



Australian Government

Australian Quarantine and Inspection Service

[AQIS 06 attachment]

File

copy given to Marnic World
2/4/05

MINUTE SUMMARY

TO:

CC:

FROM:

DATE: 4 April 2005

FILE: 04/10597

SUBJECT: Preserved marine worms for bait.

PURPOSE

To provide information on the potential compensation claim from Marnic Worldwide following amendment to their import permit for marine worms for bait.

BACKGROUND

1. On 27 November 2002, Mr Nick Constantine (Marnic Worldwide Pty Ltd) requested advice from the Biologicals Unit regarding the import of marine worms to be used as bait. Between November 2002 and April 2003 the importer corresponded with several members of the Biologicals Unit to discuss manufacturing processes, treatments and approved competent authorities for government certification, standard information that is required for all applications. (AQIS had no record of this correspondence, however, Mr Constantine provided copies in November 2004.)
2. On 20 March 2003 Mr Constantine lodged an import permit application for marine worms. An AQIS import permit (200306288) was issued on 7 April 2003. As is the case for the majority of commodities assessed by the Biologicals Unit there is no formal Import Risk Analysis (IRA) for imported marine worms for bait. In the absence of an IRA, import permit conditions are constructed from existing policies from Biosecurity Australia (BA) and treatments in the *Quarantine Proclamation 1998*.
3. An import permit was issued with a condition for a manufacturer's declaration stating "that the worms have been washed and preserved in 70% alcohol for at least 1 hour". The condition was based on Item 1, Column 1, Table 13, Section 38 of the *Quarantine Proclamation 1998*; which permits dead animals and animal parts to be imported if they are preserved and transported in 70% ethanol. (Attachment 1).
4. The permit issued to Marnic Worldwide was amended several times from April 2003 to August 2003 to add government certification (competent authorities), and to remove duplicate conditions.
5. On 26 October 2004, the Biologicals Unit received a second application to import preserved worms in alcohol for bait from another company. The application was referred to BA who advised that gamma irradiation at 50 kGray on arrival would be required.

6. On 8 November 2004, Mr Constantine applied for a new competent authority on the import permit. The assessing officer referred the application to BA as the importer had requested a competent authority not on BA's approved list. BA advised that gamma irradiation at 50 kGray on arrival should be required, as there was no information available to confirm that the treatment listed in the proclamation would effectively manage all quarantine risks associated with the use of imported worms for bait.
7. On 9 November 2004 Marnic Worldwide's import permit was amended accordingly and Mr Constantine advised. Mr Constantine informed the Biologicals Unit that he had several containers of the product ready to be despatched to Australia from China and that gamma irradiation would irreparably damage the product. He also provided the Biologicals Unit with copies of previous written correspondence from AQIS demonstrating his earlier discussions with AQIS in relation to this point. The company advised AQIS that it would be seeking compensation.
8. On 11 and 12 November 2004, Marnic Worldwide's solicitor contacted Dr Robert Heard, BA to request the scientific basis for the decision to amend their import permit condition, and whether the original import permit could be reinstated or conditions amended. Minter Ellison responded with advice from BA with the reasons for the decision.
9. AQIS lodged a liability claim notification form with Comcover on 17 November in anticipation of a formal compensation claim being lodged by Marnic Worldwide. Up until 10 November 2004, the company had imported about 10 consignments of samples for market evaluation. On 1 December 2004, solicitors for Marnic Worldwide wrote to Minter Ellison seeking compensation and claiming that their client had invested approximately US\$1.5 million to establish their business on advice received from AQIS. Minter Ellison corresponded with Marnic's solicitors on a number of occasions between 15 November and 9 December 2004, and informed them without admitting liability or admitting that their client is eligible for such a payment, that it would be possible to seek an act of grace payment.
10. The company has not sought compensation for detriment caused by defective administration (CDDA) or an act of grace payment at this point in time. There has been no further contact with the applicant since Minter Ellison wrote to the company's solicitor on 8 December 2004 requesting justification for the company's compensation claim of \$1.5 million.
11. On 21 January 2005 Comcover provided a claim number (11441) informing the Department that it would be indemnified under the professional indemnity section of the policy, however, if the case proceeded to court and the claim was made on different grounds, a further assessment from Comcover would be required.

ISSUES

12. AQIS issued an import permit for marine worms for bait, a commodity that has not undergone an import risk assessment, without referring the proposed import conditions to BA for advice. The relevant file containing the application does not include any of the pre-application correspondence, which was critical to the development of the import conditions listed on the permit. The assessment process was not recorded on the file or on the application coversheet, as required by the work instructions.

[AQIS 06 attachment]

13. In its current form, Item 1, Column 1, of Table 13 in Section 38 of the *Quarantine Proclamation 1998* is open to interpretation, as no end use for animals and animal parts preserved in alcohol is stated, unlike other commodities listed in the table. An amendment to the legislation to state that animals or animal parts preserved in alcohol are permitted entry on condition that they are for in-vitro use only is required.

DISCUSSION

Biologicals Unit work practices

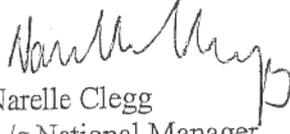
14. In early 2004, the Biologicals Unit implemented procedures whereby all import permit applications for products that do not have standard import conditions listed in the unit's work instructions must be referred to BA for advice. This work instruction was in effect and followed when the second application to import worms preserved for alcohol in bait was received in October 2004.
15. The new work instructions emphasise the importance of documenting and filing the assessment process. Advice regarding commodities cannot be given until the unit has received an application to import the product so that all information and assessment notes regarding the application can be filed.
16. All members of the Biologicals Unit have included in their learning agreements a short course in administrative law concentrating on administrative decision-making, freedom of information, the Privacy Act, and appeal processes. The importance of accurate record keeping is emphasized in this training, as well as in the revised work instructions and weekly Biologicals Unit meetings.

Amendment to the Quarantine Proclamation

17. On 1 February 2005 a minute was sent to April Purry, A/g Manager Legislation Review Unit requesting that Item 1, Column 1, Table 13, Section 38 of the *Quarantine Proclamation 1998* be amended as soon as is practicable to state the end use for the item as in-vitro.

RECOMMENDATION

That you note the above information.


Narelle Clegg
A/g National Manager
Animal Programs