

**GOVERNMENT OF CANADA
SUBMISSION**

**SAFEGUARD INQUIRY INTO THE
IMPORT OF PIGMEAT**

PRODUCTIVITY COMMISSION OF AUSTRALIA

**High Commission of Canada
Canberra, Australia
November 2007**

Introduction

The purpose of this submission is to provide the Government of Canada's views with respect to the safeguard inquiry into the import of pigmeat currently being conducted by the Australian Productivity Commission. We intend to address a number of issues pertaining to the present inquiry. Specifically, we will underline the standard for safeguard action, the previous investigations the Commission has conducted on pigmeat, the findings it made further to those investigations, and factors currently affecting the Australian pigmeat industry.

We would state at the outset that Canada does not believe that there is a credible basis for safeguard action by Australia with respect to the pigmeat industry. In Canada's view, such action cannot be justified. There is no substantiated causal link between increased imports and a finding of serious injury, which would be necessary before a safeguard measure could be applied, and such measures would not be of any long-term benefit to Australian producers and consumers.

Previous Investigations

In 1998, the Government of Australia undertook a safeguard investigation to determine whether a safeguard action regarding imports of frozen pigmeat would be justified. The report by the Productivity Commission concluded at that time that the Australian industry had suffered,

or was suffering, serious injury due to depressed prices for pork products and a reduction in domestic demand for same.

In 1998, the Productivity Commission concluded that despite its finding that imports of pork had caused serious injury to the domestic industry, safeguard measures would not rectify the situation. The Commission also noted that such measures would simply delay the Australian pork industry's inevitable adjustment to global trends.

In 2005, another investigation with respect to pork imports was initiated. In the 2005 investigation, the Commission found that for the period from 1999 to 2002, Australian pigmeat producers were profitable, but lost market share in 2003 and 2004 due to drought, increased feed costs, and an increase in the value of the Australian dollar. The report highlighted the fact that imports of pigmeat to Australia were not benefiting from significant subsidies. In addition, the report concluded that increased trade restrictions on imported pigmeat would impose costs on consumers, retailers and manufacturers, and would likely not be in the long-term interests of Australian pork producers and/or primary processors.

Safeguards

Safeguard investigations are governed by the *WTO Agreement on Safeguards* and Article XIX of the GATT 1994, which set out the requirements for the conducting of investigations, the criteria for findings of "serious injury" and/or "critical circumstances", and the recourse available in the event of a positive finding.

It should be noted that under the *Agreement on Safeguards*, the investigating authorities are held to a high standard for positive findings of “serious injury”. Article 4.1(a) of the *Agreement on Safeguards* states that “serious injury shall be understood to mean a significant overall impairment in the position of a domestic industry”.

In *US – Lamb*¹, the WTO Appellate Body compared the standard of “serious injury” to that of “material injury” found in the *Anti-Dumping Agreement* and the *Subsidies and Countervailing Measures Agreement*, and concluded that the standard of “serious injury” for safeguards is higher than that of “material injury”.² In Canada’s view, 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.³

Furthermore, the Commission must recognize that safeguard measures are further distinguished from anti-dumping or countervailing measures in that they are fair trade remedies. Thus, the Productivity Commission must

¹ Appellate Body Report, *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS177/AB/R, adopted 16 May 2001, DSR 2001: IX, 4051.

² Appellate Body Report on *US – Lamb*, para. 124.

³ The Appellate Body in *Argentina – Footwear (EC)* upheld this interpretation with respect to the extraordinary nature of safeguard measures: “...application of a safeguard measure does not depend upon ‘unfair’ trade actions, as is the case with anti-dumping or countervailing measures. Thus, the import restrictions that are imposed on products of exporting Members when a safeguard action is taken must be seen, as we have said, as extraordinary. And, when construing the prerequisites for taking such actions, their extraordinary nature must be taken into account.” (Appellate Body Report, *Argentina – Safeguard Measures on Imports of Footwear*, WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I, 515, para. 94)

inherently recognize that imports of pigmeat to Australia are not benefiting from unfair trade practices.⁴

Industry and Product Definition

The term “domestic industry” is defined in Article 4.1(c) of the *Agreement on Safeguards* as being “understood to mean the producers as a whole of the like or directly competitive products [emphasis added] or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products [emphasis added].”

In this case, the product in question is frozen de-boned pork imported under tariff heading 0203.29 of the Australian Customs Tariff. It should therefore be noted that the domestic industry is comprised of producers of frozen and de-boned pork, namely the abattoirs and boning rooms where the pork is processed, and not the producers of live swine. This interpretation was upheld by the WTO Appellate Body in *US – Lamb*, a similar case where the Panel ruled that domestic industry producers of “lamb meat” did not include “growers and feeders of live lambs”.⁵ Similarly, the definition of domestic industry in the present case should not include growers and feeders of live pigs, as they do not produce like or directly competitive products. Therefore the Commission should restrict the scope of its investigation to the market, domestic production and imports of frozen de-boned pork falling under HS code 0203.29.

