

Safeguards Inquiry into the Import of Pigmeat

Submission to the Productivity Commission

On behalf of the United States Industry, represented by the
National Pork Producers Council (NPPC), the American Pork
Export Trading Company (APEX), the American Meat Institute
(AMI) and the US Meat Exporters Federation (USMEF)

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Glossary and Definitions

In this submission, any reference to:

'**ABS**' means the Australian Bureau of Statistics;

'**Agreement on Safeguards**' means the WTO's *Agreement on Safeguards*;

'**AMI**' means the American Meat Institute;

'**APEX**' means the American Pork Export Trading Company;

'**APL**' means Australian Pork Limited;

'**AQIS**' means the Australian Quarantine and Inspection Services;

'**AUSFTA**' means the Australia-United States Free Trade Agreement;

'**Commission**' or '**PC**' means the Productivity Commission;

'**DSB**' means the WTO Dispute Settlement Body;

'**FTA**' means the Free Trade Agreement;

'**GATT**' means the *General Agreement on Tariffs and Trade 1994*;

'**General Procedures**' means 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' that the Commission is directed to undertake the investigation in accordance with;

'**NPPC**' means the National Pork Producers Council;

'**PCRC**' means the Pork Cooperative Research Centre;

'**Specified goods**' means goods which, if imported, fall within Tariff subheading 0203.29 of the *Customs Tariff Act 1998* (Cth);

'**SPS Agreement**' means the WTO *Agreement on the Application of Sanitary and Phytosanitary Measures*;

'**TOR**' means Terms of Reference

'**USITC**' means the United States International Trade Commission;

'**USMEF**' means the United States Meat Exporters Federation;

'**WTO**' means the World Trade Organization; and

'**WTO Agreement**' means the *Marrakesh Agreement Establishing the World Trade Organization*.

Requests

We request the Commission determine that:

- I. any increase in the volume of global imports was not caused, as required in Article XIX of the GATT, by developments that were unforeseen at the time Australia entered into its current WTO obligations and, on this basis alone, the Commission should halt this inquiry and report to the Government that safeguard measures cannot be imposed.
- II. the Australian goods that are 'like' or 'directly competitive with' imports of the specified goods are primal and sub-primal cuts of pigmeat and, consequently, that the domestic industry consists of boning rooms.
- III. in accordance with Article 9.5 of the AUSFTA, imports from the United States of the specified goods are not a 'substantial cause of serious injury or threat thereof' to the relevant domestic industry and, consequently, such imports must be excluded from any provisional or final safeguard measures that are imposed.
- IV. there is no clear evidence of the 'critical circumstances' required for imposing provisional safeguard measures and, consequently, the Commission should halt the provisional inquiry and report to the Government that provisional measures cannot be introduced.
- V. there is no, or alternatively insufficient, objective evidence available of serious injury from any cause to the domestic industry resulting from imports of the specified goods and, consequently, final safeguard measures cannot be imposed.

If the Commission does not make the above determinations, we request that the Commission recommend to the Government, in accordance with the policy guidelines set out in section 8 of the *Productivity Commission Act 1998* (Cth), that safeguard measures would not be in Australia's best interests.

Summary

Unforeseen Developments

- A Paragraph 1(a) of Article XIX of GATT requires a safeguard inquiry to be abandoned unless it can be established that any alleged increase in imports is the result of 'unforeseen developments'. Any developments that may have led to an increase in imports in this case, such as the appreciating Australian dollar and the relaxation of quarantine restrictions on imports of the specified goods from the United States, were foreseeable at the time Australia undertook its current commitments during the Uruguay Round, when the obligations relevant to this inquiry were undertaken. As evidenced by the Commission's 2005 inquiry into the pigmeat industry, these factors, along with the increase in feedstock prices due to drought, are long standing challenges to Australian producers. They are not 'unforeseen developments'.

Domestic Industry

- B Identification of the domestic industry producing like or directly competitive products is an essential prelude to consideration of both the exclusion of imports of the specified goods from the US provided for in Article 9.5 of AUSFTA and the applicability of safeguard measures.
- C The domestically produced products which are like or directly competitive with the specified goods are primal and sub-primal pigmeat cuts. The Australian producers of these pigmeat cuts are boning rooms and it is these businesses (including the cost centers that pertain to boning rooms for vertically integrated producers) that constitute the domestic industry for the purposes of this inquiry. Neither pig producers nor abattoirs form part of the properly defined domestic industry.
- D The process of identifying the relevant domestic industry was advocated by the Australian Government in analogous circumstances in *US-Lamb* and was adopted by the panel and Appellate Body. Australia should now apply the principles it successfully championed in *US-Lamb*.
- E The Commission's assessment of serious injury or threat thereof must focus on the economic performance of boning rooms whose collective output constitutes a major proportion of total domestic production of pig meat cuts.

AUSFTA

- F Imports from the United States are not a substantial cause of any serious injury or threat thereof to the domestic industry. As such, imports from the United States must be excluded from any provisional or final determination of safeguard measures. To the extent that imports from the United States are a cause of serious injury or threat of injury, they are a lesser cause than, for example, imports from Canada or Denmark, the domestic industry's lack of competitiveness, rising feed costs or the appreciation of the Australian dollar.

Increase in Imports

- G Only an increase in imports that is 'recent enough, sudden enough, sharp enough and significant enough, both quantitatively and qualitatively, to cause or threaten serious injury' can justify safeguard measures.
- H Contrary to these dramatic requirements, increase in the rate of imports in this inquiry has exhibited slow, steady and orderly growth. There is no objective evidence to support a conclusion by the Commission that an increase in imports in absolute or relative terms has caused serious injury or threat thereof to the domestic industry as properly defined.

Serious Injury

- I In assessing serious injury, the Commission is required to analyse objective evidence regarding each of a range of economic performance factors relating to the relevant domestic industry to ascertain whether the 'exacting' standard of serious injury or threat thereof has been met.
- J As there is insufficient evidence on which to base an analysis of the relevant economic factors affecting boning rooms, the Commission cannot conclude that serious injury or a threat thereof has been established. The small amount of publicly available evidence as to the performance of the relevant industry does not support a finding of serious injury.

Causation and Non-attribution

- K The *Agreement on Safeguards* requires that a preliminary or final safeguard determination cannot be made unless there is appropriate evidence supporting a conclusion that increased imports have caused serious injury. Furthermore, any other causal factors must be distinguished, separated and quantified to ensure that injury caused by such factors is not attributed to increased imports. In the present matter, other causal factors of alleged injury include lack of competitiveness, feed costs and lack of access to imported feedstock, appreciation of the Australian dollar and subsidisation of ethanol production.
- L It is these other factors that are the overwhelming cause of any alleged injury and any increase in imports has to be regarded as a symptom, not a cause, of such injury.

Provisional Safeguard Measures

- M The provisional safeguard inquiry should be terminated on two main grounds. Firstly, there is no clear evidence that an increase in imports has caused serious injury. Secondly, there is no evidence at all of 'critical circumstances' where delay in imposing safeguard measures would cause damage to the domestic industry that would be difficult to repair.

Public Interest

- N Even if the Commission concludes that there is sufficient objective evidence to support a provisional and/or final safeguard determination, it should recommend to the Australian Government that global safeguard measures not be imposed on the specified imports on the grounds that such measures would not be in Australia's overall best interests because trade restrictions would:
- (i) assist producers and primary processors regardless of need;
 - (ii) reduce incentives for the industry to change and restructure;
 - (iii) adversely affect secondary processors, retailers and consumers;
 - (iv) detract from Australia's capacity to seek reductions in overseas trade barriers; and
 - (v) risk legitimate retaliatory action by exporting countries that may impact on globally competitive Australian industries.

Introduction

1. The Australian pigmeat sector faces numerous challenges in today's increasingly global economy, particularly as a result of a drought that has significantly impacted on the cost of producing pigs; an appreciating Australian dollar and an industry that has generally been unable to lift its competitiveness in recent years despite the assistance provided by the Australian Government.
2. Many of these problems are, to a large degree, irrelevant to this inquiry because, while they may impact the *wider* pigmeat sector, they do not directly affect the domestic industry. This inquiry is squarely focused upon 'whether safeguard action is warranted against imports of meat of swine, frozen, falling within tariff subheading 0203.29 of the Australian Customs Tariff'. This inquiry has a defined TOR, which must not be undermined by irrelevant or inappropriate considerations.
3. Safeguard measures are meant to temporarily protect a particular domestic industry from the effects of a sudden, unexpected surge in imports which causes serious injury (or threatens to cause serious injury) to the domestic industry.
4. Safeguards are an 'extraordinary' remedy. Indeed, safeguard measures were intended by the negotiators of the *Agreement on Safeguards* to be matters out of the ordinary, to be matters of urgency, to be, in short, 'emergency actions'. Such 'emergency actions' are to be:

'invoked only in situations when, as a result of obligations incurred under the [GATT], a [WTO] Member finds itself confronted with developments it had not 'foreseen' or 'expected' when it incurred that obligation... Thus, [GATT] Article XIX is clearly, and in every way, an extraordinary remedy.'¹

5. The Commission is directed to undertake this inquiry in accordance with the *General Procedures*, which correspond to the relevant provisions of the GATT (particularly Article XIX), as well as the *Agreement on Safeguards*. These agreements have been clarified in accordance with the customary rules of interpretation of public international law through recommendations and rulings of the DSB.²
6. In accordance with these governing rules, the Commission must provide a 'reasoned and adequate explanation as to how the facts support' whatever conclusions it might reach in the context of this inquiry.³ In addition, the burden of proving that the conditions for imposing safeguard measures

¹ See Appellate Body Report, *Argentina – Footwear Safeguard*, paragraph 93.

² Such rulings and recommendations are to be found in the adopted reports of panels and the Appellate Body, in accordance with the provisions of the WTO's *Understanding on Rules and Procedures for the Settlement of Disputes*.

³ See, for example, Appellate Body Report, *US – Lamb*, paragraphs 100-107.

have been met lies with the domestic industry. In case of doubt, the Commission must decide that the conditions have not been met. In this inquiry, there are myriad examples where the Commission will not be able to set forth 'reasoned conclusions' with respect to legally mandated factors because there is either no or inadequate information available. In these circumstances, we believe that the Commission must conclude that safeguard measures cannot be recommended.

Unforeseen Developments

7. Paragraph 1(a) of Article XIX of GATT states that safeguard measures may only be imposed if an alleged increase in imports is the result of 'unforeseen developments'. 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. They are not 'unforeseen developments'. Consequently, the Commission should halt its inquiry and report to Government that a prerequisite for provisional and final safeguard measures cannot be satisfied.
8. As the Commission acknowledges in its Issues Paper, the concept of 'unforeseen developments' derives from Article XIX(a) of the GATT, which provides:

'If, as a result of unforeseen developments and of the effect of the obligations incurred by a Member under this Agreement, including tariff concessions, any product is being imported into the territory of that Member in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers in that territory of like or directly competitive products, the Member 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.'
9. In a number of Appellate Body reports, the WTO has highlighted that GATT Article XIX and the *Agreement on Safeguards* are provisions of one treaty – namely, the WTO Agreement – and, as such, constitute an 'inseparable package of rights and disciplines'.⁴
10. The 'existence of unforeseen developments' is a 'prerequisite that must be demonstrated' in order for a safeguard measure to be legitimately applied in accordance with WTO rules.⁵ Therefore, the Commission's report must contain a 'finding' on the question of unforeseen developments to comply with Article 3.1 of the *Agreement on Safeguards*.⁶
11. Turning to the precise requirements of GATT Article XIX:1(a), the WTO Appellate Body has observed that Article XIX:1(a) requires that safeguard measures only be applied to the product

⁴ See, for example, Appellate Body Report, *Argentina – Footwear Safeguard*, footnote 15, paragraph 81; Appellate Body Report, *Korea – Dairy Safeguard*, footnote 16, paragraph 75; Appellate Body Report, *US – Lamb*, paragraph 69; and Appellate Body Report, *US – Steel Safeguard*, paragraph 275.

⁵ See, for example, Appellate Body Report, *US – Lamb*, paragraph 72.

⁶ See, for example, Appellate Body Report, *US – Lamb*, paragraph 76.

that is 'being imported in such increased quantities', and that those 'increased quantities' are being imported 'as a result' of unforeseen developments.⁷ Not just any development that is unforeseen will do. The Appellate Body has noted:

'To trigger the right to apply a safeguard measure, the development must be such as to result in increased imports of the product ('such product') that is subject to the safeguard measure.'⁸

12. Article XIX:1(a) also links the prerequisite of 'unforeseen developments' with the concept of the 'effect of the obligations incurred by a Member under [the GATT]'. In *Argentina – Footwear Safeguard*, the Appellate Body highlighted that these two concepts should be read together when it affirmed the following quote from the one pre-WTO case that involved GATT Article XIX, the so-called *Hatters' Fur* case from October 1951:

'... '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.'⁹

13. The obligations relevant to this inquiry are those incurred during the Uruguay Round of trade negotiations and which led to the establishment of the WTO on 1 January 1995.

All relevant developments were reasonably foreseeable at the time of the concession and are not the result of obligations incurred under the GATT

14. We believe that import growth of the specified goods in this inquiry is not the result of developments that were unforeseen. Rather, the developments that have coincided with changes in the nature of imports were predictable, foreseen and expected when Australia undertook its current obligations during the Uruguay Round.

15. In particular, the Commission should note:

- (a) it was readily foreseeable at the time Australia made the commitment during the Uruguay Round to zero tariffs for products falling within item 0203 of the Australian Customs Tariff that imports would increase.

⁷ See, for example, Appellate Body Report, *US – Steel Safeguard*, paragraph 314.

⁸ See, for example, Appellate Body Report, *US – Steel Safeguard*, paragraph 316.

⁹ See Appellate Body Report, *Argentina – Footwear Safeguard*, paragraph 96.

- (b) it was readily foreseeable during the Uruguay Round that imports might increase as a result of Australia complying with its obligations under the *SPS Agreement*, which clearly envisaged countries placing science at the forefront of quarantine decisions.
- (c) that increased imports are a readily foreseeable result of lifting sanitary restrictions is established by the fact that the Commission itself recognized in the context of the 2005 inquiry into the Australian pigmeat industry that imports from the United States likely would increase 'about 10-fold over the minimum levels achieved upon gaining access in the last quarter of 2004'.¹⁰
- (d) similarly, the appreciation of the Australian dollar and rising feed costs cannot be regarded as having been unforeseen because they are normal economic phenomena.

¹⁰ See PC Inquiry Report, *Australian Pigmeat Industry* (18 March 2005) page 31.

Domestic Industry

It is necessary for the Commission to correctly define the scope of the 'domestic industry that produces like or directly competitive products'

16. Identification of the domestic industry producing the like or directly competitive products is an essential prelude to consideration of both the application of Article 9.5 of AUSFTA, and the application of Article XIX of the GATT and the *Agreement on Safeguards*. The domestic products that are like or directly competitive with the specified imported goods are primal and sub-primal pigmeat cuts. The Australian producers of these products are boning rooms. It is the financial performance of these boning rooms (including the cost centers within vertically integrated producers pertaining to boning rooms) that the Commission must take into account in this inquiry. Neither pig producers, nor abattoirs, nor small goods producers are part of the domestic industry. This definition of the domestic industry follows from application of the final determinations of the panel and Appellate Body in *US-Lamb*, which was successfully argued by the Australian Government. Australia should now apply the principles it successfully championed in *US-Lamb*.
17. The TOR for this inquiry require the 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'. Because Australian quarantine requirements preclude importation of bone-in pigmeat, the product being imported is frozen, boneless pigmeat cuts. These products, when imported, are used in the manufacture of smallgoods, primarily due to constraints under the applicable sanitary and phytosanitary regulations. The tariff subheading in the TOR does not include live or harvested pigs, nor carcasses or half carcasses.
18. Relevant safeguard rules contemplate an analysis of the impact of certain imports upon 'the domestic industry that produces like or directly competitive products'.¹¹ In interpreting these rules, the WTO Appellate Body has outlined a two-stage process of analysis, starting *first* with identification of the domestic product that is 'like or directly competitive' with the imported product; and moving, only *secondly*, to consider the producers of that product. Producers of

¹¹ Paragraph 11 of the *General Procedures* and Article 4.1(c) of the *Agreement on Safeguards* provides that 'domestic industry' means the 'producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.'

products that are *not* 'like or directly competitive products' do not form part of the domestic industry' and their financial performance should not be considered in the analysis.¹²

19. 'Like product' for these purposes is defined in Australia as '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.' No specific definition is provided for 'directly competitive products', however it is axiomatic that products which compete indirectly, tangentially or remotely are not 'directly competitive;' it is head to head competition that is envisaged.

The relevance of *US – Lamb* to the Commission's approach to defining the relevant 'domestic industry' for the purposes of this inquiry

20. In its Issues Paper, the Commission highlights that, since its 1998 safeguards inquiry of imports into pigmeat (which took a broad interpretation of the scope of the relevant domestic industry), direct guidance on the proper determination of the 'domestic industry' in safeguards cases has been provided by the WTO Appellate Body in the *US – Lamb* case. The relevance of the *US – Lamb* case is heightened because the industry definition issue in that case was closely analogous to that in this inquiry. The only pertinent difference is that in *US – Lamb* the product being imported and subject to the inquiry had a wider scope than in this inquiry. The product in that case was lamb meat, fresh, chilled and frozen, including carcasses and half carcasses.¹³ In this inquiry, the product does not include fresh or chilled meat. Nor does it include carcasses and half carcasses.

21. In the *US – Lamb* case, the Australian Government argued:¹⁴

'112. ... lambs produced by feeders (i.e. slaughter lambs) ... are not 'alike in all respects' to lamb meat, and ... have quite different characteristics. A slaughter lamb is alive and is in no way interchangeable with a carcass or some cut of lamb meat. It only obtains 'characteristics closely resembling' lamb meat after it has been slaughtered. Therefore, slaughter lambs are not 'like product' to lamb meat and so feeders do not produce 'like product' to lamb meat.

113. While the USITC based its decision on the definition of the 'domestic industry' on 'like product', the same error would apply if it had in fact used 'directly competitive' as the

¹² Appellate Body Report, *US – Lamb*, paragraph 84. (Emphasis by Appellate Body).

¹³ The full product scope was 'imports of fresh, chilled and frozen lamb meat, imported under subheadings 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20 and 0204.43.20 of the Harmonized Tariff Schedule of the US': see Panel Report, *US – Lamb*, paragraph 2.1.

¹⁴ Australia's first written Submission to the Panel, 19 April 2000, reproduced in the Panel Report, *US – Lamb*, page A-25.

criterion. Clearly, two products are 'directly competitive' only if they compete in the market place. This is confirmed, for example, by the Appellate Body in *Japan - Taxes on Alcoholic Beverages*, in the context of looking at 'directly competitive or substitutable'.⁶⁴

114. In respect of growers, feeder lambs do not compete in the market with carcasses or primal and sub-primal cuts. Neither do lambs for breeding. The markets for lambs for breeding and for feeder lambs are each quite different from that for lamb meat. Therefore, growers do not produce product that is directly competitive with lamb meat.

115. Similarly, slaughter lambs do not compete with the output of packers and breakers, since they are the major input for packers. Thus slaughter lambs are not directly competitive with lamb meat. Therefore, feeders do not produce product that is directly competitive with lamb meat.

⁶⁴ At page 25 of *Japan - Taxes on Alcoholic Beverages*, Appellate Body, WT/DS8/AB/R.'

22. The panel and Appellate Body agreed with Australia's argument. They found that the USITC acted inconsistently with the *Agreement on Safeguards* by defining the domestic industry that produced a product 'like' imported lamb meat as including producers of live lambs in addition to the packers (abattoirs) and breakers (boners) of lamb meat.
23. In reaching this view, the Appellate Body ruled that 'if an input product and an end-product are not 'like' or 'directly competitive', then it is irrelevant, under the *Agreement on Safeguards* that there is a continuous line of production between an input product and an end-product and that the input product represents a high proportion of the value of the end-product, that there is no use for the input product other than as an input for a particular end-product, or that there is a substantial coincidence of economic interests between the producers of these products'.¹⁵

What is the 'like product or directly competitive product' to 'imports of meat of swine, frozen, falling within tariff subheading 0203.29 of the Australian Customs Tariff'?

24. In accordance with the Appellate Body's decision in *US – Lamb*, the first step in the Commission's analysis in this inquiry is to identify the 'like or directly competitive product'. The products subject to this inquiry is meat of swine, frozen, falling within tariff subheading 0203.29 of the Australian Customs Tariff. The only products that are 'like' imported boneless, frozen pigmeat are primal and sub-primal cuts. These are the only products that 'closely resemble' the imported product specified in the TOR, in the sense they may be boned and trimmed in a manner that allows them to be used by a smallgoods manufacturer. Though these domestically-produced

¹⁵ See Appellate Body Report, *US – Lamb*, paragraph 90.

'like' products can be, and to a significant degree are, sold to retailers for sale "as is" to the consumer, imported products do not compete in this market segment.

