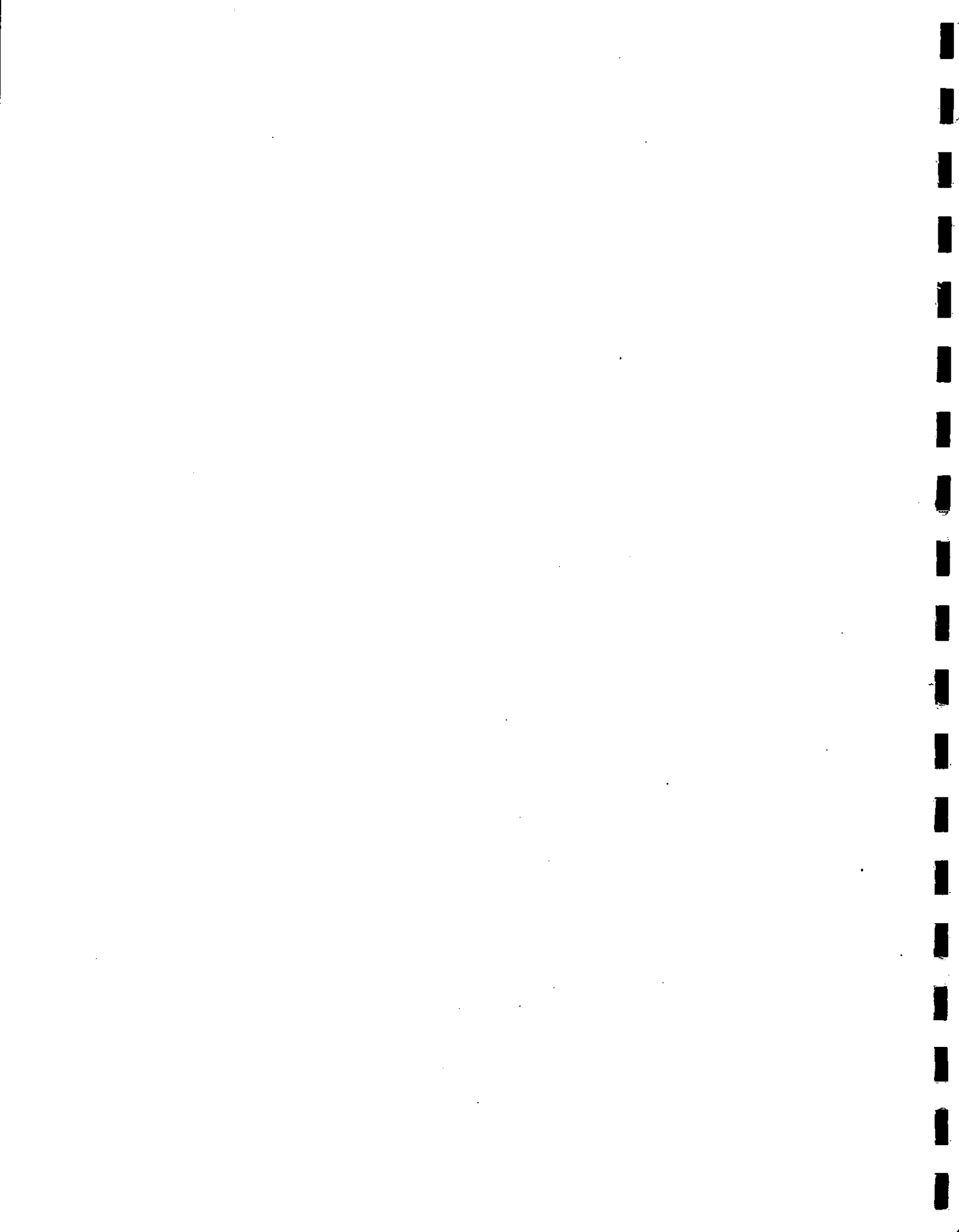


THE CALIFORNIA PROCESSED FRUIT AND VEGETABLE INDUSTRY

**Information for Mediators
of Bargaining Disputes
between Growers and Processors**





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Prepared for the Bargaining Advisory Committee, CDFA,
with the assistance of processors and grower organizations

ISBN: 1-885641-26-5

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Industry Sketches

of Economic Subsectors in which California's Agricultural Producers and First Handlers Bargain Collectively for Terms of Trade

***Purpose:** These sketches of the California processed fruit and vegetable industry were developed by Mahlon G. Lang at the request of the Bargaining Advisory Board, Marketing Branch, California Department of Food and Agriculture for use by mediators or arbitrators who may be asked to conciliate disputes between industry packers and growers' bargaining associations.*

The intent is to provide a brief, easily read document that can be used to quickly develop a basic understanding of the industry and of terminology that is likely to be heard in discussions among growers and packers. The sketches describe key trends affecting the industry, and do not detail the extensive data that is available.

These data can be added to the sketches at the request of growers or packers. The intent was also to be objective in describing the industry. If any party feels that this description is less than objective, the author will readily consider appropriate adjustments.

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The California Apricot Industry

An Overview: Each year, growers and processors of California's canning apricots meet to negotiate price and other terms of trade. The Apricot Producers of California (APC), whose members include over 80 of California's apricot growers, has represented those growers in bargaining since 1961.

The number of growers and packers alike has dropped substantially during the last five decades. As of 1999, there are three major canners; three are concentrate producers, and four are freezers.

Bargaining between grower associations and processors is authorized under the Food and Agriculture Code (Div. 20) of the State of California. The bargaining statute provides a framework to negotiate prices that maintain equity among growers and stabilize relationships between growers and handlers.

The Product: Apricots have five major uses. The share of total production going to each use varies greatly from year to year. During the 1996-1998 period, canning uses accounted for 27 percent to 40 percent of the total, concentrate accounted for about 23 percent to 28 percent of the total, followed by fresh (13%-18%), dried (9%-20%), and frozen (10%-12%) apricots.

A Global Industry: California exports relatively few of its apricots, although some concentrate is exported and dried apricots are exported to Japan. In general, the trend is stagnant. Imports of dried apricots from Turkey are the most formidable source of competition for California apricots.

The U.S. Industry: Although the long-term acreage trend is down, apricot acreage has gradually increased in the last two decades from less than 18,000 acres to more than 20,000 acres. In the same period, yield variation resulted in production as low as 53,000 tons and as high as 132,000 tons.

As indicated in the overview, the principal uses of apricots are for canning and concentrate. As indicated above, the industry is increasingly concentrated with three canners (Tri-Valley Growers, Del Monte, and Pacific Coast Producers) accounting for

virtually all canned apricots. Producers of concentrate include H.J. Heinz, J.R. Wood, and Sabroso. The remaining volume is processed by freezers (Del Mar Food Products, Patterson Frozen Foods, J.M. Smucker Company, and J.R. Wood Company). There were 20 different dryers as of 1998.

Negotiated Volume: Of approximately 250 apricot growers in California, 80 are members of the Apricot Producers of California. These growers average 50 acres of apricots. Of these, many are also members of Tri-Valley Growers (TVG) and the Pacific Coast Producers (PCP), both grower-owned cooperative canners.

All apricots processed by TVG are produced by the cooperative's members. However, PCP has both member product and *cash tonnage*. This volume and all other *processed* volume is the subject of negotiations by the APC. Fresh product prices are not directly affected by negotiations between growers and packers.

Not all independent growers are members of the Apricot Producers of California. However, the terms negotiated by the Apricot Producers with processors are typically used in transactions with all other growers.

Cooperative processors typically account for 70 percent of canning uses. All of the TVG volume and part of the PCP volume is produced by members. Cooperative member production accounts for about 25 percent of the total crop. Fresh uses account for 16 percent of the total crop. Therefore, if

total production were 200,000, and these percentages applied, the cash tonnage over which negotiations take place would be about 132,000 tons. Bargaining association members actually represent about 80 percent to 85 percent of this volume.

Negotiations and Bargaining Year

The Apricot Producers of California do not take title to member fruit. However, non-members benefit from the same terms as those negotiated by the APC.

The association manager conducts market research year-round, planning to offer a price in April, and hoping to reach agreement in May.

Members sign a contract with the APC that commits the association to make its best effort to "find a home" for the members' products. A 3 percent retain by processors for members of the association is used to create a revolving fund. There is a master contract between the association and the processors. A third contract or allocation form signed between the packer and the grower specifies the number of tons to be delivered. Most of these are term contracts ranging from two years to ten years.

Terms of Trade: The focus of negotiations is to determine the base price per ton for apricots. The price depends largely on their uses.

The highest valued apricots are for canning. These are priced on a sliding scale based on percentages of defects or offgrades. For example, in 1997 a grower could have received as much as \$320.00 per ton as long as the off-grade percentage was 9 percent or

less. Greater discounts apply as off-grade percentages rise.

These criteria for offgrades consider size, maturity, damage, worms, mold, or other damage. They remain constant from year to year. Although the criteria are constant, penalties and incentives vary. Minimum size and tolerance levels may vary.

Production volume is clearly a principal determinant of the outcome of negotiations. Total supply, as defined by production, carryover, and imports (which affect some products), affect price.

Apricots for freezing may be discounted from canning fruit prices. During the same period in which canning fruit brought as much as \$320.00 per ton, apricots for freezing commanded \$300.00 per ton for all varieties. In the same year, \$190.00 per ton was negotiated for apricots used in concentrates. No price was negotiated for dried apricots, which faced very difficult foreign competition. The APC does not negotiate prices for fresh fruit.

Supply Management: There is no marketing order for apricots. Supply control is purely market driven in that product will be harvested only if a contract is offered to the grower. In years of excess production, fruit for which processors have not contracted is simply not harvested.

The California Cling (Canning) Peach Industry

An Overview: Each year, growers and processors of California's canning (cling) peaches meet to negotiate price and other terms of trade. The California Canning Peach Association (CCPA), whose members include 560 of California's 700 cling peach growers, has represented those growers in bargaining since 1922.

The number of growers and packers alike has dropped substantially during the last five decades. As growers became fewer and larger, consolidations and industry exits led the number of packers to drop from forty-two in 1952, to seventeen in 1972, to ten in 1998. Of the remaining packers, three account for over 90 percent of industry volume.

Bargaining between grower associations and processors is authorized under the Food and Agriculture Code (Div. 20) of the State of California. The bargaining statute provides a framework to negotiate prices that maintain equity among growers and stabilize relationships between growers and handlers.

The Product: Cling peaches, so named because they "cling" to the stone or seed, are used almost exclusively for canning and less for further processing, which includes freezing, baby food, and juicing. Freestone peaches, so named because their flesh is readily removed from the seed, are used primarily for fresh market sales.

For this reason, this overview deals mainly with "cling" or canning peaches.

A Global Industry: California accounts for over 95 percent of U.S. cling peach production. However, foreign competition is an increasingly important influence on the U.S. industry. In 1995, Greece alone accounted for over half (300,000 tons) of the total volume (540,000 tons) of the five largest producers outside the U.S.

The U.S. Industry: As of 1997, there were about 700 peach producers in California. During the last ten years, bearing acreage has ranged from 28,000 to 31,000 acres, or just over forty acres per grower.

The principal use of cling peaches is for canning. As indicated above, the industry

has become increasingly concentrated with three canners (Tri-Valley Growers, Del Monte, and Pacific Coast Producers) accounting for 90 percent of industry volume in 1998. A new canner, California Fruit Packing Company, entered the business in 1998. The remaining volume is processed by freezers (J.R. Wood, Wawona), baby food producers (Gerber Products Co. and Beech-Nut Nutrition Corporation) and other processors (e.g., Sabroso and La Torre).

Negotiated Volume: Of the 700 cling peach growers in California, approximately 560 are members of the California Canning Peach Association. Of these, many are also members of Tri-Valley Growers (TVG) and the Pacific Coast Producers (PCP), both grower-owned cooperative canners.

As part of their marketing agreements, members of TVG and PCP deliver some or all of their peaches to their cooperatives. Tonnage delivered to TVG and PCP per agreement with their members is called *member tonnage*. All tonnage delivered to TVG and PCP on commercial sales terms,

along with all sales to firms like Del Monte, J.R. Wood, Wawona, and others, is called *cash tonnage*.

While total volumes vary by year, the share of product going to cooperatives and other packers is somewhat predictable. If, for example, industry volume were 500,000 tons, cooperative member tonnage would account for about 200,000 tons. The cooperatives might purchase an additional 110,000 tons from nonmembers. This portion of cooperative purchases would be cash tonnage.

The remaining processors account for 190,000 tons, all of which is cash tonnage. This means that about 300,000 (299,000) cash tons are the immediate subject of cling peach price negotiations.

The CCPA, which takes title to its members' fruit, contracts with member growers to place about 90 percent of the cash tonnage in the industry. In turn, the association contracts with processors. The remaining 30,000 cash tons are sold by growers who are neither members of one of the operating cooperatives nor members of CCPA. Because they benefit from the same terms as those negotiated by the CCPA, nonmembers are sometimes referred to as "free riders." In effect, they are represented by the association without paying membership fees of \$1.50 per contracted ton.

The CCPA typically signs multi-year contracts with processors for delivery of members' fruit.

Bargaining year: Market research is conducted year-round, but the bargaining period typically begins in April. At that time, a sales committee of the CCPA board of directors arranges meetings with processors to discuss factors that will affect the base price of the upcoming crop. Some factors considered include inventory, export sales, planned government purchases, retail sales, retail prices and trends, food service volume,

acreage, and world supply.

