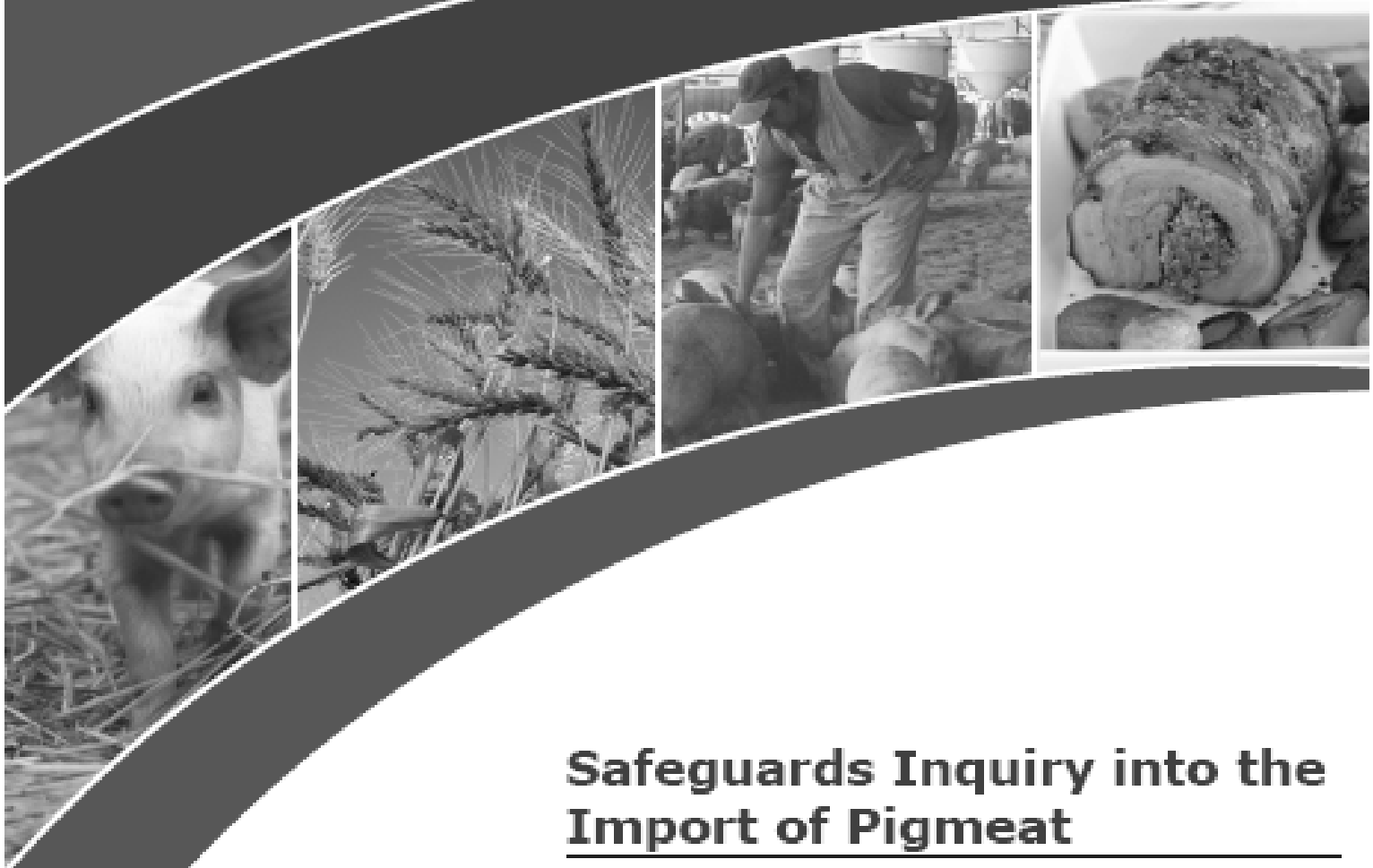


AUSTRALIAN PORK LIMITED

Australian Government Productivity Commission

Submission #2

10 December 2007



**Safeguards Inquiry into the
Import of Pigmeat**

2007

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GLOSSARY

ABS	Australian Bureau of Statistics
APFG	Australian Pork Farms Group Submission to the Productivity Commission Inquiry by Australian pork Farms Group 26/11/2007
AOS	Agreement on Safeguards
APL	Australian Pork Limited Submission to the Productivity Commission Inquiry by Australian Pork Limited 26/11/2007
AUS FTA	Australia United States Free Trade Agreement
BEC	B.E. Campbell Pty Ltd Submission to the Productivity Commission Inquiry by B.E. Campbell Pty Ltd 23/11/2007
BISD	Basic Instruments and Secret Documents
BPEX	British Pig Executive
CAN	Government of Canada Submission to the Productivity Commission Inquiry by Government of Canada 23/11/07
CSIRO	Australian Commonwealth Scientific and Industrial Research Organisation
CWE	Carcase Weight Equivalent
DS	Danish Bacon and Meat Council Submission to the Productivity Commission Inquiry by Danish Bacon and Meat Council 23/11/2007
DSU	Dispute Settlement Understanding
EC	European Commission
EU	European Union
GATT	General Agreement on Tariffs and Trade 1994
IAS	IAS Management Services Submission to the Productivity Commission Inquiry by IAS Management Services 30/11/2007
IC	Industry Commission
MFAD	Ministry of Foreign Affairs of Denmark The Trade Council Submission to the Productivity Commission Inquiry by Ministry of Foreign Affairs of Denmark 23/11/2007
NCMC	Northern Co-operative Meat Company Ltd Submission to the Productivity Commission Inquiry by Northern Co-operative Meat Company Ltd 30/11/2007
NSW	New South Wales
NTRMP	NT and RM Paterson Submission to the Productivity Commission Inquiry by NT and RM Paterson 23/11/2007
PMWS	Post Weaning Multisystemic Wasting Syndrome
Primo	Primo Smallgoods Submission to the Productivity Commission Inquiry by Primo Smallgoods 23/11/2007
QAF	QAF Meat Industries Pty Ltd Submission to the Productivity Commission Inquiry by QAF Meat Industries Pty Ltd 30/11/2007

USI	United States Industry Submission to the Productivity Commission Inquiry by Minter Ellison on behalf of the United States Industry represented by National Pork Producers Council (NPPC), the American Pork Export Trading Company (APEX), the American Meat Institute (AMI) and the US Meat Exporters Federation (USMEF) 26/11/2007
USITC	United States International Trade Commission
WF	Windridge Farms Submission to the Productivity Commission Inquiry by Windridge Farms 30/11/2007
WTO	World Trade Organisation

**AUSTRALIAN PORK LIMITED SUPPLEMENTARY SUBMISSION TO PRODUCTIVITY
COMMISSION RE PROVISIONAL MEASURES**

EXECUTIVE SUMMARY

1. There is clear evidence of record high imports over the last year.
2. The recent fall-back in volumes from those record highs are rightly conceded to be explained by normal seasonal factors by the Canadian Government. The US Department of Agriculture predicts record levels again next year. Australian producers are in the main operating at ongoing unprofitable levels. That is likely to continue and be unsustainable.
3. Existing and projected exit figures show an alarming contraction of the industry and a likelihood of significant overshooting.
4. Long lead-times and barriers to re-entry suggest that immediate safeguard action is warranted as these are critical circumstances where the existing and projected serious injury would be difficult to repair.
5. That injury cannot be adequately explained by domestic factors such as grain prices as foreign exporters admit that they are subject to similar cost increases. It is the fact that imports can ignore those increases in their pricing that causes the injury.

INTRODUCTION

1. This supplementary submission addresses the issues the Commission must consider in its recommendation as to any provisional safeguard remedy. It does so in the light of the range of submissions that have been lodged to date. APL also addresses the comments raised by the Commissioner with APL as the public hearing on 27 November and provides corrections to APL's original submission in Annex A. APL looks forward to providing further submissions in relation to the Commission's determination as to final safeguard measures in due course

THE APPROACH TO BE TAKEN BY THE COMMISSION WITH REGARD TO PROVISIONAL MEASURES

2. Various submissions have taken fundamentally different views as to the matters to be considered by the Commission. Differing views have been proffered with regard to determination of the relevant domestic industry, the elements to be identified when considering provisional measures and the evidentiary standards pertaining to each. In considering whether to recommend provisional measures, the Commission must deal with a number of foundational questions:
 - (a) What matters must be considered under the Commission's legislative mandate as outlined in Commonwealth of Australia Gazette No S297, 25 June 1998, in particular paragraph 16 thereof, and as per Australia's obligations under the WTO Agreement on Safeguards (AOS)?
 - (b) What matters should *not* be considered, lest they taint the recommendation as being based, in part, on irrelevant considerations?
 - (c) What process should be employed by the Commission in order to give parties the fullest opportunity to address all relevant issues with adequate evidence, particularly when its Terms of Reference have called for the provisional and final safeguards analysis to overlap?
 - (d) What evidentiary standards should apply at the provisional measure stage?
3. It is not only vital that the Commission accurately identifies the elements required to be considered, but also ensure that parties are sufficiently aware of the Commission's views so that they may be able to make meaningful submissions. From APL's perspective, the key preliminary issues are the nature and ambit of the domestic industry and the range of factors to be considered for provisional remedy measures.
4. Where the nature of the domestic industry is concerned, the Commission would be aware that there is a fundamental difference in view between APL, which argues that pig meat producers either produce like products or directly competitive products to the goods in question and on the other hand, foreign exporter interests who argue for a more limited industry. Each party has tended to present evidence in support of its own version of the domestic industry on such matters as serious injury and causation. Were the Commission to agree with APL's view as to the

domestic industry, then APL has had sufficient opportunity to present relevant data for the preliminary measure investigation. APL submits that it has provided “clear evidence” of the relevant factors. Opposing parties have taken the risk that a narrower industry would be identified at the preliminary stage in terms of the evidence they have submitted. If the Commission had any doubt about APL’s views as to the domestic industry, APL ought to be advised in advance so it has an opportunity to present “clear evidence” in relation to the domestic industry as defined by the Commission. APL’s views as to the nature of the relevant domestic industry are discussed further below.

5. Where the factors relevant to entitlement to a preliminary measure are concerned, the following section addresses the legal interpretation of the requirements, in particular, the elements expressed in paragraph 16 of the above-mentioned Gazette. A determination can be made where the following are evident: “critical circumstances exist where delay in applying measures would cause damage which it would be difficult to repair”; “increased imports”; “causing or threatening”; “serious injury”. The determination should be based on an analysis of “clear evidence” submitted by the applicant.
6. At the provisional safeguard stage, this means that other elements of a final determination, namely the broader economic impact or the presence of unforeseen developments are not relevant. APL would have equal procedural as well as interpretative concerns were the Commission to feel that an impact assessment is required at the preliminary measure stage, simply because that is not alluded to expressly in paragraph 16 of the relevant Gazette which directs the Commission as to its inquiry. Hence, were such factors to be taken into account, not only would this be wrong in law, but APL would have been denied procedural fairness in being able to present clear evidence on this issue. While APL contends that the current stage need not address the presence of “unforeseen developments”, this submission does expand upon that notion by way of context and because it believes that this element would not require the same detailed evidentiary preparation as would a proper submission on broader impact. The situation would be different if the Commission both thought that unforeseen developments was a relevant factor and that further evidence was needed for a determination on that issue.

THE LEGAL TEST FOR A PROVISIONAL REMEDY

7. The Commission’s obligation is to comply with Australia’s statutory safeguards regime as contained in Gazette No. S297, 25 June 1998. Where provisional measures are concerned, the entitlement and criteria are contained in paragraph 16. The express wording of this paragraph shows that this is an *additional* remedy to final measures and specifies that the preconditions are the presence of “clear evidence” that increased imports are causing or threatening serious injury that would be difficult to repair. These factors must be seen in the context of there being critical circumstances.
8. No other requirements are mentioned. Were the Commission to consider any other matters, it would be failing to comply with its legislative mandate, would be taking

irrelevant considerations into account and would leave the decision by it and the government open to challenge.

9. An analysis of Article XIX of GATT 1994 and the Agreement on Safeguards does not alter this position. Article XIX is somewhat ambiguous and does not define the minimum conditions. Article XIX:2 indicates that in critical circumstances, action under paragraph 1 may be taken. By itself this could imply that there need to be unforeseen developments demonstrated, as that criterion is articulated in paragraph 1. That is not the better view. AOS, which is stated in the Preamble to be aimed at clarifying Article XIX, expresses the same hurdles in Article 6 as are contained in the Australian Gazette. Furthermore, that Article indicates that other aspects that must be satisfied before a final measure can be implemented do not need to be dealt with in a provisional safeguards consideration. Article 6 expressly indicates that other requirements in Articles 2-7 and 12, need only be considered after provisional measure determinations have been made. The same result is also consistent with the structure of the Australia-US Free Trade Agreement which provides for provisional safeguard measures separately in Article 9.3.
10. Submissions on behalf of United States exporter interests (USI) are therefore wrong to assert that “the grounds for making a preliminary determination are, in fact, more demanding than for a final determination.” (USI paragraph 131) That would make the whole notion of provisional safeguards meaningless. It is only clearly more demanding in one sense, namely that separate attention needs to be given to whether there is damage that would be “difficult to repair” absent the provisional safeguard.
11. Where the balance of factors relevant to a final measure are concerned, only some need to be considered at the provisional stage and only then on a differential evidentiary standard that cannot possibly contain the full analysis of a final determination.
12. Less clear is whether “critical circumstances” is a distinct condition to be established. The better view is that the phrase “critical circumstances” is defined by the following words, namely, “where delay would cause damage which it would be difficult to repair ...”. Where damage would be difficult to repair, the circumstances are obviously critical. Where that would not be so, it makes sense to allow the Commission to delay any recommendations until the final investigation is completed.
13. It is also incorrect for USI to assert (para 133) “that ‘preliminary’ can be interpreted only in a chronological sense, not a qualitative sense”. If that were so, it would mean that a preliminary determination is exactly the same as a final one, but simply quicker. That is contrary to the plain meaning of Article 6 in context and paragraph 16 of the Australian Gazette.

EVIDENTIARY AND INTERPRETATION ISSUES GENERALLY

14. This section discusses the evidentiary standards to be applied throughout the Commission’s deliberations. Because the current round of submissions relates to the application for provisional safeguards, greatest attention is given to the evidentiary standards required at this stage. Nevertheless some attention is also

given to the broader evidentiary requirements as they may help colour the Commission's understanding of the approach it should take to provisional remedies and the directions it should give to interested parties in relation to the balance of the investigation. The central point is that the Commission is simply required to determine on balance whether the grounds for provisional or final measures are made out. Any higher evidentiary standard would be contrary to its legislative mandate.

15. Similar issues arise when the Commission must inevitably interpret provisions in the Gazette, AOS and Article XIX of GATT 1994. A number of submissions have tried to suggest that the Commission's deliberations should be concerned with the possibility of adverse WTO conclusions about the Commission's recommendations including its interpretative and evidentiary decisions. It is important for the Commission to be even-handed and simply seek to interpret its legislative mandate accurately and based on proper approaches to interpretation. The same approach should be taken to evaluation of evidence.
16. An evaluation of all the WTO jurisprudence shows that the key to understanding the WTO's role is to understand its *standard of review* and its mandate to ensure that proper processes and reasoning were followed. The WTO does not seek to mandate a particular outcome.
17. While the DSU does not expressly identify the standard of proof required, jurisprudence shows that it is a question of balance. Thus in *US-Section 301*, a Panel noted that its:

“task will essentially be to balance all evidence on record and decide whether the ... party bearing the original burden of proof, has convinced us of the validity of its claims. In case of uncertainty, i.e. in case all the evidence and arguments remain in equipoise, we have to give the benefit of the doubt to the ... defending party.” (para 7.14)
18. Thus if the competing cases are equally balanced, the person defending the claim should win. If the case of the person bringing the claim is slightly stronger, it should win.
19. The process the Commission should adopt can be understood by looking at the way WTO Panels may from time to time be asked to scrutinize the behaviour of domestic administrators. In *US-Underwear* a WTO Panel considered domestic determinations in the context of the objective assessment that is required under Article 11 of the Dispute Settlement Understanding of the WTO. The Panel considered that this called for an examination of whether all relevant facts had been examined both positive and negative, whether adequate explanation had been provided of how the facts as a whole supported the determination made and consequently, whether the determination made was consistent with international obligations.
20. Although the Panel in *US-Section 301* was looking at the burden and standard of proof under a WTO challenge, the same approach ought to apply in the primary domestic adjudication. Thus the submission in USI para 6 that “in case of doubt, the Commission must decide that the conditions have not been met,” is wholly

erroneous. This would be applying a standard of beyond reasonable doubt or scientific certainty. This is never called for in anti-dumping and countervailing actions and should not apply to safeguards either. The abovementioned quote shows that it should be about balance, not any level of doubt. USI would be well aware of the jurisprudence in cases that the United States was centrally concerned with.

21. The evidentiary standard would also often vary at different stages. The evidentiary requirements at the provisional measure analysis stage must of necessity be less than at the final stage or there is no point having provisional remedies provisions. In the anti-dumping arena, a Panel in *US-Softwood Lumber* indicated that the evidence sufficient to justify an investigation would necessarily be less than that required at the time of a final determination (GATT Panel Report *United States-Measures Affecting Import of Softwood Lumber from Canada*, BISD 40 F/358 para 322). APL recognises that the provisional remedy standard should be higher than the standard for initiation of an investigation, as it may come with actual measures which impact upon exporters. Nevertheless, AOS contemplates that it could be taken without their input and needs simply to be based on clear evidence provided by the applicant. This is discussed further below in relation to the notion of “clear evidence”. In one sense this is similar to the initiation evidence in cases such as *Softwood Lumber* as it involves a decision as to whether there is enough evidence to move forward with certain designated consequences. Analysing the adequacy of evidence is not the same as making a final determination.
22. The Canadian submission also suggests that in interpreting provisions, note should be taken that they are fair trade remedies and that the Productivity Commission “must inherently recognize that imports of pig meat to Australia are not benefiting from unfair trade practices.” The latter conclusion does not follow from the premise. While safeguard actions may be taken against fair foreign practices, there may also be unfair trade practices that underpin the serious injury. For example, an illegal subsidy to an input product in a foreign country might lead to increased imports causing or threatening serious harm. In such circumstances the imports do benefit from an unfair trade practice which could not be attacked directly through countervailing measures. The Canadian Pork Council itself has recently been reported to have expressed concerns over the introduction by the EU of export refunds for fresh and frozen pig meat. The US National Pork Producers Council has expressed similar concerns. The reports suggest that the respective governments have been asked to examine the legality of the EU initiative. APL also contends that Australian producers face unfair market conditions because of grain subsidies to foreign producers through such provisions as the US Farm Bill or the European Union’s Common Agricultural Policy. This is particularly significant when the cost of grain invariably comprises some 60% of the cost of producing a pig.
23. While arguments may vary as to whether such input subsidies are legal or not, they are certainly not fair in a free market sense. The overriding point is that one cannot presume *a priori* that all foreign producers are competing from a fair and equitable starting position.

