

CHAPTER ONE

QUARANTINE POLICY AND ANIMAL QUARANTINE POLICY ARRANGEMENTS

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Introduction

1.1 Until the recent amendment to the regulations, an Australian ban (Quarantine Proclamation 86A) on the imports of fresh, chilled or frozen, wild, ocean caught salmon from Canada and the USA had been in force since 1975. The justification for the ban was to prevent the introduction of exotic disease agents into Australia, with negative consequences for the health of fish in this country. Canada has been seeking access to the Australian market for uncooked salmon products since that time, culminating in 1994 with the initiation of formal General Agreement on Tariffs and Trade [GATT] dispute settlement consultations and ultimately the challenge in the World Trade Organisation [WTO] by Canada and the United States.¹

1.2 As a result of that challenge Australia was required to undertake an Import Risk Analysis [IRA] on the importation of salmonid products and non-salmonid marine finfish, which resulted in changes to import measures for both types of product. In the case of salmonids, quarantine restrictions were relaxed; in the case of marine finfish, quarantine restrictions were tightened.

Structure of the Report

1.3 The report discusses the development of quarantine policy, the significance of the aquaculture and recreational trout fishing industries and industry concerns in relation to the changed quarantine arrangements for salmon, the dispute in the WTO and the impact of Australia's membership of the WTO on quarantine policy, the methodology and science of the Import Risk Analysis and the process by which the IRA was developed. The Committee conclusions and recommendations are set out in the final chapter.

1 Australian Quarantine and Inspection Service, Submission 17, p 68

1.4 The Committee acknowledges that the IRA for salmonids also considered importation of non-salmonid marine finfish. The Committee has concentrated its discussion on the salmonid product, but comments on non-salmonid marine finfish where appropriate.

Quarantine Policy Development

1.5 The Australian Quarantine and Inspection Service [AQIS], is responsible for Australia's national quarantine and inspection systems, including the safeguarding of animal, plant and human health status, a significant factor in the value of some exports, including salmon and trout. AQIS' objective is to adopt quarantine policies that, wherever appropriate, are based on international standards and which provide the health safeguards required by government policy in the least trade-restrictive way.² However, if measures go beyond the relevant international standard, AQIS must undertake an import risk analysis in order to justify the measure on a scientific basis.

1.6 The *Quarantine Act 1908* provides the legislative basis for human, animal and plant quarantine in Australia.³ Since 1908 there has been a firm commitment to prevent the unplanned introduction of pathogens and parasites of animals and plants to Australia. Such measures as bans on invasive pathogens are particularly important where the potential damage would be irretrievable.

1.7 Section 4 of the Act defines the scope of quarantine and Subsection 13(1) provides the power to issue quarantine proclamations 'prohibiting the importation into Australia of any articles likely to introduce any infectious or contagious disease, or disease or pest affecting persons, animals or plants'. This power can be applied either generally or subject to conditions.

1.8 AQIS advises:

Implicit in the development of quarantine policy and practice is the understanding that natural movements, such as those of migratory birds and wind borne organisms, and the entry of people (7.5 million international visitors in 1998-99), aircraft (56 000 first port aircraft), cargo (2.5 million containers), vessels (11 000 commercial vessels) and mail (260 million

2 AQIS, *Import Risk Analysis on Non-viable Salmonids and Non-Salmonid Marine Finfish*, July 1999, p 5

3 Section 4 of the Act states:

In this Act, Quarantine has relation to measures for the inspection, exclusion, detention, observation, segregation, isolation, protection, treatment, sanitary regulation, and disinfection of vessels, installations, persons, goods, things, animals, or plants, and having as their object the prevention of the introduction, establishment or spread of diseases or pests affecting human beings, animals, or plants.

Subsection 13(1) of the Act provides, *inter alia*, that the Governor-General in Executive Council may, by proclamation, prohibit the importation into Australia of any articles likely to introduce any infectious or contagious disease, or disease or pest affecting persons, animals or plants. This power of prohibition may be applied generally or subject to any specified conditions or restrictions, which if applied, must relate to pest or disease concerns.

articles) will bring pests and diseases of animal, plants and people into Australia. Through the application of quarantine measures, AQIS aims is to reduce the risks associated the entry of people and goods to an acceptably low level...⁴

1.9 Both AQIS and the Department of Agriculture, Forestry and Fisheries [AFFA] affirmed the conservative nature of Australia's quarantine arrangements, both in their submissions and at public hearing, citing the following reason for the conservative approach:

...we would openly say we are conservative for one very justifiable reason: this country has a unique status in terms of pest and disease incidence, and it is our wish, both in the private and the public sector, to protect that status.⁵

1.10 AQIS advises in its Import Risk Analysis:

The matters to be considered when deciding whether to issue a permit are set out in section 70 of QP [Quarantine Proclamation] 1998 and include the quarantine risk, whether the imposition of conditions would be necessary to limit the quarantine risk to a level that would be acceptably low and anything else that is considered relevant. Quarantine risk means the likelihood that the importation of introduction, establishment or spread of a disease or a pest in Australia, the likelihood that harm will result (to humans, animals, plants the environment or economic) activities and the likely extent of any such harm.⁶

Trade Considerations

1.11 Australia is a relatively small economy in world terms and one which is highly dependent on trade. Within the agriculture sector, approximately 80% of the gross value of production or \$25 billion is exported.⁷

1.12 AQIS advised that, in the years preceding the GATT and WTO Agreements, Australia had become increasingly vulnerable to the use of quarantine measures as a means of discrimination against its agricultural production. AQIS stated that 'exporters were highly vulnerable to the use of quarantine measures for trade protection and in particular to blanket bans on imports of products from the whole of Australia's territory, notwithstanding the absence of diseases or pests at least in some major agricultural production regions'⁸. Australia's dependence on agricultural exports provided the impetus for it to become active in the negotiation of multilateral

4 AQIS, Supplementary Submission 62, 10 February 2000, pp 3-4

5 Dr Simon Hearn, Evidence, RRAT, 24 September 1999, p 6

6 AQIS, *Import Risk Analysis on Non-viable Salmonids and Non-Salmonid Marine Finfish*, July 1999, p 6

7 National Farmers Federation, Submission 33, p 2

8 AQIS, Submission 17, p 11

agreements that would contribute to improved market access and which would provide greater security and predicability in market access.⁹

1.13 Many submissions noted that it is in Australia's interests to remain in conformity with WTO requirements. Australia's dependence on trade has provided the impetus to its commitment to the freeing up of trade barriers. With the signing of such agreements as the Sanitary and Phytosanitary [SPS] Agreement and the Agreement on Technical Barriers to Trade [TBT], Australia has agreed to be bound by those agreements and must abide by decisions of the WTO in relation to any perceived breaches. Before Australia can implement or maintain quarantine restrictions, it must consider whether its quarantine arrangements breach WTO Agreements.

The Review of Quarantine Policy

1.14 Quarantine policy has been the subject of a number of reviews over the last several years, principally by the Bureau of Resource Sciences [BRS], a National Taskforce Review and by Professor Malcolm Nairn. The principal findings of these reviews are set out below.

Bureau of Resource Sciences and National Taskforce Reports

1.15 In 1992 AQIS commissioned the Bureau of Resource Sciences to conduct a major review of aquatic animal health and quarantine, to form the basis of a comprehensive examination of Australia's quarantine policies, practices and procedures for aquatic animals and their products. The objective of the review was to develop a scientifically justified, consistent quarantine policy that would provide the desired level of quarantine security for Australia but not unjustifiably restrict trade.¹⁰

1.16 The report recommended that, although there was a need to consider species on a case-by-case basis, in principle the importation of wild-harvested salmon could be permitted if the salmon:

- a) Could be derived from stocks with no known epidemics and be certified as such by a responsible authority of the exporting government; and
- b) Were certified as not being derived from finfish slaughtered due to quarantine emergencies or disease outbreaks; and
- c) Were individually inspected for evidence of muscle, skin, visceral or other lesions or abnormalities, and certified as free of such by a competent government authority; and

9 AQIS, Submission 17, pp 10-11

10 *ibid*, p 68

d) Were imported as eviscerated, filleted flesh to minimise possible contamination by exotic pathogens, unless other safeguards were taken to minimise possible risks.¹¹

1.17 The Government then established in June 1995 a National Task Force on Imported Fish and Fish Products to examine the BRS report and related issues. The National Task Force included representatives of relevant Commonwealth agencies, the States/Territories, commercial fisheries, recreational fisheries, importers, aquaculture interests, research organisations and the environmental movement. The task force was required to consider:

a) The nature and extent of reliance by the Australian fishing industry and aquaculture industries on imported fish and fish products; and

b) The implications of aquatic uses of such products for current and future fisheries operations and management; and

c) Changing industry practices in specific areas such as the use of imported product for feed in aquaculture and bait in commercial and recreational fisheries; and

d) Issues arising from interstate trade in fish and fish products intended for aquatic use; and

e) The range of pathways by which imported fish and fish products could be introduced into the aquatic environment and international best practice in managing these pathways; and

f) Relevant aspects of the BRS Report on aquatic animal quarantine.

