Briefing information on Fire blight and New Zealand Apple Imports

The New Zealand apple and pear industry has watched with interest as the debate on the possible import of New Zealand apples has developed. We are concerned at the extent to which the public debate has avoided the science that supports our application, as well as an understanding of the New Zealand industry.

We have enclosed a number of papers that provide an overview of fire blight and its impact on production; a recent independent assessment of the science relating to fire blight and a brief overview of the New Zealand industry.

The briefing material enclosed is as follows:

Fire blight Fact Sheet	Appendix 1
Fire blight and world apple competitiveness	Appendix 2
New Zealand Government submission to the Australian Senate Committee	Appendix 3
Summary of the WTO apple case *Japan – Measures affecting the import of apples* (paper authored by Bill Bryant, Bryant Christie, Seattle)	Appendix 4
Management of Australia's quarantine system – concerns and future challenges (paper authored by leading Australian trade authority and former Ambassador to the GATT, Alan Oxley)	Appendix 5

In summary, we feel there is a need for greater awareness of the following points:

1. **The world's best scientists conclude that mature apples cannot transfer fire blight.**

   - New Zealand does not want to export anything but apples and there is overwhelming scientific proof that apples do not transfer fire blight.
   - Fire blight transfers by the movement of rootstocks or propagative material such as nursery trees and budwood.
   - The application applies only to the export of New Zealand mature apples.

2. **A WTO panel, in *Japan – Measures affecting the import of apples*, has confirmed that apples do not transfer fire blight.**

   In the tribunal's words;

   "..we conclude that there is not sufficient scientific evidence that apple fruit are likely to serve as a pathway for the entry, establishment or spread of fire blight.."

   In arriving at this conclusion, the panel considered submissions from many countries, including Australia. There is no reason to conclude that WTO would not reach a similar conclusion if a case were considered between New Zealand and Australia.

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3. **If fire blight were to ever establish in Australia (and it won't from apple imports) it will not be anywhere near as damaging as claimed.**

   - Fire blight exists in the world's most successful apple and pear growing and exporting countries, and does not seriously affect production. Apples and pears are grown throughout the world and nowhere have there been whole regions or industries destroyed because of fire blight.
   - Despite having fire blight New Zealand has one of the highest levels of production per hectare in the world.

4. **New Zealand's standards are the best in the world.**

   - Suggestions have been made that New Zealand does not have a commitment to clean, green growing standards. This is incorrect as New Zealand leads the world in apple and pear Organic and Integrated Fruit production growing technologies.
   - 100% of New Zealand's growers are committed to environmental growing methods; our growers are EurepGap compliant; and our packhouses meet the British Retail Consortium's (BRC) rigid standards.
   - New Zealand consistently achieves the very highest standards established by consumers, customer and phytosanitary standards. We export 70% of our total production to more than 65 countries and are proud of our record in meeting, and leading, those standards.

5. **New Zealand has no wish to damage the Australian apple and pear industry.**

   - We already work closely on a number of research projects and value the close relationship and exchange of knowledge between our industries. The apples that will be exported to Australia will be complementary to Australian grown fruit, with a position in the Australian market that offers consumers unique New Zealand bred varieties, such as Pacific Rose™.

In the view of the New Zealand industry, there is sufficient scientific evidence to demonstrate that apple fruit cannot serve as a pathway for transmission of fire blight. We ask you to consider the enclosed papers and determine for yourself whether Australian industry stakeholders are basing their campaign on the basis of science.

Phil Alison
Chairman
Pipfruit New Zealand

30 June 2004

Fire blight Fact Sheet

A brief summary prepared on behalf of Pipfruit New Zealand Inc.
1 June 2004.

What is Fire blight?

Fire blight is a plant disease caused by the bacterium ***Erwinia amylovora.*** It attacks species of plants from the *Rosaceae* family, including apples and pears. During suitable climatic conditions, the bacterium enters apple and pear trees through the blossom, causing blossom damage and damage to new growth. In severe cases whole branches can be damaged.

