

Chapter 5

Sanitary and Phytosanitary Measures

Introduction

5.1 This chapter gives an overview of Australia's quarantine processes; it summarises the WTO SPS Agreement and explores the arguments raised in submissions and given as evidence on the SPS provisions under Chapter 7 of the AUSFTA. The arguments relate to Australia's scientifically-based quarantine processes, the two proposed bilateral committees and the possible impacts on our international reputation, the environment and agriculture.

5.2 The issues have been canvassed in the Senate Select Committee's Interim Report and also emerged during the Joint Standing Committee on Treaties' inquiry on the AUSFTA.

The Agreement

5.3 Under Chapter 7 of the AUSFTA, Australia and the United States recognise that, as major agricultural producers, they must work together in the context of facilitating trade that is underpinned by scientifically robust SPS measures. In the AUSFTA, both countries have reaffirmed their commitment to the WTO and the WTO SPS Agreement.

5.4 In trying to foster a better informed and more cooperative relationship, two new bilateral SPS committees will be established. One committee will focus on general information exchange of SPS matters, while the other will be more technically focused. Neither committee is a decision-making body. There are not any legislative changes required on SPS matters as a consequence of the AUSFTA.

5.5 Intertwined with reaffirming the rules and obligations of the WTO SPS Agreement and establishing two bilateral SPS committees under the AUSFTA are the concerns over the possible impacts of the activities of these committees on Australia's quarantine regimes. It is important to have a basic understanding of Australia's quarantine and the WTO SPS Agreement (outlined below), to understand the complexity of the arguments.

Quarantine in Australia

5.6 The Australian government's quarantine policies are administered through Biosecurity Australia. It is responsible for developing new policies or reviewing existing quarantine policies on imports of animals and plants and their products. The development and review of quarantine policy is generally undertaken as an import risk analysis (IRA). It is the results of the IRA that help inform Biosecurity Australia as to whether a commodity may enter Australia.

5.7 Biosecurity Australia operates under the follow legislative framework: the *Quarantine Act 1908* and subordinate legislation; the requirements of the WTO SPS Agreement and with the standards for import risk analysis developed by the Office International des Epizooties (OIE) and the International Plant Protection Convention (IPPC).

5.8 Australia's quarantine processes are critical from an economic and environmental perspective. The task of controlling or eradicating exotic pests or diseases within this large and varying landscape is extremely difficult and costly. Australia's quarantine arrangements are designed to minimise pest and disease incursions and, as such, avoid the need to attempt difficult and costly control and eradication campaigns. It has been estimated that an outbreak of Foot and Mouth Disease could potentially cost Australia over \$2billion in the first year¹. Early in 1990's, Papaya fruit fly, an exotic species of fruit fly, was introduced and cost the Australian governments \$35m to eradicate. The total cost to Australian growers was estimated at \$100million.²

5.9 Import risk analysis is considered within Australia to be the foundation stone on which all quarantine policies and actions are be built. Biosecurity Australia undertakes import risk analysis as a process to identify, assess and manage the risks associated with the importation of animals and animal-derived products, and plants and plant-derived products.

5.10 The process is set out in the Import Risk Analysis Handbook 2003. The handbook builds on the AQIS³ Import Risk Analysis Process Handbook 1998 that was part of the Government response to recommendations of the Australian Quarantine Review Committee. The revisions to the process are based on Biosecurity Australia's experience with IRAs, the results of relevant parliamentary reviews, advice from the Quarantine and Exports Advisory Council (QEAC) and comments from stakeholders.⁴

5.11 Key to Biosecurity's risk analysis is that it is:

- conducted in a consultative framework;
- a scientific process and therefore politically independent;
- a transparent and open process;
- consistent with government policy and Australia's international obligations (under the WTO Sanitary and Phytosanitary Measures);

1 www.affa.gov.au >Market Access and Biosecurity - accessed 6 July 2004

2 www.affa.gov.au > Market Access and Biosecurity - accessed 6 July 2004

3 AQIS's quarantine operations at airports and seaports include the use of Quarantine Officers, specially trained sniffer dogs, and sophisticated imaging machines, all of which are designed to detect unauthorised importations of quarantineable material. This quarantine service has approximately 700 officers and a range of officers in state government departments. The Australian governments and the industries that benefit from international trade contribute to the cost of maintaining an effective quarantine service in Australia.

