Australian Dairy Industry submission

to

Quarantine and Biosecurity Review 2008

Australian Dairy Industry Council

and

Dairy Australia

Australian Dairy Industry submission 2008 – contact

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Quotations from discussions and correspondence are utilised in this paper to indicate dimensions of issues. Where these are from public documents, references are provided.

6 May 2008

Mr Roger Beale AO
Chair
Review of Quarantine and Biosecurity Review
GPO Box 858
CANBERRA ACT 2601

Dear Mr Beale

Re: **Review of Quarantine and Biosecurity Review**

On behalf of the Australian Dairy Industry Council (ADIC) I welcome this opportunity to submit our views on policy, regulatory and practical aspects of Australia's Quarantine and Biosecurity system.

As the national policy body of the Australian dairy industry, the ADIC represents the interests of Australian dairy farm families and businesses, dairy manufacturers and traders across all states and territories. This is a joint submission, in association with Dairy Australia, the dairy industry's own service organisation.

The Australian dairy industry is an integrated industry covering the whole dairy supply chain from primary, manufacturing, retail and export sectors. The Australian dairy industry welcomes this important review of policy, regulatory and practical aspects of Australia's quarantine and biosecurity system.

I look forward to working with you and the government to further develop a prosperous relationship.

Yours sincerely

Allan Burgess
Chairman

Dairy Industry Key Issues

The Australian dairy industry is an integrated industry covering the whole dairy supply chain from primary, manufacturing, retail and export sectors. The Australian dairy industry welcomes this important review of policy, regulatory and practical aspects of Australia's quarantine and biosecurity system.

In recent meetings, the Council of Australian Governments (COAG) has articulated and confirmed important principles for review of regulations impacting on industries and for good regulation practice.

- **The Dairy Industry supports the COAG principles (minimum effective regulation) as overarching all operation, review and development of regulations,** including that proponents are to weigh up public benefits of regulation taking into account multiple costs and effects across businesses and communities. The Dairy Industry expects the COAG principles will be applied in this review of quarantine and biosecurity regulatory and control systems.

Like other food industries in Australia, the Australian dairy industry needs to be protected from exotic diseases. Australia's relative pest free status is a great advantage in international trade and should be preserved. Industry has very high expectations of Australia's quarantine system, given that quarantine decisions directly impact our livelihoods. An outbreak of an animal disease such as foot and mouth disease would be a real disaster for the Australian dairy industry.

Australia also needs to be vigilant against diseases and parasites affecting pasture crops and other feed crops as well as water and soil. It is vital that Australia maintains a strong quarantine policy that provides reasonable protection against diseases and pests which could destroy our livelihood.

About half of Australia's dairy production is exported and with no price support in Australia the farm gate price of milk is determined by the price received on the export market. So the second element of maintaining our livelihood is that we need access to overseas markets. To maintain this access we need to ensure that Australia does not leave itself open to criticism, complaint, challenge and ultimately trade sanctions as a result of an unnecessarily harsh quarantine regime. The dairy industry's position on quarantine and biosecurity reflects its unique position in national and international markets.

Dairy shares concerns with other Australian rural industries that the risk of losses through new pests and diseases needs to be carefully identified and well-managed to protect Australia, while still ensuring access to valuable export markets. To balance these competing objectives, the key issues that need to be addressed for an effective Quarantine and Biosecurity system, from the dairy industry's perspective, are:

1. It must be **effective**. We need to ensure that all reasonable steps are taken to protect Australia from exotic diseases and pests.
2. It must be **reasonable**. We need to recognize that the elimination of all risk is only possible if we close our borders to all imports and stop all overseas travel. This is not possible so we need to ensure that we are reasonable in assessing what constitutes risk and what really is an appropriate level of risk. Insisting on unrealistically low levels of risk is unreasonable and will encourage our trading partners to respond in kind with unreasonable barriers to entry to their markets.
3. It must be **scientific**. If we are going to take measures to stop imports it must be on the basis of a clear scientific threat. Analysis needs to be undertaken on the basis of the best available information. The science needs to look at whether the risk of incursion is large enough to warrant controls and what controls could reduce the risk to a reasonable level. In assessing this there will be a need to consider the real economic impact of an incursion as well as a reasonable assessment of the risk.
4. It must be **timely**. One of the most common complaints about the current system is that it just takes too long. When dairy talks to people in other countries about improving access for dairy products we invariably get a response which points out that they have been waiting for a number of years for an IRA on some other product. Biosecurity Australia must have sufficient resources to clear the backlog of IRAs waiting to be processed and sufficient resources in the future to respond quickly to requests from countries which we

need to keep open as markets for our dairy products. Other government organizations (eg OGTR, FSANZ, APVMA etc) also undertake risk assessments relevant to the IRAs, and these assessments could be used to inform the IRA process, instead of starting from scratch, increasing the time to reach a decision. (See two case studies at the end of this section.)

5. It must be **transparent**. The need for a scientific approach should not preclude an analysis of the cost of the threat to Australia should the disease get in. Nor should it preclude an analysis of the cost of controls on Australia more broadly. This should include consideration of the cost of WTO action and trade sanctions should the controls be judged excessive by our trading partners. However, science must form the main basis of the decision. Where economic factors form part of the decision this must be clearly stated in the announcement. There should be no hint of political interference in the decision making process.

6. It must be **harmonised**. The requirements need to be consistent with the risk management approaches used in Australian production. If the conditions for imports are not equivalent to the regulations for domestic production and manufacture there may be imposts on domestic manufacturers that are not imposed on importing companies especially audit checks. (Refer Part C)

7. It must provide **confidence**. The system in place must instill confidence that all reasonable precautions have been taken to protect our industry from incursion of pests and diseases from overseas. We need to also ensure that our trading partners have confidence that our system is fair.

8. It must be seen as **fair**. The WTO SPS agreement allows us to protect ourselves from exotic pests. At the same time it requires that we make sure that our quarantine system is fair and reasonable. The EU and ASEAN challenges to our system are a warning that we can not risk being isolated. As a country that relies so heavily on exports for the survival of our agricultural industries we must make sure that we meet the expectations of other WTO members. We have an obligation to follow all of the elements of the SPS agreement in the same way we would expect of them.

9. It must not be **duplicative**. Quarantine and biosecurity arrangements must recognise and build on existing regulatory frameworks and not seek to duplicate existing national and state based systems that currently deliver effective outcomes. The COAG principles are essential to ensure industry is not overly burdened with duplicative compliance costs. The recommendations from the Frawley Report should be implemented. Mutual recognition of authorised agencies would help avoid duplication.

10. It must advocate **acceptance of the national Australian system as the basis for export certification.** The shared responsibilities between national and state governments and industry can sometimes be forgotten and one jurisdiction can seek to impose controls that are already being effectively delivered in other ways. Governments and industry have worked hard to adopt internationally compliant systems – additional unrealistic requirements imposed on Australian exports should be vigorously opposed.

11. **IRAs must allow a wider assessment of economic impacts.** Dairy argues strongly that Australia recognise that economic elements are, and should be, embedded in the SPS, ALOP and IRA assessment. In summary (but refer to Part B of this submission for more detail):

    - **Quarantine decisions are economic from the start.** The initial identification of a 'disease' or 'pest' frequently has an economic basis, particularly when animals or crops potentially affected are not species native to the country implementing quarantine provisions.

    - **Economic elements are provided for in, and underlie, core instruments .**The *Quarantine Act* 1908 (Cth), the WTO SPS Agreement, and Australia's Import Risk Assessment Handbook 2007, identify economic factors as relevant to considerations. The latter instruments apply limits or tests. However, the SPS agreement also requires that 'members should, in determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects'.

    - **Proper assessment of economic harm can rarely be narrow.** Australia's current IRA rules limit assessment of economic effects to impacts of specific pests or diseases on particular industries. This is a narrow interpretation as indicated by the Issues Paper asking if this should be changed [p13]. The Dairy Industry considers that applying the ALOP narrowly, ie. to 'reduce risk to a very low level, but not to zero' for a particular industry without consid - ering wider and counter-balancing effects, is too simplistic for an advanced economy.

It appears any Australian industry can be outrun by competitors locally and overseas, or by changing markets, costs or weather, but it will have an 'appropriate level of protection', notwithstanding wider economic effects. *A worst-case scenario is that Australia's system or political processes could allow this to occur to protect an industry where there is minimal pest threat.*

- **'Harm' including economic harm is relative and changing.** Australia's industry traders are well aware of world trade dynamics, risks and they experience the reality of all sorts of barriers, no matter what governments contend in their statements. Australia will be judged in terms of the evident 'reasonableness' of its assessments and conduct in the eyes of trading nations generally – and this will influence their behaviour toward Australia. This potentially does more economic damage to Australia and its export industries now than when economies were more closed decades ago, in part because Australia has argued persistently for open market access policies.

- **Wider, balanced economic considerations support enhanced trade – this aligns with Australian and WTO policy directions.** Taking into account 'broader economic effects' means to assess effects on trade involving Australia if various imports are highly restricted. Effects can arise where key export products from countries to which Australian industries need to trade, are barred. Or where import of goods such as feedgrain for Australian industries is very difficult.

