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Chair

Mr. Gerry Ritz

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• (0905)

[English]

The Chair (Mr. Gerry Ritz (Battlefords—Lloydminster, CPC)): Good morning, ladies and gentlemen, and welcome to our sixth meeting.

Today our hearing will continue our investigation into the imports of milk protein concentrates. We have a number of witnesses before us today. Of course, the table is full, and we also have some people back in the cheap seats, who may be called forward as we require them.

I won't take time to introduce everybody. Certainly, you will respond to questions in your field or purview, if you would. We'll keep our opening statements as short as we can. We do have two hours, but it always goes by so darn quickly. We will have a seven-minute opening round of questions, followed by five-minute rounds.

How many opening presentations have we got?

Mr. Graham Barr (Director, Multilateral Trade Policy Division, Department of Agriculture and Agri-Food): We're just doing introductions, so they'll all be brief.

The Chair: Okay, that would be great.

Mr. Boshcoff, you wanted a moment at the beginning?

Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.): Thank you, Mr. Chairman.

Yes, I'd like to apologize to Monsieur Bellavance for the remarks at the last meeting. There's no doubt that as Canadians we all expect that all of our material should be in both languages.

Thank you.

The Chair: Very good.

Thank you, Mr. Boshcoff.

[Translation]

Mr. André Bellavance (Richmond—Arthabaska, BQ): I accept your apology.

[English]

The Chair: Thank you, André. Gracious as always.

All right, ladies and gentlemen, we'll now proceed.

Who is going to do the kick-off? Mr. Barr? Thank you.

Mr. Graham Barr: Mr. Chair, thank you for the opportunity to appear here today.

My name is Graham Barr, and I'm the director of the multilateral trade policy division at Agriculture and Agri-Food Canada. We're the division that's responsible for providing analytical and operational support to Canada's chief agriculture negotiator. In this capacity today, I'll be responding to any questions you might have concerning milk protein concentrates relating to Canada's international agriculture trade policies, as well as past or current GATT and WTO agriculture negotiations.

I'm joined today at the table by my colleague, Richard Tudor Price, the director of the supply management division in the strategic policy branch of Agriculture and Agri-Food Canada. That's the division that provides advice to the minister and senior management on matters relating to the supply managed subsectors of Canadian agriculture, including, of course, the dairy sector. He'll be happy to address any questions you have concerning the domestic policy implications of the MPC issue.

As you see, in addition to AAFC, there are a number of federal departments and agencies involved in this issue, and all of them are represented at the table this morning. We have the Department of Finance, the Department of Foreign Affairs and International Trade, the Canadian Food Inspection Agency, and the Canada Border Services Agency. Given the number of organizations represented at the table, it was agreed for purposes of this meeting that I would be the lead for the government representatives, and I would refer your questions to the appropriate person for reply. Hopefully, this way it will expedite our process this morning.

Now I'm going to turn it over to each one of the organizations, so they can introduce themselves and explain their role in this issue. Perhaps we'll start with the Canada Border Services Agency.

• (0910)

Mr. Darwin Satherstrom (Acting Director General, Trade Programs Directorate, Admissibility Branch, Canada Border Services Agency): Thank you, Graham.

Thank you, Mr. Chairman and members of the committee, and good morning. My name is Darwin Satherstrom. I'm acting director general of the trade programs directorate in the admissibility branch of the Canada Border Services Agency.

I should start by explaining the role of the CBSA. The CBSA is an integral part of the key national agencies within the Department of Public Safety portfolio, dedicated to protecting Canadians and evaluating information from domestic and international sources in assessing a whole range of risks that Canada faces. Our mandate is to provide integrated border services that support national security and public safety priorities and to facilitate the flow of persons and goods that meet all requirements under the program legislation, which is vital to our national economic vitality.

The CBSA has approximately 12,000 employees, including: customs officers; immigration officers responsible for ports of entry, detentions, removals, investigations, intelligence, and immigration control overseas; officials inspecting animals, plants, and food imports; and marine inspection officials. They provide services at some 1,200 points across Canada and in 39 international locations.

On average, we collect \$8.3 million in import duties and \$68 million in GST each day. The value of cross-border trade with the U.S. alone averages \$1.9 billion a day. On average, 18,400 trucks arrive from the U.S. every day, with 10,500 of them processed through southern Ontario border crossings alone. In fiscal year 2004-05 there were approximately 104,000 commercial and courier shipments and releases handled every day nationally.

The CBSA administers more than 90 acts, including regulations and international agreements, some of which are on behalf of other federal departments and agencies, the provinces, and the territories. One of the statutes the CBSA administers is the Customs Tariff Act, or, as it is known, the customs tariff, which falls under the responsibility of the Minister of Finance and which is the trade legislation respecting the classification of imported goods.

The role of the CBSA is to ensure the proper classification of imported goods, and we follow a process adhering to classification principles that are internationally mandated under what is known as the harmonized system for goods classification, as well as national subdivisions within that system. Once classified, an imported good is subject to a rate of duty that's set out in the legislation and that may vary depending on the origin of the good. In cases where there's disagreement between the CBSA and an importer, a dispute resolution mechanism exists to resolve these issues.

In conclusion, Mr. Chairman, we administer legislation that governs the admissibility of people and regulates and controls or prohibits the import and export of goods. We promote Canadian business and economic benefits by administering trade legislation. We detain people who may pose a threat to Canada and remove people who are inadmissible to this country. We interdict illegal goods entering or leaving the country, and we protect food safety and the environment by stopping prohibited or hazardous products arriving at our air, land, and sea ports.

Thank you, Mr. Chairman. I look forward to the committee's questions.

The Chair: Thank you.

Mr. Graham Barr: Thank you, Darwin.

Now the Department of Finance will introduce itself and explain its role.

Mrs. Carol Nelder-Corvari (Director, International Trade and Finance, International Trade Policy Division, Department of Finance): Thank you, Graham. Thank you, Mr. Chairman.

My name is Carol Nelder-Corvari. I'm the director of the international trade policy division at the Department of Finance. With me is Mr. Dean Beyea, who is the chief of tariff policy.

The Minister of Finance is responsible for Canada's customs tariff; that's the law that sets out the tariff rates for imported goods. We're pleased to answer your questions on the customs tariff.

As well, the Minister of Finance is responsible for other import policy legislation, including the Special Import Measures Act, which sets out the rules for addressing dumped and subsidized imports.

Thank you.

Mr. Graham Barr: Thank you, Carol.

Now the Department of Foreign Affairs and International Trade will introduce itself and explain its role.

Mr. Marvin Hildebrand (Director, Tariffs and Market Access Division, Department of International Trade): Thank you, Graham.

Good morning, Mr. Chairman and committee members.

My name is Marvin Hildebrand. I'm the director of the tariffs and market access division at the Department of Foreign Affairs and International Trade. DFAIT's responsibilities with respect to the MPC issue are actually on two levels: overall trade policy, and secondly, the administration of tariff rate quotas.

At the policy level, the department is responsible for the broader international trade elements of the issue, and specifically with respect to article 28 of the GATT; that is, DFAIT deals with the intersection of this agriculture-specific issue with Canada's international trade obligations and our engagement with WTO members as a whole.

While Agriculture and Agri-Food Canada is responsible for agricultural trade policy, DFAIT is the lead agency on Canada's overall trade policy and as such deals with the implications of the MPC issue and any government action on it from the perspective of Canada's overall trade relations.

I will turn it over to my colleague, David Usher, to briefly address the tariff rate quota administration dimensions.

● (0915)

Mr. David Usher (Director, Trade Controls Policy, Department of Foreign Affairs and International Trade): Thank you, Mr. Chairman and members of the committee.

Bonjour, tout le monde.

I am the director of the trade controls policy division within the Department of Foreign Affairs and International Trade. Our division is responsible for the administration of Canada's agricultural import controls, one of which deals with the tariff rate quota for natural milk constituents.

I'd be pleased to answer any questions you may have later on.

Thank you.

Mr. Graham Barr: Thank you, David.

Now I'll turn it over to the Canadian Food Inspection Agency to introduce itself and explain its role.

Mr. Greg Orriss (Director, Bureau of Food Safety and Consumer Protection, Canadian Food Inspection Agency): Thank you, Graham. Thank you, Mr. Chairman.

My name is Greg Orriss. I am the director of the Bureau of Food Safety and Consumer Protection for the Canadian Food Inspection Agency. I am pleased to have an opportunity to appear here today and provide some brief opening remarks.

The CFIA is the Government of Canada's key science-based regulator for food safety, animal health, and plant protection.

The Canadian Food Inspection Agency is mandated to safeguard Canada's food supply and the plants and animals upon which safe and high-quality food depends. In carrying out this mandate, the CFIA is committed to serving Canadians by providing protection from preventable health risks, delivering a fair and effective regulatory regime, sustaining the plant and animal resource base, and promoting the security of Canada's food supply. In fulfilling its mandate, the agency works in partnership with other government departments at the federal, provincial, and territorial levels, as well as internationally and with industry, consumers, and other stakeholders.

To deliver its broad regulatory mandate, the CFIA verifies compliance with 13 federal acts and their respective regulations, which promote food safety, consumer protection, and animal and plant health. Products that may be subject to inspection or certification by the CFIA range from agricultural inputs such as seeds, feeds, and fertilizers, to fresh foods—including meat, fish, eggs, dairy products, fruits, and vegetables—and prepared and packaged foods.

