



Parliament of the Commonwealth of Australia

**The Australian Meat and Live-stock Industry (High  
Quality Beef Export to the European Union) Order 2000**

**Report of the  
Senate Rural and Regional Affairs  
and Transport Legislation Committee**

December 2000

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ISSN 1326 - 9372

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Senator Jeannie Ferris	LIB, South Australia	
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## **TERMS OF REFERENCE**

That the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000, made under section 17 of the *Australian Meat and Live-stock Industry Act 1997*, be referred to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 7 December 2000.

## CONDUCT OF THE INQUIRY

The provisions of the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000 were raised by the Senate Rural and Regional Affairs and Transport Legislation Committee in estimates on 4 May 2000, and again on 22 May 2000.

Subsequently, the Order was signed by the secretary of the Department of Agriculture, Fisheries and Forestry Australia (AFFA) on 6 June 2000, commenced operation on being gazetted on 9 June 2000, and was tabled in the Parliament on 17 August 2000.

On 5 October 2000, Senator Forshaw successfully moved in the Senate that the provisions of the Order be referred to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 7 December 2000. On 12 October 2000, Senator Forshaw gave notice of his intention to move in 15 sitting days (the first sitting day in 2001) that the Order be disallowed.

In the period following this notice, the Senate agreed to change its pattern of sitting ahead of the Christmas recess. As a result, the date for disallowance of the Order was brought forward to 4 December 2000. Consequently, the date of reporting of the Senate Rural and Regional Affairs and Transport Legislation Committee was also brought forward to 4 December 2000.

The Committee advertised its terms of reference and invited written submissions in the rural press in late October 2000. In addition, the Committee contacted directly the beef exporters affected by the Order, together with the relevant peak bodies and AFFA. A total of 20 written submissions were received. A list of written submissions is at Appendix 1.

The Committee held a public hearing on this matter on 21 November 2000 at Parliament House. The *Hansard* of the hearing is available at the Hansard site at [www.aph.gov.au/hansard/index.htm](http://www.aph.gov.au/hansard/index.htm). A list of witnesses is available at Appendix 2. Subsequently, the Committee received four supplementary submissions, also listed in Appendix 1.



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## TABLE OF CONTENTS

<b>MEMBERS OF THE COMMITTEE .....</b>	<b>iii</b>
<b>TERMS OF REFERENCE .....</b>	<b>iv</b>
<b>CONDUCT OF THE INQUIRY .....</b>	<b>v</b>
<b>TABLE OF CONTENTS.....</b>	<b>vii</b>
<b>ABBREVIATIONS .....</b>	<b>ix</b>
<b>EXECUTIVE SUMMARY.....</b>	<b>xi</b>
<b>LIST OF RECOMMENDATIONS .....</b>	<b>xiii</b>
<b>CHAPTER ONE.....</b>	<b>1</b>
<b>BACKGROUND TO THE ORDER .....</b>	<b>1</b>
Introduction .....	1
The 80-20 Export Performance System.....	1
Chronology of Events Leading to the New Quota System.....	3
The Principal Provisions of the Order .....	8
<b>CHAPTER TWO.....</b>	<b>11</b>
<b>THE ISSUE OF RETROSPECTIVITY .....</b>	<b>11</b>
Introduction .....	11
The Loss of Quota by Certain Exporters .....	11
The Legal Position.....	15
Arguments Justifying the Loss of Quota .....	16
Available Means of Redress for Disadvantaged Exporters .....	18

<b>CHAPTER THREE .....</b>	<b>21</b>
<b>CLAIMS OF COMMERCIAL DISADVANTAGE .....</b>	<b>21</b>
Introduction .....	21
The Breakdown in Industry Consensus .....	21
Trading of Quota Ahead of 23 December 1999 .....	24
<b>CHAPTER FOUR.....</b>	<b>29</b>
<b>CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>29</b>
<b>ADDITIONAL COMMENT BY THE LABOR PARTY.....</b>	<b>33</b>
<b>APPENDIX 1: LIST OF SUBMISSIONS.....</b>	<b>35</b>
<b>APPENDIX 2: LIST OF WITNESSES.....</b>	<b>37</b>
<b>APPENDIX 3: THE 21 MEMBERS OF CIG .....</b>	<b>39</b>
<b>APPENDIX 4: SHIPMENT AND QUOTA ALLOCATION RECORDS FROM 1996/1997 TO 1999/2000.....</b>	<b>41</b>
<b>APPENDIX 5: RECORD OF QUOTA TRANSFERS FROM 1 JULY 1999 TO 24 MAY 2000.....</b>	<b>43</b>



## ABBREVIATIONS

ABARE	Australian Bureau of Agricultural and Resource Economic
AFFA	Department of Agriculture, Fisheries and Forestry Australia
AMC	Australian Meat Council
AMLC	Australian Meat and Livestock Corporation
CIG	Common Interest Group of Disadvantaged Exporters
EU	European Union
HGP	Hormone growth promotants
HQB	High Quality Beef
RMAC	Red Meat Advisory Council



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## EXECUTIVE SUMMARY

Australian beef producers have for many years exported a limited quota of high quality beef (HQB) to the European Union (EU). Currently that quota is 7,000 tonnes. Although the market is small, it is a premium market offering high returns.

The Australian Government administers the export of HQB to the EU by eligible Australian beef exporters. Traditionally, quota has been allocated to individual beef exporters on the basis of performance accounts. Under this arrangement, individual exporters allocated quota had three options: they could export their quota allocation themselves; they could lend their quota to other exporters while still retaining the right for the quota to be reallocated to them the following year; or they could sell their quota outright.

On 23 December 1999, the Minister for Agriculture, Fisheries and Forestry, the Hon Mr Truss MP, announced changed arrangements for the allocation of EU HQB quota. The new arrangements were that quota would be allocated not on the basis of performance accounts but on the basis of shipment records (ie the name on the export container). The Minister also announced that this change would be backdated to 1 July 1999. As a result, beef exporters that lent their quota allocation for 1999/2000 did not receive a quota allocation in 2000/2001.

Two fundamental issues were raised during the conduct of this inquiry. The first was that of retrospectivity. On the one hand, it was argued that certain exporters would not have lent quota in 1999/2000 had they known that doing so would prevent them from receiving a quota allocation in 2000/2001. This position was argued by various exporters that lost quota, together with the Australian Meat Council (AMC) and the Common Interest Group (CIG). The CIG represents 21 exporters that lost quota in 2000/2001, and was formed following the Minister's announcement of 23 December 1999. The 21 members of the CIG are listed in Appendix 3.

On the other hand, it was argued that the financial returns from the market should be restricted to EU accredited packer exporters actually shipping product to the EU, and that this was achieved by the Minister's decision announced on 23 December 1999. In effect, the financial returns from the market should not be available to those non-EU accredited exporters 'paper trading' in lent quota. This position was adopted by AFFA, the Cattle Council, the Australian Beef Association, Sanger Australia and Hunt Partners, acting on behalf of Bindaree Beef.

Furthermore, it was also argued that any genuinely disadvantaged exporters have had ample opportunity for redress, either through buying additional quota after the Minister's announcement of 23 December 1999, or through the new entrants provision in the Order.

The second fundamental issue raised during the conduct of this inquiry was whether certain exporters received a commercial advantage from prior knowledge of the decision announced by the Minister on 23 December 1999. It was argued that some participants in the industry bought additional quota on a lend basis prior to 23 December 1999, in the knowledge that they would receive that quota back in 2000/2001.

This report is in four chapters. Chapter One provides a background to the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000.

Chapters Two examines the issue of retrospectivity. Chapter Three considers the question of commercial advantage and disadvantage. Chapter Four presents conclusions and recommendations. Although the Committee recommends that the current Order before the Senate be passed without amendment, the Committee makes recommendations relating to the 2001/2002 Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order to address the concerns of some industry participants.

The report also includes an Additional Comment by the Labor Party.

## **LIST OF RECOMMENDATIONS**

### **Recommendation 1**

The Committee recommends that the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000 not be disallowed in the Senate.

### **Recommendation 2**

The Committee recommends that the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2001, when prepared, allocate quota based on the 1999/2000 performance year, but that future allocation continue on the basis of 100 per cent EU shipment records.

### **Recommendation 3**

The Committee recommends that where exporters choose not to re-enter the EU HQB market in 2001/2002 through a decision of their own not to meet the EU accreditation standards, their uncommitted quota allocation should be available to EU accredited packer exporters and non-packer exporters currently in the market. Allocation of uncommitted quota should be on the basis of applications to the Secretary of AFFA.

### **Recommendation 4**

The Committee recommends disadvantaged exporters that applied to AFFA for quota under the exceptional circumstances provision in 2000 should be in a position to withdraw that application. Where disadvantaged exporters do not withdraw that application and in fact receive quota under the exceptional circumstances provision, they should not be eligible for an allocation of quota based on the 1999/2000 performance year (Recommendation 2).

### **Recommendation 5**

The Committee recommends that the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2001, when prepared, retain the new entrant provision.



# CHAPTER ONE

## BACKGROUND TO THE ORDER

### Introduction

1.1 This chapter initially examines export performance and the 80-20 system which has traditionally been used in Australia to allocate quota to export HQB to the EU market. Subsequently, it considers the chronology of events leading to the development of alternatives to the 80-20 system for 2000/2001. Finally, the chapter summarises the Minister's decision announced in the media release of 23 December 1999, and the provisions of the current Order before the Senate.

### The 80-20 Export Performance System

1.2 For many years, Australia has exported 7,000 tonnes of HQB to the EU under a specific annual tariff quota. Although this amount is less than one per cent of Australia's annual beef export of around 850,000 tonnes, the EU remains a prime market and attracts premium returns for participants.<sup>1</sup>

1.3 The Australian Government administers quota for the export of HQB to the EU on behalf of the EU Administration. Prior to July 1998, management of quota for EU HQB export from Australia rested with the Australian Meat and Livestock Corporation (AMLC). However, in July 1998, responsibility reverted to AFFA, but with the understanding that industry involvement in policy development be maintained through the newly formed Red Meat Advisory Council (RMAC).<sup>2</sup>

1.4 Quota for the export of HQB to the EU has traditionally been allocated on the basis of export performance in the previous year. That period was lagged by a further two months to 1 May each year for administrative reasons. As an example, in 1999/2000, quota was allocated to individual exporters based on their performance from 1 May 1998 to 30 April 1999.<sup>3</sup>

1.5 Under the performance system, individual exporters allocated quota had three options. First, they could export their quota allocation themselves. Second, they could lend their quota to other exporters while still retaining the right for the quota to be reallocated to them the following year. Third, they could sell their quota outright, in effect removing themselves from the EU HQB market.<sup>4</sup>

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1 AFFA, Regulation Impact Statement – EU HQB Quota Order, p 1

2 Evidence, RRAT, 4 May 2000, p 182

3 Submission 8, p 4

4 Evidence, RRAT, 22 May 2000, p 56

1.6 This third option of selling quota outright generally attracted prices at least two to three times the cost of leasing quota. However, selling quota was not common.<sup>5</sup> As stated by Mr Rigg from the CIG in hearings:

I think the people who sell outright are generally people that are in financial difficulties or going out of business, or that have gone out of business and the receivers are selling it. The people that are in the business day to day ... are not really in the business of selling it outright.<sup>6</sup>

