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## Australia

### Trade Policy Monitoring

## Pork Imports in Doubt Following Court Decision 2005

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**Report Highlights:**

On May 27, 2005, a Federal Court in Sydney handed down a decision in a legal challenge of a recent change in quarantine conditions for imported pork. The judge was extremely critical of the methodology used in the government's recent pig meat Import Risk Analysis, particularly as it relates to Post-weaning Multisystemic Wasting Syndrome, or PMWS. The judge made no final ruling regarding pork imports, but a decision may occur as soon as next week. Australian Pork Limited, who brought the case, is calling for a stop to all imports from PMWS affected countries, which would include product from Canada, the EU and the United States.

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Includes Trade Matrix: No  
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## Pork Imports in Doubt Following Court Decision

On May 27, 2005, a Federal Court in Sydney handed down a decision in a legal challenge of a recent change to quarantine conditions for imported pork. The judge in the case was extremely critical of the methodology used in a final Import Risk Analysis (IRA) and the subsequent policy decision by the Australian Director of Quarantine to adopt new import conditions for pork. The judge made no final decisions in regards to pork imports, pending both parties to the case submitting proposed 'orders' on how to proceed. This decision may come as early as next week, and has the potential to impact pork imports, including from the United States. This is apparently the first time an Australian court has considered the way in which the government sets quarantine policy.

**The Pig Meat Import Risk Analysis:** In February 2004, Biosecurity Australia (the government body responsible for quarantine policy, including conducting IRAs) released a Final Import Risk Analysis Report, entitled 'Generic IRA for Pig Meat', that proposed changes to import conditions for pork. (This IRA was released together with two very controversial draft IRAs for apples from New Zealand and bananas from the Philippines.) The pig meat IRA considered the risk posed from pork imports as regards a number of animal diseases, including Post-weaning Multisystemic Wasting Syndrome, or PMWS. The IRA proposed various mitigations that would reduce the disease risk in imported product, including that for PMWS, to a level meeting Australia's appropriate level of sanitary and phytosanitary protection (ALOP). The final pig meat IRA, along with other matters related to it, can be accessed on Biosecurity Australia's website at:

<http://www.affa.gov.au/content/publications.cfm?ObjectID=EAA47406-D373-4205-AC85A3D6A8AA7046>

On May 10, 2004, following a public comment and appeal period for the IRA, the Australian Director of Quarantine formally made the policy determination to accept the recommended import conditions outlined in the pig meat IRA. This policy determination paved the way for the United States, and other countries that could meet the IRA conditions, to supply pork to Australia.

**The Court Case and Decision:** In July 2004, Australian Pork Limited (APL), representing Australia's pork producers, and Windridge Farms Pty Ltd, a pork producer, filed a case in the Federal Court in Sydney questioning the recommended control measures for imported pork outlined in the final IRA and the issuance of an import permit for pork from the United States under the new import conditions. The case was argued formally in November 2004, which entailed considerable testimony of expert witnesses regarding the methodology utilized in the IRA and the science regarding PMWS. (Of note, APL was unsuccessful in their attempts to stop or change the pig meat IRA during the formal IRA appeal process.)

The basis of the case was how the government dealt with protecting Australian pig farmers from the risk of contamination by PMWS, which was already proclaimed to be a 'quarantineable' animal disease in Australia. Challenges to the government's decisions were made on four grounds: error of law; failure to take into account a relevant consideration; unreasonableness; and no evidence. All these challenges were based on alleged deficiencies in the IRA.

On May 27, 2005, the court's decision was released. The judge found the IRA decisions, and the subsequent issuance of an import permit under the revised import conditions, 'unreasonable', given that the IRA panel's reasoning was unsupported by any fact, scientific

evidence or scientific expertise. The judge also noted that 'no evidence' grounds could also be argued. The judge withheld any ruling on 'relief' in the matter, but may do so as early as this week. The complete text of the court decision can be accessed at:  
[http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2005/671.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2005/671.html)

**APL's Reaction:** APL issued a press release on May 27, following the public release of the court's findings. APL characterized the decision as a "win" and called on Biosecurity Australia to undertake the necessary research into effective measures to protect Australia from PMWS. Further, APL will be asking the government to agree to 1) immediately stop the importation of pig meat from PMWS affected countries; and 2) immediately prevent any further processing of imported pig meat from PMWS affected countries already in Australia.