I'll be pleased to answer any questions the committee may have.

Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Graham Barr: Thank you, Greg.

Mr. Chair, we're ready to address your questions.

The Chair: That would be great.

Our opening questioner is Mr. Easter, for seven minutes.

Hon. Wayne Easter (Malpeque, Lib.): Thank you, Mr. Chair.

Thank you, folks, for coming.

On this issue, Mr. Chair, I think we should cut to the simple fact that we have a system of supply management in the country that works. I'm of the opinion that many of the bureaucracies in Ottawa do not really understand that system and how it works, and that there's a tendency to let the market decide.

Regardless of that fact, the supply management system has brought stability to a number of commodities in the agriculture sector, and in my view, it is a model for rural development that we should be promoting around the world.

But the MPC issue, as it relates to supply management in dairy, could in fact end up destroying the system, because it reduces the amount of market and basically undermines the system.

The original intent was to be able to prevent dairy products from coming in. That can now be broken down into components, and the rules don't apply the same as before.

Each of your departments has been looking at this issue for some time. We have heard the positions of the Dairy Processors Association of Canada and the Dairy Farmers of Canada.

First, I wonder if you could provide us with what you're recommending to your ministers from your various departments.

Second, we have the CITT ruling and the Federal Court of Appeal decision. I'd appreciate knowing what analysis you folks have done on those issues.

I think that will give us the background we need to move forward.

• (0920)

The Chair: Mr. Barr.

Mr. Graham Barr: Thank you for the question.

Over the past several years, the government's commitment and support in defence of supply management has been very clear, whether it was in the WTO agriculture negotiations or defending our dairy practices in the trade dispute with the United States and New Zealand. Our minister was here the other day and made the government's supports for supply management crystal clear.

Yes, this issue has been around for several years. Government officials have consistently provided the same advice and pointed out the same implications for various actions that could be taken to address this issue.

In your question about analysis, can you be more specific as to which particular issue regarding supply management you'd like us to address?

Hon. Wayne Easter: There's the CITT ruling and there's the Federal Court of Appeal decision, basically as it relates to milk protein concentrates. Do you have any analysis of those decisions from each of your departmental perspectives that you can table with the committee?

Mr. Graham Barr: As you know, in a ruling upheld by the Federal Court earlier this year, we were told by the CITT that the correct classification for a particular milk protein concentrate—a concentration of 87.5%—was in chapter 35. Canada does not have a TRQ for milk protein concentrates in chapter 35. In order to have one, we would need to undertake an article 28 process, so when the question is posed as to what are the implications of undertaking an article 28 process to establish a TRQ in chapter 35 to cover such products, again, our advice has been consistent over the years as far as what those implications would be.

Hon. Wayne Easter: But what I need more of, and what I think we need as a committee, is your analysis backgrounding the decision that had you arrive at that position. You have a number of folks saying that you should invoke an article 28 process, saying that would solve the problem. What's your analysis for getting to the position that you've got to, and is each department's analysis the same? Or are you privy to give us that information?

Mr. Graham Barr: There are several implications of undertaking an article 28 process. A bit later I'll turn it over to my colleagues from the Department International Trade, as well as the Department of Finance, to discuss, possibly, the NAFTA implications of undertaking an article 28 process, but there are other implications. For example, if the United States were not to challenge Canada's right to apply article 28 to imports from the United States, the implication would be that the United States could do the same against imports from Canada, including on products sensitive to them, such as wheat, hogs, or cattle.

So if Canada were to undertake an article 28 process against imports from the United States, it would likely be more difficult for the American government to reject or rebuff calls from its own industry for an article 28 action against Canadian imports. In fact, several years ago, the United States industry was pressing for an article 28 action on imports of sugar-containing products, including from Canada. As you can imagine, that would have threatened Canadian investment in certain plants.

Another implication is that it sets a domestic precedent. Undertaking an article 28 process on dairy products could likely result in pressure from other sectors to introduce TRQs.

And the third implication I'll speak to is an implication for us in the ongoing WTO agriculture negotiations. As you know, the overall goal of the WTO agriculture negotiations is to further liberalize trade by lowering barriers to trade. An article 28 action, by its very definition, is about increasing trade barriers, and our trading partners could very well view our undertaking an article 28 process as being inconsistent with the direction of the WTO negotiations.

As far as I know—and my colleagues from the Department of Finance will correct me when they speak, if I'm wrong—since the agriculture negotiations began in the year 2000, neither the United States nor Canada has initiated an article 28 process.

● (0925)

Hon. Wayne Easter: Just before the Department of Finance responds, that's where the difference is. You're seeing an article 28 action as increasing or restricting the flow of trade. We don't—or I don't—and I don't believe Dairy Farmers of Canada do. What they see article 28 doing is meeting the original intent of protection in the beginning; it was to protect milk products from coming in. So it's not increasing the restrictions, but it's living up—under the new technologies—to what the intent of supply management was in those restrictions in the beginning. There's a huge difference there. We're not increasing trade barriers here; we're just seeing that the intent, in this day and age, is abided by.

The Chair: A very short response, if you can, Mr. Barr.

I'm sure Mr. Bellavance will pick up on this thread.

Mr. Graham Barr: Mr. Chair, I'd like to reconfirm what I said, that Canada's trading partners could view an article 28 action as increasing barriers to trade. Our role here is just to point out the possible implications, and that's certainly one of them.

Am I out of time, or would you like me to continue?

The Chair: Mr. Easter is out of time, but you can certainly follow that up. I'm sure Mr. Bellavance will maintain this line of questioning on article 28.

Mr. Bellavance, seven minutes, please.

[*Translation*]

Mr. André Bellavance: Thank you for being here today. Imports of milk proteins is an issue of great concern. This is what is shaking up the foundations of the supply management system, particularly import restrictions which constitute one of the pillars of the system.

You yourself said that the minister told you he supported supply management. The former government also supported supply management. Everyone says that they support supply management. But what have we done in practical terms to protect supply management? Mr. Easter just mentioned section 28. There are also regulations that could be put in place. Officials from the finance department are not here for nothing. They are here because we could go through the Department of Finance to have access to regulatory measures. There are means and solutions we can use to protect import restrictions, which constitute the pillar of the supply management system.

Earlier on, you mentioned problems with applying section 28 under NAFTA. Have you read the testimony of the Dairy Farmers of Canada, who appeared before us, or the legal opinion they obtained on the use of section 28? According to that legal opinion, using section 28 did not have the same consequences as those you identified. Are you familiar with their testimony and opinion?

[*English*]

Mr. Graham Barr: Yes, we're very aware of what the Dairy Farmers of Canada presented on May 11 when they appeared before the committee.

To address your question about the NAFTA implications of undertaking article 28 action, I'll turn it over to my colleagues from the Department of International Trade.

Mr. Marvin Hildebrand: Thank you.

In response to your question, as Mr. Barr noted, we are familiar with the legal opinion furnished by the Dairy Farmers of Canada. We've also looked at this question in the context of Canada's rights and obligations under both the NAFTA and the WTO. Our assessment is that one of the really major considerations of taking an article 28 action on MPCs is that our NAFTA obligations would leave a very large hole in the coverage of such an action. Given our NAFTA obligations, in article 302 in particular, we would not be able to extend an article 28 action to the U.S. and Mexico, and given the production capacity that exists for MPCs in the U.S., there is an obvious hole in the coverage that would result.

As I said, we've looked at this carefully, and we may have looked at different aspects or dimensions of it than others, but this is our legal assessment.

[Translation]

Mr. André Bellavance: Do you have that legal opinion? We have the opinion of the Dairy Farmers of Canada, but it seems that your opinion is different.

[English]

Mr. Marvin Hildebrand: You refer to the opinion of the Dairy Farmers of Canada?

[Translation]

Mr. André Bellavance: Yes. The Dairy Farmers of Canada submitted the legal opinion they obtained to the committee. You say that you have a legal opinion indicating that we will have problems with NAFTA. I would very much like to see it.

• (0930)

[English]

Mr. Marvin Hildebrand: As I said, we've looked at this question carefully. The question of furnishing legal opinions covered by a solicitor-client privilege is not one for us to make here. It's a decision for the government, as to whether such opinions might be made available.

[Translation]

Mr. André Bellavance: We agree on the fact that other countries have already used section 28 in special situations. I believe that we have a situation which is both special and urgent, and the possibility of using that section of GATT was part of the WTO negotiations, and was part of the Uruguay Round negotiations. Some countries used it, so there are precedents. Earlier, we heard that we should not be creating precedents, but I believe we are the only ones who consistently try not to create precedents. I hope that you are aware of the fact that if we do not use section 28, the supply management system will be threatened. You say that section 28 cannot be used. Do you have any other options to suggest?

[English]

Mr. Graham Barr: As you know, the Dairy Farmers of Canada have also put forward other options beyond article 28. In fact, you referred to one a little earlier, the harmonization to 90% protein concentration.

To address what you said about Canada not using article 28 in the past, what I said was that since the agriculture negotiations began in 2000, we haven't used it. We have used it in the past, mostly for technical reasons.

As far as the use of article 28 by other countries is concerned, if you'd like, I'll turn it over to my colleagues from the Department of Finance, but my understanding is that since the Uruguay Round, the use of article 28 has been rather limited, and mostly for technical reasons, for example, EU enlargement, etc.

Would you like us to elaborate on the use that other countries have made of article 28?