THE “CLEAR EVIDENCE” REQUIREMENT AT THE PRELIMINARY STAGE

24. The Commission must give careful consideration to the different evidentiary standards for provisional and final remedies. Where provisional remedies are concerned, the Commission is simply asked to evaluate whether there is “clear evidence” in support of certain positions rather than to make final “determinations” in respect of those issues. If the Commission failed to distinctly answer the question of whether it has such clear evidence, it has failed to comply with its mandate in relation to the request for provisional remedies.
25. In this case, the provisional analysis has been integrated procedurally with the final determination. Normally, provisional measures are taken without prior consultation with other interested parties. In such circumstances it is obvious that the Commission’s obligation is to analyse the clear evidence provided by the applicant alone. Where the two are put together, there still needs to be a meaningful difference in approach and consideration of how evidence in response to the applicant’s contentions is to be utilised. To require the same approach as for a final determination means that the Australian Government is not really considering provisional measures. Such an interpretation would go wholly against paragraph 16 of the relevant Gazette.
26. While it is dangerous to apply synonyms to the statutory language, the Productivity Commission’s Issues Paper is correct in describing the obligation as requiring a *prima facie* case. The applicant must provide “clear evidence” of its entitlement. The Commission is not obliged to fully test that evidence against all other interested party submissions, but where these have been sought, can at least look to see whether there is enough evidence to think that the applicant has a legitimate chance of succeeding on balance at the final determination stage. If other submissions contradict key facts and it is easy to resolve the conflict at the provisional stage, the Commission would be entitled to do so. An example would be if the various parties disagree on ABS figures. On the other hand, where differences relate to complex econometric analysis, such as causation by imports as opposed to other factors, the Commission cannot complete the analysis at the provisional measure stage, otherwise it is making that stage otiose. This is particularly so if the applicant could not have been able to present the fullest analysis under the tight time frame for a preliminary determination.
27. If the Australian Parliament simply wanted to say that the normal time period should be shortened in case of critical circumstances, but that the same weight of evidence remains, it could have done so. That is quite different to the notion of provisional remedies. Urgently taken final measures are different to preliminary measures. Australia has availed itself of the opportunity identified in Article 6 of AOS to provide provisional safeguards on less than a full analysis of all competing evidence, subject to the applicant having made a sufficient case as to potential entitlement.
28. USI’s assertion that provisional measures have the same standard as final measures, is completely negated by the plain meaning of Article 6 of AOS. Elements of Articles 2 to 7 and 12 are to be determined later. These include evaluation of all factors under Article 4.2(a) and the open investigation per Article 3. It also includes

the public interest analysis in the latter provision. USI has provided no explanation of how their interpretation of Article 6 squares with this express reference to a two stage analysis.

29. Comments above as to the standard of proof being *on balance* and not *beyond reasonable doubt*, are equally appropriate at the provisional remedy stage. USI is thus wrong to assert (para 133) that the phrase “clear evidence” means “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”. Such a standard would make it beyond reasonable doubt. Such a standard is not appropriate for a final determination and is certainly not so at a preliminary urgent stage.
30. Because AOS contemplates that such a determination could be made simply based on the evidence provided by the applicant, the natural meaning of “clear evidence” is that the applicant itself provides enough to make the Commission satisfied on balance that the stipulated elements are present. It may be that in due course that evidence is refuted by other interested parties or qualified by more detailed economic analysis. It is simply a minimum evidentiary threshold to a holding pattern remedy, pending a fuller analysis of all relevant factors.
31. USI is also wrong to assert that the Commission must make “an unqualified finding” that delay would cause damage which it would be difficult to repair. Again the evidentiary standard is on balance. The Commission must determine whether delay would cause such damage, or whether on balance it would not. The Commission makes the best assessment on the evidence available, albeit requiring the applicants to have provided “clear evidence”. Evidence provided by APL’s October 2008 Interim Pigmeat Production Survey¹ as reported in APL’s first submission to the Commission described a decrease of 10.69 percent by January 2008 or 14,000 sows, emphasizing the critical conditions confronting the industry at present. The preliminary findings of APL’s Preliminary November Pigmeat Production Survey² (refer to Annex B) reinforce this further: it finds the greatest decrease of sows recorded by APL’s survey since March 2007 (see Table 1 below). Preliminary results indicate that between 1st November 2007 and 1st July 2008 survey respondents will decrease their breeding herds by 24.0 percent, totaling 21,573 sows. Extrapolating this out would be the equivalent to, 72,960 sows leaving the marketplace by July 2008 – the expected second wave impact as identified by APL in its first submission.

¹ APL conducts a quarterly survey of pig producers to assess change in the pig slaughter numbers or breeding herd as of the end of July. Due to the poor operating and deteriorating environment and an interim survey was undertaken. The survey covered current sows on hand and expected breeding sows at November 2007 and then again June 2008; pigs weaned and sold per litter and current farrowing and to February 2008. The results of the (regular) quarterly November survey are expected in early December.

² In the November 2007 Preliminary Pigmeat Production Survey results included a total of **43** participating producers, representing a collective sow pool of **90,492** or **29.7 percent** of an estimated 306,000² Australian Breeding herd. The survey is not expected to be finalised until mid December 2007.

Table 1**Comparison of November 2007 Pigmeat Producer Survey against previous Pigmeat Producer surveys:**

Survey Period	Sow decrease	Sow increase	Net +/- growth within group	Net % +/- of total collective sow pool
March 07 – January 08	-1156	833	-323	-0.3%
July 07 – March 08	-568	602	34	0.5%
Interim October 07 – January 08	-15166	368	-14798	-11.4%
November 07 – July 08 (Preliminary results)	21,750	177	-21,573	-24%

32. The current environment has significantly impacted upon the number of producers partially or totally de-stocking their piggeries, with total sow numbers decreasing regardless of producer size (see Annex B).
Of the 14 percent of respondents exiting the industry by July 2008:
- 33 percent stated they would return if industry conditions improved
 - 50 percent stated they would NOT return if industry conditions improved
 - 17 percent stated they were unsure of future investment into the pig industry
33. Similar trends were also reported by APL's Producer Impact Survey (refer Annex C) which was conducted in early November 2007 and reported in APL's first submission. An additional analysis commissioned by APL concerning Australian Pig Industry Financial Trends confirms the increasing losses, liabilities and job losses across the industry (refer Annex D).
34. USI also unfairly misquotes APL reference to a broader inquiry, in relation to the evidentiary standards of a provisional application (USI para 135). The terms of reference of that inquiry did not even cover safeguards. An inquiry aiming to deal with all aspects of competitiveness is wholly different from the time frame for a provisional measure in the face of critical circumstances.

CRITICAL CIRCUMSTANCES AND INJURY WHICH WOULD BE DIFFICULT TO REPAIR

35. The notion of critical circumstances should be seen as relating to serious injury that would be difficult to repair. If there is clear evidence of such injury, that would satisfy the plain meaning of critical circumstances. Conversely, if no part of the injury would be difficult to repair, it is understandable that the Commission would prefer to make measures dependent on a final determination.
36. Conclusions as to whether serious injury would be difficult to repair would depend upon the Commission's findings as to the nature of that serious injury. While this submission addresses a broad range of injury criteria, the key elements in the context of an application for provisional remedies are the fact that producers are reporting that most of their sales are at a loss; thus they are therefore operating on unsustainable levels and either need to increase debt or exit the industry; there is clear evidence of significantly higher than normal downsizing of stock numbers and

also complete exit from the industry; with consequential threats to the viability of certain abattoirs and boning rooms and multiplier effects on regional communities.

37. Furthermore, the ability to compete efficiently requires continued research and development and capital investment including adoption of technology which cannot be undertaken at a time that producers are operating at a loss as it is simply impossible to get sufficient support from financial institutions. Added to this are the very long time lags before financial returns could be expected from such productive investments.
38. Finally there is clear evidence as to the significant problems of re-entry once producers have decided to leave the industry. WF:6 point to the need for development applications, environmental impact statements, building, acquisition of additional land and periods of lower sales and income while pigs are bred and grown to the required weights. APFG:6 notes that it is highly unlikely that anyone exiting would return to the industry. It suggests that the amount of capital needed to get back into the industry is huge with a lead time from decision making of a minimum of 15 months. Working capital needs per sow equates to approximately \$1500 which is a huge commitment. Once buildings are closed down they deteriorate rapidly with no ongoing maintenance, which is unlikely to be affordable. Recommencing requires local and State permits which may be difficult to get as facilities will be subject to new building and permit guidelines. The workforce will often have moved on to other places and it is difficult to find and retrain new staff. The risk/reward ratio for reinvesting is unlikely to be attractive.
39. An analysis of all of the evidence and the balance of this submission should therefore lead the Commission to conclude that continuation of losses at current levels would lead to significant exit from the industry, would bar timely investment and that were a final safeguard measure to be recommended and accepted by government sometime in the latter part of 2008, the industry would have suffered unacceptable serious injury that would be too difficult to repair. Thus, a provisional measure operating as a holding pattern should be recommended pending the finalization of the broader inquiry.

UNFORESEEN DEVELOPMENTS

40. As noted above, the Commission should be concerned at this stage to deal adequately with the matters relevant to a preliminary remedy consideration and not colour that deliberation by consideration of extraneous factors. Because of the express wording of paragraph 16 of the Gazette, the Commission should not at this stage make any determination as to the presence of unforeseen developments. Nevertheless, to assist the Commission in understanding the arguments to be put in due course in relation to final remedies, APL articulates its views about the legal requirements for unforeseen developments and what facts in this case together constitute unforeseen developments. Were the Commission to take a different view as to the relevance of the notion of unforeseen developments at the preliminary stage and were the Commission to feel that other evidence would be relevant to its determination, APL asks that it be advised of this prior to the Commission's decision so that it could make adequate representations.

41. Article XIX of GATT 1994 speaks of safeguards being permissible when there are “unforeseen developments”. The same phrase is not reiterated in the AOS. Nevertheless, the Appellate Body has ruled that a measure must comply with both Article XIX and AOS to be permissible.
42. The Appellate Body further concluded that the phrase “unforeseen developments” is not simply context for considering the stipulated requirements. Appellate Body *US-Lamb* paragraph 72 suggested that the existence of unforeseen developments is a “prerequisite that must be demonstrated”. There must be a finding on the question of unforeseen developments (*US-Lamb* para 76). The Appellate Body considered that it was a “circumstance” which must be established, although in its view, it does not constitute a “condition”. While that distinction seems indeterminate, simply because a circumstance which requires distinct evidence and proof is in essence a condition, were the Commission to feel constrained by the Appellate Body’s logic, there is clear evidence of unforeseen circumstances.

WHEN MUST THE CIRCUMSTANCES BE UNFORESEEN?

43. The *Hatters Fur* case under GATT considered that unforeseen developments refers to developments after the negotiation of the relevant tariff concession (cited in Appellate Body *Argentina-Footwear Safeguard* para 96).

NATURE AND EXTENT OF UNFORESEEN DEVELOPMENTS

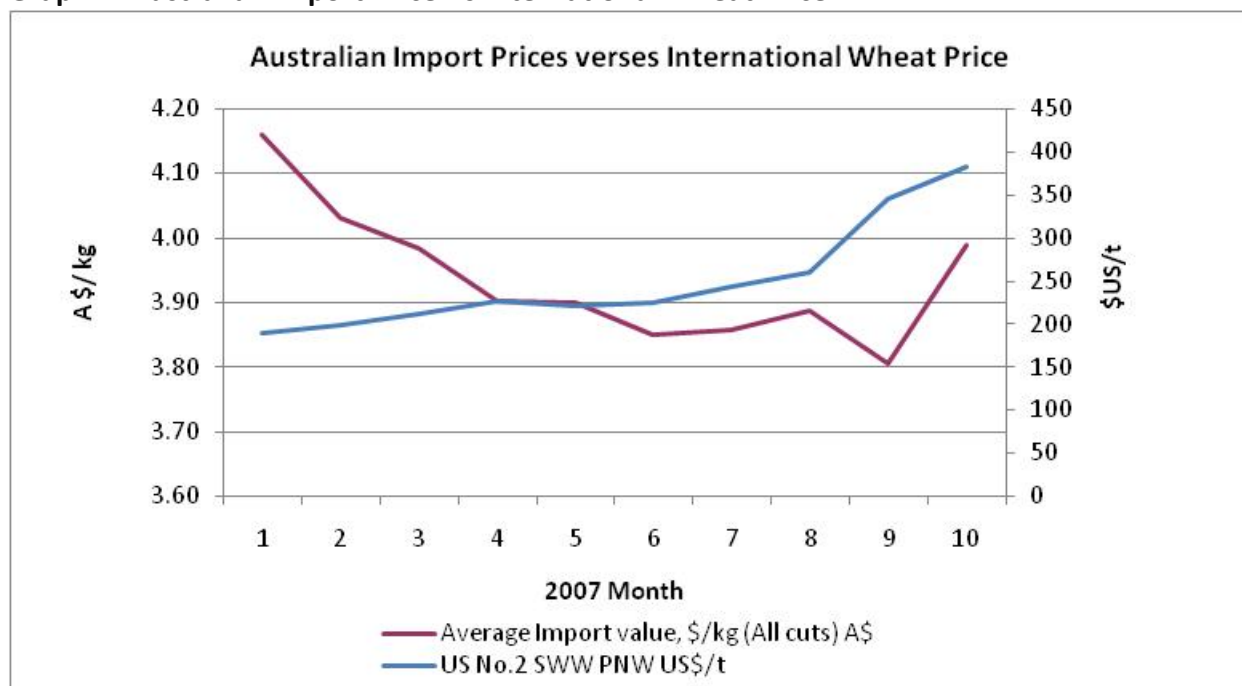
44. It is important to note at the outset that the Appellate Body has made clear that the phrase “unforeseen developments” covers both the *nature* and the *extent of* any changes (*Argentina-Footwear* para 91). *Extent* can cover both timing and magnitude issues. An eventuality that was itself foreseen could easily be unforeseen in terms of magnitude or duration. Examples in this case include drought, exchange rate, grain prices, foreign subsidies, quarantine changes and Doha Round delays.
45. The notion of *unforeseen developments* also encompasses a *combination* or *confluence* of factors that individually may have been foreseen, but where the combination itself was unforeseen (*US-Steel* para 10-89). Again it is the convergence of the stipulated factors that is in issue.

THE ELEMENTS OF THE UNFORESEEN DEVELOPMENTS PERTINENT TO THIS INQUIRY

46. What was unforeseen in this industry was the nature, extent, duration, confluence and combination of the following factors:
 - (a) That there would be a sharp and continual increase in imports.
 - (b) That this increase in imports would be contrary to historical quarantine practices.
 - (c) That the Uruguay Round’s introduction of a bound zero tariff would in part be based on the Australian Government’s wrongful assertion that its quarantine measures and practices were valid under the WTO.

- (d) That because of the belief in the validity of the Government's assertions about its quarantine measures, the local industry could naturally have assumed that it had a comparative advantage on health issues as opposed to foreign products. The local industry would not have foreseen how this supposed comparative advantage asserted by AQIS practice, would quickly dissipate following WTO challenges in cases such as *Australia-Salmon*.
- (e) That it would certainly have been unforeseen that the relaxation of Australian quarantine would be seen by the Federal Court as inappropriately risky, but that the Federal Court determination would have been overturned simply on the question of standing to challenge that behaviour. CSIRO review of the import risk assessment showed a 95 percent chance of incursion of the exotic disease, PMWS. It would have been unforeseen that foreign exporters would have standing before the WTO to enforce relaxation of quarantine measures, while domestic interested parties have no standing either at the WTO or in their own country to support the application of standards to prevent CSIRO's prediction.
- (f) That it would not have been foreseen that Australian labeling laws and consumer protection authorities would not prevent certain forms of import practice. For example, one processor is currently inserting Australian bones into imported boneless legs which would naturally create the expectation that the meat itself was Australian.
- (g) That foreign imports remain at unusually low prices with low correlations to fluctuations in foreign grain prices. This is clearly reflected in Graph 1 below comparing Australian import prices and international wheat prices ³.

Graph 1: Australian Import Price Vs International Wheat Price



³ Grain price Data provided by Richard Koch Profarmer who advises "International wheat prices include French, US Soft White Wheat (our main competitor grade), CBOT wheat futures & APW track Newcastle."

- (h) That foreign import prices would not be affected by increases in their own grain prices at the same time as Australia has experienced what seems to be a permanent shift upwards in grain prices, albeit where such prices still fluctuate significantly. This has recently seen reintroduction of export subsidies in the EU which would also not have been foreseen.
- (i) That it would not have been foreseen that relaxed quarantine on pork meat would not be matched with a consistent approach and application to quarantine on imported grains. It could not be foreseen that quarantine has worked in a very negative way for the industry differentially between a (key) input, grain, and outputs.
- (j) That these events would occur at the time of the worst-ever drought in Australia's history.
- (k) That the current likely magnitude of climate change itself and responses from various governments could not have been foreseen. For example, US public policy towards the ethanol industry would not have been foreseen and the impact that this has on shifts in grain production and pricing. The US shift in policy to feed security has strongly encouraged ethanol production and in turn has had a direct impact on international grain prices with a new benchmark in grain prices emerging. When combined with the above-mentioned Australian quarantine requirements for the importation of grain, this effectively means importing grain to improve supply and thereby release grain up country has become more expensive. The New South Wales State Government has been the first to consider similar developments in relation to the ethanol industry.
- (l) That these factors, including the drought, would occur at the same time as a significant appreciation in the Australian dollar as against the US dollar in particular.
- (m) That there would be a concurrent collapse or significant delay in the Doha Round of WTO negotiations which should have helped counter the zero percent bound tariff with decreased EU and US agricultural subsidies.
- (n) That safeguards measures applying in foreign markets but not in Australia would also not have been foreseen in their impact nor their duration, e.g. gate price system in Japan (WF:5). That it was also unforeseen that importers would be warned to order up because of a possible Danish strike which did not eventuate. The increased orders further exacerbated market share losses for the domestic producers.
- (o) That it was unforeseen that Canadian pork prices would not rise to a significant degree. The Commission itself in its 1998 Safeguard Inquiry Report (p 29) concluded "The Commission also observed that imports of pig meat could increase significantly if Canadian leg pork remained consistently cheaper than comparable Australian cuts. However, at the time, it was anticipated that Canadian pork prices would rise, while Australian

production costs would fall when the drought, which existed at the time ended, both of these factors ‘would help to reduce the incentive to import’ (IC 1995a p 18).”

