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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO PIG AND PIGMEAT INDUSTRIES:
SAFEGUARD ACTION AGAINST IMPORTS

PROFESSOR R.H. SNAPE, Presiding Commissioner

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON TUESDAY, 6 OCTOBER 1998, AT 10.05 AM

Continued from 24/8/98

PROF SNAPE: Good morning, and welcome to this additional hearing of the Productivity Commission's inquiry into pig and pigmeat industry. I have explained the nature of this inquiry at the beginning of each of the 3 days of hearings held in August so I don't think that I need to go over those matters again. Also, the issues paper circulated at the beginning of the inquiry sets out the relevant details.

I should however spend a few moments to explain why we have scheduled this additional hearing day. The Canadian High Commission in its submission dated 21 September - it's a submission which we have numbered, number 34 - on page 3 drew attention to my statement at the Sydney hearing, which read, "We won't be having further hearings to get elaboration so if there are points on which we would like elaboration then we intend to get back in touch to ask you questions." My statement then was in the context that few written submissions were available at that time and that because we did not anticipate further hearings the commission might get back in touch with those who are making written submissions to elaborate on some points in those submissions.

The Canadian High Commission's concern is that they should have adequate time to respond to any submission, a concern shared by the commission with respect to all interested parties. Perhaps I should mention also that in the hearing in Melbourne, which was 3 days after the hearing in Sydney, I did raise the possibility of additional hearings where there are sudden demand for them.

The prime reason for this additional hearing day is that the Pork Council of Australia indicated to the commission some weeks ago that its submission would be about 2 weeks later than it had previously anticipated. The council stated that this was due to the time necessary to arrange, undertake and evaluate a survey of pig farmers. The commission was concerned to provide the maximum opportunity for other participants to respond to this major submission and decided that the best way to initiate this response was for the submission to be presented publicly at a hearing. Such public presentation would also help to ensure that there was no further slippage in time.

The main reason for this additional hearing day then is to ensure that there is adequate time for responses. So we now turn to today's participants. As you know, the proceedings are recorded and a transcript will be made. Hard copies will be sent to relevant participants for checking. Should you be unsure of any facts or find on subsequent reflection that some information should be amended, we would ask you to get back in touch with staff members. The transcript should be on the commission's web page in 2 or 3 days' time.

When we have concluded today's presentations I shall invite any other parties to speak. I understand that one party has requested to speak, in addition to those that were listed on the schedule. Those that are on the schedule were the Pork Council of Australia and Auspork. So there will be at least one additional presentation. Our first presentation is from the Pork Council of Australia and we have three representatives from the Pork Council in front of microphones and others I think are here as well.

We would ask you to identify yourselves each now so that the voices can be on the tape so that the transcriber is able to identify people subsequently, so I would ask each of you first of all to identify yourselves and your position. Then I think, Brian, you're going to lead off, if you could then lead off. But first of all the identification please.

MR RAMSAY: Okay. Brian Ramsay, and I'm the chief executive officer for the Pork Council of Australia.

DR HEILBRON: Dr Selwyn Heilbron, and I'm a consultant to the council.

MR OXLEY: Alan Oxley. I'm director of international trade strategies and a consultant to the council.

PROF SNAPE: Thank you. Brian?

MR RAMSAY: Thank you, Prof Snape. The crux of the Pork Council's submission which we have now tabled with the commission is that a surge of imports of frozen pigmeat from Canada is causing and is threatening to cause a significant overall impairment in the position of the Australian pork industry. The pigmeat producers find themselves in severe difficulty as the result of the unexpected surge in imports that has occurred since mid-1996. Damage has been incurred in the form of declining profits and negative cash flows, falling production, employment, and other adverse impacts.

The pigment producers and early stage processors are producers of boned, uncooked product which competes with boned, uncooked pigment from Canada which is overwhelmingly pork legs. Canadian imports averaged 5 to 10 per cent of the Australian market for boneless leg meat until the last 2 years when they surged to around 25 per cent. The change is depressing prices in the pork market and causing significant overall impairment in the position of the majority of pork producers and early stage processors. Australian pigment producers are therefore urging the federal government to provide temporary tariff and tariff quota assistance under the safeguards provisions of the World Trade Organisation.

The WTO safeguards agreement was designed to address precisely the type of circumstances in which Australian pigment producers find themselves now. Adoption of temporary safeguard measures is a normal feature of the GATT WTO system. Since the inception of the GATT system over 150 safeguard actions have been notified.

This submission outlines the clear evidence regarding the effects of increased imports and the justification for Australia to utilise the safeguard provisions of the WTO to meet a legitimate need. The Pork Council of Australia, which represents producers and early stage processors of pork, have requested the imposition of a provisional safeguards measure which would provide immediate assistance that is warranted by and proportionate to the urgency of the situation facing the industry. A tariff of 100 per cent is required. The Productivity Commission should recommend imposition of such a measure now.

A general safeguard measure is warranted to remedy the serious injury being caused and further threatened. This measure should gradually reduce over 4 years so as to provide a platform for future orderly structural adjustment in the production and processing of pigment. A quota of 5120 tonnes is required.

Structural change has been significant in the industry and has been under way for a considerable period of time against the widely held understanding and expectation that imports would continue at an average of 5 to 10 per cent of Australian production of boneless leg meat, a level achieved following the opening of the Australian market in 1990. The expectation of relatively low and manageable import penetration at around these levels, and attendant manageable pace of structural adjustment, must presumably have been the basis on which the government, without consultation with the industry, bound tariffs on imported pigment at zero in the WTO Uruguay round settlement in 1995. However, the rapid and unanticipated surge in imports in the most recent years, to an average of 25 per cent of the leg meat market, has fundamentally injured the industry and simultaneously undermined the foundations on which industry development and restructuring was proceeding.

The damage caused by the surge in imports has been profound, as is clear from the results of a survey undertaken for the purposes of this inquiry, and has severely undermined confidence in the industry. The safeguards measures required would give the industry the opportunity it needs to continue, in an orderly manner, the current substantial changes under way in the industry structure, to improve competitiveness against imports and enable the industry to continue building its export capability.

A continuation of the unrestricted import surge the industry has faced would undermine these efforts and cause devastation not only to the industry but more broadly too. The Australian pork industry is not seeking protection. The industry is seeking the proper and reasonable application of the safeguards provisions of the WTO. The industry is prepared to continue operating and to compete vigorously in the long term on the basis of the zero bound tariffs imposed on it from 1995. How many other Australian industries, one might wonder, would be prepared to give that undertaking.

However, the unforeseen surge in imports to the levels of recent years and the clear expectation that imports will continue at least at similar levels has presented the industry with an unparalleled, unexpected and unfair crisis. The industry is now requesting, in these exceptional circumstances, a breathing space fully consistent with the mechanisms of the WTO and Australia’s right to exercise them against an unforeseen surge in imports that is causing and threatening to cause devastation to the industry. No departure from Australia’s formal treaty obligations is entailed and the Australian pigment market will continue to remain open to international competition at even more generous levels to those envisaged when the market was initially opened in 1990 and tariffs were bound at zero in 1995. The Productivity Commission should accordingly advise the government to accede to the industry's request for both immediate tariff assistance and for a temporary tariff quota for 4 years in accordance with the agreement.

Before continuing to discuss the remainder of our submission I must raise formally the Pork Council's grave concerns on the issue of natural justice and fairness. The Pork Council has always been concerned to ensure that its case is considered fairly and decently, in accordance with the principles of natural justice. The council has become increasingly concerned over the processes which have been established by the government in considering its case for safeguards action. In the first instance the council has been extremely concerned that the Productivity Commission was selected by the government as the body to review the case. Widespread media commentary and statements and remarks by ministers to the effect that the Australian pigment industry is seeking some kind of unwarranted protection have accentuated our concerns. At least one statement has even been incorporated into the commission's issues paper.

Under these circumstances we must question whether our case can be properly considered by the commission, who has a reputation of being opposed to protection. The article by Mr Alan Mitchell, editor of the Financial Review of July 1998, on 29 July, is illustrative of the serious concerns which the Pork Council has in relation to being accorded natural justice by the Productivity Commission in this matter. Our concerns over natural justice have been heightened even further by the public statement by the Prime Minister to the National Press Club in Canberra on 1October 1998 in relation to the pig industry; that it doesn't work to block off imports, and further, if you block these imports, then their mates who are trying to export sugar and beef would have their exports blocked.

Similarly a public statement by the Minister of Primary Industries and Energy dated 29 September entitled Industry and Government Agree on Trade Reform supported by 16 associations in that industry is inflammatory and presumably designed to influence this inquiry. Its reference to knee-jerk protectionism and closet protectionists and its exclusion of the Pork Council of Australia as a signatory presumably is designed to damage the standing of the pigmeat industry discrediting it in the public domain and to influence this inquiry.

The Pork Council was not invited to endorse the minister's statement as were the 16 other associations, and it comes as no surprise that the clear defamatory intent of this statement was duly reflected in media reporting, for example in the newspaper The Land of 1 October 1998, to the effect that 16 farm and food industry organisations have come out in support of Primary Industry Minister John Anderson's hard line on the pig industry, pointing out that the list of organisations did not include the Pork Council.

Had the council been invited to endorse a bona fide statement of this kind, it would have done so, but as it stands, this ministerial statement is yet another example of a denial of natural justice to this industry, and an indication that regardless of the outcomes of this inquiry, the government appears to have already made up its mind. It is our firm view that this inquiry should have been conducted as an independent judicial process in which such statements would have been ignored by law and in which the makers of such statements would have felt bound to think again before making them.

A related question in the context of natural justice and fairness issues arises with respect to consideration of the council's case for a provisional safeguard measure under article 6 of the agreement. The Pork Council has consistently requested such action as an integral element of its request for safeguard measures, and indeed a government gazette notice establishing the basis for this inquiry explicitly includes provisions to enable such consideration. Notwithstanding this, the commission's issues paper provides no guidance to participants on how it envisages addressing the question of provisional safeguards.

Further, we are gravely concerned that it has come to our attention that the government through the Department of Foreign Affairs and Trade has formally notified the WTO in Geneva that the issue of provisional safeguards has not been considered in this inquiry. So we request your immediate clarification on whether this hearing will address the matter of provisional safeguards and the basis on which this decision has been reached and whether the commission has been informed by the government not to examine the case for provisional safeguards. I can now turn to Mr Oxley if you like.

MR OXLEY: Thank you. Mr Commissioner, in the Pork Council's submission there is some detailed material on the various issues of the provisions. What I intend to address in my brief comments now are some views of the council on aspects of some of the WTO provisions. As I say, it's spelt out in more detail in this submission itself. The first issue that we wish to put before you is the question of the purpose of the safeguard provisions. There is a setting for this inquiry to which Brian Ramsay has adverted which does seem to reflect in the broader community a view that the imposition of a safeguard provision is some way a restoration of protection.

This has led to some submissions to the commission which place an interpretation on the safeguard provisions, that since the purpose of the WTO is to reduce protection, therefore any action which results in an increase in protection is something which should be taken very advisedly; indeed you have been advised that the provisions of the agreement would have to be strictly interpreted as opposed to normally interpreted, and rigorously applied.

The general point we wanted to make is that in fact the safeguards provision is a critical part of the mechanisms created under the WTO provisions to facilitate multilateral liberalisation. There are many eminent analysts and supporters of the multilateral trading system who perceive the process as a key part. There's a notable text by Hoekman and Kostecki of which you'll be well aware, in which they say the main rationale for the general safeguard clause is to allow some flexibility with respect to tariff commitments, thereby promoting trade liberalisation efforts. If we didn't need mechanisms to assist governments to liberalise - and this is the primary purpose that the WTO creates - you wouldn't have it.

The whole structure of the WTO is to permit governments to meet their public policy objective of supporting the process of trade liberalisation which in any case raises very difficult public policy issues. Now, if the WTO creates economic instruments which have effects - and we know in the issue of public economic policy-making that it's difficult for policy makers to get it right. We know broadly what economic effects are, but when we put instruments in place which have an economic effect, we often can't predict a result. The safeguards agreement recognises this feature. It recognises that you can actually make mistakes, and the purpose is to allow breathing space in the event the decision to open a market in accordance with the rules of the WTO act as a bigger result than was intended, and it provides a capacity to slow down to enable an orderly process of adjustment.

In this case therefore, we would stress an urge that in interpreting the various provisions, key regard be paid to the operational purpose of this provision, and these provisions as part of the broader purpose of the WTO system to support multilateral trade liberalisation. We don't think that it's relevant to contend that very tight processes of interpretation and provisions need to be made in case a mistake is made to allow more protection than is intended. We would urge that in analysing and interpreting these provisions, we bear in mind the broad public policy purpose of this mechanism which is to enable governments to continue to apply the broad process of trade liberalisation which is the objective of the WTO.

There are a couple of other things that I wanted to touch on in passing. We have made comments on almost all the provisions, and we've been through the key provisions which we think support the case and the analyses are there, but one or two of these we would like to underline. The first one is the question of public interest. Now, there are two issues that arise - - -

PROF SNAPE: Are you referring to particular pages here or - - -

MR OXLEY: In the issues paper?

PROF SNAPE: No, in your submission.

MR OXLEY: You'll find most of the comments in two sections. There's an annexe at the back.

PROF SNAPE: You're not reading from a particular section.

MR OXLEY: No.

PROF SNAPE: Thank you.

MR OXLEY: The public interest issue has been raised by the commission in its issues paper. Evidently in the commission's mind it is a matter of some import because it's one of six steps. Now, there are many steps in the process of interpretation, but obviously the commission selected the things that it thinks are germane to the decision and has highlighted public interest in this way. It's adverted to two provisions of the WTO agreement and implicitly linked them. The first is the requirement in the agreement that in providing for a process of hearing, that there has to be scope among other things to give parties an opportunity to present - and the words say "inter alia" - among other things on public interest issues.

The second issue immediately following in the issues paper is the question of retaliation, and the commission points out that there can be retaliation provisions. I'll say first that we think the commission's rendering of the retaliation points is inaccurate. The commission's issue paper actually says that the parties are obliged to offer compensation; they are not. The provisions of the agreement says that parties are to endeavour to offer some form of compensation, and that if there is no agreement on that, then the party which objects or thinks its interests have been affected by the imposition of safeguard measure under certain circumstances has a right of retaliation, but we underline we think that the rendering of the issue in the issues paper where it says the parties have an obligation to provide compensation is not a correct rendering.

More importantly, we are concerned with the linkage of these two matters because it gives an impression in pointing out that there has to be some scope to give people the right to raise a public issue interest, that somehow or other those that might be affected by retaliation within your own economy have a public interest to put this issue on the table. Now, there's a substantive and a practical point here. As we say, the substantive point is that the retaliation point is not accurately put. Secondly, it's somewhat unrealistic in our view. If you take regard to the steps that have to be followed for the retaliation to occur, we find it hard to envisage that somebody could make a practical presentation on this.

First the test has to be that there is no agreement between the parties to provide some sort of compensation about which they do have an obligation to consult, that then under those circumstances some form of retaliation will be taken, but to know what form, what public interests in Australia might be affected by this, one would have to be confident that the failing would occur; secondly to know what type of measure was going to come in place so you could have an estimate as to where the impact would be, and these are sufficiently hypothetical that we don't really understand why it is that the commission in fact effectively invited views on these matters in a way in which the issues paper was selected.

Finally, any retaliatory measure can't be implied for 3 years, and since the first term for an application safeguard measure is 4 years, it seems to be hypothetical in the extreme. Therefore we are puzzled, if I may put it that way, about why the commission chose that construction on that issue in the range of six matters. Now, it has been put to the commission that the commission is obliged to take the public interest into account when it makes its finding on the request of the safeguard. That is in fact not an obligation arising from the WTO provisions. The commission is not obliged to take the public interest into account.

All the commission is obliged to do is to create a proceedings where if someone has got a public interest position to put, they can be heard, but all the commission is obliged to do in terms of giving a safeguard measure is to test the conditions which are clearly spelt out in the provisions. One of those is not to say that the public interest has to be assessed.

The next issue that I would like to touch on is the question of definition of industry.

PROF SNAPE: I wonder if I may just pause there because a couple of - two or three things come together there I think, and it's a question of what is relevant in the hearing of this inquiry. The terms of reference of course is what specifies, and there are really I think four different things, and this is answering a point or commenting on a point which Brian Ramsay made before also. There are four things. There's the terms of reference, there's the gazetting, there's the safeguards agreement, but there is also the Productivity Commission Act. In the reference to it says, "I, Peter Costello, treasurer, under Parts II and III of the Productivity Commission Act hereby" - etcetera, etcetera, etcetera.

