



# Submission

*Prepared by*

## The Australian Access Action Group

*In response to*

“Revised Draft Import Risk  
Analysis Report for Apples from  
New Zealand”

Released by Biosecurity Australia  
December 2005

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## Acronyms

AAAG	The Australian Access Action Group
ALCM	Apple Leaf Curling Midge
ALOP	Appropriate level of Protection
AQIS	Australian Quarantine Inspection Services
BA	Biosecurity Australia
EC	European Canker
IFP	Integrated Fruit Production
IRA	Revised Draft Import Risk Analysis Report for Apples From New Zealand; December 2005
MAF	Ministry of Agriculture and Fisheries (New Zealand)
NZ	New Zealand
SPS	Agreement on the application of Sanitary and Phytosanitary Measures
WTO	World Trade Organisation

## Executive Summary

- i. This document is the Australian Access Action Group's (AAAG) formal response to Biosecurity Australia's (BA) latest Revised Draft Import Risk Analysis Report for apples from New Zealand; December 2005
- ii. AAAG acknowledges the IRA's release but asserts that Australia is using process to delay settlement of the dispute.
  - a. This current dispute has been in process for **seven** years
  - b. This is the **third** draft IRA
  - c. There has been **one year** of submission time attributed to this process.
- iii. AAAG request the release of the final IRA by the **30<sup>th</sup> of June 2006** with confirmation of their acceptance of this procedure by the **14<sup>th</sup> of April 2006**
- iv. AAAG expresses strong concerns over AQIS officials inspecting New Zealand orchards. This breaches the spirit of the CER agreement held between New Zealand and Australia.
- v. AAAG queries the legitimacy of the 'Extremely Low Risk' category of Australia's ALOP. There are no precedents for this category and contend that its risk range is so close to zero that it can only be deemed a trade barrier.
- vi. **Fire blight:** The WTO has ruled that fire blight **cannot** be transmitted on mature symptomless apples therefore New Zealand export quality apples provide no phytosanitary risk, for fire blight, to Australia. Any trade restrictions or mitigating measures put in place for this disease are unjustified.
- vii. **European canker:** Australia has had European Canker. It was present for 20 years before identification. During this time it did not spread.
  - a. Australia's own legislation required **ONLY** the restriction of the movement of apple fruit wood from areas infected with EC. It did **NOT** restrict the movement of fruit from the infected area. Australia is applying duplicitous rulings.
- viii. **Apple Scab:** AAAG contend that Apple scab is endemic in Western Australia and as such WA cannot employ a 'disease-free' status as a trade barrier.
- ix. **Codling Moth:** AAAG assert that Australia is using inappropriate scientific data to determine risk.
  - a. New Zealand's own science shows infestation levels of between 0-0.6 percent.
  - b. New Zealand has exported over 700 million apples to Taiwan without a single codling moth interception
- x. **Apple Leaf Curling Midge:** AAAG asserts that Australia is not taking into account all available science. Australia's assumption that all ALCM cocoons found on fruit are viable is wrong.

## Introduction

The Australian Access Action Group (AAAG) acknowledges the release, by Biosecurity Australia (BA), of the "Revised Draft Import Risk Analysis (IRA) for Apples from New Zealand, December 2005". We question, however, whether the release would have been made at that time if it had not been for the protest actions undertaken by AAAG and NZ Growers.

## Time scale

AAAG takes this opportunity to express its deep concern at the extraordinary length of time that this process is taking.

AAAG asserts that Australia is using process to delay settlement of this dispute.

This is the third draft Import Risk Analysis to be presented in the seven years of this process. Incredulously, each report has been attributed a submission period exceeding that prescribed in the Import Risk Analysis Handbook. In total, there have been three, 120 day submission periods totaling **one year** for submissions.

In light of these **exceptional** circumstances i.e.

1. This current process has been underway for **seven** years
2. **Three** draft Import Risk Analyses have been released and, in total,
3. There has been **one year** of submission periods in this process

AAAG formally requests that Australia delineates a **finite** timeline for the ongoing process and release of the final Import Risk Analysis.

Australia has already made precedential exceptions to the import risk analysis process as outlined in the Import Risk Analysis Handbook e.g. lengthening of the submission period, and given the above arguments AAAG can see no reason for not consenting to the request.

AAAG consider that given the knowledge that the IRA Team now has of the issues at hand that the **30<sup>th</sup> of June 2006** be a reasonable date for release of the final IRA.

AAAG requests that the time frame be communicated by the **14<sup>th</sup> of April 2006** to facilitate transparency, harmonization and indeed good relations.

### **Mathematical Model:**

AAAG would like to express their annoyance with Biosecurity Australia's sluggishness in releasing the mathematical model (@Risk) used in preparing the IRA. There could be no possible reason for this delay and it only served to antagonize the situation and to decrease transparency in the process.

