Chapter 3

Risk management

3.1 This chapter discusses the feasibility of the risk management measures and operational arrangements proposed in the final IRA report. The chapter also considers the capability of the Australian Quarantine Inspection Service (AQIS) to monitor and enforce compliance with those measures and operational arrangements.

The feasibility of the risk management measures and operational arrangements proposed in the final IRA report

3.2 A key part of any IRA process is the identification and assessment of risk management measures. Where the IRA process concludes that the risks associated with an import proposal exceed Australia's appropriate level of protection (ALOP), risk management measures are proposed to reduce the risks to a level that achieves Australia's ALOP. Where it is not possible to reduce the risks to below the ALOP trade will not be allowed.

3.3 Risk management measures must be consistent with Australia's obligations under the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (The SPS Agreement). In particular, the SPS Agreement requires 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.[1]

3.4 Article 5 of the SPS Agreement states that:

> … when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.[2]

3.5 The committee accepts that risk management measures must be supported by scientific evidence. At the same time, the committee has long held the view that Australian producers should have a clear understanding of the pest thresholds which will apply to imports and the risk management measures through which these thresholds will be achieved. The committee also believes that the development of practical and effective risk management measures is pivotal to any proposal to import

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1 Biosecurity Australia, *Import Risk Analysis Handbook*, 2007, Annex 2, p. 25.

2 Biosecurity Australia, *Import Risk Analysis Handbook*, 2007, Annex 2, pp. 33-34.

plant or animal products. The committee was therefore very interested to clarify and understand the process by which risk management measures are being developed for the importation of bananas and the extent to which Australian growers would be able to have confidence in the practical efficacy of these measures.

Identification of pest thresholds and risk management measures

3.6 The IRA process has applied a quantitative approach to determining the probability of entry, establishment and spread (PEES). The restricted PEES is to be expressed in terms of a pest threshold. The pest threshold is the maximum number of pests and/or the maximum level of disease associated with mature hard green Cavendish bananas imported into Australia from the Philippines that would achieve Australia's ALOP.

3.7 The final IRA report also identifies a range of possible mitigation measures for each pest and considers the potential for each measure, or a combination of measures, to reduce the level of risk to achieve Australia's ALOP. The example effects of mitigation measures on pest levels for Moko, black Sigatoka and freckle are provided in the following tables, together with an assessment of the efficacy of each measure in achieving Australia's ALOP. [3]

Moko

Table 9.20 Example effects of mitigation measures on pest levels

(The table shows example efficacies of measures considered feasible at reducing the proportion of infected clusters determined in the analysis of unrestricted risk. In this example the combination of ALPP and visual inspection (followed by corrective action) reduces the pest level to 1.2 infected clusters per million bunches which achieves Australia's ALOP.)

Measure	Example efficacy	Pest level (number of infected clusters per million)	Effect
No Measure		505	-
Pest free areas, pest free places of production and pest free production sites		-	Not considered feasible
Post-harvest chlorine treatment			Minimal effect
Areas of Low Pest Prevalence (ALPP)	0.03 plants infected per ha per year	6.1	Exceeds ALOP
Visual inspection for discolouration of the pseudostem and peduncle followed by corrective action (visual inspection)	80%	101	Exceeds ALOP
ALPP and visual inspection	As above	1.2	Achieves ALOP

3 Biosecurity Australia, *Final Import Risk Analysis Report for the Importation of Cavendish Bananas from the Philippines*, November 2008, Part B, pp. 111, 157 and 187.

Black Sigatoka

Table 10.21 Example effects of mitigation measures on pest levels

The table shows example efficacies of measures considered feasible at reducing the level of infected trash (Scenario A) and fertile spores (Scenario B) from the pest levels determined in the analysis of unrestricted risk.