So we've got four pieces of - I'm not sure what the term is. It's not legislation, but four aspects which we have to take note of in conducting this inquiry, and in Part II, if I've got it correct, of the Productivity Commission Act, it refers essentially to what is the public interest aspect. I refer you to paragraph 8 which is the general guidelines for commission or general policy guidelines of the commission: "In the performance of its function, the commission shall have regard to" - and the first one specified there is basically the overall economic performance, and there are a number of other things under that as well.

So the public interest, if one uses that shorthand term of it, comes in I think at least three directions. It comes in from the act, it comes in as you correctly pointed out and with the limitations that you correctly pointed out under the safeguards agreement, and it also comes in under the gazetting; under the third point of what was relevant in the gazetting. It talks about the effect of business circulation. I know you refer to that in some more detail further on, but where you refer to it, I think you don't also refer to the Productivity Commission Act which is a relevant consideration as well.

As to what instructions we have which was a point that was raised by Brian Ramsay before, they comprise our written instructions, and there is no instruction from the government other than what appears therein.

MR OXLEY: So will you consider the provisional safeguard issue?

PROF SNAPE: We will consider the provisional - we will give consideration to that. We are asked to report in 140 days or earlier as the terms of reference there, but I'll leave that at that point.

MR OXLEY: In that respect, you have put out quite detailed guidance as to what might inform the procedures to investigate the case for what we would consider what we'll describe as a full safeguard, but there is nothing in the issues paper which explains guidance on the terms which would apply for a decision on a provisional safeguard measure. The tests for a provisional safeguard measure and the issues are quite different - we have gone into this in our paper - and are much less stringent.

PROF SNAPE: I've received the paper half an hour ago, and I've glanced at the relevant provisions, but I'm not prepared to respond at the moment.

MR OXLEY: The observation we make here which does relate to perhaps processes and natural justice is that we notice that there is no guidance on how a decision might be taken on a provisional safeguard, whereas there is in the case of a safeguard.

PROF SNAPE: I note that point.

MR OXLEY: Can I come back to the issue of the public interest. We may reserve if I may to have a closer look at Parts II and III of the Productivity Commission Act. You noted that public interest is a relevant consideration, but in fact it seems to us that the terms of your inquiry are dominated by the recital of the obligations in the safeguards agreement. They are in fact spelt out almost verbatim in the attachment to the gazette, and in that respect it would seem to us that there would be a distinct obligation on the commission to pay primary regard to those provisions.

We would propose that if the commission intends to take into account provisions outside the obligations in the safeguards agreement, that in fact would have to be spelt out as quite a separate consideration. Our contention is that since you've been given the task under the agreement of being the competent authority to advise on whether the case put meets the terms and the conditions of the safeguards agreement, that if you consider that there are other factors which would bear on a judgment, they would need to be separate, but you would need to make in our opinion in terms of your terms of reference a discrete assessment based on the provisions of the safeguards agreement and article 19.

There is one particular point that I want to make in reference to this which may be germane, and I confess I neglected to mention and we have also picked it up. We are aware that in paragraph 2C of the gazettal, you are asked also to have regard to the government's requirements for assessing the impact of regulation which affects businesses. Those measures should be implemented. I haven't got the logical flow here. The council has taken legal advice on this, Mr Commissioner, which is attached to our submission. The summary of that legal advice is that - you'll find this on page 36 of the submission.

PROF SNAPE: Grateful for that. Thank you.

MR OXLEY: No, sorry, wrong page.

PROF SNAPE: Wrong page.

MR OXLEY: It's page - it is 36, last three paras. I'll just read it:

> The commission has raised in the issue paper its obligation under the terms of reference to have regard to the Commonwealth government's requirements for assessing the impact of regulation which affects business.
>
> The council accepts the commission is bound by the terms of reference. For the record it wishes to state its view that whatever conclusion it may arrive at on that matter, it in no way diminishes the right the Government has under the WTO provisions to impose a safeguard measure if the terms of WTO provisions are satisfied.
>
> In the issues paper however, the commission has gone beyond what is required under its terms of reference. The Council has advice from legal counsel that the commission is not entitled to take into account COAG principles in making its recommendation after the inquiry, and that if it does so, it may be in a position to have its actions challenged as an improper exercise of power conferred by the gazette. That opinion is attached for information.

I'd now like to go on to a couple of the other issues. We'd like to make some brief comments on the issue of the definition of industry. In your earlier presentation you yourself have pointed out that there's a degree of integration in the industry. In our submission we consider that the industry in fact represented what we will define as the early stage processes. These are the producers of pork and the processors of the pork at the early stage. The question has arisen as to what extent downstream processes have an interest in this - to what extent may they constitute part of the industry.

We would contend that they do not; that in fact the product that we're looking at here is imported boned ham, and that pork manufacturers who use that product are in fact consumers of the pork boned ham. So the industry that is relevant in this case for the definition of industry, is the industry that produces the pork boned ham. It's been argued that in fact industry should include smallgoods manufacturers and other meat processors, and we would argue that they are not relevant as they're not producers of the like product.

PROF SNAPE: Could I just have a clarification? Do you mean ham or do you mean that the pork - - -

MR OXLEY: Sorry, meat; porked boned meat, beg your pardon.

PROF SNAPE: So where you were saying "ham" in the last few sentences, you should have said - - -

MR OXLEY: I have to restate that, yes; it's the pork boned meat. We think the economics in fact support that; the degree of value-adding once the meat becomes processed and converted into manufactured product is of such an order that this is not the industry which is the producer of a product which has been injured by the imports.

We want to make some brief comments on the issue of serious damage. In your own issues paper - the commission's issue paper - and in some of the discussion, there has been reference to other definitions of serious injury including reference to definitions used in other parts of the WTO system, particularly in the anti-dumping and the countervailing area. We don't think these issues are germane.

PROF SNAPE: In those areas it's material injury, not serious injury.

MR OXLEY: Yes, but in one of the papers there's a reference to the fact that the test is in fact stricter than that. It's used as a reference point - as a comparative point. That's in the issues paper. Our point is that we don't think these are germane because the safeguards agreement provides its own definition of industry.

PROF SNAPE: Of injury.

MR OXLEY: Of injury, sorry - its own definition of injury. Thank you for your help. Its own definition of injury - and we would contend that it's the way in which that is interpreted for the provisions of the agreement which is relevant and not how terms related to that have been defined in other parts of the system. In fact there is a key point in the issue - in that definition which we would like to draw attention to. There's a reference to damage to the impairment of the position of the industry. We note that - I'd perhaps like to illustrate the point that if it said "condition" as opposed to "position", we would have the classical case to analyse the economic impact of the industry within the terms set out in the issues paper, and that's quite clear.

However, "position" introduces some different elements, and we think it's essential that they be taken into account when assessing the damage. Position obviously is something which relates to the position in relation to something else, and in our opinion that would relate quite squarely to market share. In fact market share is referred to in article 18 as an element. So more than assessing the economic damage to the industry as required, we think a relevant consideration is the change of the position of that industry vis-a-vis the market taken by imports.

Finally, we just wish to touch briefly on the issue of unforeseen circumstance. This matter has been raised - you touched on it. You raised a point about whether there's an issue because the terms of the article 19 are different from the agreement. We think it's interesting that the agreement offers no definition of unforeseen circumstance where it does seek to try to provide some greater definition to some of the other terms. We think that not too much should be made of unforeseen circumstances. The meaning of it is relatively plain.

We think that linked as it is in article 19 with the impact of the imposition of a binding obligation - generally thought to be a binding tariff - and then the subsequent argument in article 19 which refers to the fact that when the surge of imports causes such an increased change in imports and such a change in conditions, obviously the mention of those changes and the quality of those changes which relate to what were the unforeseen circumstances. Evidently with these arrangements, some level of trade is foreseen. What was unforeseen has to be the dimension of the impact of the change.

As Brian Ramsay pointed out, trade started when quarantine laws were changed in 1990, the tariff was bound at zero in 1995 on the expectation of a certain level of trade which can be viewed. The share of the market was 5 to 10 per cent of the boned meat market, and it changed to about 25 per cent. The total meat market also shifted. So it seems to us that we have in fact here a classic safeguards case. Finally I just wanted to return to the point about interpreting these provisions in the broader issue of support for the multilateral trading system.

PROF SNAPE: Good. Before you go onto that, could we just pick the unforeseen point up which was referred to by both yourself and Brian Ramsay? While I think that under the GATT/WTO, the term "unforeseen" ever since the 1950s has been rather spongy in its interpretation to say the least. The Hatters Fur case that you would be aware of I think introduced that sponginess. Nevertheless, one thing that perhaps one could be precise about if one is drawing on article 19, where the term is used, is unforeseen when? If one is talking about unforeseen, when does it have to be unforeseen from?

MR OXLEY: Since it also refers to the impact of obligations, we would contend it is unforeseen from the time at which the formal commitment to bind the tariff - if this is what the case is - was taken. In Australia’s case, this was 1 January 1995 in the case of zero binding of pork.

PROF SNAPE: If we are drawing upon the term "unforeseen", which for various reasons is contentious or at least arguable one way or another, I think is probably the better way to state it - but if you are drawing upon it, then you would say that it would have to have been unforeseen at 1 January 1995.

MR OXLEY: First let me ask you what is contentious about the term "unforeseen"? What is the debate?

PROF SNAPE: I think the relationship between article 19 and the agreement on safeguards and to the extent that terms which are used in article 19 are relevant in the agreement on safeguards themselves when those same terms don’t appear, is the thing on which there is some discussion, and I think this has been addressed by the Canadian High Commission in their submission.

So it's the extent to which the agreement on safeguards is considered, whether there are words that are used in article 19 which aren't used in the agreement, the extent to which those words carry on and condition the agreement on safeguards, but I wasn't inviting you really to go into that in detail unless you wished to, but what I was saying to the extent that one does want to take into account to that little extent or to a greater extent those words which appear in the article 19 which don't appear in the agreement on safeguards, and "unforeseen" is one of those words. Then at what date would you say it had to be unforeseen at?

MR OXLEY: Well, let me make two points - well, three points. The first is that while the point has been raised, it's a nice intellectual point, but nobody has actually explained why it's germane to the decision, if I may observe. Secondly, there is an inconsistency in the terms between article 19 and the agreement, and the Canadian submission goes into some of the legalities on this. It draws on an appellate decision which actually makes the pertinent point that these matters need to be decided on a case-by-case basis.

It does refer to an interpretive provision when the WTO agreements were adopted. It would seem to imply that where there's a conflict, the provisions in the GATT 1994 will prevail, but the truth is that there are a number of areas where plainly the WTO agreements provide quite different meanings to provisions in GATT 1994. I think therefore that the basic point one must come back to here is that it has to be considered on a case-by-case basis.

It would seem to me there is an argument that if "unforeseen" is not addressed at length in the agreement, then the agreement does specifically say that a safeguards measure may only be imposed if the conditions set out in that agreement are met, and these are laid out in article 2, and that if it does not refer to unforeseen circumstances immediately in article 1, it says that a safeguard measure is that as defined in article 19, and article 19 does say to have your safeguards agreement it's got to be the result of unforeseen circumstances, plus the effect of the tariff binding.

So I would contend that first it is evidently less important in deciding whether the safeguards agreement is to be applied. That was the case before the agreement came into account. I don't know if it matters a great deal because we would contend anyway that even in the circumstances envisaged in article 19, the circumstances we have here is a clear case. Article 19 links the unforeseen circumstances with the adoption or the acceptance of the obligation, and I haven't got the exact language in front of me. Let's look at the circumstances - here it is - that the case of this was meant to address. Unforeseen developments - "and of the effect of the obligations incurred by a contracting party," and it says including a tariff concession. Presumably if we talk about the obligation, when was the obligation incurred? The obligation is incurred when the government says that the commitment is legally binding on it, and in Australia's case I'm told by the Department of Foreign Affairs and Trade that that is 1 January 1995 in a case of zero binding on pork.

We think there’s a natural interpretation of this provision which actually fits the original case. If the idea of the safeguards agreement was that basically when a government entered a commitment to bind the tariff and the surge of trade was much greater than it had anticipated, then this was a relief felt to enable it to suspend the obligation to give it time to put some other measure in place to slow down the rate of imports to support the process of adjustment.

We would argue that in this particular case, the imports began in 1990 as a result of the change in quarantine laws. We can observe a level of trade between 1990 and 1995 at which pork meat was coming in at about 1½ per cent - taking about 1½ per cent of the Australian market; of the leg ham market it was about 5 to 10 per cent; the numbers in our submission. After 1995 when the binding came into effect, imports rose dramatically, and the share of pork meat took 3 per cent of the market instead of 1½ per cent, and of the leg ham market it rose to about 25 per cent. So we saw a sudden rise following the adoption of the obligation.

We would presume that the unforeseen circumstance was that when the government's negotiators agreed to zero bind, they would have had an assessment of what they thought the level of trade was going to be. They had 5 years' experience in which to see that level of trade, and we think reasonably they would have assumed and would have continued at 5 to 10 per cent. The unforeseen circumstance is that they were wrong, and this is actually the plain intent and meaning of article 19. They got it wrong, and that's so - we would argue that the legality of the point may not be all that terribly significant, and if you look at article 1, how do you understand what it means? What is the unforeseen development? We think plainly it means a miscalculation of what the level of trade is going to be.

PROF SNAPE: Thank you.

MR OXLEY: Sorry to have taken so long, but they're the points that we're seeking to highlight. As I said in the submission, there are a number of other points we've gone into that - - -

PROF SNAPE: I cut you off at another point that you were going on to.

MR OXLEY: Well, I've covered the point in - I was going to go on to talk about this. I have in fact covered these points in discussion.

PROF SNAPE: Thank you very much. Selwyn Heilbron.

DR HEILBRON: Could I draw up the assistance of Mr Pearson to put the charts on? What we have prepared for you is a number of charts to summarise some of the key points which are dealt with in far greater detail in the submission, and we believe that in terms of the case we are presenting, there are a number of key features which need to be appreciated about what has transpired in the industry. The first point to make which was illustrated by this chart showing the increase in average herd size - - -

PROF SNAPE: They're sows, aren't they?

DR HEILBRON: Yes, that has taken place over - - -

PROF SNAPE: They're sows, not the total herd.

DR HEILBRON: Sow herd size. We tend to use that interchangeably, but it is sows.

PROF SNAPE: One figure is 10 times the size of the other.

DR HEILBRON: What we see here is that there has been a progressive and ongoing process of structural adjustment in this industry which preceded the period when imports were allowed into the market. Concomitant with that is a reduction in the number of farms which has fallen considerably from about 10,000 in 1986 down to about 3300-odd today. Could you go to the next slide? However, what we see here is that from about the middle of January 1996 there was a very rapid increase in import penetration of the market.

Now, what that chart illustrates is the Canadian imports of the item under issue in the inquiry expressed as a percentage of Australian leg production. In order to calculate that, we have converted imports of legs to a boning equivalent, and then taken total Australian production of pigmeat, estimated the percentage which comprises manufacturing product, and then estimated the percentage of that which comprises legs. What you see from that is that following the surge in imports from about the middle of 1996, and once the imports got above a level of about 20 per cent domestic market, one saw a dramatic drop in the monthly contract price of bacon as an indication of prices paid.

Perhaps you could turn to the next slide. What is also important about the price movements is that traditionally as one sees from the line for 1995 and 1996 and beforehand indeed, you saw a sustained increase in prices as we head into the second part of the year derived from the demand for these products for seasonal requirements around Christmas. Now, come 1997 we see for the first time that that increase in the final quarter did not eventuate as a result of the pressures that emerged in the market, driven by the imports.

We see that for 1998 the prices are at a substantially lower level, but follow a similar pattern, and although we haven't gone obviously until the end of the period - it hasn't occurred yet - one sees similar types of patterns emerging. In fact, we do have some up-to-date price information which is on the next slide which takes us through - as up to date as we possibly can - and you'll see that going through into October there has been a flattening of that pricing, almost parallel shape to the previous year. So we are now seeing a more entrenched pattern of pricing into the second half of the year.

PROF SNAPE: The relationship between that chart and the previous one - if you could put the previous one back on just for a minute. It seemed to be a rather more dramatic increase in price from the trough in June on this one than the previous one, doesn't it?

DR HEILBRON: Yes. It's a slightly different price series. These are bacon at contract prices, whereas the second prices are average bacon prices reported by the QPPO. So those would be reported differently.

PROF SNAPE: Do you have an explanation for the difference? Is it just the scale that's causing the difference?

DR HEILBRON: No. One sees slightly different movements in these relative price series over time, and I have no explanation for those differences. It could be that certain forms of sow transaction include certain costs, and others do not.

PROF SNAPE: Thank you.

