess I'm probably going to ask most people who intend to submit, from the import perspective, whether there's any comment they would like to make about the nature of the retail business and how it might have changed in recent times.

MR GELDENHUYS (SAFVCA): Thank you very much for that. We'll most definitely make that submission within our supplementary. In addition to that, our information that we have is a little bit different from what we've heard earlier from SPCA in terms of, the retail sector is of course a large part of the market, but the catering section is also a very large part of the market, and we will be making a submission on that also.

MR HARRIS: That would be useful too. Thank you very much for that.

MR WILSON (JT): I'm sorry, can I just comment. Could you clarify exactly what you're saying there in regard to the supermarkets' operation and how they import, I think was what you said.

MR HARRIS: Not so much how they import but how they might have changed the nature of import markets. In some of the submissions - and they're on the web site. It may be that there is no impact, but I'm interested in the nature of this because we're primarily trying to understand this question of markets and products and like products and therefore behaviour may or may not be relevant.

We've got submissions from the two supermarket operators, and we'll be going back to talk to them directly, but to the extent that you have information that you're prepared to share with us about how that might have changed the nature of importing behaviour in Australia, we're interested in that. It may subsequently prove to be irrelevant, but if there's nothing that you know of, then there's nothing you know of.

MR WILSON (JT): Yes. It perhaps goes back to a historic thing as to when the merger happened between Ardmona and SPC. At that time they had a market dominance position. They were the only manufacturer. For the two years immediately after the merger the prices went up in Australia by 40 per cent. The supermarkets didn't like that, so they looked for an alternative, and that alternative was obviously external to Australia.

MR HARRIS: Yes.

MR WILSON (JT): Firstly, though, they tendered to the world. Any manufacturer anywhere could have tendered on the supply of their fighting brands; ie, if you want to call it Coles Smart Buy and Homebrand, amongst others in the other retailers. Two years on, when that lesser grade of product came into the market, both the supermarkets saw an opportunity for a premium brand, a private label brand. In the

case of Coles it was the You'll Love Coles brand. In the case of Woolworths it was the Select brand.

That's where there may have been a little change, because you went from a cheap-end syrup pack - any standard, if you like, or any quality level - to suddenly having a premium brand with ring-pull cans, which this market hadn't seen before. There was a significant shift, and this was in about 2004.

MR HARRIS: Right. So 2004 was the time of the merger, if I recall correctly.

MR WILSON (JT): No. It was earlier than that.

MR HARRIS: Earlier?

MR WILSON (JT): The merger occurred in 2001.

MR HARRIS: 2001? Okay. In any event, it may not be a relevant consideration but, as you know, one of the things we're required to do is discover the market and the substitutability potential effects and then discern what was likely to be driven by factors relating to imports and what was driven by other factors. So we intend to do our job, and that's why I'm asking the question.

So if there is anything you wanted to offer on that, we'd be interested in it. It may, as I said, prove not to be relevant. On examination, you may decide it's just anecdotal and therefore not even worth submitting. Fair enough. But if there was anything - I feel obliged to ensure that we should do a comprehensive job; we should ask the question of you. Thanks very much for your time today.

MR GELDENHUYS (SAFVCA): Thank you.

MR HARRIS: We appreciate it.

MR HARRIS: All right, we are way ahead of time. I have the Delegation of the European Union next. I don't know whether the European Union is ready, present and available. I know at some point, if we keep running ahead, I'm going to look up and look for the next participant and they're not going to be here, and then we'll have to say, "Talk amongst yourselves for the next 20 minutes." I hope not.

By the way, I should take the opportunity, since we're here, to say that I understand that at about 2 pm - for those who want to straighten their ties and brush their hair - the media will be here to photograph your presence. I think the ABC is sending a camera crew around. They won't be taking any sound but they will be doing some vision for the television tonight. Somebody will wave to me and say the TV cameras are here and then we'll all just act in a suitably high-level diplomatic fashion and look like we all know what we're doing, et cetera. Perhaps for the benefit of the recording, if you gentlemen could identify yourselves and then we'll proceed.

MR NICOLAJ (EU): My name is Andrea Nicolaj. I'm first councillor, Delegation of the European Union to Australia and New Zealand, and I'm currently charges d'affaires here at the moment.

MR TUCKWELL (EU): I'm John Tuckwell, a senior adviser at the Delegation of the European Union.

MR HARRIS: Andrea, John, thank you very much. Do you have comments you'd like to make at the start?

MR NICOLAJ (EU): Yes indeed.

MR HARRIS: Okay, please proceed.

MR NICOLAJ (EU): Thank you very much for having invited the European Commission and may I say at the outset that unfortunately, given the short advance notice, my colleagues from headquarters in Brussels were not able to send an expert from the headquarters. Therefore, I'm going to read out a document statement which I received from headquarters for the European Commission.

MR HARRIS: Sure, please proceed.

MR NICOLAJ (EU): First of all, again thank you very much for having given us the opportunity to be heard with regards to the initiation of a separate investigation on imports of processed tomato and fruit products into Australia. At the outset I'd like to make a remark on the terminology I will use. I represent today here the European Commission and we are providing evidence to the Productivity Commission, which may create some confusion. For the sake of brevity, we have

both a tendency to refer simply to "the commission".

MR HARRIS: Sure.

MR NICOLAJ (EU): I'd like to make it clear that when I make reference to "the commission" I refer to the European Commission, so that's an important caveat. Most of the points I will make today will apply to safeguard inquiries and so unless specified, basically our comments apply to both, although it is obvious that our economic interest lies predominantly with processed tomato products, notably imported from Italy.

First of all, the commission would like to remind the Australian authorities that the safeguard instrument should be reserved to truly exceptional circumstances as it affects fairly-traded imports irrespective of their country of origin and whether or not they individually cause an injury to domestic industry. For this reason, of course, the WTO jurisprudence has clearly set very high standards for the application of the measures. The commission trusts that Australia is aware, obviously, of these very demanding standards and will strictly apply them during the course of these proceedings.

