



13th April 2004

Committee Secretary
Joint Standing Committee on Treaties
Department of House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

APL welcomes the request for public comment and consultation by the Joint Standing Committee on Treaties (JSCOT) regarding the Australia-United States Free Trade Agreement.

Whilst broadly supporting the movement towards improved trading arrangements with the USA, APL has a number of concerns regarding recent activities and comments relating to the draft FTA. These include:

- An implied link made by US trade representatives between the FTA and changes to Australia's quarantine standards favourable to US exporters, including specifically pig meat.
- Indications that the Final Import Risk Assessment for Pig Meat released by Biosecurity Australia was potentially influenced by negotiations with the USA about quarantine outcomes in the context of the Free Trade Agreement and in particular the timing of the release of the Final IRA Report.
- The potential for de-facto dispute resolution via the SPS Technical and Working Group.
- The inclusion of trade representation on the proposed SPS Committee and related technical sub-committees.
- A comparison of the SPS texts of these US FTAs demonstrating clearly that the US has taken the opportunity provided by the FTA negotiations to seek to unduly influence Australia's quarantine regime outside the WTO framework.
- The quarantine concessions negotiated in Chapter 7 for the FTA Text are significant and have serious implications for the Australia's pork industry and other food producing industries. They will inevitably be extended to other countries.
- The US view that Australia in the immediate future is a sizeable new export market, a fact that appears to be a driving motivation behind the numerous unsubstantiated claims throughout the FTA negotiation process that Australia's quarantine standards are not based on science.

APL is particularly concerned that combined, these factors could be contributing towards a reduction in Australia's conservative quarantine standards. APL estimates the direct and indirect cost of an out break of an exotic disease in Australia such as PMWS would be 2,200 lost jobs, a \$189 million drop in gross domestic product and a \$76 million reduction in household income.

APL urges the JSCOT to give thorough consideration to the above concerns so as to ensure the Australia pork industry can have confidence that Australia's quarantine standards, our risk assessment processes and determinations have not been compromised as part of the FTA negotiation process.

Yours sincerely,



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Submission to the Joint Standing Committee on Treaties

Australia-United States Free Trade Agreement Inquiry

13 April, 2004

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Executive Summary

While broadly supporting the movement towards improved trading arrangements with the USA, Australian Pork Limited (APL) has a number of reservations regarding recent activities and comments relating to the draft Australian- USA Free Trade Agreement.

The office of the United States Trade Representative has made consistent claims imply that Australia is using quarantine regulations as an unjustifiable trade barrier. The US Agricultural Policy Advisory Committee asserts that that the Agreement "does not deal effectively with many non-science based sanitary and phytosanitary measures that Australia continues to use to restrict trade"

While APL notes the Australian Government's assurance that quarantine outcomes were not negotiated as part of the FTA and have not been weakened by the FTA concessions in Chapter 7, the official statements from the US raise serious concerns.

APL contends that the United States objective is to break down Australia's science-based, legitimate and WTO legal, quarantine protection of its pork and other targeted industries. Having failed over the years to water down Australia's quarantine regime on pork and other products, and having declined to contest Australia's decisions in the WTO, the United States appears to be using the opportunity of this FTA negotiation to attack Australia's legitimate quarantine protection and through "technical co-operation" to obtain results which could not be achieved in WTO processes.

The US has achieved "through the back door" significant quarantine concessions and it is a matter of concern to the Australian pork industry that Australia seems to have traded off quarantine for advantages in other areas of this FTA.

The quarantine concessions negotiated in Chapter 7 of the FTA Text are significant and have serious implications for the Australian pork industry and other food producing industries. They will be inevitably extended to other countries.

APL is significantly concerned that the Final Import Risk Assessment for Pig Meat, recently released by Biosecurity Australia, may have been influenced by negotiations with the United States of America about quarantine outcomes in the context of the FTA. There is a very strong inference that an undertaking provided to the USA in the context of negotiations for the FTA was the external imperative to publish the Final Report.

APL is supportive of the provisions that enable safeguard actions to be implemented in accordance with measures allowable under the WTO norms and disciplines. We note the Australian Government's continued reluctance to the implement a safeguard action to protect domestic industries, like the Australian pork industry, suffering damage from imports because of very strong public commitment to less distorted global agricultural trade and to the reduction of trade barriers through negotiated multilateral trade rounds. Yet by allowing the inclusion of safeguards in a bilateral trade agreement, appears to contradict and

weaken this very position while allowing Australian industries to bear the impact of unfair competition from imports on the domestic market.

While at this stage the prospects for significant quantities of Australian pork product being sold into the US market would appear limited, APL is in the process of reviewing potential opportunities and therefore welcomes the changes to the US tariff lines on pork products. While this appears to be a gain for the Australian pork industry, APL must reiterate that this advantage would be completely nullified by US domestic subsidies to its pork industry.

In light of the above concerns APL requests the following:

1. APL seeks clarification with regard to the 'technical issues' referred to by US authorities and the details of the framework, including the nature of the trade agency representation and the list of specific products.
2. APL proposes that the role of trade representatives on bilateral SPS bodies be clearly articulated and closely monitored to ensure that particularly US trade representatives confine themselves to ensuring consistency of bilateral SPS activities with WTO disciplines and obligations.
3. In light of the fact that the Executive Manager of Biosecurity Australia (BA) will in part chair the Technical Working Group, APL proposes that BA should be required to notify the domestic industries concerned when discussions relate to their products and the nature of these discussions.
4. APL also wishes to understand what processes will be put in place in the Technical Working Group to assure that industries will be notified of such discussions and what communications and consultations will be undertaken with the respective industries concerned.
5. APL requests that the FTA cover the issue of domestic support to ensure that any improvement in market access is not undermined.
6. APL requests that there be ongoing real time monitoring of domestic agricultural support programs (both at a national and sub-national level), estimations of their impact on cost of production and appropriate mechanisms in place to ensure Australian industries are safeguarded against U.S. domestic support policies, in particular on anti-dumping given the high level of U.S. domestic support.
7. APL requests that the close consultations and co-operation by Government with industry continue, particularly in any implementation of the FTA with the USA and in light of our concerns over SPS matters.

1. Introduction

Australian Pork Limited (APL) welcomes the request for public comment and consultation by the Joint Standing Committee on Treaties (JSCOT) regarding the Australia-United States of America Free Trade Agreement.

While broadly supporting the movement towards improved trading arrangements with the USA, APL has a number of reservations regarding recent activities and comments relating to the draft FTA. These include:

- An implied link made by US trade representatives between the FTA and changes to Australia's quarantine standards favourable to US exporters, including specifically pig meat.
- Indications the Final Import Risk Assessment for Pig Meat released by Biosecurity Australia was potentially influenced by negotiations with the USA about quarantine outcomes in the context of the Free Trade Agreement and in particular the timing of the release of the Final IRA Report.
- The potential for de-facto dispute resolution via the SPS Technical and Working Group.
- The inclusion of trade representation on the proposed SPS Committee and related technical sub-committees.
- A comparison of the SPS texts of these US FTAs demonstrating clearly that the US has taken the opportunity provided by the FTA negotiations to seek to unduly influence Australia's quarantine regime outside the WTO framework.
- The quarantine concessions negotiated in Chapter 7 for the FTA Text are significant and have serious implications for the Australia's pork industry and other food producing industries. They will inevitably be extended to other countries.
- The US view that Australia in the immediate future is a sizeable new export market, a fact that appears to be a driving motivation behind the numerous unsubstantiated claims throughout the FTA negotiation process that Australia's quarantine standards are not based on science.

