No. CT-91/1

Public VERSION

THE COMPETITION TRIBUNAL

IN THE MATTER of an application by the Director of Investigation and Research for orders pursuant to section 92 of the Competition Act R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of the acquisition by Hillsdown Holdings (Canada) Limited of 56% of the common shares of Canada Packers Inc.

B E T W E E N:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant,

- and -

HILLSDOWN HOLDINGS (CANADA) LIMITED,
MAPLE LEAF MILLS LIMITED,
CANADA PACKERS INC. and
ONTARIO RENDERING COMPANY LIMITED

Respondents

AFFIDAVIT OF PROFESSOR MICHAEL TREBILCOCK

I, Professor Michael Trebilcock, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I have been a professor at the Faculty of Law of the University of Toronto since 1972 and the Director of the Law and Economics program at the University of Toronto since 1976. I was a Visiting Fellow in Law and Economics at the University of Chicago Law School in 1976 and a Visiting Professor in Law and Economics at Yale Law School in 1985. In 1986, I was elected a Fellow of the Royal Society of Canada. In May 1991, I was named a University Professor at the University of Toronto.

2. I am the author of The Common Law of Restraint of Trade: A Legal and Economic Analysis (1986) and the co-author of Canadian Competition Policy: A Legal and Economic Analysis (1987) and Trade and Transition: A Comparative Analysis of Adjustment Policies (1990).

3. I have also been associated with various studies on Canadian competition policy, public enterprise in Canada, business bail-outs in Canada, misleading advertising and unfair business practice laws, regulatory reform and the choice of governing instruments, regulation of the professions, trade-related adjustment assistance policies, tort reform and the liability insurance crisis, traffic safety regulation, and liability for medical malpractice.

4. I have been retained by Maple Leaf Foods Inc. to provide my opinion on the competitive implications of the merger between Maple Leaf Mills Inc., Rothsay Rendering Division and Canada Packers Inc. (now Maple Leaf Foods Inc.), Orenco Rendering operation on the rendering industry in Ontario.

5. My ability to comment and advise Maple Leaf Foods Inc. is based on my experience in competition policy analysis. I have also been provided with and have had full access to information from Maple Leaf Foods Inc. about their rendering operations.

6. Attached hereto as Exhibit "A" to this my affidavit is a true copy of the report prepared for Maple Leaf Foods Inc. pursuant to their request.

Sworn before me at the)
City of Toronto in the)
Province of Ontario)
this 1st day of August 1991.)

Professor Michael Trebilcock

A Commissioner, etc.

9460D/20-22

This is Exhibit "A" to the
Affidavit of Professor Michael Trebilcock,
Sworn before me on the 1st day
of August, 1991

A. Svoboda
A Commissioner, etc.

PROFESSOR MICHAEL TREBILCOCK

CANADA PACKERS - MAPLE LEAF MILLS RENDERING PLANT MERGER IN ONTARIO

REPORT

of

Professor Michael J. Trebilcock
Faculty of Law
and
Department of Economics
University of Toronto

A. Introduction

1. The issue to which my evidence will primarily be directed is whether the acquisition by Maple Leaf Mills, the owner of the Rothsay (Moorefield) rendering plant, of the Canada Packers' rendering plant, Orenco, both located in Southern Ontario, constitutes a substantial lessening of competition in the rendering industry in Ontario, in terms of s. 92 of the Competition Act 1986, thus justifying an order of divestiture or some other order by the Tribunal, at least if efficiency gains from the merger are not found to outweigh the effects of any substantial lessening of competition (s. 96). This latter issue will be addressed by Professor McFetridge in his evidence.

2. My evidence is confined to the first issue, and in particular addresses the question of the appropriate conceptual framework for evaluating the competitive effects of a merger in a contracting or declining industry. In terms of the types of expert evidence reviewed by Dr. Frank Roseman and Ms. Jane Graham in a paper, "Expert Witnesses", presented at the University of Toronto on November 7, 1990, I view my evidence as falling into the category of Type Two evidence (legislative history and facts, appropriate conceptual framework)

B. The Central Features of the Transaction

3. Because Orenco does not render poultry material, the Director appears to accept that the merger potentially only reduces competition with respect to red meat, grease and deadstock renderable material, which Rothsay (Moorefield) also renders, in addition to poultry material. Thus, there

appears to be little dispute that the relevant product market, on the input side includes red meat rendering material, which comprises beef and pork by-products. The Director has also included in the relevant market grease and deadstock material. Deadstock and grease constitute a small share of the relevant materials. Moreover, the Respondents have taken the position that these types of material are not at issue in these proceedings. Consequently, the focus of my report is on the supply of red meat rendering material.

4. In the rendering industry, a distinction is commonly drawn between captive and non-captive rendering material. With respect to captive rendering material, integrated meat packers render their own by-products. With respect to non-captive material, non-integrated meat packers, slaughterhouses, abattoirs, restaurants, supermarkets etc., sell meat by-products, trimmings, or waste to independent renders.

5. With respect to red meat rendering material, four major packers account for 90 percent of pork slaughtered in the Province of Ontario at present. Three of these four packers, representing 72 percent of current slaughter, are integrated processors and do their own rendering. In contrast, at the present time, no operating Ontario meat packer renders its own beef by-products, so that 100 percent of beef by-products from slaughter are available to non-captive renderers. Thus, in evaluating the competitive impacts of this merger, the principal focus is on the non-captive beef by-product rendering industry in Ontario.

