

IMPORT RISK ANALYSIS APPEALS PANEL—FINDINGS REPORT
FRESH STONE FRUIT FROM CALIFORNIA, IDAHO, OREGON AND WASHINGTON PROVISIONAL FINAL IRA
REPORT

INTRODUCTION

The Import Risk Analysis Appeals Panel (IRAAP) was convened in accordance with the Import Risk Analysis Handbook 2007 (*update 2009*) (the handbook) published by the Australian Government Department of Agriculture, Fisheries and Forestry.

The IRAAP considered two appeals lodged in response to the release of the *provisional final import risk analysis (IRA) report for fresh stone fruit from California, Idaho, Oregon and Washington*, from:

- the Department of Primary Industries, Victoria
- the Department of Employment, Economic Development and Innovation, Queensland

The IRAAP comprised:

- Mr Andrew Inglis AM, Chair (Chair—Biosecurity Advisory Council)
- Mr Dennis Witt (Biosecurity Advisory Council)
- Mr Allen Grant (Executive Manager—Department of Agriculture, Fisheries and Forestry)

Consistent with the handbook, the IRAAP considers appeals, supported by a statement of reasons, based on the following grounds:

- there was a significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder.

The IRAAP does not consider matters relating to:

- the scientific merits of the IRA,
- the merits of the recommendations made or the conclusions reached by Biosecurity Australia or the Eminent Scientists Group.

The IRAAP may make one of three findings in relation to an appeal:

- *allow* a claim
- *disallow a claim, or*
- *find it outside the grounds of appeal.*

In addition to the appeals, the IRAAP was provided with documents relating to the stone fruit IRA process, which included:

- the Import Risk Analysis Handbook 2007 (update 2009) (the handbook);
- the 2008 draft IRA report on fresh stone fruit from the USA;
- the 8 submissions and attachments from stakeholders received during the formal period of consultation on the draft IRA report; and
- the *provisional final (IRA) report for fresh stone fruit from California, Idaho, Oregon and Washington*.

FRESH STONE FRUIT FROM THE USA IRAAP FINDINGS

The IRAAP's assessment of the appeals follows.

Appellant

Department of Primary Industries, Victoria

CLAIM 1A

Summary of claim

CLAIM – The appellant claimed ‘that the recent spread of the Spotted Wing Drosophila (*D. suzukii*) to parts of the USA, including those areas from which stone fruit is proposed to be imported has been inadequately treated in the IRA process’ (for fresh stone fruit from California, Idaho, Oregon and Washington (USA)¹) in accordance with part 5.6 (step 5. Annex 1 Import risk analysis flow chart, page 23) of the handbook.

Finding

Claim disallowed

Reasons

Part 5.6 (step 5) of the handbook, which applies to both standard and expanded IRAs states:

Biosecurity Australia will issue a draft IRA report to present the results of the risk analysis, taking into account all relevant input received. Biosecurity Australia will announce that a draft IRA report has been placed on its website and invite comment on the draft IRA report.

Biosecurity Australia will also place the draft IRA report on the public file.

The Chief Executive of Biosecurity Australia will inform stakeholders of the deadline for submissions. Under the Regulations, stakeholders will have up to 60 days to submit written comments on a draft IRA report.

Biosecurity Australia may meet with stakeholders to discuss the draft IRA report.

If the Chief Executive of Biosecurity Australia considers stakeholders may not have reasonable opportunity to comment on the draft IRA report within the normal consultation period, the Regulations provide for a single extension to the timeframe of up to 60 days.

Submissions received will be placed on the public file, unless they are marked ‘confidential’ and are capable of being classified as such in accordance with the *Freedom of Information Act 1982*. Biosecurity Australia’s approach to confidentiality is explained further at Annex 9.

The Department will notify the WTO Secretariat of the draft IRA report. The notification will include the date by which comments should be provided.

[as extracted]

The panel noted that:

- Biosecurity Australia issued the draft IRA report on 29 April 2008 and presented the results of the risk analysis which can be found on the Biosecurity Australia website as required in step 5.
- The Chair of the panel asked Biosecurity Australia to confirm that all relevant input was taken into account (in accordance with step 5). Biosecurity Australia stated in writing that:

“Additions and deletions have occurred in response to stakeholder comment (IRA Handbook Section 5.6)”.

¹ The draft import risk analysis for stone fruit from California, Idaho, Oregon and Washington (USA) can be accessed from Biosecurity Australia’s website at:

http://www.daff.gov.au/__data/assets/pdf_file/0008/634904/Stone_Fruit_USA_Draft_IRA_Report.pdf

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Biosecurity Australia also announced (BAA 2008/12²) on 29 April 2008 that a draft IRA report had been placed on its website and invited comment on the draft IRA report.

- BAA 2008/12 invited stakeholders to comment on the draft IRA report and informed stakeholders that they will have up to 60 days to submit written comments on draft IRA report (27 June 2008).
- Step 5 requires Biosecurity Australia to place submissions on the public file (unless they are marked 'confidential'). The Biosecurity Australia website listed (on the public file) submissions received on the draft IRA report on 18 July 2008.

