The Senate

Rural and Regional Affairs and Transport Legislation Committee

Administration of Biosecurity Australia – Revised draft import risk analysis for apples from New Zealand

March 2005

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Recommendations

Recommendation 1

3.24 The Committee recommends that Biosecurity Australia requires that the trash free certification process be administered by AQIS officers in New Zealand in conjunction with their New Zealand counterparts.

Recommendation 2

3.47 The Committee recommends that Biosecurity Australia review the weighting given to the economic consequences in its risk modelling.

Recommendation 3

3.78 The Committee recommends that Biosecurity Australia require any inspection of New Zealand orchards for fire blight symptoms to be conducted by AQIS officers together with their New Zealand counterparts.

Recommendation 4

4.28 The Committee recommends that Biosecurity Australia review its communication channels with Australian stakeholders and actively seek to inform stakeholders of any amendments and other developments.

Recommendation 5

4.43 The Committee recommends that Biosecurity Australia reviews its public consultation programs to provide forums for meaningful exchange between themselves and stakeholders.

Recommendation 6

4.44 The Committee recommends that Biosecurity Australia reconsiders the Committee's predecessor's recommendation to develop guidelines which specify the purpose of the consultation so that all who attend public meetings have the same understanding of the nature of the outcomes that can be expected.

Note to readers

The Committee draws readers' attention to another of its reports – Administration of Biosecurity Australia – revised draft import risk analysis for bananas from the Philippines.

The two inquiries were conducted at the same time. There are some issues that arose in relation to both inquiries and the risk modelling recommendations in both reports are applicable to both inquiries.

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.

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".[1] 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.[2]

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.[3]

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, 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, accessed 5 October 2004

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

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.[5]

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.[6] This follows New Zealand's earlier attempts to export apples to Australia in 1986, 1989 and 1995.[7]

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.[8]

1.15 Presently only fuji apples from Japan are permitted into Australia, subject to certain protocols.[9]

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.[10]

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.[11]

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.[12] 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[13] 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

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.[14] 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.[15] 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.[16]

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.[17]

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.[18]

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.[19]

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.

CHAPTER TWO

The WTO Case

Introduction

2.1 Australia's commitment to a scientific assessment of risk as required by the World Trade Organisation's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is exemplified by the existence of an agency to undertake the work.

2.2 During this inquiry, Biosecurity Australia reinforced the importance of science to the risk assessment process. In evidence to other inquiries the Committee has conducted into import risk analyses, Biosecurity Australia has also expressed this view. Biosecurity Australia's import risk analysis review panel has the responsibility of making assessments of the science in the risk modelling process. The then Executive Manager of Biosecurity Australia informed the Committee that:

> The expert panel is responsible for considering the available scientific information and producing a draft report. Included in the draft report is the panel's view on the quarantine risks and risk management measures …[1]

2.3 In relation to the IRA for apples from New Zealand, the Committee was informed of the conflicting scientific information available to the panel:

> Some studies have found that, at the end of the season, and when you pick, some apples have got some levels of bacteria on them at picking. Other studies – even from severely blighted orchards, with severe symptoms throughout the orchards – have reached the conclusion that there are no viable bacteria left on apples at maturity and harvest.
>
> So there is a mixed set of information there. The panel itself has gone through all this information, and the draft conclusions are of course in the draft report.[2]

2.4 Science is neither unequivocal nor static and the results of one scientific study are not necessarily applicable to field situations. The interpretative nature of the data for the risk modelling process is governed by the terms of the agreement and science, but it is a qualitative assessment. For some, the jurisprudence emerging from WTO appellate cases should be taken into consideration to provide some guidance to this process.

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1 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 1

2 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 38

Japan – US dispute and WTO determination

2.5 In June 2002, a Panel was formed by the WTO's Dispute Settlement Body to hear a complaint from the US challenging Japan's existing SPS measures applied to US apples for export to Japan. In July 2003 the Panel found Japan's restrictions on US apples to be in breach of their obligations under the WTO's SPS Agreement, and on 12 November 2003 the WTO's Appellate Body upheld the findings of the Panel.[3] Australia and New Zealand were third parties to both decisions.

2.6 Principally, Japan was found to have established its SPS measures in a manner inconsistent with its obligations under Article 2.2 of the SPS Agreement, which states that:

> Members shall ensure that any sanitary or phytosanitary measure is applied *only to the extent necessary* to protect human, animal or plant life or health, is based on scientific principles and is *not maintained without sufficient scientific evidence*, except as provided for in paragraph 7 of Article 5 (emphasis added).[4]

2.7 In *Japan – Measures Affecting the Import of Apples* the Appellate Body affirmed the principle that a test of a "rational or objective relationship" between an SPS measure and the available scientific evidence applied. This test is determined by an assessment of whether an SPS measure is "clearly disproportionate to the risk identified on the basis of the scientific evidence available".[5] In the context of Article 2.2, scientific evidence is only considered "sufficient" to justify an SPS measure if it demonstrates that the risk is proportional to its mitigation.

2.8 The facts of this case led the Panel and Appellate Body to conclude no rational or objective relationship between Japan's restrictions and the empirical risks.[6] According to the WTO, the evidence before the Panel suggested that the risk of mature, symptomless apples serving as a pathway for the spread of fire blight was negligible.[7]

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3 World Trade Organisation, *Japan – Measures Affecting the Import of Apples: Report of the Appellate Body*, www.worldtradelaw.net/reports/wtoab/japan_apples(ab).pdf, accessed 12 October 2004, pp. 1-3 and p. 93

4 http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm. Article 5.7 provides that, in the absence of sufficient scientific evidence, measures may be adopted on the basis of "available pertinent information".

5 Panel report quoted in World Trade Organisation, *Japan – Measures Affecting the Import of Apples: Report of the Appellate Body*, www.worldtradelaw.net/reports/wtoab/japan_apples(ab).pdf, accessed 12 October 2004, p. 60

6 World Trade Organisation, *Japan – Measures Affecting the Import of Apples: Report of the Appellate Body*, www.worldtradelaw.net/reports/wtoab/japan_apples(ab).pdf, accessed 12 October 2004, p. 60

7 The Committee recognises Japan's failure to produce scientific evidence relating directly to mature symptomless apples.

2.9 Japan's SPS measure comprised of a number of cumulative elements including:

- prohibition from orchards not completely blight-free;
- 500 metre buffer zone around designated orchards;
- joint visual inspections by US and Japanese officials; and
- chlorine treatment.[8]

The Panel and the Appellate Body concluded that this measure was not proportionate to the risk of fire blight being introduced to Japan by mature US apples.

2.10 However, the WTO Appellate Body was careful to emphasise that determining the appropriateness of a risk mitigation measure with regards to its basis of "sufficient scientific evidence", as required by Article 2.2, depends on the particular circumstances of each case.[9]

2.11 It is this aspect of the SPS agreement which is central to the debate as to whether risk mitigation protocols proposed by Australia for New Zealand apples is sufficiently scientifically based. Essentially, the question of proportionality is indicative of whether or not Biosecurity Australia's IRA protocols are more trade restrictive than necessary to achieve an appropriate level of protection (ALOP) from quarantine pests and disease.

Appropriate level of protection (ALOP)

2.12 According to Biosecurity Australia, the purpose of the International Agreement on the Application of Sanitary and Phytosanitary Measures is to:

> ... [define] the concept of an 'appropriate level of sanitary or phytosanitary protection (ALOP)' as the level of protection deemed appropriate by the WTO Member establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory.[10]

2.13 The risk of an identified pest or disease entering Australia as a result of the importation of any given product, in this case apples from New Zealand, must fall below Australia's appropriate level of protection. The IRA Panel assess the risk as

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8 World Trade Organisation, *Japan – Measures Affecting the Import of Apples: Report of the Appellate Body*, www.worldtradelaw.net/reports/wtoab/japan_apples(ab).pdf, accessed 12 October 2004, p. 7

9 World Trade Organisation, *Japan – Measures Affecting the Import of Apples: Report of the Appellate Body*, www.worldtradelaw.net/reports/wtoab/japan_apples(ab).pdf, accessed 12 October 2004, p. 60

10 *Importation of Apples from New Zealand: Revised Draft ITA Report, Part A,* Department of Agriculture, Fisheries and Forestry, February 2004, p. 10

being a combination of the likelihood and the consequences of an identified pest or disease entering as a result of importing that product. If the risk does not fall below the ALOP, strategies to reduce the risk to an appropriate level of protection should be examined. The WTO Appellate Body's ruling clarified that any risk mitigation strategy proposed must bear a scientific relationship to the level of the assessed risk.

2.14 Australia is one of a number of countries that uses qualitative terms to express its appropriate level of risk. According to the revised draft IRA, the level of risk established by government policy reflects community expectations. This is currently expressed as "providing a high level of sanitary and phytosanitary protection, aimed at reducing risk to a very low level, but not to zero."[11]

2.15 Biosecurity Australia argues that a very low level of risk is the highest standard of protection possible, without limiting the movement of goods.[12] In discussing the implied level of risk of fire blight entering Australia, Dr Roberts, the chairman of the IRA panel, indicated that:

> It is exactly the same as eight million tourists coming through the border. I can guarantee, although I cannot identify the number or who, that some of them have fire blight bacteria on them. I guarantee that some of them have backyards, gardens or businesses with fire blight hosts in them. So the bacteria are already crossing our border. It is unavoidable unless you say that nothing moves.[13]

2.16 However, the import risk assessment made by the expert panel combines that risk with the consequences of such entry. It is the outcome of that calculation that must be below Australia's ALOP.

Industry response

2.17 The outcome of the WTO Panel and Appellate Body consideration of the *Japan – Measures Affecting the Import of Apple* dispute and its implications for Biosecurity Australia's draft IRA was a matter of substantial comment in Committee hearings and submissions, with the New Zealand government and Australian industry representatives offering different interpretations of the WTO's position.

New Zealand

2.18 The New Zealand government's submission placed considerable weight on the determination of the WTO in *Japan – Measures Affecting the Import of Apples*. They particularly emphasised the WTO Panel's conclusion, on the basis of the evidence

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11 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report, Part A,* February 2004, p. 10

12 RRAT Legislation Committee, *Transcript of Evidence* - IRA on Pig Meat, Canberra, 8 March 2004, pp. 17 and 33

13 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 39

before it, that "with respect to mature, symptomless apple fruits, the risk that the transmission pathway be completed is negligible".[14] Accordingly:

> In New Zealand's view, the fact that there is not sufficient scientific evidence that apple fruit can serve as a pathway for transmission of fire blight means that any measures imposed to address risk of fire blight transmission from imported apples will be disproportionate to such risk and not based on science within the meaning of the SPS agreement.[15]

The upshot of the New Zealand government's argument is that the WTO has determined that *any* risk mitigation strategy with respect to mature apples would be inconsistent with Article 2.2 of the SPS Agreement.

2.19 These views are echoed in the comments made by the Chairman of Pipfruit New Zealand in evidence he gave to the Committee:

> I guess the moot point is at what level, how it is transmitted, what is the pathway and so on. It is along the lines of the WTO saying mature apples pose no risk.[16]

2.20 The Committee considers New Zealand's position to be an optimistic one when held against the WTO's findings. Firstly, their view fails to reflect the Appellate Body's important qualifying statement. That is, assessing the proportionality of SPS measures in the context of Article 2.2 is a matter to be determined on a case by case basis. Secondly, Japan had not based its SPS measures on scientific evidence specifically related to the proposed export of apple fruit.[17] The WTO Panel consequently declared that Japan had not properly conducted their risk assessment as defined by the SPS Agreement.[18]

2.21 The Committee notes that the scientific evidence the WTO Panel relied on in *Japan – Measures Affecting the Import of Apples* is specific to that case and Japan's own assessment of risk. Alternative scientific evidence presented in accordance with Article 2.2 of the SPS Agreement requirements could facilitate the WTO Panel in adopting a different assessment of the risk of fire blight carried by mature apples.

