

FOREWORD

The Review of the *Export Control Act* is part of the comprehensive examination of all legislation affecting competition agreed by the Commonwealth and State Governments when the National Competition Policy was adopted in 1996.

As its name suggests, the *Export Control Act* authorises restraints on business engaged in export. The Review Committee was required to assess the extent to which the restraints affect competition within the individual export industries, and the competitiveness of Australia's export industries overseas. Costs and benefits were also to be assessed. Using the outcome of these assessments, a third task was to make judgements on retention of the legislation and, if positive, to recommend changes which would improve effectiveness and maximise consistency with NCP principles.

The Committee strongly recommends retention of the Act, but the Committee also recommends amendments to the Act and changes to the way it is administered.

The key objective of the latter recommendations is to set a direction for the administration of all programs so that they accord with NCP principles, and are based on active cooperation between government and individual industries.

A vision has been set. It establishes clear goals and structure for each program. The Committee commends the recommended approach to Government for implementation within the next five years.

Many people and organisations contributed to the Committee's tasks.

Foremost among them were the representatives of individual businesses and industries covered by programs authorised under the Act. They were forthright in advising the Committee about "what helps" and "what hinders". The Committee sincerely hopes that increased exports is the ultimate reward for their valuable and constructive inputs.

The Committee's work could not have been completed without the input of the Australian Quarantine and Inspection Service (AQIS). Management and staff at all levels provided reams of information, valuable assistance and constructive suggestions. The Committee was most appreciative of the help provided.

Special mention must be made of the group servicing the Committee with research, industry contacts, drafting, redrafting and general administration. The most conspicuous were Hilary Cuerden-Clifford, Glenda Owens and Alex Cockinos. However, the Committee is aware that there were others who made valuable inputs. Thank you to all.

Peter T Frawley
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23 December 1999

Executive Summary

The Export Control Act Review is part of the comprehensive examination of legislation by the Commonwealth Government to ensure compliance with the National Competition Policy. This Review focuses on those parts of the *Export Control Act 1982* which restrict competition or which result in costs or benefits for business.

The Review received 54 written submissions from a cross-section of the individuals, companies and industry associations affected by the Act. The Review Committee consulted with exporters, peak industry organisations, relevant government instrumentalities in Australia, and representatives of importing countries. The Review also comprised industry site visits and discussions with policy and operational staff of AQIS. All this information was incorporated into the Draft Report, which was released in August. Comment on that draft has been incorporated in the Final Report.

The Committee undertook its task in the following steps –

- assessment of the existing arrangements,
- development of approaches to address deficiencies and improve the effectiveness of arrangements,
- formulation of a vision for export assurance and a strategy for its implementation.

On the positive side, the Committee found that the Act is:

- fulfilling its purpose,
- providing a recognisable economic benefit,
- presiding over expanding agricultural sector exports,
- effectively guarding against the threat of market failure, and
- providing a framework for introducing progressive practices in the export sector.

In economic terms, the ECA facilitated \$13 billion worth of exports in 1998-99. Although food exports would still occur in the absence of the Act, the Committee assessed that withdrawal of export controls would lead to market losses in the order of billions of dollars. The Committee also concluded that the benefits of the legislation for industry are well in excess of the costs.

Balancing this, the Committee is of the opinion that policies and procedures now in place under the Act and its subordinate legislation could lead to major competitive distortions. This potential for distortion would, however, be lessened by addressing the shortcomings of the present system and changing the emphasis of some functions managed by AQIS.

Stemming from this, there is a need to address the following:

- a pervasive culture of control in the export community,
- dual systems (domestic and export) for managing food safety,
- complexity and cost incurred in meeting export systems,
- a lack of objectives and performance measures in the legislation,
- a lack of specification over product coverage under the Act,
- a lack of provision for meaningful review of the legislation,

- some problems with consistency in application of the legislation, and
- the need for development of information and transaction management through electronic databases and documentation.

The Committee's vision is for exports based on Australian standards, enabled by a true partnership between government and industry, with single-body certification by government, where this is required by importing countries.

The Committee's impetus for change is found in the recommendations, which advocate retention of the *Export Control Act*, but with amendments to more closely reflect NCP principles and the partnership process with stakeholders. These include:

- adoption of an integrated export assurance system based on 3 tiers:
 - Tier 1: Australian Standards harmonised with International Standards/Agreements (Codex, OIE, IPPC).
 - Tier 2: Importing country conditions not covered by Australian Standards
 - Tier 3: Emergency or special requirements by industry or government,
- setting of appropriate objectives for the Act to promote clarity of purpose and measurability,
- harmonisation of domestic and export standards for the production of food and agricultural products,
- export certification by a single government based agency,
- contestability of monitoring, auditing and inspection,
- extending the focus of the Act through the entire food chain, and
- government and industry co-responsibility for strategy and program priorities.

The Committee believes that a shared vision and a strong partnership is central to industry and to government administration of the Act, to ensure fair and committed application of the Act's provisions, consistent with its objectives. Implementation and monitoring of activities under the Act must reflect the shared purpose and commitment to uphold the reputation of Australian goods exported with the full endorsement of the Act.

The Committee has briefly assessed the status of the existing programs against the approach defined in the model it has proposed. Some programs are close, but clearly others will require considerable work.

The Committee urges the Government to incorporate the implementation of this Review into the COAG process with a timetable and assigned responsibilities.

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 business competition in Australia. In April 1995, the Council of Australian Governments (COAG) agreed to implement a package of measures designed to extend pro-competition 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 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 *Export Control Act 1982* (hereafter referred to as the '*Export Control Act*', or 'the Act') for review in 1998-99.

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'. This Review considered the Act in its entirety, but particularly focused on those parts of the *Export 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 Attachments 1 and 2 respectively.

1.2 Conduct of the Review

The Review formally commenced in February 1999, and there have been regular Review Committee meetings through its course. Key stakeholders were contacted in February to assist in defining the major issues for the Review. Advertisements were placed in the national press in March, inviting submissions on the operation of the *Export Control Act*. Invitations to make a submission were also sent to over three hundred stakeholders, including industry, Commonwealth and State Government instrumentalities, and governments of countries with significant agricultural imports from Australia.

The Review received 54 written submissions from a broad cross-section of the food exporting industry, government departments and consumer representatives. In addition, the Review Committee consulted with exporters, peak industry organisations, relevant government instrumentalities in Australia, and representatives of importing countries (see Attachment 4). 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 exports of food and agricultural products. All this information was incorporated into the Draft Report, which was released in August 1999. The further input to that has been incorporated in the Final Report. The Review also drew upon other contemporary reviews, in order to incorporate lessons derived from similar concerns. These reports included the Food Regulation ('Blair') Review, and the Quarantine and Exports Advisory Council (QEAC) reviews of Dairy, Grains, Horticulture and Fish.

Research was conducted into the costs and benefits of the *Export Control Act*, and the Australian Bureau of Agricultural and Resource Economics (ABARE) provided aspects of economic analysis to assist in ensuring that the Review Committee's deliberations had a sound economic basis.

The terms of reference required that the Committee, in assessing the impact of the *Export Control Act* on competition, take into account, where relevant, effects of the legislation on a number of factors including the environment, welfare and equity, occupational health and safety, economic and regional development, and competitiveness of business. Given the nature of the Act, some of these considerations carried more weight than others and so were explored in more detail in this Report. Principally, these related to:

- the competitiveness of Australian business,
- the efficient allocation of resources, and
- economic and regional development, including employment and investment growth.

Issues of less relevance to the Review, and not addressed in the Report in detail, were:

Ecologically sustainable development

As the *Export Control Act* facilitates the export of food and agricultural products, the effect of the additional demands of exports on the environment occurs mainly through the impact of farming on Australia's marginal land as a result of overcropping or overstocking. Although undoubtedly agricultural exports have an effect on the environment, the link between the *Export Control Act* and any environmental degradation due to agricultural activity is at best only a tenuous one. The Act facilitates exports but it is not the existence of the Act or anything that it prescribes that impacts on Australia's environment.

The *Export Control Act* does not have a role in promoting sustainable agriculture, but is part of a complex pattern of regulation and control of aspects relating to primary industry. There are bodies better suited to follow-up on the local environmental aspects.

Social welfare and equity considerations, including community service obligations

Social welfare considerations are of little or no relevance to the Act, as far as export facilitation is concerned. Nevertheless, matters of equity are relevant in the manner in which the Act is applied and impacts on industry and individual companies. These issues are examined in the Report. Community service obligations relate to national policy matters concerning exports, such as the process of legislative amendment, and do not impact directly on the

community at large in ways other than covered in the discussion in this Report.

Occupational health and safety, industrial relations, and access and equity

Australian standards on occupational health and safety are the relevant standards, any practices stemming from overseas requirements having to be consistent with them. Industrial relations is not within the direct responsibility of the Act. Access and equity are discussed in general through the Report and constitute one of the cornerstones of its conclusions and recommendations.

The interests of consumers

This Act deals with export matters, and is properly limited to this. However, the presence of the administering body (AQIS) within the AFFA portfolio and the move toward a 'food portfolio' will ensure that consumer interests are properly considered.

1.3 Objectives of the Review

The general objectives of the Review are derived from the Terms of Reference (see Attachment 1). While the *Export Control Act* may cover all exports, the Review has concentrated on food and agricultural products.

More specifically, it has tried to answer the following questions:

- Why, when and how should government regulate in relation to exported food and agricultural products?
- What is the impact of current government regulation on competition in the export food and agriculture industry and on the wider community?
 - What are the benefits?
 - What are the costs?
- Are current government regulatory arrangements for export of food and agricultural products effective and efficient? What improvements are possible?
- What functions and systems could industry introduce which would maintain and enhance safety and reduce costs of compliance?
- What are the impacts of the *Export Control Act* on Australia's food and agricultural industries?

The Committee considered the following areas more intensively.

1.3.1 Impact on Competitiveness

The Committee examined stakeholder views on the prescriptiveness of the current Act, Regulations and Orders in regulating market access, including:

- Does the requirement to meet detailed legislation impose limitations on innovation in industry?
- Do the current requirements, including the need to register premises, constitute a significant barrier for potential exporters?
- Should arrangements be changed to deliver a more effective approach?

1.3.2 Market Access Overseas

The Act is primarily used to ensure that exported food is wholesome and has been prepared under hygienic conditions. However, over the years, it has been used to ensure that other conditions relating to trade are satisfied. These include trade and product descriptions, volume limitations and other requirements imposed by overseas governments for access to their markets. A key issue for the Committee was to examine the conditions under which the Act and its enabling powers should be used, and to define appropriate areas for commercial responsibility and government regulation.

1.3.3 Purpose of the Act

There are no objectives stated in the legislation. The Committee considered various options and, specifically, input from stakeholders on possible objectives for the Act.

1.3.4 Co-Regulation

Current Government policy gives emphasis to a co-regulatory approach to food safety. This implies a joint commitment from industry participants and government regulators. In the case of exports, co-regulation must also take into account whether or not alternative regulatory mechanisms are acceptable to importing countries. The Committee sought input on the effectiveness of current arrangements and changes which could be introduced by industry to enhance safety and reduce compliance costs.

1.3.5 Prescribed Goods

The Prescribed Goods General Orders (PGGOs) lists the goods to which the legislation applies. Commodities such as dairy, meat and fish are covered by the legislation; others such as wine and sugar are not.

From time to time non-food products have been prescribed under the Act. The notable examples have been coal and woodchips.

The Committee considered questions of equity within and between industries in the operation of the Act. They also considered the issue of what should be prescribed – whether it be limited to health and hygiene matters or whether it should be broader, extending to such matters as trade description and quotas.

1.3.6 Orders under the Act

There is a large number of Orders dealing with specific export commodities, and requirements may be different between commodities destined for the same market. The Committee inquired into the efficacy of the Orders in achieving regulatory objectives.

1.3.7 Standards

There is a number of national and international standards which may apply to goods regulated under the Act. Australia is a signatory to Codex Alimentarius, the international body that develops voluntary food safety standards. Trade agreements between Australia and other nations are subject to oversight by the World Trade Organisation (WTO). Nationally, standards applicable to food production, handling and transport are developed and/or approved by bodies such as the Agricultural and Resource Management Council of Australia and New Zealand (ARMCANZ), the Ministerial Council for Food, and Standards Australia. The Committee examined whether current regulatory arrangements took full advantage of relevant standards in developing export opportunities and maintaining access to existing markets.

The Committee examined the adoption of standards and their effect on equity among participants in the industry.

1.3.8 Definitions

The following definitions are relevant to issues raised in this Report.

- **assurance:** provision of a guarantee or undertaking as part of, or instead of, certification for a product or process.
- **audit:** examination of system controls and testing to ensure that a described process is being carried out accurately (in this Review, used to denote checks of company export processes and operations under an arrangement).
- **certification:** documentation required to accompany goods or product providing assurances or statements attesting to facts about the goods. (commonly regarding animal health or public health).
- **co-regulation:** joint regulation of an industry or activity by the industry or activity provider itself in conjunction with some government authority.
- **HACCP:** Hazard Analysis and Critical Control Point – refers to a system which defines critical controls in a process and ‘guarantees’ the process by adherence to defined controls.
- **harmonise:** to make something uniform, eg to make a common set of rules, in the case of the *Export Control Act* referring to outcomes and standards, but not processes.
- **inspection:** the examination of a product or document by staff employed by government or company to detect any unacceptable abnormalities or non-conformity that do not comply with product specifications or requirements.

- **monitoring:** the examination or checking of records, process or system on a regular basis to ensure compliance with known requirements or specifications.
- **phytosanitary:** refers to the plant health and public health requirements in relation to a plant product.
- **prescribed goods:** goods which are prescribed to come under the coverage of the Act.
- **sanitary:** animal health and public health requirements in relation to an animal product.
- **third party:** individual or group who can be affected by an action between two individuals or groups. A third party can be an observer of an action or can provide a service to one of the two main parties.
- **validation:** the testing of a method or system against a known sample to ensure that the test method is suitable and provides an acceptable degree of accuracy, sensitivity and specificity.
- **verification:** the checking, examining or testing of a system or process to ensure that it is correct or true (in this Review, used to denote the checks leading to government certification of export product).

2. STRUCTURE AND ADMINISTRATION OF THE *EXPORT CONTROL ACT*

2.1 Origins of the Act

The *Export Control Act* was enacted in 1982 in a period of crisis. The origins of the crisis were the export to the USA of kangaroo and horsemeat labelled as beef. Limited quantities of meat prepared as pet food also entered the export chain. A specially established Royal Commission later concluded that:

malpractice in the nature of commercial cheating has been widespread in the export industry.

The crisis created a public outcry in Australia. A severe loss of confidence in Australia's inspection arrangements seriously threatened continued access for Australian meat to the US and UK markets. This, in turn, reflected adversely on the status of the Australian government's guarantee for all exports of food and agricultural products, not just meat.

Although the Act does not include specific objectives, the then Minister stated, when introducing the Bill to Parliament:

The purpose of this Bill is to establish a new and comprehensive legislative base for the export inspection and control responsibilities within my portfolio. Under existing arrangements, export inspection powers are drawn from the Customs Act 1901 and the Commerce (Trade Descriptions) Act 1905. This has created a number of administrative and legal weaknesses. Although these could be overcome by amending the existing legislation, the Government has taken the view that the most appropriate long-term response is to develop new and separate export inspection legislation, which ensures a more efficient and flexible legal framework.

The Bill provides for the application of export controls to goods specified in regulations; spells out inspection responsibilities and the authority of inspection staff to carry out these responsibilities; and sets penalties to apply in the case of fraud or deliberate malpractice. Whilst the inspection powers under the Bill are to be exercised by officers of the Department of Primary Industry, the Bill also provides for the Secretary to the Department to authorise carriage of such powers as are appropriate by other people. This is to cover the situation where officers of other Commonwealth and State instrumentalities, and in certain instances people under contract, carry out specific or specialised inspection functions on behalf of the Department of Primary Industry. (Second Reading Speech on the introduction of the *Export Control Bill 1982*, 22 April 1982)

The explanatory memorandum for the legislation stated that stringent controls within Australia were an essential pre-requisite to maintaining export markets for primary products. The proposed legislation provided for such controls with appropriate penalties for their contravention.

The introduction of separate legislation in the form of the *Export Control Act* provided a stable but flexible legal framework for controlling food exports.

The Act established the Export Inspection Service, which subsequently became known as the Australian Quarantine and Inspection Service.

The Act came into force on 1 January 1983. It has not been heavily altered since that date but Orders prescribed under the Act – subordinate legislation – have been amended and new Orders have been established in line with changes in markets and industries, and in accord with international trade agreements.

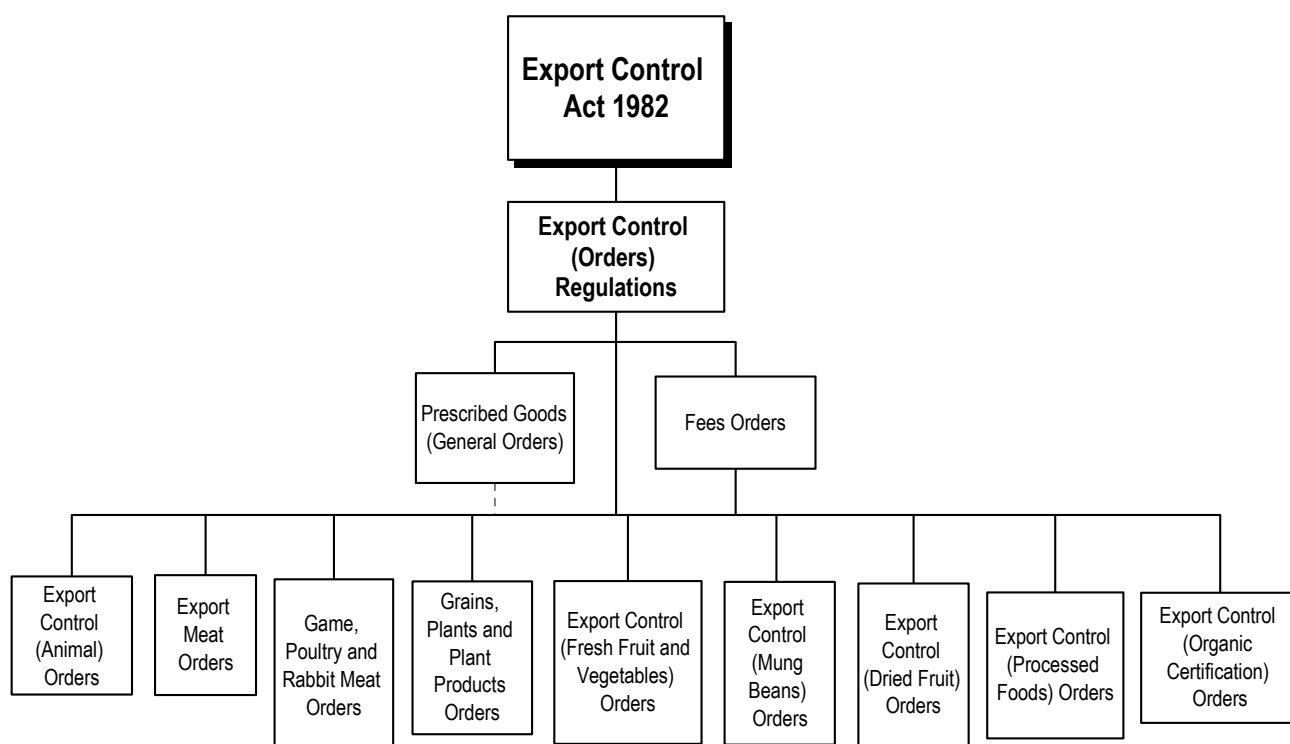
2.2 Structure of the Act

The Act provides for certain products – mainly food – to be prescribed and allows the export of goods subject to certain conditions specified in the legislation. The Act imposes penalties for non-compliance with its provisions, including for malpractice and fraudulent behaviour. It also gives AQIS inspectors a number of powers including the right to inspect goods, premises and records. In addition, AQIS inspectors have the power, at their discretion, to issue export certification.

Subordinate legislation, in the form of Regulations and Orders, specifies the administrative arrangements and actual controls that apply to individual commodities. These are referred to as the Export Control (Orders) Regulations and the Prescribed Goods General Orders (PGGOs). A third grouping of Orders – Fees Orders – sets charges for registration of premises and for AQIS inspection and audit activities. The subordinate legislation has enabled the Act to incorporate technological and administrative developments easily, thus facilitating increased responsiveness to changes in the international trade environment.

The overall structure is set out in Figure 2.1.

Figure 2.1 Structure of the Legislation



While the initial objective of the Act related to export regulation and control, it has been used primarily to ensure the health and safety of food for the export market. The Act has also been used to satisfy other conditions of trade. These include satisfying quality standards, product descriptions and limitations placed on market access by overseas governments.

2.3 Powers Specified in the Act

Provisions in the legislation include:

- the power to request inspection of prescribed goods,
- the power to sample and assess export consignments with the authority to reject product from export and, if necessary, to seize and detain product that does not comply with the regulations,
- the power to enter and inspect premises, including fishing vessels, in order to determine whether goods are produced and stored under conditions which ensure that they are wholesome and safe for human consumption,
- the power to require conformity with legitimate importing country requirements that are additional to the requirement of the Act, Regulations and Orders,
- the power to issue certification attesting to the safety and wholesomeness of prescribed goods,
- the power to register premises subject to compliance with defined requirements,
- powers for discretionary issue of certificates to meet specific importing country authority requirements,
- authority to impose sanctions and penalties for non-compliance,
- creation of offences for misuse of official marks, applying false trade descriptions and making false declarations, and
- a requirement to keep records relating to matters relevant to the operation of regulations and make these available for review by inspectors.

2.3.1 Compliance

The objective of a regulatory system is to obtain compliance with its provisions. In the case of regulation such as the *Export Control Act*, this compliance is most successfully engendered by industry capability and maturity. It is most important to build a culture of compliance. Consultation and the partnership process are of singular importance. In the first instance, compliance will never be achieved unless the industry is largely self-regulating on this issue. It is in the interests of industry to take the long term approach. It is more effective if the regulating authority – AQIS in this case – has the role of auditor and certifier than ‘policeman’. Industry has told the Committee that

quality assurance systems offer the prospect of stricter control (through continual monitoring, audit and evaluation) than periodic visits by an inspecting authority. The quality assurance systems push companies to improve processes continually rather than get by with the minimum needed to achieve compliance under an inspection-based regime.

RMAC wrote of:

the need for robust audit systems to verify consistent administration of AQIS export certification requirements across agencies. There should be strong sanctions available to be used against non-compliance.

Non-compliance, or the potential for non-compliance, is an ever-present threat, and mechanisms are required to ensure compliance and to stop acts of non-compliance. These take the form of sanctions. Two basic types 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 a higher level of inspection/audit, incurring extra audits, incurring costs for rectification, or removal (temporary or permanent) of the ability to operate in the industry.

A range of court imposed penalties applies for offences against the Act. The Act allows for imprisonment ranging from six months to five years. Fines of up to \$50,000 can also be imposed for offences against the principal Act, but more often, a fine of \$1,000 can be imposed for offences against the regulations. Registration requirements contained in the legislation require persons of integrity to manage and control registered premises. Where a person has been convicted of an offence against the Act, or any other law of the Commonwealth or a law in force in a State or Territory, AQIS has the legislative authority to refuse or revoke export registration.

The refusal to grant registration, or to revoke it, is one of the administrative sanctions available to AQIS. Others include revoking export permits, refusing certification and suspending operations of registered premises. Such operational sanctions are potentially a much greater deterrent to non-compliance than the threat of court imposed fines.

Operational sanctions are generally more effective as they can be imposed administratively, applied promptly and targeted to encourage compliant behaviour. Importing countries usually expect effective sanctions to be built in to legislative arrangements which underpin export certification.

Changes to the Criminal Code also mean that the specification of the penalties in the *Export Control Act*, as with other acts, requires review.

2.4 Subordinate Legislation

The subordinate legislation covers the prescription of goods for specific export controls. The Act gives unlimited scope with respect to the prescription of food and non-food items. However, only limited ranges of export goods are made subject to the operation of the Act. Currently, 'prescribed goods' include meat (including game, poultry and rabbit) dairy products, fish (including crocodile meat), eggs and egg products, dried fruit, mung beans, grains, plants and plant products, processed fruit and vegetables, fresh fruit and vegetables and products labelled as organic.

The use of subordinate legislation rather than the customary approach of covering all requirements in the wording of the Act was adopted to provide the flexibility necessary to deal with a diverse range of importing country requirements and the need to be able to respond quickly to changes in such requirements.

The PGGOs establish the broad requirements applying to all goods prescribed under the Act. Generally, this includes detailed requirements for registration of establishments, construction standards of premises, packaging of goods for export, trade description of goods, official marks and marking devices, sampling requirements, role of authorised officers, penal provisions and mechanisms for reconsideration of decisions made under the Orders.

Fees Orders apply to all prescribed goods and set the level of charges for registration of establishments, inspection charges and fees for audit activities.

Commodity specific Orders set out another layer of detailed rules which build on the specifications contained in the PGGOs. Examples of matters dealt with under specific commodity Orders are:

- specifications for processing establishments (construction, equipment, facilities etc),
- routine inspection procedures,
- operational requirements (good manufacturing practice, hygiene measures),
- risk based hazard assessment and process control (HACCP),
- approval of quality assurance arrangements, and
- trade descriptions.

Specific commodity orders aim to reflect, as much as possible, relevant international requirements and standards. Changes are made to commodity specific Orders to reflect changing importing country requirements.

2.4.1 Non Prescribed Goods

(i) Export Goods not prescribed under the Act

There is a range of agricultural commodities and food products which are exported but not controlled under the Act. These include rice, sugar, grocery items, prepared foods, wine, juices, bakery products, breakfast cereals, pasta and confectionery. These products are not prescribed under the Act because government to government certification is not generally required. A related reason for not prescribing certain foods is that some products are routinely subjected to additional processing in the importing countries. This further processing may correct or eliminate any health or hygiene concerns that may have existed. Some export products such as ice cream, processed fruit and vegetables, and honey were taken off the prescribed goods list in the mid 1980s in response to industry views that these products were already adequately controlled by industry measures. For non prescribed commodities, including commodities never prescribed under the Act, AQIS may, if requested, provide export certification. The purpose would be to assure matters such as Australian origin and availability for sale for human consumption in Australia.

(ii) Export Goods controlled by other Legislation

Provision for export control or selling arrangements for some agricultural commodities such as sugar, wine and horticultural products is covered under other legislative arrangements.

(iii) Export Goods certified by AQIS but not prescribed under the Act

Certificates are also issued by AQIS for such non-prescribed goods. An example of this is certification of skins and hides exported to the European Union.

In providing certification for non-prescribed goods to facilitate exports, AQIS operates without coverage of the Act or other Commonwealth statutes. If this form of certification is continued, consideration should be given to providing the appropriate legislative cover.

2.5 Operation of the Export Control Act

2.5.1 Structure and Operations

The portfolio responsibilities for export control using the Act rest with the Minister for Agriculture, Fisheries and Forestry. Administratively, the Act is managed by the Commonwealth Department of Agriculture, Fisheries and Forestry, also known as AFFA. The Secretary of the Department is the delegate for the purposes of powers contained in the Act and subordinate legislation.

The day-to-day operations of the Act are managed by the Australian Quarantine and Inspection Service (AQIS) which is one of five administrative

'groups' in AFFA. AQIS operates a series of commodity specific programs from a central base in Canberra. Programs are further coordinated through offices in capital cities and major regional centres, and deployment of field staff at export registered facilities. The meat program is the largest export program administered by AQIS and operates a full range of services under the legislation. This includes registration of premises, provision of inspection staff and routine audit of export establishments. Other programs encompass the registration function, however inspection and audit may be conducted by third parties depending on program arrangements.

AQIS also performs a program evaluation role in addition to routine audit of compliance with the requirements of the Act and its subordinate legislation. These program level evaluations are conducted at least annually.

All programs are equivalent in that the requirements laid down are consistent with, and generally based on internationally agreed public health, animal health and phytosanitary standards as defined by Codex Alimentarius (Codex), the Office International Epizooties (OIE) and International Plant Protection Convention (IPPC) and the Agreement on the application of Sanitary and Phytosanitary Measures (SPS) under the World Trade Organisation (WTO). The primary purpose of all these agreements is to make standards that protect human animal and plant health, whilst facilitating international trade (see Chapter 3.6 also).

2.5.2 Monitoring and Co-regulation

The programs are not identical in respect to the specific requirements (such as compliance monitoring and inspection) that have to be met before exports can occur and the measures for monitoring compliance and inspection arrangements under these programs, which in some cases allow for non-AQIS supervision. Inspection and assurance arrangements within a program may incorporate:

- constant on line supervision by AQIS inspectors, an example being veterinary inspections in meat plants,
- on line supervision by third party inspectors approved by AQIS such as veterinary inspection of live animal exports,
- supervision by third parties or company employees (depending on the industry) under Approved Quality Assurance Arrangements that allow exporters to implement quality assurance systems under mutually agreed conditions, these being subject to audit by AQIS (the fish program, for example), and
- Certification Assurance (CA) arrangements under which export establishments develop their own QA system to ensure that products meet nominated export requirements, with AQIS auditing the quality system to establish that export conditions can be satisfied, rather than inspecting each export consignment (eg grains and plants).

The combination of AQIS and company controls which comprise the regulatory system is referred to as co-regulation. This term reflects complementary responsibility/supervision undertaken by companies/AQIS respectively.

Adoption of these more flexible arrangements is possible to some degree in all current export programs. The degree of acceptance of these arrangements by importing countries varies and is a limiting factor on wider adoption. As far as the importing country is concerned, certification under co-regulatory arrangements must carry the same level of authority and independence as arrangements based on government inspection.

2.5.3 Exemptions

Exemptions from the legislation are allowed, and are specified in the PGGOs. These fall into two classes.

In the first, legislation provides a discretionary mechanism for exemption in the case of:

- commercial samples,
- experimental purposes,
- exceptional circumstances, and
- special commercial circumstances.

The second allows exemption in the case of the export of meat, game, poultry and rabbit meat from establishments that are not export registered, and is detailed in its specifications. This dates from 1997.

Between January and October 1999, AQIS issued 99 exemptions. Since 1986, the most exemptions issued in any one year was 254 (in 1994), and the least, 6 (in 1987).

AQIS also administers the import or quarantine measures which are set out in the *Quarantine Act 1908*. Some overseas trading partners have criticised Australia on the level of quarantine restrictions imposed on imported goods. There needs to be consistency in the scientific assessment of risks associated with both imports and exports. This is the basis for negotiating bilateral and multi-lateral trade arrangements.

2.6 Consultative Mechanisms

Consultative mechanisms are an aid to ensuring that provisions of legislation are properly and equitably applied. Consultation is also a means of ensuring 'best practice' methods for achieving the objectives of any legislation are developed cooperatively between industry and government.

A Ministerial consultative committee has been appointed to advise government on administration of the legislation implemented by AQIS, which includes the *Export Control Act*. This consultative committee is called the Quarantine and Export Advisory Council (QEAC) and meets five or six times annually. Strategic issues and directions for AQIS export programs are included within QEAC's terms of reference.

A series of Industry Consultative Committees (ICCs) has been established by AQIS on a commodity basis. Through these committees, AQIS undertakes consultation with exporters. The issues covered in this consultation process include overseas government requirements, the basis for negotiating protocols on market access, and service delivery arrangements. Fees and charges are also discussed. Notably, the committees do not appear to have made any serious effort to focus on strategies and longer term policy issues. This point was raised in the QEAC review of the horticulture program.

The following is a list of AQIS ICCs of relevance to export industries:

- AQIS (Meat) Industry Task Force
- AQIS Airline Industry Consultative Committee
- AQIS Grain Industry Consultative Committee
- AQIS Industry Cargo Consultative Committee
- AQIS Meat Industry Charging Review Committee
- Biologicals Industry Consultative Group
- Dairy Export Industry Consultative Committee
- Export Meat Industry Advisory Committee
- Horticulture Industry Consultative Committee
- Imported Food Consultative Committee
- Livestock Export Industry Advisory Committee
- Organic Produce Export Committee
- Post Entry Plant Industry Consultative Committee
- Seafood Export Consultative Committee

These committees meet at frequencies varying between annually and quarterly. The terms of reference of all AQIS ICCs were broadened in 1997-98 to include the full range of operational issues, including fee matters.

Discussion of fees has been a major undertaking of most committees, as this has been a controversial topic now that AQIS programs run on a full cost recovery basis.

2.7 Certification Under The Act

Certification of exports of food, live animals, animal products and plant products, is a major outcome of the Act. Commodities which are prescribed under the Act are usually exported accompanied by an AQIS certificate. Certification may relate to sanitary or phytosanitary standards, or other health or process requirements, as agreed with the importing country.

Certification of export goods by AQIS represents confirmation of one or more of the following:

- that government to government assurances have been met,

- that inspection has been carried out during preparation of the goods to protect public health, and
- that specific market access requirements have been met including product labelling and description to maintain the integrity of the product.

Rather than certifying on the basis of AQIS inspection of all products, AQIS may be certifying that ongoing, approved systems are in place (as is the case for dairy or meat products). In some cases, third party audits are part of the assurance system which is certified by AQIS.

In general, the details given at the time of certification reflect market requirements and the level of public health risk thought to be associated with the product.

2.7.1 Health Certification

Health certificates signed off by AQIS may include either:

(a) a direct statement by AQIS about some characteristic of the product (to meet market requirements),

or

(b) a declaration by the exporter which is subsequently endorsed by an AQIS officer.

Certification is usually on the basis that ongoing, audited systems are in place at the processing establishment and that AQIS is satisfied that these systems meet importing country requirements. AQIS does not always need to visit the place of processing to establish these facts, and hence supporting evidence may be requested from the exporter before endorsement is made. Recently AQIS has expanded the role of third parties in the required audit and inspection activities which support ongoing systems for assuring food safety.

2.7.2 Phytosanitary Certification

Certificates attest that consignments have been inspected according to appropriate procedures and are considered to be free from quarantine pests, and practically free from other injurious pests, and are considered to conform with current phytosanitary requirements of the importing country. Schedule 3 of the Orders details the conditions for issuing phytosanitary certificates. They are issued from one government to another under the International Plant Protection Convention.

The certificates are not issued or intended for commercial usage. Although AQIS acknowledges that phytosanitary certificates are referred to in commercial transactions, exporters are strongly discouraged from agreeing to letters of credit that stipulate any endorsements on phytosanitary certificates.

When the importing country requires it, the phytosanitary certificate may include additional declarations relating to such things as freedom from seeds of weeds, specific pests, or details of any treatments applied. For instance, wheat exported to China must be generally free from the weed seed *Lolium temulentum* (commonly known as darnel, drake or bearded ryegrass).

2.7.3 Fit for Human Consumption

Where an endorsement is made that the product is 'Fit for Human Consumption', AQIS presence at the time of processing or a visit to the establishment is used as the basis for endorsing the certification.

Establishments processing food for export on a regular basis are subject to routine audit arrangements which are administered by AQIS, and include visits to the establishments and an audit rating. Importing countries have access to the findings of these audits on request.

2.7.4 Quality Assurance and Certification

In line with government policy, AQIS has encouraged the adoption of quality assurance and third party delivery of audit and inspection functions.

