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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

SAFEGUARDS INQUIRY INTO THE IMPORT OF PIGMEAT

MR G.R. BANKS, Chairman

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON TUESDAY, 27 NOVEMBER 2007, AT 9.00 AM

Continued from 26/11/07 in Sydney

MR BANKS: Good morning, ladies and gentlemen. Welcome to the public hearings for the Productivity Commission's inquiry into safeguard action against imports of frozen pigmeat. My name is Gary Banks. I am chairman of the Productivity Commission and I am presiding on the inquiry. As you know, it commenced on 17 October, when the former Australian government agreed to initiate a safeguards inquiry according to the rules set out by the World Trade Organisation. These rules have been laid out for interested parties in the inquiry issues paper, which was distributed on 23 October, and copies are available from the commission's web site. The commission, as Australia's designated competent authority to conduct such inquiries, has been asked to inquire into whether safeguard action is justified against imports of "meat of swine, frozen, falling within tariff subheading 0203.29.

More specifically, we have been asked to report on - and I quote from the terms of reference - "whether conditions are such that safeguard actions measures would be justified under the WTO agreements; secondly, if so, what measures would be necessary to prevent or remedy serious injury and facilitate adjustment; and, thirdly, whether having regard to the government's requirements for assessing the impact of regulation which affects business, those measures should be implemented".

The inquiry is to be completed by the end of March 2008. But the commission has also been asked to provide an accelerated report by 14 December as to whether the provision of safeguard measures should be put in place for up to 200 days. We have already talked to a range of organisations and individuals, both from industry and government here in Australia and representatives from overseas on an informal basis, and the purpose of these hearings is to provide an opportunity for interested parties to discuss their submissions and to put their views on the public record, including in response to the submissions of others.

Following this hearing in Canberra - and we commenced yesterday in Sydney - we will be proceeding to hold hearings in Brisbane, Adelaide and finally in Melbourne. We will then finalise the accelerated report by 14 December – it's on an accelerated schedule – and then work towards completing our report by the end of March 2008, as well at that time addressing the second part of the terms of reference, which relate to structural adjustment and feed cost issues. We are not proposing to hold another round of hearings, but further submissions will be welcome. The terms of reference note that the reports will be published as soon as practicable.

We like to conduct the hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken. And while participants are not required to take an oath, they are required under the Productivity Commission Act to be truthful in their remarks. Transcripts will be made available to participants and will be available from the commission's web site following the hearings, which usually occurs within about three days. Copies can also be purchased and there are order forms available here for that purpose. Submissions of course are also available on the commission's web site.

Could I call as our first participant here this morning A.J. Edgerton and Co, Glenita Stud. Welcome to the hearings. Could you give your name and position.

MR EDGERTON: My name is Geoff Edgerton. We run a 400-sow stand-alone piggery 11 kilometres south of Young. I was born in 1938 and reared and lived on the first farm we had till 1960. Right from the time I can remember we had several sows, and I took an active interest in running pigs right from the time before I started school even. I used to feed them and then I would have to get in and clean the houses out. I had my own pigs from 1952, been breeding them ever since. The first farm we had, the conditions for pigs were very basic. We moved to a second farm in 1960 and lived there until 1967. The pig sheds improved greatly for the pigs, but they were still run outdoors.

In 1967 we moved to our present position. We built our first intensive shed. We run intensive pigs and also a pig run outside. Between 196 and 1997 we built all of the sheds to what we have got at present, to accommodate 400 sows. We had wanted to go to 500 sows, but at that time there was fair bit of labour problems. You could always hire one or two good men, but then the third, fourth and fifth one that you wanted in our sort of industry were hard to come about. My manager has been there since 1987. Next week he will be 20 years there. The second person that I employed will be 10 years in March next year. You would have to admit that I'm reasonably easy to get on with. Several others have been there four or five years and then other people might only last a week.

1998 was a bad year. We run a campaign against the government and things went bad for us. But the years 2000 and 2001 were the best years we have ever had. I decided against increasing the number of sows on the place but that didn't mean we didn't do improvements. We built a new feed shed, feed mixing operation. When my now manager started in 1987, from 1987 to 1997 that was when we did most of the buildings we have got now. In that 2000 period, when we had good times, we gutted most of the old buildings and restructured all of them inside to bring them right up to scratch. We also built another 1100 tonne of grain storage to take us up to 2300 tonne, which for a 400-sow piggery was virtually 12 months' supply. We usually had some carryover and then we would fill the silos at harvest time, when it was cheaper, and that gave us an extra profit.

In 2002 I still owed a little bit of money, but the grain I had on hand was enough to cover that, so I was out of debt. We had built this 400-sow piggery. We had a 700-acre farm and we were out of debt. That was the good part. Now, I am not one of these fellas that say these were the good old days. We had some tough times in these early days, 1962, 1982, 1994, they were terrible times for us. But my point was if we had a bit of a downtown for a year or even two years we were immediately followed by some good times and we were able to keep expanding. As

I say, by the year 2002, I had built this 400-sow piggery and we were debt free as well as buying a 700-acre farm.

It's a different story from 2002 to 2007. I don't know - well, I do know why. Pig imports have put a cap on what we can get for our pigs. We have also struck a five-year drought, which in my lifetime I have never seen one like it. We have had one good year where we got some grain, say, about 2004 or 2005. And we were able to buy grain reasonably cheaply in that period of time. And I look and I wonder why we didn't make a profit. But we couldn't make a profit because the pig prices were capped. As our costs come down, so did our - so did the money we got for our product. But, on the other hand, when our costs escalated rapidly, up to $400 and $500, we have had to pay for wheat in the last little while - it has come back now - but our pig prices have not gone up. We virtually have to sell two pigs now to pay to feed one. That can only go on for four months and then you run out of pigs. All the time we have used the income from the broad-acre farm - we run some sheep, lambs, wool and grow wheat, grow some wheat. The wheat we grow of course goes into the pigs. Profit from the sheep and lambs is put back into the piggery. At present we have gone from being out of debt to being half a million in debt in five years. As I say, when you look at the price we were able to buy some of our grain for, we shouldn't be - but the cap is on that.

Now, when I got around to the 65-year-old age group, I went to my accountant and said, "Could we bring in my manager as a partner somehow to give him more incentive?" He looked at my figures and he said, "No good bringing him in. You are losing money. All Steve will do is lose the equity in the property and the house he has got." So my point is Steve still gets his wage, but I have to keep borrowing money to keep the place going.

Now I have reached the stage where I can't borrow any more. Probably could but at nearly 70 what is the point? I have not got any outside income. We are in drought, too, the same as everyone else. So we are not going to strip much grain to put into the pigs. We haven't got lambs to sell. So come February-March, we have to make a decision. Now, if we saw some light at the end of the tunnel, we would keep in there. Destock/restock is not a proposition for us because, as I say, some of the sheds are 30 to 40 year old and, if you take pigs out of them and leave them for a couple of years or six or 12 months, they just deteriorate and are virtually unusable. Besides, this destock/restock always costs more than people think.

The only other thing I can do is to go out of pigs. After 50, nearly 60 years in them that would break my heart. I had planned to retire, still own the farm and have Steve manage it. He is an excellent manager, but if there is no future for me there is no future for him. So he spent the last 20 years building up something that he thought he would be able to take a greater interest in. If we exit, he is gone too. Basically that's my story. We need some relief from the damage that the imports are doing to us, otherwise we are finished and I don't know how many others are as well.

MR BANKS: Thank you very much for that overview of what is happening.

MR EDGERTON: Any questions I am happy to try and answer.

MR BANKS: You said that you need safeguard relief. As you know, it comes in potentially two instalments in the safeguard arrangements, 200 days provisional action and potentially up to four years of safeguard action. Could you talk a little bit about what you would do with that time? It would provide you with obviously breathing space, but I suppose the question is how that breathing space would be used or would the industry find itself in potentially a crisis situation at the end of that period?

MR EDGERTON: Surely we are not going to have another five years of drought like we have had in the last five years. The breathing space would give us a chance - the drought must end. The breathing space would give us a chance to see whether we are able to survive in an open world competition with normal prices instead of drought prices. And just see whether we can compete. It may well be we can't. But the subsidised imports, if they keep coming in, will just beat us. But at least it will give us a chance to see whether we are able to compete, whether my piggery is good enough or the neighbour's piggery is good enough to compete. If we are not, we will have to go out, but there will be a lot of us that will be able to compete once this drought ends.

MR BANKS: You said that grain prices had come back a bit. Could you just say whether you are speaking now or recently?

MR EDGERTON: $380 to $390 a tonne. That's on farm. Then the cartage. We get the GST back but we have to find, say, $450. There used to be an old formula that if wheat was $200 a tonne and you got $2 a kilo for your pigs, you could keep going. The last few years the grain price has been well over $300 a tonne and the pig price has been in the low $2 to 2.20, which means we are just losing money hand over fist. As I say, I have subsidised my piggery with the income from the rest of the farm. But I have still had to make massive borrowings. The borrowings were in January 2003, July 2004 and January again in 2005. Now, I haven't borrowed since then, but that put me so far behind after being out of debt, that we have been able to manage up until now. But the way the prices have gone in this last six months, the feed prices have gone in the last six months, everyone is in desperate trouble.

MR BANKS: You said that with the good years you had in 2000, 2001 you hadn't increased your capacity, but you had done certain improvements.

MR EDGERTON: Yes, efficiency.

MR BANKS: Got efficiency gains?

MR EDGERTON: Yes.

MR BANKS: Could you just describe what that translated to in terms of cost improvements, and whether you could see an opportunity to get further cost improvements or efficient gains going forward?

MR EDGERTON: We improved the farrowing houses, improved the flow of pigs, bought more augers, so we didn't have to move from one silo to another with our feed. We bought extra trucks. We would home mix; we mix our own feed, we put into six-tonne tip trucks. Our silos hold 12 tonnes, so it's two truckloads to a silo. We bought a couple of extra trucks. So that each different type of feed has their own truck; we don't have to clean our trucks to cart the feed down to the different silos. We have got different augers down there. So that all saves an enormous amount of time. As I say, we restructured the inside of the farrowing shed. The other sheds, the dry-sow sheds, well, they are standard. There is nothing - we automatically fed, there is nothing we can do to improve them; they have been done. There is not a real lot of chance - there is always chance to improve things. But we wouldn't get the gains that we got in 2000 and 2001. But there are opportunities there.

MR BANKS: I was going to ask you again related to the capital improvements you made. And you talked earlier in the submission that you had spent $1.5 million, I think.

MR EDGERTON: According to the depreciation schedule at the back of the taxation things, the capital expenditure has been 1.5 million. That's without - you don't count when you go and take the insides out of a farrowing shed. That's repairs. But the capital itself is $1.5 million. There was a piggery sale next to us six or eight months ago. The fellow got the land price. The bloke buying the piggery said the piggery is worth nothing. In my case I have to insure my piggery buildings for $2 million because there is a mortgage on them. So you insure them for $2 million. How much money will you lend me on them? $35,000. That's all they are worth if they weren't used as a piggery. But I still have to pay a premium to insure my piggery every year.

MR BANKS: When you referred to the depreciation schedule, to what extent have they already been depreciated?

MR EDGERTON: No, that's what they have cost over the 40 years. The sheds we built that cost us $1000 in 1968 would cost you $6000 or $8000 now. But I'm just saying what they actually cost. They cost $1000 in 1968 and they might have cost $20,000 for the same thing in 2000. But that's just the actual cost.

MR BANKS: Historical cost.

MR EDGERTON: The historical cost.

MR BANKS: What I'm saying, a portion of that would have been fully depreciated?

MR EDGERTON: Yes.

MR BANKS: You did say you spent 2000 in 1991?

MR EDGERTON: On silos, yes.

MR BANKS: Thank you very much. I didn't have any further questions. Thank you for your time this morning.

MR BANKS: Our next participants are the delegation from the European Commission. Welcome to the hearings. Could you give your names and positions.

MR RICHARDS: My name is John Richards. I'm the counsellor at the Delegation of the European Commission here in Canberra. I'm assisted by John Tuckwell, who is a senior adviser at the Delegation dealing with trade and economics.

MR BANKS: Thank you very much. Thank you for your submission. Thank you also for your time. I spoke to John earlier in the processes when we did some informal visits. We appreciate your attending the hearings today. I will give you the opportunity to make the key points you would like to make in your submission and then we can perhaps have some discussion about those.

MR RICHARDS: On behalf of the European Commission, I should like to thank the Productivity Commission for allowing us to participate in this safeguard inquiry into imports of pigmeat. Our Ambassador, His Excellency Bruno Julien presents his apologies. He would have been here himself, but he is in fact in New Zealand. The European Commission is the overall competent authority within the European Union for matters relating to trade policy, including measures of this kind. This is without prejudice to the interests of the member states and others concerned by any particular investigation.

The fact that we have made a written submission and are now appearing at the oral hearings underlines how seriously we take the safeguards inquiry. Before going any further I should like to express our sympathy towards Australian pig farmers for the financially difficult situation they are in. However, we think that the origins of their difficult situation can be explained by a range of factors other than imports, and consequently we believe that on a number of grounds the conditions for the imposition of safeguard measures have not been met.

Like Australia, the European Community is a strong defender of a rules based trading system and fully respects the right of Australia to hold the inquiry, but we should like to underline the WTO Safeguard Agreement as well as article XIX of GATT clearly point to safeguard measures only being used in exceptional circumstances.

WTO legislation and jurisprudence have established very high standards and strict conditions for the imposition of such measures. In its written submission, we addressed four issues which we consider central to the conduct of this inquiry. The increase in imports and unforeseen developments, the definition of the "domestic industry" and "serious injury", causality and other causes of injury, and the type of safeguard measures. I should like to expand a bit on these and also to try and assist the commission with any queries it may have.

Regarding the key domestic industry submission from Australian Pork Ltd, it is unfortunate that it's only just become available and after the due date for the organisations appearing in the public hearings. Further, the important supporting appendices to the submission, such as the legal opinion and econometric analysis, are still to become available, and we think this undermines the transparency of the process to some extent, and certainly the ability to scrutinise and respond to the submission as was our intention.

On the first point, Mr Chairman, on increases in imports and unforeseen developments, article 19 of GATT and the WTO Safeguard Agreement allow for safeguard measures where domestic industry is suffering serious injury as a result of an unexpected sudden, sharp and significant increase in imports. The European Commission does not consider that there has been the necessary unexpected sudden, sharp and significant increase in imports to justify safeguard measures. While there has been a limited opening of the Australian market due to changes to the quarantine import conditions, as has been emphasised by the Danish Bacon and Meat Board, up to 80 per cent of the overall pigmeat market remains reserved for the domestic industry, depending on the calculations relating to the processing industry.

Similarly, the Danish and Canadian government submissions both show that there has not been a sudden and sharp increase in imports. Furthermore, as already identified in the Commission's own issues paper, the WTO jurisprudence has also clearly confirmed the necessity to demonstrate the existence of unforeseen development in particular before applying any measure. In this context the European Commission considers that it would be very difficult to claim the existence of unforeseen development when the February 2004 generic import risk analysis for pigmeat report, which led to the changed import conditions, estimated that "unrestricted pigmeat imports may increase to approximately 90,000 tonnes per year", which approximately corresponds to the expected import level in 2007.

MR BANKS: Could I ask, if you don't mind me asking questions along the way: that estimate did refer, as you said, to unrestricted pigmeat imports, which would have also included imports of fresh pigmeat. So I'm not sure that this is as strong a point as you suggest in relation to the unforeseen development.

MR TUCKWELL: It certainly was within the bounds, and never was it intended, I think as a result of the import risk analysis process, to consider the import of fresh pigmeat from countries. So I think it almost - our reading of this was that this relates to - "unrestricted" would relate to the need for heat treatment.

MR BANKS: We will look again, but my understanding was the basis for comparison was New Zealand, where fresh meat imports are permitted, chilled meat imports are permitted, and that was the basis for assessing "unrestricted". But I just make that point, and it is something that obviously we will look at again.

MR RICHARDS: It may be that our industry colleagues may wish to comment on that as well, because they will no doubt have a view on that point. Regarding APL's arguments that unforeseen developments should be referenced to the negotiation of the tariff concession in 1994, we would like to observe that the point in time relevant to evaluate whether developments are unforeseen is not indicated in the WTO agreements. In article XIX of GATT, reference is generally made to “obligations incurred under this agreement”. But taken literally, APL's starting point would appear to be that any changes to the market which have occurred through changes to the quarantine restriction could be regarded as unforeseen, if you extrapolate that position. It's also difficult to fully follow APL's arguments on the evolution of imports, since it swaps between summary financial year, calendar year and moving annual total imports and between carcass weight and shipped weight. So it renders the submission difficult, I think, to follow.

On the second point, on the definition of the "domestic industry" and "serious injury", the definition of the "domestic industry" is an important aspect of this investigation given that the Productivity Commission will need to determine that serious injury is suffered by that domestic industry. The product subject to the investigation is meat of swine, frozen, other, which falls within the tariff code 0203.29.00. And the relevant question is to determine who in Australia produces like or directly competitive products to the imported pigmeat. In this respect there are similarities between the present investigation and the US lamb safeguard case, which the Commission has already drawn attention to in its issues paper. In the US lamb case, there was some dispute as to what constituted the domestic industry, which was in the end settled by the WTO's appellate body.

The appellate body in the US lamb case found that the relevant domestic industry should consist only of producers that have output of the like or directly competitive product, namely, producers of meat and not growers and feeders. It would appear that this reasoning would apply also in the current case, and the European Commission does not see how the Productivity Commission could depart from the appellate body's conclusions. As a consequence, Australian pig farmers cannot be correctly defined as domestic industry in this case. I should like to note that this point has also been emphasised in the submissions by the Canadian and Danish governments and in a submission on behalf of US industry.

Regarding APL's submission on this point, it makes considerable reference to the Productivity Commission's 1998 inquiry that the definition of "like" or "competitive product" - we would like to in effect state the obvious, that since that time WTO jurisprudence has brought important clarifications to the area and that this inquiry, to ensure consistency, needs to look at current WTO rules. Moreover, the initial reaction of our experts in Brussels to APL's arguments is that the appellate body found no support in the safeguards agreement for the application of the criteria of the "continuous line of production", and cautioned against an examination of the degree of integration of production processes since the focus should be on the products.

The third point on causality and other causes of injury - as indicated in the Commission's issues paper, WTO law and jurisprudence allow safeguard measures but only to the extent they address injury caused by the increased imports. Therefore, the investigation should specifically identify and quantify separately the injury caused by imports and injury caused by other factors. The European Commission is confident that the Productivity Commission will apply this crucial WTO principle during the investigation and will examine these aspects closely and further analyse those factors on the basis of all the relevant information. The other factors themselves have been clearly identified in the issues paper and, as stated previously, from our perspective there are clear indications that the difficult situation of pig farmers is due to a series of factors other than imports. This is also supported by a number of submissions from domestic producers, who rightly emphasise the impact of the drought and of feed prices before imports, while others highlight the negative impact of the high Australian dollar on exports, with product redirected back to the domestic market. This is of course without prejudice to the above claim that pig farmers cannot constitute a domestic industry in this case.

Again, regarding APL's analysis, it goes to some length to set out the evolution and profitability and despite clearly showing that at least half the decline in profitability is due to increases in the cost of production - and I think figure 3 on page 42 of the submission points to this - and also the clear inverse relationship between feed prices and profitability - and chart 13 on page 45 points to that - it continues to claim that imports have caused the damage. Further, nothing in the analysis appears to consider the impact of prices for other competing meats on pig prices nor the impact of a strong Australian dollar on exports.

