

**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.

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.