



**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**

**AT MELBOURNE ON MONDAY, 28 OCTOBER 2013, AT 9.42 AM**

**Continued from 30/7/13 in Canberra**

## INDEX

	<u>Page</u>
SHARMAN STONE	105-114
GREATER SHEPPARTON CITY COUNCIL: JENNY HOULIHAN GERALDINE CHRISTOU	115-119
BUYAUSTRALIANMADE: STEPHEN GATELY	120-121
TURNBULL BROS ORCHARDS PTY LTD: ROSS TURNBULL	122-127
K. BESIM AND CO: SALI BESIM	128-131
SPC ARDMONA: PETER KELLY SHALINI VALECHA SELWYN HEILBRON	132-165
SOUTH AFRICAN FRUIT AND VEGETABLE CANNERS ASSOCIATION: RIAN GELDENHUYS	166-169
EMBASSY OF MEXICO: RAFAEL MONTOYA	170

**MR HARRIS:** I want to welcome everybody to this hearing today. I think people probably know the purpose but, for the record, we're considering today two inquiries into possible safeguard measures related to processed fruit and tomatoes. These inquiries proceed according to WTO rules and a determination by the Australian government in a gazettal form. Issues papers were provided publicly on 4 July and accelerated reports were provided to the government, somewhat later than I had hoped due to the election period on 18 September. The government published these on 26 September.

The government has asked us to not only consider the nature of safeguards and the claim for it but also to consider whether, having regard to its requirements for assessing the impact of regulation, measures should be implemented, should we find them justified, against the safeguards standards. This aspect of the report, although noted on the accelerated advice, did not prove necessary as we did not find safeguards to be justified on accelerated analysis. However, it may be relevant to the final reports should this analysis vary, and parties should note that.

The commission found clear evidence that both grower and manufacturer activity in this industry has been affected by the presence of imports over time. However, growers are not the affected party for the purposes of this safeguards analysis, serious though their position may be. The commission found that in recent times, import volumes have been increasing sufficient to meet the standard for safeguards in fruit mixtures and, arguably, for peaches but not for other products. In the case of tomatoes, however, the preliminary conclusion was that the standard was met for imports relative to domestic production. On these and all other matters in the report, we are still interested in receiving further advice from all interested parties.

The commission analysis tends to indicate that price pressure from imports has not been significant in recent times in terms of the price paid to foreign suppliers but that margin pressures in the retail area have clearly been present. The commission also found a number of factors are involved in causing damage to industry. While this indicated to us that the standards for safeguards was not met in the accelerated report, we sought further comment. Comment to date has been mainly aimed at either supporting or opposing aspects of the reports. While this will all be considered, it does not offer much new or alternative information to this point. Today's hearing offers another opportunity for such information to be provided.

For any party who is present at the end of the day's proceedings and has not had the opportunity to speak, we will allow brief comments. Again, hopefully these will provide further analysable information.

We've been asked about the possibility that parties who were planning to speak but now are not able to be present today for various reasons could have statements

read into the record. I'm afraid that's not the purpose of today's hearings. All statements received will, however, be considered and, unless restricted, will be placed on the web site. Subsequent submissions to today's hearings can be received up until the middle of November and these too will be published on the web site unless restricted.

Parties today are not required to take an oath, but must be truthful according to legislation. For any media present today, there are rules and you should ask the staff for advice on those rules, and for OH and S purposes, please note there are green exit signs and follow the warden's instructions should alarms sound. Thank you very much. So the hearings are now open. Paul, you didn't want to add anything to those comments?

**MR BARRATT:** No.

**MR HARRIS:** Thanks for that. Our first witness is Sharman Stone.

**DR STONE:** I want to thank you for this opportunity. I am disappointed that the commission couldn't have come to Shepparton, given most of us have come that far, and certainly, as you can be aware, times are tough and every time we have to come up this highway it's time away from the industry that we're talking about trying to survive. I want to quote from page 9 of your report number 64. It says:

As set out in the terms of reference, provisional measures can be recommended only where it is found that "critical circumstances" exist such that delay in applying measures would cause damage that would be difficult to repair. Although this is a necessary condition, it is not a sufficient condition for the imposition of provisional measures. A recommendation for provisional measures also requires a preliminary determination that there is *clear evidence* that increased imports have *caused* or are threatening to cause *serious* injury to the domestic industry.

That, of course, in turn reflects the WTO measures. I am shocked and baffled, like a lot of people in this room, as to why the facts presented to you, which clearly demonstrated the significant and sudden and sustained additional volume of imports coming into the country, no doubt stimulated by the Australian dollar which, over that same period of time, went extraordinarily high - it slipped slightly recently, but it's back up to 97, 98 cents. So you have not queried in fact the volume of increased imports and you show those quite clearly in your documents.

You haven't questioned either, I don't believe, the timing of when those imports began, their value and the volume. You also do acknowledge the decrease in exports over that period of time for SPC Ardmona (Coca-Cola Amatil) and you've just

repeated yourself, commissioner, you're aware of the impacts then on the suppliers to the orchard industry, SPCA, in the form of extreme damage done to the growers themselves.

I don't think it's right to say this is not about the growers. I don't think you can separate out from SPCA industry their suppliers. Without the fruitgrowers they don't have an industry, and the serious damage that has been done to the fruitgrowers themselves is not easily repaired. It does threaten to cause and has caused serious injury to this domestic industry, the removal of those fruit trees.

I quote in my paper to you part of the submission by Mr Ross Turnbull, representing Turnbull Orchard Industries, where he explains that the trees that his enterprise was required to push over when they lost their SPCA contracts, which in turn of course was in response to the increased imports, were in their prime. They were only a few years old. They'd recently been planted to world best practice open Tatura trellis. They represented some million dollars worth of investment on behalf of that orchard.

So this is not a story of old, already past their prime fruit trees being knocked over in response to the contraction of SPCA in front of the imports. This is where prime fruit trees have also gone under the bulldozers.

In terms of the serious injury, this cannot be easily overcome in the business of orchards, because it can take three to five years to re-establish those trees, if you have the funds to do that. It's not like some other industries where you can start and stop fairly readily. There is a significant barrier to commencing in this regard. You might say, "Well, tomatoes only take a year to plant a new crop." That's not true either when you look at the infrastructure that's required; the irrigation infrastructure that needs to be laid; the leasing of new land when you're shifting from one crop place to another.

So I am baffled and shocked that with the data presented to you - and I commend the fact that you came up to the area, you inspected some of those orchards, you inspected the industry itself - you still came to a conclusion that there weren't sufficient conditions to demonstrate or clear evidence to demonstrate that there was serious injury right now, and I know that the WTO definitions allow even "threatened serious injury", but that hasn't occurred.

You are aware, of course, already that SPC Ardmona is in the process of having to consider closing the Mooroopna Ardmona factory and Kyabram. You're aware too that they have had to write down some \$200 million of their production. You're aware that if they can't have support very soon in the form of a level playing field they won't be able to have confidence sufficiently in the domestic or export

market to invest in new technologies.

I'm concerned that your report also implies that part of the problem is that the technology of canning is old and therefore part of the problem is the industry's failure to innovate. I think you can see, if you look, that in particular the Ardmona Mooroopna SPC Ardmona factory was at the forefront in development of new technologies in fruit preservation and packaging. So they were the first company or first factory in the world to use fruit juice to present with the fruit in the can or the plastic pack. They were the first to introduce, for example, plastic snack packs and they did some very innovative advertising using, in the case in Australia, the rowing Oarsome Foursome, and that was an innovative way to promote fruit in Australia, or indeed any food product.

So it's demonstrable that SPC Ardmona is in fact innovative and markets its product well, but they can't compete where you have this extraordinary volume of imports at such a price that our supermarkets in Australia, which you're well aware are in a very strong position of market power, power dominance, with over 80 per cent represented by two big companies - those two big companies were able to take advantage of this very cheap imported fruit. That allowed them to boost their generic home brands with an object of 80 per cent. That's their goal, they state to their shareholders.

That generic home brand was supported by our very lax and inappropriate labelling laws in Australia, which meant that the shopper was confused, especially when the brand was called something like Sunny Valley or Golden Valley rather than Goulburn Valley. So the shoppers didn't realise always the generic home brands were full of South African or Chinese imported product if it was fruit or tomatoes if it was the canned tomato generics.

That meant that they could do two things with SPC Ardmona: pressure them on price, to a point where they're hardly being paid across the cost of production, and it also meant a substantial drop in volume of the product. So you put the price pressures and the drop in volume of demand back on the domestic industry.

SPCA is the only surviving preserve fruit company left in Australia, and you had significant damage done to them, such that they were facing closure. You also seem to have a problem with the fact that they didn't name a date for closure. They didn't actually state, "We're gone, we're finished, and therefore really seriously in trouble." You can imagine, as a company with high regard for the region which depends on them, their own shareholders, not many companies do go out and publicly state the date they'll close. But I think it's inferred and obvious that SPC Ardmona will not be able to put the investment into the company that is necessary to even more reduce their cost of production than they are already and to have new

innovation.

It's interesting that during this time, with the massive local push for "Toss a Can in a Trolley" - you'll remember that campaign we had, with the locals saying, "Can the shopper buy Australian product?" - there was a significant increase in consumption of Australian SPCA fruit. However, the company, while it got additional volumes purchased, there was no additional margin for them in that, and that is not a sustainable situation for them. They need to also have increased margin.

I'm saying that the way you looked at these two products, the tomatoes and also the fruit, is baffling in the conclusions you come to, because you do identify the huge increase in volumes and value of the imported fruit. You acknowledge that it was sudden, unforeseen, substantial; it led to unanticipated substantial volumes. That's of course part of the impact that the WTO wants to see proven. There's an acknowledgment that that was a consequence of an escalation of the Australian dollar.

You seem to imply the problems were just the cost of production in Australia. In fact, let me stress, SPC Ardmona has managed to minimise its labour cost increases compared to other industries in Australia. It cut back significantly on its labour and, indeed, did so much cost cutting that there were concerns about the employment in our local area.

Let me say it again: this is not just a case of this industry being given a level playing field in price with the imported product. It's also a case of an emergency time frame. As you're aware, fruit-growing is a seasonal business. All of this fruit that they preserve and conserve and package comes in in a flood over the summer months. The exception is the baked beans and several other products. We're talking about the fruit. The tomatoes likewise.

There's a window when all of the product comes in to be processed. That window is approaching in several months. If this industry doesn't get this level playing field on price - they're not asking for subsidies, they're just asking for what the WTO recognises as fair; that's a level playing field on price, with duties and tariffs making up the difference - and if they don't get that in the immediate short term, they can't go and order the additional equipment that is required to make them sustainable in the long term because they'll miss this next coming season of fruit production. It will put them another year behind. There'll be more trees bulldozed in that period.

The farmers can't wait. They have pest and disease pressures. If they don't spray those trees - and remember a lot of them now have no income - then they have to bulldoze them to manage the pest and disease threat. So there is a time imperative

which is like no other industry's pressures. Yet again, as I say, shocked and baffled to see that those time pressures weren't taken into consideration in this emergency response.

I have to say to you, we have at stake more than a thousand jobs in the Goulburn Valley, many more jobs than in the automotive industry in the first instance in terms of their survival. We have a competitive advantage - a natural competitive advantage - in this industry in terms of our seasons, our climate, our water infrastructure; more than \$2 billion invested in modernising the irrigation infrastructure.

The factories at Kyabram and Mooroopna and Shepparton we know will be rationalised back to one factory, but the employment that will still be there will be significant; at least 600 effective full-time people. There is an enormous multiplier impact of this industry into cool-storing, transport, the packaging manufacturing itself, the labelling. It goes on and on. This industry of fruit manufacturing in the Goulburn Valley underpins the economy. Without it, I am just without any understanding of how the whole of the economy will go on to be sustained, so I ask you to relook at the facts which you have identified and to reinterpret them.

I don't think the problem with your report is the facts so much as your own personal interpretation of them, and whether that comes from a philosophical position I'm not sure, but I think you need to very sincerely go back and look at the WTO guidelines themselves, see that they are met and very urgently resubmit to the government your recommendations, as urgent action is needed now.

**MR HARRIS:** Thank you, Ms Stone. Paul, did you want to say anything first in response to that?

**MR BARRATT:** No. I will.

**MR HARRIS:** Okay. Today is obviously not a place where we want to go into what we agree and disagree with in terms of our continuing debate. However, I think, given that you've made an earnest and well-intentioned submission on behalf particularly of constituents that you represent, it would be unreasonable just to sort of thank you and take you off the stage.

Without trying to refute individually or in any collective sense the comments that you've made, we did give very serious consideration to this question of the accelerated report and the need for a response that dealt with prevention of something that couldn't be reversed, and clearly I think - as you acknowledge, I think - the growers themselves are in a position where decisions are being made and have to be made, and they're being made in the context clearly where tonnages have been



significantly reduced on order and this question of not being able to spray trees or having to pull trees was quite significant for us in considering this position.

I think the primary difficulty we had, although Paul will comment on this too, is to see a measure imposed that would prevent that actually happening; in other words, that the measures that were in front of us in the circumstances of the decision to reduce tonnages, those decisions were not just inevitable, they were decisions that growers had to make that couldn't be altered by any decision that we were likely to make.

So I think in a fundamental sense the other issues that you've alluded to - things like has SPC stated publicly an intention to close facilities - no, we're quite conscious of corporate governance requirements, if nothing else. There are market information requirements that a company would need to take into account before doing such things. So I don't think we actually expected to see the company itself create the inevitably. It might have done so; it's entirely a matter for the company. But we certainly took close account of growers and their position, and even though therefore, as I say, our final conclusion on the question of "Are growers the relevant subject for consideration in the safeguards inquiry?" is we've determined, based around the perspectives put in previous WT inquiries that they're not, nevertheless we did consider this question before we came to that final position on growers.

We did consider it quite closely. In answering I think a primary concern of yours, we couldn't see a measure that was likely to be imposed, even if growers were pertinent to this inquiry, that would reverse those decisions because those decisions were a consequence of something that was going to take place anyway.

That's more to provide an answer to you on why we got to where we got to on emergencies. It's not intended to refute any of the statements you've said today and we intend to take close consideration of what everybody says here today. We realise this is quite a high-profile issue not just in the region that you represent but it has some national aspects to it too and these reports will be closely scrutinised, and obviously they will be scrutinised overseas as well, but they will be closely scrutinised in Australia. So that's really what I wanted to say in general response, if you like, to that. Paul, did you want to say something else as well?

**MR BARRATT:** Yes. I would simply just echo that the focus of the accelerated safeguards report is the need for emergency action, and that is necessarily very short-term action. Growers, with the exception of 50, had lost their contracts before the inquiry was established and nothing that would take place in the inquiry would have any beneficial effect on them, so the only possible impact from the inquiry might be the amount of fruit that SPCA would take from the 50 growers that remained in contract with them. We were conscious of that, but again the stage of

the season was such that one had to consider what would be the effect of government waiting from September to December for final advice, and in the course of doing a preliminary analysis the accelerated report found evidence of damage to peaches, mixtures and tomatoes.

The issue then was - well, two issues: one, causation, and there's a mixture of factors in which imports obviously is an important one, and the second one is what would be the consequences of waiting for several weeks to put in the final report? Is the pattern of what's taking place in the market such that there's an imperative for short-term action? And in cases when you look at the data, you find, well, the Australian dollar has gone off, the level of imports in very recent times might have levelled off or gone into what may or may not be a shorter or longer-term downturn, but the case for action within a matter of two or three months is what really needed to be addressed in looking at what was a report about the need for emergency action. So what we're here to look at now is where do we come out in the final report about those three sets of products.

