From: Peter Henchman [pchench@bigpond.net.au]
Sent: Monday, 4 July 2011 1:49 PM
To: BA - Plant Biosecurity Contact
Subject: draft NZ apple import report

Apples – proposed unregulated import of New Zealand apples.

I am an apple grower in Bilpin growing apples for the Flemington markets – high quality Gala, Fuji, Pink Lady and Sundowner apples all grown under total exclusion netting on M9 dwarfing rootstock.

As no doubt Biosecurity is very well aware, the statute (Quarantine Act and Regulations) is concerned with an extremely serious issue – quarantine security to protect Australians, in particular concerned with major food production and the potential destruction of businesses, livelihoods and towns and even health (non-use of antibiotics by horticulture). Any entity superimposing its own matrix on a quarantine statute should very seriously consider the dire consequences should the matrix be flawed - here, it could be said, flawed by its deliberate and progressive nullification of the weight to be given to almost all of the mandatory considerations – in particular, by enormous weight being given to one consideration – "distribution" - which is a non-statutory term. In line with the principles recently expressed by the Full Federal Court in the Batlovers case, it would appear that the use of such a flawed matrix which substantially distorts the statute would constitute an error of law in that it misconstrued the statute by failing to give some weight to most of the mandatory relevant considerations and, all in all, constituted a totally unreasonable decision. Further, given that the NZ document setting out *"standard operating procedures"* for the trade in apples from New Zealand has not been available to Australian apple growers or the industry, it can clearly be seen that there has been a flagrant breach of the rules of procedural fairness. How can we assess whether those procedures have a good chance of achieving an appropriate level of protection against the pests and diseases in contention, especially Firebight and European Canker, when we do not know what those regulations state.
Just imagine NZ accepting such a situation were we to export fruit to that country which might carry fruit fly (ie, accept our measures of lures and baits, inspections and washing) – and fruit fly does not kill trees and destroy orchards as does fireblight. It is very controllable with baits – cue lures and protein hydrolysate mixes and the like and, at worst, lebaycid sprays.

All this in circumstances where the WTO Appellate Panel did allow Australia to impose some conditions on import to protect the industry from quarantineable pests and diseases.

I would like to make a further submission on Biosecurity's finding on the consideration **"distribution".** It is not disputed that the draft report could take it into account as being part of "introduction" but it is notable that the critical finding on "distribution" (critical to the ultimate outcome of the matrix as "very low") was often not based on science but non-expert "opinion" such as:

"Apples purchased via retail outlets can enter the environment after being purchased by consumers. The majority of the population (and therefore the majority of apple consumption) is in the capital cities significant distances from most commercial apple and pear orchards."

(My comment: Bilpin is not a significant distance from Sydney or Penrith or Richmond, yet significant numbers of tourists visit Bilpin every day – same goes for the Yarra Valley, Adelaide Hills etc – in

quarantine terms "most" is not good enough and anyway not apt, given particularly the size of orchards near Melbourne and Adelaide.)

"Managed waste will remove any *E. amylovora* bacteria from the household and environment, reducing the likelihood that susceptible plants will be exposed to this pathogen."

(My comment: Compost from green waste is readily obtainable for horticulture from these managed waste centres, yet [in my personal experience when requesting confirmation this year that compost delivered to our orchard be free of armillaria and phytopthora] those compost centres will not give written guarantee of removal of bacteria – it is simply said that the most, but not all, of the compost is heat treated.)

And

"New Zealand has been exporting apples to Taiwan and China for several years without specific risk management measures for fire blight (MAFNZ 2011). China is the largest producer of apples in the world (Branson *et al.* 2004). There have been no reports of fire blight in either of these export destinations. Exports of apples from the southern to northern hemisphere would land fruit during spring when host plants are flowering and at the most susceptible stage for infection."

(My comment: One doubts that Biosecurity has any idea what sprays China uses – does China have an obligation to report outbreaks and if there is an outbreak, its response may well be to simply apply a spray, such as streptomycin. Apple Industry representatives have visited China and were given no access to their chemical sheds.)

And despite findings such as:

"The most likely mechanism of transfer of bacteria from discarded apples to a receptive site in a susceptible host is by browsing insects (AQIS 1998a; Deckers 2010; Paulin 2010a). Discarded apples are attractive to a wide range of insects and this attraction may be increased by rotting. Bees are known to be involved in the secondary spread of fire blight disease from infected blossoms."

(My comment: Bilpin is near big highly populated centres: outskirts of Sydney, Penrith and Richmond. Particularly during weekends a stream of visitors come from these centres - it is surrounded by a great deal of native bush (national parks) full of bees, particularly native bees and many other browsing insects. The same would no doubt apply to the Yarra Valley and Adelaide Hills orchards and of course the major nurseries and garden centres in and near Sydney, Melbourne and Adelaide – ie a mix of people, discarded apples and a multitude of browsing insects. All this in circumstances where Biosecurity has not been able to say that fireblight **cannot** be transmitted from apple cavities to plants by way of insects or bees.)

Thus it could well be said, even apart from the extraordinary weighting of mandatory considerations referred to above, that many of the findings concerning "distribution" had no evidence to support them – that the facts were wrong. It is interesting too to note that Biosecurity states that fireblight was not found in New Zealand until the 1950's but that now "fire blight, caused by *E. amylovora,* is endemic in New Zealand". Its distribution and spread must have been rapid indeed and only curtailed to some extent. by the more recent use of streptomycin. Why are there so few pear orchards in NZ?]

One cannot be other than distraught and appalled at the extraordinary lack of concern shown in the draft report for the apple and pear industry and the totally illogical manner in which the draft report purports to have regard to the very important and serious considerations which the statute mandates. Give proper weight to the mandatory considerations imposed by statute and if NZ apples are to be allowed in, develop appropriate and realistic levels of protection.

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