APL is concerned that combined these factors could contribute towards a reduction in Australia's conservative quarantine standards, a potential outcome the Australian pork industry views as particularly troubling with far reaching implications. APL estimates the direct and indirect cost of an outbreak of an exotic disease in Australia such as PMWS would be 2,200 lost jobs, a \$189 million drop in gross domestic product and a \$76 million reduction in household income. Furthermore, we estimate it would add 15 percent to the cost of production in affected herds. We subsequently urge the JSCOT to thoroughly consider these concerns in its inquiry.

APL also wishes to express its support for the proposed measures regarding safeguards, particularly in relation to the requirement that WTO safeguards and bilateral safeguards cannot be applied at the same time. However, APL notes that within the FTA there has been allowance for safeguard price mechanisms trigger for US beef and horticulture in spite of the fact this is contrary to Australia's own policy position regarding this trade measure. These safeguards are unfortunate precedents to be set by a committed agricultural trader and leading light of the Cairns Group of Free Trading Nations, such as Australia.

APL urges the JSCOT to give thorough consideration to the above concerns so as to ensure that Australia's pork industry and food producing industries in general, can retain confidence that Australia's quarantine standards will not be compromised as a result of the FTA.

2. The Australian pork industry

APL is the peak national body representing the interests of Australia's pork producers. It is a unique agricultural organisation underpinned by legislation that enables the organisation to combine the functions of marketing, research and strategic policy direction and implementation, supported by industry funds. There are currently 2,500 pork producers in Australia producing some 5 million pigs annually. APL's members own approximately 77% of the Australian pig production.

The Australian pork industry provides a significant positive impact to local, regional, state and national economies. The total value produced by the Australian pork industry is approximately \$2.6 billion. The majority of farms are small to medium sized, family owned and run operations. Despite the family orientated structure of the industry, pork represents 2.5% of total Australian farm production.

The pork industry generates substantial income and employment in rural and regional Australia. It generates over \$1.1 billion in household income. In 2002, the pork industry directly generated approximately 6,000 full time jobs with a further 33,863 jobs generated indirectly in other sectors of the national economy¹. The specific economic impacts at a national, state and regional level are documented below in Table 1.

The industry's growing export markets are now valued at over \$228 million per year compared to \$24 million in 1997. Demand from overseas markets for Australian pork has increased substantially over the past four years, from just 2.6% of Australian pork production in 1997 to approximately 20% in 2003. Australia's key markets are in Asia, with Singapore and Japan providing export income of \$100 million and \$80 million per year respectively. Of major significance is the fact both these markets place a particularly high level of importance on food safety and animal health issues, as highlighted by Japan's response to recent BSE outbreaks in Canada and the USA involving temporary bans on imports of beef from those countries.

The Australian pork industry is in the enviable position of having a national pig herd with a 'world's best' health status, which underpins pork exports and is vital to the competitiveness and growth of the industry. It is this health status that makes Australian pigs and pig products desirable. With growing global consumer concern for food safety in the wake of increasing disease outbreaks, this highly regarded health status becomes even more desirable and an increasing competitive advantage.

¹ 'Socio-Economic Impacts of the Australian Pork Industry', Western Research Institute; 17 December 2002

Table 1 Socio-Economic Impact of the Pork Value Chain

	Output (\$m)	Value Added (\$m)	Household Income (\$m)	Employment
Australia	6,199.90	2,576.00	1,109.78	33,863
States				
New South Wales	1,498.14	625.22	266.05	7,916
Victoria	1,359.76	550.05	242.38	7,732
Queensland	1,188.37	434.28	201.37	6,312
South Australia	539.65	219.53	85.70	3,121
Western Australia	469.24	183.47	78.16	2,380
Tasmania	87.39	35.07	16.09	488
Regions				
Central NSW	372.05	129.52	49.93	2,011
Southeast Qld	601.02	192.56	80.68	3,257
Southern NSW – Northern Victoria	615.20	212.25	88.80	3,348

Source: 'Socio-Economic Impacts of the Australian Pork Industry', Western Research Institute; 17 December 2002

3. The Australia-US FTA & Pig Meat Import Risk Assessment

APL is concerned that the Final Import Risk Assessment (IRA) for Pig Meat, recently released by Biosecurity Australia, may have been influenced by negotiations with the United States of America about quarantine outcomes in the context of the Free Trade Agreement. These concerns are based on statements made by the United States, as detailed below, in the lead up to and during the Australia-US FTA negotiations.

These statements are inconsistent with the Australian Government's assurance that quarantine outcomes were not negotiated as part of the FTA.

3.1 Prior to the Negotiations

Even before the negotiations commenced for the FTA, it is evident that the US believed that they would extend to quarantine outcomes, including those relating to pig meat. APL notes statements by Ambassador Robert Zoellick that, "Making progress on a number of issues of concern to U.S. agriculture will be essential for the successful conclusion of these negotiations. ... As an example, several U.S. agriculture interests have raised serious concerns about Australia's use of Sanitary and Phyto-sanitary (SPS) measures as a means of restricting trade. ... In addition, we and Australia have agreed that SPS measures must be

based on science and be fully transparent.”² Notably, these comments appear to also infer a belief that Australia was not in compliance with the WTO SPS Agreement.

By contrast, APL’s negotiating objectives for SPS issues in an Australia–US FTA were:

1. U.S. quarantine processes need to be made significantly more transparent and less subject to political influence.
2. U.S. SPS arrangements need to improve guidance material describing its IRA process.
3. Supporting treatment of complaints about SPS issues through WTO arrangements.
4. Opposing the establishment of strict deadlines for the conduct of IRA's, which would impede inappropriate science based research being undertaken.
5. Opposing any negotiation on the independence of the science used in the IRA process.
6. To effectively address U.S complaints about the time taken to conduct the Import Risk Analysis processes, it is necessary to increase the resources available for Biosecurity Australia.

3.1.2 During Negotiations

During the FTA negotiation process, there were several assertions from US stakeholders suggesting these negotiations did in fact extend to quarantine outcomes **in relation to pig meat**. APL notes comments in the 2002 US President’s Report in Trade Agreement’s Program that, “The US continues to have concerns about the stringency of Australia’s SPS regime and the two sides have agreed to continue discussions of SPS measures in parallel with FTA negotiations.”³

There are strong indications that the that the office of United States Trade Representative (USTR) had a basis, arising from the FTA negotiation process, to assure US pork producers that Australia would relax quarantine conditions. The extensive public and congressional scrutiny of USTR activities provides a high level of assurance that its official publications would be based on firm facts. For example, the USTR has consistently made the claim that through the FTA they will be "pushing the Australian Government to develop a new science-based pork import policy" (USTR Fact Sheet, June 2003).

APL also highlights comments by Ambassador Zoellick, in his letter about the Free Trade Agreement to Congress on 12 November 2002, in which he stated that the US agenda on SPS issues was to have Australia eliminate unjustified SPS restrictions and to facilitate the export of US food and agricultural products to the market.

3.1.3 Post-Negotiations

Since the conclusion of discussions between Australia and the US, numerous comments from key US stakeholders have indicated quarantine outcomes, including those with respect to pig meat, were negotiated in the context of the FTA negotiations. As an example the American Farm Bureau Federation (AFBF) commented that, “The draft (FTA) provides for follow-up talks on sanitary and phytosanitary measures... and that...gains in US exports of meat

² Letter from Robert Zoellick (USTR) to Senator Byrd (President Pro Tempore, US Senate) notifying Congress of the intention to initiate an FTA with Australia –13 November 2002.