- **Ongoing ramifications from Australia's import rules and practices.** Processor-exporters report positively on improved communications, however most issues with Australia's import policy and practices persist in 2008, notwithstanding changes to the quarantine system.

Much relates to attitude, ie. the positioning of import quarantine in Australia's policy, trade aspirations, day-to-day commerce with the world, and market development. Is Quarantine an instrument to carefully facilitate trade, or is it only protective? Australia must achieve a Quarantine system viewed by all as meeting the letter and spirit of WTO agreements, and not as a trade barrier.

AQIS has described itself to the dairy industry as "an agent of importing countries". This appears to be a fundamental shift in the role of AQIS. To date, the dairy industry has had a mutually beneficial and co-regulatory partnership with AQIS, and AQIS has been an advocate of the Australian food safety system, helping to facilitate trade with export markets. If the role of AQIS has fundamentally changed to that of "policeman" for importing countries, then the dairy industry needs to understand what has driven this change. There are far reaching consequences of such a shift, not the least being the imposition of a very prescriptive, inflexible system that will add substantially to compliance costs across the production system. These costs will invariably be passed on to producers.

The Australian Dairy Industry recommends the above key issues to the Review Panel to address, in particular that -

► Policymakers and agencies acknowledge there are, and should be, economic factors embedded in Australia's quarantine regulation system and decisions.

► Wider economic effects should be examined as part of each IRA including impacts on other industries and consumers, *where* taking these factors into account could balance decisions and facilitate import and export trade (in accord with SPS 5.4).

- This would require adjustment to the IRA process, from approach to and weighting of options through to constitution of decision groups. *see Part C*

- Where economic effects on wider industries affect decisions, then those industries should be included in MOUs to pay for control of pest/disease incursions, if any. *Part D.*

► Australia's quarantine policy, law and systems ensure that inputs and decisions on scientific, economic and any other criteria are transparent and explained at all points – from deciding on pests and diseases, to risk assessment, through to final decisions by Ministerial and/or Departmental delegates.

- Australia streamline its import processes including Food Code inspection arrangements to ensure that Australian standards are utilised, the letter and spirit of WTO agreements are met, and undue obstacles are not created. *Part C*

- Australia streamline its import processes including Food Code inspection arrangements to ensure that Australian standards are utilised, the letter and spirit of WTO agreements are met, and undue obstacles are not created. *Part C*

- Australia's Quarantine system must not be **duplicative**. Quarantine and biosecurity arrangements must recognise and build on existing regulatory frameworks and not seek to duplicate existing national and state based systems that currently deliver effective outcomes. The COAG principles are essential to ensure industry is not overly burdened with duplicative compliance costs. The recommendations from the Frawley Report should be implemented. Mutual recognition of authorised agencies would help avoid duplication.

- Australia moves to the forefront of quarantine technology and systems. Modern knowledge and technologies for testing and control should reduce the need for bans and complex inspections. Intelligent import protocols would align with Australia's trade policy. For instance, Australia already operates intra-nation quarantine. Regional import permits could be issued for some products.

- Once import protocols are agreed as science-based and reasonable regarding risk (including wider economic considerations) these need to be systematically implemented by agencies and other stakeholders at borders and post-border. Sufficient and capable resourcing is crucial, as is building on existing systems. Costs of resourcing should be weighed against potential gains, including in trade. *Parts C, D*

Import Risk Assessments – Two Case Studies

1. Thailand Prawns and Butteroil 2007 and 2008

In 1995 Thailand restructured the import tariff schedule to take account of commitments agreed as part of the WTO Uruguay Round agreements. This resulted in butteroil inadvertently being put into a different tariff classification which saw the import tariff increase from 5% to 20%. When this was brought to the Thai Government's attention they corrected the error and trade recommenced at the lower tariff level. This took about one week from the time that the error was discovered until the error was rectified.

From 1 January 2007, Thailand introduced a new tariff structure designed to take account of the World Customs Organization new 2007 Harmonized System. This again resulted in butteroil being inadvertently reclassified and the tariff increased from 5% to 18% (slightly lower than 1995 as the Uruguay Round commitment resulted in the ceiling being lowered). This time, however, the problem took 13 months to fix with Thailand eventually agreeing at the end of January 2008 to restore the original tariff rate and refund excess duties paid.

On both occasions the issue was exactly the same and Thai authorities agreed it was simply a technical error. The second time, however, the damage to the trade was considerably greater as it took a very long time to correct the technical error in the tariff.

The difference was that in 2007 every time the issue was raised, the Thais responded with statements to the effect of "you fix our problems with getting prawns into Australia and we'll consider your problem with butteroil". This form of response was received in discussions that Dairy Australia had with officials from the Ministry of Agriculture, the Ministry of Finance and with the Thai Ambassador to Australia. No doubt the Australian Government received a similar answer.

Clearly the Thais had linked the two issues. They added that they had some difficulty understanding how it is possible after exporting prawns to Australia for a number of decades without causing any disease in the Australian fishery, that suddenly there is an urgent need to stop trade while an import risk assessment is undertaken to see if there is a disease threat from Thai prawns. They were very clear that in their minds the process is neither scientific nor timely but political and designed to protect a local industry from cheaper, more competitive imports. Whether or not this is true, it is the perception in Thailand and it resulted in a very slow resolution of an issue affecting the Australian dairy industry. Australian exports of butteroil to Thailand are worth $A10 to 20 million per year.

2. Philippines Tropical Fruit and Veterinary Quarantine Certificates

The Philippines has a requirement that consignments of dairy products exported to the Philippines must be accompanied by a Veterinary Quarantine Certificate (VQC) that is issued by the Philippines Government before the product leaves the country in which it is made. The VQC achieves no practical purpose as it effectively confirms the health certificate provided by AQIS. However, exporters to the Philippines accepted the VQC as it is a small administrative burden which enables dairy products arriving into the Philippines to be exempt from many of the inspection procedures that are in place for other processed food imports.

However, during 2000 the Philippines Secretary for Agriculture, reportedly in response to Australia's slowness in completing Import Risk Assessments for bananas, pineapples and mangos, made imports of dairy products into the Philippines from Australia more difficult. The Secretary of Agriculture implemented a system which effectively required Philippines importers to spend two days waiting in a series of queues in a number of offices in Manila to apply for the VQC. All VQCs for imports of dairy from Australia also needed to be personally signed by the Secretary. This meant that there could be a hold up of a number of weeks before the VQC was issued. As the VQC must be issued before the shipment leaves Australia this effectively stopped the Australian dairy industry's ability to assure continuity of supply to what was then our second most valuable export market. Although this system is no longer in place, while it was in place Australia lost its dominant position in the market to New Zealand and has never recovered the position.

Australian dairy exports to the Philippines have fallen from a peak of $A345 million in 2000 to $A126 million in 2007. The reduction is also due to commercial factors such as the state of the Philippines economy and availability of product in Australia following successive droughts. But it is noteworthy that over the same period Australian exports to Japan increased and New Zealand exports to the Philippines increased to fill the gap left by Australian exporters who were unable to assure supply while the Secretary interfered with trade. The Philippines has fallen from Australia's second most valuable dairy export market in 2000 to the sixth most valuable in 2007.

In this submission, the Dairy Industry raises a number of issues, including a major, overarching issue (transparent consideration of economic effects). The primary points are developed in Part B, with aspects elaborated in Parts C and D in relation to areas of discussion raised by the Issues Paper.

These issues are raised for review by the Panel under its broad terms of reference and in the context of COAG promises to achieve 'minimum effective regulation' systems.

A. Dairy, a major Australian export industry

Australia's Dairy Industry is mature, modern and a world leader in milk production, product preparation and trade. It is currently the third largest rural industry at the farmgate (valued at $3.2 billion in 2006-07) and the fifth in exports (manufactured products valued at $2.5 billion).[1]

Australian milk production increased from 8.2 million litres in 1994-95 to a peak of 11.27m litres in 2001-02, then settled to a drought affected 9.6m litres in 2006-07. Some 65% of dairy production is located in Victoria, with a further 12% in NSW. In 2006-07, milk was utilised as: cheeses (35%), drinking milk (23%), skim milk powder and butter (23%), and whole milk powder (11%).

Over half of Australia's annual milk production is exported. In 2006, world trade of dairy products was dominated by NZ at 32%, the EU 30%, then Australia 12%, Argentina 6%, and the Ukraine 3% [DA and ABS data].

As southern Australia edges out of drought the near-term picture for dairy production and markets is generally positive. However, the medium-term outlook says Australian dairy must be more competitive in all markets. Although Australia's trade has doubled since 1990, the export flow faces challenges.

- Australia is one of the world's few dairy industries operating a fully open market.
- World market prices (ie. export returns) determine the farmgate price paid for milk for every Australian dairy farmer with flow on benefits to communities across Australia.
- As Australian production grows, viable export markets will become increasingly important.

Projections for dairy trade identify improving conditions, then easing of world prices from 2011. ABARE has regularly stated that 'a major challenge facing the Australian dairy industry is to maintain its competitiveness in export markets'. ABARE's outlook for dairy markets to 2013 includes the following:[2]

- World prices for dairy products are expected to remain high in 2008, after rising sharply late in 2006 driven by constraints on supply growth from the three major exporters, the EU, NZ and Australia, plus rising global demand.
- Demand for dairy products is expected to remain strong to 2013 associated with firm economic growth for major importers. From 2011, however, production growth in major exporting countries is forecast to exceed growth in demand and to put downward pressure on prices.
- Further expansion of dairy industries in China, India and Argentina, means their own production will account for more of their rising domestic consumption, so reducing import demand in those countries and adding to world supplies.