Measure	Example efficacy		Pest levels		Effect
	Scenario A	Scenario B	Scenario A	Scenario B	
No Measure			50	100	
Pest free areas, pest free places of production and pest free production sites	-	-	-	-	Not considered feasible
Post harvest inspection followed by corrective action	-	-	-	-	Not considered feasible
Areas of Low Pest Prevalence (ALPP)	95.00%	90.00%	2.50	10.00	Exceeds ALOP
Trash minimisation	75.00%	85.00%	12.50	15.00	Exceeds ALOP
Post-harvest fungicide treatment	0.00%	90.00%	50.00	10.00	Exceeds ALOP
Trash minimisation and post-harvest fungicide treatment	75.00%	98.50%	12.50	1.50	Exceeds ALOP
ALPP and trash minimisation	98.75%	98.50%	0.62	1.50	Achieves ALOP
ALPP and post-harvest fungicide treatment	95.00%	99.00%	2.50	1.00	Achieves ALOP
ALPP, trash minimisation and post-harvest fungicide treatment	98.75%	99.85%	0.62	0.15	Achieves ALOP

Freckle

Table 11.12 Example effects of mitigation measures on pest levels

(The table shows example efficacies of measures considered feasible at reducing the proportion of clusters infected with pycnidia from the pest levels determined in the analysis of unrestricted risk. In this example the combination of ALPP and fungicide bunch sprays reduces the number of infected clusters to a level that achieves Australia's ALOP.)

Measure	Example Efficacy	Pest levels (infected clusters per 1,000)	Effect
No Measure		93.1	
Pest free areas, pest free places of production and pest free production sites			Not considered feasible
Post harvest inspection followed by corrective action			Not considered effective
Trash minimisation			Not considered effective
Post-harvest fungicide treatment	90%		Only effective on a small proportion of infection
Areas of Low Pest Prevalence (ALPP)	90%	9.3	Exceeds ALOP
Fungicide bunch sprays	70%	27.9	Exceeds ALOP
ALPP (90%) and fungicide bunch sprays (70%)	97%	2.8	Achieves ALOP

A systems approach

3.8 The final IRA report concludes that no single measure is likely to reduce the level of risk for these pests to a level that meets Australia's ALOP. However, the final IRA report concludes that a combination of mitigation measures, a 'systems approach', is most likely to achieve Australia's ALOP.

3.9 BA advised the committee that the final IRA report requires that a number of risk management measures are employed, in a systems approach, to ensure that any potential risks are managed to a level that achieves Australia's ALOP.[4] However, the committee considers that, while this expectation may be implicit in the discussion of risk management measures, it has been unable to identify where it is stated as an explicit recommendation

3.10 The committee heard concerns regarding the proposal that a systems approach be used to address phytosanitary risks that can not be managed to below Australia's ALOP through a single risk management measure. It was suggested to the committee that, in the absence of a change in the evidence supporting the introduction of bananas, the introduction of the concept of a systems approach had the effect of lowering the risk of a particular disease or pest to below the ALOP.[5]

Industry Expectations of the IRA process

3.11 There appears to be confusion and concern within the industry as to whether the Final IRA fulfils the expectations set out in the Import Risk Analysis Handbook. Strong concerns were expressed during the inquiry with regard to what is seen as the failure of the IRA report to specify the actual risk management measures that will be applied in the Philippines and Australia.

3.12 In its submission the Australian Banana Growers' Council Inc (ABGC) referred to the statement in the Import Risk Analysis Handbook 2003 (the Handbook) that an import risk analysis 'identifies the pests and diseases relevant to an import proposal, assesses the risks posed by them and, if those risks are unacceptable, specifies what measures should be taken to reduce those risks to an acceptable level.' [6]

3.13 ABGC also drew the committee's attention to Chapter 3 of Part B of the final IRA report which describes the method for import risk analysis.[7] Section 3.1 states that the technical component of an IRA for plants or plant productions is termed a 'pest risk analysis' or PRA. A PRA is carried out in three discrete stages:

- Stage 1: Initiation of the PRA

4 Answers to questions on notice provided in camera.

5 In camera evidence

6 Department of Agriculture, Fisheries and Forestry, Import Risk Analysis Handbook, 2003, p. 8.

7 Australian Banana Growers Council Inc, *Submission 5*, p. 2.

- Stage 2: Pest risk assessment
- Stage 3: Pest risk management.'[8]

3.14 ABGC notes that Section 3.1.3 describes pest risk management as 'the process of identifying and implementing measures to mitigate risks to achieve Australia's ALOP while ensuring that any negative effects on trade are minimised.'[9]

3.15 ABGC submitted that:

> The IRA team did not complete that critical third stage (pest risk management) of the IRA for Moko, black Sigatoka and freckle and, as a consequence, did not (and could not) recommend any risk management measures for those pests.
>
> The IRA team did:
>
> - calculate a 'pest threshold' for each of Moko, black Sigatoka and freckle; and
> - identify a range of potential risk management measures for those pests.
>
> However, the IRA team failed to undertake the critical element of analysis involved in the third stage of the IRA which is to:
>
> - assess the efficacy of each of the identified potential risk management measures for those pests; and
> - consequently, assess whether those potential risk management measures, either alone or in combination, could reduce the risk of the entry, establishment and spread of those pests sufficiently to achieve Australia's ALOP (or, expressed another way, reduce the level of infection of those pest (sic) sufficiently to achieve the 'pest threshold' for those pests).[10]

3.16 ABGC is highly critical of the IRA team's assessment of the risk management measures identified in the final IRA report. ABGC submitted that:

> While the IRA team identified a token range of potential risk management measures for the pests and considered whether those potential risk management measures were technically feasible, it did not undertake the next step in the third stage (pest risk management) of the IRA, which was to assess the efficacy of each of the identified potential risk management measures.
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> Instead, the IRA team undertook a scientifically irrelevant hypothetical analysis based on unverified "*example efficacies*" for the identified potential risk management measures.[11]

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8 Biosecurity Australia, Final Import Risk Analysis Report for the Importation of Cavendish Bananas from the Philippines, Part B, November 2008, p. 15

9 Australian Banana Growers Council Inc, *Submission 5*, p. 2.

10 Australian Banana Growers Council Inc, *Submission 5*, pp. 2-3.

11 Australian Banana Growers Council Inc, *Submission 5*, p. 3.

3.17 ABGC notes that the final IRA report does not recommend any particular risk management measures, though ABGC notes that, based on 'that hypothetical analysis' the report does identify a number of possible systems approaches which could achieve Australia's ALOP. In ABGC's opinion:

> It was necessary for the IRA team to say that those combinations of risk management measures 'could' (rather that(sic) "would") achieve Australia's ALOP because they did not assess the efficacy of the potential risk management measures and, therefore, were not in a position to know whether or not they would actually achieve Australia's ALOP.[12]

3.18 ABGC expressed concern that determination of the risk management measures which will apply to the importation of bananas from the Philippines will now occur outside of the IRA process.

3.19 The Queensland Department of Primary Industries and Fisheries (DPI&F) expressed concern that the risk mitigation measures proposed in the final IRA report are reliant on implementation procedures that are not practical.[13] For example, DPI&F believes it will be extremely difficult to achieve the required levels of visual inspection and corrective action for Moko in the plantation due to the size of plantations in the Philippines and the number of inspectors required to achieve the level of inspection required.[14] DPI&F also notes that the risk mitigation measures proposed in the IRA for black Sigatoka are considerably lower than those implemented under Australia's domestic quarantine arrangements during the Tully incursion in 2001.[15]

3.20 BA advised the committee that:

> In accordance with the 2003 IRA handbook the report includes in many places recommended risk management measures and permits the importation of bananas from the Philippines subject to the Philippines being able to demonstrate, to Australia's satisfaction, that they can meet the risk management measures. The final IRA report is very clear in identifying pest thresholds, which in effect are the standards that must be met to achieve ALOP. The final IRA report also includes a systems approach to risk management, that the IRA team considered feasible, that would reduce phytosanitary risks to a level acceptable to Australia. The recommended risk management measures are indicative of how the pest thresholds will be met.[16]

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12 Australian Banana Growers Council Inc, *Submission 5,* p. 3.