³ 2002 US President’s Report in Trade Agreement’s Program

(particularly pork) ...depends on the success of these sanitary/phytosanitary talks."⁴ In February 2004, at the conclusion of the negotiations and before the public release to the text of the FTA, on 1 March 2004, the AFBF in a background briefing paper on the Australian Free Trade Agreement stated "A key issue for agriculture in these negotiations will be the elimination of the many unjustified SPS measures Australia has in place, which have kept U.S. agricultural products, even those with reasonably low duties, out of the Australian market. These SPS issues are still under review by the Australian government. These include SPS measures on pork."⁵

More generally the AFBF provided a very positive assessment of gains to US farmers, including specifically pork producers, from the FTA, claiming the trade pact would create hundreds of millions of dollars worth of new exports *because it will lower Australian quarantine barriers*. (SMH report, 17 March 2004)

APL notes the assertions by the US Farm Bureau that Australia's quarantine laws are not based on scientific fact, that the risk assessment process needs to be transparent and that the science used must match the international science on the subject. While these sorts of comments look reasonable prima facie, it is well worth remembering that Australia is one of the very few countries in the world that is free of the many devastating exotic swine diseases. It is a commercial advantage not just to Australia but reports suggest that it is potentially a marketing advantage on the global pork market to those countries, which gain access to Australia. Further international science on the subject is geared towards management and minimisation - not prevention as evident in the exotic disease PMWS.

These comments in fact merely serve to underscore the determination with which the US (including prominently its trade representatives) is pursuing changes to Australia's import risk assessment processes and determinations.

The nature of these and similar comments emanating from the US appear contrary to the recent statements by the Executive Manager of Biosecurity Australia, in the first Senate Inquiry public hearing that "free trade agreement texts are of a general cooperative nature (and that) they do not prescribe the way in which we will carry out our import risk analysis work⁶."

3.1.4 Conclusions - the FTA's impact on the IRA for Pig Meat

In a report commissioned by the Australian Government in 2001,⁷ it is acknowledged that the industry's key competitive advantages are its comparative freedom from diseases, its proximity to Asia and capability to export fresh chilled pork to these Asian markets.

However, it is Australia's key competitive advantage, its unique and unparalleled quarantine and health status that underpin the future of the industry. Australia's quarantine, in combination with its preparedness and level of integrity with animal disease surveillance programs, facilitates industry investment and growth. The Australian pork industry is in the

⁴ Implications of an Australian FTA on U.S. Agriculture, American Farm Bureau Federation, Economic Analysis and Trade Teams (March 2004)

⁵ Report from AFBF website <http://www.fb.org/issues/backgrd/>

⁶ Senate Rural And Regional Affairs And Transport Legislation Committee, Import Risk Analysis for Pig Meat Inquiry, 9 February 2004, Canberra

⁷ Commonwealth Government, "The Charter of Strategic Imperative for the Australian Pork Industry," 2001.

enviable position of having a national pig herd with a 'world's best' health status, which underpins pork exports and is vital to the competitiveness and growth of the industry.

It is therefore imperative that Australia's strategic competitive advantage: its clean green image and disease free status is maintained and, as recognized by the Government's own charter, it "...should be fiercely protected."⁸

As an Australian industry, pork (through APL) looks to the Australian Government, including principally DFAT and DAFF, for interpretation of trade issues before and during trade negotiations so that it can determine the potential opportunities and disadvantages to itself, both directly and indirectly.

While industry lobby groups will always make claims about potential benefits or otherwise arising from trade agreements, there is generally a sound basis for making such claims. In this context, it is of great concern to APL that US pork producer representatives appear to have as their main advocate the US Trade Representative. The US maintains strong, legislated industry consultation mechanisms, including for example through a range of advisory committees such as the Advisory Committee for Trade Policy and Negotiations, the Agricultural Trade Policy Advisory Committee and the Agricultural Technical Advisory Committee. American pork producers and processors are represented on all of these bodies, either in their own right or through farm bodies.

As noted earlier, the USTR has made consistent claims that clearly state or imply that **Australia is using pork quarantine regulations as an unjustifiable trade barrier**. This assertion is also reflected in reports by US trade advisory committees, such as those outlined above, although they appear to take a less optimistic view about SPS issues "being resolved". Relevant excerpts are set out below.

Report of the Advisory Committee for Trade Policy and Negotiations, 12 March 2004⁹

Agriculture -- The trade impact of this agreement on U.S. agriculture is more limited.

The ACTPN welcomes the fact that all U.S. agricultural exports to Australia will receive duty-free access immediately upon implementation of the agreement. Gains for U.S. farm products, though, will also depend upon resolving outstanding sanitary and phytosanitary issues, not just on tariff removal. ...

The agreement addresses sanitary and phytosanitary (SPS) issues and establishes a special working mechanism for bilateral cooperation and closer mutual engagement in regulatory processes with a view toward greater reliance on science-based measures. The agreement calls for an SPS working group that will be established after the agreement comes into force. We are pleased that these mechanisms are included to minimize unnecessary disruptions to trade and provide a means for resolving SPS disputes before further measures are needed. However, the ACTPN remains concerned about the outstanding SPS import risk assessments that are still not completed on a number of important products.

Increases in U.S. farm exports to Australia will depend heavily on the use of science-based SPS risk assessments. [emphasis added]

⁸ Ibid, p33

⁹ Reports from USTR website, <http://www.ustr.gov/new/fta/australia.htm>

Report of the Agricultural Policy Advisory Committee, 12 March 2004¹⁰

II. Executive Summary of Committee Report

The APAC appreciates the efforts to complete the U.S.-Australia Free Trade Agreement, which will improve access for certain US agricultural products. However, many of the APAC members are concerned that the Agreement is not comprehensive, does not impose any new disciplines on Australia's agricultural export monopolies, and does not deal effectively with many non-science based sanitary and phytosanitary measures that Australia continues to use to restrict trade. [emphasis added]

Report of the Agricultural Technical Advisory Committee (ATAC) for Trade in Animals and Animal Products, March 2004¹¹

Advisory Committee Opinion on Agreement

Our trade advisory committee views non-tariff trade barriers as major hurdles that need to be resolved. Members of the committee remain concerned about the implementation and enforcement provisions within this Free Trade Agreement, specifically in regard to veterinary and sanitary issues. Some members of the Committee remained concerned about the potential negative impact from this agreement.

Poultry and Pork

This agreement is not comprehensive. It does not deal effectively with a number of non-science based sanitary and veterinary regulations that Australia may continue to use to protect its domestic producers. ... The pork industry will be able to support this trade agreement when the risk assessment is fully implemented and pork trade commences. [emphasis added]

APL contends that the United States' objective is to break down Australia's science-based, legitimate and WTO legal, quarantine protection of its pork and other targeted industries.

Having failed over the years to water down Australia's quarantine regime on pork and other products, and having declined to contest Australia's decisions in the WTO, the United States officials appear to be using the opportunity of this FTA negotiation to attack Australia's legitimate quarantine protection and through "technical co-operation" to obtain results which could not be achieved in WTO processes.

APL is concerned that it can be easily inferred, from US claims and the lack of a strong Australian rebuttal, that Australia has given the US this opportunity.

3.2 Release of the Final Report for the IRA for Pig Meat

APL is significantly concerned as to why the Final Pig Meat IRA report was published in the week that intervened between the initialling of the Free Trade Agreement and the release of the draft text of the Agreement.

