

**WESTERN AUSTRALIA'S REGIONAL FREEDOM FROM PESTS AND DISEASES, RECOGNITION
BY COMMONWEALTH GOVERNMENT**

Motion

HON ADELE FARINA (South West - Parliamentary Secretary) [2.24 pm]: I move -

That this house requests the Australian government to recognise and formally acknowledge the prerogatives of Western Australia to determine regional freedom from pests and diseases on a scientific basis, consistent with the obligations of the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures.

Members will be aware of the longstanding concerns that Western Australian growers have had about how the Australian government manages quarantine, particularly in relation to the assessment of agricultural products for import, and whether such imports pose a risk to our existing agricultural produce. Members will also recall the debates on the Trans-Tasman Mutual Recognition (Western Australia) Bill 1999 and concerns raised about the protection of regional differences in the assessment of import risk.

Public debate on the importation of New Zealand apples into Western Australia, which occurred recently, served to highlight concerns about import risk assessment by Biosecurity Australia and the application of regional differences in the assessment of import risk. By way of background, the Commonwealth of Australia became a signatory to the Uruguay round of the multilateral trade negotiations in January 1995. In so doing, the commonwealth agreed to establish the World Trade Organisation and to conform to the Agreement on the Application of Sanitary and Phytosanitary Measures - more commonly known as the SPS agreement - and certain other international agreements. One of those is the International Plant Protection Convention, commonly known as the IPPC, which provides the rules adopted under the SPS agreement for international trade in plants and plant products. The SPS agreement and the IPPC provide that countries may exercise their sovereign right to impose appropriate sanitary and phytosanitary measures; however, these measures should be applied without discrimination between countries of the same sanitary and phytosanitary status and if such countries can demonstrate that they apply identical or equivalent risk-management procedures without discrimination between domestic and imported consignments. The IPPC further defines other principles, including the use of restrictive measures advocating a minimum-impact approach; the development of protocols and provisions of rationale for prohibitions - the focus on this being the need for transparency; the recognition of equivalent treatments and control measures - the focus being on the equivalent aspect; and the use of IPPC risk-analysis methods and agreed management policy, which is management risk, including recognition of pest-free areas, which is the regional differences in pest status.

Under the SPS agreement, the measures that a country puts in place may be based on international standards, which are set out in the IPPC, and therefore no risk assessment is required; or they can be based on measures to deliver appropriate levels of protection of a country's own choosing, in which case the measures must be supported by scientific-risk analysis. When measures are based on risk analysis, the analysis must identify the disease or pest, of which the entry, establishment or spread within the territory a WTO member wants to prevent, as well as the potential biological and economic consequences associated with the entry, establishment or spread of the disease or pest; evaluate the likelihood of entry, establishment or spread of the disease or pest, as well as the associated potential biological and economic consequences; and evaluate the likelihood of entry, establishment or spread of the disease or pest according to the SPS agreement that might be applied.

The SPS agreement recognises that risk may not be evenly distributed across the country and that, where practical, different risk-reduction measures should be imposed within a country to achieve the country's appropriate level of protection in the least trade-restrictive manner. It is this tension, and in particular the nexus between the science-based quarantine arrangement and the least restrictive trade measures, that is of concern to growers and is the crux of the problem. Growers are concerned that the science-based quarantine decisions are now subordinate to the requirement for Biosecurity Australia to resolve trade-related quarantine disputes. Growers are also concerned that Biosecurity Australia is trading away our quarantine rights and with them the very foundation of our agricultural competitiveness. Growers are also expressing their concern that Biosecurity Australia is failing to protect the interests of Australian farmers. They argue that Biosecurity Australia is so concerned about its reports being potentially challenged that it is erring on the side of caution.

It is important in this debate to also recognise how the Quarantine Act 1908 fits into all this. Under that act the Governor-General may prohibit the importation into Australia of any articles likely to introduce, establish or spread any disease or pest affecting persons, animals or plants. For articles prohibited by proclamation, the Director of Animal and Plant Quarantine may permit the entry of products on an unrestricted basis or subject to compliance with certain conditions. The import risk analysis, to which I have been referring and which is set up through those international agreements, provides the scientific and technical basis for quarantine policies that are

referred to by a decision maker when making the decision on whether an import may be permitted and, if so, what conditions should be applied. In deciding whether to grant a permit, the director must consider the level of quarantine risk if the permit were granted and, if the permit were granted, whether the imposition of conditions on it would be necessary to limit the level of quarantine risk to one that is acceptably low.

The SPS agreement makes it mandatory for member countries to consider regional differences within importing and exporting countries. However, the SPS agreement does not provide exhaustive guidance on what constitutes regional conditions. There is some discussion and some issue about what should be included and whether the provisions of the Quarantine Act should be applied. In that context, regional conditions must reasonably be limited to consideration of the presence or absence of a pest or disease in a country or part of a country. The International des Epizooties animal health code calls for the number of species and other characteristics of the animal and human populations exposed to certain pests or diseases. Examples of those characteristics quoted in the code include properties of the agent, presence of potential vectors, human and animal demographics, customs and cultural practices and geographical and environmental characteristics. It is reasonable, therefore, to expect that each factor relevant to the assessment of risk at the national level will also be considered in an examination of regional distribution of risk within the importing country if SPS agreement requirements are to be met.

Import risk analyses conducted to date have not effectively addressed regional freedom from disease or pests of quarantine concern, nor have they effectively considered or dealt with regional differences in levels of risk. For this I turn to issues raised by Hon Kim Chance at council meetings of agricultural ministers and, in particular, to the memorandum of understanding signed in 1995 between the commonwealth, states and territories that articulates the obligations of each of those parties flowing from the establishment of the World Trade Organisation and the SPS agreement. The elements of the MOU state that states and territories shall consult with the commonwealth before implementing sanitary and phytosanitary measures which could inhibit trade into Australia and which may not conform to the SPS agreement; that they shall, in consultation with the commonwealth, review existing SPS measures and identify provisions that may be inconsistent with the SPS agreement; and that they shall not apply any relevant sanitary or phytosanitary measures within their jurisdictions that would not conform to the provisions of the SPS agreement. However, the MOU itself does not commit the commonwealth to addressing regional differences in pest status and risk. All it does is tie the states and territories to the SPS agreement in implementing quarantine measures, which could inhibit trade into Australia.

