

Department of Agriculture, Fisheries & Forestry

**GOVERNMENT RESPONSE TO THE AUSTRALIAN
BUREAU OF AGRICULTURAL AND RESOURCE
ECONOMICS AND SCIENCES REPORT ON
HORTICULTURE EXPORT REGULATION**

REGULATION IMPACT STATEMENT

(Office of Best Practice Regulation ID No 2011/12936)

September 2012

Summary

Commonwealth legislation (the Horticulture Marketing and Research and Development Services Act 2000 (HMRDS Act) and subordinate Regulations and Orders) allow horticultural industries, acting through Horticulture Australia Limited (HAL), to place conditions on horticultural produce exported from Australia. This legislation was reviewed against the principles of National Competition Policy.

The regulation impact statement considers five options for the government's response to this review:

Option 1. Take no action.

Option 2. Amend the Statutory Funding Deed with HAL to disallow any future applications by industry to regulate horticultural exports.

Option 3. Revoke all the current Orders and the Regulations, but leave the regulatory head of powers in the HMRDS Act intact.

Option 4. Revoke all the current Orders and after two years evaluate adjustment by the citrus industry before repealing the Regulations, but leave the regulatory head of powers in the HRMDS Act intact.

Option 5. Repeal the current Orders and the Regulations and remove the regulatory head of powers from the HMRDS Act.

Consideration of the options described above indicates that the revocation of the current Orders and Regulations, but retaining the regulatory head of powers in the HMRDS Act (**Option 3**), is the option with the potential for the most advantages.

The current uses of the export regulations (**Option 1**) generate no quantifiable net benefits and any potential benefits they may deliver could be achieved without the need for government regulation. As such they do not conform to the principles of National Competition Policy. Moreover, it seems highly unlikely that any future use of export regulation enabled by the Regulations, in their current form (aside from import quota management), could conform with the National Competition Policy principles and/or with contemporary government policy in the areas of innovation and international trade.

The options of retaining the current use of the regulations, while disallowing other future uses by other horticultural industries (**Option 2**), or of revoking the current Orders, but reintroducing them in the future (**Option 4**), do not conform to the principles of national competition policy. **Option 5** would decrease the government's options to address emergent policy issues that may affect horticultural exports from Australia (a form of opportunity cost arising from deregulation).

The main stakeholders affected by this recommendation are those who currently use the export control powers, predominantly members of the Australian citrus industry that export to the United States and Chinese markets.

Any transitional costs to the citrus industry from the removal of the current regulations are expected to be small. It is likely that the proposed changes would increase the volume of citrus exported to the United States and China and increase the total revenue from those markets. The recommended changes would favour larger, efficient export packhouses at the expense of smaller, inefficient export packhouses, thereby increasing the productivity of the industry. The changes are unlikely to

benefit those smaller producers who do not have the capacity to increase their production, but nor are they likely to impose significant (if any) costs.

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Section 1. Background

Commonwealth legislation allows horticultural industries, acting through Horticulture Australia Limited (HAL), to place conditions on horticultural produce exported from Australia. The power to place licensing conditions on horticultural exports was originally granted to the Australian Horticultural Corporation (AHC), a Commonwealth statutory authority established in August 1988 under the *Australian Horticultural Corporation Act 1987* (AHC Act).

The AHC was established as part of a package of measures "*introduced primarily to enhance the capacity of the horticultural industries to expand exports*" (Jones, 1987). The government considered the horticulture industry was underperforming in terms of its export revenue, mainly due to an uncoordinated approach to export sales, a lack of appropriate marketing infrastructure for most fresh produce and inadequate quality control, market research and promotion (Industry Commission, 1993). The other measures in the package included the establishment of the Horticultural Policy Council and the Horticultural Research and Development Corporation (HRDC).

The AHC Act empowered the AHC to control or prohibit exports. Conditions could also be applied by product boards to particular products or destinations, including licensing and conditions pertaining to price, quality or characteristics, presentation, documentation, exporters' fees and commissions and freight.

The AHC administered the export efficiency powers (EEPs) until 31 January 2001 when new legislation, the *Horticulture Marketing and Research and Development Services Act 2000 and the Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*, repealed the AHC Act, abolished the AHC, and established HAL, which is essentially a merger of the former AHC and the HRDC. The AHC's export licensing provisions were incorporated into the legislative framework that established HAL, in the form of Sections 19-26 of the HMRDS Act and its associated Regulations and Orders. HAL is the declared industry export control body under the Act.

The HMRDS Act provides for Regulations which may make provisions in relation to horticultural exports. The regulations (The Horticulture Marketing and Research and Development (Export Efficiency) Regulations 2002) currently allow the industry export control body to place broad ranging, potentially anti-competitive, conditions on horticultural exports. These conditions may include, but are not limited to:

- Requiring the use of specific importing or exporting agents
- Establishing quality, colour, shape or size standards for produce
- Requiring the use of specific containers or packaging
- Requiring exporters participate in an approved export program

The HMRDS Act provides for the Secretary of the Department of Agriculture Fisheries and Forestry to make Orders to specify the products and markets to which the current EEPs, administered by the industry export control body, apply. Orders currently apply to the following markets:

- Oranges to all export markets
- Mandarins, tangelos, grapefruit, lemons and limes to the United States

- Apples to all export markets
- Pears to all export markets
- Dried grapes to all export markets

HAL's current licensing conditions for these products are at Appendix A. The citrus industry makes the most significant use of the EEPs, requiring the use of a single importing agent for citrus exports to the United States¹ and establishing a minimum price for oranges exported to China.

Under the Competition Principles Agreement (CPA) of the National Competition Policy (NCP) principles; endorsed by the Council of Australian Governments in 1995) the Commonwealth agreed to review and, where appropriate, reform legislation that restricts competition by the end of 2000. The statutory marketing arrangements which were then enabled by the AHC Act 1987, which are *prima facie* anti-competitive, were not included in the initial legislation review schedule as they had only recently been reviewed and would be reviewed on a systemic basis every 10 years (Commonwealth of Australia, 1998; Productivity Commission, 1999). The Statutory Funding Agreement (SFA) between the Commonwealth and HAL, signed in 2001, provided for the 10 year review of the EEPs against the NCP principles. This provision was retained in the 2010-14 SFA between the Commonwealth and HAL.

The Chairman and secretariat for the review was provided by the Department of Agriculture Fisheries and Forestry (DAFF). DAFF convened an inter-departmental committee of officials from the Department of Finance and Deregulation, Department of Foreign Affairs and Trade and Department of Industry, Innovation, Science, Research and Tertiary Education to guide the review. To inform the review, between October 2011 and August 2012 the Australian Bureau of Resource and Agricultural Economics and Sciences (ABARES) prepared an independent report analysing the current export regulations against the NCP principles (Moir *et al.*, 2012). ABARES (Moir *et al.*, 2012) recommended the current EEPs be discontinued as they do not conform to the NCP principles. ABARES' report and its recommendations form the basis for the regulatory proposals contained in this RIS.

Section 2. Assessing the problem

The problem being addressed is whether the export regulation powers under the *Horticulture Marketing and Research and Development Services Act 2000* and subordinate legislation conform to the principles of the National Competition Principles Agreement, which require that legislation/regulation which restricts competition should be retained only if:

1. the benefits to the community as a whole outweigh the costs; and
2. the objectives of the legislation/regulation can be achieved only by restricting competition.

The export regulation powers have been in force, largely unamended, since 1987. The review of the powers against NCP principles is required under the SFA between the Commonwealth and HAL.

¹ The single importer establishes a limit for the volume Australian citrus exports to the United States in an attempt to maximise returns from the market.

Section 3. Objectives of government action

3.1 The objective of reviewing legislation

The Competition Principles Agreement requires that legislation should be regularly reviewed to identify and remove unwarranted competition restrictions that impede innovation and productivity growth in the Australian economy. More broadly, legislative review ensures that legislation is up-to-date with contemporary conditions and only remains in-force for as long as it is required.