¹⁰ Reports from USTR website, <http://www.ustr.gov/new/fta/australia.htm>

¹¹ Reports from USTR website, <http://www.ustr.gov/new/fta/australia.htm>

The Final Report of the IRA for Pig Meat was released one week after the commencement of the Senate Committee inquiry into the matter - at which substantial questions about the Draft IRA in relation to the Australia-US FTA negotiations were raised. The release of this Report prior to the completion of the Inquiry strongly indicates that there was an externally driven imperative to publish the Final Report, otherwise rational standards of public administration would have seen publication of the Final IRA delayed to track the progress of the Inquiry.

These factors lead to the very strong inference that an undertaking provided to the USA in the context of negotiations for the Free Trade Agreement was the external imperative to publish the Final Report. They raise a substantial question whether the IRA outcome was affected by those negotiations.

3.3 Technical Working Group and Dispute Resolution

In Ambassador Zoellick's announcement of the outcome of the FTA negotiations, the US Trade Representative said, "The U.S. and Australia will work to resolve sanitary and phytosanitary barriers to agricultural trade, **in particular for pork, citrus, apples and stone fruit.**

The Agreement establishes a new mechanism for scientific cooperation between U.S. and Australian authorities to resolve specific bilateral animal and plant health matters.

USDA's Animal and Plant Health Inspection Service and Biosecurity Australia will operate a standing technical working group, including trade agency representation, to engage at the earliest appropriate point in each country's regulatory process to cooperate in the development of science-based measures that affect trade between the two countries."¹²

While APL welcomes the US commitment to developing science-based SPS measures applicable to imports of Australian agricultural products, the above statement is difficult to reconcile with advice from the Minister for Trade that Australia's quarantine regime is not affected by the Agreement. In particular we refer to the key outcomes listed under the Sanitary and Phyto-sanitary measures, which states among others, "A framework for discussions on specific products has been established." APL has specific concerns regarding the details of this framework, including trade agency representation and the list of specific products.

Our concerns have been further heightened by the announcement of the US National Pork Producers Council President, Jon Caspers that, "The support of US pork producers for the Australian Free Trade Agreement is contingent upon Australia completing its technical work (referring to the draft Import Risk Analysis for Pig Meat) and opening its market to US pork."

The inference of these statements from the Office of the US Trade Representative and the NPPC is that US support for the FTA, insofar as it relates to the pork industry, is dependent upon the resolution of 'technical' matters pertaining to Australia's quarantine protocols for imported pig meat. Certainly the NPPC are very clear that their support for the FTA is contingent upon the completion of the technical work for the Import Risk Assessment for Pig Meat, *provided* it recommends opening the Australian market to US pork exports; this

¹² Free Trade "Down Under" - Summary of the U.S.-Australia Free Trade Agreement, Office of the United States Trade Representative, Trade Facts, 8 February 2004

statement is at odds with a science based process and seemingly disregards that market access is dependent upon science.

APL is concerned that the US believed there was at the least an implied commitment by Australia to reduce SPS barriers to pork importation, long before the Import Risk Assessment for Pig Meat process has been properly completed. This is not a risk Australia should take.

APL understands that the FTA explicitly prohibits bilateral dispute resolution on SPS matters. We express some reservation that the SPS Committee and Technical Sub-committees may provide the US with another avenue to try to influence Australian deliberations on SPS issues. This influence is being characterised as "consultation over technical issues". APL is concerned that this is an attempt to circumvent addressing quarantine issues through most appropriate forums, namely the WTO SPS Committee or WTO dispute resolution processes. Our concerns are further heightened by the fact there has been numerous comments from the US criticising Australia's SPS/quarantine regime.

APL is seeking clarification with regard to the technical issues referred to by US authorities, the details of the framework including the nature of the trade agency representation and the list of specific products.

3.4 Trade Representation on SPS Committee

APL suggests efforts should be made to ensure the proposed involvement of trade agency representatives in SPS Committee and Technical sub-committees be carefully monitored since the FTA expressly prohibits bilateral dispute resolutions of quarantine matters and explicitly states that any SPS disputes are to be referred to the WTO. This recommendation is made in respect of Chapter 7, Article 7.4 (10) that states, "each party shall ensure that the appropriate representative with responsibility for the development, implementation and enforcement of sanitary measures from relevant trade and regulatory agencies participate in meetings of the committee".

While it is reassuring to think that trade representation on the SPS Committee - and SPS Technical Working Groups - is to ensure that Chapter 7, Article 7.4(10) is adhered to, comments made consistently over the past two to three years by the US Trade Representative and senior US trade officials do not provide APL with any confidence that that will in fact be the role of US trade representatives on these bodies. In fact market access issues should not drive quarantine. The intrusion of trade into science into risk assessments, as reflected in Chapter 7, should be rejected. The US, like other countries has the opportunity to provide its information into the normal (and transparent) Import Risk Assessment process. It therefore begs the question as to why trade representation is needed on an SPS Committee and a separate and parallel process is not being established for the US. This will inevitably be extended to other countries.

APL proposes that the role of trade representatives on bilateral SPS bodies be clearly articulated and closely monitored to ensure that particularly US trade representatives confine themselves to ensuring consistency of bilateral SPS activities with WTO disciplines and obligations.

Further, in light of the fact that the Executive Manager of Biosecurity Australia (BA) will in part chair the Technical Working Group, APL proposes that BA should be required to notify the domestic industries concerned when discussions relate to their products and the nature of these discussions. We also wish to understand what processes will be put in

place to assure that industries will be notified of such discussions and what communications and consultations will be undertaken with the respective industries concerned.

3.5 SPS Provisions of Other US FTAs

It is worth noting that the SPS provisions in the Australia- US FTA, particularly in relation to the SPS Committee and more especially the SPS technical working groups, are more detailed and prescribed than in other FTAs into which the US has entered.

A summary of the SPS provisions in recent US FTAs is set out below in Table 2. Detailed text comparisons are attached in Appendix 1. A comparison of the SPS texts of these US FTAs demonstrates clearly that the US has taken the opportunity provided by the FTA negotiations to seek to unduly influence Australia's quarantine regime outside the WTO framework.

Table 2 Summary of SPS Provisions in other US FTAs

FTA partner	Year of Agreement	SPS Provisions	SPS Committee (Y/N)	Trade representation on SPS Committee (Y/N)	Technical Working Group on SPS issues (Y/N)	Industry consultation provisions in text
Australia	March 2004 (draft text)	See text Appendix I	Yes	Yes	Yes	No
Central America	March 2004 (draft text)	Similar but not as detailed as AsUS FTA	Yes	Yes	Yes	Nil
Chile	April 2003 (in force)	Similar to AsUS FTA but not as detailed on SPS Committee	Yes	Yes	Yes	Nil
Morocco	March 2004 (draft text)	In the same vein but less prescribed than AsUS FTA	Yes	Yes	Provided for but not stipulated	Yes
Singapore	April 2003 (in force)	Nil	No	NA	NA	NA

4. Safeguards

APL is supportive of the provisions that enable safeguard actions to be implemented in accordance with measures allowable under the WTO norms and disciplines. In particular, APL supports the general transition period during which a safeguard can be applied being 10 years from the entry into force of the Agreement. APL also contends that the requirement that WTO safeguards and bilateral safeguards cannot be applied simultaneously as being a favourable FTA outcome.