The international agreements, to which I referred earlier, highlight the need to ensure that the commonwealth, state and territories have a consistent approach to the appropriate level of risk and apply this approach consistently to plants and plant products produced domestically and internationally, and that quarantine regulations are technically justified and that equivalent risk management procedures are recognised. In May 2002 Minister Chance raised concerns about addressing regional differences in pest status and risk as part of the import risk assessment, and expressed concern that the MOU did not adequately reflect the recent developments in articulating the partnership approach to biosecurity. It was agreed that this would be addressed through an exchange of letters. Hon Warren Truss, the commonwealth Minister for Agriculture, Fisheries and Forestry, in a letter dated 23 July 2002, set out the proposed terms of agreement. Hon Kim Chance raised some concerns about those proposed terms of the agreement as they did not fully encompass the issues from Western Australia's viewpoint. In particular, a number of important unresolved issues concerning the import risk analysis process and the handling of regional differences in risks were not assessed. They include the proper interpretation and consistent implementation of the agreement; the apparent inconsistent approach by Biosecurity Australia to recognise official control; and failure to incorporate regional pest status and risk information in an adequate and transparent manner and the way this undermines the whole import risk analysis process. To this end Minister Chance suggested that the methodology for assessing regional differences in the IRA be specified in the technical guidelines for import risk analysis. Another matter that he raised was that the states and territories must be consulted at each stage in the IRA process prior to general release to stakeholders, providing an opportunity for the states and territories, together with the commonwealth, to resolve any differences in scientific interpretation. Unfortunately, not all of Minister Chance's suggestions were supported by federal Minister Truss. The failure to adopt all of Minister Chance's suggestions has resulted in continuing problems with Biosecurity Australia's import risk analysis and the failure of appropriate mechanisms for the resolution of issues regarding regional differences in pest status and risk. In particular, Minister Truss' revised IRA framework provides only two points of consultation with the states and territories. The first point of consultation does not provide for the consideration of any technical information, particularly of regional differences. This means that the first point of consultation with the states and territories on regional differences in pest status and risk is through the draft IRA, providing no opportunity for resolution of any disagreement between the states and territories on how regional differences have been addressed in the draft IRA ahead of the draft IRA being released to stakeholders.

The second point of consultation, which is just prior to the release of the final Import Risk Analysis Handbook, is too late in the process for resolution of the differences. Minister Chance strongly argued in his letter to Minister Truss on 29 November 2002 that in the absence of a requirement for Biosecurity Australia to consult with the states and territories prior to the release of the draft IRA, the only practical means of having regional differences in pest status and risk address is for the state to lodge a formal appeal, which is costly and also time consuming. Regrettably, Minister Truss declined to accept further changes to the agreement as suggested by Minister Chance. As a result, there continues to be dissatisfaction with the way in which the commonwealth has addressed the issue of regional differences in pest risk assessment.

I am sure that members understand the importance of regional differences, particularly for a state like Western Australia. Western Australia enjoys isolation from the rest of Australia and, therefore, an opportunity to protect its produce from many pests and diseases which are endemic elsewhere. It necessitates the commonwealth's acknowledging the different levels of risk; consequently, protection may be necessary in Western Australia as it goes through the import risk analysis process. It is important for members to recognise what is at risk. The state's agricultural industry has gained competitive and market access advantages from its relative freedom from so many pests and diseases. I understand that WA, as an agriculture producer, enjoys more freedom from pests and diseases than any jurisdiction globally. It is very important that this advantage is maintained, not because it benefits this state's agricultural producers, but because of the wider environmental and economic costs that are associated with controlling noxious pests and harmful diseases.

Many people have argued that Australia has adopted a particularly conservative approach to biosecurity in the world and is increasingly under pressure from trading partners to relax the impediments to trade, which is part of the nexus issue that I raised earlier. In maintaining its conservative level of quarantine protection in the least trade restrictive manner, Australia has risk management options open to it that are not available to many other countries. Australia has a diverse range of environments, from the tropical north east to the highlands of Tasmania. Along with the diverse range of environments are some regional variations in sanitary and phytosanitary status and in the demographics of susceptible populations between regions. Practical and technical feasible options exist to institute measures on a regional basis within the country to protect areas of higher health status and areas that have a greater exposure to risk. These options are well illustrated, particularly by the western region, which is separated from the rest of mainland Australia by vast desert and limited points of access, and the island state of Tasmania, which is separated from the mainland by more than 300 kilometres of sea.

In the same way that Australia's health status is a function of its geographical isolation, so too is the health status of some of its pest-free regions. These pest-free regions, especially those that have high concentrations of susceptible populations, need to be guarded to maximise the opportunities to the country for a productive, efficient and diverse primary sector. Where regional differences can be managed by regional measures, it is inappropriate for Australia to institute national quarantine measures tailored to the region most at risk. This imposes unnecessary trade impediments and leaves the country's quarantine measures vulnerable to challenge. Any relaxation of measures resulting from a successful challenge could then expose the regions and pest-free areas to risk in excess of the appropriate level of protection.

In this era of freeing up impediments to trade, regionalisation of risk management should be seen as an opportunity to adopt the most appropriate approach to quarantine policy for the country; this is consistent with minimising impediments to trade. The SPS agreement defines the appropriate application of sanitary or phytosanitary protection as a level of protection deemed appropriate in establishing a sanitary or phytosanitary measure to protect human, animal, plant life or health within its territory. Australia has one ALOP for international trade that has been defined as very low. However, the risk of some threats to particular regions - for example, Johne's disease in animals or fire blight in apples - may be greater in one region than in others. This variation may be a function of pests or disease status, presence or absence, or the level of risk expressed as a probability of an adverse event occurring, as well as the magnitude of consequences of such an event. Therefore, it follows that sanitary and phytosanitary measures needed to meet the ALOP can vary from one region to another depending on the level of risk posed by the pest or disease. An example is that the unrestricted risk estimate of fire blight on apples from infected countries to the Northern Territory could be considered negligible, but measures will be needed to achieve Australia's ALOP. However, the risk to Western Australia may be considered to be slightly higher and, therefore, more restrictive measures are needed.

It can be seen that while there is one level of protection for Australia, regions may argue a higher or lower unrestricted risk estimate and, therefore, more or less restrictive measures are needed for imports into those regions to meet, but not exceed, that risk estimate. Regions can only argue on this basis if there are internal quarantine barriers in place, or are practical to put in place, to restrict the entry of the commodity once imported into another part of the country at risk. For example, apples from fire blight affected countries should not be allowed into the Northern Territory without restrictions. From there, they could be easily moved to states that

could be at higher risk, like New South Wales, where it is impractical to institute measures sufficient to prevent the entry from interstate. This is what makes Western Australia and Tasmania unique in this respect. However, protections in smaller regions are possible, provided quarantine barriers are practical.

Another example to illustrate this point is in respect of Spanish citrus imports into Australia. Current measures include a requirement for fruit to be treated at low temperatures for a specified period to provide effective control of Mediterranean fruit fly. This treatment, which can damage the fruit, is relatively costly and adversely affects the shelf life. Mediterranean fruit fly is endemic in Western Australia, but the risk to WA from Mediterranean fruit fly is negligible. Measures are in place in WA and interstate to prevent the movement of domestic hosts that would apply to imported produce to prevent the movement of the pest to pest-free states and territories, yet the current national import requirements for Spanish citrus apply equally to both WA and the remainder of Australia. The national quarantine policy approach that results in the imposition of measures in this manner could well be considered to be overly trade restrictive. It could be argued that the current national measures are not fully SPS compliant and could be open to challenge. The application of a regional approach to risk management has a benefit of being the least restrictive to trade while providing effective protection to regions most at risk.