1.7 Export performance was traditionally calculated using the so-called 80-20 system. Under this system, 80 per cent of the 7,000 tonnes (5,600 tonnes) annual EU HQB export quota was allocated to beef exporters based on performance in the previous year beginning 1 May. The remaining 20 per cent (1,400 tonnes) was allocated on the basis of HQB exports to other markets internationally. A minimum entitlement to export 5 tonnes was required for an operator to be granted an allocation of quota.<sup>7</sup>

1.8 The allocation of 20 per cent of quota according to international export performance was initially included in the export arrangements in 1990 in an attempt to encourage the development of export beef markets. In effect, beef exporters were given the opportunity to participate in the premium EU HQB market in recognition of their previous export performance in other world markets.<sup>8</sup>

1.9 Under this system, EU HQB quota could be held by 3 different types of licensed exporters:

- a) EU accredited packer exporters which processed the product for the market at abattoirs. EU accredited packer exporters held the majority of the quota.
- b) Non-EU accredited packer exporters that earned quota from the 20 per cent international export component, and generally sold it to the EU accredited packer exporters.
- c) Non-packer exporters that marketed HQB in the EU, without processing the product themselves.<sup>9</sup>

1.10 An example of a non-packer exporter raised on several occasions during the conduct of the Committee's inquiry was Sanger Australia. Sanger sources most of its meat from Bindaree Beef, and exports it under the label of G H Elliott, which is a subsidiary of Sanger.<sup>10</sup>

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5 Evidence, RRAT, 21 November 2000, p 28

6 Evidence, RRAT, 21 November 2000, P 29

7 AFFA, *HQB Administrative and Quota Arrangements for the Three Quota Years Commencing from 1 July 2000*, 23 November 1999, p 2

8 AFFA, *HQB Administrative and Quota Arrangements for the Three Quota Years Commencing from 1 July 2000*, 23 November 1999, p 4

9 Submission 8, p 5

10 Evidence, RRAT, 21 November 2000, pp 89-90



1.11 In 2000/2001, there were 45 beef exporters who received EU HQB quota. However, of those, only 16 were EU accredited packer exporters who provided product to the market.<sup>11</sup>

### **Chronology of Events Leading to the New Quota System**

#### *The RMAC Review*

1.12 On 9 February 1999, the former Minister for Agriculture, Forestry and Fisheries, the Hon Mr Vaile MP, wrote to RMAC requesting that it conduct a review of the administrative arrangements for the allocation of EU HQB quota. The Minister suggested that RMAC should address the following key issues:

- a) the cost effectiveness of the system;
- b) the potential for a new entrant provision;
- c) the potential for a fee for service cost recovery mechanism for quota administration; and
- d) the impact on producers of any new system.<sup>12</sup>

1.13 The Minister publicly announced this review in a media release on 18 February 1998.<sup>13</sup> Subsequently, RMAC wrote to the Minister on 5 March 1999 to indicate that it had put in train a review process.<sup>14</sup>

#### *Partial Allocation of the 1999/2000 Quota*

1.14 In June 1999, the Minister requested RMAC's advice on the partial allocation of EU HQB quota for the first half of 1999/2000.<sup>15</sup> In response, the chairman of RMAC, Mr Malcolm Foster, wrote to the secretary of AFFA, Mr Ken Matthews, on 24 June 1999. Mr Foster indicated that RMAC remained strongly in favour of retaining the existing arrangements for the allocation of the HQB quota in 1999/2000 while it completed its review of the quota administration arrangements:

The current Australian Meat and Livestock Industry (Sheepmeat and Goatmeat Performance Recording – Exports) Order 1998 specifies what counts as performance and contains time periods for that purpose. It is our opinion that there needs to be a proper period of formal notification of any change in implementation of quota allocation arrangement, involving at least twelve months. We have a strong view that commercial arrangements, such as forward sales contracts, livestock purchasing agreements, service kill arrangements etc, associated with the EU quota trade, should not be subject to abrupt administrative change. Any change

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11 AFFA, Document tabled 21 November 2000.

12 Submission 16, p 3

13 AFFA, Response to Questions on Notice 4 May 2000.

14 Submission 16, p 3

15 Submission 16, p 6

in the quantum or method of quota allocation that may take effect from 1 July 1999 would be inconsistent with that approach.<sup>16</sup>

1.15 The following day, 25 June 1999, AFFA provided an urgent minute to the Minister advising on the options for the allocation for the HQB quota for 1999/2000. The three possible options were:

- a) Allocate the full 7,000 tonnes for the full year as planned;
- b) Apply a partial allocation for a portion of the quota year, with the aim of adopting the recommendations of RMAC arising from its review of the 80-20 system;
- c) Apply a partial allocation for a portion of the quota year to enable a review of the RMAC outcomes while retaining the option for further consultation.<sup>17</sup>

1.16 AFFA further advised the Minister that he should consider the Government's commitment to provide 12 month's notice to beef exporters ahead of any change to the quota system. In particular, AFFA noted that the industry strongly supported the retention of the existing arrangements for the allocation of the EU HQB quota in 1999/2000:

If exporters have made commercial commitments based on a full quota allocation then to be advised that other arrangements are to be implemented it is likely to cause a backlash by the industry. RMAC considers this may include legal action by those disadvantaged by the variation in approach.<sup>18</sup>

1.17 The minute also noted that partial allocation of the HQB quota for the period from July to December 1999 would require the initial allocation of two-thirds of the quota to meet the higher shipping demand from July to December.<sup>19</sup> The minute continued:

This brings into question the worth of releasing 33% of 7,000 tonnes under a revised allocation system to be implemented during the January to June period. Similarly, to withhold 33% of the allocation only to issue it under existing arrangements from January appears to serve little point. The added disruption and uncertainty for exporters in either option is likely to have a negative impact.<sup>20</sup>

1.18 In his response, the Minister indicated his support for option C – partial allocation of the 1999/2000 beef quota – pending consideration of RMAC review outcomes. This had the advantage of allowing time for consideration of the RMAC recommendations, and left the way open for the Minister's final decision announced on 23 December 1999.

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16 RMAC, Correspondence to the Secretary of AFFA, 24 June 2000

17 AFFA, Minute to the Minister for Agriculture, Fisheries and Forestry – EU High Quality Beef Quota, 25 June 1999, p 1

18 AFFA, Minute to the Minister for Agriculture, Fisheries and Forestry – EU High Quality Beef Quota, 25 June 1999, p 6

19 AFFA, Minute to the Minister for Agriculture, Fisheries and Forestry – EU High Quality Beef Quota, 25 June 1999, p 2

20 AFFA, Minute to the Minister for Agriculture, Fisheries and Forestry – EU High Quality Beef Quota, 25 June 1999, p 6

1.19 Subsequently, on 30 June 1999, Mr Matthews wrote to Mr Foster informing him of the Minister's decision to implement an initial partial allocation of the HQB quota for 1999/2000. Furthermore, he indicated AFFA's expectation that the remainder of the allocation would be made in the 1999/2000 financial year under the same allocation arrangements.<sup>21</sup>

#### *The RMAC Report*

1.20 Two days later, on 2 July 1999, RMAC provided its report arising from its review of the EU HQB quota to the Minister. RMAC recommended in its report:

- a) the quota system should be limited to EU accredited packer exporters or to exporters sourcing product from those EU accredited packer exporters (ie non-packer exporters);
- b) quota entitlements should be earned on the basis of 80% EU shipments / 20% global performance from EU accredited packer exporters from May 2000;
- c) HQB quota holders should only be allowed to trade without performance up until the end on June 2000, and from June 2001 any quota trade must be with performance;
- d) the minimum quota allocation be increased from 5 tonnes to 12 tonnes.<sup>22</sup>

1.21 On 22 July, the Hon Mr Truss MP replaced the Hon Mr Vaile MP as the Minister for Agriculture, Fisheries and Forestry.

1.22 On 6 September 2000, AFFA provided a submission to the new Minister, at the request of the Australian Meat Council (AMC) and the National Meat Association, for the release of the final one-third of EU HQB tonnage. The Minister agreed, and announced the release of the final one-third of quota in a media release on 13 October 1999.<sup>23</sup>

1.23 From August through until October 1999, the Australian Bureau of Agricultural and Resource Economic (ABARE) conducted a review of the RMAC report. The thrust of ABARE's findings was that the most effective way to capture quota rent would be to auction the quota and supply the resultant revenue to whole of industry programs. Not surprisingly, this recommendation was subsequently rejected by the industry.<sup>24</sup>

#### *The Issues Paper of 24 November 1999*

1.24 A further complication to the EU HQB market arose in late 1999. From 1 December 1999, the EU required that HQB for export to the EU needed to be sourced from properties which had documented controls on the use of hormone growth promotants (HGP). This

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21 Correspondence from Mr Matthews to Mr Foster, 30 June 1999

22 Submission 16, pp 8-10

23 AFFA, Response to Questions on Notice 4 May 2000.

24 AFFA, *HQB Administrative and Quota Arrangements for the Three Quota Years Commencing from 1 July 2000*, 23 November 1999, p 1

necessitated the implementation of a system of closed sourcing to guarantee that cattle that are transferred between properties are free of HGP, and accordingly added an expensive new premium to the cost of supplying HQB to the EU.

1.25 In anticipation of the changed arrangements to come into place on 1 December 1999, AFFA sent a letter to RMAC on 10 November 1999 in which it raised various issues that needed to be resolved.<sup>25</sup> Mr Read, general manager of meat and livestock at AFFA, subsequently met with the chairmen and executive directors of the six peak industry bodies on RMAC on 16 November. Those six bodies are Meat and Livestock Australia, the National Meat Association, AMC, the Cattle Council of Australia, the Australian Livestock Exporters' Council and the Sheepmeat Council of Australia. It was agreed at the meeting that AFFA would prepare an issues paper for RMAC consideration.<sup>26</sup>

1.26 That issues paper was subsequently provided to RMAC on 24 November 1999. In it, AFFA endorsed RMAC's earlier recommendation that non-EU accredited packer exporters that had not been supplying the market become ineligible to receive EU HQB quota. Under this proposal, the 20 per cent of the export quota (1,400 tonnes) which was previously allocated on the basis of global beef export would be abolished.<sup>27</sup>

1.27 AFFA also proposed that the new arrangements commence in eight months time on 1 July 2000. Further, future entitlement to EU HQB quota would be determined according to the export performance of eligible shippers over the year to 30 November 1999.<sup>28</sup> In support, AFFA cited the following legal advice from the Australian Government Solicitor which was attached to its issues paper of 24 November 1999:

I understand that we are now talking about the system for next year, rather than a change to the system this year. In this context, no acquisition of property issue arises, as there are as yet no entitlements of any sort for next year. Until a decision is made under section 5 of the *Quotas Act* imposing a limitation on the export amount to the EU for the next year, and until new orders are made under the AMLI Act setting up the system for allocation of quotas and decisions are made in accordance with those orders under section 6 of the *Quotas Act*, no exporter will hold any form of right or entitlement which could provide the basis for an acquisition of property argument. **The risk of acquisition of property identified in my earlier advice related to changes to the present system of entitlement operating this year** (Committee's emphasis).