[Translation]

Mr. André Bellavance: Yes, because it is the other option. It consists of regulatory measures, and that is what we want. Regulation would be even easier than going through the legislation. We have the flexibility to act so that we can deal with certain problems. In the past, we were protected from imports, but now we no longer are. We want to correct that. Canada did what it had to do, but now it no longer does anything. I would very much like to hear what the Department of Finance officials have to say on this.

[English]

Mr. Graham Barr: We'll address the question of article 28, as well as the question of domestic legislative change.

Mrs. Carol Nelder-Corvari: Thank you.

With respect to domestic legislative change, we have met with the Dairy Farmers of Canada and we've met interdepartmentally on it. We're seized of the issue of the concern of the Dairy Farmers, but we are constrained by the legislation. We can't raise tariff rates without legislation; there's no regulatory or order in council authority that would allow the government to move forward with raising rates without legislation.

With respect to article 28 and the history of Canada's involvement in such negotiations, perhaps Mr. Beyea can respond.

Mr. Dean Beyea (Chief, International Trades and Finances, International Trades Policy Division, Department of Finance): Just simply, since the Uruguay Round, Canada has taken one article 28 action, with respect to the major rewriting of the Canadian customs tariff in 1998. In collapsing some tariff items, there were some minor areas where tariffs were raised minimally, affecting minimal amounts of trade. Overall, though, there was a net \$90 million reduction in duties collected, so it was of broad benefit to all members of the WTO. So it's similar, and in fact a technical measure, as Graham pointed out, like the enlarging of the European Union.

The Chair: Thank you.

We'll now move to Mr. Miller for seven minutes.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Thank you, Mr. Chairman.

I would like to thank all the witnesses for being here today.

This may be a question for Mr. Hildebrand or Mr. Barr.

In the recent WTO talks, we've run into a bit of a stumbling block, if I could use that term, with the vote of 148 to 1 when it comes to supply management. Now this government has made a commitment to protect supply management.

In your opinion, would you agree that leaving the table altogether would basically leave supply management out on its own, with basically nobody there to fight for it?

• (0935)

Mr. Graham Barr: If Canada were not present at the negotiating table, the fight for those issues would not be as strong, as we would have been the only ones fighting to defend the issues of importance to supply management.

Mr. Larry Miller: Thank you.

As has been brought up here around the table, changing article 28 to change the tariff numbers on milk protein concentrates would increase the level of imports of recent years by 10%. Yet the Dairy Farmers of Canada have a legal opinion that doesn't go along with that. I'd like to hear your comments on why that opinion by the Dairy Farmers of Canada is basically in opposition.

Mr. Graham Barr: I won't speak for the Dairy Farmers of Canada, but my understanding is that they're not disputing the fact that there would be this extra 10% cushion if we were to undertake an article 28 action. My understanding of the Dairy Farmers of Canada's position is that they differ with our view on whether or not Canada would be able to apply an article 28 action to imports from our NAFTA partners.

Mr. Larry Miller: Are there other ways of limiting the imports?

Mr. Graham Barr: The Dairy Farmers of Canada have put forward other options. One that we've hinted at around the edges so far this morning, and that I imagine we'll get into a little later, is this issue of what is called harmonizing the protein concentration at 90% with the United States. Carol was just talking about the domestic legislative changes that would be needed.

In continuing to respond to your question, please understand that I'm merely indicating theoretical possibilities and in no way implying any likelihood of success. Certainly, Dairy Farmers could petition for anti-dumping or countervailing duties to be placed on these products if they thought they had evidence these imports were subsidized or dumped into Canada. The Dairy Farmers could also gather evidence in support of a WTO challenge, if they had evidence, for example, that imports of MPCs from other countries, such as the European Union, benefited from export subsidies. Another way a country can limit imports—again, I'm pretty sure that's not applicable here—is through a global safeguard action.

As I said at the beginning, due to technical or other reasons, it's unlikely those options will be applicable in this case.

Mr. Larry Miller: Okay, carrying this a little bit further, how do you explain that in the U.S. the 90% protein content requirement virtually blocks all imports of milk proteins, again because of the technical difficulty of it? So why does Canada not have the same requirements?

Mr. Graham Barr: I'd like to take this opportunity to clarify something about the 90% cut-off point for milk protein concentrates in the United States. That cut-off point actually has very little practical significance for American dairy farmers. Unlike in Canada, the United States has no TRQ in chapter 4 to cover milk protein concentrates; as a result, milk protein concentrates below 90% are imported in the U.S. at an extremely low tariff rate. American dairy farmers have been lobbying their government for several years to create a TRQ, but they have had no success. As I said, whether the MPCs are classified under chapter 4 or chapter 35 in the United States has no practical impact.

As far as the trade in these products is concerned, if I recall correctly, from 2001 to 2005, imports into the United States of milk protein concentrates increased by 50%. On May 11, when they appeared before you, the Dairy Farmers of Canada provided their own trade data of imports of milk protein concentrates into Canada. Our data, which is from Statistics Canada, is consistent with the

Dairy Farmers of Canada's data, and also shows that imports of these products have been stable at approximately 6,000 tonnes in the last few years.

● (0940)

Mr. Larry Miller: Okay.

What are the tariffs, if any, imposed on milk protein concentrates imported into the United States?

Mr. Graham Barr: The extremely low tariff rate I referred to equals .37¢ per kilogram, which basically works out, if I do my math correctly, at one-tenth of 1% of the value of the product.

Mr. Larry Miller: One-tenth of 1%.

Mr. Graham Barr: That's my understanding, yes.

Mr. Larry Miller: That's all I have to say.

The Chair: Mr. Devolin.

Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC): I have a quick question. You're saying that the quantity of the milk protein concentrates coming into Canada has been stable for several years and has not increased significantly in the last couple of years?

Mr. Graham Barr: I merely refer you to the trade data that the Dairy Farmers of Canada provided to the committee on May 11. What that data showed—and we agree with it—is that imports of milk protein concentrates under the tariff line in chapter 4 have been relatively stable for the past few years, at approximately 6,000 tonnes.

Mr. Barry Devolin: The Dairy Farmers basically suggested that if nothing happened, the collapse of supply management was imminent. I don't think I'm overstating their case. Do you think they are being alarmist or shrill in making that observation?

Mr. Graham Barr: Mr. Chair, that's a question I can't answer.

The Chair: Thank you, Mr. Barr.

Mr. Atamanenko, you have seven minutes, please.

Mr. Alex Atamanenko (British Columbia Southern Interior, NDP): Just before we move back to this topic, in British Columbia, for example, the fruit growers are considering anti-dumping regulations for the apples coming in. Who would that go through, or who deals with that? What's the process if, for example, the fruit growers feel there's dumping going on with apples coming into British Columbia? What's the mechanism for putting in anti-dumping regulations?

I think it's your department, so I'd like to get an answer from you on that.

Mrs. Carol Nelder-Corvari: Thank you for the question.

The Special Import Measures Act is the responsibility of the Minister of Finance. It sets out the rules for implementing Canada's rights to impose anti-dumping or countervailing duties against injurious imports. The process is that domestic industry would file a complaint with the Canada Border Services Agency, who would investigate the dumping or subsidy allegations, and then the Canadian International Trade Tribunal would investigate the injury allegations.

You need both a finding of dumping or subsidization, plus an injury finding, in order for the duties to be put in place, and that's all done through an independent process. So if those findings from both the Canada Border Services Agency and the Canadian International Trade Tribunal are that there's subsidization and dumping, then injury duties are imposed to protect domestic manufacturers or producers.

In the case of British Columbia, there's been a history of such regional cases, where they're showing injury only to a regional market. So that would have to be explored with the CBSA in terms of initiating a case.

Mr. Alex Atamanenko: To your knowledge, has this been done recently?

Mrs. Carol Nelder-Corvari: I don't have that before me. I think there was an apples case in the past, maybe over a decade ago, but I can provide that information to the committee.

Mr. Alex Atamanenko: Thank you.

I guess I still have some time left and can continue.

The Chair: Yes, you do.

Mr. Alex Atamanenko: Okay, I'll ask one of the questions I have here in front of me.

Since Canada's dairy farmers are responsible for certain costs associated with the storage of skim milk powder, the more imports there are of dairy ingredients that displace skim milk powder, the more farmers' costs increase. Should not the processors also cover the costs associated with surpluses of skim milk powder? It is well known that in Europe and the U.S., governments play a huge role in eliminating skim milk powder surpluses, thereby subsidizing the dairy farmers. Could the Government of Canada not do the same thing?

I guess what I'm reading in this question is that if things don't change, is there something we can do here, rather than changing the way imports are coming in, to help our dairy farmers so they can continue to make a profit? That's how I read it. Could I get your comments on that?

• (0945)

Mr. Graham Barr: Thank you for the question. For the answer I will refer to my colleague from Agriculture and Agri-Food Canada, Richard Tudor Price.

Mr. Richard Tudor Price (Director, Supply Management, Department of Agriculture and Agri-Food): Thank you, Mr. Chair.

With regard to the honourable member's question, it is quite correct that if increased MPC imports did displace solids, not fat, in cheese manufacturing, it would increase the skim milk powder surplus that has to be dealt with in the system. It's already a substantial surplus and it would be increased.

For some years, the storage costs for that have been the responsibility of the dairy sector. With regard to the sharing of those costs between producers and processors, that's a matter that's worked out between provincial boards and provincial processors in the negotiation at the provincial level, and it's not something that the federal government directly intervenes in.