Having said that, the commission deeply regrets that the Australian authorities have decided to initiate investigation, particularly because the bases on which it has been opened we feel are not as strong as the safeguard case would warrant or would require. In particular, regarding processed tomato products, the commission does not understand why the Australian authorities have decided at the same time to open an antidumping investigation on the same product, specifically targeting Italian product exports, and the commission asks you for an explanation, although we fully understand that the Productivity Commission is not the best-placed institution in Australia to speak with authority on antidumping, but we still think it is useful for us to put it on the record.

The agreement on safeguarding requires that existence of an increase in imports in absolute or relative terms to domestic production as a prerequisite for the application of safeguard measures. This increase of imports has to be caused by unforeseen developments and has to cause a serious injury to the domestic industry. Furthermore, jurisprudence has established that this increase needs to be recent enough, sudden enough, sharp enough and significant enough, both quantitatively and qualitatively, to cause or threaten to cause serious injury.

Let me focus on the data used in the submission and the elaboration of the case. First of all, the commission believes that the data presented to demonstrate that such an increase of imports has occurred is not solid enough to base the decision of a safeguard proceeding. The figures notified to the WTO do not allow assessing the most recent development of imports because, indeed, the latest data ended by 30 June

2012, which is more than a year ago counting from today. In particular, for processed tomato, according to the data reflected in the WTO initiation notice, it appears that there was an increase in imports in the period financial year 2011-2012. However, the commission has strong doubts that such an increase of 12 per cent in one year is significant and sharp enough to justify the imposition of such safeguard measures.

Indeed, there has been additional information which has been published in the Australian Productivity Commission's web page on the same basis of the WTO notification that imports of processed tomatoes, less New Zealand, actually declined by 2 per cent for the first 11 months of the period 2012-2013, compared to the same periods of the previous year. This, of course, suggests that for the most recent period there have been no grounds at all for a safeguard inquiry.

In terms of processed fruit products, according to the WTO initiation notice, it appears that imports of the products under investigation have followed different trends. Imports for some products have only slightly increased in the most recent period or even decreased. For example, this is the case of the import of citrus fruits. I think there has been an increase of 5 per cent only, peaches 2 per cent and other fruits 5 per cent, whereas in other cases like in the imports of mixtures, it has even decreased by a considerable amount of 43 per cent. So it is clear, according to our analysis, that on this basis it is impossible to conclude that it was a recent increase of imports and no measures would be justified for these products on this basis.

The data reported by SPCA does not add, to our understanding, much clarity to the picture as the figures are based on imported sales, which is by no means a measure of global imports to Australia. As well, the figures provided only referred to supermarkets and forget the rest of the distribution channels. Even though the industry does refer in some chapters of its submission to official figures, the source of information for most of the figures on imports used is a market research company and not the official statistics source. In the commission's view, non-official figures provided by SPCA are not to be taken into consideration and official figures which in this case show a decrease, as I said before, of imports in 2012 again need to be reconciled with the ones provided by the different parties.

Finally, as already mentioned, the alleged increase of imports has to be the result of an unforeseen development. The commission strongly questions the fact that the increase in the exchange rate is considered to be an unexpected and unforeseen development, as SPCA argues in its submission. Public information in fact demonstrates that the exchange rate has been steadily increasing since 2009 until 2012 - this means over a period of four years - which is under no circumstances an unforeseen development as we can label it.

In terms of serious injury, the correct definition of the scope of the domestic

industry is key for the injury analysis. According to article 4 of the Agreement on Safeguards, the domestic industry shall be understood as the producers as a whole of the like or the directly competitive product. In the commission's opinion a suitable approach in this case would therefore be to restrict the definition of the domestic industry to the producers of canned tomato products. In other words, the commission contests the fact that producers of fresh tomato or fresh fruit intended for processing have taken into consideration, for the definition of the domestic industry, producing like product or directly competitive to canned product.

With regard to the injury analysis, the commission is indeed disappointed by the insufficient level of data on injury notified to the WTO. We understand that this morning the Productivity Commission has asked SPCA to provide this missing information, so forgive me for these comments which go, I think, in the same direction as some of the comments made by others. The commission considers that the lack of information at this initial stage does not allow the interested parties to conclude that domestic industry is seriously injured. The commission had hoped that the recent publication of the SPCA submission would have shed some light on the injury analysis but, instead, we found that references to injury were based on assumptions or were not clear.

According to article 4 of the Agreement on Safeguards, the analysis of all relevant factors of objective and quantifiable nature is crucial to demonstrate that the position of the domestic industry is in significant overall impairment. SPCA did not provide information on all relevant factors specified in the article 4 such as, for example, the level of employment, capacity utilisation, the real share of domestic market taken by increased imports, including all distribution channels, production or productivity. It provided, however, data on profitability which is not, in our view, very clear in terms of the scope and the time frame. The planned investment to operate a plant in the Goulburn Valley suggests that there are also technical reasons for the loss of profitability.

The commission is convinced that the elements to pursue a solid analysis on injury are simply not there. Consequently, it calls on the investigating authorities to ask for relevant information on the injury, which as I said before I know you have already done. Also, I think it is crucial to evidence the existence of a causal link between increased imports and a serious injury. In the commission's opinion SPCA does not explain clearly what is the causal link between the increase of the unit cost in imports. Additionally, the commission has strong reasons to think that there are sources of injuries other than increased imports causing injury to the industry. For instance, weather conditions or the increase of costs of production certainly cause injury to the industry other than injury caused by imports and its limited capacity of the industry to react against imports. These other sources of injury are mentioned and are clearly minimised in the SPCA submission but we believe they are important.