25. By contrast, live pigs, harvested pigs, carcasses and half carcasses are *not* like imported frozen boneless pigmeat cuts. The characteristics and properties of boneless pigmeat cuts are neither identical to, nor do they closely resemble live pigs, carcasses and half carcasses. They are raw materials for boneless pigmeat cuts, but must undergo significant processing before they may be put to the same end uses as boneless pigmeat cuts. Such differences are reflected in the fact that the products fall under different tariff classifications: 0203.29 (meat of swine, frozen), which is distinct from live pigs (Item 0103), and carcasses and half carcasses (0203.11 (fresh or chilled) and 0203.21 (frozen)).¹⁶
26. Application of the alternative criterion of 'directly competitive goods' produces the same outcome. The relationship between *upstream* products, such as pigs, harvested pigs, carcasses and half carcasses; and *downstream* products, such as primal and sub-primal cuts, is an *indirect* one. The Commission in its 2005 analysis of the Australian pigmeat industry said as much with respect to the relationship between pigmeat used as an input to the secondary processing sector and fresh pigmeat: 'increased imports could be expected to *directly* reduce prices received for pigmeat used as an input for the secondary processing sector, and *indirectly* reduce prices for fresh pigmeat',¹⁷ and further, that 'pigmeat destined for the fresh market, ... *does not directly compete* with imports'.¹⁸
27. The relationship between imports and live animals and carcasses is even more indirect, as was argued by the Government of Australia in the *US-Lamb* case:

'[T]wo products are 'directly competitive' only if they compete in the marketplace...

[F]eeder lambs do not compete in the market with carcasses or primal or sub-primal cuts ... Similarly slaughter lambs do not compete with the output of packers and breakers, since they are the major input for packers.¹⁹

The same analysis applies in this case, subject only to the qualification that the products subject to inquiry in *US-Lamb* were somewhat broader than those in this case.²⁰

¹⁶ In this regard, it may be noted that the structure of the producing and processing industries in the *US - Lamb* matter were in all material respects analogous to the facts of the present matter except that the specified imported goods in the lamb meat inquiry *included* carcasses and half carcasses. The scope of the 'like' product in this case is more *tightly* prescribed in this matter than in *US - Lamb*.

¹⁷ PC Inquiry Report, *Australian Pigmeat Industry* (18 March 2005) page 45. (emphasis added)

¹⁸ Ibid, page 200 (emphasis added).

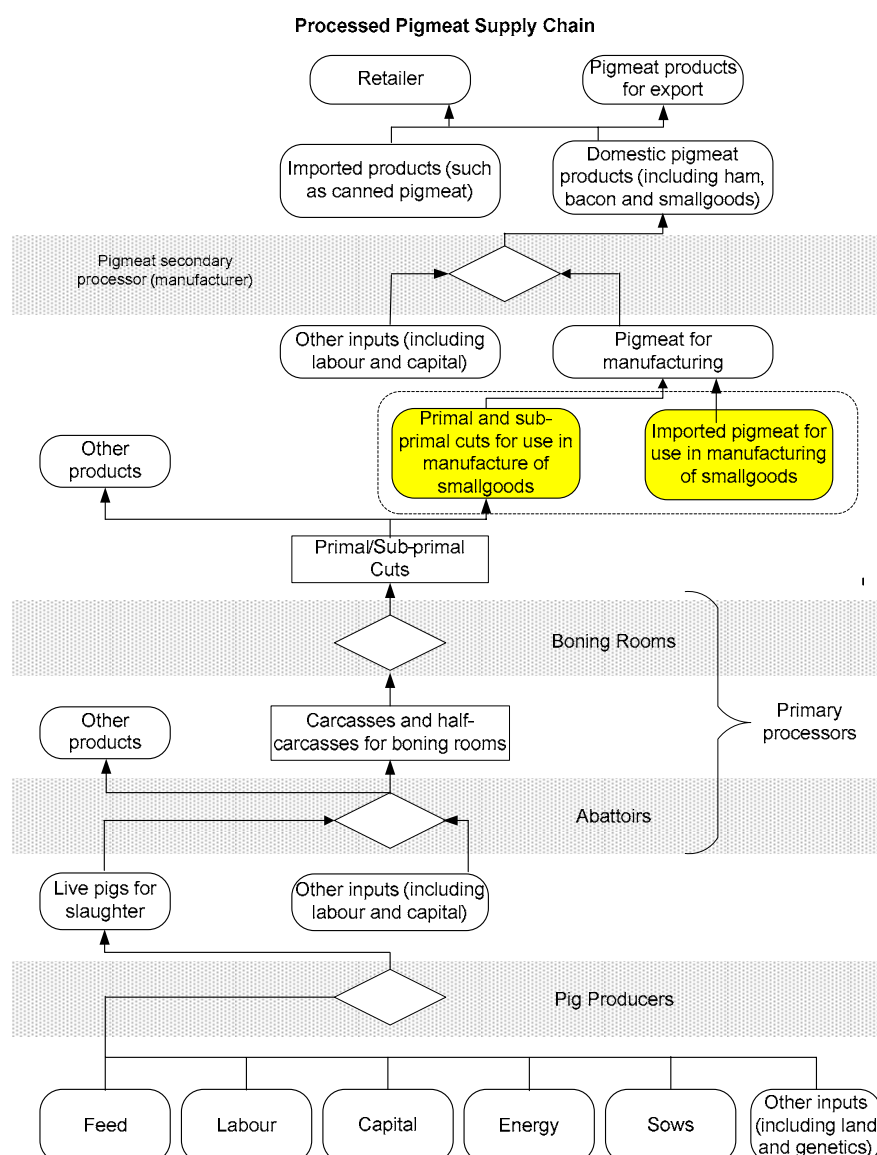
¹⁹ Australia's first written Submission to the Panel, 19 April 2000, reproduced in the Panel Report, *US - Lamb*, page A-25, paragraphs 113-115.

²⁰ See above paragraph 20 and footnote 16.

What is the 'domestic industry that produces the like or directly competitive product'?

28. Having identified the 'like or directly competitive product' as primal and sub-primal cuts, the next step is to consider the domestic industry that produces this 'very specific group of products'.²¹ In its 2005 report on the Australian Pigmeat Industry, the Commission broke the industry down into pig producers, pigmeat primary processors and pigmeat secondary processors (smallgoods manufacturers).²²
29. The processed pigmeat supply chain is illustrated in the following table based on the Commission's analysis in 2005:

Figure 1



²¹ Appellate Body Report, *US – Lamb*, paragraph 84.

²² PC Inquiry Report, *Australian Pigmeat Industry* (18 March 2005) page 5.

30. As can be seen from the diagram, boning rooms are the domestic producers of the like and/or directly competitive product. Boning rooms, as a distinct operation, are where 'the carcass is divided into primal and sub-primal cuts'.²³
31. The report of the Commission distinguished between 'abattoirs' and 'boning rooms' as distinct elements of primary processing. The 'end products of [abattoir] processes are whole carcasses, half carcasses, edible offal and other by-products'. None of these products is like or directly competitive with the imported product under investigation. Accordingly, the 'domestic industry' relevant to this inquiry is limited to boning rooms producing primal and sub-primal cuts. It does not extend to abattoir operations.²⁴ And, it certainly does not extend to producers of live or harvested pigs.
32. Consistent with the clear and explicit ruling on this point by the WTO Appellate Body, the following factors are irrelevant for purposes of determining the appropriate scope of the domestic industry:
- (a) the existence of a continuous line of production between these various input products and primal and sub-primal cuts;
 - (b) the proportion of the value of these upstream products in the value of primal and sub-primal cuts;
 - (c) the fact that these input products are used primarily or exclusively for production of primal and sub-primal cuts; and
 - (d) the coincidence of economic interests between the producers of these products and the producers of primal and sub-primal cuts.
33. Likewise, any degree of vertical integration amongst pig growers, abattoirs and boning rooms is not relevant. As set out above, the relevant 'domestic industry' must be analysed by reference to the product under investigation, not by reference to ownership arrangements amongst different levels of the production chain. This does not mean that vertically integrated producers may be excluded from the Commission's analysis, but rather that the Commission should gather data specifically for the boning rooms of such vertically integrated producers.²⁵

²³ Ibid, page 14.

²⁴ In the *US – Lamb* case the domestic industry was held properly to include packers (equivalent to abattoirs) and breakers (equivalent to boning rooms) because carcasses and half carcasses were included within the product scope of the investigation. In this case, abattoirs are not properly part of the domestic industry because carcasses and half carcasses are *excluded* from the product scope of the inquiry.

²⁵ The need for the Commission to gather suitably disaggregated data pertinent to the boning room industry was the subject of our initial submission to the Commission of 9 November 2007.

34. As the Commission's Issues Paper highlights,²⁶ the AUSFTA expressly permits Australia to exclude US imports from global safeguards if they are not 'a substantial cause of serious injury or threat thereof.'²⁷ As demonstrated below, the Commission should exclude US imports because they are not a 'substantial cause' of the alleged serious injury or threat thereof.

Application of the Article 9.5 AUSFTA Exclusion

35. This matter is the first global safeguard investigation by Australia since the AUSFTA entered into force. Consequently, this inquiry is the first opportunity for the Commission to define how the Article 9.5 exclusion should be applied. There are three preliminary questions that must be addressed:
- (a) What criteria should be used to determine whether US imports are a 'substantial cause' of serious injury?
 - (b) At what point in the inquiry should the Commission separately consider US imports?
 - (c) Why should the Commission recommend the exclusion be applied?

US imports can only be a substantial cause of serious injury if they are a more important cause than any other cause of serious injury

36. The term 'substantial cause' is defined in the AUSFTA to mean a 'cause which is important and *not less than another cause*.'²⁸ There are two distinct components to this definition. First, US imports can only be a substantial cause of serious injury if they are an 'important' cause of that injury. Second, US imports must *also* be equal to or greater than any another cause. In other words, even if US imports are an important cause of serious injury, they will not be a 'substantial cause' if any other cause results in the same or greater injury.

The Commission should apply the Article 9.5 exclusion at the outset of the inquiry

37. The WTO Appellate Body has determined that where an investigating authority has conducted a safeguard investigation considering imports from all sources, including any countries that might have an FTA with the country conducting the investigation, that investigating authority may not, without any further analysis, exclude imports from FTA partners from the application of the resulting safeguard measure.²⁹ If this were to occur, the Appellate Body has noted that there

²⁶ See PC Issues Paper, *Safeguards Inquiry into the Import of Pigmeat*, (October 2007), page 14.

²⁷ AUSFTA Art. 9.5.

²⁸ AUSFTA Art. 9.6 (emphasis supplied).

²⁹ See, for example, Appellate Body Report, *US – Steel Safeguard*, paragraph 441.

would be a gap between, 'on the one hand, imports covered by the investigation and, on the other hand, imports falling within the scope of the safeguard measure.'³⁰ In order to avoid this potential lack of parallelism issue, the Commission should analyse at the outset of this inquiry whether imports from the US, standing alone, are a substantial cause of serious injury or a threat thereof. If imports from the US are not a substantial cause of such injury, the Commission should consider whether global import from all other subject countries meet the requirements for imposing safeguard measures under Article XIX of the GATT and the *Agreement on Safeguards*.

38. This approach is consistent with the Parties' understanding of how the Article 9.5 exclusion would operate. For example, the Minister for Trade, the Hon. Mark Vaile stated during the Second Reading of the Bill that implemented the AUSFTA that the Article 9.5 exclusion would permit the investigating country to exclude 'imports *from the beginning*' [emphasis added].³¹ Although Minister Vaile was expressly talking about how the US would treat Australian imports, we believe that Australia should provide the same treatment it expects to receive from the United States in any global safeguard investigation.
39. This approach is also consistent with Australia's replies to questions posed by the European Communities in the WTO to Australia's notification of changes to its safeguard rules.³² Australia acknowledged that if imports from FTA partners are to be excluded from the scope of any safeguard measures imposed, the imports must have been excluded from the injury phase as well. In order to adhere to this principle, the Commission should conduct a separate analysis of US imports at the outset of the investigation. This way it can exclude US imports from the injury phase, and avoid the parallelism issue noted above.

Australia should broadly exercise its discretion to exclude imports from the United States from any global safeguard measures

40. The current inquiry is the first time that the issue of the application of Article 9.5 of the AUSFTA has arisen for consideration by either Party. Consequently the interpretation adopted by the Commission in this inquiry will establish a precedent for any future safeguard matters that might arise between the Parties.
41. In our view, it is clearly in Australia's best interests for the Commission to adopt an expansive (as opposed to a trade-restrictive) interpretation of the circumstances in which the exclusion should apply for a number of reasons, most particularly – because Australia is a global proponent of trade

³⁰ See, for example, Appellate Body Report, *US – Steel Safeguard*, paragraph 441.

³¹ Second Reading Speech on the Introduction of the US Free Trade Agreement Implementation Bill 2004 (June 23, 2004): *Hansard*, House of Representatives, 23 June 2004, 31219.

³² *Replies to Questions Posed by the European Communities Regarding the Notification of Australia*, G/SG/Q1/AUS/6, (April 25, 2006).

liberalization in general and of trade in agricultural goods in particular. Perhaps more importantly, Australia has a significant, favourable agricultural trade balance with the US. The magnitude of Australia's surpluses are clearly shown below in Table 1 with respect to bilateral trade in meat products.

Table 1 **Bilateral trade in meat products**

Description	2003	2004	2005	2006
Australia Surplus on Bilateral Meat Trade in Absolute Terms (Thousand of US\$)	\$1,158,338	\$1,396,343	\$1,195,025	\$1,231,888
Australia's Meat Exports as a Percentage of US Meat Exports	21,591%	19,197%	2,250%	2,284%

Source: US Department of Agriculture Foreign Agricultural Service:

<http://www.fas.usda.gov/ustrade/USTImFAS.asp?QI=>

US imports are not a substantial cause of serious injury or threat thereof

42. As we highlight below,³³ we believe that:
- (a) there is insufficient data on the relevant injury factors to enable the Commission to come to a 'reasoned conclusion' on the question of 'serious injury or threat thereof' in accordance with the requirements established by the *Agreement on Safeguards*; and
 - (b) even if the Commission chooses to make a determination on the basis of the evidence available, such evidence does not substantiate any injury to the relevant domestic industry.
43. But even if the Commission ultimately determines that serious injury or threat thereof exists, we believe that US imports – in the context of Article 9.5 of the AUSFTA – are not a 'substantial cause' of any such injury or threat thereof for the following reasons.

US import volumes have not increased significantly in recent periods

44. Imports of pigmeat from the US have only been permitted to enter the Australian market since 2004, when Australia changed its quarantine policy to permit such imports. As a result, the Commission does not have five years of data, which is the period normally considered, to assess 'the trend rate of increase and absolute quantities of imports' from the US.³⁴

³³ See paragraphs 80 ff dealing with 'serious injury'.

³⁴ PC Issues Paper, *Safeguards Inquiry into the Import of Pigmeat*, (October 2007), page 9.

45. Immediately after the relevant quarantine restrictions were lifted, US imports naturally grew at a significant rate for a brief period. However, that period of rapid growth occurred several years ago and is not recent.
46. Since that time, US imports have grown slowly and steadily, as one would expect in what is still a new market. That said, and as discussed in more detail below, US imports have entered Australia at lower volumes than imports from either Canada or Denmark. And, the most recent trends show that US import volumes decreased significantly following a seasonal peak in mid 2007. The limited increase and the recent decrease in US imports do not meet the WTO Appellate Body's requirement that 'the increase in imports' must be 'recent enough, sudden enough, sharp enough and significant enough'.³⁵

US import volumes have consistently been lower than imports from Canada or Denmark

47. The clearest evidence that US imports are not a 'substantial cause' of injury is the fact that US import volumes are lower than the import volumes from any other country in both absolute and relative terms. As demonstrated in the following chart, since US imports entered Australia in December 2004, they have consistently been lower than imports from Canada or Denmark.

Table 2 Share of imports into Australia from Canada, Denmark and the United States

Concept	2005	2006	Jan.-Oct. 2007
Global Imports	78,139,238	81,385,578	87,672,535
Imports from Canada	34,407,537	34,792,793	33,926,780
Imports from Denmark	25,305,557	27,508,573	28,051,342
Imports from United States	18,386,856	19,043,768	25,644,918
Canadian Share of Total Imports	44.03%	42.75%	38.70%
Danish Share of Total Imports	32.39%	33.80%	32.00%
US Share of Total Imports	23.53%	23.40%	29.25%
US/Canadian Share of Total Imports	67.56%	66.15%	67.95%

Source: ABS Statistics

Source: ABS data

48. US imports must be less of a cause of the alleged injury because US volumes are lower than those from other countries.
49. In absolute terms, US imports were 16,000 metric tons lower than Canadian imports in 2005 and almost 7,000 metric tons lower for 2007 year to date. Likewise, US imports were almost 7,000 metric tons lower than Danish imports in 2005 and nearly 3,000,000 kilograms lower for 2007 year to date.
50. In relative terms, US imports were less than 30 percent of total imports in 2005 and 2006, and during the periods January-September 2006 and January-September 2007.

³⁵ Appellate Body Report, *Argentina – Footwear Safeguard*, paragraph 131.

51. Imports from other countries, both individually and collectively, are greater than imports from the US. Consequently, if the Commission finds that imports are a cause of serious injury, it must conclude that imports from other countries are more of a cause than imports from the US. Once the Commission reaches this conclusion, it should find that US imports are not a substantial cause of serious injury because they are, in fact, less than another potential cause – imports from Canada and/or Denmark.
52. Table 2 also demonstrates that although US imports grew from January-October 2006 to January-October 2007, that growth was at the expense of Canadian imports, not Australian producers. While the share of US imports increased in this period by 4 percentage points (from 23.53 percent to 29.25 percent), the share of Canadian imports fell by 5 percentage points. Collectively, the share of US and Canadian imports (as a percentage of total imports) remained flat from 2005 to 2007 year to date. This demonstrates that the growth of US imports during 2007 (as compared to the same period in 2006) was not at the expense of Australian producers. Even APL recognizes that the growth of US imports was at the expense of Canadian imports.³⁶

US import volumes have decreased significantly, and at a far greater rate than Canadian imports and imports from Canada and Denmark

53. Since peaking in May 2007, US import volumes have decreased significantly, and at a far greater rate than imports from Canada, and imports from Canada and Denmark. The Commission should focus heavily on trends during this most recent period in accordance with applicable WTO jurisprudence. The following chart provides monthly import volumes for 2007:

Table 3 Monthly import volumes for 2007

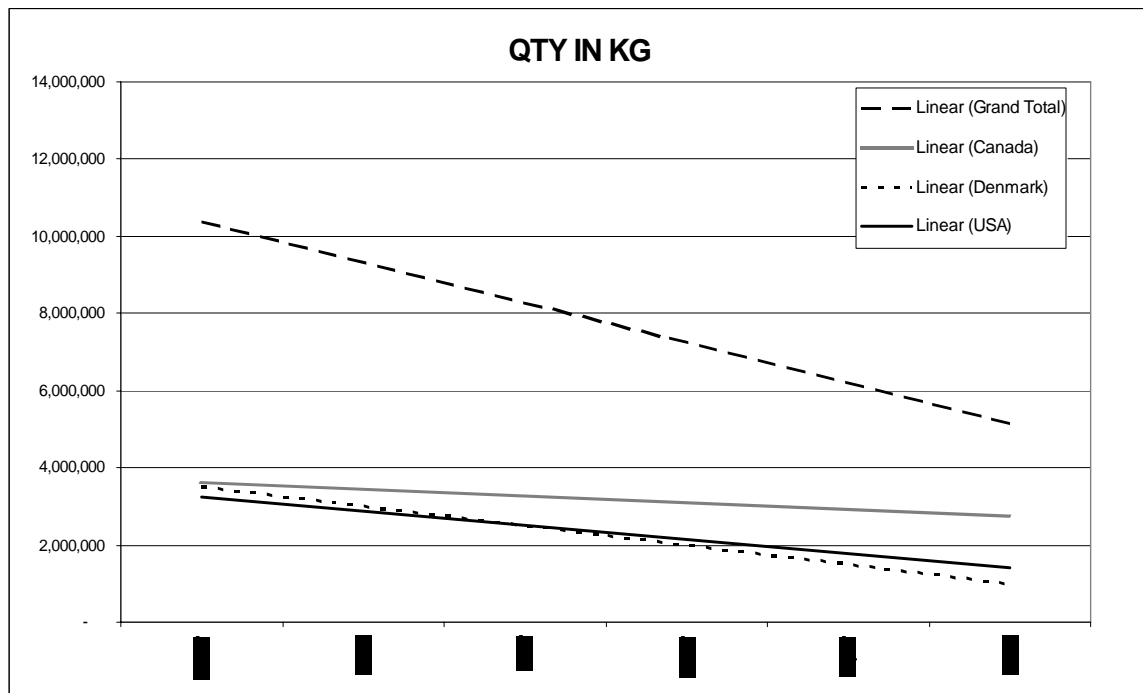
Source	January	February	March	April	May	June	July	August	September	October	May/Oct
Global Imports	9,756,735	8,670,176	11,563,561	11,162,837	12,518,611	8,436,611	6,389,533	6,508,054	6,053,731	6,612,686	-47.18%
Canada	3,353,459	3,318,238	4,918,636	3,266,157	4,425,103	3,267,980	2,364,466	2,843,287	2,767,712	3,401,742	-23.13%
Denmark	3,472,989	2,911,950	3,643,456	4,538,456	4,320,607	2,629,967	1,517,150	2,075,590	1,597,407	1,343,770	-68.90%
United States	2,905,584	2,439,988	2,976,677	3,358,224	3,772,901	2,538,664	2,507,917	1,589,177	1,688,612	1,867,174	-50.51%
Canadian Share of Total Imports	34.37%	38.27%	42.54%	29.26%	35.35%	38.74%	37.01%	43.69%	45.72%	51.44%	
Danish Share of Total Imports	35.60%	33.59%	31.51%	40.66%	34.51%	31.17%	23.74%	31.89%	26.39%	20.32%	
US Share of Total Imports	29.78%	28.14%	25.74%	30.08%	30.14%	30.09%	39.25%	24.42%	27.89%	28.24%	

Source: ABS data

54. US imports in October 2007 were 50 percent lower than US imports in May. In contrast, Canadian imports decreased by only 23 percent.
55. The following graph illustrates the recent significant decrease in US imports, and how US imports have decreased more rapidly than Canadian imports as well as total imports.

