

**AUSTRALIA – MEASURES AFFECTING THE IMPORTATION OF APPLES
FROM NEW ZEALAND**

Request for the Establishment of a Panel by New Zealand

The following communication, dated 6 December 2007, from the delegation of New Zealand to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 27 March 2007, the Australian Director of Animal and Plant Quarantine determined a policy for the importation of apples from New Zealand: "Importation of apples can be permitted subject to the *Quarantine Act 1908*, and the application of phytosanitary measures as specified in the *Final import risk analysis report for apples from New Zealand*, November 2006".¹

New Zealand considers that the measures specified in and required by Australia pursuant to the *Final import risk analysis report for apples from New Zealand* are inconsistent with the obligations of Australia under the *Agreement on the Application of Sanitary and Phytosanitary Measures* ("SPS Agreement").

In particular, New Zealand considers that the following measures are, both individually and as a whole, inconsistent with the obligations of Australia under the SPS Agreement:

Fire blight

- The requirement that apples be sourced from areas free from fire blight disease symptoms.
- The requirement that orchards/blocks be inspected for fire blight disease symptoms, including that they be inspected at an inspection intensity that would, at a 95% confidence level, detect visual symptoms if shown by 1% of the trees, and that such inspections take place between 4 to 7 weeks after flowering.
- The requirement that an orchard/block inspection methodology be developed and approved that addresses issues such as visibility of symptoms in the tops of trees, the inspection time needed and the number of trees to be inspected to meet the efficacy level, and training and certification of inspectors.
- The requirement that an orchard/block be suspended for the season on the basis that any evidence of pruning or other activities carried out before the inspection could constitute an attempt to remove or hide symptoms of fire blight.

¹ Biosecurity Australia Policy Memorandum 2007/07, 27 March 2007.

- The requirement that an orchard/block be suspended for the season on the basis of detection of any visual symptoms of fire blight.
- The requirement that apples be subject to disinfection treatment in the packing house.
- The requirement that all grading and packing equipment that comes in direct contact with apples be cleaned and disinfected (using an approved disinfectant) immediately before each Australian packing run.
- The requirement that packing houses registered for export of apples process only fruit sourced from registered orchards.

European canker

- The requirement that apples be sourced from export orchards/blocks free of European canker (pest free places of production).
- The requirement that all trees in export orchards/blocks be inspected for symptoms of European canker, including that orchards/blocks in areas less conducive for disease are inspected for symptoms by walking down every row and visually examining all trees on both sides of each row, and that areas more conducive to the disease are inspected using the same procedure combined with inspection of the upper limbs of each tree using ladders (if needed), and that such inspections take place after leaf fall and before winter pruning.
- The requirement that all new planting stock be intensively examined and treated for European canker.
- The requirement that an orchard/block be suspended for the season on the basis that any evidence of pruning or other activities carried out before the inspection could constitute an attempt to remove or hide symptoms of European canker.
- The requirement that exports from an orchard/block be suspended for the coming season on the basis of detection of European canker and that reinstatement would require eradication of the disease, confirmed by inspection.

Apple leafcurling midge

- The requirements of inspection and treatment for apple leafcurling midge, including:

the option of inspection of each lot on the basis of a 3000 unit sample selected at random across the whole lot for apple leafcurling midge, symptoms of quarantineable diseases, quarantineable pests, arthropods, trash and weed seeds, with detection of any live quarantineable arthropod resulting in appropriate treatment or rejection for export;

the option of inspection of each lot on the basis of a 600 unit sample selected at random across the whole lot for symptoms of quarantineable diseases, trash and weed seeds, plus mandatory appropriate treatment of all lots.

General

- The requirement that Australian Quarantine and Inspection Service officers be involved in orchard inspections for European canker and fire blight, in direct verification of packing house procedures, and in fruit inspection and treatment.
- The requirement that New Zealand ensure that all orchards registered for export to Australia operate under standard commercial practices.
- The requirement that packing houses provide details of the layout of premises.

New Zealand considers that the above measures are inconsistent with the obligations of Australia under Articles 2.2, 2.3 (both sentences), 5.1, 5.2, 5.5 (first sentence), 5.6 and 8 (in relation to Annex C) and Annex C(1)(a) of the SPS Agreement.

On 31 August 2007, New Zealand requested consultations with Australia regarding the above measures pursuant to Article XXII of the *General Agreement on Tariffs and Trade 1994*, Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), and Article 11 of the SPS Agreement. In accordance with Article 4 of the DSU the request was notified to the Dispute Settlement Body ("DSB"), the Council for Trade in Goods, and the Committee on Sanitary and Phytosanitary Measures. The request was circulated to members of the World Trade Organization on 4 September 2007 (WT/DS367/1). Australia accepted New Zealand's request and consultations were held on 4 October 2007 in Geneva. However, the consultations have failed to resolve the matter.

Accordingly, New Zealand respectfully requests the DSB to establish a panel pursuant to Article 6 of the DSU, with standard terms of reference as set out in Article 7.1 of the DSU.

I would be grateful if you would place this item on the agenda for the next DSB meeting on 17 December 2007 and circulate this request to Members.