**Both Sides Criticize the Quarantine System:** Australia's quarantine system, and very conservative import measures, has been roundly criticized by many trading partners and is currently the focus of challenges at the World Trade Organization (WTO). In 2003, the European Union filed a case claiming that the Australian quarantine system breached WTO rules laid out in the Agreement on SPS Measures. Similarly, in 2002, the Philippines began pursuing a WTO case against Australian quarantine measures for fresh fruit. In 1998, a WTO dispute settlement panel ruled in favor of Canada that Australia's ban on salmon imports was not consistent with the Agreement on SPS Measures.

Domestic interests, in addition to the pork industry, have also been critical of Australia's quarantine policy. Prior to the release of the final pig meat IRA, a Senate investigating committee examined and ultimately took issue with the conclusions in the pig meat IRA. The loudest arguments against any proposed changes in import quarantine measures have come from industries currently shielded from import competition. The apple industry, for example, is very opposed to changes in import measures for fresh apples suggested in a draft IRA on apples from New Zealand, while other industries have similar positions, e.g., bananas and poultry.

In 2004, several changes were made to Australia's quarantine regime and the structure of policymaking body, Biosecurity Australia (BA), due in part to domestic criticisms of quarantine policy. The changes entailed making BA a 'prescribed' agency (financially independent), the establishment of an 'Eminent Scientists Group' to examine draft final IRA reports before release, a review and reissuing of all ongoing IRA's, and the setting out of the IRA process and procedures in regulation and statute. The Minister of Agriculture said that the changes were being made to reinforce Australia's strong, science-based biosecurity policies, to boost confidence in the rigor of the IRA process, and to address perceptions that trade considerations, rather than scientific analysis, were influencing the IRA process.

**Pork Import Overview:** Australia is a major importer of pork, with approximately 70,000 MT (carcass weight equivalent) of product entering the country in 2004. Canada and Denmark, which already had access to Australia prior to the change in import conditions, were the major suppliers. Pork shipments from the United States, under the new import conditions, began arriving in the country in the later part of 2004. In the first quarter of 2005, Australia imported 3,981 MT (shipped weight) of U.S. pork valued at A\$14.3 million (US\$11 million). In the month of March 2005 alone, Australian pork imports from the United States reached 2,331 MT valued at A\$7.8 million, and the U.S. share of the import market reached 28 percent. At this monthly pace, Australian imports of U.S. pork in 2005 would total about 28,000 MT, valued at about A\$94 million.

There is a significant Australian industry that is dependent on imported pork for their business. These businesses would likely find it impossible to source sufficient pork domestically.

**Industry Has Sought Other Ways to Restrict Pork Imports:** Changed quarantine conditions on imported pork, and rising imports, have prompted the Australian pork industry to agitate for other ways to restrict import competition. In 1992, at the urging of the industry, the Australian Customs Service conducted an inquiry into dumping and subsidization of Canadian pork, which found no injury from imports. Similarly, an 1995 Industry Commission inquiry found little influence of imported pork on domestic pig prices. In 1998, the Productivity Commission conducted a formal safeguard inquiry regarding pork imports. The Commission found injury, but recommended against any safeguard action. In 2004, a Productivity Commission study looked into economic difficulties in the industry and found that declining industry profitability and market share (vis-à-vis imports) reflected lower pig prices in competitor markets, high feed prices due to the drought and an appreciating Australian dollar. The Commission also warned that restricting imports would increase pork prices for consumers, retailers and manufacturers, and would blunt incentives for pig producers and processors to adjust to the market environment.