Quality assurance arrangements may cover inspection requirements, trade descriptions, treatment of goods and standards applied to premises registered for export.

Quality assurance and third party arrangements are incorporated in export programs to the extent that these arrangements are adopted as meeting importing country requirements.

2.7.5 Electronic Export Documentation

The Export Documentation (EXDOC) system supports the preparation of export documentation for produce prescribed under the *Export Control Act* and associated legislation. The system has been in place since 1992. Initially for meat exports, it has been available for dairy exports as well since late 1998. It forms an integral part of overall AQIS procedures which ensure product meets Australian and importing country standards.

The system works as follows:

- The exporter (or freight forwarder) who is linked to the EXDOC system electronically enters details of proposed exports.
- EXDOC system accepts the details and checks against a database whether the establishment or origin is eligible to export (based on results of AQIS inspections/audits) and whether the product is eligible.
- The AQIS inspector approves.
- Where the establishment and product are eligible, EXDOC issues an export permit and a health certificate (if required) to enable export.
- Exporters or freight forwarders with appropriate printers may print certificates on site otherwise certificates are printed by AQIS and collected by the exporter.

The EXDOC system is able to act as the Customs agent for exporters using a system known as the Single Electronic Window. An exporter sends to EXDOC 'Request for Permit' information which is processed, and EXDOC

transmits information relevant to the Customs to the EXIT system. A single response message is then transmitted to the exporter. This process ensures that EXIT and EXDOC data are fully reconcilable.

2.8 Operation of Programs by Commodity Group

The operation of the Act varies among industries depending upon domestic and international requirements.

Some examples by commodity group are provided below.

2.8.1 Processed Foods (including dairy and fish)

Not all processed food exports are controlled by the Export Orders. Exports of processed foods that come into the ambit of the Export Orders include processed meat (including pet foods), dairy products, egg and fish products (including crocodile), dried fruit and certain frozen and canned fruits and vegetables. In general, whether exports of processed foods are controlled depends on a variety of factors including:

- the requirements by importing countries for government-to-government certification, inspection and quarantine,
- the necessity for securing and maintaining market access, and
- food safety and plant and animal health reasons.

Most countries require certificates for processed foods before they will allow products to be imported. The detail specified on the certificate varies according to market requirements.

Exports of processed foods are controlled under several Export Orders, including the Export Meat Orders; the Game, Poultry and Rabbit Meat Orders; the Export Control (Processed Food) Orders; the Export Control (Dried Fruit) Orders; the Export Control (Organic Certification) Orders and the Grains, Plants and Plant Products Orders.

The Export Control (Processed Food) Orders detail specific requirements for registration of premises, hygiene standards for the production of dairy, fish and egg products, including structural requirements, inspection systems and trade descriptions to be applied to the products.

- Specific export orders operate under the Act for dairy produce. These orders specify a range of requirements including construction, procedural and microbiological standards to be met when producing for export. They also specify labelling requirements and provide the mechanism by which AQIS can prevent the export of dairy products unless certain prescribed conditions are met.
- The Orders also provide the basis for issuing certifications regarding the fitness of the product.

For certain commodities, eg fish and dairy, approved quality assurance arrangements, audited on a regular basis by AQIS, are used by industry to demonstrate compliance with the requirements specified in the Orders.

2.8.2 Meat and Meat Products

In the case of red meat, the Export Meat Orders set out a detailed and prescriptive set of requirements to be met for export of product to specific markets (where relevant). The range of requirements included in the Orders reflects the large number of countries that import meat from Australia and the fact that meat has traditionally been a heavily regulated commodity from the point of view of food safety. The Meat Orders are the most detailed and prescriptive of the specific commodity Orders under the Act.

Export meat processing establishments must be registered and have approved quality assurance programs in place before they can engage in the export trade. AQIS provides routine inspection and veterinary supervision as required at registered establishments and also conducts monthly or quarterly audits of registered establishments in accordance with importing country requirements.

Meat exporters must also be licensed under the *Australian Meat And Livestock Industry Act 1997* (the AMLI Act). The *Export Control Act* and its interaction with the AMLI Act may place additional costs and unnecessary regulation on the exporters of red meat, and the live export of cattle, sheep and goats. This aspect of the regulation imposed by the *Export Control Act* needs to be reviewed in conjunction with the AMLI Act.

As mentioned previously, certification of meat exports is provided through an electronic system operated by AQIS (EXDOC), generating certification for each consignment. The certification is verified and signed by an AQIS veterinary officer. There are over 130 countries importing meat from Australia under certification arrangements.

2.8.3 Live Animals and Animal Reproductive Material Exports

Exporters of live animals must meet requirements specified in the Export Control (Animals) Orders. These orders set out the animal health, vaccination and animal welfare standards which must be met before AQIS provides export health certification and export permits under the authority of the *Export Control Act*. In addition, exporters of live cattle, sheep and goats are required to be licensed under the AMLI Act, and are also required to implement the industry quality assurance (QA) scheme made mandatory by that Act.

Export of merino reproductive material is controlled by the Livestock Export Merino Orders under the *Export Control Act*. Under these provisions exports of female breeding material are banned, except to New Zealand. Export of rams is allowed subject to a quota of sales at designated export auctions of 800 per year. Semen from rams on a register of semen donors, to which studs can designate up to a total of 100 rams per year, can also be exported. Rams may be exported free of quota to New Zealand and there is provision for approval of scientific projects.

Australia's policy towards the export of merino reproductive material has been reviewed on many occasions, most recently in 1994. Successive governments, while making some concessions to allow the export of some merino breeding rams and semen under controlled conditions and export of merinos for slaughter have maintained a policy of restricted exports.

2.8.4 Grains, Plants, and Plant Products

The Grains, Plants and Plant Products Orders under the Act currently cover wheat, barley, oats, sorghum, lentils, field peas, lupins, vetch, mung beans, chickpeas, faba beans, and soybeans. The Orders facilitate compliance with importing country trade description and phytosanitary requirements (plant health and pest issues) and prevent the export of prescribed and/or certifiable produce that does not comply with the orders.

Grain inspection at loading is provided by AQIS using contract inspectors. Quality assurance arrangements are also utilised by companies to demonstrate compliance with export requirements.

AQIS also certifies, under these Orders, a range of plant products, in relation to phytosanitary issues and other matters, as stipulated by importing country requirements.

2.8.5 Organics

The export of organic produce is regulated by the Export Control (Organic Certification) Orders.

The National Standard for Organic and Bio-Dynamic Produce sets out minimum requirements for the production, processing and labelling of organic produce and requires that all exporters are certified with an accredited industry organisation. The organic produce industry previously liaised with AQIS on a voluntary basis, but this was formalised with the enactment of the Export Control (Organic Certification) Orders. These Orders adopt the National Standard as the basis for export certification of organic produce.

Organic Produce Certificates are provided by private companies accredited by AQIS. These companies are audited by AQIS against the National Standard for accreditation in Organic Certification.

2.9 Setting Standards within Australia (Domestic Arrangements)

ANZFA is a statutory authority established under the Australia New Zealand Food Authority Act 1991. ANZFA's principal function is to develop and review the standards relating to food available in Australia and New Zealand. ANZFA is not responsible for either implementing or enforcing food standards. Its role is to develop and review standards and to make recommendations to the Australia New Zealand Food Standard Council (ANZFS). In 1991, the Commonwealth, States and Territories agreed to implement food standards under State and Territory food legislation, by reference and without

amendment once adopted by ANZFSC. ANZFA is currently reviewing the Food Standards Code against National Competition Principles and is looking to harmonise domestic standards with those of Codex Alimentarius (Codex) where appropriate.

ANZFA does not have an active role in setting standards for the meat industry. This is carried out by ARMCANZ. This body comprises State and Territory Ministers and agencies with jurisdiction in the agricultural portfolio, and is chaired by the Commonwealth Minister for Agriculture, Fisheries and Forestry. Standards developed by ARMCANZ also rely on adoption through State legislation to take effect. Current legislative requirements as detailed in the *Export Control Act* and its subordinate legislation do not align in every instance with these domestic standards.

A perceived difference in standards between goods produced for domestic consumption and those produced for export generates confusion and sometimes mistrust in the minds of consumers locally and overseas. This issue has prompted a number of recent review reports, particularly *Food: a growth industry - The report of the Food Regulation Review* (1998) – the “Blair” review, which reported serious concerns about the inefficiency of the food regulatory system in Australia. The existing system was considered complex, fragmented and wasteful, and key recommendations of the Blair report were :

- that the regulatory burden on the food industry be reduced by reviewing regulations that restrict competition or impose costs, and
- that an integrated national food regulatory system be implemented to reduce inconsistencies, duplication and unnecessary costs.

2.10 Other Legislation

The *Export Control Act* is one of several Commonwealth and State Acts with jurisdiction over the production or export of agricultural commodities or food products. Attachment 3 lists some of the Acts which overlap with or duplicate functions under the *Export Control Act*.

The *Commonwealth Customs Act 1901* has the closest match with the powers and objectives of the *Export Control Act*. The *Customs Act* is designed to identify goods which are subject to special (export) control arrangements to:

- preserve Australia’s reputation as an exporter of quality products,
- preserve native flora and fauna, and
- protect Australia’s strategic and foreign policy interests.

Primary products including meat, dairy products, eggs, animals, fish, grains, vegetables and fruit are all subject to export control under the *Customs Act*.

A permit for export of these goods is issued under the *Customs Act* but the detail of production, labelling and packaging requirements for export is left to the *Export Control Act*.

2.11 Comparison of the Complexity of Legislative Arrangements in AQIS Export Programs

The charts on the following pages provide a schematic view of two different export systems: meat and dairy. Each of these programs is at a different stage in the continuum from full regulation to industry-based responsibility. For the sake of showing the principal flows clearly, these charts only give a general view, omitting the more technical and administrative aspects.

Some steps are common to all export legislative flows and are represented by similar flows, an example being the core of international arrangements and activities covered by the *Export Control Act* (steps 1 – 6).

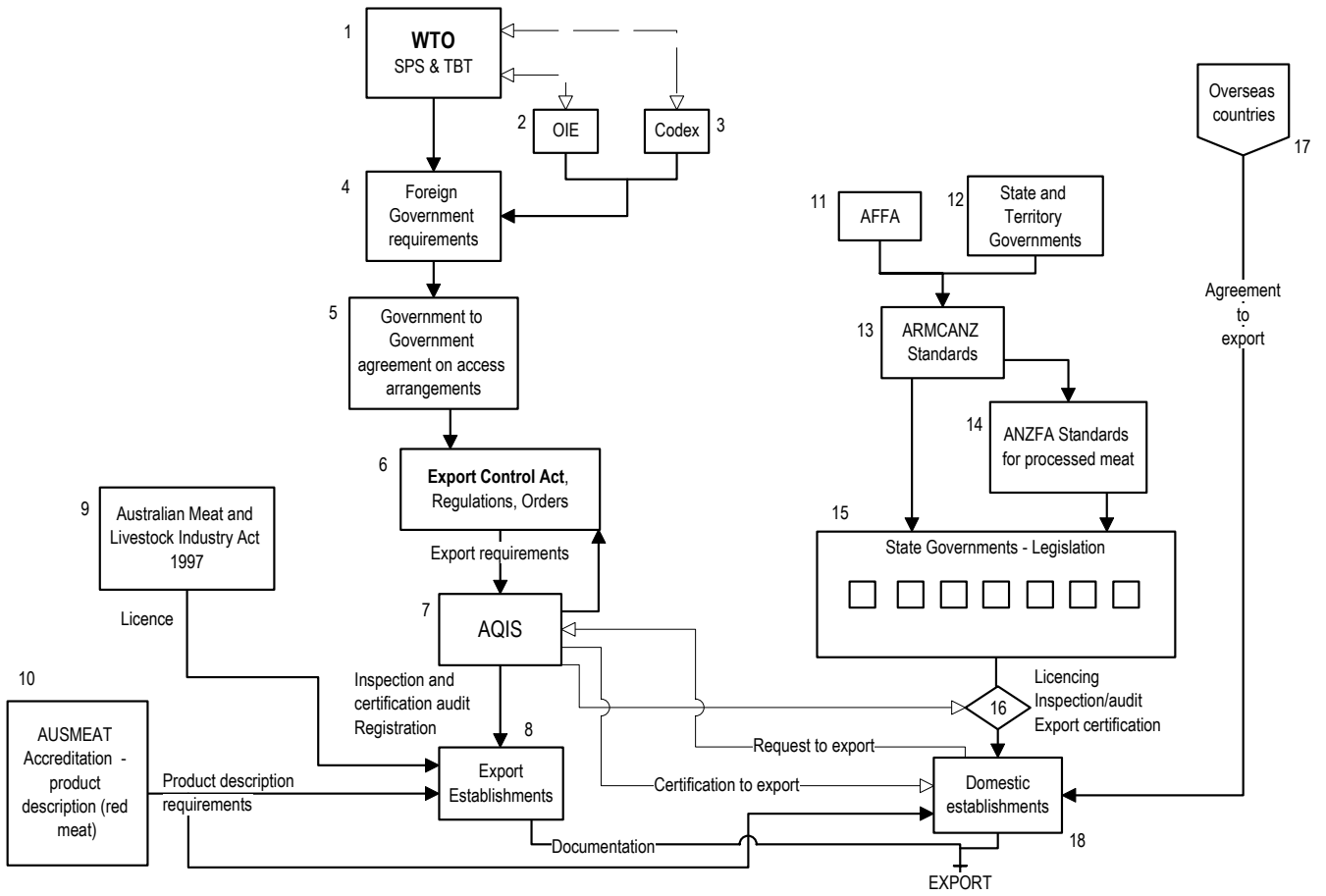
The system closer to full regulation is meat. It is a system characterised by mandatory AQIS inspection procedures and a plethora of bodies involved in setting and administering the standards and export controls. Some of this has evolved from the nature of the product and human health requirements, and it has, over time, produced a layered system which is complex and inflexible. Further complexity has been added by the introduction of a policy allowing export from domestic registered premises, with alternative licensing, registration and certification procedures.

Dairy, which is subject to risks similar to those that apply to meat, is characterised by a sophisticated manufacturing system which has moved on to setting its own technical standards for product safety and quality. Over time, regulation has been streamlined to reflect a reduced government role and an increasing role for company-based quality assurance. Registration is more integrated and audit also introduces further simplicity and directness in external systems. Some steps in the dairy diagram reflect the greater involvement of the dairy companies in the control process. Systems internal to exporters are more complex because of the need to demonstrate and document the compliance of systems with established procedures, whereas, end-point inspection leaves more responsibility with the inspecting authority.

The long-term policy of AQIS is to move from the more inspection-based systems to those characterised by co-regulation or partnership. The underlying principle is that the exporter's own management and administrative systems should closely align with the required quality systems and therefore save resources (in complying with inspection) while increasing effectiveness.

Similar diagrams apply to Fish, Grains, Live Animals and Organics, and these can be found at Attachment 7.

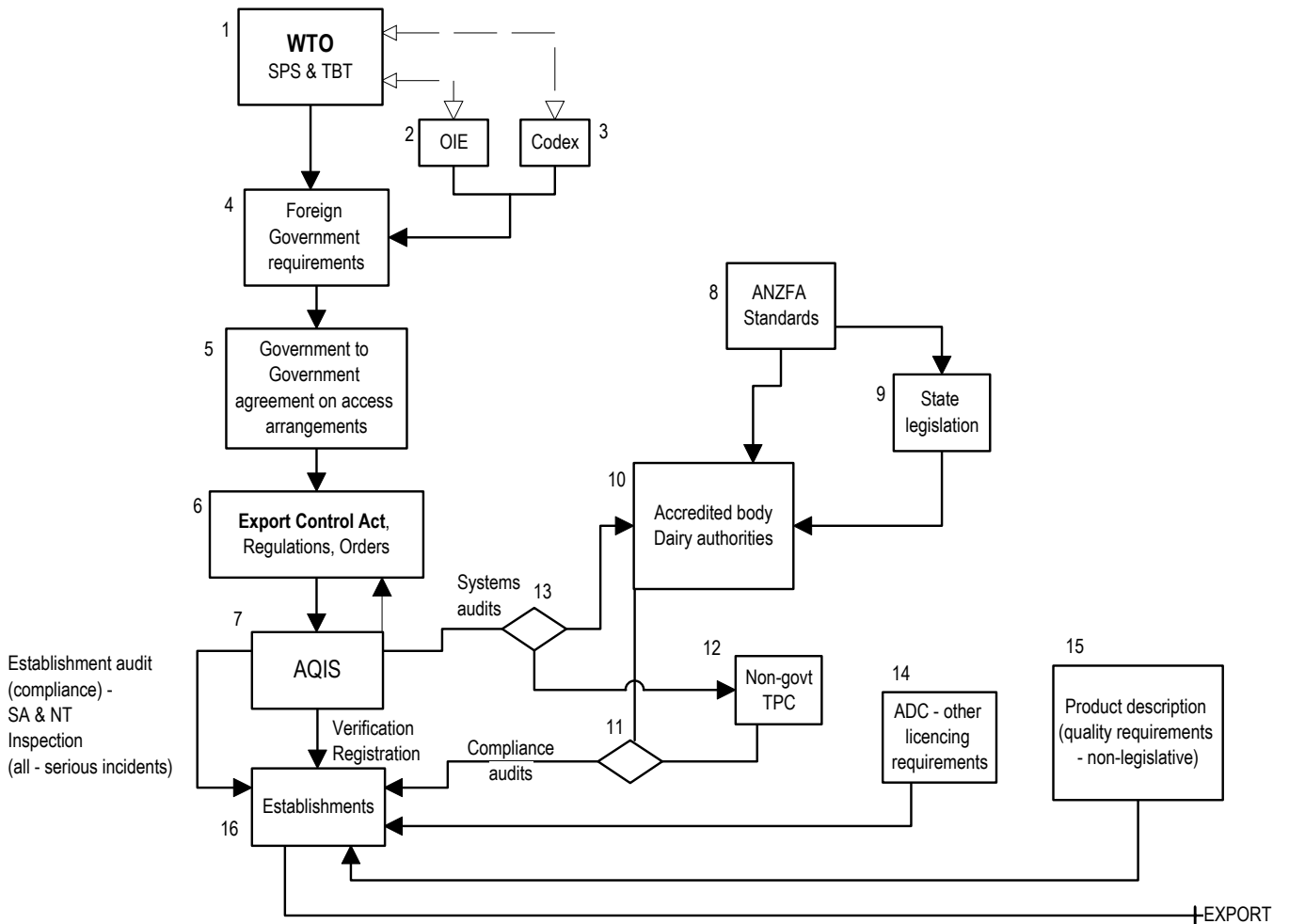
Figure 2.2
Legislation and Operations: Meat



Legislation and Operations: Meat Description

1. **WTO:** Australia is a signatory to the SPS Agreement and the TBT Agreement, which, were designed to prevent countries turning to food safety and quarantine restrictions as a means of protecting their agricultural industries. (See Chapter 3.6)
2. **OIE:** Office International Epizootique – Australia is a signatory – Government agencies can certify freedom from certain diseases, and there is an obligation to notify for disease outbreaks. There is exchange with the WTO.
3. **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. There is exchange with the WTO.
4. **Overseas governments:** Overseas governments have standards for entry. Exporters must conform with these standards, irrespective of their conformance with domestic standards, unless a special agreement has been reached.
5. **Government to Government agreements:** These cover the specific conditions by which food is exported to the overseas country and meets its requirements. This does not duplicate the special agreement referred to in (4) above).
6. **Export Control Act:** This, with the Regulations and Orders, provides the regulatory basis for Australian food exports.
7. **AQIS:** AQIS has responsibility for the *Export Control Act*, including policy advice and execution of functions.
8. **Inspection etc:** AQIS has responsibilities for inspection and audit (as applicable), registration and the verification of the licence. However, an independent veterinarian may also perform the functions of inspection and audit.
9. **Licence:** An AMLI Licence for cattle, sheep and deer meat is required to export.
10. **AUSMEAT:** Accreditation by AUSMEAT is required in terms of product description, both for export establishments, and for domestic establishments which export.
11. **AFFA:** AFFA has input into the relevant ARMCANZ standards affecting exports.
12. **States:** States have input into the relevant ARMCANZ standards affecting exports.
13. **ARMCANZ Standards:** ARMCANZ standards specify codes and standards of practice for exporters.
14. **ANZFA** promulgates standards for processed meat, which are implemented under State legislation.
15. The **State Governments** administer legislation which is consistent with relevant ARMCANZ and ANZFA standards.
16. For **export from domestically registered establishments**, State Governments are generally responsible for licensing, inspection/audit and Export certification. In certain circumstances, AQIS may be responsible for the functions covered in (16), but this is not the preferred option.
17. **Export from domestically registered establishments** is usually originated by a request from an overseas country (which would come about as part of normal market processes).
18. When all requirements are fulfilled, export can occur.

Figure 2.3
Legislation and Operations: Dairy



Legislation and Operations: Dairy Description

1. **WTO:** Australia is a signatory to the SPS Agreement and the TBT Agreement, which, were designed to prevent countries turning to food safety and quarantine restrictions as a means of protecting their agricultural industries.
2. **OIE:** Office International Epizootique – Australia is a signatory – Government agencies can certify freedom from certain diseases, and there is an obligation to notify for disease outbreaks. There is exchange with the WTO.
3. **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. There is exchange with the WTO.
4. **Overseas governments:** Overseas governments have standards for entry. Exporters must conform with these standards, irrespective of their conformance with domestic standards, unless a special agreement has been reached.
5. **Government to Government agreements:** These cover the specific conditions by which food is exported to the overseas country and meets its requirements. This does not duplicate the special agreement referred to in (4) above).
6. **Export Control Act:** This, with the Regulations and Orders, provides the regulatory basis for Australian food exports. Experience in AQIS and with stakeholders is used to tune the legislation to what is needed.
7. **AQIS:** AQIS has responsibility for the *Export Control Act*, including policy advice and execution of functions. AQIS also has responsibility for compliance audits in South Australia and the Northern Territory.
8. **ANZFA:** Standards are drafted by ANZFA which are implemented under State legislation in their food-related legislation, and also apply to third parties under State control (eg Dairy authorities). ANZFA standards also apply directly to these organisations.
9. **State legislation:** This sets the food standards, and also contains specifications relating to the establishments (which are in turn audited by the accredited bodies, see step 10).
10. **Third Party Accredited bodies:** Compliance audits are conducted by the third parties, usually State dairy authorities. Accreditation comes from the State governments and auditing from AQIS.
11. **Compliance audits:** These may be undertaken by the Dairy authorities or a non-Government third-party certification provider.
12. **Third-party certification providers** (non-Government) can be appointed, and are subject to audit from AQIS in the same manner as the Dairy authorities.
13. AQIS conducts **systems audits** of service providers.
14. **The Australian Dairy Corporation** licences establishments.
15. There are product description requirements relevant to dairy.
16. When all requirements have been met, export can occur.

2.12 Committee's Assessment of Key Points

Structure and Powers of the Act

- *The structure of the Act and its subordinate legislation is appropriate for facilitating and sustaining exports of food and agricultural products.*
- *The powers in the Act are sufficient to address a threat of market failure. This capability has been demonstrated on many occasions since the Act came into force.*
- *The necessary sanctions and penalties are available under the Act to address a potential failure in the export assurance system.*
- *There are no specific objectives stated in the legislation. This shortcoming should be rectified.*
- *The legislation does not include specific criteria or guidelines for the prescription of goods under the Act. Guidelines would help ensure the Act is applied in a more transparent manner.*
- *The Act does not stand alone. Its effectiveness is often dependent upon activities in other jurisdictions (mainly States).*

Administration and operations under the Act

- *Administration of the Act relies on co-operative arrangements between agencies of the Commonwealth and overseas governments.*
- *AQIS operates as the sole service provider in most of the export programs under the Act. There is progress toward greater contestability for services but some importing countries will not accept delegation of the inspection role from Government to a third party.*
- *The regulatory system involved in controlling the export chain is overly complex. The number of agencies involved means duplication and extra costs. The Committee supports the conclusions of the Report of the Food Regulation Review, that is, a single set of regulatory controls for food production in Australia.*

3. CHARACTERISTICS AND MARKET REQUIREMENTS OF FOOD AND AGRICULTURAL PRODUCTS

3.1 Background

The products prescribed under the *Export Control Act* have predominantly been of animal and plant origin with food products being the majority covered. The Committee reviewed the industries concerned, the importance of exports to their viability, the international trade arrangements and the likely future developments affecting exports of these products. These are covered in this chapter.

3.2 Current Product Coverage

As noted in Chapter 2, there are currently eight commodity programs covering a range of food and agricultural products. In 1998-99 Australia's food exports totalled some \$16 billion. Of this amount, specific programs under the Act covered \$12.7 billion the details of which follow:

Table 3.1: Australian Exports certified by AQIS

1998-99	Value of Exports Certified by AQIS (\$million)
Dairy	2,044
Fish	1,231
Grains	4,959
Live Animals	556
Meat	3,277
Horticulture & dried fruit	625
Total	12,692

Source: AQIS

Value of all food exports (\$million)*	16,074
Percentage certified by AQIS	79%

* Source: ABS 1999 (includes beverage and live animal exports)

3.3 Reliance on Exports

Figures 3.1 and 3.2 illustrate the importance of exports to the viability of Australia's leading agricultural based industries.

Figure 3.1 Australian Production and Exports 1998-99: By Volume

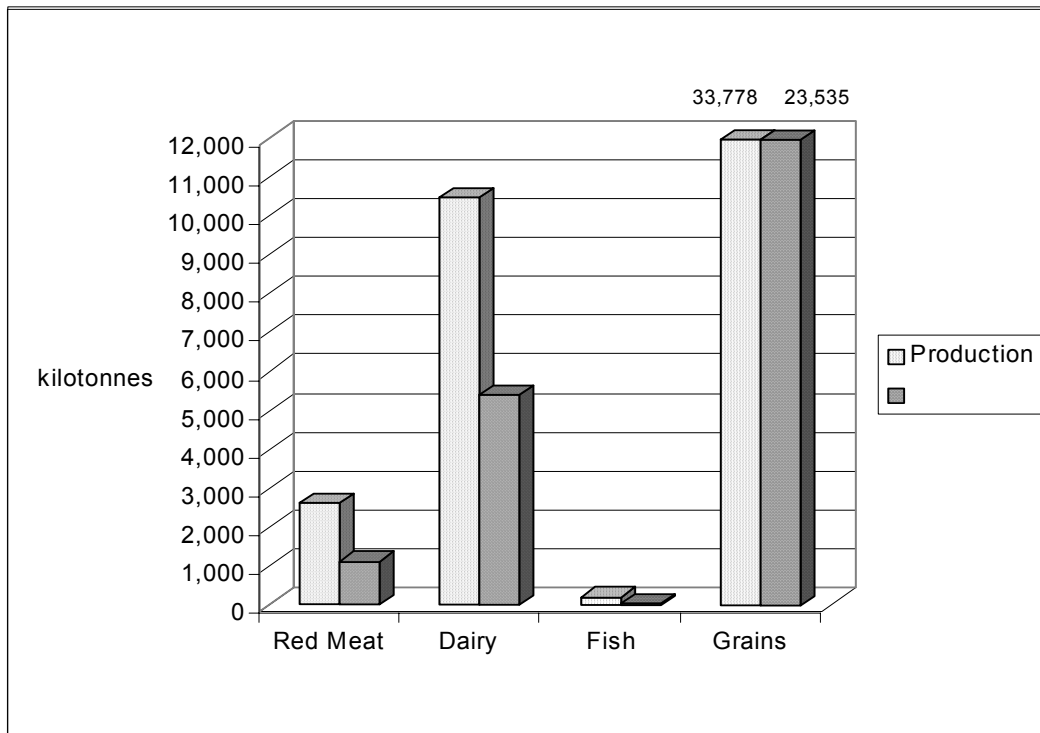
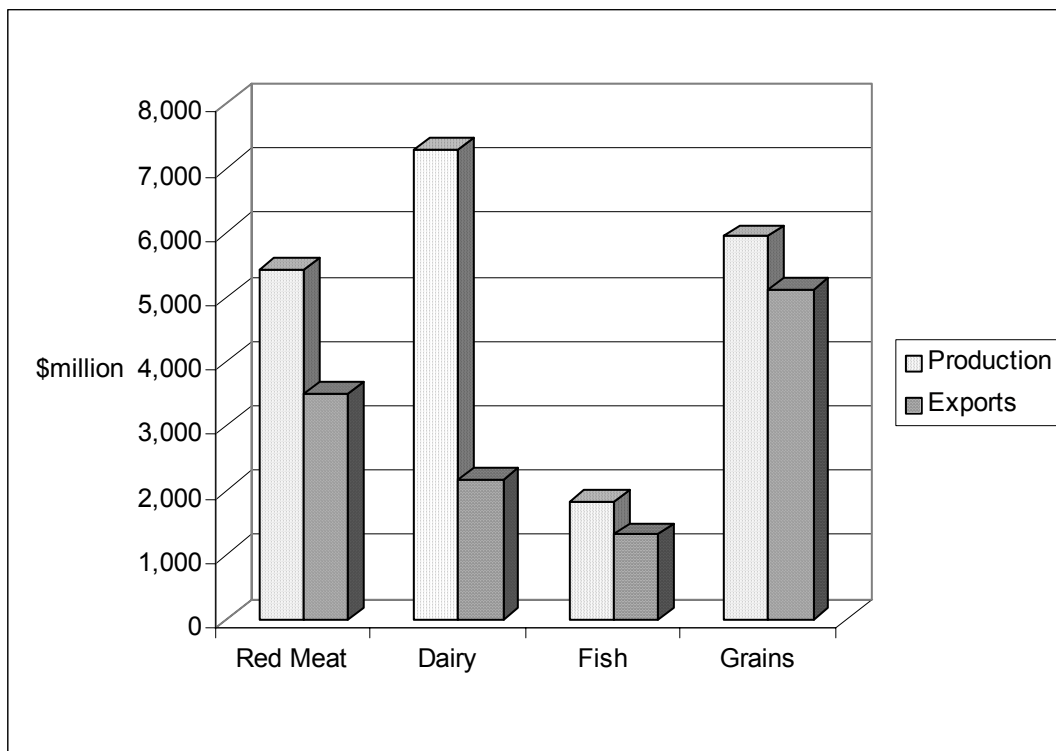


Figure 3.2 Australian Production and Exports 1998-99: By Value



Source: ABARE and ADC (both)

Loss of access to overseas markets, or even the threat of such loss in one or two individual markets, would severely affect the performance and outlook for each of the above industries.

3.4 Characteristics of the Export Industry

World trade in food and agricultural products is more complex and involves greater government intervention than trade in most other manufactured products and services. This complexity and involvement stems from the desire of governments to avoid risks associated with such products—risks to human health, threats to animal welfare and perceived dangers to plant life and the environment.

Many of the risks originate from the characteristics of the products, for example:

- many of the products are biologically active when traded, eg dairy products,
- most of the food products are perishable, eg meat, grains,
- many require special storage and/or transportation arrangements, eg chilled and frozen foods, and
- risks to human health associated with the products are not necessarily physically conspicuous, eg pesticide residues.

The variation both between and within the various agrifood commodity groups is immense. Product is exported from the raw state in bulk through every degree of processing and packaging to the high value added, ready to consume product. Branding also exhibits similar variation, from generic industry or statutory authority brands, to highly promoted proprietary brands including international brands of the multinational participants.

The red meat industry epitomises the complexity within some commodity groups, with more than 300 cuts being possible from a single carcass. The processed food industry has its own complexity due to the seasonal nature of some raw materials used and the necessity to use often multiple sources for such raw materials. Such complexity means that the scope for misdescription and mislabelling is significant, hence the desire exists for some form of control mechanism on trade description in order to maintain the integrity of the system.

The differences among the manufacturers themselves and the varying stages in maturity of the commodity sectors must also be considered. The various industry sectors are in different stages of maturity, from the long established wheat, beef and dairy sectors to the newer groups of horticulture and organic produce. Within the agrifood sector, there exists the full spectrum of small to large, single product to multiple commodities, single site locally owned to multiple site multinational manufacturers. In some industries there is also a large monopoly statutory authority seller.

3.5 Importing Government Requirements

Within Australia the risks associated with the production and sale of food and agricultural products is addressed by a range of local, State and Commonwealth government legislation. Overseas governments have similar laws and monitoring arrangements for their domestic production.

The majority of overseas countries also have standards applicable to imported food and agricultural products, but because production and trade is initiated offshore the importing countries look to the exporting countries to ensure that requirements are met. This transfer of responsibility necessitates, as a minimum, the extension of domestic standards to exports. Further, if different or special standards have been set by the importing country, exporters have to establish specific arrangements to ensure compliance with them too. Such undertakings are made under both multilateral and bilateral agreements.

3.6 Multilateral Agreements

The major international arrangements regulating trade are those established under the World Trade Organisation (WTO), and as a member Australia is obliged to comply with its rules and provisions. These include specific provisions covering the prohibition of export controls but authority to allow measures 'necessary to protect human, animal or plant life or health' or relating to the 'conservation of exhaustible natural resources'. The provisions also allow measures 'necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of the Agreement including . . . the prevention of deceptive practices'.

The 1994 Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) implemented with the establishment of the WTO, sets out rules for trade in food and other agricultural commodities in regard to animal, plant and human health. It accords a special status to standards elaborated by organisations such as Codex Alimentarius Commission (Codex), the International Plant Protection Convention (IPPC) and the Office International des Epizooties (OIE), while allowing countries to maintain more restrictive measures, provided these are based on a scientific risk assessment. The 1994 WTO Agreement on Technical Barriers to Trade (TBT Agreement) and the SPS Agreement were designed to limit the arbitrary or unjustified use of non-tariff barriers to trade by defining how technical barriers to trade may be used legitimately.

Codex is the international inter-governmental body that develops food safety and commodity standards to facilitate trade and promote consumer safety. It is not compulsory, but signatories do not depart from it without very good reason. The Codex Alimentarius Commission was established in 1962 by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) of the United Nations. Australia has always been an active participant. Whilst member countries have been committed to the principles of Codex since its establishment, use of Codex standards was rather arbitrary until the conclusion of the GATT Uruguay Round and the adoption of the SPS and TBT Agreements. 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. 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.

3.6.1 WTO Requirements other than Health

Other WTO obligations including anti-dumping, countervailing, customs valuation and safeguards are also relevant to Australia's export control regime through, for example:

- meeting particular requirements for customs valuation requirements of other countries (eg this could extend to cooperation to prevent fraudulent practices), and
- meeting anti-dumping or countervailing minimum price undertakings or the like.

These and other relevant provisions require Australia to ensure that there is an enforceable legal system that will allow for export controls to be applied in certain situations to facilitate access to other markets under WTO rules.

3.7 Bilateral Agreements

Australia's commitment to these multilateral agreements is supplemented by bilateral agreements with all major trading partners. These bilateral agreements set out the requirements which have to be met before importing countries will approve entry of particular products to their markets. A brief summary of the requirements of some of Australia's major trading partners is set out below.