Finally, and as mentioned in the issue paper as a source of injury other than imports, the commission believes that the exchange rate has indeed played a crucial role in the increase of imports and, as a consequence, the commission asks the Australian authorities to duly investigate factors of injuries other than imports, such as the increased cost of production of SPCA. A few concluding remarks: we as a commission therefore are convinced that it is yet to be demonstrated in a clear way what the evolution of imports was during the investigating period, and for us that is a crucial point. A deeper analysis on injury factors and causes of injury needs to be duly performed, taking into account reliable data from the industry and paying special attention to causes of injury other than imports.

The commission is convinced that at this stage there is no justification to impose provisional safeguard measures as the industry has failed to demonstrate, with reliable data, the existence of critical circumstances that would cause damage difficult to repair to the domestic industry, which are exclusively the processed tomato products producers and not, as explained earlier, the tomato fruitgrowers as a whole. Finally, the commission trusts that the Australian investigating authorities will duly take into account all arguments outlined in the submissions for this investigation. Thank you very much.

MR HARRIS: Thank you very much for your presentation. Can I just clarify with you the comment on the exchange rate, because I did read this in the submission and it wasn't fundamentally clear to me. So the exchange rate shift will, all things being equal, have been one of the factors leading to an increase in imports. So clearly - I want to be sure this is right - you're not suggesting that in some sense the exchange rate should be considered as a trend in its own right but irrelevant to the increase in imports? I think what you'll be suggesting is the exchange rate, in terms of its impact on other costs of SPC in producing the product is also relevant. In other words, other imported costs for SPC which may have been affected are relevant. Would that be really what you're saying?

MR NICOLAJ (EU): What I would say is that, first of all, it needs to be demonstrated that there has been an increase in imports, because I think for us that is the very first point.

MR HARRIS: I understand.

MR NICOLAJ (EU): Secondly, what I could say is that yes, I think it's a tricky issue. The exchange rate may explain why imports increased or caused injury but the question in our mind is rather whether increased imports have indeed caused injury or not. That, for us, is what would be important.

MR TUCKWELL (EU): Another matter, of course, with the strong dollar meant

that exports were much more difficult and virtually ceased, is my understanding, and therefore that's added further to the injury, which is not to do with imports but to do with exports.

MR HARRIS: In other words you're suggesting to us that we should comprehensively examine the dollar impact, not just consider the dollar impact in relation to the imported processed tomato product, for example. Is that correct?

MR TUCKWELL (EU): Correct.

MR HARRIS: Okay. I think we understand each other then. That's good. I think you also observed that the European Commission - I'll keep calling it "the commission" too - the commission doubts that a 12 per cent increase in processed tomatoes, one year and one year, is a sufficient basis for proposing a safeguards investigation. I guess you'd undoubtedly realise it's not our decision to launch the investigation with the investigating authority, but I am interested in knowing whether you have any advice that suggests why 12 per cent would be insufficient one year upon year. For example, there may have been case law that we're not aware of, or somebody may have made some decisions in other circumstances. It's a very specific point and I was wondering if there's any other information behind it.

MR TUCKWELL (EU): We did ask that question overnight to Brussels and are still unfortunately awaiting a reply as to what level of increase would we therefore think was - and whether or not there's any case law.

MR HARRIS: Yes.

MR TUCKWELL (EU): But we've received no reply to that issue.

MR NICOLAJ (EU): That of course has to be put into the context of the importance of the domestic production.

MR HARRIS: Of course, of course. I'm not suggesting that that's a make or break - - -

MR NICOLAJ (EU): But we would be happy to get back to you.

MR HARRIS: If you do get a reply, we would be very appreciative of receiving that advice.

MR BARRATT: Yes, that's good.

MR HARRIS: I understand the circumstances, though, as ones where necessarily you may not want to answer the question quite in the way which says, well, what

level is sufficient. Of course then you're on the hook of - somebody can find that and say, "Aha!" so I'm not asking you to go down that path. I'm really just trying to work out why 12 per cent isn't, so the second half of it is important to me; the idea of what is sufficient. I'm really asking just the question around would 12 per cent, year on year, not be considered sufficient? Is there a basis on which this has been previously attained in some other case? Or are you aware of something which would support that? We'd be interested in that information.

MR TUCKWELL (EU): But if you look at the trends, the statistics over the period, the fluctuations in imports have been, in previous years in the early 2000s, much larger than that change and there was no initiation of such an investigation during that period.

MR HARRIS: Okay, I note that. You also referred to exceptional circumstances and although I'm getting familiar with the language of safeguards, because there are many interesting words in the safeguards context which have particular meanings attributed to them over time, I haven't heard the term "exceptional circumstances" before, and I was just wondering whether that too is terminology that is quite important. I think you said at the outset that safeguards are the sort of thing you trigger only in exceptional circumstances, and so we've had these references, and you've made them yourself, to conceptually to surge - although I understand "surge" is also not a word that's invested with a lot of legal substance, but with this question of sharp enough, sudden enough, unforeseen - those sorts of languages do actually have some legal significance.

Did the term "exceptional circumstances" come with advice that suggested again that there was some explanation you could provide on this? Noting, of course, that it's not our decision to trigger the safeguards inquiry but nevertheless I'm interested in knowing whether there was any background to that that you could also provide.

MR TUCKWELL (EU): I think in part that's differentiating between this example where you can have measures, where there is fair trade, and other trade defence instruments, either antidumping subsidies measures where there has been unfair trade.

MR HARRIS: Yes.

MR TUCKWELL (EU): So that's why I think it's exceptional circumstances but we can take advice.

MR HARRIS: If there is anything. Obviously if there's not - I'm not trying to build a mountain out of a molehill here but I do note the terminology and I'd like to be sure that we're following the correct precedents where they're available. Paul, do you

have questions?

MR BARRATT: The one that was in my mind was the point that was being made about the exchange rate and that's been clarified.

MR HARRIS: All right, just let me check through my notes. I have multiple sets of notes here, so if you can just bear with me for a moment to ensure that I've asked everything that I was planning to ask here. This may or may not prove relevant but can you tell me whether there's been recent policy changes at the European Union level which might have had an impact themselves on global markets? You may have noted earlier I asked South African representatives if they had some understanding of global markets. One thing we will try and look at in the course of this is whether we are seeing in the import data something that reflects a global market shift rather than a local market shift. That may not be relevant in the end but we're at the stage where we ask for information if we can get.