DR HEILBRON: We believe that a major factor in the driver of these prices is the fact that a substantial proportion of the consumption of the end product occurs in precisely that time period of the last few months. We find that 30 to 40per cent occurs in the last few months of the year.

PROF SNAPE: What years is that calculated over?

DR HEILBRON: The source of the data? Do you know?

MR NORTH: It goes back over 4 years.

PROF SNAPE: So that's 4 years prior to the last season when it didn't go that way? Is that right?

MR NORTH: 91 to 95, I think.

PROF SNAPE: It's for 91 to 95?

DR HEILBRON: Correct. Given the seasonal balance of the consumption of the product, it would suggest that something dramatic happened over the past 2 years over that time period where the seasonal break in prices has occurred. What this presents is one of the charts of the results of the survey undertaken, and we will be asking the person who produced and undertook the survey to be producing some more comments on what has happened. This is the essential chart we believe to consider in this context, and what it shows is that over a period from January 97 to June 1998 - the first line shows the average sale price achieved by those surveyed, and that actually does correlate reasonably well with the other price series that we have seen and that is reflected in the contract bacon chart that we saw earlier.

What you see are two distinct drops in price; the first one occurring around March 1997. The next line underneath that shows the estimated cost of production of those surveyed. Below that comes their estimate of what the break-even price is that they need, and finally the costs that they believe - the prices that are believed they required in order to stay in business over the longer term. Once we get to the period of March, we see that the average sale prices received cut the line at which they believe the cost of production exists. It continued to go down again through the period of February, March a year later when it cut the line of break-even, and there shortly after the level required in order to stay in business.

PROF SNAPE: Could I ask - I'm not sure if it would be you or the person who's going to speak to this later - but what is included in break-even that isn't in cost of production, and what is included to stay in business that isn't in break-even? Often one would use the term "break-even" to mean that that's what you required to stay in business. What's the definition of those three?

MR STOLLZNOW: The difference is in depreciation.

PROF SNAPE: Perhaps - - -

DR HEILBRON: Yes, it might be an idea for - - -

PROF SNAPE: Maybe you could join.

MR STOLLZNOW: Sure.

PROF SNAPE: Maybe you could go - if you could identify yourself for the tape.

MR STOLLZNOW: Yes. Max Stollznow, principal Stollznow Research. I'll spell that - S-t-o-l-l-z-n-o-w. You get practised to spelling that over the years.

PROF SNAPE: Thank you. Mr Stollznow, could you explain each of those I think: what's in break-even that isn't in cost of production; what's in to stay in business that isn't in break-even.

MR STOLLZNOW: Yes. Excuse me, I'll just get the chart so I can see.

PROF SNAPE: It's on page 22 of the submission.

MR STOLLZNOW: Yes, in the research report that accompanies the submission it's on page 14. What we've got is the - in terms of cost of production, that is all costs involved. When we get down to the break-even, this includes depreciation - hang on, it says the chart shows various financial aspects:

> On the chart the average sale price per kilo, hot standard carcass weight is shown along with the average return which operators believe is necessary to stay in business. The average break-even point, the average cost of production; all expressed in hot standard carcass weight. Respondents are asked to include their costs in cost of production or cost before tax.

So basically if you take that line there that - the first line there which is the cost of production - have we got the lines right? Somebody has changed it on me. It's the other way around. The bottom line is cost of production. This is if they are prepared to accept that they are not going to make any contribution to the business whatsoever. This is basically what it is costing to feed and maintain. After that they start to subsidise. The line above that will be before depreciation costs, before tax. Then up on top of that the line of the - - -

PROF SNAPE: I presume no tax is paid until you get a profit, so - - -

MR STOLLZNOW: Exactly. So these were asked to estimate.

PROF SNAPE: - - - we leave the tax out of it because we're trying to get up to the point where you start to pay that.

MR STOLLZNOW: And that's this line here.

PROF SNAPE: Which is - what are you including in that to stay in business that you're not including in any other?

MR STOLLZNOW: The profit return.

PROF SNAPE: So you haven't got the cost of capital up to that point?

MR STOLLZNOW: No.

PROF SNAPE: So it's basically, if you might say, variable costs on the bottom one, the costs that you have to meet on a day-to-day basis. The next one would be the costs of the long terms including your sheds and other things like that which depreciate.

MR STOLLZNOW: Correct.

PROF SNAPE: And the next one is you're now going to say what you get a return on capital. Thank you.

MR STOLLZNOW: They were asked to estimate this and check their records and go back to this particular period. We did trend those lines. That's also included in the report.

PROF SNAPE: In the survey did you cover all sizes of business?

MR STOLLZNOW: Yes. We covered all - - -

PROF SNAPE: Including the very big ones?

MR STOLLZNOW: Including the very big ones; the very big ones with 400 sows or more constituting 24 per cent of the sample.

PROF SNAPE: I was meaning very big, not medium.

MR STOLLZNOW: Yes, there were a number of very big ones in there. We're talking 22,000, 20,000 sows.

PROF SNAPE: How did you weight those? Did you weight Bunges the same as you weighted someone with 50 sows?

MR STOLLZNOW: What we've shown in the report - and the data is there - we've shown them for each of those categories or groups of people. We could not show Bunges individually. That would be a breach of confidence. So what we've done is we've grouped the various sizes of the operation of the sow numbers so that we can look at a small 40-sower - a less than 40-sower, then we go to - sorry, less than 100, 100 to 200, 200 to 400, and over 400. So Bunges would be included in the over 400. We can actually get the data very specific if we have to.

PROF SNAPE: Well, without referring to any particular enterprises and explicitly not referring to Bunges, just to make it clear that I'm not, I might say that these figures are rather above other figures that we've seen that have been quoted to us - quite significantly in the hearings and submissions, but I'll look forward to your survey. It may be that the other people weren't quoting a "to stay in business" figure to us, but I'd be surprised if they weren't.

MR STOLLZNOW: We did find differences according to the size of the operation, obviously.

PROF SNAPE: Well, that's not obvious to us because a number of times we have asked whether there are economies of scale in this industry, and we've been told no, and yet so many of the enterprises in it seem to want to get bigger, which would in fact tend to conflict with that statement, and so if in fact you have found that there is a correlation between size and costs, that's evidence which we haven't had before.

MR STOLLZNOW: In the research report, it appears that the operations that are remaining - Mr Commissioner, I've actually started halfway through where I would have started.

PROF SNAPE: I'm sorry. You go at your pace and I'll lay off for a while.

MR STOLLZNOW: The first point I'd like to make with regard to the sample is that we couldn't - 7 per cent - we originally set out to contact 529 of the producers. The detail of how the sample is selected is in the research report. When we tried to contact them, 7 per cent had already gone out of business. There is a further 7 or 8 per cent - again it's all detailed - who we could not contact. We went through

White Pages on CD. We checked that all the telephone numbers and all the fax numbers and addresses were still correct. They were correct, but we could not contact these people. So we have made a guess that some of those may no longer be in business.

When we looked at the number of sows per operation in this sample, we find that the operations have actually grown slightly, and the reason for this is that as some go out of business, the other producers who stay in pick up those sows, and from the comments that were written in on the questionnaires as to why these things occurred, they were endeavouring to increase the sow numbers, take a smaller margin, but get roughly the same return which is a classic higher volume, lower margin, stay in business situation.

We also looked at the capacity of the business operation and related that to the number of sows they held. There has been a convergence of the capacity and the number of sows lines in this particular sample which means that we can see that they are increasing to the maximum capacity that they can hold, which we again would say that those that are staying in business would seem to be picking up the sow numbers for those who are going out of business. That's dealt with in the first part of the report. So bear in mind that 24 per cent of this sample had 400 more sows.

The sample only contains about 6 per cent of producers, but it accounts for approximately 36 per cent of all sow numbers and all pigs sold. So we're talking about a reasonably large section of the sows and the sales.

PROF SNAPE: Do you specify in it how you selected the samples?

MR STOLLZNOW: Yes, that is specified and detailed in an appendix. If it's convenient, I'll go on and just make some of the generalisation or some of these summary points that came out. Firstly I must stress that we are a research organisation, and whether or not any assistance is given to the industry is not for us to comment upon. That is for the commission and also for the industry. We have dealt with this chart up here, so I'll skip past that. 92 per cent of the producers believe that there has been a major change in profitability in the last 18 months. This is their belief. So we are now dealing not with numbers where we've got hard information on the price; we're dealing with their conviction or their belief or their observation.

Most of this is attributed to an increase in importation; a reduction in saleyard prices as a result of the importation of pigmeat. Only 25 per cent of people made any reference to there being an increase in the slaughterings. In the report we do have the chart or table which does show the years - if we take year 95 as an index, production has decreased for 96 and 97. You'll find that on page 13 of the report at the bottom. So the production has not really increased, but it has increased in this sample as they have taken up the sows that have become available through closure of various groups going out of business.

I'm going back on page 8 of the report now at the bottom. The further evidence of this, 95 per cent of all respondents believe that the importation of pigmeat has had a negative effect. This is their belief. What we find when we scale that - and you'll see in the chart when you have a chance to go through - is that 65 per cent of them put it in the extreme category. Getting two-thirds of your sample to say this has had an extremely negative impact is a lot higher than we would expect on these types of scales. We generally expect 20per cent or so, or if it's really bad a third, but when you get to two-thirds, putting it into an extreme category, you sense that there is a feeling among the producers that they are not moving particularly well.

PROF SNAPE: Does the fact that this survey was not held in a vacuum- - -

MR STOLLZNOW: That must be taken into account. That's why we have a combination of attitude questions as well as how many sows have you got, what price have you been getting per kilo and this. So we had this combination of questions that require specific information as well as questions which require some sort of attitude information, because the attitude does tend on occasions to reflect the feeling within the industry, and that can become a self-fulfilling prophecy.

PROF SNAPE: They also would be aware that it was associated with this inquiry no doubt.

MR STOLLZNOW: I would think that anybody that thought otherwise would be naive, but on the other hand we'd then look at the results and see how consistent they are. If they answer a certain way in one area but a different way in another area - and you can run various checks to see are these people being consistent. So we'd expect those figures to be high. Even though, 65 per cent in the extreme category is still very high. At one stage we thought could these people have been colluding, but there's no way they could have because they came from all over Australia, they were contacted by phone, and also we do random spot checks back to clarify information if there's something wrong.

If in fact some of their estimates of price or their estimates of cost to stay in business become too consistent, we ring back to find out why that is so, and we get satisfactory explanations. I've made that point that the production of pigs has gone down even though on our sample, the production has gone up. In the report generally, 60per cent believe that they have had to increase that productivity to stay in business, and around about the same number believe they are going to have to continue to increase their productivity to remain in business in the coming period, if they stay in business. To some degree we would suggest this explains why there's been an increase in the numbers. It's a matter of distributing your costs over a bigger base; taking a smaller return on each unit.

Where the ha've attempted to increase productivity - and these again are detailed in the report - is by improving their capital in some instances because on the figures that they gave us, we're estimating about a 2.28 - around about 2 to 3per cent increase in capital invested in the industry among this sample, because those that have left the industry would no longer have capital involved.

PROF SNAPE: Over what period?

MR STOLLZNOW: Over the next 12 months. This has been done in improving facilities. This is sometimes investing in growing their own feed. It's taking time - in extra shedding, in changing the nature of their production. That's a modest increase in capital on the sample. While they are raising capital, the banks, again from comments and also talking to some of them in an interview situation - the banks do not appear to be particularly accommodating to the pig farmers at this point in time.

So they are subsidising from other on-farm activities, which is an advantage that seems to accrue more to the smaller producer, that as you will see in the report has a more diverse range of activities than large producers that get a significant or substantial part of their income from pork production. In the early part of the report - could I refer, if you wouldn't mind, to page- - -

PROF SNAPE: I don't have with me a copy of your report.

MR STOLLZNOW: Sorry.

PROF SNAPE: I've got the copy of the Pork Council's submission.

MR STOLLZNOW: Right. What we did is we asked them to estimate - - -

PROF SNAPE: Is there a copy available? Thank you very much. We only got it 20 minutes ago and we photocopied what we could.

MR STOLLZNOW: I was only told 10 minutes ago I was talking.

PROF SNAPE: Okay, thank you very much. What page are we on?

MR STOLLZNOW: I'm looking at the bottom now of page 9.

PROF SNAPE: That's page 9 of the market research report.

MR STOLLZNOW: Yes.

PROF SNAPE: Thank you.

MR STOLLZNOW: We asked people - and again you can refer to the charts at leisure later, and the detailed tables in the back - we asked people to estimate their position with regard to profitability currently and their estimate for the 98 year. Not everybody could provide this information - some people seem to be some way behind - but those who could showed that their profitability over that period, when we add the figures up, declined by 85 per cent. At the same time, their estimated losses had increased, according to the figures they gave us, by 995 per cent.

Now, when you're adding up figures and you see something like that, the first instance is to say something has gone terribly wrong. In other words, those who are making losses, they claimed that the losses on this sample would go from $825,000 - can I refer you to page 5, I think that's easier to follow.

PROF SNAPE: Yes, I was actually going to ask you a question on this, that I picked up just from the council's submission itself, and it was that the percentages didn't seem to add up. If I could refer you - and perhaps it's the appropriate time too - to page 21. That's the page I see that you have got there. Below the table there it says:

> Those in the sample that made profits of 57 per cent had dropped a massive 85 per cent.

Then you say, "of whom only 32 per cent," yes. Then you say in the next sentence:

> At the same time the number of producers surveyed that had reported losses in 1996-97 was 8 per cent.

So that 8 per cent added to the figure above the 57 per cent only gives me 65 per cent. Where are the other 35 per cent of producers?

MR STOLLZNOW: The other 35 per cent of producers did not give information. They did not provide any data.

PROF SNAPE: Okay.

MR STOLLZNOW: They didn't know.

PROF SNAPE: So those are all of the percentages of the total producers but there's another 35 per cent who didn't give any information at all.

MR STOLLZNOW: Yes, and that is all shown in the report at the appropriate table.

PROF SNAPE: Thank you.

MR STOLLZNOW: Now, if we take the information that they gave us, you can see there that the total profit of those that made a profit, they believed in 96-97 - if we aggregate the lot, it was $15,000,000. In 97-98 they were now estimating $2.2 million, which is down 85 per cent. They were also estimating that their losses - those that made losses - the total loss for this sample was $825,000 in 96-97 and now they were estimating $9,000,000. That's where we get our 995 per cent increase in loss. We ran those figures back and did do a subcheck on the sample and they were the estimates that were being given. So the sums are right. The next line deals with the number of employees.

PROF SNAPE: Could we stop on that just for a moment. 96-97 was a good year in prices, as I recall.

MR STOLLZNOW: Yes.

PROF SNAPE: It was the best year that has been there for quite a long time. It was after the drought and I think the prices went up then to a level that was rather higher than for some years. Is that not correct - 96-97? That is right. So if you take the last half of 96 and the first half of 97 and averaged it over the whole year, as some others have, it was a good year for prices, and yet the profits were less than 10 per cent.

MR STOLLZNOW: Yes.

PROF SNAPE: One might have expected the industry to be building up a bit more but that perhaps not a - - -

MR STOLLZNOW: It depends on the cost structure in the year they came off.

PROF SNAPE: Well, it was the year after the drought so the costs had gone down. I mean, the feed was relatively cheap as compared with what it had been. Well, it was reasonable. It returned to normal levels - feed - in that year. Prices were up, yet the profit was only 15,000,000, that is of those reporting profit.

MR STOLLZNOW: Those recording a profit, yes.

PROF SNAPE: It would also, if I may say, be interesting to see that there was still some reporting losses in that extremely good year, which is a bit surprising.

MR STOLLZNOW: Yes. Again we could go back into the sample, isolate and analyse those people specifically as a group.

PROF SNAPE: I suppose it just says that some people will always make losses.

MR STOLLZNOW: Yes, they could always make losses, or they could be paying off debt coming out of a drought or they could have invested.

PROF SNAPE: Well, if they were paying off debt I don't think that would be entered into their loss.

MR STOLLZNOW: If it was a feed debt maybe.

PROF SNAPE: Yes, maybe; it depends how they're accounting.

MR STOLLZNOW: Well, it always does, doesn't it.

PROF SNAPE: You were going on to employment.

MR STOLLZNOW: Yes, the number of employees in the industry was 2136. That's what we understand the employment is. These respondents, they were employing 1360 and they were estimating that there would be some labour shedding.

PROF SNAPE: Do you define employment?

MR STOLLZNOW: Employment includes family members.

PROF SNAPE: Including the owners?

MR STOLLZNOW: Including the owners - all people working in pig production.

PROF SNAPE: It's all people working on it.

MR STOLLZNOW: That's right.

PROF SNAPE: Thank you.

