CHAPTER FIVE

THE DRAFT APPLE IMPORT RISK ANALYSIS DECISION-MAKING PROCESS

Introduction

5.1 This chapter initially examines the New Zealand request in January 1999, through MAFNZ, for access to the Australian apple market. Various parties were highly critical of BA's decision to accept this request, arguing that it was inappropriately worded, was not accompanied by sufficient information, and was politically influenced.

5.2 Subsequently, the chapter also considers the decision of BA to undertake a routine IRA, as opposed to a non-routine IRA. Various parties argued that this decision did not reflect stakeholder views, and was inconsistent with the requirements of the IRA handbook that 'technically complex' matters be subject to non-routine assessment.

5.3 Finally, the chapter discusses the decision to extend the 60-day public comment period, and whether it was disadvantageous to certain parties. It also considers the rejection of the Australian apple industry's application for research funding by the former Horticultural Research and Development Corporation (HRDC).

The Decision to Undertake a New Import Risk Analysis

5.4 During the conduct of this inquiry, a number of issues were raised with the Committee regarding BA's decision to undertake a new IRA. As noted in the previous chapter, AQIS released the final 1998 IRA on 11 December 1998. However, almost within a month (13 January 1999), it had accepted a new application from MAFNZ.

5.5 First, on 17 December 1998, the former Minister for Trade, the Hon Tim Fischer MP, released a Joint Ministerial Statement with the Hon Lockwood Smith MP, New Zealand Minister for International Trade, which stated in part:

> We reaffirmed the need to consult in a timely manner on SPS issues that affect both of us. We agreed that greater inter-agency cooperation between our respective SPS authorities in the form of more regular discussions would aid this process. We committed ourselves to identifying a process for the timely resolution of outstanding SPS issues, including apples.[1]

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1 The Hon Tim Fischer MP & the Hon Lockwood Smith MP, *Joint Ministerial Statement: Australia New Zealand Economic Relations*, 17 December 1998

5.6 Plummers BV Orchards and the APGASA argued in their written submissions that that as a result of this Joint Ministerial Statement, AQIS was placed under undue political pressure to find a speedy resolution to the quarantine impasse on the importation of New Zealand apples.[2] As stated by the APGASA:

> The fact that AQIS gave this new application a high priority, considering there are in excess of 100 other applications, including three for apples to be reviewed, suggest other external pressures have been applied to achieve a particular result.[3]

5.7 The Committee also notes the following extract from *The Orchardist* (New Zealand) in March 1999, cited by the APGASA in its written submission:

> A glimmer of hope came soon after the AQIS report was released. Australian Deputy Prime Minister and Minister for Trade Tim Fischer said he believed the issue could be resolved this year. If that does not occur the New Zealand Government is likely to take the dispute to the World Trade Organisation. New Zealand's Minister for International Trade Dr Lockwood Smith discussed the issue with Tim Fischer on 17 December in Wellington.
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> Mr Fischer agreed to finding a process to resolve the problem. Lockwood Smith commented: "That doesn't mean automatic access for New Zealand apples. It means that there is further work to be done to see how we overcome the vexatious issues that have up until now prevented us from being able to achieve access to the Australian market.[4]

5.8 A second issue raised during the conduct of the inquiry was whether AQIS followed the requirements of the *IRA Handbook* when initiating the IRA. The AAPGA, and a number of other parties such as the NSW Farmers' Association and the Northern Victorian Fruitgrowers' Association (NVFA), argued that AQIS should not have accepted the MAFNZ request until such time as MAFNZ had provided 'sufficient information to enable an adequate analysis of risk'. As stated in the IRA Handbook:

> For AQIS to be able to begin the IRA process, the proponent of an import proposal must (AAGPA's emphasis) provide AQIS with sufficient information to enable an adequate analysis of risk.[5]

5.9 Rather, the AAPGA suggested that the only new research that was submitted by MAFNZ was research by Taylor and Hale (1999) on the survival of *Erwinia amylovora* on apples in cold storage, and that that research was inconclusive.[6]

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2 Submission 4, p 1. See also Submission 26, p 4

3 Submission 26, p 1

4 Cited in Submission 26, p 4

5 AQIS, *The AQIS Import Risk Analysis Process Handbook*, 1998, p 13

6 Submission 33, pp 10-11

5.10 A third issue raised during the conduct of the inquiry was whether the MAFNZ request that Australia should determine the 'least restrictive' quarantine measures for importation of New Zealand apples was appropriate. Put simply, AQIS was not responding to a specific request for market access under certain protocols, but was being asked to determine themselves protocols for the entry of New Zealand apples.[7]

5.11 Senator Ferris raised this issue during hearings on 6 February 2001. In response, Mr Taylor, Secretary of AFFA, stated:

> In 1999 they made a request in a fashion that most countries do and we do to other countries which is consistent with the WTO framework we have operated under since 1995 – that is, they asked Australia to indicate in the least trade restrictive fashion how New Zealand apples might be brought into the country. That is why we have undertaken the detailed import risk assessment we have. We are complying with the obligation that is placed upon us within that framework.[8]

5.12 BA reiterated this point in its response to questions taken on notice on 6 February 2001. It indicated that Australia has an obligation under the WTO rules to consider all applications from other WTO members, although BA generally only considers one request from any one country at a time. In addition, the New Zealand government places high priority on access to the Australian apple market.[9]

5.13 In response to these various issues, the Committee notes that the request for access to the Australian market was consistent with WTO guidelines and international practice. The Committee acknowledges however the understandable concern of the industry that the final version of the 1998 IRA was released on 11 December 1998, but that almost within a month, BA had accepted a new application for market access from MAFNZ.

The Decision to Undertake a Routine Import Risk Analysis

5.14 During the conduct of this inquiry, a number of issues were raised with the Committee relating to AQIS' decision to conduct a routine IRA, as opposed to a non-routine IRA.

5.15 First, the AAPGA and other parties such as the NSW Farmers' Association argued in their written submission that AQIS effectively ignored the fact that 75 per cent of respondents called for the conduct of a non-routine IRA. This assertion was

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7 Evidence, RRAT, 12 February 2001, p 52, 60. Evidence, RRAT, 9 March 2001, p 378

8 Evidence, RRAT, 6 February 2001, p 6

9 Biosecurity Australia, Response to Questions on Notice 6 February 2001, p 2

based on the responses to the BA letters of 25 February 1999 and 15 April 1999, seeking comment on the conduct of the IRA (see Tables 4.1 and 4.2).[10]

5.16 Secondly, even without the results of the consultation process, the AAPGA argued that the *IRA Handbook* made it clear that the non-routine consultation process should have been adopted. The *IRA Handbook* states:

> A routine analysis process will typically be followed when the analysis is technically less complex or the proposal appears *prima facie* not to require assessment of significantly greater or different risks than those AQIS has previously examined. In a complementary way, non-routine analyses will be required where there are potentially significant quarantine risks to be evaluated that have not previously been studied by AQIS, and where the analysis is likely to be large and technically difficult.[11]

5.17 On the basis of this statement, the AAPGA and other parties such as the NVFA and NSW Farmers Association suggested that the significant quarantine risks associated with fire blight, together with the large and technically complex nature of the analysis, warranted a non-routine risk analysis.[12]

5.18 In turn, with the benefit of hindsight, various parties such as the Western Australian Fruit Growers' Association submitted that the fact that the final draft IRA is over 200 pages long, and includes 284 technical references, bears witness to the fact that the draft IRA was not "technically less complex".[13]

5.19 Similarly, the Queensland Fruit and Vegetable Growers' (QFVG) Apple Committee also noted that the draft IRA took nearly a year to prepare, nearly three times the original timeframe, indicating that the matter was in fact highly complex and warranting a non-routine analysis.[14] Likewise, the NSW Farmers' Association stated:

> The fact that the IRA took 18 months to complete suggests that there were significant quarantine risks that had not been fully assessed before and that the analysis was large and technically complex, thereby suggesting a non-routine analysis should have been undertaken.[15]

5.20 Thirdly, Mr Ranford from the APGASA argued that the fact that the New Zealand request for access to the Australia market had been framed in terms of 'the least trade restrictive protocol' brought a 'new parameter' into the process which required the adoption of the non-routine IRA:

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10 Submission 33, p 12. See also submission 36, p 3

11 AQIS, *The AQIS Import Risk Analysis Process Handbook*, 1998, p 14

12 Submission 33, p 13. See also submission 21, p 3. See also evidence, RRAT, 9 March 2001, p 389

13 Submission 42, p 8

14 Submission 10, p 8

15 Submission 36, p 3

> … if you look at the bibliography of the draft IRA there are probably only nine or 10 new scientific papers that were tabled in 1999 and 2000, so the science probably had not changed to a large degree. But the methodology of using that science was entirely different, given that we were looking at the development of an import protocol.[16]

5.21 Given these concerns, the Committee notes the recommendations of the Queensland Government in its written submission. The Queensland Government recommended that AQIS's decision to adopt a routine draft IRA process should have been open to appeal to dispel the current controversy concerning the process. In addition, even when a routine process is adopted, the Queensland Government recommended that there should be scope for involving external technical experts to ensure transparency and help maintain the confidence of stakeholders in the process.[17]

5.22 The Committee also notes the findings of the recent ANAO report *Managing for Quarantine Effectiveness*. The ANAO argued that when deciding to follow a routine or non-routine IRA process, BA should consider the likely consequence of the incursion of a particular pest. Presently, BA only considers whether the IRA is likely to be large and technically complex.

5.23 The Committee endorses this argument, and notes that considering the consequence of an incursion would improve stakeholder confidence in the final decision whether to use a routine or non-routine IRA.[18]

5.24 In the meantime, the Committee notes the response to questions taken on notice by Ms Williams from the Tasmanian Government at the Committee's hearing in Huonville on 14 February 2001:

> The Tasmanian Government has taken the stance to date that each proposed IRA is examined on its merits as to whether a routine or non-routine method should be employed. To date, the Tasmanian Government has considered that BA is sufficiently experienced that it can conduct most IRAs in-house (ie the routine approach). However, our experience with this IRA into apples has highlighted important deficiencies in the risk assessment expertise of BA and its ability to consult, particularly with industry, during the preparation of a routine IRA. Until these deficiencies are corrected we will find it necessary to recommend the more wide ranging (and expensive) non-routine approach to guarantee that exporters and industry are consulted.[19]

5.25 The Committee believes that rightly or wrongly, the decision to conduct a routine IRA led to the impression that BA was attempting to deflect industry scrutiny

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16 Evidence, RRAT, 15 February 2001, p 208

17 Submission 63, pp 3-4

18 ANAO, *Managing for Quarantine Effectiveness*, Audit Report No 47 2000-2001, June 2001, p 116

19 Tasmanian Government, Response to Questions on Notice 14 February 2001, p 5

of the conduct and findings of the IRA. Fundamentally, given the sensitivity of the issues involved, a non-routine IRA was more appropriate in the circumstances.[20]

The Decision to Extend the 60-day Public Comment Period

5.26 As indicated, during the 60-day public comment period, BA conducted a series of public meetings with industry stakeholders. In hearings, Dr Stynes indicated to the Committee that BA regarded the meetings as an opportunity to clarify issues raised by the industry, and to encourage participants to make written submissions raising any issues that needed redress in the final IRA.[21]

5.27 The Committee notes that various parties found these meetings to be unsatisfactory. For example, Mr Jarvis from the Western Australia Fruit Growers' Association submitted:

> He (Dr Stynes) focused his meeting on overheads and so on, and at the end of the day he walked away and you realised that he had not answered any of the questions that others had asked him.[22]

5.28 At the same time however, Mr Granger from the QFVG noted in defence of the BA officers:

> It is a difficult and challenging topic, as you could well imagine, but they were very open. They did their jobs professionally and quite openly, but they were on the receiving end of a fair bit of emotion that had built up for all the reasons that we have been talking about.[23]

5.29 In regard to the extension to the 60-day public comment period announced on 20 December 2000, the Committee again notes several issues raised during the conduct of the inquiry.

5.30 First, various parties requested an extension to the 60-day public comment period prior to its expiry, but were denied. For example, the APGASA indicated that it unsuccessfully requested a 180-day extension. As a result, the association submitted that its members were placed under 'unacceptable stress' to meet the deadline.[24]

5.31 Secondly, Mr Durham from the AAPGA indicated in hearings on 13 February 2001 that the AAPGA approached several statisticians in Australia for help in

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20 Evidence, RRAT, 13 February 2001, p 132

21 Evidence, RRAT, 6 February 2001, p 24

22 Evidence, RRAT, 16 February 2001, p 299

23 Evidence, RRAT, 12 February 2001, p 61

24 Submission 26, p 9

preparing the AAPGA submission, but that they were unable to help because of the tight time frame. As it later turned out, this time frame was extended.[25]

5.32 Thirdly, in its written submission, the AAPGA argued that parties that met the 60-day deadline and tendered their written submissions on time were disadvantaged by the placing of those submissions on the public record, giving other parties the opportunity to respond:

> … submissions sent by the closing date are now part of the public record and are available to all stakeholders and "interested parties". This means that stakeholders with high levels of resource are able to read all the other submissions and then write a supplementary submission refuting the points made in disagreement of their own views.[26]

5.33 In response to these concerns, Mr Taylor indicated in hearings on 6 February 2001 that the decision to extend the deadline was made because of the useful comments that BA had received up until then, and also the fact that there were still 'high profile leaders' of the industry who had not made a submission:

> The most important thing that we need to do in our role about reaching a policy determination on the New Zealand application is to make sure we have assessed all the scientific and technical aspects, that we do not leave any stone unturned. So we made again this conscious decision to extend the period by which submissions could be brought before us until 28 February.[27]

5.34 The Committee notes in this regard the written submission of the PIRSA. PIRSA indicated that it was able to meet the initial 60-day deadline, but indicated that the draft IRA is a complex document, and that a greater degree of flexibility should have been available to the secretary of AFFA.[28]

5.35 The Committee endorses the decision to extend the 60-day consultation process, in the interests of allowing all parties opportunity to comment on the draft IRA. However, it is clear that the decision to extend the consultation period should have been made well before the deadline for close of submissions, rather than retrospectively.

The Decision to Reject the Apple Industry's Application for Research Funding

5.36 Following BA's initiation of the IRA process, the AAPGA applied to the former HRDC for funding for a research project to respond to the draft IRA. In a letter dated 1 June 2000, Ms Uloth from the HRDC wrote to Mr Pullar, Principal

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25 Evidence, RRAT, 13 February 2001, p 123

26 Submission 33, p 55

27 Evidence, RRAT, 6 February 2001, p 6

28 Submission 37, p 4

Consultant with David Pullar and Associates (engaged by the AAPGA) indicating that the application for funding of $75,801.00 in 1999/00 had been approved.[29]

5.37 Subsequently however, on 6 July 2000, Mr Baxter from the HRDC sent a letter to Mr Durham of the AAPGA withdrawing the funding approval:

> This project was considered by the full HRDC Board at its June 2000 meeting and again at a teleconference held on 28th June 2000. After extensive discussion and consideration, the Board has decided not to approve this project.
>
> The HRDC Board is of the view that the proposal is directed at developing a response to the recommendations from an import risk assessment and therefore has the potential to be agri-political or used in a political manner. The Corporation is specifically prohibited by Ministerial direction from funding projects of an agri-political nature. This view was supported by opinion from AFFA.[30]

5.38 In his response to this letter dated 10 July 2000, Mr Durham replied:

> We believe that the exchange of correspondence on this project dated 1 June 2000, which confirmed the success of the proposal for funding with an approved life of project budget of $75,801, gave the industry the security to proceed with project plans, such as making travel arrangements for Dr Tom van der Zwet.
>
> To now, barely 1 month later, have the project approval recalled constitutes a critical breach of good faith between the Corporation and the Australian apple and pear industry regarding the whole R&D mechanism.[31]

5.39 In this regard, Mr Durham also noted that the industry had successfully applied for funding of research on previous IRAs.[32]

5.40 The Committee raised this matter with Mr MacNamara, previously the government director on the board of the HRDC, in estimates on 20 February 2000. Mr MacNamara indicated that the initial application was approved by a relatively inexperienced project manager (Ms Uloth) on the basis that it fell below the funding cut-off level for matters to be referred to the full Board. Subsequently however, the matter was drawn to the attention of the Board, which overturned the earlier decision to grant funding on the basis that the project was agri-political.[33]

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29 Ms Uloth, Letter to Mr Pullar, David Pullar & Associates, 1 June 2000

30 Mr Baxter, Letter to Mr Durham, CEO AAPGA, 6 July 2000

31 Mr Durham, Letter to Mr Baxter, Horticultural Research and Development Corporation, 10 July 2000

32 Evidence, RRAT, 13 February 2001, p 136. The previous project was AP646 (Technical Review of Factors Relating to Import of Apples from Countries with Fire Blight)

33 Estimates, RRAT, 20 February 2001, p 162

5.41 Mr Mike Taylor, Secretary of AFFA, elaborated this point in further correspondence with the Committee following estimates:

> Note in this regard that the project included funding for the visit to Australia of Dr Tom van der Zwet. The Land article of 29 June 2000 refers to the AAPGA fighting the New Zealand apple import application and Dr van der Zwet's activities in Australia supporting this action.[34]

5.42 AFFA also forwarded to the Committee a policy memorandum by Mr Baxter dated 22 February 2001. Mr Baxter indicated that the previous AAPGA project was approved by the HRDC because at the time it was regarded as a valid R&D project. However, he argued that the project was subsequently used in an agri-political manner, and that the AAPGA was verbally warned of the HRDC Board's displeasure at the time.[35]

5.43 Finally, Mr Taylor also indicated that the 'Ministerial direction' cited in the letter from Mr Baxter dated 6 July 2000 prohibiting the funding of agri-political projects is in accord with the longstanding *Guidelines on Funding of Consultation Costs by AFFA Portfolio Statutory Authorities*:

> The Guidelines make it clear statutory authorities may not make payments to industry organisations for the specific purpose of, or as a contribution to agri-political activities.

5.44 Accordingly, Mr Taylor rejected any implication that the reference in the letter dated 6 July 2000 constituted direct intervention by the Minister in the case of the AAPGA project.[36]

5.45 The Committee acknowledges AFFA's concerns that the AAPGA proposal was agri-political, but notes that the process was very poorly handled by the former HRDC.

5.46 As a result of the withdrawal of HRDC funding, the Australian apple and pear industry has funded privately its response to the draft IRA. Mr Durham indicated that it has spent up to $140,000 to date.[37]

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34 Mr Taylor, Letter to Senator Crane, 1 March 2001, p 1

35 Mr Taylor, Letter to Senator Crane, 1 March 2001, Attachment F

36 Mr Taylor, Letter to Senator Crane, 1 March 2001, p 2

37 Evidence, RRAT, 14 February 2001, p 168