

R-CALF USA Position Paper

USDA Should Not Allow the Importation of Over 30-Month Cattle and Beef from Canada

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A. The Full Magnitude of Canada's BSE Epidemic is Still Unfolding, But it is Already Much Greater than what USDA Has Asserted and Assumed.

- The magnitude of Canada's BSE epidemic is much greater than USDA assumed when it issued its 2005 Final Rule to allow the importation of Canadian cattle less than 30 months of age and Canadian beef from such younger cattle. The USDA erroneously assumed that the Canadian feed ban was effective in preventing the spread of BSE when it relaxed U.S. import restrictions. Additionally, USDA did not contemplate that BSE would be detected in any Canadian cattle born after the feed ban and did not anticipate that Canada would detect 9 indigenous BSE cases within 3 years. The USDA stated in support of its 2005 Final Rule to relax U.S. import restrictions:
 - “Even if BSE-infected cattle do remain in Canada, they are likely to be older animals that were exposed before Canada's feed ban in 1997.”²
 - “While additional cases may occur in cattle born before implementation of Canada's feed ban, the epidemiological evidence indicates the number of new cases, if any, will be limited by the downward pressure of the comprehensive mitigations in place.”³
 - “We disagree that the possible presence of additional animals in Canada, infected before implementation of the Canadian feed ban, present risks that have not been addressed for this rulemaking. As stated in several other comments, it is possible that cattle born before Canada initiated its feed ban in August of 1997 may still exist in Canada.”⁴
 - “We agree it is possible there may be other asymptomatic BSE-infected animals in Canada. However, because the two BSE-infected animals were born before the feed ban, there is no evidence to suggest that the feed ban is ineffective.”⁵

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² Federal Register, Vol. 70, No. 2, January 4, 2005, at 514.

³ *Ibid.*

⁴ Federal Register, Vol. 70, No. 2, January 4, 2005, at 515.

⁵ *Id.* at 515.

Notwithstanding these erroneous assumptions, Canada has now detected 9 indigenous BSE cases including 4 cases born after Canada implemented its 1997 feed ban,⁶ providing evidence that Canada's feed ban did not prevent the establishment or spread of BSE in either the Canadian cattle herd or the Canadian feed system. Given USDA's track record for grossly underestimating the magnitude of Canada's BSE problem, current import restrictions should not be further relaxed.

B. Cattle Over 30 Months of Age that Originate in a BSE-Affected Country Have an Inherently Higher Risk for Transmitting BSE.

- Canadian cattle over 30 months of age have an inherently higher BSE risk profile than cattle less than 30 months of age and there is a higher risk that BSE prions will be sufficiently concentrated in Canadian cattle over 30 months of age to make transmission of the disease possible.⁷ USDA stated in October 2003 that the 30-month age threshold was a useful dividing line for purposes of mitigating risk.⁸ In January 2005 USDA stated that the age of the cattle and the effect of the feed ban were the two most significant factors in determining risk:

APHIS determined that cattle less than 30 months of age are unlikely to have infectious levels of the BSE agent and that animals born after the feed ban was implemented are unlikely to have been exposed to the infectious agent. The combination of these factors caused us to conclude that we could safely import cattle for feeding and slaughter or for immediate slaughter that (1) were less than 30 months of age . . .⁹

In this case, nothing has changed since USDA decided to restrict imports to cattle less than 30 months of age and beef from such younger cattle to make cattle over 30 months of age and beef from such older cattle less of a risk of BSE infection and transmission. To the contrary, the discovery of 7 additional cases of BSE in Canadian cattle following publication of the 2005 Final Rule, including 4 cows that were born and infected after implementation of the Canadian feed ban, suggests that USDA should be adopting more protections against the possibility of contaminated meat or infected cattle being imported into the United States, not fewer.

C. As Previously Recognized by the Food and Drug Administration, and as Recognized by International BSE Experts, Current BSE Mitigation Measures Are Inadequate to Address the Increased Risk Associated with Older Canadian Cattle, and Beef from Older Canadian Cattle.