MR STOLLZNOW: What they are doing is that again in past - how they are trying to increase productivity and minimise cost - one of it is working longer hours and one of it is also bringing in family members who perhaps haven't been employed before. These are the independent ones. That's a drop of 7 per cent in employment, based on that estimate.

Their indebtedness to financial organisations, interestingly enough over this period - and again in the report you can see how this relates to the size of the operation - has increased by 13 per cent, that is between 96-97 and their estimate for 97-98. They believe that their indebtedness to financial organisations will increase.

PROF SNAPE: Could I just stop you on the employment. I've got a puzzle in table 5. Go to the number of employees line in table 5 and we see "actual 2136" then 1996-7 "1360", 97-8 "1261". What's this?

MR STOLLZNOW: The respondents in 96-97 - that is the sample. The figure of 2136 is the information we were given that said this is the total number of people employed in the industry.

PROF SNAPE: 2136?

MR STOLLZNOW: That was the total number of people employed in the industry.

PROF SNAPE: So what’s the 1360 figure?

MR STOLLZNOW: That is the number of people employed in the sample that we drew.

PROF SNAPE: Okay. So 2136 is - - -

MR STOLLZNOW: The actual is independent information.

PROF SNAPE: But there are 3200 people. Doesn’t that mean that - - -

MR STOLLZNOW: Yes, there are 2136 people employed in the industry.

PROF SNAPE: Well, in that case the definition of employment must be changing because there are 3200 pig farms to start off with, which must have at least one person per pig farm.

MR STOLLZNOW: At least, one would assume, one person there, yes.

PROF SNAPE: And some have got a heck of a lot more.

MR STOLLZNOW: Yes, we can double-check that figure.

PROF SNAPE: I think there’s something wrong with that figure.

MR STOLLZNOW: Yes, that may be a different definition of employment, yes.

PROF SNAPE: Yes, there’s something wrong there I think.

MR STOLLZNOW: We sourced that figure outside the report.

PROF SNAPE: Perhaps if we just delete it.

MR STOLLZNOW: We’ll check it, because it’s a wrong figure. Where was I now?

PROF SNAPE: You had just gone off employment and you were going on to the next - - -

MR STOLLZNOW: Yes, but when you said something about employment it triggered something else.

PROF SNAPE: I think a clarification might be provided by MrPearson.

MR PEARSON: Can I make one statement. Those figures were provided to me by the Australian Pork Corporation. Those are number of employees without counting the sole proprietor. So if you factor that in, which is another 3300 - which we addressed in our submission - we're really looking at 5500 or thereabouts.

PROF SNAPE: Thank you.

MR STOLLZNOW: If I move on, the indebtedness - when we aggregate the indebtedness for 96-97, on the information given it was $57,000,000. The indebtedness to financial organisations - the estimate was that it would increase to 64. That's 13 per cent. We can't say whether that was interest or cumulation or whether or not it was extra borrowings. But nevertheless, they were estimating an increase. The figure below that deals with the indebtedness to feed companies, which does show an 82 per cent increase.

PROF SNAPE: If one compares those two figures in total it goes from about 60,000,000 or 61,000,000 up to 71,000,000, which in view of the price decline etcetera over that time, and the reported losses, does not seem a very substantial increase in debt. It was from 61,000,000 to 71,000,000. I must say, looking through this very quickly before, that figure surprised me.

MR STOLLZNOW: Yes, it could also be perhaps that the increase in debt is that it's very hard if you're a pig farmer to borrow.

PROF SNAPE: Yes.

MR STOLLZNOW: Banks are not - some of the written-in comments in support of these estimates that are written into the questionnaires, which we can extract and have extracted, do indicate a degree of - how can we put it - hostility or ambivalence towards the accommodation of various financial organisations with regard to letting people stay in business. In other words, they don't particularly care for them at the moment. So we've dealt with that.

One thing that did emerge as well is that the larger operators very much felt trapped in the business, because it was difficult to sell their capital other than the sows, or reduce those. The ones who seemed to be going to hang on tended to be the smaller producers, with less than a hundred sows, because they had a diversity of activity and therefore could cross-subsidise, whether they were sheep, wheat, cattle, grain or - we even had a couple of cotton farmers who would probably be in the best position at the moment to do that.

The final set of charts in the report - and I think it would be a good place to stop - deals with how people saw their future in the industry. Attitude questions regarding a person's future indicate, as I mentioned earlier, something that could approach a self-fulfilling prophesy because when people become desperate and depressed, and based upon what they perceive as being very negative circumstances, they tend to lose some heart and also it makes it a little bit difficult to remain productive. The majority of respondents believed that their production was going to remain the same. That's 53 per cent believed that their production would remain the same in the coming period. 23 per cent thought it would increase, which gets back to, "I'll buy more sows to maximise my capital, lower unit price, better turnover, higher growth."

35 per cent said they would remain viable and remain in the industry. We only had a third that were that confident. A further 30 per cent said, "I'm going to wait and see what happens." 70 per cent are at the moment reviewing their future to see whether they can hang in there. 9 per cent believe that they are marginal and 6 per cent want to get out right away. If we add that to the 7 per cent of our sample who were already out of the industry, there is this tail that seems to be dropping off which is shown in the earlier figures about the number of pig farms and the decline in the number of operations over the period.

Those who remain viable - then there's more detail as to why they think they're going to remain viable. The biggest reason there is because they have to; they have no other options. Those who are going to wait and see will probably be waiting for certain decisions or to see what is going to happen in the future before they make any decision. The reason for their - there are a few negative comments about government attitudes and things like that, and low profitability being among the biggest problems confronting the industry.

Now, I could stop at that point but I would be quite happy to do the detailed report at some stage, but it gives you an overview. We have checked a number of the figures. The sample is very significant in terms of the number of operations. There does appear to be a number of problems that these people are experiencing. That's experienced by their wanting to exit the industry, the increase in indebtedness and the way they're having to do business.

PROF SNAPE: Thank you very much, Mr Stollznow. I wonder if you could - I wasn't able to refer to all the charts to which you were just referring, but did you get a picture from the responses as to how the producers see the industry in the next few years?

MR STOLLZNOW: That's the - - -

PROF SNAPE: See the development of the industry and the industry as it is developed, if you like.

MR STOLLZNOW: Yes. The bigger ones are positive; the middle ones are very concerned and do not see the industry as developing. At the bottom end they're probably looking at wheat prices rather than pigs. We have a lot of comments that are verbatim comments or comments that are written into the questionnaires as well where people explain just why they've rated the way they have, and some of what I've said comes from reading that data. They do not see a great future in the industry in the current situation.

PROF SNAPE: Did you ask questions that would indicate as to whether the small or medium producers were in fact perceiving linkages to bigger outfits - - -

MR STOLLZNOW: No.

PROF SNAPE: - - - or getting together in the sort of way which - well, we've got AusporK coming on next - in the sort of way that a number of their producers are? Did you see that as a predominant view within the industry?

MR STOLLZNOW: No, that wasn't a predominant view. Some of them were contracting and they saw that as a way out, but they did not see that they were going to be necessarily swamped. As I come back to that point, the smaller producers were the ones who could hedge their bets a little bit by having a broad range of on-farm activity; some cattle perhaps, some grain, some pigs.

PROF SNAPE: Just for the benefit of the record, because it comes out on the transcript, there's a word that's ambiguous. You did say "contracting" in the sense of meaning to have contracts, not contracting.

MR STOLLZNOW: Yes. When we dictated this, somebody got mixed up between sales and sows. So we're desperately hoping there isn't - - -

PROF SNAPE: In this case it's the same word which you cannot pick up from a written version. Thank you. Thank you very much, Mr Stollznow.

MR HIGGINS: I was just going to clarify some of the questions.

PROF SNAPE: Certainly, and identification again please.

MR HIGGINS: My name is Paul Higgins. I'm a director of the Pork Council, but I'm also here as a director of Ausporck. I just wanted to make some clarification on some of the points that were made on the way through. First of all, it was about economies of scale or diseconomies of scale that the commissioner asked in relation to if people are getting bigger they must think they can make more money by being bigger. It depends on how you look at the structures of their business.

As was discussed before, there are elements of risk and diversification involved also. So there are many farms out there that have other sources of income - grain, cattle, etcetera. So to them there's some advantages in staying small. There are certainly some advantages in terms of cost of production increasing in size. Examples I guess in our group are that we're able to spread advice or the cost of advice say for example nutrition and diet formulation over a much larger number of tons of feed as opposed to a smaller number and therefore our costs are lower. But at the other end there's also I think some diseconomies of scale, and it's well-known I guess in the industry that organisations at the larger end - I'm referring to I guess particularly a Bunge in this situation - have some problems in buying grain, etcetera, because they buy such a large volume that they have a great difficulty in doing some of the things that the smaller producers do in terms of spot buying and buying close to their farms, etcetera.

There's also on the other side - not necessarily on costs of production, but on marketing, there are certainly small farms out there that are producing small numbers of pigs and are marketing to several small outlets, and have probably weathered through this storm better than anyone else because they haven't been threatened in the circumstances. Now, it's very hard for a larger organisation obviously to do that when they're marketing five or 10 or 20 thousand pigs a week. So there are just some comments about those economies of scale.

PROF SNAPE: Thanks very much.

MR HIGGINS: Certainly the general trend has been larger, and I think the other major thing which I'll touch on when we talk about Auspork is that people are recognising that to survive in the industry, they see in 5 or 10 years' time, they need some scale in terms of marketing and production of product, particularly for export markets and other markets. The other issue was that the costs of production that were put up, the commission made some comment about those figures were higher than levels that you've been quoted before. I 'm not sure what those would be. There needs to be some care taken that those costs there are hot standard carcass weights, whereas the figures that are calculated in the Pig Stats which may have been submitted otherwise are live weight.

PROF SNAPE: I think that we were working on a common basis because they're in the same ballpark. They wouldn't be in the same ballpark if they weren't. The standard way of which we're quoted is a hot standard - over the hooks.

MR HIGGINS: Certainly the costs of production there are actually lower than has been described in the Pig Stats information in general. The other issue was you touched on profitability in 96-97.

PROF SNAPE: Yes.

MR HIGGINS: And as part of the information - I didn't actually include it even in our confidential submission, but I have here the figures for the average feed cost, and the situation was that the drought was still in effect because you don't get a new crop until November, December. So the actual costs of feed for the first half of the year when prices were reasonably high were still fairly high. So for example our figures here range between $301 and $308 per tonne up until November, and then fell to $262 a tonne in January. So when those prices were coming down, it was the same time that the feed prices were coming down. So that probably explains some of the apparent inconsistencies in terms of profit in that financial year.

PROF SNAPE: Thanks very much, Mr Higgins. That concludes, does it, the- - -

MR RAMSAY: Were there any other comments you wanted to make?

PROF SNAPE: I have a couple of questions which I wished to ask, but I was wondering if you had - - -

MR RAMSAY: I had some concluding remarks to make.

PROF SNAPE: Yes.

MR PEARSON: Just one comment.

PROF SNAPE: Mr Pearson?

MR PEARSON: Just one comment on the chart, there appears to be some - I mean, I want to clarify the costs of production are the cash costs; what you would term in microeconomics as the variable costs below which, if prices fall, you reach a shut-down point. That's the bottom line. Your break-even as earlier mentioned includes the component for depreciation.

PROF SNAPE: You're referring to chart 3 on page 22 of the submissions.

MR PEARSON: Correct, the one that's showing there, yes, and the price required to stay in business includes the capital component. That's the price farmers need in the long run to stay in business. They're the three key points. If prices fall below your costs of production - your cash costs of production - they have no option, and this is from classical microeconomic textbook theory. They have no option but to shut down. Thank you.

PROF SNAPE: What rate of return was incorporated then to stay in the business? What rate of return was required - I mean, if we'relooking at the difference between the break-even and to stay in business, there has to be a rate of return imputed into there, and I'm asking what the rate of return was.

MR STOLLZNOW: That was not specified by the respondent.

PROF SNAPE: Thank you. Could I ask a couple of questions - I can only find one at the moment, but I'll find the other one - in that we heard quite a bit about that at the end of last year, the last half of last year, imports were coming in of legs, and in fact the processes were caught or some of the producers were caught with large stocks of legs. So what happened in coming into this calendar year, there was this overhang of legs on the market which was not the right time to have a stock of legs in the freezer. It was customary to have them a few months before, but there was a very large stock which depressed the prices into the following year. So legs were being used for other purposes for which they're not often used, but that depressed the market. Has that stock of legs now been worked off?

DR HEILBRON: We have no information on what the stockholdings are. That's commercially available, but we do not have that.

PROF SNAPE: Okay, but do you see the signs from the processors in buying legs which would indicate that they have worked off their stock of legs? You'd see it in the marketplace. You saw it in the marketplace at the beginning of this year because there was such a very big depression of the prices because of that overhang of legs. You'd probably see it in the buyers' behaviour now as to whether they had such a stock of - even if you don't have direct information on it, you might have indirect.

MR NORTH: The stock of legs has continued along a reasonably high level.

PROF SNAPE: We'd better have an identification.

MR NORTH: Ray North from the Pork Corporation. The stock of legs has continued along at a reasonably high level. The overhang coming into the calendar year 98 was caused by the escalation of imports in late 97, and that caused local early stage processes to retain stocks of legs because they couldn't quit them, and there's been a working through of leg stocks, but they've still been buying legs locally, and the imports have continued at a level which has not permitted the quitting of those stocks. So there's still an overhang, but not to the same degree as there was going into the calendar year.

PROF SNAPE: Thanks, Mr North. I wonder if you could indicate how you see the industry developing? You state that you're not seeking long-term protection, and Mr Oxley of course emphasised in his presentation that this was a safeguard measure which was perfectly legitimately available under the WTO, but it was not changing the long-term level of protection, and that you declared that you were prepared to live with that; that is, a zero bind tariff.

Now you're asking for assistance in the form of a safeguard measure for the next 4 years, but how do you perceive the industry developing over that period of the safeguard action in such a way that it would then be able to survive in the zero tariff environment, given that - I mean, one might have said that there was an excess of legs from Canada or from somewhere in the last year or so, but one might anticipate that occurring again in the future from time to time. So in other words, to be able to cope with the normal vicissitudes of the world market after 4 years' time, because as Mr Oxley would know, any safeguard measures have to be not just in relation to the injury, but also must facilitate adjustment. So how do you perceive this adjustment? How do you see it being able to survive in the longer term?

MR RAMSAY: I think what we'll see is the continuation of some of the activities that are currently under way with increased productivity happening on farm, but at the broader level I think one of the key structure changes that will be happening is as flagged in a number of submissions from industry people that we want to see growth in our exports. We want to see investment happening in post-farm gate as well as on farm for productivity improvements. We see opportunities for improving risk management, particularly for the farmers and getting risk management tools that are appropriate to the farmers in a more volatile world operating environment developed and in place and being adopted. We see opportunities to continue the rapid up-take of quality assurance systems on farms which really is about farm business management systems. So we've been through a series of actions like that. The trends are already in place, they're in those areas, from exports - are trending up at the moment. We think that if we continue the current strategies and put more effort into that, that will benefit the industry, and similarly on farm, with productivity, quality assurance, better risk management tools and techniques, better information flows.

PROF SNAPE: Is there some structural change in the sense of the size of the average herd that you would be anticipating? Do you expect to remain in the same sort of structure into the future? We know that over the last 30 years or more the average herd size has been increasing substantially. There have been very big structural changes in the industry. Do you see that every sized pig farm is going to continue? I know that you're an industry association and so you have to speak for all your members. Nevertheless, we have to be able to perceive how this industry might in fact adjust to survive in a zero tariff level in the future. Do you have more details in your mind as to how that structure of the industry would evolve to be able to survive? Would it be that no-one under 400 sows is going to be able to survive in the future or what? It's a hypothetical.

MR RAMSAY: Yes. I think, as I was saying before, the trends that are in place will continue. So I think that the farm build-up trend will continue. One line of thinking is that we may not necessarily see a situation hypothetically, as you said, where if you have less than 400 breeding sows that you won't be in business. We may see increased contract growing or multi-site production where smaller farmers have a role in growing out different stages of production. So that is possible. That's a trend that's emerging in other parts of the world and that investment or those types of farming enterprises are springing up now around Australia but it's still too early to say where it will lead.

PROF SNAPE: Maybe I can put it to you in another way. You have given a great deal of attention as a council, of course, to this inquiry and to being able to secure a period in which you can see this adjustment. Now, if you were in fact to be getting safeguard assistance on the lines that you are requesting, what would you be doing with regard to your members? What would you - because you've got 4 years. Now, presumably you then have to go out and say, "Look, 4 years, you really have to meet the world market," and you would be going out and giving advice to your members to be able to do that. What sort of advice would you be giving to get this facilitation of adjustment?