European Union

Certificates are required for exports to the EU for the large majority of live animals and animal products, and most food products. The requirement for certification is based on prescriptive EC Veterinary Directives, which define in detail the processes to be complied in the preparation of the product, the inspection itself, and the issue of the certificate. The certificates themselves generally have very prescriptive statements that must be verified by a government inspection and certification body. An exception is organic produce for which the EU has approved non-government inspection and certification, although AQIS is still required to audit these third party inspection providers.

United States

Historically the US has required strict adherence to US statutory requirements.

The US Department of Agriculture's (USDA) Food Safety Inspection Service (FSIS) administers meat and poultry products under the Federal Meat Inspection Act and Code of Federal Regulations. These regulations specify that importers must meet standards equivalent to those applied to US domestically produced products.

The US Food and Drug Administration (FDA) under the Federal Food, Drugs and Cosmetics Act is responsible for the regulation of most non-meat products (apart from eggs). This Act requires that products must be prepared in accordance with the provisions of the Act or other equivalent statute.

US imports of animal and plant products are controlled under legislation administered by USDA's Animal and Plant Health Inspection Service (APHIS). Again equivalence is based on US standards although APHIS does permit third party inspection regimes which are underwritten by exporter governments.

Canada

Canada's system and requirements for regulation of agricultural and food products are similar to those utilised by the United States, including that importers must meet equivalent standards to domestic producers and be certified by the government of the country of origin. Standards are set and administered by the Canadian Food Inspection Agency (CFIA) which is part of the Department Agriculture and Agrifood, and the Canadian Department of Health.

South Africa

The basic requirement is certification by the government of the exporting country.

Republic of Korea

Korea requires government to government agreements and export government certification as a pre-requisite for most imported food.

Japan

Japan requires government to government agreement and exporting government certification for most imports of food and agricultural products.

Taiwan

Government certification is currently required, and the *Export Control Act* has had a positive impact on market access.

Thailand

Most food and agricultural products require an import license from Thai authorities and government certification by the exporting country.

Philippines

Exporting government certification is a requirement for imports of food and agricultural products into the Philippines.

Malaysia

Imports of food into Malaysia are subject to an import permit system and approval to import is based on the adequacy of food safety controls in the country of origin. This includes the competent certification authorities having the necessary legislative powers to control imports including powers of inspection.

Vietnam

Vietnam law or regulations do not specifically require government certification, with the exception of dairy produce, which requires certification by an Australian government agency for access.

Indonesia

Imports of agricultural products into Indonesia are granted approval based on the ability of the exporting country to guarantee adequate controls on veterinary health and food safety. Indonesian authorities prefer that such guarantees be provided by a government inspection and certification agency, although SGS has been heavily involved in certifying for Indonesia.

Non-WTO Countries

A substantial amount of trade occurs with countries that are not members of the WTO. In these cases, trade may be regulated by bilateral arrangements, which are negotiated between Australia and the respective countries. As a general rule if a country requires a bilateral agreement, certification by the government of the exporting country will be included in the agreement.

3.8 Likely Future Requirements

There are many signs to suggest that importing country health hygiene and related requirements will intensify progressively rather than liberalised in the immediate to short term. The signs include:

- general increase in consumerism and the accompanying demands by governments for companies to improve standards in health, hygiene premises, animal welfare and the environment,
- the publicity and subsequent public awareness of risk to human health in recent years, including the outbreak of BSE (mad cow disease) in the UK, E coli 0157 food poisoning episodes in the USA and Japan,
- the emerging public debate about genetically modified foods,

- continued improvements in the speed, accuracy and intensity of analytical methods which have provided confirmation of contamination and/or presence of residues that were previously undetected,
- continuing public focus on food irradiation as a method of preservation,
- the need to alter systems for meat, dairy, fish and processed foods in order to accommodate HACCP approaches, because of rising consumer concerns with food borne pathogens,
- the tendency in all countries to look for new ways of justifying protection against imports as traditional approaches such as quotas and tariffs have been negotiated away, and
- new organisms of concern/spread of known pathogens or organisms.

In the past, health and hygiene issues associated with international trade have been administered largely as an adjunct to production under the auspices of agricultural and production related ministries. In the future the responsibility is likely to shift to consumer affairs and health ministries. Such a change has already occurred in the European Union.

The rapid growth in electronic communication via the Internet has dramatically accelerated the flow of information between countries. In the past, knowledge about export failures has often not been extended beyond the immediate countries and/or companies directly affected. Consumers and governments are now increasingly demanding greater transparency and the Internet has provided the means of instant communication. This means that shortcomings in performance by an individual company, or more importantly an individual country, will be known to all trading partners virtually instantaneously, and therefore failures in one country will have repercussions in others.

There will be an increase in competition for export trade as the world's economy continues to grow. Examples of this include both the US and EU entering non-traditional markets in Asia.

Consumer expectations will continue to extend beyond the traditional health and safety issues to areas such as animal welfare and the environment.

International bodies such as WTO and Codex will continue to develop uniform measures such as SPS and TBT agreements and major exporting nations will continue with their efforts to liberalise trade.

There will be an increase in globalisation of the agrifood industry through merger and acquisition. Vertical integration will continue as evidenced by the investment of Japanese companies in our beef industry and the continued global expansion of major international supermarket chains with their house brands. Large companies with substantial market power are also setting up their own food administration systems in parallel with the Government-based systems.

Individual Australian agrifood industries will continue to be more reliant on export for growth due to domestic market saturation and our already high per capita consumption of commodities such as sugar, wheat and beef.

3.9 Emerging Issues

There are already a number of emerging issues which the *Export Control Act* will need to take into account. These include trade in Genetically Modified Foods (GMFs) and products containing genetically modified organisms (GMOs), irradiation, animal welfare and E-Commerce. Each of these developments will impose new demands on the administration of the Act.

In order to be proactive, it will be necessary for Government and Industry to deal with these emerging issues by developing appropriate strategies that incorporate:

- prediction,
- identification,
- description,
- risk analysis,
- legislative implications, and
- competition implications.

3.9.1 Genetically Modified Foods

The production of GMFs involves the incorporation or modification of one or more genes from other sources (either natural or synthetic) into the food either via a raw material or a living organism. The aim of the technique is to enhance existing characteristics or to introduce advantageous new traits. The technique allows the introduction of DNA from non-related species, which could not be achieved by conventional breeding programs.

The export of genetically modified products as raw produce and as part of further processed products is a new issue to challenge the scope of the *Export Control Act*. Issues such as segregation of product, identification and trace-back, and potential regulatory failure will have a major effect on the credibility of Australia's export regulation.

It is possible that other legislation will set standards, with these being called up by export regulation. There may be special conditions for which export regulation may need to cater (eg wind-blown pollen contamination).

It is apparent that the application of the Act to the export of genetically modified produce will be heavily dependent on the import requirements of overseas governments.

Consideration of Government policy on GMFs is ongoing as this Report is published.

3.9.2 E-Commerce

Fast becoming a business reality because of its delivery of efficiency gains and cost savings, E-Commerce will be a major tool of world trade in the near future. However, the reaction of some organisations has been slow, and legislative changes have lagged behind technical changes.

The potential benefits of E-commerce have been recognised by State Governments, which have advocated that the *Export Control Act* take account of new technology and changing global business systems such as E-commerce and Internet use.

The Commonwealth Government's Internet 2001 objective was announced in the Prime Minister's *Investing for Growth* industry statement in December 1997. The aim of the initiative is to 'deliver all appropriate Commonwealth services electronically on the Internet by 2001'. Regular surveys will ascertain the readiness of Commonwealth agencies to deliver appropriate services electronically. The first survey was completed in the first half of 1999, and it is anticipated that future surveys, and/or interviews with agency representatives, will be conducted every six months leading up to the 2001 deadline.

3.9.3 E-Commerce in Exports

As mentioned previously, the electronic export documentation system (EXDOC) has been in operation for meat since 1992 and dairy since 1998. The stated intention of AQIS is to gradually develop it for other groups (see 3.9.4 below).

AQIS and the Australian meat industry are proposing a uniform common approach to the identification of all trade units of edible and non-edible product (eg carcase, carton). EAN-UCC numbering, bar coding and Electronic Data Interchange (EDI) have been identified as the enabling technologies for unambiguous identification, tracking, management and control of the flow of meat products through the supply chain.

By capturing information, either directly or through linkages to databases, about the history of the product from production through processing, tracing capability is almost instantaneous. Further, barcodes have the capacity to be substituted for shipping marks in the health certification process. The shipping mark links the logistic item with the health certification of the traded product. Benefit from such use will be derived through savings in labour and materials to apply shipping marks and reduction in rejections for illegible or no shipping marks.

When a barcode is linked with automated data capture and EDI, a uniform common approach to numbering and barcoding enables electronic commerce.

Benefits of the use of barcodes may be categorised into five areas: Meat Safety; Export Integrity and Certification; Electronic Commerce and Innovation; Co-Regulation; and Industry Competitiveness.

Meat Safety – Barcoding offers the tools for achieving the key food safety concept of Paddock to Plate.

Export Integrity and Certification – Use of barcodes facilitates the export effort of industry by improving the integrity of the certification process through product identification and thus accountability, improving the accuracy of information being transferred onto the health certificate (the current system relies on manual counting with associated errors), and providing a sound basis for product traceability and trackability.

Electronic Commerce and Innovation – Barcoding operates within electronic media and thus supports ongoing automation in the supply chain. It provides a basis for facilitating business transactions and export certification.

Co-Regulation – Facilitates using industry managed systems for achieving regulatory outcomes.

Industry Competitiveness – Industry will derive benefits in the form of better utilisation of resources, improved stock management, improved information transfer and hence will be able to provide a more timely and cost effective service to its clients.

All stakeholders are keen to see progress in the uptake of electronic export documentation. The Committee is of the opinion that AQIS should ensure that a high priority is maintained in this area, particularly in relation to making the system universally applicable to the stakeholder base.

3.9.4 Export Documentation

AQIS has run its electronic export documentation system (EXDOC) since 1992. This system interfaces with the Customs EXIT system and its use by meat exporters is mandatory. EXDOC was specific to the meat industry but is now being enhanced to accommodate the needs of other industries. The system is Internet mail-enabled. The Committee has been informed by AQIS that EXDOC meets all current Government policy specifications relating to electronic commerce. Reported benefits of the system have been containing costs and expediting turnaround times. Output is generated under the UN agreed Electronic Data Interchange For Administration, Commerce and Transport (UN EDIFACT) standards for the sanitary/phytosanitary certification (SANCRT) protocol.

Evolution is continuing, and includes the development of a single electronic window for export documentation, involving Customs and AQIS. There are individual industry consultative mechanisms (Electronic Documentation Working Groups) considering proposed enhancements. There is a need, in some cases, for alignment between EXDOC and the business practices in industry.

Stakeholders are keen to see progress in the uptake of electronic export documentation and the Committee is of the opinion that AQIS should ensure that a high priority is maintained in this area, particularly in relation to making the system truly universally applicable to the stakeholder base. See 6.2.13 for further discussion.

3.9.5 Animal Welfare

Animal welfare is another important emerging issue, and has been signalled by the WTO for inclusion in the next round of multilateral trade discussions. Animal welfare issues are relevant to industry both in their own right and because of the link between animal welfare and animal health. The *Export Control Act* does not have a role, specifically, as a mechanism to control animal welfare, but it does have a role in the delivery of appropriate product to consumers, and it is interactive with other relevant Commonwealth and State legislation.

3.10 Committee's Assessment of Key Points

- *Impromptu abandonment of the Export Control Act could put some of the \$13 billion in value of Australia's exports at risk. The major focus of growth in the food industry is now exports, hence facilitation of exports will be of significant importance to the Australian economy.*
- *Most countries importing food from Australia require certification by a Commonwealth agency. AQIS performs this role under the authority of the Act.*
- *Consumer demands for assurance on food safety will increase because of the threat posed by 'invisible' risks such as pesticide residues and some microbiological contamination.*
- *Adoption and development of E-Commerce is a significant opportunity for both industry and government to reduce the costs and complexity of trading arrangements including certification of export goods.*

4. STAKEHOLDER VIEWS

This chapter sets out a summary of stakeholder views. These views are mostly set out with reference to questions asked by the Committee. These questions were posed in the process set out in Chapter 1, and stakeholder responses were considered in detail. Material in this chapter therefore relates to stakeholder views only. All quotes in this chapter are from submissions received by the Review, and the Committee's assessment of the most important issues arising from this process is given at the end of this chapter.

4.1 Impact on Competitiveness

The most immediate concern for most stakeholders was the impact of Government activity on their costs, so reducing the resources which they needed to conduct their business. However, stakeholders did not specify exactly where their cost problems are.

Restrictions under the legislation, such as the need for registration of premises, drew a mixed response. Some stakeholders saw it as promoting compliance with required standards (and quality) and hence competitiveness overseas, while others saw it as a barrier to entry, and hence restricting competition. The elaborateness of the legislation and inherent restrictions, such as time taken to implement new arrangements, was seen as working against innovation and entrepreneurial capture of new markets:

Legislation which is too prescriptive inhibits innovation, and fails to exploit other means of achieving a safe food outcome. [*Victorian Government*]

The requirement to meet detailed legislation imposes unreasonable limits on innovation in the industry as very prescriptive legislation can be prohibitive to prospective opportunity for trade. [*Queensland Department of Primary Industries*]

The bounds of responsibility should be set at which industry in general is free to pursue and develop both domestic and export business without either regulation or interference from government. Regulatory requirements should be set in order to protect the safety of the population and to protect the industry from any individual acts which may either undermine or harm the industry's reputation in the international marketplace. ... Regulation should only be required in situations where there is an obvious potential of major risks to the Australian food and beverage industry. . . . It is recognised throughout industry that the development of export markets requires significant capital and that overall returns are lower than those on the domestic market. When the costs imposed by regulation are taken into account, the commercial viability of developing export business is brought into question. Within the industry the costs are definitely not perceived to be fair and reasonable, mainly due to the fact that industry sees little benefit from the costs imposed. . . . The costs of compliance are high and can ultimately result in (or be a significant factor in) a company's failure to establish a viable export market. Moreover, complying with the existing orders does not provide any benefit to the company in the domestic market which would assist in alleviating the financial burden compliance imposes. [*WA Food and Beverage Exporters Association*]

There was more agreement on the effectiveness of the Act in aiding market access in general, and on its value in demonstrating compliance with importing country requirements.

The Act and AQIS should be seen as a positive support for the export of Australian foods. [WA Government]

The benefit to the Industry of complying with the requirements of the Act is foreign market access. Access is more likely when the export of a food item has to meet a set of enforceable requirements and follow prescribed protocols, which can be identified through the Act. [Australian Dried Fruits Association]

The resource needs of AQIS to rapidly respond to market opportunities are essential. [Australian Oilseeds Federation]

Nevertheless, successful access has its own requirements:

Those hoping to seek out and develop new markets and customers (the 'big' markets of the future) are conscious that competing nations such as Canada appear to be able to export quickly and flexibly - they can provide Canadian standard product to any export customer but, of course, must meet importing country requirements. Hence, the decision to supply a customer is a relatively quick and commercial one. The basics for market development are also clear. [Victorian Quality Assured Meats]

There is a significant body of opinion in favour of the promotion of Australia's domestic standards as a suitable basis for export:

Access to export markets is not currently available to much Australian red meat which is prepared in accordance with Australian Standards and eaten daily by Australians. This is a real issue for the meat industry and associated regulators. [Victorian Quality Assured Meats]

There is a market failure rationale for restricting access by Australian exporters to markets on the basis of domestically set quality standards. For example, it is often argued that the actions of an individual exporter exporting products of 'low or variable quality', will result in negative 'spill-overs' in the form of lower prices, loss of markets etc, to other Australian exporters. [NSW Government]

The Authority would encourage the removal of the prescriptive detail contained in the current Orders and believes that the new Food Standards Code should form the basis of any "national standards for prescribed goods" as any alternative standards would create unnecessary duplication and confusion for the food export industry. [ANZFA]

VQAM seeks significant progress toward a model which does not restrict competition into export markets for any Australian meat and meat products produced as set out by the Australian Standards for preparation of meat for human consumption. [Victorian Quality Assured Meats]

National standards, based on quality assurance using HACCP procedures, will achieve better market outcomes than prescriptive export control orders, especially if strongly negotiated and promoted by AQIS and DFAT. [Victorian Government]

The need for the use of the prescribed goods provisions would be eliminated if standards applying to domestic and export were equal (except where particular country requirements apply). [WA Government]

International standards are seen as relevant, too:

The basic level of regulation to achieve the stated objectives should be such that produce destined for export complies with the base international standards required under the WTO, or that apply to the sale of that produce within Australia, whichever of the two is the greater. This is a moral concern in that Australia should not export produce that is not of a quality acceptable to Australian consumers. [*Queensland Department of Primary Industries*]

4.2 Market Access Overseas

There was some confusion among the respondents regarding the term market access. A majority interpreted it as facilitation of exports (which is the intended meaning) but a significant minority interpreted it as control or restriction of access, either domestically or internationally. Most respondents were opposed to the Act being used to impose quotas; a notable exception was the Department of Foreign Affairs and Trade.

International obligations (eg SPS and TBT) and standards (eg Codex) set the frame in which Australia trades food outside its borders. This was emphasised by the Department of Foreign Affairs and Trade, but little commented upon by other stakeholders.

Further, a number of stakeholders believe that food is not traded internationally in a free market, typically:

The international market for grain is not a free market. It is a market that is characterized by market failure and corrupt practices. Many governments engage in policies that are trade distorting and these policies adversely affect the prices received by Australian growers. As a consequence, Australian growers need every advantage that they can gain in order to compete effectively on these international markets. The continued operation of the present export control arrangements is thereby beneficial to Australian grain exporters and is thus in the national interest. [*Grains Council of Australia*]

Respondents accepted that importing countries, rather than exporting ones, set the rules. Additionally, political considerations were instanced, including:

- trade-distorting policies adopted by other governments, and
- use of export failure (in Australia) as a weapon against Australian exports.

Stakeholders pointed out that damage to the whole industry or a sector could occur from an incident concerning a specific exporter. This view commonly came from those industries exporting commodities such as grains and meat rather than 'branded' products.

In any case, fair or not, importing country requirements are at the heart of market access, a view supported by most stakeholders. Unless these requirements are observed, there is little hope of exporting. However, there is a general view (see 4.7 'Standards'), that an opportunity exists to promote Australia's own food standards as a suitable basis for food export.

Most stakeholders thought that regulation should cover health and safety, but should leave trade description as the responsibility of the exporter, though not all shared this view. For example:

Accurate product description on export certification is essential to maintain integrity of product and to satisfy the importation requirements of our trading partners. [*Pork Council of Australia*]

The preferred situation would be that trade descriptions are commercial issue and not government issue. However, as the international market may not be mature enough to rely on contractual arrangements between companies at the present time some government intervention in this matter may be required. [*Queensland Department of Primary Industries*]

Trade specifications and product description requirements are a commercial and/or industry self regulatory responsibility. In the past however there has been the need to manage supply into some markets (eg Jordan and Saudi Arabia) because the country either has specification requirements, or the nature of the market requires that supply be regulated to avoid over or under supply. [*Livecorp*]

Some were in favour of a more comprehensive set of responsibilities:

Government control over exports can also be important when access for particular products is restricted by a tariff-rate quota (TRQ). Even when the importing country does not require formal government control to ensure the orderly administration of the quota, the absence of government controls may have commercial impacts. The EC, for example, has hinted that it would like to change the administration of some of its quotas. Any lessening of Australian controls might spur the Commission to assume control of quota allocation. [*Department of Foreign Affairs and Trade*]

Stakeholders were generally in agreement on the importance of Government (and, as most saw it, AQIS) certification:

Confidence in the certification and inspection process has . . . seen new dairy export facilities certified by Brazil, sight unseen. This confidence was also a key factor in securing Brazilian agreement in late 1998 to allow importation of wheat and grass seeds. [*Department of Foreign Affairs and Trade*]

Even those in favour of minimal regulation saw benefits:

The bounds of responsibility should be set at which industry in general is free to pursue and develop both domestic and export business without either regulation or interference from government. Regulatory requirements should be set in order to protect the safety of the population and to protect the industry from any individual acts which may either undermine or harm the industry's reputation in the international marketplace. [*WA Food and Beverage Exporters Association*]

State Governments were more firmly in favour:

The responsibility of government lies in the development of umbrella legislation to meet the objectives stated and to work with industry on codes, standards and to bring these into the regulations where appropriate. Government also has the responsibility of ensuring that there is International acceptance of its capacity to ensure compliance.

As there is significant risk in the actions of a few jeopardising market access for all, there needs to be a capability for Government to assess compliance and ensure remedial action is taken and this be supported by heavy penalty where compliance is not subsequently met. [*Queensland Department of Primary Industries*]

While most stakeholders saw validity in trade facilitation, some found problems:

It is probably inappropriate to denote this facilitative role as an export control. In reality, the most important controls on the production of dairy products for commercial sale are those which apply domestically to ensure the health and safety of consumers on the Australian market. [*Australian Dairy Products Federation*]

4.3 Purpose and Value of the Act

The value of the Act was universally attested, as was the need for a clear and meaningful objective to the legislation. Issues canvassed for consideration of the objective included:

- participation of industry in the decision-making process,
- specification of the purpose of regulation,
- specification of the objective the government wishes to achieve by export control,
- outcome-basis,
- objective: efficiency, effectiveness and accountability,
- objective: facilitate export to and competition in the international marketplace,
- objective: enhancement of the reputation of Australian primary products,
- objective: safety for human consumption and truth in labelling.

Desirable regulatory characteristics included:

- reduction of duplication,
- reduction of costs to industry,
- alignment with food safety programs proposed by ANZFA,
- alignment with the Australian Food Standards Code,
- flexibility,
- removal of regulation which concerns purely commercial decisions,
- licensing of food processing plants (to the Australian standard).

The basic proposition was put by the Australian Wheat Board:

'Regulation of export quality and standards is extremely important and central to maintaining the reputation of Australian agricultural exports overseas'

The question of why and when Government should regulate saw a divergence of views. The requirement for regulation was accepted, but coverage was seen as greater than strictly needed (bodies like the Australian Wheat Board being obvious exceptions):

The Act has been used over the years to ensure certain market access conditions are satisfied by exporters. While on the face of it this may seem to be an inappropriate role for the Act to play, in actual *practice* we believe it has resulted in improved levels of market access. Countries have the confidence to import Australian products in the knowledge that exacting quality compliance requirements have been met. [*Australian Wheat Board*]

More industry responsibility and less prescriptive legislation were popular themes:

The prescriptive nature of the regulations which are currently in place retards industry's access to the most appropriate means of achieving a safe food outcome. [*Victorian Quality Assured Meats*]

The AMC believes that amendments to the *Export Control Act* to make it simpler and easier to use, less prescriptive and more orientated to coregulation and to ensure that all exporters compete on a 'level playing field' would enhance competition. However, the AMC considers that, if Australia is to maintain its share of the international red meat market, the special circumstances of the international and Australian red meat export trades require the maintenance of an effective regulatory regime. [*Australian Meat Council*]

The Cattle Council is of a similar view, with detail to back their assertions:

It is widely accepted that the current Act (and therefore the associated Orders) is highly prescriptive. It can be argued that this hinders innovation, induces higher than necessary compliance costs and is resource intense. The revision of the Orders by AQIS (1999) is an attempt to rectify these problems, but at the same time maintain the integrity of the system.

Cattle Council supports a more flexible approach to industry regulation. It is counterproductive to enforce a 'checklist' approach, where individuals are penalised for not adhering to a strict schedule that may have no bearing on the variables of 'importance'. . . . To clarify this point, refrigeration guidelines can be used as an example. It is well accepted that refrigeration is a critically important step in the preparation and storage of a safe, wholesome product. Under the current legislative framework of the Act, the Export Control Orders for refrigeration are highly detailed. The Orders list temperature limits at specific time periods for different products. Variable inputs are accounted for and a step-wise approach for compliance is provided.

Under the AQIS *Control Orders Exposure Draft (1999)*, a more flexible approach has been developed. An outcomes based approach is utilised, where the principles that need to be satisfied to achieve an outcome are identified and a framework put in place to facilitate the meeting of these requirements in an efficient manner.

Under this scheme the role of AQIS 'shifts' from being inspectionist and regulatory to more of a verification and partnership approach. Importantly, this places an obligation on the operator to inform AQIS of any problems or breakdowns in the system. The question for industry is if there is enough incentive to ensure this obligation is met? The issues of effective verification and subsequent penalties are, therefore, extremely important.

And the Western Australian Government stated that:

AQIS should not have the dual role of setting the standards and policing them.

The Queensland Department of Primary Industries summarised the issues succinctly:

Government should regulate the export of food and fibre to cost effectively meet the objectives stated above. There is also a need to regulate to meet very specific international obligations and standards. Australian standards may exceed International standards due to peculiarities of our environment. In all cases, regulatory controls should ensure conditions of World Trade Organisation endorsed agreements such as Sanitary and Phytosanitary agreements and technical Barriers to Trade are met.

4.4 Co-regulation

The variety of responses and viewpoints indicate that this term requires further public definition and standardisation.

Co-regulation was seen to extend the setting of standards:

‘which is government regulation, [and] should be developed in an open, consultative manner involving all participants in the industry, and with careful considerations of costs and benefits, including potential impacts on competition and innovation.’ [*Victorian Quality Assured Meats*]

One stakeholder said:

Co-regulation is the interaction of both industry and government to mutually service the best needs of the industry. [and more specifically, the] responsibility of ensuring their preparation systems and products meet audited standards. [*WA Food and Beverage Exporters*]

Further:

All along the meat chain, commercial operators should be responsible for, and accept responsibility for, regulating their own operations to ensure that their products meet the expectations set out in rules/standards. It should be for commercial operators to innovate, check and decide best methods to do this. [*Victorian Quality Assured Meats*]

There was little comment on how to go about achieving co-regulation, and this is another obvious area for an extensive consultative process to assist in defining the policy and its practical outcomes.

Some stakeholders had faith in the strength of the marketplace as a ‘regulator’. Yet, there was concern that co-regulation could involve as much ‘red tape’ as the original regulation, and that any move toward co-regulation should be accompanied by the recognition of this danger and the need to avoid it.

Caution needs to be exercised by industries and businesses when considering co-regulation (industry codes backed by law), and/or industry prescriptions, as alternatives to government regulation. Such schemes can add as much 'regulatory red-tape' to an industry as a government system. That red-tape can become entwined with business interests in a way that is helpful to some in the industry, but not to others. Innovators of any size in some industries have found difficulties dealing with 'competitors as supervisors'. [*Victorian Quality Assured Meats*]

Others shied away from self-regulation:

While industry self regulation would in the end be a desirable outcome the reality is, quite simply, that this is not possible. The disparate nature of industry participants, the range of products and markets and the confidence levels required by importers, means that regulation remains necessary to preserve product safety and quality . . . AWB does not believe that private enterprise should perform any of the principle functions of AQIS. [*Australian Wheat Board*]

Bodies such as the EU place considerable value in Government certification and (commonly) in Government inspection, seeing these as mandatory to exporting.

Stakeholders had varying views on the benefits AQIS could contribute in its role, some of the views including:

- a cost-efficient inspection service,
- certification of export products,
- the 'pull through' of some industry QA reforms through formal linkage between company participation in those schemes and eligibility for product export certification,
- the issuing of per consignment health certificates underpinned, in the case of meat, by the NRS chemical residue sampling program,
- as a by-product of the above, huge data bases, and
- promotion of Australian standards as the basis for export.

Stakeholder comments concentrated on the introduction of quality assurance and ISO systems as mechanisms to facilitate co-regulation, but did not appear highly focused on alternative administrative systems of achieving export success.

In summary:

Traditional end-point export inspection arrangements administered by the Commonwealth would be replaced by transferring responsibility to the companies, with registered third party independent auditors or local government to monitor the system. This places the onus on the manufacturer to conform and be subject to audits by a registered organisation, rather than placing the onus on government to police the industry to try to catch companies breaking the rules. [*WA Government*]

4.5 Prescribed Goods

Stakeholders wanted all currently prescribed goods treated in the same fashion, allowing for differences in product types. The Australian Meat Council extended this argument, calling the provision of exemptions under the Act for export of meat from domestic (only) approved establishments a 'grave anomaly'.

The Queensland Sugar Corporation was in favour of the single-desk marketing system but was not in favour of being subject to the *Export Control Act* (and losing responsiveness and flexibility):

Turning to the present review, as currently structured sugar is not a prescribed product under the *Export Control Act*. For this reason the QSC's export activities are not currently affected by the legislation. The QSC is keen to ensure raw sugar continues to be excluded from the operation of the Act. The QSC's ability to respond flexibly to the market changes in the light of increased competition from Brazil and other origins will be important to the ongoing profitability of the industry. The application of the *Export Control Act* to sugar would be a significant impediment to the QSC's ability to respond flexibly to changing market conditions.

There were requests for approaches which reflected the unique nature of products, for example, in the dairy industry:

Our industry depends crucially on the efficient and competitively priced provision of export services. The industry believes that as an exporter, it should be treated no differently than other food exporters such as confectionary, biscuits, sugar etc. These commodities are freely traded on the international market without any Government export controls.

However, the industry recognises that its products are biologically active and that importing countries have a number of Government requirements that must be met for the certification of food imports. [*Australian Dairy Products Federation*]

A good summation of the issue was made by QDPI:

Although there is an equity issue in the prescribed goods regulations, and it would be preferable if all industries were to be assessed against the same principles, it is not of paramount importance that equity should be achieved. However, the need for any prescription of products should be transparent and be clearly explained. The risk management based approach in fish and dairy exports is fully justifiable relative to the more regulated meat export requirements.

It is highly conceivable that some potential markets will require a higher quality assurance standard than that which applies as a base international standard. However there is no compulsion on producers to supply to that particular export market. Many producers may wish to target markets in which there are no additional quality assurance standards required. Therefore the decision to sell produce into a market with high quality entry standards is purely a commercial decision to be made by individual producers (or a group of producers).

The higher quality standards required impose significant additional costs by way of testing and certification of product quality. These additional costs should only apply to those producers who wish to access those markets and should not be incurred by those producers who do not need to comply with those same strict standards.

. . . the Government can provide the certification of quality assurance required without compelling those producers and exporters who do not need this level of quality assurance to meet the same standards and bear unnecessary costs. [Queensland Department of Primary Industries]

Opinion varied industry by industry and case by case, depending on the circumstances of the trade. Comments in other submissions have indicated that a large number of stakeholders wish to have the Act limited to health and hygiene. However, there is still a substantial opinion which wants an all-inclusive Act (grains in particular):

Many importing authorities, such as the importing State Trading Enterprises in countries like Japan, South Korea and China, maintain very strict conditions in relation to the particular requirements that must be met by those wishing to import products. These requirements relate to quality aspects such as hygiene, quarantine pests and trade and product descriptions. The present export control arrangements help to ensure that Australian grain exporters are able to meet those requirements. The GCA fears that changes to those arrangements could have the potential to restrict access to the quality conscious international markets for Australian grain products. [Grains Council of Australia]

DFAT is of the view that prescription of non-certified goods can be of assistance in gaining market entry in specific cases. The National Meat Association, on the other hand, sees no rationale for eliminating the current exemption process.

4.6 Commodities Regulated by Orders under the Act

Stakeholders held reasonably consistent views of significant benefits of being regulated under the Act. These included:

- safeguards for industry against problems,
- ease of access to markets,
- confidence overseas in Australian foods,
- importance in commerce,
- meeting of international obligations,
- damage control should problems arise, and
- maintenance of the quality of exported food.

However, stakeholders saw that these benefits imposed significant costs associated with:

- hardship in meeting prescriptive legislation,
- duplication of processes,
- documentation,
- compliance audits,
- fees and charges,
- costs of compliance,
- additional hidden costs,
- opportunity costs due to costs of compliance,
- time delays caused to exports through process, and

- disincentive for industry to innovate.

The Australian Chamber of Commerce and Industry, in their submission, suggested that 'A better informed and compliance-ready trading community would greatly ease the demands placed upon inspectors'. It also targeted cross-subsidisation of establishments.

Stakeholders also saw the need to demonstrate accountability in AQIS.

The South Australian Government identified some important cost issues:

Strategies that reduce costs and/or improve inspection efficiency need to be continually applied. There needs to be transparency in the setting of inspection fees.

For the Meat Industry, which is highly regulated under the Act, the costs to industry are high, much higher than our competitors in NZ and USA. With horticultural products, AQIS inspection fees often represent 3-6% of export documentation and administrative costs. Inspection fees are often a more pressing problem where:

- the commodity is facing strong competition in the market place and has a small profit margin
- packing facilities are remote from inspection services and incur high travel costs
- competing countries subsidise their inspection fees
- inconsistency of charging for like services occurs between regions.

[South Australian Government]

4.7 Standards

There was a strong message from a number of stakeholders on the desirability of harmonising domestic and export standards, and promoting Australian standards as a suitable basis for export. Significantly, the current 'two-tiered' domestic and export standard was criticised as expensive and as sending out messages that Australian companies manufacture to a lower standard for domestic markets. To take a typical response:

Under domestic regulations, when the proposed National Food Safety Standards are implemented a food business in Australia must be:

- registered;
- have an approved HACCP based food safety plan in place;
- undergo systems audits to ensure the food safety plan is achieving its objective that is the hygienic production of safe food;
- ensure the products it produces conform with the relevant food product codes eg general standards such as labelling, additives and, microbiological requirements and product specific standards.

The *Export Control Act* should recognise these domestic requirements and not duplicate them. The aim of the *Export Control Act* should be to allow the responsible agency (AQIS) to certify to the extent required by foreign governments and our export customers that exports are fit for the purpose to which they will be put (eg human consumption, animal consumption, other applications). Where necessary, the agency may also agree to certify other qualities to the extent required by foreign governments and our export customers if there is a reasonable basis for doing so.

Where the certification concerns fitness for human consumption on an export market, compliance by the processor with the National Food Safety Standard should be sufficient. [*Australian Dairy Products Federation*]

Access to export markets is not currently available to much Australian red meat which is prepared in accordance with Australian Standards. [*Victorian Quality Assured Meats*]

It needs to be recognised that within the framework of ANZFA and current legislation, Australia's domestic food standards are well positioned to replace many of the areas contained in the current *Export Control Act*. [*WA Food and Beverage Exporters Association*]

Feedback from exporters indicates that regulatory arrangements can be made more efficient through further harmonising (of) domestic standards between the Commonwealth and the States. [*Pork Council of Australia*]

4.8 Regulation and its Administration

The Review expected many comments about the length, structure and complexity of the legislation, but this was not the case. There were few comments in this category, although there were more on the subject of over-prescriptiveness.

The requirement to meet detailed legislation imposes unreasonable limits on innovation in the industry as very prescriptive legislation can be prohibitive to prospective opportunity for trade. The costs involved in meeting such legislation may have no benefit other than to satisfy the legislation. An example of this can be seen where the prescription calls for levels of compliance above those required to meet base international standards of acceptance by a specific market and, as a result of this, a new market opportunity may be lost. [*Queensland Department of Primary Industries*]

Prescriptive criteria specified by export orders also excludes exporters who can meet importing nation requirements but not the prescribed criteria. [*Victorian Government*]

Current regulatory arrangements restrict active competition in, and competitiveness of, the Australian meat industry both directly and indirectly, via . . . prescriptive detail in the export regulations, and to a lesser degree the Australian Standard, which tell meat industry businesses 'how' to conduct their operation, rather than 'what' product and conduct standards they are expected to achieve, so limiting commercial innovation, initiative and decision making. [*Victorian Quality Assured Meats*]

On the other hand:

Legislation by definition must be prescriptive; without this, national goals and interests would not be reached. [*Southern Game Meats*]

Most stakeholders thought the benefits outweighed the costs, although most thought that the situation could be improved. According to the Australian Meat Council, benefits strongly outweighed costs, a cost-benefit analysis being required before any further changes to the Act.