If you're aware of any recent policy changes at the European Union level that relate to the industries that we have under consideration that may be reflected in what are called the international markets, the international trade for other relevant products, we would be interested in anything you have by way of background on that.

MR NICOLAJ (EU): In terms of the European Union policy, there's been - over the last recent years - reform of the common agricultural policy which has moved our policy towards less trade distorting - it's become much less trade distorting - and we have decoupled our support away from production, which again should be creating a more level playing field. That's in general.

MR TUCKWELL (EU): In precise terms, the previous direct payments to the fruit and vegetable sector were abolished in 2007. That just happens to coincide with the end of the countervailing measures which were enforced on Italian tomatoes up until April 2007. The reform of the CAP means most of the support is no longer now linked production. Producers are free to produce to the market but they receive sort of almost a social payment to keep farmers on the land.

MR HARRIS: Okay, and that was prior to 2007, so since 2007 the direct payments issue - okay. But nevertheless, in terms of then the global market, a number of submitters have sent us information on how they see global market trends, and I'd be interested in your information on global market trends, if indeed there is any, but if there isn't any that's fine as well. All right, I don't think I have anything else, gentlemen. Are there final comments that you would otherwise like to make?

MR NICOLAJ (EU): Not other than we will certainly commit to follow up on those issues.

MR HARRIS: Okay, that's fine. Thank you very much.

MR HARRIS: When you're ready, gentlemen, if you could identify yourselves for the purposes of the transcript, thank you.

MR MOULIS (ANICAV): My name is Daniel Moulis. I'm from the law firm Moulis Legal and my colleague with me, Alistair Bridges, is also from the law firm Moulis Legal, representing ANICAV.

Commissioners, thank you for giving me the opportunity to address this public hearing of your inquiry concerning processed or preserved tomatoes. I've already introduced myself and my colleague Alistair.

We attend here today on behalf of the Italian National Industry Association of Conserved Vegetables. It has a much more lyrical name in Italian. However, my ability to pronounce it in that language in a convincing way ends at "Associazione". I cannot continue with the rest of words in a convincing way, so I'll leave it at that. I'll refer to my client as ANICAV.

I'd also like to make clear that ANICAV's observations regarding a safeguards investigation are also shared by and represent the views of two other organisations. One of those is AIIPA, the Italian Association of Food Product Industries, and the other is Fedagri Confcooperative.

Just to introduce the organisations themselves, ANICAV is the association comprising the members of Italy's vegetable processing industry, as the name would suggest, including, importantly and substantially, its tomato processors. AIIPA represents food product industries more widely and has a broader remit and membership than just vegetable processors. Fedagri is a representative organisation of the primary agricultural sectors in Italy.

Also I'd like to mention that ANICAV is a member of the European Organisation of Tomato Industries, and that organisation lodged a submission in this inquiry on 17 July, which ANICAV was also part of and which ANICAV endorses. So I think you can see the seriousness with which the Italian agricultural sector is treating this matter and also its very earnest concern to assist the commission in its inquiries and to present the facts, its agreements and its requests.

Be in no doubt from the outset that there are no grounds for the imposition of any safeguard measures in the circumstances of this case. I'll also refer to these safeguard measures as border measures, because that essentially is what we're talking about.

ANICAV's position is not based on a pleading, and what I mean by this is that ANICAV and its supporting organisations do not come here to ask that the commission in its discretion not recommend to the government that safeguard

measures should be imposed, whether on a provisional basis or for a longer period. The commission has a discretion not to recommend the imposition of safeguard measures if the conditions for their imposition are made out, but there is no discretion in the opposite case. ANICAV maintains that this opposite case applies; that the conditions do not exist.

This is a legal matter. It's bound by the rules of the WTO Safeguards Agreement. Australia is obliged not to increase tariffs under the justification of safeguards unless the legal conditions for the imposition of those measures do exist. This does not mean that other WTO-compliant means of providing assistance and support to industries involved in food chain activities in Australia are not open to the Australian government.

I'm not here to argue against or advise upon any other means by which the Australian government might consider it could or should develop and encourage the development of the processing industry and the related industries. I'm here to address the contemplation that border measures under the safeguards agreement might be imposed by the Australian government and, in that specific context, the answer is, no, the legal conditions do not exist for their imposition.

I would also like to make it quite clear, as stated towards the end of ANICAV's submission, that ANICAV has regard and respect for the growers of tomatoes in Australia. Many of them are the families of Italian immigrants to Australia, and Italy and Italians have a strong social and cultural connection with this country. Whether the farmers themselves are of Italian descent or not does not matter. ANICAV respects the nobility and the importance of all farmers and their work.

But this specific safeguard measures case is about the industry producing like and directly competitive products to the imported products; namely, the preserved or processed tomatoes which are produced by SPC Ardmona. These become different products, after they are grown, through that process. Through that industrial process, they are transformed into things that are no longer raw produce. Different factors of production apply. Different considerations - considerations specifically related to the processing industry - must be used in assessing the application of safeguard measures against the imported processed products.

This reality is a function of the WTO rules that I have spoken about, and safeguard measures are not justified to protect the processing industry, because the conditions do not exist. The answers to the concerns of the tomato-growing communities of Australia are not to be found - cannot be found - in the specific guise of safeguard measures. This is likely to be a matter of regret for them, but that is how the system operates.

With that introduction and context in mind, I would now like to turn to the

main points of ANICAV's submission, which was filed with the commission recently. It's probably trite - and it's already been said a few times today - that there are certain conditions for the application of safeguard measures. They may be imposed if a product is being imported into a WTO member country in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury - may I underline "serious injury" - to the domestic industry that produces like or directly competitive products.