6. At the time of the acquisition, the estimated combined market shares, in terms of weekly rendering raw materials volume in the non-captive red meat, greased and deadstock rendering market, of Orenco and Rothsay was about percent (see Appendix A). However, at this time, Rothsay was also operating a rendering plant in Toronto as well as at Moorefield, and the former plant was, shortly after the acquisition, expropriated by the City of Toronto. 1991 market shares of Orenco and Rothsay with only its Moorefield plant are likely to fall into the percent range (see Appendix A).

7. The Director takes the view that this market share will enable the merged entity to exercise market power (i.e., act as an monopsonist) in the red meat rendering input market, and depress prices paid for rendering inputs below competitive levels, with presumably some reduction in the supply of inputs below the competitive level.

C. The Industry Context

8. The beef industry in Ontario and in North America more generally is undergoing a massive process of rationalization. Various aspects of this process of rationalization have critically impacted the meat rendering industry, and any analysis of the competitive effects of this merger cannot abstract from these important structural changes that are in progress.

9. These changes are well reviewed in a study by Kevin Grier of the Ontario Ministry of Agriculture and Food, September 1988: Ontario Beef Packers Situation Outlook. In this study, Grier points out that in the U.S. from 1900 to 1960,

cattle moved from small feed-lots and farmer feeders in the U.S. mid-west to cities such as Chicago, Omaha, Kansas City and St. Louis for slaughter. From the mid- 1960's onwards, the U.S. beef industry has been revolutionized through the location of very large slaughter plants where the cattle were located. Today the vast majority of slaughter in the U.S. is located in the corn-belt and high plain states such as Ohio, Nebraska, Kansas, Colorado, Texas, and Oklahoma.

10. The logistics of beef packing are simply that it is cheaper to transport beef, particularly boxed beef, to the market than it is to transport live cattle to the market for slaughter. Today, three major U.S. meat packing companies account for about 80 percent of all cattle slaughtered in the U.S. These massive meat packing operations are typically integrated, in the sense that they undertake their own by-product rendering. In the U.S. in 1969, 1032 plants slaughtered 25.6 million cattle. By 1985, a mere 16 years later, 435 plants slaughtered 27 million head of cattle. These dramatic changes in the structure of the U.S. meat packing industry are depicted in Appendix B.

11. Not surprisingly, with this massive trend to integrated mega- meat packing plants, not only has there been a substantial decline in the number of smaller meat packing plants but also in the number of independent renderers, who previously relied principally on the by-products from local meat packing plants and abattoirs for the supply of rendering by-products. As Dr. Bisplinghoff has pointed out in his evidence in this case, the number of independent rendering plants in the U.S. has declined from 600 in the early 1970's to 182 today. He also points out that in many cities and states in the U.S., one company services an

entire city or state. In some states, there are no independent renderers at all. Where there is competition, there is only one other renderer in 70 percent of the competing areas. It is uncommon to find more than two renderers servicing a given rendering territory.

12. The Ontario beef industry is now undergoing a similar process of structural change. These changes are well reviewed by Grier and by Professor Van Duren and Dr. Groenewegen in their evidence in this case. In 1971 Ontario had 24 federally inspected packing plants. In 1988, this number had declined to 19, which accounted for 90 percent of all cattle slaughtered in the Province. Beef slaughtered in Ontario declined about 50 percent in the 10 year period 1979-89 (i.e., from about 24,000 head per week to 15,000 per head per week). As of 1990, the weekly slaughter rate had declined to about 12,000. Beef slaughter in Ontario is expected to decline an additional 4.0 percent per year over the next five years.

13. Since Grier completed his report in 1988, nine meat packing plants have ceased operations, reducing the number of federally inspected beef packing plants in operation in the Province from 19 to 10. Even with these closures, capacity utilization remains low by competitive standards, and the through-put in plants still in operation is three or four times lower on average than competitive meat packing plants in Alberta or the U.S.

14. Over the period of these past changes, the Alberta beef industry has grown dramatically. Appendix C (from Grier) indicates graphically the decline in volume of cattle slaughter in Ontario, the rising volume of beef imports,

principally from the U.S., but also to a lesser extent from Australia and New Zealand, and an escalating net deficit after international trade with respect to Ontario beef consumption of about 175 million pounds in 1987, almost all of which was made up by imports of beef - principally boxed beef - from very large modern meat packing plants in Alberta, most of which are integrated into rendering. In 1981, Western beef represented only 16.5 percent of Ontario's total consumption. In 1987, it represented nearly one quarter.

15. By virtue of shipping principally boxed beef into the Ontario market, most of the by-products and trimmings have been removed before shipment. The trend towards breeding and raising leaner meat, in response to changing consumer preferences has further reduced renderable trimmings and waste. For the Ontario meat packing industry to become competitive with Alberta and U.S. producers, a few major meat packing plants with capacity and utilization rates comparable to those of Alberta and U.S. meat packing plants (and several small plants serving specialty needs), may be all that the Ontario industry can sustain (Grier, p. 58). One would also predict that if this occurs, then as with plants in Alberta and the U.S., the major plants will increasingly integrate into the rendering of red meat by-products.