The IRAs conducted so far have not effectively addressed regional freedom from pests. This has exposed pest-free areas to potential introductions over which they have little control. Any measures imposed by states and territories to protect these regional freedoms outside the IRA process could be construed as in breach of the SPS agreement if they are not supported by the commonwealth government. This could expose the state or territory measures, and hence Australia, to challenge. Furthermore, it is open for the commonwealth, using its external affairs powers, to legislate to override state and territory measures affecting external trade should unilateral actions by the states and territories continue. Even if measures imposed by the states and territories were determined by this analysis consistent with international standards and the sanitary and phytosanitary agreement, these, too, would have no standing in an international dispute and would not be supported by the national government as a World Trade Organisation member.

Minister Chance highlighted these concerns in his letters to Minister Truss by referring to the importance of ensuring that regional differences are appropriately assessed and appropriate measures are in place to deal with these issues.

Members will recall the outrage that resulted from Biosecurity Australia's proposal to approve, subject to certain conditions, apple imports from New Zealand. The outrage occurred from two directions: firstly, from New Zealand growers who felt that the measures were too onerous; and, secondly, from Western Australian and Australian growers who were concerned about the possibility of pests being brought into this state, together with the control of those pests and the management of spread of disease should that occur. At that time a Senate inquiry was held into the assessment by Biosecurity Australia, and that committee found that the science behind Biosecurity Australia's decision to allow New Zealand apples to be imported into Australia was not sound and that the risk from the disease fire blight was too great. The Senate committee recommended changes to the protocols for the inspection of New Zealand orchards to detect fire blight symptoms; that Biosecurity Australia be required to implement a better consultation program with growers; and that the quarantine watchdog review the weighting it gives to the economic impact of the disease fire blight. That is the very important issue I referred to earlier about the growers' concerns: that is, Biosecurity Australia has been required to balance competing interests - the scientifically based import risk assessment protection against the least restrictive trade requirements. As a result, there is concern that Biosecurity Australia has placed too much emphasis on securing trade measures, rather than protecting this state and the growers from pests and diseases.

Ultimately, there is a question of working cooperatively with the commonwealth government, especially Biosecurity Australia, to ensure that regional difference is understood, effectively considered, consistently applied and appropriately weighted against the least restrictive trade measures. The process must be transparent and, importantly, the states and territories must be fully consulted throughout the assessment process. I call on members opposite to join with the state government in advocating to the commonwealth government the importance and immediate need to address these issues. Although the exchange of letters between the state and the commonwealth ministers went some way towards addressing these issues, regrettably there is still a gap and more work needs to be done, as was clearly articulated by Hon Kim Chance in his letters to Minister Truss.

I hope that the lack of appropriate application of regional differences by Biosecurity Australia in its assessment of risk does not arise again. However, if the matter does arise again, I trust that the state government can rely on members opposite to support this state in its representations to the commonwealth to ensure that Western Australia's valid concerns are recognised and addressed. On that basis, I commend the motion to the house.

HON BARRY HOUSE (South West) [2.56 pm]: The opposition is happy to support this motion on the basis that it means what it says, and that the rhetoric is backed by action and deeds rather than just words. I support

the motion on that basis, because it would be irresponsible of me as a Western Australian not to. However, if this motion is merely a vehicle to clear the way for progress of another piece of legislation, then questions must be answered before the opposition will proceed to that step. The legislation to which I am referring, and which was referred to by the parliamentary secretary, is the Trans-Tasman Mutual Recognition (Western Australia) Bill. This legislation has been in this Parliament for some time. My research indicates that it was first introduced into this chamber on Wednesday, 27 October 1999, when the second reading speech was given by Hon Norman Moore representing at that time Hon Monty House, Minister for Primary Industry. The legislation was introduced a second time on Thursday, 28 November 2002, followed by a second reading speech by Hon Kim Chance, Leader of the House and Minister for Agriculture. The third introduction of the legislation was in a statement by the Leader of the House on Tuesday, 21 June 2005, when he clarified that we were referring to the same bill, the Trans-Tasman Mutual Recognition (Western Australia) Bill.

As the second reading speeches indicate, the purpose of the bill is very clear and I do not intend to regurgitate that information, but it seeks to recognise, across the Tasman, the mutual recognition of qualifications and movement of goods and services between the two nations and between states. That is all I will say about that bill, except that it is relevant that I mention the reasons for the bill not being progressed to this time, because those reasons are directly applicable to the motion before the house today.

The reason that the Trans-Tasman Mutual Recognition (Western Australia) Bill did not progress while we were in government, and since the change in government since 2001, has been the same: that members of the opposition, and, I believe, many members on the government benches, were seeking assurance. There was a lack of assurance regarding protection for Western Australian industries. That is where the direct relevance of this motion comes to the fore. South west members were alerted to the fact that the Western Australian apple industry had some serious reservations about what it might mean for them concerning their disease-free status in some areas and their efforts to keep out diseases and pests like fire blight, codling moth and apple scab, to mention three. The Western Australia apple industry is free of fire blight. There have been outbreaks of the other two, but they have been controlled. The concern of the industry is that fire blight, which is quite prevalent in New Zealand apples, could be introduced into the Western Australian apple industry.

Having competition is one thing, I suppose, but I know that the Western Australian apple industry does not shy away from direct competition. It can hold its head high in any commercial apple production environment in the world. The major concern was the introduction of disease, or worse, into the Western Australian apple industry. That creates a classic dilemma for Australian rural industries in particular. Although we want to see freer international trade, it opens up the possibility that the protective barriers we have built up over the years against biosecurity concerns and disease throughout the world might be exposed or, worse still, broken down. We can be very proud as a nation that Australia has been remarkably successful over the years in keeping out some of the major primary industry diseases, like foot-and-mouth disease, bird flu - at this stage - and others. Western Australia, as a subset of the nation, has been particularly successful, and its quarantine stations have operated on the borders over the years. That is the background to the matter. The Western Australian apple industry and other industries are equally concerned about biosecurity breaches and the introduction of insects, animal and vegetable matter and disease. That is the reason the Trans-Tasman Mutual Recognition (Western Australia) Bill has not progressed through this house of Parliament; we have not gained watertight assurances on those matters.

I hope that this motion is not merely preparing the ground for the future progress of that bill. I would be disappointed if it was, because if that were the case, we would need concrete assurances that the concerns expressed in this house by members, including the Minister for Agriculture and Food, have been addressed in various forums.

This motion seeks assurance through the federal government, which is a signatory to the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures - SPS agreement. The federal government declared that Western Australia, or subregions of Western Australia, as I understand it, can be declared a particular case. The parliamentary secretary quoted extensively from, I think, explanations on notes involved with the SPS agreement. I have a copy of the agreement with me. The first thing we should do is clarify exactly what the definition of "sanitary and phytosanitary measures" is. Annex A, the definitions of that agreement, states -

1. Sanitary or phytosanitary measure - Any measure applied:

- (a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- (b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

(c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof; or from the entry, establishment or spread of pests; or

(d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.

