Using WTO Trade and Quarantine Rules to secure the Australian Pork Industry

Submission to the Productivity Commission Inquiry into the Australian Pork Industry from Australian PRISM by:

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What is at stake

The Australian pig industry:

- 2,300 active producers;
- employment: 6,000 full time workers employed “on farm”, plus 6,700 directly employed “off farm”, plus conservatively indirect employment of 16,800;
- 330,000 sows, on which we are losing on average $30 per week per pig sold, as a direct result of increases in imports;
- an investment in infrastructure of over $1bn;
- an annual farm gate value of production of $980m (2003).
- statistical evidence supports the claim that the Australian pig industry is efficient both in terms of financial and productivity parameters.

1. Handling the flood of pork imports

Yet this commodity industry is in danger of becoming a “cottage” industry, supplying only fresh product. Imported pig meat from countries that strongly support their farmers – the EU, US and Canada – now accounts for 40% of processed product. The NPPC of America has stated that the US will gain access for $50 million of product under the Australia-US FTA. Another 10 countries are also seeking access approval into the Australian market

Ready access to imports has altered the buying patterns of both processors and supermarkets and as such does not allow the opportunity for any seasonal price spike. The major determinant in driving the value of a whole carcass are the returns received for the premium cuts – leg meat and prime middles form the vast majority of imports.

This crisis has been recognised for some time:

- In 1998 a report by Purcell and Harrison, commissioned by the Qld DPI, found at that time, for every additional 1000 tonnes of imports, returns to domestic producers fell substantially.
- The Productivity Commission “Pig and Pigmeat Industries - Inquiry 1998” found that “increased imports were the dominant cause of low pig prices and reduced profitability” (Report #3, 11 November 1998, Overview XXIII).
- A recent ABARE report stated that if the present import trends continue, an Australian industry almost entirely focused on servicing domestic demand for fresh pig meat, with most raw materials for manufacturing processed meats being imported, was a possibility.

Australia has the explicit right to take safeguard action when an industry is being damaged by imports under the GATT Article XIX (see Appendix 1 below) and the WTO, Final Act of the Uruguay Round, 1986-1994, Agreement on Safeguards (see Appendix 2 below). The latter is a clarification and strengthening of the former.

GATT article XIX 1.a states that “ If … any product is being imported … in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory … the contracting party shall be free … to the extent and for such time as may be necessary to prevent or remedy such injury, to

suspend [its trade] obligation in whole or in part or to withdraw or modify the concession" (emphasis added).

The WTO Agreement on Safeguards Article 2 explicitly says that when a domestic industry is facing imports "into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products", then our government has the right to invoke safeguard measures (emphasis added). To suspend obligations means to suspend whatever binding commitments binds to the product.

"Serious injury" means "a significant overall impairment in the position of a domestic industry", and the "threat of serious injury" means and injury that is clearly imminent" (Article 4.1)

The WTO Agreement on Safeguards Article 6 states that, "In critical circumstances where delay would cause damage which it would be difficult to repair", then we are entitled to take "a provisional safeguard measure" of up to "200 days", in the "form of a tariff", "pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury." The duration of a safeguard measure can be up to "three years", provided a review is held "mid-term of the measure" (Article 7.4). Note, while the safeguard "should be a tariff", it can take other forms.

RECOMMENDATION 1. The Federal government must invoke the emergency safeguard measures on pig meat imports through as is our right under GATT-WTO rules for industries suffering "serious injury" from imports.

2. Handling dumped imports

There is a strong prima face case that Canadian and Danish pork is being dumped in Australia. Therefore, the WTO-GATT anti-dumping rules should be applied to dumped imports.

GATT 1996, Article VI, *Anti-dumping and Countervailing Duties* states as follows:

> 1. The contracting parties recognize that dumping, by which products of one country are introduced into the commerce of another country at less than the normal value of the products, is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. For the purposes of this Article, a product is to be considered as being introduced into the commerce of an importing country at less than its normal value, if the price of the product exported from one country to another
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> (a) is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country, or,

(b) in the absence of such domestic price, is less than either

(i) the highest comparable price for the like product for export to any third country in the ordinary course of trade, or

(ii) the cost of production of the product in the country of origin plus a reasonable addition for selling cost and profit.

