

## Chapter 2

# Background to the decision to review Australia's policy for the importation of beef and beef product

### Introduction

#### *Bovine Spongiform Encephalopathy*

2.1 Bovine Spongiform Encephalopathy (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).<sup>1</sup> Since BSE was first identified as a major risk to human health, Australia has implemented arrangements to protect Australians from exposure to BSE via the human and animal food chains. There has been no instance of BSE infected cattle in Australia and no case of vCJD has yet been diagnosed in Australia.<sup>2</sup>

#### *Previous BSE food safety policy*

2.2 Since 2001 Australia has implemented a ban on beef imports from countries reporting any BSE cases and those countries exposed to high risk factors, together with a range of other measures to protect the Australian population from BSE contamination. 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.<sup>3</sup>

2.3 Under the 2001 policy, countries that have never reported a BSE case in their cattle herd could apply to FSANZ for BSE risk assessment. The Australian BSE Country Classification Committee assigned countries a Category A, Category B or Category C status, depending on the level of assessed BSE risk, based on each country's technical submissions. Differing food safety measures were then applied to beef imports from each category. The Australian Quarantine Inspection Service (AQIS) conducted checks at the border to verify that the correct certification was provided for the country category for each consignment.<sup>4</sup>

2.4 The Department of Agriculture, Fisheries and Forestry (DAFF) told the committee that the assessment approach used in the 2001 policy had some inherent weaknesses because it did not include a mechanism for in-country inspections to

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1 Department of Foreign Affairs and Trade, *Submission 3*, p.1.

2 Professor John Mathews, *Review of Scientific Evidence to Inform Australian Policy on Transmissible Spongiform Encephalopathies (TSEs)*, 9 October 2010, p. 20 and p. 22

3 Department of Foreign Affairs and Trade, *Submission 3*, p. 1.

4 Department of Agriculture, Fisheries and Forestry, *Submission 4*, p. 5.

verify information provided for desk audit and the methodology used is now outdated.<sup>5</sup>

2.5 DAFF advised the committee that when Australia announced its policy in 2001, "departments recognised that the policy was conservative and that scientific understanding and management of the risks of BSE were progressing"<sup>6</sup>. DAFF told the committee:

A verbal commitment was given to trading partners that the policy would be reviewed in 2003, two years after implementation. It is a matter of public record that a scientific review of the policy commenced in 2003 and that the previous government considered proposals to update the policy in 2005 and 2007, but the policy was not changed.<sup>7</sup>

### ***Legislative and administrative framework within which the ban was implemented***

#### *Development of food standards*

2.6 The Australian food safety policy on BSE is reflected in requirements set out in the Australian New Zealand Food Standards Code Standard 2.2.1.11 – Meat and Meat Products.<sup>8</sup> The Code states:

Bovine meat and meat products must be derived from animals free from bovine spongiform encephalopathy.<sup>9</sup>

2.7 The standard applies equally to both domestic and imported meat and meat products.<sup>10</sup> A copy of the standard is provided at Appendix 3.

2.8 Food Standards Australia New Zealand (FSANZ) is responsible for the development of food standards. Food standards have the force of law. Responsibility for enforcing and policing food standards rests with the States and Territories in Australia and with the New Zealand Government in New Zealand. The standards apply to both domestic and imported foods.

#### *Determination of risk foods*

2.9 The Commonwealth enforces the code in relation to food imported into Australia through the *Imported Food Control Act 1992*. FSANZ determines the risk

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5 Department of Agriculture, Fisheries and Forestry, *Submission 4*, p. 5.

6 Department of Agriculture, Fisheries and Forestry, *Submission 4*, p. 4.

7 Department of Agriculture, Fisheries and Forestry, *Submission 4*, pp 4-5.

8 Department of Health and Ageing, *Submission 2*, p. 1.

9 Australia New Zealand Food Standards Code, Issue 103, p. 6, available on Food Standards Australia New Zealand website:  
[http://www.foodstandards.gov.au/srcfiles/Standard\\_2\\_2\\_1\\_Meat\\_v103.pdf](http://www.foodstandards.gov.au/srcfiles/Standard_2_2_1_Meat_v103.pdf) viewed 1 March 2010.

10 Department of Agriculture, Fisheries and Forestry, *Submission 4*, p. 4.

food poses to public health and safety following a food safety risk assessment. FSANZ categorises food as 'risk' if it has the potential to pose a medium to high risk to public health.<sup>11</sup> FSANZ advises AQIS of the risk category for food and this determines the frequency with which it will be inspected and the appropriate testing regime to be implemented under the Food Inspection Scheme.<sup>12</sup> Risk foods are listed in a schedule to the *Imported Food Control Order 2001*. Beef and beef products from all countries are classified as 'risk' food for the purposes of the Food Inspection Scheme. There has been no change to this categorisation as a result of the change in Australia's BSE food safety policy.

