



Comments from the Australian Quarantine and Inspection Service
On Australian Dairy Industry's comments to the Productivity Commission
On the draft report Regulatory Burdens on Business

The Australian Quarantine and Inspection Service (AQIS) is the Australian government authority responsible for certification of certain goods, so called prescribed goods, when these are exported from Australia. AQIS certifies these goods in line with known government requirements of importing countries. AQIS provides its export certification services under the export legislation, including the *Export Control Act 1982* and associated Regulations and Orders. Milk and milk products are prescribed under the export legislation and the Export Control (Milk and Milk Products) Orders 2005 are the relevant Orders.

AQIS is pleased to provide general, specific and editorial comments on Australian Dairy Industry's comments to the Productivity Commission on the draft report Regulatory Burdens on Business.

General comment

AQIS believes that many comments offered by the dairy industry in its submission to the Productivity Commission reflect the lack of understanding that governments in countries importing Australian dairy products have a right to impose requirements that are different from Australian standards and are more prescriptive than Australian standards. Australian government authorities continuously negotiate the acceptance of Australian standards as equivalent with importing country requirements, but are not always successful.

Governments in countries importing Australian dairy products also often expect that the baseline domestic legislation is applied uniformly, and to this date, Australia has not achieved this.

AQIS must ensure that systems underpinning export certification are valid and have sufficient integrity, otherwise AQIS issued export certificates will not be accepted by governments of importing countries. As the majority of markets for Australian dairy products require a government, AQIS-issued export certificate, without that certification Australian dairy products would not be able to access those markets.

Specific comments

Page 2, point 3

AQIS has no desire to foster duplication of hygiene or any other standards. In mid 2007, AQIS commenced a redraft of the Export Control (Milk and Milk Products) Orders 2005 (the Orders) to incorporate Standard 4.2.4. Primary Production and Processing Standard (PPPS) for Dairy Products and employed an officer at Executive Level 2 to undertake the task. AQIS had developed a legislative timetable to ensure this incorporation of Standard 4.2.4. into the Orders occurred by October 2008 - the commencement of the Standard 4.2.4. AQIS prepared a detailed comparison of Standard 4.2.4. with the Orders and circulated the comparison for comments to the industry and State Regulatory Authorities in late 2007. Not having received any comments, AQIS re-circulated the comparison in April 2008. At the meeting of the Dairy Export Industry Consultative Committee in April 2008, the industry and State Regulatory Authorities put a hold on the process to integrate the Standard 4.2.4. into the Orders.

AQIS' general philosophy is that Standards provide the basis for operational controls for food safety and wholesomeness, whether it be for export or domestic production. Consistent with the recommendations of the National Competition Policy review of the *Export Control Act 1982*, and, as far as is possible, all food safety and wholesomeness requirements are to be contained within the Standards, leaving the export subordinate legislation (Orders) to deal with the mechanics of export.

Page 3, second paragraph, sentence in italics

This statement appears to be an incorrect generalisation. All jurisdictions have been progressively moving away from prescriptive rules over the last 10 years; it is an evolving process and one of continuous improvement. All legislative processes also now require rigorous stakeholder involvement, so industry has the opportunity to influence legislative development; whether they do or not is industry choice.

Page 3, fourth paragraph (starting with “Substantial change ...”)

AQIS agrees with the reference to simpler regulation structures. This is the goal of Government, as well as industry.

Page 3, fifth paragraph (starting with “Arguably ...”)

AQIS questions the statement that reviews should not be carried out by regulators alone. All contemporary legislative processes require stakeholder involvement in legislative reviews - whether stakeholders take this up is another matter.

Page 5, the end of the third paragraph

The policy aim of achieving efficiencies for exporting industries was contained within recommendations of the National Competition Policy review of *Export Control Act 1982*. The Department of Agriculture, Fisheries and Forestry agreed with the recommendations.

Page 5, first dot point (paragraph starting with “Dairy argues ...”)

The italicised statement is true; all Primary Production and Processing Standards will now be developed with an Implementation Plan process running concurrently. The Implementation Plan will comprise a compliance model, response model, support materials and reference materials.

Page 5, first dot point (paragraph starting with “Applying views ...”)

Whilst it is correct that applying views on ‘best practice’ is a commercial decision and not for regulation regimes, regulators have valid views based on their experience.

