

S. HRG. 109-040

**EXAMINING THE EFFECTS OF BOVINE  
SPONGIFORM ENCEPHALOPATHY (BSE) ON U.S.  
IMPORTS AND EXPORTS OF CATTLE AND BEEF**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON AGRICULTURE,  
NUTRITION, AND FORESTRY**  
**UNITED STATES SENATE**

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

—————  
FEBRUARY 3, 2005  
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Printed for the use of the  
Committee on Agriculture, Nutrition, and Forestry



Available via the World Wide Web: <http://www.agriculture.senate.gov>

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U.S. GOVERNMENT PRINTING OFFICE

98-459 PDF

WASHINGTON : 2005

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**EXAMINING THE EFFECTS OF BOVINE  
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U.S. IMPORTS AND EXPORTS OF CATTLE  
AND BEEF**

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**THURSDAY, FEBRUARY 3, 2005,**

U.S. SENATE,,  
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,,  
*Washington, DC.*

The Committee met, pursuant to notice, at 11:02 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Saxby Chambliss, [Chairman of the Committee], presiding.

Present or submitting a statement: Senators Chambliss, Lugar, Roberts, Talent, Thomas, Coleman, Crapo, Harkin, Lincoln, Nelson, Dayton, and Salazar.

**STATEMENT OF SAXBY CHAMBLISS, A U.S. SENATOR FROM  
GEORGIA, CHAIRMAN, COMMITTEE ON AGRICULTURE,  
NUTRITION, AND FORESTRY**

The CHAIRMAN. The Committee will come to order.

The purpose of the Senate Committee on Agriculture, Nutrition, and Forestry's hearing today is to hear testimony regarding the impacts of bovine spongiform encephalopathy, BSE—that is the last time you are going to hear anything other than “BSE” because I do not think we can pronounce it again; I know Senator Roberts cannot, so we do not want to give him a chance—on trade and cattle and beef products in North America as well as the rest of the world.

We are honored to have the Honorable Mike Johanns, our new Secretary of Agriculture, here to testify today. It was less than a month ago that this committee held a hearing on the confirmation of this Secretary and favorably reported his nomination to the full Senate. Mr. Secretary, we welcome you back today. We are pleased to have the Secretary here and look forward to his testimony on this important matter.

I cannot emphasize enough how important this complex issue is to our livestock industry. I would like to briefly mention three issues that I believe are involved with this situation.

First is jobs. Having the border closed with Canada for the past year has already cost our country job losses in slaughtering facilities in Iowa, Nebraska, Ohio, Mississippi, and Idaho. If the border continues to remain closed for too much longer, we will be seeing many more permanent job losses in other States, including my State and probably at least a dozen more. Many of these jobs have

moved to Canada. More will likely follow if a satisfactory resolution cannot be reached soon.

Second is export demand. Having our export markets in Japan and elsewhere closed to U.S. beef will certainly have a negative impact on our market here in the U.S. Japan was importing over \$1 billion worth of U.S. beef annually prior to our first domestic case of BSE. Having trade resume with Japan is critical to the long-term economic success of our beef producers and processors.

Last is sound science. It has never been more important to use sound science to guide decision-making. As we have learned all too often, when countries stray from sound science as a basis for making decisions that affect trade, we end up with arbitrary, artificial barriers that are even harder to overcome. Many countries have used bogus claims to prevent U.S. poultry products from being imported. Usually it is done under the guise of protecting their domestic poultry supply or protecting consumer food safety. It ends up being an artificial barrier to trade, usually designed to protect a domestic producer group from our exports.

We have to be very careful about having legitimate and sound science as the foundation for all the decisions in this area if we want to be credible regarding our commitment to sound science in the international trade world.

Before I recognize my Ranking Member, my friend Senator Harkin, for his comments, I would like to add one other thing. While we hope today's hearing will be as comprehensive and as helpful as possible, I do not expect Secretary Johanns to be able to answer every question about every issue, because I know there are some issues that are not quite ripe enough for final answers today.

For instance, the U.S. Government Accountability Office will soon be completing its follow-up review of the FDA's feed ban implementation. The FDA itself has a pending rule-making on to these matters. USDA's Office of Inspector General will be releasing a report later this month pertaining to some of USDA's administrative actions with respect to beef imports. Currently, two lawsuits are pending against USDA regarding this situation. I only mention these to show that I see a need for this committee to probably have a subsequent hearing or briefings on some of these matters as they become timely.

At this time I will turn to my friend Senator Harkin for any comments he has to make, followed by any statements that other members wish to make at this time. Senator Harkin.

**STATEMENT OF HON. TOM HARKIN, A U.S. SENATOR FROM IOWA, RANKING MEMBER, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY**

Senator HARKIN. Thank you very much, Mr. Chairman, for calling this hearing. I again welcome the new Secretary and congratulations again on your speedy confirmation here and your swearing-in by the President. We certainly are delighted that you are here today to talk about this very important issue.

As you know—and I will get into this in the questions—Mr. Secretary, a number of us sent you a letter the other day about this because this is a big concern, of course, in my State and, as the chairman has said, all over the country. We need to review this

final rule that is supposed to be effective March the 7th defining BSE minimal risk region and that would allow live cattle and expanded beef trade with Canada.

This minimal risk rule raises questions not just about expanding beef and cattle trade with Canada. There are also questions about the effectiveness of anti-BSE measures in the U.S. and Canada, and also broader U.S. efforts on our two-way trade, as the chairman mentioned, especially with Japan and South Korea.

I guess what bothers me is that the USDA—and you speak about it in your prepared statement, Mr. Secretary, about using sound science as the basis for making decisions. We all agree on that. USDA says it is relying on OIE guidelines for defining what is minimal risk. The rule ignores OIE standards in key respects.

My question is: Is the Department saying that OIE is not science based? I would like to know what this Department is saying about that. If we are going to rely on science and if we want to be in a global trading environment, it seems to me that the O.I.E are the recognized world reference body. What I see is that we are backing down from their recommendations in this proposed final rule.

We need to reconsider adopting the OIE guidelines fully unless you can show us that they are not science based; and that we ought to work with our major trading partners using these guidelines as a reference to have a comprehensive common framework for deciding whether a country has minimal risk standards.

Some of us also believe that we should maintain the ban on beef from cattle over 30 months of age, and we are also calling to delay the March 7th effective date until these concerns are addressed. It just seems, finally, that USDA departures from the OIE guidelines seem very likely to complicate our goal—our goal of restoring trade with Canada. They are our friends, our neighbors, our allies. We love Canadians. They have just got to get their house in order. Second, it complicates our efforts to develop this common framework with other trading partners around the world to establish true minimal risk status.

These are the areas that I will be covering with you, Mr. Secretary, in the question-and-answer period when we get to it. Again, I compliment you. Thank you for being here today. I know this is a tough issue, but it is one that concerns the health and safety of our people, and it concerns our international relations in terms of export markets, too.

Thank you, Mr. Secretary. Thank you, Mr. Chairman.

[The prepared statement of Senator Harkin can be found in the appendix on page 42.]

The CHAIRMAN. Thank you, Senator Harkin.

At this time I will open it up to any statements that any of our committee members wish to make, but before doing so, let me say that we have had a number of requests from other members of the Senate, not members of the committee, to testify today or submit testimony, and we are going to accept written testimony today from a number of other Senators. Senator Harkin and I will make a joint decision later on with respect to future hearings as to whether Senators will be allowed to come testify or whether we are just simply going to ask for written testimony from members.

At this time I will turn to Senator Lugar for any comments he might want to make.

**STATEMENT OF HON. RICHARD G. LUGAR, A U.S. SENATOR  
FROM INDIANA**

Senator LUGAR. Thank you very much, Mr. Chairman, and thank you for this hearing on BSE. Thanks to the Secretary for your appearance.

The proposed opening of the Canadian border on March 7th has fueled much debate in the United States cattle industry and, likewise, concerns have been raised regarding our ongoing inability to export beef to Japan. I am interested in learning more today about how these situations may cause negative, long-term changes in our agricultural infrastructure markets and the security of our food supply.

Because the United States is the world's foremost economic power and the country with the most open markets, trade agreements that open other markets to our goods are very much to our advantage. That is why with respect to BSE it is both important to resume beef trade with partners we typically export to, like Japan, while also abiding by those same standards and resuming trade with the country that typically exports to us, Canada. For the United States economy to grow, we cannot passively depend on selling only to our domestic markets, which is essentially the precedent we will create by prohibiting trade through non-scientific based protections.

Ninety-seven percent of the world's population and 67 percent of the world's purchasing power is located outside the United States. We must compete aggressively in the growing world economy, and we must not surrender our trade advantage in our own hemisphere by allowing industry to shift by employing protectionist measures. I am keenly aware that many cattle producers are fearful that a large number of Canadian cattle will flood domestic markets, severely diminishing returns on their own animals. I believe USDA originally predicted that nearly 2 million cattle may become available to our market should the ban be lifted. Others have suggested these numbers are incorrect and that the number is more likely to be in the range of 900,000 animals.

Regardless, it is very important that this committee understand what may happen to our own markets when the Canadian border is open and work to mitigate any severe market fluctuations that could occur. However, I do not hold the belief that we should maintain a closed border based primarily on the interest of stimulating market prices, while as a Nation we are strongly advocating the acceptance of many of our agricultural products elsewhere based on scientific standards. To abandon that approach in this situation severely undermines our position across the board.

I am also aware of the food safety concerns associated with resuming cattle and beef trade with Canada, and I am hopeful that the hearing today will address the issue and apprise the committee what the USDA will do to ensure the public safety. The security of our food supply is of the utmost importance, and our trade agreements must ensure that our food supply remains the safest in the world.

In addition, I hope the committee is able to ascertain what is happening to our domestic cattle infrastructure as a result of our closed Canadian border and inability to export meat to Japan. I have great concern that by not resuming cattle trade with Canada we are shifting our processing capacity to that nation. I am concerned that while the U.S. beef industry is closed out of Japan, other nations will begin to supplant us as a high-quality beef provider.

There are many challenges facing this committee concerning the issue of BSE. I look forward to working with all members of the committee to ensure a vibrant domestic cattle industry and a safe food supply for our citizens.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

[The prepared statement of Senator Lugar can be found in the appendix on page 43.]

Senator Nelson.

**STATEMENT OF HON. E. BENJAMIN NELSON, A U.S. SENATOR  
FROM NEBRASKA**

Senator NELSON. Thank you, Mr. Chairman. Mr. Secretary, welcome to the committee once again. I appreciate very much your diving into the most difficult issues early on, and thank you for your commitment.

You will learn, as you testify before this committee and other opportunities that will be there, that no matter how many times it has been said before, if I have not said it, it probably has not been said. A little bit of repetition will occur in spite of our efforts to be brief and original.

You have already heard the nontariff trade barriers that are being suggested and how we need to deal with those. The chairman has alluded to chicken wars and other kinds of trade challenges that we face. What we need to do here is focus, as I know you are, on sound science, but we also must be mindful of the trade implications of reopening the market to live cattle from Canada.

You are also aware of the inconsistency that is impacting the U.S. beef industry by permitting boxed beef or processed beef to come from Canada as imports. We have a terrible inconsistency there that has caused many producers and processors to say it is either open to both or how can you have it open to one and not the other if it is sound science that we are concerned about and legitimizing some of the questions that have been raised about the Canadian processing as it relates to feeding their live cattle.

You are faced with dealing with exports, a trade issue. You are faced with food safety, sound science, and at the same time some consistency as it relates to the American market. Those are all challenges. I know that you are anxious to get to your statement, and we will not further delay that. Thank you for your commitment.

The CHAIRMAN. Thank you, Senator Nelson.

Senator Roberts, would you hit your button there, please?

**STATEMENT OF HON. PAT ROBERTS, A U.S. SENATOR FROM  
KANSAS**

Senator ROBERTS. Mr. Chairman, is it your desire that we go under the 5-minute rule? Then obviously go in the order of appearance. Would there be a second round? I have ten questions. I am not going to ask ten questions. I will submit six for the record. There will be four questions. Rather than making an opening statement, I would rather reserve my time for those questions. Could you provide that information as to a possible second round?

The CHAIRMAN. Mr. Secretary, are you under a time constraint?

Secretary JOHANNIS. I am not, other than this afternoon, at 3:30, I fly to San Antonio to be with the cattlemen tomorrow.

Senator ROBERTS. I can assure the Secretary that my questions are not going to last to the degree that it would interfere with your plane, unless, of course, your answers would be that long. I do not anticipate that.

The CHAIRMAN. My reason for the question is that since this is such a sensitive issue, I want to give every member of the committee a full opportunity to ask all their questions.

Senator ROBERTS. We will be operating under the 5-minute rule, or 6 or 8 or what?

The CHAIRMAN. The 5-minute rule with as many rounds as it takes to get all your questions in.

Senator ROBERTS. The only other observation I would say is, Mr. Secretary, you have two excellent shotgun riders to your right and left, and Dr. Collins and Dr. DeHaven do an excellent job.

The CHAIRMAN. Senator Dayton.

**STATEMENT OF HON. MARK DAYTON, A U.S. SENATOR FROM  
MINNESOTA**

Senator DAYTON. Thank you, Mr. Chairman.

Mr. Secretary, this, as the record should show, is not a policy of your creation, but you have inherited it. It continues the very unfortunate pattern in U.S. trade policies of harming American businesses and workers and shifting production and jobs to other countries. This policy that has been proposed creates a dream world for Canadian producers and processors and nightmares for American cattle producers, processors, and the workers in those industries. It is no wonder then that they are increasingly cynical toward and distrustful of their government. Today it is imperative, and we still have the opportunity, to put this Federal Government policy back on the side of Americans rather than foreigners.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Thomas.

**STATEMENT OF HON. CRAIG THOMAS, A U.S. SENATOR FROM  
WYOMING**

Senator THOMAS. Thank you, Mr. Chairman. Obviously, I do not have much new to say, but I simply want to reinforce what has been said here, that the safety of our food, of course, is our biggest concern, and we are all concerned about that. We have some of the best and safest in the world, of course, and we want to keep it that way.

We are very concerned about the rule and what will happen to it in the future. Senator Burns and I, and Senator Thune, are going to introduce a bill this afternoon that would have some impact on it, as a matter of fact, and would not allow the beef over 30 months of age to come over and so on. That will be something we will have to all work at together.

I guess one of the real issues is to make a determination on the Canadian compliance with ruminant feed and the BSE safety measures and so on. This obviously in our industry is one of the most important things that we have to deal with. You understand that. I hope that, if nothing else, we can take a long look at the present regulation and hopefully to get some expansion of time or eliminate it, one or the other. Thank you for being here, and we will be talking with you about it.

[The prepared statement of Senator Thomas can be found in the appendix on page 51.]

The CHAIRMAN. Senator Crapo.

**STATEMENT OF HON. MIKE CRAPO, A U.S. SENATOR FROM  
IDAHO**

Senator CRAPO. Thank you, Mr. Chairman, Senator Harkin, and thank you, Secretary Johanns, as well as Dr. Collins and Dr. DeHaven, for being here with us today.

With the final rule to reopen the U.S. border to live cattle trade in Canada due to go into effect March 7th, this is an opportune time for us to discuss the effects of the BSE issue on cattle and beef trade. Secretary Johanns, I know you understand the importance of this issue to the cattle producers, processors, and the communities that we represent, and I look forward to the discussion today.

There have been many challenges in dealing with the unfortunate discoveries of BSE, and one very critical challenge has been with regaining our foreign markets. I commend you for the efforts that you have already put forward during your short time as Secretary of Agriculture to regain our export markets, and I was pleased to see that you asked the Japanese Government to set a date for the resumption of U.S. beef trade. Frankly, the Japanese trade issue is directly related to the Canadian trade issue that we are dealing with here, and I would appreciate all of the strong effort and aggressive push you can make to make sure that we resume Japanese trade. We all hope that date comes swiftly, and ideally before March 7th.

