# Imported Food

**National Competition Policy Review of the**
***Imported Food Control Act 1992***

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## Foreword for Imported Food Control Act Review

The *Imported Food Control Act Review* has occurred at a time when food regulation in Australia and the implementation of food safety practices are undergoing major changes. At the same time, world trade in processed foodstuffs is growing rapidly, food processing techniques are changing, and there is increasing consumer concern about food safety. With Australians now consuming about ten percent of their food from overseas sources, ensuring the safety of overseas-produced food is an important consideration for the food importing and processing industries, government, and of course, consumers. Not surprisingly, the Review has attracted wide interest and our task has been assisted by the many constructive suggestions put forward about how to improve the effectiveness and efficiency of the *Imported Food Control Act 1992*.

As a *National Competition Policy Review*, the Committee closely examined the costs and benefits to the community as a whole of the Imported Food Control Act. Early in our deliberations, we decided that it would be necessary to consider not only the legislation but also how the legislation is administered. In developing our recommendations, the Committee was also cognisant of the need for the Act to be consistent with Australia's international obligations and trade objectives, and to be compatible with recent advances in food technology and food safety.

The Committee concluded that the best way to minimise costs to industry, while ensuring that imported food complies with Australia's public health and food standards, is through a co-regulatory or partnership approach between industry and government. We believe that the recommendations put forward in the Report will lower costs to industry while providing the basis for a more effective and efficient imported food safety system. This system will be more flexible and so able to respond to the dynamic food safety environment. The Review Committee members unanimously support all the recommendations presented in this Report.

Finally, the Committee wishes to acknowledge the professionalism and enthusiasm of the Secretariat, led by Hilary Cuerden-Clifford, and to thank them for their hard work during the course of the Review.

Carolyn Tanner
Chairman
Imported Food Control Act Review
30 November 1998

## ACKNOWLEDGEMENTS

The Review Committee wishes to thank those who took the time to lodge written submissions with the Review, and to participate in the consultation process. The high level of interest in the Review demonstrated by the stakeholders was particularly gratifying, in view of the many reviews which have occurred in the food sector in the recent past. The Review Committee is grateful to the Australian Quarantine and Inspection Service (AQIS) Regional Imported Food Inspection Program (IFIP) officers in Brisbane, Melbourne and Sydney for their valuable assistance with arranging site visits and meetings with stakeholders.

The Review Committee wishes to thank the staff of the Commonwealth Department of Health and Family Services, the Victorian Department of Human Services, the South Australian Department of Human Services, and the National Centre for Epidemiology and Population Health for their assistance in developing estimates of the costs of food-borne diseases. Staff in the Australian Customs Service also provided valuable assistance by providing information relevant to imported food.

In the Department of Agriculture, Fisheries and Forestry, Scott Crerar and Murray Lembit provided valuable perspectives in their respective fields of expertise.

AQIS provided extensive support and resources for the Review, in particular by staffing the Secretariat. The Committee is especially grateful to AQIS for its generous support.

# Executive Summary: Imported Food Review

The Imported Food Control Act Review is part of the comprehensive examination of legislation being undertaken by the Commonwealth Government to ensure compliance with the National Competition Policy. The principle behind National Competition Policy, as stated in the Hilmer Report, is that it "seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives". This Review focuses on those parts of the Imported Food Control Act 1992 which restrict competition or which result in costs or benefits for business.

The Review initially received 28 written submissions from a broad cross-section of the food importing and processing industry, government departments and consumer representatives. In addition, the Review Committee consulted with food importers and customs brokers, peak industry and consumer organisations, relevant government instrumentalities and health experts. The Review Committee undertook industry site visits and held discussions with policy and operational staff of the Australian Quarantine and Inspection Service (AQIS) responsible for the Imported Food Inspection Program (IFIP). The Committee released its Draft Report at the beginning of October, and nineteen responses were received.

Approximately ten percent of the food consumed by Australians is produced overseas. Because Australia had no direct control over food production in exporting countries, a system was introduced to ensure that imported food complied with Australian public health and food standards. To achieve that objective the Imported Food Control Act has relied, in the main, on barrier inspection and end-point testing.

The Review has occurred at a time when food safety regulation and food safety practices in Australia and overseas are undergoing major change. At the same time, there is rapid growth in world food trade, Australian food consumption patterns are changing and there is increasing consumer concern about food safety. Much of the food now consumed by Australians is relatively underprepared or "fresh" compared to the traditional thoroughly cooked or salted foods. Such foods come with higher inherent risk if not prepared under adequate safety plans. However, the emergence of new preservation and processing techniques result in process controls being more effective in verifying the safety of the product when compared to traditional end-product inspection and testing.

The Review Committee has examined the nature of the food market and identified a number of factors pertinent to the food industry which can lead to market failure and impede the efficient operation of the market. Government regulation through the setting and enforcement of food standards provides confidence to consumers that commonly available foods are safe for human consumption and requires manufacturers to identify the contents of their food. Another major source of market failure in the food sector results from the costs arising from the sale of contaminated food not being fully borne by the suppliers of the food but spilling over to the wider community.

The Review Committee examined the costs and benefits of the Imported Food Control Act and, where possible, attempted to quantify them. The costs of the scheme were estimated to be in the order of $9 million annually, representing 0.25 percent of the value of food imported into Australia. These costs are largely borne by the importing industry and consumers. Where imported foods are used as ingredients for further processing, export competitiveness may be affected. Benefits relate mainly to the reduction in costs of illness. Based on only three

bacterial contaminants in imported food detected by IFIP in 1997, the scheme is estimated to have potentially saved Australians at least $21 million for that year in medical expenses and lost production. The estimate of the benefits is considered conservative because it does not take into account all failures detected by the program or the educative and deterrent effects of the scheme. In the absence of such a scheme, it is likely that the incidence of sub-standard or unsafe food entering the Australian market would increase. The Review Committee recommends that the Imported Food Control Act be retained and that changes be made to the legislation and the operation of the scheme to increase its effectiveness and efficiency.

In developing its recommendations, the Review Committee was cognisant of the need for the Act to be consistent with Australia's international obligations and trade objectives, and for it to be compatible with advances in food processing and food safety. The Committee's recommendations reinforce the conformity of Australia's controls on imported foods with the principles of the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade. In order to maintain the relevance and effectiveness of the Act, it is important that the Act allows the delivery of a program that adheres to scientific risk-management principles, and is performance-based, transparent and flexible, consultative, efficient and effective.

On the basis of its analysis and consultation with stakeholders, the Review Committee concluded that the best way to ensure that imported food complies with Australian public health and safety standards is to develop a partnership (or co-regulatory) approach between industry and government. The partnership approach will encourage industry to take greater responsibility for ensuring food safety while, at the same time, retaining government control over the food importing system through regular government-controlled audits. The changes recommended will lead to:

- increased industry responsibility and the use of compliance agreements with the importer, based on quality assurance-type systems;
- greater flexibility to adopt the method of compliance which best suits an importer's operations;
- improved targeting of resources through greater use of risk profiling and performance-based testing;
- simplification of the inspection system by reducing the inspection classifications (categories) from three to two;
- reduction in incorrectly referred food through improved methods of dealing with labelling failures and enhancement of the tariff code system;
- increased contestability in the market for laboratory services;
- improved communication through a reconstituted consultative body and enhanced communication strategies;
- better management and operational effectiveness through the development of performance indicators and improved training of staff; and
- more appropriate enforcement.

The Review Committee's recommendations provide the basis for a more effective and efficient imported food safety system to ensure the safety of imported food and to provide the flexibility to respond to the changing food safety environment.

## LIST OF RECOMMENDATIONS

**Recommendation 1:** The Review Committee recommends that the Act be amended in order to more clearly state its objectives. The following should be considered:

> *The objective of the Imported Food Control Act is to provide for the compliance of imported food with the Australian public health and food standards.*

**Recommendation 2:** The Review Committee recommends that a new combined surveillance category be established in legislation for all foods other than risk categorised foods.

**Recommendation 3:** The Review Committee recommends that:

- assessment be undertaken by AQIS, in consultation with stakeholders, to determine appropriate inspection levels and strategies for risk and surveillance foods to achieve the objectives of the Act; and
- AQIS consult with stakeholders to develop and implement an assurance regime that is based on individual and collective performance in the imported food industry.

**Recommendation 4:** The Review Committee recommends that:

- inspection rates not be detailed in the legislation; and
- legislation specify the factors to be taken into account when setting inspection strategies and rates.

**Recommendation 5:** The Review Committee recommends that the legislation includes provision for imported food to be tested specifically for the purpose of policy development by ANZFA and AQIS, this testing, as now, to be funded by government.

**Recommendation 6:** The Review Committee recommends that AQIS investigate the use of the tariff code system with a view to achieving more focussed referrals of imported food.

**Recommendation 7:** The Review Committee recommends that AQIS and ANZFA allocate adequate resources to ensure operational effectiveness of the Imported Food Inspection Program.

**Recommendation 8:** The Review Committee recommends that suitably accredited laboratories be permitted to analyse imported food samples for both risk and surveillance categories of food.

**Recommendation 9:** The Review Committee recommends that AQIS provide notification of results and releases to importers for all foods tested under the Imported Food Inspection Program.

**Recommendation 10:** The Review Committee recommends that AQIS facilitate the development and implementation of a system to verify the validity and accuracy of test results provided by laboratories.

**Recommendation 11:** The Review Committee recommends that:

- the legislation specify that labelling conform to Australian requirements at the time of inspection or prior to the product leaving the importer's premises (which ever comes first);
- the legislation specify that failures for labelling should be recorded and actioned against the importer, rather than the producer;
- the use of Holding Orders against producers for minor labelling failures be discontinued; and
- AQIS, in consultation with relevant agencies and industry, develop a system to verify labelling compliance of imported foods, post border.

**Recommendation 12:** The Review Committee recommends that AQIS continue the current policy of release on sampling for non-risk categorised foods.

**Recommendation 13:** The Review Committee recommends that legislation be amended to permit AQIS to expand the use of certification agreements with other countries' food inspection authorities and that it build more rigour into the present certification system, by provision for:

- review of agreements every three years;
- linking on-site audits to the country's compliance history;
- improved flexibility in relation to inspection rates, including removing them from the legislation (as in Recommendation 4); and
- adoption of an appropriate charging structure to minimise cross-subsidisation, while encouraging uptake of certification.

**Recommendation 14:** The Review Committee recommends that:

- legislation be amended to clearly allow AQIS to enter into compliance agreements with importers based on approved quality assurance-type arrangements;
- AQIS develop a compliance agreement option that includes specifications for importers, and auditing functions consistent with other inspection systems' functions conducted by AQIS;
- the compliance agreement option has the ability to cover the entire production chain and, where appropriate, the transport chain; and
- overseas suppliers be encouraged to enter into approved quality assurance arrangements with AQIS by permitting these arrangements, where appropriate, to be sourced from the importer's own QA systems.

**Recommendation 15:** The Review Committee recommends that AQIS investigate and institute changes to AIMS that would ensure effective administration of IFIP, including:

- databases that are accurate;
- reporting modules which provide information relevant to management requirements;
- reporting modules with improved flexibility to meet the need for queries and for changes to requirements; and
- a system which provides information to support field activities.

**Recommendation 16:** The Review Committee recommends that AQIS define, develop and use performance indicators to ensure efficient and effective program delivery.

**Recommendation 17:** The Review Committee recommends that a competency-based, comprehensive training program, co-ordinated by a National IFIP Training Officer, be developed and delivered to all officers undertaking IFIP inspections.

**Recommendation 18:** The Review Committee recommends that a comprehensive review of all regional IFIP operations be undertaken as soon as practical to identify and rectify present inconsistencies while the training package is being developed, and that monitoring of the quality of service should be an on-going function.

**Recommendation 19:** The Review Committee recommends that:

- legislative sanctions should be reviewed for effectiveness, appropriateness and conformity with the Criminal Code Act 1995;
- the size of the penalty be struck with reference to analogous legislation (eg, State Food Acts, Quarantine Act 1908, etc), via the normal process of consultation with the drafters and the relevant areas in Attorney-General's;
- appropriate sanctions be developed with the introduction and extension of certification and approved quality assurance arrangements; and
- legislative sanctions have a proper legislative basis and suitable avenues of appeal and redress, and that they are transparent, and imposed in an accountable manner.

**Recommendation 20:** The Review Committee recommends that a formal Memorandum of Understanding or service level agreement with the Australian Customs Service be established for imported foods.

**Recommendation 21:** The Review Committee recommends that AQIS, together with ANZFA, reform the current consultative committee for the imported food program with a view to making it consistent with the consultative arrangements for its other programs, ensuring shared responsibility, transparency in decision making, broad based representation and full consultation among stakeholders.

**Recommendation 22:** The Review Committee recommends that AQIS develop and implement a communications strategy that:

- provides all stakeholders with timely and detailed information;
- provides transparency in imported foods policy and operations;

and that AQIS, in co-operation with other agencies:

- develop an overview booklet for food importers containing details of all relevant agencies and their requirements; and
- establish an inter-agency "shopfront" facility to disseminate information about the responsibilities of the various government agencies involved in food importing.

**Recommendation 23:** The Review Committee recommends that, in line with considerations described in this Report, the Imported Food Control Act 1992 be retained, with:

- timely amendment of legislation consistent with Recommendations 1, 2, 4, 5, 11, 13, 14 and 19; and
- enhancement of administrative processes supporting the legislation consistent with the other recommendations in this Report.

## ACRONYMS

| | |
|---|---|
| ACS | Australian Customs Service |
| GAL | Australian Government Analytical Laboratories |
| AIMS | AQIS Import Management System |
| ANZFA | Australia New Zealand Food Authority |
| AQIS | Australian Quarantine and Inspection Service |
| ASEAN | Association of South East Asian Nations |
| CCFICS | Codex Committee on Food Import and Export Inspection and Certification Systems |
| CER | Closer Economic Relations Treaty |
| COAG | Council of Australian Governments |
| CSO | Community Service Obligation |
| FAO | Food and Agriculture Organization |
| GATT | General Agreement on Tariffs and Trade |
| HACCP | Hazard Analysis Critical Control Point |
| IFAC | Imported Food Advisory Committee |
| IFIP | Imported Food Inspection Program |
| IWGQ | Industry Working Group on Quarantine |
| MOU | Memorandum of Understanding |
| NATA | National Association of Testing Authorities, Australia |
| NCP | National Competition Policy |
| ORR | Office of Regulation Review |
| QA | Quality Assurance |
| SPS Agreement | Agreement on the Application of Sanitary and Phytosanitary Measures |
| TBT Agreement | Agreement on Technical Barriers to Trade |
| TTMRA | Trans-Tasman Mutual Recognition Arrangement |
| WTO | World Trade Organization |

# 1. INTRODUCTION

## 1.1 Origins of the Review

In 1993, a review, headed by Professor Frederick G Hilmer, reported on how best to ensure that there were no unnecessary restraints on competition in Australia. In April 1995, the Council of Australian Governments (COAG) agreed to implement a package of measures designed to extend pro-competitive policies, a key element being the Commonwealth's *Competition Policy Reform Act 1995*. The objectives of the Act are to help to dismantle private and regulatory barriers to competition, and to encourage competition throughout the whole economy. It also aims to provide the domestic policy arrangements needed to realise the opportunities arising from Australia's external trade policies and developments in the international economy.

As a result of the agreement by COAG, the Commonwealth Government has instituted a comprehensive examination of its legislation to ensure that National Competition Policy (NCP) is being followed. This Review is part of that process. The Commonwealth schedule of reviews approved by Cabinet on 4 June 1996 listed the *Imported Food Control Act 1992* for review in 1997-98.

The principle behind competition policy, as stated in the Hilmer Report, is that it "seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives" (Hilmer *et al.* 1993, p. xvi ). This Review focuses on those parts of the *Imported Food Control Act* which restrict competition, or which result in costs or benefits for business. The terms of reference for the Review and membership of the Review Committee are shown in Appendices A and B, respectively.

## 1.2 Conduct of the Review

The Review formally commenced in March 1998, and there have been regular Review Committee meetings through its course. Advertisements were placed in the national press in early May, inviting submissions on the operation of the *Imported Food Control Act 1992*. Invitations to make a submission were also sent to over eighty stakeholders, including industry, consumers, Australian government instrumentalities and governments of countries with significant food exports to Australia.

In accordance with the terms of reference, the Review examined the effect of the legislation on competition. This also involved the examination of those administrative aspects which are closely tied to the legislation. In a number of cases, the Committee preferred administrative alternatives to legislative change where they were simpler, more effective and more timely than legislative change. This aspect was also provided for in the terms of reference.

The Review received 28 written submissions from a broad cross-section of the food importing and processing industry, government departments and consumer representatives (see Appendix C). In addition, the Review Committee visited Sydney, Melbourne, Brisbane and Canberra, consulting with food importers and customs brokers, peak industry and consumer organisations, relevant government instrumentalities and health experts. The Review Committee undertook industry site visits and held discussions with policy and operational staff of the Australian Quarantine and Inspection Service (AQIS) responsible for the Imported Food Inspection Program (IFIP). For details of those with whom the Review consulted, see Appendix D.

Detailed research was conducted into the cost aspects of imported food, both for costs and benefits, and economic and health experts were consulted to ensure that the Review Committee's deliberations had a sound basis.

A Draft Report was prepared from the material gathered, and nearly 200 copies were distributed to stakeholders for comment. Nineteen comments have been received, and these have been considered in detail including discussions with those providing comments with numerous viewpoints being incorporated into the final Report.

## 1.3 Description of the imported food sector

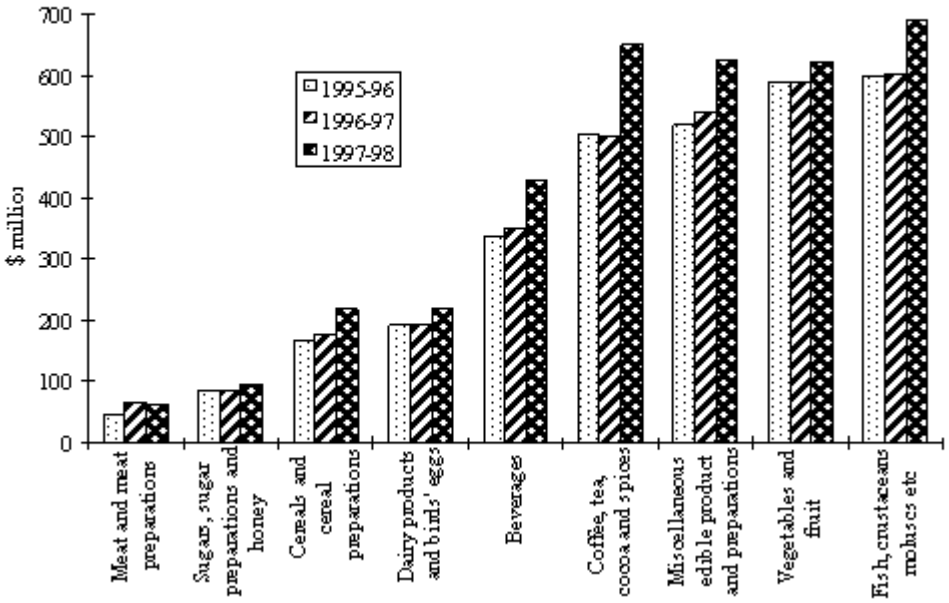
The total value of food and beverage imports, encompassing processed foods and raw commodities, in 1997-98 was $3.6 billion, accounting for just over 10 percent of the Australian food market (ABS 1998a,b). Most food is imported for final household consumption, with about a quarter of food imports being used as ingredients for food processing in Australia.

The main food import categories are fish and seafood products ($691 million), coffee, tea, cocoa and spices ($651 million) and vegetables and fruit ($623 million) (ABS 1998a). Figure 1.1 shows imports of foods by category for the past three financial years. The increase in 1997-98 in dollar terms in the major categories should be seen against fluctuating exchange rates and Australia's own food export performance.

Figure 1.2 shows the value of Australian food exports and imports since 1986-87, in constant 1989-90 prices. Over this period, both imports and exports have trended upwards. However, the ratio of exports to imports has remained fairly constant, with food export values being just over four times greater than import values.

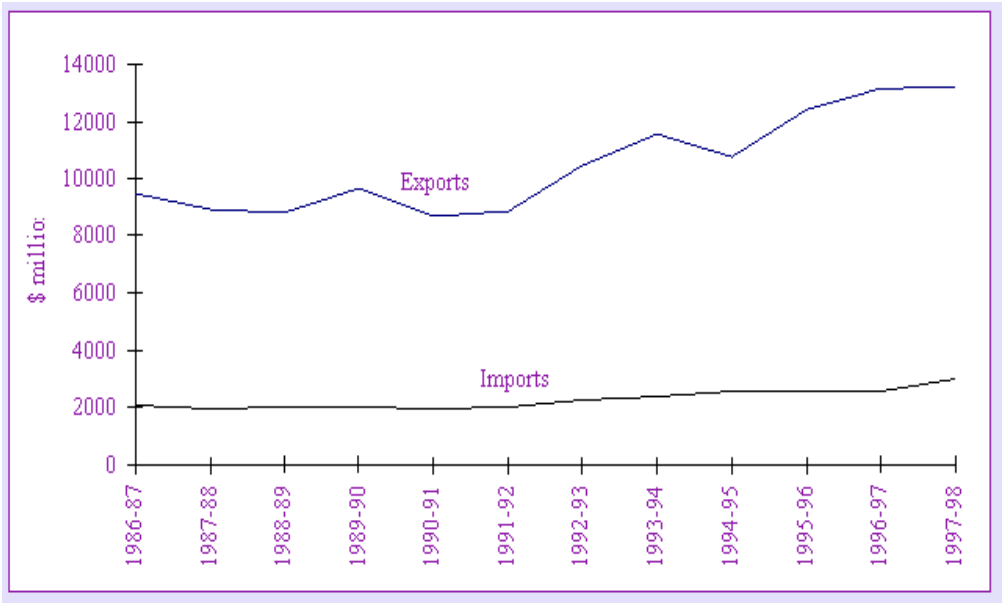
The main sources of Australia's food and beverage imports by value are shown in Figure 1.3. The biggest single food exporters to Australia are New Zealand, the United States, Thailand, and the United Kingdom. The main types of foods imported into Australia from these countries are shown in Table 1.1.

**Figure 1.1 Australian food imports by food category (by value)**



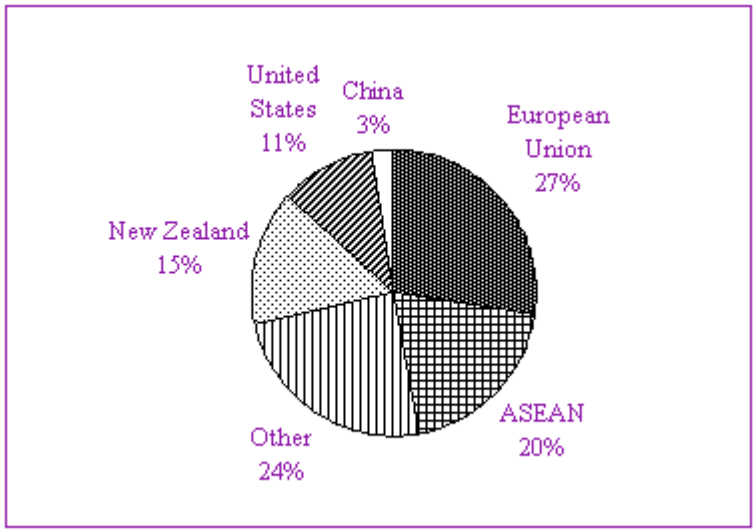

Source: ABS (1998a).

**Figure 1.2 Australian food imports and exports constant 1989-90 prices**




Source: ABS (1998a).

**Figure 1.3 Share of Australian food imports by source and value:1997-98**




Source: ABS (1998a).

**Table 1.1 Australia's major import sources, and the major products from those sources (by value)**

| Country | Product |
|---|---|
| New Zealand | Fish fillets<br>Cheese<br>Fruit and vegetables<br>Food preparations, including sauces |
| United States | Alcohol (spirits)<br>Food preparations<br>Coffee extracts<br>Fruit and vegetables<br>Nuts |
| Thailand | Seafood |
| United Kingdom | Alcohol (spirits)<br>Chocolate and confectionery items<br>Food preparations<br>Bakery goods |

Imported foods generally range from gourmet specialties and complete retail packs of ready-to-eat food to basic ingredients for cooking and processing. They can be relatively safe or have a high degree of risk attached to them. The companies which import them range from large, sophisticated importers and large manufacturing firms to small family-based operations.

There are no government controls on who may import food and beverages, and commercial barriers to becoming an importer are relatively low. Not surprisingly, therefore, there are many participants. AQIS databases list some 25 000 companies or persons as importers of food, but the overwhelming majority of these would be infrequent or once only importers. As to regular food importers, their size and range of operations varies greatly, from small family-based enterprises selling in one State only to large companies operating with a national focus.

The nature and level of potential food safety hazards associated with imported foods also varies greatly. Until recently, to prevent those hazards eventuating, importers would seem to have relied, in the main, on the risk being managed by the overseas producers. This approach was supported by the fact that the principal markets for those producers tended to be the United States and Europe. With changes in both market expectations and the regulatory approach to delivering food safety, importers are now being forced to take a more planned approach to ensuring the safety of the food they import. In keeping with the lack of homogeneity in the industry, the capability of importers to respond to the changed environment varies significantly and is not always analogous with the size of the importer or their market share.

## 1.4 The Imported Food Inspection Program

### 1.4.1 Origins of the program

Since the 1950s, with major advances in food production technology, food markets have been developing on a global basis. Whilst this development provides consumers with a wide variety of food as well as some traditionally seasonal foods on a year round basis globalisation gives rise to new food safety concerns. Rapid and efficient transport systems can spread the vectors of food contamination and food-borne illness more widely than previously. Consequently, the increase in the international food trade has been accompanied by the implementation of food safety programs specifically aimed at imported food.

During the 1980s, some particularly serious incidents of food poisoning occurred overseas which highlighted the need to develop an imported food inspection program in Australia. Examples were:

- about 50 deaths in the United States from soft cheese contaminated with *Listeria monocytogenes*;
- many occurrences around the world of staphylococcal enterotoxin poisoning caused by contaminated canned mushrooms;
- deliberate adulteration of wine with di-ethylene glycol; and
- widespread radioactive contamination of food in the mid 1980s from the Chernobyl accident.

