

Sanitary and Phytosanitary Measures

Introduction

- 8.1 The SPS Chapter covers market access issues affecting quarantine and food safety, consistent with WTO rules. According to the *Guide to the Agreement*, both Parties reaffirm that decisions on matters affecting quarantine and food safety will continue to be based on scientific assessments of the risks involved in the commercial movement of animals and plants and their products.

This affirmation is made to reflect the primacy of existing rights and obligations under the WTO Agreement on Sanitary and Phytosanitary Measures.¹

- 8.2 The SPS Chapter comprises four articles and an annex. According to the DFAT *Guide to the Agreement*

the Chapter recognises that both Australia and the United States are major agricultural producers and exporters but with different environmental conditions and pest and disease status. Nothing in the Chapter undermines the right of either Party to determine the level of protection it considers appropriate.²

- 8.3 Two committees will be established under the Agreement, for the purpose of improving each Party's understanding of the other's SPS

1 DFAT, *Guide to the Agreement*, p. 35.

2 DFAT, *Guide to the Agreement*, p. 35.

measures and associated regulatory processes. According to the *Guide to the Agreement*, one will focus on general matters and one on a more specific set of plant and animal health (quarantine) matters. The Committee received evidence from several individuals and organisations regarding the role of these Committees and will consider this issue later in this Chapter.

- 8.4 The affirmation of the WTO SPS Agreement which is provided for in the AUSFTA means that there is no dispute settlement under the Agreement for SPS matters.

This is because the Chapter creates no new SPS rights or obligations so there is no need for the Parties to have recourse to dispute settlement under the Agreement. Rights under the WTO dispute settlement mechanism would continue to apply for each Party.³

Proposed impact of SPS measures

- 8.5 The Committee notes that, despite reassurances from the Department of Agriculture, Fisheries and Forestry (AFFA) and DFAT at paragraphs 8.1 and 8.2, there are many differences of opinions with regard to the impact of the SPS measures in the Agreement. The Australian Conservation Foundation states that

while the AUSFTA has not resulted in any immediate changes to Australian quarantine laws, it puts in place procedures that may, in the future, weaken those quarantine laws and also laws governing the environmental release of GMOs [genetically modified organisms]⁴

and the NSW Government suggests that

the procedures outlined in the proposed AUSFTA raise some doubt about the future integrity of quarantine procedures as an entirely Australian process.⁵

- 8.6 The Committee also notes evidence from Ms Kathleen Plowman from Australian Pork Ltd that

3 DFAT, *Guide to the Agreement*, p. 35.

4 Australian Conservation Foundation, *Submission 127*, p. 2.

5 NSW Government, *Submission 66*, p. 5.

the quarantine concessions that have been negotiated in the US FTA are significant and have serious implications for Australia's pork industry and other food-producing industries, and we believe that they will inevitably be extended to other countries.⁶

- 8.7 The Committee notes these concerns and the influence they have had on the debate about the impact of the Agreement on Australian quarantine standards.

Status of quarantine standards

- 8.8 The Committee received evidence from the Federation of Australian Scientific and Technological Societies (FASTS) that Australian quarantine practices have been 'conservative and have been generally very effective in minimising damage from invasive species'.⁷ The Committee further notes the observation from FASTS that Australia has attained 'considerable market advantage to our agricultural and aquacultural producers in the global market' as a result of its quarantine history.⁸

- 8.9 The Committee received evidence which suggested that any reduction in quarantine standards would be detrimental to Australia. Dr Geoffrey Pain stated that 'any reduction in quarantine procedures under an agreement would be disastrous for this country'.⁹ Mr Mark Salter from the Tasmanian Apple and Pear Growers' Association stated that

our argument is that we need to have the most stringent set of import measures in place, because we do not have the pests and diseases that other countries have; we need to keep them out.¹⁰

- 8.10 The Committee recognises that concerns that Australia would be forced to adopt American quarantine measures were common to many submissions on SPS measures in the Agreement. Dr Geoffrey Pain told the Committee that

the pressure is clearly on from the Americans to relax our fairly severe importation and quarantine rules. They want to

6 Ms Kathleen Plowman, *Transcript of Evidence*, 14 May 2004, p. 23.

7 Mr Bradley Smith, *Transcript of Evidence*, 6 May 2004, p. 32.

8 Mr Bradley Smith, *Transcript of Evidence*, 6 May 2004, p. 32.

9 Dr Geoffrey Pain, *Transcript of Evidence*, 23 April 2004, p. 27.

10 Mr Mark Salter, *Transcript of Evidence*, 21 April 2004, p. 6.

speed up the access to their farming markets to send material over here; otherwise, we would not be discussing the issue.¹¹

- 8.11 However the Committee notes evidence from officials of Biosecurity Australia that

we are not proposing to integrate the quarantine systems of Australia and the US. We run our quarantine system to our standards to reflect our phytosanitary status just as we respect their right to do the same.¹²

- 8.12 The Committee also acknowledges evidence from Ms Virginia Greville from AFFA, who advised the Committee that

the agreement reaffirms the commitment of each party to the WTO SPS agreement and is very clear that it imposes no new SPS obligations and creates no new SPS rights for either party with respect to quarantine.¹³

- 8.13 Ms Mary Harwood from Biosecurity Australia stated that

nothing in this agreement affects our right to apply quarantine the way we wish to the standard that we wish or our right to use Australian processes for risk assessment and policy determination.¹⁴

Establishment of two Committees

- 8.14 As stated at paragraph 8.3, the Committee is aware that there will be two committees formed under the provisions of Chapter 7 of the Agreement.

- 8.15 The Committee understands that the SPS Committee is a consultative one where the standing working group on animal and plant health has a technical role.

SPS Committee

- 8.16 The SPS Committee, which has clear terms of reference in the Agreement, provides ‘a forum for high level policy discussions and
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11 Dr Geoffrey Pain, *Transcript of Evidence*, 23 April 2004, p. 27.

12 Ms Mary Harwood, *Committee Briefing*, 2 April 2004, pp. 29-30.

13 Ms Virginia Greville, *Transcript of Evidence*, 14 May 2004, p. 65.

14 Ms Mary Harwood, *Committee Briefing*, 2 April 2004, p. 28.

facilitates cooperation between agencies.’¹⁵ The Australian Conservation Foundation notes that this Committee will be comprised of ‘US and Australian officials with responsibility for sanitary and phytosanitary matters, such as quarantine and GMO laws.’¹⁶

- 8.17 The Committee notes evidence from Biosecurity Australia that the SPS Committee is for information exchange and for enhancing mutual understanding of each other’s SPS systems. It is essentially a high-level committee for consultation and engagement on SPS issues.¹⁷

From the view of the Department of Agriculture, Fisheries and Forestry and Biosecurity Australia, we are comfortable with the agreement and the provision that it makes for discussions between Australia and the US on quarantine matters as a natural part of our trading relationship.¹⁸

Standing Working Group on Animal and Plant Health

- 8.18 The Standing Working Group on Animal and Plant Health, also known here as the ‘Technical Working Group’, is designed to help with the resolution of specific animal and plant health matters.

This initiative recognises that relating technical exchange and cooperation can assist in resolving matters relating to specific quarantine risks in ways that address the importing Party’s quarantine concerns but do not unduly restrict trade.¹⁹

- 8.19 Ms Virginia Greville stated that

The standing technical working group on animal and plant health actually formalises the arrangement that Biosecurity Australia has already with its counterpart competent authority, the Animal and Plant Health Inspection Service, which is part of the United States Department of Agriculture.²⁰

15 Ms Virginia Greville, *Transcript of Evidence*, 14 May 2004, p. 66.

16 Australian Conservation Foundation, *Submission 127*, p. 7.

17 Ms Mary Harwood, *Committee Briefing*, 2 April 2004, p. 28.

18 Ms Virginia Greville, *Transcript of Evidence*, 14 May 2004, p. 65.

19 DFAT, *Guide to the Agreement*, p. 36.

20 Ms Virginia Greville, *Transcript of Evidence*, 14 May 2004, p. 66.

Concerns regarding both Committees

8.20 The Committee is aware that serious concerns have been expressed regarding the establishment and operation of the two Committees. These concerns related mainly to the conflict between the aims of the Committee (the perceived conflict of interest between promoting science-based decisions as well as the promotion of trade), the lack of details regarding their operation, and the overall threat to Australian quarantine standards they represent. The Committee heard from Australian Pork Limited that there were several questions regarding the details of these Committees' operation.

What are their criteria? What are their terms of reference?
What are the processes of consultation? What assurances do we have that they are consistent with our own transparent import risk assessment process—and that those processes are based purely on science?²¹

8.21 The Committee also noted that the concern of FASTS

is compounded by the fact that there are no provisions requiring independent scientific expertise on the membership of either committee.²²

Conflict of interest between quarantine and trade?

8.22 The Committee notes evidence from the Grail Centre that

the objectives of the Committee (7.4.3) are not always compatible objectives. On the one hand, it is charged with protecting human, animal and plant life and health and, on the other, facilitating trade between the Parties²³

and from FASTS, 'that is, there is an intrinsic conflict in the objectives of both committees'.²⁴

The objectives of both of those committees go to protecting animal, human or plant life and to facilitating trade between the parties. So we would say that there is a potential internal

21 Ms Kathleen Plowman, *Transcript of Evidence*, 14 May 2004, p. 26.

22 Federation of Australian Scientific and Technological Societies, *Submission 190*, p. 3.

23 The Grail Centre, *Submission 97*, p. 11.

24 Federation of Australian Scientific and Technological Societies, *Submission 190*, p. 3.

conflict of interest between the two broad objectives of both parties.²⁵

Concerns specific to SPS Committee

Role of trade officials

8.23 The Committee received conflicting evidence regarding the involvement of trade officials in the SPS Committee set up under the agreement. Australian Pork Limited stated

in the actual agreement, we are concerned that there is trade representation on an SPS committee. Our principal concern is that Australia has always advocated that our quarantine assessments are based on science risk analysis, so our question is: why do we need to have trade representation on that committee? We believe it is unnecessary.²⁶

8.24 The Committee notes the statement by Australian Pork Limited that

APL proposes that the role of trade representatives on bilateral SPS bodies be clearly articulated and closely monitored to ensure that particularly US trade representatives confine themselves to ensuring consistency of bilateral SPS activities with WTO disciplines and obligations.²⁷

8.25 The Committee notes the evidence from the NFF that while some groups in Australia have specifically raised the issues of the provision for a US trade official to be present as part of these new Committee arrangements,

NFF is not overly concerned by this, given the agreement relates to a trading relationship between two countries, and NFF sees no capacity for the trade official to influence Australia's Import Risk Assessment Process.²⁸

8.26 This opinion was supported by evidence from Ms Greville, that

it is fair to say that a disconnect between trade officials and scientists can sometimes result in quarantine issues escalating unnecessarily into trade disputes. The inclusion of both in a

25 Mr Bradley Smith, *Transcript of Evidence*, 6 May 2004, p. 33.

26 Ms Kathleen Plowman, *Transcript of Evidence*, 14 May 2004, p. 24.

27 Australian Pork Limited, *Submission 108*, p. 4.

28 National Farmers Federation, *Submission 153*, p. 6.

consultative body can help each to understand better the rules by which the other operates ... The more trade officials who understand the basis for our conservative quarantine regime—the way that our process works and the rigour with which we assess risks—the better our reputation is likely to be.²⁹

8.27 Ms Greville added

While [trade officials] may be present for those conversations and it may facilitate understanding, that is not to say that those trade officials will in any way contribute to or affect the outcome of discussions on matters of science. That is very clearly understood between both parties. I would also like to make the point that neither party—that is, neither the US nor Australia—has any interest in having the scientific and technical matters resolved by anyone other than people with scientific and technical expertise.³⁰

Potential for de facto dispute resolution?

8.28 Australian Pork Limited has made the Committee aware of their concerns that there may be a potential for de facto dispute resolution via the SPS technical working group.³¹ Concerns about the processes for dispute resolution under the Agreement were also raised by Dr Patricia Ranald from AFTINET.

Our worry is that because it is in a trade agreement the disputes process can then be used to challenge the development of policy or particular aspects about quarantine. That means that a trade tribunal will be making decisions about quarantine which we believe should be made on a scientific basis in terms of health and environmental issues for Australia.³²

Concerns specific to technical working group

8.29 The Committee is aware of the concern caused by the fact that the groups are yet to be established, and the consequent lack of information on the details of the Groups' anticipated operation.

29 Ms Virginia Greville, *Transcript of Evidence*, 14 May 2004, p. 66.

30 Ms Virginia Greville, *Transcript of Evidence*, 14 May 2004, p. 67.

31 Ms Kathleen Plowman, *Transcript of Evidence*, 14 May 2004, p. 23.

32 Dr Patricia Ranald, *Transcript of Evidence*, 19 April 2004, pp. 38-39.

APL also wishes to understand what processes will be put in place in the Technical Working Group to assure that industries will be notified of such discussions and what communications and consultations will be undertaken with the respective industries concerned.³³

- 8.30 The Committee also notes concerns expressed by the Grail Centre and Mr Bradley Smith from FASTS, that

the Chapter needs to enunciate a clear working principle in circumstances of conflict. The 'precautionary principle' should receive explicit support in such a situation, not the scientific view which supports the risk of trade.³⁴

We see a problem with the standing working group in that there is no mandate for any scientist or independent scientist to be on it.³⁵

- 8.31 The Committee notes advice from Ms Greville that

the arrangements do not mean that the US will participate in our quarantine risk assessment policy or decision-making processes, rather they recognise that the interests of both parties—when you are dealing with a technical market access request—are best served if there is early access to the best scientific information available. The working group is a means to facilitate exchange and cooperation to that end.³⁶

Are Australian quarantine standards threatened?

- 8.32 The Committee is aware that some evidence suggested that reassurance was required that Australian quarantine standards would not be threatened or reduced in future as a result of the Agreement. The Committee notes comments by Ms Liz Turner, from Friends of the Earth, Melbourne, that

the Minister for Trade, Mark Vaile, was questioned by the ABC's *AM* program on 23 February and he was unable to state that these new bodies would be able to protect

33 Australian Pork Limited, *Submission 108*, p. 4.

34 The Grail Centre, *Submission 97*, p. 11.

35 Mr Bradley Smith, *Transcript of Evidence*, 6 May 2004, p. 36.

36 Ms Virginia Greville, *Transcript of Evidence*, 14 May 2004, p. 66.

Australian environments from contamination...Based on this and also Australia's previous practice with regard to quarantine and trade disputes at the WTO, we believe that it is risky for these bodies to be established and we believe that it is risky for the clauses that currently exist in the FTA not to contain provisions that strongly prevent contamination.³⁷

- 8.33 Concerns that State and Territory jurisdictions would be influenced by the Agreement were also brought to the Committee's attention, for example by the Governments of South Australia and Queensland.

South Australia seeks assurances from the Commonwealth Government that these consultative mechanisms will in no way be used to downgrade Australia's and South Australia's jurisdiction over quarantine matters.³⁸

- 8.34 The Queensland Government also sought clarification on the operation of the two committees, claiming that it is unclear how the State and Territory governments might have input into these committee's activities or what status their deliberations might hold.

Reassurance is also sought that the proposed arrangements will not result in increased pressure from US interest on Australia SPS decision making processes.³⁹

- 8.35 The Committee notes these comments and received evidence from departmental officials from AFFA and DFAT that

... it is very clear in the text, that this consultative arrangement is about science and technical issues; it is not about the level of protection which is appropriate, the level of risk which is acceptable or the fundamentals of the balance between trade and quarantine.⁴⁰

- 8.36 The Committee also notes comments by Ms Mary Harwood that

What we can work on together technically is ... looking at whether there are less trade-restrictive ways of trading a product that still deal with the quarantine risk, or if systems can be streamlined. But nothing in that alters the fact that the

37 Ms Liz Turner, *Transcript of Evidence*, 20 April 2004, p. 63.

38 South Australian Government, *Submission 198*, p. 4.

39 Queensland Government, *Submission 206*, p. 9.

40 Ms Virginia Greville, *Transcript of Evidence*, 14 May 2004, p. 70.

basic right to apply quarantine measures to address the risk as we see it stands and will not change.⁴¹

Positive responses to SPS and Technical Committees

8.37 The Committee notes that while there have been some strongly voiced concerns from several groups, positive responses to the establishment of the committees have also been received. Mr Brian Jeffriess of the Tuna Boat Owners' Association stated that

the committees that are going to be set up under this agreement are, in my view, discussion groups. They certainly will not provide any threat to Australia's scientific approach to biosecurity issues.⁴²

8.38 The Committee also notes the comments made by the National Farmers' Federation with regard to the committees.

NFF understands one of the outcomes of this meeting was an agreement to develop a closer working relationship on SPS-related market access issues. In this regard, NFF is not concerned if this relationship is formalised by the formation of a Committee(s). NFF sees no evidence in the text of the US FTA that US representation on these Committees has the power to undermine Australia's scientific-based system or Import Risk Assessment process in particular.⁴³

Implementation and operation of SPS measures

8.39 Several submissions received by the Committee refer to specific concerns with the management of Australia's SPS regime and the role and competence of Biosecurity Australia. The Committee notes these concerns given the proposed role of that organisation as the lead agency in the implementation of quarantine provisions within the Agreement. The Committee accepts the views of FASTS, and other organisations, that the capability of Biosecurity Australia will be a key issue in the implementation of the AUSFTA. Mr Mark Salter, from the Tasmanian Apple and Pear Growers Association, told the Committee that

41 Ms Mary Harwood, *Committee Briefing*, 2 April 2004, p. 30.

42 Mr Brian Jeffriess, *Transcript of Evidence*, 6 May 2004, p. 14.

43 National Farmers Federation, *Submission 153*, p. 6.

it seems to be very clear from industry that, as far quarantine is concerned, there has been a lowering of the bar by the present government and the bureaucracy attached to it.⁴⁴

8.40 The Committee received evidence from WTO Watch Queensland, and notes the concerns of Ms Theodora Templeton, who stated that

the Department of Foreign Affairs and Trade has stated on numerous occasions and with some vigour that our quarantine laws will not be traded away. Yet shortly after the text of the agreement was released Biosecurity Australia announced a new draft import risk analysis which makes it easier for entry to Australia for products of interest to the US.⁴⁵

8.41 Further, the Committee notes the evidence from Australian Pork Limited with regard to the import risk assessment process, managed by Biosecurity Australia.

we do have a number of reservations ... these include ... indications that the final import risk assessment for pig meat, released by Biosecurity Australia, was potentially influenced by negotiations with the USA about quarantine outcomes in the context of the free trade agreement and, in particular, the timing and release of the final IRA report.⁴⁶

8.42 The Committee notes evidence in the submission from Australian Pork Limited that

the US has achieved 'through the back door' significant quarantine concessions and it is a matter of concern to the Australian pork industry that Australia seems to have traded off quarantine for advantages in other areas of this FTA.⁴⁷

8.43 The Committee was made aware of industry concerns that

the confidence the agricultural sector and the relevant scientists who do analysis in the area have in Biosecurity Australia has been diminishing over time, primarily due to concerns that trade is becoming inappropriately prioritised over the scientific analysis of risk.⁴⁸

44 Mr Mark Salter, *Transcript of Evidence*, 21 April 2004, p. 2.

45 Ms Theodora Templeton, *Transcript of Evidence*, 5 May 2004, p. 34.

46 Ms Kathleen Plowman, *Transcript of Evidence*, 14 May 2004, p. 23.

47 Australian Pork Limited, *Submission 108*, p. 3.

48 Mr Bradley Smith, *Transcript of Evidence*, 6 May 2004, p. 33.

and

There have been many debates in the public domain recently – over pineapples, durian, Atlantic salmon down in Tasmania, apples, pig meat, and most recently, bananas. The way Biosecurity has handled risk in all those areas has raised concerns in the science, agribusiness and agricultural sectors.⁴⁹

8.44 This perception was supported by evidence from Ms Kathleen Plowman from Australian Pork Limited

... our experience, particularly in relation to this import risk assessment for pig meat which has just been finalised, is that we have concerns that Australia's conservative approach to quarantine is slowly being watered down and that priorities over and above risk analysis are given more attention than is necessary. I believe that the report from the Senate inquiry into pig meat which was released yesterday confirms those views.⁵⁰

8.45 The Committee understands that, based on these concerns, the confidence held by industry groups in the two bilateral committees established under the Agreement will largely depend on the conduct and operation of Biosecurity Australia.

8.46 The Committee is aware that Biosecurity Australia has conducted several recent import risk assessments which have been controversial within the affected industry. Some of the evidence presented to the Committee related to the current operation of Biosecurity Australia.

8.47 FASTS stated that if the AUSFTA were to be ratified, they would strongly urge the government to reform Biosecurity Australia. Mr Smith from FASTS, told the Committee that

Indeed, we would say that the evidence and concerns that are available now warrant reform of Biosecurity Australia, independently of the FTA.⁵¹

Mr Smith added that

Our concern is about the potential conflict with both committees. The key issue then is: given that we are

49 Mr Bradley Smith, *Transcript of Evidence*, 6 May 2004, p. 33.

50 Ms Kathleen Plowman, *Transcript of Evidence*, 14 May 2004, p. 26.

51 Mr Bradley Smith, *Transcript of Evidence*, 6 May 2004, p. 34.

potentially in conflict, how robust is the leading Australian agency and how confident are people in it? At no point have we said that trade should not be an element of this. The direction of our argument is about the robustness and appropriateness of Biosecurity Australia's practices.⁵²

Comments in the US

8.48 The Committee received many comments from organisations concerning the US opinion on SPS obligations outlined in the Agreement. The Committee heard from the Australian Chicken Meat Federation that 'the United States side, for its part, clearly believes that important quarantine concessions have been achieved.'⁵³

8.49 The Committee was advised that

Australia Pork Limited contends that the United States' objective is to break down Australia's science-based, legitimate and WTO legal, quarantine protection of its pork and other targeted industries.⁵⁴

8.50 The Committee is not able to comment on the legitimacy of the attitudes reportedly held by Americans about the Agreement's SPS Chapter. Normally the Committee would limit its attention to discussion on issues facing Australia's national interest, but in this case the Committee notes the extent of the debate about domestic quarantine issues that are seen in some international circles as a barrier to trade.

Concluding observations

8.51 A wide range of reactions was received in relation to the SPS outcomes under the Agreement. The Committee notes the positions of the NFF and the Cattle Council of Australia were supportive, the latter specifically stating that 'we certainly see no pitfalls at all in the

52 Mr Bradley Smith, *Transcript of Evidence*, 6 May 2004, p. 39.

53 The Australian Chicken Meat Federation Inc., *Submission 26*, p. 6.

54 Australian Pork Limited, *Submission 108*, p. 11.

SPS arrangements negotiated under this agreement'.⁵⁵ The NFF stated that

We found nothing objectionable in the SPS outcomes of the agreement and in fact supported specifically the side letter on BSE that advocates both countries working together in international fora to bring about a better trading regime with regard to that disease.⁵⁶

- 8.52 Support for the SPS outcomes under the Agreement was also expressed by Mr Peter Corish from the NFF who stated that the 'NFF does not believe the US FTA undermines Australia's quarantine system'⁵⁷ and Mr Jeffriess who stated that 'there is no indication that this agreement provides any sort of biosecurity issues'.⁵⁸
- 8.53 The Committee is aware of the level of concern following recent import risk assessments conducted by Biosecurity Australia. If the AUSFTA is ratified, the Committee notes Departmental assurances that quarantine decisions will continue to be made on the basis of scientific assessment. The Committee further notes the opinions of bodies such as the NFF and the CCA that there is nothing in the SPS Chapter which should undermine our current quarantine decisions. The Committee shares the view that any weakening of Australian quarantine standards would be detrimental to the national interest.

Recommendation 8

The Committee recommends that the Department of Agriculture, Fisheries and Forestry Australia and Biosecurity Australia undertake widespread consultations with stakeholders during the initial implementation phase of the AUSFTA, with a view to maintaining a high level of confidence in Australia's quarantine standards and their preservation.

55 Mr Brett de Hayr, *Transcript of Evidence*, 3 May 2004, p. 3.

56 Dr Peter Barnard, *Transcript of Evidence*, 3 May 2004, p. 3.

57 Mr Peter Corish, *Transcript of Evidence*, 4 May 2004, p. 79.

58 Mr Brian Jeffriess, *Transcript of Evidence*, 6 May 2004, p. 14.