#### *Other import requirements for beef and beef products*

2.10 Biosecurity Australia is responsible for developing and reviewing animal quarantine measures for the importation of animals and animal products into Australia. The importation of beef and beef products must meet animal quarantine requirements for foot and mouth disease and rinderpest. Australia also enforces bans on feeding animal materials such as beef to cattle.<sup>13</sup>

### **Proposal to change Australia's BSE food safety policy**

2.11 On 20 October 2009, the Minister for Trade, the Hon. Simon Crean, the Minister for Agriculture, Fisheries and Forestry, the Hon. Tony Burke, the Minister for Health, the Hon. Nicola Roxon and the Parliamentary Secretary for Health, the Hon. Mark Butler announced that Australia would be adjusting its imported food policy settings regarding BSE with effect from 1 March 2010. In announcing the change the Ministers stated that there would be no change to the Australian food standard requirement that beef and beef products are to be derived from animals free of BSE and that the current enforcement measures will continue to apply.<sup>14</sup>

2.12 The new policy would permit the importation and/or sale of certain beef and beef products under agreed conditions from countries that have reported cases of BSE. In its submission to the inquiry, the Department of Health and Ageing (DOHA) advised the committee that the policy had moved from an exclusion system to an assessment system whereby the human health risk from beef from all countries is

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11 Risk foods are subject to a 'test and hold' direction and are not released for sale until test results are known. Consignments of risk food which fail inspection and therefore do not meet Australian standards cannot be imported. These foods must be brought into compliance otherwise the food will be re-exported or destroyed. Any consignments that fail result in a return to 100 per cent testing of that product until a history of compliance is re-established for the producer of the food. Refer: <http://www.daff.gov.au/aqis/import/food/inspection-scheme>

12 The Food Inspection Scheme is provided for in Division 2 of Part 2 of the *Imported Food Control Act 1992* and Part 3 of the *Imported Food Control Regulations 1993*.

13 Dr Andrew Carroll, Chief Veterinary Officer, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 14 December 2009, p. 104; 25 February 2010, pp 33-35.

14 Joint media release, 20 October 2009, *Australia refines its food safety rules for imported beef and beef products*, DAFF09/341BJ.

evaluated.<sup>15</sup> Under the new policy a country wishing to export beef to Australia is able to apply to FSANZ and undergo an assessment to determine whether the country has in place, and appropriately monitors, controls necessary to ensure that beef and beef products exported to Australia are derived from animals free of BSE. The new policy is set out in Australia's *Bovine Spongiform Encephalopathy (BSE): Requirements for the importation of Beef and Beef Products for Human Consumption – Effective March 2010*.<sup>16</sup>

### ***Beef industry request for change to BSE policy***

2.13 The committee heard that the review of Australia's current BSE policy was initiated, at least in part, by a request from the Red Meat Advisory Council (RMAC).<sup>17</sup> Mr Timothy Yeend, First Assistant Secretary of the Office of Trade Negotiations, Department of Foreign Affairs and Trade (DFAT), told the committee that:

In the discussions we have had when we have spoken to industry, given the huge reliance they have on maintaining export markets et cetera, the prospect of some kind of action by a trading partner to challenge Australia and the consequences of that for our industry, both domestically and in terms of its export markets, were a major concern. Certainly as they came to government this was registered very clearly and was one of the key considerations in the government deciding to look at the policy again.<sup>18</sup>

2.14 In a letter to Minister Burke on 9 August 2009 RMAC stated:

Red Meat Advisory Council Ltd (RMAC) believes it imperative for the Federal Government to amend the current standard such that it is made consistent with the standard set by the World Organisation for Animal Health (OIE) and current ambiguity is removed.<sup>19</sup>

2.15 RMAC advised the Minister that at its board meeting on 6 March 2009, RMAC had "again endorsed its opposition to the BSE certification rules currently

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15 Department of Health and Ageing, *Submission 2*, p. 3.

16 Food Standards Australia New Zealand, *The Australian assessment process to assess BSE risk*, <http://www.foodstandards.gov.au/consumerinformation/bovinespongiformencephalopathybse/> viewed 23 February 2010.

