



Australian Government
Biosecurity Australia

Mr Tony Heidrich
Chief Executive Officer
Australian Banana Growers' Council Inc
PO Box 309
BRISBANE MARKET QLD 4106

Dear Mr Heidrich

I refer to the meeting between representatives of Biosecurity Australia and the Australian Banana Growers' Council (ABGC) on 24 April 2008 and to your letters of 12 and 26 May 2008 providing further comments on the Council's views regarding issues discussed at that meeting.

I have noted your advice in your letter of 26 May 2008 that, although you do not appear to fully agree with the summary record of the meeting, you do not wish to offer an alternative summary. Biosecurity Australia will therefore finalise the existing summary and place it on the public file together with your correspondence. Beyond this issue, I have also noted that your letter of 26 May essentially restates the issues you have raised previously, including in your letter of 12 May 2008.

There appears to be a misunderstanding as to how the expert Import Risk Analysis (IRA) team is considering representing risk management measures in the final IRA report. I would like to again provide assurance that the final IRA report is being developed in accordance with the requirements of the 2003 Import Risk Analysis Handbook. All stakeholder submissions, including original and supplementary submissions from the ABGC, will be taken into account in accordance with this proper process together with any new or additional scientific information that may have emerged since the revised draft report was published in March 2007. Risk management measures will continue to be specified in the final report.

A provisional final IRA report will soon be referred to the independent Eminent Scientist Group (ESG) to ensure that all stakeholder comments have been properly considered by Biosecurity Australia in the preparation of that final report. A final IRA report will subsequently be released for a period of appeal by stakeholders.

For the record, I wish to again state that I do not accept that the revised draft IRA report, issued on 1 March 2007 for stakeholder comment, contained a material error. I acknowledge that it is open to experts to have differing views and opinions on issues. Obtaining these views, and the reasoning behind them, is the principal reason for Biosecurity Australia publishing draft reports for comment by stakeholders as well as to ensure the transparency of the scientific and technical debate through the publication of submissions on the public file.

I confirm the advice provided at our meeting on 24 April that I referred the ABGC's concerns to the IRA team. The information is being properly considered and I believe the final report will reflect the full spore count range of 1-2 spores in the assessment of black sigatoka as proposed by the ABGC. This expert consideration, drafting, comment and response appear to be further evidence of a proper process at work.

In relation to your comments about the composition of the IRA team, stakeholders were notified of changes to the IRA team in Biosecurity Australia Advice 2008/13 of 19 May 2008 (copy attached). IRA team meeting summaries available on the Philippines banana IRA public file (www.biosecurityaustralia.gov.au), had also recorded these changes.

As you have noted in your letter of 12 May 2008, three draft reports have already been issued as this IRA has proceeded. The current development of the final IRA report is in accordance with the 2003 IRA Handbook. The changes being incorporated into the final report respond to the comments submitted by stakeholders in response to the draft reports together with other relevant scientific and technical information. This is entirely consistent with proper process. Responding properly to stakeholder comments, all of which are publicly available, is not a basis of itself to issue a new draft report. Mechanisms for further independent review of the final report also exist through ESG review and a subsequent appeal process.

I am of course mindful that the 2003 IRA Handbook provides discretion to issue a revised draft report. I do not consider the circumstances outlined in the Handbook that provide the basis for this discretion presently exist for this IRA. In view of this and the processes that I have outlined above, I confirm that I do not propose to release a further draft report for stakeholder comment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Cahill', with a long horizontal flourish extending to the right.

John Cahill
Chief Executive

30 May 2008



Australian Government
Biosecurity Australia

19 May 2008

BIOSECURITY AUSTRALIA ADVICE 2008/13

**IMPORT RISK ANALYSIS FOR BANANAS FROM THE PHILIPPINES –
STATUS REPORT**

This Biosecurity Australia Advice (BAA) informs stakeholders of the current status of the import risk analysis examining the proposal to import Cavendish bananas from the Philippines.

The stakeholder comment period on the revised draft import risk analysis (IRA) report for the importation of Cavendish bananas from the Philippines closed 29 June 2007. The expert IRA team has since met regularly to consider the twenty one stakeholder submissions that were received on the draft report. A draft final IRA report will soon be forwarded to the independent Eminent Scientists Group for review. A further BAA will be issued at that time.

