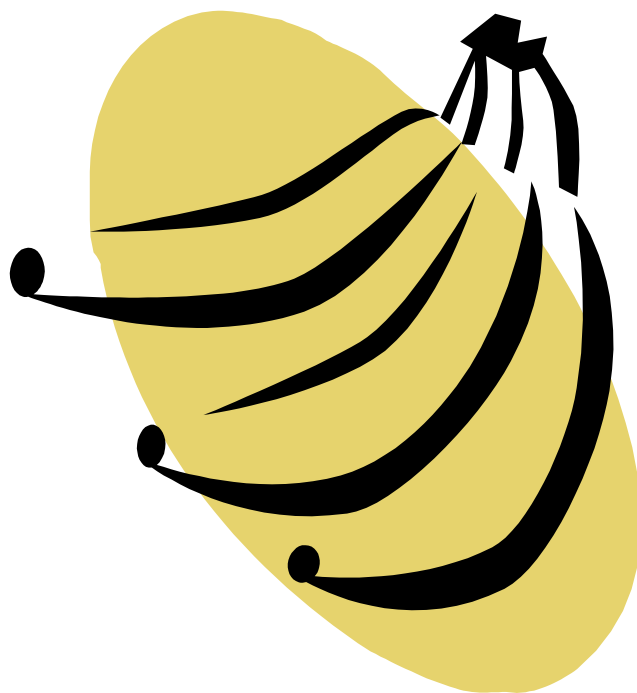


AUSTRALIAN BANANA GROWERS' COUNCIL INC.



Submission to

Joint Committee of Public Accounts and Audit

Review of Australia's Quarantine Function

19 July 2002

1. Introduction

The Australian Banana Growers' Council (ABGC) has previously contributed to the joint committee's review of quarantine function by assisting in the development of a combined horticultural industry submission put forward by the Horticulture Australia Council (HAC).

The ABGC remains firmly committed to the HAC submission but has taken this opportunity to highlight some issues of specific concern to the banana industry that are encompassed under the following single term of reference:

- the development of import risk analyses;

2. Background

The Australian banana Growers' Council has been a registered stakeholder in the Import Risk Analysis for the importation of banana fruit from the Philippines since June 2000. During this time we have maintained an active involvement in all aspects of the IRA process in order to ensure that the final determination is based on sound interpretation of the scientific evidence.

As a consequence of our intensive involvement in the IRA process over this period we have experienced a number of the inadequacies of the current system and have taken this opportunity to put before the committee some of our thoughts on how the IRA process might be improved.

3. The development of import risk analyses

3.1 Cultural Change

The ABGC believes that there remains within AFFA a view that scientifically or technically based risk assessment is unique and inherently difficult.

Government decisions in recent years have sought to deliver a much more transparent and accountable IRA process. However AFFA struggles to understand and implement the distinction between an assessment process which is scientifically based and conducted in accordance with law and government policy on the one hand and an assessment process which is determined by the scientists and AFFA staff engaged in the conduct of the assessment on the other.

In fact scientifically or technically based risk assessment is now commonplace in a wide variety of contexts which are closely controlled by legislation and policy with opportunities for legal and political review. Some examples include:

- Environmental Impact Assessments for all significant projects under Commonwealth and State legislation;
- Notifications and approvals to Environment Australia;
- Occupational Health and Safety programs under Commonwealth and State legislation;
- Licensing of Genetically modified organisms under Commonwealth and State legislation;
- Food Standards determinations under Commonwealth legislation;
- AgVet Chemical decision making under Commonwealth legislation;
- Public Health guidelines issued by NHMRC.

This issue is clearly demonstrated by a significant number of dealings between ABGC and AFFA through the life of the IRA into Bananas from the Philippines. We set out three examples.

1. The Executive Manager of Biosecurity Australia wrote to ABGC on 9 April 2001 in response to correspondence from ABGC's legal advisers to AFFA's legal advisers. She stated that summary records of the Risk Analysis Panel meetings would be placed on the public file.

The IRA has proceeded with no records of any RAP meeting being placed on the public file or otherwise published to stakeholders.

2. The IRA Handbook which sets out the Government's policies on IRAs prescribes the requirements to be met by an applicant before an IRA is commenced.

The IRA Handbook states (at paragraph 1.1):

"A proponent may request the development or review of an import policy either by asking AQIS in writing to consider a proposal to import a plant, animal, a plant/animal product, or goods associated with such commodities, or by applying to AQIS for an import permit (see Annex 3). ...For AQIS to begin the IRA process, the proponent of an import proposal must provide AQIS with sufficient information to enable an adequate analysis of the risk."

Annex 3 of the IRA Handbook includes a summary of procedures for application for access to Australia for plants and plant products. Annex 3 states (in part):

"Prior to the commencement of an import risk analysis the applicant is required to provide the scientific data from the national quarantine service of the proposed exporting country on the distribution records of pests associated with specific plants or plant products in production areas. ..."

Annex 3 of the IRA Handbook then proceeds to provide a list of technical data which proponents for an import risk analysis must provide to Australia.

Annex 3 also includes an application form (called 'Application for Permit to Import Quarantine Material and Application Completion Instructions') which proponents must complete. The application form requires proponents to provide detailed information and technical data.

When ABGC objected to the commencement of the Bananas IRA on the ground that the Philippines had not met this requirement of Australian Government policy, AFFA replied by letter dated 9 April 2002:

"... Secondly, you raise the question of whether sufficient information was provided by the Government of the Philippines to initiate the risk analysis process set out in the Handbook. While views differ as to what information may be regarded as 'sufficient' for these purposes, we consider that the document provided by the Government of the Philippines provided sufficient information to enable us to commence the analysis of risk, and that the initiation of the IRA process was in accordance with government policy."

While there are good policy arguments both for and against this position articulated by AFFA, ABGC submits that it was not in accordance with the published policy of the Australian Government.

The consequence of this departure from policy is still evident – with AFFA currently considering how much and what sort of further research Australia will fund and conduct into Philippines quarantine pests and diseases for the purpose of seeking to address gaps in the data provided by the Philippines.

3. On numerous occasions AFFA undertook to ensure that reports of the Technical Working Groups (“TWGs”) would deal with quarantine protocols and would be published to stakeholders in advance of the Draft IRA. For example:
- At a stakeholder meeting held at Brisbane on 22 August 2001, the Chair of the RAP advised stakeholders that open discussion on management options (ie quarantine protocols) would occur prior to the release of the draft IRA.
 - In a letter from the Chair of the RAP to Mr Millward (a banana grower), the Chair advised Mr Millward that “stakeholders will be consulted before the panel (ie the RAP) develops a position on quarantine risks and risk management measures.”
 - In a letter from Mr Brian Stynes (of Biosecurity Australia) to the ABGC’s legal advisers, Mr Stynes wrote:

“The TWG’s have been appointed by the RAP to consolidate and analyse information about the quarantine risks and also potential risk management options for possible import of Philippine bananas into Australia. I can assure you that most of the content of the draft technical reports will be made available to stakeholders about two to four weeks in advance of stakeholder workshops in the New Year. The technical reports will be finalised following stakeholder workshops and prior to the publication of the draft IRA. The final versions of the TWG reports will be posted on the Biosecurity Australia website.”

Ultimately the material produced by the TWGs which was published contained nothing on quarantine protocols and there was no consultation on quarantine protocols prior to the publication of the draft IRA.

3.1.1 Recommendation

The ABGC is of the view that AFFA would benefit from initiating a comparative analysis of the way other government departments or organisations manage the process of scientific risk assessment. The findings of such a study could be reviewed by a panel of independent risk assessment experts and recommendations put to the Minister for consideration.

3.2 IRA Guidelines

The IRA process is currently an administrative process governed by policy guidelines. Any departure by Biosecurity Australia from those guidelines has the potential to significantly disadvantage stakeholders participating in the IRA process. However, as the process is governed by policy guidelines, stakeholders have little or no opportunity to legally review the conduct of the process by Biosecurity Australia. The ABGC believes that this can, in some cases, result in stakeholders being denied procedural fairness which erodes credibility in the process and contributes to the perception of a lack of accountability on the part of Biosecurity Australia.

3.2.1 Recommendations

It is recommended that:

- the IRA process should be given legislative backing so that Biosecurity Australia cannot deviate from the prescribed process unless authorised under the legislation;
- decisions made in the IRA process should be subject to statutory judicial review;
- the IRA process should only be varied after consultation with stakeholders.

3.3 Consultation with Stakeholders

The ABGC believes that Biosecurity Australia should engage in real and effective consultation during the IRA process. In the ABGC's experience stakeholders expend considerable time, energy and money to respond to documents released by Biosecurity Australia or Risk Assessment Panels at various stages of the IRA process often without receiving any response from Biosecurity Australia or Risk Assessment Panels in relation to the issues of concern raised by stakeholders.

3.3.1 Recommendation

It is recommended that Biosecurity Australia and Risk Assessment Panels undertake real and effective consultation by providing specific detailed responses to all issues raised in stakeholder submissions provided during the IRA process.

3.4 Technical Working Groups

The ABGC calls for the formalisation of involvement of technical working groups (TWG's) in the IRA process.

3.4.1 Recommendations

It is recommended that:

- Biosecurity Australia publish terms of reference for work to be conducted by TWG's;
- stakeholders be consulted by Biosecurity Australia on the terms of reference for each TWG;
- TWG's be required to prepare written reports addressing each of their terms of reference;
- Biosecurity Australia or the Risk Assessment Panel not alter the terms of references for TWG's without undertaking consultation with stakeholders;
- the reports of the TWG's be published in their entirety prior to the release of the draft IRA.

3.5 Research

It is often the case in conducting pest risk analyses that a Risk Assessment Panel will identify 'gaps' in scientific knowledge which prevent the Risk Assessment Panel from properly assessing the likelihood of introduction, establishment or spread of a pest or the consequences of entry, establishment and spread of a pest. The ABGC believes that where a Risk Assessment Panel identifies gaps in scientific knowledge, the onus should be on the applicant for the IRA to undertake necessary experimental research to 'fill' the gaps in knowledge. While it is appropriate for Biosecurity Australia and Risk Assessment Panels to assist applicants in preparing appropriate experimental research protocols to fill the gaps in knowledge and to supervise that research, the ABGC believes that in no circumstances is it appropriate for Biosecurity Australia to expend public funds to undertake its own experimental research to fill gaps in knowledge. The ABGC believes that the onus should be on the applicant to demonstrate, through appropriate verifiable scientific and technical data that the importation of a particular commodity satisfies Australia's acceptable level of protection.

3.5.1 Recommendation

It is recommended that Biosecurity Australia should not expend public funds to undertake experimental research to fill gaps in scientific knowledge which is necessary in order to undertake pest risk analyses.

3.6 Market Access

The ABGC believes that there is a fine line between the Australian government discharging its international obligations in the consideration of an importation request and government quarantine agencies actually facilitating market access for an import applicant.

3.6.1 Recommendations:

- Clear guidelines should be established that dictate what Australian government quarantine agency officials involved in the conduct of an IRA can discuss and in what detail with the import applicant.
 - Details of all meetings between Australian government quarantine agencies and representatives of the import applicant should be placed on the public file within 60 days.
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