APL also appears to make comparisons between prices for imports and domestic wholesale market prices and claims that import prices are lower than domestic prices. We would question whether APL is comparing like with like. And this point is important also because APL then extrapolates these price comparisons to make an ambit bid that, based on publicly available data, this means an estimated tariff of 62 per cent for legs and a tariff of 48 per cent for middles.

On the fourth point, on the type of safeguard measures and some concluding points, in closing, and in the light of the above, the European Commission invites the Productivity Commission to analyse the unforeseen sudden, sharp and significant nature of imports of frozen pigmeat into Australia, the existence of serious injury to the relevant Australian industry, producing the like or directly competitive products. And the existence of a causal link between imports in the situation of the industry. In particular, by excluding the intervention of those other factors.

The European Commission has strong doubts that these WTO legal requirements for the imposition of safeguard measures are met in this case. In any event, it believes that such measures would not be of assistance for Australian pig farmers given that the allegedly precarious situation appears to be caused clearly by factors other than imports. In any event, given that many fundamental issues still need to be investigated and clarified, the European Commission considers that the Productivity Commission should not find the existence of critical circumstances which would justify the imposition of provisional measures. Indeed, the Productivity Commission should first clarify the various issues at stake and allow interested parties to comment on the initial assessment.

Finally, in reserving our position to make a subsequent submission, the European Commission would like to state that it fully supports its exporters in this case and believes that any unwarranted safeguard measures would constitute an undue barrier to trade between the European Union and Australia. Thank you very much, Mr Chairman.

MR BANKS: Thank you very much for that. You made a number of points that I might respond to, and I have some other questions. You make the comment about the transparency of the process potentially being a bit compromised by a delay in APL's submission. I agree that it would have been nicer for even myself to have received it a bit earlier ahead of today. But I should say that you will have the opportunity having got the submission, to make a submission in turn on that. Indeed, if you wish to appear at other hearings, potentially the Melbourne hearing on the last day next Tuesday, you have the opportunity to do that as well.

MR RICHARDS: Thank you very much, Mr Chairman. We appreciate your situation. The comment was directed as much towards yourself I think as ourselves.

MR BANKS: The second point - you talked about imports and the question of causality. Of course, imports don't occur in a vacuum. Import increases are driven by something. Everything is related to everything else in a market. You clearly would like us to rule out as a trigger for increased imports rising cost in the domestic industry. But I thought I would ask you what your comments would be about the exchange rate as an influence on rising imports?

MR TUCKWELL: Obviously, the economic theory tells you it should make imports more attractive on this market, because it is reducing their relative prices. But I think the question is probably better directed to the representative of the Danish industry this afternoon, who are the actual exporters, to see how that impacts on their decisions, because we are observing the markets operate rather than being practitioners.

MR RICHARDS: I think we are saying that it is another factor that needs to be looked into as part of the whole picture. Something that needs to be examined as one of the elements.

MR BANKS: Yes. I guess all I'm saying is that everything is interconnected, and for imports to be the major cause of injury, the question is what drove the increase in imports. There are some things that you may rule out. There are other factors that should not be considered and there are some that may well be, but I will take up that point with the Danes later. I note that in your submission you say that the commission should clarify the various issues at stake and allow interested parties to comment on its initial assessment. Do you want to elaborate on that? I wasn't quite sure what you meant. Are you saying that we should be releasing a draft report for public discussion? This is on page 3, second last paragraph of the submission.

MR RICHARDS: I think, Mr Chairman, we fully appreciate the transparency and the involvement in the exercise. This is in part directed to the point of having provisional measures.

MR BANKS: I see.

MR RICHARDS: But it is also a general point that, prior to adoption of measures, the proper consultative process that is prescribed for in the agreement should be gone through.

MR BANKS: Which is the responsibility of the government, not the commission.

MR RICHARDS: I think that's true, yes. But so far as the provisional measures are concerned, of course, that point is made also independent, specifically on that aspect.

MR BANKS: Just going more broadly, we have had a number of people in the industry complain about subsidisation, indeed even dumping. This is not an inquiry into those features, but in terms of looking at what might account for a sudden increase in imports, policies of foreign governments are obviously potentially relevant in that. My question is in relation to the EU and whether there have been any policies or levels of support that have changed in the past few years in a way that might have had implications for exports to Australia.

MR RICHARDS: Mr Chairman, overall levels of subsidies have been, over years, going down very substantially. Firstly, as the Productivity Commission's 2005 report into the Australian pigmeat industry concluded in finding 4.4:

> Imports of pigmeat into Australia do not benefit significantly from foreign subsidies. Government assistance provided to pigmeat producers in Denmark and the United States is low. Somewhat more assistance but still low is provided to pigmeat producers in Canada.

I don't think that the situation has substantially changed and certainly not "adversely", since those findings. We would make the point that you have made in any event, that while we dispute the issue of subsidies, whether or not imports are subsidised is irrelevant for a safeguards inquiry. But I think the general conclusion has already been drawn by the appropriate Australian authority.

MR TUCKWELL: If anything since your report in 2005, it's a continuation of a reform to the common agricultural policy, although not in the pigmeat sector, which is reducing any direct subsidies. If you want to ask me about the particular issue - the new private storage scheme, which is a matter of public record - on 18 October we announced a scheme. So it's a very new scheme, which came into force on

29 October and it has a legal basis of commission regulation 1267 of 2007. So it's a formal open, transparent system. Under that program, yes, there are aids for operators who store their own meat at their own expense for a period of three to five months. This is a scheme which is intended to take the meat off the market at a time when there is a short-term surplus and improve the tone of the market. If there is any impact at all, ramifications on the world market from that, it should actually be a firming of prices by taking surplus production off at a time of particular weakness.

Another observation - these are not huge sums of money. We don't know what the cost of the scheme will be, because it's brand-new. But in APL's submission they highlight the last time we used this in the period January 2003 to January 2004 it cost 13 million Euros. Compare that with the production in the EU for 2004, of about 21.2 million tonnes of pigmeat, the actual subsidy is fractions of a cent. These are not large sums of money involved here, but they are useful market instruments to take out some of the extreme fluctuations in the market.

MR BANKS: As we know from the history, the EU, with its various mountains and lakes, they are dependent on I suppose the government understanding how the market is going to evolve. And you can get an overhang in a market, which can potentially be problematic down the track.

MR TUCKWELL: Thankfully as a result of our reforms virtually all of the mountains and lakes have gone.

MR BANKS: But you are potentially building another one in the pigmeat area.

MR TUCKWELL: It's a short-term storage aid system.

MR BANKS: There are not a lot of precedents for an accelerated report. However, one of them is an EC safeguard investigation into imports of canned mandarins from China, which was done in 2003-04, and assessed injury caused by imports as the amount of the so-called price undercutting, which was measured in that particular investigation as the difference between the non-injurious price for local producers, which was essentially their costs of production plus a profit margin, and the import price. Do you still regard that as the appropriate way of assessing injury and arriving at the quantum of safeguard measures to be applied?

MR RICHARDS: I'm not an expert and we will get back to you on it, but what I would say as a preliminary response to that is that the way we look at measures which are being taken against countries like China have been certainly in the past different and it may be that the status of China as a new WTO member with a number of specific provisions applying to it mean that that case is somewhat different from the generality of cases where we would be looking at a country like Australia or vice versa, who are much longer-standing members of the multilateral trading system, in fact founding members. It may be that the answer lies in that. But I'm hesitant to give you a fully comprehensive response now. But we will get back to you on that.

MR BANKS: My reading of that safeguard investigation report, it didn't invoke other considerations of that kind. But I suppose if you are getting back to me, essentially the question is whether that effectively cost-plus approach to assessing injury is something that the EC would still see as appropriate, particularly given that the WTO requirements are that measures imposed should reflect the extent of injury caused by imports and not other factors, the point that you have just made, and should only be applied to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. So as you would appreciate, what we are hearing from the domestic industry is a big part of their problem is the capping of the upside on prices consequent on cost increases by imports and trade. There seemed to be some comparability there in the approach that the EC followed. I look forward to any further comment you might be able to quickly provide on that.

That particular EC safeguard action imposed provisional measures against imports of canned mandarins from China because it was considered that critical circumstances existed which would cause injury to the industry which would be difficult to repair. But the evidence cited in support of that was that there might be temporary or permanent closure of some production facilities and that this would have some negative consequences for regional employment, production and so on. But no reason was given that I could find as to why this would be difficult to repair or whether other employment opportunities were available. So my question is: does the EC continue to take the view that any closures or reduction in the size of an industry would demonstrate critical circumstances and damage that's difficult to repair consistent with that case that I have spoken of?

MR RICHARDS: Again, I think that we would - the specific circumstances of individual cases I think are difficult for me to comment on with specific reference to this case. But it sounds to me more as though those points were being dealt with in respect of whether you should or should not have provisional measures rather than being directed necessarily specifically at an injury point. But, again, because I don't know the features of that case, I would prefer that the experts in Brussels comment, and we get back to you very shortly.

MR BANKS: But I think as you said yourself the accelerator report, the provisional measures, are really an additional requirement on top of already having established that there is a clear nexus between injury and imports. We don't in a sense see it separate from the wider safeguard criteria, but rather an additional criterion about whether delay would cause irreparable damage. The only other question I had, and it relates, I guess, to your point to us that the investigation should specifically identify and quantify separately the injury caused by imports and that caused by other factors, as to what quantitative analysis again the EC undertook in its three safeguard investigations which have resulted in measures being undertaken. Again, it is not clear to me how much quantitative analysis there was in those reports. It might be that you would need to get back to us again on that. Is that correct?

MR RICHARDS: I think if you would like us to give you a genuine indication of the amount of assessment, I would prefer to do that by getting back to you relatively rapidly rather than commenting on the detailed cases which I have not personally dealt with or been aware of.

MR BANKS: I realise that these are technical questions and so on, but as you yourself said, since the commission did its last report in 1998 things have moved on. There has been case law. Some of that has come out of the US, as you have pointed out in your submission, but some of it has come out of the EU. And I guess it's in relation to the EU that we would be seeking further comment from you on those matters. If we could have that within a week, that would be quite helpful.

MR RICHARDS: We will be able to provide it within a week, no problem.

MR BANKS: Thank you very much. I didn't have any further questions.

MR RICHARDS: Thank you again for the opportunity.

MR BANKS: We will start again. Our next participant this morning is Windridge Farms. Welcome to the hearings. I would ask you to give your names, please, and your positions.

MS WALKER: Thank you for the opportunity to present today. I am Sally Walker, the Chairman of Windridge Farms.

MR DUFF: And I'm John DUFF, Director of Windridge Farms.

MR BANKS: Thank you very much for your submission, which I have received and read and also for your participation in other such events that the commission has been involved in. As I said, I will give you an opportunity to give an overview on any points you want to make and perhaps ask you some questions after that.

MS WALKER: Windridge Farms is a piggery at Young. We have 3,500 sows. We produce 107 tonnes of pigmeat each week. We have 52 fantastic families working for us. Our business is expected to make a loss of $1.6 million this year. We have already reduced the number of jobs, the number of places on our payroll, by five, which is 10 per cent of our payroll. We have increased our debt as much as it is possible for us to do, to unprecedented levels. We actually weren't able to obtain the full finance we believed we needed given the current circumstances of the industry. Our situation is not sustainable. We can't go on indefinitely with no relationship between the price we receive and our costs. The exodus from the industry at the moment is unprecedented.

There have been many crises in the pig industry, but none of them have been like this. There are farmers leaving the industry in a very hasty and dramatic fashion, and they are taking very drastic action to allow a speedy exit, where it is not easy to make a speedy exit, and that is really quite frightening and I think very difficult for the people doing that. We have not made that decision at this stage. But I have not heard of actions that have been taken this time - I have never heard of people doing things like this before. I think the circumstances are really extreme. Also, the numbers leaving the industry are very significant. We believe that so many will leave the industry in the short term due to the short-term cash flow problem with the prices being so low that there will be too many leaving and there will not be enough supply for the fresh market and if there is not quick action to remedy the situation, because people just can't hold on for much longer, there will be a cost to that is difficult to repair, which is probably a very large understatement, in my view.

The industry has worked very hard to increase consumption of fresh pork in the last five years, and we have been very successful with that. If we are unable to supply enough to feed that increased consumption, we are going to completely lose our investment in that. It has taken a lot of resources from the industry to achieve those gains, a lot of effort and time, and I don't see that we will - we are likely to be in a state where we will be able to regain those losses due to the industry obviously being much smaller. There are Australian processors who have remained loyal to

Australian product whose loyalty we are going to lose and not be able to regain. There have been rumblings from our supply chain already from the last two months about fear of that circumstance, that we won't be able to supply some of those people who have been loyal to Australian product, and they are most upset because they have stuck with the Australian industry through this time and they think there is going to be a deficit in supply, and they are very worried about that. I think that loyalty - once you make a change like that, it's a lot easier to make it again.

MR BANKS: Could you elaborate on that? They are worried about - - -

MS WALKER: Not being able to obtain Australian pork for their processing in the future because the exodus of producers from the industry is so extreme. There are also export markets that have been difficult to maintain over the last years, but that our supply chain has maintained at some cost and commitment from all levels of the supply chain in order to keep the door open and to have that diversification available. We are going to be unable to supply those markets as well.

MR BANKS: When you say "we" are you referring to Windridge Farms?

MS WALKER: No, I'm referring to the industry. Our supply chain and the industry as a whole. Our supply chain has other producers involved as well.

MR BANKS: So what you are talking about now is the potential downsizing from an overshooting, excess departing from the industry and the difficulties in sustaining - - -

MS WALKER: It's just extreme instability.

MR BANKS: All right.

MS WALKER: The dramatic increase in imports has filled freezers across the country, it has made our price completely unresponsive to costs, to both increases in cost for local supply but also to the falling local supply. The instability generated is a really big issue. And, yes, prices may be high down the track, but who knows when that will be, how many people will be left. Given the cash flow, the high cash flow in pig production, people don't have that long to wait. It is not good for their industry to have a very high price if half the industry is gone and we can't supply all our markets. We would much rather have lower long-term - we would much rather miss those peaks but bring up the troughs as well so that we are able to continually supply our markets and not keep damaging them.

MR BANKS: Yes, although we all learnt in economics 101 about the hog cycle. Traditionally a kind of inherent feature is the leading and lags of this industry; you did get everybody responding to the low or high prices at the same time and overshooting as a matter of course.

MS WALKER: I haven't seen anything like this before. People are taking really drastic action and making very hasty decisions. The costs of exiting the industry and re-entering are much greater than of enduring. But cash flow and your bank support - there is a limit on how long you can endure. I don't see that people will come back in for another round of this once they have got out, and it would be very hard to get a bank to support you to do that, too. Yes, there is a cycle and people respond to that. But it is not apparent to me how the level of imports is responding to those normal economic circumstances.

I haven't got the resources and time to have been able to draw all of the different economic factors that should affect the level of imports on one graph, but from my knowledge the imports do not move in conjunction with exchange rates, domestic prices or their own home prices; they often move in the opposite direction to what one would expect. That also makes it very difficult for us to predict what will happen. They are very erratic. Decisions in our business about our level of supply - it takes a long time to implement those. Not only is it a capital intensive business with specific purpose-built housing but each stage of that housing is built for a different age and type of pig. We can't change a farrowing house where they give birth to a finisher shed where they spend their last period of time.

If we wish to change from supplying one market weight at one carcass weight to another market and a different carcass weight we have to change the numbers coming through the system or have empty sheds, which we just can't afford to do, and constantly putting staff on, laying staff off. Those changes coming through from the market are just becoming - in the last short period there have been very rapid changes. There was a change in the past to supply export markets, and then they have tailed off. But now we are going from one thing to the next, sort of from one month to the next, and it takes us a long time to implement those changes, whereas the level of imports just suddenly can triple from one month to the next. It takes a long time to effect those changes. If they don't move in response to normal economic factors, how are we to know or be able to work out what will happen.

We have visited farms, pig farms, in both America and Europe, and I was really staggered in Europe to see the way that they operated their farms. We could not possibly afford to operate with those sort of capital costs and operational costs. The difference is not marginal, the difference was extreme. I can't tell you how galling it is for me having seen that and, you know, struggling away in our business with 52 good people dependent on us to come in here and hear a plea for fair trade from people who are clearly not operating with fair trade.

In conclusion, I would like to say please consider the 52 good families who work for us and whose jobs are at stake. I can go and find another job anywhere. That's not a problem. But those 52 families do not have other alternatives. There are not other jobs on offer in Young at the moment. There are not other jobs on offer in any other regional area, either. They are good people, they work very hard, we have a fantastic business. It's long-term future looks good, but we might not make it through the short term.

MR BANKS: All right. Thank you. John, did you want to add anything to that?

MR DUFF: No, I think Sal has made the points well. I think that it is incredibly hard, as she said, to make any forecasts on price. We are in the agricultural industry and we are price-takers, but the price we receive doesn't move to supply and production and demand locally; it has some amazing forces being acted on it. When we talk to our processor, who we sell all our 1400 pigs a week to - we have had many, many meetings with him as a result of the current industry circumstances. The first thing he starts talking about is imports and how full everyone's freezers are and that he has no room to move on price. You know, his hands are tied, which makes it impossible for him to raise the price given to us when our - our costs are going through the roof. It has a huge impact on us, an enormous impact.

MR BANKS: Could you - I may have it here and I can't quickly locate it - but talk a little bit about what has been happening for you recently in terms of your production levels or anticipated production levels over the next little while?

MS WALKER: We have kept our production levels the same, because in a way that's one of the benefits that we are provide in pig production, a stable supply. And because the costs of exiting and entering again are very high. We believe we have good long-term viability. So we do want to stay in the industry. We are passionately committed to it, but there is only - we can only last a certain length of time without prices that allow us to recover our costs.

MR DUFF: And we also make those decisions to reduce our production - we take them very seriously; it takes a long time and is very expensive for us to change our production, to reduce the sows to go to single-week weaning. All those things have a huge impact on our efficiency. So the price or the cost to us per kilo of pork produced, while we will be producing less pigs and hence our overall loss will be smaller, our loss per kilo will be greater.

MR BANKS: Could you talk, then, about what has happened to profitability recently or any projections you have been making if current circumstances continue? You can read that any way you like. I'm not asking for confidential information.

MS WALKER: Our budget has a $1.6 million loss on it for this year.

MR DUFF: This financial year, which when broken down means that every pig we sell we are losing about $20 to $25 a head.

MS WALKER: We have some pretty significant advantages in our costs so we would expect other people to be losing more than that.

MR BANKS: You have been quite innovative in the way you have developed your feed and so on, which I had not heard from anywhere else. You are less dependent just on the wheat situation, I guess.

MS WALKER: It does still affect all - it affects all - the wheat price affects the other ingredients in the feed prices as well. But we go to extremes to adapt and make our feed flexible to minimise the damage that the high costs give us.

MR BANKS: You are clearly - the story of your farm is one of I think a lot of innovation and productivity improvement and so on. Are there unrealised - is there still unrealised potential to do more?

MS WALKER: There is. Most of the jobs that we have reduced are actually on our maintenance and building team. Piggeries have high depreciation. Pigs are very rough. It's like having a whole heap of teenage boys really; they are very rough on our equipment and buildings.

MR BANKS: I didn't realise they were that rough.

MS WALKER: So we have a permanent maintenance team. We have some older piggeries as well as some newer ones and so there is constant repair. As we do those repairs, we upgrade things bit by bit. We do a lot of that work ourselves because that's the cheapest way for us to do it. We happen to have an engineer, and that makes it very handy. However, we have reduced the maintenance team to less than half, and they are just doing emergency jobs now. So that, you know, immediately has an impact on productivity. We have an endless list - I think the last time I looked the print was so small I needed a magnifying glass, and there were two pages completely covered with a list of ideas for projects that would improve productivity and efficiency. They are all on hold. Even some of the normal maintenance is on hold.