17 Department of Foreign Affairs and Trade, *Submission 3*, p. 6.

18 Mr Timothy Yeend, First Assistant Secretary, Office of Trade Negotiations, Department of Foreign Affairs and Trade, *Committee Hansard*, p. 107.

19 Letter from Mr Ian McIvor, AM, Chairman, Red Meat Advisory Council Limited to the Hon Tony Burke, MP, Minister for Agriculture, Fisheries and Forestry, 9 August 2009, *Answer to question taken on notice*, Public hearing 5 February 2010.

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operating in Australia".<sup>20</sup> RMAC wrote a second letter to the Minister, in similar terms, on 18 September 2009.<sup>21</sup>

2.16 DFAT provided the committee with a summary of the sequence of events that led to the decision to amend the policy:

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).<sup>22</sup>

2.17 RMAC's concerns with the policy centre on two perceived risks to the Australian beef industry: the risk that all beef, both domestic and imported, would be removed from retail shelves in the event of a BSE outbreak in Australia; and the risk of action through the World Trade Organisation (WTO) by Australia's trading partners.

### ***Risk of removal of beef from retail sale***

2.18 In its submission to the inquiry DFAT told the committee that RMAC has long been concerned about the negative impact Australia's 2001 BSE policy could have on the local industry should Australia experience an indigenous case of BSE.

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20 Letter from Mr Ian McIvor, AM, Chairman, Red Meat Advisory Council Limited to the Hon Tony Burke, MP, Minister for Agriculture, Fisheries and Forestry, 9 August 2009, *Answer to question taken on notice*, Public hearing 5 February 2010.

21 Letter from Mr Ian McIvor, AM, Chairman, Red Meat Advisory Council Limited to the Hon Tony Burke, MP, Minister for Agriculture, Fisheries and Forestry, 18 September 2009, *Answer to question taken on notice*, Public hearing 5 February 2010.

22 Department of Foreign Affairs and Trade, *Submission 3*, p. 2.

DFAT told the committee that such an occurrence was 'unlikely but a real possibility despite measures currently in place'<sup>23</sup>. DFAT described the following outcome:

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.<sup>24</sup>

2.19 In its submission RMAC told the committee that if beef were removed from shelves the cost to the Australian beef industry would be significant.<sup>25</sup> In its letters to Minister Burke, RMAC stated that Clause 11 of Standard 2.2.1 of the Food Standards Code is ambiguous. RMAC advised the Minister:

Australia's legal requirement relating to BSE and the safety of domestic beef for human consumption is ambiguous: it is stated in Clause 11, Standard 2.2.1 of the FSANZ Food Standards Code that, "Bovine meat and meat products must be derived from animals free from bovine spongiform encephalopathy". This ambiguity must be clarified through the provision of a domestic-food-safety-response policy that is developed and agreed to by relevant Federal, State and Territory human-health and food-safety authorities in consultation with the industry.<sup>26</sup>

2.20 The committee notes that there appears to be widespread agreement that the risk of a BSE outbreak in Australia is unlikely.<sup>27</sup> For example, the committee notes the comments of Mr Gary Burridge, representing the Australian Meat Industry Council when asked his view on the likelihood of a case of BSE in Australia under the current import arrangements that are in place. Mr Burridge said:

I would say that it is very limited, based on the science that we have been provided with and that has been provided by international and domestic experts.<sup>28</sup>

2.21 Nevertheless, the committee notes that such an outcome has been described in quite alarming terms, both within the context of the inquiry and more widely in the

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23 Department of Foreign Affairs and Trade, *Submission 3*, p. 3.

24 Department of Foreign Affairs and Trade, *Submission 3*, p. 5.

25 Red meat Advisory Council Limited, *Submission 5*, p. 6.

26 Letter from Mr Ian McIvor, AM, Chairman, Red Meat Advisory Council Limited to the Hon Tony Burke, MP, Minister for Agriculture, Fisheries and Forestry, 9 August 2009, *Answer to question taken on notice*, Public hearing 5 February 2010.

27 See for example, Mr Justin Toohey, *Committee Hansard*, 14 December 2009, p. 32, Mr Robert Steel, *Committee Hansard*, 14 December 2009, p. 72, and Dr Andrew Carroll, *Committee Hansard*, 14 December 2009, p. 103.