Due to Idaho's geographic location, Idahoans have benefited greatly from trade with the Pacific Rim countries, and prolonged closure of the Asian market hurts the Idaho producers and our economy. Many are looking to you to continue to push to get our markets open, and I look forward to the day when the U.S. can once again ship our beef products to these markets.

Additionally, the continued absence of our key export markets has contributed to the suspension of domestic beef processing operations in the United States, including processing here in Idaho. I understand the chairman mentioned that. I am holding a press release right now from Tyson indicating that they are continuing the closure of their operations in our area.

This is very concerning because it not only results in a loss of jobs and revenue for our economy, but it also decreases the processing options for cattle producers. This results in cattle producers being forced to ship greater distances, driving up production costs. Far too many American companies and cattle producers are suffering similar problems, and I have concerns and questions about an aspect of the rule that I feel could make this problem worse. Senator Thomas has just referred to it. Specifically, I am concerned with the portion of the rule that provides for the import of beef over 30 months of age, even though cattle over 30 months of age will not be allowed to be imported.

It is inconsistent to ban cattle over 30 months of age while allowing in boxed beef over 30 months of age. When the U.S. border was open for the importation of beef products under 30 months of age but not cattle to be processed at U.S. plants, a vast opportunity was created for Canada to increase their beef processing capacity for export of beef products to the United States. Canada seized this opportunity and reportedly increased their processing capacity by 20 to 30 percent. U.S. cattle producers and our economy are impacted as domestic processing capabilities are squeezed and shifted above the border. This problem is poised to be expanded upon through broadening the scope of products to be imported from cows that are banned from importation. I would note—I doubt that you have seen it yet, but the entire Idaho delegation has sent you a letter today expressing these concerns and expressing our hope to work with you on correcting this and some other aspects of this rule.

I have further questions regarding this matter that I will raise during the questioning portion of the hearing. Again, I welcome you here today and look forward to the discussion.

Thank you, Mr. Chairman.

[The prepared statement of Senator Crapo can be found in the appendix on page 50.]

The CHAIRMAN. Senator Coleman, we are departing from normal procedure and giving all members an opportunity for an opening statement, if you would like to make any comments, you may do so at this time.

**STATEMENT OF HON. NORM COLEMAN, A U.S. SENATOR FROM MINNESOTA**

Senator COLEMAN. Thank you, Mr. Chairman, just briefly.

First, it is a great pleasure to have the Secretary before us, and I know he is working hard already.

I am going to start by associating myself with the comments of my colleague from Idaho, Senator Crapo, both in regard to the concerns about Japanese trade and simply getting the market open and saying that I—and I share his belief that this issue of opening the market to Canada is in a way tied to what we have to do with the Japanese. Each and every day that the market is closed to a place like Japan and South Korea, what happens is we have a huge competitor like Australia, and they are not sitting back, and they are the main beneficiary, and they are grabbing an even larger share of the world market. It is going to fight to keep that.

Even if we get this done—and every day that we lose is a day that hurts our producers—we are going to have a battle. We are going to have to work like heck to regain what we lost, and it is going to be tough.

I associate myself with the comments of my colleague from Idaho. This may be when we have just got to get it done. Maybe the President personally has to get involved. We have to get this done.

I also associate myself with the concerns raised about importations of beef over 30 months old while banning cattle. I would hope—and I will follow this up during my question period. You know, have we analyzed this? Have we looked at the economic impact that this has? What is your assessment, Mr. Secretary? We need to understand that.

There are a number of concerns. I am someone who believes in trade. I am someone who believes that we have to in the end rely on sound science. That is what this is about, sound science. I want the folks who are part of our export opportunities to operate that way and we have to operate that way. That is critical. We have to get these markets open, and we have to get them open soon.

I look forward to your testimony. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Secretary, again, we welcome you, and as with Senator Roberts, we recognize you have two of our long-time experts in their respective areas with you. Dr. Collins and Dr. DeHaven, we appreciate you being here in support of the Secretary.

Mr. Secretary, we will turn it over to you, and we look forward to your comments.

**STATEMENT OF HON. MICHAEL JOHANNNS, SECRETARY,  
UNITED STATES DEPARTMENT OF AGRICULTURE,  
ACCOMPANIED BY KEITH COLLINS, CHIEF ECONOMIST,  
UNITED STATES DEPARTMENT OF AGRICULTURE; AND RON  
DeHAVEN, ADMINISTRATOR, ANIMAL & PLANT HEALTH  
INSPECTION SERVICE, UNITED STATES DEPARTMENT OF  
AGRICULTURE**

Secretary JOHANNNS. Chairman Chambliss, Senator Harkin, members of the committee, thank you for holding this very important hearing today, and thank you for giving me the opportunity to testify. As has been noted, accompanying me today are Dr. Keith Collins, USDA's Chief Economist; Dr. Ron DeHaven, the Administrator of USDA's Animal & Plant Health Inspection Service. I will be calling on them for help in working through your questions. I do ask that my full statement be included in the record.

Before I begin, if I might, I would like to take this opportunity to say thank you to all of you for your professionalism, your courtesy extended to Stephanie and me during my recent confirmation process. I appreciate the close, positive working relationships that we have begun forging, and thanks to the diligence of this committee, it was an honor and a privilege for me to be the first Cabinet member that was confirmed during President Bush's second term. It is therefore a pleasure to return today for my first hearing as Secretary.

I have said frequently that addressing BSE issues, especially as they relate to trade disruptions, would be my top priority as Secretary. I have also heard from this committee quite clearly on this topic, and I believe very strongly, that we are all on the side of American agriculture. The committee and your constituents have also posed some very useful, valid questions that deserve thorough examination, which I hope this hearing will provide.

The actions that the U.S. Department of Agriculture and the Federal Government are taking in regard to BSE are potentially precedent-setting and could affect international trade patterns for years to come with important economic implications for our cattle producers in the entire beef industry. Therefore our actions must be taken with the utmost deliberation, using science as the basis. In the absence of that science, sanitary and phytosanitary or SPS restrictions will be used arbitrarily by many nations without any basis of protecting human or animal health. Accordingly, this hearing could not be more timely.

I want to be very clear that while protecting human and animal health must remain our top priorities, I am confident that we can seek to return to normal patterns of international commerce by continuing to use science as the basis for decision-making by U.S. regulatory authorities and our trading partners.

Almost exactly a year ago, Secretary Veneman appeared before this committee to discuss BSE. In the time since then much has transpired. A scientific international review team was convened to review our response to BSE. A greatly enhanced surveillance program was designed and established. Our laboratory infrastructure was greatly expanded. A minimal risk rule aligning the U.S. with international standards was proposed and finalized.

Let me briefly discuss USDA's enhanced surveillance program, which began June 1, 2004. Our goal is to test as many high-risk cattle as possible in 12 to 18 months. The plan was reviewed by an international scientific review team which characterized it, and I am quoting here, "comprehensive, scientifically based and address[ing] the most important points regarding BSE surveillance in animals."

If we test 268,500 animals we will be able to detect the presence of as few as five targeted, high-risk cattle with BSE at a 99 percent confidence level. To date, some 8 months later, more than 200,000 animals have been tested, all of which have been negative.

The role of producers, renderers and others in helping obtain samples of high-risk animals has been indispensable to the success of the surveillance program. I might mention the cooperation we have received has been outstanding. Although additional positive may be found, the results so far are promising.

On December 29, 2004, USDA announced the final minimal-risk rule, which designated Canada as the first minimal-risk region for BSE, and which will become effective, as you have noted, on March 7, 2005. This rule is an important step in aligning U.S. policy with international standards.

On January 2, 2005, Canada confirmed its second domestic case of BSE in a cow that was born in October 1996, the first since May 20th of 2003. It was followed 9 days later by a third case, an 81-month-old cow.

On January 24, 2005, USDA dispatched a technical team to Canada. We sent the team to investigate the efficacy of Canada's ruminant to ruminant feed ban because the animal was born shortly after the implementation of the ban, and to determine if there are any potential links among the positive animals. We have appreciated Canada's cooperation and their willingness to assist in these efforts.

The team is composed of experts from several USDA agencies, APHIS, the Agricultural Marketing Services, the Foreign Agricultural Service, and advisers from the FDA. We have been receiving regular updates from the team. We expect an analysis on the feed ban issues in mid February, and results from the epidemiological investigation by the end of March. This information will be critical as we consider whether any adjustments to current policies are warranted.

As you are aware, USDA's minimal-risk rule has come under legal challenge. We will continue to strongly defend the promulgation of the rule, which was transparent, deliberative and science-based.

The final rule establishes criteria for geographic regions to be recognized as presenting minimal risk of introducing BSE into the United States. It places Canada in the minimal-risk category and defines the requirements that must be met for the import of certain ruminants and ruminant products from Canada. A minimal-risk region can include a region in which BSE-infected animals have been diagnosed, but where there is sufficient risk mitigation measures put in place to make the introduction of BSE in the United States unlikely.

Because the rule permits the import of live cattle under 30 months of age and ruminant products from older animals, it is useful to note the risk mitigation measures. They include: proper animal identification; accompanying animal health certification that includes information on individual animal identification, age, origin, destination and responsible parties; the movement of the cattle to feedlots or slaughter facilities in sealed containers; the prohibition on cattle moving to more than one feedlot in the United States; and the removal of specified risk materials from cattle slaughtered in the United States.

We remain confident that the combination of all of these requirements, in addition to the animal and public health measures that Canada has in place to prevent the spread of BSE, along with the extensive U.S. regulatory food safety and animal health systems, provides the utmost protection to U.S. consumers and to livestock.

USDA continues to monitor Canada's compliance with its BSE regulations. In addition to the investigation that I have already discussed, USDA's Food Safety and Inspection Service is continuing to work to ensure Canada's compliance with the BSE requirements in the United States.

I am aware of concerns with the portion of USDA's minimal-risk rule that would allow meat from animals over 30-months of age to be imported from Canada, but continue the prohibition on the importation of live animals of the same age for processing in the United States. Some have suggested that going forward with this

new rule will change the historical beef-trading patterns in North America to the detriment of U.S. packers.

As Secretary of Agriculture, I believe that the marketplace should determine cross-border trading patterns. We must make every effort to avoid policies that favor one group of packers over another. Decisions, however, related to sanitary and phytosanitary measures must be based in science.

I can assure you that I will be reviewing this issue very carefully in the days ahead as we move closer to the March 7 implementation date.

I simply cannot emphasize strongly enough the central role of science in the entire process, particularly with regard to the rigorous evaluation of risk. Since the discovery of the first case of BSE in Great Britain in 1986, we have learned a tremendous amount about this disease. That knowledge has greatly informed our regulatory systems and our response efforts.

We have learned that the single most important thing we can do to protect human health regarding BSE is the removal of SRMs from the food supply. Likewise, the most significant step we can take to prevent the spread of BSE and bring about its eradication is a ruminant to ruminant feed ban. It is because of the strong systems the United States has put in place, especially these two essential firewalls, that we can be confident of the safety of our beef supply, in that the spread of BSE has been prevented in this Nation.

After Canada reported its first case of BSE in May 2003, USDA conducted a comprehensive risk analysis to review the potential threat that was posed. The initial analysis followed the recommended structure of the World Organization for Animal Health, or OIE, an drew on findings from the Harvard-Tuskegee BSE risk assessment; findings from the epidemiological investigation of BSE in Canada; and information on Canadian BSE surveillance and feed ban, and history of imports of cattle and meat and bone meal from countries known to have BSE.

The results of that analysis, available, I might add, on the USDA website, confirmed that Canada had the necessary safeguards in place to protect U.S. consumers and livestock against BSE. These mitigation measures include the removal of SRMs from the food chain supply, a ruminant to ruminant feed ban, a national surveillance program and import restrictions. The extensive risk assessment conducted as part of USDA's rule-making process also took into careful consideration the possibility that Canada could experience additional cases of BSE.

In the risk analysis update for the final rule, USDA also considered the additional risk protection from new slaughter procedures, such as the prohibition on the use of downer animals for food.

The OIE recommends the use of risk assessment to manage human and animal health risks of BSE. OIE guidelines, based on current scientific understanding, recognize that there are different levels of risk in countries or regions, and suggest how trade might safely occur according to the levels of risk. USDA used OIE as a basis in developing our regulations defining Canada as a minimal-risk country.

While SPS regulations protecting human and animal health are the foremost concern, USDA also has examined the potential economic impacts of the minimal-risk rule and related BSE trade issues as required by Executive Order 12866.

The cost benefit analysis conducted as a part of the final rule indicates that U.S. beef imports from Canada are projected to actually decrease slightly in 2005, as Canada shifts its slaughter capacity to lower-yielding older cattle not eligible for export to the United States. At the same time, imports of fed and feeder cattle under 30 months are expected to increase in 2005, which is expected to drive up U.S. beef production, reduce beef prices slightly, and consequently, reduce cattle prices.

The precise economic effects will depend on the timing and the volume of cattle and beef imports from Canada. In addition, to the extent that we can continue to open markets that are currently closed to our beef, U.S. cattle price prospects will strengthen.

U.S. market maintenance activities have been critical in helping restore our beef export markets. In 2003 the total export value of U.S. beef and ruminant products was \$7.5 billion. After December 23rd, 2003, 64 percent of that market was immediately closed. Today we have recovered well over a third of that, so that 41 percent of that market or 3.1 billion remains closed. Two countries, Japan with 1.5 billion and Korea with 800 million, account for three-quarters of the existing closures.

As a leader in the critical Asian market, Japan is a vital market to reopen to U.S. beef exports. We are aware that the decision to resume trade in this market will set an important precedent for trade resumption in many other markets. Therefore, we have endeavored to use science in our ongoing efforts. Efforts to reopen this market have drawn on resources across the Federal Government, and I might add, at the highest political levels. As I had previously said, this issue has occupied much of my first few days as Secretary. Just last week I met with Ambassador Kato, and also wrote to my counterpart, Minister Shimamura, on the importance of this issue. At the same time, Ambassador Baker continues to press this issue with Government of Japan officials in Tokyo and other U.S. Government officials continue to contact their counterparts.

These efforts are just the latest in many policy discussions and technical exchanges over the past 13 months. Indeed, the issue has been a major focus of direct discussions between President Bush and Japanese Prime Minister Koizumi.

While we are focusing on Japan because of our important trading relationship and its leadership role in the region, we are also pursuing efforts to reopen all markets that are closed to us. We are actively engaged with Korea, Hong Kong, Taiwan, China, Egypt and Russia, and have specific actions under way in each market to get trade resumed. I would be pleased to provide members upon request additional detail on these and other secondary markets. While the progress that has been made has taken far longer than we had hoped, progress is indeed being made. I have stated that USDA, and indeed the entire U.S. Government, will exert every effort to resolve the matter at the earliest possible time.

As traditional trade barriers such as tariffs are lowered, our focus to eliminate unjustified non-tariff barriers such as non-science-based SPS regulatory measures become all the more important to maintain the flow of mutually beneficial trade. For USDA a common touchstone across these issues is the need to maintain consistency and predictability, to base our domestic regulations on science, and to encourage the use of science-based solutions within the international community. The United States has long been a leader in this regard, including negotiating the World Trade Organization agreement on the application of sanitary and phytosanitary measures during the Uruguay Round.

Even before the discovery of a single case of BSE in the United States, USDA had begun talking with other countries about the need for international trade standards to keep pace with the science, and we will redouble our efforts in this regard.

It is also critical that domestic trade rules reflect the current state of knowledge regarding BSE, and here the United States is leading as well. We are confident that trade can be resumed with countries where BSE has been discovered, contingent upon strong protections within those countries, as well as the robust and effective regulatory system those imports are subject to when they enter the United States. These facts are reflected in the minimal-risk rule.