⁶ See Canadian Food Inspection Agency (CFIA) disease investigation reports of the BSE infected cow born in 1998, the two BSE-infected cows born in 2000, and the BSE-infected cow born in 2002, available at <http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/situatione.shtml>.

⁷ See Federal Register, Vol. 68, No. 213, November 4, 2003, at 62391. "In summary, infected cattle over 30 months of age . . . may have levels of the abnormal prion in affected tissues that are sufficient to infect other animals fed protein derived from these tissues." See also Federal Register, Vol. 70, No. 2, January 4, 2005, at 513, 514.

⁸ *Risk Analysis: BSE Risk from Importation of Designated Ruminants and Ruminant Products from Canada into the United States*, U.S. Department of Agriculture, APHIS, Veterinary Services, October 2003, at 17, 18.

⁹ Federal Register, Vol. 70, No. 2, January 4, 2005, at 485.

- International scientists recommended in 2003 that Canada needed to significantly strengthen its feed ban by prohibiting specified risk materials (SRMs) from use in animal feed to prevent the spread of BSE.¹⁰ The four BSE cases born after Canada's feed ban prove these scientists were right. But Canada does not intend to strengthen its feed ban until July 2007,¹¹ far too late to prevent the establishment and spread of this disease, which has a long incubation period that averages about 5 years.¹² Current import restrictions should not be further relaxed until after Canada has significantly strengthened its feed ban and sufficient time has lapsed to ascertain the effectiveness of any feed ban improvements.
- International scientists told the United States in 2004 that the U.S. feed ban was insufficient to prevent exposure of cattle to the BSE agent.¹³ Also in 2004, the Food and Drug Administration (FDA) stated that the U.S. feed ban should be strengthened to ban poultry litter and plate waste from the cattle feed supply.¹⁴ The revised 2003 Harvard Risk Assessment acknowledges the potential risk associated with the practice of feeding poultry litter to cattle, stating that, "It is possible that cattle-derived protein feed supplements administered to chicken could contain BSE infectivity, and that BSE infectivity could pass through chicken and become available in cattle feed supplemented with chicken litter."¹⁵ The U.S. continues to allow chicken litter to be fed to cattle and it has not yet strengthened its feed ban. The U.S. should not allow any higher-risk cattle or beef into the U.S. until it has significantly strengthened its feed ban to prevent the possible spread of BSE if it is introduced from Canada.
- Canada does not appear to be testing a sufficient number of Canadian cattle to meet even the minimal international testing guidelines established by the World Organization for Animal Health, commonly known as the OIE, and it certainly is not testing enough cattle to determine the true prevalence of its disease problem. Canada is on track to test fewer cattle in 2006 than it did in 2005, despite the fact that Canada has detected 5 new cases of BSE in 2006.¹⁶ Based on the BSE surveillance point system recommended by the OIE, Canada would need to test 187,500 consecutive targeted cattle (with a BSE risk equal to that in the "Casualty slaughter, age between 4 and 7 years" subpopulation in Table 2), and be found BSE-free to be confident that the BSE prevalence is not more than 1 in

¹⁰ *Report on Actions Taken by Canada in Response to the Confirmation of an Indigenous Case of BSE*, International Review Team, Bern, Switzerland, June 25, 2003, at AR008830 et seq.

¹¹ *Canada Strengthens Feed Controls*, Canadian Food Inspection Agency, News Release, Ottawa, June 26, 2006, available at <http://www.inspection.gc.ca/english/corpaffr/newcom/2006/20060626e.shtml>

¹² Federal Register, Vol. 70, No. 2, January 4, 2005, at 475.

¹³ *Report on Measures Relating to Bovine Spongiform Encephalopathy (BSE)*, International Review Team, U.S. Department of Agriculture, February 2004, at 8.

¹⁴ *Expanded "Mad Cow" Safeguards Announced to Strengthen Existing Firewalls Against BSE Transmission*, United States Department of Health and Human Services, News Release, January 26, 2004.