Due allowance shall be made in each case for differences in conditions and terms of sale, for differences in taxation, and for other differences affecting price comparability.*

2. In order to offset or prevent dumping, a contracting party may levy on any dumped product an anti-dumping duty not greater in amount than the margin of dumping in respect of such product. For the purposes of this Article, the margin of dumping is the price difference determined in accordance with the provisions of paragraph 1.*

3. No countervailing duty shall be levied on any product of the territory of any contracting party imported into the territory of another contracting party in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation, including any special subsidy to the transportation of a particular product. The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise.*

Recommendation 2. Given that there is a strong prima facie case that some pork imports are dumped into the Australian market, the Federal government apply the WTO anti-dumping rules, modeled on procedures used by the US and the EU.

3. The threat of Post-weaning Multisystemic Wasting Syndrome due to the poor science of Biosecurity Australia's Pork Import IRA

This threat of this disease has been well documented. The poor science of Biosecurity Australia has been well documented by the pork industry. BA poor science is threatening a flood of imports that threaten to undermine our domestic market further and threatens the establishment of the deadly PMWS disease in Australia.

Recommendation 3. The pork industry wants:

I. **The Biosecurity Australia Pork Import Risk Assessment be withdrawn;**
II. **An independent inquiry into the operations of BA be conducted in accordance with the attached terms of reference, as drafted by Apple and Pear Australia Limited (see Appendix 3);**
III. **That BA be limited to drafting IRA's based only on science and not on trade issues;**
IV. **That BA risk assessment be based on low risk assessments, i.e. on maximum biosecurity considerations for Australian primary industries and foods standards;**
V. **The current IRA only be recommenced once the outcomes of that inquiry have been published and implemented; and**
VI. **The government agree to compensate stakeholders for losses incurred by them as established by that inquiry.**

4. Phytosanitry testing of imports

Australia has strong phytosanitry rules aimed a providing Australians a high food safety standards, guarding against damaging animal medicines, pesticides, chemicals and heavy metals contaminating human foods. If Australia fails to keep its guard up, contaminated foods will prove very costly to the health budget.

Australian farmers have to pass course accreditations to use these products on their farms. Australian produced foods are randomly tested for pesticide and chemical residues. This is done under an industry voluntary testing schemes.

Imported foods are not regularly tested for pesticide and chemical residues. With rising food imports, there poses a risk to public health. There are major issues with food safety from imported foods.

In many less developed and emerging economies:

there are no laws governing the use of pesticides and chemicals;
there is no training and accreditation of farmers in the use of pesticides and chemicals;
many farmers are illiterate and have little or no knowledge of how to use pesticides and chemicals;
there is frequent overuse of chemicals and pesticides, some of which are banned in Australia, leading to dangerous residue levels in food;
heavy metals contaminate farm lands and foods, and this is a widespread problem in East Asia, including China;
there are few, and often no, food testing facilities in these countries;
hence Australian importers and consumers have no indication of pesticide, chemical and heavy metal contaminants in imported foods, UNLESS these foods are comprehensively tested by Australian authorities.

There are issues with food imports from other developed nations like the USA.

Some chemicals and pesticides animal medicines used in these countries are banned from use in Australia.
For some foods, phytosanitry rules permit chemical, pesticide and heavy metal residues at levels that are not permitted under Australian phytosanitry rules.

Recommendation 4: The Federal Government undertake comprehensive testing of food imports to ensure they comply with Australia's comprehensive food safety standards.

5. Future of the Australian Pork Industry

The industry has suffered seriously from the failure of the Federal government to apply WTO Safeguard Rules, WTO Anti-Dumping Rules, Australia's own quarantine rules and phytosanitry rules. To ensure the industry has a future, the industry not only needs these issues corrected, but a restructure plan put in place.

Recommendation 5. The Federal Government, in <u>detailed consultation</u> both with industry body and individual producers, develop a five-year plan to help restructure and develop a stronger pork industry.