At the meetings between the sales committee and the processors, each party presents its interpretation of the market situation. Based on the findings of these meetings, the sales committee develops pricing recommendations for the board.

Typically, the full board is not involved with "across the table" price negotiations. The sales committee is involved in processor negotiations and submits a price for approval by the full board. Ideally, the process is completed in July, prior to the beginning of harvest.

Terms of Trade: The focus of negotiations is to determine the base price of No. 1 cling peaches. A No. 1 cling is a peach greater than 2³/₈ inches in diameter that meets certain quality requirements. Once negotiators agree on the price per ton of No. 1 clings, the price of any ton of peaches is determined by a series of *premiums* and *discounts* relative to varieties and grade levels.

Per ton *premiums* may be paid for early varieties delivered prior to a specified date.

In a recent year, for example, a grower would receive the base price per ton as long as the product included no more than 8 percent offgrade (bruised, green, split, etc.). However, discounts of \$15.00, \$40.00, and \$90.00 per ton respectively, applied when off-grade percentages were in the 8 percent to 12 percent, 12 percent to 15 percent, or over 15 percent ranges.

Supply Management: On four occasions, once in 1981, and three times in the 1990s, the CCPA assessed its members to pay growers for pulling trees out of production. The aim was to reduce what was deemed to be excess production, that is, acreage and associated volume that would drive prices low enough to be destructive to the industry. Such pulling is voluntary and does not prevent subsequent increases in production.

The California Olive Industry

An Overview: Product, Volume and Value. Participants negotiate prices and other terms of trade for five varieties (Manzanilla, Sevillano, Ascalono, Mission, and Barouni) of black olives used in canning or food ingredients (pizza topping, salad bars, and restaurant ingredients). About half of this volume is ultimately sold to retailers and half is sold to food service outlets. As with all other agricultural products, the harvested acres and volumes vary.

Industry Statistics	1998	1997	1995	1993
Farm Gate Value (\$000)	\$42,259	\$63,208	\$ 43,460	\$ 57,752
Acres	35,300	35,300	34,222	32,000
Tons	86,000	99,200	72,900	119,000

As in all industries in which collective bargaining is used, the California olive industry is characterized by a market in which a relatively large number of growers supply fewer and larger (more concentrated) processors. While olive growers have gradually become fewer and larger, olive processors have concentrated at an even faster pace.

Growers

As of 1998 there were about 1,200 olive growers of record in California. Although the average grower farms 25 to 30 acres, there is great variation in the size of producers. The Olive Growers' Council (OGC) represents growers in price negotiations. The OGC has over 300 members whose acreage ranges from 3 acres to 300 acres per member. Member acreage accounts for 25 percent of industry volume.

Processors

The packing sector is concentrated and became more so in 1998. A major independent canner declared bankruptcy and was purchased by another large independent

packer, Musco Olive Products. Two independent black ripe olive canners remain: Bell-Carter Foods and Musco. These account for 85 percent of industry volume. Tri-Valley Growers (Oberti), a cooperative, accounts for 15 percent of the California black ripe olive industry. In fact, California produces nearly 100 percent of all black ripe olives produced in the U.S. Arizona has a few commercial acres on the Gila Bend Indian Reservation. These too are processed in California.

Although TVG is a cooperative, about 70 percent of its purchases are on a cash basis.

Thus, over 95 percent of the black olives processed in California are sold on a cash basis.

Bargaining Year

Processors' preliminary estimate of olive tonnage is usually available about the first of July. A grower estimate is announced the first of August. Negotiations begin between the OGC and processors when the first estimate is announced in July.

Olive processors and other handlers meet individually with the Olive Growers' Council (OGC) to negotiate prices and terms of contract for green fruit harvested and processed as black ripe olives. When OGC reaches agreement on price and terms of trade, both the processors and the OGC make a public announcement of field prices for the current harvest season. Ideally, the negotiation process is completed by the first of September. Harvest traditionally begins about mid-September or earlier, depending upon weather and crop size (lighter crops are harvested earlier).

The OGC has no master contract with olive processors. Processors contract directly with growers for their olives with no price listed. Processors agree to take all the olive

tonnage produced from the contracted acreage. Contracts are generally for a minimum of two years after which they become "evergreen" (they automatically renew unless the grower or processor gives notice to the other that they will terminate the agreement). The window usually occurs during the first ten days of March. Processors pay growers for olives based on prices and terms negotiated between the parties.

Global Markets: International competition, particularly from Spain and Morocco, has a major impact on the California olive industry. Because of the presence of less expensive foreign olives, the California industry has begun to accumulate inventory surpluses. Each year, the tons delivered by foreign sources have a direct impact on the California olive carryover position. Current crop size, carryover, foreign sales into the U.S., and market strength are principal considerations in negotiations and final price agreements.

The California Canning Pear Industry

An Overview: Each year, growers and processors of California's canning pears meet to negotiate price and other terms of trade. The California Pear Growers (CPG), whose members include approximately 80 percent of California's 300 pear growers, has represented those growers in bargaining since 1953.

The number of growers and packers alike has dropped substantially during the last five decades. As of 1999, there are three major canners, two that are cooperatives and one that is investor owned. Five other canners in the northwest (Oregon and Washington) are also customers.

Bargaining between grower associations and processors is authorized under the Food and Agriculture Code (Div. 20) of the State of California. The bargaining statute provides a framework to negotiate prices that maintain equity among growers and stabilize relationships between growers and handlers.

The Product: About one-third of California's Bartlett pear production is sold for fresh and dried uses. The remaining two-thirds are used in canning. Canning pears have two major uses. From two-thirds to three-fourths of canning pears are used in fruit cocktail. The remainder is used as pear halves. The value of the product to packers varies by size and ripeness. Larger pears are worth more to packers because there is less waste in processing. Ripeness is measured by a pressure test that determines whether a pear is too soft.

Pears are classed as No. 1, No. 2, No. 3, or No. 4 by size, and as Class A Pears (by hardness—pressure of 15 ppsi or more) or Class B Pears (pressure of 14.0–14.9 ppsi). Class B is relatively uncommon and not a major consideration in most years.

The U.S. Industry: From 1993 to 1997, the average crop size in California was 286,000 tons. In 1997, the total was 279,555 tons. Of this amount, about 160,000 tons were processed by three primary canners: Tri-Valley Growers, Del Monte, and Pacific Coast Producers. Twenty tons were sent to processors in Oregon, Washington, and British Columbia. It is important to recognize that

this amount can vary substantially from year to year and can be an important factor in negotiations.

The remaining pears are sold for fresh uses and for dried fruit.

Although separate associations negotiate terms of trade for California pears and Northwest pears, the production of both regions is, in some respects, part of the same market. The five-year average for the northwest was 229,000 tons.

Negotiated Volume: About 80 percent of the estimated 300 pear growers in California are members of the California Pear Growers Association. Most are relatively small producers, with less than 40 acres of pears per operation. Of these, some are also members of Tri-Valley Growers (TVG) and the Pacific Coast Producers (PCP), both grower-owned cooperative canners.

Most pears processed by TVG are produced by the cooperative's members, with 10 percent to 15 percent of processed volume counting as cash tonnage. However, virtually all pears handled by PCP are processed for their members. The cash tonnage sold to TVG, along with volume processed by Del Monte, is the subject of negotiations by the

CPG. Fresh product prices are not directly affected by negotiations between growers and packers.

Cooperative processors typically account for about 75 percent of California's canning uses. About 90 percent of the TVG volume is produced by its members who have commitments to the cooperative. As an aid to perspective, in one recent year, TVG processed 100 tons of pears, PCP processed 35

tons, and Del Monte processed 45 tons. Of these amounts, 10 tons processed by TVG and 45 tons processed by Del Monte were cash tons. California Pear Grower member production accounts for about 80 to 90 percent of these cash tons. Pears sold for fresh uses, which are not directly affected by bargaining, account for about 25 percent of the crop.

Negotiations and Bargaining Year

The California Pear Growers do not take title to member fruit. However, nonmembers benefit from the same terms as those negotiated by the CPG.

The negotiation timeline begins by January 15, when a Master Agreement, which details tentative tonnage requirements, is signed by the association and packers. Ideally, a price agreement is reached by June 30. If necessary, conciliation is requested on July 1 and completed by July 30.

Members sign a contract with the CPG that commits the association to make its best effort to place the members' product. The association is funded by a service fee of \$2.00 per ton. This fee is retained by processors on behalf of members of the associa-

tion. A master contract exists between the association and the processors. The association has full rights to market the members' product to whomever it chooses.

Terms of Trade: The focus of negotiations is to determine the base price per ton for canning pears. The price depends largely on their size and hardness.

In general, the highest valued pear is over 2³/₄ inches in diameter and withstands 15 ppsi of pressure. A constant tolerance of 5 percent offgrades is assumed for all sizes and classes.

These criteria for offgrades consider rust, worms, mold, or other damage. They are variable from year to year, as are penalties and incentives. Minimum size and tolerance levels may vary.

Factors in Negotiations

Production volume in California and the Northwest are clearly important determinants of the outcome of negotiations. Total supply, as defined by production, carryover, and imports (which affect fresh products), also affects price. International trade has little effect on canning pear prices, but fresh pears, which are not the subject of negotiations, are imported from South Africa and South America.

Marketing Order—California Pear Advisory Board: There is a marketing order for pears, but it does not affect supply. It can define grades and standards, provide for third-party grading to determine whether these are met, and fund industry promotions. This order is funded by growers. Different rates are charged to growers for canning pears and fresh pears.

The California Prune Industry

An Overview: Bargaining between grower associations and processors is authorized under the Food and Agriculture Code (Div. 20) of the State of California. The bargaining statute provides a framework to negotiate prices that maintain equity among growers and stabilize relationships between growers and handlers.

The Product and Its Uses: Producers negotiate with processor-shippers for the price per ton of dried prunes. Growers are responsible for dehydration and bear this cost. Processors handle, sort, store, add water, pit, and package prunes. Prune size significantly affects value for growers and packers.

Of the total *marketable prunes*, about 40 percent are typically exported. From 60 percent to 70 percent of export sales and about 40 percent of domestic sales are pitted prunes. The second largest use is for juices and concentrates, followed by dried (unpitted) prunes, and then by canning, baby foods, purees, butters, dices, and government uses.

Market Structure: The prune industry, like most food marketing subsectors, is characterized by increasing concentration at the processing and production levels. However, the packing and processing sector is far more concentrated than is production.

Sunsweet Growers, a cooperative that currently accepts only members' prunes, accounts for 52 percent of the prunes produced by California's growers.

All other prune tonnage (not sold by cooperatives) is known as *independent tonnage*.

Some independent tonnage is produced by members of Sunsweet who have *split memberships* in Sunsweet and PBA. The prune acreage marketed through the cooperative is determined by delivery rights acquired by member owners. Members who do not own rights to deliver all of their acreage sell the rest as independent tonnage.

About 40 percent of the total production is handled by six privately held grower-

shippers. Some of these process and ship only their own production. Others produce very little of what they ship.

One publicly held processor acquires all of its prune volume, producing none of its own. This firm accounts for about 7 percent of California's marketings. The remaining 3 percent of sales are conducted by very small, privately held producer-processors.

A Global Industry: The prune industry is global but is concentrated in California, which in a typical year accounts for about 70 percent of world supply (180,000 tons) and exports 40 percent of its production. Other key producers are France, which annually produces 50,000 tons to 60,000 tons, followed by Chile (20,000 tons), Australia (14,000 tons), and Yugoslavia (4,000-5,000 tons).

Growers and Contractual Relationships: The Prune Bargaining Association (PBA) represents growers in negotiations with processors. The PBA has about 200 members who account for 40 percent of the independent tonnage.

In effect, the terms negotiated by PBA and the processor-packers define the terms to all growers. Under the terms of its *contract with members*, PBA receives \$4.00 per ton delivered by PBA growers. The PBA has a *master contract with packers* under which packers agree to pay growers on terms negotiated by PBA. Packers pay a service fee, which in 1998 was \$2.00 per ton for all tons received by the packer. Packers sign *individual contracts* with growers for quantities and other conditions of delivery.

Industry Organizations

The prune industry operates under provisions of marketing orders voted upon the industry by producers and packers. They include (1) the California Prune Board, which uses check-offs for promotion, advertising, and research and advertising costs, and (2) the Federal Prune Marketing

Committee, which defines and enforces industry standards of size and quality. The Marketing Committee also has authority to apply volume control through reserve pooling and green drop provisions. These provisions are not popular and have not been used since 1974.

Crop Year and Bargaining Dates

The crop year for prunes begins on August 1 and ends on July 31. Prune harvest runs from the beginning of August to mid-September. The PBA board and the processors make initial price offers after

volume estimates are issued in June. Price negotiations draw more attention after these announcements. Negotiations are usually completed by mid-August.

Factors Affecting Negotiations

Crop size (production) is the greatest variable in total supply, which includes carryover, production, export demand, and domestic consumption. This is the largest

unknown at the beginning of the bargaining process. The total crop is not known until December, although estimates become more accurate as that date approaches.

The California Raisin Industry

The Product and Its Uses: According to the June 1998 report of the California Agricultural Statistics Service, raisins accounted for 40 percent of California's bearing grape acreage. During the same period, winegrapes and table grapes accounted for 49 percent and 11 percent of the total. Raisin variety acreage is relatively constant, ranging from 266,000 to 271,000 acres from 1988 to 1997.

