IMPORT RISK ANALYSIS APPEALS PANEL - FINDINGS

PROVISIONAL FINAL IMPORT RISK ANALYSIS REPORT FOR FRESH UNSHU MANDARIN FRUIT FROM JAPAN

INTRODUCTION

The Import Risk Analysis Appeals Panel (the Panel) was convened in accordance with the *Import Risk Analysis Handbook 2007* (the Handbook) published by the Australian Government Department of Agriculture, Fisheries and Forestry[1].

The Panel considered two appeals lodged in response to the *Provisional Final Import Risk Analysis (IRA) Report for Fresh Unshu Mandarin Fruit from Japan* (provisional final unshu mandarin IRA report) by:

- the Tree Pathology Centre
- Citrus Australia.

In addition to the two appeals above, a submission was received from the Victorian Department of Primary Industries. However, this submission was determined by the Panel not to be an appeal against the provisional final unshu mandarin IRA report. The Panel has formally referred the submission to Biosecurity Australia for appropriate action.

The IRAAP comprised Mr John Crosby (Chair) (Chair—Quarantine and Exports Advisory Council); Mr Stephen Morris (Quarantine and Exports Advisory Council); and Mr David Williamson (Executive Manager—Department of Agriculture, Fisheries and Forestry).

Consistent with the Handbook, the Panel considers appeals, supported by a statement of reasons, based on the following ground:

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

The Panel 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.

In relation to an appeal, the Panel may make one of three findings: the Panel may *allow* or *disallow* an appeal, or may find it *outside the ground of appeal* set out in the Handbook.

The Panel's assessment of the two appeals follows.

UNSHU MANDARIN IRAAP FINDINGS

Appellant

Tree Pathology Centre

Ground of Appeal
There was a significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder.

CLAIM ONE

Summary of claim

The appellant claimed that had the *Draft Import Risk Analysis Report for Fresh Unshu Mandarin Fruit from Japan* been referred to the Eminent Scientists Group (ESG), the ESG would not endorse the report.

Finding

Outside the ground of appeal.

Reasons

- The appellant did not identify any significant deviation from the regulated IRA process. The issue of whether or not the ESG would have endorsed a draft IRA report is not a matter that the Panel considers. As stated in the Handbook, the Panel *"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"* (page 39)[1].
- As such, **the Panel concluded that the claim falls outside the ground of appeal**.
- For completeness, the Panel noted that a draft IRA report is only required to be referred to the Eminent Scientists Group (ESG) in the expanded IRA process[2].
- The Handbook stipulates that *"The Chief Executive may decide the expanded process will be followed where:*
  - *the IRA involves significant differences in scientific opinion or*
  - *significant harm to people, animals, plants or the environment may result from the importation.*

  The standard process will be followed in all other circumstances" (Section 4.2, page 14)[1].
- The Chief Executive did not decide that the expanded process would be followed in the case of the unshu mandarin IRA. Accordingly, the standard process was followed.
- Biosecurity Australia Advice 2008/08, released on 19 March 2009, (second sentence) notifies stakeholders "*this analysis will be undertaken as a standard IRA, requiring completion within 24 months from announcement*"[3].

CLAIM TWO

Summary of claim

The appellant claimed that Biosecurity Australia has not addressed stakeholder concerns submitted during the regulated IRA process.

Finding

Disallowed.

Reasons

- Biosecurity Australia Advice 2008/23, released on 29 July 2008, notified stakeholders of the release of the *Draft Import Risk Analysis Report for Fresh Unshu Mandarin Fruit from Japan* (draft unshu mandarin IRA report) and invited written comments within 60 days[4].
    - Nine separate submissions were received against the draft unshu mandarin IRA report.
- The Handbook states: *"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"* (Section 5.7, page 19)[1].

  [emphasis added]

- In considering claim two, that Biosecurity Australia had not addressed stakeholder concerns, the Panel referred to:
    - the draft unshu mandarin IRA report
    - the nine stakeholder submissions received against the draft unshu mandarin IRA report
    - the provisional final unshu mandarin IRA report (released for appeals on 6 April 2009)[5]
    - consultations with Biosecurity Australia on how it considered stakeholder submissions.
- The Panel determined that Biosecurity Australia had addressed stakeholder comments identified by the Tree Pathology Centre in its appeal.
- As such, the Panel concluded that **there was no deviation from the regulated IRA process that adversely affected the interests of a stakeholder. Therefore, the claim was disallowed.**

Appellant

Citrus Australia

Ground of Appeal
There was a significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder.

CLAIM ONE

Summary of claim

The appellant claimed that Biosecurity Australia has not adequately addressed stakeholder concerns clearly submitted during the regulated IRA process.

Finding

Disallowed.

Reasons

- Biosecurity Australia Advice 2008/23, released on 29 July 2008, notified stakeholders of the release of the *Draft Import Risk Analysis Report for Fresh Unshu Mandarin Fruit from Japan* (draft unshu mandarin IRA report) and invited written comments within 60 days[4].
    - Nine separate submissions were received against the draft unshu mandarin IRA report.
- The Handbook states: *"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"* (Section 5.7, page 19)[1].

  [emphasis added]

- In considering claim one, that Biosecurity Australia has not adequately addressed stakeholder concerns clearly submitted during the regulated IRA process, the Panel referred to:
    - the draft unshu mandarin IRA report
    - the nine stakeholder submissions received against the draft unshu mandarin IRA report
    - the provisional final unshu mandarin IRA report (released for appeals on 6 April 2009)[5]
    - consultations with Biosecurity Australia on how it considered stakeholder submissions.
- The Panel determined that Biosecurity Australia had adequately addressed stakeholder comments identified by Citrus Australia in its appeal.
- As such, the Panel concluded that **there was no deviation from the regulated IRA process that adversely affected the interests of a stakeholder. Therefore, the claim was disallowed.**

CLAIM TWO

Summary of claim

The appellant claimed that the IRA is proposing a significant change in policy and may be considered to be setting a precedent.

Finding

Outside the ground of appeal.

Reasons

- The appellant did not identify any significant deviation from the regulated IRA process. The issue of whether or not the IRA is proposing a significant change in policy, or may be considered to be setting a precedent, is not a matter that the Panel considers. As stated in the Handbook on page 39, the Panel *"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"* (page 39)[1].

  [Emphasis added]
- As such, **the Panel concluded that the claim falls outside the ground of appeal.**

[1] The *Import Risk Analysis Handbook 2007* can be accessed from Biosecurity Australia's website at: http://www.daff.gov.au/ba/ira/process-handbook.
[2] See regulation 69C of the *Quarantine Regulations 2000*.
[3] Biosecurity Australia Advice 2008/08 can be accessed from Biosecurity Australia's website, at: http://www.daff.gov.au/__data/assets/word_doc/0011/595163/mandarin_from_japan_BAA2008_08.doc
[4] Biosecurity Australia Advice 2008/23 can be accessed from Biosecurity Australia's website, at: http://www.daff.gov.au/__data/assets/word_doc/0005/747824/2008_23.doc
[5] Biosecurity Australia Advice 2009/07 can be accessed from Biosecurity Australia's website, at: http://www.daff.gov.au/__data/assets/word_doc/0017/1073231/2009_07_BAA_Japan_unshu_mandarins_provisional_final_report_090406.doc