The panel was satisfied that Biosecurity Australia had acted in accordance with 5.6 (step 5) of the handbook.

As such, the panel concluded that **there was no significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder. Therefore, the claim was disallowed.**

Although not taken into consideration in respect of this claim, the panel noted, for completeness, that:

- There was a reference to the consideration of *D. suzukii* in the final provisional IRA.
- There is a Pest Initiated Risk Analysis (PRA) being undertaken which will address the potential for US stone fruit to be vectors for this pest.
- There are emergency measures in place, including for US stone fruit, which will remain until the PRA is completed (beyond the completion date of this IRA).
- The PRA will include an analysis of equal comprehensiveness to that of the draft IRA.

² Biosecurity Australia Alert can be found on the Biosecurity Australia website at: http://www.daff.gov.au/ba/ira/current-plant/stonefruit-usa/biosecurity_australia_advice_notifying_the_release_of_the_draft_import_risk_analysis_report_for_stone_fruit_from_the_usa

CLAIM 1B

Summary of claim

CLAIM – “That the preparation and publication of the provisional final IRA report³ (step 8) fails to allow formal consultation with stakeholders for *D. suzukii* with respect to the significance of the pest and any proposed quarantine measures which may eventuate from the pest risk analysis referred to above”.

Finding

Claim disallowed

Reasons

Part 5.9 (step 8) of the handbook, which applies to both standard and expanded IRAs states:

Biosecurity Australia will prepare a provisional final IRA report, taking into account stakeholder comments and, in the case of expanded IRAs, any recommendations made by the ESG.

In considering the recommendations in the provisional final IRA report, the Chief Executive of Biosecurity Australia must be satisfied that, in his or her opinion, the IRA has been conducted in accordance with the Regulations and the process described in this Handbook, and that the recommendations:

- are reasonable, in the light of the evidence
- meet the Government's objectives for biosecurity
- are consistent with Australian legislation
- accord with Australia's international rights and obligations.

Before the provisional final IRA report is published, Biosecurity Australia will consult with state and territory governments on the proposed outcomes of the IRA. This consultation will include, for example, issues of regional pest status and risk, and aspects of joint responsibility arising from the IRA's recommendations.

Biosecurity Australia will announce that a provisional final IRA report has been placed on the Biosecurity Australia website. Biosecurity Australia will also distribute the provisional final IRA report to the proposer and registered stakeholders together with the ESG report and any response by Biosecurity Australia to the ESG's report. These documents will also be placed on the public file.

The regulated timeframe for an IRA ends when a provisional final IRA report is issued.

The panel noted that:

- Under the Quarantine Regulations for a standard IRA, Biosecurity Australia is not required to invite the public to provide submissions on the provisional final draft IRA.
- As set out in part 5.9 of the handbook, Biosecurity Australia is required to consult with State and Territory governments on the proposed outcomes of the IRA before the provisional IRA is published.
- In response to the Chair of the panel's request to Biosecurity Australia to confirm that consultation with state and territory governments on the proposed outcomes of the IRA was undertaken. Biosecurity Australia confirmed that Primary Industries Standing Committee CEOs were provided with a copy of the key findings of the provisional final draft IRA on 12 March 2010.
- Biosecurity Australia issued the provisional final IRA on 15 March 2010.

³ The provisional final import risk analysis report for stone fruit from California, Idaho, Oregon and Washington (USA) can be assessed from Biosecurity Australia's website at:
http://www.daff.gov.au/__data/assets/pdf_file/0003/1554771/Provisional_Final_IRA_Report_-_US_Stone_fruit.pdf

FRESH STONE FRUIT FROM THE USA IRAAP FINDINGS

Taking into account all the relevant information, the panel concluded that **there was no significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder. Therefore, the claim was disallowed.**

Although not taken into consideration in respect of this claim, the panel noted, for completeness, that:

- There is a Pest Initiated Risk Analysis being undertaken which will address the potential for US stone fruit to be vectors for this pest.
- There are emergency measures in place, including for US stone fruit which will remain until the PRA is completed (beyond the completion date of this IRA).
- The PRA will include an analysis of equal comprehensiveness to that of the draft IRA.
- There will be substantial stakeholder consultation as part of the PRA assessment of *D. suzukii*.

Appellant

Department of Employment, Economic Development and Innovation, Queensland

CLAIM 1

Summary of claim

CLAIM A – The appellant claims “That there has been a significant deviation from the regulated IRA process pertaining to sections 5.5, 5.6 and 5.7”.

Finding

Claim disallowed

Reasons

Part 5.5 (step 4) of the handbook states in part that:

The draft IRA report will:

- confirm the pests and diseases being assessed
 - describe the major pathways by which Biosecurity Australia considers these could enter, establish or spread in Australia
- [as extracted]

Part 5.6 (step 5) of the handbook states in part that:

Biosecurity Australia will issue a draft IRA report to present the results of the risk analysis, taking into account all relevant input received.