¹⁵ *Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States*, Joshua T. Cohen et al., Harvard Center for Risk Analysis, Harvard School of Public Health, Revised October 2003, at 32.

¹⁶ *BSE Enhanced Surveillance Program*, Canadian Food Inspection Agency, Updated December 18, 2006, available at <http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/surv/surve.shtml#num>. Canada tested 57,766 cattle in 2005 and detected 2 BSE cases. In 2006, Canada has tested 51,452 cattle through December 18, 2006, and has detected 5 additional BSE cases.

100,000.¹⁷ However, Canada has tested fewer than 60,000 head of cattle during each of the last two years. Until Canada significantly increases its BSE testing, neither the United States nor any other potential importing country will be able to make an informed decision about the actual risks presented by cattle and beef originating in Canada. The U.S. should not consider any further relaxation of its import restrictions for Canadian beef and cattle until Canada achieves a BSE testing level comparable to the testing levels conducted in other regions of the world where, like Canada, numerous cases of BSE have been detected.

- The U.S. Department of Agriculture, Food Safety and Inspection Agency (FSIS) recently conducted a study on the BSE risk mitigation measures implemented in the U.S.¹⁸ and found that the removal of specified risk materials (SRMs) can reduce human exposure to BSE by about 80 percent.¹⁹ This level of protection is inadequate to protect the U.S. from the importation of older cattle from Canada, and beef from older Canadian cattle, that have an inherently higher-risk for BSE.

D. Allowing Older Canadian Cattle, and Beef from Older Canadian Cattle into the U. S. Will Immediately Harm the United States' International Disease Risk Profile.

- Allowing the importation of Canadian cattle over 30 months of age and beef from such older cattle will further exacerbate the United States' efforts to maintain a favorable BSE risk profile under the international guidelines established by the OIE. Currently, the United States likely meets the OIE's most favorable BSE risk profile – that of a country with a negligible BSE risk. In order to maintain eligibility for a negligible BSE risk profile, every indigenous case of BSE must have been born more than 11 years ago.²⁰ Because Canada has had an indigenous case of BSE born as recently as 2002, it cannot possibly meet the OIE criteria for a negligible BSE risk. If the U.S. begins to mingle Canadian cattle over 30 months of age and beef from such older Canadian cattle with the U.S. cattle and beef supply, the United States' BSE risk profile will likely be downgraded to the same level as that of Canada, which will further complicate the already difficult task of restoring lost U.S. export markets.

E. Allowing Older Canadian Cattle, and Beef from Older Canadian Cattle into the U.S. Will Further Harm the United States' Ability to Fully Restore Lost Export Markets.

- Because the USDA has not harmonized the BSE precautions on Canadian cattle and beef with the precautions exercised within global beef markets, requiring only that Canada practice the least stringent BSE mitigation measures of any country in the world where

¹⁷ See *Surveillance for Bovine Spongiform Encephalopathy*, Terrestrial Animal Health Code – OIE – 2006, Appendix 3.8.4.1, Tables 1 and 2.

¹⁸ See *Preliminary Analysis of Interim Final Rules and an Interpretive Rule to Prevent the BSE Agent from Entering the U.S. Food Supply*, USDA Food Safety and Inspection Service, at 47.

¹⁹ *Id.* at 56, 57.

²⁰ *Bovine Spongiform Encephalopathy*, Terrestrial Animal Health Code – OIE – 2006, Chapter 2.3.13, Article 2.3.13.3(3)(b).

BSE exists, the proposal to further relax U.S. import restrictions will effectively establish the United States as a country with safety standards lower than the world norm.²¹