Page 5, first dot point (the end of paragraph starting with “The Dairy Industry considers ...”)

All Australian regulators now recognise a regulatory development process focussing on outcomes. However, importing country governments are often very much interested in a clear, transparent demonstration of the process in reaching the outcome.

Page 5, second dot point (the penultimate sentence in paragraph starting with “Dairy believes ...”)

AQIS does not agree that this is a correct statement. There is general acceptance that a single (national) system is the way forward. However, a national system does not necessarily guarantee export markets and therefore importing country requirements must be "add-ons".

Page 6, first dot point

Reference to unclear standards etc leaving people not knowing what constitutes compliance correctly describes a situation that may develop when standards do not have any prescription. AQIS notes that the dairy industry consistently argues against any level of prescription in the national or export legislation.

Page 6, last paragraph, reference to the Milk Orders

The Milk Orders cover more than just food hygiene; they are also, importantly, about the mechanics of export.

Page 6, last paragraph, reference to AQIS being involved in FSANZ

AQIS occasionally participates in the FSANZ consultative processes.

Page 7, third paragraph, reference to a regulatory overlap

AQIS believes that the industry has described a ‘bridge to cover the gap’ and not an overlap.

Page 7, fifth paragraph (starting with “The industry asks that ...”)

As indicated earlier in AQIS’ comments on page 1, in mid 2007 AQIS commenced the process of a redraft of the Export Control (Milk and Milk Products) Orders 2005 (the Orders) to incorporate the PPPS, Standard 4.2.4. Primary Production and Processing Standard for Dairy Products; in April 2008 the industry and State Regulatory Authorities requested AQIS stop the process.

Page 7, third dot point (starting with “With full implementation ...”)

At this stage the PPPS, Standard 4.2.4. is not acceptable to overseas markets as the single and only Australian standard for dairy product manufacturing for export.

Page 7, dot point starting with “These State-based ...”

AQIS questions the statement that the State-based arrangements are ‘proven’. During audits of Australia’s export dairy system, State-based arrangements are regularly deemed by importing country government authorities to be deficient.

Page 7, dot point starting with “Any additional ...”

Reference to AQIS needing requirements is incorrect; the export legislation requires compliance with additional requirements of importing countries because governments of those countries impose those requirements on imports into their markets.

Reference to safety requirements implies that the Australian system demonstrates compliance with all food safety requirements of importing countries. During regular audits by importing country government authorities, for example the US Food and Drug Administration and the European Commission, the system fails to demonstrate that it can deliver milk at safe temperatures and free from antibiotics and these are also food safety requirements.

AQIS is considering consolidation of the commodity Orders enabling the generic elements to be contained in a single document, such as revamped Export Control (Prescribed Goods – General) Order 2005, with commodity specifics being contained in schedules and supported by operational instructions such as the current Dairy Exports Program Operations Manual (DEPOM).

Reference to AQIS personnel being routinely on-site or inspecting is incorrect. Firstly, AQIS does not provide routine auditing in addition to States. AQIS’ role is verification to satisfy export needs. AQIS relies on inspection or audits of factories processing dairy products for export by State Regulatory Authorities and therefore is not routinely on-site or inspecting. Secondly, in order to verify that export certification issued by AQIS is correct and underpinned by robust systems, AQIS must occasionally also visit processing factories.

Page 7, dot point starting with “AQIS would continue ...”

AQIS is not just a facilitator of exports, it is also regulator at the request of overseas markets and in support of export certification that AQIS issues.

Page 7, paragraph starting with “At July 2008 ...”

Incorporating the PPPS, Standard 4.2.4., into the Orders was intended to address National Competition Policy review recommendations. It would not create a more complex set of regulations, in fact the intention is to simplify the system. The Orders would ‘incorporate PPPS by way of reference’, not duplicate whole of PPPS into Orders. The Orders would ‘incorporate PPPS by way of reference’, not duplicate whole of PPPS into Orders. The PPPS is not a law in itself - it must be given effect through a legislative instrument - a Commonwealth one (Orders) for export purposes or a State one for Australian jurisdictional purposes.

Page 9, third last paragraph

AQIS agrees that dairy and meat industries have advanced over the last 10 to 15 years, however, AQIS’ role in improving the system should also be recognised.

Editorial comments

Page 2, 4th paragraph, the correct name of the Department is ‘Department of Agriculture, Fisheries and Forestry’.