13 Queensland Department of Primary Industries and Fisheries, *Submission 7,* p. 9.

14 *Submission 7,* p. 7.

15 *Submission 7,* p. 5.

16 Answers to Questions on Notice provided in camera.

3.21 BA emphasised in evidence to the committee that the basis of the IRA is to set up a series of measures with standards which have to be met. BA told the committee that the processes that are put in place to achieve those standards will be undertaken at the time that an application is made to import bananas from the Philippines.

> Before that can happen, a considerable amount of research is going to be required … to establish the detail that is necessary before anything can happen.[17]

3.22 The committee notes that this expectation is repeatedly stated throughout the report. For example the committee notes the following statement in relation to the discussion of risk management measures for Moko:

> The Philippines Government will be required to demonstrate to Australia's satisfaction that the strength of the proposed phytosanitary risk management measures, or a combination of phytosanitary risk management measures (a systems approach) will reduce the number of Moko bacteria infection banana fruit waste.
>
> The efficacy of any treatment(s) to reduce the number of bacteria would need to be demonstrated by laboratory and/or field trials and also under commercial conditions.[18]

3.23 BA also drew the committee's attention to the Independent IRA Appeals Panel (IRAAP) report which considered a number of appeals from stakeholders on this issue against the framework set out in the 2003 IRA Handbook. BA told the committee that:

> The IRAAP found that (sic) IRA team recommended in the Final Bananas IRA Report a risk management and operational framework associated with the importation of bananas from the Philippines (Part B, page 293). Section 12.3 of Part B notes that risk management measures specific to each disease (including moko, black Sigatoka and freckle) are also discussed under their respective chapters of the Final Bananas IRA Report. The IRAAP noted that the Handbook does not specify a particular level of detail in recommending parameters or conditions for import in a final IRA report. It also found that, in accordance with section 2.2 (page 6) of the 2003 IRA handbook, it is not the role of Biosecurity Australia to implement measures, but rather to recommend conditions for importation.[19]

3.24 Despite this, the evidence presented during this inquiry, indicates a clear expectation endures among submitters that the Australian banana industry should have a role in the assessment of the feasibility and efficacy of the intended risk management measures for the importation of bananas proposed by the Philippines.

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17 In camera evidence

18 Biosecurity Australia, *Final Import Risk Analysis Report for the Importation of Cavendish Bananas from the Philippines*, Part B, November 2008, p. 107.

19 Answers to Questions on Notice provided in camera.

3.25 BA explained to the committee that in assessing the proposed study methodologies and/or the results of any studies, industry expertise might be sought via individual experts engaged by the Australian Authorities.[20] However, BA stressed that these experts would be engaged as specialist disciplinary consultants and not as industry representatives. BA went on to explain that:

> As the negotiations and discussions are at a Government to Government level there is no intention to provide all scientific methodology to all stakeholders for a formal consultation process.[21]

Development of import requirements

3.26 The committee sought clarification the next steps in the development of risk management measures and operational protocols in relation to the importation of bananas. BA told the committee that before approval for a banana to enter Australia will be given, the Philippines will have to demonstrate under AQIS' supervision and subject to AQIS' approval how the pest thresholds specified in the final IRA report will be met. This would become the operating arrangement for the importation of bananas from the Philippines.

3.27 In particular, the committee sought clarification of the trigger for laboratory and field trials of proposed risk mitigation measures.

> **Senator MILNE –** … Assuming the Philippines made an application tomorrow to import bananas, given what Senator Boswell has just said about there being no specifics, which goes to the other things about the prescriptions on the diseases, at what point do you decided, and who decides, on the actual prescriptive standard? At what point does somebody say, 'This chlorine bath will be used, to this standard and this specification?' At what point does that very specific test get developed? If it is not specified as Senator Boswell said when is it specified so that people can see whether it is robust or not or make a judgement about that?
>
> **Biosecurity Australia**– When and if we were to receive a request for export from the Philippines to Australia, we would then seek from the Philippines authorities specifications about precisely which plantations the product would be coming from. We would need to have them demonstrate that those plantations are free from these diseases or meet these standards that we have- …. identified in these tables in the IRA.