It may be that some exporters who were allocated quota this year but will not be entitled under the proposed arrangements for next year will have an expectation of receiving an allocation next year. This raises the general issue of natural justice requirements based on legitimate expectations, as I have discussed in earlier advices. I do not think there is any significant legal risk based on natural justice obligations in the present situation, because **the new orders establishing the new system for next year are a legislative rather than an administrative instrument**

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25 AFFA, Response to Questions on Notice 4 May 2000

26 AFFA, Response to Questions on Notice 4 May 2000. See also Evidence, RRAT, 4 May 2000, p 140

27 AFFA, *HQB Administrative and Quota Arrangements for the Three Quota Years Commencing from 1 July 2000*, 23 November 1999, p 4

28 AFFA, *HQB Administrative and Quota Arrangements for the Three Quota Years Commencing from 1 July 2000*, 23 November 1999, p 5

**and natural justice is generally not required in relation to legislative actions** (Committee's emphasis).

However, to avoid any possible natural justice issues, and also to avoid practical and political risks if affected exporters are not informed of the new system until the last minute, **I suggest that AFFA should seek to give all relevant exporters as much notice as possible of the new arrangements proposed for next year** (Committee's emphasis). As we discussed, along with other general communications approaches, this might include information being mailed to all exporters who were allocated quota this year.<sup>29</sup>

1.28 Finally, AFFA proposed a new entrant provision under the revised arrangements for EU HQB quota administration to apply for three years from 1 July 2000. At the end of that period, AFFA/RMAC would conduct a review and make any recommendations on the performance of the system prior to the completion of the third quota year.<sup>30</sup>

1.29 On 17 December 1999, RMAC responded to the issues paper with revised recommendations for the administration of the EU HQB market. RMAC indicated its acceptance that quota be restricted to EU accredited packer exporters or non-packer exporters sourcing product from accredited works. RMAC also supported the new entrant / exceptional circumstances provision.<sup>31</sup>

1.30 Significantly, however, RMAC was unable to reach consensus upon the proposed means for allocating quota on commencement of the new arrangements. The majority of five industry bodies recommended that quotas for 2000/2001 be based on performance to December 1999 and shipment records (ie the name on the export documentation) from 1 January 2000.<sup>32</sup>

1.31 The minority position adopted by AMC was that the allocation of quota for 2000/2001 be based wholly on shipment record in 1999/2000. The reason for this approach was that basing quota allocation partially on performance up until December 1999 would only serve to benefit exporters who did not trade in the EU market.<sup>33</sup>

#### *The Minister's Announcement of 23 December 1999*

1.32 On 23 December 1999, the Minister announced in a media release revised arrangements of the export of HQB to the EU. The Minister indicated that henceforth, eligible exporters must be either EU accredited packer exporters or source their product from EU accredited packer exporters:

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29 AFFA, *HQB Administrative and Quota Arrangements for the Three Quota Years Commencing from 1 July 2000*, 23 November 1999, Attachment A

30 AFFA, *HQB Administrative and Quota Arrangements for the Three Quota Years Commencing from 1 July 2000*, 23 November 1999, p 5

31 AFFA, Regulation Impact Statement – EU HQB Quota Order, Appendix 2

32 Submission 16, p 13

33 Submission 16, p 14

I believe the new HQB quota allocation arrangements to be timely in ensuring the benefits of this valuable market are, unlike in the past, captured by cattle producers, processors and meat traders who actually perform in the EU market.<sup>34</sup>

1.33 Importantly in the context of this inquiry, the Minister also announced that future entitlement to EU HQB quota would be determined according to shipment records in 1999/2000:

... from 1 July 2000, quota will be allocated on the basis of shipment of record into the HQB EU market as recorded during the 1999/2000 performance year. This was the only issue on which RMAC could not reach an industry consensus.<sup>35</sup>

### **The Principal Provisions of the Order**

1.34 These measures announced by the Minister on 23 December 1999 are implemented by the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000, which replaces the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 1999.

1.35 Under Section 8 of the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000, an exporter's standard EU entitlement for 2000/2001 is calculated by the formula:

$$(AA - 600 \text{ tonnes}) \times \frac{EPAS}{TPAS}$$

Where AA is the access amount (currently 600 tonnes)

EPAS is the exporter's recorded shipment for 1999/2000

TPAS is the total exporters' recorded shipment for 1999/2000

1.36 Accordingly, all quota will return to quota holders already in the market based on shipment records, with the exception of the 600 tonnes (400 tonnes in subsequent years) set aside for new entrants or exceptional circumstances. AFFA has stated its intention to distribute any quota not allocated in a given year to existing quota holders in proportion to the quota held.<sup>36</sup>

1.37 Furthermore, sections 6 and 7 of the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000 provide that the Secretary of AFFA may allocate EU entitlement to an eligible exporter who applies to AFFA's Quota and Administration of Statistics Unit by 1 December 2000.

1.38 Under Section 12 of the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000, quota allocations will not be tradeable on an annual basis. Section 12 states in part that:

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34 The Hon Warren Truss MP, Media Release – New Arrangements for EU Beef Quota, 23 December 1999

35 The Hon Warren Truss MP, Media Release – New Arrangements for EU Beef Quota, 23 December 1999

36 AFFA, Regulation Impact Statement – EU HQB Quota Order, pp 8-9

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- (1) An exporter may transfer all or part of its standard EU entitlement to another exporter in accordance with this section.

*Note* There is no provision to return credits for quota meat exported (previously referred to as ‘performance’) for any EU quota transferred.

1.39 To cover the costs of administering the EU HQB market, AFFA will levy a cent/kg charge on product exported to the EU. This will ensure that those quota holders that benefit from export to the EU HQB market pay for its administrative costs. The power for AFFA to recover the costs of maintaining the quota is provided under the *Australian Meat and Live-stock Industry Act 1997*.<sup>37</sup>

1.40 Finally, in the accompanying Regulatory Impact Statement, AFFA stated its intention to review these arrangements prior to the completion of the third quota year, to determine the efficiency and effectiveness of the new arrangements. AFFA further indicated its intention to complete the review with sufficient time for any revised measures to be implemented from 1 July 2003.<sup>38</sup>

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37 AFFA, Regulation Impact Statement – EU HQB Quota Order, pp 9-10

38 AFFA, Regulation Impact Statement – EU HQB Quota Order, p 8





## CHAPTER TWO

### THE ISSUE OF RETROSPECTIVITY

#### Introduction

2.1 This chapter initially examines claims by certain exporters that lent quota in 1999/2000 that they were disadvantaged by the Order. This is because the Order allocates quota in 2000/2001 according to shipment records in 1999/2000, and not according to performance in 1999/2000. Given this, the chapter also considers the legal status of the Order.

2.2 Subsequently, the chapter examines the principal argument made in defence of the new arrangements: namely that it directs revenue to EU accredited packer exporters, and away from non-EU accredited packer exporters not operating in the market. This argument rests on the basis that the industry can only support a limited number of participants.

2.3 Finally, the chapter considers the position of exporters genuinely disadvantaged by the new arrangements, and whether they have been given sufficient opportunity to re-enter the market either through acquisition of quota after 23 December 1999 or through the new entrant / exceptional circumstances provision in the Order.

#### The Loss of Quota by Certain Exporters

2.4 As indicated in Chapter One, on 23 December 1999, the Minister for Agriculture, Fisheries and Forestry announced that the allocation of EU HQB quota in 2000/2001 would be based on shipment records during 1999/2000. As a result, beef exporters that lent their quota allocation in 1999/2000 lost that allocation in 2000/2001. This is shown in Appendix 4.

2.5 The loss of quota raises the fundamental issue that had EU HQB quota holders known of the proposed changes to the quota system, they would have made different commercial decisions prior to the 1999/2000 quota year in order to protect their position. In effect, the Minister's decision of 23 December 1999 was commercially retrospective. As Mr Read from AFFA acknowledged in estimates on 4 May 2000:

Without the system changing, the same person received the quota the next year. Once there is a change in the system, there will be winners and losers.<sup>1</sup>

2.6 As an example of the loss of quota by certain exporters, the Committee was presented with evidence by Mr Hines that his company has been marketing beef to the EU for 28 years, and has been an exhibitor at the two major European trade fairs for the last 20 years, but that

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1 Evidence, RRAT, 4 May 2000, p 190

... at the Sial fair just a few weeks ago in Paris we had meetings with some of our traditional buyers of high quality beef that we have exported to in the past. We just could not give them an answer as to what the future was going to be.<sup>2</sup>

2.7 Following from this example, the Committee was presented with evidence by Mr Rigg representing CIG that the 21 members of CIG lost entitlement to approximately 800 – 1000 tonnes of quota in 2000/2001 because they did not ship HQB to the EU in 1999/2000.<sup>3</sup> By the Committee's own calculation, the figure was around 900 tonnes, making allowance for the 600 tonne new entrant / exceptional circumstances provision (see Appendix 4).

2.8 In response, in its supplementary written submission, Hunt Partners noted that four members of the CIG did in fact ship HQB to the EU in 1999/2000 and accordingly received an allocation in 2000/2001. They were G & J Hines Pty Ltd, Kilroy Pastoral Co Ltd, Rogers and Anderson Int P/L and Towers Thompson (Aust) P/L (see Appendix 4). Accordingly, Hunt Partners claimed that when quota gains and losses are taken into account, the quota lost by members of the CIG was closer to 600 tonnes.<sup>4</sup>

2.9 The Committee notes however that Hunt Partners included in their estimate of 600 tonnes an increase in shipped quota in 1999/2000 by three of the four members of the CIG noted above. That increase was around 300 tonnes. Significantly however, that additional 300 tonnes was clearly purchased by these companies at their own expense, and should not have been included in calculations of the quota lost by the members of the CIG.

2.10 As a result of exporters losing entitlement, the Committee notes that participation in the EU HQB market has largely been constricted to operators on the eastern seaboard and in the north. In particular, Senator Crane advised during hearings on 21 November 2000 that there are currently no EU accredited exporters in WA. The only exporter that previously held quota, E G Green and Sons, lost quota under the revised arrangements, although Senator Crane advised that the company had been intending to reapply for EU accreditation.<sup>5</sup>

#### *The Lack of 12 Months Notice*

2.11 Central to the concerns raised by those exporters that lost quota under the revised arrangements was that there was not 12 month's notice of the revised arrangements to allow them to adapt their export practices. Rather, as the 1999/2000 record year began on 1 May 2000, the announcement of the Minister on 23 December 1999 was 8 months into the year. This is significant due to the change from performance to shipment records as the basis for allocating quota in 2000/2001.

