

Mad Cow and the Agony of the Cattle and Beef Markets

Steve Suppan, Director of Research, Institute for Agriculture and Trade Policy
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Agony at the U.S.-Canadian Border

On December 30 and January 11, the Canadian government announced the new discovery of two more cows that had tested positive for bovine spongiform encephalopathy (BSE or 'mad cow' disease). The announcements set off a furious debate over whether to implement a planned re-opening of the U.S. border on March 7 to trade in Canadian cattle. On December 29, in a 500-page rule, the U.S. Department of Agriculture (USDA) had proposed to re-open a border that had been closed since the December 2003 detection of a BSE infected Canadian cow in Washington state.

During a January 6 U.S. Senate hearing on the nomination of Governor Mike Johanns to become the new Secretary of the USDA, several Senators bitterly complained that the USDA had published the border re-opening rule even after the first BSE detection. The USDA defended its planned re-opening by pointing to a World Animal Health Organization (OIE in its French acronym) guideline developed with the support of the USDA.¹ The guideline was negotiated in anticipation of future BSE cases resulting from better animal surveillance and was designed to facilitate trade.²

According to the guideline, a country can have "less than two [BSE] cases per million [cattle] during each of the last four consecutive 12 month periods"³ and still be considered a "minimal risk country" for purposes of international trade. The recommendation contains other criteria concerning annual risk assessments and enforcement of feed formulation rules. In a January 5 letter to outgoing USDA Secretary Ann Veneman and incoming USDA Secretary Mike Johanns, Public Citizen accused the United States of negotiating the OIE "minimal risk country" category in order to facilitate cattle trade with Canada, while putting public health at risk.⁴ OIE recommendations are presumed to be authoritative by the World Trade Organization. Senator Bryon Dorgan (D-ND) criticized the OIE recommendation as "wrong-headed".⁵

Canadian Cattlemen for Fair Trade will likely invoke the OIE "minimal risk" recommendation in their lawsuit against the United States, filed under the investment chapter of the North American Free Trade Agreement. As of late October 2004, 124

¹ "USDA Rules on Canadian Beef Imports Opposed by Senators, Ranchers", INSIDE U.S. TRADE, January 7, 2005.

² Barry Wilson, "Future BSE incidents should not affect trade", THE WESTERN PRODUCER, November 25, 2004.

³ "Bovine Spongiform Encephalopathy", *Terrestrial Animal Health Code 2004*, Article 2.3.13.5, WORLD ORGANIZATION FOR ANIMAL HEALTH at http://www.oie.int/eng/norms/mcode/en_chapitre-2.3.13.htm.

⁴ "Letter to Ann Veneman and Mike Johanns regarding mad cow disease", Public Citizen, January 5, 2005 at http://www.citizen.org/print_article.cfm?ID=12776.

⁵ "USDA Rules on Canadian Beef Imports Opposed by Senators, Ranchers", INSIDE U.S. TRADE, January 7, 2005.

cattle producers were seeking \$300 million in alleged damages due to the loss of their investment as a result of the border closing.⁶

When announcing the discovery of BSE-infected cows, the Canadian government emphasized that no meat from the infected cattle had made its way into the food system. Consumption of BSE-infected meat is very likely the cause of variant Creutzfeldt-Jakob Disease (vCJD), which has been fatal for the more than 150, mostly European, consumers who have contracted vCJD.

Agony in the U.S. federal inspection system

Little noticed by U.S. Congress and others amidst the furor over whether to re-open the border was the initiation on December 28 of a "personnel misconduct investigation" by the U.S. Food Safety Inspection Service (FSIS) of Charles Painter, chairman of the U.S. federal meat inspectors union. Painter charged that a USDA rule to keep the most likely BSE infected materials from entering the food supply was not being followed by meat plant employees.⁷

Under the USDA rule, specified risk materials (SRMs), such as the skull, brain, and spinal column, from cattle 30 months and older are to be kept out of the food supply. Worldwide, most of the cattle that have been determined to be BSE infected were 30 months or older. Under the USDA rule to re-open the border, only cattle younger than 30 months would be allowed entry into commerce. SRMs are regarded as the epicenters of BSE infection. (However, an article published in a January edition of *SCIENCE* reported that the BSE infection spread to the liver, pancreas and kidneys in laboratory mice with chronic inflammation in those organs.⁸)

Painter, on the basis of reports he had received from federal inspectors, charged that plant employees did not mark the head of cattle about to be slaughtered that were older than 30 months to keep them out of the food supply. Painter wrote a December 8th letter to FSIS offering to discuss how to improve design and enforcement of the USDA's BSE policy.⁹ Rather than respond to Painter's letter, FSIS sent an investigator to Painter's house unannounced on December 23 to demand the names of his informants and other details, which Painter either didn't know or refused to give, citing past instances of FSIS retaliation against its inspectors.