3.28 The committee also sought clarification of the process through which the import requirements would be developed and tested and the extent to which this would be a negotiated process. BA confirmed that the import requirements would be negotiated between the Australian and Philippine authorities.

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20 In camera evidence.

21 Answers to Questions on Notice provided in camera.

> **Biosecurity Australia** – … it would all be done under a negotiation arrangement, the specificity of which would be required by us. Unless that specificity was achieved it would not go any further.[22]

3.29 The committee also sought clarification of the time frame within which the relevant field trials and laboratory testing would take place. BA confirmed that the process would take in the order of two years.[23]

> **Senator MILNE** – … I understand from what you are saying that in the event that an application is made to import bananas to Australia you would then embark on a series of lab and field trials on the ground in the Philippines in the areas from which the bananas would be exported. Those practical steps that Senator Boswell was asking about would determine the procedures that AQIS and Biosecurity Australia are appropriate to prevent disease coming into Australia. I am trying to work out the steps from here. Assuming that an application was made tomorrow, would you envisiage the field trials and the lab test taking one year, two years, six months or two seasons? What are you thinking.
>
> **Biosecurity Australia** – More than likely, it would take of the order of two years.
>
> **Senator MILNE** – Okay. Then you would embark on two years of lab and field trials. From that, you would determine the steps that you think would protect us. At the end of that, you would write up your manual or whatever of the operational guidelines to which the Philippines would have to adhere under AQIS supervision on the ground in the Philippines.
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> **Biosecurity Australia** – Correct.[24]

3.30 BA confirmed that at the end of this process the Director of Quarantine would approve the operational guidelines under the Quarantine Act.

3.31 The committee also clarified the extent to which third parties might have input prior to the finalisation of the operational guidelines.

> **Senator MILNE –** In the event that [there] was an application … made tomorrow**,** this process would take place and the operational guidelines would be developed and signed off. As it currently stands under the legislation, the parliament would not have another opportunity from here on in to consider the adequacy of the operational guidelines.
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> **Biosecurity Australia** – The Director of Quarantine would have to be satisfied and comfortable enough with the procedures that had been put in place and the efficacy testing of all of that and the on ground inspection measures that had been identified. That would be based on the work done and the assurances provided by qualified people.

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22 In camera evidence.

23 In camera evidence.

24 In camera evidence.

> **Senator MILNE** – So the Director of Quarantine, in making that decision to sign off on the operational guidelines, would consult presumably but with whoever they thought had the appropriate level of expertise.
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> **Biosecurity Australia** – Yes.[25]

3.32 Biosecurity Australia drew the committee's attention to a radio interview given by the Minister for Agriculture Fisheries and Forestry on 7 March 2009 in which he 'said that it was his intention to ensure that those procedures are satisfactorily developed and that he would require that as part of his comfort level.'[26] Biosecurity Australia went on to say that the Minister could:

> … make it very clear to the director [of quarantine] that he wants to be certain that the director is comfortable. Under statute, the director has to be satisfied.[27]

3.33 Biosecurity Australia also told the committee that if the Philippines 'do not now at this point, develop the measures that we wish in concert with us, then we will not provide them with an import permit.'[28]

Committee view

3.34 The committee considers that some of the confusion surrounding whether or not the IRA must recommend the specific risk mitigation measures that must be used could be resolved by the use of clearer language in the report. The committee notes that, the discussion of the application of potential risk management measures for Moko, black Sigatoka and freckle is introduced with the following sentence:

> The IRA process requires the consideration, and recommendation, of whether there are risk mitigation measures, used either alone or in combination that would reduce any risk that exceeds Australia's ALOP, identified through pest risk analysis, to a level that achieves ALOP.[29]

3.35 The committee considers that statements such as these raise the expectation that specific recommendations will be made regarding risk management measures. However, the committee notes that the wording of the risk management conclusions for Moko, black Sigatoko and freckle clearly afford the Philippines the latitude to propose risk management measures which it believes will achieve Australia's ALOP, so long as these can be demonstrated to satisfy the threshold specified in the final IRA report by laboratory experiments and/or field trials and under commercial conditions.[30]

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25 In camera evidence.