It is difficult to determine the specific acreage committed to raisin production because the state's category "raisin variety" encompasses those grapes (generally Thompson Seedless) that are used for table consumption, wine, juice concentrate, and raisins. Based upon juice prices offered by the wineries, traditional raisin farmers are now selling substantial Thompson grape acreage for juice purposes. In fact, a "raisin variety" grape grower can easily make a decision to produce raisins or sell to the juice market just prior to harvest. As a result, production of Thompson grapes for juice or raisins can vary significantly.

California raisins are produced, processed, and sold under a federal marketing order. The primary functions of the marketing order are to (1) establish the grades and standards for the industry; (2) oversee the reserve raisins that are not released to packers as "free tonnage" raisins, and (3) Collect proceeds from the sale of these "reserve" tons for the growers.

The "free tonnage," also known as the "trade demand," represents those raisins that are released to packers under a formula established in the federal marketing order.

The trade demand is annually determined by the industry on or before August 15, which is roughly 60 days before the completion of harvest. Growers receive a premium price on the free tonnage percentage of their crop.¹ The free tonnage represents those raisins that are sold and readily available to be marketed by the packers who have established outlets for their product. For this reason, the portion referred to as free tonnage has a more predictable value to growers and packers than does the remainder of the crop. The remainder of the crop is placed in a reserve category that is overseen by the Raisin Advisory Committee. About 34 percent of raisins are sold in retail packs, whereas 66 percent are sold for industrial or ingredient uses.

The 1997 free tonnage was 252,398 tons. These free-tonnage raisins were released to packers as growers delivered their crop. Packers are also able to access raisins from the reserve. In the 52 week period ending on July 31, 1998, total Thompson shipments were 310,004 tons, with 185,745 tons (60%) sold domestically and 124,349 tons (40%) sold to overseas buyers.

In the 52 week period ending on July 31, 1997, total free tonnage was 329,596 tons. Of this amount, 202,517 tons (61.4%) were sold domestically. The remaining 127,079 tons (38.6%) were exported.

The reserve tonnage is released to packers under specific industry programs. The market value of reserve tonnage raisins is less predictable because sales opportunities and volumes are not known in advance.

The Marketing Order and Determination of Free Tonnage

The industry operates under a federal marketing order, voted upon the industry by itself. Growers and packers agree upon

certain marketing rules under which they all will operate in the interest of the industry. The marketing order (1) defines grades and

1. If the trade demand is calculated as 270,000 tons and crop production is 360,000 tons, growers would receive a premium on 75 percent of their crop ($270,000/360,000 = 75\%$).

standards for raisins; (2) defines free tonnage and reserve tonnage; and (3) collects revenues from packers on behalf of growers as reserve tonnage is sold.

The marketing order is implemented by the Raisin Advisory Committee (RAC), which, as indicated, defines the share of the crop to be identified as "free tonnage." Simultaneously, the RAC defines the portion of the crop to be considered "reserve ton-

nage." The RAC uses a complex, but understood and accepted, formula to define free tonnage. It is based upon industry shipments in the last year, crop size, shrinkage, carryover stocks, and "optimal" carryover.

The principal objective of the bargaining process is to determine the price to be paid by processors to growers for "free tonnage." The disposition of "excess" or "reserve" tonnage is overseen by the RAC.

Industry Structure

There are approximately 5,000 raisin growers in California. Of these, about 2,000 are members of the Raisin Bargaining Association, and about 1,400 are members of Sun-Maid, a grower-owned raisin marketing cooperative. The remaining 1,600 growers are termed "independent" growers, because they are not affiliated with RBA or Sun-Maid. However, the terms of trade negotiated by RBA with the packers also determine the amount that independent growers are paid for their raisins.

The June 1998 annual report of the California Agricultural Statistics Service indicates all California raisin varieties cover nearly 270,000 acres. Most industry experts believe that the acreage devoted specifically to raisins ranges from about 160,000 to 200,000 acres. The large swing in acreage is influenced by juice prices and the fact that many raisin growers frequently switch from making raisins to selling to juice buyers, depending on prices. The average raisin

grower's vineyard is 35 acres to 40 acres, with the average total production per grower approximately 75 tons.

There are approximately eighteen packers in the California raisin industry. Packers fall into three categories: a grower-owned cooperative; grower-processors who produce, process, and market raisins; and packers who simply process and market raisins. Sun-Maid, the largest single packer, is a grower-owned cooperative with a nationally recognized brand. Sun-Maid accounts for about 30 percent of industry volume. The largest segment of the industry is composed of grower-packers who buy the majority of their fruit from farmers but produce their own fruit as well. There are six such processors that account for approximately 55 percent of industry volume. The remaining packers are medium to small grower-processors who account for about 15 percent of industry volume.

Contractual Relationships

RBA Master Contract: RBA extends one-year to two-year contracts to packers to whom the Association seeks to sell raisins on behalf of its grower-members. These "signatory packers" rarely vary. Several months before harvest, RBA executes its Master Contract of Sale with the signatory packers. This contract defines the formal terms for

deliveries by members, payments, price offer and settlement terms, and other details that protect the members of the Association. This contract also contains a "most-favored nation" provision that requires all signatory packers to treat members of RBA at least equal (as to payments, bonuses, incentive) to any of their other growers.

Member-Packer Contracts: Individual growers, including members of RBA, sign individual delivery agreements with packers.

These define expected tonnage and conditions of delivery.

RBA Membership Agreement

Growers who are members of RBA also execute a membership agreement. This agreement recognizes RBA as their agent in negotiating the terms of pricing and payment for their raisins. This agreement allows RBA to take title to and receive payment for the members' raisins. In this contract, members agree to have packers retain

1 percent of the negotiated value of free tonnage for payment to RBA. The Association is funded by interest earned on the growers retains and by a \$5.00 per ton service fee paid to the association by packers for every ton delivered to them by RBA members.

RBA Individual Agreement

This agreement is executed between the RBA member and his or her respective signatory packer. The individual agreement, essentially a delivery agreement, discloses approximate tonnage to be delivered, the timing and terms under which the member will be paid, container requirements, loans or advances, and similar details.

Factors Affecting Price Determination: In addition to domestic demand, crop size, costs of production, and carryover by processors, worldwide demand and supply are

critical determinants of the price of raisins. Price negotiations are performed for free tonnage raisins and not the reserve tonnage. The price and utilization of the reserve tonnage is the responsibility of the Raisin Administrative Committee.

California produces approximately 99 percent of the raisins grown in the United States. California produces approximately 40 percent of the world's raisin supply and about 75 percent of its dark raisin production.

The California Walnut Industry

Industry Structure: The in-shell equivalent of California walnut production has averaged about 230,000 tons per year since 1986. With about 5,000 walnut growers in California, this converts to an average of 46 tons of walnuts per grower.

The largest single packer-processor in the state is Diamond Walnut. This grower-owned cooperative typically accounts for 45 percent to 50 percent (100,000–125,000 tons) of walnut production.

“Independent” growers (those who are not members of Diamond, but sell their product to other packers) account for 90,000 to 100,000 tons per year. Some ingredient packers are also growers, producing approximately 30,000 tons per year.

The principal role of the Walnut Bargaining Association (WBA) is to negotiate field price and terms of sale on behalf of these growers. However, some members of Diamond Walnut are also members of the Association. They have an interest in the Association as a provider of industry market information and field pricing information.

A Global Market: Historically, the walnut industry served an in-shell, “bleached” market; nearly half of California production is exported, particularly to Europe. Shelled walnuts are sold primarily in the United

States to food manufacturers and the bakery and confectionery trade.

Developments in the international market are critical. Markets in Europe, Israel, and Japan are important, especially because domestic markets in the United States are flat and because the Peoples’ Republic of China has planted very large quantities of walnuts.

Walnut Bargaining is New: The WBA was created in 1991. Therefore, bargaining is new to the walnut industry. However, the justification for creating a bargaining association in this industry is much the same as its justification in other industries; namely, to bring economic information to bear on transactions, thereby stabilizing prices.

A major related concern of independent growers in the walnut industry is the absence of third-party grading. Because there is no vehicle for independent grading, and because the crop is storable, not all product is priced on delivery. If there is a large supply, producers may deliver their crop to processors without knowing when or where the product will be sold. The crop is then sold by packers on a “consignment-like” basis using packers’ own grades, without grower agreement or knowledge of the specific grade or price program.

Relationships Among Handlers, Growers, and the WBA

A membership agreement authorizes the Association to serve as the member’s agent for the negotiation of price, grade standards, and terms of sale. It also authorizes the association to notify the processor-handler to whom the grower member delivers that a membership assessment is to be taken from the proceeds of the sale. The relationship between the WBA and its members is defined in a membership agreement (contract) that commits to provide information about their production to the WBA. The agreement does not grant title to the WBA.

The relationship between the WBA and first handlers is defined by the Agricultural Fair Practices Act. This Act defines the legal obligation of first handlers to meet at reasonable times and in reasonable places to negotiate terms of trade with the bargaining association to negotiate terms of trade.

The relationship between growers and handlers may be defined in “open-price” contracts. Under these contracts, growers assume an obligation to deliver their tonnage without necessarily knowing what

price will be paid. The role of the Association is to negotiate the terms that will complete this contract. If the Association cannot do so, any product delivered without a field price is delivered, received, processed, and sold by handlers in trade markets, and a field price is then paid to growers.

Industry Organizations: The industry does operate under the provisions of a federal marketing order that is funded by processors. As a processor marketing order, it provides for the grading of finished-product shelled

and in-shell walnuts. It also provides for production research and market development, although not for advertising.

California legislation was used to create the California Walnut Commission. Under the Commission, there are provisions for advertising and promotion in export markets only.

Factors In Negotiations: Principal considerations in negotiations include inventory carryover, domestic and export demand and current supplies, costs of production, and costs of processing.

The California Processing Tomato Industry

Negotiators in the California processing tomato industry found it important to add information about their industry that was not deemed essential by negotiators in other industries. Therefore, the data that follow for the California processing tomato sketch is substantially different both in content and in format than sketches for other industries.

Industry Sketch¹

Objective: To provide conciliator with general overview of industry in which conciliation is sought under the Food and Agriculture Code.

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1. All information in this section is provided by the Agricultural Cooperative Bargaining Associations Advisory Committee.

I. Industry Information

CALIFORNIA TOMATOES FOR PROCESSING

Year	Harvested Acres	Yield	Production (in millions)	Unit Vaule	Total Value (in millions)	Year	Harvested Acres	Yield	Production (in millions)	First Delivery Point	PRICE PER TON		Total Value (in millions)
											Processing Plant Door	Plant Door	
1965	122,800	20.1	2.47	35.40	87.4	1981	206,600	24.0	4.90	50.80	64.70	249.1	
1966	162,500	19.3	3.14	30.00	94.1	1982	232,000	26.5	6.15	55.60	68.50	341.8	
1967	186,700	17.1	3.19	38.70	123.5	1983	233,500	25.5	5.97	53.70	65.70	320.7	
1968	231,300	21.2	4.90	35.20	172.6	1984	239,700	27.5	6.59	52.00	64.80	342.8	
1969	154,000	21.9	3.37	27.20	91.7	1985	217,000	28.1	6.10	51.40	64.10	313.6	
1970	141,300	23.8	3.36	25.20	84.7	1986	210,400	30.8	6.48	51.00	62.20	330.5	
1971	163,700	23.7	3.88	28.00	108.6	1987	214,000	31.3	6.70	46.40	57.20	311.0	
1972	178,900	25.3	4.53	28.00	126.7	1988	226,100	29.0	6.55	48.20	58.90	315.6	
1973	218,000	22.3	4.86	35.00	170.1	1989	276,500	31.1	8.59	55.50	66.30	476.5	
1974	249,900	23.4	5.85	56.80	332.1	1990	310,000	30.0	9.31	55.20	66.30	513.7	
1975	299,200	24.3	7.27	55.60	404.2	1991	312,000	31.7	9.89	52.90	64.70	640.1	
1976	233,800	21.7	5.07	47.40	240.2	1992	240,000	33.1	7.93	46.10	56.40	447.4	
1977	278,400	24.1	6.67	56.10	374.2	1993	274,000	32.7	8.95	48.30	59.10	529.0	
1978	231,900	22.9	5.29	53.80	284.6	1994	311,000	34.6	10.75	50.90	61.00	655.6	
1979	250,000	25.4	6.35	56.70	360.0	1995	317,000	33.5	10.61	54.00	62.30	660.8	
1980	208,300	26.6	5.54	47.70	264.3	1996	313,000	34.1	10.66	—	62.30	664.2	
						1997 (est.)	269,000	34.7	9.34	—	—	—	

U.S. TOMATOES FOR PROCESSING BY STATE 1995-97

State	Acreage Harvested			Yield Per Acre (tons)			Production			
	1995 Total	1996		1995 Total	1996		1995 Total	1996		
		Total	Contract		Total	Contract		Total	Contract	
California	317,000	313,000	310,000	33.46	34.06	34.94	10,606,820	10,660,780	10,540,000	9,400,000
Colorado	180	220	220	10.22	17.72	1.840	1,840	3,900	3,900	—
Indiana	6,700	6,400	6,400	23.50	28.20	26.00	157,450	180,480	180,480	169,000
Michigan	4,500	4,400	4,300	30.00	32.50	34.00	135,000	143,000	138,600	115,600
Ohio	10,400	10,500	10,400	25.93	29.30	28.20	269,670	307,650	304,750	253,800
Pennsylvania	1,400	800	800	26.14	27.88	24.00	36,600	22,300	22,300	26,400
Other States	4,200	3,800	3,700	18.73	23.85	22.90	78,660	90,630	87,780	53,810
Total U.S.	344,380	339,120	335,820	32.77	33.64	34.39	11,286,040	11,408,740	11,277,810	10,018,610

