

CHAPTER FOURTEEN

DETERMINATION OF THE FINAL IMPORT RISK ANALYSIS

Introduction

14.1 This chapter initially notes the importance of free trade and market access to Australia. Subsequently, it examines a number of issues relating to the final determination of the IRA on the importation of apples from New Zealand, including the claim by the New Zealand Government that Australia is using quarantine to block trade out of fear of competition.

14.2 In turn, the chapter emphasises that the final decision on the importation or otherwise of apples from New Zealand into Australia rightly rests with the Director of Quarantine, based on the findings of the final IRA. That said, Australia has the right to determine its own ALOP, and apply the 'precautionary principle' should the available scientific information be inconclusive.

The Importance of Free Trade to Australia and New Zealand

14.3 In evidence on 5 April 2001, the New Zealand High Commissioner to Australia, Mr Murdoch, reiterated the importance of free trade to both Australia and New Zealand, and suggested that it is important that other countries see that Australia and New Zealand deal with each other's applications for market access in a timely manner:

Negative perceptions of either of us will hamper our joint efforts around the world in trade liberalisation, especially in agricultural products. As you know from your own experience, Mr Chair, as CER partners we are already pretty active in negotiations for more liberal trade with the ASEAN block of countries under AFTA, through APEC and globally through the WTO via the Cairns Group. The way we deal with each other as CER partners in a bilateral context is being watched by other people.¹

14.4 Similarly, in its written submission, PIRSA argued that Australian producers expect that prospective trading partners will assess Australian applications for market access on a sound technical basis and in a timely manner.²

14.5 The Committee wishes to acknowledge from the outset that Australia is a major beneficiary of world trade, and that there are Australian industries which are reliant on world trade for their wellbeing. Indeed, through the Cairns Group, Australia

1 Evidence, RRAT, 5 April 2001, p 409

2 Submission 37, p 4

has been instrumental in the establishment of set rules to facilitate the freeing up of agricultural trade internationally.

The Determination of the Final IRA According to WTO Requirements

14.6 As discussed in Chapter One, the WTO Agreement framework requires that Members adopt the least trade restrictive quarantine barriers possible. However, Member countries have the right to take sanitary and phytosanitary measures necessary to protect human, plant and animal life or health, provided such measures are scientifically based, non-discriminatory and consistently applied. These requirements are discussed below in relation to the determination of the final IRA on the importation of apples from New Zealand.

Scientifically Based Risk Assessment

14.7 Article 5.1 of the SPS Agreement places a fundamental obligation on Members to ensure that sanitary and phytosanitary measures are based on a scientific assessment of risk.

14.8 In this regard, the Committee wishes to emphasise that the final decision on the importation or otherwise of apples from New Zealand into Australia rightly rests with the Director of Quarantine, based on the scientific findings of the final IRA. The Committee does not seek to dictate the findings of the final IRA on the importation of apples from New Zealand.

14.9 That said, as subsequently discussed in Chapter Sixteen, the Committee makes various recommendations for further scientific research prior to completion of the final IRA.

Consistency in the Level of Protection

14.10 Article 5.5 of the SPS Agreement requires Members to avoid arbitrary or unjustifiable distinctions in the level of sanitary and phytosanitary protection applied in different situations, if such distinctions result in discrimination or a disguised restriction on international trade.

14.11 The New Zealand Government argued in its written submission that any ban on apples from New Zealand would constitute just such a disguised restriction on international trade, 'presumably on concerns about the relative competitiveness of the Australian industry'.³ As before, the New Zealand apple industry is rated the most efficient industry in the world. The submission continued:

New Zealand is not advocating a relaxed approach to risk estimation and risk management: both Australia and New Zealand depend on agricultural exports too greatly to take such chances. But where risk is demonstrably

3 Submission 24, p ii

negligible, and where appropriate measures to mitigate risk are available, quarantine should not be used as a means of preventing trade.⁴

14.12 The Committee also received a submission from Mr Brian Chamberlin, a consultant in international trade. For the public record, the Committee notes that Mr Chamberlin has previously worked for MAFNZ, but made his submission in a private capacity.⁵

14.13 Mr Chamberlin argued that the Australian apple industry is attempting to manipulate quarantine regulations in a way which will shield it from competition, and that this action is damaging Australia's reputation as a world leader at Cairns:

I believe that these people are applying pressure and gathering public support in a way which makes it very hard for Biosecurity Australia and AQIS to make the scientific decisions they are charged with making. Any further reversing of decisions made by Australian quarantine organisations would do considerable damage to Australia's reputation as a leader in trade reform.⁶

14.14 Mr Chamberlin elaborated this argument in hearings, arguing that the Australian apple industry is 'a poor performer by international standards', but is trying to force the Australian government to adopt a zero-risk policy.⁷

14.15 The Committee acknowledges that Australia is not entitled to implement a policy of zero-risk. Clarification on this matter was provided in "EC – Hormones":

