

**IMPORT RISK ANALYSIS APPEAL PANEL  
SECRETARIAT**

**APPLES FROM NEW ZEALAND IRA - APPEAL**

**FINDINGS**

---

**INTRODUCTION**

The Import Risk Analysis Appeal Panel (IRAAP) was convened in accordance with the *Import Risk Analysis Handbook* 2003 (the Handbook) published by the Australian Government Department of Agriculture, Fisheries and Forestry.

The Panel considered three appeals lodged in response to the *Final Import Risk Analysis Report for Apples from New Zealand* (Final NZ Apples IRA Report) by:

- Apple & Pear Australia Ltd.
- Apple and Pear Growers' Association of South Australia. Inc. and
- NSW Farmers' Association Horticulture Committee.

The Panel comprised Mr John Crosby (Chairman) (Chairman – Quarantine and Exports Advisory Council); Dr Raoul (Roly) Nieper (Quarantine and Exports Advisory Council); Dr Glen Kile (Executive Director – Forest and Wood Products Research and Development Corporation) and Mr Daryl Quinlivan (Deputy Secretary – Department of Agriculture, Fisheries and Forestry).

Consistent with the Handbook, the IRAAP considers appeals, supported by a statement of reasons, based on one or both of the following grounds:

- there was a significant deviation from the process set out in the Import Risk Analysis Handbook that adversely affected the interests of a stakeholder (Ground 1)
- a significant body of scientific information relevant to the outcome of the IRA was not considered (Ground 2).

The IRAAP does not consider matters relating to:

- issues falling within the ambit of the appeal in step 8 (see Section 4) of the Import Risk Analysis Handbook
- the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was not considered
- the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia.

On either ground of appeal, the IRAAP may make one of three findings: the Panel may *allow* or *disallow* an appeal, or may find it *outside the grounds of appeal* set out in the Handbook.

## NEW ZEALAND APPLES IRAAP FINDINGS

### *Appellant*

### **Apple and Pear Australia Ltd**

### *Ground of appeal 1*

There was a significant deviation from the process set out in the Import Risk Analysis Handbook that adversely affected the interests of a stakeholder

### **CLAIM 1**

#### *Summary of claim*

That the Chief Executive of Biosecurity Australia deviated from the process set out in the Handbook by failing to issue a recommendation for a policy determination that was separate from the recommendations of the IRA team.

#### *Finding*

Claim disallowed.

#### *Reasons*

- The IRAAP found that the Handbook requires the Chief Executive of Biosecurity Australia to issue a recommendation for a policy determination, having regard to the matters in the Handbook at section 19 (page 17).
- Although a recommendation for a policy determination was made for the conditional importation of apples from New Zealand in the IRA summary set out in the Final NZ Apples IRA Report Part A, the IRAAP considered that this did not fully meet the requirements of the Handbook.

The Panel considered that to be consistent with the Handbook, the recommendation for a policy determination should have been made clearly in the name of the Chief Executive of Biosecurity Australia.

The IRAAP found therefore, that **there was a deviation from the process.**

- The IRAAP found that **this deviation was not significant**: Biosecurity Australia's recommendation for a policy determination for the conditional importation of apples from New Zealand was clearly set out in the IRA summary in the Final NZ Apples IRA Report Part A. The Chief Executive of Biosecurity Australia also issued the Final NZ Apples IRA Report and accompanying memorandum in his own name.
- The Panel concluded that, since a full explanation of the recommendations was provided in the Final NZ Apples IRA Report, the appellant's claims that the deviation reduced the transparency of the IRA process and obfuscated the consequences of adoption of the recommendations are not supported.
- The Panel considered that the conclusion reached in the Final NZ Apples IRA Report, namely a recommendation for the conditional importation of apples from New Zealand, could be clearly understood by stakeholders. The Panel found that **the deviation did not adversely affect the interests of the stakeholder. Therefore, the claim was disallowed.**

## CLAIM 2

### *Summary of claim*

That the IRA team deviated from the process set out in the Handbook by ‘redefining the ALOP’ through using a semi-quantitative rather than qualitative analysis by assigning numeric values for probability; and calculating the import risk on the basis of one year of trade.

### *Finding*

Claim disallowed.

### *Reasons*

- The IRAAP noted that the Handbook states that a technical manual produced by Biosecurity Australia, (Draft) *Guidelines for Import Risk Analysis* (September 2001), may assist those undertaking import risk analysis work (section 3.7, page 9).