³⁶ APL *Pork it up* (November 2007) at page 6 (attached as Annexure 5).

Figure 2 Import Quantities (2007)



Source: ABS data

Other causes are likely a greater cause of injury than US imports

56. In its 1998 and 2005 inquiries, the Commission identified several challenges to Australian producers, including the loss of export markets, high feed costs, and drought. In our view, each of these factors have had, and threaten to have, a far more significant impact on the wider Australian pigmeat sector than US imports. As such, US imports cannot be a 'substantial cause' of injury. We discuss these other – more significant – causal links below in more detail,³⁷ but in the meantime and in the context of Article 9.5 of the AUSFTA, we believe the following are particularly significant in terms of Article 9.5.

Decreased Export Volumes for Australian Producers

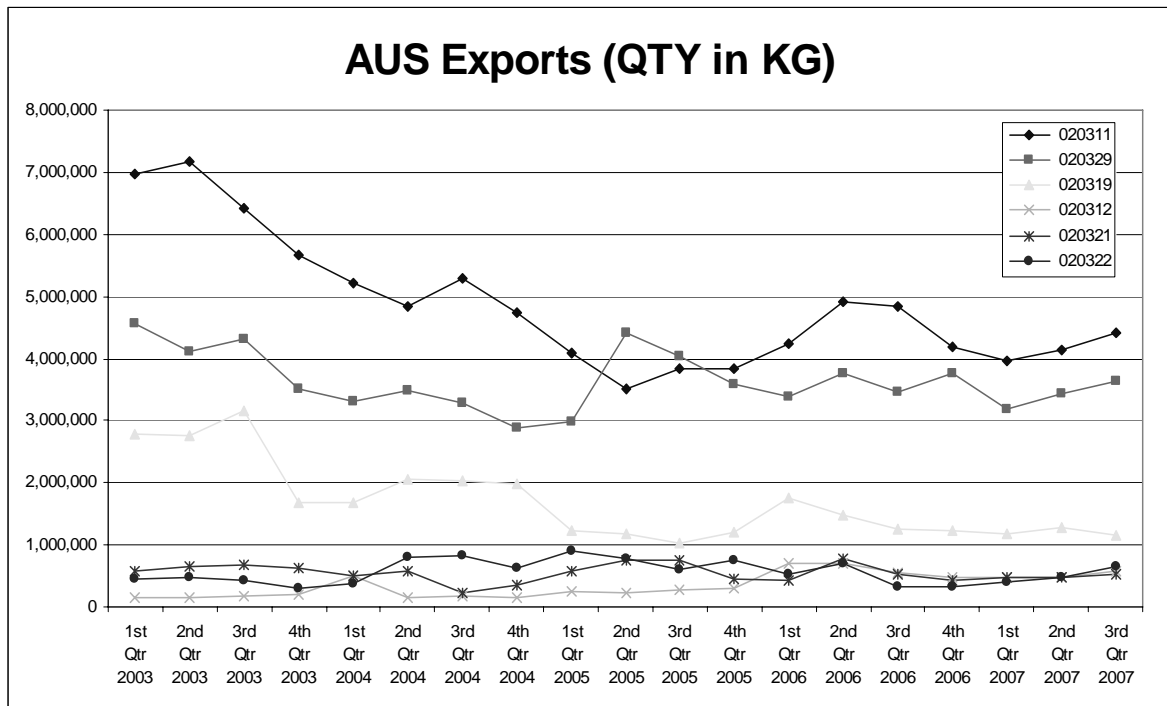
57. From 1999-2001, Australian pigmeat exporters enjoyed strong demand and profits in Asian markets, such as Singapore and Japan. However, starting in 2001, Australian exports began to decrease as disease outbreaks ran their course in other major exporters (such as the European Union), and the Australian currency appreciated vis-à-vis other major exporters, such as the United States, Canada and Denmark.
58. As a result of the loss of export markets, Australian producers were compelled to place thousands of tons of pork into the domestic market over the past few years. The loss of export markets injures Australian producers because 'Australian pig producers/marketers can sometimes obtain a

³⁷ See paragraphs 105-126 in relation to 'causation'.

higher net return [for exports] than by selling products domestically because of differences in consumer preferences from one country to another and other market factors.³⁸

59. The following graph shows the significant loss of exports since January 2003, by tariff code:

Figure 3 Exports into Australia by tariff code



Source: ABS Data

60. Total Australian pork exports fell from 15,492 metric tons in the first quarter of 2003 to 10,966 metric tons in third quarter of 2007, a drop of 29 percent. As seen in the chart, carcasses and half-carcasses (classified under 020311) accounted for the majority of the decrease in exports.

High Feed Costs/Drought

61. The Commission should also consider whether US imports, standing alone, are a greater cause of injury than the long-standing drought and higher feed costs. In our view, and as outlined more fully below,³⁹ the indirect impact of higher feed costs and the drought, passed on to boning rooms from hog farmers through higher costs for carcasses, is far greater than the impact of US imports.

Imports of pigmeat from the United States do not pose a threat of serious injury

62. Finally, US imports are not a 'substantial cause' of any possible threat of serious injury.
63. The volumes of imports from the United States have remained at consistently lower levels than imports from other sources. US imports are not likely to significantly increase their share of the

³⁸ PC Inquiry Report, *Australian Pigmeat Industry* (18 March 2005) page 23.

³⁹ See paragraphs 116-121 below.

market in the imminent future due to limitations both on imports into Australia and on exports from the United States.

64. In order to import pork from the United States, importers must meet AQIS requirements.⁴⁰ Under these rules, importers are required to obtain Import Permits and enter into Compliance Agreements, and they must meet the stringent SPS handling and transportation restrictions for pigmeat after importation and pay the costs associated with meeting these requirements.⁴¹ These restrictions are an important barrier to entry of importers, which limits the volume of US imports.
65. In addition, due to demand in the United States and third country markets for pork, the volume of US imports into Australia is likely to be limited in the imminent future. The vast majority of US pork is consumed fresh or chilled in the large and growing US market and in major, well-established export markets. Focusing for the moment only on frozen pork of the sort subject to this inquiry, as the following chart shows, US producers have six export markets to which they ship higher volumes of frozen pigmeat under tariff heading 0203.29 than they ship to Australia.

Table 4 Top Export Destinations for US Pigmeat (HTS No. 0203.29) in 2006

COUNTRY	2006 (Metric Tons)	VOLUME
Japan	118,604	
Korea	42,741	
Russian Federation	38,140	
China	35,082	
Hong Kong	17,391	
Australia	17,109	

Source: US Department of Agriculture, Economic Research Service (ERS), FATUS Export Aggregations, available at <http://www.fas.usda.gov/ustrade/USTExFatus.asp?QI=>

66. The US industry is committed to supplying the US market and these key export markets. This will not change in the imminent future. In addition, US producers are not expected to have significant additional inventories in 2008 that would enable them to ship additional volume to Australia. US inventories for pork, which includes mainly frozen pigmeat as fresh meat must be

⁴⁰ See AQIS, Public Quarantine Alert PQA0339. For example, prior to the exportation of the pigmeat, the bones and major lymph nodes must be removed.

⁴¹ Ibid.

consumed, are expected to remain relatively stable, increasing from 254,000 in 2007 to a projection of 256,000 metric tons in 2008.⁴²

67. In sum, US imports should be excluded from this inquiry because they cannot reasonably be regarded as a 'substantial cause' of any of the alleged serious injury or threat thereof that is being levelled against imports more generally.

⁴² US Department of Agriculture, Foreign Agriculture Service, Official USDA estimates, *available at* <http://www.fas.usda.gov/psdonline/psdQuery.aspx>.

Increase in Imports

Only an increase in imports that is 'recent enough, sudden enough, sharp enough and significant enough, both quantitatively and qualitatively, to cause or threaten serious injury' can justify safeguard measures

68. The Commission must determine whether imported frozen pigmeat cuts are being 'imported into Australia in such increased quantities, absolute or relative to production, and under such conditions' as to cause or threaten serious injury to the relevant domestic industry.
69. The Appellate Body has addressed these requirements, and has made clear that: 'whether the requirement of imports 'in such increased quantities' is met is not a merely mathematical or technical determination.... [T]his language ..., requires that the increase in imports must have been *recent enough, sudden enough, sharp enough, and significant enough*, both quantitatively and qualitatively, to cause or threaten to cause 'serious injury'.⁴³ This is because the requirement as to increased imports must 'be read in the context of the 'extraordinary nature' of the 'emergency action' that is authorized by Article XIX:1(a) of the GATT".⁴⁴
70. Data from the most recent period is highly relevant.⁴⁵ Nevertheless, 'although data from the most recent past has special importance, competent authorities should not consider such data in isolation from data pertaining to the entire period of investigation.'⁴⁶
71. The threshold of increased imports in a safeguard investigation is therefore a very high one. This is consistent with the extraordinary nature of the safeguard measure.
72. In sum, the Commission must:
- (c) consider whether imports have increased *recently, suddenly, sharply* and *significantly* before a safeguard measure may be contemplated; and
 - (d) analyse the data available with a view to assessing these factors both *quantitatively* and *qualitatively* including through consideration of trends across the data available.

Data on developments with imports

73. Figure 4 shows the volume of imports from all sources. Although this data reveals a quantitative increase in imports from about 4,000 tonnes per month in September 2002 to about 6,000 tonnes

⁴³ Appellate Body Report, *Argentina – Footwear Safeguard*, paragraph 131; Reaffirmed in Appellate Body Report, *US – Steel Safeguard*, paragraph 346.

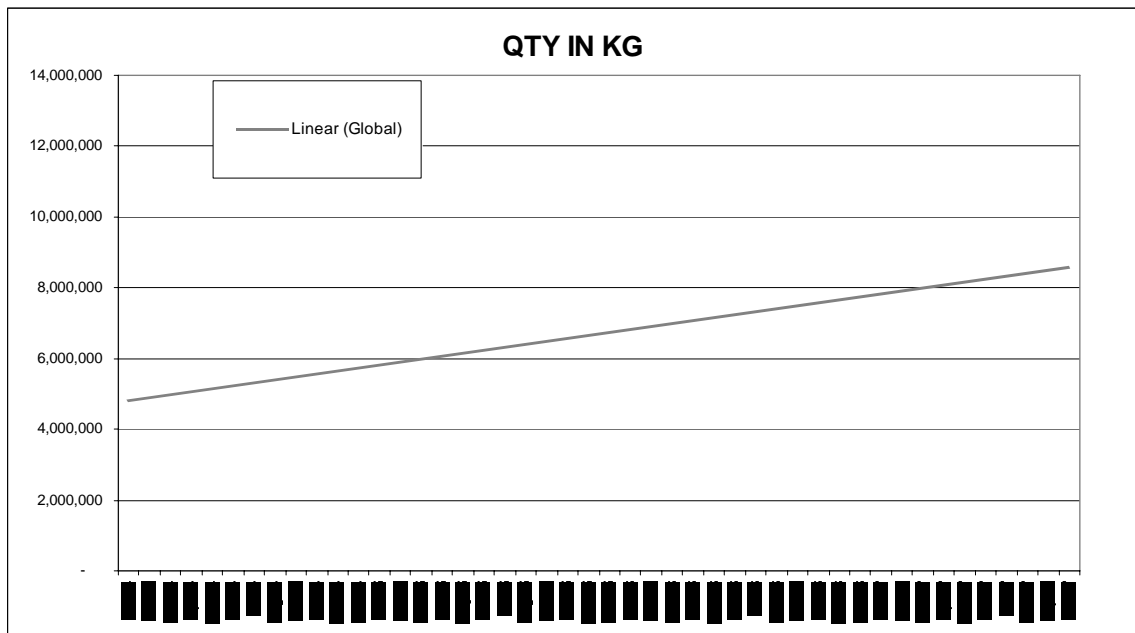
⁴⁴ Appellate Body Report, *US – Steel Safeguard*, paragraph 346.

⁴⁵ Appellate Body Report, *US – Lamb*, paragraph 137.

⁴⁶ Ibid, paragraph 138.

in September 2007, the increase is neither sudden nor sharp. It reflects a continuation of longer term trends, which have seen a gradual increase in market share from efficiently produced imports. Import growth has been gradual and steady, subject to a recurring and predictable seasonality, reflecting demand for the product.

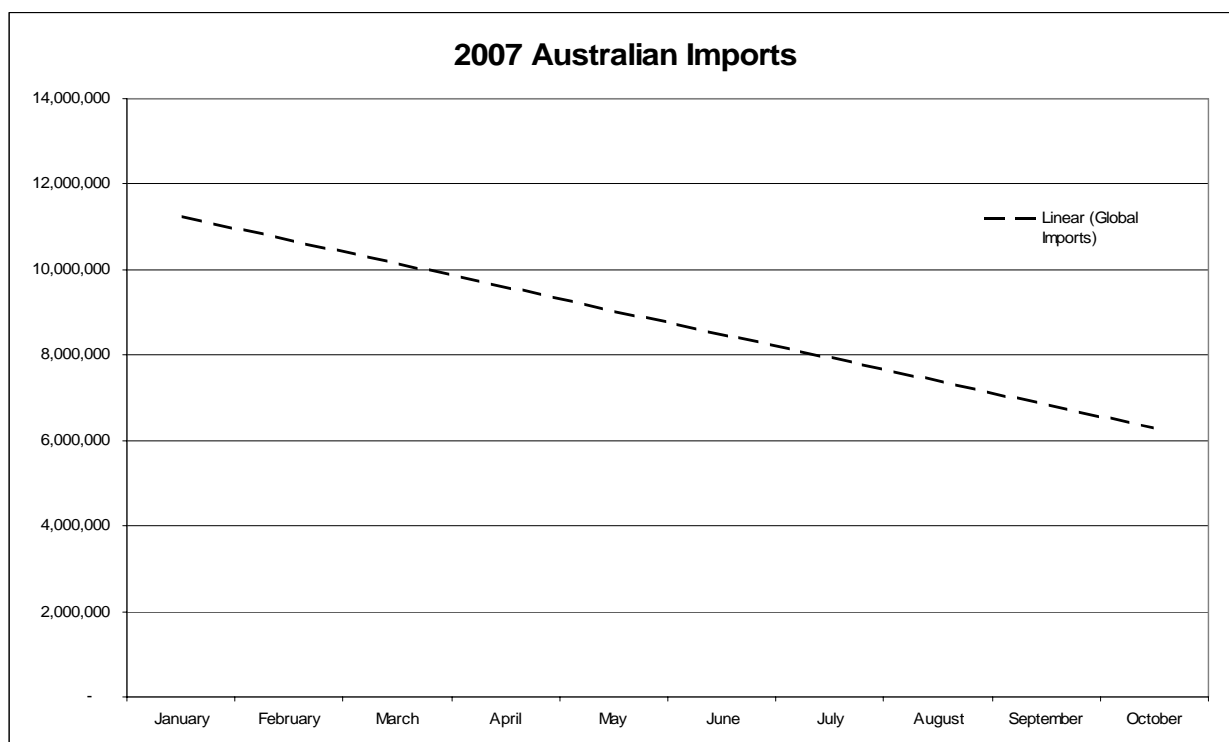
Figure 4 Increase in imports from January 2004 – October 2007



Source: ABS data

74. As can be seen in Figure 4, there has not been a surge in imports that would meet the requirement that the requisite change in the nature of imports be 'recent'. Instead, as Figure 5 demonstrates, during the most recent period (i.e., May 2007 to the present) imports declined significantly. The peak in imports that preceded this period were partially cyclical in nature, and partially due, according to industry sources, to extraordinary factors such as a threatened strike at a major Danish processor (this labour issue has been resolved).

75. **Figure 5**



Source: ABS data

76. Data on imports relative to domestic production of the like or directly competitive product (i.e., primal and sub-primal cuts produced by boning rooms) is not available. In its 2005 inquiry on the Australian Pigmeat Industry, the Commission estimated for some of its calculations that around 40 percent of total domestic production of pigmeat was dedicated to the fresh meat sector.⁴⁷ Consumption of fresh pork in this market segment is expanding significantly, by 25 percent in recent years.⁴⁸ This means that earlier estimates as to the proportion of meat entering the secondary processing sector may be unreliable, particularly when total production has remained fairly steady (see Figure 6 below).
77. In the absence of precise data on these issues, it is impossible to estimate with any reliability the relativities between domestic meat destined for secondary processing and imports of frozen, boneless pigmeat cuts. The Commission itself recommended "caution" when interpreting estimates as to the share of the processing sector taken respectively by imports and domestic

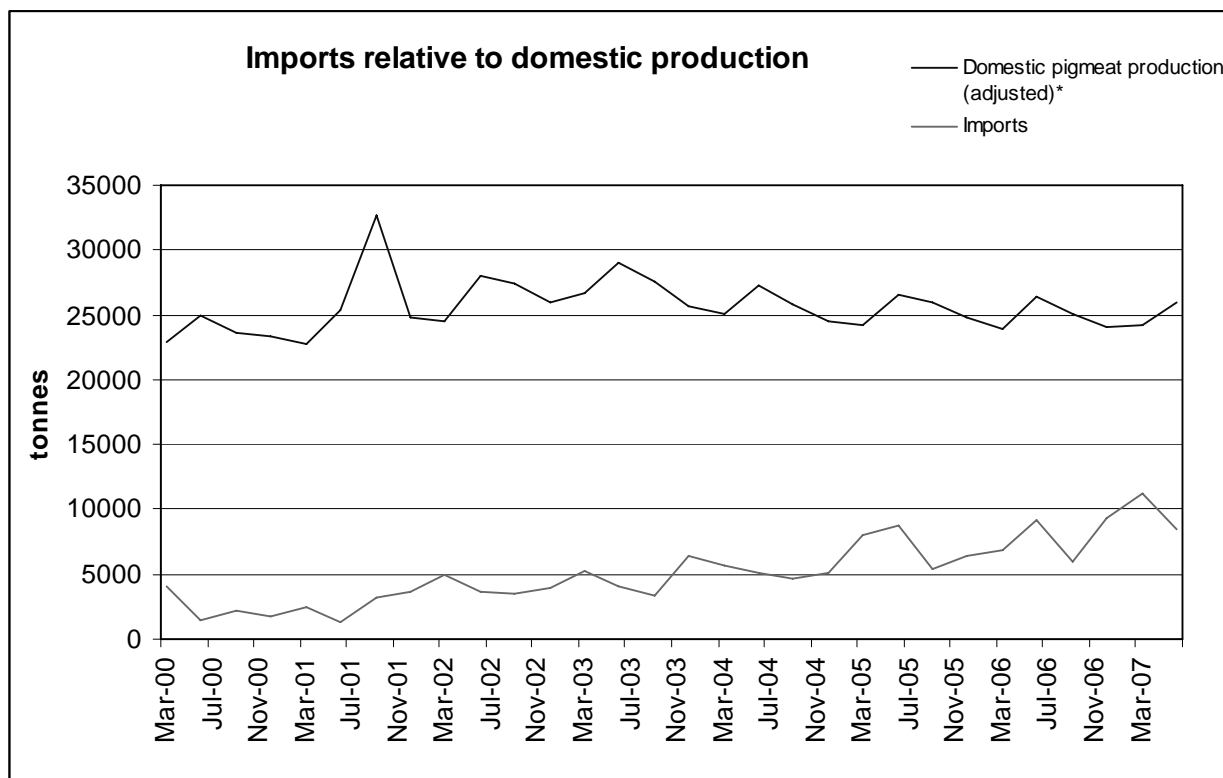
⁴⁷ See, for example, PC Inquiry Report, *Australian Pigmeat Industry* (18 March 2005), Appendix B-4, page 200.

⁴⁸ British Pig Executive Briefing Paper of May 2006 (attached as Annexure 7).

pigmeat, because such results were "sensitive to the assumptions made about meat yield and the proportion of domestic production entering the manufacturing sector".⁴⁹

78. Figure 6 below sets out the available data on total domestic pigmeat production relative to imports of frozen boneless pigmeat cuts. This figure reveals that domestically produced pigmeat continues to represent the lion's share of pigmeat in Australia.

Figure 6



Source: ABS data from PC website, see http://www.pc.gov.au/data/assets/excel_doc/0003/72291/Web_Data2.xls adjusted as per Note (see below).

Note: * Domestic pigmeat production from ABS data adjusted to equivalence with imports using conversion factor of 0.78⁵⁰

⁴⁹ PC Inquiry Report, *Australian Pigmeat Industry* (18 March 2005), Annex B-4, p. 201

⁵⁰ This corresponds to the carcass to retail conversion factor published by The Food Industry Center, University of Minnesota. As the Center explains: "A carcass with an average weight of 184 pounds yields 142.8 pounds of retail product; and $142.8/184 = 0.776$. Many of the current retail cuts are boneless or semi-boneless, so if all product was boneless the conversion factor would be 72.9 percent, only slightly lower, with the total weight of edible product being 134.1 pounds. The conversion factors do not count any weight added by absorption such as pumping for hams since the solution is not pork". (*Agricultural Conversion Factors*. The Food Industry Center, University of Minnesota, http://foodindustrycenter.umn.edu/Agricultural_Conversion_Factors.html). We note that the Commission used different conversion factors for legs and middles in its 2005 report.

79. It is also important in this inquiry to take into account the fact that domestic producers face absolutely no import competition on the proportion of their production that is sold to retailers and for export. It therefore is hard to see how the relatively minor increase in imports could be significant enough to cause any injury at all, let alone the very high level of injury required to impose safeguard measures.

