

MINTER ELLISON BUILDING 25 NATIONAL CIRCUIT FORREST  
GPO BOX 369 CANBERRA ACT 2601 AUSTRALIA  
DX 5601 CANBERRA [www.minterellison.com](http://www.minterellison.com)  
TELEPHONE +61 2 6225 3000 FACSIMILE +61 2 6225 1000

9 November 2007

Mr Gary Banks  
Chairman  
Pigmeats Safeguard Inquiry  
Productivity Commission  
Locked Bag 2  
Collins Street East  
MELBOURNE VIC 8003

Dear Mr Banks

We act for the United States' (US) National Pork Producers Council (NPPC), the American Pork Export Trading Company (APEX), the American Meat Institute (AMI) and the US Meat Exporters Federation (USMEF), each of which is an interested party in the above inquiry, and we will be lodging a full submission on their behalf on or before 23 November 2007.

Prior to doing so, however, there is an urgent threshold issue that we wish to bring to the attention of the Commission.

In our full submission, we will be advancing detailed arguments to support a conclusion that in this inquiry the Australian industry producing goods that are 'like' and/or 'directly competitive' with frozen pigmeat imported under tariff subheading 0203.29 of the Australian Customs Tariff is comprised only of abattoirs and/or boning rooms engaged in the processing of pigmeat. Such a conclusion would accord with the 2001 findings of the WTO Appellate Body in a safeguards matter noted by the Commission in its Issues Paper.<sup>1</sup> A consequence of such a conclusion is that any assessment of 'serious injury', 'critical circumstances' and 'all relevant factors having a bearing on the situation of [the] industry' must be based on performance data specific to the processing sector. We note earlier observations by the Commission on the substantial level of vertical integration of the production and processing sectors and, at this stage, we have been unable to identify any significant data publicly available in a disaggregated form.

Article 4 of the WTO *Agreement on Safeguards* requires that the evaluation of the economic performance of the industry shall be undertaken by reference to 'objective and quantifiable' data and that the issue of causation shall be determined on the basis of 'objective evidence'. While acknowledging that the Issues Paper specifically requests 'the industry' to provide evidence of serious injury there is no direction that such evidence must include economic performance data

---

<sup>1</sup> *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS178/AB/R, 1 May 2001.

that is appropriately disaggregated so as to facilitate analysis of claims of injury to the relevant sector of the pigmeat industry.

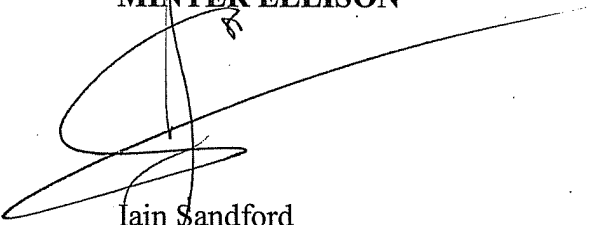
We urge the Commission to so direct the industry as soon as possible, and to explore any alternate sources of data that may be available.

Finally, we note that both the *Agreement on Safeguards* and the *Productivity Commission Act 1998* encourage the adoption of a transparent process for investigations of this nature in which interested parties have a full opportunity to present evidence and views. Accordingly, it is essential in this matter that we are afforded reasonable and timely access to performance data submitted by the domestic industry or compiled by the Commission and we welcome the Commission's statement that all data used in its analysis will be made available on its inquiry webpage.

We look forward to assisting the Commission on this inquiry.

Yours faithfully

**MINTER ELLISON**



Iain Sandford  
Deputy Director,  
International Trade Group

Contact: Iain Sandford Direct phone: +61 2 6225 3014 Direct fax: +61 2 6225 +61 (0)2 6225 1014  
Email: Iain.Sandford@minterellison.com