

SUBMISSION TO
SENATE STANDING COMMITTEE ON RURAL AND
REGIONAL AFFAIRS AND TRANSPORT

SENATE INQUIRY INTO THE POSSIBLE IMPACTS AND
CONSEQUENCES FOR PUBLIC HEALTH, TRADE AND
AGRICULTURE OF THE GOVERNMENT'S DECISION TO
RELAX IMPORT RESTRICTIONS ON BEEF

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

NOVEMBER 2009

Introduction

1. The Department of Foreign Affairs and Trade (DFAT) has responsibility for trade issues and will therefore concentrate its submission on trade related issues regarding the change to Australia's policy on Bovine Spongiform Encephalopathy (BSE) and imported food safety. We understand that the Department of Health and Ageing (DoHA) will provide more detailed information on human health issues, including consultations undertaken with health stakeholders, and that the Department of Agriculture, Fisheries and Forestry (DAFF) will provide more detailed information on animal health issues, as well as trade issues and consultations with industry.
2. In 2001 Australia put in place measures, based on the scientific knowledge at the time, to protect the Australian population from BSE contamination of the food supply. BSE is a progressive, fatal, central nervous system disorder of cattle. Consumption of certain tissues from BSE infected cattle has been linked to the rare fatal human disease variant Creutzfeldt-Jakob Disease (vCJD). The 2001 policy includes a ban on imports of food containing beef from countries that have reported one or more cases of BSE. Countries currently banned from exporting beef and beef products to Australia because of the identification of indigenous BSE in their territories include Canada, Japan, many European countries and the United States (US).
3. At the time the 2001 policy was instituted it was recognised that the science was continuing to develop on this issue and that the policy was conservative. In this context an undertaking was given to review the policy two years after implementation — in 2003. As a matter of public record, re-consideration of the policy was undertaken by the then government in 2005 and 2007 but the policy was not changed.
4. The policy has been strongly criticised over a long period of time by a number of key trading partners (such as Canada, the US, Japan and Europe) as inconsistent with current science and the relevant international standard¹ and, because of this, some of those countries have indicated they consider the policy breaches Australia's World Trade Organization (WTO) obligations. The World Organisation for Animal Health (OIE) has implemented a standard, significantly updated in 2005, that provides for the safe trade in beef from countries that have experienced BSE. The OIE (which has 175 members) is referenced in Article 3.4 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement) as an international standard setting body and is recognised as the major international standard setting authority on animal health and animal diseases impacting human health.
5. Australia's beef industry, as indicated by a peak national beef body, the Red Meat Advisory Council (RMAC —members include the Cattle Council of Australia, the Sheepmeat Council of Australia, the Australian Lot Feeders' Association, the Australian Livestock Exporters' Council and the Australian

¹ Chapter 11.6 of the World Organization for Animal Health *Terrestrial Animal Health Code*.

Meat Industry Council) has long been concerned about the negative impact the current policy could have on the local industry should Australia experience an indigenous case of BSE (an unlikely but real possibility despite measures currently in place). Under Australia's WTO national treatment (ie, non-discrimination) obligations Australia must not place more onerous conditions on imports from other countries than it applies domestically. Implementation of this principle would require, based on Australia's 2001 BSE policy, that Australia ban sales of all domestically produced beef in the event of a BSE case in Australian cattle. Such a situation would have severe implications for the local industry and those reliant on it for their livelihoods. Because of this, the RMAC requested a review of the policy as a matter of urgency.