Serious injury and threat of serious injury

Serious injury and threat of serious injury are 'exacting' and 'very high' standards

80. '[S]erious injury' means a significant overall impairment of a domestic industry' and '[t]hreat of serious injury' means serious injury that is clearly imminent'⁵¹ and a determination of threat 'shall be based on facts and not merely on allegation, conjecture or remote possibility'.⁵² WTO disputes settlement decisions make clear that, in determining the existence of serious injury to a domestic industry, a domestic authority must apply a 'very high',⁵³ 'exacting'⁵⁴ standard.⁵⁵
81. In undertaking its inquiry on this aspect, the Commission is to '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'.⁵⁶ As with other elements of the inquiry, such analysis needs to be supported by 'objective evidence'.⁵⁷
82. In undertaking its analysis in this matter, the Commission is – in line with applicable WTO jurisprudence – bound to observe the following requirements:
- (a) every relevant factor needs to be analysed to determine whether the 'exacting' standard of serious injury is met;
 - (b) if 'threat' of injury is claimed, the Commission must consider whether the relevant industry is manifestly on the brink of an imminent and dire economic situation;
 - (c) data on relevant factors must allow the Commission to conduct a 'proper evaluation', such that the commission can draw 'reasoned and adequate conclusions', based on a '*sufficient*

⁵¹ *Agreement on Safeguards*, Article 4.1(b).

⁵² *Agreement on Safeguards*, Article 4.1(b).

⁵³ Appellate Body Report *US – Lamb*, paragraph 124.

⁵⁴ Appellate Body Report *US – Wheat Gluten*, paragraph 149.

⁵⁵ The Appellate Body has made clear that the degree of injury required in a safeguard case -- *serious* injury -- connotes a 'much higher standard of injury than the word 'material' used in the context of WTO rules on dumping and countervailing measures. (*US – Lamb*, paragraph 124)

⁵⁶ See Article 4.2(a) of the *Agreement on Safeguards*. Indeed, the Appellate Body in *US – Wheat Gluten* highlighted (at paragraph 55) that an authority in the position of the Commission must 'in every case, carry out a full investigation to enable them to conduct a proper evaluation of all of the relevant factors expressly mentioned in Article 4.2(a)'.

⁵⁷ *Agreement on Safeguards*, Article 4.2(b).

factual basis'.⁵⁸ The evaluation is not simply a matter of form, and the list of relevant factors to be evaluated is not a mere 'check list';⁵⁹ and

- (d) if data on the specific domestic industry being analysed is insufficient, for example because it has not been sufficiently disaggregated for different phases of the production chain, the Commission will simply not be able to make a determination of serious injury consistent with the *General Procedures* and the *Agreement on Safeguards*.

The relevant domestic industry

- 83. As outlined above⁶⁰, the relevant domestic industry for purposes of the Commission's injury evaluation is boning rooms.
- 84. The Commission's 2005 report on the Australian Pigmeat Industry indicates that, in 2005, the five largest primary processors represented 91 percent of the national pig kill.⁶¹ This group, which comprises *both* abattoirs (which are not part of the relevant domestic industry for purposes of this inquiry) *and* boning rooms (which are the relevant domestic industry), was made up of the following companies:
 - (a) QAF Meat Industries;
 - (b) Swickers;
 - (c) Linley Valley Pork;
 - (d) Port Wakefield (Primo); and
 - (e) Big River Pork.
- 85. Limited data is publicly available on the performance of these businesses as a whole, let alone on the performance of their boning room operations, as a distinct industry for purposes of the Commission's analysis in this inquiry. But the data that is publicly available is reviewed below and points to a generally healthy level of performance.

⁵⁸ Appellate Body Report *US – Lamb*, paragraph 131.

⁵⁹ Appellate Body Report *US – Lamb*, paragraph 104.

⁶⁰ See paragraphs 16-33 relating to 'domestic industry'.

⁶¹ PC Inquiry Report, *Australian Pigmeat Industry* (18 March 2005) page 192.

86. With respect to QAF Meats:
- (a) it is Australia's largest pig and pigmeat producer, accounting for approximately 20 percent of Australian production. In 2006, it sold over 1 million heads or approximately 69,000 metric tonnes of pork;⁶²
 - (b) it has the largest abattoir facility in Australia, with a capacity to process 1 million heads per year; and
 - (c) its focus is the Australian retail market and it has dedicated its entire boning room at the Corowa facility to process chilled pork for the retail market.⁶³
87. QAF's focus on the Australian retail market is not surprising. Australian producers are the sole suppliers to Australia's retail and foodservice markets. As discussed above,⁶⁴ consumption in this market segment has grown by 25 percent in recent years. Imports do not compete with Australian products in this market because all imports must be further processed into smallgoods. In addition, the Australian industry is the sole supplier to smallgoods manufacturers that are not authorized by AQIS to use imports. These restrictions mean that imports and the domestic like product only compete directly in a very narrow market segment: smallgoods manufacturers that are authorized to use imports.
88. QAF also has an related company – Diamond Valley Pork Pty Ltd – and we have the following information to hand:
- (a) 'the operating performance of Diamond Valley improved in 2006 as a result of increased throughput in the abattoir and boning room, as well as improved margins for both carcasses and boned products';⁶⁵ and
 - (b) 'slaughter operations have increased by 20 percent over that of 2005 and the company is now at full capacity. The company has, at the end of 2006, embarked on a construction programme to increase its chiller capacity which is currently the 'bottleneck' in its process. With the additional chillers, capacity of the plant will increase to 500,000 heads per year and this will make Diamond Valley one of the leading abattoirs in the Victoria area.'⁶⁶

⁶² Ibid, page 23.

⁶³ Ibid, page 24.

⁶⁴ See above, footnote 48.

⁶⁵ Ibid, page 25. Diamond Valley, located in Laverton, Melbourne specializes in the processing of pigs and has a capacity of 250,000 heads per year and boning lines to process 300 pigs a day.

⁶⁶ Ibid.

89. In looking at QAF – a significant player in the relevant domestic industry – we would note that increased investments and full capacity are not likely to be the acts of members of a seriously injured industry.
90. Several submissions already made in this inquiry focus on the state of pig producers. This is *not* the domestic industry for the purposes of analysing serious injury. Pig producers are producers of a product that is upstream to the production of the primal and sub-primal cuts for use in the manufacture of smallgoods that compete directly with imports of frozen, boneless pigmeat cuts for use in the manufacture of smallgoods.
91. In our initial submission of 9 November 2007, we highlighted the need to obtain performance data in a suitably disaggregated form, in order to focus on the relevant domestic industry. We reiterate this point in this submission. Data concerning phases of the pigmeat production chain that does not relate to the performance of the industry producing primal and sub-primal cuts for use in the manufacture of smallgoods cannot form the basis of a proper evaluation of serious injury for the purposes of this safeguards inquiry. In the absence of performance data allowing evaluation of the relevant injury indicators pertinent to the *specific* domestic industry that produces like or directly competitive products, there is simply not a basis on which the Commission could properly reach a conclusion on the existence of serious injury or a threat thereof.

Evaluation of injury factors

92. We note at the outset that suitably disaggregated sales data is not available from the myriad sources we investigated in preparing this submission. In the absence of data relating to the injury indicators for the specific industry under consideration, namely boning rooms, it is not open to the Commission to reach a finding of serious injury in this matter. We further note that during the Commission's 2005 inquiry, the APL stated that it would take an entire year for the Commission to gather the data necessary to assess the condition of the industry.⁶⁷

The rate and amount of the increase in imports of the product concerned

93. As detailed previously,⁶⁸ the level of imports in the most recent period has *declined*. And over the past five years, import growth has been gradual and orderly. There is nothing in the data to suggest that the increase in imports is recent enough, sudden enough, or sharp enough to cause or threaten serious injury. Imports increased between September 2002 and September 2007 by about 2,000 tonnes per month, against a backdrop of total domestic pigmeat production of about 25,000 a month. This is not a significant increase in imports.

⁶⁷ APL Productivity Commission Australian Pig Meat Industry Public Inquiry Submission 1, (19 October 2004).

⁶⁸ See Figure 5 above.

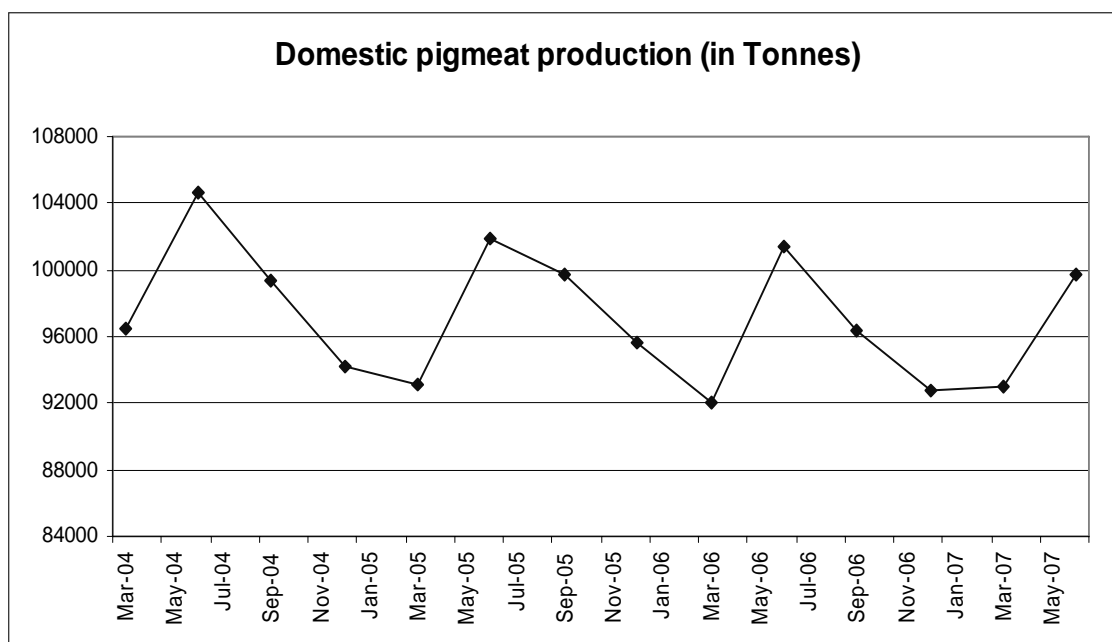
The share of the domestic market taken by increased imports

94. As set out previously,⁶⁹ data on the share of the relevant domestic market is not available, and the Commission itself has advised "caution" in when interpreting estimates as to the share of the processing sector taken by imported frozen, boneless pigmeat cuts. In addition, in considering this factor, it is also important to take account of the fact that domestic producers face absolutely no import competition in the fresh pigmeat market.

Production

95. Suitably disaggregated production data is not available from public sources. In the absence of data relating to this injury indicator for the relevant domestic industry, the Commission cannot reasonably reach a finding of serious injury in this matter.
96. In fact, if anything, the limited, aggregated publicly available data shows that overall pigmeat production has not been materially affected by imports. The following graph shows total pigmeat production (seasonally adjusted) as reported by ABS:

Figure 7

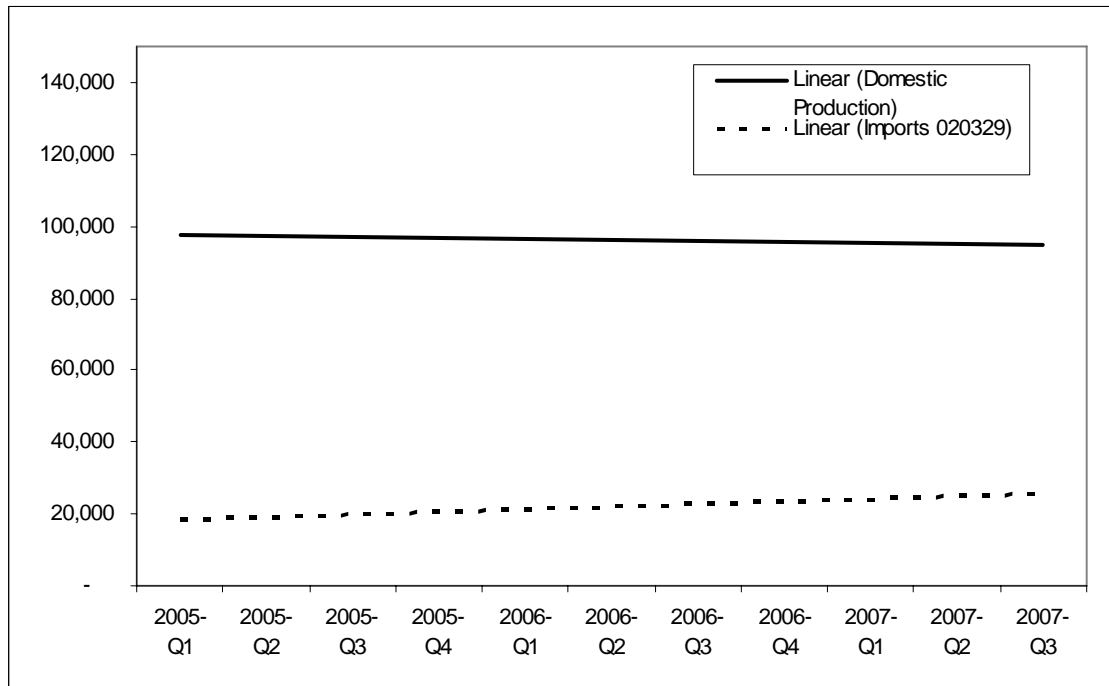


Source: ABS data from PC website, see http://www.pc.gov.au/data/assets/excel_doc/0003/72291/Web_Data2.xls

97. As the Commission can see, overall pigmeat production has essentially remained flat despite the increase in imports since 2004. The following graph illustrates this trend:

⁶⁹ See paragraph 76above.

Figure 8 Overall Pigmeat Production Trends

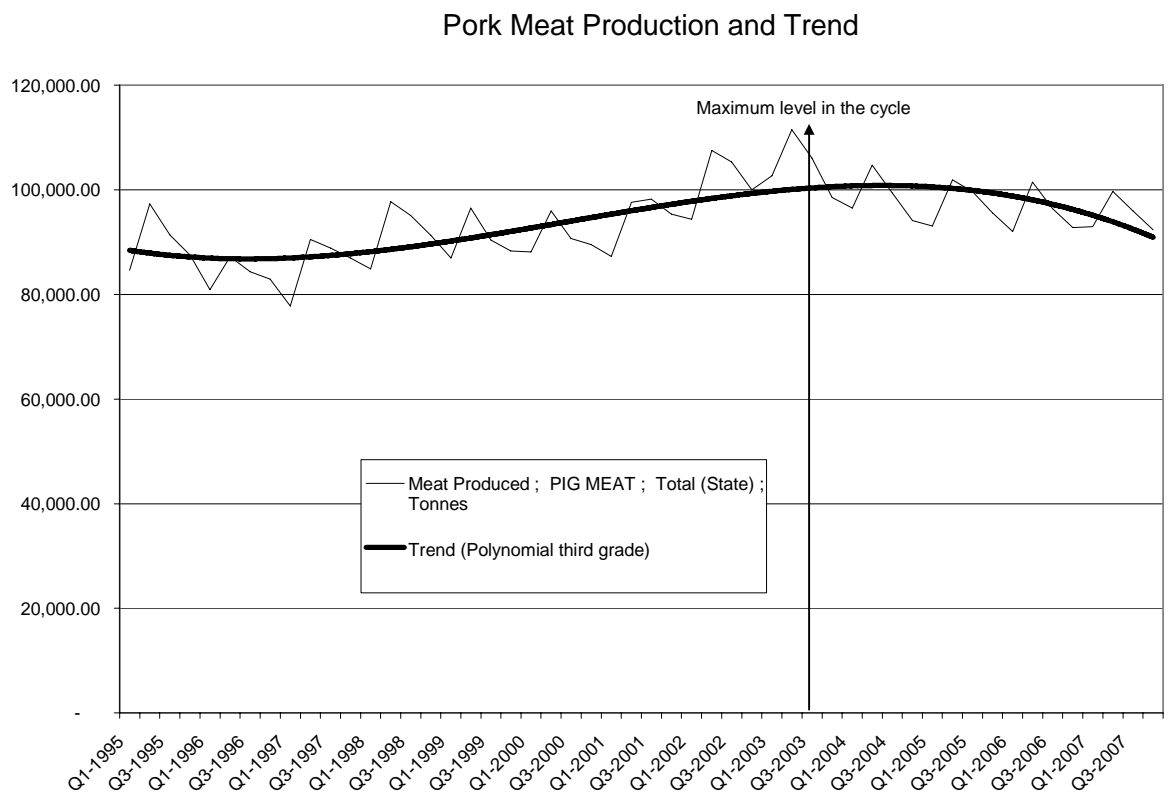


Source: ABS data from PC website, see

http://www.pc.gov.au/data/assets/excel_doc/0003/72291/Web_Data2.xls

98. As shown in Figure 9, the slight drop in domestic production in recent years is attributable to the fact that the industry finds itself at the bottom of the hog cycle. The hog cycle is a well-documented phenomenon, which cannot be avoided through safeguard measures.

Figure 9

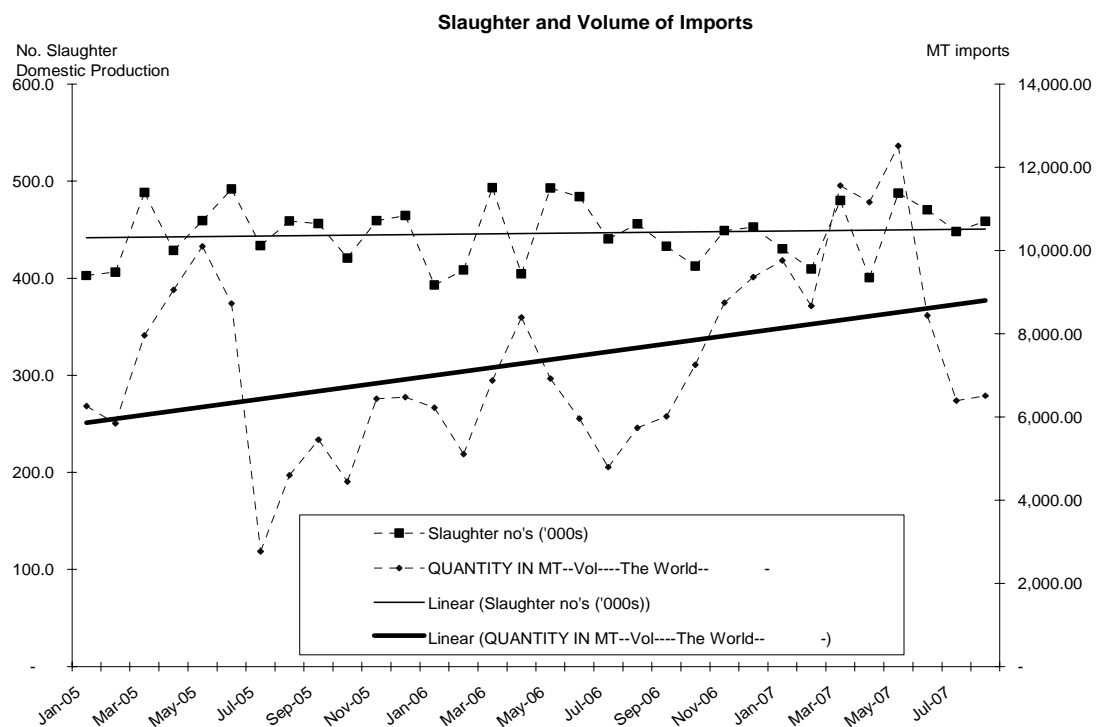


Source: : ABS data from PC website, see

http://www.pc.gov.au/data/assets/excel_doc/0003/72291/Web_Data2.xls

99. There is also evidence that import volumes have not impacted on the number of pigs slaughtered per month:

Figure 10



Source: APL (taken from ABS); ABARE data from PC website, see
http://www.pc.gov.au/_data/assets/excel_doc/0003/72291/Web_Data2.xls

100. As can be seen in the preceding graph, the number of pigs harvested per month has remained relatively constant since January 2005, despite the increase in import volume. One would expect to see a significant drop in the number of harvested pigs if imports were causing serious injury.

Changes in the level of sales, profits and losses, and employment

101. Suitably disaggregated data relating to the changes in the level of sales, profits and losses, and employment is not publicly available, based on the investigation conducted to prepare this submission, nor has it been made available to us by the Commission or the other parties to this inquiry. In the absence of data relating to these injury indicators for the relevant domestic industry, the Commission cannot reasonably reach a finding of serious injury in this matter.

Imports of pigmeat from all sources do not pose a threat of serious injury

102. The volumes of imports from all three sources (namely, Canada, Denmark and the United States) have *decreased* rather than increased in the second half of 2007. When January through April 2007 is compared to May through September 2007, ABS statistics confirm that the volumes *declined* by more than 55 percent for imports from the US, by more than 63 percent for imports from Denmark and by more than 37 percent for imports from Canada. Moreover, the ending

103. inventories for pork products in 2008 are projected to remain stable for Canada compared to 2007 (50,000 metric tons). For the US, as discussed above, ending inventories will only increase by 2,000 metric tons when 2008 is compared to 2007.⁷⁰ These steady levels of inventories will not result in an increase in imports in the imminent future.
104. In addition, the factors that result in attenuated competition for imports from the US also limit competition for imports from other sources. Imports compete with domestic product in the secondary processing market, which is a limited segment of the market. This is not likely to change in the imminent future given the restrictions on imports imposed by Australia.⁷¹ Moreover, the participants in the Commission's 2005 inquiry stated that pigmeat from Canada and Denmark was 'both competitively priced and of a high quality' compared to the Australian product.⁷² As the products that are being imported have not changed, and are not likely to change, the quality differences between imports and the domestic product further confirm the lack of competition between these products.