4 www.affa.gov.au > content > publications - accessed 6 July 2004

- harmonised, through taking account of international standards, guidelines and recommendations; and
- subject to appeal on process.

5.12 Decisions to permit or reject an import application should be made on sound scientific grounds. It is the Director of Plant and Animal Quarantine who actually makes the quarantine decisions usually on the basis of the outcomes of the import risk assessment. It is Australia's sovereign right to make the quarantine decision as to whether a commodity is traded into Australia.

5.13 Under the proposed bilateral arrangements of the AUSFTA. The relevant agencies for SPS matters within the United States and Australia will work even more closely. The United States Animal and Plant Health Inspection Service (APHIS) is one of the main agencies responsible for protecting and promoting United States agricultural health; administering the Animal Welfare Act; and carrying out wildlife damage management activities.⁵ Like Australia, the United States operates in a manner consistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement).

The WTO Agreement on the Application of Sanitary and Phytosanitary Measures

5.14 As a member country, Australia is obliged to uphold WTO rules and obligations including the Agreement on the Application of Sanitary (animal) and Phytosanitary (plant) Measures. Most of the WTO Agreements are the result of the 1986–94 Uruguay Round negotiations, signed at the Marrakesh ministerial meeting in April 1994. There are about 60 agreements and decisions⁶.

5.15 Australia, under its commitments to the WTO SPS Agreement, must consider all import requests from other countries concerning agricultural products, just as other member countries are obliged to consider our requests. This does not mean that all requests are granted. Since the WTO SPS Agreement came into force in 1995, Australian has gained access to more than 240 new markets for animal and plant products and foods.⁷ Australia works within the parameters of the SPS international criteria and standards. The three main international agencies that set standards for animal and plant health, and food include:

- The Codex Alimentarius Commission⁸, which sets international standards relating to food additives, veterinary drugs, and pesticide residues;
- The Office International des Epizooties⁹ (OIE), which informs member countries of animal disease outbreaks throughout the world, and studies new ways of controlling animal diseases and sets international standards; and

⁵ www.aphis.usda.gov/ipa/about/welcome.html -accessed 25 May 2004

⁶ www.wto.org accessed 7 July 2004

⁷ www.affa.gov.au >documents > market access > biosecurity - accessed 26 May 2004

⁸ for more information see www.codexalimentarius

- The International Plant Protection Convention¹⁰ (IPPC) which provides a framework for international cooperation sets international standards and exchanges information on plant health.

5.16 To fully understand the rights and obligations of the WTO *SPS Agreement* it is important to read it in its entirety as articles do not stand alone. They must be interpreted in relation to each other.

5.17 The key WTO SPS measures are defined as any measure applied¹¹:

- to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms.
- to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs.
- to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests.
- to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

5.18 The key provisions of the WTO *SPS Agreement* are as follows¹²:

- An importing country has the **sovereign right** to adopt measures to achieve the level of protection it deems appropriate (its appropriate level of protection (ALOP)) to protect human or animal life or health within its territory, but such a level of protection must be consistently applied in different situations.
- An SPS measure must be based on **scientific principles** and not be maintained without sufficient evidence.
- In applying SPS measures, an importing country must avoid arbitrary or unjustifiable distinctions in levels of protection, if such distinctions result in discrimination or a disguised **restriction on international trade**.
- An SPS measure must not be **more trade restrictive** than necessary to achieve an importing country's ALOP, taking into account technical and economic feasibility.

9 for more information see www.oie.int

10 for more information see www.ippc.int

11 www.affa.gov.au - "Guidelines for Import Risk Analysis - Draft September 2001" p.3

12 www.affa.gov.au > Market Access and Biosecurity – accessed 7 July 2004

- An SPS measure should be based on an international standard, guideline or recommendation, where these exist, except to the extent that there is **scientific justification** for a more stringent measure which is necessary to achieve an importing country's ALOP.
- An SPS **measure conforming** to an international standard, guideline or recommendation is presumed to be necessary protect human, animal or plant life or health, and to be consistent with the WTO SPS Agreement.
- Where an **international standard, guideline or recommendation** does not exist or where, in order to meet an importing country's ALOP, a measure needs to provide a higher level of protection than accorded by the relevant international standard, such a measure must be based on a **risk assessment**; the risk assessment must take into account available scientific evidence and relevant economic factors.
- When there is insufficient scientific evidence to complete a risk assessment, an importing country may **adopt a provisional measure(s)** by taking into account available pertinent information; additional information must be sought to allow a more objective assessment and the measure(s) reviewed within a reasonable period.
- An importing country must recognise the measures of other countries as **equivalent**, if it is objectively demonstrated that the measures meet the importing country's ALOP.

5.19 In summary, the WTO SPS Agreement covers food safety and animal and plant health regulations. It provides a right for governments to take SPS measures but only to the extent necessary to protect human, animal or plant life or health. It encourages members to accept SPS measures even if they differ from those used by other member nations as long as they are not used as a trade barrier. SPS measures must be based on international standards and import risk assessments must be scientifically justifiable. There are detailed criteria and procedures for assessing risks and for determining the appropriate levels of protections.

AUSFTA dispute settlement, the WTO Agreement and the Bilateral Committees

5.20 An important aspect of the AUSFTA, is that, the WTO SPS Agreement Article 11, which covers consultation and dispute settlement, will be applied should a dispute arise between Australia and the United States on SPS matters. The dispute mechanisms under chapter 21 of the AUSFTA *do not* apply to Chapter 7 - SPS provisions. As there are not any new obligations or rights established under the AUSFTA for SPS matters, the WTO SPS Agreement was deemed appropriate to address dispute matters between Australia and the United States. The proposed bilateral committee will provide a forum to communicate a better understanding of the basis of Australia's SPS decisions.

5.21 However, as discussed in more detail further in this chapter, there appears to be a contrasting discourse 'coming out' of the United States and Australia regarding the expected outcomes of proposed bilateral committees.

5.22 It is well recognised that the United States is a frequent user of the WTO dispute settlement processes on SPS matters. An Australian agricultural official appearing before the Committee stated that challenges to the decision-making process are allowable but only on the basis of science.¹³ In further evidence she stated that:

We know that our measures are based on science. We are not at all afraid of having a technical or scientific consultation with our opposite number in the United States. In fact, we see it as an opportunity for them to understand how science based, transparent and robust our system is, with the hope that they will stop criticising it to quite the same extent as they do now. I think that is part of the reason why there has been some publicity in the United States suggesting that this will mean that our system will change.

5.23 The Australian Government believes that quarantine decisions in Australia are capable of passing the scrutiny of the WTO processes and that the United States will not influence our quarantine regime that would reduce our standards. However, there has been some comment that the bilateral committees may have the potential to be de facto dispute settlement regimes thus circumventing the WTO dispute settlement mechanisms¹⁴. Given the number of these bilateral committees being established under free trade agreements that the United States enters, it is not difficult to understand why there is concern. Until otherwise proven it must be considered that the United States intention through these committees is benign, and aimed at fostering better communication of SPS matters with its trading partners.

The AUSFTA and SPS measures

5.24 The rules and obligations of the WTO SPS Agreement which have been reaffirmed in the AUSFTA have been generally supported in submissions or by witnesses during the Senate inquiry¹⁵¹⁶¹⁷. Australian government officials have also given evidence reemphasising the WTO SPS commitments.

....In the context of this particular negotiation on the FTA agreement, the most important thing to say, of course, is that all the rights and obligations and disciplines provided by the SPS agreement under the WTO are confirmed by both sides. Both sides confirmed that this is the framework in which we each make our quarantine decisions.....¹⁸

13 *Transcript of Evidence*, 18 May 2004, p.4, (Greville, DAFF)

14 *Submission 291*, p.19, (Australian Pork Limited)

15 *Submission 153*, p.3, (NFF)

16 *Transcript of Evidence*, 15 June 2004, (Webster - Horticulture)

17 *Submission 291*, p.19, (Australian Pork Industry)

18 *Transcript of Evidence*, 18 May 2004, p.7, (Gosper, DFAT)

....There is nothing at all in this chapter on the sanitary and phytosanitary aspects of the FTA that will in any way add to or subtract from Australia's rights under the SPS agreement of the WTO.....¹⁹

5.25 For those who are concerned about alleged threats to Australia's quarantine regime, it is not enough merely for the Government to keep espousing that it works within the framework of the WTO SPS Agreement protection measures, that is 'decisions are based on scientific principle and maintained through scientific evidence / justification'. That there are international SPS guidelines and criteria and that it is up to the WTO member country to adopt and enforce SPS protection measures is undisputed.

5.26 However, the concern is what transpires between the members of the bilateral SPS committees in relation to interpretations of scientific assessment. Interpretation of scientific evidence can be subjective. It relies on available information. Theories can be supported or not supported by scientists. Even whether a provision meets WTO requirements may also be subjective in this context. It is the level of degree of the interpretation and justification that leaves many stakeholders uneasy about the influence of the proposed bilateral SPS committees.

5.27 It appears that stakeholder participation in these two bilateral committees is limited, if at all. All the evidence given to the Select Committee to-date suggests that the main participants of these bilateral committees will be relevant government officials and technical and / or scientific experts. In a response to Senator Conroy's question regarding consultation with industry on the establishment and design of the bilateral committees, Ms Greville gave evidence that:

We have certainly talked to anybody who has asked us about them but, given that they are essentially a formalisation of bilateral government-to-government negotiations, we have not sought industry's input into how they should be constituted. We have told industry exactly the same as what we are telling you, and to a large extent industry knows this already—we have talked regularly competent authority to competent authority in this precursor to the FTA arrangements, in the margins of the SPS committee and in the plant and animal quadrilaterals, which are meetings of the four SPS good guys. They know that and they understand that that process is ongoing.

Industry have not expressed any particular interest or concern to us about how these bodies will be constituted other than the concern that has been expressed by some perhaps less well-informed commentators about the import of these arrangements and how they gel with the import risk analysis process. We have had the same sorts of conversations with them as we are having with you to assure them that there is no suggestion or possibility that the import risk analysis process will be compromised or undermined in any way.²⁰

19 *Transcript of Evidence*, 6 July 2004, p.25, (Deady, DFAT)

20 *Transcript of Evidence*, 6 July 2004, p.5, (Greville, DAFF)

5.28 In the context of stakeholder involvement in quarantine process conducted through Biosecurity Australia, Ms Greville also stated that:

..... When these arrangements are in place, and in fact while the current interim arrangements are in place, any import risk analysis that is being conducted by Biosecurity Australia, we will—as we do—consult with the trading partner through the various forums. We also have a consultative, inclusive and transparent process with stakeholders domestically....²¹

5.29 Providing a forum for robust discussion and information exchange is an admirable endeavour but government is not the only entities that have a stake in achieving better communication on SPS process with the United States. Limiting the membership of these two committees is inhibiting the very aim of the forum. These bilateral committees which will consist and be driven by only government officials and experts may not give the appearance of a transparent, consultative or inclusive process.

5.30 The Federation of Australian Scientific and Technological Societies was particularly concerned that:

There are no provisions requiring independent scientific expertise on the membership of either committee.²²

5.31 Biosecurity Australia has recently conducted import risk assessments that have been contentious in the industries affected. Several industries²³ conveyed concerns to the Select Committee about what they perceived to be the 'watering down' of risk assessment to facilitate more trading of commodities. It is argued that there is little point having a strong commitment to the WTO SPS Agreement, particularly if there is any truth in the allegation that trade is becoming inappropriately prioritised over scientific risk assessment.

5.32 The Government gave evidence before JSCOT that:

... a disconnect between trade officials and scientist can sometimes result in quarantine issues escalating unnecessarily into trade disputes. The inclusion into both consultative bodies can help to understand better the rules by which the other operates....²⁴

The SPS committees and quarantine standards

5.33 Much of the debate over quarantine and the SPS committees is based on the fear of the unknown and future consequences of the influence of these committees. The provisions for these committees fall under Article 7.4 - the SPS Committee and Article 7.4.9 and annex 7-A – the Standing Technical Working Group.