Recognising the lack of measures Australia had to prevent such incidents, a national Imported Food Inspection Program (IFIP) was introduced in 1990, focussing on food considered a public health risk. In 1992, through the *Imported Food Control Act*, IFIP was given specific legislative backing and expanded to cover all imported foods and beverages.

The task of developing and implementing the program was given to the Australian Quarantine and Inspection Service (AQIS), as the only national food inspection agency with trained inspection staff in all major ports around Australia. The body responsible for developing Australia's food standards, the Australia New Zealand Food Authority (ANZFA then the National Food Authority), was given the task of undertaking scientifically based risk assessment for the program.

### 1.4.2 Legislative basis for the program

The *Imported Food Control Act* and its associated *Imported Food Control Regulations* comprise the legislation that enables AQIS to monitor and inspect imported foods. The legislation provides that the requirements with which imports must comply are those contained in the Food Standards Code, which is developed by ANZFA (see Section 2.5).

The Act, which was given Royal Assent in 1992, specifies (among other things):

- the role of ANZFA in risk assessment;
- the Food Standards Code as the applicable national standard;
- the power of the Minister of the Department of Agriculture, Fisheries and Forestry to make Orders which, for example, specify foods considered *risk* categorised foods;
- the making of regulations and their coverage;
- control procedures relating to imported food;
- the certification and quality assurance arrangements that may be accepted in lieu of inspection;
- the treatment of failing food;
- enforcement provisions and decision review; and
- fees

## 1.5 The future of food safety regulation in Australia

Worldwide trade in processed foods is growing at more than twice the rate of trade in primary products and, by the turn of the century, trade in processed or value-added products is expected to account for 75 percent of global agricultural trade compared with around 50 percent in 1985. The future of food safety regulations needs to be examined in the context of this rapidly increasing trade, as well as changing food consumption patterns and technological developments in food processing.

Substantial changes have occurred in the types of food consumed by Australians over the past three decades. Now many Australians seek new food styles such as Mediterranean, South-East Asian and Indian food. Along with the acceptance of "new" cuisines, there has been a change in preparation methods and in the demand for "new" ingredients.

Australians now eat out regularly. The average Australian household spends about 27 percent of the total weekly expenditure on food and non-alcoholic beverages in the form of take-away or restaurant meals (ABS 1996). This trend has increased the demand for different foods and ingredients, including foods relatively underprepared or "fresh", compared to the traditional thoroughly cooked or salted foods. The emerging Australian lifestyle of "food on the run" and "food for high energy" has also created a demand for specialised foods such as sports drinks and sports foods (nutrition bars etc) and some selected confectionery. These demands are met in part by imported food and ingredients.

The emerging food patterns and consumer preferences do not come without problems. To meet the consumer demands, new preservation and processing techniques have emerged. These new techniques often rely on more than one control mechanism to deliver safe food to the consumer.

For example, meat products in the past were preserved mainly using high levels of salt. These days they may be preserved by a combination of low salt level, low sodium nitrite and phosphate levels, and, in some cases, marginally lower pH, combined with refrigeration during distribution and storage. Therefore, to ensure safety of a new-style meat product, several "hurdles" must be controlled during processing, instead of one (ie, salt level). End-product inspection and testing is consequently much less effective in verifying the safety of the product, and the assessment of process controls is more important, particularly for assuring food safety.

A great deal of activity within Australia and internationally has promoted the use of food safety management systems such as Hazard Analysis Critical Control Point (HACCP). The mandating of such systems for production of many Australian food export commodities and some domestic sections of the Australian food industry recognises that these systems are a more efficient and effective mechanism to ensure food safety.

Traditionally, end-product testing has been employed by IFIP. However, such testing has been questioned in view of the changed food consumption, processing and preservation techniques, and the changing Australian food regulatory environment. The emerging trends have increased the need to inject more scientific rigour into food safety measures and to consider food production and transportation as a system comprising several food safety hurdles.

These patterns have set the stage for Australia to review its approach to food standards and implementation of food safety practices in the production, processing, storage and transport of food. The above trends and changes also affect imported food and, therefore, should be considered in developing a modified imported food control system, which takes into account the importance of processing controls.

# 2.THE NATIONAL AND INTERNATIONAL POLICY FRAMEWORK

In order to evaluate the operations of the *Imported Food Control Act 1992* and administration under the Act, it is necessary to consider the impact of market forces as well as the national and international regulatory framework. Internationally, the World Trade Organization (WTO) Codex Alimentarius Commission (Codex) and special arrangements with New Zealand place limits on Australian regulations for imported food safety. The Review Committee analysed the operations of the Act and IFIP against not only this background but also the national food safety regulatory framework, in order to establish the nature and extent of necessary modifications.

## 2.1 Market failure and the need for regulation

Where competitive markets are working properly, they allocate the economy's available resources to their most valued uses. Markets allocate resources to individuals according to the value they place on them. However, in some cases markets fail to produce economically efficient or socially desirable outcomes. In such situations a case may be made for government intervention. Regulatory intervention by government is often employed to:

- deal with market failure; and
- attain socially desirable outcomes such as worker safety, consumer protection and equity.

The government's actions in regulating the food sector for both domestic and imported foods reflect both principles mentioned above. The overriding concern that drives food regulation policy is the need to protect human health and safety by ensuring that food entering the marketing chain is safe and free from microbial, physical and chemical contamination. One way this can be achieved is by the government setting food standards designed to provide a minimum acceptable level of protection from unsafe foods. However, government regulation of the food industry goes beyond the setting of food standards to a more interventionist approach that aims to ensure that the standards are observed. This is because a number of factors pertinent to the food industry can lead to market failure and so impede the efficient operation of the market in delivering outcomes that are consistent with the desired standards.

Markets will not operate effectively unless consumers have sufficient information upon which to base decisions on what goods to buy and consume. Lack of adequate information can lead to market failure with consumers making decisions that may not be in their best interest. Consumers normally lack the resources to verify the standard or wholesomeness of a part of the food which they buy. With foods there are two concerns regarding the provision and availability of information to consumers:

- Some qualities of a food can only be determined after purchase and consumption, and even then it may be impossible to ascertain safety where there could be adverse long term effects. As well, because some companies might regard some information to be of limited relevance to consumers, food companies might not supply complete information to consumers.
- People with allergies or specific dietary requirements need to know the composition of foods that they consume.

Government regulation through the setting and enforcement of food standards provides confidence to consumers that commercially available foods are generally

safe for human consumption and requires food manufacturers to identify (ie, label) the contents of their foods.

Another major source of market failure in the food sector is where the costs arising from the sale of contaminated food are not fully borne by the suppliers of those foods but spill over to the wider community. This is best evidenced where contaminated food has led to an outbreak of food-borne illness.

> Businesses supplying contaminated food products are rarely forced to compensate consumers for the illness due to practical problems in independently verifying food quality, and linking the supplier to the consumer or the food to an illness, and arriving at a value for compensation (*Food Act Review Working Group* 1998).

In addition to problems with compensation, there are also the costs incurred by the public health agencies in trying to identify and contain the source of a food-borne disease outbreak.

Businesses supplying safe food can also be adversely affected by other businesses that supply contaminated or sub-standard food, often due to an inability or a reluctance by consumers to distinguish between similar generic products (Food Act Review Working Group 1998). A regulatory impact statement on the *Tasmanian Food Bill 1996* prepared by the Tasmanian Department of Community Health and Services refers to two major recent outbreaks of food-borne illness, which occurred as a result of a significant breakdown in hygiene controls, either within the premises processing the food or in the premises supplying raw materials. In addition to the direct medical costs and productivity losses resulting from the illnesses, both outbreaks had disastrous consequences for the industries concerned, illustrating problems that food-based industries face when consumer confidence in the safety of their products is shattered. This is well illustrated by reference to the mushroom industry, highlighting the interdependence of the domestic and importing food industries:

> The Australian mushroom industry is valued in excess of $0.25 billion annually. A major food scare, caused by contaminated imported product could have devastating consequences for the industry by eroding consumer confidence in the entire mushroom category (The Australian Mushroom Growers Association *Submission* 1998).

The food industry as a whole relies on consumer confidence in the supply of safe food to market its products (Food Regulation Review Committee 1998). To maintain consumer confidence governments must have systems in place that ensure the integrity of the food supply. The desire by consumers for a regulatory system that guarantees the safety of foods sold commercially is demonstrated in consumer surveys where the majority of respondents support such regulation and, more importantly, exhibit a willingness to pay for the setting, maintenance and enforcement of adequate food standards (John Hawkless Consultants 1998).

A survey on food safety in Tasmania found that some 99 percent of those surveyed consider that regular inspections of food manufacturing and food selling premises are necessary. The survey also highlights the role that governments have in bestowing consumer confidence in the food industry: 86 percent of respondents indicated that adoption of government-approved safety plans by food sellers may result in increased patronage (ABS 1997).

Given the potential risks associated with eating contaminated or unsafe food, there is strong consumer demand for government-backed assurances regarding

the safety of food that is commercially available in Australia, whether imported or produced domestically:

> We certainly believe that there is a strong justification for having a program for inspecting and testing imported foods. We believe that the governments role in imported food inspection should be based on standards that are clearly defined and enforced by government personnel (Australian Consumers Association *Submission* 1998).

This concern with food safety and quality mirrors a reported rise in the incidence of food-borne illnesses in Australia and an increasing awareness of the costs of such illnesses to the community. Between 1991 and 1997, the number of reported cases of salmonellosis and campylobacteriosis increased by 25 percent and 29 percent, respectively. A report commissioned by ANZFA estimated the annual cost of acute food-borne illness in Australia to be around $2.1 billion (John Hawkless Consultants 1998). This represents the costs of medical treatment for patients and the opportunity cost of days missed from work. This estimate does not take into account long term or chronic complications associated with some of these illnesses, which are difficult to cost.

Food regulation is also aimed at protecting consumers from pesticides, contaminants and some other additives, where prolonged ingestion of food with high levels of such substances may result in harmful long term health effects. Because any adverse effects that these agents may have on individuals take a long time to develop, causality and cost attribution is very difficult to establish.

## 2.2 Costs of regulation and the impact on competition

Whilst government regulation is often used to address a market failure and to deliver socially desirable outcomes that would otherwise not be delivered, it is not without costs to the community as it directly affects the environment in which business operates. The prescriptive nature of food legislation can have an adverse impact on competition through its effect on company costs. Such costs can act as a barrier to entry in the industry or may impede the operations of existing companies. In either case it is likely that, in a highly regulated environment which results in substantial compliance costs, the supply and choice of foods available to consumers will be restricted and prices will be higher.

Costs of regulation can be divided into direct and indirect costs.

- **Direct costs** are those costs that are borne directly by companies or the sectors that are subject to regulation. In the case of the IFIP, these costs are: fees for inspection and testing, administrative costs incurred to ensure compliance with the Act, and extra interest and stockholding costs due to delays caused by IFIP. These costs are dealt with in greater detail in Section 5.1.
- **Indirect costs** are more difficult to quantify and extend beyond individual companies. These costs mainly arise out of the impact of regulation on the allocation of resources across the economy. Costs due to misallocation of resources are nil or minimal where regulatory controls are targeted to directly address a market failure. However, costs become more pronounced where regulations are overly prescriptive or extend beyond the market failure they seek to correct.

Because Australia has no direct control over food production in overseas countries, it needs a system to ensure that imported foods meet Australian standards. Failure to do this could put Australian consumers at risk from contaminated or sub-standard food and place Australian food manufacturers, which must comply with Australian standards, at a competitive disadvantage. In this respect, the objective of the Act is to ensure the integrity of imported foods, whilst providing a level playing field between domestic and imported foods.

Resource misallocation could arise should IFIP embody an inspection and testing regime that was more onerous than required to ensure compliance with Australian standards. Efficiency may be impaired and resource misallocation would then result as more resources were drawn into the food manufacturing sector, at the expense of other sectors. Consumers would also be worse off because of higher prices and reduced choice.

Where some of these foods are used as inputs in the production of other foods in Australia, there would be detrimental effects if the higher prices of these inputs were to raise the cost of production of these foods and hence lower their competitiveness in the domestic and export markets.

Perceptions by overseas countries that regulations are used to assist domestic industry by imposing non-tariff barriers to trade and thus making it more difficult and costly to import to Australia may lead to trade tensions and retaliatory action which could harm Australian exporters. In its submission the Australian Food Council states:

> Australia has a trading surplus in food as commodities and finished consumer food products. It is critical that access to overseas markets is not jeopardised through barriers to trade inadvertently being created by food regulations based on faulty science or poorly established risks to public health.

## 2.3 Impact of the Act and its administration on industry

One of the reasons for the introduction of IFIP was to address an apparent inconsistency in the treatment of imported food compared to domestically produced food. Before IFIP, imported food was generally subject to end-product testing at the retail level only in Australia. This compared to domestic food, which was subject to a maze of controls and regulations imposed by all spheres of government. According to the AQIS submission:

> Before 1990 there was no comprehensive national inspection program for imported food and it was argued that domestic food producers were disadvantaged . . . There was no national control over imports, yet local producers had to comply with regulation covering all aspects of premise construction, hygienic practices, product labelling etc. As the jurisdiction of each State or Territory extends only to its borders, there was no national alert system or consistent control mechanisms when a problem was detected with imported foods.

As discussed in Section 2.2, the *Imported Food Control Act* has a direct impact on the cost of imported foods. The legislative provisions for the inspection and testing of food imports add to the costs of these goods and so affect their profitability and supply on the Australian market. Higher costs can also have an adverse effect on the level of competition in the food sector. Under the Act there are no requirements for the licensing of importers, so the impact of IFIP on competition is through its effects on company costs.

IFIP has a twofold impact on the Australian food industry in:

- the treatment of imported foods compared with domestically produced foods; and
- the possible differential treatment of food importers of different characteristics (eg, size, type of business).

For the former, industry costs will be higher and competition lower than warranted if the inspection requirements of IFIP are more stringent than is needed to ensure that imported foods meet Australian standards.

The impact of the Act and its administration on the level of competition among food importers will depend on the effect the program has on the cost structures of the various types of firms. Where costs are disproportionately large for small companies, IFIP will have an adverse impact on competition. Whilst larger companies may be better placed to absorb or pass on additional costs, the capacity to pass on costs also depends on the nature of the market for which the food is imported. Food imported as a brand name or for a niche market provides an importer with greater discretion over pricing.

The Review Committee sought, in its deliberations, to ascertain not only whether the current scheme delivers a net benefit to Australia by ensuring safe food from imported sources, but also whether it is efficient and effective in its operation and equitable in its delivery. Such issues as the frequency, relevance and selection of tests, the consistency of application of regulations, the role of quality assurance arrangements in the provision of safe food and the costs of the program are addressed in the report.

## 2.4 The international policy environment

### 2.4.1 The WTO and SPS/TBT agreements

With the reform of agricultural protection which resulted from the Uruguay Round of Multilateral Trade Negotiations held under the auspices of the General Agreement on Tariffs and Trade (GATT), there was concern that countries might turn to food safety and quarantine restrictions as a means of protecting their agricultural industries. The 1994 WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the 1994 WTO Agreement on Technical Barriers to Trade (TBT Agreement), which entered into force with the establishment of the World Trade Organization on 1 January 1995, were designed to prevent this from happening. The purpose of these two agreements is to prevent the proliferation of non-tariff barriers to trade by defining how technical barriers to trade may be used legitimately. The 1994 TBT Agreement replaced the earlier TBT Agreement (also known as the Standards Code) which was one of six codes signed at the end of the GATT Tokyo Round in 1979. The 1994 SPS Agreement was the first such code covering sanitary and phytosanitary matters and was designed to improve the conduct of trade.

Given that Australia exports more than four times as much food as it imports, it is clearly in Australia's interests to ensure that food safety policies and procedures are not used as a device to protect industries from import competition. The SPS Agreement covers such matters as the application of food safety and animal and plant health regulations for animals, plants and food-related products moving in international trade. The Agreement also serves to maintain the sovereign right of any government to provide the level of health protection deemed appropriate, as long as these measures are based on a scientific risk assessment process. It requires that sanitary and phytosanitary measures be applied only to ensure food

safety and animal and plant health. The Agreement clarifies factors that should be considered in assessing the risks and requires that measures to ensure food safety and to protect the health of animals and plants should be based (as far as possible) on the analysis and assessment of objective and accurate scientific data.

For food, the SPS Agreement provides a special status to standards, guidelines and recommendations established by the Codex Alimentarius Commission (discussed in Section 2.4.2). Sanitary measures which conform with the Codex position are deemed to be necessary to protect human health and presumed to be consistent with the SPS Agreement. Hence no additional scientific justification for such measures is required. However, if the national requirement results in a higher level of sanitary protection than would be achieved by an international standard (such as, Codex), then a country could be asked to provide scientific justification, in order to demonstrate that the measure was based on a consistent application of scientific risk assessment principles.

The TBT Agreement provides protection from the application of arbitrary and discriminatory measures to imported foods, covering issues such as labelling, which lie outside of the scope of the SPS Agreement. Both the SPS and TBT Agreements recognise the principle of equivalence, thereby allowing exporting countries to apply measures, which, while differing from the detail of the importing country requirement, provide the same outcome.

### 2.4.2 Codex

The Codex Alimentarius Commission is an international inter-governmental body that develops food safety and commodity standards to facilitate trade and promote consumer safety. The Commission was established in 1962 by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) of the United Nations. The Commission, comprising representatives of each of its 154 member countries, establishes policy and work priorities and adopts standards based on the recommendations of the Commissions 28 subsidiary bodies. To date, the Commission has adopted over 230 food standards, 3500 maximum residue limits for agricultural and veterinary chemicals and over 40 hygiene and technological codes of practice. These are published in the 14 volumes of the Codex Alimentarius.

Australia has always been an active participant in the Codex program for two prime reasons. First, the utility of Codex standards and codes provide a means of protection of consumer health and safety. Of equal importance to Australia, Codex standards provide the basis for harmonisation of requirements for foods moving in international trade. Whilst Codex member countries have been committed to the principles of the Codex Alimentarius Commission since its establishment, use of Codex standards was rather arbitrary until the conclusion of the GATT Uruguay Round and the adoption of the SPS Agreement.

Codex standards also provide a bridge between the facilitation of trade and domestic standards for local consumers. Governments frequently adopt Codex norms directly into national regulations, as is the case with many of the developing countries where resources and expertise for food standard setting are limited. On the other hand, governments may use Codex standards as the basis for developing domestic standards. In Australia, ANZFA has a statutory obligation to take into account international standards when developing measures for inclusion in the Food Standards Code.

There are two main linkages between Codex and the *Imported Food Control Act*. First, the Food Standards Code is the applicable standard under the *Imported Food Control Act*. Second, and of particular relevance, Codex has established a committee to develop guidelines for import and export certification systems. Inspection procedures utilised by Australia will need to conform with Codex standards, when these are finalised.

At its February 1998 meeting, the Codex Committee on Food Import and Export Inspection and Certification Systems, chaired by Australia, progressed further development of proposed Guidelines for Food Import Control Systems. The first of the seven principles in the draft Guidelines states:

> Imported food standards and application of those standards cannot be more rigorous than domestic controls, while acknowledging that domestic production allows some scope for "in process" control.

The full set of proposed principles in the draft Guidelines is shown at Appendix E.

### 2.4.3 Special arrangements with New Zealand

The Review noted that Australia has particular obligations under agreements made with New Zealand. In 1997 Australia and New Zealand agreed to relax border controls for food traded across the Tasman. This was a flow-on from the creation of ANZFA and the agreement to harmonise food standards. The only New Zealand food products now subject to testing upon entry to Australia are those on the jointly agreed list of foods that are considered to have the potential to pose a risk to public health.

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) was signed by Australia and New Zealand in July 1996, and came into force in May 1998. Building on the principles of the Closer Economic Relations (CER) Treaty between the two countries, the objective of the arrangement is to remove regulatory barriers to the movement of goods and service providers between Australia and New Zealand. The TTMRA and its supporting legislation declares that goods, which comply with applicable standards and hence are legally available in Australia, are eligible for sale in New Zealand and *vice versa*. Quarantine requirements are outside the scope of this agreement and continue to apply.

With the relaxation of barrier inspection of food traded across the Tasman, the control of food from third countries was recognised as an important issue. Australia (AQIS) and New Zealand (Ministry of Health) have agreed to jointly assess proposed certification arrangements with third countries. Further, the certification arrangements that now exist with foreign countries are subject to review. This is an opportunity for expansion of certification coverage to encompass both Australia and New Zealand and to assess the efficacy of existing arrangements.

## 2.5 The national policy environment

### 2.5.1 The national food regulatory process

Under the Constitution, the States and Territories are responsible for food matters. Historically this has meant that food legislation was developed differently in each jurisdiction and resulted in inconsistent approaches, with the potential to impact adversely on food traded between the various States, as well as food traded between Australia and other countries.

The States and Territories have been working with the Commonwealth Government since the 1970s to bring about nationally consistent food legislation. The primary legislation in each State and Territory is a Food or Health Act that is based on the Model Food Act adopted in 1980. The state legislation supports two sets of regulations the food standards regulations (mainly end-product requirements) and the food hygiene regulations (mainly process requirements).

Uniformity has been achieved for the food standards regulations through an agreement between the States and Territories and the Commonwealth that established a Ministerial Council consisting of all Health Ministers chaired by the Commonwealth. In essence, the agreement provides that food standards, endorsed by a majority of members on the Council, are adopted by reference and without amendment into the food regulations in each jurisdiction. These standards are known collectively as the Food Standards Code and are developed by the Australia New Zealand Food Authority (ANZFA). The Agreement was extended to include New Zealand in 1996.

Whilst the state legislation does not directly impact on the operations of IFIP, the Food Standards Code is of particular relevance as the *Imported Food Control Act* defines the "applicable standard" to which imports must comply as "the national standard in force in relation to that food or matter at that time"; in other words, the Food Standards Code. As a result, all food products traded on the Australian domestic market, whether produced domestically or imported, must conform to the same standards. This ensures that the WTO requirement of "consistent treatment" is met.

### 2.5.2 Reviews of national food regulation

The legislative framework and content of food regulation in Australia are currently undergoing major reviews. In the case of the State Food Acts, whilst they are based on the Model Food Act, uniformity has not been fully achieved and there are significant differences between jurisdictions. Accordingly, ANZFA with the States and Territories is reviewing the Model Food Act and State Food Acts to increase uniformity and to enable the implementation of important food reforms such as the hygiene regulations and a national surveillance and compliance system. This review has been extended to include a review of relevant provisions of the *New Zealand Food Act* in an attempt to achieve uniformity of important provisions of Australian and New Zealand Food Acts.

> The Review Committee *noted* that the development of nationally uniform Food Acts would result in consistent definitions across all jurisdictions for the first time. It would be desirable to align the definitions in the *Imported Food Control Act 1992* with the Food Acts.

ANZFA is also reviewing the various food standards which make up the Food Standards Code. The specific objectives of the review include to:

- reduce the level of prescriptiveness of food standards;
- develop standards that are easier to understand and easier to amend; and
- replace standards which regulate individual foods with standards that apply to all foods or to a range of foods.

This review, which is the Authority's highest priority project, is expected to be completed by the end of 1999. It is also being conducted against the National Competition Policy principles.

The review of food standards is of particular significance to the operations of IFIP. During the course of consultations, it became clear that in some cases importers' concerns with IFIP were in fact related to particular aspects of the food standards that were claimed to be unduly restrictive or out of line with international practice for example, the Australian prohibition on the addition of preservatives to sauces. In this context, ANZFA commented that "[s]ince the revision of the Food Standards Code is being done taking into account the competition policy principles, our WTO obligations and Codex standards, it will address the major areas of complaint about IFIP put forward by importers" (ANZFA *Submission* 1998).

> The Review Committee ***noted*** progress in the current revision of the Australian Food Standards Code and expects the proposed reduction in prescriptiveness and simplification of the food standards will facilitate compliance by imported food with Australian requirements.

The review of the food standards has another implication for the Act and its administration. The simplification of food standards is likely to lead to the removal of many of the specific and prescriptive labelling requirements, as well as of compositional and quality requirements. Instead, much greater reliance will be placed on the Food Acts under which it is an offence for food to be labeled in a manner which is false, misleading or deceptive. The Code will, however, continue to contain labelling requirements relating to health and food safety issues.

The Committee noted that at present the *Imported Food Control Act* does not contain a prohibition on false and misleading claims similar to that found in the State Food Acts and considered whether such a prohibition should be included in the Act. The Committee decided that, on balance, such a step was unnecessary. The following factors were relevant to the Committee's decision:

- at its inception, IFIP was clearly linked to the enforcement of the Food Standards Code and to depart from that position would necessitate a clear change in government policy;
- the Code would continue to contain labelling requirements relating to health and food safety issues and these would continue to be enforced under the Act;
- deciding whether a claim is misleading is generally a complex process that depends on evaluation of a wide range of factors; such decisions are ultimately made by courts, not by administrators;
- the States and Territories will still retain powers over false and misleading claims for imported foods; and
- IFIP does not have to duplicate government controls over all aspects of the domestic food safety and standards system.

The Committee recognised that the regulation of claims by reliance on general prohibition on misleading practices rather than by specific controls was a major development in food administration and enforcement policy. As this development was evaluated, the Committee considered it would be appropriate to further consider the implications for the imported food program.

> The Review Committee ***noted*** that, with the removal of many of the specific and prescriptive labelling requirements of the Food Standards Code, the Act's powers over labelling will, in the main, relate only to health and food safety issues. The implications of this may need to be further considered by Government to determine whether any expansion of powers is required.

The Food Regulation Review (the Blair Review) reported during the course of the Imported Food Control Act Review. The Blair Review was a wide-ranging exercise, encompassing the whole of the food sector. It had the tasks (among others) of:

- proposing broad purposes for food regulation;
- identifying the nature and magnitude of the problems with existing food regulation;
- developing options (with costs and benefits);
- recommending changes; and
- reviewing the *Australia New Zealand Food Authority Act 1991* against National Competition Policy principles.

The Draft Report was released for comment in May 1998 and the Final Report was released to the public in August 1998 (Food Regulation Review Committee 1998).