⁷⁰ US Department of Agriculture, Foreign Agriculture Service, Official USDA estimates, *available at* <http://www.fas.usda.gov/psdonline/psdQuery.aspx>. Data regarding ending inventories are not available for Denmark.

⁷¹ The US industry association statements in this brief regarding Australia's import restrictions should not be read as an acknowledgement that those restrictions are consistent with Australia's WTO obligations.

⁷² PC Inquiry Report, *Australian Pigmeat Industry* (18 March 2005), page 28.

Causation and non-attribution

105. The Commission notes in its Issues Paper that it is vitally important there be a causal link between any increase in imports of the specified goods and the alleged serious injury or threat thereof. As demonstrated above, there is no evidence of serious injury to the domestic industry, the boning rooms, and consequently we have submitted that there are no grounds for continuing to inquire into the issue of causation. If, however, the Commission determines otherwise, or if it elects to define the relevant domestic industry as something broader than this specific industry, it remains clear that any injury that may be found to exist has little to do with an increase in imports.

106. The WTO Appellate Body has considered the whole question of causation in a number of disputes and has established extensive guidance and precedents. In particular it has observed:

'... the term 'the causal link' [as it appears in the first sentence of Article 4.2(b) of the *Agreement on Safeguards*] denotes, a relationship of cause and effect such that increased imports contribute to 'bringing about', 'producing' or 'inducing' the serious injury.⁷³

107. Nevertheless, the Appellate Body has also emphasized the crucial significance of the second sentence of Article 4.2(b) of the *Agreement on Safeguards*, emphasising that injury caused by factors *other than* imports must not be attributed to imports:

'Clearly, the process of attributing 'injury', envisaged by this sentence, can only be made following a separation of the 'injury' that must then be properly 'attributed'. What is important in this process is separating or distinguishing the *effects* caused by the different factors in bringing about the 'injury'.⁷⁴ [Emphasis in original].

108. Indeed, the non-attribution language in the second sentence of Article 4.2(b) of the *Agreement on Safeguards* has been further explained to mean that the:

'... effects of increased imports, as separated and distinguished from the effects of the other factors, must be examined to determine whether the effects of those imports establish a 'genuine and substantial relationship of cause and effect' between the increased imports and the serious injury.⁷⁵

⁷³ See Appellate Body Report, *US – Wheat Gluten*, paragraph 69, footnote 19.

⁷⁴ See Appellate Body Report, *US – Wheat Gluten*, paragraph 69, footnote 19.

⁷⁵ See Appellate Body Report, *US – Lamb*, paragraph 168.

109. In a situation, therefore, where several factors might be at play in terms of causation, the Commission must ensure that the injurious effects caused by all the different causal factors are *distinguished and separated*. Otherwise, as the Appellate Body has observed, 'any conclusion based exclusively on an assessment of only one of the causal factors – increased imports – rests on an uncertain foundation, because it *assumed* that the other causal factors are *not* causing the injury which has been ascribed to increased imports.'⁷⁶ [Emphasis in original].
110. Accordingly, in order to recommend that safeguard measures be contemplated, the Commission must determine, on the basis of objective data:
- (c) *first* the existence of a causal link between increased imports and serious injury to the relevant domestic industry (in the sense that increased imports brought about, produced or induced such injury); and
 - (d) *secondly*, that injury caused by other factors not be attributed to increased imports.

The facts of this matter do not reveal the existence of the requisite causal link between imports and alleged injury

Existence of a causal link

111. As to the first requirement of the analysis of causation, namely the existence of a causal link between imports and injury, in our view, there is no objective evidence that an increase in imports in recent years has caused serious injury to the domestic industry. Even assuming, for the sake of argument, that there is the requisite increase in imports and the requisite level of injury, the damage has not been brought about, produced or induced by imports.
112. The Commission addressed the relationship between imports and the economic state of the pigmeat sector in 2005. It concluded that:
- 'Imports of pigmeat are ... a *symptom* of
- the displaced Australian pigmeat being either more expensive or of lower quality than the imported pigmeat; and/or
 - Australian processors being unable to supply large volumes of consistent quality rather than the *cause* of its lack of competitiveness.'⁷⁷ [Emphasis in the original]
113. That finding is equally applicable today only two years later.

⁷⁶ See Appellate Body Report, *US – Lamb*, paragraph 179.

⁷⁷ See PC Inquiry Report, *Australian Pigmeat Industry* (18 March 2005), page 45.

Non-attribution

114. Even if there were a causal link between imports and injury, the extent to which any such injury exists is due overwhelmingly to other factors. Such factors include:
- (e) the overall lack of *competitiveness* of the Australian pigmeat sector, which is broader than the domestic industry relevant to this inquiry, due to:
 - (i) comparative lack of scale economies
 - (ii) high feed costs and other issues due to drought;
 - (iii) more general feed grain issues, including the subsidised development of the Australian fuel ethanol industry;
 - (iv) the appreciating Australian dollar; and
 - (v) the ongoing structural change; and
 - (f) *Additional factors*, including quarantine restrictions on the importation of feedgrain and carcasses and half carcasses.

Competitiveness

Lack of economies of scale

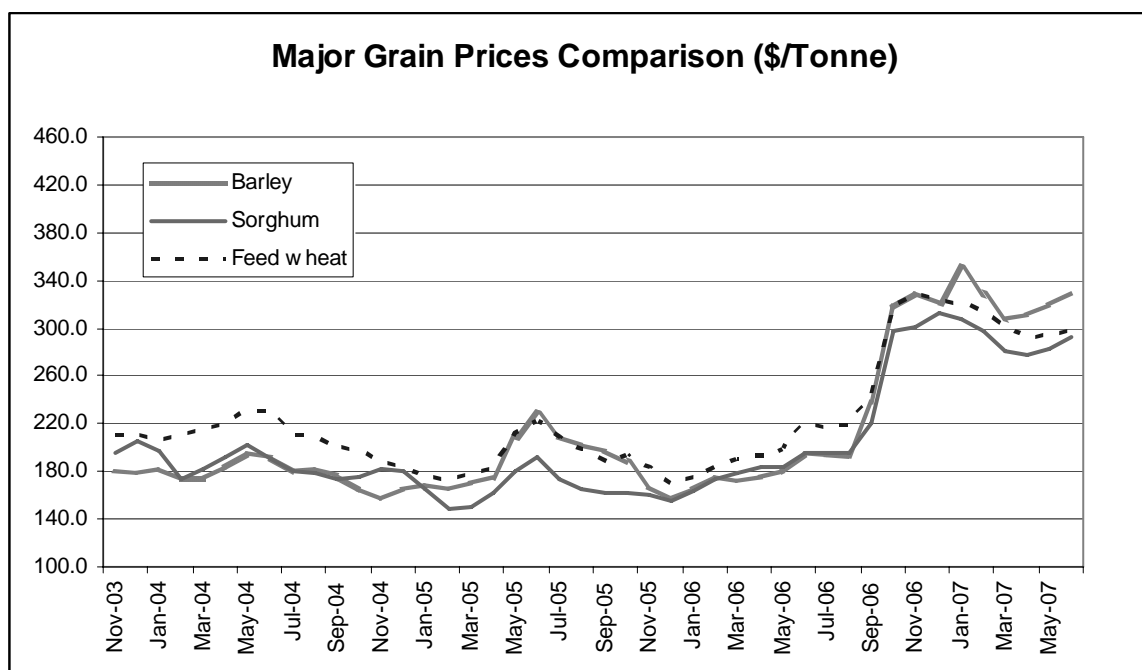
115. The Commission's 2005 report highlighted that the Australian processing industry lacked economies of scale when compared with internationally competitive pigmeat processing industries.⁷⁸

Higher feed costs

116. There is considerable evidence that higher feed costs are hurting Australian producers of pigs by dramatically forcing up the cost of production. Because pigs for harvest are an essential input to the carcasses and half carcasses that are, in turn, an essential input to the boning rooms that constitute the relevant domestic industry for purposes of this inquiry, such rises in the cost of production can lead to higher input costs for the boning room industry.
117. Feedgrain prices have increased in the recent period:

⁷⁸ PC Inquiry Report, *Australian Pigmeat Industry* (18 March 2005), page 70.

Figure 11



Source: ABARE data from PC website, see

http://www.pc.gov.au/_data/assets/excel_doc/0003/72291/Web_Data2.xls

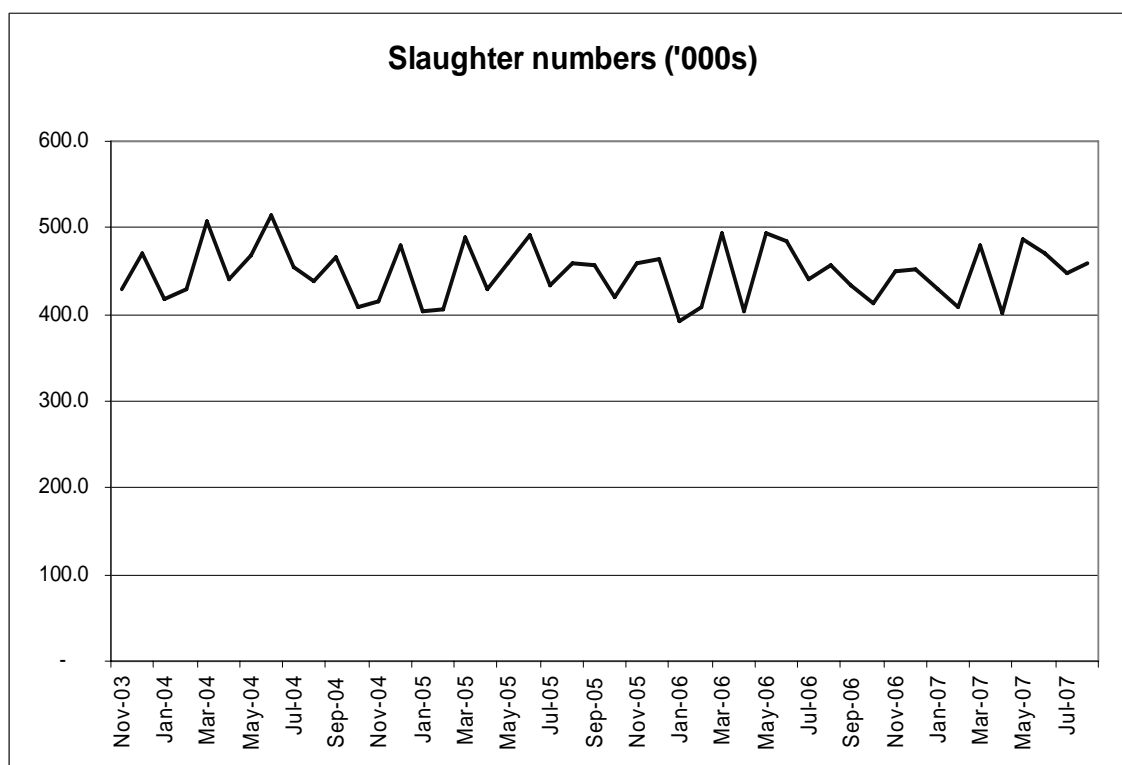
118. In the period since January 2006, feedgrain prices have, as a result of drought, increased from a range of AUD140-220/tonne to over AUD350/tonne in early 2007. APL data suggests that prices have peaked at almost AUD420/tonne in September/October 2007.⁷⁹ Feedgrain make up around 50 percent of the total cost of production for pig producers in Australia, meaning production costs have increased to a commensurate level.⁸⁰

⁷⁹ See for example, APL *Eyes and Ears*, Issue 257, (15 November 2007), page 4 (attached at Annexure 6).

⁸⁰ See PC Inquiry Report, *Australian Pigmeat Industry* (18 March 2005), page 123. The PCRC – which was established in October 2005 primarily for the purpose of reducing feed costs through innovative grain production – has also observed: 'The Australian pork industry finds it increasingly difficult to achieve sustainable returns. The cost of production, and this profitability of the industry, is determined by feed prices and efficiency of conversion to pork product. Over the last three years feed prices have been very high and variable and feed conversion efficiencies into lean meat are suboptimal ... In addition, although Australia is a low-cost producer by world standards in times of grain surplus, high and unpredictable grain prices remain a crippling burden in times of drought, particularly as grain cannot be readily imported.' (See www.porkcrc.com.au (relevant article attached as Annexure 2). It is likely this burden has increased since October 2005.

119. Similarly, slaughter numbers have remained within the range of recent years:

Figure 12



Source: APL (taken from ABS) data from PC website, see

http://www.pc.gov.au/data/assets/excel_doc/0003/72291/Web_Data2.xls

120. This clearly results in a situation where average revenues are remaining within the same range as recent years; whereas costs of production have increased.

121. The impact of this dynamic in an industry upstream to the relevant domestic industry in this inquiry is unclear. Evidence from APL, however, suggests that there may be an impact from feedgrain prices upon downstream boning rooms. APL acknowledged in its submission to the Commission during the 2005 inquiry that 'A substantial part of the industry is not globally competitive'.⁸¹ Similarly, it has identified drought impacts on feed grain prices as having a 'major impact' on the wider pigmeat industry.⁸² Indeed, it has observed, amongst other things, that during times of drought, rising feed grain prices invariably impact upon the economic performance of piggery enterprises; and the likely economic impact of the current drought on the wider pigmeat industry would be a:

(a) 'loss of approximately \$208 million in gross domestic product';

⁸¹ APL *Productivity Commission Australian Pig Meat Industry Public Inquiry Submission 1*, (29 October 2004), page 6.

⁸² See, for example, APL, *Fact Sheet: Feed Grain Issues*, (undated), page 1 (attached as Annexure 1).

- (b) 'reduction in household income of \$48.04 million'; and
- (c) 'loss of more than 1,500 jobs post farm-gate'.⁸³

Development of a subsidised ethanol industry

122. APL has also consistently argued that the subsidised development of the ethanol industry is having a negative impact on the pigmeat sector as it diverts much needed feed grain away from the hog industry, with the result that feed grain prices increase even further.⁸⁴

Appreciating Australian dollar

123. The appreciating Australian dollar is another factor that is arguably having a significant impact on the lack of competitiveness of the wider Australian pigmeat sector. Since early January this year, the Australian dollar has risen from 0.7939 US cents through to 0.9376 US cents on 7 November 2007. Such a surge has seen, amongst others, the:

- (a) PCRC note that 'barriers to profitability [in the Australian pigmeat sector] are further compounded by unfavourable exchange rates which have stalled export growth';⁸⁵ and
- (b) the Chief Executive of APL observe that the 'high dollar has been responsible for slowing pork exports to major export markets like Singapore. Pork normally destined for Singapore has been pushed back onto our already oversupplied domestic market'.⁸⁶

124. In sum, we submit that, in the first instance, the Commission does not need to consider the question of causation because there is no evidence that the domestic industry is seriously injured (or threatened with such injury).

125. But if the Commission is of the view that serious injury is occurring or threatened to the domestic industry in question, then we submit that such injury or threat thereof has not been caused by imports.

126. In addition, any injury that is present in the relevant domestic industry results from other factors relating mainly to the overall lack of competitiveness of the wider Australian pigmeat industry. Injury caused by these factors must not be attributed to imports for the purpose of considering safeguard measures.

⁸³ Ibid.

⁸⁴ See, for example, APL, *Fact Sheet: Feed Grain Issues*, (undated), pages 3-4 (attached as Annexure 1). See also a recent article in the *Sydney Morning Herald* entitled 'Poor outlook for grain stokes fight over biofuels', 31 October 2007, attached as Annexure 3.

⁸⁵ See, for example, Annexure 2.

⁸⁶ See, for example, the APL's media release of 10 September 2007, attached as Annexure 4.

Provisional Safeguard Measures

WTO Agreement on Safeguards

127. Relevant safeguards rules⁸⁷ provide that:

'In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is *clear* evidence that increased imports have caused or are threatening to cause serious injury.' [Emphasis added].

128. Article 1 of the *Agreement on Safeguards* provides that:

'This Agreement establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of GATT 1994.'

129. Clearly provisional action is a safeguard measure for the purposes of the *Agreement on Safeguards* and consequently such action must comply not only with the specific requirements of Article 6 but also with all the rules set out in the Agreement that govern the application of safeguard measures.

130. Those rules require, *inter alia*, that before recommending the application of provisional measures the Commission must determine that the domestic industry is suffering serious injury or the threat thereof and that such injury is being caused by increased imports and that the necessary causal link is not compromised by other factors that may be causing injury. Such determinations must be made by the Commission on the basis of 'objective evidence' and its report must contain findings and reasoned conclusions reached on all pertinent issues of fact and law'.

131. While Article 6 does allow that an investigation subsequent to the introduction of provisional safeguard measures may result in a final finding that long term safeguard measures are not justified, it is clear from the terms and context of the *Agreement on Safeguards* and Article XIX of GATT that the grounds for making a preliminary determination are, in fact, more demanding than for a final determination. It is important to recall that 'ordinary' safeguard action is characterized by GATT as emergency action. Provisional safeguard action can only be entertained if the competent authority can identify an emergency within an emergency involving, not just serious injury, but critical circumstances where delay would cause damage which it would be difficult to repair'.

⁸⁷ Article 6 of the *Agreement on Safeguards*, given effect by Paragraph 16 of the *General Procedures*.

132. With respect, this array of stringent requirements is not reflected in the Commission's observation in the Issues Paper⁸⁸ that:

'It is particularly important to note that a determination on provisional safeguard measures essentially is a preliminary safeguard determination and, as such, must be based on *prima facie* evidence of increased imports causing serious injury to the relevant local industry'.

133. While it is true that Article 6 of the *Agreement on Safeguards* provides for the making of a preliminary determination, it is clear from the strict criteria set out in both the *Agreement on Safeguards* and Article XIX, and the overall context of those documents, that 'preliminary' can be interpreted only in a chronological sense, not a qualitative one. In particular, the evidence required cannot be construed as merely *prima facie*. The imputation to be drawn from the term 'clear evidence' is that the information available to the competent authority admits of no other realistic conclusion than that the domestic industry is suffering serious injury or threat thereof to an extent that it would be difficult to repair in the event of any delay.

Application in the present circumstances

134. In the present matter, the critical circumstances criterion requires the Commission to assess by reference to clear and objective evidence whether a delay in making a decision on safeguard measures would cause damage that would be difficult to repair. The threshold issue confronting the Commission is that, on present indications, it is extremely unlikely that sufficient objective and clear evidence will be available to the Commission by 14 December 2007 to enable reasoned conclusions to be reached on the application to the domestic industry, as properly defined, (namely, the industry producing primal and sub-primal cuts), of all the criteria relevant to consideration of provisional safeguard measures (i.e., unforeseen developments, increased imports, serious injury and causation as well as 'critical circumstances').

135. This view gains support from the observation of APL⁸⁹ that:

'It would take the Commission a year to determine properly the condition of the industry and recommend appropriate action to improve it.'

136. Even if such evidence of damage were available, however, it would have to be established that it related to industry members responsible for the majority of production.
137. Central to the rationale of provisional trade measures, both generally and in the *Agreement on Safeguards*, is the concern that a delay in responding to increased imports will result in

⁸⁸ See PC Issues Paper, *Safeguards Inquiry into the Import of Pigmeat*, (October 2007), page 9.

⁸⁹ APL *Productivity Commission Australian Pig Meat Industry Public Inquiry Submission 1*, (19 October 2004).

irremediable damage. The maximum prospective delay in the present matter is about 3½ months and the question to be resolved is whether such a delay would cause a major proportion of the domestic industry to be so critically affected that it would be difficult to repair the damage. The decision to be made by the competent authority does not involve possibilities, likelihoods or probabilities; it involves an unqualified finding that the 'delay would cause damage which it would be difficult to repair'. Further, it is clear that damage of this magnitude to *individual* members of the domestic industry is not the issue to be assessed by the competent authority.

Public Interest

138. Even if the Commission is of the view that:

- (a) there have been increased imports; and
- (b) such increased imports:
 - (i) were the result of unforeseen developments; and
 - (ii) have caused, or threaten to cause, serious injury to the domestic industry,

we believe that the Commission – in line with its general policy guidelines, as laid down by section 8 of the *Productivity Commission Act 1998* (Cth) – should recommend that safeguard measures would not remedy the injury occurring and therefore should not be implemented.

139. As the Commission's 1998 report highlighted, safeguard action would not necessarily assist either the pig farmers or primary processors and would obviously impact negatively on secondary processors, retailers and consumers.

140. The problems associated with the pigmeat sector are far more symptomatic of a sector that has been in decline over a protracted period of time and is continuing to struggle to adjust to the current competitive environment of not just Australia, but the global economy. Imposing safeguards in this context is likely to reduce incentives for the industry to change and restructure. In addition, safeguard action would also detract from Australia's capacity to seek reductions in overseas trade barriers and, perhaps most importantly, would risk legitimate retaliatory action by exporting countries that may impact on globally competitive Australian industries.