At the same time we will continue to work with our trading partners to ensure the ongoing strength of their own BSE protection systems, especially the removal of SRMs and the implementation of the feed ban. While trade opportunities are multiplying in an increasingly global marketplace, we must remain mindful of our paramount responsibility to protect the public health and animal health.

In summary, I am confident that we are continuing to keep the protection of public and animal health foremost in our concerns. It is critical that we continue to use science as a basis for our decisions and regulations, and that the United States maintain its leadership role in advancing our scientific understanding of these kinds of SPS-related issues and appropriate science-based responses.

Mr. Chairman, thank you once again for holding this important hearing. I would now be pleased to take any questions you or other members would have. Thank you.

The CHAIRMAN. Thank you very much, Mr. Secretary.

In May of 2003, when the first BSE case in Canada was discovered, a decision was made by the Department to close the border. I assume that decision was made on the basis of sound science. Would you explain what the position of the Department was that led to that decision and what has changed since that time which now compels the Department to change its mind and to reopen the border?

Secretary JOHANNIS. Mr. Chairman, as you know, this process has evolved now over an extended period of time. You referenced back to May of 2003. We might even reference back to the situation in Europe.

During that period of time since May of 2003 we have learned so much more in this country in terms of what this disease is all

about. Think about where we have come in that period of time. We put in place an aggressive surveillance system. Quite honestly, once the system was designed, I am not entirely certain we knew exactly what we were going to find. We knew we had a goal in terms of the number of cattle. We wanted to test at least 268,500, but we would test more within that 12- to 18-month period of time. As of today we have tested about 200,000, and we have not found a case of BSE.

The other thing that I would mention is that we have also understood a lot more about managing the risk involved. If you look at the two points I emphasized over and over in my comments, the removal of SRMs, the feed ban, ruminant to ruminant feed ban, we have come to realize that they are far and away the most effective things we can do in terms of dealing with this risk.

I will also share something with you. If you read the international standards, if there is one overriding message that comes out of that, it is the whole idea of doing the risk assessment and then managing that risk, and that has been a part of this process, so it would be based upon science.

Now, there are others here with me. Dr. DeHaven was here during that process when I was not, and I would invite him to offer a comment to your question, but I would just summarize by saying the Department has paid attention, they have learned a lot. They have also referenced the standards. They have worked through the risk assessment process. A tremendous amount of information is available today that was not available back then.

Dr. DEHAVEN. Mr. Secretary, thank you, and you have captured very effectively the actions and the basis for our actions since May of 2003.

I would only emphasize that at the time that the Canadians discovered their first case on May 20th, 2003, indeed, our trade policy was based on really two categories of countries, those affected by BSE and those not affected. If a country was affected as Canada then became on May 20th, we in essence shut off all trade. That trade policy was not consistent with the OIE guidelines and not consistent with the science that we know about, so our activities since then have been toward bringing our trade policies more in line with the science, and obviously, more in line with the international guidelines. Indeed, the fundamental of the changes that we've made is based on that risk assessment that is done consistent with the OIE chapter.

The CHAIRMAN. Thank you. The only thing I am not clear on relative to that, has there been any change in the practice or procedure on the other side of the border between May of 2003 and today?

Secretary JOHANNES. There has. As you know, we have a team up there which I referenced, and a lot of publicity about the team that is there, but over that period of time, we have continued to work with Canada on issues, the feed ban, SRM removal. It is fair to say really in lock-step they have attempted to follow within the same time frame the very things that we were doing on this side of the border. Keep in mind that the ruminant to ruminant feed ban was put in effect in both countries on the same day. The SRM removals that are now occurring are the same really on both sides of the bor-

der, and they have been very, very willing to work with us in terms of making sure that what we are doing here is mirrored there on the Canadian side.

The CHAIRMAN. I understand that some folks, both in the U.S. and elsewhere, are advocating that the United States test every head of cattle slaughtered for BSE as a way to resume trade with Japan. I also understand that even though Japan tests all animals destined for the human food chain, many people think that the U.S. surveillance system is more effective at finding BSE. Can you discuss the differences between our system and testing every head of cattle slaughtered, and please give us what your thoughts are on a 100 percent testing scheme?

Secretary JOHANNIS. I will just jump in in terms of where your question leaves off. I do not believe that science would justify 100 percent testing scheme. Again, if you look at what the international standards call for, they call for risk management, and I do not see any basis whatsoever in science for 100 percent testing of animals. It is just not justified under any standard I have read, any science I have read. It just simply should not be a part of the requirement to do business in the international marketplace with beef.

The CHAIRMAN. Thank you.

Senator Harkin.

Senator HARKIN. Thank you, Mr. Chairman.

Mr. Secretary, you today and the USDA prior to your coming, has often cited the OIE standards as the authority on BSE. With all of the measures recommended by OIE, whether it be the feed ban, surveillance or mandatory reporting of cattle with clinical signs of BSE, there are two crucial factors that make them effective safety measures. One, the amount of time the measures have been in place, and second, how well those measures have been complied with and enforced.

OIE standards recommends that a feed ban needs to be in place, and effectively enforced for 8 years to confidently ensure minimal risk. Canada does not meet that standard. Why have we departed from the OIE standards if, in fact, the OIE standards are science-based? That is why I said in my opening statement, are you here today to tell us that the OIE standards are not science-based?

Secretary JOHANNIS. No.

Senator HARKIN. Then if they are science-based why have we departed from them?

Secretary JOHANNIS. You are right. There are two items, the time, there is compliance. We definitely want to pay attention to those. We can agree, you and I, Senator Harkin, that they are science-based. They are not prescriptive. The standards are such that it is not a "thou shalt" sort of approach by the standards. The essence of what the standards are saying is look at it from a risk-based standpoint, and do a very thorough risk analysis, and make sure you are doing everything you can to deal with the risk that is presented. If you have one case of BSE in a country, the approach may be vastly different than if you have hundreds of cases of BSE in a country. How you approach that is you are given guidance in these standards.

Your observation is correct in terms of the feed ban. We are a few months short. It would be 8 years in August if I am not mistaken.

Senator HARKIN. That is true, but however, it has to be effective. We checked, at least my staff did, with the Canadians, and quite frankly, they have had their ban in place for about 7 years, it will be 8 years coming up here shortly. The fact is we do not know how effective it has been and whether it has been in full compliance. For example, I am told that Canada has been in 95 percent compliance for the last 3 years. What was it for the last 4 years, 5 years, 6 years? Was it 80 percent, 70 percent, 50 percent? What standard do you, does the USDA use? The OIE, I thought, was pretty clear. It has to be effective. What, in your mind, is effective in terms of percent compliance?

Secretary JOHANNIS. It truly does depend on the risk analysis, and that is what the OIE calls for. The steps you take to deal with BSE in a country are interlocking steps. It would not be fair to pull one step out without looking at all of the other steps. The risk protection design depends upon the risk analysis. In this case, we have SRM removal, we have the ruminant-to-ruminant feed ban, which you are questioning about. We have the national surveillance programs in the two countries which are very similar, the import restrictions. Again, all of these things interlock together to put a plan together in terms of how you deal with the risk presented in that country.

The essence of the international standards is that a country can have a BSE situation and a program is designed based upon what the risk analysis shows, and that is what the USDA did here, just a very careful, thoughtful risk analysis.

Senator HARKIN. I understand that, and there are two other areas that I just want to get into briefly. The one is this feed ban, that we have departed from the OIE standards.

Second, you talk about surveillance. Well, again, the OIE standard is that an effective surveillance plan must be in place for 7 years. The final rule does not say that. The final rule just says a surveillance plan has to be in place. Do we really know how effective the Canadian system has been? Why does the final rule not specify the same 7 years that the OIE standard has set?

Secretary JOHANNIS. I am going to ask Dr. DeHaven to jump in here because he was part of this at a time when I was not. I see from his body language that he is anxious to add something to this discussion.

Doctor.

Dr. DEHAVEN. Thank you, Mr. Secretary.

Indeed, we would not grant minimum risk categorization to a country unless we felt that their feed ban was effective, that their surveillance program was effective for an appropriate period of time.

As the Secretary has mentioned, it is a comprehensive look at the entire system based on a number of redundancies, the fact that we start with import restrictions in Canada going back to the early 1990's, the feed ban that has been in place, as the Secretary mentioned, since August 1997. They have, in fact, had very effective surveillance in place in Canada since 1992 and have exceeded the

OIE requirements, in terms of surveillance, for at least the last 7 years.

In fact, in calendar year 2004, the Canadians tested over 23,550 of the same high-risk or target animals that we are testing. When you consider that in proportion to their adult cattle population versus the larger adult cattle population in the United States, in fact, their surveillance system would be at least comparable to the system that we have enacted since June 1st in this country, in terms of proportion of the adult cattle population.

Again, it is a holistic look. The OIE guidelines are called guidelines for that very purpose. They are not intended to be prescriptive, but rather guidelines to help a country go through a comprehensive risk analysis, which of course was the basis for our final rule.

Senator HARKIN. Thank you, Dr. DeHaven.

Last, the third part of my question on departing from OIE standards has to do with the reporting and investigation of all cattle demonstrating signs of BSE. The OIE standard is compulsory. The final rule, basically, does not even address this at all on the reporting of cattle demonstrating signs of BSE.

You take all three of those together, I understand what you say, Dr. DeHaven, that Canada has had a surveillance system, but I would turn the argument back around on you that one of these elements they may have done well, but the other two they did not do well. I am not certain they did all of them well. While their surveillance may have been done well, some of the other measures, we do not know about the feed ban and such, we do not know how effective they have been over the last 7 years.

That is why I say—I would sum up, Mr. Chairman, I know my time is out—that it just seems, that if you add up all of the OIE recommendations, that if we were to adhere to them, that Canada might not be minimal risk. It would be more like a moderate-risk entity rather than minimal risk. I will come back to that later. My time is up.

The CHAIRMAN. Senator Lugar.

Senator LUGAR. Mr. Chairman, I would like to ask the Secretary just to think aloud in these areas.

Clearly, the first bias of each Senator has to be food safety for the American people. Likewise, we are deeply concerned about food safety in our products for people around the world. You have been discussing that with the distinguished chairman and ranking member, and I am satisfied that USDA has given extraordinary thought to this and has provided a safe situation.

Now, I would not say it is a bias, but my own personal enthusiasm would be to maximize trade with Canada, likewise with Japan, and likewise with every country around the world. I just think this is critical to American agriculture. Therefore, I am heartened by the fact that we may be regaining some trade with Canada, under the order of March the 7th of this year.

We have already queried you about it, but I want to ask further about the opening up of the market to Japan, and I do so as a practical matter of the debate that is ensuing, if not with this committee, at least in the Senate, in which many Senators, having heard that as many as two million animals might come from Can-

ada to the United States March 7th and the border is open again or the modification that some think 900,000. I would say hang on here. Safety aside, if 2 million or 900,000 animals are suddenly coming in, and we are not exporting to Japan or we are even having problems with South Korea, which you have identified as a large part, a fourth or a third maybe, of our export market. This is bad news. Simply sort of hold the horses for a while or the cattle, as the case may be, and sort of wait this one out.

Now, I am wondering to what extent you have coordinated in USDA with the State Department, with our Trade Representative, with the other agencies of our Government who have a national interest in this, in addition to an agricultural interest and, likewise, your own advocacy with regard to enhancement of trade, the movement of our agricultural products. Can you give us some idea of how you perceive your leadership in these areas and your coordination with others.

Secretary JOHANNIS. As I indicated in my confirmation hearing, I believe I have a key role, and I have every expectation that I will be at the table. We have already had a number of meetings and briefings at the USDA following my confirmation on trade issues, and we are already strategizing on how I can fit into these negotiations as quickly as I possibly can. If that literally requires my attendance in another part of the world to be at the table to advocate for agriculture, I will not hesitate to leave Washington and do exactly that.

As you have probably seen from the articles, I walked out of the committee hearing. It did not matter who was asking the question, everybody was saying, at that time, Governor, what do you intend to do in terms of reopening Japan? I took that very, very seriously. As soon as I was sworn in, I asked for an immediate meeting with their Ambassador. We had a meeting. I talked about it publicly. I have talked to our Ambassador in Japan, a fine man, Ambassador Baker, and we talked at length about where they are at. I have indicated our willingness to do everything we can.

The important point is this. Those of us who have been involved in trade policy, and many of you have been involved many more years than I have, know that, as the tariff issue has been resolved, in negotiation after negotiation or it is in the process of being resolved, we continue to bump into these issues relating to GMOs, and animal disease, and it just goes on and on. I just think this is such an important area that, without absolutely dogged determination, in terms of our focus on science and being ready to lead by example, this thing has just got the potential to bog trade down, whether it is beef or chickens or whatever it is. Every member could talk about issues in their area.

The last thing I wanted to mention, and I hope there is a question on the economic analysis that was done, Dr. Collins did a very thorough economic analysis, he and his people, about what we might anticipate. There has been a lot of discussion in the last few days about that. He could offer some insight on that much more thoughtfully than I could.

I see the lights flashing. That probably means I need to be quiet, but I hope we deal with that issue. It is an important issue, and our producers want to hear about that.

Senator LUGAR. I agree. Thank you very much.

Secretary JOHANNIS. Thank you, Senator.

The CHAIRMAN. Dr. Collins, is there anything you want to add to that at this point?

Mr. COLLINS. Mr. Chairman, I will go ahead and take my cue and comment on this question of the impending backlog of cattle poised to come across the border. USDA was probably first out of the box to characterize what might happen because we are the ones that issued the rule. Of course, with any rule we issue of this magnitude, we have to do an economic analysis, and we did that with this rule.

We indicated in our analysis that we thought in the 12 months subsequent to March 7th that we might have 1.5 to 2 million head of Canadian cattle come across the border. Unfortunately, from that characterization, it led people to believe that diesel trucks would be lined up eight deep on March 6th waiting to come across the border. We do not think that is the case. In addition to our assessment, as I said, which was the first out of the box, we have others, which you have mentioned, others from credible organizations that have suggested between 800,000 and a million might be a more appropriate number. That is a number for the calendar year 2005. Ours was for the 12-month period beginning March 7th. The numbers come a little bit closer together when you adjust for those differences.

Even so, our estimate was that Fed cattle prices in the United States would decline from \$85 a hundred weight in 2005 to \$82 a hundred weight. You could argue whether that is a large effect or a moderate effect. If the analyses that were done subsequent to ours that suggest 900,000 head are to come across the border, then that effect would even be smaller, that is encouraging for American cattle producers.

Of course, since the time we did our analysis, we have learned more about the slaughter capacity expansion in Canada, we have learned more about the transportation constraints. There is reason to believe that the numbers might be smaller than what we had initially anticipated. Our analysis was done based on data that we had through the first 6 months of 2004, and here we are sitting now in the beginning of 2005, and we have learned a lot more. That is not to say there will not be an impact, but it could be characterized as a moderate impact.

The CHAIRMAN. Thank you.

Senator Nelson.

Senator NELSON. Thank you, Mr. Chairman.

Dr. Collins, I know it seems like it is a risk that is out there that might be an acceptable risk, but there are probably some producers and processors here who are not necessarily ready to take your risk, and we have to be very cautious and careful on that date. If you are right, perhaps the adjustment can be made. If you are slightly off, there are some folks in this room who are going to lose some money. The American market is going to be flooded at a time that we do not have an opening in the Asian markets at the same time.

Let me say, Mr. Secretary, once again, you have inherited a Hobbesian Choice here. If you move one direction, you have created

a certain situation; if you move the other direction to be correct, you have created another situation. I know you are aware of that.