Potential competition is rising from exporters, including countries in South America with lower cost structures.[3] Competition continues from OECD countries where dairying and export is protected by governments in various ways. These factors interact in global marketplaces and determine pricing and returns to Australian producers and communities.

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[1] Current and historical industry statistics plus some trend discussion is sourced from: Dairy Australia – *Australian Dairy Industry In Focus 2007*, and the Dairy Australia website. www.dairyaustralia.com.au/

[2] ABARE. Dairy outlook to 2012-13 australian commodities vol. 15 no. 1 march quarter 2008. Also Volume 14, 2007 March and December quarters.

[3] ABARE Conference 2006. Phillips C, Dairy Challenges in an Evolving Export market Competition from South America.

Competitiveness in current markets and opening new markets for dairy products will be vital.[4] Australian exporters must continue to compete on price, quality and delivery and the industry must be able to open, hold and build overseas markets.

Industry expectations of reviews

Australian regulatory arrangements impact on local and international competitiveness and on profitability. This Industry, like other sectors, can carry no more regulatory costs than are essential for business. This is discussed in the Industry's March 2008 submission to the Productivity Commission's second annual review of Regulatory Burdens on Business [www.pc.gov.au]. Such impacts include higher costs, loss of market opportunities and/or deterrence of innovation and investment.

The challenge for governments and for industries facing productivity pressures is to reduce the costs and restrictions of regulation, and to secure full public benefits from any regulatory system. This was recognised again by COAG in 2006.[5]

That proponents are to demonstrate public benefits of business regulation taking into account multiple costs and effects across businesses has been confirmed in recent COAG statements, particularly the April 2007 COAG *National Reform Agenda* Communiqué including Principles of Good Regulatory process.[6] COAG pledges have been reinforced by the new Federal Government. The December 2007 and March 2008 COAG meetings confirmed deregulation as a priority.

► **The Dairy Industry supports the intent and wording of COAG's principles as overarching all operation, review and development of regulations – ie minimum but effective regulation.**

► **The industry expects the COAG principles will be applied in this review of quarantine and biosecurity regulatory and control systems.**

The Industry also notes the Primary Industries Ministerial Forum (PIMF) confirmed in February that 'continued productivity growth is of fundamental importance to the agriculture and food sectors'. They committed to reconsider influences key to agri-industry productivity. 'The Regulatory Framework' is at the top of the list.[7]

The PI Ministers recorded 'progressing market access' as a priority for concerted attention (alongside Climate Change, Drought policy, Productivity), and agreed -

- 'to work together to open overseas markets to Australian produce, by seeking the removal of unjustified policies and regulations in our export markets that impede the productivity and competitiveness of our agricultural industries, and
- 'to the importance of domestic policies that are consistent with our international obligations, as well as promoting productive and competitive industries – such as a transparent, science-based approach to quarantine policy in Australia, and
- 'to work towards national consistency on issues related to international market access, recognising the potential for regional differentiation.'

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[4] 'Australia is highly restricted in its access to world processed food markets by the impact of rigid import controls, tariffs and other trade barriers including export subsidies provided by foreign countries for their own exports. High input costs also reduce Australia's competitiveness. Australia needs to give priority to diversification of export markets, particularly in the emerging markets in Africa, Asia, the Americas and the Middle East ….' Kidane (2006) Export Impediments and Opportunities for Australian Processed Food Industry, *Journal of Asia-Pacific Business* 7(3). Also Australian Farm Institute journals.

[5] COAG Council of Australian Governments, Meeting 10 February 2006 Communiqué. www.coag.gov.au

[6] COAG National Reform Agenda, *COAG Regulatory Reform Plan,* April 2007. COAG endorsed eight principles for 'Maximising the Efficiency of Regulation'. These add to the *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*, endorsed by COAG 1995, amended by COAG 1997 and 2004, current 2008.

[7] Primary Industries Ministerial Forum in Cairns, Friday, February 29 2008. Communiqué.

B. Quarantine and Biosecurity policy - risk, economics, science

The Dairy Industry asks policymakers to acknowledge that there are, and should be, economic considerations embedded in Australia's quarantine system. Decisions around economic factors should be recognised and transparent.

The level at which Australia has set its ALOP (Appropriate Level of Protection)[8] is not open for review in this inquiry. A current statement of Australia's ALOP is included in the DAFF/Biosecurity Australia Import Risk Assessment Handbook 2007.

> The Australian Government, with the agreement of all state and territory governments, has expressed 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.**

During the 2002 Parliamentary inquiry into quarantine systems,[9] the ALOP was considered in terms of its precision and scope. In the absence of an Australian statement of its ALOP, the Joint Committee of Public Accounts and Audit referred to a 1998 WTO Dispute Panel reading of the Australia's ALOP as being: [10]

> … a high or 'very conservative' level of sanitary protection aimed at reducing risk to 'very low levels', while not based on a zero-risk approach'.

The Joint Committee decided against submissions that sought a more precisely defined or qualified ALOP. The Committee also decided, to 'not support the inclusion of broader economic considerations in deciding Australia's ALOP', counter to a number of submissions, including from Dairy Industry participants.[11]

In this 2008 submission, the Dairy Industry is not disputing the overall ALOP.

Dairy argues strongly, however, that Australia should now recognise that economic elements are embedded in the SPS, ALOP and IRA assessment. Six linked lines of reasoning are put forward.

1. Quarantine decisions are economic from the start.

The initial identification of a 'disease' or 'pest' frequently has an economic basis, particularly when animals or crops potentially affected are not native species. The Issues Paper [p4] defines 'exotic' and 'endemic' pests but does not discuss why agents are nominated as pests or diseases. In many cases, 'harm', if it occurs would be economic not an issue of native biodiversity, eg. citrus canker or BSE.

2. Economic elements are provided for in, and underlie, core instruments.

The *Quarantine Act* 1908 (Cth) s 5D defines 'Level of Quarantine' risk to be:

> (a) the probability of (i) a disease or pest being introduced, established or spread in Australia, the Cocos Islands or Christmas Island; and (ii) the disease or pest causing harm to human beings, animals, plants, other aspects of the environment, **or economic activities**; and (b) **the probable extent of the harm.**

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[8] A concept defined in The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) 1994 and described in Australia's IRA Handbook 2007 as 'the level of protection deemed appropriate by a WTO Member establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory. Among a number of obligations, a WTO Member should take into account the objective of minimising negative trade effects in setting its ALOP.'

[9] Joint Committee of Public Accounts and Audit, *Review of Australia's Quarantine Function*, 3.2003

[10] Committee report p6, referring to WTO, Australia—measures affecting importation of salmon, 20 October 1998, decision on Canada's successful appeal before the WTO against Australia's ban.

[11] Joint submission by Bonlac Foods, Murray Goulburn Cooperative, Tatura Milk Industries, Warrnambool Cheese and Butter Factory, plus a submission by the then Australian Dairy Corporation, May 2002.

The WTO SPS Agreement Article 5 (Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection) states -

> SPS 5.3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of [SPS] protection from such risk, Members shall take into account **as relevant economic factors**: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.
>
> SPS 5.4. Members should, when determining the appropriate level of sanitary or phytosanitary protection, **take into account the objective of minimizing negative trade effects.**

Australia's Import Risk Assessment Handbook (dated Sept 2007 building on 2003 and 1998 versions) both allows for, and limits, economic impact measures.

> **p8. Consistent with the SPS Agreement** [5.3], **in conducting risk analyses Australia takes into account as relevant economic factors**:
>
> - the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease in the territory of Australia
> - the costs of control or eradication of a pest or disease
> - the relative cost-effectiveness of alternative approaches to limiting risks.

3. Proper assessment of economic harm can rarely be narrow.

Australia's current IRA rules limit assessment of economic effects to impacts of specific pests or diseases on particular industries. This is a narrow interpretation as indicated by the Issues Paper asking if this should be changed [p13].

► The Dairy Industry considers that applying the ALOP narrowly, ie. to 'reduce risk to a very low level, but not to zero' for a particular industry without considering wider and counter-balancing effects, is too simplistic for an advanced economy.

- It is inconceivable for instance, that an Import Risk Assessment would interpret 'causing harm to human beings' in the *Quarantine Act* to mean only those humans working within the industry arguing for quarantine.
- Economic damage can be reflected in sales costs to consumers (target beneficiary of, say, the National Competition Policy),[12] and production and sales effects on other industries (eg. from non-access to world feedgrain, and/or through risks to international reputation and world trade).

► The Dairy Industry considers the limits set in the IRA Handbook p8, plus the Joint Committee's findings, also need to be objectively tested under National Competition Policy and COAG productivity and regulation efficiency principles.

This assessment by the Committee, for instance, is debatable in today's terms.

