Australian Government

AUSTRALIAN GOVERNMENT RESPONSE

TO

THE SENATE STANDING COMMITTEE ON RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES

REPORT ON THE INQUIRY INTO

THE POSSIBLE IMPACTS AND CONSEQUENCES FOR PUBLIC HEALTH, TRADE AND AGRICULTURE OF THE GOVERNMENT'S DECISION TO RELAX IMPORT RESTRICTIONS ON BEEF (2010)

August 2017

Introduction

On 20 October 2009, changes were made to Australia's policy on bovine spongiform encephalopathy (BSE) and the safety of imported food, specifically relating to beef and beef products. The new policy, which came into effect on 1 March 2010, allows beef to be imported from countries with prior cases of BSE, provided they can prove they have acceptable BSE controls in place and that those controls are effectively monitored. This includes controls on animal feeding practices, surveillance, transportation, animal identification and traceability, slaughtering, food safety and food recall systems. The new policy replaced the policy put in place in 2001 which included a ban on imports of beef and beef products from all countries that had reported cases of BSE.

Any country wishing to export beef into Australia must now apply to Food Standards Australia New Zealand (FSANZ) and undergo an assessment. The assessment determines whether the beef and beef products from that country represent a risk to the health of Australian consumers and what import conditions would need to be imposed by Australia before beef and beef products could be imported for human consumption. For fresh (chilled or frozen) beef, the Department of Agriculture and Water Resources will also conduct an animal biosecurity risk assessment.

On 9 November 2009, the Senate Standing Committee on Rural and Regional Affairs and Transport References (the Committee) announced it would conduct an inquiry into the possible impacts and consequences for public health, trade and agriculture of the Australian Government's decision to relax import restrictions on beef. The Committee produced a first and a final report from the inquiry in 2010.

The Australian Government's response to the recommendations of the 2010 inquiry follows.

Recommendation 1 (First Report - 2010) – *The Committee recommends that a clear policy through which Australia's provisions for the recall of beef and beef product will be exercised in the event of an Australian case of BSE should be developed in consultation with the Australian beef industry. The Committee also recommends that a process is initiated through COAG to seek the input and agreement of the relevant Federal, State and Territory human health and food safety Ministers.*

Response: Agree in principle.

FSANZ has worked with the states and territories to develop a contingency plan for managing the domestic food safety aspects of any potential Australian case of BSE. The contingency plan forms an annex to the National Food Incident Response Protocol (NFIRP), and determines whether beef products comply with the BSE provisions set out in Standard 2.2.1 of the Australia New Zealand Food Standards Code (the Code). In the event of detection of BSE in Australia, the product would be recalled under the provisions set out in the NFIRP. On 3 December 2010, the former Australia and New Zealand Food Regulation Ministerial Council, now the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum), endorsed the *Annex to the National Food Incident Response Protocol for BSE and Food Safety* (the BSE Annex).

Recommendation 2 (First Report - 2010) – *The Committee recommends that Australia's* Bovine Spongiform Encephalopathy (BSE): Requirements for the Importation of Beef and Beef Products for Human Consumption – effective 1 March 2010 *and all administrative processes for the assessment of applications from countries seeking to import beef and/or beef product be suspended pending the outcome of a formal import risk analysis modelled on the expanded import risk analysis process provided for in the* Import Risk Analysis Handbook 2007 (updated 2009).

Response: Noted.

Australia has effective controls in place to mitigate BSE risk.

The *Bovine Spongiform Encephalopathy (BSE): Requirements for the Importation of Beef and Beef Products for Human Consumption – effective 1 March 2010* was developed by a range of federal government departments and agreed to by the Government. It was also endorsed by industry stakeholders. The implementation of the policy with respect to the evaluation of countries is undertaken by FSANZ and the assessment process is overseen by the Australian BSE Food Safety Assessment Committee. The Department of Agriculture and Water Resources provides technical assistance to the evaluation program through its membership on the BSE Food Safety Assessment Committee. All country reports pass through this Committee for approval before being endorsed by FSANZ.