However, APL does consider it problematic that a bilateral safeguard under the FTA can be applied for up to four years (two years initially with provision for a further two years). In this context - and in terms of benchmarking for the future - the US special transitional safeguards to be applied to horticulture and beef over an 18 year transition period with provision for a further beef safeguard to come into effect indefinitely in year 19 of the FTA's operation is of concern.

It is interesting to note that in the Australia-Singapore FTA it was agreed that there would be no bilateral safeguards over and above measures that can be applied under WTO disciplines. A perusal of recent US FTAs suggests that their standard transition period for safeguards is 10 years, but that the maximum time a bilateral safeguard can be applied varies. For example, in the US-Chile FTA safeguard measures can only be applied for a maximum of three years during a transitional period of 12 years.

APL believes that for Australia - as a leader of the Cairns Group and a known agricultural free trader - to accept such terms, along with the complete exclusion of sugar, sends a mixed signal about its previously very strong public commitment to less distorted global agricultural trade and to the reduction of trade barriers through negotiated multilateral trade rounds.

APL is very disappointed that Australia is willing to allow the US to have such a bilateral safeguard mechanism when the Australian Government has consistently refused Australian industry requests for safeguard action, even when damage has been proven beyond doubt. For example, in 1998 after an extensive inquiry, the Productivity Commission, found that the Australian pork industry suffered and was continuing to suffer serious financial injury as a result of unrestrained imports of pork. It recommended, inter alia, a 10% tariff, falling to 5% after the first year and zero thereafter as a remedy to the injury suffered and to facilitate structural adjustment. However, the Government did not implement any tariff.¹³

We note the Australian Government's continued reluctance to the implement a safeguard action to protect domestic industries like the Australian pork industry, suffering damage from imports because of its very strong commitment to global free trade. Yet by allowing the inclusion of safeguards in a bilateral trade agreement, appears to contradict and weaken this very position while allowing Australian industries to bear the impact of unfair competition from imports on the domestic market.

5. Opportunities for the Australian pork industry

While at this stage the prospects for significant quantities of Australian pork product being sold into the US market would appear limited, APL is in the process of reviewing potential opportunities and therefore welcomes the changes to the US tariff lines on pork products.

By contrast the US views Australia in the immediate future as a sizeable new export market, a fact that appears to be a driving motivation behind the numerous unsubstantiated claims throughout the FTA negotiation process that Australia's quarantine standards are not based on science.

¹³ Productivity Commission, "Pig and Pigeat Industries: Safeguard Action Against Imports Inquiry", Report No. 3, 11 November 1998.

APL notes that there will be an immediate removal of the 5% tariff on any US products entering into Australia, particularly since overall the US has higher tariffs on more pork products than Australia as shown in Appendix 2. All US tariffs on imported pork products from Australia will likewise be eliminated immediately the FTA enters into force.

While this appears to be a gain for the Australian pork industry, APL must reiterate that this advantage would be completely nullified by US domestic subsidies to its pork industry.

In the report by the Centre for International Economics June 2001, U.S.\$1.2 billion in economic benefits would be derived by agriculture through improved market access conditions to the United States. The U.S. agri-food sector is the largest recipient of government outlays, receiving nearly U.S.\$30 billion in 2000. As a result, direct payments amount to over one half of net farm income.¹⁴ However, **this value is potentially overstated as it fails to account for the impact of U.S. domestic support (refer to Table 3). APL therefore requires that the FTA cover the issue of domestic support to ensure that any improvement in market access is not undermined.**

Table 3 U.S. Pork Production and Support

Producer Subsidy Equivalent (PSE) for pigmeat, 1999	Percentage PSE	PSE in A\$ million	PSE in A\$ per ton
Australia	2.1	17.3	48
United States	5.2	690.475	77.7

Livestock is regarded as value added grain. The vast majority of U.S. domestic support goes into livestock inputs, such as soybeans and corn (comprising up to 50% of the cost of livestock production), and therefore acts as a significant production subsidy for livestock. **APL believes that no sale of a subsidised or production supported commodity should be permitted in the Australia market or into third markets where Australia has a significant interest, such as Japan.**

The United States' National Pork Producers Council has called for a zero to zero tariff arrangement. The Australian pork industry would be satisfied with this outcome of a Free Trade Agreement provided that it is not at a disadvantage in terms of domestic support received by their U.S. counterparts.

There needs to be ongoing real time monitoring of domestic agricultural support programs (both at a national and sub-national level), estimations of their impact on cost of production and appropriate mechanisms in place to ensure Australian industries are safeguarded against U.S. domestic support policies, in particular on anti-dumping given the high level of U.S. domestic support.

The need for this is highlighted by the 121 disputes brought before the WTO between 1999 and January 9, 2003, those involving the U.S. comprised around 68, or more than 50% of

¹⁴ WTO, Trade Policy Review United States, WT/TPR/G/88

WTO disputes. Of these disputes, 32 (over 26% of all cases) were for Safeguard, Antidumping or Countervailing Duties claims made against the U.S.¹⁰

6. Government- Industry Consultations

Government consultations with industry over trade issues are essential. APL wishes to record its appreciation for the level and consistency of consultations undertaken by the Australian Government, in particular by DFAT (Steve Deady and colleagues) and DAFF. We would wish to see this close co-operation continue, particularly in any implementation of the FTA with the USA and in light of our concerns over SPS matters.

7. Conclusion

While APL supports the movement towards improved trading arrangements with the USA, we have a number of reservations regarding recent activities and comments relating to the draft FTA including:

- An implied link by US trade representatives between the FTA and Australia's quarantine standards.
- Indications that the Final Pig Meat Import Risk Assessment released by Biosecurity Australia was potentially influenced by negotiations with the United States of America about quarantine outcomes in the context of the Free Trade Agreement, and in particular the timing of its release.
- The potential for de-facto dispute resolution via the SPS Technical Working Group.
- The inclusion of trade representation on the proposed SPS Committee and related technical sub-committees.
- A comparison of the SPS texts of other US FTAs clearly demonstrates that the US has taken the opportunity provided by the FTA negotiations to seek to unduly influence Australia's quarantine regime outside the WTO framework.
- The significant quarantine concessions negotiated in Chapter 7 of the FTA Text and the subsequent serious implications for Australia's pork industry and other food producing industries.
- The US view that Australia in the immediate future is a sizeable new export market, a fact that appears to be a driving motivation behind the numerous unsubstantiated claims throughout the FTA negotiation process that Australia's quarantine standards are not based on science.

APL is concerned that combined, these factors could contribute towards a reduction in Australia's quarantine standards, a potential outcome the Australian pork industry views as particularly troubling. APL is concerned that our nation's conservative approach to quarantine is potentially being put at risk. While it is in our interests to facilitate trade, which we assume is the objective of the SPS Trade Committee, we must take every precaution to ensure that it is not watered down.

APL urges the JSCOT to give thorough consideration to the above concerns so as to ensure the Australian pork industry can have confidence that Australia's quarantine standards, our risk assessment processes and determinations have not been compromised as part of the FTA negotiation process.

