

19 December 2012

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
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Dear Sir/Madam

Re: Biosecurity Legislation

Thank you for the opportunity to respond, on behalf of the Australian apple and pear industry, to the Senate Standing Committee on Rural and Regional Affairs and Transport inquiry into the Biosecurity Bill 2012.

Apple and Pear Australia Limited (APAL) is the peak industry body representing the interests of commercial apple and pear growers in Australia in matters of national importance including regulation and legislation, marketing, research and development.

APAL is fully supportive of initiatives aimed at creating a more responsive and flexible regulatory environment. Replacing the century old Quarantine Act 1908 is a good start. The system that manages the risks of pests and diseases from entering, establishing and spreading must be based on simple but effective legislative and regulatory provisions. The new Biosecurity Bill 2012 provides an opportunity to rectify existing deficiencies. While biosecurity risks must be managed efficiently and at minimum cost, it is important that adequate resources are allocated to the task.

However APAL believes that the framework which underpins our quarantine and biosecurity arrangements must be based on sound science and sensible policy. Further, our quarantine and biosecurity arrangements must be adequately resourced (both in human capacity and funding) to protect Australia's environment, biodiversity and agricultural production systems from exotic pests and diseases.

Biosecurity Import Risk Analysis Process

APAL understands that the Biosecurity Bill (Chapter 3) and regulations will replace the current IRA process with a Biosecurity Import Risk Analysis (BIRA) process. APAL supports the Government's intention to make reference to the BIRA process within the legislation as this will improve the level of accountability and transparency. This is particularly important if the Minister is able to direct the Director of Biosecurity to undertake a Biosecurity Import Risk Analysis.

Guidelines

APAL firmly believes that the Director of Biosecurity should publish any guidelines setting out matters to be taken into account when conducting a BIRA, including the factors to be considered when deciding

whether to commence a BIRA process and how the level of biosecurity risk identified should be assessed against Australia's appropriate level of protection (ALOP). However APAL also believes that industry should be consulted on the guidelines prior to their publication.

Eminent Scientists Group

Under the existing arrangement an Eminent Scientists Group (ESG) reviews the draft import risk assessment report prior to the release of a provisional Final (Expanded) IRA. It is our understanding that the ESG reviews any relevant new information and assesses conflicting scientific views to ensure that:

- all technical submissions received from stakeholders in response to the draft IRA report have been properly considered and
- the conclusions of the revised draft IRA report are scientifically reasonable based on the material presented.

APAL supports the concept of an ESG and is most disappointed that the provision for an Eminent Scientists Group has been dropped from the proposed legislative and regulatory arrangements.

APAL urges the Government to reconsider and make provision for an ESG that:

- enables affected parties to provide "new information" to the Eminent Scientists Group, including new information which counters the science upon which the draft IRA Report was based;
- requires the ESG to demonstrate the rigour of their assessment. Specifically, the ESG should be required to comprehensively document its assessment of a) the manner in which the Director of Biosecurity has dealt with the issues raised by stakeholders (whether they have been properly considered) and b) whether the conclusions of the draft IRA are scientifically reasonable. The ESG must also be required to fully justify its determination of the superiority of scientific views where there is conflict.
- requires the ESG to provide transparency about the scientific materials they use in making their determinations. That is, any new information made available to the ESG must be publically available to enable industry stakeholders to either support or challenge the validity of "new information".

Appeals Process

APAL understands that the current Import Risk Appeals Panel (IRAAP) is to be replaced by an Inspector-general of Biosecurity (IGB). However it is not at all clear:

- Whether an appeal can be made to the IGB only with the release of the provisional IRA or whether appeals can also be made after the release of the Final IRA report.
- What the terms of reference for the IGB will be.

The Government has suggested that appeals to the IGB must relate to the process followed to produce the BIRA, not the outcome of the decision. APAL urges the Government to reconsider:

- If our calls for an ESG as argued above are ignored, the rigour around the science used by the Director of Biosecurity is left unchecked;
- An assessment of deviations from a process as set out under the (yet to be published BIRA Guidelines) do not meet the needs of the community. Specifically, the IGB should not be

constrained to equating the procedural steps of a BIRA as being the “process”. Whilst the procedural steps are fundamental, the essential question in an appeal relates to whether the Director of Biosecurity has undertaken what is required of him/her during an IRA. The IGB must have the ability to determine whether the Director of Biosecurity has undertaken what he/she is supposed to do in a BIRA – that is identified and evaluated all pests and diseases of quarantine concern, assessed the likelihood that an identified pest or disease or pest would enter, establish or spread, assessed the probable extent of the harm that would result and identified appropriate measures to meet Australia’s ALOP.

