

Chapter 4

Conclusion and recommendations

Considering the pre-emptive action we have taken in this country with regard to the beef industry and establishing standards that are unequalled around the world, why would we put our industry here in Australia at risk by lowering standards for importation?¹

4.1 Australia is one of the few countries in the world that can claim to be BSE free. More broadly, Australia's beef industry has a disease free reputation that is the envy of its trading partners. This reputation has earned Australia entry into some of the toughest export markets in the world. Yet even with Australia's disease free status, Australia's beef producers continue to be expected to meet exacting standards and costly requirements to export their product.

4.2 In this context, this committee cannot comprehend why Australia should put its most significant export market at risk by embracing a hastily conceived policy based on inadequate and secretive consultation, and partial analysis of the risks involved, and implement it through a set of procedures that contain no clear criteria and for which there is no ministerial or parliamentary scrutiny.

4.3 Witnesses before the committee have raised the likely trade motivations and implications associated with this policy change. The committee notes that the side letter to the Australia- U.S. Free Trade Agreement marked a significant turning point in Australia's ability to maintain its BSE free status through a ban on imports from countries who do not enjoy such status. Other witnesses have argued that the policy and protocols developed and implemented on 23 February 2010 are supported by current science and are consistent with OIE guidelines.

4.4 However, after four hearings and 35 submissions, the committee continues to hold fundamental concerns about Australia's recently introduced policy for the importation of beef and beef product and the protocols through which it will be implemented.

Consultation

4.5 Departmental representatives advised the committee that this policy change was underpinned by an extensive process of consultation and provided the committee with a list of the organisations that had been consulted. The committee does not accept that the consultation process was extensive. The committee notes that the consultation with the beef industry was conducted via confidential meetings with peak industry

¹ Mr Greg Brown, Cattle Council of Australia, *Committee Hansard*, 14 December 2009.

bodies and that no attempt was made to engage individual beef producers in these consultations.

4.6 The committee fails to understand why there was a need for secrecy regarding the Departments' consultation with the beef industry. The committee also fails to understand why those industry bodies involved in the consultation process agreed to keep the matters discussed at these meetings from the wider rank and file membership of their organisations. The committee has repeatedly heard that this change in policy is the product of rigorous consultation undertaken over a number of years. The committee was told that there were no surprises in this for the beef industry and that this was a change that the industry has actively sought for some time. However, it is obvious to the committee that this is far from the case. The strong responses against the policy from individual beef producers once news of the change became public clearly demonstrate that individual beef producers were indeed surprised by this policy change and angry that they had not been consulted in its development.

4.7 The committee was roundly criticised by the Cattle Council of Australia for drawing this policy change to the attention of the wider public. Mr Greg Brown told the committee that he considered that by raising the issue of BSE in the public arena the committee's inquiry had been detrimental to the beef industry. The committee takes issue with Mr Brown's assertion. The committee considers that this Senate committee process has been entirely appropriate, particularly as it has provided an opportunity for those who were not privileged to be included in the closed circle of industry representatives with which the government consulted to have their voices heard. More importantly though, as there was no avenue for formal accountability to Ministers or the Parliament because no legislative change was required to implement the new policy, this committee's examination of the policy has played a very significant scrutiny role. Without the benefit of this inquiry, the beef industry may have realised too late that they needed to be directly involved in the development of the protocols through which beef will be imported into Australia.

4.8 At the committee's hearing on 14 December 2009, Mr Justin Toohey, Secretary to the Red Meat Advisory Council, told the committee that the industry was confident that the Government would develop protocols which met industry's expectations.² However, as that hearing progressed it became apparent that the protocols may fall seriously short of industry expectations. It was clear that they would not necessarily require an in-country inspection prior to import approval being given, that assessments would be on a whole of country basis and not a regional or zonal basis, that it was not clear whether equivalent traceability systems would be required or whether questions of border control would be effectively dealt with.

