



Department of
AGRICULTURE
FISHERIES &
FORESTRY -
AUSTRALIA



AFFA Submission

*Inquiry by the Senate Rural and Regional
Affairs and Transport Legislation Committee*

*The Administration and Management by the
Australian Quarantine and Inspection
Service and the Department of Agriculture,
Fisheries and Forestry - Australia's
Biosecurity Australia*

All Aspects of the Consideration and
Assessment of Proposed Importation to
Australia of Fresh Apple Fruit from New
Zealand.

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PART A THE IMPORTATION OF GOODS—THE LEGAL AND REGULATORY REGIME

1. INTRODUCTION

1.1 The terms of reference

Senator Calvert, pursuant to notice of motion not objected to as a formal motion, moved: that the following matter be referred to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by the last sitting day in March 2001:

The administration and management by the Australian Quarantine and Inspection Service and the Department of Agriculture, Fisheries and Forestry Australia's Biosecurity Australia group of all aspects of the consideration and assessment of proposed importation to Australia of fresh apple fruit from New Zealand.

1.2 Outline of AFFA submission

The Department of Agriculture, Fisheries and Forestry - Australia's (AFFA) submission consists of three sections. In order to gain an understanding of AFFA's actions with regard to this specific access request, it is essential to fully appreciate the complex legal and policy environment in which this type of decision is made. Therefore, the first two parts of this submission provide a detailed description of this environment. The third part addresses AFFA's actions with respect to New Zealand's request.

Part A describes the legal and regulatory regime within which the importation of relevant goods must be considered. It explains the role of the *Quarantine Act 1908* in the regulation of imports of goods and its interaction with other Commonwealth legislation. The role of State and Territory Governments and their responsibilities for quarantine matters is described, as is the Memorandum of Understanding between the Commonwealth and States and Territories on quarantine measures, which was recently reaffirmed by the Council of Australian Governments. Australia's international rights and obligations under the World Trade Organization are also explained, focusing on the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

Part B explains Australia's quarantine policies and procedures relating to quarantine risk management and focuses on the import risk analysis process undertaken by Biosecurity Australia (BA), with emphasis on what must be taken into account when assessing quarantine risk. It also describes the role of the relevant international standards setting organisation, the International Plant Protection Convention, in this process.

Part C sets out the process undertaken leading to the October 2000 release of the draft IRA on the importation of fresh apple fruit into Australia from New Zealand. Previous applications for access are described; and the transparency, technical rigour and consistency of the current draft IRA are explained. Consultations undertaken during the IRA process are also detailed.

2. DOMESTIC LEGISLATION REGULATING IMPORTED GOODS—THE QUARANTINE ACT 1908 (CHL)

2.1 Amended quarantine legislative framework

The *Quarantine Act 1908* and its subordinate regulations and proclamations provides the power to regulate the entry of people, goods and other objects into Australia with the purpose to prevent the introduction, establishment and spread of unwanted pests and diseases. The Quarantine Act has been amended many times since it was promulgated in 1908; an extensive revision of the Act (*Quarantine Act Amendment Act 1999*) ensures that it reflects the scope and focus of quarantine in the 21st century and reflects current government practice.

Included in these changes to the Quarantine Act were measures to explicitly implement the managed risk approach to quarantine recommended by the Australian Quarantine Review Committee Report. The changes clearly spell out that Australian quarantine policy is based on the concept of the management of risk to an acceptably low level, to provide appropriate protection for humans, animals, plants and other aspects of the environment and economic activity in Australia. Actions will be based on scientific reasoning and consistent with the Government policy on the appropriate level of protection for the management of animal and plant quarantine risk. Section 5D provides an explanation of what is meant by the phrase "level of quarantine risk" where it appears in the Act, such as in Sections 44C and 44D. This concept had been placed in quarantine rules earlier (*Quarantine Proclamation 1998*, Section 70 regarding the matters the Director of Quarantine has to consider when issuing a permit to import material subject to quarantine).

The amendments to the Quarantine Act are consistent with Australia's obligations under the WTO's SPS Agreement. As outlined above, the factors that may be considered in assessing risks and determining what, if any, SPS measures should be used to manage that risk are set out in Articles 5.2 and 5.3 of the SPS Agreement. The definition of the level of quarantine risk in Section 5D of the Quarantine Act is consistent with the SPS articles.

3. OTHER COMMONWEALTH LEGISLATION THAT MAY AFFECT THE IMPORTATION OF GOODS

3.1 Quarantine decision making and environment issues

Quarantine policy and programs are concerned not only with the protection of animals and plants which have a commercial value but also with the protection of native flora and fauna. Amendments to section 4 of the *Quarantine Act 1908* by the *Quarantine Amendment Act 1999* give significant recognition to this role of environmental protection. The inclusion of references to the environment in the definitions of 'level of quarantine risk' in Section 5D of the *Quarantine Amendment Act 1999* and 'quarantine risk' in Section 70 of the *Quarantine Proclamation 1998* ensures that the probability of harm to the environment is taken into account in decision making in relation to the importation of goods into Australia.

Environment Protection and Biodiversity Conservation Act 1999

Among other things, this Act provides for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance, and

establishes a Commonwealth environmental assessment process concerning activities that are likely to have significant impacts on the environment.

In recognition of Part 11A of the *Quarantine Amendment Act 1999* referred to below and given Australia's highly conservative approach to the level of quarantine protection as well as the comprehensiveness of the scientific IRA risk assessments conducted, decisions to 'grant a governmental authorisation under the *Quarantine Act 1908*' are exempt from the provisions of the *EPBC Act*, (subsection 524(3)).

This inter-relationship between Part 11A of the *Quarantine Amendment Act 1999* and the *EPBC Act 1999* ensures that respective responsibilities relating to quarantine and the environment are maintained. In the context of quarantine policy and administration, it is important to maintain the clarity and directness in the way in which Australian quarantine policies and decisions meet Australia's WTO obligations under the SPS Agreement. Decisions taken by the Director of Quarantine must meet these SPS obligations.

Part 11A of the Quarantine Amendment Act 1999

Part 11A of the *Quarantine Amendment Act 1999* requires that before making a decision under the *Quarantine Act 1908*, the implementation of which is likely to result in a significant risk of harm to the environment, the Director of Quarantine must ensure that the Environment Minister is advised of the Director's intention to make the decision and is given an opportunity to comment on the preliminary assessment of the potential impact of the decision on the environment. Following such action by the Director of Quarantine, the Environment Minister may give written advice to the Director as to the action that should be taken to prevent or limit any harm that may be caused to the environment as a result of the implementation of the decision. Any such advice must be taken into account by the Director of Quarantine and the Environment Minister must be told how the advice has been taken into account.

4. QUARANTINE MATTERS AND THE INTERFACE WITH STATE AND TERRITORY LEGISLATION

4.1 State action contemplated

The States and Territories have legal competence for establishing and maintaining quarantine measures to the extent that they are consistent with Commonwealth legislation. State quarantine legislation can co-exist with Commonwealth quarantine law to the extent that the two are not incompatible.

Application of Section 92 of the Constitution

Section 92 prevents a State from imposing a "discriminatory burden of a protectionist kind" on interstate trade (*Cole v Whitfield* (1988) 165 CLR 360). In *Cole v Whitfield* a Tasmanian law prohibiting the sale of undersize crayfish, whether Tasmanian or imported, was held not to offend Section 92 on the basis that the restrictions were a reasonable way in which to protect local crayfish stock; hence any burden imposed on the importation of crayfish from interstate was not, in the circumstances, of a discriminatory kind and protectionist. (The imported crayfish in question were from South Australia which had a lower minimum size requirements than Tasmania.)

If any State legislation were to prevent the entry of imported origin product which had been lawfully imported into another State of Australia it would need to do so in a way that did not offend Section 92. This would require that any discriminatory burden be incidental and not disproportionate to the achievement of the non-protectionist object such as the threat to the health of local species.

The application of the Mutual Recognition Act 1999 (the MR Act)

The purpose of the MR Act is to promote the goal of the freedom of movement of goods and services providers in the national market in Australia. Section 8 of the MR Act provides that the Act applies to goods produced in, or imported into a State and their sale in another State. The MR Act relies on its effect on Section 51(37) of the Constitution (reference of a power to the Parliament of the Commonwealth by a Parliament of a State).

The principle of mutual recognition defined in Section 9 of the MR Act is that goods produced in, or imported into, one State may be lawfully sold in another State (second State) without the necessity for compliance with further specified requirements relating to the sale that are imposed by the second State. These requirements are set out in Section 10 of the MR Act. They include:

- standards relating to the goods for example standards about the production, composition, quality or performance of goods;
- standards relating to the way goods are presented;
- requirements for the inspection, passing or similar dealing with goods; and
- any other requirements relating to sale that would prevent or restrict or would have the effect of preventing or restricting the sale of the goods in the second State.

For example, product imported into one State and on-sold into another State would appear to gain the benefit of the MR Act which would, under Section 109 of the Constitution, override any inconsistent State law.

However the MR Act contains a permanent exemption from its operation in respect of quarantine matters (Section 14(2) of the MR Act). To invoke this exemption any proposed law of a State would need to satisfy the following tests set out in Schedule 2 of the MR Act:

- the State is substantially free from a particular disease, organism, variety, genetic disorder or other similar thing;
- it is reasonably likely that the goods would introduce or substantially assist the introduction of the disease, organism, variety, disorder or other similar thing into the State; and
- it is reasonably likely that the introduction would have a long term and substantially detrimental effect on the whole or any part of the State.

The application of the TTMR Act

The Australian States and Territories have also entered into the TTMR Arrangement with the Commonwealth and New Zealand. This agreement is reflected in the provisions of the TTMR Act which is authorised by the Parliaments of the States under a referral of powers under paragraph 51(37) of the Constitution.

The TTMR Act provides a mutual recognition scheme similar to the MR Act. The Act applies to products imported into, or produced in, New Zealand that may lawfully be sold in New Zealand. This Act also contains a permanent exemption for quarantine laws. This exemption is expressed differently from that in the MR Act. The formulation of the TTMR Act exemption is set out in Section 45 and Part 1 of Schedule 2 of that Act. The effect of these provisions is that a law relating to quarantine is exempt from the operation of the TTMR Act to the extent that the law:

- is enacted or made substantially for the purpose of preventing the entry or spread of any, pest, disease, organism, variety, genetic disorder or other similar thing;
- authorises ‘the application of quarantine measures that do not amount to an arbitrary or unjustifiable discrimination or to a disguised restriction on trade between Australia and New Zealand and are not inconsistent with the requirements of the Agreement establishing the World Trade Organization’.

Any State law which sought to rely upon the permanent exemption would need to satisfy the standard set by the above exemption.

MOU between States and Territories and the Commonwealth

The 1995 Memorandum of Understanding entered into by the States and Territories with the Commonwealth was expressly designed to avoid a situation of a State or Territory introducing or maintaining quarantine measures that might conflict with Australia’s SPS obligations. Any State or Territory seeking to introduce a quarantine measure affecting international trade should first consult with the Commonwealth under the terms of clause 9 of the MOU.

This issue has been the subject of considerable discussions between the Commonwealth and State and Territory governments. The August 2000 meeting of Agricultural and Resource Management Council of Australia and New Zealand (ARMCANZ) noted the Standing Committee on Agriculture and Resource Management (SCARM)’s proposal for building a closer working relationship between State/Territory agricultural agencies and AFFA in developing quarantine policy, consistent with the obligations of the MOU. The meeting also noted that Australia’s ALOP statement would be reviewed in parallel with this process.

In its Communique, the Council of Australian Government (COAG)’s meeting of 3 November 2000 stated that the commitment of all Australian governments to complying with Australia’s international trade obligations is needed to underpin Commonwealth efforts to ensure fair access for Australian exporters to overseas markets. Heads of Government reaffirmed their commitment to work closely together, within the framework of the 1995 MOU, to ensure observance of all of Australia's obligations under the SPS Agreement. Heads

of Government agreed to intensify dialogue on quarantine policy, import risk analyses and other WTO-related quarantine issues and to confirm this by an exchange of letters.

4.2 Contingency arrangements to deal with pest and disease incursions

Development of pest and disease incursion plans

Recommendation 28 of the Australian Quarantine Review Committee's Report recommended that the Department take a leadership role to ensure that appropriate contingency plans are available to deal with major exotic pests and disease that threaten plants and the natural environment. AFFA has reviewed its ability under the *Quarantine Act 1908* to deal with disease and pest threats and has made a number of amendments to deal with these incursions.

Emergency disease planning occurs at three levels - Commonwealth, State/Territory and local - and involves both plant health authorities and emergency-management organisations. Industry is becoming more involved with planning, especially in relation to diseases for which the major effect would be on industry.

At the national level the Consultative Committee on Exotic Plant Pests is responsible for the development and implementation of response actions to exotic pests and diseases. The committee is under Plant Health Committee of SCARM, is chaired by the Chief Plant Protection Officer (AFFA) and has a standing membership of State plant health representatives (from both Plant Health Committee and Interstate Plant Health Regulation Working Group) and CSIRO. Appropriate technical and operational experts and industry representatives are included for specific pest and disease responses. The committee activities include developing and implementing programs to determine whether or not eradication should be attempted. The current funding arrangement for incursion response agreed to by SCARM is 50% Commonwealth and 50% States and Territories, apportioned by the size of industry at threat. This arrangement only covers direct costs of agreed response actions and does not cover compensation for crop loss. The newly formed Plant Health Australia is currently reviewing funding arrangements and will be developing a new funding policy to include the issue of compensation.

Incursion response is dealt with generically through a SCARM approved framework that outlines procedures to be followed for all incursions and can be implemented in response to any incursion. This is needed for plant pest and diseases due to the large number and wide variety of potential plant pests and disease incursions. For specific targeted pests and diseases, specific incursion response plans have been developed jointly by Plant Health Committee member organisations and specific industries. They include the same basic procedures as the generic response plan but have specific prearranged protocols specific to the response to a specific pest or disease. Examples of specific plans that have been developed include Fireblight (draft), Melon Fruit Fly and Sugarcane Smut among others. The plan for Fireblight was utilised in the Melbourne incident and is being reviewed in light of experience gained from the incident.

State/Territory agriculture agencies are responsible for the on the ground response operations and have developed control plans that are put into place in response to incursions, which are tailored to their State/Territory agency. These arrangements are used to effectively comply with the generic and specific response plans and they implement a specific response operation

stipulated in a specific plan or develop and implement an initial response operation under the SCARM generic framework.

5. INTERNATIONAL OBLIGATIONS IMPACTING ON QUARANTINE POLICY AND DECISION MAKING

5.1 The legal and regulatory regime

The legal and regulatory regime governing AFFA in relation to the importation of goods into Australia consists of a complex set of requirements and obligations at the international and domestic level:

- As a Member of the World Trade Organization (WTO) Australia has rights and obligations under the WTO Agreements. Of particular relevance to this inquiry are: the obligations under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The latter Agreement references the standards, guidelines and recommendations adopted by the Codex Alimentarius Commission, the Office International des Epizooties (OIE) and under the International Plant Protection Convention (IPPC).
- At the domestic level there is a body of Commonwealth law administered by AFFA in relation to the importation of goods including requirements under the *Quarantine Act 1908* and other relevant Commonwealth legislation including the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- Superimposed on this regime are the general legal and policy requirements under Commonwealth law that apply to:
 - the exercise of administrative discretions by AFFA under the *Quarantine Act 1908* and the ways in which these decisions can be reviewed by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) and be investigated by the Ombudsman under the *Ombudsman Act 1976*; and
 - the entitlement of persons to obtain access to information and documents from decision makers under various provisions including in the ADJR Act, the *Freedom of Information Act 1982* (FOI Act), the *Privacy Act 1988* and the *Copyright Act 1968* (as amended).

These requirements are designed to ensure fairness, transparency and consistency in decision making.

5.2 Australia's rights and obligations under the WTO Agreements

The rules and principles governing international trade have been developed over the last fifty years and are embodied in the various agreements of the WTO that was established on 1 January 1995.

The international trade rules are comprehensive. With only a few exceptions, Member countries must sign on to all the WTO Agreements. Countries cannot pick and choose those

Agreements to which they wish to belong. The Commonwealth Government is the Australian signatory to the WTO Treaty. It takes on the rights and obligations of WTO membership on behalf of the Australian nation.

The WTO agreements have the status of multilateral treaties. Australia's international treaty obligations under the WTO are binding and it is Australian practice to implement these obligations and to seek observance of the same obligations by other WTO Members.

5.3 WTO framework on quarantine

For quarantine, the key WTO instrument is the SPS Agreement. The SPS Agreement sets out the rights and obligations of Members when putting into place or implementing sanitary or phytosanitary measures necessary for the protection of human, animal or plant life or health. The Agreement establishes key principles particularly regarding the need for sound science, consistency and transparency as the basis for determining the pest and disease risk associated with imports and for applying appropriate measures to manage that risk.

The DSU provides an effective dispute settlement system that can be enforced. Where our trading partners are not meeting their WTO obligations under any of the Agreements, including the SPS Agreement, Australia has the right to challenge the relevant measures and to see that these are brought into conformity. Similarly, should Australia not abide by its obligations, our trading partners can take action against us.

As the signatory, the Commonwealth Government has responsibility for ensuring the compliance of State and Territory SPS, including quarantine, measures with Australia's WTO obligations, as well as to formulate and implement positive measures and mechanisms in support of the provisions of the SPS Agreement by States and Territories. A MOU exists between the Commonwealth and the States and Territories to enable compliance by Australia with its obligations under the Agreement. Further detail is found in Section 4.1.

The SPS Agreement complements the WTO Agreement on Agriculture by ensuring that sanitary and phytosanitary measures are not used as disguised technical barriers to trade. SPS measures can be an extremely effective means of restricting market access opportunities and the SPS Agreement is an important tool for Australia as a major exporter for ensuring that access gained to overseas markets through tariff reductions for example, are not diminished through use of unjustified quarantine barriers by our trading partners.

It is difficult to assess the exact contribution of the SPS agreement and the Agreement on Technical Barriers to Trade to achieving success in export negotiations. However there is no doubt that the number of successful access requests and the speed with which they have been reached, has been greatly enhanced by these two agreements.

WTO Sanctioned Retaliation/Compensation

If as a result of WTO Dispute Settlement action a measure is found to be in breach of the WTO rules, such measures have to be brought into conformity with the WTO rules. Where a Member has taken no such action within the set deadline, or where in the view of the WTO the remedial action taken has not remedied the breach of commitments, then compensation can be negotiated with the aggrieved country. Failing this, the aggrieved country can be sanctioned to retaliate. It should be noted that compensation/retaliation is a temporary

remedy only. The country found in breach must, in due course, rectify the breach of its commitments.

The overall aim is to ensure that all Members play by the rules. The DSU also ensures that once Members bring their regime into compliance, any retaliatory measures are withdrawn. Nevertheless, failure to bring measures into conformity can lead to lengthy and costly periods of retaliation. The level of retaliation that is sought has been in many cases excessive and the country facing such retaliation would have to exercise its right to challenge this in the WTO and seek an Arbitrator's decision on the appropriate level. This is a very uncertain process and the lack of any procedure for considering appropriate levels of retaliation has tended to result in only basic calculations being made. The possibility that the level of retaliation would exceed a level we would consider as appropriate cannot be ruled out. The decision of the Arbitrator on the level of nullification and impairment and the corresponding level of retaliation is final. The nature of any retaliation (ie product coverage) is not limited or even considered by the Panel.

Risks of WTO Dispute Settlement

If Australia was found to be in breach of our WTO obligations on any quarantine measure, there is considerable risk that Australian exports of other goods may face retaliatory duties on export markets and valuable trade lost and as long as there is scope for any other Member of the WTO in a position to retaliate against Australia, it is expected that the retaliation will take the form that causes maximum disruption to Australian exports. Ongoing failure to bring our measures into conformity with our obligations, or further delays, would likely lead to other WTO Members successfully obtaining sanctioned retaliatory rights.

Ideally it is in our trade interests to ensure that all import measures introduced comply with our international obligations. The repercussions for our export industries of not doing so would be substantial. As was intended, compensation and retaliation are powerful mechanisms for ensuring that WTO Members comply with their obligations.

Further, in reaching any agreement with an aggrieved party on measures that bring Australia into conformity with the WTO rules to the satisfaction of that country, there is a risk that the measures may weaken the risk management regime in Australia.

5.4 Principles of the SPS Agreement

The sovereign right of countries to adopt measures to protect their citizens, plants, animals and the environment from imported pests and diseases is widely recognised by the international community. The SPS Agreement was negotiated during the Uruguay Round and entered into force with the establishment of the WTO on 1 January 1995. In broad terms the Agreement provides the framework under which measures can be legitimately taken to protect human, animal and plant health against pests, diseases and contaminants.

The SPS Agreement represents an elaboration of existing basic General Agreement on Tariffs and Trade disciplines and importantly, accords a basic (as compared to exceptional) right to WTO members to take sanitary and phytosanitary measures necessary for the protection of human, animal and plant life or health, provided that such measures conform to the provisions of the Agreement. SPS measures include legal and other requirements applied for the protection of human, animal and plant life and health. In all cases, the disciplines relate to the

measures *as applied*, which can extend from restrictions mandated by law through to administrative actions such as certification or the issue of an import permit.

Adaptations have been made to Australia's quarantine legislation practice and administration, with a view to giving expression to SPS procedural requirements. Evidence of this includes the Government's response to the Australian Quarantine Review Committee's Report, the COAG reaffirmed 1995 MOU between Commonwealth, State and Territory Agriculture Ministers and recent amendments to the *Quarantine Act 1908*.

Members' rights and obligations under the SPS Agreement

The SPS Agreement defines the basic rights and obligations of WTO Member countries with regard to the use of sanitary and phytosanitary measures; rights and obligations relevant to this inquiry are discussed below. The full text of the SPS Agreement is provided at attachment A.

Members' right to apply sanitary and phytosanitary measures

Members have a right to take sanitary and phytosanitary measures necessary to protect human, animal or plant life or health providing that such measures are not inconsistent with the provisions of the SPS Agreement (Article 2.1).

Measures must be applied only to the extent necessary to protect human, animal or plant life or health and must be based on scientific principles. Except where provided by Article 5.7, they must not be maintained without sufficient scientific evidence (Article 2.2).

Discrimination and disguised restrictions on international trade

Members must ensure that SPS measures do not arbitrarily or unjustifiably discriminate between members where identical or similar conditions prevail. The measures must not be applied in a manner that would constitute a disguised restriction on international trade (Article 2.3.)

Harmonisation and adoption of international standards

The preamble to the SPS Agreement refers to the objective to further the use of harmonised SPS measures between Members on the basis of international standards but expressly provides that furtherance of this objective does not require Members to change their appropriate level of protection (see later this section). WTO Members are required to base their sanitary and phytosanitary measures on applicable international standards, guidelines or recommendations where they exist except as otherwise provided in the Agreement (Article 3.1). However, the SPS Agreement does not impose an obligation to adopt international standards.

International standards, guidelines or recommendations are those that are adopted by the international organisations that have been recognised for the purposes of the SPS Agreement. For plants and plant products, this organisation is the IPPC.

Members may choose measures which provide a higher level of protection than that provided by relevant international standards to the extent that there is scientific justification for a more stringent measure or where a Member's appropriate level of protection is higher than the level of protection provided by the relevant international standards.

When WTO compliance may be presumed

Sanitary and phytosanitary measures which conform to the international standards, guidelines or recommendations shall be presumed to be necessary to protect human, animal or plant life or health and presumed to be consistent with the obligations under the provisions of the Agreement (Article 3.2). However, such measures may be subject to challenge on other grounds such as inconsistent outcomes from the application of measures on comparable products or discriminatory treatment between different countries or in regard to distinctions in treatment of comparable diseases and pests.

Measures not based on a relevant international standard, guideline or recommendation, or where one doesn't exist, must be based on a risk assessment taking into account available scientific evidence and relevant economic factors, taking into account risk assessment techniques developed by the relevant international organisations (Article 5.1). If a Member were to adopt a measure which results in a higher level of sanitary or phytosanitary protection than that provided as a result of the application of an international standard, then the Member may be asked to provide justification.

What is to be taken into account in assessing risk

Under Article 5.2 of the SPS Agreement the following must be taken into account in assessing risk:

- available scientific evidence;
- relevant processes and production methods;
- relevant inspection, sampling and testing methods;
- prevalence of specific diseases or pests;
- existence of pest- or disease-free areas; and
- relevant ecological and environmental conditions and quarantine or other treatment.

Article 5.3 also indicates that Members shall take into account relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks,

Determining the appropriate level of protection (ALOP)

The SPS Agreement defines the “appropriate level of sanitary or phytosanitary protection” as the level of protection deemed appropriate by the Member establishing a SPS measure, including quarantine requirements, to protect human, animal or plant life or health within its territory. This concept is also called the “acceptable level of risk” (paragraph 5 of Annex A).

A WTO Member has a sovereign right to determine its appropriate level of protection (ALOP). In setting its ALOP a Member must take into account the objective of minimising negative trade effects (Article 5.4). The ALOP is a societal judgement and any factors can be taken into account in setting the ALOP. A Member does not need to have a scientific basis for determining its ALOP and in effect a government is striking a balance between:

- the likelihood of pest or disease incursions and the expected losses that would result (ie the risks); and
- the benefits of trade which include improved access to consumer and investment goods at competitive prices and to new genetic material to enhance the productivity of primary industries.

SPS measures must be based on scientific principles and be applied only to the extent necessary to protect human, animal or plant life or health. This means that all SPS measures must be formulated and implemented to achieve the Member's ALOP.

Consistency in risk management

In applying the concept of appropriate level of sanitary or phytosanitary protection against risks, a Member must avoid arbitrary or unjustifiable distinctions in the level it considers to be appropriate in different situations if such distinctions result in discrimination or a disguised restriction on international trade (Article 5.5).

Least trade restrictive approach

Members shall ensure that their measures are not more trade restrictive than is required to achieve the appropriate level of sanitary or phytosanitary protection (Article 5.6).

Transparency

Where a Member intends to introduce a sanitary or phytosanitary measure which is not in accord with a relevant international standard and which may have a significant effect on the trade of other Members, the Member must publish, notify other Members, allow reasonable time for comment, and take comments received into account (Article 7 and paragraph 1 of Annex B to the SPS Agreement).

5.5 The application of the SPS obligation of consistency in the level of protection applied

In conforming with the international obligations of the SPS Agreement, Australia is required to be consistent in its approach to the risks presented by imported goods entering Australia. This is the result of conformity by Australia with requirements such as the following:

- In applying the concept of ALOP, Members must avoid arbitrary or unjustifiable distinctions in the level considered to be appropriate in different situations (Article 5.5);
- Members must ensure that their measures are not more trade restrictive than that required to achieve the ALOP, taking into account technical and economic feasibility (Article 5.6).

The avoidance of arbitrary or unjustifiable distinctions in the level of risk which a Member accepts in different situations has the objective of achieving consistency in applying the ALOP (i.e. a consistent approach to risk management). It is not open to a Member to take varying approaches to the acceptance of risk in that a Member cannot take a very conservative approach to risk in relation to the entry of one commodity and be willing to accept a much higher level of risk for another commodity, perhaps, for example, in order to gain a trade advantage for its exports. (Risk is a function of both the probability and scale of potential damage.)

5.6 International standards recognised by SPS Agreement

IPPC and the SPS Agreement

The IPPC is the organisation recognised by the SPS Agreement as the source for international standards for phytosanitary measures (ISPMs) affecting trade.

The IPPC is a multilateral treaty deposited with the Director-General of the Food and Agriculture Organization of the United Nations (FAO) and administered through the IPPC Secretariat located in FAO's Plant Protection Service. One hundred and eleven (111) governments are currently contracting parties to the IPPC. It commenced in 1952 and Australia was an original member.

The purpose of the IPPC is to secure common and effective action to prevent the introduction and spread of pests of plants and plant products and to promote measures for their control. The Convention provides a framework and forum for international cooperation, harmonisation and technical exchange in collaboration with regional and national plant protection organisations. Australia maintains an active role in the development of ISPMs and an Australian expert currently sits on the Interim Standards Committee. The IPPC is further discussed in Section 7.3.

5.7 Commonwealth, State and Territory compliance with the SPS Agreement

The Commonwealth Government is fully responsible under the SPS Agreement for the observance of all obligations under the Agreement. It is required under the provisions of Article 13 to:

- formulate and implement positive measures and mechanisms in support of the observance of the provisions of the SPS Agreement by state and local governments;
- take such reasonable measures to ensure that non-governmental entities and regional bodies comply with the provisions of the SPS Agreement; and
- refrain from taking measures which have the effect of requiring non-governmental entities or regional bodies to act in a manner inconsistent with the SPS Agreement.

In compliance with these requirements the Commonwealth and the States and Territories entered into a MOU with the in 1995. This MOU was recently reaffirmed by COAG. The elements of the MOU include the following:

- Para 9. The States and Territories shall consult fully with the Commonwealth before implementing any relevant sanitary or phytosanitary measures which could inhibit trade into Australia and which may not conform with the provisions of the SPS Agreement.
- Para 11. States and Territories shall not apply any relevant sanitary or phytosanitary measures within their jurisdictions which would not conform with the provisions of the SPS Agreement.
- Para 12. If, in accordance with Article 11 of the SPS Agreement and the provisions of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, it is found that a relevant sanitary or phytosanitary measure applied by a State or Territory does not conform with the provisions of the SPS Agreement, the responsible State or Territory shall take appropriate corrective action as a matter of urgency.
- Para 15. The parties shall ensure that all regulatory bodies within their control adhere to the principles of this Memorandum.

A copy of the MOU is at attachment B.

The MOU also provides for annual review by SCARM/ARMCANZ of progress in implementing measures under the MOU. This matter is further discussed at Part 4.1.

5.8 CER and the Trans-Tasman Mutual Recognition Arrangement

The Closer Economic Relations Treaty (CER) between Australia and New Zealand commits the parties, among other things, to:

- use the relevant international codes and standards as a basis for quarantine and related inspection standards and procedures except in certain specified circumstances;
- consult the other party before introducing a new standard;
- to work towards developing arrangements on quarantine requirements for plant and animal products so as to facilitate:
 - harmonisation of quarantine standards and procedures and the adoption of common inspection standards and procedures;
 - definition of inspection standards and procedures including import conditions;
 - development of improved procedures to notification of quarantine rejections so that remedial action can be taken as soon as possible; and
 - develop a consistent approach to risk analysis and quarantine requirements for imports from third countries.

The Trans-Tasman Mutual Recognition Arrangement (TTMR Arrangement) entered into on 9 July 1996 by New Zealand, Australia and the Australian States and Territories further develops the principles of the CER. The Trans-Tasman Mutual Recognition legislative scheme implementing the Arrangement came into full operation on 1 May 1998. The

objective of the Arrangement is the removal of regulatory barriers to the movement of goods and services between Australia and New Zealand. Goods that comply with the applicable standards and are thus legally available in New Zealand are eligible for sale in Australia and *vice versa*.

Consistent with Australia's commitment to the CER and the TTMR Arrangement, the TTMR legislative scheme contains a permanent exemption for quarantine laws (section 45 and part 1, schedule 2, Cth TTMR Act).

PART B COMMONWEALTH POLICIES RELATING TO QUARANTINE RISK MANAGEMENT

6 IMPORT RISK ANALYSIS

6.1 Summary of SPS requirements relevant to quarantine risk management

The SPS Agreement affirms that importing countries may impose measures necessary to protect life or health of humans, animals or plants provided those measures are not inconsistent with the SPS Agreement, while limiting those measures to ones which are justified to provide the level of sanitary or phytosanitary protection considered appropriate by the importing country. It requires that such measures be applied for no other purpose than that of protecting human, animal and plant life and health, and clarifies which factors should be taken into account in the assessment of the risks involved.

Article 3 of the SPS Agreement requires that sanitary and phytosanitary measures be based on international standards, guidelines and recommendations (a process referred to as harmonisation) where these exist, except to the extent that there is scientific justification for a measure(s) giving a higher level of health protection, or where a Member determines in a non-discriminatory way that a higher level of protection is appropriate to its circumstances. As well, sanitary and phytosanitary measures not conforming to international standards, guidelines or recommendations should be based on a risk analysis with the risk analysis taking into account available scientific information and relevant economic factors. In developing such measures, Members are required to ensure that their ALOP is implemented in the least trade restrictive manner.

Under the SPS Agreement, a Member has the sovereign right to determine its ALOP and quarantine authorities are permitted to use risk management strategies that are more stringent than international standards, guidelines and recommendations where this is scientifically justifiable or where a Member determines that the international standard does not provide the level of protection the Member considers appropriate.

6.2 Australian Government position on quarantine risk management - ALOP

Successive Australian Governments have maintained a highly conservative (ie cautious) approach to management of quarantine risks. This is reflected in the strictness of Australia's import policies and in the way that quarantine procedures are undertaken at the border. Internationally, Australia is regarded as having one of the most conservative approaches to quarantine risk management. Australia does not however, maintain a zero risk quarantine policy, which would be impracticable since it would preclude the lawful import into Australia of consumer items including human, animal and plant therapeutics and medical and diagnostic aids and reagents, and of genetic material which may be highly desirable for the development of our agricultural industries, and would require highly obstructive border activities against tourists, mail and generally traded goods. Rather, Australia's quarantine policy is based on the concept of the management of risk to achieve a very high level of protection.

The Government's approach is based on the application of sound scientific principles and practices to identify and to manage pest and disease risks associated with trade in animals, plants and goods and human travel. The IRA process has been an integral part of the Commonwealth Government's quarantine decision-making for many years.

In accordance with Australia's highly conservative approach to quarantine risk management and in conformity with its rights under the SPS Agreement, Australia has not confined itself to relying on its quarantine measures on international standards, guidelines and recommendations because to do so would result in a number of instances of an unacceptably high level of risk of disease or pest entry or establishment. Across the range of animals, plants and related products, measures more stringent than the relevant international standard have been adopted.

Where there is significant uncertainty resulting from gaps in the scientific information available, in common with quarantine authorities of other countries, a precautionary approach in risk analysis is taken. The SPS Agreement permits the adoption of precautionary measures on a provisional basis based on the available information, but 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' (Article 5.7). Thus Australia's international obligations preclude an indefinite recourse to the exceptions provided by Article 5.7 as grounds for not taking a decision on any import access request or for maintaining restrictions without scientific justification.

When risks change significantly and rapidly, a response may need to be taken as a matter of urgency by applying strict protective measures on a precautionary basis, subject to an appropriate risk analysis being initiated as soon as practicable.

6.3 Previous reviews of quarantine

In 1979, the Senate Standing Committee on Natural Resources' report on the adequacy of quarantine and other control measures stressed that there is no such thing as a 'nil risk' quarantine policy, that in practice any international trade or travel contains an element of quarantine risk and that a more accurate description of quarantine policy would be the 'scientific evaluation of acceptable risk'.

Similarly, in 1988 the *Review of Australian Quarantine Requirements For The Future (1988)* (the Lindsay Report) concluded that 'a "no risk" policy for Australian quarantine — implying total exclusion — is untenable and undesirable and should be formally rejected'. By contrast, the Committee believed that the notion of 'acceptable risk' was realistic as it reflected the fact that, regardless of the policy of the day, all imports, whether or not they are legal, inevitably involve a level of quarantine risk. The same report reiterated that 'successive reviews of Australia's quarantine services have noted that a policy of "no risk" is not, and never has been, a viable quarantine policy option'.

The Government policy statement *Australia Quarantine - Looking to the Future* issued by the then Minister for Resources in 1990 in response to the Lindsay Report stated that:

Far less visible but of even greater importance to the long term achievement of quarantine goals is the intensive and continuous process of risk assessment.

The first, and pivotal step, in deciding what quarantine measures are to be adopted is risk assessment.

The importance of science-based risk assessment was endorsed by the Report of the Senate Rural and Regional Affairs and Transport Legislation Committee, *Australian Quarantine and Inspection Service*, May 1996 which also rejected a 'no-risk' policy in the following terms:

The Committee is concerned about the persistence of the view that “no risk” is a viable option for quarantine policy, despite consistent and unequivocal dismissal of this approach by previous reviews. The Committee is of the view that a no risk approach is unrealistic and untenable and its currency only demonstrates that the concepts of risk assessment or risk management are widely misunderstood.

In its 1996 report, the Australian Quarantine Review Committee highlighted the lack of community understanding of the risk management aspects of quarantine decision making, and emphasised that a ‘no risk’ policy was unachievable especially for a major agricultural trading nation such as Australia. The Australian Quarantine Review Committee proposed the term ‘manageable risk’ to reflect the professional judgement implicit in making a decision on an import proposal. The Committee noted that consistency in the application of the concept of manageable risk could be achieved by reference to existing Australian policies and procedures, to relevant international standards, guidelines and recommendations, and through the contribution of experienced members of the groups conducting risk analyses.

The Government Response to the report of the Australian Quarantine Review Committee considered the IRA to be the foundation stone on which all quarantine policy and action must be built. The Government concurred with the Australian Quarantine Review Committee’s belief that Australia’s quarantine policies and programs should continue to be based on the assessment and management of pest and disease risk in accordance with internationally accepted principles, and with its firm debunking of the notion that Australia had ever had, or ever would have, a ‘no-risk’ policy. The Government noted the Committee’s support for the position that ‘managed risk’ as the only viable approach to quarantine policy given to the rapidly increasing trends in world trade and tourism and the risks inherent in such an environment, and also given the possibility of natural routes for the introduction of diseases, for example, through migratory birds.

7 COMPONENTS OF A RISK ANALYSIS

7.1 What are the risk assessment requirements under Article 5.1 of the SPS Agreement

Article 5.1 requires that sanitary or phytosanitary measures, if not based on an international standard, guidelines or recommendation, must be based on an assessment as appropriate to the circumstances, of the risk.

Risk assessment is defined in paragraph 4 of Annex A as follows:

Risk Assessment – The evaluation of the likelihood of entry, establishment or spread of a pest or disease within the territory of an importing Member according to the sanitary or phytosanitary measures which might be applied, and of the associated potential biological and economic consequences.

7.2 What must be taken into account in assessing risk

Members shall ensure that their sanitary or phytosanitary measures are based on an assessment as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organisations.

Article 5.2 and 5.3 of the SPS Agreement set out what must be taken into account in risk assessment:

- 5.2 In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest or disease-free areas; relevant to ecological and environmental conditions; and quarantine or other treatment.
- 5.3 In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

While Articles 5.2 and 5.3 of the SPS Agreement allow the social and economic considerations arising from the potential impact of pests and diseases which could enter and establish in Australia as a result of importation to be taken into account in an IRA, the potential competitive economic impact of prospective imports on domestic industries is not a relevant consideration as part of a quarantine risk assessment.

The removal or reduction of quarantine restrictions on imports, when consistent with appropriate risk management, may have the effect of exposing domestic industries to substantially greater import competition and consequent structural adjustment pressure. The Government may in such circumstances seek relevant economic analysis and consider options available for an appropriate response. Such considerations may occur in parallel with, but are not relevant considerations for any IRA performed by Biosecurity Australia (BA).

7.3 IPPC and related standards

Application of the IPPC

The IPPC is the organisation recognised by the SPS Agreement as the source for ISPMs affecting trade. The role of the IPPC with relation to the SPS Agreement is primarily the institutional arrangements for standard setting. These include provisions that formalise the Secretariat, standard setting procedures as well as establish the Commission on Phytosanitary Measures.

Compliance with a revised IPPC

Notwithstanding the need for two thirds of contracting parties to accept the amendments before they enter into force, a resolution from the November 1997 FAO Conference called for parties to start to implement the 1997 IPPC and for an Interim Commission on Phytosanitary Measures to be established until the 1997 IPPC was ratified. The interim Commission on Phytosanitary Measures met for the first time in November 1998. Meetings are held annually.

A National Interest Analysis of the 1997 IPPC revision prepared by AQIS as part of the Commonwealth treaties process was tabled in Parliament on 11 August 1999. The Joint Standing Committee on Treaties (JSCOT) considered the proposed treaty action on 30 August 1999 and tabled its report, which supports binding treaty action, in December the same year.

The JSCOT Report No 27 outlines the broad consultation undertaken during the consideration of this amendment.

Following Executive Council's approval on 8 March 2000, the Minister for Foreign Affairs lodged an instrument of acceptance on Australia's behalf on 11 May 2000. This instrument was received by FAO on 13 June 2000. This was the fifteenth acceptance of the 106 contracting parties, meaning another 56 acceptances are needed before the 1997 IPPC enters into force.

Development of ISPMs

Australia maintains an active role in the development of ISPMs and an Australian expert currently sits on the crucial Interim Standards Committee.

Information exchange

With the Revision of the IPPC in 1997, the IPPC Secretariat provides the forum for the sharing of information on plant pests by member countries. In the past, it had been the responsibility of the member countries to inform the FAO/IPPC Secretariat of their phytosanitary regulations, any changes to phytosanitary regulations and pest status, who acted as the centralised depository for this information.

This ensures that there are structured channels for notification of changes to phytosanitary measures, deviations in the relevant regulations, and a forum for information sharing. The primary responsibility on information sharing now lies with each individual country member. Each member country is obliged to provide the IPPC Secretariat with an official Contact Point for the member country. All official communication with member countries will then be channelled through this Contact Point.

Governments are encouraged to carry out regular pest surveillance's and monitoring, to establish and maintain pest free areas, and to conduct pest risk analyses when scientific support for a phytosanitary measure may be needed. To do this, countries must be able to readily obtain pertinent data on pest biology, distribution, host range and potential for impact. In these instances, the IPPC Secretariat assists countries by helping to facilitate their access to reliable pest data, and exchange of information, by providing: international standards for phytosanitary measures, technical assistance through projects, including for emergency pest control; and a forum for government consultation on shared concerns and for resolution of issues of contention.

8. THE BIOSECURITY AUSTRALIA IRA PROCESS

8.1 Roles and responsibilities of BA

On 6 October 2000, the Secretary of AFFA announced the establishment of BA, a group within AFFA, to take responsibility for assessing the quarantine risks associated with commodity imports. A copy of the AFFA press release is at attachment S.

Responsibility for the conduct of IRAs previously rested with AQIS. IRAs continue to be conducted according to the *AQIS Import Risk Analysis Process Handbook*. However, under the changed administrative arrangements, determinations previously made by the Executive

Director of AQIS are now made by the appropriate Deputy Secretary of AFFA. Once quarantine policy is adopted, implementation is the responsibility of AQIS.

The Animal Biosecurity and Plant Biosecurity teams within BA manage IRAs of animals and animal products (including aquatic animals) and plants and plant products, respectively. A list of the current IRAs and their status is available from the AFFA website (<http://www.affa.gov.au>). A list of import access proposals yet to commence is also available on the website. BA also negotiates with counterpart organisations in other countries on technical export issues.

8.2 Principles applied in the conduct of an IRA

The Government agreed with the Australian Quarantine Review Committee on the six fundamental principles to be applied in import risk analysis:

- a consultative framework;
- a scientific and therefore politically independent process;
- a transparent and open process;
- consistency with both Government policy and Australia's international obligations;
- harmonisation through taking account of international standards and guidelines; and
- interested parties to have the right to appeal on grounds of inadequacy in the process followed.

The Government has adopted an import risk analysis process which incorporates the principles espoused by the Australian Quarantine Review Committee. This process is described in the *AQIS Import Risk Analysis Process Handbook* (published in 1998) which sets out for stakeholders and other interested parties the IRA process which BA applies in developing and reviewing quarantine policies for importing plants, animals and their products into Australia.

The technical component of the IRA process is a science based process that involves in broad terms:

- the identification of the hazards (pests and disease agents) which might be associated with the commodity under examination;
- the assessment of the likelihood of the hazards being present in the commodity;
- the assessment of the likelihood of the hazards entering and establishing in Australia's animal or plant populations through the commodity;
- the assessment of the biological and economic impact of the establishment of such a hazard in Australia;
- the development of risk management options including their relative cost effectiveness;

- the evaluation of the likelihood of entry, establishment or spread of these hazards according to the SPS measures which might be applied; which would reduce the risks to the appropriate level, which minimise negative trade effects; and
- the selection of the option(s) which meet Australia's ALOP in the least trade restrictive way.

The principles of risk communication apply throughout the process.

8.3 Review of the IRA process

A survey was conducted in March 2000 of all registered IRA stakeholders (2,168) to seek feedback on the level of satisfaction with existing consultative arrangements; 643 responses were received. Overall the level of stakeholder satisfaction was very high, with 84% indicating they were receiving all the information they wished; 96% were happy with the information and, in comments on how to improve existing arrangements, the largest portion (30%) indicated they were happy with the present arrangements and had no suggestions to make.

A review is currently in progress in consultation with QEAC and stakeholders. Two Biosecurity Policy Memoranda – ABPM 54/2000 & PBPM 24/2000 - advised stakeholders of the review of the Biosecurity Australia import risk analysis process and invites feedback on the current process and views on ways the process can be improved.

It is noted that the *Handbook* is a first edition and, at the time of publication, AFFA indicated that the new process would need bedding down, with IRAs conducted over the first two years expected to show up ways in which the process could be improved.

AFFA considers that the current process fulfils the principles outlined by the Australian Quarantine Review Committee and endorsed by the Government in its response to the review report, and that IRA outcomes to date are properly based on science and reflect Government policy with regard to Australia's ALOP. AFFA believes, however, that the IRA process is in need of some fine tuning in light of the recommendations of the Senate Committee inquiring into the importation of salmon products, the IRAAP findings on durian and table grapes, and as a result of practical issues raised by AFFA staff and stakeholders. In conjunction with the Managed Risk Policy Group (MRPG) of QEAC and in consultation with stakeholders, AFFA is now reviewing the process. The review will form the basis of a new edition of the *Handbook*.

Three areas in which an examination of a better approach has commenced include an enhanced relationship with the States and Territories in the development of quarantine policy, consultation with stakeholders and clarified terms of reference for the IRAAP.

Issues relevant to the development of quarantine policy were raised at a meeting in July 2000 between AFFA and State/Territory agriculture Chief Executive Officers (CEOs). There was agreement that there should be greater participation by appropriate State/Territory personnel from an early stage in the IRA process. To ensure that the expertise of the most appropriate scientists (animal and plant) was available for IRAs, the CEOs will be involved in their nomination. Greater participation by leading scientists in IRAs will ensure outcomes which incorporate the best available expertise, latest thinking on pest and disease issues, and risk management options which are appropriate and practical.

A detailed proposal for a closer working relationship, which includes enhanced participation by appropriate State/Territory personnel at an early stage in the IRA process, is being drawn up and will be incorporated into formal AFFA procedures.

A paper on the roles and responsibilities of the IRAAP is under development, and comments received from stakeholders on the appeals process will be taken into account.

The MRPG has met with the National Farmers' Federation executive, members of the salmon and apple industries, Grains Council, Cattle Council, Pork Council and several State agriculture agencies, seeking comments on the IRA process. Discussions indicated that most stakeholders consulted to date were satisfied that the process appeared to be working well. Most complaints heard by the MRPG related to some technical aspects of specific IRAs. However, the two IRAAPs convened to hear stakeholder appeals against completed IRAs on durian and table grapes, have raised issues of consultation and transparency which will be addressed in the review.

An issues paper, available on the AFFA website, sought stakeholder views on the process with regard to whether it has achieved its purpose, and whether there are deficiencies in the process and the manner in which these could be addressed in a practical way. Issues upon which stakeholders have commented in various fora have been listed, but comment on any issues relating to the IRA process will be taken into account in the review.

A revised Handbook is expected to be published later in 2001.

PART C - THE CONTEXT FOR THE RELEASE OF THE DRAFT IMPORT RISK ANALYSIS PAPER FOR THE IMPORTATION OF APPLES FROM NEW ZEALAND INTO AUSTRALIA

9. IMPORT RISK ANALYSIS ON NEW ZEALAND APPLES

9.1 History of previous apple access requests

New Zealand had access to the Australian market for apple fruit until 1921, when Australia changed its quarantine conditions following the establishment of fire blight disease in Auckland in 1919. New Zealand made applications in 1986 and 1989 to regain access. However, the prohibition was maintained primarily because of unresolved issues relating to whether trade in apples could lead to the establishment of fire blight in Australia.

AQIS (now BA) received another access application from New Zealand in late 1995 based on the contention that mature apple fruit free of trash are not a vector for fire blight disease. Some scientific literature and details of New Zealand research work carried out on fire blight accompanied the application. AQIS (now BA) commenced a risk analysis in 1996, following the ISPM No 2: *Part 1 - Import Regulations: Guidelines for Pest Risk Analysis* (IPPC, 1996a).

While the draft risk analysis was being considered by stakeholders in April 1997, *Erwinia amylovora*, the bacterium causing fire blight, was reported to have been detected in the Royal Botanic Gardens in Melbourne (attachment D) and work on the risk analysis was suspended pending a full investigation of this claim. After eradication of the source of infection, nationwide surveys confirmed that there was no evidence of fire blight in Australia. Subsequently the risk analysis recommenced in March 1998.

AQIS (now BA) concluded its analysis and released a final IRA paper in December 1998 (attachment E). The process that was followed, preceded changes implemented in 1998, resulting from the government's response to the Australian Quarantine Review Committee. Nevertheless, this final IRA was a rigorous analysis of all pests and diseases of apples in New Zealand, based on the best scientific information available at the time. The risk analysis was consistent with international standards and represented the then world's best practice. The policy determination it contained was to reject New Zealand's access request. Had this application been accepted, apples from New Zealand could have been imported into Australia provided they were mature and free from trash, such as leaf litter. No other risk management measures would have been required. AQIS (now BA)'s position was as follows:

AQIS did not consider that on the basis of available evidence the New Zealand claim that mature apple fruit free of trash are not a vector of fire blight was adequately demonstrated. AQIS also believed that the New Zealand proposal did not provide an equivalent level of protection required for other products imported into Australia that could carry high impact pests. In these respects the New Zealand proposal was not consistent with Australia's appropriate level of protection and therefore could not be accepted.

AQIS considered that with the current state of knowledge and the unresolved uncertainty about the possibility of apple fruit acting as a vector for fire blight, any risk management

measures should be based on arrangements that provide, to a high degree of certainty, that imported apples are not carrying the fire blight pathogen, Erwinia amylovora.

In regard to other quarantine pests AQIS considered that satisfactory risk management measures based on field control, orchard inspection and packinghouse inspections could be used to manage these pests to achieve adequate quarantine protection. These measures would be directly equivalent to those applied by AQIS to other products coming from New Zealand and other countries for the same range of pests.

It is apparent that this and earlier risk analyses have raised the level of awareness about fire blight and other pests and disease of New Zealand apples within the Australian industry. With support from the Australian Apple and Pear Growers Association Inc (AAPGA), producers also received further information from a tour conducted by Dr Tom van der Zwet, a visiting American fire blight specialist.

9.2 Process undertaken with current IRA

Background

New Zealand submitted a new application in January 1999, requesting a review of available risk management options for apples from New Zealand with a view to trade occurring under phytosanitary measures that are the least trade restrictive necessary to meet the level of protection deemed appropriate by Australia. Data were provided in support of cold storage as an effective risk management option for fire blight.

New Zealand authorities have consistently indicated that their highest priority technical market access request to Australia concerns apples. No other New Zealand product was proposed as a higher priority for market access by other interested parties, such as Australian importers. Accordingly, AQIS (now BA) was obliged to consider the new request by New Zealand as a high priority.

Using the terminology contained in the current draft IRA, the 1998 IRA provided an unrestricted risk estimate. Therefore, much of the 1998 IRA is relevant to New Zealand's 1999 request and the current draft IRA takes into consideration the risks identified in the 1998 IRA and addresses possible risk management measures. Where necessary, the risks identified in 1998 have been re-examined in relation to new information gathered by BA or provided by New Zealand since the completion of the previous IRA, and with regard to new risk assessment methodology developed as a result of the WTO hearings into salmon. It is important to note, that despite these differences, both the 1998 IRA and the current draft IRA draw the same conclusion that the unrestricted importation of apple fruit from New Zealand poses an unacceptable risk.

Western Australia currently prohibits import of apples from the rest of Australia due to historical concerns over several pests that occur in other parts of Australia, but not in that State. Several of the pests of concern also occur in New Zealand. This draft IRA deals with these pests but does not propose conditions for the import of New Zealand apples into Western Australia. BA will conduct a separate assessment on the issues specific to Western Australia in the future. The principal reason for this exception is that systems for quarantine management of a significant pest not present in Western Australia (apple scab, *Venturia inaequalis*) are not available at this point in time.

Scope of the analysis

In this draft IRA, BA considered the quarantine risks that may be associated with the importation of fresh apple fruit from New Zealand to Australia and possible management measures to address those risks. Apple fruit is defined as the mature fruit of *Malus x domestica* (Borkh.).

An IRA that assessed the risks of importation of New Zealand apples without restrictions was completed in December 1998. The present draft IRA was undertaken in accordance with the New Zealand request that:

AQIS review available risk management options with a view to establishing phytosanitary measures that are the least restrictive in respect of the New Zealand apple exports while ensuring the level of protection deemed appropriate by Australia.

Consultation

The process has followed the step by step process outlined in *The AQIS Import Risk Analysis Process Handbook*. Prior to the release of the draft IRA, there were 348 registered stakeholders.

In addition to the formal consultation steps required by *The AQIS Import Risk Analysis Process Handbook*, BA undertook a range of other initiatives with the aim of optimising industry involvement in the draft IRA process. However, there was concern that direct industry involvement in the development of the draft IRA would be seen as undermining the objectivity of the draft IRA. This meant that detailed information about proposed risk management measures could not be released. Nevertheless, during the analysis BA kept in contact with key industry figures as outlined below. Following the release of the draft IRA, BA staff undertook an extensive round of consultation with stakeholders via a series of public meetings. BA staff have also made themselves available to discuss various issues with individual stakeholders.

Priority

On 25 February 1999 stakeholders were advised that AQIS (now BA) was initiating an import risk analysis on the importation of apples from New Zealand. Stakeholders were advised that they could offer information and comment on the priority that should be accorded by AQIS (now BA) to the proposal. The comment period closed on 25 March 1999.

Eleven responses were received including six from key apple industry stakeholders. Of these, two did not want the IRA to commence and one considered it a high priority.

Type of process

On 15 April 1999 stakeholders were advised that AQIS (now BA) would conduct an import risk analysis using the process outlined in the *AQIS Import Risk Analysis Process Handbook*. At that time AQIS (now BA) proposed that the IRA should be undertaken using the routine process. This was based on consideration that the proposal did not require an assessment of significantly greater or different risks than those AQIS (now BA) had previously examined.

Stakeholders were invited to comment on the type of process by close of business on 17 May 1999.

Comments were received from seven stakeholders comprising two industry organisations and five government agencies. Four did not support the use of the routine process, one supported routine and two did not comment on the proposed process. AQIS (now BA) determined that the routine process should be followed on the basis that; it clearly met the requirements of the Handbook in that it was considered technically less complex and not requiring assessment of significantly greater or different risks than other proposals of pome fruit which AQIS (now BA) had previously considered; and that a number of analyses of technical information on pome fruits from New Zealand, particularly on the disease fire blight, had previously been undertaken.

Stakeholders were advised on 28 June 1999 that AQIS (now BA) had decided to proceed with the routine process. The analysis was commenced in July.

During the analysis

In June 1999 it was anticipated that the draft IRA would be released in November the same year. Meeting this timeframe depended upon obtaining information from external sources, and as it was delayed, a new deadline was set. The AAPGA executive were made aware of this fact during two meetings in late 1999. All stakeholders were advised of this delay on 13 March 2000.

In addition to two meetings with the AAPGA executive in November and December 1999, AQIS (now BA) also spoke to:

- a meeting of apple growers in Batlow in September 1999;
- a communications reference group in November 1999 and July 2000;
- the AAPGA technical committee in July 2000; and
- meetings with senior staff from State Departments of Agriculture in July and August 2000.

To respond to known concerns of the industry, AQIS (now BA) also prepared an article that was published in the industry's official journal in April 2000 (attachment F).

Draft IRA paper

BA prepared a draft IRA paper in order to clearly set out its preliminary position on these issues so that registered stakeholders and other interested parties could make informed comments. On 11 October 2000, all registered stakeholders were provided with a copy of the draft IRA and invited to comment on the technical issues raised in the draft IRA paper of the importation of apples from New Zealand (attachment G). BA also prepared explanatory material (eg a plain English overview and a fact sheet, attachment H) to accompany the lengthy draft IRA paper in order to assist readers become familiar with the document.

As a result of the WTO dispute over salmon, BA began developing generic guidelines for animal and plant risk analysis at the time the New Zealand apple IRA process began. In order to clearly document the risk analysis the draft IRA paper used the methodology being

developed at the time. Consequently, the draft IRA is set out in a more structured and systematic way than earlier IRAs, and is more closely aligned with international standards.

In addition to the benefits to stakeholders, it was clear from the WTO salmon hearings that a transparent assessment of risk and a transparent evaluation of risk management were essential if the new apple IRA process was to be defensible in the international forum. For this reason, the risk estimation matrix developed for the salmon IRA and which withstood scrutiny by the WTO appellate body, was utilised.

In July 2000, AQIS (now BA) advised stakeholders that it intended to release only a summary paper and make a draft IRA reference document available on request. However, it was decided that such an approach may cause unnecessary confusion and the draft IRA paper (ie the draft IRA reference document) should be circulated to all stakeholders.

In advance of a planned series of meetings, AFFA staff met with industry leaders in Tasmania and attended a meeting in Shepparton arranged by the member for Murray. BA also assisted the AAPGA with travel costs for its executives to meet in Canberra to discuss the draft IRA.

During the comment period BA contacted those interested parties who made public comments about the draft IRA and invited them to provide a submission detailing their concerns.

Public meetings

During October and November 2000, BA held public stakeholder meetings in the following major apple and/or pear growing areas:

- outer Melbourne,
- Shepparton,
- Huonville,
- the Adelaide Hills,
- Lesmurdie,
- Donnybrook,
- Batlow,
- Orange,
- Stanthorpe,
- Shepparton and
- Harcourt.

In addition to BA staff, the AFFA Secretary also attended the Shepparton meeting. All meetings were well attended and resulted in informed discussions that were useful from the perspective of advancing the IRA process. The aggregate attendance at all meetings was approximately 1500. In conjunction with these meetings, BA staff also met with State industry leaders in Tasmania, Queensland, New South Wales and South Australia.

The aim of these meetings was to help explain the key elements of the draft IRA and discuss key issues in order to assist people in making their submissions. In addition, BA staff took note of as many of the issues raised as possible and will ensure that these are considered in the preparation of a final IRA paper.

The period for written submissions closed on 12 December 2000. One hundred and seven submissions were received as at the official closing date.

Extension for comments on the draft IRA

BA wishes to ensure that everyone with an interest in this issue is aware of it and has the opportunity to comment. BA issued several press releases regarding the draft IRA (attachment F) and gave numerous media interviews. In addition, on 20 December 2000, BA extended the public comment period until 28 February 2001 to ensure that no one was denied the opportunity to have input to the policy making process and that the final analysis is based on the best science available. All groups or individuals that had already provided submissions to BA were now invited to review and modify their submission or provide supplementary information on the draft IRA.

9.3 Transparency

Process issues

As per the *Handbook* a Public File was opened at the commencement of the IRA for the importation of apples from New Zealand. The Public File contains the non-confidential stakeholder comment and technical documentation. Although the *Handbook* states that the Public File is available to stakeholders in Canberra during business hours, copies of the information requested by stakeholders have been forwarded to ensure that the process is fully transparent. A copy is at Enclosure I.

In order to ensure a transparent and open process, the draft IRA paper for NZ apples, the accompanying Plant Biosecurity Policy Memorandum, fact sheet and plain English overview documents were circulated to all stakeholders in the format of their choosing (ie hard copy or electronic). These documents were all marked up live on the AFFA web site on 11 October 2000.

Technical issues

A series of questions and answers prepared by AQIS (now BA) to address growers' concerns was published in the industry's official journal in April 2000 (attachment G).

Prior to the release of the draft IRA AQIS (now BA) met with the Executive and members of the AAPGA in November and December 1999 to discuss consultation during the IRA process. AQIS (now BA) also gave a presentation on this issue at a meeting of apple growers in Batlow in September 1999. BA staff also had regular informal contact with the CEO of AAPGA and other pome fruit industry leaders.

Communications reference group

As a result of the November meeting with the AAPGA Executive, AQIS (now BA) formed a three-member communications reference group to provide advice on communication to the industry to ensure the process is transparent, and is seen as such by industry. The membership was as suggested by the AAPGA, and the group met as necessary during the preparation of the draft IRA. Its first meeting was held on 12 November 1999 where a range of issues relating to New Zealand's proposal were discussed including; WTO obligations, the

purpose of the IRA and the use of antibiotics in New Zealand apple production. The meeting also discussed the role of the AAPGA in relation to communication prior to and after the release of documents. As this latter issue was not resolved, AQIS (now BA) arranged a second meeting which was held on 25 July 2000. An outline of BA's presentation to this meeting is at attachment K. At this time the industry members expressed concern over their role and at their request, the meeting agreed that the discussions were confidential. In an attempt to more clearly define their role, draft terms of reference were prepared for this group and these are also at attachment K. It was agreed that there would be value in holding further meetings to finalise the draft terms of reference and to further discuss relevant issues. However, this issue was not further pursued by AFFA because it became clear that further discussions may have been seen to be pre-judging the position put in the draft IRA.

9.4 Technical rigour

The draft IRA is based on an extensive array of published information collected by AQIS (now BA) over recent years. The analysis is consistent with international standards and with the IRA process conducted on salmon and related products, the only one to have been approved by the WTO dispute settlement process.

BA has a range of plant scientists on staff, who are qualified in various disciplines relating to plant pests and diseases; and who specialise in risk assessment and risk management. This group compares favourably with other regulatory authorities undertaking this type of work. Due to the breadth of issues that BA must cover on a daily basis, it is obviously impossible to have world class experts on every pest and disease on staff. Therefore, advice is routinely sought from experts around the world.

Consistent with its standard approach, AQIS (now BA) obtained assistance from a range of scientific experts during the risk analysis, covering fire blight disease and other pests and diseases.

Technical advisory panel

Due to the wide range of pest and disease issues being considered across a range of plant IRAs at any one time, it is normal practice during the course of a routine IRA to contact relevant experts to obtain assistance. In most cases this is sought from government (eg from State or Territory agriculture Departments) scientists and is done without entering into a formal contract and without payment. Where a substantial amount of intellectual effort is required or a private scientist has particular expertise, contractual arrangements are normally entered into.

Three Australian scientists, with expertise in plant pathology relevant to the risk analysis with respect to fire blight, were approached to form a technical advisory panel. This group consisted of one private scientist, who AQIS (now BA) contracted, and two state government scientists. The role of the group was to provide assistance with identifying and accessing all relevant information on which to base the risk assessment. These scientists also provided comments on the draft IRA. AFFA understands that these scientists have also provided advice to industry groups on this issue.

All comments from this group were considered in the development of a preliminary view as documented in the draft IRA. However, the group did not take part in the analysis and had no

decision-making role in the preparation of the final draft IRA paper. The group's final comments are at attachment L.

Industry technical committee

On 11 July 2000, AQIS (now BA) staff first met with representatives from David Pullar and Associates, the consultants responsible for collating the AAPGA's submission and whom we understand are the pome fruit industry's quarantine technical committee. This meeting was arranged following a request from Mr Pullar so that Dr Tom van der Zwet, a visiting American fire blight specialist, could brief AQIS (now BA) staff. A second meeting was held on 25 July 2000 for a similar purpose. A report from these meetings is at attachment M.

Environment Australia

In addition to contact as a stakeholder, Environment Australia (EA) was contacted in August 2000 regarding threatened native plants that may be affected by fire blight. The advice from EA was that no species was threatened or endangered under the *Environment Protection and Biodiversity Conservation Act* (EPBC Act). EA noted that two species that may be affected are listed under the Convention in Trade in Endangered Species and therefore the *Wildlife Protection Act 1982*. One apparently does not occur in Australia and the other (*Aphanes pentamera*) is unlikely to be a host as it is not a woody species and it is in a subfamily not affected by fire blight. Acting conservatively, BA based its consequence assessment on a high level of environmental impact. EA has lodged a submission commenting on the draft IRA as part of the consultative process. As with all submissions, this will be given full attention in the further consideration of the IRA.

State agricultural agencies

Scientists employed by the State agriculture agencies provide fundamental information for all IRAs. This information relates to Australian pest and disease records and as such all States and the Northern Territory were asked to comment on the lists of pest and diseases recorded on apples in New Zealand regarding their completeness and the status of each pest in their respective State or Territory.

In addition to this input, senior policy and technical representatives from each state and the Commonwealth met to discuss the draft IRA on 20-21 July 2000. A report from this meeting is at attachment N. A Supplementary meeting involving Queensland and Western Australia and the Commonwealth took place on 11 August 2000 to discuss the scope for quantitative risk analysis. This meeting resolved that there were insufficient data available to justify including a quantitative risk analysis in the draft IRA paper. This is the case with most IRAs.

Other external experts

AFFA also sought technical comments from international fire blight specialists. These specialists were identified with the assistance of the scientist who had been contracted and they were chosen on the basis that they had international reputations for conducting research relevant to the field behaviour of the fire blight pathogen. Comments from a well-known American fire blight researcher were also taken into consideration.

A list of 29 questions aimed at clarifying several issues was framed with assistance from the technical advisory panel. These questions are included in the information at attachment O. On 27 January 2000 this list was emailed to 15 scientists, seeking independent views, based on expertise and experience; and wherever possible, supported by published or unpublished information. The questions were subsequently faxed to one further international scientist.

- Seven substantive responses were received.
- Four responded but made no technical comments (of which, one indicated a decision not to become involved in the issue).
- One advised that a response had been forwarded via official channels. This response was followed up via the relevant diplomatic mission, without success.
- There was no response at any stage from 4 scientists.

Responses to several of these questions were used to complement a small number of points in the risk assessment. Where these responses have been used they have been cited in the draft IRA. The full list of questions has been placed on the public file along with those responses that have been released by their authors. This information is at attachment O. AFFA scientists also met with one of the international scientists - Professor Herb Aldwinckle - during his visit to Australia in February 2000 and discussed a range of issues. Professor Aldwinckle submitted his response to these questions in March 2000.

On 8 May 2000 an excerpt of the management options being considered were forwarded by email along with another 7 questions (attachment P) to 14 of the same scientists. Four scientists responded and their responses are collated at attachment Q. A reminder message was sent on 31 May 2000 (attachment R). In order to elicit further responses, this message stated that responses received at that time had indicated that some of the proposed requirements were unnecessary. No further responses were received.

Various other experts were contacted to verify information about particular issues in relation to the other pests considered as part of this IRA. Where this input was used in the analysis, it is cited in the draft IRA paper as personal communication.

On 8 May 2000 an excerpt of the management options being considered were forwarded by email along with another 7 questions (attachment P) to 14 of the same international scientists. This request was also forwarded to the technical advisory panel. Six scientists responded, of which four made substantive comments and these have been collated at attachment Q. Following these responses, a reminder message was sent on 31 May 2000. In order to elicit further responses, this message (attachment R) stated that responses received at that time had indicated that some of the proposed requirements were unnecessary.

Various other experts were contacted to verify information about particular issues in relation to the other pests considered as part of this draft IRA. Where this occurred, it is cited in the draft IRA paper as personal communication.

9.5 Consistency of measures

The importation of a variety of plants and plant products derived from species affected by the same pests and diseases as apples is already permitted. As the measures established for New Zealand apples will need to be consistent with existing measures, relevant existing measures provided an important reference point in undertaking the analysis. For example several Asian

pears can be imported from several north Asian countries and apples are permitted from Japan. New Zealand also has market access for a range of fruit species which are affected by many of the same insects and mites as are apples. A range of processed apple products is also permitted entry, including dried apple from New Zealand.

A key issue of consistency relates to the approval to import planting material. The two quarantine diseases identified (fire blight and European canker) are both known to be transferred via infected planting material and movement of propagating material is the highest risk of transferring either disease. Current import requirements are for three years growth in post entry quarantine, during which time a range of passive tests are applied in order to detect a range of exotic pathogens. The aim of these procedures is to manage the risks to a level consistent with Australia's appropriate level of protection, without unnecessarily impeding access to new planting material.

At the request of the pome fruit industry, BA is currently reviewing the conditions that apply to imported apple and pear planting material to see if the length of time can be reduced. To enable this without compromising the level of quarantine security provided by three years' growth in post-entry quarantine, a range of active tests are being considered.

The highest risk of importing these diseases is via smuggled planting material and AQIS has a range of programs in place aimed at detecting this type of activity. Smuggling activity is not uncommon and is done for various reasons, including deliberate attempts to avoid the time taken by post entry quarantine procedures. From time to time AQIS detects smuggling of planting material, and has in the past successfully prosecuted representatives from various horticulture industries for this type of high-risk activity.

Accidental introduction of fruit with passengers is also of concern and AQIS has a range of programs in place aimed at minimising 'leakage' at the barrier. A study of plant material taken from passengers during the Sydney Olympic Games revealed that apples were the most commonly carried item of plant material. However, detailed examination, including a polymerase chain reaction (PCR) test for fire blight, revealed only one significant exotic disease from 110 batches of apple fruit (ie brown rot). In consideration of the likely end use of this fruit (ie most will be eaten) this pathway is not considered as significant as smuggled planting material.

9.6 New and emerging pests and diseases

Under the IPPC, of which Australia and New Zealand are contracting parties, there is an obligation to report new pests or diseases that might be of concern to other members. New Zealand has a national survey program aimed at detecting new pests or diseases and every year, on a rotational basis; a major industry is surveyed. If a new pest of apples were detected, whatever emergency measures deemed necessary would be implemented pending the outcome of a risk assessment of the pest. Similarly, if a pest or disease is detected at on-arrival inspection in Australia emergency measures would be implemented (eg suspension of trade or treatment of consignments) and a risk assessment undertaken.

9.7 Other apple requests

Import access proposals have been received from:

Korea (1993)
USA (pre-1994)
Chile (1996)
Mexico (2000)

The status of these requests varies significantly. The USA considers their request to be a high priority, while for Mexico it is their sixth priority. Traditionally Korea has focussed on one commodity at a time and their current highest priority is persimmons, while Chile is primarily concerned about the progress of their current application being considered for table grapes. Both Korea and Chile have not raised apples in recent conversations with BA. This situation may change at short notice.

9.8 Next steps with this IRA process

BA is currently reviewing comments received from stakeholders. To ensure that all interested parties have the opportunity to input to the policy making process BA extended the comment period for written submissions until 28 February 2001. All groups who had provided submissions by the original closing date of 12 December 2000 were invited to review and modify their submissions or provide supplementary information on the draft IRA. Where interested parties who have not made submissions have made public comments about the draft IRA since 11 December 2000, BA has contacted them advising of the extension and inviting them to lodge submissions detailing their concerns.

To avoid unnecessary delays in the process, BA commenced the examination of submissions immediately after the original closing date. If stakeholders re-lodge their submissions they will be re-examined and any new issues identified and addressed.

BA will consult with stakeholders as necessary to ensure that all issues raised are considered in finalising the IRA. To begin this process BA will prepare a response to all issues raised by stakeholders and circulate it to all those who have made submissions. BA will then discuss with the AAPGA the most appropriate method to continue consultations with the industry to ensure that BA has a thorough understanding of all comments made, and that stakeholders have a thorough understanding of BA's response to each comment. To this end, BA has proposed holding further meetings with representative groups of stakeholders to discuss the issues raised and its responses to them in order to assist it during the development of the final IRA paper. Following this consultation, an IRA will be circulated and an appeal opportunity is available. This is not expected to be available in the first 6 months of 2001.

ACRONYMS

AAPGA	Australian Apple & Pear Growers Association Inc
ADJR Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
AFFA	Department of Agriculture, Fisheries and Forestry - Australia
ALOP	Appropriate level of protection
AQIS	Australian Quarantine and Inspection Service
ARMCANZ	Agricultural and Resource Management Council of Australia and New Zealand
BA	Biosecurity Australia
CEO	Chief Executive Officer
CER	Closer Economic Relations Treaty
COAG	Council of Australian Governments
Codex	Codex Alimentarius
CPPO	Chief Plant Protection Officer
CVO	Chief Veterinary Officer
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
EA	Environment Australia
ESP Act	<i>Endangered Species Protection Act 1992</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPIP Act	<i>Environment Protection (Impact of Proposals) Act 1974</i>
FAO	Food and Agricultural Organization
FOI Act	<i>Freedom of Information Act 1982</i>
IPPC	International Plant Protection Convention
IRA	Import Risk Analysis

IRAAP	Import Risk Analysis Appeal Panel
ISPMs	International Standards for Phytosanitary Measures
JSCOT	Joint Standing Committee on Treaties
MOU	Memorandum of Understanding
MR Act	<i>Mutual Recognition Act 1999</i>
MRPG	Managed Risk Policy Group
NTFIFFP	National Task Force on Imported Fish and Fish Products
OIE	Office International des Epizooties
ORR	Office of Regulatory Review
PBPM	Plant Biosecurity Policy Memorandum
QEAC	Quarantine and Exports Advisory Council
RAP	Risk Analysis Panel
RIS	Regulation Impact Statement
SCARM	Standing Committee on Agriculture and Resource Management
SPS	WTO Agreement on the Application of Sanitary and Phytosanitary Measures
TTMR Act	<i>Trans-Tasman Mutual Recognition Act 1977</i>
TTMR Arrangement	Trans-Tasman Mutual Recognition Arrangement
WTO	World Trade Organization

ATTACHMENTS

Attachment A	SPS Agreement
Attachment B	MOU on Animal and Plant Quarantine Measures
Attachment C	Summary of Appeals received.
Attachment D	Information paper on detection and eradication of fire blight disease, March 1998
Attachment E	1998 Final IRA on New Zealand apples
Attachment F	Article published in Pome Fruit Australia, April 2000
Attachment G	2000 Draft IRA on New Zealand apples and related Plant Biosecurity Policy Memorandum
Attachment H	Plain English overview and fact sheet relating to draft IRA
Attachment I	AFFA press releases relating to draft IRA
Attachment J	Article published in the Weekly Times
Attachment K	BA overheads for meeting with communications group; and Draft Terms of Reference for communications group
Attachment L	Comments from Technical Advisory Panel
Attachment M	Report from meeting with industry technical committee on 25 July 2000
Attachment N	Report from meeting with state officials on 20-21 July 2000
Attachment O	Information from public file relating to expert comments
Attachment P	Email to international experts regarding risk management 9 May 2000
Attachment Q	Responses from international experts to questions regarding risk management
Attachment R	Reminder email to international experts regarding questions on risk management, sent 31 May 2000
Attachment S	AFFA Press Release 6 October 2000 – Establishment of BA
Enclosure 1	Public File