California Tomato Growers Association, Inc.
Delivered, Certified Paid-For
Processing Tomato Tonnage, 1997

Week Ending (1997)	Weekly		Cumulative		1996 Actual Weekly Tons	1996 Net Tons	1995 Net Tons	1994 Net Tons
	Estimate	Actual	Estimate	Actual				
06/14						22,111		
06/21					6,962	29,073		29,378
06/28			6,349	6,575	52,556	81,629	32,376	79,700
07/05	85,375	85,206	91,960	91,781	343,645	425,274	40,812	428,834
07/12	458,764	554,872	550,545	554,872	606,929	1,032,203	111,148	1,186,126
07/19	760,222	764,813	1,315,094	1,319,685	833,787	1,865,990	490,495	2,056,105
07/26	861,211	893,159	2,200,896	2,212,844	870,283	2,736,273	1,201,969	2,963,170
08/02	916,600	916,413	3,129,444	3,129,257	903,650	3,639,923	2,084,655	3,885,861
08/09	934,143	934,682	4,063,400	4,063,939	898,852	4,538,775	3,088,528	4,806,108
08/16	910,648	909,312	4,974,587	4,973,251	931,551	5,470,326	4,090,218	5,727,198
08/23	928,091	923,520	5,901,342	5,896,771	971,666	6,441,992	5,099,744	6,625,563
08/30	914,833	909,270	6,811,604	6,806,041	920,696	7,362,688	6,112,954	7,510,011
09/06	863,162	866,158	7,669,203	7,672,809*	875,037	8,237,725	7,110,875	8,352,130
09/13	786,338	791,295	8,458,537	8,464,104	863,626	9,101,351	8,091,143	9,156,438
09/20	579,443	577,142	9,043,547	9,041,246	764,594	9,865,940	9,045,290	9,891,238
09/27	216,783	222,600	9,258,029	9,263,846	569,150	10,435,090	9,905,829	10,373,127
10/04	62,778	63,911	9,326,624	9,327,757	202,391	10,637,481	10,431,284	10,594,421
10/11	14,483		9,342,240		13,484	10,650,965	10,568,071	10,722,707
10/18					5,471	10,656,436	10,602,491	10,742,378
10/25					2,071	10,658,507	10,605,787	10,743,563
11/01					155	10,658,662		10,745,241
11/08					79	10,658,741		10,745,560

*PTAB adjustment

Updated 10/13/97

Tomatoes and Tomato Products Supermarket Sales Overview

(Food Institute analysis of IRI InfoScan Data)

Category/Flavor	Supermarket Sales (Millions/Dollars)			Physical Volume (Millions/Pounds)		
	1996	1995	% Chng.	1996	1995	% Chng.
Barbeque Sauce	324.70	333.48	-2.63	274.37	279.77	-1.93
Barbeque	324.70	333.48	-2.63	274.37	279.77	-1.93
Canned and Bottled Tomatoes	489.98	460.00	6.52	726.45	705.24	3.01
Cut/Sliced/Diced Tomatoes	134.86	96.56	39.66	163.67	120.38	35.96
Whole Tomatoes	134.06	144.00	6.91	218.75	239.72	-8.75
Stewed Tomatoes	100.75	104.25	-3.35	129.93	137.26	-5.34
Misc. Tomatoes	30.73	31.95	-3.84	41.31	42.59	-3.01
Crushed Tomatoes	89.58	83.24	7.62	172.79	165.29	4.54
Chili Sauce	36.98	33.89	9.11	29.36	28.54	2.87
Chili Sauce	36.98	33.89	9.11	29.36	28.54	2.87
Ketchup	431.35	422.29	2.15	532.66	544.70	-2.21
Ketchup, Regular	430.56	421.60	2.12	531.64	544.01	-2.27
Ketchup, Misc.	0.71	0.43	64.99	0.96	0.50	92.25
Ketchup/Mustard Blends	0.80	0.26	-67.26	0.06	0.19	-70.05
Mexican Sauce and Marinades	762.70	736.39	3.57	374.26	371.37	0.78
Salsa, Medium	197.61	196.77	0.43	94.96	94.80	0.17
Salsa, Mild	192.39	188.85	1.88	91.82	90.54	1.42
Mexican, Misc.	98.89	88.28	12.01	52.32	49.06	6.65
Salsa, Misc.	70.29	44.48	58.02	26.63	17.72	50.28
Picante, Medium	66.48	72.36	-7.62	37.04	41.25	-10.20
Picante, Mild	65.16	69.95	-6.85	35.90	39.82	-9.86
Picante, Hot	24.16	25.95	-6.91	13.08	14.25	-8.18
Salsa, Hot	43.79	47.92	-8.63	20.41	22.68	-10.04
Picante, Misc.	3.57	1.82	96.13	2.10	1.25	68.30
Seafood Sauce	45.31	45.35	-0.09	17.31	17.42	-0.65
Seafood Sauce	45.31	45.35	-0.09	17.31	17.42	-0.65
Spaghetti/Italian Sauce	1,323.47	1,251.41	5.76	1,317.07	1,296.24	1.61
Italian Reg., Misc.	937.38	876.57	6.94	939.92	916.93	2.51
Italian Mushroom Sauce	194.41	189.03	2.85	180.37	183.66	-1.79
Italian Meat Sauce	136.56	137.91	-0.98	154.40	157.14	-1.74
Italian Marinara Sauce	49.39	41.46	19.10	40.10	35.96	11.52
Italian Clam Sauce	5.73	6.43	-10.94	2.28	2.56	-10.97
Taco Sauce	45.48	47.62	-4.50	19.43	21.02	-7.56
Taco, Mild	28.56	29.55	-3.34	12.18	13.05	-6.64
Taco, Medium	11.67	12.09	-3.50	5.07	5.41	-6.20
Taco, Hot	5.09	5.66	-10.10	2.12	2.44	-13.19
Taco, Misc.	0.16	0.31	-50.20	0.06	0.13	-50.74
Tomato Paste/Sauce/Puree	382.71	388.60	-1.52	622.60	633.57	-1.73
Tomato Sauce	249.31	251.44	-0.85	473.76	477.99	-0.89
Tomato Paste	103.94	106.70	-2.59	93.65	98.11	-4.55
Tomato Puree	29.47	30.46	-3.26	55.19	57.47	-3.97
Total	3,842.68	3,719.02	3.32	3,913.49	3,897.87	0.40

Tomatoes and Tomato Products: 1997 Leading Marketers

Food Institute Analysis of 1996 IRI InfoScan data

Company	Percentage of Market
Ragu Foods Company	16.0
Hunt-Wesson	15.8
Private Label	14.2
Campbell Soup Company	10.4
Heinz USA	9.3
Pace Foods, Inc.	6.9
Del Monte Foods	6.0
Frito Lay	6.0
Pet, Inc.	5.4
Kraft USA	5.1
Prince Co.	4.8
Generic	0.2

Source: The Food Institute, Food Markets in Review: Tomato Products—1997

Production of Processing Tomatoes in Selected Countries

Country	1993	1994	1995	1996	1997
	1,000 metric tons				
North America					
United States	8,778	10,471	10,230	10,350	9,344
Mexico	340	350	275	140	200
Total	9,118	10,821	10,505	10,490	9,544
South America					
Brazil	670	878	930	680	1,000
Chile	611	745	902	1,007	886
Total	1,281	1,623	1,832	1,687	1,886
Western Mediterranean					
Italy	3,500	3,500	3,450	4,150	3,500
Greece	1,056 ¹	1,145 ²	1,200	1,340	1,123
Spain	894	1,211	907	1,254	1,100
Portugal	501	865	831	905	910
France	238	277	287	290	295
Total	6,189	6,998	6,675	7,939	6,928
Eastern Mediterranean					
Turkey	1,050	1,225	2,080	1,850	1,700
Israel	205	254	315	256	220
Total	1,255	1,479	2,395	2,106	1,920
Total Mediterranean	7,444	8,477	9,070	10,045	8,848
Grand Total	17,843	20,921	21,372	21,795	20,278

1. Includes approximately 30,000 tons diverted to the fresh market.
2. Includes approximately 20,000 tons diverted to the fresh market.

Source: Horticultural and Tropical Products Division, FAS, USDA

World Production by Region: 1997

(Source: Tomato News)

North America	41.9
AMITRON	39.6
Southern Hemisphere	12.3
Other Northern Hemisphere*	6.2

* Includes Hungary, Bulgaria, Algeria, Morocco, China, and Japan

Source: The Food Institute, Food Markets in Review: Tomato Products—1997

II. Processors-Buyers

1997 FOOD AND AGRICULTURAL CODE

DIVISION 20. PROCESSORS, STORERS, DEALERS, AND DISTRIBUTORS OF AGRICULTURAL PRODUCTS

CHAPTER 6. PROCESSORS OF FARM PRODUCTS

Article 1. Definitions

55401. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

55402. Agent" means any person that on behalf of any processor contracts for or solicits any farm product from a producer of the farm product, or that negotiates the purchase of any farm product on behalf of any processor.

55402.3. Cash" means coin or currency of the United States, and does not include a check or money order.

55402.5. Cash buying processor" means any person who is engaged in the business of processing or manufacturing any farm product; who obtains from the producer of any farm product, title to, or possession or control of the farm product; and who buys or agrees to buy any farm product, by cash payment of the full agreed price of such product to the producer at the time of obtaining possession or control or at the time of contracting for title to, or possession or control of any farm product.

55403. Farm product" includes every agricultural, horticultural, viticultural, or vegetable product of the soil, honey and beeswax, oilseeds, poultry, poultry product, livestock product, and livestock for immediate slaughter. It does not include timber or any timber product, milk or any milk product, any aquacultural product, or cattle sold to any person who is bonded under the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181, et seq.).

55404. Lender" includes any person that advances new value to a processor.

55404.5. Licensee" means any person licensed under the provisions of this chapter as a processor or cash buying processor.

5540 5. "New value" includes any new advance or loan, whether in money or other property, which is made by a lender to a processor. It does not, however, include any extension or renewal of any existing obligation of the processor, nor any obligation which is substituted for such existing obligation.

55406. "Packout basis" means that payment for the farm product is based on the grade or quality of the finished product, as determined at the completion of the processing.

55407. "Processor" means any person that is engaged in the business of processing or manufacturing any farm product, that solicits, buys, contracts to buy, or otherwise takes title to, or possession or control of, any farm product from the producer of the farm product for the purpose of processing or manufacturing it and selling, reselling, or redelivering it in any dried, canned, extracted, fermented, distilled, frozen, eviscerated, or other preserved or processed form. It does not, however, include any retail merchant that has a fixed or established place of business in this state and does not sell at wholesale any farm product which is processed or manufactured by him.

55408. "Producer" means any person that is engaged in the business of growing or producing any farm product.

55409. Juice or must used for wine which, as a condition of sale, is required to be pressed or crushed from grapes in the field or at a facility not owned by the purchasing vintner, is a farm product for purposes of this chapter. Juice or must which was not required to be pressed or crushed from grapes as a condition of a sale, and which is stored for the account of the producer who grew the grapes, is not a farm product when it is sold.

Directory of Tomato Processors

Basic Vegetable Products, L.P.

705 E. Whitmore Ave.
P.O. Box 3659
Modesto, CA 95352
Phone: (209) 538-5450
(209) 538-5437

Campbell Soup Company

Plants

6200 Franklin Blvd.
Sacramento, CA 95824-3499
Phone: (916) 395-5081

Dixon Canning Corporation

P.O. Box 340
Dixon, CA 95620
Phone: (707) 678-4406 (Dixon)
(916) 441-2261 (Sacramento)

Valley Tomato Products, Inc.

760 Industrial Rd.
Stockton, CA 95206-3927
Phone: (209) 982-4586

Colusa County Canning Company

Div. of Red Wing Company, Inc.

Administrative Office

Red Wing/New York

196 Newton Street
Fredonia, NY 10463
Phone: (716) 673-1000

Plant

6229 Myers Road
Williams, CA 95987-9620
Phone: (530) 473-2871

Del Monte Foods U.S.A.

Corporate Office

One Market Plaza
P.O. Box 193575
San Francisco, CA 94119-3575
Phone: (415) 247-3000

Plant #1

4000 Yosemite Blvd.
P.O. Box 576008
Modesto, CA 95357-6008
Phone: (209) 527-3850

Plant #23

1376 Lemen Ave.
P.O. Box 2030
Woodland, CA 95776-2030
Phone: (530) 662-8661

Plant #24

10652 Jackson Ave.
Hanford, CA 93230
Phone: (209) 582-3271

Escalon Premier Brands, Inc.

1905 McHenry Ave.
Escalon, CA 95320-9601
Phone: (209) 838-7341

Harter Tomato Products Company

P.O. Box 1688
Yuba City, CA 95992-1688
Phone: (530) 673-3100

Heinz U.S.A.

Div. of H.J. Heinz Co.

P.O. Box 57
Stockton, CA 95201-3057
Phone: (209) 948-2782
(209) 948-0296

Hunt Foods Co., Div., Hunt Wesson, Inc.