As we can see, there are a number of conditions to be met, and they are not to be satisfied casually. One or other is not good enough. All the conditions must be met. Why should there be these strict rules? Why should there be these gates through which a WTO member must pass before imposing duties or other border restrictions such as these? The reason is that these are measures which would otherwise violate a member's WTO obligations. They would apply against fairly-traded imports. In other words, safeguards are measures that contradict the natural order of the WTO agreements and the philosophies which underpin those agreements.

Let us apply these rules to the facts of this case. First and primarily - it's a theme that I will come back to on a few occasions - are there increased quantities of imports that would serve as the trigger to even consider the other elements? SPC Ardmona states that imports of canned tomatoes have increased in absolute terms over the period from 2010-2012 and into 2013, but this is not correct, because SPC Ardmona's own charts show a decrease in imports from 2011 to 2012. The longer term trend, were it relevant - and I'm talking about the longer term trend way back in the past - is a stable one, apart from 2009 when there was a strong decrease in the imports to Australia.

Australia's WTO notification is also curious so far as ANICAV is concerned. It only has statistics up to 30 June 2012, which was fully over a year ago. Thus, neither SPC's data nor that submitted to the WTO relate to a sudden and recent increase or surge in imports, and it is this surge in imports or this increase that is the basic element underpinning consideration of the other factors and ultimately a decision to impose safeguard measures.

In the WTO case of Argentina Footwear the appellate body referred to a requirement - in fact a number of requirements - that the increase be recent enough, sudden enough, sharp enough and significant enough, both quantitatively and qualitatively, for it to be able to cause or threaten to cause serious injury, in the meaning of the article.

This test of increased imports must look at the overall trend over a recent period. It must not just look at a year-to-year change; it must not look at a 10 or 15-year trend in imports. In this particular instance, ANICAV sees none of the

hallmarks of a recent, sudden, sharp and significant increase in imports. In fact, we have reproduced in our submission a chart which is based on the statistics which were issued by the commission in the dataset on its web site. People may not have yet seen that submission and the chart that we presented. I think you've probably got it there, but I've got some copies here. I'll just talk to it, I guess.

The main points of the chart that ANICAV has provided in its submission are these: a decrease in imports in calendar 2012 as compared to calendar 2011; a continuing decline in imports in the first half of 2013, which in this chart we've annualised for the purposes of plotting a full-year number. We also checked some other six-month periods to make sure that that wasn't an unusual or improper assumption, and it wasn't. We'd also see the position between 2008 and 2012 as amounting to only a one per cent increase, with a further decrease from the 2008 import volumes in 2013 on that annualised basis.

So in truth I could end ANICAV's presentation at this point. We did not see the recent, sudden, sharp and significant increase in imports which needs to be demonstrated in order for safeguard measures to be considered. With respect, we submit that SPCA's case does not get to first base.

Next I would turn to the question of injury. Quickly, I remind you that the focus of the inquiry needs to be the processing industry and that SPC Ardmona agrees with this characterisation of the industry. The WTO notification might be taken to suggest that a wider food chain is to be considered as the industry, in that it refers to a diminishing number of growers. If that is the suggestion of that notification by the Australian government, then ANICAV disagrees with that suggestion and notes that Australia itself participated in the WTO lamb litigation against the US where this principle was established that the consideration of injury must be limited to that industry that is producing the like or directly competitive products.

ANICAV submits that SPCA's injury claim falls short of the WTO requirements in a number of ways. SPC refers only to certain injury factors. It refers to a loss of market share, loss of economies of scale and a decline in profitability. However, the WTO agreement asks for a number of other injury factors to be considered in addressing this question of overall impairment of the Australian industry, and I heard when I came in a suggestion that additional information had been requested from SPC to fill out the data that had been provided to the commission in this regard.

ANICAV feels that SPC's submission does not demonstrate causality. Charts are provided showing trends in its retail sales of canned tomatoes, but no link is pointed out between an increase in imports and those sales trends. If SPCA can only refer to a few injury factors, ANICAV wonders how the WTO test of significant

overall impairment can be met. Again, WTO authority speaks of an evaluation of the overall position of the domestic industry in light of all the relevant factors having a bearing on that industry. For those of us that are familiar with a parallel agreement in the WTO - the anti-dumping agreement - a consideration of all of those factors is important.

ANICAV suggests that other factors are much more pertinent to the position of the Australian processing industry; the strength of the Australian dollar over recent years, in particular. ANICAV notes that weather conditions - extreme weather conditions here in Australia over the past decade, swinging from drought to flood - have severely militated against SPCA's supply chain, causing it to have overcapacities, which led to the closure of one of its plants in 2011.

ANICAV also notes that SPCA has publicly raised structural impediments as a concern for the development of its overall industry chain here in Australia and, in a 2011 submission on the National Food Plan, it highlighted that Australia needs to undertake a value chain assessment to work out what needs to be done to match other countries and to become globally competitive.

Therefore, ANICAV does not perceive that there is clear evidence of serious injury caused by imports, let alone from increased quantities of imports which, as we say, have not occurred. In particular, might I highlight WTO authority that the word "serious" underscores the extent and degree of a significant overall impairment that the domestic industry must be suffering as a result of the increased quantities of imports.

Anyone here could undertake a quick review of Coca-Cola Amatil reportage about the predicament of SPC Ardmona over past years, and that review would indicate to the reader that SPC Ardmona has been performing at what might be referred to as suboptimal levels; in normal speak, quite badly for very many years. Where is the change to this predicament which can be linked to a sudden surge of imports; a surge which itself does not exist? This coincidence, as mentioned in the Argentina Footwear case - a coincidence between a surge in imports and the significant overall impairment in the condition of the domestic industry - is not apparent.

There are two other matters that I'd like to discuss before closing my address. The first of these is the need for it to be demonstrated that the increase in imports has come about by reason of or through unforeseen developments, and there's been some discussion about that today, I note. This legal condition was agreed to by the WTO's contracting parties as an added hurdle to the imposition of safeguard measures. In summary, a WTO member needs to show that the increased quantities of imports come about by reason of something they could not have reasonably contemplated when they signed up to the GATT all those many years ago. These unforeseen

developments must be directly related to the product itself or to the increase in the imports of that particular product.