Appendix 1 SPS provisions in US Free Trade Agreements

SPS provisions in US Free Trade Agreements

13 April 2004

FTA partner	Year of Agreement	SPS Provisions	SPS Committee (Y/N)	Trade representation on SPS Committee (Y/N)	Technical Working Group on SPS issues (Y/N)	Industry consultation provisions in text
Australia	March 2004 (draft text)	See text Appendix I	Yes	Yes	Yes	No
Central America	March 2004 (draft text)	Similar but not as detailed as AsUS FTA	Yes	Yes	Yes	Nil
Chile	April 2003 (in force)	Similar to AsUS FTA but not as detailed on SPS Committee	Yes	Yes	Yes	Nil
Morocco	March 2004 (draft text)	In the same vein but less prescribed than AsUS FTA	Yes	Yes	Provided for but not stipulated	Yes
Singapore	April 2003 (in force)	Nil	No	NA	NA	NA

Australia-US FTA draft text

ARTICLE 7.1 : OBJECTIVES

The objectives of this Chapter are to protect human, animal, or plant life or health in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum for addressing bilateral sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities

ARTICLE 7.2 : SCOPE AND COVERAGE

This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

ARTICLE 7.3 : GENERAL PROVISIONS

1. Further to Article 1.1.2, the Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

ARTICLE 7.4 : COMMITTEE ON SANITARY AND PHYTOSANITARY MATTERS

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Matters ("Committee") comprised of representatives of each Party who have responsibility for sanitary and phytosanitary matters.
2. The Parties shall identify the primary representative of each Party to the Committee and establish the Committee's operating procedures not later than 30 days after the date of entry into force of this Agreement.
3. The objectives of the Committee shall be to enhance each Party's implementation of the SPS Agreement, protect human, animal, or plant life or health, enhance consultation and cooperation on sanitary and phytosanitary matters, and facilitate trade between the Parties.
4. The Committee shall seek to enhance any present or future relationships between the Parties' agencies with responsibility for sanitary and phytosanitary matters.
5. The mandate of the Committee shall be to:
 - (a) enhance mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;
 - (b) improve bilateral understanding related to specific implementation issues concerning the SPS Agreement;

(c) review progress on and as appropriate, resolve through mutual consent, sanitary and phytosanitary matters that may arise between the Parties' agencies with responsibility for such matters; and

(d) consult on:

(i) matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

(ii) issues, positions, and agendas for meetings of the WTO SPS Committee, the *Codex Alimentarius Commission* and its subsidiary

bodies, the International Plant Protection Convention, the International Office of Epizootics, and other international and regional fora on food safety and human, animal, and plant health; and

(iii) technical cooperation activities on sanitary and phytosanitary matters.

6. The Committee shall meet within 45 days of the date of entry into force of this Agreement, and subsequently at least once a year thereafter, unless the Parties agree otherwise. The Committee shall inform the Joint Committee established under Article 21.1

(Joint Committee) of the results of each meeting.

7. The Committee shall perform its work in accordance with its operating procedures, which it may revise at any time.

8. Each Party shall ensure that the appropriate representative with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies participate in meetings of the Committee.

9. The Parties hereby establish a Standing Technical Working Group on Animal and Plant Health Measures as set out in Annex 7-A.

10. The Committee may agree to establish additional technical working groups in accordance with the Committee's mandate.

ARTICLE 7.5 : DEFINITIONS

For the purposes of this Chapter, **sanitary or phytosanitary measure** means any measure referred to in Annex A, paragraph 1, of the SPS Agreement.

Text in other US Free Trade Agreements relating to Sanitary and Phyto-sanitary Measures

US Central America FTA

(For comparison purposes the corresponding draft text of the Australia-US FTA is inserted, in red, after each article.)

DRAFT Subject to Legal Review for Accuracy, Clarity, and Consistency, 28 January 2004

Chapter Six: Sanitary and Phytosanitary Measures

Objectives

The objectives of this Chapter are to protect human, animal, and plant health conditions in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum for addressing sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities.

ARTICLE 7.1 : OBJECTIVES

The objectives of this Chapter are to protect human, animal, or plant life or health in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum for addressing bilateral sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities

Article 6.1: Scope and Coverage

This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

ARTICLE 7.2 : SCOPE AND COVERAGE

This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

Article 6.2: General Provisions

1. The Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. No Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

ARTICLE 7.3 : GENERAL PROVISIONS

1. Further to Article 1.1.2, the Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

Article 6.3: Committee on Sanitary and Phytosanitary Matters

ARTICLE 7.4 : COMMITTEE ON SANITARY AND PHYTOSANITARY MATTERS

1. The Parties hereby agree to establish a Committee on Sanitary and Phytosanitary Matters composed of representatives of each Party who have responsibility for sanitary and phytosanitary matters as set out in Annex 6.3.

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Matters ("Committee") comprised of representatives of each Party who have responsibility for sanitary and phytosanitary matters.

2. The Parties shall establish the Committee no later than 30 days after the date of entry into force of this Agreement through an exchange of letters identifying the primary representative of each Party to the Committee and establishing the Committee's terms of reference.

2. The Parties shall identify the primary representative of each Party to the Committee and establish the Committee's operating procedures not later than 30 days after the date of entry into force of this Agreement.

3. The objectives of the Committee shall be to enhance the implementation by each Party of the SPS Agreement, protect human, animal and plant life and health, enhance consultation and cooperation on sanitary and phytosanitary matters, and facilitate trade between the Parties.

3. The objectives of the Committee shall be to enhance each Party's implementation of the SPS Agreement, protect human, animal, or plant life or health, enhance consultation and cooperation on sanitary and phytosanitary matters, and facilitate trade between the Parties.

4. The Committee shall seek to enhance any present or future relationships between the Parties' agencies and ministries with responsibility for sanitary and phytosanitary matters.

4. The Committee shall seek to enhance any present or future relationships between the Parties' agencies with responsibility for sanitary and phytosanitary matters.

5. The Committee shall enhance communication between the Parties' agencies and ministries with responsibility for sanitary and phytosanitary matters and, whenever possible, shall seek to facilitate a Party's response to a written request for information from

another Party without undue delay. Where appropriate, the Committee shall also endeavor to ensure that at the earliest opportunity the responding Party communicates to the requesting Party the steps involved with responding to the request.

6. The Committee shall provide a forum for:

5. The mandate of the Committee shall be to:

(a) enhancing mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(a) enhance mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(b) consulting on matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

(b) improve bilateral understanding related to specific implementation issues concerning the SPS Agreement;

(c) addressing bilateral or plurilateral sanitary and phytosanitary issues to facilitate trade;

(c) review progress on and as appropriate, resolve through mutual consent, sanitary and phytosanitary matters that may arise between the Parties' agencies with responsibility for such matters; and

(d) consulting on issues, positions, and agendas for meetings of the *WTO SPS Committee*, the various *Codex* committees (including the *Codex Alimentarius Commission*), the *International Plant Protection Convention*, the *International Office of Epizootics*, and other international and regional fora on food safety and human, animal, and plant health;

(d) consult on:

(i) matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

(ii) issues, positions, and agendas for meetings of the *WTO SPS Committee*, the *Codex Alimentarius Commission* and its subsidiary

bodies, the *International Plant Protection Convention*, the *International Office of Epizootics*, and other international and regional fora on food safety and human, animal, and plant health; and

(iii) technical cooperation activities on sanitary and phytosanitary matters.

(e) coordinating technical cooperation programs on sanitary and phytosanitary matters in consultation with the *Trade Capacity Building Committee*;

(f) improving understanding related to specific implementation issues concerning the SPS Agreement; and

(g) reviewing progress on addressing sanitary and phytosanitary matters that may arise between the Parties' agencies and ministries with responsibility for such matters.

7. The Committee shall meet at least once a year unless the Parties otherwise agree.

6. The Committee shall meet within 45 days of the date of entry into force of this Agreement, and subsequently at least once a year thereafter, unless the Parties agree otherwise. The Committee shall inform the Joint Committee established under Article 21.1

(Joint Committee) of the results of each meeting.