I know that we believe it is about sound science because we talk about it, but in 47 countries that have shut down American beef exports, I am not so certain it is about sound science, certainly not entirely about sound science. Sound science or the threat of BSE is, at times, good reason not to accept the market, but at other times it is just a very good excuse. That is why I am pleased, Mr. Secretary, you are going to work on these nontariff trade barriers because we are experiencing more than a slight amount of that.

What I am concerned, though, is that until the Canadian feed issue is resolved satisfactorily, to the satisfaction of virtually every one of those markets, the cloud remains. The irony is Canada started the problem. We compounded it by inconsistent reaction, by shutting off live cattle, but permitting meat, Canadian meat to continue to come into the market. The result is that we are moving jobs to Canada, creating all kinds of processing and producer problems here in the U.S., and now correcting it threatens to flood the market, as Senator Lugar has said, but we continue to give pause to the Asian markets who capitalize on the food safety cloud caused by Canada in the first place.

Now, it is too easy to blame Canada, so I am not going to do that, and I am not going to blame the Australians for being opportunistic to try to move into the markets they were losing. We need to accept the fact that we seem to have shot ourselves in the foot while aiming, by not stopping the Canadian meat from coming in at the same time, given the constraints we have had about BSE coming from Canada.

What alarms me more is that we are about to do it again. I am not suggesting that it is not in our policy to try to consolidate the cattle industry, but if we wanted to do that, there probably would not be a better way to do that, to consolidate processing, to consolidate production. I know it is going to be very difficult to try to resolve this, but there is a lot on the line, and I am getting flooded, as I am certain you are, by people who are concerned that we even this out.

My question is, and I have still got a minute-and-a-half here if we allow over 30-month cattle imports through rule-making, would it not make more sense to bring all this back together and do the rule-making for OTM cattle at the same time that we concern ourselves with continuing to permit OTM meat imports and resolve this all at once with one rule rather than having this totally inconsistent, creating dislocation for certain processors, threatening now to bring things in so that we would now create a flood in the market, dropping U.S. beef prices at a time when cattle producers and some people are making some money at it.

Have you thought about putting it all under one rule-making effort?

Secretary JOHANNNS. Boy, you have touched on all of the issues.

Senator NELSON. Well, I have all of these people touching on me, as you know. We are reaching out.

Secretary JOHANNNS. You have some excellent people there with you because you literally have hit on key issues. I would offer this thought. As you know, I was Governor back when we discovered

BSE, in the one animal, the “cow that stole Christmas,” and we did everything—

Senator NELSON. He keeps on stealing.

Secretary JOHANNNS. Yes. We did everything we could to make sure that the right information was before the American consumer, and decisions were made by the USDA at that time, and I supported those decisions. We all did. I held a press conference on the 24th. We found out about it the evening of the 23rd, and we were literally before the media on the 24th in encouraging consumers to hang in there, and they have. Gees, they have just been champions, and they are confident in what we are doing.

The very issues that you touch upon are some of the reasons why pulling back the whole shebang, the whole rule, would cause me a great deal of concern. The industry will restructure. It just is the nature of the beast. It is the nature of the economy. The industry is restructuring. There is not any doubt about it. To what level? Gosh, we could have a whole separate hearing and probably debate that. What do I mean by that? You are seeing more processing in Canada. It is the jobs that you refer to.

Your colleagues have also already referenced the fact that that is having an impact in their States, in their communities, and there is not any doubt about that. We can see that by the announcements from beef packers. I would just be very, very worried that this thing gets so far down the road, the industry so restructures, that by the time we get in, we have put our producers at a disadvantage.

Then there is the other issue. If we believe that what we are doing is based upon good science, and when I look at the risk assessment, when I look at SRM removal, the ruminant-to-ruminant feed ban, the work that we have done in Canada, with their co-operation, and on and on, the very, very, very worrisome thing is that we just sent a signal to the international marketplace that we are playing by different rules than what we are articulating, and, Senator, that is just about as candid and bold as I can be about your question. It raises a whole bunch of concerns.

Now, I have studied this up one side and down another, and I will welcome any advice I can get. I will listen to it and consider it, but that would be how I would just respond as directly as I can to your question.

Senator NELSON. I agree with you that we ought to try to do things on an intellectually honest basis. I just wish others would join. I will play by their rules. I just wish they would play by ours. We have to look at this in a holistic fashion as to what the current imports are doing, but by expanding those imports what that could do to our export market. I know you are aware of that, and we will continue to work together. This is not a hostile environment.

Secretary JOHANNNS. No.

Senator NELSON. We are all in the same boat. We are just trying to row in the same direction.

Secretary JOHANNNS. Yes.

Senator NELSON. I thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Roberts.

Senator ROBERTS. Mr. Chairman, the distinguished Senator from Wyoming has important business on the floor. I am going to yield my time to him, with the understanding that I would be in the batting circle the next time the Republican opportunity comes up.

The CHAIRMAN. Without objection.

Senator Thomas.

Senator THOMAS. Thank you very much.

I guess, Mr. Secretary, and I know this is a complicated issue and a tough issue, but just to make it clear, what do you expect to have happen now on the 7th of March? What is the situation? What will be done?

Secretary JOHANNIS. Well, the rule is proceeding to that date. We do have a team in Canada that is looking at some very important issues in terms of the ruminant-to-ruminant feed ban and whether it is being honored. I will cue Dr. DeHaven up here. I asked for a briefing just before I walked in here, and he gave me a briefing, and I will ask him to give the same briefing to you. I will emphasize it is very preliminary.

I am going to look at that information very closely. The other thing I have promised is that we will be absolutely transparent with that information. We will put it out there. We will get it over to this committee and—

Senator THOMAS. You do not know what the situation is going to be. You do not know whether this regulation will be put into place as it is or whether it will be changed or whether it will not and put into place.

Secretary JOHANNIS. It is on the road to implementation. I will say this, I will absolutely consider everything right up to that date because I believe that is my responsibility. You cannot, on one hand, send a group up there and say, "Take a look at this," and then say, "By the way, I will not be paying attention to them." I am going to be paying attention to them.

Senator THOMAS. Oh, I understand. We have had quite a little time to take a look at it and know what is going on. You have all talked about what is happening and what you know, but you do not know enough yet to be able to know what you are going to do; is that correct?

Secretary JOHANNIS. Senator, I would not go so far as to say that because the USDA has done a ton of work in Canada.

Senator THOMAS. I know, but you still do not where we are going or not sharing with us.

Secretary JOHANNIS. No, Senator. The data is out there, and the rule is moving forward and each day you can cross off the calendar. I do have a team, and I am going to consider their findings. I do not think you would expect anything less of me in terms of making sure that that is something I take a look at, and I intend to do that.

Senator THOMAS. What do we know about Japan and Korea, assuming, as I assume now, that this regulation is going to go into place, what is their reaction to that?

Secretary JOHANNIS. In no discussion that I have had either with our Ambassador, their Ambassador or anyone associated with Japan has the topic of Canada or a quid pro quo been raised in those discussions. My discussions have been purely on where are

we at with Japan, how quickly can we set a date and start moving beef into that marketplace again.

Senator THOMAS. Or does not the decision with Canada make a difference to them?

Secretary JOHANNNS. I can offer my thought on that. Again, they have not raised the issue, but—

Senator THOMAS. That is what has caused us to be in the position we are in with them, is it not?

Secretary JOHANNNS. Here is what I would offer, Senator. I believe we have to be consistent in our presentation. If we are truly about basing our decisions upon the science that is available, the OIE standards, the risk analysis, the factors that we build into the system based upon a risk analysis, then I just think I feel very strongly you have to be consistent in your dealings with each other country, otherwise trade discussions become constantly entangled.

Senator THOMAS. Yes, I understand, and I am not suggesting that that would make a difference, that you would tell them something different, but they can probably tell you now, at this point, if this rule goes into place, what will they do?

Secretary JOHANNNS. Canada has not been raised in any discussion, and you have people that have worked on this a—

Senator THOMAS. No discussion with Japan?

Secretary JOHANNNS [continuing]. With Japan. We have people that have worked on this. I will ask Dr. Collins to offer—

Senator THOMAS. Well, that is why they closed our trade.

Mr. COLLINS. Senator, they closed the trade because they have not done the kind of work we have done. They have not done the risk assessment—

Senator THOMAS. They closed it because of the mad cow in Canada, correct?

Mr. COLLINS. They closed it because they wanted 100-percent testing of the animals that we are going to turn into beef—

Senator THOMAS. I am sorry, guys, but all of this science stuff gets a little confusing, and we need to be a little more broad. That is the reason we are not dealing with Japan on the same basis we were.

Mr. COLLINS. The finding of BSE is the reason.

Senator THOMAS. Sure. That is what I am saying.

Mr. COLLINS. OK. I got that.

Secretary JOHANNNS. Senator, if I could just add a clarification, just so our record is clear, my understanding is that the Japanese took the action not because of the first finding of BSE in Canada, it was the finding of BSE in the United States, which was many months after—

Senator THOMAS. Which was, also, Canadian.

Secretary JOHANNNS. It was. Just, again, so we are clear, they did not act on the finding of BSE the first animal in Canada, they acted on the situation December 23rd.

Senator THOMAS. I understand the difficulty, but at some point, rather than talking about how many studies we are going to do, we have to have some—we are getting fairly close to the time when there is a decision is going to have to be made. It affects people, and people ought to have some idea of where you are, and where you expect to be, and where you hope to be.

Thank you very much.

Secretary JOHANNIS. Thank you, Senator.

The CHAIRMAN. Senator Dayton.

Senator DAYTON. Thank you, Mr. Chairman.

Mr. Secretary, you talk about using science in your decisions. There is health science, and there is economic science, and both are essential to a good policy. I am certainly glad that the Department has applied the best health science to this proposed policy, but your economic science is out of Mad magazine. You are going to allow Canadian operators to slaughter Canadian cattle over 30 months of age and export that beef into the U.S. market, but you are not going to allow American meat packers to slaughter Canadian animals that are over 30 months of age. The price of a Canadian animal I am told is now less than one-third that of a U.S. animal. Obviously, the large meat packers are going to shift their processing plants to Canada where they can literally make a killing and, in fact, that is what is already happening.

Senator Crapo cited Tyson closing in Idaho. Tyson is reportedly also preparing to open an expanded 5,000-head slaughter operation in Alberta, Canada. Excel is, also, reportedly starting up a 5,000-head slaughter operation in Canada, which will slaughter the smaller U.S. meat packers who will not be allowed to buy those much cheaper Canadian OTM animals, and they will go out of business in the United States, and those American jobs will be lost.

Those American workers, our taxpayers, our citizens and constituents, and their families are going to be devastated by those closings and loss of jobs, and you call that a moderate impact. I find that ignorant and offensive to sit here in suits, your job is protected, your salary is secure, and call those people who are going to lose their jobs a moderate impact. It is wrong, and it is ignorant, and it is offensive to this committee and to the American people.

This rule should be exposed as having been crafted by somebody as perfectly as could conceivably have been done to benefit the Canadian industry and to harm the American industry. The only American operators that are going to benefit are the large U.S. companies, like Tyson and Excel, who are being rewarded by our Government policy for shifting their plants and jobs from the United States and Canada. I do not blame them for following the economic logic, but it is nonsensical that our Government would adopt a policy that would reward them for taking jobs from Americans and passing them up to Canada, as your own analysis predicts in the regulation.

I quote from the Federal Register final rule, "Allowing the United States to import Canadian beef from cattle slaughtered at more than 30 months of age would enable Canada to produce and sell much larger quantities of processing beef without fearing the significant price collapse that would likely occur if the entire additional product were only for the Canadian market."

The summary, your economic summary in your own analysis, says, "This final rule will cost U.S. cattle producers up to \$2.9 billion over a period of several years." You call that a moderate impact. This is huge for Minnesota. It is huge for other States. You know that. You are a Governor. I say, again, you walked into this.

You inherited this. This is a disaster, and it is a disaster of the creation of this department.

I am so tired of people who campaign for office or appointed to office with the ideology that Government does everything badly, and then when they are in office, they go out to prove themselves correct. They adopt policies that sever, that do damage to Americans and sever the trust that should exist between Government and its people, and then they point to their failures and say, "See, that proves Government does everything badly."

No wonder people, no wonder these producers, and workers, and business owners are just fed up to here with Government, and you are going to make it worse. You are going to cost them their jobs, and then we are going to talk about process and progress with the Japanese or the Koreans, which will go on, and on, and on, while all of this damage takes effect that you are forecasting in your own analysis. You say here today the industry will restructure. The industry is restructuring. Well, there is no doubt about that. Well, let us throw up our hands. There is nothing we can do about that.

Well, here is something we can do about that. We can not adopt a policy that is going to reward that restructuring for taking jobs from Americans and giving them to the Americans. That is about as simple and basic as it gets. If the U.S. Government cannot figure out how not to do that, then we all ought to go home and save the taxpayers the money.

This is crazy. It is crazy, and it is wrong, it is destructive, and I cannot conceive that you are going to adopt a policy that is this one-sidedly rewarding of Canadian operations, and businesses and their people at the expense of Americans and walk off into anywhere else in the world and talk about fair trade policy. Countries make trade policy in their own economic self-interest. This one, I do not know whose economic self-interest this is, as it relates to Americans, but it is not the folks that I hear from, and it is not many, except for the large operators. Again, I do not fault them for taking advantage of what you are doing for them, but I wonder why you are doing something that is so harmful to everybody else.

Secretary JOHANNIS. I am going to invite Dr. Collins to say a word, because the essence of your concern relates to the economic analysis, and I would like him to offer a few thoughts about it.

Senator let me emphasize there is so much at stake here in terms of the international marketplace that our agriculture enjoys—

The CHAIRMAN. Excuse me. Mr. Secretary, let us let him quickly respond, if you will, and we need to move on.

Secretary JOHANNIS. That I could not agree with you more, that it is enormously important that we get this right and think about the long-term impact on the industry and the availability of marketplaces for the future.

You are right, there is a lot at stake here, and I do not want anything that the USDA has said prior to my arrival or after to minimize those issues.

Senator DAYTON. My time is up. This regulation is not right, Mr. Secretary, it is not right.

The CHAIRMAN. Thank you.  
Senator Roberts.

Senator ROBERTS. Thank you, Mr. Chairman.

Welcome to the Agriculture Committee, Mr. Secretary. The USDA's Office of Inspector General, in a recent briefing to staff reported three main concerns with APHIS and FSIS handling of the Canadian cattle and the beef product imported in the United States during the period of August 2003 through August 2004. The OIG's three main findings in their audit were as follows.

APHIS expanded the list of products approved for importation without public notice. Some of the products, tongues, are considered moderate-risk products, not the low-risk products mentioned in the Secretary's announcement. APHIS and FSIS's definition of certain beef products were not consistent. Further, the two agencies did not really communicate with each other regarding their efforts to monitor the Canadian beef imports; and finally, APHIS did not have sufficient internal controls to issue and monitor import permits. I am not pointing any figures. I would point out that Mr. DeHaven has been on board about 6 months.

Mr. Secretary, in light of these disturbing findings by the Office of Inspector General, what steps will APHIS and FSIS and USDA take or have taken to assure the American consumer that the USDA has the ability to enforce and monitor the restrictions and the conditions in regards to regulating beef and imports when the trade with Canada finally does resumes? In addition, can you assure us that the USDA and the relevant agencies will not change the list of approved items without public notice and the notification of Congress?

Secretary JOHANNIS. Let me ask Dr. DeHaven to respond to the first part of your question in terms of those findings.

Dr. DEHAVEN. Thank you, Mr. Secretary.

Senator Roberts, the OIG report is still pending. We have reviewed a draft and will be submitting our final comments to that report in the very near future. Let me just address some of the concerns.

