



## Trade opportunities: how to overcome market access barriers

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### The problem

Overcoming the regulatory barriers imposed by importing countries can seem to be a never-ending process that is very costly to exporters. It is immensely frustrating for an exporter or exporter organisation to have identified a trading opportunity and then to have to wait for several years before their products are able to enter that market.

Among the range of regulatory processes, one of the slowest is that of establishing new plant health (phytosanitary) regulations in order for exported plant products to be allowed entry to another country. The purpose of writing this column is to promote a greater understanding in the wider industry (growers, exporters, industry organisations, consultants, scientists, and officials) of that process and to encourage better ways of working together to achieve a common objective - growth in export revenue.

The process is fairly straightforward, as described in Figure 1 (see p 22). A broadly similar pathway is followed by most importing countries. The steps in the process are guided by a series of International Standards that have been developed under the International Plant Protection Convention, an international agreement signed by most of New Zealand's trading partners and recognised in the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement).

### The process

Once a new trade opportunity has been identified, the first step is to check whether import regulations are already in place. There may be an existing regulation allowing import under certain conditions which cannot be met by New Zealand exporters. Or the commodity may be prohibited because

of a certain pest (e.g., apples to Korea) or because a pest risk analysis has to be carried out before an import regulation can be developed (e.g., citrus to the USA). The nature of the existing regulation (or prohibition) will impact on the scope of the project, but again the process is broadly similar.

The first step is to scope the project and to submit to the importing country a request for access to that market. This initial scoping and development of a project plan can be done by the industry (or their agents) in consultation with MAF and the Ministry of Foreign Affairs and Trade (MFAT). Communication with the importing country to request access is usually done by MAF, but can also be done via MFAT or by an importer in the importing country.

The importing country will then prioritise the import request, taking into account things like the current backlog of work, the potential volume of trade, and a range of other factors. In order to speed up the process the importing country may also ask for technical information. This will usually include a list of pests associated with the commodity to be imported, scientific information about those pests, and information about the commodity (e.g., season of export, export volumes, harvesting and packing processes). This information is then used by the importing country to assess the risk associated with importing the commodity. Development of pest lists and collation of additional technical information can be carried out for industries by private sector providers on a contestable basis.

In conducting a risk assessment, most countries consider risk to comprise of two main components: the likelihood and consequence of pest entry and establishment. The interaction of likelihood and consequence results in an estimate of risk. For example, a pest that is very likely to enter on a commodity but that would have a low consequence (perhaps due to inability to establish) would be considered low risk. These assessments are made on the basis of an unrestricted pathway, i.e., an import pathway where no actions



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are taken to control the pest other than normal commercial practices. Two International Standards (Guidelines for Pest Risk Analysis, Pest Risk Analysis for Quarantine Pests) provide guidance to countries on the factors they should consider when assessing risk. During this phase it is likely that the importing country will need to request further information from the exporting country to assist with the completion of the risk assessment.

Once the risks have been identified and quantified, the next stage is to develop risk management measures for these pests. These measures are the actions that can be taken by the exporting country, in-transit, on-arrival, or post-entry to reduce the risk to an acceptable level. This level, known as “appropriate level of protection” or “acceptable level of risk” can only be defined by an importing country and, as long as it is applied in a consistent manner, can be any level that the importing country deems appropriate without further technical justification. The sorts of measures that can be applied include: pest free area, pest free places of production, the development of a specific post-harvest phytosanitary treatment, the combination of several measures to reduce risk (sometimes called a systems approach), or phytosanitary inspection.

In applying these measures there are a number of important principles that need to be taken into consideration by the importing country. These principles are specified in International Standards, the International Plant Protection Convention, and the WTO SPS agreement. The International Standards and Agreements provide the tools that we can use to argue for a technically justified outcome to this process. A few of these principles are that the measures applied should: be only those necessary to protect plant (or animal or human) health; the least trade restrictive measures available; be applied in a non-discriminatory manner (the same strength of measures applied to countries with the same pest status, and without discrimination between domestic and imported produce); be accepted if they are equivalent in their outcome even though the actual measures may differ.

During the process of pest risk assessment and development of phytosanitary measures it is normal for there to be ongoing communication with the importing country, and usually the outcome is agreed on a Government-Government, or bilateral,

basis. However there are some instances where agreement cannot be reached. There are also occasions when generic changes are made to an import regulation without a great deal of bilateral discussion. The exporting country (the industry in consultation with MAF and MFAT) needs to then decide whether the measures are acceptable. This takes into account such things as whether it is expedient to have quick access under difficult conditions or to hold out for ideal conditions, as well as the likelihood and cost/benefit of actually achieving anything better.

If the outcome of the PRA is unacceptable, then the approach to resolving the problem will depend on whether the outcome of the pest risk analysis is technically challengeable. If there is an aspect of the risk analysis that can be challenged there is scope for further bilateral discussion to resolve the issue. If these bilateral discussions fail, New Zealand also has recourse to the dispute resolution mechanisms of the WTO and IPPC. Dispute resolution is a process of last resort, as it is very costly both in resources and to carefully developed foreign relationships.

In some circumstances the outcome of a pest risk analysis may be unacceptable to the industry (for example, in terms of high compliance costs) but technically justified. In those circumstances it may be possible to take actions that will change some of the parameters of the risk assessment. For example, it may be possible to carry out research that may result in a lowering of a risk estimate. Or, it may be possible to clarify the taxonomy of a group of pests and in fact show that a quarantine pest is the same as one already present in the importing country. Or, it may be necessary to change New Zealand’s pest status by eradicating a pest, no easy task.

### The uncontrollable factors

The process described above is a fairly straightforward one. There is no good reason why the technical aspects of a PRA cannot be completed within a few months. The reason it takes so long and costs so much money for a market access project to come to fruition is that the process is almost entirely dependent on the internal processes of the importing country. These include often complex consultation processes, as well as requirements to ensure decisions are in accordance with domestic law. Affected industries in

many countries are becoming increasingly litigious, and Governments are wary of this.

New Zealand industry can do a great deal to speed up market access projects, by providing all of the technical information and facilitating the process, but in the end the importing country can still drag its feet. Under the SPS Agreement there is a requirement for countries not to maintain a phytosanitary measure (e.g., a prohibition) without sufficient scientific evidence and for members to review such measures within a reasonable period of time. Unfortunately, there has been no definition of what constitutes a reasonable period of time. And, given the costs of bringing trade disputes, most exporting countries are extremely patient of such delays.

### The way forward

There are three key factors to a successful market access project - buy-in from all parties, good planning, and sound science. All three factors are essential if the project isn’t to lose its way. Buy-in is about industry, MAF, MFAT and other relevant agencies working as a team that is committed to the successful conclusion of a project. Ideally this team will include the importing country as well. Good planning involves developing a project plan with measurable milestones and performance measures, anticipating contingencies, having the flexibility to modify milestones, acknowledgement of roles, sharing of information, and commitment to funding and resource allocation. Sound science is about having good surveillance or research data for the provision of technical information and pest list development, and having access to scientists to provide expert advice where needed.

One of the reasons for establishing Market Access Solutionz was that we wanted to have the opportunity to focus on a small number of projects and really make progress with them. When we work with an export industry we aim to ensure that we have all three components covered. Industries are paying a great deal towards the costs of market access and they want the opportunity to be involved with and contribute directly to the successful outcome of projects. Both MFAT and MAF have been very open and supportive of our approach and we are already seeing success, with a number of projects moving quickly towards conclusion. Elsewhere, this issue features recent access for cherries into Western Australia (p 8).