Additionally, representatives of the Department of Foreign Affairs and Trade and the Department of Agriculture and Water Resources meet regularly with FSANZ management to discuss the program and its activities, and provide trade and technical assistance where required.

These processes ensure a robust evaluation is undertaken of countries exporting to Australia. The level of co-operation between the agencies ensures that the endorsed outcomes of BSE food safety country evaluations have been extensively scrutinised and are well supported. A classification of Category 1 or Category 2 BSE risk status by FSANZ allows access for heat-treated shelf-stable beef and beef products (for example retorted canned product) for human

consumption from the applicant country, on the basis of the treatment meeting current biosecurity requirements.

Category 1 status means there is a minimal likelihood that the BSE agent has or will become established in the national herd from that country and enter the human food chain. Beef and beef products derived from animals from these countries are therefore regarded as posing a minimal risk to human health. Category 2 status is for countries that have either not reported cases of BSE, but there are identified risk factors, or they have reported BSE but pose a minimal level of risk through effective implementation of, and compliance with, appropriate BSE control measures. The risk of beef and beef products potentially containing the BSE agent is mitigated through more stringent certification requirements to reflect this level of risk.

If a country also requests access for fresh (chilled or frozen) beef then the animal biosecurity risk needs to be assessed by the Department of Agriculture and Water Resources. Both the FSANZ BSE food safety risk assessment and the Department of Agriculture and Water Resources biosecurity risk assessment need to be successfully completed before permission to export fresh (chilled or frozen) beef from those countries to Australia may be given.

Recommendation 3 (First Report - 2010) *– The Committee recommends that FSANZ revise the Australian process to assess BSE risk, including the Australian Questionnaire to Assess BSE Risk, to include a clear requirement that applicant countries must demonstrate that they have in place a national animal identification scheme with the same physical ability to trace an individual animal from birth to point of retail sale as Australia's National Livestock Identification System.*

and

Recommendation 2 (Final Report -2010) *– The Committee recommends that unless there is full traceability across national borders (equivalent to Australia's traceability requirements) both countries must be considered to pose equal risk.*

Response: Agree in principle.

Countries that wish to export beef and beef products to Australia are required to demonstrate that they have adequate livestock identification and traceability systems in place which deliver equivalent outcomes for the control of BSE to those of Australia's National Livestock Identification System (NLIS). NLIS provides for livestock identification and traceability from their birthplace to the point of slaughter.

Requirements for the traceability of cattle and products derived from them are built into the *Australian Questionnaire to Assess BSE Risk*. The FSANZ BSE food safety risk assessment considers an applicant country's policies and practices on imports of cattle and their products when assessing risk.

Recommendation 4 (First Report - 2010) *– The Committee recommends that FSANZ revise the Australian process to assess BSE risk, including the Australian Questionnaire to Assess BSE Risk, to include a mandatory requirement for an in-country inspection to be undertaken as part of the assessment of each application to import beef and/or beef product to Australia.*

Response: Noted.

Australia has robust processes in place to determine whether an in-country inspection is required.

The announcement of a change to Australia's BSE imported food safety policy included a provision for FSANZ to undertake in-country inspections as part of the risk assessment process. In-country inspections are undertaken where there is a need to collect further information on a country's systems; and/or where verification of the effectiveness of application of a country's BSE food safety control measures is indicated on analysis of the BSE questionnaire response. FSANZ may also seek advice from the Department of Agriculture and Water Resources on assessing the performance of the relevant competent authority and its systems of certification and verification.

To date, FSANZ has conducted in-country verification visits to all of the countries for which it has completed a BSE assessment under the 2010 policy.