2.22 The European Journal of International Law review of the decision suggests the possibility that a future dispute could produce a different outcome :

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14 Quoted in New Zealand government submission, *Submission 7*, p. 2

15 New Zealand government, *Submission 7*, p. 3

16 Mr John Allison, RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 61

17 World Trade Organisation, *Japan – Measures Affecting the Import of Apples: Report of the Appellate Body*, www.worldtradelaw.net/reports/wtoab/japan_apples(ab).pdf, accessed 12 October 2004, p. 74

18 See Article 5.1 and Annex A. Japan also failed to fulfil the requirements of SPS Agreement Article 5.1 in not examining SPS measures that *might* be implemented, in addition to those that were already in place.

> The Japanese [SPS] measure at issue seems not to have raised difficult legal issues, because it had significant factual deficiencies.[19]

2.23 In this case, the WTO – through its 'case by case' caveat - articulated that no precedent has been established with regards to the factual question of transmitting fire blight via the importation of mature apples. Instead, the case affirms the principle of proportionality between SPS measures and scientifically assessed risk. The Committee believes that the New Zealand request for no risk mitigation at all is inconsistent with this principle and Australia's stated ALOP.

Australia

2.24 Australian industry representatives have also disputed New Zealand's interpretation of the implications of *Japan – Measures Affecting the Import of Apples*. They highlighted the failure of the Japanese to adequately demonstrate the consistency of their measure with the SPS Agreement. In submissions to the inquiry, industry organisations contended that the main reasons for the outcome were Japan's failure to:

(a) demonstrate that risk mitigation protocols were based on relevant science; and

(b) conduct an appropriate risk assessment.[20]

2.25 The Australian industry's concern over *Japan – Measures Affecting the Import of Apples* is the impact the decision has had on Biosecurity Australia's approach to this IRA. The Apple and Pear Industry Taskforce claimed the decision had influenced Biosecurity Australia to make the revised draft IRA less trade restrictive:

> There is no doubt that Biosecurity have a high level of concern in relation to a W.T.O. challenge by New Zealand. From our observation this is a common occurrence in all I.R.A.'s undertaken by Biosecurity.
>
> It is relevant that Biosecurity personnel are not trade experts, and do not have legal training. Our contention is that an I.R.A. should be undertaken with W.T.O. policy issues left to trade and legal experts.
>
> There is a very real danger that protecting Australia from any potential W.T.O. challenge will result in taking the "easy or safe options" when faced with issues that are reliant on opinions to resolve.[21]

2.26 The Tasmanian Apple and Pear Association also suggested that BA had interpreted the decision as a precedent that would be applied to any challenge against Australia's protocols:

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19 Trachtman, J. *Japan – Measures Affecting the Import of Apples*, European Journal of International Law, http://www.ejil.org/journal/curdevs/sr44.pdf, accessed 12 October 2004

20 Australian Apple and Pear Industry Taskforce, *Submission 14*, p. 27 and Tasmanian Apple and Pear Association Inc, *Submission 11*, p. 2

21 Australian Apple and Pear Industry Taskforce, *Submission 14*, p. 27

> This whole process is being undertaken in an environment where Biosecurity Australia is intimidated by the possibility that if New Zealand does not like what is proposed then they will take Australia to the WTO on the basis that science does not support the proposed measures and that they are too trade restrictive.
>
> The recent WTO ruling against Japan has been interpreted as a precedent and seems to have a strong influence on the manner in which Biosecurity Australia has managed this revised draft IRA.[22]

2.27 Apple and Pear Australia Limited (APAL) also claimed that trade issues were BA's foremost consideration:

> There is no doubt that what is the least trade restrictive is what influences Biosecurity's thinking. There is no doubt that everything they do is based on what the WTO would think about it, and I think it would be equally true to say that there is a free trade culture within Biosecurity and AFFA that pushes the lead on these issues.[23]

2.28 Biosecurity Australia has repeatedly stated to the Committee that its revised draft IRA is entirely science based:

> The reassurance I give you is that the panel's deliberations on risk assessment measures and the judgment of risk are their own and are based on an Australian risk assessment—an Australian assessment of the scientific situation for Australia's position on quarantine risk in relation to New Zealand apples. It is a distinct, independent Australian assessment.[24]

2.29 The Committee accepts these reassurances, while noting that Biosecurity Australia also acknowledges that its approach to quarantine is consistent with the terms of the WTO's SPS agreement.[25]

2.30 Further, the Committee notes the use of the phase "the judgement of risk are their own" in the above quotation. This implies the qualitative nature of risk assessments.

Qualitative vs quantitative

2.31 In its 2001 report, the Committee's predecessor recommended that:

> Biosecurity Australia incorporate a full quantitative risk evaluation in the final IRA on the possible importation of New Zealand apples, in preference

22 Tasmanian Apple and Pear Association Inc, *Submission 11*, p. 2

23 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 24

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

25 Department of Agriculture, Fisheries and Forestry, Import risk analysis handbook, Canberra 2003, p. 5

> to the current unsatisfactory qualitative risk evaluation used in the draft IRA.[26]

2.32 A quantitative likelihood model was used in the 2004 revised draft IRA to "represent pathways relevant to the importation and utilisation of apple fruit, the disposal of fruit waste, and the possible exposure of susceptible host plants in Australia."[27]

2.33 The revised draft IRA states that the quantitative model provides the following four important technical facilities:

- a framework upon which to base the logical structure of each assessment;
- evaluation of the effect of the 'volume of trade' during a specified period;
- accommodation of 'uncertainty' or 'natural variation' in the likelihood estimate assigned to individual steps in pathways; and
- use of 'sensitivity analysis' to identify critical steps in each scenario, and thus focus information needs and (where relevant) risk management.[28]

2.34 However, the revised draft IRA also indicates that quantitative data:

> ... was not always available to support estimation of many of the probabilities assigned to the pathway steps considered in this analysis. The likelihoods assigned to these steps were subsequently based on expert judgements, and modelled using the qualitative likelihoods described in Biosecurity Australia's *Guidelines for Import Risk Analysis* (2001) [the Guidelines]. [29]

2.35 The Guidelines set out the boundaries adopted for qualitative likelihoods, indicating that in choosing the boundaries it was important to:

- provide a system that could be adopted by those experts whose take it was to review scientific evidence and estimate likelihoods;
- ensure that the categories were neither overly precise nor constrictive; nor so broad as to lose the precision that may have been present in the original body of scientific evidence.[30]

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26 Senate Rural and Regional Affairs and Transport Legislation Committee, *The Proposed Importation of Fresh Apple Fruit from New Zealand, Interim Report,* July 2001, p. xxiii

27 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report, Part A,* February 2004, p. 46

28 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report, Part A,* February 2004, p. 46

29 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report, Part A,* February 2004, p. 48

30 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report, Part A,* February 2004, p. 48

2.36 The revised draft IRA indicates that it "was *not* critical that the categories were of equal width, or that they were assigned according to a predefined arithmetic or logarithmic scale."[31] Rather, it is argued, the

> ... emphasis was on useability and, once defined, a system that would enable experts to use the corresponding terms and definitions consistently, and for stakeholders to be clear on the meaning of the likelihood terms used.[32]

2.37 The Committee acknowledges that the modelling allows for a standard that can be used to assess quarantine risks over a range of imports and to assess them in an open and transparent way. However, it also creates an environment where there are no absolutes and judgements can be called into question. Biosecurity Australia are aware of the dilemmas that can arise:

> The panel spent many meetings discussing this issue [the risk unit part of the model] with various experts. If you get a room full of experts on this particular issue you will get two rooms full of answers from them.[33]

2.38 Such problems are only heightened when the available scientific evidence does not relate specifically to the matter at hand or when there is conflicting evidence. The interpretative nature of the assessment requires judgements to be made over "best fit" to local circumstance and as with any judgements, differing views are likely to exist. Thus, Australian apple and pear industry representatives contended:

> ... from the industry's viewpoint, we believe there is a very strong case that could be argued about the transmission of fire blight to mature fruit. Our view would always be: you back it and you go in on that basis and work from there.[34]

The precautionary principle

2.39 The Committee recognises that it is tempting, in the midst of conflicting scientific evidence, to argue that Biosecurity Australia would be justified in applying a cautious approach to imposing protocols for the importation of New Zealand apples. This method of assuming the worst case scenerio in the face of scientific uncertainty is frequently referred to as the 'precautionary principle'.

2.40 Article 5.7 of the SPS Agreement states that:

> In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of

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31 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report, Part A,* February 2004, p. 48

32 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report, Part A,* February 2004, p. 48

33 RRAT Legislation Committee, *Transcript of Evidence*, Canberra 30 June 2004, p. 38

34 RRAT Legislation Committee, *Transcript of Evidence*, Canberra 30 June 2004, p. 24

> available pertinent information, including that from the relevant international organisations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.[35]

2.41 One possible interpretation of this provision is its role as an invitation to invoke the precautionary principle where scientific evidence is insufficient.

2.42 In the context of establishing SPS measures to prevent the transmission of fire blight, it is unlikely that the precautionary principle could be so invoked. Notwithstanding its possible broader application, the WTO in *Japan – Measures Affecting the Import of Apples* determined that there was sufficient scientific evidence pertaining to the transmission of fire blight through the importation of mature apples.[36] The WTO Panel and Appellate Body further clarified the issue, concluding that scientific uncertainty did not constitute insufficient evidence. [37]

35 WTO SPS Agreement, www.wto.org/english/tratop_e/sps_e/spsagr_e.htm, accessed 5 October 2004

36 World Trade Organisation, *Japan – Measures Affecting the Import of Apples: Report of the Appellate Body*, www.worldtradelaw.net/reports/wtoab/japan_apples(ab).pdf, accessed 12 October 2004, pp. 65-66

37 World Trade Organisation, *Japan – Measures Affecting the Import of Apples: Report of the Appellate Body*, www.worldtradelaw.net/reports/wtoab/japan_apples(ab).pdf, accessed 12 October 2004, p. 67

CHAPTER THREE

THE REVISED DRAFT IRA

Introduction

3.1 The Committee's predecessor's interim report on the 2000 draft IRA made a number of recommendations.[1] Two key recommendations related to the fire blight disease and the Committee has already noted that these recommendations were not pursued in the current IRA process. This Chapter examines the IRA process and associated risk mitigation protocols, with particular reference to fire blight. It concludes by considering the issue of apple scab and codling moth, a disease and pest of particular concern to the Western Australian industry.

The revised draft IRA

3.2 The IRA process consists of three main technical stages. These are:

(i) identification of pests and diseases not present in Australia but potentially transmitted via the commodity;

(ii) assessment of risks associated with each pest or disease;

(iii) identification of risk management protocols for pests and diseases where the level of risk they present exceeds Australia's appropriate level of protection (ALOP).[2]

3.3 The pests and diseases for which Biosecurity Australia established risk mitigation protocols are fire blight, european canker, leaf curling midge, leafrollers (four species), wheat bug, apple scab and codling moth.[3]

3.4 All pests and diseases of concern are subject to certain registration and verification processes. These require all apples to be sourced from registered orchards and processed in registered packing houses as certified by the designated New Zealand authority. Further, the post-import AQIS sampling protocol requires the inspection of 600 pieces of fruit per consignment for the presence of quarantine pests/disease, trash and apples that are damaged or not mature.[4]

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

2 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 1

3 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, pp. 3-5. Only Western Australia is free from apple scab and codling moth.

4 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, pp. 490-498

3.5 Biosecurity Australia's risk mitigation protocols relating to the transmission of fire blight are the most contentious, a fact reflected in evidence presented to the Committee. The Committee notes the industry's anxiety over the threat of fire blight. Consequently, this chapter will primarily examine the issues raised in relation to this particular disease threat.

