



Quarantine & Biosecurity Review

Submission by the Food & Beverage Importers Association

Introduction

The Food & Beverage Importers Association (FBIA) is an industry association that represents importers of food and beverages, both packaged ready-for-retail sale and ingredients for further processing, into Australia.

Members range from large, multi-national companies to small, specialist importers (see attached list of members). Their imports cover most commodities that are imported (eg cheese, nuts, vegetables, fruit, seafood, confectionery, oils) and in all formats (frozen, fresh, roasted, prepared, canned).

The focus of the Association is on the regulatory controls, operational matters and logistics issues facing food and beverage importers, in particular at the border. Its aim is to inform members about regulatory controls and to influence the development of those controls so that they are the minimum necessary to effect the desired policy outcomes. The FBIA aims to work in a consultative manner with regulatory agencies and, relevant to this review, the Association is represented on these committees:

- AQIS Industry Cargo Consultative Committee
- Imported Food Consultative Committee
- AQIS Industry Biologicals Working Group

The Association is also a member of the Industry Working Group on Quarantine (IWGQ) and, as a member, we are aware of its submission, which gives a broad industry position on the quarantine and biosecurity regimes. The Association fully support the IWGQ submission. The FBIA submission will focus more closely on the quarantine & biosecurity regulatory regime as it applies to food imports.

Australia's Food & Beverage Imports

Australia's imports of food and beverages have been steadily increasing in recent years. In 2006–07, the value of food and beverages imported into Australia was approximately \$A8.0 billion, compared to \$A6.8 billion in 2005–06 (source: Australian Bureau of Statistics, Catalogue 5368.0). The increase was in both foods mainly for consumption (up from \$6.17 billion to \$7.19 billion) and in foods mainly for industry (up from \$A0.65 billion to \$A0.82 billion).

Food & Beverage Importers Association

Email: fbia@fbia.org.au

Telephone: (03) 9639 3644

Facsimile: (03) 9639 0638

181 Drummond Street,

Carlton, Victoria 3053

ABN 53 932 472 760



The main commodities imported are seafood, fruit/nuts/vegetables, dairy, processed foods and confectionery.

Australia imports food from a wide range of countries but the main source is New Zealand (about 20%). Other major sources are Thailand, the United States, China, Ireland and Vietnam. The pattern of trade has been, and will continue to be, affected by the implementation of free trade agreements; for example, with the United States and Thailand.

The main reasons that foods are imported would be:

- Insufficient local supply (eg seafood, canned tomatoes, commodities in short supply because of drought)
- Not produced in Australia (range of nuts, herbs, spices)
- Specialty foods (cheese, Asian products)
- Price
- Seasonal supply (eg citrus when out-of-season in Australia)

There are also broader economic and social factors that are driving the increase in food imports are:

- globalisation of the food industry
- improving transportation and communications infrastructure
- migration

All suppliers of food to the Australian market (growers, local manufacturers, importers) have a legal obligation to ensure the food they supply is safe and of a merchantable quality. There are also strong market incentives for food businesses to produce food that is safe for human consumption. The loss of reputation from an incident can devastate a business, and each business in the chain of supply has a crucial interest in ensuring its supplies are safe.

It is common, therefore, for food businesses to operate under audited HACCP systems. This is certainly the case with any significant importer who sells to the main retail chains or to Australian manufacturers. Food safety and quality concerns have resulted in the development of effective supply chains from the point of production to the Australian customers. The importer's controls start overseas, not when the imported commodity enters its warehouse.

An essential element of those supply chains is the ability to trace products and, if necessary, ingredients of products, so that any food quality and safety issues, such as contamination, can be traced back to the source or origin more efficiently. This ability is also necessary to ensure that products are labelled in accordance with the Australia New Zealand Food Standards (for example, allergen, genetically modified, irradiation information). Importers, as all food suppliers, also must have a product recall procedure to enable unsafe food to be withdrawn from the market.



Indeed, the effectiveness of an importer's own systems for ensuring food safety have been recognised by government and AQIS is moving to enter into compliance agreements with importers, under which the importer's own food safety system will replace the current end-point testing by AQIS under the Imported Food Control Act.