**DR STONE:** Can I follow up just quickly on one of those major points you made. You suggested that there was nothing that might have been done in the short term that might have saved some trees. In fact we have observed, when Coles and Aldi saw the Australian buying public's response to the likelihood of there being no Australian manufactured fruit available in the supermarkets in the future with the loss of SPCA, that there was a significant increase in consumption, in buying of SPCA product. That led to Coles, Woolworths and Aldi, all of them, saying, "Well, in the future our generics will contain Australian product." That immediately led SPCA to then being able to go back to their orchards, saying, "We've got another 5000 trees' worth of product now that we can buy from you," and that was an immediate response to that additional product being put through the supermarket chains.

Now, if we had a level playing field in terms of price with this emergency action, you would see that the other supermarkets, the hospitality sector or, if you like, the big wholesale sector that buys huge volumes for hospitals, prisons, nursing homes and so on, would not be lured to have on their shelves all the cheap product - which, I also argue, some of which is dumped; but the cheap imported product. The evidence has been that you would see SPCA immediately being able to ring up their orchards and say, "Oops, lucky you still haven't bulldozed all of those. We've got some additional tonnages that we want to buy from you." That was demonstrated. That's the case.

Can I also say to you in terms of the short-term need, I've already mentioned to you - I will just restate it - there's a seasonality, and SPCA wants to order this new equipment. As you know, it's requesting \$25 million from the federal government,

\$25 million from the state, they will put in \$90 million themselves, and that will give them the capacity, if they have this commercial environment more stable through the import measures, to with confidence rush out now and order that equipment in time for this season. Each day, that becomes a shorter time frame for them and they can't do that, and they lose another season or they go out of business.

Let me finally say - and I didn't mention it before and it's additional to what I was saying before - in your report you say on page 2 that Australia had in play additional measures beyond the normal WTO requirements to improve emergency or, indeed, any safeguard measure. So I checked it up with the Treasurer and his office and I said, "What are these additional measures that are required and why is it that Australians, compared to New Zealand or other countries, have to do better?" I'll quote page 2:

Australia's procedures for safeguards inquiries go beyond what is essential under the WTO Agreement.

I checked that up because you also stated on another page that there was also this Friends of Safeguard Procedures committee that made it even more necessary for you to be more than simply ticking the boxes but to go beyond the call of duty.

The Treasurer assures me there are no special Australian procedures or safeguard criteria beyond the WTO Agreement and that that new Friends of Safeguard Procedures committee has not yet met and they wouldn't expect it to put additional height to the bar we have to jump when it comes to proving the case. So I just put that into the mix because I'm concerned. On page 2 it's right there in your document, saying - and I quoted it - that the safeguard inquiries go beyond what is essential under the WTO Agreement.

**MR HARRIS:** Thank you for raising that, because it was in your submission and, while we are going to deal with this in the final report just to make sure there's a clarity of answer, I intended to cover it with my opening statements. It's one of the things that Paul and I were talking about, and said it's probably better to do this.

This additional procedure is not really anything to do with the Friends of Safeguards at all. The procedure is this question of, in practice, saying if we were to impose, if we were to recommend action, we are then required under the gazetted notice to consider this question, effectively, as a RIS, a regulation impact statement. In other words, is it justified in the circumstances? So that's the additionality.

The WTO doesn't require countries to develop RISs. The Australian government requires a RIS to be conducted if you were to recommend a regulatory response. So I think the Treasurer was quite accurate in what he said to you, because

it wasn't pertinent, as I said in my opening remarks; it wasn't relevant to this. But if we decide to recommend action in the final report, we will effectively respond to that regulation impact statement, if you like, standard that the government has sought from us, but it's not a WTO-imposed requirement.

**DR STONE:** And we wouldn't be afraid of a regulatory impact assessment.

**MR HARRIS:** Clearly most of the information is available. This is why in a sense it's almost but not quite a self-fulfilling requirement. You would say substantially the content of a report like this forms a RIS in itself. If we were to recommend final action, we would probably just look at what additional information would we - and, as I'm sure you're aware, the Productivity Commission, but the government itself, is very firmly in favour of regulation impact statements. It is, as far as I can work out, a bipartisan requirement because it applies quite clearly under any government at all. So that's the additional requirement.

The Friends of WTO reference was a reference, effectively, to explain a policy context. In the Productivity Commission, we tend to describe everything we find, if you like, in our reports. It's not pertinent to the final conclusions. It has no restraining capability of Associate Commissioner Barratt or myself in terms of coming to a final conclusion. It was a thing that we discovered along the way and we put it in the report. But, no, the additionality here is an additionality effectively relating to a RIS or the equivalent of a RIS.

**DR STONE:** Yes. I was trying to work out what was it that had made you interpret the data in the way you did, because it just didn't make sense.

**MR HARRIS:** No. If I could, since it's come up in the context of your evidence and it will come up continuously today: our real desire here today - and it's not limiting anyone else's desire here today, but we did ask in the report for comments on causality, which is the pertinent thing here because, I think as you've noted but others have noted as well, a number of the tests have actually been met.

**DR STONE:** Yes.

**MR HARRIS:** Not all of them, but a number of them have been met in some circumstances. Causality, however, has not been met to this point in our analysis. That's why we're seeking actual advice, evidence, information, revised descriptors of how causality could be attributed. So we are not restricting - obviously we're not capable of restricting - what people put in their submissions, but for the purposes of this inquiry we are trying to come to a conclusion and that causality question is pivotal.

**DR STONE:** I guess, there, my problem and the problem of others who will be giving evidence is that we believe the causality is more than demonstrated; ie, this significant, sudden, sustained volume and value of imports, which in turn fed into other outcomes, like increased supermarket generic home brands, their capacity to squeeze domestic price.

**MR HARRIS:** Yes.

**DR STONE:** So our argument is, causality is shown, and so I guess we come finally to judgment and we're just hoping your judgment will fall on the side of this industry, which is too valuable to lose and whose impacts are just too great to even think about.

**MR HARRIS:** Okay. Thank you for your evidence, Ms Stone.

**DR STONE:** Thank you.

**MR HARRIS:** Greater Shepparton Council, and Councillor Jenny Houlihan.

**MS HOULIHAN (GSCC):** Thank you. I am the Mayor of Greater Shepparton. Geraldine Christou is the Manager of Investment Attraction at the council. We are here squarely and unashamedly to represent the story of the harm to our whole community if this goes ahead, and we do believe that this is, to a great extent, being caused by just the aspects that Sharman was just talking about of importation. Geraldine is going to start first and then I will be speaking after Geraldine. Thank you.

**MS CHRISTOU (GSCC):** Thanks, Councillor Houlihan. Prior to articulating council's response to the release of the accelerated report I'd just like to take the opportunity to once again go over a bit of background to our municipality and our economy.

The Goulburn Valley forms an integral part of the Goulburn Murray Irrigation District, which is one of the most important agricultural areas in Australia, as highlighted by its reputation as Victoria's food bowl. Our economy has already been harmed recently in terms of consumer confidence and investor confidence, by floods, drought, introduction of the carbon tax, the draft Murray-Darling Basin Plan and the introduction of sustainable diversion limits, and what SPCA is going through and our fruitgrowers are going through at the moment is also leading to further uncertainty, and we're seeing that in the investor inquiries or the lack of investor inquiries that we're getting at the moment.

Our current population is approximately 62,000 residents. Our current unemployment rate is already 7.44 per cent. Shepparton's combined socioeconomic index of advantage and disadvantage ranks the municipality as the 15th most disadvantaged in Victoria out of 79 municipalities, and that's declined from the 25th most disadvantaged in 2006. 25 per cent of our residents are on income support, compared to a Victorian average of 16 per cent. Indigenous unemployment is 20 per cent and, to give you an idea of the sort of catchment that we're servicing in Greater Shepparton, we have a regional catchment of 300,000 people and 4.1 million people living within a two-hour drive of Shepparton.

Our residents' transition from year 12 to higher education is 26 per cent at the moment, compared with the Victorian average of 56 per cent, and 56.5 per cent of our residents have no qualification at all. Only 9.2 per cent have a bachelor degree or higher, and we currently have 80 vacant shops within our CBD. So that paints the devastating picture that we already have at the moment, without this further uncertainty.

Council acknowledges the findings of the recently released accelerated report

and the fact that the report identifies that two of the three tests are likely to be met. However, the third test regarding whether the injury was caused by imports says causation is due to loss of exports, reduced consumer demand and higher costs, including labour costs. Although these causes may be of some relevance, it is cheaper imports that have impacted on consumer purchase of SPCA products due to the supermarkets being able to sell brands other than SPCA at a much cheaper price.

Council believes that pricing decisions by supermarkets are not made domestically as stated in the report but caused by changes in the world market for processed fruit products. The cheap imports have cost advantages in manufacturing their fruit over SPCA, and this is why supermarkets are able to place a cheaper price on imported products.

It is council's belief that cheaply manufactured imports which may be of inferior quality have resulted in many money-conscious consumers switching to imported processed fruit products over SPCA products. The economic impact to the Greater Shepparton region is severe should SPCA be forced to withdraw from the region. I'll now hand over to our Mayor of Greater Shepparton Council, Jenny Houlihan, who will outline the impacts as projected by the Essential Economics report that was commissioned in June this year.

**MS HOULIHAN (GSCC):** Thanks, Geraldine. If SPCA closes - and we won't go over what I believe and we believe strongly is the basis for a lot of the problems that we're having, to do with importation - we will have job losses of 1000 full-time equivalent positions. That includes 360 full-time equivalent jobs at the SPCA facilities, 640 full-time equivalent jobs in the supporting sectors of agriculture, transport and logistics, retail and other, through the employment multiplier effect. Additionally, 1050 casual seasonal positions at SPCA will be lost.

Assuming that no jobs were replaced, the loss of SPCA operations in the GV region would result in Greater Shepparton's unemployment rate increasing from the already high 7.4 per cent to 9.8 per cent. There will be a reduction in industry training opportunities such as SPCA's Induction to Leadership training program which is available to all staff and seasonal workers. There will be a reduction in the regional economic output of \$160 million per annum, including \$105 million associated SPCA suppliers and \$50 million in other spending in the economy through the multiplier effect.

This level of contraction represents 5 per cent of the annual gross regional product for the affected parts of the GV region, mainly the municipalities Greater Shepparton and Moira, with up to 6 per cent of all businesses likely to be impacted directly and many more impacted indirectly.

There will be reduced viability for proposed major infrastructure projects such as the Shepparton bypass and the GV Link Freight Node which are premised on sustaining and growing regional industrial output and freight volumes. The reduction in construction investments, noting that SPCA has invested significantly in the region over the years, including \$25 million in its national distribution centre and Mooroopna facilities - these two projects alone are estimated to have generated 200 full-time jobs in construction. There will be reduced council rates revenue of \$700,000 per annum. That's huge for a council. That represents approximately 15 per cent of all industrial rate revenues paid to this council at this time.

SPCA is the largest donor to the Goulburn Valley Community Fund, which helps many of the communities in Shepparton that Geraldine outlined that we must support. SPCA has partnered with United Way Goulburn Valley to start a local breakfast program for thousands of regional schoolchildren. The Kidstown Adventure Playground is an innovative and fun community project located in the bushland between Shepparton and Mooroopna. SPCA has supported the initiative over the past 12 years, with approximately \$350,000 donated during that time.

SPC Ardmona's employees assist Meals on Wheels by volunteering their time every second Tuesday of the month during work hours. SPCA also contributes to statewide initiatives such as the Murdoch Children's Research Institute and Foodbank.

The accelerated report highlights that waiting a few months for a decision until completion of the final safeguards report in December is unlikely to cause injury to the domestic industry. Unfortunately, injury has already occurred and will keep occurring but will be worse. It will place the SPCA in serious jeopardy and, already impacting on many families within the Goulburn Valley, it will make that worse, and also the ability to attract investment to the region will be more difficult than now.

The Goulburn Valley is known as the food bowl of Australia, with approximately 25 per cent of the total value of Victoria's agricultural production which is generated in our area. This reputation to us would be seriously compromised if SPCA were forced to withdraw from the region, and Australia's ability to capitalise on the opportunities that currently present themselves in the Asian food market would be seriously hampered.

So, as the Mayor of Greater Shepparton, I do urge you to reconsider your findings within the accelerated report, and on behalf of the council I would also like to take this opportunity to express my sincere gratitude to the Productivity Commission for the extensive work you have undertaken during this inquiry. Thank you.



**MR HARRIS:** Thank you very much for your presentation. The report you refer to, the Essential Economics report, is it possible for us to have access to the nature of that report? We've got, obviously, the correspondence that you've sent in.

**MS CHRISTOU (GSCC):** We believe we actually provided the report initially, as long as it remained confidential.

**MR HARRIS:** Right, but would we then be able to utilise the report? This confidentiality issue - you can tell in these circumstances we're required to create a report which is then going to be examined potentially internationally, so to the extent we're not able to put information in it, being able to refer to the existence of information but not able to enable others to receive it, I guess that's a bit of a worry for us. We like to be comprehensive. If it's possible to receive the report, we'd like to have it, but we understand the circumstances, and, moreover, we'd really like to be able to use the information contained in it in the final report. I mentioned causation, but another clear question for us is this question of the inevitability of a form of continuing damage and you are a source of information on that.

**MS CHRISTOU (GSCC):** Okay.

**MR HARRIS:** So if you could further consider this, that would be - - -

**MS CHRISTOU (GSCC):** Sure.

**MS HOULIHAN (GSCC):** I think what you're saying is really, really important, because we are trying to show that it is going to cause damage for a long time. Could you leave that with us, please, and we will certainly get in contact with you.

**MR HARRIS:** Yes.

**MR BARRATT:** What we need to be able to do is use critical parts of the content of the report without necessarily publishing the report itself, which we accept is a confidential document. If you can find a way where we can extract key data from it - - -

**MS HOULIHAN (GSCC):** Would you like someone to get in contact directly with you?

**MR HARRIS:** Yes, that would be good if you could do that.

**MS HOULIHAN (GSCC):** All right.

**MR HARRIS:** But just to explain more what Paul is saying, if we have to convince

a doubting WTO panel that this report has been thoroughly considered and, moreover, drawn on information that is pertinent, we need to be able to say not just - for example, let's pluck it out of the air. You quoted some unemployment impacts. We'd want to be able to go through that and work out "Are they credible?" and then one of the values you get, frankly, from a Productivity Commission inquiry is, we do carry quite a deal of credible weight in our analysis if we said we thought this was credible. So it's the underpinning analysis. We wouldn't publish it necessarily. We'd want to be able to say we'd been through it and comprehensively we can agree or disagree. But please don't rest on the unemployment numbers.

**MS CHRISTOU (GSCC):** No.

**MR HARRIS:** It's just that I wrote it down here. It's one of those things; that that's what we go through. So we're soliciting from everybody. We understood that confidentiality is an issue, but we have to write a report and it's a report that has to sustain itself in other environments, environments where the credibility of the analysis genuinely matters. Anyway, if you could consider that, that would be great.

**MS HOULIHAN (GSCC):** We'll get back to you, certainly.

**MR HARRIS:** Thank you.

**MS HOULIHAN (GSCC):** Definitely, yes.

**MR HARRIS:** Paul, do you have other questions?

**MR BARRATT:** No.

**MR HARRIS:** I didn't have anything specific other than that. We would like to get access to it if we can. Thank you very much.

