

**PUBLIC CITIZEN \* GLOBAL RESOURCE ACTION CENTER FOR THE ENVIRONMENT**

January 5, 2004

Docket No. 03-080-1  
Regulatory Analysis and Development  
PPD  
APHIS  
Station 3C71  
4700 River Road Unit 118  
Riverdale, MD 20737-1238

Dear Secretary Veneman:

We are writing to oppose the Proposed Rule<sup>1</sup> to permit the importation of live ruminants and ruminant products from certain countries with diagnosed cases of Mad Cow Disease, including Canada. The proposed rule is a response to an embarrassing trade problem. Until now, the government has stood by the ironclad principle of not accepting ruminants or ruminant products from countries with cases of bovine spongiform encephalopathy (BSE), otherwise known as Mad Cow Disease. To our knowledge, the United States has never lifted a ban on the import of ruminants or ruminant products from countries with indigenous BSE outbreaks. As long as the countries with single cases of BSE (Austria, Finland, Greece and Israel<sup>2</sup>) were trivial (or non-) exporters of ruminants to the United States, this principle could be maintained and alluded to as a policy grounded in both sound science and the recommendations<sup>3</sup> of the Office of International Epizootics (OIE).\*

What a difference a day makes. On May 20, 2003, Canada, from which the United States imports more cattle than from the rest of the world combined (1.7 million head from Canada of an international total of 2.5 million head imported in 2002 [68%]),<sup>4</sup> reported its first indigenous case of BSE. Because United States Department of Agriculture (USDA) regulations only permit the importation of ruminants from "BSE-free" countries (the safest of five levels described by the OIE), exports from Canada were appropriately banned on an emergency basis. But, as is so often the case, trade considerations would trump public health ones in the Proposed Rule. Suddenly, it seems, the OIE recommendations themselves are no longer grounded in sound science and require reconsideration. Now we are told that it has become acceptable to import ruminants from countries at "minimal risk" for BSE (the third of the five OIE levels). And, by a stroke of luck, Canada itself just happens to be a "minimal risk" country. Problem solved. (Incidentally, imported Canadian cattle only represent 2% of the number slaughtered annually in the U.S.,<sup>4</sup> so it does seem that U.S. consumers could manage without Canadian beef.)

It almost goes without saying that the events of the past two weeks, in which the source of the United States' only case of BSE according to the USDA appears to have been a herd in Canada, only strengthens the case for not importing Canadian ruminants or ruminant products. For,

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\* The OIE is the World Trade Organization- recognized international standard-setting organization for animal health and related issues

despite the fact that the Canadian and U.S. cattle industries are often described as integrated, the Canadians now appear to have detected two indigenous (as opposed to imported) BSE cases among 13.4 million cattle, compared to no indigenous cases among 96.1 million U.S. cattle,<sup>4</sup> despite similar disease testing rates. In public health, the purpose of quarantines or other measures that restrict the movement of potentially disease-carrying plants or animals from areas of high prevalence to those of lower prevalence is to prevent the prevalences from moving toward equality over time. Allowing the unlimited import of Canadian cattle greatly increases the likelihood that more cases of BSE will be found in this country.

Current U.S. regulations only permit the importation of ruminants or ruminant products from BSE-free countries. USDA maintains a list of countries with actual cases of BSE as well as those with inadequate surveillance systems or less stringent import restrictions than the USDA deems desirable to reliably preclude BSE.<sup>5</sup> According to the OIE, a country with a case of BSE cannot be considered “BSE-free” until it has had a) no indigenous cases for seven years; and b) a feed ban that has been effectively enforced for at least eight years.

Canada meets neither criterion. Regarding the first criterion, two cases originating in Canada have now been identified (in addition to an imported case in 1993). In neither case has the source of infection been clearly identified and the possibility thus exists of more, asymptomatic cases lurking in Canadian herds. It is also possible that additional BSE-infected cattle have already gone to slaughter, since most cattle are slaughtered before BSE-infected cattle typically develop symptoms. With regard to the second criterion, Canada has not effectively enforced a feed ban for the required eight years. In the first place, the Canadian feed ban only went into effect in 1997. In the second, compliance has been less than ideal. As late as 2000-2001, 35% of Canadian feed mills were found to be non-compliant, generally for record-keeping violations.<sup>6</sup>