Table of Cases

Short Title	Full Title and Reference
Argentina – Footwear Safeguard	<p><i>Argentina – Safeguard Measures on Imports of Footwear, Report of the Appellate Body</i>, (AB-1007-7), 14 December 1999, WT/DS121/AB/R</p> <p><i>Argentina – Safeguard Measures on Imports of Footwear, Report of the Panel</i>, 25 June 1999, WT/DS121/R</p>
Argentina – Preserved Peaches	<p><i>Argentina – Definitive Safeguard Measures on Imports of Preserved Peaches, Report of the Panel</i>, 14 February 2003, WT/DS238/R</p>
Korea – Dairy Safeguard	<p><i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products, Report of the Appellate Body</i> (AB-1999-8), 14 December 1999, WT/DS98/AB/R</p> <p><i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products, Report of the Panel</i>, 21 June 1999, WT/DS98/R</p>
US – Lamb	<p><i>US – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i>, Report of the Panel, 21 December 2000, WT/DS177/R, WT/DS178/R</p> <p><i>US – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia</i>, Report of the Appellate Body (Ab-2001-1), 16 May 2001, WT/DS177/AB/R, WT/DS178/AB/R</p>
US – Softwood Lumber IV	<p><i>US – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada</i>, AB-2003-6, Report of the Appellate Body, 19 January 2004, WT/DS257/AB/R</p> <p><i>US – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada</i>, Report of the Panel, 19 August 2003, WT/DS257/R</p>
US – Steel Safeguard	<p><i>US – Definitive Safeguard Measures on Imports of Certain Steel Products, Report of the Appellate Body</i>, WT/DS 428.249, 251, 253, 254, 258, 259/AB/R, 10 December 2003</p>
US – Wheat Gluten	<p><i>US – Definitive Safeguard Measure on Imports of Wheat Gluten from the EC, Report of the Appellate Body</i> (AB-2000-10), 22 December 2000, WT/DS166/AB/R</p> <p><i>US – Definitive Safeguard Measures on Imports of Wheat Gluten from the EC, Report of the Panel</i>, 31 July 2000, WT/DS166/R</p>

Annexure 1

Australian Pork Limited – Fact Sheet Feed Grain Issues

Annexure to Submission to the Productivity Commission



Feed Grain Issues

Feed Grain Use in the Australian Pig Industry

The intensive industries are a growing and valuable customer of the Australian grain industry. Total feed grain usage by the intensive industries has been increasing steadily since 1992/93, when 5.77 million tonnes were used almost doubling to 10.92 million tonnes in 2002/03. During the drought, national feed grain demand has been trending lower as higher feed grain prices and lower returns from dairy and pig products ration feed demand. The pig industry's usage of grain has increased from 1.57 million tonnes in 1992/93 to over 2.13 million tonnes in 2002/03. This comprises approximately 2,000 kilo tonnes of grain (predominantly wheat, barley and sorghum) and 120 kilo tonnes of oilseed meals.

The pork industry is faced with the double edged sword of high grain prices due to drought and low pork prices, which are capped by imported pig meat. Weak pork prices resulting from imports have undermined the ability of pig producers to cope with cost increases experienced in recent times. Whilst the cost of feed increased in 2003 as a consequence of the drought, with a resulting increase in pig production costs, average prices received by pig producers were lower in 2003 than 2002. When the drought ends, feed prices should fall, slightly alleviating pig production costs (or bringing them back to break even point). This however assumes no further import penetration. The industry requires access to feed grain at world parity prices in order to remain competitive.

Drought Impacts on Feed Grain Prices

The drought conditions across Australia are having a major impact on pork producers and APL is concerned that the long term viability of many businesses are at risk. Many pork producers have been unable to sustain the high cost of feed without a corresponding increase in the price of pork and pork products. As a result, approximately 12 per cent of small to medium sized producers have had no option but to de-stock their herds, while a further 5 per cent have exited the industry. A study completed for APL by the Western Research Institute¹ suggested that the likely economic impact of the current drought on the pork industry in Australia would be a loss of approximately \$208 million in gross domestic product, a reduction in household income of \$48.04 million and loss of more than 1,500 jobs post farm-gate.

Intensive livestock feeding businesses are impacted by drought irrespective of whether the operation is in an area directly affected by drought or not. A drought where grain inputs are grown for the industry will also adversely impact on the on a piggery operation because of the nature of production.

During times of drought, rising feed grain prices adversely impact on the economic viability of piggery enterprises. Figure 1 reveals the Australian feed grain price trend for the July 2001 to September 2003 period. During this period, feed wheat and sorghum prices increased as the drought intensified, peaking in late 2002 / early 2003. In late 2001, domestic feed grain prices began to exceed import parity prices and feed grain users seeking relief from escalating feed grain price looked to import feed grain. The first cargo of imported feed to Australia in seven years occurred in January 2003, which contributed to the decline in feed grain prices

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¹ "Economic Impact of Drought on the Pork Industry: Preliminary Study" Western Research Institute, December 2002.

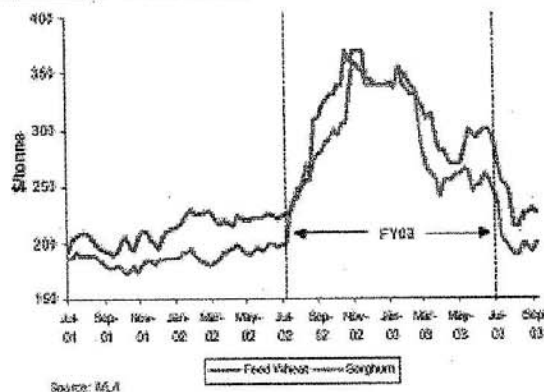


Figure 1: Australian Feed Grain Prices

Feed Grains – a Fair Return

There are many issues associated with grain supply for the pork industry such as drought assistance, risk management, grain imports, feed grain varieties, ethanol production and GMOS. However, as an industry that must compete both internationally and with pork imports on the domestic market the most critical strategic issue for the Australian pork industry is to remain internationally competitive and to do this it must be able to access feed grain at world competitive prices.

The Australian pork industry does not seek to have the single desk abandoned, rather it seeks to secure from the Australian Government adjustment measures that address the impact on the pork industry of any grain premiums that are the result of the single desk regulations. There is wide spread intensive livestock industry concern about the impact of the monopoly powers especially those conferred by AWB's single desk powers. The intensive livestock industries believe that the cereal grain industry fails to recognise the current and growing needs of the domestic feed grain using industries. In severe drought scenarios, a preferred course of action would be to divert grain from the export pipeline and up country systems to cater for the needs of the domestic intensive livestock feeding industries in preference to overseas clients as a duty of care obligation that is attached to the single desk monopoly power vested by government in AWB. This issue needs to be further debated and critically examined quantitatively to prevent similar occurrences in future droughts.

The Australian pork industry is forced to bear the cost of the government's wheat marketing arrangements without any provision for the impact on its own competitiveness in domestic and international markets. It is critical that the government address this major public policy failing so as to secure the prosperity and jobs of people in rural and regional Australia. For more information see the APL Policy Paper: Feed Grains & The Single Desk: A Fair Return.

Impacts on the Sustainability of Pork Production

Pork Imports

The Australian pork industry is distinctly placed in Australian agriculture, in that it competes both on the international market and with pork imports. No other Australian

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meat products compete with imports to the level that the pork industry does. The level of subsidies on grain, and other assistance received by other countries make it difficult for the Australian pork industry to compete with our competitors both in the international and domestic market. The Pig Support Estimate (PSE) seeks to include the annual monetary value of transfers from consumers and tax payers to agricultural producers, measured at the farm gate level, arising from policy measures that support agriculture, regardless of their nature, objectives or impacts on farm production or income.

Table 1 shows that the Pig Support Estimate (PSE) received by Australian farmers is far below that received by our major competitors. Table 2 shows that PSE for our major input, grain is less than one third of Canadian, less than 9% of what European farmers receive and 8% of farmers in the US. It is notable that these competitors receive transfers on both their pig meat and their grain inputs at a much higher rate than Australian producers.

Country	PSE % for pig meat	\$US million
Australia	4	18
Canada	7	162
EU	24	5,711
USA	4	473

Table 1: The pig meat PSE for 2000-2002

Country	PSE % for wheat	\$US million
Australia	5	103
Canada	16	427
EU	46	8,982
USA	40	3,993

Table 2: The wheat PSE for 2000-2002

The Australian pork industry supports free trade provided it is fair trade. It is important that the distinction is made between quarantine based on rigorous science, as required under the World Trade Organisation's SPS Agreement, and economic protection. Australian pork currently competes against subsidised pork product both domestically and in international markets. Such measures, whether applied through direct or indirect support, are trade distorting, reduce international prices and displace Australian product on the domestic market

Ethanol

The Australian Government recently announced a package for the ethanol industry, which includes a subsidy at the excise rate of approx 38 cents per litre to enable the industry to establish. This subsidy equates to an indirect subsidy on grain (sorghum) of \$152 per tonne. This will substantially distort regional feedstuff markets. If there is a mandated 10% ethanol blend in all petrol by 2010, 1,818 GL of ethanol would be required annually. This would require 4.5 MT of grain - 50% of Australia's feed grain production of approx 9 MT per year.

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Subsidised development of a fuel ethanol industry based on grains that can be utilised as stockfeed makes little sense given that it will come at the expense of existing livestock feeding industries.

Australian Government Drought Assistance - Exceptional Circumstances

Intensive industries have been severely impacted by this drought, yet most have been unable to access assistance due to current Exceptional Circumstances eligibility criteria. While drought preparedness is essential and self reliance should be the aim of all good managers, it is essential for some form of assistance in exceptional circumstances including a welfare safety net.

Exceptional circumstances (EC) is the Australian government's assistance scheme to drought affected farmers, and is based on events that have an impact so severe and prolonged that they are likely to occur only once in every 20-25 years. The principle objective of EC support is to provide targeted short-term assistance to long-term viable farmers in a region or industry who need it to cope with a rare income downturn that is beyond the scope of good management.

Under a process agreed by the Australian, State and Territory Ministers, communities or industries based in a single state / territory are expected to initiate the process for raising an EC application. While the EC scheme does help to address the requirements of pork producers, it is dependent upon their property falling in an EC declared area. As many producers lie outside the EC declared areas, their ability to access EC is dependant on a regional industry application.

State Government Drought Assistance

There are feeding difficulties for both intensive and extensive industries during a drought, however pork producers are affected by high grain prices even if they are not located in a "drought declared" area. The impacts of drought for the pork industry reach far wider than just the drought declared areas. Current state drought assistance is designed to support broad acre farming and includes freight or grain subsidies which drive the price of grain up even further putting even more cost squeeze on pig producers.

Pork producers are ineligible for state drought assistance in all states except Vic and WA. State drought assistance schemes need reform. Support should be more along the lines of measures used in disaster relief (eg low interest loans rather than subsidies). Transaction based subsidies need to be removed as they distort the market and just push up prices of grain.

It is unlikely that the issue of drought assistance from both the Australian and state governments, and its resulting direct and indirect impact on pig producers, will be resolved until after the drought breaks. Nor is it likely that the Australian or state governments will provide additional funds to livestock industries or expand existing drought assistance to pig producers, preferring to ride out the drought. The federal government has clearly indicated that livestock industries must find commercial solutions to their feed grain problems.

Treatment of Grain Imports

It is possible to import grain into Australia, however quarantine conditions applying to the imported feed stuffs are extensive, and are attributable to the risks associated with the grains carrying pests or diseases that could negatively impact our domestic grain

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industries. All imported grains must be devitalised, and can be used only in metropolitan areas only, but this does not alleviate demand in inland areas.

APL values Australia's unique health status and like all agricultural industries it provides our competitive edge. Livestock industries must be able to access a secure supply of quality feed grain at an parity as a benchmark) into the long term, either from domestic supply or through importation during periods when domestic supply cannot meet requirements APL and Meat and Livestock Australia have funded a project with CSIRO to investigate devitalising imported whole grain using a new fumigation technology which may prove more cost effective. CSIRO has identified a new gaseous fumigant which shows high potential to be an effective treatment for the devitalisation of whole grains, weed seeds, and the pathogens and insects of quarantine concern, in imported feed grain. If this treatment is proven successful (final results are not expected until 2005), then it would result in a shelf ready fumigation product that could be used for grain imports in future droughts, and also may enable the industry to engage in long term grain supply arrangements off shore to minimise risk.

Risk Management Tools

Assisting producers to minimise grain price volatility through commercial risk management tools is an important strategic goal for APL. APL is undertaking consultation with pork producers, the grain industry and the financial sector to identify feed grain financial risk management services and tools that can be used by Australian pork producers to manage feed grain price volatility and thereby reduce the impact on costs of production.

Genetically Modified Organisms

The inclusion of GMO crops in livestock feed is becoming a significant issue. This is especially the case with stock feed ingredients derived from soybean meal imported from the US and cotton seed meal. Australia has a reputation as a supplier of high quality, safe pork products and this reputation must be protected. APL encourages a cautious approach to GMOs until the issues of consumer resistance, market concerns, segregation, costs, farmer's rights, co-existence have been addressed. Further research is required to prove the benefits of GMO product to both producers and consumers and to address on-farm food safety systems and effective tracking, tracing and identity preservation systems.

APL advocates that the use of GMO feed stuffs needs to be fully transparent on farm and encourages producers to implement farm management systems to protect their GMO free status.

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Annexure 2

Pork CRC

About Pork – Pork Industry in Brief

Annexure to Submission to the Productivity Commission



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ABOUT PORK

Pork Industry in Brief

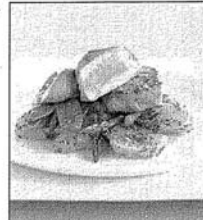
The Australian pork industry is an important part of our economy, generating in excess of 2.5 billion dollars/year and providing over 30,000 jobs.

The industry also has significant benefits for regional and local communities through the increased requirements for goods and services whilst providing greater employment opportunities.

Today, piggeries have to be responsibly managed businesses. Their aim is to produce a consistent number and quality of pigs, to meet market requirements while proving to be a profitable enterprise.

Regardless of the piggery production system adopted, a well operated, continuously planned production cycle, with welfare for the animal throughout the entire production processes, are important factors in achieving a profitable business.

Today Australian piggeries are clean, environmentally responsible and efficient enterprises. Not only do they offer a rewarding career path, they also benefit the local community and our economy.



http://www.porkcrc.com.au/html/about_pork.html

22/Nov/2007

Industry Challenges

Globalisation, food safety requirements, technology developments and trade reforms have forced profound structural changes in the Australian pork industry over the past 5 years. In 1998, the industry was focused on the domestic market and international competitiveness was not critical to its profitability. Since that time, added competition from imports, together with opportunities in Asian markets have prompted industry restructure (with assistance from the Australian Government).

Over this time, pork exports have increased in value from \$40 million in 1998 to \$250 million in 2003 (largely related to increasing market share in Singapore and Japan), and there has been a 40% increase in gross value of pork production to \$969 million. This has been accompanied by a reduction (20%) in the number of pig farms, and expansion in the slaughter capacity of specialist, export-oriented pig abattoirs and a 12% increase in the number of pigs produced per sow per year (to 5.7 million pigs produced per year from 340,000 sows).

Despite these advances, the Australian pork industry finds it increasingly difficult to achieve sustainable returns. The cost of production, and thus profitability of the industry, is determined by feed prices and the efficiency of conversion to pork product. Over the last three years feed prices have been high and variable and feed conversion efficiencies into lean meat are suboptimal. These barriers to profitability are further compounded by unfavourable exchange rates which have stalled export growth, and increasing domestic and export market competition, particularly from countries with lower costs of production or subsidised production. In the last 4 years pork imports into Australia, principally from Canada and Denmark, have risen by 64%.

Whilst Australia has the potential to substantially increase production to meet some of the growing demand for pork products in Asia, we must compete against much larger exporters (some with subsidised production) on either price, quality and/or service in what are largely commodity, price-driven markets. To remain viable in global markets as a niche producer and exporter, attract further investment and build on past success, the industry must reduce the cost of production and add value to, or differentiate its product range. In addition,

http://www.porkcrc.com.au/html/about_pork.html

22/Nov/2007

although Australia is a low-cost producer by world standards in times of grain surplus, high and unpredictable grain prices remain a crippling burden in times of drought, particularly as grain cannot be readily imported.

Target Markets

The Pork CRC research program will generate the following marketable outputs with associated target markets including:



- New information to improve on-farm management decisions, and new processes, or enhancements to existing practices (eg. crop agronomy, feed formulation strategies, sow management techniques) will be directly targeted towards piggery owners and managers, and service providers (eg. nutritionists, consultants, veterinarians) with transfer via established and novel pathways.
- New prototype products to improve on-farm efficiency) eg. grain varieties, equipment, feed additives, metabolic modifiers and gene markers) will directly targeted towards pork producers, stockfeed manufacturers and service providers.
- New pork products will be targeted towards highly integrated pork producers, food processing companies and retailers with transfer via intellectual property commercialisation licences.
- A new generation of well-trained specialists with pork industry expertise which will be targeted towards research and teaching institutions, highly integrated pork producers and service industries.

The high level of involvement of the target markets in the Pork CRC research programs and company management (ie. at Board level and research administration level) will ensure the markets are continually monitored and their needs are conveyed to the Pork CRC on an ongoing basis.



http://www.porkcrc.com.au/html/about_pork.html

22/Nov/2007

Annexure 3

Sydney Morning Herald article – Poor Outlook for Grain Stokes Fight Over Biofuels

Annexure to Submission to the Productivity Commission

smh.com.au**The Sydney Morning Herald** [Print this article](#) |  [Close this window](#)

Poor outlook for grain stokes fight over biofuels

Daniel Lewis Regional Reporter
October 31, 2007

FOOD producers who rely on feed grain stepped up their attack on biofuels yesterday as the forecast for Australia's grain harvest was slashed by another 4.5 million tonnes after two more months of exceptionally warm, dry weather.

The dairy, pork, egg and feedlot beef sectors said the global demand for grain to produce ethanol was causing record grain prices, food inflation and job losses.

With Australia so prone to drought, and climate change likely to lead to even more extremes of temperature and rainfall that would affect grain production, the groups demanded governments abandon any plans to mandate the use of biofuel.

In a special drought update yesterday, the Australian Bureau of Agricultural and Resource Economics cut its 2007-08 harvest estimate for the three main crops of wheat, barley and canola to 18 million tonnes, from the 32.9 million tonnes forecast in June and the 22.5 million forecast in September.

In NSW some areas experienced record dry weather in September and October. Many farmers have suffered total crop failure. The NSW harvest forecast of 2.4 million tonnes is now less than a quarter of what it was six months ago. It will be the state's smallest crop in more than a decade.

The bureau's report was released as a feed grain summit was held in Canberra. The price of wheat has more than doubled in the past year and is at record highs due to low global supplies.

Jim Cudmore, the vice-president of the Australian Lot Feeders' Association, said 70 per cent of the beef in supermarkets was grain-fed and prices would have to rise.

Although the 2007-08 harvest will be about 4 million tonnes above 2006-07 production, for the second year in a row Australia is set to produce far less grain than is needed for domestic and export use.

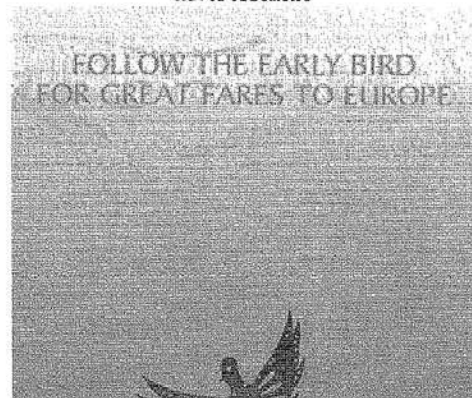
Ethanol industry supporters argue that grain prices have been unrealistically low for decades and the grain shortage is due to the weather.

NSW is the only state to have mandated ethanol use. The 2 per cent regime started this month. The Federal Government has helped the biofuels industry through tax breaks.

A Labor energy spokesman, Tim Friedrich, said the federal Opposition supported alternatives to fossil fuels such as biofuels, but recognised there were implications for food supply.

<http://www.smh.com.au/cgi-bin/common/popupPrintArticle.pl?path=/a...> 22/Nov/2007

Advertisement



He said a viable ethanol industry needed next-generation technology that allowed fuel to be produced from non-food plant cellulose, and Labor supported research into that technology.

"That's where the future of ethanol is globally," he said. "We don't support a mandate."

This story was found at: <http://www.smh.com.au/articles/2007/10/30/1193618885430.html>

<http://www.smh.com.au/cgi-bin/common/popupPrintArticle.pl?path=/a...> 22/Nov/2007

Annexure 4

Media Release – Australian Pig Farmers on the Brink of Ruin

Annexure to Submission to the Productivity Commission



10 September 2007

Media Release

Australian Pig Farmers on the Brink of Ruin

The prolonged impact of drought, compounded by record levels of pig meat imports into Australia and a strong AUD affecting exports have brought Australia's pork industry to its knees.

Australian Pork Limited (APL) Chief Executive Officer Andrew Spencer said that all these factors have come together to create the worst operating environment for Australian pig farmers in living memory.

"The greatest impact has been the skyrocketing price of feed grains. Added to this have been record levels of imports displacing Australian grown pork, particularly in the manufacturing sector.

"At the same time the high dollar has been responsible for slowing pork exports to major export markets like Singapore. Pork normally destined for Singapore has been pushed back onto our already oversupplied domestic market."

Mr Spencer said, in dollar terms Australia's pork industry is bleeding at a rate of around \$3-4 million per week in losses. Producers are currently losing on average more than \$30 per pig sold. No industry can continue to sustain this type of loss.

"The other side of the coin with imports is the increased risk this places on biosecurity for not just the pig industry but all Australian agriculture. We've seen first-hand the devastating impact the equine influenza out-break has had on our horse industry. All countries exporting pork into Australia have a range of diseases that are endemic to their regions, and not found in Australia.

"With import volumes at historical highs, having more than doubled in the last four years, the adequacy of our quarantine arrangements must be challenged. APL has in recent years strongly disputed the robustness of the import protocols and their ability to protect the industry from exotic disease through imports.