16. The impact of these trends on the red meat material rendering industry has been dramatic. In Ontario, the number of renderers has declined from 19 in 1971 to 7 in 1991. In British Columbia, one independent renderer (Westcoast Reduction) has a 95 percent market share. In Alberta, the same renderer has a 100 percent market share.

In Saskatchewan, the same renderer has a 90 percent market share, In Manitoba, Rothsay has a percent market share. In Quebec, Coture has 90 per cent of the market. In the Maritimes, Rothsay has per cent of the market.

17. Beyond Canada and the U.S., an inquiry by the U.K. Monopolies and Mergers Commission in 1985, Animal Waste, found that the number of renders in the U.K. had declined from 125 in 1970 to 74 in 1982. It found that one company, Prosper DeMulder Ltd. (PDM) had acquired a market share approaching 50 percent in 1982, compared with six or seven percent for the next largest company. This market share had been acquired in part as the result of acquisitions of small renderers - about 30 - all but five of which were subsequently closed and collection and processing activities rationalized (p. 44).

18. The set of economic and related forces operating on the independent rendering industry in Ontario and elsewhere are well set out in Dr. Bisplinghoff's affidavit evidence. On the output side of the rendering industry, rendering firms are essentially selling their output (i.e., tallow, oil or grease, and animal meal) into international commodities markets, where they face intense competition from close oil and meal substitutes (e.g., palm oil, coconut oil, soya bean oil, soya bean meal, and petroleum by-products). It is not contested in these proceedings that rendering companies are complete price-takers in these output markets, which are as perfectly competitive markets as one is likely to find. Moreover, because of the increasing supply of substitutes, prices in these output markets have consistently declined in recent years in real terms. Trends in prices of rendering outputs and their substitutes

for the period 1972-84 were depicted graphically by the U.K. Monopolies and Mergers Commission (see Appendices D and E).

19. On the input side of the red meat material rendering industry, the structural changes described have substantially reduced the supply of rendering by-products to the independent rendering industry over the past decade as shonw in the data provided by John Groenewegen and Erna van Duren in their affidavits.

20. Based on conservative projections, the amount of non-captive red meat rendering material (beef and pork) in Ontario will decline approximately 3.0 percent per year over the next five years according to calculations made by Professor Van Duren and Professor McFetridge in their evidence in this case. An increasing percentage of free market material will be lower-yield or lower-grade material from smaller abattoirs, restaurants, supermarkets etc. that also entails higher collection costs. In addition, increasingly stringent environmental requirements relating to odour and sewage disposal have entailed, or will entail expensive retrofitting of rendering plants.

21. Environmental requirements have also in many cases led to the closures of plants: e.g., Rothsay (Toronto); the Darlings lease renegotiation difficulties; U.K. Animal Waste Report, chap. 3. Environmental requirements, along with the switch from batch to continuous processing beginning in the 1970's with the advent of new technologies, have substantially raised the minimum efficient scale of rendering plants. Thus, with renderers facing depressed prices in their output markets;

diminishing supply in their input markets as meat packers relocate to the sources of beef cattle rearing and integrate into rendering; increasing fixed and operating costs; and falling capacity utilization rates, the structure that has emerged in the rendering industry in Canada, the U.S., and the U.K. is no surprise.

22. The particular and difficult conceptual challenge faced by the Tribunal in this case is how to evaluate the competitive effects of this merger in the broader context of a meat industry undergoing a dramatic transformation, in which context the independent red meat material rendering industry is clearly a contracting or declining industry.

D. Evaluating Mergers in Declining or Contracting Industries

23. The critical issue in undertaking such an evaluation is the identification of the relevant reference point or counterfactual against which the merger is to be evaluated. In other words, does the merger in issue substantially lessen competition compared to what? It is, of course, tempting simply to compare the post-merger shares of the merging parties with their pre-merger shares in the rendering market and conclude that there has been a substantial increase in market share and concentration levels, and by implication some significant increase in the ability to exercise market power. However, as the majority of the U.S. Supreme Court pointed out in U.S. v. General Dynamics Corp. 415 U.S. 486 (1974), a well-known case involving a merger in the U.S. coal industry, which had been undergoing a long process of contraction and mine shut-downs, to adopt a purely comparative statics approach (i.e., immediately before and after comparisons), in such a

merger, and to focus excessively on statistics like market share, is insufficiently sensitive to the competitive dynamics that have to be taken into account in a industry undergoing a major transformation. This case is significant because it entailed a rejection by the U.S. Supreme Court, in the case of a declining industry, of the structural approach that generally dominated U.S. merger case-law at that time. As pointed out in a note in the Harvard Law Review ("Horizontal Mergers after U.S. v. General Dynamics Corp" (1978) 92 Harvard L. R. 491), General Dynamics mandates an investigation into the 'structure, history, and probable future' of the relevant industry.

24. This more dynamic, qualitative perspective is entirely consistent with the terms of the Competition Act. First, s. 92 states: "Where, on application by the Director, the Tribunal finds that a merger or proposed merger prevents or lessens, or is likely to prevent or lessen, competition substantially...". Thus, a forward looking, or predictive element, is built into the opening language of the section. Moreover, in the factors listed in s. 93 to be considered regarding the prevention or lessening of competition, clause (g) identifies 'the nature and extent of change and innovation in a relevant market' as a relevant factor.