- South Korea, previously our 3rd largest export customer, had informed the U.S. that it delayed resumption of U.S. beef imports because it was concerned that the U.S. is commingling Canadian beef with U.S. beef.²²
- South Korea,²³ Taiwan,²⁴ Singapore,²⁵ and Egypt,²⁶ all important U.S. export markets, either do not allow the U.S. to export Canadian beef or beef derived from Canadian cattle (South Korea, Singapore, and Egypt) or do not allow beef exports from Canada (Taiwan).
- The following countries that have reopened their markets to U.S. beef have done so under the condition that the beef be derived only from cattle less than 30 months of age (Japan's requirement is 20 months of age or younger): Mexico, Taiwan, Egypt, Lebanon, Japan, Hong Kong, Singapore, Korea, Thailand, Costa Rica, Vietnam, and Russia.²⁷
- After the lapse of nearly three years since export markets closed their borders to U.S. beef in response to the discovery of a Canadian-origin cow with BSE in the U.S. in 2003, the volume of U.S. beef exports in the first ten months of 2006 (January – October) was only 944,413,000 pounds – less than half of what it was during the same period in 2003 (2,170,179,000 pounds).²⁸

²¹ See Appendix 1.

²² "Delay in U.S. Beef Exports to South Korea Will Be Resolved 'Within Weeks,' USDA Says," *Daily Report for Executives*, BNA, Inc., No. 113, Tuesday June 13, 2006, at A-19.

²³ *USDA Export Verification (EV) Program: Specified Product Requirements for Bovine – Republic of Korea*, U.S. Department of Agriculture, Agricultural Marketing Service, March 7, 2006, available at <http://www.ams.usda.gov/lsg/arc/ARC1030M.pdf>.

²⁴ *Summary of the situation with Foreign Markets relatively to BSE as of June 21, 2006*, Meat Hygiene Manual of Procedures, Canadian Food Inspection Agency, available at <http://www.inspection.gc.ca/english/anima/meavia/mmopmmhv/chap11/annexre.shtml>.

²⁵ *USDA Export Verification (EV) Program: Specified Product Requirements for Bovine – Singapore*, U.S. Department of Agriculture, Agricultural Marketing Service, January 17, 2006, available at

<http://www.ams.usda.gov/lsg/arc/ARC1030L.pdf>. See also *Export*, Meat Hygiene Manual of Procedures, Canadian Food Inspection Agency, available at

<http://www.inspection.gc.ca/english/anima/meavia/mmopmmhv/chap11/singape.shtml>.

²⁶ *USDA Export Verification (EV) Program: Specified Product Requirements for Bovine – Egypt*, U.S. Department of Agriculture, Agricultural Marketing Service, March 25, 2005, available at <http://www.ams.usda.gov/lsg/arc/ARC1030E.pdf>.

²⁷ See USDA Export Verification (EV) Program requirements for each listed country, available at <http://www.ams.usda.gov/lsg/arc/bev.htm>.

²⁸ See *Cumulative Livestock and Beef Trade*, Livestock, Dairy and Poultry Outlook reports, U.S. Department of Agriculture, Economic Research Service, December 2006 and December 2003, available at <http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1350>.

- In 2003, the United States accounted for 18 percent of global beef exports by major traders.²⁹ After the U.S. detected BSE in a Canadian-born cow in late 2003, and while the U.S. continued to allow Canadian beef products into the U.S., the U.S. global market share fell to 3 percent in 2004.³⁰ In 2005, the USDA expanded Canadian imports to include live cattle and more beef products and the U.S. global market share remained at only 4 percent.³¹ For 2006, the USDA predicts that its 3-year practice of giving access to the U.S. market, to products originating in a country with a globally recognized disease problem, before regaining its lost export markets will result in a global market share of only 7 percent.³² This clearly demonstrates that the ongoing U.S. policy of giving access to the U.S. market before regaining access to export markets continues to harm the United States' ability to restore lost export markets.

United States' beef and cattle exports continue to suffer as a result of USDA's continued mingling of Canadian beef and cattle with U.S. beef and cattle. It would be irrational for the United States to further relax its already lenient import restrictions, which would likely result in further constraints of U.S. exports, without first taking steps to fully restore U.S. beef exports to 2003 levels.