Instead, the United States proposes to relax its standards and permit the importation of certain ruminants and ruminant products from “minimal risk” countries. According to the OIE, a number of criteria need to be met in order to receive “minimal risk” status. These include: a) having conducted a risk assessment of BSE risk; b) having an “effectively enforced” feed ban for at least eight years; and c) not having had an indigenous case for seven years. We have already demonstrated that criteria b and c have not been met. While it is true that a risk assessment has been conducted, it reached the conclusion that “993 times out of a thousand, there would be no BSE infection in Canada as the result of importation of cattle from the UK and Europe from 1979 to 1997.”<sup>7</sup> It is not enough to simply do a risk assessment; it should also be accurate. After two cases of indigenous BSE (rather than the heavily predicted zero), this claim cannot be made with seriousness for the Canadian risk assessment.

To allow Canada to be considered “minimal risk” (allowing importation from the class to which Canada actually belongs [“moderate risk”] might not pass political muster), thus requires a creative reimagining of the OIE guidelines. Thus USDA asserts in its Proposed Rule that, rather than literally following the OIE guidelines it has heretofore found acceptable, “it is more appropriate to evaluate the overall combined effect” of a series of ill-defined factors when determining a country’s status. For example, rather than require a feed ban to be in place for eight years, as required by the OIE guidelines, USDA prefers to assess “the sum total of control mechanisms in place at the time of the diagnosis of BSE and the actions taken subsequently.”

No method for enumerating or weighing these mechanisms is put forth. USDA also notes the supposed “high level of compliance” with the Canadian feed ban, without citing a single statistic, let alone the poor compliance we were able to learn from materials available on the Canadian Food Inspection’s own website (cited above). Finally, USDA makes much of the fact that the first Canadian BSE case (and apparently the second) was born prior to the implementation of the Canadian feed ban. This, too, is not convincing. What matters is not when an infected animal was born (mere months before the feed ban for the second indigenous Canadian case and not much longer for the first), but the total exposure to potentially contaminated feed in its lifetime. Both animals must therefore have lived most of their lives in the post-feed ban period. Infection during this time, when the ban was most likely not strongly enforced, is a strong competing explanation for when the infection occurred.

These inconsistencies seem not to matter to USDA or, for that matter to the Canadian Food Inspection Agency. In what is not likely to be a coincidence, CFIA now has a webpage trumpeting the title “Canada: a minimal BSE risk country”<sup>8</sup> and making many of the same arguments as USDA. But the Canadians are not sticklers for consistency themselves since, to our knowledge, they have not accepted any ruminants or ruminant products from countries that are not BSE-free.

U.S. policy with respect to the importation of ruminants and most ruminant products from countries that are not BSE-free has to date been very straightforward: since 1989, we have not accepted them. A justifiable exception to this policy was made for the single case of BSE diagnosed in Canada in 1993, because that case occurred in an animal imported from Britain. But to lower the bar to importation in the midst of an outbreak of unclear size in which one of the clearest findings is that the infected animal came from the very country whose products would now more easily be imported seems irresponsible at best.

Yours sincerely,

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<sup>1</sup> 68 Fed Reg 62386-405. November 4, 2003

<sup>2</sup> Food Standards Agency. Confirmed cases of BSE worldwide. Available at: <http://www.food.gov.uk/bse/facts/worldwidewif/incidence>. Last updated August 11, 2003.

<sup>3</sup> Office of International Epizootics. Bovine Spongiform Encephalopathy. Terrestrial Animal Health Code 2003. Chapter 2.3.13. Available at [http://www.oie.int/eng/normes/mcode/A\\_00068.htm](http://www.oie.int/eng/normes/mcode/A_00068.htm).

<sup>4</sup> Economic Research Service. Background data for BSE coverage. Available at <http://www.ers.usda.gov/news/BSECoverage.htm>.

<sup>5</sup> 9 CFR 94.18 and 9 CFR 94.404(a)3

<sup>6</sup> Animal, Plant and Food Risk Analysis Network. Risk Assessment on Bovine Spongiform Encephalopathy in Cattle in Canada. Ottawa: December 2002. Available at: <http://www.inspection.gc.ca/english/sci/ahra/bseris/bserise.pdf>.

<sup>7</sup> Morley RS, Chen S, Rheault N. Assessment of the risk factors related to bovine spongiform encephalopathy. *Rev. Sci. Tech. Off. Int. Epiz* 2003;22:157-78.

<sup>8</sup> Canadian Food Inspection Agency. Canada: a minimal risk BSE country. Available at: <http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/minrise.shtml>.