3.2 The objective of regulating horticultural exports

Access to export markets is an impure public good in that it is partially non-excludable and partially non-rivalrous. In the absence of government regulation, export market access is non-excludable (parties can't be excluded from "consuming" it). Consumption of export market access is also non-rivalrous (one party's access to a market doesn't preclude another party's access to that market), but there is potential the demand of the importing nation to become congested through oversupply. In economic terms, the aim of regulating the quantity and quality of horticultural exports from Australia is to avoid market failure by preventing:

1. Congestion of demand in the importing nation and thereby maximising rents to Australian exporters.
2. Negative externalities (loss of market access; reputational damage) resulting from exporter behavior, such as the export of poor quality produce or produce affected by pests or disease.

3.2.1 The regulation of quantity and quality under the HMRDS Act

The objective of the regulation of horticultural exports under the HMRDS Act and subordinate legislation is 'to enable Australian horticultural industries to fulfill their full potential in overseas markets'. This potential is generally fulfilled when the quality of the product is maintained, industry assets and natural advantages are developed and maintained, supply commitments are consistently met, and importers endeavor to promote the interests of Australian industry, such as through effective product promotion or where the benefits from any import quota are not nullified.

Although the current legislation allows industry, through the industry export control body, to place conditions on the quality of exported produce, this provision has not been used.

3.2.2 The regulation of phytosanitary conditions (plant pests and diseases) where required by the importing country and trade descriptions under the Export Control Act 1982 (hereafter, the Export Control Act).

Conditions placed on horticultural exports under the HMRDS Act are in addition to those under the Export Control Act, the Export Control (Plants and Plant Products) Order 2011 and the Export Control (Prescribed Goods—General) Order 2005, which provide the legal framework governing the preparation or processing of plant and plant products for export². This legislation provides for systems to ensure compliance with Australia's International Plant Protection Convention (IPPC)

² The *Export Control Act* 1982 was enacted to address a severe loss of confidence in Australia's export inspection arrangements for agricultural products and food resulting from the export to the United States of kangaroo and horsemeat labelled as beef and the entry of a small quantity of pet food into the export supply chain. The Act established a new and comprehensive legislative base for the export inspection and control responsibilities within the agriculture, fisheries and forestry portfolio.

obligations³, importing country requirements and Australia's export requirements. This ensures that prescribed plant products are free from pests and diseases and hence some of the potential negative externalities (loss of market access; reputational damage) that could result. It also requires that where a trade description is applied to prescribed goods (it need not be) the description must contain sufficient information to enable the goods to be readily identified. De-prescribing fresh fruit and vegetables is on the export reform agenda and would remove the regulation of this requirement. If de-prescribed, labeling would only be necessary where required by the importing country.

Matters of non-compliance under the IPPC are reported between the governments of countries party to the trade (i.e. government-to-government). The effect of action taken to address non-compliance depends upon the market access protocol requirements. Non-compliance can affect various elements of the value chain such as registered growers, registered establishments or indeed the whole trade to a particular country. Increasingly where bi-lateral agreements are established, market access protocols can limit the effect to the product pathway so is to a degree excludable but continued non-compliance can have broader impact. There are limited powers under the Export Control Act to take action against an exporter.

The Export Control Act was assessed against the NCP principles in 1999 and was retained because of the benefits that accrue to Australia through its operation (Frawley *et al.*, 1999).

3.3 The objective of compliance with Australia's international trade obligations

Any government action needs to comply with Australia's international trade obligations. This includes World Trade Organisation rules and free trade agreement obligations.

Section 4. Options that may achieve the objective

Option 1. Take no action.

HAL, as the industry export control body, funded on a cost-recovered basis by application fees, would continue to administer the regulation of exports in the same manner as now. The current legislation and licensing conditions would be retained. Horticultural industry representative bodies or other industry groups could continue to propose new conditions to be applied to the export of commodities according to the process outlined in the SFA between the Commonwealth and HAL, which includes a positive vote by affected industry stakeholders and the development of a Regulatory Impact Statement.

Option 2. Amend the SFA with HAL to disallow any future applications by industry to regulate horticultural exports.

HAL, as the industry export control body, funded on a cost-recovered basis by application fees, would continue to administer the scheme in the same manner as now. The current legislation and licensing conditions would be retained. However, the SFA would be amended to disallow any future applications by horticultural industries to make use of the legislation to regulate exports (i.e. "grandfather" the current uses of the legislation).

Option 3. Revoke all the current Orders and the Regulations, but leave the regulatory head of powers in the HMRDS Act intact.

³ The International Plant Protection Convention (IPPC) is an international agreement on plant health with 177 current signatories. It aims to protect cultivated and wild plants by preventing the introduction and spread of pests. The Secretariat of the IPPC is provided by the Food and Agriculture Organization of the United Nations.

The current Orders and the Regulations would be revoked, but the capacity for the government to act to regulate horticultural exports under the HMRDS Act in the future would be retained.

Option 4. Revoke all the current Orders and after two years evaluate adjustment by the citrus industry before repealing the Regulations, but leave the regulatory head of powers in the HRMDS Act intact.

The current Orders would be revoked, and after two years the volume of citrus exported to the United States and prices received from that trade would be evaluated before considering the future of the Regulations. The capacity for the government to act to regulate horticultural exports under the HMRDS Act in the future would be retained.

Option 5. Repeal the current Orders and the Regulations and remove the regulatory head of powers from the HMRDS Act.

In addition to abolishing current uses of the powers, amending the Act would prevent any future use of the powers.

Section 5. Consideration of the options

5.1 The evidence base

ABARES was commissioned to prepare an independent report assessing the EEPs against the NCP principles (Moir *et al.*, 2012). ABARES considered evidence on the benefits and costs of the EEPs presented to them in two periods of public consultation, in November 2011 and July 2012, (Section 6) and meetings with approximately 15 stakeholders organisations.

The Industry Commission reviewed the EEPs in 1992 as part of its broader review of the effectiveness of the AHC at increasing the international competitiveness of the horticulture sector (Industry Commission, 1992). The Productivity Commission reviewed the single desk importing arrangement for citrus to the United States in 2002 as part of its inquiry into citrus growing and processing (Productivity Commission, 2002).

The citrus industry is the only significant user of the current export licensing provisions, using them to maintain a single-desk importing arrangement into the United States and a floor price threshold for exports to China. Therefore, empirical evidence of the costs and benefits of the current licensing provisions is restricted to evidence available from the citrus industry.

The guidelines for NCP Legislation Reviews form a sequential test (Centre for International Economics, 1999; Section 2). If it cannot be demonstrated that the restrictive legislation provides a net community benefit, the legislation should be reformed. Even if a net community benefit can be demonstrated, for an existing approach to be retained, it must then be shown that there are no less restrictive ways of meeting the legislations objectives. If these can be demonstrated, an alternative approach must be adopted. The burden of proof rests with those defending the anti-competitive legislation (Irving *et al.*, 2000).

5.2 Impact group identification

The main stakeholders affected by the options considered in this RIS are those who currently use the export control powers (apple, pear, citrus and dried fruit growers, exporters, Horticulture Australia Limited), potential suppliers to export markets (growers and exporters), Australian consumers and the Australian Government. As the citrus industry is the only significant user of the EEPs, the consequences of the options considered in this RIS are analysed primarily with reference

to this industry.