4.9 Following that hearing the beef industry peak bodies sought urgent discussions with the relevant Ministers and demanded to be consulted on the development of the protocols. This type of industry involvement in the development

2 Mr Justin Toohey, *Committee Hansard*, 14 December 2009, p. 36.

of import protocols is something that this committee has advocated over successive inquiries into biosecurity issues. The committee considers that it is vital that the development of import requirements is informed by those with a practical understanding of the industry and the risks posed to it. Without this committee inquiry it is unlikely that the beef industry would have had a seat at the table while those protocols were being developed. Following the release of the protocols on 23 February 2010, the Red Meat Advisory Council advised the committee that they had looked at the protocols and were satisfied with them.³

Scientific review

4.10 Throughout this inquiry the committee has expressed concern that a decision as significant as this ought to have been made after a comprehensive process of review. A comprehensive review of the science is fundamental to any decision to relax import requirements where food safety is concerned. The committee has expressed concern about the amount of time allocated to Professor Mathews to undertake a review of the current scientific evidence on BSE in relation to food and the flow on implications to human health. The committee does not doubt that Professor Mathews furnished the Department of Health and Ageing with as comprehensive a review as his considerable experience and extensive range of research contacts would allow in the time available. However, the committee cannot accept that a review completed in two and a half weeks can be claimed to represent a comprehensive reconsideration of the scientific knowledge around BSE. Evidence to the committee suggests that at least some of the current clinical work being undertaken in relation to transmissible spongiform encephalopathies is contested to some degree.⁴

4.11 The committee notes the observation of the National Health and Medical Research Committee (NHMRC) that there is so much about this disease that is still unknown.⁵ The committee has also heard evidence from those with a practical understanding of the disease that even a small risk in an environment of incomplete knowledge is too great a risk for Australia to take.⁶ Ms Suzanne Solvyns, the National Coordinator of the CJD Support Group Network, told the committee:

Prion disease has a history of slapping in the face those who make decisions based on arrogant assumption that this will not happen to them. In 1985 those of us who received human pituitary hormones were not told of our

3 Mr Ian McIvor, Chairman, Red Meat Advisory Council, *Committee Hansard*, p. 25.

4 Professor John Mathews, *Committee Hansard*, 5 February 2010, p. 34.

5 Notes of National health and Medical Research Council Teleconference, 17 September 2009, Answer to question taken on notice, Public Hearing 5 February 2010.

6 Ms Suzanne Solvyns, National Coordinator, CJD Support Group Network, *Committee Hansard*, 22 February 2010, pp. 12 -13. Ms Solvyns was the recipient of human pituitary hormones from a contaminated batch while on a fertility program in the seventies.

risk as the decision makers decided that nobody was at risk—until four women died.⁷

4.12 The committee is also not at all persuaded that our current understanding of the risk to animal health is as complete as has been argued during this inquiry. Nor does the committee accept that an examination of the human health risks obviates the need for an examination of animal health risks. The committee does not doubt the expertise of Australia's Chief Veterinary Officer or of the other officers of the Department of Agriculture, Fisheries and Forestry who have informed this policy process. However, it is the committee's view that there should have been a greater attempt to confirm that our current understanding of the animal health risks posed by BSE within the current global regulatory environment is accurate. The committee considers that there would have been less of an angry backlash from the wider beef industry if a thorough, open and transparent consultation process had been undertaken.

Import risk analysis

4.13 The committee believes that the decision to relax the import requirements for beef and beef products should have been preceded by a formal analysis of the import risk attached to such products. The committee has stated earlier that a formal risk analysis, consistent with the model provided by an expanded Import Risk Analysis (IRA), would address a number of the concerns the committee has with the process through which Australia's BSE policy has been reviewed. As well as providing a formal, open and transparent mechanism for all stakeholders to be consulted, such a model provides a means for all stakeholders to gain access to the scientific reviews conducted as part of the risk analysis and to provide comment on them. The committee considers that the statutory timeframes provided within such a model are also more consistent with the significance of the issue at hand.

4.14 The committee notes that the expanded IRA model also provides for a thorough consideration of all likely consequences of an incursion, particularly the economic consequences. The committee has noted elsewhere in this report the concerns raised regarding the need for clarity in relation to implementation of Australia's policy for the removal of Australian beef and beef products from sale in the event of an Australian case of BSE. The committee has heard that the costs to the industry of such action would be significant and far reaching. The committee has also heard varying interpretations of how the policy would be implemented. The committee notes that there is agreement that the risk of such an occurrence is negligible, however, with the decision to relax Australia's import requirements the committee concludes that this risk might be amplified to some extent. The committee considers that this is one risk that necessitates a thorough risk analysis that takes account of the economic implications for the beef industry.

7 Ms Suzanne Solvyns, National Coordinator, CJD Support Group Network, *Committee Hansard*, 22 February 2010, p. 11.

Recommendation 1

4.15 The committee recommends that a clear policy through which Australia's provisions for the recall of beef and beef product will be exercised in the event of an Australian case of BSE should be developed in consultation with the Australian beef industry. The committee also recommends that a process is initiated through COAG to seek the input and agreement of the relevant Federal, State and Territory human health and food safety Ministers.