Mr. Alex Atamanenko: Thank you.

The Chair: If you are finished, I will use your last two minutes.

I'd like to direct a question to Mr. Orriss.

Could you give us a quick thumbnail sketch of the safety regime that's in place when you're checking these imported MPCs? How do you verify the percentage so that it falls within the calculated amount? I understand that's a bit of a tricky procedure. Do you do that on a poundage basis or is it just a random check? How do you do that, sir?

Mr. Greg Orriss: Thank you, Mr. Chair.

The priorities of the Canadian Food Inspection Agency relate to health and safety and consumer protection. Our emphasis in our inspection programs and our resources are prioritized based on the risks associated with health and safety matters, and consumer protection matters from the perspective of misrepresentation or deceptive practices regarding the sale of food products.

We look to the industry establishments producing the products to have quality assurance measures in place to verify that these products meet the appropriate specifications and that they have process controls in place to ensure these ingredients are used appropriately and are formulated in a safe manner. We verify that those controls are in place, as well as do end-product testing to look at the compositional nature of the product in some cases. But principally, we look at health and safety matters with respect to microbiological safety of the products.

The Chair: What agency of record then would be verifying that this falls within our parameters? Nobody? You're talking about safety only, and you take their word for it, but who does the actual spot check, or end result check, to say this is 85%?

Mr. Greg Orriss: Mr. Chair, I don't know. From a CFIA perspective, we don't focus on that area.

Possibly our colleagues can respond to that question.

Mr. Graham Barr: I believe you're referring to the procedure at the borders?

The Chair: Yes.

Mr. Graham Barr: I will refer the question to my colleague from the Canada Border Services Agency.

Mr. Darwin Satherstrom: Thank you, Mr. Chair.

This is going to get a bit technical, which I apologize for right from the start, but essentially, if the goods are being imported under chapter 4 of the customs tariff, and the importer wishes to claim them within what we call the "within-access provision" in chapter 4, at the lower rate of customs duty, they are required to have a permit issued by the Department of Foreign Affairs and International Trade.

When the goods are being accounted for, we will check the importation against the permit to ensure that permit exists. Otherwise, if the importer had made a claim that there were goods that qualified within the access rate, but did not have the permit, we would go back and investigate and reassess the importer. If the importer were not able to provide the permit, then they would become subject to the higher rate of duty.

In terms of whether the goods are below or above the levels of protein concentrate for purposes of classification, whether it's in chapter 4 or chapter 35, the practice of the agency is to periodically conduct verifications of importers. We will look at the records of importers to confirm that the goods in question meet the claim that has been made at the time of importation.

• (0950)

The Chair: Okay, so you basically check the permit and the paper, but nobody ever really physically checks the product?

Mr. Darwin Satherstrom: It is possible in the process of a verification to ask for a laboratory sample.

The Chair: Has that been done?

Mr. Darwin Satherstrom: I can't talk of specific cases, but in certain sectors, depending on the nature of the product, whether it's food or chemicals, or otherwise, and depending on the complexity of the product, we would ask for samples.

The Chair: But you can't tell me if that's been done or not?

Mr. Darwin Satherstrom: I couldn't refer you to a specific case.

The Chair: Okay. Thank you.

Now, Mr. Boshcoff, for five minutes, please.

Mr. Ken Boshcoff: Thank you, Mr. Chairman.

Border crossings, I believe, relate to Mr. Satherstrom's program. Currently in my riding, which covers the entire top of the State of Minnesota, there are three border crossings. This is an issue, I believe, that applies across the country. The number of "turnbacks" on specific types of products—dog food, potatoes, and those kinds of things—is something that of course has an entirely detrimental effect on tourism and on other people coming across the border.

Is your agency the one that is responsible for advising Americans, before they get to your food, safety, and consumer protection...?

Mr. Darwin Satherstrom: Well, it depends on the issue, I think. I'm not an expert in this area.

Mr. Ken Boshcoff: Is there someone then from International Trade who could respond?

Mr. Darwin Satherstrom: If you could just specify the question a little bit more, as to whether you're talking about exports from the U.S. into the Canadian market that get turned back at the border....

Mr. Ken Boshcoff: No, it's essentially about people coming across the border with products. Were you just going to deal with commercial exports and imports?

Mr. Darwin Satherstrom: My area is commercial, dealing with the administration of the trade programs.

Mr. Ken Boshcoff: It would certainly apply to those people who were trying to sell or buy products across the border, in terms of their knowledge or understanding of what happens when they get to the

border and they're turned back. I'm just concerned about our methods of communicating to Americans what they can't sell or bring to us.

Mr. Darwin Satherstrom: I'll have to take your question under advisement.

Mr. Ken Boshcoff: Thank you.

Now to International Trade, the recent concerns about a softwood sellout included some predictions that there would be other detrimental effects on NAFTA from the ruling. The first effect started yesterday with the appeal on corn to the panel. Are you familiar with that, you folks from International Trade?

Okay.

For a long time, the Dairy Farmers of Canada have been expressing their concerns with this article 28. They have provided a legal opinion that it would not be applicable to the United States, but I think, because of the precedent set from softwood, the Americans will be using an angle now to try essentially to expand their operations.

So do you think, and are you concerned, in spite of the legal opinion to the contrary, that milk protein concentrates would be part of that? Is that your greatest fear?

Mrs. Carol Nelder-Corvari: I don't know if I can answer that last question, but with respect to your question about the appeal on corn, both Canada and the U.S. retain their rights to use trade remedy measures. Canada, over the last decade, has taken actions against the United States, and vice versa. In the case of grain corn, there was a finding by the Canadian International Trade Tribunal that U.S. imports were not injuring the domestic industry, so that case was dropped. I understand, however, that the U.S. has proceeded to appeal the finding of the Canada Border Services Agency respecting subsidies in that case. That's their right to do.

Both governments use a chapter 19 process under NAFTA quite frequently in trade remedy cases, so it's not an unusual step. The only thing unusual here is the fact that the case has been dropped by Canada, and the assumption is that the U.S. government remains concerned about the way in which Canada undertook its investigation of U.S. subsidies. So that's the issue in this case.

• (0955)

Mr. Ken Boshcoff: So for MPCs, if a professional organization provided you with a legal opinion, you're welcome to either consider it or not. I would think that the legal opinion of the Dairy Farmers of Canada would probably have been examined laboriously and been submitted in a very serious manner. So what would you do with that, in terms of your own perspective on determining whether or not it would be injurious or not?

Mrs. Carol Nelder-Corvari: If you're talking about accusations of dumped or subsidized imports, the Dairy Farmers of Canada would take that complaint to the Canada Border Services Agency, with their documentation and allegations of dumping or subsidization. That's how the process would begin.

The Chair: Thank you, Mr. Boshcoff.

Mr. Bellavance, for five minutes, please.

[Translation]

Mr. André Bellavance: You said that the United States did not have tariff quotas, but we know that they define milk protein concentrates under tariff line 04.04 at a concentration of 90%.

Earlier on there was an issue we wanted to discuss, but we ran short of time. Canada could pass legislation—Ms. Nelder-Corvari said that the existing legislation would have to be amended—redefining tariff line 04.04 so that it comprises milk protein concentrates up to 90% concentration. This can be done. This is another option that other countries have used and Canada can use.

[English]

Mr. Graham Barr: It certainly is possible, and we've never said that it's not possible. All we're doing is pointing out the possible implications of doing it and explaining the process.

One of the possible implications is that it would be quite dismissive of the recent CITT ruling, which specifically said that a product with a concentration of 87.5% belonged in chapter 35, as opposed to chapter 4, and that was upheld by the Federal Court, as you know. Furthermore, taking such an action could very easily be challenged by our trading partners, for example New Zealand. Again, it is possible; we're merely pointing out what the implications could be of taking such action.

[Translation]

Mr. André Bellavance: It can be done, but it requires political will. The government could do it. It only has to go ahead and do it, and the change would apply.

[English]

Mr. Graham Barr: It certainly is possible to take that action. There are implications, which we've explained.

[Translation]

Mrs. Claude DeBellefeuille (Beauharnois—Salaberry, BQ): Good morning.

In Quebec, we are very concerned about maintaining the supply management system, because some 50% of Canada's industrial milk comes from Quebec. In my riding, there are 90 milk producers. Recently, a dairy farm was closed for three reasons: weakening of the import system, quota reductions already in place and expected, and the excessive cost of replacing the reduced quotas.

We have spent a lot of time on discussing the use of section 28, but let's look at the issue differently. If we do nothing, if we do not use section 28 or if we do not amend the regulations, how do you see the medium-term future for dairy farmers in Quebec and Canada? I suppose you have done some analysis. The profits of processors are rising, and dairy farmers are finding themselves in an increasingly difficult situation. There is an imbalance there. What measures can the department take to improve the situation?

[English]

Mr. Graham Barr: Thank you for the question.

In a moment I'll turn it over to my colleague, Richard Tudor Price, to address your more specific question, but in general, yes, you are

right. There are significant challenges facing the dairy industry, both dairy producers and dairy processors.

As you know, in the middle of April, Minister Strahl invited the leaders of both the dairy producer organization and the dairy processor organization to form a working group to talk about those issues, because it's pretty clear that although government has a role, the process needs to start with the producers and the processors working together. We're very pleased that that process has begun and are hopeful that it can lead to options and possible solutions for many of the issues you have raised.