APPENDIX 1

GATT 1986, Article XIX

Emergency Action on Imports of Particular Products

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

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

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

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

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

APPENDIX 2

WTO Final Act of the Uruguay Round, 1986-1994

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AGREEMENT ON SAFEGUARDS

Members,

Having in mind the overall objective of the Members to improve and strengthen the international trading system based on GATT 1994;

Recognizing the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

Recognizing the importance of structural adjustment and the need to enhance rather than limitcompetition in international markets; and

Recognizing further that, for these purposes, a comprehensive agreement, applicable to all Members and based on the basic principles of GATT 1994, is called for;

Hereby *agree* as follows:

Article 1

General Provision

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

Article 2

Conditions

1. A Member [1] may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

2. Safeguard measures shall be applied to a product being imported irrespective of its source.

[1] A customs union may apply a safeguard measure as a single unit or on behalf of a member State. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this Agreement shall be based on the conditions existing in the customs union as a whole. When a safeguard measure is applied on behalf of a member State, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in that member State and the measure shall be limited to that member State. Nothing in this Agreement prejudges the interpretation of the relationship between Article XIX and paragraph 8 of Article XXIV of GATT 1994.

Article 3

Investigation

1. A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

2. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Article 4

Determination of Serious Injury or Threat Thereof

1. For the purposes of this Agreement:

   (a) "serious injury" shall be understood to mean a significant overall impairment in the position of a domestic industry;

   (b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 2. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and

   (b) in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

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

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

(c) The competent authorities shall publish promptly, in accordance with the provisions

of Article 3, a detailed analysis of the case under investigation as well as a demonstration of the relevance
of the factors examined.

Article 5

Application of Safeguard Measures

1. A Member shall apply safeguard measures only to the extent necessary to prevent or remedy
serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification
is given that a different level is necessary to prevent or remedy serious injury. Members should choose
measures most suitable for the achievement of these objectives.

2. (a) In cases in which a quota is allocated among supplying countries, the Member applying
the restrictions may seek agreement with respect to the allocation of shares in the quota with all other
Members having a substantial interest in supplying the product concerned. In cases in which this method
is not reasonably practicable, the Member concerned shall allot to Members having a substantial interest
in supplying the product shares based upon the proportions, supplied by such Members during a previous
representative period, of the total quantity or value of imports of the product, due account being taken
of any special factors which may have affected or may be affecting the trade in the product.

(b) A Member may depart from the provisions in subparagraph (a) provided that consultations
under paragraph 3 of Article 12 are conducted under the auspices of the Committee on Safeguards provided for in paragraph 1 of Article 13 and that clear demonstration is provided to the Committee
that *(*i) imports from certain Members have increased in disproportionate percentage in relation to the
total increase of imports of the product concerned in the representative period, *(ii*) the reasons for the
departure from the provisions in subparagraph (a) are justified, and *(iii*) the conditions of such departure
are equitable to all suppliers of the product concerned. The duration of any such measure shall not be extended beyond the initial period under paragraph 1 of Article 7. The departure referred to above
shall not be permitted in the case of threat of serious injury.

Article 6

Provisional Safeguard Measures

In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 2 through 7 and 12 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraphs 1, 2 and 3 of Article 7.

Article 7

Duration and Review of Safeguard Measures

1. A Member shall apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed four years, unless it is extended under paragraph 2.

2. The period mentioned in paragraph 1 may be extended provided that the competent authorities of the importing Member have determined, in conformity with the procedures set out in Articles 2, 3, 4 and 5, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Articles 8 and 12 are observed.

3. The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

4. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. If the duration of the measure exceeds three years, the Member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

5. No safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

6. Notwithstanding the provisions of paragraph 5, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

Article 8

Level of Concessions and Other Obligations

1. A Member proposing to apply a safeguard measure or seeking an extension of a safeguard measure shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members which would be affected by such a measure, in accordance with the provisions of paragraph 3 of Article 12. To achieve this objective, the Members concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on their trade.

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2. If no agreement is reached within 30 days in the consultations under paragraph 3 of Article 12, then the affected exporting Members shall be free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the Council for Trade in Goods, the application of substantially equivalent concessions

or other obligations under GATT 1994, to the trade of the Member applying the safeguard measure,
the suspension of which the Council for Trade in Goods does not disapprove.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first three years
that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result
of an absolute increase in imports and that such a measure conforms to the provisions of this Agreement.