26 In camera evidence.

27 In camera evidence.

28 In camera evidence.

29 Biosecurity Australia, Final IRA Report, 2008, Part B, p. 111. See also pp. 156 and 186.

30 Biosecurity Australia, Final IRA Report, 2008, Part B, pp. 113, 159 and 189.

3.36 The committee notes that even where the final IRA report concludes that a potential risk management measure was not considered effective by the IRA team, the final IRA report does not preclude the measure as an option the Philippines may use.[31]

3.37 In the same context, the committee notes BA's assurance that it expects that multiple risk management measures will be employed, in a systems approach, to ensure that any potential risks are managed to a level that achieves Australia's ALOP. The committee considers that if this is the IRA team's intention, it should be explicitly stated in the report.

3.38 The committee understands that it is now up to the Philippines to initiate the development of the risk management and operational measures that would underpin a permit to import bananas into Australia. The committee also understands that the development of these measures must be developed in consultation with the Australian authorities and the Director of Quarantine must be satisfied, on the basis of laboratory and field trials, that the measures will achieve the pest thresholds prescribed in the IRA under commercial conditions before signing off on them. The committee notes the Minister's statement that:

> We have now got to make sure that the biosecurity rules are as strict as possible and everything that's put in place is followed to the letter.[32]

3.39 The committee could not agree more with this statement from the Minister. As noted in paragraph 2.55, this committee has a first hand understanding of the devastating and far reaching effects of breaches of biosecurity and concurs that there is no room for complacency or poor practice in this area.

Monitoring and enforcement of compliance by AQIS

3.40 The committee notes that the capacity of the Australian Government (and in particular AQIS) to monitor and enforce compliance with risk management measures and operational requirements was a focus of significant concern throughout the IRA process.

3.41 Chapter 20 of the IRA sets out the following general administrative requirements for entry of Philippine bananas to Australia:

- *Recognition of the competent authority and agency arrangements*. The Bureau of Plant Industry (BPI) would be required to ensure that all service and certification standards and work plan procedures are met by all Philippine organisations and individuals registered to participate in the program.

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31 See for example, Biosecurity Australia, *Final Import Risk Analysis Report for the Importation of Cavendish Bananas from the Philippines*, Part B, November 2008, pp. 112, 157, 158, and 185.

32 Minister Tony Burke interviewed by Col Campbell, 4BC Brisbane, 7 March 2009, DAFF09/96T.

- *Preparation of a documented standard operating procedure or manual* that describes the phytosanitary procedures for each of the pests of quarantine concern.
- *Registration of all plantations, block and packing stations* involved in the supply of bananas for export to Australia for the purpose of providing trace back and monitoring field controls.
- *AQIS audit* of the Philippine operating manual and work plan and will undertake field audits to measure compliance with plantation registration, block identification, disease management/monitoring, records management and the administration of areas of low pest prevalence and accreditation requirements.