25. Section 92(2) specifically rejects a structuralist approach to mergers in providing that a merger shall not be found to lessen competition substantially solely on the basis of evidence of concentration or market share. The purpose clause in the Act (s.1.1) in turn emphasizes that one of

the purposes of the Act is to promote the efficiency and adaptability of the Canadian economy.

26. This emphasis on dynamic considerations is also reinforced by an examination of the legislative history of the Competition Act, 1986. In the report, Dynamic Change and Accountability in a Canadian Market Economy (1976) prepared by an independent committee for the Minister of Consumer and Corporate Affairs, headed by Messrs. Bruce Macdonald and Lawrence Skeoch, which substantially influenced the framing of the post-1976 merger reforms, the authors state (at p. 71):

> Stated generally, merger policy in a country of intermediate size, such as Canada, has to involve an analysis of both the primary and the secondary consequences of mergers... briefly, the terms 'primary merger consequences' refers to the probable impact of the merger in creating or reinforcing artificial economic restraints; the term 'secondary merger consequences' refers to the probable real-cost economies and the longer-run dynamic consequences of the merger.

27. At p. 89, the authors state that 'the analysis would not attempt to establish 'specific actualities' but to forecast and appraise reasonable probabilities'. The authors of the Dynamic Change report explicitly reject a non-discretionary approach to merger review that would focus on mathematical indicators like concentration ratios or profit rates. The authors state (at p. 91) - 'reliance on a single, or on, say, two major tests of market effectiveness could result in over-looking a combination of secondary factors... that would cause a prosecution to be initiated that would

destroy effective dynamic pressures in some markets...' At p. 70, the authors state:

> Fundamentally, the preferred approach is to develop policies to alter the reaction pattern of the economy so as to promote economic development and dynamic change rather than to attempt to "fine tune" merger policy in such a way as to sort out comprehensively and with precision the mergers that are undertaken.

28. Professor Skeoch continued to be critical of predecessors of Bill C-91 for their continued preoccupation with structural indices (see Skeoch, "The Dynamic Change Report and The Proposed Competition Act", in Prichard, Stanbury and Wilson (eds.) Canadian Competition Policy (Butterworths, 1979) at p. 85. In introducing Bill C-91 that became the Competition Act, 1986, the Minister of Consumer and Corporate Affairs at the time, Michel Coté, in the House and in Parliamentary Committee hearings similarly stressed the importance of focusing on dynamic considerations in merger review, and avoiding structural or static preoccupations. (Canada, H.C. Debates, 1st Sess., 32 Parl. 35 Eliz, II, Vol. VIII at 11927 7 April, 1986)).

29. Thus, rather than looking backwards and asking how this merger changed things as they were, it seems crucial instead to look forward and ask how the merger is likely to change things as they might otherwise evolve, absent the merger, say five years from the date of the acquisition, given the transformation occurring in the broader meat industry of which the rendering industry is a sub-part. This is not to argue the case for a special dispensation for mergers in declining industries. This issue has

attracted some discussion amongst academic commentators in the U.S., principally in the context of domestic industries facing contraction as a result of increased import competition, where a benign anti-trust policy has sometimes been advocated as an alternative to trade protection. (see e.g. Harry First, "Structural Antitrust Rules and International Competition: The Case of Distressed Industries", (1987) 62 N.Y.U. L. Rev. 1054; Robert Pitoksky, "Antitrust and Problems of Adjustment in Distressed Industries", (1986) 55 Antitrust L.J. 21).

30. However, as Frankena and Pautler in a study for the U.S. Federal Trade Commission, Anti-Trust Policy for Declining Industries (October 1985) persuasively argue, the causes of industrial decline are manifold and include factors such as changes in technology and prices of substitutes; changes in demand; changes in input costs; changes in comparative advantage; and changes in government policy. It is far from clear that a common policy response, such as a benign anti-trust policy, is the appropriate response to all of the possible causes of industrial decline. Moreover, the two authors find that, empirically, mergers are not generally more frequent in declining industries than other industries and are not necessarily the most appropriate vehicle for efficient resource reallocation in such contexts. However, they note a number of declining industries, such as the steel and autoparts industries, where mergers do appear to have played a significant role in rationalizing resource allocation.

31. Rather, the appropriate policy stance would seem to be a sensitive application of the existing anti-trust laws - sensitive to the particular industry context - through the

adoption of the more dynamic perspective espoused by the majority of the U.S. Supreme Court in General Dynamics, an approach that seems clearly to be endorsed in the language of ss. 92, 93 and 1.1 of the Canadian Competition Act and in the legislative history of the Act.

32. In the light of these considerations, it seems appropriate to pose the kind of question that I have suggested i.e., how, if at all, is this merger likely to impact on the competitive health of the independent red meat material rendering industry in Ontario as it might otherwise evolve over the next e.g., five years, after present rationalization processes have worked themselves through, in the absence of this merger? Here, taking seriously data on past trends and reasonable future projections for the Ontario meat industry as set out in the evidence of Professor Van Duren and Dr. Groenewegen in this case, and taking account of what is observably the case with respect to the structure of the independent rendering industry elsewhere in Canada, the U.S. and the U.K., can we realistically expect, five years from now, with or without this merger, that there are likely to be more than two major independent red meat material renderers in the Ontario market, with perhaps a third smaller renderer, some competition in the non-captive rendering market from integrated meat packers with excess rendering capacity, and perhaps a small amount of cross-border competition from Quebec and U.S. renderers?