6. It is noted that the timing of this specific request from RMAC was related to a discussion, on 28 July 2009 within a Red Meat Market Access Committee (RedMMAC) meeting, in which DFAT advised of the recent stepping up of pressure from trading partners for a review of Australia's BSE policy. Within that meeting DFAT requested industry to advise government regarding its position on the issue. Industry members of the Committee present at the meeting included 8 representatives of the Australian Meat Industry Council (AMIC), 1 representative of Meat and Livestock Australia (MLA) and 2 representatives of the Cattle Council of Australia. It was agreed that AMIC would write to RMAC seeking consideration of the issue with a view to getting consistent industry policy put back to Government for consideration. RMAC, on behalf of its members, subsequently wrote to the Minister for Agriculture, Fisheries and Forestry, the Hon Tony Burke MP, on 9 August 2009 seeking an urgent update of the 2001 policy on BSE. On 18 September 2009 RMAC sent a further letter to Minister Burke reiterating its request for an update of the 2001 policy on BSE to reflect, among other things, increased understanding of the risks posed by BSE, increased confidence in measures to minimise the risks of BSE and recommendations and principles of the World Organisation for Animal Health (OIE).
7. The Australian Government announced, on 20 October 2009, changes to the policy following a Government review which considered a range of issues, including the current international standard, international practice in BSE management, the latest scientific information on BSE and vCJD and international trade rules and trade implications. The review process included consultation with a wide range of health and industry stakeholders — undertaken by DoHA (with health stakeholders) and DAFF (with industry stakeholders). DFAT attended the main DAFF consultations with industry. No concerns were raised by those consulted. The change will take effect from 1 March 2010.
8. In relation to this review DoHA commissioned Professor John Mathews to review the current scientific evidence on BSE particularly in relation to human food and the flow on implications to human blood, human blood products and other human therapeutic goods. Professor Mathews is an eminent scientist with 40 years experience as an epidemiological researcher and significant experience in the field of transmissible spongiform encephalopathies. The National Health and Medical Research Council's (NHMRC) Transmissible

Spongiform Encephalopathies Committee (TSEAC) peer reviewed the Mathews Report in September 2009 and supported the findings of the report. Australia's Chief Medical Officer, Professor Jim Bishop, was also consulted.

9. Professor Mathews' report *Review of Scientific Evidence to Inform Australia's Policy on Transmissible Spongiform Encephalopathies (TSEs)* concluded that the overseas epidemic of variant vCJD is declining, and that beef imports from "controlled risk" or "negligible risk" countries (according to OIE categorisation), with appropriate certification, would lead to only a negligible increase in risk for vCJD in Australia. The report indicates that it is possible to import beef from countries that have reported cases of BSE and at the same time maintain a high level of protection for the Australian public, provided the appropriate risk mitigation strategies are put in place.
10. The Mathews Report concluded that:
 - Over the last five years the evidence for more effective control of the global BSE epidemic has strengthened. Passive and active surveillance, carried out in accordance with OIE guidelines and European Community legislation, has shown that numbers of BSE-affected cattle are falling year by year in virtually all affected countries;
 - The amount of BSE-infected material entering the human food chain in "controlled BSE risk" countries such as the United Kingdom (UK) is now very small because of the decline in BSE, the removal of brain and other specified risk materials (SRMs) from carcasses, and the detection and destruction of infected animals;
 - The risk of future food-borne transmissions leading to human vCJD is very small, if not negligible, even in the UK, where previously the risk was greatest; and
 - The risk to Australians from UK beef imports, if this was to be allowed, is found to be a 0.002 chance of a case of vCJD occurring in the next 50 years. This was estimated to translate to an absolute risk of 40 million times less than the risk of death from road accidents over the next 50 years.
11. Under the new policy, countries wishing to export beef and beef products to Australia will be required to have BSE mitigation strategies in place. They will need to receive a favourable risk assessment from Australian authorities (led by Food Standards Australia New Zealand — FSANZ) which will take into account the OIE BSE risk assessment methodology, before imports can be allowed into Australia. This may include an in-country audit of risk mitigation strategies by Australian authorities.
12. The details of this process are provided in the policy document *Bovine Spongiform Encephalopathy (BSE): Requirements for the Importation of Beef and Beef products for Human Consumption — Effective March 2010*. This policy document was developed jointly by DoHA (including FSANZ), DAFF and DFAT. DFAT's role in development of the policy was to ensure that the policy would meet Australia's WTO obligations, specifically obligations under the WTO SPS Agreement. Development of the risk assessment methodology and process for conducting risk assessments is currently being undertaken by

FSANZ for use from commencement of the policy on 1 March 2010, and DFAT will continue to be involved in the same capacity.