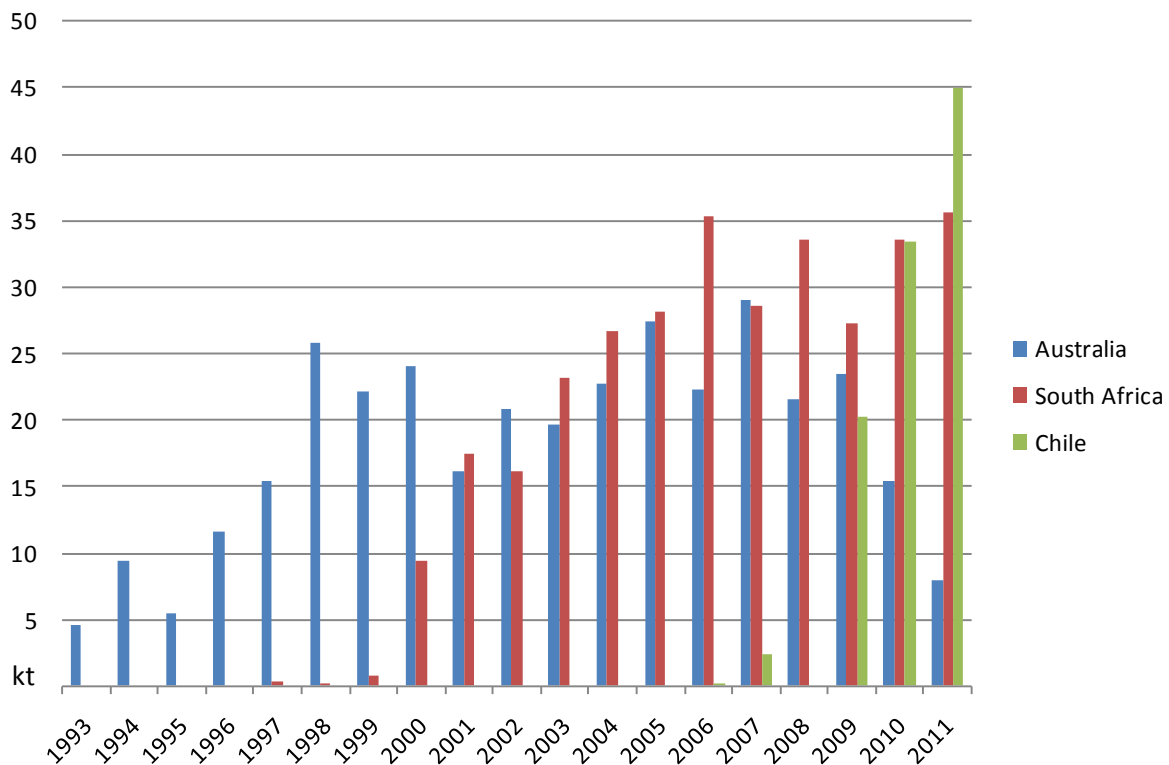
5.3 Option 1. Take no action

5.3.1 Benefits⁴

ABARES (Moir *et al.*, 2012) stated that it was provided with no evidence of any quantitative benefits from the current use of the EEPs.

Qualitatively, ABARES concludes that in the 1990s when Australia was the sole supplier to the United States citrus market (Figure 1), the EEPs may have yielded benefits to the citrus industry by allowing it to exercise market power to control export volumes, which might have increased prices and perhaps revenue. Similarly, the Productivity Commission (2002) noted that export licensing may be appropriate in certain, narrowly-defined market circumstances. For example, by restricting quantities exported, Australian growers may capture premiums in export markets where Australia has market power. However, the Productivity Commission went on to note that there are likely to be very few, if any, citrus markets around the world where Australia has any significant power — particularly in view of the emerging competition from other southern hemisphere suppliers.

Figure 1. Volume of United States orange imports (source Moir *et al.*, 2012 based on United States Department of Agriculture data)



In addition to price setting, ABARES (Moir *et al.*, 2012) noted the EEPs may deliver other benefits to the Australian citrus industry including:

- A mechanism through which product quality can be controlled to maintain the reputation of Australian citrus, and to run an effective promotion program.

⁴ According to the NCP, the costs and benefits of the arrangements should be assessed at the level of the whole Australian community. In practice, we assume that industry costs and benefits are also experienced by the Australian community as a whole.

- Regular market information about the United States market to the Australian citrus industry.
- Some economies of scale to the importing company—handling and distribution costs in the United States might be higher if a number of importers were involved—but the evidence for this is mixed.
- A licence granted under legislation that may provide some, though in reality very limited, assurance that the exporting company is competent to conduct its business.
- Allowing HAL to collect data for sharing among export licensees, which might lead to better performance in the export market (however, data are not collected).

The Productivity Commission (2002) observed that some of the benefits attributed to the EEPs by the citrus industry are not caused by the EEPs. In particular, the high returns received by growers for sales in the United States market in the past, reflected the low exchange rate for the Australian dollar relative to the United States dollar at that time. It also reflected the willingness of United States consumers to pay relatively high prices for citrus in comparison to consumers in other export markets (Moir *et al.*, 2012).

There are no conditions applied to apple and pear exports beyond the requirement that exporters obtain a licence. Licences are granted to companies considered to be financially sound and competent to conduct an export business, so a licence gives some, though very limited, assurance that the exporting company is competent to conduct its business.

There are only two exporters of dried grapes, and the conditions specified in the Licence Conditions Document are not applied. The exporters do not pay for their licences. The two companies each have their own reputations to protect, and there is no additional benefit received from the issue of the licences.

5.3.2 Costs

ABARES (Moir *et al.*, 2012) reported the direct costs to exporters of obtaining export licences from HAL. There were 92 licences held by exporters in 2011. More than half of these were held by citrus exporters, a further 11 were for apple and pear exporters and 31 were dual licences for citrus and apples and pears. Only two licences were held by exporters of dried grapes. The costs of these licences are \$1300 for citrus and \$792 for apples and pears. There is no charge for licences for dried grape exports.

In addition to these quantifiable costs, ABARES (Moir *et al.*, 2012) and the Productivity Commission (2002) reported a number of qualitative in-principle costs that the EEPs may impose on the citrus industry, and through industry, on the Australian community. These costs are set out below.

The incentive to innovate, for both members of the Australian supply chain and the United States importer, is likely to have been reduced. As the monopoly importer of Australian citrus, DNE is likely to have limited incentive to improve its efficiency. The practice of price pooling in the US citrus market eliminates incentives for producers to supply higher quality fruit. As noted in submissions made to the review ‘some class 1 product is of a higher standard than others, and those growers who grow better quality fruit and have it packed to a higher standard are harmed by the pooling system’ (McMahon, 2011).

The EEPs do not encourage direct relationships between Australian exporters and retailers in the United States. The costs of moving produce through the supply chain in the United States are said to be high, but at least one exporter interviewed by ABARES believed that costs related to

commission, warehousing, re-inspection, trucking and handling could be reduced if, in the absence of the present single importer arrangements, fruit could be sold directly to retailers.

There may be a loss of efficiency in Australian industry if new entrants to the market are deterred, leaving established and possibly less efficient exporters with limited competition.

Mandatory regulation requiring continued use of a single importer in the United States is likely to mean that any market premiums would be shared with the importer rather than obtained fully by Australian exporters (Productivity Commission, 2002). This is likely to cause the volume of fruit exported to the United States to be reduced and a loss of export revenue from foregone sales (ABARES 2012). It would also lead to the possible congestion of other export markets or the domestic market. This situation appears to be occurring now, however the extent to which it is attributable to the single importer arrangement is not quantifiable (other factors such as the high value of the Australian dollar certainly also contributing to the current decline in citrus exports to the United States).

From submissions received to the review (Section 6), it appears the EEPs reduce the volumes that some exporters supply to the United States, may deter others from entering the market and prevents the niche marketing opportunities from being fully developed. As a result, export volume is probably lower than it would be if additional importers were to actively seek additional markets for Australian citrus. Any restriction to the volume of exports that occurs as a result of the EEP would constrain sales revenue and have little effect on the price received.

The Productivity Commission (2002) noted that the EEPs could impose costs on the citrus industry, primarily through the loss of market opportunities and/or the loss of flexibility in responding to change. For citrus exports to the United States, market opportunities on the east coast, and to Hawaii, Alaska and Guam cannot be exploited, nor opportunities with retailers or other outlets where the single importer does not have market links. Also, DNE has limited expertise in the increasingly important market for mandarins (Moir *et al.*, 2012).

The minimum prices set for exports of oranges to China may prevent some trade that would take place with lower prices.

5.3.3 Assessment

Quantitatively, the current uses of the EEPs impose costs and deliver no benefits. Qualitatively, a range of in-principle benefits and costs may be delivered by the current use of the EEPs. However, these benefits could be obtained by commercial or industry arrangements that do not involve government regulation (Section 5.5.3). As such, the current uses of the EEPs do not meet the requirements of NCP.