DFAT and other stakeholders (see Sections 4.1 and 4.3) advocated reduction of compliance costs where possible and indicated that electronic trading/certification initiatives were worth considering.

Substitution of Government-provided services with third party (contestable) performance of some audit/certification functions is an obvious proposition to satisfy competition issues and may contribute to cost reduction, yet comments were far from positive on this issue. Stakeholders had two principal concerns - not to compromise Australia's reputation and to contain costs.

While positive about the benefits of regulation, stakeholders voiced concern about some of its administration. Comments were made on delays, cost issues and the 'double layer' of legislation and processing control. There were comments on the relatively high cost of AQIS inspection, but these were not common. There were tangential comments about AQIS's effectiveness (most stakeholders are of the opinion that some good comes out of the activity) but little direct comment.

Among positive suggestions was the creation of a database of mandatory and non-mandatory import requirements and the development of a database on microbiological testing.

The Grains Council was convinced of efficiency and effectiveness:

The GCA believes that the present arrangements for the control of Australian grain exports, as outlined in the *Export Control Act*, provide for the most efficient structure for control of prescribed exports. AQIS has the necessary expertise and experience to enable it to provide an efficient export testing service with regard to grain and to thereby help Australian grain marketers to operate effectively in international markets. The GCA believes that these efficiency considerations mean that the export control function has natural monopoly characteristics and is thus best handled by a body operating on a national basis which can reap the benefits of economies of scale and scope.

It can also be argued that the present export control arrangements provide for the operation of an efficient and cost effective service. If the present arrangements were not in place there would still be a need for Australian grain marketers to provide some form of certification of their product in order to ensure that they could compete effectively internationally on quality and reputation grounds. It would be likely that, without the existence of the present arrangements, the provision of such certification would be significantly more costly for the Australian grain marketers.

The GCA concludes its view that there are very significant public benefits that stem from the present export control arrangements that are outlined in the *Export Control Act*. The GCA firmly believes that these benefits act to outweigh any anticompetitive detriment that may arise out of the legislation. As a consequence, the GCA would like to take the opportunity to advocate to the Review Committee that any changes to the *Export Control Act* that may be recommended by the Committee need to ensure that the benefits that arise from the present arrangements, both to the Australian community generally and to the grains industry in particular, are not lost. [*Grains Council of Australia*]

At a more specific level, there have been criticisms:

Exporters expressed concern that AQIS is not flexible enough in processing requests for meat inspection on weekends. Potential customers from Singapore, Hong Kong and Japan have apparently had difficulty in obtaining meat products from Australia during weekends. AQIS's requirement for two full working days' notice to process weekend inspections results in potential export orders being lost. PCA recommends that AQIS be more flexible in its inspection policy, especially as industry bears the full cost. A more flexible approach by AQIS will boost Australia's export competitiveness. [*Pork Council of Australia*]

4.9 Importing Country Requirements

A very detailed submission was received from the Department of Foreign Affairs and Trade which outlined what importing countries valued about the Australian export certification system. The main points were as follows:

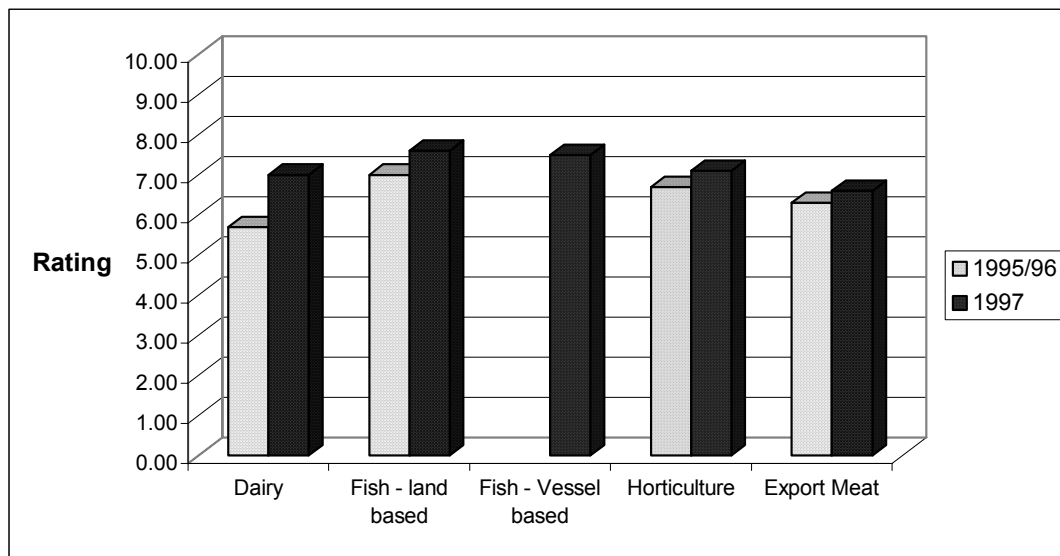
- There is strong support for government involvement in export certification.
- Importing countries have greater confidence with government inspection.
- Confidence in Australian products would decline if government involvement were withdrawn.
- Many countries accept government assurance without being familiar with the internal operation of our system.
- Some governments are receptive to detailed logical argument about changes to export inspection or certification—other governments are not receptive.
- There are links between ease of establishing market access and government based certification.
- The time taken to restore confidence in an Australian product when problems arise is shorter with government involvement in inspection/certification than without.
- Food safety is a priority universally, with many countries less concerned about issues such as labelling and product quality.
- Attention needs to be given to directing resources to resolving market penetration issues, which will give the best market return.

DFAT believes that there is scope for reforming Australia's inspection and certification regime with the possibility of using non-government inspectors. However, with the strong desire for the continuation of government involvement, there are many hurdles to overcome. Discussions should be avoided if they are potentially damaging commercially.

4.10 Stakeholder Feedback obtained by AQIS

AQIS has set up a client feedback process which encourages clients to report back on its service performance, particularly where client expectations have not been met. The client feedback information is acted on by the managers of the various AQIS export programs with an undertaking to give a prompt response. This is included in the AQIS service charter for each of the export programs. The following table shows some recent results.

Figure 4.1: AQIS Client Satisfaction



This chart, drawn from information in the regular surveys, shows the relative satisfaction for the various programs from 0 (poor) to 10 (excellent).

4.11 Committee's Assessment of Key Points

The Export Control Act in Principle

- *Stakeholders view the Export Control Act as essential to the bulk of Australia's food and agricultural products export trade. Consumer protection, health and hygiene, animal welfare and common product descriptions were all stated by stakeholders as reasons why the Act is needed.*
- *Arrangements under the Act, in particular AQIS certification, are held in high regard by Australia's major trading partners and supported by the majority of Australia's food and agricultural product industries.*

Objectives and Coverage

- *Virtually all representations supported the need for a clear statement of objectives in the legislation to cover facilitation of trade, access to markets, compliance with food, plant and animal health requirements set by foreign governments and protection of Australia's trading reputation.*
- *There was support for the Act to be based on Australian requirements, which are promoted to overseas governments as the export standard.*
- *Stakeholders were generally of the opinion that specific products or groups of products should only be prescribed when there is a need for certification to gain access to export markets, either when specifically sought by industry or in the event of market failure.*
- *Responses from industries not already subject to the Act argued such status should be retained. However a number of submissions sought all food products to be subject to the requirements of the Act.*
- *Trade specification and product description requirements are viewed as commercial and could be excluded from the Act. However some submissions argued for inclusion of descriptions if the trade is new, if description is a requirement of importing countries, or, if the actions of individual participants could threaten the trade for all exporters.*

Discharge of responsibilities under the Act

- *There was a majority view that the Act is overly prescriptive and that the degree of regulatory scrutiny is not risk related. Inhibitions to innovation increased with the degree of prescriptiveness within the administration of export 'rules'.*
- *HACCP based QA and risk/performance based monitoring and auditing are the preferred means for achieving compliance.*
- *The existing Act imposes burdens on food and agricultural export industries in the areas of administration costs, inspection arrangements and registration of premises. Such burdens are a concern under National Competition Policy (NCP) principles.*

Co-regulation and contestability

- *The concept of reduced responsibilities for governments and increased roles for the exporter (co-regulation) has strong support. However there was not a common view on the exact roles for government and industry.*
- *The limited scope for contestability of services and the involvement of AQIS in all activities under the Act — establishment of certification assurance programs, supervision of implementation (inspection) and final certification - is potentially at odds with NCP principles.*

Administration of the Act

- *Perceptions are strongly held within industries about AQIS programs which administer the Act. Particular criticisms were:*
 - *inconsistency of application within the same program across regions within Australia,*
 - *inconsistency of application of 'rules' by approved third party providers, and*
 - *overlaps between programs especially in dairy and processed foods.*
- *Users are especially critical of the cost of registration of premises and requirements for first time exporters.*

Prospects for the future (technology)

- *There is strong support for advancing the rate of introduction of electronic based certification. Concern was expressed, however, about the costs associated with such introduction especially on small exporters.*

5. ECONOMIC AND COMPETITION ANALYSIS

5.1 Introduction

As part of the NCP process, the Committee is required to assess the legislation and its administration against Section 5 of the Competition Principles Agreement. Section 5 (9) (c – e) is particularly relevant, stating:

Without limiting the terms of reference, a review should: . . .

- (c) analyse the likely effect of the restriction on competition and on the economy generally;
- (d) assess and balance the costs and benefits of the restriction; and
- (e) consider alternative means for achieving the same result including non-legislative approaches.

The economic justification for government intervention to control exports under the *Export Control Act* rests upon the presumption that the net economic benefits to the Australian economy would be lower without the Act than with the Act.

Under the Act, export of food products from Australia is conditional on 'acceptance of' and 'compliance with' the requirements of importing countries. Therefore it can be argued that the economic value of the Act is the value of the market access and flow-on benefits that it facilitates. Because access would be denied to certain markets in the absence of the Act, export volumes of certified product would be considerably lower than the present level of \$13 billion.

Against this background, the chapter examines:

- the case for regulation of food products,
- costs and benefits of the Act, and
- the effect of the Act on competition.

Costs and benefits are considered in Section 5.3 and in the consultancy report prepared by the Australian Bureau of Agricultural and Resource Economics (ABARE). The Committee decided that the most appropriate method was to conduct a broad-based theoretical analysis of economic and competition issues, supported by:

- commodity-based assessments through an indicative study of the cost of compliance, and
- modelling by ABARE of the likely effects of loss of access to selected markets for two commodities.

This was judged as the most effective way of tackling the task given its sheer size and complexity, reflecting the number of commodities to be covered and the inter-relationships between products and markets. The consistency of the stakeholders' support for the Act in general and the Committee's analysis in particular have confirmed adoption of this approach.

Restrictions on competition, (c) quoted in the opening paragraph above, are considered at 5.4 in terms of the pivotal issues of administrative costs, registration, fees and charges, exemptions and cross subsidisation. The issue of alternative means of achieving the same result, (e) also quoted above, is discussed at 6.3.1.

5.2 The Case for Regulation of Food and Agricultural Product Industries

Food exports make an important contribution to Australia's international trade position. In 1998-99 they totalled \$16 billion and accounted for just under 20 per cent of all goods exports. Disruption of these exports would have a significant impact on the performance of the Australian economy, and particularly on the rural and food sectors, and individual producers. The Australian government has a policy of facilitating access to food export markets.

5.2.1 The Need for Government Intervention

The Act facilitates exports by providing a mechanism for inspecting and certifying food products, and ensuring that they are safe and wholesome. The Industries Assistance Commission (1989) identified four main reasons for government regulation of food processed for export, namely:

- to meet requirements imposed by or negotiated with foreign governments,
- to meet obligations under various international conventions to which Australia is a signatory, such as SPS, WTO and TBT,
- to meet a moral obligation not to export dangerous or unhealthy food, eg the Code of Ethics on International Trade in Food, and
- to enhance an industry's prospects in export markets.

The first three reasons effectively impose a requirement on Australia to put in place legally enforceable mechanisms to control food exports, ensuring compliance with the requirements of foreign countries and with international obligations. Most governments make it a condition of entry into their markets that imported foods meet certain standards. Some require foods to be inspected and certified by a government agency in the exporting country. In these circumstances Australia must comply with the foreign country requirements.

The fourth reason is based on an assessment by industry and government of the potential impact of safety failure incidents caused by individual exporters. Where the risk of market loss to the industry is estimated to be large compared with the cost of regulation, there are sound economic reasons for regulating exports.

5.2.2 Characteristics of Food and Agricultural Products

Food safety is the most important public policy issue facing the food industry and an issue of considerable concern for government. Food safety failures

can have high economic and human cost, with spillover effects that can be felt by all producers. An intrinsic characteristic of food is that many attributes, especially those that can be harmful to human health, such as bacterial or chemical contamination, cannot be detected easily by the consumer before purchase and consumption.

These characteristics of food create a need for government regulation to determine food safety for the consumer. Governments intervene in the food industry by setting and enforcing minimum food health and safety standards.

Food safety concerns apply equally to foods that are produced locally or are imported. Governments monitor and control the quality of imported foodstuffs to ensure that they meet at least the standards required of domestic foods. To this end, importing countries often negotiate to reach agreement on minimum standards to be imposed and policed by the government of the exporting country.

5.2.3 'Generic' and 'Branded' Products

Consumers often perceive agricultural or food products (such as meat or grains) as generic, particularly with their frequent use as inputs for further processing. Without brand names, it is difficult for users to differentiate products produced by individual firms, and buyers tend to rely on country of origin as an indicator of food safety and quality. Hence if a safety incident occurs, the repercussions are likely to spread beyond the offending producer and affect all other suppliers from that country.

Spillover effects can be mitigated by the creation of a strong brand name for a product, to help insulate it from adverse effects caused by safety failures involving competing products. Firms that invest in the establishment of a brand name, through advertising, labelling and packaging, have an incentive to protect the reputation of their brand. Therefore, these companies are likely to set up systems to monitor quality assurance processes, both of their own products and of the inputs they use.

However, the nature of food products is such, that the risk of spillover effects may not be completely removable through use of a brand name. This point was made by the Australian Food and Grocery Council who stated to this Review:

Branded manufactured food products carry with them an overt and high value seal of quality and safety—namely, the brand name. Nevertheless, despite the strength of brands, negative spillovers can occur even for branded products in the event of product failures related to safety—particularly when food poisonings actually occur—and quality. Export markets are critically dependent upon customer confidence in Australia's regulatory system which will be undermined in the event of product integrity being questioned.

The AFGC considers, therefore, that the Export Control Act is a fundamental and indispensable framework under which all exporting food businesses should operate.

5.3 The Costs and Benefits of the *Export Control Act*

Calculating the costs and benefits of legislation is an important step in assessing whether the Act is of net public benefit. The Committee considered that, given the highly complex nature of the area, a selective commodity-based approach was the most appropriate form of analysis. This was reinforced by strong industry support for the retention of the Act, as expressed in submissions, and the clear industry benefit of the Act. Industry benefit arises from increased market access and the avoidance of severe consequences that would arise from losing export markets. Such losses could result from systemic food safety failures and/or non compliance with importing country requirements.

Once the relationship of the benefits and costs has been established, it is important to determine whether the form and substance of the regulations imposed to ensure compliance with the Act are the most cost efficient and equitable from the industry and community perspective.

5.3.1 Benefits

Market Access

The benefits of the export controls prescribed under the Act lie in their ability to underpin continued market access for Australian products. An approximate measure of the magnitude of these benefits can be obtained by looking at the value of Australian food exports. Although the benefit of the Act does not necessarily equate with the total value of prescribed food exports, the Act plays a crucial role in protecting and facilitating access of Australian food products to overseas markets. So a clear association can be drawn between government certification and the value of exports. This association was recognised by the Queensland Department of Primary Industries which in its submission to the Review stated:

... the value of Queensland rural exports is approximately \$5459 million. The ability to export the volume and value of Queensland agricultural produce is significantly increased by the Act ensuring international obligations are achieved.

Sudden withdrawal of certification could lead to losses to the Australian economy running into billions of dollars. Indeed, in cases where overseas governments require certification by the Australian government as a condition of allowing food products into their country, the Act effectively makes exports to those countries possible.

International trade in food or agricultural products rarely occurs in the context of a truly free market environment. Australian goods often compete in markets that are protected or controlled through quotas, tariffs or some other trade limiting arrangements. Issues of food safety or standards are often linked to an importing country's broader trading policy, and a food safety failure in these markets could have much more severe ramifications than if the product was not the subject of such protection. Under these circumstances, government certification is crucial not only in providing market access but also in safeguarding that access.

The importance of the Act to the export food sector can be better appreciated by considering the possible impact of a loss of market that could result either from failure to enforce mandatory import requirements or from a food safety failure causing a food-borne illness in an importing country. To illustrate the possible impact of a loss of confidence in Australian product, the Review Committee commissioned a consultancy from ABARE to quantify the effect of loss of a key market for two export industries in terms of lost value of production (see page 64).

Australia's reputation for exporting safe and wholesome products

Besides securing market access and minimising spillover risks, the Act has helped in the development of Australia's excellent reputation for exporting safe and wholesome food and agricultural products. This is especially true for the exporters of bulk products who have been able to use Australia's good reputation in the absence of a brand name. The Act has materially assisted this by providing an export inspection service that generates confidence in the safety and integrity of Australian food.

In its response to the draft report the Australian Food and Grocery Council made the following comment:

It is quite simply untenable that Australia should market food products globally that are unsafe. This is not only contrary to our moral obligations but in the longer term would undermine the reputation of Australian food products, damaging Australia's reputation as a provider of safe products, thus threatening the commercial operations and viability of Australian food industries competing in global markets.

The AQIS 'brand'

Establishing a brand name or building up a reputation for safety in a foreign market can prove expensive for an individual company, often prohibitive for small companies. However, with mandatory government certification, individual exporters do not necessarily have to provide separate signals, through identifiable brand names, about the safety of the food exported. These signals are provided by AQIS through its inspection and certification service. Hence, the Act could be considered as a cost-efficient method of signalling the safety of Australian products and can obviate the need to establish a widely recognised reputation or brand name. In this sense, AQIS approval can be considered a type of brand, a symbol of the safety of the product.

Taking the example of the grain sector, while inspection may represent a small proportion of total costs, the confidence afforded in the safety and quality of Australian grain can have a significant effect on prices received. In their submissions to this review, the Grains Council of Australia (GCA) and the Australian Wheat Board (AWB) made this point quite strongly. The AWB's submission stated that:

The impact of the Act on the competitiveness of Australian agricultural exports should be viewed in light of the central role the Act has played in allowing Australia to develop a grain export industry with an extremely strong international reputation. The high quality of Australian wheat, which in part, is a consequence of the current system of export quality control, has been instrumental

in improving Australia's competitiveness in the distorted international grains market.

Economy wide benefits from higher exports

There are a number of important links between the direct benefits of the Act and broader flow-on effects. These benefits include balance of payment, economic growth, and employment considerations.

By facilitating exports, the Act assists the food sector to make a positive contribution to the balance of payments. This has a broad positive impact on the Australian economy. A higher level of exports raises Australia's consumption and investment possibilities by allowing greater access to other countries' production through imports.

Given the mature state of the domestic Australian food market, expansion of the agricultural and food sectors is increasingly dependent on growth of exports. Facilitating export and protecting market access not only delivers an immediate benefit in terms of export sales, but also contributes to the growth of the sector and so fosters economic activity and growth in employment. Furthermore, the *Export Control Act* reduces the risk of a food safety breakdown and resultant spillover effects. It thus acts to protect regional incomes and employment. These employment effects are all the more valuable as they occur in regional areas where the ability to generate employment is seen as critical by State and Commonwealth governments. Approximately 88 per cent of persons engaged in agricultural production are in non-metropolitan areas.

In 1998, approximately 600,000 Australians were employed in the agricultural and food manufacturing sectors combined. This represents 7 per cent of the employed workforce. The agricultural sector alone is responsible for over 380,000 jobs in regional Australia, accounting for 12 per cent of all regional employment. These figures do not take into account employment effects of ancillary regional industries, such as transport and manufacturing, which support and rely on agriculture for continued survival and growth.

Quantification of the above flow-on effects is difficult and is beyond the scope of the review, but these are quite significant especially in view of their regional implications.

An example of the flow on effects of the Act is provided by the ABARE consultancy. An important finding of the study is that the negative impact of the loss of a vital market can be greater than the value of exports to that market. This reflects the disruption of production and the fall in price that follow the loss of a market. In the case of beef exports to the US, loss of that market causes the gross domestic value of beef production to fall by \$1.1 billion, although the value of exports is approximately \$735 million. The adverse effects are also felt in related industries such the sheep industry which is estimated to suffer a decrease in gross value of production of some \$50 million as a result of lower lamb prices.

Loss of Market Study of Potential Consequences

The analysis performed by ABARE was intended to assess the loss in gross revenue to the beef and dairy industries that may occur from a disruption to a major export market for each commodity caused by a major product failure, using the hypothesis that changes to the current *Export Control Act* may lead to such a scenario. The revenue losses are estimated only for the marketing year in which the disruption occurs.

The analysis was conducted with the aid of the OECD's AGLINK model. The AGLINK model is a dynamic economic model of the world's major temperate zone agricultural commodity markets which, for obvious reasons, includes agricultural commodities of most importance to the member countries of the OECD. AGLINK encompasses demand, supply, trade and price determination on an annual basis for as many as 27 commodities for each of 22 countries or regions.

For the beef industry the reference point chosen was calendar year 1999 while for dairy the reference year was 1998-9. In the baseline it is estimated that Australia's beef exports to the US will reach 405 kt dressed weight and account for nearly 32 per cent of total export shipments. For dairy, it is projected that Japan will account for nearly 46 per cent of total cheese exports and around 7 per cent of Australia's skim milk powder exports.

As a consequence of the closure of the US beef market, it is estimated that the gross value of production in the beef industry could fall by around **\$1.1 billion**. The main reason for this fall is the lower price that beef producers receive for grass fed cattle, the type of beef exported to the US.

The loss of the US market and subsequent fall in the beef price also leads to the diversion of some beef to both the domestic market and to the other export destinations. Domestic consumption increases by around 100 kt in response to the lower beef price. Lower beef prices also result in a rise in beef shipments to other markets so that total exports are estimated to fall by around 240 kt even though the loss in beef exports to the US market exceeds 400 kt.

This impact on the beef industry also influences other industries, with increased competition from lower beef prices reducing the demand for lamb, therefore, the saleyard price of lamb falls. As a result the gross value of sheep industry output falls by \$50 million with lower lamb prices more than outweighing the effect of larger production (the sheep flock is estimated to expand by more than 500 000 head as producers move resources into what are now relatively more profitable enterprises).

As a consequence of the closures of the Japanese dairy markets, it is estimated that the gross value of production in the dairy industry could fall by around **\$400 million**. The most significant factor determining this is the lower price. This impact would be particularly significant in the cheese and skim milk powder markets where relatively high returns are currently being received.

With lower prices, domestic consumption rises and some product lost to the Japanese market is diverted to other export markets. As a result, cheese exports in total are projected to fall by around 50 kt, despite the loss of the 77 kt Japanese market. Even though cheese is diverted to other markets, returns to the dairy industry from cheese production are estimated to fall significantly.

A detailed analysis and tabulated results can be found in Attachment 5 'Market Loss Analysis'.

ABARE 1999

5.3.2 Costs

AQIS's export inspection program operates on a cost recovered basis. All inspection, documentation and registration costs are recovered from industry. However, there is a component of the program that comes under the definition of community service obligation or for which cost attribution is not appropriate and is funded by the Commonwealth. This includes overseas representation on behalf of Australian exporters regarding market access issues, policy and legislative development, and compliance activity relating to investigation and subsequent action taken to deal with breaches of the *Export Control Act*. In 1998-99 the cost to government of these activities was around \$5.6 million.

Export regulation can impose a significant cost burden on participating industries. These costs are generally confined to the food industry; they affect the profitability of firms engaged in exports and act as a barrier to entry for prospective new exporters. The costs of regulation can be broken down into two categories:

Direct Costs: These are costs directly charged by AQIS to industry for the provision of inspection services. In the case of the Act, these costs include inspection and audit fees, export registration charges and export permit charges. As AQIS is on full cost recovery, the fees and charges levied are based on the cost to AQIS of providing an export inspection service. It is therefore important that AQIS provides this service at as low a cost as possible, without, however, compromising the integrity of the inspection arrangements.

The table below shows the value of certified exports and the fees and charges collected by AQIS in 1998-99 for the most important prescribed commodity groups. These vary across sectors, both in absolute terms and as a percentage of the value of exports. None of the export programs cost industry more than 2 per cent of the value of export, with the majority of programs costing less than 0.5 per cent. At \$53 million, meat charges are by far the largest single revenue item, accounting for 73 per cent of all fees and charges collected under the Export Control Act, and 1.6 per cent of the value of certified meat exports.

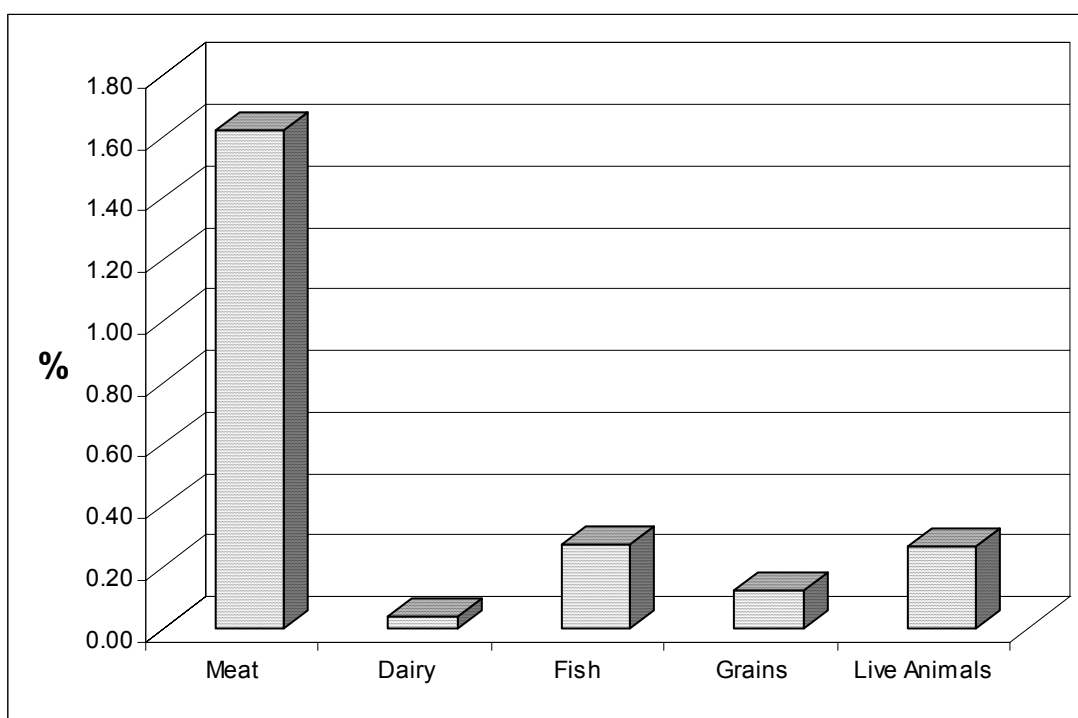
Hence, at an aggregate level AQIS fees and charges impose a small burden on industry relative to the total value of certified exports. This conclusion needs to be qualified in two ways. Firstly, the impact of the charges on individual firms can be more severe than implied by aggregate ratios, and secondly the value of exports is a gross revenue figure; it incorporates a number of costs to exporters, commercial and regulatory, all of which detract from competitiveness.

Table 5.1
Certified exports and AQIS fees and charges: 1998-99

Commodity	Exports \$000	AQIS fees and charges \$000
Meat	3,277,000	52,972
Dairy	2,044,000	809
Fish	1,231,000	3,336
Grains	4,959,000	5,998
Live Animals	556,000	1,482

Source: AQIS

Figure 5.1
Export Assurance Costs (AQIS) 1998-99 as % of Exports



It should be noted that differences in charges between commodity programs do not necessarily reflect relative program efficiency. Rather, they reflect the technical and administrative requirements for obtaining export clearance for specific products, based on a combination of the characteristics of the product in terms of safety risks and of foreign country requirements. For example, meat is a highly perishable product and is more susceptible to microbiological contamination than other food products (eg, cereals, vegetables, and fruit). In addition, some animal diseases can be transmitted to humans, and importing countries require the presence of veterinary officers to carry out post and ante mortem inspections. As a result, the inspection arrangements for meat products are more stringent and more costly than those for other foods.

Within this broad framework, there is scope for improvement and reform to achieve better cost outcomes for industry. In the dairy program, there has been a rationalisation of the inspection function between AQIS and State Dairy Authorities. Whilst there has been some transfer of costs from the Commonwealth to State authorities and industry associated with this rationalisation, genuine cost reductions have also been achieved by eliminating duplication of effort. The graphs below show the total cost reduction achieved over the last seven years as a result of the reforms in the dairy inspection program. This has been achieved against a background of rapidly rising export volumes.

Figure 5.2
Dairy: Export Assurance Costs

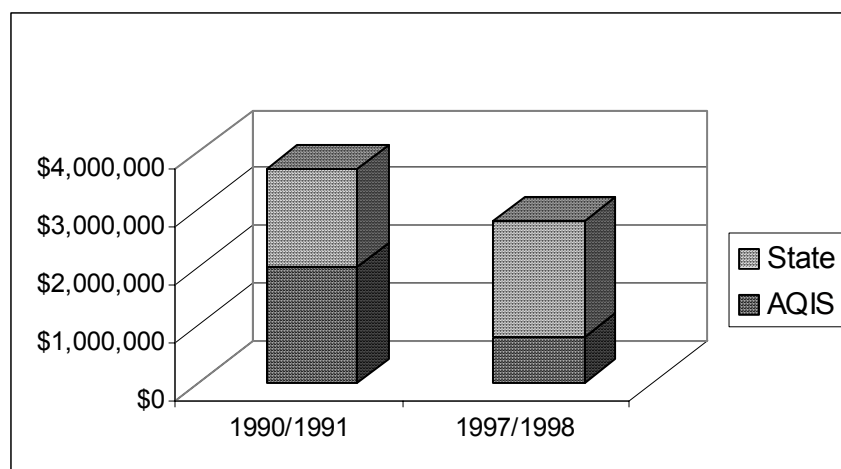
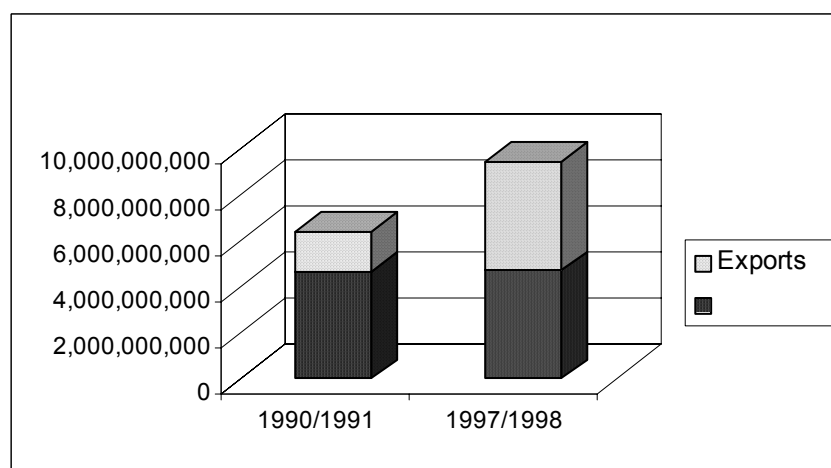


Figure 5.3
Dairy: Production (litres)



Source: ADPF (both)

Indirect Costs: These are costs incurred by firms in order to comply with provisions of the Act. They arise from a change in regular business practice needed to comply with a particular legislation. In the case of the *Export Control Act*, these include administrative expenses to deal with the legislation

and operational expenses incurred to meet standards (construction and/or production processes) required by AQIS or an importing country.

Indirect costs are difficult to quantify but can be just as significant as, if not more significant than, direct costs. An indication of the magnitude of indirect costs of food regulation can be obtained by using the results of a study commissioned by the Department of Workplace Relations and Small Business in 1998 (*Overcooked: A study of food compliance costs for small business*). The study based on a survey of small to medium size firms, estimated the indirect costs of food regulation (administrative and capital expenses) for food export businesses to be around 60 per cent of the total food regulatory burden. Given that fees and charges are \$73 million, the total indirect costs of export regulation are estimated to be approximately \$110 million. This estimate must be viewed with great caution as the study looked at all costs of food regulation and not just export costs, and the results are qualified by a relatively small sample size. Nevertheless, it should serve to put in context the indirect costs of regulation compared to the benefits.

It is important that cost imposts, both direct and indirect, are kept to a minimum and that the Act is sufficiently flexible to allow compliance with overseas requirements at the lowest possible cost to industry. The move from end point inspection to a quality assurance system is part of a strategy to provide companies with greater choice and cost effective alternatives for complying with the requirements of the Act. It is also accompanied by moves to adopt third party auditing of such systems, with AQIS retaining an overall supervisory role.

5.3.3 Conclusion

In 1998-99 the ECA facilitated \$13 billion worth of exports. Although food exports would still occur in the absence of the Act, withdrawal of export controls would, most likely, lead to market losses in the order of billions of dollars. As the ABARE study indicated, the losses (when flow-on effects are considered)—in terms of price and production effects—can be even higher than the value of the market lost. Any downturn of such a magnitude will have obvious effects on employment, and these are likely to be felt particularly keenly in regional Australia.

Fees and charges collected under the ECA in 1998-99 amounted to \$73 million, representing 0.56% of the value of certified exports. Indirect costs could not be calculated with any precision. However, a rough *guesstimate* is that these could be in the order of \$110 million.

On this basis the Committee concluded that the Act confers a significant positive net benefit to industry.

5.4 Competition Issues

The competition principles under the Competition Principles Agreement (CPA) seek to promote efficiency and economic growth through maintenance of an environment conducive to competition. Under the agreement, a restriction on competition can only be justified if it creates a net public benefit. Section 1(3) of the CPA sets out circumstances in which an assessment is required in order to ensure that regulation does indeed confer a net public benefit.

The Review has identified two varieties of competition: competition among firms in Australia seeking export markets; and competition of Australian produce, as a whole, in export markets. Examples of the different effects are: the potential damage caused by fee structures that are generally too high (competition of Australian industry as a whole); and the existence of up-front costs which discourage new entrants or smaller companies (mainly competition within industry). Some stakeholders have tried to link one with the other—that is, domestic restrictions making for more effective competition overseas—but the causal link does not necessarily follow, and this aspect should be examined on a case-by-case basis.