Annex A goes on to cover harmonisation; international standards, guidelines and recommendations; risk assessment; appropriate levels of sanitary or phytosanitary protection; pest or disease-free areas; and areas of low pest or disease prevalence, as part of the definition. I certainly do not intend to read all of it, but it is available on the Internet to anybody who wants to access that information.

It is worth reading the opening paragraph of the agreement that describes the crux of what it is all about. It states -

Members,

Reaffirming that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade -

It goes on from there. Further on, the agreement states -

Article 2

Basic Rights and Obligations

1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.

That is a pretty broad statement, but it really does confirm the crux of what we are trying to achieve in Western Australia. Article 2 reads -

2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles -

That is the key phrase -

and is not maintained without sufficient scientific evidence, except as provided for -

Another paragraph is referred to. Article 2 continues -

3. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members.

The section of the agreement that relates specifically to what this motion refers to is Article 6, which states -

Adaptation to Regional Conditions, Including Pest - or Disease -

Free Areas and Areas of Low Pest or Disease Prevalence

1. Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area - whether all of a country, part of a country, or all or parts of several countries - from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

I will not read the other parts to that section at this stage. In their response, either the Minister for Agriculture and Food or the parliamentary secretary might tell me who makes that decision. Is it made by the exporting country? If it is made by the exporting country, a question mark will continue to remain over it. I will use

apples as an example. Is the decision on the importation of New Zealand apples into Western Australia made by New Zealand in this case or -

Hon Kim Chance: No.

Hon BARRY HOUSE: I am pleased to hear that.

Hon Kim Chance: If the application is made by New Zealand, it then passes through the import risk assessment process in Australia. However, it then gets even more complicated when referring to regional freedom, because a state or territory law may have a different provision from that provided in the federal Quarantine Act. I will go into that in more detail in my response.

Hon BARRY HOUSE: That is good. Although the process would obviously have to be initiated by the exporting country, the decision does not lie with it; it lies with a process that involves the weighing up of regional interests. That is the critical part.

Hon Kim Chance: Yes. In all those stages there is transparency.

Hon BARRY HOUSE: Yes. Article 7 of the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures - the SPS agreement - is a separate section on transparency. Article 10 of the agreement is headed "Special and Differential Treatment" and refers to developing country members, particularly the least developed country members. That also warrants a question. Australia is a member of the WTO and is therefore required to take into account other less developed nations that are signatories to this agreement that want to export their products into Australia. If Australia has a problem with the disease status of a product being imported from a less developed nation that is a signatory to the WTO, will some allowance be given to the less developed nation, which might expose Australia to some risk? That question must be asked. That is about all I will refer to from the WTO agreement.

I was trying to follow the parliamentary secretary's speech. Obviously the matter has been taken up by Minister Chance on behalf of Western Australia at a Council of Australian Governments meeting, which is appropriate. I was trying to ascertain from the parliamentary secretary the degree of positive response that Minister Chance received. I deduce from what the parliamentary secretary said that there have been positive responses in several areas but that other areas are still outstanding. We all require some assurance on that matter if this motion is preparing the ground for the future passage in this chamber of the Trans-Tasman Mutual Recognition (Western Australia) Bill. That summarises the opposition's point of view. The Trans-Tasman Mutual Recognition (Western Australia) Bill is still on the agenda for this house. The opposition has baulked at supporting the bill. When I say the "opposition", the Liberal and National Parties in opposition, and even in government, baulked at the passage of the bill, and will continue to do so unless they receive suitable assurances from the government about the biosecurity risks and Western Australia's exposure to plant and animal diseases in the future.

The opposition supports the motion and I hope that it hears a further explanation from either the minister or the parliamentary secretary on behalf of the government that these measures are under way and that it will be provided with written confirmation of these assurances if and when the Trans-Tasman Mutual Recognition (Western Australia) Bill is presented.

HON KIM CHANCE (Agricultural - Minister for Agriculture and Food) [3.15 pm]: Obviously, we will support this motion, and I thank Hon Adele Farina for raising it. I thank also Hon Barry House for putting the motion in the context of the Trans-Tasman Mutual Recognition (Western Australia) Bill. I assure Hon Barry House that this motion is not a precursor to the introduction of the Trans-Tasman Mutual Recognition (Western Australia) Bill. It was not in Hon Adele Farina's mind when she moved the motion. She might have a different view, but she certainly did not say anything about it to me. However, it has occurred to me that this motion is a handy precursor to that legislation because the issues that have arisen in this debate are fundamentally concerned with the issues that Hon Barry House has indicated will arise in the consideration of the Trans-Tasman Mutual Recognition (Western Australia) Bill. It has occurred to me also that the debate on this motion, and the fact that the Trans-Tasman Mutual Recognition (Western Australia) Bill is not far away in the government's priorities, might help members' understanding of the issues concerned with that bill. The two are conceptually linked, but I do not think they were strategically linked. There was no plan to do it in this way.

As an Australian jurisdiction, Western Australia is bound by the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures. We have heard many negative comments about the effect of the SPS agreement, which is a child of the WTO agreement and has a child of its own - the dreaded import risk assessment process. The SPS agreement and the IRA process are both administered by the commonwealth organisation Biosecurity Australia. We have heard negative comments about Biosecurity Australia and the way in which it administers those two agreements. Generally, those negative comments concern a decision by Biosecurity Australia about whether as a result of an import risk assessment a particular commodity from a

particular source is suitable for importation into Australia. Most recently there has been some talk about pork and the post-weaning multisystemic wasting disease, which is present in Canadian pork and which Biosecurity Australia decided through the IRA process would be quite okay to import into Western Australia, even though mathematically the odds are almost 50-50 that within a decade that disease would exist in Australia as a direct result of the decision to import uncooked pork from Canada. It is a matter of risk assessment. Many of us believe that Biosecurity Australia applies its duties far too narrowly under the SPS agreement and the import risk assessment process. As a result, some pretty dumb decisions have been made. Indeed, when the Australian pork industry first appealed the Biosecurity Australia decision on imports of raw pig meat, in the first instance, in supporting the appeal by the Australian pork industry, I think the Federal Court of Australia judge made a comment - I should not quote him because I do not have it with me - to the effect that he could not believe anyone could have made such a dumb decision. He wondered how a decision like that could be made. Subsequently, the Federal Court decision was overridden, and the original Biosecurity Australia ruling still stands and we can import raw pig meat into Australia. That is an absolute tragedy.