Fire blight

3.6 Fire blight is caused by the bacterium *Erwinia amylovora*. The disease is the most devastating that affects pome fruit.[5] Called fire blight because of the scorched appearance of its symptoms, the disease is characterised by its robustness during colder weather and virulent activity during spring.[6]

3.7 In their revised draft IRA, Biosecurity Australia noted that the fire blight bacterium could potentially be imported via the following scenarios:

(i) Through the internal (endophytic) or external (epiphytic) infection of apple fruit, not visible at the time of infection; and

(ii) The presence of trash material.[7]

3.8 With regard to the risks associated with trash, Biosecurity Australia stated that:

> This pathway was not considered in this analysis, because the scope of this assessment is limited to export from New Zealand of mature apples free from trash.[8]

3.9 If the fire blight bacterium were to enter Australia, the IRA argues that several necessary events must occur for it to become established, spread, and ultimately impact on Australia's apple growing industry. In assuming the absence of trash,[9] Biosecurity Australia noted that the bacterium would potentially enter the environment when fire blight-infected apples are disposed of as rotten uneaten fruit, partially eaten apples and cores or peels. Should the bacterium survive, a suitable vector would be required to transmit the disease to a suitable host (of which there are a

5 This category includes apples, pears, quince and loquat.

6 RRAT Legislation Committee, *The Proposed Importation of Fresh Apple Fruit from New Zealand: Interim Report*, July 2001, pp. 90-92

7 This includes leaves, twigs, soil, timber and splinters left over from the harvesting and packaging process.

8 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 86

9 This assumption is the subject of further discussion at paragraphs 3.12 to 3.24.

large number, including trees other than pome fruit). Biosecurity Australia suggests that the most likely vector would be a browsing insect.[10]

3.10 The critical element in this sequence of events is the likelihood that the bacterium would survive in sufficient quantities to be transferred by a suitable vector. On the evidence outlined in the revised draft IRA, Biosecurity Australia concluded that:

> It is highly unlikely that the minimum dose for infection will be found in apple waste.
>
> Taking the ... evidence into consideration it is extremely unlikely that there is continuity in the pathway for dissemination of E. amylovora to a susceptible host.[11]

3.11 The Australian industry has questioned a number of aspects of Biosecurity's assessment of the fire blight risk. That is, their calculation of the risk of disease entry and the consequences its spread would have.

Assessment Issues

Trash free imports

3.12 Perhaps Australian growers' greatest concern with the revised draft IRA is the assessment that apples imported from New Zealand will be free of trash. For Australian growers such an argument ignores the practicalities associated with the "real world" of farming – harvesting, packing and transporting apples.

3.13 The term 'trash' pertains to organic matter superfluous to the actual fruit being exported. In the case of apples, trash essentially includes leaves, twigs, soil, timber and splinters left over from the harvesting and packaging process. Trash material can act as a vector for fire blight, but the revised draft IRA does not consider such a pathway. Instead, it focuses on ensuring that the imported apples are trash free.

3.14 The revised draft IRA provides for trash free apples through:

(i) Pre–export verification of trash free status by New Zealand's competent authority; and

(ii) Post-export AQIS inspections.

3.15 On each occasion 600 units of fruit will be inspected, equating to a 95 per cent confidence level that no more than 0.5 per cent of the fruit is accompanied by trash.[12]

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10 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 98

11 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 99

3.16 The Batlow Fruit Co-operative Ltd argued that the IRA's failure to consider the issue of trash:

> ... is a serious deficiency because of the lack of understanding and commercial reality of picking fruit. It is not commercially practical to avoid some leaf or nodes in the packaged product.[13]

3.17 According to the industry taskforce:

> The level of leaves and spurs in any given quantity of fruit will depend on the level of experience of pickers. It is conceivable that with an inexperienced picker over 20% of fruit may have leaves and spurs attached.
>
> In this instance even the best systems in a packing shed are under pressure.[14]

3.18 New Zealand industry representatives did not agree with their Australian counterparts on the inevitability of a trash presence:

> You have two opportunities to get trash out of the fruit. One is at the picking stage. If you pick carefully and structure your pickers you can remove the vast bulk of it. The second opportunity is through the packing line. If you have a pretty clean line of fruit, it is manageable. If the requirement for entry to Australia is trash-free fruit, that is what we will deliver.[15]

3.19 They instead framed the issue of complete trash removal as an economic decision; the additional cost of production that would be justified if the market could bear associated price increases:

> If the grower or the exporter believes he has a market at a certain price and he can ensure that the trash is removed, he will do it. If he does not, he will not and he will send that fruit somewhere else where perhaps it is not so trash sensitive.[16]

3.20 The Tasmanian Apple and Pear Growers' Association further argued that the inspection of entire apple cartons, rather than individual apples, was essential to ensure imports are trash free:

> ... the carrier of trash is most likely the carton rather than a piece of fruit and as such the inspection procedure for trash should be 600 cartons not 600 pieces of fruit. Article 5.2 of the WTO SPS agreement specifically

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12 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 497

13 Batlow Fruit Cooperative Ltd, *Submission 30*, p. 5

14 Australian Apple and Pear Industry Taskforce, *Submission 14*, p. 20

15 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 60

16 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 60

> states that "relevant processes and production methods" must be taken into account in any risk analysis.[17]

3.21 The Committee notes that with regard to the New Zealand phytosanitary inspection process the revised draft IRA states that:

> All fruit will be removed from each selected carton and the empty carton examined for trash.[18]

3.22 The Committee also notes that evidence of the Australian growers and the New Zealand industry representatives is not completely conflicting. Australian growers indicated that, at the picking stage, trash reduction is dependent on the level of experience of the pickers. New Zealand industry representatives commented of the need to "pick carefully".[19] Clearly, trash free imports would require dedication on behalf of the New Zealand industry.

3.23 Yet the Committee remains concerned that the issue of trash has not been more comprehensively addressed in the revised draft IRA. Biosecurity Australia's effective blanket acceptance that fruit will arrive in Australia trash free because it has been certified as such belies the risk trash poses as an acknowledged vector for fire blight.

Recommendation 1

3.24 The Committee recommends that Biosecurity Australia requires that the trash free certification process be administered by AQIS officers in New Zealand in conjunction with their New Zealand counterparts.

Impact of fire blight on Australian growers

3.25 When assessing Australia's quarantine risk of pests and disease, Biosecurity Australia can take into account their potential economic impact. That is, the potential harm that may be inflicted by a pest and disease can be considered when assessing the level of quarantine risk that is 'acceptable'. Article 5.3 of the WTO's SPS Agreement states:

> In assessing the risks and determining the measures to be applied for achieving the appropriate level of protection, members shall take into account as relevant economic factors, the potential damage in terms of loss of production or sales, the cost of control or eradication and relative cost effectiveness of alternative approaches to limiting risk.[20]

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17 Tasmanian Apple and Pear Growers' Association Inc, *Submission 11*, p. 6

18 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 497

19 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 60

20 WTO SPS Agreement, www.wto.org/english/tratop_e/sps_e/spsagr_e.htm, accessed 5 October 2004

3.26 In the initial publication of the IRA Handbook Biosecurity Australia indicated that a "WTO member must take into account relevant economic factors"[21] when setting its ALOP. This was amended by corrigenda to read "should take into account the objective of minimising negative trade effects".[22]

3.27 Assessing 'acceptable risk' against the consequences of a disease that could be devastating to Australia's apple and pear industry presents an intrinsic dilemma. What risk of disease ought to be borne when its impact could be terminal to many growers?

3.28 In terms of likely economic damage, Biosecurity Australia assessed the consequences of fire blight as high in the revised draft IRA.[23] In accordance with Article 5.3, this included consideration of both production/sales and the costs associated with control and/or eradication.

3.29 Despite this, Australian industry representatives argued that Biosecurity Australia had not properly considered fire blight's potential devastation to Australia's apple and pear industries when determining Australia's ALOP. In particular, there was a perception amongst many contributors that Biosecurity Australia had not given appropriate weight to the extent to which fire blight would flourish amongst Australia's susceptible varieties and warm weather.

3.30 The following comment broadly reflected industry's anxiety over the threat of fire blight:

> Fire Blight is more devastating in warmer climates, on new varieties such as Pink Lady. Many Australian apple growing areas are located in warmer climates than New Zealand ... and most of our apple production is from Dwarf Rootstocks. There are large plantings of Pink Lady's in these warmer areas, as this variety grows best in this climate. There has been a large investment in Pink Lady apples in Australia, as it is one of the few hopes for both our domestic and export industry returns.[24]

3.31 The possibility of fire blight thriving in Queensland was of particular concern to that state's growers:

> This disease loves warm wet springs. In the countries that have fire blight it is the spring climate that defines where and if they can grow apples and pears. The scientists have done climate modelling and they all agree that fire blight would love the Australian climate. Our own Queensland DPI stated that Stanthorpe would experience up to 16 fire blight infection periods each year. This would wipe out our orchards.[25]

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

22 Biosecurity Australia, *Import risk analysis handbook*, Canberra, 2003, Corrigenda

23 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 123

24 Australian Farmlink Pty Ltd, *Submission 17*, p. 2

25 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 53

3.32 Queensland growers also emphasised the highly susceptible nature of the varieties prevalent in the state:

> ... all the good, new high-value varieties we have planted in the last 15 years are very susceptible to fire blight. It would ruin Stanthorpe. Because of our particular soil and climate, Stanthorpe would not be able to swap to other crops. We have very capital-intensive farms with expensive cold stores, packing sheds and hail netting. We cannot swap to another crop when fire blight strikes.[26]

3.33 In addition to production and sales forgone, the cost of managing the presence of fire blight in commercial orchards also represents a significant additional burden for growers.

3.34 The revised draft IRA states that:

> Streptomycin, which is effective against *E. amylovora*, is not a registered chemical for fire blight in Australia.[27]

3.35 Nonetheless, streptomycin is presently the most effective method for controlling the disease. The Committee notes the March 2003 advice of the NRA (see paragraph 1.18) that an Australian fire blight eradication program would involve the short term permissible use of streptomycin. However, this may not be possible in all apple growing regions in Australia.

3.36 For South Australian growers, the proximity of their apple growing regions to major water catchment areas presents a significant problem in combating an outbreak of fire blight:

> If we got an outbreak, part of the eradication process would just about go out the door because of our inability to use streptomycin, because the community would be up in arms about us using an antibiotic in a water catchment area.[28]

3.37 The Committee acknowledges the difficulty growers in the Adelaide Hills region, in particular, would face in attempting to control an outbreak of fire blight and that this could signal serious economic difficulties for the region.

3.38 In addition to the cost associated with chemical treatments, the required removal of affected branches/trees would have a significant impact on the viability of the Australian apple and pear industries.[29]

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26 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 53

27 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 116

28 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 46

29 Estimates of the costs associated with the control and eradication of fire blight, undertaken in various studies, are included in the revised draft IRA at p. 120.

3.39 In evidence to the Committee, New Zealand growers attempted to downplay the affect fire blight has on their industry. They maintained costs and production are not drastically affected by the presence of fire blight:

> ... we have heard for the last five or six years that if you have fire blight that is it for an orchard and that is it for a region and so on. On my orchard I might have 20 strikes of fire blight in 10 acres every year. ... All of those branches cut off and weighed might be 30 kilograms but if you cut out all of my trees there would be hundreds and hundreds of tonnes of wood. In other words a little infection does not really translate into a high number of apples with a high level of bacteria on them. It just does not happen.
>
> ...
>
> Fire blight is another pest and disease. Of course, as growers we would rather not have it. Does it cost us a fortune? Absolutely not. It costs us absolutely in terms of market access, but in terms of treatment I would not even know what it is per hectare of treatment.[30]

3.40 However, Australian growers maintained that the disease would flourish here due to our more conducive weather conditions:

> ... because much of Australia is not a cold country, as is New Zealand, we tend to grow apples in the mountains. This means that we have frequent hailstorms in summer. Even small hail creates a wound in apple leaves or fruit as an entry point for bacteria. This type of fire blight is called trauma blight and would be particularly prevalent in Stanthorpe, Orange, Batlow, much of Victoria and in the Adelaide Hills.[31]

3.41 Representatives of Tasmanian growers highlighted the impact of the disease on the export market, focussing on the competitive advantage gained through marketing a 'clean' image:

> We are basing most of our exports on our clean, green image. That is a very useful tool in going into very small niche markets.
>
> ...
>
> Tasmania is the only state in Australia recognised as being fruit fly free. That gives us direct access to the Japanese market, through a reasonably cost-effective protocol to get into that market. It also gives us very good access to markets like Taiwan and other South-East Asian destinations.[32]

30 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 61

31 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 53

32 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 49

3.42 The Committee notes that Tasmania accounts for approximately 65 per cent of Australia's apple exports,[33] including exports to Japan, a country also attempting to preserve its fire blight-free status.