**MS HOULIHAN (GSCC):** We'll do our best for you.

**MR HARRIS:** Okay. Thank you.

**MR HARRIS:** BuyAustralianMade and Stephen Gately. Please proceed.

**MR GATELY (BAM):** Thank you.

**MR HARRIS:** So, if you can identify yourself first.

**MR GATELY (BAM):** My name is Stephen Gately. I'm the founder and managing director of BuyAustralianMade.

**MR HARRIS:** The submission you've provided to us is, if you like, a general description in support of Australian-made as a - would it be right to consider it as a marketing opportunity or does it go further than that?

**MR GATELY (BAM):** Yes, commissioner, it does go further. It really looks at the impact of the short-term circumstances that we're focusing on at the moment and the impact it will have for the long-term viability of primarily what this Productivity Commission is about, the processing of food, but it ranges wider than that as well.

**MR HARRIS:** Okay. In these circumstances, do you - I guess I'm trying to ask the question, is this a commercial relationship that you have in support of SPCA here or is it a question of public policy interest that encourages you to appear here today?

**MR GATELY (BAM):** I've got no commercial relationship with SPCA, though that wouldn't rule out one in the future. But at the moment there certainly isn't. It is more about the concerns that have been raised to me by both other Australian food processors and also the Australian general public.

**MR HARRIS:** In terms of support from the government or government entities, do you have relationships with government parties that would be relevant to the purposes of this inquiry?

**MR GATELY (BAM):** BuyAustralianMade is completely self-funded; has never received any money from government or any other bodies. It is a member based organisation, where members pay an annual subscription to receive the services of BuyAustralianMade.

**MR HARRIS:** Is it a large membership?

**MR GATELY (BAM):** The membership is around 400, commissioner.

**MR HARRIS:** 400 companies?

**MR GATELY (BAM):** Yes, 400 companies or 400 individuals. It's really made up

of primarily SMEs, ranging from one-person operations through to businesses that may employ a couple of hundred people.

**MR HARRIS:** The primary concern that you have to reflect here today in relation to the safeguards inquiry we're considering, is that a concern relating to the general nature of Australian industry or is it specific to this SPC application?

**MR GATELY (BAM):** It is specific to the SPC application, though I can see it reflected in other parts of the Australian economy. It is about SPC today.

**MR HARRIS:** You earlier clarified that SPC is not a member of - - -

**MR GATELY (BAM):** SPC is not a member.

**MR HARRIS:** I didn't have anything else. Paul, do you have anything else on BuyAustralianMade?

**MR BARRATT:** No. There are sort of four key issues in the submission - processing plants, products, health issues and food security issues - and we'll certainly take those on board in looking at the final report, but I didn't have any particular questions to ask. Were there any particular points you wanted to make out of those - - -

**MR GATELY (BAM):** I'm sure, commissioners, that all the points that I would have been able to discuss with you have been brought up. When I entered the room, I heard the Mayor of Shepparton talking about some of the exact issues that I've raised in this report, and I'm sure you've heard all of that.

My concern really is about the long-term impact that short-term circumstances have on SPC primarily but also with other Australian businesses as well.

**MR HARRIS:** Okay, that's fine. As I said, I don't have any other questions for you, so unless there are final remarks you'd like to make, we can probably move onto the next witness.

**MR GATELY (BAM):** No, thank you.

**MR HARRIS:** Thank you very much.

**MR HARRIS:** Next on my batting order is the Turnbull Bros Orchards and Mr Ross Turnbull. I think we've had Ross here before.

**MR TURNBULL (TBO):** Thank you very much, commissioners, for giving me an opportunity to express my opinion today. As you'll probably note from my submissions, there's a fair amount of subjectivity in them. As a result, as a sort of single operator without the resources I used to have, a lot of the figures I've just plucked out of - or done calculations in a sort of estimated way.

At the outset also I'd like to just mention, I've got Parkinson's. Consequently, I sometimes have trouble mouthing words and I get the jitters a bit.

**MR HARRIS:** Just proceed at your own pace.

**MR TURNBULL (TBO):** No, that's fine. Because I've got 15 minutes - - -

**MR HARRIS:** Can I just check before you start, Ross, is the microphone working? It seems to have been - - -

**MR BARRATT:** It's only recording, it's not amplifying.

**MR HARRIS:** It's not amplifying? It's a little difficult, I think, for some people at the back, by the sound of it, to hear you. It may be best to speak directly to them. We'll hear you anyway.

**MR TURNBULL (TBO):** Okay. I'll turn the volume up a bit.

**MR HARRIS:** To the extent you can, yes.

**MR TURNBULL (TBO):** Basically, I've precised the submissions that I've put before you on the basis that I was given 15 minutes to present and I'd like some of it to be in questions.

**MR HARRIS:** Sure. You just proceed and we'll ask you things from your submission in due course.

**MR TURNBULL (TBO):** Okay. What I've written here is the precis: "SPC request for relief via tariff impositions being placed on the imported processed peaches be implemented." To support that, the Australian canning and fruit industry is on the brink of collapse. I can assure you that is the case. The collapse will have a substantial negative impact on the Goulburn Valley, its people and its future. The implications of a decision not to support our industry will send a chilling message to other industries that are internationally exposed. We are at the point where it is

imperative that immediate relief be granted.

The fairness test that I suggested indicates that the industry and manufacturing in general have a very hostile business environment in which to operate. If the Australian dollar were at, say, 2005 levels, it is unlikely that we would have the crisis we are facing today. In my view, this is the most telling factor in the debate.

To maintain and attract new and long-term investment in agriculture and manufacturing we need the value of the Australian dollar to be maintained at levels that encourage this. I've offered a proposed method of achieving this, which may or may not be viable. If not, I would hope that I might have stimulated some thinking that could achieve the same result. That's my precis.

**MR HARRIS:** Okay. You've made a number of statements in your submission about the impact locally on growers and, as I think I had previously noted, one of the things that we determined in the accelerated reports was that, based on WTO circumstances applying in previous inquiries that have been conducted, it seems unlikely that growers would be considered to be the primary party involved here in this inquiry. We know, though, that we have a lot of submissions from growers, including yourself, and a lot of continuing interest from growers.

I guess what I wanted to ask you was, if we're not able to consider growers in the circumstances of the narrow safeguards inquiry terms, is your submission really asking us to look at the circumstances of growers separately to that? It wasn't clear from the articulation, but because it comes through in a number of the submissions to the inquiry, where growers are not necessarily rejecting what's been written in terms of WTO coverage but are still saying there's such a significant problem here, I think the implication is that it's worthy of further consideration. Is that really what you're asking?

**MR TURNBULL (TBO):** I think it's worthy of consideration, Mr Commissioner, purely on the basis that - in my submission I put an iceberg theory. What it indicated is that the growers' input into the total cost structure - this is my estimate - is about 16 per cent.

**MR HARRIS:** Yes.

**MR TURNBULL (TBO):** If the growers start pulling trees out, it has an immediate impact on the future viability of SPC Ardmona, and it's from that angle that I'm suggesting that it needs to be considered in the total scheme of things. Growers are pulling out trees at quite a rapid rate. Some of them are hanging on in hope that the result of this hearing might be favourable in terms of the industry, but on the basis that it may not be, in six months' time it could well be that those trees totally

disappear. It's because of the long lead times that growers need to invest in new plantings that they're rather reluctant to pull the trees out rather quickly.

**MR HARRIS:** But we have had evidence given previously at our last hearing that said even if there was an improvement in circumstances for SPC that they would focus on the 50 growers now contracted to them rather than growers outside that group of 50, so while I happily accept what you're saying about improvement in circumstances, it would certainly only apply to a subset of all the growers who potentially might have been previously suppliers to SPC. Is that not right?

**MR TURNBULL (TBO):** Yes and no. We're one of the 50 contracted growers. We've been given an entitlement or a contract to supply pears. We were initially told that our peaches were not included in that contract and we decided we'd be pulling those trees out. Before we did, we once again were waiting for the result of this hearing, because it was worth our while. Considering we had a very viable orchard on the basis of the prices that we were being paid, it would be worth us hanging in there and not pulling them out until absolutely necessary.

**MR HARRIS:** Okay. So certainly, as one of the 50, you're a potential beneficiary? Your circumstances may improve in these circumstances?

**MR TURNBULL (TBO):** Yes.

**MR HARRIS:** Okay, I understand it from that perspective. Paul, did you have anything?

**MR BARRATT:** No. That's a very interesting piece of data. It's an important piece of data.

**MR HARRIS:** I think it's quite important. Not self-determining, but quite important in other ways. You raise the Australian dollar in your submission and you've said if it were trading at levels applicable eight to 10 years ago we wouldn't be sitting here today. Again, one of the pivotal factors in this inquiry is the role of the dollar versus other circumstances, so could I ask you your view on general consumer approaches to the consumption of processed fruit products. Is that not a relevant consideration in your view?

**MR TURNBULL (TBO):** The Australian dollar affects this the whole way through. Basically, as I read it, if the Australian dollar were down at, say, 70 cents US and equivalents in euros, et cetera, we really wouldn't have the problem we've got. It's been dollar driven, but the implications on consumption are that we were able to, certainly in the 1990s, slightly increase consumption as the result of innovative advertising, product development and innovative packaging, and our

company, which was Ardmona Foods Ltd at that time, grew our business quite substantially on the basis of that innovation. We were selling at prices then that were related to a 70 cent or so Australian dollar, and - maybe correctly or incorrectly - I'm assuming if we get back to those levels that a bit more money can be poured into the innovative side of the production of processed fruit and that we can get the consumption back onto a better basis.

There's also one major factor that's been concerning me, and I have mentioned it in the report: the use by supermarkets of house-brand generic labels is a self-fulfilling prophecy to doom. The lack of real promotion other than price in fruit - innovative packaging doesn't occur under those circumstances - will result in a substantially diminished sale of our products, and there's evidence of it right around the world; very short shelf spaces in supermarkets of processed fruit. Australia was rather unique in its amount of brand exposure in the canned fruit segment, having a much higher consumption rate per capita than the rest of the world.

**MR HARRIS:** So if I could summarise that - but, please, without trying to put words back in your mouth - you're suggesting that the private label trend is potentially a threat to continued innovation in practice, presumably because it, if I can use the term, commoditises the product. Would that be the idea? Or because you don't expect that supermarkets will be interested, as purchasers, as creators of private labels, in innovating to the same degree that a dedicated manufacturer would be.

**MR TURNBULL (TBO):** Absolutely. A dedicated manufacturer, if he innovates and innovates well, and then promotes and promotes well, is the beneficiary of his work.

**MR HARRIS:** Right. So he can get the benefit back through the marketing?

**MR TURNBULL (TBO):** Yes.

**MR HARRIS:** Which isn't necessarily the focus of a supermarket?

**MR TURNBULL (TBO):** No.

**MR HARRIS:** It's quite an interesting point. So with the relatively recent jump-up in demand, apparently, from supermarkets for Australian product to fill their private label containers, which was referred to a little earlier - I can't remember which of the major retailers, but one of them has announced that it's going to switch entirely, I think, to Australian-sourced product.

**MR TURNBULL (TBO):** I think they both have, actually.



**MR HARRIS:** The other is saying something fairly similar, of the larger two. While that's of benefit to you in terms of throughput, in terms of increased demands, it wouldn't necessarily be the long-term - - -

**MR TURNBULL (TBO):** It would be of benefit on the basis that there's an improvement in the amount sold. It really then comes back to the price that can be achieved in that. I'd suspect there will be the sort of lurking import price there that will ultimately put pressure on the price in a downwards manner.

**MR HARRIS:** On the price that's received locally?

**MR TURNBULL (TBO):** Yes.

**MR HARRIS:** Okay. This is an area where we have been looking for information and we've had relatively little submitted to us. It's obviously a matter of substantial commercial sensitivity - - -

**MR TURNBULL (TBO):** Yes.

**MR HARRIS:** - - - and nobody really wants to comment much on the record, which again does diminish what can be said in an inquiry like this. But, as I mentioned in my opening remarks, we have found this question of strategies at the retail level versus the wholesale price received to be potentially quite a significant force in this industry, and although, as I said, we've been quite limited in the information that everybody is prepared to provide us on the record, off the record a lot of people have confirmed this as being highly pertinent.

**MR TURNBULL (TBO):** Yes.

**MR HARRIS:** But in an inquiry like this, if it's off the record it's difficult. You can allude to it in general terms, but we are providing a report which in the end, as I said, is going to have to be examined not just by the Australian government for potential implementation but by other parties and I guess we are seeking something, and at least you've been prepared to say something on the record today which will be of value to us. Perhaps we can induce others to do that too, because I think this question is probably one that deserves a little further airing. Anyway, that's just an observation. Paul, did you have anything else?

**MR BARRATT:** No.

**MR TURNBULL (TBO):** Could I just ask you - - -

**MR HARRIS:** Sure. One final comment or further comments, yes.

**MR TURNBULL (TBO):** I've put, I guess, probably a somewhat outlandish proposition in terms of the Reserve Bank and the Australian dollar. I don't know whether it's viable or not, but I see it through the Australian being maintained at a competitive level necessary to warrant investment in manufacturing or food production. Certainly from an investor's point of view in orchards, I'd have to say that I'd be reluctant, without some mechanism in place, to spend the money and go to the effort of planting a lot of new fruit trees.

**MR HARRIS:** No, I appreciate that. Okay. Thank you very much for your attendance here today.

**MR TURNBULL (TBO):** Thank you.

**MR HARRIS:** Is Mr Besim here today?

**MR BESIM (KBC):** My name is Sali Besim. I've been a lifetime fruit-grower at Kyabram. I've seen many canneries in the past years that were there and established, taking a lot of fruit from the Goulburn Valley, that are closed. We've been pushed from one cannery to the next and the next and the next. We used to supply pears, apricots and plums to SPC. Our pear quota has been totally cut, but we still supply apricots and plums. If that cannery was to close, which I wouldn't blame Coca-Cola, if they didn't make a profit, to shut it down, there will be thousands of jobs gone in the Goulburn Valley.

I feel it's the Australian government's obligation, duty of care, to preserve a food bowl for Australian people; not just growers, not just manufacturing, but food for Australian people. If you were to wipe out the cannery, which is the last cannery - if that cannery was a panda bear in China and the last bear, it would be wrapped in cotton wool. I can't see for the life of me why the commission doesn't automatically instruct the government to save the last cannery in Australia.

Each cannery used to take 30,000 tonnes of pears. Three canneries were taking close to 100,000 tonnes of pears. SPC now is only talking for this coming season 10,000 tonnes of pears. That's 10 per cent of what the canneries used to take - aren't the alarm bells going off? - let alone peaches

On our farm we've got pear trees that are well over 100 years. Our parents bought the farm in 1937. I've got three other brothers that are orchardists with me. The pear trees were on the farm before my parents bought the farm. It takes 10 years to grow a pear tree, to have it in production. Not one, two, three years, but 10. Nobody in their right mind would plant pear trees now if they had no other source of income.

For God's sake, advise the government to help, and for the Australian people's sake. I've heard on the grapevine now, Argentina has been hit by a frost and they've had apricots and other early fruits wiped out. Where's Australia going to source our fruit for the Australian people if countries like that are short of fruit? There are a lot of things that should be considered.