Having said that and taking account of the generally negative things that are said about Biosecurity Australia and the way the World Trade Organisation processes work, I will speak in Biosecurity Australia's defence. I can assure members that I have nothing to gain by defending the process. It is the only process we have. As a state that exports 85 to 90 per cent of its produce, it is the state that has the most to gain by eliminating non-tariff barriers for world trade and agricultural commodities. However, every now and again we hit a painful spot. Non-tariff barriers are every bit as serious an issue and threat to our agricultural producers as are tariff barriers. Quarantine is one of those non-tariff barriers. Also in defence of the Biosecurity Australia process, there are just as many complaints from people outside Australia trying to get goods into Australia that Biosecurity Australia is over-rigorous. We need speak only to the Philippine High Commissioner, as I have in the past year or so, about Biosecurity Australia's attitude to the importation of mangos, bananas and pineapples, a treble issue that has been before Biosecurity Australia for years without a decision. The Philippine High Commissioner asked me how anything could take that long. The pressure now as a result of the disruption of the Queensland banana crop emphasises the question fairly pointedly. How can it take so long and why?

Criticism comes from both sides, and Biosecurity Australia sits uncomfortably in the middle of that process. We should not be uncritical of the Biosecurity Australia process and all that that means, but we should try to be at least constructively critical of it. The fact is that if we did not have the Biosecurity Australia process in place, we would not have anything. There is no alternative system sitting behind the WTO agreement. We either have that agreement, as imperfect as it might be, or we have nothing at all. That would mean a total collapse of our capacity to talk to those many jurisdictions to which we sell food commodities, particularly in the South East Asian region where there are enormous movements of food between, for example, us and the Thais. All the food product that goes through Singapore ends up in not only the South East Asian region, but also the north Asian region. We hear much about the tiny bit of food we import from China. However, does anyone not stop to wonder what would happen if our attitude were translated into their attitude about the food they import from us? It would be a serious issue.

We talk about foreign aid, for example. One of the most important foreign aid contributions we have made to South East Asia in the past has been to assist those countries to reach the stage at which their animal population is disease free, particularly from foot-and-mouth disease. Indonesia features prominently in that. Australia played a huge role in getting rid of foot-and-mouth disease from animals in Indonesia. Why? It helps to protect our cattle and sheep from foot-and-mouth disease. It is a very important issue. Similarly, it is important that, if we do not have all the same rules, we at least read from the same hymn sheet on how the rules should be structured. Even with the WTO process - almost every country in South East Asia is a WTO member - we still cannot quite make the gears slide together properly. We all work from the same WTO rules, under the same SPS agreement and on the basis of the rules called Codex Alimentarius - I do not know why big Latin names are used to describe something quite simple - which is a worldwide process for establishing food codes. Somehow we are still crunching gears. I once put to the Agri-Food and Veterinary Authority, the Singapore food regulator, that perhaps it should consider taking responsibility for dragging together the rule-making process, at least throughout South East Asia, so that all our rules would match. That would have made our rules much easier to follow. It would also have made the rules of trade between each country much more amenable to a process that people could understand and work with. We still have not reached that stage, much less the stage of developing an alternative to that process.

What goes wrong with the WTO rules? Essentially there will still be people who are, or have the perception that they are, disadvantaged either because of the interpretation of the rules or because the rules are different. In addition, straight-out mongrelism occurs in any trade system. An example of mongrelism happened the other day when I was called by a very substantial exporter of seafood, in this case, from Western Australia. He said that, as a result of a mistake in his consignment, a container of fish had arrived in England that did not carry his

assessment number - the number that should have been stencilled onto the container and the boxes within the container. The English authorities said that the consignment had to return to Australia for the numbers to be affixed. The exporter simply wanted his licensed agent to have access to the container so that he could affix the number in England and have it released from bond. However, the answer from the English authority was no, the box had to come back to Australia. I thought that was ridiculous and wondered who I could approach to fix it. I was delighted with the response I got from the Australian authorities. In fact, the Western Australian Agent General was in Perth at the time and, as luck would have it, he was having dinner with the director general of agriculture that same night. I got the call about 5.30 in the evening, so we were able to get straight onto the Agent General. We used all the string-pulling capacity we have within the Australian Quarantine and Inspection Service, which is quite considerable. AQIS and the Agent General supported us, but the British authority still said no. It was rather like the computer saying no.

Hon Barry House interjected.

Hon KIM CHANCE: Exactly. That was just an example.

The shipment had to come back or alternative markets had to be found. It was not a lost cargo because it was at least frozen, but it involved much inconvenience for many people. That is just an example of what happens when the rules do not match each other, even when the rules are the same.

Another aspect that goes wrong with these rules - this is getting more to the crux of the motion, although I thought I had to go through that process first - is that quarantine and international codification rules impose a requirement, as they are signed by national jurisdictions, but become binding upon those components of a national jurisdiction. They tend by their very nature to set a one-size-fits-all rule. As we know, it is quite possible for a particular problem to exist in some parts of a jurisdiction the size of Australia, Argentina or Brazil, but not in other parts of those jurisdictions. We are familiar with the concept of regional freedom, for example, from foot-and-mouth disease in Brazil and Argentina. We are also aware of examples of regional freedom existing with insect pests, such as Mediterranean and Queensland fruit fly - two examples that were given today. That means that we must have an understanding of the concept of regional freedom, which is quite reasonable. Provided we can establish that we have safe boundaries around an infected area and a non-infected area, there should be no issue about recognising regional freedom. Indeed, Hon Barry House raised the issue of apples - which I will go into in detail later - about which Western Australia and Tasmania have specific issues and which underlines the importance of the recognition of regional freedom.

The World Trade Organisation agreement provides the basis for freer trade internationally, and I believe that we have more to gain than we have to lose from it, albeit that it has problems. The sanitary and phytosanitary agreement is the child of the WTO agreement and, essentially, the import risk assessment process is the child of the SPS agreement. In order to underline the concept of regional freedom, a memorandum of understanding also exists between the commonwealth and the states on the application of all parts of the WTO agreement, and a side letter to the MOU deals with the question of regional freedom.

Hon Barry House raised the question of the Trans-Tasman Mutual Recognition (Western Australia) Bill 2005. The issue gets a bit clouded and complicated here. The relevance of that bill in this debate is that concerns have been raised in earlier debates on the bill that, as a consequence of the provisions of the bill, will oblige Western Australia to permit the importation of goods from New Zealand that may compromise our quarantine status. This has been a major issue. In fact, the whole issue of quarantine is among those issues that are specifically excluded from the scope of the Trans-Tasman Mutual Recognition (Western Australia) Bill. It is a permanent exemption, not a special exemption, and it is found in schedule 2, part 1, on page 32 of the Trans-Tasman Mutual Recognition (Western Australia) Bill. It is correct that concern for quarantine integrity has caused delays in consideration of the Trans-Tasman bill, and although on the face of it the existence of the permanent exemption in schedule 2 should have allayed that concern, it is not quite that simple, unfortunately. The reason it is not quite that simple is that schedule 2, part 1, clause 1(b) of the bill imposes a conditional qualification on the scope of the exemption. In other words, it is a permanent exemption on quarantine issues but there is a condition. The preamble states that a law of an Australian jurisdiction, including a law relating to quarantine, is exempt to the extent that, and the condition is outlined in paragraph (b) -

the law authorises the application of quarantine measures that do not amount to an arbitrary or unjustifiable discrimination or to a disguised restriction on trade between Australia and New Zealand and are not inconsistent with the requirements of the Agreement establishing the World Trade Organisation.