- (p) That it would have been unforeseen that the supermarket sector in Australia would have exercised the degree of control on the behaviour of processors and ultimately the impact on pig meat prices.

- 47. The nature, extent and duration of each of the above-mentioned factors and their confluence in recent times, would not have been foreseen at any time between the negotiation of the original zero bound tariff concession up until their recent eventuality.

OTHER SUBMISSIONS AS TO UNFORESEEN DEVELOPMENTS

- 48. The USI submission fails to give any attention to these issues of the *extent* of the developments and *confluence* of different factors. It simply points to a foreseeable relationship between quarantine decisions and imports, a foreseeable relationship between zero tariff findings and imports and a foreseeable rise in the Australian dollar and feed costs (USI paras 14 and 15).
- 49. First, the submission is erroneous for speaking of “foreseeable” as opposed to “unforeseen”. The Panel in *US-Lamb* distinguished “unforeseen” from “unforeseeable”, noting that it is easier to show that something is unforeseen (para 7.22).
- 50. Secondly, it does not address either the *extent* or *duration* of the changes or the *confluence* of the different factors. It does not address these issues in the context of other relevant factors also acknowledged by USI, e.g. the extreme drought conditions and the appreciating Australian dollar (USI para 1). USI also makes no comment about extent and duration of Australian dollar appreciation and rising feed costs.
- 51. Most importantly, USI does not address the question of whether the domestic industry would have foreseen at the time of the Uruguay Round Negotiations that Australia’s then existing quarantine regime was not in compliance and that cases such as *Australia-Salmon* would soon show this to be the case, nor does it address why the domestic industry would have foreseen the other developments concurrently.
- 52. USI also inappropriately seeks to rely on the Commission’s 2005 inquiry as to what would have been foreseen. Comments that the Commission was able to make in 2005 have nothing to say about what was reasonably able to be foreseen during the Uruguay Round Negotiations by the domestic industry. The Commission’s comments were at the very least in the context of a clear understanding of Australia’s fundamental shift in its quarantine behaviour.
- 53. A similar evidentiary flaw is displayed by the European Commission. It seeks to rely on the Australian Government Generic Import Risk Analysis for Pig Meat (p 36 February 2004) to suggest that increased imports of unrestricted pig meat were foreseen. The issue is not what the Government could now validly conclude after

other unforeseen developments have eventuated, including its losses in quarantine cases before the WTO.

54. Furthermore, because the Appellate Body has rightly stated that one must look at the extent and combination of developments where there are a range alluded to, one simply cannot take any observations out of context in this way. Any submission or conclusion that does not take into account all of the relevant developments is simply failing to address the combination of factors and the question of whether that combination was unforeseen. To fail to do so would be to fail to answer the question as properly identified by *US-Steel* paragraphs 10-89 and would make Australia in violation of its WTO obligations.

INCREASED IMPORTS – THE LEGAL STANDARD

55. Article 6 of AOS refers to “increased imports” in the context of provisional safeguard measures. It would be fair to presume that this is intended to have the same meaning as the phrase “such increased quantities, absolute or relative to domestic production ...” as found in Article 2.1. The comments below in relation to the appropriate legal standard apply therefore to both provisional and final safeguard measures.
56. APL suggests that the Commission should view with concern what appears to be selective quoting by USI, Canada, Denmark and the European Union where WTO jurisprudence is concerned. As will be demonstrated below, such selective quoting, ignoring qualifying phrases even in the same paragraph as the quotation, is grossly misleading, whether intended or otherwise. To the extent that the Commission agrees with APL’s legal analysis and these observations about other submissions, the Commission ought to be equally circumspect in considering other aspects of those submissions.
57. USI has essentially quoted misleadingly from the Appellate Body in *US-Steel Safeguards* and has presented an argument to the Commission contrary to America’s argument in that case which was approved by the Appellate Body. While the Appellate Body in *Argentina-Footwear* did state that the “increase in imports must have been recent enough, sudden enough, sharp enough and significant enough ... to cause or threaten to cause serious injury”, it was not attempting to set up independent criteria of “recent”, “sudden”, “sharp” and “significant”. As is made abundantly clear in paragraph 346 of the Appellate Body report in *US-Steel Safeguards*, its comment was in relation to interpreting the phrase “such increased quantities” as appears in Article XIX:1(a) of GATT 1994 and Article 2.1 of AOS. The Appellate Body notes that the context includes the words “to cause or threaten to cause serious injury”. The Appellate Body goes on to say that “in our view, the term ‘such’ ... clearly links the relevant increased imports to their ability to cause serious injury or the threat thereof”. It goes on to say that it agrees with the US that the Appellate Body’s statement in *Argentina-Footwear* to the effect that “(w)hether an increase in imports is recent, sudden, sharp and significant enough to cause or threaten serious injury are questions that are answered as the competent authorities proceed with the remainder of their analysis (i.e., their consideration of serious injury/threat and causation).”

58. Thus the issue is whether increased imports flowing from unforeseen developments cause or threaten serious injury. The important question is to identify serious injury from that and distinguish it from serious injury which might have been caused by foreseen historical import levels. The safeguards regime is a response to the former and not the latter.
59. Furthermore, USI's quotation from the Appellate Body in *US-Steel Safeguards* to the effect that the nature of safeguard measures as emergency actions must be taken into account when construing the prerequisites, must be seen in the context of the rest of the paragraph not quoted by USI. While the Appellate Body confirms that in paragraph 347, it does that in the context of immediately going on to say that "even so, the fact that safeguard actions are 'emergency actions', and that the prerequisites for taking such actions should therefore be construed while taking into account the 'extraordinary nature' of safeguard measures, does not imply that the prerequisites for taking such actions, *in and of themselves*, must necessarily be 'abnormal' or 'extraordinary'. The question is one of the 'conditions' under which 'such' increased quantities of imports occur." (Appellate Body para 347)
60. A number of submissions note that there have been increased imports in 2007 but that recent months display a downward trend. USI presents this information generally in opposition to the application and also in support of its assertion that the US should be excluded under the provisions of the Australia-US Free Trade Agreement. Comments about the level of imports generally are contained in the sections below dealing with serious injury. Comments about Australia-US FTA provisions are dealt with in a separate section. At this stage it is important to consider the interpretative questions as to the quantitative requirements for a finding that there are "increased imports". In this regard, USI also fails to contextualize their quotes with the Appellate Body's observation in *Argentina-Footwear* reiterated in *US-Steel Safeguards* paragraph 350 that "the 'extraordinary nature' of the domestic response to increased imports does not depend on the absolute or relative quantities of the product being imported. Rather, it depends on the fact that the increased imports were unforeseen or unexpected." The Appellate Body goes on to note that the reference is to such increased quantities "and under such conditions" as to cause the relevant injury. It concludes that "(t)he relevant importance of these elements varies from case to case." (para 351) Comments of the Appellate Body at paragraph 358ff in looking at whether the Panel sought to assert absolute standards of the nature and level of the increase show clearly that this is not what either the Panel or the Appellate Body thought was appropriate. Article 4.2 requires a consideration of the "rate and amount" of the increase.
61. The Appellate Body reiterated that the competent authorities are required to consider the trends in imports over the period of the investigation.
62. At paragraph 374 the Appellate Body states:
- "In our view, what is called for in every case is an *explanation* of how the *trend* in imports supports the competent authority's finding that the requirement of 'such increased quantities' within the meaning of Articles XIX:1(a) and 2.1 has been fulfilled. It is this *explanation* concerning the *trend* in imports – over the entire period of the investigation – that allows a

competent authority to *demonstrate* that ‘a product is being imported in such increased quantities’.”

63. In that context it is important to further understand why the Appellate Body noted some other Panel observations without in any way seeking to criticize them. For example, paragraph 339 of the Appellate Body report noted that the Panel concluded that imports need not be increasing at the time of the determination, but merely that imports have increased. Thus USI’s reference to any seasonal downturn in imports cannot be determinative. The issue will instead be whether an increase over a relevant period has indeed caused or threatened serious injury.
64. A decline in imports towards the end of an investigation period is certainly relevant but not determinative. It simply needs to be explained. If the decline demonstrates a trend that goes against the ongoing utility of a safeguard measure, then it should be relevant to that conclusion. Alternatively, if it is a temporary decline explained by particular factors such as seasonal variations or past stockpiling, that does not detract from the overall conclusions about increases causing serious injury, thus they should not be a bar to a successful application. As articulated below any recent decline is likely to be temporary, is likely to be a precursor to a significant increase in 2008 as has been the case in the past and is part explained by atypical factors. As articulated below any recent decline is likely to be temporary, is likely to be a precursor to a significant increase in 2008 (unless there is a “chilling” effect from the commencement of this inquiry) as has been the case in the past and is part explained by atypical factors.
65. Guidance should also be taken from the Appellate Body’s comments in paragraphs 395 and 398 where it indicates it has misgivings in terms of the Panel’s reasoning and may have been more inclined to support USITC’s findings on overall differentials in imports compared to domestic production. The Appellate Body was not required to rule finally on that issue as the issue before it was the adequacy of the reasoning and explanations provided by USITC.
66. Denmark’s submission concedes that exports have grown roughly between 3.8% and 7.2% on an annual basis from 2006 to 2007, although they suggest that this is not “sudden and sharp” but is closer to the average. Again this misrepresents the WTO jurisprudence. It is not an absolute figure as to the magnitude of the increase that matters. It is whether such increase has caused or threatened serious injury.
67. The Canadian submission is also misleading when it suggests that “in order to apply a safeguard measure it must be demonstrated that the injurious conditions facing the domestic industry are extraordinary and that a safeguard measure is necessary to respond to a significant impairment in the overall economic position of the industry.” There is nothing in the jurisprudence that would support a requirement that the injurious *conditions* must be extraordinary and that the safeguard measure must be *necessary*. Article 5.1 of AOS simply indicates that the safeguard measure should only be applied “to the extent necessary to prevent or remedy serious injury and to facilitate adjustment ...”. The notion of necessity limits the extent and nature of the measure.

68. The Canadian submission purports to rely on this conclusion merely from one extract from the Appellate Body in *Argentina-Footwear* taken out of context as alluded to above in respect of USI. As outlined above, that extract refers to the Appellate Body's noting that safeguard action is extraordinary and the extraordinary nature of the actions must be taken into account when construing the prerequisites. The Appellate Body was not asserting that it should be a prerequisite in its own right. It also does not call for a restrictive interpretation per se, but simply an interpretation appropriate to a measure of that nature. Under principles of interpretation appropriate to international law, that would call for a purposive interpretation rather than a restrictive one.
69. The Canadian submission also misrepresents the key findings of the Appellate Body in asserting that *Argentina-Footwear* stands for a "test for increased imports" that is "necessarily very strict". Again, while they are not incorrect to quote the words, they fail to note the important observation that the issue is to find such an increase that truly causes or threatens serious injury.
70. If the level of imports has jumped significantly in the last three years but has remained relatively constant, the fact that there is a sudden increase in the first part of 2007 but not a sudden increase of late should not be held against an applicant. The fact that it is cautious in terms of bringing an application for a safeguard measure should not be used against it in this way. A sustained and constant significant increase must be looked at to see if it is causing or threatening serious injury. Month to month volumes change very markedly, as has been seen over the past few years, but this has not stopped the fact that over time, imports have significantly increased. Month to month movements do not show trends. The High Commission of Canada's further responses to the Commission's questions 7 December referring to the decline in imports since May 2007, admits that "this likely reflects, to a considerable degree normal seasonal factors" (p8).
71. The figures presented by Canada in its submission (Table 1, p9) are disingenuous purporting to show that the volume of imports ending 2007 will be less than those for 2006. This should be compared with the High Commission of Canada's further responses to the Commission's Questions 7 December which acknowledges that imports between the first 8 months of 2006 would show an increase of 57 percent (p 8). Further annualised import volume for calendar year 2006 was 81,386 tonnes/SW and for the 10 months to end October 2007 (ABS figures), import volumes had already matched this. APL has (very) conservatively estimated that the total import volumes for the calendar year ending December 2007 will total 102,701,tonnes/SW.

Table 2 APL Forecast Import Volumes MAT end December 2007

Period	Total Import Volumes (kg/SW)
Jan 2006 - Dec 2006	84,058,503
Jan 2007 – October 2007	89,687,035
APL Conservative Forecast Jan 2007 – December 2007	102,701,510
Percentage change	+ 18%

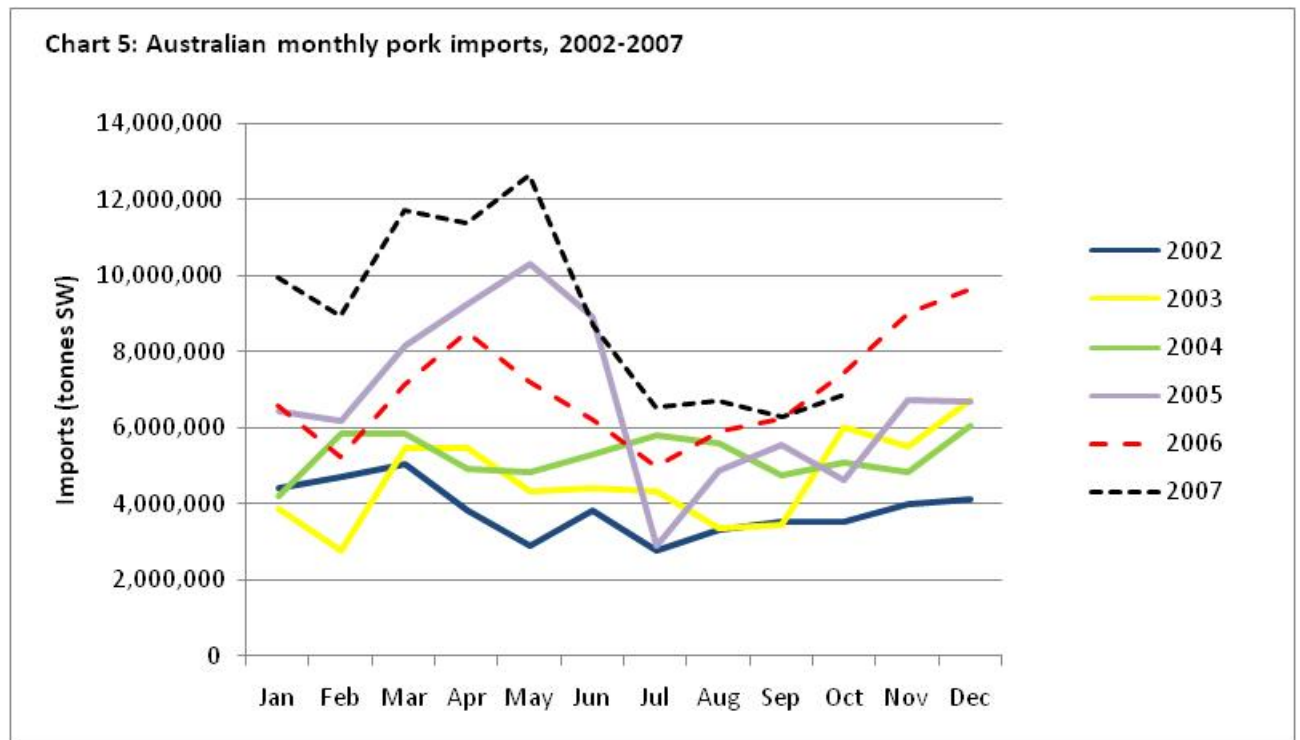
Source: ABS

72. The EC submission similarly misrepresents the legal requirements. It asserts that “Article XIX GATT and the WTO Safeguard Agreement allow for safeguard measures to be taken where a domestic industry is suffering serious injury as a result of an unexpected, sudden, sharp and significant increase in imports.” This submission is again taking WTO Appellate Body jurisprudence out of context and trying to turn it into a statutory threshold. As the European Commission would be aware, the Appellate Body expressly rejected this. To phrase it in the way that the EC submission does, would be to say that imports must be *all* of unexpected, sudden, sharp and significant in terms of their increase. Once again, the Appellate Body drew attention to the need to examine increases and their trends to be able to say with appropriate confidence that they *caused or threatened serious injury*.
73. Finally, it is crucial to note that the Commission must consider in the alternative, absolute increases in imports and import increases *relative to domestic production*. In *US-Steel Safeguards* the Appellate Body confirmed the plain meaning of Article 2.1 that in applying a safeguard measure, there is only a need to demonstrate either absolute increased quantities or increased quantities relative to domestic production (para 390). The following sections deal with each of these in turn.

INCREASED IMPORTS IN ABSOLUTE TERMS

74. While methods of identifying figures may vary all submissions show that there have been very significant increases in imports. BEC:20 points to imports increasing by 87 percent from 2002 to 2006. In APL’s first submission, Chart 1 page 15, Chart 2 page 16, Chart 3 page 17 and Chart 5 page 19 provide clear evidence of absolute increases in imports. The Commission’s own tables show a very serious spike in monthly imports of pig meat from September 2006 through to the middle of 2007. Chart 5 clearly shows that there is a subsection where two months trend down but then this followed by a spike at record levels which becomes increasingly apparent 2003 onwards and these volumes are increasingly higher each year. (Chart 5 shown below has been updated to reflect the latest ABS import statistics for October 2007.)

APL submission #1 Updated Chart 5



75. QAF suggests that ABS data shows an increase of over 60 percent in imported product in the first half of 2007 compared to 2006.
76. NCMC:2 points to 300 percent growth in pig meat imports from 2003 to 2007. That is likely to increase further as pig producers and processors exit the industry.
77. IAS Management Services (IAS), basing its conclusions on a focus group of 10 family pork businesses (the focus group) speaks of imports of pig meat at a record level of 109,000 tonnes per annum.
78. Because of the need to look at trends, IAS's representation of a 12 month moving total is an appropriate way to look at import volumes. IAS:2 Figure 1 shows record levels and gradient in import growth in 2007.
79. The Canadian submission concedes that ABS data shows that imports of frozen deboned pork for the period from January to August 2007 are up by 57 percent (78,554 metric tonnes) over the same period for 2006 (50,015 metric tonnes).
80. When aggregated with the more recent data and the projections for the rest of 2007, the only valid conclusion that the Commission could come to is that there is a significant increase throughout 2007. Furthermore, there is no evidence before the Commission to suggest that the trend would not continue in 2008. Chart 5, as explained previously in paragraph 74, shows that import volumes are increasingly higher each year. Also shown previously in paragraph 71 and Table 2, APL has (very) conservatively estimated that the total import volumes for year ending December 2007 will total 102,701 tonnes/SW, an 18 percent increase from end year 2006. This compares to the aggregated estimates as provided by DS, USI and CAN for year

ending December 2007 which totals 98,095 tonnes⁴, an increase over 2006 of 21 percent; critically it should be noted that by end October 2007 imports had already reached 89,687 tonnes (ABS). Again the trend in imports has been an increase each year for the past ten years, and increasingly so for the past three years.