### 2.5.3 Development of the Food Hygiene Standards

In June 1995 and again in July 1996, State and Territory Health Ministers, in their capacity as the Australia New Zealand Food Standards Council, affirmed their support for a major reform of food hygiene regulation in Australia. They resolved that this could be achieved within the terms of the State, Territory and Commonwealth Agreement in relation to the adoption of uniform food standards of 1991. Food Hygiene Standards are outside the scope of the 1996 Agreement establishing a system for the development of joint food standards between Australia and New Zealand and therefore these proposed hygiene standards will only apply in Australia.

The purpose of the new hygiene standards is to enable Australia to have in place nationally uniform, efficient and cost-effective regulatory arrangements, governing the safe and hygienic production, storage, transportation, retailing and handling of food.

The Australian food hygiene reforms seek to:

- reduce the incidence of food-borne illness in Australia;
- reduce the incidence of food-borne pathogens reaching the marketplace, rather than detecting them after they have entered the marketplace;
- encourage a business environment that can respond quickly to emerging food-borne pathogens;
- encourage a business environment in which business can take full responsibility for the safety of the foods produced; and
- support export initiatives to enable Australia to compete more effectively on world food markets.

The Review Committee recognises that the development of the Food Hygiene Standards will require food importers to adopt food safety plans. This will require businesses to:

- adopt food safety programs;
- provide for food recalls;
- notify themselves to a relevant authority;
- ensure that their staff and supervisors have skills and knowledge in food hygiene commensurate with their work activities; and
- abide by standards which set out good hygiene practices for food handling and storage and standards for premises and appliances.

## 3. OBJECTIVES OF THE IMPORTED FOOD CONTROL ACT

The *Imported Food Control Act* was passed because of the perceived market failure in relation to imported foods (see Section 2). The Review Committee has considered the benefits and costs of the current legislation (Section 5) and has investigated alternative legislative strategies (Section 6), with the general conclusion that legislation should be retained. It is important, then, to properly define the objectives of the legislation.

The Act has, as its primary objective, protection of public health, by ensuring food safety, but this objective is not clearly stated in the legislation. The long title of the Act is:

> *An Act to provide for the inspection and control of food imported into Australia, and for related purposes.*

It does not directly mention the protection of public health, which was given some emphasis in the Bill's second reading speech, where Minister Griffiths stated that the Act aimed "at ensuring imported foods meet the same Australian food standards as local product", and that "the focus will remain on public health matters, but enforcement of other food standards requirements will be included in the scope of the inspection program" (House of Representatives 1992). The Explanatory Memorandum stated that the Act made "imported foods subject to monitoring both for . . . safety from a consumer health perspective and for compliance within the broader provisions of the Australian Food Standards Code" (Senate 1992).

The Committee is of the opinion that the objectives of the Act should be clearly stated in the legislation. The Office of Regulation Review (1997) has stated that:

> The objective of the regulatory initiative should be specified. The objective should not be specified so as to align with (and thus pre-justify) the particular effects of the proposed regulation. Rather, is should be specified in relation to the underlying problem.

The Review Committee is of the opinion that the primary objective should be to ensure that food consumed in Australia from imported sources complies with Australian food standards and general public health and safety requirements. The Committee is also of the opinion that the Act should be sufficiently flexible to be compatible with advances in food processing and food safety. The Committee also noted the requirement for legislation to be:

- consistent with Australia's international obligations and trade objectives; and
- consistent with National Competition Policy principles.

The legislation should deliver a program that is:

- risk-based;
- transparent;
- efficient and effective;
- performance-based;
- flexible, enforceable and promotes consistent and predictable outcomes;
- minimal in its imposition of compliance and paper burden costs on industry, and small business in particular;
- able to provide the appropriate incentives for full and mature industry participation;

- dedicated to fair and equitable outcomes;
- effective and efficient in its interrelationship with other agencies; and
- consultative in its development and administration.

The *Imported Food Control Act* and the Imported Food Inspection Program need not duplicate government controls of all aspects of the domestic food safety and standards system, ie, the Food Standards Code, the Food Acts, Fair Trading Acts and the Food Hygiene Standards. State and Territory authorities remain responsible for regulating misleading labelling/trade description of all products offered for sale on the Australian domestic market, including imported food products.

The *Imported Food Control Act* and IFIP should be responsible for those areas of regulation where intervention at the border is the most effective and efficient means of controlling imports. Primarily, those areas are public health and safety requirements, which are, in the main, to be found in the food standards that comprise the Food Standards Code. That Code also includes certain labelling requirements. For administrative efficiency, these should remain within the scope of the Act and IFIP. There should be a range of measures to assure food safety, including certification agreements, quality assurance arrangements, inspection and end-product testing.

**Recommendation 1:** The Review Committee recommends that the Act be amended in order to more clearly state its objectives. The following should be considered:

> *The objective of the Imported Food Control Act is to provide for the compliance of imported food with the Australian public health and food standards.*

# 4. ANALYSIS OF THE LEGISLATION AND ITS ADMINISTRATION

## 4.1 Operation of the program

The Imported Food Inspection Program (IFIP) largely operates on a risk and performance-based approach to food imports, which is discussed in more detail in Section 4.2.1. End-point inspection and testing are the main bases for determining the compliance of imported foods with the applicable standards. There are provisions in the Act for recognition of overseas production control systems and government supervision of production which are implemented by IFIP through certification agreements with overseas authorities.

The "risk" of foods is determined by ANZFA and the program then assesses food using this scientifically based risk assessment. The program has detected a range of failing foods through its various processes and these foods are then dealt with in the following manner:

- destroyed, or
- treated to bring it into compliance with Australian standards, or
- re-exported, or
- downgraded to animal food if applicable.

For the period 1995 to 1997, the number of entries referred to IFIP for action has remained fairly steady, being between approximately 19 500 and 20 500 each year with IFIP closely inspecting up to 18 000 of these each year. From IFIP management statistics, the Review Committee has determined that failure rates have been between 5.9 and 6.8 percent for all lines of food inspected. Most of these certainly over the past 18 months have been for labelling, making up just over 60 percent of all failures detected.

The types of food failures have been analysed by the Review Committee for the three-year period ending June 1998. Reasons for failure were classified in six categories of declining significance to public health and food safety:

> **Category 1:** Microbiological failures with the potential to pose high risk to human health, and extraneous failures with the same potential.
>
> **Category 2:** Failures with the potential of longer term health risks, including: heavy Metal, chemical residues, aflatoxins, histamines and ethylene oxide residues.
>
> **Category 3:** Composition failures, such as illegal additives or additives in excess of allowable limits.
>
> **Category 4:** Extraneous matter that renders products unusable in presented form, and dented cans.
>
> **Category 5:** Major labelling failures, including misleading health claims, missing health warnings and undeclared ingredients.
>
> **Category 6**: Minor labelling failures, including lack of importer details, lack of lot codes and failure to declare country of origin.

The failure data is presented on a quarterly basis for risk foods (foods of a high inherent risk to human health and safety, as determined by ANZFA, see Section 4.2) and surveillance foods (foods other than risk foods) in Figures 4.1a and 4.1b, respectively. The data needs to be interpreted cautiously as a different approach to inspection is taken depending on the classification of food under the Act and Regulations (see Section 4.2). Risk foods are tested for the contamination identified by ANZFA as a potential health risk (categories 1 and 2 above) as well as for labelling compliance (categories 5 and 6 above). Tests for risk and surveillance foods vary to reflect the inherent characteristics of the foods.

For *risk* foods, failures for health risks (categories 1 and 2) have declined over the period. For *surveillance* foods, there have been few failures in the past two years on grounds of high risk to human health. Failures for the presence of non-permitted additives or for the level of permitted additives above the maximum allowed limit have, however, remained constant. One explanation is that, as discussed in Section 2.5.2, Australia's food standards are highly prescriptive and have tended to be out of step with international practice on permissions for additives. These standards are currently under review.

Non-compliance with labelling requirements has been the major cause of failures. Indeed, the one category of failures showing an increase is minor labelling failures for surveillance foods. The high incidence of labelling failures is a major concern for importers and has serious implications for the operations of IFIP, especially in regard to the administration of Holding Orders. The issues surrounding labelling are discussed in Section 4.5.

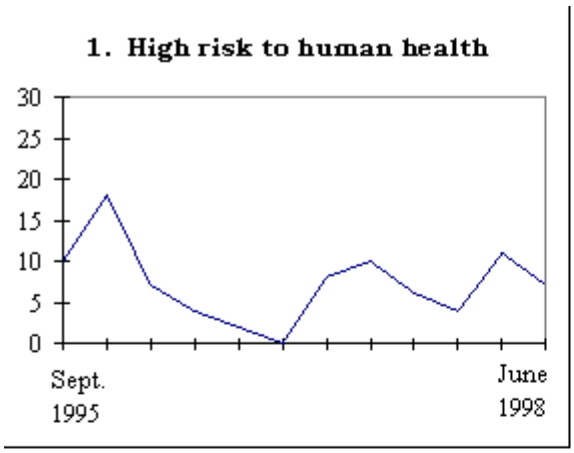
The program costs of IFIP are fully recovered from industry. Current charges are shown in Table 4.1.

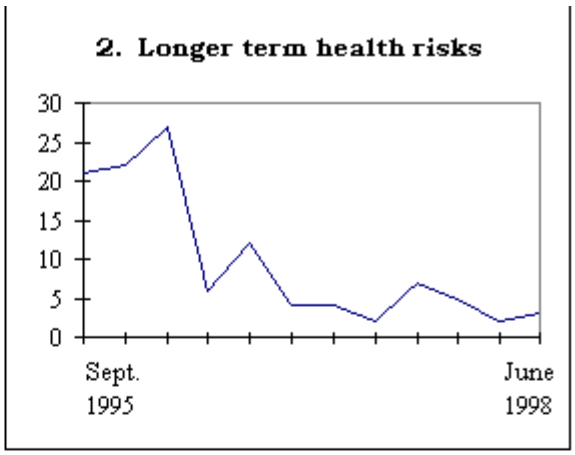
Food subject to certification agreements (see Section 4.7.2) does not attract inspection or testing charges but the documentation processing fee is charged for each consignment. Inspection fees are applicable to inspection of imports, and supervision of the treatment, destruction or re-exportation of failing food. Importers of all but certified food are liable for the costs of any analysis carried out by the Australian Government Analytical Laboratories (AGAL).

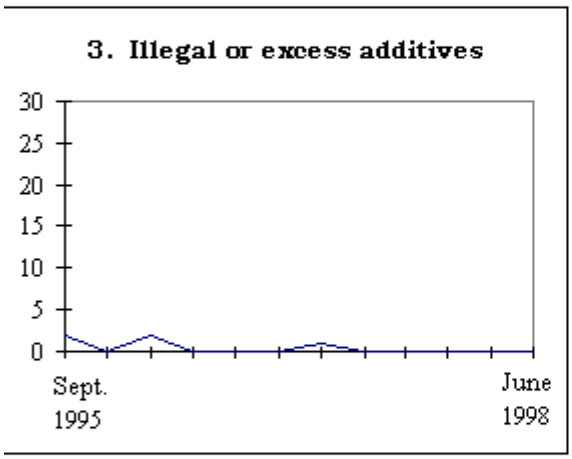
While there has been strong support in submissions and consultations from stakeholders for the need for government regulation and an imported food inspection program, stakeholders have indicated there is a need for improvement in a number of areas of program delivery.

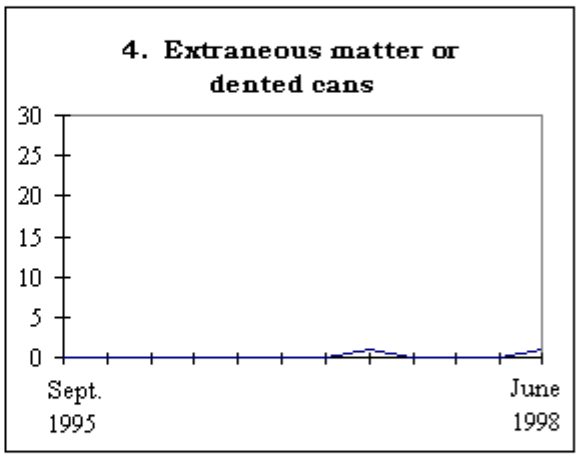
**Figure 4.1a Imported food failures by type: 1995-1998**
**Risk food**

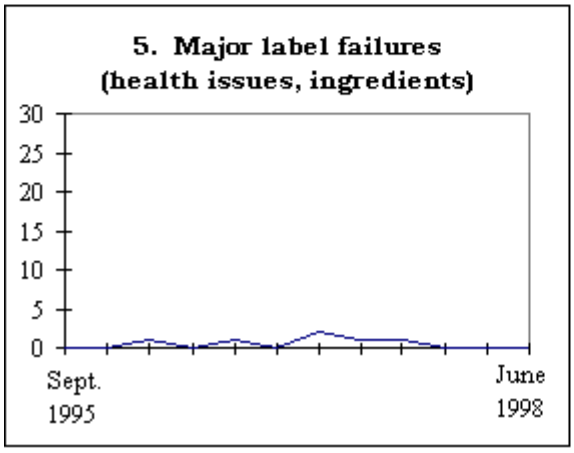
The failures are listed by type, each successive chart representing failures of a decreasing order of severity. Failures have been aggregated by quarter. The vertical axis shows the number of failures and the horizontal axis the relevant quarter.



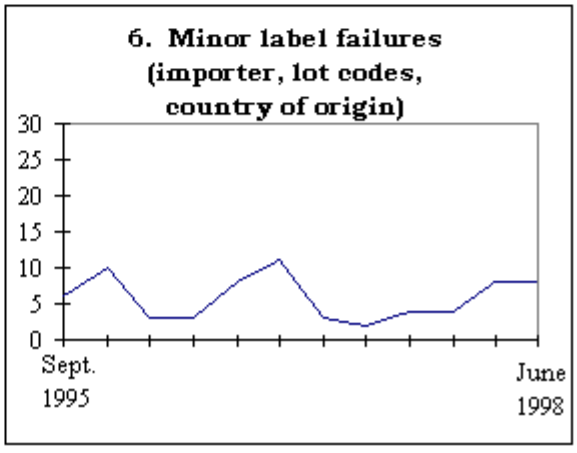



**Figure 4.1b Imported food failures by type: 1995-1998 Surveillance food**

The failures are listed by type, each successive chart representing failures of a decreasing order of severity. Failures have been aggregated by quarter. The vertical axis shows the number of failures and the horizontal axis the relevant quarter.

Note: The scale on the vertical axis varies from Figure 4.1a.

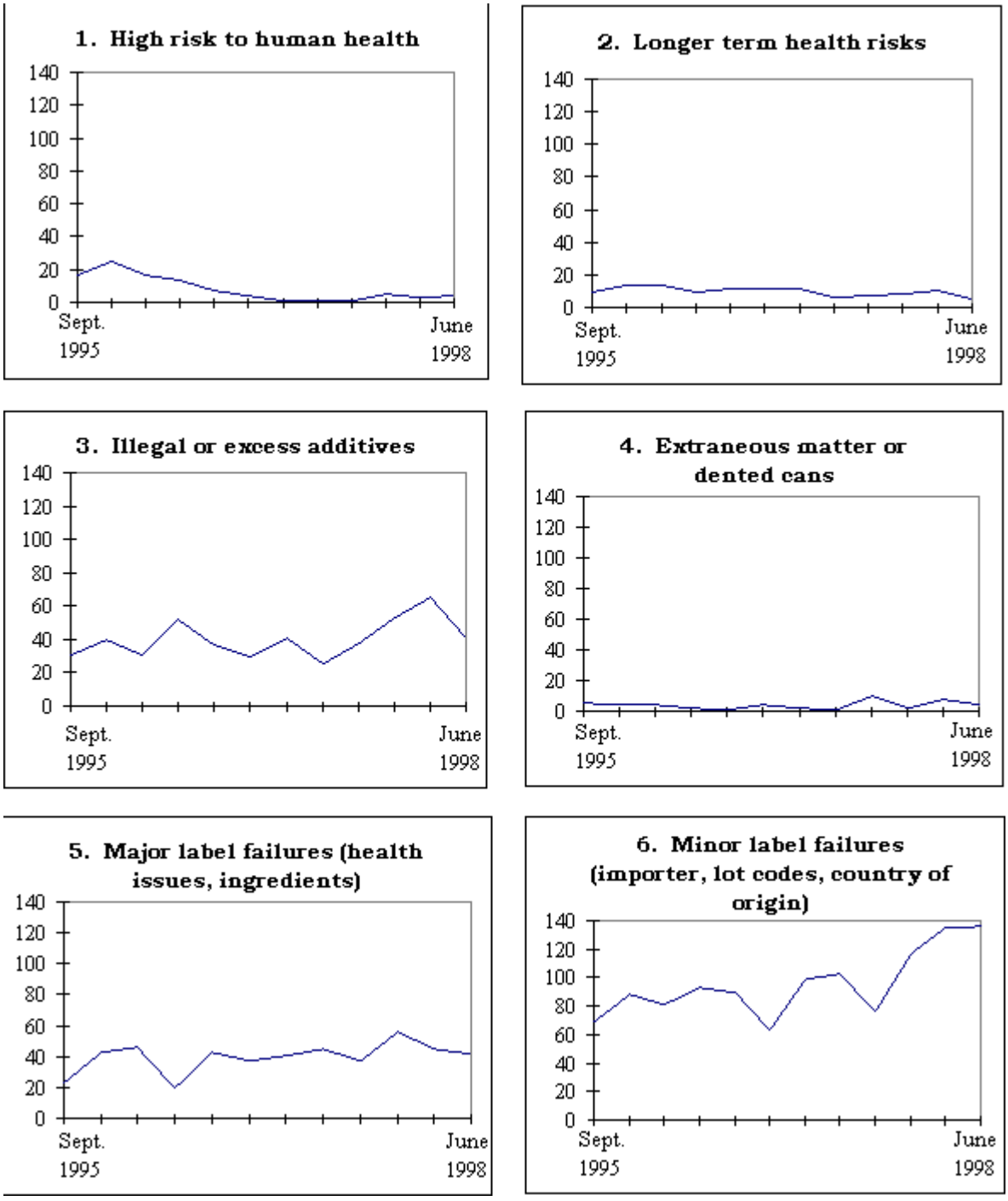


**Table 4.1 Current program charges**

| Chargeable service | Functions covered | Fee |
|---|---|---|
| Electronic entry lodgement | Lodgement in AQIS Import Monitoring System (AIMS) | $6 |
| Manual entry lodgement | Manual lodgement in AIMS | $12 |
| Document processing fee | Assessment of shipment information for inclusion in a food control certificate Assessment of documents for certified shipments | $30 |
| Inspection | Inspection of foods (first half hour) and arranging for food to be analysed | $68 |
| Inspection | Each subsequent quarter hour of inspection | $34 |

In its submission, the Australian Food Council observed:

> The benefits of food regulations are that they create a framework providing confidence to the consumer in the integrity of food, and an environment conducive to business producing and marketing food products.

The Australian Consumers' Association submission stated:

> There is a special case for having a special program for inspecting imports of food and beverages. Over the past ten years, our research has shown that food has risen to the top of the consumer agenda. Consumer concerns have come to focus on food safety; and also on issues of quality, and labelling and other information deemed necessary by consumers to make an informed choice.

However, in their submissions and during consultations, many stakeholders raised the following issues:

- an inequity in the level of testing between different importers;
- a lack of recognition of a good compliance history for importers;
- costs associated with inappropriate testing, inspection and analysis delays;
- a lack of transparency in the operation of the scheme; and
- a perceived lack of expertise of some inspectors.

These and other stakeholder views have been carefully considered and form an integral part of this report. See Appendix F for major stakeholder concerns.

## 4.2. Categorisation of food

### 4.2.1 Categories

The Act and Regulations have three inspection categories which determine the frequency of inspection: *risk, active surveillance and random surveillance*. The risk and active surveillance foods are determined and routinely reviewed by ANZFA. Upon advice from ANZFA, the Minister of Agriculture, Fisheries and Forestry may make an order specifying food within the inspection categories.

All risk categorised foods are inspected and tested, whereas all surveillance foods referred to IFIP are inspected, but not all are tested.

**Risk categorised food**: Food that has the potential to pose a high or medium risk to public health. At the point of entry, the Australian Customs Service (ACS) refers 100 percent of risk categorised foods, electronically, to AQIS for inspection status.

Examples of risk categorised foods and the program tests that are determined for them, based on the inherent risks associated with these foods, are shown in Table 4.2.

A performance-based approach applies. Food products from foreign producers with a consistent history of compliance are inspected less frequently than products from new suppliers or those with a history of failure against Australian standards. The three inspection rates are defined in legislation *(Imported Food Control Regulations)*, and any failure results in immediate intensification of the inspection regime. Risk categorised food remains subject to AQIS control pending the analytical results. The performance-based inspection levels are as follows:

- the first five shipments of a particular food first arriving from a particular producer are inspected; after five consecutively cleared shipments, inspection intensity drops to next level;
- one in four shipments is then inspected (the other three are automatically released); after 20 cleared inspections and, if importation follows a steady pattern, inspection intensity drops to the next level;
- one in 20 shipments is then inspected (the other 19 are automatically released)

**Active surveillance category:** 10 percent of shipments of designated *active surveillance foods*, from every supplying country, are inspected. These products are released upon sampling. The test results of active surveillance foods are analysed by ANZFA to determine the appropriate category classification for the foods.

**Table 4.2 Examples of risk categorised foods and program tests**

| Food | Program tests |
|---|---|
| Cheeses, soft and selected | *Listeria monocytogenes* |
| Coconut, desiccated | *Salmonella* |
| Crustaceans, cooked | Various microbiological tests, including *E. coli*, *Salmonella*, Standard Plate Count, Staphylococcal enterotoxin |
| Fish, selected | Mercury |
| Molluscs, ready for consumption | Various microbiological tests including *E. coli*, Standard Plate Count, *Vibrio cholera* and paralytic shellfish poisoning toxin |
| Mushrooms, canned | Pressure test, commercial sterility, Staphylococcal enterotoxin |
| Mussels, ready to eat | *Listeria monocytogenes* |
| Peanuts and peanut-based products | Aflatoxins |
| Pepper, dried | *Salmonella* |

**Random surveillance category:** 5 percent of all consignments of all other foods not included in the risk or active categories are inspected. These products are released upon sampling. Neither AQIS nor the importer have the ability to predict which shipment or which foods will be impeded for inspection.

**A Holding Order** can be issued where an active or random surveillance food does not comply with the standards. A Holding Order against a foreign supplier effectively raises the inspection category of the food up to "risk" status. This means that all future shipments of that food from the offending supplier are automatically detained and held until compliance with Australia's requirements is confirmed. After five clear inspections, the food reverts back to its prior category. Holding Orders are described in more detail in Appendix G.

The Review Committee noted that stakeholder submissions and interviewees have supported the current approach to dealing with risk categorised food used by IFIP, but were less satisfied with the surveillance category referrals, particularly the active surveillance foods. The Food and Beverage Importers Association submission stated that:

> … the active surveillance classification, as currently operating, is inflexible, leads to overtesting and not in line with risk analysis principles. There might be need for a classification for emergency or special testing, but the current

scheme is an unnecessary cost for importers, which is passed on to consumers.

Further, the AQIS submission observed:

> No commodities have been elevated to risk status through monitoring active surveillance foods.

Other stakeholders provided similar comments and further commented that, considering the tests are used by ANZFA as a policy assessment tool, levels of testing in this category are high, and costly to industry and the community. The issue of inspection levels is discussed in Section 4.2.2.

The Review Committee was of the opinion that there appear to be no health-related reasons for the continuation of the active *surveillance* category, given that the monitoring conducted in the past six years has not resulted in any foods being reclassified. On the other hand, there still remains a need to target specific foods should the potential for a health concern arise a function best performed by IFIP, in consultation with ANZFA (see Section 4.2.3).

The continuation of a new combined *surveillance* category with a random inspection element is considered necessary by the Review Committee to provide a deterrent to non-compliance by importers. The data presented in Figure 4.1b clearly demonstrates the deterrent effect of the inspection of foods in the surveillance category for health-related failures.

**Recommendation 2:** The Review Committee recommends that a new combined surveillance category be established in legislation for all foods other than risk categorised foods.

### 4.2.2 Inspection levels and strategies

Stakeholders commented that under the present system, no account was taken of measures that importers used to ensure that surveillance foods they imported complied with Australian requirements. As such, there is no incentive for importers of surveillance foods to take measures offshore in regard to the foods they import. The submission provided by the Industry Working Group on Quarantine (IWGQ) stated:

> The current IFIP appears to be driven by the assumption that every importer, and every product is an equal potential risk and therefore a percentage of every importer's product should be inspected. . . The opinion of industry service providers and importers was that this situation effectively increased the risk of other possible contaminated foods and beverages passing the import barrier undetected by AQIS.

The Review Committee noted that the AQIS submission dealt with this subject as follows:

> Surveillance categories do not provide relief even when a good compliance record may exist for the particular product. For example, because of the relatively high proportion of imported alcoholic spirits (a random surveillance food), there is a consequential high rate impediment of this commodity. There has been no finding of noncompliance of a food safety nature, yet the legislation requires that the products are impeded and evaluated at the 5% rate.

The Review Committee supports the principle of encouraging importers to accept greater responsibility. Measures taken by importers of surveillance foods, and factors such as company and industry performance should be taken into account under a performance-based system as with risk foods. The current inspection regime results in the anomalous situation where the importer of a risk food with a good compliance history is inspected at a 5 percent rate, the same as an importer of a random surveillance (low risk) food, and an importer of an active surveillance (low risk) food with a good compliance history is inspected at a 10 percent rate.

It is six years since the Act was introduced and, since that time, changes have occurred in the imported foods industry and in approaches to food safety. Although stakeholder concerns focussed on testing s*urveillance* foods, the Review Committee believes that it is timely to reassess the inspection levels and strategies for **both** risk and surveillance foods.

The Committee is of the opinion that assessment should be undertaken by AQIS (in consultation with stakeholders) to determine appropriate inspection levels and a performance-based testing regime for risk and surveillance foods to achieve the objectives of the Act. Factors which should be taken into account in such a system include:

- compliance history of the importer and supplier; and
- whether the importer has a compliance agreement with AQIS based on of a quality assurance-type system as proposed in Section 4.7.3.

A performance-based system for *surveillance* as well as *risk* foods would have the twofold benefit of:

- providing incentives for importers to source compliant products from reliable sources; and
- better targeting of program resources based on risk profiling, eliminating the need to routinely inspect imports from importers with a good compliance record and products with a good compliance history.