Article 9

Developing Country Members

1. Safeguard measures shall not be applied against a product originating in a developing country
Member as long as its share of imports of the product concerned in the importing Member does not
exceed 3 per cent, provided that developing country Members with less than 3 per cent import share
collectively account for not more than 9 per cent of total imports of the product concerned.[2]

2. A developing country Member shall have the right to extend the period of application of a safeguard measure for a period of up to two years beyond the maximum period provided for in paragraph 3 of Article 7. Notwithstanding the provisions of paragraph 5 of Article 7, a developing country Member shall have the right to apply a safeguard measure again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement,
after a period of time equal to half that during which such a measure has been previously applied, provided that the period of non-application is at least two years.

Article 10

Pre-existing Article XIX Measures

Members shall terminate all safeguard measures taken pursuant to Article XIX of GATT 1947
that were in existence on the date of entry into force of the WTO Agreement not later than eight years
after the date on which they were first applied or five years after the date of entry into force of the WTO Agreement, whichever comes later.

Article 11

Prohibition and Elimination of Certain Measures

1. (a) A Member shall not take or seek any emergency action on imports of particular products
as set forth in Article XIX of GATT 1994 unless such action conforms with the provisions of that Article applied in accordance with this Agreement.

[2] A Member shall immediately notify an action taken under paragraph 1 of Article 9 to the Committee on Safeguards.

(b) Furthermore, a Member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side.[3,4] These include actions taken by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members. Any such measure in effect on the date of entry into force of the WTO Agreement shall be brought into conformity with this Agreement or phased out in accordance with paragraph 2.

(c) This Agreement does not apply to measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX, and Multilateral Trade Agreements in Annex 1A other than this Agreement, or pursuant to protocols and agreements or arrangements concluded within the framework of GATT 1994.

2. The phasing out of measures referred to in paragraph 1(b) shall be carried out according to timetables to be presented to the Committee on Safeguards by the Members concerned not later than 180 days after the date of entry into force of the WTO Agreement. These timetables shall provide for all measures referred to in paragraph 1 to be phased out or brought into conformity with this Agreement within a period not exceeding four years after the date of entry into force of the WTO Agreement, subject to not more than one specific measure per importing Member [5], the duration of which shall not extend beyond 31 December 1999. Any such exception must be mutually agreed between the Members directly concerned and notified to the Committee on Safeguards for its review and acceptance within 90 days of the entry into force of the WTO Agreement. The Annex to this Agreement indicates a measure which has been agreed as falling under this exception.

3. Members shall not encourage or support the adoption or maintenance by public and private enterprises of non-governmental measures equivalent to those referred to in paragraph 1.

Article 12

Notification and Consultation

1. A Member shall immediately notify the Committee on Safeguards upon:

(a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports; and

(c) taking a decision to apply or extend a safeguard measure.

2. In making the notifications referred to in paragraphs 1(b) and 1(c), the Member proposing to apply or extend a safeguard measure shall provide the Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction,

[3] An import quota applied as a safeguard measure in conformity with the relevant provisions of GATT 1994 and this Agreement may, by mutual agreement, be administered by the exporting Member.
[4] Examples of similar measures include export moderation, export-price or import-price monitoring systems, export or import surveillance, compulsory import cartels and discretionary export or import licensing schemes, any of which afford protection.
[5] The only such exception to which the European Communities is entitled is indicated in the Annex to this Agreement.

expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting shall also be provided. The Council for Trade in Goods or the Committee on Safeguards may request such additional information as they may consider necessary from the Member proposing to apply or extend the measure.

3. A Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Members having a substantial interest as exporters of the product concerned, with a view to, *inter ali*a, reviewing the information provided under paragraph 2, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 1 of Article 8.

4. A Member shall make a notification to the Committee on Safeguards before taking a provisional safeguard measure referred to in Article 6. Consultations shall be initiated immediately after the measure is taken.