1.18 The report of the National Task Force, released in December 1996, did not specifically address the importation of salmon product from the United States and Canada, but provided 46 recommendations for extensive review of existing quarantine policies for aquatic animals in general. It also made recommendations on how to undertake the review.¹²

1.19 Objectives of the two studies, the BRS review and the National Taskforce report, 'included laying the groundwork for the development of a comprehensive and consistent aquatic animal quarantine regime to support aquaculture and fisheries development, while meeting the requirements of Australia's obligations under the WTO SPS Agreement'.¹³

1.20 Other significant events around that time included:

11 *ibid*, p 69

12 *ibid*

13 *ibid*

- a) The conclusion of the Uruguay Round of the General Agreement on Tariffs and Trade,
- b) The negotiation of the Agreement on the Application of Sanitary and Phytosanitary Measures by members of the WTO,
- c) The increasing use of Australia's 'clean, green' reputation as a marketing tool,
- d) Rapid increases in the volume of world trade and international passenger movements, and
- e) Significant scientific advances in surveillance and identification procedures for plant and animal pests and diseases.¹⁴

The Nairn Report

1.21 In 1996, the Australian Quarantine Review Committee (Department of Primary Industries and Energy), chaired by Professor Malcolm Nairn, was established to undertake a comprehensive review of quarantine issues facing Australia. That review resulted in the report, *'Australian Quarantine - A Shared Responsibility'*, published in December 1996. The report made 109 recommendations, addressing all aspects of policy and procedure.¹⁵ In particular, the report made a number of recommendations relating to the import risk analysis process, all of which were accepted by Government.

The Revised Policy Framework

1.22 Following the review of the Nairn committee the Government announced a new quarantine policy framework. The impetus for the review and the policy were described in the government's response as:

The development of a global marketplace, the increased movement of people and goods internationally, and breakthroughs in communication and technology that span continents are trends that are likely to accelerate as trade and investment barriers tumble throughout the world. This is the environment in which we live, and one that exerts new and ever-changing pressures on our quarantine system.¹⁶

1.23 The 1997 Government Statement on Quarantine is based on seven key quarantine themes:

- a) Managed risk, based on science;

14 Nairn ME, Allen PG, Inglis AR & Tanner C, *Australian Quarantine – A Shared Responsibility*, 1996, pp 3-4

15 *ibid*, p ix

16 *Australian Quarantine - the Government Response*, 1997, p 8

- b) A continuum of quarantine, [pre-border, border and post-border];
- c) Community responsibility;
- d) Consultative decision-making;
- e) External input to quarantine policy;
- f) Enhanced capacity in plant and fish quarantine protection and policy;
and
- g) Delivering quarantine objectives.¹⁷

1.24 The statement also noted the necessity for quarantine decisions to be justifiable scientifically and emphasised the continuation of a cautious and conservative approach to quarantine policy. However, the Government also noted that, while retaining as an essential primary quarantine objective the protection of the health of humans, animals, plants and the environment, that objective had to be balanced with the broader trading and national interests and to take note of the very close linkage between Australia's quarantine status and export future.¹⁸ The response stated:

Australia's export future depends on our relative freedom from pests and diseases. Further, our ability to overcome quarantine barriers in potential export markets depends partly on Australia having a credible quarantine policy that is consistent with international rules and standards.¹⁹

1.25 The Government's stated approach to quarantine is that of 'managed risk', ie to manage the risks within an appropriately conservative quarantine framework as opposed to the impossible goal of a zero risk policy.²⁰ The policy response acknowledges the rights and responsibilities incurred by Australia as a member of the WTO and as a signatory to the SPS Agreement and TBT Agreement.

Revised Quarantine Administrative Arrangements

1.26 Following its consideration of the recommendations contained in the Report of the Nairn Committee and those contained in the Report of National Taskforce on Imported Fish and Fish Products, the Government revised quarantine legislation 'to ensure it reflected a realistic approach to quarantine risk analysis, and the concept of a continuum of pre-border, border and post border quarantine arrangements'.²¹

17 *ibid*, p 9

18 *ibid*, p 8

19 *ibid*

20 *ibid*

21 AQIS, Submission 17, p 66

1.27 The revised arrangements were published in the Australian Government Gazette on 7 July 1998 and revoked all previous arrangements. AQIS advises that the revised arrangements implemented a uniform system by which anything likely to introduce pests or diseases could be prevented from entering Australia or would only be permitted entry subject to conditions limiting the quarantine risk to an acceptably low level.