Philippine compliance with import requirements

3.42 The committee notes that Australian banana growers appear to lack confidence in the ability of AQIS to ensure compliance by the Philippines with the import requirements. A number of submitters commented on the lack of a compliance culture within the Philippines.[33] The Eminent Scientists Group Report also refers to the significant number of submissions to the IRA process that raised the issue of confidence in the process to be used by AQIS to ensure compliance by the Philippine Government and Philippine banana growers with import requirements.[34]

3.43 In its earlier inquiry, the committee heard grave concerns in relation to the use of quarantine measures that rely upon monitoring and inspection by Philippine authorities.[35]

3.44 In its submission to the current inquiry, the ABGC observed that 'proper implementation of the risk management regime … requires competence, diligence and honesty from a large number of Philippine banana growers, plantation and packing station workers and BPI officials.' The ABGC went on to state that there will be strong economic and political forces continuously at work to provide powerful incentives to BPI and its political masters to obfuscate its dealings with AQIS'.[36]

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33 For example: Australian Banana Growers' Council Inc, *Submission* 5, Mr Thomas Pashley, Submission 4, Growcom, *Submission 6*, Mackay Estates, *Submission 9*, p. 5, and Mr Peter Abetz, *Submission 10*, pp. 2-3.

34 Eminent Scientists Group Report, August 2008, p. 2.

35 Senate Rural Regional Affairs and Transport Legislation Committee, Administration of Biosecurity Australia- Revised draft import risk analysis for bananas from the Philippines, March 2005, pp. 33-34.

36 Australian Banana Growers Council Inc, *Submission No. 5*, p. 8.

3.45 The ABGC also lacks confidence in the audit regime to be implemented by AQIS. In its submission, the ABGC stated:

> While it is not completely clear from the final IRA report, it appears that AQIS's role will be limited to performing field audits and compliance audits on a limited and ad hoc basis and that much of AQIS's audit activity will involve paper audits of records and procedures.[37]

3.46 The ABGC calls for a significantly more intensive compliance monitoring and enforcement regime to be implemented by AQIS inspectors on an on-going basis. ABGC is concerned that paper based audits provide no verification of pest prevalence in the field.[38] The ABGC expresses concern that such a regime must address the inevitable time delay between the occurrence of non-compliance and a paper based audit being undertaken.[39] ABGC states that AQIS's role must be directed at detecting instances of non-compliance at the time of the non-compliance and removing any compromised fruit from the export pathway.

> AQIS on-the-ground inspectors must be directly involved in verifying compliance with the possible risk management measures through real-time inspections of the implementation of the possible risk management measures in both plantations and packing stations.[40]

3.47 The committee also notes the more practical concerns raised by DPI&F in relation to proposed risk management measures and operational arrangements: the ability of the Philippines to establish and maintain areas of low pest prevalence, ensure mobile packing stations provide high pressure washing facilities using water from an uncontaminated source and provide a sufficient number of appropriately skilled inspectors to satisfy the required inspection levels.[41]

3.48 The committee shares DPI&F's concern that BA should verify the operational arrangements developed by AQIS for risk management to ensure that the risks identified in the IRA are adequately mitigated by the proposed operational framework that has been developed.[42]The committee considers that the results of such verification should be made public once the negotiations for the import requirements are complete.

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37 Australian Banana Growers Council Inc, *Submission 5*, p. 11.

38 Australian Banana Growers Council Inc. *Submission 5*, p. 12.

39 Australian Banana Growers Council Inc, *Submission 5*, p. 12.

40 Australian Banana Growers Council Inc, *Submission 5*, p. 11.

41 Queensland Department of Primary Industries and Fisheries, *Submission 7*, pp. 7- 9.

42 Queensland Department of Primary Industries and Fisheries, *Submission 7*, p. 9.

Mandatory pre-clearance requirements

3.49 BA explained to the committee that the final IRA report establishes performance targets or standards for each of the identified pests and diseases. BA told the committee that the final IRA report states:

> … precisely what has got to be achieved by a standard. The process by which that standard will be achieved is to be determined by work undertaken under supervision in the Philippines.[43]

3.50 BA went on to assure the committee that:

> The processes that are then adopted, having put the procedures in place, the actual actions, will be under supervision on the ground in the Philippines by AQIS inspectors. It will not be contracted out; it will be done by AQIS inspectors.[44]

3.51 BA emphasised that this supervision by AQIS in the Philippines would continue 'for as long as is needed to be satisfied that the processes are being fulfilled.'[45]

3.52 The committee had some difficulty accepting BA's assurance that pre-clearance procedures would remain in place for as long as necessary. The committee was concerned to understand when and in what circumstances these mandatory pre-clearance procedures would be removed and who would be responsible for deciding that pre-clearance inspections are no longer required.