Corporate Office

1645 W. Valencia Dr.
Fullerton, CA 92833-3899
Phone: (714) 680-1000

Plants

16429 W. Kamm
P.O. Box 188
Helm, CA 93627-0188
Phone: (209) 848-7347

554 S. Yosemite Ave.
Oakdale, CA 95361
Phone: (209) 848-7347

1111 E. Covell Blvd.
Davis, CA 95616
Phone: (530) 757-0533

Ingomar Packing Company

9950 S. Ingomar Grade
P.O. Box 1448
Los Banos, CA 93635
Phone: (209) 826-9494

John Potter Dry Yard

(Sundried Tomato Processors)

406 Orange Avenue
Patterson, CA 95363
Office Phone: (805) 772-3111

La Victoria Foods, Inc.

9133 E. Garvey Avenue
Rosemead, CA 91770
Phone: (626) 312-2941

Lipton

Corporate Office

800 Sylvan Avenue
Englewood Cliffs, NJ 07632
Phone: (201) 567-8000

Plants

1785 Ashby Rd.
Merced, CA 95344
P.O. Box 2168
Merced, CA 95341-2168
Phone: (209) 723-8831

1400 Waterloo Rd.
Stockton, CA 95205-3743
Phone: (209) 466-9580

Los Gatos Tomato Products

19800 Gale Ave.
P.O. Box 429
Huron, CA 93234
Phone: (209) 945-2700

Directory of Tomato Processors, continued

Morning Star Packing Co., The**Plants**

13448 Volta Rd.
Los Banos, CA 93635
Phone: (209) 826-8000

2211 Old Highway 99
Williams, CA 95987
Phone: (530) 473-3600

Pacific Coast Producers**Corporate Office**

631 N. Cluff Ave.
P.O. Box 1600
Lodi, CA 95241-1600
Phone: (209) 367-8800

Plants

P.O. Box 880
Lodi, CA 95241
Phone: (209) 334-3352

P.O. Box 32
Oroville, CA 95965
Phone: (530) 533-4311

Patterson Frozen Foods, Inc.

100 E. Las Palmas Ave.
P.O. Box 114
Patterson, CA 95363-0114
Phone: (209) 892-2611

Pictsweet Frozen Foods

Div. of United Foods, Inc.
732 S. Hanson Way
P.O. Box 5878
Santa Maria, CA 93456-5878
Phone: (805) 928-4414

Quality Assured Packing, Inc.

2851 N. Bozzano Rd.
P.O. Box 55308
Stockton, CA 95205-8808
Phone: (209) 931-6700

S K Foods, L.P.

1175 19th Ave.
P.O. Box 160
Lemoore, CA 93245-0160
Phone: (209) 924-6500

San Benito Foods**Div. of Northwest Packing Co.**

P.O. Box 30
Vancouver, WA 98666-0030
Phone: (360) 696-4356

Plant

865 East St.
P.O. Box 100
Hollister, CA 95024-0100
Phone: (408) 637-4434

Stanislaus Food Products

12th and "D" Sts.
P.O. Box 3951
Modesto, CA 95352-3951
Phone: (209) 522-7201

Sun Garden-Gangi Canning Company, Llc**Corporate Office**

2906 Santa Fe
P.O. Box 830
Riverbank, CA 95367
Phone: (209) 869-9300

Plants

2906 Santa Fe
P.O. Box 830
Riverbank, CA 95367
Phone: (209) 869-9300

901 Packers Street
P.O. Box 814
Atwater, CA 95301
Phone: (209) 358-5616

Timber Crest Farms

4791 Dry Creek Rd.
Healdsburg, CA 95448
Phone: (707) 433-8251

Toma Tek, Inc.**Corporate Office**

P.O. Box 876
Vancouver, WA 98666-0876
Phone: (360) 696-0460

Plant

2502 "N" St. & Hwy. 33
Firebaugh, CA 93622
Phone: (209) 659-1601

Tri-Valley Growers**Main Office**

12667 Alcosta Blvd.
P.O. Box 5580
San Ramon, CA 94583-0578
Phone: (925) 327-6400

Plants

2801 Finch Rd.
P.O. Box 3327
Modesto, CA 95353
Phone: (209) 572-5200

3200 E. Eight Mile Rd., RR 2
Stockton, CA 95212
Phone: (209) 931-1531

26200 Nowell Rd.
P.O. Box 108
Thornton, CA 95686
Phone: (209) 794-2303

12045 S. Ingomar Grade
P.O. Box 511
Los Banos, CA 93635-0511
Phone: (209) 827-5000

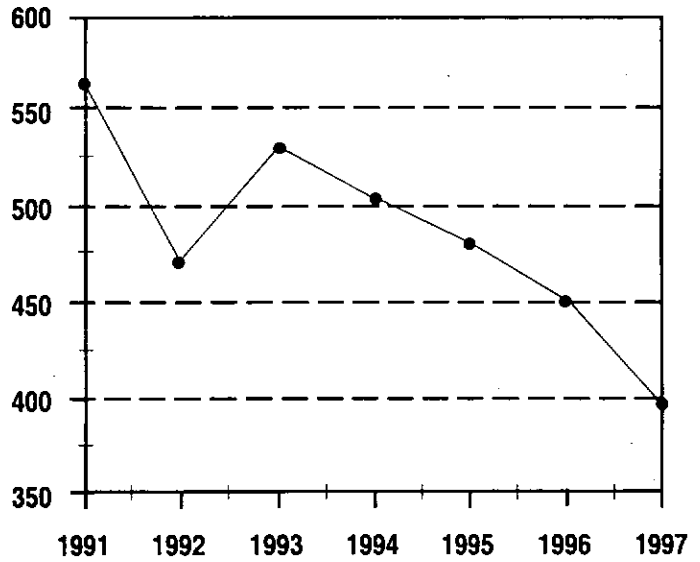
Valley Sun Products of California**Newman Production Facility/****Corporate Offices**

3324 Orestimba Road
P.O. Box 549
Newman, CA 95360-0549
Phone: (209) 862-1200

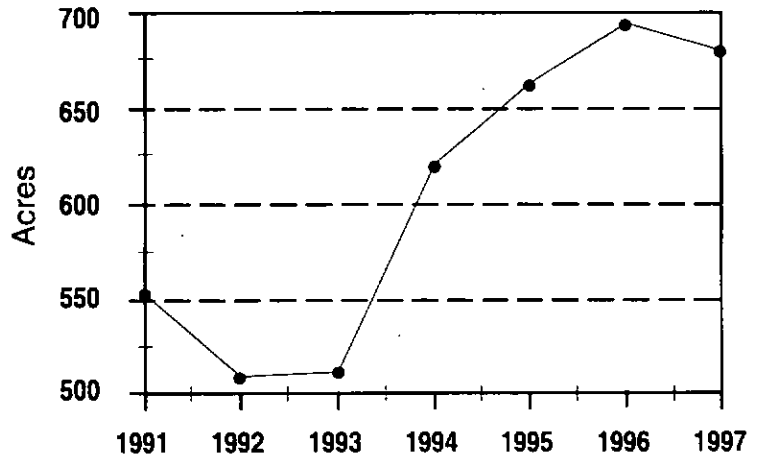
III. Growers-Sellers

Processing Tomato Advisory Board

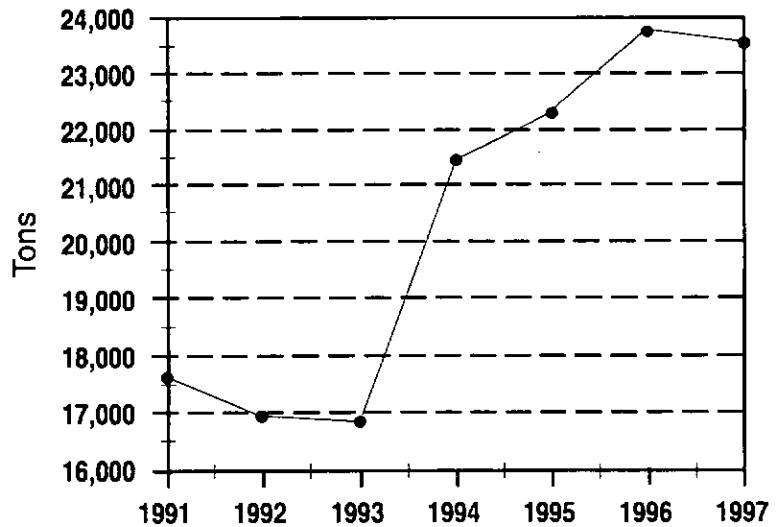
**Number of
Tomato Growers**



**Average
Farm Size**



**Average
Contract Size**



Processing Tomato Production

California's processing tomato production in 1997 was 9.35 million pay tons, a 12 percent decrease from the 1996 production. Harvested acreage is 260,000 acres, down 17 percent from a year earlier. The yields increased 6 percent to 35.96 tons per acre.

TOMATOES FOR PROCESSING

State	Area Planted		Area Harvested		Yield Per Acre		Production	
	1996	1997	1996	1997	1996	1997	1996	1997
	Acres				Tons			
California	318,000	270,000	313,000	260,000	34.06	35.96	10,660,780	9,349,600
Colorado	220	—	220	—	17.72	—	3,900	—
Indiana	6,600	6,400	6,400	6,400	28.20	24.60	180,480	157,440
Michigan	4,600	3,800	4,400	3,800	32.50	32.50	143,000	123,500
Ohio	10,900	9,100	10,500	8,900	29.30	28.39	307,650	252,670
Pennsylvania	1,100	1,200	800	1,100	27.88	24.55	22,300	27,010
Other States ¹	3,950	3,200	3,800	3,170	23.85	19.69	90,630	62,430
UNITED STATES	345,370	293,700	339,120	283,370	33.64	35.19	11,408,740	9,972,650

1. 1996-97: Delaware, Illinois, Maryland, New Jersey, New York, Texas, and Virginia.

CALIFORNIA TOMATOES FOR PROCESSING BY COUNTY, 1997 CROP

County	Contracted and Open Market			
	Area Planted	Area Harvested	Yield Per Acre	Production ¹
	Acres		Tons	
Colusa	22,200	22,000	33.58	738,800
Sacramento	5,300	5,200	33.63	174,900
Solano	14,500	14,400	34.90	502,500
Sutter	16,000	14,700	33.46	491,800
Yolo	52,900	49,200	33.61	1,653,400
Fresno	95,500	92,700	38.41	3,560,800
Kern	2,300	2,000	36.75	73,500
Merced	10,900	10,400	37.40	389,000
San Joaquin	26,600	26,100	34.43	898,600
Stanislaus	13,000	13,000	38.31	498,000
Other Counties ²	10,800	10,300	35.76	368,300
TOTAL	270,000	260,000	35.96	9,349,600

1. On the basis of PAID FOR TONNAGE purchased from growers as reported by processors, dockage not included.

2. To avoid disclosure of individual operations, OTHER COUNTIES includes: Contra Costa, Madera, Monterey, Kings, San Benito, Santa Barbara, Santa Clara, Tulare, and Ventura.

Source: California Agricultural Statistics Service, California Vegetable Review, January 29, 1998

IV. Nonprofit Cooperative Associations

1997 FOOD AND AGRICULTURAL CODE

DIVISION 20. PROCESSORS, STORERS, DEALERS, AND DISTRIBUTORS OF AGRICULTURAL PRODUCTS

CHAPTER 1. NONPROFIT COOPERATIVE ASSOCIATIONS

Article 1. Definitions

54001. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

54002. "Association" means any corporation which is organized pursuant to this chapter. An association shall be deemed incorporated pursuant to this chapter, or organized pursuant to this chapter and shall be deemed a producer of a product within the meaning of this chapter, if it is functioning under, or is subject to, the provisions of this chapter, irrespective of whether it was originally incorporated pursuant to such provisions or was incorporated under other provisions.

54003. "Member" includes members of associations without capital stock and holders of common stock in associations which are organized with shares of stock.

54004. "Product" includes any horticultural, viticultural, aquacultural, forestry, dairy, livestock, poultry, bee, or farm product.

Article 2. General Provisions

54031. The purpose of this chapter is to do all of the following:

(a) Promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation.

(b) Eliminate speculation and waste.

(c) Make the distribution of agricultural products between producer and consumer as direct as can be efficiently done.

(d) Stabilize the marketing of agricultural products.

54032. The following are all here recognized:

(a) Agriculture is characterized by individual production in contrast to the group or factory system that characterizes other forms of individual production.

(b) The ordinary form of corporate organization permits industrial groups to combine for the purpose of group production and the ensuing group marketing, and the public has an interest in permitting farmers to bring their industry to the high degree of efficiency and merchandising skill evidenced in the manufacturing industries.

(c) The public interest urgently needs to prevent the migration from the farm to the city in order to keep up farm production and to preserve the agricultural supply of the nation.

(d) The public interest demands that the farmer be encouraged to attain a superior and more direct system of marketing in the substitution of merchandising for the blind, unscientific, and speculative selling of crops.

54033. Associations which are organized pursuant to this chapter are "nonprofit," since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.

54034. Any provisions of law which are in conflict with this chapter do not apply to any association which is provided for in this chapter.

54035. Any exemption under any existing law which applies to any agricultural product in the possession, or under the control, of the individual producer, shall apply similarly and completely to such product which is delivered by its farmer members that are in the possession, or under the control, of the association.

54036. A person, firm, corporation, or association, that is hereafter organized or doing business in this

Article 2 (54036), continued

state, may not use the word "cooperative" as part of its corporate name or other business name or title for producers' cooperative marketing activities, unless it has complied with this chapter.