4.16 Similarly, Australia's strong position as a beef exporter is underpinned by its unique disease free status. A decision to relax import restrictions on beef to potentially allow importation of beef from countries which have had cases of BSE has the potential to affect Australia's standing in key export markets. The committee has noted the assurances provided during this inquiry that Australia's international standing as a producer of quality disease free beef will not be diminished through the implementation of this policy. However the committee is not satisfied that these assurances are based on any analysis of the likely impact of the policy.

4.17 The committee has noted Biosecurity Australia's Advice 2010/02, released on 24 February 2010, which advises that Biosecurity Australia will conduct an analysis in line with the Import Risk Analysis Handbook to address animal quarantine issues. This advice states that these IRA's will be conducted on a country-by-country basis in response to specific market access requests and will be conducted outside the regulated IRA process as a non-regulated analysis of existing policy. The committee does not consider that this process of individual IRA's, which will be conducted separately to the risk assessment undertaken by FSANZ, satisfies the committee's concerns regarding the lack of import risk analysis prior to the decision to relax Australia's policy for the importation of beef.

Recommendation 2

4.18 The committee recommends that Australia's *Bovine Spongiform Encephalopathy (BSE): requirements for the importation of Beef and Beef Products for Human Consumption – effective March 2010* and all administrative processes for the assessment of applications from countries seeking to import beef and/or beef product be suspended pending the outcome of a formal import risk analysis modelled on the expanded import risk analysis process provided for in the Import Risk Analysis Handbook 2007 (updated 2009).

The import protocols

4.19 In the committee's view, the development of effective import protocols is fundamental to this policy process. The committee has expressed concern on numerous occasions throughout this inquiry that the protocols have been developed in relative isolation. The committee considers that it is essential that the development of import protocols is undertaken in close consultation with the relevant Australian industry sector to ensure that all concerns are considered and appropriately addressed.

4.20 The committee notes that representatives of the Australian beef industry did seek input into the development of the import protocols and the committee was advised at its hearing on 25 February 2010 that these industry representatives were satisfied with the protocols.

4.21 However, the committee is concerned that the questionnaire which forms the basis for the import protocols that will apply under the new policy lacks a clear statement of the criteria against which applicant countries will be assessed. In particular, while the committee has been assured that applicant countries will be required to demonstrate equivalence with the requirements currently applying to Australia's own beef industry, the committee notes that there is no statement to this effect in the questionnaire. The committee believes that this is a reasonable expectation. The Australian beef industry routinely satisfies onerous and costly requirements, including SRM removal and in-country inspections of plant and systems, in order to export its product. It is only reasonable that countries seeking to export to Australia should face the same level of requirement as Australian beef producers.

4.22 However, the committee is concerned that there is no clear statement regarding how these requirements will be determined to be equivalent. The committee considers that greater clarity needs to be provided in the questionnaire itself as to how FSANZ will be guided in its assessment of applications. The committee considers that as a minimum requirement all countries wishing to export beef or beef product to Australia must be able to demonstrate that they have in place a national animal identification scheme with the same physical ability to trace an individual animal from birth to point of retail sale as Australia's National Livestock Identification System.

Recommendation 3

4.23 The committee recommends that FSANZ revise the Australian process to assess BSE risk, including the Australian Questionnaire to Assess BSE Risk, to include a clear requirement that applicant countries must demonstrate that they have in place a national animal identification scheme with the same physical ability to trace an individual animal from birth to point of retail sale as Australia's National Livestock Identification System.

4.24 The committee is also concerned that the assessments by FSANZ and those undertaken by Biosecurity Australia do not mandatorily include in-country inspections. The committee considers that a desk top analysis is no substitute for first hand assessment of the competencies and systems that underpin the management of livestock prior to slaughter and export. The committee has noted the criteria that may trigger an in-country inspection, but is still concerned that these require a subjective judgement on the part of FSANZ. The committee believes that the extent to which Australia's food and animal safety relies on subjective judgement should be limited and that in-country inspections must be undertaken as a matter of course as part of the assessment of each import application.

Recommendation 4

4.25 The committee recommends that FSANZ revise the Australian process to assess BSE risk, including the Australian Questionnaire to Assess BSE Risk, to include a mandatory requirement for an in-country inspection to be undertaken as part of the assessment of each application to import beef and/or beef product to Australia.