Trade obligations

13. The major trade obligations engaged by Australia's policy on BSE and imported food safety are its obligations under the WTO SPS Agreement. This Agreement provides a multilateral framework of rules governing the use of measures to protect the life and health of humans, animals and plants, with the aim of minimising any negative impact on international trade. Under the SPS Agreement, WTO Member Countries, including Australia, are encouraged to harmonise their measures with international standards developed by 'relevant' international organisations, including the OIE. Measures may differ from an international standard but their necessity for protecting life and health must be supported by a science-based risk assessment.

14. Australia's BSE policy is subject to all relevant provisions of the SPS Agreement, including those of *Article 2 – Basic Rights and Obligations*, which are reproduced below for the Committee's convenience:

- 1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.*
- 2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.*
- 3. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.*
- 4. Sanitary or phytosanitary measures which conform to the relevant provisions of this Agreement shall be presumed to be in accordance with the obligations of Members under the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b).*

15. Also important is Article 5.1 of the SPS Agreement, which states:

Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

16. As indicated above a number of trading partners have expressed concerns over a long period that Australia's BSE and imported food safety policy is

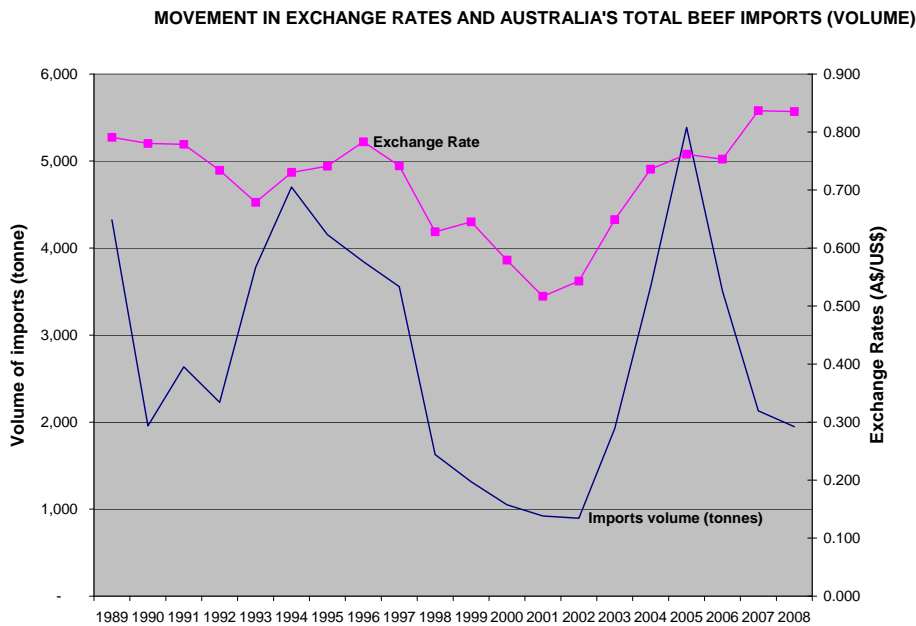
inconsistent with its obligations under the WTO SPS Agreement because, in the view of those countries, the Australian policy is not consistent with the science or the relevant international standard on BSE. A further implication such countries draw from this is that Australia's BSE policy is more trade restrictive than necessary to protect human and animal health.

17. Given the scientific findings in the Mathews Report, retention of the 2001 policy would risk one or more of Australia's trading partners commencing formal WTO dispute settlement action against Australia on the basis of a claim that its measures violate the WTO SPS Agreement. Earlier this year, Canada began such a WTO dispute action against the Republic of Korea's BSE-related restrictions on imported beef. Over a number of years several of Australia's key trading partners, including Canada, have made repeated representations to Australia indicating that they did not consider Australia's previous BSE policy to be consistent with Australia's WTO obligations. If Australia had continued to maintain its previous policy, we consider it likely that a WTO dispute may also have been taken against Australia. A loss in the WTO would likely require Australia to change its BSE policy or face WTO sanctioned trade retaliation, such as the imposition of higher tariffs on Australian products, by a successful complainant or complainants.
18. As also indicated above the 'national treatment' (ie, non-discrimination) requirement, reflected in Article 2.3 of the WTO SPS Agreement, requires that Australia must not place more onerous conditions on imports from other countries than it applies domestically. Therefore, in the unlikely event of a case of BSE in Australian cattle, Australia would be obliged to ban Australian produced beef from sale in Australia because the 2001 policy on beef imports indefinitely bans the import of beef from countries which have had a case of BSE in their cattle. Failure to implement such a ban would leave Australia exposed to a WTO challenge. Peak meat industry bodies have emphasised that this leaves the industry in a vulnerable and uncertain position and they have, accordingly, requested a change in policy.
19. Australia's new BSE policy does not, in fact, adopt the OIE standard or the categorisation of countries by the OIE. Rather, it will take into account the modern OIE risk assessment methodology to undertake its own rigorous risk assessments to ensure that beef entering Australia meets Australia's appropriate level of protection. The broad approach for assessment is set out in the policy document referenced at paragraph 11 and is available from the FSANZ website.
20. The approach Australia has taken is consistent with its rights and obligations under the WTO SPS Agreement. Although WTO Member countries are encouraged under Article 3 of the SPS Agreement to follow international standards where they exist, it is not mandatory to do so. Article 3.3 provides for WTO Members to introduce or maintain measures that result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standard, provided that these measures are scientifically justified, and are based on an appropriate risk assessment — as will be the case with the new BSE policy.

