10 INTERNATIONAL BENCHMARKING

10.1 Introduction

As part of its consultation program, the Panel met with a number of trading partners to seek their views on Australia's biosecurity system. The Panel also sought information from trading partners on the systems they use to manage risks across the biosecurity continuum. Discussions were held with government officials and business representatives in New Zealand, North America and Europe. The Panel also met with senior World Trade Organization staff and representatives from the World Trade Organization Member countries in Geneva. Additional meetings were held with overseas embassy officials based in Australia and a number of submissions were received from foreign governments (see Appendix D for a complete list of submissions received and Appendix E for a complete list of consultations with international stakeholders).

The terms of reference state that 'In undertaking this review, the Panel should consult with relevant domestic and international stakeholders and, where appropriate, benchmark Australia's arrangements in an international quarantine context.'

The Panel sought to obtain comparable information on elements where trading partners were particularly critical of Australia's system, for example, the length of time taken to complete an Import Risk Analysis and the perception that Australia is more conservative than its Appropriate Level of Protection would imply.

Some of the variations which exist in the biosecurity systems and pest and disease status of each country make it difficult to conduct benchmark analysis in the normal sense of the word. None of the countries consulted were able or willing to provide statistical data on, for example, the length of time taken to respond to market access requests or conduct import risk assessments. Quantitative evaluation of performance is impractical. Nevertheless the Panel was impressed by the genuinely helpful approach taken by international authorities during its consultations. The Panel used the information it gathered to carry out a qualitative comparison of particular elements of Australia's

system with a number of trading partners. Some differences have already been alluded to earlier in the report.

Differences in the biosecurity arrangements of Australia's trading partners typically reflect their different endemic pest and disease status, the extent of land borders with neighbouring countries and capability levels. Australia and New Zealand are similar in that they do not share land borders with other countries, are geographically isolated and, largely as a consequence, have a favourable pest and disease status. Other developed island nations, such as the United Kingdom, have histories of large trading volumes and the regular movement of people that pre-date the development of even the most rudimentary biosecurity protocols. Continental nations have land borders that are inevitably open to the movement of some pests and diseases. Developing countries often have not had the biosecurity capability necessary to analyse and manage risks. These factors have variously influenced the pest and disease status of our neighbours and trading partners and the relative emphasis they place on border controls or the capacity to identify and respond to pest and disease outbreaks quickly.

The following sections examine the approach adopted by other countries in:

- articulating the Appropriate Level of Protection;
- developing and implementing biosecurity measures; and
- structuring agencies responsible for biosecurity.

10.2 Appropriate Level of Protection

A nation's Appropriate Level of Protection is fundamental to the World Trade Organization's SPS Agreement, as described in Chapter 5. It is therefore surprising that few countries attempt to articulate their Appropriate Level of Protection with any precision, including those that criticise Australia for ambiguity or lack of clarity in this respect.

Some countries are currently examining the definition but others view the Appropriate Level of Protection as being circularly defined by what they do to manage risk. As discussed in Chapter 5, Australia has used the term 'very low but not zero'. Other countries refer to 'negligible level' or 'reasonable certainty of no harm'.

The European Commission described its Appropriate Level of Protection in a recent publication as follows:

> 'For serious threats to human health and the rural economy, we must strive to reduce the risk to a negligible level.' (European Commission 2007, p. 12)

During the World Trade Organization challenge brought against Japan by the United States on measures affecting the importation of apples, Japan expressed its Appropriate Level of Protection as:

> 'the level of protection that is achieved by the import prohibition.' (World Trade Organization Dispute Settlement Body 1998, p. 95)

In 2003, despite a comprehensive review leading to the adoption of a 'Biosecurity Strategy for New Zealand', New Zealand did not take the opportunity to articulate its Appropriate Level of Protection. More recently, in the context of a review of the BSE policy for New Zealand the following comment was made:

> 'No country has expressed an explicit appropriate level of protection (ALOP) for the prevention of disease in humans, including vCJD. The levels of control taken by various countries suggest implicit ALOPs.' (Hellstrom 2005, p. 22)

The Panel discussed the subject with Ms Gretchen Stanton, Secretary of the SPS Committee at the World Trade Organization. She confirmed that few countries attempt to define their Appropriate Level of Protection, noting that a proxy is the measures actually applied to manage risk.

10.3 Developing and implementing biosecurity measures

Although countries operate different biosecurity systems, there are two distinct processes used for assessing market access requests. The first, often referred to as the negative list approach, permits the importation of commodities unless they are listed as prohibited. This approach tends to be adopted by countries with a long history of endemic or recurrent animal and plant pests and diseases. Such countries have less need to be concerned about exotic pest and disease threats and are confident in their ability to identify threats when they occur.

For example, the European Union's regulatory system for the importation of plants and plant products is based upon the European Commission's *Plant Health Directive*. The Directive sets out measures to prevent the introduction into, and spread within the European Union of serious pests and diseases of plants and plant products. Except where otherwise identified in the Directive, all plant commodities are permitted entry. This aligns with the European Union's generic approach to import risk assessments as a number of significant pests and diseases are endemic in parts of the European Union such as bovine tuberculosis, BSE and bluetongue virus in relation to animals, and Mediterranean fruit fly, fire blight and Dutch elm disease in relation to plants. The European Union initiates assessments using the basic standards and guidelines set out by international

standard setting bodies, the OIE and International Plant Protection Convention for notifiable pests and diseases. Assessments of market access requests are then based on the ability of the product (or exporting country) to meet the existing policy directive.

Government representatives in the United Kingdom told the Panel that Australia's relatively heavy emphasis on the border contrasts with that in the United Kingdom where the focus is on being able to respond quickly to contain pest and disease outbreaks. This reflects the fact that the United Kingdom has no trade border with its European Union neighbours. Representatives from the European Commission informed the Panel that they mitigated risks by shifting responsibility to the country of origin, with border controls being a secondary safeguard.

The second approach, often referred to as the positive list approach, lists commodities for which importation is permissible—all other commodities are barred. This approach is typically used by countries which have a relatively short history of exposure to exotic pests and diseases, and/or a history of successful eradication of incursions. These countries, being relatively free from a broad range of pests and diseases, face a greater number of biosecurity risks from imports. The positive list approach allows these countries to assess risks and control importation in a structured way, particularly in response to market access requests.

Australia implemented a positive list approach in the 1930s following increased volumes of trade in commodities which could provide pathways for the introduction of pests and diseases. Other countries using the positive list approach include the United States, New Zealand, and Japan. These countries conduct Import Risk Analyses at an individual commodity level to ensure there are sufficient measures to mitigate the risks posed.

The United States Codes of Federal Regulations 7CFR319.56 (fruits and vegetables) and 9CFR93.101 (animals, birds, and poultry, and related products) prohibit or restrict importation of commodities into the United States from certain parts of the world to prevent the introduction of pests and diseases that are new to, or not widely distributed within, the United States. The regulations list those commodities that are permitted entry and the specific sanitary and phytosanitary measures that must be applied to them.

Similarly, New Zealand's *Biosecurity Act 1993* allows for 'import health standards' which specify risk management requirements for 'risk goods'. There is no requirement to issue an import health standard in cases where risks from importation cannot be effectively managed. The importation of risk goods without an import health standard is prohibited.

Although the Panel heard complaints from trading partners regarding the timeliness of Australia's Import Risk Analysis process, no other country provided information which demonstrated it operated a more timely process. The Panel noted that there are numerous cases where market access requests for Australian agricultural exports have taken well over a decade to finalise, for example, Australia's request for access for bees to the United States and the request to the European Commission for recognition that many Australian regions are free of bluetongue disease and therefore should be allowed to export ruminant animals to the European Union. Maintaining access to some markets has also been problematic for some Australian agricultural products. For example, after 15 years of export of stone fruit and cherries to Taiwan without any detection of pests within exports, access was removed in January 2006 when Queensland fruit fly was moved from a precautionary pest to a prohibited pest. Trade has still not been re-established.

The Panel noted that a significant number of specific trade concerns have been made against Australia in the World Trade Organization's SPS Committee meetings (see Table 7). It is not uncommon for biosecurity measures that are adopted to become a source of disagreement between countries. It could be observed that most of the complaints by World Trade Organization members at the SPS Committee are against the major importing countries with higher valued markets such as the European Union and the United States. Due to their value, access to these markets has become the goal for many exporting countries and consequently their import standards become, by default, international benchmarks. However, complaints within the World Trade Organization may not be an accurate reflection of the validity of a country's measures as, in many cases, including those involving Australia, such disagreements may also be discussed and resolved bilaterally outside the World Trade Organization. The Panel also heard positive acknowledgement of the transparent nature of Australia's biosecurity arrangements.

Australia's trading partners acknowledge the recent changes Australia has made to the Import Risk Analysis process, including capping the timeframes for an Import Risk Analysis within legislation. They note that Australia is the only World Trade Organization Member to make such a commitment. This desirable measure should go a long way to responding to the claims of excessive time taken to undertake an Import Risk Analysis. Unless there is a significant increase in resources, however, many import access requests will continue to spend a long time waiting for an Import Risk Analysis to be commenced, a scepticism noted by several overseas representatives to the Panel.

Table 7	Number of specific trade concerns raised against each WTO member

WTO member country	No.[a]
European Union[b]	46
United States	22
Japan	20
Australia	16
China	12
Korea	11
Brazil	10
India	9
Argentina, Canada, Indonesia, Panama	7
Chile, Czech Republic, Mexico, Venezuela	5
Chinese Taipei, El Salvador, Israel, Poland, Slovak Republic, Spain	4
Bolivia, Honduras, New Zealand, Romania, Turkey	3
Belgium, Croatia, Cuba, France, Germany, Guatemala, Hungary, the Philippines, South Africa, Switzerland, Thailand	2
Austria, Bahrain, Barbados, Colombia, Costa Rica, Dominican Republic, Egypt, Greece, Iceland, Italy, Kuwait, Malaysia, Netherlands, Norway, Oman, Qatar, Singapore, Slovenia, Trinidad and Tobago, United Arab Emirates, United Kingdom, Uruguay	1

[a] As of December 2007, some concerns identify measures maintained by various members, so the total of this Table exceeds the total number of concerns raised.
[b] Where the concern relates to a measure maintained by an individual EU member State and not the EU as a whole, these are included elsewhere in Table 7.
Source: Stanton 2008

10.4 Structure of agencies

Countries have used a range of structural approaches to manage biosecurity risks across the continuum.

The United Kingdom, United States and Canada have adopted a multiple agency approach to managing risks across the biosecurity continuum, including devolving the management of border activities to a single, multi-functional border agency, albeit for different reasons. In the United Kingdom, a government-wide directive in 2003 to separate policy development from

service delivery saw Her Majesty's Revenue and Customs take on responsibility for protecting the border from all threats, including biosecurity risks, while the Animal Health Agency is responsible for biosecurity behind the border. The Health and Safety Executive provides regulatory oversight of the major biosecurity research laboratories. Policy development and direction is provided by the Department of Environment, Food and Regional Affairs. Her Majesty's Revenue and Customs performs interventions at the border based on risk profiling information for various countries supplied by the Department of Environment, Food and Rural Affairs. Pre-border assessments and audits for products entering the United Kingdom are conducted by the European Commission's Food and Veterinary Office.

The United States integrated border security functions into the Department of Homeland Security following 11 September 2001 when a high emphasis was placed on border integrity for counter-terrorism purposes. The United States Department of Agriculture and the United Kingdom's Department of Environment, Food and Rural Affairs maintain responsibility for certification, risk assessments and intelligence. They are also the lead agencies for emergency preparedness, national responses to post-border incursions, and the monitoring and surveillance of endemic pests and diseases. The Panel found that many of these structural changes were adopted as a result of a shift in policy focus from environmental and economic concerns to human health and/or food safety concerns.

Few people involved in biosecurity operations in the United Kingdom or the United States were convincingly positive about these structural changes. Most regard the single border agency approach as losing a valuable link between risk management strategies, priorities and measures across the biosecurity continuum to mitigate risk. In the Panel's view, this disjunct between the pre-border and post-border elements of the biosecurity continuum is at odds with the integrated **One Biosecurity: a working partnership** approach it believes is essential for Australia.

In addition the Panel was told that, even with the best of intentions, it is difficult to maintain a timely flow of information between border agencies whose principal focus is not biosecurity, and the agencies responsible for developing and implementing risk management measures. It is clear to the Panel that the single border agency in the United States (the Department of Homeland Security) placed its primary focus on security, narcotics and illegal immigrants rather than biosecurity. This was encapsulated by a line the Panel heard during its consultations describing relative risk priorities 'guns, drugs and thugs - not bugs'.

Canada has also adopted a similar structural approach to managing biosecurity risks to the systems used by the United States and the United Kingdom.

Three agencies within Canada maintain responsibility for managing various elements of the biosecurity continuum. These agencies are the Canadian Food Inspection Agency, the Canada Border Services Agency and the Public Health Agency of Canada. In December 2003, the Canada Border Services Agency took responsibility for the initial import inspection of food, agricultural inputs and agricultural products. The Canadian Food Inspection Authority sets the policies and regulations for these importations and they are enforced by the Canada Border Services Agency at Canadian entry points. As required, shipments are referred to the Canadian Food Inspection Agency for follow-up action. The Panel was told during consultations that this structural approach was implemented to reflect the Canadian Food Inspection Agency's priority of food safety and the migration from management of risks at the border to a more social and environmental approach with less emphasis on economic factors. The Canadian Food Inspection Agency is also the lead agency for the national management of post-border incursions affecting the food chain. However, the Public Health Agency of Canada takes responsibility for managing the response to outbreaks of zoonotic diseases.

In contrast to the approaches taken by the United States, United Kingdom and Canada, New Zealand has adopted the approach of a single agency managing the biosecurity system for animal and plant health. In July 2007, New Zealand integrated two former business groups within the Ministry of Agriculture and Fisheries—Biosecurity New Zealand and the Ministry of Agriculture and Fisheries Quarantine Services—to establish Biosecurity New Zealand. Biosecurity New Zealand manages all elements of the continuum from the setting of policy, to intervening to prevent harmful organisms crossing and establishing within New Zealand's borders, and on to post-border monitoring and surveillance to reduce the effects of pests and diseases already established.

The Panel considered the single agency management of the whole continuum approach taken by New Zealand to be the most analogous to the structural direction Australia should take to achieve the Panel's vision of **One Biosecurity: a working partnership**.