81. The Commission should verify what these decreases imports purported by DS, DFA, USI and CAN should be, if any, look for reasons for these decreases and to then extrapolate MAT volumes to end December 2007 and into the first half of 2008. As noted above, a telling concessions is that the High Commission of Canada's further responses to the Commissions questions on 7 December referring to the decline in imports since May 2007 admits that "this likely reflects, to a considerable degree, normal seasonal factors." (p 8).
82. Thus while there has been a downturn in the figures alluded to in USI from those atypical increases, this should not detract from the overall conclusion that there has been such increase in imports to cause or threaten serious injury.
83. Recent decreases do not matter for a number of reasons:
 - 1) As noted above, from a legal perspective it is the trend over the entire period that matters.
 - 2) Seasonal adjustments come into play during this period as Canada concedes and as noted in paragraph 74 there is always a trend downwards over two months but this is then followed by a spike in import levels. However, the fact that imports have decreased again over the past couple of months is a reflection only that:
 - The volumes coming in for the first half of the year were so high that inventories with manufacturers were likely to have become very high, leading to decreased orders. This will be a short term response only, until inventories are again in control
 - Storage for frozen pigmeat may have been limiting, contributing to the reduction in orders
 - Month to month volumes change very markedly, as has been seen over the past few years, but this has not stopped the fact that over time, imports have significantly increased. Month to month movements do not show trends.
 - 3) The spike in imports in early 2007 were thus not able to be processed quickly enough, hence importers' freezers are also relatively full, still leading to domestic oversupply even with a more recent drop in imports from the atypical high levels. As noted and discussed in paragraph 64 and again in paragraph 74 there is always a trend downwards in import volumes over two months but this is then followed by a spike in import levels and that this spike has been increasing since 2003.

⁴ Canada Pork International in their submission (p 3), state they expect to export approximately 40,000 tonnes of pigmeat to Australia by end 2007. According to USI submission (p22), in October 2007, Australia imported 1,867 tonnes of pigmeat from the United States. The average volume imported (3rd quarter of July, August and September 2007 data) this figure was 1,928,569 tonnes. This was included for November 2007 and December 2007. According to the DS submission Annex, Denmark estimates it will export approximately 29,043 tonnes to Australia by end year 2007. Therefore combining the estimates of Canada, the United States and Denmark (40,000, 29,502 and 29,043 tonnes respectively) the expected imported volume would be 98,095 tonnes being imported into Australia for the calendar year ending 2007.

- 4) Another explanation of more recent decreases is the announcement or chilling effects of the commencement of this inquiry itself.
84. The US Department of Agriculture has as recently in its November Outlook for US Agricultural Trade, predicted that US pork exports will reach a new record in 2008. This also undermines USI assertions that recent import figures tell against the application of provisional measures. Not only can the recent drop in imports be explained but in addition there is evidence that there will be significant increases in 2008.

INCREASED IMPORTS RELATIVE TO DOMESTIC PRODUCTION

85. Table 2 p age19, Chart 6 page 20 and Chart 7 page 21 of APL's first submission provides clear evidence of relative increases in imports. This is not controverted by other submissions.
86. IAS also point out that from 2006-07 on, imports as a percentage of total available domestic production have jumped from 40 percent to around 60 percent (IAS:2 Figure 1).

RELATIONSHIP BETWEEN INCREASED IMPORTS AND UNFORESEEN DEVELOPMENTS

87. The Appellate Body in *US-Steel Safeguard* paragraph 314 suggests that the increased quantities are required to be imported "as a result" of the unforeseen developments. (paragraph 316)
88. The relaxing of quarantine measures against a background of bound zero tariffs, rapid appreciation of the Australian dollar, severe drought, failure of the Doha Round to remove agricultural subsidies and the fact that foreign imports do not seem to be as severely affected by grain prices as local product in part because of subsidies, all together give imports an ability to capture increased market share from domestic producers. Thus the increased imports do result from this confluence of unforeseen developments.

IS THERE INJURY BEING CAUSED OR THREATENED TO A DOMESTIC INDUSTRY?

89. As noted at the outset, various submissions have taken fundamentally different views about the nature of the relevant domestic industry. Once again, submissions on behalf of the United States, Canada, Denmark and the European Union have misrepresented WTO jurisprudence, consciously or otherwise, particularly in relation to identifying what the Appellate Body decision in *US-Lamb* actually stood for. Because it is abundantly clear that the case said nothing whatever about "directly competitive products", and was based on findings of fact about the lack of vertical integration in the United States lamb industry when it addressed "like products", assertions in exporter submissions about the WTO jurisprudence are erroneous and grossly misleading. Once again the Commission is invited to consider the impact that such a conclusion might have for the weight to be given to the balance of those submissions.

THE DEFINITION OF “DOMESTIC INDUSTRY”

90. Domestic industry is defined to include producers of “like products” or “directly competitive products”.
91. While this submission addresses both concepts, it would be clear that “like products” would be a subset of directly competitive products. Thus for the Commission to exclude pig producers from the notion of the domestic industry, it would be required to hold that they did not produce directly competitive products to those in issue. Hence this submission concentrates primarily on that issue.

LIKE PRODUCT- THE LEGAL TEST

92. In the legal opinion to APL’s first submission at Annex 1, the following observations were made about the interpretation of “like product”.
93. The Appellate Body has promoted a more market orientation in Article III jurisprudence, even when dealing with the “like product” standard. In *Japanese Liquor Taxes II* the Appellate Body report reviewed the Panel’s observation that “the wording makes it clear that the appropriate test to define whether two products are ‘like’ or ‘directly competitive or substitutable products’ is the market place. The Panel recalled in this respect that the words used in the Interpretative Note ad Article III paragraph 2, namely ‘where competition exists’: competition exists by definition in markets.” (*Japanese Liquor Taxes II* Panel Report para 6.22)
94. The Appellate Body (at 25) stated:

“The Panel emphasised the need to look not only at such matters as physical characteristics, common end uses and tariff classifications, but also at the ‘market place’. This seems appropriate. The GATT 1994 is a commercial agreement, and the WTO is concerned, after all, with markets.”
95. The Appellate Body in *Japan-Alcoholic Beverages* (page 25) has accepted that cross-price elasticity is one means of examining a market.
96. In the *Korean Liquor Taxes* case, the Appellate Body went further saying “(t)he context of the competitive relationship is necessarily the market place since this is the forum where consumers choose between different products.” (AB Report para 114)
97. If the proper approach in each case is to look at the market place to determine the presence and ambit of competition, there seems no reason in legal interpretation or economic logic to deny access to some market information simply based on presumptions that upstream producers cannot satisfy such requirements.

LIKE PRODUCT – THE EVIDENCE

98. A market place analysis of the way in which pork is produced and traded would show that vertically integrated enterprises, plus independent traders, treat carcasses and individual cuts as merely differing ways of satisfying the same consumer needs, albeit in some cases coupled with a need to dispose of unwanted parts as profitably as possible. Because of this it is open for the Commission to find

that these are like products, although as noted, because directly competitive products are broader and because producers of such products are entitled to be considered for assistance, APL believes the Commission should concentrate primarily on that issue.

DIRECTLY COMPETITIVE PRODUCT – THE LEGAL TEST

99. APL's first submission, Annex 1, contained a detailed outline of its approach to interpreting the concept of directly competitive products. In relation to WTO jurisprudence, the following observations were made.
100. In the Panel report on *Japan – Taxes on Alcoholic Beverages* paragraph 6.22, the Panel stated that:

“Normally, the term ‘directly competitive’ invites, in the first instance, a comparison of the commercial uses of the products and not their characteristics ...”
101. In that context, in construing Article III:2 of GATT 1994, the Panel looked to common types of end uses to find whether products were directly competitive. That should support the Commission's approach in the 1998 enquiry.
102. The Appellate Body in *Korea-Alcoholic Beverages* (para 16) considered that the word “directly” suggests a degree of proximity in the competitive relationship between the domestic and imported product. The Panel had also considered that the term meant a competitive relationship that was other than remote. (para 7.50) This would be satisfied when the two products provided alternative ways of satisfying a particular need. (para 7.52).
103. In *US-Cotton*, the Appellate Body considered that to be “directly” competitive, there needed to be more than “a remote or tenuous competitive relationship.” (para 98)
104. USI's submission misapplies the Appellate Body decision in *US-Lamb*. USI is incorrect when it asserts that the “Panel and Appellate Body agreed with Australia's argument” (USI para 22). The USI submission quoted Australia's arguments about both like product and directly competitive products. Neither the Panel nor the Appellate Body addressed Australia's arguments about directly competitive products as they simply were not relevant. USITC had only made a decision in relation to like products.
105. As noted in APL's legal opinion in Annex 1 of its first submission, the *US-Lamb* case clearly implied that it may be possible on appropriate facts to conclude that upstream producers were producers of directly competitive products. WTO jurisprudence noted that to be directly competitive products, the competition must not be remote. USI is incorrect when it asserts that “it is head to head competition that is envisaged” (USI para 19) if that implies that competition other than remote competition cannot suffice.
106. USI quotes Australia's arguments in *US-Lamb*. The Commission should not feel bound by advocacy which sought to succeed in that particular case on different facts at a different time in a different country. Even so, the arguments as

articulated in the Panel Report are in some cases erroneous and in others simply fail to display any reasoning. Paragraph 113 is quoted where Australia asserted that two products are directly competitive only if they compete in the marketplace. That itself is unobjectionable but it depends on what marketplace is being considered.

107. At paragraph 114 Australia simply makes the assertion that the markets for lambs for breeding and for feeder lambs are each quite different from that for lamb meat. More significantly, at paragraph 115 Australia's argument is articulated to the effect that "slaughter lambs do not compete with the output of packers and breakers, since they are the major input for packers". That is a circular proposition as it begins from the premise that the relevant industry is simply that of packers and breakers. The proper economic approach is to identify which products compete in a non-remote way and *then* identify the industry.
108. USI is also incorrect in the way it seeks to quote the Commission's 2005 analysis to determine what are directly as opposed to indirectly competitive goods. USI paragraph 26 quotes the Commission to the effect that "increased imports could be expected to *directly* reduce prices received for pig meat used as an input for the secondary processing sector, and *indirectly* reduce prices for fresh pig meat ...". This statement shows that carcasses destined for the secondary processing sector can in fact compete directly. The reference to indirect effects on prices for *fresh* pig meat flows from the fact that imports simply do not compete in this sector.
109. It is also somewhat incorrect to state that lines of production, values, use of input products and economic interests are "irrelevant" as is asserted in USI paragraph 32. All that WTO jurisprudence did was correctly note that these matters were not *determinative* as the US had sought to argue in *US-Lamb*. The only proper analysis is whether the products are "directly competitive" or not. The above-mentioned factors can in appropriate cases help to show whether this is so or not.
110. The Canadian submission also completely misrepresents the finding of the Appellate Body in *US-Lamb* when it asserts that an interpretation to the effect that the domestic industry must be limited to abattoirs and boning rooms was an "interpretation ... upheld by the WTO Appellate Body in *US-Lamb* ...". The Canadian submission asserts that "the Panel ruled that domestic industry producers of 'lamb meat' did not include 'growers and feeders of live lambs'." No such finding was in fact made. The only finding was that lamb meat and live lambs were not 'like products' on the facts before the Panel. The other aspect of the domestic industry, namely the producers of directly competitive products, was simply not addressed.
111. The European Commission submission also misrepresents the *US-Lamb* findings. It asserts that the Appellate Body upheld the Panel's conclusion that lamb growers should not be included in an investigation "based on the fact that the relevant domestic industry should consist only of producers that have 'output' of the 'like' or 'directly competitive' product (i.e. producers of meat and not growers and feeders); ...". While it is correct to say that the Appellate Body and Panel rightly stated that the relevant domestic industry must produce either like or directly competitive products, once again neither the Panel nor the Appellate Body considered whether the two products were *directly competitive*. Therefore to seek

to conclude as the European Commission does that this was a finding of either dispute settlement body is highly erroneous.

DIRECTLY COMPETITIVE PRODUCT – THE EVIDENCE

112. A number of submissions show why application of the directly competitive test must include producers. Approximately 50-60 percent of the industry is vertically integrated. Large integrated production businesses such as QAF Meat Industries (QAF) engage in stock feed manufacture, pig production, slaughtering and boning and sales and distribution of pork products. This shows how all elements of the production chain are competing to meet the demands of key customers. QAF produces approximately 18 percent of Australia's pork production. Significant industry entities such as BEC sell to retailers, supermarkets, the food services sector, manufacturing and export (BEC:2). Independent traders such as BEC are naturally considering profitable trade in the whole carcase. Quoted prices on individual cuts depend on the anticipated sale prices of other cuts. Examination of price grids of key buyers would show how the consumer looks at the return on the whole carcase. This in turn directs the producer as to the specifications required in the whole pig in order to be profitable. Hence direct competition is based on trading in the entire output, and not discrete items that are identical in all respects with imported goods.
113. This is supported by submissions from APFG and Hans Continental Smallgoods. In addition, submissions point out that to be viable and successful, industry participants must maximize their returns on costs for the entire pig carcase. Northern Co-operative Meat Company Ltd (NCMC) is a dedicated pig processing facility with some 1,500 producer members. NCMC point to the need for the pig producer, processor and fabricator to have an outlet for every possible finished product from a pig or pig carcase (NCMC:4). It is not enough to simply try and maximize market prices for individual components. It is necessary to consider an overall approach as this determines pig size and time to market and the like.
114. The dominance of the supermarket/retail sector as the ultimate customer is shown by a range of submissions. For example BEC point out that over 50 percent of its output goes to the supermarket/retail and food service segments. It supplies approximately 20 percent of Sydney's fresh pork market. Supermarket requirements impact upon the entire production chain and certainly are not primarily directed to the behaviour of abattoirs and boning rooms. They direct the type of pigs that should be grown, size, fat content and the like. Boning rooms and abattoirs compete on the services they provide, not the inherent qualities of the carcasses they treat, save where they have particular relationships with producers. Even then it is the quality of the producer's output that matters. NT and RM Paterson (NTRMP:1) as grain growers and livestock producers point out that they have entered into an exclusive contract with Coles to help stabilize income although not at levels that guarantee the meeting of production costs.
115. BEC:13 also points to the importance of supply contracts with growers. This allows growers to provide evidence of ability to meet loan repayments to financial lenders.

116. EPEX Briefing Paper enclosed in Annexure 7 of USI's own submission notes (page 81) that "(m)ost pigs that are locally produced are marketed directly to a meat processor ...".
117. This is all to be expected analytically. Intensive industries lend themselves more and more to vertical integration through development of feed sources through to processing.
118. Thus it is not appropriate as USI asserts, to limit analysis to Australian boning rooms. It would be an unduly technical analysis devoid of commercial reality to simply look at the producers that give rise to the identical product for tariff purposes. In this case USI argues that this is simply abattoirs and boning rooms. Yet these entities simply *convert* pork products. They do not produce them.
119. The Canadian submission also suggests that the quarantine regulations, in particular the obligation to heat treat imported products, puts them in a different product class to domestically produced frozen de-boned pork. It is not clear whether the Danish and Canadian submissions are saying that they are different products or that this fact can simply be taken into account in assessing competition and injury. It would not prevent direct competition and hence are relevant to determining the domestic industry.
120. Even where "like products" are concerned, it is wrong to presume that *US-Lamb* ruled that primary producers cannot ever be taken to produce like products to meat imports. First, *US-Lamb* dealt with a different product, in a different country with a different market at a different time. Secondly, there was an express finding of fact in *US-Lamb* that the lamb industry in the United States was not highly integrated vertically. As noted above, vertical integration occupies over 50 percent of the Australian pork industry. Reference is again made to submissions by BE Campbell and APFG.

ACTUAL SERIOUS INJURY

121. APL's first submission has provided clear evidence of actual serious injury in terms of lower prices, lost income and ultimately, loss of profitability on sales of pigs.
122. USI slightly misquotes the notion of serious injury (para 80) when it suggests that it means a significant overall impairment of a domestic industry. The language in AOS is in fact that it means a significant overall impairment "in the position" of a domestic industry. Impairing a "position" must be less than impairing the industry overall. Elements of the serious injury to the industry is discussed in detail in the section below.

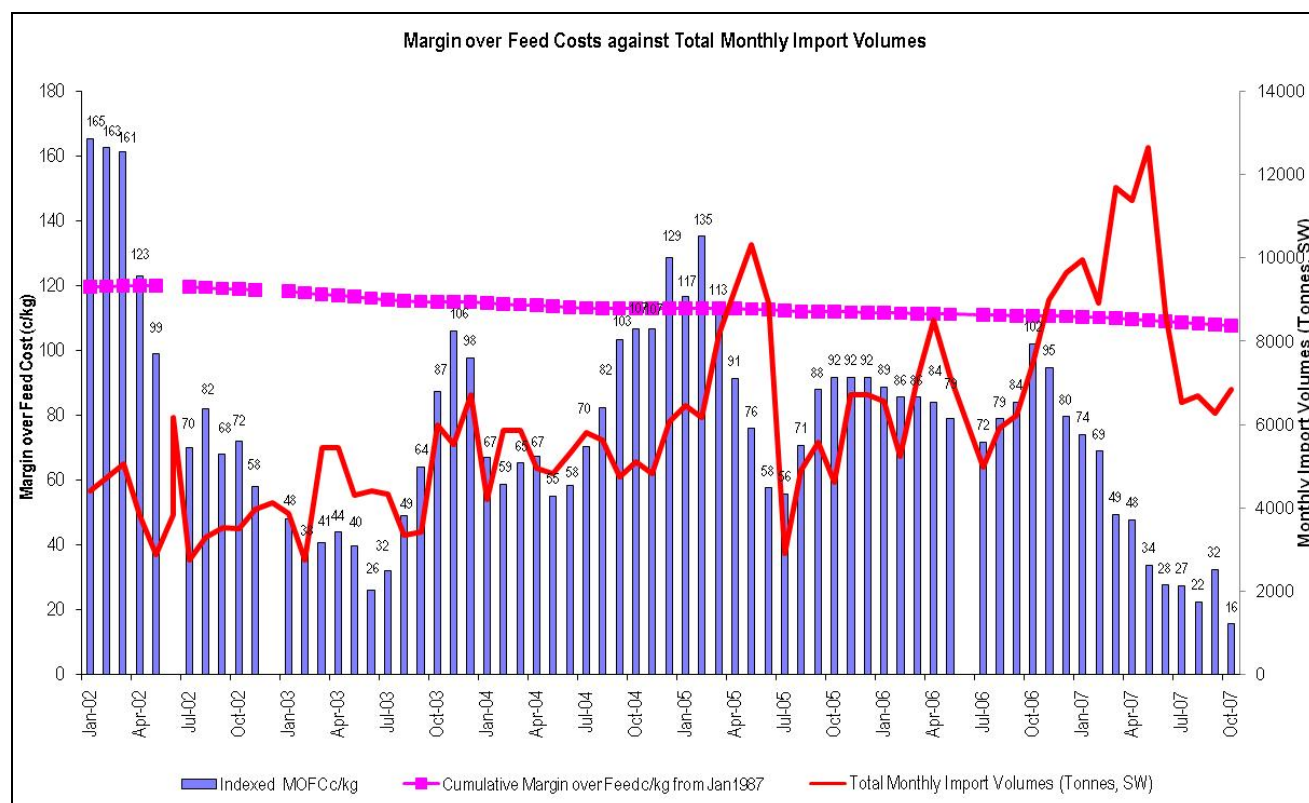
ELEMENTS OF SERIOUS INJURY

LOWER PRICES

123. BEC:5 Figure 2 shows the correlation between increased volumes and domestic prices.

124. A similar picture arises with the market for legs. BEC Confidential Attachment – Ref 2 shows why local producers are unable to compete with import prices that are consistently under \$4/Kg.
125. BEC:15 also points to the seasonal nature of farm gate price changes. BEC:15 Figure 12 shows the trending down of the average hot standard carcase weight price paid to growers.
126. QAF report domestic prices for middles into manufacturing falling from \$5.40 per kilo at the start of 2007 to a current figure of \$3.80 per kilo. Even at these low prices, substantial volumes of middles have had to be frozen.
127. QAF report receiving on average 45 cents per kilogram less than this time last year for its sales of carcasses to boning rooms.
128. When there is a significant oversupply and/or inability to make profitable sales, some producers must freeze product. This in turn leads to increased costs and the possibility of further damage to pricing when the product must be offloaded in due course (BEC:11).
129. Graph 2 below shows the strong correlation between reduced margins over feed with increased import volumes noting a lag of three months for the market to adjust through prices. (Note that the margin is what is available to pay other costs such as veterinary, electricity before return to the owner.)