Whilst the Act does not set out to restrict competition directly by limiting the number of firms that can export prescribed goods, it may do so as a result of:

- administrative costs incurred to comply with export regulation,
- the need to obtain export registration in order to export prescribed goods, and
- the imposition of fees and charges.

In highly competitive markets, the additional costs (those imposed by legislation) will exclude marginal suppliers. The more competitive the markets the less the opportunity to pass on extra costs. Regulatory costs that impact more heavily on smaller or new operators can limit their capacity to enter the export sector and so provide some form of protection to established operators.

Provisions involving the requirement for the registration of export premises reflect both of the following:

- a desire by Australian authorities to safeguard the integrity of the food export sector from unscrupulous or incompetent exporters, and
- mandatory requirements by some importing countries, for a register of exporters who are permitted to export to their markets.

By helping maintain the reputation that Australian food products enjoy overseas, the Act allows Australian companies to trade on that reputation and so helps enhance market access opportunities for Australian producers in foreign markets. This can be of particular benefit to smaller exporters who, as a result, may not have to invest heavily in building a product specific reputation.

The Act can also generate some distortions through cross subsidisation and the operation of 'exemption' arrangements. This section looks at aspects of the Act that can affect the level and the nature of competition through their impact on industry costs.

5.4.1 Higher Administrative Costs to Comply with Export Regulation

In complying with the provisions of the Export Control Act, exporters incur administrative costs relating to the inspection and clearance of export consignments. For example, under Section 6 of the Act, notification of intention to export must be given to the Secretary of AFFA or their delegate, and arrangements for the inspection of consignments must be made by anyone who is intending to export prescribed goods. The process involved in obtaining export clearance takes up company resources and so imposes a number of administrative costs on businesses.

Arranging for inspections and the flow of documentation can be problematic for exporting companies in regional or remote areas which are not serviced by a local AQIS office. Discussions with a number of exporters in non-metropolitan areas have confirmed that lack of quick access to AQIS offices is causing logistical problems in arranging for inspections and transmitting documents. This can often result in additional costs or delays in shipping the product.

The expansion of EXDOC to cover all export programs is seen as an important measure that will reduce the administrative burden on all exporters and especially those in non-metropolitan areas. EXDOC, by being linked to the Customs export clearance system, further benefits exporters as they only have to input export data once to satisfy the requirements of AQIS and Customs. Proposed further developments with E-Commerce are expected to lead to further reduction in the administrative burden of regulation.

Export regulation clearly imposes administrative compliance costs on industry. However, the Committee did not find that these costs are excessive. Nor did it find that the costs act as a barrier to entry or that they restrict competition to any significant extent. These costs are of incremental significance and are treated by companies as part of the normal cost of conducting business.

5.4.2 The Registration of Premises as a Barrier to New Entrants

Regulations made under the Act require the registration of premises involved in the production of prescribed goods for export. Export registration has a twofold objective:

- to ensure that premises are up to standard to meet export specifications, and
- to give effect to the fit and proper person provisions of the Act.

Generally, exports of prescribed goods are only permitted from export registered premises. Export registration is conditional upon fulfilment of certain construction and production standards specified in the Act, and these are often different from the Australian domestic standards. This restricts

competition in the export sector by limiting access to overseas markets to establishments that are assessed as complying to the required standards.

Expenses associated with the construction and upkeep of export premises raise costs of production and inhibit the entry of smaller players—particularly establishments that supply the domestic market and are considering expanding operations to export. The Committee found that detailed information to quantify the additional costs of such requirements was not available. However, evidence collected from industry suggests that the fixed cost component forms a substantial part of the total package. This means that the imposts are relatively heavier on smaller companies or companies exporting only a proportion of their production. This adds to the disincentive for smaller establishments to enter the export sector. Some of the extra costs identified include: construction of approved premises, maintenance of premises, adoption of quality assurance systems, inventory controls, product traceability and segregation.

Where the standards specified in the Act stem from conditions imposed on Australia by an importing country and are different from domestic standards, such restrictions are justified in terms of access to these markets. In such cases the restrictions imposed by the Act cannot be said to be anti-competitive in nature.

However, some stakeholders (particularly in meat) contend that the standards demanded by the Act are, in many cases, unnecessarily different from Australian domestic standards thus excluding domestic market producers from obtaining registration. The application of standards that are different or more onerous than needed to access a foreign market have a twofold negative impact on the Australian economy:

- They result in Australian exports being less competitive than they need be in markets that do not require such standards.
- They unnecessarily restrict the degree of competition by preventing—through higher production costs, potential exporters from entering the export sector.

For example, the standards required by the Export Meat Orders (EMOs) are largely those needed for access to the United States market. Where the US standard is over and above what is required by other countries, to have that standard as a benchmark for granting export registration makes Australian meat products less price competitive in these other markets.

Allowing exports from domestic (non export registered) abattoirs under the exemptions provisions of the Act, represents an endeavour by the Government to deal with the issue of export standards that are too stringent for certain exports. Exemptions are discussed later in this chapter, at 5.4.4.

The fit and proper person provisions were introduced in the aftermath of the meat substitution scandal of the early 1980s. Although this measure can be seen as restrictive of competition in terms of keeping certain persons out of the industry, it reflects a concern to protect the reputation of the Australian export sector from rogue or criminal elements in the industry. Countries like the United States place considerable importance on 'fit and proper' checks on business integrity in their reviews of the export meat program.

The Committee found that export registration can be restrictive of competition where the export standard required to obtain registration is more stringent than is necessary to obtain access to a particular market. The uniform standards imposed by the EMOs are an example of a potential restriction on competition imposed by the Act.

5.4.3 Fees and Charges add to Production Costs

Except for a small component that relates to policy, legislative development and compliance and which is funded directly by the Commonwealth, AQIS's export inspection program operates on full cost recovery. Under Section 25 of the Act, power is given to set regulations for imposing fees for inspection by authorised officers.

Since the early 1990s, there has been a gradual adoption of full cost recovery. Alongside this, AQIS has taken significant steps to raise the efficiency of its operations and so to cushion the impact of the higher cost recovery levels. AQIS field staff numbers in export inspection fell from 2,054 in 1990 to 821 in 1998. These staff reductions were reflected in lower fees and charges. In the period between 1993-94 and 1996-97 fees for most export inspection programs have been reduced. These efficiencies have often been accompanied by measures to encourage the adoption of quality assurance systems, based on HACCP principles.

Yet, for those companies that are trading in highly competitive international markets with narrow profit margins, any addition to production costs can impair their ability to compete with foreign producers. Australian exporters can be further disadvantaged when competing against overseas producers who, while facing similar requirements in terms of government certification, do not always bear the full cost of inspection as this is often subsidised by government.

There is a wide range of views among stakeholders regarding the level of fees and charges and their impact on individual industries and companies. These views range from a perception of fees as fair and reasonable, to seeing them as a significant burden impeding the development of viable export businesses (see Chapter 4). However a number of dairy and meat exporters interviewed during the course of the Review, indicated that the ability of AQIS to deliver an effective and timely inspection service to industry, including good technical support when needed, is the prime concern, ahead of fees and charges.

The level of competition is affected by the structure of fees as much as by the quantum of fees. The table below shows the fee structure for the main AQIS export programs.

Table 5.2
AQIS fees and charges by type (\$ 000) – 1998-99

	Meat	Grains	Horticulture	Fish*	Live Animals	Dairy
Fee for Service	45,809	6,608	2,465	483	733	7
Registration	4,587		17	1,838		420
Documentation	2,572	73	2,006	420	707	380
Other	4	-683	24	594	42	2
Total	52,972	5,998	4,512	3,335	1,482	809

*Fish Other includes \$540 000 export levy. Horticulture includes dried fruit.
 Source: AQIS

Some programs, like the grains and live animal programs, incorporate most of their charges into a fee for service type charge and as a result have low or no registration charges. By contrast, other programs, especially those on quality assurance arrangements, such as fish and dairy, rely quite heavily on registration charges to recoup their costs.

Some stakeholders have stated that registration fees can be an impediment to a more competitive domestic environment, as small and medium size enterprises often find it difficult to pay up front fees for AQIS registration. Generally, flat charges such as registration charges disadvantage smaller producers as they tend not to be directly linked to export or production levels. The Western Australian Government submission contends that for small and medium exporters the initial pre-export AQIS costs are disproportionate to the expected initial returns and thus make it very difficult to develop successful export markets. Consequently, several smaller Western Australian manufacturers have made the decision not to pursue export opportunities. The submission argues for the development of an approval process that transfers the costs from the initial registration stage to the subsequent export stage, while remaining revenue neutral.

The use of both registration charges and fee for service is justified on economic efficiency grounds. In broad terms AQIS has explained that its charging policy is to recover the cost of field operations (inspection) through a fee for service and overhead or infrastructure costs through registration or documentation charges. Within this broad framework, programs develop their own fee structure in consultation with industry. AQIS also seeks to minimise the impact of registration charges on new or smaller exporters, by spreading payment for registration on a quarterly basis and, in some cases, linking registration charges to the size of an operation.

The Committee did not receive strong evidence that the fee structure is inefficient, inequitable or unduly restrictive of competition.

5.4.4 Exemptions

A particular criticism of the Export Control Act from sections of the meat industry is that the EMOs have adopted the stringent US standards as the benchmark for granting export registration to meat processing establishments. This standard is often in excess of the requirement demanded by other countries and can result in the exclusion of some companies from the export sector and also make products less competitive in those markets where less exacting standards apply. This raises competition policy issues, as the EMOs act to exclude establishments that produce safe product for the domestic market from expanding into exports and accessing new markets beyond the US, EU and Japanese markets.

To address this problem, the government has introduced a system whereby AQIS can grant an exemption from normal export requirements where it can confirm that the government of the importing country will accept a product without the generally accepted health certificate.

The exemptions system has a number of implications for the level and nature of competition. On the one hand it encourages more competition by allowing non-export registered establishments which operate in accordance with Australian standards to access export markets without having to fully conform to the requirements set by AQIS in the EMOs. As the costs of supplying these markets are reduced, more product can be exported and new opportunities opened up for a number of Australian companies that were previously prevented from exporting.

On the other hand, the granting of exemptions that allow non-export registered establishments to export without going through the normal clearance process can cause distortions as it enables exempted companies to export prescribed goods without being subject to the rigour of the Act and without incurring the associated costs. Where exemptions are widely used, they can put at a competitive disadvantage registered exporters who face full regulation.

Export registered establishments often invest quite heavily in equipment and in certain processes in order to gain export registration and access to certain markets. An easing of export requirements, whilst conducive to overall lower costs for industry, could leave some of the incumbent exporters with an infrastructure and a cost structure that makes them less competitive in the new environment.

The use of exemptions, while addressing the problem of overly stringent export standards, introduces its own distortions and if used extensively can compromise the integrity of the registration system. The Committee considers that a more efficient and equitable registration system, with no need for exemptions, would emerge through a closer alignment of export and Australian standards, and where possible, a better identification in these standards of importing country requirements. The proposed three tiered model aims to achieve such an outcome.

5.4.5 Prescription and Co-regulation

One of the strengths of the *Export Control Act* is its flexibility in dealing with diverse commodities. However, at the commodity level, the Orders can be highly prescriptive, resulting in too much emphasis being placed on procedures and processes rather than on the achievement of outcomes. Legislation that is overly prescriptive imposes indirect costs on producers by determining a set method for operations which may not be conducive to best practice, and which can be stifling to innovation and change. In addition, the traditional inspection programs tend to produce a focus on attaining minimum standards, so promoting an industry culture focused on merely satisfying the regulator.

In recent years, AQIS has implemented a more outcome based co-regulatory approach to export inspection. This is based on auditable quality assurance arrangements in place of detailed oversight by official inspectors, such as those in the Fish and Dairy Export Programs. A key element in the transition to a more co-regulatory, less prescriptive environment, is the adoption of quality assurance systems that are still capable of meeting the standards required by overseas markets. These systems are based on HACCP and other risk minimisation principles.

Adoption by AQIS and industry of quality assurance systems as an alternative to end point inspection will limit the government's role to that of auditing (or commissioning a third party to audit) these systems to ensure compliance. As such they offer scope for a reduction in AQIS inspection costs, but this does not necessarily mean that there are direct net savings for a company from a shift to a quality assurance environment. Company interviews during the course of the review indicated that food producers in general do not expect to achieve net cost savings through adoption of quality assurance versus end point inspection. If anything, costs tend to rise in the short term during the development, implementation and trialling of quality assurance. Nevertheless, many food exporters support quality assurance because of its effectiveness in securing food safety. A quality assurance system generally confers greater responsibility on industry for meeting food safety objectives. It also promotes a culture of continuous improvement.

In some cases, (eg bulk grains) current end point inspection costs are so low (13.5 cents per tonne) that sections of the industry have stated that from a cost point of view alone there is no incentive to move to a quality assurance type system. However, in considering the cost of inspection, it is important to note that often aggregate figures can disguise significant cost variations within a program. For example, in the Grains Export Program there is a considerable disparity in the costs of providing inspection services for bulk and non-bulk grains. The total cost of the grains program in 1998-99 was around \$6 million and was split approximately 50/50 between bulk and non-bulk grains. This was despite the fact that bulk grain exports accounted for some 92 per cent of all grains exports (24 million tonnes compared to 2 million tonnes of non-bulk grain). It follows that the per tonne charge for the non-bulk grain is considerably higher than \$0.13/tonne, and that the drive for quality assurance is likely to be stronger in the non-bulk grain section of the industry than it is for bulk grain.

From a National Competition policy perspective, export assurance arrangements should allow for maximum flexibility for firms to achieve the desired outcomes at minimum costs. Quality assurance arrangements generally deliver the best outcomes for both industry and government in terms of cost effectiveness and minimum prescription. AQIS has an obligation to encourage uptake of such systems in accordance with government policy. Clearly a move to such arrangements should be undertaken if it can provide the required level of standards at an overall lower cost to industry and where these arrangements are acceptable to importing countries. At the same time, there is a need, at least in the short term, to consider the costs of developing and implementing quality assurance and the capacity of smaller firms to introduce and maintain such systems. This is particularly relevant where AQIS can provide an inspection service that is efficient, effective and low cost.

5.4.6 Cross subsidisation

A number of stakeholders have identified some anomalies in the charging of some export inspection programs reflected in cross subsidisation of establishments within programs. This issue was raised by the Australian Chamber of Commerce, who stated in their submission that:

One notable inconsistency is the cross-subsidisation of establishments. A case in point involves the travelling time of inspectors visiting regional/rural establishments, where the travel costs are not being fully borne by the establishment where the inspection is taking place but transferred, at least in part, to urban-based establishments.

If the actual cost of inspection is charged to all producers (taking into account time taken and travel expenses), then it is possible the establishments in more remote areas would not be viable. Cross subsidisation of this kind raises the level of competition by providing a financial concession to remote localities which may assist them to remain viable and continue to operate, but at a cost to other participants. Whilst cross subsidisation does introduce a distortion, this should be viewed against the broader government objectives in relation to regional development and employment.

In the grain industry there has been a case made for the disaggregation of inspection charges on a State basis to reflect different loading and handling efficiencies at different port terminals. This issue was addressed by the QEAC review of the AQIS Grain Export Program which concluded that:

While there could be a small subsidisation of less efficient ports by aggregating the bulk grain inspection levy across States, inspection costs represent such a small fraction of total costs that there are undoubtedly other factors driving efficiency in these ports. Differential charging would be a cumbersome scheme to administer, with high overheads for industry to pay and few benefits to offer.

The Committee did not find evidence of widespread or significant cross subsidisation within AQIS programs. Nevertheless, as a matter of principle, the Committee considers that the practice of subsidising certain establishments through the charging regime leads to inefficiencies and should be discouraged. Government objectives in terms of regional development

policies are better pursued through more direct and less distortionary assistance measures, such as grants or tax concessions.

5.4.7 Conclusion

The Act imposes costs on industry that restrict competition, particularly for markets that are highly competitive and where the capacity to recoup extra costs through higher prices is limited. To a large extent this is inevitable, given the need to comply with importing country requirements and to secure and safeguard access to overseas markets. As indicated in Section 5.3 the benefits of the Act outweigh the costs, as represented by fees and charges and indirect industry compliance costs. On this basis, export regulation and the resulting restriction on competition are justified.

However, the Committee does not consider that the current arrangements provide the most effective or efficient way of providing export assurance. Despite a shift toward a more co-regulatory export clearance model based on HACCP and quality assurance principles, some commodity specific Orders remain highly prescriptive and rely heavily on end point inspection. For some commodities, the transition to a quality assurance environment is a slow and difficult process that needs the agreement of importing countries. In this regard, efforts should continue to be made to encourage foreign markets to accept co-regulation within Australia as delivering outcomes that are of the standard required by them.

Finally, a key concern, especially in the meat industry, is that the requirements for registration are too stringent and for many markets unnecessarily different from the Australian standard. This leads to the exclusion of firms that supply the domestic markets from expanding overseas and so restricts competition. The decision to allow meat exports from domestically regulated meat works under the exemptions system is aimed at addressing this problem, but in so doing creates a different set of distortions.

5.5 General Conclusion

This Chapter established a case that the *Export Control Act* confers a net benefit to the community and so should be retained.

The Act clearly imposes costs on industry which act to restrict competition, but on the whole, the provisions of the Act were not found to be unduly anti-competitive. In fact many of these provisions represent a necessary pre-condition for access of Australian food products to export markets.

It is important to preserve consistency of approach and adherence to competition principles.

Within this broad assessment, the Committee found that the most serious anti-competitive element of the Act is where it imposes standards for export registration that are too stringent or unnecessarily different from the Australian standard. The Committee also considers that there is still considerable scope for further progress in relation to adopting a co-regulatory export clearance

model, accompanied by greater contestability of the inspection and audit functions.

Because of the distribution of industries and the employment associated with them, a vibrant export industry will have a significant positive effect on regional Australia.

5.6 Committee's Assessment of Key Points

- *The Act imposes costs, but the benefits are assessed as considerably outweighing the costs and there is a prima facie case for maintaining the Act on the grounds of net public benefit.*
- *There is a clear case for regulation of food products where the impact of a food safety incident will have an economic impact on the entire industry, not just the offending party.*
- *There is scope for greater efficiency by moving further along the regulatory continuum toward co-regulation.*
- *The cost of the Meat program to industry is significantly more than other export programs.*

6. FINDINGS

6.1 Introduction

The terms of reference for this Review require the Committee to test the application of the *Export Control Act* against National Competition Policy principles and, if inconsistencies are found, to recommend changes to existing legislative and administrative arrangements.

This chapter assesses the existing arrangements and approaches to addressing deficiencies, and examines ways of improving the effectiveness of arrangements.

6.2 Assessment of the Act against NCP Principles

The Committee made its assessments of the existing arrangements on the basis of the representations submitted, as well as its own examination of the legislation and individual programs. Information from previous reviews, including QEAC program evaluation reviews, was taken into account.

The Committee's broad assessment of the Act against NCP principles is that the benefits arising from the legislation outweigh any anti-competitive elements. These assessments are discussed in the foregoing chapters.

The Committee examined in detail the application of the Act and its subordinate legislation against the National Competition Policy and is of the opinion that current application of the authorities granted under the existing *Export Control Act* and subordinate legislation is inconsistent with elements of the NCP principles. This is especially apparent in relation to:

- the fundamental intent of the Act, in allowing the export of goods subject to certain conditions
- selective application of the Act to individual products and industries through prescription of goods under the Act
- the imposition of compliance costs
- the freedom granted in the legislation to interpret and impose overseas government requirements on individual export companies, leading to the potential for discrimination both within and between industries
- compulsory registration of premises used to produce goods for export
- specifications relating to the production, storage and handling of goods for export
- the multiple functions performed by AQIS as policy initiator, regulator, inspector and certifier, and
- limitations on the scope for contestability of services provided to implement the legislation.

Moreover, the Committee believes that the potential for distortion could be reduced by administrative changes to the existing arrangements.

6.2.1 Fulfilling its Purpose

While specific objectives are not stated in the Act, its fundamental purpose is to provide authority for systems that assure overseas countries that Australian produce will satisfy their requirements, especially health and hygiene. These systems comprise written standards with outcomes that are auditable together with the means and methods of implementing these standards on a scientific basis.

The Committee concluded the Act has fulfilled and continues to fulfil this purpose. Australia has a robust means of securing access overseas markets for its food and agriculture products through the Act and the export programs managed by AQIS. Agreed conditions for access and systems to ensure that the products are supplied in accord with the required standards are in place and are effective. The AQIS Australia Inspected ("AI") health mark is recognised worldwide and is held in high regard by importing countries. The legislation provides tangible evidence that Australian law will enforce undertakings given by the Australian government in bilateral and multilateral trade agreements.

Acknowledgment by importing countries of the value of certification under the *Export Control Act* is evidence that there is an ongoing need for the legislation as a means of facilitating export.

The Committee had contact with representatives of all industries currently operating under the coverage of this legislation, and an overwhelming majority supported the retention of the Act.

The Committee believes that the Act must be retained and optimised.

6.2.2 Economic Benefit

The Committee examined the impact of the legislation in economic terms (see Chapter 5). The Act is justified on two principal economic grounds.

The first is industry net benefit whereby the benefits from continued export market access are assessed as considerably exceeding the costs of compliance with prescribed conditions for export under the legislation.

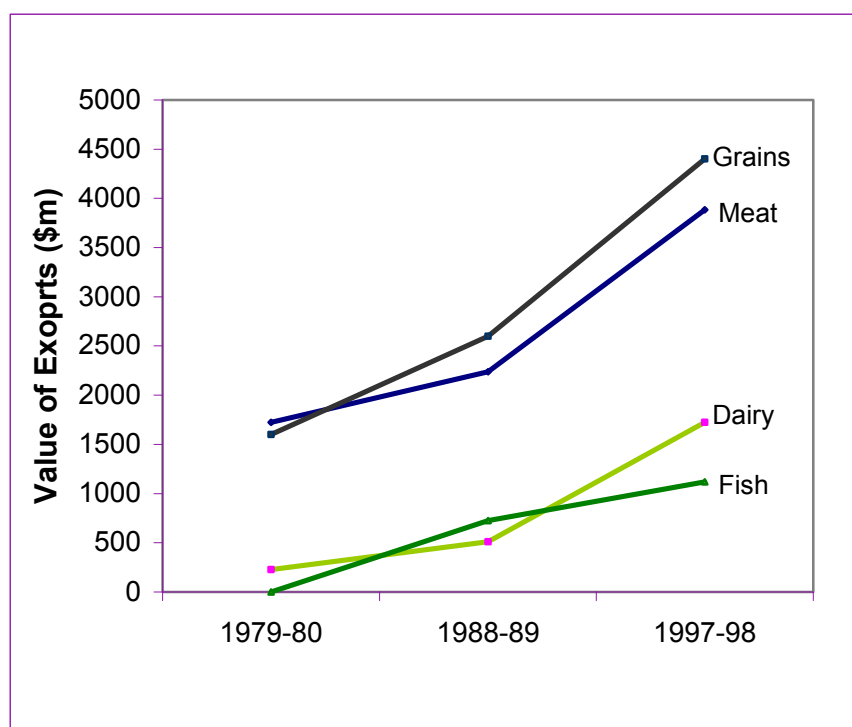
The second is the external benefit the legislation provides by reducing the likelihood of a food safety breakdown or a plant/animal health emergency in an export market. Such a situation reduces economic activity in the broader community and potentially has severe regional impact within Australia.

There is a strong economic incentive for the Act to successfully facilitate exports to safeguard returns against threats and build new market opportunities from assurances the legislation is there to provide. The Act is successfully responding to a range of potential issues which may threaten market access. The Act has been and is very useful to Australian exporters in this regard.

6.2.3 Expanding Exports

The agricultural sector in Australia relies on the Act to facilitate a wide range of exports to many overseas markets. In recent years, exports of commodities covered by the *Export Control Act 1982* have expanded, as illustrated by the following chart:

Figure 6.1
Value of Australian Exports by Commodity



Source: ABARE

Furthermore, AQIS has recently instituted surveys of its activities in reporting and monitoring market access for Australia's food exports. Results of these surveys support the conclusion that the Act is effective. In the last three years, 93 new individual markets have been opened, 55 have been expanded and there have been 137 instances where constructive solutions have been found where access to existing markets has been challenged.

6.2.4 Response to Potential Loss of Market Access

The Committee is satisfied that the existence and operation of the Act enables Australia to demonstrate that effective control measures can be initiated whenever market access has been threatened. Notable examples include the response to threats of market access following the detection of pesticide residues in Australian beef in the eighties and nineties, and the response to an outbreak of papaya fruit fly in Northern Queensland in 1997. More recently, a potential human health scare related to use of animal grain (vetch) intended as food for human consumption led to the prescription of some grains under the Act. Powers under the *Export Control Act* were used in these cases to

temporarily suspend certification of products until it was demonstrated that testing, product treatment or other controls were sufficient to address any potential health risk to consumers in importing countries.

6.2.5 Criteria for Prescribing Goods

The Act operates by permitting the export of certain products as long as particular conditions and restrictions are met. However, the Act does not specify criteria as to which goods should be so prescribed. Since the Act is silent on when and why goods may be prescribed, the power is open ended. In theory, the Act could be used to prohibit the export of any product or commodity. In practice, it has been used primarily to ensure that Australian food and agricultural products satisfy specific health and hygiene requirements set either under Australian law or by overseas governments.

The Committee found that there is no guidance for government administrators or industry as to how to apply power to either prescribe or to de-prescribe goods. Industry requests, threat of market failure and and/or overseas government requirements have been the predominant reasons for adding goods to the list. There is no clear test or criteria for the prescription or non-prescription of product. The absence of such detail limits an assessment as to whether such status should or should not be applied.

Increased accountability relating to the power to prescribe (which is currently held by the Minister) is desirable to satisfy the issues of transparency and fairness. The Committee concluded that a protocol setting out how, when and why the power to prescribe may be exercised, and the regular review of the prescribed goods list, would improve the effectiveness of the Act and minimise redundant activities.

A weakness associated with the lack of guidelines covering the prescription of goods is the absence of any provision for the review of the legislation or the review of the prescription of products. As written, the legislation allows a product to be prescribed for an unspecified period of time. Because the requirements of the Act impose costs and affect competitiveness, the ongoing prescription of goods and the ongoing operation of the Act should be subjected to regular review.

6.2.6 From Prescription of Process to a Focus on Outcomes Based on Quality Assurance Systems

The structure of the legislation has advantages in allowing timely response to trade issues through changes to regulations and orders under the Act. This means that necessary controls can be put into place quickly. The Committee suggests that the existing structure be maintained so that this advantage is preserved. However, some review of AQIS administrative methods is needed to ensure all activities fall within the powers granted by the legislation.

Generally the Act is administered flexibly. Commodity programs are designed and adapted to meet the different characteristics and profiles of the products to be exported. The Committee recognises that this approach is essential to minimise the impact of mandatory export control measures. A notable trend

in the way the Act is administered is the joint effort by government and industry to reduce reliance on detailed prescription of prerequisite conditions of process requirements in favour of comprehensive quality assurance systems that are monitored independently by AQIS or by approved third parties.

The Committee supports the adoption of quality assurance by industry as a means of reducing the impact of legislation on innovation and competition. Links between these company systems and regulation requirements overcome the need for the regulation to impose additional controls, provided the desired outcome is served.

The Committee recognises, however, that export industries will proceed along the pathway from prescription to quality assurance at different rates because of those limitations. More detailed discussion and linkage to the Committee's vision is contained in Chapter 7.

6.2.7 Culture of Control

Under the *Export Control Act*, a culture of control has evolved, both in industry and in government. This is not surprising, given the origins of the legislation—a crisis, born out of the meat substitution scandal.

From a government perspective, the culture of control is evidenced by the high degree of prescription in export programs. This is reinforced by a common belief, justified or not, that, given a choice, industry may give priority to commercial issues; in turn, this may increase the risk of a food safety breakdown. A culture supporting 'heavy handed' controls is further reinforced by demands from consumers and overseas governments, especially in developing countries, for increasing levels of government assurance about food safety.

For industry, the culture of control has often resulted in the creed to 'do enough just to meet government demands'. The Committee recognises that an interventionist, prescriptive and rigid set of regulatory controls will not deliver the outcomes required of the Act. Such an approach is in conflict with competition principles and ignores the potential for greater accountability within the industries that depend on exports to survive.

The fact that both Commonwealth and State Governments regulate food safety and animal and plant health in Australia further contributes to the legislative burden on industry.

The Committee found that there is still insufficient evidence of widespread industry acceptance that investment in improving health and hygiene standards is commercially sensible and rewarding. This attitude in industry may arise from experience with the heavy hand of prescription in export programs. There is also a perception that requirements for export are unavoidable, add costs and undermine competition and are not an essential cost of doing business overseas. The Committee suggests that the title of the *Export Control Act* also re-inforces the control mentality and could be changed to reinforce the move to QA based assurance.

The Committee sees considerable room for improvement in industry understanding of the value added to exports through operations under the legislation.

A high degree of voluntary compliance with legislative standards is essential for the Act to be effective within the National Competition Policy framework.

Overseas countries which import from Australia are also struggling to achieve an appropriate balance between controls to safeguard the interests of consumers and the degree of flexibility needed to encourage and develop trade.

Prescriptive rules and technical jargon in subordinate legislation are difficult for industry to absorb within day-to-day operations. In future, the Committee would like to see standards which can be assimilated easily into company QA systems and documentation which is easily understood, for example, in ISO format.

As government and companies continue to adopt food safety systems based on risk analysis and HACCP, the culture of control is changing and may be expected to change further. Significant progress in simplifying regulatory arrangements has already been made, but the Committee believes there is still a long way to go.

The overlay of one regulatory regime on another has been recognised by government as a limiting factor on business development. A comprehensive package has been developed for endorsement by the Council of Australian Governments (COAG), aiming for a substantial reduction in the regulatory burden on industry without compromising public health and safety. Measures proposed in the new regime include early warning systems and traceback mechanisms where a food safety risk is identified. The success of this package will be commercially driven. The Committee concludes that the COAG initiative should be taken up by AFFA and AQIS and reflected in the operations of the *Export Control Act*.

6.2.8 Two Systems for Managing Food Safety

As reflected in the Food Regulation Review and in many submissions to the Committee, Australia has overlapping systems for managing food safety. There is a State based system for regulating food for domestic consumption and a Commonwealth set of arrangements for food products intended for export.

Standards for food consumed within Australia are set by ANZFA and adopted by States and Territories in their legislation. However, ANZFA does not exercise this authority for red meat processing standards. They are currently set by ARMCANZ. The red meat industry has a joint government/industry body (SAFEMEAT) which is specifically charged with responsibility for developing and implementing controls to ensure safe and wholesome meat is produced for both the domestic and export markets. This peak body makes recommendations on standards to the joint State/Commonwealth Ministerial Committee (ARMCANZ) that endorses and publishes national standards for agricultural industries including beef, sheepmeat, poultry, game and live animal exports. SAFEMEAT also advises AQIS on export requirements to be

incorporated in the *Export Control Act 1982*. The standards setting is a complex and lengthy procedure under these arrangements.

The Committee believes these mechanisms should be harmonised and made more transparent in line with competition principles.

Food safety at retail level is also regulated by State and Territory Health authorities and local government.

Standards for export of food prescribed under the *Export Control Act* are a Commonwealth responsibility and are set by the Minister for Agriculture Fisheries and Forestry and are implemented and managed by AQIS.

The fact that separate controls exist under Commonwealth, State and local government legislation has led to a dual system of production in Australia. The Committee identified a demarcation of food production which is based on destination—domestic or overseas. With Australian food and agricultural industries heavily dependent on export markets, companies must continue to target these markets and ideally should be producing under a single regulatory system which meets global standards, and not under systems that differentiate between home and overseas consumption.

Harmonisation of standards for production, storage and handling of food within Australia is a priority which must be addressed.

6.2.9 The Decision to Export and the Point of Application of Export Controls

As a general rule, Australian companies establish their operations to supply domestic outlets. Exports are usually targeted after a domestic base has been established. This often means production facilities and systems focus only on domestic requirements. In the case of food, a decision to export may result in a significant change to operations and systems additional to ANZFA standards, depending upon importing country requirements. Requirements for overseas markets need to be understood and addressed prior to processing for export. Frequently, commercial operators only seek export certification after production systems are in place. When certification is refused because the importing country requirements have not been addressed, AQIS is unjustly criticised and accused of stifling export opportunities.

A harmonised set of standards, easy to access and understand, would help overcome this shortcoming. Ready access to the details of overseas market requirements is needed to help potential exporters determine the investment required and decide which markets to target.

6.2.10 Complexity and Costs

The current systems for meeting export requirements are complex, and as such are generally costly to administer. The additional costs of complying with the full range of domestic and any additional export requirements are passed on to exporters, and this can reduce their competitiveness relative to producers in other countries. Depending on the extent of those costs, they

may act as a barrier to entry for businesses with export potential. Early and accurate assessment of any additional requirements to be met for a particular market will avoid costly delays in obtaining export approval (certification).

In its submission, ANZFA contends 'that much of our food exports come from small to medium sized firms. For these firms in particular, it is hard to keep up with the complex legislation required for both domestic and export production, as it is expensive to employ someone with sufficient expertise or to hire consultants. Anything that reduces this complexity will be of benefit to them.'

With regard to compliance costs borne by individual exporters, the Committee recognised the following three specific benefits. First, it is a fact that the supply of products to export markets will always be more costly than sales in the domestic market. Second, the most appropriate way of addressing industry concerns about costs is to endeavour to simplify the total system. Third, the application of costs across individual exporters should be distributed as equitably as possible.

6.2.11 Consistency of Application

Australia is a vast country, and preparation of food and agricultural products for export occurs in many and sometimes isolated locations. Administration of export programs under the Act necessitates the engagement by AQIS of many employees in various locations. This, coupled with the great diversity in both the profile of exporting industries and in the products exported, leads to significant variations in the application of the regulations.

On the basis of many representations from companies and industries, it appears that export requirements are not always consistently applied across States and regions. This gives rise to concerns that some companies are advantaged compared with others. This inconsistency is continually being addressed by AQIS but the problem persists.

The possibility of inconsistency also arises in those programs where AQIS certification relies on State based animal, plant and human health systems. For example, the 1998 European Union (EU) review of the Australian meat inspection system pointed to the differences in the State based systems for identification of cattle in relation to hormonal growth promotant status. Lack of a uniform national system threatened ongoing market access to the EU. A new system is being established in Australia under the *Export Control Act* to overcome this criticism and maintain access.

Finally, inconsistency can arise in those programs that allow for inspection and/or audit activities to be undertaken by third parties. For example, the dairy program provides for State Dairy Authorities to audit quality assurance systems. While there are guidelines for processes to be followed in audits, there may still be room for differing interpretations by individual auditors or by the organisation contracted to perform the actual audit.

The granting of exemptions as previously mentioned in 2.5 can lead to another element of inconsistency that is of concern for industry. For example, the refusal to grant exemptions for trade samples may be related to previous abuse by some exporters. It is, however, a key element in the development of exports. Mechanisms to control its orderly use of such sanctions would be

preferable to the current system which appears to depend on the individual judgements of AQIS personnel.