3.43 The Committee acknowledges the importance of the potential impact of pests and diseases on exporters' access to certain markets. Australia's international competitiveness in the export of agricultural commodities is significantly diminished when exporters can no longer claim their products are sourced from pest and disease free regions. When this special status no longer applies a vital competitive advantage has been lost.

3.44 The Committee is firmly of the view that the entry and spread of fire blight in Australia would have a devastating economic effect on the domestic apple and pear industry, through the consequent loss of production and sales, the loss of access to particular markets and the costs associated with disease control and eradication. It recognises that the Australian industry would be affected to a greater extent than New Zealand due to climatic and varietal differences.

3.45 Both Biosecurity Australia and the Australian industry accept that the establishment of fire blight in Australia would have significant consequences. The revised draft IRA recognises the potential of fire blight to have a serious economic impact on the Australian industry should it become established and spread to apple and pear growing regions. However, the weight given to these consequences within the risk modelling process fails to convey that view.

3.46 While the Committee recognises that this weighting may reflect the balance Australia's biosecurity policy gives in the context of Article 5.3 of the SPS agreement, it believes that it should be revisited in the review that is currently being conducted.

Recommendation 2

3.47 The Committee recommends that Biosecurity Australia review the weighting given to the economic consequences in its risk modelling.

Risk Unit in modelling

3.48 The Committee notes that Biosecurity Australia has used a single fruit unit as the risk unit for the purposes of their risk modelling. In evidence, Biosecurity Australia explained that this approach, rather than applying another unit such as a box, pallet, kilo, or tonne, reflected more accurately the practical realities of the transmission risk:

> ... some of the risk events that you need to look at do not involve someone driving along the road to Sydney and tossing a pallet load of apples out the window because their kids have just eaten them in the backseat. They

33 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 118

> involve individual apples. People do not go down to the supermarket and walk out with a pallet load of apples. They walk out with a kilo or two or sometimes just one apple and so on.
>
> In the end we concluded by far the best way is to concentrate on the individual risk unit in the shipment, which is the single apple. Some of the scenarios may allow for the potential that a single apple could start the disease. It is not going to be a pallet load landing under the tree, it is going to be one or a few apple cores.[34]

3.49 The Committee is concerned that this does not accurately reflect such realities as large scale dumping of produce from retail or service outlets, following such an incidence as the break down of refrigeration facilities.

3.50 The Committee commends the work conducted by Biosecurity Australia in developing a model to make assessments of the risks posed to Australia's quarantine standards by imported products. However, it notes that, as with the development of any new system, there may be some need for some refinements.

3.51 The Committee also received considerable evidence on the appropriateness of Biosecurity Australia's risk management protocols, established in light of the risk assessment, to ensure the risk of pests and disease from imported New Zealand apples falls within Australia's ALOP. Again, the focus of this discussion was fire blight and the adequacy of the protocols pertaining to that particular threat.

Risk Mitigation Protocols

3.52 The revised draft IRA proposes a number of protocols that must be met by New Zealand in the importing of apples to Australia. The three specific measures to manage the risk of fire blight transmission through the importation of New Zealand apples are:

(i) Fruit can only be sourced from orchards or 'blocks' that do not express symptoms of fire blight;

(ii) Chlorine dipping in New Zealand pack houses; and

(iii) Six weeks cold storage.[35]

Fire blight protocols: changes from the previous draft IRA

3.53 Biosecurity Australia's current proposed fire blight risk mitigation protocols differ markedly from those contained in the 2000 draft IRA. In particular, many protocols relating to fire blight have been dropped for the revised draft. The most significant differences in the protocols are:

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34 RRAT Legislation Committee, *Transcript of Evidence*, Canberra 30 June 2004, p. 38

35 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 4

- Removal of the requirement of a 50 metre fire blight-free buffer zone around registered orchards;

- A less detailed pre-harvest inspection regime; and

- Removal of the requirement for disinfestation of harvesting bins.[36]

3.54 Biosecurity Australia officers informed the Committee that the changes from the previous draft reflect the availability of new scientific information:

> The panel has had the benefit of a lot of new information and a detailed review of all the evidence surrounding fire blight. There is new research available, and the measures they propose now essentially reflect that current assessment of the risks in the light of all the information available to them.
>
> ...
>
> There have been developments in the science between 2000 and 2004.[37]

3.55 The Committee has already noted that its predecessor's recommendation for Australian research on fire blight was not pursued in the revised draft IRA. In Chapter Four it discusses the availability of some of the new science used in the revised draft IRA.

Lack of detail in risk mitigation protocols

3.56 During the inquiry, Australian growers expressed concern over the lack of specificity in the protocols proposed in the revised draft IRA. Of particular concern was the measure stipulating that fruit must be sourced from symptomless orchards. The revised draft IRA contains little detail as to exactly how this measure will be enforced, other than to say that the New Zealand authorities will provide assurances to that effect.

3.57 According to the Australian industry, this lack of detailed information presents significant difficulties with respect to:

(i) judging the effectiveness of protocols; and

(ii) ensuring appropriate consultation with stakeholders.

3.58 Industry representatives informed the Committee that:

> We also have significant problems with the protocols that are proposed ... it is very difficult to work out the efficacy of a protocol when you do not know how the protocol is going to be carried out. A very important part is

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36 These protocols were contained in the 2000 draft IRA and discussed in the RRAT Legislation Committee's *The Proposed Importation of Fresh Apple Fruit from New Zealand: Interim Report*, July 2001

37 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 21

> Biosecurity assuming the total risk here. They have to plug a figure into that to feed into this matrix to see whether these protocols drop the level of risk. How they have done it we do not know. We certainly cannot respond to it.[38]

3.59 Biosecurity Australia rejected criticism that the IRA was not detailed enough for being able to provide meaningful comment on it:

> I think the measures as described are clear enough for people to be able to comment on whether they consider them to be adequate or not. They are also welcome to comment, if they wish, on the detail of how they consider particular things should or should not be done. They do provide a clear picture of the intended quarantine regime.[39]

3.60 However, Biosecurity Australia admitted to the Committee that details of the practical measures to be taken are yet to be finalised:

> It could be more than one inspection. There has been some debate over a period of time about how many inspections you need and what the appropriate time is. The measure is to make sure that the block that fruit is sourced from is free of disease symptoms. The details of how we do that will be discussed with all stakeholders at an appropriate time.[40]

3.61 Biosecurity Australia also emphasised to the Committee that the protocol was not intended to ensure the orchard be completely free of infection, but to reduce infection risk to an acceptable level. Instead, inspections would be relatively easily designed to ensure that orchards are symptom free:

> Disease symptoms of fire blight are very distinctive and very easily inspected for in a plot. If the disease is there, you will find it.[41]

3.62 The Committee shares industry's doubts over this aspect of the process. The methodology used in Biosecurity Australia's revised draft IRA assumes that apples will be sourced from orchards free of fire blight symptoms even though the specific protocols to ensure this have yet to be determined. This assumption is crucial to the overall assessment of risk and ought to have a sufficiently detailed enforcement regime as its foundation.

3.63 In the Committee's view the lack of practical detail of the implementation of the proposed risk mitigation strategies not only makes it difficult to assess their effectiveness, but may also compromise the consultation process.

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38 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 13

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

40 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 16

41 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 16

Inadequacy of risk mitigation protocols

3.64 Although the Australian industry indicated that assessing the adequacy of the loosely defined risk mitigation strategies is difficult, the Committee nonetheless received evidence commenting on the effectiveness of the protocols.

3.65 A number of Australian growers' organisations questioned Biosecurity Australia's assessment of the effectiveness of the three risk mitigation protocols relating to fire blight. From the practical viewpoint of harvesting and packaging apples, industry representatives expressed a lack of confidence in the protocols to reduce the quarantine risk posed by fire blight to the level assessed by Biosecurity Australia.

3.66 Industry's concerns principally related to the protocol stipulating that fruit could be sourced from symptomless blocks, however perceived deficiencies in the chlorine dipping and cold storage protocols were also raised during the inquiry.

Pre harvest inspection determining disease-free status

3.67 The revised draft IRA provides that New Zealand would export mature apples only from orchards or blocks free from visible symptoms of fire blight. Of the three specific fire blight protocols, the Committee is of the view that the efficacy of this one is most vital to preventing the entry and spread of fire blight.

3.68 Biosecurity Australia described the measure to the Committee in terms of the required outcome, rather than the process for meeting the requirements of the protocol:

> The measure is that the block that the fruit will be sourced from will be free of symptoms. That may require one, two, perhaps even three inspections, but the requirement, the result of the inspection, is that the orchard needs to be free of symptoms.[42]

3.69 Notwithstanding the revised draft IRA's lack of detail as to how inspections might be conducted in practice, industry expressed concern that the presence of fire blight bacteria would not always be visible, regardless of the inspection process. Scientific opinion provided by APAL suggested that:

> ... it could be there without showing any type of symptom at all. The tree may be infected but it may not show any symptoms; and still the bacteria could migrate into the fruit as an endophytic infection and you will not see it there.[43]

3.70 Even assuming the most rigorous inspection process, industry suggested the protocol is inherently flawed. A major criticism of the pre-harvest inspection protocol

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42 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 35

43 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 24

is the difficulty of identifying certain symptoms of fire blight from an inspection conducted walking at ground level:

> There are several types of symptoms. The most prominent is the strikes, where clusters of flowers are infected. The strikes are easily visible. But there are also cankers, which could be about three to five millimetres in diameter or much larger. Our question is: how is anybody going to see these cankers at the top of the tree from ground level?[44]

3.71 Biosecurity Australia acknowledged in evidence that visual inspections may fail to ensure that an orchard was symptomless. However, it rejected any assertion that missed symptoms would make a substantive difference to the overall effectiveness of the strategy:

> ... you are not going to absolutely ensure that there is not one or a few symptoms left in an orchard if it is going to be based on visual inspection. But the bottom line is: what effect does missing a few symptoms in the orchard have on the final level of bacteria in the apples being sourced from that orchard? The conclusion of the panel was that it has insignificant effect.[45]

3.72 APAL further argued that Biosecurity Australia's pre-harvest inspection fails to properly respond to a number of additional risk factors associated with the production process. These were cited as:

- historical infection of orchards;
- proximity of infected hosts to approved blocks;
- removal of symptoms pre-inspection;
- fruit from non-approved blocks being included;
- the impact of hail prior to harvest;
- cross contamination by machinery; and
- contamination during the packing process.[46]

3.73 Growers emphasised their concern that the requirement to have a symptom free 'block', rather than an entire orchard, would increase the risk of disease transmission:

> We believe it would be considerably easier for New Zealand growers to set up a block within an orchard that is free from disease symptoms than it

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44 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 18

45 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 41

46 Australian Apple and Pear Limited, *Submission 1*, pp. 3-4

> would be for the same grower to ensure that their entire orchard is free of symptoms. The level of risk associated with harvesting fruit from a symptom free block within an infected orchard would surely be greater than harvesting fruit from an entire orchard that has been certified free of symptoms. The potential for cross contamination from equipment, picking bags, machinery and people would unquestionably be greater within an orchard than between orchards.[47]

3.74 On the possibility of infection from nearby areas, Biosecurity Australia asserted that the buffer zone was not necessary if blocks were required to undergo inspections for disease symptoms:

> It is preferable to let the New Zealand orchardist decide on how he is going to protect his block. He may choose to have a 200-metre buffer. He may choose to rip out all the trees but, if he does not do a good job, then his block that he wants to register will not be free of symptoms.[48]

3.75 Biosecurity Australia applied a similar logic to the problem of contaminated machinery:

> If that were a means of spreading the disease into a registered orchard block, then there would be symptoms and the block would be deregistered.[49]

3.76 Essentially, Biosecurity Australia maintained the position that as long as blocks were symptom free, the protocol was appropriate when viewed in the context of the entire risk mitigation requirements.