Graph 2 Margin over Feed Costs (MOFC) Against Total Monthly Import Volumes



Source: Queensland DPI&F Pig and feed price trends

LOST INCOME

130. QAF reports lost revenue in excess of \$12,000,000. It estimates total revenue will be reduced by 25 percent in 2008.

LOSSES

131. APL's first submission provided data on losses in Table 3 page 42 and Table 4 page 44. While different producers have experienced different levels of loss per kilo, any sale at a loss necessarily constitutes serious injury. Such injury cannot be sustained without eating into cash reserves or forcing additional borrowings, each of which is a major threat to the long term viability of any producer.
132. WF:8 alludes to current negative cashflows. IAS reports the focus group of 10 family businesses lost over \$1.1 million in the financial year 2006-07. IAS:6 reports \$12.08 loss per pig among the focus group. NTRMP note many periods in recent years when they have failed to make a profit. It currently estimates that it will be sustaining losses in excess of \$100,000 per year (NTRMP:11).
133. More recent profitable margins as shown in APL's Producer Impact Survey are only are very short term and reflect the lags in production. Producer losses are not expected to be fully felt until the second half of the financial year due to lags in production. Producers were in many cases able to make a modest profit in 2006/ 2007 financial year, despite some periods of high feed grain costs, due to the high pig prices received in late 2006 and early 2007. These high prices were the result of global factors – Brazilian pork being locked out of Russia due to a Foot & Mouth Disease outbreak there, and thus US and Canadian pork filling Russian orders. At the same time, thousands of weaners were being sent into Germany from Denmark due to a specific short term demand there. These factors restricted supply and pushed up prices of imported pork, leading to greater demand for the domestic pig. Of course since this time, Brazil has re-entered the Russian market and global forces have returned to a more normal level, and imports have, as we know, flooded into Australia, depressing prices and leading to greater losses as extreme feed prices also hit profit and loss sheets from August onwards. The full extent of the losses in the industry will be felt from the second quarter or later in the 2007/ 2008 year.
134. Losses not only relate to annual shortfalls but also to the need to write down the value of assets associated with the business. NCMC has provided confidential information about those types of losses (NCMC:7).
135. Current losses will be exacerbated when favourable long term contracted feed prices no longer operate (BEC:18). Riley (Annex D) shows that the total profit achieved by his sample was \$1 261 356 in 2005-2006, a loss of \$809 537 in 2006-2007 and a further loss of \$770 000 is projected for the financial year ending June 2008.

EXIT AND DOWNSCALING

136. QAF noted that it is removing sows from production for the first time in its 37 year history. It is currently reducing its sow production base by 16,000 sows for 2008.

137. BEC:13 state that “the number of growers has steadily decreased ...”. IAS reports that the focus group has reduced sow numbers by 31 percent. BEC:11 estimates that by June 2008, sow numbers in the industry could potentially fall by 20-25 percent. BEC assesses that this will increase costs of production by at least 29 percent and will make ongoing operations not commercially viable.
138. Riley (Annex D) also provides data concerning farm businesses that are scaling back their enterprises or exiting the industry.
139. APL Preliminary November Pigmeat Production Survey also highlights the significant impact that the current environment is having in relation to the number of producers exiting or partially or totally de-stocking their piggeries, with total sow numbers decreasing regardless of producer size (see Annex B). Similar trends were also reported by APL’s Producer Impact Survey (refer Annex C.)
140. NCMC speak of pig numbers rapidly falling “by up to 30% ...” (NCMC:4).
141. NCMC:5 Graph 2 points to a significant drop in pig numbers in 2007. This has occurred at the same time as there has been an increase in fresh pork sales.
142. APL’s Preliminary November Pigmeat Production survey (paragraph 31) clearly shows that a second wave of producers have begun liquidating their breeding stock and that this is occurring at an accelerated rate.
143. Again a number of submissions from both producers and primary processors as well as the service industries themselves (such as Better Blend Stockfeeds) show that these businesses are losing viability, putting off employees and losing critical scale.
144. As noted above in relation to injury that would be difficult to repair, APFG:6 notes that it is highly unlikely that anyone exiting would return to the industry. It suggests that the amount of capital needed to get back into the industry is huge with a lead time from decision making of a minimum of 15 months. Working capital needs per sow equates to approximately \$1,500, which is a huge commitment. Once buildings are closed down they deteriorate rapidly with no ongoing maintenance which is unlikely. Recommencing requires local and State permits which may be difficult to get as facilities will be subject to new building and permit guidelines. The workforce will often have moved on to other places and it is difficult to find and retrain new staff. The risk/reward ratio for reinvesting is unlikely to be attractive. NTRMP also note that anyone exiting would be likely to be the bearer of heavy debt, adding to the difficulty of re-entry (NTRMP:11).

EMPLOYMENT

145. QAF reports retrenchment of over 200 staff out of its current level of 1000.
146. WF:7 notes reduction of staff numbers by 10 percent. That is less than it otherwise would be as it involved moving maintenance staff into pig attendant positions, with maintenance work being put on hold.
147. NCMC report further reductions in their workforce by 10 percent in November 2007 (NCMC:7). It anticipates further and more significant reductions.

148. IAS reported that the focus group made 46 percent of employees redundant.
149. APFG:5 note a decrease of 5-8 percent in their labour force.
150. Extrapolating the job losses reported on farm in APL's Producer Impact Survey⁵, the national average total full time and casual staff laid off is 1,098. Further, full time and part time staff have had their hours cut back, Those that have reduced part-time working hours have on average reduced the working hours which finds 4,147 people are *underemployed*,
151. A number of submissions make it clear that because of the geographical location of producers, significant losses in employment will have negative multiplier effects on regional communities.
152. With limited opportunities in their immediate locality it is predicted that their skills will be lost to the industry Gunpork (page 8) and Riley (Annex D).

CAPACITY AND PRODUCTION COSTS

153. BEC:20 estimates a 15 percent loss of turnover for 2008.
154. Reductions in capacity apply to feed milling, pig production and abattoir businesses for integrated producers.
155. As capacity utilization drops, cost per kilo rises. BEC:11 assesses 2008 financial year costs as likely to rise 17 percent from 2007 figures. BEC assesses that this will make the operation immediately unprofitable.
156. BEC:17 alludes to increased costs of 20 percent for abattoirs with lost income and lower economies of scale. It reports decreased throughput of nearly 30 percent in one abattoir and the standing down of 28 staff (BEC:17).
157. For integrated producers, decreases in throughput volumes will also increase cost of manufacturing feed. QAF estimates this to be a likely cost increase of 10 percent.
158. QAF estimates that reduced production in 2008 in both weight and volume will increase production costs by an estimated 12 cents per kilogram. It estimates that slaughter costs are likely to increase by at least 10 percent for the same reason.
159. Rationalisation in the abattoir industry may also increase transport costs for piggeries having to transport to abattoirs further away (WF:9).
160. NCMC report the intermittent need to suspend their pig boning operation.
161. IAS report that the focus group terminated contract arrangements with 55 percent of their contract growers.
162. Riley reports that contract growers aligned with business that contributed to his study will lose income in the order of \$250,000 per annum. In many instances, the

⁵ Figures were based on Australian producers with 100 sows or more and drew on APL's PigPass data base. The 100 sow figure is based on an industry average: that every 100 sows requires one FTE of labour. This may be either employed labour or family members. It is assumed that farmers with less than 100 sows would not employ any outside labour and as such they have been omitted from these figures.

contract growers have borrowed money to build facilities to enter into an alliance with breeding herds.

163. QAF points to a further problem in being able to compete with imports through differential treatment by processors. Many of the latter are happy to buy cheaper imported products from animals with a carcase weight above 100 kg, particularly from the US. At the same time their pricing structure heavily penalizes carcase weights above 70 kg and 11 millimetres of fat at the P2 site for local producers shifting to bone-in hams and for rasher bacon products. This also adversely affects production costs.
164. Pigs lose value very quickly once they have passed the optimum slaughter size. This is exemplified by the difference in price of a typical porker (around \$2.45 / kg presently) and a sow (well under \$1.00 / kg presently). Riley states that "Under normal market conditions the cull sow would realise on average around \$220/head Currently, it is almost impossible to find a market for cull sows and the return for a cull sow could be in the order of \$100."
165. As there is no value in trying to "store" product "on the hoof" since it loses value too quickly. The best financial option for a producer, even when he is losing money, will still be to sell his pigs for slaughter at the right weight.
166. USI paragraph 96 asserts that slaughter volumes have remained constant. While this is true of past years, sow slaughter rates are increasing as shown in APL's Preliminary November Pigmeat Production Survey and discussed in paragraph 31. This is a clear indication that production levels are being reduced. This will, however, take around 11 months to become fully apparent due to the production cycle.
167. Further support is provided by the recent ABS Livestock and Meat Australia⁶ trend estimates which show pig slaughtering increased for the fifth consecutive month, to 456,000. This was the highest figure recorded since June 2004. The trend estimate for pork production increased for the sixth consecutive month, to 32,800 tonnes. This was the highest figure recorded since October 2005.
168. Similar trends were also reported by APL's Producer Impact Survey (refer Annex B), Riley's Financial Trends in the Australian Pig Industry (Annex D) and the IAS submission.
169. A number of submissions, notably CAN, USI and DS make a number of claims concerning the Australian pig industry's competitiveness with which APL disagrees. Annex G provided by the Pork CRC provides an assessment of the global competitiveness of the Australian Pork Industry and the investment undertaken in research and development to enhance Australia's competitive position.
170. In particular the DS submission makes a number of assertions which APL refutes. They are as follow:

⁶ ABS 7218.0.55.001 - Livestock and Meat, Australia - Electronic Publication, Oct 2007 released December 3, 2007.

- a. It is claimed that an increase in the overall meat supply as a result of the drought is leading to downward pressure on the pig meat market. The drought we are experiencing has in many parts of Australia been occurring for two years or even more, and over this period, fresh pork consumption has continued to increase in Australia, and thus our share against other meats has increased. Demand for fresh pork remains very strong.
- b. Grain prices are confused with feed prices in the wording and charts of the DS submission. Whilst the two are related, we use as a rule of thumb feed price = grain price + \$100/ tonne. The difference in the cost of feed and grain is significant in the DS submission because of the claims made around profitability “if feed prices had remained stable...”. Our calculations show that grain costs would have to reduce to \$177/ tonne (from the assumed \$400/ tonne) to result in the savings claimed in the DS submission which were supposedly based on feed prices one year ago. Grain prices were well above \$177/ tonne one year ago
- c. The submission makes claims around production efficiencies and costs in Denmark versus Australia. It would be our position that if we wanted to argue such points, we need to start outlining differing levels of government assistance and subsidies in each market. The European Commission oversees regulations which result in more than Euro 100 billion in support to EC farmers each year (OECD, 2006)⁷ – much of which logically benefits pork farmers (being the largest meat industry) directly or through grain inputs (as the largest agricultural industry).
- d. The DS submission claims that pork imports have only access to around 20% of the overall pork market, which is calculated without reference to the extreme import volumes of early 2007, which is calculated mixing carcase weight equivalent figures with shipped weight figures and which overestimates the volume of “bone-in” product which is supposedly not available to the imported product. Product is now appearing on supermarket shelves labelled as “On the bone leg ham” using imported pork, so it seems even this market is opening up to imported pork usage. Given that imports in carcase weight terms are some 160,000 tonnes on a moving annual total basis, assuming this is competing in only 20% of the overall pork market would lead to per capita total pork consumption figures for Australia (21 million population) of some 38 kg, or even more if one assumed that the foreign pork share of this 20% segment was less than 100%. The real figure is closer to 25kg/ capita/ annum.

MARKET SHARE

171. USI Figure 7 paragraph 96 argues that domestic pig meat production has remained essentially flat despite the increase in imports. This would demonstrate that imports have taken all of the market growth. Inability to capture any part of total market growth should itself be a serious injury factor.
172. Furthermore, if imports are taking all of that growth, that form of serious injury must be caused by imports.

⁷ OECD 2006 “Agricultural Policies in OECD Countries at a Glance” p34

173. BEC points to the impact of long term contracts for imports which make it difficult to recapture lost market share through price reductions (BEC:5).

FINANCE AND INVESTMENT

174. A number of submissions have pointed to the need for significant investment to maintain viability. All of these other forms of injury will inevitably reduce the ability of producers to raise finance for improvements, economies of scale and research and development. For example BEC points to the need to invest in new carcase testing technology to improve consistency. Such investment will simply not be possible while imports ensure that domestic production is a loss-making activity.
175. Windridge Farms (WF) reports that it has put on hold a \$13,000,000 plan to upgrade and improve its facilities (WF:2). It notes that this leads them to operate with increasing debt levels and depreciating equipment and buildings, making them more vulnerable to competition. APFG:5 note that it has halted all but essential capital and repair/maintenance projects and has had to renegotiate finance. NTRMP:10 note efficiencies from restructuring in the past but an unwillingness to inject further capital until it gains some return on the money already invested.
176. WF:7 notes that it has had to increase borrowings to unprecedented levels in the last six months. IAS reports that 9 out of 10 of the focus group have had to increase their level of borrowing.
177. WF:9 notes the single use nature of pig industry assets and the lack of investors and bank support without confidence in stability of prices. WF notes that because of the very specific nature of buildings designed to house pigs, if the industry is not viable, two-thirds of the value of key assets would be wiped out (WF:2).
178. WF reports that even though it spent millions of dollars to improve its carcase weight, it has been forced to move out of supplying heavier weight because of market specifications from domestic retailers (WF:2).
179. WF point to the difficulties for producers switching from production for one market to another in terms of additional housing needed for different size pigs.
180. Riley (Annex D) reports the level of owner equity in the businesses examined had fallen from 56% at June 30th 2006 to 49% at June 2007 and was projected to fall to 44% at June 2008. The liabilities of the business had increased from \$11.33 million at June 2006 to \$13.48 million at June 2007. In the last financial year, the sample increased their liabilities by 18.6% and owner equity is forecast to decline to 44.28 percent by 30 June 2008. He goes on to report that once the level of owner equity in a business falls below 50%, banks are likely to become concerned about the longer term viability of the business.

OVERSHOOTING

181. An additional concern is the strong risk that producers will overshoot in their production decisions, particularly when faced with current industry losses. This

may already have happened, with current figures demonstrating significant decreases to breeding herd sizes and producer exit figures.

182. This assessment is reinforced by the findings of APL's November 2007 Pigmeat Production Survey. The preliminary findings detail of the 43 surveys returned, respondents will decrease their breeding herds by a total of 21,573 sows, or 24% of the total sow pool recorded, by July 2008. Extrapolating this figure out, would be the equivalent of 72,960 sows leaving the marketplace by July 2008. (Footnote next to July 2008)
183. During the past four weeks, from the completion of the Interim October 2007 Pigmeat Production Survey, the reduction of breeding herds has further increased, from approximately 10 percent or 14,978 sows to approximately 24 percent or 21,573 sows, a 44 percent increase to the number of sows expected to exit the market.
184. APL's forward estimates based on these trends show that this level of production will lead to shortages of domestic fresh pork and product for export, which will unwind much of the good work the industry has been able to achieve over the past four or five years. Pig producers are under extreme liquidity pressure and cannot continue to sustain these losses indefinitely. The damage incurred will be costly, time consuming and very difficult repair due barriers to entry, and will flow not only through the production sector but through the whole chain and service industries.

LOST OPPORTUNITY

185. WF submission (page 8) asserts that lost opportunity also leads to underutilisation of capacity at producer and abattoir and boning rooms. As demand falls for domestic pork, and production volumes fall in turn, critical mass is lost through the supply chain. This can be seen at the farm level – lack of full utilisation of grower sheds, farrowing sheds where producers have chosen to reduce their own production.
186. This can however be much more pronounced at varying levels of the processing stages. Abattoirs rely on high levels of capacity utilisation to enable debt/investment repayment. A small reduction in volume/slaughter numbers below optimal levels can have severe impacts on profitability. There are a limited number of abattoirs, and closure of any one of them due to industry over capacity can have a very negative effect on the local pig production industry which will in all likelihood have to transport pigs further and at higher cost for slaughter. In a country the size of Australia, distances can be large and costly to carry this out. In principle, exactly the same principles apply to boning rooms.
187. The loss of critical mass due to industry size reduction has a very negative impact on our ability to remain world competitive. The prices that the domestic industry would have to offer to remain profitable would increase. This would enable imports to lift their prices without any fear of a loss of market share, or alternatively to leave prices constant and take greater market share over domestic product, leading to even greater losses of critical mass. The end result would be a dependence on

imported pig meat and an associated vulnerability – exporting countries supply problems would become our supply problems.