To turn more specifically now to your question about any analysis that we've undertaken, I'll turn to my colleague, Richard, from Agriculture and Agri-Food Canada.

● (1000)

Mr. Richard Tudor Price: Thank you very much, Mr. Chairman.

As far as the honourable member's question with regard to the stability of the dairy industry is concerned, I think it's fair to say that since the end of the Uruguay Round, there has been growth in the industrial sector of the dairy industry. To some extent, that has rolled back in the last two years, but the dairy sector has been characterized by considerable stability. Obviously the concern is with anything that would undermine that stability, but I think the indicators we look at suggest that at the present time the situation in dairy is fairly stable.

There are some specific problems in terms of the excess quantities of skim milk powder that are available and that are putting a strain on the system, but I would say the overall picture is one of stability. At the same time, there is also consolidation going on in terms of the number of producers and processors, and that I think is reflected in the comments the member made.

The Chair: Following up on Madame's point—I'm sorry, your time has elapsed, but we'll get back to you again—what has the value of quota done during that same timeframe? Have you studied that?

Mr. Richard Tudor Price: It's not an indicator that we consider on a regular basis, but we do monitor those changes, and quota values since the end of the Uruguay Round have increased.

The Chair: Thank you.

Mr. Devolin, for five minutes.

Mr. Barry Devolin: Thanks.

I'd like to follow up on that same line of questioning.

My riding is in central east Ontario, the former Victoria County, now Kawartha Lakes. I was speaking yesterday with a dairy farmer who also sits on the Ontario board. He told me that in my riding there are about 70 dairy producers and that in the past month, four of them decided to pack it in. He had spoken to them, and it wasn't my sense that they had made a business decision in a stable market, but a decision under duress, and that people had lost hope and were leaving the industry.

So I go back to the question I asked really quickly at the end of the last round, that I feel as though we're hearing two very different stories, one from you here today that dairy is a relatively stable industry and that things are generally okay, other than for some manageable issues. Yet I hear an entirely different story when I'm in my riding and I talk to dairy farmers, including some who have been in the business for 30 or 40 years, who are saying that the combination of the long-term threat from the WTO talks and the impact of changes to MPCs and their growth, and where they see that going, is making them feel very pessimistic about the future.

So when we heard from the Dairy Farmers recently, their point was that:

Unrestricted protein imports could increase non-fat solids surpluses beyond 100 million kilograms. This is more than the system can bear and will lead to the collapse of the domestic price structure for non-fat solids, putting a very quick end to supply management in Canadian dairy production.

To me, that falls under the category of crying wolf. I guess often when you cry wolf there is no wolf there, but sometimes you cry wolf because there actually is a wolf there.

So my question is, how is it that the Dairy Farmers of Canada and the Dairy Farmers of Ontario are, in your opinion, so far off the mark in terms of their very real fears about the near future?

Mr. Graham Barr: First of all, I don't know that we've said anything that implies that we think they're so far off the mark. I'd said in response to Madam DeBellefeuille's question that there are difficult challenges facing the industry, just as there are difficult challenges facing the grains and oilseed industry or other industries within the agriculture sector.

Again, that's why we're very pleased to start a discussion among processors and producers—and have hopes in the dairy working group—to look at ways of coming up with solutions to those important issues.

Richard has something to add.

• (1005)

Mr. Richard Tudor Price: I think it's worth pointing out that I was talking about the current situation. I wasn't purporting to forecast out.

Also, as you would see from a riding perspective, there is an ongoing consolidation taking place in dairy. There are fewer dairy producers. They tend to be larger. They tend to have more productive animals. In fact, if you look at national statistics you'll see that the number of dairy farmers has fallen by about one-third since the end of the Uruguay Round. There has been a similar consolidation in the number of processing plants. Although the volumes are very similar overall, the output and the processing are taking place on fewer premises, with fewer people involved.

Mr. Barry Devolin: I'm not sure if this issue is appropriate to raise, as it's not about MPCs specifically, but many dairy farmers in my area for years also sold cattle, and exported cattle out of the country. That was another income stream for them. Of course, in the aftermath of BSE and the border closure, they've lost that secondary business they were engaged in. That's put on additional pressure.

So it's the combination of things—two, three, four things—that is causing some dairy farmers to say, "I'm not going to hang around until my equity is gone, I'm going to sell out now."

I've only been here for two years, but my sense is that the degree of despair in the industry is significantly greater now than it was a couple of years ago. I just hope the officials recognize that and act on that basis.

The Chair: Any redirect on that?

Just to follow up on Mr. Devolin's question, how current is the data that you ladies and gentlemen are working with? This is 2006. Where are your numbers coming from, and what studies? How current is it?

Mr. Richard Tudor Price: This would be current data, Mr. Chair.

The Chair: Thank you.

Mr. Steckle, five minutes, please.

Mr. Paul Steckle (Huron—Bruce, Lib.): Thank you very much for appearing here this morning. I want to direct my questioning basically to the CFIA at the outset.

As a committee, we have studied in the past year the whole issue of product and consistency—how we standardize product, what is allowed. We talked about Bill C-27, and within Bill C-27 found a reasoning argument to put forward a recommendation that there be truth in advertising.

I'm wondering about the resolve in terms of some of the problems farmers see when I hear Mr. Price talking about stability in the dairy industry. I think you would find some argument from the dairy sector as to whether there is real stability. As Mr. Devolin said this morning, there is less stability in the dairy industry today than there has been for a long time.

You're telling us we really can't look at either area of article 28. Perhaps we ought to look at what is happening, and at what we're not doing, here in Canada. If I understand correctly, the dairy regulations in both the Canada Agricultural Products Act, CAPA, and the Food and Drugs Act do not allow for the use of milk protein concentrates in the making of standardized dairy products. For many years now, the Canadian Food Inspection Agency, which is responsible for enforcement of the dairy regulations of both CAPA and FDA, is aware that the Canadian dairy processing industry is using milk protein concentrates in the fabrication of standardized dairy products. The agency has not taken steps to stop the illegal use of thousands of tonnes of milk protein concentrate in standardized cheeses and other dairy products.

Is it normal that a government enforcement agency fails to fulfill its mandate while knowingly allowing the use of an illegal ingredient in standardized dairy products?

The Chair: Mr. Orriss.

Mr. Greg Orriss: Thank you for the question.

You're correct. Dairy products are regulated in Canada under federal legislation, the Food and Drugs Act and regulations, and under the dairy product regulations. Where you're incorrect is that the dairy product regulations do allow the use of milk protein concentrates in the formulation of some standardized dairy products.

There is a conflict to some extent between the requirements in the food and drug regulations and those found in the dairy product regulations, but it is our understanding that one of the principles for the interpretation of statutes is that current regulations take precedence over earlier regulations. And since the dairy product regulations are more current with respect to compositional standards, CFIA has used those regulations allowing the use of milk protein concentrate.

•(1010)

Mr. Paul Steckle: Do you think that's a fair direction for us to proceed? If we can't get what we want in one way, we can get it another way, but it seems that the processors and the further processors always seem to get their way. The farmer feels left out of it; he's always at the point where he's taking the wholesale price for his product, and he has no recourse to finding a market price that's satisfactory.

We talked earlier about standardization. The name "processed cheese" is standardized, yet this was one of the concerns we had when we brought in the dairy terms.

The consumers are expecting that certain products are made, in this case, with cheese. The current situation is allowing the use of a qualifier product with a standardized name to name the food, while the food is not produced according to a process that is in the regulations, therefore misleading the consumers.

The role of CFIA is to stop this kind of practice, and I guess this takes us back to what we tried to do last year. The CFIA, I don't think, was very complimentary of our view that we should be going forward with that. I'm not sure that all parties at the table were, but we did as a committee agree to move forward under Bill C-27.

Would you be in agreement to seeing Bill C-27 come back in the current form it left this committee a year ago?

Mr. Greg Orriss: Thank you for the question.

As we all know, Bill C-27 died on the order paper. CFIA was actually looking with considerable optimism towards Bill C-27 moving forward, in that the intent of Bill C-27 was to enhance, modernize, and consolidate the CFIA's enforcement and inspection authorities in the areas of food safety, animal health, plant protection, and food security.

As you know, the decision to reintroduce or table the legislation lies with our minister.

With respect to your question regarding the concerns around the proposed wording of the dairy terms provisions included in Bill C-27, yes, we did have some concerns.

The CFIA regulates all foods, including dairy products and milk products, and our responsibility, as I mentioned earlier, is to protect public health and to protect consumers from the perspective of deception or misleading labelling claims. To that end, we have moved forward on providing guidance through policy with respect to highlighted ingredients and flavours, in the absence of Bill C-27 moving forward. The highlighted ingredient policy was established after extensive consultation with stakeholders, including the Dairy Farmers of Canada, other industry associations, as well as consumer associations. And we did in fact complete consumer surveys,

because this issue is a matter that involves a balanced review of perspectives from all stakeholders.

We have developed a clear policy for highlighted ingredients and flavours, which goes a long way to addressing some of the issues that were raised by the Dairy Farmers of Canada, in terms of the proposed wording of dairy terms that were included in the provisions under Bill C-27.

Thank you.

The Chair: Thank you, Mr. Orriss.

Madam DeBellefeuille, five minutes, please.

[*Translation*]

Mrs. Claude DeBellefeuille: As I understand it, the government's failure to act in controlling milk protein imports means that the government accepts there can be only a third of the farms surviving, as long as the volume of milk produced remains the same. I find it very worrying to hear Mr. Price saying the situation is stable because the volume has remained the same.