"As a result of higher imports the Australian pork industry is now facing an increased threat of introduced diseases on top of the economic pain inflicted by the drought and higher feed grain prices," Mr Spencer said.
ENDS

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Annexure 5

Australian Pork Limited's Newsletter – Pork it Up – Issue 15, November 2007

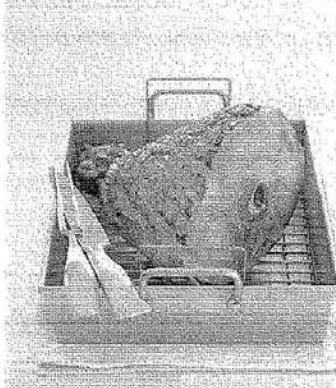
Annexure to Submission to the Productivity Commission

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Membership update

APL's current membership number stands at 442 - this includes two new associate producer members. As a result APL now represents more than 91 per cent of Australia's pig industry.

**APL encourages industry to register interest in Productivity Commission inquiry**

As a result of the Australian pork industry's lobbying efforts an announcement was made by the Australian Government on 18 October that the Productivity Commission (PC) will undertake a safeguards inquiry into the impact of imports of pigmeat on our industry.

Australia, as a World Trade Organisation (WTO) member, has made binding commitments in relation to the trade of goods and services. The WTO safeguards agreement allows members to introduce safeguard measures in response to unexpected and unforeseen circumstances, where it can be proven increased levels of imports has caused serious material injury to the relevant domestic industry.

If we are to make a difference and rescue our industry from the current dire circumstances, then it is critical that producers and those involved in the industry provide a submission to the PC Inquiry into the Import of Pigmeat. Submissions should focus on detailing the significant injury that imports are having on individual enterprises and to the industry in general.

The PC needs to hear about individual situations and the devastating impact imports are having on the livelihoods and future sustainability of those involved in the Australian pig industry.

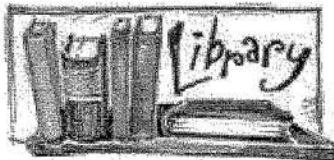
- It is important for all interested parties to know that **you must register your interest with the PC if you intend to make a submission or attend a public hearing**. Please log on to the PC website to complete this www.pc.gov.au/inquiry/pigmeatsafeguards/index.html

To assist in making a submission to the PC, Australian Pork Limited has developed a template and guidelines to aid in writing a submission. A submission can simply be in the form of a letter and does not need to be extensive. What is important is that your own story is told.

To obtain a copy of the template and guidelines visit APL's website www.australianpork.com.au, email apl@australianpork.com.au; or phone Tim Flor on freecall number 1800 789 099. If you need assistance in writing your submission please do not hesitate to call or email us.

Due date for initial submissions is 23 November 2007 (if you are attending public hearings) or 30 November (others).

If you have not registered your interest do so now. Visit the Commission's website www.pc.gov.au/inquiry/pigmeatsafeguards or call the Commission on 03 9653 2181 or visit APL website - www.australianpork.com.au



The APL Library contains a rich source of material that could be useful to improving your piggery's efficiency.

These manuals and training materials are listed in the *APL Training Programs & Publications* booklet which can be obtained from the librarian, Lisl Vincent on:

E: lisl.vincent@australianpork.com.au

Ph: 02 6285 2200 or Fax: 02 6285 2288.

Final reports are free of charge to all Australian pork producers. Summaries of reports are available in the *Completed and Current Research Projects 2007* booklet.

The *Drought alert 2007: feeding strategies* leaflet and the *InnovatE* newsletter are also available at no charge.

Library Feature

FeedCheque is a multi-faceted program that will assist pig producers improve their current on-farm diet mixing practices as well as maintaining the quality of mixed feed prepared on-farm in the long term. Manual, feed sieve and mason jar kit \$250.00. To order please contact the APL Librarian or call 1800 789 099.

Thumbs up for supermarket pork sausages

Pork sausages have been chosen as the tastiest and least fattening by the latest Choice test.

According to a Choice test of supermarket sausages, the 'gourmet' tag is much ado about nothing with a humble pork banger receiving the top score.

Choice tested 24 types of sausages, most of them 'gourmet' sausages sold by Coles and Woolworths under their own brands. Sausages from two independent butchers and some cheaper supermarket brands were thrown in for comparison.

The clear winner was a standard Coles pork sausage described by the tasters as juicy and tender. It not only contained less fat than most of the other selections but also was among the cheapest.

"The term gourmet is at best an ambiguous description," said Choice spokesperson Christopher Zinn. "They certainly aren't 'healthier' than standard sausages and there are no significant differences when it comes to their kilojoules, fat content or salt levels."

Each sausage was given a total score out of 100 by an expert panel, based on the same criteria used for an expert test of deli meat at the Sydney Royal Fine Food Show. The sausages were rated for visual appearance, texture, workmanship, flavour and aroma.

None of the sausages scored 90% — which would have been worth a 'Gold Award', but two were worthy of a 'Silver Award' (82-89%). These were the You'll Love Coles Pork sausage (89%) and the Coles Finest French Toulouse-Style sausage (82%).

The You'll Love Coles Pork sausages are a mid-range brand, priced at \$6.25/kg and contain 13.9g of fat. The Coles Finest French Toulouse-Style are marketed as 'gourmet' and cost \$9.90/kg. They contained 16.3g of fat.

Other 'gourmet' sausages in the test scored as low as 61%, and many contained over 20g of fat.

"Sausages need a certain amount of fat to make them juicy. But some which contained a lot less fat still rated well in our taste test," Zinn said.

Source: www.foodweek.com.au



Tip of the Month



Maximising feed efficiency is the most effective way to maintain profitability during these difficult times. Key points to achieve this include:

- Measure feed consumption and feed conversion ratios to monitor feeding efficiency.
- Do not compromise diet ingredient specifications to reduce diet cost.
- Ensure diets are reformulated using up-to-date grain and protein prices, and nutrient analyses.
- Use feed additives and metabolic modifiers to improve feed efficiency.

Dates for the Diary 2007

November

21-22 - APL Annual General Meeting and Delegates Forum, Marriott Hotel, Melbourne.

25-28 - Australian Pig Science Association 11th Biennial Conference 2007, Sofitel, Brisbane.

December

The APL office will be closed from 5pm Friday 21 December 2007, and will re-open on Wednesday 2 January 2008.

Coming up in 2008

June 18-21 - PPPE08, incorporating Uptake

For further information regarding Pork it Up, please contact:

APL Media Assistant, Sophie Drew on P: 1800 789 099
E: sophie.drew@australianpork.com.au

Australian Methane to markets in Agriculture

The Minister for Agriculture, Fisheries and Forestry, Peter McGauran, has announced the Government will contribute \$1 million to a collaborative research program aimed at lowering agricultural greenhouse gas emissions by capturing and using methane for energy generation.

In addition, another \$1.25 million from a range of industry partners including the Rural Industries Research and Development Corporation, Meat and Livestock Australia, Dairy Australia and Australian Pork Ltd will complement this contribution.

The program involves adapting, for Australian conditions, technology already in use in countries such as the United States, Denmark, Brazil and Thailand that have intensive animal production. The most promising technology approach involves covered effluent ponds to capture methane generated as the waste is digested. This methane may then be used for heating, or electricity generation.

The program will help cut agriculture's carbon emissions and provide a potential secondary income for farmers in the intensive livestock industry. It is being managed by the Rural Industries Research and Development Corporation and will include projects in the dairy, beef and pig industries. It forms part of Australia's commitment to the international Methane to Markets Partnership.

More information is available at: <http://www.maff.gov.au/releases/07/07075pm.html>

Marketing in Brief

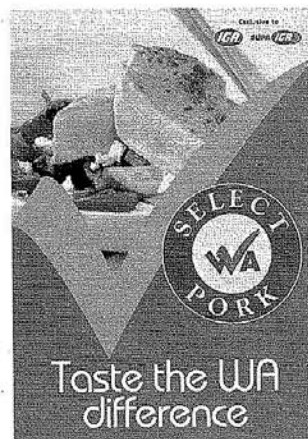
WA

The Catering Institute of WA held the 40th Anniversary of the Gold Plate Awards recently, with a Gala Ball to mark the occasion. Pork was served to more than 1200 of Perth's top restaurant and industry representatives who attended the event. The Gold Plate program seeks out and rewards facilities who provide world class standards in service, cuisine and ambience.

PPC Linley Valley Fresh launched the new "Select by Linley Valley Fresh" brand to IGA Supermarkets in WA on 25 July 2007. The new range consists of 15 exciting products and is exclusive to all IGA Supermarkets in WA. The launch was a result of the combined effort of APL, PPC and IGA Supermarkets, WA.

NSW

Pork was the star in the NSW region of Shoalhaven this week when Giovanni Pili from Freshwater Restaurant in Sydney worked with young upcoming chef's from the south coast area. They prepared a six course degustation dinner where his signature dish, slow roasted suckling pig with scented apple sauce and rosemary, was served to more than 200 consumers and industry members.



Domestic Production

Table 1.1 Australian slaughter and production trends

Month	SLAUGHTERING		PIG MEAT PRODUCTION		AVG SLAUGHTER WEIGHT	
	Monthly (000's)	MAT (000's)	Monthly (Tonnes)	MAT (Tonnes)	Monthly Kgs/head	12 month Avg Kgs/head
Aug-07	458.7	5,328.4	33,492	382,683	73.0	71.8
Aug-06	455.4	5,372.2	33,263	388,014	73.0	72.2
% Change	0.7%	-0.8%	0.7%	-1.4%	0%	-0.6%

Source: ABS MAT = Moving Annual Total

HSCW = Hot Standard Carcase Weight

August 2007 pig slaughter numbers

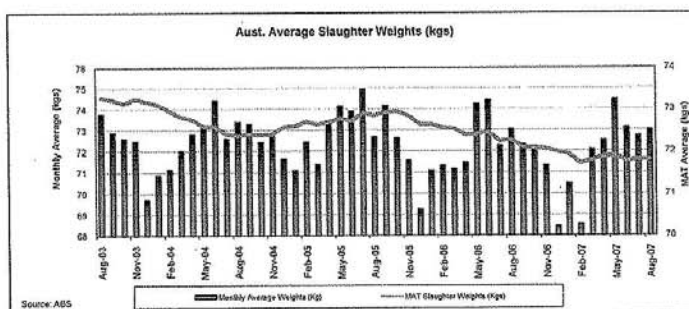
- 458,728 pigs slaughtered, 0.7% increase on last quarter (Mar-May 07) and 0.7% increase on August 06
- Average monthly slaughter weight = 73.0kg
- August 2007 Moving Annual Total (MAT) of 5.328 million pigs, 0.8% reduction on August 2006 MAT

August 2007 pig slaughter weights (12 month average)

- 12 month average of 71.8kg, a decrease of 0.6% compared with August 2006
- New South Wales (NSW) slaughter weights - 70.9kgs, 1.1% increase on August 2006
- Victorian (VIC) slaughter weights - 72.8kgs, 5.5% decrease, and greatest amongst states.
- Queensland (QLD) slaughter weights - 74.1kgs, 0.7% decrease
- South Australia (SA) slaughter weights - 77.0kgs, 2.7% increase
- Western Australian (WA) slaughter weights - 68.6kgs, 0.8% increase

August 2007 sow slaughter

- MAT = 112,008, 6.2% decrease on August 2006
- VIC represents the highest % of total sow slaughter across the states, at 36.0%, or 3532 sows, despite a decrease of 35% from August 2006.
- SA follows VIC = 24%, 2338, of total sows slaughtered

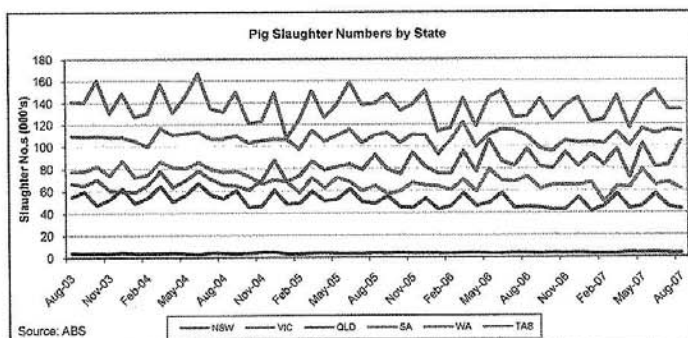


August 2007 state pig MAT slaughter

- NSW contributes to 30.3% of pig MAT slaughter for August 2007, exceeding all other states.
- NSW = 1,615,000; 0.3% increase on August 2006,
- VIC = 776,000; 2.4% decrease
- QLD = 1,274,000; 2.2% decrease
- SA = 1,055,000; 2.7% increase
- WA = 567,000; 3.9% decrease

August 2007 state pigmeat production (kilograms)

- All states increased pigmeat production (000's) on August 06
- NSW = 9,447,000; increase 6.1%
- VIC = 4,480,000; 20.3% decrease
- QLD = 8,385,000; 3.2% increase
- SA = 8,016,000; 10.0% increase
- WA = 2,917,000; 4.3% decrease



Exports

Table 1.1 Major export destinations for farmed Australian pork & offals

Month	TOTAL		SINGAPORE		JAPAN		NEW ZEALAND	
	Volume tonnes SW	Value \$m (Million)	Volume tonnes SW	Value \$m (Million)	Volume Tonnes SW	Value \$m (Million)	Volume Tonnes SW	Value \$m (Million)
MAT Aug-07	47,686	155.7	23,261	84.2	2,116	9.0	11,381	41.8
MAT Aug-06	51,504	161.4	24,349	84.9	2,589	12.7	11,464	40.3
% Change	-7.4%	-3.5%	-4.5%	-0.8%	-18.3%	-28.8%	-0.7%	3.6%
Aug-07	4,240	14.0	2,168	7.6	105	0.3	1,274	4.7
Aug-06	4,302	13.7	2,338	8.4	157	0.7	718	2.6
% Change	-1.4%	2.1%	-7.3%	-10.5%	-33.2%	-48.9%	77.4%	82.5%

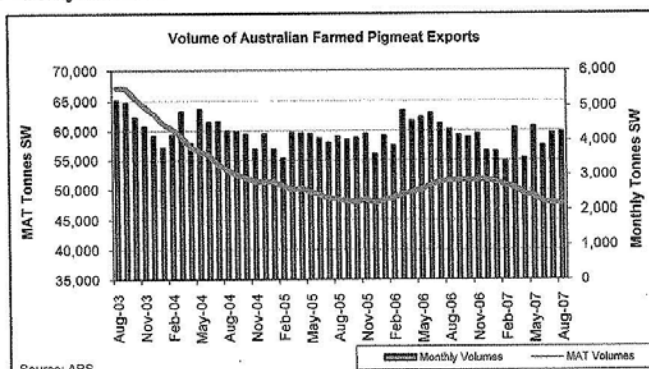
Source: ABS

SW = Shipped Weight

MAT = Moving Annual Total

August 2007 export volume and value

- 4,240 tonnes (t) Shipped Weight (SW), 0.8% increase on July 2007, 1.4% decrease on August 2006
- Moving Annual Total (MAT) value of \$155.7m, 3.5% decrease on August 2006
- MAT Volume = 47,686t SW, 7.4% decrease on August 2006
- Average price = \$3.48/kg, (excludes offal and livers) 1% increase on August 2006
- Singapore, Japan and New Zealand represent 83.6% of total exports



Source: ABS

August 2007 exports by state

- New South Wales (NSW), Queensland (QLD), Victoria (VIC) increased export volumes on August 2006.
- All other states decreased export volumes, with South Australia (SA) decreasing export volumes by 68.8% less when compared year on year.

Singapore

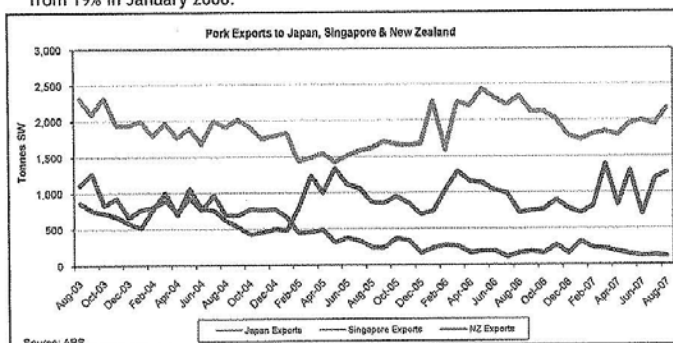
- 2,168 t SW, 11.9% increase on July 2007
- Contributing to 51.1% of total Australian export volume
- Average price = \$3.50/kg (excludes offal and livers), 4% decrease on August 2007
- August 2007 MAT volume of 23,261 t SW, 4.5% decrease on August 2006
- August 2007 MAT value of \$84.2M, \$7.6M or 0.8%, 10.5% decrease respectively on August 2006

New Zealand

- 1,274 t SW, 77.4% increase on August 2006, and a value of \$4.7m a 82.5% increase August 2006
- Monthly volume increased by 7.0%, value by 14.2% when compared to July 2007.
- Contributing to 30.0% of total Australian export volume, growth from 19% in January 2006.

Japan

- Exports to Japan continue to decrease for August 2007, a consistent trend apparent from January 2007
- Exports volume decreased 66.5% on January 2007
- 105 t SW monthly exports, 33.2% decrease on August 2006



Source: ABS

Imports

Table 1.3 Country of origin for pork imports

Month	TOTAL		CANADA		DENMARK		USA	
	Volume Tonnes SW	Value \$AUD (million)	Volume Tonnes SW	Value \$AUD (million)	Volume Tonnes SW	Value \$AUD (million)	Volume Tonnes SW	Value \$AUD (million)
MAT Aug-07	108,926	439.5	41,908	155.4	37,087	173.0	28,087	106.1
MAT Aug-06	75,309	278.5	30,661	107.2	25,143	103.6	18,546	64.1
% Change	44.6%	57.8%	36.7%	45.0%	47.5%	64.0%	55.9%	65.7%
Aug-07	6,696	26.0	2,843	10.6	2,101	9.2	1,709	5.9
Aug-06	5,911	22.7	2,353	8.6	2,221	9.4	1,257	4.3
% Change	13.3%	14.6%	20.8%	23.0%	-5.4%	-2.1%	36.0%	37.1%

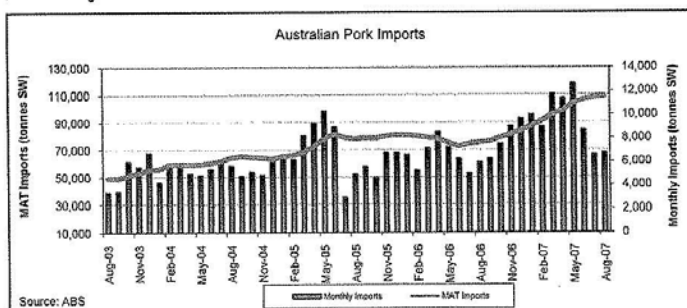
Source: ABS

SW = Shipped Weight

MAT = Moving Annual Total

August 2007 import volume and value:

- Average monthly import volume = 6,696 t SW
- Compared with July 2007, August import volume increased by 2.3%, and total import value increased by 3.1%
- Average price = \$3.89/kg, a 1.6% decrease on last quarter (Mar-May 07) and a 1.2% increase on August 2006.



Canada

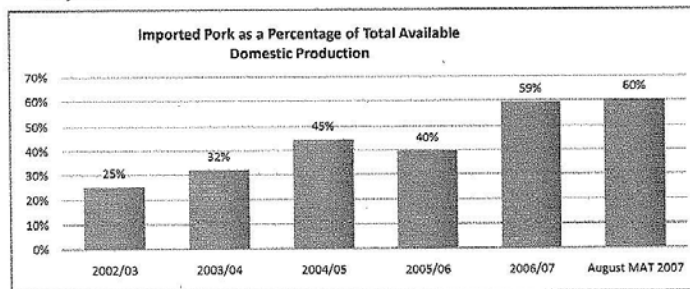
- 2,843 t SW, a 32.8% decrease on last quarter (Mar-May 07) and a 20.8% increase on August 2006
- Average monthly import volume = 2,843 t SW
- Represents 42.0% of total monthly imports, an increase share of 6% on July 2007

Denmark

- 2,101 t SW, a 50.0% decrease on last quarter (Mar-May 07), and a 5.4% decrease on August 2006
- Represents 31.0% of total monthly imports, increase share of 8% on July 2007

United States

- 1,709 t SW, a 33.2% decrease on last quarter (Mar-May 07) and 36.0% increase on August 2007
- Represents 26.0% of total monthly import volume share, a decrease of 14% on July 2007, allowing Canada and Denmark to increase their import market share.



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Conclusion:

- Canada, Denmark, and United States, all decreased import volume on last quarter (Mar-May 07) between 30 - 50%
- Canada, Denmark and US acquire 99% of total imports, however United States significantly decrease their import volume market share, by 14% on July 2007 market share.