The current application of export regulations are only a small fraction of all potential uses. Combinations of horticultural crop, by importing country and by possible licensing condition yield many other potential uses and benefits. Some of these are assessed below.

Higher market prices, and possibly greater revenue, resulting from the control of supply in other countries.

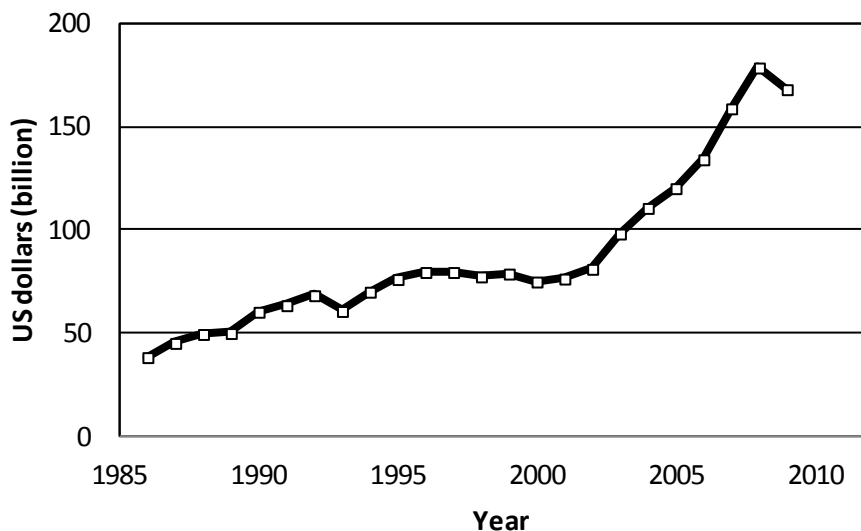
As noted by the Industry Commission (1992; 1993), the Productivity Commission (2002) and ABARES (Moir *et al.*, 2012) controlling supply can in some circumstances deliver market power to Australian suppliers. In such cases, provided alternative supplies are not readily available, reducing supply will generally raise prices. The restriction of Australian exports may also be used to prevent the market price falling (Industry Commission, 1992).

While these scenarios can support a case for export licensing, their practical relevance is less clear. International horticultural trade has become increasingly globalised since the EEPs were first introduced (Figure 2) and the scenario outcomes, therefore, would be far less certain.

The requirement to demonstrate net community benefit, established by the National Competition Policy, also applies to the introduction of new or amended legislation that restricts competition. To satisfy this commitment, the Australian Government introduced its regulation impact assessment process. In practice, it would be difficult to gather evidence to prove that the restriction of exports of Australian product to a particular market would deliver greater net benefits to the Australian community than unfettered trade.

Further, it is relevant to consider the Australian Government's 2011 trade policy statement which sees restrictions such as import quotas, and other such restrictions, as invariably having the effect of reducing the amount of trade between countries. Reducing these government imposed restrictions on trade at home has the potential benefit of exposing local businesses to international competition, compelling them to innovate, to be efficient and to restrain the price they charge consumers.

Figure 2. Value (US dollars) of global imports of fruit and vegetable products between 1986 and 2009 (data source FAO Stat, 2012).



Sensory (eating quality; visual appearance; size) quality controls on exported product

Statutory restrictions on sensory quality (e.g. taste, appearance, texture) for fresh produce are inherently anti-competitive as they prevent the development of markets for the trade of lower-quality produce, although buyers and sellers may be willing to participate in such trade.

Mandatory sensory quality controls on exports of fresh fruit and vegetables were removed with effect from 1 July 1991, as a consequence of recommendations to the then Minister for Primary Industries and Energy in November 1990 by the then Horticultural Policy Council in its report "*Government Involvement in Horticultural Export Standards and Inspection and Appropriate Policies for the Future*".

The Council was a statutory advisory body to the Minister and comprised appointed industry members with secretariat support by the then Department of Primary Industries and Energy.

The Council considered there was little benefit to be gained in the overall export quality performance of fresh fruit and vegetables through the maintenance of a government-regulated

inspection system. Quality considerations were regarded by the Council as commercial matters, between buyer and seller, which should be driven by the market and not by regulation. With the removal of these controls the then government accepted it was industry's responsibility to produce, prepare and export product to meet market requirements, including attributes concerned with quality and condition.

The negative externalities that regulating sensory quality avoids are relatively minor and mostly limited to business-to-business transactions. It is not clear that reputational damage incurred by an Australian company that provides low quality produce to an importing country spills-over to negatively affect other Australian companies that were not parties to the transaction (Moir *et al.*, 2012).

There has been no application by industry to establish quality standards on export of a horticultural product since HAL was established in 2001.

Ordered response to import quotas imposed by importing countries

The Industry Commission (1993) considered that the only valid case for opening new markets for export licensing would be where a potential importing country required Australia to restrict exports to its market. While WTO obligations now impose strong obligations on quantitative restrictions, it is conceivable that such a requirement could arise with respect to an existing market, such as under a tariff-rate-quota system. Export licensing may be an appropriate instrument in these circumstances (Moir *et al.*, 2012; Productivity Commission, 2002).

Protection for growers and packers against financial default and poor performance by exporters, by requiring that export licensees have export experience and are financially sound.

In principle this is designed to remove any disincentive to export created by the uncertain financial position of exporting companies. Licences are not issued to companies that are under financial administration or that have no experience exporting horticultural produce. ABARES (Moir *et al.*, 2012) found that these provisions were not strongly enforced by HAL and afford only a low level of protection to packers and importers. However, more effective industry arrangements to accredit exporters and insure against failure could be adopted (as discussed in Section 5.3.3).

Benefits from greater collaboration among Australian exporters or importers handling Australian product and in the promotion of Australian produce in international markets

The single importer or exporter arrangements might result in a higher volume of trade passing through that company, potentially reducing costs through economies of scale. In submissions to the review some industry participants noted that the United States market requires a 'critical mass'. If the arrangement was abandoned, the trade would be spread more thinly between a number of importers, none of which (they argue) could offer Australian exporters the scale necessary to market their produce effectively.

However, regulation is not required to ensure the most efficient arrangements prevail. Competition between importers of Australian fruit ensures the operation of an efficient and competitive market.

Protecting economies of scale by regulatory means, through suppressing competition, is likely to undermine the benefits and efficiency gains that might otherwise be realised. Some industry participants claim that costs could be reduced and additional market segments captured if additional importers are used. Any benefit arising from the economy of scale of a single importer could, therefore, be outweighed.

If collective export or import arrangements deliver benefits we could expect the Australian industry to participate in the arrangements freely, rather than needing to be compelled (National Competition Council, 2000). Quality control, promotion and other actions to promote and protect a brand could be developed and administered by an industry body, without any legislative backing, or on a private proprietary basis.

Collection and sharing of data among exporters

The EEPs provide for HAL to collect and disseminate information on export markets, which could be potentially valuable to exporters. However, this provision is not used. Data can be shared on a voluntary, cooperative basis, such as by Citrus Australia's InfoCitrus system and other similar industry systems.

Conclusion

It seems highly unlikely that any future use of export regulation enabled by the Regulations, in their current form (aside from import quota management), could conform with the National Competition Policy principles and/or with contemporary government policy in the areas of innovation and trade.

5.4 Option 2. Retain the current legislation, but amend the Statutory Funding Agreement with Horticulture Australia Limited to disallow any future applications by industry to regulate horticultural exports.

5.4.1 Benefits

This option would prevent horticulture industries from making further use of the legislation to regulate horticultural exports, while retaining the uses enabled by the current Orders (i.e. grandfathering the current uses). This would minimise the risk to the government from further regulation of horticultural exports, which may invite criticism from our trading partners through the World Trade Organisation, while allowing industry and the Australian community to continue to receive any benefits from the current uses of the EEPs. However, as discussed in section 5.3.1, there are no quantifiable benefits from retaining the current uses of export regulation.