This would result in an inspection system which would target resources more efficiently and effectively, and overcome stakeholders' concerns that the present inspection and testing system does not reflect food safety risk or company performance. While IFIP would become more proactive, ANZFA would still determine the *risk* categorised foods.

**Recommendation 3:** The Review Committee recommends that:

- assessment be undertaken by AQIS, in consultation with stakeholders, to determine appropriate inspection levels and strategies for risk and surveillance foods to achieve the objectives of the Act; and

- AQIS consult with stakeholders to develop and implement an assurance regime that is based on individual and collective performance in the imported food industry.

The rates at which types of food are inspected are currently specified in the legislation. The Review Committee is of the view that this makes the system too inflexible and reduces the effectiveness and efficiency of the inspection regime.

Legislation which specifies testing rates constrains risk profiling and targeting, based on current information. The principles on which inspection and testing policies are based should be specified in the legislation but the testing rates should not be specified in the legislation. These should be authorised at a suitable level (eg, the Secretary of the Department of Agriculture, Fisheries and Forestry).

**Recommendation 4:** The Review Committee recommends that:

- inspection rates not be detailed in the legislation; and
- legislation specify the factors to be taken into account when setting inspection strategies and rates.

In the Committee's opinion, reviewing the testing rates, and introducing greater flexibility and performance-based testing for all imported foods and beverages, together with changes to labelling recommended in Section 4.5, will overcome stakeholder concerns about the inequities of the current *surveillance* foods system and alleged over-inspection. In addition to these recommendations, the Committee gave extensive consideration to changing inspection of surveillance foods from a line-based system to a container-based system. Whilst the latter approach may provide some advantages for importers of multi-commodity shipments who commented that most of their shipments are currently referred to IFIP further consideration of that approach is premature and should be deferred until the recommended changes have been evaluated.

### 4.2.3 Policy development

To ensure the safety of imported food for consumers, AQIS and ANZFA need to be able to make objective scientific risk assessments on the products that are imported. Many factors are involved in this process, including gathering data about the potential risks. For example, if AQIS or ANZFA consider there is a risk of a contaminant in cereal products from certain countries or geographical locations, but have no data to support increasing the inspection category to "*risk*", then IFIP is a valid mechanism to collect data and to determine if the suspected risk exists. This activity would not be performed for compliance purposes, but for enabling scientifically based risk assessments to be conducted. The *active surveillance* category is presently utilised in this role together with activities undertaken by ANZFA, and so both industry and government fund this area. As an activity conducted for the public good, its funding is best sourced from government (ie, community service obligation funding) rather than recovered from industry.

**Recommendation 5:** The Review Committee recommends that the legislation includes provision for imported food to be tested specifically for the purpose of policy development by ANZFA and AQIS, this testing, as now, to be funded by government.

## 4.3 Rationale for tests

Many stakeholders commented on the perceived inappropriateness of much of the testing performed under IFIP. They see this as imposing a considerable cost burden. The Committee defined the following issues as central to the tests applied:

- tariff codes and the selection of tests using AQIS Information Management System (AIMS);
- the selection of tests types by ANZFA; and
- officers' expertise (see Section 4.8.5).

### 4.3.1 Selection of tests using tariff codes and AIMS

Tests are allocated within AIMS for various commodities most of these being *risk* categorised foods or those on Holding Orders and the results provide a history for each producer and food. This history determines the inspection rate of those foods, with compliant producers benefiting from lower inspection rates and those with compliance problems remaining on or elevated to higher rates of inspection. This system works well, subject to the problems of tariff code definition of products. The relatively broad definition afforded by the tariff codes does not always match the precision required by IFIP, and has led to inappropriate tests being allocated against products. For example, a test allocated for dried peppercorns (a *risk* category food) will also affect peppercorns in brine, which are not subject to the same health risks. It is necessary, therefore, to be able to distinguish between the two.

Tariff codes are an internationally accepted method of classifying foods for trade and (as such) would be difficult to change. IFIP will need to continue to have a computer system that is able to record a history against various criteria that are selected. This information is needed to maintain a national database to ensure that imports are treated consistently, irrespective of where they are inspected. The nature of the products imported can often only be verified at inspection. AQIS is presently investigating the potential for expanding the scope of statistical codes associated with tariff codes, for quarantine purposes, and the Committee would encourage AQIS to extend this to imported foods. The problems with tariff codes are further exacerbated by the lack of officer expertise and for this reason AQIS officers should be sufficiently trained to ensure that inappropriate tests allocated by AIMS are not done on products. This issue is discussed further in Section 4.8.5.

**Recommendation 6:** The Review Committee recommends that AQIS investigate the use of the tariff code system with a view to achieving more focussed referrals of imported food.

### 4.3.2 Selection of test types by ANZFA

ANZFA, using its scientific risk assessment procedures and in consultation with AQIS and industry, determines the tests that are to be undertaken for the various commodities in the *risk*, *active surveillance* and *random surveillance* categories. IFIP then issues notices which detail the range of tests to be allocated against the various commodities that are imported and the notices are made available to all officers and interested parties.

The category listings and tests are current until they are reviewed by ANZFA. In one instance, the *active surveillance* category list and associated tests were in place for over two years, leading to many complaints from importers that performing the same tests on the same foods, was of little value, especially when there had not been any failures on previous imports under these conditions. In response, many IFIP officers extended the range of tests performed on these foods, leading to more uncertainty for importers. Lengthy delays in changes to category lists and associated tests have caused problems, and in the opinion of the Review Committee may have been through a lack of resources being allocated by both ANZFA and AQIS to this function. Implementation of the recommendation of the Review Committee to have only *risk* and *surveillance* categories will simplify these reviews, as the *risk* category list is likely to remain reasonably consistent.

The appropriateness of tests determined by ANZFA has been questioned by stakeholders and on occasions by experienced IFIP officers. Some of the problems result from the difficulties encountered with tariff code selection, discussed in more detail in the previous section. The ANZFA submission supported this view, commenting on:

> . . . [the] difficulty in identifying the correct tariff code to use to impede product where a potential public health and safety risk is known; . . . [and the] difficulty in providing generic instructions to AQIS inspectors on what tests to apply to particular foods.

The Review Committee welcomes the moves by both agencies to relieve this problem by developing more detailed interpretive guidelines on testing for officers at an operational level. Problems have been exacerbated by the lack of expertise of some of the officers undertaking IFIP inspections (see Section 4.8.5 for more discussion on this point), and both agencies not taking into account difficulties in implementing policy decisions at an operational level. The incidence of problems, together with the reasons, needs to be determined and solutions adopted to suit both parties. Additionally, the program needs to be flexible in its approach to ensure that any policy changes are able to be implemented in a timely fashion.

**Recommendation 7:** The Review Committee recommends that AQIS and ANZFA allocate adequate resources to ensure operational effectiveness of the Imported Food Inspection Program.

## 4.4 Product testing

IFIP laboratory analysis costs industry in the order of $1.2 million per year. There were many written and oral submissions made to the Committee concerning laboratory testing, which can be separated into issues concerning client service and technical accuracy. While most stakeholders were satisfied with the standard of work being performed by the Australian Government Analytical Laboratories (AGAL), there were comments on the length of time taken for testing and claims of high charges.

### 4.4.1 Client service

Section 34 of the Act allows the Secretary to appoint analysts to test imported food. However, Cabinet Minute No 11946 of 1988 specified that all analytical work for the program should be performed by AGAL. Recently, following changes to government policy, this was altered to allow importers to use other service providers that meet the requirements for the analysis of *surveillance* food. The Committee noted that as at 25 August, 1998, 12 laboratories other than AGAL had been appointed as analysts under the Act.

In its submission AQIS states:

> Ideally, importers should have a wider choice as to what laboratory service providers can be used to test imported food. In the view of AQIS such arrangements would be technically defensible, where participating laboratories are National Association of Testing Authorities (NATA) accredited and participate in regular performance testing programs.

This approach is repeated in submissions from the Customs Brokers' Council, Food and Beverage Importers' Association, New Zealand Ministry of Health, the Tasmanian Department of Health and others.

The Committee considered that a more contestable environment for laboratory testing would be beneficial to the importing industry. This would allow importers to "shop around" for analytical service providers who meet their requirements for factors such as price, turnaround time, and reporting. However, at present, not all laboratories supply all services needed or required for imported food, and there may be some restrictions on usage.

Use of laboratories other than AGAL may result in changes in operation for AQIS, particularly in respect of the transportation of samples and release of consignments of *surveillance* foods. Samples are now delivered to AGAL by AQIS. As importers choose to use other analytical service providers, AQIS may need to review the mechanisms for the delivery of samples to ensure their integrity.

**Recommendation 8:** The Review Committee recommends that suitably accredited laboratories be permitted to analyse imported food samples for both *risk* and *surveillance* categories of food.

IFIP previously notified importers of the results of all testing and issued releases on all tested foods which passed, but this has been changed recently to providing only releases on foods that had been held pending results. This had led to a level of importer dissatisfaction with service delivery by IFIP. AGAL stated that flowing from the AQIS decision, calls from firms about release of food had increased its workload. These calls are referred on to AQIS, which is the authority for providing releases on consignments. In its submission AGAL states:

> This issue is complicated by the recently changed arrangements whereby importers are required to "self-assess" results provided by AGAL and to make a decision to proceed with distribution/sale of food without a confirmatory indication from AQIS. Prior to this administrative change, AQIS inspectors performed a useful role in providing a pass/fail message to importers, particularly those from small to medium sized enterprises who do not necessarily have the appropriate knowledge base in-house to interpret test results.

The Review Committee is of the opinion that IFIP, as the body responsible for sampling and testing, should provide notification of results and releases to importers for **all** foods tested. This would provide efficiencies to industry, assisting importers to make considered decisions on future imports of the same products.

**Recommendation 9:** The Review Committee recommends that AQIS provide notification of results and releases to importers for all foods tested under the Imported Food Inspection Program.

### 4.4.2 Technical accuracy

The accuracy of results is critical as any errors could have the potential for serious impacts to importers, consumers and AQIS. False negative results could culminate in a (preventable) food poisoning incident, while false positives have measurable cost disadvantages for industry and the community. To assist in controlling this situation, the Committee noted that AQIS has developed a set of requirements for laboratories to be appointed under the Act. The primary requirement for appointment of laboratories is NATA registration, in keeping with the Memorandum of Understanding between the Commonwealth and NATA. AQIS also demands that laboratories meet other criteria including minimum turnaround times, lines of reporting, and notification to AQIS if NATA registration or method accreditation is discontinued or inoperative.

An important control in maintaining integrity and technical accuracy is the proficiency testing process, and laboratory participation is part of the criteria set by AQIS. The Committee noted the comments regarding the availability of proficiency testing made by Dr Terry Spencer (AGAL) as well as those made in the AGAL submission.

Dr Terry Spencer (AGAL) commented:

> Satisfactory performance in proficiency testing should be part of the agreements between commercial laboratories and AQIS.

**Recommendation 10:** The Review Committee recommends that AQIS facilitate the development and implementation of a system to verify the validity and accuracy of test results provided by laboratories.

As part of its normal practice, AGAL provides extended reports on tests in addition to those specified by IFIP, if such testing is seen as warranted by AGAL. For example, if a sample appears to have high coliform counts, AGAL routinely extends analysis and looks for *E. coli*. Routinely, pesticide analysis is extended beyond the standard list. AQIS is given reports on these if any positives are found. AGAL amortises the cost of this across all testing done for IFIP. In the opinion of the Review Committee, extended reporting is appropriate and testing charges may, in some circumstances, need to be increased to reflect extra laboratory costs.

> The Review Committee ***encourages*** AQIS to consider including these and any other extended reporting as part of the agreements with commercial laboratories.

## 4.5 Labelling

Stakeholders identified labelling requirements as an important issue. The Review Committee found that there are many different agencies involved in monitoring labelling compliance, with a wide range of regulatory requirements:

- IFIP (AQIS and ANZFA);
- State Health and local government agencies;
- Australian Competition and Consumer Commission (ACCC);
- Fair Trading agencies (States/Territories); and
- Australian Customs Service (ACS).

Labelling requirements are part of the Food Standards Code which applies to both domestic and imported foods. The State/Territory Food Acts require labelling satisfying the Food Standards Code to be on products at the time they are sold, in contrast to the *Imported Food Control Act* for which all requirements must be met at the time of importation. The latter potentially places an unfair burden on importers and the Committee considered whether this could be avoided.

Labelling is particularly important for the following reasons:

- consumers' awareness of ingredients in food, so they can make considered choices when purchasing, particularly for consumers with allergies to certain ingredients and with special dietary needs;
- consumers' identification of country of origin of product;
- facilitation of product recalls in the event of product failures; and
- facilitation of inspection by IFIP officers, including ingredient lists in English and lot codes.

The Review Committee accept that the responsibility for ensuring labelling compliances lies with the importers. For non-compliance, officers place the products on hold after inspection and importers rectify labelling, the products then being re-inspected and passed if acceptable. Officers filling out a Holding Order Request form which is then processed by Canberra IFIP. See Appendix G for a discussion of Holding Orders.

Most stakeholders commented that labelling requirements under the Food Standards Code were quite reasonable, but difficulties arose when overseas suppliers and manufactures did not label products as requested. Some stakeholders stated that it could be difficult to meet all requirements, as the overseas manufacturers were unwilling to divulge all ingredients on labels to protect their products from being copies. The high proportion of failures due to labelling problems is shown in Figures 4.1a and 4.1b.

Labelling in English was considered important by most stakeholders contacted. Australian manufactures producing products for the domestic market and / or overseas markets must comply with the Australian domestic labelling requirements, labelling requirements of importing countries, or Codex labelling requirements, all of which include ingredients listing and the use of language which is acceptable to the intended consumer.

The Review Committee is of the opinion that while labels should be brought into compliance before the products are released, the imposition of Holding Orders on failing products causes disruption to the market, and is seen by stakeholders as unfair. At present approximately 60 percent of Holding Orders are for "labelling only" breaches, and cause the next five shipments of that product to be flagged for inspection, even for importers with excellent compliance history. The Committee was of the opinion that any sanctions in place should be specific to the importer who imported the failing product and not necessarily to the product.

Labelling non-compliance detected by IFIP has remained consistent, at approximately 60 percent of total breaches detected form 1995 to 1997. This, combined with stakeholder comments convinced the Review Committee that the present system of dealing with labelling failures does not provide a sufficient deterrent to lessen breaches, and is taking up to much of the program's resources in an area that does not focus on the greatest risks from imported foods. The current system of targeting food, not importers, for labelling breaches does not provide any incentive for compliance, and is neither effective nor equitable.

The Review Committee is of the view that IFIP should seek to develop alternative procedures to deal with labelling failures, such as compulsory checking of the importer's next shipment, specifically for labelling compliance. Nevertheless, there are instances where labelling failures are of major food safety concern and the option of utilising Holding Orders for these label failures should remain.

As the responsibility for labelling is placed more in the province of industry, the Review Committee considered it important that AQIS - in consultation with relevant agencies and industry – develop a system to verify labelling compliance for imported food in the marketplace. Intelligence gathered from various sources, including other government agencies, importers and the general public, should be utilised by IFIO to target its resources to the most appropriate areas. These measures would encourage a greater level of compliance by all importers while answering stakeholders' views that there was not enough uniform enforcement of labelling compliance at present

**Recommendation 11:** The Review Committee recommends that:

- the legislation specify that labelling conform to Australian requirements at the time of inspection or prior to the product leaving the importer's premises (which ever comes first);
- the legislation specify that failures for labelling should be recorded and actioned against the importer, rather than the producer;
- the use of Holding Orders against producers for minor labelling failures be discontinued; and
- AQIS, in consultation with relevant agencies and industry, develop a system to verify labelling compliance of imported foods, post border.

## 4.6 Release on sampling of surveillance food

It has been the practice of AQIS to release *surveillance* food upon sampling, based on the low expectation of a serious food failure. The benefits in the system of "sample and release" are seen as marginal by some importers and customs brokers, who now routinely hold some surveillance foods targeted by IFIP until results are returned from the laboratory. Most stakeholders interviewed make their own risk assessment on *surveillance* foods, and on this basis hold or release the food in question. This is a commercial decision based on whether the risk of a recall, and the associated costs, justifies the expense of holding the food.

AQIS in its submission to the Review suggested that practices should be amended to remove the "sample and release" approach for "*low risk*" foods and replace with "sample and hold". The following reasons were stated.

> A custom of the IFIP has been to release low risk food upon sampling. The cost of conducting food recalls to the State/Territory Health Authorities has been considerable (although estimates in dollar terms are difficult to get) if the tests later reveal the food failed testing . . . Within the group [of importers] that do not practise this cautionary procedure, are the importers who may gain from quickly on-selling the food.
>
> Because the importers are legally able to "deal" with the goods, low risk food has been treated as a lower priority by AGAL. Samples are often "batched" and delays in commencing the analysis have created a situation where importers, who choose to hold the food, are penalised.

The States which responded pointed to the fact that costs were incurred in the case of product recalls.

The Review Committee considered that the issue of enforcing food safety for *surveillance* foods which, based on the ANZFA scientific risk assessment, have been determined to pose a low risk, needs to be balanced against commercial considerations:

- the cost of holding all foods subject to test until results are received; and
- the cost of recalls.

The Review Committee believes that it is logical to release all foods to the discretion of the importer because selection for inspection and testing is done on a random basis. The fact that the non-compliant food may be more easily detected by IFIP simply points to the different characteristics of an end-point inspection system, compared to inspection of the production establishment, where problems would be discovered and corrected much earlier. The company decision to release after sampling is purely a business decision. The New Zealand Ministry of Health's submission observes:

> On the condition that the importer is responsible for the food product and its compliance with food standards, food should be released after sampling, if the product has a history of compliance or is perishable. Product with a non-existent or non-compliant history should be held pending results. This puts the onus on the importer whether to hold or distribute the food into the marketplace. Where the importer has justified confidence in the food, they can make that informed decision.

If a change to a "sample and hold" regime were put in place, inventory costs would increase. All importers, not just importers of *risk* categorised food, would bear the cost of the additional stock needed to cover for possible delays in the release of products. The resulting increase in cost would be at least $6.1 million, assuming (as described in Section 5) that the change causes extra stock to be held for 25 percent of *surveillance* foods imported.

In the opinion of the Review Committee there is not sufficient reason for a change and there are strong reasons not to change from the present release after sampling for *surveillance* foods. Commercial decisions are based on risk assessment, and domestic producers already make this type of decision. The prime need is to ensure that there are similar standards for both domestic and imported product.

**Recommendation 12:** The Review Committee recommends that AQIS continue the current policy of release on sampling for non-*risk* categorised foods.

## 4.7 Equivalence, certification agreements and quality systems

Ultimately, it is the responsibility of industry to provide safe food. The government sets safe food standards and puts a mechanism in place to monitor compliance, while industry should be responsible for implementing an internal process to ensure those standards are met. The food importing and manufacturing industry is increasingly using technically advanced and integrated systems along the entire food supply chain to identify risks to the production of safe food. These systems offer a greater assurance of food safety, and are less reliant upon end-point testing. An example of such a system is the Hazard Analysis Critical Control Point (HACCP), where a set of steps are used to identify and control specific physical, chemical and biological hazards in a given production process.

### 4.7.1 Equivalence

The Review Committee considered the impact of equivalence agreements developed between trading partners in respect of food trade. The Committee noted that the Codex Committee on Import and Export and Food Inspection and Certification Systems (CCFICS) has developed Principles for Food Import and Export Inspection and Certification (CAC/GL 20-1995) which state:

> Countries should recognise that different inspection/certification systems may be capable of meeting the same objective, and are therefore equivalent. The obligation to demonstrate equivalence rests with the exporting country.

The Review Committee noted that the principle of equivalence was discussed at the last meeting of CCFICS in February 1998 in respect of a proposed guideline on judgment of equivalence of sanitary measures associated with different food inspection and certification systems. Although the future of the proposed guideline is not yet certain, a number of basic principles were documented, including:

- the SPS Agreement obliges Members to accept sanitary or phytosanitary measures as equivalent, and that Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements which recognise the equivalence of specified sanitary or phytosanitary measures; and

- CCFICS deliberations confirmed that the equivalence of food control systems, but not the equivalence of specific requirements or standards, should be required.

The Review Committee ***noted*** the progress of the CCFICS in developing a guideline on equivalence and ***strongly supports*** the underlying principles.

### 4.7.2 Certification agreements

As mentioned previously, Australia is under an obligation to recognise other countries' inspection/certification systems if those systems deliver outcomes which are equivalent to those delivered by Australian systems. Under the current legislation, AQIS can enter into certification agreements with specified foreign government agencies allowing those agencies to certify that the subject goods met Australian food standards at the time of their production. Shipments are accompanied by a certificate from the overseas authority and, in most cases, a certificate of analysis from an approved overseas laboratory. AQIS presently accepts certificates from nine foreign governments as shown in Table 4.3.

**Table 4.3 Certification agreements**

| Country | Commodity |
|---|---|
| Canada | All seafood products |
| China | Canned mushrooms from approved sources with certification being subject to less intensive post-arrival testing |
| Malaysia | All risk foods |
| New Caledonia | Chilled and frozen prawns |
| New Zealand | Cooked frozen crustaceans, molluscs, smoked vacuum packed fish/seafood, fish (for mercury testing), and cheese |
| Norway | Cheese |
| Singapore | All foods |
| Philippines | All foods |
| Thailand | Cooked frozen crustaceans, molluscs, fish products, and all foods (other than seafood products) |

These certified agreements not only ensure access to Australia's domestic market but also provide for a testing rate of 5 percent, with the exception of canned mushroom from China. While the legislation does not preclude AQIS from charging, AQIS has refrained, in order to encourage importers to use recognised foreign governments to verify the safe production of food. Notwithstanding the incentive provided, the Review Committee found awareness of the certification process relatively low in industry, particularly among the smaller firms (see Section 4.8.9).

The establishment of the certification agreement with a foreign government has usually been on the basis of a written submission, with little or no field assessment by AQIS or its agents. However, auditing of supplier countries' export control systems is routine for many importing countries, and Australia's export controls are, for example, regularly assessed by the European Commission, the United States Department of Agriculture and the United States Food and Drug Administration.

In its submission, AQIS states that in 1997 about 10 percent of the certified shipments, which were analysed, failed to meet Australian requirements and additional costs were imposed on AQIS in pursuing these failures with foreign governments, and the costs passed on to industry. The rate of failure is higher than that of normal shipments and supports the need for on-site audits and a tightening of the certification agreements. Further, because the cost of audit inspections of certified shipments is cost recovered by AQIS from other inspections, cross-subsidisation presently occurs between the importers of certified and uncertified shipments.

The Thailand Centre of Export Inspection and Certification for Agricultural Products (CEICAP) submission states:

> AQIS has agreed with CEICAP in certifying system that CEICAP has to certify the process establishment and inspect every consignment of exported products. CEICAP will audit the certified establishments to verify the efficiency of their operations. But AQIS still requested analysis certificate to accompany with certificate of inspection..... The certificate of inspection issued by CEICAP has covered the requirements of Food Standards Code and Imported Foods Program in itself, so it is not necessary to have addition certificate of analysis.

The Review Committee agrees and believes the present certification system appears to have an over-reliance on the accompanying certificate of analysis, rather than the reliance being on the equivalence of outcomes certified by the overseas authority.

Under the present certification system, there have been instances where certified product when tested in Australia was found not to have been held at a suitable temperature. In most cases this has been the result of transport failures that have occurred after the product has left the certifying country. Quality assurance-type arrangements such as compliance agreements between AQIS and the importer designed to include the transport chain up to arrival in Australia would potentially reduce the risks of such occurrences, and would be more consistent with a risk-based approach to food safety. This would particularly apply to perishable produce.

As an incentive to encourage more importers to use certified agreements, the Committee supports greater flexibility in the rate of inspection of certified shipments. The rate of inspection (and associated costs) could then be reduced for importers choosing this option. The Review Committee recommends that the inspection rates should not be stated in the legislation (Recommendation 4).

One consequence of the Trans-Tasman Mutual Recognition Arrangement (TTMRA) is that Australia and New Zealand must have agreement about acceptable certificates from third countries. This has already triggered a review of certification arrangements and will be used as a basis to assess the efficacy of existing arrangements.

**Recommendation 13:** The Review Committee recommends that legislation be amended to permit AQIS to expand the use of certification agreements with other countries food inspection authorities and that it build more rigour into the present certification system, by provision for:

- review of agreements every three years;
- linking on-site audits to the country's compliance history;
- improved flexibility in relation to inspection rates, including removing them from the legislation(as in Recommendation 4); and
- adoption of an appropriate charging structure to minimise cross-subsidisation, while encouraging uptake of certification.

### 4.7.3 Quality systems

#### *Quality assurance arrangements and overseas suppliers*

The *Imported Food Control Act* (Section 19) provides the facility for AQIS to enter into quality assurance agreements with overseas suppliers and so have their product treated upon entry to Australia as if it were certified food. This facility recognises that not all foreign governments have reliable export inspection systems, yet individual companies in those countries may well have excellent quality assurance (QA) systems in place. There has been no uptake at this stage. This indicates that the Australian market is not large enough for an overseas company to go to the expense of documenting its system specifically for Australian authorities, or to develop a special QA system that would satisfy Australian requirements. Under the circumstances, quality assurance arrangements with AQIS will only be commercially viable when the overseas company has the potential to benefit by securing some type of recognition. Furthermore, AQIS requirements for approved quality assurance arrangements with overseas suppliers should be sufficiently flexible to allow approval of overseas manufacturers' QA systems which deliver equivalent food safety outcomes. This is consistent with the CCFICS's principle of equivalence.

#### *Quality assurance-type arrangements (compliance agreements) and importers*

Some importing companies have told the Committee that they already have in place sophisticated food safety assurance systems; for these businesses IFIP imposes an additional and unnecessary cost. The Committee acknowledges advantages in assuring food safety by extending the concept of approved quality assurance-type arrangements to include importers and notes that this would require legislative change. AQIS favours a quality assurance-type system (a compliance agreement with the importer) that:

- exempts products imported by an approved importer from routine sampling;
- allows AQIS to conduct detailed audit of the importer's system, including access to import records;
- includes a notification clause so that any noncompliance is immediately notified to AQIS;
- is acceptable as part of the food safety plan required by ANZFA;
- is on the basis of an auditable documented system equivalent to other quality assurance-type programs run by AQIS, which includes the controls implemented throughout the production, transport checks upon arrival, etc; and will encompass any certification provided by foreign governments;

- has a "fall back" inspection regime if the importer either is proven unreliable, or voluntarily suspends or revokes the quality assurance arrangement;
- has an "emergency" provision to over-ride the compliance agreement arrangement if the need arises; and
- includes a charging rate for audits.