2.12 In estimates on 4 May 2000, Mr Read acknowledged that in deciding how the 2000/2001 quota should be allocated, consideration was given to a range of alternative timing options for the allocation of quota. These included using 1998/99 as the reference year, which

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2 Evidence, RRAT, 21 November 1999, p 22

3 Evidence, RRAT, 21 November 1999, p 27

4 Submission 9A, pp 5-6, 9

5 Evidence, RRAT, 21 November 2000, p 60

would have avoided the problem of retrospectivity, or 1998/1999 and 1999/2000 together as the reference years.<sup>6</sup>

2.13 However, Mr Read also argued that there had been extensive warning of a possible change to the system prior to the decision of 23 December 1999. For example, Mr Matthews stated in his letter of 30 June 1999 to Mr Foster regarding the partial allocation of quota in 1999/2000 that:

It is the view of the Minister and my Department that this approach will send a clear message that a change in arrangements may be imminent and that all sectors of the red meat industry should be aware of prospective changes stemming from the RMAC review. This is particularly relevant for those licensed exporters who do not maintain or support EU-accredited plants nor develop export niche opportunities in the EU, but only trade in quota entitlements throughout the quota year.<sup>7</sup>

2.14 Similarly, in his media release on 13 September 1999 regarding the release of the final one-third EU HQB tonnage for 1999/2000, Minister Truss stated:

I would like to stress, however, that this allocation should not be seen as an indication that the HQB quota arrangements will not significantly change from 1 July 2000.<sup>8</sup>

2.15 Given such statements, the Cattle Council argued in its written submission that it was ‘common knowledge’ that the distribution of quota to non-EU accredited exporters would cease, although it acknowledged that the date from which it would cease was uncertain.<sup>9</sup>

2.16 In response to these arguments, AMC argued in its written submission that the various announcements and decisions by AFFA and the Minister between June 1999 and December 1999 gave no indication that retrospective change was being considered. In particular, AMC cited a letter from the Minister to Mr Ware, chairman of the AMC, on 17 September 1999 regarding the AMC’s request for the release of the final one-third of quota. In that letter, the Minister stated:<sup>10</sup>

It has long been an industry agreed policy position that any change to the allocation mechanism for beef be implemented with effect from 1 July 2000. When the then Minister, Mark Vaile MP asked for a review of the EU quota allocation process in February this year, he did so in the context of a timeline which was agreed with the relevant industry organisations.<sup>11</sup>

2.17 In addition, AMC noted that if exporters did not have an expectation of receiving quota from one year to the next, they would not make long-term investments in developing

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6 Evidence, RRAT, 4 May 2000, p 196

7 AFFA, Correspondence to the Chairman of RMAC, 30 June 2000

8 The Hon Warren Truss MP, Media Release – Final Release of EU Beef Quota, 13 September 1999

9 Submission 5, p 2

10 Submission 8, p 11

11 Submission 8, Attachment 8

the market. This is particularly so in the case of the EU HQB market, given the high costs of EU accreditation.<sup>12</sup>

2.18 The Committee accepts that in 1999/2000, there was notification that the EU HQB arrangements were under review. However, there was certainly no indication that the result of that review would encompass retrospective arrangements. The Committee endorses the comments in estimates on 22 May 2000 of the Chair of the Committee, Senator Crane, that certain participants in the market, while being aware that the system was likely to change, were effectively required to ‘second guess’ what the changes would be to retain their quota allocation in 2000/2001.<sup>13</sup>

2.19 In the Committee’s opinion, a preferable date for the implementation of the new closed system would have been 1 July 2000, or as a second alternative, 23 December 1999. Under either of these arrangements, quota would have been transferred back to those that had lent quota in 1999/2000 according to performance.<sup>14</sup>

2.20 Given this belief, the Committee notes that AMC advocated in its written submission that the current arrangements remain in place for the remainder of 2000/2001, on the basis that any alternative would be ‘disruptive, uncommercial and irresponsible’. However, AMC argued that in the 2001/2002 quota year, arrangements revert back to an allocation on the basis of 1999/2000 performance<sup>15</sup>:

These proposals result in no disruption in the current year. They remove the retrospectivity of the current decision and reinstate equity to EU HQB quota management.<sup>16</sup>

2.21 The Committee also notes the argument of Mr Hunt representing Bindaree Beef that if the industry had been provided with a formal 12 months run-in period, a bidding war would have developed for quota held by exporters that were not EU accredited and wanted to leave the industry. As a result, Mr Hunt argued that quota would be concentrated in the hands of a small number of large exporters.<sup>17</sup>

2.22 The Committee believes that this argument is wrong. Non-EU accredited packer exporters that lost quota after a formal 12 month run in-period would not have been entitled to sell their quota. This is simply because they consciously chose not to meet the EU accreditation standards and to leave the industry. Any surplus quota from non-EU accredited packer exporters following a 12 months run in period could have been redistributed by AFFA amongst quota holders with EU accreditation.

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12 Submission 8, p 11

13 Evidence, RRAT, 22 May 2000, p 60

14 Evidence, RRAT, 21 November 2000, p 21, 30

15 Submission 8, p 13

16 Submission 8, p 2

17 Evidence, RRAT, 21 November 2000, p 82

## The Legal Position

2.23 Given the claims that the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000 was commercially retrospective, the Committee raised with AFFA in estimates the legal status of the Order. In particular, the Committee raised the question whether quota holdings essentially constituted property rights. As stated by Senator O'Brien in estimates on 4 May 2000:

You have had a change in the system of allocation of quotas and you agree that under the old system there were tradeable property rights which had a value. The system has changed. There are now tradeable property rights under the new system but, because of the decision to change the basis of allocation, a number of people who have had ongoing property rights may have lost them.<sup>18</sup>

2.24 In response, Mr Read from AFFA cited the legal advice from the Solicitor General attached to the paper of 24 November 1999 that the decision taken on 23 December 1999 did not raise property right issues. The basis for this was that any comparison between the system of allocating quota in 1999/2000 and the system used in 2000/2001 is inappropriate given that the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Orders are reissued each year.<sup>19</sup>

2.25 The Committee requested in estimates on 4 May that AFFA provide the legal advice of the Solicitor General. This was made available to the Committee prior to estimates of 22 May 2000. Once again, Mr Read stated in estimates on 22 May 2000:

That is the Solicitor's advice that is there – there are no property rights and the decision can be taken without affecting legally the position of people at this time.<sup>20</sup>

2.26 AFFA provided further legal advice from the Deputy General Counsel of the Australian Government Solicitor, Mr Orr QC, in its written submission to the Committee's inquiry. That legal advice was that the Order was within the scope of the *Australian Meat and Live-stock Industry Act 1997*, and that the Order does not result in the acquisition of property on other than just terms under paragraph 51 of the Constitution. In addition, it was indicated that the Order does not operate retrospectively. As stated by Mr Orr:

... in my view there was no procedural fairness obligations in relation to the 2000 Order. First, the 2000 Order did not revoke any quota. ... Rather the 2000 Order sets out how quota is to be obtained and worked out for the financial year beginning 1 July 2000.

Secondly, the principles of procedural fairness generally arise where an administrative decision will affect the interests of a particular person; for example the granting of particular quota to a particular person. The making of the 2000 Order is in my view more appropriately characterised as a legislative action which

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18 Evidence, RRAT, 4 May 2000, p 190

19 Evidence, RRAT, 4 May 2000, p 188

20 Evidence, RRAT, 22 May 2000, p 59

established the legal scheme under which quota is to be granted. Such legislative acts are generally not subject to the requirements of procedural fairness.<sup>21</sup>

2.27 The Committee notes however, that the CIG stated that it is currently preparing a legal challenge to the provisions of the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000, which it intends to pursue subject to the outcome of this matter in the Senate.<sup>22</sup>

2.28 In hearings of 21 November 2000, Mr Hetherington from AMC questioned the statement that the Order does not attract the requirements of procedural fairness. In this regard he noted that paragraph 27 of the advice provided by the Solicitor General to AFFA finds that it is 'possible' that quota is a right or interest:

It is possible that quota is a right or interest. Administrative decisions in relation to such rights may give rise to an obligation to provide procedural fairness.<sup>23</sup>

2.29 The Committee is not in a position to comment further on the legal questions of property rights or retrospectivity raised by the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000.

### **Arguments Justifying the Loss of Quota**

2.30 In response to concerns regarding the loss of quota by certain exporters, it was argued during the conduct of this inquiry that the previous system of EU quota allocation supported a 'paper trade' in quota. In other words, EU accredited packer exporters were required each year to rent quota back from non-EU accredited packer exporters, thereby reducing their returns from the market.<sup>24</sup> As stated in estimates on 4 May 2000 by Mr Roseby from AFFA:

There is another issue here of what is good policy, of whether or not you are suggesting that good policy is to reward those who do all the work or whether or not you think it is a good policy to have a secondary market which plays around with the quota rent, and the producers and the processors who actually do all the work and get the product into the marketplace are the ones that should be getting the reward.<sup>25</sup>

2.31 To develop this point, Mr Hunt cited in hearings on 21 November 2000 the results of a February 1999 report commissioned by Hunt Partners entitled 'Economic Evaluation of the Systems for Allocating Australia's EU Quotas' (the Hassell Report). The Hassell Report argued that exporters need a minimum of around 700 tonnes of quota to be viable in the EU HQB market, but that under the 80-20 system, exporters continually had to buy additional quota, at considerable expense, to remain viable.<sup>26</sup>

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21 Submission 10, Attachment C, pp 8-9

22 Evidence, RRAT, 21 November 2000, p 21

23 Evidence, RRAT, 21 November 2000, p 59

24 Submission 6, pp 1-2

25 Evidence, RRAT, 4 May 2000, p 195

26 Evidence, RRAT, 21 November 2000, p 63

2.32 The report also presented a financial analysis of an exporter that held 1,000 tonnes over a 10-year period from 1990 to 2000. The report found that from participating in the market, the exporter would have made \$6.1 million over the 10-year period, provided quota was topped up annually. At the same time, the report found that if the exporter had allowed its EU accreditation to lapse and lent quota without performance over the same 10-year period, the return would have been \$20.9 million.<sup>27</sup>

2.33 Given this argument, it was further contended in evidence on 21 November 2000 that the significant tightening of EU HQB requirements on 1 December 1999 imposed an even greater imperative that financial returns be directed only to those EU accredited packer exporters supplying the market. For example, Mr Carter from the Australian Beef Council noted in his opening statement to the Committee:

If they are going to divide it [quota] between too many players, it is not going to be economic for abattoirs to spend the money that is required to get them EU certification. We are only a small country. If we have got heaps of abattoirs with quota, the arithmetic just does not stack up.<sup>28</sup>

2.34 Similarly, in his opening statement, Mr Hunt argued that from the time the EU imposed its higher standards, there was really no alternative to providing the full economic rent to the EU accredited packer exporters. To do otherwise would mean that there would not be sufficient premium available to induce producers to become accredited.<sup>29</sup> Mr Hunt continued:

the only interest or equity that the balance of the disaffected have is that they want one more bite of the cherry to either sell it [quota] to the highest bidder on a keeps basis or to enter into some sort of commercial arrangement with a European Union accredited establishment. These are people—I make this very clear—who were in the business of trading quotas and not in the business of supplying the market and who have been receiving windfall gains themselves for many years without any accompanying expenditure.<sup>30</sup>

2.35 Mr Hunt also argued that as a consequence of tougher EU requirements for HQB, many EU accredited packer exporters had been required to provide alternative cuts in addition to the three prime cuts (tender loin, strip loin and rump) due to lack of supply. Consequently, many EU accredited packer exporters were not getting the premium they otherwise would, making it even more imperative that revenue not be diverted to those not participating in the market.<sup>31</sup>

2.36 In this regard, Senator O'Brien noted in hearings that the cost for individual exporters of becoming EU accredited is between \$1 and \$2 million, and that this would be recouped within two years under the new system.<sup>32</sup> The Committee is also aware that the

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27 Evidence, RRAT, 21 November 2000, p 63

28 Evidence, RRAT, 21 November 2000, p 32

29 Evidence, RRAT, 21 November 2000, p 64

30 Evidence, RRAT, 21 November 2000, p 65

31 Evidence, RRAT, 21 November 2000, p 64. See also Submission 9, p 1

32 Evidence, RRAT, 21 November 2000, p 72

price of cattle has increased significantly in the last year, partially because of the weakness of the Australian dollar. As a result exporters currently in the market are experiencing very good trading conditions.<sup>33</sup>

2.37 Finally, the Cattle Council of Australia also argued that the Minister was right not to extend the previous quota system until June 2000. The Cattle Council submitted that to have done so would have led to the leakage of a further \$6-8 million from the system.<sup>34</sup>

2.38 In response, Mr Ware from AMC noted that based on the highest historical rate of return on HQB to the EU of \$2 a kilogram, and given that approximately 800 – 1000 tonnes of quota was lost by aggrieved exporters in 2000/2001, this amounted to \$1.6 million in ‘lost’ revenue. On the current rate of return of 50c a kilogram, it would be significantly less again.<sup>35</sup>

2.39 It is also important to comment on the position of non-packer exporters within the industry. In hearings on 21 November 2000, Mr Hines representing CIG suggested that up to 50 per cent of new markets that had been opened up for Australian exports had been opened up by non-packer exporters, although they do not directly produce HQB for the EU market.<sup>36</sup> Mr Hines later continued:

The fact is that there are so many non-packer exporters in the industry that play a role in the industry, and I doubt whether the major processors in this country would sell and make use of the non-packer exporters to the degree that they do if it were not that they are providing and adding a value.<sup>37</sup>

2.40 Subsequently in hearings, Mr Hunt representing Bindaree agreed that in situations where non-packer exporters were actively marketing meat on behalf of an abattoir, they deserved to be treated as active and genuine participants in the market.<sup>38</sup>

2.41 The Committee endorses this position. While it accepts that the financial returns from the EU market should be available to EU registered packer exporters, and not to non-EU registered packer exporters, the Committee believes that non-packer exporters also have a legitimate role to play in the EU HQB market.