MR RAMSAY: I think the Pork Council and the other industry bodies at the national level will have to take a strong leadership role in communicating the imperatives for change to the membership. I think that having a target there even over the 4 years, it provides a structured framework for planning and driving the change process for - or driving quality assurance adoption or improved on farm or export development. I mean, it sets a target and I think it puts the pressure on the industry and the industry organisations to really get on with the task that - I mean, we are currently doing - but I think that it will happen in a bit more stable environment than we've got at the moment.

PROF SNAPE: Well, when we visited Queensland and talked to a number of producers up there and so on, the point was often made that a number of people wanted to get out of the industry. I think that the survey is probably supporting that. But it was essentially no, that there wasn't a dignified way out of it, now we're trying to see an exit mode. Now, would the Pork Council, if they were to get the safeguard assistance in this manner, would it be going out and saying, "Look, now you've got an exit. Now your assets have got some value. For heaven's sake get out now or you're not going to be able to survive in 4 years' time?" Is this the sort of attitude that the Pork Council would then be pressing upon the industry, or what would they be doing?

We have to see the facilitation of adjustment and we don't see the picture clearly coming across as to how you envisage this adjustment. I mean, it's all very well to say, "Get quality assurance," etcetera etcetera but I think that under the agreement on safeguards there has to be a clearer vision of the way that the industry would adjust than what you're currently giving me.

MR RAMSAY: I would say as well that the industry has done - I mean, at the moment we have developed a business plan for example which involves accelerating the implementation of all of those things I touched on before, including proposing formation of an export council and those types of actions to get better focus into the industry on the high priority issues for structural change and actually making sure that happens. So I mean, I think in an industry which as you said has gone through profound structural change already, that the fact that people are exiting the industry is - or that farm build-up is happening - has been a feature of the industry. It's not a new thing.

But I do agree that getting the information out there about what the priorities are and getting the information out there to help people make their decisions about their future in the industry is very important and that would be a role the Pork Council would take strongly.

DR HEILBRON: It seems to me that you are assuming that the future structural adjustment that would take place once this breathing space was over would be in some sense a new departure for the industry. It seems to me that what we're actually saying is that the process of structural adjustment was going on in a more or less manageable process for some period of time but what happened is that the imports disrupted that process, it made it unmanageable. It also, in so doing, undermines the potential for some very desirable structural changes which would have happened in the absence of those imports. There is evidence to that effect from the commercial players; that there are a number of investments in export enhancement and so forth, that are pending. But the uncertainty which has been created by the current situation puts those at risk. So I guess what we are saying is that the temporary breathing space actually will provide for the ongoing process of manageable structural adjustment.

PROF SNAPE: Okay. Obviously I noticed - I was implying by his body language that I might have been exaggerating the facilitation but I'm trying to get the case made as strongly as it could be and trying to draw you out on it in that regard. We have of course received a very large number of submissions from your members. I must say that a large number of those submissions appear very similar and all seem to recommend the same remedy, which is a remarkable coincidence perhaps. But the remedies, as I say, are very, very similar and along the lines that you're suggesting.

A number of them have made the comment - in fact quite a large number have made a comment about the uncertainty, that they in fact wanted a more certain environment. This is a very common thing in the submissions. It's just about as common as the suggested remedy, the points that people make, "We want more certainty in being able to plan." Now, of course we're again talking about a breathing space and again there wouldn't be any more certainty after that time than in the past. It's not as if it could be returned to pre-1990. Yet so many of the submissions, I must say, do sort of hanker after that sort of certainty and don't seem to in their attitudes, as revealed in their submissions, be saying that they're prepared really to live in the uncertain world that would be when the pig industry was fully integrated into the world market. Would you like to comment on that?

MR RAMSAY: Yes. I think the issue about the current uncertainty is that we can't get into a situation where we can do what you were just talking about with the structural change process. Clearly one of the things that we would have to do if the government were to agree to applying the safeguard is that a program of structural change would have to be planned. It would have to be implemented over that time. I mean, some of the feedback I get as well from producers, who express the same view about concerned about uncertainty, are putting it to me in a slightly different way. They're saying that, you know, "Are we going to be able to get enough breathing space here to be able to set some targets and actually get some plans in place and get on with them, because the current environment is so unstable and swinging one way and the next that we can't even seem to take control of our own future." I think it's at a different level. I think we'd have to - - -

PROF SNAPE: But what is there more unstable in the situation at the moment or in the situation as it has been over the last year or so that would be more stable after the 4-year period that you're seeking had expired?

MR RAMSAY: The industry will have over that time implemented structural changes that are necessary to improve both our export performance, to improve our on-farm performance, including the ability to manage risk in an internationalised environment.

PROF SNAPE: And you see that ability applying then at all levels of production of a farm?

MR RAMSAY: Well, it has to in the end for the industry to prosper. At the moment there would be varying degrees of ability, for example, on the risk management front, between different scales of operations.

PROF SNAPE: So you would see in fact that the smaller scale people, with not being able to implement the same sort of risk management thing, would in fact tend to decline as a proportion of the industry?

MR RAMSAY: Well, no. It may well be that at the moment the effort needs to be put in to develop those risk management skills for the smaller farm operators and that the stability that's provided through the safeguards measures would allow investments that have been flagged by many of the bigger operators to go forward, with their plans for export development, and we would see an overall improvement in the health of the industry.

PROF SNAPE: Thank you. Now, also very, very common in the submissions - common I think to the point of unanimity - is the request for a tariff quota rather than a simple tariff. Indeed, I think in Ausporks's submission later on, it's the first submission that has even mentioned the possibility of a tariff and not just the tariff quota.

MR HIGGINS: I made a mistake.

PROF SNAPE: Which brings us then to the question - we can see that it is if you like - the argument that you're presenting; that it is in fact the increased quantity of imports which came in, but of course the effect on profitability is what happens through price; not the quantity of imports as such, but on price. Now one is going to the alternative safeguard mechanism which was a simple import tariff of a temporary nature, which of course would raise the price, and therefore would in fact enable the domestic producers to sell at a higher price than previously. Why isn't that option given more consideration?

MR RAMSAY: It was primarily based on the fact that we think that a quota would provide more certainty there around volumes coming in. It was as simple as that; that we thought that would provide a more certain environment for the industry.

PROF SNAPE: It would insulate you more from the world market, and I now come back to the facilitation question. If one is in fact trying to structure an industry in a way that will integrate into the world market in the longer term, and of course the import quota idea or tariff quota or import quota suppresses much more the world market effects on the domestic industry. Is that as good a way to facilitate adjustment? With the tariff there would be a wedge between the world price and the domestic price, but the domestic price would still go up and down with the world market, and you would still be in touch with the world market.

On the other hand, if you've got a tariff quota or a quota in there, that is pretty well full insulation from the world market and doesn't communicate developments in the world market through the import side. So if you are trying to look towards a facilitation to live in this world, isn't it better to go for a tariff than a tariff quota?

DR HEILBRON: I guess it comes back to the discussion we had previously on the adjustment that's envisaged. Let us go back. The structure adjustment was under way before the search of imports undermined it, and therefore if you are to ensure or minimise the risk that future structural adjustment export expansion and so forth takes place, then the objective should be to lower the risk of that not happening. So therefore the quota actually has a greater chance of ensuring that the subsequent structural adjustment does in fact take place.

PROF SNAPE: Can't you turn that on its head and say that the industry was fully in touch with the world market between 1990 - the world market as represented by Canada anyway - between 1990 and - well, until now because of course the - and therefore its adjustment was in fact partly in response to being in touch with the world market. Sure there was a big shock to it in the last year or so, and now you're going to put a block on that one, whereas that adjustment over this decade has been occurring in response to the world market change.

DR HEILBRON: Well, I guess it goes back to what we said earlier, that the adjustment was taking place post-1990 under the system of open trade, but the search which took place in imports was totally unanticipated, and it did provide a shock, and that is the essence of the problem here.

MR HIGGINS: Commissioner, can I just make some comments about the structural facilitation.

PROF SNAPE: It's Mr Higgins again.

MR HIGGINS: Sorry. I wanted to say something because I think Brian may feel a bit restricted by maybe the smaller end of his membership in terms of some of the comments; despite the fact that I'm elected by them, I don't necessarily feel as restricted.

PROF SNAPE: You're no longer president?

MR HIGGINS: No. I'm still director, but I don't wish to be president again, but I think there's some fairly serious things going to happen. We'll touch a bit on the Auspork stuff about what we're going to do, but - - -

PROF SNAPE: Perhaps if you could leave that until you're speaking for them.

MR HIGGINS: I will. That's fine, but in terms of the industry perspective, my view is that we will see a slight difference in the emphasis - when you look at those adjustment figures, all you really see is averages, and I think what we're going to see is a dichotomy of an industry where some smaller producers will probably do better than anyone because of niche marketing, because of value-adding of their own grain, for a number of reasons, and they will survive and continue to survive and prosper, and the other sources of farm - income on their farms will form a buffer for the volatility that probably will occur.

On the other side I think there will be a rapid acceleration in the coming 3 or 4 years if there is some sort of tariff quota or tariff put in place, because the sort of investment of the medium to largest size farms is a 10 to 20-year investment, and people have put money into that in the last couple of years. They see that the only way that they're going to survive is they've got to be able to compete in that global market after whatever measures are put in place.

What will happen I believe is that there will be quite a rapid increase in the export market basically because of export structures going in place to actually be able to achieve that; that a lot of the farms that you see on those graphs will end up - I think as already has been said - as grower contractors, so the actual control of production will narrow even though the number of farms may actually increase as in - when I say "number of farms", I mean number of physical farms as opposed to ownership of those farms, and that the domestic marketplace has to undergo some structural reform in terms of its product mix and size of carcass etcetera to compete in those markets, and we'll see quite a large increase in that.

I guess that's the way that I see it happening, and there's a group of people I guess who are members somewhere in the middle who may well be threatened by that. My view is that that's, you know, the reality of the marketplace we're in; that we don't have some sort of temporary measure to put a little bit of confidence back in the system; no-one is going to be able to spend the capital or make the profits that will enable them to actually make those changes and create that change.

PROF SNAPE: With the restructuring that you are talking about, you would see that the Australian industry could continue to survive and indeed prosper in a world market situation in which I think that if it is fully integrated into the world market in the future, one would not be able - and correct me if I'm wrong, but one would not be able to depend in the future on the increase in the price of legs in the second half of the year which has been as I understand it a key element in the profitability of pig farming for a very long time.

If one sees the Australian industry integrating into the world industry, one would see I think a picture of a possibly viable industry in which one is importing legs because we tend to have an excess demand for legs relative to the rest of the world or a bias towards demand for legs relative to much of the rest of the world, and exporting predominantly other cuts of meat. So then with that pattern you would see a fairly even pattern of prices over the year with a variation in imports over the year, the imports particularly going up to meet the seasonal demand for legs for ham.

That means without that premium on that leg market that one really has to survive on world prices - on the export market for the cuts that you're exporting other than legs essentially, and against the import price of legs with respect to that. You can see then the Australian industry surviving on those prices?

MR HIGGINS: Well, I'd like to know what those prices are in 4 years' time. It's a bit hard to answer that question in a sense, but - - -

PROF SNAPE: They're the world prices; it's world prices, being able to integrate into the world market. I don't know what they are and of course no-one does, but one gets a feeling from the world market by looking at how the prices have been, and - - -

MR HIGGINS: I can only answer that probably in two very short ways: one is (a) I don't think we have a choice but, secondly - again a personal thing - I'm willing to put my money on the line to do it. So I'm making a personal view that says, yes, we can survive and we can do that based on the information that we have but - and the real issue is we need to get the infrastructure in place and some of the changes and we need some capital to be able to do that, and in the current situation that is not likely to occur unless some confidence is put back into the marketplace.

PROF SNAPE: Does the survivability of it in that sort of scenario depend upon getting feed at world prices for feed?

MR HIGGINS: Yes.

PROF SNAPE: Would you like to elaborate further on that as to the current situation on feed prices?

MR HIGGINS: Well, there's probably two key issues, and I'm not someone who knows the great detail of this, but the two key issues are that as we discussed before in terms of the predictions - I spoke to actually my regional bank manager yesterday, and their internal predictions of the bank are that there will be reasonably low feed prices for the next 2 or 3 years, and he was saying that's good for the industry. Now, to some extent that's driven off world prices, and it's both good and bad because it exposes the industry to a situation where if we have another drought and therefore feed grain availability is reduced, then our major competitors may be in a situation where they've got extremely low feed costs, whereas we are back in the situation of high feed costs that occurred 3 years ago.

The other issue is that some of the marketing structures within the domestic industry we believe add somewhere in the range of 10 to 20 dollars a tonne to feed costs for feed grain.

PROF SNAPE: What are the marketing structures?

MR HIGGINS: Well, I guess in relation to the trading situation, the power in the market that the Wheat Board has, some of those have been dismantled to a little bit of an extent, but certainly it’s our experience in the marketplace that they tend to distort the marketplace.

PROF SNAPE: Does the council have a view on that?

MR RAMSAY: I think in terms of you were asking questions before about structural changes that have to be advanced over the next 3 or 4 years with a safeguard measure in place, and there are a number of factors that impact on the industry such as access to feed grain at world competitive prices and - I don’t know, maybe costs of things like government charges for meat inspection and those sort of things. There are initiatives in place to try and reduce those costs, but structural change has to be delivered as part of a package of activities I think over that period.

PROF SNAPE: I haven’t yet been able to read your submission right through of course but just glance at it, but have you made any reference in it to the effect on your costs of the marketing arrangements for grains in the country?

MR RAMSAY: We haven’t done. We’ve suggested in the submission that we provide some additional comments by this Friday on matters that are affecting competitiveness, the second strand of the commission’s inquiry, and that that would be where we pick that up.

PROF SNAPE: Thank you very much. You said before that you wished to make a concluding statement.

MR RAMSAY: I have one question first. Regarding the provisional safeguard issue, as I mentioned in my opening remarks, the Foreign Affairs and Trade Department have notified the WTO that this inquiry won’t be examining provisional safeguards. Do you have any comments about that?

PROF SNAPE: I wouldn’t comment on that specifically. Our position on that really has been to think that that provisional action would have been an action that the government could have taken had it wished to take it prior to the reference to us, and that then having referred to it for 3 months - no, up to 140 days and having it in those terms, that we would in fact be involved in the other part of it, and as the issues paper has focused on that. The reference did say -

> inquiry under the provisions of Part II and Part III of the Productivity Commission Act, and it then is required to report within 140 days or earlier of receipt of this reference and is to hold hearings for the purpose of the inquiry.

I think that the framing of that or the inference in the way that that is framed was for that - not to the emergency action. That is the implication which you have drawn. I thought it would have been presumed that had they wished us to address the other they would have told us.

I realise, as has been pointed out by Mr Oxley and he'll no doubt point it out again, that both provisions are within the safeguards agreement. I take that point. But nevertheless I think that the way in which it was given, implied to us that - of that situation. If you tell me that the Australian government has notified the WTO to that effect then you have told me that.

MR OXLEY: If I may, Mr Commissioner, the issue is less what the government thinks than how you choose to interpret your responsibilities within the terms of reference.

PROF SNAPE: That is how we have interpreted our responsibility.

MR OXLEY: So that is effectively a decision by the commission that it will not consider the case for application of a provisional measure.

PROF SNAPE: The commission will be reporting within about 5 weeks in relationship to the safeguard measures and we don't anticipate any report prior to that time.

MR OXLEY: So you interpret the terms of reference as not requesting you to consider application for provisional measure, notwithstanding the precise terms in paragraph 16 of the reference?

PROF SNAPE: I was fairly careful in the way I just phrased that sentence, which you may have realised.

MR OXLEY: Yes. That's why I ask the question.

PROF SNAPE: I did not rule out, in the way that I phrased that question, addressing any of the parts of the WTO safeguards agreement. But I did say that I do not anticipate a report to the government earlier than approximately 5 weeks.

MR RAMSAY: Okay, I just have a couple of remarks. I think, as we have put before the commission today, that it's clear that the industry is experiencing a crisis and that the overwhelming cause of this crisis is the unexpected surge in imports. The industry is suffering and is likely to continue to suffer serious injury. Australia's commitments in the Uruguay round to bind pork imports at a zero tariff has created a framework which is driving the structural adjustment of the industry. Industry notes in passing that it was never consulted about that commitment. It is presumed that Australia's trade negotiators assumed imports would continue at the level at which imports were observed following the removal of certain quarantine restrictions a few years earlier. Industry is prepared to continue to compete and develop in the long term on the basis of the zero bound tariff.