33. As Dr. Bisplinghoff points out in his evidence, this is indeed a more optimistic competitive scenario than exists in many other jurisdictions. With dramatically increasing concentration occurring in the Ontario meat packing

industry -- overwhelmingly the major source of rendering materials -- any market power on the part of renderers will increasingly confront similar market power on the part of their major suppliers. In the case of smaller abattoirs and other smaller suppliers, independent collectors have the ability to aggregate supplies from a number of different sources and bargain effectively with renderers over these aggregated volumes.

34. In a presentation by Canada Packers' Inc. to the Competition Policy Bureau, September 10th, 1990, the company offered the following five year projection for Ontario of non-captive market share by renderer:

PROJECTION OF
FREE MARKET SHARE BY RENDERER
OVER FIVE YEARS

35. If this projection, or one close to it, is seen as a realistic forecast of the future, then it will be obvious that it will be impossible to avoid a situation where Orenco, no matter who the owner is, holds a market share of close to percent. As Rothsay (Moorefield) increasingly specializes in poultry rendering, given the general growth in poultry production in Ontario that is projected, its ability to compete in the non-captive red meat material market, with or without the merger, will sharply diminish. Thus, the only question left to be resolved is, does it matter, for competitive purposes, who owns Orenco?

36. If Maple Leaf Mills is permitted to retain Orenco, it will have a substantial market share. If Maple Leaf Foods is forced to divest Orenco, the new purchaser will have a substantial and comparable market share. It would be to ignore comparative experience and the deep structural changes occurring in the Ontario meat industry to imagine that the structure of the independent red meat material rendering industry in Ontario several years from now will look sharply different from this projection, however this merger is disposed of. In other words, this is an inherently thin market that may become even thinner. There is already excess capacity in the industry. Both Darlings and Banner are operating significantly below full capacity. Schneiders, who have ceased to slaughter cattle in the province, have significant integrated rendering capacity that can be dedicated to non-captive rendering. . With the continuing decline in the supply of red meat renderable material that is projected, it is difficult to imagine a competitive scenario for the non-captive red meat rendering

industry in Ontario five years from now that looks significantly superior to that depicted in the foregoing five-year projection table, with or without this merger.

37. It is important to note that this conclusion will also hold however the issue of the renegotiation of Darlings' lease on its Toronto harbourfront rendering plant is resolved. Darlings are probably the world's largest rendering company, with 40 plants in the U.S.. Obviously, from a competitive perspective, it is highly desirable that Darlings remain in the market.

Even if this proves not to be the case, Darlings have plants in Buffalo (presently mothballed) and Detroit (with excess capacity) that could service large parts of the Ontario market.

38. Significant quantities of renderable material have been shipped both ways over the border in recent years. Cross-border movements are now essentially tariff-free (See Appendices F and G). Regulatory barriers, from discussions I have had with officials in the Canadian Department of Agriculture (Dr. Yo) and the U.S. Dept. of Agriculture (Dr. Blackwell), are modest: renderable materials moving into the U.S. must be certified by a veterinary inspector at a federally inspected Canadian meat packing plant as of Canadian origin and as being free of contagious or communicable disease (see form in Appendix H).

39. But even if Darlings are unable to renegotiate their lease, and even if they cannot service all their Canadian

customers from their U.S. plants, this will simply mean that Orenco's market share will increase, whoever the owner is, in the absence of significant new entry. The conditions determining the likelihood of new entry (e.g., obtaining relevant municipal and environmental approvals; inadequate capacity in the industry; supra-competitive profits being earned by incumbents) are all quite independent of who owns Orenco and entry will or will not occur irrespective of the ownership of Orenco.

40. Thus, applying the test that I have proposed above as appropriate to a declining or contracting industry of the kind in issue in this case, it seems highly unlikely that this merger will lessen competition substantially relative to any plausible alternative scenario that is likely to evolve in this industry over the next several years. Moveover, to deny the merging parties the efficiency gains that will be realized from rationalization of the two plants' activities will be to deny these parties what has been conceded to rendering plants in other jurisdictions with whom these parties must compete in their output markets. It is noteworthy that despite the massive rationalization of the rendering industry in the U.S. in recent years, not a single merger case (other than a case in the early 1970s in Los Angeles, referred to by Dr. Bisplinghoff) has been brought by U.S. antitrust authorities in this industry. Similarly, in the U.K., the Monopolies and Mergers Commission in the report earlier referred to found that PDM was not operating against the public interest and there was no evidence of monopsony pricing.