### **Available Means of Redress for Disadvantaged Exporters**

2.42 During the conduct of the inquiry, the Committee raised its concern that while some exporters clearly never intend to participate in the market, many exporters may have been prevented from exporting in 1999/2000 for particular reasons such as repairs to their stations or industrial disputation.<sup>39</sup> The Committee notes in particular that a number of southern processing works were unable to process cattle in the period up until 30 November 1999 due

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33 Evidence, RRAT, 21 November 2000, p 59

34 Submission 5, p 2

35 Evidence, RRAT, 21 November 2000, p 52

36 Evidence, RRAT, 21 November 2000, p 19

37 Evidence, RRAT, 21 November 2000, p 24

38 Evidence, RRAT, 21 November 2000, pp 83-84

39 Evidence, RRAT, 21 May 2000, p 60. Evidence, RRAT, 21 November 2000, p 25



to climatic conditions which made it almost impossible to prepare the right type of cattle for the EU HQB market.<sup>40</sup>

2.43 In response, Mr Read argued that following the decision of 23 December 1999, the price of quota fell significantly. Accordingly, he argued that those quota holders that lent quota in the 1999/2000 year had the opportunity to purchase quota for the 2000/2001 year at a significantly lower price than what they lent it for. Thus Mr Read argued that the new system did not restrict anyone with a genuine desire to be in the market.<sup>41</sup>

2.44 The Committee acknowledges this argument, but notes that under previous quota arrangements, those exporters that lent quota in 1999/2000 would have received a free allocation of quota in 2000/2001. They would not have had to buy back into the market.

2.45 Mr Read also highlighted in estimates the new entrants / exceptional circumstances provisions – the additional 400 (600 in the first year) tonnage set aside under the Order – as a means of redress for those exporters genuinely disadvantaged by the decision announced by the Minister on 23 December 1999.<sup>42</sup> The Committee notes that applications for the new entrant / exceptional circumstances provisions closed on 1 December 2000, prior to the resolution of this matter in the Senate.<sup>43</sup>

2.46 In its written submission, Hunt Partners commented that through the 600 tonne ‘hardship reserve’, together with the drop in the cost of quota after 23 December 1999, any party genuinely affected by the decision of 23 December 1999 had an ample opportunity to rectify the situation.<sup>44</sup> As stated by Mr Hunt in hearings on 21 November 2000:

Our submissions had always had a hardship provision for anyone who was inadvertently disadvantaged because of seasonal conditions, lack of supply of cattle, refurbishment of their premises, union disputes or whatever.<sup>45</sup>

2.47 In response to such argument, Senator Crane noted that some industry participants have been in the industry for over 20 years, and that it was unreasonable that they be required to go through a new entrant provision in order to overcome their arbitrary exclusion from the market.<sup>46</sup> In reply, Mr Milne from the Cattle Council stated:

I would have thought it was simply demonstrating a bit of flexibility in resolving a problem that was observed to exist.<sup>47</sup>

2.48 The Committee notes that the new entrant / exceptional circumstances provision of 600 tonnes may not be sufficient to cover all exporters that lost quota under the revised

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40 Evidence, RRAT, 21 November 2000, p 20

41 Evidence, RRAT, 4 May 2000, p 189

42 Evidence, RRAT, 22 May 2000, p 60

43 Evidence, RRAT, 22 May 2000, p 110

44 Submission 9, p 3

45 Evidence, RRAT, 21 November 2000, p 64

46 Evidence, RRAT, 21 May 2000, p 45

47 Evidence, RRAT, 21 May 2000, p 45

arrangements. As indicated, the CIG estimates that its members lost 800 – 1000 tonnes of quota as a result of the revised arrangements.

2.49 The Committee also sought from AFFA in hearings on 21 November 2000 further legal advice on the status of the Guidelines for the Allocation of Non-Standard Quota Entitlements attached to the Order, particularly as they relate to the 600 and 400 tonne new entrant provisions. AFFA subsequently referred this request to the Australian Government Solicitor.

2.50 The advice of the Australian Government Solicitor was that the Order contemplates the formulation of the Guidelines for the Allocation of Non-Standard Quota Entitlements and requires the Secretary of AFFA to have regard to them. However, they remain administrative guidelines. They are not part of the Order itself and are not a disallowable instrument for the purposes of Part XI of the *Acts Interpretation Act 1901*. In effect, the Guidelines cease to have any relevance when the Order ceases to have effect on 30 June 2001.<sup>48</sup>

2.51 Nevertheless, the Australian Government Solicitor also advised that, were the Committee to disallow the orders, there would be nothing to prevent the Secretary of AFFA from having regard to the Guidelines when allocating the 600 tonne new entrant/exceptional circumstances reserve. The Secretary would be free to do this under subsection 6(1) of the *Australian Meat and Live-stock (Quotas) Act 1990*:

Indeed one would expect him to do so given the likely expectation of those who have submitted applications for non-standard entitlement that they will be assessed against the criteria set out in the Guidelines.<sup>49</sup>

2.52 The effect of this advice is that, were the Committee to disallow the Australian meat and Live-stock Industry (High Quality Beef Order to the European Union) Order 2000, it is likely that the current new entrants / exceptional circumstances provisions of the Order would nevertheless be implemented.

2.53 Given this is the case, the Committee has made a number of recommendations in Chapter Four which it believes negates the need for exporters to apply for the exceptional circumstances provisions by addressing the retrospectivity of the Order.

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48 Australian Government Solicitor, Correspondence 29 November 2000, p 1-2

49 Australian Government Solicitor, Correspondence 29 November 2000, p 1-2

## CHAPTER THREE

### CLAIMS OF COMMERCIAL DISADVANTAGE

#### Introduction

3.1 This chapter initially examines the breakdown in industry consensus during late 1999, following the presentation of RMAC's unanimous position on 2 July 1999. In particular, it considers the role played by AFFA in that breakdown, and claims that individual and industry lobbying was behind the move towards the decision announced by the Minister on 23 December 2000.

3.2 Subsequently, the chapter also considers claims that some exporters were in a position as early as August 1999 to anticipate the Minister's decision announced on 23 December 1999, and bought additional quota accordingly. Even were this not the case, the Committee was presented with evidence that the AFFA issues paper provided to RMAC on 24 November 1999, which was not marked private and confidential, subsequently went into limited distribution within the industry. Again the claim was that this was to the advantage of certain companies prior to 23 December 1999.

#### The Breakdown in Industry Consensus

3.3 As noted in Chapter One, RMAC presented a unanimous position to the Minister on 2 July 1999. However, in hearings on 21 November 2000, Mr Read indicated that as early as August or September 1999, AFFA became concerned that a new closed system would need to be implemented to meet the foreshadowed higher EU HGP standards. In particular, Mr Read reiterated that if the 80-20 system was not modified, a significant delay would occur before quota was transferred to those actually supplying the market, placing at risk the entire supply.<sup>1</sup> As commented by Mr Read:

In October 1999, AFFA – I – liaised with a number of EU participants examining how the RMAC recommendations could be modified to address the above concerns ... Clearly, I went into a number of discussions on the 20 per cent in terms of capping arrangements and consideration of domestic production to see whether there was some tinkering that could be done with the RMAC report that basically set it with the appropriate alignment to the direction the minister was seeking.<sup>2</sup>

3.4 Mr Read indicated that throughout the consultation process leading up to the announcement of the Minister on 23 December 1999, AFFA was looking for an arrangement which would put quota in the hands of those participants in the market actually exporting to the EU. Ideally that arrangement would have been reached with the consensus of the industry.<sup>3</sup> Regrettably, as indicated, such consensus could not be achieved.

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1 Evidence, RRAT, 21 November 1999, p 5

2 Evidence, RRAT, 21 November 1999, p 6

3 Evidence, RRAT, 21 November 2000, p 9

3.5 In evidence, Mr Milne from the Cattle Council played down the breakdown in consensus in late 1999, arguing that there was absolute agreement by the industry on every aspect of the Minister's announcement of 23 December 1999, except the issue of timing. In response, Senator Crane observed that this was a fundamental split:

... in terms of the arrangements, there was only consensus, if that is the right word, to a point, and that there was a major split in some members of RMAC and on the implementation date.<sup>4</sup>

#### *The Role of AFFA and the Minister*

3.6 Given the breakdown in consensus, AMC argued that AFFA and the Minister lacked an appreciation of the unanimously endorsed industry position agreed by RMAC. Partly this was attributed to AFFA's lack of knowledge of industry practices and the commercial implications of its decisions, given the short period in which AFFA has been responsible for the EU HQB market.<sup>5</sup>

3.7 In this regard, the Committee's attention was drawn to the long delay between 2 July 1999 and the announcement of the Minister's decision on 23 December 1999. Mr Ware from AMC indicated in hearings that RMAC worked very hard in order to present to the Minister a unanimous position on 2 July 1999, and that he personally was very surprised at the subsequent delay in the announcement of a decision:

... we worked our butts off to physically get the proposal back to government within the time period. So we worked like hell. We got to a position and then nothing happened and nothing happened again, and this just rolled on and on. Finally, our chairman went to see the minister or the department—I am not sure which—and still nothing happened.<sup>6</sup>

3.8 CIG also argued that the Minister and AFFA had a conscious agenda to reach the position announced on 23 November 1999. In particular, CIG suggested that the change in the position of the Cattle Council after 2 July 1999 may have been the result of Ministerial and AFFA pressure.<sup>7</sup>

3.9 In this regard, AMC argued that AFFA realised that its decision would lead to disruption of the industry, and accordingly delayed its announcement until such time as events were progressed and it was "too late". For example, AMC argued that AFFA consciously delayed gazetting the Order until June 2000, which meant that with a 15 sitting period delay, the order was not tabled in the Parliament until August 2000. Similarly, AMC cited the fact that the Minister's decision was announced on 23 December 1999, two days before Christmas, as an attempt to curtail any industry response until mid January.<sup>8</sup>

3.10 The timing of the announcement of 23 December 1999 was raised by Senator Forshaw in estimates on 4 May 2000. In response, Mr Read indicated that as a consequence

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4 Evidence, RRAT, 21 November 2000, p 44

5 Submission 8, p 7

6 Evidence, RRAT, 21 November 2000, p 53

7 Submission 7, p 4

8 Submission 8, p 10

of the need to revise the RMAC paper, which took 15 days or so, and the need to brief the minister on this issue, it was close to Christmas before a revised arrangement could be finalised:

I do not think there was anything strategic about Christmas. It was just trying to get this very complex issue with a lot of vested interests in it announced.<sup>9</sup>

### *Industry Lobbying of AFFA and the Minister*

3.11 In its written submission, CIG argued that the reason for the perceived change in the position of AFFA and the Minister may have been lobbying by Hunt Partners on behalf of Bindaree Beef.<sup>10</sup> Mr Hines further stated in hearings on 21 November 2000:

We, the members of the Common Interest Group—and I speak on their behalf—believe that the lobbying undertaken on behalf of Bindaree Beef and their trading partner, Sanger Australia, brought about the Minister’s proposed mind-set.<sup>11</sup>

3.12 CIG also commented in its written submission that while Bindaree was lobbying AFFA and the Minister for a change to the system, it was also actively buying quota on a lend basis, fully aware of the windfall benefits that would ensue if their lobbying was successful:

This was a win/win strategy as the worse case scenario was that the quota was only purchased for one year, the outcome the seller thought was the intention anyway.<sup>12</sup>

3.13 In its written submission, Hunt Partners, acting on behalf of Bindaree Beef, readily acknowledged that the company has been active in pushing for reform of the EU HQB allocation system since as early as 1996.<sup>13</sup> Mr Hunt confirmed this in hearings, noting that Bindaree was not a supporter of the agreed RMAC position presented to the Minister on 2 July 1999, although that position had the support of all six industry bodies. Indeed, Hunt Partners prepared a response to RMAC’s recommendations of 2 July 1999 in which it argued that they benefited non-EU accredited packer exporters, reflecting their numerical dominance on RMAC.<sup>14</sup>

3.14 The Committee notes that Hunt Partners and Bindaree were perfectly entitled to lobby their case with the Minister. In the Committee’s opinion, the only concern arises where there is evidence that certain participants in the industry had advanced knowledge of the likely final outcome of the consultation process.

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9 Evidence, RRAT, 4 May 2000, p 187

10 Submission 7, p 4

11 Evidence, RRAT, 21 November 1999, p 21

12 Submission 7, p 5

13 Submission 9, Attachments E and F.

14 Evidence, RRAT, 21 November 2000, pp 80-81

### Trading of Quota Ahead of 23 December 1999

3.15 The Committee raised in estimates on 4 May 2000 the claim that some exporters bought additional quota prior to the decision announced by the Minister on 23 December 1999 in anticipation of receiving a financial windfall.<sup>15</sup> In response, Mr Roseby stated:

Nobody had prior knowledge of what the minister would actually announce. There was discussion of a range of options prior to that, including the large meeting that Mr Read referred to where a whole lot of options, draft papers, et cetera were considered. The only person with prior knowledge of the minister's decision was the minister.<sup>16</sup>

3.16 Subsequently, in its written submission, AMC stated its belief that AFFA spoke directly with at least 4 or 5 major quota holders between August and October 1999. At those meetings, AMC claimed that AFFA placed the issue of retrospectivity on the agenda:<sup>17</sup>

It has since become apparent that as early as August 1999 AFFA was considering implementing the proposed changes retrospectively following discussions they had with various quota holders. Throughout this period, AFFA was fully aware that quota was actively being traded, fully aware who was selling and who was buying quota, (ie. who would be disadvantaged and who would be advantaged through retrospective implementation). Despite this no formal notice was given to exporters affected by the policy prior to the Minister's announcement.<sup>18</sup>

3.17 As a result of this consultation process, both CIG and AMC claimed in their written submissions that Sanger/Bindaree and Nippon Meat Packers acquired approximately 1000 tonnes of quota from July to December 1999, which they implied was bought in the knowledge of the likely final decision of the Minister.<sup>19</sup>

3.18 For example, CIG indicated in its written submission that from July to November 1999, Sanger/Bindaree purchased 700/750 tonnes of EU HQB for 1999/2000 usage.<sup>20</sup> Subsequently in hearings, Mr Hines from CIG noted that Sanger/Bindaree and Nippon were offering prices 20 to 25 per cent higher than the market value.<sup>21</sup> A full list of transactions in quota from July 1999 to March 2000 is at Appendix 5.

3.19 In response to such claims, Hunt Partners acting on behalf of Bindaree Beef acknowledged in its written submission that Bindaree continued to purchase EU HQB quota from August through to November 1999. However it maintained that:

At no time prior to the announcement by the Minister on 23 December 1999 did the Minister, anyone from the Minister's office or anyone from the Department of Agriculture, Fisheries and Forestry discuss with us, or our client, that it was

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15 Evidence, RRAT, 4 May 2000, p 194

16 Evidence, RRAT, 4 May 2000, p 201

17 Submission 8, p 11

18 Submission 8, p 10

19 Submission 7, p 2. Submission 8, p 1

20 Submission 7, p 2. Submission 8, p 1

21 Evidence, RRAT, 21 November 2000, p 20

proposing to change the HQB EU quota allocation system in the manner that it did.<sup>22</sup>

*The AFFA Paper of 24 November 1999*

3.20 As indicated in Chapter One, the AFFA issues paper of 24 November 1999 outlined AFFA's proposals for the future allocation of EU HQB quota. Subsequently, that paper was distributed to the heads of the six industry organisations on RMAC. It was not marked as confidential.

3.21 The further distribution of the paper is far from clear. In hearings on 21 November 2000, Mr Rigg representing AMC indicated that AMC only distributed the paper to AMC directors, and that none of the 21 members of CIG received a copy. This was confirmed by the covering AMC facsimile which was tabled in the hearing by Mr Hunt. Mr Rigg also noted that representatives of Sanger/Bindaree and Nippon were AMC directors.<sup>23</sup>

3.22 Given this evidence, the Committee is concerned that the paper of 24 November 2000 only achieved limited distribution within the industry, but that those in receipt of the paper were in a position to make decisions to the commercial advantage of their own companies.<sup>24</sup> As stated by Senator Ferris in hearings:

Blind Freddy must have been able to see that you were exposing them to an opportunity to play a role in the market by sending that paper around. It was not marked commercial-in-confidence. It was not marked confidential. Weren't you really just opening it up for people to begin to operate on that basis?<sup>25</sup>

3.23 In reply, Mr Read indicated that AFFA was attempting to ensure that the information was available to the industry in an endeavour to achieve an industry agreed position, and that if the information was available to everyone, then no-one could operate from a beneficial position. In addition, Mr Read indicated that he was acting at the request of RMAC, following the meeting of 16 November 1999, to provide the paper to RMAC's directors.<sup>26</sup>

3.24 The Committee was also presented with evidence by AMC that between the distribution of the issues paper on 24 November 1999 and 30 November 1999, 158 tonnes of quota was traded, and that a further 22 tonnes were traded on 1 December 1999.<sup>27</sup> In total AMC indicated that 253 tonnes was traded between the release of the AFFA paper on 24 November 1999 and the announcement of the Minister's decision on 23 December 1999.<sup>28</sup>

3.25 Mr Rigg, appearing on behalf of AMC, further argued that this trading in late November and December 1999 was highly unusual. Mr Rigg indicated that quota is generally released by AFFA/AMLC in two tranches each year, the first at the beginning of

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22 Submission 9, p 3

23 Evidence, RRAT, 21 November 2000, p 23

24 Submission 3, p 3. Submission 8, p 11

25 Evidence, RRAT, 21 November 2000, p 11

26 Evidence, RRAT, 21 November 2000, pp 11-12

27 Submission 8, p 12

28 Evidence, RRAT, 21 November 2000, p 50

the quota year in July, and the second a few months later after final figures have been adjusted. Trading in quota generally follows these two tranches closely. Accordingly, Mr Rigg stated:

I would not think there was one tonne of it that was not generated from the particular goings on—that some people knew and some people did not, either by accident or by naivete. Whatever way it was, that was why that 253 tonne was traded in that short period of time.<sup>29</sup>

3.26 Once again, CIG and AMC alleged that the additional trading in quota in late November and December was attributable to Sanger/Bindaree and Nippon. In regard to the actions of Nippon, CIG cited a range of evidence in support of its claim that Nippon transacted quota transfers in the weeks prior to 23 December 1999 that were driven by considerations other than usual market forces. For example, CIG indicated that Nippon bought 25 tonnes of quota from WA Meat Exporters on 26 November 1999, in which it stipulated that ‘this should be the end of the transaction’. CIG continued:

Normally sales are made on the basis of “Performance to be returned”. This emphasis in this sale of ‘this should be the end of the transaction’ again clearly indicates an intention other than normal “lends/usage”.<sup>30</sup>

3.27 CIG also alleged that Nippon officials made a number of telephone calls to the senior management of Weddel Swift in London between 24 and 30 November 1999 in order to expedite the sale of almost 11 tonnes of quota. This sale proceeded on 1 December 1999.<sup>31</sup>

3.28 In evidence, Mr Read acknowledged that he spoke to Mr Standen, a consultant working with Nippon, on 19 November 1999, and that he confirmed to Mr Standen that the tenor of his discussion with RMAC on 16 November 1999 was that the 80-20 system needed changing. However, Mr Read noted that Nippon did not trade between 19 November 1999 and the release of the issues paper on 24 December 1999.<sup>32</sup>

3.29 Nevertheless, documents tabled with the Committee by AFFA confirm that Nippon purchased quota on 25, 26 and 29 November 1999 and 1 December 1999 (see Appendix 5). The Committee believes that this is clear evidence of commercial advantage following the release of the issues paper of 24 November 1999, and notes that this contradicts the evidence provided by Mr Roseby in estimates on 22 May 2000:

You gave two scenarios: one, that they had prior knowledge or, two, that they had good guessing power. I guess they had good guessing powers because they did not have prior knowledge of when that date [of implementation] would be set.<sup>33</sup>

3.30 In regards to the actions of Sanger/Bindaree, Sanger acknowledged in its written submission that John Cooper, the head of Sanger International and the Australian Meat

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29 Evidence, RRAT, 21 November 2000, p 56

30 Submission 7, p 3

31 Submission 7, p 3

32 Evidence, RRAT, 21 November 2000, p 10

33 Evidence, RRAT, 22 May 2000, p 60



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Council, received private and confidential advice from AFFA on 25 November 1999 outlining AFFA's future proposals for the EU HQB allocation. However, it was stated:

Neither Sanger nor G H Elliott entered into a contract to purchase any HQB EU quota entitlement with or without performance, either on their own behalf or on anyone else's behalf, after 25 November 1999. Our last purchase of quota prior to this date was on 18 November 1999.<sup>34</sup>

3.31 Similarly in hearings on 21 November 2000, Mr Hunt, acting on behalf of Bindaree Beef, indicated that:

all the quota that was purchased on behalf of my clients, Bindaree, which was purchased by Sangers, was made on or before 18 November—most of it many months before.<sup>35</sup>

3.32 This was confirmed by evidence tabled with the Committee on 21 November 2000 (see Appendix 5). Mr Hunt later indicated that following the receipt of the AFFA paper of 24 November 1999, the Directors of Bindaree made a conscious decision not to purchase additional quota.<sup>36</sup>

3.33 Despite this evidence, the Committee holds grave concerns that the consultation process conducted by AFFA between July and December 1999 was fundamentally flawed, and that certain industry participants probably received significant commercial advantage. For example, there is clear evidence to suggest that the AFFA minute dated 24 November 2000, which AFFA failed to mark as commercial in confidence, offered commercial advantage to certain exporters. There is also evidence of private consultation, including a number of phone calls, by industry representatives with officers of AFFA.