MR DUFF: A lot of that is also forgoing opportunities to do things better because we just can't afford it. We are patching things up at the moment because there is just not money there to make capital improvements to make things more efficient. One of the things, too, is - I don't know whether this was in our submission, but we have been involved in and have - the industry's adopted a new welfare code. That welfare code will be mandatory and we have 10 or 15 years to implement that. But in terms of our existing production, anything that we have built in the last five or six years complies no worries. Any of the older sheds - there is an enormous capital expenditure to get those sheds to a point where they will comply into the 2015s and 2020s with the new welfare code. That's something when you are a price taker and with the price fluctuations that we are seeing, makes it very difficult for anyone to plan those capital improvements.

MR BANKS: Is there a difference, in the instance of the welfare code, for incumbents in the industry and someone who wanted to come in? Presumably someone coming in would - - -

MS WALKER: New sheds have to be built to comply immediately, and there is a time delay for older sheds to be converted. It is a very big commitment from the industry to do that. There is no assistance with any of the funding to do that. The industry has agreed to do that. It has become mandatory. It is going to become law, which it has not been before, and we are funding 100 per cent of it. Those standards don't apply in the rest of the world.

MR JONES: Clearly, the industry supports it because it sees benefits in it.

MS WALKER: Yes, and our community expects that. But then to be competing with products that don't have to comply to those kind of standards makes it again more difficult.

MR BANKS: I wanted to get a sense of the timing of this. On page 2 you talk about high carcass weight, and in your case the carcass weight being 10 kilos over national average, which has reduced your per kilo production costs and so on, and that you have had to change as you have moved to the fresh meat market. What time frame are we talking about when you made those decisions?

MS WALKER: Bigger numbers in the last six months is the most significant change. We had been able to produce a much larger pig up until then, and we have held on with the small number of exports that we are doing now for a number of years. So that hasn't changed in the last few years. The big change was recently. It's very galling to me. One of the biggest potential productivity improvements is to increase the carcass weight, and the economics of it are just fantastic at every stage of the supply chain. But we can't dictate to the retailers what they will do. The same time we are competing with - we are being told to compete on price with product from other countries where they are able to produce to much heavier carcass weight. So a bit between a rock and a hard place there. I would like to think that with time the industry would be able to change some of those Australian expectations, and certainly there has been a fair bit of work put into that in the past.

MR BANKS: Yes. Again, it is probably in your submission, but what proportion of your output is now going into the fresh market as opposed to manufactured? Can you guess?

MR DUFF: It would be very difficult to know, to be honest. The guy who buys our pigs, yes, we make up a fair proportion of his weekly purchases, but it would be very difficult to tell.

MR BANKS: Who are you selling to? Generically who are you selling to?

MS WALKER: We sell all our pigs to BE Campbell.

MR DUFF: In Sydney.

MS WALKER: And they have a wide range or market, or traditionally have had a wide range of market; this is also becoming limited. One of our great advantages had been that diversity. I would say that of the pigs we sell to the Australian market, now 90 per cent of those are going to the fresh meat market. A number of years ago I would have thought that figure was more like 20 per cent in our particular circumstance.

MR BANKS: There has been a little bit of discussion about contracts, different points of view expressed about them and to what extent they provide any buffer and so on, I suppose. But you clearly see them as having assisted?

MS WALKER: Yes. It's not - our contract is somewhat flexible. But, yes, it has provided us with a little assistance but we don't have a flat price, so it hasn't insulated us from the market completely.

MR BANKS: But to some extent?

MS WALKER: That would be nice, but that's unsustainable in the long term for either party. It is very much a long-term arrangement and it's not sustainable in the long term for either party to be stuck in a position that's different to the market.

MR BANKS: I don't have any more questions. Are there any further comments you wanted to make?

MS WALKER: No.

MR BANKS: Thank you again for your submission and for attending today.

MS WALKER: Thank you.

MR BANKS: I wish you well. We will take a break for morning tea before our next participant, which is APL. So we will break for at least 20 minutes. Thank you.

MR BANKS: We will recommence now. Our next participant is Australian Pork Ltd. Welcome to the hearings. Could I ask you please to give your names and the capacity in which you are here today.

MR ALLARA: My name is Enzo Allara, chairman Australian Pork Ltd.

MR SPENCER: My name is Andrew Spencer, CEO of Australian Pork Ltd.

MS PLOWMAN: Kathleen Plowman, General Manager Policy, Australian Pork Ltd.

MR WAINCYMER: Jeff Waincymer, legal adviser.

MR HELIBRAN: Selwyn Helibran, consultant to APL.

MR BANKS: Thank you for attending today and for the substantial submission, which has kept me busy. I won't pretend that I have absorbed all of it. We may well have to come back to you with questions on the submission when I have had a greater opportunity. But today I will give you the opportunity to make the main points that you would like to make in whatever order you would like to do so.

MR ALLARA: I thought I would give a brief overview/summary for a couple of minutes and then let the team go throughout submission in more detail. Australian Pork has, on behalf of its members, which comprise the pork producers and primary processors, sought the application of provisional safeguards on the importation of frozen pigmeat into Australia.

APL membership represents around 92 per cent of pigmeat production in Australia. The provisional safeguards have been sought to slow down and eventually stop the severe haemorrhaging that is currently occurring in the domestic industry. The negative margins and cash flow have been occurring since the second quarter in the calendar year 2007 and have been progressively increasing as the volume of imports has increased, the availability and cost of feed grains has worsened, the impact of the ceiling on selling prices, dictated by the low level of import prices, has prevented the normal and cyclical recovery of higher production costs.

Profitability has been shattered. In the period from January to October this year, margins are estimated to have on average fallen from a small profit of around $12 per pig to a loss of around $40 per pig and currently losses are estimated at around $50 per pig. As you can imagine, this level of loss is unprecedented and is unsustainable.

The industry does not enjoy any government subsidies unlike those applying to many exporting countries. These losses impact on the long-term viability of the industry through an increasing number of producers exiting the industry, a substantial reduction in overall production, a significant deterioration of the breeding herd, and the closure of primary processor facilities that will cause a reduction in employment as well as critical mass. These losses completely undermine the significant progress the industry has made over the last four years in the areas such as an increase in the per capita consumption of domestic fresh pork of around 35 per cent, a consolidation of the industry from approximately 2500 producers in 2002 to less than 1500 now, a continuous emphasis on improving productivity and on relative competitive positions, and a significant investment in recent times in establishing the pork CRC.

Our submission outlines our view on the causes of these escalating losses, and our request for the immediate application of provisional safeguards. In view of the size of the price gap between imports and domestic production, the level of tariff will need to be significant. We contend that, on the public evidence available, the tariff needs to be in the order of 48 per cent for middles and 62 per cent for legs. In the submission we have focused our arguments on the urgent need for the application of provisional safeguards. Without these protective measures, we are concerned that there will be a significant overcorrection. As a result, we have not addressed the questions of other potential non-border measures in the submission, as we believe that without the application of meaningful and effective safeguards other measures in isolation will not be effective. However, we will make further submissions in the new year to address these issues.

In summary, therefore, this inquiry will be a watershed for the wider Australian pork production and primary processing industry. It has the potential to change its direction forevermore, either enabling it to repair, restructure and rebuild by providing immediate relief from the continued and sustained injury resulting from imports, or render a large part of the industry unviable, leading to its inevitable collapse. This collapse will then trigger a further multiplier effect on all of the supporting industries. I would now hand over to my colleagues for any comments that they want to make to the submission.

MR SPENCER: I will be talking to the main points in the submission that we have made. The structure of that will be around the key questions that were put forward in the issues paper. I will be supported by my colleagues here, who have some of the more detailed information, and I will be throwing to them or they can put up their hand when we make some further detailed points in some of the parts of the facts. I would also invite you to interrupt where there are any areas that you would seek further clarity or have some questions related to the content of what I'm talking about.

The first question in the issues paper is, have imports increased? I think we have made the point very clearly that, since 1998 or up until 1998, import levels of pigmeat into this country were up and down but always less than the level of 10,000 tonnes in terms of shipped weight. Today that figure in terms of a moving annual total or the closest we can get to it, is something like 110,000 tonnes. That's a very significant increase. I think we would like to make the point also that not only have imports increased, but the rate of their increase has also increased. There has been an acceleration in the growth of imports particularly over the last few years and in particular over the last year. Since 2002 the volume of imports has grown by 126 per cent. And the last full financial year saw the level of imports at 40 per cent greater than the previous period. So not only have imports increased; the rate of growth of imports has significantly increased.

The second question relates to was the increase in imports the result of unforeseen developments and the result of obligations incurred perhaps throughout World Trade Organisation. We believe that the increase in imports is the result of a number of unforeseen developments, and they can be from as general a perspective as the way that the Australian dollar has strengthened over the last period, the fact that we have been undergoing the worst drought in 100 years in this country and the impact that that has had on our costs of production and the global competitiveness of our product, the differentials in price that have existed between what the exporting countries to Australia can afford to place on their product, their prices, compared to what we consider to be prices driven by reasonable costs of production plus reasonable margins and perhaps, most importantly, the area of quarantine, where since 1994 there have been a series of relaxations of Australian quarantine brought about by a number of different situations, and I think in particular since that period Australia has had to look at its obligations under the SPS agreement and has had to change the way it approached quarantine. The way that that happened was not foreseeable in that it would require an assumption that the Australian quarantine regulations before that time were unlawful under World Trade Organisation rules. We would submit that that wasn't a foreseeable situation; it later came to be understood.

The second part of that is that our industry has had a lot of difficulty with the area of quarantine in recent times, including a court case where litigation was taken by Australian Pork Ltd with the director of quarantine in the area of the import risk assessment for pigmeat. We contended in that litigation that the risk of importation of exotic disease to this country was too high and was not consistent with the definitions they were seeking of very low risk. We actually won a case on that basis from the technical argument perspective. That win was later overturned on appeal due to a legal argument that in effect found that we did not have the ability to question a policy determination from Biosecurity Australia. So what that actually means is that as Australian Pork Ltd, and representing the domestic pork industry, we have no capacity to question the quarantine protocols placed on us by the Australian Government. However, that right of question, that right of challenge, certainly exists to the countries who are exporting product to this country through the World Trade Organisation. Again, that is a situation that was unforeseeable that we would have a disadvantage in terms of our right to challenge the quarantine situation versus our overseas competitors. But in summary, around the question of the increase in imports, we believe a number of different unforeseen developments have resulted in those increases after the obligations we have incurred through the World Trade Organisation.

The third question is who are producers of like or directly competitive products. In the issues paper the case of US lamb is raised and the potential precedent that that sets around how like product is judged. We contend that in this case the situation is very different, that our industry is structured extremely differently to the US lamb industry in a couple of ways. One is the level of integration of our industry processing to producing. The way that the trade is done means that it is very difficult to specifically identify a part of the industry that produces a competing product with middles from Denmark or boned legs from North America. This is an area of some detail around World Trade Organisation law. So I would like to throw to my colleague, Jeff Waincymer, who might be able to give us a bit more of the interpretation from his perspective.

MR WAINCYMER: I'm certainly happy for you to interrupt and steer the discussion about anything you are concerned about. My overriding position, which is elaborated on in annex 1, is that the US lamb case is a red herring. It should not trouble you in any way. If I begin with page 11 of your issues paper, it in fact overstates what the case in fact stood for. The issues paper says that the WTO appellate body considering the imposition of safeguard measures by the United States against imports of Australian lamb ruled that US lamb growers and feeders did not produce like or directly competitive products. In fact, neither the panel nor the appellate body said anything whatever about the phrase "directly competitive products". As the commissioner would be aware, the definition of "domestic industry" requires consideration of who are the producers of like products, however that is to be defined, and in addition who are the producers of directly competitive products.

The panel in US lamb made it abundantly clear that the USITC that imposed the safeguard did not make any finding whatever as to whether the lamb was in fact directly competitive with the lower down the chain products. It only made a decision that they were like products. That was the issue that was taken before the panel. The panel on four separate paragraphs, which I won't take you to now in the submission, made it abundantly clear that it was not passing any judgment on directive competitive. And the appellate body in two separate paragraphs reiterated that its appeal was only on the question of like product. So there is simply no precedent whatever indicating to you that there is any problem in considering these directly competitive products. Indeed, the appellate body jurisprudence makes clear what would be natural on plain meaning, the like product must be a subset of a directly competitive product. It would stand to reason that all like products would compete in a direct measure, but the plain language of the safeguards agreement and Australia's provisions show that protection is available to those beyond like product who can be said to produce directly competitive products.

In terms of that phrase, there is a separate obligation to understand what is meant by "directly competitive", and the jurisprudence partly in relation to safeguards cases of the WTO and partly in relation to article 3 of GATT cases of the WTO, which may or may not be directly applicable on questions of legal interpretation within the WTO, effectively say that the concept of directly competitive are things that economists would see as competitive in a marketplace, circumscribed merely by the word "directly", which is an unnatural word I would think in economics. So rather than total substitutability, it is substitutability that is not too remote. The jurisprudence in other areas says that things that are proximate and substitutable and not too remote and not too tenuous are what the jurisprudence says that that phrase "directly competitive" would be.

MR BANKS: Is that your interpretation of what they are saying?

MR WAINCYMER: Bearing in mind that the direct lamb case says nothing on this whatever because it is only dealing with like product. There are one or two other safeguard cases mentioned in my annex. One in the textile special safeguard provision, one in the ordinary safeguard provisions, and indeed some cases under article 3 that expressly use the words "proximate", "not to remote" and "not tenuous". I'm grabbing from three or four different places to say that the standard - that the limitation on the general economic concept of competitiveness was not meant to be unduly restrictive. And, indeed, in the 1998 inquiry the commission approved of the leading WTO scholar, Prof Jackson, asserting that it should be a broad interpretation of that phrase, because one should not a priori limit the possible people that could produce evidence to you about serious damage caused by the unforeseen circumstances. It ought to be a matter that you keep your mind open to all of the relevant data. By all means it may be at the end of the day people won't be able to prove serious injury caused or they will be able to do it. But to circumscribe it in advance because of something that the appellate body said on the lamb case about the phrase "like product", that simply did not address in any way the notion of "directly competitive" would be a constraint.

I have very quickly had a look at the Europe Union's submission to you. I wouldn't be doing justice to it to quote it out of context; I have not read the whole thing. But it seeks to conflate the idea of like product and directly competitive and seeks to assert that somehow the case circumscribes you in the matter before you and again I say that is simply not something that is logically maintainable from the case itself.

What one can concede at most from the US lamb case is that in the circumstances of that particular case, limited only to the question of like product, they did hold that the USITC was wrong to consider the live lamb a like product to the imported lamb meat. Now, the question then would be: is that a ruling as a matter of law that must bind each and every administrator around the world or is that a decision on its own facts? That may or may not be replicated 50 per cent of the time in other matters or even 99 per cent of the time, but can those who are arguing against my client's position take it to a level where it's a matter of legal ruling that applies against?

Once again, I would say there is nothing that you can point to in that or any other case that constrains you to do so, and to do that would be contrary to the test of what is a like product because appellate body jurisprudence throughout the WTO says that there are a range of factors and circumstances that one looks at, both physical properties, end use, and importantly looks at market conditions. So on a number of occasions the appellate body has said very clearly that it is meant to be a market based analysis. In some cases, not all, they have allowed evidence of cross-elasticity to be submitted to it.

Once again, a priori, if you could, under the legal definition of like product, give consideration to all physical factors and cross-elasticities, then you should never constrain your mind and your analysis by looking at what an appellate body said merely as a matter of review of a different industry in a different country at a different time, where it was stated as a fact both at the USITC and at the panel that the US lamb industry was not significantly vertically integrated. So already here the evidence before you, from Australian Pork Ltd, is that it's a highly vertically integrated industry, and it is again within that backdrop that my legal submission is merely that you should keep an open mind and you should look at the data to determine what is or is not directly competitive and what is or is not a like product. Because the notion of like product is a subset of directly competitive, my primary assertion would be that you should address that first, and if you were to find that these are directly competitive goods, then you don't even need to enter into the arcane WTO debate about what is a like product or not and about the lamb case because it is the alternative; the producers group encompasses both those who make like products and those who make directly competitive products. If the latter is broader turn your mind to that. If you find that they are producers of directly competitive products, they still then need to convince you of the serious injury and the causation in all of the circumstances of the safeguards agreement. But to argue, as Minter Ellison has alluded to in their letter, that somehow you are constrained or frightened by that case and to argue somehow as the European Union seems to suggest that that case has changed the world and changed the analysis, I simply say that I don't see anything of that.

I should say as a matter of general introduction because I'm not aware of how anyone can even argue that it constrains you, I'm shooting in the dark in making this submission - I'm very happy to make this submission before I hear what if anything Minter Ellison will be submitting to you later this afternoon. But I would certainly like, if there are any arguments that are presented that I have not been able to predict, I would certainly like to have the opportunity to come back in relation to that.

In terms of the lamb case, it doesn't deal with the legal test that I say is the primary matter you should deal with. The test that it did deal with, which is also relevant is a finding on its facts. Factual findings can never bind. It can only be legal interpretation, or valid legal interpretations under international law that can bind. And it simply held that in that American industry the like lamb was not a like product to the lamb meat. Similarly, we can't ask you to be bound by your factual findings in 1998 that they were like products. But the point is the fact that the commission did have a conclusion to that effect in 1998 means that it felt that there was enough economic data, once it did closely analyse the industry, to come to that conclusion. Neither the WTO negative decision or the Productivity Commission's positive conclusion should bind you on this occasion, and again you should simply feel that you are unconstrained.

If I may just quote one paragraph from the appellate body in lamb which I didn't include in the annex, and I will with permission lodge it as an additional submission. It's a paragraph that shows that, if one was to constrain one's thinking, based on a reading of that case alone, one would simply run the risk of not engaging in the proper economic analysis, because the appellate body says at paragraph 131:

> In our view the requirement for competent authorities to evaluate the bearing that the relevant factors have on the domestic industry and subsequently to make a determination concerning the overall situation of that industry, means that competent authorities must have a sufficient factual basis to allow them to draw reasoned and adequate conclusions concerning the situation of the domestic industry.
>
> The need for such a sufficient factual basis in turn implies that the data examined concerning the relevant factors must be representative of this domestic industry. Indeed, a determination made on the basis of insufficient data would not be a determination about the state of the domestic industry as defined in the agreement, but would in reality be a determination pertaining to producers of something less than a major proportion of the total domestic production of the products at issue.

Again, based on that kind of logic, I would respectfully submit that your approach is to consider what are the range of directly competitive products. And once one determines that there are producers in that arena, attract and analyse all of the data in relation to those producers under the test required before a safeguards measure can be imposed. Indeed, in one sense this whole discussion is outside what you are currently considering, given that you are considering a provisional safeguard measure and you are considering merely the critical circumstances and the threat of serious injury that would be difficult to repair. So in the context of the very specific statutory requirement of a provisional safeguard measure, which is much more in the nature of a holding pattern - that is found I think at paragraph 16 on page 22 of the gazette, annexed to your issues paper at paragraph 16. It states that a reference can be made to the commission for an accelerated report to determine whether - and it articulates the factors that are to be determined. Whether critical circumstances exist, where delay in applying measures would cause damage which it would be difficult to repair. It goes on to say the commission will report to the minister - on what will you report? On whether there is clear evidence that increased imports have caused or are threatening to cause serious injury. That's the extent of the matters that you are asked to turn your mind to on a provisional measure.