⁴ Ibid.

⁵ Appellate Body Report on *US - Lamb*, para. 84.

Imports of Canadian pork under the aforementioned tariff code are also subject to very restrictive quarantine regulations. In fact, Australian Quarantine and Inspection Service Condition C5091 states at paragraph 19 that all Canadian pork meat imports must be cooked to an internal temperature of 56 °C for a minimum of 60 minutes prior to any further processing. This clearly places imports of Canadian pork in a different product class as domestically produced frozen de-boned pork is not subject to the same restrictions and can therefore be utilized in a wider number of applications.

Factors Affecting the Industry

Canada wishes to emphasize that the Commission should examine all factors that may be causing serious injury to the domestic industry and not limit its examination to just imports.

Indeed, there are a number of conditions that must be fulfilled for the Commission to return a finding of serious injury. As stated by the WTO Appellate Body in *US – Wheat Gluten*,⁶ there must be a causal link between increased imports and serious injury; the effects of other factors must be distinguished from effects caused by increased imports; effects caused by other factors must be excluded totally from serious injury determinations to ensure that they are not attributed to increased imports; and finally, increased imports alone must be capable of causing serious injury.⁷

⁶ Appellate Body Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/AB/R, adopted 19 January 2001, DSR 2001:II, 717.

⁷ Appellate Body Report on *US – Wheat Gluten*, para. 66.

Furthermore, the Commission must consider the fact that an increase in imports does not necessarily entrain safeguard measures. Under Article XIX:1(a) of the GATT 1994 and Article 2.1 of the *Agreement on Safeguards*, products must be imported in such increased quantities – absolute or relative to domestic production as to threaten or cause serious injury. In *Argentina – Footwear (EC)*⁸, the WTO Appellate Body found that the test for increased imports when considering safeguard measures was necessarily very strict. Specifically, the Appellate Body determined that increases in imports must be demonstrated to be “...recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause or threaten to cause ‘serious injury.’”⁹ The WTO Panel in *US – Wheat Gluten* applied the same standard in its determinations as well.¹⁰

In this context, Canada understands that Australia is currently facing severe drought conditions that are having a significant impact on farmers in all sectors. In the specific case of pig producers, the immediate effect has been a sharp rise of already high feed costs.

While Canada sympathizes with the plight of Australian pigmeat producers, we must remind the Commission that the circumstances facing the Australian pigmeat industry are not entirely unique. Pork producers worldwide are facing increasing feed costs and depressed prices resulting in

⁸ Appellate Body Report, *Argentina – Safeguard Measures on Imports of Footwear*, WT/DS121/AB/R, adopted 12 January 2000, DSR 2000:I, 515.

⁹ Appellate Body Report on *Argentina – Footwear (EC)*, para. 131.

¹⁰ Panel Report, *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities*, WT/DS166/R, adopted 19 January 2001, modified by Appellate Body Report, WT/DS166/AB/R, DSR 2001:III, 779, para. 8.31.

smaller profits for producers. It should also be noted that Australia's pigmeat production and export volume has also remained very stable over the period from 2003 to 2007.¹¹

Canadian exports of frozen de-boned pigmeat have remained relatively constant from 2003 through 2007. According to Australian Bureau of Statistics data provided by the Productivity Commission, Australia imported 32,399 metric tons of Canadian frozen de-boned pork in 2003, 33,917 metric tons in 2004, 34,407 metric tons in 2005, 34,792 metric tons in 2006, and has reached 27,757 metric tons for the period from January to August 2007. From 2005 to 2006, Australia's imports of Canadian frozen de-boned pork increased by only 1.1%.