The Committee appreciates it will never be possible to achieve complete consistency, as to seek to do so would probably result in greater prescription. Such a "cure" would be worse than the 'problem'. The solution lies in balancing the need for flexibility against overseas countries' expectations of a uniform approach to meeting their import requirements. This outcome will be easier to achieve in some markets than in others, and thus the issue should be addressed program by program. The Committee suggests that the issue be considered specifically when individual programs are next reviewed.

6.2.12 Quality Standards and Trade Descriptions

Requirements relating to quality standards and product descriptions are regulated under a number of acts, including the Commonwealth Trade Practices Act and the Fair Trading Acts in the States and Territories. Authority also exists under the *Export Control Act* for specific conditions to be set for quality and product description on exported goods. At present, there is no common approach in the individual programs.

All goods covered by the *Export Control Act* are subject to these provisions. In addition, ANZFA, through the Food Standards Code, regulates product description, composition, advertising, use of additives and microbiological standards, among other things.

The *Export Control Act* currently includes a considerable amount of detail concerning:

- trade description (commercial), and
- quality specifications for export goods (weight, grade, size etc).

Orders under the *Export Control Act* may contain such detail, depending on the commodity.

This multiplicity of coverage is confusing and costly, and it detracts from the intent of the legislation—consumer awareness and consumer protection.

A common policy approach is necessary and the Committee suggests that this issue be flagged in AFFA's response to the COAG policy on food regulation and discussed with commodity groups subject to controls under the Act.

In structural terms, the Committee is of the view that any trade or product description should be time-bounded and subjected to regular review as to its necessity under regulation.

6.2.13 Electronic Databases and Documentation

E-Commerce is a reality of modern businesses, but the potential for the provision of electronic documentation (the EXDOC system) is still in the process of being realised fully by both AQIS and export industries.

EXDOC supports the preparation of export documentation for prescribed products and has been in place since 1992. Initially it was developed for meat exports, but is now in the process of being made applicable to other export commodities.

EXDOC was designed to provide a seamless electronic interface between export processors, brokers, AQIS, statutory marketing authorities and the Australian Customs Service (ACS). This objective is being fulfilled as the system allows for input at the manufacturer's site and the resultant printing of the Health Certificate at the manufacturer's nominated site. Remote printing is becoming available to all non-meat commodities and the cost aspects are being worked on through the use of both data compression and Internet e-mail.

In its submission, the dairy industry disputes that the EXDOC system will meet their needs and has severe concerns that it can deliver the types of benefits that a fully integrated state-of-the-art electronic data system should be capable of. They also have expressed concerns relating to the costs and time associated with the development of the system. AQIS has responded that a concerted effort to resolve the Dairy Industry issues is under way.

The Committee regards the limited availability of electronic documentation for all transactions leading to certification as a weakness. In addition, electronic access to current information about the regulatory requirements for particular markets is not available to all exporters. This is an issue requiring attention, although AQIS has advised that it is now progressively putting requirements on the Internet. Lack of access to such information has the potential to limit uptake of export opportunities by small business.

As discussed in Chapter 3, E-Commerce is much more than an electronic documentation system. The Committee believes more resources should be applied by both government and industry towards the development and introduction of E-Commerce for all export programs.

The Committee believes that despite existing and planned levels of access to EXDOC, there is much to be gained through the development of E-Commerce, especially in efficiency, cost reduction and customer service and E-Commerce has the potential to provide Australia's export industries with a significant competitive advantage.

This is particularly true for producers and potential exporters outside the metropolitan area, and for small businesses that do not have an existing IT facility for information management.

6.3 Approaches to Improving Effectiveness

In the previous section (6.2) the Committee has identified areas for improvement to existing arrangements. This section expands on the Committee's approach to improvement in the following areas:

- legislative alternatives,
- objectives for the legislation,

- structure of the legislation, and
- certification.

6.3.1 Legislation Versus Non-Legislative Alternatives

Having determined that the benefits of an *Export Control Act* exceed the costs, the Committee considered whether the same benefits could be secured without recourse to legislation. The options considered included:

- *No specific regulation*: reliance to be placed on market mechanisms in conjunction with existing liability and insurance laws.
- *Self regulation*: industry to accept full responsibility to build in quality assurance through the production process and government involvement limited to an information role.
- *Co-regulation*: government and industry to develop mutually acceptable codes, regulations and operations to best secure the needs of industry and requirements of customers.

Under the National Competition Principles, one test that may be applied to legislation is whether the objectives of the existing Act could be achieved by a non-legislative based approach. Such a test is difficult to satisfy in this instance because the current Act does not have specific objectives.

The second reading speech for the legislation in 1982 stated ‘...the purpose of this bill is to establish a new and comprehensive legislative base for the export inspection and control responsibilities...’ within the portfolio of then Minister for Primary Industry. This wording limits the objectives of the Act to providing authority for the establishment of regulations and orders to control exports. Non-legislative alternatives could not meet such an objective, but the Committee considers that rejection of non-legislative alternatives purely on such grounds would not be in the spirit of the National Competition Principles.

A more appropriate test would be to determine whether non-legislative measures are adequate to satisfy the purpose for which the export inspection and control responsibilities had been judged as necessary.

In this context, the purpose of the controls is to ensure that the inspection and other requirements set under Australian domestic standards or by overseas governments can be met. A related purpose is to ensure the export product is true to description, that is to prevent product substitution or product misrepresentation.

Australian standards are enforced by both Commonwealth and State legislation. There are no plans and no industry request to terminate such legislation. Moreover, community expectations support more rather than less legislative and regulatory oversight. This attitude has emerged primarily in response to a number of instances of harmful or potentially harmful food being delivered to markets both in Australia and overseas. Notable examples are E Coli in smallgoods in Australia in 1996-97 and evidence of the existence of BSE (mad cow disease) in the beef herd in the United Kingdom throughout the nineties.

The current debate in Australia and overseas about the treatment to be accorded to GMOs in food and agricultural products is a further example of increasing community concern about food safety, food labelling and related issues.

The requirements of Australia's major trading partners are set out in Chapter 3. While the requirements differ from country to country, the most consistent element is a requirement for government to government assurances in the form of certification.

As in Australia, overseas governments impose production, processing and handling standards on their local industries and monitor their operations to ensure compliance. A logical extension of such requirements is for imported products to be subject to similar disciplines.

Thus overseas governments generally make the same demands of their offshore suppliers as they do of local producers. In addition, overseas governments look for some form of proof that what is promised can be delivered. Governments address this by backing these promises with legislation. Possible reliance by Australia on a non-legislative approach would therefore appear to be unacceptable for two reasons, failure by Australia to set standards backed by legislation, and an inability, without legislative support, for a government agency to certify that all requirements would be met.

These co-regulatory systems require that certification continues to be issued by AQIS.

The Committee was informed that Australia had advised a number of trading partners that it will extend its coregulatory approach. The responses have been mixed. Some have accepted in full. Others, such as the USA with regard to meat, have accepted the proposed changes in principle; more negotiations will be necessary. Finally, the EU has indicated that the current regulatory system will need to continue for the foreseeable future.

The Committee was convinced that the requirements for final certification by a competent government authority will continue to be mandatory for most markets in the immediate future.

Impartial and independent implementation of controls is the basis for the integrity of certification conferred under the legislation. Efforts to move the regulatory assurance mechanisms towards co-regulatory arrangements will continue. However, most of the submissions to the Review expressed the need for caution in relation to changes to export regulatory controls.

The Committee concluded that given the role of certifying authorities under the Act, non-legislative alternatives could not deliver the same benefits to exporters and the nation as can be obtained by legislation. The Committee considers most overseas governments will continue to insist that Australia retain the legislative power to impose standards for the foreseeable future. It is also clear that trading partners expect certification to be backed by investigative powers and strong penalties to ensure compliance.

The Committee concluded that legislation is necessary.

6.3.2 Objectives for Legislation

Objectives define the expectations and purpose of legislation. They also provide a basis for the development of benchmarks for day-to-day administration of the Act and for assessing success or failure when legislation is reviewed in the future.

The existing legislation does not have stated objectives other than those expressed in the Minister's second reading speech statement 'to establish a new and comprehensive legislative base for . . . export inspection and control responsibilities.'

This lack of concise objectives, against which progress may be measured, is an obvious weakness of the existing legislation. There are no criteria under the Act for assessing whether the legislation achieves the purposes for which it was enacted. In addition, there is no benchmark in the legislation for assessing outcomes of the administrative processes imposed under the Act. Since the legislation potentially restricts competition, these deficiencies represent a serious weakness in NCP terms.

The Committee considered a full spectrum of possible objectives for legislation authorising export controls. Almost all the written submissions received by the Committee made specific reference to the need for objectives and many suggested revised wording.

The suggestions canvassed included:

- cover market failure,
- build Australia's reputation as a trading partner,
- facilitate exports from Australia,
- guarantee that overseas government requirements will be met,
- authorise the establishment of appropriate inspection and certification arrangements,
- secure access to overseas markets,
- ensure Australian health and hygiene standards are met,
- improve the efficiency, effectiveness and accountability of Australian procedures,
- provide authority for enforcement of quality standards and product specifications,
- provide authority for enforcement of specific production procedures, environmental requirements or animal welfare standards,
- provide authority for Australia to meet its international obligations as defined in the WTO, Codex, OIE and IPPC agreements, and
- provide authority to initiate controls for any purpose related to meeting importing country or other relevant requirements.

Before finalising its views on objectives, the Committee debated a number of key principles. These included the extent of the authorities to be granted, broad or narrow product coverage and the scope to include industry requests.

Firstly, the basic purpose of the legislation is to facilitate Australia's exports. World trade is unpredictable and complex, and frequent changes are made to the regulations, often without notice. Such characteristics require scope for a rapid response by Australia, and, in these circumstances, it would be counterproductive to have a rigid and narrow range of authority.

Secondly, the Committee considers that the potential product coverage of the legislation should not be limited. In the past, the Act has been applied principally to food and agricultural products, and this can be expected to continue in the future. But there have been exceptions, some of which were initiated in response to specific developments and/or government policies within Australia. The notable examples have been export controls on wood chips, coal and certain other minerals. The Act has also been used to authorise the imposition of quantitative limits on exports of products such as sugar, grains, beef and dairy products as part of undertakings given by Australia in multilateral or bilateral agreements. The Committee considers it desirable to allow for similar use of the legislation in the future.

Thirdly, the legislation should not limit the government's authority to that of imposing requirements related to health and hygiene. The Committee recognises that the bulk of the application of the Act will be in relation to such matters and administration of the Act will be undertaken by AFFA and AQIS. However, there is a need for government to be able to respond flexibly and rapidly to circumstances and developments that cannot be defined in advance.

Having determined these first three principles, the Committee suggests that one means of avoiding open-ended authority for export controls for any reason and on any product would be to specify time limits on the application of particular controls. For example, controls required for sanitary or phytosanitary standards, or other health or process requirements would remain applicable until no longer required, whereas controls required for other reasons such as quotas would be limited to one year, after which the regulation would need to be reviewed to authorise ongoing application.

Finally, while the key purpose of the legislation should be to ensure compliance with the requirements of importing countries, there may also be scope for controls for reasons beyond such requirements. It may be necessary to impose controls to ensure Australia's reputation as a supplier of consistent quality products is not threatened. Some threats could arise from the activities of immature or inexperienced exporters or alternatively government and industry may decide to pursue a special opportunity that requires export producers to comply with a particular quality or standard.

The Committee considers that the above principles would be satisfied by adoption of the following statement of objectives (see Recommendation 2).

The objective of future export control legislation should be to facilitate, sustain and enhance Australia's exports by providing authority for the imposition of systems to:

- *ensure compliance with overseas country requirements,*
- *ensure compliance with any other standards established through government/industry consultations.*

6.3.3 Structure of Legislation

The current legislation comprises

- the **Act** which authorises the Minister of Agriculture Fisheries and Forestry to issue Orders to prohibit the trade in a specific (prescribed) product or products unless certain conditions are met.
- the **Regulations** and **Orders**, which contain the conditions with which potential exporters must comply before export will be permitted.

This structure is designed to grant maximum authority by means of the Act, and maximum flexibility by means of the Orders and Regulations. An alternative would be for the Act to specify individual prescribed products and the terms under which export would be permitted. Such an approach would mean that changes in the terms and conditions could only be made by amendment of the Act by Parliament, and would be time consuming and inflexible. The reality of international trade requires a more rapid response.

Accordingly, the Committee believes there is no practical alternative to retaining the structure of the legislation - Act and associated Regulations and Orders - as it is at present. It would not be feasible or effective to attempt to cover all the required powers in any other form.

The Committee envisages the Act will be a possible point of control for activities beyond its present focus at a secondary or tertiary processing level.

An example of this is the new scheme of arrangement to satisfy EU market requirements for identification of cattle and certification of the HGP-free status of meat exported to the EU.

This arrangement includes controls at farm level as well as process controls at abattoirs. Regulation to cover all aspects of production, transport, processing and storage of export goods is now demanded by many markets.

Arrangements involving a combination of State and Commonwealth legislative controls are losing credibility with some markets. This dichotomy will need to be revised in the future. A single set of control arrangements is desirable.

The existing Act and subordinate legislation deliver an internationally recognised system of inspection and certification that assists Australian exporters gain access to markets with stringent food health and safety standards. The level of inspection and certification is tailored to meet the requirements of individual export markets. An outcome of this approach is that compliance costs incurred by individual industries are also tailored to the specific requirements of the industry and markets.

The *Export Control Act* gives wide-reaching authority for prescription of specific goods for export control and the determination of the actual conditions under which exports may occur. The Act does not specify conditions or criteria for determining when controls should be applied or the degree of prescription. Judgements on these issues may be left to the discretion of the Secretary.

The Committee concludes that the present broad structure of the Act allows flexibility and meets requirements for the export trade at the moment. However, some suggestions have been made which if adopted, will improve reliance on and effectiveness of the Act for future applications.

6.3.4 Certification under Existing Arrangements

The Committee considered the suggestion that responsibility for certification be devolved to State governments and/or other independent agencies such as quality assurance inspection companies.

For a number of reasons the Committee favours retention of the existing arrangements under which final export certification is provided by a single Commonwealth authority (AQIS).

First, AQIS certification is recognised and well respected internationally. Introducing other certification agencies would undermine the strong reputation of the current health mark (Australia Inspected or AI) and also create confusion in overseas markets. Dual systems of standards already add unnecessary complexity and costs within Australia; therefore additional complications should be avoided.

Second, the existing AQIS arrangements provide considerable flexibility and cater for different inspection and alternative systems. For example, certification can be based on physical presence of AQIS staff during production or an accredited quality assurance program monitored by independent third party agencies. Such flexibility should cater adequately for the vast majority of exporter requirements.

AQIS also provides certification for certain non-prescribed goods. As noted in Chapter 2, it appears that there is no legislative authority to support this. However, such certification facilitates exports and is therefore beneficial. The Committee believes that the Act should be amended as necessary to provide legislative cover for continuation of this service.

The Committee is of the opinion that future undertakings regarding certification, such as protocols for access to overseas markets, should increasingly be based on accredited quality assurance programs with the final certification being issued by a single national authority in the knowledge of the effectiveness of these systems. There has been much recent progress in this regard and it is a well-established fact that such programs are more effective than on line inspection in producing goods of a uniform, high standard.

While there is scope for greater flexibility under the Act using co-regulation as a base, there are significant roadblocks and limitations to be overcome in commodities where certification has been based on a strong government inspection presence. Despite this observation, the Committee is convinced that all export commodity programs should evaluate their current arrangements against alternatives offered under co-regulation.

Integrity of certification

The reputation of Australia as an exporter of high quality, safe products under the *Export Control Act* is underpinned by the integrity of the certification system. Steps must be taken in any co-regulatory process to ensure this level of integrity is not threatened. If there are events which compromise integrity, then the response from the regulator must be swift and effective. Importing countries expect a higher level of sanctions to apply to transgressions where a co-regulatory arrangement is in place. Sanctions and penalties must reflect the degree of risk to be managed under the co-regulatory framework.

Administration of the Export Control Act utilising co-regulatory options

The Committee noted that the extent of existing co-regulatory arrangements varies between export programs administered under the Act. The way forward on this issue is described in the next chapter. The Committee proposed a more transparent way of organising and delivering the regulatory functions under the legislation so that market confidence is maintained and the influence of the independent certifying authority is highlighted. Recognising additional importing countries while emphasising the strengths of domestic arrangements in Australia is the concept behind the three tier administrative arrangement that is described in Chapter 7.

7. VISION AND STRATEGY

7.1 Vision for Export Assurance

This chapter sets out the vision for future operations under the *Export Control Act*, outlines an administrative framework and model for implementing the vision, and briefly assesses current programs against the Committee's vision. In Chapter 8, specific recommendations are made for changes to the existing arrangements. When implemented, these changes will align individual programs with the vision and ensure the National Competition Policy concerns raised in this Review are effectively neutralised.

The reform of regulatory arrangements for the food industry is already a government priority with the development of COAG policy on food regulation reform following on from the recent Blair Review. The Committee would like to contribute further to this reform by advocating a vision for future management of exports under the legislation.

The Committee's vision has seven elements:

1. the adoption of Australian standards, rather than the most stringent foreign requirements, as the baseline for all export destinations,
2. freedom for individual producers to invest to meet additional standards that may be required by individual overseas governments,
3. cultural change by industry so that Australian food companies produce for a global market (that is a significant shift from the current focus on the domestic market with exports given lower priority),
4. securing the benefits from a partnership arrangement between industry and government,
5. a single provider of certification for human, animal and plant health requirements of product exported from Australia,
6. availability of a comprehensive system for the electronic processing of export documentation and for facilitating access to information necessary to meet regulatory requirements, and
7. promotion of contestability for service delivery through the Act.

A diagrammatic presentation of the Committee's vision is set out in Figure 7.1.

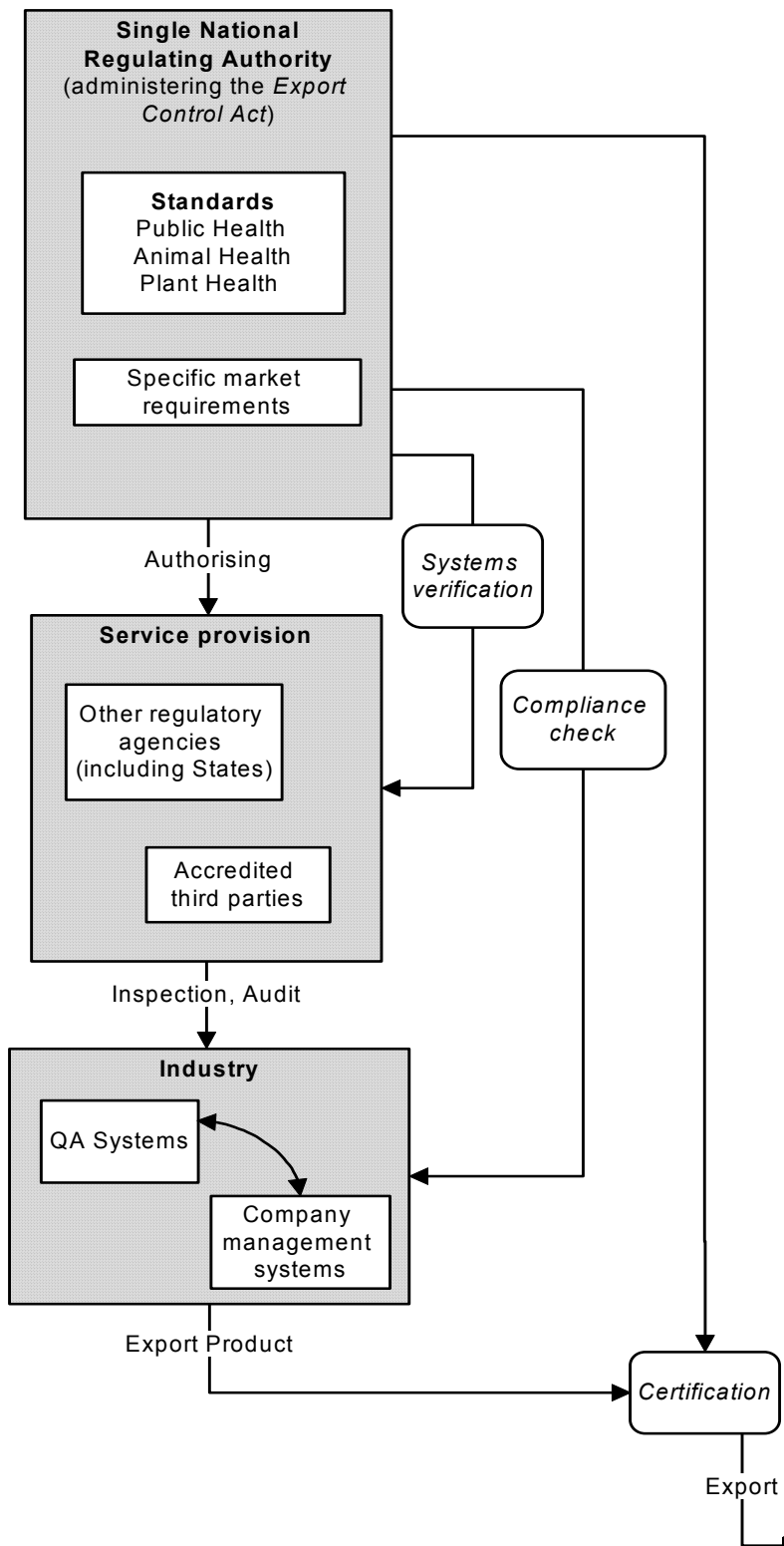
7.2 Implementing the Vision

The Committee believes that attaining the vision would be conditional on the adoption of the following principles:

- enhancing the government/industry interface as driving the establishment and implementation of strategies and operational detail of programs under the Act,
- incorporating HACCP based quality assurance arrangements for risk assessment and risk management,

- establishing an outcomes basis for all programs to facilitate equivalence and accommodate technological change, and
- providing for third party arrangements to verify compliance across all commodity programs.

Figure 7.1 Vision for Export Assurance



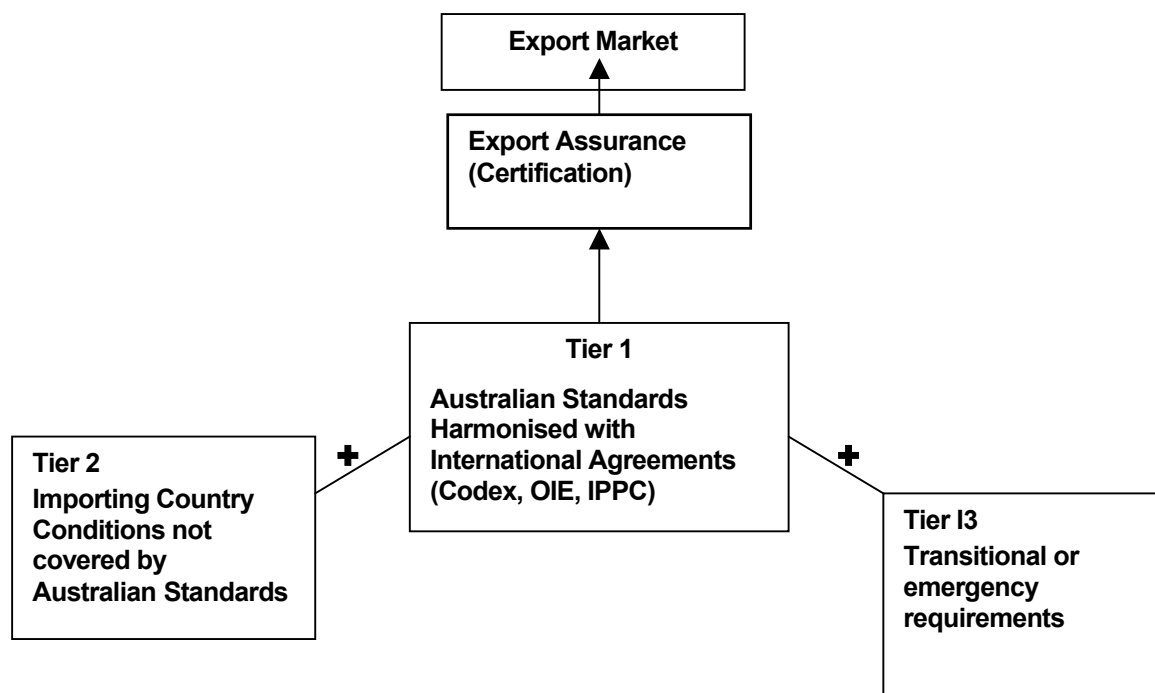
7.3 Administering the Act via Three Tiers

The Committee believes the vision could not be attained without a fundamental change in the manner by which Australian food and agricultural products are currently regulated. Australian exports of food and agricultural products have been disadvantaged by working under a combination of two systems – domestic and export – and legislation that is excessively prescriptive. The Committee believes that a single system should be in place within which production of food and food products is undertaken for a global market. Under this system, it is assumed that Australian health, hygiene and quality standards are built into the production process. Such an approach must have the confidence of markets in Australia and in overseas countries.

The Committee suggests that the single system be built through adoption of three tiers for meeting export requirements. The key objectives of this tiered structure are to support a single national system for the production of food and agricultural products and to harmonise Australian standards in a way which leaves the producer/ processor free to choose to supply either the domestic market or importing countries that do not have special requirements. An additional objective is to provide flexibility for individual producer/ processors to make their own decisions about supplying individual markets that have additional requirements.

Elements of the three-tier model are described below.

Figure 7.2 Features of the Three-Tier Model



Tier 1 All Australian food and agriculture product manufacturers would be required to comply with established Australian standards. These standards would cover the essential health and hygiene issues and would be based on and incorporate the accepted international standards. This would ensure Australian standards would meet the nominated requirements of most importing countries. Any producer/processor meeting the Australian food safety and hygiene standards would have automatic right, subject to certification, to export to countries which did not have requirements additional to Australia's Tier I standard.

Adoption of Standards under Tier 1 would be uniform throughout the States and Territories within Australia. Systems would be established to verify that Standards are applied consistently.

Food safety standards forming the basis of production systems under Tier 1 would incorporate HACCP principles and be set by ANZFA.

Standards for other commodities or products under Tier 1 would be set and endorsed by the relevant Commonwealth/State Ministerial committee.

Tier 2 Tier 2 requirements would be market specific.

They would be negotiated between the Australian government and the government of the importing country. The instruction would be to keep requirements as close to Tier 1 requirements as possible. The agreed entry conditions would be established by AQIS in an industry export program with provision for certification by AQIS that all requirements would be met. This suitability for a particular market would be noted on the export certification for the goods.

Independent monitoring mechanisms will be in place to verify that conditions in the various Tiers are in place and are working. These may involve inspection of product and /or audit of assurance systems by AQIS or third parties including regulators in the importing country. The decision about investing to comply with the additional standards would be made by the individual producer/processors.

Tier I conditions would have to be met as well as requirements set in Tier II.

Tier 3 This Tier could cover all non-health and hygiene requirements such as quality requirements or product descriptions not specifically required by Tier II. Such requirements would be in addition to the domestic (Tier I) and any importing country requirements.

There will be occasions when government or industry may want one or more additional requirements to be met by all exporters of

a particular product to a particular market. This may be part of an industry strategy to gain a foothold in a new market or to retain access to an existing market in the face of an unforeseen adverse development or market failure.

Because Tier 3 requirements would be an additional impost on industry, the potential impact of any new requirements should be assessed in NCP terms prior to formal adoption as a Tier 3 requirement. Measures under Tier 3 must also be defensible under WTO rules.

These requirements could be enforced by the legislation for a limited period, reflecting the time necessary for industry to either introduce a quality assurance based response under industry control or have the Tier I standard changed to respond to the market demand.

Decisions about requirements to be covered by this Tier would be made jointly by government and industry.

7.3.1 How the Three-Tier Structure Addresses NCP Principles

The Committee's findings outlined in Chapter 6 included a judgement that the current Act is inconsistent with elements of the NCP principles. Adoption of the three tier structure would address the inconsistencies with respect to application, duplication, and the cost of compliance.

The 'application' shortcoming would be addressed because the three tiers provide freedom for exporters to produce for the domestic market and those overseas markets which will accept Australian standards. This approach allows exporters freedom to decide whether to invest to supply other overseas markets which impose different standards from Australia's.

The 'duplication' is similarly addressed through removal of the export/domestic demarcation and establishment of Tier 1 as the base standard with Tier II only to exist if overseas governments insist on different standards to Australia.

Adoption of the three-tier structure would reduce the cost of compliance because common domestic and export standards would apply. In addition, this structure would terminate the current requirement that all exporters must comply with the most stringent standards, irrespective of whether they wish to export to the country with those.

7.3.2 Implementing the Three-Tier model

The Committee advocates the adoption of the three-tier model as a matter of priority. Since some legislative change is involved, the Committee realises that implementation may stretch over the next two to three years, because of the normal legislative process.

The Committee envisages that the harmonisation of risk-based systems for export assurance will, over time, result in the reduction of Tier 2 and Tier 3

requirements in favour of a more robust and widely accepted set of Tier 1 systems and arrangements.

It is inevitable that individual commodity programs would progress towards the Committee's vision and adopt the three-tier structure at different rates.

Consultation will be needed to convince both exporters and their clients that adoption of arrangements based on Tier 1 is a sound long-term proposition and will not disrupt trade in the short term. Investment of time and money will be required to secure the advantages offered by this new arrangement.

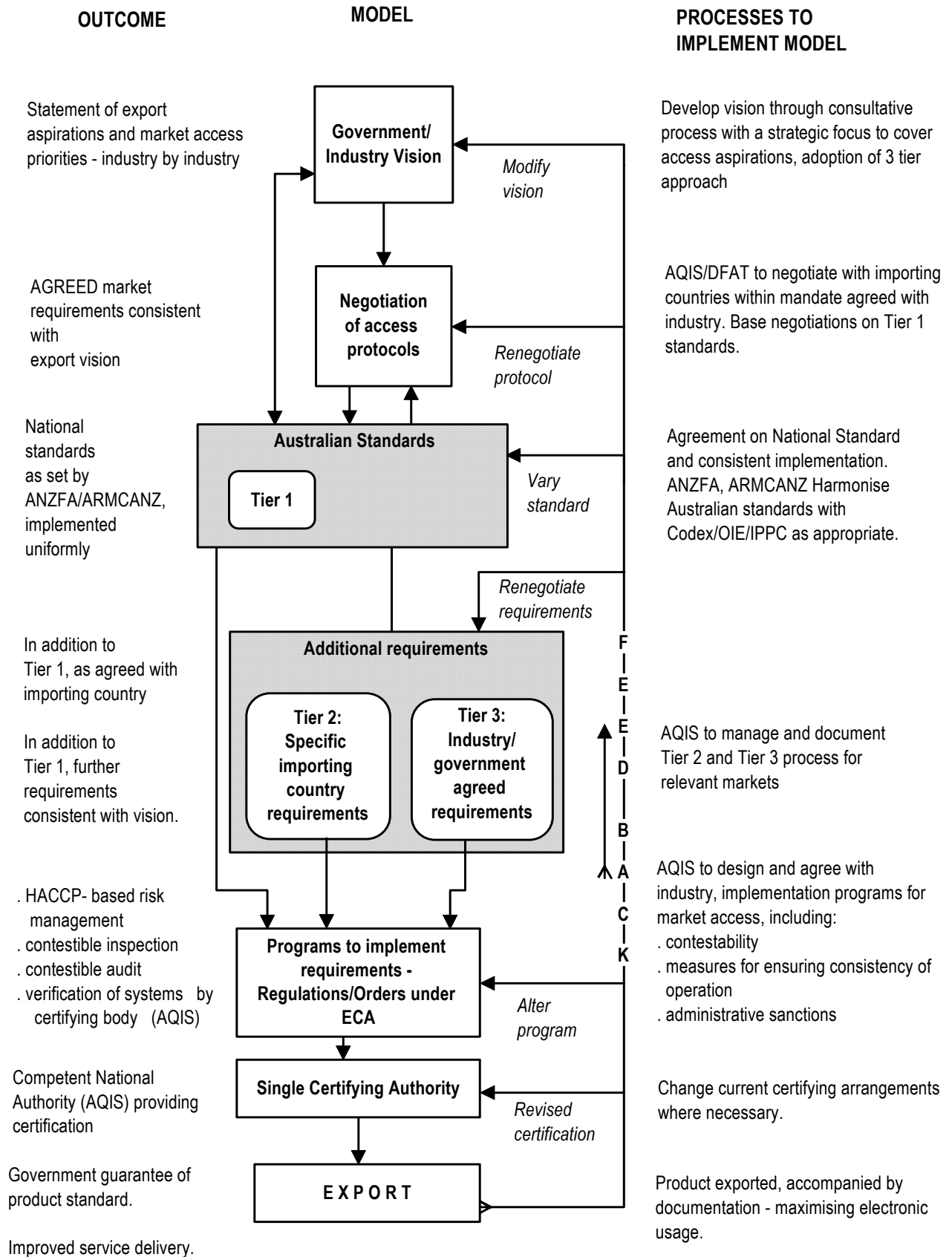
The Committee regards it as essential that a management plan be developed to ensure that the three-tier model is implemented progressively within existing arrangements.

7.4 Securing Change

An outline of how the Committee's vision would operate in practice for an individual commodity program is set out in Figure 7.2. The following steps are involved:

- determination of a vision for each commodity program;
- harmonisation of domestic and export standards;
- negotiation of access arrangements into individual overseas markets;
- establishment of arrangements to ensure requirements are met, and
- certification by a single authority.

Figure 7.3: A Model of the 'Vision in Practice'



As noted in Chapter 5, the Committee acknowledged that the existing arrangements were in conflict with NCP principles in the multiple roles performed by AQIS and the lack of contestability for the provision of some services.

It will be evident from the above diagram that under the Committee's vision, AQIS retains a role in each of the key functions.

Under the proposed approach, the AQIS role of policy initiation will be shared with industry through the establishment of visions and priorities for each program.

With respect to negotiation of access arrangements with overseas governments, AQIS will work to briefs prepared in consultation with the relevant industry representatives and the Department of Foreign Affairs and Trade. Moreover, the standing direction for such negotiations will be acceptance of the Australian standard as the base.

With respect to the functions of inspection and audit, AQIS is currently the prime service provider. These functions can be performed by accredited third parties including State Government agencies. There is already evidence of the functions being opened to contestability under individual programs. Certainly, the Committee is satisfied that the formal AQIS policy is to provide an opportunity for the functions to be undertaken by non AQIS organisations. However, the offering of such services to open competition is dependent on agreement by overseas governments. For some commodities, such agreement has been relatively easy to secure; for others, such as meat, it is unlikely that agreement will be obtained from some countries in the short term.

On balance, the Committee accepts that contestability for inspection and audit is already available or under consideration for most programs. The exceptions are in programs in which overseas governments continue to insist on government engaged inspectors (eg meat) or there is strong industry support for continued government involvement (eg certain cereals).

7.4.1 Existing Programs versus the 'Vision in Practice' Model

As part of the evaluation of its model the Committee examined each of the existing programs against the individual elements that make up the vision. The outcome is set out in Table 7.1 and in comments which follow on individual programs. The comments also include an indication of the possible first steps to secure change.