The Review Committee accepts the AQIS concept of a compliance agreement but stresses the need to assure food safety. A compliance agreement with an importer would need to cover the entire production, transport and storage chain to provide this assurance. Further, regular audits will be required to ensure compliance. Assuming that a QA-type system forms part of an importer's normal management and administrative operations, this process should lower a company's cost by reducing the need for border inspection.

Some importers have indicated to the Committee that, given the range and type of products they import, a quality assurance-type arrangement such as a compliance agreement with AQIS may not be justified. The Review Committee notes that importers will have to institute food safety plans at a future date when the proposed Food Hygiene Standards are implemented. Indications are that it may take as long as six years to complete implementation. This would need to be considered by AQIS when developing requirements in relation to compliance agreements with importers. Further, importers will need access to information regarding AQIS requirements and compliance agreements. This should form part of the information available to stakeholders as discussed in Section 4.8.9.

AQIS is undertaking a pilot project with one importer trialling an inspection mode that will allow the incorporation of a company's QA program into the AQIS overall assessment of food imported by the company.

> The Review Committee investigated the pilot scheme and ***strongly supports*** this pilot initiative.

The approach being used in the pilot project is consistent with other quality assurance-type programs and compliance agreements operated by AQIS and the ANZFA-proposed food safety plans. When developed, the food safety plans could become part of an approved quality assurance-type arrangement.

It is important for proper effectiveness that there is an appropriate degree of industry maturity. To be effective, compliance agreements should:

- include the production, transport and storage of food to offer a flexible and non-prescriptive approach to food safety; and
- ensure that company-based controls are supported by AQIS audits carried out by inspection staff with appropriate auditing skills and technical knowledge.

**Recommendation 14:** The Review Committee recommends that:

- legislation be amended to clearly allow AQIS to enter into compliance agreements with importers based on approved quality assurance-type arrangements;
- AQIS develop a compliance agreement option that includes specifications for importers, and auditing functions consistent with other inspection systems functions conducted by AQIS;
- the compliance agreement option has the ability to cover the entire production chain and, where appropriate, the transport chain; and
- overseas suppliers be encouraged to enter into approved quality assurance arrangements with AQIS by permitting these arrangements, where appropriate, to be sourced from the importer's own QA systems.

## 4.8 Operations

### 4.8.1 Administration of the program

Under the present arrangements importers (or, more commonly their customs brokers) lodge entries describing their imports with the ACS's COMPILE system. This information includes the tariff codes for each individual import commodity. Entries of relevance to IFIP are transferred electronically to the AQIS Import Management System (AIMS).

AIMS was initially developed to manage quarantine matters associated with imports, and IFIP used a different computer system to manage its operations. A decision was made in 1994 to transfer IFIP operations to AIMS to provide a co-ordinated computer system to serve both programs' needs. AIMS was enhanced and had IFIP requirements added. Thus, the AIMS system was not purpose designed to meet IFIP's needs, and required further enhancements. AQIS has acknowledged that there is a need for further redevelopment and enhancement of the AIMS system to facilitate IFIP operations, and is progressively rectifying identified problems.

The various IFIP-related databases, held within COMPILE and AIMS, are not always up to date nor are they completely accurate. ACS allows brokers to create and enter new importers, suppliers' names and codes when they are lodging entries. Any slight variation in a name (eg, changes in the spelling or abbreviation of aspects of importer and supplier names) often means that the broker will create duplicate listings for that supplier in both COMPILE and AIMS. This can result in products being over-impeded by IFIP because the COMPILE and AIMS systems would identify such consignments as coming from a new supplier. As this could also result in imports from a single supplier being imported under multiple supplier names, the rate of inspection will be higher than would be the case if the imports were treated as being from a single supplier. This has led to many complaints from importers claiming over-inspection and over-referral by IFIP (see Appendix G for a more detailed discussion). With the data available to IFIP management and the Committee, it was not possible to verify the actual inspection rates for categories of food. This was seen as a major deficiency of the current operations of the program.

As discussed in Section 4.3.1, the AIMS system is also used by IFIP to allocate tests to various commodities. These tests are then assigned to the products as they are processed through AIMS. This system allocates tests against commodities on a broad basis. As already noted, this can result in instances of inappropriate tests being allocated against specific products.

Another difficulty with AIMS concerns the way that data is collated within AIMS and what can be retrieved in the way of reports. AIMS contains a wealth of potentially useful data which cannot be utilised because there is no capacity to extract that data in a meaningful form. Effective program management requires the analysis of relevant data to ensure that emerging problems with various types of foods are identified. The reporting modules within AIMS are neither detailed nor flexible enough to be able to extract the data required to make sound, risk-based, and informed decisions. AIMS was not designed for statistical data collection. In order to get limited information for the purpose of this Review, it was necessary to download and manipulate COMPILE and AIMS data (see also Section 4.8.3).

**Recommendation 15:** The Review Committee recommends that AQIS investigate and institute changes to AIMS that would ensure effective administration of IFIP, including:

- databases that are accurate;
- reporting modules which provide information relevant to management requirements;
- reporting modules with improved flexibility to meet the need for queries and for changes to requirements; and
- a system which provides information to support field activities.

Customs brokers who were interviewed have raised two issues of particular concern to their operations:

- the accounting system used by AQIS for IFIP services; and
- the ability of brokers to cost recover functions provided on behalf of IFIP.

Some brokers have indicated to the Review Committee that accounts have been received from AQIS for IFIP services long (up to two years) after the service had been provided. This creates difficulties for brokers as they may no longer have the importer as a client, and the time taken to find the relevant documents and deal with the client cannot be cost recovered and must be borne by the broker.

Brokers were also concerned about their ability to cost recover services they provide on behalf of AQIS, such as provision of information. While importers may grumble about government charges they will pay them, but attitudes may change when brokers charge for these services instead.

The possibility of additional costs being imposed on brokers should be considered by AQIS when administrative changes are contemplated.

The Review Committee ***encourages*** AQIS to implement a more timely accounting system to avoid delays and additional costs being imposed on customs brokers.

### 4.8.2 Location of the function

Responsibility for domestic food standards policy has rested with ANZFA and its predecessors. It is this body which develops the food standards. The Imported Food Inspection Program has, from its inception, been located in AQIS and since October 1996 has been part of the Import Clearance program. AQIS is the only Commonwealth body with a national food inspection program and there is a Memorandum of Understanding between AQIS and ANZFA. This arrangement has worked satisfactorily, from a functional viewpoint. In addition, AQIS has responsibility for assurance of all transborder food movements.

The Review Committee is of the opinion that the current location of the border/barrier control function is appropriate, and in no way detracts from the efficiency and effectiveness of the program. The Review Committee also notes that Australia's border control responsibilities are currently under review and that this is the forum in which to consider such issues on a long term basis.

### 4.8.3 Administrative efficiency and effectiveness

Aspects relating to costs particularly relating to stakeholder operations are discussed in Section 5. This section relates to the internal efficiencies and effectiveness of IFIP.

IFIP is responsible for overseeing the importation of some $3.6 billion worth of foods and beverages annually (ABS 1998a). The charges for inspection and testing paid by industry annually is approximately $3.6 million. This cost represents 0.1 percent of the value of food imports. To this needs to be added industry costs attributable to IFIP (see Section 5).

It is essential, for maximising efficiency and effectiveness in IFIP, to provide minimal impact on the operations of industry, and hence facilitate trade and contribute to lower prices to consumers. As discussed in Section 4.8.5, AQIS has located IFIP and Quarantine within the one administrative and functional grouping, with the objective of improving efficiency and, if feasible, effectiveness.

Some stakeholder comments indicate that there is potential for improvement in efficiency. Small firms in particular stated that:

- inspections were taking too long;
- appointments were not being kept on time;
- inspectors have been unprepared for the job at hand; and,
- it has taken up to 3 to 5 days to secure a booking (compared with next day before the amalgamation with Quarantine).

Efficiency is questionable if the program imposes excessive costs or if service delivery is poor. The Committee considers that performance indicators which relate to the performance of the function are essential. They do not exist at the moment in any meaningful state. There are no benchmarks to measure the effectiveness of the program. During the course of the Review, it was time-consuming and difficult to obtain any information which could be used meaningfully in assessing the efficiency and effectiveness of the program. As discussed in Section 4.8.1, there is a need for more information on testing rates to be available to both management and stakeholders.

**Recommendation 16:** The Review Committee recommends that AQIS define, develop and use performance indicators to ensure efficient and effective program delivery.

### 4.8.4 Equity

The Review Committee considered two issues concerning equity:

- any differences in treatment accorded imported food and domestically produced food; and,
- the relative impact of the Act and its administration on different sectors of industry (eg, small and large importers).

Numerous comments were received on each of these issues.

To comply with WTO requirements, it is necessary to ensure that a balance in regulation is maintained between local manufacturers and importers of overseas-produced food. Generally, domestic manufacturers claim that importers are treated more leniently because of border inspection only, whereas importers point to higher levels of inspection. These contentions are not easily resolved.

To achieve the balance of regulation between importers and local manufacturers, inspection of local manufacturing processes must produce the same outcomes as end-point inspection, certification agreements and quality assurance-type systems (compliance agreements with the importer) for imported food. This is particularly difficult to determine, and precise determination will require a considerable amount of research and judgement. Ultimately, the answer may lie in the determination of equivalence (see Section 4.7.1). Currently, the Committee believes that, on the information available, the balance has been appropriately struck.

Concerning the relative impact on different areas of the importing community, the Review Committee has found that improvement is possible, and desirable. Stakeholders have consistently commented on inequities in the testing regime, the cost and time taken with laboratory tests, and the effects of a disproportionate concentration on labelling Recommendations elsewhere in this section (principally at 4.2.2, 4.4.1 and 4.5) have taken up this issue.

### 4.8.5 Consistency of delivery and staff training

The existence of an imported food inspection function is accepted because importers, consumers and the government recognise the value of safe food. All importers benefit from the perception that imported food is safe, hence the regulatory costs of ensuring safe food need to be shared by all importers. A consistent application of regulation is essential for fair competition, and is consistent with National Competition Policy principles.

The Review Committee noted allegations that there are inconsistencies amongst ports in relation to the level of inspections and the types of food inspected. One stakeholder claimed that "certain ports target particular products for inspection that are not inspected elsewhere" while another said "that inspection rates were much less in the busy ports of Sydney and Melbourne when compared to elsewhere". Such alleged inconsistencies decrease the competitiveness of those importers faced with inspection costs that their competitors do not share, and

may mean that the program is not consistent with relevant Codex guidelines (see Section 2.5.3).

Inconsistent treatment could lead to "port shopping" a practice where importers seek an "easy entry" port, particularly for potentially non-complying food imports. Allowing this practice disadvantages competition in two ways. First, other ports are deprived of their share of the trade which would normally come their way if inspection were more even handed. Second, companies with interstate operations and offices can have an advantage over smaller and more localised firms by being able to switch ports at their discretion.

The Committee also noted reports of incidents of inconsistent treatment by different inspectors, associated with problems relating to the sampling procedures. Inconsistent enforcement was often described by stakeholders as facilitating "unfair competition". More importantly, inconsistency could also potentially lead to food safety problems. AQIS management needs to develop statistically designed sampling plans to address this problem (see Recommendation 18).

***Integration with Quarantine***

As previously noted, AQIS Imported Food and Quarantine functions were brought together towards the end of 1996. The programs were integrated to provide clients with a single service point for import clearance. Benefits expected were:

- reduced inspection costs through single inspection for both AQIS programs;
- quicker access to goods for importers with associated savings; and
- efficiencies within AQIS.

Some stakeholders commented that not all of the expected efficiencies have been realised. Consignment release has been slowed in some cases by delays in scheduling inspections and/or returning results to importers. The Committee observed that importers in some regions appeared to be disadvantaged over importers using other more efficient ports.

Quarantine has traditionally dealt with customs brokers primarily rather than with importers, whereas IFIP has generally dealt with importers directly, rather than through brokers. This direct relationship has come about because importers are often more knowledgeable about their products and the relevant food regulations than their brokers. Problems of compliance are thus more easily resolved directly with the importer rather than through the broker.

These observations point to the need to unify the approach to delivering Import Clearance services for imported food functions around Australia. The Committee noted that AQIS has moved to appoint a National Co-ordinator. The duties of this position are to monitor the operations and ensure that a consistent and efficient service is delivered to all clients.

> The Review Committee ***strongly supports*** the appointment of the National Co-ordinator in order to assist in realising the efficiencies inherent with the amalgamation of IFIP and Quarantine.

***Training of inspection staff***

As reported by the Australian Quarantine Review Committee (Nairn *et al*. 1996), staff training had (at that time) suffered in Quarantine. This is also the finding of this Review in regard to training for IFIP.

The Review Committee recognised that there are differences in the focus of Quarantine inspections and Imported Food program inspections and, consequently, in the expertise and knowledge that officers require to perform each function. The separate skills and knowledge required should be acknowledged and properly provided for in training.

The Review Committee believes that the amalgamation of IFIP with Quarantine has led to a lessening of expertise of some of the officers undertaking IFIP duties. Training has not been given the prominence it requires, leading to a dilution of officers' abilities in this complex area. Many stakeholders have commented on the unnecessary costs imposed on them through inappropriate selection of tests (see Section 4.3) and delays. Throughout the Review, the Committee noted that adequate training of inspection staff could alleviate many of the highlighted problems.

The submission from the New Zealand Ministry of Health observed:

> The Ministry feels that some AQIS staff lack experience in food manufacturing and the public health risks associated with imported food. The integration with Quarantine has diluted previously established expertise . . . We believe that this area needs specialists, especially with the increasing world trade in food.

Further, the submission from the Australian Seafood Importers Association states:

> There are many new inspectors coming into the field at the moment since the amalgamation of Quarantine and AQIS [sic] and as a result, these people are not experienced in carrying out their duties [and] . . . inspections by inexperienced staff are causing a lot of aggravation within industry in general.

The training presently given to Quarantine officers who are to take up imported food inspection work, consists of one week's formal training followed by a varying amount of "field" training. The individual field training varies from "a couple of days" to around three weeks. The training is not co-ordinated and the appointment of a national training officer for IFIP is necessary for optimum effectiveness.

The Committee observed that inspector qualifications and training needs should be competency based to ensure that all officers inspect and treat goods in a consistent manner. The Committee noted that food safety and food technology training is essential for competent inspection staff. The Committee also noted the high degree of dedication to food safety and client service amongst IFIP inspection staff, as well as the high levels of expertise of many of the more senior and experienced inspectors.

The effectiveness of IFIP must be able to be verified by the program's management. At present there does not appear to be any system in place to verify this or the competency of officers undertaking IFIP duties. This was seen as a failing and the Review Committee is of the opinion that there should be an ongoing co-ordinated review of regional IFIP operations to identify and remedy any inconsistencies in delivery.

**Recommendation 17:** The Review Committee recommends that a competency-based, comprehensive training program, co-ordinated by a National IFIP Training Officer, be developed and delivered to all officers undertaking IFIP inspections.

**Recommendation 18:** The Review Committee recommends that a comprehensive review of all regional IFIP operations be undertaken as soon as practical to identify and rectify present inconsistencies while the training package is being developed, and that monitoring of the quality of service should be an on-going function.

### 4.8.6 Paper work - minimisation of the paper burden

The area of paper work and the design of forms is reasonably satisfactory, except for the easy confusion between Quarantine and IFIP forms. The IFIP makes use of ACS and Quarantine systems where possible, thus keeping the paperwork to a realistic minimum.

There are possibilities for improved efficiency by introducing electronic forms, offering the option of submission and access from site, even though the present system appears to be efficient. The use of electronic forms offers potential savings to both the imported food industry and to IFIP. However, standardisation and acquisition of information technology systems should be implemented in a way that:

- does not impose cost burdens on the companies;
- does not disadvantage firms in particular sectors; and
- makes use of information technology consistent with systems already used by importers.

The Review Committee ***endorses*** current approaches and ***advocates*** continued monitoring of information technology in order to take advantage of any opportunities for increases in efficiency and improvements in service, including introducing electronic forms.

### 4.8.7 Sanctions

Two basic types of sanctions are available: punitive and operational.

- Punitive sanctions consist of penalties or fines, which can be imposed for not complying with legislative requirements. The legislation must specify the penalty or fine, which should apply for specific breaches.

- Operational sanctions can constitute such measures as reverting to a higher level of inspection, incurring extra audits, incurring costs for rectification, or removal (temporary or permanent) of the ability to operate in the industry.

The major objective of sanctions is to ensure compliance rather than to act as a source of revenue. Sanctions should punish obvious non-compliant behaviour and encourage compliance but should not distort the marketplace beyond this.

Many stakeholders (particularly importing companies) were in favour of excluding from the marketplace those firms which engaged in extended non-compliant behaviour, but exclusion is a serious matter and, as already noted, compliant behaviour is the overriding objective.

Court imposed penalties tend to affect smaller firms more than larger ones, by virtue of company size in relation to the penalty. Operational sanctions are generally more effective as they can be administratively imposed, timely to apply, operate in a manner proportional to the company's size, and more specifically encourage compliant behaviour. However, such sanctions are more prone to misuse and do not have the same level of checks and controls as court imposed penalties.

The Review Committee was of the opinion that the following areas of the Act require some attention in relation to sanctions:

- quality assurance-type systems (compliance agreements with the importer) and certification failures (discussed in Sections 4.7.3 and 4.7.2, respectively);
- assurance that impeded foods are inspected;
- prompt action by importers on failures; and
- labelling failures (discussed in Section 4.5).

At present there are no effective sanctions in place to deal with importers who do not arrange for impeded foods to be inspected. This could have the effect of discouraging importers from having their food inspected, particularly if that food could possibly fail. IFIP management needs to develop a system to verify that all impeded foods are inspected and then apply appropriate sanctions to importers or their agents who do not fulfil their obligations to have the foods inspected.

While the present legislation specifies that officers must indicate a period in which any agreed treatment, destruction or re-export of failed food is to take place, this does not generally occur in practice, leading on occasions to lengthy delays in failed foods being dealt with by the importer. The legislation includes a penalty of $20 000 for refusal or failure to comply with the requirement to treat, destroy or re-export the failed food but does not specifically provide a sanction for deliberate delaying moves by an importer. This may be an appropriate area for the development of an operational sanction that could be uniformly applied across all regions.

**Recommendation 19:** The Review Committee recommends that:

- legislative sanctions should be reviewed for effectiveness, appropriateness and conformity with the *Criminal Code Act 1995*;
- the size of the penalty be struck with reference to analogous legislation (eg, State Food Acts, *Quarantine Act 1908,* etc), via the normal process of consultation with the drafters and the relevant areas in Attorney-Generals;
- appropriate sanctions be developed with the extension of certification and quality assurance-type systems (compliance agreements with the importer); and
- legislative sanctions have a proper legislative basis and suitable avenues of appeal and redress, and that they are transparent, and imposed in an accountable manner.

### 4.8.8 Interface with external agencies

The Committee noted that IFIP performs only with the assistance of external agencies, primarily Australian Customs Service (ACS), ANZFA and AGAL. In its operation, the program also has dealings with the State, Territory and foreign governments.

The Committee noted that, while the relationship with ACS is critical to the functioning of IFIP, there was no formal Memorandum of Understanding (MOU) or service level agreement between the organisations.

**Recommendation 20:** The Review Committee recommends that a formal Memorandum of Understanding or service level agreement with the Australian Customs Service be established for imported foods.

ANZFA's responsibilities are defined in legislation and an MOU exists between AQIS and ANZFA. AQIS also participates in the State and Territory Senior Food Officers meetings run by ANZFA. These are held twice a year and supplemented with a teleconference every four weeks.

The relationship with AGAL has been dealt with in Section 4.4.

Interaction with State and Territory governments is at an operational and policy level. Operationally, State governments are the initial point of contact for AQIS when a *surveillance* food (released upon sampling) fails to meet the requirements. Decisions to recall non-complying foods lie with the States, once the food has been released. There may be some need to develop a more interactive relationship with these agencies. IFIP and State Health departments collect a large amount of intelligence about products which should be shared. This intelligence could, with advantage, be utilised to assist in resource allocation by IFIP and to avoid duplication of service by both sectors. Policy decisions, including the interpretation of food standards, are the subject of the Senior Food Officers meetings.

### 4.8.9 Consultation, communication and transparency

***Consultation***

Two of the key themes of the report of the Australian Quarantine Review Committee (Nairn *et al*. 1996), were that quarantine and, by implication, other AQIS operations are a shared responsibility and that AQIS should operate in an environment of full consultation between stakeholders. To give effect to these recommendations AQIS began reforming its existing AQIS/industry consultative committees, so that they included consultation on important policy and strategic issues, as well as concerning themselves with major operational issues. To achieve this, it was necessary to alter the terms of reference for each committee and reconsider their membership to ensure that all relevant sectors were involved. AQIS committed itself to establishing these committees as its peak industry consultative committees and ensuring that representation on these committees reflected their new broader roles. So far, AQIS has reformed ten of its industry consultative committees as part of this process.

The Review Committee recognises the necessity of ensuring that the decision making and processes of IFIP are transparent to stakeholders. It was evident that there are currently some problems with transparency in the areas of information dissemination, reasons for decisions and background to testing. However, IFIP management is actively seeking to improve the information flow to clients.

> The Review Committee ***endorses*** the activity in IFIP to improve the information flow to clients and stakeholders and ***advocates*** its continuation in terms of the issues covered below.

The Imported Food Advisory Committee (IFAC), currently comprising ANZFA, AQIS and industry members, does not appear to have the profile or the agenda to be a fully effective consultative committee. While the represented industry groups are working well, these groups are not fully representative of all importers and stakeholders. There is a need to reconstitute IFAC to provide an effective mechanism to ensure that industry receives full information on the program's activities, that views are properly represented and that enquires can be made in relation to issues such as decisions, testing and inspection profiles.

**Recommendation 21:** The Review Committee recommends that AQIS, together with ANZFA, reform the current consultative committee for the imported food program with a view to making it consistent with the consultative arrangements for its other programs, ensuring shared responsibility, transparency in decision making, broad-based representation and full consultation among stakeholders.

***Communication***

The Review Committee was of the opinion that a proper communication strategy is desirable to provide all stakeholders with timely and appropriately detailed and accurate information. The strategy should reach all stakeholders regardless of the size of the business or the nature of the food imported.

The Committee noted that an effective communication strategy would deliver:

- relevant information for business (large and small) to make informed decisions;
- timely advice regarding changes to the program that has potential to affect business; and
- information regarding the responsibilities of business.

The means of communication recognised by the Review include:

- printed matter (hand-outs, notices, *AQIS Bulletin* etc);
- electronic (internet, AQIS home page, Customs Bulletin Board);
- dissemination by inspectors in the course of their duties;
- seminars, training and "open days"; and
- interaction via industry or other business associations.

Evidence from interviewees was that the current means of communication is *ad hoc* and does not reach all concerned, which has led to a level of dissatisfaction from stakeholders. The Australian Seafood Importers Association submission observed:

> The Australian Seafood Importers Association wholeheartedly supports the Review and also the function of ANZFA and AQIS, however I must comment at

> the moment the relationship between industry and the above two bodies is at an all time low. This I firmly believe is because of a lack of communication. Over the last 12 months it has been extremely difficult to communicate with people and get satisfactory answers on a number of issues.

***Transparency***

Transparency is a basic principle of public administration and is central to the partnership process with industry, giving proper confidence that imported food processes are even-handed and that no companies are disadvantaged. A number of companies have complained about apparently inconsistent actions towards industry members, and it is important that they have the means of:

- assuring themselves that operations are, on an overall basis, fair; and
- obtaining feedback where there are perceived problems.

Transparency also enables the community to see for itself that the process is working. In its submission, the Australian Consumers' Association stated:

> Another major concern . . . has been . . . an increasing lack of trust in both government and industry when it comes to consumer protection, . . . exacerbated by the increasing trend towards deregulation. . . . Consumer confidence could improve if there was improved transparency of AQIS's actions and increased communication to consumers of the monitoring and surveillance roles of AQIS. Currently it is very difficult to find out whether foods have been rejected by AQIS at the Australian border. . . . Publication of rejections and quarantines on the internet would provide an important contact for consumers.

A second issue concerning transparency is informing foreign governments on failures, where this is applicable. Currently, the relevant government is informed when *surveillance* food fails (thereby activating a Holding Order) and when certified shipments of *risk* food fail, but not otherwise. It would be logical to inform other governments of all failures. It would further be reasonable for AQIS to ascertain what the most effective solution might be. Use could be made of Section 35 of the Act (with legal advice on the extent of information which can be released) in order to increase transparency of the program through providing relevant information regarding failures to government authorities of exporting countries.

The Review Committee received many comments about the difficulty in obtaining information from the various government authorities that have jurisdiction over importing food. Problems included:

- determining agency responsibility for aspects of importation; and
- contradictory advice from different agencies leading to confusion and, in some cases, adoption of incorrect advice.

This Review highlighted the need for a co-ordinated approach by government agencies involved in barrier control, particularly co-ordination of information delivered by AQIS for its Quarantine and Imported Food programs.

**Recommendation 22:** The Review Committee recommends that AQIS develop and implement a communications strategy that:

- provides all stakeholders with timely and detailed information;
- provides transparency in imported foods policy and operations;

and that AQIS, in co-operation with other agencies:

- develop an overview booklet for food importers containing details of all relevant agencies and their requirements; and
- establish an inter-agency "shopfront" facility to disseminate information about the responsibilities of the various government agencies involved in food importing.

***Education of industry***

The Committee considered two elements in education of industry:

- provision of information to assist industry to meet government requirements; and
- technical aspects of the commodities imported.

The Committee considered that AQIS has a responsibility to facilitate the training and education of industry to ensure that government requirements are clear to all participants, while training in respect of technical aspects of food commodities was the responsibility of industry.