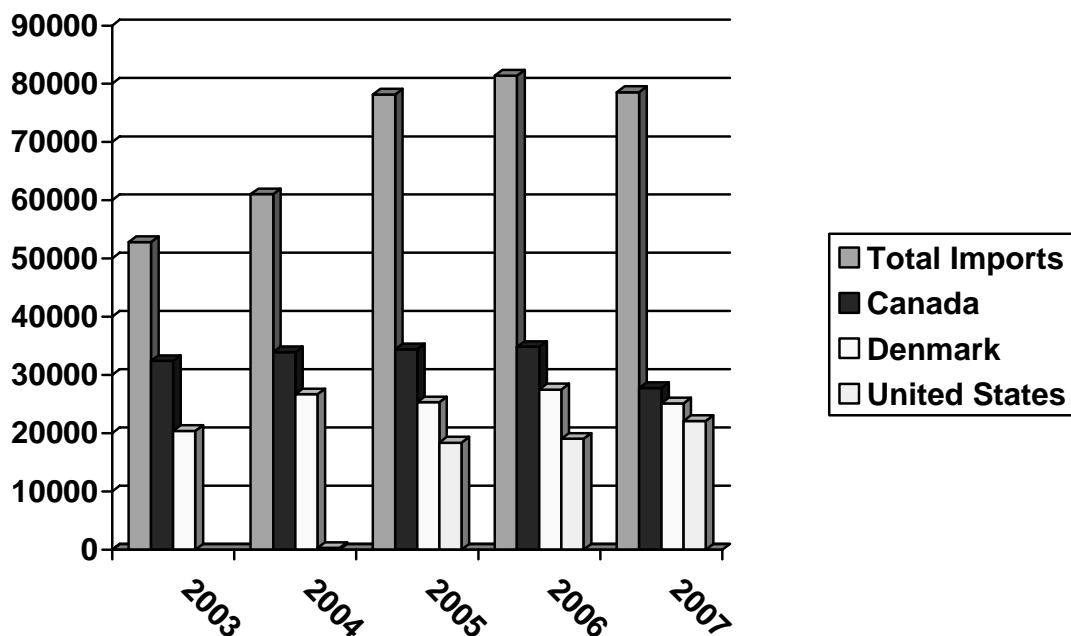
Given the regular and moderate increases in Australian imports of pigmeat, the Productivity Commission must also demonstrate that the increase in imports is due to "unforeseen developments" as required under Article XIX:1(a) of the GATT 1994. It is important to note that the aforementioned "unforeseen developments" must be included in the Commission's report and must be proved in order to return a finding in favour of safeguard measures. This interpretation was upheld by the Appellate Body in *Argentina – Footwear (EC)*.¹² It is our view that the current conditions in the Australian industry, given the data available, do not meet the requirements for "unforeseen developments under Article XIX:1(a) of the GATT 1994.

¹¹ Australian Bureau of Statistics Data provided by the Productivity Commission shows that Australian pigmeat exports amounted to 15,017 metric tons in 2005 and 14,359 metric tons in 2006, an increase of 10.7% over 2004.

¹² Appellate Body Report on *Argentina – Footwear (EC)*, para. 94.

Table 1 below illustrates Australia's imports of frozen de-boned pork by country from 2003 to 2007. While there was a significant increase in total imports from 2004 to 2005, it should be noted that the bulk of that increase is due to imports of pigmeat from the United States, who entered the market in 2005. It should also be noted that Australian imports of pigmeat from all sources have remained relatively constant in the last two years. In 2005, Australian imports of frozen de-boned pigmeat amounted to 78,139 metric tons. In 2006, total import volume increased by 4.15% to 81,385 metric tons.

Table 1. Australian frozen de-boned pork imports (metric tons) by country



Conclusion

In conclusion, it is Canada's position that safeguard measures are not appropriate in this instance. While the import volume of frozen de-boned pork entering Australia has increased in the last year¹³, there is a lack of objective evidence to demonstrate that imports are the primary cause of serious injury to the Australian domestic industry.

In Canada's view, there is no evidence to support the contention that the alleged injury to Australia's domestic industry is due to unforeseen developments. It is also our position that imports of frozen de-boned pork under HS code 0203.29, since they require additional processing before final processing and shipment, are significantly and materially different from frozen de-boned pork produced by the domestic industry.

In our view, imports of frozen de-boned pork have not increased enough in volume in the last year to meet the WTO Appellate Body's criteria of a recent enough, sudden enough, sharp enough, and significant enough increase, both quantitatively and qualitatively, to cause or threaten to cause serious injury.

Any injury which may have been suffered by domestic producers is more likely to be the combined result of factors such as drought, increased feed costs, and depressed prices. As was previously stated, it is Canada's

¹³ Australian Bureau of Statistics data shows that imports of frozen de-boned pork for the period from January to August 2007 are up by 57% (78,554 metric tons) over the same period for 2006 (50,015 metric tons).

position that increased imports alone are not causing serious injury as defined under Article 4.1(a) of the *Agreement on Safeguards*.

Finally, it is also noted that an injury to primary input producers – such as pig farmers – does not result in a serious injury to the producers of like or directly competitive products in this case. The producers of like or directly competitive products in this instance are meat processors, abattoirs and boning rooms, and not pig farmers. A safeguard action is not the appropriate remedy in this case and would not provide the relief sought by domestic industry.