3.77 The Committee believes that the protocols relating to the pre-harvest inspection are the most crucial to preventing the transmittal of fire blight to Australia's apple growing regions. Accordingly, they should have been more clearly defined in the revised draft IRA. The Committee is firmly of the belief that inspections should be as rigorous as possible; conducted on multiple occasions during the year by Australian representatives. This would ensure symptoms manifesting themselves according to seasonal conditions could be identified. Further, placing responsibility for the inspections with Australian government officials would provide the best incentive to conduct the most rigorous inspection possible.

Recommendation 3

3.78 The Committee recommends that Biosecurity Australia require any inspection of New Zealand orchards for fire blight symptoms to be conducted by AQIS officers together with their New Zealand counterparts.

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47 Western Australian Fruit Growers' Association, *Submission 12*, p. 4

48 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 19

49 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 35

Chlorine dip

3.79 The second risk mitigation strategy proposed in the revised draft IRA is subjecting the fruit to a chlorine dip. The administering of the chlorine treatment is proposed to take place by the following means:

> Chlorine treatment could be applied in the routine packing house process by incorporating chlorine in the flotation tanks and maintaining the chlorine concentration at a minimum of 100 ppm.[50]

3.80 Biosecurity Australia officials informed the Committee that chlorine dipping is the only measure in place for the export of US apples to South America, which does not have fire blight.

3.81 Growers expressed concern that bacteria could continue to be present in the calyx of the fruit:

> It is freely acknowledged that there tend to be higher concentrations of bacteria inside the calyx on the remnants of the flower of the petioles. As the apple starts to grow, quite often there are higher concentrations of bacteria there, which are obviously not going to be picked up by visual inspection. The chlorine dip would also be ineffective because of the air pockets, so it could effectively go right through the supply chain and importation steps.[51]

3.82 In the revised draft IRA, Biosecurity Australia did not indicate that chlorine dipping represents a fail-proof measure for eliminating the presence of residual fire blight bacteria:

> Although chlorine can eliminate all bacteria in some situations, there is evidence that its effectiveness could be only partial in horticultural and agricultural situations. There is also some doubt about the efficacy of chlorine on bacteria in the calyxes because air pockets could prevent access of chlorine especially in closed-calyx fruit.[52]

3.83 In keeping with its central theme on the effectiveness of each protocol, Biosecurity Australia emphasised that this protocol would, in conjunction with other measures, reduce the risk to a level that was acceptable to Australia's quarantine standard.

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50 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, pp. 470-471

51 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 5

52 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 471

Cold storage

3.84 The third and final strategy proposed requires the fruit to be stored between 0-4 degrees Celsius for a minimum six week period.[53] This aspect of Biosecurity Australia's risk mitigation strategy is intended to diminish remaining surface bacteria to a level that reduces the risk of transmission within Australia's ALOP.

3.85 From a growers' perspective, the intuitive response to this protocol focussed on the survivability of fire blight in cold climate growing regions:

> Fire blight is indigenous to North America. Washington state gets down to minus 20 degrees. Orchards are covered in a metre of snow but, come spring, they still end up with an outbreak of fire blight. As a grower, I have no idea what six weeks in cool storage at zero degrees is going to do.[54]

3.86 Biosecurity Australia told the Committee that the survival of fire blight on trees in cold climates was not comparable to the cold storage risk mitigation measure:

> In cool storage, the bacteria are superficial on the surface of the fruit, so the bacterium has no nutrients to draw on. It cannot reproduce that way.
>
> ... there is no nutrient base on the surface of an apple to sustain a population of bacteria.[55]

3.87 Scientific experts representing APAL before the Committee disagreed with this assessment:

> The majority of the assessment that was done on cold storage was done on artificially inoculated bacteria to fruit surface. The problem with drawing conclusions from such studies is that, obviously, artificial inoculation cannot and often does not parallel what can happen in nature.[56]

3.88 They added that:

> Cold storage prolongs the life of an organism. That is because it slows down the metabolic processes of the organism so that it can survive longer.[57]

3.89 The Committee notes continuing scientific uncertainty with respect to the effectiveness of cold storage on fire blight.

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53 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 472

54 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 22

55 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 3

56 Dr I Carmichael, RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 21

57 Dr S Wimalajeewa, RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 21

Biosecurity Australia's response

3.90 Biosecurity Australia regularly reinforced to the Committee the view that none of the protocols are singularly intended to eliminate risk. This claim was often employed to refute growers' assertions that the protocols were not adequate to prevent the transmission of fire blight. Biosecurity Australia told the Committee that while each protocol is not in itself a flawless procedure, the cumulative effect of them being administered as a series of measures should be effective:

> In a simple sense, the initial step of sourcing apples from areas that are free of disease symptoms means that the apples will have the lowest levels of bacteria present on the surface and they will have no internal infection because apples with internal infection are only found in orchards where there are symptoms in calyces. So you get to the stage where you have a level of bacterium that is bacteria dose responsive. Then you take a chlorine treatment, and the chlorine is very effective against killing bacteria. It will kill all the bacteria on the surface of the fruit and it will kill a lot of the bacteria present in the calyx. The third step is actually to take it through a cold storage period, which will reduce the bacteria level even further. That will be at least to a non-culturable level. So all these steps are required to bring it down to that level.[58]

3.91 The intended cumulative effect of each of the protocols is acknowledged by the Committee. Nonetheless, this in itself does not diminish the industry's concerns about Biosecurity Australia's assessment of their effectiveness. The Australian growers' day to day participation in the field provides a practical knowledge of how these risk mitigation strategies will operate. Such knowledge is important when calculating risk and successful strategies to combat such risk.

3.92 There is a need to strike a balance between the theoretical and scientific aspects of this import risk analysis and the more practical implications of implementing risk mitigation measures. It is clear that while Biosecurity Australia's recommendations (in relation to processes and procedures) are based on sound scientific analysis, those called upon to actually implement these procedures are in a better position to determine whether they are practically feasible.

3.93 In this instance, the Committee is concerned that Biosecurity Australia has not given appropriate weight to the practical aspects of the apple harvesting process, as highlighted by industry representatives throughout Biosecurity Australia's own consultation period and this inquiry. The Committee believes the on-the-ground realities of implementing the proposed protocols have not been given sufficient credence by Biosecurity Australia through the IRA process.

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58 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 19

Apple Scab and Codling Moth

3.94 Although concerned with an outbreak of fire blight in Western Australia, that state's industry representatives cited apple scab, and to a lesser extent codling moth, as the major threats posed by the importation of New Zealand apples. Highlighting the potential impact of apple scab, WA criticised the IRA for not appropriately recognising the threat it posed:

> There appears to be inconsistency in the IRA document in relation to economic consequences of disease outbreaks. Apple scab is the most damaging disease of apples worldwide and this fact is supported by numerous scientific references. It therefore should follow that the economic consequences for WA growers should be rated higher than that of Fire blight to Eastern States growers. Yet in the document the overall consequence of Fire blight is rated as High, and Apple Scab is rated as Moderate.[59]

3.95 Representatives of the Western Australian Fruit Growers Association informed the Committee that WA apple growing regions were alone – worldwide - in not having apple scab and codling moth. According to local industry representatives, Western Australia's freedom from many of the pests and diseases present in eastern Australia provides a significant competitive advantage through lower costs of production associated with chemical treatments.[60]

3.96 WA industry argued that the proposed protocols were not sufficient to protect WA growers from the threat of apple scab and coddling moth:

> The protocols have been put in place primarily to try and reduce the risk of fire blight. It is almost like apple scab and codling moth have been given scant regard. Certainly the protocols that are there at the moment, because they are focused on fire blight, we believe are going to be very ineffective against apple scab and codling moth, which increases the risk to the Western Australian industry considerably.[61]

3.97 They further contend that this was exemplified by flaws in pre-inspection process:

> With apple scab you can have what are called pinpoint lesions. The document itself admits that they are not detectable at the time of harvest. Because we do not know how they are going to inspect for apple scab in New Zealand—it has not been listed yet—you really need to inspect it a number of times during the season to determine whether there are pinpoint lesions or how far it has gone with apple scab. If you have pinpoint lesions—and the document admits they survive the packing processes et

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59 Western Australian Fruit Growers' Association, Submission 12, p. 3

60 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 4

61 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 10

> cetera—it could then show up between eight and 11 weeks later and by that time the apples would be in Australia.[62]

3.98 The Committee notes that the revised draft IRA has proposed to mitigate the apple scab risk by sourcing only from disease free areas. Codling moth will require verification inspection in New Zealand.[63]

3.99 The possible importation of New Zealand apples into Western Australia also raises the issue of a conflict between the proposed arrangement and existing domestic quarantine regulations. At present, WA's particular disease free status is reflected in state legislation prohibiting apples from other states entering WA.

3.100 According to WA representatives:

> There are no protocols in place to allow fruit from the eastern states to come into Western Australia, primarily as a result of the eastern states not applying to the department of agriculture. It is just seen as being too serious to come through.[64]

3.101 Biosecurity Australia informed the Committee that it would be seeking to have the Western Australian government change its quarantine restrictions for fruit from Australia's eastern states. According to Biosecurity Australia, there would otherwise be an inconsistency between Australia's first and second tier quarantine arrangements, a situation that would be in conflict with Australia's WTO agreement obligations.[65]

3.102 In this context the Committee notes the comments in a similar vein made by representatives of the Tasmanian growers:

> I know that our state government is looking at possibly enacting state quarantine legislation if Biosecurity do allow New Zealand apples to come in. There is the risk that fire blight will come in with those apples, and we will be lobbying the state government to enact that legislation, as they have done with the salmon issue.[66]

3.103 The potential for state legislation to restrict the entry of New Zealand apples into that state is a matter of concern to the Committee.

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62 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 6

63 Biosecurity Australia, *Importation of Apples from New Zealand: Revised Draft IRA Report*, February 2004, p. 481 and 488.

64 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 5

65 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 18

66 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, pp. 50-51

CHAPTER FOUR

Administration of Process by Biosecurity Australia

4.1 The preparation of the revised draft IRA was a process administered by Biosecurity Australia in conjunction with the Import Risk Analysis Panel. The administrative steps of the process are set out in Biosecurity Australia's Handbook (the IRA Handbook). During the inquiry the Committee heard evidence that levelled a number of criticisms at the Biosecurity Australia's administration. The criticisms include poor communication with Australian stakeholders and a lack of transparency in the process. This chapter examines those criticisms.

Communication

4.2 The IRA Handbook indicates that Biosecurity Australia "maintains a register of stakeholders to assist effective consultation and communication."[1] The Handbook continues by describing stakeholders as "government agencies, individuals, community or industry groups or organisations, in Australia or overseas, ..."[2]. Yet evidence presented to the Committee suggests that both consultation and communication with two groups of stakeholders – Australian industry groups and growers – continues to cause concern.

4.3 The Apple and Pear Growers Association of South Australia indicated that while there had been some improvement in the communication and consultation process, there was still room for advancement in a number of areas. They made the following points in relation to the South Australian industry:

- the focus of communication and transparency tends to be at the upper levels;
- further consultation needs to occur within regions (and involve growers); and
- regional issues need to be raised, discussed and included during the drafting process.[3]

4.4 The Tasmanian Apple and Pear Growers Association indicated that Tasmanian industry representatives participated in a working group and provided evidence during the initial stages of the consultation process. However, their involvement ended completely following Biosecurity Australia's determination of risk elements, allowing for very little impact on the final outcome.