### **AQIS:**

AAAG would like to express their alarm at the thought of the Australian Quarantine and Inspection Service (AQIS) personnel monitoring New Zealand orchards.

*“ Under these arrangements AQIS officers would be involved in orchard inspections for European Canker and fire blight, in direct verification of packing house procedures and in fruit inspection” Revised Draft import Risk Analysis December 2005*

There is no justification for this and in fact it contravenes the spirit and intent of the Closer Economic Relations (CER) agreement held between New Zealand and Australia.

AAAG assert that the above proposal is not technically justifiable, would be economically prohibitive (yet another trade barrier), and is not conducive to amicable relations between the two countries.

AAAG request that any monitoring, should it be required, be undertaken <b>only</b> by a New Zealand competent authority.
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### **Appropriate Level of Protection**

The Australian Access Action Group does not accept Australia's use of ALOP's, in particular, the 'Extremely Low Risk' category.

The SPS agreement, Article 5 section 4, states...

“Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objection of minimizing negative trade effects”

The 'Extremely Low Risk' category is defined in the IRA (page 43) by the following statement.

“The event would be extremely unlikely to happen” and has a probability ranging from “0.001 to 0.000001.”

The IRA also states (page 3) that “Australia's ALOP(s)...(are) aimed at reducing risk to a very low level, but not zero”.

AAAG contend the ALOP's 'Extremely Low Risk' category is so close to zero that it can only be deemed a trade barrier.
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Furthermore AAAG asserts that there are no international precedents for the 'Extremely Low Risk' category. Many other countries, including New Zealand, have equally unique and ecologically valuable flora and fauna and yet do not find it necessary to place such trade restrictive phytosanitary measures.

AAAG contend that the Extra Low Risk Category is in breach of the spirit of the SPS agreement. AAAG contend that Australia are not taking into account their obligations under this agreement and are violating the agreements intention of harmonization and equivalence.

## Fire blight

The Australian Access Action Group request in light of the WTO ruling, *USA vs. Japan – Measures Affecting the Import of Apples* dispute, that **no** phytosanitary measures, based on the false premise that fire blight is a phytosanitary risk to Australia, be in place.

The WTO Disputes Panel found that:

1. *with respect to mature symptomless apple fruits, the risk that the transmission pathway be completed is “negligible”.*
2. *it has not been established with sufficient scientific evidence that the last stage of the pathway (i.e. transmission of fire blight to a host plant) would likely be completed (for either mature or immature fruit).*

AAAG are bemused when they consider the questions that will be raised when Australia notifies the WTO of the outcomes of the IRA process as they are bound to under the guidelines of the Import Risk Analysis Handbook.

Australia’s draft IRA case is based on the assumption that since there is no demonstration that apples are not a vector for the transmission of fire blight then vectoring must occur.

An enormous amount of scientific data has been generated worldwide to try to prove that fire blight can be spread via mature symptomless apples. No data has been found to prove this hypothesis. AAAG contend that it is this data that shows that mature symptomless apples **cannot** be a vector for the transmission of fire blight, and that Australia’s assumption is a **ruse** to enable the enforcement of trade restrictions.

AAAG asserts that the above evidence proves that the pathway, for the transmission of fire blight, cannot be completed and hence the risk is negligible, if not zero.

Further evidence of this interrupted pathway is found in the history of world apple trade. New Zealand has exported millions of apple fruit to many countries that are free of fire blight without the specific requirement for phytosanitary measures for fire blight. These countries include China, Japan, India, Pakistan and Russia.



There has **never** been evidence provided to illustrate disease transmission on mature symptomless apple fruit. Indeed Australia, in the draft IRA, has offered no evidence of this transmission.

AAAG insists that these facts should be deemed **pertinent information** and hence be taken into account under **article 5.7** of the **SPS agreement**.

Finally, AAAG dually requests that Australia, given the recent WTO ruling and being a member of both the WTO and chair of the Cairns group, recognise the science and rulings of the WTO.

## European Canker

The Australian Access Action Group asserts that Biosecurity Australia, while assessing the sanitary and phytosanitary risk to Australia associated with the importation of apples from New Zealand orchards with European Canker (EC), has failed to comply with several of its obligations under the SPS agreement.

This noncompliance is evident through BA ignoring **relevant** and **pertinent** information/science while applying restrictions in a **discriminatory** manner. The information referred to is contained in the scientific paper...

L. M. Ransom (1997) The eradication of *Nectria galligena* from apples trees in Tasmania, 1954 to 1991. *Australasian Plant Pathology* 26 (2): 121-125.,

...which is referenced in the IRA.

BA fails to use evidence from the Ransom paper that shows that

1. Australia has had EC and during this time it did not spread despite being present for almost twenty years before identification.

*"...Nectria galligena was identified as the causal agent of tree canker on apple trees...in three orchard blocks..."*

*"It was not widespread, although it may have been present for almost 20 years"*

2. Once identified Australia only restricted the movement of fruit wood but not the movement of the fruit itself.

*"A statutory Rule was proclaimed under the Tasmanian Plant Disease Act 1930, which did prohibit the removal of any apple scion budwood or other part of the apple tree used for the propagation of that plant from the place specified in the schedule of the proclamation"."*

This evidence clearly shows that

- a. Australia has had EC
- b. EC did not spread widely under Australian environmental conditions
- c. Australia knows that EC is transmitted only on wood
- d. Australia has established from its controls that movement of fruit from infected orchards is of no phytosanitary risk to any other plant life.

AAAG asserts that the Ransom paper should be classified as **pertinent** information and hence be used under article 5.7 of the SPS agreement

Importantly BA has presented no scientific data proving that European Canker can be transmitted via fruit.

Given the above evidence AAAG accuses Australia of negligence and self interest. By

- a) Ignoring **pertinent** information,
- b) allowing fruit movement for the Australian domestic market (which is of lower specification than mature, unblemished, export class 1 fruit) from its own orchards infected with EC but **not** mature, unblemished, export class 1 fruit from New Zealand orchards with EC, and
- c) not taking into account its own **relevant processes and productions methods**,

AAAG believe this clearly points to **unjustifiable discrimination**.

AAAG would also like to note that once New Zealand export fruit is in Australia it will be situated in identical conditions to that of the Australian fruit that came for EC infected orchards and hence would provide no new risk

AAAG believe the above grievances show a violation of the following SPS articles.

- Opening Paragraph  
'*reaffirming* that no member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, **subject to the requirement that these measures are not applied in a manner which should constitute a means of arbitrary or unjustifiable discrimination between members** where the same conditions prevail or a disguised restriction on international trade (emphasis added)
- Article 2.2: members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, **is based on scientific principles and is not maintained without sufficient scientific evidence**, except as provided for in paragraph 7 of article 5. (emphasis added)
- Article 2.3: **member shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevails**, including between their own territory and that of other Members. Sanitary and phytosanitary measures **shall not be applied in a manner which would constitute disguised restriction on international trade**. (emphasis added).

- Article 5.1: 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 to account risk assessment techniques developed by the relevant international organisations.** (emphasis added)
- Article 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 ecological and environmental conditions; and quarantine or other treatment (emphasis added)
- Article 5.7: **In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information,** including that from the relevant international organisations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly wishing a reasonable period of time. (emphasis added)

Given the above evidence AAAG requests that any restrictions placed on the importation of fruit from New Zealand orchards with European Canker be removed.

AAAG would like Australia to note that a significant portion of New Zealand's apple growing regions are free from European Canker.

The IRA states that "The risk pathway of greatest concern to export with regard to European canker is symptomless infection and infestation of fruit that cannot be detected by inspection."(p 136) The IRA however offers no evidence of latent infection providing a pathway.

## Apple Scab

The Australian Access Action Group find it incredulous that Western Australia can declare itself disease free for Apple Scab in spite of repeated outbreaks of the disease and knowledge of its etiology.

AAAG contend that Apple Scab is endemic to Western Australia and as such cannot be used as a phytosanitary trade barrier.

There are several factors that lead to this conclusion.

1. Western Australia has recorded Apple Scab in 17 seasons from 1930 - 2004
2. The records show two distinct outbreaks; 1930-1948 and 1989-1996
3. The 1989-1996 outbreaks were **widespread** and associated with a **wet summer**.
  - a. Western Australia's normal climate is characterized by dry summers. These conditions are not viewed as "High Pressure" for Apple Scab development. Upon the arrival of 'disease suitable' or 'high pressure' weather conditions the disease has manifested itself. This indicates that Apple Scab is indeed endemic to WA.
4. A further outbreak has since been recorded in 2005; four years after yet another disease free status was announced.
5. AAAG contends that the disease is routinely kept under control during the normally dry weather conditions by spray programmes designed to control other diseases such as summer rots and powdery mildew. The agrichemicals used in these spray programmes are used to control Apple Scab in other apple growing regions around the world.
6. Apple Scab spores are known to travel up to 5 kilometres (Aylor 1998). The 1989-1996 outbreaks showed distances of up to 24 km (McHardy 1996). AAAG asserts that spores could not have traveled from a single infection source to cause this outbreak and that this evidence further reiterates the endemic nature of the disease.

Given the above evidence AAAG perceive it as a charade that New Zealand apples (or anyone else's apples) are excluded from Western Australia due to Apple Scab.

AAAG asserts that Western Australia is using an erroneous disease free status to exclude all apples.

## Codling Moth

The import risk analysis states

*'The likelihood that codling moth will arrive in Western Australia with the importation of apple fruit from New Zealand: **Moderate**'.*

AAAG assert that this qualitative analysis appears to use inaccurate data and hence is wrong.

New Zealand apple exporters are world leaders in exporting pest free apples to the rest of the world.

Evidence to the fact is our clean record for exporting apples to Taiwan. It is our systems approach to pest and disease management and export protocols that has allowed New Zealand to export over 700 million apples to Taiwan in the past eight years without a single interception of codling moth.

The use of the Rothschild and Vickers paper (1991) by Australia to indicate codling moth infestations of less than 2% in New Zealand export apple fruit is spurious. It is trite of Australia to use such a tactic.

Such high codling moth infestation levels would be unacceptable to New Zealand Growers. Papers by Walker et al. (1997) and Walker et al (1998) show clearly that codling moth infestation levels in New Zealand export fruit actually ranges from 0-0.6% in orchards managed under New Zealand's IFP production system

If the information stated in the IRA were attributable to the New Zealand export crop, New Zealand would be unable to export fruit due to poor quality and phytosanitary concerns.

Normal New Zealand pre-export phytosanitary inspection procedures require a sampling regime that will detect nominated quarantine pests with a 95% level of confidence when more than 0.5% of the fruit are infested. This is similar to standards of inspection applied by biosecurity authorities in Western Australia and, importantly, significantly below the 30% chance of introduction suggested in the IRA.

AAAG contends that the IRA wrongly implies that there is at least a 30% chance that codling moth will be introduced to Western Australia through the importation of New Zealand apple and requests a reassessment of the risk using **relevant and pertinent** data.

### **Apple Leaf Curling Midge.**

The Australian Access Action Group are dismayed that Australia appear to have failed to take into account **all** the available science, insect pest etiology and, more specifically, data supplied by New Zealand.

Furthermore AAAG maintains that the IRA uses outdated information which when superseded by current data produces a more favourable outcome for New Zealand.

Central to our grievance is the IRA's apparent assumption that any cocoon present on apple fruit presents is a viable risk. This is a spurious assumption in the face of an enormous amount of data disputing the fact.

Recent research by New Zealand scientists working on this issue shows that 36-42% of the cocoons present on New Zealand apple fruit are empty (Rogers et al (in prep)). Additionally any cocoons with pupae present show a 59% mortality rate (Rogers et al (in prep)) and importantly Todd (1959) showed that up to 95% of the remaining pupae were parasitized by *Platygaster demades*.

AAAG would like to note that a high percentage of **empty** cocoons on apple fruit is to be expected. Apple Harvest (even for very early varieties) occurs well after shoot growth has finished for the year. The above-ground lifecycle of the ALCM terminates when shoot growth ceases and the larvae make their way from the leaves to the soil to pupate (some end up on fruit by mistake). This gives the adult ALCM plenty of time to develop and emerge before the fruit is harvested.

AAAG request that Australia make reassessments based on the above science.
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The dIRA does not appear to take into account the following post-harvest mitigating measures which are significant in further reducing any remaining cocoons that may be present on apple fruit

- Most New Zealand packhouses use high pressure apple washers and this has been proven to reduce the incidence of cocoon infestation by 31-54%
- Fruit grading assists in the removal of a significant portion of cocoon infested fruit
- Pre-export inspections also play a part in assessing and removing infested fruit.

AAAG suggest that these factors make the probability of viable pupae being found in cocoons as extremely low.

AAAG request a reassessment of the data to take into account these facts.
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Most notable and pertinent to the ALCM issue is the following information...

California maintains a pest free status for Apple Leaf Curling Midge in spite of New Zealand and indeed many of the eastern states of America sending apples to California for over 20 years prior to the introduction of ALCM protocols in 2001. Some of these apples must have had ALCM cocoons attached yet California insists it remains free of ALCM.

AAAG suggest that this data challenges the likelihood of apple fruit acting as a pathway for ALCM introduction, establishment and spread.

AAAG asserts that this 'working data' proves that the risk of the importation, distribution and establishment of ALCM is negligible if not zero

Additional Points:

Australia does not appear to have taken into consideration data supplied by New Zealand for the period 2001-2004 that shows that infestations detected by fruit graders immediately following packhouse apple washing. This data shows that fruit infestation is expected to be reduced by 32-54%

The report inappropriately uses 1994 data from Tomkins et al. This data pre-dates the introduction of New Zealand Integrated Fruit Production programme. There has been a significant reduction in midge activity, pest status and fruit contaminations following IFP's introduction.

The report also does not appear to take into account the data provided by Tomkins et al (1994) that showed that 63% of the cocoons on fruit at harvest were found empty.

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**Any comments, queries or communications regarding this submission are to be referred to the Project Manager of the Australian Access Action Group. The contact details are**

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