188. Until today, the local pork industry has supplied to both the fresh and manufacturing sectors of the pork market. As this moves more and more towards the fresh market only, and consequently loses scale, our ongoing ability to also supply the fresh market competitively is being compromised. This could conceivably lead to demands from retailers for access to “world competitive pork” and a removal of quarantine restrictions allowing fresh pig meat imports. It is exactly this scenario that is presently being pushed in New Zealand where the authorities are proposing to allow the importation of “high value cuts” of fresh pork from particular countries. This would be an extremely concerning scenario for the Australian pork industry.

CONCLUSION ON ELEMENTS OF SERIOUS INJURY

189. There is ample clear evidence of a range of injury factors that collectively should be seen as serious. The fact that most producers are suffering sustained losses constitutes serious injury, coupled with lower prices, lost revenue, decreased capacity utilization and attendant increase in per unit production cost, loss of market share, reduction in employment, decreased herd sizes, loss of employment and exit from the industry, all impacting adversely on investment and finance company support, constitutes serious injury.
190. Such injury can only be expected to feed on itself and exacerbate all of the factors. Decreased production will lead to increased imports, leading to further loss in market share, capacity utilization, increased cost per unit and occasion further job losses and exits from the industry.

THREAT OF SERIOUS INJURY

191. Not only is there existing serious injury, but there are demonstrable threats of even further serious injury if no measures are taken. As noted above, continued import substitution would naturally lead to continued exit from the industry given the unsustainable losses that people are currently incurring.
192. Other threats include the possibility that New Zealand quarantine will relax its attitude to Danish product, which would in turn impact upon current export volumes (BEC:12).
193. With relaxed quarantine, the industry also needs to gear up for the possibility of foreign diseases finding their way into Australia. WF:5 suggests a 95% chance that PMWF will be introduced in the next 10 years. This is confirmed by CSIRO.
194. USI is wrong to assert that if threat of injury is claimed, that the Commission must consider “whether the relevant industry is manifestly on the brink of an imminent and dire economic situation” (para 82). Notions of “manifest” and “dire” economics cannot replace the plain meaning of AOS.
195. Nevertheless, there is sufficient evidence of actual serious injury to warrant the application of provisional safeguard measures. While additional threats should be

added to the analysis, the entitlement to a provisional measure is not dependent on there being threat of serious injury.

CAUSATION OF SERIOUS INJURY OR THREAT OF SERIOUS INJURY BY IMPORTS

196. The Commission must next consider whether the serious injury, both actual and threatened, is caused by imports or by other factors.
197. The Appellate Body in *US-Lamb* suggested that:

“In a situation where *several factors* are causing injury ‘at the same time’, a final determination about the injurious effects caused by *increased imports* can only be made if the injurious effects caused by all the different causal factors are distinguished and separated.” (para 179)
198. The above analysis has shown that increased imports at low prices have constrained domestic producers from responding to increased costs of production. This has directly caused serious injury. For example, NCMC show the correlation between suspension of their boning operations and levels of imports (NCMC:6). BEC Figure 4 shows the inverse proportions between imported and domestic volumes for middles (BEC:5).
199. EPEX Briefing Paper included as Annexure 7 to USI’s own submission, notes (page 80) that “(t)he rise of imports has driven prices down.”
200. APFG also point to European Union and other subsidies on exports being in part aimed at countering foreign producers’ increased costs of production. The fact that imports are being sheltered from those same costs of production changes, further shows why they are causing serious injury. Injury caused by the dumping or subsidization of imported products, is itself caused by those imports.
201. Safeguards actions are the only short to medium term viable remedy. Countervailing or dumping actions would be limited to like products and would not encompass directly competitive products. Furthermore, many subsidies are on input products such as grain which cannot readily be countervailed. Furthermore, there are problems of proof in obtaining the details of foreign subsidies. Most crucially, local processors who rely on imported products would not support such actions which require support of 50 percent of the relevant industry. There is also a problem in bringing countervailing actions because of carousel support arrangements. Measures tend to be regularly changed as and when they are coming up to the time at which they would be subject to challenge.
202. APL is delighted that the Commission is asking for information of this nature from our trading partners and encourages the Commission to seek information regarding pricing in other key markets to compare to the Australian scenario and to assist in predictions as to future import levels.

CAUSATION BY OTHER FACTORS

203. Some exporter submissions try to argue that increases in grain prices are a distinct cause of serious injury. It is certainly the case that grain prices have increased significantly. NCMC point to an average increase in input costs of approximately

102 percent (NCMC:3). However, as described in paragraph 46(g) and shown in Graph 1 there is no correlation between international grain prices and import prices.

204. The most important issue with grain prices is that increases in cost of production would normally be passed on to consumers. That is not possible when import prices depress and/or suppress or undercut prices in the domestic market. Because that is the case, grain prices are not a distinct cause of serious injury but provide an explanation as to why unusually low import prices are able to cause or threaten serious injury. The high Commission of Canada in its responses to the Commission questions 7 December at pages 2,3 AND 5 acknowledges record high feed prices in Canada but does not explain why the Canadian exporters have not simply built these increased costs into their export prices. APL considers this to be a question of fundamental significance and urges the Commission to explore this further with foreign export interests who must all be feeling the effects of such price increases.
205. Instead of simply having to deal with substitutability to less feed intensive meat products, the Australian industry seems to have to compete with foreign exporters who are subject to, but not responsive to such increases. As noted above, that is exacerbated by or perhaps explained in part by the fact that there are now export subsidies to alleviate increased grain prices overseas. Canadian Pork associations are reported to have government assistance in part based on increased feed prices. The high Commission of Canada in its responses to the Commission's questions 7 December refers to the annual support "less than 5%" in "product specific support" (page 1). It is not clear what this refers to, what if any non-product specific support is received. The Commission is urged to explore this further and in the meantime note that a not insignificant amount of is being received. Reuters November 26 reported that "(t)he European Union plans to subsidise shipments of ...pigmear to ease financial problems being faced by EU exporters as a result of soaring prices for grain based animal feed." It notes that the cost of animal feed in the EU has jumped some 35 percent in the 12 months to September 2007. Imports that do not need to build in their own increased costs of production are the direct cause of an inability of local producers to pass on those costs.
206. Increased grain prices are also impacted upon by quarantine restrictions. While it is possible to import grain at a time of high domestic prices, the grain must be devitalised on importation if it is to be transported up country to regional areas and there are significant added costs to this process.

EXCHANGE RATE

207. While exchange rate fluctuations do impact upon competitiveness, current movements have been more about the depression in the US dollar than improvements in the Australian dollar as against other country currencies such as the Euro. The fact that the Australian industry has suffered equally from Danish exports as from American, makes it less likely that exchange rates can explain why local producers cannot even make a profit of late.
208. The Primo submission notes that the Canadian dollar has been stronger than Australia yet it fails to explain how it has maintained its market share. The High Commission of Canada in its responses to the Commission's questions 7 December

also concedes the impact of the high Canadian dollar. The Commission is urged to seek further information from Canada as to why such increases in currency value, coupled with feed price increases, does not seem to have dampened Canada's record high exports.

LOSS OF EXPORT MARKETS

- 209. USI asserts that loss of export markets is also a cause of the serious injury. It suggests that Australian pig meat exporters lost their advantage when European and other foreign disease outbreaks ran their course and also because of Australian currency appreciation (USI para 57).
- 210. USI is wrong if it seeks to imply that recent serious injury is caused by loss of exports. Its own Figure 3 paragraph 59 shows that after some decline in only two tariff codes between 2003 and 2005, export levels have been relatively steady for the last two years, although fluctuating around the mean in some categories.

CONCLUSION ON CAUSATION

- 211. It is important for the Commission to bear in mind that it is currently seeking to determine what recommendation to make in relation to provisional safeguard measures. Causation analysis is highly complex and depends on the fullest analysis and evaluation of complex evidence in a multi-faceted market. Having determined that there is serious injury caused by increased imports, the aim of a safeguard measure is to provide a holding pattern while that fuller analysis ensues. To the extent that it is possible that all or most of the serious injury was caused by imports where that injury would be difficult to repair, the level of provisional safeguard should be such as to prevent that difficult to repair injury continuing or being exacerbated.
- 212. Nevertheless, at this stage it would be appropriate to conclude on balance that low import prices and increased market share by imports are the direct reason why local producers are selling their product at sustained losses. Domestic grain prices and drought do not explain why local producers cannot pass on increased cost to customers. Only imports lead to that result, hence they cause the serious injury.

USFTA AND THE DISCRETION TO EXCLUDE US IMPORTS

- 213. US imports may be excluded if they are not "a substantial cause of serious injury or threat thereof" (AUSFTA Article 9.5). Article 9.6 defines this in a way contrary to its natural meaning. It indicates that a substantial cause is a "cause which is important and not less than another cause".
- 214. USI identifies three preliminary questions in relation to this analysis, namely: what criteria should be used to determine whether US imports are a substantial cause of serious injury; at what point in the inquiry should the Commission separately consider US imports; and why should the Commission recommend the exclusion be applied (USI para 35).
- 215. There are a number of other issues. A key question is what is the evidentiary standard to be applied, and who has the burden on this issue. A second key

question is whether the deeming provision which defines a substantial cause to be something other than its plain meaning, would make Australia in violation of its WTO obligations and open to a challenge from other export interests who would be disadvantaged as against US exporters were the latter to be excluded. This would arise because a country whose exports cause significant but not predominant injury, would escape a measure thus being in violation of Article 2 AOS unless Article XXIV GATT 1994 provides a defence, a question not as yet tested in WTO disputes.

216. Where burden and standard of proof is concerned, the burden should be on the US to show that it is not a substantial cause of serious injury or threat thereof. The permissive power to exclude is only where that situation has been demonstrated.
217. Excluding US imports is a positive act and must be based on some evidentiary standard. The requisite standard of proof should be the same as that which applies to all of the other determinations by the Commission. While APL takes issue with USI's suggestion that where there is any doubt, the Commission should reject the application for a safeguard, if such a high standard was applied to the primary determination, it should also apply to this exclusionary power. APL's view, however, is that those questions should be determined on balance, based on appropriate evidence and comprehensive analysis.
218. When USI asserts (para 82(d)) that in seeking a measure, if information is not sufficiently disaggregated, certain determinations are not permissible, the same logic would apply to their own contentions that US imports should be excluded. USI has not disaggregated legs and middles which would show how US imports relate to Canadian and Danish imports.
219. Where WTO compliance is concerned, the only appropriate stage for any exclusion is at the final analysis after careful consideration of injury and causation from a range of sources. Otherwise there is a high risk that injury would be wrongly attributed to other exporters, leading to unnecessarily onerous safeguard measures were they to be imposed.
220. In particular, any exclusion could not easily occur at the stage of provisional measures as at that stage, the Commission would not be in a position to carefully analyse who is causing what kind of serious injury. While the proper analysis must flow from identifying the directly competitive domestic industry to the stipulated imported products, causation analysis might need to segment the market to look at different types of meat cuts. For example, if one country has a small volume overall but dominates the most profitable sector, the Commission might find that it nevertheless causes substantial serious injury as defined in AUSFTA.
221. Conversely, if as USI suggests (para 37), an attempt was made to analyse at the outset whether imports from the US standing alone are a substantial cause of serious injury or a threat thereof, that would be a meaningless analysis and would fall foul of WTO jurisprudence and the defined meaning in AUSFTA. If a substantial cause under AUSFTA is one not less than another cause, how can it possibly be considered standing alone, without any comparison with other exporters?

222. USI thus misstates the nature of parallelism called for by the WTO in its submissions in paragraphs 37-9 (see *US-Steel Safeguard* para 441).
223. Even if the Commission was to consider excluding US imports from the outset, insufficient data has been presented by USI to allow it to do so even on balance.
224. USI has suggested that “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 ...” (para 41). Were the Commission to consider it appropriate to interpret AUSFTA, it should simply do so from the normal approach to interpretation of international agreements under the Vienna Convention on the Law of Treaties and not based on what is an interpretation “clearly in Australia’s best interests”. In the same paragraph, USI suggests that the fact that Australia has a significant favourable agricultural trade balance with the US should be a factor in the Commission’s interpretation. Interpretation of international treaties should not vary depending on whether we have positive or negative trade balances with the other countries concerned.
225. USI is also wrong to assert that US import volumes have not increased significantly in recent periods. First, it is wrong to assert that the Commission does not have five years of data (USI para 44). It has five years of data. For the first two years there were simply no imports because of quarantine restrictions. That is still data.
226. That five years of data shows why the increase is recent and significant. USI’s own submissions admit that “imports naturally grew at a significant rate” albeit that it asserts that this was for a brief period. It suggests that the period of rapid growth occurred several years ago and is not recent (para 45). Nevertheless it goes on to admit that “since that time, ... imports have grown slowly and steadily ...”.
227. USI again relies on WTO Appellate Body comments that the “increase in imports” must be “recent enough, sudden enough, sharp enough and significant enough” (Appellate Body Report *Argentina-Footwear Safeguard* para 131). This has been discussed above in relation to the legal test of what constitutes an increase in imports. While note should be taken of any Appellate Body jurisprudence, it is abundantly clear that it cannot replace the words of the treaty. The key words in the Appellate Body’s comments are “enough” and “to cause”. It will always be a question of degree and whether there really is some unforeseen and significant increase in imports that leads to the request for safeguard measures. A strong, steady growth in imports should not be a bar to requests for safeguard remedies, particularly when this is equally as unforeseen as a more steep increase.
228. USI concentrates on import *volumes* to assert that US imports are not a substantial cause of injury. Volume alone is not a sufficient measure. In particular, attention needs to be given to differentiated sub-products in the domestic industry and also price and substitutability.
229. Furthermore, USI’s own Table 2 (paragraph 47) shows that the only significant increase in imports comes from the United States. If the whole purpose and tenor of safeguards measures is to respond to rapid increases in imports, the difference in figures between 2006 and 2007 are telling. US imports have increased from over 19,000,000 kg to over 25,000,000 kg, which is an increase of over 31 percent, a

massive increase in a one year period. Effectively all the growth in 2006/07 is in US imports.

230. USI also asserts that US growth was at the expense of Canadian imports, not Australian producers (USI paragraph 52). This is inaccurate. The following table outlines calculation of the imports (converted to CWE) as a percent of total apparent consumption. Imports' share of total consumption has risen dramatically to 34 percent, so Australia's share has fallen equally dramatically. The US has increased share, but Canada has not fallen and instead has stabilised at record levels.

Table 3 Imports as a percentage of total consumptions

	July 02- June 03	July 03- June 04	July 04- June 05	July 05- June 06	July 06- June 07
USA	0.53	0.51	5.63	7.18	10.24
Canada	13.69	13.53	15.10	11.91	15.02
Denmark	4.19	7.50	7.53	7.01	9.45

Source: Heilbron ITS

231. USI is also wrong to assert that AQIS requirements are a barrier to their imports. If that was so, it would not explain why US imports spiked in the early years after Australia found its quarantine requirements to be in violation of WTO Agreements.
232. Finally, little evidentiary weight can be given to the assertion that the US industry is committed to supplying the US market and a number of key export markets. While that may be so, a 30 percent increase in imports over the last year is of necessity substantial and far outweighs any movements in market shares for other exporters.
233. For all the above reasons, given that the onus is on the US to show why it should be excluded, it has not provided sufficient evidence to satisfy the Commission on balance that this should be so.

PUBLIC INTEREST

234. As noted at the outset, APL contends that this is not a relevant factor at the provisional remedy stage. Consequently it would be inappropriate to present evidence, lest it induce the Commission to take irrelevant considerations into account. Were the Commission to take a contrary view, APL asks that it be advised as soon as possible so submissions could be made.

SHOULD THERE BE REFUNDS IF THERE IS NO FINAL POSITIVE DETERMINATION?

235. Whether the tariff is to be refunded or not, should not affect the Commission's deliberations as to the entitlement for a provisional measure. The Commission

should not consider that it has a discretion when each of the elements in paragraph 16 of the Gazette have been satisfied. Even were it to consider it has such a discretion, whether tariffs should be refunded or not should not affect the need to provide a holding pattern prior to the final deliberation should the Commission accept that there is serious injury that would be difficult to repair.

236. Having said this, APL provides the following comments by way of assistance.
237. The Australian Gazette is silent. When one looks at AOS, Article 6 indicates that the provisional measure “should” be a tariff which should promptly be refunded. The word “should” when used in WTO provisions is often interpreted as falling somewhere between shall and may. It indicates that this is the preferred view in most cases but may be departed from on a case by case basis. It does mandate that if a tariff is used, it should be refunded. It does not indicate what is to occur if another measure is used. Obviously there is no possibility of refunding anything to do with a quota that might have been imposed. The Australia-US Free Trade Agreement expressly provides for refunds.

THE NEED FOR PROVISIONAL MEASURES

TIMING ISSUES

238. USI suggests that there is only three and a half months difference between a determination on a provisional and final remedy. That is by no means a figure that can be accurately relied on. While the Commission is to report finally by the end of March, there can be no indication at the outset as to how long government will take to respond both in terms of setting policy and taking the matter to Parliament at its next sitting.

IS A SHIFT TO FRESH PORK A SUSTAINABLE RESPONSE?

239. There are a number of reasons why a viable solution to the injury from imports cannot simply be a shift to the fresh meat market. First, fresh meat customers demand a different type of pig. Were the domestic industry to shift entirely to this market, they would lose any ability to compete with imports, leaving the latter in a monopolistic position, in due course no doubt leading to higher prices for imports. If all producers move to fresh meat, there would also be oversupply, which would force further rationalization of the industry as domestic processors would drop below viable levels.
240. Over-reliance on fresh pork sales also narrows the customer base and makes the industry more volatile in terms of any future changes to quarantine in that arena.
241. A similar problem arises where local producers move to greater concentration on bone-in pork legs. BEC:9 Figure 8 shows the significant increase in volumes of bone-in legs but also notes that this requires a decrease in pig weights to ensure that the legs received by the company meet the requirements of the bone-in leg market. BEC:16 points to the negative impacts on production and costs of a lighter pig. This adversely affects overall profitability and would further shelter imports of other products from meaningful competition. That also leads to an oversupply and reduction in price and profitability for bone-in leg sales (BEC:9). QAF report a

decrease in price of 20 percent for bone-in legs as a result of the shift to this product category.