As the regulatory approach moves towards sharing responsibility between industry and AQIS for imported foods, it is necessary that industry has the required skills to meet its obligations. The Committee noted that industry has taken up the training issue in respect of Quarantine functions. The submission by the Industry Working Group on Quarantine (IWGQ) outlined the purpose and function of the "Course in Quarantine and Exports" delivered to industry by the IWGQ and AQIS. The AQIS Industry Cargo Consultative Committee has recently finalised the development of a nine module training course "Quarantine and Export". The Committee noted the IWGQ offer to sponsor an additional module dealing with imported food inspection requirements and procedures and considered this a positive approach which should be encouraged by AQIS.

The Committee noted that as AQIS is now moving to accept quality assurance-type systems (compliance agreements with the importer) to conduct designated IFIP functions, some stipulated qualifications of relevant company personnel could be a useful prerequisite to entering into compliance agreements with the importer based on quality assurance-type systems. The Review Committee noted that the IWGQ training package could, if appropriately developed, go some way to providing those qualifications.

The Review Committee ***endorses*** the IWGQ training for industry and ***encourages*** AQIS to enter into discussions with a view to developing industry training in food inspection and procedures.

# 5. COST BENEFIT ANALYSIS

Food safety regulations exist to help safeguard the integrity of food and hence protect public health by preventing and controlling the presence of food-borne pathogens and other disease-causing elements (eg, pesticides) in food. However, food safety regulations impose a number of costs on food suppliers, which in turn can result in higher prices, lower quantities being supplied and reduced product choice. Cost-benefit analysis is a particularly useful technique to assist public decision making by identifying the benefits and costs of food safety policies. The terms of reference for the Review of the Imported Food Control Act require the Review Committee:

> to analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Act.

In this section a number of costs and benefits arising from the Act and its administration are identified. However, because of data and resource constraints, it has not been possible to undertake a comprehensive cost-benefit analysis. Nevertheless, the analysis contains a significant quantitative component to assist in reaching conclusions about the overall value of the Act and operations under the Act.

## 5.1 Costs

IFIP imposes costs on importers and on the Commonwealth government, and can also have indirect effects on the economy through the impact of regulation on the allocation of resources. Direct costs to importers include documentation and inspection charges, the laboratory analysis fees and the cost of sampled product. There are additional costs incurred by importers due to delays caused by inspection and laboratory testing of certain foods, and also because of time and resources that importers have to commit in order to comply with the requirements of the program.

Since IFIP is a fully cost-recovered program, the net costs to government are small. These costs comprise an identified community service obligation (CSO) component of the program and are reflected in budgetary allocations made to ANZFA ($40 000) and AQIS ($100 000) for program support and policy development. AGAL also receives a budgetary allocation for laboratory test development work that has a public good element. Some of the results of that work are used for tests prescribed by IFIP but they also have a wider application and, hence, it is not appropriate to count such funding as a cost of IFIP.

As discussed in Section 2.3, the costs of IFIP extend beyond the imported food sector and affect the economy as a whole. Where costs are incorporated into the final price of the imported food, Australian downstream food processors are penalised by higher input costs, while consumers are penalised through higher prices and/or reduced choice of product. If through the Act and its administration, Australia's domestic food industries receive a higher level of protection than is needed to protect human health, then resources might be drawn to this sector at the expense of other more efficient industries. This can lead to a misallocation of resources with detrimental effects on Australia's gross domestic product. Further, since Australia presently exports more than four times the amount of food it imports, it is important that Australia does not face retaliatory action in overseas markets.

For this Review, only costs which directly impact on the food importing industry have been estimated. Costs that were calculated are the direct program charges, the cost of maintaining a higher level of stocks than would be needed in the absence of IFIP and administrative costs associated with industry compliance.

### 5.1.1 Inspection and laboratory charges

Importers are required to pay AQIS for documentation and inspection services and laboratories for the cost of testing. These direct program costs have been estimated to cost the importing industry $3.6 million per year, consisting of $1.2 million for laboratory analysis fees and $2.4 million for inspection and documentation charges. These charges represent 0.1 percent of the total value of food imported into Australia.

### 5.1.2 Stockholding costs

While the direct program costs of IFIP are readily quantified, it is more difficult to estimate the other costs of the program on industry. Of significance is the cost of holding stock while awaiting test results, as well as the cost of holding any additional stock in anticipation of an inspection delay. These costs can be attributed to the program and consist of storage and interest charges.

For an importer, continuity of supply is essential because of costs associated with the re-introduction of a product if it is delisted by a retailer. Many importers of surveillance food indicated that IFIP imposes no additional storage costs on their business because any delay is accommodated through their practice of routinely maintaining a minimum level of inventories to cover a range of contingencies. This is particularly the case for those importers who choose to release surveillance food after IFIP sampling, rather than awaiting the results of tests. Some importers stated that they maintain surplus stock levels as high as 10 percent of the value of the stock to cover all contingencies.

Storage costs vary considerably depending on the type of product imported and the method and place of storage. For example, importers of frozen and chilled product face higher storage costs than importers of non-perishable goods, while importers who need to rent additional space also bear additional charges. The cost of storage has been calculated using information supplied by importers. Weekly costs vary considerably depending on mode of storage, location, the extent to which importers use their own premises, and the value of the product. Estimates obtained from importers for storage in commercial premises ranged from 3.5 to 21 percent of the annual value of goods imported. Based on data supplied by the firms surveyed, the cost of storage has been assumed to be 15 percent of the annual value of goods imported. For the purposes of calculating interest costs, an average annual commercial interest rate of 10 percent was assumed. Annual interest rates are currently in the range of 8 to 12 percent. Therefore the total cost of holding stock was assumed to be 25 percent of the annual value of the stock.

To estimate storage costs on the basis of the value of imported foods, an average annual value of goods referred to IFIP for inspection in each risk category was extrapolated from a four-month sample of two "quiet" months (May and June 1997) and two "busy" months (October and November 1997). This information was extracted from AQIS and ACS databases.

Importers of risk category food and any surveillance food with a Holding Order have no choice but to hold foods until cleared by the program. It is because of this, that AGAL gives priority in testing risk category foods and foods with Holding

Orders. Delays range, on average, from 7 to 14 days. An average 12-day delay for risk category food and food with a Holding Order was used for this analysis. It was assumed that importers hold 12 days additional stocks of foods that have the potential to be inspected. Using the four-month data sample, the value of risk category food referred to IFIP and surveillance category food with a Holding Order was estimated at $313 million, of which $195 million worth of product is tested. Assuming that all importers maintain extra stock for all risk foods to cover possible delays, the cost of IFIP to industry for risk category food and surveillance category food with a Holding Order is estimated to be in the order of $2.6 million annually.

From the four-month sample, the combined annual value of active and random surveillance food inspected by IFIP was estimated to be $288 million. This excludes foods with a Holding Order since these goods are held pending results from laboratory analysis and have been included with the risk category foods. Surveillance category foods are released by IFIP following an inspection, and delays for an inspection range from 1 to 5 days. Assuming an average inspection delay of 3 days, the annual cost to industry of holding stock for inspection is $0.6 million per year. Because of the random inspection in the surveillance categories, some importers may choose to maintain extra stocks in case their consignments are selected for inspection. Given that inspection rates in the surveillance categories are 10 and 5 percent for active and random surveillance respectively, and that the estimated delay is only 3 days, it is safe to assume that the extra stocks held for contingency purposes are in the order of 25 percent of the value of these categories of foods. Based on the assumptions stated above, the annual cost of this contingent stockholding is estimated to be $1.5 million.

Surveillance category food importers are not required to hold food selected for testing. The decision to hold or release pending the results of test analysis is a commercial decision of importers, based on importers risk assessment of releasing products. Those importers who choose to hold goods pending test results have determined that there is a risk of a product recall, and that the expected cost of the recall is greater than the cost of holding the stock until the tests are completed. Following discussions with a range of importers, it became evident to the Review Committee that while most importers of surveillance foods release stocks after IFIP inspectors take samples for testing, some importers choose to hold goods pending analysis. While these costs may be significant to those importers, the costs arising from this practice are not the direct result of government regulation but rather are based on commercial practice. Consequently, these costs have not been included in the total cost of the program.[1]

A number of points need to be made regarding the calculation of these costs. First, whilst the Committee is satisfied that the choice of a three-day delay for inspection is warranted, it is aware that in certain instances especially in busy centres such as Sydney the delay can be longer and this can be costly to industry. The Committee has calculated that an additional days delay in inspection clearance of surveillance foods would cost industry some $0.7 million per year in additional stockholding costs. This estimate also includes an adjustment in contingent stockholding from three to four days. Second, in calculating stockholding costs it is implicitly assumed that importers are able to move their stocks very rapidly and that the only delay is caused by IFIP. Whilst the Review Committee does not have information to comment on the average time it takes for food consignments to be sold, it seems unlikely that all stock will be moved within 5 to 10 days of being cleared by ACS. To the extent that this is the case, the calculations above will overstate the impost on industry of the Act and its administration in terms of additional stockholding charges. Finally it should be mentioned that the holding costs in the risk food category may be

overstated as in some instances notably fresh seafood and canned tuna importers are allowed to release after sampling, thus reducing the 12-day waiting period.

### 5.1.3 Industry administrative costs

In ensuring that they comply with the requirements of the Act, food importers incur administrative costs in relation to the preparation of paperwork and the organisation of clearance of consignments that are subject to the provisions of the Imported Food Control Act. From the Committees discussions with industry, it was estimated that food importers spend on average between an hour and an hour and a half per shipment that is selected for inspection/testing. In 1997-98, some 17 000 shipments were selected for inspection by IFIP. Using average weekly earnings of $795, industry administrative costs are estimated to be in the order of $510 000 per year. The Committee is aware that in some cases, especially with smaller companies, handling import clearance matters may be done by relatively senior staff in which case use of average weekly earnings may understate the administrative cost of IFIP. However, given the range of company sizes and structures of importing firms, the Committee considered that the most accurate available measure was to use an official figure of average earnings to calculate administrative costs.

### 5.1.4 Total costs

The above costings have some limitations and should only be considered as indicative of the total cost to industry of the program. For example, the industry estimate of storage costs at 15 percent of value per year is the best available to this Review Committee.

Considering the foregoing, the total cost of IFIP to industry and government is estimated as approximately $9.0 million. These costs are summarised in Table 5.1.

**Table 5.1 Direct costs of IFIP**

| **Item** | **Cost ($)** | **Totals ($)** |
|---|---|---|
| **Government costs** (appropriations) | | |
| AQIS | 100 000 | |
| ANZFA | 40 000 | 140 000 |
| **Program costs** | | |
| Inspection charges | 2 400 000 | |
| Laboratory charges | 1 200 000 | 3 600 000 |
| **Industry administrative costs** | 510 000 | 510 000 |
| **Stockholding costs** | | |
| *Risk* category goods/Holding Orders | 2 576 000 | |
| *Surveillance* category goods tested | 592 000 | |
| *Surveillance* category goods: contingency | 1 541 000 | 4 709 000 |
| **Total direct costs** | | **8 959 000** |

## 5.2 Benefits

The benefits from government regulatory arrangements designed to safeguard the quality and the integrity of food stem from a reduction in the level of risk of illness that these regulations can achieve. Benefits from imported food regulation are diverse and widely spread across the community and include:

- lower incidence of food-borne illness (and all associated costs);
- lower incidence of dietary illness caused by prolonged consumption of potentially harmful food or additives;
- savings in food product recalls;
- increased consumer confidence in the safety of imported food;
- reductions in recalls of processed foods that use imported food ingredients; and
- protection of Australia's international reputation as a supplier of safe foods by preventing contaminated imported food ingredients from entering the food supply chain.

Most analyses of the benefits of food regulations have traditionally focused on the benefits from a lower incidence of acute food-borne illness. This is because these benefits are the most direct and can be calculated relatively easily. However, food regulation is also aimed at protecting consumers from harmful long term health effects, associated with prolonged use of foods containing high levels of pesticides, preservatives or other additives. As IFIP also tests for the presence of excessive levels of such ingredients, in assessing the benefits of the program there should be an acknowledgment of the potential savings achieved over the long run from a reduction in the incidence of dietary-caused illnesses. The calculation of these benefits is difficult, due to the long time frames involved and the difficulty in establishing causality, and is not attempted here.

Other benefits such as increased consumer confidence and protection of an industry's or Australia's reputation whilst also important are more diffused and difficult to estimate. Their calculation relies on the application of complex economic techniques such as contingent valuation and risk analysis. These benefits are discussed later in this section, but their quantification is beyond the scope of this Review and hence will not be attempted here.

The analysis that follows will concentrate on the benefits of lower incidence of acute food-borne illness. As most of these benefits flow from a reduction of the risk of transmission of illness through contaminated food, the causes of food-borne illness and the costs of such illness are discussed.

### 5.2.1 Food as a cause of illness

Food is a common cause of a number of gastroenteric diseases. These diseases are either bacterial or viral in origin and are generally relatively mild, without any long term complications for the patients. Nevertheless, in some cases they can be quite severe in their impact and may result in long term health complications or even in death. In such cases, these illnesses have extensive economic, health and legal ramifications for consumers, public health authorities and industry.

In recent years the incidence of food-borne illness has been rising in Australia, parallelling a similar trend in other developed countries. While this may be explained by improved diagnostic techniques and an increase in monitoring and reporting, there are indications that this increase is real and reflects changes in eating habits, food preparation and the adoption of more intensive methods of food production, particularly in animal husbandry. Figure 5.1 shows the incidence

of three notifiable food-borne illnesses in Australia since 1991. For all three illnesses there is a distinct upward trend.

One of the biggest problems in estimating the true incidence of food-borne diseases is the difficulty in the collection of reliable data on food-borne illnesses (Kraa 1995). As official statistics only record reported cases, official figures on the incidence of food-borne diseases are invariably an under-estimate of the actual number of cases. The World Health Organization has estimated that in industrialised countries reported cases of food-borne illness could be under-reported by a factor of ten (Kraa 1995). In the United States, disease surveillance systems similar to Australia's suggest that in the case of Salmonella fewer than 1 percent of cases are detected during an outbreak (Crerar et al. 1996). Under-estimation of the number of cases of food-borne diseases is likely to be of a similar magnitude in Australia.

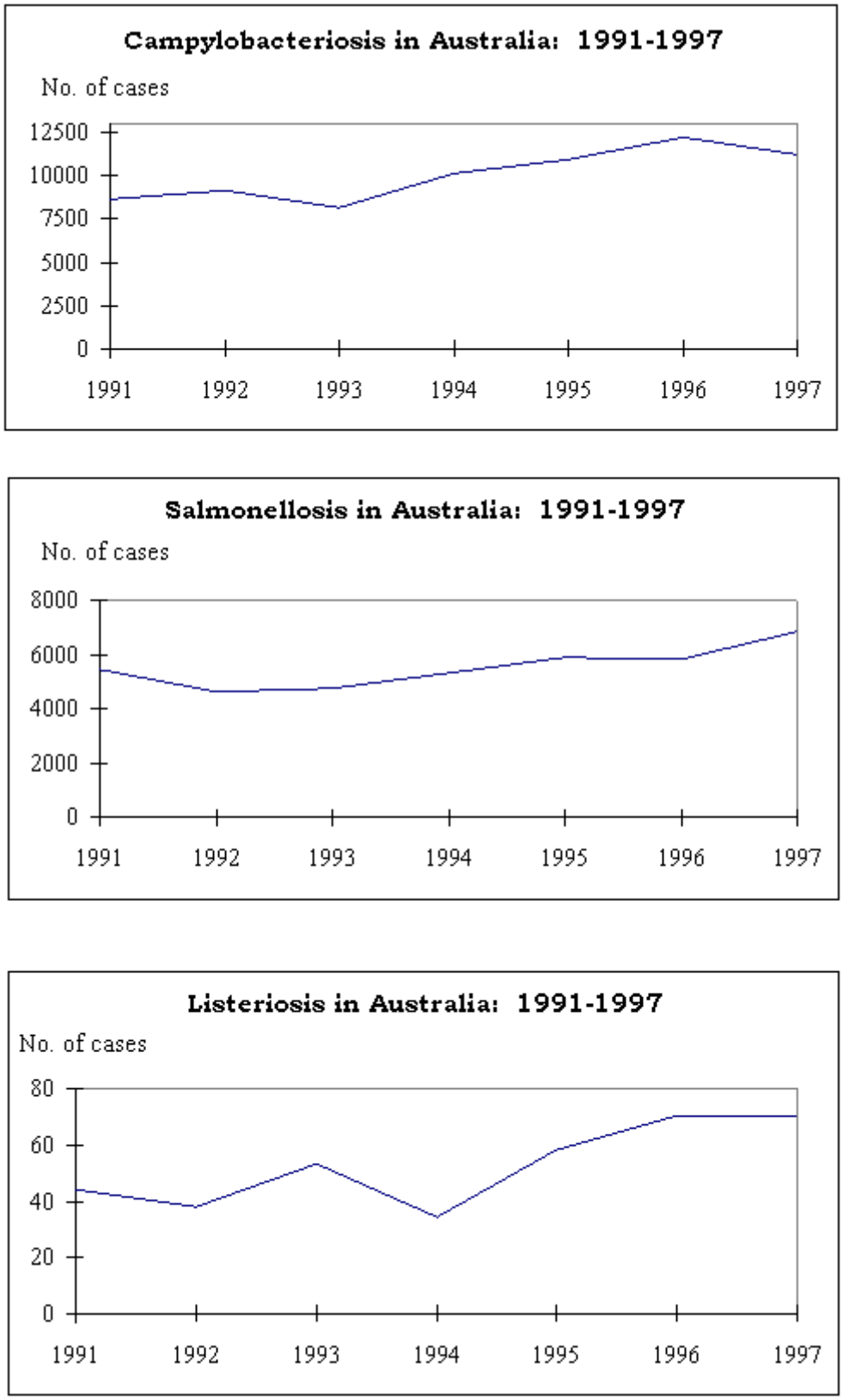
Outbreaks of food-borne diseases in Australia occur on a regular basis and can affect a large number of people. Recent outbreaks of such illnesses include:

- an outbreak of gastroenteritis due to orange juice contaminated by a viral agent affecting over 3000 persons across Australia (1991);
- an E. coli infection from mettwurst resulting in 23 cases of renal illness and the death of one child (1995);
- a Salmonella outbreak in Victoria affecting 860 people, with as many as 80 people needing hospitalisation (1997); and
- an outbreak of Hepatitis A in New South Wales from contaminated oysters that affected over 700 people with one reported death (1997).

### 5.2.2 The cost of food-borne illness

Food-borne illnesses are costly, and their costs are spread across the entire community. When a food-borne disease outbreak occurs, costs are generally borne by three groups namely, affected individuals, industry and government. Table 5.2 shows some of the main costs incurred by each group.

**Figure 5.1 Reported cases of three food-borne illnesses in Australia**




Source: National Centre for Disease Control (1998).

Note: Due to under-reporting, notified cases represent only a proportion of the actual number of cases that occurs.

**Table 5.2 Summary of costs of illness by group**

| Individuals/households | Industry | Government/community |
|---|---|---|
| Loss of life<br><br>Pain and suffering<br><br>Medical/pharmaceutical expenses<br><br>Income/leisure loss<br><br>Litigation costs | Loss of productivity<br><br>Product liability litigation<br><br>Loss of consumer confidence and reduced product demand<br><br>Increased regulation and introduction of tighter food processing practices/procedures<br><br>Lower business viability | Investigation of outbreak<br><br>Monitor incidence and severity of outbreak<br><br>Disease containment and control<br><br>Medical/laboratory costs<br><br>Litigation costs |

As most of the benefits from food regulation arise from a reduction of the risk of transmission of illness through contaminated food, the benefits of such regulation are "a measure of avoided costs" (Caswell 1998) and are usually assessed on the basis of cost of illness calculations. Although, this approach has been criticised by some economists for providing a lower measure of consumer willingness to pay for higher quality foods, government regulators, especially those who must prepare cost-benefit assessments of new regulations, often prefer to use cost of illness measures because they are conservative and relatively reliable measures of benefits (Caswell 1998).

Lack of data on many of the variables in Table 5.2 means that a comprehensive estimate of the cost of illness is not feasible within the scope of this Review. Because of data limitations, most cost of illness studies generally seek to quantify individuals medical costs and the cost of productivity losses.

A useful reference for methodological issues and the actual calculation of the medical costs and productivity losses from bacterial food-borne illness in the United States is provided in Marks and Roberts (1993) and in Buzby et al. (1996).

### 5.2.3 The cost of food-borne illness in Australia

There are no comprehensive studies of the total cost of food-borne illnesses in Australia. Whilst there have been a number of attempts to estimate the incidence and the cost of food-borne illness in Australia, data limitations and differing approaches between studies make the derivation of firm conclusions and the comparison of results problematic.

The Australian Institute of Health and Welfare puts the medical costs of intestinal infections in 1993-94 at $179 million. This amount is inclusive of all medical expenses (hospital, pharmaceutical, and consultations) and relates to illness originating from food as well as non-food sources. In the same year, there were 849 and 31 hospital admissions for salmonellosis and E. coli infections, respectively. Hospital costs were estimated to be $1.8 million for Salmonella and $45 000 for E. coli, implying a hospital cost per case of $2120 and $1450, respectively (Australian Institute of Health and Welfare, personal communication).

The Review Committee has examined, in some detail, two case studies of illnesses caused by food in Australia. The two case studies selected involve a Salmonella outbreak in Victoria and an E. coli outbreak in South Australia and are presented in Appendix H. Although these outbreaks did not originate from imported food, the pathogens that cause both these diseases are those for which IFIP tests and they provide an excellent example of the potential effects of a disease outbreak caused by contaminated imported food.

The Salmonella outbreak in Victoria was known to affect 860 people and was estimated to cost $1230 per case in medical/pharmaceutical costs and productivity losses whilst the hospital cost per case hospitalised was estimated to be $2470. The total estimated cost on a conservative basis was in the vicinity of $1 million. The South Australian outbreak was known to affect at least 150 people, with a total cost in the vicinity of $1.17 million. It is likely that the total costs were considerably higher than estimated, particularly in the South Australian case, which had such a severe and prolonged impact on many of the affected children (see Appendix H).

A report commissioned by ANZFA for a Regulation Impact Statement on the Proposed Nationally Uniform Food Hygiene Standard estimated the cost of diarrhoea and gastroenteritis caused by food to be $124.2 million per annum (John Hawkless Consultants 1998). This figure includes the cost of medical consultations and lost productivity, through days missed from work. The calculation is based on an estimate of 4.6 million cases of diarrhoea and gastroenteritis in Australia, 50 percent (2.3 million cases) of which were assumed to be attributable to contaminated food. The calculation implicitly assumes that all cases are mild with no complications and requiring no hospitalisation. Hence it may represent an under-estimation of the true cost of food-borne illness. A second more comprehensive estimate in the same report, puts the cost of food-borne illness in Australia at $2.1 billion. This is based on an estimated 2.1 million cases of food-borne illness in Australia annually and on an assumed average cost of illness of $1000 per case, based on comparable US and Canadian health cost data.

The AQIS submission to this Review reported that IFIP has the potential to save the Australian economy up to $73 million in human salmonellosis cases. This is based on an assumed cost per case of $2000 (medical treatment and lost productivity) and an estimated possible 36 500 cases of Salmonella infection from imported foods. The latter number is derived from US epidemiological data adjusted for the size of Australia's population and the fact that food imports account for 10 percent of food consumed in Australia. However, this proportional attribution of the risk of food-borne illness from imported foods does not take into account the risk type of imported foods. With quarantine controls restricting the importation of meat and poultry products, a large element of risk from food-borne illness from imported products is removed. Therefore the potential cost of food-borne illness that can be attributed to imported foods may be less than their share of the domestic food market would suggest.

It should be noted that none of the above estimates include the long term complications of food-borne illnesses, which can develop in some 2-3 percent of the acute cases. As scientific knowledge on these diseases improves, there is increasing awareness of the chronic or long term effects associated with some of these illnesses and of the additional costs, financial and non-financial, that they impose on society and individuals. Inclusion of these costs, together with other costs identified in Table 5.2, means that the actual cost of illness is considerably greater than studies focusing on medical costs and productivity losses alone would suggest. Therefore cost of illness estimates presented above should be

treated with caution and viewed as providing only an indication of the **minimum** cost of food-borne illness in Australia.

### 5.2.4 Imported foods and the risk of illness

As already discussed, the objective of the Imported Food Control Act is to ensure that imported food complies with Australian public health and food standards. Unlike the situation with domestically produced food, IFIP relies on barrier inspection and testing because Australian authorities have no control over the production techniques in exporting countries. In this way the program aims to ensure that imported foods meet Australian food standards.

The program intercepted contaminated foods in the risk category that, if undetected, could precipitate an outbreak of salmonellosis, listeriosis or E. coli infection. Table 5.3 shows the number of failures for imported food tested for three bacterial pathogens in 1996 and 1997.

The figures in Table 5.3 suggest, that for the risk category at least, there are sound reasons for retaining a system of control. From Table 5.3 it can be seen that in 1997, 21 imported food consignments failed because of contamination with bacterial pathogens that could cause a potentially dangerous and costly food-borne disease outbreak. Although in percentage terms the number of failures is small (1 percent), the absolute number is large enough to justify continued monitoring of imported foods.

**Table 5.3 Imported food failures for three bacterial pathogens: 1996 and 1997**

| | **Category of Food** | | |
|---|---|---|---|
| | ***Random surveillance*** | ***Active surveillance*** | ***Risk*** |
| **1996** | **Tested.....Failed** | **Tested.....Failed** | **Tested.....Failed** |
| *E. coli* | 17.....0 | 11 .....0 | 495 .....4 |
| *Listeria monocytogenes* | 16 .....0 | 199 .....0 | 398 .....4 |
| *Salmonella* | 93 .....0 | 309 .....1 | 879 .....9 |
| **Total** | **126** .....**0** | **519**.....**1** | **1772** .....**17** |
| **1997** | **Tested** ..... **Failed** | **Tested** ..... **Failed** | **Tested** ..... **Failed** |
| *E. coli* | 23.....0 | 26 .....0 | 520 .....4 |
| *Listeria monocytogenes* | 29.....0 | 123 .....0 | 540 .....11 |
| *Salmonella* | 119.....0 | 445 .....0 | 974 ..... .....6 |
| **Total** | **171** ..... **0** | **594** .....**0** | **2034**.....**21** |

On the basis of the costings for the Salmonella and E. coli case studies discussed in Appendix H, and taking a very narrow view of benefits in terms of calculating the cost of illness, the program in 1997 could potentially have saved the Australian economy at least $21 million in these three bacterial illnesses alone. The breakeven point for the community would be if the program prevented, on average, eight outbreaks from imported foods per year.

