DEPARTMENT OF AGRICULTURE FISHERIES & FORESTRY
Comments on the Productivity Commission's
Draft Report on Mutual Recognition Arrangements

Thank you for the opportunity to comment on the Draft report. The following comments are in relation to the sections of the draft report relevant to the Department of Agriculture Fisheries & Forestry, in particular imported food inspection and biosecurity.

General comment

The proposal contained in Draft Recommendation 8.1 is acceptable to AQIS. We agree with narrowing the permanent exemption to include only those foods where equivalence is unlikely to be achieved. We agree the special exemption category is appropriate for risk food for which a determination of equivalence may be achieved The relevant cooperation program can then concentrate its work and limited resources on the more vexing issues of comparison of imported food controls and "third country" issues.

Comments 1- 5 are suggested changes to correct or clarify text of the draft report

1. The footnote 1, page 162 is worded to imply that *Salmonella* or *E. coli* are foods. Footnote could be improved – suggested text:

   Risks associated with food include disease causing microbiological and chemical contamination. Because of the nature of the food or the processing conditions some foods are more predisposed to contamination and represent a higher risk to human health.

2. P 162, 4th paragraph, sentence that starts ' A problematic area is New Zealand's…" In fact the Australian import control measures are less progressive than New Zealand . It may be better to say … *" A problematic area is the difference between the countries in the import control measures for Bovine Spongiform Encephalopathy (BSE).*"

3. Paragraph that straddles p 162 & 163: May be clarified by replacing the last sentence with *AQIS is aware that development of broad trade arrangements with 3rd countries may not take into account normal food safety food inspection arrangements. This is dealt with in more detail in chapter 10.*

4. (typos)
   - Draft recommendation 8.1, last line: replace "body" with "bodies".
   - References p 387 DAFF: replace "1998" for "2008" in reference to the Review of the Imported Food Control Act 1992

5. Page 170 in Chapter 8

Replace lines 5–10 of the first paragraph with the following:

The Commission understands that ongoing collaboration between Australia and New Zealand on quarantine procedures is handled by the Consultative Group on Biosecurity Cooperation (CGBC), which works under ANZCERTA. At the technical level, the work is handled by three technical working groups that report to CGBC. These groups are the Animal Health Working Group, Plant Health Working Group and Operations Working Group.

The Protocol on Harmonisation of Quarantine Administrative Procedures to the Australia New Zealand Closer Economic Relations - Trade Agreement appears to have been little used since it came into force in 1988. It is considered that CGBC, as an ongoing biosecurity forum with established procedures, would be a suitable body for resolving technical differences that impede harmonisation in this area. This forum might provide opportunities for improving harmonisation on quarantine issues in the future. The Commission therefore sees no need for an additional body, such as suggested by the New Zealand Government, to be created.

Chapter 6 – Temporary exemptions

The Red Bull case

During the Commission's presentations of the draft report during Nov 08, there was a discussion about the proposed automatic implementation of temporary exemptions upon a jurisdiction banning a product. The inference was that the proposed changes to the TTMRA in respect of temporary exemptions would correct anomalies such as the Red Bull "sport" drink case. AQIS believes the proposed automatic temporary exemption process may not assist in such cases.
The Red Bull issue was created because the Australian standards deemed the product illegal, but in New Zealand Red Bull was legal under the Dietary Supplements regulations. As the product was not considered high risk in Australia it was subject to the TTMRA and able to be imported from New Zealand without any valid regulatory action by Australian jurisdictions, but could not be made in, or directly imported into Australia.

Although the countries have a joint food standard setting system, New Zealand, under the Joint Food Standards Treaty, can opt out of any one of the standards if it chooses. There are many instances where food standards differ between the countries[1]. In addition to variation in food standards between the countries, the New Zealand Dietary Supplements legislation deems many products legal in New Zealand that are considered illegal in Australia.

So, similar situations to that which created the Red Bull case continue.

[1] "Australia only" standards include Standard 1.4.2 (Maximum Residue limits), Standard 1.6.2 (Processing requirements), Chapter 3 (Food Safety Requirements) and Chapter 4 (Primary Production Standards). New Zealand also opted out of the Country of Origin requirements stipulated for Australia.

Banning

The envisaged consumer product safety regime and its dovetailing with the (proposed) changes to the TTMRA and its legislation may have some unforseen difficulties in the case of food regulation. Unless there is rigorous criteria for promulgating a ban, it may be possible for a jurisdiction, under (say) strong political pressure, to ban a product, or class of products, such as GM food, for which enforcement of the ban is difficult if not impossible. We assume the criteria for invoking a ban will be determined by the consumer product safety regime.

A further complication is that banning food products from entering the country is not legally enforceable under the Commonwealth *Imported Food Control Act (1992).* AQIS has no legal power to prevent banned products from entering Australia from New Zealand or anywhere else. To implement a ban at the border, options other than relying on the Imported Food Control Act may need to be in place.

There may be other regulatory areas where national import controls do not allow implementation of bans.

Chapter 10 – Mutual recognition in the wider context

We would suggest that the Draft Finding 10.3 be amended to ensure that other two way trade driven arrangements, other than FTA's are included within the finding.

In the wider context of mutual recognition there are:

- two way trade arrangements (ie import and export) forged between a foreign government and one or both trans Tasman country based on high level policy decisions arising from trade agenda: and,
- certification arrangements which cover food safety of imports, certified by a foreign government. These arrangements are developed only if food safety enforcement by the foreign government is judged effective.

The second (certification arrangements) do not create problems. They are based on objective information about food inspection activities of third countries and can minimise regulatory action in the Australia or New Zealand.

AQIS is conscious that there may be impacts on food inspection functions as an indirect consequence of the more comprehensive two way trade arrangements with third countries.
We consider that there would be value in strengthening the requirement of either side to consider impacts of such arrangements on their trans Tasman partner. One means may be to implement a reporting obligation of the impacts that these arrangements may have on trans Tasman trade, with the negotiating trans Tasman partner informing the relevant sectoral co-operation program(s).