These canneries took many years to build. You can destroy them in one or two days with a bulldozer-excavator, but no-one is going to go and start again. Just look at pines. Look at all the industries we've lost. I mean, what's our future? We've got to compete with countries like China and Africa that are paying their workers \$1 an hour; no holiday pay, no overtime pay. Is that fair? Plus our high dollar, which makes imports cheap.

We're being kicked in the guts in many ways. We've gone through floods, we've gone through 10-year droughts, and now to have an obstacle like this happen, it's just a nightmare. You wake up in the morning, "What's next out there?" I'm not a professional speaker, I'm a professional farmer. So if you see me jumping from one spot to the other, it's because I've got a lot of frustration inside and saying, "Why isn't the government doing something for Australian people?" not just farmers, not just manufacturing. We've got to have our own.

I've heard stories years ago where countries have had famine in the 1940s and the neighbouring country, when they asked them for potatoes, said, "Go and get stuffed, we're going to feed our own people. You should make your own provisions to have food for your people." I've just got a few more points here that I'd like to say.

**MR HARRIS:** Sure.

**MR BESIM (KBC):** Also our electricity costs. They've more than quadrupled. They've gone four times higher than what they were five and 10 years ago. The cost of fuel and gas - I mean, we export our gas to China, I believe, for around 10 cents a litre. We have to pay 70 cents out of the bowser for Australian businesses.

Another point is that the US, I believe, has a 17 per cent tariff. If we want to sell Australian fruit to the US, we have to pay a 17 per cent tariff to get things in the door. The US government allows their farmers to pay \$5 per hour for Mexican workers to come into the US and harvest their crops. We have to pay standard award Australian wages. We've got no benefit bringing cheap labour into the country. Also the American farmers get subsidies for their fruit crops, their grain crops, their diary crops. We don't get any subsidies. We're not asking for government handouts. We just want a level, fair playing field. By letting countries who have cheap labour and cheap cans, cheap sugar - everything is done cheaply - to bring their product here is not a level playing field.

Another issue is the labelling laws. We see the supermarkets who put "Woolworths Select" on their cans but Woolworths Select from where? China? Africa? Indonesia? Where is the product coming from? The Australian people have a right to know what they're buying, but I don't mean in unmagnified writing on the back of the label, I mean that it should be in 10-mil writing on top of the labels, and let the Australian consumer make the choice what they want.

**MR HARRIS:** You've been pretty clear about what you've got in mind, but one thing you have done is mention a number of cost impacts that affect the industry. One thing we were finding in our earlier accelerated reports was just that - that there are a significant number of cost differences between production in Australia and

production overseas - and that those costs tend to be part of the reason why you are going to have damage to the Australian production level reflected in its market share.

Your submission here today is that a tariff would be a good way of offsetting that cost differential. I think at the previous hearing I asked at least one of the grower representatives, do you then consider that raising the price, which would be potentially the impact in those circumstances, is a good thing? Will it increase consumption, because a tariff will increase price, unless again - and this goes to this margins issue - the margins that are sought in competition between supermarkets and other suppliers enable some significant variations to be undertaken.

In principle at least it seems that the response here that we are considering - this is the safeguards inquiry rather than the question of this \$25 million grant - do you consider that will be a positive outcome in the circumstances?

**MR BESIM (KBC):** I don't believe by putting a percentage tariff on imported fruit is going to lift the price up. It's only going to make Australian fruit more competitive. I mean, it won't lift Australian fruit up. It's only going to lift the cheap imports, where the supermarkets will turn around and say, "If I'm paying a dollar for this can for SPC and if I'm paying 90 cents for that, why go to the exercise to import for 10 per cent? We'll wear it. We'll buy Australian."

And if we had the labelling laws changed - you see, another thing I haven't mentioned is, banned chemicals such as DDT are still used in certain overseas countries. Our fruit is tested regularly, yearly, for residues. Imported fruit is not tested. Even the fresh fruit is not tested. That's why I've got a lot of anger in me: why doesn't the Australian government protect our farmers, our manufacturers and, most of all, our Australian people from what they're eating from overseas? The finger should be pointed at their product, because it's pointed at ours.

**MR HARRIS:** Okay. I certainly understand your point. Paul, do you have anything to ask?

**MR BARRATT:** No. It's all very clear.

**MR HARRIS:** Okay. I haven't got any questions other than that principal once that I've just asked you, and I think you've made your points quite clearly.

**MR BESIM (KBC):** The other thing I'd like to add is that if this meeting was held and publicised in Shepparton, I'm very sure you would fill up the Shepparton Showgrounds with the community in support of action to be taken to protect our manufacturing companies. Also you mentioned new technology and you say canned fruit is old technology, but they're all telling us we're having global disasters, fires,

winds. It won't take much to destroy a fruit crop, to do a lot of damage with a heatwave or a strong wind or a hailstorm. In plastic containers, fruit only lasts a minimum of around 12 months before it starts losing its colour through the plastic. Fruit can stay at least three years in a can, and that's food for people of Australia. So it might be old technology, but it's the old draughthorse technology which still feeds people.

**MR HARRIS:** Yes, okay, I understand that too. Thank you very much for your time today.

**MR BESIM (KBC):** Thank you.

**MR HARRIS:** If you could, just for the purpose of the recording, identify each of yourselves before we launch in.

**MR KELLY (SPCA):** I'm Peter Kelly, MD of SPC Ardmona.

**MS VALECHA (SPCA):** Shalini, SPC Ardmona.

**DR HEILBRON (SPCA):** Selwyn Heilbron.

**MR HARRIS:** Do you have an opening statement, Peter?

**MR KELLY (SPCA):** Yes, we do. SPC Ardmona dismisses the findings of the Productivity Commission reports on provisional safeguards. SPC believes that the reports are unbalanced, listing every possible and in several instances clearly erroneous arguments and judgments, all of which are errors that affect our application for provisional safeguards.

We have important concerns regarding procedural fairness of the Productivity Commission process and at the outset we wish to ask a question which relates directly to procedural fairness, an issue about which we've only become aware in the past few days. I'll ask Selwyn just to talk about it.

**DR HEILBRON (SPCA):** Thanks, Peter. Mr Chairman, we'd like to note something here: that it appears that representatives of the South African government and industry have been allowed to appear at this hearing following us. They are listed on the sheet which was provided. This is something that's only come to our attention on Friday, so for obvious reasons it hasn't been included in our submission. As of Friday we haven't been able to find on the inquiry's web site any submission made by these parties.

The commission's hearing documentation states that if an interested party intended to present a submission at this hearing the submission had to be lodged by the 20th of this month, and we complied with this requirement and we believe that all the other parties that have appeared here to date complied with that as well, so I guess the question is, why have the representatives of South Africa been allowed to present at this hearing when they haven't lodged a submission?

**MR HARRIS:** I'll take your request under advisement, because I wouldn't necessarily want to concede that there is or isn't an issue in relation to this. You might have noted in my opening comments I mentioned people reading submissions into the record, so we've said that we're not here for that, but that's primarily a commentary on the fact that we can read a submission. We don't need it read into the record, we can read it independently, and it will be published on the web site, so

there's no loss. I'll find out the question and I'll answer the question for you at a subsequent point, but I don't have an answer for it right now because clearly you've just raised it at the table.

**DR HEILBRON (SPCA):** Thank you for that, Mr Chairman, but with respect, I think it's incumbent on us to point out some of the implications of this, and taking a matter of procedural fairness on notice, we are reluctant to, frankly, accept.

**MR HARRIS:** I don't think, with respect, you have any ability to dictate to us on whether or not we can take something on notice.

**DR HEILBRON (SPCA):** With respect, the issue that we raise goes to the procedural fairness of this hearing now. If we continue the hearing on the basis that it's been established now, frankly we don't see how it can be considered fair, for reasons which I would like just a minute to illustrate if I may.

**MR HARRIS:** That's correct, but please note my comment back to you.

**DR HEILBRON (SPCA):** It is noted. What this allows is a situation whereby all the information and the arguments that we've provided can basically be taken by those who are quite clearly taking an opposite position in this inquiry. It gives them the opportunity to do that, and if we allow the hearing to proceed on this basis - and I'm saying "we" as a collective party here, not "we" as SPCA - then what that basically means is they also get access to whatever arguments we're going to now present to you.

We are not in a position to do the same with them. We have got no information from them on the arguments that they have put in relation to our submissions, nor your report, and now we're going to have no ability to counter any counterarguments that they have.

Now, whether this is an inadvertent error or some other reason is not for us to determine, but we have to note this because it is consistent with precisely what Mr Kelly has said. We have really serious concerns about the procedural basis on which this inquiry has gone.

**MR HARRIS:** Can I ask you this then. If the South African representatives don't appear, does that resolve your problem?

**DR HEILBRON (SPCA):** I think it would.

**MR HARRIS:** Fine. I'll just note it and, as I said, we'll provide you with further advice. I don't think we can deal with this in the course of today, so we'll just take



your comments under advisement and, as I said, I'll provide you with a response in due course. I would note this, however.

We've conducted this inquiry on the basis that people can provide us with submissions, and indeed did provide us with submissions, after the last public hearings and on a continuing basis, so I would merely note that we are completely open to receiving information up to, as I said in the opening remarks, the middle of November, in the course of discovering as much information as we can about the subject of this inquiry.

No-one is prevented from therefore providing further commentary on any other claims made by any other party, and indeed I've deliberately used the term "mid-November" because I'm offering some flexibility about when exactly in November. I'm just trying to make sure that everybody knows that they have the maximum number of opportunities for providing information to us. But on the specific question that you raised, I will provide some comment at an appropriate point once I've had the chance to take advice.

**MR KELLY (SPCA):** Thanks, commissioner. I'll get back to some commentary we have on the preliminary report. We believe there's been a large number of errors in the report and this leads us to conclude the reports are of poor quality, lacking analytical and commercial rigour, and leads us to the conclusion that the commission has a predetermined position to reject our application.

I want to identify two major areas where we don't think we've been given a fair go, the first in regards to an important area where we believe there may have been breaches of confidentiality in the data that we provide to the commission. In addition to the numerous failings in the report which we're going to detail for the record, we're concerned about the release of commercially sensitive information which was provided in confidence by SPC and released without our permission.

Examples of this are evident in the processed fruit report which includes confidential information about SPC's profit and loss on page 46 and employment numbers on page 46, our sales data, which is highly confidential, and our market share data, which is confidential, as well as capacity data on pages 41, 43 and 45 respectively. Similarly, in the tomatoes report, information on company production levels, profit and loss, employment levels, on pages 26 and 27, has been similarly treated.

SPC has already written to the federal Treasurer to register our complaint at the handling of our commercially sensitive data and we would like a response from the Productivity Commission about these potential breaches of confidentiality. Should these breaches be confirmed, they would appear to us to constitute a significant

breach of the Productivity Commission's own act, which requires information not to be disclosed if the company objects to it being made public.

This could have major ramifications for the confidence that our company and other companies might have in trusting the commission with further data. In addition to this loss of trust in the commission, our company could well face material commercial damages and other losses when our competitors use this information, this confidential information, against us in the market. So we'd like to ask, how has it come about that this commercially sensitive information has been released?

**MR HARRIS:** I understand that you've made a submission on this matter, and we've provided advice to the Treasurer, and the Treasurer will undoubtedly write back to you in due course with his response.

**MR KELLY (SPCA):** Okay. We'll certainly look out for that advice from the Treasurer about that.

The second issue that we're very concerned about is the previously undisclosed membership of Australia in the so-called Friends of Safeguards Procedures group of the WTO. SPC first became aware of this in reading the final report of the commission, particularly the tomatoes report, where this was put forward as a reason why higher standards had to be applied against Australian applications for safeguards than for countries that weren't a member of this so-called Friends of Safeguards Procedures group, and this affected evidence and analysis. It was obviously important because the commission chose to raise that as a particular reason why they had to find a higher linking causality than other countries would have to do.

We have a question. Why was SPC not informed about even the existence of this group at any time during the formal process in any of the meetings we had with the commission? Membership of the group obviously has a material impact on the commission's assessment because, as stated in your own report, membership appears to restrict companies from being able to access or prove safeguard cases by applying a higher standard of evidence. So why was this group not revealed to SPC during the process, particularly in the terms of reference or the industry issues paper, or in any of our meetings?

**MR HARRIS:** Again I don't think it's our job to answer your questions here today. These matters will be dealt with in written advice that you will receive. I would note for the record that I don't think we accept your interpretation of this information. Earlier, in remarks to Ms Stone, I did make in passing some comments about the existence of the Friends of Safeguards group in terms of this being information we discover in the course of an inquiry we conduct. So the Productivity Commission tends to provide as comprehensive a set of commentary as it can, based around the

information that we're able to discover. The individual significance of information we discover is not necessarily as you've attributed it, but you will receive written advice on this matter.

**MR KELLY (SPCA):** Okay. We'll turn now to some specific problems we have with the analysis.

**MS VALECHA (SPCA):** Turning now to the examples of errors in the accelerated report, SPC believes that they are riddled with factual errors which, taken together, undermine the validity of the conclusions. The following list that we're going to go through now is by no means complete but focuses on some of the key mistakes that we believe are part of the accelerated report.

Firstly, supermarket Aldi's information has been ignored in the assessment. Aztec scan sales data has been used in the reports to indicate retail market information such as retail market size, retail market shares and, importantly, retail market growth. However, Aztec scan sales data does not include the sale of products through Aldi, a fact that SPCA had made clear to the commission.

Aldi has doubled the number of stores from 2007 to 2013 and now has over 300 stores on the eastern seaboard. This is equivalent to about a 19 per cent increase in stores per annum over the past six years. In addition to this, Aldi's average turnover per store is also increasing at approximately 6 per cent per annum. That is, each store is becoming bigger by the year and selling more.

Processed fruit and processed tomatoes have an even higher share in Aldi than average. We have information from Aztec Home Panel data and our knowledge from Aldi's tender documents to support this claim. Our confidential submission to the Productivity Commission on 18 July included estimates for Aldi. Processed fruit and tomatoes in Aldi are predominantly all sold as private label, therefore ignoring Aldi means understating the growth of private label products in the Productivity Commission's reports.

In specific, Aldi's annual Australian sales are now estimated to be greater than \$5 billion. That's almost greater than David Jones and Myers put together. Aldi has grown from zero to more than 300 stores in Australia. Aldi over-indexes in packaged fruit versus other retailers due to its format and customer base. Aldi has as much own-label packaged fruit as Coles and Woolworths combined. Ignoring Aldi underestimates the size of private label sales by an enormous factor, yet despite our evidence to the commission, Aldi sales were ignored as a part of the retail market, with the resultant material factual errors in the commission's understanding of the market in this country and its findings.

The implication of omitting this data is profound. Proper inclusion of Aldi would have corrected errors in the commission's calculations of the level and rate of import penetration, therefore increasing the justification for safeguards. So we have a question. Why did the commission ignore the data we provided on Aldi and thereby reach a conclusion on the Australian regional market on facts it knew to be incomplete?

**MR HARRIS:** I think that's a vast over-assertion of information. In fact, you know this yourself from reading the report, that Aldi is actually mentioned. Can I ask you a question? What is Aldi's market share in the products that are relevant to this inquiry? You listed a large number of characteristics of Aldi as a group.