MR BANKS: That's true, but implicit in that is injury to whom.

MR WAINCYMER: Of course. And we address it now because, if you knew at the end of the day that it could not satisfy these people, of course you would turn your mind to that. I merely say if it's a live issue based on complex evidence about market analysis of who directly competes with who, a definitive determination by you is not what is called for under paragraph 16 at this stage. So unless you are convinced as a matter of legal interpretation from the WTO appellate body that it could never be so that the pig producers could be considered directly competitive with pigmeat importers - unless you are so confident, then you ought to leave that as a matter to be determined at any final hearing and address at the provisional stage the particular matters that are articulated in paragraph 16. Unless the commissioner has any further inquiries, that's basically my submission at this stage.

MR BANKS: Thank you for that. That has all been very helpful. I have not yet read the annex; I have not had time. I will have a look at it. In particular the points you make about the broader interpretation of directly competitive with as opposed to a like product and the basis of that in WTO provisions - I assume that's in your annex?

MR WAINCYMER: Yes.

MR BANKS: We will certainly look at that. Thank you for those remarks.

MR SPENCER: The next question is has the industry suffered or is it likely to suffer serious injury? The next few questions are actually - there are a lot of things that are interrelated so there might be a bit of overlap in how we present the information around this. But no matter how you measure the industry, whether you want to measure it at a pig producer level or if you want to measure it at a primary processor level, which is what we call the abattoir and boning room side of the industry, both of those in one way or another are affected by imports and the volume and price of imports as they come into this country. We believe at the moment our industry is suffering a particular crisis in profitability, and that is predominantly driven by low prices in comparison to previous years. In particular this time of year, from July to December, the pig producers look forward to. It's when the demand for stocking up and producing product for the Christmas and holiday season picks up. Prices therefore start to rise. It's really the time that the producers make their annual profits.

The response to those types of demand this year has been particularly sluggish. It's been behind where it's been before, I believe the last five years. Those low prices are causing profitability issues at the producer level that are quite serious, as Enzo described in his opening comments. It's exacerbated by the difficulty that we have presently with the consequences of the extreme drought that we have been having and the impact that has on grain prices, which are the major input and the major input cost to pig production. In the submission you will see the representations we have made with respect to where pig prices are and how in combination with the cost of production increases that has led to the profitability crisis in the industry that presently has estimates somewhere probably between $40 and $50 in losses per pig produced.

MR BANKS: The $40 and $50 losses, is that based on an industry weighted average? We have been given smaller numbers than that, including some significant producers.

MR SPENCER: Situations will vary producer to producer depending on (1) have they on-farm storage of grain which would allow them, may have allowed them, to buy grain at previously lower prices and even as recently as the second quarter of this year prices were significantly lower. Once it was clear that the winter crop was failing, they accelerated in price extremely quickly. There are possibly some producers who have been able to take advantage of the situation where they have on-farm stocks of cheaper grain. Secondly, producers have different contractual arrangements with their buyers. Some of those are locked into anything from the cost of production base to a margin agreement, to spot agreements which don't really have very sophisticated pricing arrangements for them. But our estimations, as good as they can be, are that over time that number has been increasing, the losses per pig, to a point where it has probably peaked some weeks ago when grain prices were at their peak at between $40 and $50 per pig.

MS PLOWMAN: Where a producer is situated in Australia in terms of grain production and in which state is very important. There are some states in Australia which provide for drought assistance for grain, which excludes pig producers. These freight subsidies just drive up grain prices even further. Even if you had grain contracts or you weren't relying on grain storage on-farm, you are going to be impacted in a different way to, say, a producer in Western Australia. So that's why those differences in the industry averages.

MR BANKS: Okay.

MR SPENCER: If you look at the processor level as another definition of industry, processors are clearly suffering at the moment also, as the investments needed to participate in the processing industry are quite high. The assets that they need to have are particularly limited in their application. They are very much pig industry abattoirs and boning rooms. They rely on throughput. Once they fall below a certain level of throughput, it's very difficult to be getting a profit out of them. Scale is extremely important. When those facilities are built, they have very clear assumptions of course about the volume they will have going through those facilities, and as imports have increased those volumes have been compromised not only in terms of the number of pigs but in terms of the size of pigs as we are forced to focus more and more on the fresh pork segment of the market, which requires a smaller pig.

Those facilities are also suffering. They suffer from throughput in the short term and they suffer from a lack of scale in the longer term as their volumes are decreasing. And that's very much a clear reason why safeguards can give breathing space to not only the production base of the industry to restructure itself to a new competitive environment that it had not predicted, but also the processing industry which needs to rationalise to be able to cope with a new level of production under new assumptions in terms of what the competitive environment is going to be. My colleagues might want to offer something more.

MR WAINCYMER: In relation to any disparity in figures on the losses per pig, I would have thought that the question before you is whether there is serious injury. Any loss is a serious industry, whether it is $10, $20 or $50 a pig. I would have thought in the context of finding serious injury for your provisional analysis a consistent pattern of losses, even if they vary from producer to producer, must by any legal definition constitute serious injury.

MR SPENCER: To that argument also, we may later come to some of the statistics around the effects that the serious injury is having to the production base and the effect on individual producers in terms of their profitability and in terms of their intentions with respect to the industry, that is, destocking/depopulating their piggeries or in fact exiting the industry altogether. One of the clear scenarios that we see is a possibility, if we do not address the present profitability crisis in the industry, is what we call the overshoot scenario, which results in decisions being taken by producers which are disproportionate to the economic opportunity within our industry and leads to a period whereby we can't supply our base market of fresh pork and export, where we do not even in fact compete directly with imports but where of course imports can have an effect or will have an effect on the industry's ability to provide those markets because of the profitability problems that are imposed on the industry.

MR BANKS: You should be careful there. I saw your lawyer's eyebrows rise when you said they don't compete directly with imports because that's precisely the case that you are making.

MR WAINCYMER: I wasn't - I was actually being tired there, commissioner.

MR BANKS: All right.

MR SPENCER: It's very difficult - and maybe "direct" is the word at issue here. It's very difficult to separate fresh markets from processed markets. The pig industry in Australia has a history of making itself a producer for both markets, and they are intrinsically very interrelated.

MR BANKS: Of course.

MR SPENCER: You sell a pig. There will be parts of that pig that go into the processed market. There will be parts that will be more attractive to sell on to the fresh market. To lose one or other of those markets to imports will have an impact on the other one.

MR BANKS: You make the point about overshooting. We had evidence yesterday also to that effect. Overshooting often occurs in markets and it gets sorted out by prices. Are you saying that it's the elevation of price on the domestic market that would be counterproductive in the longer term for the image and marketing efforts of the industry?

MR SPENCER: That's one of the consequences of an overshoot scenario. I think one of the major problems with the overshoot is that we do not operate in a perfect market, and the time between producers or processors even receiving a clear market signal - that is, "I'm not making any money on my pigs and therefore I need to change something," and that may be that I need to exit the industry or change the level of production, the time between that signal and a decision being taken to the time that there is a change in supply to the market, which ultimately will be the price driver, is something up to 11 months to one year, and that's driven by the amount of time it takes to mate the sow and get her pregnant, the amount of time at gestation, the amount of time for the piglets to grow out to a size where they would be economically slaughtered. That takes a long time. So the decision to the supply shift is a very long time, and the ability of the industry to survive in a sustainable fashion through that period given the profitability difficulties that we have today is very, very difficult. That's why we talk about an overshoot scenario.

It's not rational if you look at the economic opportunity but it's very rational if you look at individual cases of producers losing their lifesavings, being sold up by banks and suffering so heavily in the shorter term, that that's really their only option. The consequences of an overshoot are that we can't supply our base markets of fresh pork and export. That has to lead to a situation where either of those markets or both have a reduced level of consumption of our product. The very nature of the competitive environment that we work in means that to get that consumption level back is a very difficult, expensive and long-term proposition. We know that because we have been successful as an industry in increasing fresh pork consumption domestically in Australia by around 35 per cent over the past four years, and that has not come about by accident; that has been a very determined industry strategy that's involved millions of dollars worth of promotional funding and marketing effort, required a lot of patience and required some very skilled individuals to put their mind to it. That is now being threatened through a lack of supply driven by very short-term profitability bleeding. That's really a description of the urgency of our situation, which warrants provisional safeguards being imposed.

MR HELIBRAN: Commissioner, yes, that was the point I was going to make. This is where the issue of provisional safeguards and the urgency and necessity of it comes around. I'm not sure if this is the point at which you want to go into that. But it seems a logical point. Given the time lags in decisions and given the critical nature of the losses being experienced, unless measures are implemented in the immediate term, the consequences of that will be the overshooting some time down the track. I would hazard to say that, unless that was done urgently, then the situation of full safeguards would have far, far less impact. That's the urgency of the situation as it stands now. That would apply almost irrespective of what happens with the level of imports this week or next week or the week after because the damage that's being done is in the process of being experienced now and will pan out over the next 11 months. If that's not addressed, we will be looking at this overshooting situation happening down the track even if imports stabilise at their current levels.

MR SPENCER: Commissioner, I think it's a good illustration of this concept of the supply - the decision supply lag in our industry, how the Europeans have chosen to deal with that very same issue in their market, which has been the application of what are called storage aids and really that is a scheme to hold product back from the market, so in effect to change the supply lag of being some 11 to 12 months and make it immediate through a market intervention. So that's their way of having dealt with this particular situation and I just think it illustrates that very specific issue to industries like ours, in particular ours, where market forces do not in any way lead to intermediate supply shifts and makes it very difficult under profitability situations we presently face to retain a sustainable production base.

MR HELIBRAN: Just to clarify as well that the private storage aids are of course not the only mechanism by which the European Union controls imports and the effect of surges. We have documented and it's documented by the OECD and a number of other agencies a range of measures that are used to protect the European industry, including very high levels of tariffs.

MR BANKS: In your submission you said that one of the consequences of this might be that you get a lot of volatility in the market, you get prices going quite high, which in itself would do damage to the longer term prospects. Is that right?

MR SPENCER: Yes, that would be a natural progression from having a level of demand that's higher than the supply that you can give to the market, it's going to compensate through price. Our commodity, pigmeat, is one that is very sensitive to price increases, so that will certainly pull that consumption back to a level where it's going to meet the supply. But price increases will put consumers off. Price increases will give edges into the market for our major competitors, which in the domestic market are of course the red meat industry and the chicken industry, and in the export markets the impact will be to let in competitors such as the Canadians or into export markets like Singapore, the obvious people to replace those sorts of supply shortages would be the Indonesians and the Canadians.

MR BANKS: I am leading to the obvious point, that you are asking for tariffs on imported product of 60-plus per cent or 40-plus per cent depending on the cuts, which are pretty significant price increases in the market. You don't see those also impacting on the industry in the same way?

MR SPENCER: Remembering that those tariffs will have an impact on the product that comes into the country which is going to be dedicated into the processed part of the market. That is a completely - in the consumers viewpoint, that's a very different part of the market. If you look at it in terms of bacon and ham being the major volume, it doesn't compete with the fresh meat market. It doesn't compete with fresh pork, fresh chicken, fresh beef. So what I am talking about is the fresh meat market as a consequence of market reaction to a lack of profitability due to price ceiling imposed by imports. The processed meat market is quite a different one.

MR BANKS: Yes, but you are not saying that a wedge on import prices wouldn't flow through to the fresh meat market and allow higher prices for fresh meat, are you?

MR SPENCER: I'm sorry?

MR BANKS: You are not saying that a tariff on imports of frozen pigmeat would have no benefit for producers of fresh pigmeat?

MR SPENCER: No, certainly there would be benefits. The problem that we face at the moment through imports is that they impose a price ceiling that does not relate to the supply and demand within our own market domestically. So even though we are suffering from some of the highest costs of production that we have ever known, we are not able to get compensation for those costs of production through the normal market mechanism, because of the ceiling in prices imposed by the surge in the volume of imports which has led to an oversupply situation in the market. Clearly, that has an impact on, yes, our volumes going into the processed market certainly. But as to those being displaced back to the fresh pork market - those two markets are clearly linked in terms of the economic consequences.

MR BANKS: Okay. I will let you go on.

MR SPENCER: Now, that serious injury I think we have shown at the producer level and processor level. Question 5 relates to whether that serious injury is caused by increased imports. We have gone to some lengths to try and show the connection there. It's very much based on that concept that I have mentioned, whereby imports are putting a price ceiling, and the surge of imports in the short term in particular have put a price ceiling on the value of pigs. In particular because the level of imports over the past 12 months surpassed a volume which previously the industry had been able to cope with. Our industry has I think done a very good job in being able to compensate for increasing imports for very many years, and it's been able to do that based on some very good development of new markets overseas, and by what I have previously referred to in terms of the huge increase in fresh pork consumption, an increase that I think in commodity terms from a consumer level is relatively unprecedented for a product such as ours, fresh pork. That occurred up until earlier this year.

A surge in imports clearly surpassed the situation that the industry could continue to cope with that, to a point where we now have a clear oversupply and a clear economic consequence being price suppression, against all other market forces in the country, particularly that one being the huge cost of production coinciding with that. We have done some modelling to try and show very clearly the link between import volumes and prices received for pigmeat. I think that link is clearly established in the submission.

MR BANKS: Just on the price - again, it's based on a fairly quick read of your submission. One of the points I think you made was that the gradient of decline in prices had been steeper than in the past. I think on page 40 you have got a chart there that shows that?

MR SPENCER: Yes.

MR BANKS: Isn't that simply reflecting the fact that prices were very high in late 2006?

MR SPENCER: The dynamics behind that whole situation is a little more complicated. What seemed to be happening was there was some restriction on the availability of pigmeat leading up to January 2007. That led to a situation where we had higher than average prices which producers enjoyed for a while. But once we got into the new year, past that high demand period of Christmas, and the reaction of some of the manufacturing industry was to place significant orders for pigmeat. There is a number of different things happened at that time which led them to take decisions to place higher levels of imports than they might otherwise have done. Those imports, as it was clear they were on the water and about to float into the market, pig buyer were doing their sums and working out that they weren't going to need quite as many pigs as they thought earlier and I believe that has been what has been the major influence on the steepness of the price drop in the earlier part of 2007.

That situation has continued to a point where, once it reached a new low, down around July, the bounce back that we normally expect has been much more hesitant/reluctant, and it's been tripping along the bottom to a point where we have the worst prices in five or six years.

MR BANKS: I think that's quite clear. It hasn't taken off in the third quarter the way it has in previous. The only point I'm making, it has come from a higher base and for the first half of the year prices were higher than they had been in the preceding four years, I think, if this chart is correct.

MR SPENCER: Yes.

MR BANKS: The other thing I was looking at was chart 10, which shows Australian pig price trends, average yearly bacon prices. It looks like prices have actually been rising. They have been averaged out, I guess, but that trend is a slightly rising one over that whole period.

MS PLOWMAN: That particular graph - the actual prices - the graph is deceptive in a way. As Andrew said, the prices have started to change a little, but they are just drifting. They are drifting slowly up. They are not - there is no momentum there, and they are certainly not rising at the rate they would have in previous quarters.

MR SPENCER: I guess you lose the nuances of the seasonal aspects of price with a graph like that.

MR BANKS: That's right.

MR SPENCER: Given the industry environment over those years in particular with some parts of the country suffering unending drought over that time, that has had an impact on the way market forces have worked. It may be that that graph may not be representative, if you look at it as trending upward in price, of the real situation over the longer term.

MR BANKS: You have given lots of fodder for me with all these charts and tables, and I have only had a quick look at them. Chart 12, table 4, seem to confirm that it was higher production costs rather than lower prices that have squeezed profitability. If you look in particular at table 4, price in terms of dollar per kilo sold, at least up till 2006-07, I should say, prices are higher, but it's costs that seem to have risen and made the difference.

MR SPENCER: Table 4 has not captured the low prices in the period that we have been suffering from.

MR BANKS: Since mid - - -

MR SPENCER: End of July or so, ongoing. We don't deny that we have been suffering from high feed grain prices. The real point is that in a normal market situation we would have hoped to have been able to capture some of the increases in the cost of production through price compensation. And that has been impossible due to the surge of imports, which have meant that we have an oversupply of pigmeat in the country, and that compensation is impossible in that situation. So, yes, we have suffered from higher costs of production, but the lack of ability to compensate that is a real point, and that comes from the volume of imports that surged into the country in this calendar year.

I believe we tied the serious injury clearly to the level of increased imports. Acknowledging that profitability is a function of cost as well as price, but compensation of cost has been the real difficulty for us and that's been caused by the imported volumes flowing into the country. In our submission we took the liberty to put in a little extra question 5A, on the basis that the first part of your inquiry and the first report that you will be giving, I understand, was more driven by questions around the urgency of action to be taken as an industry.

So therefore, question A5 reads: are there critical circumstances where delay would cause damage which it would be difficult to repair?. I think we have already talked about some of this. The real issue that worries me for the future of our industry in this country, despite all of the successes that we have had and all of the positive initiatives that we have taken on, is that short-term profitability factors could result in us destroying all of the value that we have generated in those initiatives to a point where it comes down to the fact that we have such a reduced industry in terms of size and volume that we can't supply our consumers to their liking, and that we can't use the infrastructure that we have to its optimal asset value. These are situations that have caused damage already to our industry, that are continuing to cause damage, and that will continue to cause damage into the future unless we get safeguards applied in the near term.

We have what we believe is a significant proportion of our industry waiting to see what the future holds, and part of the process for them deciding on what the future holds is the outcome of this inquiry and in particular the December reporting date recommendations. Without safeguards it's quite likely that there will be another flush of exits from the industry, and we will move closer and closer towards this overshoot scenario whereby we can't even supply our core market segments, being fresh pork and export. To get those back of course, as I've described, is a very expensive longwinded and difficult exercise.

MR BANKS: I mean, again thinking about the overshoot and perhaps being a devil's advocate, why would there not be some entrepreneurial supplier who would anticipate what everyone is now talking about, namely, an overshoot, by thinking, "I will benefit from an overshoot"? Why aren't you getting some producers taking a punt on benefiting from the hasty and perhaps the overreaction of others in cutting production?

MR SPENCER: That would be a very risky decision to take. Our industry is one where it is expensive to enter, and the very fact that you have got - if you are an entrepreneur deciding to get into the pig industry - - -

MR BANKS: Or expand your operations.

MR SPENCER: Yes. You would be looking to build more sheds, to build more capacity for sows. Any animals that you put in there, any investment that you make, on the best possible case there will be no cash flow of any kind for 11 to 12 months because of exactly that same issue I talked about, being the time lag between the market based decision and the market based supply shift. So given the circumstances that we have at the moment in terms of our prices, the uncertainty of the outcomes of this inquiry, the uncertainty of the ongoing nature of the drought, and the uncertainty of the global situation, it would be a very bold investor indeed to be making a decision like that based on some foreseen profitability situation in the future that they may be able to capitalise on. It's just one of those risk profiles that you would look at and say I would be very hesitant to involve myself in that. This is where there are so many ways that our industry functions in particular with the import scenarios on top that normal market forces do not lead to the conclusions that we see people taking with respect to investment in our industry.

MS PLOWMAN: Can I add to that? APL conducted a producer impact survey and the results came due end of November. One of the questions we asked was about debt investment. And it became clear that 75 per cent of our producers - and this goes across from small right through to medium and large producers, have extended their debt facilities not for investment but just to keep their businesses viable. So that proportion of the industry is not looking at an investment in terms of expansion or taking an opportunity from this risk; for the other 25 per cent I can't really speak. But that's a huge component of this industry.