21 *Transcript of Evidence*, 6 July 2004, p.6, (Greville, DAFF)

22 *Submission 528*, p.9, (FASTS)

23 see *Submissions* - Chicken (108); Pork (291), FASTS (534)

24 Joint Standing Committee on Treaties, *Transcript of Evidence*, 14 May 2004, p.66, (Greville, DAFF)

5.34 Evidence given to the Senate inquiry is that the guidelines under which Biosecurity Australia operates will not be changed as a consequence of the AUSFTA²⁵. Chief Negotiator Stephen Deady was at pains to confirm to the Select Committee that there was not any threat to Australia's science-based quarantine regime:

I would just say, if I can, again, as we explained this morning, there is nothing in the establishment of these committees which will impact on the integrity of the IRA processes in Australia. The science based nature of the import risk assessments will not be affected by the establishment of these two committees under the FTA. There is nothing at all in this chapter on the sanitary and phytosanitary aspects of the FTA that will in any way add to or subtract from Australia's rights under the SPS agreement of the WTO. There is nothing here that now gives the Americans any additional rights over Australia beyond what is already agreed to by both countries in the SPS agreement of the WTO.²⁶

5.35 Mr Deady's statement - which had been reiterated on many previous occasions by him and other officials including the Minister for Trade - does not appear to have reassured many stakeholders. The Federation of Australian Scientific and Technological Societies stated that:

We are concerned that both the objectives of the committees and their character as bureaucratic instruments to facilitate trade may undermine the fundamental role that proper scientific analysis must have in a sound quarantine system.²⁷

5.36 The Select Committee notes the evidence from the government to allay those concerns but the concerns of the critics is understandable. Can Australia afford to compromise its scientifically based importation assessment and subsequent decisions for a promise of increased trade and economic gains? Definitely not. The consequences to Australia's environment and its agricultural sector would be much higher than any potential economic gain should Australia down grade its current standards. It is essential this is clearly understood by all concerned.

5.37 It is important to remember that while Australia may be considered by some to be conservative in its approach to quarantine, applying the 'precautionary principle' to SPS matters, the United States also applies strict SPS protection measures.

5.38 Australia being an island nation has an enviable international reputation as a relatively low diseased country. The recent outbreak in Queensland of the so-called 'Citrus canker' is a stark reminder of the importance of remaining vigilant on quarantine standards. This bacterial disease is not endemic in Australia, but is highly contagious and has seriously impacted the citrus industries in other countries around the world including the United States. The economic or social impact of this outbreak is yet to be determined but some believe that our international reputation will be affected by this outbreak.

25 *Transcript of Evidence*, 6 July 2004, p.32, (Greville, DAFF)

26 *Transcript of Evidence*, 6 July 2004, p.25, (Deady, DFAT)

27 *Submission 528*, p.9, (FASTS)

5.39 The sensitivity surrounding the bilateral committee's influence and purpose has been reinforced by statements made by the United States that these AUSFTA SPS committees will help to resolve specific bilateral SPS matters²⁸. The Chicken Meat Industry stated that:

The statements by the United States that Australia will work to resolve our quarantine barriers on poultry (and the fact that this is being counted as a benefit by the United States) is a very serious concern.²⁹

5.40 It is not difficult to reach the conclusion based on comments from the United States agricultural sectors that they believe that these new SPS committees will provide a forum to encourage Australia to reduce quarantine standards. It is this overriding message that is making many Australian stakeholders very nervous, particularly as these bilateral SPS committees, which include trade representatives, are a common theme in the free trade agreements entered into by the United States with, for example, Chile, Morocco, Central America and now Australia.³⁰ Australia has very high standards and is very different from these countries in terms of trade, social and economic policies and yet it appears that the United States wants these SPS committees regardless if they're warranted, as is the case in Australia.

5.41 Professor Weiss and Dr Thurbon highlighted to the Select Committee several statements made by United States agriculture groups, who see these bilateral committees as an advantage to their respective sectors. The following extract is from their submission:

The Californian Farm Bureau Federation states that Australia's burdensome phytosanitary restriction are currently limiting export opportunities [*so in order to increase export volumes*] the California Farm Bureau Federation requests that.... In addition to the standard WTO-based SPS language that is normally included in a free trade agreement...any FTA with Australia establish a standing SPS committee ...While technical regulators and scientists would of course be active participants, a policy level committee would help ensure that the technical and policy priorities are consistent and compatible (emphasis added).³¹

5.42 Comments like this have not engendered confidence within Australia. Some of Australia's agricultural industries such as horticulture, pork and chicken have, in light of these comments from the United States, expressed concern over the potential influence of these committees.³² The Western Australia, Queensland and the New South Wales governments have also expressed concerns about the United States

28 United States International Trade Commission, "US-Australia Free Trade Agreement: Potential Economywide and Selected Sectoral Effects" May 2004, pp.54, 56, 59

29 *Submission 108*, p.7, (Australian Chicken Meat Federation Inc)

30 *Submission 291*, p.19, (Australian Pork Limited)

31 *Submission 307*, pp.3-5, (Professor Weiss & Dr Thurbon)

32 same as above

pressures in light of the comments on the future integrity of Australia quarantine regime.³³

5.43 Others, however, believe that there is no evidence in the AUSFTA to suggest that these bilateral committees will have the power to undermine Australia's scientific-based assessment processes. The National Farmers Federation submission does acknowledge that some agricultural groups have expressed concerns with regard to the formation of two SPS committees but the NFF overall is not concerned about it nor do they believe that the committees will influence our quarantine processes.

NFF understand 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, the 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.³⁴

5.44 The United States Trade Representative for the AUSFTA has also stated that science-based assessment will continue to be the basis for importation of agricultural commodities.

The Office of the United States Trade Representative stated that the U.S. and Australia will work to resolve sanitary and phytosanitary barriers to agricultural trade, in particular, for pork, citrus and apples and stone fruits.

- The agreement establishes a new mechanism for scientific cooperation between U.S. and Australian authorities to resolve specific bilateral animal and plant health matters.
- USDA's Animal and Plant Health Inspection Service and Biosecurity Australia will operate a standing technical working group, including trade agency representation, to engage at the earliest appropriate point in each country's regulatory process to co-operate in the development of science-based measures that affect trade between the two countries.³⁵

5.45 The Senate Select Committee and the Joint Standing Committee on Treaties inquiries, heard evidence from the Australian Government that:

The FTA agreement does not change the rights of obligations or expectations that we each have and, in determining our own appropriate level of protection, will apply in accordance with the rules and obligations of the [WTO] SPS Agreement³⁶

33 *Submission 142*, p.2, (WA) & Joint Standing Committee on Treaties, *Submission 66*, p.5 (NSW) & 206, p.9, (QLD)

34 *Submission 153*, pp.5-6, (NFF)

35 www.ustr.gov > Trade Facts, p.2, 8 February 2004

36 *Transcript of Evidence*, 18 May 2004, p.7, (Gosper, DFAT)

The US has an SPS regime which is not the same as ours but has some similarities, in the sense that they have a science based, transparent decision making process.....³⁷

5.46 At various stages since the announcement of the AUSFTA, members of the Howard's government have indicated that Australia's quarantine standards and processes are not negotiable and were not ever going to be negotiable in the context of the AUSFTA.

5.47 The Chicken Meat Industry, although concerned about the possibility of influence that the bilateral committees may have on quarantine, stated that:

It is perhaps not surprising that commercially aggressive and subsidised exporters of agricultural products, such as the United States, allege that other countries like Australia which they see as an attractive import target misuse bio-security and quarantine measures to protect their markets. The allegations of aggressive and subsidies exporters in this context is familiar "beggar-thy-neighbour" propaganda common in international trade negotiations.

The truth is that all countries who have, or aspire to develop, livestock industries require proper bio-security and quarantine regimes administered by their national governments without which the pre-conditions for orderly investment and large scale agribusiness development in their countries would not occur.³⁸

5.48 In the Select Committee's view it will be the capacity of Biosecurity Australia to maintain its integrity that will be key to maintaining quarantine standards that are in Australia's national interest under the AUSFTA.

The purpose of the SPS committees

5.49 The SPS Committee and a Standing Technical Working Group have been formed with the purpose to continue to improve Australia's and the United States' understanding of the application of their respective SPS measures and associated regulatory frameworks. DFAT's Mr Sparkes gave evidence that the four objectives³⁹ that were nominated for SPS matters are reflected in the outcomes of the negotiations, and in particular, the establishment of these committees will continue to foster the objectives. They will:

"seek to strengthen cooperation between Australian and US quarantine authorities"⁴⁰

5.50 According to the Government, Australia's endeavour to facilitate a forum of good will and discussion with the United States is the premise on which these committees have been formed. Currently, many of the free trade agreements the United States has entered into have a provision for SPS committees and all have trade

37 *Transcript of Evidence*, 18 May 2004, p.55, (Greville, DAFF)

38 *Submission 108*, p.7, (Australian Chicken Meat Federation Inc)

39 the four objectives are outlined in DFAT "Guide to the Agreement", March 2004, p.126

40 *Transcript of Evidence*, 18 May 2004, p.39, (Sparkes, DFAT)

representatives on these committee⁴¹. It could appear that the United States is trying to by-pass the WTO processes by creating these bilateral committees but to date there is no hard evidence to support that they are more than consultative and information-sharing forums.

5.51 The Australian government has at length stated that these committees will not be influencing quarantine processes, that they provide forums for dissemination of information and discussion on technical and scientific interest - these committees are **not** decision making committees.

5.52 The DFAT *Guide to the Agreement* states that the role of the SPS committee is to increase the mutual understanding of SPS policies and regulatory processes of each country. Ms Greville expanded on their role by stating that:

The purpose is to involve all of those bodies [relevant SPS agencies] where necessary, partly because there is a feeling between Australia and the US that we do not necessarily understand each other's division of responsibility—the way that we understand and apply the SPS agreement—and also, to be frank, because within jurisdictions it is not necessarily the case that everybody understands how everybody else works. The idea of the overarching SPS committee is very much about cooperation, increasing understanding and providing each with an opportunity to explain to each other how it works so that misunderstandings do not occur and accusations do not fly backwards and forwards about bad citizenship under the WTO and SPS agreements⁴².

5.53 In general, the SPS committees will be co-chaired and may have trade representatives on the committee. Attendance at these annual meetings may depend on what is on the agenda. These committees will be hierarchical in that the SPS Committee will be the overarching committee for the Technical Working Group. The Technical Working Group will report its activities to the SPS Committee who will in turn report to the Joint Committee (the main committee established under AUSFTA, Chapter 21).

5.54 Ms Greville⁴³ confirmed that while the working group will be independent of Australia's IRA process but the IRA panel can draw on the technical working group expertise. Annex 7-A of the AUSFTA outlines the Standing Technical Working Group. The working group will consist of scientific / technical experts. It will also have representatives from Biosecurity and the equivalent United States agencies.

The process within the standing technical working group will be that the scientists on either side will attempt to achieve a meeting of their scientific minds and resolve, to use the words of the text, to their mutual satisfaction any of these kinds of issues which are germane in an import risk analysis or which MAY not be related to a specific import analysis but may be alive in

41 *Submission 291*, pp.18-19, (Australian Pork Limited)

42 *Transcript of Evidence*, 6 July 2004, p.7, (Greville, DAFF)

43 *Transcript of Evidence*, 6 July 2004, p.3, (Greville, DAFF)

international debate somehow. We consider that to be a very useful process.⁴⁴

The Select Committee's views

5.55 It is the Select Committee's view that, with respect to the concerns expressed about the influence and purpose of the two committees and their potential affects on quarantine standards, some of the concerns expressed relate to fears of what might eventuate from these new arrangement rather than what has been agreed under the AUSFTA. It is not in Australia's national interest to reduce Australia quarantine standards. Australia can ill afford for these committees to be an avenue for the United State to influence our policies, as it would be the 'thin end of the wedge' undermining our international reputation and our environmental and agricultural sectors.

5.56 It is clear that constant vigilance is required over our scientifically based quarantine assessment process. The Committee is not overly confident, notwithstanding assurances from the Australian government, that pressure from the United States will not be brought to bear through these two bilateral committees on Australian quarantine decisions. Biosecurity Australia's processes may be robust enough to withstand such pressure should it arise.

5.57 In the Select Committee's view, community anxiety about quarantine matters is just one more symptom of the existing problematic process of agreement making, where the government has agreed to new bilateral arrangements without adequately engaging or building the confidence of the key stakeholders. The Select Committee recognises that the key to successful implementation of government policy is to bring the community along with the process, particularly key stakeholders.

44 *Transcript of Evidence*, 6 July 2004, p.3, (Greville, DAFF)