In WTO speak, there not only needs to be an unforeseen development but there needs to be a logical connection between the unforeseen development and the increased imports of the particular product concerned. I think you had a question about this a little bit earlier, and I've taken some notes. We can draw your attention to that case.

SPC Ardmona first argues against the need to demonstrate that the increase was unforeseen. This contradicts WTO authority, and I'll say no more about it. In the alternative, SPC Ardmona in its submission offers three developments that it claims are unforeseen. They are, firstly, currency. ANICAV maintains that this factor - the factor of currency fluctuation - was fully understood to be a concomitant aspect or a concomitant part of an open-world trading system. Moreover, currency fluctuation does not have an impact only on the imports of processed tomatoes; it has a general impact on the trading terms of a country overall. Thus it does not have the required direct connection to any increased processed tomato imports.

The next development alleged by SPCA is that of dumping. This, we submit, is irrelevant to a safeguard investigation. Indeed, that, if it is a problem, is able to be resolved elsewhere and is in the course of being resolved elsewhere. ANICAV maintains that there is no dumping and, in any event, the determination of whether there is or not is outside the province of this commission.

SPC Ardmona cites the strategies of supermarkets to choose imports in their private label offering as an unforeseen development. ANICAV cannot accept that competition is an unforeseen development or an unforeseen consequence of opening up borders to trade with other countries.

Lastly, may I address the accelerated inquiry aspect of this matter. This part of the inquiry is looking at the possibility of provisional measures to address critical circumstances, and I heard some references earlier to exceptional circumstances. It should be self-evident that if there are no grounds to impose safeguard measures at all, as has been the direction of this presentation, then there can be no grounds to impose provisional ones either.

This provisional remedy is not a remedy that is meant to preserve the status quo or to give an interim remedy before deciding whether the grounds exist for final action to be taken. Not at all. Clear evidence is required before taking such action; clear evidence of the self-same things that you would need to decide in order to make a recommendation at the end of this inquiry as to whether safeguard measures should be imposed. There is this added element of criticality. The test is not one of "maybe".

In closing, I wish to recommend ANICAV's submission to you. ANICAV, AIIPA and Fedagri Confcooperative urge the commission to report to the government that the grounds do not exist for provisional measures, because there's been no sudden increase of imports, no serious injury caused by a phantom increase in imports and ipso facto no critical circumstances can therefore be demonstrated.

There's been no increase in imports that meets the WTO threshold of being recent enough, sudden enough, sharp enough and significant enough, and I remind you of the graphical presentation that I have presented to you in that regard. ANICAV says that there are no unforeseen developments such as might be responsible for an increase in imports which would then be able to be addressed by safeguard measures. This just has not been established. No serious injury can be linked to an increase in imports because, firstly, there has not been an increase and, secondly, because serious injury in response to such an increase is not evident.

SPC Ardmona's position seems to have been maintained at an unprofitable level over a period in which there have been fairly consistent volumes of Italian processed tomato imports to this country.

I'm happy to take questions and engage in discussion, noting, however, that my client has not been able to come to Australia for this particular inquiry and I may have to take questions which require me to obtain instructions on advisement, but I assure you that we would come back to you on those matters.

MR HARRIS: Thank you.

MR MOULIS (ANICAV): Thank you very much.

MR HARRIS: Does your colleague have other remarks to make? No? Okay.

MR MOULIS (ANICAV): He'll answer the questions.

MR HARRIS: Thanks. That was a very comprehensive presentation. In the light of your graph, which I guess we'll put up as the revised submissions on the web site - so unfortunately for people who haven't received it, it's going to be a little hard to continue this discussion with your, as it were, mental input, but you've done calendar years here for your assessments. I guess you can get variations, but it is quite notable for our own numbers, which we've also got up on the web site but on financial year bases, that there is a bit of a differentiation.

You presumably, in doing this, did have access, because you used the ABS, to financial year data. It does go somewhat to my earlier question to the European Commission, which is this question of - on a financial year basis, we do have an

increase in processed tomatoes in a particular year on year, and please don't read into anything I'm saying here that I've reached any conclusions at all, but I'd like to repeat the question to you that I asked the European Commission. If indeed the data does show that there's been, say, a 12 per cent increase - which is the number used - from one year to another year, do you have a view on whether that constitutes a significant shift such as would potentially meet the requirements of a safeguards inquiry?

MR MOULIS (ANICAV): It's trite to say that every case depends on its particular circumstances, and the WTO cases have looked at this requirement of what constitutes increased quantities of imports, given its importance to the imposition of safeguard measures. They've emphasised in those considerations that the rate and amount of any increase is important. They've emphasised that one shouldn't look at sort of point-to-point analysis; one shouldn't look too far back; certainly one shouldn't look back further than, you know, five years. Obviously you can get context when you look at some charts to see what has happened in the past. However, the key requirement is the suddenness, the significance, the recentness of the increase in the imports.

You really don't have to look at my chart. You may as well look at SPC Ardmona's own chart. If you look at chart 2.1 in SPC Ardmona's submission and if you look at the import history from 2008, one sees a steady and stable trend of the imports; fairly consistent; a drop-off in fact in 2009, but then the levels in the other years - 2010, 2011 and 2012 - just being at quite reasonable, normal, stable levels, one would think, looking at that import history. As I said, it needs to be looked at on a case-by-case basis.

MR HARRIS: Yes, and we'll do that. I was just wondering if you had an opinion on it, since you might have heard it earlier, but I understand your answer. I was going to ask the question relating to your earlier observation but, since it was your earlier observation, do you want to ask that question?

