

**GOVERNMENT OF CANADA  
INITIAL COMMENTS  
TO  
THE PRODUCTIVITY COMMISSION  
PIG AND PIGMEAT INDUSTRIES  
SAFEGUARD ACTION AGAINST IMPORTS**

CANADIAN HIGH COMMISSION  
CANBERRA, AUSTRALIA  
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Canadian authorities wish to refer to the inquiry by the Productivity Commission regarding whether safeguard action is warranted with respect to imports into Australia of certain frozen pigmeat. As noted in the Issues Paper initiating the inquiry, Canada is the most significant import supplier of this product to Australia. Accordingly, Canadian authorities have a substantial interest in the conduct of the inquiry and any recommendations it may make. In this context, Canadian authorities will be following this inquiry very closely and intend to file a full submission with the Productivity Commission by the deadline of September 18, 1998.

Canadian authorities appreciate the assurances received from the Australian Government, including the Minister for Trade and the Minister for Primary Industries and Energy, that the conduct of this investigation will conform fully with Australia's obligations under the World Trade Organization (WTO) Agreement on Safeguards. In this context, Canadian authorities would like to emphasize Canada's expectations regarding these obligations as well as Canada's interpretations of these same obligations.

As Australian authorities know, a WTO Member may apply a safeguard measure to an imported product only if that Member has determined, in an investigation as described in Article 3 of the Agreement on Safeguards, that such product is being imported into its own territory in such increased quantities, whether absolutely 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. While determining whether imports of a particular good have increased, either in absolute or relative terms, is fairly uncomplicated, the determination of the product subject to the inquiry and the determination of the domestic industry producing those particular goods is less obvious.

In this regard, the definition of the product under investigation can often be the determining factor of whether imports have increased, or whether these increases are causing injury to domestic producers of "like or directly competitive products." In addition, the product also circumscribes the "domestic industry that produces like or directly competitive products". Canadian authorities would therefore urge Australian authorities to take particular care in defining the product under investigation.

The importance of the definition of the domestic industry is, of course, crucial to any determination of serious injury or threat thereof. Canadian authorities note that, in determining injury or threat thereof in a safeguard investigation, the WTO Agreement on Safeguard stipulates that a "domestic industry" is 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 product constitutes a major proportion of the total domestic production of those products.

As the Commission knows, the WTO Agreement on Safeguards states that for the purpose of the Agreement, "serious injury" is understood to mean a significant overall impairment in the position of a domestic industry and that the "threat of serious injury"

is understood to mean serious injury that is clearly imminent, based on facts and not on mere allegation, conjecture or possibility. It is generally accepted that the standard for injury in safeguard actions should be the highest, certainly higher than the standard of "material injury" for anti-dumping and countervailing duty actions, a fact acknowledged by the Productivity Commission in its Issues Paper.

Accordingly, Canadian authorities fully expect that, in conducting the inquiry, Australian authorities will evaluate all relevant factors bearing on the situation of the industry, as required by the WTO Agreement on Safeguards. In this regard, Canadian authorities are encouraged that the Productivity Commission has acknowledged the need for the examination of all such factors in its Issues Paper.

In addition, and more importantly, the Agreement on Safeguards requires that not only must the domestic industry be suffering "serious injury" or "threat of serious injury," but there must be a direct causal link between the increased imports and serious injury or threat thereof. As noted by the Issues Paper, when any factor or combination of factors other than increased imports are causing the injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

In conclusion, Canadian authorities wish to reiterate their expectation that Australian authorities will take full account of Australia's international trade obligations, set out in Articles 2, 3 and 4 of the WTO Agreement on Safeguards, in considering and reporting on the issue of whether the Australian domestic pig and pigmeat industries are suffering "serious injury" or "threat of serious injury" caused by increased imports.