5.4.2 Costs

The quantifiable costs of retaining the current uses of export regulation are the export licencing fees that horticultural exporters pay under the scheme. Additional in-principle qualitative costs are described in section 5.3.2. The implementation of this option would entrench these costs, deliver no quantifiable benefits, and therefore it does not conform to NCP principles.

5.4.3 Assessment

The current uses of the EEPs deliver no quantitative benefits to the Australian community. Any net qualitative benefits could also be provided through non-regulatory approaches (as discussed in Section 5.5.3). The option for retaining the current use of the regulations, while disallowing other future uses by other horticultural industries, therefore cannot conform to the NCP principles.

5.5 Option 3. Revoke all the current Orders and the Regulations, but leave the regulatory head of powers in the HMRDS Act intact.

5.5.1 Benefits

Ceasing the regulation of exports under the HMRDS Act would remove the current quantifiable costs imposed by the system. It may also deliver some qualitative in-principle benefits to industry and the communities in which industry is located. The qualitative benefits of removing the current uses of the EEPs are essentially the inverse of the current qualitative costs identified in section 5.3.2, being:

- Increasing the effective competition from Australia in the United States citrus market which might help to restore some of the volume lost in this trade in recent years and an increase in export revenue.
- Increasing the incentive to innovate, and improve efficiency and product quality, for both members of the Australian supply chain and the United States importers.
- Encouraging direct relationships between Australian exporters and retailers in the United States.
- Removing barriers to entry for new exporters wishing to enter the citrus export trade to the United States.
- Encouraging the use of more than one United States importer to target currently untapped market opportunities.
- Allow greater commercial flexibility in trade with China.

ABARES (Moir *et al.*, 2012) concluded that removing the current trade restrictions to the United States would likely lead to an increase in the overall volume of oranges supplied to that market and an increase in export revenue.

5.5.2 Costs

The transitional costs (if any) to industry and the Australian community from the removal of the current uses enabled by the legislation is likely to be small. Licence conditions on the export of dried fruit, apples and pears are not restrictive and, therefore, the removal of these conditions will not impose any transitional costs (through the loss of benefits) to these industries.

We expect any transitional costs to the citrus industry from the removal of these licensing conditions will be small because:

- The current uses of the EEPs deliver no quantifiable benefits.
- The removal of the export regulation removes the statutory compulsion to use a single importer, but members of the citrus industry may still choose to voluntarily co-ordinate their exports if they see benefit in doing so.
- The single desk arrangement for citrus imports relates only to the United States market- which was the fifth largest export market (on a volume basis) for Australian citrus in 2011. The arrangements that are successfully applied to other export markets (including the four largest citrus export markets) should therefore be applicable to the United States market.
- Large citrus growing, packing, exporting companies, which are responsible for the majority of exports to the United States market (approximately 75 per cent) have expressed their support for the cessation of export regulation (see Section 6).

- The volume of citrus exported to China is negligible. The statutory floor price restricts trade and its removal may, if anything, stimulate trade.
- The allocation of research and development funding to benefit the citrus industry that is currently enabled by the HRMDS Act will not be effected.

Aside from transitional costs (if any), it seems unlikely there would be any long-term costs from the implementation of this option.

5.5.3 Assessment

ABARES (Moir *et al.*, 2012) concluded that voluntary industry arrangements have the capacity to deliver many of the in-principle benefits identified in 5.3.1. Such voluntary arrangements appear to work well for Australian citrus in other export markets such as Japan, which has an unrestricted importing arrangement. They also work well for the (unregulated) export of other Australian horticultural commodities, such as table grapes, and for other countries, such as South Africa, whose citrus exports compete well in the United States market with voluntary industry co-ordination.

ABARES report (Moir *et al.*, 2012) noted that without the EEPs:

- Exporters could voluntarily agree to use one or a few importers in the United States and, potentially, in other importing countries. Many smaller exporters would undoubtedly continue to use Riversun to coordinate their exports and the current single importer, DNE Fruit Sales, as the US importer.
- Quality control, promotion and other actions to promote and protect a brand can be undertaken on a private proprietary basis or through a process administered by an industry body, without any legislative backing. Internal testing of quality for juice content, sugar and sugar-to-acid ratio, currently used for Australian domestic markets, could form part of a voluntary arrangement to certify the quality of produce under a unified brand.
- An industry organisation could provide accreditation to exporters that meet certain requirements and give undertakings as to their good standing to interested parties as required (similar to other industry associations that typically restrict their membership to those who meet certain standards). Additionally, it would be possible for the industry to develop an arrangement for compensating packers and growers who suffer as a result of default by an accredited exporter.
- The free rider problem associated with collecting information on export market volumes could be solved by information being shared only among contributors and being denied to those who do not contribute. This could occur through a voluntary agreement among exporters. Citrus Australia operates such a system, InfoCitrus, where access via the internet is made available only to contributors. The EEPs are not necessary or justified for collecting and sharing information among exporters and should not be used for this purpose.
- Any benefits that arise from the Citrus to China program could equally be realised from a voluntary arrangement, as is shown by the operation of the voluntary arrangements for mandarins exported to China.

5.6 Option 4. Revoke all the current Orders and after two years evaluate adjustment by the citrus industry before repealing the Regulations, but leave the regulatory head of powers in the HRMDS Act intact.

5.6.1 Benefits

The benefits are the same as those for Option 3.

In addition to the benefits described for Option 3, Option 4 appears to give greater flexibility to the government in that it could evaluate the effectiveness of the first phase of reform, before progressing with further reform or, if reforms impose unexpected costs on the citrus industry, returning to the current regulatory regime.

5.6.2 Costs

The transitional costs are the same as those for Option 3.

This option gives an uncertain message to the Australian citrus industry and the United States importers about the long-term arrangements for the Australian citrus export trade. The uncertainty created by the possible return of the current regulatory arrangements may impede the development of strategic long-term commercial relationships between Australian and United States participants in the citrus trade. This, in turn, may prevent many of the potential benefits from the deregulation of the United States import arrangements from being delivered.

5.6.3 Assessment

Option 4 delivers the same transitional costs as Option 3, but with fewer net potential benefits. The uncertainty created by the possible re-introduction of export controls in the future may prevent many of the potential benefits from the deregulation of the United States import arrangements from being delivered. Moreover, it is highly unlikely that the government could reintroduce the current regulatory regime in the future. Firstly, as established in this RIS, the current regulatory arrangement does not conform to the government's best practice regulation guidelines. As such any future attempt to re-introduce the current regulatory arrangements would not be approved by the Office of Best Practice Regulation. Secondly, any future attempt to re-introduce the current regulatory arrangements would be subject to legal advice on the WTO consistency of such arrangements. As such, Option 4 is not a legitimate policy option as, after revoking the current Orders, the government is unlikely to be able to reintroduce them.

5.7 Option 5. Revoke the current Orders and Regulations and remove the regulatory head of powers from the HMRDS Act.

5.7.1 Benefits

The benefits are the same as those for Option 3.

5.7.2 Costs

The transitional costs are the same as those for Option 3.

HAL's current uses of export regulation enabled by the HRMDS Act are not consistent with the National Competition Policy principles and/or with contemporary government policy in the areas of innovation and trade. However, uses of the EEPs that are consistent with the government's original objective and which help address legitimate policy problems can be foreseen.

There is an emergent trend for Australia's trading partners to seek verification of Australia's food safety control systems. It is proving increasingly difficult for Australia to provide this verification for its horticultural exports-owing to the federated nature of Australia's food safety system and the dispersed and small-scale of operation of some horticultural producers and exporters.

Future uses of export regulation under the HMRDS Act could address the legislated requirements of importing countries that are not covered under the Export Control Act such as agri-chemical Maximum Residue Levels (MRLs) and food safety (e.g. as specified by Codex Alimentarius to which Australia is a signatory but the regulation of the agreement is not covered by the Export Control Act). The Export Control Act does not cover such matters that could be covered by the HMRDS Act, broadly or specifically⁵. Loss of export market access caused by factors that could be covered by the HRMDS Act has already occurred. Trade to Japan for mangos stopped in 2011 due to residue levels above the Japanese MRLs. As discussed in Section 3.2, addressing this type of market failure is one of the objectives for government in regulating horticultural exports.