Salmon Quarantine Regulations in force until July 1999

1.28 Quarantine restrictions on the importation of fresh and frozen Pacific salmon, genetic material and trout product have been in place since 30 June 1975, when stringent import restrictions on salmonid products were imposed through *Quarantine Proclamation No 86A*, gazetted on 21 February 1975²². The proclamation was made on the recommendation of the Australian Fisheries Council, comprising the Commonwealth and State Ministers for Fisheries, to protect trout recreational fisheries from disease incursion.²³ Commercial salmon farming had not yet commenced, although preliminary importation of ova and breeding had begun in the 1960s.

1.29 The Proclamation prohibited the import of the following products:

- a) Live fish of the sub-order Salmonidae; and
- b) Semen or ova of fish of the sub-order Salmonidae unless the Director of Quarantine, has by instrument in writing, consented to the importation;
- c) Dead fish of the sub-order Salmonidae, or any parts (other than semen or ova) of fish of that sub-order, in any form unless:
 - i) Prior to importation into Australia, the fish or fish parts have been subject to such treatment as, in the opinion of the Director of Quarantine is likely to prevent the introduction of any infectious or contagious disease or a disease or pest affecting persons, animals, or plants; and
 - ii) The Director of Quarantine, or a person authorised by him, has, by instrument in writing, consented to the importation.²⁴

1.30 One of the reasons advanced for the prohibition on the importation of non-viable salmonid products was to protect Australia's virtual disease-free salmonid population, including the recreational trout fisheries, from specific exotic diseases. Canned products and salmon smoked at certain specified temperatures were not prohibited. The policy predated the establishment of commercial salmonid farming in Australia.

22 *ibid*, p 65

23 *ibid*

24 *ibid*

1.31 Section 43 of the Quarantine Proclamation 1998²⁵, and amending quarantine policy generally, dealt with the importation of fish of the salmonidae family as follows:

- (1) The importation into Australia of fish of the family Salmonidae, or any part of such a fish, in any form (including canned fish, dried fish, processed fish and fish meal) is prohibited.
- (2) The importation into Australia of the roe or caviar of fish of the family Salmonidae is prohibited.
- (3) However, subsections (1) and (2) are not taken to prohibit the importation of canned fish, canned roe or canned caviar of that family if the fish:
 - (a) is contained in a hermetically sealed container; and
 - (b) has been heat-treated in that container so as not to require refrigeration or freezing to maintain its quality.
- (4) Also, subsections (1) and (2) are not taken to prohibit the importation by a person of fish, fish parts, roe or caviar of that family if:
 - (a) a Director of Quarantine has granted the person a permit to import the fish, fish parts, roe or caviar into Australia; and
 - (b) when the fish, fish parts, roe or caviar is landed at a place in Australia;
 - (i) the permit or a copy is produced to an officer at the place; or
 - (ii) the details necessary to identify the permit are given to an officer electronically.
- (5) Also subsections (1) and (2) are not taken to prohibit the importation by a person of fish, fish parts, roe or caviar of those families of a Director of Quarantine has granted the person a permit to import the fish, fish parts, roe or caviar into Australia.

1.32 AQIS advised that:

- a) The provisions in section 43 maintained the position of general prohibition with entry permission of individual consignments being considered by the Director of Quarantine and subject to specific conditions; and
- b) This system of controls was consistent with that expressed in the previous Proclamation 86A.²⁶

1.33 A further amendment of the quarantine regulations was gazetted on 4 May 1999, permitting small amounts of canned or smoked product for personal consumption or use to be imported.

25 Gazetted on 7 July 1998

26 AQIS Submission 17, p 66

The Policy Impact of the WTO and the Dispute

1.34 Australia is a signatory to many international agreements. The principal agreement affecting quarantine policy is the Sanitary and Phytosanitary [SPS] Agreement. The most significant provisions in this agreement and the other major agreements are discussed in detail in Chapter Two. However, it is appropriate to touch on the impact of the recent decisions of the WTO on current policy.

