



4 July 2011

Dr. Colin Grant
Chief Executive
Biosecurity Australia
GPO Box 858
CANBERRA ACT 2601
AUSTRALIA

Dear Dr. Grant

RE: Draft report for the non-regulated analysis of existing policy for apples from New Zealand

Apple and Pear Australia Limited rejects wholly and absolutely, the non-regulated analysis and its recommendations in regard to the importation of apples from New Zealand.

Apple and Pear Australia Limited also dismisses Biosecurity Australia's conclusion, as documented within the "Draft report of the non-regulated analysis of the existing policy for apples from New Zealand" (Draft Report) that:

{W}hen the New Zealand apple industry's standard commercial practices for production of export grade fruit are taken into account, the unrestricted risk for all three pests assessed achieves Australia's appropriate level of protection (ALOP). Therefore, no additional quarantine measures are recommended, though New Zealand will need to ensure that the standard commercial practices detailed in this review are met for export consignments.

It is extremely disappointing that Biosecurity Australia has now come to a position that effectively unravels the efforts that your organization provided as part of the Australian Government response to New Zealand's actions within the World Trade Organisation in regard to the SPS measures established for three pests of concern – fire blight, European Canker and Apple Leaf Curling Midge. Over the 2007 to 2010 period the Australian Government invested considerable time, effort and resources to justify:

- The processes employed and the science used to determine the phytosanitary measures established in the 2006 policy; and,
- Australia's right to establish an Appropriate Level of Protection.

Apple and Pear Australia Limited believe that the recommendations contained within the Draft Report in regard to fire blight, European Canker and Apple Leaf Curling Midge are arbitrary and are based on an irrational and an unreasonable set of conclusions. Specifically, the Draft Report is seriously flawed because:

- The downgrading of the risks posed by the three aforementioned pests and diseases is not based on scientific evidence;

- The proposed measures to manage the risks presented by the three pests and diseases cannot achieve an Appropriate Level of Protection for Australia;
- The process used to derive the proposed measures and the proposed measures themselves are not supported by scientific evidence nor transparent reasoning;
- There is a lack of transparency in the analysis underpinning the Draft Report;
- The employment of a non-regulated review rather than a proper Import Risk Assessment denies stakeholders procedural fairness;
- Biosecurity Australia fails to properly consider or utilise protocols/measures that have been implemented by New Zealand and/or Australia which represent appropriate ‘equivalence’ measures;
- The failure to provide stakeholders a copy of the New Zealand Integrated Fruit Production manual upon which the Draft Report relies severely compromises our ability to address claims made by Biosecurity Australia;
- From a statement made by the Minister, Biosecurity Australia has not sighted the full Integrated Fruit Production manual. Making recommendations on the basis of an incomplete document is irresponsible and a dereliction of duties.

These concerns are broadly outlined below. For a fuller analysis of the 2011 Review I refer you to the attached Technical Response to the Draft Report commissioned by Apple and Pear Australia Limited.

Downgrading of Risks Posed

The Draft Report provides an assessment that the unrestricted entry of apples from New Zealand would pose a very low risk for fire blight and negligible risk for European canker and Apple Leaf Curling Midge. This is a considerable downgrading of the risks established in the 2006 analysis (Table 1).

<i>Likelihood of entry, establishment and spread</i>	2006 Final Report	2011 Draft Report
- Fireblight	Very low	Extremely low
- European canker	Low	Extremely low
- ALCM	High	Very low
<i>Consequences – European canker</i>	Moderate	Low
<i>Unrestricted risk – whole of Australia</i>		
- Fireblight	Low	Very low
- European canker	Low	Negligible
- ALCM	Low	Negligible

The Technical Response commissioned by Apple and Pear Australia Limited clearly demonstrates that there is no scientific evidence cited in the Draft Report which could support any of those changes.

Apple and Pear Australia Limited undertook an extensive analysis of the additional science referenced in the 2011 assessment compared to the previous 2006 Import Risk Analysis. From our analysis there is no scientific evidence to indicate that any of the three pests and diseases of concern are less dangerous than previously concluded or more manageable than previously concluded. To the contrary, the additional or new science referenced in the 2011 Draft Report clearly shows that the bacterial disease, Fire Blight, can be more unpredictable or take on new forms. Similar conclusions can be reached with regard to European canker and Apple Leaf Curling Midge.

Biosecurity Australia has continued to ignore the science concerning 'viable but non culturable' (VBNC) states. Experts at the World Trade Organisation hearings clearly identified VBNC as a risk that was not taken into account in the 2006 analysis. Combined with the new scientific evidence confirming the potential risks of VBNC, Biosecurity Australia once again ignores this risk and proposes no measures to minimise this risk.

It is our view that the singular driver of the changed assessments of unrestricted risk of each of the pests is the change to a purely qualitative risk assessment method which uses a single "wrapped up" assessment of the likelihood of importation and of distribution of each pest in issue. In each case change to the assessed level of unrestricted risk derives solely from the method used to assess the likelihood of importation and distribution of the pest in Australia; and not from any change to the substantive assessments of those likelihoods.

Biosecurity Australia has failed to:

- Provide any scientific reasoning that is capable of supporting any downgrading of the risk assessments.
- Provide any reason for the change in risk assessment method that is employed;
- Demonstrate that it has the authority to employ the significantly more opaque and arbitrary method of analysis.

A sceptic could conclude that the process was undertaken to arrive at a pre-determined answer.

The Integrated Fruit Production System is not a phytosanitary measure

In the 2006 Review, Biosecurity Australia correctly acknowledged that the Integrated Fruit Production (IFP) system (then referred as the Integrated Pest manual) is:

"only a management tool and may not always reduce the opportunities for establishment of pests, for in some seasons no matter what IPM program was in place, if environmental conditions were conducive, pests would occur."

Biosecurity Australia now reject this view and recommend in the 2011 Draft Report that the Integrated Fruit Production (IFP) system will provide adequate measures to manage the unrestricted risks posed by fire blight, European Canker and Apple Leaf Curling Midge. This recommendation is flawed on a number of grounds.

First, Biosecurity Australia has not substantiated why they now disagree with their earlier finding. This is surprising because Apple and Pear Australia Limited is confident that no responsible scientist would disagree with the 2006 view that the IFP system is only a management tool that cannot always reduce the opportunities for pests to establish. Without substantiation the decision to now accept the IFP is both irrational and unreasonable.

Second, Apple and Pear Australia Limited also believes that the reliance on the IFP system as adequate to meet Australia's Appropriate Level of Protection is also irrational and unreasonable. Biosecurity Australia has given no scientific support to their conclusion that the standard orchard practices as established through the implementation of the Integrated Fruit Production manual meets the terms of the SPS Agreement as a 'measure' and/or meets Australia's Appropriate Level of Protection.

Third, based on the analysis provided Biosecurity Australia there appears to be no difference the standard orchard practices employed within New Zealand under the current IFP and that employed under the IFP in place when the 2006 Review was conducted. There is, therefore, no credibility in the assumption by Biosecurity Australia that the implementation of latest version of the Integrated Fruit Production Manual has reduced the threat of Fire Blight, Apple Leaf Curling Midge or European Canker to a level that meet Australia's Appropriate Level of Protection.

Indeed, the IFP system demonstrates that New Zealand has not found a way to control or eliminate fire blight or prevent serious outbreaks of the disease. New Zealand authorities and the pipfruit industry do not pretend that they have. But under the recommendations made by Biosecurity Australia, fruit will, at times, be harvested from orchards with severe outbreaks of fire blight.

This fruit will be heavily infested with the Fire Blight bacteria. The on line treatment required will not contact or eradicate the bacteria in the calyx and the fruit will arrive with high levels of bacteria in undiluted consignments. There is no measure proposed which would prevent that fruit being imported and distributed very shortly after harvest.

With a disease such as Fire Blight that Biosecurity Australia itself identifies as one of the most serious diseases of apples, fruit should at the very least be guaranteed to come from a Pest Free Place of Production. While Biosecurity Australia recognises this requirement for the less dangerous and complex insect (Codling moth) for West Australia, it fails to apply the same principle to the much more serious disease Fire Blight.

The same scenario also occurs in regard to European canker and Apple Leaf Curling Midge.

Fourth, the 2011 Review has not made any assessment of the capacity of the IFP system to deliver management of the risks of fire blight, European canker and Apple Leaf Curling Midge. Failure of the New Zealand system during a period when Integrated Fruit Production was a standard orchard practice is well documented. Whether these failures have arisen because the IFP system is not a true SPS measure as

argued above or simply because the IFP does not take into account the impact of human error, human abuse, changing climatic conditions, orchard design and canopy and the occurrence of pests and diseases on properties which do not operate under the IFP, is not known. In either case, Biosecurity Australia has an obligation to audit past failures and identify how it intends to prevent these failures into the future.

Insufficient inspection for Trash

Trash is scientifically recognised as a high risk carrier of Fire Blight and European Canker. At present there is no known process that ensures that all trash is removed or excluded in the grading and packing process. It is common for trash that is dislodged from fruit during the grading process to end up in the carton. Equally trash included in the harvesting process is mechanically transferred by the grading process and also ends up in the carton. The risk of an incidence of trash in cartons increases with the use of tray fillers which are used extensively in NZ.