As to the expanded list of products, we had a list initially of products that we considered to be of low risk that we would by permit allow into the United States from Canada, which we did so. That list at the time that we created it was not intended to be a complete list that we would never change, but rather that was the requests that we were getting, and comparing the requests for products that our importers wanted to bring in and that we also considered to be safe to bring in from a BSE risk standpoint.

After that initial list was in place, in fact it included products like meat trimmings. We did then subsequently allow some of those products to be processed, recognizing that the processing in no way altered the risk relative to BSE. For example, meat trimmings that are subsequently ground is still the same meat trimmings, it has just been processed. We ensured that we had procedures in place that would make certain that that processed product in no way commingled or could be contaminated by other products that would not already be enterable prior to the processing. Tongues, while there may have been some discussion about it being moderate risk, are considered actually to be low risk. I would point out that we would allow tongues in under this minimal risk rule that we have simply published.

Having said all of that, we would clearly acknowledge that while we do not feel that any of the products that we have allowed into the United States from Canada represented any kind of food safety or animal health risk. Clearly, the processes and the transparency that we went about in allowing those additional products was not what it should have been, and we—

Senator ROBERTS. The Secretary's announcement was different from what was actually happening, which leads to public perception that is not in the best interest of the USDA.

Mr. Secretary, we just had a meeting in Kansas where the head of the Animal Health Division of our State Government was asked a question about a national ID system. Where are we with a national ID system? He said it would take another year, and then made the remarkable statement that it would take 10 years by the time we could really fully implement this and have a national ID system where we would be able to trace every animal, given the industry, given all of the movement of all of these critters. Where are we with a national ID system?

Secretary JOHANNNS. The national ID system, I have actually pulled the team the already at the USDA, because again, as I said previously, I am a believer that the system is necessary. The premises ID will be ready sometime mid summer, and then in terms of animal ID, my hope is that we can move that along right behind that. Whether it will be 10 years, I cannot imagine it would be that long, Senator. From my standpoint I would find that unacceptable. We need to move that as quickly as we can within the finances that I have available to make it happen, but believe me, I see it as a very, very key component for the future of this industry.

Senator ROBERTS. What is the top remaining hurdle to reopening the Japanese market?

Secretary JOHANNNS. I would say we have answered their technical questions. That has been going on for 13 months, and things arise, and we respond immediately. I just really think it is time now for the Japanese Government, at whatever level, to make the decision that this is going to be the date, and it literally is that decisionmaking that I believe has to occur for it to happen. That is where I see this process. There is nothing more, Senator, that we could possibly provide. We have been going through that now for many months before I arrived on the scene, and answered their questions and met their concerns, and I just really think it is a point now where somebody needs to make a decision that we are ready to set a date and get it done.

Senator ROBERTS. Before any American or any person in Government says,

[Japanese phrases] say American beef?

[Japanese phrase], is that correct?

[Laughter.]

Secretary JOHANNNS. Somewhere in all of that you lost me.

Senator ROBERTS. Where is the beef?

Secretary JOHANNNS. Where is the beef?

[Laughter.]

Senator ROBERTS. Thank you very much, sir.

The CHAIRMAN. You want to run through that one more time?

[Laughter.]

The CHAIRMAN. Can you say BSE in Japanese for us, please?  
 Senator Harkin has a comment.

Senator HARKIN. Mr. Chairman, thank you. I have to go to another meeting, but I just wanted to mention that Senator Baucus wanted to be here this morning, but is in Montana with the President. Also, Senator Conrad also is in North Dakota, same reason, with the President. I just ask permission, Mr. Chairman, to submit questions in writing to the Secretary to be answered?

The CHAIRMAN. Certainly.

Secretary JOHANNIS. We will answer those very expeditiously.

The CHAIRMAN. Without objection. I would say the same for Senator Burns, who also wanted to be here, but is with the President. Senator Talent.

**STATEMENT OF HON. JAMES TALENT, A U.S. SENATOR FROM MISSOURI**

Senator TALENT. Thank you, Mr. Chairman.

Mr. Secretary, you have seen the frustration that we feel, and you know we are just reflecting what our producers are saying. It just seems like we are always the good guy. I do feel sometimes like we are in the middle of that Peanuts strip where Charlie Brown always trusts Lucy and Lucy always pulls the football away.  
 [Laughter.]

Senator TALENT. We are all waiting for everybody to do what we have been doing a long time in terms of sound science. Yet I understand your position, and I have to say that certainly in principle, I agree with it. When you are the biggest exporter in the world you have an interest other countries do not have in following sound science so that exports can go across the border.

Now let me ask you to comment on a couple of things because so much of what I wanted to ask has been asked, which is a good thing. First of all, the comment has been made—Senator Thomas went into this, and I really sympathize with what he was saying. Is there any sign that sticking to sound science and moving toward a resolution where we allow the Canadian beef in is sending any signals to the Japanese where they might do the same thing with our beef? You said it has not come up, it does not look to us like doing what we are doing is helping us with them.

Let me take the flip side of that. This is my gut instinct, that if we did not do it, would it hurt us with them? If I am Ambassador Zoellick and I am sitting across the table from them and it gets to the point where we are really demonstrably dragging our heels here with the Canadians, it does give them another excuse to delay yet again. I can just see that being tossed back at our people under those circumstances. It is incredibly frustrating, but my gut instinct is in that direction. Maybe you want to comment on that.

Then let me switch to another point, another market. When I had a meeting in Kansas City with various people interested in agricultural trade and one of the representatives from the Chinese Council was there, and it was a very constructive meeting. He talked about his desire, their country's desire to develop relationships and markets with us, and we talked about beef. I realized the potential of that market in particular for prices in the United States, because I believe once they really start tasting American

beef, we are going to be in good position, and that is a great market. Are you looking at that?

That is what I am looking at, beyond the current pricing situation for beef in the United States, beyond the restructuring here, do you have any sense that they are watching this, and that what we are doing here may have an impact on our ability to develop that market in particular long term, because that market is the prize for agriculture. We have seen what their imports of our beans have done to prices of soybeans in the United States, and really when we are just beginning to penetrate. The potential there is enormous.

Comment on that if you would, or maybe Dr. Collins wants to. The potential for enhancing obstruction if we are seen as dragging our heels, the bad that may happen if we are seen that way. Then second, where the Chinese are on all this, if you would.

Thank you, Mr. Chairman.

Secretary JOHANNIS. I will offer a couple of thoughts and then I will invite Dr. Collins to offer his observations.

The first thing, I would be very worried about the very thing your question is directed at, and that is just handing in a bright package all tied in a bow, another excuse to delay discussions, to go back to square one in terms of opening the Japanese market. We keep pushing that the science justifies our beef going back into Japan, and I just would be very worried that if we send a contrary signal with our discussions and negotiations with any control, we are going to jeopardize those discussions.

I will also again point out when BSE was found in Canada, Japan did not close our border. Our whole goal here is to deal with these issues in a way that recognizes risk and develops a plan to deal with that risk.

China, I have been there a number of times as Governor, because I believe that that market has great potential, and whether that is beef or soybeans or any other product, there are a lot of people there, and I believe that we can provide the needs of those people relative to agricultural products, and again, in our discussions with them, I will guarantee part of what we deal with is the whole issue of science and making decisions based upon good science.

Mr. COLLINS. The only thing I would add to that is it is fundamental that we follow the principles and recommendations of OIE and have a science-based return to normalcy in trade with Canada. That is a fundamental signal that we can send to other countries of the world, and that includes China.

With respect to China, before suspension of trade, we were exporting about \$550 million a year worth of ruminant and ruminant products. Today that market is about 88 percent open. They take things like hides and skins. They do not take very much fresh, frozen and chilled beef from us. It is a very small portion of their imports. They have not opened that part of the market yet.

In negotiations with China, which Dr. Penn and others have led, China has raised many issues, technical issues, they have even raised non-meat trade issues as you might expect. There is a lot of pressure that still has to be put on China to move them forward. The potential there down the road, as you suggest, is immense.

Senator TALENT. Doctor, thank you.

Mr. Chairman, I want us to keep our eye on that ball because the practical potential for our producers, if they begin importing, as they progress economically, is huge.

Look, Mr. Secretary, one of the consistent messages here is look at whether these discoveries in January are a basis for perhaps some modification or some delay in view of the fact that we may have been borderline in terms of the OIE guidelines anyway. Senator Harkin was sending that message, and it is a reasonable one.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Crapo.

Senator CRAPO. Thank you very much, Mr. Chairman.

Mr. Secretary, I want to come back to two issues, and that would be the opening of the trade with Japan, as well as the question on the beef, live cattle over 30-months-old.

With regard to the trade issue with Japan, the issue that I want to raise has been well covered, so I just want to make a quick statement. Understanding that you have said that we have basically done everything we need to do, and that is really not much more we can provide in terms of justification of opening the trade with Japan, it seems to me that we must apparently face a political issue as opposed to a science issue in getting this done. If I am correct about that, then I would simply suggest that we develop a strategy and a rather prompt course of action or action plan to elevate this to whatever level it needs to be elevated to even if that means that the President of United States has to deal with the top leadership in Japan or whatever it takes. It seems to me that we cannot let this languish.

If you would like to comment on that, I would welcome. Otherwise, I will just make that as a statement and move on to the next issue.

Secretary JOHANNIS. Well, I agree with you. I absolutely believe that all of us have to be a part of this. I really felt the confirmation hearing sent an enormous signal, obviously. It certainly got everybody's attention and that is what was talked about. When I met with the Ambassador from Japan I emphasized: Mr. Ambassador, it did not matter who is asking the question. This is of paramount importance.

The other thing I would mention, we should not discount the fact that we have had an excellent working relationship with Japan for a long, long time, enormous amount of trade between the two countries. We need to make sure that we are laying the groundwork for that to continue. We just cannot get in the business, each of us, of trying to figure out how to negatively impact that. That will not serve anybody. It will not serve their people and it will not serve our people.

The President has talked to the Prime Minister, as you know, very directly about this issue. I have enlisted the Ambassadors on both sides. I will enlist my Cabinet colleagues to do everything they can, and as I have said, if it would be helpful for me to catch the next flight to Tokyo, I am there. I am ready to go. I understand its importance.

Senator CRAPO. I appreciate that, and you will know from the comments that you are getting here that you will have very strong support from this committee.

Let us move quickly in the time remaining to the question of the portion of the rule that will allow live cattle over age 30 to be brought into the United States from Canada. You know the issue. It has been discussed with you at length here. It seems to me that your answer implies that notwithstanding the economic circumstances that have been pointed out, that there is some kind of sound science that justifies allowing live cattle over the age of—excuse me—allowing boxed processed cattle over the age of 30 months into the United States, but not live cattle.

I would like you to clarify that for me. If there is some science that is prohibiting us from correcting this very difficult problem, what is it?

Secretary JOHANNIS. The rule is based upon good science, and let me just reaffirm that. Let me specifically address the issue that you have raised, because as I started drilling down into this issue in asking for more information, the very issue that you are talking to me about popped up on my radar screen, and I said, “Gosh, is there consistency in what we are doing here?” I looked at the economic analysis that was done, and I even went so far as to ask for the Federal regulations in this whole area of economic analysis and how much leeway I have.

As I indicated in my statement, it is an area I am taking a look at because some of the very things that you are raising are things that occurred to me as I have been working through this. Again, today I do not want to announce a conclusion because I do not have a conclusion. We do have some information that is headed my way, and I just think I owe it to the process to look carefully at that information, make sure I have everything before me.

Senator, I encourage a continued dialog between you and I and other members of the committee that are concerned about this area of the rule because it is something I am taking a look at.

Senator CRAPO. Thank you, Mr. Secretary. Actually, I am glad that you did not answer the question by saying, “Here is the science that justifies this distinction.” As I understand it, you are raising those same questions yourself and you are asking those questions, and you are going to pursue it. The answer is going to be that there is not a basis of sound science that would justify the rule the way it is currently written, and I hope to work with you in that regard.

Secretary JOHANNIS. I welcome that, Senator, thank you.

Senator CRAPO. Mr. Chairman, I am going to leave as well, but I have a number of other questions. Are you going to allow us to submit written questions to be answered later?

The CHAIRMAN. Yes. We are going to leave the record open for 5 days. You will be able to submit written questions.

Senator CRAPO. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Salazar.

**STATEMENT OF HON. KEN SALAZAR, A U.S. SENATOR FROM COLORADO**

Senator SALAZAR. Thank you very much, Senator.

Let me first say, Governor Johanns, thank you for coming before the committee to address this very important issue, and congratulations to you also on your unanimous confirmation in the U.S. Senate. It shows the kind of bipartisan support that this committee and this Senate does have, and the support that we have for agriculture. I wish you the very best in your years ahead leading this very important department.

Let me second say I was disappointed in the President's State of the Union in that he did not address agricultural or rural issue. From my point of view, that is a part of the forgotten America that needs to be addressed, and I know that you as former Governor of Nebraska know how important that part of our country, and we need to have more focus on agricultural and rural communities.

Third, let me say with respect to this hearing and the issue that is before us today, what we are hearing from everyone is that we have a problem with this rule. It seems to me that what we ought to be doing is fixing the rule before we actually open the borders. I had a meeting with most of the agricultural leaders in my State, in Colorado this last Saturday, and that is their sense. There is a sense that there is a whole host of issues that are unanswered, many of which have been raised here with you today. Without going through all of those questions, the simple question as to how are you going to verify at the border which one of these 900,000 animals plus are either 30-months or less, and on and on and on and on. I know that there are several organizations that are looking at also instituting litigation against the promulgation of the rule in March.

I guess I would say this. Given the contentiousness of this issues, given the numerous questions that have been raised, given the advent of this new position for you as Secretary of Agriculture, it seems to me that it would be most prudent to go ahead and to delay the opening up of the border until such time as you can take the rule and give it a comprehensive review and address all the questions that have been asked, including the issue of the animal identification system and all the rest of the issues that we have talked about before.

I do not understand why it is that we are at this point stuck on this date on the opening of the Canadian border, given the fact that we have so many questions that have been raised.

[The prepared statement of Senator Salazar can be found in the appendix on page 55.]

Secretary JOHANNs. A couple of observations, Senator. The rule has been making its way through the process for now many months. There was a comment period and then another comment period, and there were 3,300 comments, questions, concerns raised, and those were responded to. We will do everything we can to respond to the questions that are raised here, and hopefully do our very best to address those very, very promptly so you can get information to your constituencies.

There really is a big picture here for this industry and for agriculture in general in our country. We are just an enormous exporter of agriculture products. In the State I came from, we were the fourth largest. Without good, sensible agricultural export policy, this agriculture industry is in very difficult shape.

Because of what has happened here, this industry is restructuring in Canada. Like it or not, that is the way the economy works, that is the way industry works. Boneless beef is coming into this country by permit. It has for many, many, many months. It is about equal to where it was before all of this took place. Rather remarkably this industry is adjusting to that.

What is happening? Well, to the extent that I can observe, it appears to me that the processing, the packing industry is growing in Canada, and that has an impact on a lot of people here in this country. I just worry, Senator, that if I make a decision here that we look back at 6 months from now or whatever, and say, "My goodness, the industry took off like a rocket, readjusted, and now it is forever changed to the detriment of the American producer," then there is a lot of risk in terms of just simply saying, "Gosh, this is so hot to touch, I should not be touching it."

I look at all the factors. I look at the risk analysis. I look at our discussions with other countries. I look at our constant discussion with other countries, that we have to be science-based. I look at the economic analysis, and as I said to Senator Dayton, none of this do I take lightly.

Senator SALAZAR. If I may, Governor, because my time is already up, Mr. Secretary Governor, I guess, because you have a dual title.

Secretary JOHANNNS. I am proud of either title.

