

IMPORT RISK ANALYSIS APPEALS PANEL—FINDINGS REPORT
FRESH APPLE FRUIT FROM THE PEOPLE’S REPUBLIC OF CHINA 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 IRA handbook) published by the Australian Government Department of Agriculture, Fisheries and Forestry.

Five submissions were received in response to the release of the *provisional final import risk analysis (IRA) report for fresh apple fruit from the People’s Republic of China*. The Chair decided the claims made in two submissions (containing five claims) were worthy of further consideration by the IRAAP, these appeals being from:

- Apple & Pear Australia Limited
- the Department of Employment, Economic Development and Innovation, Queensland

The IRAAP comprised of:

- Mr Andrew Inglis AM, Chair (Chair—Biosecurity Advisory Council)
- Dr Elizabeth Mattiske (Biosecurity Advisory Council)
- Ms Fran Freeman (Executive Manager—Department of Agriculture, Fisheries and Forestry)

Consistent with the IRA 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 fresh apple fruit IRA process, which included:

- the IRA handbook;
- the 2009 draft IRA report on fresh apple fruit from the People’s Republic of China;
- the Eminent Scientist Group’s report;
- the *Provisional final (IRA) report for fresh apple fruit from the People’s Republic of China*; and
- independent legal advice.

The IRAAP’s assessment of the appeals follows.

Appellant

Apple and Pear Australia Limited

CLAIM 1A

Summary of claim

CLAIM – The appellant claims that there was a deviation in the IRA process because the provisional final IRA report fails to conduct an unrestricted risk assessment for:

- 1) Apricot Weevil from Xinjiang Uygur Autonomous Region,
- 2) Yanyuan scale from Sichuan and Yunnan provinces,
- 3) Citrophilus mealybug from Hebei and Henan provinces and
- 4) SBFS from Yunnan province.

The appellant claims that as such “the IRA does not meet the definition of ‘risk analysis’ in the Quarantine Regulations 2000 (the Regulations) (Part 6A, section 69B), and that because the definition of a risk analysis has not been met, an ‘IRA’ has not been completed and there are deviations to the IRA process outlined in sections 69C (2) (h) and 69E (2) of the Regulations”.

Finding

Claim disallowed.

Reasons

The IRAAP considered the question of whether a ‘risk analysis’ had been conducted in line with the regulated process for an expanded IRA. It noted that ‘risk analysis’ is defined under the Quarantine Regulations 2000 (section 69B) as:

“the assessment of the level of quarantine risk associated with the importation, or the proposed importation, of animals, plants or other goods and where necessary, the identification of risk management options to limit the level of quarantine risk to one that is acceptably low.”
[as extracted]

After taking into consideration all the available information, the IRAAP was satisfied that the process of completing a ‘risk analysis’ had been undertaken in accordance with the regulated IRA process, as described under Quarantine Regulation 69B. It was not within the scope of the IRAAP to make an assessment of the scientific merits of the ‘risk analysis’.

As such, the IRAAP agreed **that there had not been a significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder**. The IRAAP reviewed the remainder of the appellant’s claim for completeness (noting that claims against Section 69C (2) (h) and Section 69E (2) of the Quarantine Regulations 2000 are based on the previous claim (disallowed by the IRAAP) that Biosecurity Australia did not comply with the definition of risk analysis in the Regulations).

For completion the IRAAP noted that:

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- Section 69C (2)(h) states that:

“An expanded IRA must include the following steps, Biosecurity Australia considering the Eminent Scientists Group’s (ESG) comments and preparing and publishing a provisional final IRA report”.
[as extracted]

The panel noted that the ESG’s report on the draft IRA was published on 4 December 2009.

- Section 69E(2) of the Quarantine Regulations 2000 states that:

“An expanded IRA must be completed within the period of 30 months commencing on the day public notice of its start was given”.
[as extracted]

The panel noted that the 30 months allowed for an expanded IRA have not yet elapsed.

The IRAAP agreed that the question of whether Biosecurity Australia conducted an assessment of unrestricted risk as part of this risk analysis and whether it was done accurately or thoroughly (for Apricot Weevil from Xinjiang Uygur Autonomous Region, Yanyuan scale from Sichuan and Yunnan provinces, Citrophilus mealybug from Hebei and Henan provinces and SBFS from Yunnan province) related to the scientific merits of the IRA, which is outside the ground for appeal. Neither the scientific merits of an IRA nor the merits of recommendations and conclusions reached by Biosecurity Australia or the Eminent Scientists Group can be considered by the IRAAP.

However, the IRAAP did note that written advice provided by Biosecurity Australia confirmed that unrestricted risk assessments had been conducted for the four pests identified by the appellant.

CLAIM 2

Summary of claim

CLAIM – Failure to (1) consider and assess the likelihood on importation of *Drosophila suzukii* (*D. suzukii*) in the regulated IRA process, and (2) - meet the requirements of section 3.2 of the IRA handbook in relation to *D. suzukii* .

Finding

The IRAAP found that:

Part 1 of the claim was outside the ground of appeal.

Part 2 of the claim was disallowed.

Reasons

Part 1 - consider and assess the likelihood on importation of *D. suzukii* in the regulated IRA process

Under the grounds for appeal on page 39 of the IRA handbook 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

The IRAAP agreed that any consideration of whether or not *D. suzukii* should have been added or omitted from the import risk analysis would be commenting on the scientific merits of the IRA, which is outside the IRAAP's terms of reference.

Although not taken into consideration in respect of this claim, given the claim is outside the grounds for appeal, the IRAAP noted, for completeness, that:

- The appellant claims that a failure to consider and assess the likelihood of *D. suzukii* means that the IRA does not meet the definition of risk analysis in the Quarantine Regulations 2000 (Section 69B). The IRAAP's conclusions on whether Biosecurity Australia conducted a risk analysis and subsequent conclusions relating to claims against sections 69E (2) and 69C (2) (h) of the Regulations, outlined in Claim 1, would also be relevant to this claim.
- While the provisional final IRA report did not include *D. suzukii* in the IRA process, a pest initiated pest risk analysis (PRA) is currently being conducted for *D. suzukii* by Biosecurity Australia.

Part 2 - meet the requirements of section 3.2 of the IRA handbook in relation to *D. suzukii*.

Specifically, the appellant claimed that “Acceptance by Biosecurity Australia of the import proposal from China, without China having provided any information about the distribution of *D. suzukii* in China is a deviation” from the regulated process outlined in the IRA handbook.

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Section 3.2 of the IRA handbook states that:

“Regardless of the origin of an import proposal, it must be in writing. While there is no standard form for import proposals, a proposal should provide relevant scientific and other information to the extent that is available. This information may be provided by the person or agency proposing the import (the proposer), the national Competent Authority of the exporting country, or may be available to Biosecurity Australia through scientific literature or other sources. The required information may include, but is not limited to, distribution records of pests associated with particular plants, or information on the incidence of animal diseases or treatments used on the goods.”
[as extracted]

The IRAAP concluded that that an import proposal can only be based on the known science at the time and noted written advice provided by Biosecurity Australia in response to questions from the Chair, which stated that;

*“China provided pest lists for apples when they requested access in 2001 and 2005. However, Biosecurity Australia does not rely solely on the information provided by the proponent country. Exhaustive literature and database searches were conducted by Biosecurity Australia and by state department stakeholders during the IRA consultation. At the time there appeared to be no reports of *Drosophila suzukii* as an economic pest of apples (or other fruit) in China or other areas where it is native or endemic.”*

After taking into consideration all available information, the IRAAP agreed that the requirements set out in section 3.2 of the IRA handbook had been met. As such, the IRAAP concluded that **there had not been a significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder and the claim was disallowed.**

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 IRA handbook pertaining to section’s 5.5, 5.6 and 5.7” because the categorisation tables in the provisional final IRA report include 45 pests that were not included in the draft IRA.

Finding

Claim disallowed.

Reasons

Part 5.5 (step 4) of the IRA handbook states 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 IRA handbook states 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 IRA 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 IRAAP noted in relation to the processes covered in steps 4, 5 and 6 of the IRA handbook:

- Biosecurity Australia had issued a draft IRA report. The draft IRA report confirms the pests and diseases being assessed and describes the major pathways by which these could enter, establish and spread in Australia. The IRAAP noted that the draft IRA report had been considered by the Eminent Scientists Group.
- The Chair of the IRAAP 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) on the draft IRA report and review of the scientific literature available”.

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- Biosecurity Australia announced (BAA 2009/01) on 21 January 2009 that a draft IRA report had been placed on its website and invited comment on the draft IRA report.
- BAA 2009/01 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 (23 March 2009).
- 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 7 April 2009.
- The Chair of IRAAP asked Biosecurity Australia whether they considered submissions received on the draft IRA. 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).”
- There is no requirement under the Regulations, or the IRA handbook, for Biosecurity Australia to publish a revised draft IRA and invite public comment of the revised draft IRA (step 6).

The IRAAP was satisfied that Biosecurity Australia had acted consistent with 5.5, 5.6 and 5.7 (steps 4, 5 and 6) of the IRA handbook. As such, **the IRAAP 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.**

In consideration of the specific inclusion of 45 pests from the regulated IRA process the IRAAP considered **this outside the IRAAP's ground of appeal** (as this would be commenting on the scientific merits of the IRA). However, the IRAAP 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.

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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 IRA 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 IRAAP noted that:

- The Chair of IRAAP asked Biosecurity Australia whether they considered submissions received on the draft IRA. 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).”
- There is no requirement under the Regulations, or the IRA 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).

The IRAAP was satisfied that Biosecurity Australia’s actions were consistent with 5.7 (step 6) of the IRA handbook. As such, the IRAAP 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.**