1.35 Canada challenged Australia's import controls under the terms of the SPS Agreement. The dispute was decided in 1998, when the Panel found against Australia on two principal grounds:

- a) Australia's import risk analysis on uncooked wild caught Pacific salmon from Canada did not fulfil all the requirements of the SPS Agreement in relation to a risk analysis and there was no risk analysis to support the restrictions on the importation of other uncooked salmon products; and
- b) There were arbitrary or unjustifiable distinctions in the level of protection applied by Australia in relation to salmon and other fish, and these distinctions resulted in a disguised restriction on international trade.²⁷

1.36 The WTO decision, upheld on appeal, argued that the 1975 Proclamation 86A breached WTO rules, because it was not based upon a risk assessment as defined in Section 5.1 of the SPS Agreement. The December 1996 IRA was deemed not to be a proper risk assessment 'principally because its assessment did not go beyond disease identification to address the probability of entry establishment or spread according to the measures which might be applied to reduce or manage the risk.'²⁸

Current Quarantine Policy on Salmonids and Non-Salmonid Marine Finfish

1.37 Following the ruling in the WTO, a further risk assessment process on salmonids, ornamental finfish and non-salmonid marine finfish was undertaken and as a result of that later process, revised quarantine arrangements were announced on 19 July 1999. The revised measures were implemented through a series of Animal Quarantine Policy Memoranda [AQPM], released over the ensuing few months.

Animal Quarantine Policy Memoranda

1.38 AQIS issues AQPMs when advising proposed or actual changes to quarantine policy. A series of AQPMs have been issued since the IRA was completed. The most significant are discussed below.

27 AQPM 1999/51, 19 July 1999, p 3

28 Department of Foreign Affairs and Trade, Submission 21, p 14

*Animal Quarantine Policy Memorandum 1999/51*²⁹

1.39 AQPM 1999/51, published on 19 July 1999, contains the outcomes of the risk analyses and the criteria to be used when deciding whether to grant import permits. The AQPM relaxed the import controls on salmon, however, following the publication of this AQPM, in order to be able to bring salmon product to Australia, exporting countries had to be able demonstrate to AQIS that they were able to meet Australia's conditions and that the product was consumer ready.

1.40 AQIS argues that, while there was some relaxing of controls on salmon products, the net impact on imports was a tightening of controls:

...the new policies are intended to have the net effect of tightening quarantine control over about 100,000 tonnes of imports whereas it is unlikely that additional imports of salmonids will exceed several thousand tonnes. A proportion of this is likely to be sourced from New Zealand whose aquatic health status is similar to Australia's, and under AQIS's new policies (particularly for control of risk of whirling disease) presents negligible disease risk.³⁰

1.41 The policies as announced in the AQPM provide for:

- a) Measures for the importation of fresh, frozen and chilled non-viable salmonid product [Attachment 1 to the AQPM];
- b) The introduction of additional quarantine conditions for the importation of non-viable marine finfish products [Attachment 2 to the AQPM];
- c) The tightening of the quarantine conditions for live ornamental finfish [Attachment 3 to the AQPM].³¹

Measures for Non-viable Salmonids

1.42 The policy determination permitted the import into Australia of fresh, frozen and chilled non-viable salmonid product under certain conditions:

- a) The fish should be eviscerated;
- b) The fish should not be derived from a population slaughtered as an official disease control measure;
- c) The fish should not be juvenile salmonids or sexually mature adults/spawners;

29 Appendix 5

30 AQPM 1999/51, 19 July 1999, p 2

31 *ibid*, pp 2-3

- d) The fish should be processed in premises under the control of a competent authority;
- e) The head and gills should be removed and internal and external surfaces thoroughly washed;
- f) The fish should be subjected to an inspection and grading system supervised by a competent authority;
- g) In addition, for farmed fish, the fish should be derived from a population for which there is a documented system of health monitoring and surveillance administered by a competent authority;
- h) Consignments exported to Australia should be accompanied by official certification confirming that the exported fish fully meet Australia's import conditions (as specified on an import permit issued by AQIS).³²

1.43 In the case of non-viable salmonid product from New Zealand, the importation restrictions were relaxed to permit the importation of salmonids, other than rainbow trout, without the head and gills removed. Product from countries other than New Zealand derived from non-viable salmonids meeting the policies would be released from quarantine if imported in consumer ready form, as specified in the AQPM.

1.44 The AQPM further provided for the importation of non-viable salmonid product from countries other than New Zealand, "in consumer ready form", ie:

For the purpose of these policies, consumer ready product is product that is ready for the householder to cook/consume, such as cutlets, fillets (without skin), skin-on fillets if less than 450g weight and headless fish of 'pan-size' (ie less than 450g weight). Product that has been cooked for human consumption (eg canned, hot smoked, flash fried) is also regarded as consumer-ready product. Imported head-off, gilled and gutted salmonids of greater than 450g weight (ie, not consumer ready) should be processed to consumer-ready form in premises approved by AQIS before release from quarantine.³³

1.45 It was this last requirement which was the subject of the adverse finding by the WTO in February 2000.

Measures for non-salmonid marine finfish

1.46 While the import controls for salmonids were relaxed, those for non-salmonid marine finfish were tightened. With effect from 1 December 1999, importers of non-

32 AQPM 1999/51, Attachment 1

33 *ibid*

salmonid marine finfish product were required to obtain an import permit. AQIS advised that this requirement is warranted by the outcome of the import risk analysis.

1.47 The policies applying to the importation of non-viable, non salmonid marine finfish are that either:

- a) The fish should be processed in a premises under the control of a competent authority; and
- b) The fish should be eviscerated;
- c) The fish should be subjected to an inspection and grading system supervised by a competent authority;
- d) The head and gills should be removed and internal and external surfaces thoroughly washed;
- e) Consignments exported to Australia should be accompanied by official certification confirming that the exported fish meet Australia's import conditions in full; or
- f) For product that has been further processed (beyond that described above) to a consumer-ready state, AQIS will not require an official health certificate.

1.48 If neither of the above options applies, the policies require an importer to apply for an import permit, specifying:

- a) Details of the finfish species to be imported;
- b) The waters in which the fish were farmed (if applicable) and harvested;
- c) The intended end use of the imported fish.

1.49 AQIS assesses the application in light of the quarantine risks presented and if the delegate concludes that the proposed importation is consistent with Australia's appropriate level of protection (ie it presents an equivalent level of risk to certified, inspected, headless, eviscerated, washed fish), a permit for the importation of single or multiple consignments during a specified timeframe will ordinarily be granted.

1.50 Under the amended policies, AQIS states that non-salmonid marine finfish may continue to be imported into Australia. However, imports of certain marine finfish species would be subjected to additional controls to address risks associated with specified diseases.³⁴ For non-susceptible species, the most significant change

³⁴ For whole, round, commercially-harvested, market-size non-salmonid finfish, the disease agents which require specific risk management are: aquabirnaviruses, IPNV, Iridovirus of red sea bream, *A. salmonicida* and *Photobacterium damsela subsp. piscicida*. For *A. salmonicida*, risk management applies to all farmed marine

was that importers would be required to obtain an import permit from AQIS, except for consignments of fish that are head-off, gilled, gutted, inspected and accompanied by an official health certificate (when no import permit would be required) or for consumer-ready product (as defined above).

1.51 Non-viable marine finfish caught in New Zealand's EEZ were required to be accompanied by official certification stating that they were of New Zealand origin.

The importation of live ornamental finfish

1.52 The policy for all ornamental finfish is that each consignment is to be accompanied by:

- a) An animal health certificate from a competent authority attesting to the health of the fish in the consignment and the health status of the premises of export;
- b) Certification from a competent authority that the premises of export are currently approved for export to Australia; and
- c) Certification from a competent authority that the fish had not shared water with food-fish aquaculture premises.

1.53 Consignments are subject to post-arrival quarantine detention for a minimum period in approved private facilities under quality assurance arrangements approved by AQIS. The minimum period of quarantine is three weeks for goldfish and one week for all other Schedule 6 listed finfish.

1.54 In addition to the above policies, delegates must have regard to the following risk management measures singly or in combination, as appropriate to the pathogens of concern, to the importation of ornamental finfish to address specific disease concerns:

- a) Health certification from the competent authority that the source of the fish was free of specified disease agents;
- b) Testing of the source population of the fish for specified disease agents;
- c) Pre-export visual inspection;
- d) Visual inspection at the border to identify overtly diseased consignments and to ensure that the fish are of species listed on Schedule 6;

finfish species but not to wild-caught non-salmonid marine finfish. For all other disease agents, risk management applies only to susceptible species (as specified in the IRA).

- e) Quarantine security over procedures in quarantine premises, including the disposal of sick and dead fish, transport water, packaging materials and other waste;
- f) Testing of imported fish, on a random or routine basis, to address the likelihood that unwanted disease agents may be present in a consignment, and/or to provide additional data to improve targeting of risk management measures generally;
- g) If the presence of specific disease agents is suspected or confirmed by diagnostic testing, AQIS may require appropriate treatment of imported fish;
- h) Increased post-arrival quarantine over the minimum indicated period (for example, due to concerns over the risks posed by iridoviruses, the minimum quarantine period for gouramis and cichlids will be 2 weeks).

1.55 The arrangements set out above were clarified in a series of AQPM's issued subsequent to the AQPM 99/51, including:

- a) AQPM 1999/64 dated 22 September 1999, which summarised new policies for the importation of product derived from freshwater and marine finfish other than salmonids;
- b) AQPM 1999/65 of 23 September 1999, which advised new policies for the importation of personal consignments of non-viable salmonid product and continuation of non-viable salmonid product and continuation of pre-existing policy for the importation of other salmonid products not intended for human consumption;
- c) AQPM 1999/66 of 23 September 1999, which set out proposed revised quarantine policies for the importation of salmonid roe and uncanned, thermally-treated salmonid products, ie smoked salmon;
- d) AQPM 1999/69 of 20 October 1999, which clarified arrangements for the importation of uncanned salmonid product in accordance with the policies announced in AQPM 1999/51;
- e) AQPM 1999/70 of 21 October 1999, which confirmed the arrangements for importation of specified thermally-treated salmonid products in accordance with the proposals in AQPM 1999/66.

AQPM 1999/64 - product other than salmonids

1.56 AQPM 1999/64 dated 22 September 1999 summarised new policies for the importation of product derived from freshwater and marine finfish other than salmonids. This memorandum clarifies the administrative arrangements for the importation of non-salmonid marine and fresh-water finfish product. These arrangements are set out in Appendix 1, which contains a summary and 4 parts, as follows:

- a) Part A: Importation of non-salmonid finfish product in consumer-ready form.
- b) Part B: Importation of non-salmonid finfish product from New Zealand.
- c) Part C: Importation of eviscerated, head-off non-salmonid finfish product in a consignment accompanied by a health certificate.
- d) Part D: Importation of other non-salmonid finfish product.

1.57 The general effect of the rulings in the AQPMs is:

- a) For non-viable salmonid products importation is prohibited unless the Director of Animal and Plant Quarantine has issued a permit for importation, with some exceptions;
- b) With the exception of salmonid fish, prior permission is generally not required to import non-viable marine finfish or their products;
- c) Compounded fish feeds and meals derived from aquatic animals (eg fish meal) require prior permission but may be imported subject to compliance with the requirements set out in an AQIS import permit;
- d) Prior permission is required to import live salmonids and their genetic material [no imports have been approved since 1975];
- e) Live ornamental finfish may be imported, subject to inspection on arrival;
- f) Other species of marine finfish require prior permission, which has only been granted on a case-by-case basis for public display or scientific purposes.³⁵

1.58 Companies wishing to import and process salmon must enter into a compliance agreement with AQIS under Section 66B of the *Quarantine Act* 1908. Companies wishing to enter into a compliance agreement, which will incorporate the company's operations manual, to be submitted to AQIS for approval, must demonstrate to AQIS that they can provide the following:

- a) A system of control over all parts of the process that will quickly detect any significant departure from AQIS's conditions and implement corrective action;

35 AQIS, *Import Risk Analysis on Non-viable Salmonids and Non-Salmonid Marine Finfish*, July 1999, p 7. The exceptions are canned fish, roe or caviar of salmonid fish, which can be imported without a permit.

- b) A system of record keeping that clearly reports when corrective action has been required and implemented and the action taken to prevent the recurrence of similar problems;
- c) Suitably trained company staff and employees who will carry out all their tasks to the standards specified in the manual and approved by AQIS.³⁶

1.59 As at 10 February 2000, AQIS had issued 19 permits for the importation of salmon product from New Zealand, three for Canada and two for the United States. A total of 16,605 kg of salmon had been imported from New Zealand through Sydney, Melbourne, Perth or Brisbane.³⁷

Further WTO Findings

1.60 On 18 February 2000, the WTO released the findings of the subsequent Canadian challenge on the restrictions remaining in place in Australia. The WTO supported the Australian risk analysis approach and most of the import controls imposed by Australia. However, the WTO found that the consumer ready requirement was unnecessarily restrictive.

1.61 The Panel found against Australia on the following measures:

- a) The consumer ready requirements were not supported by the risk assessment and were more trade restrictive than necessary to meet Australia's appropriate level of protection;
- b) The Tasmanian measures were found to be inconsistent with the WTO agreement and not supported by the AQIS IRA.

1.62 On 17 May 2000, the Minister for Trade, the Hon Mark Vaile, announced that Australia and Canada 'had reached a mutually satisfactory settlement of Canada's WTO complaint on salmon'.³⁸ The Minister announced that the consumer ready requirement had been replaced by controls on processing including detailed packaging and certification requirements and legally enforceable compliance conditions for processors.³⁹ The text of the Bilateral Statement is at Appendix Three.

Major Issues

1.63 The Committee received considerable evidence from a number of groups and individuals from industry, government, academics and the community in relation to the decision to allow the importation of some salmon products into Australia. The

36 AQIS Submission 17, Part C, pp 78-79

37 AQIS, Supplementary Submission 62, p 5

38 *Trade News*, 17 May 2000

39 *ibid*

issues of concern which have emerged as a result of the salmon dispute and the resulting quarantine policy changes include:

- a) The potential impact of the decision on certain industries, principally the aquaculture and recreational trout fishing industries;
- b) The conduct of the risk analysis process by AQIS, including the public understanding of risk assessment and risk management in policy making;
- c) The consultation process, including the transparency requirement under the international agreements;
- d) Concerns in relation to the uncertainty or incompleteness of the science;
- e) The determination of the Appropriate Level of Protection [ALOP] and the communication of that standard;
- f) Insufficient consideration of the consequences of the decision, especially economic consequences and the impossibility of eradicating diseases, once established;
- g) The role of the WTO and its impact on the development of Australian quarantine policy and procedure;
- h) The dispute settlement process in the WTO and Australia's arrangements for handling such disputes;
- i) The actual conduct of the litigation in the WTO and the adequacy of Australia's administrative arrangements for international law.

1.64 Another significant issue which arose during the course of the inquiry was the Tasmanian decision to undertake its own IRA and to implement its own quarantine measures. This matter is further discussed in the body of the report.

1.65 Submissions expressed concern about the potential impacts of the decision, both in terms of economic impacts and potential disease risks.

1.66 The Committee notes that representations were both supportive and critical of the decision, depending on the potential impact on a particular industry. For example, the pet industry advocates and those from the tuna and lobster industries were critical of any attempt to tighten import restrictions further, while the trout and salmon industry stakeholders were concerned at the potential impact of the relaxation import restrictions. Similarly, export industries, such as the sugar and beef industries, are vulnerable to reprisals if AQIS does not act promptly in response to WTO rulings. The Committee received advice from the Cattle Council of Australia that the draft retaliatory list published by the Canadian Government includes Australian beef

products worth approximately \$4 million, to an industry worth \$91.8 million in 1998.⁴⁰

1.67 These contrasting views are indicative of competing trade interests and serve to highlight the difficulty faced by government which must balance the competing interests when making judgements about the determination of policy and consequential supporting measures.

Committee Approach to the Inquiry and its Significance

1.68 The inquiry is an examination of the effectiveness of the legal and regulatory regimes within AQIS, having regard, in particular, to the administrative procedures and decision-making processes involved in the recent decision to allow the importation of salmon products into Australia. However, the Committee considers that the inquiry is of considerably broader significance than an examination of the decision to relax import controls on salmon. In particular, the Committee is concerned about the degree of importance placed on international law in general and dispute settlement in particular. The present arrangements appear to be unsatisfactory.

1.69 If Australian quarantine arrangements are to maintain their integrity and survive challenges in the WTO or not be subject to challenge in the first instance, Australia's internal arrangements for determining its ALOP and quarantine measures, and for undertaking its import risk analyses, must be rigorous. The WTO and litigation under such agreements as the SPS Agreement will be increasingly significant for Australian quarantine arrangements. It is essential that agencies such as AQIS and DFAT ensure that their processes and the quarantine regime safeguards Australia's interests and able to withstand challenge.

1.70 Some submissions to the inquiry and oral comment were critical of the competence and integrity of AQIS and its staff. The Committee wishes to place on record that it has no reservations in relation to the personal integrity of AQIS staff in the conduct of their duties.

1.71 However, the Committee is seriously concerned about some critical aspects of AQIS' operations and its procedures in relation to the IRA process and the WTO challenge. For example, the Committee is particularly concerned about the widespread release of the draft IRA, including indicative conclusions. In the Committee's view, the release of the document to such parties as Canada was prejudicial to Australia's interests in the WTO.

