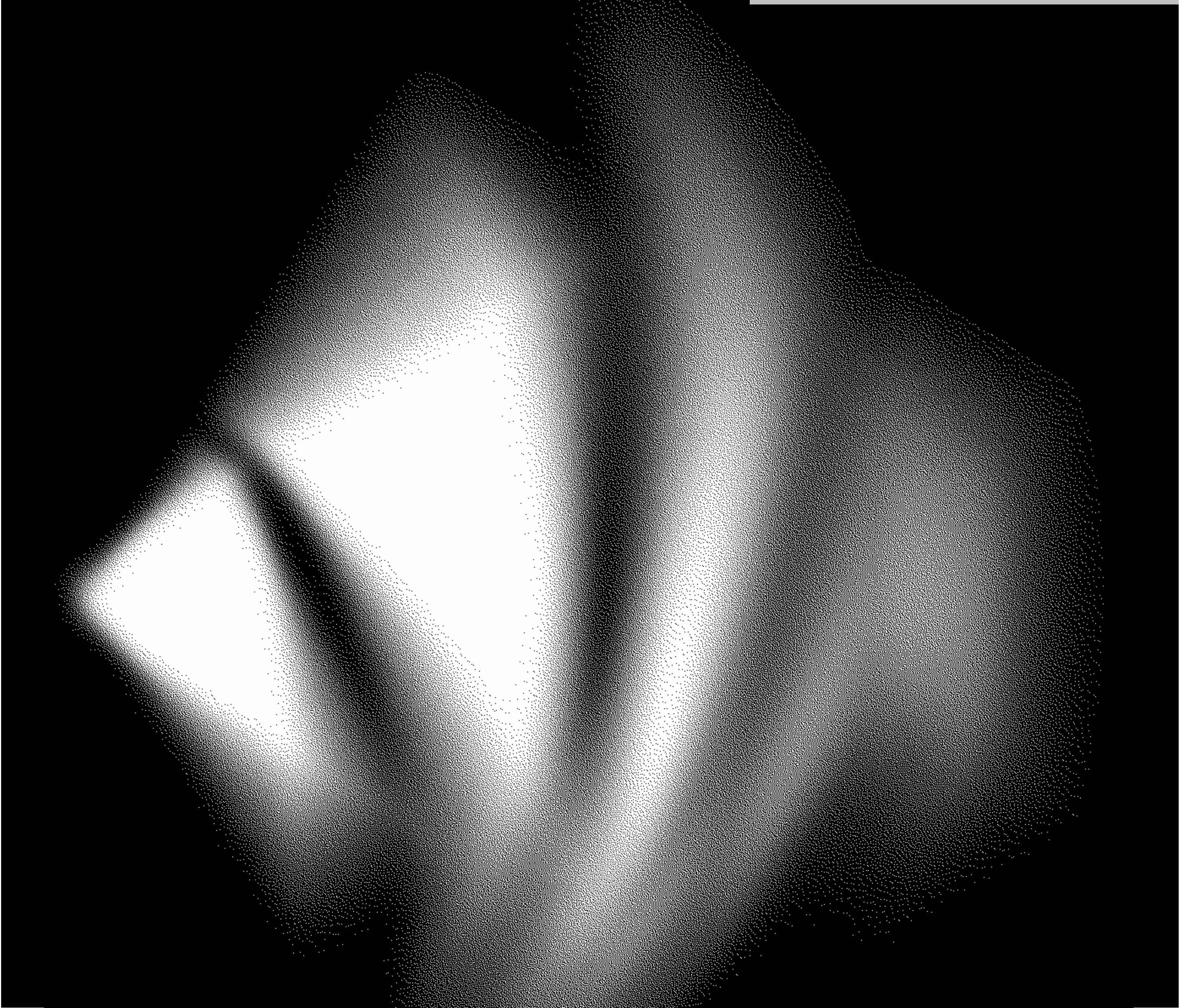
Australian Government
Productivity Commission

Safeguards Inquiry into the Import of Pigmeat

Productivity Commission *Accelerated Report*

No. 42, 14 December 2007



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14 December 2007

The Honourable Wayne Swan MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

In accordance with Section 11 of the *Productivity Commission Act 1998*, I have pleasure in submitting to you the Commission's accelerated report on *Safeguards Inquiry into the Import of Pigmeat*.

Yours sincerely

Gary Banks AO
Chairman

Terms of reference

SAFEGUARDS INQUIRY INTO THE IMPORT OF PIGMEAT

Productivity Commission Act 1998

I, Peter Costello, Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, request the Productivity Commission to undertake an inquiry into the question of whether safeguard action is warranted against imports of meat of swine, frozen, falling within tariff subheading 0203.29 of the Australian Customs Tariff.

The inquiry is to be undertaken in accordance with the World Trade Organization (WTO) safeguard investigation procedures published in the *Gazette* of S297 of 25 June 1998, as amended by GN39 of 5 October 2005.

The Commission is to report on:

- whether conditions are such that safeguard measures would be justified under the WTO Agreements;
- if so, what measures would be necessary to prevent or remedy serious injury and to facilitate adjustment; and
- whether, having regard to the Government's requirements for assessing the impact of regulation which affects business, those measures should be implemented.

In undertaking the inquiry, the Commission is to consider and provide an accelerated report on whether critical circumstances exist where delay in applying measures would cause damage which it would be difficult to repair. If such circumstances exist, and pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury, the Commission is to recommend what provisional safeguard measures (to apply for no more than 200 days) would be appropriate.

In addition, the Commission is to have regard to the work being undertaken by the Cooperative Research Centre for an internationally competitive pork industry (Pork CRC) and examine and report on whether:

- there have been any changes that have taken place in the structure or operating methods of the industry since the Commission's August 2005 inquiry into the *Australian Pigmeat Industry*; and
- there are any immediate actions that could be taken to complement the work of the Pork CRC to alleviate the impact of changes in the price and availability of feed grains.

The Commission is to provide the accelerated report to the Government by 14 December 2007 and a final report by the end of March 2008. The reports will be published as soon as practicable.

The Commission is to consult widely, hold hearings and call for submissions for the purpose of the inquiry.

PETER COSTELLO

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1 About the inquiry

1.1 What the Commission has been asked to do

On 17 October 2007, the Australian Government asked the Commission to inquire into whether safeguard action under World Trade Organization (WTO) rules is justified against imports of ‘meat of swine, frozen’, falling within tariff subheading 0203.29 (see Terms of Reference, p. iv). Safeguard action is temporary, ‘emergency action’ (typically employing tariffs, tariff–quotas or quotas) where a surge of imports causes or threatens to cause serious injury to a domestic industry. Safeguard measures can apply for up to four years.

The inquiry is to be completed by the end of March 2008. The Commission also has been asked to provide an ‘accelerated report’ by 14 December 2007, as to whether *provisional* safeguard measures should be put in place. Provisional measures may be taken in ‘critical circumstances’ and pursuant to a preliminary determination that increased imports are causing or threatening such injury that delay in taking action would cause damage which is ‘difficult to repair’.

The Terms of Reference require the Commission to conduct the safeguards inquiry in line with the criteria set out in the Commonwealth of Australia Special Gazette No. S 297, as amended by No. GN 39 (reprinted in appendix D). These criteria largely mirror the terms of the WTO Agreement on Safeguards. They stipulate that, before recommending any safeguard measures, the Commission must:

- determine whether safeguard measures are justified under the WTO Agreement; and, if so,
- consider what measures would be necessary to prevent or remedy serious injury and to facilitate adjustment.

In addition, and going beyond what is essential under the WTO, the Terms of Reference require the Commission to consider (where measures are found to be justified) whether “having regard to the Government’s requirements for assessing the impact of regulation which affects business, safeguard measures *should* be implemented”. This requires the Commission to subject any proposed measures to a regulatory impact assessment of the community-wide costs and benefits, before making a recommendation.

Under WTO rules, a government can only take safeguard action (whether final or provisional) if the ‘competent authority’ it has nominated under the Safeguards Agreement finds that action is justified. Moreover, while it can choose not to act, if it does take action it cannot impose measures greater than those considered appropriate by the authority (in this case, the Productivity Commission).

The Terms of Reference also outline a second strand of work for the final report. The Commission is asked to investigate recent changes in the structure and operating methods of the industry, and whether any immediate actions could be taken to complement the activities of the Pork Co-operative Research Centre (CRC) in order to alleviate the impact of changes in the price and availability of feed grains.

1.2 Background

This is the second pigmeat safeguards inquiry conducted by the Productivity Commission — the first was undertaken in 1998 (PC 1998). The Commission also undertook a general review of the pigmeat industry in 2005 (PC 2005), as did its predecessor organisation, the Industry Commission, in 1995 (IC 1995).

This and earlier inquiries have been prompted by industry concerns about the impact of import competition. Since 1990, Australian quarantine prohibitions on the importation of pigmeat have progressively been amended to permit imports of uncooked (frozen) and cooked pigmeat from several countries, notably Canada, Denmark and the United States (box 1.1). Current quarantine protocols require frozen pigmeat imports to be boned and, on arrival in Australia, cooked to specific temperatures in approved processing facilities to minimise the risk of disease contamination of the local industry. These requirements mean that imports of cooked and uncooked pigmeat can only be used by smallgoods manufacturers, with the fresh pork market being supplied entirely from local production.

This safeguards inquiry relates only to imports of *frozen* pigmeat falling within tariff subheading 0203.29 of the Australian Customs Tariff. These imports enter duty-free, with the zero rate bound under the WTO. Frozen pigmeat is imported almost entirely from Canada, the USA and Denmark.

Box 1.1 **A chronology of measures on pigmeat imports**

- **Pre-1990:** No pigmeat imports permitted, except for canned hams.
- **From 1990:** New quarantine protocols progressively introduced, allowing imports of uncooked pigmeat under various conditions according to disease status of the exporting country:
  - *May 1990*: imports of uncooked pigmeat allowed from the south island of New Zealand
  - *July 1990*: imports of uncooked pigmeat allowed from Canada, provided it is frozen for 30 days prior to importation
  - *Late 1992:* requirements strengthened for Canadian uncooked pigmeat, requiring, in addition to freezing, that all imports are boned prior to export and processed (cooked/fermented) on arrival under quarantine control.
- **January 1995:** The WTO and its associated agreements came into force, including the Agreement on Safeguards and the Agreement on the Application of Sanitary and Phytosanitary Measures.
  - *May 1996:* imports of unfrozen pigmeat allowed from Canada, provided the meat is boned and cooked on arrival under quarantine control.
  - *November 1997:* imports of uncooked, boneless pigmeat are allowed from Denmark, provided the pigmeat is processed on arrival under quarantine control. Imports of *cooked* pigmeat allowed from Canada, provided the pigmeat is boneless.
- **May 2004:** a new quarantine policy is announced for pigmeat imports. It follows an import risk analysis by Biosecurity Australia, which recommended that pigmeat imports be permitted subject to conditions depending on the health status of the exporting country. Australia's new pigmeat quarantine policy recommended management measures such as country, zone or herd disease freedom; testing of carcasses; cooking, freezing, curing or canning; boning; and the removal of certain parts of the carcass.
  - *May 2004:* imports of frozen cooked, boneless pigmeat are allowed from Denmark, provided major peripheral lymph nodes are removed.
  - *May 2004:* imports of frozen uncooked, boneless pigmeat are allowed from Canada and the United States, provided major peripheral lymph nodes are removed and the meat is processed on arrival under quarantine control.
  - *July 2004:* imports of cooked, boneless pigmeat are allowed from the United States, provided major peripheral lymph nodes are removed.

Sources: PC (1998); PC (2005); AQIS (2007).

1.3 Inquiry procedures and consultation

The WTO Agreement on Safeguards requires safeguard inquiries to be conducted in an open and transparent manner, with opportunities for interested parties to present their views and to respond to the views of others. Reflecting these requirements, Commonwealth of Australia Special Gazette No. S 297 states that:

- reasonable public notice must be given to all interested parties in accordance with section 14 of the *Productivity Commission Act 1998* (Cwlth); and
- the inquiry must involve public hearings or other appropriate means in which importers, exporters and other interested parties can present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest.

These requirements accord with normal Productivity Commission public inquiry procedures.

Public notification

The inquiry was advertised in the national press on 20 October 2007 and in major rural press and electronic media in the week following receipt of the terms of reference. The advertisements outlined the nature of the inquiry and invited parties to register their interest.

On 24 October 2007, a circular announcing the inquiry and calling for written submissions was released. In addition, an issues paper setting out matters about which the Commission was seeking comment and information, was sent to nearly 1000 individuals and organisations who had registered their interest or who were considered likely to have an interest in the study, including more than 400 regional media outlets. Both the circular and issues paper were placed on the Commission's website. All subsequent circulars were sent to those who had registered an interest and were also placed on the website.

As required by the WTO Agreement on Safeguards, the Australian Government formally notified the WTO of the safeguards investigation on 20 October 2007. Embassies in Australia of major exporting countries were also notified directly.

Informal consultation

Informal meetings and visits were conducted in the early stages of the inquiry with individual producers and processors, producer organisations, Australian and State Government departments and agencies, as well as representatives of relevant foreign governments. The full list of those consulted is contained in appendix A.

Request for information

To supplement publicly-available data and other information, a request for information was sent to 11 major pork abattoir/boning operations. The letter of request is reprinted in appendix A and was also placed on the website. Individual responses were treated as commercial-in-confidence, but the information has been drawn on in chapter 2.

Data provision

Key data series used by the Commission in its investigations were placed on the Productivity Commission’s website to enable feedback and to facilitate their use by participants in the inquiry.

Submissions

Given the timeframe for the accelerated report, participants were requested to provide submissions by 30 November 2007, or earlier if they intended to present their submission at a public hearing.

One hundred submissions were received and all were posted on the Commission’s website as soon as they could be processed (usually the day of receipt). Where submissions contained commercial-in-confidence information, however, the relevant sections were not published. A list of all submissions received is presented in appendix A.

Some participants complained that key submissions (including from Australian Pork Limited (APL)) were not made available prior to parties appearing at hearings. In particular, the APL submission (sub. 41) was received by the Commission on the evening prior to the hearings at which APL appeared: it was posted on the Commission’s website by 9.15 am the following morning. Parties wishing to respond to that and other submissions were advised that they were welcome to do so either in writing, or by appearing at public hearings scheduled for the following week.

APL sent a supplementary submission of more than 70 pages on 12 December. To expedite the opportunity for scrutiny, it was sent that day by email to all exporter interests, as well as being posted on the inquiry website.

Box 1.2 **An overview of participants' views**

Normally in its inquiry reports, the Commission extensively cites views put to it in submissions and at public hearings. In the time available, this has not been possible for this accelerated report, although all submissions have been read and taken into account.

- Of the 100 submissions received, around 60 were from individual producers, co-operatives or producer representative organisations. Virtually all argued that increased imports were the principal cause of reduced profitability and losses, and most, though not all, supported safeguard measures to reduce imports. The few who did not support safeguard measures advocated adjustment assistance or financial assistance to innovate.
- Submissions and evidence from most key primary processors of pigmeat generally supported the case for safeguard action, although those processors who also manufactured smallgoods from imported products, and organisations representing them, opposed measures that would increase the price of a major input.
- Submissions from State Governments provided evidence supporting the industry's case, but generally advocated alternative assistance to safeguard measures.
- Thirteen submissions were received from representatives of industries in exporting countries and their governments, arguing that the circumstances of Australian producers did not satisfy the safeguard criteria.

Public hearings and transcripts

Public hearings were held in Sydney, Canberra, Brisbane, Adelaide and Melbourne in late November and early December 2007. Transcripts of the hearings were progressively posted on the Commission's website, with all transcripts available by 11 December. A list of participants at public hearings is provided in appendix A.

Release of reports

This accelerated report on provisional measures is a report in its own right (not a draft report). The Terms of Reference state that both the accelerated and final reports will be published as soon as practicable.

Next steps

This report presents the Commission's assessment as to whether *provisional* safeguard measures should be put in place for up to 200 days. The final report will determine whether there is a case for full safeguard measures (which can apply for up to 4 years) and will consider further a number of issues raised in this accelerated report. The final report will also address the second part of the Terms of Reference relating to longer-term issues of structural adjustment and feed costs. Participants are invited to provide additional material relevant to these issues by end February 2008.

2 Assessing the case for provisional safeguard measures

This chapter sets out the Commission's preliminary findings in relation to each of the safeguard criteria and whether the conditions for applying provisional measures under the World Trade Organization (WTO) are satisfied. Data series underlying charts and figures are available from the Commission's website unless otherwise indicated.