In reality the preventative value of the program is likely to be higher than implied above, as the 21 failures only relate to three bacterial pathogens. In 1997, there were a total of 86 failures (including the above 21) in imported foods, for reasons of high or longer term risk to human health, and 175 failures which involved lesser (but still health-related) risks (see Figures 4.1a and 4.1b). Whilst the risk and impact of illness would vary from case to case, there is little doubt that each case represents a potential health risk to the community from acute or long term dietary illness and that the repercussions of the release of such foods into the Australian market could result in substantial costs for consumers, industry and governments. These costs would be considerably larger than those quantified in terms of medical expenses and lost productivity.

Finally, the educational and deterrence role of IFIP over the years should not be under-estimated. After about eight years in operation, it can be claimed that IFIP has played a role in raising the standard of imported foods so that failure rates over time for serious health reasons have been declining (see Figures 4.1a and 4.1b). The implication is that, in the absence of a national imported food control mechanism, the incidence of unsafe or contaminated food being imported to Australia would be higher.

A good illustration of this positive effect of IFIP is the increasing awareness by importers of the benefits of sourcing foods from good overseas suppliers and efforts by importers to ascertain the track record of suppliers on matters of compliance with the Act.

### 5.2.5 Other benefits of the Act

In ensuring that imported foods meet Australian food standards, IFIP plays an important role in bestowing consumer confidence on imported food and in protecting the industry from the adverse effect of sale or consumption of contaminated food.

In the absence of the *Imported Food Control Act*, the commercial risk is that release of contaminated or unsafe food to the domestic market is likely to have a destabilising effect on the entire sector, regardless of whether it precipitates a disease outbreak or not. The repercussions of this will not be confined to the supplier of the contaminated product, but will impact on the entire sector as importers and domestic producers of untainted but similar products will also be affected and suffer loss of business.

Where release of contaminated food is associated with an outbreak of illness, the impact on the industry is likely to be far more extensive. Examples of this are the E. coli outbreak from contaminated mettwurst in 1995 and the problems with peanut butter in 1996, from which both sectors are still recovering. It is reported that in the aftermath of the E. coli outbreak, the entire smallgoods sector suffered a major drop in turnover, with sales still considerably lower than pre-outbreak levels a year after the event.

By testing risk food before release, IFIP intercepts unsafe foods before they are released on the Australian market and so reduces the need to resort to food recalls. Recalls are generally expensive because of high administrative costs and also undermine confidence in the types of food affected. Between January 1996 and December 1997, there were 18 imported food recalls (five of which were for viral, bacterial or fungal contamination). In the absence of the Act, this number could be significantly higher given that in 1997 total failures for reasons other than labelling infringements amounted to 261.

Finally, the release of safer food into the Australian marketplace helps reduce the prospects of expensive litigation action arising from the consumption of contaminated food and the consequent health implications.

### 5.2.6 Food safety and health information

In attempting to carry out a cost-benefit analysis of IFIP, the Review Committee found that while a considerable amount of information has been gathered on the interrelationship between food safety and health, there exists little analysis or interpretation of this information. It has been difficult for the Review Committee to draw an accurate cost picture of diseases in general, let alone for costs related to imported food. As noted previously, the necessary information does not exist to give management an adequate picture of the usefulness of the program. The same can be said of the monitoring of food-borne diseases. Health officials interviewed were of the opinion that it is important for research and analysis to be applied to this field and this is strongly supported by the Review Committee.

> The Review Committee notes the lack of information available on the interrelationship between the government food safety programs and food-borne disease and *encourages* government to investigate the development of more effective food-borne disease monitoring and reporting.

## 5.3 Conclusion

The total cost of IFIP was estimated to be approximately $9 million, representing 0.25 percent of the value of food imported into Australia. Although this cost is small in relative terms, it nevertheless represents an impost on industry resulting in higher costs and potentially affecting the price and supply of imported foods. At the company level, the effect of the program may be more pronounced in some sectors of the industry, depending on how it impacts on firms of different size and therefore on the ability of smaller importers to enter the sector and remain viable. Where imported foods are used as ingredients for further processing, IFIP will increase costs and affect export competitiveness.

Benefits mainly relate to the avoidance of costs of illness. The cost of all food-borne illness in Australia in medical expenses and productivity losses alone has been estimated to be in the order of $2.1 billion annually (John Hawkless Consultants 1998). Whilst apportioning a share of this cost to imported food is difficult, there is little doubt that unsafe or contaminated imported food if released on the domestic market can precipitate an outbreak of food-borne illness and hence contribute to the total cost of illness.

In 1997, IFIP detected the presence of three disease-causing bacteria in 21 items of imported food, thus potentially saving the Australian economy at least $21 million in medical expenses and lost production. In fact the benefits of the program are likely to be much higher, if the impact of the total number of failures (261, excluding labelling irregularities) for that year could be assessed and if all the benefits flowing from procuring safe foods could be quantified.

The role of IFIP as an educative mechanism for importers and as a deterrent against the importation of unsafe food should not be under-estimated. In the absence of such a scheme, it is likely that the incidence of sub-standard or unsafe food imports to Australia would increase, thus raising the risk of food-borne illness from imported food.

On the evidence available, the Committee considers that the *Imported Food Control Act* provides a net benefit to the community and should be retained.

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'In response to comments received, the Committee considered it would be appropriate to provide an indication of the magnitude of these costs and estimated them to be approximately $0.9 million. This was based on a 12-day average delay and on the assumption that 75 percent of surveillance foods referred to IFIP for inspection are tested. It was further assumed that importers hold 50 percent of foods tested until the test results are released. These costs have not been included in the calculations.

# 6. LEGISLATIVE OPTIONS AND CONCLUSION

The Review Committee considers that there is a regulatory spectrum available to assist the achievement of policy goals. It consists, not of a limited number of defined approaches, but a continuum of potential solutions, ranging from full regulation, through such measures as quasi-regulation (including co-regulation), self regulation, market-based instruments, and information and education campaigns, to no regulation or specific action at all.

This section provides detail on the four principal regulatory options:

- full Commonwealth imported food regulation, including licensing of food importers;
- co-regulation (partnership between the Commonwealth and the imported food industry);
- industry codes of practice; and
- no Commonwealth imported food regulation.

In each case, the advantages and disadvantages for the Commonwealth government, the imported food industry and the community (defined as the nation as a whole — particularly consumers, food processors and food exporters using imported ingredients, and State/local governments) are presented, with additional detail provided on the impact of the particular model for regulation.

In view of the difficulties encountered in undertaking a full cost–benefit analysis of IFIP (see Section 5), it was not considered feasible to attempt a cost–benefit analysis of each of the legislative options described in this section. The Review Committee therefore decided only to identify, in general qualitative terms, advantages and disadvantages of the four options. Comparisons are with the administration of the *Imported Food Control Act* as it now stands.

All food sold in Australia is required to comply with the Food Standards Code, irrespective of the existence of the *Imported Food Control Act*. Any reduction in impact of the Act would throw responsibility for enforcement of the Food Standards Code onto States and local authorities, and would probably result in a reduction in Australia's effectiveness in dealing with imported foods.

## 6.1 Full Commonwealth imported food regulation

### 6.1.1 Description of arrangement

A move to full regulation would entail the introduction of licensing of food importers and probably a more rigorous inspection and testing regime in terms of frequency of inspections. The Commonwealth would assume responsibility for administering the licensing system and would continue to enforce compliance of imported foods with the Australian food standards. The likely advantages and disadvantages of this arrangement are summarised in Table 6.1.

**Table 6.1 Advantages and disadvantages of full Commonwealth imported food regulation**

| Commonwealth Government | Imported Food Industry | Community |
|---|---|---|
| ***Advantages*** | | |
| Greater control of imported food sector through licensing | Full government regulation should result in more predictability and transparency for importers | Perception of greater food safety by consumers<br><br>Potential for greater transparency and accountability |
| ***Disadvantages*** | | |
| Arrangements may not properly recognise industry capability and maturity and may thus promote sub-optimal solutions<br><br>Greater reliance on inspection may hamper innovation in securing compliance from industry through less prescriptive means<br><br>More resource-intensive to manage licensing and more inspections<br><br>Potentially inconsistent with WTO principles | Arrangements may not properly recognise industry capability and maturity and may thus promote sub-optimal solutions<br><br>More costly<br><br>Less flexible<br><br>Licensing may adversely impact on competition through restricting entry to the industry | Higher imported food prices through greater cost of operation of scheme<br><br>Less consumer choice because of higher costs, restricted imports<br><br>May result in inconsistent treatment of imported food compared to domestic food<br><br>Potentially inconsistent with WTO principles<br><br>Higher costs to food manufacturers using imported ingredients<br><br>Could lead to resource misallocation |

### 6.1.2 Impact

- Costs of IFIP to industry would include higher direct costs, eg, testing and inspection fees and probably new registration charges, and higher indirect costs such as stockholding costs.
- The scheme would be too prescriptive and may stifle attempts by industry or individual companies to be innovative and introduce their own quality assurance systems.
- Additional costs and licensing requirements may create barriers to entry and result in reduced competition in the food importing sector.
- The price of imported foods is likely to rise, whilst food choice may be reduced.
- Government control over industry would be enhanced but licensing reviews and decisions by authorities will increase workload and may lead to contested outcomes that could be expensive for both the government and industry.
- The scheme may afford domestic food processors a greater than warranted level of protection and could become — or be perceived as — a barrier to trade.
- The effectiveness of the current scheme indicates that a move to greater regulation, including licensing, would not be justifiable. A full regulatory scheme would increase costs and is unlikely to lead to any additional benefits.

## 6.2 Co-regulation (partnership)

### 6.2.1 Description of arrangement

It is assumed that under this option the Australian food standards are retained and that importers of food need to meet these standards. In the strict sense of the term, the option described here cannot be defined as co-regulation because it does not go as far as allowing industry to develop its own code or standard which is then ratified by the government (ORR 1997). Co-regulation here means the continuation of the existing arrangement where government sets the food standards and AQIS is responsible for their enforcement for imported foods, but allows firms with a proven record to conduct their business without having to be subject to the normal inspection and testing arrangements. Under this system the means for achieving compliance are more flexible.

Companies able to demonstrate that they have systems in place which can ensure that the foods imported are safe and meet labelling requirements, will be allowed to operate subject to a lower level of inspection and testing. The development of such a system is linked to the development of certification agreements and pursuit of equivalence with exporting countries, and relies on a much more flexible inspection regime to provide an economic incentive to encourage importing companies to participate in such an arrangement. Audits administered by the Government will need to be carried out to monitor the performance of the importers that choose to operate under this system. A higher frequency of audits or a stricter inspection regime can be introduced for companies that are found not to comply with the food standards. The likely advantages and disadvantages of the partnership approach are summarised in Table 6.2.

**Table 6.2 Advantages and disadvantages of co-regulation (partnership)**

| Commonwealth Government | Imported Food Industry | Community |
|---|---|---|
| ***Advantages*** | | |
| Retention of legislative imperative by Commonwealth<br><br>Sharing responsibility with industry<br><br>More effective as it is outcome driven<br><br>Better enforceability through use of administrative sanctions against non-compliance<br><br>Reduction in pressure on State/local authorities<br><br>Reflects current Government policy | More interactive, with industry participation in the definition of systems<br><br>Assumption of greater responsibility will encourage industry maturity<br><br>Opportunity for industry to develop and implement systems that suit their particular circumstances but still secure compliance<br><br>Lower costs in the medium to long term as quality systems are bedded down<br><br>Reduction in legislative prescription<br><br>Outcome-oriented, as companies will be able to develop systems and processes to achieve the desired results | Government still involved with food safety through regulation and audits<br><br>Uniform approach between domestic and imported food sectors<br><br>Australian food exporters continue to have imported inputs validated by Government<br><br>Potential benefits from efficiency and effectiveness as optimal solutions are derived through the partnership process |
| Assurance will not rely on detailed, direct control<br><br>More complex auditing systems may need to be developed | Possible increases in company costs in the short term as they develop quality assurance systems<br><br>Perceived attenuation of Government control through lessening of "direct" involvement<br><br>More care will need to be exercised in relation to interpretation of regulatory requirements | Perceived attenuation of Government control through lessening of "direct" involvement<br><br>Potential for some loss of confidence |

### 6.2.2 Impact

- Greater flexibility for companies to put in place arrangements that suit their particular circumstances best, while still delivering the desired outcomes.
- Emphasis on outcomes is consistent with the current focus of domestic food regulation and developments in food processing.
- Integration with industry structures in a partnership approach is likely to lead to improved effectiveness.
- Sanctions for non-compliance are administrative and therefore less challengeable and easier to enforce. Non-compliance becomes costly for industry as the rate of audits/inspections increases. This provides a strong incentive for industry to comply.
- Lower government costs for all spheres of government are likely because lower levels of Commonwealth (AQIS) inspections need not lead to a corresponding increase in inspection by other governments.
- Given the relatively low impost of IFIP on industry, some firms — particularly smaller importers — may prefer to continue operating under the current inspection system. For firms already operating under quality systems there are likely to be savings due to the interaction of their own systems and QA-type systems designed to meet AQIS requirements.

## 6.3 Industry codes of practice

### 6.3.1 Description of arrangement

Under this arrangement IFIP would be wound up, although some basic Commonwealth legislation may be retained to permit a supervisory role for the Commonwealth and to ensure that the industry codes of practice are observed. The imported food industry would develop and adopt its own code of practice to ensure compliance with the Australian food standards and would police the conduct of companies. Compliance may be achieved by adoption of ISO standards. The likely advantages and disadvantages of industry codes of practice are summarised in Table 6.3.

### 6.3.2 Impact

- Under this option the imported food sector would not in effect be deregulated, although the Commonwealth would substantially withdraw from enforcing the food standards.
- The substantial withdrawal of the Commonwealth may cause the States and local governments to perceive the need for some intervention, although the voluntary standards applying to industry would assist.
- If States decide to replicate the Commonwealth's arrangements under IFIP, there would be no material change for importers or the community, depending on how much reliance is placed on industry systems. States may be worse off as they would have to expend their own resources to monitor the scheme. There would be the loss of the ability to enter into agreements with overseas countries at a national level.
- To the extent that the States decide to replicate the Commonwealth's arrangements under the *Imported Food Control Act*, the incentive for industry to adopt and police a code of conduct will be proportionally reduced.
- The costs of IFIP on an industry-wide basis are relatively small, therefore the costs savings for deregulation are unlikely to be large.
- Industry efforts could be jeopardised by opportunistic or marginal operators who have no long term stake in the food sector and hence can see no benefit in conforming with the association's voluntary code.

**Table 6.3 Advantages and disadvantages of industry codes of practice**

| Commonwealth Government | Imported Food Industry | Community |
|---|---|---|
| ***Advantages*** | | |
| Minimal resources for Commonwealth<br><br>Decrease in amount of responsibility and controversy<br><br>Some government involvement possible in setting up of standards | Very flexible<br><br>Assumption of responsibility by industry<br><br>Company control over processes | Possibly cheaper imports<br><br>Possibly more consumer choice |
| ***Disadvantages*** | | |
| Loss of Commonwealth control<br><br>Not enforceable<br><br>Loss of information to formulate policy<br><br>Government may still be held responsible for an imported food-based disease outbreak | Loss of Commonwealth Government assurance ("safety blanket")<br><br>Heavy commitment of resources required (all internal mechanisms)<br><br>Exposure to more commercial risk<br><br>No check on "fairness" of code, industry self-interest might take over<br><br>Possible restrictions on competition (eg, associations may restrict membership)<br><br>Importers have little influence over food manufacturing processes in foreign countries, hence may be unable to prove adherence with required standards | Loss of Commonwealth Government assurance/control<br><br>Potential pressure on State and local authorities to maintain inspections/testing<br><br>Greater variability in application and effectiveness<br><br>Competitive disadvantage to domestic industries (higher costs of establishment inspection compared to border inspection)<br><br>Reduction in community involvement by inability to participate or have input to government-based "public" process<br><br>Loss of accountability and transparency<br><br>Potential increase in illness due to higher food risk |

- If the level of testing and inspection is reduced or becomes more *ad hoc*, there could be:

    - a small reduction in prices and greater choice of importer food;
    - a possible decline in the level of consumer protection, accompanied by a increase in food-borne disease incidence;
    - an increase in recalled foods and an erosion of public confidence in imported foods;
    - the possibility of outbreaks of food-borne illness through contaminated or sub-standard foods finding their way to consumers;
    - in addition to costs of treating, investigating and controlling these illnesses, such outbreaks could have severe repercussions on the entire affected sector of the industry, given consumer perceptions of food as a generic rather than differentiated product; and
    - complaints from domestic food processors that these arrangements put them at a disadvantage.

- Non-compliance may not be discovered until after contaminated food has been released in the marketplace.

## 6.4 No Commonwealth imported food regulation

### 6.4.1 Description of arrangement

In the context of this analysis, deregulation means repeal of the *Imported Food Control Act*. It does not mean that imported food would be subject to no regulations in terms of being exempt from meeting Australian food standards. In the absence of the Act, imported foods would still have to comply with the food standards but enforcement of the standards would probably occur at State or local government level. Such an arrangement would involve inspection at retail or wholesale point of sale. Effectively this system would take the imported food sector back to the situation that existed in Australia prior to the existence of the Act. The likely advantages and disadvantages of this option are summarised in Table 6.4.

### 6.4.2 Impact

- Under this option the imported food sector would not in effect be deregulated, although the Commonwealth would withdraw from enforcing the food standards.
- The responsibility for upholding the food standards would revert to the States and local governments.

**Table 6.4 Advantages and disadvantages of no Commonwealth imported food regulation**

| Commonwealth Government | Imported Food Industry | Community |
|---|---|---|
| ***Advantages*** | | |
| Lower commitment of Government resources | Assumption of control and responsibility<br><br>Simple<br><br>Flexible, possible reduction in industry costs | Lower prices<br><br>Possibly greater product choice |
| ***Disadvantages*** | | |
| Criticism of Government for abrogating responsibility in relation to public food safety<br><br>Lack of control generally, and in relation to emergent imported food risks in particular<br><br>Government may still be held responsible for an imported food-based disease outbreak<br><br>Lack of information to formulate policy | Loss of Government assurance<br><br>Exposure to more commercial risk in a potentially less stable marketplace<br><br>Possible loss of confidence in imported foods<br><br>Some firms may not act in the best interests of industry overall, and may operate unchecked<br><br>Loss of "blanket" assurance as part of a government-regulated industry<br><br>Reduction in the ability of small firms to identify risks with the loss of the government information and education process | Loss of Commonwealth Government assurance at the barrier<br><br>Likely increased pressure on State and local government to maintain inspections/testing<br><br>Greater variability in application and effectiveness<br><br>Probable higher recall rate, undermining public confidence on safety of food<br><br>Increased risk of food-borne illness from imported foods<br><br>Higher level of litigation<br><br>Loss of accountability and transparency<br><br>Competitive disadvantage for local producers |

- If States replicate the Commonwealth's arrangements under IFIP, there may be no material change for importers or the community. States may be worse off as they will have to use their own resources to manage the scheme, or they may lack the resources to do so. Net costs to industry may rise or fall depending on how efficiently these governments fulfil that role. It should be noted that the cost of IFIP on an industry-wide basis is fairly small, therefore the costs savings for deregulation are unlikely to be significant.

- Abolition of border testing and inspection may result in:

    - a small reduction in prices and greater choice of imported food;
    - a possible decline in the level of consumer protection, accompanied by an increase in food-borne disease incidence;
    - an increase in recalled foods and an erosion of public confidence in imported foods;
    - the possibility of precipitation of outbreaks of food-borne illness through contaminated or sub-standard foods finding their way to consumers;
    - in addition to costs of treating, investigating and controlling these illnesses, these outbreaks could have severe repercussions on the entire affected sector of the industry, given consumer perceptions of food as a generic rather than differentiated product;
    - complaints from domestic food processors that these arrangements put them at a disadvantage;
    - the loss of the ability to enter into agreements with overseas countries (at a national level) to ascertain safe processing and transport.

- Non-compliance may not be discovered until after contaminated food has been released in the marketplace.

## 6.5 Optimum legislative solution

Food regulation carries a strong public interest element because of major human health concerns associated with the sale and consumption of unsafe foods. Regulation of the food sector stems from the existence of market failure as market forces alone cannot deal effectively with the food safety issues. Accordingly, the Review Committee does not consider deregulation to be a viable option. Furthermore the Committee considers that health risks associated with possible non-compliance are serious enough to preclude reliance on a code of practice to secure compliance with the Australian food standards. On the other hand, the current effective mode of operation of the imported food sector indicates that full regulation may be too intensive an approach.

The Committee's preferred option is that of a partnership approach with industry, as presented in Section 6.2. Such an approach balances a minor attenuation in Commonwealth control with an interactive relationship with industry, recognising and encouraging industry maturity and responsibility as the soundest way of ensuring compliance with Australian public health and safety standards. In the Committee's opinion, the partnership approach, through the development of compliance agreements based on quality assurance type arrangements by food importers and greater use of certification and equivalence agreements, is desirable both in its own right, and for reasons of consistency with current developments in the domestic food sector.

In reaching this conclusion the Review Committee is aware that IFIP does not impose a large cost burden on the food importing industry as a whole. Therefore, quality assurance arrangements may be not be taken up by some sections of the industry, especially where significant up-front costs have to be incurred in developing QA or HACCP-based programs. This option would become more attractive to industry where its introduction by an importer is accompanied by a significant reduction or even elimination of border inspections by IFIP.

Moreover, the preferred solution is in close alignment with the specifications of the Office of Regulation Review (1998), which was the view that regulation should be considered where "the problem is high risk . . . for example, a major public health and safety issue", and where "universal application is required".

**Recommendation 23:** The Review Committee recommends that, in line with considerations described in this Report, the *Imported Food Control Act 1992* be retained, with:

- timely amendment of legislation consistent with Recommendations 1, 2, 4, 5, 11, 13, 14 and 19; and
- enhancement of administrative processes supporting the legislation consistent with the other recommendations in this Report.

## 6.6 Conclusion

The Review Committee has concluded that the *Imported Food Control Act* should be retained to provide for the compliance of imported food with Australian public health and safety standards, and that a partnership approach between government and industry be developed to enhance the effectiveness of the legislation. All stakeholders contacted by the Review emphasised the necessity for the legislation and there is strong stakeholder support for a partnership (or co-regulatory) approach, to be developed in consultation with industry.

The recommendations of the Review are designed to strengthen the effective and equitable discharge by AQIS of its responsibilities under the legislation and incorporate a number of legislative changes. The recommendations for legislative change have been made where it has been concluded that this is the most effective method, or where there is no readily available alternative.

The partnership approach will encourage industry to take greater responsibility for food safety while, at the same time, retaining government assurance over the food importing system through regular government-controlled audits. The recommendations put forward by the Review will increase the flexibility of the imported food regulatory system to respond to change and are consistent with developments occurring in national food regulation and advances in food processing and food safety. Of particular significance will be the shift away from border inspection and end-point testing toward greater reliance on quality assurance-type systems under compliance agreements with importers.

There is also a need to enhance consultation between government and industry. Implementation of the changes recommended in this Report will benefit from detailed consultation with stakeholders. Because of the dynamic nature of the food safety environment, the Review Committee has concluded that appropriate legislative and administrative practices will be achieved from regular monitoring through the partnership process.

The Review Committee considered how the new program will reinforce Australia's compliance with international requirements for imported food control systems, outlined in the SPS and TBT Agreements. Imported food must continue to comply with requirements of the Food Standards Code, as does food produced domestically for the Australian market. The responsibilities of AQIS and ANZFA in the imported food control system are and will remain clearly defined in the *Imported Food Control Act*. Through strengthened certification agreements, food safety controls in exporting countries — which are capable of assuring safe food complying with the Food Standards Code — will be recognised in order to simplify imported food controls applied in Australia. The Committee also recommended improvements in the system in order to achieve greater transparency, and to ensure that the system is truly risk and performance based.

The Review Committee is confident that the suite of recommendations put forward in this Report addresses the major concerns of stakeholders through attention to such factors as:

- increased industry responsibility and the use of compliance agreements with the importer, based on quality assurance-type systems;
- greater flexibility to adopt the method of compliance which best suits an importer's operations;
- improved targeting of resources through greater use of risk profiling and performance-based testing;
- simplification of the inspection system by reducing the inspection classifications (categories) from three to two;
- reduction in incorrectly referred food through improved methods of dealing with labelling failures and enhancement of the tariff code system;
- increased contestability in the market for laboratory services;
- improved communication through a reconstituted consultative body and enhanced communication strategies;
- better management and operational effectiveness through the development of performance indicators and improved training of staff; and
- more appropriate enforcement.

Implementation of the Review Committee's recommendations will provide the basis for a more effective, efficient and equitable imported food safety system. Development of a partnership approach will result in benefits not only to industry and government but also to consumers.

## APPENDIX A: TERMS OF REFERENCE

**The Committees terms of reference were as follows:**

1) *The Imported Food Control Act 1992* (the Act), and associated regulations, are referred to the Review Committee (the Committee) for evaluation and report by 31 August 1998. The Committee is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2) The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation;

b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication;

d) compliance costs and the paper work burden on small business should be reduced where feasible.

3) In making assessments in relation to the matters in (2), the Committee is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Act seeks to address;

b) clarify the objectives of the Act;

c) identify whether, and to what extent, the Act restricts competition;

d) identify relevant alternatives to the Act, including non-legislative approaches;

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Act and alternatives identified in (d);

f) identify the different groups likely to be affected by the Act and alternatives;

g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

h) determine a preferred option for regulation, if any, in light of objectives set out in (2);

i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Act and, where it differs, the preferred option.

4) In undertaking the review, the Committee is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5) Within 6 months of receiving the Committee's report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and, where appropriate, after consideration by Cabinet.

## APPENDIX B: MEMBERSHIP FO THE REVIEW COMMITTEE

### Carolyn Tanner: Chairman

Carolyn Tanner is a Senior Lecturer and the Associate Dean for the Bachelor of Agricultural Economics degree at the University of Sydney. Her major areas of expertise are trade policy and Australian agricultural policy. In 1995 she was appointed by the Commonwealth Government to an inquiry into Australia's quarantine policies and procedures (the Nairn Review). Currently she is a member of the Quarantine and Exports Advisory Council (which provides advice to the Government on major quarantine and export policy issues).