Apple and Pear Australia therefore seeks that upon arrival inspections include 600 randomly selected cartons per lot to ensure that trash is not present and exported to Australia. This is in addition to inspections of the fruit itself.

The 2011 review fails to address the concerns expressed by the WTO

The World Trade Organisation (WTO) found that the 2006 Import Risk Analysis conducted by Biosecurity Australia did not provide sufficient scientific justification for Australia's quarantine measures because (i) some measures were supported by neither scientific evidence nor transparent reasoning and (ii) there was a lack of transparency in the 2006 risk analysis.

Apple and Pear Australia Limited's review concludes that the 2011 Review fails to address the concerns expressed by the WTO. The Draft Report falls well short of the required standards – the analysis and processes are not supported by science or by transparent reasoning. It is also far less transparent than the 2006 Analysis which it purportedly reviews. Consequently Biosecurity Australia has produced an arbitrary, irrational and unreasonable set of conclusions.

Moreover, Biosecurity Australia proposes a range of 'measures' which are the same 'measures' which New Zealand proposed in the World Trade Organisation dispute. The World Trade Organisation Appellate Panel ruled that those 'measures' did not meet Australia's Appropriate Level of Protection. Yet Biosecurity Australia does not heed that counsel.

Equivalence

Apple and Pear Australia Limited believe that there are a number of examples of protocols and SPS measures that have been implemented by New Zealand and/or Australia which represent appropriate 'equivalence' measures. Biosecurity Australia has failed in its 'duty of care' in not considering and/or utilising some of the appropriate 'equivalent' measures.

Human Health

As one of the criteria for a risk analysis is to protect human health, the acceptance by Biosecurity Australia that a proportion of the fruit imported by New Zealand will be treated with antibiotics without assessing the human health consequences is in conflict with this important obligation.

Procedural Fairness

A request to obtain a copy of the New Zealand Pipfruit Integrated Fruit Production Manual has been denied by Biosecurity Australia based on the confidentiality rating placed on the document by Pipfruit New Zealand. As a result Apple and Pear Australia Limited and other stakeholders have been unable to analyse it and comment in an informed manner. This significantly impacts on stake-holders ability to respond to the Draft Report and denies any level of procedural fairness.

Furthermore, Apple and Pear Australia Limited understand that Biosecurity Australia itself has been denied access to the complete documentation that supports the Integrated Fruit Production System. That Biosecurity Australia has based its analysis and formed its recommendations upon incomplete documentation suggests that Biosecurity Australia was derelict in their responsibilities.

Measures required to meet Australia's Appropriate Level of Protection

Apple and Pear Australia Limited's assessment of the "new science" concludes that the following measures are required, as a MINIMUM to ensure that Australia maintains its Appropriate Level of Protection:

For managing European canker:-

- Banning of apples from the high risk areas for European canker (eg., Auckland), and
- Orchard inspection with the elimination of an orchards for the season with an outbreak of European Canker, and
- Inspection of 1200 pieces of fruit per 300 Tray Carton Equivalent,
- Inspection of 600 randomly selected cartons per lot and
- A maximum pest limit of zero.

For managing Apple Leaf Curling Midge:-

- Implementation of 'pest free place of production' (an accepted SPS process), or
- Fumigation of apples before export, and
- Inspection of 1200 pieces of fruit per 300 Tray Carton Equivalent, and
- Inspection of 600 randomly selected cartons per lot and
- A maximum pest limit of zero.

For managing Fire Blight:-

- Pre harvest orchard inspection with the elimination of an orchards for the season with an outbreak of Fire Blight, and
- Test of apples to prove freedom from Fire Blight, and
- Inspection of 1200 pieces of fruit per 300 Tray Carton Equivalent for trash.
- Inspection of 600 randomly selected cartons per lot and

For managing leafrollers and mealybugs:-

- Inspection of 1200 pieces of fruit per 300 Tray Carton Equivalent for trash.

For managing codling moth into WA:-

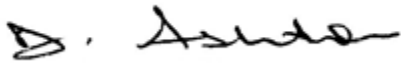
- Establishment of pest free areas, or areas of low pest prevalence for codling moth, or fumigation with methyl bromide.

For managing all fruit imported into Australia from New Zealand:

- Fruit treated with antibiotics should be excluded from export;
- Testing to ensure that only mature fruit is exported to Australia
- Maintenance of sanitary conditions in dump tank water
- High pressure water washing and brushing of fruit in the packing house

I urge you to revise the recommendations in your Draft Report to reflect more appropriate measures as recommended by Apple and Pear Australia.

Yours sincerely

A handwritten signature in black ink, appearing to read "D. Ashton". The signature is written in a cursive, flowing style.

Darral Ashton
Chairman