Continued Importing during an IRA

APAL understands that under the new legislative arrangements the Director of Biosecurity may continue to issue import permits whilst a BIRA is underway. APAL believes that this is illogical because a BIRA is undertaken because of a perceived risk or because there is insufficient information to rule out that there are no risks from importing a good.

Human Health

The Government has signalled an intention that the Director of Biosecurity will have authority to request that the Director of Human Biosecurity prepare a Human Biosecurity Impact Statement (HBIS) outlining the biosecurity risks to human health associated with the importation of the proposed goods. APAL supports this authority to ensure that human health impacts are properly considered in the BIRA process.

However, APAL believes that the Director of Human Biosecurity should be mandated to prepare a Human Biosecurity Impact Statement where the proposed good is a food. APAL understands that the current guidelines make provision for consultation with Department of Health officials but such consultations rarely, if ever, take place. For example, recent Import Risk Assessments for the importation of apples and pears from various countries have assessed the phytosanitary measures required to maintain Australia’s ALOP, but have failed to consider the human health issues and the sanitary measures which may be required to protect human health. This is inconsistent with managing biosecurity to protect human health as well as the health of plants and animals.

Import Food Sampling

AQIS is currently charged with the inspection and testing of imported food. APAL remains concerned, however, that the testing of food is less rigorous than that applied to domestically produced products. For example, the apple and pear industry have voluntarily chosen to fund an annual program to randomly test for chemical residues in apple and pears. The apple and pear screen contains some environmental contaminants as well as compounds that are registered for use on apples and pears in Australia. The screen also contains some other compounds that are not registered for use on apples and pears in Australia.

The industry has chosen to undertake screening in order to both protect the image of apples and pears as being clean fruit as well as to protect human health.

It is not at all clear that the same level of protection will be afforded to consumers of imported apples and pears. Although Customs nominates that five per cent of all “low” risk foods are to be inspected by AQIS, the sampling process may not actually capture any apples or pears as the sample is taken across all “low” risk imported foods.

Additionally the chemical screens applied to imported apple and pears appear to differ from the screens applied to domestic product. There are some chemicals that are either banned or not used in Australia but are in general use overseas.

Prevention and Control Measures

APAL supports the thrust of Chapter 6 of the Biosecurity Bill which implements the Beale Review's recommendation for the Commonwealth to have broader powers on-shore to manage incursions of pests and diseases. APAL believes that the proposed on-shore powers will supplement existing state controls and responsibilities and will ultimately provide more options in the management of on-shore incursions.

We believe that it is important that the Commonwealth be able to monitor and, where necessary, manage biosecurity risks when they emerge on-shore, not just when they arrive in Australia from overseas. We also believe that it is important that the Commonwealth's powers be extended beyond monitoring human health risk factors to also include the ability to manage plant pests and diseases on-shore.

Under the current arrangements the Commonwealth would have limited powers to manage an exotic disease in the apple and pear industry. Many diseases such as fire blight are unlikely to be readily apparent at the border and are only likely to become apparent upon manifestation within an orchard. Providing the Commonwealth with additional on-shore powers will enable Commonwealth biosecurity officials to work with the States to manage the risk and help prevent pests and diseases from negatively impacting upon the Australian apple and pear industry.

APAL supports the information gathering powers, the Biosecurity Control Orders powers, and the Biosecurity zone powers. However APAL is concerned that insufficient detail has been provided with respect to:

- The definition of 'reasonable grounds'. For example, on what basis might a biosecurity officer require an orchardist or fruit wholesaler to undertake a biosecurity measure to prevent or control the establishment or spread of a pest or disease.
- Compensation costs. For example, how would an apple grower be compensated if he were directed under a biosecurity control order to destroy bare trees, trees with fruit or harvested fruit? Would the processes used to establish the compensation values as outlined under the Emergency Plant Pest Response Deed ("the Deed") apply here or would a different mechanism be employed?
- The nature of the protection that limits the exercise of powers or application of measures in a biosecurity zone. For example, in what way must the Director of Biosecurity demonstrate that the biosecurity measures are 'likely to be effective in preventing, reducing or controlling the risk and are proportionate to the level of risk'?

