

**AGREEMENT
ESTABLISHING AN INTERNATIONAL FOOT AND MOUTH DISEASE
VACCINE BANK**

DONE AT LONDON ON 26 JUNE 1985

[1985] ATS 19

Documents Tabled on 2 December 2003:

National Interest Analysis

Text of the Agreement

Annexures:

Consultations

Status List



NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

Agreement Establishing an International Foot and Mouth Disease Vaccine Bank, done at London 26 June 1985 [1985] ATS 19.

Date of Tabling of Proposed Treaty Action

1. 2 December 2003

Nature and Timing of Proposed Treaty Action

2. The proposed treaty action is for Australia to denounce the Agreement Establishing an International Foot and Mouth Disease Vaccine Bank (the Agreement). Under Article XI of the Agreement, a Participant may denounce the Agreement by giving at least twelve months written notice to the Foreign and Commonwealth Office of the United Kingdom, expiring on any anniversary of the date of commencement of operation of the International Foot and Mouth Disease Vaccine Bank (the Bank). The Bank commenced operation on 26 June 1985. As such, any notice given before 26 June 2004 will take effect on 26 June 2005.
3. The Bank will cease operation from 30 June 2004. Any denunciation by Australia should take effect after the Bank ceases operation.

Overview and National Interest Summary

4. The Bank was established under the Agreement in 1985. The Bank holds concentrated antigens of seven strains of Foot and Mouth Disease (FMD) virus sufficient to produce 500,000 doses of vaccine for each strain. The Bank also has a small FMD vaccine formulation plant.
5. When the Bank ceases operating from 30 June 2004, Australia's rights and obligations under the Agreement will effectively end. The Commission established by the Agreement (the Commission) has already resolved to end the functioning of the Bank.
6. Under the terms of the Agreement, termination is not automatic upon the Bank ceasing operation. This means that Australia will technically remain a party to the Agreement. For the sake of completeness, it is in Australia's interest to take the further step and denounce the Agreement, once the Bank ceases operation.

Reasons for Australia to take the Proposed Treaty Action

7. Pursuant to Article XII of the Agreement, the Commission established by the Agreement ("the Commission") unanimously decided on 18 May 2003 that the Bank will cease operation from 30 June 2004. This is because, in the opinion of the Commission, the Bank is no longer able to meet the needs of its members for the supply of high quality, safe and effective FMD vaccines.
8. Once the Bank ceases operation, Australia (together with all other Participants) will no longer have the right to request a vaccine from the Bank. In effect, the rights and obligations arising under the Agreement will cease. The only surviving right or obligation is that the Participants will share the receipt of any money in excess, or the payment of any money in deficit, in the accounts of the Bank upon the Bank ceasing operation.
9. Whilst the cessation of the operation of the Bank effectively ends the rights and obligations under the Agreement, the terms of the Agreement do not provide that it is thereby terminated. Australia will remain party to a 'shell' of an agreement.
10. Australia could do nothing and remain party to the Agreement, and very little substantive consequence will occur. However, the Agreement will still technically be 'on the books', and so it would be desirable for Australia to formally denounce the Agreement.
11. It will be desirable for Australia to remain party to the Agreement until the Bank ceases operation on 30 June 2004. This will allow Australia to participate in the winding up of the Bank, including sharing in any assets of the Bank that are distributed amongst the Participants.

Obligations

12. Cessation of the operation of the Bank will effectively end most of Australia's obligations under the Agreement. The primary obligation of Participants under the Agreement is to make annual contributions pursuant to Article X towards the costs of operation of the Bank in proportion to their vaccine drawing rights.
13. Australia will still be obliged under Article XII (5) to pay to the Administering Authority (i.e. the UK Department for the Environment, Food and Rural Affairs, which is the successor department to the UK Ministry of Agriculture, Fisheries and Food) any amounts due by Australia for the cost of operating the Bank (including its winding up) subsequent to the last contribution made under Article X(1) until the date of cessation. If the residual funds on winding up exceed the costs, Australia will receive a payment of the residue in proportion to our contributions.
14. The primary right of members of the Agreement is drawing rights for a specified number of doses (500,000 doses in Australia's case) of the seven strains of FMD vaccine.
15. Importantly, it is the cessation of the operation of the Bank, not the denunciation of the Agreement, that puts an end to these rights and obligations. There will be no rights or obligations remaining when it comes time for Australia to denounce the Agreement. That is, the proposed treaty action of denouncing the Agreement will have no effect on the rights or obligations under the Agreement. Denunciation of the Agreement merely amounts to a formal act that has little practical effect, apart from ensuring that Australia is not party to a meaningless agreement.