As noted in Section 5.3.3 the powers could also be used to enable the administration of quotas on Australian exports by the industry export control body. As noted by ABARES (Moir *et al.*, 2012), although quantitative quotas were disallowed under the WTO Uruguay Round Agreement on Agriculture, the introduction of new measures, such as tariff rate quotas, can be consistent with WTO rules if this involves tariffs being applied below the bound rate (rates that are committed to in the WTO and are difficult to change). DAFF currently administers quotas for the dairy products and beef through the authority granted to DAFF under the Dairy Produce Act 1986 and the Australian Meat and Live-stock Industry Act 1997 and Australian Meat and Live-stock Industry (Quotas) Act 1990 (which are the diary and meat industry equivalents of the HRMDS Act). More detail on the administration of export quotas for horticulture is at Appendix B.

There is no burden on business or the community from retaining the regulatory head of powers.

⁵ For example DAFF biosecurity's capacity to regulate meat and livestock exports is in part due to powers contained in the *Australian Meat and Live-stock Industry Act 1997* (the meat and livestock industry equivalent to the HMRDS Act) which complement those in the *Export Control Act 1982*.

5.7.3 Assessment

Option 5 delivers the same benefits and transitional costs as Option 3. Option 5 also withdraws the powers for export control from the Act. The declared industry export control body would no longer have the opportunity to regulate horticultural exports to address emergent policy issues affecting horticultural exports from Australia (a form of opportunity cost arising from deregulation).

5.8 Preliminary conclusion

Consideration of the options described above indicates that the revocation of the current Orders and Regulations, but retaining the regulatory head of powers in the HRMDS Act (Option 3), is the option with the potential for the most advantages. The current Orders and Regulations reflect the policy position of the government approximately 25 years ago and are now broadly out of touch with contemporary government policy in a number of areas. However, emerging policy issues in the areas of food safety control systems for Australia's horticulture exports and the possibility of managing potential import quotas imposed by our trading partners, indicate that the legislative powers provided by the Act are still relevant and should be retained.

5.9 Risk and distributional consequences

There are no meaningful conditions imposed on the export of apples, pears and dried fruit, and the value of oranges exported to China had a five-year rolling average to 2011 of only \$200,000 per annum (Moir *et al.*, 2012). The removal of regulation on the export of these commodities and for oranges to the China market contains little risk of negative outcomes for the currently regulated industries or the Australian community.

The single import desk arrangement for Australian citrus imports into the United States is the only significant use of the EEPs. The value of citrus exports to the United States has decreased significantly in recent years, and the United States has been overtaken by Japan (the Japanese market is not subject to export regulation) as Australia's highest value citrus export market (Table 1 and Moir *et al.*, 2012). The gross value of citrus exports to the United States market was \$16.7 million in 2011. The ABS estimated the gross value of production (GVP) from the citrus industry in 2010-11 to be \$409.1 million (Australian Bureau of Statistics, 2012). Citrus exports to the United States therefore contribute approximately four per cent of the citrus industry's total GVP.

Table 1. The value (2011 A\$) of citrus (oranges, mandarins, lemons, limes and grapefruit) exports to United States and Japan and the value of this trade as a percentage of the total value of citrus exports in 2000, 2005 and 2011.

Country	Citrus exports	2000	2005	2011
United States	Value (A\$ million)	59.3	65.5	16.7
	Percentage	23.8	33.5	11.2
Japan	Value (A\$ million)	19.1	14.1	29.5
	Percentage	7.6	7.2	19.8
Total value of citrus exports		249	196	149

The majority of citrus exported to the United States is oranges (on a value basis, \$12.1 million in 2011). The orange industry had an estimated gross value of production in 2010-11 of \$198.1 million. Orange exports to the United States therefore contributed only about six per cent of total orange industry GVP. The value of mandarins exported to the United States in 2011 was \$4.6 million, or only three per cent of the industries 2010-11 GVP of \$137.4.

The net profit derived by the Australian industry from its trade with the United States is a small fraction of the gross value of the trade.

In 1999 the Productivity Commission reviewed the effects of deregulation of statutory marketing authorities for agricultural commodities (Productivity Commission, 1999). The Commission received very little evidence of the effects of past reforms in several regions that experienced the loss of statutory marketing and other measures, such as the Atherton region of Queensland (removal of statutory marketing and tariffs for tobacco), Mildura (deregulation of the dried fruits industry), Shepparton (statutory marketing arrangements for deciduous canning fruits), and Mount Gambier (abolition of milk price equalisation). Apart from the experience of the tobacco-growing regions in Queensland, participants considered their regions had not experienced any lingering negative effects from deregulation.

The relatively small value of citrus exports to the United States, the high likelihood that a substantial portion of this currently modest trade would continue in the absence of the statutory regulations (Section 5.4.2) and experience with the deregulation of other statutory marketing arrangements suggests that the risk of negative outcomes for the Australian community as a result of ceasing the statutory regulation of citrus exports to United States and China would be very low.

Some industry submissions to this review have argued the single importer arrangement enables smaller growers and packers to have access to the United States market they otherwise would not have. However, many large Australian packer/exporters, such as the Mildura Fruit Company, Riversun and others pack and co-ordinate exports for multiple growers (in their submission MFC estimate they pack for 150 growers). If the single-desk import arrangement ceased, the statutory co-ordination of imports by the single United States importer is likely to be replaced by the commercial co-ordination of exports by large Australian packhouses. It seems likely that the removal of the single-desk could give further impetus to consolidation in the number of packhouses, favouring the larger, more efficient, automated operations at the expense of smaller operations.

In its submission to the current review, the Australian Horticultural Exporters Association claimed the status quo favours a small handful of exporters affiliated with the current single-desk import arrangements at the expense of a larger number of independent horticultural exporters. The cessation of the current arrangements would remove this effective barrier to entry and encourage other Australian export companies to enter the trade.

Some companies, typically larger growers/packers that could supply larger volumes to the United States market, believe they are being disadvantaged by the current arrangement. A more competitive arrangement would allow them to negotiate better terms with importers, reduce their costs, and access additional market segments. Also, the pooling of Australian fruit and payments prevents suppliers of high quality fruit from receiving the full price premiums for supplying high quality fruit (and prevents suppliers of lower quality fruit from receiving the full price discounts for supplying lower quality fruit). Growers who deliver high quality fruit to the United States market claim the current arrangement means they don't receive the premiums they deserve and that the incentive to provide high quality fruit is diminished (McMahon, 2011).

Other growers, packers and exporters, typically smaller grower/packers who could not increase volumes supplied to the United States market, believe they would suffer if the arrangements were to be discontinued. They fear that increased competition among Australian exporters would eliminate the price premium that Australian citrus currently enjoys in the United States. However, Australia now has very little market power in the US citrus market, as South Africa and Chile together accounted for more than 90 per cent of imports by volume in 2011. As such, Australia is now a price taker rather than a price maker in that market and increased volumes from Australian suppliers are unlikely to significantly affect prices. Average per unit price for Australian orange imports to