54037. Any corporation or association which is organized pursuant to previously existing statutes for the purpose of cooperatively marketing products as defined in this chapter or under Title 23 (commencing with Section 653aa), Part 4, Division 1 of the Civil Code shall be deemed to be organized and existing pursuant to, and by virtue of, this chapter, and all of the provisions of this chapter, and any of the restrictions and benefits of such provisions, shall apply to such corporation.

54038. Any association which is organized pursuant to this chapter is not any of the following:

- (a) A conspiracy, a combination in restraint of trade, or an illegal monopoly.
- (b) An attempt to lessen competition, to fix prices arbitrarily, or to create a combination or pool in violation of any law of this state.

54039. The marketing contracts and agreements between an association which is organized pursuant to this chapter and its members and any agreements authorized in this chapter are not illegal, in restraint of trade, or contrary to any statute which is enacted against pooling or combinations.

54040. The General Corporation Law (Division 1 (commencing with Section 100) of Title 1 of the Corporations Code) as added by Chapter 682 of the Statutes of 1975 and as heretofore or hereinafter amended and all powers and rights under such law applies to each association which is organized pursuant to this chapter, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter. For the purpose of associations organized without shares of stock, the members shall be deemed to be "shareholders" as the term is used in the General Corporation Law.

54041. (a) Subject to subdivision (c), Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure does not apply to any proprietary interest in an association organized in accordance with this chapter. Any proprietary interest that would otherwise escheat to the state pursuant to Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure shall instead become the property of the association.

(b) This section shall apply to all proprietary interests which as of January 1, 1988, have not yet been paid or delivered to the Controller pursuant to the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

(c) Notwithstanding subdivision (a), no proprietary interest shall become the property of the association under this section unless all of the following requirements are satisfied:

(1) At least 60 days prior notice of the proposed transfer of the proprietary interest to the association is given to the affected member by first-class or certified mail to the last address of the member shown on the association's records, and by publication in a newspaper of general circulation in the county in which the member last resided as shown on the association's records. Notice given in that manner constitutes actual notice.

(2) No written notice objecting to the transfer is received by the association from the affected member or, if the member is deceased, from the member's heirs or the executor or executrix of the estate, prior to the date of the proposed transfer.

(d) "Proprietary interest" means and includes any membership, membership certificate, membership share, share certificate, or equity or dividend certificate of any class representing a proprietary interest in, and issued by, the association together with all accrued and unpaid earnings, dividends, and patronage distributions relating thereto.

54042. (a) An association organized pursuant to this chapter may request the board of supervisors of the county in which the association's principal place of business is located to issue a certificate stating that the association meets the requirements of subdivision (b). When the certificate is provided by the board of supervisors to the association, the Franchise Tax Board shall exempt the association from the minimum franchise tax as provided in paragraph (2) of subdivision (c) of Section 23153 of the Revenue and Taxation Code.

**Membership Agreement of
California Tomato Growers Association, Inc.**

THIS AGREEMENT, made this _____ day of _____, 19____, between CALIFORNIA TOMATO GROWERS ASSOCIATION, INC., a nonprofit cooperative association organized under the Agricultural Code of the State of California ("the Association") and _____

a producer of processing tomatoes (Member) to establish the following terms and conditions for the member's membership in the association.

1. **Consideration.** This agreement is made by Member in consideration of the execution of similar membership agreements by other producers of tomatoes situated throughout the State of California, and in consideration of the services to be performed by the Association as hereinafter set forth.

2. **Term.** It is mutually agreed that the Membership Agreement shall be effective from the date of this agreement until the end of the _____ calendar year; provided, however, that the Membership Agreement shall be automatically renewed and extended from time to time thereafter for additional periods of two calendar years each until terminated in accordance with paragraph 9 of this Membership Agreement.

3. **Association Approval or Release of Contracts.** It is mutually agreed that Member shall not sell or enter into any agreement to sell any processing tomatoes during the term of this Agreement except pursuant to a written contract which contains the minimum prices and terms approved by the Association; provide, however, that in the event the Association has not negotiated and approved the minimum price or other terms for the sale of processing tomatoes to a processor, and further provided that the Association does not have membership agreements similar to this Agreement with growers who produced fifty percent or more of the processing tomatoes which were sold to proprietary processors during the preceding year as determined by the Board of Directors of the Association, then the Member may submit to the Association a written contract or agreement that the Member desires to accept for the sale of Member's processing tomatoes to such processor, and the Member shall thereafter be released to sign the contract or agreement so submitted without further approval of the Association.

4. **Services of Association.** Association, as the exclusive bargaining Agent for Member, shall have the exclusive authority, right and power during the term of this Contract, without taking title, to establish and fix (including the authority to change and amend) and to approve the minimum terms and conditions of sale or of the contract of sale of all the processing tomatoes produced by or for Member and other members who have executed contracts similar to this one, and the minimum terms and conditions of sale of the contract of sale shall be fixed and established and approved by Association in such form and manner and at such price as Association deems for the best advantage of all members who have signed such similar contracts. Association shall during the term of this Agreement perform its services for Member to the best of its ability under economic and marketing conditions from time to time existing. In performing the bargaining service herein specified, Association shall solicit for and on behalf of its members contracts which it will approve with the greatest possible number of processors of processing tomatoes and brokers thereof, and diligently attempt to procure the largest possible market for the Member's processing tomatoes.

5. **Provision for Agency Member.** Association agrees that as of the date hereof, at the option of the Member, exercised in writing at the bottom of this Agreement, it will not disclose member's membership in the Association other than to the Executive Committee of the Board of Directors and to the Executive Vice President and his or her assistant without the prior written consent of Member, except (1) in the event of a violation by Member of his or her obligations under this Agreement, or (2) in the event the Association is served by an order of a court or of an administrative agency of the federal or state government directing the Association to disclose such membership. The Agency member shall be entitled to exercise all of the rights of a member and shall be required to perform all of the duties and obligations of a member, with the exception of those exceptions that are specifically set forth herein.

6. **Association Dues.** The undersigned hereby represents that he is a member of the California Tomato Growers Association, a nonprofit agricultural cooperative association engaged in marketing processing tomatoes, and as such is obligated to pay membership dues to it as established by the Association. Grower hereby advises the processor to whom he sells his tomatoes for processing that he has assigned to the Association from money due to him by processor as payment for his processing tomatoes the amount of such dues. Pursuant to Section 58451 of the California Food and Agricultural Code, processor is hereby directed to deduct a sum for such dues per ton from the money to be paid by processor for processing tomatoes sold by grower to processor and to pay the same promptly over to the Association as assignee. Grower hereby represents that this assignment and direction to processors shall remain in effect and processor may rely upon it and upon the written representation

Membership Agreement, continued

of the Association with respect to the amount of dues which grower is obligated to pay to it for each harvest season unless and until grower notifies processor in writing that this assignment and direction is no longer in effect:

Provided, however that if grower has elected to be an Agency Member pursuant to paragraph 5 hereof, he is not required to execute such assignment to the processor but hereby agrees that he will promptly upon the sale of his produce, notify the Association of such sale and shall pay to the Association such dues per ton as are established by the Association.

7. Other Services. Association shall, to the best of its ability, furnish to its members such other services in the nature of information, data and statistics pertaining to production, marketing and utilization to tomato crops as may from time to time be currently available.

Association shall represent Member and other members in matters relating to the improvement of conditions respecting the production, marketing, utilization and grading of canning or processing tomatoes.

8. Grade Tag Information. Member hereby authorizes the Association to have access to grade tag information in the possession of the Processing Tomato Advisory Board relating to the inspection of Member's tomatoes by the Board for each harvest season for the duration of this Membership Agreement and does hereby request the Board to make such information available to the Association.

9. Member's Right of Withdrawal. Member may file with the Association on or before November 1 of the last year of the then current period that this Agreement is in force, a written notice of withdrawal and the Association shall thereupon give a written release to Member and thereupon this Agreement shall be cancelled as to member with respect to all succeeding years of the contract period, and the Association is given the reciprocal right to give written notice to Member at any time during the month of March in any of said years of its desire to withdraw from the Agreement, and thereupon this Agreement shall be cancelled as to Member with respect to all succeeding years of the contract period.

10. Duty of Member to Comply with Articles of Incorporation and Bylaws. Member shall comply with and abide by the provision of the Articles of Incorporation and the Bylaws of Association and all amendments thereto that may from time to time be hereafter adopted, and all rules and regulations that may from time to time be adopted by the Board of Directors of Association.

11. Bylaws Acceptance and Approval. Inasmuch as the signature of the original Bylaws adopted by the Association and by each and all of its members would be difficult and impracticable, Member hereby agrees with Association that by the execution of correct copy of the Bylaws of the Association and does hereby give his full assent to and approval thereof, with like force and effect as if Member's signature had been affixed to the original of said Bylaws.

12. Information from Member. At such times as Association may request during the term of this Contract, Member shall promptly notify Association in writing of the location of his tomato crop, the number of acres planted to tomatoes, the varieties of tomatoes planted, his estimated production, and such other information as the Association may deem necessary.

13. Arbitration and Damages for Breach. It is mutually agreed that any unresolved dispute or controversy arising out of or relating to the Membership Agreement or any breach thereof, shall be submitted to and settled by arbitration in accordance with the rules of the American Arbitration Association, and that the decision and award of damages, if any rendered by the arbitrator shall be binding and conclusive on all parties. It is further agreed that any sale or agreement to sell processing tomatoes by the Member contrary to the provisions of the Membership Agreement, would cause material damage to the Association and its members and that the actual amount of such damages would be impracticable or extremely difficult to determine. Accordingly, Member shall pay to the Association an amount of liquidated damages as agreed to between the Association and the member, or as awarded by the arbitrator, which liquidated damages shall not exceed a maximum of twenty-five percent of gross sale proceeds from any sale or agreement to sell processing tomatoes by the member contrary to the provision of the Membership Agreement.

14. Breach or Cancellation of Other Contracts. The breach or cancellation of a similar bargaining contract or contracts entered into by Association with one or more other members shall in no manner impair or affect the obligations under this Agreement, or the mutuality of interests hereunder created.

15. Successors and Assigns. This Agreement shall bind the heirs, administrators, successors and assigns of the respective parties hereto. Therefore, no sale, transfer, lease or other conveyance of land by member for the purpose of evading directly or indirectly his obligations hereunder shall discharge any obligations herein created.

Membership Agreement, continued

16. **Counterpart Execution.** This Agreement and all similar agreements executed by other members shall be deemed counterparts of one and the same contract, by each member shall be severally liable for the full performance of the contract signed by him. This Agreement shall not be effective for any purpose unless and until the execution and delivery hereof by the Association shall have been authorized or ratified by the Board of Directors of the Association.

17. **Partnership Member.** If this Agreement is signed by a member or the members of a co-partnership, it shall apply to them and to each of them individually in the event of a dissolution or termination of said co-partnership.

18. **Bona fide Transfers.** In case of a bona fide transfer made by Member during the term of this Agreement of all or any portion of the land upon which the products subject to his Agreement are produced, all products produced upon the lands so transferred shall be delivered subject to this Agreement during, but no beyond, the calendar or crop year in which such transfer shall have been made, and such transferee shall be obligated to deliver said products hereunder. If the transferee shall fail to deliver said products, Member shall pay to the Association liquidated damages as herein provided with respect to all products not so delivered by such transferee, and in addition, the Association shall have any other remedy given to it by law or by this agreement.

19. **Performance Excused.** In the event the Association is prevented in any year from performing the terms of this Agreement by strikes, injunctions or the orders of any officer or regulatory body of any governmental agency having jurisdiction in the premises, it shall be excused from such performance, and Member, in such case, shall have no right of damages against the Association.

20. **Exclusive Agreement.** The parties hereto agree that there are no oral or other promises, conditions, covenants, representations or inducements in addition to or in variance with any of the terms hereof and that this Agreement represents the voluntary and full understanding of both parties.

21. **Governing Law.** The terms of this Agreement shall be construed in accordance with the laws of the State of California.

22. **Notices.** All notices herein provided for shall be deemed to have been given to the Association when mailed, first class, postage prepaid, to its office in Stockton, California, and to Member when mailed, first class, postage prepaid, to his address as noted herein, or such other address as may from time to time be furnished in writing by either party to the other.

CALIFORNIA TOMATO GROWERS
ASSOCIATION, INC.

MEMBER

By: _____
Date: _____

Name of Member _____
Address: _____

Organized as: Individual _____
Partnership _____ Corporation _____
By: _____

The following is to be executed by a member if he/she elects to be an Agency member:

Pursuant to the provisions of paragraph 5 above member hereby elects to become an Agency Member.

ALIFORNIA TOMATO GROWERS
ASSOCIATION, INC.

MEMBER

By: _____
Date: _____

By: _____

MASTER AGREEMENT — 1998 TOMATO PURCHASES

THIS AGREEMENT is entered into by and between the CALIFORNIA TOMATO GROWERS ASSOCIATION, INC. ("Association"), a cooperative association organized under the Food and Agricultural Code of the State of California, and Canner, to establish the following terms and conditions for the purchase of tomatoes by Canner from Bargaining Members of the Association during the term hereof.

1. **Definitions.** The following terms as used in this Agreement shall have the meaning set forth below:

(a) **Association Member** - A producer of tomatoes who is a member of the Association during the term of this Agreement.

(b) **Bargaining Member** - An Association Member who authorizes the Association to bargain for him concerning the price and other terms for the sale of tomatoes produced by such Member.