Let me pose this, but the associate commissioner did note earlier that in some circumstances, if you have a 20 per cent market share and you lose one per cent of the market, you actually lose five per cent of your market share, and that could be a significant tipping point. In other words, a small shift - let's say a 10 or 12 per cent shift - could be quite a significant shift depending on what actual part of the market you still might consider to be what you're planning long term on retaining and therefore could damage you in a way that the simple and absolute number wouldn't necessarily suggest.

This is not a question with an intent behind it. I think the observation was made - and I would use that word "observation" - earlier. So I'd ask that question of you as well. Is there a history of this being a matter that, from a WTO perspective, would potentially meet the definition you're talking about, or not?

MR MOULIS (ANICAV): I think we have to look at the question of serious injury and this overall impairment. If there has been a decline, then the next question would be, well, how do we separate the different causes and their responsibility for that decline? One would think that over recent times there's been a very significant impact of currency fluctuations - a very significant impact - and if there has been, say, that loss in market share that you just referenced, well, one couldn't lay that at the door of the allegedly increased imports wholly.

Therefore, any diminution in market share could be down to quite a number of factors, and one can't be obsessed or focused on the question of the imports. One needs to look more roundly at what are the different impacts on the domestic industry which would dilute the effect of any increased imports in causing that particular injury, an injury which, even if it was considered to be serious in an absolute sense, when you fairly considered what were the different causes of it, you would find that there was not serious injury caused by increased quantities of imports. That just gives you a different - - -

MR HARRIS: Yes. The comprehensiveness, in other words.

MR MOULIS (ANICAV): Yes.

MR HARRIS: It's the same question.

MR MOULIS (ANICAV): Yes.

MR HARRIS: Examine all the factors that might be relevant.

MR MOULIS (ANICAV): Yes.

MR HARRIS: Sorry, since I stole your observation - - -

MR BARRATT: That's all right. No, that's fine. I'd just like to probe your statements about the exchange rate. You referred to the injury claim falling short in a number of ways, one of which was the fact of the strength of the Australian dollar. I think, if I got you correctly, you went on to say that the circumstances that caused injury would have to be unforeseeable at the time of signing the agreement, and you said that currency fluctuation is just an inherent part of the world trading system and is quite foreseeable.

What I'd like to get clear from you is that it's your contention that there could be no type of currency, of exchange rate excursion, that would constitute an unforeseeable circumstance. For example, just to give you an illustration, SPCA said, "Well, who could have foreseen that the Australian currency would begin to be

taken on board as a reserve currency?" and they referred to a historically high level of exchange rate for which I think they would be able to get support from the governor of the Reserve Bank.

You're saying that, just by definition, changes in the alignment of currencies can't be a trigger.

MR MOULIS (ANICAV): Yes.

MR BARRATT: All right.

MR HARRIS: Okay. I don't have any other specific questions for you at this time. I did mention to a number of other people - and I think you referred to it - that we have actually asked SPC for more information on some of the issues that you've referred to. You may have been present as well, but let me clarify: the fact that we asked for submissions by 18 July was so we could run a hearing as quickly as possible in order to consider the provisional measures sort of issue. That's not meant to shut off the avenue of providing further advice.

So even though I think we haven't left anything specific with you today by way of questions, we're still in the mode for receiving additional information and we'd be happy to receive that if there are things that occur to you that you think are relevant to us for the purpose of conducting the inquiry.

MR BARRATT: And that additional information includes commentary on the information that's been provided by others, of course.

MR MOULIS (ANICAV): Yes.

MR HARRIS: I'm not sure how long it takes us to get the transcript up. Actually, no-one has asked me that today. How many days, roughly speaking, would it take us to get the transcript up? About three days? So in about three days' time and then a day to read it, because it's that long. But from then on anyway, if there's commentary that you would like to provide by way of submission, we're certainly happy to receive additional information. Okay. Thank you very much for your time today.

MR MOULIS (ANICAV): Thank you.

MR HARRIS: Welcome, Ambassador. If you and your colleagues could identify yourselves for the purpose of the record. If I understand rightly, you're going to read a statement.

AMBASSADOR DIAZ HERRERA (ERC): Thank you very much, Mr Chairman. I am Pedro Pablo Diaz, Ambassador of the Republic of Chile.

MR MORAN (ERC): Good afternoon. My name is Carlos Moran. I'm the Deputy Head of Mission of the Embassy of Chile.

MR DIAZ IBANEZ (ERC): Good afternoon. Felipe Diaz, second secretary of the embassy.

AMBASSADOR DIAZ HERRERA (ERC): As you can see, Mr Chairman, this is a very important issue for us, for my country, and that's why, as a signal of responsibility and to show that it's very important, all of our embassy is here, and because of the short time we had, our people couldn't come to be present from Chile.

The government of Chile thanks the Australian Productivity Commission for the opportunity to appear before it today to present comments regarding the ongoing safeguard investigation for processed fruit imports initiated at the request of SPC Ardmona.

First of all, Chile would like to highlight that safeguard measures are considered to deal with injury caused by a sudden and recent surge of imports due to unforeseen developments, and neither dumping nor subsidise need to be present. Accordingly, to apply safeguards, the increase of imports must be recent enough, sudden enough, sharp enough and significant enough, both quantitatively and qualitatively, as it has been recalled in several submissions. The unforeseen development must be understood as unexpected circumstances, and the injury and causality requirements are much more stringent than those required under the analysis of unfair trade practices.

Chile disagrees with SPC Ardmona's suggestion that the analysis of provisional safeguards can disregard this basic condition set forth by the WTO Safeguards Agreement. Besides, Chile believes that the current inquiry is not the appropriate field to challenge Australian authorities' procedures regarding safeguard measures.

After the examination of the submissions provided until last Friday, Chile strongly believes that the arguments and information supporting the present inquiry so far do not fulfil the abovementioned high standards. The following elements allow us to arrive at this conclusion.

First, domestic industry and products under consideration: in its first

submission, Chile stated that there were no elements which would allow to determine that the imported products specified in the terms of reference are neither like products nor directly competitive vis-a-vis the locally produced products.