Fire blight exists in many major growing regions, including USA, South America, New Zealand and throughout Europe.

Effect on Production

The presence of fire blight is not considered a major disease problem for NZ pipfruit growers. Significant tree deaths are rare in any producing country in which fire blight is established.

The only outbreak of fire blight of any significance in New Zealand for the past 15 years was in Hawkes Bay in 1998, before early warning systems were developed. Most damaged trees returned to normal production within 2 years.

The table below shows NZ total exports for the five-year period from 1995 to 2000. As can be seen, the fireblight outbreak in 1998 did not affect exports and the overall economic impact was negligible.

Year	Apple Export Production (000 tonnes)
1995	305
1996	296
1997	287
1998	292
1999	309
2000	330

How do NZ Orchardists Manage Fire blight?

Since 1998 the NZ industry has introduced predictive modelling in all districts susceptible to fire blight outbreaks. Predictive modelling monitors climatic conditions over the blossom period and identifies when those conditions may be conducive to a fire blight outbreak. When those conditions are identified preventative sprays are applied.

On average one to two treatments are required annually and the spray options are Streptomycin or Blossom Bless. Streptomycin is an antibiotic, while Blossom Bless is a biological control agent that can be applied to both conventional and organic orchards. Increasingly Blossom Bless is considered the more appropriate option.

The cost is typically about $160 per hectare for streptomycin and $360 for blossom bless.

What is the risk of Fireblight Spreading to Australia?

There is a significant body of science from throughout the world that concludes that apples ***are not a pathway*** for the spread of fire blight. That there is no risk of fire blight establishment!

This was confirmed recently by the WTO in a case brought by the USA against Japan to which both New Zealand and Australia were 3rd country participants. After examining all the scientific evidence and extensively questioning international experts, including a leading Australian scientist, one of the conclusions they reached (clause 8.176) was:

"...we conclude that there is not sufficient scientific evidence that apple fruit are likely to serve as a pathway for the entry, establishment or spread of fire blight.."

Fire Blight and World Apple Competitiveness
Where does New Zealand Stand?

Pipfruit New Zealand summary paper

1 June 2004.

Competitiveness

Each year, the World Apple Review[1] comments on trends in production, pricing, variety mix and comparative advantage in the world apple business. The 28 major apple producing nations are compared and ranked for their overall performance on production efficiency, infrastructure and inputs and financial and markets. The overall rankings for the past five years are as follows:

	First	Second	Third	Fourth	Australia
1999	NZ	Chile	Austria	USA	11th
2000	NZ	Chile	Holland	France	11th
2001	NZ	Chile	Holland	Austria	8th
2002	NZ	Chile	France	Austria	12th
2003	Chile/NZ		France	Austria	12th

With the exception of Chile, all countries ranked in the top four producing countries have fire blight. Holland, France, USA, and Austria are also major producers of pears. Even New Zealand exports nearly 9,000 tonnes of fresh pears each year.

Countries with a wide range of climatic conditions have fire blight and are able to demonstrate that it does **not** have the serious impact on production that is being suggested – whether for apples **or** pears.

Fire Blight does not determine the success of an industry. Success arises from the development of the capability to innovative and to accept the challenges of international competition.

New Zealand has a very successful apple and pear industry, however, we still would not encourage the importation of apples from New Zealand unless we were totally confident that apples are not a vector for the establishment of fire blight. Fire blight simply cannot establish by trade in fresh apples!

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1 The World Apple Report has been published since 1996 by Belrose Inc. Desmond O'Rourke, President of Belrose is widely regarded as the world's leading commentator on the international apple business.

Production Methods

100% of New Zealand's production is grown either organically or using IFP. (Integrated Fruit Production) The IFP system was developed by the NZ industry in response to its desire to eliminate harmful sprays and minimise the use of all sprays. New Zealand's introduction of NZP-IFP has resulted in:

- Almost total elimination of organophosphate chemicals
- Elimination of calendar spraying in favour of monitoring and application of "soft" sprays targeting specific pests
- Residue profiles well below international regulatory requirements
- Introduction and encouragement of natural predators to control pests
- Reduction in total amount of chemical usage

The New Zealand IFP growing system was recently selected as a finalist in the Australia and NZ Innovation Awards sponsored by Du Pont.