- Neither the USDA nor Canada has obtained international support or acceptance for the more lenient approach the two countries have taken in response to Canada's BSE problem. Currently, Canada practices the least stringent SRM removal practices when compared to other BSE-affected countries; Canada has adopted the weakest feed ban when compared to other BSE-affected countries; and Canada's BSE testing program includes fewer cattle than other BSE-affected countries, even when compared to countries with smaller herd sizes.³³ As a result of Canada's more lenient BSE mitigation measures, the world's beef importing markets have not yet regained confidence in the safety of Canadian beef and cattle. Canadian cattle and beef are currently banned by 35 beef importing countries, including the important U.S. export markets of the Republic of Korea, Singapore, and Taiwan.³⁴ It is irrational for the U.S. to even consider further relaxing its already nominal import restrictions for Canada in the face of ongoing international concerns for the safety of Canadian beef and cattle.

F. The Financial Losses to U.S. Cattle Producers Will Likely be Severe if the U.S. Allows Higher-Risk Canadian Cattle and Beef Into the U.S. Market.

²⁹ *Livestock and Poultry: World Markets and Trade*, U.S. Department of Agriculture, Foreign Agricultural Service, Circular Series, DL&P 2-06, October 2006, available at <http://www.fas.usda.gov/dlp/circular/2006/2006%20Annual/Livestock&Poultry.pdf>

³⁰ *See Id* at 3.

³¹ *Id.*

³² *Id.*

³³ *See Appendix 1.*

³⁴ *See Summary of the Situation with Foreign Markets Relatively to BSE as of June 21, 2006*, Canadian Food Inspection Agency, Meat Hygiene Manual of Procedures, available at <http://www.inspection.gc.ca/english/anima/meavia/mmopmmhv/chap11/annexre.shtml>. *See also Beef Report, Canada's Beef and Veal Products (excl. bison), Exports to All Countries*, Agriculture and Agri-Foods Canada, available at http://ats-sea.agr.ca/stats/beef_e.htm.

- The USDA grossly underestimated the negative financial impact that actually occurred to U.S. cattle producers following the USDA’s 2005 decision to allow cattle into the U.S. from a country with an ongoing disease problem. When USDA issued its 2005 Final Rule to allow Canadian cattle less than 30 months of age into the United States, it projected that the largest decline in U.S. fed cattle prices would occur in the first or second quarter of the year following the resumption of Canadian cattle imports. USDA estimated price declines during the first and second quarter ranging from a low of \$3.10 per cwt. to a high of \$6.05 per cwt.³⁵ However, during the third and fourth quarters following the resumption of Canadian cattle imports, U.S. fed cattle prices fell from \$96.50 per cwt. in December 2005 to \$79.10 per cwt. in May 2006, a decline of \$17.40 per cwt. – nearly three times greater than what USDA projected for the upper boundary of expected losses.³⁶ The negative financial impact to U.S. cattle producers, should the U.S. further relax its already lenient import restrictions, will, again, likely be more severe than what USDA may estimate. To mitigate this inevitability, mandatory country-of-origin labeling must be implemented before any further relaxation of import restrictions is considered to ensure that consumers can differentiate beef produced exclusively from U.S. cattle from beef produced from Canadian cattle.

Appendix I

<u>BSE Affected Countries</u>	<u>Removal of at least brain, skull, vertebral column, etc.</u>	<u>Testing High-risk Cattle (Downers, etc.)</u>	<u>Testing at Normal Slaughter</u>	<u>Meat and Bone Meal (MBM) Ban</u>	<u>Ruminant Blood in Ruminant Feed</u>
EU	> 12 months	> 24 months	> 30 months (> 24 for Germany)	All animal feed	No
Japan	All cattle	All cattle	All cattle	All animal feed	No
Canada	> 30 months	Limited testing > 30 months	None	Ruminant feed only	Allowed

³⁵ *Economic Analysis Final Rule, Bovine Spongiform Encephalopathy: Minimal Risk Regions and Importation of Commodities*, U.S. Department of Agriculture, Animal and Plant Health Inspection Services, December 20, 2004, at 24.

³⁶ *Choice Beef Values and Spreads and the All-Fresh Retail Value*, USDA-Economic Research Service, available at <http://www.ers.usda.gov/Data/meatpricespreads/Data/beef.xls>, downloaded on December 19, 2006.