41. In a declining or contracting industry, there is clearly a danger in focusing excessively on the competitive state of the input market and abstracting from the competitive state of the output market. From a consumer welfare perspective, any rationalization of input utilization that enhances the competitive state of the output market is presumably desirable. To emphasize this point, it may be useful to contemplate a limiting example: suppose freight or passenger rail services have been contracting over time in the face of intermodal competition. Only two railway companies are left in a particular geographic market. To maintain a viable competitive rail presence in the mix of transportation services available, it may be that a merger of the railway companies is socially desirable or necessary, along with a rationalization of schedules, routes, manpower, rolling stock, etc. If such a merger were to occur, this may enhance rather than reduce competition in the output markets (i.e., the remaining railway company may be able to compete more effectively with trucks, passenger cars, buses, airlines etc.). However, in the input market, it is true that specialized suppliers of inputs (e.g., train engineers, suppliers of railway lines or rolling stock) have fewer purchasers of their inputs available to them. Nevertheless, it would seem to make no sense to hold up the merger, which by hypothesis is socially desirable from an output (and consumer welfare) perspective, in order to preserve a greater degree of competition in the input markets.

42. By denying the merging parties in this case cost savings from rationalization -- savings which according to Professor McFetridge's evidence are very substantial (well in excess of per year) -- there is a non-trivial

risk that, given that they are (as has been emphasized before) complete price takers in their output markets, they will now face cost differentials in their input markets (relative to renderers in other jurisdictions) which they cannot pass through and which may endanger their long-term competitive viability. Thus, by preventing the merger, rather than enhancing competition in the independent red meat material rendering industry in Ontario in the long-run, competition may instead be reduced.

APPENDIX A

ESTIMATED WEEKLY RENDERING MATERIAL VOLUMES
FOR PROVINCE OF ONTARIO

Revised

NAME OF COMPANY	Relevant Raw Material Input (x1000lbs)	Free Market Material (x1000lbs)	Free Market Material %	Future Free Market (x1000lbs)	Future Free Market %
Banner	1,500	1,500		1,671	
Darling	2,180	2,180		2,437	
Fearmans & Hogu	525	250		279	
J.M. Schneider	995	145		159	
Bruce Packers	105				
Maple Lodge Farms					
Ray Bowering	25	25		25	
Phil's Rendering	150	150		164	
Quebec Renderers	855	855		956	
TOTAL					

APPENDIX B

TABLE 6

Number and Relative Importance of U.S. Steer and Heifer Slaughtering Plants, by Size Categories, 1972-85.

Year	Annual Steer and Heifer Slaughter (Number of Head)				
	Less Than 10,000	10,000-99,999	100,000-249,999	250,000-499,999	500,000 or More
	Number of Plants				
1972	492	247	48	17	3
1973	494	241	37	21	2
1974	459	224	47	19	3
1975	447	217	49	20	2
1976	447	215	52	17	5
1977	400	216	49	20	7
1978	411	197	49	17	9
1979	420	153	47	15	9
1980	413	150	37	18	8
1981	362	113	32	22	10
1982	352	101	28	20	12
1983	355	97	25	19	14
1984	333	88	27	16	15
1985	302	75	27	14	17
	Percent of Total Steer and Heifer Slaughter				
1972	4.9	35.9	29.4	22.2	7.5
1973	4.8	37.5	23.3	29.1	5.3
1974	4.4	34.1	28.2	26.1	7.2
1975	4.7	32.5	29.4	27.6	5.8
1976	4.5	30.3	30.4	22.5	12.4
1977	3.7	29.0	26.0	24.1	16.0
1978	3.5	26.0	28.5	21.4	20.6
1979	3.6	23.1	29.0	19.9	24.4
1980	3.3	23.3	23.7	25.6	24.0
1981	2.9	16.9	19.6	31.1	29.5
1982	2.6	16.0	17.6	27.9	35.8
1983	2.4	14.3	14.7	25.9	42.7
1984	2.2	12.4	17.2	21.6	46.6
1985	1.9	10.4	15.8	18.5	53.4

SOURCE: U.S.D.A.