Complementary Trade

New Zealand believes that the fruit we would export to Australia will be complementary to the Australian grown produce. Our varietal mix is different and the timing of our harvest we will always be in the market later than Australian produced fruit.

Current Australian and New Zealand Variety Mix

(Figures obtained from APAL and NZ Customs and Industry data 2003)

	Australia	New Zealand
Delicious - Red	22%	0.6%
Granny Smith	22%	2.0%
Cripps Pink (Pink Lady TM)	14%	0.5%
Gala/Royal Gala	11%	32.4%
Delicious - Golden	7%	0.1%
Fuji	7%	9.0%
Cripps Red (Sundowner TM)	3%	0%
Jonagold	2%	0%
Jonathan	2%	0%
Lady Williams	2%	0%
Braeburn	2%	30.5%
Pacific Rose/ Pacific Series	0%	15%
Cox Orange	0%	2.9%
Other apples	6%	7%

NEW ZEALAND SUBMISSION TO THE AUSTRALIAN SENATE INQUIRY INTO THE ADMINISTRATION OF BIOSECURITY AUSTRALIA AND REVISED DRAFT IMPORT RISK ANALYSIS FOR NEW ZEALAND APPLES

The New Zealand Government welcomes this opportunity to make a submission to the Australian Senate inquiry into the administration of Biosecurity Australia with particular reference to the revised draft Import Risk Analysis (IRA) for the import of New Zealand apples. The IRA is a response to New Zealand's request to Australia to produce the least restrictive regime under which New Zealand apples could be exported to Australia.

1. The New Zealand Government had the privilege of making a submission to the inquiry launched by the Senate in 2000 into the administration and management of the IRA process concerning the proposed import into Australia of New Zealand apples. We stand by the statements we made at that time. What we would like to do in this submission is to highlight an important development since then – namely the WTO ruling in *Japan – Measures Affecting the Import of Apples*.
2. As major agricultural producers and exporters New Zealand and Australia share a strong interest in ensuring that the disciplines of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) are not undermined by the adoption of measures aimed at protecting domestic industries or meeting domestic political imperatives, rather than addressing legitimate scientifically established risks.
3. At the same time our unique biosecurity concerns mean that we must also seek to uphold the rights reserved to WTO Members under the SPS Agreement to take measures for the protection of plant and animal life and health, as well as to adopt our chosen appropriate level of protection from scientifically established risks. Our concerns regarding Australia's unjustified barriers to New Zealand apple imports should be placed firmly within that context.
4. Since the Australian Senate inquiry was initiated in 2000 into the administration and management of the IRA process concerning the proposed import into Australia of New Zealand apples, a WTO Panel and the Appellate Body of the WTO have considered the consistency of fire blight-related measures with the SPS Agreement. As a result of the *Japan – Measures Affecting the Import of Apples* dispute there is now far greater clarity regarding both the risk of transmission of fire blight from apples in trade and what is required of WTO Members under the SPS Agreement.
5. The Panel in *Japan – Apples* had before it up-to-date and comprehensive scientific evidence from a range of experts on fire blight. Notably, both the New Zealand and Australian Governments were third party submitters to the WTO hearings, and all the science used by the Biosecurity Australia Risk Assessment Panel in relation to fire blight was also considered by the WTO. On the basis of the evidence before it, the Panel made significant factual findings regarding the risk of transmission of fire blight through apples in trade. Most importantly, the Panel concluded that there was not sufficient scientific evidence that apple fruit are likely to serve as a pathway for the entry, establishment, or spread of fire blight. We refer you to the key components of this conclusion:

"We therefore conclude, on the basis of the information made available to the Panel that there is not sufficient evidence to conclude that mature symptomless apples are likely to harbour epiphytic populations of bacteria capable of transmitting E. amylovora."