242. If domestic producers are able to remain within the industry but supplies decrease, this would naturally lead to increased prices, which in turn would lead to consumption shifts to substitutable meat products such as red meat and chicken (APL submission p 21).
243. APL submits and as detailed in our first submission page 77 that the most immediate and effective government measure to be taken to facilitate adjustment is provisional safeguards followed by full safeguard import controls as proposed in this submission. This will give the industry breathing space to restructure in an orderly way. APL submits there is a requirement for provisional safeguards with:
- tariff of 62 percent for legs
 - tariff of 48 percent for middles
244. This should apply for 200 days, following which full safeguards should apply at the above rates, phasing down to the end of the four year period.
245. Knowledge that the measures are to be phased out within four years will create incentives for the industry to select its preferred form of restructuring.
246. Subsidies are sought to assist that transition. Consideration should be given to support measures in the form of payments to producers and processors for adjustment to regulatory requirements and to assist repositioning of the industry against import competition.
247. At the public hearing, the Commissioner requested clarification regarding Australian Pork Limited's submission, specifically seeking reconciliation between the suggested tariff (48 percent for middles and 62 percent for legs) to close the gap between domestic and import prices and the WRI's estimate that the opportunity lost to the domestic industry from imports translates into prices being only 3.4 percent higher if the opportunity loss did not occur. Firstly we would note that the two assessments are different. The WRI did not model the economic impact of the recommended tariff nor did it model the economic impact of changes in retail prices. The economic modelling undertaken by the WRI is based on supply and demand elasticities at the farm gate level and the resultant price change at that level. The analysis of tariffs addresses the tariff level required to reduce imports. In addition, the two analyses are not comparable. The tariff levels recommended are based on seasonal peaks in the gap between domestic and import prices. The data used by the WRI in the econometric modelling is based on average prices and does not take into account seasonal peaks and troughs. For further comment refer to Annex F.
248. The Commissioner also sought clarification as to whether the ABS import statistics that APL uses on the value of pork imports are based on a c.i.f (i.e. they include cost, insurance and freight) or f.o.b (free on board) valuation. APL's figures are customs values and therefore do not include cost, insurance or freight. APL has obtained estimates of insurance and freight costs for shipments of pork from Denmark and the USA to Australia from commercial sources which indicate these

charges are approximately 25cent / kg. This would be equivalent to around 5-6 percent of the average import unit value price of legs and middles over the period we have analysed i.e. you would need to add this amount to the unit value, which is based on FOB, to produce a CIF price comparable with domestic wholesale prices - and the tariff for legs and middles we have used would need to be reduced by this amount.

249. Moreover current freight rates are at extremely high levels having increased by between 50 and 100 percent over the past 12 months, so given that the tariff we used is based on prices over the past two years for US legs and 5 years for Canadian legs and Danish middles the reduction in tariff would be much less than 5 percent (perhaps around half as much) based on average freight levels over recent years. Accordingly, the addition of costs for freight and insurance would only add a marginal amount to the costs of landed product.

CONCLUSION

250. There is clear evidence of record high imports over the last year. The recent fall-back in volumes from those record highs are rightly conceded to be explained by normal seasonal factors by the Canadian Government. The US Department of Agriculture predicts record levels again next year. Australian producers are in the main operating at ongoing unprofitable levels. That is likely to continue and be unsustainable.
251. Existing and projected exit figures show an alarming contraction of the industry and a likelihood of significant overshooting. Long lead-times and barriers to re-entry suggest that immediate safeguard action is warranted as these are critical circumstances where the existing and projected serious injury would be difficult to repair. That injury cannot be adequately explained by domestic factors such as grain prices as foreign exporters admit that they are subject to similar cost increases. It is the fact that imports can ignore those increases in their pricing that causes the injury.

ANNEX A

ERRORS IN APL'S SUBMISSION #1 TO THE PRODUCTIVITY COMMISSION

26 NOVEMBER 2007

A review of APL's original submission has revealed errors. They are summarised below for the PC's perusal.

Page No.	Error and Correct wording/Correct figure
4	Other complimentary measures at this critical point would be redundant in their effectiveness if undertaken in isolation without a provisional safeguard. Change to: 'complementary'
5	Australian Pork Limited (APL) is providing this submission to the Productivity Commission's (PC) Inquiry into whether safeguard measures under the WTO should be imposed on imports of frozen pigmeat. Change to: 'on imports of frozen pigmeat falling within tariff line 0203.29'
6	Imports have risen from negligible levels when the market was opened to over 160,000 tonnes (carcase weight) currently. There has clearly been a meteoric increase of imported pig meat: the August 2007 annual forecast being over 126 percent of the 2002. It is also clear that the rate of growth has sharply accelerated during 2007 with the year to August 2007 import rate extrapolating to a 40 percent growth over 2006. Change to: Needs to say carcase weight equivalent CWE. Change to: It is also clear that the rate of growth has sharply accelerated during 2007 with the year to August 2007 import rate extrapolating to a 40 percent growth over 2006. (Table 2)
8	Expert WTO legal advice confirms this and is provided with this submission. Change to: Expert WTO legal advice confirms this and is provided with this submission in Appendix 1.
10	'Continuation of current import trends will result in further injury to the primary processing sector. In the short term the profitability of the primary processing sector may benefit from the continued high level of imports and the resulting oversupply of pigs in the domestic fresh market market...' Change to: Remove double word, 'market.'
16	In the most recent year they rose from 126, 889 tonnes carcase weight equivalent (CWE) in 2005-06 to 190,311 tonnes in 2006-07. Change to: 190,311 tonnes should be 165,000 as per Table 2.
17	There has clearly been a meteoric increase of imported pig meat: the August 2007 annual forecast being over 126 percent of the 2002 total a as shown in Chart 2 above. Change to: Should be '...of the 2002 total as graphically illustrated in Chart 2 above.'
25	Paragraph 2 – While the jurisprudence has identified these elements, they must be read in the context of the standard of review that is applied in any challenge to domestic measures. A safeguards enquiry...

	<p>Change to: Change to ‘a safeguards inquiry’.</p> <p>Change to: jurisprudence</p>
58	<p>APL’s Producer Impact Survey (November 2007) For clarification refer to Annex 1 in Submission 2 for full report as requested by the Commissioner at the public hearing 27 November 2007</p>
60	<p>As already noted, the pig production industry is already losing \$130 million per year. Projections under approaching cost and price scenarios point to pig producers losing up to \$5 million per week over the next year (or \$260 million per year) if present trading conditions persist, almost doubling the current estimates of \$2.6 million per week.</p> <p>Change to:</p> <p>As already noted, the pig production industry is already losing \$182 million per year. Projections under approaching cost and price scenarios point to pig producers losing up to \$5 million per week over the next year (or \$260 million per year) if present trading conditions persist, almost doubling the current estimates of \$2.6 million per week.</p>
	<p>Once productive capacity is lost it will not be a simple matter of resources moving back into the industry in a seamless fashion at some point in the future in response to returns. The cost of restocking piggeries has a significant capital and cash flow impost to farmers. Mothballing and then recommissioning processing facilities is also costly. Finding qualified labour is also a significant challenge.</p> <p>Change to:</p> <p>Once productive capacity is lost it will not be a simple matter of resources moving back into the industry in a seamless fashion at some point in the future in response to returns. The cost of restocking piggeries has a significant capital and cash flow impost to farmers. Mothballing and then recommissioning primary processing facilities is also costly. Finding qualified labour is also a significant challenge.</p>

ANNEX B

CONFIDENTIAL

ANNEX C

ATTACHMENT APL'S PRODUCER IMPACT SURVEY NOVEMBER 2007

CONFIDENTIAL

ANNEX D

FINANCIAL TRENDS IN THE AUSTRALIAN PIG INDUSTRY

John Riley

IAS Management Services

Summary

Contact with industry identities identified 66 businesses that were reducing sow numbers from 42 200 to 7 100. Of the sixty- six businesses identified, 50 were thought to be exiting the pig industry. Telephone contact with 25 businesses confirmed that their sow numbers would be reduced from approximately 12 000 to 3 700.

Of the twenty- five herds contacted thirteen businesses supplied financial data for the years ending June 2006 and 2007 and projected financial results for the year ending June 2008. The businesses that provided the financial data had a total of 6 844 sows in 2006-2007 but indicated that they were reducing numbers to 3 450. The level of owner equity in the businesses had fallen from 56% at June 30th 2006 to 49% at June 2007 and was projected to fall to 44% at June 2008. The liabilities of the business had increased from \$11.33 million at June 2006 to \$13.48 million at June 2007.

The total profit achieved by the sample was \$1 261 356 in 2005-2006, a loss of \$809 537 in 2006-2007 and a loss of \$770 000 is projected for the financial year ending June 2008. Of the thirteen businesses, five were leaving the industry, three were reducing sow numbers, three were depopulating with the intension of restocking and two were reviewing their future in the industry. The reduction in sow numbers will result in twenty- nine staff being made redundant.

Introduction

The profitability of pig production has declined over the last 12-18 months due to an increase in the cost of production. The high price of grain on the world market has seen feed prices escalate and record levels of imports of frozen product for processing have capped wholesale pig meat prices.

The high cost of feed is not unique to Australia but is affecting pig producers world wide including Canada, USA and Denmark, the major suppliers to our market.

The financial results achieved by a sample of ten Australian medium size pork production businesses (Dalby Focus Group) with a total of 4 700 sows was discussed in a paper by John Riley of IAS Management Services to the Pig Meat Safeguards Inquiry, November 2007. The paper stated that during the financial year July 2006- June 2007 the members of the Dalby Focus Group lost an average of \$12.08 on every one of the 92 819 pigs marketed in that period.

The paper also stated that all the businesses in the Focus Group had reduced the percentage of owner equity in their business by reducing their assets and or increasing their liabilities.

As a follow up to the paper referred to above, IAS Management Services has subsequently collected financial data from a sample of businesses who have decided to either reduce

their sow numbers or have decided to exit the industry. The businesses invited to contribute data to the sample were identified by contact with pig industry identities. From a list of sixty- six businesses identified, financial records were provided by 12 businesses.

The financial data collected and referred to in this paper was the profit and loss statements and balance sheets for the financial year ending June 30th 2006 and 2007. In addition the projected profit and loss for the 12 months ending June 30th 2008 was calculated and a balance sheet at the 30th June was constructed.

Identification of businesses

The initial trawl to identify businesses that might be reducing sow numbers was made by contact with Sara Willis, Queensland Department of Primary Industries and Fisheries, representatives of breeding companies and stock feed manufacturers in Queensland and a member of the Victorian Farmers Federation. The results of the trawl are included in Table 1.

Table 1. Businesses changing their business structure in current financial year

State	Number of businesses	Total Sow numbers June 2007	Total Sow numbers June 2008
Queensland	35	14715	3950*
NSW	14	6020	1550**
Victoria	14	18200	600
WA	2	1500	1000
SA	1	1800	0***
Total	66	42235	7100

- One herd will restock **Two herds will restock ***This herd will restock.

The reduction in sow numbers will result in a reduction of approximately 630 000 slaughter pigs.

The figures quoted in Table 1 do not represent the actual number of businesses reducing their sow numbers in the states listed but are simply the number of businesses brought to the attention of the author of this paper. The number of sows quoted as owned by the businesses in 2007 and 2008 are based on the knowledge of the industry identities questioned and confirmed with a sub sample of twenty five businesses by telephone.

Table 2 shows the number of businesses which are understood to be scaling back their enterprises and the number of businesses that are exiting the industry.

Table 2. Businesses identified as scaling back production or exiting the industry

State	Total businesses	Businesses Scaling back pig enterprise	Businesses exiting pig industry
Queensland	35	8	27
NSW	14	3	11
Victoria	14	2	12
WA	2	2	0
SA	1	1	0

Sub Sample

A sub sample of twenty five businesses was contacted by telephone and invited to contribute financial data relating to their business activities in the financial year ending June 30th 2006 and 2007 and were asked to project their business results forward for the year ending June 30th 2008.

Table 3 summarises the details of the businesses contacted by telephone. The businesses contacted indicated that they would reduce sow numbers by the end of the current financial year from 12 000 to 3 700.

Table 3. Reduction in sow numbers for sub sample – June 2007 - 2008

Number of businesses	Number of Sows June 2007	Number of sows 2008
25	12 090	3 730

Of the twenty- five contacted five indicated they were reducing sow numbers from their current total of 6500 by 40% to about 3 700.

Four of the businesses contacted which were running a total of approximately 3000 sows in 2006 indicated that they were depopulating with the intention to restock with high health animals at some point in the future. The remaining 16 businesses indicated that they were exiting the pig industry totally.

Of the 25 businesses contacted, four indicated that their properties had been listed for sale but no interest from potential buyers had eventuated and on two of the properties the pig buildings (total capacity 950 sows and progeny) would be demolished.

Financial data

Of the twenty- five businesses contacted thirteen supplied financial data on the state of their operation.

The 13 businesses that responded had a total of 6 844 sows when in full production in 2007 and predicted that they would have 3 450 sows by the end of the financial year 2008.

The long term plan of the businesses that provided financial data is summarised in Table 4.

Table 4. Long term plan of contacted businesses

Long term plan	Number of units
Exit industry	5
Reduce sow numbers and terminate alliances with contract growers	3
Depopulate with the intention to restock	3
Will exit when recently negotiated finance is exhausted	2

The assets and liabilities of the businesses that responded are listed in Table 5. The value of the property was as quoted by the representative of the business. The value of the pigs was adjusted to an average price of \$80 per head.

Table 5. Assets liabilities and percentage owner equity

	June 30 th 2006	June 30 th 2007	Projected 30 th June 2008
Assets	\$25.93 million	\$26.62 million	\$23.72 million
Liabilities	\$11.33 million	\$13.47 million	\$13.21
% Owner Equity	56.29	49.36	44.28

Table 5 shows that the percentage of owner equity in the businesses has fallen in the period 2006- 2007 and is projected to fall further by June 2008 due to a fall in assets and a significant increase in liabilities. In the last financial year, the sample increased their liabilities by 18.6%. In discussions with a Rabobank Agriculture adviser, I was informed that once the level of owner equity in a business falls below 50%, they as a lender become concerned about the longer term viability of the business. Three of the businesses that provided financial data have been forced to approach the Queensland Rural Adjustment Authority (QRRRA).

The financial performance for the ten businesses that supplied their costs and returns is summarised in Table 6.

Table 6. Summary of costs and returns

	Financial year 2005-2006	Financial year 2006-2007	Financial year 2007-2008 Projected
Sales	\$19.49 million	\$23.37 million	\$14.91 million
Feed Cost	\$10.04 million	\$13.94 million	\$9.36 million
Non Feed Cost	\$8.19 million	\$10.23 million	\$46.32 million
Margin (loss)	\$1.26 million	(-\$0.81 million)	(-\$0.77 million)

Contract growers

Two of the businesses that stated they were scaling back the size of their enterprises have alliances with contract growers. In the future they propose to terminate their alliances with some or all of their contract growers and use the building space made available by the reduction in sow numbers to grow out the progeny from the reduced herd on the home farm. The loss of income to the contract growers aligned with businesses that contributed to this data pool is in the order of \$250 000 per annum.

In many instances, the contract growers have borrowed money to build facilities to enter into an alliance with breeding herds.

Depopulation – Repopulation

The solution to the pork industry's current problem is seen by many experts but particularly by breeding company representatives to be a depopulation – repopulation program. Three of the businesses that contributed data to this paper, plan to destock and restock. The key elements of a successful depopulation program include:

- Minimising the time that the business is out of production.
- Selling cull sows at a high price
- Achieving a significant improvement in growth rate and feed conversion efficiency in the new herd.

- Maintaining a high health status in the new herd for a lengthy period.

To minimise the period with no cash flow it is advisable to make an arrangement with the supplier of the gilts or an individual with a suitable facility to have the gilts mated whilst the existing unit is being run down (depopulated). In addition, a second facility needs to be leased to complete the growing out of the “dirty” growers. Providing such arrangements can be negotiated, the time out of production can be as short as one month.

Under normal market conditions the cull sow would realise on average around \$220/head which could be offset against the total cost of the gilt at point of farrowing of about \$600. This figure includes the price of the maiden gilt, the feed used during gestation and a management fee for the contractor responsible for managing the gilts from delivery through mating and gestation. Currently, it is almost impossible to find a market for cull sows and the return for a cull sow could be in the order of \$100.

The three businesses that are destocking with the intention of restocking with high health status animals have in total 1160 sows. Under normal market conditions the cost of replacing their existing sows with healthy gilts would be in the order of \$440 800 but currently the cost would be in the order of \$580 000. This figure does not include any costs incurred with cleaning the existing premises or repairs and renewals on the existing premises.

In addition the business destocking would need to find a facility for the “dirty” growing pigs to be fed from weaning to slaughter which would be in the order of \$45 000.

These costs have to be set against the reduction in medication cost of about \$100 net/sow/year and an improvement in FCR and growth rate. The results of a depopulation-repopulation program are summarised in Table 7.

Table 7. Estimate of costs and benefits to the three herds totaling 1160 sows which are considering depopulating and repopulating

Net cost of replacing breeding stock (The cost of the pregnant gilt minus the value of the cull sow)	\$580 000
Cost of leasing grow out facilities	\$ 45 000
Net saving in medication	\$116 000
Cost of feed saved by improvement of 0.2 in FCR in grower herd with feed at \$450 per tonne	\$186 000
Minimum period over which improvement in FCR must be maintained to recoup cost	25 months

In addition there is the profit foregone whilst the unit is out of production which could be as low as one month but in most situations is longer. Of the three businesses that planned to depopulate and repopulate, one business has stated that a lack of equity will dictate that they will be forced to restock over a period of three years to get to their current herd size.

Job Losses

The businesses that provided financial data will make twenty nine full time staff equivalent redundant as a result of the reduction in sow numbers. With limited opportunities in their immediate locality it is predicted that their skills will be lost to the industry.

CONCLUSION

Obtaining financial data from pig producers is a long and thankless task. The author acknowledges the cooperation of the thirteen businesses that contributed to this data pool.

John Riley 11th December 2007

ANNEX E

CONFIDENTIAL

ANNEX F

WRI LETTER



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Ms Kathleen Plowman
General Manager, Policy
Australian Pork Limited

Dear Kathleen,

We understand that the Commissioner of the Productivity Commission's Inquiry into Pork Imports has requested clarification regarding Australian Pork Limited's submission. Specifically the Commissioner seeks reconciliation between the suggested tariff (48% for middles and 62% for legs) to close the gap between domestic and import prices and the WRI's estimate that the opportunity lost to the domestic industry from imports translates into prices being only 3.4% higher if the opportunity loss did not occur.

Firstly we would note that the two assessments are different. The WRI did not model the economic impact of the recommended tariff nor did it model the economic impact of changes in retail prices. The economic modelling undertaken by the WRI is based on supply and demand elasticities at the farm gate level and the resultant price change at that level. The analysis of tariffs addresses the tariff level required to reduce imports.

In addition, the two analyses are not comparable. The tariff levels recommended are based on seasonal peaks in the gap between domestic and import prices. The data used by the WRI in the econometric modelling is based on average prices and does not take into account seasonal peaks and troughs.