In the table, H 'high' means that the program is close to attaining the objectives of the vision, M 'medium' means that some progress has been made, and there are some limits to further progress, and L 'low' means that there are more severe limits to progress.

The Committee acknowledges that quite a number of the barriers to progress are not under the control of either industry or government in Australia. This is why the Committee is emphasising the role of joint industry/government development committees in assisting with a strategic role.

Table 7.1 Comparison of Progress with Vision Elements

	Meat	Dairy	Fish	Horticulture	Grains
Established vision	L	M	L	L	M
Export market acceptance of Australian standards	L	H	L	M	L
Degree of adoption of co-regulation	M	M	M	L	L
Progress away from highly prescriptive process	L	M	M	M	M
Availability of contestability	L	M	M	L	L

KEY: H = High, M = Medium, L = Low

The Committee sees significant opportunities for each program to progress toward the model, but that guidance from the Development Committees will be needed because of the complexity of the issues and because of the need to establish balance between competing considerations. This work should be undertaken as part of ongoing reviews of individual programs and in the formal examinations by AQIS and industry of the recommendations contained in this Report.

The following perspectives elaborate on the table, but are only an indicator of some of the issues involved.

Meat

- There are both export and domestic standards in place, and harmonisation of these is a priority. Some elements of co-regulation are established but contestability for inspection services is very limited. Negotiation continues with overseas markets to gain acceptance of less government involvement in inspection and audit.
- Risk based procedures must be kept under review with industry because of the potential for adverse events to have impact on consumer confidence. This is likely to result in greater emphasis on government controls.

First steps towards Vision: Harmonise standards, strengthen the vision for joint industry/government systems to replace end-point controls, continue efforts for importing country acceptance of QA based processes.

Risk Element: There will be significant risks if the inspection based structures are dismantled before confidence has been established in alternative methods. Adverse events force increases in the level of controls.

Dairy

- This industry is well advanced against the 'model'. Exports are increasing, backed by a high level of investment in technology and QA
- Contestability is in place for inspection and audit functions. However, a view exists within the industry that total outsourcing of service to third parties is not desirable because of potential conflict of interest.

First step: Address auditing/outsourcing issue to ensure confidence in monitoring arrangements.

Risk element: The lack of government-based resources to respond to adverse events under the co-regulatory arrangements may create a situation where an inadequate regulatory response results in damage to consumer confidence, and hence exports.

Fish

- There is a multiplicity of small processors, with no single industry focus. The industry is characterised by rapid development with an opportunity to progress to the model. There is relatively little formal QA uptake at the moment.

First step: Organise an effective industry voice, examine a QA model which fits the characteristic of this industry and move towards greater contestability for services.

Longer term: The industry should progress to a fully integrated co-regulatory arrangement, adapted to continually emerging market conditions which may include public health issues.

Grain

- Coregulatory arrangements have not been adopted in the bulk grains industry. There has been perseverance with inspection and lack of cost competitors for the service. Phytosanitary issues are the prime concern in importing countries rather than public health.

First steps: To find a means of motivating industry, to adopt QA systems on farms and in storage/handling. Determine whether a separate strategy for non bulk grain commodities will assist with new market opportunities.

Risk element: Other legislation controls bulk grain export, and it is conceivable that all export control requirements could be managed under such legislation rather than under the *Export Control Act*. Therefore, the effectiveness of controls under the *Export Control Act* should be kept under review.

Horticulture

- This grouping is artificial. There is no such thing as a Horticulture industry; rather there are many groups of exporters and potential exporters often working from small farms/economic units with relatively limited expertise and asset base.

- This 'industry' has its own legislation very similar to the *Export Control Act* which can address all of the issues including certification. Some progress has been made with contestability and QA but this is not consistent across all participating groups.

First step: Consider QEAC program evaluation recommendations and finalise the vision for this industry.

Longer term: Determine whether the Act is necessary as well as the *Australian Horticultural Corporation Act 1987*.

Other Programs

Live Animals

- This industry is significantly different from the others because there is no processing step involved in the exports chain. Animal welfare and transport are the dominate concerns in this industry.
- Significant progress has been made with QA and contestability for inspection and a review of existing arrangements is currently being undertaken.

First step: Continue to emphasise effective industry control from farm to departure with reduced reliance on government inspection.

Risk element: Effective management of animal welfare and transport issues is required.

Organics

- A different nature – 'organic' is an overlay of food legislation, an extra requirement, relating to the means and method of production. Potentially, requirements relating to 'organic' could apply to any product under the Act. It is important, therefore, that requirements be consistent across products. It is critical that potential consumers have confidence in a certification that production meets 'organic' requirements.

First step: Ensure ongoing consumer confidence.

Risk element: Retention of high standards by all accrediting organisations.

8. RECOMMENDATIONS

Recommendations are in bold, immediately under the headings, and commentary follows in normal text.

RECOMMENDATION 1

Retention of the Act

The Review Committee recommends that:

- 1.1 **the Export Control Act be retained, in its current form, and with its current general structure,**
- 1.2 **the title of the Act to be changed to the ‘Export Assurance Act’,**
- 1.3 **specific amendments be made in the areas of: the objectives of the Act; the scope of the legislation; adoption of a three-tier system of export assurance; and, legislative monitoring, as outlined in other Recommendations in this Report, to ensure that the Act properly conforms to the NCP and is relevant to current export requirements.**

Government certification is a prerequisite to gain entry to most overseas markets for most food and agricultural products. This Act provides the legislation to support Government certification. The Review Committee has established that the benefits of the Act are far greater than the costs.

Stakeholders strongly support the retention of the Act.

The Committee considers that the current structure of the Act provides the authority necessary to satisfy overseas governments that their requirements can be met, while the Regulations and Orders allow the administrative flexibility necessary to keep up with the dynamics of international trade. Therefore, the existing structure should be retained.

There are a number of areas, as detailed in the Report and other Recommendations, which require amendment to ensure that the Act remains relevant to exports and fulfils its objectives properly. There is also a need for the Act to conform to competition policy principles.

The current title of the Act does not fully reflect its purpose. The Committee is of the opinion that the word ‘assurance’ conveys more accurately the outcome desired. ‘Assurance’ adds the dimension of industry responsibility to ‘control’ and emphasises to foreign markets that the outcome is the prime focus.

Implementation

Retention requires no timetable. Legislative amendments referred to should be addressed as soon as practicable, in consultation with stakeholders. There will be the usual direct costs involved with amendment of legislation. For general costs and benefits conferred by the legislation, see Chapter 5.

Report References

Ch4 (4.3), Ch5 (throughout), Ch6 (6.2.1-4 & 6.2.8), Ch7 (throughout)

RECOMMENDATION 2

Objectives of the Legislation

The Review Committee recommends that the Act be amended to include a statement of specific objectives.

The Act has no specifically stated objectives. Inclusion of objectives will bring the legislation up to date, make its purpose clear and enable a proper basis to be established for performance measurement purposes.

The objective recommended by the Committee is:

The objective of future export control legislation is to facilitate, enhance and sustain Australia's exports by providing authority for the imposition of systems which:

- *ensure compliance with overseas country requirements, and*
- *ensure compliance with any other standards established through government/industry consultation on the basis of net public benefit.*

The two elements of this objective are strongly interrelated. There are 'flow-on' considerations encapsulated in the above, such as ensuring public health and safety, covering market failure, observing relevant international agreements, authorising appropriate control and assurance arrangements and guaranteeing that overseas requirements will be met.

The objectives should be of such a nature as to provide an effective basis for the establishment of measurement criteria (see Recommendation 10).

Development of specific objectives for individual programs should be part of the consultative process between government and industry.

Implementation

Legislative amendments should be addressed as soon as practicable, in consultation with stakeholders. Benefits will include gains flowing from increased clarity of the purpose of the legislation, acceptance from overseas markets, and better industry alignment in Australia. Future legislative drafting and interpretation will be greatly facilitated.

Report References

Ch2 (2.1), Ch4 (4.3), Ch6 (6.2, 6.3.2), Ch7 (7.2 & 3)

RECOMMENDATION 3**Adoption of an Integrated Export Assurance System
(Three Tier Model)**

The Review Committee recommends that programs established under the Export Control Act be administered under the following three tier model comprising:

- **Australian Standards (Tier 1),**
- **Standards set by overseas governments for access to their markets (Tier 2),**
- **Market-specific requirements (Tier 3).**

The objectives of the three tiered approach are to:

- avoid the current broad practice of imposing the most stringent controls set by one country or group of countries on exports to all destinations,
- eliminate the confusion and additional costs created by the existence of domestic and export systems, and
- avoid the need for exemptions from the Act such as those currently allowed under the meat program.

The coverage under each of the tiers would be as follows:

Tier 1 would relate to exports of food and agriculture products prepared under the requirements of the established Australian standards. The standards would cover the essential health and hygiene issues and would be based on accepted international standards such as those promulgated by Codex, OIE and IPPC.

All food and agricultural product manufacturers would have to comply with these standards.

Tier 2 would cover standards set by overseas governments for access to their markets additional to the standards set under Tier 1. Only producers/manufacturers wishing to supply such markets would be required to comply with these additional standards.

Tier 3. There will be occasions when government or industry set special requirements for all exporters of a particular product to a particular market. This may be part of an industry strategy to gain a foothold in a new market or to retain access to an existing market in the face of an unforeseen adverse development or responding to a market failure. Such requirements would be in addition to the domestic (Tier I) and additional to any importing country (Tier 2) requirements.

The Tier system would incorporate HACCP based quality assurance arrangements for risk assessment and risk management.

This concept is central to the Committee's vision, but it is recognised that because of basic differences between products, industries and trade, it may not be implemented in exactly the described form for all products.

Implementation

The implementation process will be long and complex, and will be dependent on commitment of Australian industry and on acceptance by importing countries. No realistic timetable could be set at this stage. Subordinate legislation may need to be restructured.

In the medium to long term, this approach should result in substantial cost reductions for all sectors, particularly the smaller firms. It should remove many of the current distortions and impediments to competition. Benefits will flow from a more targeted export assurance system.

Report References

Ch5 (5.4.4), Ch7 (7.2 – 7.4).

RECOMMENDATION 4

Harmonisation of Domestic and Export Standards

The Review Committee recommends that domestic and export standards for the production of food and agricultural products in Australia be harmonised, and that they be consistent with relevant international standards.

Australian industry should be encouraged to produce for a global market with health hygiene and product standards built into production systems. The first step should be to ensure Australian standards are consistent with accepted world standards set by relevant international agencies.

In order to avoid duplication and overlap of regulation, existing Australian standards should be adopted and the government should undertake to promote Australia's standards as suitable for application by overseas governments. Special regard may need to be given to residues.

The harmonisation of domestic and export standards is an important objective for stakeholders associated with the existing Export Control Act. There is a strong consensus favouring a single set of standards.

Implementation

Progress will be dependent on concordance between AQIS, ANZFA, and State authorities. Given that this recommendation is in line with current COAG policy, implementation could be expected within three years. This is a prime recommendation to establish a more efficient and effective process.

Report References

Ch1 (1.3.2 & 1.3.5), Ch2 (2.2, 2.4, 2.7 - 2.9), Ch4 (4.1-4 & 4.7), Ch6 (6.2.8 & 6.2.16), Ch7 (7.1 and 7.4)

RECOMMENDATION 5

Certification by a Single Authority

The Review Committee recommends that certification of Australian export products continue to be administered by a single government based agency.

Certification is the declaration that agreed conditions of access into a market have been met, and is currently delivered by a single government-based agency (AQIS). The agreed conditions may allow for shared responsibility between government, industry or third parties for monitoring of export performance, but a single certifying authority is a standard requirement. There is thus no scope to introduce contestability into this role.

In addition certification by a single authority creates a value for individual exporters. The "AI" (Australia Inspected) stamp applied by AQIS when certifying shipments is interpreted as a statement about the condition of the product. It is a recognisable level of assurance—a 'guarantee' - and should be retained.

The single certifying body provides a single point of contact for foreign governments, a single identifiable point for origination of policy and the most efficient means of policy delivery. It reduces the impact on industry and provides a body easily identifiable with industry.

Implementation

This recommendation is consistent with existing arrangements. The single body minimises costs and maximises benefit in terms of contact with importing countries, and as a reference point for Australian industry.

Report References

Ch4 (4.9), Ch6 (6.3.4), Ch7 (7.1)

RECOMMENDATION 6

Contestability of Monitoring, Auditing and Inspection

The Review Committee recommends that monitoring and inspection arrangements be made fully contestable under all programs as soon as third party arrangements are acceptable to overseas governments.

The traditional system for measuring performance has been to rely solely on government engaged inspectors. The ideal future model is to allow third parties to provide the service and full contestability on open competition between service providers.

The current arrangements vary between programs; meat is still reliant on the traditional approach, while organic food and dairy products are virtually working in accord with the “vision in practice” model. Services for live animal exports are now substantially delivered under a contestable system.

The ultimate objective is to have all programs aligned with the ‘vision in practice’ model. The timing of the shift is dependent on overseas government acceptance of third party inspectors. The Committee is aware that the existing arrangements are being progressively reviewed but urges that a timetable for adoption of the model be established for all programs.

The contestability should not extend to the function of certification. As previously stated, The Committee has a firm view that certification should continue to be undertaken by AQIS (Recommendation 5).

Implementation

Adoption will be dependent on securing agreement of industry and overseas governments that third party inspections are acceptable. Implementation should be complete within three years.

Industry should pay no more for services subject to contest, and may be able to secure cost reductions. However, costs of services would no doubt vary to take account of specific conditions such as remote locality and variable processing times.

Once approved, implementation arrangements should be addressed by the relevant program development committee (see Recommendation 12).

Report References

Ch2 (2.5, 2.8, 2.11), Ch3 (3.7), Ch4 (4.4, 4.8), Ch5 (5.3.2, 5.4), Ch6 (6.2.6, 6.2.7), Ch7 (7.1, 7.2)

RECOMMENDATION 7

Scope of the Legislation

The Review Committee recommends that the focus of the Act extend through the entire food chain and not rely primarily on the product preparation stages immediately prior to export, as occurs at present.

In recent years, there has been increased consumer awareness that product safety risks extend through the food preparation chain and are not confined to the preparation, handling and storage of end products. This awareness has prompted greater government interest in all stages of product preparation. The notable examples of such awareness and response have been the ban

by a number of countries on beef from cattle raised with assistance from hormonal growth promotants and consideration by governments of appropriate rules to regulate genetically modified foods.

The emerging outcome is a call by governments for new controls on the origin of products and validation of standards set for each processing step. The concepts covered in Recommendation 4 are relevant.

There is authority for such controls under the existing Act, but it is implied. The scope of the existing Act should include specific provision for the imposition of standards through the complete production and marketing chain. In practice, the necessary controls would be established in Regulations and Orders after detailed consultation with industry and State and overseas governments.

Implementation

The Act must have clear authority to keep up with the requirements of foreign governments. The costs of compliance relating to these requirements can therefore not be avoided.

Report References

Ch3 (3.4 – 3.7), Ch4 (4.4, 4.6, 4.7) Ch6 (6.2.8); Ch7 (7.1)

RECOMMENDATION 8

Criteria for Application of Legislation

The Review Committee recommends that specific criteria for the application of the Act be prepared in consultation with industry.

The criteria should include:

- a protocol for implementing the process of prescription under the Act;
- a protocol for reviewing goods prescribed under the Act;
- a protocol for product coverage under the Act; and
- arrangements for consultation with industry.

The adoption of specific objectives and the three tier approach as recommended will provide improved guidance for specific application of the legislation. The key determinant for implementation will continue to be the standards set by overseas governments for access to their markets. There is, however, a need for industry to know in advance how the rules will be applied. Such predictability will facilitate planning and assist exporters to target individual markets and minimise costs.

Implementation

Consultation is required, but the process should be straightforward and achievable within twelve months. Benefits will accrue to industry from

minimisation of costs through greater predictability from better targeted legislation.

Report References

Ch2 (2.3 – 2.5, 2.7), Ch3 (3.9), Ch4 (4.5-6, 4.8), Ch6 (6.2.5, 6.2.6, 6.2.11), Ch7 (7.2)

RECOMMENDATION 9

Certification of Non-Prescribed Goods

The Review Committee recommends that only prescribed goods be certified under the Act.

AQIS currently certifies a number of non-prescribed goods, eg ice cream, biscuits. If this form of certification is required on an on-going basis, such goods should be added to the prescribed list.

Implementation

This will be a routine matter to alter, but requires detailed consultation because of the divergence in views among stakeholders. Increased costs would be negligible and improved benefits will flow from transparency and consistency. AQIS operations will then fall within the letter and spirit of its authorities.

Report References

Ch2 (2.4.1), Ch4 (4.5), Ch6 (6.3.4)

RECOMMENDATION 10

Review of Individual Programs against NCP Principles

The Review Committee recommends that QEAC establish a program of periodic monitoring of the operation of regulation, particularly in economic terms, ensuring that:

- **the activity under the Act and its administration are measurable against its objectives,**
- **the Act be periodically monitored in relation to the net benefit it confers.**

Monitoring of regulation, its administration and its effects, is required as circumstances change over time. It is important that subordinate legislation in particular be subject to regular scrutiny by the responsible Government authority, in consultation with stakeholders. It is Government policy to review subordinate legislation regularly, to determine its current relevance.

Reviews are of particular importance for regulation that operates in the commercial arena. There should be periodic checks against NCP principles as it is government policy to review subordinate legislation regularly, to determine its current relevance. Legislation which is managed and monitored in this fashion will be more in line with the relevant principles, more responsive to business needs, and more likely to “survive” through relevance. Export legislation exerts considerable power, and it is imperative to monitor to ensure that it is fulfilling its objectives rather than imposing irrelevant authority.

Those provisions which should receive the greatest attention are the aspects of regulation related closely to commercial issues, such as prescription.

In order to gain appropriate synthesis between the development of the Act’s objectives and the periodic review of regulation, it will be necessary to define appropriate measurement criteria and establish mechanisms which will enable the measurement to be carried out. The Committee, again, sees this as an important part of the consultation process between government and industry.

Implementation

The process should be defined within six months and implemented by twelve months. Monitoring will involve administrative costs for AQIS, which should be recouped by better targeting and increased effectiveness of the legislation through better information on functioning.

Report References

Ch2 (2.1); Ch4 (4.1, 4.3, 4.8); Ch6 (6.2); Ch7 (7.2, 7.3)

RECOMMENDATION 11

Accelerate the Current Review of Existing Subordinate Legislation

The Review Committee recommends that the current review of subordinate legislation should be accelerated, and conducted with reference to the principles expressed in this Report, in particular, reflecting the partnership between Government and Industry, and the assumption of greater industry responsibility.

The *Export Control Act* is compact, but the subordinate legislation (Regulations, Orders) is lengthy and complex. It is also the part which directly affects the daily operations of exporters. Alteration to regulation may be needed when overseas requirements are altered. Further, clients must wade through voluminous documentation in order to determine applicability. The Committee is of the opinion that a more effective approach is to specify adherence to the requirements of the relevant importing country. Excessive prescriptiveness is anti-competitive, potentially stifling of innovation, and lacks the necessary flexibility. Increased use of Australian systems and standards will also assist in reducing this problem. The Export Meat Orders are already being reviewed to incorporate an outcomes focus and co-regulatory controls. This direction of the review is consistent with the Committee’s views.

The Committee believes that all subordinate legislation applying under the Act should be reviewed with the same specific objective.

Implementation

These reviews should follow the government's assent to action on the recommendations contained in this report. AQIS should adopt a rolling program of reviews, continuing from those currently under way. As QEAC has been instrumental in reviewing a number of export programs, it is to this body to which the task should be given of ensuring that progress is achieved.

Report References

Ch4 (4.3), Ch6 (6.3.3) Ch7 (7.4)

RECOMMENDATION 12

Co-responsibility for Strategy and Program Delivery

The Review Committee recommends that:

- 12.1 a Development Committee be established for each program,**
- 12.2 membership of the Committee comprises representatives of AQIS and Industry,**
- 12.3 the Committees operate independently and be charged with the specific responsibility to
determine strategies
establish priorities, and
approve plans for their implementation,**
- 12.4 QEAC review the performance of these committees biennially and report to the Minister against the adopted plans.**

Under existing arrangements individual programs are monitored by Consultative Committees comprising representatives of AQIS and the relevant industry. The Review Committee believes that these Committees should be given more responsibility for policy developments and program delivery. Particular focus should be placed on strategies and priorities to facilitate trade through improved access to individual markets.

Because the objective is to inject real strategic responsibilities, membership of the individual committees should be limited to, say, six permanent members. However, the committees should be given authority to co-opt temporary members from other Commonwealth or State Government agencies, or other industry experts where appropriate.

A first step for the newly established committees should be an assessment of each program against the vision and assurance model outlined in this Report.

The existing Ministerial council (QEAC), with appropriately broad-based representation, is the appropriate organisation to oversight the effective discharge of this process.

Implementation

Consultation should commence immediately, with the process be completed within twelve months. Increased effectiveness will have efficiency dividends for industry.

Report References

Ch2 (2.3.1, 2.6); Ch3 (3.8); Ch4 (4.4); Ch6 (6.3.2); Ch7 (7.2, 7.4)

RECOMMENDATION 13

Electronic Commerce

The Review Committee recommends that AQIS move quickly to align the administration of the regulation with current Government policy on electronic commerce, recognising in particular:

- 13.1 advantages in establishing more easily accessible information bases and information services for stakeholders on such issues as importing requirements and microbiological testing**
- 13.2 the benefits of placing a greater emphasis on electronic commerce, particularly given government policy on this issue**

Accessibility to information that may change frequently is an issue for current or potential exporters. Competitiveness depends, in part, on the ability of industry and individual businesses to identify and respond to opportunities.

AQIS has a commitment to E-Commerce and its implementation should be accelerated. The coverage, accessibility, costs and timetable for extension of the existing facilities should be addressed by the Development Committees to be established (see Recommendation 12).

The Commonwealth Government's Office of Government On-line (OGO) has considerable expertise and resources to increase effectiveness in this area.

Implementation

This is a continuing initiative, with development costs, but it has been shown that the system has the potential to reduce costs both for the administrative system itself and for industry through reduced charges and greater efficiencies.

Report References

Ch3 (3.8, 3.9); Ch6 (6.2.13); Ch7 (7.1)

RECOMMENDATION 14

Implementation

The Review Committee recommends that the outcome of this Review and its Recommendations be included as part of the COAG policy on the reform of food regulation, and further that:

- 14.1 **AFFA/AQIS progress the recommendations in this context by developing an implementation plan with milestones for achievement over the next five years. The plan must show substantial changes occurring within 18 months,**
- 14.2 **The Minister establishes a reporting framework for progress on implementation of recommendations taking into account the role of other government bodies, apart from AQIS. Implementation of the Committee's vision depends on securing commitment from Commonwealth bodies such as ANZFA and all State and Territory Governments,**
- 14.3 **ARMCANZ oversight implementation of the Three Tier model and facilitate harmonisation of State/Commonwealth standards for each industry or program area encompassed by the *Export Control Act*.**

Recommendations for this Report have been framed to support Government policy on food regulation matters, and to indicate those areas where policy needs to be refined or extended. This Recommendation covers the intergovernmental links and the controls needed to ensure that Report Recommendations are put in place.

A combination of operational level and policy level action will be required in AQIS to give appropriate support to the realisation of the Recommendations.

Implementation

Action should commence immediately, with the agenda being defined within six months, and with annual reporting on progress, incorporating stakeholder comments.

Report References

N/A (refers to other Recommendations).

Attachment 1**Terms of Reference**

1. The Export Control Act 1982 (the Act), and associated regulations and orders, are referred to the Review Committee (the Committee) for evaluation and report by 31 August 1999. 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 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.

Attachment 2

Review Committee

The Review Committee was chosen to reflect a diversity of experience with export and regulation of primary industry commodities

Peter Frawley: Chairman

Mr Frawley has extensive experience with trade policy issues, as a senior government trade official, as Managing Director of the Australian Meat and Livestock Corporation and as Managing Director of a large export meat processor. Mr Frawley was formerly Executive General Manager of CSR and is currently Chairman of Livecorp.

Raoul Nieper

Until recently Head of the Queensland Department of Primary Industries, Mr Nieper also held a number of senior positions in that Department. He is now an independent consultant. He is currently Chairman of the Australian Animal Health Council, and has been involved at senior level with Grainco, the Queensland Dairy Industry Authority, and the Livestock and Meat Authority of Queensland.

Lyndsay Makin

An independent consultant, Mr Makin was previously General Manager, Export for Nestlé. He is also past President, Council of Australian Food Technology Associations (CAFTA). Mr Makin was the inaugural member of the Management Committee overseeing the Code of Conduct for the Provision of Consumer Information on Foods and chaired the Limited Review of the Code for the Australian and New Zealand Food Authority (ANZFA).

Barbara Wilson

Barbara Wilson is currently Assistant Director, Technical Services and Operations in the Australian Quarantine and Inspection Service (AQIS). Prior to this, in AQIS, she was Assistant National Operations Manager (North-West). She previously held senior positions in the South Australian Public Service including Chief General Manager of Primary Industries (SA) and was Deputy Chair of the National Registration Authority (NRA).

Secretariat and Support

The work of the Committee was supported by a Secretariat managed by Dr Wilson, consisting of Hilary Cuerden-Clifford (Research coordination), Glenda Owens (Administrative support), Alex Cockinos (Economic research), Sharon Kennett (Economic research) and Julia Curtis (Technical/scientific research).

Brian Johnston of Agricultural Industries Division provided oversight for the economic research, and Deborah Fileman provided the material for Attachment 3.

Attachment 3

Current Regulatory Arrangements Impacting on the Export Of Prescribed Goods

National Legislation

(This list excludes numerous charging Acts and Levy Acts)

Name of Act	Potential Impact on Export of Prescribed Goods
At the Border	
<ul style="list-style-type: none"> • <i>The Customs Act 1901</i> 	<p>Part V1 of this Act deals with the exportation of Goods. This Act allows for the making of regulations, including regulations to prohibit exports. It also regulates the entry of goods for export and the use of computers for export entry and clearance purposes.</p>
Industry Specific Acts	
<ul style="list-style-type: none"> • <i>Australian Meat and Livestock Industry Act 1997</i> 	<p>This Act regulates the red meat industry. It requires that exporters are licensed and allows for the administration of a quota system.</p>
<ul style="list-style-type: none"> • <i>Australian Horticultural Corporation Act 1987</i> 	<p>This Act allows for regulations empowering the Corporation to control the export of horticultural products from Australia, including prohibiting exports and requiring a licence to export.</p>
<ul style="list-style-type: none"> • <i>Dairy Produce Act 1986</i> 	<p>This Act allows for regulations to be made prescribing the conditions that must be complied with for controlled dairy produce. The Act also requires exporters to be licensed.</p>
<ul style="list-style-type: none"> • <i>Wheat Marketing Act 1989</i> 	<p>This Act requires that the Wheat Marketing Authority grant permission to export wheat.</p>
Other	
<ul style="list-style-type: none"> • <i>Trade Practices Act 1974</i> 	<p>The primary focus of this Act is on trade within Australia. However, part IV which deals with industry codes could be used by industries that export. Country of Origin representations also comes under this legislation.</p>
<ul style="list-style-type: none"> • <i>The Food Standards Code</i> 	<p>The Food Standards Code is referenced in the Export Control Orders</p>

State Legislation

State or Territory	Public Health Acts	Industry Acts	Animal/ Plant Health Acts	Other
NSW	<ul style="list-style-type: none"> • <i>Food Act 1989</i> • <i>Food Standards Code</i> 	<ul style="list-style-type: none"> • <i>Meat Industry Act 1989</i> • <i>Poultry Processing Act 1969</i> • <i>Poultry Meat Industry Act 1986</i> • <i>Dairy Industry Act</i> 	<ul style="list-style-type: none"> • <i>Stock Disease Act 1923</i> • <i>Plant Diseases Act 1924</i> • <i>Exotic Disease of Animals Act 1991</i> 	<ul style="list-style-type: none"> • <i>Agricultural and Veterinary Chemicals Act 1994</i>
Victoria	<ul style="list-style-type: none"> • <i>Food Act 1997</i> 	<ul style="list-style-type: none"> • <i>Meat Industry Act 1993</i> • <i>Dairy Industry Act 1994</i> • <i>Dried Fruits Act 1958</i> 	<ul style="list-style-type: none"> • <i>Livestock Disease Control Act 1994</i> 	<ul style="list-style-type: none"> • <i>Agricultural and Veterinary Chemicals Act 1994</i>
Queensland	<ul style="list-style-type: none"> • <i>Food Act 1981</i> • <i>Food Hygiene Regulations 1989</i> • <i>Food Standards Regulation</i> 	<ul style="list-style-type: none"> • <i>Meat Industry Act 1993</i> • <i>Dairy Industry Act 1993</i> 	<ul style="list-style-type: none"> • <i>Stock Act 1915</i> 	<ul style="list-style-type: none"> • <i>Agricultural and Veterinary Chemicals Act 1994</i>
South Australia	<ul style="list-style-type: none"> • <i>Food Act 1985</i> • <i>Food Hygiene Regulations 1990</i> • <i>Public and Environment Health Act 1987</i> 	<ul style="list-style-type: none"> • <i>Meat Hygiene Act 1994</i> • <i>Poultry Meat Industry Act 1969</i> • <i>Dairy Industry Act 1992</i> • 	<ul style="list-style-type: none"> • <i>Stock Act 1990</i> 	<ul style="list-style-type: none"> • <i>Agricultural and Veterinary Chemicals Act 1994</i>
Western Australia	<ul style="list-style-type: none"> • <i>Health Act 1911</i> • <i>Health (Food Hygiene) Regulations 1993</i> 	<ul style="list-style-type: none"> • <i>Meat Authority Industry Act 1976</i> • <i>Chicken Meat Industry Act 1997</i> • <i>Dairy Industry Act 1973</i> 	<ul style="list-style-type: none"> • <i>Stock Diseases Act 1968</i> 	<ul style="list-style-type: none"> • <i>Agricultural and Veterinary Chemicals Act 1995</i>
Tasmania	<ul style="list-style-type: none"> • <i>Public Health Act 1962</i> 	<ul style="list-style-type: none"> • <i>Meat Hygiene Act 1985</i> • <i>Dairy Industry Act 1994</i> 	<ul style="list-style-type: none"> • <i>Animal Health Act 1995</i> 	<ul style="list-style-type: none"> • <i>Agricultural and Veterinary Chemicals Act 1994</i>
ACT	<ul style="list-style-type: none"> • <i>Food Act 1992</i> 		<ul style="list-style-type: none"> • <i>Stock Act 1991</i> • <i>Animal Diseases Act 1993</i> 	
Northern Territory	<ul style="list-style-type: none"> • <i>Food Act 1986</i> • <i>Food Standards Regulations 1988</i> 	<ul style="list-style-type: none"> • <i>Meat Industry Act 1996</i> 	<ul style="list-style-type: none"> • <i>Stock Diseases Act</i> 	<ul style="list-style-type: none"> • <i>Agricultural and Veterinary Chemicals Act 1994</i>

Commentary

- The Acts listed include some of the numerous Acts that have the potential to impact on the exporters and processors of export food with respect to wholesomeness. Consequently, Commonwealth and State legislation regulating workplace relations, occupational health and safety, fees, charges and levies etc have not been included.
- The requirements of State and Territory Acts may or may not duplicate requirements legislated for under the Export Control Act and further research would be required to determine the extent of any overlap.
- Issues worthy of further consideration or research, in relation to the interaction of State, other Commonwealth and AQIS administered legislation might include the following.
 - There is an overlap in licence and registration requirements found in State and Commonwealth legislation. For example, red meat processors are required to be licensed under the Australian Meat and Livestock Industry Act, registered under the Export Control Act and licensed under State Legislation.
 - In some instances, the Export Control Act relies on State legislation to ensure that exported food is safe and wholesome. Plant and animal health is constitutionally the responsibility of State governments. Legislation such as the *Exotic Diseases Act 1981*, and the *Stock Diseases Act 1923* in New South Wales are the first step to ensuring the health of animals presented for slaughter. Further, various state Agricultural and Veterinary Chemicals Acts regulate the use of production chemicals in the interest of clean, green product.

Attachment 4**Stakeholder Contact****Submissions**

Written submissions were received from the following organisations and individuals

Abbott Stillman & Wilson
 ACT Chief Minister
 Agriculture Fisheries and Forestry Australia
 Angas Park Fruit Company
 Aus-Meat
 Australia New Zealand Food Authority (ANZFA)
 Australian Chamber of Commerce & Industry
 Australian Cotton Shippers Association
 Australian Dairy Products Federation
 Australian Dried Fruits Association
 Australian Food & Grocery Council
 Australian Lot Feeders Association
 Australian Meat Council
 Australian Oilseeds Federation
 Australian Quarantine and Inspection Service
 Australian Wheat Board
 Australian Wine and Brandy Corporation

Biostarch

Cattle Council of Australia
 Custom Brokers Council of Australia

Dairy Authority of SA
 Department of Foreign Affairs & Trade

European Union (Delegation of the EC in Australia)

Goodman Fielder
 Grains Council of Australia

Kialla Pure Foods

Livecorp

National Meat Association of Australia
 Nestlé
 NSW Government
 NT Department of Primary Industry & Fisheries

O'Donnell, Dr Carol

Palos Verdes International
 Pork Council of Australia
 Pulse Australia

Quarantine and Exports Advisory Council (QEAC)
 Qld Department of Health
 Qld Department of Primary Industries
 Qld Produce Seed & Grain Merchants
 Qld Sugar Corporation

RSPCA

Seed Industry Association of Australia
 SA Government
 Southern Game Meats

Tasmanian Department of Primary Industry & Fisheries
 Teys Bros

Victorian Department of the
Premier & Cabinet
Victorian Quality Assured
Meats

WA Department of the
Premier & Cabinet
Welsman, Sandra
Western Australian Food and
Beverage Exporters
Association

**Comments on the Draft
Report**

***Comments on the Draft
Report were received from
the following organisations
and individuals***

Anderson, John (AQIS)
Angas Park Fruit Co
Agriculture Fisheries and
Forestry Australia
ANZFA
Australian Customs
Australian Food and Grocery
Council
Australian Pork Corporation
Australian Wheat Board

Confederation of Australian
Pork Exporters

Dairy Authority of South
Australia

Fred Lloyd (AQIS)

Garreffa Garry (AQIS)

Harvey Fresh

Kialla Pure Foods

National Association for
Sustainable Agriculture,
Australia (NASAA)
National Meat Association of
Australia

QEAC
Queensland Department of

Primary Industries

Red Meat Advisory Council
RSPCA

SA Department of
Primary Industry &
Resources
Seed Industry Association of
Australia
South Australian Co-operative
Bulk Handling

Victoria Premier & Cabinet
Victorian Meat Authority

WA Department of
Commerce & Trade
WA Department of
the Premier & Cabinet
WA Meat Industry Authority

Consultation and Meetings

***Direct consultation took
place with representatives of
the following organisations.***

A & B Grains
Agriculture Fisheries and
Forestry Australia
Allegro
AQIS
Australian Game Meat
Association
Australian Horticulture
Corporation
Australian Meat Council

Beak and Johnston
Bega Dairy
Bonlac

Capel Dairy
Culley & Russell

Dairy Export Industry
Consultative Committee
Dairy Industry Authority WA
Deacon Seeds
Department of Foreign Affairs
and Trade

European Union

Food Safety Committee

George Weston Foods
Gourmet Chef Foods
Grainco Qld

Harvey Fresh
Hillside Meats

Kailis & France
Kialla Pure Foods

Mundella
Murray-Goulburn Co-
Operative

National Meat Authority

Peters/Browns

Qld Department of Primary
Industries
Qld Livestock & Meat
Association
Qld Meat Industry Review
Committee

Red Meat Advisory Council
Regal Marketing
Roediger Bros Northam
RSPCA
Russell Bros

Sadleirs Transport
South Australian Co-operative
Bulk Handling
South Australian Dried Fruits
Board
Southern Meats
Supermarket to Asia

Tatura Dairy
Teys Bros

United States Embassy

Victorian Meat Authority

WA Department of
Agriculture
WA Department of Commerce
and Trade
Walsh's Bunbury

Attachment 5

An Assessment of the economic value of the Export Control Act to the Australian beef and dairy industries

Report prepared for the Australian Quarantine Inspection Service

Ian Shaw
August 1999

Contents

<i>Background</i>	130
<i>Method of analysis</i>	130
Structure of the AGLINK model	130
Conditioning assumptions for the analysis	131
<i>Results of the loss of market access</i>	132
Estimated impact of the closure of the US beef market	132
Estimated impact of the closure of the Japanese cheese and skim milk powder export markets	133
Table 1: Beef Scenario	135
Table 2: Dairy Scenario	136

Background

The objective in this report is to assess the economic value to the Australian beef and dairy industries under the current administrative or legislative arrangements of the *Export Control Act* by simulating the likely losses in industry revenue that might flow from a disruption to a major export market for each commodity as a result of either:

- an hypothesised easing of the ECA; or
- an hypothesised complete annulment of the ECA.