Background

The Nairn Review set a reforming agenda for quarantine under which the quarantine system was to be supported by key themes: managed risk, based on science; the continuum of quarantine; community responsibility; consultative decision making. In response, the administration of quarantine became more proactive and innovative. There was a move into offshore risk mitigation schemes, onshore industry partnerships as these measures were seen as enhancing not jeopardising Australia's biosecurity. Examples of the innovative approach include:

- Broker Accreditation
- Development of the electronic Import Condition Database (ICON)
- Australian Fumigation Accreditation Scheme
- Systematic approach to quarantine approved premises
- Import Clearance Effectiveness Project

As noted in the IWGQ's submission, in the past few years, there has been a gradual change from a proactive and innovative regime to one that is extremely risk-averse, focussed on process and strict adherence to narrow interpretations of the legal requirements. The result is an attempt to micro-manage all aspects of quarantine through standard operating procedures and work instructions that leave little leeway for flexibility in operational activities and scarcely any room for AQIS officers to use their experience and expertise.

As a result, food importers face significant hurdles in satisfying quarantine requirements:

- Products with long history of safe importation are becoming subject to greater scrutiny; eg meat-based flavours sachets for noodles, even though the meat content is very minor.
- Strict application of quantitative quarantine conditions with questionable scientific bases:



- ❖ permits required for water-based drinks that have some quantity of milk, because after the deduction of the water content, the dairy content is greater than 10 percent
- ❖ Mayonnaise with 10.1% egg content after the deduction of water content not being permitted entry into Australia.
- Renewal permits becoming far more complicated than original permits and so, more difficult to meet.
- Significant changes in import conditions on renewal of permits without any previous advice of likely change.
- Difficulty of importing any commercially prepared and packaged food that contains any quarantine sensitive material (such as apple, banana) as an ingredient.
- Difficulty in obtaining clear and timely interpretations of quarantine conditions as more questions are referred to AQIS Canberra and then to Biosecurity Australia that once were decided by experienced AQIS staff.
- The need to lodge more information with AQIS at the time of clearance to enable the classification of a product under ICON, even though a product may have been imported many times in the past.
- Continued inspections of commodities that have been imported from the same producer by the same importer numerous times without incident.

The reason for this change in approach, which started before the equine influenza outbreak last year, does seem to have much to do with objective quarantine circumstances relating to food imports. As far as we are aware, there had been no quarantine incursions as a result of imported food. Certainly, AQIS has said that it is applying the Federal Court's decision on the pigmeat IRA and the issuing of permits to import pigmeat. Moreover, we believe that it is not co-incidental that there have been a number of controversial IRAs (pigmeat, apples from New Zealand, prawns) and these have lead to very close attention paid by Ministers and senators to biosecurity and quarantine issues, especially in response to claims made by some local agricultural groups.

Whatever the cause, we do not believe this approach is the most effective or efficient means of protecting Australia's biosecurity environment. It has resulted in an approach to quarantine that is based too much on risk perception rather than risk assessment, that is unnecessarily prescriptive, that does not differentiate sufficiently between high and low risks and that does not make best use of resources. This is discussed further in our response to the Review Panel's Issues Paper.



Response to Issues Paper

Risk across the quarantine and biosecurity continuum

Are Australia's quarantine and biosecurity systems appropriate to maintain its ALOP (very low risk, but not zero)?

Is ALOP understood and applied in a consistent way? Is it achieved in a way that is not more trade restrictive than required?

It should be recognised that the ALOP is not defined with any statistical or scientific precision. It is a vague term, but yet there is an attempt to apply it strictly and without any regard to the wide range of goods that are imported (eg 9.9% egg ingredient permitted; 10.1% egg content rejected). Such an approach does not accord with the 'not more trade restrictive than required' rider.

Moreover, we are concerned that the 'not more trade restrictive than required' rider is not being sufficiently considered as involving the whole quarantine continuum. The border is being regarded as a barrier so that all quarantine measures must be applied at that point. But the pathway for a disease or pest incursion may be quite narrow and could be protected by additional measures by state governments or manufacturing processes. For example, if in the case of prawns, the feeding of imported seafood to aquaculture was prohibited by the states, less cumbersome conditions that are difficult to interpret at the border could be applied.