"We therefore conclude, on the basis of the information made available to the Panel, that there is not sufficient scientific evidence to conclude that mature, symptomless apples would harbour endophytic populations of bacteria."

"We conclude from these elements that the scientific evidence presented to the Panel show that, with respect to mature, symptomless apple fruits, the risk that the transmission pathway be completed is negligible."

6. These findings represent the considered view of an independent Panel based on an examination of scientific evidence produced by experts in this area. In New Zealand's view these findings must be given weight by Australia in the context of its IRA for New Zealand apples.
7. In addition the Panel, and the Appellate Body, made legal rulings on the application of the SPS Agreement to Japan's fire blight-related measures that are also highly relevant to any fire blight-related measures other WTO Members may consider imposing. In particular, the Appellate Body clarified the requirements under Article 2.2 of the SPS Agreement for any such measures.

   Article 2.2 provides 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.* (emphasis added)
8. The finding of the Panel, confirmed by the Appellate Body, is that a measure is maintained without scientific evidence if there is not a "rational or objective relationship" between the measure and the scientific evidence. Given that the Panel had found that it is not likely that apple fruit would serve as a pathway for entry, establishment or spread of fire blight in Japan, the Panel concluded that Japan's measures were clearly disproportionate to the risk identified, and as such was in breach of Article 2.2 of the SPS Agreement.
9. Australia's draft IRA identifies three measures that are sought to be imposed on New Zealand apple imports. 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. Accordingly in our view none of the proposed measures would be based on sufficient scientific evidence and, if imposed, would be inconsistent with Australia's obligations under the SPS Agreement.
10. In light of the above arguments, New Zealand will be making a submission to Biosecurity Australia on its revised draft IRA for New Zealand apples and will forward a copy to the Senate Committee when it is completed.

Summary of WTO Apple Case between USA and Japan

Prepared for Pipfruit New Zealand by Bill Bryant of Bryant Christie, Seattle

1 June 2004

- On March 1, 2002 the United States asked the World Trade Organization (WTO) to review Japan's fire blight regulations on imported apples. On July 15, 2003 a WTO panel found in favor of the United States, concluding that there was not sufficient scientific evidence that apples are likely to serve as a pathway for the entry, establishment or spread of fire blight, and that Japan's import requirements were maintained without sufficient scientific evidence. Japan appealed that report, and on November 26, 2003 the World Trade Organization upheld the panel's findings.

- Under the WTO rules, a country may set whatever quarantine regulations it chooses as long as its regulations are based on science, are the result of a risk analysis, and are not more trade restrictive than necessary to protect quarantine security. The United States argued that Japan's fire blight quarantine regulations did not meet these WTO obligations.

- The U.S. brought the case because Japan required U.S. apple orchards be designated fire blight free, free of host plants other than apples, surrounded by a 500 meter fire blight free buffer zone, inspected three times during the growing season; required the apples be cleaned with chlorine and stored apart from other apples; required harvest containers and packing plants be disinfected.

- Japan defended these measures by arguing that imported apples could introduce fire blight and that then wind, rain, insects, etc., could spread the disease. Japan argued discarded or decomposing imported apples could serve as a source of the disease.

- The WTO panel concluded it did not find any science supporting the contention that mature, symptomless apples were capable of introducing and spreading fire blight.

- The WTO concluded that fire blight does not appear capable of surviving the apple decomposing process, and that contamination from rain splash, bees, or birds from apple fruit has not been established even in experiments. The WTO panel noted that experts who had attempted to establish visible contamination using apples with fire blight ooze had failed. Japan's evidence was characterised as circumstantial and unconvincing by experts. The experts agreed that historical and scientific evidence suggests that the likelihood of apples introducing and spreading fire blight was negligible. The WTO panel specifically cited the buffer zone and inspection requirements as inconsistent with the risk presented by apples.

- This WTO panel decision should be carefully considered by countries, such as Australia, that are reconsidering their fire blight regulations. The WTO conclusion that there is only a negligible risk that mature, symptomless apples could spread fire blight, suggests that import requirements need only ensure mature, symptomless apples are imported.