**MS VALECHA (SPCA):** Yes.

**MR HARRIS:** What's its market share for the products that are relevant to this inquiry?

**MR KELLY (SPCA):** We want to get comfortable about all the data that we provide you from here on to make sure that we're dealing off a level playing field. But I think the important fact that Shalini reached: if you take the private label fruit sales of Coles and Woolworths and you add them together, Aldi has slightly greater sales than that. So to talk about private label and ignore Aldi, you effectively ignore half of the private label volume in fruit in this country. That is an enormous error that I think should be rectified pretty quickly, because you obviously get the wrong implication about how much has been imported.

So I think it is a question of fact, and we did point this out to the commission - - -

**MR HARRIS:** I'm just surprised in the circumstances that you make so much of this that you aren't prepared to put on the public record what you think its market share is. It's a simple fact, as I think you'd know from correspondence with us previously, that the difficulty in obtaining information here is one that does make the inquiry more difficult to conduct than it need be, when these are relatively simple questions to answer.

**MR KELLY (SPCA):** We have unique information about Aldi, because they're a customer of ours, and they're a very private company. We first will need to get comfortable about the data we provide from here on and wait for a letter from the Treasurer and other people to make sure that we're happy with procedural fairness, the way that confidential data is dealt with, et cetera. We have to wait for that response from the Treasurer that's coming in writing, as you said before.

**MR HARRIS:** Fine. Just to be clear what your submission is here today, you're saying you believe we didn't take Aldi into account. Aldi is actually represented in language in the report and it will be represented in the final reports, but I'm not going to comment further on that. But a simple question, asking you what you estimate its market share to be in these products, is not something you can answer.

**DR HEILBRON (SPCA):** Perhaps I could add something on this, Mr Chairman. The nature of the data required to answer that question puts us in an extremely difficult position, as Mr Kelly outlined. Perhaps if we could have received some greater comfort on the treatment of the information, to the extent that information provided to you would not be divulged without being referred back to the company - which I would have thought would be entirely reasonable under the circumstances - there would be more comfort in this process.

But we have done the due diligence on this matter, and the impact on the share of the market accounted for by imports is material. It is significant, it is material and it goes to the heart of the submission and the heart of the inquiry.

**MR HARRIS:** Do you understand the nature of this report? So you will say in your testimony that it is significant but you're not prepared to provide information which supports that.

**DR HEILBRON (SPCA):** No, we are, but we want some comfort over the treatment of that information. We're quite prepared to provide it. In fact, in the initial submission we provided it. Unfortunately, it hasn't been reflected in the report.

**MR HARRIS:** So you say.

**MR KELLY (SPCA):** Mr Chairman, it's a question of fact. I mean, it's either been reflected in the report or it hasn't. There has been a reference made to Aldi in the report, but the information that we provided goes to the level of import penetration and that has not been reflected in it. It's a question of fact.

**MR HARRIS:** As I said, I don't think we're here to answer questions put in that way. We're trying to find a piece of information on which I could ask you for further advice that's relevant to this report. The primary piece of information is, Aldi, as you've described it, is a \$5 billion entity. That doesn't tell me anything about its share of the market and the products under consideration here today. I'm asking you for information on that. It seems to me a fairly simple request.

**MR KELLY (SPCA):** Mr Commissioner, with respect, I'll answer that question again for you. The sum of packaged fruit relevant to this inquiry sold under private

label for Aldi is slightly larger actually than the sum of total Coles and total Woolworths put together. Given that that's the data that you are measuring from Aztec, the bit you've missed out is bigger than the sum of those private label brands in total.

That's enough for me to say, "Holy cow, that's a big error there," because all my market growth numbers are going to be wrong, my import penetrations are going to be materially wrong, and we tried to point this out in one of our meetings. We thought the point was well made in our meeting, but when we read the report, yes, that fact has been ignored, and we have a problem with that.

**MR HARRIS:** As I said, I'm not going to comment here about whether anything has been ignored or not. I'm trying to get a number, because, as you say, this information is difficult to obtain from any other source and our requirement is to try and provide as comprehensive a report as possible. Just something which gives us an order of magnitude capable of analysis seems to be pivotal to supporting or not supporting your case, so we're soliciting this information.

You're perfectly free to make statements based on the language rather than the data, but I'm seeking data, because we think it's potentially quite pivotal and we'd like to receive that. But it's entirely in your hands as to whether or not this is made available.

**DR HEILBRON (SPCA):** Mr Chairman, we're happy to provide that evidence but not here and not now in public, and I think that's entirely reasonable. There are procedures in place, including in the commission's own act, for protecting information.

**MR HARRIS:** I'm not questioning those either. I'm asking you because, as you know from exchanges with us on a continuing basis, the difficulty is providing information which can support a sustainable case that we can put in a report that is subsequently to be analysed internationally. We'd like to get that information. If that information isn't available, we're substantially restricted in how we can provide a convincing case. The commission tries to provide as comprehensive a document as it can to the Australian government and for subsequent purposes.

We will be pursuing this matter with Aldi. We have received some information from them. It's an interesting question that you put, and we would like to be able to clarify it in our final report, but currently restrictions placed by all parties on information available make it very difficult to demonstrate perhaps that things are being taken into account. In any event, let's proceed.

**MS VALECHA (SPCA):** Moving onto the second example, SPC's cost of

production where SPCA data was ignored. The PC report on processed fruit says:

There is some evidence that the increase in SPC Ardmona's costs of production was driven partly by increased variable costs, in particular factory labour.

We'd like to ask, Mr Chairman, how was PC able to draw a conclusion on variable costs when no breakdown of fixed costs and variable costs in the cost of production was either asked or provided to PC? Information provided on some key variables, such as fruit cost, indicates the opposite to what is in PC's report conclusion. For example, for fruit costs, prices paid for the raw fruit to the growers was submitted to the PC and these highlight the prices being flat or declining, yet this data was ignored in the above assessment.

Labour rate increase has been cited as the reason for cost increases. However, we'd like to point out that average increases given to the food preservers, (the key labour force for production, for the period 2010 and 2013 was 2.4 per cent per annum, which is much lower than the food industry average of 4 per cent and the national average of 3.4 per cent.

The conclusion is also flawed, as the same report on page 46 highlights that the data shows that the number of casual workers employed on a weekly basis has decreased by about 30 per cent while the number of salaried employed people has decreased by about 19 per cent. So how could the commission have possibly reached the conclusion it did on labour costs without having correct data from us?

**MR HARRIS:** I think you'll see in the final report quite a lot more detail, which in an accelerated report there simply wasn't an ability to put forward, on how we come to our conclusions. I would, because it is highly pertinent to growers, note that we have actually made comments on the position of growers and the prices received over a long period in that primary report, and that information was certainly examined by us. So we don't agree with your comments at all on raw fruit prices in the terms that you've just put them, but we'll demonstrate further our commentary on variable and fixed costs in the final report.

**MR KELLY (SPCA):** Sorry, commissioner, I don't understand. The growers' comment about SPC's labour costs?

**MR HARRIS:** No, raw fruit prices.

**MR KELLY (SPCA):** Sure.

**MR HARRIS:** Raw fruit prices.

**MR KELLY (SPCA):** The report says that we've got a problem with our labour costs at SPC, and what we're trying to say is, no, we never raised that. We in fact have evidence to show the alternative. Our employees are actually going out of their way to try to be as cooperative as possible. We're not at war with our employees. Our employees have taken below-market wage increases and tried to add productivity improvement into their work. We've had a wonderful relationship with our employees.

What we object to is them being raised as the issue when we've never raised it as the issue and no data has ever been requested on that breakdown, and yet a big point is made that there's a problem with labour costs at SPC. That's the nub of the question for us to restate again. There is no problem in that regard.

**MR HARRIS:** I think, with respect, Mr Kelly, your colleague did raise raw food prices. I didn't take it in my notes here. Okay? So I'm responding on raw fruit prices.

**MS VALECHA (SPCA):** That was in response to your question about variable costs of production. Variable costs of production - - -

**MR HARRIS:** No, no, I think we're losing track here. I was really commenting on something that you said. I tell you otherwise. Additional information on this will be provided in the final report.

**DR HEILBRON (SPCA):** Could I, Mr Chairman, ask for a clarification on that? So a conclusion was reached in the accelerated report based on information that you didn't have then but that you will now divulge in the full report?

**MR HARRIS:** That's not what I said.

**DR HEILBRON (SPCA):** No, could I seek clarification?

**MR HARRIS:** You'll receive further information on how we came to our conclusions on labour cost related issues in the final report.

**DR HEILBRON (SPCA):** So you had the information but you didn't divulge it in the accelerated report?

**MR HARRIS:** I'm sorry, I'm really not here to be cross-examined by you.

**DR HEILBRON (SPCA):** With respect, it's a request for a clarification, not a statement - - -



**MR HARRIS:** And I've given you an answer.

**DR HEILBRON (SPCA):** I'm sorry, but, with respect, I have a question. The question is, did you have the data before you reached the conclusion in the accelerated report or did you get the data afterwards that you'll provide in the full report?

**MR HARRIS:** I think I've given you an answer.

**MR KELLY (SPCA):** Okay, we'll move on to the next error that we believe we found in the preliminary report.

**MS VALECHA (SPCA):** The next one is predominantly around the domestic product volumes and the using of historical production volumes based on unverified source from CANCON conferences. The reports have cited unverified estimates provided at a CANCON industry conference for its conclusions on capacity utilisation and historical domestic production.

The PC reports use this information for trend analysis despite SPCA indicating that this data was not correct and inappropriate for use in this context. We've written an email to PC dated 6 August highlighting this fact. We're not sure why the commission would choose not to use the actual confidential data supplied, which the commission was welcome to verify, which was also matched to the products in the terms of reference in this inquiry. The conference presentation data cannot be confirmed to be aligned with the products that are relevant to the inquiry.

The data given at the conferences, which I attended with other competitors, is only ever going to be a rough estimate at best. We'd like to know why this data was treated for the purpose of analysis. Did the commission verify this data with the conference organisers or the presenters?

**MR HARRIS:** I think the report itself notes the nature of the data as being - and I can't remember the precise words - information that provides clarity on general trends, but the periods of years, if I remember rightly, are somewhat different and generally characterise it as being relevant but information that is published with its limitations noted.

**MR KELLY (SPCA):** Commissioner, I'm just bewildered. Why wouldn't you use our actual data that we did provide and that we opened the doors, "Come and check, come and audit it, it's been matched exactly to the terms of reference for the inquiry." Why use a presentation from a conference that we gave, with our competitors at? Why not use the actual data that you've been welcome to come and see how it's

calculated and check it and use the actual data, because it was different. It's difficult for me to come to terms with - - -

**MR HARRIS:** We're quite happy to receive further information on this. For the purposes of the accelerated inquiry, we published that information that we had and we placed it in a series that we think was relevant and we noted the limitations that were provided to it. We're happy to receive further information on this matter.

**MR KELLY (SPCA):** Okay. Commissioner, you did have our data. I'm just clarifying. It sort of sounded like you didn't have our data. We gave you our data on this topic - actual data - and our query is why ours wasn't used, the actual data, and you used the overseas conference data, which we said wasn't incorrect at the time.

**MR HARRIS:** It's my understanding that we did actually use your data - - -

**MS VALECHA (SPCA):** Part of it, yes.

**MR HARRIS:** - - - but if you think we didn't use your data, we're quite happy to clarify this in a further discussion with you on the data issues. We think the limitations were noted and, as I said I think a number of times to a number of submitters here today, we intend to put all the information that we have available to us up. If there's better information that's available, we would really like to receive it for the final report. Where we think information that's provided from multiple sources by being published will assist us in getting better information from parties, we think that's a relevant thing to do.

So we're quite happy to take further advice from you on this and, if it proves that information we used is not of the best quality and information that is clearly of better quality is available, we'll take it.

**MR KELLY (SPCA):** We certainly think that, so we'll resubmit the data we've given and we'll open the doors for you to come and verify it. The beautiful thing about using actual data from real computer systems is that it can be audited and checked, and you could make yourselves as comfortable as we are that using actual data is better than data from a conference somewhere overseas. Thank you.

**MS VALECHA (SPCA):** Moving on to the next one, we'd like to discuss the impact of imports on unit prices, the analysis that was carried out. SPCA believes that the analysis carried out to establish the impact of imports on unit prices, which is one of the key arguments used, is flawed. Analysis carried out is at aggregate level and does not highlight the dynamics of sub-markets within each tariff code. Products within each tariff code do not compete with each other necessarily.

SPCA went to great lengths to provide the commission with factual evidence on 12 August, in a meeting at the office here, which would have enabled it to describe the market. We'd like to know why it was not taken into consideration.

**MR HARRIS:** I think the information that we published is in relation to the tariff headings that we're required to examine as part of this inquiry. If I understand your comment then - but please provide further commentary - you're suggesting that sub-tariff items are more relevant, which is an argument you've made on a number of occasions, but the purpose of this inquiry is to focus on the tariff items as referred to us by the government.

Am I right in suggesting that you have actually made a commentary then on sub-tariff items? I did hear the terminology used.

**MS VALECHA (SPCA):** What we'd like to highlight is that there are sub-markets within each tariff code and the dynamics in those sub-markets are different. Before we come to the judgment around how the unit prices of imports impact the market, those need to be analysed at a lower level rather than at an aggregate average stock level. It will draw incorrect and flawed conclusions.

**MR HARRIS:** I understand. Sorry, I may not understand. Your contention then is that differentiation of products within tariff items can lead to alternative conclusions about an aggregate tariff item. Can you explain how that can be, when the import data that we're required to focus on by the tariff item in the terms of reference is the case? Why, if we're to focus on that, can a sub-tariff item alter that import number?

**DR HEILBRON (SPCA):** Mr Chairman, it can't alter the import number, but one of the issues which the inquiry is required to address is import share of the market, and it is entirely relevant to making that calculation. So there are sub-items - - -

**MR HARRIS:** So please clarify the market for the purpose of your commentary then.

**DR HEILBRON (SPCA):** The market for the purposes of this particular analysis was measured by the scanner data plus Aldi. That's the market consumption of the product. It's actually an issue which we will address later on, the selective use of the criteria for analysing serious injury. The only criteria that effectively has been used is the share of production, whereas both the WTO Safeguards Agreement and the gazettal notice require that one of the parameters is the share of consumption. That is where it becomes relevant. There are sub-items which go within the tariff code that apply to consumption in the marketplace, and they make a material difference to the result.

**MR HARRIS:** The consequence of these sub-items though? Demonstrate, just in commentary, how they affect the aggregate number.

**DR HEILBRON (SPCA):** They can result in a substantially higher level of import penetration and a different level of growth.

**MR HARRIS:** A substantially higher level of import penetration in the sub-market or in the market covered by the tariff item?

**DR HEILBRON (SPCA):** Well, in the sub-items, which may comprise the total tariff item at issue.

**MR KELLY (SPCA):** We had this debate here in this building and we pointed out - Paul, you were there at the same time - if you're talking about retail prices in a market, you can't average across all the packs and then look at the average. It's the case of the man who had his head in the freezer and his feet in the oven and on average he was at the right temperature. You can't do that. You have to analyse the impact on prices and unit prices at a lower level. We explained - - -

**MR HARRIS:** I think we know your arguments quite clearly on individual package sizes in the marketplace, but I'm asking you to tell me how, in the statement that I think was made earlier, you can say that this affects the consideration of the import at the tariff item level. How does aggregating these packs alter the analysis in the way that you've suggested, to create a flawed conclusion? How does it happen?

**MS VALECHA (SPCA):** There are different markets here. When you're comparing penetration at the retail end, you're not even taking into account the food service market. The food service market is a completely different channel and yet that's not been taken into consideration when you are looking into import prices.