However, the IRAAP found that the Handbook does not require that an import risk analysis be conducted with reference to any specific statistical methodology or specified period of trade.

- The IRAAP found that **the IRA team’s choice of import risk analysis methodologies, including the period of time over which risk was assessed, did not represent a deviation**, significant or otherwise, from the process set out in the Handbook in the case of the Final NZ Apples IRA Report. **Therefore, the claim was disallowed.**
- The Panel also noted that, according to the Handbook (Annex 4, page 25), consideration of the merits of methodologies employed in the import risk analysis is beyond the IRAAP’s terms of reference.

## CLAIM 3

### *Summary of claim*

That Biosecurity Australia deviated from the process set out in the Handbook by failing to specify measures, specifically with respect to the operational details of orchard inspection regimes, that should be taken to reduce risks associated with fire blight.

### *Finding*

Claim disallowed.

### *Reasons*

- The IRAAP noted that the Handbook does not indicate the level of detail required in recommending, in a Final IRA Report, parameters or conditions for import.
- The Panel noted that Biosecurity Australia recommended inspection as a measure to manage risks associated with the importation of apples from New Zealand, and that the Final NZ Apples IRA Report set a standard for that condition (Part B, page 316).
- The Panel noted also that it is not the role of Biosecurity Australia to implement measures (Handbook, section 2.2, page 6) but rather to recommend conditions for import. The IRAAP found that the **recommendation of an inspection standard in the Final NZ Apples IRA Report (Part B, p105-106 and 316), is not a deviation**, significant or otherwise, from the process set out in the Handbook. **Therefore, the claim was disallowed.**

## CLAIM 4

### *Summary of claim*

That the IRA team deviated from the process set out in the Handbook by failing to assess the likelihood of entry, establishment or spread of wheat bug (*Nysius huttoni*).

### *Finding*

Claim disallowed.

### *Reasons*

- The IRAAP noted that wheat bug was considered in the Final NZ Apples IRA Report, (Part B, p323). The IRA team concluded that wheat bug was a contaminant pest, rather than a pest of apple, and therefore existing measures for dealing with contaminant pests were appropriate.
- The IRAAP found that **the IRA team's conclusions regarding wheat bug do not represent a deviation**, significant or otherwise, from the process set out in the Handbook. **Therefore, the claim was disallowed.**
- The Panel noted also that, according to the Handbook (Annex 4, page 25), the IRAAP's terms of reference do not extend to consideration of the scientific merits of the import risk analysis.

### *Ground of appeal 2*

A significant body of scientific information relevant to the outcome of the IRA was not considered.

## CLAIM 5

### *Summary of claim*

That the IRA team failed to consider a significant body of scientific information that provides evidence of the heightened risk of fire blight when fruit is sourced from orchards without symptoms at the time of inspection but with a recent history of infection, specifically:

- information provided by the Bureau of Rural Sciences (BRS) and included in the Final New Zealand Apples IRA Report, Part B, Appendix 1 (page 331-334);
- Beer, S.V. and Norelli, J.L. (1977) Fire blight epidemiology: factors affecting release of *Erwinia amylovora* by cankers. *Phytopathology* **67**: 1119-1125

### *Finding*

Claim disallowed.

### *Reasons*

- The IRAAP considered that a significant body of scientific information should relate to more than one example of published and peer-reviewed scientific literature.

While relevant to the outcomes of the IRA, the BRS advice on clustering of risk is not peer-reviewed scientific literature.

While relevant to the outcomes of the IRA, the Beer & Norelli (1977) article identified by the appellant is a single peer-reviewed publication.

- The IRAAP concluded therefore that **the Beer & Norelli (1977) article, on its own, and the BRS advice did not constitute significant bodies of scientific information.**
- In any case, the IRAAP found that **the IRA team considered both BRS's advice and the paper by Beer & Norelli (1977)** in undertaking the IRA for New Zealand apples.
- **Therefore, the claim was disallowed.**

## CLAIM 6

### *Summary of claim*

That the IRA team failed to consider a significant body of scientific information relevant to the outcome of the IRA for New Zealand apples (including a World Wide Web publication, Longstroth M. (2002), *The fire blight epidemic in southwest Michigan*, Michigan State University Extension, <http://www.canr.msu.edu/vanburen/fb2000.htm>) that provides evidence that fire blight outbreaks occur in apparently symptomless orchards more than seven weeks after flowering.