MR ALLARA: If we go on further and take a broad macro view and look at profitability over the last four or five years, you are a pretty game person to say I'm going to put in millions of dollars to position myself to take advantage of any change. On top of that, with the quarantine changes that have occurred in the last five years what is to sop the EU or US applying to import fresh pork? The whole game changes again. Because you are in an uncertain environment of what government may do down the track in quarantine, you are pretty reluctant to start putting in large amounts of money where the track record of people in the pig industry hasn't been very great in terms of profitability, and the future is also uncertain. You have to ask yourself where are you going to benefit.

MR BANKS: You said that at some point in the future that quarantine restrictions on fresh meat could be reduced. But what about a situation in which you put safeguard action on imports of frozen pigmeat? Wouldn't that lead to an incentive for exporters to send to Australia cooked product, manufactured product?

MR ALLARA: They do that now.

MR BANKS: Which they can do now. But clearly at the moment there is no great incentive for them to do it. But if prices became higher and imports became more expensive, could there be some incentive to divert into processed product?

MR WAINCYMER: But the safeguard action could encompass the whole thing, depending on what you say by "directly competitive industry".

MR BANKS: Not this time, because imports have been specified as frozen pigmeat.

MS PLOWMAN: When we were looking at the tariff line, we did look at other tariff lines for that particular product. Interestingly, this is a point that we had made in the import risk assessment process conducted quite a few years ago with Biosecurity Australia around this kind of trend. There has been some change in that product entering, and there has been more, but I wouldn't say it's significantly more. There may be other opportunities, but I think there are significant costs involved around the transport, et cetera, of that particular product. Perhaps as technology changes, as it does in the future, there might be more opportunities in that area. But at this stage, no. There might be a slight more movement in that area, but I wouldn't see it as significant in any way.

MR BANKS: I suppose all I'm saying is that if we talk about increases of, say, on average 50 per cent in import prices as a result of safeguard actions, that will flow through to increased prices of domestically processed product in Australia which would compete with imported processed product. So the incentive to export processed product to Australia would increase commensurate with the increase in domestic prices; that's the point I'm making.

MR HELIBRAN: I think that would be a rational expectation. But my experience of these industries commercially is also that imports of the more highly processed products generally entail also a much higher degree of closeness to the consumer and an understanding of specific consumer requirements. It generally tends to be quite difficult to do from very large distances that we are talking about.

MR BANKS: There is some natural protection?

MR HELIBRAN: That would be my view, as well as the considerable risks involved that have been mentioned as well in terms of productive capacity and so on. Whereas supplying of bulk commodities, more towards bulk commodity, tend to be a bigger volume and more standardised, with deeper price structures and so on.

MR SPENCER: I think a reflection of that is the fact that the processed pork market is driven by brands to a much greater extent than the fresh pork market. We have a number of processors in this country, such as Primo, Hans, KR Darling Downs, et cetera, who hold market share through the strength and value of the image that their brand brings, and that of course would be a major hurdle to overcome to companies who wanted to import directly competitive products, readily processed overseas. There will be some market barriers.

MR BANKS: We are going to have to end proceedings at 25 minutes past, because I'm giving at presentation at 12.30. It's in this building, so five minutes will be enough.

MR SPENCER: I will try to move on. Just as another example of the difficulty in taking the investment decision to get into the pig industry, another difficulty with that is of course that whatever infrastructure you build, the sheds and things that go with producing pigs are very much dedicated assets. In fact, the banks categorise them as what they call specialist assets, which means that you can't - they are useless unless you put pigs in them and grow pigs. If you can't make money out of they, are worthless in effect, no matter how much you spend on them. They are not transportable, transferable, dismountable. On question 5A, we believe there are very much critical circumstances that require urgent action to stop the profitability bleeding of the industry and to save us from what we consider the overshoot scenario.

MR BANKS: You mentioned the APL survey. Are you going to provide us with the information that came out of that survey?

MS PLOWMAN: That's actually in the submission.

MR BANKS: Okay.

MS PLOWMAN: That is in the submission, those figures that I have been quoting, and there are additional ones around employment.

MR BANKS: But have you aggregated all of the results from the survey in a form that we could have?

MS PLOWMAN: There are parts of that survey which I have considered confidential, but I would be happy to provide you with other parts.

MR BANKS: But even the confidential part, we can protect the confidentiality of it if you thought it would help us understand the issues.

MR SPENCER: Question 6, what safeguard measures would remedy serious injury? We have made some recommendations in this area. Perhaps it would be most pertinent if I gave it to you, Selwyn, to discuss.

MR HELIBRAN: Briefly, it is set out in a reasonably detailed fashion in the submission. As you would be aware, there are a number of different ways in which you could try and calculate a measure that could serve to address the injury and we try to do it really at micro level by looking at the gap in prices that has occurred over the past five years or so, and looked at alternative levels of tariff which could serve to effectively close that gap. There are some that would be overly, in our view, overly restrictive of trade and virtually cause it to cease, and there are some which in our view wouldn't have much effect. So I guess we have tried to strike a reasonable balance and used as the essential basis of it the average of the kind of seasonal peak in the gap between import and domestic prices.

We have presumed that a differential tariff couldn't be applied as between different countries for the same product. We have essentially said one for legs and one for middles. The one for legs is weighted according to the volumes of imports coming in from the US and Canada respectively. It's reasonably simple but hopefully robust and would achieve the desired effects.

MR BANKS: Just a couple of questions there. One was where the import price data came from. And whether it's CIF, FOB?

MR HELIBRAN: It's import unit values. So it's effectively CIF. It's the value of imports divided by the volume.

MR BANKS: Having the sources of that information would be quite helpful to us. Which table are we talking about?

MR HELIBRAN: The sources are described in the first time where we look at the gaps in the imports. The sources are described on page 48.

MR BANKS: Okay. It's unit value data, which you think is effectively CIF.

MR HELIBRAN: Correct.

MR BANKS: Is it based on a survey, again?

MR HELIBRAN: It's ABS. We have tried to find - - -

MR BANKS: We might have to check that with you. I'm getting puzzled looks from my team. But perhaps we could deal directly with you to get some more information on that.

MR HELIBRAN: Sure.

MR SPENCER: Moving on. Question 7 is: what are the impacts on other parties? I don't intend to go into too much detail on this area. Perhaps just to bring up that in the 1998 Productivity Commission inquiry into the pigmeat industry, whilst safeguards were seen as a justifiable measure at the time, it was decided against imposing them in favour of allowing industry restructuring motivated by other ways, which I think in the end was the wrong - or was a mistake. A reason being that our industry, despite the enormous gains that we have made in various areas of efficiency, of market acceptance, of export volume, et cetera, despite all of the good things that have happened by the industry for the industry since that time, we find ourselves here today still suffering from an enormous volume of imports that we have not been able to compete with for various reasons.

At the time it was decided to do that because that was seen as being in the public interest, that consumers should get access to good-quality products at cheap prices, and it was seen that that decision facilitated that outcome. What we put to you in the present circumstances is that I believe a clear public benefit exists in there existing a strong competitive pork industry in Australia. The reason for that is that we are presently seeing a situation where the share of domestic pork in the processed pork market has diminished to such an extent that if it continues over the next couple of years we won't have any share of that market. That leads to a situation where we rely very heavily on what happens in other parts of the world for us to get our pigmeat supply for a particular part of our market.

We are subject to the vagaries of whatever they choose to do with their subsidies, whatever happens to grain prices in their locality, whatever happens to the exchange rate, what happens where there is exotic disease outbreaks overseas, et cetera. The Australian consumer, if we rely completely on imported pork for a section of our market, will be vulnerable to forces that are completely out of their control and won't have the opportunity of choosing to buy local if we force the local producer out of that part of the market. We see it as a clear industry and public good that safeguards are imposed to save the industry and its capability to continue to provide at least part of that market, to give the consumer choice, to allow for varying scenarios of happenings in the future that may in fact lead to the consumer choosing to have other reasons why they might decide to buy domestic product over and above imported product. That type of flexibility, we believe, is worth a small investment by the consumer through his taxes to enable the industry to survive at a level that is meaningful for their ability to supply that market.

MR BANKS: Wouldn't you say that, if anything, the international sources of supply have broadened and that is part of industry's problem, because you now have America supplying as well? What we have heard is that one of the problems facing the local industry is that the foreign supply is essentially on tap. It has greater immediacy to it than the kind of lead times needed for the domestic industry to gear up to satisfy increases in demand and so on.

MR SPENCER: I think the US coming into the market - it is geographically very close to Canada. If there are disease outbreaks, there are possibilities that it affects both markets, anyway. We have seen the effects of BSE and FMD over the past years and the effect they can have on availability to get volumes from overseas and it can be very disruptive. We also have to remember that the way the import streams have structured themselves, we have middles coming out of one part of the world and we have legs coming out of another part of the world. Both of those, if an exotic disease outbreak occurred, would lead to a major restructuring of supply lines.

MS PLOWMAN: Also in terms of a broader argument - one of the things for consideration here is that obviously the policy decisions of other governments with regard to trade does have an effect on the national trade of pigmeat. One of the reasons they can provide such immediacy is that they operate in a protected market, but also they have private storage. Their producers don't have to make a change in their production. They can just store it for up to five months. These things complicate the picture greatly.

MR ALLARA: Coming back to your other parties, secondary reprocessors, smallgood manufacturers, could obtain the supplies required in this country provided they took on long term contract arrangement to do so. As I said earlier, it takes

12 months before you can grow a pig. For them that's their risk assessment profile they have to manage. But if it's a disease, they can't come back to a local processor to try to suddenly find a supply of raw material.

MR SPENCER: We have been through the questions that were raised in the issues paper. Just in summary, we would like, particularly focusing on your short-term objective of having good reasoning around the question of whether provisional safeguards are justified, that means is there something going on now that means we have to act extremely quickly because we are going to have irreparable injury if we don't? That is certainly the situation we see at the moment. We have an industry that is bleeding very heavily. It has suffered already severe injury and it continues to suffer injury, and it's waiting on some signal as to what the future may hold.

A negative signal will mean that it will continue to suffer very severe injury. That will cause suffering at the producer level, that will cause suffering at the primary processing level, the boning rooms and the abattoirs, and to all the people who depend on those different parts of the industry for their employment and their ongoing way of life. For us it's extremely important that we have provisional safeguards imposed as quickly as possible to stop the profitability bleeding of our industry and to be able to give us the capability of saving it at a sustainable level for production and enabling us to restructure in a way that is manageable and does not lead to severe damage to our markets, which will be expensive and difficult and time consuming to overcome.

MR BANKS: Good. Thank you very much. Unfortunately, I only have about five minutes to ask some of the questions I had. I assume it's out of the question that you could come back at 2 o'clock? Would that be feasible?

MR ALLARA: We are in your hands.

MR BANKS: To do justice to the submission that you provided, which was a bit late and it will take me a while to get my head around it, if we could do that I think that would work. We are scheduled to resume at 2.30 currently. But if you are able to resume at 2, let's do that and proceed. There is a lot of material in here which, as I say, I would like to do justice. Why don't we adjourn now and we will resume at around 2 o'clock. Thank you very much.

(Luncheon adjournment)

MR BANKS: Let's get started again. I welcome back APL and thank them for their indulgence. I don't have a lot more questions, but they are ones that have occurred to me just in the quick look that I had at the submission. I had more time to look at the overview actually, and there are a couple that I had in relation to that. One comes off a little bit a comment that was made earlier, and this was made by other participants as well, and that is the multiplier or local effects of the demise of enterprises and so on, and the role in a sense that the industry plays in the wider economic life of regions and so on.

In the overview, or summary, of your submission you say, under the heading "What are the impacts on other parties?" you say that under the safeguards agreement interested parties must be given an opportunity to present their views. This is on page 7. "However, this does not require the commission to assess the impact of safeguard measures on interested parties or to assess whether the measures are in the public interest in determining whether the requirement for imposition of measures have been met. Whether safeguards are justified is a legal question based on the requirement stipulated in the safeguards agreement." Now, that point is very true about the safeguards agreement.

The only point I would make for the record perhaps, if you wanted to respond to it, was the commission under its statute obviously has to respond to the terms of reference it receives. The terms of reference that it receives asks it to report on the safeguards specific issues, whether conditions are such that safeguard action would be required and, if so, what action would be necessary to prevent or remedy serious injury. But also whether having regard to the government's requirements for assessing the impact of regulation which affects business, those measures should be implemented. In Australia there is an additional provision in the gazetted requirements relating to the safeguards provisions that I don't think probably apply in other countries. I thought I would draw this to your attention. You are obviously aware of it. Are you saying that this should be interpreted in a particular way? As we said in our issues paper, that requirement asks really - requires us to look at some of the broader effects in terms of the costs and benefits of regulation or regulatory measures, which I would include any action, safeguard action, to encompass.

MR SPENCER: I think that the assumption behind the submission is that we are really focusing to help the commission in their decisions around 14 December. So those ones are we presume much more around provisional safeguards. Correct me if I'm wrong, but I would have imagined that the public benefit-type issues would perhaps be part of the later part of the inquiry and therefore subject to further comment from us through a later part of our submission. That is probably the way we have approached it here, to answer your question.

MR ALLARA: We recognise the need to address issue, but I think we focus our energies on trying to find and debate the rational case why provisional safeguards are necessary. But we have to come back I think as part of the overall proposal to give our views on the multiplier effects or the other effects across the industries.

MR BANKS: I think that's right. My reading of the terms of reference, the terms of reference then go on and say that in undertaking the inquiry the commission is to consider and provide an accelerated report. Implicit in that is I guess a requirement that we would have looked at all of those factors in thinking about the further case for an accelerated report.

MR WAINCYMER: I don't agree with that.

MR BANKS: Now is your time to tell me about it.

MR WAINCYMER: It is certainly complicated and you are right to say you are bound by the Australian provision. There is the WTO agreement and the Australian gazetted provisions. Prima facie the Australian government can be presumed to want to be compliant with WTO. While it has a right to vary, and if it does clearly intend to vary we are bound by it, but to the extent there is any ambiguity in the provisions before you, one would start with the normal presumption that it intends to comply.

The WTO agreement allows for provisional measures on very specified criteria, and those are word for word what you find in paragraph 16, that we addressed before on page 22 of the issues paper. The Commonwealth Gazette says a reference can also be made. So that's talking about a different reference to the type of reference that is the reference for a final measure. For expediency reasons, the terms of reference before you ask you to do both at the same time. But I would argue that it's very important that you, while at one and the same time trying to generate information, make sure you are very clear on which matters you need to turn your mind to by December and which matters you would turn your mind to later on. And the three-part requirement in paragraph 2 on page 19 really relates to the final advice you are going to give to government, which is, A, whether a safeguard measure is in fact appropriate, which is a different question again to a provisional measure, because a provisional measure is about a holding pattern. Is there the evidence of serious injury and is the kind of damage that would be difficult to repair? They are the factors you are considering in paragraph 16. And you are considering that in the context of will you put a 200-day holding pattern on while we engage on the broader analysis. So that's the downstream multiplier, that's the effect on the boning industries, that's the loss of employment. That's the people leaving the industry.

That's the difficulty of coming back into the industry in terms of the difficulty of repairing any damage if you don't apply a provisional safeguard. Whether you do or you don't then in terms of paragraph 2, as you point out yourself, you have three separate considerations to turn your mind to. The first is whether the conditions for the safeguard measures would be justified and indeed you would consider some factors that you do not consider in terms of traditional measures. Secondly, you would consider what measures would be necessary. Unconstrained by what is in paragraph 16, which also asks you to think about that, but it stipulates to you that such measures should take the form of tariff increases unless that would not be sufficient to prevent serious injury.

So on your provisional measure power, you are actually directed that that is the prima facie starting position unless you form a view that that would not prevent it. So you are constrained in thinking about non-border measures and quotas or whatever. Whereas going back to the final determination, you are completely unconstrained in the recommendation to government. It is only after you have decided positively in relation to the first and the second issue in a final measure that you then give government additional advice about wider impact. So that you are again separating it out - and again I would advocate that the impact doesn't address the first issue. So any negative economic impact you might find somewhere else doesn't alter the fact of whether the safeguard measure is permissible or not, because there is not an industry national standard test in the WTO agreement.

Under the second aspect of your final determination it may be relevant, because you would say a measure a priori that has less negative externalities is better than one that does not. Under the third one you are saying that regardless of what I have concluded before, this is my advice to government about the general impacts about whether you would want to take on this measure or not. That is not in any way I believe relevant to the provisional safeguards issue.

MR BANKS: What is your view about if the commission found, for example, in favour of provisional measures in December but at the end of March came to the view that perhaps on broader criteria that we were asked to look at as well that such action was not warranted as a more permanent or longer-standing safeguard action? What would happen to the revenues collected from the provisional measures? Would there be a requirement to reimburse those?

MR WAINCYMER: Not in any way, shape or form. Because under the WTO agreement it is mandated that you can do those holding pattern provisional measures. There is no mandated provision for return of those. They are like going to court and seeking an injunction where the court says stop everything while we wait and deal with the case. Unless there is some separate obligation to offer damages as part of a court injunction, you just accept the fact that someone has said, "I deserve a holding pattern on the criteria that are laid out." I should know but I don't know whether the government is obligated to give concessions back to adversely affected exporters, but certainly there would not be an obligation to return the funds.

MR BANKS: So that's something for us to look at. Because we understood there may well be a requirement to reimburse.

MR HELIBRAN: My understanding of that reimbursement aspect was that it only applied if the protection had extended beyond the four years.

MR BANKS: I'm talking about 200 days now.

MR HELIBRAN: No, I wasn't aware of any return requirement in respect of the 200 days.

MR WAINCYMER: Just hypothetically, even if you were under an obligation to reimburse, that does not alter the entitlement of someone to have a holding pattern provisional measure. It is during that 200 days you keep everything at status quo until you make a final determination. If your final determination was negative, it may well be that that - that is a separate issue, what then happens in the future.

MR BANKS: Where I'm leading is if there was an obligation to reimburse, it would imply that the logic of this was that similar considerations would go into the provisional assessment as would go into the final one.

MR WAINCYMER: I don't see why one would follow from the other. The fact that there is a legal obligation to return to does not alter the criteria in paragraph 16, which would seem to me limiting. If the gazette wanted to put that general public interest/national interest flow-on effect multiplier criteria in, they would have put it in paragraph 16. They did not. I would invite you to interpret paragraph 16 in context, and by comparison with paragraph 2 they are fundamentally different. It is not a criterion for your consideration what happens to the money later on. The only criteria that are expressed in paragraph 16 are about the circumstances, the injury, the causation and whether if you don't apply a provisional measure it might be too late because the damage might be difficult to repair, and it's not even "irreparable", it's only "difficult to repair".

MR BANKS: By the way, I don't think the commission would have to reimburse the money.

MR WAINCYMER: Nor would the pork industry.

MR BANKS: You might have to bear with me; I probably asked some of the things I was going to ask, but I thought I should sweep through. Firstly, I suppose - I did mean to go back to our 1998 report last night, but I didn't have time, didn't have it with me. You made the observation in the summary and also in the body of the report that the commission determined in 1998 that safeguards were warranted, which is correct and then you say the justification has increased since then. What you are implying in that is all of the same trends and pressures that led the commission in 1998 to make that finding also apply now. But my understanding is that the situation with grain costs was quite different at that point and also that import prices had fallen more strongly, undercutting domestic prices at that point. But I would ask you if you would like to comment on that. It is something we would be looking at in the course of events, but since you have raised that I thought I should challenge it on my understanding of the 1998 report.