Implications of the policy change for trade

21. The change to Australia's policy regarding BSE and imported food safety was based solely on scientific principles, specifically the advances in scientific understanding and risk management techniques since 2001 when the former policy was introduced. This is in line with Australia's WTO obligations, discussed above, to base sanitary measures on science, avoid arbitrary or unjustifiable distinctions, and to ensure that such measures are not more trade restrictive than necessary. However, the implications for trade in Australian beef were examined in the process of reviewing the policy.
22. The beef industry is very important to Australia's economy in terms of both its domestic and export value. The Australian Bureau of Resource Economics (ABARE) estimates the gross value of Australian beef and veal production to be around \$7.1 billion (excluding live cattle) in 2008-2009, with around 60 percent exported.
23. It is considered that the adjustments to the policy will not adversely affect trade in Australian beef and may in fact help to secure the future of this very valuable industry.
24. As indicated above, the 2001 policy presents potential risks to the viability of Australia's beef industry in the event of an indigenous case of BSE because of the potential loss of the Australian market to Australian beef. The new policy provides a better outcome for both our domestic and export industry, allowing a more sensible risk-based approach.
25. The change in policy may also assist with retention of markets or re-opening of markets in the event of an indigenous case of BSE. Continuation of the 2001 policy may have resulted in our major markets treating Australia in similar terms to its treatment of them (ie, banning our beef), leading to the closing of markets and very lengthy delays in re-opening those markets. This would severely exacerbate the damage of any requirement to remove Australian beef from domestic butcher and supermarket shelves. The new policy will put Australia in a stronger position to argue that it should not be excluded from its beef export markets should a BSE event occur in Australia.
26. The Australian beef industry is very competitive, being the second largest exporter of beef in the world, producing 4 per cent of the world's beef supply. As indicated above, this \$7.1 billion industry exports around 60 per cent of its production. Re-opening Australia's beef market to countries that have experienced BSE, such as European countries, Japan, the US and Canada, if allowed, is unlikely to be followed by significant increases in beef imports into Australia. Australia has historically been a small importer of beef and beef products (0.3% of Australia's total trade in beef in 2000 and 0.5% in 2008) and, given the competitive position of Australian industry, the adjustments to the policy would not be expected to alter this status.