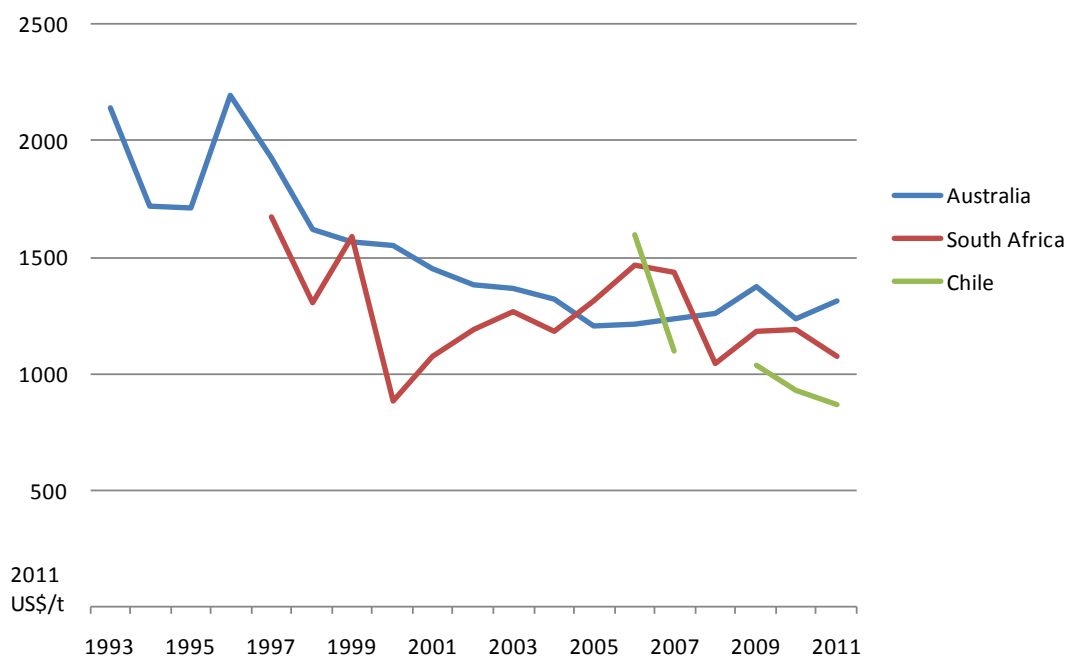
the United States has fallen by approximately 30 per cent since the entry of South Africa and Chile into the market (Figure 3⁶). Although variable, Australian fruit oranges do not have a higher average unit price than South African fruit.

Although those growers unable to increase their production might not benefit, any disadvantage to them would be limited, particularly as the United States accounted for only nine per cent of Australia's volume of exports of navel oranges in 2011 (Moir *et al.*, 2012).

An important uncertainty in this analysis is how increased volumes of Australian citrus imports, which are likely to occur if the market is deregulated, would affect prices for Australian citrus in the United States market. Citrus imports aren't evenly distributed across the United States. Australian fruit is distributed in the west coast states and South African fruit in the east coast states. At a regional level, the Australian industry may still have some monopoly power in the market place. Supporters of the retaining the single desk importing arrangement contend that the industry retains price setting capacity in the market. However, the large fall in the supply of Australian exports to the United States following the entry of Chile and South Africa suggests that the market isn't strongly regionally differentiated (if it was, this decrease would not have occurred). The increased presence of citrus from other exporting nations in the west coast states is likely to have eroded any price setting capacity the Australian industry may have had.

Some submissions to the review argued that Australian suppliers entering the bulk retail market (e.g. Costco) would reduce the prices received by other Australian suppliers operating in niche premium markets. However, this isn't necessarily the case, as it is common commercial practice for companies to retail a number of quality standards of produce at appropriate prices to maximise total customer revenue.

Figure 3. Average per unit price return for orange imports to the United States (2011 \$US/t; Moir *et al.*, 2012).



⁶ The increased availability substitutable summer fruit in the United States market and decreased consumer sentiment may also be contributing to the reduced prices for oranges.

In summary, it is likely that the proposed changes would favour larger, efficient export packhouses at the expense of smaller, inefficient export packhouses. The changes are unlikely to benefit those smaller producers who do not have the capacity to increase their production, but nor are they likely to impose significant (if any) costs. Those growers that deliver higher than average quality fruit to the United States market are likely to benefit from the removal of the current statutory arrangements, whereas those that supply lower than average quality fruit will be penalized. An important uncertainty in this analysis is the affect of increased volumes of Australian citrus exports on per unit prices received from the United States market.

Section 6. Consultation

6.1 The November-December 2011 and March 2012 Consultation- input to the review process

On 17 October 2011 the chair of the IDC wrote to 70 stakeholder groups and individuals seeking input to the review. A two-tiered approach was taken, targeting national peak industry bodies of most horticultural commodities, but also approaching state and regional citrus representative and marketing groups and large citrus growing, packing and exporting businesses. In addition, advertisements were placed in regional newspapers in major citrus growing regions seeking input from individual citrus producers. This period of written consultation closed on 16 December 2011.

Thirteen written submissions were received containing a range of views, particularly about the single importer arrangement for citrus to the United States. ABARES met with the authors of many of the submissions in March 2012 to clarify the views they expressed in their earlier written submissions.

Some citrus industry members submitted that the single importer arrangement has played an important part in the development of the industry and was the 'best thing that ever happened to the industry'. They view the single-desk arrangement to be necessary to prevent prices being driven down by competition among Australian exporters, and to allow the importer to achieve economies of scale and maximise its power in the market, thus returning maximum revenues to exporters.

Other members of the citrus industry considered that, while the single importer arrangement has served well in the past, conditions have now changed. They claim the single importer arrangement limits their opportunities in the United States. DNE only markets Australian citrus to the west coast. Some exporters believe they can operate more effectively by working directly with retailers rather than through the importer. Some have identified additional market opportunities that cannot be accessed through DNE.

For the Citrus to China program, one person submitted that the minimum prices were too high to justify his company exporting to that market.

Some members of the citrus industry would like to see standards imposed on the quality of exported fruit. Samples of citrus destined for the domestic market are regularly tested for sugar and acid content, but this is not used for exports. They submitted that a few shipments of sour fruit could damage the reputation of all Australian citrus even if, under different arrangements, brand names of individual producers were used more prominently.

Several respondents suggested that, if the current uses of the EEPs were to be discontinued, this should initially be trialled for a year or two, to allow them to be reintroduced or for new or revised arrangements to be introduced.

Citrus Australia Limited commissioned a survey of views on the single importer arrangement into the United States (CDI Pinnacle Management, 2011). It found that 53 per cent of respondents, representing 27 per cent of production area, were in favour of maintaining the current single import arrangement for the United States market, while 47 per cent of respondents, representing 73 per cent of the production area, were in favour of change. The Citrus Australia export committee was unable to present an agreed position. Citrus Australia Limited reported that the industry is slightly more satisfied with the China program, stating that members of the HAL Citrus to China Committee have noted the benefits of industry-wide discussions on the market. Citrus Australia does not report any industry view on EEP provisions for countries other than the United States and China.

6.2 The July 2012 Consultation—a request for comments on the ABARES report and its recommendations

On 4 July 2012 the chair of the IDC wrote to 80 stakeholder groups and individuals inviting comments on the ABARES report and its recommendation that the EEPs be discontinued. In particular the Chair invited stakeholders to bring forward new data and information on the costs and benefits of the EEPs and also to provide comments on any transitional issues that should be considered in the event the government decided to abolish the EEPs. The consultation was advertised in *The Australian* and in newspapers in major citrus growing regions. The report was also advertised through “secondary” outlets including industry newsletters and the ABC rural radio. This period of written consultation closed on 6 August 2012⁷.

Fourteen written and three verbal submissions were received, with the majority coming from the members of the citrus industry. The submissions contained little new data or information and largely confirmed the views provided during the earlier consultation period particular, some members of the citrus industry submitted that discontinuing the current arrangements, as recommended by ABARES, would have a significant negative effect on citrus producers. They contend this would be brought about by increased competition among Australian exporters (price undercutting), which would reduce prices paid for Australian citrus in the United States market (as noted 5.9, it is not clear that the Australian citrus industry now has any price setting power in the market following the entry of South Africa and Chile).

Stakeholders raised a number of transitional issues if the government decided to abolish the EEPs. Several stakeholders supported abolishing the EEPs well in advance of the start of the 2013 export season (May-October). Citrus Australia Limited proposed an interim suspension of the EEPs for two years followed by the consideration of the long term future of the arrangements. Citrus Australia Limited also advocated greater government support to expand export market access for citrus during the two years in which the EEPs are suspended. HAL expressed the view that should the government decide to abolish the EEPs, this should be given effect by revoking the Orders, but leaving the Regulations and Act unchanged.

⁷ The review secretariat approved extensions of 7-10 days to the due date for five organisations that sought them.