5. The results of the consultations referred to in this Article, as well as the results of mid-term reviews referred to in paragraph 4 of Article 7, any form of compensation referred to in paragraph 1 of Article 8, and proposed suspensions of concessions and other obligations referred to in paragraph 2 of Article 8, shall be notified immediately to the Council for Trade in Goods by the Members concerned.

6. Members shall notify promptly the Committee on Safeguards of their laws, regulations and
administrative procedures relating to safeguard measures as well as any modifications made to them.

7. Members maintaining measures described in Article 10 and paragraph 1 of Article 11 which
exist on the date of entry into force of the WTO Agreement shall notify such measures to the Committee
on Safeguards not later than 60 days after the date of entry into force of the WTO Agreement.

8. Any Member may notify the Committee on Safeguards of all laws, regulations, administrative
procedures and any measures or actions dealt with in this Agreement that have not been notified by
other Members that are required by this Agreement to make such notifications.

9. Any Member may notify the Committee on Safeguards of any non-governmental measures referred to in paragraph 3 of Article 11.

10. All notifications to the Council for Trade in Goods referred to in this Agreement shall normally
be made through the Committee on Safeguards.

11. The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary
to the public interest or would prejudice the legitimate commercial interests of particular enterprises,
public or private.

Article 13

Surveillance

1. A Committee on Safeguards is hereby established, under the authority of the Council for Trade
in Goods, which shall be open to the participation of any Member indicating its wish to serve on it.
The Committee will have the following functions:

(a) to monitor, and report annually to the Council for Trade in Goods on, the general implementation of this Agreement and make recommendations towards its improvement;

(b) to find, upon request of an affected Member, whether or not the procedural requirements of this Agreement have been complied with in connection with a safeguard measure,
and report its findings to the Council for Trade in Goods;

(c) to assist Members, if they so request, in their consultations under the provisions of this
Agreement;

(d) to examine measures covered by Article 10 and paragraph 1 of Article 11, monitor the phase-out of such measures and report as appropriate to the Council for Trade in Goods;

(e) to review, at the request of the Member taking a safeguard measure, whether proposals to suspend concessions or other obligations are "substantially equivalent", and report as appropriate to the Council for Trade in Goods;

(f) to receive and review all notifications provided for in this Agreement and report as appropriate to the Council for Trade in Goods; and

(g) to perform any other function connected with this Agreement that the Council for Trade in Goods may determine.

2. To assist the Committee in carrying out its surveillance function, the Secretariat shall prepare annually a factual report on the operation of this Agreement based on notifications and other reliable information available to it.

Article 14

Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes arising under this Agreement.

APPENDIX 3

Apple and Pear Australia Limited (APAL)

TERMS OF REFERENCE

1 Are the arrangements for engagement and conduct of IRA Teams adequate to ensure scientific integrity and appropriate transparency of IRA processes with particular regard to:

(a) The composition of IRA Teams;

(b) Contractual arrangements for IRA Team members;

(c) Conduct and recording of IRA Team meetings;

(d) The relationship between IRA Teams and the modelling conducted by Biosecurity Australia.

2 Is Biosecurity Australia sufficiently accountable to Ministers, the Parliament and stakeholders?

(a) What has been the detail behind the "errors" announced in the Apples and Bananas IRAs?

(b) What criteria should Biosecurity Australia apply in dealing with stakeholders on matters where BA is aware that it holds knowledge not shared by stakeholders?

(c) How should the public file be maintained?

(d) Have Biosecurity Australia officials met their responsibilities to be truthful and accurate in their dealings with members of the Australian community?

3 Is the model for simulating risk used by Biosecurity Australia robust? What processes should be in place to ensure the model is used to simulate, rather than determine risk assessments?

(a) Is it appropriate for IRA Teams to record their conclusions in the spreadsheet rather than the IRA report?

(b) What are the minimum required quality assurance and audit requirements for effective use of the model?

4 Has the integrity of the IRA Team for Apples from New Zealand been compromised by the failure by Biosecurity Australia to disclose that discrepancies existed between the IRA Report and the values input to the risk estimation spreadsheet?

5 Has loss or damage been caused to stakeholders by any failure by Biosecurity Australia to comply with appropriate standards of accountability and transparency in the conduct of recent IRAs.