2.1 What are the hurdles for provisional measures?

As set out within the terms of reference (box 2.1), provisional measures can be recommended only where it is found that 'critical circumstances' exist such that delay in applying measures would cause damage which it would be difficult to repair. Although this is a necessary condition, it is not a sufficient condition for the imposition of provisional measures. A recommendation for provisional measures also requires a preliminary determination that there is *clear evidence* that increased imports have *caused* or are threatening to cause *serious* injury.

Box 2.1 **Requirements for provisional measures**

In undertaking the inquiry, the Commission is to consider and provide an accelerated report on whether critical circumstances exist where delay in applying measures would cause damage which it would be difficult to repair. If such circumstances exist, and pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury, the Commission is to recommend what provisional safeguard measures (to apply for no more than 200 days) would be appropriate.

Source: Terms of Reference (drawing on WTO Agreement on Safeguards).

Australian Pork Limited (APL) submitted opinion suggesting that a preliminary determination did not require a determination regarding the definition of the relevant industry, but rather could be based simply on *prima facie* evidence of increased imports and serious injury (Canberra transcript, pp. 101–102).

The Commission does not accept this interpretation. As noted earlier, the Terms of Reference refer to a preliminary determination that increased imports have caused or are threatening to cause serious injury. While there is no explicit reference to the 'industry' in this sentence, reference to serious injury in the abstract makes little sense. Injury must be inflicted on someone, and in the context of the Safeguards Agreement, the relevant party is the industry, appropriately defined.

In addition, the Commission considers that a preliminary determination requires that all matters relevant to a safeguards inquiry need to be addressed; albeit, given the accelerated nature of the investigation and its preliminary status, inevitably not to the extent of the full investigation.

Consequently, to make its preliminary determination, the Commission addresses the following matters in this chapter:

- the definition of the relevant domestic industry;
- whether imports have increased;
- whether the increase in imports is the result of unforeseen developments;
- whether the relevant industry is suffering serious injury, or serious injury is being threatened;
- whether increased imports have caused or are threatening to cause serious injury; and
- whether critical circumstances exist.

APL also argued that the Commission should not take into account potential impacts of provisional safeguard measures on other parties, or the community generally, in making its recommendation. Indeed, APL appeared to suggest that the Commission would be misconstruing the terms of reference if it were to do so.

Again, the Commission disagrees. While the paragraph in the Terms of Reference relating to an accelerated report does not explicitly require the Government's requirements for assessing the impact of regulation which affects business to be taken into account, the accelerated report clearly is regarded as part of the general safeguards inquiry. Moreover, the Commission's own legislation (*Productivity Commission Act 1998*) requires it to look to the interests of the community as a whole, not just those of any particular industry or group. The Commission also considers that it would be remiss if it failed to take into account possible ramifications of provisional measures on other parties, where these could have consequential impacts on the pigmeat industry itself.

2.2 Which Australian industry produces 'like' or 'directly competitive' goods?

The WTO Agreement on Safeguards defines the 'domestic industry' as comprising the producers as a whole of 'like or directly competitive products', or whose collective output constitutes a major proportion of the total domestic production of those products. Thus, a first step is to establish which domestically-produced goods are *like,* or *directly competitive* with, imported pork.

Goods under reference

The goods under review are frozen pork falling within tariff sub-heading 0203.29 of the Australian Customs Tariff. This sub-heading covers frozen, boneless cuts of 'meat of swine', as well as some 'bone in' cuts (table 2.1). Imports under this sub-heading enter free of duty and this zero rate has been bound under the WTO since 1 January 1995. Current quarantine restrictions limit imports within this sub-heading to *frozen boneless* cuts from Canada, Denmark, the United States, Finland and Sweden.

Table 2.1 **Goods under reference**

Australian Customs Tariff, Schedule 3

Reference no.	*Statistical Code/Unit*		*Goods*	*Rate*
0203			**MEAT OF SWINE, FRESH, CHILLED OR FROZEN:**	
0203.1			- Fresh or chilled:	
0202.11.00	*07*	*kg*	-- Carcasses and half-carcasses	Free
0203.12.00	*08*	*kg*	-- Hams, shoulders and cuts thereof, with bone in	Free
0203.19.00	*09*	*kg*	-- Other	Free
0203.2			**- Frozen:**	
0203.21.00	*10*	*kg*	-- Carcasses and half-carcasses	Free
0203.22.00	*11*	*kg*	-- Hams, shoulders and cuts thereof, with bone in	Free
0203.29.00			**-- Other**	**Free**
	30	***kg***	***With bone in (excluding salted, dried or smoked ham (0210))***	
			Boneless (excluding salted, dried or smoked ham (0210)):	
	40	***kg***	***Leg cuts***	
	41	***kg***	***Middle cuts***	
	42	***kg***	***Shoulder cuts***	
	45	***kg***	***Other***	

What are 'like' and 'directly competitive' products?

The Agreement on Safeguards is one of a number of Agreements concluded during the Uruguay Round of Multilateral Trade Negotiations. Its stated aim is to 'clarify and reinforce the disciplines of the General Agreement on Tariffs and Trade (GATT) 1994, and specifically those of its Article XIX' (Emergency Action on Imports of Particular Products).

The term *like or directly competitive* is contained in Article XIX of the GATT. The term *like product* occurs in several articles of GATT 1994 in addition to Article XIX.[1] These include Articles I, III, VI, XIII, and XVI which relate, respectively, to most-favoured-nation treatment, national treatment, anti-dumping and countervailing duties, quantitative restrictions, and subsidies. As noted by Jackson, an internationally recognised authority on trade law, '… there is no precise definition of "like products" or similar phrases and that same term, when used in different clauses of the General Agreement, can have different meanings' (1969, p. 263).

In the context of anti-dumping and countervailing inquiries, the term *like product* consistently has been interpreted as an identical product and was defined thus in the 1994 WTO Agreement on Anti-dumping and Countervailing Duties (Article 2:6). A similar definition is included in the general procedures for safeguard inquiries issued by the Australian Government:

> **Like product** means a product which is identical, i.e. *alike in all respects* to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics *closely resembling* those of the product under consideration. (Commonwealth of Australia Gazette, S 297) [italics added]

With regard to GATT Article I (most-favoured-nation rule), *like* products generally are regarded as those which fall within the same tariff classification (Jackson 1969, pp. 263–4).

Article XIX and the Agreement on Safeguards use the explicitly broader expression — *like or directly competitive*. Jackson (1997) has noted that:

> this inclusion is clearly appropriate, because the objective in the escape clause is to ascertain when the imports are harming domestic industry, and obviously competitive products can so harm. (p. 189)

[1] GATT 1994 comprises the original GATT 1947, as amended, together with relevant Understandings and Agreements negotiated during the Uruguay Round of Multilateral Trade Negotiations.

On the question of which products can be construed as directly competitive with others, he observed that 'GATT jurisprudence being so sparse, considerable leeway seems to exist for interpreting this phrase' (p. 189).

In some contexts — for example, GATT Article III, which concerns national treatment on internal taxation and regulation — *directly competitive* has been interpreted as encompassing goods with distinct physical characteristics, provided they compete for the same market (for example, different types of alcoholic spirit).[2] Here, the objective was to ensure that national taxes or regulations do not act as *de facto* barriers against imports by discriminating between competing goods.

In the context of safeguard action, the objective is to permit action against imports which cause serious injury to a domestic industry. In its 1998 safeguards inquiry (PC 1998), the Commission noted that several foreign governments seemed to accept this broader, contextual interpretation. For example, the US Trade Act of 1974 stated that:

> An imported article is 'directly competitive with' a domestic article at an earlier or later stage of processing, and a domestic article is 'directly competitive with' an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article. (US *Trade Act of 1974*, Section 201)

The Commission's preliminary assessment

As already noted, allowable imports under tariff sub-heading 0203.29 comprise frozen, boned pork cuts. The majority of these imports are boned legs, shoulders and middles from Canada, Denmark and the United States of America.[3] These cuts typically are referred to as primal and sub-primal cuts and, together, comprise almost all of a pig. On arrival in Australia, they must be cooked at licensed premises to meet quarantine conditions and therefore can only be used by the smallgoods manufacturing sector (mainly for production of boneless hams and bacon), and not be sold as fresh meat.

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[2] WTO, Appellate Body 1996, *Japan – Taxes on Alcoholic Beverages*, WT/DS8/AB/R.

[3] It should be noted that a large volume of imports enters under the classification 'other'. For imports from Denmark, this is not an issue because only middles are imported, but imports from Canada and the United States include shoulders and legs.

The Commission considers that domestically-produced boned legs, shoulders and middles are 'like'; that is, virtually identical with imported cuts:

- In line with its 1998 safeguards inquiry, the Commission considers that freezing does not change the nature of the imported product compared with pork produced in Australia in any way that changes the nature of the product. Moreover, domestically-produced cuts are often frozen for storage to facilitate matching of supply and demands (for example, see B. E. Campbell, sub. 31).
- Both domestic and imported cuts are used by the smallgoods manufacturing sector to produce similar final products and thus mainly compete on price.
- Although several participants observed some difference in product consistency, this generally referred to products meeting processor specifications for cut, fat and size (see Primo Smallgoods, sub. 21) rather than any inherent differences in taste that would be noticeable to a final consumer. In other words, imported and domestically-produced cuts essentially are interchangeable for the purposes of manufacturing smallgoods and, indeed, often are mixed in the production process such that final products are labelled as being 'made from local and imported' product.

The Commission also notes that some 'other' *bone-in* cuts fall within tariff sub-heading 0203.29, which is a well-accepted criterion for defining a 'like' product.

Importantly, the Commission also considers that domestically-produced whole and half dressed carcasses as well as other bone-in cuts are *directly competitive* with imported boneless primal and sub-primal cuts, because smallgoods manufacturers often cut and bone the carcass themselves, or contract this task out to boning rooms. In other words, when buying meat for manufacturing, smallgoods manufacturers choose between on the one hand domestically-produced dressed carcasses and half-carcasses which are bone-in, as well as boned cuts; and on the other, imported frozen boned middles, legs and shoulders (see, for example, Houston Pork Wholesalers, sub. 72). From the downstream processors' viewpoint, that the products are at somewhat different stages of processing, frozen or unfrozen, is largely immaterial — carcasses and half-carcasses and bone-in cuts are directly competitive with boned imported cuts.

FINDING 2.1

For the purposes of this safeguards investigation, Australian-produced fresh pork cuts, and dressed carcasses and half-carcasses are 'like or directly competitive with' pigmeat imported under tariff sub-heading 0203.29.

Who are the domestic producers of like and directly competitive products?

In its 1998 safeguards inquiry (PC 1998), the Commission concluded that pig producers as well as 'primary processors' of pigmeat (that is, pig abattoir, boning and primary cutting operations, including vertically-integrated operations which encompassed all or some of these value-adding activities), together constituted the domestic industry producing like or directly competitive products. Downstream processors of pigmeat into hams and smallgoods — that is, the buyers of imports and like or directly competitive local products — and downstream operations of vertically-integrated establishments, were excluded. This was consistent with the Canadian International Trade Tribunal (CITT) which, in its safeguards inquiry into imports of boneless beef in 1993 (CITT 1993), found that the high degree of economic interdependence between cattle producers and slaughterers and boners justified inclusion of cattle producers in the 'domestic industry'.

Subsequently, the WTO Appellate Body, in considering an appeal by Australia on the imposition of safeguard measures by the United States against imports of Australian lamb, considered that US lamb growers and feeders did not produce 'like' products. In that case, the domestic industry was deemed to comprise only lamb meat producers, that is, 'packers and breakers'. (*US – Lamb* (DS 177, 178)).

The Commission has received conflicting views on the relevance of this case to the current inquiry (box 2.2). APL (sub. 41) pointed out that the Appellate Body made its finding only in relation to the producers of like products, not directly competitive products. Representatives of exporting countries, however, asserted that the *US – Lamb* decision ruled out pig producers as producing products that were like or directly competitive with imported pigmeat.[4]

[4] MinterEllison Lawyers also state that they act 'on behalf of the United States Industry, represented by [among others] the National Pork Producers Council' (sub. 43, cover page).

Box 2.2 **Participants' views on 'like' and 'directly competitive' products and the 'domestic industry'**

The Government of Canada (sub. 29), and Canada Pork International (sub. 66), argue that the domestic industry comprises producers of frozen and de-boned pork, that is, abattoirs and boning rooms. They cite the WTO Appellate Body ruling in the *US – Lamb* case (DS 177, 178), to which the Commission made reference in its Issues Paper for the inquiry.

The Delegation of the European Commission (sub. 30) and the Ministry of Foreign Affairs of Denmark (sub. 20) also cite the *US – Lamb* case. They state that pig farmers should not be considered the domestic industry but do not provide an inclusive definition.

Supporting this view, the Australian Meat Industry Council, representing the post farm-gate meat industry, suggests that Australian fresh pork meat and bone-in products are not directly competitive with imported boneless products and that '… imported pig meat primals are not the same product that is being marketed by the Australian pig grower' (sub. 35, p. 8).

Also drawing on the *US – Lamb* ruling, MinterEllison (sub. 43), representing the US National Pork Producers Council, the American Pork Export Trading Company, the American Meat Institute and the US Meat Exporters Federation, contend that the domestic industry includes only boning rooms. They argue that the only 'domestic products that are like or directly competitive with the specified imported goods are primal and sub-primal pigmeat cuts' (p. 12), and that these products are produced by boning rooms. They further state that, 'neither pig producers, nor abattoirs, nor small goods producers are part of the domestic industry' (p. 12).

Conversely, APL (sub. 41), argues that the *US – Lamb* ruling provides no limiting authority as to the like or directly competitive product analysis for safeguard action. They assert that the term 'directly competitive' is sufficiently broad to compare processed imports and fresh domestic pigmeat, based on the end uses and demand relationship. Furthermore, due to the high level of vertical integration in the industry, they argue that there is no identifiable separate domestic industry producing only boned cuts of pork. They claim 'processors and pig farmers are often one and the same' (sub. 41, p. 36) and, as a result, pig farmers as well as processors should be included in the domestic industry.

Pigmeat production in Australia

According to APL, about two-thirds of Australia's local pigmeat is produced by vertically-integrated operations encompassing pig growing, slaughtering and processing operations. Major examples include QAF (which is responsible for around 18 per cent of Australia's pigmeat production; QAF, sub. 73), Hans Continental Smallgoods, Linley Valley Pork and Big River Pork. Of the remaining one-third, around 80 per cent of the pigs are grown and supplied under contract to independent processors (APL, sub. 41).

'Like' products — that is, boned cuts of pork — are prepared and sold to downstream manufacturers and other users by either vertically-integrated farming/abattoir/boning operations or independent boning room operators. This group comprises specialist pig boning operations such as B. E. Campbell (which buys carcasses from pig producers) and abattoir/boning rooms of vertically-integrated operations such as QAF, Big River Pork and Linley Valley Pork. In some cases, boning operators are contracted by manufacturers to break carcasses to their specifications.

In the Commission's assessment, while pig farmers do not produce 'like products' as defined, they do produce products that are 'directly competitive' with imported cuts. Pig abattoirs in Australia generally provide a slaughtering service for a fee, but do not assume 'ownership' of the pig. Ownership is transferred to a processor (which may be integrated with the abattoir) or wholesaler 'over the hook', and after the carcass has been weighed and inspected. In other words, unless part of a vertically-integrated operation, the pig producer generally contracts to have the pig slaughtered, *then sells a dressed carcass, not a live pig*, to a wholesaler, processor or manufacturer. Consequently, pig producers are paid on a hot standard carcass weight (hscw) basis, not on the basis of live weight. For vertically-integrated pig-farming and processing operations, abattoir services are often provided 'in-house' (albeit sometimes at 'offsite' locations).

In both cases, however, the 'producer' of the carcass is effectively the pig owner/grower. To argue that only abattoirs produce carcasses would be akin to arguing that trucking companies produce the goods they are paid to deliver. The activity, and value-added, of abattoirs is slaughtering *services*, not the production of pigmeat. Although imported pork also embodies slaughtering services — and to this limited extent, competes directly with abattoir operations — it mainly comprises pigmeat, and pigmeat is produced and sold in carcass form by pig growers.

FINDING 2.2

Pig producers and primary processors produce products which are either like, or directly competitive with, imported pigmeat cuts.