The unexpected and unplanned import surge of the last few years is a crisis of unparalleled proportions for the Australian industry. Imports have virtually tripled in a short space of time and they are clearly expected to continue to climb. The surge in imports has damaged and will continue to damage the industry and it has derailed the process of orderly structural adjustment. The council submits that the circumstances of the industry today create a classic case for which the safeguard provisions of the WTO were designed. There is a need to temporary waive the commitment to bind imports of frozen pork leg meat to give the Australian industry a respite to enable it to improve its competitiveness in an orderly manner.

The critical issue is how the increase in imports has caused serious injury to the Australian industry. The council considers that the case is plain. The increased imports have depressed prices and adversely affected the welfare of the industry. The council is also deeply conscious that there is a widespread view that adoption of a safeguard measure is tantamount to a restoration of protection. This is a regrettable setting for this case. The WTO safeguard provisions are an essential element of the machinery of multilateral trade liberalisation. The primary function of the rules of a multilateral system are to assist governments to deal with the public policy issues which arise from the removal of protection to sectors of industry. If there were no such pressures there would be no need for international agreements. The logic of the economic benefits of liberalisation would be widely understood and governments would proceed to open markets unilaterally.

The safeguards agreements enable governments and industries to manage the process of liberalisation in cases where actions to open markets under the rules of the WTO have exposed domestic markets to a much greater competitive pressure than was anticipated. The council urges the commission to assess the case for safeguard measures within the spirit of how the provisions are intended to support the global process of multilateral trade liberalisation. The commission can recommend adoption of safeguard measures, taking full comfort in the fact that this will not result in a permanent reversal of protection but rather as simply a temporary mandating of a slower process of adjustment. We'll leave it at that.

PROF SNAPE: Thank you very much. It's been a long morning, thank you very much for it. We now have Auspork, and I think we also have the Canadian High Commission, through their representatives, who wish to make a presentation. I'm not sure if other people wish to take advantage of the offer also.

MR MOULIS: I was wondering whether you had a proposal as to lunch; a say not-before time in the sense of setting a time limit.

PROF SNAPE: I was going to ask the representatives of Auspork and the Canadian High Commission what is their preference now in proceeding. We could in fact proceed after just a short break, 5 minutes, with Auspork and then straight after that to have the Canadian High Commission, or would the participants prefer to have a lunch break and then resume?

MR MOULIS: I think I would prefer a not-before say of 2.30 or 2.45 in the sense of lunch being held, then Auspork will speak. But they are the first on the list so I'm really in their hands.

PROF SNAPE: You would wish that you would be in the seat at about 2.30?

MR MOULIS: Yes, a not-before time, so that there's enough time for lunch and for Auspork now being got through.

PROF SNAPE: Yes.

MR MOULIS: I don't want to prolong things so - - -

PROF SNAPE: No. Let's say three-quarters of an hour lunch and resume at 1.15. I would then think that Auspork would probably take about an hour maybe. I'm not quite sure how much you've already covered that you wish to cover but it may be that we are ready for you well before 2.30. If we start at 1.15 then you'd have to be ready from any time from about 1.45 I guess. Okay, so let's now adjourn until 1.15 and that might be the most convenient arrangement, thank you.

(Luncheon adjournment)

PROF SNAPE: Let us resume our hearings, and we welcome Paul Higgins who is a director of Auspork, and he is to present the Auspork submission. Again I think, Paul, if you wouldn't mind - only likely to be one voice this time, but if you would identify yourself for the tape, please.

MR HIGGINS: My name is Paul Higgins, and I'm a director of Auspork Ltd which is a public company which owns an export abattoir and a wholesale meat business. I won't spend a great deal of time on the submission itself, because a lot of the issues have already been covered this morning in relation to the public part of our submission. Just as background, our company was formed by a group of pig farmers who have a view that we need to insert ourselves further down the production and value-adding chain, and that's the reason why we have an abattoir and wholesale meat company.

There's some information in the submission about our structure and also about directors which just point out the involvement that those individuals have had in the industry over a long period of time - over the last 25 years or so. Basically Auspork's direction is that it started as a joint venture marketing group that's gone further and further down the chain, and we currently have plans on the go for additional increase in export boning at Daylesford, plus a new export and boning plant at Murray Bridge in South Australia which is planned to kill 10,000 pigs a week over there.

I don't really, as I said, want to spend a great deal of time on the information in relation to the industry situation. We've supplied some information which is probably very similar to the information which you've already been supplied in relation to import levels seeing as they have been sourced from the ABS and the Australian Pork Corporation. So you can ask some questions about that later if necessary. One thing I would like to spend some time on is the issue of like or directly competitive product, and the basic definition we've used is on the basis that the farmers even in our organisation get paid once the actual pig is a carcass.

So they're actually getting paid on a hot standard carcass weight eviscerated and trimmed carcass, and that product is in direct competition with imported legs because we either break that product up and sell it individually or we sell whole carcasses, and that the price of those carcasses in a large part are driven by the price of legs in the domestic marketplace. There are a certain percentage - somewhere around 5 to 7 per cent on our information - that obviously go through markets. There's still a reasonable number of pigs that go through live markets where that doesn't apply, but obviously over 90 per cent actually are transferred over the hooks as carcasses rather than anything else. So it is our view that that means that the vast majority of industry is in a situation where they're producing product which is in direct competition with the imported boned-out leg meat.

We supplied information in relation to has the industry suffered or likely to suffer serious injury which again is related to the sort of industry information that has already been presented. So I will move past some of that, but I just want to talk about a couple of things. There has been some argument that the problem in the last

12 months has related to an increase in production, and we've just presented some information there in graphical form of production levels, seeing as the last - when we had the drought and a lot of farmers were badly damaged, we lost a significant amount of production, and the production is only recovering to those - well, still below those sort of levels in the last financial year. So it basically says that over-production isn't an issue in terms of current price situation.

We supplied to the commission some specific farm data from our supply farms. Just to clarify that, we don't actually own those farms. It's the shareholders of the public company that do own those farms, and they've requested that that information remain confidential. So the commission has that and we're happy to talk about that in any private session in relation to that information. The issue really probably is we put forward two models in relation to safeguard measures and as was discussed earlier, we've put one up of a tariff quota but also of a straight tariff.

Now, the way we went through that process was to say we want a situation at the - no matter what measures are implemented that stabilises the marketplace. So we're of a view that either of those measures can stabilise the marketplace, but obviously there are some difficulties in the quota model with the market being open to more than one competitor in the current situation and administrative procedures in that sort of a sense, whereas a tariff based on just every tonne of product which comes through would be a more fair method of creating that situation and those models are defined in the submission.

Under the tariff quota model we've proposed a 3-year level with that increase in the fourth year and that's mainly based on the time-frame that we think we need to implement change which will put us in a situation of being able to complete post the removal of these measures and we think a 3-year period as outlined in our private planning information we've given to the commission would give us that opportunity and that the fourth year be an increase on the basis of some adjustment process then into the point where the market would be opened up completely again.

I've said in the conclusion that we've presented a whole lot of data both in the public submission and in the private submission in relation to volumes and prices and profitability effects etcetera but that the most compelling argument we have is the current situation and the confidence of the industry. It's very difficult obviously to demonstrate that in this sort of a session but it is our view that the industry's confidence and ability to invest in the sort of things it needs to invest in to be competitive at the end of the proposed measures is severely dented.

We have a situation where in the last financial year the normal goalposts, I guess, that the industry or the marketplace expected disappear in that the normal Christmas demand did not occur. We have a situation where currently we've risen to a level probably slightly above break-even and that in the current situation there's not too much more positive going on with that. That, coupled with some discussion yesterday on the ABC that we were going to be targeted for increased levels of imports due to the current trade dispute between the United States and Canada and that we would get perhaps vastly increased levels of imports in the near future - a combination of all those things - have left people with a severe lack of confidence.

Our company is in the situation where it has gone from about 3 and a half thousand sows to now 15,000 sows and the processing capacity on top of that. A lot of that investment has brought in people from outside the industry who hadn't invested in the industry before and those people are either sitting on our board or sitting outside as shareholders and saying do they want to continue that investment? Do they want to put more money down what possibly may be a bad investment path? We're firmly of the belief that the sort of things the industry needs to do, which are to certainly develop an export infrastructure and a significant percentage of product exported to continue to drive the sort of changes that we have done on a farm level, including the adoption of segregated early weaning techniques, increases in numbers to supply those export markets and the use particularly in the last couple of years of extra waste food products to improve feed efficiency in terms of cost.

All of those things we've done and invested a significant amount of capital in the last 5 years. We have plans to invest roughly in the order of about $15,000,000 in the next 2 or 3 years to cap that off, and we see ourselves in an extremely precarious situation, that we need to raise money to create that change and that the confidence of our shareholders and of the general industry is at such a low point that we - if no measures are put in place - would believe that whole plan is in jeopardy.

I guess the main issue is that what are we going to be doing if such measures are put in place and it's my view that I guess - contradictory to what some economic thought - is that our private company or - well, it's a public company, but our private operation will actually accelerate change during that process rather than decelerate because we're left in a situation now where our investors, our shareholders and our suppliers do not know where they'll be in 6 months' or 12 months' time. So they're questioning very hard about whether they want to commit a lot more capital to the sort of changes that we believe the industry needs to survive in the long term.

If we're left in a situation of that uncertainty and as we currently fear there is a price situation the same as 97-98 in this current financial year, then the rate of changes that we can actually create will be reduced purely because of lack of capital, lack of cash flow and lack of confidence. So we would be using those intervening 3 to 4 years to actually create the change. It's not airy-fairy plans. It's already - we've spent close on $400,000 on the development in South Australia already in relation to planning, appeals permits etcetera. We're already set to export bone on Monday assuming the gas is back on in Victoria, and we are already spending the money to upgrade to the next level of export boning that will allow us to export on a single shift basis 25 per cent of our production.

So we're already committed to those sort of things and we were actually at a knife edge at this point in time where we believe unless the market is stabilised in some sort of a sense, then the people that need to supply that money won't have the confidence to continue to invest in what we see as the only way out. We believe that

I guess some of the scenario that was discussed or you outlined this morning, commissioner, in relation to - there's probably going to be a flattening of the price situation because of imports of legs which is a long-term situation and the only response we have is to further value add and further export value add in particular other parts of the carcass and accept that in the long term the structure of the market has changed forever.

But we need the time to be able to go through an adjustment process to be able to create that change and be in a position where we can compete. My major worry at this stage is that if we get another hit like we did last year and the imports surge again then we'll end up with a spiral where the industry itself will never recover because it will never actually get the productive capacity or the infrastructure to actually do the export that it needs to do to survive.

On a wider note, I just wanted to expand a little bit on my view of where the industry will be in 5 or 10 years' time and what will happen in terms of structural change of the industry. Do you want me to go - I can go back over this morning - but repeat myself?

PROF SNAPE: Yes.

MR HIGGINS: Well, I very strongly believe there will be a dichotomy in the industry, that there will be a number of small producers who will survive because they're a long way from other markets, they're value adding their own grain and they've got niche markets for local butchers and specialised markets where they will survive because they're not really exposed in the situation. They also have, in a business health sense, other incomes from the point of view of other farm operations and in some cases dairy, cropping, beef etcetera. So they are a bit more balanced in their overall diversification or risk scenario than we are.

Having said that, I believe that the only way the industry can go forward is by exporting. I believe that also creates an ongoing situation of greater risk rather than less - I mean on a year-to-year basis rather than a long-term capital risk - because experience has shown in other industries that export from Australia that if you run into trouble with those export markets and then have to sell that product back on the domestic market you can create more problems. So we recognise that's going to be the case and that we need more, say, infrastructure, but also we're going to have to manage that risk by a number of means.

I think the rest of the production industry then is going to fall into fewer and fewer hands controlling the actual production. I think there will actually probably be more farms, because some of the capital that comes from that will be people who are willing to invest in grain structures and grain units, where there's an advantage for them because they may value-add their own grain or do some things like that. There's an advantage to the owners of the pigs themselves because someone else is contributing capital and not tying up any land, because existing land is being used. You know, only a very small part of their land will be tied up in pig growing, and production will end up in fewer and fewer hands. Now, I don't really know where those numbers will end up but I think we'll end up with a situation where more than 50 per cent of production will be in less than seven or eight hands in the coming 3 or 4 years.

PROF SNAPE: Do you include Auspork as one hand or several hands?

MR HIGGINS: Several hands, sorry?

PROF SNAPE: Well, you have several- - -

MR HIGGINS: No, I've included that as one, sorry.

PROF SNAPE: As one?

MR HIGGINS: Yes. I'm talking more about groups of people. I don't mean ownership, I mean relative control.

PROF SNAPE: Groups, yes.

MR HIGGINS: Yes. The situation in the industry at the moment is that that's happening right now and that people are having discussions about strategic alliances for marketing purposes and I believe the relationships, again if there's enough capital available between the producers and the processors, is going to alter significantly in the next 2 or 3 years, because they have to survive together. I think the processors in the last little while have realised that they can't import everything they need and they need a strong domestic industry to survive as well. So there's those sort of things going on at the moment.

They also lead to, hopefully, a better quality control and better quality product in relation to volumes, particularly for export or, as appears to be going on at the moment, a narrowing of the supply channel into the retail markets. We're of the view that not all of those alliances, all those people, will survive. Obviously we intend that we will be one. But that's the only way we believe that people can survive, is to bond together and create greater networks and greater, I guess, value between themselves by strategic alliances. But again that requires some fundamental change and in a lot of cases requires fundamental change and significant amounts of capital.

So basically that's what we wanted to present. We're certainly happy to discuss the private submission in a private session or at the plant itself and that information is a lot more telling I guess about what we're attempting to do. I guess I can't emphasise enough - and I don't want to name names here - but we talk to a lot of people in the industry and obviously I'm well-connected in the industry and people are just at sea. They do not know where they will be in 12 months' time. They don't know where the market will be in 12 months' time. That's just basically an intolerable situation.

If they are given some sort of temporary measures to stabilise that marketplace I believe they will be - the sort of structural change you have seen presented as the last 10 or 20 years will be like a tea party compared to what's going to happen over the next 3 or 4 - but if that doesn't occur there's a real risk the industry may just, as I say, go into an ongoing spiral where it never gets quite the infrastructure it needs to survive and it never gets the confidence or cash flow it needs to introduce new technology and compete in a global marketplace.

PROF SNAPE: Thanks very much for that. That was a very interesting outline of how you see things developing. You mentioned that the relationship between producers and processors will change in the future. I wonder if you might like to outline how you see that occurring.

MR HIGGINS: I think there has been a history I guess of distrust between the two over a reasonably long period of time. I think there has been some realisation come to that if both are going to survive in what's going to become a very tough, competitive environment then they've got to get closer together or work closer together, and I think you will see some alliances going on in a lot stronger sense than you have with just supplier relationships with those processes over the next 2 or 3 years.

PROF SNAPE: Yes, it does seem to me that the pig producers are caught in the middle somewhat with respect to risk-taking. I had wondered why long-term contracts had not evolved rather more, with price in the contracts as well as quantities, so that some of the risks would be shed, would be placed elsewhere.

MR HIGGINS: We've certainly tried to do that, and not been very successful. I guess that there's a couple of things. I mean, you have a situation where one large processor in the last financial year did have those contracts and when the price fell because of the effects of the imports, then tore them up. That's probably almost slanderous.

PROF SNAPE: We have had reference to that before.

MR HIGGINS: They went to their producers and said basically - you know, left them with a no choice situation.

PROF SNAPE: Will those farmers go back to that processor again?

MR HIGGINS: I can't speak for individuals but- - -

PROF SNAPE: No, but I mean, if an enterprise breaks a contract in the way that has been suggested that that was broken, one would think that people would be reluctant to do business again.

MR HIGGINS: Yes, well, I would, but I can't speak for individuals. I mean, I've certainly heard that they've said, "That's it," you know, they're never going to supply those people ever again, and that may well be the case. But sometimes necessity is the keener driving force.

I guess the other thing is that the volatility of the marketplace has made the processors very, very nervous about entering into contracts. One of the ways the market has changed fundamentally - and it's part of that issue about the Christmas demand but there's also been the issue about the demand earlier in the year - is that in previous years a number of processors would actually, once legs reached what they believed were the bottom price in the market, would actually put them away, on the basis they realised there would be a Christmas demand and that they could then bring that product out at a cheaper material price and process it later in the year. I don't have any hard data because it's very hard to get that but it's our sort of anecdotal evidence that that has just virtually disappeared, because people have no view about what the price will be in 2 months, 3 months, 6 months, and that they are no longer willing to carry that risk with all those carrying costs.

PROF SNAPE: You mentioned that larger units would manage risks and be able to manage risks. How do you see that evolving in the management of risks.

