AQIS COMMENTS TO
EVALUATION OF THE MUTUAL RECOGNITION SCHEMES
PRODUCTIVITY COMMISSION DRAFT RESEARCH REPORT June 2003

These comments are provided in response to the Draft Report of the Productivity Commission's Review of the Trans Tasman Mutual Recognition Arrangement (TTMRA) and address preliminary finding 7.13 and associated issues with "Most Favoured Nation".

These comments also include some observations about the use of the Imported Food Control Act as a mechanism for dealing with the few food regulations where there remains separate requirements for Australia and New Zealand.

Preliminary finding 7.13

The finding reads :

> *The Imported Food Control Act 1992 (Commonwealth) is no longer needed for the blocking of risky food imports from New Zealand. This Act could be removed from the list of TTMRA permanent exemptions provided that there is reciprocal treatment of Australian food imported into New Zealand and the existing and projected third country issues are recognised and dealt with effectively.*

Editorial comment – the finding would be better phrased as …. "*no longer needed for the control of risk food imported from New Zealand…*" .
The food is not "blocked" – but subject to strict controls; food is categorised as "risk food" not "risky". "Risk food" is defined in the Imported Food Control Act.

AQIS concurs with the finding and is continuing efforts to deal constructively with New Zealand officials in ensuring reciprocal treatment and in resolving third country issues.

In the case of food traded across the Tasman, joint food standards have been implemented (there are a few exceptions) and there is good understanding and continuing exchange of information in respect of the risk based food inspection systems adopted in each country. Australia has recognised that implementation of the TTMRA may have created a situation where food imported into NZ can reach Australia without the normal inspection regime applied. This "third country" issue is being specifically addressed within the work of officials, noted above.

Most Favoured Nation (MFN)

The question of MFN status was raised in discussions with the Productivity Commission, in light of the relatively favourable treatment of food products that is delivered to New Zealand, through the application of the TTMRA. The MFN concept is a basic premise of the General Agreement on Tariffs and Trade (GATT), and requires that no country is treated more favourably than another in terms of trade conditions. However, nations are permitted to set up trading agreements between 2 or more countries, and treat those trading partners differently to those outside the group. The existence of the TTMRA allows the Australia and New Zealand to engage, without fear of recrimination, in trading practices that 'favour' each other, insofar as the WTO and its various Agreements are concerned.

Foods where standards are not harmonised.

AQIS would like to take this opportunity to proffer some thoughts about treatment of the few foods that remain under separate standards and the operation of the Imported Food Control Act.

It has been suggested that for the few commodities, where a single Australia/New Zealand standard has not been achieved, that the TTMRA holds a permanent or temporary exemption allowing Australia to inspect these commodities at the border. There are policy and practical reasons to remain cautious about implementing these as solutions to a problem.

The obligations within the WTO Agreements[1] prevent singling out a country for more restrictive treatment, without strong rationale, justified by scientific risk assessment process (SPS Agreement) or to achieve a legitimate objective (TBT Agreement). That is, Australia cannot treat products from NZ less favourably than it would other countries. The mechanism and the rationale applied to impeding all imports must be consistent.

The Imported Food Control Act and its subordinate legislation sets out the structure of the program, and requires a minimum inspection rate of 5% of low risk products. The low risk products are randomly selected by tariff code, and no bias is given to a country, commodity, producer, importer or any other selection criteria that might be applied. There are costs to importers when products are impeded.

A permanent or temporary exemption for application of the Imported Food Control Act in the TTMRA for foods where the standards were not harmonised may create a restrictive trade measure. Using the hemp seed oil standard, (which precludes the use of hemp seed oil in food in Australia only) as an example - the variety of food that may contain hemp seed oil is very large. It is not possible using the tariff code system to target foods that may contain hemp seed oil without casting a much wider net, and so creating an irritating barrier to trade. Bakery products, snack bars, ice cream and ice confection products and many others potentially contain hemp seed oil. All of these products imported from NZ would need to be impeded, and the question asked “does this contain hemp oil”?

However, to meet our obligations under WTO, products from NZ would need to be treated in the same manner as products from other countries. It is not proposed that all products that potentially contain hemp seed oil regardless of its origin, are impeded, only those from NZ. It is not proposed that hemp seed oil containing products present a sufficient risk to health that such products are to be elevated to “risk” category, thereby bringing all possible supplying countries under the same risk management method. The same principle (of no less favourable treatment) and practical problem (difficulty of targeting implicated foods) arises with the ethylene oxide treated product. In this case the foods that are most likely to be treated with ethylene oxide are spices. These are currently risk listed, not for ethylene oxide residues, but for contamination with food poisoning micro-organisms.

Unless all other imports are treated in this manner, it would be a trade restrictive measure, applied only to NZ, creating a possible breach of WTO obligations.

It should also be noted that the Imported Food Control Act was primarily implemented to protect the health and safety of the public from potential food borne illness. It was not set up to deal with issues of competition.

[1] The 2 WTO Agreements that are particularly relevant to food trade are The Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement)

The situation with food regulation between Australia and NZ is unique. There is no other sector where the stipulated standards are the same. Other sectors must have mechanisms to deal with differing standards that do not rely on promulgating permanent or temporary exemptions in the TTMRA.

While the present situation is that Australian requirements are more stringent than NZ in the few inconsistent food regulations, there remains the possibility that this may well be reversed in the future, with Australian standards being less stringent than the NZ regulation. The application of the suggested TTMRA exemption would create a recurrence of the very circumstances that AQIS is now trying to correct – i.e. disproportionate effort in relation to risk in creating market access for Australian food products exported to NZ.

AQIS is committed to working with NZ officials to deal with the existing situation. AQIS strongly advocates that an alternative mechanism to implementing permanent or temporary exemption in the TTMRA be found to manage the issue of inconsistent regulations between the two countries. AQIS believes that a solution can be negotiated by the working group that has been formed and it should take into account:

- the aim to have harmonised food regulations
- recognition of international standards where they exist
- inspection and other measures to ensure (sovereign) compliance
- the risk category of foods involved.

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