The government has to understand that dairy farms and milk production constitute wealth, generate economic activity in the region, create jobs and help make their regions vibrant and dynamic. I find it an issue of great concern when I see you so unworried about the drop in the number of dairy farms in Quebec and Canada. Frankly, I think processors have very good lobbyists to succeed in making the government delay in passing legislation or taking concrete action to protect our dairy farms. I am not generally paranoid, but I believe the processors will probably create a product that will make it possible to artificially reduce the amount of milk protein. So even if the percentage changes, when the product goes over the border their profit margin will increase even more.

Mr. Price, can you assure me that our government will not encourage dairy farms in Quebec and Canada to close?

•(1015)

[*English*]

Mr. Richard Tudor Price: Thank you, Mr. Chairman.

One of the principles of these supply managed sectors is the amount of quota in the system is managed by the stakeholders to equate to the domestic requirements for the product. When you look at the national quota for industrial milk, for example—and I was talking about how it grew after the Uruguay Round and has slipped back a little in the last couple of years—what that's reflecting is the disappearance of dairy products, in effect the consumption of dairy products by Canadians. The system is geared to respond to consumer demand. So the national quota reflects what consumers are purchasing and consuming.

In terms of the consolidation of dairy farms, this is a world-wide trend. If you look at any major dairy-producing country across the world you'll see there has been a tendency for greater specialization. A consolidation in the number of farms has been continuing for 50 years in Canada. At one time there were a quarter of a million or more dairy farms; there are now 16,000. That's a trend that is difficult to see changing.

That is facilitated by the producer organizations themselves in that they allow producers who leave the sector to sell their quota to other producers. That tends to lead to larger operations, and that is implied in decisions made by individual provincial marketing boards. It's not a trend the government controls, and it is one most people would regard as hard to change.

The Chair: Thank you.

André.

[*Translation*]

Mr. André Bellavance: Thank you, Mr. Chairman.

That is not how we want to operate in Quebec. We have very specific goals, and one of them is keeping the number of farms we have.

Earlier on, we were talking about imports, which have remained stable at some 6,000 tonnes. It should be understood that we were in the middle of a challenge at the Canadian International Trade Tribunal. In January 2006, the CITT rendered its final decision. The facts are these: we know that we have lost the battle for butter oil imports in ice cream. At present, Coaticook ice cream is almost the only one to be made with real cream. I invite you to taste it.

As for increased imports, here are some facts: casein imports increased by 718% between 1998 and 2005; caseinate imports increased by 336% between 1998 and 2005. With respect to butter oil, we have unfortunately lost the battle, as I said earlier. For dairy farmers, losses are assessed at some \$250 million. They could reach \$500 million if we continue on the same path. Am I pulling these figures out of nowhere, or do you agree with them?

• (1020)

[*English*]

Mr. Graham Barr: The 6,000-tonne figure is for the imports under the tariff line in chapter 4. It's important to note that there are other products beyond milk protein concentrates within that tariff line. Another point there, of course, is that the tariff line is limited by a tariff rate quota. That is the reason for its stability overall at those times. There's a cap. There's a tariff rate quota for those products.

With regard to going forward, as you might know, the government recently took action to ensure that milk protein concentrates with a concentration of 85% or below are clearly captured under the TRQ in chapter 4.

The Chair: Thank you, Mr. Bellavance.

Mr. Anderson, go ahead for five minutes, please.

Mr. David Anderson (Cypress Hills—Grasslands, CPC): Coming back to the subject of the industrial milk quota, I'm wondering what allowance is made for the quantity of milk that's displaced by the imports of MPCs. Is there a part of the formula that accounts for that?

Mr. Richard Tudor Price: No, Mr. Chairman. The quota is set on a butter fat basis, and any displacement by MPCs that takes place, for example, in the manufacture of cheese, affects the solids, not the fats side of the equation. Therefore, the way the system is currently operated, displacement by MPCs would not affect the quota. It would affect, however, the skim milk powder surplus.

Mr. David Anderson: Mr. Barr talked earlier about the United States having a 90% content requirement and how it wouldn't help us out if we raised it, because it has no practical impact. Your rationale seemed to be that it wouldn't have an impact because the United States has no tariff restrictions on MPCs. My impression was that if we were to raise the content requirement from 85% to 90% in Canada, it would have an impact here because we do have those restrictions, and that would make a difference in our country. Is that accurate or not?

Mr. Graham Barr: Earlier, when I was talking about no practical impact, I was referring to within the United States, because the tariff applied to imports with milk protein concentrates is either identical or not substantially different between chapter 4 and chapter 35. I wasn't commenting on the potential significance of making the necessary domestic legislative change to clarify that chapter 4 has a 90% cut-off.

Mr. David Anderson: Okay. I'd like to come back to that change. I think someone talked about the fact that these tariff rates can't be raised without legislation. Is that correct? Perhaps I wasn't paying close enough attention. In order to change that from 85% to 90%, what's the procedure?

Mr. Graham Barr: My colleague from the Department of Finance will comment specifically on the procedure. I'd also like to make the point that in general, a principle of the WTO is that most, if not all, tariff lines are "bound", which means that they're bound in schedules, and it's very difficult to raise them. An advantage of that principle is that our own trading partners also can't be raising tariffs that would affect our export-oriented sectors as well.

So there is a very rigorous process, both at the WTO and within nations to go forth and change those tariffs or to establish TRQs. That's the reason behind it: to provide predictability for our exporters so they know that the tariff they have to deal with, if in fact there is one, is the tariff which will be there for the longer-term.

Mr. David Anderson: The question, then, is whether the procedure to raise that content requirement within a tariff line is the same as the one to raise the tariff line.

Mr. Graham Barr: For the answer to that specific question, I'll turn to the Department of Finance.

Mr. Dean Beyea: Yes, if the effect you're having by shifting products, by using an explanation to ship products from a lower tariff to a higher tariff, is the raising of the tariff, legislation would be required to do that. There's no regulatory means to do that within the powers of the customs tariffs.

Mr. David Anderson: It doesn't matter if you're bringing that into line with another country's requirements or tariff lines; it's just that it's the same procedure?

Mr. Dean Beyea: No, it was clearly classified as in Canada; if you went beyond that, you would need a legislative amendment to do that.

Mr. David Anderson: Okay.

Mr. Ritz had asked a question a little bit earlier about controlling the importation of these products. I wasn't entirely comforted by what I heard. I'm just wondering how you control the importation of MPC products that may fall outside the requirements we have in place. You suggested that you sample once in a while and the rest of the time you trust the documentation. Is that the procedure? Or is it that once in a while you don't sample?

• (1025)

Mr. Darwin Satherstrom: Thank you for the question.

The practice is to conduct periodic verifications of importers, and in doing so, to investigate the documents with respect to their importations. I'm talking generally across the board. We will assure ourselves that in fact the imported product was properly classified at the time of importation. If it's not properly classified, we can ask them to reassess their importation. If that results in a change in the rate of duty that's applicable to the import product, they would be required to pay that amount to the government.

Mr. David Anderson: So it's these sporadic spot checks, then, that would guarantee, in your mind, that the classification is correct?

Mr. Darwin Satherstrom: The implication for an importer who does not have a proper classification would be that they would have to pay an adjusted rate of duty. Depending on the difference in the rate of duty applicable between two tariff classifications, they would have to decide what the consequences would be of paying that higher rate.

Mr. David Anderson: What is the risk of being caught?

Mr. Darwin Satherstrom: We like to think that if we do a verification, we can do a full forensic verification to determine that the goods are in fact properly classified. We will ask for all the documentation necessary to assure ourselves that the goods were properly classified.

The Chair: Thank you, Mr. Anderson.

Just to follow up on that point, before I move to Mr. Atamanenko, have you ever done a forensic audit? Has that ever been called for?

Mr. Darwin Satherstrom: Let me put it in these terms. We have someone go to the company, ask for their import documents, and review their documentation.

The Chair: But again, Mr. Satherstrom, we're talking about a paper chase, not an actual product. You don't actually have the product tested and say this is above or below the 85%.

Mr. Darwin Satherstrom: We can ask for samples of the product they're importing.

The Chair: But have you? Can you give an example of when you've actually tested the product, not just checked the paper?

Mr. Darwin Satherstrom: There are cases where we do send products to the lab. It's difficult for me to respond with respect to a very specific case, because the Customs Act prevents me from referring to very specific cases.

The Chair: Just give me how many instances there were. I don't need the name of the company.

Mr. Darwin Satherstrom: I don't know the answer to that. It's difficult to answer that question.

The Chair: Thank you.

Mr. Atamanenko, five minutes.

[*Translation*]

Mr. Alex Atamanenko: Thank you. I just want to point out the fact that my colleagues here today are saying it is rural existence—the survival of our rural life—which is at stake. Without the political will, we can justify everything we say. For example, we can say that there are fewer dairy farmers because of the way the market is changing. The government and politicians must have the will to maintain our rural existence. That is what is at stake, and we depend on you to help us achieve that goal.

On April 15, the Minister of Agriculture and Agri-Food announced that processors and farmers would get together to discuss what could be done instead of changing section 28 or anything else.

So where are we at? Have any decisions been made or measures taken to control such things as the imports of certain milk protein concentrates? I would like to know whether the process is working, and whether you can keep us informed.