Senator SALAZAR. I do not think that the issue is going to go away at all when you implement the new rule in March and you open up the Canadian border. It seems to me that many of these issues are going to continue for a long time, and they are going to continue including in litigation. It would be best for the American producer and for the industry at large if you were able to take time, now that you are in your position as Secretary of Agriculture, and say all of these issues have been raised. This is a comprehensive way in which I am going to approach the lifting of the Canadian ban, the science that is going to go with it, the animal identification issues and all the rest of the issues that have been raised.

Secretary JOHANNNS. Thank you, sir.

The CHAIRMAN. Senator Coleman.

Senator COLEMAN. Thank you, Mr. Chairman. Mr. Chairman, I have some questions that I would like to be included for the record and have some responses. I apologize. I had to make a statement on the floor of the Senate.

I would just raise, and I am not sure if the question has been asked, but I have some concerns about the disparity of treatment of beef over 30-months versus cattle. I am not sure whether the economic analysis has been conducted on that on the impact of that portion of the rule. I would raise that issue. I do have those concerns, but I have some other questions, Mr. Chairman, that I would submit for the record and like to have answered before we finish this matter.

The CHAIRMAN. Certainly.

Senator COLEMAN. Have we dealt with the question of the assessment of the impact of the rule and the disparity between dealing with live cattle versus—

Secretary JOHANNNS. I will ask Dr. Collins because you have raised some issues that he has worked on specifically.

Senator COLEMAN. Before he responds, I do want to say for the record, I want to thank Dr. Collins and his staff. You have been extraordinarily responsive, and from the perspective of my staff, it has been a pleasure working with them, and I did want to state that publicly, doctor.

Mr. COLLINS. Thank you very much, Senator Coleman.

Let me make a comment about the economic analysis. It has come up here and I have not commented on it since sort of the beginning of the hearing. It is important to understand that we have been reducing cattle numbers in the United States for 9 years. We are at a cyclical low in cattle slaughtering in the United States. In 2003 we slaughtered 35-1/3 million cattle. Last year we slaughtered 32.8. This year, without opening up the border to Canada, we will slaughter 32.5. Without opening up the border to Canada, slaughter numbers are going down, capacity utilization is going down, packer costs are going up. We have a situation with no trade with Canada that the packing industry is under some stress.

What this rule does is it takes another step in the return to normalcy with trade. We will import, by various estimates, 900,000 to 1.8 million head of cattle. Those are cattle that will be killed in the United States. Those are cattle that packers will be able to use to increase their capacity utilization, lower their labor costs, and presumably help their profitability. That context has to be understood. Now, within that, there is the issue of cow packers, those who slaughter cows, which is the basis for most of the concern here today because the broader picture of what we are doing here economically has been lost. Cow packers kill about 5 million head year out of the 32 to 33 million head. That is an important sector of the meat packing business, but it is one-sixth of the meat packing business, but it is a very important sector. It is a sector that is in the spotlight here today because this rule does not allow cattle in over 30 months, but allows the beef in over 30 months. Not allowing the beef in over 30 months versus allowing it in over 30 months, those two options were explicitly addressed in the regulatory impact analysis that accompanied the rule.

The answer to your question is, yes, these issues were looked at. Were they looked at thoroughly enough? As I sit here today I can answer that and say no. What we have learned over the six to 9 months since most of that analysis was done was that there will be a differential effect on cow packing plants. You look at Canada, cows sell for less than \$20 a hundred weight. In the United States they sell for \$50 a hundred weight. If you look at the price of lean beef in the United States, it is \$140 a hundred weight. In Canada a packer can buy a cow for \$20 a hundred weight and sell the beef for \$140 a hundred weight in the United States. That is one heck of an incentive to pull cow beef across the border.

There are estimates ranging from 250,000 head to 460,000 head additional cows will be killed in Canada, and that beef will come to the United States. Now, that comes here at a time when, as I said, there is a cyclical low in cattle slaughter in the United States which means that cow prices are higher than they would normally be because cow packers are bidding against one another to find a scarce number of cows. All of a sudden they are going to face lower beef prices at the same time they have high cow prices. Their mar-

gins, already low, will be further stressed, and their capacity utilization, already low, is another factor that will hurt them as well.

There is no question. I have communicated this to the Secretary. The Secretary is aware of the differential effects on the cow industry. That is why he took great pains in his opening statement to mention the fact that he did not want to see differential effects in the meat packing industry. That was not spelled out in his statement, but that is what that referred to. We are well aware of this issue. It is an economic issue, and it comes into collision with the science issues about whether you should import this beef or not.

I just wanted to make sure, and you gave me the opportunity to do so, that our economic analysis is aware of what is going on, and the Secretary is informed on this issue.

Senator COLEMAN. I appreciate it.

I know my time is up, Mr. Chairman. As I said, I will submit some other questions. On the one hand we want to be judged by sound science. We want Japan to judge us by sound science so we have to be very clear. Mr. Secretary, I will repeat it again if it has not been said enough, you have been on it from day one. The opening of that market is critically important, but at the same time the economic impact issues are significant, and I appreciate the fact that you have looked at this. We will have to take a close look, and clearly, we want to minimize any kind of disparate treatment that we can.

Secretary JOHANNIS. Mr. Chairman, if I might offer a thought, I welcome the opportunity to visit with you. The question has come up as we have visited with your colleagues on a number of occasions. As I sat down and kept looking at this rule, I kept bringing these folks at the USDA back into meetings and say, "Now, why did we do that, and where are we coming from?" They are probably behind me nodding their heads because more than one meeting was devoted to this. That is an area that very, very clearly I am concerned about, I am taking a very close look at, that is a part of this rule, but a very important part because it does involve a lot of animals and it involves packers on this side of the line, small and probably some of the larger ones. I am taking a look at it.

I will share with you that in terms of cattle over 30 months, as I understand the process that was developed some time ago, and Dr. DeHaven can address this, a risk analysis was not done on that, so we would have some work to do on this. That is exactly what I am trying to pull together here.

Senator DAYTON. Mr. Secretary, I see your Minnesota education is holding you in good stead.

Secretary JOHANNIS. Thank you.

The CHAIRMAN. Senator Lincoln.

#### **STATEMENT OF HON. BLANCHE LINCOLN, A U.S. SENATOR FROM ARKANSAS**

Senator LINCOLN. Thank you, Mr. Chairman, and thanks for holding such a timely hearing so that we all might offer the Secretary our concerns and thoughts, and we can share some wisdom and hopefully come about something that is going to really in the long term provide us what we need, both as a trading partner and for the safety of our consumers as well. It is a very important rule

that has been proposed here in terms of what it means to a very important industry in the U.S., our cattle industry, and our consumers.

Mr. Secretary, welcome back. I am glad to see that you still want the job.

[Laughter.]

Senator LINCOLN. I certainly appreciate the opportunity to talk with you about something that is of great concern to the cattlemen and women of Arkansas and to our cattle industry as a whole. The rule and the issues around it are very complex. You have seen that from the response of many of us, both complex, and they come at an unfortunate time when certainly we recognize that Canada has two more positive cases, or has had two more positive cases of BSE, and has been expressed by many, that the Japanese and the South Korean and some of our other U.S. export markets remain closed.

I want to associate myself a little bit with the comments of Senator Roberts, where he talks about perception and reality. That is a critical thing for all of us up here. We continually have to remember it, and it is important for us as a nation that oftentimes when dealing with others globally that perception can be reality to them. We want to make sure that we are very, very clear about what the reality really is.

In any case, during our last hearing when you were here we talked an awful lot about the Japanese and the South Korean markets and the negative impact that it is having on the entire U.S. cattle industry, and particularly my cattlemen in Arkansas which I hear about on a daily basis. I know this issue has been probably, we have discussed it a great deal here today, but I just feel compelled to have to emphasize that point one more time. The time has really come where the President of the United States needs to step up, and he has to step up to the plate and deal with this issue personally, and I hope that you will encourage that. This is certainly, with no offense intended to you or to USDA, with your authority or your power, but at the juncture we have come to, that we really need the President to weigh alongside you with his counterparts and with your counterparts in Japan. That is going to be essential.

I do not know what you know about the horizon and the opening of those markets, and if you have anything further that you can divulge to us in terms of those perspectives. I have just personally come to the conclusion if the President does not personally engage himself in this, we are going to spend too much more time at a disadvantage here that is going to just exacerbate the problem that you have with the rule and Canada.

We look at these markets that we seem to be losing, and we always talk about what it is going to take to fight to get them back. We lose these markets, sometimes we never get them back. That is something very important to put into this equation in terms of the timeliness of it, do I hope that you will consider that.

In regard to the rule with Canada, looking at that, is it going to move the process with Japan and South Korea and others faster? Is it going to move us along faster in that initiative? I hope it will. Again, I reiterate I just cannot impress upon you enough how important that is. Is it going to set us back in terms of opening export markets in other places? We have talked about that, the impres-

sion that we leave globally and the science that we use, and its predictability and dependability in negotiating future markets is important.

Dr. Collins, I just wanted to make sure I am clear. Is your economic evaluation complete, and do we have that up here? Have I just not seen it?

[The prepared statement of Senator Lincoln can be found in the appendix on page 53.]

Mr. COLLINS. There is what is called a Regulatory Impact Analysis that is available. It is required by both statute and Executive Order and regulation. It was complete for the promulgation of this rule. It is about 57 pages with another 30 pages of appendices.

Senator LINCOLN. That is available to us?

Mr. COLLINS. That is available to you.

Senator LINCOLN. It is complete, or do you have further work?

Mr. COLLINS. The analysis of this issue will never be complete. We will be revising our thinking as we continually get new information. That is a snapshot of how we saw this rule, a snapshot of what we saw as the effects of this rule or one that would go into place on March 7th. It is based on data available to the Department through the first half of 2004. It is complete as of that point in time. Every month we put out official forecasts of the price of fed beef, the beef production in the United States and so on, and so every month we will be reevaluating those variables based on new information.

Senator LINCOLN. You will send us the updated information that you have which is consistent with the study that you have been doing ongoing, is that correct?

Mr. COLLINS. I would be happy to do that.

Senator LINCOLN. OK, great.

Well, Mr. Chairman, as a member of the Senate Finance Committee, which has jurisdiction over international trade, we certainly spend a lot of time there talking about the needs to base decisions on scientifically sound ways, and we work to ensure that we are treated fairly in the international marketplace based on rules that we all agree to live by.

I do not envy you, Mr. Secretary, you are in a perfect storm right now. You have two sides that are coming at you, and it is going to be critical, in my opinion, one, that the President weighs in, and two, that every ounce of consideration can be given in the timeframe of the rule, as Senator Salazar has mentioned, and what kind of impact it is going to have on our constituency. I look forward to working with you.

Mr. Chairman, I am sorry. I will probably have to excuse myself too if you finish this up, and I am hoping that one of these three lunch meetings I am going to is going to serve me a steak after this.

[Laughter.]

Senator LINCOLN. I am looking forward to it.

Thank you, Mr. Secretary.

Secretary JOHANNIS. Absolutely.

The CHAIRMAN. If you get a steak, how about calling me?

[Laughter.]

The CHAIRMAN. Mr. Secretary, do you want to comment on anything that Senator Lincoln has said?

Secretary JOHANN. Just a quick comment. I do appreciate your thoughts in this area, and the economic analysis is available. I have taken the time to review it, and the regulations, and the Executive Order that are the basis upon which that is built.

Dr. Collins' observations are correct, this is a dynamic industry. What do I mean by that? It changes. Decisions are made at an individual basis that all of a sudden collectively can have a very profound impact. I would assert again that a very important issue for us to pay attention to is that raising cattle and processing go hand to hand, and without one or the other, the industry can really have, there can be very serious consequences. If we delay on this rule without basis we impact our trade negotiations. I just have no doubt about it. We get caught in a situation where the industry in Canada will, I believe, continue to build the capacity to slaughter. Once those decisions are made and those capital investments occur, it will not be in your lifetime or mine that the industry will retool itself in all likelihood, and all of a sudden you have a whole different dynamic.

In the short term we may be thinking we are helping the producer. In the long term it may be a very devastating decision for him. You have a major presence in your State in this area, so you share my concern, I would be pretty confident.

Senator LINCOLN. No doubt, but it is important to always remember that we have to have, in this dynamic industry, a customer. Again, as Senator Salazar mentioned, there are very few of us that come from rural America any more up here, and it is critical, that impact. I just really implore upon you and the President to recognize. Hopefully the President will seize this as an opportunity to show rural America that he is willing to step in and fight for them in those marketplaces like Japan, and I encourage that heavily.

Secretary JOHANN. He has and he will. In his conversations with the Prime Minister of Japan a few months ago, he aggressively worked this issue, and I could not be more appreciative of his efforts.

The CHAIRMAN. Let me ask one final question. We, Mr. Secretary, have been talking here, obviously, about animal health versus food safety relative to this issue. FDA is not here today, but you mentioned FDA early on in your statement. I want to make sure that as this issue is publicized and this hearing is publicized, it is clear what role food safety plays in this issue. Would you or Dr. DeHaven quickly comment on that, please?

Dr. DEHAVEN. I would simply say that food safety hospital always been the paramount issue that has been before us as we made the decisions on all of our programmatic changes and enhancements we have made to the program. Even to the extent that we increase surveillance to determine what the prevalence of the disease is or is not in the United States, that then has implications for what additional measures we may need to take with regard to a feed ban, additional food safety measures we may need to take with regard to SRM removal or some of the other actions. Clearly the starting point is ensuring food safety. The fact that Secretary

Veneman very quickly initiated an SRM removal program shortly after the finding in the case is indicative of that, but again, the starting point has been food safety and all of the other actions we taken then stem from that.

The CHAIRMAN. Thank you very much. Gentlemen, thank you for being here. Thanks for providing this testimony.

We have received written statements and testimony from Senators Allard, Burns, Craig and Cantwell, that I would like to submit for the record, and without objection, it is so ordered.

[The prepared statements of Senators Allard, Burns, Craig and Cantwell can be found in the appendix on page 72-79.]

The CHAIRMAN. I would remind all Senators that the hearing record will remain open for 5 days to allow for Senators to submit statements for the record, as well as questions, to which, I would appreciate, Mr. Secretary, you all would respond to as quickly as possible so we can move ahead with this issue.

[The prepared statement of Secretary Johanns can be found in the appendix on page 57.]

The CHAIRMAN. With that, this hearing is concluded.

[Whereupon, at 1:17 p.m., the committee was adjourned.]

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**A P P E N D I X**

FEBRUARY 3, 2005

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**Opening Statement of Tom Harkin  
Committee on Agriculture, Nutrition and Forestry  
February 3, 2005**

Thank you, Mr. Chairman, I commend you for calling this hearing regarding Bovine Spongiform Encephalopathy to review the final rule to be effective March 7 to define a Bovine Spongiform Encephalopathy (BSE) Minimal Risk Region and allow live cattle and expanded beef trade with Canada. The minimal risk rule raises questions not just about expanding beef and cattle trade with Canada. There are also questions about the effectiveness of anti-BSE measures in the U.S. and Canada and also broader U.S. efforts to restore two-way beef trade with currently closed markets such as Japan and South Korea.

USDA has previously relied on OIE guidelines for BSE minimal risk. But the rule ignores OIE standards in key respects. There are three main areas of concern: protecting U.S. consumers and encouraging their confidence, protecting U.S. beef industry and demand for beef, and reopening closed foreign markets.

Any measures taken by USDA should not compromise safety or negotiations with any our trading partners. Ideally, we should be able to work with our trading partners to come to generally agreed upon standards to trade beef products and live cattle under a minimal risk framework.

Even though our export markets have traditionally been marginal compared to our domestic beef market, there have been real consequences to the loss of beef and cattle markets. In Iowa, packing plants have either slowed down their processing lines or have closed altogether. In August, the Iowa Quality Beef plant in Tama, Iowa closed because of higher cattle prices and the ban on beef exports to Japan, affecting 540 employees. On January 6, Tyson Foods decided to suspend operations at its Denison, Iowa plant due to a lack of cattle supply. This affects 275 employees. Tyson, much to their credit, is still paying the employees the equivalent of a shortened 32 hour work week, however.