Felicia Nestor, a food safety consultant whose work is now funded by Public Citizen, also was a source of information about plant employee violations of USDA rules. She has worked for ten years with federal inspectors who have tried to inform their supervisors of USDA rule violations by plant employees. Nestor believes that the FSIS investigation against Painter is another defense of its deregulation of inspection under the Hazardous

⁶ Mary MacArthur, "Cattle producers finalize list for trade challenge", THE WESTERN PRODUCER, November 4, 2004.

⁷ Carole Sugarman, "Inspectors' union chairman under investigation by FSIS", FOOD CHEMICAL NEWS, January 3, 2005.

⁸ Sandra Blakeslee, "Study Finds Broader Reach For Mad Cow Proteins", THE NEW YORK TIMES, January 21, 2005.

⁹ The letter is posted at <http://www.citizen.org/documents/NJCletter-12-8-04.pdf>

Analysis Critical Control Point (HACCP) program that allows plant employees to implement USDA rules with minimal government oversight. (In June 2000, a U.S. Circuit Court in Washington, DC ruled that the FSIS's regulatory design for HACCP in slaughterhouses violated the U.S. Meat and Poultry Inspection Acts. FSIS has yet to redesign HACCP to respond to the Court's ruling.)

FSIS responded in a December 28 email to FOOD CHEMICAL NEWS that "Mr. Painter has levied totally unsubstantiated and non-specific charges pertaining to SRM removal". It said that FSIS veterinarians and supervisory personnel verified the age of cattle by looking at documentation and in the absence of valid documentation, "FSIS relies solely on its Public Health veterinarians to make age determination on cattle" by looking at their teeth. Painter said that according to his sources, supervisory personnel sometimes told federal inspectors in slaughterhouses, "Let it go, this is not your job, don't look at the teeth" to re-check the age of a cow.

Painter said that he expects FSIS will suspend him and that "It won't be the first time for me". At present, FSIS has not announced that it will seek to investigate the kinds of USDA violations Painter outlined in his December 8th letter.

Mad cow and the international beef market

On January 14, the president of the Ontario Cattlemen's Association wrote in an "Open Letter to American Cattle Producers" that "Across Canada, cattle producers have lost more than \$5 billion -- think of the effect this type of devastation would have on cattlemen in your own country if another case is found in the U.S." The premier of the Canadian province of Alberta has suggested that the entire Canadian cattle herd might have to be culled in order to regain the confidence of international beef markets.¹⁰ However, the economic devastation of Canadian cattle owners has not changed the minds of many U.S. cattle producers about keeping U.S. borders closed against Canadian cattle. U.S. cattle producers have their own worries about the export market, as well as the U.S. market for beef.

The detection of a BSE infected cow in December 2003 in Washington state resulted in ongoing import bans on U.S. beef in several countries, including Japan, the largest U.S. beef importer. The fact that the cow came from a Canadian herd has lead some to assume that the United States is BSE free. An unpublished study from Kansas State University estimates that the United States has lost 5,000 jobs and \$1.9 billion in beef sales because of the import bans.¹¹

Despite repeated assurances by U.S. officials that a Japanese market re-opening was imminent¹², in mid-January, Japanese officials again postponed the re-opening and demanded more information about U.S. BSE safeguards. Japan is demanding that the United States provide rigorous and complete documentation to show that U.S. beef

¹⁰ Peter Menyasz and Derrick Cain, "Canada to Comply, Assist With U.S. Probe Into Mad Cow Cases; Border Opening Eyed", BNA, Inc., January 14, 2001.

¹¹ "Closed border hurts U.S.: study", THE WESTERN PRODUCER, January 6, 2005.

¹² E.g. Sally Schuff, "Beef industry hails U.S.-Japan trade agreement", FEEDSTUFFS, October 29, 2004.

exports to Japan come from cattle less than 20 months of age. Japan developed such a system for its own cattle following the detection of BSE there in 2001. The age of the youngest known BSE infected cow, detected in Japan, was 21 months.¹³ The Japanese government does not accept inspector determination of cattle age by inspection of bottom permanent teeth, so documents tracing the cow from birth to slaughter are required.¹⁴

The U.S. countered with a proposal that the 20-month threshold be provisional and eventually be raised to 30 months. In October, the Japanese agriculture minister rejected the U.S. proposal, stating, "We are confident that our safety policy is right. We will not adjust to their stance. We want them to accept our policy".¹⁵

The U.S. is now proposing to ship beef judged in terms of tenderness, rather than in terms of meeting the Japanese requirement to document that the cattle from which the beef comes be no older than 20 months. "Tenderness" is a food quality guideline determined by industry. By shifting the issue from food safety to food quality, the U.S. government may antagonize the Japanese consumer. Although more tender beef generally comes from cattle younger than 20 months, the determination of tenderness by meat exporters is highly subjective and prone to error.