[*English*]

Mr. Graham Barr: The discussions are taking place between the producers and processors. We expect that the government will be informed of their progress at the appropriate time, but at this point it's a process between the producers and the processors.

Mr. Alex Atamanenko: I think that's all I have.

The Chair: Thank you, Alex.

We'll move to Mr. Easter, for five minutes.

Hon. Wayne Easter: Thank you, Mr. Chair.

I have a fairly technical question for the CFIA.

Based on your earlier answers, I believe you indicated that MPCs are permitted in the production of dairy products under the dairy product regulations. Are those all dairy products? That is one question. But more technically, if this is the case, that the CAPA regulations allow MPCs, then my understanding would be that this is provided by allowing milk solids in the making of products like cheese, etc.

The problem is this: milk solids, by definition, exclude components that have been altered in their chemical composition. MPCs—simplified, I guess—are a modified milk ingredient. Modified milk ingredients, by definition, refer to components that have been altered in their chemical composition. So we're going in different directions.

The CITT removed MPCs with concentrates of over 85% from the tariff chapter covering dairy products to chapter 35. The CITT considers that MPCs of 85% concentration are not a natural milk component. Therefore, my question is—and it's technical, I will admit, Mr. Orriss—on what grounds does CFIA consider MPCs to be a milk solid?

• (1030)

Mr. Greg Orriss: Thank you for the question.

Mr. Chairman, because of the specificity and technical nature of the question, I will call upon my colleague, Ms. Gail Daniels, to join me at the table to help me in the response to that question.

The Chair: Do you need the question repeated, Ms. Daniels?

Hon. Wayne Easter: It's a long question. It'll take up all my time!

Some hon. members: Oh, oh!

The Chair: Well, I was hoping so, Mr. Easter, but we won't go there.

You have the basic thrust of the question, though? You're okay with it?

Ms. Gail Daniels (Chief, Dairy Programs, Canadian Food Inspection Agency): I think so.

The Chair: Thank you.

Ms. Gail Daniels: I guess it depends on the processes and technology that are used to make milk protein concentrates, whether or not the chemical composition is altered. Depending on the process, that may not be the case, so that it would be a milk solid. In general, usually the milk protein concentrates are permitted in the cheese products, where they would be used to provide the main function of cheeses, which is the protein aspect.

Hon. Wayne Easter: So are you saying that MPCs are not allowed in other dairy products?

Ms. Gail Daniels: They're allowed in products where you would be allowed to use milk or milk products in the composition of a product. Now, depending on the product, you may not want protein in it. For example, there's not much protein in ice cream, so milk protein concentrates wouldn't be used in that. But for most of the products that allow milk or milk products, if MPCs would be useful, they could be permitted.

Hon. Wayne Easter: All right. We'll have a look at this in the blues and go from there.

The implications of this are really serious. Mr. Tudor Price answered earlier that the quotas managed by stakeholders along lines of predicted domestic market—those weren't your exact words—and dairy consumption around the world are going down. But in this instance in Canada, you really have to consider the impact of the amount of domestic production that is being displaced by MPCs, which goes against the original intent—which I asked about earlier—of the supply management system stopping milk per se, so that we would know what would be coming into the domestic market and manage our supply accordingly.

Now, we're seeing it being broken down and re-established again—and we can get into a technical argument on whether CFIA is right or wrong—but the fact of the matter is that Canadian dairy farmers are being much harder put by than farmers in other countries, because their domestic market is being displaced in a number of ways. One, it's declining, and two, other product is really getting around the system by coming in this way.

Mr. Bellavance said earlier that there needed to be political will, and the response was that you had outlined the implications of MPCs to ministers. Can you table before us what you said those implications would be on the various options that government may take? Or is that just privy to ministers?

• (1035)

Mr. Richard Tudor Price: Mr. Chair, I will just clarify something in response to Mr. Easter's question.

I hope I didn't say that domestic markets were declining. What I did say was that there had been growth in the market-sharing quota, that is, the size of the national market in relation to consumer demand since the end of the Uruguay Round and that the national quota had peaked a couple of years ago and has fallen back somewhat.

But as I said in my answer to Mr. Anderson, the imports of MPCs do not affect the national quota. What they do affect is the skim milk powder surplus, because the national quota is set on a butter fat basis.

Hon. Wayne Easter: But they do affect it. They displace the amount of production that Canadian producers can produce, do they not?

Mr. Richard Tudor Price: No, Mr. Chairman, with respect, because MPCs are entirely solids, not fat, they do not affect domestic disappearance of butter fat. What they do is to displace solids, not fat, in cheese milk, which then goes into the skim milk powder surplus. So if the skim milk powder surplus is 60,000 tonnes, if you had further imports of MPCs, you'd expect to see that surplus increase. But it doesn't reduce the amount of production; what it does is to force more skim milk powder into low-priced markets, such as animal feed.

The Chair: Mr. Bezan, you have five minutes, please.

Mr. James Bezan (Selkirk—Interlake, CPC): Thank you, Mr. Chair.

Ladies and gentlemen, we've been throwing around this issue and talking about what you can't do when you're dealing with MPCs and trying to address the concerns that dairy farmers have across this country. I'm wondering if there's anything you have talked about among yourselves to help mitigate the problems.

You're saying that article 28 doesn't work and that you have concerns about NAFTA and how we approach it with the Americans. So what can we do, from a regulatory or policy basis, that would meet some of the concerns that have been brought forward by Dairy Farmers of Canada?

Mr. Graham Barr: Thank you.

Throughout the course of this appearance today, we have outlined several possibilities, most of which have been brought forward by the Dairy Farmers of Canada as well. There's been discussion on article 28. There's been discussion on changing our domestic legislation to make a clarification that chapter 4 has a 90% concentration. I also spoke about other possibilities, including a WTO case, global safeguards, and an anti-dumping or countervailing investigation. I'll just repeat, by naming those I'm not in any way implying any potential success of those measures. There are many possibilities out there.

As I said a little while ago, the government recognizes this is an issue of serious concern to Canada's dairy industry. As we've said, that was part of the rationale for Minister Strahl extending the invitation to the processing and producing sector to work together to come up with solutions, so that we can have a stronger dairy industry in the long term.

Mr. James Bezan: When the government and staff are sitting around talking about these issues, whether it's at the WTO or NAFTA, CITT, or the U.S. International Trade Commission, if there are challenges coming forward, who's in the lead role here?

We have five different agencies and departments represented here. Who provides the scientific and policy advice? Somebody has to be in charge, and I'm just wondering who that is when we start making the decisions.

Mr. Graham Barr: As with many important issues before the government, this is one that's managed horizontally among departments. In our opening remarks, each of us explained our more specific role in this file, for example, from a policy angle, as with my colleague, Mr. Richard Tudor Price; the Department of Finance; and me, from Agriculture and Agri-Food Canada.

You mentioned scientific, and I think clearly the exchange between Mr. Orriss and Mr. Easter demonstrates that the scientific expertise rests in large part with the Canadian Food Inspection Agency. We've also heard from the Canada Border Services Agency. Obviously, they take a lead role in administering the policies and rules that are given to them.

•(1040)

Mr. James Bezan: Nobody's operating in isolation. Everyone's communicating.

Mr. Graham Barr: Absolutely.

Mr. James Bezan: Who's in charge of making sure that the communication lines are open, that nobody is going off on their own and creating hardship for the dairy industry?

Mr. Graham Barr: The communication lines between all five organizations represented at this table are very open.

The Chair: Thank you, Mr. Bezan.

Mr. Bellavance, go ahead, please.

[*Translation*]

Mr. André Bellavance: Today, we have representatives of the Canadian Borders Services Agency. Allow me to give you some background concerning what happened in 1999.

Milk proteins, or the protein Promilk 872b, had been classified in tariff line 35.02, which is not subject to tariff quotas. Obviously, it was noted there was a problem because in 2003, the protein was reclassified in tariff line 04.04. This was followed by a challenge before the Canadian International Trade Tribunal, the Court of Appeal, and so on.

We would like things to go back to what they were with the 2003 decision. I would like the CBSA representatives to explain why, in 2003, it was decided to put Promilk 872b into tariff line 04.04. There must have been good reasons for it. It was not because the CITT overturned the decision that we, as elected officials—obviously the government has the last word—could not go back to the really good

2003 option, which was to put 872b into the right tariff line, as the U.S. did without hesitation.

I would like the representatives of the CBSA to answer. In 1999, did we make a mistake by putting the protein into tariff line 35.02? In 2003, was that mistake corrected by putting the protein into tariff line 04.04? Should we go back to the 2003 situation to fix the problem we have today?

I know this makes you smile, but what I have said does frame the question. If I'm wrong, please feel free to say so.

[*English*]

Mr. Darwin Satherstrom: Thank you for the question. Perhaps I will deal with the end of the process first. As a consequence of the Federal Court decision to dismiss the appeal of the Canada Border Services Agency and of the Dairy Farmers of Canada, we are now classifying product with a milk protein content on a dry weight basis of over 85% in chapter 35.

I can't answer the question of whether we were in error or not. As you know, at some point we look at importations, and importers have a right to appeal importations. The Canadian International Trade Tribunal, which is a quasi-judicial body, issued a decision on the matter, and as a consequence of the final decision of the Federal Court of Appeal, we are now in the position of having to administer the provisions as we do.