I look forward to having a dialog on USDA's final minimal risk rule, and our efforts to restore our beef trade with overseas markets.

Thank you again, Mr. Chairman.

Statement submitted by Senator Richard Lugar

Thank you Mr. Chairman for providing this committee an important opportunity to further examine the issue of bovine spongiform encephalopathy and trade. I also would like to thank Secretary of Agriculture, Mike Johanns, for his testimony to the Committee today.

The proposed opening of the Canadian border on March 7<sup>th</sup> has fueled much debate in the U.S. cattle industry. Likewise, concerns have been raised regarding our ongoing inability to export beef to Japan. I am interested in learning more today about how these situations may cause

negative long-term changes in our agricultural infrastructure, markets, and security of our food supply.

Because the U.S. is the world's foremost economic power and the country with the most open markets, trade agreements that open other markets to our goods are very much to our advantage. That is why with respect to BSE it is both important to resume beef trade with partners we typically export to, like Japan, while also abiding by those same standards and resuming trade with a country that typically exports to us, Canada. For the United

States economy to grow, we cannot passively depend on selling only to our domestic markets, which is essentially the precedent we will create by prohibiting trade through non-scientific based protections. Ninety-seven percent of the world's population and sixty-seven percent of the world's purchasing power is located outside of the United States. We must compete aggressively in the growing world economy, and we must not surrender our trade advantages in our own hemisphere by allowing industry to shift by employing protectionist measures.

I am keenly aware that many cattle producers are fearful that a large number of Canadian cattle will flood domestic markets, severely diminishing returns on their own animals. I believe the USDA originally predicted that nearly 2 million cattle may become available to our market should the ban be lifted. Others have suggested that these numbers are incorrect and that the number is more likely in the range of 900,000 animals. Regardless I think it is very important that this Committee understand what may happen to our own markets when the Canadian border is opened, and work to mitigate any severe market fluctuations that could occur.

However, I do not hold the belief that we should maintain a closed border based primarily on the interest of stimulating market prices while we as a nation are strongly advocating the acceptance of many of our agricultural products elsewhere based on scientific standards. To abandon that approach in this situation severely undermines our position across the board.

I am also aware of food safety concerns associated with resuming cattle and beef trade with Canada. I am hopeful that the hearing today will address this issue and apprise the committee what the USDA

will do to ensure the public's safety. The security of our food supply is of the utmost importance, and our trade agreements must ensure that our food supply remains the safest in the world.

In addition, I hope the committee is able to ascertain what is happening to our domestic cattle infrastructure as a result of our closed Canadian border and inability to export meat to Japan. I have great concern that by not resuming cattle trade with Canada we are shifting our processing capacity to that nation. I also am concerned that while the U.S. beef industry is closed out of Japan,

other nations will begin to supplant us as a high quality beef provider.

There are many challenging issues facing this committee concerning the issue of BSE and the trade of cattle and meat. I look forward to working with all members of this committee to ensure a vibrant domestic cattle industry and a safe food supply for our citizens. Thank you, again, Mr. Chairman for convening this important hearing.

**Statement of Senator Mike Crapo  
Senate Agriculture Committee  
February 3, 2005**

Thank you Chairman Chambliss, Senator Harkin. Thank you, Secretary Johanns, Dr. Collins and Dr. DeHaven for being here with us today. With the final rule to reopen the U.S. border to live cattle trade with Canada due to go into effect on March 7<sup>th</sup>, this is an opportune time for us to discuss the effects of Bovine Spongiform Encephalopathy (BSE) on cattle and beef trade. Secretary Johanns, I know you understand the importance of this issue to us and the cattle producers, processors and communities we represent, and I look forward to the discussion today.

There have been many challenges in dealing with the unfortunate discoveries of BSE and one very critical challenge has been with regaining our foreign markets. I commend you for the efforts that you have already put forward during your short time as Secretary of Agriculture to regain our export markets. I was pleased to see that you asked the Japanese government to set a date for the resumption of U.S. beef trade. I think we all hope that date comes swiftly and ideally before March 7<sup>th</sup>. Due to Idaho's geographic location, Idahoans have benefited greatly from past beef trade with Pacific Rim countries, and prolonged closure of the Asian markets hurts Idaho producers and our economy. Many are looking to you to continue to push to get our markets open, and I look forward to the day when the U.S. can once again ship our beef products to these markets.

Additionally, the continued absence of our key export markets has contributed to the suspension of domestic beef processing operations in the U.S., including processing in Idaho. This is very concerning because it not only results in a loss of jobs and revenue for Idaho's economy, but it also decreases the processing options for cattle producers. This results in cattle producers being forced to ship greater distances, driving up production costs.

Far too many American companies and cattle producers are suffering similar problems, and I have concerns and questions about an aspect of the rule that could exacerbate this problem. Specifically, I am concerned with the portion of the rule that provides for the import of beef over 30 months of age, even though cattle over 30 months of age will not be allowed to be imported. It is inconsistent to ban cattle over 30 months of age while allowing in boxed beef over 30 months of age.

When the U.S. border was opened for the importation of beef products under 30 months of age but not cattle to be processed at U.S. plants, a vast opportunity was created for Canada to increase their beef processing capacity for export of beef products to the U.S. Canada seized this opportunity and reportedly increased their processing capacity by 20 to 30%. U.S. cattle producers and our economy are impacted as domestic processing capabilities are squeezed and shifted above the border. And, this problem is poised to be expanded upon through broadening the scope of products to be imported from cows that are banned from importation. I have some further questions regarding this matter that I will raise during the question portion of the hearing.

Again, I welcome you here today and look forward to the discussion. Thank you, Mr. Chairman.

Senator Craig Thomas  
Committee on Agriculture, Nutrition, and Forestry

February 3, 2005

I am grateful to the Chairman for holding this hearing to examine the effects of Bovine Spongiform Encephalopathy (BSE) on US imports and exports of cattle and beef. This is an issue that is of great importance to the nation as a whole, and of particular importance to cattle producers like those in my home state of Wyoming. The BSE discoveries have frightened the public, brought beef trade to a stand-still, and de-stabilized cattle markets. Concerned cattle producers cringe as they watch news reports about BSE and see the cattle markets fluctuate in the wake of those reports.

Unfortunately, much is still unknown about BSE and related diseases. It is still unclear how they are transmitted and exactly how they are caused. Outside of the United Kingdom, only ten people are known to have contracted Variant Creutzfeldt-Jakob Disease (vCJD), the human form of BSE believed could be spread from cattle to humans. Even though it appears the disease cannot be spread to humans by consuming beef muscle alone, people are understandably concerned that meat from BSE-infected animals be kept out of the food system. It is vitally important that we keep our food supply safe and that we also maintain consumer confidence in the safety of our food. That is important for the health and safety of consumers as well as for the health and stability of our markets.

In the United States, BSE has only been found in one imported cow. USDA helped contain the incident by establishing feed restrictions and an intensive testing and screening program to ensure and maintain the safety of the American beef supply. Even so, that one discovery has had an enormous effect on American import and export markets. In 2003, before BSE was discovered, the United States exported \$3.9 billion worth of beef products, amounting to approximately ten percent of the farm value of cattle and calves in the United States. After the discovery, many countries banned U.S. beef and cattle products, bringing our beef exports to a virtual stand-still.

While some nations, such as Mexico and Canada, have resumed limited imports of our beef, our two largest export markets, Japan and Korea, have not reopened their borders. It is absolutely essential for our cattle industry that foreign

markets reopen. Over 60% of our beef exports go to Japan and Korea, and exports are an important part of our beef industry.

We must also continue to work to maintain the safety of the U.S. beef supply. The USDA's new rule to expand beef imports from Canada gives cause for concern. Reports from Canada indicate that there are serious questions about whether they have enforced their specified risk material feed bans and other measures to prevent the spread of BSE. The recently discovered cases of BSE in Canada seem to confirm these concerns and raise questions regarding the safety of Canada's beef supply.

We cannot afford to risk the safety of the beef supply in America. Before we reopen our border to Canadian beef, it is critical that we make sure the Canadian beef supply is safe and that Canada's food safety and BSE prevention regulations are being properly enforced. This is necessary to maintain food safety as well as consumer confidence in the beef supply.

I look forward to hearing the testimony today and discussing this topic further.

**Draft Statement and Potential Questions  
for  
U.S. Senator Blanche Lincoln  
before the  
Senate Agriculture Committee**

**February 3, 2005**

- Thank you, Chairman Chambliss. And thank you for holding this timely hearing ...so that we might learn more about USDA's proposed rule in terms of what it means for our very important U.S. cattle industry and our consumers.
- ...Mr. Secretary, welcome back to the Committee. I'm glad to see that you still want the job... and I appreciate the opportunity to talk with you about the concerns of the Cattlemen and women of Arkansas and our Cattle industry as a whole.
- This rule and the issues around it are complex and come at an unfortunate time when Canada has had two more positive cases of BSE, and the Japanese, South Korean, and other U.S. export markets remain closed. Sort of a perfect storm. Just when I thought it could not possibly get any worse for you, Mr. Secretary, I saw reports of your Ag budget...Not sure who over at the White House doesn't like you...
- In any case, during your last hearing, we talked a lot about the Japanese and South Korean markets and the negative impact that is having on the entire U.S. cattle industry, and particularly my cattlemen. I know this issue has probably been touched on but I need to emphasize the point again. The time has come when the President of the United States needs to step up to the plate and deal with this issue personally. That's no offense to you or USDA at all. You're doing all you can. But, your counterparts need to hear from the President personally to get this moving. We are losing markets that we will have to fight to get back even when the border reopens. Lifting the Soviet Grain Embargo didn't mean we got that market back right away -- and some say we never did. So, when is the President going to make this a priority in the White House and get personally involved?

- In regard to the rule with Canada, is this going to move the process with Japan and South Korea and others faster or is it going to set us back in terms of opening our export markets?
- Have you done a comparison of what the economic impact would be on the U.S. cattle industry if we opened our border to Canada at the same time we opened our export markets to Japan and other key markets, compared to opening up Canada first and then down the road the others? Should we be coordinating these a little?
- I have one other question that I'd like to ask ...and since I'm limited in time I'd also like to submit a few in writing that I'd appreciate your response to..
- We hear a lot about the significance of the World Organization for Animal Health ...or ..."OIE".
- As a member of the Senate Finance Committee, ...which has jurisdiction over international trade, ...I can tell you that I spend a lot of my time talking about the need to base decisions in scientifically sound ways and that we be treated fairly in the international market place based on rules we all agree to live by.
- Mr. Secretary, how can we make these scientific standards that hundred of countries have pledged to live by more controlling or binding so we don't have this mess we are in today? How can we cut to the chase as a global community and once we arrive at sound science that protects human health, as I thought we have already done, put all the smoke and mirrors that disrupt markets and trade behind us?

**Senator Ken Salazar**  
**Regarding the United States Department of Agriculture's Proposed Rule to Reopen**  
**the Canadian Border**  
**February 3, 2005**

Good Morning. Thank you to Mr. Chairman and Senator Harkin for holding a hearing on this very important issue. And, thank you to Secretary Johanns for appearing before the Committee today, I very much look forward to hearing what you have to say. Government accountability is the first step in making a genuine effort to improve our handling of these critical food safety and border protection issues.

I also hope, Mr. Chairman and Senator Harkin, that this is the first of several hearings on this important topic. In particular, I hope we will have the opportunity to hear from producers – farmers, ranchers and their families that will be directly impacted by this decision – and consumers on this important topic.

I also want to thank USDA for what they've done to ensure the safety of our food supply and domestic livestock herd. Developing and implementing safety measures is an extremely complicated task and, to date, I think we can all agree that the U.S. food supply remains the safest in the world.

That being said, I am extremely concerned about the issues regarding BSE (Bovine Spongiform Encephalopathy) and the reopening of the Canadian border that have brought us here today. I had a very productive meeting in Denver, just last Saturday, with leading voices in our agricultural community. It was a valuable and important meeting and I can tell you that this is an issue that is in the forefront of all of their minds. I understand the concerns of producers in Colorado and across the country, and I also know that meat processors have been forced to haphazardly or hurriedly change their operations due to the continued closure of the Canadian border.

While I appreciate that USDA is trying to balance competing interests, I have real reservations about the current rule. Specifically, I am concerned about the Administration's apparent piecemeal approach to BSE-risk policy and the apparent contradiction in whether beef from 30-month old animals is deemed safe or not. It seems to be that these two fundamental issues should be clearly resolved in the public's mind before any action to open the border is commenced.

We are all aware that lower-risk beef has been permitted into the U.S. since August 2003, but if we decide to allow additional product into the U.S. we must be sure that we have implemented the highest food safety standards in order to maintain the safety of our domestic livestock herd and overall consumer confidence as well as do everything we can to regain our lost beef markets, especially in Japan.

Under the USDA rule, rather than developing a comprehensive approach to address BSE risk globally, the Department seems to be headed toward a different set of standards for

different countries. To reopen our foreign markets we must ensure confidence in the safety of U.S. beef, therefore we should not implement a piecemeal framework that does lead to common standards for risk determinations and mitigations.

As I mentioned, I am very concerned about the proposed rule that changes the 30-month age limit on beef products. I do not understand the Department's decision to allow imports of Canadian beef products from cattle over 30-month of age and live cattle under 30-months. This sort of discrepancy in the rule-making process does not add to a thorough and comprehensive safety standard and only adds fuel to the fire for those who believe the border should not reopen.

Toward that end, there seems to be further confusion in regards to the requirement for segregated processing of cattle over 30-months. In their rule, the USDA expresses that the removal of SRM's (specified risk material) from cattle over 30-months old during slaughter is sufficient to guard against the risk of BSE, however, I am worried that because of the unknown prevalence of BSE in Canada, it is not clear that this approach will be satisfactory. I believe that USDA should strengthen measures that will avoid BSE risk – not abandon such measures.

It is essential that USDA can assure farmers and ranchers, consumers and other agricultural industries and organizations in Colorado and across the country that Canada is implementing and in compliance with the highest food safety standards. And, I am concerned that, as currently written, there are unnecessary risks placed on our domestic livestock herd and food safety standards. I am hopeful that USDA will address these concerns before the border is reopened and in order to maintain the safety of the U.S. food supply.

**TESTIMONY OF THE HONORABLE MIKE JOHANNIS  
UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE U.S. SENATE  
COMMITTEE ON AGRICULTURE, NUTRITION & FORESTRY  
FEBRUARY 3, 2005**

Chairman Chambliss, Mr. Harkin, Members of the Committee, thank you for holding this important hearing today and for the opportunity to testify before you. Accompanying me today are Dr. Keith Collins, USDA's Chief Economist and Dr. Ron DeHaven, Administrator of USDA's Animal and Plant Health Inspection Service (APHIS). They will be available to assist in answering any questions you might have.

Before I begin, I want to thank you all for the professionalism and courtesy extended to Stephanie and me during my recent confirmation process. I appreciate the close, positive working relationships that we have begun forging, and thanks to the diligence of this Committee, it was an honor and privilege for me to be the first Cabinet member confirmed during President Bush's second term. It is, therefore, a pleasure to return for my first hearing as Secretary.

I have said frequently that addressing Bovine Spongiform Encephalopathy (BSE) issues, particularly as they relate to trade disruptions, would be my top priority as Secretary. I have also heard from this Committee quite clearly on this topic, and I believe very strongly that we are all on the side of American agriculture. The Committee and

your constituents have also posed some useful and valid questions that deserve thorough examination, which this hearing will help provide.