Accreditation of Overseas Approved Facilities

APAL is concerned that the new legislative requirements may reintroduce the system of accredited overseas sources for testing of budwood and similar plant material to be imported into Australia.

Prior to 2002 overseas agencies were accredited as a source for pome fruit budwood. There were a number of issues with this: (a) DAFF could not provide evidence of when these sources were accredited and what they were accredited for – indeed, it is our understanding that AQIS had not visited any of the former pome fruit accredited sources in the 20 years prior to 2002 (b) accreditation did not alter the testing process for the plant material when it arrived in Australia, and (c) it restricted the supply of budwood and added unnecessary costs to industry.

APAL worked with DAFF to complete new pome fruit quarantine protocols (that were adopted in February 2002) which removed the system of accredited sources.

APAL is keen to ensure that the system of accredited sources is not reintroduced with the new legislation. Reintroduction of the accredited source system could mean that all new material entering Australia would have to come through one of these establishments.

For some industries there are good commercial reasons for having accredited sources but for tree crops where mutations play a key role and the crops are grown all over the world, access to new germplasm can easily be stifled if you have to arrange for the plant material to go somewhere else first.

Logistically this is difficult if there is just one or two accredited sources and they are both in the same hemisphere, seasonality and growing timing. Transporting material from, say South Africa to Australia via an accredited source in Europe would simply add unnecessary costs and delays.

Moreover, an accredited source system simply complicates the movement of material from one country to another because the exotic pest and disease list varies between countries. For example, material from South Africa may present a pest or disease of concern (and subsequently face phytosanitary barriers) to the country of the accredited establishment even if the material posed no issue to Australia if the material came directly.

Additionally, overseas agencies will only be in a position to 'accredit' plant status for the pests and diseases of concern to that country. It is our experience that you can't just 'add on' testing for pests and diseases of concern to Australia that are not also of concern to the country of the accredited facility. This is especially true if they do not have tests that we have, and there is little or no advantage in having an accredited source.

Our experience also suggests that many agencies that conduct plant certification systems only as a service to industries within their own country, so that the performance of tasks for others outside the country are dealt with only if "time and space" allows. For example, the Australian apple industry proposed viroid testing as part of a new quarantine protocol with WSU at Prosser

in the USA but WSU would not provide this as a commercial service. Testing was subsequently developed here in Australia.

APAL strongly believes that the existing pome fruit nursery stock budwood protocol should be retained. The protocols for Australian testing were established to deal with plant material from any country. The protocols have continued to work for nearly a decade and do not require replacement with an accredited overseas source system.

Emergency Provisions

Chapter 8 of the Biosecurity Bill, which outlines the powers and provisions relating to the declaration of a state of biosecurity emergency and the management of associated biosecurity risks, is of critical concern to the apple and pear industry.

APAL supports “in-principle” any move to simplify the emergency powers within the Biosecurity Bill to enable the Commonwealth to take fast and urgent action where there is a potentially significant threat posed to Australia’s industries and economy. APAL also supports “in-principle” the broadening of powers to ensure that both state and Commonwealth resources are fully and appropriately utilised in emergency response.

However the Bill does not appear to make reference to the Emergency Plant Pest Response Deed which sets out emergency response arrangements between the Commonwealth, the States and the plant affected industries in the event of a biosecurity incident. Similarly no mention is made of EADRA or NEBRA is made in the Bill. It is important that the role of plant industries' in decision making during an incident is acknowledged.

Australia’s Appropriate Level of Protection (ALOP) and SPS measures

APAL supports the inclusion of a definition of Australia’s Appropriate Level of Protection (ALOP) within the legislation to improve transparency in its application when assessing biosecurity risks. We believe, however, that the simple expression of Australia’s ALOP as “providing a high level of sanitary and phytosanitary protection, aimed at reducing risk to a very low level, but not to zero” is too loose and is without its wider context.

Instead, APAL recommends that the definition be broadened to add that:

Consistent with the SPS Agreement, Australia bases its biosecurity measures on international standards (such as those developed by the International Plant Protection Convention or Codex Alimentarius) where they exist and where they achieve Australia’s appropriate level of protection from pests and diseases of biosecurity concern. Further, where such standards do not achieve Australia’s ALOP, or relevant international standards do not exist, Australia exercises its right under the SPS Agreement to apply measures, justified on scientific grounds and based on a risk assessment, to achieve Australia’s ALOP.

Yours sincerely

Jon Durham
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