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Annexure 6

Eyes and Ears – Market News for the
Australian Pork Industry – Issue 257
15 November 2007

Annexure to Submission to the Productivity Commission

eyes & ears

Market news for the Australian Pork Industry



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Markets

Pig Prices c/Kg HSCW, Trim 1 - Head on (weighted average indicative prices). NB: National weighted averages exclude Tasmania
W/E 09/11/2007

CONTRACT PRICES	45kg - 60kg - 11-12mm				60.1kg - 75kg - 12-13mm			
	Range		Weighted Av	CH	Range		Weighted Av	CH
	min	max			min	max		
QLD	235	300	277	4	225	310	233	4
NSW	235	310	257	10	197	290	227	2
VIC	220	240	221	0	215	243	232	1
SA	265	270	270	0	230	250	239	2
WA	317	322	319	3	228	251	244	6
TAS	350	350	350	0	290	290	290	0
EASTERN SEABOARD*	220	310	256	3	197	310	233	2
NATIONAL	220	350	269	4	197	310	235	3

CONTRACT PRICES	75.1kg - 85kg - 13-14mm				85.1kg - 105kg - (Japan Trim)			
	Range		Weighted Av	CH	Range		Weighted Av	CH
	min	max			min	max		
QLD	215	251	235	5	185	215	199	7
NSW	215	280	236	8	205	270	254	7
VIC	215	240	228	1	195	210	210	0
SA	230	240	239	1	0	0		
WA	225	251	240	6	0	0		
TAS	265	265	265	0	290	290	290	0
EASTERN SEABOARD*	215	280	235	4	185	270	221	5
NATIONAL	215	280	236	5	185	290	221	5

CONTRACT PRICES	Backfitter Sows > 20mm			
	Range		Weighted Av	CH
	min	max		
QLD	80	166	124	2
NSW	70	125	83	4
VIC	120	140	121	0
SA	135	140	139	0
WA	127	160	147	2
TAS	120	120	120	0
EASTERN SEABOARD*	70	166	117	2
NATIONAL	70	166	123	2

SALEYARD PRICES	Baconer price			Porker Price			Numbers Sold	
	LW	TW	CH	LW	TW	CH	LW	TW
Toowoomba (QLD)	290	317	27	297	308	11	n/a	560
Gunnedah (NSW)	148	n/a	n/a	301	n/a	n/a	90	n/a
Ballarat (VIC)	245	234	-11	268	238	-30	324	742
Dublin (SA)	256	241	-15	280	283	3	1,010	1,111

CH: Denotes change from previous week. N/A: Denotes no data provided. Please note: Price change figures for the Gunnedah sale yard prices are over a two week period. *Eastern Seaboard: Includes QLD, NSW, VIC & SA states only.

Pork Wholesale Prices (Sydney c/Kg) (Source: NLRS TW: This Week | LW: Last Week | LY: Last Year Moving Average)

14/11/2007	CARCASS			BROKEN SALES		
	Pork	Bacon	Legs	Saddles	Forequarters	
TW	390	380	330	470	300	
LW	390	380	330	470	300	
LY	392	362	329	503	273	
14/11/2007	CARTON SALES					
	US Ribs	Boneless Legs	Fillets	Striploins	Pork Neck	
TW	920	530	1000	670	730	
LW	920	530	1000	670	730	
LY	646	503	981	653	658	

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Domestic Market**Wheat**

ASX January 08 futures are bid at \$415/tonne and offers around \$420/tonne port, well down on last week's values.

Sth QLD/Nth NSW

Harvest continues in nth NSW and sth Qld, with CQ nearing an end. Rain over the last week interrupted harvest but clear weather forecast well into next week should see the harvest quite advanced. Quality remains very patchy, with a large percentage of high screenings.

Flour mills are the main buyers of any quality wheat of high protein. This is keeping the premium for APH wheat some \$40-50/t above lower grades with high screenings. Wheat is traded based on screenings rather than protein at present.

Prices are hovering around \$430/t Brisbane for APH down to \$385/t ex farm Darling Downs for 70/10 low screenings feed wheat. HPS1 prices are around \$340/t depot in sth Qld but up around \$370/t in nth NSW. Most of the buying interest is coming from Brisbane and southern based flour mills. While the mills remain active, prices will be steady, but once they have coverage, we would expect prices to move lower by around \$20-25/t very quickly.

Sth NSW/VIC/SA

What wheat has been harvested thus far in Victoria (not a great deal) is reported to be high protein and low screenings. While no harvest has occurred in the southern half of the state, crop expectations are high. Prices are starting to settle as more volume comes to the markets. Domestic millers are not as prominent as they are in the Nth NSW and Queensland markets.

Delivered Melbourne Jan 08 APW multi-G bids are lower at \$370/t, while Goulburn Valley (GV) and other up-country destinations maintained within a \$10/t range. Southern NSW markets remain at a \$20-30/t premium to Melbourne.

In South Australia, wheat quality has been a high percentage of milling grades, but is moving east to satisfy the Riverina and Goulburn valley consumption markets.

WA

Cash prices for wheat in the Kwinana Port Zone are still attractive, especially the fixed grade cash bids, with the best PGH at \$354/t for APW FIS Freo (down \$5/t for the week). Growers with wheat in warehouse are locking in the fixed grade bids and delivering to the domestic market where possible.

The best multi-grade bids at only around \$20/t behind EPRs on an FIS basis are also still reasonably attractive to growers, with a low proportion of cash cover leading into harvest.

Generally, wheat is being warehoused at delivery, with the intention of allocating loads to contract commitments and possibly one or more pools later during the harvest period. This gives growers the option of selling for cash if more export licences are issued once production is better understood.

It is still too early to draw much of a conclusion about wheat yields and quality, but early indications suggest that yields and quality could be a little up on expectations.

Domestic Feed Barley**Sth QLD/Nth NSW**

Domestic values are in the main steady to a little firmer in nth NSW and sth Qld as trade shorts for FB1 quality continue to try to find coverage from a crop that is mainly producing FB2 quality and below. New crop prices are bid at \$360/t delivered Downs for FB1 but offers are \$20/t above these levels, with discounts of \$30/t for FB2, \$70/t for FB3 and \$100/t for FB4.

Crops in the northern zone are all but harvested, with quality and yield all over the place but generally poor. While trade shorts exist, barley prices will remain steady near term but trend lower longer term if wheat prices continue to fall.

Sth NSW/VIC/SA

Improved quality and yields of early harvest in Victoria and South Australia, and a lack of international buyers, is seeing port prices fall and the malt spread tighten. Up-country bids are falling but not as quickly, as crop harvested and supplied against contracts puts more grain into the supply chain.

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Goulburn Valley and Riverina markets are in the \$350-369/t range delivered for F1. These bids are above cash at silo prices. F1 is at a discount of \$60/t across most states. Prices are back to \$320/t track for FB1.

Barley in the SA Mallee has been similar to Victoria and we have not heard of any quality problems apart from a percentage of barley missing the malt grade due to high protein.

WA

In WA, barley prices are tumbling (down \$15-25/t for feed) as growers sell into the cash market either on a load-by-load basis, or in the form of forward cash contracts, as they become more confident with production at bids of around \$310/t FIS Free for feed.

As is usually the case when harvest cranks up, the marketers and traders reduce prices as grower selling increases. Most reports are indicating better than expected yields of barley in all port zones, but particularly the Albany Port Zone.

Sorghum

With the A\$ easing of late current export parity levels for new crop sorghum is around \$244/tonne delivered Brisbane/Newcastle.

Some 50%-60% of the total sorghum crop has been planted, with the much higher percentage planted in QLD; far northern NSW is lagging behind due to dry weather. Growers are expected to continue to plant sorghum through into early next year on further rain.

Sorghum prices continue to move lower as seasonal prospects improve and grower forward selling interest increases. Given a good season, the current domestic premium over export values may move closer to \$10-15/t, implying a fall of some \$40-50/t from current levels around \$300-310/t track port. This represents a domestic premium around A\$60/tonne over export values for new crop sorghum compared to \$90/tonne two weeks ago.

Weekly Feed Grain Table:

(Source: ProFarmer)

Given the current environment, APL is now capturing grain prices on a weekly basis.

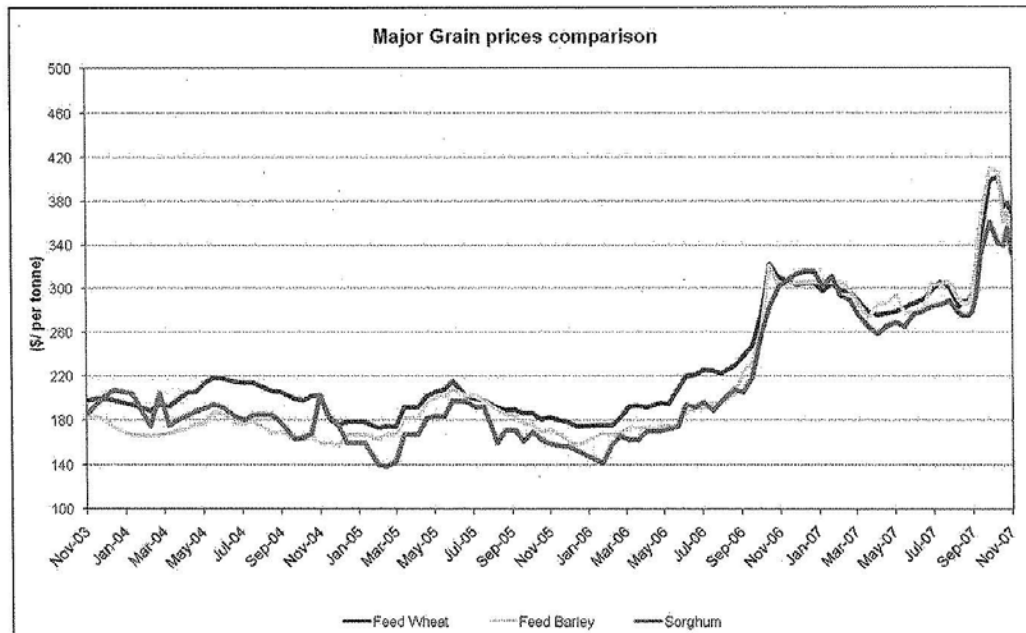
	DD			Bris			Nth NSW			New		
	LW 07/11	TW 14/11	CH	LW	TW	CH	LW	TW	CH	LW	TW	CH
Feed wheat	410	410	0	420	420	0	376	390	14	400	370	-30
Feed Barley	370	370	0	355	370	15	360	355	-5	370	365	-5
Sorghum	310	300	-10	325	310	-15	330	315	-15	340	328	-12
Triticale												
Soy meal	543	590	47	528	575	47	558	605	47	528	575	47
Canola meal	440	435	-5	425	420	-5	440	435	-5	400	395	-5
Cotton seed	400	400	0	370	370	0	390	389	-1			
	Sth NSW			Pt K			GV			Central Vic		
	LW	TW	CH	LW	TW	CH	LW	TW	CH	LW	TW	CH
Feed wheat	390	380	-10	406	372	-34	376	366	-10	400	345	-55
Feed Barley	375	365	-10	375	370	-5	350	345	-5	330	315	-15
Sorghum												
Triticale	380	380	0	380	392	12	380	380	0			
Soy meal	558	605	47	528	575	47	558	605	47	558	605	47
Canola meal	440	435	-5									
	Geel			Adel			Freo					
	LW	TW	CH	LW	TW	CH	LW	TW	CH			
Feed wheat	352	323	-29	325	350	25	280	280	0			
Feed Barley	330	317	-13	312	290	-22	290	310	20			
Sorghum												
Triticale				326	325	-1	320	310	-10			
Soy meal	528	575	47	558	605	47						
Canola meal	415	410	-5									
Lupins							340	330	-10			
Feed Oats				280	280	0	270	270	0			

DD = Darling Downs Bris = Brisbane Nth NSW = Northern New South Wales Sth NSW = Southern New South Wales Pt K = Port Kembla GV
Goulburn Valley Central Vic = Central Victoria Geel = Geelong Adel = Adelaide Freo = Fremantle. LW = Last week TW = This week CH= Change
Due to the volatility of the grain market, caution must be used when valuing data.

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Annexure 7

British Pig Executive Briefing Paper May 2006

Annexure to Submission to the Productivity Commission



Synopsis:

The Australian market is fairly static but is increasing its imports of pork for further processing on a background of falling domestic production. It offers interesting opportunities for legs and trimmings. This is a price-driven market and competitiveness of the product offer is paramount.

THE AUSTRALIAN PORK MARKET

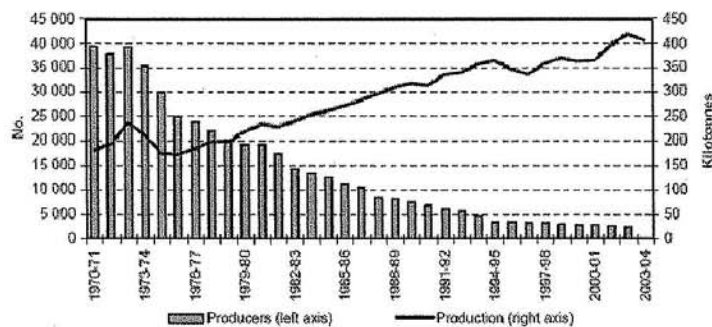
Jean-Pierre Garnier, Meat and Livestock Commission

This report has been jointly prepared by the UKTI Australian team, namely Rob Hemming and Shengul Kosyer in Melbourne, Richard Harper and Lorraine Upton in Sydney, Hayden Hodges in Brisbane and Bruce Dann for Perth.

The Australian pork sector

The Australian pork sector has undergone a great restructuring. From 40,000 producers in 1970, only 2,300 remain. Some 70 producers holding more than 1,000 sows produce nearly half Australian pork, whilst smaller producers run diversified operations. Pork is produced in Western Australia, the Murray Basin and the developed Eastern coastal areas. There has been some concentration of the slaughtering sector with 15 pigs abattoirs left that are located near the areas of production.

Fig. 1 Australian pork production and number of pig holdings
(Source: Australian Pork Ltd – Productivity Commission)



There has been a lot of activity in the Australian pork sector over the last few years.

Australian pork production represents 3% of Australian agricultural output with a value of A\$ 900 m. and volumes in small decline at 388,000 tonnes for 2005-6. Australian pork exports, mainly to New Zealand and the Far East have risen steadily to around A\$ 200 m. But these seem to have peaked at around 50,000 tonnes. The pork industry, represented by Australian Pork Limited or APL has experienced challenges from increased imports. It has had to place more emphasis on exporting as imports have grown. An APL study into the competitiveness of the Australian industry in April 2005 found that the domestic market was static and growth could only come from exports. The study also found that the industry structure in Australia needed to rationalise and become more integrated to enable it to compete in the global marketplace.

Australian pork production faces a number of challenges. The rise of imports has driven prices down. It has depressed the price of pork by an estimated 25% according to Australian Pork Ltd Senior Analyst, Charles McElhone to the current prices of A\$ 2.29 /kg (£ 0.94 /kg) for baconers and A\$ 2.65 /kg (£ 1.10 /kg) for porkers. Pig producers need an estimated A\$ 2.50 to make a decent return. In the past pork prices were closely related to feed prices by the growth of imports has fundamentally changed this relation. The Australian pork sector has also been hit by the effect of the drought on feed prices that are adding A\$ 40-50 cents per kg of pork produced and are squeezing producers' margins. However, the wide use of future markets by Australian pig producers has partly offset this rise in costs. Australian Pork is trying to raise carcase weights from the current 73 kg to 85 kg in order to lower costs of production and bring Australia in line with global specifications.

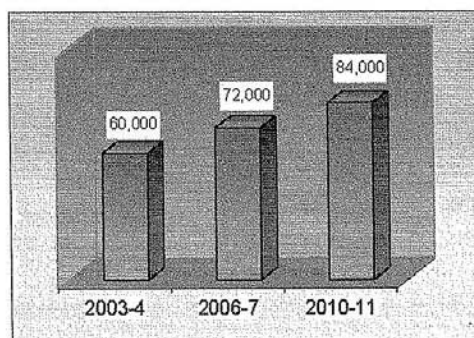
The processing sector is healthy and growing. The processing sector counts more than 300 companies of various sizes producing a vast array of products that reflect Australia's varied ethnic background, including English sausages and German Wurst. Unsurprisingly for a country with a dominant Anglo-Saxon culture, the main processed products are bacon and ham. Processed pork represents 65% of pork usage and imported pork (see below) represents 45% of this. Six companies that include Primo, Hans, Weston, Darling and KR Castlemaine represent 60% of total smallgoods production.

Domestic consumption of fresh pork has grown by 25% over the last three years from 8.11 kg/person/year to 10.38 kg/person/year, whilst the consumption of processed pork product is stable at 11.79 kg/person/year, making a total of 22.17 kg/person/year. The growth of consumption has spurred the growth of imports. The Australian pork sector is fairly innovative, having launched an injected pork initiative in 2006 (interestingly named "moisture infused") as well as numerous aggressive publicity campaigns, the latest using the Chinese Year of the Pig. A code of practice for animal welfare has been developed. There are some niche markets including a RSPCA-approved Freedom Food scheme that use British standards (sows kept outdoors and pigs finished on straw) operated by Pastoral Pork Company under the Otway pork brand. This is a tiny scheme with meat distributed in the Melbourne area. Pigs weigh 58-66 kg carcase and have a 12mm P2. Other schemes of note include Large Black and Berkshire pork.

Pork trade

The Australian pigmeat market has seen a dramatic increase in imports over the last ten years following the relaxation of import and quarantine restrictions. Imports of fresh pork were initially from Canada and then followed by imports from Denmark. Imports are forecast by the Australian Bureau of Agricultural and Resource Economics (ABARE) and the Danish Meat Board to continue to increase over the next five years (see below). This has been matched by declining domestic production, which is likely to continue its slow decline.

Fig. 2 Pork imports forecasts 2003/4 to 2009/10 (tonnes)
(Adapted from Abare data)



Pork imports are limited to further processing in order to protect Australia's health status. The industry in Australia argued for many years that imports posed a disease threat, though imports of uncooked, boneless pig meat from Denmark and Canada have been permitted for some years. Since 2004, with the introduction of the Free Trade Agreement with the United States, pork has also been imported from there. Apparently, the US share of imports has grown at the expense of the Canadian share. Denmark reported in 2005 that its exports to Australia had increased five-fold in the previous six years.

A check of the Australian Quarantine & Inspection Service (AQIS) web site on 2 April 2007 showed that the only countries currently listed as having specific import conditions for import of pig meat are Canada, Denmark, Finland, Italy, Spain, Sweden and the United States. However, a contact at [Biosecurity Australia](#) confirmed that specific import conditions for pork from the United Kingdom should be finalised very soon. There are full details of the general requirements for imported pig meat in the [Import Risk Analysis](#) document on the Biosecurity Australia web site.

The APL keeps records of import figures in its [Pork Import Report](#). According to an [Australian Food News](#) web site report in August 2006, Australian imports of pork increased from around 6,000 tonnes in 1992-3 to 60,000 tonnes in 2003-4 (see above). An [Australian Bureau of Agricultural and Resource Economics](#) industry overview states that "a significant proportion of pig meat consumed in Australia is imported. In 2002-03, for example, imports accounted for around a quarter of total pig meat consumption, and 37 per cent of the bacon, ham and smallgoods consumed in Australia."

Specifications for pork have to meet high standards, especially fat thickness. Most pigs that are locally produced are marketed directly to a meat processor and graded for carcass-fat content in the abattoir.

Consumption of pork in Australia is around 23 kilograms per person (around half fresh and half processed) and this consumption is forecast by ABARE to remain relatively stable over the next five years.

In terms of current imports industry sources indicate that they can be divided into a number of individual meat categories and need to be understood in the context of each category. The categories are subject to the relative demand by the market but can be described as follows:

- pork leg meat mainly sourced from Canada
- pork middles mainly sourced from Denmark
- pork trimmings mainly sourced from Canada
- pork loins mainly sourced from Canada.

For some large smallgoods manufacturers, imports make up a considerable part of their raw material supply and are considered necessary to maintain a competitive position in the market. Over recent years imports have been cheaper than domestic meat and with a strong exchange rate this is expected to remain the case.

The strengthening of imports has seen smallgoods manufacturers being released from utilising a whole carcass to selecting specific cuts from the import market. This in turn has released retailers from marketing cooked products with volumes and prices set by the domestic market. Ultimately the fresh trade is still yoked to the whole carcass utilisation but the cooked market is not. Naturally as less meat is required from the domestic market for smallgoods, in turn there is some downward pressure on local prices. The result can be major distortions in raw material pricing with most processors spending considerable time and energy analysing the import market looking at exchange rate movements, seasonal marketing of pork products from Canada, Denmark and the newer entrants. This is then compared to the domestic market looking for seasonal advantage particularly in the winter months away from the Christmas demand. Long-term contacts with suppliers with locked in prices and volumes are available with imports and for those with considerable capital, investment buying is also a possibility.

This would appear to be a good time to look at export to Australia as the local industry has been hit quite severely by the impact of a prolonged drought. This does not necessarily affect water supplies for all producers but does have an impact on price and availability of feed grain. A recent news report also mentioned that low returns and labour shortages were problems currently being experienced.

The first tier of importers in Australia includes Primo (NSW), Hans (QLD), George Weston (Don Smallgoods) (VIC/SA) and KR Castlemaine (VIC). Details of these companies are provided in the next section of this report.

UK exporters should be aware of AQIS requirements – for example, pork meat must be cooked and de-boned and, with its original packaging must be heat-treated. Raw pork i.e. ham and bacon accounts for 60% of the smallgoods market. There is information on the Australian Pork Limited web site about new regulations regarding Country of Origin labelling.

Import conditions for British Pork

AQIS have advised, if conditions are finalised, that they will issue import permits to Australian importers that have made an application. All import conditions would be clearly stated on these permits. Until conditions have been finalised UK pig meat cannot enter Australia. Therefore format and packaging will be addressed when the specific import requirements for import from the United Kingdom have been finalised. It is worth noting some of the requirements for two countries already exporting to Australia:

Canada

Each shipment must be accompanied by an application for permission to import which includes details of country of export, name and identification/veterinary control number of

producing establishment, species of origin, product type and full details of any process of manufacture the meat has undergone. There are strict conditions as to parts of the animal used and traceability. For raw pork the shipping container has to be sealed in a tamper-evident manner. Cooked pork destined for Australia has to be stored separately from products not eligible for export to Australia.

USA

Unprocessed meat may be sent to Australia for further processing. Similar regulations apply as to parts of animal used and traceability. Shipping containers have to be marked 'Product of USA', bear the slaughter or packaging date, details of establishment where the animals were slaughtered, with visible identification/veterinary control number on the outer wrapping. The product should be packed to ensure each container contains meat from a single species, so that they are not exposed to contamination before export; in clean, new or disinfected packing containers.