Management of Australia's quarantine system – concerns and future challenges

A paper prepared for Pipfruit New Zealand by Alan Oxley of ITS Global, Sydney.

Executive Summary

1. Australia now has a reputation for using Sanitary and Phytosanitary Measures as trade barriers to give domestic industries economic protection.

> Whether or not it is true, this is the perception of Australia's trading partners. They have lost confidence in the integrity and impartiality of our quarantine system.
>
> The consequences are:
>
> - an undermining of the credibility and effectiveness of Australian trade diplomacy to advance Australia's national interests
> - curbing of capacity to secure greater market access in agricultural markets for Australian exporters; and
> - increased likelihood of challenges to Australian measures in international trade disputes panels, with an attendant increase in risk of disruption of business and lower profits

2. "Zero risk" is no longer a viable or acceptable approach to risk management. "Managed risk" is now the norm in international business and public policy.

> Australia's system for determining risk from sanitary and phytosanitary measures and setting measures to contain that risk needs institutional reform to meet our longer term challenges and enable regulators to support Australia's national interest.

3. It is urgent that the declared determination by Minister's that quarantine challenges should be determined at arms' length by Australian authorities, and on the basis of science, is demonstrated as current practice.

> Rebuilding global confidence in Australia's quarantine management will take a long time and a start must be made immediately.

4. The current "New Zealand apples" case will be a demonstration of the capacity of the Australian system that its processes are based on science and proper risk assessment.

> The science to be applied to assessment of the risk in this case has already been amply demonstrated in a closely related case in the WTO.

Formerly a good reputation

Australia's trading partners believe that Australia officially politicizes quarantine management to protect the domestic market for Australian producers. This is a relatively recent development. This undermines a reputation Australia once had for world's best practice in quarantine

management. It also creates a hostile environment for Australia to pursue its international trade interests.

Australia had always been known for tough and scrupulous quarantine control. For many years Australia followed what was virtually a "zero Import Risk" approach to Import Risk Analysis. The broad justification was that the native flora and fauna were unique and that pest and diseases from other parts of the world would have a devastating effect on native fauna.

This tough regime of management also protected many Australian agricultural industries which enjoyed the benefit of no competition from imports. In the long run, however, this had a negative effect. It resulted in several of those industries not being globally competitive. When any producer is freed from the challenge of competition, inefficiency is the inevitable consequence.

The comparatively "clean" producer environment has also been beneficial to Australia as a global supplier of food in the world economy. Australia's freedom from foot and mouth disease for example gave Australian beef producers access to its two most important world markets. In the late nineteen fifties Latin American beef was denied access to the US market because of foot and mouth disease. Until that point Australia had not been a significant supplier. Ever since, the US has been one of Australia's most important beef markets. When Japan opened its beef market thirty years later, it imported beef only from countries free of foot and mouth disease. It is now Australia's other major beef market.

Even today, Australia's clean producer environment is economically important. Australian manufacturing beef is highly valued in the US market because it has a low bacteria count compared to other imported beef.

Australia's quarantine reputation was regarded as tough, but justifiable. It also reflected Australia's high standards on sanitary and phytosanitary issues which were well regarded internationally.

Perceptions today

Trade officials among Australia's leading trading partners believe that Australian management of quarantine Import Risk Analysis is now politically managed and has been operated to serve as a trade barrier to give economic protection from competitive imports. This would be the case in Europe, North America, New Zealand and among ASEAN countries and China which has joined the EU complaint in the WTO against Australia's quarantine regime.

There are few public statements by officials of other Governments that Australia is willfully mismanaging its quarantine system for political or economic purposes. The norms of trade diplomacy limit that. It is this analyst's experience from private conversations with foreign trade officials, however, that such a conviction is strongly held. Furthermore, the number of challenges in the WTO against Australian Import Risk Analyses demonstrates that trading partners believe Australia's processes in the WTO are being used for more than legitimate protection of sanitary and phytosanitary interests. This view is also shared by a number of Australian producer groups who are concerned that this broad perception does work against Australia's overall capacity to increase access in foreign markets. That is that the perception quarantine controls are being used to protect some domestic industries from imports is having a deleterious effect on market access for other agricultural industries.