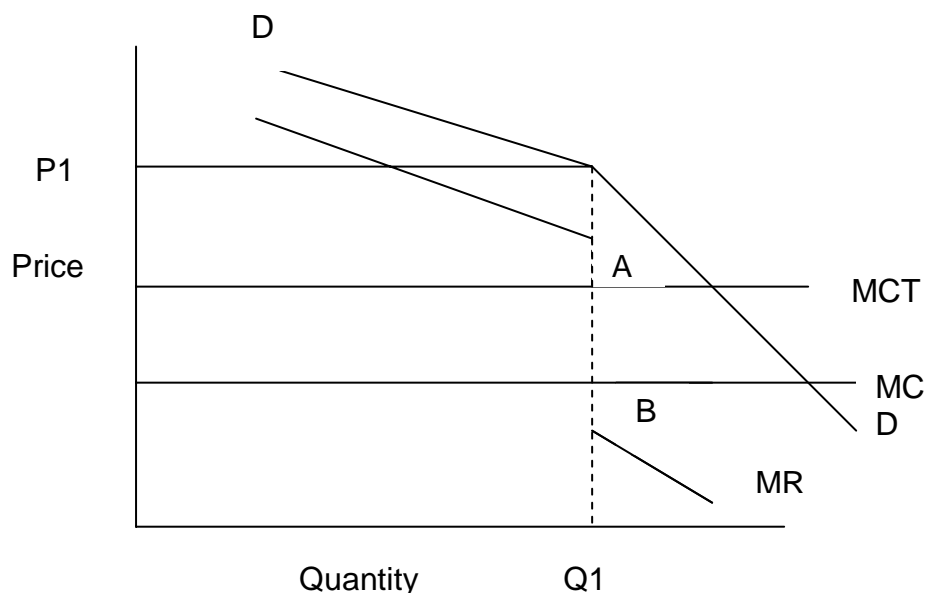
Nevertheless we would make the following comments regarding the potential for price increases.

1. **Level of Imports captured by domestic production.** The estimated 3.4% increase in farm gate prices reflects domestic production supplying 27.3% of current imports of pigmeat. Should imports cease altogether the farm gate increase would be expected to be higher than 3.4% but much more modest than the requested tariff levels.
2. **Weighted Average Price.** Any impact of a tariff on farm gate prices needs to take into consideration the weighted average price. Currently imported pigmeat comprises 34% of apparent consumption in Australia, with 66% already being supplied domestically. Therefore, any increase would apply to only 34% of the market.

3. **Farm gate price vs retail price.** The impact on the final retail price paid by the end consumer would be expected to be considerably lower than the increase in farm gate price. A report prepared by the Department of Agriculture, Fisheries and Forestry, "Price Determination in the Australian Food Industry 2004" indicates that, in the pork industry, the farm gate dressed carcass price represents only 24% of the final retail price. This would suggest that, maintaining the same margin, the increase in retail price would be 24% of the increase in farm gate price. For example an increase in the farm gate price of 50% would only require an increase in the retail price of 12% to maintain the same margin.
4. **Market Structures- Farm Gate and Retail.** The analysis in the commissioned work was confined to the farm gate market which tends to be competitive or even monopsonistic, in that relatively few processors buy from many producers and the processors in turn are impacted by the market conditions of retailers. It is therefore not surprising that demand for local pork produce in this market is highly elastic as a slight rise in the price of the local product will result in buyers shifting to other domestic pork producers, imported product or to lamb, beef or chicken.

However the retail market is oligopolistic in that it is dominated by a small number of major retailers. It is not possible to determine the price and output in an oligopoly as any one of a number of models may apply to such a market. However because demand in such markets is less than perfectly elastic and as shown in 3 above, farm gate price is only a small proportion of the retail price, it is likely that a 48-62 percent rise in the tariff on imported pork will have modest or no impact on the retail price. This can be illustrated by one possible model that retailers could adopt namely the kinked demand curve model shown in Figure 1.

Figure 1.



In this model the demand curve for pork products DD to the left of Q1 (which is the quantity sold at the existing price P1) is quite elastic. If for example one retailer raises its price the other retailers are unlikely to follow but rather accept the increased market share. However if one retailer lowers its price it moves down a much less elastic demand curve to the right of Q1 because the other retailers will match the price cut so as to not lose market share. The resulting kink in the demand curve gives a

marginal revenue curve that is discontinuous between A and B. The discontinuous section of the marginal revenue curve can mean that a large rise in the marginal cost of pork as a consequence of, for example a tariff, would have no effect on the retail price. This is illustrated by the pre-tariff marginal cost curve MC and the post-tariff marginal cost curve MCT. Both marginal cost curves cut the marginal revenue curve at a price P1 and quantity Q1. That is the tariff has no effect on the domestic retail price.

Of course the Australian retail market for pork may operate under other oligopolistic market models than the kinked demand curve. However, given that the dressed carcass price is only 24% of the final retail price, virtually all other models suggest that retail prices would only rise modestly if at all. In any event the actual price rise would be more the result of the market conditions in the retail market than the size of the tariff. For the Australian pork industry, however, the tariff could have a significant impact on the viability of Australian pork producers.

We trust that the above clarifies the situation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tom Murphy', with a stylized flourish at the end.

Tom Murphy
Chief Executive Officer

ANNEX G

PORK CRC: *The Global Competitiveness of the Australian Pork Industry: and Investment in Research and development to enhance Australia's Competitive Position*



Current Situation

The Australian pork industry is currently suffering from high feed costs due to the drought and global grain “shortages” and low pig prices due to the effects of imported pork on domestic supply.

Whilst it is difficult to predict the period of time grain and feed prices are likely to remain high the effects of ethanol production on corn supply for feed purposes in the USA is likely to extend for at least the next two years and potentially longer whilst global wheat supplies are likely to remain short for at least another 12 months. Consequently, Australia and the majority of other pork producing countries will likely experience higher feed costs over the next two years.

The effect of feed costs and Herd Feed Efficiency (HFE) on the break even price for pork production in Australia is shown in Table 1.

The original feed cost for Australian pork producers used by the Pork CRC as part of its business indicators was \$280/tonne. The original HFE was 4.2. The latter has fallen on average to 4.13. From Table 1 it can be seen that with the original business indicators the average carcass price required to break even was \$2.18/kg. With feed at \$400/tonne and HFE at 4.2 the break even price is \$2.68/kg.

Whilst not all producers receive the same price or have the same grain or feed costs the current situation will likely result in a significant reduction in the Australian production base which in time will result in increased prices

On the feed side it is unlikely that costs will decline in the short period as such margins are likely to remain tight and in the majority of cases negative through much of 2008.

Table 1: The effects of feed costs and whole herd feed efficiency (HFC) on the average pork price (\$/kg carcass weight) required to break even

<i>Feed cost (\$/tonne) /HFC</i>	3.2	3.4	3.6	3.8	4.0	4.2
280	1.90	1.95	2.00	2.06	2.12	2.18
320	2.02	2.09	2.15	2.22	2.28	2.34
360	2.15	2.22	2.30	2.37	2.44	2.51
400	2.28	2.36	2.44	2.52	2.60	2.68
440	2.41	2.50	2.58	2.67	2.76	2.85
480	2.54	2.63	2.73	2.82	2.92	3.02

Effects on Australia's Competitive Position

It is unlikely that the current feed /price situation faced by Australian producers will alter Australia's global competitiveness. Indeed, because of the drought feed costs in Australia are likely to increase more than in Europe or North America. Our competitive position against selected European countries and the USA in 2005 is shown in Table2.

Table 2 the business indicators and costs for selected EU countries and the USA (2005)

Indicator/Country	Denmark*	USA#	NL*	Ireland*	Australia+
COP (\$Aus/kg carcass weight)	2.16	1.52	2.14	2.35	2.20
Pigs weaned/sow/year	26.1	20.0	24.5	23.1	21.1
Pigs sold/sow/year	24.6	18.1	23.4	19.7	19.4
Carcass weight (kg)	78.3	91.5	88.1	76.6	73
Carcass/sow/year (kg)	1924	1647	2062	1645	1416
Feed cost (\$Aus/tonne)	297	185	285	365	280
Average Diet DE (MJ/kg)	13.9	14.6	13.6	13.4	13.3
Diet cost (Cents/MJ DE)	2.13	1.27	2.10	2.72	2.10
HFC (Carcass weight basis)	3.79	3.90	3.54	3.72	4.20
HFC (MJ DE/kg carcass weight)	52.7	56.9	48.1	49.8	55.8

NL The Netherlands

* based on British Pig Executive -2005 pig Cost of Production in Selected EU Countries (December 2006), # based on United Feeds Records (Indiana USA),+ based on Australian Pork Limited's Australian Pork Annual (2005).

The USA has an advantage in feed costs and though the price of corn has increased 60% over the last 12 months to \$ AU150/tonne the price of wheat in Australia has increased by 80-100% to \$400/tonne.

The Netherlands and Denmark have no advantage in terms of feed costs or cost of production due largely to their higher overhead costs. Both countries have technical and market advantages over Australia in terms of reproduction and volume with the latter due to a combination of more pigs sold per sow/year and markedly heavier carcass weights than the average for Australia. The effects of volume on cost of production are shown in Table 3. The summary which is based on increasing the number of pigs sold per sow/year at a constant carcass weight demonstrates the importance of volume (pigs sold X carcass weight) on cost of production and global competitiveness and this is an area where Australia trails competitors such as Denmark and Canada.

Table 3 Effects of volume on the HFC and cost of production (COP) for a herd with an initial HFC of 4.22 on a carcass weight basis, feed at \$480/tonne and an average carcass weight of 72 kg

Pigs sold/sow/year	Carcass weight sold/sow/year (kg)	HFC	COP (\$/kg carcass weight)
18	1296	4.22	3.14
20	1440	4.13	2.98
22	1584	4.06	2.86
24	1728	3.99	2.74

Herd feed efficiency on an energy basis is better for Australia compared to the USA and in part the better herd feed efficiency of the Danish and Dutch herds is associated with their greater volume (pigs sold x carcass weight) though the results suggest the Netherlands may have genetics capable of very efficient growth between weaning and slaughter given the much heavier weights pigs are sold compared to Australia and the fact that both Denmark and the Dutch produce castrated rather than intact males. In general approximately 80% of Whole Herd Feed Efficiency is associated with the feed efficiency (feed used) of the growing stock between birth and slaughter. Nevertheless, in a submission to the Productivity Commission by IAS Management Services the authors report a whole herd feed efficiency of only 3.4:1 (Approx 46 MJ DE/kg carcass weight) for some of their clients producing heavier pigs. Similarly, there are herds in Australia selling 24 plus pigs/sow/year with the top 10% of participants in APL's benchmarking study exceeding 25 pigs weaned/sow /year.

The industry through APL and the Pork CRC is investing in improving the overall competitiveness of the industry firstly by ensuring current information and knowledge associated with improving productivity is communicated to and implemented by the industry. For example is the extremely low herd efficiency reported for particular producers in the submission by IAS management Services associated with the use of a particular genetic line (s?) or some other factor than can be implemented by other Australian producers? Similarly are the globally competitive reproductive performances seen in APL's bench marking study due to particular genetics and/or housing and management systems that could /should be available to all Australian producers?

The second level of investment is in research and development aimed at the development of new technologies. The strategy is supported through APL and the Pork CRC with the two organizations working closely together to develop research projects that have the potential to alleviate Australia's major constraints on its global competitiveness in pork production.

The factors most affecting Australia's competitive position is best illustrated in tables 4 and 5 which show the sensitivity of profit to changes in business indicators with feed at \$280 (original Pork CRC value) and \$400/tonne respectively. The results show that with higher feed costs reducing feed costs or improving FE has a larger effect on profit than the same proportional improvement in volume. At the same time volume at least as affected by carcass weight may decline further if imports continue to reduce the amount of Australian pork used for manufacturing and the strength of the \$Australian continues to limit export opportunities. Under these situations more emphasis needs to be placed on improving reproductive capacity and the number of pigs sold/sow/year.

Table 4 the effects of 10% improvements in business indicators on profit with average feed cost at \$280/tonne

<i>Business indicator</i>	<i>Change in margin (\$/kg carcass weight)</i>	<i>Change in profit (\$/sow)</i>
Price	24.0 (\$2.40)	345 (107%)
Feed cost	11.8 (\$280/tonne)	169.34 (52.5%)
HFC	11.8 (4.2)	169.34 (52.5%)
Pigs/sold/sow/year	9.1 (20)	238.43 (73.4%)
Carcass weight	9.1 (72)	238.43 (73.4%)

In this and table 4 the figures in parenthesis show the value of the starting business Indicator

Table 5 the effects of 10% improvements in business indicators on profit with average feed cost at \$400/tonne

<i>Business indicator</i>	<i>Change in margin (\$/kg carcass weight)</i>	<i>Change in profit (\$/sow)</i>
Price	24 (\$2.40)	\$345.60 (from -\$403) 86%
Feed cost	16.8 (\$400/tonne)	\$242 (80%)
HFC	16.8 (4.2)	\$242 (80%)
Pigs/sold/sow/year	14.7 (20)	\$ 192.4 (48%)
Carcass weight (kg)	14.7 (72)	\$ 192.4 (40.2%)

The Pork CRC and its Programs

The Federal government and industry participants including producers, universities, State Government agencies, APL and product and technical supply companies have invested some \$84 million in cash and in kind over seven years in the Pork CRC.

The Program

The Pork CRC is using Government and participants funds to identify, contract and manage research projects to deliver better/cheaper feed on an energy basis, improve whole herd feed efficiency and better pork (increased price) to Australian pork producers. The outcomes are delivered through new knowledge, products and services.

The four program areas and associated improvement targets are:

Program 1: Securing more reliable and consistent supplies of protein and energy for pig diets. The targets – reduce feed costs by 10% and increase the DE content of grains by 1 MJ/kg. There are three sub programs within Program 1.

Program 2: Improving Whole Herd Feed Efficiency. The target - reduce HFC from 4.2 to 3.6. There are seven Subprograms within Program 2.

The results of recently completed projects in Program 2 have shown that the energy content of the diet offered gilts during their first lactation is crucial to determining subsequent fertility and longevity. Indeed the findings suggest that raising the DE level of the diet to 14.4 MJ/kg or higher increases the number of gilts successfully having a second litter by some 30% resulting in reduced replacement costs and overall improved reproduction. High sow turnover is a major factor constraining reproduction in the Australian industry and it has been calculated that reducing the number of gilts mated from 30% to 20% would save the Australian industry some \$33,000,000 so the recent results have important commercial implications.

Another recently completed project in the area of reproduction has shown that supplementing the diet of gestating sows with the amino acid Arginine starting day 16-17 of pregnancy for 10-14 days increases litter size by 1.4-1.5 pigs. If only 50% of the extra pigs born were weaned this would increase net profitability by \$152/sow.

Other research results have shown that pig profitability can be increased by between \$1.50 and \$10.00 per pig by better understanding the physical constraints to feed and energy intake under commercial situations and modifying the pig's dietary energy levels accordingly. The findings are in direct contrast to current nutritional theory but have been proven in a number of producer trials and will have even greater impact if the Australian industry moves towards a lean based and away from a P2 (fat thickness) based payment system and/or pork is sold as cuts rather than carcasses.

The Government's and industries recent investment in research through the Pork CRC is already paying dividends though the advantages of the new technologies/knowledge are only just starting to be realized at the commercial level and have largely been overshadowed by the cost/price squeeze due to increased grain costs and reduced pork prices due to the impact of imports. Nevertheless, the targeted and focused research programs developed by the Pork CRC and APL for the Australian pork industry will enhance the competitiveness of the industry in the future.

Program 3: Enhancing capacity to deliver nutrients promoting health and well being through pork. The targets are - 1 Increase export and domestic sales volumes by 10 %; and 2. To achieve a \$1.00/ kg increase in returns for 10 % of the product sold into the higher value markets.

Program 4: Education and communications -The targets are associated with the numbers of postgraduate and undergraduate students attracted by the Pork CRC and maintained within the industry.

The sub programs and number of projects within each at present are summarized in Table 6. More detail on individual projects is available in the 2006-2007 annual report.

Table 6 sub program areas and the number of projects currently supported within each sub program

Sub program	Title	No of projects
1A	Innovative grain production for the pork industry	4
1B	Quality assessment of feed ingredients	5
1C	Alternative ingredients for pig diets	2
2A	Measuring feed intake and pig weights in commercial situations	5
2B	Improving the feed intake and performance of pigs immediately after weaning.	5
2C	Improving animal health and reducing antibiotic use.	5
2D	Improving sow reproduction and longevity.	9
2E	Advanced reproductive technologies.	3
2F	Physiology and manipulation of growth.	3
2G	Nutritional strategies for sows and grower/finisher pigs.	3
3	Enhancing capacity to deliver nutrients promoting health and well-being through pork.	(5)*
4	Education and Communications	NA

Includes four recently approved projects co funded with APL

The budgeted (committed) R&D expenditure for each program area and the percentage of the Pork CRC's R&D budget committed to each program area are shown in table 7.

Table 7 cash and in kind expenditure within Pork CRC programs

Program	Cash (\$M)	In kind (\$M)	% of total program expenditure
1	4.28	5.16	32.8
2	6.67	19.92	51.1
3	0.93	0.80	7.5
4	1.15	NA	8.6

The percentage expenditure within each sub program in Programs 1 and 2 is shown in Table 8.

Table 8 the percentage expenditure on sub programs within programs 1 and 2.

<i>Program1</i>	SP 1A	SP 1B	SP 1C	<i>Program2</i>	SP 2A	SP 2B	SP 2C	SP 2D	SP 2E	SP 2F	SP 2G
% Expenditure	43.2	43.6	13.2		6.0	22.2	13.1	27.9	13.0	13.8	4.0

Conclusions

Australia's competitive position in the global pork industry is well understood.

In terms of farm gate costs Australia is equally and probably more efficient than the USA and Canada but is disadvantaged in terms of grain and feed costs. The latter can be alleviated by developing a feed grain industry with particular emphasis on the selection of grains with yield and nutritional characteristics specifically suited to pigs and pork producers and/or by enhancing the efficiency with which feed (energy) is used for pork production.

Compared to the EU and Denmark in particular Australia has similar costs of production and potential to markedly improve its competitive position by enhancing the reproductive capacity of the Australian herd and/or increasing carcass weight without reducing price. There are producers in Australia achieving world best practice in terms of the number of pig's sold/sow/year and recent research findings offer the potential for Australia to significantly improve this crucial business indicator.

Investment in research and development to improve the productivity and profitability of the Australian pork industry has increased since 2005-2006. The focused programs of the Pork CRC and APL have and will continue to deliver technologies and new knowledge to improve the efficiency of pork production in Australia. Research and development however, by its nature will result in continuing and longer term improvements in the efficiency of the industry and can't be expected to offset the marked deterioration in margins experienced by Australian pork producers over the last 6-7 months.