TABLE 4

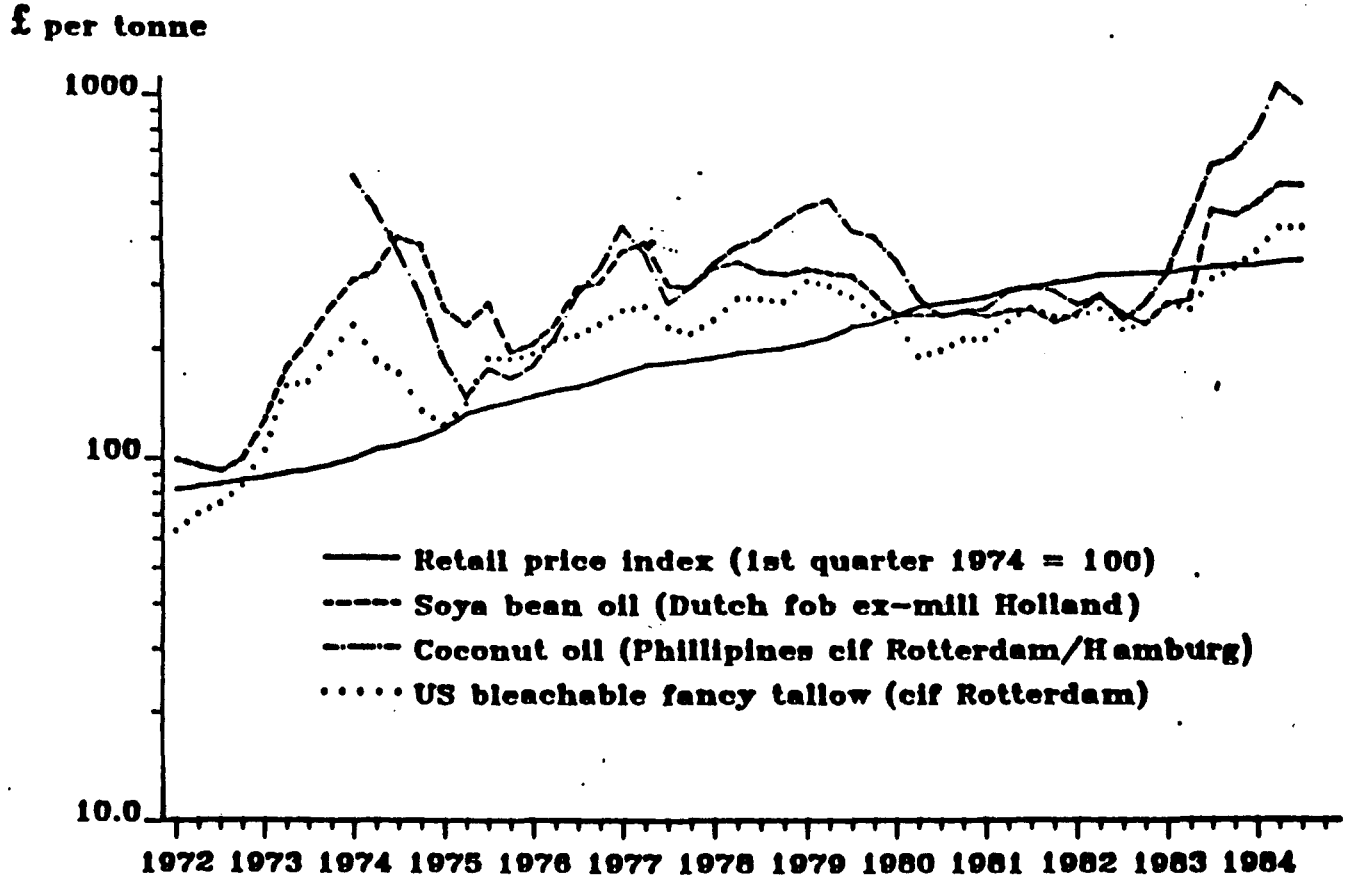
ONTARIO BEEF DEFICIT AFTER INTERNATIONAL TRADE
(POUNDS)

Year	Ontario Slaughter (Fed. Insp. plants)	Ontario Slaughter (Prov. Insp. plants)	Beef Imports	Beef Exports	Ontario Consumption	Net Deficit
1987	526,123,005	37,655,300	81,734,900	52,554,400	768,508,270	175,629,465
1986	562,516,177	39,770,805	61,838,700	47,278,500	787,407,696	168,560,314
1985	533,899,698	37,731,748	67,701,400	46,060,000	769,894,326	176,639,480
1984	513,398,176	26,303,510	79,293,300	39,038,000	751,981,634	172,024,648
1983	596,000,253	22,604,567	50,265,300	31,289,300	777,470,564	139,889,744
1982	598,868,981	22,010,517	31,322,100	34,546,400	778,694,482	161,039,284
1981	633,600,692	21,894,880	30,122,700	39,966,800	773,672,098	128,020,626

SOURCE: Ontario Agricultural Statistics and Livestock and Meat Trade Report compilation.