Because the U.S. and Canadian cattle herds have been integrated by transnational meat packers searching for the cheapest raw materials for their meat products, the discovery of the third infected cow on January 11 is a strong disincentive for re-opening the border and for the Japanese to resume importing. As John Munsell, a small Montana meatpacker, wrote in a January 12 letter to MeatNews, "Japan has insisted for months that one condition of resuming imports of U.S. beef is that America can guarantee that all such imports are of American origin, excluding foreign-born beef, including Canadian. Once the U.S. border is open for imports for Canadian live animals, even the USDA will be hard pressed to construct an adequate paperwork system to scientifically validate that all our exported beef products are devoid of foreign born animals". A major obstacle is that the USDA and meatpackers have successfully blocked implementation of the mandatory country of origin labeling legislation passed by the U.S. Congress in 2002.

On January 10, the Ranchers Cattlemen Legal Action Fund (R-CALF) sued the USDA to prevent the re-opening of the border, charging that the USDA rule-making process violated the Administrative Procedure Act and other laws, which governs federal rule making. For example, R-CALF charges that the USDA undertook no studies to ensure that Canadian feedlots and feed manufacturers followed rules to prevent the use of animal protein in feed. Such feed is thought to cause Mad Cow.

Support for re-opening the border has been articulated in the belief that since the U.S. and Canadian beef markets have been integrated and are regulated by similar rules, Canadian and U.S. herds are equally safe. Mark Dopp, of the industry-funded American Meat

¹³ Pete Hisey, "Japan postpones U.S. beef ban decision, asks for more documents", Meatingplace.com, January 21, 2005.

¹⁴ Barbara Duckworth, "Cattle age becomes priority", THE WESTERN PRODUCER, November 11, 2004.

¹⁵ "BSE tests spark clash" (Reuters) in THE WESTERN PRODUCER, October 28, 2004.

Institute (AMI), contends, "The U.S. and Canada have implemented state-of-the-art meat inspection and animal disease prevention systems. As we look across the border, we see near mirror images of one another".¹⁶ AMI has filed a suit to open the border and remove the USDA ban on importing cattle over 30 months of age, contending that the ban is "scientifically unsupportable and is, therefore, arbitrary, capricious and contrary to law in violation of the Administration [*sic*] Procedure Act."¹⁷

Without reviewing all the legal arguments made for and against opening the border, it is worth noting that everyone involved is invoking "science". AMI believes that "science and international beef and cattle trading guidelines set by the Office of International Epizootics (OIE) both say that the U.S. should permit importation of Canadian cattle regardless of age". R-CALF's Bill Bullard argues that the USDA ignored science and tried to get OIE to reduce its standards regarding feed formulation in order to get Canada declared a "minimal risk country".¹⁸

There are no OIE guidelines nor is there "science" to indicate that cattle over 30 months of age are as safe to trade as are cattle under 30 months. Rather the OIE guidelines are a precautionary measure based on a combination of probabilistic mathematics and observed experience of the history of Mad Cow infections. When there is so much that is not known about Mad Cow, to suggest that a decision to open a market to the cattle and beef trade is based on certain science is an abuse of scientific method.

The Bottom Line of Mad Cow

U.S. and Canadian veterinary officials said, following the preliminary detection on December 30 of the second BSE infected Canadian cow, the scheduled border opening would be unaffected. But with the discovery of the third BSE infected cow, the rumor in Washington is "Career folks at APHIS (the Animal Plant and Health Inspection Service) say they are going to kill the [December 29th] rule".¹⁹ If the rule is killed and the border remains closed, are consumers any safer than before it was closed?

On January 11, in response to the discovery of the third Canadian BSE infected cow, Dr. Ron DeHaven, Administrator for the Animal and Plant Health Inspection Service (APHIS), stated, "As always, protection of public and animal health is our top priority". Dr. DeHaven announced that the results of an APHIS investigation into Canadian regulatory system compliance "will be used to evaluate appropriate next steps in regard to the minimal risk rule published last week", i.e. the rule that would have opened the border to Canadian cattle.