[as extracted]

Part 5.7 (step 6) of the handbook states that:

Biosecurity Australia will consider submissions received on a draft IRA report and may consult informally with stakeholders. Biosecurity Australia may revise the draft IRA report as appropriate.

[as extracted]

The panel noted that:

- The Chair of the panel wrote to Biosecurity Australia and asked if had confirmed the pests and diseases being assessed and to also confirm whether the major pathways by which Biosecurity Australia considers these (pests and diseases) could enter, establish or spread in Australia had been included in the draft IRA report (as outlined in step 4). Biosecurity Australia stated in writing that:

“noting that this risk analysis was undertaken as a ‘standard’ IRA, these steps were completed as part of the draft IRA report (IRA Handbook Section 5.5). Those pests that meet the criteria of a quarantine pest and are found to be likely associated with the importation pathway progress to a detailed risk assessment.”

- Biosecurity Australia issued the draft IRA report on 29 April 2008 to present the results of the risk analysis. The report can be found on the Biosecurity Australia website as required in step 5.

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- Biosecurity Australia also announced (BAA 2008/12) on 29 April 2008 that a draft IRA report had been placed on its website and invited comment on the draft IRA report.
- BAA 2008/12 invited stakeholders to comment on the draft IRA report and informed stakeholders that they will have up to 60 days to submit written comments on draft IRA report (27 June 2008).
- Step 5 requires Biosecurity Australia to place submissions on the public file (unless they are marked 'confidential'). The Biosecurity Australia website lists (on the public file) submissions received on the draft IRA on 18 July 2008.
- In response to a request from the Chair of the panel, Biosecurity Australia stated in writing that:
"Stakeholders were provided the opportunity to comment on whether they consider that the pest list to be comprehensive and to suggest any changes they consider justified, in accordance with the regulated process. These suggestions were considered by Biosecurity Australia and amendments made where necessary (IRA Handbook Section 5.7)."
- The Chair of the panel asked Biosecurity Australia to confirm that all relevant input was taken into account (in accordance with step 5). Biosecurity Australia stated in writing that:
"Additions and deletions have occurred in response to stakeholder comment (IRA Handbook Section 5.6)".

Taking into account all the relevant information, the panel was satisfied that Biosecurity Australia had acted in accordance with sections 5.5, 5.6 and 5.7 (steps 4, 5 and 6) of the handbook.

As such, the panel concluded that **there was no significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder. Therefore, the claim was disallowed.**

Although not taken into consideration in respect of this claim, the panel noted, for completeness, that:

- Almost every IRA conducted by Biosecurity Australia results in pests and diseases being added, for completeness, to the pest categorization table.
- None of the additional pests contributed to changes to final measures being recommended for imports of stone fruit from the USA.

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Appellant

Department of Employment, Economic Development and Innovation, Queensland

Summary of claim

CLAIM B – “Given a revised draft IRA report with the full categorisation tables was never issued for stakeholder comment, stakeholders have not been given opportunity to comment on the scientific merit of the assessments made of all pests and diseases.”

Finding

Claim disallowed

Reasons

Part 5.7 (step 6) of the handbook states that:

Biosecurity Australia will consider submissions received on a draft IRA report and may consult informally with stakeholders. Biosecurity Australia may revise the draft IRA report as appropriate.
[as extracted]

The panel noted that:

- Following the public consultation process, BA is required, under the Quarantine Regulations to consider the submissions received and to prepare and publish the provisional final draft IRA.
- In response to a written request from the Chair of the panel, Biosecurity Australia stated in writing that:
“Stakeholders were provided the opportunity to comment on whether they consider the pest list to be comprehensive and to suggest any changes they consider justified, in accordance with the regulated process. These suggestions were considered by Biosecurity Australia and amendments made where necessary (IRA Handbook Section 5.7).”
- There is no requirement under the Quarantine Regulations, or the Handbook, for Biosecurity Australia to publish a revised draft IRA and invite public comment on the scientific merit of the revised draft IRA (step 6).
- Under the Regulations for a standard IRA, Biosecurity Australia is not required to invite the public to provide submissions on the provisional final draft IRA.
- As set out in paragraph 5.9 of the handbook, Biosecurity Australia is required to consult with State and Territory governments on the proposed outcomes of the IRA before the provisional IRA is published.
- In response to the Chair of the panel’s request to Biosecurity Australia to confirm that consultation with state and territory governments on the proposed outcomes of the IRA was undertaken. Biosecurity Australia confirmed that Primary Industries Standing Committee CEOs were provided with a copy of the key findings of the provisional final draft IRA on 12 March 2010.
- Biosecurity Australia issued the provisional final draft IRA on 15 March 2010.

Taking into account all the relevant information, the panel was satisfied that Biosecurity Australia had undertaken the consultation required under the handbook.

As such, the panel concluded that **there was no significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder. Therefore, the claim was disallowed.**