28 Mr Gary Burridge, Processor Council, Australian Meat Industry Council, *Committee Hansard*, 14 December 2010, p. 18.

media. The committee notes Minister Burke's comments during a radio interview shortly after the announcement of the new policy that:

If, for example, there were an outbreak of BSE in Tasmania, all Australian beef no matter where it came from would have to be taken off the shelves in Australia. Because we have a policy at the moment that says for any country, including our own, you can't take a regional approach; you can't take a science-based or a health-based approach. The approach has to be nationwide and immediate and its all off the shelves.<sup>29</sup>

2.22 The Australian Beef Association (ABA) told the committee that they regard the issue of the potential for removal of beef off supermarket shelves in the event of a case of BSE as a farce and a completely separate issue to the decision to relax import requirements for beef. Mr Carter told the committee:

No government in the world would put 300,000 people out of work by taking all the beef off the shelves. It has not happened anywhere. We believe that what has been going on is a complete fabrication. It has been said that the WTO obligations would necessitate it. We would like to see that paper, and we ask that it be tabled.<sup>30</sup>

2.23 The committee received confirmation from DOHA that any decision to remove beef from retail shelves would be taken by individual state health ministers.<sup>31</sup>

2.24 The committee notes that FSANZ has procedures in place to recall any food products that pose a health risk.<sup>32</sup> The procedures followed are set out in Food Code Standard 3.2.2.

2.25 The power to recall contaminated meat products is contained in both the *Food Standards Australia New Zealand Act 1991* (FSANZ Act) and the *Trade Practices Act 1974*. Section 13 of the FSANZ Act says the functions of FSANZ include:

(j) in co-operation with the Department administering Division 1A of Part V of the Trade Practices Act 1974, to coordinate the recall of food under that division; and

(k) at the request of the States and Territories, to co-ordinate action by the States and Territories to recall food under State and Territory laws.<sup>33</sup>

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29 The Hon Tony Burke MP, Minister for Agriculture Fisheries and Forestry, Interview with Leon Byer, 5AA Adelaide 1395 AM, 21 October 2009.

30 Mr John Carter, Director, Australian Beef Association, *Committee Hansard*, 14 December 2009, p. 2.

31 *Committee Hansard*, 5 February 2010, p. 95.

32 Food Standards Australia and New Zealand, Food recalls, <http://www.foodstandards.gov.au/foodmatters/foodrecalls/> viewed 2 March 2010.

33 *Food Standards Australia New Zealand Act 2001*, p. 10.

### *Australia's international trade obligations*

2.26 In its submission DFAT advised the committee that Australia's 2001 BSE policy has been strongly criticised over a long period of time by a number of Australia's key trading partners, including Canada, the US, Japan and Europe, as being inconsistent with current science and the relevant international standard. DFAT also told the committee that because of this, some of these countries have indicated that they consider the policy to be in breach of Australia's WTO obligations.<sup>34</sup>

2.27 More specifically, DFAT drew the committee's attention to Canada's initiation of a WTO dispute against the Republic of Korea's BSE-related restrictions on imported beef which are similar to Australia's requirements.<sup>35</sup> DAFF also told the committee that the policy change is consistent with the approach being taken by Australia's key trading partners:

The BSE-related import requirements for a number of countries have been progressively relaxed in recent years, particularly in North Asian markets, from a position of blanket bans on imports from countries with reported BSE cases. Japan, Taiwan, the Republic of Korea, New Zealand, Canada, the United States and European Union member States are examples of the many countries that now permit beef imports from countries that have reported BSE cases.<sup>36</sup>

### *Australia's WTO obligations*

2.28 DFAT advised the committee that the major trade obligations invoked by Australia's policy on BSE and imported food safety are its obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (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.

2.29 Under the WTO SPS Agreement, WTO member countries are encouraged to harmonise their measures with international standards developed by 'relevant' international organisations, including the OIE.<sup>37</sup> Measures may differ from an international standard but WTO members must not use SPS measures that are: unnecessary, not science-based, arbitrary, or which constitute a disguised restriction on trade.<sup>38</sup> Article 2.3 of the WTO SPS Agreement requires that Australia must not

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34 Department of Foreign Affairs and Trade, *Submission 3*, p. 1.