Section 7. Conclusion and recommended options

Quantitatively, the current uses of the EEPs impose costs and deliver no benefits. Qualitatively, a range of in-principle benefits and costs may be delivered by the current use of the EEPs. However, these benefits could be obtained by commercial or industry arrangements that do not involve government regulation (Section 5.5.3). As such, the current uses of the EEPs to restrict competition do not meet the requirements of national competition policy. **It is recommended the Orders be revoked.**

The Horticulture Marketing and Research and Development (Export Efficiency) Regulations 2002 grant HAL the power to place conditions on horticultural exports very similar to the power originally granted to the AHC in 1987. It seems highly unlikely that any future use of export regulation enabled by the Regulations, in their current form, could conform to the National Competition Policy principles and/or with contemporary government policy in the areas of innovation and trade. **It is recommended the Regulations be repealed.**

The *Horticulture Marketing and Research and Development Services Act 2000* grants powers to regulate exports to the industry export control body (currently HAL). Although the current use of these powers isn't supported, it is possible that in the future these powers could be useful in addressing emergent issues affecting horticultural exports, consistent with the government's original intent in establishing the powers and which aren't covered by the *Export Control Act 1982*. **It is recommended that the clauses in the Act (Part 4-Export Control) be retained.**

There are no quantifiable transitional costs from the implementation of this recommendation. Qualitatively, there are potential transitional costs, but (if any) they are expected to be small due to:

- the relatively small qualitative benefits the current uses of the EEPs might be delivering; and
- the capacity of commercial or industry measures to deliver these benefits.

Only minor distributional consequences are expected from the implementation of the recommendation.

Section 8. Implementation and review

The Minister for Agriculture Fisheries and Forestry is required to agree to a change in policy. The Secretary of the Department of Agriculture Fisheries and Forestry has the power under the HMRDS Act to revoke the current Orders issued under the Horticulture Marketing and Research and Development (Export Efficiency) Regulations 2002. The process that the Secretary must follow to revoke an export control order is described in Clause 20 of the HMRDS Act. The revocation of the Orders would cease all current uses of the EEPs. DAFF will then arrange for the Horticulture Marketing and Research and Development (Export Efficiency) Regulations 2002 to be repealed.

The development of future Regulations under the HMRDS Act will be guided by the Australian Government's requirements for best-practice regulation. Any future government regulation of horticulture exports would also need to be consistent with Australia's WTO and free trade agreement obligations.

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Appendix A HAL's current export licence conditions

Licence Conditions Document



Effective: 28 June 2006 – 5th edition

Know-how for Horticulture™

1. Licence Conditions for export trading of Citrus¹

1.1. United States

Exports may only be made to DNE World Fruit Sales Inc. of Fort Pierce Florida.

2. Licence Conditions for export trading of Oranges

2.1. All destinations

The exporting of oranges is prohibited other than from Horticulture Australia Limited licensees in accordance with requirements of these conditions.

2.2 Peoples Republic of China

All exports of oranges must comply with the Citrus to China Marketing Program.

2.2.1

Prices paid to a packer by an exporter for oranges destined for China must not be less than the minimum price per grade set by HAL based on the price per grade recommended by the Citrus to China Committee.

3. Licence Conditions of export trading for Apples

3.1 All destinations

The exporting of apples is prohibited other than exporting by Horticulture Australia Limited licensees in accordance with requirements of these conditions.

¹ Citrus comprises of oranges, mandarins, tangelos, grapefruit, lemons and limes

Licence Conditions Document



Effective: 28 June 2006 – 5th edition

Know-how for Horticulture™

4. Licence Conditions of the export trading for ***Pears***

4.1 All destinations

The exporting of pears is prohibited other than exporting by Horticulture Australia Limited licensees in accordance with requirements of these conditions.

5. Licence Conditions of export trading for ***Dried Grapes***

5.1 All Destinations

- i. Licences to export dried grapes to all destinations are required by exporters who have exported 100 tonnes or more of dried grapes in the past twelve months.
- ii. Licensed exporters are required to apply the processing standards and trade descriptions contained in the Export Control Act 1984, the Export Control (Dried Fruits) Orders 1987 as amended, and the Prescribed Goods General Orders (1985).
- iii. Licensed exporters are required to process fruit in establishments registered in compliance with the Export Control (Dried Fruits) Orders 1987 as amended.
- iv. Licensed exporters are required to provide statistics to Horticulture Australia Limited on sales by market for aggregation and distribution to industry stakeholders as requested.
- v. Exports may only be made to purchasers with Export Finance and Insurance Corporation (EFIC) cover or to purchasers to whom EFIC insurance is not available only if payment terms are secure.

Horticulture Australia Limited
 ABN 19 095 566 108
 Level 1, 50 Carrington Street
 Sydney NSW 2000, Australia

Telephone 61 2 8295 2300
 Facsimile 61 2 8295 2399
 info@horticulture.com.au
 www.horticulture.com.au

Appendix B Quotas on horticultural produce

Frequency and trends in the use of quotas

World Trade Organisation (WTO) members have rules limiting their use of quotas. Tariff-rate-quotas (TRQ's) are by far the predominant form of quota used. Another kind of quota, an import quota under special treatment rules, only exists in two instances for Korea and the Philippines, and both in relation to rice imports. Under the WTO rules only 43 members have the right to use TRQ's on certain products. In total, there are 1425 individual TRQ's. Amongst these 43 countries, Australia for example has TRQ's on certain cheese products, and the right to have a TRQ on unmanufactured tobacco, however the TRQ on tobacco is not operational. The majority of the 1425 TRQ's are for agricultural products.

A number of countries maintain quotas for horticultural products. For example:

- China: does not have any TRQ's on horticultural products.
- Japan: has three TRQ's that relate to horticultural products, being on dried leguminous vegetables, ground nuts and tubers of konnyaku – Australia exports leguminous vegetables and ground nuts to Japan.
- United States: has four TRQ's that relate to horticultural products relevant to HAL, being on green whole olives, green ripe olives, green ripe olives other and mandarin oranges – Australia exports mandarin oranges to the US
- Taiwan has a number of TRQs including on bananas, pears, peanuts, pineapples and mangoes.
- Korea has a number of TRQ's including on potatoes, oranges, mandarins and green tea – Australia exports potatoes, oranges and green tea to Korea.
- A number of other countries have TRQs on horticultural products including Thailand, New Zealand, Israel, Costa Rica, Switzerland, the EU and Colombia.

In addition to the above quotas the US has two country specific quotas (CSQs) for avocados and peanuts from Australia as part of the AUSFTA (Australia US Free Trade Agreement). Australia does not currently have access to the US market for avocados because of quarantine restrictions and there have been no exports of peanuts to the US in the last three years.

WTO members are working on a further trade agreement in the Doha Round of negotiations. Under Doha there are proposals for the use of quotas in relation to sensitive products. Any use of quotas is expected to be limited by strict rules. It is also not clear which products individual countries will seek to designate as sensitive and it is impossible to ascertain whether there will be any new tariff rate quotas for horticulture products. As negotiations in this round are currently at an impasse, we do not consider the imposition of quotas through Doha to be a material consideration for present purposes.

Which of the trading partners is responsible for quota administration

Whether an importing or exporting country is responsible for quota administration is a case by case matter. This issue has been considered as part of the negotiations at the WTO where it has generally been accepted that there is no single "best" method of administering quotas. DAFF currently administers CSQs for exports of certain dairy and red meat products to the EU and US.

The government's position in trade negotiations with regard to the establishment of import quotas

As provided in the Australian Government's April 2011 Trade Policy Statement, in trade negotiations the government seeks to reduce foreign tariff barriers and quantitative restrictions on Australian exports of primary commodities and manufactured goods. In addition the government sees lowering trade barriers and opening up the Australian economy have been well worthwhile in their own right. The government sees restrictions such as import quotas, and other such restrictions, as invariably having the effect of reducing the amount of trade between countries. Reducing these government-imposed restrictions on trade at home has the benefit of exposing local businesses to international competition, compelling them to innovate, to be efficient and to restrain the price they charge consumers.