Hon Christine Sharp argued previously in this place that the qualification in clause 1(b) of the bill means that the permanent exemption provided in schedule 2, part 1, has no value. Although earlier attempts to satisfy Hon Christine Sharp were reasonably successful, clever woman that she is, she very quickly worked out that perhaps clause 1(b) made that assurance nonsense. We then had a hot and cold type of approach to the Trans-

Tasman Mutual Recognition (Western Australia) Bill. That is why I think Hon Barry House was very perceptive in linking these two issues. As I said, it was not strategic but it was a useful linkage.

As a result of concerns expressed by members of this house, but led principally by Hon Christine Sharp, we then went through the process that has been comprehensively described by Hon Adele Farina. I do not propose to take members through all that process again, but that is where the MOU and the side letter to the MOU came from.

Hon Paul Llewellyn: Has that side letter been tabled publicly?

Hon KIM CHANCE: I think we tabled it as a result of a request from Hon Christine Sharp, but we are more than happy to make it available again to the house; I just do not have it with me in my material.

The difficult issue is that on the face of it the MOU contains the same qualification; that is, dependent upon the rules as provided in the sanitary and phytosanitary agreement, the commonwealth recognises the right of the states and territories to maintain their own rules in keeping with their requirement for regional freedom. Again, I am not quoting; that was just from memory. However, that in itself caused people, including Hon Chrissy Sharp, to say again that it was worthless, because it would tie the guarantees back to the SPS agreement, or the WTO agreement in the broader sense. In fact, tying the issue back to the sanitary and phytosanitary agreement is actually a strength for regional freedom. That is where I think members have tended to miss the issue. The guarantee for the rights of regions, which includes states and territories but not exclusively, actually exists within the sanitary and phytosanitary agreement itself, so that every time a function is tied back by memorandum of understanding or letter of agreement, we must continually refer to the SPS agreement, as the SPS agreement itself contains that guarantee.

Hon Barry House: That is the case only if the WA government gets the cooperation of the federal government.

Hon KIM CHANCE: Yes, that is a practical issue and it is timely now to discuss it, as it is also covered in the MOU. We in this place have been asked from time to time whether we are getting that cooperation. I believe the intent of the commonwealth is to supply that cooperation. When we measure spirit and performance, sometimes they do not match up. There have certainly been occasions when we have been disappointed that the agreement that the commonwealth had with us, as expressed in the memorandum of understanding, to supply certain information and to undertake a certain degree of consultation at various stages has simply not been delivered on. When confronted with that, the commonwealth has said that we were right, that it did not happen and that it would do something to fix it. There is a spirit of wanting to cooperate and comply with the rules. Sometimes the commonwealth has not performed according to that spirit, but it has been its intention to do so. Frankly, I am relaxed about that.

The other issue, which I have not spoken about very much, goes directly to the question of regional freedom and an action taken under the commonwealth Quarantine Act about, for example, New Zealand apples. If a determination were made under an import risk assessment that the importation of New Zealand apples to Sydney would not pose a risk - for example, if Sydney had discovered fire blight as endemic - the commonwealth Quarantine Act would be triggered and apples from New Zealand would be removed from the excluded list. Many people have said that it would be the end of the Australian apple industry and that if they were allowed entry into Australia, they would be allowed entry into Western Australia because the state legislation could not overrule the commonwealth legislation as a result of the application of section 109 of the Australian Constitution. That section provides that commonwealth legislation overrides state legislation, but only to the extent of the inconsistency between the provisions of the two jurisdictions' competing legislation.

I have had a very close look at the Western Australian legislation, particularly the Agriculture and Related Resources Protection Act, which I have read in conjunction with the commonwealth Quarantine Act. I must say that I have not tested this greatly, although I have asked other people whether they agree with my reading of the two acts; however, when one reads the two acts, it seems very clear that they are designed to operate in parallel. This is quite unusual with commonwealth and state legislation. One usually finds each jurisdiction's legislation trying to cover the field. When that happens, they will eventually cross and get to a point at which there is the potential for inconsistency between the state and commonwealth legislation, which could lead to a section 109 trigger. This does not seem to be the case with quarantine legislation. The acts refer to each other. They seem to be clearly designed to work, not by covering the field but by working in parallel with each other; that is, one recognises that it has a commonwealth jurisdiction and the other recognises that it has a state jurisdiction. As a result of that, it has always been my view that in the event that New Zealand apples were permitted to be imported into Australia, they would still be excluded as a result of the provisions of the Western Australian Agriculture and Related Resources Protection Act, because the New Zealand apples, while complying with the requirements of the commonwealth Quarantine Act, would not comply with the requirements of the Western Australian legislation. This depends on a number of things still existing; however, the current state of the Western Australian pome fruit industry, which I think is the only pome fruit industry in the world that is free of

the big three pests - apple scab, codling moth and fire blight - effectively means that if the dark day were to come when Australia lost its reasonable grounds for objection to the importation of New Zealand apples, that dark day could not apply in Western Australia.

Hon Adele Farina: Does the SPS agreement not specifically allow for that different risk assessment anyway, regardless of the legislation?

Hon KIM CHANCE: It does. That is why I said there is always the referral back to the SPS agreement, which is a good thing and not a bad thing, because it is article 6 of the SPS agreement that refers to the capacity for regional freedom.

This is a bit complex, and I am sorry. I told Hon Sally Talbot that I could explain this to her in five minutes, but I realise now I probably could not do that. However, I have tried not to overcomplicate the matter. It comes back to a relatively simple set of guidelines. The process is complicated, but the guidelines are quite simple if they are followed with some degree of goodwill and the perception, which obviously does not exist in the Philippines just now and which is hard to sell, that we are not using these rules as some kind of non-tariff barrier. The Philippine High Commissioner did not believe me when I said that we were not using the rules as a non-tariff barrier. She said that of course we were and that we should talk about the real thing, which is what the Philippine market should do to export bananas to Australia. I said that getting rid of a few diseases might help. Her answer was that we should go to the Philippines to get rid of those diseases so that we could import their bananas. I thought that might be going a little too far. However, it is not such an absurd notion, because that is what we did in Indonesia with foot-and-mouth disease.

I thank Hon Adele Farina for raising the question. I certainly thank Hon Barry House for linking it in the way he did with the Trans-Tasman Mutual Recognition (Western Australia) Bill, because I hope that this debate will allow us sometime this year to get on with that bill and deal with it in the absence of the phantoms that have haunted this bill for so long and have prevented us from doing what we need to do. Of course, some of the issues will need to be churned over again. Some assurances will need to be given while we are debating that bill. However, I hope that we have at least flushed the phantoms out into the open and that we can get on with dealing with the bill.

HON PAUL LLEWELLYN (South West) [3.48 pm]: It would be very difficult to debate this motion without any discussion of the implications of the Trans-Tasman Mutual Recognition (Western Australia) Bill, which is now fully in the open, and the World Trade Organisation's impact on our economy. I will have to draw on some of the ghosts of the past, because Dr Christine Sharp has briefed me, and I will lay out the case again.