MR HELIBRAN: I think what was being referred to there was that the same circumstances which led the commission to conclude in 1998 as regards the impact of imports and the surge that had taken place, and the anticipated nature of events leading to it apply in even more depth today than they did then. But that's to say there are not other factors which have emerged since that time which complement it and which can operate for a short period of time. There are heightened periods - periods of high grain prices and periods of low grain prices and periods of high exchange rates and low exchange rates. But the one constant factor through that whole period has been the progressive opening of the quarantine restrictions and the also uninterrupted inexorable rise in imports in relative terms. That's really what - - -

MR BANKS: It perhaps gets back to possibly this broader context and so on. But on page 13 of your submission you talk about the market being liberalised through the Uruguay Round commitments in the 1994 agreement, which accepted a bound tariff rate of zero, which was effective from 1995. You then say liberalisation was undertaken without adjustment assistance or any form of compensation. You go on to say between May 1999 and 2004 quarantine restrictions against imports have been progressively reduced. I guess another way of looking at that is that at least that part of the liberalisation that occurred, you could say, was staged; it has been progressive. And you could argue that that in itself has been a form of - well, it's been a phenomenon that can facilitate adjustment to the extent that all markets suddenly weren't open at the same time. I don't know whether you want to comment on that. The progressive opening of the market seems to go counter to your point that there was no assistance or compensation for that.

MS PLOWMAN: Earlier, when Andrew made his opening statement, we talked about there are various decisions around quarantine. Obviously quarantine, the protocols have changed over that period of time. But there have been decisions within that such as, for example, when APL had issue, for example, with the quarantine protocols that emerged out of the import risk assessment process and how we cannot actually challenge those. Prior to that was the salmon case as we call it here in Australia, which has had a precedent really in terms of quarantine in the sense that I'd say Australian industry thought our quarantine application had been fairly consistent, but out of that particular case it was clearly shown it wasn't and there was a big shake-up. Those things were unforeseen and what we are saying is that there are unforeseen events within quarantine itself and other things, such as the 100-year drought, which we have had no control over.

MR HELIBRAN: I would add to that the kind of indication that staged losing equals planned and hence some kind of program is definitely not the case. In many respects, if right at the beginning all of those markets had been known that they would be open simultaneously, that could have actually perhaps allowed the industry to know where it was heading. What has happened as a consequence of the way that it has occurred in an unplanned manner is that there has been progressive expansion of the import to countries that could not have been envisaged would be in place when those restrictions were first eliminated. And that they have progressively added to the level of imports, which is, you know quite clear from just inspection of the charts. And that is contrary to what was anticipated at the time, including in Productivity

Commission inquiries, where, for example, it was anticipated that the imports from the US would perhaps substitute for imports from Canada, whereas in fact they have quite clearly augmented them.

MR BANKS: I should say, and you can have a look at the transcript, I think the supplying countries would beg to differ on the point here that you make that a full market opening has occurred. The point they are making is that they are only partly competing with domestic product in that they don't have access to the fresh market and so on. But that's a semantic point, I guess. You say on page 26 that there was and express or implied promise to industry that the quarantine controls were effective and valid. This probably comes back to the point you were making earlier, and that that's not the case, but is there any evidence of that or are you saying that you were taking from - I will ask whether you had any evidence to support that presumption.

MR WAINCYMER: I would also make the legal comment that those circumstances are more for the later part of your inquiry rather than the provisional measures stage.

MR BANKS: It does relate, I suppose, to the question of "unforeseen"

MR WAINCYMER: Which is not in your terms of reference for your provisional measure in paragraph 16.

MR BANKS: I'm not so sure about that. I think even paragraph 16 says that there needs to be a clear case established.

MR WAINCYMER: It just says clear evidence of.

MR BANKS: That's right.

MR WAINCYMER: But it's the words that come after the "of" that matter there; that it's clear evidence of the serious injury caused by imports where the damage would be difficult to repair. They are the stated words.

MR BANKS: Okay. So your view on that paragraph would be that it has to be looked at in isolation.

MR WAINCYMER: Well, not - - -

MR BANKS: That only the things mentioned in that paragraph should be considered in the accelerated report?

MR WAINCYMER: We have sought to put in an all-encompassing submission to help you do the two tracks at the same time, and we are certainly happy to explore any of these questions today. But to understand that our obligation for the provisional is to give you enough evidence urgently so you can turn your minds to the things that paragraph 16 deals with, and on an emerging basis, based on our discussions and your questions, present you with the right kind of data for the balance. So just as the implications to consumers of a tariff increase would be dealt with at a later stage, and we could do modelling to assist you, it's not appropriate to do that urgent work now while you are doing the provisional measures. Again, I would say as a matter of law an unforeseen circumstance inquiry now by you would be an irrelevant factor in your provisional measure analysis as it's articulated by government.

If you took a different view of that, then at the very least we ought to be pre-warned about that and have an opportunity to present a fulsome argument about that, because at the moment we have merely flagged the edges of that kind of a discussion by all means to follow your mandate as to how and when one should present that data. But certainly seen on the plain language of paragraph 16, as compared to paragraph 2, it's a separate issue. It's a holding pattern question. You are not asked to determine whether there is a safeguard entitlement under the agreement. You are asked to identify perhaps four out of six or seven of the factors that would be relevant to the final determination, and all against the backdrop of damage that would be difficult to repair and it's only within a 200-day limit.

MR BANKS: Thank you for that.

MR WAINCYMER: Commissioner, if I may excuse myself; I have an immovable flight back to Melbourne.

MR BANKS: All right. I will only ask economic questions. Thank you for attending. Apropos, you had some work commissioned through the Western Research Institute, some modelling work done; my understanding of what is reflected in the submission from the consultant's report is that it shows that without imports production would be about $120 million higher, and prices would be about 3.5 per cent higher overall. Now, I suppose we will have to look at that in more detail, but that 3.5 per cent figure just seemed very small particularly compared to the request for a tariff of about 60 per cent. I'm just wondering how we would reconcile those numbers. It might be something you would want to look at again. In other words, you know, the complete cessation of imports drives prices 3.5 per cent higher. When you think of the flipside of that, it's hard to see why such a large tariff wedge is needed to offset injury currently. As I say, I haven't had a chance to go through it in detail. It may well be reconciled in other parts of the report. But you have an opportunity to make any comment now if you wish.

MR HELIBRAN: No, let's just look at the comparison of the numbers and perhaps if you could just tell us which particular number it is that you are looking at?

MR BANKS: I'm on page 55.

MR SPENCER: It's probably fair to say that, if we had $120 million higher production, our scale would be of such a different dimension that a 3.5 per cent increase would be quite interesting, because our costs of production would be probably somewhat lower than they are today due to that scale and due to the full utilisation of industry assets. There is a sort of two-edged sword to increased size of the industry in terms of revenue and an increase in price.

MR BANKS: That's quite possible, but I doubt that that modelling would have economies of scale built into the production function or whatever for the industry. It may have. It's the second bottom paragraph there.

MR SPENCER: Again, it's probably an area where the arguments around damage can be further refined for the follow-up submission, and that can be an area of some attention, that part of it.

MR BANKS: I will leave it with you. It may be something that you could get back to us on. Notwithstanding the comments of your legal representation, that paragraph 16 still talks about a clear link between damage and imports. So this modelling still bears on that to some extent even though it may not be as detailed as were required for the final report. This picks up on your scale point, I think, page 67, table 9. Again, it is more I think ultimately for the final report in a way going forward. But it talks about the impact of border measures and various things that could benefit from that. Under "competitiveness" it talks about longer term competitiveness can be improved through scale, efficiency, and that investment certainly can be increased. Someone might observe that in the past to what extent did we see those sorts of scale efficiencies occurring when imports were not permitted, and what would be the motivation with greater protection from imports for the sorts of investments that would lead to those scale efficiencies? I give you an opportunity to make any comment around that.

MR SPENCER: If you look at the example of what is happening presently in the industry, the largest single producer, QAF Industries, has recently announced that it is withdrawing a fairly major part of its production out of Victoria. The impact of that is probably in the vicinity of 15 to 16 thousand sows' worth of production coming out of production over the next weeks and months. They predict the clear flow-on effect into their abattoir and into their boning room, and they predict, alongside the job retrenchments that they have had to take for the production base decrease to be reflected also ultimately in their processing, primary processing part of their business. So that clearly is going to have an impact on their scale.

They have a capacity in their abattoir, with a single shift, of something in the vicinity of 20,000 pigs a week. Once you take 25 per cent to 30 per cent of that away, you still need the same number of people to run the operation; the throughput is going to be much less. Your ability to allay the fixed costs of your facility on to the pigmeat you are selling means it's going to be a larger proportion of the total cost behind the product.

MR BANKS: Okay.

MR SPENCER: The industry has taken a lot of efforts over the past years, recognising that we do need to improve continuously global competitiveness. If we stop doing that, we fall well behind. You have to be able to run alongside everyone else. Part of the initiative in that area of course has been to form the pork CRC. Pork CRC is a body that has a number of different core partners, one of which is APL but there are quite a number of commercial piggeries who are putting their own money up front with the business opportunity to invest in improved methods of production that offer efficiencies, paying back in terms of the bottom line over time. There is a lot of projects in that whole area that look very promising for our future. The thing that worries me at the moment is our ability to keep funding ongoing under the environment that the industry is presently suffering in terms of profitability. So clearly that's an area where the industry has decided to invest in its own future, but short-term issues are of course rendering that potentially as a major risk.

MR BANKS: You might have answered this before, but I will ask this again. This is on page 72. It may well be that you outlined this earlier, but it is where you have justified the tariffs that you have proposed there of 62 and 48 per cent, derived from average seasonal peak levels and the price gaps for these products over the period analysed. I guess getting a better understanding of those price gaps and how they are derived is quite important, and where the import price data comes from - and we talked about that; we may need to get back to you on that as well. You refer in the last sentence at the top of page 72 to "under normal market conditions" would mean "prices at levels that would enable a break-even under normal market conditions". Could you elaborate on that briefly?

MR HELIBRAN: In discussing the levels of the price gaps for the various products, one of the things I looked at was if tariffs were applied at this level, which is germane to the question you asked about the input/output analysis. I did check with some commercial contacts as to if tariffs were applied at those levels what would happen in respect of the break-even, would it return them to a break-even position or put them substantially in profit or whatever. The indication was that, certainly with regard to middles, for example, the tariffs at the levels indicated would pretty much bring you back to break-even. In respect of legs, it would probably still not bring you back to break-even, but that is because at the particular point in time that we were doing the analysis the import price of legs was particularly weak and felt to be slightly abnormally weak at that time. So what I'm saying is that the judgment is that, based on the analysis of price gaps over a decent period of time, over the five years, and with the cross-checking that I did, under normal, what would be expected from normal conditions at this period of time, it would serve to return you to break-even. But in respect of legs there is apparently slightly abnormal conditions operating at this point in time.

MR BANKS: Good. Thank you. My final question - I thank you for bearing with me here - and the next participants for waiting. Again, you talked a bit more a moment ago about implications for the abattoir and boning sector. Again, thinking more for the final report, I guess, the question has come up from individual farms, I guess, who see the demise of some of the small abattoirs and boning operations as a problem in terms of additional transport costs and so on; on the other hand, we are hearing that those operations thrive on scale. When we were in South Australia, for example, we heard that the operations at Murray Bridge have benefited enormously from the extra scale they have had in recent times. Can you comment on whether there is any scope for further rationalisation in that primary processing part of the industry.

MR SPENCER: We probably need to understand that something like 85 per cent of all pigs slaughtered go through what we call export abattoirs. And in the pig industry I believe at the moment there are only eight of those. So we do have a situation where there are large abattoirs, and they are predominantly putting the major volume of the industry's output through them. That eight actually includes one that burnt down last year. So it's not in production at the moment, but there have been plans to rebuild. Of course, until it's rebuilt we don't know if it will ever happen. Of those eight abattoirs, there are a significant number of them already suffering from undercapacity issues. The QAF one I have already mentioned. PPC Linley Valley. Some of these people you may have already spoken to. My understanding is that their people are on either a nine-day fortnight or a four-day week. So that shows the reduction in their output. Big River has been one that benefited from the Primo situation. But whether South Australia can justify in the future scenario of pig production two export abattoirs is certainly a question mark. And also the Hans Swickers abattoir in Queensland and the KR abattoir in Toowoomba are clearly two abattoirs playing in a market where really you can only justify probably one and a half or one and a third. Of course, whether there is room for significant rationalisation, probably the answer is, yes, but the scope of that will depend on what the industry looks like in the future and what sort of production base we have.

MR BANKS: You mentioned Primo. In a sense that seemed to be discordant with what we were hearing in South Australia, where we were hearing the good-news story about Big River and reductions in unit costs that came about through the extra throughput. What would be prompting Primo to re-enter? In a sense it is almost a vote of confidence in the future, which goes against the expected injuries.

MR SPENCER: What you say is exactly correct, if you look at it in a macro level, around the whole industry. What is driving the Primo decisions is really a business relationship they have with a major retailer, where they have significant obligations for a long period of time, and they have done their sums about what makes sense from their perspective - not what makes sense from an industry perspective. But they are making those decisions very much around the specific business relationship and contractual arrangement that they have with a major retailer. That's my understanding and that may make it completely logical for them to go down that track.

MR BANKS: When you say "long term", do you know what that would be?

MR SPENCER: I would be very hesitant to say. You really should talk to them about that.

MR ALLARA: We also wonder why, but we're not investing.

MR BANKS: I think I have gone through all of the questions that I had. Again, I really appreciate the thoroughness of your submission. We will go through it. Because it is thorough, it might take us a little bit longer to absorb some of the points. If you are happy to come back to us separately on those, that would be great. Thank you again for your attendance.

MR ALLARA: Our submission is focussed predominantly on the provisional safeguards and the need for urgent industry assistance in the short term. And that's where most of our attention is focussed. We will come back with a broader submission answering some of the questions you asked today. But I think our view is the industry is at a tipping point. If there is no urgent assistance being granted in the short term, the industry is likely to implode. That's something we don't want to happen obviously in this process. We have been there before. The commission has looked at these issues before. As time as gone on it has got progressively worse. Despite all of the productivity stuff that APL have done and all the farmers have done, it has got progressively worse. We believe there is an urgent need for assistance, and the only way assistance can come with short term effect is through professional safeguards; others would take too long to take effect and the industry would be lost. So we are in your hands.

MR BANKS: Our next participant today is the Canadian High Commission. Welcome to the hearings. Could I ask you, please, to give your names and your positions.

MR MADAN: My name is Kapil Madan. I'm the commercial counsellor at the High Commission.

MS EMBLETON: Ilsa Embleton, trade commissioner.

MR BANKS: Thank you very much for attending today. Thank you also for taking the time to talk to us earlier in the process and for the submission that you have provided, which I have read. As I said, I will give you the opportunity to raise the key points that you want to make.

MR MADAN: Thank you for the opportunity to present before the inquiry. Let me start by saying that we believe it's regrettable that, as of this morning, not all submissions that were to have been available were actually available on the Productivity Commission's web site. This affects transparency of process and participants' ability to be fully informed prior to these hearings. By way of introduction, the purpose of the submission is to provide the government of Canada's views with respect to the safeguards inquiry into the import of pigmeat currently being conducted by the Productivity Commission. We intend to address a number of issues pertaining to the present inquiry. Specifically, we will underline the standard for safeguard action, the previous investigations the commission has conducted on pigmeat, the findings it made further to those investigations, and factors currently affecting the Australian pigmeat industry.

We would state at the outset that Canada does not believe that there is a credible basis for safeguards action by Australia with respect to the pigmeat industry. In Canada's view, such action cannot be justified. There is no substantial causal link between increased imports and a finding of serious injury, which would be necessary before a safeguards measure could be applied, and such measures would not be of any long-term benefit to the Australian producers and consumers.

Looking back at previous investigations, in 1998 the government of Australia undertook a safeguards investigation to determine whether a safeguards action regarding the imports of frozen pigmeat would be justified. The report by the commission concluded at that time that the Australian industry had suffered or was suffering serious injury due to depressed prices for pork products, and a reduction in domestic demand for the same. In 1998 the commission concluded that, despite finding that imports of pork had caused serious injury to the domestic industry, safeguards measures would not rectify the situation. The commission also noted that such measures would simply delay the Australian pork industry's inevitable need to adjust to global trends.

In 2005 another investigation with respect to pork was initiated. In this investigation the commission found that for period from 1999 to 2002 Australian pigmeat producers were profitable but lost market share in 2003 and 2004 due to drought, increased feed costs and an increase in the value of Australian dollar. The report highlighted the fact that imports of pigmeat into Australia were not benefiting from significant subsidies. In addition, the report concluded that increased trade restrictions on imported pigmeat would impose costs on consumers, retailers and manufacturers and would likely not be in the long-term interests of the Australian pork producers and/or primary processors.

Looking briefly at safeguards - safeguards investigations, as you know, are governed by the WTO agreement on safeguards and article 19 of the GATT, which set out the requirements for the conduct of investigations, the criteria for findings of serious injury and/or critical circumstances, and the recourse that is available in the event of a positive finding. It should be noted that under the agreement on safeguards the investigating authorities are held to a high standard for positive findings of serious injury.

Article 4.1 of the agreement on safeguards states that serious injuries shall be understood to mean significant overall impairment in the position of a domestic industry. In US lamb, the WTO appellate body compared the standard of serious injury to that of material injury and found in the Antidumping Agreement and the Subsidies and Countervailing Measures Agreement, and it concluded that the standard of serious injury for safeguards is higher than that of material injury. In Canada's view, in order to apply a safeguards measure it must be demonstrated that the injurious conditions facing the domestic industry are extraordinary, and that a safeguards measure is necessary to respond to a significant impairment in the overall economic position of the industry.

Looking now at industry and product definition, the term "domestic industry" is defined in article 4.1 of the agreement on safeguards as being understood to mean the producers as a whole of the like or directly competitive products or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products. In this case, the product in question is frozen deboned park imported under tariff heading 0203.29 of the Australian Customs Tariff. It should therefore be noted that the domestic industry is comprised of producers of frozen and deboned pork, namely, the abattoirs and boning rooms where the pork is processed and not the producers of live swine. This interpretation was upheld by the WTO appellate body in US lamb, a similar case where the panel ruled that the domestic producers of lamb meat did not include growers and feeders of live lambs. Similarly, the definition of "domestic industry" in the present case should not include growers and feeders of live pigs, as they do not produce like or directly competitive products. Therefore, it's our view that the commission should restrict the scope of its investigation to the market, domestic production and imports of frozen deboned pork falling under HS code 0203.29.

MR BANKS: APL, the industry body, through its legal representation, were arguing that the US lamb case was not a precedent in terms of industry or product definition. You might be interested to have a look at the transcript there. And if the High Commission or Canadian government wishes to respond to that, that would be of interest. They in particular distinguish between like product and directly competitive. The latter they saw as a more encompassing term that would allow more - notwithstanding the name, more indirect or - yes, more indirect sort of competition across the industry chain. But, anyway, I will leave that for you.

MR MADAN: We will certainly go back and have another look at that. Imports of Canadian pork under the aforementioned tariff code are also subject to very restrictive quarantine regulations. In fact, AQIS condition C5091 states at paragraph 19 that all Canadian pork meat imports must be cooked to an internal temperature of 56 degrees Celsius for a minimum of 60 minutes prior to any further processing. This clearly places imports of Canadian pork in a different product class, as domestically produced frozen deboned pork is not subject to the same restrictions; it can therefore be utilised in a wider number of applications.

Looking briefly at the industry: Canada wishes to emphasise that the commission should examine all factors that may be causing serious injury to the domestic industry and not limit its examination just to imports. Indeed, there are a number of conditions that must be fulfilled for the commission to return a finding of serious injury. As stated by the WTO appellate body in US wheat gluten, there must be a causal link between increased imports and serious industry, the effects of other factors must be distinguished from effects caused by increased imports, effects caused by other factors must be excluded totally from serious injury determination to insure that they are not attributed to increased imports and, finally, increased imports alone must be capable of causing serious injury.