Parliamentary scrutiny

4.26 One of the committee's key concerns in this inquiry is the reality that a policy change as significant as this could be developed and implemented without any effective scrutiny. The committee has noted that the policy change does not require any change to primary or delegated legislation and as a result would not normally come before the Parliament. The committee has also noted that responsibility for the development of the policy rests primarily with FSANZ, with some input from DAFF, Biosecurity Australia and AQIS.

4.27 The categorisation of applicant countries will be undertaken by FSANZ on behalf of the Australian BSE Food Safety Committee (ABFSC) and approved by the Chief Executive Officer of FSANZ. Similarly, the committee notes that any reviews of country classifications will be considered by ABFSA and any subsequent review of the policy or the questionnaire through which it is primarily administered will be undertaken at the discretion of FSANZ. The committee has expressed concern in previous inquiries about questions of biosecurity not being subject to appropriate scrutiny.⁸ The committee accepts that FSANZ and its officers are accountable in a broad sense to the FSANZ board and ultimately to the Minister. However, this is not the same as Ministerial sign off on policy decisions, or parliamentary scrutiny of significant changes in policy.

Recommendation 5

4.28 The committee recommends that the Government review the administrative framework through which policy relating to implications for food safety and plant and animal health arising from import applications is developed. The committee recommends that final responsibility for the development and administration of such policy should rest with the Minister and that such policy and administrative procedures should be reflected in legislative instruments to ensure that they are subject to appropriate parliamentary scrutiny.

8 See for example: Rural Regional Affairs and Transport Committee, *Administration of the Department of Agriculture, Fisheries and Forestry, Biosecurity Australia and Australian Quarantine and Inspection Service in relation to the final import risk analysis report for apples from New Zealand*, June 2007; Rural Regional Affairs and Transport Committee, *Import risk analysis (IRA) for the importation of Cavendish bananas from the Philippines*, June 2009.

Country of origin labelling

4.29 The committee notes that, while country of origin labelling requirements apply to unpackaged fresh pork and seafood, there is no such requirement for unpackaged fresh beef. The committee also notes that responsibility for developing standards in relation to food labelling rests with FSANZ and that Australia's food labelling law and policy is currently under review.

4.30 The committee considers that country of origin labelling is a significant related issue in the context of any decision to relax beef import requirements. Ultimately the decision to consume beef or beef product from other countries should rest with the consumer. The committee considers that consumers are entitled to make such choices on the basis of clear and accurate country of origin labelling.

Recommendation 6

4.31 The committee recommends that Australia's current labelling requirements are amended to reflect the country of origin for all food products including unpackaged fresh beef.

Ministerial request for import risk analysis for beef imports

4.32 On 8 March 2010 the Minister for Agriculture, Fisheries and Forestry, the Hon Tony Burke MP, announced that he had written to the Director of Quarantine requesting Biosecurity Australia do an IRA for fresh beef (chilled or frozen) from countries other than New Zealand. The Minister stated that:

I have formed a view that conducting an Import Risk Analysis is the best way of reassuring the Australian community that effective protocols will be put in place to provide for the safety of imports.

...

This is a formal review process with specified timelines, guaranteed opportunities for community engagement and consultation as well as the added assurance of review by the Eminent Scientists Group.⁹

4.33 The Minister also stated that the policy previously announced would remain in place, but that the assessment of the risk of such imports will now have a higher level of formality.¹⁰

4.34 The committee welcomes this announcement as a belated victory for commonsense. However, the committee proposes to examine the implications of the

9 Minister for Agriculture, Fisheries and Forestry, the Hon Tony Burke, *Import Risk Analysis for beef imports*, DAFF10/389B, 8 March 2010.

10 Minister for Agriculture, Fisheries and Forestry, the Hon Tony Burke, *Import Risk Analysis for beef imports*, DAFF10/389B, 8 March 2010.

Minister's announcement at a further public hearing in order to gain a complete understanding of how the import policy will now be implemented, and the extent to which this implementation process will be subject to appropriate ministerial scrutiny.

4.35 The committee notes that under the expanded IRA provided for in the Import Risk Analysis Handbook 2007 (update 2009), there is no express requirement for an in-country inspection to be undertaken as part of an IRA. The committee also notes that the implementation of risk management measures, or protocols, is undertaken once the formal IRA process has been completed and a determination has been made by the Director of Animal and Plant Quarantine. The committee proposes to examine the extent to which both the assessment of risk and the assessment of claims made in import applications from importing countries will be verified through in-country inspections. The committee will also examine the extent to which provision will be made for consultation in the development of the import protocols under the IRA process proposed by the Minister.

Senator Fiona Nash
Chair