(c) **Tomato Contract** - Any agreement by which Canner purchases or agrees to purchase tomatoes from a Bargaining Member.

(d) **Acreage Contract** - A Tomato Contract which requires Canner to purchase all of the Net Tons of tomatoes produced and harvested by a Bargaining Member from the acreage or land described in the Tomato Contract.

(e) **Tonnage Contract** - Any Tomato Contract which limits or restricts the total quantity of tomatoes to be purchased by Canner on any basis other than the total Net Tons of tomatoes produced and harvested by the Bargaining Member on the acreage or land described in the Tomato Contract.

(f) **Gross Tons** - The total tons of tomatoes before any rejection and/or deduction for quality or other defects.

(g) **Net Tons** - The Gross Tons of tomatoes which remain after the rejections and/or deductions for quality defects in accordance with the standards set forth in this Agreement.

(h) **Base Price** - The base price set forth in the attached Price Schedule which is to be paid by Canner for each of the Net Tons of tomatoes purchased from a Bargaining Member.

(i) **Premium Payments** - The premium payments set forth in the attached Price Schedule which are to be paid by Canner in addition to the Base Price for all of the Net Tons of tomatoes purchased from a Bargaining Member under the conditions described for such payments.

(j) **Week** - A period of seven consecutive days beginning on Sunday and ending on the following Saturday.

(k) **Weekly Delivery Schedule** - Any schedule or limitation in a Tomato Contract which restricts the Gross Tons or Net Tons of tomatoes to be delivered by a Bargaining Member or purchased by Canner during any Week or similar time period to any quantity less than the total Gross Tons or Net Tons to be purchased under the Contract.

2. **Term.** The term of this Agreement shall be from the date of its execution through December 31, 1999.

3. **Third-Party Beneficiaries.** Canner acknowledges that Association is the authorized agent to bargain for its Bargaining Members concerning the price and other terms of sale of tomatoes produced or sold by such Bargaining Members. Association and Canner declare that each Bargaining Member is a third-party beneficiary of this Agreement, and that the Association is a proper party-in-interest to any Tomato Contract with any Bargaining Member.

4. **Price Discrimination.** Canner agrees that it will not discriminate against any Bargaining Member with respect to the price or other terms of purchase of tomatoes by Canner and that Canner will offer to purchase tomatoes from Bargaining Members at equally favorable prices and economic terms as offered by Canner at that time to other tomato producers. Canner agrees that in determining whether there has been any such discrimination, the calculation of the price paid by Canner for tomatoes shall include the reasonable value of any (a) bonuses, (b) premiums, (c) hauling or loading allowances, (d) deferred payments and (e) other expense or special services which are provided by Canner to such other tomato producers.

5. **Quantity Discrimination.** Canner agrees that it will not discriminate against any Bargaining Member with respect to the quantity of tomatoes purchased by Canner. Canner further agrees that it will offer to purchase from Bargaining Members substantially the same percentage of Canner's total tomato purchases during the term of this Agreement as the percentage of Canner's total tomato purchases which were made from Bargaining Members during the immediately preceding crop season. In determining such discrimination in the quantity of purchases, the calculation of the percentage of such purchases shall be based upon the quantity of tomatoes which are purchased by Canner during each of the respective years at substantially the same or higher prices and terms than those agreed to between Canner and Association.

6. **Tomato Purchases from Members.** All Tomato Contracts by which Canner purchases or agrees to purchase any tomatoes produced or sold by a Bargaining Member during the term thereof, shall be in writing, shall

Master Agreement, continued

provide for payment to the Bargaining Member at the Base Price, Premium Payments and other terms set forth in this Agreement, and shall incorporate by specific reference all of the provisions of this Agreement. The total quantity of Gross Tons or Net Tons of tomatoes to be purchased by Canner under a Tomato Contract with a Bargaining Member shall be negotiated with and mutually agreed to between Canner and the Bargaining Member. The price and all other terms or conditions of any Tomato Contract with a Bargaining Member (including any amendment or rider thereto) which are contrary, directly or indirectly, to the provisions of this Agreement, shall be void and of no force or effect. Any other conditions of Canner's Tomato Contract shall remain in effect provided that such conditions do not relate to or result in any deduction or penalty to the Bargaining Member.

7. **Premium for Bins.** Canner acknowledges and agrees that a greater expense and inconvenience is required to harvest and handle tomatoes in bins as opposed to bulk trailers. Canner shall therefore pay a premium as set forth in the attached Price Schedule for all tomatoes which Canner requires a Bargaining Member to harvest or handle in bins.

8. **Premium for Special Variety or Harvest.** Canner acknowledges and agrees that a greater risk and expense is incurred in producing a tomato variety which has not been established as adaptable to the geographical area where such tomatoes are to be produced, and in harvesting tomatoes by hand or other special means. Canner shall therefore pay a premium as set forth in the attached Price Schedule for all tomatoes which Canner requires Bargaining Member to produce in a variety that Canner and Bargaining Member agree is experimental or unproven, or which Canner requires Bargaining Member to harvest by hand or other special harvesting means.

9. **Purchase of Seed.** Any Tomato Contract with a Bargaining Member which specifies a tomato variety to be produced under the Tomato Contract, shall provide that the Bargaining Member may select the seed from any established and reputable seed supplier which is consistent with the specified variety or with Canner's approved list of varieties.

10. **Minimum Tons in Tonnage Contract.** Any Tonnage Contract which requires or otherwise provides for a Bargaining Member to produce or harvest the tomatoes to be purchased on a minimum acreage or quantity of land, shall also require or otherwise provide for Canner to purchase a minimum Net Tons of tomatoes computed on the average yield of the Bargaining Member on such acreage or land during the preceding five years or less. In determining such average yield, a nonrepresentative high or low yield in any one year which is caused by unusual factors shall not be considered.

11. **Weekly Delivery Schedule.** Any Tomato Contract which limits or restricts the total Gross Tons or Net Tons of tomatoes to be delivered by a Bargaining Member and/or to be purchased by Canner during any Week or similar period, shall provide a Weekly Delivery Schedule with a minimum weekly delivery consistent with the normal practices in the area of production and as mutually agreed to between the Bargaining Member and Canner.

Canner shall not enter into contracts for the purchase of tomatoes under Weekly Delivery Schedules which when combined would exceed Canner's reasonable plant production capacity for that week.

12. **Adjustment of Delivery Schedule.** Canner acknowledges that uncertain weather and growing conditions render it extremely difficult to predict the dates when the tomatoes will mature, and that any Weekly Delivery Schedule in a Tomato Contract is only an estimate of the periods when the tomatoes are likely to be suitable for harvesting and delivery to Canner under average growing conditions in the area of production. Accordingly, Canner agrees to adjust the Weekly Delivery Schedule to accommodate the delivery of tomatoes from a Bargaining Member in excess of his Weekly Delivery Schedule, provided that such adjustment would not restrict the delivery of tomatoes by other growers capable of delivering their scheduled weekly tonnage. If Canner adjusts the Weekly Delivery Schedule to accommodate the delivery of such excess scheduled tonnage, Canner may also adjust the tonnage to be delivered in subsequent weeks on a proportionate and reasonable basis.

13. **Containers.** Canner shall provide without rental or other charge to each Bargaining Member having a Tomato Contract with Canner, a sufficient number of containers for the scheduled harvest and handling of the tomatoes to be purchased from such Member. All such containers shall be delivered by Canner in good condition and repair, and shall be handled with care by such Member and returned to Canner in like condition upon completion of harvest.

14. **Delivery of Tomatoes.** The Bargaining Member shall be responsible for the harvest of the tomatoes subject to a Tomato Contract into containers, and the delivery of such containers to the designated staging area for the harvest field. Canner shall be responsible for all further transportation and delivery of such tomatoes from the designated staging area to the inspection station and to Canner's processing facilities.

Master Agreement, continued

15. **Canner Remaining Open.** Canner shall continue to operate its tomato processing facilities and accept tomatoes produced under a Tomato Contract with a Bargaining Member as long as tomatoes remain to be harvested under such Tomato Contract which meet the quality standards set forth in this Agreement, and a sufficient volume of tomatoes are still available which will allow Canner to operate its processing facilities with reasonable economic feasibility.

16. **Inspection of Tomatoes.** All tomatoes subject to a Tomato Contract shall be weighed and inspected by the State of California, Processing Tomato Advisory Board, at an appropriate facility within the immediate geographical area where such tomatoes were produced. If an appropriate facility does not exist within such immediate production area, the tomatoes may then be weighed and inspected at an appropriate facility which is most convenient to the Bargaining Member and Canner. Canner acknowledges that the quality of tomatoes deteriorate rapidly after harvest. Accordingly, time is of the essence in the prompt transportation and inspection of the tomatoes in accordance with the provisions of this Agreement.

17. **Reject Standards.** No load of tomatoes subject to a Tomato Contract with a Bargaining Member may be rejected by Canner for any reason other than the following:

(a) The inspection of the tomatoes by the State of California, Processing Tomato Advisory Board, in its standard grading practice identifies one of the following quality defects:

(1) Mold in excess of 5% of the Gross Tons weight of the load. This percentage may be reduced by prior written notice from Canner if necessary for Canner to process an acceptable finished product; provided, however, that if Association believes that such reduced percentage is used by Canner to restrict the volume of deliveries, Association may by written notice to Canner require the percentage to remain at 5%.

(2) Worm damage in excess of 1% of the Gross Tons weight of the load.

(3) Grass green in excess of 4% of the Gross Tons weight of the load.

(4) Material other than tomatoes in excess of 3% of the Gross Tons weight of the load.

(5) Agtron color reading in excess of the level established by the Director of Food and Agriculture.

(b) The inspection of the tomatoes establishes a chemical residue or improper use of agricultural chemicals which exceed that set forth in the Tomato Contract and prevents Canner from processing an acceptable finished product in compliance with any State and/or Federal regulation.

(c) The Bargaining Member shall be responsible for payment of 100% of the State inspection fee for all rejected loads.

18. **Deduct Standards.** No load of tomatoes subject to a Tomato Contract with a Bargaining Member may be deducted, penalized or otherwise reduced in net weight or price for any reason other than the following quality defects as identified by the State of California, Processing Tomato Advisory Board, in its standard grading practice:

(a) Material Other Than Tomatoes - A deduction may be made from the Gross Tons weight of the load of tomatoes equal to three times the percentage of material other than tomatoes (MOT) identified in the load.

(b) Limited Use - A deduction may be made from the Gross Tons weight of a load of tomatoes equal to the following percentage of tomatoes identified in the load as being of limited use, provided that the tomatoes are inspected within eight hours of the time the load was available for delivery at the Bargaining Member's staging area, and further provided that the Bargaining Member was allowed during the preceding two weeks to deliver all tomatoes under his Weekly Delivery Schedule:

(1) When 5% or less, no deduction.

(2) When 5½% to 8%, a deduction equal to the actual percentage of limited use in excess of 5%.

(3) When 8½% to 14%, a deduction equal to one and one-half the percentage of limited use in excess of 5%.

(4) When 14½% or more, a deduction equal to twice the percentage of limited use in excess of 5%.

(c) Grass Green - A deduction may be made from the Gross Tons weight of a load of tomatoes equal to the following percentages of tomatoes identified in the load as grass green:

(1) When 2% or less, a deduction equal to the actual percentage of grass green.

(2) When 2½% or more, a deduction equal to two times the percentage of grass green.

(d) Mold - A deduction may be made from the Gross Tons weight of a load of tomatoes equal to the actual percentage of the tomatoes identified in the load as having mold.

(e) Worms - A deduction may be made from the Gross Tons weight of a load of tomatoes equal to the

Master Agreement, continued

actual percentage of the tomatoes identified in the load as having worm damage.

19. **No Other Reduction.** No rejection, deduction, penalty or other price or weight reduction may be made by Canner on the tomatoes subject to a Tomato Contract with a Bargaining Member other than those expressly set forth in this Agreement.

20. **Assignment of Dues.** Canner shall deduct from the payment for the tomatoes purchased from each Association Member, and pay to the Association, the amount of the dues which have been assigned by such Member to the Association. The amount of such dues is currently \$0.17 per Net Ton for all tomatoes purchased from Association Members, but such amount is subject to change during the term of this Agreement by action of the Board of Directors of the Association. The Association shall furnish Canner a list of the Association Members from whom such dues are to be deducted, and shall give timely notice to the Canner of any change in the list of such Members or in the amount of such dues. Canner shall pay the total amount of such assigned dues to the Association on a weekly basis after harvest and shall identify the amount of such dues which are applicable to each Association Member.

21. **Industry Service Fee.** Canner shall pay to the Association a service fee in an amount equal to \$0.045 per Net Ton for all tomatoes purchased by Canner from all tons in order to reimburse the Association for the costs incurred and the services provided in the various agricultural, production, marketing and promotional activities of tomatoes by the Association. Canner shall pay such service fee to the Association on a weekly basis after harvest and shall identify the total Net Tons applicable to each such service fee payment.

22. **Governing Law.** This Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate original on _____

CALIFORNIA TOMATO GROWERS ASSOCIATION, INC.

CANNER

By: _____
Executive Vice President

By: _____

PRICE SCHEDULE

1. **Base Price.** The Minimum Base Price for each Net Ton of all tomatoes purchased by Canner from a Bargaining Member shall be a full cash price of \$58.00 per net Ton when full payment thereof is made by Canner in cash within ten days of delivery.