### *Finding*

Claim disallowed.

### *Reasons*

- The IRAAP considered that a significant body of scientific information should relate to more than one example of published and peer-reviewed scientific literature.
- The IRAAP agreed that **a single publication made solely on the World Wide Web, and which does not form a part of peer-reviewed scientific literature, does not constitute a significant body of scientific information.**
- In any case, the IRAAP found that **the IRA team considered the Longstroth M. (2002) article** (Final NZ Apples IRA Report, Part B, page 99), **as well as the possibility more generally of fire blight outbreaks more than seven weeks after flowering in apparently symptomless orchards** (Final NZ Apples IRA Report, Part B, p 113). **Therefore, the claim was disallowed.**

## CLAIM 7

### *Summary of claim*

That the IRA team failed to consider a significant body of scientific information relevant to the outcome of the IRA, namely the possibility of the formation of fire blight biofilms and aggregates, which may impact the effectiveness and usefulness of chlorine dipping.

### *Finding*

Claim disallowed.

### *Reasons*

- The IRAAP considered that a significant body of scientific information should relate to more than one example of published and peer-reviewed scientific literature.
- The IRAAP agreed that claims made by **an appellant without reference to published scientific literature, would not constitute a body of scientific information.**

- In any case, the IRAAP found that **the IRA team considered the effectiveness of chlorine treatment on biofilms** (Final NZ Apples IRA Report, Part B, 73). **Therefore, the claim was disallowed.**
- The Panel noted that, according to the Handbook (Annex 4, page 26), consideration of the merits of the risk management measures recommended by the IRA team is beyond the IRAAP's terms of reference.

## *Appellant*

### **Apple and Pear Growers' Association of South Australia Inc**

#### *Ground of appeal 1*

There was a significant deviation from the process set out in the Import Risk Analysis Handbook that adversely affected the interests of a stakeholder.

#### **CLAIM 1**

##### *Summary of claim*

That Biosecurity Australia deviated from the process set out in the Handbook by failing to provide an opportunity for stakeholders to consider alterations made between the Draft and Final NZ Apples IRA Report.

##### *Finding*

Claim disallowed.

##### *Reasons*

- The IRAAP noted that there is no obligation in the Handbook for Biosecurity Australia to consult with stakeholders on alterations made between a Draft and Final IRA Report.
- The IRAAP found that **Biosecurity Australia not providing an opportunity for stakeholders to consider alterations made between the Draft and Final NZ Apples IRA is not a deviation**, significant or otherwise, from the process set out in the Handbook. **Therefore, the claim was disallowed.**

#### **CLAIMS 2 and 3<sup>1</sup>**

##### *Summary of claims*

That Biosecurity Australia deviated from the process set out in the Handbook by failing to recommend the adoption of measures that the appellant claims are relevant existing international standards, namely:

- the conditions required by China Animal and Plant Quarantine (CAPQ) for the export of Tasmanian apples to China;
- the *Australian Code of Practice for collection, culturing, identification and replication testing for Fire Blight*; and
- *New Zealand pipfruit integrated fruit program manual* (2004).

##### *Findings*

Claims disallowed.

##### *Reasons*

- The IRAAP noted that, with reference to plant health, international standards are those developed under the auspices of the International Plant Protection Convention (IPPC) in cooperation with regional organisations operating within the framework of the IPPC.

---

<sup>1</sup> Claims considered together given similarity of argument.

- The Panel noted that neither the CAPQ requirements for the export of Tasmanian apples to China, nor the New Zealand pipfruit integrated fruit program manual (2004) are international standards.
- The IRAAP noted that there is no reference to an *Australian Code of Practice for collection, culturing, identification and replication testing for Fire Blight* in the CAPQ requirements (as cited by the appellant) and that a document so named does not appear to exist.
- The IRAAP found that **Biosecurity Australia not recommending the adoption of measures contained in these documents is not a deviation**, significant or otherwise, from the process set out in the Handbook. **Therefore, the claims were disallowed.**

## CLAIM 4

### *Summary of claim*

That Biosecurity Australia deviated from the process set out in the Handbook by failing to implement an independent peer review of the Final NZ Apples IRA Report.

### *Finding*

Claim disallowed.