The information provided by SPC Ardmona regarding this issue in its non-confidential submission of July is absolutely incomplete and quite surprising. First, it refers to only two products, pears and peaches. Then page 28 states:

The majority of pear shoppers also buy peaches and therefore may be likely to substitute. However, the reverse is not the case.

What does this information mean? Does it mean that two products are substitutes just because they are bought by the same consumers? Does it mean that domestic peaches compete only with imported peaches? What about the whole range of products under investigation according to the terms of reference?

It's worth mentioning that the information provided by SPC Ardmona on pages 9 and 10 of its submission regarding physical likeness, commercial likeness and functional likeness is applicable to a very much wider range of products than those under the inquiry. Then Chile would like to ask the commission to provide clarification on this issue prior to any determination under the investigation.

Second, lack of increase in imports: despite the lack of certainty about the appropriateness of the product coverage suggested by the Productivity Commission issues paper, taking into consideration the import data available, it is not possible to conclude that there was a recent increase of imports as required by the WTO Safeguards Agreement. The fact is being raised by most of the countries participating in this inquiry.

Third, lack of unforeseen developments: on the basis of the information available we reaffirm what we said in our written submission. There is no evidence of unforeseen developments which would have influenced the fluctuation in the imports volume. In the non-confidential submission of July, SPC Ardmona brings up three factors. Appreciation in the Australian dollar: as we stated before, the fluctuations in exchange rates are known to affect the competitiveness of specific economic sectors. Moreover, the situation alleged is well documented and has affected a wide, wide number of countries, including many exporters to Australia, as in the case of my country, Chile.

Imported products through dumping: given the allegation, the government of Chile would like to ask the commission to determine the appropriateness of continuing this safeguards inquiry. Supermarket products strategies: regarding this issue, Chile would like to point out the submissions made by Woolworths Ltd and Coles. Both companies provide information on their stocks of Australian products in

general, and those of SPC Ardmona products in particular. We believe that this information differs from the scenario presented by SPC Ardmona.

Fourth, lack of serious injury and causality: on the basis of the information available, we reaffirm what we stated in our written submission. There are not enough elements to properly assess the factors determining the existence of the alleged injury. Even taking in account the answers provided by SPC Ardmona to the questions of the commission, the lack of facts supporting the claims regarding serious injury, presence of critical circumstances and causality - pages 38 to 41 - remains unchanged.

It's worth mentioning the wide range of factors emerging from the written submission, other than increased imports, that can be considered as sources of injury to the local industry; for example, weather conditions affecting supply, production conditions such as irrigation, age of the trees, increase of production costs - energy, natural long-term decline of preserved fruit demand as fresh and frozen alternatives are more readily availability and/or more convenient to consumers, and the exchange rate movements abovementioned. Chile requests the Australian authority to duly investigate all the factors reported prior to any determination under this investigation.

Conclusion: Mr Chairman, we would like to recall that under the Australia-Chile Free Trade Agreement the only country in Latin America with a free trade agreement with Australia is Chile. That's why this is not very important; it's extremely important for the free trade agreement signed last March - maybe March of 2009. Both parties in that free trade agreement committed themselves to strengthen their economic relations and further liberalise and expand bilateral trade and investment. In fact, bilateral trade has been increasing steadily since then. Despite that, Chilean exports of processed fruits to Australia have declined sharply in the most recent period of time. Besides, as was stated in our written submission, Chilean contribution to the imports under investigation is not relevant. It's almost marginal. Under these circumstances the application of a safeguard measure to the products under consideration would overly punish Chilean export, opposing the spirit of the free trade agreement.

Finally, Chile trusts that the Productivity Commission will give due consideration to the evidence before it, and if there's no further evidence that the authority will close the investigation without the application of any safeguard measures. Thank you very much, Mr Chairman.

MR HARRIS: Thank you, Mr Ambassador. I was going to make at least one comment in relation to your submission - not the presentation today but your submission. You did note in your earlier submission some references by SPC in press releases to the fact that demand shifts had been possible, and I think you mentioned that as well in your presentation - shifts in consumer preference for SPC

products had been part of the reason for a decline in quantities sought from growers. Since you also referred to it in your presentation here, I was wondering if you had information which would support the idea that consumer preferences have shifted away from processed fruit products.

If you don't have that information, if it's possible for you to supply us with any additional information that you might be able to gain from your home authorities. But I did notice that you had made that comment in your submission and no-one else had made such an observation, so that's why you're getting the question. You make the observation, you get the question - not to say it isn't something that somebody might else might have said.

AMBASSADOR DIAZ HERRERA (ERC): We don't have it here but we've read the request.

MR HARRIS: Thank you very much for that. I don't think we have any more information there. We have noted your comments about additional information that we too will need to put together in order to get our inquiry done properly, and I want to note those comments. Thank you very much for your time today.

AMBASSADOR DIAZ HERRERA (ERC): Thank you.

MR HARRIS: I think, according to what I have as a list, we are probably at the end of our list of people who are formally down to appear, so unless anybody has been missed out - he says, looking round the room for somebody. We did say we'd give the opportunity at this point to anyone who wanted to make final comments, as it were, from the floor, and I'm happy to do that but you would need to stand and perhaps proceed down near the microphones if you want to have any final comments that you have to make recorded. So is there anybody who feels the need to make a final comment here this afternoon?

That being the case that no-one is, can I make at least one observation. We haven't received any submissions on one of the tariff items that has been referred to us in the terms of reference provided by the government, and that is on canned citrus products. We've received no submissions from anybody on the subject. I think it's likely that unless we receive submissions on this from some party in the relatively near future, we can probably come to the conclusion that this isn't going to be relevant to the safeguards inquiry on a continuing basis. I just make that comment - no-one here today. That's not to say we have yet come to a final conclusion on that but we've received nothing and if we don't receive anything we don't plan to continue to a point of including this in the final report. So I just put that on the record here today.

AT 3.09 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY