

# **Chapter 6**

## **The proposed importation of fresh ginger from Fiji**

### **Additional issues raised by stakeholders**

6.1 This chapter continues the committee's examination of the issues surrounding the proposed importation of fresh ginger from Fiji. More specifically, this chapter outlines the criticisms raised by industry stakeholders in relation to the evidence relied on by DA Biosecurity in the preparation of the ginger IRA.

6.2 Throughout the inquiry, the committee heard a range of concerns regarding the scientific and other information relied upon by DA Biosecurity in the preparation of the ginger IRA. Concerns were raised about the quality of information used and the Department of Agriculture's powers to obtain additional information by request, or to commission appropriate research.

6.3 Stakeholders also raised concerns about what they perceive as a lack of consultation with industry. The committee received evidence regarding delays in the provision of relevant information to industry, a lack of transparency in relation to IRA processes and a lack of communication about changes made to the IRA.

#### **Evidence relied on by DA Biosecurity**

6.4 The quality of the information relied upon in the preparation of the ginger IRA was questioned by industry stakeholders, including the AGIA which submitted that:

The other significant concern is that the assessment of risk by DAFF Biosecurity at each point in the importation process is based on extremely limited information. There is no doubt that Fijian isolates of *R. similis*, for example, cause damage very rapidly, killing plants and destroying rhizomes.

The AGIA maintains that there is, as yet, not enough information available to use the risk estimation matrix to assess the risk of importation of pests.<sup>1</sup>

6.5 Mr David Peasley, Consultant to the Australian Ginger Association (AGA), expressed a similar view, and argued that the risk assessment had proceeded in the absence of sufficient information:

I do not believe that you can make any sort of risk estimation until you have proper information to start with. That is the problem. There is just not enough information on which to base a risk analysis. I believe that it should not be conducted until that information is found. A big problem with the IRA, I think, is that where there was a lack of information the risk was decided to be not discernible or negligible.<sup>2</sup>

---

1 Australian Ginger Industry Association, *Submission 9*, [p. 5].

2 Mr David Peasley, Consultant/Service Provider, Australian Ginger Industry Association, *Committee Hansard*, 23 October 2012, p. 18.

6.6 Stakeholders also argued that where there was an absence of information, it appeared to be left to the industry to conduct the relevant research. For example, the AGIA indicated that:

It was industry that did the work for *Radopholus similis*. What about all the other pests and diseases that have been put in the risk matrix? What type of strain, biotype and so forth are they? If you do not know that information and it is causing majority rot in Fiji wouldn't you want to have that information about exactly what pests and diseases you have before you start sending fruit to other countries? Would not you like to know those risks?<sup>3</sup>

6.7 Stakeholders indicated that industry's concerns about the approach taken by DA Biosecurity extended back to 2005. The committee was also told that the current issues in relation to the ginger IRA are somewhat different from the IRA on bananas from the Philippines as there was a lot more information available for bananas. However, the AGA told the committee that, in relation to the culture of DA Biosecurity, not much had changed:

I would like to say that things have changed since then, but I cannot see much evidence of it. I note in your report in 2009 that you were disappointed, as a committee, that you had not seen substantial change since the 2005 inquiry. I presented to both of those inquiries and I just cannot see much change in the culture of DAFF Biosecurity within that time.

At least in the banana one I think we had a lot more technical information on which to do the risk analysis...<sup>4</sup>

### ***The field report***

6.8 In 2007, officers from DA Biosecurity conducted a field trip to Fiji to assess the biosecurity arrangements for ginger. The report prepared following the trip was criticised by a number of submitters, including the Australia Ginger Growers Association (AGGA):

The field report which we obtained showed a clear lack of knowledge about growing and harvesting ginger in Fiji. Our research shows, poor post-harvest practices including top up of consignments, a sincere lack of knowledge about pests and diseases in Fiji, including their strains and taxonomy... DAFF [Biosecurity] consistently claimed that their research into pest and disease had been thorough, yet industry during the course of 2012 has conducted trial experiments into *Radopholus similis* and proved that the Australian burrowing nematode was a completely different strain than that found in Fiji.<sup>5</sup>

---

3 Mr Anthony Rehbein, President, Australian Ginger Industry Association, *Committee Hansard*, 23 October 2012, p. 19.

4 Mr David Peasley, Consultant/Service Provider, Australian Ginger Industry Association, *Committee Hansard*, 23 October 2012, p. 22.

5 Australia Ginger Growers Association, *Submission 4*, [p. 1].

6.9 Templeton Ginger also raised concerns about the robustness of the field report and the extent to which it was relied upon for the ginger IRA:

The Field Trip Report which as stated in the Draft IRA, provided the information that formed the basis for estimating unrestricted risk in the Import Risk Analysis (page 15), was only 3-4 pages long (without tables and pictures). If this forms the basis of a risk assessment, how can 3 to 4 pages of information be adequate to give proper Risk Assessment?<sup>6</sup>

### ***Need for further research***

6.10 Mr David Peasley informed the committee of his view on the field trip report, and the additional information required:

The initial response is that there is not very rigorous science at all identifying the pests or the distribution of those pests in Fiji. I do not see how you can extrapolate from that poor information base to do a risk analysis. You really have to have a lot of data and information on which to estimate risks.<sup>7</sup>

6.11 Interestingly, the Biosecurity Authority of Fiji also raised concerns about a lack of valid scientific evidence, noting that:

...Fiji has no desire to compromise Australia's quarantine integrity but there appears to be no valid scientific evidence provided to date, to justify the provisional quarantine status of *Radopholus similis*.

Article 5 of the SPS Agreement also requires that DAFF "...shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time."<sup>8</sup>

6.12 The AGIA told the committee that it had additional concerns about a range of pests, particularly in relation to the different pathogenicity which could arise if there were different biotypes in Fiji. The AGIA also noted that further work is required to ascertain whether fumigants are effective:

The AGIA sees that, before the IRA is finalised, further research is also needed to compare the pathogenicity and host ranges of Australian and Fijian isolates of *Pythium graminicola*, *P. vexans* and *Fusarium oxysporum* f.sp. *zingiberi*, and to determine whether the bacterial wilt pathogen is present in Fiji.<sup>9</sup>

6.13 Dr Graham Stirling also highlighted some of the gaps in the information available for the Fijian burrowing nematode variant, and argued that further work is needed to resolve the uncertainties:

---

6 Templeton Ginger, *Submission 5*, [p. 6].

7 Mr David Peasley, Consultant/Service Provider, Australian Ginger Association, *Committee Hansard*, 23 October 2012, p. 20.

8 Biosecurity Authority of Fiji, *Submission 11*, p. 5.

9 Australian Ginger Industry Association, *Submission 9*, [p. 6].

We simply do not find this burrowing nematode in ginger soils. We have bananas, sure, and in the Sunshine Coast hinterland there have been bananas grown for 50, 60 or 70 years; I am not sure. The nematode is there. Right next door we grow ginger, and it is fine. To me that says immediately: 'What's going on? Why?' In Fiji they get problems; we do not. It could be varieties. It could be soil types. There are a whole range of factors that could be involved. But, if we do not have the nematode to do the work, we cannot do that.<sup>10</sup>

- 6.14 The AGIA told the committee that research is required to develop effective mitigation measures, but there were questions surrounding how that research could be conducted:

One must question whether mitigation measures require further research before ginger is imported. How long, at what rate and at what temperature will methyl bromide [be] used? Who will be required to conduct this operation and what quality assurance will be used to regulate this system?

Obviously, much research is still required. With many questions unanswered, the Australian ginger industry asks to stop the clock.<sup>11</sup>

#### *Cost of research*

- 6.15 The costs associated with conducting appropriate research was also raised by stakeholders. The AGGA argued that, 'as a relatively small group, the ginger industry is not in a position to fund such research' and indicated that:

Asking industry to conduct further taxonomic research into this area within 12 months is not a viable option. We have investigated a research project that has been costed at \$500,000 over three years and would take industry 3 years to fund.<sup>12</sup>

- 6.16 A similar view was expressed by Dr Mike Smith, who told the committee that:

The whole issue about the pathogenicity of the Fijian strain and the Australian strain, I believe there is evidence that has been provided to say that they are different. As I said, that will not change in a year's time. There will still be evidence that is presented. But to do a full taxonomic and pathogenic evaluation of these two *Radopholus* populations will take time and money and the ginger industry does not have that money to put to this sort of research.<sup>13</sup>

---

10 Dr Graham Stirling, Independent consultant assisting the Australian Ginger Industry Association, *Committee Hansard*, 23 October 2012, p. 24.

11 Mr Anthony Rehbein, President Australian Ginger Industry Association, *Committee Hansard*, 23 October 2012, p. 15.

12 Australian Ginger Growers Association, *Submission 4*, [p. 2].

13 Dr Mike Smith, Technical adviser to the ginger industry, *Committee Hansard*, 23 October 2012, p. 23.

6.17 The AGIA indicated that, in order to complete the ginger IRA, there is clearly a need for more scientific information, and argued that 'this can be achieved only with the financial support of the Australian or the Fijian Government'.<sup>14</sup>

### **Committee comment**

6.18 The committee considers that the availability of accurate, current data on the prevalence of pests and diseases in Fiji is a fundamental requirement of the risk analysis for importing fresh ginger. The committee observes that such data is not always available or forthcoming and that DA Biosecurity has proceeded to complete the ginger IRA with the information that it has available.

6.19 DA Biosecurity consistently advocates that its processes are based on the use of rigorous scientific data. However, the committee is concerned that assessments of consequences, likelihoods and risks have been made where there is inadequate information.

6.20 The committee acknowledges that the data that has been used may be scientifically robust, however the assessments being made based on that data do not appear to be scientifically sound. As highlighted in Chapter 5, assessing the likelihood of the Fijian burrowing nematode variant entering Australia without mitigation measures as 'moderate', when it is an event that is almost certain to occur appears to defy logic and does not appear to be scientifically robust. Similarly, as discussed in the previous chapter, assessing the consequence to Australia as 'low' for the Fijian burrowing nematode variant, when the consequences for a large number of important crops are unknown, cannot possibly be credible from a scientific perspective.

### **DA Biosecurity's powers to gather information and commission research**

6.21 In response to some of the concerns raised about the lack of accurate information used in the conduct of the IRA, the committee examined DA Biosecurity's capacity to gather information and commission further research.

6.22 The committee notes for example that while DAFF Biosecurity confirmed that one farm in Fiji had suffered a 70 per cent crop loss due to burrowing nematode, DA Biosecurity were not able to provide information on the extent of losses across other farms in Fiji.<sup>15</sup>

6.23 In describing DA Biosecurity's position, Dr Colin Grant quoted from proceedings of the Federal Court, on appeal from a judge of the Federal Court in Australia about the process associated with DA's assessment of risk:

The legislation does not suggest that quarantine decisions are to be made on an assumption that every scientific fact is known about every conceivable disease or pest that might be introduced into Australia, or that such decision are to be delayed until all such facts are discovered and accepted. On the contrary, quarantine decisions have to be made in the existing state of

---

14 Australian Ginger Industry Association, *Submission 9*, [p. 6].

15 Mr Bill Magee, Assistant Secretary, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 23 October 2012, pp 30–31.

knowledge. Imponderables have to be weighed and value judgements made. No specific criteria are laid down, other than the condition to be established must limit the level of quarantine risk to one which is 'acceptably low'—which necessarily assumes there will be some risk.<sup>16</sup>

6.24 This information would appear to suggest that DA Biosecurity may not be legally required to seek further information or commission research to better inform an IRA. However, it is also noted that the Chief Executive of the Department of Agriculture has the power under paragraph 69G(2) of the Quarantine Regulations 2000 to commission research, or to seek substantial expert advice. While the Chief Executive may not be legally compelled to use that power, the Chief Executive appears not to have done so in the case of Fiji ginger to commission relevant research to resolve the burrowing nematode subspecies issue, among and other issues.