FIGURE 2.2

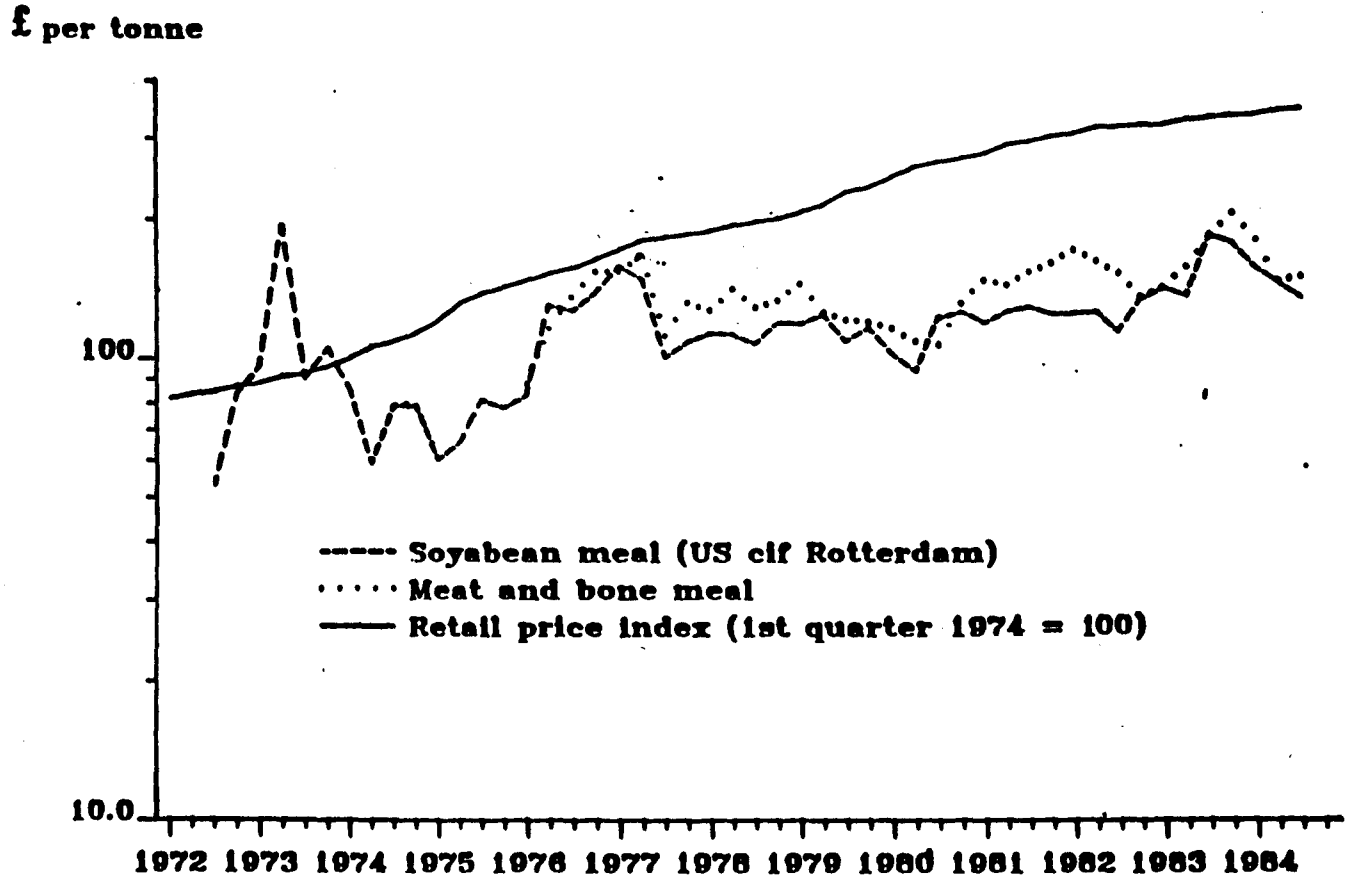
Prices of oils and tallow (1972–1984)



Source: The Overseas Development Administration and the Public Ledger.

FIGURE 2.3

Prices of soyabean meal and meat and bone meal (1972–1984)



Source: The UK Renderers' Association and the Public Ledger.

Relevant Tariff Elimination on Rendering Raw Materials Under FTA

Item	Description	U.S. Base Rate	Cdn. Base Rate	Staging Category
0504.00.00	Guts, bladders and stomachs of animals	Free	Free	D
0506	Bones, trimmed without fat ...	Free	Free	D
0511	Animal products not otherwise specified; dead animals ...	2.5%	Free	A/D
1502.00.00	Fat of bovine animals, raw or rendered ...	0.95¢/kg	4%	A
1506.00.00	Other animal fats, raw or rendered ...	5%	10.9%	B

Legend

A Duty eliminated January 1, 1989

B Duty to be removed in five equal annual stages by Jan 1, 1993

D Shall continue duty free

Relevant Tariff Elimination on Rendering Finished Products Under FTA

Item	Description	U.S. Base Rate	Cdn. Base Rate	Staging Category
1501.00	Lard, pig and poultry fat	6.6¢/kg	2.21¢/kg	C
1502.00	Bovine fat, rendered	0.95¢/kg	4%	A
2301.00	Meat meal or offal	Free	Free	D

Legend

A Duty Eliminated January 1, 1989

C Duty to be removed in 10 equal annual stages by Jan 1, 1998

D Shall continue duty free

APPENDIX H

U.S. E.U.
ANNEX(E) G

ORIGINAL

Agriculture Canada

Food Production and Inspection Branch

Direction générale, production et inspection des aliments

Official Meat Inspection Certificate for Inedible Fresh Meat and Meat By-products Destined for Animal Food

Certificat officiel d'inspection des viandes pour viande et sous-produits de viande frais non comestibles destinés à la nourriture animale.

Place.....Date.....
(City-Ville) (Country-Pays)

I hereby certify that the meat and meat by-products hereby described were derived from livestock which passed ante-mortem and post-mortem veterinary inspections at time of slaughter in plants certified for inspection of meat products into the United States.

Je certifie que la viande et les produits de viande ci-décrits proviennent de bestiaux qui ont passé les inspections vétérinaires ante mortem et post mortem lors de l'abattage dans des usines certifiés pour inspection de leurs produits aux États-Unis.

Kinds of Product Sortes de produit	Species of livestock derived from Espèces d'origine	Number of pieces or containers Nombre de morceaux ou de contenants	Weight Poids
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Identification marks on products and containers/marques d'identification sur les produits et les contenants.....

Consignor/expéditeur.....

Address/adresse.....

Establishment number where product originated/numéro d'établissement des produits d'origine.....

Consignee/destinataire.....

Destination/destination.....

Shipping marks/marques d'expédition.....

(signature) .....

(Name of official authorized by the national foreign government to issue inspection certificates for meat and meat by-products exported to the United States).

(Nom du fonctionnaire autorisé par le gouvernement national étranger à émettre les certificats d'inspection de viandes et de sous-produits de viandes exportés aux États-Unis).

(Official title)
(Titre officiel) .....

Canada