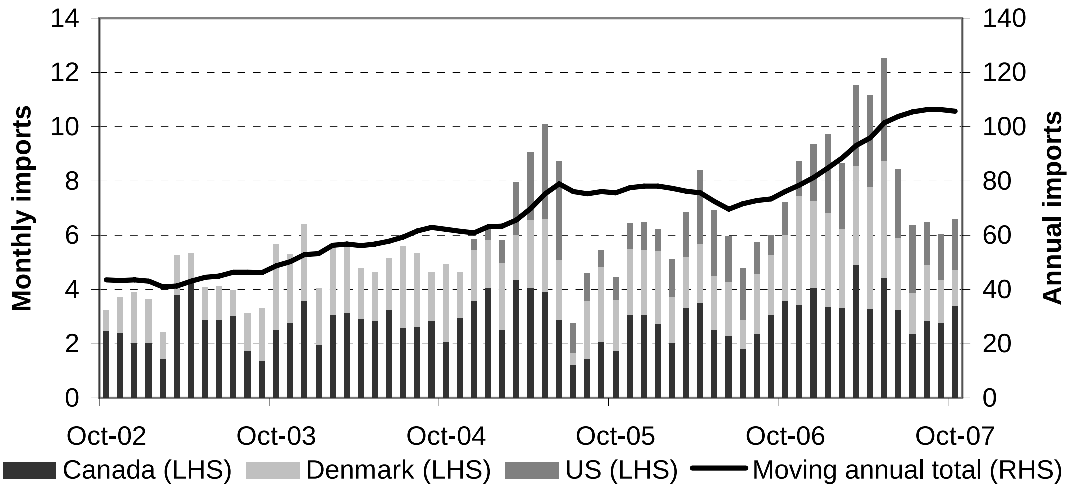
It is worth observing, moreover, that even if the industry were narrowly defined as comprising only boning rooms (as suggested by MinterEllison, sub. 43), the impact of pigmeat imports on pig production more widely would remain relevant. This is because the output, sales and profitability of boning rooms will be directly affected by any reduction in competitiveness and throughput of domestic pigmeat. Because imports embody pigmeat as well as pigmeat processing services, increased import competition will affect both pig production and processing activities. Moreover, any tariffs or quotas applied to imports of pigmeat would obviously assist *both* pig producers and processing activities, proportionate to their value-added. (This expectation was indeed what motivated APL to seek the inquiry.)

2.3 What has happened to imports?

Under WTO provisions, there must be evidence that imports of pigmeat have increased either in absolute terms *or* relative to domestic production. While a timeframe for the increase in imports is not specified in the Agreement on Safeguards, a rule of thumb is to focus on the last five years for which data are available, to assess both the trend rate of increase and absolute quantities of imports (Sykes 2003). Further, a WTO appellate body has ruled that 'the increase in imports also must be recent enough, sudden enough, sharp enough and significant enough' (*Argentina – Footwear (EC),* (DS 121)).

Imports totalled 104 000 tonnes in the financial year 2006-07, roughly 50 per cent higher than in the previous financial year and one-third higher than in 2004-05 (the previous highest level of imports). Imports in October 2007 were roughly double those in October 2002, and 2.4 times higher on a year-on-year basis. Imports have fallen since the record high levels reached early in 2007, with imports in October 2007 around 8.5 per cent lower than in the same month in 2006. This has resulted in a small decline in the moving annual total, but that total remains relatively high (figure 2.1).

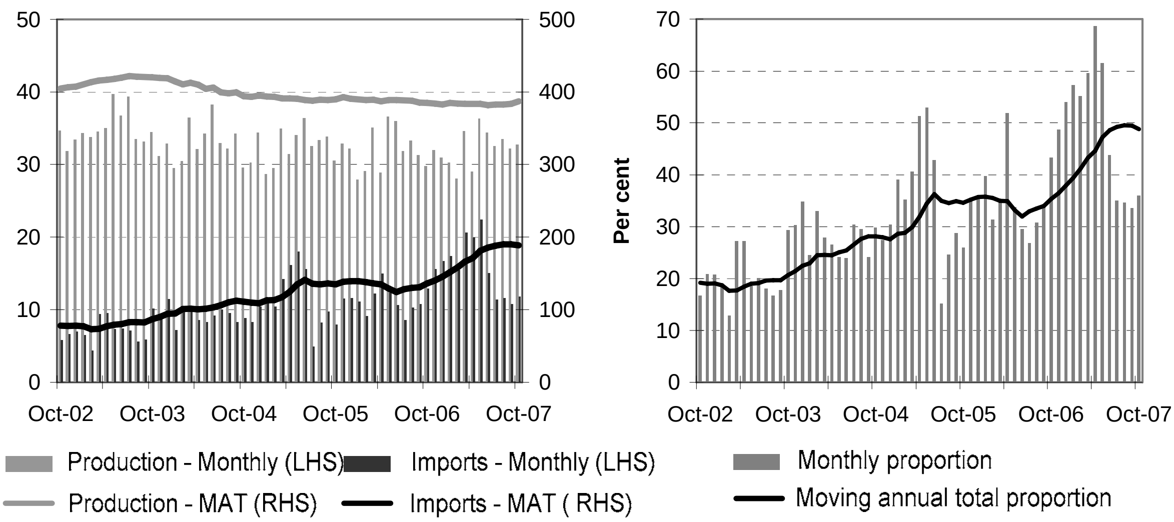
Figure 2.1 **Import volumes, tariff sub-heading 0203.29**
kilotonnes



Data source: ABS (unpublished).

Domestic production is slightly lower in 2007 than in previous years (figure 2.2). Consequently, imports (converted to a carcass weight equivalent (cwe) basis — see box 2.3) and expressed as a ratio of domestic output, have increased significantly since 2002. The annual moving share of imports to domestic production has increased from a little over one-third to just under one-half in the last year.

Figure 2.2 **Domestic production versus imports**
kilotonnes[a]



[a] Import volumes are carcass weight equivalent. A conversion factor of 0.56 is used.

Data source: ABS (unpublished).

Box 2.3 Converting imported boneless pigmeat to its carcass weight equivalent

Imported pigmeat is boneless, whereas Australian production is expressed in terms of its carcass weight (which includes bones). Imports therefore need to be converted to their carcass weight equivalent (CWE).

Inquiry participants have used a range of conversion factors:

- APL recommends a conversion factor of 0.56 (Import volumes are divided by 0.56).
- MinterEllison use a conversion factor of 0.78.

The PC, in its 2005 review, used a factor of 0.56 for leg cuts and 0.65 for middles. In this report, a conversion factor of 0.56 is used for *all* pigmeat cuts.

Using a different conversion factor for each cut of meat is problematic because the majority of pigmeat imported in 2006-07 was classified as ‘other’ than shoulders, middles or legs. As it is presumed that this classification includes a mix of cuts, it is not possible to determine the proportion of each cut and, therefore, the appropriate conversion factor.

The conversion factor in this report is the lower of the above, that is, 0.56. Thus, when expressed in CWE, import volumes are likely to be a maximum estimate. However, provided the composition of imports has not changed much, the *percentage* increase in imported pigmeat will be the same regardless of which conversion factor is used.

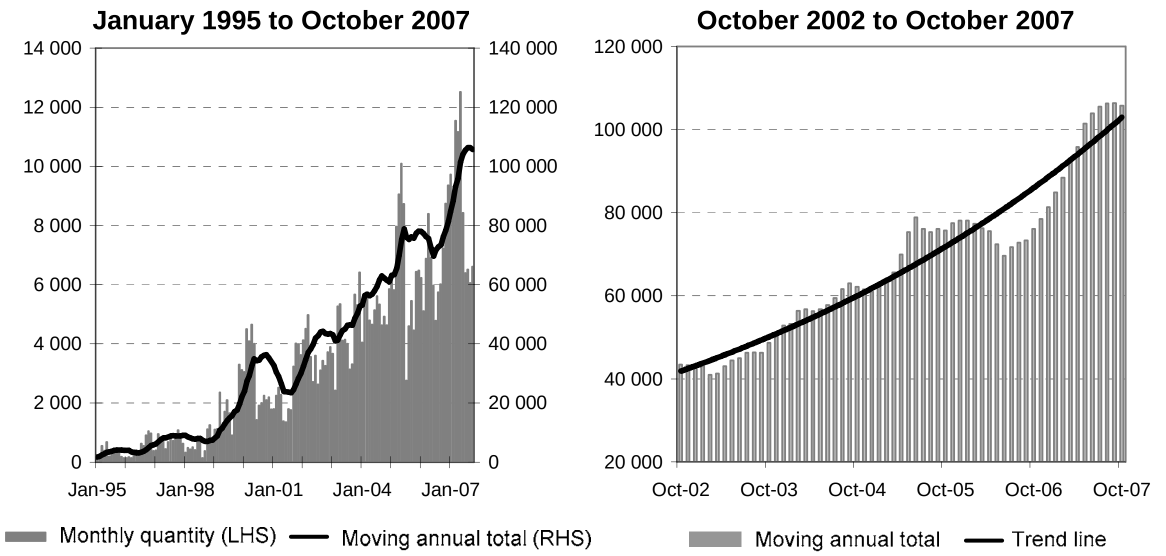
Although imports have fallen in recent months, except for October, they remain at levels above the corresponding months in previous years. The Commission notes that the Panel in *US – Line Pipe* (WT/DS 202/R) found that ‘there is no need for a determination that imports are presently still increasing’ — in effect, just that they have *increased*.

However, as noted earlier, it also must be demonstrated that the increase has been ‘recent enough, sudden enough, sharp enough and significant enough’, although there do not appear to be any objective standards for making this assessment.

As shown in figure 2.3, imports have increased continuously since 1995, except for brief downturns in late 1998, 2001 and, more recently, in 2006. The increase in the moving annual total of imports in 2007 appears sharper than previous average annual growth. However, the 50 per cent increase in imports for 2006-07 may be inflated because imports in 2005-06 were relatively low.

The right-hand chart in figure 2.3 shows the moving annual total of imports since October 2002. The fitted trend line to this chart shows that the import growth rate over the past 5 years is increasing, though slowly. Therefore, imports have grown at an increasing rate, both over a one-year and five-year period.

Figure 2.3 **Import trends**
tonnes[a]



[a] Standard weight.

Data source: ABS (unpublished).

The ratio of imports to domestic production has also grown at a faster rate in recent times. As already noted, imports are currently equal to almost one-half of Australian production, compared with around one-third a year ago. The growth in the ratio of imports to domestic production over the past two years is also higher than previous years' growth. The absolute increase in the ratio of imports to domestic production in the past *two* years was almost as large as the increase for the previous *three* years.

FINDING 2.3

Import quantities have increased both in absolute and relative terms. On balance, consistent with the requirements of WTO case law, the increase in imports appears to have been 'recent and significant enough, and sharp and sudden enough'.

2.4 Was the increase in imports a result of 'unforeseen' developments?

Case law since the inception of the World Trade Organization in 1994 has affirmed that the original GATT Article XIX and the WTO Agreement on Safeguards comprise a 'package' of requirements — that is, the Agreement on Safeguards does not supplant GATT Article XIX, but clarifies and reinforces it. Consequently, the requirements of both must be met.

While the Agreement on Safeguards is silent on the matter, Article XIX provides that WTO members may only take emergency action if, as a result of "unforseen developments and the effect of obligations incurred by a WTO member", imports cause or threaten serious injury.

Case law has interpreted this to mean that a requirement for the imposition of safeguard action is that the trading developments could not reasonably have been foreseen or expected by negotiators when the obligations under the GATT were incurred; in this case, 1994.

In practice, the requirement that an increase in imports be due to unforeseen developments has been interpreted quite broadly. The GATT Working Party report on *Withdrawal by the United States of a Tariff Concession under Article XIX* stated:

> … the term 'unforeseen developments' should be interpreted to mean developments occurring after the negotiation of the relevant tariff concession which it would not be reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated. (GATT/CP/106, report adopted on 22 October 1951)

This case concerned imports of hatters' fur into the United States. While the Working Party found that a change in fashion — which had led to a surge in imports of hatters' fur — was not an 'unforeseen development', it determined that the *extent* of change, in this particular case, could not have been foreseen at the time the tariff concession was made. On this basis, the Working Party found that the requirements of Article XIX had been fulfilled. According to Jackson, this broad interpretation of 'unforeseen developments' suggests that '… the prerequisite cause of "unforeseen developments" has been essentially "read out" of the GATT agreement' (Jackson 1997, p. 187).

A range of unforeseen developments has been cited in support of other safeguard actions since the inception of the WTO:

- the South–East Asian Financial Crisis (*US – Steel* (DS 248, 249, 251, 252, 253, 254, 258, 259)). (This was subsequently challenged and a WTO Panel (later affirmed by the Appellate Body) found that 'although it describes a plausible set of unforeseen developments that may have resulted in increased imports to the United States from various sources, it falls short of demonstrating that such developments actually resulted in increased imports into the United States causing serious injury to the relevant domestic producers'.)
- increased use of trade defence instruments by the USA and the consequent reduction in exports to the USA (*EC – Certain steel products* (DS 260)).
- failure to achieve forecast exports coupled with exchange rate changes (*EC – Farmed salmon* (DS 326, 328)).

Some participants in this inquiry advocated a strict interpretation of this requirement. For example, MinterEllison, acting for the United States industry, argued that:

> In this inquiry, the developments that may be alleged to have led to an increase in imports, such as the appreciating Australian dollar, fluctuating feed costs and the removal of quarantine restrictions on imports of the specified goods from the United States, were readily foreseeable at the time of the Uruguay Round, when the obligations relevant to this inquiry were undertaken. (sub. 43, p. 9)

In contrast, APL argued that virtually none of the changes to quarantine restrictions or subsequent market developments could have reasonably been foreseen in 1994 when Australia became a signatory to the WTO:

> We believe that the increase in imports is the result of a number of unforeseen developments … 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 Organization rules. (Canberra transcript, p. 97)

The Commission does not accept that it was reasonable to assume that because Australia joined the WTO, its quarantine arrangements must have met the requirements of the new Sanitary and Phytosanitary Agreement. Indeed, a government report in 1996 had called for a broader approach to Australia’s quarantine than ‘a border or “barrier” approach’ which, it claimed, had prevailed in the past (Nairn et al. 1996). Moreover, Australia’s quarantine restrictions on imports of pigmeat (as well as a number of other commodities) had previously been criticised by trading partners (Snape et al. 1998). Furthermore, quarantine reviews had resulted in imports of frozen pigmeat from New Zealand and Canada being permitted from 1990 (see box 1.1), four years before Australia joined the WTO.

Nonetheless, although in the Commission’s view further market opening could have been foreseen, with consequent increased import competition, whether developments generating the *extent* of import growth since 2004 and, in particular, the increase in the first half of 2007, could have been foreseen is moot.

In a review of pigmeat quarantine arrangements in 2004 (prior to imports from the United States being permitted), Biosecurity Australia (2004) projected that *unrestricted* pigmeat imports (that is, imports in the absence of quarantine restrictions such as post arrival processing) would range from a minimum volume of 50 000 tonnes, with a 'most likely' volume of 90 000 tonnes, to a maximum of 150 000 tonnes.[5] These scenarios were used to model disease risk, which provided a basis for determining quarantine protocols.

Actual imports in 2006-07 totalled 104 000 tonnes, about 15 per cent above the 'most likely' scenario, but well within the range specified. However, imports in fact are not 'unrestricted': only some countries meet quarantine requirements and all imports must be cooked, either in Australia or prior to export.

This assessment is reinforced by the USDA (USDA 2005, cited in PC 2005, p. 31) which reported that:

> [The US Embassy in Canberra] expects that US imports will reach 10 000 [metric tonnes] in 2005, nearly seven per cent of total imports. It is expected that most of the growth in imports from the United States will come at the expense of Canadian product. (pp. 3, 21)

The prediction of 10 000 tonnes proved to be low — the actual amount was almost double at 18 553 metric tonnes, before climbing to 19 208 metric tonnes in 2006 and around 28 000 metric tonnes in the ten months to October 2007, equal to around 29 per cent of total imports. Moreover, the evidence suggests that US imports have not simply displaced Canadian imports — Canadian import volumes have remained steady at around 34 000 metric tonnes. MinterEllison's assertion that the rise in the United States' share of total imports at the expense of Canada's share demonstrates displacement (sub. 43, p. 36) fails to take into account absolute import quantity growth.

This increase in imports from the United States has been assisted over the past two years by the substantial appreciation of the Australian dollar against the US dollar (around 20 per cent).

The greater than anticipated increase in imports following the 2004 quarantine review also may have resulted from the deepening of the market, which allowed importers to increase their reliance on imported product.

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[5] These estimates in part were based on New Zealand's experience. At public hearings in Canberra, Mr Knud Buhl, Director of International Affairs, Danish Bacon and Meat Council, suggested that Biosecurity Australia's projections could not have assumed unrestricted imports, because New Zealand also imposed processing requirements on pigmeat imports (Canberra transcript, p. 144). However, Biosecurity Australia states that it used information relating to the 12 months prior to that country imposing processing controls on pigmeat imports (2004, p. 36).

The rise in feed grain prices since late 2006, driven by drought in Australia as well as international factors, will also have acted to constrain the competitiveness of Australian pigmeat producers relative to imports (which, as discussed below, tend to be produced with lower-cost feeds), such that imports have supplied expanding local demand for pork.