In "EC – Hormones" the Appellate Body rejected the panel's contention that the *SPS Agreement* should be interpreted on the basis of a "minimum magnitude of risk". The Appellate Body clarified that, in principle, a WTO Member could maintain a "zero-risk" approach. However, such an approach could be difficult to sustain across a range of different measures on different products, if challenged under the "consistency" provisions of Article 5.5 of the Agreement.⁸

14.16 The Committee is aware of suggestions that the New Zealand Government would be likely to challenge the current draft IRA protocols, if implemented in the final IRA, in the WTO. Indeed, Mr Chamberlin suggested in evidence that New Zealand growers would have pushed for action in the WTO following the 1998 IRA

4 Submission 24, p ii

5 Submission 3, pp 5-6. See also evidence, RRAT, 13 February 2001, p 99, 106

6 Submission 3, p 1

7 Evidence, RRAT, 13 February 2001, p 93

8 Submission 39, p 3

decision but for the Joint Ministerial Statement of 17 December 1998, indicating that the importation of apples into Australia would be revisited.⁹

14.17 In response, the Committee reiterates that the Director of Quarantine in Australia is obliged to make a final quarantine decision on the importation of apples from New Zealand in accordance with the principles enshrined in the WTO Agreement framework. During the Committee's visit to Wellington, Senator Crane restated this assurance to MAFNZ and MFATNZ officials.¹⁰

Non-Discriminatory Trade Measures

14.18 Article 5.6 of the SPS Agreement requires Members to ensure that sanitary and phytosanitary measures are not more trade-restrictive than required to achieve a Member state's ALOP, taking into account technical and economic feasibility.

14.19 In this regard, the New Zealand High Commissioner to Australia, Mr Murdoch, highlighted in hearings that Australia is obliged under WTO rules to adopt the 'least trade restrictive' protocols to mitigate against quarantine pests.¹¹ This was reiterated by Mr Wood from MFATNZ during the Committee's visit to Wellington.¹²

14.20 The Committee acknowledges the requirement that Australia adopt the 'least trade restrictive' protocols, but also notes that Australia is entitled to implement its own very conservative ALOP, provided that it is scientifically based, non-discriminatory and consistently applied.

14.21 That said, the Committee notes that were the final IRA to show that apples are not a vector for the transmission of fire blight, Australia would risk trade retaliation in the WTO were it to continue the current prohibition on the importation of New Zealand apples.

The 'Precautionary Principle'

14.22 Article 5.7 of the SPS Agreement entitles Members to take sanitary and phytosanitary measures necessary to protect human, plant and animal life or health where the science is unsure.

14.23 The Committee notes that at the conclusion of the final IRA, it may be that the scientific evidence remains uncertain. If that is the case, the Committee believes that Australia is entitled to apply the 'precautionary principle' and continue to prevent the importation of New Zealand apples, pending further research.

9 Evidence, RRAT, 13 February 2001, p 100

10 Meeting between the Committee and officials from MAFNZ and MFATNZ, Wellington, 15 May 2001

11 Evidence, RRAT, 5 April 2001, p 406

12 Meeting between the Committee and officials from MAFNZ and MFATNZ, Wellington, 15 May 2001

The Delay in Finalising the New Zealand Application

14.24 In his written submission, Mr Chamberlin argued that Australia is getting a reputation for delaying tactics, due to the length of time it takes to deal with applications to import products into Australia. The current delay in the preparation of the apple IRA is an example of this. Similarly, Mr Chamberlin claimed that the Senate Rural and Regional Affairs and Transport Committee's inquiry is also seen internationally as a delaying tactic.¹³

14.25 In response, Senator O'Brien raised Australia's application to New Zealand for the introduction of Australian honey into New Zealand, which has been ongoing since the late 1980s. Senator O'Brien suggested that the honey industry in New Zealand has been employing what Australian honey producers would equally describe as delaying tactics.¹⁴

14.26 In addition, Senator O'Brien noted that where there are internationally accepted protocols for a particular disease in a particular product, there may be minimal delays in the establishment of trade, but that where diseases are less well understood, delays in establishing trading arrangements inevitably arise. The mechanisms of the WTO permit a lengthy consideration period of an application for market access.¹⁵

14.27 Finally, the Committee notes that during its visit to New Zealand, various parties, including the New Zealand Minister for Foreign Affairs, expressed concern at the further delay in the IRA process to incorporate the changes announced by the Director of Quarantine, Mr Taylor, on 6 March 2001.

14.28 In response, the Committee endorses the measures announced by the Director of Quarantine on 6 March 2001 as a valid extension to the IRA process, particularly as relates to the development of a final scientific position.

13 Submission 3, p 1

14 Evidence, RRAT, 13 February 2001, p 102

15 Evidence, RRAT, 13 February 2001, p 103