Furthermore, the commission must consider the fact that an increase in imports does not necessarily entrain safeguards measures. Under article 19 of the GATT and article 2.1 of the Agreement on Safeguards, products must be imported in such increased quantities, absolute or relative to domestic production, as to threaten or cause serious injury. In Argentina Footwear, the WTO appellate body found that the test for increased imports when considering safeguards measures was necessarily very strict. Specifically the appellate body determined that increases in imports must be determined to be "recent enough, sudden enough, sharp enough and significant enough both quantitatively and qualitatively to cause or threaten to cause serious injury". The WTO panel in US wheat gluten applied the same standard in its determinations as well.

In this context, Canada understands that Australia is currently facing severe drought conditions that are having a significant impact on farmers in all sectors. In the specific case of pig producers, the immediate effect has been a sharp rise of already high feed costs. While Canada sympathises with the plight of Australian pigmeat producers, we must remind the commission that the circumstances facing the Australian pigmeat industry are not entirely unique. Pork producers worldwide are facing increased feed costs and depressed prices, resulting in smaller profits for producers. It should also be noted that Australia's pigmeat production and export volume has also remained very stable over the period from 2003 to 2007, and Canada's exports to Australia increased by only 1.1 per cent from 2005 to 2006.

Given the regular and moderate increases in Australian imports of pigmeat, the Productivity Commission must also demonstrate that the increase in imports is due to unforeseen developments as required under article 19 of the GATT. It is important to note that the aforementioned unforeseen developments must be included in the commission's report and must be proved in order to return a finding in favour of safeguards measures. This interpretation was upheld by the appellate body in Argentina Footwear. It is our view that the current conditions in the Australian industry, given the data available, do not meet the requirements for unforeseen developments under article 19 of the GATT.

In conclusion, it's Canada's position that safeguard measures are not appropriate in this instance. While the import volume of frozen deboned pork entering Australia has increased slightly in the last year, there is a lack of objective evidence to demonstrate that imports are the primary cause of serious industry to the Australian domestic industry. In Canada's view, there is no evidence to support the contention that the alleged injury to Australia's domestic industry is due to unforseen developments. It is also our position that imports of frozen deboned pork under HS code 0203.29, since they require additional processing before final processing and shipment, are significantly and materially different from frozen deboned pork produced by the domestic industry. In our view, imports of frozen deboned pork have not increased enough in volume in the last year to meet the WTO appellate body's criteria of a recent enough, sudden enough, sharp enough and significant enough increase both quantitatively and qualitatively to cause or threaten to cause serious injury. Any injury which may have been suffered by domestic producers is more likely to be the combined result of factors such as drought, increased feed costs and depressed prices. As was previously stated, it's Canada's position that the increase in imports alone are not causing serious injury as the defined under article 4.1 of the safeguards agreement.

Finally, it is also noted that an injury to primary input producers, such as pig farmers, does not result in a serious injury to the producers of like or directly competitive products in this case. The producers of like or directly competitive products in this instance are meat producers, abattoirs and boning rooms and not pig farmers. A safeguards action is not the appropriate remedy in this case and would not provide the relief sought by the domestic industry.

MR BANKS: Thank you for that. I just had a few questions in part responding to what you said and in part to the submission. You made reference at the beginning to your concern that submissions had not been placed on the web site. You are not implying that we have submissions that we are keeping off the web site?

MR MADAN: No, absolutely not.

MR BANKS: Or are you saying that we have not yet received submissions?

MR MADAN: All I know is that as of this morning not all submissions that should have been on the web site were on the web site.

MR BANKS: So submissions that we have received, that you know that we have received, have not been - - -

MR MADAN: No, I don't know that you had received them.

MR BANKS: That's a serious allegation.

MR MADAN: Absolutely.

MR BANKS: Once we receive a submission, we put it immediately on the web site. If you haven't seen a submission on the web site, it's because we have not received it. Having said that, with submissions that have come in last night, and indeed today, they will go on the web site. You will have the opportunity to see those and, if Canada wanted to make a further submission in response to those, you would be obviously free to do that. Indeed, if you wanted to attend the hearings in Melbourne on Tuesday to make any points in response to any submission that is on the web site before then, you would be welcome to do that as well.

If I just go back to where you concluded. There seems to be a conflict between the story you are telling on the page related to table 1, and your conclusion. On table 1 you are saying that there is no significant increase in imports; that imports for pigmeat from all sources remained relatively constant in the last two years and your chart for 2007 seems to confirm that. But then you acknowledge in the conclusion that the import volume of frozen deboned park entering Australia has increased in the last year by 57 per cent. 57 per cent is in your footnote. I'm just not sure they can both be right. Whether your chart was done before you saw the number in the footnote, I don't know, or perhaps the chart in 2007 is not a full year or something?

MR MADAN: It's January to August. That's what it is showing, I think.

MR BANKS: Okay.

MR MADAN: We obviously don't have a full year number, so I think that's just showing January to August; it's comparing 2006-07 January to August.

MR BANKS: The industry would say imports were just as high between January and August in 2007 as they were for the whole 12 months of the previous year. So they could use your chart to say the opposite of what you have said.

MR MADAN: My understanding is that much of the activity takes place in the earlier part of the year and less so in the latter half. But you are right, it would be more helpful once we have full year-end numbers to show for 2007.

MR BANKS: You might want to look at that and whether you want to correct that. You also made the point in reference to a Productivity Commission report in 2005, which was not a safeguards investigation like this one, that we had not found evidence of significant subsidisation in foreign supplying countries, although I think we thought Canada was somewhat involved in higher subsidies than we saw in Europe. But in relation to this particular investigation, subsidisation is not an issue, because it is a safeguards investigation. However, any changes in subsidies or other policies in overseas markets or supplying countries that would affect imports to Australia would be relevant. I guess the question is: have policies or levels of support changed in Canada in the past few years which might have had implications for the export of product to Australia?

MR MADAN: They have not, to my knowledge. We have substituted new programs for old programs, but they accomplish many of the same goals. I'm not aware of any programs that have come in that are new which provide new subsidies for farmers, but we can certainly confirm that for you.

MR BANKS: Thank you. A second question is whether - and you may not know the answer to this - but we were discussing earlier the extent to which any safeguard action on frozen pigmeat might have the effect of prompting more supply of cooked product. I would be interested to know whether Canada exports much cooked pigmeat. Are you aware of that? Is that something you could get back to us on?

MR MADAN: We could certainly find out and give you numbers.

MR BANKS: I guess depending on who you talk to, whether exporting cooked pigmeat to Australia would be seen as a viable thing to do.

MR MADAN: Option, yes.

MR BANKS: The other question I was going to ask, just to get some sense of comparison - there is a lot of talk about efficiency of the industry, et cetera, apart from the handicap that it has in relation to feed costs. Any information you had on how the efficiency of the Australian pigmeat industry compared with the Canadian industry would be quite useful. You might look at the submissions from Denmark that provide some information of an equivalent kind for Denmark and any observations you might have or the government might have about the main differences or reasons for that would be useful.

MR MADAN: Okay.

MR BANKS: The final question, again which you may wish to take on notice, is what effect higher world feed prices may be having on the Canadian industry. There has been some comment about that earlier. And indeed whether, like the US government, the Canadian government is pursuing ethanol targets, which obviously have implications for the feedstock. If it was possible to get some responses within a reasonably short time, perhaps a week, that would be of great benefit to us. As I say, keep an eye on our web site, because we put submissions up as quickly as we can physically do so. But if we have not received a submission or it comes at midnight, it's a bit hard for us to do that instantaneously as well. Did you have any further comments?

MR MADAN: No.

MR BANKS: Thank you for attending today.

MR BANKS: Our next participant is the Danish Bacon and Meat Council. Welcome to the hearings. Could I ask you, please, to give your name and the capacity in which you are here today.

MR BUHL: Thank you very much for the opportunity to participate here this afternoon. My name is Knud Buhl, and I'm the director of international affairs in the Danish Bacon and Meat Council, which is the organisation for the major Danish slaughterhouse companies, Danish Crown and Tican. We also have related companies as members. We represent 100 per cent, almost 100 per cent, of the Danish pigmeat exports.

I have been working with this industry for 20 years and we have certainly also during those 20 years seen a lot of structural developments. When I started in this industry, we had 46,000 farmers supplying pigs to our slaughterhouses. Last year we had 8600. When I started, we had 20 slaughterhouse companies. Now we are down to two companies. So I just mention this to say that it is very common to see a structural development going on also in this pigmeat industry.

MR BANKS: Could I just welcome you here. I know you have come a long way and we appreciate your coming to Australia from Denmark for these hearings. You have come with some technology, so we will allow you to make your presentation. As I said, I may stop you along the way if I have any questions, otherwise I will save them for the end.

MR BUHL: You are right; I brought some technology so I can show the writing on the wall. I will follow the agenda as you can see on the wall, but since I have already been - there have already been so many good submissions this morning, I will not go into all details.

We are in complete agreement with what has been said by the EU Commission and the Canadian High Commission. I don't need to go into details with the definition of "industry", only to say that we agree. We heard in the APL representation that they put a question mark as to whether the way we define industry as only the part who compete directly with the imported goods could be questioned. I understood that the backbone of the arguments from the APL were that your industry has to be seen as integrated. But I don't think that the pork industry in Australia is more integrated as an industry than the lamb industry in the US. So therefore, I just think that the arguments as presented by Canada, the EU Commission and also in the written submission from the law firm who represents the US industry are still very valid.

I will now turn to look at the limitation of competition in Australia. As it has been mentioned many times, when we export to Australia we can only supply to a very limited market segment because we can only supply, number 1, deboned products, and only if those products are heat treated after arrival in Australia, and we are further limited by the fact that it is not allowed to transport the containers through urban areas. That alone makes a very big limitation as to where we can sell our products, to which segment we can sell our products in Australia. Apart from the limitation, the requirements of additional heat treatment, the limitations on transport means that we are already in a deficit compared to our Australian competitors, because they don't have to comply with the same requirements. So we are limited in our abilities to exclusively supply raw materials to the processing industry.

Now, just one footnote here. There are some confusion I can hear as to what you mean with the different words. When we say "processing industry" in Europe, we mean the industry who are actually heat treating and making bacon and sausages, whereas I understand in Australia sometimes you call this industry smallgoods. And when you talk about processing, that is what we normally call slaughterhouse and cutting facilities. Just to make that clear, because there were some points I did at first glance understand in the APL presentation, but I think the reason is that difference. So when I talk about a processing industry, I mean we are limited to supplying to the smallgoods industry when using Australian terminology, as I understand it.

MR BANKS: I think there is a further distinction in Australia between primary processing and further processing or manufacturing, where the primary - when we say "primary processing" we are referring to the slaughtering and deboning part of the cycle.

MR BUHL: For the Productivity Commission I think it is very important to substantiate how big the market is to where the Australian industry has a monopoly. And how small is the market where there is actually competition in a segment between imports and Australian industry. I'm not in a good position to substantiate that, but I can try it anyhow in a simplistic way.

In some of the submissions from mainly Australian pig farmers and APL, it is quoted that imports constitute approximately 65 per cent of the raw materials used in the processing sector in Australia. When we know that we can only supply to the processing sector, then the logic of this statement is that our total exports to Australia combined with US and Canada and Denmark, our total exports are then constituting 65 per cent. This is just a rough estimate. Which means that when you use that arithmetic, then the processing industry uses 120,000 tonnes. If like in other statements the 65 per cent would have been 70 per cent, then the processing industry would have been smaller. That's just to get some idea of the proportions by using Australian figures from APL.

Now, if you put that in relation to the size of the Australian market, then you can see that we have tried to see how big is the consumption in the Australian market. We have then taken Australian statistics for the production for the import and the export, and that leaves a consumption for 2005 of 450,000 tonnes and for 2006 of also around 450,000 tonnes. You then have to see how big a share is this calculated use in the processing industry of the total. That is less than 30 per cent.

If we had not used 65 per cent but taken 70 per cent, as I think was put in the submission from APL, then the 27 per cent would have been 25 per cent. That's just my simplistic way to say our access to Australia is limited to a market segment which is of a size of less than 30 per cent, but this is not all. We are further limited because when you look at the use of raw materials in the processing industry, they have a very big use also of bone-in products. But we are not allowed to send bone-in products into Australia. I don't know exactly how big this segment of the processing industry's use of raw materials are, but I know it's an important segment. If you take a product like Christmas hams, which is those hams with bone in, heat treated, they have such a big use in the processing industry that they need to start buying in those hams and freezing them in already in January, and then continuing all over the year to get sufficient supply for the Christmas season. So it is an important segment from where we are further excluded.

So my guess would be that in reality we can only be in competition with the Australian industry on a segment which is around 20 per cent, which means the other way around, that the Australian industry has got a classic monopoly of market segments constituting 80 per cent. This is not big science. I just did put those figures on based on the submissions which have been put in to try to get a proportion. I think it's important that you refine that proportion in your further investigations, because it is important when you evaluate the effect of an import to establish on how big a segment you have competition.

I would, based on these figures, also make a comment back to one of the comments made by one of the lawyers represented here earlier together with APL. He said that in Europe we were subsidised by import duties. The private storage was commented very well by the commission this morning. But I have to comment on this thing with the import duties. On import duties I think he was thinking about our general duties and forgetting that we have a very, very big special quota - duty quota - with heavily reduced duties. And we are not even using that quota available. We ourselves in our companies who are processing are sometimes importing when it is worth while, but you should remember that the pigmeat sector in the European Union is the most liberal sector when you look in the agricultural policy history. So thanks to the fact that we have not been as subsidised as other sectors, we are more competitive and that is shown by the fact that even that tariff quota that we have is not even used up.

Then when he has the comment about a subsidy by a duty, then I would say that, if you have an SPS system which put a ban on imports from participating in competition on 80 per cent of your market, that is much more efficient than a duty of

100 per cent, because if you are out you are out. With a duty you can still pay and get in. I would say, just to comment and put it in perspective, that this limitation of import competition should give the Australian industry a very strong support.

Now, coming to the point about developments in imports, we have made an estimate for the rest three months of 2007 where we don't have official export statistics out of Denmark. But as you can see, if you look at the last few years, it is what we would call a very stable picture. I know that with statistics you can always put in the line where it suits you best because with statistics you can focus on random fluctuations. To illustrate that, I have here the Danish monthly export over recent years. And as you can see, even from month to month there is very big fluctuations, and that is very normal. We are exporting to 140 different export markets. On many export markets we have this kind of fluctuations, which is very, very natural, because it is random how the statistical offices get registrated the export. So you will alone from that point of view see fluctuations.

Then furthermore, exports are fluctuating because of changes in market situations. If you look at development in exports, then it is very important then to focus on the trend and not to focus on specific fluctuations. If you would, you could compare the second half of 2007 - 2006 until the first half of 2007. There you see like a concentration. If you compare that to the year before, then you will see a big increase. On the other hand, if you compare the whole calendar years in this case, then you will find out that there is not a big difference between the two years. This is of course export data out of Denmark and of course this is not the same as import into Australia. But in the end of the day the two sets of data will reflect the same development. So as you can see, we had a big first half year and a low second half year. You may now ask the question: why do we see this relatively big second half year and a big first half year? It's always difficult to explain, because market is a lot about psychology. I know that in the second half of 2006 the Australian dollar started to get strong and then the psychology works in the way that when a buyer buys in, then he feels all - a stronger power in his purchasing. So maybe instead of buying 500 tonnes he orders 700, instead of 1100 he orders 1200. That's how it goes. You tend to buy a little bit more until you come to a point in time where you find out, well, it's not a temporary thing, this is a strong dollar, I have got a strong purchasing power and then you start to hold back because you also maybe did build up a little bit of stock. That's just my guess.

Another guess could be something which had to be seen in combination with the first - that in 2005 there was this court case concerning the legality of the import system, of the quarantine system, where because the APL won in the first instance there was created a certain nervousness in the market and I think the users started to look maybe for home-grown alternatives. But they tried for a while and maybe were disappointed compared to the alternative and then they had run down their normal operational stocks and had to stock up again as from the second half of 2006. This is kind of guessing, because you never know market psychology. But what is important is that when you look at imports you should not try to hang on and focus to random fluctuations. It is very important to look at the trend. If we look right now, we cannot talk about increase, because we are in a period of decrease. If you take the latest statistics - - -

MR BANKS: What about the other possible explanation which I have heard from processors here, and that is that Danish interests had warned them that there could be industrial relations disputes which would lead to difficulty of obtaining Danish product?

MR BUHL: I don't know if that has an effect. I think it was known to everybody that there was a major risk of industrial conflict not only in the slaughterhouse sector but all over the industry sector in Denmark last year. With regular - negotiations, we were lucky that it never materialised; we only had a few random strikes, but not something big. We tried that some years ago - I don't remember in which year now, maybe six or seven years ago - where it caused our clients in Japan very big difficulties because of these industrial conflicts. But it's not something that we go out and use in particular like that, because we work very hard to avoid conflicts.

This was of course only the Danish export, whom I know best. But I think in the Canadian paper there was given a very good summary as to the picture of the total development. I think when you talk about safeguard, it is the actual situation we are talking about. But if you go several years back, I think it must be taken into consideration that it was only by the end of 2004 that the US were allowed to export to Australia and of course it's natural that something happens in a market.

Also concerning the element of unforeseen, as mentioned by the EU Commission this morning, it was foreseen that the imports would increase. You questioned if it was foreseen on the same background as we think. But as we see it, it was foreseen on the background of the WTO liberalisation. That was how we understood it. Anyhow, it has been discussed in many contexts in Australia that imports would go up. But, basically, when looking at the total picture, the Danish, US and Canadian picture combined, I think we have to look at the trend and not to focus on random fluctuations, which of course always happen - happens around any import. If we do that, I cannot see any significant, sudden or whatever fluctuations necessary to safeguard in itself - to justify in itself safeguard action.

Now, looking at the imports, we believe that the imports have contributed to positively developing consumption and developing the processing industry in Australia, because all of a sudden the industry have got access to raw materials they would not have had access to if everything had continued to be closed, which means that there has been an expansion and there have been created a number of new jobs and consumers have got a wider choice. I think it's also very important for the commission to take into consideration - for the Productivity Commission to take into consideration that if you take drastic measures against imports, then it will hurt a lot of investments which have been made in Australia, it will hurt a lot of jobs. It will hurt the consumers. So that's important. I think if we stick to the industry definition, which we saw by the commission and the Canadian submission, then of course the industry who will be hurt by the safeguard measure is the industry who is concerned by the inquiry to a certain extent, and that would be rather ironic.

Now, looking at the Australian pig farmer situation, of course we also have a lot of sympathy with that situation. It is tough and it is tough everywhere in the world right now. The world is running in cyclical movements, and what we see now is that aside the cyclical movement we are hit by increasing feed costs all over the world, because of alternative use of corn and because of failure of harvest, because of new demand from places like China and so on. So pig farmers are having troubles in many countries all over the world now. We know for sure that the market will regulate itself after a while. There will be a new balance where the feed cost and the price of the pigs will enter into balance again. This is nothing new, it has happened again and again, but every time when we have a down swing in profitability, as now, we see major structural developments taking place and, as I mentioned in the beginning, we have seen that in Denmark it's going like a clock. It's tough.

The more efficient are surviving and growing bigger, and the less efficient are leaving the industry, so that's why we have moved from 46,000 suppliers to our slaughterhouses 20 years ago to 8600 last year. What we see now will just guarantee that this development is continuing. I would say the situation can be found all over the world, and that's unfortunately the way the market is functioning.