### Tony Beaver

Tony Beaver, who has legal qualifications, has been the secretary of the Food and Beverage Importers Association for the past three years. He is a member of the Imported Food Advisory Council, the AQIS Industry Cargo Consultative Committee and the Industry Working Group on Quarantine.

### Andy Carroll

Andy Carroll is currently Manager, Animal Programs Section, Australian Quarantine and Inspection Service (AQIS). He has also served in various other areas within the Commonwealth Department of Agriculture, Fisheries and Forestry and its predecessors including rural sciences and agricultural health. Previously (1979 to 1985), he served as a District Veterinary Officer with the Queensland Department of Primary Industries.

### Elizabeth Flynn

Elizabeth Flynn is the Program Manager for Monitoring and Surveillance in the Australia New Zealand Food Authority (ANZFA), and has managed scientific staff of the organisation since the inception of the National Food Authority (NFA, later ANZFA) in 1991. Prior to this, she worked as a microbiologist with the then ACT Public Health Laboratories and the National Health and Medical Research Council food committees (the food standards system which preceded the NFA).

### Secretariat and support

The Review Committee was supported by a Secretariat: Hilary Cuerden-Clifford (Manager); Stephen Schutt; Alex Cockinos; and Deborah Fileman. Policy advice was contributed by Slava Zemanovic.

# APPENDIX C: LIST OF SUBMISSIONS

## Submissions received

Ardmona Foods Ltd
Australia New Zealand Food Authority
Australian Business Limited
Australian Consumers Association
Australian Customs Service
Australian Dairy Corporation
Australian Food Council
Australian Government Analytical Laboratories
Australian Mushroom Growers Association Ltd
Australian Poultry Industry Association
Australian Quarantine and Inspection Service
Australian Seafood Importers Association
Centre of Export Inspection and Certification for Agricultural Products (Thailand)
Confectionery Manufacturers Association of Australasia
Consumers Federation of Australia
Customs Brokers Council of Australia
Department of Community and Health Services (Tasmania)
Department of Human Services (Victoria)
Food and Beverage Importers Association
Golden Circle Ltd
Grains Council of Australia
Industry Working Group on Quarantine
Ministry of Commerce (New Zealand)
Ministry of Health (New Zealand)
National Farmers Federation
Nestlé Australia Ltd
Tecra Diagnostics
The Australian Associated Brewers Incorporated

## Comments on the Draft Report

Australia New Zealand Food Authority
Australian Bureau of Agricultural and Resource Economics
Australian Food Council
Australian Quarantine and Inspection Service
Mr J. Cameron (AQIS NSW)
Customs Brokers Council of Australia
Mr M. Farrell (AQIS NSW)
Food and Beverage Importers Association
Golden Circle Ltd
Grains Council of Australia
H. J. Langdon Group
Industry Working Group on Quarantine
Ministry of Commerce (New Zealand)
Ministry of Health (New Zealand)
Mr L. Johns (AQIS NT)
Office of Small Business
Pork Council of Australia
Mr G. Powell (AQIS Qld)
Mr R. Salvage (AQIS Import Clearance Program)

## APPENDIX D: CONSULTATION

**Government**
Australian Quarantine and Inspection Service
Australian Competition and Consumer Commission
Australian Customs Service
Australian Government Analytical Laboratories
Australia New Zealand Food Authority
Department of Health and Family Services
Department of Human Services (Victoria)
Food Regulation Review
Ministry of Commerce (New Zealand)
Office of Small Business

**Peak industry bodies**
Australian Food Council
Customs Brokers Council of Australia
Food and Beverage Importers Association
Industry Working Group on Quarantine

**Consumers**
Consumers Federation of Australia

**Importers (Melbourne) general consultative meetings**
Australian Olive Oil Association Inc
Benedikt Imports (Aust.) Pty Ltd
Calendar Cheese Company
Conga Foods
Delta Sales Pty Ltd
Frank Mason & Associates
J. S. Frozen Foods
Menora Foods Pty Ltd
Oceanic Food
Sant Agata Pty Ltd
Seafood Imports Pty Ltd

**Importers (Sydney) general consultative meetings**
Chun Shing Trading
Eastern Cross Trading Pty Ltd
Ettason Pty Ltd
Japan Food Corp.
Pag-Asa Asian Food Store
Pontiac Trading Pty Ltd
Shin Mi Australia

**Importers (on-site visits)**
Aztec Foods
Coles Supermarkets
Exclusive Foods
Food Traders Australia Pty Ltd
Galaxy Imports and Exports
Gee Trade
Great Ocean Products Pty Ltd
H. J. Langdon & Co. Pty Ltd
Han Yang Trading
Hoa Australia
Hong Lee Foods

Lam Brothers Pty Ltd
Lay Brothers
Marco Polo Foods, Sydney
Nimco Foods
Riviana Foods
Scalzo Food Industries
Unilever Foods
Wah Lien Trading Pty Ltd
Woolworths Fresh Food, Sydney

**Customs brokers**
Considines Customs Brokers
ASL Customs Services Ltd
Ross Fehlberg Pty Ltd
Complete Customs Agency
Queensland Customs Brokers Pty Ltd

**Expert consultation**
Communicable Diseases Control Branch, Department of Human Services (SA)
National Centre for Disease Control, Commonwealth Department of Health and Family Services (Commonwealth)
Acute Care Financing and Analysis Branch, Department of Health and Family Services
Infectious Diseases Unit, Department of Human Services (Victoria)
National Centre for Epidemiology and Population Health, Australian National University
Department of Nephrology, Womens and Childrens Hospital (SA)
Australian Institute of Health and Welfare (Canberra)

**AQIS inspection staff in Brisbane, Melbourne and Sydney**

## APPENDIX E: DRAFT CODEX PRINCIPLES FOR IMPORTED FOOD CONTROL GUIDELINES

The following principles for imported food control guidelines have been presented to the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) at its fifth (1997) and sixth (1998) sessions. As yet, the Committee has not made a decision to progress the development of a guideline through the Codex steps. However, a draft guideline paper will be considered at the next session of CCFICS. The principles are based on the "Principles for Food Import and Export Inspection and Certification" (CAC/GL 20-1995) and are focussed on imported food specifically. Incorporation of these principles into a guideline would provide a basis for the development of import inspection systems consistent with the "Principles for Food Import and Export Certification and Inspection" (CAC/GL 20-1995).

**Principles**

**1. Parity with domestic controls.**
Imported food standards and application of those standards cannot be more rigorous than domestic controls, while acknowledging that domestic production allows some scope for "in process" control.

**2. Clearly defined authority conducting control.**
Clear legal basis for control. If more than one agency is involved with pre-clearance, border clearance, or point of sale inspection of imported food products, the responsibilities and authorities must be clearly defined.

**3. Consistently implemented system.**
Imports should be controlled consistently at each entry point. If the same standards and procedures are not used at each port, an imported food control program is in danger of fragmenting with some ports allowing easy passage of higher risk foods.

**4. Recognition of food safety controls in exporting country**
Imported food inspection systems should include the capacity to recognise controls implemented in exporting countries where those control provide the same degree of protection expected domestically. Acceptance may include certification or other mutual recognition agreements.

**5. Transparent system with documented procedures and standards**
Details of controls should be written and published in a manner which allows simple access and use of the documentation according to need. The standards and procedures should be flexible enough to deal with short term unforeseen (scientifically proven) threats to food safety, and allowing importation of material for further processing that may be hazardous in its raw state.

**6. Application of risk assessment**
No control system can effectively inspect all food. Allocate resources according to risk.

**7. Adhere to the CODEX "Code of Ethics for International Trade in Food"**
For example, if food is rejected, the next prospective buyers (ie, country) and the exporting country authorities should be informed. The exchange of information should follow the format stipulated in the "Guidelines for the exchange of information between countries on rejections of imported food", Alinorm 97/30

## APPENDIX F: MAJOR CONCERNS OF STAKEHOLDERS

This appendix summarises the major concerns of stakeholders, as expressed to the Review Committee in written submissions and in consultative meetings and interviews.

**Testing rates**
Many importers, particularly smaller firms, complained that most of their shipments were inspected and that some foods were always inspected. The testing rates did not appear to be related to the potential food safety hazards associated with the food and there was no relief from testing rates, except for risk categorised foods or certified shipments.

**Costs of testing**
Costs of tests conducted by IFIP were overly high according to most stakeholders. There were also concerns about the slowness of results from AGAL, which can have a greater impact on importers costs, particularly if foods are held pending results.

**Repetitive testing of same products**
Most complaints were about foods that are in the active surveillance category, which, according to some importers, are continually tested even when there have been no failures. Importers were unable to get explanations from officers or management on why foods were being tested for particular tests.

**Inappropriate tests on products**
Many stakeholders commented on the number of occasions when officers selected inappropriate tests for the products they are inspecting. In their opinion, the resultant costs of these tests could not be justified and there were no avenues of redress available.

**Inconsistencies in inspection regime throughout different ports**
Inconsistency in treatment by inspectorate staff in different ports was a significant problem.

**Importers' compliance history is not considered**
The present inspection regime treats all importers equally, with no recognition of measures taken by importers to ensure the food imported by them is safe. Importers felt they were not being rewarded for taking measures off-shore which would improve food safety.

**Delays in getting inspections done**
Stakeholders have commented that since IFIP was integrated with Quarantine there have been increased delays in getting inspections done. Prior to amalgamation, IFIP inspections were almost always able to be arranged for the next day, but now delays can be as long as five days, particularly so in the busier ports of Sydney and Melbourne. Stakeholders complained of a lack of personnel within AQIS to deal with both IFIP inspections and enquiries relating to IFIP matters.

**Officers lack of expertise and knowledge of food issues**
Many importers commented that officers expertise and knowledge of food issues had deteriorated subsequent to the integration of IFIP with Quarantine. More experienced inspectors were seen as being more knowledgeable and more helpful to industry in providing information and assistance.

**Inconsistency in treatment of products by officers**
Stakeholders commented that different officers are inconsistent in the way they treat products. Consistency is important to allow importers to forward plan and cost their consignments with some measure of surety.

**Poor information provided by IFIP on program and decisions**
The need for transparency in the program was highlighted by many stakeholders. Some stakeholders commented that communication with IFIP in general and officers in particular was at an all time low, and was affecting their ability to operate cost effectively.

**Holding Orders**
**Stakeholder comments included:**

- no flexibility exists in the application of Holding Orders;
- all importers are penalised, not just the importer of the failing food;
- labelling failures should not have Holding Orders applied to them;
- Holding Orders are not working properly as there are other importers importing the same products that have failed and these do not get inspected or held; and
- many foods in the marketplace do not comply and should have been failed by IFIP.

**Inflexibility of the Food Standards Code (not part of this Review**
While this was not part of this Review, there was an overwhelming number of comments by stakeholders on the inflexibility and prescriptiveness of the Food Standards Code. The Food Standards Code is being reviewed and ANZFA has indicated that the new Code will be less prescriptive and will answer many stakeholders concerns about the present format of the Code.

**Labelling and description**
Importers commented that the prescriptive nature of some labelling requirements contained in the Food Standards Code made it both costly and difficult for them. In particular the need to have a full importers name and street address meant that importers were unable to fully utilise ink jet printing used by manufacturers overseas. This technology has character limits and so was often unable to accommodate a full name and address. Importers suggested that requirements be changed to only requiring the name, telephone number and the registered ACN number on labels. Another area of concern was the need to comply with labelling requirements for additives, particularly colours. Many overseas manufacturers primarily produce for the United States market which has a different format for labelling which results in Australian importers needing to "oversticker" ingredient labels with the Australian ingredient descriptions. This extra expense is difficult to justify in their opinion.

**Desire for government involvement**
During the course of this Review it became apparent that almost all stakeholders were of the opinion that there was a need for government involvement in regulating the import of food. This was particularly emphasised by consumer groups. Industry sees this involvement as providing both a measure of food safety surety but also as a means of providing a "level playing field" in which they can operate their business. Several importers expressed concerns that without IFIP there would be a plethora of non-compliant and potentially dangerous foods entering Australia and that State and local government agencies would be unable to deal with these. They were concerned that these agencies already treated foods differently in each State or Territory and did not want this exacerbated.

## APPENDIX G: HOLDING ORDERS

**Holding Orders**, which are specific to the food and not to the importer, are intended to ensure that *surveillance* foods that have previously failed are referred for inspection when next imported, regardless of importer.

Foods can fail for a number of reasons including: contamination, high microbial counts, illegal or excess additives, high residue or heavy METAl levels, and labelling non-compliance, for both food safety matters and for non-compliance with other Food Standards Code requirements.

There are six principal steps in the Holding Order process:

- *Active and random surveillance foods* found to have failed inspection have a "Holding Order Request" lodged by the inspecting officer.
- The Holding Order Request is processed by Canberra IFIP staff and a profile request sent to ACS. The profile request includes the tariff code, country of origin and supplier of the original shipment, and is processed by ACS. A profile is created in the ACS COMPILE system which automatically refers imported foods that meet these criteria to the AIMS system.
- A profile is also created in the Holding Order database within AIMS including information on producer, tariff code and country of origin. Testing regimes are also allocated for this profile.
- The importer of the food is notified that a Holding Order has been placed on the food and that the next five shipments of this food will need to be inspected. IFIP also notifies the relevant embassy of the foods country of origin of the failure.
- For subsequent imports, food entries which match the Holding Order profile in COMPILE are referred to IFIP. The AIMS system screens the entry through its Holding Order profiles and the food is assigned a "Holding Order Test and Hold" direction within AIMS.
- All analytical or labelling results are automatically recorded in the AIMS Holding Order database. After five successful passes, the Holding Order is then revoked in AIMS and Customs is notified to lift the profile from COMPILE, and the food reverts back to the active or random surveillance category.

### Problems with Holding Orders

There are several factors which affect the efficiency of the Holding Order system:

- **Accuracy of profile criteria**

**Tariff codes:** These are broad and open to interpretation by brokers, as the same food may be entered under more than one tariff code by brokers.

**Country of origin:** Some brokers are entering shipments of similar products from more than one country using the suppliers country as the country of origin, (ie product from Germany, France, and Switzerland all on one shipment from a supplier in Germany).

**Supplier:** Foods supplied by a different supplier than the original shipper do not get referred for inspection. There is a potential for an importer to knowingly change suppliers to clear product because if the same food as that on a Holding Order is exported from a different supplier, it does not match the profile.

**Producer:** There is a tendency by customs brokers to name the supplier as the producer, corrupting the data in AIMS. Officers often record the supplier as the

producer on the Imported Food Inspection Report and the Holding Order Request form, further compounding this problem.

- **AIMS and COMPILE databases**

Supplier and producer names are allocated unique codes within the ACS COMPILE system and copied in the AIMS system. Variations in spelling of these names can and does lead to multiple records for each supplier and producer. ACS has direct control over supplier listings and codes while AQIS only has control over producer listings.

There is a need for AQIS, ACS, customs brokers and importers to ensure that multiple listings are not created and that present databases are examined with a view to removing multiple listings. AQIS and ACS should be educating both stakeholders and their own staff in the correct use of these databases and more stringently assessing new allocations of codes.

- **Present number of Holding Orders**

There are approximately 2150 Holding Orders in the database as at 25 August 1998, and of these approximately 320 have been revoked. This large number of Holding Orders covers a wide array of foods and reasons for failure. However, approximately 60 percent of all failures have been for labelling non-compliance.

- **Lack of database access to field officers**

Field officers do not have access to AIMS, and are often unable to determine whether a food referred for inspection by a Holding Order is actually on a Holding Order. A possible scenario, as a consequence of this situation, is:

> Product A (sauce) from manufacturer M exported to Australia by supplier S fails because of an illegal additive. A Holding Order is placed on this product (ie sauce) citing S as the supplier. Five shipments of sauce products supplied by S (not necessarily to the same importer as product A) are then inspected and tested and passed. However, these are different sauces (products B and C), and product A undergoes no inspection because it is not imported at this time. The Holding Order is then revoked because of the five "clear" importations and yet product A (the failing product) has never been flagged or inspected again by the program, and may be imported again under its normal rate of inspection.
>
> Apart from the fact that product A should not be allowed in without inspection and now will be, there has also been considerable and unnecessary expense and delay to the importers of the five other shipments.

Problems within the Holding Order system can and do lead to instances of foods being referred for inspection when there is no real need, and also to foods that are on a Holding Order not being inspected when they should have been.

# APPENDIX H: CASE STUDIES

Whilst a comprehensive study to calculate the total cost of food-borne illness in Australia is beyond the scope and the resourcing of this Review, the Review Committee has examined two case studies of illnesses caused by food in Australia, in order to provide an indication of the potential cost arising from an outbreak. The two case studies selected involve a *Salmonella* outbreak in Victoria and an *E. coli* outbreak in South Australia. Although the cause of these outbreaks was not from imported food, these foods are tested for pathogens that cause both these diseases.

As already mentioned in Section 5.2, the estimates derived here only relate to the medical/productivity cost of acute illness. The costs of any long term complications of these outbreaks cannot, at present, be estimated because of the short space of time since the incidents occurred. It is recognised that long term costs **are** likely. Other costs identified in Section 5.2.2 have been largely ignored due to difficulties in measurement. However, program management should attempt to derive a better information base from which to make necessary policy decisions. For these reasons, the estimates made in this appendix must be viewed as indicative of the **minimum** cost impact of these outbreaks.

## H.1 Case study: *Salmonella* outbreak - Victoria 1997

Much of the following discussion is based on information provided by the Victorian Department of Human Services and on Lester *et al*. (1997).

On 23 March 1997 the Department of Human Services in Victoria was notified of large numbers of patients seeking treatment for gastroenteritis at two hospitals in the south eastern suburbs of Melbourne. The outbreak was identified to have been caused by the presence of *Salmonella* in some of the ingredients used in the production of pork rolls. The hot bread shop identified as the source was closed on the day in which the outbreak was notified and remains closed to date. Most of the suspect rolls were purchased from that shop, although a number of other retail establishments which sold rolls supplied by the hot bread shop had cases associated with them. The number of rolls consumed ranged from one bite to four rolls.

In total 862 persons were identified as being affected by the outbreak. Medical attendance was recorded for 859 cases, with 854 recorded as having attended a general practitioner or hospital Emergency Department at some time during their illness. Eighty cases required hospitalisation. No deaths were reported in relation to this outbreak. The age of the victims ranged from less than one year old to 85 years old. The median age was 29 years. Males and females were equally affected.

Of the 265 cases for whom the number of visits to a doctor was recorded, the number of visits ranged from 0 to 7 visits. The mean was 3 visits. The duration of illness was recorded in 274 cases and ranged from 1 to 21 days. The mean was 7.2 days.

Although data for the length of hospital stay for this outbreak are not available, data from the Victorian Department of Human Services show that in 1996-97 the average length of stay in hospital for a case of *Salmonella* was 4.5 days. The length of stay ranged from one day to 64 days. In 93 percent of the cases patients were released from hospital within the first 10 days, with 26 percent of the patients staying in hospital for only one day.

Table H.1 summarises the costs of the outbreak and provides an explanation for some of the calculations. A number of victims have since developed symptoms linked to reactive arthritis, a chronic condition that is associated with *Salmonella* infection.

Table H.1 Costing of *Salmonella* outbreak: Victoria 1997

| | Number | GP visits or days in hospital | Unit cost | Cost ($) |
|---|---|---|---|---|
| **Medical expenses** | | | | |
| Number of cases | 862 | 3 visits | $25 /visit | 58 650 |
| Medical attendance | 782 | 4 days | $618/day | 197 760 |
| Hospitalisation | 80 | | $27/prescription | 23 274 |
| Medication | 862 | | $50/test | 20 350 |
| Laboratory | 407 | | | **300** |
| **Sub-total** | | | | **034** |
| **Productivity losses** | | **Number of days** | | |
| | 862 | | | |
| Number of cases | 80 | 11 days off work | $159 | |
| Hospitalised | 782 | 5 days off work | $159 | 139 920 |
| Non hospitalised | | | | 621 690 |
| **Sub-total** | | | | **761** |
| | | | | **610** |
| **Total cost** | | | | **1 061** |
| | | | | **644** |

**Assumptions and methodology**

A daily hospitalisation cost of $618 is used based on a national public hospital average cost for all conditions (Commonwealth Department of Health and Family Services 1998). This includes accommodation, medical care and medication whilst in hospital and any pathology tests done.

It is assumed that all 862 patients took medication once at a cost of $27 per prescription.

Laboratory tests are assumed to cost $50 per test.

For the purposes of estimating productivity losses:

- For patients who were hospitalised, the length of illness was assumed to be 3 times the mean hospital stay. This estimate was adjusted for weekends (13 days less 2 days).
- For patients who were not hospitalised, the mean length of illness was used. This estimate was adjusted for weekends (7 days less 2 days).

To calculate productivity losses, the average adult full time weekly earnings was used and divided by 5 to obtain a daily rate.

## H.2 Case study: *E. Coli* outbreak South Australia 1995

The material contained in the section draws heavily from the Coroners Inquest concerning the death of Nikki Robinson (Chivell 1995), and from Henning *et al*. (1997).

In January 1995 an outbreak of illness caused by *E. coli O111:H* was linked to the consumption of sausage mettwurst produced by a smallgoods manufacturer in South Australia. The outbreak was declared after three children developed Haemorrhagic Uraemic Syndrome (HUS), and were reported to the Communicable Diseases Unit of South Australia. According to the Coroners Report on the death of one of the affected children, the outbreak involved 23 cases of paediatric HUS, 4 cases of thrombotic thrombocytopaenic pupura and reports of some 200 cases of haemorrhagic colitis and diarrhoea. One child that developed HUS died, and five of the other children continued to suffer impaired renal function one year after infection. Nine children suffered major non-renal complications. These included colonic necrosis, cerebral haemorrhage/infarction, convulsions and glucose intolerance.

Although *E. coli O111:H* has been associated with HUS before, this was the first large outbreak reported in Australia.

Nineteen children had a prodromal illness characterised by abdominal pain and bloody diarrhoea. The median duration was of four days. All children had evidence of haematological and renal disease on admission to hospital. Most of the children required substantial supportive treatment, renal dialysis in 18 cases and repeated blood transfusions in all cases. The children were hospitalised for an average of 20 days and underwent dialysis for an average of 14 days.

Two years after the outbreak, the outcome is excellent for 17 children without renal dysfunction. However, five children have been left with impaired kidney function and they must be considered to be at risk for a progressive deterioration in the renal function in the long term.

In addition to the 23 HUS cases, there were a number of other children and adults who were affected by the outbreak and suffered from haemorrhagic diarrhoea. The Review Committee could not obtain official data on these cases although it appears that this figure was based on the number of telephone calls received by the South Australian Health Commission from people reporting symptoms that can be caused by *E. coli*. Nevertheless, from the Coroners Report it can be established that seven people were hospitalised as a result of this outbreak with at least two of them suffering renal failure. In the absence of more accurate data the Review Committee has assumed that of the suspected 150 cases of *E. coli*, only half developed symptoms severe enough to warrant medical attention and use of sick leave.

Table H.2 provides a costing of the acute phase of this outbreak in relation to the paediatric HUS and the other 150 cases.

Table H.2 Costing of *E. coli* outbreak: South Australia 1995

| Number | | GP visits or days in hospital | Unit cost | Cost ($) |
|---|---|---|---|---|
| **Medical expenses** | | | | |
| **Paediatric HUS cases** | 23 | | | |
| Number of cases | 23 | 20 visits | $25 /visit | 11 500 |
| Medical attendance | 23 | 20 days | $1 000/day | 460 000 |
| Hospitalisation | 18 | 14 days | $200/day | 50 400 |
| Dialysis | 23 | 5 | $27/prescription | 3 105 |
| Medication | | 2 | $50/test | 1 150 |
| Laboratory | | | | **526** |
| **Sub-total** | | | | **155** |
| | | | $25 /visit | |
| **Other cases** | 200 | | $1 000/day | |
| Number of cases | 100 | 2 visits | $200/day | |
| Medical attendance | 6 | 19 days | $27/prescription | 5 000 |
| Hospitalisation | 2 | 19 days | $50/test | 114 000 |
| Dialysis | 100 | 1 prescription | | 7 600 |
| Medication | 100 | 1 test | | 2 700 |
| Laboratory | | | | 5 000 |
| **Sub-total** | | | | **134** |
| | | **Number of days** | | **300** |
| **Productivity losses** | | | $159 | |
| Paediatric HUS cases | 23 | 44 | $159 | |
| Other cases | 75 | 4 | | |
| **Sub-total** | | | | 160 908 |
| **Total cost** | | | | 47 700 |
| | | | | **224** |
| | | | | **508** |
| | | | | **884** |
| | | | | **963** |

Note: Factors such as ongoing and long term health problems, ultimately give a **minimum** cost in excess of $1.17 million.

**Assumptions and methodology**

A daily hospitalisation cost of $1000 is used. The higher rate used here, compared to the *Salmonella* case, reflects the severity of the illness and the fact that intensive care had to be provided to most of the patients.

Laboratory tests are assumed to cost $50 per test.

It was assumed that there were on average two visits to general practitioners prior to hospitalisation and that visits continued on a monthly and bi-monthly basis, 12 and 24 months after discharge, respectively.

Of the 200 or so cases reported to have been affected by the outbreak, it was assumed that only half developed symptoms which required medical attention and resulted in days of work lost.

For the purposes of estimating productivity losses, the length of illness was estimated to be 3 times the mean hospital stay. This estimate was adjusted for weekends (60 days less 16 days).

To calculate productivity losses, the average adult full time weekly earnings was used and divided by 5 to obtain a daily rate.

Besides the tragic effect of the outbreak on the victims and their families, the identification of the companys product and its linkage with the death and severe illness of the children involved had a catastrophic effect upon the companys business, such that it ceased operations on Monday 6 February 1995. This resulted in the downfall of one of the biggest smallgoods manufacturers in South Australia and the loss of more than 100 jobs. The outbreak also had a deleterious effect upon several other producers of smallgoods in South Australia. According to trade data in the aftermath of this outbreak, the entire smallgoods sector suffered a major drop in turnover, with sales still considerably lower than pre-outbreak levels a year after the event.

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