Why is this perception widely held? There are four broad reasons.

One, apparent political influence

Australian quarantine officials have altered Import Risk Analyses following protest and pressure from farm groups which would be directly affected. The most notable case was assessment of the impact of imports of salmon. Within the space of twelve months, Australian officials issued first an assessment that salmon could be imported and then another that it couldn't. When Canada challenged the case in the WTO, a WTO disputes panel ruled that the Australian restriction on imports did not follow WTO requirements to govern risk assessments.

Whether or not it was a reasonable conclusion, foreign trade officials suspected that Australia was manipulating Import Risk Analyses, and this case further damaged Australia's free trade credentials.

Two, administrative arrangements

A reorganization of the quarantine administration within recent years has compounded the perception that IRAs are subject to political guidance. The former Australian Quarantine Inspection Services (AQIS) was viewed as an agency relatively independent of Government. In fact it was an integral part of the federal government agency responsible for primary industry. AQIS was reorganized recently and the function of Import Risk Analysis was shifted to new arm of the Department, Market Access and Biosecurity, which manages agricultural trade policy as well. AQIS is now solely responsible for border inspection.

The Secretary of the Department has statutory responsibility for taking decisions on Import Risk Analysis. However officers of the Department, including those working on Import Risk Analysis, are legally obliged to take direction from the Secretary of the Department on any matters within the responsibility of the portfolio. The merger of responsibility for IRAs into a line agency of the Department, and for that matter into an agency also responsible for Trade Policy, reinforces perceptions that Import Risk Analysis are part and parcel of the daily policy work of the Department [and as such subject to the direction of Ministers who themselves are subject to electoral pressures?].

At a time when trading partners were starting to become suspicious that Australian quarantine decisions were becoming subject to government guidance as a result of political pressure, an administrative change was made which would not have diminished such apprehensions, but enhanced them.

Government Minister's appear to appreciate this problem. The Minister for Trade and the Minister for Agriculture, Forests and Fisheries have both made public statements emphasizing that that final decisions will be taken by Biosecurity Australia (this means the Head of the Department of Agriculture, Forests and Fisheries), not "the Government" and that the determinations must be made on the basis of science alone.

Three, adverse attention in the WTO

In addition to the successful Canadian challenge on controls on imports of salmon, the Philippines, supported by other ASEAN countries has contested Australian import controls on tropical fruit, and the EU, in a case that will be of high profile in international trade circles, has challenged the overall administration of Australia's quarantine system as inconsistent with WTO rules.

Four, official indifference

Australian officials for several years have had a long waiting list of requests for review of import controls. At time of writing, there are 180 requests awaiting attention. (Forty seven cases are being reviewed). Officials rightly point out that their resources are finite and they cannot work faster. The average time for completion of an Import Risk Analysis is eighteen months and can take five years. This has been the case for several years and despite complaints from trading partners, no action has been taken by the Government to reduce the waiting list. This is simply a matter of resources. Either additional resources could be given to the government agency concerned or IRA work could be outsourced. Trading partners would naturally conclude that it suited the Australian Government politically that requests to review import controls could not be considered for some because of lack of resources. Unnecessary delays in current processes would exacerbate these perceptions.

What has happened to Australian quarantine management?

Australia's processes for managing quarantine Import Risk Analysis have been the subject of regular review over the years. A perennial recommendation, last made in the Nairn Enquiry in the late nineteen eighties, is to establish an independent statutory agency to make quarantine import decisions. It is a standard model for taking decisions where it is important that decisions be seen to be free of political or governmental influence. It is common where matters of public health and safety are concerned.

Successive governments have avoided transferring this responsibility to a statutory agency. Presumably this has been so a degree of political control can be maintained or the perception created that it is maintained.