A disruption to trade with another country may arise for example because a foreign government refuses to accept any alteration to the current arrangements or because of a health or quality problem arises with a product subsequent to a change in the ECA. The analysis reported here provides an indication of the likely gross revenue effect for each commodity during the year in which the disruptions are simulated. The results are for the Committee's deliberations and review of the comparative costs and benefits of existing and alternative approaches to controlling food exports (such as industry self-regulation and government-industry co-regulation) under the ECA.

Method of analysis

A conventional *ex ante* cost-benefit analysis involving the discounting of expected future streams of economic benefits and costs over a specified planning horizon would have proven too difficult and time consuming for the purposes of this Review. Instead, it was decided a single year analysis (1999 for beef and 1998/1999 for dairy) would yield more meaningful results. It was also felt that a single year analysis would better facilitate any subsequent comparison with the likely economic benefits and costs under any specifically defined alternative control regime that the Committee might subsequently prescribe.

For the analysis, the *AGLINK* model was used to estimate the separate impacts of a disruption to a major beef and dairy export market. Of particular interest are the possible gross revenue effects for both industries.

Structure of the *AGLINK* model

The *AGLINK* model is a dynamic economic model of the world's major temperate zone agricultural commodity markets which, for obvious reasons, includes agricultural commodities of most importance to the member countries of the OECD.

AGLINK encompasses demand, supply, trade and price determination on an annual basis for as many as 27 commodities for each of 22 countries or regions, such as the European Union. The model contains detailed representations of the ten major agricultural producing and trading countries or groups of countries within the OECD (Australia, Canada, European Union, Japan, Republic of Korea, Mexico, New Zealand, United States, Poland and Hungary), as well as a complete agricultural sector module for China and Argentina. It also has a rice module that includes Asian countries as well as representations of the beef sector in Mercosur countries and countries in Asia that are important for the world beef market.

Trade flows between countries and regions provide the link between developments in each commodity market as well among the countries and regions. These trade flows are determined by price movements as well as policies like tariff rate quotas (TRQ) and production and export subsidies that are relevant to the agricultural sector in each particular country or region. As a result of the modeling approach, AGLINK contains individual price determination for beef, pork, poultry meat, cheese, butter, skim milk powder, wheat, coarse grains, oilseeds, oilseed meal, vegetable oil and rice in each of the major agricultural producing countries and regions of the world.

Another feature of the model is that the parameters affecting livestock production are explicitly time-dimensional and reflect the detailed modeling of the dynamic behavior of livestock inventories and animal production. In an effort to capture changes in Australia's livestock industries in recent years, ABARE has recently completed a major exercise to update the suite of models covering livestock production in Australia. The industries covered to date include beef, wool, sheep meat and dairy. To ensure consistency across all broadacre industries, ABARE has also updated its model of Australia's cropping sector. These updated models have been used to produce the projections reported here.

The OECD Secretariat uses the information generated from AGLINK to prepare reports presenting outlook assessments for cereals, oilseeds and livestock products. The reports are discussed at the annual meetings of the Working Group on Meat and Dairy Products and the Working Group on Cereals, Animal Feeds and Sugar of the OECD Committee for Agriculture. The model is also used by the Secretariat and member countries to assist in policy analysis.

Conditioning assumptions for the analysis

To conduct the market closure scenarios, a baseline simulation was first generated using *AGLINK* in which the projections for Australia's meat, dairy and cropping industries published in the latest edition of *Australian Commodities* (ABARE 1999) were replicated. The baseline simulation provides a reference point with which to compare the alternative simulations of market closure for beef and dairy exports.

For the beef industry the reference point chosen was calendar year 1999 while for dairy the reference year was 1998-99. The projections published in *Australian Commodities* are based on a number of assumptions about the Australian and world economies which are also reported in that publication. In the baseline it is estimated that Australia's beef exports to the US will reach

405 kt dressed weight and account for nearly 32 per cent of total export shipments. For dairy, it is projected that Japan will account for nearly 46 per cent of total cheese exports and around 7 per cent of Australia's skim milk powder exports.

To examine the impact of the loss of these markets, separate alternative simulations were generated assuming that Australia lost access to these export markets for a period of one year. Although it may be argued that closure of these markets for a year may be unlikely, the period assumed simply reflects that *AGLINK* is an annual model. In economic terms, the implication of the loss of these major export markets is a significant fall in demand for the particular products.

It should be noted that the results of the analysis must be considered as *indicative only* because of the considerable uncertainties that exist. For example, the incentive for producers to adjust to lower demand depends amongst other things, on the length of time that market access is expected to be restricted. Beef producers may actually reduce the slaughter of breeding cows if they believe the disruption is only temporary so that when the restrictions are lifted they can respond to higher prices by increasing production. This contrasts with the more typical response to reduced prices assumed in the present analysis which is to increase cow slaughter now to reduce production in future periods.

Also uncertain is the reaction of consumers in both the domestic market and other export markets. Any reaction in these markets would in part depend on the reason for the original closure. For the analysis reported here however, it is assumed that demand in all other markets is unaffected by the closure of the selected market and that no new markets are found to replace that which has withdrawn access. Rather than finding alternative export markets, it is assumed here that the fall in the price arising from the closure of a specific export market results in greater export shipments to other existing markets as well as increased domestic consumption.

Results of the loss of market access

Estimated impact of a closure of the US Beef market

The estimated impacts of the removal of access to the US beef market for one year are presented in table 1. As a consequence of the closure of the US beef market, it is estimated that the gross value of production in the beef industry could fall by around \$1.1 billion dollars. The main reason for the fall is the lower price that beef producers receive for grass fed cattle, the type of beef exported to the US.

Although the number of cattle on feed and fed cattle production rise in response to the lower price of feeder calves, cattle slaughter in total falls slightly. While cow-calf producers increase slaughter in response to the lower price, more steers are retained on farm instead of being turned off. This, together with lower slaughter weights, results in beef production falling by around 130 kt.

The loss of the US market and subsequent fall in the beef price also leads to the diversion of some beef to both the domestic market and to the other export destinations. Domestic consumption increases by around 100 kt in response to the lower price of beef. Lower beef prices also result in a rise in beef shipments to other markets so that total exports are estimated to fall by around 240 kt even though the loss in beef exports to the US market exceeds 400 kt..

While the cattle herd is estimated to contract by around 600 000 as a result of the closure of the US market, the sheep flock is estimated to expand by more than 500 000 head as producers move resources into what are now relatively more profitable enterprises. Although wool production does not respond significantly in the first year, it would rise in subsequent periods. Lamb production however, does respond immediately although the increase in production is relatively small. Increased competition from lower beef prices reduces the demand for lamb and as a result, the saleyard price of lamb falls. As a result the gross value of sheep industry output falls by \$50 million with lower lamb prices more than outweighing the effect of larger production.

Lower beef prices are also expected to result in some shift of resources into cropping in the year after the closure (2000-2001) if producers expected access to the US beef market to be continued to be withheld. The estimated \$60 million increase in the gross value of crop production that is estimated to occur would offset the decline in the gross value of sheep industry production in the year of the assumed closure of the US beef market.

Estimated impact of a closure of the Japanese cheese and skim milk powder export markets

The estimated impacts of the removal of access to the Japanese cheese and skim milk powder markets for one year are presented in table 2. As a consequence of the closure of the Japanese dairy markets, it is estimated that the gross value of production in the dairy industry could fall by around \$400 million. The most significant factor determining this is the lower price received for dairy products, particularly cheese and skim milk powder. Amongst the bulk manufactured products, both cheese and skim milk powder are currently receiving relatively high returns.

Even though dairy farmers are not expected to respond to the resulting 5 cents per litre fall in the manufacturing milk price in the first year, dairy product manufacturers are estimated to adjust their output mix to reflect the change in the relative value of the various products. In response to the fall in the price of cheese, cheese production is estimated to fall by 14 kt. With lower prices, domestic consumption rises and some product lost to the Japanese market is diverted to other export markets. As a result, cheese exports in total are projected to fall by around 50 kt, despite the loss of the 77kt Japanese market. Even though cheese is diverted to other markets, returns to the dairy industry from cheese production are estimated to fall significantly.

The reduction in cheese prices also results in milk being diverted away from cheese production into other dairy products, such as fresh dairy manufactured products like ice cream and yoghurt as well as whole milk powder and butter. The diversion of extra milk to butter production also leads to a minimal increase in the output of the joint product, skim milk powder.

With lower prices for all dairy products, domestic consumption of each rises. Whole milk powder and butter exports also rise slightly and the lower price of skim milk powder allows most of the loss in exports to japan to be diverted to other markets

Attachment 6**Glossary**

ABARE	Australian Bureau of Agricultural and Resource Economics
ACCC	Australian Competition and Consumer Commission
AFFA	Agriculture Fisheries and Forestry (Department of)
AGICC	AQIS - Grain Industry Consultative Committee
AICCC	AQIS - Industry Cargo Consultative Committee
AMC	Australian Meat Corporation
AMLI	<i>Australian Meat Industry and Livestock Act 1997</i>
ANZFA	Australia New Zealand Food Authority
ANZFSC	Australia New Zealand Food Safety Council
APHIS	Animal and Plant Health Inspection Service
AQIS	Australian Quarantine and Inspection Service
ARMCANZ	Agriculture and Resource Ministers Council of Australia and New Zealand
AWB	Australian Wheat Board
BICC	Biologicals Consultative Committee
BSE	Bovine Spongiform Encephalopathy
CA	Certification Assurance
CAFTA	Council of Australian Food Technology Associations
CFIA	Canadian Food Inspection Agency
COAG	Council of Australian Governments
CODEX	Codex Alimentarius
CPA	Competition Principles Agreement
DEICC	Dairy Export Industry Consultative Committee
DFAT	Department of Foreign Affairs and Trade
EC	European Commission

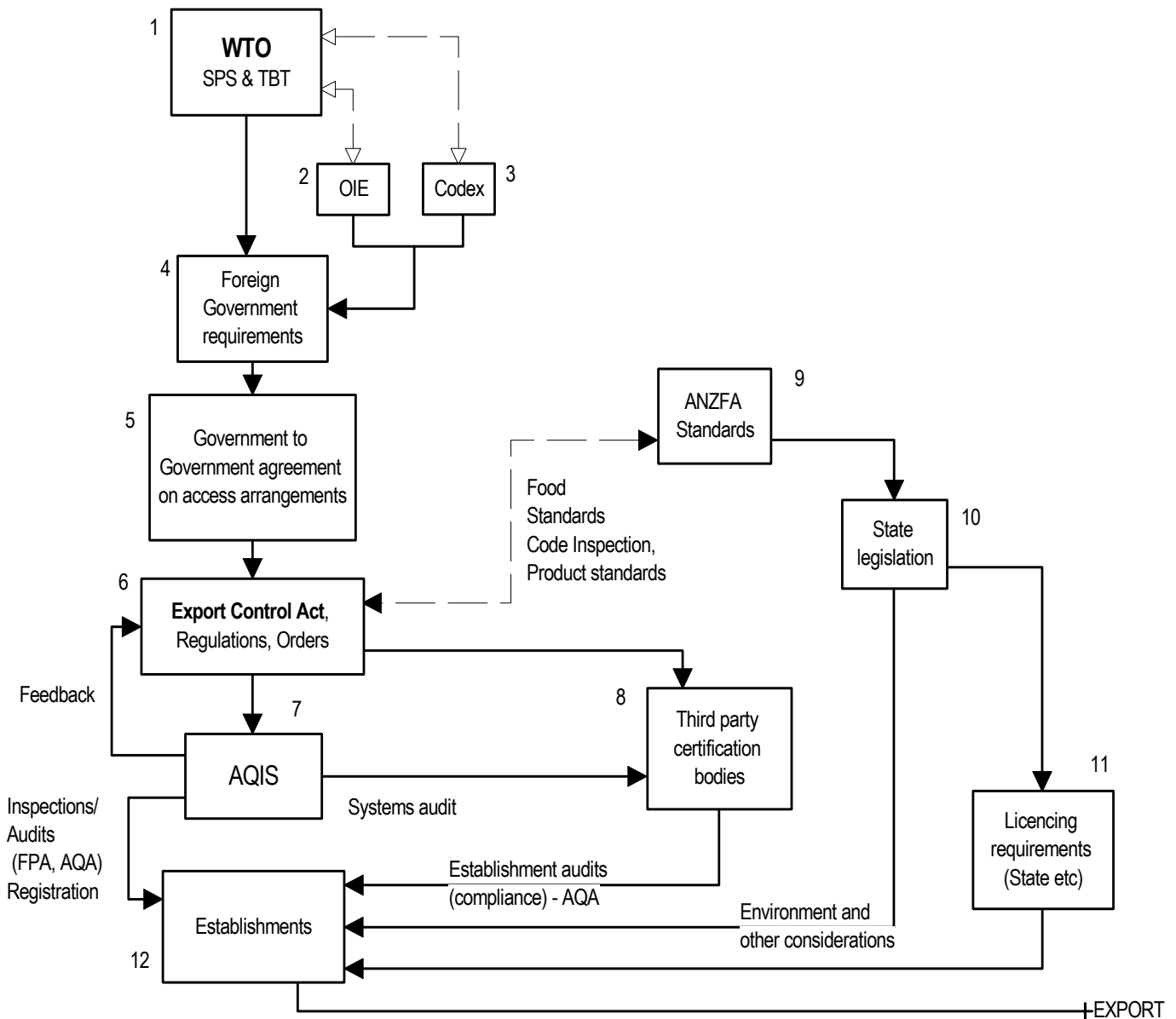
ECA	<i>Export Control Act 1982</i>
EMIAC	Export Meat Industry Advisory Committee
EXDOC	Electronic Export Documentation
EU	European Union
FAO	Food and Agriculture Organisation
FSIS	Food Safety Inspection Service
GAO`	Government Accounting Office (USA)
GCA	Grains Council of Australia
GMF	Genetically Modified Food
GMO	Genetically Modified Organism
HACCP	Hazard Analysis Critical Control Point
HECC	Horticulture Export Consultative Committee
HICC	Horticulture Industry Consultative Committee
ICC	Industry Consultative Committees
IFCC	Imported Food Program Consultative Committee
IPPC	International Plant Protection Convention
ISO	International Standards Organisation
MRC	Meat Research Committee
NCP	National Competition Policy
NRA	National Registration Authority
NRS	National Residue Survey
OECD	Organisation for Economic Co-operation and Development
OIE	Office International Epizooties
OPEC	Organic Produce Export Committee
PCA	Pork Council of Australia
PEPIC	Post-entry Plant Industry Committee
PGGO	Prescribed Goods General Order
QA	Quality Assurance

QDPI	Queensland Department of Primary Industries
QEAC	Quarantine Exports Advisory Council
QSC	Queensland Sugar Corporation
RMAC	Red Meat Advisory Council
SCARM	Standing Committee on Agriculture and Resource Management
SECC	Seafood Export Consultative Committee
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
TRQ	Tariff-Rate Quota
USDA	United States Department of Agriculture
USFDA	United States Food and Drug Administration
VQAM	Victorian Quality Assured Meat
WA	Western Australia
WHO	World Health Organisation
WTO	World Trade Organisation

Attachment 7

Legislative Flowcharts (See Chapter 2)

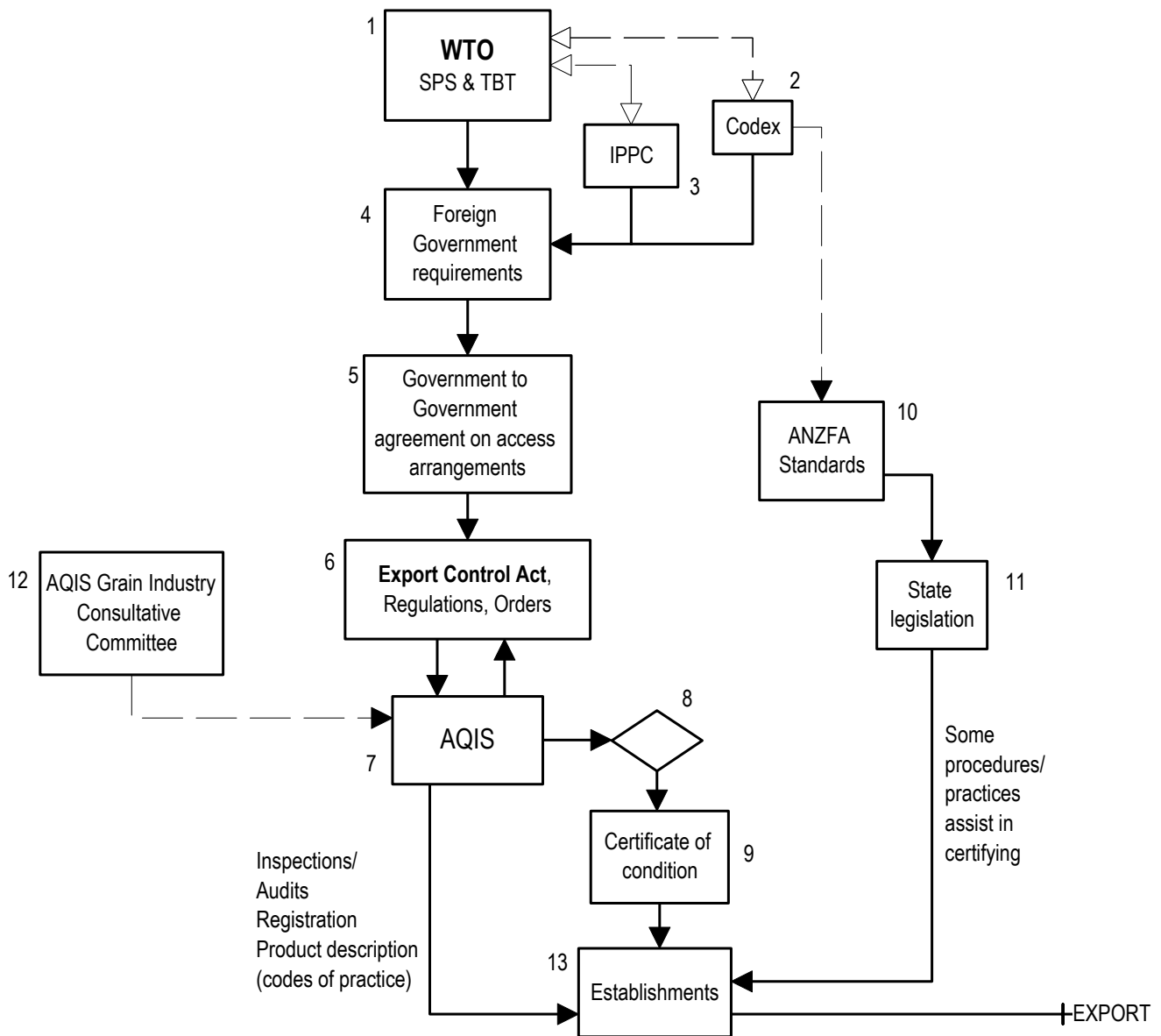
Chart A7.1
Legislation and Operations: Fish



Legislation and Operations: Fish Description

1. **WTO:** 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 countries turning to food safety and quarantine restrictions as a means of protecting their agricultural industries. Australia is a signatory.
2. **OIE:** Office International Epizootique – Australia is a signatory – Government agencies can certify freedom from certain diseases, and there is an obligation to notify for disease outbreaks. There is exchange with the WTO.
3. **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. It is not compulsory, but signatories do not depart from it without very good reason. The Commission was established in 1962 by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) of the United Nations. Australia has always been an active participant in the Codex program.. 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. There is exchange with the WTO.
4. **Foreign governments:** Foreign governments have standards for entry. Exporters must conform with these standards, irrespective of their conformance with domestic standards, unless a special agreement has been reached.
5. **Government to Government agreements:** These cover the specific conditions by which food is exported to the foreign country and meets its requirements. This does not duplicate the special agreement referred to in (4) above).
6. **Export Control Act:** This, with the Regulations and Orders, provides the regulatory basis for Australian food exports.
7. **AQIS:** AQIS has responsibility for the Export Control Act, including policy advice and execution of functions, including inspection and audit.
8. **Inspection etc:** AQIS has responsibilities for inspection and audit (as applicable), and registration. However, third party providers may also perform the functions of in inspection and audit.
9. **ANZFA:** ANZFA sets standards in relation to fish products, including inspection.
10. **State legislation:** ANZFA standards are picked up in State legislation, to which establishments must comply.
11. **Licencing:** States also licence fish establishments.
12. When all requirements are met, export can occur.

Chart A7.2
Legislation and Operations: Grains

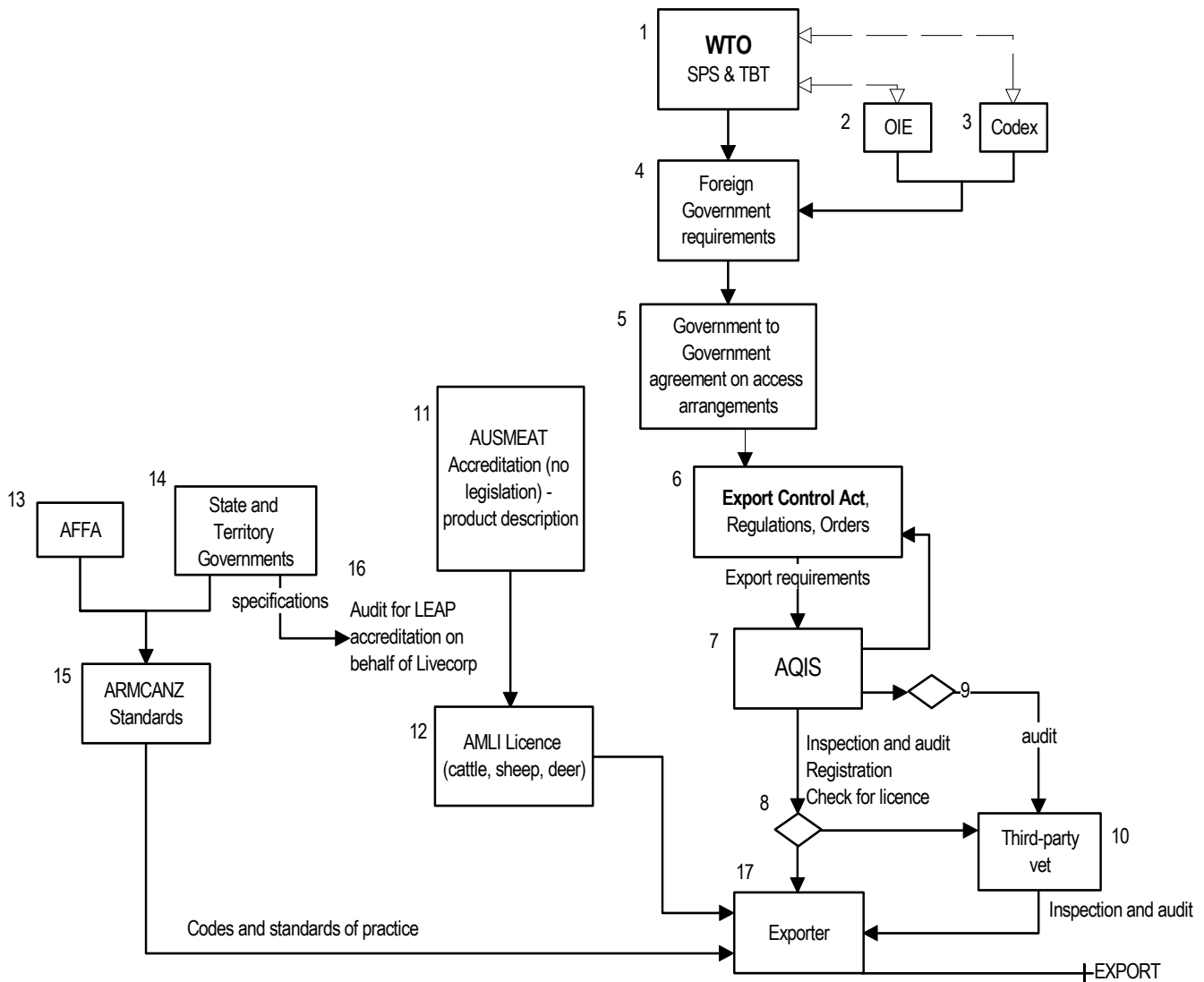


Legislation and Operations: Grains

Description

1. **WTO:** 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 countries turning to food safety and quarantine restrictions as a means of protecting their agricultural industries. Australia is a signatory.
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. It is not compulsory, but signatories do not depart from it without very good reason. The Commission was established in 1962 by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) of the United Nations. Australia has always been an active participant in the Codex program.. 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. There is exchange with the WTO.
3. **IPPC:** The International Plant Protection Convention is the recognised standards-setting body under SPS. Certification is given relating to freedom from quarantine pests. Notification of disease outbreaks is also provided for. There is exchange with the WTO.
4. **Foreign governments:** Foreign governments have standards for entry. Exporters must conform with these standards, irrespective of their conformance with domestic standards, unless a special agreement has been reached.
5. **Government to Government agreements:** These cover the specific conditions by which food is exported to the foreign country and meets its requirements. This does not duplicate the special agreement referred to in (4) above).
6. **Export Control Act:** This, with the Regulations and Orders, provides the regulatory basis for Australian food exports.
7. **AQIS:** AQIS has responsibility for the Export Control Act, including policy advice and execution of functions, namely inspections, audits, registration, product description (codes of practice).
8. **Certificate of condition** (if required).
9. AQIS provides a certificate of condition.
10. **ANZFA** promulgates standards, which take account of Codex **State legislation** gives effect to the standards.
11. There is consultation through the AQIS Grain Industry Consultative Committee (similarly with other commodities, though it is not shown on those charts.
12. When all conditions have been fulfilled, export may occur.
13. specifications.

Chart A7.3
Legislation and Operations: Live Animals

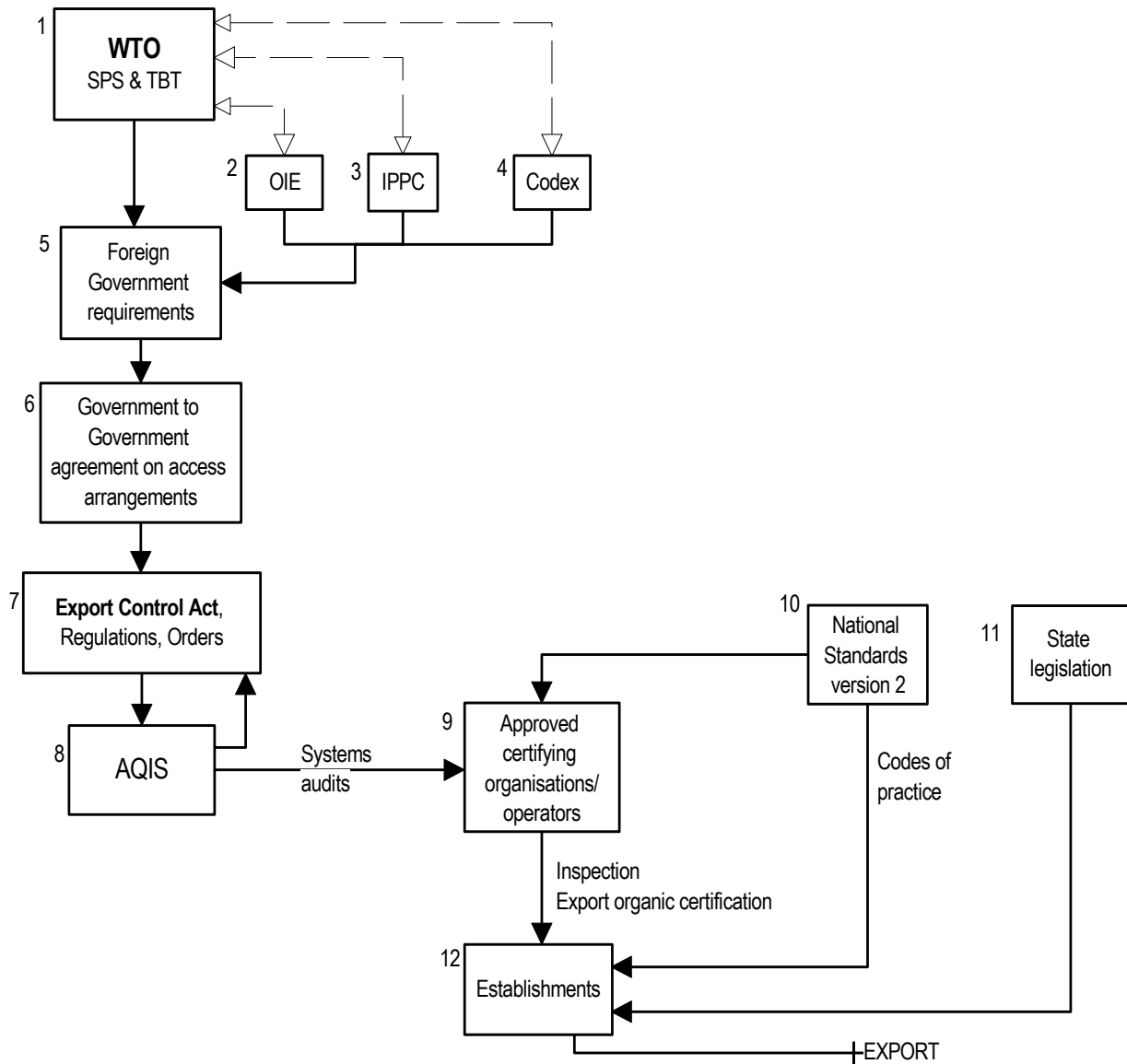


Legislation and Operations: Live Animals

Description

1. **WTO:** 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 countries turning to food safety and quarantine restrictions as a means of protecting their agricultural industries. Australia is a signatory.
2. **OIE:** Office International Epizootique – Australia is a signatory – Government agencies can certify freedom from certain diseases, and there is an obligation to notify for disease outbreaks. There is exchange with the WTO.
3. **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. It is not compulsory, but signatories do not depart from it without very good reason. The Commission was established in 1962 by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) of the United Nations. Australia has always been an active participant in the Codex program.. 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. There is exchange with the WTO.
4. **Foreign governments:** Foreign governments have standards for entry. Exporters must conform with these standards, irrespective of their conformance with domestic standards, unless a special agreement has been reached.
5. **Government to Government agreements:** These cover the specific conditions by which food is exported to the foreign country and meets its requirements. This does not duplicate the special agreement referred to in (4) above).
6. **Export Control Act:** This, with the Regulations and Orders, provides the regulatory basis for Australian food exports.
7. **AQIS:** AQIS has responsibility for the Export Control Act, including policy advice and execution of functions.
8. **Inspection etc:** AQIS has responsibilities for inspection and audit (as applicable), registration and the verification of the licence. However, an independent veterinarian may also perform the functions of in inspection and audit.
9. **Audit:** In the case of the independent veterinarian performing the inspection/audit, AQIS has the responsibility of auditing the work of the veterinarian to ensure compliance with the legislation.
10. **Third Party:** Inspection/audit by third party veterinarian.
11. **AUSMEAT:** Accreditation by AUSMEAT is required in terms of product description.
12. **AMLI Licence:** An AMLI Licence for cattle, sheep and deer is required to export under the Australian Meat and Livestock Industry Act
13. **AFFA:** AFFA has input into the relevant ARMCANZ standards affecting livestock exports.
14. **States:** States have input into the relevant ARMCANZ standards affecting livestock exports.
15. **ARMCANZ Standards:** ARMCANZ standards specify codes and standards of practice for exporters.
16. State and territory governments perform audits for LEAP accreditation on behalf of Livecorp.
17. After all requirements are fulfilled, export can occur.

Chart A7.4
Legislation and Operations: Organics



Legislation and Operations: Organics

Description

1. **WTO:** Australia is a signatory to the SPS Agreement and the TBT Agreement, which, were designed to prevent countries turning to food safety and quarantine restrictions as a means of protecting their agricultural industries.
2. **OIE:** Office International Epizootique – Australia is a signatory – Government agencies can certify freedom from certain diseases, and there is an obligation to notify for disease outbreaks. There is exchange with the WTO.
3. **IPPC:** The International Plant Protection Convention is the recognised standards - setting body under SPS. Certification is given relating to freedom from quarantine pests. Notification of disease outbreaks is also provided for. There is exchange with the WTO.
4. **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. There is exchange with the WTO.
5. **Overseas governments:** Overseas governments have standards for entry. Exporters must conform to these standards, irrespective of their conformance with domestic standards, unless a special agreement has been reached.
6. **Government to Government agreements:** These cover the specific conditions by which food is exported to the overseas country and meets its requirements. This does not duplicate the special agreement referred to in (4) above).
7. **Export Control Act:** This, with the Regulations and Orders, provides the regulatory basis for Australian food exports.
8. **AQIS:** AQIS has responsibility for the Export Control Act, including policy advice and execution of functions. For Organics, the food is subject to the Export Control Act in the normal manner (see other charts), but there are additional requirements as specified in steps 8 – 11. AQIS conducts systems audits of certification providers, involving listing by EU etc.
9. Organic produce is certified by **approved** (by AQIS) certifying organisations/operators. They inspect and supply export organic certification. The domestic organics system “hangs off” the export one.
10. **National Standards**, derived through an industry-government process, provide the reference point for inspection and also establish codes of practice..
11. **State legislation** takes precedence over the national organic standard.
11. When all specifications have been satisfied, export can occur.

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