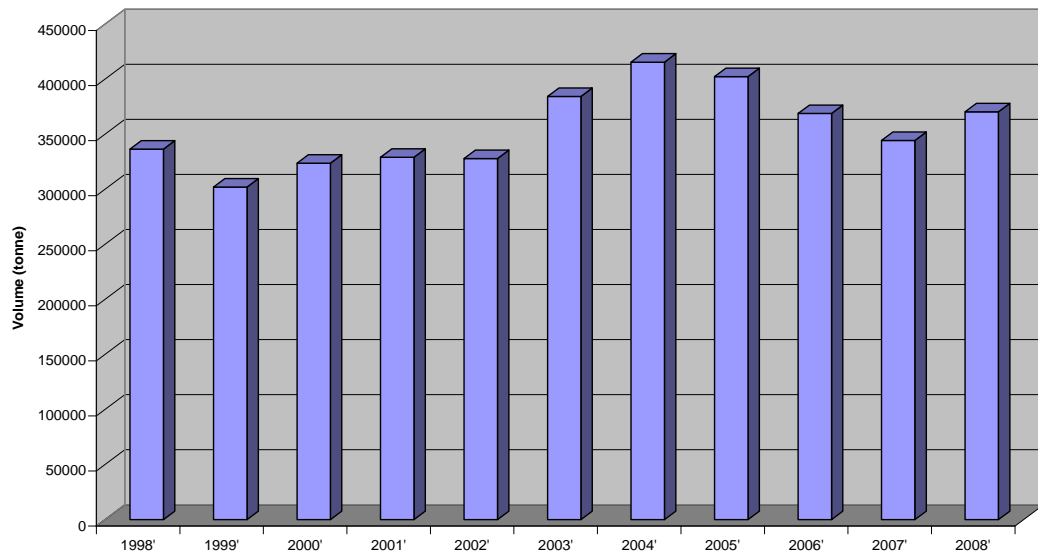
27. Since the decision to change the BSE policy was announced, there has been some commentary in the media regarding an expectation that a high value Australian dollar, particularly against the US dollar, would result in significant imports of beef to Australia. Historically, there does not appear to be clear relationship between the strength of the Australian dollar and imports of beef into Australia, including from the United States. The chart below shows that Australia imported very small quantities of beef and beef products even during periods when the Australian dollar was strong against the US dollar.



Source: DFAT STARS Database and IMF-International Financial Statistics Database

28. We do not anticipate that the new policy would impact negatively on Australia's beef exports. Implementation of the policy will not affect our most favourable 'negligible BSE risk' rating from the OIE. New Zealand (which has not had a case of BSE) amended its BSE policy about eight years ago and this has not impacted on its beef exports or its negligible risk status. New Zealand has adopted the OIE BSE standard, recognises the categorisation of countries by the OIE and does not undertake further assessment for those countries. It allows beef imports from countries assessed by the OIE as negligible, controlled or undetermined risk. The chart below shows that New Zealand's beef exports have not been affected as a result of its less trade-restrictive policy. New Zealand's key beef export markets are the United States, Korea, Japan and Indonesia.

NEW ZEALAND'S BEEF EXPORTS - 1998-2008 (VOLUME)



29. It is also important to note that the US and Canada (countries currently banned from exporting beef and beef products to Australia) have access to Japan for fresh beef and the US also has access to the Korean beef market. Japan and Korea are Australia's largest and third largest beef export markets respectively.
30. Overall trading partner reaction to Australia's changed BSE policy for imported food has been positive, although some have expressed concerns at the potential for lengthy delays for access to Australia's beef market arising from the risk assessment process. There has been no indication that this change in policy settings will have an impact on demand for Australian product.
31. The National Livestock Identification System (NLIS) is Australia's system for livestock identification and traceability and is an important element in providing assurance to other countries that Australia is able to manage disease outbreaks quickly and effectively. Australia's NLIS is a world class, permanent, whole-of-life system that allows individual cattle to be identified electronically and tracked from property of birth to slaughter, for food safety, product integrity and market access purposes. Older cattle, those born before NLIS became mandatory, are able to be traced to all properties and establishments from time they first moved off a property and were identified within the NLIS. The NLIS became mandatory in all Australian states and territories in July 2005.

Rationale for the change in Australia's policy on BSE and imported food safety

32. The Committee has asked government departments to explain, from their own portfolio perspective, the rationale for the policy decision to relax import requirements for consignments of beef or beef products from other countries. In this portfolio's view the rationale for the amendment to Australia's policy on BSE and imported food safety arises from the following:

- The new policy
 - can be achieved while maintaining a high level of protection for the Australian population, as long as risk mitigation strategies are in place (as indicated in Professor Mathews' report and as proposed by the policy);
 - will not risk Australia's OIE "negligible risk" status for BSE;
 - will not adversely impact Australia's export markets;
 - will provide a better long term trading environment for the Australian beef industry (for both domestic and export sectors); and
 - is consistent with the current science and will therefore provide assurance that Australia continues to abide by its international obligations, specifically those arising from the WTO SPS Agreement.