3.34 The Committee notes however that none that of this activity would have been significant had the changes to the EU HQB quota system not been introduced in a manner that was commercially retrospect.<sup>37</sup>

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34 Submission 6, p 3

35 Evidence, RRAT, 21 November 2000, p 66

36 Evidence, RRAT, 21 November 2000, p 79

37 Submission 7, pp 3-4



## CHAPTER FOUR

### CONCLUSIONS AND RECOMMENDATIONS

4.1 During conduct of this inquiry, the Committee was presented with evidence that the Minister's decision announced on 23 December 1999, altering the arrangements for the allocation of EU HQB quota in 2000/2001 and basing future allocation on shipper records, was commercially retrospective. Specifically, beef traders and exporters claimed that they would not have lent quota in 1999/2000 had they been aware that in doing so, they would no longer be entitled to quota in 2000/2001.

4.2 The Committee accepts that some exporters that had previously operated in the market were significantly disadvantaged as a result of the new arrangements. In the Committee's opinion, a preferable date for implementation of the new system would have been 1 July 2000, or as a second alternative, 23 December 1999. Under either of these arrangements, quota would have been transferred back to those that had sold quota in 1999/2000 according to performance accounts.

4.3 In saying this, the Committee also accepts the argument that only EU accredited packer exporters should receive financial returns from participating in the market, especially given the tighter restrictions on HGP in HQB enforced by the EU after 1 December 1999. However, the need to close the system did not necessitate the retrospective measures that were adopted on 23 December 1999. The Committee also believes that non-packer exporters have a significant ongoing role to play in the market.

4.4 During the conduct of the inquiry, the Committee was also presented with claims that certain industry participants received an unfair commercial advantage from prior knowledge of the Minister's decision announced on 23 December 1999. Specifically, it was claimed that certain industry participants were in a position to buy up quota and position themselves in the market ahead of the allocation of quota in 2000/2001.

4.5 In this regard, the Committee is concerned that the consultation process conducted by AFFA between July and December 1999 was open to manipulation, and that certain industry participants may have received commercial advantage. For example, there is clear evidence to suggest that the AFFA minute dated 24 November 2000, which AFFA failed to mark as commercial in confidence, offered commercial advantage to certain exporters. There is also evidence of private consultation, including phone calls, by industry representatives with officers of AFFA (refer to 3.28 and 3.29).

4.6 Despite these concerns, the Committee is not in a position to disallow the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000. The option of disallowing the order would cast the industry into considerable confusion, as was acknowledged by AMC in its written submission. In this regard, the Committee is aware of suggestions that Australia should be careful in its management of the EU HQB market for fear that significant upheaval in the industry could lead to the withdrawal of Australia's export quota.

### **Recommendation 1**

**The Committee recommends that the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000 not be disallowed in the Senate.**

4.7 In order to address the Committee's concerns and reinstate equity into the allocation of EU HQB quota, the Committee believes that two principles should be implemented in the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2001:

- a) allocation of quota in 2001/2002 should be based as a one off on the 1999/2000 performance year. The Committee believes that such an allocation would prevent any further disruption during the current quota year;
- b) to ensure that the economic rent from participation in the EU HQB market should be available only to EU accredited packer exporters and non-packer exporters, the Committee believes that future allocation of quota should continue on the basis of 100 per cent EU shipment records.

4.8 Combining these two measures effectively returns the revenue from the EU HQB market to active market players, but at the same time gives those exporters with a genuine interest in exporting HQB to the EU who were excluded in 1999/2000 the chance to re-enter the market in July 2001. This would provide eight month's notice to those exporters to allow them to meet the EU HQB standard.

### **Recommendation 2**

**The Committee recommends that the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2001, when prepared, allocate quota based on the 1999/2000 performance year, but that future allocation continue on the basis of 100 per cent EU shipment records.**

4.9 The Committee accepts that there may be some exporters who lost quota in 2000/2001 that do not wish to re-enter the market in 2001/2002, given the high costs of seeking EU accreditation. In that instance, their uncommitted quota allocation should be available to EU accredited packer exporters and non-packer exporters currently in the market.

4.10 The allocation of this uncommitted quota should be at the discretion of the Secretary of AFFA upon application. The Secretary should have discretion to rank applications according to the capacity of the applicant to supply the market. Once all uncommitted quota has been allocated, no further allocation will be made, subject to confirmation by AFFA that the additional quota allocation is being utilised.

### **Recommendation 3**

**The Committee recommends that where exporters choose not to re-enter the EU HQB market in 2001/2002 through a decision of their own not to meet the EU accreditation standards, their uncommitted quota allocation should be available to EU accredited**

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**packer exporters and non-packer exporters currently in the market. Allocation of uncommitted quota should be on the basis of applications to the Secretary of AFFA.**

4.11 The Committee notes that the new entrant / exceptional circumstances provisions (Sections 10 and 11 of the Order) were introduced partly as means of redress for those exporters that were disadvantaged by the new arrangements. Following from Recommendation 2, the disadvantage suffered by certain exporters has been addressed. Accordingly, the exceptional circumstances provision appears no longer necessary.

4.12 However, as indicated in Chapter Two, it is important to note that the exceptional circumstances provision remains in effect under the current Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2000. It is possible that exporters that lost quota in 2000/2001 may have applied under the exceptional circumstances provision for additional quota in 2001/2002. The deadline for such applications was 1 December 2000 (Section 7 of the Order).

4.13 Although the Committee is not aware of any such instances, disadvantaged exporters should not be in a position to receive an allocation of quota under the exceptional circumstances provision in the current 2000 Order, together with an allocation based on the 1999/2000 performance year (Recommendation 2). Accordingly, where applicable, exporters that applied to AFFA for quota under the exceptional circumstances provision prior to 1 December 2000 should be able to withdraw any application.

#### **Recommendation 4**

**The Committee recommends disadvantaged exporters that applied to AFFA for quota under the exceptional circumstances provision in 2000 should be in a position to withdraw that application. Where disadvantaged exporters do not withdraw that application and in fact receive quota under the exceptional circumstances provision, they should not be eligible for an allocation of quota based on the 1999/2000 performance year (Recommendation 2).**

4.14 The Committee believes that the new entrant provision should be retained to encourage new participants in the market. The allocation of tonnage for new entrants should continue at 400 tonnes in both 2001/2002 and 2002/2003.

#### **Recommendation 5**

**The Committee recommends that the Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2001, when prepared, retain the new entrant provision.**

**Senator Winston Crane  
Chairman  
December 2000**



## **ADDITIONAL COMMENT BY THE LABOR PARTY**

The Labor Party notes with concern that the failure of the former Minister, Mr Vaile, and the current Minister, Mr Truss, to properly manage the change in quota arrangements has significantly disadvantaged a number of industry participants.

The Labor Party notes Mr Vaile was presented with a set of unanimous recommendations from his key industry advisory body, RMAC, on 2 July 1999. But the then Minister failed to act on that advice and the matter remained unresolved until two days before Christmas, some eight months into the trading year.

It is the view of the Labor Party that a timely response by Mr Vaile and Mr Truss to the July recommendations from the RMAC could have resulted in a more timely and equitable outcome for all EU HQB participants.





## **APPENDIX 1: LIST OF SUBMISSIONS**

1	Rockdale Beef Pty Ltd
2	W A Meat Exports Pty Ltd
3	Cluranee International Trading Pty Ltd
4	Towers Thompson (Australia) Pty Ltd
5	Cattle Council of Australia
6	Sanger Australia Pty Limited
7	Common Interest Group of Disadvantaged Exporters
8	Australian Meat Council
9	Hunt Partners
10	Department of Agriculture Fisheries & Forestry – Australia
11	John Dee (Export) Pty Ltd
12	Ramsey Food Processing Pty Ltd
13	Harveybeef
14	Weddel Swift (Australia) Pty Limited
15	Alliance Meat Exports (Aust)
16	Red Meat Advisory Council Limited
17	Australian Beef Association
18	National Meat Association of Australia
19	Lachley Meats (Forbes) Pty Ltd
20	Seattle Meat Pty Ltd

### **Supplementary Submissions**

6A	Sanger Australia Pty Limited
7A	Common Interest Group of Disadvantaged Exporters
8A	Australian Meat Council
9A	Hunt Partners



## **APPENDIX 2: LIST OF WITNESSES**

### **Department of Agriculture, Fisheries and Forestry Australia**

Mr Greg Read, Assistant Secretary, Meat and Livestock Branch

Mr Carry Cullen, Meat and Livestock Branch

### **Common Interest Group**

Mr Jack Hines, Managing Director, Hines

Mr Bill Luttick, Managing Director, Luttick Australia

Mr Bill Rigg, Managing Director, WA Meat Exports

Mr John Hardman, Chief Executive, Clurane International

### **Australian Meat Council**

Mr Jack Ware, Chairman

Mr Bill Hetherington, Chief Executive Officer

Mr Stephen Martyn, General Manager

Mr Bill Rigg, Director

### **Australian Beef Association**

Mr John Carter, Chairman

### **Cattle Council of Australia**

Mr Peter Milne, President

Mr Justin Toohey, Executive Director

### **Hunt Partners**

Mr Norman Hunt, Partner

### **Sanger Australia**

Mr Graham Greenhalgh, Director



## **APPENDIX 3: THE 21 MEMBERS OF CIG**

Blue Ribbon Exp P/L

Cargill Australia Ltd

Clarunee Int Trading P/L

E G Green and Sons P/L

East West Meat Wxp P/L

Export Meat Packers P/L

G & J Hines Pty Ltd

John Dee (Exporting) P/L

Kilcoy Pastoral Co Ltd

Lachley Meats (Forb) P/L

Louis Dreyfus Aust P/L

Luttick Aust P/L

P & R Meats P/L

Pride Meats P/L

Rogers & Anderson Int P/L

T & R Pastoral P/L

Tabro Meat P/L

Towers Thom (Aust) P/L

WA Meat Exports P/L

Weddel Australia P/L

Westmeats P/L



**APPENDIX 4: SHIPMENT AND QUOTA ALLOCATION  
RECORDS FROM 1996/1997 TO 1999/2000**

<b>Licensee</b>	<b>Allocation 1999/2000</b>	<b>Shipped 1999/2000</b>	<b>Shipped 1998/1999</b>	<b>Shipped 1997/1998</b>	<b>Shipped 1996/1997</b>
Australian Meat Hold P/L	1,888,810	1,903,594	2,711,878	2,855,786	2,510,211
Australian Lamb P/L	0	2,021			
Blue Ribbon Exp P/L	39,300				
Bush's International P/L	17,869				
Cargill Australia Ltd	38,829				
Castricum Brothers P/L	7,416		149,688	85,320	61,386
Clarunee Int Trading P/L	44,972				
Consolidated Meat Group	615,781	615,743	794,873	648,087	576,787
Craid Mostyn & Co P/L	8,917				
E G Green and Sons P/L	68,044				
East West Meat Exp P/L	38,472	0			
Export Meat Packers P/L	62,455				
G & J Hines Pty Ltd	22,501	184,838	103,132	142,564	135,639
G& K O'Connor P/L	144,369	143,119	94,016	270,561	695,299
G H Elliott Holdings P/L	742,186	1,389,751	800,646		73,706
Global Australia P/L					
Good Country Pty Ltd			10,843		
H J Heinz Co Aust Ltd	11,009				
H W Greenham & Sons P/L	52,923				
Harry Ellis Trad P/L	0				
I M T Processing Pty Ltd	5,343				
John Dee (Exporting) P/L	123,512				
Kasimar Pty Ltd	5,743				
Kilcoy Pastoral Co Ltd	85,725	75,750			
Lachley Meats (Forb) P/L	107,887				
Louis Dreyfus Aust P/L	20,150				
Luttick Aust P/L	67,231				
Marubeni Aust Ltd	13,787				

Matrad P/L					9,067
Metro Meat Intl P/L	571,639		451,016	1,262,072	1,145,828
Midfield Meat Intl P/L	24,479				
Nippon Meat Packers Aust					
Oakey Abattoir P/L	522,379	561,479	514,482	432,139	620,530
P & R Meats P/L	71,545				
R J Gilbertson P/L					134,683
Ramsay Food Processing	36,056				
Rockdale Beef P/L	32,770				
Rogers & Anderson Int P/L	47,671	23,680	49,869	71,021	85,943
S T M P/L	39,240				
Sanger Aust P/L	0	194,967	11,839		
SBA Foods P/L	390,779	401,655	380,348	460,553	332,773
South Burnett Meatworks	52,779				
Stockyard P/L	17,382				
T & R Pastoral P/L	10,601	124,578			
Tabro Meat P/L	40,733				
Terra Sciences P/L		10			
Teys Bros (Beenleigh)	232,100	659,379	602,769	463,904	594,511
Teys Bros (Biloela) P/L	202,703	155,817	215,889	48,767	
Teys Bros (Naracoorte) P/L		119,523			
Towers Thom (Aust) P/L	62,693	95,742			23,510
WA Meat Exports P/L	172,686				
WA Meat Marketing Corp					119
Waltell P/L	28,468				
Westmeats P/L	56,080				
Wingam Abattoirs P/L	131,686	342,440	113,218	259,226	
Woolworths Ltd	17,953				
<b>Total</b>	<b>6,995,653</b>	<b>6,994,084</b>	<b>7,004,506</b>	<b>7,000,000</b>	<b>6,999,982</b>



**APPENDIX 5: RECORD OF QUOTA TRANSFERS FROM  
1 JULY 1999 TO 24 MAY 2000**

<b>Date</b>	<b>Transferor</b>	<b>Transferee</b>	<b>Kgs</b>
05-Jul-99	Metro Meat Intl Ltd	Teys Bros (Naracoorte)P/L	381,093
		<b>July 1999 Total</b>	<b>381,093</b>
20-Aug-99	Westmeats Pty Ltd	Sanger Australia P/L	37,387
24-Aug-99	East West Meat Exp P/L	WA Meat Exports P/L	25,000
25-Aug-99	WA Meat Exports P/L	Sanger Australia P/L	52,000
25-Aug-99	WA Meat Exports P/L	Sanger Australia P/L	39,000
26-Aug-99	Woolworths Ltd	Rohan Trading Company P/L	11,969
27-Aug-99	Rohan Trading Company P/L	Sanger Australia P/L	11,969
30-Aug-99	T & R Pastoral P/L	Weddel Swift (Aust) P/L	7,067
31-Aug-99	Marubeni Australia Ltd	Sanger Australia P/L	9,191
		<b>August 1999 Total</b>	<b>193,583</b>
02-Sep-99	Louis Dreyfus Aust P/L	Sanger Australia P/L	17,495
02-Sep-99	Luttick Australia P/L	Louis Dreyfus Aust P/L	4,062
14-Sep-99	WA Meat Exports P/L	Sanger Australia P/L	39,000
15-Sep-99	Q Sun Foods Pty Ltd	Cluranee Int Trading P/L	35,186
16-Sep-99	South Burnett Meatworks	Q Sun Foods Pty Ltd	35,186
22-Sep-99	WA Meat Exports P/L	Sanger Australia P/L	52,000
22-Sep-99	South Burnett Meatworks	Q Sun Foods Pty Ltd	17,593
24-Sep-99	Craig Mostyn & Co P/L	E G Green & Sons P/L	8,917

<b>Date</b>	<b>Transferor</b>	<b>Transferee</b>	<b>Kgs</b>
24-Sep-99	Blue Ribbon Exp P/L	Sanger Australia P/L	39,300
24-Sep-99	P & R Meats P/L	Sanger Australia P/L	71,545
24-Sep-99	Towers Thompson (Aust)P/L	Luttick Australia P/L	24,000
24-Sep-99	Q Sun Foods Pty Ltd	Cluranee Int Trading P/L	17,593
27-Sep-99	Luttick Australia P/L	Sanger Australia P/L	85,138
27-Sep-99	Export Meat Packers P/L	Sanger Australia P/L	62,455
27-Sep-99	Metro Meat Intl Ltd	Teys Bros (Naracoorte)P/L	118,907
27-Sep-99	Woolworths Ltd	Rohan Trading Company P/L	5,984
28-Sep-99	Marubeni Australia Ltd	Sanger Australia P/L	4,596
28-Sep-99	G & J Hines Pty Ltd	Sanger Australia P/L	25,546
28-Sep-99	WA Meat Exports P/L	Midfield Meat Intl P/L	6,261
28-Sep-99	Rogers & Anderson Int P/L	Sanger Australia P/L	6,028
28-Sep-99	East West Meat Exp P/L	G & J Hines Pty Ltd	3,045
28-Sep-99	East West Meat Exp P/L	WA Meat Exports P/L	9,779
28-Sep-99	Rohan Trading Company P/L	Sanger Australia P/L	5,984
29-Sep-99	Luttick Australia P/L	Louis Dreyfus Aust P/L	2,031
29-Sep-99	Rogers & Anderson Int P/L	Harry Ellis Trad P/L	5,963
30-Sep-99	WA Meat Exports P/L	Sanger Australia P/L	27,000
		<b>September 1999 Total</b>	<b>730,594</b>
01-Oct-99	Midfield Meat Intl P/L	Sanger Australia P/L	30,740
04-Oct-99	E G Green & Sons P/L	WA Meat Exports P/L	15,000
04-Oct-99	H J Heinz Co Aust Ltd	SBA Foods Pty Ltd	11,009
05-Oct-99	Tabro Meat P/L	G & J Hines Pty Ltd	40,733
06-Oct-99	G & J Hines Pty Ltd	Sanger Australia P/L	40,733
06-Oct-99	T & R Pastoral P/L	Weddel Swift (Aust) P/L	3,534

<b>Date</b>	<b>Transferor</b>	<b>Transferee</b>	<b>Kgs</b>
14-Oct-99	Sanger Australia P/L	Maverick International Ex	11
21-Oct-99	I M T Processing Pty Ltd	Sanger Australia P/L	5,343
22-Oct-99	Louis Dreyfus Aust P/L	Nippon Meat Packers Aust	8,748
22-Oct-99	Bush's International P/L	Nippon Meat Packers Aust	17,869
22-Oct-99	Ramsey Food Processing	Nippon Meat Packers Aust	36,056
27-Oct-99	Luttick Australia P/L	Nippon Meat Packers Aust	17,000
27-Oct-99	Luttick Australia P/L	Towers Thompson (Aust)P/L	910
27-Oct-99	Rockdale Beef Pty Ltd	Luttick Australia P/L	17,910
		<b>October 1999 Total</b>	<b>245,596</b>
01-Nov-99	Waltell Pty Ltd	Nippon Meat Packers Aust	28,468
03-Nov-99	Nippon Meat Packers Aust	Australian Lamb Co P/L	2,021
03-Nov-99	Lachley Meats (Forb) P/L	Sanger Australia P/L	107,887
11-Nov-99	Wingham Abattoirs P/L	Luttick Australia P/L	17,000
12-Nov-99	Luttick Australia P/L	Sanger Australia P/L	17,000
16-Nov-99	Kasimar Pty Ltd	Nippon Meat Packers Aust	5,743
17-Nov-99	Westmeats Pty Ltd	Sanger Australia P/L	18,693
18-Nov-99	WA Meat Exports P/L	Sanger Australia P/L	7,204
22-Nov-99	Rogers & Anderson Int P/L	Sanger Australia P/L	12,000
25-Nov-99	Cluranee Int Trading P/L	Nippon Meat Packers Aust	26,000
25-Nov-99	Cargill Australia Ltd	Nippon Meat Packers Aust	38,829
26-Nov-99	S.T.M. Pty Ltd	Nippon Meat Packers Aust	17,600
29-Nov-99	WA Meat Exports P/L	Nippon Meat Packers Aust	25,000
29-Nov-99	E G Green & Sons P/L	WA Meat Exports P/L	25,000
29-Nov-99	E G Green & Sons P/L	Nippon Meat Packers Aust	26,000
		<b>November 1999 Total</b>	<b>374,445</b>

<b>Date</b>	<b>Transferor</b>	<b>Transferee</b>	<b>Kgs</b>
01-Dec-99	E G Green & Sons P/L	Nippon Meat Packers Aust	10,961
01-Dec-99	Weddel Swift (Aust) P/L	Nippon Meat Packers Aust	10,601
23-Dec-99	Metro Meat Intl Ltd	T & R Pastoral P/L	71,639
		<b>December 1999 Total</b>	<b>93,201</b>
15-Mar-00	WA Meat Exports P/L	G & J Hines Pty Ltd	80,000
15-Mar-00	John Dee (Export) P/L	WA Meat Exports P/L	80,000
16-Mar-00	Cluranee Int Trading P/L	S.T.M. Pty Ltd	2,680
17-Mar-00	WA Meat Exports P/L	Towers Thompson (Aust)P/L	56,135
17-Mar-00	S.T.M. Pty Ltd	G & J Hines Pty Ltd	24,320
17-Mar-00	Cluranee Int Trading P/L	WA Meat Exports P/L	56,135
17-Mar-00	Rockdale Beef Pty Ltd	Cluranee Int Trading P/L	14,860
20-Mar-00	WA Meat Exports P/L	G & J Hines Pty Ltd	21,619
20-Mar-00	WA Meat Exports P/L	G & J Hines Pty Ltd	49,237
20-Mar-00	John Dee (Export) P/L	WA Meat Exports P/L	43,512
20-Mar-00	Cluranee Int Trading P/L	WA Meat Exports P/L	21,619
20-Mar-00	H W Greenham & Sons P/L	T & R Pastoral P/L	52,923
21-Mar-00	Kilcoy Pastoral Co Ltd	WA Meat Exports P/L	5,725
22-Mar-00	Cluranee Int Trading P/L	Harry Ellis Trad P/L	1,404
23-Mar-00	Kilcoy Pastoral Co Ltd	WA Meat Exports P/L	4,248
23-Mar-00	WA Meat Exports P/L	G & J Hines Pty Ltd	9,021
23-Mar-00	Luttick Australia P/L	Australia Meat Hold P/L	7,416
23-Mar-00	Cluranee Int Trading P/L	WA Meat Exports P/L	4,773
24-Mar-00	Harry Ellis Trad P/L	Australia Meat Hold P/L	7,367
24-Mar-00	Castricum Brothers P/L	Luttick Australia P/L	7,416

<b>Date</b>	<b>Transferor</b>	<b>Transferee</b>	<b>Kgs</b>
		<b>March 2000 Total</b>	<b>550,410</b>
03-Apr-00	East West Meat Exp P/L	G & J Hines Pty Ltd	648
04-Apr-00	Stockyard Pty Ltd	Sanger Australia P/L	17,382
		<b>April 2000 Total</b>	<b>18,030</b>
24-May-00	Consolidated Meat Group	Towers Thompson (Aust)P/L	4
		<b>May 2000 Total</b>	<b>4</b>
		<b>Year Total</b>	<b>2,586,956</b>