6.25 As indicated previously in this report, Australia has obligations under the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement). In particular for risk management measures, the SPS Agreement requires that:

Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.<sup>17</sup>

6.26 The above requirement has a very important caveat expressed in paragraph seven of article 5 of the SPS agreement, allowing countries to adopt sanitary or phytosanitary measures in circumstances where relevant scientific evidence is insufficient:

In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.<sup>18</sup>

6.27 Australia's international obligations, as set out in the SPS agreement, do not appear to inhibit DA Biosecurity using its powers to gather information and commission research. Rather, the SPS agreement appears to encourage the seeking of such information.

---

16 Director of Animal and Plant Quarantine v Australian Pork Limited [2005] FCAFC 260, NSD 994 of 2005, on appeal from a Judge of the Federal Court of Australia, *Reasons of Judgement – Heerey and Lander JJ*, 16 September 2005, pp 18–19.

17 Biosecurity Australia, *Import Risk Analysis Handbook*, 2011, Annex 2, p. 23.

18 Biosecurity Australia, *Import Risk Analysis Handbook*, 2011, Annex 2, p. 25.

6.28 The committee questioned DA Biosecurity about seeking further information or commissioning research to acquire information to better inform the ginger IRA, including whether it would conduct a 16-week controlled test to clarify whether the nematode subspecies were different in Australia and Fiji. The committee notes the following statement made by DA Biosecurity during the inquiry:

The role of the department is to undertake risk assessments based on available information.

The issue is very simply that risk analysis is made on the available information of the day. As that changes, changes are made to the status of risk.<sup>19</sup>

What we do is we take into account evidence that exists already.<sup>20</sup>

### **Committee comment**

6.29 The committee considers the preceding statements by DA Biosecurity may create a misleading impression, given that Regulation 69 gives DA Biosecurity the power to seek further information, commission research, 'stop the clock' while awaiting the outcome of research, and even terminate an IRA if there is not sufficient information.

6.30 The committee observes that Australia's obligations under the SPS agreement positively encourage the Department of Agriculture to use its information-gathering powers, where there is insufficient scientific evidence available.

6.31 The committee further notes that DA Biosecurity is not legally obliged to exercise its powers under Regulation 69. However, the committee considers that DA Biosecurity should be more open and transparent in justifying why it chooses not to use the powers, particularly when there are significant concerns being raised by stakeholders about the lack of information informing IRAs.

### **Recommendation 21**

**6.32 The committee recommends that, before any fresh ginger is imported from Fiji, the Department of Agriculture use its powers under Regulation 69 of the Quarantine Regulations 2000 to resolve the scientific uncertainty surrounding the burrowing nematode and other possible pathogens.**

### **Recommendation 22**

**6.33 The committee recommends that the proposed merits review process for IRAs also include decisions by the Department of Agriculture on the exercise of information-gathering and other powers under Regulation 69 of the Quarantine Regulations 2000.**

---

19 Dr Colin Grant, First Assistant Secretary, Plant Division, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 23 October 2012, pp 29–30.

20 Dr Colin Grant, First Assistant Secretary, Plant Division, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 23 October 2012, p. 40.

## Consultation with industry during the IRA process

6.34 In addition to concerns about the information DA Biosecurity relied on in the preparation of the ginger IRA, stakeholders also raised concerns about what they described as an inadequate level of consultation. Submitters were critical of delays in providing information to industry, a lack of transparency in relation to processes and a lack of communication with industry.

6.35 The comments made by Mr David Peasley are similar to those made by a number of industry stakeholders:

The lack of open dialogue has caused unnecessary friction and mistrust of our national Biosecurity organisation. Australian industries need transparency and confidence in the technical capacity of [DAFF Biosecurity] to undertake a rigorous, sound scientific assessment.<sup>21</sup>

### *Delays in providing information to industry*

6.36 Peasley Horticultural Services submitted that, in its view, the industry had been 'kept in the dark' for many years about the Fijian ginger import request. The submission pointed specifically to the length of time between the market access request being received by the Department of Agriculture and this information being provided to the ginger industry:

DAFF [Biosecurity] received a submission requesting market access for fresh ginger from Fijian Biosecurity Authorities in November 2003. This submission included information on the pests associated with ginger crops in Fiji and further information was provided on the ginger production system in 2004 and 2007, outlining the land preparation, pest management, harvesting and post harvest handling.

It was not until August 2010, some 7 years later, that the Australian Ginger Industry was first advised of this import application request by Fiji for access to the Australian market.

Since August 2010 the Australian Ginger industry contributed scientific information to DAFF [Biosecurity]. From the release of the Draft IRA the industry only had 60 days to respond.<sup>22</sup>

### *Report on DA Biosecurity's field trip to Fiji*

6.37 The committee was also told that the report on the DA Biosecurity field trip to Fiji (dated September 2007) was not provided to the industry until three weeks before the closing date for comments on the ginger IRA – in May 2012. Stakeholders suggested that the report was only provided then because the matter was raised at the Senate's Budget Estimates hearings.<sup>23</sup> Peasley Horticultural Services explained the consequences of the delayed receipt of the trip report:

---

21 Peasley Horticultural Services, *Submission 7*, p. 3.

22 Peasley Horticultural Services, *Submission 7*, p. 2.

23 Mr Shane Templeton, Director, Templeton Ginger, *Committee Hansard*, 23 October 2012, p. 2.

Despite the draft IRA stating (page 15) that the Trip Report undertaken by DAFF Biosecurity Officers in September 2007 "forms the basis for estimating unrestricted risk in this Import Risk Analysis", access to the Trip Report when requested by the AGIA was denied. The report was finally supplied on 25 May 2012, just 3 weeks before the deadline for submission of responses to the draft IRA. This delay seriously restricted the time for the AGIA technical group to respond effectively.<sup>24</sup>

#### *Mitigation measures added without consultation*

6.38 Stakeholders raised similar concerns about risk mitigation measures being added to the provisional final IRA, without the industry being given an opportunity to comment on their effectiveness.<sup>25</sup> Templeton Ginger asked:

How DAFF Biosecurity can place new risk mitigation measures in the Provisional Final IRA for control of Burrowing Nematode and no-one has the opportunity to comment on the science of these risk mitigation measures? To me this seems unjust and shows this process needs change.<sup>26</sup>

6.39 Similarly, the AGIA suggested that the process needs to be reviewed and argued that:

When we got the provisional IRA, it really needs another process where it can come back to industry to talk about mitigation measures, because to this point, since that, communication from industry had broken down.<sup>27</sup>

#### **Committee comment**

6.40 The committee acknowledges that DA Biosecurity interacts with many stakeholders on many different issues. However, the committee considers that the evidence provided demonstrates a need for significant improvement in the openness and transparency with which DA Biosecurity interacts with Australian industry groups.

6.41 The committee is concerned that adequate time for the conduct of research and for industry to respond has not been allowed. In particular, the committee is concerned about apparent instances of the ginger industry receiving information vital to its participation in the IRA process, through sources other than the Department. For example, as a result of questioning at Senate estimates and inquiry hearings; or informally through related industry groups. Relevant industry stakeholders and/or peak bodies should receive such information directly, without delay and with sufficient time to respond to IRA timelines.

---

24 Peasley Horticultural Services, *Submission 7*, p. 1.

25 Australian Ginger Industry Association, *Submission 9*, [p. 3]; Templeton Ginger, *Submission 5*, [p. 6].

26 Templeton Ginger, *Submission 5*, [p. 6].

27 Mr Anthony Rehbein, President, Australian Ginger Industry Association, *Committee Hansard*, 23 October 2012, p. 21.

**Recommendation 23**

**6.42 The committee recommends that the Department of Agriculture provide industry stakeholders and/or peak bodies with information relevant to IRA processes directly and without delay (and with sufficient time to respond to IRA timelines).**