Should the wider implications – for exporters, consumers and the economy – be taken into account when developing quarantine and biosecurity arrangements, and if so, how?

The purpose of quarantine regime is to promote the well-being of the Australian community as a whole. It is therefore definitely appropriate for the wider implications to be taken into account. Quarantine measures to deal with pest and disease risks involve tradeoffs between costs and benefits within the economy and the community (including producers and consumers). An obvious tradeoff with an import ban is between the benefit of reducing a particular pest or disease risk, which may be substantial, and the benefits from obtaining cheaper or different products. All these tradeoffs are not necessarily captured in an IRA.

There should be some recognition of the overarching concern for the well-being of the community as a whole, rather than just the interests of any particular industry or group. This is especially the case where it is proposed to restrict trade in a commodity for which there is a well-developed trade (eg prawns). In such cases, we believe there should be an analysis of the wider cost to the community. If the agencies do not have capacity then other agencies should be asked, such as the Productivity Commission. We note that the Commission did undertake an economic analysis in the salmon case.



Is it well understood in the Australian community that quarantine measures can only be applied to the extent that they are necessary to protect human, animal or plant life or health that they are the not more trade restrictive than required, and that they may not be used as an industry protection mechanism?

We do not believe this concept is well-understood at all by the Australian community. The concept of 'zero risk' or a variation of the 'precautionary principle' still seems to apply in some sections of the community in relation to food and agricultural products. 'If there is any risk, why take it?' too often predominates. We note that agricultural industries that are strongly export-oriented (eg dairy) do seem to understand and accept the concept.

Do Australia's risk assessments (including import risk analyses) competently and comprehensively assess risk and risk management issues when providing advice on market access requests and import applications? Are they sufficiently timely?

The completion of IRAs has up to now certainly not been timely. The new measures introduced last year are intended to speed up the process. It is too early to decide if the measures will be successful.

Another aspect of risk management is the provision of advice by Biosecurity Australia to AQIS on clearance issues (eg what quarantine conditions apply and whether they are met). There is significant pressure on all parties when goods are being held while rulings are being obtained and, currently, it must be said the process is very slow. In our view, the separation of AQIS & BA exacerbates this problem.

Is the role of the Eminent Scientists Group in the import risk analysis process understood and appropriate?

The Eminent Scientists Group will be essential to the maintaining the credibility of the IRA process.

Are risk analyses, import policy determinations and permit conditions sufficiently updated through monitoring of actual experience in the application of risk management measures? Do the appropriate feedback loops exist and are they effective?

No. There is no system for reviewing whether conditions remain necessary or are too restrictive. Part of the reason for this lies in the lack of adequate information technology and skilled resources. AQIS IT systems, which are old, do not facilitate the collection and analysis of data that would be required to direct operations with a risk focus.



The re-engineering of ICON is a positive move, but its full re-development is quite some years away (2011 at best, we understand). The early signs of a future import clearance IT system that will embrace biosecurity requirements, provide connectivity across the program and a better interface with industry, are also positive. But we have doubts whether the current administrative framework will provide AQIS with sufficient resources and personnel to develop the system within a reasonable timeframe.

Does AQIS implement risk management in a manner consistent with the advice/recommendations provided by Biosecurity Australia and the Director of Animal and Plant Quarantine (as outlined in the Import Risk Analysis Handbook)?

As far as our experience goes, AQIS does implement the quarantine measures decided by the Director of Animal and Plant Quarantine.

The legislative framework

Is the Quarantine Act 1908, as amended, relevant and effective to meet Australia's current quarantine and biosecurity needs? Should it be rewritten and modernised?

AQIS has developed a Quarantine Operational Framework to ensure decisions are made in accordance with a legal interpretation of the legislation. As a result, there seems to be a tendency to seek legal advice on the application of the legislation on many occasions as a pre-requisite of decision-making. Apart from the delay, this may lead to overturning of accepted practices and interpretations; for example, the interpretation that 'landed' mean 'imported' has significant implications for the shipping industry. In this environment, we believe that the legislation should be reviewed to ensure that it is operationally appropriate, given significant changes in the logistics, transport industries and international trade.

One amendment to the legislation that we believe is essential is the inclusion of a clause setting out the object or purpose of the Quarantine Act. Such a clause might help in ensuring that interpretations of sections of the Act were realistic and cognisant of operational requirements.

Should an import permit be used to restrict a product from a particular region in Australia if it is determined on a scientific basis to be regionally free of a pest or disease, while still allowing general access to the Australian market?

Yes. States are now free to introduce special quarantine conditions restricting access to their market (eg fish by Tasmania) and there are restrictions on movement of some



fruits between states. This approach should be considered by all IRAs and is consistent with the requirement to be least trade restrictive.

Jurisdictional and institutional arrangements

Is there appropriate interaction between Biosecurity Australia, AQIS and the Product Integrity, Animal and Plant Health Division and other relevant Commonwealth and state and territory agencies?

Should the current approach, which separates the roles and responsibilities of AQIS, Biosecurity Australia and the Product Integrity Animal and Plant Health Division, be integrated?

Should the quarantine and biosecurity function be integrated within the Department of Agriculture, Fisheries and Forestry, or exist as a separate agency (statutory authority)?

From our perspective, the current structural arrangements are not working and do not provide an adequate framework for assessing and managing risk across the continuum of quarantine. The split has removed much scientific expertise from AQIS so that it has to refer to BA too many issues where there might be some question about the appropriate quarantine action. But BA does not operate under any strict time constraints in providing responses and, in any case, the advice might not be clear and require a further referral by AQIS to BA. This leads to unacceptable delays in making decisions on goods before clearance by AQIS.

In our view there should be a greater integration of functions and responsibilities in quarantine administration. AQIS, BA & PIAPH should be brought together into one functioning unit.

The institutional arrangements should also make greater provision for the development of measures implementing the 'shared responsibility' concept. The Broker Accreditation Scheme, Quarantine Approved Premises and other schemes are now essential elements in managing quarantine. We believe that compliance agreements arrangements should now be extended to food importers, for whom traceability is integral to their operations. The 'shared responsibility' approach could also be taken up through a greater use of permits that specify import conditions and that then are subject to an audit regime.

Under current arrangements, an importer of 10 years standing basically receives the same treatment as a first-time importer. There is no recognition of a history of good compliance and inspections are maintained no matter how many clear inspections there have been in the past. The Imported Food Control Act that is focussed on human health and safety allows for risk differentiation between producers and importers. A similar approach that implements the 'shared responsibility' principle should be adopted for food importers in the quarantine area.



Who should have the ultimate decision making power on risk policy and import permits – a Minister or an independent public servant or statutory authority?

It is appropriate that the appropriate level of protection be determined by the elected government. But, decisions on the application of that policy to actual cases should be made by an independent person so as to avoid political considerations influencing quarantine decisions.

How should wider consumer and economy interests (a national interest test) be incorporated into such decisions (subject to consistency with international obligations)?

The purpose of quarantine is to protect the broad Australian community. Imports do bring benefits such as greater choice, lower prices. It is also the case that sometimes IRAs restrict or impede access for goods that were being imported. In the same way that BA is able to seek external scientific expertise, it should be able to seek external economic advice. If to include such advice within an IRA was not consistent with the SPS Agreement, then it might be appropriate for the Director of Quarantine to seek such advice prior to making his decision on the IRA.

*Do any conflicts result from AQIS' joint responsibilities of facilitation and regulation?
Should the regulator also be a facilitator?*

We were not aware that AQIS facilitated imports. Where a program is fully cost-recovered, such as Import Clearance, then industry is entitled to expect that the quarantine measures will be applied in an efficient and cost-effective manner.

C4. Culture, efficiency and resourcing

Are resources available to Australia's quarantine and biosecurity authorities deployed across the continuum to the areas of highest risk/return?

The FBIA considers that resources could be better deployed to areas of greater risk. To do so, AQIS requires skilled staff to assess risk and a modern IT system that would have up to date risk profiles covering all import activity so that resources could be more easily deployed.

The government has set a number of specific interception targets in the Import Clearance Program: external container inspection, reportable documents in the air express industry and air cargo unit load devices. The need for these targets should be urgently reviewed as they have not shown any high risk activity.