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1 Department of Agriculture, Fisheries and Forestry, Import risk analysis handbook, Canberra 2003, p. 9

2 Department of Agriculture, Fisheries and Forestry, Import risk analysis handbook, Canberra 2003, p. 9

3 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 46

4.5 The Western Australia Fruit Growers' Association (WAFGA) made comments in a similar vein. Western Australia does not have the disease apple scab or the pest codling moth, as described in paragraph 3.95. The WAFGA argued that despite apple scab's potentially devastating effect on the Western Australian apple and pear industry, there had been "improper consultation between Biosecurity Australia and the Department of Agriculture in Western Australia".[4] WAFGA stated that:

> We have an extremely good team of people in the west who do risk assessment analyses for different products which come in. Biosecurity Australia certainly consulted with them on identifying what pests and diseases were relevant to WA, but they did not consult with them on the actual risks, what they thought of the risk measures and what kinds of risks were involved.[5]

4.6 In its submission to the inquiry, WAFGA also argued that the lack of consultation with Western Australian authorities on the issue of regional risk constituted a breach of the steps contained in the Handbook.[6]

4.7 The Committee requested Biosecurity Australia to respond to WAFGA's assertions in a question provided on notice following the 30 June 2004 hearing. The Committee asked:

> Question 12
>
> In their submission the Western Australian Fruit Growers' Association indicate that "they are not aware of Biosecurity Australia ever consulting with WA over regional risk (likelihoods of entry, establishment and spread and consequences) issues for apple scab or codling moth" (p 2) and that this is contrary to indications in the Handbook (p 15). Would you care to respond?[7]

4.8 In response to what was a very specific question about consultation with Western Australian authorities regarding regional risk, and the rules as outlined in the IRA Handbook, Biosecurity provided the following answer:

> Representatives from the Western Australian Department of Agriculture were on the provisional technical working group that assisted in the categorisation of pests including apple scab and codling moth.[8]

4.9 Biosecurity Australia's answer seemed to indicate that involving the Western Australian Department of Agriculture in a provisional technical working group

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4 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 4

5 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 4

6 Western Australia Fruit Growers' Association, *Submission 12*, Improper Consultation

7 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, Attachment A, p. 2

8 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, Attachment A, p. 2

(categorising pests of concern) represents an appropriate level of consultation. The answer also fails to address the question of why relevant WA agencies were apparently not consulted on regional risk issues – including the likelihood of entry, establishment and spread and consequences of regional quarantine pests and disease – as outlined in the Handbook. The Committee was sufficiently concerned with Biosecurity Australia's approach to this issue to ask a further question on notice following the hearing of 9 February 2005.

4.10 The Committee asked:

> Could you indicate to the Committee the consultation you undertook with the WA Department of Agriculture subsequent to the work done to categories pests of risk? Did you consult with them on the extent of the risk to WA or potential risk mitigation strategies that might be implemented? If not, do you consider this to be a breach of step 10 of the IRA handbook.

4.11 Biosecurity Australia's answer was more forthcoming:

> The Department of Agriculture WA (DAWA) participated as a full member of the IRA technical working group. Biosecurity Australia consulted extensively with DAWA on a range of issues, including the extent of risk to WA, and will continue to do so. Biosecurity Australia considers that the process used fully complied with the requirements of the IRA Handbook.

Errors in Revised Draft IRA

4.12 Concerns raised with the Committee about Biosecurity Australia's communication extended beyond issues related to consultation.

4.13 The Committee was told of industry's specific concerns about the accuracy of the revised draft IRA document. Apple and Pear Australia Ltd (APAL) indicated that a number of errors had been identified during an audit analysis APAL conducted on the revised draft IRA in June 2004. As APAL proceeded through a quality assurance check using Biosecurity Australia's model, a number of discrepancies were found between APAL and Biosecurity Australia's figures.

4.14 Following the discovery of the errors, APAL wrote to both the then Secretary of the Department of Agriculture Fisheries and Forestry, Mr Mike Taylor and the then Director of Biosecurity Australia, Ms Mary Harwood, highlighting the errors as a matter of major concern. APAL expressed industry's disappointment in the response received from Biosecurity Australia which described the differences in the figures as typographical errors. They also argued that:

- industry had been attempting to respond to an inaccurate document for approximately four months;
- for three of those four months, Biosecurity Australia had been aware of the inaccuracies;
- Biosecurity Australia had not formally notified stakeholders of the errors;

- most of the errors identified are in the pathways – one of industry's major areas of concern; and
- the errors discovered in the document present a procedural fairness issue.[9]

4.15 APAL's level of anger and concern over the transcription errors was evident in the letter they wrote to the Minister for Agriculture, Fisheries and Forestry, the Hon. Warren Truss, MP. In it they requested that:

- the apple IRA be withdrawn;
- the Minister instigate an independent inquiry into Biosecurity Australia's actions; and
- compensation be provided for all stakeholders who prepared their responses using an inaccurate report.[10]

4.16 APAL described Biosecurity Australia's handling of the issue in the following terms:

> After the banana IRA was shown to have problems, Biosecurity Australia stated in the public arena that those problems did not affect the apple IRA and that the apple IRA was correct. They found that they had made mistakes but they did not tell anybody. They did not tell us that we were in fact responding to a document that had fundamental errors in it. Not only that, but they continued to distribute documents that they knew were wrong.[11]

4.17 During its hearing on 30 June 2004, the Committee sought to clarify both the timeline of events and the decisions made in relation to the revised draft IRA. The Committee did establish that Biosecurity Australia corrected the erroneous data on the document posted on its website, but continued to distribute hard copy with the transcription errors (see paragraph 4.24).

4.18 In a subsequent response provided by Biosecurity Australia, the Committee was informed that Ms Mary Harwood had advised both the Minister's office and the Departmental Secretary's office on, or about, 19 March 2004. Both the Secretary and the Minister were advised that:

> … the Risk Assessment Model, and risk assessment conclusions drawn from the model and contained in the revised Draft Apple Import Risk Analysis report were correct. She also advised that some data inputs had been incorrectly transcribed in the printed report but that they made no material difference to the risk assessment. Accordingly, Biosecurity

9 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 17

10 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, pp. 17-18

11 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15

> Australia had decided that there was no need to issue a correction to the report.[12]

4.19 The Committee was also advised that the then Secretary, Mr Taylor, supported Ms Harwood's decision, accepting that the transcription errors did not alter any risk assessments conclusions made in the revised draft IRA.[13] Such a response appeared to the growers to belittle their work and resource contribution.

4.20 APAL highlighted the resources the organisation had put into its response to the revised draft:

> Clearly we have spent a great deal of time and effort in responding to the hard copy version of the revised draft IRA. We have spent hundreds of thousands of dollars in cold hard cash, and that is not counting the time and effort that industry people have put into responding to a document that is wrong and that Biosecurity Australia knew was wrong. That is a major problem for us.[14]

4.21 In relation to the errors which were characterised as 'typographical' by Biosecurity Australia, representatives of the Apple and Pear Growers Association of South Australia made the following comments:

> Certainly as an industry we are most concerned – again, not only at the South Australian level but at a national level. On behalf of our industry I have committed many hundreds of hours, particularly over the last 120 days, in working on a document that we find has got errors in it.
>
> …
>
> From any industry perspective, we have wasted a lot of time and effort on a document which Biosecurity Australia travelled the country with throughout May and early June on a roadshow. They brought copious boxes of those reports into the state and never was there a point made that, 'There is a discrepancy between this document we are giving you' – which is basically the one we have worked on – 'versus what is on the web site.'[15]

4.22 In response to such criticism from the industry, Biosecurity Australia told the Committee that:

> The errors identified in the printed report are minor and do not have any significant bearing on the draft conclusions contained in the published report. The proposed risk management measures bring risk below ALOP whether the correct on incorrect input data sets are used, and the risk

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12 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, p. 1

13 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, p. 1

14 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15

15 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, pp. 46-47

> analysis panel will consider all comment and submissions before finalising a set of recommendations to Biosecurity Australia.[16]

4.23 The Committee notes the frustration experienced by the industry in relation to this matter. While it accepts that the errors did not significantly alter the risk assessments made, it understands the difficulties that Biosecurity Australia's attitude to information sharing posed. Indeed, during the inquiry the Committee experienced similar difficulties.

Biosecurity Australia's evidence

4.24 During its hearing on 30 June 2004, the Committee ascertained that the corrected tables were loaded on the web site on 31 March 2004. It was also established that Biosecurity Australia was aware, prior to 31 March, that the hard copy of the document that had been distributed was inaccurate.

4.25 At the 30 June hearing, the Committee also explored whether Biosecurity Australia officers giving evidence to the Committee at the hearing of 31 March 2004 were aware of the errors and, if so had not taken any opportunity to inform the Committee of these errors. In an effort to ascertain what happened at the 31 March hearing, the following exchange took place at the 30 June 2004 hearing:

> **Senator COLBECK –** I would like to ask a question based on what happened at the hearing on 31 March, because I asked a question at that hearing about the spreadsheets and about having them checked by a third party. It was in relation to the 2001 committee report that recommended exposure of an IRA to a third party. I asked whether you had had the spreadsheets checked by a third party with respect to the apple IRA. Your response to me was:
>
> The spreadsheets have been verified as presenting an accurate electronic transcription of the model as presented in the printed report.
>
> **Ms Harwood –** That is absolutely correct. The model is correct. The electronic transcription of the model is correct. There was, and there is, no error in the model. The only thing there is is that several input values in the printed report – data points that are entered into the model – are incorrectly presented in the printed report. The correct input values are in the PDF filed on the Web. So the model has been verified both internally and by the RS statisticians as implementing correctly the model, formulation and syntax as presented in the written report.
>
> **Senator Colbeck –** So you are saying that the model as presented in the printed report is correct?
>
> **Ms Harwood –** That is correct.
>
> **Senator Colbeck –** But there are transcription errors with respect to some of the input data items.

16 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 2

> **Ms Harwood –** Yes. Some input data points in the printed report are printed wrongly; they have the wrong value there. As I said, there are about 1, 150 data points in the apple report and about 10 of those are not correctly entered into the printed version of the report.
>
> **Senator Ferris –** But when Senator Cherry, I think it was, asked that question of you, Ms Harwood, you gave really only half the answer, in the sense that you answered the end point but you did not say what you already knew and that was what you have just said to us then – that there were some errors. So it meant that when the growers discovered those errors the whole question of Biosecurity's credibility was quite rightly questioned. I do not understand why, when you had the opportunity in response to Senator Cherry's question to give a full answer, you only gave half the answer. It seems to me that, as a result of that, you have brought yourself a bucket load of trouble because your whole credibility is now on the line. If you had answered the question in the first place as truthfully as you knew, we might not have been here today asking questions like we are.
>
> **Ms Harwood –** The question I was asked was: has the model been verified as correct? I gave a correct answer to that: that the model had been verified.
>
> **Senator Ferris –** But you could have said 'however'. We on this Committee already knew that we were into the 'however' on bananas – Biosecurity, the whole industry all over again, your credibility – and here we are in the same position again. I just do not think it does Biosecurity any good with industries.[17]

4.26 The then Acting Secretary of the Department of Agriculture, Fisheries and Forestry, Mr Wonder, was asked to comment on whether he believed the right course of action had been followed by Biosecurity Australia "in not advising formally that there was a difference between the hard copy document, which was publicly distributed, and the material on the web site which contained the corrected tables?".[18] Mr Wonder responded by saying that:

> … At the time, my understanding is that BA were firmly of the view – and I understand the position – that they did not have something on their hands that actually changed in any way the findings of the report. They were also, as I understand it, of the view that the errors that were there had not in any sense led to incorrect analysis or incorrect modelling; they had verified results subsequently. They still obviously felt at the time that they had a substantive document that was useful and appropriate for responding to as a draft report. I underline the fact that it was a revised draft. It was not a final document. I do understand the position and perspective that they took at that time.
>
> …

17 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, pp. 31-32

18 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 33

> … Had we known that the issues that are being discussed here today might have unfolded the way they have then I accept that we would ask ourselves whether that was the best way to do it. We would have to reflect on that. As I say, it is great to be wise in hindsight. I believe that at the time the analysis was comprehensive. The findings are correct, the IRA panel's recommendations are unaffected and there is a substantial draft report there for the community and industry to respond to. We are now in a position where we still have a viable way forward to go to the final report that is not in any way, I do not believe, threatened by the events to date.[19]

4.27 The Committee finds this view disturbing. The then Acting Secretary accepts that Biosecurity Australia is asking stakeholders to comment and review a document and thereby contribute to the IRA process, but does not believe that Biosecurity Australia have a responsibility to keep these organisations and individuals 'in the loop' by ensuring that they are made aware of any corrections made to the document. The Committee believes that Biosecurity Australia needs to do more than "reflect" on "whether that was the best way to do it". Posting corrections on the web site has been demonstrated to be less than effective in informing all stakeholders of any changes to IRAs.