2. **Premium Payments.** The following Premium Payments shall be paid in addition to the Base Price:

(a) \$5.00 per Net Ton for tomatoes delivered from September 15, 1999, through September 21, 1999.

(b) \$7.50 per Net Ton for tomatoes delivered from September 22, 1999, through September 28, 1999.

(c) \$10.00 per Net Ton for tomatoes delivered from September 29, 1999, through the end of the 1999 harvest season.

(d) An amount mutually agreed to between the Bargaining Member and Canner for tomatoes which Canner requires to be produced in an unproven variety or to be handpicked.

CALIFORNIA TOMATO GROWERS ASSOCIATION, INC.

CANNER

By: _____
Executive Vice President

By: _____

Dated: _____

Dated: _____

V. Bargaining

1997 FOOD AND AGRICULTURAL CODE

DIVISION 20. PROCESSORS, STORERS, DEALERS, AND DISTRIBUTORS OF AGRICULTURAL PRODUCTS

ARTICLE 2. UNFAIR TRADE PRACTICES

54431. It is an unfair trade practice, and unlawful, for any processor, handler, distributor, or agent of any such person, or, with regard to subdivisions (d), (e), and (f), for any cooperative bargaining association or any agent of an association, or for any other person to do any of the following:

(a) Interfere with, restrain, coerce, or boycott producers in the exercise of the rights which are guaranteed pursuant to Section 54402.

(b) Discriminate against any producer with respect to price or other terms of purchase of any raw agricultural commodity, by reason of the producer's membership in, or contract with, any cooperative bargaining association.

(c) Pay or loan money, or give any other thing of value, to a producer as an inducement or reward for refusing or ceasing to belong to, or for breaching one's membership agreement in, a cooperative bargaining association.

(d) Maliciously or knowingly give false reports about the finances, management, or activities of any person subject to this chapter.

(e) Refuse to negotiate or bargain, including refusing to comply with the procedure prescribed in Article 3.5 (commencing with Section 54451), at reasonable times and for reasonable periods of time with a genuine desire to reach agreement and a serious attempt to resolve differences with a cooperative bargaining association for price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which a cooperative bargaining association represents, or refuse to negotiate or bargain, including refusing to comply with the procedure prescribed in Article 3.5 (commencing with Section 54451), at reasonable times and for reasonable periods of time with a genuine desire to reach agreement and a serious attempt to resolve differences with a processor for price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which the cooperative bargaining association represents. This subdivision does not apply to fresh grapes purchased for wine. Also, this subdivision is limited to processors, handlers, or agents of any of those persons who deal in fruits, nuts, or vegetables for processing and a cooperative bargaining association which meets all of the following:

(1) That, under the articles of incorporation or bylaws of the cooperative bargaining association, the association is producer owned and controlled exclusively by producers.

(2) The cooperative bargaining association has enforceable contracts with its members.

(3) The cooperative bargaining association has financial resources and management reasonably sufficient to accomplish the purpose for which it was organized.

(4) The cooperative bargaining association represents, through its own members, a sufficient number of producers or a sufficient quantity of any particular commodity, or both, to make it an effective agent for producers in bargaining with handlers.

(5) One of the functions of the cooperative bargaining association is acting as principal or agent for its producer members to negotiate or bargain with handlers for prices, terms of sale, compensation for commodities produced under contract and other terms of contracts with respect to the production, sale, and marketing of their commodities.

(f) Refuse to negotiate or bargain for price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which a cooperative bargaining association represents. This subdivision only applies to a cooperative association whose members produce either fresh grapes purchased for wine or whose members produce any other commodity not specified in subdivision (e) and which meets all of the following:

(1) Under the articles of incorporation or bylaws of the cooperative bargaining association, the association is producer owned and controlled exclusively by producers.

(2) The cooperative bargaining association has enforceable contracts with its members.

(3) The cooperative bargaining association has financial resources and management reasonably sufficient to accomplish the purpose for which it was organized.

Article 2 (54431), continued

(4) The cooperative bargaining association represents, through its own members, a sufficient number of producers or a sufficient quantity of any particular commodity, or both, to make it an effective agent for producers in bargaining with handlers.

(5) One of the functions of the cooperative bargaining association is acting as principal or agent for its producer members to negotiate or bargain with handlers for prices, terms of sale, compensation for commodities produced under contract, and other terms of contracts with respect to the production, sale, and marketing of their commodity.

54432. The provisions of subdivision (e) of Section 54431 only apply to any processor, handler, distributor, or agent of any such person, who refuses to negotiate or bargain, as specified by such provisions, with a cooperative bargaining association which represents producers with whom such a processor, handler, distributor, or agent of any such person, has had a prior course of dealing.

For purposes of this section, "prior course of dealing" means that the processor, handler, distributor, or agent of any such person has purchased in any two of the immediate preceding five years a commodity from a producer which a cooperative bargaining association represents. However, a processor, handler, distributor, or agent of any such person is subject to subdivision (e) of Section 54431 if that person has newly gone into business in California by locating in this state from another state or country, by being created from other business entities which had a prior course of dealing with a bargaining association, or by being newly created and utilizing substantially the same processing facilities as a prior processor which itself was subject to subdivision (e) of Section 54431.

54434. The provisions of subdivision (e) of Section 54431 shall not apply to cooperative associations in respect to business done with its own membership.

54435. Nothing in subdivision (e) or (f) of Section 54431 requires any processor, handler, distributor, or agent of any such person, to negotiate over any specific period of time, or to agree upon price, terms of sale, compensation for commodities produced under contract, and other contract provisions relative to any commodity which any cooperative bargaining association represents. However, nothing in this section relieves the parties from the requirement to negotiate and bargain pursuant to subdivision (e) or (f) of Section 54431 or to comply with the procedures prescribed in Article 3.5 (commencing with Section 54451) if applicable.

1997 FOOD AND AGRICULTURAL CODE

DIVISION 20. PROCESSORS, STORERS, DEALERS, AND DISTRIBUTORS OF AGRICULTURAL PRODUCTS

ARTICLE 3.5. CONCILIATION

54451. The department shall order conciliation between any cooperative bargaining association and any processor subject to this chapter if it determines, after receiving a request under the procedure specified in Section 54452, that conciliation will materially assist the parties in negotiating an agreement. Either party may request at any time that conciliation be ordered.

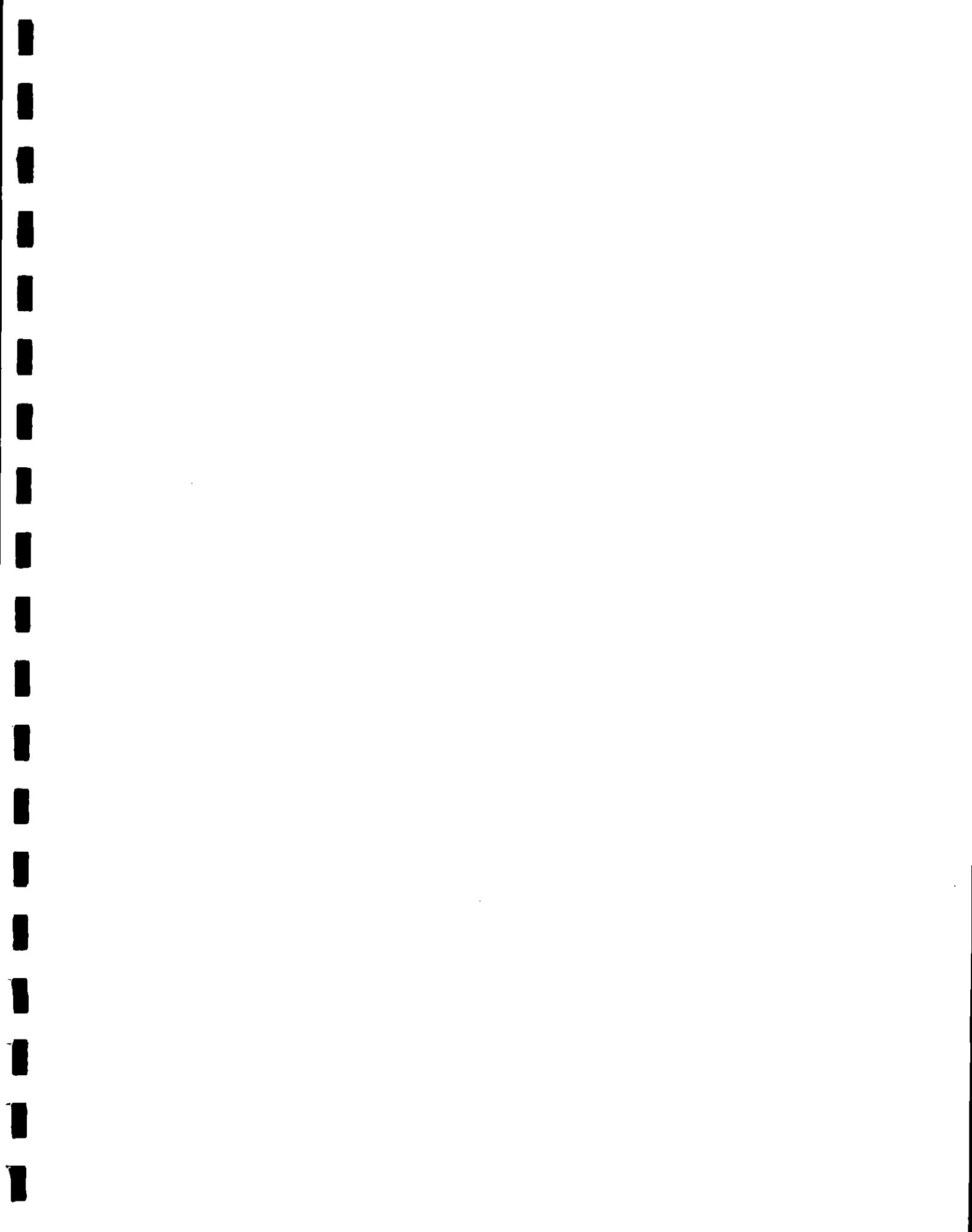
54452. The following procedure shall be used upon receipt by the department of a request for conciliation:

- (a) The request from one of the parties to the negotiation, referred to as the requesting party, shall be presented on a form prescribed by the department.
- (b) The requesting party shall submit, along with the request, the last offer made to the other party, referred to as the responding party, reasons for rejection of the responding party's last offer, and an indication as to what the requesting party believes would be required to reach an agreement. A copy of the request, as well as any information required pursuant to this subdivision, shall be express mailed to the responding party on the same day that the request is submitted to the department.
- (c) On the next business day after receiving the request for conciliation, the department shall notify the responding party that a request for conciliation has been received. The responding party shall be required to respond to the department within three business days after receipt of notification that conciliation has been requested. The response from the responding party shall include the last offer made to the requesting party, reasons for rejection of the requesting party's last offer, and an indication as to what the responding party believes would be required to reach an agreement. The responding party's response shall be made on a form prescribed by the department. A copy of the response, as well as any information required pursuant to this subdivision, shall be express mailed to the requesting party on the same day that the response is submitted to the department.
- (d) On the same day that the responding party is notified by the department that a request for conciliation has been made, the department shall notify the conciliation service of the American Arbitration Association that conciliation may be ordered.
- (e) On the date that the department notifies the responding party that a conciliation has been requested, the department may also request additional information from either party.
- (f) Both parties have three business days after the date of the request made pursuant to subdivision (c) in which to respond to the request for additional information.
- (g) Within three business days after final receipt from the parties of all information requested by the department, the department shall determine whether conciliation shall be conducted.

54453. (a) If conciliation is ordered, the department shall, on the day the department determines that conciliation shall be conducted, notify both parties that the conciliation will take place and direct the American Arbitration Association to commence the conciliation process in accordance with its Commercial Mediation Rules for use in California, as amended and in effect December 1, 1988. However, this article prevails if there is any conflict between those rules and this article.

(b) Confidential information disclosed to a conciliator by the parties or by any other person in the course of the conciliation shall not be divulged by the conciliator. All statements, oral or written, records, reports, or other documents received or made by a conciliator while serving in that capacity, or by any other person, shall be confidential. The conciliator shall not be compelled to divulge the information or to testify in regard to the conciliation in any proceeding or judicial forum. The parties shall maintain the confidentiality of the conciliation, and shall not rely on, or introduce as evidence in any proceeding or forum, any of the following:

- (1) Views expressed or suggestions made by any party in the course of conciliation proceedings with respect to a possible settlement of the dispute.
- (2) Admissions by any party in the course of conciliation proceedings.
- (3) Proposals made or views expressed by the conciliator.
- (4) The fact that any party in the course of conciliation proceedings had or had not indicated willingness to accept a proposal for settlement made by the conciliator or other party.





**THE CALIFORNIA PROCESSED FRUIT AND VEGETABLE INDUSTRY: INFORMATION
FOR MEDIATORS OF BARGAINING DISPUTES BETWEEN GROWERS AND PROCESSORS**

Through sketches of the individual sectors, this brief guide provides a basic understanding of each industry, key trends, and the terminology used in discussions between growers and packers.

The Center for Cooperatives, University of California was established by the California Legislature in 1987 in response to the growing need for information and technical assistance by California cooperatives. The Center carries out and promotes research about cooperatives and provides education and development support to California's cooperatives.

Located on the University of California, Davis campus, the Center serves the public by supporting agricultural, arts and crafts, consumer, credit union, housing, parent, student, worker, and other cooperatives, drawing its teaching and research resources from both the academic and cooperative business communities.

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