**MR HARRIS:** But at the aggregate level surely it is taken into consideration. Surely the aggregated tariff item as recorded by - - -

**MS VALECHA (SPCA):** It's averaged out.

**MR HARRIS:** Yes, but when you say it's not taken into account, surely that's an overstatement. It might be in the aggregated tariff item. How could it not be?

**MS VALECHA (SPCA):** The analysis that is carried out looks at import prices at tariff code level, which includes food service tin cans, which do not compete with retail market prices, which is what the data presented - it's the wholesale market.

**MR HARRIS:** Okay. Perhaps I can turn it around and get a better answer then. At

the aggregated level, are those products covered or not? Do the statistics that we have analysed in the report include them? What I can't work out is your claim of causality here at this level. You don't seem to be able to show me how it is that, by disaggregating the items into individual markets, you achieve this claim of a better analysis than the one that necessarily must be conducted for the purpose of this inquiry at the aggregated level, because we are asked to deal in this inquiry with the tariff at the aggregated level, not at the subaggregated level of individual markets, and if I understand you correctly you've said if you don't analyse it in individual market segments you will get a wrong conclusion at the aggregated level. What I want to see is the linkage that you're making there, because it's not self-evident. I can't see how it can be the case that the aggregated number is dismissed.

**MR KELLY (SPCA):** We showed examples in a meeting in this office. We showed examples. Paul, you were there as well. We went across three different - your question before: is the number in the average? Yes, it's in the average. That's the problem: it's an average. We showed how to look at actual; how a market behaves and the way that all the competitors behave. You have to look at the level of competition that takes place in the consumer or with the wholesale channel or the retail channel, and that's at the next level down, and we gave you examples and showed you, and we have it. We'll resend it to you if it's missing.

**MR HARRIS:** No, we know the examples. I'm looking for causality.

**MR KELLY (SPCA):** It's shows you how there's - - -

**MR HARRIS:** I'm looking for causality to support your claim that the conclusion is wrong at the aggregated level because of some issue with not utilising sub-markets. What is the causality that says by dealing with sub-markets you're missing something that you must deal with before you conclude on the aggregated level?

**DR HEILBRON (SPCA):** Perhaps one can illustrate it by separating out the food service market from the retail market. So the total level of imports may be the same, but in terms of its impact on injury, if you are making a substantially different margin on one and you're not even in the second one, because effectively they are not competing, it has a substantially different impact on injury.

**MR HARRIS:** And yet the consequence of making a decision in favour of sub-markets takes a new tariff or quota, depending on the circumstances of and stage of the inquiry, across the entire category of the tariff item according to what we've been asked to examine, does it not?

**DR HEILBRON (SPCA):** Well, the tariff item, the total volume of imports may be

exactly the same, but as I said previously, you're required to assess the impact of those imports.

**MR HARRIS:** That's right, but that hasn't answered the query I just put. Does not the impact of the response to all of this sub-market analysis necessarily affect all categories across the tariff item? Does it not affect all categories?

**DR HEILBRON (SPCA):** It may affect them differentially.

**MS VALECHA (SPCA):** Differently.

**DR HEILBRON (SPCA):** It may affect them completely differently.

**MR HARRIS:** And that's right, but what I'm asking you is, you say that the analysis is flawed because it is at the aggregated level.

**MS VALECHA (SPCA):** Yes.

**MR HARRIS:** You want to recommend analysis solely at the subaggregated level, but the consequence of making a decision on the subaggregated level applies the tariff or quote under consideration to the entire level, everything.

**DR HEILBRON (SPCA):** With respect, that's not material, because the measure that - now we're talking measure, as we've pointed out before, if we are concerned about the impact of the measure, that is not an issue. Customs can create a sub-tariff line any day of the week.

**MR KELLY (SPCA):** You could easily make a recommendation - - -

**DR HEILBRON (SPCA):** Any day of the week. That's a simple - - -

**MR KELLY (SPCA):** - - - that a tariff code apply to one pack size.

**DR HEILBRON (SPCA):** Absolutely.

**MR HARRIS:** So let's stick with that for a second. So your submission here today is that, as a consequence of this information, we should create new tariff items?

**DR HEILBRON (SPCA):** Why not?

**MR HARRIS:** Okay. I just need to get that on the record. So I think your comment was "Why not?"

**DR HEILBRON (SPCA):** Yes. We've mentioned this before previously, I think in perhaps the first meeting that we had. It's a matter for measure. I think that is an entirely secondary issue.

**MR HARRIS:** Many things are mentioned orally and we are providing, as I have been at pains to say today, a comprehensive report. I do not recall a submission to this effect, but if it's there, we'll go and find it. But can I then extend from this discussion about sub-tariff items. So your proposition is we should examine sub-tariff items. The terms of reference say recommend about a tariff item, but we should examine these and potentially recommend a position which says, "For this sub-tariff item, create a new tariff item and apply a level of protection at that level to this good but not necessarily to this good," and that we define that by container size, for example?

**DR HEILBRON (SPCA):** That's suitable under the Customs tariff. Customs may have some particular requirements, but - - -

**MR HARRIS:** Sorry. You're submitting a proposition, so to say Customs should decide will then result in - if it's not presumably what you want, then that's the wrong answer, so I do think it's incumbent upon you, if this is your position, to tell us the sub-item that you think should be created and the basis on which that would be a relevant consideration to this inquiry.

We have heard many times from you about the nature of the different retail markets. I think our proposition has been, we're required by the terms of reference to look at the full tariff item. If your submission is not only, "Don't look at the full tariff item; disaggregate it into these container sizes and recommend a varied tariff," I need to know this. I need to know this as a formal proposition of some kind, that that's really what you're putting, because we would then want to rely on it. So when you say orally, I certainly heard it said orally in different debates about what is the right container size, but the proposition has to be put and the analysis provided to support that if that's your claim. Okay?

**MS VALECHA (SPCA):** Okay.

**MR HARRIS:** Please proceed.

**MS VALECHA (SPCA):** The next issue we'd like to raise is around the analysis of production volumes to assess the increase in imports. The PC report states under section 2.2 at various places that:

The ratio of import volumes to domestic production has increased substantially over time, growing from a low base, but recently at a slower

rate than the longer term trend. This calls into doubt whether the WTO standard can be met.

SPCA disagrees with the methodology of using ratio of imports to production to derive the findings. A ratio analysis of this nature fails to take into account the effect of stock carry-over in the domestic production from year on year. It fails to capture massive stock write offs that SPCA has had in recent years and had informed the PC about. It also overlooks the timing differences between domestic production, imports and sale of goods. In addition to the above, as has been highlighted before, the production data from previous years is unverified and inconsistent with SPCA submitted data for recent years.

So we'd just like to know why such a simplistic analysis, which is very basic to this inquiry, was carried out knowing some of these issues with using this ratio.

**MR HARRIS:** Let me just clarify one of the comments that you made there. There are a number. Tell me why the stock shift and write-off is relevant to a trend analysis. I can see why, in your submission, it was relevant to a particular year compared to any other particular year, but a period of five years or a period of three years - if the stock is accumulated in one year, is it not reflected in a lower level of production in the following year?

I guess I'm not asking this hypothetically. I'm asking it because you appear to be indicating a piece of information which I think should be present in all the production data that I think was provided, but you seem to be saying it may not be present in either - if I'm understanding you correctly - a particular year or in a complete series of years that's shown in this analysis.

**MR KELLY (SPCA):** We certainly wrote off a significant amount of stock two years in a row, so that would affect a trend analysis conducted over five years, and we certainly have a massive amount of carry-in stock, but we still have stock on hand at the end of the analysis. So, you know, with three instances like that in a time series of five, that's where you get a bit of a problem.

**MR HARRIS:** But, sorry, it's inherent in the numbers that you provided on production, is it not? In other words, the year of overproduction is present in there, because overproduction is a characteristic not of production but of what you've managed to sell and what you therefore retain. In the next year you'll produce - - -

**MR KELLY (SPCA):** And then if you destroy it - - -

**MR HARRIS:** Sorry, just let me continue. In the next year you'll presumably produce less, or in the year afterwards, depending on when you take into account that



accumulated stock. You'll presumably produce less. So in the trend period - is not stock covered in that period? It hasn't been magically deducted - - -

**MR KELLY (SPCA):** This coming season, commissioner, is the year in which we'll produce less. That's what all the growers have been talking about since they first met in the commission and started making submissions. We've been wearing it and taking stock and trying to make things work to save the industry, but, no, you get a one-time correction, which is what's going to happen in the season ahead. You get a big correction for that.

**MR HARRIS:** That's quite important, what you've just said, because in the written submission you provided on this you did not make it clear why this wasn't taken into account. So let me just clarify. What you're saying is, those production numbers are consistent, they're correct, but what they don't reflect is, "We are about to do a massive cut-back in production, because there has been a steady accumulation of excess production through that period, and the write-offs that we announced previously are not write-offs that have already occurred, they are write-offs that are about to occur." Is that right?

**MR KELLY (SPCA):** Some write-offs have occurred in the period, and we have a significant oversupply of stock going into this season.

**MR HARRIS:** Okay. This should be a data issue. You should be capable of demonstrating this in a data series.

**MR KELLY (SPCA):** Yes.

**MR HARRIS:** The production numbers are the production numbers. The loss is a forecast lost. Can I go further and gain a comment on this: does that mean that you're suggesting that the trend analysis should include the future year, because it's the year in which you expect to see these reductions primarily demonstrated? Would that be right?

**MR KELLY (SPCA):** You can simply correct the numbers that you've been using for production for these areas and get the correct number to get the correct production.

**MR HARRIS:** No, I'm not sure it's an error, because if it's an error I want to know why we are in error by taking production numbers that did exist. These were what was produced, so literally they are the production numbers. You are wanting to attribute something as an error which is literally not in terms of it being produced. You're saying, if I'm understanding you correctly, "Aha, but you've got to take into account what we're about to do. We're about to reduce production massively because

we've overproduced in those periods." Am I correct in understanding that?

**MS VALECHA (SPCA):** The analysis and the conclusions that we're drawing from this ratio is where it starts to get flawed, because in the recent years we've been building stock and our production number is higher. So when we make a conclusion that over the recent years the rate has been slower than in the longer term trend, that recent year slowing of trend is actually flawed, because it doesn't take into account the fact that we've actually been building stock. It's not reflecting the real consumption that's happening in the marketplace. If you had a pure number where the zero - - -

**MR HARRIS:** Consumption and production, separate things.

**MS VALECHA (SPCA):** If we had purely done a ratio analysis looking at what is a product that has actually been sold into the marketplace, we would have highlighted that over the recent years the import-to-sales ratio has actually risen, which is what would have reflected what's happening in the marketplace.

**MR HARRIS:** That's correct, and I do understand that. So that's imports to sales, as you've just said. Consumption or sales is different to production. The literal indicator that is being developed here is imports to production, I think.

**MS VALECHA (SPCA):** Then we need to index out the production in such a way that it takes into account the variability of stock that we've had in recent years, and that's - - -

**MR HARRIS:** Yes, that's what I'm trying to get to.

**MS VALECHA (SPCA):** - - - drawing the wrong conclusions.

**MR HARRIS:** But it does not sound, in those circumstances, like the production numbers are an error. They are the production numbers.

**MS VALECHA (SPCA):** The interpretation of - - -

**MR HARRIS:** You're saying we haven't been able to sell the stuff.

**MS VALECHA (SPCA):** - - - production numbers for the purpose of analysis that is carried out is incorrect, is what we are highlighting. You've taken the production number as a raw number and used it for drawing conclusions that therefore lead to flawed conclusions.

**MR KELLY (SPCA):** You're saying the rate of import is slowing when it's not.

**MR HARRIS:** Okay. I understand you want to object to the conclusion, but just stick with the data, because you keep using the terms "flawed" and "inaccurate" and all that sort of thing. The data is the data. As I keep saying, this is a thing that we are substantially dependent on. If we are to construct, in terms of WTO rules, an imports to domestic production number, which we are - to construct that - then it is the imports numbers here as registered to the Bureau of Statistics and the production numbers as best we can get them from you or from any other source, but the production numbers.

I'm not trying to dismiss your concern about, "We are producing to a level that the market can't sustain and we'll have to write off stock." I'm not trying to dismiss this. This is me just concentrating on the word "production", which is the statistic we're meant to be delivering here, because it's what the WTO rules include inherently in their descriptors. So it is the production numbers. What you're saying is, "Those production numbers can mislead you, because we're not able to sell this stuff."

**DR HEILBRON (SPCA):** Or we've made it and written it off.

**MR HARRIS:** Yes, and written it off.

**MR KELLY (SPCA):** I think the real desire is to work out, are imports rising as a percentage, right? If you don't use the combined resources of the Productivity Commission to analyse the data - if you just blindly say, "I'm going to use that because that's what the report says. I'm not going to use my skills to say, 'Well, hang on, if they've made this stock and then destroyed it, that's not really domestic - -'"

**MR HARRIS:** Yes.

**MR KELLY (SPCA):** I know it's production, but it's not domestic demand. The market is suffering from increasing rates, because these facts happen which are not normal. You've got to interpret data to get the right - we want to get the right answer, not just tick a box and say, "I just did what the chart said. I interpreted the data and I made a recommendation based on the correct meaning of what needed to be done."

**MR HARRIS:** We wouldn't for a moment want not to perform an analysis that we thought was ultimately relevant to the conclusion. We wouldn't want to do that, but we would want to do what the WTO standards require and, if they require the delivery of a number which says this, then we do this to the best of our ability. If it's a number which says "Production", we don't say, "Production, minus what I wasn't able to sell," because that would put us in a position of concluding on the basis of a false statistic in the terms of the WTO.

But I understand what you're saying, I think, and I'm interested in the wider analysis as well. Unless subsequent advice is that for some reason someone can refuse our ability to consider other matters, we can consider factors that we think are relevant to our conclusion here, but we have to produce this statistic literally in the terms that it says or we could be open to challenge, and I don't want to create a report that's open to challenge.

**MR BARRATT:** Basically, there are certain things we have to report on, but then we're quite at liberty to go and say, "Well, when you unpack all that, these are the important ones, these are less important ones."

**MR KELLY (SPCA):** We wouldn't want it to be inferred that we've looked at the analysis and it looks like imports are going away, they're going down in number, when that's not actually - - -

**MR HARRIS:** No. I think you can see in our reports where we've said some of the production of some of these statistical things can lead you, because of their ability - particularly the trendlines - to vary very significantly by individual one-off events - we have made what you would consider the Productivity Commission would normally make, comments to that effect. I'm not saying that's relevant here, although trendlines are definitely relevant here, but I'm not saying it's necessarily affected by any particular one-off things.

We're quite happy to take into account information as long as we can make sure that it is relevant to the purposes of such an inquiry, but literally - here I think we're talking imports to production - it's going to be the production numbers. We're not going to asterisk the production numbers for what can't be sold. I don't think we can do that, but we will consider alternatives in terms of damage to industry.

I might clarify too here at this point, this statistic, if I understand it rightly, is the statistic that is relevant to damage to industry and I don't think we concluded that damage hasn't occurred, so we are, I believe, discussing further detail around something where the conclusion has already been reached in favour of industry has suffered damage. I think that's right.

**MS VALECHA (SPCA):** Moving on to the next example, the PC report highlights on page 55 of the processed fruit report that there is evidence of long-term reduction in overall consumer demand for processed fruit, whether imported or domestically produced.