Since the late nineteen eighties, Australia's policy on quarantine import controls shifted from a "no import risk" approach to a "managed import risk" approach, in line with international practice in risk management. It was inevitable that a large number of pre-existing import controls, determined previously on the basis of a "no risk" principle, would be the subject of request for review. At the same time, the WTO rules were revised with the negotiation of the WTO Agreement on Sanitary and Phytosanitary Measures. They too were adjusted to codify principles which reflected contemporary views about what constitutes effective regulation of health and safety – decisions should be based on sound science and reflect either established international standards or be demonstrably set following a process of import risk analysis.

Without undertaking a detailed and empirical analysis of how Australia's system of management of quarantine rules has fared in the period since (and one is long overdue) one is forced to conclude that the administrative machinery and processes established in AQIS need to be reorganized and operate in such a way that they demonstrate that decisions are based on science and effective processes of risk assessment.

The consequences

Belief that Australian authorities are subjecting Import Risk Analysis to political guidance to serve as trade barriers to protect Australian producers from competitive imports has the following consequences for Australia:

Disruption of trade and business. Australian quarantine-based import controls are likely to be subject to more legal challenges in international trade disputes procedures. Trade disputes generally raise the business risk for traders and producers. While a dispute is being heard, it raises the possibility that the trade restriction will be removed and market conditions will be changed as a consequence. When conditions in markets are uncertain, business decisions are deferred. Business is always poorer for traders and producers when there is uncertainty in the market.

- Negative impacts on trade policy. Disputes with the Philippines over imports of tropical fruit have resulted in retaliation in bilateral trade with the Philippines (disruption of live cattle exports) and difficulties in collaboration inside the Cairns Group. ASEAN countries since then have been inclined to advance their own positions in the WTO on agricultural trade liberalization rather than within combined Cairns Group positions.

- Management of quarantine is elevated as a political issue in bilateral relations. US farm producers insisted that quarantine be a higher priority issue in negotiations with Australia over the terms of the proposed Free Trade Agreement with the United States. Discussions between officials in the course of the negotiation reportedly resulted in better understanding of procedures and a substantial laying to rest of US concerns. By that however, the issue had acquired a political prominence which had to be satisfied.

- Loss of confidence and authority in Australian regulation of food safety. This consequence is tangible, but difficult to quantify. General international confidence in Australian management of food safety gives value to Australian food exports. Conversely, loss of confidence undermines value. Some Australian food exports depend upon a form of quality assurance by Australian food regulators, including AQIS. If that brand value is lowered, food exports will not be able to compete with food from other sources branded by comparable national bodies, such as US agencies.

It is likely that these developments will lead to a reduction in the amount of risk regarded as tolerable. Since narrowing the range of Risk is a standard means of misusing quarantine controls to restrict trade for economic reasons, to succeed in making such a change, agencies which undertake Import Risk Analyses need to be regarded as independent, expert and credible. When they are not, their actions are likely to be treated suspiciously, with the attendant difficulties that that brings. For Australian authorities to provide the optimum protection of Australian human, animal and plant health and safety for the new challenges they face, they need to be seen to seen as independent, expert, authoritative and credible, and specifically not as if they are subject to government direction or political influence.

What should be done?

In the short term

It is a matter of urgency that Australian quarantine administration and Import Risk Analyses are seen unquestionably to be based on sound science and determined from procedures that are predictable, constant and transparent. This needs to start with cases currently under consideration. In the New Zealand apples case, clear science has been adduced in a nearly identical case in the WTO. It is difficult to know how Australian authorities could make a ruling on that case without using the scientific material in the WTO case. In any event a ruling that is not supported by contemporary norms of science and supported with an analysis of risk that

does not accord with WTO standards would be highly unlikely to survive a challenge in the WTO and would further diminish Australia's reputation.

In the longer term

The function of undertaking Import Risk Analysis needs to be transferred to a an independent authority, established solely for that purpose, with a clear legislative requirement to base decisions on sound science and to follow procedures that are constant, predictable and transparent and which meet the highest standards of natural justice in the exercise of administrative discretion.

Alan Oxley
ITS Global

May 2004