MR HIGGINS: Well, we touched on the issue of contracts. I think there's a bit more likelihood those things will occur. If you look at the data from the US in the last sort of 6 months you'll see often quoted cash prices, whereas in some states up to 70 or 80 per cent of the actual production has been contracted at a different price and the actual cash price doesn't reflect reality. There's certainly a lot more interest - we're in discussions next week about this - about price risk management in terms of grain than there was in the past. There has been difficulty in the Australian market with that, given that there hasn't really been the depth of a market that has allowed us to manage risk properly on the grain side. You know, a lot of people are saying the US obviously would use the Chicago futures market and things like that to hedge price. It has been our experience up until now - and that's changing - that the market has been so narrow here that the risk margin is paid to manage that or hedge that risk. It had been so high it wasn't worth doing. We're dislocated because of drought in particular and non-import parity pricing from those pricing mechanisms elsewhere in the world.

PROF SNAPE: Does the existence of single-desk sellers make it more difficult to establish a viable futures markets in the- - -

MR HIGGINS: I really couldn't comment on that. I really wouldn't know whether that's been a factor in terms of doing that. I mean, I see the three risk management sort of tools are really going to be about long-term contract pricing for meat, risk management in terms of grain, which is becoming more available, and thirdly I think people are just going to actually have to put themselves in a situation where they're going to have to hold more cash reserves because the volatility is going to be higher I think in coming years rather than lower.

PROF SNAPE: Okay. Investments that you have been talking about are probably generally 25-year investments, and yet you're giving a great deal of emphasis to the next 3 or 4 years in that.

MR HIGGINS: Yes. We don't regard them as 25-year investments for a start. I mean, we don't depreciate them in our own systems over 25 years, is what I'm saying.

PROF SNAPE: Is a boning room not 25 years?

MR HIGGINS: No, we don't regard that as a 25-year investment. We don't write them off in our own internal accounting systems over 25 years. A large percentage - we've given you the budgets for those. A large percentage of the budgets are actually equipment, rather than structural issues, and they obviously don't have a 25-year life. Some of the farm investments we've made over the last 2 or 3 years, we really look at a 10-year life as our decision about whether we're going to make those capital decisions or not.

PROF SNAPE: Including the investment that you spoke about in South Australia?

MR HIGGINS: Yes. It's a bit complicated I guess, without going through the figures, but we certainly look at them as longer investments than that but in our internal accounting systems we only write them off over a period of years. There are some internal structural budget things about that plant in South Australia that do make it a 10-year investment that I can talk off the record rather than on the record about.

PROF SNAPE: Yes, having read both the on and the off the record you'll appreciate that I'm trying to be careful in referring to it but I think I have not betrayed any confidence yet.

MR HIGGINS: What we're saying is that we've made investments over a number of years and that we've had a long-term plan about going to export, we've had a long-term plan about creating a structure where the capital assets, both at farm level and the processing level, could be maximised. Not the final plank but a key plank in that is the development of significant export infrastructure and boning infrastructure in our system.

PROF SNAPE: The boning plant at Daylesford, is that next door to the abattoir?

MR HIGGINS: It's actually internal.

PROF SNAPE: Internal, so it would pass the Japanese test.

MR HIGGINS: Yes, hopefully, because we're packing for the Japanese on Monday.

PROF SNAPE: So the export market that you're thinking of is predominantly Japan or are you thinking of many?

MR HIGGINS: Certainly initially it's Japanese and that has been part of a joint venture arrangement with someone else who already has market access. But down the track we don't see it obviously as being predominantly Japanese but that's the focus at the moment.

PROF SNAPE: Are you going for niche markets in exporting or are you going for the sort of commodity market?

MR HIGGINS: Well, we've basically taken the attitude that we have to crawl before we can walk before we can run. Longer term certainly there is a - well, there currently is and probably will continue to be a premium market in the Japanese market in particular, for chilled long-life product to be exported there. Now, we don't have that capacity at the moment. So our initial steps are about exporting frozen - which is essentially a commodity product - although we have had the Japanese to the plant and they are interested in the - there's a niche market in a sense in that they are interested in people that have control of production right from the point of view of feed and pig production as well as the processing and boning.

So we do have, we believe, a strategic advantage there, but it depends how you define niche marketing. I mean, the fact is even if we got 25per cent of production offshore next year, it still would be in that market a relatively small share of the total market anyway.

PROF SNAPE: What I'm thinking of is, in settling into the long term and the sort of scenario that I sketched this morning, a pig has been described as a sort of machine for converting feed into meat.

MR HIGGINS: Feed and water actually.

PROF SNAPE: Feed and water into meat, and the costs of the feed are something like 60-plus per cent of the final cost. So it's then crucial that the price of feed is a very important element in that. As I understand it, the price of feed in Australia is generally not as low as in North America. Now, there are some different types of feed that they use in North America and particularly maize is more available - corn - than it is in Australia, but if one is trying to compete on a world market and feed is 60 plus-per cent of the cost of producing the meat, and someone else is getting the feed cheaper, then one presumably then has to say either that we're going to get a better price because we're doing something different and getting into some niche - so we're either getting a better price, or else we have to do equivalently better on that other 35 to 40 per cent; that is, the part that's not feed.

So I wonder if you accept that scenario that I just painted, that we don't get feed as cheaply and we're going to be competing on the world markets, so therefore we have to do better either on price - transport costs aren't going to matter here or there I think - or on that other 35 to 40 per cent. Where do we do it on - price, or do we do it on that other 35 to 40 per cent?

MR HIGGINS: I don't fully accept the scenario. Certainly feed is around 60 or 65 per cent of the production cost of the pig, which doesn't make it 60 or 65 per cent of the production cost of the meat because you're actually exporting meat, you're not exporting a pig.

PROF SNAPE: Sure.

MR HIGGINS: So there's a different ratio there.

PROF SNAPE: So are we more efficient in the killing?

MR HIGGINS: I probably shouldn't have said it out loud, should I? There's a couple of issues. One is where the company have concentrated very hard on feed efficiency. If I may tell a small story: I was in Queensland a few years ago and a guy in the front of the audience started asking me about all my non-feed costs, and he was 20 per cent better than I was in every respect, and my total costs were about 20¢ a kilo below his because that's where we focused.

So the cost of grain or the cost of feed is only one aspect of total feed cost and we always work in feed cost per kilo of carcass, not in any other figure, because that's what we work on. So the components of that are price, herd feed efficiencies, and they are also in relation to what other feed components you can use. So I can't really go through the data, but our feed efficiencies compared to - I don't know a lot about the Canadian production costs, but certainly the US are a lot better. Because we've had to concentrate on it and we've focused on it very, very hard, then we have some advantages in that sort of sense, and some of the data - I haven't got it with me, but we can certainly get some for you - indicates that at a farm production level, the best farms here are as good as anywhere despite those feed costs.

Secondly, we've used a lot of waste feed products and we see a future in those sort of things. In the last 10 days or so, the gas crisis has given us a fair bit of milk along the way, so those sort of - - -

PROF SNAPE: You were able to switch into that quickly.

MR HIGGINS: Yes. Someone else's loss is someone else's gain I guess and we used up to quarter a million litres a day of that on the way through. Thirdly, we do believe there are some - what we've described as niche marketing opportunities, given that the Japanese experience with Taiwan falling to foot and mouth disease has left their market in a different situation, and the information we are getting back is they no longer want to put themselves in a situation where one supplier is a significant percentage of their market, their supply, because they face the situation again where one of those may fall over and disrupt their internal markets.

So the feedback we're getting is that the Japanese are very keen to have four or five suppliers into their market system. Secondly, there is now product differentiation, given that particularly the Americans as opposed to the Canadians use a lot of maize, as you said in your preamble to the question, and that creates a different colour of fat - and again we're getting feedback that there may be a premium in the marketplace for that sort of product as opposed to the Americans, who I guess in that Japanese market are our key competitor. So I guess there's a combination of issues there.

In relation to your question about processing costs, in terms of economies of scale, we are never going to match a North American plant killing 30,000 pigs a day. I mean, it's just not going to happen. However, if you look at our - you know, we can again off the record talk about our budgets in relation to that plant in South Australia. If you look at our budgets for that system and you compare those costs and you take away inspection costs, there isn't that large a gap in terms of processing at that level. We're never going to get right to the last degree of it, but I believe apart from those inspection costs, we're going to get fairly close to a cost of processing that product, and if we can supply a niche market where we're differentiated from our main competitor and the Japanese are keen to have at least partial supply out of Australia for the reasons I outlined previously, then I believe there's significant opportunities. I guess we're sticking our money where our mouth is.

PROF SNAPE: Referring to the submission itself on page 3 of the submission - I think it's 3/21, but comparing that statement there with page 16- - -

MR HIGGINS: Which statement, sorry? I've got the page, but which statement?

PROF SNAPE: It's in the second-last paragraph. It says that:

> Using industry and internal company data will show the significant effect that price changes -

the emphasis there is on price, whereas on page 16 where you get to the remedies, you in fact there at about the bottom of page 16.2 you're in fact getting on to volume.

MR HIGGINS: Yes.

PROF SNAPE: So it's again the sort of question I asked this morning, that you have suddenly switched to the volume rather than the price, whereas it's the price that's - the volume may in fact be causing the price to change of course, but nevertheless if it's the price itself, then a price-based measure such as a tariff might be more directly targeting the problem as you perceive it rather than a volume-based measure like the quota.

MR HIGGINS: I guess our view is that it has been a combination of the volume and the price that has been the issue given that - you know, the Australian market has been fundamentally driven by leg prices, and I know we're experienced in terms of wholesaling not so much recently but certainly in probably the last two calendar years has been processors saying directly to our people, "Well, you're either going to supply it for this price or we'll just get some more in." So the threat of unlimited volumes has actually had a price effect because- - -

PROF SNAPE: It doesn't actually have to import them of course to make that threat.

MR HIGGINS: No, and you always play - I mean, I don't know- - -

PROF SNAPE: What happens if there's a tariff?

MR HIGGINS: - - - much about the meat game but - - -

PROF SNAPE: Well, if there's a tariff on them of course, you'd always have to pay the extra - the threat would always be the world price plus the tariff.

MR HIGGINS: Well, we presented both models. I guess the reason we put the second model in terms of tariff wasn't really for those reasons. It was more about the difficulties we saw in the administrative sense - administering a quota as opposed to a tariff, and I guess we targeted the level of the tariff in the tariff quota model, a level we believe that once the quota is filled, there's not much incentive to bring much more in, so it's essentially limiting the volume in that sense.

PROF SNAPE: I notice you are quite prepared to give the premium then on a quota to the Canadians. Basically you are saying the Canadians could administer the quota at the export end which means of course they could raise the price at that end. The standard effect of an export administered quota is that any price increase goes to the exporter. So that recommendation, instead of giving the revenue to the Australian treasury, is going to give it to the Canadian industry.

MR HIGGINS: I guess the only - I mean, I'm just a pig farmer, but the way we thought about it - - -

PROF SNAPE: But you pay taxes.

MR HIGGINS: The way we thought about it was essentially stabilising the domestic market. So I probably didn't think through that enough. I guess we just looked at the model in terms of the way the beef industry here has managed their exports in a similar sort of manner. Our basic attitude is we need to stabilise the marketplace and that can either be done on a volume or a price effect, and that we're open to any suggestions about a different model that would actually create that change.

PROF SNAPE: Yes. One of the ironies of course is that one of the motivations - perhaps the dominant motivation to have the agreement on safeguards added to the article 19 of GATT was in fact to get rid of the voluntary export restraints that were in fact grey measure - bring things much more transparent and so on. So in recommending that the export is administered - which I must admit is provided for in another agreement under the WTO under the textile and clothing transition arrangements - nevertheless it is slightly ironic in the context that this was introduced to be suggesting that the export is administered.

MR HIGGINS: I guess I'd defer those discussions to Mr Oxley. I don't have enough knowledge about that side of things.

PROF SNAPE: I notice he's in the room again. I notice also that on page 17 you refer to - towards the bottom there we have got the boneless leg selling for 5.50 a kilogram. The current import price is approximately 3.49.

MR HIGGINS: Yes.

PROF SNAPE: Then if we go to the next price and we look at the specific tariff of $1.50 a kilogram you've got - and you're saying that that puts the price up to 4.92 and to 5.73.

MR HIGGINS: Yes.

PROF SNAPE: They're not quite consistent, are they?

MR HIGGINS: Well, no. What I did was I took the - I think we put that information in the appendix about the price over the last 2 years was it I think - yes, in the brackets there:

> Avoiding the absolute low and absolute high price in the period from July 95 onwards.

So what we did was we looked at the price data on the ABS figures for the value of imports and we said, well, we'll disregard the high and the low part of it and go in between there. So there should be in the appendix a summary of that data - of the ABS import data.

PROF SNAPE: Thank you. Ausporks's membership is all big farmers.

MR HIGGINS: Pig farmers?

PROF SNAPE: Big - fairly big pig farmers.

MR HIGGINS: They vary. The smallest is about a hundred sows.

PROF SNAPE: You go down to that?

MR HIGGINS: Yes.

PROF SNAPE: I'm sorry.

MR HIGGINS: And then the largest is about 3 and a half thousand, but the two structures are really - I mean, they're the smallest. Really there's a couple of large ones which are those South Australian farms, but they're also basically owned by a group of pig farmers anyway, those smaller farms themselves as well as the outside investors. The others would really range between - somewhere between 300 and 900 sows would be the farm size. So we're well above the average farm size compared to the average farm data.

PROF SNAPE: And that reflects your view of the future of the industry?

MR HIGGINS: I guess it has to. You've all got your own biases I guess. We have a view about where we have to go, and what we have to do to survive. I've always taken the view that you do some things as a private company, and we actively participate in the industry forums as you obviously see and know, but I see myself with two different hats on in that circumstance.

One thing I just remembered this morning, you were asking about the industry submission in relation to return on capital. I just did some rough figuring in my head that - I can write that down for you if you want, but those numbers in there are somewhere about an 8 to 10 per cent turn on capital if you calculate the margin between break-even and then multiply it out by the herd figures in terms of pigs slaughtered and the average capital investment per sow.

PROF SNAPE: And that's on the sample about the rate of return that the profitable farmers were getting in 1996-7 if I remember correctly. In that data that I drew attention to in the survey it came out just under 10 per cent.

MR HIGGINS: I have to say that long term - I guess I'm disputing the industry's own data in some ways, but long term those - I think that margin is necessary. I mean, if people don't return on capital they've got a problem anyway. I'm not sure that that price that's highlighted in there is sustainable in the long term. We certainly don't plan our future on those price levels. We also don't plan them on the price levels we've had for the last 12 months.

PROF SNAPE: I'll resist the temptation to ask you what price levels you are planning on.

MR HIGGINS: That's good, because I'd risk the temptation to tell you.

PROF SNAPE: But instead we'll ask you whether you see the current international crisis or the international crisis that had been in existence the last year or so as being particularly low in the world scene? I'm not trying to relate them to your own costs etcetera. I'm just saying do you see the world market as having been unusual, but in the last year or two?

MR HIGGINS: I don’t know whether "unusual" is the world, but certainly it’s very hard to get a handle on. I got some information a couple of weeks ago as I said before about contract prices in the US, and a large slab of the pigs which are being sold and marketed in the US, the cash prices that are quoted in the marketplace bear no resemblance to the real price of the majority of the product.

So you’ve got to be a little bit careful about how you interpret that data. Certainly the Americans have been in a situation where they’ve, my understanding, increased production by something like 8per cent, and there’s some recent information coming through on the sow and gilt slaughtering data that they’re actually starting to liquidate their breeding herd, not to a large extent, but that’s actually tipped over that people have started getting out given that I think the values for August and September were something like 25per cent over last year.

Last year’s figures were low because people were in an expansion phase, so in that situation they’re more likely to hold onto breeding stock. So you’ve got to be careful interpreting that data, but certainly there have been some low cash prices in the US in that situation. I’m not as familiar with what has happened in the Canadian market.

PROF SNAPE: Have you in Auspork had particular environmental and planning regulation problems which would be relevant to the second part of our terms of reference; that is profitability etcetera in the longer term?

MR HIGGINS: I’d probably rather discuss that next week.

PROF SNAPE: Okay. It’s always an advantage for us of course in writing our reports to have things on the record, so if there’s any aspect of it that you could refer to now if you wished - I’m not trying to press you, but rather than leave everything to a confidential point of view- - -

MR HIGGINS: Yes, I understand. I really have to refer that to my chairman. I mean, we can put something on the record following next week’s visit if we’re both comfortable with that, but at this stage I wouldn’t like to make any specific comment on that. The other issue I’d just like to raise is - we’re talking about return on capital. I remember having an interesting discussion with Don McGeckie at one stage in relation to grain imports and that sort of thing, but it’s my understanding that - what drives our business is return on capital. So what we make on margin per pig is not necessarily all that relevant.