16. Australia is currently taking measures to secure an alternative supply of FMD vaccine, should it be required. These measures include an independent commercial arrangement with an international vaccine manufacturer, and participation in international efforts to develop a new multinational arrangement.

Implementation

17. The act of denouncing the Agreement will require Australia to submit a written notification to the Foreign and Commonwealth Office of the United Kingdom, and send a copy of that notice to the United Kingdom Department for the Environment, Food and Rural Affairs.

Costs

18. Denunciation of the Agreement will not impose any financial costs on Australia.

19. Following on from the cessation of the operation of the Bank, the preliminary estimate of the contribution from Australia under Article XII (5) is not expected to exceed AUD\$50,000. (Australia's annual contribution in 2003/04 towards the cost of operation of the Bank [including the annual administration fee to the Administering Authority] was AUD\$165,714.)

20. This contribution will cover the costs of operating the Bank from the start of the Bank financial year until it is wound up (the Bank financial year is from 1 March to 28 February). These costs include staffing, support services, administration fee and consumable for the period as well as the specific costs of winding up, particularly for the disposal of the antigens and miscellaneous items (bottles, cartons, etc) and audit fees.

Consultation

21. An independent expert report on future options for supply of FMD vaccine jointly commissioned in 2000 by the Department of Agriculture, Fisheries and Forestry and the New Zealand Ministry of Agriculture and Fisheries recommended that Australia (and New Zealand) should leave the Bank and enter into a new arrangement with a commercial vaccine producer. This report was considered by an industry-government workshop on 18 April 2001 and subsequently on the 26 April 2001 by the Veterinary Committee of the Primary Industries Standing Committee with participants from all States and the Northern Territory. The meeting noted the workshop outcome that the Bank posed too great of a risk and Australia should develop an independent FMD vaccine supply arrangement.

22. An Industry/Governments FMD/BSE Policy Forum Meeting on 15-16 November 2001 identified, among other things, the need for Australia to improve access to an adequate supply of FMD vaccine that meets current regulatory standards and agreed specifications. The Forum also tasked Animal Health Australia to develop a business plan and to develop a tender document for supply of an appropriate number of doses from suitable supplier(s). The Forum also agreed that Australia would continue to be involved in the Bank until new commercial arrangements were in place. The Primary Industries Ministerial Council endorsed the recommendation in May 2002. (See Annexure.)

23. Subsequently, Animal Health Australia convened an industry-government meeting on 25 November 2002. That meeting endorsed the specifications for an independent supply of FMD vaccine for Australia in an emergency response to an outbreak of FMD. The meeting also agreed to recommend that the emergency FMD vaccine arrangements be cost shared by industry (20%) and government (80%). (These proportions being consistent with the Emergency Animal Disease Response Agreement (EADRA) provisions for this disease.)

24. The Primary Industries Ministerial Council in April 2003 agreed that the future commercial independent FMD vaccine arrangements be cost shared by governments and industry on an 80:20 basis. The governments' contributions will be shared equally by the Australian Government (40% of total costs) and the States and Territories collectively (40% of total costs) with contributions of individual jurisdictions calculated using the established EADRA criteria for FMD emergency animal disease responses. (Refer to Annexure).

25. Animal Health Australia has been progressing the funding agreement with the Australian Government, State and Territory governments and the relevant livestock industry bodies. AHA has also undertaken a tendering and selection process for supply of the antigens in conjunction with funding contributors and is negotiating a supply contract with a preferred tenderer. It is anticipated that the contractual arrangements for both funding and supply will be in place before the end of 2003.

Regulatory Impact Statement

26. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Review Statement is not required as the action is minor/machinery of government and does not impact on business.

Future Treaty Action

27. The Commission has initiated consultations between the Participants on possible future arrangements for international cooperation on the purchase, storage and formulation of FMD vaccine. It is envisaged that any such agreement would define the scope of the arrangement, establish a management body and appoint an Administering Authority. The Administering Authority would be empowered to enter into contracts with one or more commercial suppliers of FMD vaccine to manufacture and store concentrated FMD antigen and, on request, to formulate the antigen into ready-to-use vaccine. The Administering Authority may also be empowered to enter into other contracts for FMD-related services.

Withdrawal or Denunciation

28. Article XI (1) provides for denunciation of the Agreement.

Contact details

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