Does cost-recovery have an impact on the ability of AQIS staff to deliver public good outcomes?

No. What cost-recovery does require is that quarantine measures be delivered in a cost-effective and efficient manner.

Does cost-recovery limit monitoring of pests and diseases at the border, for example where the product is treated or destroyed to minimise the costs to the importer?

No. Quarantine measures are not designed to minimise costs to the importer. If risk mitigation measures are available, then an importer should be able to use them.

C5. Communication and consultation

Australia's ALOP is very low, but not zero. Is this understood in the relevant communities?

The concept is not well understood at all. Too many sections of the community focus on the 'zero' and do not see 'the very low'. If the ALOP is not zero, then it is not possible for the border to be a barrier. The impression that the border is a barrier and the focus on border activities affects public perceptions and restricts the ability to manage risk across the continuum of quarantine. More emphasis should be placed in communicating that the quarantine operations at the border act as a filter and that quarantine integrity is maintained by activities along the continuum of quarantine, including post-border measures.

C7. Review

Are existing monitoring and review mechanisms for quarantine and biosecurity policy and operations appropriate and effective? If not, what options should be considered, and why? Who should conduct reviews?

AQIS and BA have been subject to numerous reviews by external parties, often in relation to specific issues, and not always to the betterment of the system. In our view, reviews should be conducted with a focus on quarantine outcomes, rather than processes. To conduct such review there needs to be a broad understanding of the complexities of quarantine. QEAC should have a role in providing a mechanism for reviewing quarantine and biosecurity operations.



Summary

The FBIA believes that the adoption of the following points would enhance the administration of Australia's quarantine and biosecurity regime and be entirely consistent with Australia's ALOP.

1. encourage the Review Panel to re-endorse the main themes of the Nairn Review as the agenda for quarantine administration: managed risk, based on science; the continuum of quarantine; community responsibility; consultative decision making.
2. AQIS, BA & PIAPH be combined into one functioning organisation with the ability to make use of external expertise.
3. the administration of quarantine be clearly based on a targeted risk management approach.
4. a substantial capital injection be made to modernise the AQIS IT systems so that it can adopt a more targeted risk management approach.
5. the 'shared responsibility' concept be extended to food importers by means of compliance agreements or other appropriate and effective systems.
6. risk management measures be based on the continuum of quarantine.
7. more appropriate quarantine conditions be developed for commercially prepared and packaged foods.
8. a clearer understanding of Australia's ALOP be communicated so that the quarantine administration can adopt a more targeted risk management focus.

28 April 2008



2008 Members

| | |
|-----------------------------|------------------------------|
| A.Clouet (Australia) | AB Food & Beverages |
| Arquilla Bulk Trading | Barilla |
| Bon Food | Brooke Holdings |
| Cerebos (Australia) Pty Ltd | Chile Trade Commission |
| CONGA Foods | Directus |
| Dried Fruit Specialist | Ed Garing Trading & Agencies |
| F Mayer Imports | Fromagent Australia |
| Fruitmark | Fujian Holdings |
| GAF Foods | Galaxy Imports |
| GB-Commtrade | Gibson Freight |
| Goodman Fielder | H J Heinz |
| H.A. Bennett & Sons | Hormel Foods Australia |
| Hickson Lawyers | IMP Marketing |
| Imports of France | Interaust Foods |
| Kikkoman Australia | |
| Kraft Foods | Langdon Ingredients |
| Lindt & Sprüngli | M G Kailis |
| Manassen Foods | Maven Voyage Seafoods |
| Maxwell Food Products | MWT Foods |
| National Starch & Chemical | Nestle Australia Ltd |
| Nybor Holdings | OBM International |
| Oceanic Foods | Orange & Green |
| Oriental Merchants | Riviana Foods |
| Rohde & Liesenfeld | Safcol Australia |
| Scalzo Food Industries | Simplot Australia |
| Sontari Foods | Steritech |
| Stuart Alexander & Co | Sunrider International |
| Tandem Imports | Trade Commission of Denmark |
| Unilever Australasia | USA Agriculture Office |
| USA Foods | Valcorp Holdings |