35 Department of Foreign Affairs and Trade, *Submission 3*, p. 4.

36 Department of Agriculture, Fisheries and Forestry, *Submission 4*, p. 6.

37 Department of Foreign Affairs and Trade, *Submission 3*, p. 4.

38 Department of Agriculture, Fisheries and Forestry and Austrade, *The WTO Sanitary and Phytosanitary (SPS) Agreement Why you need to know ...* p. 3. <http://www.daff.gov.au/animal-plant-health/plant/publications/sps> viewed 3 March 2010.



place more onerous conditions on imports from other countries than it applies domestically.<sup>39</sup>

2.30 The SPS Agreement requires WTO members to base their SPS measures on a risk assessment and to take into account risk assessment techniques developed by relevant international organisations.<sup>40</sup> DFAT explained that:

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.<sup>41</sup>

2.31 DFAT advised the committee that while Australia's new BSE policy does not adopt the OIE standard or the categorisation of countries by the OIE, it will take into account the OIE risk assessment methodology to undertake its own risk assessments.<sup>42</sup>

#### *Australia's Free Trade Agreement with the United States*

2.32 The ABA told the committee that it believed that the change in Australia's BSE policy is directly linked to a side letter to the Australia – United States Free Trade Agreement.<sup>43</sup> In the side letter the then Minister for Trade, the Hon Mark Vaile, confirmed the following understanding between the governments of Australia and the United States:

Australia and the United States recognize the importance of addressing both food safety and animal health issues regarding Bovine Spongiform Encephalopathy (BSE) in a science-based, comprehensive, and cohesive manner.

Science-based responses to address BSE concerns help to ensure food safety and protect animal health while avoiding unnecessary barriers to international trade. Australia and the United States recognize the central roles of the World Health Organization and Food and Agriculture Organization of the United Nations' Codex Alimentarius Commission (Codex) and the International Organization for Epizootic (OIE) in establishing international standards and guidelines, and will participate actively as these organizations address BSE-related issues.

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39 Department of Foreign Affairs and Trade, *Submission 3*, p. 4.

40 Department of Agriculture, Fisheries and Forestry and Austrade, *The WTO Sanitary and Phytosanitary (SPS) Agreement Why you need to know ...* p. 13 .  
<http://www.daff.gov.au/animal-plant-health/plant/publications/sps> viewed 3 March 2010.

41 Department of Foreign Affairs and Trade, *Submission 3*, p. 1. The submission goes on to state that 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 on human health.

42 Department of Foreign Affairs and Trade, *Submission 3*, p. 4.

43 Mr Bradley Bellinger, Chairman and Mr John Carter, Director, Australian Beef Association, *Committee Hansard*, 14 December 2009, p. 2, p. 5 and p. 13.

Australia and the United States note that the OIE is presently reviewing BSE standards as they relate to animal and public health. Australia and the United States will work cooperatively in the OIE, Codex, and other fora as appropriate, with the objective of securing science-based standards and guidelines that address risks to food safety and animal health from BSE.<sup>44</sup>

*Committee comment*

2.33 The committee does not accept that a blanket recall of Australian beef and beef product would ever be implemented on an Australia wide basis in the event of an Australian case of BSE.

2.34 As indicated previously in this chapter, the committee was advised during this inquiry that no amendments to the Food Code or to the FSANZ Act are proposed as a result of the policy announced on 20 October 2009.<sup>45</sup> The committee also notes that under the new policy the requirement within the Food Standards that bovine meat and meat products must be derived from animals free from BSE remains unchanged.

2.35 The committee also notes that in the event of a new case of BSE, a country that has been given either a Category 1 or Category 2 BSE risk status is required to provide a report on the epidemiological investigation into the BSE case(s) and provide any other information to justify the continuation of its current Australian BSE status. FSANZ reserves the right to suspend a country's status at any time, including before the information is provided, until it is satisfied with the submitted information.<sup>46</sup>

2.36 While the new policy may ease the pressure on Australian State and Territory governments if they were to be faced with a reported case of BSE, it is not clear to the committee that the concerns regarding the ambiguity of how Australia's policy for the removal of beef and beef products from sale would be implemented in the event of an Australian case of BSE have been specifically addressed. The committee considers that these concerns are justified. The committee considers that a clear policy for Australia's domestic response in the case of a BSE related food safety event should be developed and agreed to by the relevant Federal, State and Territory human-health and food-safety authorities in consultation with the industry.

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44 Letter from The Hon Mark Vaile, Minister for Trade to the Honourable Robert B. Zoellick, United States Trade Representative dated 18 May 2004 and Letter from the Honourable Robert B. Zoellick, United States Trade Representative to The Hon Mark Vaile, Minister for Trade dated 18 May 2004, tabled 14 December 2009.

45 Joint media release, 20 October 2009, *Australia refines its food safety rules for imported beef and beef products*, DAFF09/341BJ.

46 Food Standards Australia New Zealand, *Australian Questionnaire to Assess BSE Risk*, p. 13, <http://www.foodstandards.gov.au/srcfiles/Questionnaire%20to%20Assess%20BSE%20Risk%2023%20Feb%2020101.pdf>, viewed 23 February 2010.