Evidence provided by PC to support the above argument is incomplete as it does not include the sales of products through the food service channel. The food

service channel is a significant part of the total food market in Australia. This channel covers the sale of products through hospitals, gaols, hotels, restaurants, canteens, schools, industries such as mining, includes government departments, includes health and aged care facilities, corrective services, Defence Force and Immigration.

In fact, Foodservice Suppliers Association Australia predicts that this channel is worth \$45 billion. The food service market is a very significant part of the total processed fruit domestic market and SPCA's total volume. Confidential data was submitted by SPCA on 8 August to the PC highlighting examples of import penetration in this market, yet this was not taken into consideration to draw conclusions on market dynamics.

In addition to the above, retail market size, as we have already highlighted, is also inaccurate, as market information on key retailer Aldi has been ignored in the analysis. So we'd like to know, why was the food service market, worth \$45 billion, ignored in the assessment before drawing conclusions on overall demand for processed fruit?

**MR HARRIS:** I think you'll find, again, in the final report that we will provide you with commentary on this. We're replaying the Aldi discussion from earlier. I think it will be the same circumstance that applies here, but we will provide you with information in the final report.

**MS VALECHA (SPCA):** The PC report for processed fruit highlights in the report at page 55:

This evidence of decreasing export volumes should be considered in conjunction with evidence of SPC Ardmona's corporate strategy to use processing plants overseas to supply the company's branded products in export markets.

Why was a statement made by the South African Fruit and Vegetable Canners Association taken as substantiated proof of SPCA's strategy? What facts were submitted to support the statement? Why was SPCA not asked to provide evidence of its operations in the other markets to validate the above statement?

**MR HARRIS:** I think with reference to this, you will find that it's not just the South African submission that's quoted. There is another academic study that is quoted. We're interested in getting quite a lot of information on this export market strategy, so - I know that we've raised this previously, I know that the matter seems to be one again of great sensitivity - I would ask for further information on export strategies and therefore gladly take up your offer to provide further information on

export strategies, and would ask that it be information that can be used in the final report in a way that supports its comprehensiveness.

**MS VALECHA (SPCA):** On other evidence, the PC report for the processed fruit states on page 61 that the South African Fruit and Vegetable Canners Association argued:

SPC Ardmona's strategy is to push its own brands, whereas retailers are pushing their own private labels. Until recently SPC Ardmona did not want to supply a product (branded) as required by the retailers.

Why was a statement, again made by the South African Fruit and Vegetable Canners Association, taken as substantiated proof of SPC Ardmona's strategy? What facts were submitted to support this statement? Why was a statement given by SPCA in the last public hearing on 30 July, which is on page 49 of the transcript, not taken into consideration?

**MR HARRIS:** The statement that Mr Kelly made was taken into consideration and I'm sure you will be aware that on this particular issue there are a number of parties who have a very deep interest in the private label strategies, as now do we because it is a significant consideration in the course of this inquiry. We would seek more information from all parties, not just from SPCA, on this question. Moreover, I would once again make the plea for information that can be used in the public record. So your commentary, which would imply that because we haven't cited other sources, we may not have them, is something that you should consider against my other earlier remarks on this issue.

We consider this to be quite pivotal and it was one of the reasons why, in seeking commentary on causality, I asked for comment on all of the factors that were relevant here. This private label market and development is something that has been noted by multiple commentators as being a big development in Australian retailing in recent years, is pertinent to the products under consideration here, quite clearly, and is the subject nevertheless of a lot of unwillingness to go on the public record, for what are probably very good reasons commercially, but it makes it quite difficult to come to a cited conclusion if no-one is prepared to go on the public record and comment on these matters.

So not just SPC but other interested parties, we would solicit commentary on this so that a final report can reflect something which potentially is quite significant to how we have determined causality to date, and I would note that once again we did seek comment quite specifically on this. People are perfectly free to say whatever comment they like, but the valuable comment for us is the one which says not just "This is wrong" but "Here's why it was wrong" in some form that can be

subsequently used to indicate to what is a published report how we've come to that conclusion. I think that's quite pivotal to this potential future conclusion of these reports.

**MR KELLY (SPCA):** Mr Commissioner, a few comments about some of these points you've been raising recently. I would have thought that the opinion that would matter the most, the data that would matter the most about SPC's strategy to private labels or SPC's production plans or SPC's utilisation, is SPC. I wouldn't feel very qualified to comment about some cannery in South Africa, their strategy.

**MR HARRIS:** No.

**MR KELLY (SPCA):** And I wouldn't expect the South African government to put too much store in what I said about their strategy.

**MR HARRIS:** No, but - - -

**MR KELLY (SPCA):** I would expect our government and our bureaucracy to take a lot of store of what we say about our plant utilisation, about our private label strategy, because how the hell would anyone else know? How would our competitors know, really, unless they've got some sort of way of checking into our systems? The point that we're raising is, the quotes come from our competitors, and our testimony or our validated facts don't seem to make it into the report.

**MR HARRIS:** The quotes come from those who are prepared to go on the record. That's what I'm trying to say.

**MR KELLY (SPCA):** We're on the record about our private label strategy.

**MR HARRIS:** You are, and others are perhaps off the record, so there are other parties to a private label strategy who may have views.

**MR KELLY (SPCA):** About SPC's strategy?

**MR HARRIS:** Yes.

**MR KELLY (SPCA):** I guess so.

**MR HARRIS:** The producers of private labels. In any event, I am merely asking for information on what we don't disagree with you is quite pivotal to this.

**MR KELLY (SPCA):** We're happy to resubmit it.

**MR HARRIS:** But what's in the report is what we can get for the purposes of trying to provide an accelerated report. We ask once again for information on this.

**DR HEILBRON (SPCA):** Mr Chairman, could I just ask for clarification. So what is the precise nature of the information of which there is some contestability of SPC's strategy? Does it have to do, for example, with its past willingness or interest in tendering for contracts?

**MR HARRIS:** No. Well, sorry, I don't want to say to somebody what is and isn't relevant. I am looking for information. But I would have thought not.

**DR HEILBRON (SPCA):** Because if we could clarify what it is - - -

**MR HARRIS:** It's reasonably clear that the big question is one in which parties who are developing private labels seek to do so for the purposes of providing pressure on the margins of parties who provide labelled products. That is a commercial strategy. We're interested in knowing to what degree those domestically induced decisions, decisions made by parties creating private labels, are relevant to the pressure that a product otherwise sourced as an import can put in a domestic market context.

That's why private label may be highly relevant and to date, as I said, it's quite commonly asserted that private label strategies not just in processed fruits and tomatoes but in a number of areas are designed for that purpose. In this inquiry we're interested in knowing more about that. We think it could be highly relevant to what then would be a domestic strategy and not necessarily therefore amenable to repair by a tariff action. May be relevant, may not be relevant, depending on how strong that margin strategy is between the parties concerned.

So I think, understandably, you are focused on a quote because it is the only quote we have, and we tend to quote where we have them. One party is saying, "This is very relevant to the market." Effectively, by putting that in there, we're asking for other people to go on the record and convince us one way or the other around private label strategies. If your contention is that private label strategies are irrelevant - and I'm not saying it is, but if your contention is that they are irrelevant to the purposes of assessing what has caused activity in the market that's of damage to your retail efforts, that's good. I'd like to get that information and we'd like to get it on the record in a way that's quoted.

If your contention is different to that - in other words, it may be highly pertinent "but here's why we don't think it's relevant to the decision you're making on imports and the potential consequence of this inquiry", which we've shorthanded to a tariff rise - I'd like information on that too. I'd like to get people to go on the record



with something that is verifiable from previously published sources. That would be the most effective information.

**MR KELLY (SPCA):** Give us an exact example, though. I want to just cut all the crap down, right down to the basic things.

**MR HARRIS:** Sorry, I don't think it's crap. I think it's quite important. You may want to tell me that it is, but I don't want to accept that.

**MR KELLY (SPCA):** Our competitors say it was SPC's strategy that we did not want to supply branded products to the retailers. That's what they said. I said the exact opposite, and so in your report you go, "Okay, we've got these two bits of evidence, both verbatim, about what is SPC's strategy. Let's ignore what Peter said and let's go with what their competitor said."

**MR HARRIS:** Peter, I think you said - I don't recall. I think literally - - -

**MR KELLY (SPCA):** You asked me if it was our strategy to exit private label strategies.

**MR HARRIS:** Well, we're asking you for something on the record here that says whether or not this is pertinent.

**MR KELLY (SPCA):** We bid strongly for all private label contracts that we can do, and I think if you've watched the press recently you will see that we've actually been a little bit successful in getting some. But the fact that you would ignore what I said and take what they said, publish that in your report - if it was "What's the strategy of the South African cannery?" I would expect you to ignore my comment and put their comment in. I find it indisputable, to be honest with you. Or at least put down "SPC said 'Our strategy is this' and the opposition said the other." Don't just put theirs in, because it carries a fair bit of credibility, what your reports actually say. A lot of people read them.

**MR HARRIS:** I don't dispute your comment was something that we did take into account and that it would be useful to see it further elaborated or in some way substantiated, but please bear in mind there are other interested parties to this. I know you've focused on the South African canners and I understand why you've focused on that - - -

**MR KELLY (SPCA):** They commented about what our strategy is.

**MR HARRIS:** Yes, but there are other parties here and, as I said - I'm now just repeating myself - it becomes quite important to a final conclusion. Is this making a

difference and if it is making a difference, in what way does it become relevant to an inquiry whose purpose is to potentially put in place tariff protection?

**MR KELLY (SPCA):** We know it's important. That's why we're bothering to come here to try to get things straightened out on some of these matters. So we accept that it's important.

**MS VALECHA (SPCA):** On similar lines, the PC report for processed fruit on page 61 states evidence from Ken Wilson, an Australian importer of processed fruit, appearing at the commission's public hearing as part of the South African Fruit and Vegetable Canners Association:

For the two years immediately after the merger the prices went up in Australia by 40 per cent.

We'd like to know if the PC validated if this information was factually correct before taking this as evidence? Aztec scan data over that period will highlight that the prices did not go up by 40 per cent post the merger between SPC and Ardmona businesses.

**MR HARRIS:** I think in our final report you will see probably published - though again maybe not, because of other circumstances, but I think you will see information on price increases in the canned fruit area over a substantial period, including any period in the last six, seven, eight years. I can't remember the exact period we have, but yes, we have data and, yes, we will publish it. Yes, you will be able to see this in a different context. But once again, I make the point that sometimes we're not able to cite anything at all and maybe we won't be in these circumstances either, but I think we probably will. So you will see that data.

**DR HEILBRON (SPCA):** I simply for the record reiterate the previous question that I asked. If this information was available when this conclusion was reached, then I would have thought at least some indication that that information was there should have been given. If it was gathered afterwards, then how was the conclusion reached? But we've had that discussion, so I'm happy to move on.

Commissioners, I don't really propose to go through this line by line. I think the point we have tried to make is that there are a number of problems, incompletenesses, in the data which are of material impact and, in our view, lead to the conclusions derived therefore not being substantiable.

A couple of points which I would just highlight from what we've submitted: the conclusions in both cases appear to be, in our view, bizarre in the sense that they don't really flow from the analysis that's happened before, which, as we've outlined,

seems to be rather imbalanced.

When we come to the conclusions, it actually concedes that some of the requirements appear to have been satisfied, but we found that quite puzzling, and I think Sharman Stone actually said pretty much the same thing. I think any sort of reasonable person would come to the same conclusion.

Setting that aside for the moment, the commission identifies two key reasons for rejecting safeguards. One is that the injury to the domestic industry has not been caused by an increase in imports, the issue of causality, and the second one, no compelling evidence of critical circumstances that would warrant a measure.

There are just a couple of points on the causation issue that we'd like to highlight. The most fundamental appears to be the sort of convoluted analysis over what the real causes of damage are and how they have impacted and the fact that imports haven't really been separated as an item from the other factors, which is what is actually required by the agreement and the notification.

The most fundamental, which links back to what we've said on Aldi, of course, has to do with the fact that one of the critical criteria, which is the share of the domestic market taken by increased imports, has not effectively been analysed, which appears to completely ignore the data that we provided which would enable them to do this.

So I guess the question we have is, why did the commission really not take into account the impact of imports on the consumer market when, firstly, we provided data which can be verified to enable this to be done and, secondly, is actually required to do by the requirements of the safeguards inquiry procedures.

The second aspect has to do with this compelling evidence of critical circumstances, and I think we found this quite troubling in the sense that the assertion was made that the company did not provide compelling evidence to "support its contention that its manufacturing facilities would be closed if provisional safeguards were not applied".

The problem is that that's not what the company said. Indeed, the report itself quotes only a couple of pages above where that quote is made and what the company actually did say, which was, "Closure of SPCA's facilities is a prospect unless provisional safeguards provide the breathing space, following by full safeguards measures, accompanied by an adjustment plan." That's been the company's consistent view from day one, and I do not believe it's changed since that point, which of course contradicts the assertion that the facilities would be closing if provisional safeguards were not applied.

**MR HARRIS:** Can I just ask you to reread the quote that you claim you made, because my copy of the report does not include the words "would be closed", which you have used not once but twice. Mine is from page 68; that it's observed that it does not use the words "would be closed". The bottom full paragraph, "For this accelerated report the commission has not received compelling evidence of the existence of critical circumstances sufficient to justify the application of immediate provisional safeguards measures," not "would be closed", which I think was your initial remark and then repeated. So unless the quote comes from somewhere else - - -

**DR HEILBRON (SPCA):** No, it does. It comes from - - -

**MR HARRIS:** Okay. Perhaps we'll find that at a subsequent point, but I don't think, unless we find it, that we should proceed on an assumption that the commission was looking for evidence that it would be closed. I think what we were looking for was evidence that said, "A failure to act now would result in irretrievable damage," or words roughly to that effect.

**DR HEILBRON (SPCA):** Sorry, with respect, page 66:

SPC Ardmona's short-term business plans: SPC Ardmona has not provided the commission with compelling evidence to support its contention that its manufacturing facilities would be closed if provisional safeguards were not applied.

**MR KELLY (SPCA):** Does it say "would be closed"?

**DR HEILBRON (SPCA):** Yes.

**MR HARRIS:** That's a commentary. The concluding remarks are the conclusion, are they not?

**DR HEILBRON (SPCA):** Well, it's in the evidence.

**MR HARRIS:** I'm just looking for this. The conclusion is, "Although the industry is suffering serious injury, there is no compelling evidence of critical circumstances." What we're looking for is evidence that would be sufficient to say, "There will be irretrievable damage if you don't act now." So it would be closed, I would presume, in those - I'm not rereading everything here, but I'm actually looking at the conclusion, which is where we want to actually say what we have concluded as a commission.

**DR HEILBRON (SPCA):** Sorry, with respect, there's a finding which directly relates to that conclusion:

SPC Ardmona's short-term business plans, finding 2.11: Although the industry is suffering serious injury, there is no compelling evidence of critical circumstances that could warrant a provisional safeguard measure.

**MR HARRIS:** Yes, that's right.

**DR HEILBRON (SPCA):** The opening sentence - - -

**MR HARRIS:** We're not solely looking for information about closure; we are looking for information which would say there's irretrievable damage. I think you heard my earlier comments here, which said if we could find something - and we certainly considered closely the growers' impact, because we do see that as shifting significantly. Growers didn't qualify as a party affected under this. We would take information which shows irretrievable damage. So closure would be irretrievable damage, but the conclusion that we have made is one which said we didn't get sufficient information, and that remains the position. We didn't get sufficient information, and closure is one of the things that would have been sufficient information.