The sizeable increase in imports during the first half of 2007 appears to reflect ‘pre-emptive’ buying of imports by smallgoods manufacturers, following relative scarcity and consequent high prices in late 2006, with large amounts of stock being placed in freezers. These actions, which the industry clearly had not anticipated, displaced the normal pattern of imports and prices over the course of the year, and appear to have curtailed the size of the usual increase in prices prior to Christmas.

FINDING 2.4

While changes in quarantine arrangements affecting pigmeat imports should have been foreseen at the time Australia joined the WTO in 1994, consequent import growth was due to developments which could not reasonably have been foreseen.

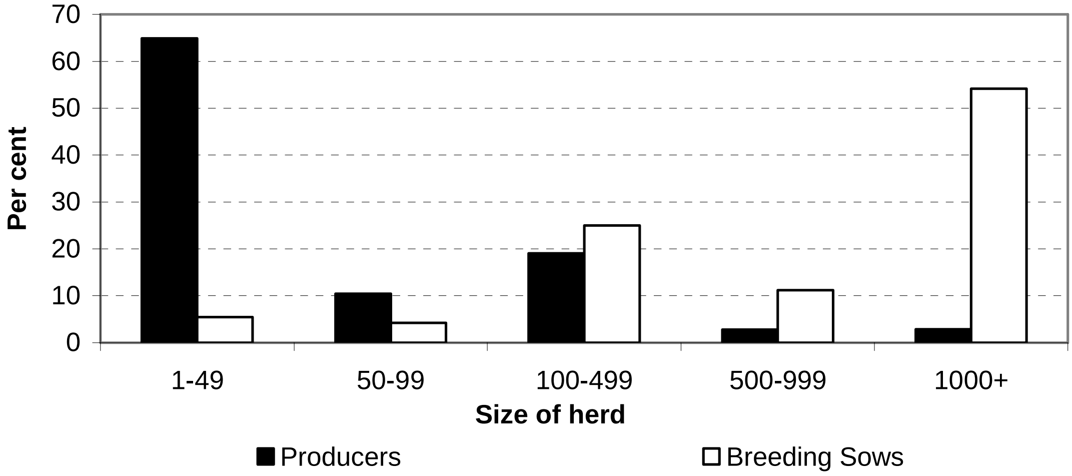
2.5 Is the industry suffering ‘serious injury’, or is it threatened?

In order to find serious injury, it must be shown that the industry in general, or those producers whose collective output constitutes a major proportion of domestic production, have been affected. The Commission estimates that it received individual submissions representing around one-third of pig production and more than half of primary processing. This evidence supplemented data from official sources and other evidence provided by industry organisations and State Governments providing broader industry information.

As at 2005, there were estimated to be 1900 pig producers in Australia, although industry rationalisation has continued since then. The distribution of producers and breeding sows is shown in figure 2.4. Its ‘W’ shape has been evident for some time, reflecting many mixed farmers with few sows, a large number of mid-sized operations, and a few large-scale producers. One producer, QAF, accounts for around 18 per cent of Australian pigmeat production. According to the ABS, there were approximately 300 000 breeding sows in Australia as at 2006, but evidence suggests that this number has declined in recent months.

A list of major primary processors of pigmeat in Australia is provided in table 2.2, including an indication of size and vertical integration. The processors listed account for more than 70 per cent of annual pig slaughters.

Figure 2.4 **Distribution of producers and breeding sows by herd size**
June 2005 (excluding contract growers)



Data source: ABS (unpublished).

Table 2.2 **Major primary processors and vertical integration**

Processor	*State*	*Pig farm operations*	*Abattoir*	*Boning room*	*Associated smallgoods operations*	*Size (slaughters per year)*
QAF Meat Industries	NSW	Yes	Yes	Yes	No	950 000[a]
Swickers Kingaroy Bacon Factory (Hans)	QLD	Yes	Yes	Yes	Yes	750 000
Big River Pork (Auspork, GWF, B.E. Campbell, others)	SA	No[b]	Yes	Yes	No	600 000[c,d]
Linley Valley Pork (Craig Mostyn group)	WA	Yes	Yes	Yes	No	500 000[c]
Port Wakefield (Primo)	SA	No	Yes	Yes	Yes	npa[e]
Toowoomba (operated by KR Castlemaine)	QLD	Yes	Yes	Yes	Yes	350 000[c]
Burrangong Meat Processors	NSW	No	Yes	No	No	300 000[c]
Cassino RSM (Northern Co-operative)	NSW	No	Yes	Yes[f]	No	200 000[c]
Diamond Valley Pork[g]	VIC	No	Yes	Yes	No	na
Boning room only						
B.E. Campbell Pty Ltd	NSW	No	No	Yes	No	400 000[h]

[a] QAF have announced that they are cutting operations by 300 000 in 2008. [b] Owned by shareholders that also own pig producing operations. [c] Commission estimates based on submissions and/or hearing transcripts. [d] Does not include temporary increase in throughput due to Port Wakefield fire. [e] Commission estimates at least 400 000 based on public hearings. [f] Boning room currently suspended. [g] Data from PC 2005 report. [h] Commission estimate of carcasses boned per year. **npa** not publicly available. **na** not available.

Sources: APL (unpublished); Public hearing transcripts; subs 31, 33, 53, 67, 73, 75, 79 and 92.

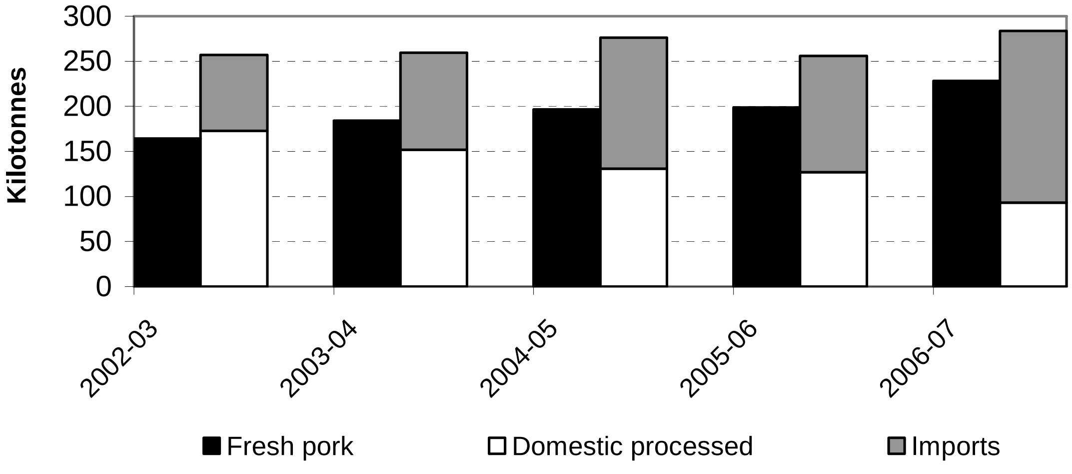
The WTO Agreement on Safeguards provides no clear guidance about what constitutes serious injury, although it is consistently interpreted as being a more demanding test than the 'material' injury test applying in anti-dumping and countervailing cases. The Safeguards Agreement and subsequent interpretations of it require that all factors listed must be assessed: namely, the share of the domestic market taken by increased imports, changes in the levels of sales, production, productivity, capacity utilisation, profits and losses and employment.

Data for some of these measures for pig producers and processors are publicly available, but many are not, particularly for primary processors. To gauge the degree of injury being suffered (or threatened) by primary processors, the Commission sent a request for information to the 11 largest operators, comprising around 60 per cent of primary processors. These data cannot be made publicly-available for reasons of commercial confidentiality, but results are drawn on in this section (a copy of the request is available from the Commission's website).

The market share of imports

Since 2002-03, the import share of the processed pork market has increased substantially, from 33 per cent to 67 per cent (figure 2.5). In terms of the total Australian market for pork, imports now account for around 37 per cent (cwe basis), compared with less than 20 per cent in 2002.

Figure 2.5 **Fresh and processed pork consumption[a], by source**



[a] Apparent consumption, calculated as domestic production plus imports, minus exports.

Data source: APL (unpublished).

Sales

As shown in figure 2.5, fresh pork consumption steadily increased by about 40 per cent between 2002-03 and 2006-07, compared with 10 per cent for processed pork. The share of fresh pork in total consumption of pigmeat rose from around 39 per cent in 2002-03 to 45 per cent in 2006-07.

This switch to supplying the fresh meat market has so far broadly offset declining sales by local producers and processors to the processed market. However, exports declined over this period, stabilising at around 40 000 tonnes for the past few years. Several pig producers observed that the strong Australian dollar was currently deterring exports.

Production levels

Official data suggest that pigmeat production levels have been steady over the past few years, with little sign of any tapering in recent months (see figure 2.2). While this might appear inconsistent with evidence of industry exits put to the Commission, the lag between reductions in sow numbers and slaughter numbers means that production will not fall for several months and could even increase in the short term if unmated sows are slaughtered.

Based on survey data, APL estimates that 27 per cent of producers are considering exiting the industry. These producers are mainly at the smaller end, and their reasons for exiting were not sought. Consequently, it is not clear whether they were closing their operations or selling or transferring them.

According to the same survey, 32 per cent of producers are estimated to be de-stocking, with sow numbers expected to be 8 per cent lower in January 2008 compared with January 2007. Evidence from individual producers was consistent with this, although a number of those who made submissions or who appeared at public hearings stated that they intended to ‘hang on’ for a while before making a decision to exit the industry or to de-stock. The Victorian Farmers’ Federation (sub. 13) claimed that, in Victoria, 28 pig producers had left the industry or had downsized (a total reduction of 6000 sows), or are considering their options. (another 4500 sows were considered to be ‘at risk’). Furthermore, most of the 16 000 sow reduction announced by QAF will occur in Victoria (box 2.4).

Box 2.4 Australia's biggest pigmeat producer cuts production

QAF Meat Industries is the largest pigmeat producer in Australia. Its operations include pig production, slaughtering and boning. QAF represents about 18 per cent of domestic pig production and 10 per cent of primary processing.

QAF has announced a 30 per cent cut in production for 2008, amounting to a reduction of 16 000 sows and 300 000 pigs produced. Staff numbers will be reduced by 200 (20 per cent) across pig production and abattoir operations. QAF expects the reduced capacity utilisation to increase unit costs by 5 per cent for pig production and 10 per cent for abattoir operations.

Source: QAF (sub. 73).

Evidence submitted by primary processors also corroborates currently steady production, but with the expectation that declining sow numbers will result in a 10 to 20 per cent fall in pigmeat production over the next 12 months.

Capacity utilisation and productivity

The Commission received mixed evidence about capacity utilisation. Pig producers who were de-stocking and some primary processors who had reduced throughput clearly had reduced their capacity utilisation (QAF and Burrangong Abattoir). However, some rationalisation, as well as a fire at the Port Wakefield processing facility in South Australia, led to increased capacity utilisation for some operations.

Given anticipated falls in domestic pigmeat production, there is a strong expectation that capacity utilisation will fall in 2007-08, resulting in higher unit costs and lower productivity for processors, reflecting a loss of scale economies.

Profits and losses

In the short run, the production of pigmeat is 'relatively inelastic'; that is, it cannot be altered much in response to changes in demand. This is due to supply lags caused by breeding and growing cycles (around 39 weeks), as well as the very short selling opportunity for pigs when they mature (as short as one week before size penalties are incurred). This means that in response to a market 'shock', prices tend to overshoot their long-run level, and can impose large losses on owners of specific or 'sunk' capital in the industry. Over time, production will be cut back in response to lower prices and some growers and processors could be expected to leave the industry, or at least output levels will be reduced. As a result of this longer-term adjustment, the price of pigmeat will rise to a new 'equilibrium' price.

Perhaps not surprisingly, given production lags, much of the evidence regarding injury received by the Commission focused on reductions in profitability and financial losses. Many pig producers claimed that currently they were incurring losses of between $5 and $50 per pig. Other pig producers claimed a ‘reduction in revenue’ of $30 to $60 per pig; however, this was relative to a four-year high in prices in late 2006.

The Eastern states — New South Wales, Queensland, Tasmania and Victoria — constitute around 70 per cent of pig production. Pig producers in these states claimed losses of $20 to $50 per pig. South Australia is in a similar situation, with claimed losses of $10 to $40 per pig (SA Govt, sub. 50).

Producers in Western Australia have had better feed availability, although prices still reflect export parity. There is also a higher export share of pig production (25 per cent) than the national average (10 per cent). Nonetheless, many pig producers claimed that they were incurring losses, albeit smaller than in the Eastern states (WAPPA, sub. 92).

Overall, the evidence of losses at current prices was consistent and persuasive, with a number of pig producers submitting their accounts to the Commission. Combining evidence from the array of sources, average losses are estimated to range from $20–$30 per pig. Such losses do not appear to be within ‘normal’ cyclical bounds. APL survey data also show that 73 per cent of pig producers extended their debt levels in the past 12 months to keep existing operations running (not to expand them).

Evidence on current profitability of primary processors was less consistent, with some reporting profit increases and others profit reductions. But all expect a reduction in profits in 2007-08: based on responses to the Commission’s request for information, an average reduction in profits of around 50 per cent is anticipated.

Employment

In 2006, 3200 persons were employed in pig farming operations (ABS unpublished data). More recent data are not available, but employment in the pig farming sector is closely related to the number of sows. Hence, employment losses in this sector precede falls in production. About half of the pig producers who gave evidence to the inquiry reported reducing employment in 2007, by between 10 and 40 per cent. Several reported cancelling contract grower arrangements.

Primary processors were expecting to reduce their workforces by between 10 and 20 per cent next year. For example, QAF has announced that it will reduce the number of shifts at its processing plant in Corowa in the new year (see box 2.4). Submissions also indicate reduced shifts or employment in processing facilities in Queensland, New South Wales and Western Australia (subs. 31, 73, 75, 79, 92).

FINDING 2.5

Most pig producers are suffering reduced profitability and many are suffering financial losses, resulting in reductions in breeding sows and employment levels, with consequent negative impacts on production emerging in early to mid 2008. In the Commission's assessment, the pig farming part of the industry is accordingly suffering serious injury.

The evidence for primary processing is less consistent. Some operators have reported increased profits, whereas others reported lower profits, reflecting variations in throughput and industry rationalisation as well as 'one-off' events. Overall, with pig production levels steady so far, there is not clear evidence that the primary processing part of the industry is currently suffering serious injury. However, clear evidence exists that serious injury is 'threatened': pig production levels are set to fall, reducing profitability due to lower throughput and increased unit costs.

Overall, the domestic industry producing products 'like or directly competitive' with imported pigmeat is suffering serious injury or is under threat of serious injury.

2.6 To what extent have increased imports *caused* or *threatened to cause* serious injury?

Under the rules, any safeguard measures imposed can only reflect the extent of injury caused by increased imports, not by other factors. This requires that the impacts of 'other' factors be separately identified and quantified. However, the WTO Agreement on Safeguards does not specify which other factors should be considered.

Any factor affecting domestic demand or supply, or changes in foreign markets, is likely to affect the level of imports. Changes in import volumes occur in response to market developments such as changes in foreign export supply (whether due to market developments or policy changes), changes in domestic border measures, domestic production levels and costs and/or consumer demands — they do not occur in a vacuum. How different 'shocks' will affect the domestic market is briefly outlined in box 2.5.

This section examines a range of factors potentially causing serious injury to the domestic industry:

- Increased imports and lower import prices.
- Domestic over-production driving lower prices.
- Higher feed costs.
- Reduced demand for Australian pigmeat (for example, reduced exports or reduced local demand for fresh pork), and
- Exchange rate appreciation.

Box 2.5 **The market for pigmeat with (partial) import supplies**

- The availability of imports in the processed pork market effectively caps producer prices of cuts competing directly with imported cuts.
- The availability of imported cuts (or a decrease in the import price) in turn encourages domestic producers to switch supply from the processing market to the fresh meat or bone-in processed markets, depressing prices in those markets to the point that producer returns eventually are equalised across baconer and porker markets.
  - The size of the price fall will reflect an average of changes in prices for all pork cuts for whatever end use. Domestic pigmeat supply will fall in response. As imported cuts — legs, shoulder and middles — represent a high proportion (as much as 90 per cent) of the value of a pig, the overall impact on the price paid for a domestic pig could be significant.
  - If domestic supply over time becomes uncompetitive vis-à-vis imports, and domestic output falls, prices in the non-import competing sector (fresh pork or bone-in ham markets) would eventually be set by supply and demand in those markets rather than import prices in the processed pork market. In other words, the link between import prices and domestic pigmeat would be broken — but, in the absence of export growth, only at significantly lower levels of domestic output.
- With imports available at a given price, a fall in the demand for fresh pork or bone-in processed products, an increase in domestic production or a fall in exports, will depress prices and lead to a switch in domestic supply to the processing market and a reduction in imports.
- The scope for a rise in pig prices in response to a rise in domestic feed or other costs of growing or processing domestic pigs, will be moderated by the availability of imported cuts.
- Expansion of domestic demand for cuts which can be imported, effectively will be met from imports (at given prices). In short, imports expand to fill any supply–demand gap at prevailing prices.

Have increased imports caused, or do they threaten to cause, serious injury?

Guidance from WTO case law is that there should be a ‘coincidence of trends’ between higher imports and serious injury. In addition, the Agreement on Safeguards stipulates that imports must be entering ‘*under such conditions* as to cause or threaten to cause serious injury to the domestic industry’ [emphasis added]. Various panel and appellate body interpretations of the highlighted phrase suggest this requires analysis of the conditions of competition in the domestic market (for example, *Argentina – Footwear (EC)* (DS 121), Panel Report).

The key mechanism through which imports cause injury to a domestic industry (though simultaneously bringing gains to consumers) is by *driving down the market price*. Initially, this will reduce profitability of the domestic industry, inducing a reduction in output until profitability is restored at the lower equilibrium price. In short, lower import prices and higher imports expand the market, but also crowd out higher cost and less competitive domestic production.

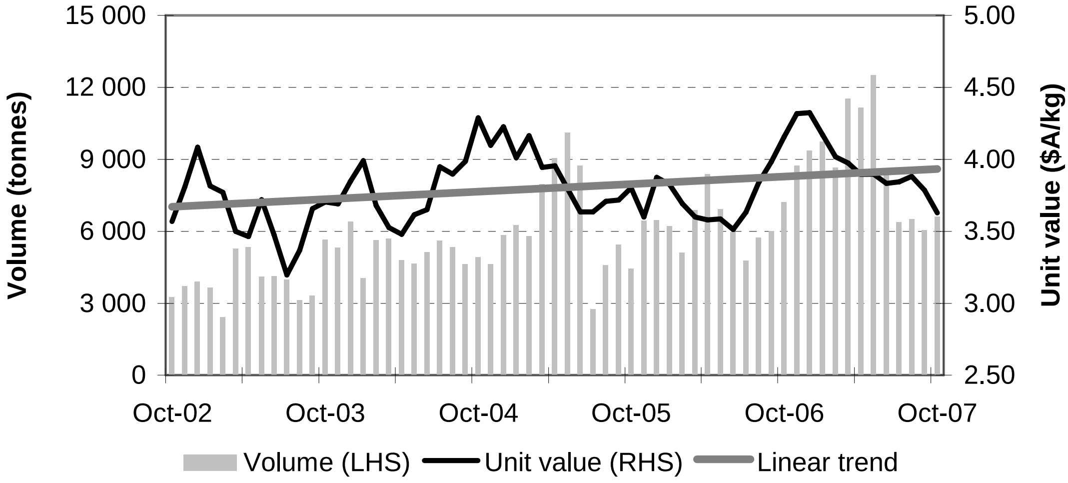
The Commission’s preliminary analysis suggests that, despite increased imports, import prices (as measured by unit values[6]) have not changed much in recent years (see figure 2.6). Indeed, fitting a trend suggests that import unit values have increased on average over the past five years, and are not out of line with unit values over the past decade (figure 2.7). Furthermore, domestic producer prices, which are heavily influenced by import prices (box 2.5), have remained within normal annual cyclical bounds.

Import unit values

Figure 2.6 shows the quantity and average unit value of total pigmeat imports. The average unit value of imported pigmeat was around $3.60 in October 2007. This was down from a peak of a little over $4.30 in December 2006 (a 16 per cent decline). However, the average unit value in December 2006 was high compared with the experience of the past five years — indeed, the average unit value of imported pigmeat in December 2006 was at its highest since 2002. That said, import values, though still not unusually low, have fallen in the latter half of 2007, which is atypical compared with patterns in previous years.

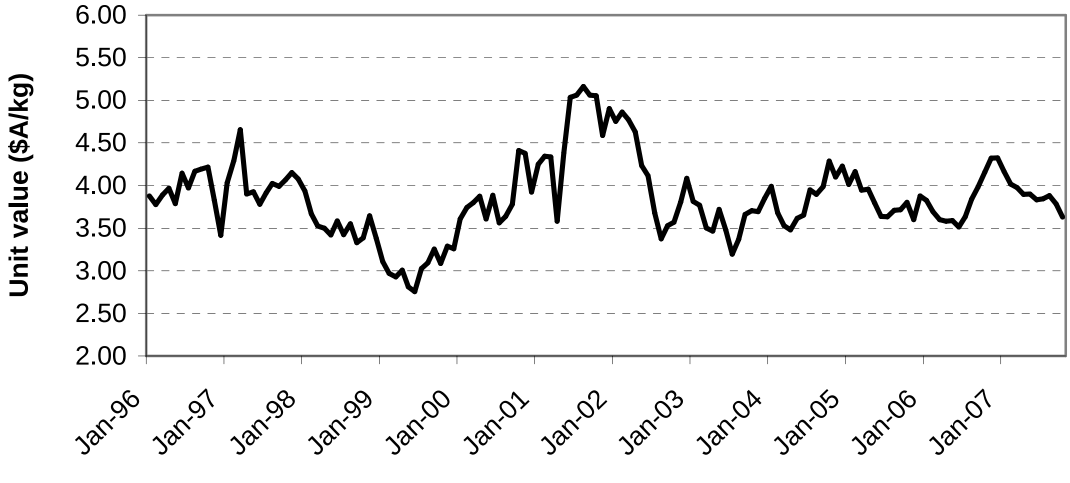
6 Unit values are not traded prices, however, which could be higher or lower depending on market conditions at the point of sale. On average over time, however, they provide a good indication of price movements, provided the composition of imports and nature of each product remains consistent. The unit values reported will systematically understate actual import prices because they exclude freight and insurance costs and any importers’ margin.

Figure 2.6 **Import unit values and volumes over the past 5 years**



Data source: ABS (unpublished).

Figure 2.7 **Import unit values over a decade**

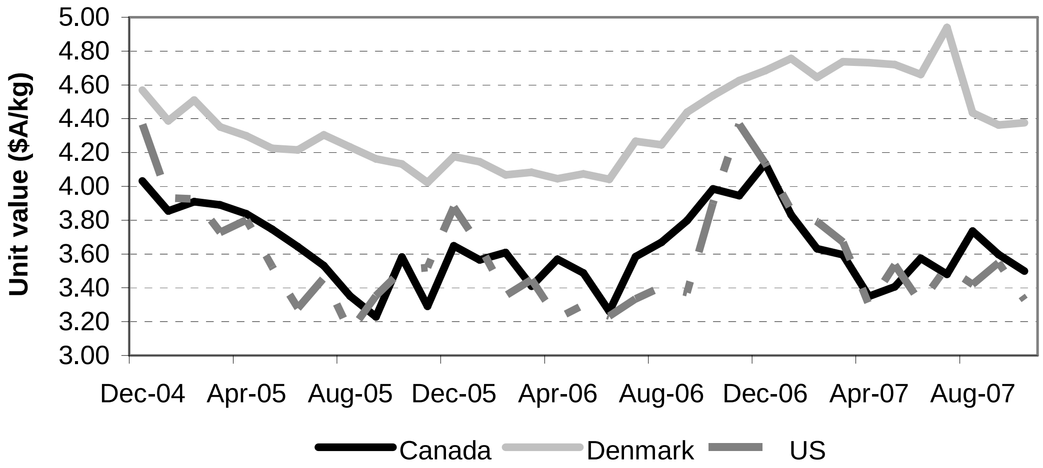


Data source: ABS (unpublished).

Figure 2.8 shows how import unit values (averaged across different cuts) have changed for the three countries from which Australia almost entirely sources its imports. The series commence in December 2004, the month in which Australia first imported pigmeat from the United States. Unit values of imports from all countries have declined since their highs at the end of 2006, but none has fallen below levels recorded in previous years.

Danish import unit values have been consistently higher than those for US and Canadian imports. This premium for Danish product probably reflects both its quality and type (middles). Unit values for US and Canadian imports, on the other hand, are broadly similar, presumably reflecting the comparable nature of their exports.

Figure 2.8 **Import unit values of the 3 supplying countries**

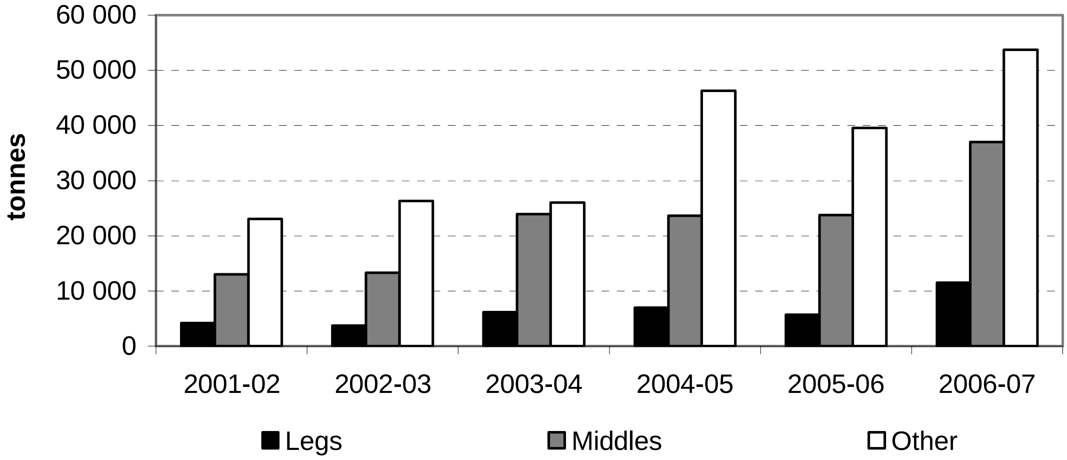


Data source: ABS (unpublished).

Import values for particular cuts show a similar pattern. Australia's imports comprise middles, legs, shoulders and 'other' cuts.[7] Imports classified as 'other' (almost entirely from the United States and Canada) exceed imports of either legs or middles and, in some years, have exceeded imports of middles and legs combined (figure 2.9). Although separately classified leg cuts make up a small proportion of total pigmeat imports (about 11 per cent in 2006-07), they more than doubled in the past year.

[7] Shoulders are not shown as reported volumes are negligible. 'Other' cuts from the United States and Canada probably comprise a mix of legs and shoulders. Those from Denmark comprise only middles.

Figure 2.9 **Volume of imported pigmeat, by type of cut**
2001-02 to 2006-07



Data source: ABS (unpublished).

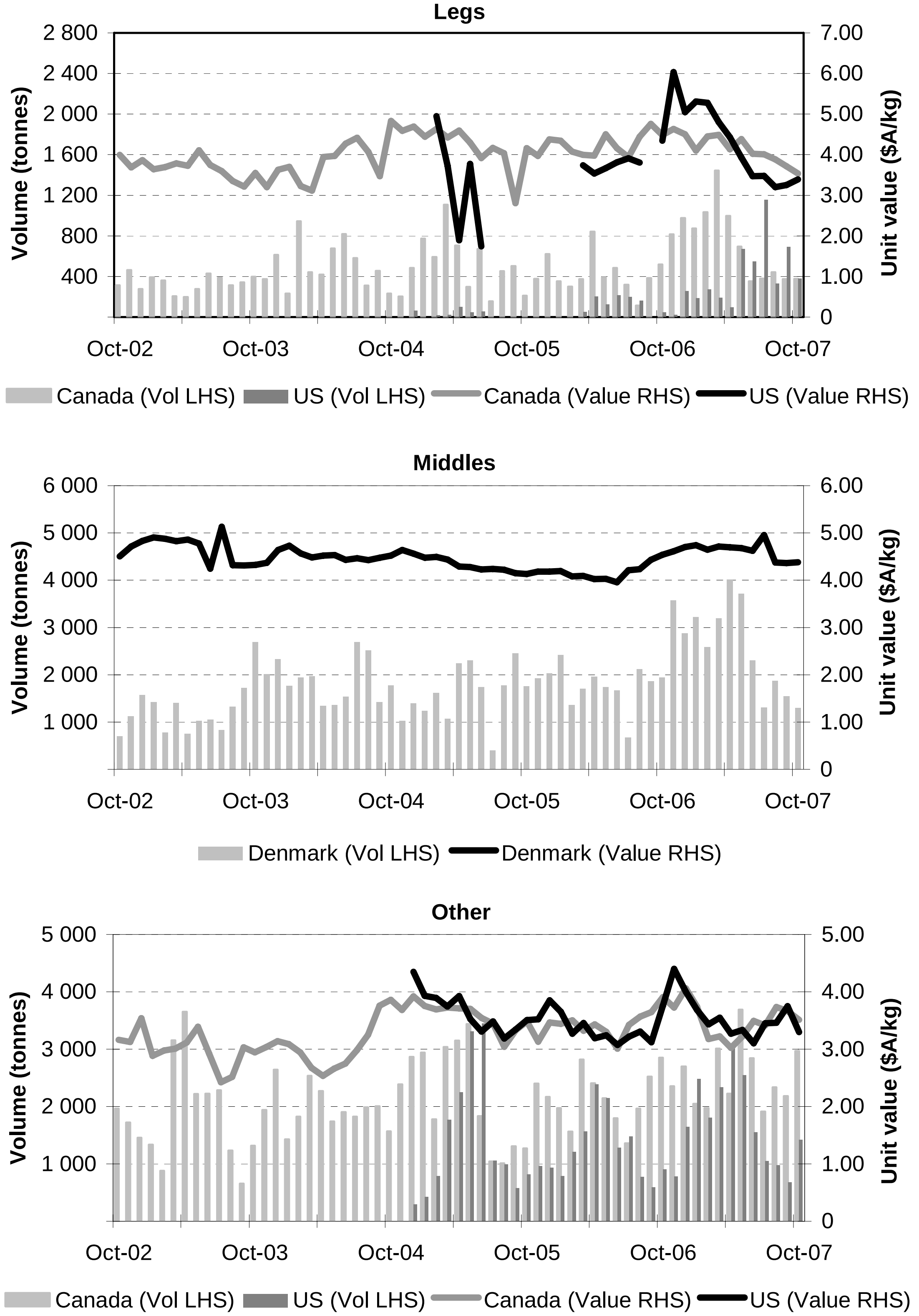
Canadian and US import unit values for ‘other’ cuts have tracked closely together, largely moving within a 50 cent band above and below $3.50 (figure 2.10). However, the decline in price since the peak at the end of 2006 for other cuts is much less than for legs (for both US and Canadian imports). For legs, US unit values have varied more than for Canadian legs, possibly reflecting initial smaller shipments from the United States and, more recently, differential exchange rate impacts.

Unit values for Danish middles have been comparatively stable and, indeed, have *increased* on average over the past year, despite import volumes reaching their highest level at the beginning of the year (figure 2.10). (As noted below, however, recent domestic *sale* prices of middles may be lower because of large quantities in storage, suggesting that importers may be incurring losses.)

Overall, import unit values have not fallen to unprecedented levels. Indeed, for Danish middles, they have remained comparatively high. Leg unit values have fallen in recent months, particularly for product from the United States, and this downward movement goes against the normal seasonal pattern. As discussed below, this recent decline is correlated with a 9 per cent appreciation of the Australian dollar against the United States dollar in the latter half of 2007.

Figure 2.10 **Import unit values and volume of pigmeat cuts**

October 2002 to October 2007

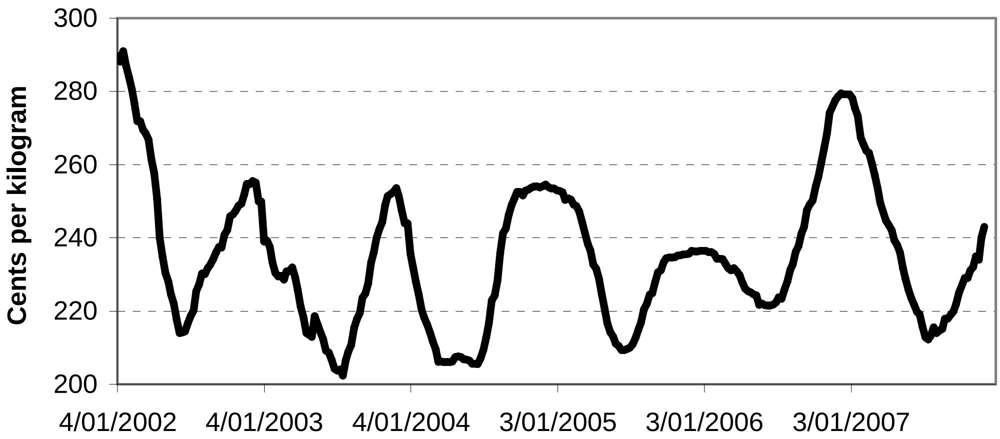


Data source: ABS (unpublished).

Domestic pigmeat prices

As shown in figure 2.11, domestic prices for pigmeat have fallen from their high levels in late 2006. Weekly pig prices at 30 November 2007 were about 35 cents per kilo lower than in the corresponding week last year. They are about 10 cents below end-of-November prices in 2002, 2003 and 2004. (They are slightly above November 2005 prices.) In year average terms, domestic prices have slightly increased since 2002-03. APL forecasts this trend to continue over 2007-08 (sub. 41, p. 41).

Figure 2.11 **Weekly pig contract prices[a]**
4 January 2002 to 30 November 2007



a 60-75kg, 12-13mm back fat.

Data source: APL (unpublished).

Participants expressed concern that although prices were increasing, they were not increasing nearly as quickly in the lead-up to Christmas as would normally be expected. A widely cited reason for this is that smallgoods manufacturers have large amounts of imported pigmeat in storage, acquired earlier in 2007 following a period of relatively low import supplies and high domestic prices in late 2006. The Commission understands, for example, that purchases of Danish middles were brought forward to avoid the impact of possible strike action in Denmark (which did not eventuate). Manufacturers clearly are prepared to pay a ‘risk premium’ to ensure supplies of pigmeat, but they may have ‘overbought’ this year. Such actions could now be suppressing domestic prices somewhat, but this impact should ease once stocks are reduced to normal levels.

It is also possible that because manufacturers since 2004 have been able to source imports from three rather than two major exporting countries, they are less likely to pay a ‘risk premium’ for domestic pigmeat. In its 1998 safeguards inquiry, the Commission noted that there appeared to be a 5 per cent premium paid to local producers over comparable imports, attributable to delivery certainty and other local advantages. As the import market has deepened, this premium has likely been eroded. That said, there is scant hard evidence of a sudden and recent change in the preference of manufacturers for imported over local product, although the Commission has heard that some smaller manufacturers have become completely reliant on imported pigmeat.

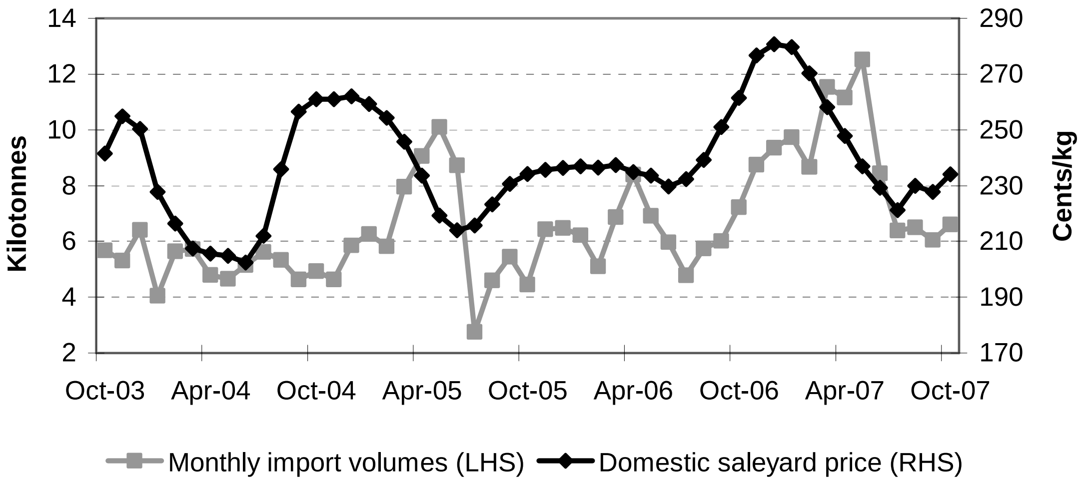
APL’s quantitative analysis

APL submitted econometric analysis linking increased imports with lower domestic prices for pigmeat. In the Commission’s preliminary assessment (box 2.6), the analysis is not robust, chiefly because it omits important explanatory variables, and the direction of causation between price and imports depends on the particular test applied. Indeed, the analysis shows that the response of imports to higher domestic prices is much greater than the response of prices to increased imports. In other words, when domestic prices increase significantly (as they did in late 2006), manufacturers respond by importing pigmeat.

Figure 2.12 tends to support this hypothesis, suggesting that sharp increases in domestic prices have *preceded* sharp increases in import volumes. For example, at the end of 2004, when domestic prices hit a cyclical peak, it took 3–4 months for import volumes to increase (to record levels at the time). In 2005-06, when domestic prices were relatively flat compared with other years, import volumes also remained flat.

The Commission expects to have completed its own quantitative analysis for its final report, but preliminary results suggest that econometric analysis may be of limited value because of issues with data series. Although import data are highly variable, other important variables (such as pig saleyard or baconer prices and domestic production) do not display much variation. Only import volumes have a large response (in magnitude) following a shock to other variables.

Figure 2.12 **Import volumes and domestic prices**
October 2003 to October 2007



Data source: ABS (unpublished), import volumes; ABARE (unpublished), saleyard price.

Therefore, the Commission proposes to develop its preliminary modelling by using other variables, including feed costs. In modelling for the 1998 safeguards inquiry, some consultants stated that a reasonable theoretical framework for the pig industry requires data on the costs of production. Because such data are not easy to obtain for the entire industry, feed costs could be used as a proxy for production costs. Retail prices of other meat and unit values of imports will also be used.

However, the Commission remains wary of the difficulties in obtaining reliable results from econometric analysis. Consequently, it will examine other methodologies, such as developing a partial equilibrium economic model of the industry.

Box 2.6 **APL's econometric analysis**

APL's consultants, Stuart Mounter and Albert Wijeweera from UNE, provided analysis of the impact of imported pigmeat on Australian production and prices using time series econometric techniques (APL, sub. 41, Attachment II). Interrelationships among 6 variables (import quantities, NSW and national pig prices, NSW and national production, and the Australia–US exchange rate) were modelled with a vector autoregression framework and Granger and Sims causality tests applied.

- The analysis excludes variables such as retail prices for substitute meats and use of the Australia–US exchange rate may not adequately capture import price movements, particularly as the majority of imports come from Denmark and Canada, and pigmeat has only recently been imported from the United States.

Econometric estimation

There are problems assigning the *direction* of causality (do imports affect domestic prices, or vice versa, or both?). *Granger* and *Sims* causality tests are used to determine the direction of causality. Although both test results show a relationship between imports and domestic prices, they have contradictory findings regarding the *direction* of causality:

- According to *Granger* causality test results, imports *do not* cause changes in prices, rather changes in prices cause changes to imports. On the other hand, *Sims* causality results show that changes to imports cause price changes, but not vice versa. Although the authors note the contradictory results regarding the direction of causality, there is no evaluation of which test results should be preferred.

Results

In their analysis, the authors assume that only imports affect prices (not vice versa). An increase in imports is found to have a negative impact on domestic prices: a one per cent increase in imports results in a 0.02 per cent decrease in national baconer prices after one month (0.25 per cent decrease after one year). The reverse effect of an increase in prices on imports is not considered. This is surprising because of the ambiguity regarding causality noted above, and because a one per cent increase in baconer prices results in a 0.85 per cent increase in import volumes after one month (a much larger result than for the opposite causality). There is also a contradictory result where an increase in the Sydney wholesale carcass price leads to a decrease in import volumes after one month.

Intuitively, some other results are difficult to explain. An increase in imports leads to a decrease in domestic prices and an increase in domestic production. In principle, domestic production should *decrease* if prices fall. The authors dismiss the results for production, saying that 'imports appear to have little influence on regional or national pigmeat production'. Despite this, they express confidence in the estimated impact of increased imports on prices, which are of similar magnitude.

Price undercutting?

APL also submitted evidence that imports caused serious injury because import prices consistently undercut prices for locally-produced pigmeat. However, the evidence provided of *persistent* (if variable) price gaps between imported and domestic cuts (sub. 41, pp. 49–50) reflects either the use of non-comparable data or differences in the nature of the products (or some mix of the two), not price undercutting:

- unit values for imports are compared with domestic prices for various cuts, but unit values based on customs valuations exclude the importers' margin and other costs. Moreover, unit values are not actual prices (although they provide an indication of changes in average prices over time);
- if domestic product sells at a higher price than the import price over time, this suggests either that the domestic product is preferred by manufacturers/consumers, or is simply different from imports.

The role of other factors

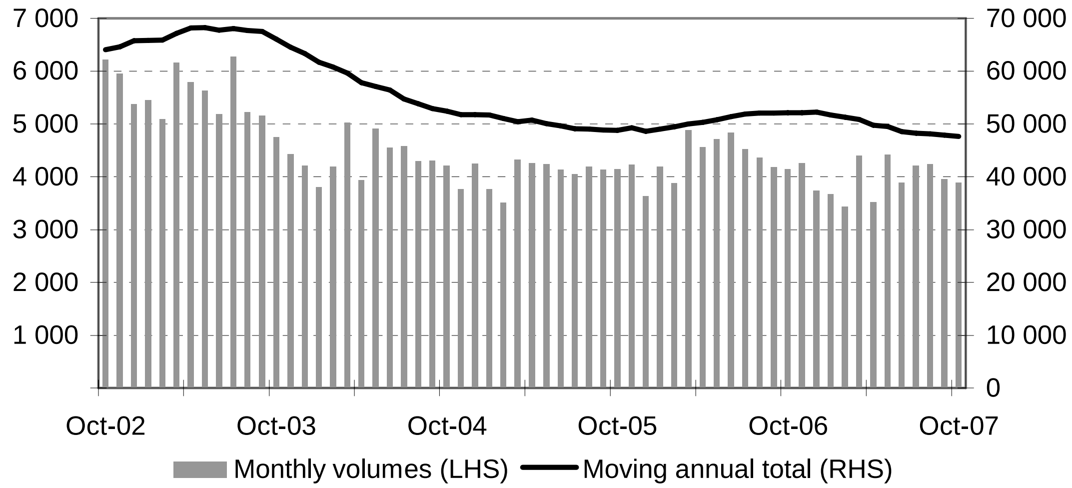
That imports have increased significantly while average producer prices have remained fairly steady suggests that there have been other drivers of both increased imports and injury.

Domestic production and exports

As shown in figure 2.2, domestic production has changed little thus far. Exports have weakened since 2002 (though absolute amounts are not large) and have softened very slightly over the course of 2007 (figure 2.13). Broadly stable domestic supply over the past few years implies that domestic consumption growth in effect has been supplied by imports. Unless the domestic industry improves its competitive position relative to imports, this is to be expected.

Figure 2.13 **Export volumes**[a]

October 2002 to October 2007, tonnes



[a] Includes all types of pigmeat, not just that categorised under tariff subheading 0203. Standard weight.

Data source: ABS (unpublished).

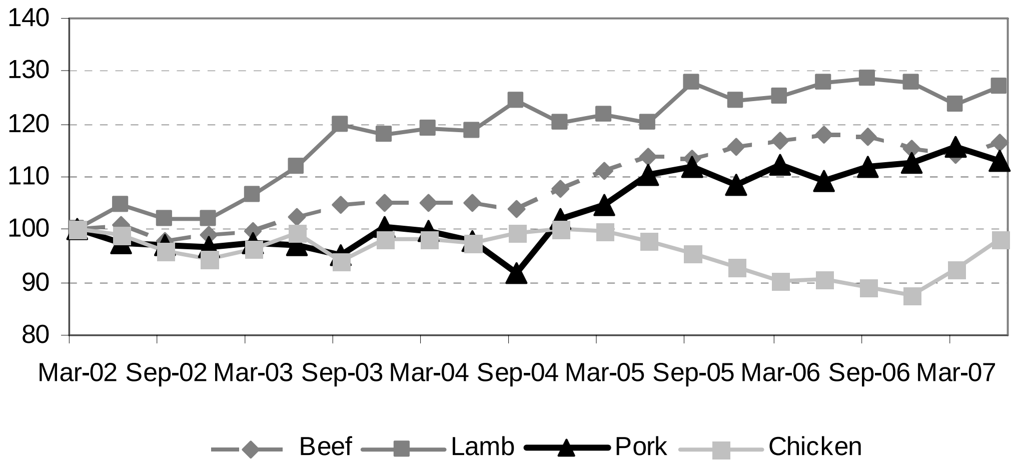
Demand for fresh pork: retail meat prices

In the four years to 2006-07 (for which data are available), fresh pork consumption increased by about 40 per cent, compared with 10 per cent for processed pork (figure 2.5). This translates to an increase in overall consumption of around 22 per cent, or some 90 000 tonnes annually.

As noted above, this increase in overall consumption has been met principally from increased imports. Domestic production has switched from supplying the processing market to supplying the growing fresh pork market, which is not subject to direct import competition. The share of fresh pork in total pigmeat consumption rose from around 39 per cent in 2002-03 to 45 per cent in 2006-07.

Retail and producer prices of pigmeat might be influenced by changes in the retail price of substitute meat products. Figure 2.14 shows that the retail price of pork generally has moved in line with lamb and beef, with prices of all three meats trending slightly upwards since 2005. There is no evidence that other meat prices have depressed pigmeat prices, thereby causing serious injury to the industry.

Figure 2.14 **Australian retail meat price trends**
Index: March 2002 = 100



Data source: ABARE (unpublished).

Feed costs

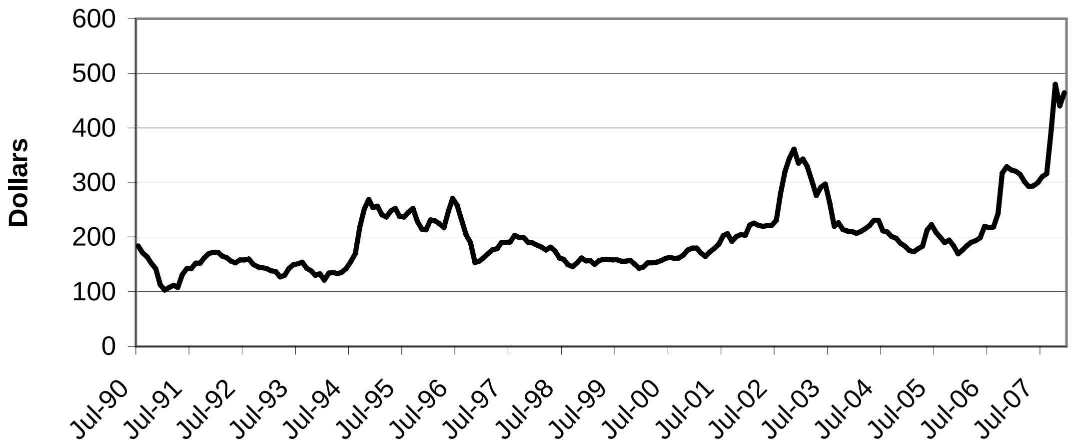
Feed costs typically account for around 55 or 60 per cent of a pig producer's total costs, with grain representing 80 to 85 per cent of these costs. Grain costs have soared to record highs in late 2007. Major factors behind recent price increases are bad weather (particularly the drought in Australia) and growing worldwide demand (and government support) for ethanol, and strong economic growth in China and India.

For much of 2007, grain prices were similar to those prevailing at the time of the 2003 drought. However they reached record levels in October, with feed wheat peaking at $A480 a tonne (figure 2.15). The price dropped back to between $A400 and $A435 a tonne in November, but rose again in December to $A465 per tonne. Even $A400 represents more than a doubling in price since May 2006.

Some recent settling in prices has been attributed to a more informed market now that the winter grain harvest is underway. Recent forecasts by the US Department of Agriculture are also considered to have helped in this regard. Increased grain production from Argentina, China and Ethiopia is expected to offset reductions in Australia and Brazil (MLA 2007).

Figure 2.15 **Feed wheat prices**[a]

July 1990 to December 2007



a Based on average quote for delivery, Sydney.

Data sources: ABARE (unpublished), ABARE (2007), *The Land* (various issues).

There is evidence that Australian producers, largely dependent on feed wheat, are being disadvantaged more than foreign competitors (especially the United States and Canada) who are able to use other crops (table 2.3). On the Chicago spot market, wheat prices have risen around 74 per cent since October 2006, while corn prices have increased by around 26 per cent (ABARE 2007). Yellow corn is used extensively to feed pigs in North America, but is not available on a cost-effective basis in Australia. These price trends have exacerbated an inherent advantage held by North American producers, in that corn was already significantly cheaper than wheat before recent relative increases in the wheat price (PC 2005).

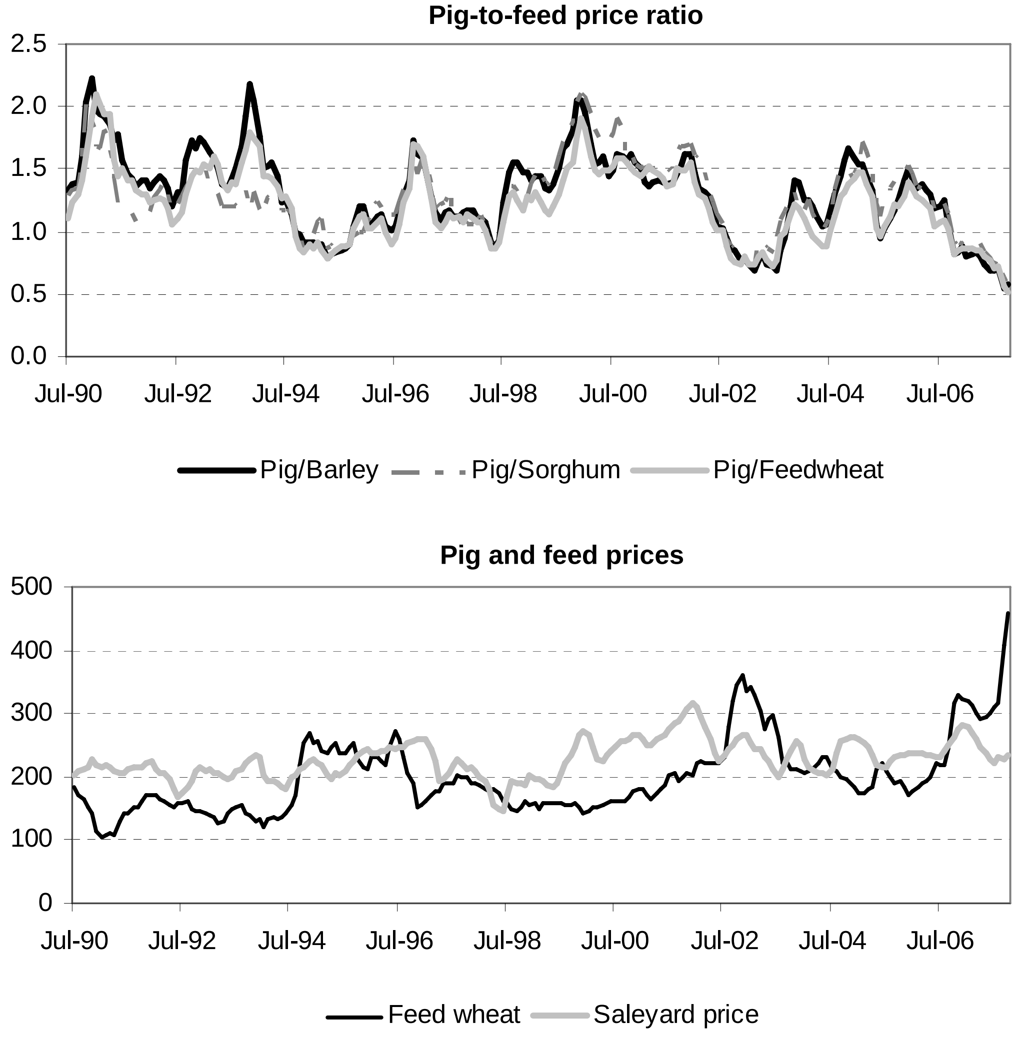
Table 2.3 **Wheat and corn prices, Chicago Board of Trade**

	Wheat ($US/tonne)	*Corn ($US/tonne)*
October 2006	183.81	119.39
August 2007	254.59	132.03
September 2007	318.67	141.19
October 2007	313.69	140.58
November 2007	319.30	150.98
Change October 2006 to November 2007	*73.7%*	*26.5%*

Source: ABARE (2007).

APL estimates that higher feed costs (averaging $280 per tonne) added about 20 cents per kilo to domestic costs in 2006-07 (to about $2.50 per kilo cwe). However, as noted above, feed costs increased sharply further in the first months of 2007-08, adding another 20 to 30 cents per kilo. This means that costs of production in November 2007 are well above average prices received of $2.45, driving pig/feed price ratios to record lows (figure 2.16)

Figure 2.16 **Pig and feed price movements**



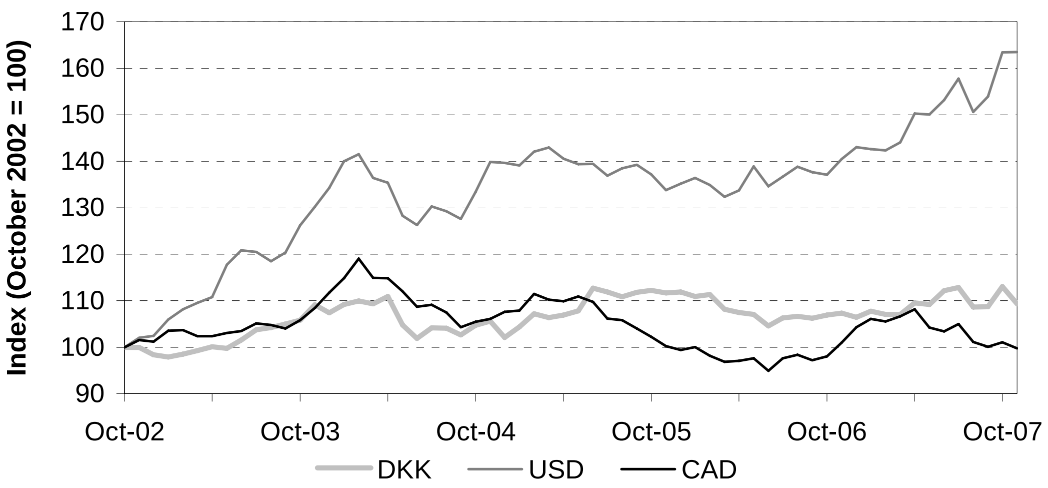
Data source: ABARE (unpublished).

Exchange rates

While import unit values do not appear to have changed much, appreciation of the Australian dollar of around 10 per cent since the middle of 2007 will be acting to suppress prices of imports from the United States (figure 2.17). At the same time, currency appreciation against the Japanese Yen and some other currencies will tend to reduce demand for Australian pigmeat exports, encouraging diversion of local production to the domestic market and placing downward pressure on prices.

The Australian dollar has moved little against the Danish Kroner and the Canadian dollar in recent years. It has depreciated slightly against the Canadian dollar over the course of 2007, which will have tended to increase prices of imports from that country.

Figure 2.17 **Bilateral exchange rates with major importing countries**



Data sources: x-rates.com; RBA (2007).

The Commission's assessment

Although domestic prices currently are lower than the unusually high levels at the same time last year, they remain within normal annual cyclical bounds. This, together with evidence that trend import unit values have risen since 2002 (even with significant currency depreciation against the US dollar), suggest that other factors are responsible for the current profit squeeze. In particular, higher production costs have been driven by a sharp rise in feed costs (above export parity in some cases).

FINDING 2.6

There is not clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry. The principal cause of serious injury to the domestic industry would appear to be higher domestic feed prices.

Most submissions and other evidence given to the inquiry from pig producers and processors recognised that rising feed costs were a major cause of the industry's problems, but they blamed imports for effectively capping their ability to raise prices. By the same token, many acknowledged that if feed prices were, say, around $250 per tonne (which is still above the average for the past five years), they would be profitable at current pig prices.

Clearly the availability of imported pigmeat for processing limits the duration and extent of any upward movement of domestic prices and the potential for increases driven by higher domestic costs. But this 'price capping' effect is to be expected and has been building for more than fifteen years, since import competition was first permitted (see PC 1998).

The Commission does not accept the logic that such 'price capping' is the *cause* of serious injury — that is, a view that without imports, or with fewer imports, prices would be higher and, therefore, imports are *causing* serious injury. It is always the case that import competition constrains or suppresses domestic prices (that is the main source of the gains from trade); but it does not follow that imports must consequently be the cause of serious injury. In the present case, this would be akin to blaming domestic competition for suppressing cost-driven price increases in a protected domestic market. Acceptance of this logic would lead to import protection being based on domestic cost disability which, in the Commission's view, is not, and should not be, the rationale for emergency action under the WTO.

2.7 Concluding remarks

As noted at the beginning of this chapter, provisional safeguard measures can be recommended where critical circumstances exist such that delay in applying measures would cause damage which it would be difficult to repair *and* pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury.

The Commission accepts that there is clear evidence that most pig producers are suffering serious injury in the form of reduced profitability or financial losses from a cost-price squeeze. This reduced profitability appears to have set in train a reduction in output of pigmeat of the order of 10 per cent nationally, with associated industry job losses, which in turn threatens serious injury in the primary processing part of the industry. But this situation has been triggered by extraordinary increases in feed grain prices in Australia since the middle of 2007, not by increased imports significantly undercutting and pushing down domestic prices.

Because the Commission considers that clear evidence of causation from increased imports to serious injury is wanting, it has not explicitly considered whether there are critical circumstances warranting imposition of provisional measures (nor other aspects such as the impact of measures on other parties or whether imports from the United States are a substantial cause of injury).

Many in the industry warned of an ‘over-shooting’ scenario in which domestic production would fall below long-run equilibrium levels, undermining industry viability. However, evidence was also received from a number of pig producers who had adopted a ‘wait-and-see’ approach, at least for the next few months. They will be assisted by a recent rise in pig prices, and a slight weakening of the Australian dollar against the United States dollar.

Moreover, pig producers worldwide are facing a similar cost-price squeeze caused by high feed costs (although probably not to the same extent as Australian producers), and higher global production costs can be expected to affect world pigmeat prices as production cuts come into effect. This is not saying that the worst is over, but that there is some evidence that the many producers who have indicated their intention to remain in the industry may face easing conditions over coming months. Moreover, market mechanisms might be expected to have come into play to secure adequate fresh and bone-in pork supplies — for example, by contracts between pig producers and fresh meat suppliers — limiting further industry exits and downsizing.

It should also be pointed out that even if imports were entirely prohibited, the ability of price rises to accommodate such high feed grain costs would be limited by demand forces (including substitute meats) and could not match the full amount of the cost increases. Production would still fall and some producers would still be forced to exit the industry.

This determination against provisional action does not rule out a recommendation for safeguard measures proper in the final report, to be completed by end March 2008. The current decision is based on preliminary analysis undertaken within the time available. Furthermore, since the commencement of the inquiry, policy changes have been announced by some foreign governments which could, directly or indirectly, affect prices of their exports to Australia and which, in turn, could directly impact upon competitive conditions in the Australian market.

The final report will also consider other possible policy changes that could help to reduce underlying cost pressures, reinforcing the efforts of producers to reduce costs and become more competitive against imports. These issues are briefly canvassed in the following chapter.

A consolidated list of the Commission's findings in relation to provisional safeguard measures is presented in box 2.7.

Box 2.7 **The Commission's findings**

Finding 2.1

For the purposes of this safeguards investigation, Australian-produced fresh pork cuts, and dressed carcasses and half-carcasses are 'like or directly competitive with' pigmeat imported under tariff sub-heading 0203.29.

Finding 2.2

Pig producers and primary processors produce products which are either like, or directly competitive with, imported pigmeat cuts.

Finding 2.3

Import quantities have increased both in absolute and relative terms. On balance, consistent with the requirements of WTO case law, the increase in imports appears to have been 'recent and significant enough, and sharp and sudden enough'.

Finding 2.4

While changes in quarantine arrangements affecting pigmeat imports should have been foreseen at the time Australia joined the WTO in 1994, consequent import growth was due to developments which could not reasonably have been foreseen.

Finding 2.5

Most pig producers are suffering reduced profitability and many are suffering financial losses, resulting in reductions in breeding sows and employment levels, with consequent negative impacts on production emerging in early to mid 2008. In the Commission's assessment, the pig farming part of the industry is accordingly suffering serious injury.

The evidence for primary processing is less consistent. Some operators have reported increased profits, whereas others reported lower profits, reflecting variations in throughput and industry rationalisation as well as 'one-off' events. Overall, with pig production levels steady so far, there is not clear evidence that the primary processing part of the industry is currently suffering serious injury. However, clear evidence exists that serious injury is 'threatened': pig production levels are set to fall, reducing profitability due to lower throughput and increased unit costs.

Overall, the domestic industry producing products 'like or directly competitive' with imported pigmeat is suffering serious injury or is under threat of serious injury.

Finding 2.6

There is not clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry. The principal cause of serious injury to the domestic industry would appear to be higher domestic feed prices.

3 Other structural and policy-related matters

The Commission's preliminary assessment is that higher domestic prices for feed grain, rather than imports per se, are driving poor profitability in the domestic pigmeat industry. Although world feed grain prices have risen, prices in Australia have risen proportionately more (and particularly so in relation to corn). At best, safeguard measures can provide temporary protection against imports. Identifying what can be done to bring about improvements in the underlying competitiveness of the local pigmeat industry, therefore, is important to its longer-term prospects.

To this end, the Terms of Reference require the Commission in its final report to investigate recent changes in the structure and operating methods of the industry, and whether any immediate actions could be taken to complement the work of the Pork CRC to "alleviate the impact of high prices and restricted availability of feed grains". This chapter briefly sets out issues the Commission intends examining, several of which have been addressed by inquiry participants.

Structural change

In its 2005 report on the industry (PC 2005), the Commission observed that Australia's pig producers and processors were continuing to experience significant structural change. Rationalisation in both sectors was helping to harness economies of scale and higher productivity.

Structural change in the pigmeat industry is a long-standing phenomenon. From 1970 until 1990 (when imports of frozen pigmeat from Canada were first permitted), the number of pig producers declined from around 40 000 to 7500. By 2005, there were estimated to be 1900 producers. But as the number of producers has declined, production has steadily increased (at least until recent years). This reflects economies of scale, as well as gains in on-farm productivity from a range of technical improvements and enhanced operating efficiency, including:

- increased fertility and reduced mortality rates;
- better feed mixes and feed conversion rates; and
- use of separate grow-out sites to assist with disease management.

On the other hand, the preference for smaller pigs in the fresh market has tended to increase unit costs.

The primary processing part of the industry has also undergone rationalisation, with a number or plants closing leading to increasing concentration and specialisation.

The industry clearly accepts the need for ongoing rationalisation to improve efficiency in pig farming and processing operations. In its dealings with a number of pig producers and processors during the current investigation, the Commission has been impressed by their commitment to innovation and efficiency improvements. Many individual producers appear to be technically efficient and some are at the forefront of world's best practice.

Reducing the costs of production

Many factors that are largely outside the control of the industry impact on its competitiveness. Some of these arguably are 'natural' disadvantages, whereas others are (often inadvertently) policy-induced.

As noted, feed is a major input in pigmeat production, currently accounting for almost 60 per cent of total costs. Grains account for around 80 per cent of feed costs.

The industry, through a variety of channels, including the innovative work of the Pork CRC, is attempting to improve feed conversion ratios and feed efficiency in a number of ways.

Feed grain *prices* are another matter. As discussed in chapter 2, currently grain prices are exceptionally high. This reflects local drought conditions, which have reduced supplies, and increased demand for grain worldwide. These developments reflect both man-made and natural phenomena.

- In part, increased demand for grain reflects relatively strong and sustained world economic growth — especially in emerging economies such as China and India — as well as the growth of industries competing for feed grain in Australia, such as beef feedlots and aquaqulture. But increased global demand also reflects policies assisting or mandating increased production of ethanol and biofuels in the United States and in Europe. The costs of these policies on other intermediate users, as well as consumers, are often not fully taken into account in policy design.
  - Although Australia has not mandated ethanol targets, the industry here, though comparatively small, is protected from imported ethanol. This protection enhances its ability to buy feedstock relative to other users. There

is potential for expansion of this industry to increase demand pressure for feed grain.

- Some users of feed grain in Australia receive drought assistance in the form of transport subsidies, but pig producers do not. This can place them at a relative disadvantage in the market for feed grain.

There are also policies affecting the supply of grain for feed:

- Quarantine restrictions on the importation of grain mean that pig producers cannot access feed grain at world prices, particularly during times of domestic shortage created by drought.
- Single desk arrangements for the export of wheat (and of some other grains in some States) are likely to have some effect on prices in the domestic market, although arbitrage across the export and domestic markets is possible.
- Some participants suggested that access to genetically-modified crops in Australia would have the potential to reduce feed costs.

Another issue raised by a number of participants, including State governments, was the need for 'safe' access to imported genetic material, to improve herd efficiency (fertility, feed conversion rates, and so on). The Commission understands that this issue is being researched by the Pork CRC.

The Commission also received evidence that pig producers are facing increasing regulatory costs, including those imposed for health and environmental reasons. There may be scope to reduce the burden of these regulations without compromising their objectives.

The levy system was also raised by some participants. The pig levy is now applied to marketing in addition to research, as is also the case for some other agricultural industries. In its 2005 inquiry, the Commission observed that the effectiveness of the various programs to which the levy is applied should be routinely evaluated.

Increasing the demand for Australian pork

As shown in chapter 2, there has been a significant increase in consumption of fresh pork in Australia, which is supplied entirely from local production. This appears to be due to demographic factors, as well as efforts by the industry to improve product quality, and to change consumer tastes.

Participants raised several areas in which they considered that more could be done to increase market share in both the fresh and processed pork markets:

- Country-of-origin labelling, which many participants considered was inadequate or inadequately applied and enforced.
- Policies of other countries that may distort international markets and prices.
- Some participants also raised the industry association's marketing strategies, with some criticising generic marketing.

The Commission invites participants to make further submissions on these and any other policy issues which they consider deserve further investigation.

A Public consultation

The Commission received the terms of reference for this inquiry on 17 October 2007. Following receipt of the terms of reference, the Commission placed notices in the press and appropriate publications inviting public participation in the inquiry. Information on the inquiry was also circulated to people and organisations likely to have an interest in it. The Commission released an issues paper in October 2007 to assist inquiry participants in preparing their submissions.

The Commission received one hundred submissions (table A.1) and visited or otherwise discussed the issues involved with a number of individuals and organisations (table A.2). Public hearings were held in Sydney, Canberra, Brisbane, Adelaide and Melbourne. A list of those individuals and organisations who presented at the public hearings can be found in table A.3.

A request for information was sent to 11 major pork abattoir/boning operations, a list of those organisations who were sent a copy of the request is reproduced in table A.4.

The Commission thanks all those who have contributed to the inquiry to date.

Table A.1 **List of submissions**

Individual or organisation[a]	*Submission number*
A.J. Edgerton & Co / Glenita Stud	27
Albacroe Pty Ltd	51
Alister Piggeries	42
Auspork Limited *	67
Australian Food and Grocery Council	89
Australian Meat Industry Council (on behalf of the independent retail butchers and the smallgoods manufacturers)	35
Australian Pork Farms Group	33
Australian Pork Limited	41, 97
Bailey Creek Piggeries	6
Baker, B.T. & A.R.	10
B.E. Campbell (NSW) Pty Ltd *	31
Better Blend Stockfeeds	58
Bimbi Bacon	25
Blantyre Farms Pty Ltd	74
Bordervale Piggery *	19
Breakout River Meats Pty Ltd	47
BroadAcres Piavella Pty Ltd	57
Burnett Pork Alliance Pty Ltd	8
B.W. & L.M. Greenaway & Sons *	68
Calco Enterprises	48
Canada Pork International	66
CHM Alliance Pty Ltd	99
Clancy, PJ & JM	26
Cool-off Pty Ltd	5
Corackerup Farming	4
Corowa Shire Council	78
D.C. and S Miles Pty Ltd	14
Dalby Focus Group	36
Danish Bacon and Meat Council	32, 100
Delegation of the European Commission to Australia	30, 86
Deni Piggery	94
Drew, G, N & J	61
Evans, W.T. & G.I.	15
Facy, BL & A	60
Food and Beverage Importers Association	84
Gawler Baconer Enterprises	37
Gjadick Pork Pty Ltd	34
Government of Canada (High Commission of Canada)	29, 93
Government of South Australia	50
Gregor, KA & CL	44
Gunpork Joint Venture	18
Hans Continental Smallgoods *	53

(Continued next page)

Table A.1 (continued)

Individual or organisation[a]	*Submission number*
Heinfeiff	62
Houston Pork Wholesalers	72
IAS Management Services	64
Inglegreen Pastoral Company	9
J.W. & G.E. Bourke Pty Ltd	2
Jemco Agencies Pty Ltd	77
Leon’s Pork Pty Ltd *	39
Link Farm Enterprises	82
Ludale Pty Ltd	22
Ludvigsen Family Farms	17
Lynch, TD & RA *	28
Maysleith Farms Pty Ltd	83
McColl Partnership	24
NSW Pork Industry Taskforce, Members of the	88
Ministry of Foreign Affairs of Denmark	20
Minter Ellison	1, 43, 87, 95, 98
Mondoro Pty Ltd *	11
Mullan, BS & AL	55
Mundigo Pty Ltd	63
Nakhla, R	46
Northern Co-operative Meat Company Ltd	75
NSW Department of Primary Industries	76
NSW Farmers’ Association	96
Parish Rural Pty Ltd *	56
Parsons, G & D	70
Paterson, NT & RM *	23
Pork Queensland Inc	12
Primo Smallgoods	21
Provimi Australia *	81
QAF Meat Industries Pty Ltd	73
Qld Department of Primary Industries & Fisheries; and Qld Department of Tourism, Regional Development & Industry	79
Queensland Natural Pork Holdings (Marketing) Pty Ltd	16
Reed, TG & FL	90
Riverhaven Enterprises Pty Ltd	65
Salt Lake Bacon	52
Scharffetter, C & I	45
South Australian Farmers’ Federation	38
Stock Feed Manufacturers’ Council of Australia	49
Tarree Pastoral	54
Tasmanian Island Pork Alliance Inc	91
Tatong Pork	71
The Australian Pig Breeders’ Association Ltd (WA Branch)	7

(Continued next page)

Table A.1 (continued)

Individual or organisation[a]	*Submission number*
The Government of New South Wales	76
The Manintveld Farm Trust	59
Victorian Farmers' Federation	13
Walker, Dugald Mr	85
West Australian Pork Producers' Association	92
Westfarm Piggery	40
Westmill Products	69
Westpork Pty Ltd	3
Windridge Farms	80

[a] An asterisk (*) indicates that the submission contains confidential material not available to the public.

Table A.2 **List of visits**

Individual or organisation
Australian Pork Limited
Corackerup Farming
Craig Mostyn Group
Dardanup Butchering Company
Delegation of the European Commission to Australia
Department of Agriculture, Fisheries and Forestry (Cwlth)
Dorsogna Ltd
Government of South Australia
Embassy of the United States of America
Great Southern Pig Company
High Commission of Canada
KR Castlemaine Foods Pty Ltd
Milne Agri Group (Australia Natural Pork and Mt Barker Free Range Chickens)
NSW Farmers' Association
NSW Pork Industry Taskforce
Parish Rural Pty Ltd
Pork CRC Ltd
Portec Australia
PPC/Linley Valley Pork
QAF Meat Industries Pty Ltd
Royal Danish Embassy
South Australian Farmers' Federation
The Australian Pig Breeders' Association Ltd (WA Branch)
Wandalup Farms
West Australian Pork Producers' Association
Westmill Products
Westpork Pty Ltd
Windridge Farms

Table A.3 **Public hearing participants**

Individual or organisation
Sydney, 27 November 2007
Cando Livestocks
Bimbi Bacon
Wilmeat Pty Ltd
B.E. Campbell (NSW) Pty Ltd
NSW Farmers' Association
Inglegreen Pastoral Company
Heather Brae Pig Stud
Leon's Pork Pty Ltd
Canberra, 28 November 2007
A.J. Edgerton & Co.
Delegation of the European Commission to Australia
Windridge Farms
Australian Pork Limited
High Commission of Canada
Danish Bacon & Meat Council
Ministry of Foreign Affairs of Denmark
Brisbane, 29 November 2007
Mondoro Pty Ltd
Northern Co-operative Meat Company Ltd
Alister Piggeries
Dalby Producers
Pork Queensland Inc
Gjadick Pork Pty Ltd
Adelaide, 3 December 2007
Parish Rural Pty Ltd
Australian Pork Farms Group
Ludvigsen Family Farms
South Australian Farmers' Federation
Melbourne, 4 December 2007
JW and GE Bourke Pty Ltd
D.C. and S Miles Pty Ltd
Minter Ellison
Victorian Farmers' Federation
Gunpork Joint Venture

Table A.4 **Request for information**

Organisation
QAF Meat Industries Pty Ltd
Derby Industries Pty Ltd (Pork Division)
Primo Smallgoods
KR Darling Downs
GWF Meat and Dairy
Hans Fresh & Swickers
Ridders Fresh
D'Orsogna Limited
B.E. Campbell (NSW) Pty Ltd
Northern Co-operative Meat Company Ltd.
Big River Pork

B Commonwealth Gazettes and GATT Article XIX

This appendix consists of:

- the *Commonwealth of Australia Gazette*, 'Establishment Of General Procedures For Inquiries By The Productivity Commission Into Whether Safeguard Action Is Warranted Under The Agreement Establishing The World Trade Organization', No. S 297, Thursday, 25 June 1998;
- the *Commonwealth of Australia Gazette*, 'Amendment of general procedures for inquiries by the Productivity Commission into whether safeguard action is warranted under the Agreement establishing the World Trade Organization', No. GN 39, 5 October 2005; and
- GATT 1994 Article XIX.

Commonwealth of Australia **Gazette**
No. S 297, Thursday, 25 June 1998
Published by AusInfo, Canberra
SPECIAL

ESTABLISHMENT OF GENERAL PROCEDURES FOR INQUIRIES BY THE PRODUCTIVITY COMMISSION INTO WHETHER SAFEGUARD ACTION IS WARRANTED UNDER THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

1. In order to comply with the requirements of the Agreement Establishing the World Trade Organization (WTO Agreement), and in particular the Agreement on Safeguards (Safeguards Agreement) and Article XIX of the General Agreements on Tariffs and Trade 1994 (GATT 1994), this notice establishes the general procedures for inquiries into safeguard action by the Productivity Commission (Commission) in respect of a reference under Parts 2 and 3 of the *Productivity Commission Act 1998.*

2. A reference under Parts 2 and 3 of the *Productivity Commission Act 1998* in respect of safeguard action will designate the product being imported and request an inquiry and report by the Commission on:

(a) whether the conditions are such that safeguard measures would be justified under the WTO Agreement;

(b) if so, what measures would be necessary to prevent or remedy serious injury and to facilitate adjustment; and

(c) whether, having regard to the Government's requirements for assessing the impact of regulation which affects business those measures should be implemented.

3. A "**safeguard measure**" means a measure provided for in Article XIX of GATT 1994, the rules for which are established by the Safeguards Agreement. A safeguards measure would be in the form of a quota, a tariff quota, or an increased level of tariff.

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Conditions

4. The Commission is to report on whether the product under reference is being imported into Australia in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

5. Safeguard measures have to be applied to a product being imported irrespective of its source, except:

(a) product determined to be of New Zealand origin pursuant to the Australia New Zealand Closer Economic Relations Trade Agreement, which shall be excluded from the inquiry; and

(b) product originating in a developing country Member of the WTO shall be exempted from such measures as long as its share of imports of the product concerned does not exceed 3%, provided that developing country Members of the WTO with less than 3% import share collectively account for not more than 9% of total imports of the product.

Inquiry

6. Reasonable public notice must be given to all interested parties in accordance with section 14 of the *Productivity Commission Act* 1998. The inquiry must involve public hearings or other appropriate means in which importers, exporters and other interested parties can present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest.

7. In accordance with section 12 of the *Productivity Commission Act* 1998 a report shall be published promptly setting forth the Commission's findings and reasoned conclusions reached on all pertinent issues of fact and law. The report will include a detailed analysis of the case under inquiry as well as a demonstration of the relevance of the factors examined. All factors specified in these procedures must be considered.

8. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the Commission. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the Commission find

that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, it may disregard such information unless it can be demonstrated to its satisfaction from appropriate sources that the information is correct.

Determination of Serious Injury or Threat Thereof

9. "**Serious injury**" means a significant overall impairment in the position of a domestic industry.

10. "**Threat of serious injury**" means serious injury that is clearly imminent, in accordance with the provisions of paragraphs 13 and 14. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

11. In determining injury or threat thereof, a "**domestic industry**" means the producers as a whole of the like or directly competitive products operating in Australia, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

12. "**Like product**" means a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

13. In the inquiry to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Commission shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

14. The determination referred to in paragraph 13 shall not be made unless this inquiry demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

Application of Safeguard Measures

15. A safeguard measure can only be applied to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

Provisional Safeguard Measures

16. A reference can also be made to the Commission for an accelerated report to determine whether critical circumstances exist where delay in applying measures would cause damage which it would be difficult to repair. The Commission will report to the Minister on whether there is clear evidence that increased imports have caused or are threatening to cause serious injury. If the Commission finds that such circumstances exist, then it will also recommend what provisional measures would be appropriate for up to 200 days. Such measures should take the form of tariff increases unless that would not be sufficient to prevent serious injury. The provisional measures would be revoked when the Government reached a decision on the imposition of safeguard measures following the receipt of the report by the Commission.

Duration and Review of Safeguard Measures

17. The Commission shall also make recommendations about the duration of the measures up to a four year period. The period is to include any period where provisional measures have been in place.

18. Where safeguard measures are imposed, the Minister may refer to the Commission for inquiry and report the question of the extension of the period for safeguard measures beyond four years and up to eight years.

19. The inquiry by the Commission to advise whether the safeguard measure continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is adjusting shall be in conformity with the procedures set out above. A measure so extended is not to be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

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Amendment of general procedures for inquiries by the Productivity Commission into whether safeguard action is warranted under the Agreement establishing the World Trade Organization

In order to comply with the requirements of the Singapore Australia Free Trade Agreement, the Australia United States **Free Trade** Agreement and the Thailand Australia Free Trade Agreement, this notice amends the General procedures for inquiries by the Productivity Commission into whether safeguard action is warranted under the Agreement establishing the World Trade Organization Instrument.

Note The general procedures were published in Commonwealth *Gazette* No S 297 of 25 June 1998, and notified to the World Trade Organization. The general procedures relate to inquiries into safeguard action by the Productivity Commission in respect of a reference under Parts 2 and 3 of the *Productivity Commission Act* 1998.

Amendments

(section 3)

[1] **Paragraph 5 (a)**

omit

which shall be excluded from the inquiry; and

insert

which shall be excluded; and

[2] **Paragraph 5 (b)**

omit

imports of the product.

insert

imports of the product; and

[3] **After paragraph 5 (b)**

insert

(c) product determined to be of Singapore origin pursuant to the Singapore Australia Free Trade Agreement, which shall be excluded; and

(d) product determined to be of United States origin pursuant to the Australia United States Free Trade Agreement, which may be excluded if those imports are not a substantial cause of serious injury**, or threat thereof**; and

(e) product determined to be of Thai origin pursuant to the Thailand Australia Free Trade Agreement, which may be excluded if those imports are not a cause of serious injury **or threat thereof or of serious damage or actual threat thereof**.

GATT 1994 Article XIX

Emergency Action on Imports of Particular Products

1. (a) If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.

(b) If any product, which is the subject of a concession with respect to a preference, is being imported into the territory of a contracting party in the circumstances set forth in sub-paragraph (a) of this paragraph, so as to cause or threaten serious injury to domestic producers of like or directly competitive products in the territory of a contracting party which receives or received such preference, the importing contracting party shall be free, if that other contracting party so requests, to suspend the relevant obligation in whole or in part or to withdraw or modify the concession in respect of the product, to the extent and for such time as may be necessary to prevent or remedy such injury.

2. Before any contracting party shall take action pursuant to the provisions of paragraph 1 of this Article, it shall give notice in writing to the CONTRACTING PARTIES as far in advance as may be practicable and shall afford the CONTRACTING PARTIES and those contracting parties having a substantial interest as exporters of the product concerned an opportunity to consult with it in respect of the proposed action. When such notice is given in relation to a concession with respect to a preference, the notice shall name the contracting party which has requested the action. In critical circumstances, where delay would cause damage which it would be difficult to repair, action under paragraph 1 of this Article may be taken provisionally without prior consultation, on the condition that consultation shall be effected immediately after taking such action.

3. (a) If agreement among the interested contracting parties with respect to the action is not reached, the contracting party which proposes to take or continue the action shall, nevertheless, be free to do so, and if such action is taken or continued, the affected contracting parties shall then be free, not later than ninety days after such action is taken, to suspend, upon the expiration of thirty days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application to the trade of the contracting party taking such action, or, in the case envisaged in paragraph 1 (b) of this Article, to the trade of the contracting party requesting such action, of such substantially equivalent concessions or other obligations under this Agreement the suspension of which the CONTRACTING PARTIES do not disapprove.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, where action is taken under paragraph 2 of this Article without prior consultation and causes or threatens serious injury in the territory of a contracting party to the domestic producers of products affected by the action, that contracting party shall, where delay would cause damage difficult to repair, be free to suspend, upon the taking of the action and throughout the period of consultation, such concessions or other obligations as may be necessary to prevent or remedy the injury.

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