I'm not in a position to say whether what was happening in 1999 was right or wrong. That was the situation at the time, and we always reserve the right in the case of any—

[*Translation*]

Mr. André Bellavance: You can tell me that you changed the tariff line in 2003. This means there must have been good reasons to do so. But please don't tell me that—

[*English*]

Mr. Darwin Satherstrom: In classifying certain products, we believe we're right. Obviously we believe we've made the correct decision. But it's always open to importers to appeal those decisions. We therefore then have to follow court decisions if the court decision disagrees with our interpretation.

[*Translation*]

Mr. André Bellavance: At present, the government can, through regulations, remedy the situation and bring things back to what they were after the 2003 decision.

•(1045)

[*English*]

Mr. Graham Barr: As we said, yes, it is possible. Our role here is to explain the process and the implications.

Mrs. Carol Nelder-Corvari: It's possible to do that through legislation. No decision has been made to move forward. As was explained, the working group has been established, and I understand that it is looking at this issue, among others. The departments represented here are awaiting input from that discussion.

[Translation]

Mr. André Bellavance: If the government decided to take the regulatory route to put those milk proteins into the right tariff line—earlier we did hear this was possible—would it be a long and complicated process?

[English]

Mr. Dean Beyea: It would be through the process of passing legislation. As Carol pointed out, there's no regulatory means; there's no order in council authority and there are no regulations. So a bill would need to go forward supporting this legislation. It could be part of a tax bill or separate legislation, but there would need to be a piece of legislation going forward as you pass a law through Parliament.

The Chair: Thank you, Mr. Bellavance.

Mr. Boshcoff, for five minutes, please.

Mr. Ken Boshcoff: Thank you, Mr. Chair.

The Federation of Canadian Agriculture provided some information regarding a 2.65% cutback in quota volumes and only a 1.5¢ increase in fluid milk pricing. They feel this is a direct result of the imports of milk products.

When people are giving you hard data from the field like this, how does it come into your policy decisions in terms of trying to adapt the dairy industry?

Mr. Richard Tudor Price: I think I already said, Mr. Chairman, that the national level quota is set by the Canadian Milk Supply Management Committee, on which dairy producers and processors and provinces are represented, and it's their best judgment of what the market requires or what the domestic requirements for dairy are. So if you have consumers reducing their purchases, that will be reflected in the quota.

I think you're talking about the recent quota cuts that have taken place, which reflect a fall in demand on a butter fat basis. Obviously the level of domestic disappearance of butter fat is affected by imports of butter-fat-containing products. I think you talked earlier about butter-oil-sugar blends, for example.

Mr. Ken Boshcoff: No, it wasn't me, but I was more concerned about the departmental perspective of these things happening out there. Several people have mentioned it, Mr. Devolin for one.

I think the feeling of these people who are trying to be effective producers and to make good food for good people, and to produce quality product, is that it's like death by a thousand cuts. These components come up on a regular basis, and it's like someone designs a new process or a synthesis of processes and we are left to fight it.

We seem to be more reactive than trying to determine that there may be something else in the future similar to this that's going to occur. Should we not be trying, first of all, to step back and say, these things are going to be happening with increasing frequency, whether it's genetic modifications, or whatever, that will essentially substitute components on a regular basis, and then design a plan that meets it in a general and food sovereignty or food security way?

Mr. Richard Tudor Price: I think that is something that we hope will be discussed by the dairy working group that the minister has established, involving producers and processors. I think it would be

very helpful for the future stability of the industry to have a plan to which all of the sector could subscribe.

Mr. Ken Boshcoff: Amongst the table here, we have some quite solid representation and skilled people with consummate experience, and I'm just wondering if there is an overriding philosophy that drives you to say that Canadian milk producers, and other parts of the agricultural component, are things that we should be doing our best for in government to help these people, as opposed to perhaps saying, well, there are these international rules, so we'll just acquiesce.

• (1050)

Mr. Richard Tudor Price: As Graham said in his introductory statement, we are strong supporters of supply management and strongly subscribe to its principles. Over the years it has had to adapt to changes, and it's been very successful in doing that. I think back to the Canada-U.S. trade agreement, which brought about a lot of change, and the change from import controls to tariffication, which changed the rules of the border. But I think supply management in dairy has been a considerable success story, and we will do our very best to support what the industry has planned to keep it that way.

The Chair: Thank you, Mr. Boshcoff.

Mr. Atamanenko, any redirect?

Mr. Alex Atamanenko: No.

The Chair: Mr. Steckle.

Mr. Paul Steckle: As we discuss this matter this morning, we can talk about tariff lines and we can talk about numbers, but really, the average person out there doesn't understand. I'm sure the average farmer doesn't understand. But there is one thing he does understand—namely, is he going to be in business tomorrow, given the circumstances of the last four years, given our BSE issue, and given everything else that's happened in the dairy sector?

A dairy farmer has to seriously evaluate, especially the new generation of farmers coming along, with sons taking over the farming operations, if it's really in their interest to do so given the uncertainty in WTO and all the rest of it.

A number of years ago it was butter oil. That product displaced much of the product we used to garner from the dairy, with the butter fat. In a number of products, but certainly in the ice cream business, we reduced the ice cream business domestically, the use of product found here, to about 50%. There's been a huge cut in our ability as dairy people to supply a market with our own product. Now we have the MPCs, and we have this product in here now displacing the proteins in a variety of products.

You have to really wonder, do we have in this country a food policy? I don't believe we do. We sort of tweak away at the edges, but we really haven't gotten down to the seriousness of what food means to this country.

There isn't a consumer in this country who would seriously believe they're paying too much for a product on the shelves. I mean, they pay a high price for the product on the shelves, but relative to what the farmer gets, they're paying very little. The farmer is getting absolutely nothing for his product. If it weren't for supply management.... It's really the only sector we have left that has any degree of stability and future, if we can hope that we continue with supply management at WTO. If we don't, then I don't think we have very much left.

That sounds much like a defeatist, but that's coming from the farm community, one who has family in the dairy business. I can tell you that my own family members are getting out of the dairy business because they simply see no end to these kinds of things happening.

We have a surplus of milk powder in this country. Who pays for the storage of that milk powder? The farmer. Should not the further processors who are displacing that product with other product also share in that? Should consumers somehow share in the costing of the storage of that? Obviously you can't simply put it back onto the backs of farmers every time you make a decision.

We would like to think that the departments—CFIA, Agriculture Canada, Trade, or whatever it is—first and foremost think about what's right for Canadians. Let's stand up for Canadians once and for all. Let's let farmers believe we stand up for them.

I don't believe they've heard that message for a long time, and it's time they hear that message again.

The Chair: Any comments from the panel? No? All right.

Mr. Steckle, all done?

Mr. Paul Steckle: I'm all done.

The Chair: Mr. Bellavance.

[Translation]

Mr. André Bellavance: Earlier, we heard that legislation was required. I have here a document from the Fédération des producteurs de lait du Québec indicating that with respect to customs tariffs, the Minister of Finance or governor in council can also make decisions regarding the denomination of tariff line 04.04, making it cover all milk protein concentrates, regardless of protein concentration. The advantage of taking this route is that we avoid amending the legislation, and this route is perfectly valid under Canadian law and solves the problem in a very direct manner. Could someone comment on this?

● (1055)

[English]

Mr. Dean Beyea: If what we're doing by changing an explanatory note is having the effect of changing the tariff rate—in this case, changing it from where it's classified now in chapter 35, under a 6.5% tariff, and moving it to chapter 4, which would classify it under a 270% tariff—and raising the tariff for those products, then that would require a legislative amendment. There's no provision within the tariff to allow the Minister of Finance to recommend such a change.

[Translation]

Mr. André Bellavance: I understand that a number of avenues have been explored. Has the Department of Finance—in fact, I'm

asking the same question I did about section 28—obtained a legal opinion on what you have just told me? Do you have any documentation in support of your statements?

[English]

Mrs. Carol Nelder-Corvari: I want to be as clear as possible here. The customs tariff is the taxing authority; it's tax legislation. If the Minister of Finance chooses to raise taxes, the normal procedure—and it's a basic principle—is that it goes forward as legislation before Parliament.

[Translation]

Mr. André Bellavance: So you do not have a legal opinion on this.

[English]

Mrs. Carol Nelder-Corvari: We're provided legal advice on an ongoing basis on issues such as this. And, yes, we have been provided legal advice that we would have to go forward with legislation if we were going to change the status of milk protein concentration.

The Chair: Is there anyone else?

Madame DeBellefeuille.

[Translation]

Mrs. Claude DeBellefeuille: Since you began testifying for us this morning, I have heard nothing reassuring. The government's philosophy does not seem based on the need to safeguard Canada's dairy farms, or to help them grow. I am quite concerned, because I feel the government does not need to wait for the results of a task force before it introduces a bill in Parliament. Parliament is flooded with bills at the present time. If the government wanted to send a clear signal today to dairy producers to let them know that it considers this sector important and is concerned with furthering its development and stability, the replies might be more encouraging than the ones we heard this morning.

[English]

Mr. Graham Barr: The government has been very clear in its support of supply management, both currently and for the future. We're just here today to provide the facts, including on the process for undertaking some of the options we've been discussing, and also to discuss the possible implications.

The Chair: Great.

Thank you, ladies and gentlemen, for your presentations here today.

Thank you to the committee for all of the great questions.

We will be going ahead with a report that will go back to the House, of course, at the end of this.

I guess, Mr. Satherstrom, you're the only one with some homework. There was one question that you were going to get back to us on with some material. I thank you for that in advance.

That brings this meeting to an end. We stand adjourned.

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