It’s certainly my understanding that one significant disadvantage we have, say, compared to the North American market has been access to capital in that the Americans in particular have been able to access capital and therefore have a higher return on equity with much lower margins between operating costs - when I say operating costs, I include depreciation in that - and sale price.

PROF SNAPE: What you’re saying is that non-equity capital is expensive?

MR HIGGINS: Well, no, there's two issues. One is that non-equity capital has been more expensive, but then there has been an issue about pure access. It's about leveraging and stuff like that. We have recently set up an operation - a new farm operation last year where we brought investors in where we have got significant leverage changes and have ended up with - theoretically we've ended up with better rates of return. That hasn't been the case over the last 6 or 12 months and I guess some of those people invested in the 2 months before things started to go a bit wobbly and got a very sour view about their investment.

But given a market where people can make money - obviously if people can't make money we don't have an industry - then we've been able to I think create a structure which actually gives better returns on capital for narrower margins.

PROF SNAPE: Is part of what you're saying that banks and other financial institutions in Australia are taking a less optimistic view or a less positive view of the industry than they are in the United States?

MR HIGGINS: That's certainly the case over the last 12 months. They're not in a particularly positive mood at all. But even before that, even when things had been in better shape they have been reluctant to lend on things like stock. They're very focused on - they want their capital covered by capital security and they're less concerned about things like cash flow and cash flow management and margins and things like that. So we have struggled to get a situation where we could leverage equity enough I guess in comparison to our competitors as well as obviously the cost of capital which has come down over the last little while, but it's still probably significantly higher than the North American market.

PROF SNAPE: Thank you very much. Thank you for your very helpful submission, and also we look forward to paying a visit of course to Daylesford next week, and - - -

MR HIGGINS: Hopefully it's running.

PROF SNAPE: Yes, with the gas on.

MR HIGGINS: There's supposed to be killing tomorrow actually - start back on. They were testing it this afternoon.

PROF SNAPE: Thank you very much. In a moment we'll ask the Canadian High Commission representatives to come, but prior to that, I would just like to refer back to this morning's discussion for a moment or two, and over the lunch period I was reminded of a couple of things which had slipped my mind this morning. To introduce that first of all I'd make the point that the safeguards agreement itself makes a clear distinction between safeguard measures and provisional safeguard measures. Provisional safeguard measures are referred to only in one part of the agreement which is article 6.

Consistent with this the gazette makes the same distinction, and most of what was gazetted - most of the paragraphs there - refer to safeguard measures in a manner similar to the way in which the safeguards agreement refers to safeguard measures. There is only one paragraph of what was gazetted which is paragraph 16 which refers to provisional safeguard measures. This in part says the following - and I'm reading from the beginning of it - there is a heading first of all Provisional Safeguard Measures, "Reference can also" - and I draw attention to the word "also":

> Reference can also be made to the commission for an accelerated report to determine whether critical circumstances exist where delay in applying measures would cause damage which it would be difficult to repair -

and so on. It then elaborates what follows from that. I needn't read the rest of the paragraph I think, but the terms of reference which we received in fact were consistent pretty well with the rest of what was gazetted in referring to safeguard measures. It says, "Report and question whether safeguard action is warranted," etcetera, etcetera, and then later on safeguard measures, and it refers to them.

Nowhere in terms of reference was provisional safeguard measure referred to, and given that there is this clear distinction in both the safeguards agreement and in what was gazetted between provisional safeguard measures and safeguard measures, we came to the conclusion - I have now been reminded and recall - that in the context of the terms of reference and how they were framed that what was being referred to us were in fact safeguard measures, and that if the government wished to take provisional - to contemplate that we should consider provisional safeguard measures they would have said so, but if they had wanted to implement them independently of our investigation, they would have done so.

The latter of course - this point was not so relevant to us; it was what was being referred to us, and we concluded that safeguard measures in this context were being referred to us. The other matter that I would just wish to reiterate because it is spelt out very clearly in our issues paper I think, although - well, I think it is very clearly spelt out there shall I say - is that the process that we are going through - and I've spoken about this before at the hearings, and it's a question of defining the industry and the like or directly competitive product, and we then say have imports increased, and then we consider serious injury and the extent to whether serious injury is attributable to increased imports.

If we are satisfied all the way down there, then of course we then come to what measures would be necessary to prevent or remedy serious injury and to facilitate adjustment. If we get right down to that point, then we will answer it, and that is really where the safeguards agreement is relevant. Now, the safeguards agreement as was pointed out this morning also makes mention of getting submissions on public interest matters - using shorthand and saying public interest matters - and then what was gazetted it says:

Whether having regard to the government's requirements for assessing the impact of regulation -

etcetera -

those measures should be implemented.

That last point of course is not relevant to the safeguards agreement. The safeguards agreement sort of cut out at the line before there, and we I think made that quite clear, but nevertheless under what was gazetted, as well as I think reasonable interpretation of the coverage of our act in respect for the Productivity Commission, we are then invited to go on and get that extra step and saying taking account of other factors, do we recommend it?

Now, the government of course may choose to take our advice or not to take our advice at that point and might say that they're a better judge of the public interest etcetera, but nevertheless the safeguards agreement cuts out at the point before that. That I think was quite clearly specified in it and that's our understanding of the process, and that's what we shall be proceeding with on that basis. So I hope that clarifies those two points.

Thank you very much, Mr Higgins, for appearing for Auspork, and I would now invite - I think it's the Canadian High Commission, and it's Mr Moulis appearing as a partner of Freehills on behalf of the Canadian High Commission, and also a representative of the Canadian High Commission, and I would invite you both to identify yourselves in the normal way please.

MR MOULIS: I've been identified, so why don't you identify yourself?

MR ROBSON: Wayne Robson from the Canadian High Commission.

MR MOULIS: Thank you, commissioner. Danny Moulis from Freehills in Canberra on behalf of the Canadian government. First I'd like to just introduce the purpose of this oral submission to the Productivity Commission today. I want to reiterate the core points - the template of the agreement on safeguards which we have very carefully tried to set out in our written submissions today. I want to consider the fit of the findings of yesterday's workshop to that template, and in so doing I want to highlight the findings which were expressed at the workshop yesterday.

First I want to restate the agreement on safeguards test, and I want to break them down into their component parts and then relate them, as I said, to the findings. I want it to be remembered that this is an inquiry which is in two parts and that there are quite specific requirements under the agreement on safeguards which must be met before any safeguard measure is recommended and applied. Has serious injury been caused to the domestic industry producing like or directly competitive products by reason of increased imports of Canadian processed pork within this tariff subheading 0203.29 which is referred to in your terms of reference?

The first issue which necessarily needs to be addressed, and it has been repeated often, is the question of like or directly competitive products. We say the imports are processed frozen boneless pork cuts. The like good is therefore processed frozen boneless pork cuts. Let me just pause there to reflect. Yesterday and again this morning there was a focus on pig carcass price per kilogram, the price seen by the pig grower. This can only have relevance if pig carcasses are the like or directly competitive product. It cannot demonstrate that Australian pork processors are injured by imported processed pork, which is, as I have already stressed, quite definitely at least the like product.

So is a pig carcass directly competitive? In other words, can we extend the ambit of the industry producing this product by saying, "Well, is a pig carcass directly competitive," and answering that question in the affirmative. We say no, it has to be chopped up and made ready to be taken up in the relevant productive process. That involves consideration of a different product of a different industry. An analysis of the cost and price forces acting on that level of the production process is neglected by going back to the previous level and isolating your attention solely to that level. The agreement is about goods and trade in goods. It is not directed at assistance to wide upstream industries and looking at the inputs which go into finished products. That I suggest is why there is a second part to these terms of reference, to enable you to take these wider issues into account in your general reporting on these issues.

It's worthwhile to remember Gary Griffith's draft conclusions of yesterday. In his full sample in respect of both leg and loin prices he found no impacts of Canadian imports on prices. His words were nothing in both cases. In the shorter sample he used he found that imports did not "pull the prices of legs", in his words, and that in the loin price there were some mixed effects or, as he pronounced it much better than I may pronounce it, simultaneity in the effects of the imports. In other words, what he was saying is that the price of the local product attracts imports, as well as the imports having some effect on that price.

But assuming pig carcass, for the purposes of discussion here today, are directly competitive products, we have the studies of Peter Kenyon and Gary McDonald. Conclusion: no impact of Canadian imports. The words used were that Canadian imports "didn't matter" in the historical, long-run relationship, and in their short-run model the expressions they used were these, "Our results were fairly consistent. No evidence of any impact."

In my consideration of like and directly competitive products it's difficult not to stray into the related tests under the agreement, namely those of serious injury and the causal link. However, I now go on to consider them in more detail.

PROF SNAPE: Are you going to say more about yesterday's workshop or is that the end of that?

MR MOULIS: No, at the end I am going to say that we ask the Productivity Commission to people insist that the modelling studies are provided on time, in order to give fair opportunity for us to - - -

PROF SNAPE: We'll endeavour to do that, as far as we can.

MR MOULIS: Thank you.

PROF SNAPE: But may I just pause and comment on scientific method for a moment.

MR MOULIS: Yes, of course.

PROF SNAPE: As I understand it, what was being examined in those various studies was in fact they were trying to test hypotheses and they were seeing whether you could in fact find evidence to support those hypotheses at various levels of confidence. Now, when you don't find the evidence which will support those hypotheses at a certain level of confidence, what one gets is in fact to a position of saying, "We have been unable to support that hypothesis in that manner." They have not tested the opposite, that is that was reached as I understand it in most of those points - are points of not supporting or not confirming, if one - I tend not to use that term - but not finding support for that hypothesis. They have not tested for the opposite. They haven't said, "Can we find that there was no evidence of a connection," and then tested that hypothesis to find confirmation or reject it.

In other words, you finish up in a no man's land rather than the opposite, so one can say, "Because we didn't find evidence" - or at the proper level of confidence etcetera - "to in fact support a particular connection," one cannot then go and say, "There is no connection." That hypothesis has not been tested.

MR MOULIS: If I can comment on that, I don't think it's correct to use a strict approach towards burdens of proof. We're not in litigation here, we're in administrative proceedings. However, there is an administrative burden of proof in deciding these questions and that is at least borne out by the requirement under the agreement that there be a demonstrable link. The inability to prove something is a failure to prove it.

PROF SNAPE: Well, that's basically what I was saying.

MR MOULIS: Correct.

PROF SNAPE: Not that in fact they have proved the opposite. In a way I think you cast your comments before - you in fact inferred that. Indeed, as they are econometricians and economists and not lawyers, they perhaps were not as careful in their language in that regard as they should have been from a legal perspective, or I might say, as an aside, even from an econometric perspective where they should always make very clear the hypothesis that is being tested and where you get to if you don't find evidence to support that hypothesis. You basically get into agnosticism, which was a word which cropped up a fair bit yesterday.

MR MOULIS: I confirm that word was used. I would also like to be able to refer to the transcript of yesterday's modelling workshop but there wasn't one, therefore my notes will suffice for now. So let me now talk to this issue of serious injury, again in the context of some of the things that we've heard over the past 2 days. Again under the agreement, there is a test of serious injury. It means "significant overall impairment" in the position of the industry - something other, I expect, than anything which might occur in the normal ebb or flow of business.

Two things which are apparent from the last 2 days - in fact from many of the written submissions the Productivity Commission has received, and from oral submissions - need to be commented on this context. The first is this. If you accept that the industry is this combined industry of pig growing and the slaughtering and the processing levels - in other words, let's assume that this is the industry, and this morning the Pork Council suggested that small goods and downstream were out but the rest were in this industry.

The first point about that is that if you have a triple-level view of the industry, this vertical approach towards the different levels of the industry, then profits which are earnt by one level, when price pressure is placed on that level by another level, indicates that one level is actually earning money, or is doing better than another level in this tri-level industry that we've defined, again for the purposes of discussion here. I suggest that if there is profit being earnt at one of the levels in this tri-level industry then this defies the criteria of a significant overall impairment in the position of this enlarged industry that you're looking at.

It was put quite nicely by Mr Higgins a short while ago - someone's loss is someone else's gain - ripped up contracts. These pressures which are in this industry suggest that there is a transference of profit between levels. Again Gary Griffith's findings from yesterday are helpful in this regard. Price levelling forces instability on to farmers. The flip side of that is that slaughterers and processors are less affected by whatever it is that is causing these pressures, but they are nonetheless in this assumed industry. So the stamp of significant overall impairment is lacking.

The next point I want to make about this issue of serious injury is the ebb and flow that I have already spoken about. We have submitted that there has to be a relevant period of inquiry and the snapshot that we've suggested to you in terms of making an assessment as to whether increased imports have caused serious injury should be that of the period from 1995 to 1998, a convenient period because on the last occasion that the industry was reviewed in the research project there was no significant impact found. Therefore it seems a convenient start point.

Yesterday we heard that Australia enjoyed its highest saleyard price in 1996, and we have seen any number of graphs which have showed the price tracking up and down over that period. My point here is that temporarily, in this temporal context, if there is a profit at a particular point in time this has an offsetting effect on any injury caused by other factors, or whatever factor is causing injury at other times. Therefore you have this concept of swings and roundabouts.

Let me now turn to the concept of a causal link. Yesterday was helpful, in my view, in this regard, even though it lacked specificity as to what Canada characterises as the relevant industry. The agreement requires this demonstrable link to be proven. I wrote down some of the observations of Peter Kenyon yesterday. He said, "At present, imports do not appear to be statistically significant," and I take the comment that you've already made. He also said we could not conclude that they had affected the domestic market.

But apart from those statements, I want to highlight some other things. First, models are not determinants of what causes injury in the sense required under the agreement, because competing causes of injury can be in the background of the model, and the models themselves had to choose four or five different variables to map how those variables related to each other.

So production costs for example - the cost of grain or of feed additive - market power issues, these gain tactics which have been referred to in some of the submissions, in particular the submission of Messrs Purcell and Beard, are all competing causes of injury which these models do not take into account. If these abnormalities exist in the system, they must also be taken into account as these factors are causes of injury which are separate and distinct from increased imports. The Canadian industry submission analyses this, and Australian industry submissions themselves point to a number of causes of injury which are not the volume of increased imports.

Accordingly the proposition that the Australian industry is being caused serious injury is even more remote because we've heard of a lot of benign econometric studies from the point of attributing guilt to wards Canadian imports, and they're made even more benign from the point of view of allocating this blame when there are other real identifiable and recognised causes of injury affecting the industry as well, and there have been admissions of these things.

Secondly, the agreement makes it clear that if there are other causes of injury, the effect of these must not be attributed to imports. Apart from the things that I have already mentioned, two statements yesterday are also suggestive of the remoteness of any discernible link between imports and injury. One representative of Australian industry referred to a perverse supply response in agriculture, that when prices go down, production can go up. This throws some doubt I suggest on the price and supply signal mechanism as a measure of action and response in the industry, and the causal link between increased imports and injury becomes even more difficult to prove.

Another industry representative yesterday said that exports will go up regardless of price over the next 2 years. Insofar as the price obtained for these exports in the world market causes injury, that must not be attributed to imports from Canada. A commitment to export is to be applauded, but if that is damaging in the financial sense in the short term but willing to be borne for strategic reasons, any losses which flow to the Australian industry cannot be attributed to increased imports. That probably covers the things of substance that I wanted to say today.

I did want to talk a little about the procedural issues. They're obviously of great interest to you and us as well. I do ask that you have the modelling studies handed into you as soon as possible so that if we wish to comment on them we can. I also wanted to ask about the survey that was referred to this morning. I have been given a copy of the submission that was tendered today by the Pork Council of Australia. Is the survey a separate submission or is it in that submission?

PROF SNAPE: I'm informed you'll get a copy this afternoon.

MR MOULIS: That's a separate document, is it? Thank you very much. It will obviously be important for consideration to be given to late submissions which have come in - one which has come in today - but we will do our best to give those submissions consideration and response if we need to.

PROF SNAPE: Thank you. I would ask of course that if you can give any response you wish to give fairly quickly. I realise the pressing of time which is upon you as well as us, and as I said, the reason that we decided to have the extra hearing was in fact to get as much time as we possibly could for that. So thank you very much for those remarks and, Mr Robson, you don't wish to add to them?

MR ROBSON: Not at this stage.

PROF SNAPE: In that case, I shall ask if there is anyone else who would like to make any comments at this juncture? I don't have too many members of what I could call the general public here, and so I would - Mr Pearson, do you wish to - no. In that case I will close the hearings and thank you all very much for your participation, and we shall be beavering away in the next few weeks. Thank you very much.

AT 2.40 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

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