Whether or not the border is opened, much, much more will have to be done to protect public and animal health. The record suggests that the USDA, in many cases, has been an

¹⁶ "AMI files suit opposed to USDA cattle ban", FEEDSTUFFS, January 3, 2005.

¹⁷ Ibid.

¹⁸ "Canadian BSE Case Reveals Danger of Ignoring International Science; USDA Continues to Plan to Expose U.S. Consumers to Unacceptable, Avoidable Risks", Press Release, R-CALF UNITED STOCKGROWERS OF AMERICA, January 16, 2005.

¹⁹ "USDA Considers Backing Off Reopening Border To Beef", CONGRESS DAILY P.M., January 11, 2005.

obstacle to the protection of public and animal health. USDA has had more than eight years to find better BSE procedures, implement more stringent standards, design more probing research and convince its field staff that public health is the department's top priority. What does the record show?

1. Federal meat inspectors, the only eyewitnesses working in the public interest in meat slaughter plants, are intimidated and pressured to remain silent rather than report violations of federal standards on BSE to prevent entry of potentially unsafe substances into the food supply.
2. USDA justifies its decision to allow entry of Canadian cattle into the USDA based on guidelines for international trade in livestock. The OIE is not a public health agency and its recommendations have no scientific validity for health policy.
3. The new Swiss research confirms that BSE can infect animal organs that USDA currently allows to enter the food supply. Clearly, USDA standards need to be reviewed and revised to broaden the definition of specified risk material (SRMs).

For those who think that the U.S. border should be closed because Canadian enforcement of feed rules to prevent BSE is inferior to U.S. enforcement, an upcoming General Accountability Office (GAO) report in February that evaluates compliance with feed formulation rules may well prove disappointing.²⁰ A January 2002 GAO report found that the Food and Drug Administration could not provide documentation to demonstrate widespread compliance with its 1997 feed formulation rules.²¹ The five-year lapse in documented compliance means that the older cattle slaughtered for hamburger may have consumed FDA prohibited feed containing ground remains of ruminant animals. Such feed is the most likely cause of BSE infected cattle and consumers eating those hamburgers produced from illegal feed likewise were exposed.

In other words, U.S. compliance with its feed formulation rules may be no better or even worse than Canadian compliance. If the United States hasn't detected a BSE infected cow from one of its herds, the basis of its surveillance and inspection design and implementation is likely defective. Such is the conclusion of both BSE experts²² and non-government organizations that work with federal meat inspectors and veterinarians.²³

If the industry argument against rigorous surveillance, inspection and documentation systems is that they are too expensive, consumers have already indicated that they are willing to pay more for beef certified as BSE free. A February 2004 survey by

²⁰ Sally Schuff, "Second GAO report on BSE rule expected to be released in February", FEEDSTUFFS, December 27, 2004.

²¹ "Mad Cow Disease: Improvements in the animal feed ban and other regulatory areas would strengthen U.S. prevention efforts (GAO-02-183), January 2002 at <http://www.gao.gov>.

²² Sally Schuff, "International panel stuns industry with recommendations for BSE program" and "Industry has strong reaction to panel's finding", FEEDSTUFFS, February 9, 2004

²³ "Call to Action: Mad Cow Crisis Exposes Systemic Flaws in Food Safety", GOVERNMENT ACCOUNTABILITY PROJECT, PUBLIC CITIZEN, COMMUNITY NUTRITION INSTITUTE, INSTITUTE FOR AGRICULTURE AND TRADE POLICY and GLOBAL RESOURCE ACTION CENTER FOR THE ENVIRONMENT, January 14, 2004 at <http://www.citizen.org>

Consumers Union showed that 77 percent of beef eaters would pay the extra costs of certification. One third of the 1,085 surveyed on-line said they would eat less beef or stop eating it as a result of the December 2003 detection of BSE in the United States. Almost 90 percent of respondents thought that USDA meat recalls should be mandatory, rather than voluntary, as they are now. The American Meat Institute dismissed the survey results.²⁴

The protection of consumer health and the expression of consumer preferences notwithstanding, the headlines on BSE keep coming back to trade. To protect U.S. cattle ranchers and overseas markets, the first step is to get USDA's own regulatory house in order to prevent the spread of BSE here in the United States. By denying the system's shortcomings and brushing important issues under the rug, the USDA is recklessly putting the U.S. cattle market, as well as consumers, in peril. It is time for the USDA to start practicing what it preaches – making protection of public health and animal health the top priority.

²⁴ Laura Gilcrist, "Poll: most are willing to pay more for BSE-test beef", FOOD CHEMICAL NEWS, February 2, 2004.