Now, looking to the Australian pig farmers - as has been mentioned before, this is not part of the industry definition as defined by jurisprudence in the WTO safeguard context. But if we should anyhow look at the pig farmers' situation in case you choose to define the industry in another way, then let's do that exercise. We believe that the difficulties in which the Australian farmers are finding themselves now is mainly due to the extreme increases in feed costs. This increase has been even bigger in Australia because of the drought and also because in Australia there are very strict SPS limitations in place as to what kind of products you can import. So you cannot make a normal import of corn from the US if you find that that would be cheaper. You are in a different position. But that is not because of the imports, that is because of the drought, that is because of the SPS limitations on imports of feedstuffs.

Furthermore, I think it's important to look at the fact that since the US was excluded from Japan, Australia started to produce beef of another type which could go in and substitute US beef in Japan, which requires that you send the cattle through feedlots, which means that all of a sudden there was a new client for this gas supply of grain in Australia. So this competition between the sectors about who can pay for the grain has of course also contributed to drive up the grain prices. By deviation, I will also draw a parallel to the feedlot sector - the beef feedlot sector.

I hear now that in the beef feedlot sector they lose money and that is of course because of the grain prices, and people are getting out of business. The interesting thing is that the feedlot sector and the pig sector, they are a little bit alike. The difference is that in the beef sector imports are not possible. Imports are possible in a limited way in the pork sector. However, in the beef sector you have the same problems even without imports. I think that underlines a little bit the fact that we believe that it is the grain prices who are causing all the problems.

Furthermore, I also think it is important in your investigations that you look into the cross-elasticity between different meats. It is so that we are not competing with the Australian pig farmers in the fresh meat market segment. In the fresh meat market segment you do however have beef and due to drought you have reduced your herds of cattle. When you reduce your herds of cattle you increase temporarily the supply to the market, and there is of course a cross-elasticity and a substitution effect between different meats. So I think the pressure that the pigmeat sector is suffering is also very, very much due to this cross-elasticity.

Then it is also important to note that in Australia it is difficult for the pig farmers to import new genetic material because there are strong limitations on importing live animals. That is also tying the pig farmers' hands in trying to be as efficient as possible, because there is an enormous development on the genetic side to make better feed conversion rates and better meat qualities and so on. So it's a major factor.

MR BANKS: Just on that - to what extent has - have those genetic improvements reduced costs in Denmark that you are aware of?

MR BUHL: I don't have the figures here, but I can tell you that we have been able to increase in recent years, for example, the number of pigs produced per sow from around 20 to now around 30. So there is an enormous development in this area. And also on the feed conversion rate, we have been able to improve that a lot. The only thing I checked up with our experts was the total feed conversion rate, where you in your presentation had a rate of 4 where ours are on 3.6. So that makes quite a substantial difference.

MR BANKS: Is that an industry average?

MR BUHL: That's an average for the industry. I will come back to that a little bit later. But, again, this is not due to imports. This is due to other factors than imports. When you are getting squeezed you are at the same time limited in responding, because of other limitations. Now, the main factor is the development in the feed costs. This is a graph I have borrowed from APL which I think is showing very well that we are seeing over the last year an increase of around 100 per cent in feed costs, which is very significant. Now, this I have also borrowed from APL. And this is presenting the actual situation for the Australian pig farmers. Here is given the feed costs and other costs and it means that you have with the present prices or costs $2 per kilo produced carcass in cost. Other costs are $1 per produced kilo carcass, which means you have a total cost of $3 compared to an average price of $2.30, which means that you are losing 70 cents per kilo or, as you mentioned before, almost $50 per pig when slaughtered at a 71-kilo carcass weight.

Now, if we just put these figures in perspective to the cost of developing in the feed area, then we can say that today in your chart the cost is $2 per kilo produced carcass. If we reduce that with 80 per cent just to be conservative, not with 100 per cent but just with 80 per cent, then it would have been 89 cents cheaper, the feed cost now. If we at the same time use an international Danish feed conversion rate of 3.6 instead of 4, then we reduce the cost with another 11 cents. I keep the other costs unchanged, so the total cost is now $2 compared to a price now of $2.30, which means that you would have had, if the feed costs had been unchanged and you had had international efficiency in the feed conversion, you would have had a profit today of $21.30 per pig. I kept the price unchanged because, if in any case there should be a link to imports on the price, then this has not been taken into consideration here.

Also to put this into perspective, it was mentioned earlier by APL that, if imports were completely excluded, then the price for the pigs would increase by 3.5 per cent. I mean, if you compare 3.5 per cent of $2.30, that's nothing compared to the 89 cents which comes from the increase in the feed costs. So I just show this to say that the real problem here is not the imports. So if you had had unchanged feed costs - international feed conversion rate and unchanged prices you would have had $1.25 more in profit instead of a deficit of 0.7 and you could even have added another $0.07 if you instead of growing pigs to 71 kilos grew them to 80 kilos.

MR BANKS: If we just pause there for a moment. Another perspective that has been put to the commission from probably comparable arithmetic to that would be that that's precisely the problem; because costs have risen in the past when there were restrictions on imports, the domestic price reflected those more elevated domestic costs, whereas imports are now injuring the industry because they are not allowing prices to reflect increases in domestic costs.

MR BUHL: I don't know. Because as it was mentioned in APL's submission, if you did put imports on zero, the prices would only increase 3.5 per cent.

MR BANKS: That's modelling work and we will have to get into the entrails of that.

MR BUHL: Again, you should remember that imports have a very limited effect to the overall picture, because imports are only in competition with the Australian industry on a very limited segment. You have a monopoly for the Australian industry on a very big market segment. So therefore the effect - - -

MR BANKS: When you say "monopoly" you mean we are not competing directly in the fresh meat?

MR BUHL: Yes, we cannot supply to the fresh meat sector.

MR BANKS: But you have already demonstrated in a wider market sense that fresh meat sector competes with beef and lamb and other products as well.

MR BUHL: Yes.

MR BANKS: Fresh product, fresh meat.

MR BUHL: But we cannot deliver directly into that segment. That can only be supplied by the Australian industry. We can deliver to the processing industry but we cannot deliver to the Australian fresh meat market.

MR BANKS: But of course the two markets are linked. What the industry said is that the increased delivery, as you put it, to the processing sector has led to the diversions of meat, Australian product, into the fresh meat sector as a result, which has had the impact on prices and so on.

MR BUHL: Yes. But still there is a very big advantage with these SPS limitations to the Australian industry. Now, just to look at what all this means to a typical farmer - I know there are big farmers and smaller farmers, but if you take a farmer with 200 sows he would produce around 5,000 pigs, and that would be a typical Australian farmer, I think. So if he was producing - if he is producing now according to APL, he makes a yearly loss of $250,000. If he produces again at the same price level as now, but with a feed conversion on an international level and with the feed costs unchanged compared to one year ago, then he would make a profit of more than $100,000. If in addition he grew his pigs instead of to 71 kilo but to 80 kilo, then he would make another $25,000. So it's just to put in perspective again if we had not had this extreme increase in the feed costs, we would have had no crisis in the Australian pig producing sector. So again, it is not the imports. Again, to finish the comments concerning the pig producers, we have sympathy, but this is not a segment which is included in the industry definition. But the comments that I make are just in case you choose to conclude otherwise, then I hope you take those principles into consideration.

In conclusion, we don't find the development of imports significant. That has been repeated many times now. And it was also anticipated already in 2004 by the Australian Government that imports would go up to the level we see now. It's important to note that 80 per cent of the market is constituted of segments to where we cannot supply directly, and be in direct competition with the Australian industry. We think it's very important to underline that we have contributed positively to developing the Australian industry where new jobs have been created and wider choices have been made available for the consumers. Again, the situation for the Australian farmers is due to many other factors than just the import and - I didn't mention all of the factors. I forgot that also of course, the currency has an important place here because it makes it more difficult to export out of Australia. But I think that is in essence what we conclude, and I hope that you take our remarks into consideration.

MR BANKS: Thank you. We certainly will do that. I just point out on that last slide that the second dot in relation to the 90,000 tonnes, that projection by the Australian government was based on an unrestricted market. In other words, you wouldn't have the third dot there if that dot was right. But that's a point I made in relation to the EC earlier.

MR BUHL: I thought when they talked about "unrestricted" it was in WTO tariff context not in SPS context.

MR BANKS: No, I thought it was broader than that. We can check that. But I think it was - the parallel was with what was happening in New Zealand, I think, where it was more - - -

MR BUHL: In New Zealand they have the same SPS restrictions more or less in place until now as you have.

MR BANKS: But they import fresh product into New Zealand.

MR BUHL: You have still to heat treat. There is a procedure going on now in New Zealand where the government have recommended to allow products to be imported without heat treatment requirement if it is portion packed. So to say, that it will be distributed in a way so there is a limited risk that waste is being thrown out and eventually fed to animals. So we, of course, are following that very closely. But right now they also have to heat treat in New Zealand. So if you say that the parallel was to New Zealand, then I must say that then it must still be referring to the tariffs and not to the SPS limitations, because they still have those limitations in place.

MR BANKS: We will check. I thought that chilled product could enter New Zealand as opposed to fresh.

MR BUHL: It must be heat treated.

MR BANKS: On arrival?

MR BUHL: Yes.

MR BANKS: Thank you for that. You had another slide there where you showed exports of manufactured product, smallgoods, as we would call them here, which I think was relatively small compared to - - -

MR BUHL: Yes.

MR BANKS: Do you remember?

MR BUHL: Yes, this one.

MR BANKS: Yes, that's right. You might have been here when I was asking earlier, just exploring some of the implications of putting a safeguard action on imports of frozen pigmeat, whether that could sort of perversely from the domestic industry's point of view have an effect on imports of cooked pigmeat. I suppose a question is: how easy is it to export cooked pigmeat these kinds of distances and so on?

MR BUHL: Physically everything is possible. But of course the clients we have, they are very professional companies who have been investing a lot in their brands and market development. And of course we hope to continue to have the cooperation we have with them. I don't know if there is an import impossibility - then they will have a big problem and maybe we will have to see if we can cooperate with our clients to find solutions so that we cooperate on making some of the processing outside and then together distributing in Australia. But I hope that we will not come to that point. But of course we will have to see how to minimise the damage. I think our clients will also look at how to minimise the damage. The first thing they will do for sure is to start to cut down capacity and lay off people, and then, who knows?

MR BANKS: You are talking domestically, in Australia, now?

MR BUHL: In Australia, yes.

MR BANKS: How significant is the Australian market for Denmark? As a share of your exports it is tiny.

MR BUHL: It is 1.6 per cent of our export quantity. But it is - I mean, that is also a very big proportion, because if you look at our export strategy, we try for every cut of the pig to find the best possible market. And Australia is a high priced market for bacon and raw materials for bacon. Australia is buying the same part of the pig as Japan and England. So therefore Australia is for us a very good supplement, because we always try to find the segment in the world where we get the highest price. So if we all of a sudden lose Australia - the 1.6 per cent, that is seen out of the total quantity, but if you look at the middles, then it's of course a much bigger share. This reminds me - just when we heard the APL presentation before, they had some graphs showing what they called the gap, the development in the gap of prices. I think that was the chart number 17 and chart number 22.

It is important that you are sure what kind of prices you are comparing, that you are comparing at the same states in the market. I understood the methodology of APL have been simply to take the total imports from Denmark, dividing with the total quantity of 0203.2900. You should remember that maybe it is not 100 per cent made out of middles. Maybe there can be variations. So maybe you then compare apple and pears. It is also important again that you compare at the same states in the marketing.

MR BANKS: Yes. In your comparison about what was potentially possible in Australia, if feed costs were not as high and if feed conversion ratios were as you put it at international standards, I guess in doing that - at least in the latter, you are making a judgment about the efficiency of domestic production in Australia relative to, say, Denmark. I would ask you whether you would like to comment further on the - on that difference between Australia and Denmark. We talked a bit about genetics. Has that been a converter to the lower feed conversion rate in Denmark?

MR BUHL: Yes, absolutely. Both in the efficiency but also in the meat quality the genetics means something.   If you look in some of the other submissions, it is mentioned by one of the meat processors that the reason that it is good for this company to import raw materials from outside is that from the genetic side there is a better quality. The efficiency goes through the whole industry also when you look at our slaughterhouses and deboning plants.

I think one of the other reasons I hear here in Australia that they buy imports are that if you need 60 containers of middles, then you can just order it by one phone call. You get consistency, which means that you do not have to employ people in shortening out. If you get the 60 containers from 20 traders in 25 different qualities, then you have to spend manpower in further trimming and shortening. And maybe you have a loss of raw materials so that you cannot actually use the gross quantity you brought in. But back to the genetics - I think they are also important for the meat quality, not only for the efficiency.

MR BANKS: Would pig size also be a factor in feed conversion ratios?

MR BUHL: Yes. I don't understand - well, to put it more correctly, I talked with some of our technical people, and they could not understand why you choose in average to supply at the weight of 71 kilo. Because if you make a calculation where you get the most efficient slaughter weight, then it would be around 80 kilos. And they then calculated for me that you could then make, if you increased the slaughter weight, you could improve your profitability with the equivalent of 0.07c Australian per kilo carcass produced.

MR BANKS: If you see the submission from Windridge Farms, who appeared this morning, you would see that that was precisely what they had done. I guess - but that was predicated on selling to the processing sector. The story we are hearing is that the diversion of product into the fresh meat sector, given the nature of demand and preferences, consumer preferences in that market, has necessitated a smaller pig weight, which leads to the question of why preferences are like that in Australia whether they can be changed over time, but that's probably a longer term issue. But that might be a submission that might be of interest to you. You might have mentioned this earlier, but I guess you were talking broadly about the impact of world feed prices generally on the industry. To what extent is this impacting in Denmark?

MR BUHL: It is impacting very much now. Especially since August, our farmers have on average been producing with a negative profitability, and it is the same all over Europe. We believe that in the beginning of next year in the spring we will start to see the prices going up again over the summer, and then when we come to Autumn we think there will be a new balance so that you have again a balance in your profitability, so the price for feed costs and the price for the meat is matching one another.

MR BANKS: Okay.

MR BUHL: And this situation of course leads to accelerating further the structural development I talked about before.

MR BANKS: Thank you. All right. I don't have any further questions. I would like to thank you for the amount of effort you put into your submission and actually participating here today, and the PowerPoint presentation worked very well.

MR BUHL: Good.

MR BANKS: Did you have any further comments to make?

MR BUHL: No.

MR BANKS: Our final scheduled participant for today is the Ministry of Foreign Affairs of Denmark. Welcome to the hearings. I ask you, please, to give your names and your positions.

MS SHINE: Thank you very much. Good afternoon, commissioner and representatives of the Productivity Commission. My name is Susanne Shine and I am the Danish ambassador here in Australia based in Canberra. At this hearing I'm assisted by Katja Goodhew, who is the Senior Commercial Adviser in the Embassy and responsible for agriculture.

MR BANKS: Thank you. Thank you very much for attending today and also for the submission, which I have read, and for the earlier meeting that you organised for us when we were just starting this process. As we indicated, I will let you make the main points you want to make in your presentation.

MS SHINE: I know it's late in the afternoon so I will keep this presentation short.

MR BANKS: Don't feel you have to.

MS SHINE: No, I think otherwise we will lose the audience. Firstly, on behalf of the Danish government I would like to take this opportunity to thank the Australian authorities for this opportunity to contribute to the safeguard inquiry into the import of pigmeat both through our written submission and here today with this statement. Let me also stress the seriousness of the matter both for the Danish export sector and for the Danish government. Our written submission to this inquiry as well as this statement complements the submission and statements made by the European Commission and the Danish Bacon and Meat Council. The Danish government fully supports and endorses the content of these submissions and statements.

Secondly, from news reports and the submissions presented to this inquiry, it is clear that the severe and prolonged drought currently affecting Australia is causing significant hardship throughout the Australian agricultural industry, including the pig industry, and that many are suffering greatly. On behalf of the Danish government, I therefore wish to extend our sympathies to those farmers suffering from these severe circumstances.

However, severe drought conditions do not in themselves justify safeguard measures and the Danish government is therefore deeply concerned about this inquiry. Australia and Denmark are both open economies depending on trade, and the multilateral and rules based trade system is therefore in the interests of both of our countries. Both Australia and Denmark have historically been working for a free and fair trading system, and I wish to stress the importance of taking account of this broader perspective in this inquiry.

Furthermore, as outlined by the European Commission this morning and by the Danish Bacon and Meat Council, it could be questioned whether safeguards measures under these circumstances would comply with WTO requirements, a view fully supported by the Danish government. Notwithstanding this, the Danish government will fully cooperate with this inquiry, that we expect to be fair and transparent in accordance with the process outlined at the onset of this inquiry.

In this respect, we request that this inquiry will address the matters set out in the submission by the European Commission, including increases in imports and unforeseen developments, definition of "domestic industry" and "serious injury", causality and other causes of injury. Finally, we would have liked to examine also the legal arguments in regard to domestic industry and like and directly competitive products prior to today's hearing, which unfortunately was not possible.

So, commissioner, with this I wish to conclude the statement by the Danish government. If required, we will gladly respond to any questions either now or after consultation with our colleagues in Copenhagen and Brussels.

MR BANKS: Thank you very much. We had a long discussion about Danish exports to Australia with the previous presentation, so I won't detain you for long. I suppose just to clarify, again, given that you are representing the Danish government, any comment from you on whether there have been any changes in policies within Denmark or the European Union that may well have contributed to the injury suffered by Australian producers - would be something that I would like you to respond to. In particular, although this is a safeguard inquiry and therefore we are not looking at subsidisation, et cetera, any changes in such policies would be relevant to our consideration of what might be behind any trends in imports into Australia. You could take that on notice or respond now.

MS GOODHEW: I think that was accurately touched upon in the EU statement early on this morning. Overall I would say we don't believe so, but of course we will respond in writing.

MR BANKS: There are no policy initiatives that have occurred within Denmark that would be separate from initiatives undertaken within the wider EU. Is that what you are saying?

MS SHINE: Yes, I think we will be coming back on these issues after consultation.

MR BANKS: Any comment either through the European Commission or separately on what impact the recently announced storage subsidy for pigmeat would have on the local industry and more broadly for world prices would also be useful.

MR BANKS: We had a brief discussion about that also this morning.

MS SHINE: Sure. We did.

MR BANKS: I also asked the EC representatives a number of questions about the basis for their decision in relation to the safeguards action against canned mandarins from China, and in particular the way injury was assessed in relation to the non-injurious price. You might care to get back to me as to your position on that, and perhaps in consultation with the EC and whether you see that as - still see that as a relevant and appropriate way for safeguard decisions to be made. Beyond that, I don't have any more questions. Did you have any further comments to make at this time?

MS SHINE: No, I think that was it for today.

MR BANKS: There will be submissions that you may not yet have had an opportunity to see that have come in last night and also today. The hearings don't end until Tuesday, but even beyond that there is the opportunity for you and indeed for the EC to respond to the submissions of any parties. Obviously, we would accept - we don't reject submissions no matter how late they come, but the sooner they come the easier it is for us to take those submissions into account. You have that opportunity. Thank you very much.

MS SHINE: Okay.

MR BANKS: Thank you again. If there are no other participants who would like to say anything at this stage, I would like to adjourn the hearings. We recommence in Brisbane on Thursday morning at 9.30. Thank you. I will adjourn the hearings now.

AT 4.45 PM THE INQUIRY WAS ADJOURNED UNTIL
THURSDAY, 29 NOVEMBER 2007

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