### *Reasons*

- The IRAAP noted that the Handbook states that independent peer review of a Final IRA Report is optional rather than mandatory (section 15, page 16).
- The IRAAP found that **not implementing an independent peer review of the Final NZ Apples IRA Report is not a deviation**, significant or otherwise, from the process set out in the Handbook. **Therefore, the claim was disallowed.**
- The Panel noted that, whilst it does not constitute peer review, the Eminent Scientists Group considered the draft Final NZ Apples IRA Report, to ensure that the IRA team had adequately considered all technical submissions from stakeholders during the formal consultation period on the Draft IRA Report.

## CLAIM 5

### *Summary of claim*

That Biosecurity Australia deviated from the process set out in the Handbook by failing to consult with stakeholders, with reference specifically to failure to provide summary meeting reports of the Risk Analysis Panel (RAP) for meetings 14-19 and after August 2006.

### *Finding*

Claim disallowed.

### *Reasons*

- The Panel noted that neither the 1998 nor 2003 version of the Handbook make provision for stakeholders to consider the outcomes of either Risk Analysis Panel (RAP) or IRA team meetings. Nor does either version require stakeholders to be consulted on the outcomes of RAP or IRA team meetings.
- The Panel found that **Biosecurity Australia not providing stakeholders with summary reports of the RAP or IRA team meeting, is not a deviation**, significant or otherwise, from the process set out in the Handbook. **Therefore, the claim was disallowed.**



### ***Ground of appeal 2***

A significant body of scientific information relevant to the outcome of the IRA was not considered.

### **CLAIM 6**

#### ***Summary of claim***

That the IRA team failed to consider a significant body of scientific information, namely the *Australian Code of Practice for collection, culturing, identification and replication testing for Fire Blight*.

#### ***Finding***

Claim disallowed.

#### ***Reasons***

- The IRAAP considered that a significant body of scientific information should relate to more than one example of published and peer-reviewed scientific literature.
- The IRAAP noted that there is no reference to an *Australian Code of Practice for collection, culturing, identification and replication testing for Fire Blight* in the China Animal Plant Quarantine requirements (as cited by the appellant) and that a document so named does not appear to exist.
- The IRAAP found that that **information which is not published, referenced or obtainable cannot reasonably be held to be a significant body of scientific information. Therefore, the claim was disallowed.**

## *Appellant*

### **NSW Farmers' Association Horticulture Committee**

The submission to the Panel from the NSW Farmers' Association Horticulture Committee did not explicitly refer to any claim under either ground of appeal set out in the Handbook.

Given there was no reference to a body of scientific information, the IRAAP could not consider any part of this submission against Ground of Appeal 2 (that is, a significant body of scientific information relevant to the outcome of the IRA was not considered).

The third paragraph of the NSW Farmers' Association Horticulture Committee submission stated, "If the process set down in the Handbook had been followed a conclusion such as this would have been set down in the draft IRA...". The Panel concluded from this that the appellant wished to appeal under Ground of Appeal 1 (that is, there was a significant deviation from the process set out in the Import Risk Analysis Handbook that adversely affected the interests of a stakeholder).

In order to give due consideration to the submission made by NSW Farmers' Association Horticulture Committee, the Panel implied the following claims from the submission.

#### ***Ground of appeal 1***

There was a significant deviation from the process set out in the Import Risk Analysis Handbook that adversely affected the interests of a stakeholder.

### **CLAIM 1**

#### ***Summary of claim***

That Biosecurity Australia deviated from the process set out in the Handbook by failing to provide an opportunity for stakeholders to consider alterations (specifically with reference to wheat bug) made between the Draft and Final NZ Apples IRA Reports.

#### ***Finding***

Claim disallowed.

#### ***Reasons***

- The IRAAP noted that, according to the Handbook, there is no obligation for Biosecurity Australia to consult with stakeholders on alterations made between a Draft and Final IRA Report.
- The IRAAP found that **Biosecurity Australia not providing an opportunity for stakeholders to consider alterations made between the Draft and Final NZ Apples IRA is not a deviation**, significant or otherwise, from the process set out in the Handbook. **Therefore, the claim was disallowed.**

## **CLAIM 2**

### ***Summary of claim***

NSW Farmers' Association Horticulture Committee makes a number of comments regarding the effectiveness of existing protocols and the resourcing of AQIS inspection staff.

### ***Finding***

Claim outside the grounds of appeal.

### ***Reasons***

- The Panel noted that, according to the Handbook (Annex 4, page 25), consideration of the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia is beyond the IRAAP's terms of reference. **Therefore, the IRAAP found that the claim was outside the grounds of appeal.**