> The Committee does not support the inclusion of broader economic considerations in deciding Australia's ALOP. The notion of allowing certain industries to be put at greater quarantine risk to pests and diseases in order to enhance the export opportunities of other industries is rejected. The Committee believes there are benefits to Australia having a diverse economy. A varied economy is a robust economy which is not unduly restricted by artificial constraints. *Joint Committee p13*

[12] 'Quarantine policy reviews … still focus primarily on the effects of restrictions just on import-competing producers. A fuller analysis that includes the consumers demonstrates that even if imported diseases were to wipe out a local industry, the gains to consumers may outweigh the losses to import-competing producers from removing a ban on imports. … An empirical analysis of Australia's ban on imports of bananas … suggests a move to free trade may well cause a major contraction of banana growing in Australia but the economic welfare gains to consumers are almost certain to outweigh the losses to producers. … there is a need for a comprehensive economic review of Australia's myriad quarantine restrictions.' James & Anderson (1998) *On the Need for More Economic Assessment of Quarantine/SPS Policies*, Centre for International Economic Studies, University of Adelaide.

In short, it appears any Australian industry can be outrun by competitors locally and overseas, or by changing markets, costs or weather, but it will have an 'appropriate level of protection', notwithstanding wider economic effects. *A worst-case scenario is that Australia's system or political processes could allow this to occur to protect an industry where there is minimal pest threat.*

> Working in agriculture is all about taking precautions against risk – risk of drought, flood… diseases … pests … management mistakes … power failure, market downturns, interest rate increases, currency revaluations, oil price increases and so on … The farmer … recognises that if the only acceptable of risk is zero risk then he can not operate a commercial business. … It is the same with quarantine. ... Insisting on zero risk is unreasonable and if we go down that route our trading partners will respond in kind with unreasonable barriers to entry to their markets. *Industry analyst, 2007*

4. 'Harm' including economic harm is relative and changing.

For instance, it appears some overseas industries that apply to export produce to Australia, can function and export successfully with an ongoing presence of pests /diseases raised as reasons for quarantine. Technologies and systems assist in this.

Or, looked at another way, most Australian industries face rising competition on world markets and need to develop new markets across the world. Blanket import prohibitions by Australia or seemingly officious criteria engender negative responses in other countries. This potentially does more economic damage to Australia and its export industries now than when economies were more closed decades ago, in part because Australia has argued persistently for open market access policies.

Australia's industry traders are well aware of world trade dynamics, risks and they experience the reality of all sorts of barriers, no matter what governments contend in their statements. Australia will be judged in terms of the evident 'reasonableness' of its assessments and conduct in the eyes of trading nations generally – and this will influence their behaviour toward Australia.

> We need to be recognise that the elimination of all risk is only possible if we close our borders to all imports and stop all overseas travel. This is not possible so we need to ensure that we are reasonable in assessing what really is an appropriate level of risk. *Industry manager, 2007*

In a 2003 presentation, Meat & Livestock Australia made the fine balance clear. Even though "the economic losses to Australian meat & livestock industries from acquiring an exotic disease are greater than those for similar industries in any other country" for multiple production and market reasons, the industry has "a greater stake in promoting world's best quarantine practice". MLA stressed that:

- Costs of quarantine failure are borne by a few – The benefits from a more liberal approach to quarantine are enjoyed by many
- Rational quarantine policy– must be scientifically based – but also requires economic assessment of costs and benefits
- Quarantine requests must be treated expeditiously
- Need to adopt least trade distorting quarantine measures based on latest scientific evidence.[13]

Protests that Australia has a 'double standard' on trade have continued beyond the Australian reviews in 1999 and 2002 and procedure changes. Even if not turned into formal complaints, concerns about Australia's practices influence trade at policy, administrative and daily commercial levels. The EU (joined by Canada; Chile; China; India; Philippines; Thailand and the USA) put these views into action in Mar 2003 (after release of the Joint Committee report).

[13] Barnard, P (2003) *Quarantine Measures: A Perspective from Australia's Meat & Livestock Industries*, Quarantine & Market Access Conference, Canberra.

> *European Union to challenge Australia's protectionist food import regime at WTO*
> The European Union has decided to request Australia to enter into WTO formal consultations on its quarantine system for imports of agricultural products. Consultations are the first step in the WTO dispute settlement process … … "Australia has built a quarantine system which is highly efficient at blocking the import of agricultural products … We believe this system flagrantly breaches WTO rules, despite Australia's constant claims to be the only beacon of free agricultural trade. The EU will use WTO procedures to ensure that Australia practices what it preaches on agricultural market access'. …
>
> Australia is a leading member of the Cairns group of agricultural exporting countries which pushes for free trade in agricultural products. Unfortunately, Australia seems to consider that this freedom only applies to its exporters not to those wishing to import perfectly safe products into the Australian market.[14]

5. Wider, balanced economic considerations support enhanced trade. This aligns with Australian and WTO policy directions.

In its report, the 2002 Joint Committee decided [p14] 'it is likely that including broader economic considerations in setting an ALOP, or adopting different ALOPs could raise serious problems with the WTO', including 'potential legal difficulties'. **However, industries were arguing that taking into account 'broader economic effects' meant to assess effects on trade involving Australia** if various imports are highly restricted. Effects can arise where key export products from countries to which Australian industries need to trade are barred. Or where import of goods such as feedgrain for Australian industries is very difficult.

This is the type of consideration intended in the SPS agreement 5.4 'Members should … take into account the objective of minimizing negative trade effects'.

> … 5.4 … may certainly be interpreted as providing a sort of balancing obligation whereby, in setting out their appropriate level of [SPS] protection, WTO members need to avoid regulatory measures with excessive trade restrictive effects.[15]

The record indicates Australia is more likely to face legal challenge and/ or commercial resistance for alleged protection through import restrictions. As in most debates, a picture needs to be pieced together from direct and indirect comments, trade patterns and issues, plus complaints or legal actions by financially able countries. *Evidentiary examples include*:

- The WTO Secretariat Trade Policy Review Report 2007[16] includes indications of some scepticism about policy and practices for Australian quarantine.

> p46. Australia has a strict sanitary and phytosanitary regime. The authorities justify this by maintaining that Australia has unique and diverse flora and fauna, is a major exporter of agricultural products, and is relatively free from serious pests and diseases. Under quarantine policy, commodities may not be imported unless the quarantine risks are reduced to a level consistent with Australia's appropriate level of protection (ALOP), which is described as "providing a high level of sanitary and phytosanitary protection aimed at reducing risk to a very low level, but not zero". However, if the SPS regime is unduly strict, it may constitute an import restriction or prohibition. Some WTO Members have raised concerns about the strictness of the Australian regime in the Committee on Sanitary and Phytosanitary Measures, covering, *inter alia,* cosmetics, fresh fruits and vegetables, live fish, prawn and prawn products, chicken meat, pigmeat, sauces, and cheese.[17]

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[14] European Union, IP/03/464. Brussels, 31 Mar 2003. europa.eu/rapid/pressReleasesAction.do?reference=IP/03/464&format=HTML&aged=0&language=EN&guiLanguage=en [April 2008]. The parties notified a 'mutually agreed solution' in Mar 2007 to include "enhanced transparency of the quarantine regime of Australia, principles of treatment for market access applications from the European Communities, and continued expert discussions on scientific aspects associated with trade in pig meat and chicken meat."

[15] Ortino, 2004, *Basic Legal Instruments for the Liberalisation of Trade: A Comparative Analysis*…, p467.

[16] WTO *Trade Policy Review Australia*, Report by Secretariat, 1.07. wto.org/english/tratop_e/tpr_e/tpr_e.htm

[17] The WTO report footnotes that: 'Concerns have been raised by: ASEAN (represented by its member countries), Bulgaria, Canada, Chile, Croatia, Czech Republic, Estonia, the European Communities,

> p47. The authorities maintain that decisions on imports and measures applied are science-based, and not more trade restrictive than required. According to the authorities, the IRA process is independent of domestic market concerns (including prices), and the application of Australia's [ALOP] is applied consistently regardless of the impact of natural events on domestic production, e.g. drought and cyclone devastation of Queensland's banana crop in 2006. Also, according to the authorities, the price increase in bananas was a temporary one.
>
> p48. According to the revised Import Risk Analysis Handbook, the IRA process conforms to Australia's international obligations, such as the WTO SPS Agreement, and international standards established under the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC).

- Situation assessments based on experiences of Dairy Industry exporters and producers with Australia's import rules and flow-on effects.

> The industry is … keen to ensure that all appropriate measures are taken to ensure that exotic diseases and pests are kept out of Australia. However, as more than half of Australia's dairy production is exported we need also to ensure that inappropriate quarantine policies do not tarnish Australia's image as a free and fair trader. … … we must recognise that the real threat to our long term viability is when overseas countries put such impediments to our exports. *ADC 2002* [18]
>
> Already, access to major dairy markets in ASEAN (particularly the Philippines, Thailand, Malaysia and Indonesia) are under regular threat as Governments become impatient over slow IRA processes. If access to these and other markets on the IRA pending list were halted in retaliation for what appears to them to be little more than a non tariff barrier, Australia's three billion dollar dairy export industry would be decimated. *ADC 2002*
>
> Our trading partners do not accept that the disease and pest risks for Australian producers can be as serious as we claim when Australian authorities ban allegedly diseased imports from the most successful producing countries in the world. • bananas from the world's fourth biggest banana producer (Philippines), • exports of chicken meat from the world's largest exporter (Thailand), • fresh salmon from the number two exporter world-wide (Canada), • table grapes from the world's third biggest exporter (USA). *Processor submission, 2002* [19]

The heavy restrictions on imports of feedgrain that raise cost of importing greatly and set high prices for local grains particularly during feed shortages are another serious problem for livestock producers and exporters[20] – again with issues around ALOP, economic considerations and balance, and open trade.

In a smart economy, there appears little logic in severely limiting grain imports on the basis of risk assessments regarding one industry and not others (or consumers).

> [There are] concerns about the IRA process for grain imports where there have been statements [made] … that effectively lead to zero risk for grain imports. In the mid 1990's drought there was a test of grain transport from port to up-country to determine if imported grain could be safely moved from port to place of demand. At that time the test was effectively that if a grain fell off the truck on the journey … there would be no protocol [developed] for imported grain transported directly up-country [inland]. This has remained the attitude for the importation of grain. It is effectively a zero risk approach to grain imports. There is no such thing as zero risk and this is something that the grains industry will have to face at some time. *Livestock industry manager 2008*

India, Indonesia, Japan, Latvia, Malaysia, New Zealand, the Philippines, Poland, Republic of Korea, Romania, Slovak Republic, Slovenia, Switzerland, Thailand, and the United States'.

[18] Australian Dairy Corporation Submission to Joint Committee for Public Accounts and Audit, 2002.

[19] Joint Dairy Processor submission to Joint Committee Inquiry, 2002.

[20] Australian Feedgrain Users Group submission to the 2004 Wheat Marketing review, (Australian Lot Feeders' Association, Australian Pork Limited, Australian Dairy Farmers Limited, Australian Chicken Meat Federation Inc. and Australian Egg Industry Association).

The Productivity Commission has confirmed that quarantine laws are one of the factors behind high feedgrain prices for livestock industries.[21]

> There are strict quarantine restrictions on importing grain into Australia. … Given Australia's status as a grain exporter, quarantine restrictions on grain imports mainly impact during periods of drought … During drought, local supplies are limited and prices typically approach, and sometimes exceed, world parity prices [at import point in Australia]. *PC 2008*

The Commission indicated use of the COAG principles of minimum effective regulation in its 2008 Pigmeat Safeguards report, recommendation 5.2:

> Quarantine arrangements should impose only the minimum requirements needed to satisfy objectives. As new options emerge for dealing with quarantine risks, arrangements should be reviewed to take them into account. The … Quarantine and Biosecurity Review is well placed to further explore these issues.

6. Ongoing ramifications from Australia's import rules and practices.

While Dairy processor-exporters report positively on improved communications especially with State authorities, most of the issues with Australia's import policy and practices persist in 2008, notwithstanding changes to the quarantine system.

> Within Australia there is a view of 'zero risk' … perception outside is that our quarantine system is a barrier to trade. *Dairy exporter, 2008*

> Australia – AQIS and Biosecurity Australia – needs to push harder on equivalency in food preparation processes – quarantine on imports in the way – New Zealand attitude is much better. New Zealand gets equivalency arrangements. *2008*

Australian export problems have likely been exacerbated by controversial bans on imports even since the faster, science-based IRA procedures were introduced.[22]

> From a quarantine perspective [in 2008] the real issue is preserving our current big markets. In those markets where we have a high profile, we are more likely to be the focus … if Governments have an axe to grind over quarantine. So the real concerns are in the current big markets. Of the top 10 ranking markets in 2007 [Japan, Singapore, Malaysia, Indonesia, Saudi Arabia, Philippines, USA, China, Thailand, New Zealand] IRAs [are] pending with 8 of them [not Singapore and Saudi Arabia].
>
> [Operationally] the problem is with the slowness of countries to respond to requests for resolution of problems. For example we argued with [one country] for over a year to overcome an inadvertent increase in the tariff on butteroil. … last time they made this mistake we were able to fix it in a couple of weeks. This time they kept mentioning chicken meat and prawns whenever our officials spoke to them. *Dairy industry manager, 2008*

In Australia's input to the 2006 WTO Trade Policy review (of Australia), it was stated confidently that changes would significantly enhance the IRA process:

> p10. In October 2006, Australia announced reforms to its import risk analysis (IRA) process which will make this process more streamlined, timely and transparent. The key improvements are: the setting of maximum timeframes for the completion of IRAs; enhanced transparency of the IRA work program; and strengthened scientific scrutiny of individual IRAs. These changes will take effect in early 2007, enhancing the efficiency and effectiveness of Australia's quarantine system.

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[21] Productivity Commission (2008) Safeguards Inquiry into the Import of Pigmeat, Canberra, March.

[22] Bangkok Post 7 December 2006, *Shrimpers cry foul over new Australia ban*. '…Viewing the move as unfair, Thai officials will also discuss the issue at a forum on the Thailand-Australia free trade agreement next week. "The ban should take effect only where the disease is found, not from the entire country,'' … … Thai shrimpers, noted that the Australian government had announced a blanket ban on shrimp not only from Thailand but also from all countries. "This shows insincerity in its part and is unfair to other countries. Australia has tried to protect its own shrimp industry which is located mostly in Queensland.''

The WTO Trade Policy Review report, however and notably, converted Australia's statements into performance target terms – a bottom-line measure for Australia's international trade operations and relationships.

> p48. Until 2003 there had been routine IRAs, for less complex issues or issues not likely to involve the analysis of new and significant risks; and non-routine IRAs, for issues involving new or complex risks. In August 2003, a revised IRA Handbook introduced a single IRA process (containing many of the features of the non-routine process), with a view to improving stakeholders' involvement in the import risk analyses.
>
> Further changes were announced in October 2006, to make IRAs more transparent, efficient, timely, and predictable. Under the new process, which is to begin in early 2007, a standard IRA will be completed within 24 months, and an expanded IRA (if there are significant differences in scientific opinion or significant biosecurity risk) within 30 months, of an announced commencement date of the process.[23]

Biosecurity Australia now lists Import Risk Assessments underway on its website. The number with long timelines is unlikely to engender confidence. For example:

> Chicken Meat – commenced 1998 (on initial access requests by US 1989, Thailand 1989 and Denmark 1990), A Draft IRA Report for Chicken Meat was released June 2006; A Draft Final IRA report was submitted to the Eminent Scientists Group for Review in March 2008.
>
> Edible Eggs and Egg Products – commenced 1998, last progress report April 2003.
>
> Bananas from The Philippines – began 2000; latest, revised draft status report, July 2007.

The 2008 list covers applications where Australia has decided to conduct and IRA under the 2007 Handbook. It appears to be an advance on the situation in 2006 where counts by industries found the numbers of pending IRAs (or applications?) had doubled, and most were taking longer than standard periods. (It was also acknowledged that some industries were contributing to delays through exercise of each avenue in the regulatory, political and legal process).

Taking an external perspective, the disproportionately high presence of Australia in WTO complaint lists should be of double concern.

Firstly, as a clear indicator of Australia's actions being viewed as not align with the world trade agreements that Australia fought to achieve.

Secondly, because the formal complaint and legal process is surely only the 'tip' of negative perception or trade experience among Australia's customers.

> Given its broad agricultural base and status as a major exporter of agricultural products, Australia is considered to be a small-to-medium sized market for foreign agricultural products. The number of complaints that have been raised by its trading partners regarding Australian SPS requirements is therefore disproportionate to its status as a market. … …
>
> A common thread that runs through the various outstanding complaints against Australia's quarantine procedures is related to the amount of time taken by Australia to make a decision on whether or not imports will be permitted, and under what conditions. … When final risk assessments are completed and decisions made, in a number of cases countries have argued that the quarantine conditions imposed by Australia are so draconian as to make commercial trade impractical. *Stanton WTO 2008* [24]

[23] WTO *Trade Policy Review Australia*, Report by Secretariat, 1.07. Footnote: "Under the new process, IRAs are to be expanded to include analyses currently undertaken as "policy reviews" (some analyses where relevant import policy exists). Processes for receiving and prioritizing import requests will be improved and clarified. A high-level group will be established to prioritize import proposals and monitor their progress. The criteria used to allocate priority to IRAs and Australia's IRA work programme will be made public. The process of reviewing IRAs by the Eminent Scientists Group will be strengthened."

[24] Stanton G (2008) Safe Trade or Safety trade-off? *Farm Policy Journal* 5(1) pp 11-19.

Overall, the Dairy Industry considers Australia must achieve new levels of intelligence and balance in our quarantine policy and biosecurity practices.

Blanket exclusions, 10-year assessments and science-based systems with unstated economic criteria, are 'old tools' in a new century characterised by global production efficiency and trade realities, backed by more advanced technologies for detecting, forestalling, and systematically managing pest and disease risk.

The imperative of grappling with the higher-order challenges of the future was highlighted by the new Minister for Agriculture, Forestry and Fisheries, recently:[25]

> What are the issues that we have to deal with now, that when you were looking at the future of the primary industries a decade ago, two decades ago or fifty years ago, might not have been front of mind. … It's first of all … the issue of climate change; and secondly, the issue of the shrinking globe. Each … carries some unusual opportunities and some particular challenges. But for each of those external pressures – climate change and a shrinking globe – we need to remember the rest of the world is facing them too. Which means that the countries that get organized first, the countries that get on the front foot, will be the countries that have the opportunity to thrive in the face of those pressures.

In international trading circumstances in 2008 and looking forward, Dairy, like a number of export industries, considers baseline change is essential.

> There needs to be a true 'appropriate level of protection' – and this has economic elements built into it – one way or the other … forward five years, a different way of approaching ALOP. *Exporter 2008*

> Australia needs to get the economics on the table – the trade-offs through the process … who decides effects and value of parts of local industries versus market access to major growing economies?

Resort to 'science-based' as a catch-cry, even with efforts to be more science-based, will come into question in years forward. While the WTO has supported the 'seemingly more neutral and universal criterion of science',[26] there are difficulties in positioning 'science' as the backbone of an assessment system. Most scientists, lawyers and businesspeople are aware that opposing science can be argued by expert witnesses to support non-science decisions, and then of problems when these are assessed by general tribunals. Such difficulties are being increasingly recognised on debates on risk and regulation in many areas.[27]

Value-judgments, and economic or political dimensions run alongside and through 'the science'. How the science is assessed and used will affect confidence.[28]

> … the regulation of quarantine controls on imports over the last decade has raised a general belief among government agencies and trading partners that Australia plays politics with quarantine controls. *Alan Oxley, Feb 2008*

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[25] Minister Burke, Agriculture, Forestry and Fisheries, Speech to ABARE Outlook 2008, 5 March 2008.

[26] Peel, J (2004) *Risk Regulation Under the WTO SPS Agreement: Science as an International Normative Yardstick?* Jean Monnet Working Paper 02/04, New York University.

[27] A few debate references regarding WTO: Gruszczynski (2008) SPS Measures Adopted in Case of Insufficiency of Scientific Evidence – Where Do We Stand after EC - Biotech Products Case? http://papers.ssrn.com/ sol3/papers.cfm?abstract_id=1100061; Peck A (2006) Summary of the WTO Interim Report in EC-Biotech www.NationalAgLawCenter.org; Stanton G (2003) The SPS Agreement – Emerging Issues and Challenges, Quarantine and Market Access Conference Canberra.

[28] Oxley A (2008) Maintaining Confidence in the Safety of Australian Food Exports, *Farm Policy Journal* 5(1). "The decision by Biosecurity Australia (BA) to restrict imports of shrimp from Thailand, China and Vietnam last year on very weak scientific grounds strengthened the opinion among trade and agriculture officials in New Zealand, the Philippines, Canada and the US that Australia officially politicises quarantine management, not on scientific grounds, but to protect the domestic market for Australian producers. The science behind the decision on shrimp looks weak. The concern is a virus could be introduced to Australian shrimp stocks if the imported shrimps are used for bait by fishermen. Scientists have derided this claim."

If Australia cannot achieve a modern, transparent, balanced quarantine and trade access system, we face ongoing *export risk* in world markets.

This export risk will manifest in costly ways. While legal actions could multiply, so could more subtle blockages. Many countries that cannot finance a WTO challenge, can control or delay decisions at their own borders on access or costs of access, or special requirements, or non-recognition of equivalency of Australian systems.

Much relates then to attitude, ie. the positioning of import quarantine in Australia's policy, **trade aspirations, day-to-day commerce with the world,** and market development. Is Quarantine an instrument to carefully facilitate trade, or a means of protection? Australia must achieve a Quarantine system viewed by all as meeting the letter and spirit of WTO agreements, and not as a trade barrier.

AQIS has described itself to the dairy industry as "an agent of importing countries". This appears to be a fundamental shift in the role of AQIS. To date, the dairy industry has had a mutually beneficial and co-regulatory partnership with AQIS, and AQIS has been an advocate of the Australian food safety system, helping to facilitate trade with export markets. If the role of AQIS has fundamentally changed to that of "policeman" for importing countries, then the dairy industry needs to understand what has driven this change. There are far reaching consequences of such a shift, not the least being the imposition of a very prescriptive, inflexible system that will add substantially to compliance costs across the production system. These costs will invariably be passed on to producers.

Accordingly, the Australian Dairy Industry recommends to the Panel that:

- ► Policymakers and agencies acknowledge there are, and should be, economic factors embedded in Australia's quarantine regulation system and decisions.
- ► Wider economic effects should be examined as part of each IRA including impacts on other industries and consumers, *where* taking these factors into account could balance decisions and facilitate import and export trade (in accord with SPS 5.4).
  - This would require adjustment to the IRA process, from approach to and weighting of options through to constitution of decision groups. *see Part C*
  - Where economic effects on wider industries affect decisions, then those industries could be included in MOUs to pay for control of pest/disease incursions, if any. *Part D.*
- ► Australia's quarantine policy, law and systems ensure that inputs and decisions on scientific, economic and any other criteria are transparent and explained at all points – from deciding on pests and diseases, to risk assessment, through to final decisions by Ministerial and/or Departmental delegates.
- ► Australia streamline its import processes including Food Code inspection arrangements to ensure that Australian standards are utilised, the letter and spirit of WTO agreements are met, and undue obstacles are not created. *Part C*
- ► Australia's Quarantine system must not be **duplicative**. Quarantine and biosecurity arrangements must recognise and build on existing regulatory frameworks and not seek to duplicate existing national and state based systems that currently deliver effective outcomes. The COAG principles are essential to ensure industry is not overly burdened with duplicative compliance costs. The recommendations from the Frawley Report should be implemented. Mutual recognition of authorised agencies would help avoid duplication.

… …

- Australia's Quarantine system must advocate **acceptance of the national Australian system as the basis for export certification.** The shared responsibilities between national and state governments and industry can sometimes be forgotten and one jurisdiction can seek to impose controls that are already being effectively delivered in other ways. Governments and industry have worked hard to adopt internationally compliant systems – additional unrealistic requirements imposed on Australian exports should be vigorously opposed.

- Australia move to the forefront of quarantine technology and systems. Modern knowledge and technologies for testing and control should reduce need for bans and complex inspections. Intelligent import protocols would align with Australia's trade policy. For instance, Australia already operates intra-nation quarantine. Regional import permits could be issued for some products. For instance, bananas imported to Victoria, limited by current border checks.

- Once import protocols are agreed as science-based and reasonable regarding risk (including wider economic considerations) these need to be systematically implemented by agencies and other stakeholders at borders and post-border. Sufficient and capable resourcing is crucial, as is building on existing systems. Costs of resourcing should be weighed against potential gains, including in trade. *Parts C, D*

C. Alignment across the quarantine-biosecurity continuum

The Dairy Industry considers Australia must achieve more balanced and modern quarantine policy and biosecurity practices, including shifting of emphasis in the quarantine continuum from pre-border, to border and post-border.

The Industry argues in Part B that wider implications for exporters, consumers, the economy and for liberalisation of trade, should be taken into account when determining how the 'appropriate level of protection' (ALOP) is to be best met for a particular proposed import.

Reasons for, and potential benefits to Australia, of this more sophisticated approach are outlined above. These wider economic factors should be assessed in the same way as asserted production, economic and trade impacts on an industry.

Pre-border, this would require adjustment to the IRA process, from initial decisions, to approach, to weighting of options, to decisionmaking. The Act and associated regulatory instruments and investigatory and decisionmaking steps would need some alteration, as would the approaches taken in assessments.

The Dairy Industry does not want to specify how changes to criteria and approach should be implemented in the quarantine rules and system. That is a responsibility of government agencies attuned to meeting policy directions.

Rather, some points indicating where an adjusted policy may require changed actions, are noted below with reference to *IRA Handbook 2007* especially Chapters 3, 4, 5 and 6. *This is an indicative rather than an exhaustive listing.*

- **Changes would need to be reflected in duties, discretions and approach of AQIS and Biosecurity Australia** (BA). Their roles are linked and could need adjusting. IRA 3.1 states AQIS receives import proposals and *may* refer these to BA. Criteria used for decisions under 3.1 and 3.3 could, for example, need review.

  IRA 3.1 An import permit application received by AQIS for a good which has not been imported previously, or not imported previously from the country or region concerned, may be referred to Biosecurity Australia and lead to an import proposal.

- **Each stage of the process warrants checking to ensure procedures are not being applied in 'barrier-form'** – to imports, to import proposals, or to the number of IRAs. Annex 7 requires a comprehensive list of scientific and production information from import applicants. Requirements for scientific and economic information from Australian industries potentially affected negatively or positively could be specified to ensure balance is evident to all parties.

  IRA 3.2 and Annex 7. Biosecurity Australia will determine when there is sufficient information to proceed with a risk analysis. If the required information is not available, special surveys and monitoring may be needed. Without all relevant information, it will not be possible for a risk analysis to be considered for Biosecurity Australia's active work program. Also IRA 3.3.

- **Criteria for consultation** ('all issues relevant to the IRA') **and stakeholders** would need to be actively widened to take into account broader economic effects and associated trade liberalisation. While the IRA Handbook encourages consultation it allows discretion ('whenever necessary') at key points.

  IRA 4.6. Engagement with stakeholders is an important part of the IRA process. [BA] will consult with stakeholders early in, and throughout, the IRA process. Consultation will be both formal and informal and will aim to seek stakeholder views on all issues relevant to the IRA.

  IRA 5.1 Biosecurity Australia will consult, whenever necessary, with the proposer, industry and other stakeholders on the scope and approach of an IRA before the Chief Executive announces the commencement of the regulated steps of the IRA.

- **There is a difference between 'consultation' and 'transparency' in decision making.** With wider considerations, more confidential commercial material would be provided to BA. Whether the information is confidential, or obtained through departmental analysis or informal discussions, or advice from officers, all draft and final reports should be informative and transparent so stake -holders can determine the basis of assessments and decisions at each stage through to the final determination by the Director of Plant and Animal Quarantine.

- **The risk analysis and report preparation process would need changes** to include procedure for assessing broader economic impacts and associated trade enhancement considerations. These could influence a number of parts of the IRA.

  IRA 5.5 The draft IRA report will:

  - confirm the pests and diseases being assessed
  - describe the major pathways by which Biosecurity Australia considers these could enter, establish or spread in Australia
  - for each pest and disease on identified pathways, determine the likelihood of its entry, establishment or spread, **and the harm (consequences) that could result**
  - **specify whether the resulting risks exceed Australia's ALOP**
  - in cases where the risks exceed Australia's ALOP, identify potential risk management measures and determine whether application of the measures **could reduce the risks to achieve Australia's ALOP** and
  - **include a preliminary view of the preferred options for risk management.**

- **Pinnacle review: an Eminent Scientists and Assessors Group (ESGA).** The independent role of the current Eminent Scientists Group is important for a science-based system. However, even under current procedures science is not the only consideration afoot. Economics affect assessments from the start and socio-economic and commercial-political influences can be seen at key steps. It has been observed that the IRA risk matrix 'places a scientific veneer over political and economic judgements'. A different independent group is needed.

  A revised IRA 5.8: The role of the ***ESAG*** is to review the draft IRA report, as revised by Biosecurity Australia after consideration of stakeholder comments, prior to its publication. The ***ESAG***'s review will take account of any relevant new information brought to its attention, and assess conflicting scientific views, to ensure that:

  • all 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, ***and all other considerations are soundly analysed***, based on the material presented.

  As part of this review, the Chairman of the ***ESAG*** may co-opt additional expertise or seek advice to assist the ESG in meeting its terms of reference. The ***ESAG*** may consult with Biosecurity Australia and with stakeholders during its review.

<u>At the border</u>, a system aiming to carefully facilitate trade, commerce and the interactions of people would put more weight on checking and control processes, where there is an established risk of problems.

This becomes the crux of quarantine success. Most in Australia welcome our horse industries being again open for international business'. Very few are calling for full bans on horses entering Australia. Agencies mustered an impressive range of technologies and systems that can also be operative at borders.

> On 14 March 2008 horses were again able to move freely within Australia - this is a significant animal health achievement. It highlights Australia's capacity to identify, diagnose and manage animal disease incursions, as well as our highly developed and effective emergency management systems'… The multi-faceted surveillance program has included epidemiological, clinical and laboratory investigations,' … trace-forward and trace-back, strict biosecurity measures and strategic vaccination… *CVO 4.2008* [29]

[29] Chief Veterinary Officer, *International animal health authorities informed of EI freedom*, 4 Apr 2008.

In this context, questions arising in Dairy Industry discussions about the 'border' stage of quarantine and biosecurity policy and practices include:

- **What level of rigour is needed** in development and test-checking of targeted risk management systems and actions at borders and post-border follow through?

  Investing resources in development of risk management procedures and practical testing of these should improve the technical strength of procedures (in detecting and dealing with pests/diseases) as well as helping to identify inefficient or ineffective steps that could be argued as officious by other nations.

- **Does Australia, in principle and practice, operate rules for food imports that are equivalent to Australian food preparation requirements?**

  Importing food products, fully or partially processed, is subject to quarantine rules and those set by the Food Standards Code administered by FSANZ, which is based on CODEX protocols. AQIS is involved in certifying that food imported or food exported meets food hygiene standards, as identified in the Issues Paper.

Australian industries are concerned Australia's highly safe food standards be recognised and accepted worldwide for food exports. The Australian Standards should be promoted as the platform for export of highly safe Australian food internationally. Policy and commonsense says Australia should also apply these same rules to imports – no more, no less – if we are to be taken seriously.

It would be inappropriate in policy, trade and food safety terms for AQIS to use its inspection systems written into various Federal Export Orders, because Export Orders are based on trade import requirements of other countries, particularly the US and/or the EU (and in themselves may be trade barriers). There is no basis for Australia using third-country rules into its import systems.

Unreasoned obstacles to import created by this process, would add to concerns expressed about inconsistency in Australia's quarantine rules. Notably, Australia faces difficulty in some negotiations (eg. for EU recognition of the equivalency of Australia's dairy production and preparation quality controls, or problems with EU recognition of Australian semen collecting systems)[30] where other countries such as New Zealand have achieved equivalence agreements.

The Australian Dairy Industry is at a forefront of working with FSANZ. The national PPPS (Primary Production and Processing Standard, Dairy) should be the basis of milk production and product preparation across Australia for local and export markets, as well as for imports. The Dairy PPPS and Export Milk Orders are discussed in the March 2008 Dairy Industry input to the Productivity Commission second Review of Regulatory Burdens. Extracts are provided in the Box below.

The vision outlined in the Export Assurance Report has since been reconfirmed by a number of other groups (eg Frawley, VCEC, COAG etc). The dairy industry has had a mutually beneficial co-regulatory partnership with State Dairy Food Safety Authorities, FSANZ and until recently, AQIS. However, AQIS' apparent recent about turn on how it perceives its role (ie as an agent for importuning countries) has put some pressures on the co-regulatory relationship. An apparent refusal to recognise arrangements other than those where AQIS has direct control, will result in increasing duplication and additional costs on the dairy industry.

[30] For instance, the EU Final Report of a Mission … in Australia 1 to 14 February 2007 … to evaluate the public health control systems and certification procedures for Milk and Products. From Australia's view point, notably: "*In previous reviews, the principle of equivalence provided for in the Council Directives appeared to be accepted but during this review it was not. … However, there were no food safety issues identified* enabling continued certification of milk and milk products to be exported to the [EU]". On bovine semen collection, the EU noted 'comprehensive regulations in place for export and import of bovine semen and embryos' but also decided Australian processes did not accord with EU requirements.

In short, Australian import and export criteria, inspections and certification must be the same as Australian food standards and hygiene regulatory systems. If Australia operates more complex requirements for imports (including current AQIS export systems) it is likely vulnerable to challenge on multiple fronts, and to *export risks* with trading countries concerned about Australian double-standards, as well as increasing costs to consumers and to industries seeking imports.

Extracts: Australian Dairy Industry submission to Productivity Commission

p16. Work began on the Dairy PPP in 2004 on instigation of Dairy Australia. An Initial Assessment was followed by an issues paper for consultation comment by March 2005. FSANZ stated that the PPP for Dairy would '*aim to be consistent with international Codex guidelines and build upon the very good food safety management systems already in place in the Australian dairy industry*'.[31] The Draft Assessment Report of March 2006 included 'scientific assessment of the food safety risks'. … …

p17. For the Dairy PPPS development, FSANZ used a combination of 'risk profiling, quantitative /qualitative risk assessments and scientific evaluations' to 'identify and assess food safety hazards in order to develop efficient and cost-effective risk management measures'.[32] The … FSANZ Dairy PPPS, 2006 Draft Assessment Report (DAR) Risk Profile determined that the current management practices in place within the Australian dairy industry support the production of dairy products with a high standard of public health and safety.

The Dairy PPP Standard demonstrably aligns with the FSANZ description of 'a single set of outcome-based national requirements that support the safe production of dairy products'. The gazetted Dairy PPPS is compact and covers Dairy primary production (Div 2), Dairy collection and transport (Div 3) and Dairy processing (Div 4). It is structured to achieve regulatory options for risk management as decided during assessment and consultation. It is a national standard. … …

The substantial FSANZ assessment behind this Dairy Standard should also underlie the development of PPPS Guidelines, plus critical review of the purpose and effects of Australia's duplicate set of regulations for export.[33] … …

p18. To achieve efficient, productive Australian food safety systems, regulators and industries also need to proactively address duplication in export rules.

The safety of Australian milk and milk products destined for local or export markets is well-established. The veracity of the State-based, Codex-linked, industry-applied systems that under-pin these safety outcomes has been confirmed through FSANZ processes [and stated] in the FSANZ … Final Report on the Dairy PPP Standard for the Ministerial Council in August 2006. …

An independent panel review of the *Export Control Act* 1982 (Cth) during 1999 under the National Competition Policy, examined the Federal export regulation and its effects on competition and export by Australian food industries. … The *Export Assurance* report, said that 'Australian exports of food and agricultural products have been disadvantaged by working under a combination of two systems – domestic and export – and legislation that is unnecessarily prescriptive'. It developed a Vision for more streamlined, efficient, trade-effective food processing regulation.[34]

"The … vision is for exports based on Australian standards, enabled by a true partnership between government and industry, with single-body certification by government, where this is required by importing countries. … The Committee believes the vision could not be attained without a fundamental change in the manner by which Australian food and agricultural products are currently regulated. [The vision involves] adoption of Australian standards, rather than the most stringent foreign requirements, as the baseline for all export destinations [and] freedom for individual producers to invest to meet additional standards that may be required by individual governments. *Export Assurance Report x, 96, 98*

Dairy submission - www.pc.gov.au

[31] FSANZ *Food Standards News* 53 - April 2005.

[32] FSANZ (2006) Draft Assessment Report Proposal P296 Primary Production and Processing Standard.

[33] *Export Control (Milk and Milk Products) Orders* 2005. The Milk Orders introduce another set of food standards developed by a single Australian regulator, not through FSANZ. do reference the Food Standards Code on products and Australian testing standards, but also duplicate substantial aspects of processing hygiene systems regulated under the Australian Dairy PPPS.

[34] *Export Assurance* (2000), NCP Review of Export Control Act 1982, Panel Frawley, Makin, Neiper, Wilson.

<u>Post-border</u>, a modern, intelligent quarantine regime will also maximise use of technologies, communication plus both existing and new systems.

Moving away from blanket bans and towards quarantine decisions that take into account wider policy and economic effects including trade liberalisation, will increase emphasis on monitoring and controls at borders and within Australia.

However, today's technologies (including tests and systems built on experience in other countries) indicate that control processes, in the rare case of a post-border incursion, could potentially be far more effective than envisaged in decades past.

These are further arguments for Australia's 2008 quarantine model to look forward and not being based on paradigms of 10, 20 or 50 years ago.

Of note, are efforts within Australia to develop Biosecurity planning and important co-ordination among governments at all levels and industry stakeholders including communities and citizens. A range of actions appear to be underway, including -

> **AusBioSec** (Australian Biosecurity System for Primary Production and the Environment) This DAFF co-ordinated system is being enhanced through a whole-of-government project, established in 2005. aiming to bring together, under an overarching national framework, biosecurity activities being undertaken by the all governments, industry, landholders and other key stakeholders in primary production and the environment. Scope includes managing pests and diseases of the terrestrial, freshwater and marine environments – from prevention and preparedness and emergency response to ongoing management of established species.
>
> **Animal Health Australia** – a Biosecurity Planning Reference Group to assist in monitoring of the plans/statements, with representatives from extensive industries, intensive industries, all governments, the Australian Veterinary Association and the Primary Industries Health Committee. Outputs include a Model Extensive Industries Livestock Biosecurity plan (including for individual farm biosecurity plans), although States and Industries also have various plans.

These ongoing and expanding activities all require attentive input, with time and money costs, from industries aiming to moderate possibly cumbersome regimes. Plans, often called best practice, have intended alignment and regulatory effects.

The Dairy Industry considers 'minimum effective regulation' principles and objectives should also apply to the biosecurity arena, with stress on 'effectiveness' (which should be tested from multiple perspectives).

Reinventing the wheel is not 'minimum effective regulation'. In particular:

- ► It is vital that any new regimes objectively utilise systems existing in various industries. Dairy management and quality assurance (QA) systems require knowledge of many animal health issues and how to monitor and manage these.
- ► Farm food safety programs are mandatory for dairy licensing. All cover key QA elements *tailored for dairying.* It is important that new national systems recognise that some industries and enterprises have different production and commercial models for efficiency, market and competitiveness reasons.

The AusBioSec Departmental Steering Group appears committed to building on current systems, but cost and regulatory efficiency also warrants attention.

> Australia already has good systems for managing pests and disease in the primary production industries, such as sectoral and pest-based strategies, legislation and operational procedures. In enhancing AusBioSec these existing systems will be used and improved upon to strengthen the biosecurity management arrangements … www.daff.gov.au/... ausbiosec

D. Regulation arrangements and administration

The Issues Paper raises a series of questions about institutional arrangements, culture, efficiency, resourcing, communication, consultation, research and review.

The Dairy Industry is not in the business of setting out ways governments and agencies should operate to achieve results. The Industry, for instance, would not be advocating that governments establish another statutory authority.

As in Australian Standards and marketplaces, outcomes and performance against requirements and commitments are the critical measures. The Dairy Industry provides the following observations to assist the review process.

- **Roles of organisations and interactions.** The majority of Dairy Industry contact regarding regulations in exporting or importing, is with AQIS. This occurs at industry level (mainly through Dairy Australia), and in day-to-day operations in parts of the industry, from product processing companies and exporters, to stud businesses based on import and export of bovine semen.

  It is vital to Dairy that all aspects of import and export regulation and action are aligned in policy, approach and decisionmaking [Parts B and C]. Australia's competitiveness is influenced by, for instance, obtaining equivalency recognition for our procedures. Overseas agencies have little trouble linking Australia's approach to quarantine to their approach to import mechanics, but in Australia these considerations seem uncoordinated.

  An area lacking clarity is the role of each entity (and DFAT) in 'market access' strategy, decisions on priorities and negotiations, which Dairy needs progressed.

  > Australia needs to push hard on equivalency … but problem if countries feel Australia is operating trade barriers. New Zealand has better access than Australia.

- **Regulator resourcing and delivery.** Regulators, Federal and State, are currently structured into food industry operations – production, processing, retail, exporting and importing. The efficiency and competitiveness of these sectors depend in part on the performance of the regulatory agencies in applying rules and in service provision. This places an onus on governments to deliver in terms of regulatory capacity, timeliness and quality of performance.

  Many industries are concerned about regulators struggling to provide personnel. This is felt in different ways by enterprises of varying sizes within industries. Smaller sectors can at times feel their needs are swamped.

  > Members are at pains to point out that they have a good working relationship with AQIS personnel who are working 'at the coalface'. However there is a strong impression that within AQIS resources are extremely limited. The overall impression is that "the numbers are thin and experience is limited." Many are frustrated in having [day-to-day] import permit applications delayed … .
  >
  > We need a process, timelines and conclusions … do not need duplication … and need agencies resourced and capable of doing the job [in a faster trade world]." *Dairy exporter, 2008*

  AQIS and other regulators appear to agree they have shortage of appropriate staff with skills and capacities for modern system challenges.[35] Governments need to examine true costs of less-than-reasonable regulatory performance. A

[35] *NSW Food Regulation Partnership - A Blueprint*, April 2005. There is a statewide shortage of food regulatory personnel. Stakeholders cite a range of reasons including: • limited public awareness about and interest in food surveillance compared to other similar applied science careers such as environmental sustainability … • limited focus of tertiary … courses on food safety and surveillance; and • reluctance of many qualified personnel to live outside metropolitan Sydney or large regional centres.

better co-ordinated approach across jurisdictions would help deliver good outcomes and avoid costly (time, money and personnel) duplication. One jurisdiction's concerns should not prevent this collaboration.

- **Communication.** As outlined above, the Industry is concerned that Australian government agencies, including parts within DAFF, communicate, co-ordinate and align on policy and operational decisionmaking that can have multiple flow-on effects. Co-ordination, and consideration of 'reception' factors (eg websites), are also vital in communicating with industry bodies and businesses of all sizes. Most rural industries are characterized by small enterprises. Quarantine and biosecurity communication needs to be tailored so it is received and understood.

  > Communication [appears to be] another side effect of resourcing problems …. Any changes in existing protocols are merely posted on a website and not advised directly to industry at the time the change is made. There is sometimes difficulty in determining the dates on when changes take effect which leads to unnecessary confusion. For example, one member collected semen … only to find that the protocol had changed shortly afterwards … semen collected for the order … had to be discarded ….
  >
  > Another example of confusion relates to the UK authorities declaring UK free of FMD as at 31st December, the OIE declaring UK as FMD-free on 18th February and Australia finally getting round to the same conclusion in mid-March. This two and a half month delay has commercial implications.

- **Costs and cost recovery.** Achieving more intelligent and balanced modern quarantine policy and biosecurity practices will conceivably involve higher costs at points – such as resourcing regulators to delivery levels needed. These costs should be offset by benefits to Australia through expanded export opportunities and advantages where domestic costs can be reduced by imports. Australian consumers and taxpayers should also benefit from more open trade.

  Governments now operate service delivery cost recovery systems. Assessing public and private benefits of regulatory and administrative activity is key. Regulation applied to production, processing and export of food products has clear public benefits, beyond the businesses involved in the food supply chain. These external benefits should be factored into cost recovery equations.

  One Biosecurity cost-sharing/recovery mechanism is the Government and Industries' Emergency Animal Disease Response Agreement and Cost Sharing Deed of Agreement. The key points on cost sharing include:

  > All Parties commit to contributing to funding the eligible costs of responding to an EAD by which they are affected. The costs to be shared are identified under the Agreement:
  >
  > - Cost Sharing is aimed at equitable contributions from all Parties commensurate with their respective resource bases …
  > - Cost Sharing is linked to the Category of the disease;
  > - A Party which does not participate does not pay … .

The Dairy Industry, in arguing for wider economic considerations in IRA assessment on pests/diseases and particular industries, recognises this comes with a responsibility to participate more broadly in cost-sharing, in advance of incursion of a biosecurity problem, even though this is unlikely. There is a need for further discussion on possible cost recovery options. For example the EAD protocol (animals) could be expanded and Government and multi-industry agreements developed, including cropping and horticulture interests.