Recommendation 5 (First Report - 2010) *– The Committee recommends that the Government review the administrative framework through which policy relating to implications for food safety and plant and animal health arising from import applications is developed. The Committee recommends that final responsibility for the development and administration of such policy should rest with the Minister and that such policy and administrative procedures should be reflected in legislative instruments to ensure that they are subject to appropriate parliamentary scrutiny.*

and

Recommendation 1(Final Report - 2010) *– The Committee recommends a process whereby the relevant Minister is required to consider and rule on the recommendations provided by Biosecurity Australia, following an Import Risk Analysis, and the Australian BSE Food Safety Assessment Committee, following a country assessment. The committee also recommends that the relevant Minister report any decision to approve or reject such recommendations to the Parliament and this committee prior to a determination by the Director of Plant and Animal Quarantine, in the case of an Import Risk Analysis, or the Chief Executive Officer of FSANZ, in the case of a country assessment, and prior to formal advice being provided to the applicant country.*

Response: Noted.

Australia is a strong international advocate of open markets and the application of science-based decision-making on issues of food safety, and human, animal and plant health. The *World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement) requires WTO Members, among other things, to ensure that quarantine rules are based on scientific principles and are not maintained without sufficient scientific evidence.

A robust decision-making framework for the scientific management of both biosecurity and food safety import risk has been established by the Australian Parliament through primary and subordinate legislation, which delegates the decision-making powers under the legislation to officials in the relevant departments. This framework for conducting scientific analyses and implementing SPS measures underpins the integrity and independence of our biosecurity and food safety import risk processes.

Consistent with our international obligations, the Australian Government adopts a science-based approach to decisions about the entry into Australia of imported products. Decision-makers are supported in their decisions by a range of scientific expertise already existing in the departments (in particular FSANZ, the Department of Agriculture and Water Resources and the Therapeutic Goods Administration; in some cases with the guidance of eminent and independent scientists). There is also an existing range of cross-agency cooperation measures that contribute to the overall strength of the legislated measures adopted by the Australian Parliament.

Ministerial decision-making and parliamentary review of import risk assessments would be inconsistent with Australia's independent, scientifically-based decision-making processes as required under our obligations in the SPS Agreement and bring into question the credibility and legitimacy of our system. It would likely be criticised by trading partners as political interference. Australia would be concerned if our agricultural exports faced political decision-making processes when SPS measures were being developed and implemented in our export markets.

The Australian Government (Department of Agriculture and Water Resources and Department of Health) works collaboratively with the New Zealand Government and the Australian state and territory governments, through the Forum, to develop food regulation policy. FSANZ develops national food standards, having regard to policy guidance from the Forum. State and territory governments develop and administer food legislation, which gives effect to the requirements of the Code.

The Imported Food Inspection Scheme, administered by the Department of Agriculture and Water Resources under the *Imported Food Control Act 1992*, is a risk based inspection scheme that aims to ensure that imported foods comply with the Code. If unsafe or non-compliant imported food is identified, it is re-exported or destroyed or, in some cases, treated in order to bring it into compliance.

The *Biosecurity Act 2015* (the Biosecurity Act) and the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016* prohibit the importation of certain goods unless an import permit is granted. This applies to many commodities, including beef and beef products.

Sections 173 and 174 of the Biosecurity Act require that the directors of Biosecurity and Human Biosecurity are responsible for determining if goods are to be prohibited or conditionally non-prohibited for import into Australia (i.e. require import conditions and/or import permits). These sections also provide that Determinations made under the Biosecurity Act are non-disallowable instruments.

The Director of Biosecurity makes decisions under the legislation, including whether to grant an import permit. In considering whether to issue an import permit, the Director (and the Director's delegates) is required to take into account a range of information. This includes the level of biosecurity risk and whether the imposition of conditions is necessary to reduce the level of biosecurity risk to an acceptable level.

Biosecurity import risk assessments carried out by the Department of Agriculture and Water Resources are a major reference source on which decisions are based. These risk assessments are science-based and apply Australia's appropriate level of protection (ALOP) for biosecurity risks, which is expressed as 'a high level of sanitary and phytosanitary protection aimed at reducing biosecurity risks to a very low level, but not to zero'. Biosecurity Import Risk Analyses (BIRAs) are conducted in accordance with section 167 of the Biosecurity Act. The Minister may only direct that a BIRA is commenced, in accordance with section 168 of the Biosecurity Act.

It must be noted that the Director's decision to issue a permit is not the sole determinant of an import being allowed into the country. Imports are also subject to the *Customs Act 1901* and other relevant laws depending on the particular class of import. In the case of beef, the Director also considers the outcomes of any FSANZ BSE food safety assessments.

The Parliament and relevant Ministers have been kept informed of activities relating to BSE Food Safety Assessments. Substantive advice on the schedule of BSE food safety risk assessments and expected completion dates have been readily available through Senate Estimates hearings. Ministers of both the Department of Health and the Department of Agriculture and Water Resources are provided with the FSANZ assessment schedule and work timetable and formally alerted of all BSE food safety risk assessment decisions pending public release of the outcomes.

Changes to the legislation are a matter for the Parliament and subordinate legislation is subject to parliamentary scrutiny.

Recommendation 6 (First Report - 2010) – *The Committee recommends that Australia's current labelling requirements are amended to reflect the country of origin for all food products including unpackaged fresh beef.*

and

Recommendation 3 (Final Report - 2010) – *The Committee recommends that all food product be labelled with both the country of origin and the country of processing, if different.*

Response: Noted.

All foods produced or imported for sale in Australia are required to comply with the food labelling standards. Standard 1.2.11 of the Code (administered by FSANZ) sets out mandatory country of origin labelling requirements for packaged food and most unpackaged fresh produce, including fresh fruit and vegetables, fish, pork, beef, chicken and lamb products. Changes to extend country of origin labelling to unpackaged meat products (beef, veal, lamb, hogget, mutton and chicken) came into effect on 18 July 2013. At the 27 July 2014 meeting of the Forum, Ministers agreed not to extend country of origin labelling to all remaining unpackaged primary food products, on the basis that it was not considered cost effective.

The state and territory food authorities are responsible for monitoring food within their jurisdictions for compliance with these labelling requirements. The Department of Agriculture and Water Resources has responsibility for enforcing these requirements at the border.

The Australian Consumer Law (ACL) prohibits businesses from making false or misleading representations regarding the origin of goods they supply, including food products. To provide certainty for businesses, Part 5-3 of the ACL also includes country of origin 'safe harbour' defences, which provide that the use of certain representations is not false or misleading where specific criteria are met.

On 21 July 2015, the Commonwealth Government announced proposed reforms to provide consumers with clearer, simpler information about where food comes from. The Government developed final proposals and a Decision Risk Impact Statement (RIS) for consideration by state and territory governments through the Legislative and Governance Forum on Consumer Affairs (CAF). CAF agreed to the final proposals on 31 March 2016.

The reforms will see the continuation of mandatory country of origin labelling for most food offered for retail sale in Australia. In addition to a statement about where the food was produced, grown, made or packaged, most Australian food will carry the familiar kangaroo symbol and an indication of the proportion of Australian ingredients by weight through a statement and a bar graph. Labels can also include the origin of specific ingredients, and the reforms will see clearer rules around when food labels can carry 'made in' or 'packed in' statements.

Under the reforms, if Australian beef is exported and re-imported into Australia without substantial transformation or the addition of ingredients from other countries, the label must also include a description (in brackets) of the processing that occurred outside Australia.

The first element of the reforms, an ACL Information Standard on country of origin labelling for food, commenced on 1 July 2016 with a two-year transition period. As a result of the introduction of this information standard the Forum agreed, on 29 August 2016, to remove the current country of origin labelling provisions from the Code with effect from 1 July 2018.

In addition, the ACL country of origin safe harbour provisions were amended through the *Competition and Consumer Amendment (Country of Origin) Act 2017* (the Act). For claims like 'Made in', the changes make it clearer what substantial transformation means and remove the complex 50 per cent local production cost test, reducing regulatory burden across all industry sectors. The Act also removes redundant safe harbour provisions and introduces a new defence for claims in the form of marks required by information standards relating to the country of origin labelling of goods.

Other elements of the reforms will be introduced progressively during the transition period.