Recommendation 4

4.28 The Committee recommends that Biosecurity Australia review its communication channels with Australian stakeholders and actively seeks to inform stakeholders of any amendments and other developments.

4.29 The Committee notes that following the February 2005 hearing with Biosecurity Australia, the responses to the Committee's questions taken on notice were both timelier and more informative. The Committee is encouraged by this apparent change in Biosecurity Australia's attitude and would encourage Biosecurity Australia to actively seek to mend any credibility difficulties with their Australian stakeholders.

Open and transparent process

4.30 Compounding Biosecurity Australia's communication problems is the belief held by many stakeholder organisations that claims of an open and transparent process has not translated to actions, particularly in relation to the consultation process.

4.31 The issue of consultation was raised by the Committee's predecessor during the earlier inquiry into the proposed importation of apples from New Zealand. In the 2001 Interim Report, the Committee explored the consultation undertaken during the risk assessment and made specific recommendations in relation to the development of guidelines which specify the purpose and method of consultation to be used during the IRA process. The Committee also recommended the establishment of a Risk

19 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 33

Assessment Committee "to allow for the direct involvement of domestic stakeholders during the conduct of IRA's."[20]

Biosecurity Australia - Defensive to criticism

4.32 The then Executive Manager of Biosecurity Australia, Ms Mary Harwood, advised the Committee that the purpose of releasing the revised draft IRA was to draw scientific and technical comment on the regime being proposed. Ms Harwood told the Committee that the report:

> … is open to anyone in the world who wishes to comment on the science and the way it is brought to bear on judgement of risk and presentation of quarantine measures.[21]

4.33 However, during the Committee's inquiry it became clear that industry representatives are concerned about the limited extent to which Biosecurity Australia has allowed the revised draft IRA document to be open to public scrutiny and critique.

4.34 The Tasmanian industry was critical of the consultation process, describing it as having "not been open and transparent enough."[22]

4.35 APAL described Biosecurity Australia's level of defensiveness toward the IRA document as 'alarming', and told the Committee that:

> We keep hearing statements like: 'It's the most transparent process in the world,' and, 'This is an excellent document,' and 'This is a thorough document,' and so on. I went to three of those meetings and not once did I hear anyone from Biosecurity Australia say, 'That is a good point that we need to consider.' All criticisms were always met with very defensive attitudes.[23]

4.36 These sentiments were echoed by Apple and Pear Growers Association of South Australia:

> I think the point has been made that once a document is put out and they start to talk about it, Biosecurity become very defensive of the document and it is very hard then to put the issues into the document.[24]

4.37 A representative of the Queensland Fruit and Vegetable Growers, Mr Ugo Tomasel also suggested that there was a perception amongst growers that Biosecurity Australia was disinclined to accept, or even consider, alternative scientific views.[25] Mr

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20 Senate Rural and Regional Affairs and Transport Legislation Committee, *The Proposed Importation of Fresh Apple Fruit from New Zealand, Interim Report,* July 2001, p. xxiii

21 RRAT Legislation Committee, *Transcript of Evidence,* Canberra, 31 March 2004, p. 27

22 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, pp. 49

23 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15

24 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 46

25 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 55

Tomasel argued that Biosecurity Australia was defensive of its position and therefore not open to the views of growers:

> My interpretation of the attitude is that they believe so strongly in this document that they never seem to question the possibility that they have made a mistake in any shape or form. That is another area that concerns me because we all make mistakes and there are some weaknesses in every document. Because the disease is such a devastating disease everyone has to be absolutely sure that everything is done correctly.[26]

4.38 In response to criticisms, representatives of Biosecurity Australia told the Committee that there had "been ongoing communication with stakeholders during the preparation of the revised draft IRA report".[27] The Committee was also told that regular updates on the progress of the IRA had been provided to industry representatives, scientists and officials in both Australia and New Zealand. Biosecurity Australia also argued that there had been "a flow of technical information through the scientific liaison point nominated by Apple and Pear Limited Australia – APAL".[28]

4.39 Officers representing Biosecurity Australia were also asked how many of the suggestions or comments made at stakeholder meetings had fed back to the panel and "caused changes to be made to their thinking?".[29]

4.40 Ms Harwood responded by stating:

> If there is going to be a change in thinking, that has yet to happen. The panel does not sit there in Shepparton and think: 'Oh, must rewrite recommendation.' They take the concern on board and think: 'Oh, that is something we need to consider,' but they have yet to start the process. What we also have, if you look at it, is a huge body of comments that arrived, including 500 pages of technical submission from the industry. The panel's job is to look at every one of the issues raised in those comments and to deal with them transparently and openly and come to a final set of recommendations.[30]

4.41 The Committee understands the growers' perception has developed in the context of assertions made by Biosecurity Australia about the openness and transparency of the process. Indeed, in undertaking its inquiry into Biosecurity Australia's administration of the IRA on Pig Meat, the Committee was informed that "Australia's IRA process is unusually transparent."[31] However, the Committee is

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26 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 56

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

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

29 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 42

30 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 42

31 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 8 March 2004, p. 17

unconvinced that the importance of transparency may not apply equally to all aspects of the IRA process. It is noted that in evidence to the Committee, Biosecurity Australia applied the notion of transparency to the risk modelling process itself:

> The import pathway steps are modelled in a way such that they are independent and the relational syntax between them in the modelling is very transparent and clearly defined.[32]

4.42 The Committee accepts Biosecurity Australia's need to have the IRA Panel examine the new information before making a comment and that this cannot take place in the context of a public meeting. However, the Committee believes that Biosecurity Australia needs to find a way to make public consultation a more meaningful exchange between itself and growers/producers who attend the public meetings.

Recommendation 5

4.43 The Committee recommends that Biosecurity Australia reviews its public consultation programs to provide forums for meaningful exchange between themselves and stakeholders.

Recommendation 6

4.44 The Committee recommends that Biosecurity Australia reconsiders the Committee's predecessor's recommendation to develop guidelines which specify the purpose of the consultation so that all who attend public meetings have the same understanding of the nature of the outcomes that can be expected.

Availability of evidence

4.45 A further transparency issue emerged during the inquiry. The Committee heard in evidence that unpublished papers were used as reference material for the revised draft IRA. Particular reference was made to a New Zealand research paper authored by Hale and Clark in 1992.

4.46 APAL argued that while this paper had been used during the revision of the IRA, a number of people who were preparing submissions in relation to the revised draft IRA had been unable to obtain copies of the paper in order to respond to it.[33] It was further argued that this was not "a good enough level of scientific input to used in a revised draft IRA."[34]

4.47 In its submission, APAL further stated that Integrated Fruit Production (IFP) as practiced in New Zealand, results in increased quarantine risks. The case for this is suggested by the argument that the practice of IFP allows previously suppressed

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32 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 8 March 2004, p. 22

33 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, pp. 14-15

34 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15

secondary pests (such as Apple Leaf Curling Midge) to increase. APAL indicated that because the industry has been unable to access the New Zealand Integrated Fruit Production Manual, it has been denied the opportunity "to offer a full and comprehensive review and report on a document referenced in the RDIRA and considered an integral part of the decision making process of the IRAT."[35]

4.48 Acknowledging the issue raised by APAL, the Committee requested that Biosecurity provide it with copies of both New Zealand's Integrated Fruit Production Manual, and the paper prepared by Hale and Clark referred to in the revised draft IRA report.

4.49 The Committee was advised that the Ministry of Agriculture and Forestry of New Zealand (MAFNZ) had informed Biosecurity Australia that the Integrated Fruit Production Manual is the property of New Zealand Pipfruit Ltd and that the company did not wish to release the document in its entirety.[36] Biosecurity also indicated that it did not have permission from either MAFNZ or PNZ to provide the Committee with a copy of the Hale and Clark paper for 'external distribution'.[37]

4.50 The Committee is very concerned about the difficulties being experienced in gaining access to scientific research material. In its interim report, the Committee's predecessor specifically recommended "that Biosecurity Australia immediately commission research by the CSIRO, the NZ Horticulture and Food Research Institute or independent authorities into whether export-ready apples from New Zealand can carry viable colonies of *Erwinia amylovora* in their core, calyx or flesh".[38]

4.51 Unfortunately, the Committee's recommendation was not acted upon and Biosecurity Australia now finds itself in the situation where it is using New Zealand research, over which it has no control – either in relation to the research itself or the distribution of scientific papers.

4.52 The Committee agrees with APAL's argument that unpublished papers are not of a sufficient standard of scientific input for an IRA. It is of the opinion that in the interests of transparency, stakeholders have the right to respond to all scientific research papers used in the preparation of the draft IRA, and, as such, they should be publicly available documents. The Committee was prepared to make a recommendation requiring Biosecurity Australia only to use research material that was, at a minimum, available to all stakeholders, but preferably publicly available. It is reassured by the recent advice from Biosecurity Australia. This advice indicates that

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35 Apple and Pear Australia Limited, *Submission 1B,* p. 18

36 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, Attachment A, p. 5

37 Biosecurity Australia has written to MAFNZ seeking a response to the Senate's interest in obtaining a copy of the Hale and Clark paper.

38 Senate Rural and Regional Affairs and Transport Legislation Committee, *The Proposed Importation of Fresh Apple Fruit from New Zealand, Interim Report,* July 2001, p. xxiv

while it "continues to seek permission from the authors to make these documents publicly available",[39] if it fails to secure such permission "the documents will not be relied on by the IRA team".[40]

Accountability – the Appeals Process

4.53 One of the best ways to have an open and transparent process is to have some form of accountability. The IRA process as established in the Handbook does provide for two specific forms of appeal process; an appeal to the Deputy Secretary of the Department of Agriculture, Fisheries and Forestry, or an appeal to the Import Risk Analysis Appeal Panel.

IRA Handbook – appeals process

4.54 The first appeal can be made at the beginning of the IRA process. Stakeholders may appeal the decision relating to "the proposed scope and approach of the IRA and the required expertise, including membership of the IRA team."[41] Any appeal must be made within 15 days of the publication of the decision, giving specific reasons. The Deputy Secretary must consider the appeal, make a determination and notify the appellant with 45 days of the close date for appeals.

4.55 Stakeholders may also appeal the recommendations in the final IRA report. Appeals are considered by an independent Import Risk Analysis Appeal Panel (IRAAP).[42] The appeal must be lodged within 30 days of the publication of the final report and can be made on the following basis:

- there was a significant deviation from the process set out in the Import Risk Analysis Handbook that adversely affected the interests of a stakeholder; or
- a significant body of scientific information relevant to the outcome of the IRA was not considered.[43]

4.56 The IRAAP does not consider matters relating to:

- any matters that can be subjected to the first appeal process;
- the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was not considered; or

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39 Apples: Questions on notice for Biosecurity Australia – 9 February 2005, Answer to question 5

40 Apples: Questions on notice for Biosecurity Australia – 9 February 2005, Answer to question 5

41 *Import Risk Analysis Handbook*, Department of Agriculture, Fisheries and Forestry – Australia, Canberra, 2003, p. 24

42 *Import Risk Analysis Handbook*, Department of Agriculture, Fisheries and Forestry – Australia, Canberra, 2003, p. 17

43 *Import Risk Analysis Handbook*, Department of Agriculture, Fisheries and Forestry – Australia, Canberra, 2003, p. 17

- the merits of risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia.[44]

Criticism of the appeals process

4.57 During the inquiry, the limited basis for appealing the final recommendations in the IRA report was raised as a matter of concern. APAL questioned why the scientific merit of the IRA should not be appealed:

> … we cannot appeal the grounds of the scientific merit of the revised draft IRA. What that means is that Biosecurity Australia have set themselves up as the ultimate arbiter in Australia on the interpretation of various research papers. We are not allowed to appeal on the grounds that they have misinterpreted, misread or taken into account inappropriate research material.[45]

4.58 The concern was reiterated in responses APAL provided to questions taken on notice during the 20 June 2004 hearing:

> … At the moment, with no appeal allowed on their judgement, they are deemed to be the highest authority in Australia on matters pertaining to IRAs. This is, in itself, a matter open to debate.
>
> …
>
> Closing down the avenues of appeal denies stakeholders their natural right to be heard and makes unnamed people with unknown qualifications and unknown interests ultimate arbiters of the future of the industry.[46]

4.59 It may be that the consultation process will permit matters such as the use of science and the appropriateness of that science, to emerge and be discussed. It could be argued that it is at that stage of the process where such differences can best be explored. However, the Committee has already examined concerns over the efficacy of the consultation program (see paragraphs 4.30 to 4.44).

4.60 Further, the Committee heard evidence suggesting that differing view points were not considered. Mr Ugo Tomasel, a fruitgrower from Stanthorpe, Queensland, indicated that a number of technical experts had found problems with the IRA, but that they were being ignored:

> I will give you an example of what I mean. The Queensland apple industry commissioned a review of some of the key scientific aspects of the IRA by two respected and experienced scientists. They have looked at four research

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44 *Import Risk Analysis Handbook*, Department of Agriculture, Fisheries and Forestry – Australia, Canberra, 2003, pp. 25-26

45 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15

46 Answers to Questions Taken on Notice by Apple and Pear Australia Limited, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, p. 5

> papers that Biosecurity quoted to support cold storage treatment. They found that only two of these gave any support to their argument, but their real concern was that they found six other international research papers that said fire blight survives quite well in cold storage. Why were these six reports not considered?[47]

4.61 The Committee notes the perception amongst industry representatives that Biosecurity Australia has been selective in its use of scientific research material. APAL advised the Committee that while there are many references in the Handbook to the use of independent reviewers, the revised draft IRA does not mention that any person outside Biosecurity Australia or the IRA panel has reviewed the document in any way. APAL would like to see the document reviewed independently by scientists disinterested in the outcome. [48]

4.62 In relation to the example cited by Mr Tomasel, the Committee accepts Biosecurity Australia's assurance provided at the hearing of 9 February 2005:

> I guess the response to that is that we are looking at cool storage and the survival of bacterium on the surface of mature fruit as the measure.[49]

4.63 On the question of an independent review of the IRA report the Committee supports the advice by Biosecurity Australia that the Eminent Scientist Group will "consider the draft Final IRA report to ensure that stakeholder comments have been properly taken into account".[50]

4.64 The establishment of the Eminent Scientists Group was one of a number of measures announced by the Minister for Agriculture, Fisheries and Forestry on 15 July 2004. The Eminent Scientists Group will independently examine the draft Final IRA reports prior to their release. The Group will have the following specific functions:

- Review the draft IRA Report prepared by the IRA Team to ensure that the IRA Team has adequately considered all technical submissions received from stakeholders during the formal consultation period on the draft IRA report; and
- Within 60 days of being presented with the draft Final IRA report, prepare a report to the Director of Animal and Plant Quarantine on their findings and recommend any action considered necessary to overcome

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47 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 53

48 Answers to Questions Taken on Notice by Apple and Pear Australia Limited, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, pp. 1-5

49 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 9 February2005, p. 5

50 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 9 February, question 2

> any identified deficiencies. The Eminent Scientists Group will provide a copy of the report to the Executive Manager, Biosecurity Australia.[51]

4.65 The Committee hopes that the establishment and work of this group will allay the growers concerns that the issues they raise will be considered and appropriately addressed.

4.66 The independence of Biosecurity Australia has been further strengthened by its establishment as a prescribed agency. Significantly, as a prescribed agency Biosecurity Australia will be financially separate from the Department of Agriculture, Fisheries and Forestry and have a separate outcome statement.[52] However, it remains part of a Department of State and is "subject to all the usual responsibilities and accountabilities to Parliament, the Government, Ministers legislation and audit arrangements etc and any associated directives that would normally arise from these responsibilities and accountabilities."[53]

4.67 The Minister's announcement noted that the appeals process will remain unchanged.[54]

Criticism of IRA handbook

4.68 Finally, industry representatives were also critical of the IRA handbook and the current process for amending its provisions. APAL made the following comments in relation to the handbook:

> … Biosecurity Australia write the handbook. They write the rules by which we play the game. We are into another edition of the handbook which is quite different from the original. Clearly, Biosecurity Australia did not really like the rules they wrote the first time so they threw them out and wrote another set. This is an issue for us – it is a problem.[55]

4.69 The Committee notes that the handbook has been reviewed and updated in the time that the IRA for apples was first commenced. The first draft IRA for apples was released on 11 October 2000, several days after the establishment of the new Biosecurity Australia. The majority of the work for the first IRA had been conducted by AQIS. The new body revised the IRA process and it was the revised process that

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51 Department of Agriculture, Fisheries and Forestry, *Animal Biosecurity Policy Memorandum 2004/15, Plant Biosecurity Policy Memorandum 2004/22, New Arrangements to Strengthen Import Risk Analysis*, p. 1

52 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 9 February 2005, p. 1

53 Correspondence between the Interim Chief Executive, Biosecurity Australia, and the Committee dated 25 February 2005

54 Department of Agriculture, Fisheries and Forestry, *Animal Biosecurity Policy Memorandum 2004/15, Plant Biosecurity Policy Memorandum 2004/22, New Arrangements to Strengthen Import Risk Analysis*, p. 2

55 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15

was followed for the apples revised draft IRA. The Committee understands that in straddling two different processes, the Australian growers unfortunately have been required to come to terms with two different sets of requirements.

4.70 The Committee notes that Biosecurity Australia have indicated that following the recent changes in the IRA process with the announcement of the Eminent Scientist Group and the review and reissue of current draft IRA reports "Consideration will be given to amending the IRA Handbook".[56] However, no timeline has been indicated. The Committee asks that Biosecurity Australia considers the dislocation that may result to active IRAs when the guidelines to the process are revised during the conduct of the process.

56 Biosecurity Australia, Apples: Questions on notice for Biosecurity Australia – 9 February 2005, Question 6

CHAPTER FIVE

Conclusion

5.1 The Committee notes that since it commenced this inquiry a number of administrative developments have been instituted that are designed to address some of the concerns raised during the inquiry. However, some of the concerns remain.

Risk Assessment and Mitigation strategies

5.2 The concerns that arise from the methodology and risk assessment, together with the proposed risk mitigation strategies continue. The Committee focused its attention when examining the risk assessment and mitigation strategies on the disease of fire blight.

5.3 If the revised model is to continue to base its assessment of risk on the assumption that apples will be exported trash free from New Zealand then the certification process needs to be carefully re-examined so that Australian growers can have confidence in the assurances that the trash free criteria will be meet.

5.4 Further, the Committee shares the growers concern that the model does not give appropriate weight to the economic consequences of a fire blight outbreak in Australia. It recommends that it be reviewed in the revision that is to take place.

5.5 Finally, the Committee continues to be concerned about the practicality of some of the risk mitigation strategies. It is in these that science meets the real world of farming and retail and it is therefore important that the merger is satisfactory. The Committee is therefore concerned that the procedure to identify blocks of orchards as symptomless for fire blight lacks detail.

Administration of process

5.6 The Committee acknowledges industry's concerns in relation to Biosecurity Australia's administration of the IRA process, and in fact shares some of those concerns.

5.7 The Committee has particular concerns in relation to the credibility of the process and the credibility of Biosecurity Australia itself – both from the perspective of the industry and those observing the IRA process.

5.8 Significant differences exist between the way in which Biosecurity Australia views its administration of the process and how its role is perceived by the industry, and the Committee believes that it is up to Biosecurity Australia to address those differences. Changes need to be made in relation to the type of language used, the way

in which consultation is undertaken and the way in which information is disseminated. The Committee has made a number of recommendations to give effect to these views.

5.9 The Committee believes that important lessons should be learned from mistakes made during this and previous processes, and in future, it will be looking for demonstrable evidence that these lessons have been learned, changes made and acted upon.

Senator the Hon. Bill Heffernan

Chair

Appendix 1

List of Submissions

1.	Apple & Pear Australia Limited
1A	Apple & Pear Australia Limited
1B	Apple & Pear Australia Limited
2.	Eastern Metropolitan Fruit Growers Association
3.	Plunkett Orchards
4.	Parliamentary Secretary to the Minister for Environment and Heritage
5.	Department Primary Industries, Water & Environment
6.	Queensland Fruit & Vegetable Growers
7.	New Zealand High Commission
8.	School of Social and Policy Research, Institute of Advanced Studies
9.	School of Agriculture and Food Systems
10.	B.A. Tierney
11.	Tasmanian Apple & Pear Growers Association Inc
12.	The Western Australian Fruit Growers' Association
12A	The Western Australian Fruit Growers' Association
13.	Greater Shepparton City Council
14.	Australian Apple and Pear Industry Taskforce
15.	Apple and Pear Growers Association of SA Inc.
16.	Mr Richard Aumann
17.	Australian Farmlink Pty Ltd
18.	Mr Kevin Saunders
19.	Mr Shane Hall
20.	Mr Peter Hall
21.	The N&A Fruit Distributors Pty Ltd
22.	E.E. Muir & Sons Pty Ltd
23.	Plummers Border Valley Orchards Pty Ltd

24. P. Savio & Co Pty Ltd
25. Springfield Orchard Partnership
26. Bruce and Joy Plummer
27. Mr Scott Baron
28. Australian Fresh Fruit Company Pty Ltd
29. P.Pullar & Co (Cobram) Pty Ltd
30. Batlow Fruit Co-operative Ltd
31. Victorian Peach & Apricot Growers' Association
32. Joyson Orchards
33. Pipfruit New Zealand
34. Partners KR Filsell & Sons

Appendix 2

Witnesses who appeared before the Committee at the Public Hearings

Wednesday, 31 March 2004
Parliament House, Canberra

Biosecurity Australia
Ms Mary Harwood, Executive Manager
Dr Brian Stynes, General Manager, Plant Biosecurity

Department of Agriculture, Fisheries and Forestry
Mr Craig Burns, General Manager, Trade Policy
Mr David Heinrich, Manager, Special Projects

Wednesday, 30 June 2004
Parliament House, Canberra

The Western Australian Fruit Growers' Association
Mr Stephen Dilley, President
Mr Robert McFerran, Executive Manager

Apple and Pear Australia
Mr Darral Ashton, Chairman
Ms Alma Reynolds, Executive Officer, Operations
Mr John Corboy, Member
Dr Satish Wimalajeewa, Consultant Plant Pathologist
Dr Irena Carmichael, Consulting Scientist

Apple and Pear Growers Association of South Australia Inc.
Mr Michael Nicol, President
Mr Trevor Ranford, General Manager

Biosecurity Australia
Ms Mary Harwood, Executive Manager
Mr Bernard Wonder, Acting Secretary, Department of Agriculture, Fisheries and Forestry
Dr Brian Stynes, General Manager, Plant Biosecurity
Dr William Roberts, General Manager, Product Integrity Animal and Plant Health
Mr David Heinrich, Manager, Special Projects

Tasmanian Apple and Pear Growers Association Inc.
Mr Mark Salter, President
Queensland Fruit and Vegetable Growers
Mr Mark Panitz, Chief Advocate
Mr Ugo Tomasel, Member, Apple Committee

Pipfruit New Zealand
Mr John Alison, Chairman
Mr Peter Beaven, Member

Wednesday, 31 March 2005
Parliament House, Canberra

Biosecurity Australia
Dr David Banks, Principal Scientist
Mr John Cahill, Interim Chief Executive
Dr Brian Stynes, General Manager, Plant Biosecurity
Mr Bernard Wonder, Deputy Secretary, Department of Agriculture, Fisheries and Forestry