3.53 BA clarified for the committee that the removal of pre-clearance procedures was a decision taken by AQIS in consultation with BA. BA went on to tell the committee that there are a number of products for which import protocols have been in place for some years and where mandatory pre-clearance requirements have not yet been repealed. For example, the committee notes that pre-clearance requirements have been in place for the importation of table grapes from the United States since 2002 and have not yet been repealed.[46]

3.54 AQIS told the committee that it could not:

> … recall any commodity where pre-clearance has been a condition of export to Australia and where the pre-clearance arrangements have in fact ceased. Generally, we either clear on arrival or we clear at the point of export. The clearing at the point of export works better for us, in terms of greater efficiency and confidence of the pathway. Indeed, it give exporter far greater confidence that the system is working, because it means that the

43 In camera evidence.

44 In camera evidence.

45 In camera evidence.

46 In camera evidence.

> product that gets through the preclearance will not be rejected on arrival in Australia, having already incurred the expense of exporting to Australia. There is a significant benefit on both sides of the equation to ensure that the system is in place and works well.[47]

3.55 The committee notes the assurances of BA and AQIS that pre-clearance requirements are not repealed lightly. The committee also notes that where mandatory pre-clearance is not required, a set of provisions, similar to the pre-clearance arrangements would apply. In these circumstances AQIS will undertake a documentation compliance examination prior to the release of bananas from quarantine and that conditions would apply.[48]

Committee view

3.56 The committee notes that despite apparent gaps in the analysis of the risks associated with the importation of bananas from the Philippines the IRA team has signed off on a report that permits the importation of bananas from the Philippines subject to the Philippines being able to demonstrate, to Australia's satisfaction, that they can meet the risk management measures. Some members of the committee were strongly of the view that these deficiencies in the IRA process should have been enough to result in the abandonment of the IRA.

3.57 The committee notes that its concerns are shared by one member of the IRA team who sought to have an amendment made to the final recommendation of the IRA report to reflect a position that a decision on the importation of bananas from the Philippines should be deferred until the Philippines is able to demonstrate the capacity to achieve Australia's ALOP.[49]

3.58 The committee was told that the Import Risk Analysis Team had:

> … agreed that the unrestricted risk is too high and it was up to the Philippines authorities to come up with verifiable research and field trials to demonstrate under commercial conditions that they can achieve Australia's LOP. Surely the recommendation from the IRAT therefore is that imports are not permitted at this stage. When the Philippines have demonstrated their capacity to achieve ALOP then the decision to import can be made.[50]

3.59 The committee is concerned that, as currently worded, the emphasis in the final IRA is on allowing the importation of bananas from the Philippines, rather than on the prohibition of importation of bananas until such time as the Philippines are able to demonstrate their capacity to achieve Australia's ALOP.

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47 In camera evidence.

48 In camera evidence.

49 In camera evidence.

50 In camera evidence.

3.60 BA told the committee that it has received legal advice to the effect that there is no material legal difference between the following two positions:

(i) allowing the importation of a good on the basis that certain conditions attaching to the importation are met; and

(ii) not allowing the importation of a good until certain conditions attaching to the importation are met.[51]

3.61 The committee notes BA's assurance that in practice no bananas will be imported into Australia until the Philippines demonstrates to Australia's satisfaction that the risk management measures and operational arrangements applied in the Philippines will achieve Australia's ALOP under commercial conditions.

3.62 However, the committee also notes that having identified shortcomings in the risk analysis process, stakeholders are justifiably less than confident that the risk management measures and operational arrangements that are ultimately adopted will be adequate to achieve Australia's ALOP or that AQIS will be able to ensure compliance with them.

51 Answers to questions on notice provided in camera.