8. The Committee shall perform its work in accordance with the terms of reference referenced in paragraph 2. The Committee may revise the terms of reference and may develop procedures to guide its operation.

7. The Committee shall perform its work in accordance with its operating procedures, which it may revise at any time.

9. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies or ministries participate in meetings of the Committee.

8. Each Party shall ensure that the appropriate representative with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies participate in meetings of the Committee.

10. The Committee may agree to establish *ad hoc* working groups in accordance with the Committee's terms of reference.

9. The Parties hereby establish a Standing Technical Working Group on Animal and Plant Health Measures as set out in Annex 7-A.

10. The Committee may agree to establish additional technical working groups in accordance with the Committee's mandate.

Article 6.4: Definitions

1. For purposes of this Chapter:

(a) **sanitary or phytosanitary measure** means any measure referred to in Annex A, paragraph 1, of the SPS Agreement.

(b) **SPS Agreement** means the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

ARTICLE 7.5 : DEFINITIONS

For the purposes of this Chapter, **sanitary or phytosanitary measure** means any measure referred to in Annex A, paragraph 1, of the SPS Agreement.

US Chile FTA

(For comparison purposes the corresponding draft text of the Australia-US FTA is inserted, in red, after each article.)

Chapter Six: Sanitary and Phytosanitary Measures

Objectives

The objectives of this Chapter are to protect human, animal, and plant health conditions in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum for addressing bilateral sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities.

ARTICLE 7.1 : OBJECTIVES

The objectives of this Chapter are to protect human, animal, or plant life or health in the Parties' territories, enhance the Parties' implementation of the SPS Agreement, provide a forum for addressing bilateral sanitary and phytosanitary matters, resolve trade issues, and thereby expand trade opportunities

Article 6.1: Scope and Coverage

This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

ARTICLE 7.2 : SCOPE AND COVERAGE

This Chapter applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

Article 6.2: General Provisions

1. Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

ARTICLE 7.3 : GENERAL PROVISIONS

1. Further to Article 1.1.2, the Parties affirm their existing rights and obligations with respect to each other under the SPS Agreement.
2. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Chapter.

Article 6.3: Committee on Sanitary and Phytosanitary Matters

ARTICLE 7.4 : COMMITTEE ON SANITARY AND PHYTOSANITARY MATTERS

1. The Parties hereby agree to establish a Committee on Sanitary and Phytosanitary Matters comprising representatives of each Party who have responsibility for sanitary and phytosanitary matters.

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Matters ("Committee") comprised of representatives of each Party who have responsibility for sanitary and phytosanitary matters.

2. The Parties shall establish the Committee not later than 30 days after the date of entry into force of this Agreement through an exchange of letters identifying the primary representative of each Party to the Committee and establishing the Committee's terms of reference.

2. The Parties shall identify the primary representative of each Party to the Committee and establish the Committee's operating procedures not later than 30 days after the date of entry into force of this Agreement.

3. The objectives of the Committee shall be to enhance the implementation by each Party of the SPS Agreement, protect human, animal, and plant life and health, enhance consultation and cooperation on sanitary and phytosanitary matters, and facilitate trade between the Parties.

3. The objectives of the Committee shall be to enhance each Party's implementation of the SPS Agreement, protect human, animal, or plant life or health, enhance consultation and cooperation on sanitary and phytosanitary matters, and facilitate trade between the Parties.

4. The Committee shall seek to enhance any present or future relationships between the Parties' agencies with responsibility for sanitary and phytosanitary matters.

4. The Committee shall seek to enhance any present or future relationships between the Parties' agencies with responsibility for sanitary and phytosanitary matters.

5. The Committee shall provide a forum for:

5. The mandate of the Committee shall be to:

(a) enhancing mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(a) enhance mutual understanding of each Party's sanitary and phytosanitary measures and the regulatory processes that relate to those measures;

(b) consulting on matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

(b) improve bilateral understanding related to specific implementation issues concerning the SPS Agreement;

(c) consulting on issues, positions, and agendas for meetings of the *WTO SPS Committee*, the various *Codex* committees (including the *Codex Alimentarius Commission*), the *International Plant Protection Convention*, the *International Office of Epizootics*, and other international and regional fora on food safety and human, animal, and plant health;

(c) review progress on and as appropriate, resolve through mutual consent, sanitary and phytosanitary matters that may arise between the Parties' agencies with responsibility for such matters; and

(d) coordinating technical cooperation programs on sanitary and phytosanitary matters;

(e) improving bilateral understanding related to specific implementation issues concerning the SPS Agreement; and

(f) reviewing progress on addressing sanitary and phytosanitary matters that may arise between the Parties' agencies with responsibility for such matters.

(d) consult on:

(i) matters related to the development or application of sanitary and phytosanitary measures that affect, or may affect, trade between the Parties;

(ii) issues, positions, and agendas for meetings of the *WTO SPS Committee*, the *Codex Alimentarius Commission* and its subsidiary

bodies, the *International Plant Protection Convention*, the *International Office of Epizootics*, and other international and regional fora on food safety and human, animal, and plant health; and

(iii) technical cooperation activities on sanitary and phytosanitary matters.

6. The Committee shall meet at least once a year unless the Parties otherwise agree.

6. The Committee shall meet within 45 days of the date of entry into force of this Agreement, and subsequently at least once a year thereafter, unless the Parties agree otherwise. The Committee shall inform the Joint Committee established under Article 21.1

(Joint Committee) of the results of each meeting.

7. The Committee shall perform its work in accordance with the terms of reference referenced in paragraph 2. The Committee may revise the terms of reference and may develop procedures to guide its operation.

7. The Committee shall perform its work in accordance with its operating procedures, which it may revise at any time.

8. Each Party shall ensure that appropriate representatives with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies or ministries participate in meetings of the

Committee. The official agencies and ministries of each Party responsible for such measures shall be set out in the Committee's terms of reference.

8. Each Party shall ensure that the appropriate representative with responsibility for the development, implementation, and enforcement of sanitary and phytosanitary measures from its relevant trade and regulatory agencies participate in meetings of the Committee.

9. The Committee may agree to establish *ad hoc* working groups in accordance with the Committee's terms of reference.

9. The Parties hereby establish a Standing Technical Working Group on Animal and Plant Health Measures as set out in Annex 7-A.

10. The Committee may agree to establish additional technical working groups in accordance with the Committee's mandate.

Article 6.4: Definitions

For purposes of this Chapter, **sanitary or phytosanitary measure** means any measure referred to in Annex A, paragraph 1, of the SPS Agreement.

ARTICLE 7.5 : DEFINITIONS

For the purposes of this Chapter, **sanitary or phytosanitary measure** means any measure referred to in Annex A, paragraph 1, of the SPS Agreement.

US - Morocco FTA

Draft - Subject to Legal Review for Accuracy, Clarity, and Consistency, 31 March 2004

CHAPTER THREE: AGRICULTURE AND SANITARY AND PHYTOSANITARY MEASURES

Section B: Sanitary and Phytosanitary Measures

ARTICLE 3.8: SCOPE AND COVERAGE

This Section applies to all sanitary and phytosanitary measures of a Party that may, directly or indirectly, affect trade between the Parties.

ARTICLE 3.9: GENERAL PROVISIONS

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.
2. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Section.

3. The Parties affirm their desire to provide a forum for addressing sanitary and phytosanitary matters affecting trade between the Parties, through the Joint Committee established pursuant to Article 19.2 (Joint Committee) or a subcommittee on sanitary and

phytosanitary matters established thereunder.