**DR HEILBRON (SPCA):** Perhaps we could - - -

**MR HARRIS:** I think you might have earlier heard my remarks to Ms Stone. I don't expect companies to announce this via Productivity Commission inquiries, but we were looking for something which said here is the critical circumstance in terms of your facility, and we're still looking for that. Although the question of provisional measures has now been addressed, we're still looking for that information, and I would take information, which again we hear informally has been provided to other parties but not to us, on what these circumstances might be.

We don't receive all the information that may be given to other parties and our process is designed for people to submit to us saying, "Here's something you can use which shows the future outcome were this assistance not to be provided." That would be pivotal, I would have thought, particularly if again it can be published in the kind of report that an international reassessment can take into account, should we end up in those circumstances. So we're trying to devise the sort of report that will withstand potential international scrutiny.

I don't think the closure is something that I'm expecting to receive information on from you. I would hope, though, that you could give us something which says,

"Here is the consequence without it," as an actual - - -

**MS VALECHA (SPCA):** We did.

**MR KELLY (SPCA):** It's pretty plain English, according to me, commissioner, but we actually did say, "Closure of SPCA's facility is a prospect unless provisional safeguards provide the breathing space," dah dah dah.

**MR HARRIS:** Yes, but can you - - -

**MR KELLY (SPCA):** That's exactly the same as the other 11 or 12 manufacturers of food who have closed already in Australia, the same as the immediacy of the 300,000 trees that have been destroyed. 200,000 more before Christmas will be gone. While we speak someone is destroying trees.

**MR HARRIS:** As I said, I think the problem is that the growers don't actually qualify as the subject of the inquiry, notwithstanding the fact that we accept that there is significant damage there. The issue that is pertinent here is, many parties will say, "We expect to close," or, "We don't think we can continue in the current form," which we would like to get in a way that enables us to do some analysis of that to demonstrate to a potential international review of this that we have done a comprehensive job and assessed that. I understand that this is not information in itself that would normally appear at a public inquiry, but we are just trying to ask for what we can get - - -

**MR KELLY (SPCA):** And, commissioner, you know that the board of CCA is the people who decide about whether the facilities close or don't close. It's not at my discretion. I'm actually a builder trying to save something, not trying to close something. They give that decision, but I would have thought that the fact that we're the last remaining manufacturer, there's pretty good evidence there to suggest that things aren't that great and that, if the MD says, "Closure is in prospect," that would be the clearest warning bell I would expect ever to receive.

**MR HARRIS:** Yes. I don't think we doubt - - -

**MR KELLY (SPCA):** I can't make it clearer than that. I'm not the chairman of the board and I'm not on the board of CCA.

**MR HARRIS:** I don't think we doubt the warning bells. For the purpose of this accelerated report, we were going to try and analyse what we could analyse by way of information that was available to us. It will still be highly relevant to the final report. We'd like to get some better information on this, particularly the scenario without the assistance.

**MR KELLY (SPCA):** What better information could someone in a public company give you other than that? I don't understand.

**DR HEILBRON (SPCA):** Absolutely. Ignore the sequence of events, commissioner - - -

**MR HARRIS:** I'm trying not to describe the information, because then I may condition your response. All I'm doing is asking for what I can get, and our conclusion is that it was not sufficient in terms of what we received to date. So that's our conclusion. It has not been sufficient. If you wanted to, you might provide more information.

**DR HEILBRON (SPCA):** Commissioner, I think this is important, if we could deal with this - - -

**MR HARRIS:** I don't think it's unimportant.

**DR HEILBRON (SPCA):** It's not as though we've simply made a statement that this in prospect. There is a sequence of events here. Whilst the growers are not germane to the question of injury, they are very germane to the question of the continuation of the processing facility. We have had hundreds of thousands of trees pulled out, a process which has continued through the course of this inquiry. We have a company which has provided confidential information on the state of its losses. Its stock is right down. I mean, this is not just something that's come out of the air.

Yet you say this is not compelling. So it puts you in a catch-22, well, what is compelling? If you can't tell us what is compelling, what on earth are we supposed to do? I mean, it goes to the procedural fairness of the whole inquiry. How can somebody conceivably address a question when you don't know what the question is?

So let's go a little further. We've got a statement in the report, "SPC Ardmona is a subsidiary of Coca-Cola Amatil. It makes lots of money." So what's the conclusion from that? I would suggest the conclusion is virtually irrelevant. If a company is making a billion dollars and it has a subsidiary that's dropped \$200 million and sees no possibility, and there are major suppliers cutting down trees every day of the week, to me it's an open and shut case. Why it hasn't happened before is a miracle.

So I think we have to put this into some form of context here, and the idea that a delay is immaterial is, frankly, something which we find bizarre.

**MR HARRIS:** I don't think we said a delay is immaterial, but I note your observation.

**MR KELLY (SPCA):** I'll just make some concluding remarks. What we've supplied today is only a sample of what we believe are some of the factual and judgmental and legal areas. We have others and, if you are interested, we'll supply them as well.

Commissioner, we made a representation to you when we first met that we didn't think that the Productivity Commission was going to give us a fair go. You assured me at the time that we would. However, we believe that all of the things we've been talking about today demonstrate that we've never been given a fair go.

We reluctantly agreed to participate in the inquiry in good faith and we've supplied comprehensive and compelling information on the application of safeguards. I'm afraid our original concerns have been vindicated to us, that we would not get a balanced report.

We have urged the federal government to reject the accelerated report findings and we also called on you to review the accelerated report and/or the data that we've highlighted today in your final report to try to come up with a report that is more balanced and fair to the industry.

**MR HARRIS:** Thanks very much. As I said, we just proceeded across the last break. I've lost my batting order again. I think we'll probably have to take a break here because of this procedural fairness issue I've got to clarify. So let's take a break. 1 o'clock, thanks very much.

(Luncheon adjournment)



**MR HARRIS:** I'm reconvening the inquiry hearing into processed fruit and processed tomatoes. This morning representatives from SPC raised a question of procedural fairness in relation to the late arrival of submissions, certainly submissions they felt they had not been able to access, and I think particularly referenced the South African Fruit and Vegetable Canners Association's submission. I've taken some quick legal advice on the matter.

The position we will adopt is that submissions from the South African Fruit and Vegetable Canners Association not circulated to all parties prior to this hearing can be presented today, but we will not inquire further into them today. After they have been available on the web site for a period of a week, we'll put a notice on the web site seeking further comment by all parties on all submissions, but everybody is advised of this today who is present.

As I noted at the outset of this inquiry this morning, we are happy to take further submissions on all aspects discussed today up until mid-November. This obviously includes commentary by all parties on any other party's submissions.

That said, let's call the South African Fruit and Vegetable Canners Association representative. If you could identify yourself for the record, that would be great.

**MR GELDENHUYS (SAFVCA):** My name is Rian Geldenhuys and I am a legal adviser for the South African Fruit and Vegetable Canners Association. Firstly, thank you very much to the Productivity Commission for allowing us to be here today.

Chairman, if I may just go on the record also in terms of the procedural issue that you just highlighted in terms of the decision that you have taken. Just for the record, we did submit our submissions in time. I understand that there's maybe some other technical issue why the submission may not have been received. We did also follow up on that and we have given proof to the Productivity Commission to that effect. However, given the nature of the fact that it may be a concern that some parties may not be able to respond sufficiently to our submission, not having sight of it, I will only make mention of what has happened in our actual submission on the accelerated report and I won't further comment on any of the submissions made here by any of the other interested parties. We will reserve that right to do so, as everybody else can do, up until mid-November, whatever that date may be.

I would just also like to note that at the initial public hearing we did not have sight of SPC's non-confidential version on the public record of their submission, yet we didn't make any issue about it because we understood that the proceedings allowed for us to make a comment on whatever may be maintained in anyone's submissions after the initial public hearing.

Let me continue and just present to you quickly on some of the issues that will be maintained or are contained within our submission. Firstly we'd just like to note the findings of the Productivity Commission in both the processed fruit and tomato investigations, we agree in the broad that the imposition of provisional safeguard measures would be unwarranted in the current circumstances. In the main we agree with the findings of the Productivity Commission in both the processed fruit and tomato investigations.

There are instances in which we seek clarification on what information has been considered. I understand from the Productivity Commission that we will probably have that clarity within the final report, and that's good and well, and in some instances it may be that our opinion differs slightly from the findings of the Productivity Commission. So our submission, and both accelerated reports on both investigations, sets out these issues in more detail and I will merely highlight the major issues now and, as I mentioned, we may make further submissions during the course of November prior to the middle of November.

Firstly, we disagree that the Productivity Commission should be guided by the public interest insofar as that would allow for inclusion of the growers into the domestic industry for purposes of satisfying the requirements of the WTO Agreement on Safeguards. I understand that there is a public interest consideration and we allow for that, as long as it does not allow for the inclusion or the broadening of this definition of the domestic industry as the Productivity Commission has defined.

Secondly, we note that in determining the domestic industry, for processed pears, apricots, peaches, nectarines and mixtures, reference was made to the supermarket sales data which only refers to, as we understand it, the multi-serve processed fruit products sold at the retail level and I assume that, in the final report, clarity will be provided, because it seems that, from our understanding reading the reports, that this gives a very narrow definition of what the actual domestic industry is and it doesn't include, for instance, the food service industry and such a narrow definition is not supported by the terms of reference, and furthermore the tariff headings do not allow for any distinction in terms of the different packaging sizes that the products may be imported on.

This narrow definition then could potentially compromise the scope of the subject product of this investigation, as well as the injury determination, especially as the accelerated report seems to rely exclusively on multi-serve fruit sold at the retail level, but like I mentioned, we understand that clarity will be provided in this regard in the final report.

Thirdly, we agree with the Productivity Commission's determination that generally, in absolute terms, the imports have either decreased or slightly or insignificantly increased during the recent investigation period and we note that this is not a sufficient increase, and of course on the decrease it can't be sufficient, to initiate any safeguard measures, but we do take note of the fact that one can, of course, look at the ratio of imports versus the domestic production, and in this regard we agree with the Productivity Commission's cautious approach in examining such a ratio. However, from reading from the report, we just want to note that under the ratio determination we were unsure whether the ratio of imports also included the imports of SPC Ardmona itself in making that particular determination. I'm sure that we will have clarity on that once we have sight of the final report.

I also take due consideration of the considerations expressed by the Productivity Commission in the requirement of unforeseeability. I'd just like to note our concern over the approach of foreseeability and the increase in the imports. We note that the appreciation of the Australian dollar was in fact foreseen and this has been included in all of our submissions thus far.

We again submit that SPC chose not to participate in the retailers' private strategy. We will, on our further submission, go on record as to why it is exactly that we believe that, that it's not only a statement that we make in a vacuum, and we believe that such development was in fact therefore foreseen.

Lastly, we note that alleged dumping should not be a consideration in this particular safeguard investigation, specifically because there is a trade remedy addressing dumping that would then address the injury that may be suffered, or the alleged injury that may be suffered from those dumped products coming onto the market. That's specifically an investigation that looks at unfair imports. In the safeguard investigation we're looking at imports that are not bad imports, they're not unfair imports. They're merely people taking advantage of the market opportunities that are presented due to our members' WTO commitments.

Fifthly, we recommend that the Productivity Commission should investigate the impact that SPCA's foreign operations have had on the domestic industry. In this regard the Productivity Commission should examine whether the decline in SPCA's exports coincides with the establishment of SPCA's foreign operations.

We have done our own little bit of research and, from the foreign markets that we know they are operating in, we couldn't find on a quick analysis - and this is not Aztec data or independently verified data; we will try and get that information for you before mid-November - that, although we did find SPCA-labelled products in those markets, they weren't of Australian origin.

Sixthly, we recommend that the Productivity Commission should investigate the impact that all of SPCA's own imports have had on the domestic industry and definitely also in regards to the public interest requirement, looking at what has happened to the growers.

We recommend that the Productivity Commission should also take into consideration the fact that SPCA's lobbying has been rather effective - perhaps very effective - and that the three retailers that currently are at the forefront of all discussions, Woolworths, Coles and Aldi, have all shifted their needs back to Australian made SPCA products. That's at least from a South African perspective. We have lost all of those types of contracts. So we submit that any safeguard measure would be too late and irrelevant, as the imports will either cease or decrease dramatically, and this is definitely from a South African perspective, and definitely this would be true for the current season going forward and also for the foreseeable future.

My understanding is that the retailers typically take a three-year program view in terms of where they would get supplies from. So foreseeably for the next three years there will be no imports of South African origin coming to the Australian market, or at least a significantly decreased market presence of South African product landing in Australia.

On the question of whether imports in the processed tomato products have increased, we agree that in absolute terms there is no clear evidence that the requirements of article 2.1 of the WTO agreement on safeguard measures will in fact be met. Again we agree with the Productivity Commission's cautious approach to interpreting this ratio of imports versus domestic production. We do seek clarity - and we understand that this will be in the final report - as to whether SPCA's own imports were taken into consideration when working out that particular ratio and we also would like some clarity - which hopefully could also be made available in the final report - as to why data was only supplied from 2009 onwards from SPCA's side.

Furthermore, in light of SPCA's own substantial imports, we question whether indeed SPCA did suffer damage or injury and, if that injury was indeed suffered, whether such injury was in fact serious. Commissioner, that is all that I have to say for the moment. If you'd like to have any questions or discussion on it - - -

**MR HARRIS:** I think we'll just proceed as I outlined earlier. Thank you very much for your submission.

**MR HARRIS:** I believe that a representative of the government of Mexico has also sought to make a brief comment, and I did say at the start of this that we would allow representation from people at the end of the inquiry who wanted to make a brief comment. So please take the floor and identify yourself.

**MR MONTOYA (EM):** Good afternoon. It's a very short statement from the government of Mexico.

**MR HARRIS:** Sorry, could you give us your name and - - -

**MR MONTOYA (EM):** This is Rafael Montoya. Head of the Political Section of the Embassy of Mexico in Australia.

**MR HARRIS:** Thank you.

MR MONTOYA (EM): Good morning, regarding the safeguards investigation on processed fruit and canned Tomato and on behalf of the Government of Mexico we want to respectfully reiterate that, as detailed in the written request that we submitted to the Australian Investigating Authority, according to our official statistical data, obtained from the System of Tariff Information Via Internet (SIAVI), Mexican exports of processed fruit, carried out during the periods under investigation did not exceed 3 percent of total imports of Australia.

Consequently, in terms of Article 9.1 of the Safeguards Agreement of the World Trade Organization, and due to the fact that Mexico is a developing country Member of that Organization I hereby kindly request to consider the exclusion of Mexican imports of processed fruit and canned tomato from the application of any safeguard measures derived from such proceeding. Thank you.

**MR HARRIS:** Thank you very much. Is there anybody else who hasn't been heard from today who wanted to make any brief comment? Nobody else needs to make a brief comment? Fine. In conclusion, let me say - I repeat for everybody's benefit - that we're happy to receive further submissions from all parties up until the middle of November. We'll publish what the middle of November date actually means on the web site, but there will be plenty of opportunity for people to make additional submissions on topics like this.

I think I've already indicated that we'll be delivering a final report to the Australian government in December. Thank you very much for your attendance here today. We're adjourned.

AT 1.16 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY