

# CHAPTER ONE

## The inquiry

1.1 This is the Committee's second inquiry into the importation of New Zealand apples. The inquiry was initially self referred by the Committee on 9 March 2004 with the following terms of reference:

The administration of Biosecurity Australia with particular reference to the assessment, methodology, conclusions and recommendations contained in the Revised Draft Import Risk Analysis report on the Importation of Apples from New Zealand released in February 2004.

1.2 The Committee advertised the inquiry in *The Australian* on 10 March 2004. During the inquiry the Committee received 37 written submissions, including three supplementary submissions. Contributions were made by the New Zealand government, the peak Australian apple and pear body and a range of other Australian apple and pear industry organisations. A list of submissions received by the Committee is included in Appendix 1.

1.3 Due to workload and the imminent 2004 federal election the Committee was unable to conduct hearings in apple growing regions. Instead, industry representatives and Biosecurity Australia appeared at public hearings in Canberra on 31 March 2004 and 30 June 2004. A list of witnesses to appear before the Committee is included in Appendix 2.

1.4 However, the Committee did not complete the inquiry prior to the election being called. On 1 December 2004, the Committee reported that fact to the Senate, together with a recommendation that the Senate refer the matter to the Committee to finalise. On the adoption of that report, the administration of Biosecurity Australia with particular reference to the import risk analysis (IRA) of apples from New Zealand, was again referred to the Committee. A further hearing was held on 9 February 2005.

1.5 A Hansard record of the Committee's hearings is available on the web at [www.aph.gov.au](http://www.aph.gov.au).

## Background

### *Australia's WTO rights and obligations*

1.6 Australia is a signatory to the World Trade Organisation's (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Under this agreement, member states are entitled to "take sanitary and phytosanitary

measures necessary for the protection of human, animal or plant life or health".<sup>1</sup> This right is limited by member states' obligation to ensure their SPS measures are not more trade restrictive than necessary to achieve an appropriate level of protection (ALOP) from pests and disease.<sup>2</sup>

1.7 International standards for phytosanitary measures are set by the International Plant Protection Convention, to which Australia is a contracting party. The WTO SPS Agreement requires that SPS measures enforcing a higher standard of protection than international standards be based on a scientific assessment of risk. The risk assessment must be based on sufficient scientific evidence and shall contemplate factors such as:

- Processes and production methods;
- Inspection, sampling and testing methods;
- Prevalence of specific pests and diseases and the existence of pest/disease free areas;
- Ecological and environmental conditions;
- Economic impact of loss of production and cost of control/eradication.<sup>3</sup>

1.8 Biosecurity Australia's undertaking of the IRA for New Zealand apples reflects Australia's obligations under Article 5 of the SPS Agreement.

### ***Biosecurity Australia's IRA process***

1.9 The entire IRA process is documented in Biosecurity Australia's IRA Handbook, specifying the step-by-step procedure that must be followed before a final IRA is produced and the Director of Quarantine makes a determination detailing import requirements.

1.10 The Handbook establishes the procedures to be followed in relation to the preparation of a draft IRA, as well as the requirement for it to be publicly released with the opportunity for affected parties to submit comments on the draft.

1.11 Step 16 of the Handbook states that:

If new information comes to light that may significantly affect the analysis, or if the IRA team identifies the need to make significant changes to the analysis in finalising the IRA Report, the IRA team, in consultation with the

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1 Article 2.1 of the WTO SPS Agreement, [www.wto.org/english/tratop\\_e/sps\\_e/spsagr\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm), accessed 5 October 2004

2 Article 5.6 of the WTO SPS Agreement. ALOP is also frequently referred to by Biosecurity Australia as 'acceptable risk'.

3 Articles 5.1-5.3 of the WTO SPS Agreement, [www.wto.org/english/tratop\\_e/sps\\_e/spsagr\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm), accessed 5 October 2004

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Executive Manager of Biosecurity Australia, may consider whether it would be appropriate to prepare a revised Draft IRA Report for stakeholder consultation.<sup>4</sup>

1.12 Further, the release of a revised draft IRA is followed by an additional consultation period whereby stakeholders are given 60 days to comment on the report.<sup>5</sup>

### ***The IRA for New Zealand apples***

1.13 The current apples IRA process was instigated in 1999 following a New Zealand request for Australia to present its assessment of the least trade restrictive quarantine regime under which New Zealand apples could be exported to Australia.<sup>6</sup> This follows New Zealand's earlier attempts to export apples to Australia in 1986, 1989 and 1995.<sup>7</sup>

1.14 This process differs from New Zealand's attempts prior to 1999 to export apples to Australia, where Australia rejected New Zealand's proposed SPS measures. On this occasion, New Zealand has requested that Australia propose the least trade restrictive risk mitigation protocols it could impose while maintaining an appropriate level of quarantine protection from pests and disease.<sup>8</sup>

1.15 Presently only fuji apples from Japan are permitted into Australia, subject to certain protocols.<sup>9</sup>

1.16 The revised draft IRA for the importation of New Zealand apples follows Biosecurity Australia's release of a draft IRA on 11 October 2000; the subject of the Committee's interim report on the importation of New Zealand apples tabled in the Senate on 18 July 2001.<sup>10</sup>

1.17 The 2000 draft IRA attracted considerable criticism from industry representatives from both sides of the Tasman, as well as sections of the scientific community. These criticisms broadly concentrated on:

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4 Biosecurity Australia, *Import risk analysis handbook*, Canberra, 2003, p. 16

5 Biosecurity Australia, *Import risk analysis handbook*, Canberra, 2003, p. 16

6 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 7

7 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 13

8 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 7

9 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 2

10 RRAT Legislation Committee, *The Proposed Importation of Fresh Apple Fruit from New Zealand: Interim Report*, July 2001

- (i) the consultation process between Biosecurity Australia and industry;
- (ii) a methodological leaning towards qualitative rather than quantitative analysis;
- (iii) the validity of the science cited in the draft IRA.<sup>11</sup>

1.18 The Committee's predecessor's interim report on the 2000 draft IRA made fifteen recommendations regarding various aspects of the development of a final New Zealand apple IRA.<sup>12</sup> Some of these addressed issues pertaining to the generic IRA process, others to the specifics of the apples IRA. The salient recommendations and government responses<sup>13</sup> are as follows:

- Introducing procedures to allow appeals on IRAs to the Administrative Appeals Tribunal. The government rejected this on the basis that the IRA process is not statutorily based;
- The development and publication of guidelines establishing the IRA consultative process, and greater direct contact with stakeholders. The guidelines outlining Biosecurity Australia's consultative process are contained in the rewritten 2003 Handbook, while Biosecurity Australia's representatives now also travel to relevant areas to hear feedback and provide direct information to stakeholders;
- Quantitative risk evaluation in preference to qualitative risk evaluation. The government's response did not directly endorse one methodology over another, however when compared to the 2000 draft IRA the revised draft version has shifted towards quantitative risk evaluation;
- Biosecurity Australia commission research into whether mature apples can carry transmittable fire blight bacteria and the role of vectors in transmitting fire blight. The government responded by indicating that the feasibility of additional research was being considered, though this has not been undertaken. The Committee notes that additional research was undertaken on behalf of the New Zealand authorities, but this is not available to the Committee (see paragraphs 4.45 to 4.52);
- Biosecurity Australia conducts tests in New Zealand packing houses to assess the processing requirements for ensuring trash free apples. The government response indicated that trash issues would be considered in more detail.

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11 RRAT Legislation Committee, *The Proposed Importation of Fresh Apple Fruit from New Zealand: Interim Report*, July 2001, p. xii

12 RRAT Legislation Committee, *The Proposed Importation of Fresh Apple Fruit from New Zealand: Interim Report*, July 2001, pp. xiii - xv

13 Senator I Campbell, *Senate Hansard*, 20 March 2003, p. 9888

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However, the revised draft IRA has removed trash as a component of BA's risk modelling; and

- Include in the IRA advice from the Agricultural and Veterinary Chemicals National Registration Authority (NRA) as to the circumstances in which the spraying of streptomycin to combat fire blight would be permitted. The revised draft IRA does not specifically do this, though the possibility of its use is referred to.<sup>14</sup> The government's response stated that the NRA has advised that it could issue emergency use permits for three months.

1.19 The Committee notes that the revised draft IRA did not base its assessment on the risk posed by mature apples as vectors for fire blight on Australian based research as recommended in its predecessor's report. Nor was the related issue of trash considered in more detail in the revised draft IRA. In fact the issue of trash was not fully considered as the IRA is predicated on the assumption that the imported fruit will be trash free.

1.20 A revised draft IRA for the importation of New Zealand apples was undertaken and released on 19 February 2004.<sup>15</sup> At the request of the apple and pear industry, many of whom were undertaking their harvest when the revised draft was released, BA agreed to extend the comment period from 60 to 120 days.

1.21 On 11 March 2004 the Committee released its final report on the proposed importation of fresh apple fruit from New Zealand; an inquiry instigated following the release of the 2000 draft IRA. This report indicated the Committee's agreement to conclude the Senate's initial reference and commence this inquiry on the revised draft IRA.<sup>16</sup>

1.22 In August 2004 the Minister announced the establishment of an Eminent Scientists Group to provide independent examination of proposed final IRAs before their release. Their role is to:

- (i) ensure the IRA panel adequately considered the technical submissions received during the consultation period, and;
- (ii) recommend necessary action to overcome any identified deficiencies, if any.<sup>17</sup>

1.23 The Committee notes that this initiative does not affect the IRA appeal process specified in the Handbook.

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14 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 120

15 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 1

16 RRAT Legislation Committee, *The Proposed Importation of Fresh Apple Fruit from New Zealand: Final Report*, March 2004

17 DAFF Press Release, *New arrangements to strengthen import risk analysis*, 16 August 2004

1.24 Following the publication of the final IRA, step 20 of the Handbook provides for an appeal process to an independent IRA appeal panel. However, the basis of any such appeal is limited to the following grounds:

- (i) deviation from the process established by the Handbook; and
- (ii) lack of consideration of a significant body of relevant evidence.<sup>18</sup>

1.25 Significantly, the IRA team's interpretation and application of the available scientific evidence, as well as any assessment of quarantine risk levels, does not provide grounds for appeal. Therefore, if industry believes the IRA team has drawn incorrect conclusions on the basis of the available science, no appeal on the final IRA is possible through the IRA appeal panel.

1.26 At its hearing on 9 February 2005 the Committee sought an indication as to the IRA's present status and what further work, if any, would be undertaken on the IRA report for apples from New Zealand. The Committee was informed that:

**Mr Cahill** - It is essentially the task of the panel to inform me of their view of that. Given that there are 200 submissions from stakeholders, there is a fair bit of work that still needs to be done by the import risk analysis team, and I expect that a new draft would be issued. But the actual details of that and how quickly we might be able to progress with that is a matter for consideration once I have received the panel's report.

**Senator Cherry** – It would certainly be a new draft. You would not be proposing to go straight to the final report at this stage?

**Mr Cahill** – That is correct.<sup>19</sup>

## Scope of the report

1.27 The Committee notes Biosecurity Australia's advice that further work will be undertaken on the revised draft IRA report for apples from New Zealand prior to its re-release. None the less the Committee believes that the issues placed before the Committee during its inquiry and the Committee's own views should be placed on the public record and it does so with this report. In doing so, the Committee hopes that the review process to be undertaken by Biosecurity Australia will note and act on the Committee's findings where appropriate.

1.28 Chapter Two considers the recent ruling by the WTO's Appellate Body in relation to the case of *Japan – Measures Affecting the Import of Apple*. During the inquiry conflicting evidence was provided asserting the significance of the decision to Australia's circumstance. These arguments are presented in that chapter.

1.29 Chapter Three focuses on the issues raised in evidence relating to the specifics of the revised draft IRA report. Regional concerns are also outlined in this chapter.

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18 Biosecurity Australia, *Import risk analysis handbook*, Canberra, 2003, p. 17

19 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 9 February 2005, p. 3

1.30 Chapter Four examines Biosecurity Australia's administration of the IRA process, including the nature of some evidence it provided to this Committee.

1.31 The final Chapter briefly outlines lessons from this process that, in the Committee's view, Biosecurity Australia should apply to any further work it conducts on the IRA for apples from New Zealand.

### **Acknowledgements**

1.32 The Committee would like to thank those who participated in the inquiry, often meeting difficult time lines. It appreciates the work undertaken to provide both written and oral evidence and acknowledges the debt this report owes to that work.