ARTICLE 3.10: DEFINITION

For purposes of this Section, **sanitary or phytosanitary measure** means any measure referred to in Annex A, paragraph 1, of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

Draft - Subject to Legal Review for Accuracy, Clarity, and Consistency, 31 March 2004

United States-Morocco Joint Statement on Sanitary and Phytosanitary (SPS) Cooperation

1. The Government of the United States of America ("United States") and the Government of the Kingdom of Morocco ("Morocco") support the full implementation of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures ("WTO SPS Agreement").
2. The United States and Morocco have a history of cooperation and partnership in the area of SPS issues.
3. The United States and Morocco affirm their intent to pursue efforts to enhance bilateral SPS cooperation, recognizing that trade liberalization and strengthening investment ties between the United States and Morocco in the context of the U.S.-Morocco Free Trade Agreement ("FTA") supports economic development, including through agricultural reform.
4. The two governments will cooperate on SPS matters by engaging in mutually agreed activities including cooperative activities aimed at supporting Moroccan agricultural reform that promote full implementation of the WTO SPS Agreement and facilitate trade between the two governments.
5. To broaden and deepen effective cooperation on SPS issues, the United States and Morocco are establishing a Working Group on SPS Cooperation ("Working Group") composed of government representatives appointed by the United States and Morocco. The governments intend that the Working Group will meet annually as agreed by both Parties, alternately in each country.
6. The two governments expect that the Working Group will devise a Plan of Action. In this Plan of Action, the Working Group should identify priority projects for SPS cooperation. Recognizing that the two governments may identify new cooperative

priorities in the event of changing circumstances, the Working Group should update the Plan of Action as appropriate.

7. The Working Group and each government should solicit, and take into account as appropriate, the views of the public with respect to the Plan of Action.
8. The Working Group will report on its work to the SPS Subcommittee established under the FTA. In conducting its work, the Working Group should consider any views and recommendations of the SPS Subcommittee.
9. Each government is expected to name a Principal Coordinator to serve as an overall point of contact regarding the activities of the Working Group and implementation of the Plan of Action.
10. All cooperative activities undertaken pursuant to the Working Group's Plan of Action are conditioned upon the availability of appropriated funds and are subject to the applicable laws and regulations of the United States and Morocco.

NAFTA

Study on the Operation and Effect of the North American Free Trade Agreement

The NAFTA also sets rules regarding the application of laws and regulations for the protection of food safety and plant and animal health (sanitary and phytosanitary measures, or SPS), requiring them to be based on scientific principles, risk assessments, and relevant international standards. However, NAFTA explicitly permits each government to set the degree of risk that it will tolerate, including by setting protection levels higher than those established under international standards. The NAFTA also requires the three parties to credit SPS measures applied by other governments when they are equivalent to their own.

From: <http://www.ustr.gov/reports/index.shtml>

US Singapore FTA

One reference in the Preamble:

Reaffirming their shared commitment to facilitating bilateral trade through removing or reducing technical, sanitary and phytosanitary barriers to the movement of goods between the Parties;

Appendix 2 US Tariff Lines of Interest to Australia (Pork)

Appendix 2 US Tariff Lines of Interest to Australia (Pork)

Note: Where the tariff line pertains to only one country, that country is listed in brackets next to the tariff code.

Tariff Heading/sub-heading	Description	Unit or Qty	US MFN rate	Australia MFN rate
	Meat of swine, fresh, chilled or frozen:			
	Fresh or chilled:			
0203.11.00	Carcases and half-carcases	Kg	Free	Free
0203.12.00	Hams, shoulders and cuts thereof, with bone in:			Free
0203.12.10 (US)	Processed	Kg	US 1.4c/kg	
0203.12.90 (US)	Other [than processed]	Kg	Free	
0203.19.00	Other [than carcases and half-carcases and hams, shoulders and cuts thereof, with bone in]			Free
0203.19.20 (US)	Processed, including spare ribs	Kg	US 1.4c/kg	
0203.19.40 (US)	Other [other than processed]		Free	
	Frozen			
0203.21.00	Carcases and half-carcases	Kg	Free	Free
0203.22.00	Hams, shoulders and cuts thereof, with bone in:			Free
0203.22.10 (US)	Processed	Kg	US 1.4c/kg	
0203.22.90 (US)	Other [other than processed]	Kg	Free	

Appendix 2

US Tariff Lines of Interest to Australia (Pork)

0203.29.00	Other [than carcasses and half-carcasses and hams, shoulders and cuts thereof, with bone in]			Free
0203.29.20 (US)	Processed	Kg	US 1.4c/kg	
0203.29.40 (US)	Other [other than processed]	Kg	Free	
0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen:			
0206.30.00	Of swine, fresh or chilled	Kg	Free	Free
	Of swine, frozen:			
0206.41.00	Livers	Kg	Free	Free
0206.49.00	Other [than livers]	Kg	Free	Free
0209.00.00	Pig fat, free of lean meat, and poultry fat, not rendered or otherwise extracted, fresh, chilled, frozen, salted, in brine, dried or smoked	Kg	3.2%	Free
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:			
	Meat of swine:			
0210.11.00	Hams, shoulders and cuts thereof, with bone in	Kg	US 1.4c/kg	Free
0210.12.00	Bellies (streaky) and cuts thereof [includes bacon]	Kg	US 1.4c/kg	Free
0210.19.00	Other [than hams, shoulders and cuts	Kg	US 1.4c/kg	Free

Appendix 2 US Tariff Lines of Interest to Australia (Pork)

	thereof, with bone in and bellies (streaky) and cuts thereof [US category includes Canadian style bacon]			
1601.00.00	Sausages and similar products of meat, meat offal or blood; food preparations based on these products			5%
1601.00.20 (US)	Pork	Kg	US 0.8c/kg	
1602	Other prepared or preserved meat, meat offal or blood: Of swine:			
1602.41.00	Hams and cuts thereof:			5%
1602.41.10 (US)	Containing cereals or vegetables	Kg	6.4%	
	Other [containing other than cereals or vegetables]			
1602.41.20 (US)	Boned and cooked and packed in airtight containers	Kg	US 5.3c/kg	
1602.41.90 (US)	Other [than boned and cooked and packed in airtight containers]	Kg	US 1.4c/kg	
1602.42.00	Shoulders and cuts thereof:			5%
1602.42.20 (US)	Boned and cooked and packed in airtight containers	Kg	US 4.2c/kg	
1602.42.40 (US)	Other [than boned and cooked and packed in airtight containers]	Kg	US 1.4c/kg	
1602.49.00	Other, including mixtures [other than hams and cuts thereof, and shoulders and cuts thereof], including brawns, jellies, pastes and the like			5%
1602.49.10 (US)	Offal	Kg	3.2%	
1602.49.20 (US)	Boned and cooked and packed in	Kg	US 4.2c/kg	

Appendix 2 US Tariff Lines of Interest to Australia (Pork)

	airtight containers			
1602.49.40 (US)	Other [than boned and cooked and packed in airtight containers]	Kg	US 1.4¢/kg	
1602.49.60 (US)	Mixtures of pork and beef	Kg	3.2%	
1602.49.90 (US)	Other [than mixtures of pork and beef]	Kg	6.4%	
1603.00.00	Extracts and juices of meat, fish or crustaceans, molluscs or other aquatic invertebrates	Kg		Free
1603.00.90 (US)	Other [than clam juice]	Kg	Free	

Sources: *Harmonized Tariff Schedule of the United States (2003) (Rev. 2)* Australia: *Customs Tariff Schedule 3*