Hon Kim Chance: I would be disappointed if she had not.

Hon PAUL LLEWELLYN: That is right. This is the first time that the Western Australian Parliament will defer to WTO rules in any statute, as I understand it.

Hon Barry House: It is not a statute; it is just a motion.

Hon PAUL LLEWELLYN: In the case of the Trans-Tasman Mutual Recognition (Western Australia) Bill, it would be the first time that the Western Australian Parliament had deferred to World Trade Organisation rules. Along with the WTO comes free trade, which to some extent is good, but we need to have that tempered by good sense with phytosanitary objectives, free movement of capital and materials and, as it might be good to liberalise our markets through the expansion of WTO arrangements, free movement of services, all of which would mean free movement of disease save for the phytosanitary arrangements at state and federal levels. It is clear from the debate on the Trans-Tasman Mutual Recognition (Western Australia) Bill 2005 - another bill I inherited and on which I was given a fat file - that we are exposing Australia, in particular Western Australia, to a set of arrangements that are not favourable to either consumers or producers. I have not kept my eye on the ball on this issue, but I note that the wine industry has taken off, although the apple industry is under pressure from international trade and the pear industry has fallen apart at the seams. It will not be long before the structure of the dairy industry will fall apart at the seams, and milk and pears will be imported from South America and so on. Where is the public interest in relation to this? I am referring to the paper prepared for me by Dr Christine Sharp, in which she considered the regional difference and the practice of national quarantine controls.

We must recognise that the trans-Tasman mutual recognition legislation, which was introduced in 1999, was uniform legislation that was passed by the commonwealth and all other state Parliaments some years ago. The repeated delay of its passage in Western Australia has been brought about by the shared concern of the Greens (WA) and the state Liberal Party about the precedent set under the bill for WA's quarantine sovereignty. Legal advice provided to Dr Christine Sharp in 2000 suggests that the bill has implications for the degree to which Western Australia can practise quarantine controls that are different from, or more strict than, the federal government's requirements. That information was provided in a discussion paper on the trans-Tasman mutual recognition legislation prepared by Marie Winter from the Research School of Social Sciences at the Australian

National University. The concern is based on schedule 1 of the bill, which defers WA quarantine standards and trading across the Tasman with New Zealand to those set out under the rules of the World Trade Organisation and controlled by the federal government. Again, this is the first time that the Western Australian Parliament has enacted legislation that specifically defers to the World Trade Organisation rules, and it sets an important precedent for the whole process of mutual recognition that has been developed between Australia and a range of trading partners.

Also, we look to the development of the memorandum of understanding in 1993, when Australia joined the World Trade Organisation. An MOU on animal plant quarantine measures was entered into between the commonwealth and the states of New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania, and the Northern Territory and the Australian Capital Territory, on 21 December 1995. The scant document does not give any consideration to the necessary working principles used in the new, and now standard, practice of scientific import risk assessment determined by the federal government's Biosecurity Australia.

Of particular concern is the lack of recognition of the significant variation in what is known as "area freedom" throughout Australia; that is, the freedom from particular pests and diseases and also the different levels of risk depending on whether important regional agricultural produce is involved. In other words, that MOU sets down that for the purpose of biosecurity under the World Trade Organisation, Australia shall act as one unit. However, the level of threat of importing pests and diseases varies enormously across the continent and that has been spelt out very clearly. Queensland may have different risks than Victoria or Tasmania etc. Very often Western Australia and Tasmania have a higher degree of area freedom than the eastern states because one is an island and the other is bordered by the desert. These form natural barriers that, in conjunction with the excellent traditional state quarantine service at airports, have provided these states with a very high level of area freedom. It is the question of area freedom that is under discussion. In fact, Western Australia and Tasmania have some of the cleanest agricultural systems in the world, and this is of great significance to the regional economies.

The MOU soon ran into its first problem with the well-known fight between the federal government and Tasmania over the importation of Canadian salmon. This issue has been left as a stalemate between the governments of Tasmania and the commonwealth. Tasmania has continued to ban Canadian salmon imports in contravention of the commonwealth position. The federal government has never sanctioned its regional difference from the Australian import protocols accepted on the mainland. Even though Tasmania has implemented its own ban, the operation of this regional difference is not working. In other words, the issue of regional difference remains unresolved.

We have talked at length about the subject of New Zealand apples. During the six years that the passage of the trans-Tasman legislation has been delayed in the WA Parliament, there has been a major push by New Zealand, through the World Trade Organisation, to overcome Australia's current ban on the import of New Zealand apples. In this same period, Biosecurity Australia has issued two separate import risk assessments on New Zealand apples. Both documents have produced such unified rejection by the apple and pear growers throughout Australia, indeed a political uproar, that on both occasions the federal government has withdrawn the import risk assessment and instructed Biosecurity Australia to redo its science. If the import risk assessments are not doing the job, what else can we rely on? At this stage, and in the past, Australia has simply banned New Zealand apples. That is not a bad proposition, regardless of whether we view this as informal protection. However, the World Trade Organisation, which is not in principle rejecting all outright bans under the phytosanitary guidelines, normally treats bans as disguised protectionism. The Australian government has taken a timid approach to provoking any test cases of this traditional approach, even though it is obviously the safest method in which the risk warrants extreme caution.

In the case of the apple industry in the south west of Western Australia, we could say that there is a compelling case. Western Australia has particular concern about these apple imports, because of its exceptional level of area freedom from apple pest and diseases. Not only is it free of the dreaded fire blight that afflicts a lot of New Zealand orchards, but also it is free from the codling moth and apple scab that are found across the Tasman and in the eastern states. There is a regional area difference; if it is found on the east coast and not in WA we need to acknowledge that regional difference. All three pests are very difficult to control. Accordingly, it is estimated that WA spends only 18 per cent on pesticides in apple production compared with New Zealand. That information came from WA fruit growers. WA has spent millions of dollars on eradication campaigns to control small outbreaks of these problems. No apples have been imported into WA since the 1920s. Is that still true?

Hon Kim Chance: That is correct. That is because of the triple freedom.

Hon PAUL LLEWELLYN: That is a beautiful thing. In other words, WA has significantly more risk from New Zealand apples than either Victoria or New South Wales, although Tasmania, being the Apple Isle, shares the same unique position as us. However, the fear of introducing fire blight into Australia - for it cannot be

eradicated once established - has provoked a unified national campaign. Fire blight is treated by spraying antibiotics onto affected areas. This is a very dangerous practice because of the rapidly growing international public health problem of antibiotic resistance. If we imported apple scab and fire blight into Australia, we would be contributing to the decrease in the effectiveness of antibiotics, which is not an insignificant matter.