Since the last update on this IRA was issued to stakeholders the composition of the IRA team has changed. Since 2005 the IRA team has comprised:

Dr Brian Stynes	Biosecurity Australia (Plant Pathologist) - Chair
Dr Rob Allen	External member (Plant Pathologist)
Mr Bob Paton	External member (Entomologist)
Mr David Peasley	External member (Horticulturist)
Mr Mike Robbins	Australian Quarantine and Inspection Service (Quarantine operations expert)
Dr Sharan Singh	Biosecurity Australia (Plant Pathologist)

The IRA team has been supported by additional expertise as required, including in plant pathology, entomology, statistics and modelling.

I regret to advise that Dr Rob Allen has recently resigned from the IRA team due to ill health. He has made substantial contributions in his areas of speciality and these contributions are being reflected in the final report. Biosecurity Australia acknowledges and thanks Dr Allen for his significant contribution to the development of the IRA and wishes him well with his future health.

Mr Bob Paton is also taking a period of extended leave to travel. However, he formally remains a member of the IRA team and will continue to contribute to the final IRA report.

Dr Singh was a member of the IRA team as a result of his role in Biosecurity Australia. Dr Singh is now employed in another area of the Department of Agriculture, Fisheries and Forestry, outside Biosecurity Australia, and has not continued in the role as a member of the IRA team.

As the IRA report is in the final stages of development, I do not propose to add to the membership of the IRA team or replace Dr Allen at this time. Biosecurity Australia will continue to provide significant, dedicated, scientific expertise and resources to support the work of the IRA team.

Information on all IRAs and policy reviews being conducted by Biosecurity Australia is available on the Biosecurity Australia website at www.biosecurityaustralia.gov.au. Biosecurity Australia welcomes any comments on matters relevant to the issues raised in this BAA. Contact details are:

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John Cahill
Chief Executive



26 May, 2008

John Cahill
Chief Executive
Biosecurity Australia
Department of Agriculture, Fisheries and Forestry
GPO Box 858
Canberra ACT 2601

Dear Mr Cahill

**PHILIPPINE BANANA IMPORT RISK ANALYSIS – SUMMARY
MINUTES OF MEETING OF 24 APRIL 2008**

I refer to the draft of the summary of the meeting between Biosecurity Australia and the Australian Banana Growers' Council on 24 April 2008 which was emailed to me for comment on 13 May 2008.

As a general comment, the Council does not believe that the draft summary provides an accurate summary of all of the matters discussed at the meeting.

Indeed, the Council believes that the draft summary misrepresents the substance of those discussions in a number of minor and material respects.

Despite those concerns, the Council does not propose to prepare its own alternative summary of the meeting, because it does not believe there is any prospect of the Council and Biosecurity Australia being able to reach agreement on the content of that summary.

However, for the purpose of correcting the record, the Council considers it important to make the following specific comments about the draft summary of meeting.

Material error in black Sigatoka IRA

At the meeting, Biosecurity Australia's statistical consultant (Rob Cannon from the Bureau of Rural Sciences) stated that the value used in the draft IRA report for the restricted risk assessment for black Sigatoka "was not the correct value".

Error in Biosecurity Australia's correspondence on the error

At the meeting the Council advised Biosecurity Australia that its correspondence to the Council of 19 March on the error contained an error. In the correspondence John Cahill stated that he did not accept "...that the revised draft IRA report contained a material or transcription error in relation to the assessment of unrestricted risk for black Sigatoka". The Council has always asserted that the error is in the restricted risk for black Sigatoka, not the unrestricted risk. The error in the correspondence from Biosecurity Australia was acknowledged and a commitment was given by Biosecurity Australia to write to the Council to correct the error.

Significant change in methodology

Biosecurity Australia representatives at the meeting explained that instead of recommending specific risk management measures for the pests under consideration (as was the case in all previous draft IRA reports), the final IRA report would specify “performance benchmarks” for the pests under consideration. It would be up to the Philippines Government, following the completion of the IRA process, to propose, for Biosecurity Australia’s consideration, the risk management measures which it considers would achieve the specified “performance benchmarks”.

The Council noted that this approach for dealing with risk management measures is significantly different to that adopted in the most recent draft IRA report and Biosecurity Australia’s usual practice and that it did not accord with the *Import Risk Analysis Handbook* (2003) which governs the conduct of the bananas IRA.

The Council expressed its very serious reservations about that significant change to the IRA process.

Additional new information

At the meeting, Dr Brian Stynes (Chair of the IRA team) advised that significant changes had been made to the draft IRA report (particularly in relation to the pest risk assessments for Moko and black Sigatoka) as a consequence of a “lot of additional information” becoming available. Despite questioning, Dr Stynes would not elaborate on the nature of that additional information.

Request for further revised draft IRA report

At the meeting the Council requested that Biosecurity Australia release a further revised draft IRA report so that stakeholders would have an opportunity to comment on the changes arising from the correction of the error and the significant changes which Biosecurity Australia advised were being made in finalising the IRA report.

This request was rejected outright by Biosecurity Australia.

Composition of IRA team

When questioned by representatives of the Council about the composition of the IRA team, senior Biosecurity Australia officers (John Cahill, Bill Roberts and Brian Stynes) provided very vague and inconsistent responses concerning Rob Allen and Bob Paton’s membership of, and continued participation in, the IRA team. The Council was initially advised that both had resigned as members of the IRA team but was subsequently advised that only Rob Allen had resigned and that Bob Paton was still a member of the IRA team and would participate in IRA team meetings by telephone (but that due to international time differences, had not participated in any since his departure).

The Council was also advised that both Rob Allen and Bob Paton had “effectively signed-off on parts [of the final IRA report] relevant to them” and

that both Rob Allen and Bob Paton would still be involved in the IRA via email but “would not formally sign-off [on the final IRA report]”.

Public file

If, despite the Council’s concerns about the accuracy of the draft summary of meeting, Biosecurity Australia continues to propose to place the draft summary of meeting on the public file, the Council requests that a copy of this letter also be placed on the public file in association with Biosecurity Australia’s summary.

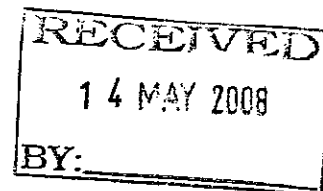
Yours sincerely

A handwritten signature in black ink, appearing to be 'T. Heidrich', written in a cursive style.

T. Heidrich
Chief Executive Officer



12 May 2008



John Cahill
Chief Executive *John Cahill*
Biosecurity Australia
Department of Agriculture, Fisheries and Forestry
GPO Box 858
Canberra ACT 2601

Dear Mr Cahill

PHILIPPINE BANANA IMPORT RISK ANALYSIS

I refer to the meeting on 24 April 2008 between representatives of Biosecurity Australia and representatives of the Australian Banana Growers' Council Inc (**Council**).

A number of issues which were discussed at that meeting raise very serious concerns for the Council.

Substantial changes since draft IRA report

Significant change in methodology

At the meeting, Biosecurity Australia representatives advised the Council that the approach for dealing with restricted risk in the final IRA report would differ from the approach in the most recent draft IRA report (released in March 2007) because the final IRA report would be "performance based" rather than including specific risk management measures.

It was explained that instead of recommending specific risk management measures for the pests under consideration (as was the case in all previous draft IRA reports), the final IRA report would specify "performance benchmarks" for the pests under consideration. It would be up to the Philippines Government, following the completion of the IRA process, to propose, for Biosecurity Australia's consideration, the risk management measures which it considers would achieve the "performance benchmarks". This approach for dealing with risk management measures is significantly different to that adopted in the draft IRA report and Biosecurity Australia's usual practice.

It is also inconsistent with the requirements of Biosecurity Australia's *Import Risk Analysis Handbook* (2003) (the **Handbook**) (which governs Biosecurity Australia's conduct of the bananas IRA), which states at paragraph 3.1:

"Import risk analysis identifies the pests and diseases relevant to an import proposal, assesses the risks posed by them and, if those risks are unacceptable, specifies what measures should be taken to reduce those risks to an acceptable level."

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“Measures” as dealt with in the Handbook are those governmental instruments which are actually applied to control importation of the product in issue (see *Australia – Measures Affecting Salmon* WT/DS18/AB/R at [103]).

In every case where unrestricted risk exceeds Australia’s ALOP, the Handbook requires the IRA team to include in the final IRA Report recommendations of actual measures – that is the controls to be applied to importation – or a recommendation that trade remain banned.

This requirement was recognised in the draft IRA report which complied with paragraph 4.12 of the Handbook which states as follows:

“The draft report:

- ...
- *in cases where the risks are rated as unacceptable, presents an evaluation of technically-feasible risk management measures to determine whether the risks can be successfully mitigated to achieve Australia’s ALOP*
- *includes a preliminary view of the appropriate risk management options.”*

What is now proposed is a fundamental departure from the defined requirements of an IRA so that the final IRA report will not contain recommendations of measures, but rather will contain “performance benchmarks” against which proposals for measures may be considered in the future, apparently outside the IRA process.

The Council believes that Biosecurity Australia and the IRA team have no authority to depart from the Handbook in the manner outlined above.

Additional information

At the meeting, Dr Brian Stynes (Chair of the IRA team) advised that significant changes had been made to the draft IRA report (particularly in relation to the pest risk assessments for Moko and black Sigatoka) as a consequence of a “lot of additional information” becoming available. Despite questioning, Dr Stynes would not elaborate on the nature of that additional information.

However, it is apparent from a review of the very brief summaries of IRA team meetings (published on Biosecurity Australia’s website) that a considerable amount of additional information relevant to key aspects of the pest risk assessments for Moko and black Sigatoka is being considered by the IRA team. It appears that some of that information is new in the sense that it has become available from new scientific publications while some is new in the sense that it is the first time the information has been considered by the IRA team (even though it was available and could have been considered in the past).

By way of example:

- the summary of IRA team meeting 54 (on 17 and 18 March 2008) refers to the IRA team being presented with “*additional literature on [the topic of Moko bacteria being drawn into the vascular tissue of freshly cut bananas] including very recent material.*”
- the summary of IRA team meeting 45 (on 15 and 16 January 2008) states that “[t]he IRA team noted that infection efficacy had not been considered during the development of the revised draft IRA report. However, as a result of stakeholder comment, it was identified as an issue requiring consideration in the revision of the report. While examining information and scientific papers identified by stakeholders in relation to spore dispersal the issue of infection efficacy was identified as an issue that should be considered in any revision to the black Sigatoka and freckle PRAs.”
- the summary of IRA team meeting 41 (on 6 December 2007) states that “[t]he IRA team agreed that substantial changes to the datasheet [for black Sigatoka] are required.”

Further revised draft IRA report

The Handbook contemplates that it may be appropriate to prepare revised draft IRA reports “*if new information comes to light that may significantly affect the analysis, or if the IRA team identifies the need to make significant changes to the analysis in finalising the IRA Report*”.

At the meeting the Council requested that Biosecurity Australia release a further revised draft IRA report so that stakeholders would have an opportunity to comment on the changes arising from the correction of the error (discussed below) and the significant changes which Biosecurity Australia advised were being made in finalising the IRA report.

In rejecting that request you stated: ‘Do the banana growers want us to release an endless series of draft reports?’

The answer to your question is “no”. The Council does not want Biosecurity Australia to release any more drafts than are necessary in accordance with the provisions of the Handbook. Rather, the Council expects that in preparing a further revised draft IRA Report, Biosecurity Australia will exercise a sufficient degree of care and quality control to avoid the need for any further revisions in the future (putting aside questions of genuinely new scientific information that might emerge).

Three draft IRA reports have now been released by Biosecurity Australia (in 2002, 2004 and 2007). The methodology, scientific analysis and recommendations contained in each of those draft IRA reports have been materially different, making the release of each of the two revised draft IRA reports necessary.

Given that Biosecurity Australia has now indicated that significant changes are being made in finalising the IRA Report, the Council believes that the release of

a further revised draft IRA Report is clearly again necessary. Indeed, the Council believes that a failure to release a further revised draft IRA report for stakeholder consultation could materially prejudice stakeholders (particularly in circumstances in which Biosecurity Australia has made simple but material errors in the two most recent draft IRA reports, which were only identified as a consequence of the Council's diligent review of those reports).

In this context it is beside the point that events in the past have necessitated the publication of two revised draft reports. The only relevant questions now are whether:

- the new information being considered by the IRA team may significantly affect the analysis; and
- the IRA team has identified the need to make significant changes to the analysis in finalising the IRA Report.

If the answer to either of those questions is yes, the Council believes that it is necessary to publish a further revised draft IRA Report.

It seems clear enough from our discussions at the meeting that the answer to both questions is "yes" – the so called "new" information will significantly affect the analysis; and the IRA team has made significant changes to the analysis.

Material error in draft IRA report

Background

In September 2007, the Council advised Biosecurity Australia of a straightforward but material mathematical error in the most recent draft IRA.

The error is straightforward in the sense that it only relates to one incorrect input value in the mathematical risk assessment model used by Biosecurity Australia to calculate the restricted risk for black Sigatoka. The error is material because, as a consequence of the error, the restricted risk for black Sigatoka was incorrectly calculated as achieving Australia's ALOP when it does not.

On 24 September 2007, Biosecurity Australia advised the Council that the Council's correspondence in relation to the error would be referred to the IRA team and would be treated as a supplementary submission, to be considered by the IRA team in preparing the final IRA report for bananas (due to be released in mid-2008).

In October 2007, Biosecurity Australia referred the Council's correspondence in relation to the error to the IRA team for its consideration.

By letter dated 19 March 2008 (more than six months after the Council first notified Biosecurity Australia of the error), Biosecurity Australia notified the Council that the IRA team considered that the relevant input value used in the draft IRA report should be the value asserted by the Council (effectively accepting the Council's position but without expressly saying so).

Despite the clear and unambiguous nature of the error, Biosecurity Australia has repeatedly sought to characterise it as a difference of expert opinion (including, most recently, in its letter dated 19 March 2008).

Despite the Council's repeated requests for its correspondence in relation to the error to be placed on the public file, and Biosecurity Australia's repeated assurances that it would be (including from as early as 24 September 2007), it has yet to do so.

Biosecurity Australia's approach

The Council welcomes the statement at the meeting by Rob Cannon (Biosecurity Australia's statistical consultant from the Bureau of Rural Sciences) that the relevant input value used in the draft IRA report was "not the correct value". Notwithstanding that admission, the Biosecurity Australia officers present at that meeting (none of whom assert expertise in statistics) continued to engage in an exercise in semantics in refusing to countenance the use of the word 'error' when referring to the issue of the incorrect input value.

Despite the IRA team and Biosecurity Australia's own statistical consultant agreeing with the Council that an incorrect input value was used in the draft IRA report, you reiterated that Biosecurity Australia would not depart from its approach for dealing with the error (that is, that the Council's correspondence in relation to the error would simply be treated as a supplementary submission in relation to the draft IRA report, to be considered by the IRA team in preparing the final report).

Given that the error is not trivial and that it does have a material impact on the outcome of the restricted risk assessment for black Sigatoka, that approach is not only inadequate but is also completely unacceptable because:

- the error has caused the outcome of the restricted risk assessment for black Sigatoka to be fundamentally flawed (with the result that the IRA team's recommended risk management measures for black Sigatoka are inadequate and need to be reconsidered);
- the next step in the IRA process is the production of a final IRA report (due to be released in mid-2008); and
- there are no more stakeholder consultation steps in the IRA process which means that stakeholders are denied an opportunity to comment on the revised risk management measures and any other consequential changes to the risk assessment for black Sigatoka.

Biosecurity Australia's approach for addressing the error is to be contrasted with the approach which it adopted for dealing with a material error that the Council identified in an earlier draft IRA report (released in February 2004). In that case, as in this case, the error was straightforward. In that case, as in this, the error had a material impact on the outcome of the risk assessment. In that case, in contrast to this, Biosecurity Australia accepted the error and released an addendum correcting it (including the consequential effects of the correction on risk management measures) for stakeholder consultation.

It is hardly surprising that in large and complex scientific exercises (such as the bananas IRA) mistakes can occur. Good public administration and proper scientific method require the acknowledgement of mistakes when they are detected, and their correction.

Biosecurity Australia's efforts to publicly conceal the error by not placing the Council's correspondence in relation to it on the public file and by attempting to characterise the error as a difference of expert opinion demonstrate a failure to meet those most basic standards of public administration and scientific method.

Council's request

For the reasons discussed above, the Council requests that Biosecurity Australia release a further revised draft IRA report addressing the error for stakeholder consultation.

Composition of the IRA team

The draft IRA report states that the members of the IRA team were:

- Dr Brian Stynes – Chair, Senior Plant Scientist – Plant Biosecurity, Biosecurity Australia;
- Dr Sharan Singh – Manger – Plant Biosecurity, Biosecurity Australia;
- Dr Rob Allen – Consultant (Plant Pathologist);
- Mr Bob Paton – Consultant (Entomologist);
- Mr David Peasley – Consultant (Horticulture);
- Mr Mike Robbins – Manager – Plant Quarantine, Australian Quarantine and Inspection Service.

The summary of IRA team meeting 37 (held on 25 October 2007) states that Dr Sharan Singh had moved from Biosecurity Australia and had ceased to be a member of the IRA team by the time of that meeting. The Council was never formally notified about Dr Singh ceasing to be a member of the IRA team and only became aware of it after reviewing the summary of IRA team meeting 37 (which was not made public until March 2008).

The summary of IRA team meeting 52 (held on 6 March 2008) states “[t]he IRA team was informed of Dr Rob Allen’s resignation from the IRA team due to health concerns.....”. At the meeting on 24 April 2008, Biosecurity Australia advised the Council that Mr Bob Paton had also recently resigned from the IRA team because he had moved overseas. The summaries of the IRA team meetings do not record Bob Paton’s resignation.

When questioned by representatives of the Council, senior Biosecurity Australia officers (yourself, Bill Roberts and Brian Stynes) provided what I regard to be very vague and inconsistent responses concerning Rob Allen and Bob Paton’s membership of, and continued participation in, the IRA team. The Council was initially advised that both had resigned as members of the IRA team but was subsequently advised that only Rob Allen had resigned and that Bob Paton was still a member of the IRA team and would participate in IRA

team meetings by telephone (but that due to international time differences, had not participated in any since his departure).

The Council was also advised that both Rob Allen and Bob Paton had “effectively signed-off on parts [of the final IRA report] relevant to them” and that both Rob Allen and Bob Paton would still be involved in the IRA via email but “would not formally sign-off [on the final IRA report]”.

Given that the Handbook provides that it is the IRA team (not Biosecurity Australia) which conducts IRAs, the Council is concerned there should be such uncertainty and confusion within the most senior levels of Biosecurity Australia about the membership of the IRA team and Rob Allen and Bob Paton’s continued participation in the bananas IRA.

This raises significant concerns about Biosecurity Australia’s administration of the IRA process and the governance of the IRA team.

The Council requires Biosecurity Australia to urgently advise it of the current membership of the IRA team and of the nature of Rob Allen and Bob Paton’s continued participation (if any) in the bananas IRA.

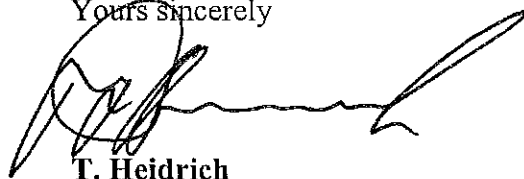
I would like to request once again that all of the Council’s correspondence in relation to the error be made immediately available on the public file.

I would also request that this letter be placed on the public file.

Finally, I advise that because of the gravity of the issues raised in this letter, I have been instructed by the Board of the Council to send a copy of it to the Federal Minister for Agriculture, Fisheries and Forestry.

I look forward to your response to the issues raised in this letter.

Yours sincerely

A handwritten signature in black ink, appearing to be 'T. Heidrich', written over a horizontal line.

T. Heidrich

Chief Executive Officer

Copy: The Hon Tony Burke MP - Minister for Agriculture, Fisheries and Forestry.