I return to the intergovernmental quarantine arrangements between Canberra and Western Australia. According to the Minister for Agriculture and Food, Hon Kim Chance, the federal government has accepted that the principle of regional difference must apply, when appropriate, to Australia's biosecurity. I suspect that that is the letter that has been tabled. However, federal Minister Truss is apparently reluctant to commit to this principle with a formal public policy document, such as a revised memorandum of understanding. Why can we not renegotiate the MOU? It must be because it would upset the World Trade Organisation, even though it is not contrary to any stated phytosanitary guidelines. On the basis of the unofficial acceptance of the principle of regional difference and the promise of consultation with this state's agricultural protection division of the Department of Agriculture and Food, in 2004 Hon Kim Chance entered into a rearrangement of the WA quarantine protection mechanism by signing over to the federal government the transfer of 230 Western Australian departmental officers. I understand that that information was contained in the answer to a question without notice asked on Tuesday, 9 November 2004 by Christine Sharp, MLC of the Minister for Agriculture, Forestry and Fisheries, as he was then called. Clearly, signing over our quarantine resources to the federal government and unifying those efforts could, to some extent, help with cost sharing. However, within a few months of the new arrangements being endorsed by both heads of department - an endorsement that included some acceptance of the need to consider regional differences during the import risk assessments and to consult with Western Australia on quarantine matters - the federal government released its import risk assessment on New Zealand apples. This document was prepared without consulting WA, and with no scientific coverage of the additional risks to WA posed by codling moth and apple scab. In fact, the import risk assessment took a national approach, which is what we are talking about, without any recognition of regional difference. It simply focused on fire blight control protocols, which were not in Western Australia's interests. Fortunately for Western Australia, these protocols were seen to be so inadequate as to require a rewrite of the draft import risk assessment document. That is now being prepared. Has the new import risk assessment document been completed?

Hon Kim Chance: Not that I am aware of.

Hon PAUL LLEWELLYN: Has it been sent back to the drawing board? In practice, the consequence of running an import risk assessment without consulting with Western Australia basically shows that the commonwealth pays no regard to the acceptance of regional differences -

Hon Robyn McSweeney: As part of the import risk analysis, 34 submissions were received from all over Australia, and it ended on 30 March 2006.

Hon Kim Chance: But we do not have the new IRA.

Hon Robyn McSweeney: No, we do not.

Hon PAUL LLEWELLYN: That is the redraft, which is the consequence of them undertaking an import risk assessment without having regard for Western Australia's regional differences and forgetting the assessment for codling moth and apple scab, which puts Western Australia's apple industry at risk.

Hon Kim Chance: Whilst I acknowledge what the member has said is true, that process of consultation with WA occurred in the latter part of the process. In the end, we were quite satisfied with the consultation that occurred in the second part of the process.

Hon Adele Farina: The problem is that the two points of consultation occurred too late.

Hon PAUL LLEWELLYN: This supports the notion that regional difference needs to be acknowledged and that we need a functional mechanism for incorporating regional differences into our quarantine arrangements.

Where do we go now with the emergence of the Trans-Tasman Mutual Recognition (Western Australia) Bill? That bill sets a legal precedent that affects WA's quarantine sovereignty. We can make that argument at a later date. The bill should continue to be deferred until the states are collectively confident that Western Australia's biosecurity requirements will operate in conjunction with natural barriers and protection boundaries to facilitate the highest level of area freedom appropriate to each region. That is the guts of it. This needs to be set out in a formal and binding public policy document, such as an updated MOU.

The most important aspect of this motion is -

That this house requests the Australian government to recognise and formally acknowledge the prerogatives of Western Australia to determine regional freedom from pests and diseases on a scientific basis, . . .

We could leave it right there and delete -

consistent with the obligations of the World Trade Organisation -

That has basically frustrated our efforts -

Agreement on the Application of Sanitary and Phytosanitary Measures.

Amendment to Motion

Hon PAUL LLEWELLYN: I move -

To delete all words after “basis”.

In support of improving the motion, I have moved to delete all words after “basis”. Therefore, if my amendment is agreed to, the motion will read -

That this House requests the Australian Government to recognize and formally acknowledge the prerogatives of Western Australia to determine regional freedom from pests and diseases on a scientific basis.

That is all that is required to make this motion effective.

Amendment put and passed.

Motion, as Amended

HON NIGEL HALLETT (South West) [4.11 pm]: My understanding of this motion is that it essentially asks the federal government to allow Western Australia to decide its own quarantine measures without the interference of the commonwealth government if it feels that Western Australia is breaching the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures - the SPS agreement. I will not go into the meaning of that agreement because Hon Barry House outlined it to the house in great detail. The WTO's SPS agreement allows countries to set their own standards on quarantine measures that they feel are necessary to protect them from the importation of foreign pests and diseases. It enshrines and protects their sovereign right to decide the level of protection they regard as necessary, but is constructed to ensure that those rights are not misused for trade restrictive purposes. The commonwealth government is party to this agreement.

Hon Kim Chance gave a very detailed outline of the trade restrictions that could be used against us. For example, if New Zealand or any other country wanted to export fruit into Western Australia that would raise potential quarantine issues, we would refuse to import the fruit on the grounds that based on scientific assessment it was a definite quarantine risk. New Zealand could protest that there is no risk to Western Australia's quarantine status and that we were trying to protect our fruit industry by using a false quarantine threat. If New Zealand believed that Western Australia had breached the SPS agreement, it could challenge Western Australia's determination. If the commonwealth government considered the issue and decided that it did not agree with the Western Australian government's risk assessment, it could override Western Australia's decision and allow the importation into Western Australia of a product that was not compliant with WA's quarantine measures. The amended motion will satisfy that problem. It is essentially about protecting signatories to the SPS agreement against unfair trade restrictions, not keeping regions and areas such as Western Australia disease and pest free. This motion is asking the commonwealth government to formally recognise Western Australia's right to determine quarantine matters from a regional perspective. The successful job done at the state's borders to protect our quarantine status must be acknowledged. It has previously been noted that fire blight, codling moth and apple scab has been kept out of the Western Australian fruit industry.

The commonwealth, states and territories entered into a memorandum of understanding on animal and plant measures in 1995. The objective of the MOU was for Australia to comply with the relevant obligations under the SPS agreement. Among other things, the MOU provides that the states and territories will consult fully with the commonwealth government before implementing any relevant sanitary or phytosanitary measures that could inhibit trade into Australia that might not conform to the provisions of the SPS agreement. It provides also that the states and territories must not apply sanitary or phytosanitary quarantine measures that would not conform to the SPS agreement. The state government believes that the MOU does not adequately recognise Western Australia's regional differences regarding its pest status and risk. Western Australia is free from many international pest and diseases that are prevalent also in other states. When Mr Delane from the Department of Agriculture gave evidence to the Standing Committee on Uniform Legislation and General Purposes hearing, he said that he believed the MOU was designed to reinforce the obligations of the states and territories pursuant to the SPS agreement rather than to express any responsibility that the commonwealth government has to adequately protect all the regions of Australia from products that pose a quarantine risk. He advised the committee that this is a contentious area.

Debate interrupted, pursuant to sessional orders.

Sitting suspended from 4.15 to 4.30 pm