The actions that the U.S. Department of Agriculture and the federal government are taking in regard to BSE are potentially precedent-setting and could affect international trade patterns for years to come, with important economic implications for our cattle producers and the entire beef industry. Therefore, our actions must be undertaken with the utmost deliberation, using science as the basis. In the absence of that science, sanitary and phytosanitary (SPS) restrictions will be used arbitrarily by many nations, without any basis of protecting human or animal health.

Accordingly, this hearing could not be timelier. I want to be very clear that while protecting human and animal health must remain our top priorities, I am confident that we can seek to return to normal patterns of international commerce by continuing to use science as the basis for decision making by U.S. regulatory authorities and our trading partners.

Almost exactly one year ago, Secretary Veneman appeared before this Committee to discuss BSE. In the time since then, much has transpired:

On March 8, 2004, USDA published a notice reopening the comment period on a rule to establish minimal-risk regions for BSE (the "minimal-risk rule").

On March 15, 2004, consistent with the recommendations of an International Review Team (IRT) of scientific advisers, USDA announced that beginning June 1 it would implement an enhanced BSE surveillance program to test as many high risk animals as possible over a 12-18 month period. We wanted once and for all to clearly ascertain whether we had BSE in our cattle herd and, if so, how prevalent it might be. USDA began the work of setting up the infrastructure required, including laboratory equipment and certification, staff training, outreach efforts, and licensing and approval of rapid tests. The plan was reviewed by the IRT, which characterized it as “comprehensive, scientifically based and address[ing] the most important points regarding BSE surveillance in animals.”

On June 1, 2004, the enhanced surveillance program began. Our goal is to test as many high- risk cattle as possible in 12-18 months. If we test 268, 500 we will be able to detect the presence of as few as five targeted, high-risk cattle with BSE at a 99 percent confidence level. At the time, USDA officials consistently stated that the surveillance plan might uncover additional BSE-positive animals. To date, some eight months later, more than 200,000 animals have been tested, all of which have been negative.

In order to help raise awareness about potential BSE cases among animal-health professionals and livestock producers, education and outreach have also been critical components of these efforts. These activities have included advertisements in industry publications, media articles, presentations at trade shows, and other materials. The role of producers, renderers and others in helping obtain samples of high-risk animals has

been indispensable to the success of our surveillance program, and the cooperation we have received has been outstanding.

On December 29, 2004, USDA announced the final minimal-risk rule, which designated Canada as the first minimal-risk region for BSE, and which will become effective on March 7, 2005.

On January 2, 2005, Canada confirmed its second domestic case of BSE in a cow that was born in October of 1996 (the first since May 20, 2003). It was followed nine days later by a third case, an 81-month-old cow.

On January 24, 2005, USDA dispatched a technical team to Canada. We sent the team to investigate the efficacy of Canada's ruminant to ruminant feed ban because the animal was born shortly after the implementation of that ban and to determine if there are any potential links among the positive animals. We have appreciated Canada's willingness to cooperate and assist us in these efforts.

The technical team is focusing both on the efficacy of Canada's feed ban and its epidemiological investigation of the new BSE cases. The team is composed of experts from APHIS in the areas of epidemiology, transmissible spongiform encephalopathies (the family of diseases to which BSE belongs), and official documentation.

An auditor from USDA's Agricultural Marketing Service (AMS) is also part of the team, which will also be joined by representatives of USDA's Foreign Agricultural Service (FAS) stationed in Canada. Technical experts from the Department of Health and Human Services' Food and Drug Administration are accompanying the team in an advisory capacity.

We have been receiving regular updates from the team. We expect a final report on feed ban issues in mid-February and the epidemiological report by the end of March. These reports will be critical as we consider whether any adjustments to current policies are warranted.

#### The Minimal-Risk Rule

As you are aware, USDA's minimal-risk rule has come under legal challenge. I will address the process of promulgating the rule, which was transparent, deliberative and science-based.

Two rounds of public comment were conducted on the rule, with more than 3,300 comments received.

The final rule establishes criteria for geographic regions to be recognized as presenting minimal risk of introducing BSE into the United States. It places Canada in the minimal-risk category, and defines the requirements that must be met for the import

of certain ruminants and ruminant products from Canada. A minimal-risk region can include a region in which BSE-infected animals have been diagnosed, but where sufficient risk-mitigation measures have been put in place to make the introduction of BSE into the United States unlikely.

Because the rule permits the import of live cattle under 30 months of age and ruminant products from older animals, it is useful to note the risk mitigation measures. These include: proper animal identification; accompanying animal health certification that includes information on individual animal identification, age, origin, destination, and responsible parties; the movement of the cattle to feedlots or slaughter facilities in sealed containers; the prohibition on cattle moving to more than one feedlot in the United States; and the removal of specified risk materials (SRMs) from cattle slaughtered in the United States.

For live sheep and goats under 12 months of age, all of the same mitigation measures apply, except for the requirement that SRMs be removed from the animal at slaughter.

We remain very confident that the combination of all of these requirements, in addition to the animal and public health measures that Canada has in place to prevent the spread of BSE, along with the extensive U.S. regulatory food-safety and animal-health systems, provide the utmost protection to U.S. consumers and livestock.

USDA continues to undertake several steps to ensure Canada's compliance with its BSE regulations. In addition to the investigation that I already discussed, USDA's Food Safety and Inspection Service in December 2004 conducted an intensive audit of Canada's compliance with the BSE requirements of the United States, with particular attention to SRM removal. FSIS visited several facilities that slaughter only cattle under 30 months of age and determined that they are effectively implementing the BSE regulations.

This month, FSIS will conduct a similar BSE audit of Canadian plants that slaughter cattle 30 months and older. Canada currently has only seven such plants that are certified to export meat to the United States.

I am aware of concerns with the portion of USDA's minimal-risk rule that would allow meat from animals over 30 months of age to be imported from Canada, but continue the prohibition on the importation of live animals of the same age for processing in the United States. Some have suggested that going forward with this rule will change the historical beef-trading patterns in North America to the detriment of U.S. packers.

As Secretary of Agriculture, I believe that the marketplace should determine cross-border trading patterns. We must make every effort to avoid policies that favor one group of packers over another. Decisions, however, related to sanitary and phytosanitary measures must be based on science.

I can assure you that I will be reviewing this issue very carefully in the days ahead as we move closer to the March 7 implementation date.

The Role of Science

I simply cannot emphasize strongly enough the central role of science in this entire process, particularly with regard to the rigorous evaluation of risk.

Since the discovery of the first case of BSE in Great Britain in 1986, we have learned a tremendous amount about this disease. That knowledge has greatly informed our regulatory systems and response efforts.

We have learned that the single most important thing we can do to protect human health regarding BSE is the removal of SRMs from the food supply. Likewise, the most significant step we can take to prevent the spread of BSE and bring about its complete eradication is the ruminant to ruminant feed ban. It is because of the strong systems the United States has put in place, especially these two essential firewalls, that we can be confident of the safety of our beef supply and that the spread of BSE has been prevented in this nation.

After Canada reported its first case of BSE in May 2003, USDA conducted a comprehensive risk analysis to review the potential threat it posed. The initial analysis followed the recommended structure of the World Organization for Animal Health, or

OIE, and drew on findings from the Harvard-Tuskegee BSE risk assessment, findings from the epidemiological investigation of BSE in Canada, and information on Canadian BSE surveillance and feed ban, and history of imports of cattle and meat and bone meal from countries known to have BSE.

The results of that analysis, available on the USDA Website, confirmed that Canada has the necessary safeguards in place to protect U.S. consumers and livestock against BSE. These mitigation measures include the removal of SRMs from the food chain supply, a ruminant-to-ruminant feed ban, a national surveillance program and import restrictions. The extensive risk assessment conducted as part of USDA's rulemaking process also took into careful consideration the possibility that Canada could experience additional cases of BSE.

In the risk analysis update for the final rule, USDA also considered the additional risk protection from new slaughter procedures, such as the prohibition on the use of downer animals for food.

The public commented on the risk assessment that accompanied the proposed rule and the Explanatory Note released following the finding of BSE in a cow in Washington State. Over a period of months, USDA carefully considered these comments, and responses were published with the final rule. The comments were beneficial to the final risk analysis. The risk analysis was reviewed internally at USDA and by Dr. William

Hueston, an international expert on BSE and a member of the International Review Team.

The OIE recommends the use of risk assessment to manage human and animal health risks of BSE. OIE guidelines, based on current scientific understanding, recognize that there are different levels of risk in countries or regions, and suggest how trade may safely occur according to the levels of risk. USDA used OIE as a basis in developing our regulations defining Canada as a minimal risk country.

#### Cattle and Beef Trade Impacts

While SPS regulations protecting human and animal health are the foremost concern, USDA also has examined the potential economic impacts of the minimal-risk rule and related BSE trade issues, as required by Executive Order 12866.

For more than three months following the May 20, 2003, BSE discovery in Canada, all imports of Canadian ruminants and ruminant products were barred. Then, certain Canadian ruminant products for which there is inherently lower risk were allowed to enter under permit beginning September 2003.

For all of 2003, the United States imported 336,000 metric tons of beef from Canada. Imports increased to an estimated 476,000 metric tons in 2004, up nearly 42 percent and back to about the level that prevailed in years prior to 2003. The cost-benefit

analysis conducted as part of the final rule indicates that U.S. beef imports from Canada are projected to actually decrease slightly in 2005 (about 4 percent), as Canada shifts its slaughter capacity to lower-yielding older cattle not eligible for export to the United States.

At the same time since the border has been closed to live cattle since May 2003, imports of fed and feeder cattle under 30 months are expected to increase in 2005, which is expected to drive up U.S. beef production, reduce beef prices slightly and, consequently, reduce cattle prices. Our most recent forecast for all of 2005 is that fed cattle prices are expected to average \$82 per cwt, assuming the Canadian border opens on March 7, 2005, and that Asian markets do not open to our beef during 2005.

The precise economic effects will depend on the timing and volume of cattle and beef imports from Canada. If USDA's price forecast turns out to be correct, that would be the third-highest annual fed cattle price on record. Cattle futures prices may be less affected than indicated by our forecast, as market prices have likely already reflected some probability of the border opening. In addition, to the extent that we can continue to open markets that are currently closed to our beef, U.S. cattle price prospects will strengthen.

U.S. market-maintenance activities have been critical in helping restore our beef export markets. In 2003, the total export value of U.S. beef and ruminant products was \$7.5 billion. After December 23, 2003, 64 percent of that market was immediately closed. Today, we have recovered well over a third of that, so that 41 percent of that

market (\$3.1 billion) remains closed. Two countries – Japan (\$1.5 billion) and Korea (\$800 million) – account for nearly three-quarters of the existing closures.

#### Opening the Japanese Market

As a leader in the critical Asian markets, Japan is a vital market to reopen to U.S. beef exports. We are aware that the decision to resume trade in this market will set an important precedent for trade resumption in many other markets. Therefore we have endeavored to use science in our ongoing efforts. Efforts to re-open this market have drawn on resources across the federal government and at the highest political levels. As I have previously said, this issue has occupied much of my first few days as Secretary. Just last week, I met with Ambassador Kato and also wrote to my counterpart, Minister Shimamura, on the importance of this issue. At the same time, Ambassador Baker continues to press this issue with Government of Japan officials in Tokyo, and other U.S. Government officials continue to contact their counterparts.

These efforts are just the latest in many policy discussions and technical exchanges over the past 13 months. Indeed, the issue has been a major focus of direct discussions between President Bush and Japanese Prime Minister Koizumi.

On October 23, 2004, Japan and the United States developed a framework to allow the resumption of bilateral beef trade following the conclusion of regulatory processes in both countries. As a step toward the resumption of normal trade, the

agreement establishes an interim special marketing program, known as the Beef Export Verification (BEV) Program, to allow the United States to sell beef and beef products to Japanese importers from animals 20 months of age and under. Animal age will be determined through a combination of production records and physiological (grading) means. We are now working with Japanese officials to gain approval of the BEV under their regulatory process.

While we are focusing on Japan because of our important trading relationship and its leadership role in the region, we are also pursuing efforts to reopen all of the markets that have been closed to us. We are actively engaged with Korea, Hong Kong, Taiwan, China, Egypt, and Russia and have specific actions underway in each market to get trade resumed. I would be pleased to provide Members upon request additional detail on these and other secondary markets. While the progress that has been made has taken far longer than we had hoped, progress is indeed being made. And, I have stated that USDA, and indeed the entire U.S. Government, will exert every effort to resolve the matter at the earliest possible time.

#### Conclusion

As traditional trade barriers such as tariffs are lowered, our focus to eliminate unjustified non-tariff barriers such as non-science based SPS regulatory measures become all the more important to maintain the flow of mutually beneficial trade. For USDA, a common touchstone across these issues is the need to maintain consistency and

predictability, to base our domestic regulations on science and to encourage the use of science-based solutions within the international community. The United States has long been a leader in this regard, including negotiating the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures during the Uruguay Round.

Even before the discovery of a single case of BSE in the United States, USDA had begun talking with other countries about the need for international trade standards to keep pace with the science, and we will redouble our efforts in this regard.

It is also critical that domestic trade rules reflect the current state of knowledge regarding BSE, and here the United States is leading, as well. We are confident that trade can be resumed with countries where BSE has been discovered, contingent upon strong protections within those countries, as well as the robust and effective regulatory system those imports are subject to when they enter the United States. These facts are reflected in the minimal-risk rule.

At the same time, we will continue to work with our trading partners to ensure the ongoing strength of their own BSE protection systems, especially the removal of SRMs and implementation of the feed ban. While trade opportunities are multiplying in an increasingly global marketplace, we must always remain mindful of our paramount responsibility to protect the public health and animal health.

In summary, I am confident that we are continuing to keep the protection of public and animal health foremost in our concerns. It is critical that we continue to use science as a basis for our decisions and regulations, and that the United States maintain its leadership role in advancing our scientific understanding of these kinds of SPS-related issues and appropriate science-based responses.

Mr. Chairman, thank you once again for holding this important hearing. I would now be pleased to take any questions you or other members may have.

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Statement of

Senator Wayne Allard

Submitted for the Record

U.S. Senate Agriculture, Nutrition and Forestry Committee

February 3, 2005

Thank you for allowing me the opportunity to share my point of view on bovine spongiform encephalopathy and its effects on U.S. imports of cattle and beef. I may hold a slightly different perspective than many attending the hearing. I do not doubt that I hold a different opinion than many ranchers in my home state. Nonetheless, it is still one of absolute concern; concern that is reinforced by reason, scientific theory, and a long term understanding of the road ahead.

The complexities of the issue before us are immense. The diverse interests involved with the rule recently published by USDA present a challenge to the most able negotiator, but a challenge no different than those we must deal with every day. I do not envy the Department of Agriculture or this Committee as they search for the appropriate and responsible course of action. As policymakers, we must often choose between popularity and sound policy, between seemingly irrefutable images and scientific hypothesis. Science and policy, not popularity and image, lead us to one conclusion - we must restore trade. The rule developed by USDA is the right course of action at the present time. It is a path of reason, not reaction, and science not conjecture. It may need tweaked here and there, but it should not be thrown out.

The rhetorical debate over the opening of the Canadian border has gone on long enough. Food and agricultural regulatory and trade policy should be founded on sound scientific evidence and principles. Canada is one of our most important trade partners. Agriculture is a fundamental component of U.S. trade. If we cannot rationally restore beef and cattle trade with our most important trade partner, how will we ever restore trade on a global scale? This, after all, is the bottom line of the hearing - how do we open those doors that have been shut around the world? Decisions to close and open borders should not be made on a tit-for-tat basis, though some have taken that approach and applied it to this situation. The

long term ramifications of our decisions today could make or break the American beef industry.

To delay a scientific reopening process only proves that science is subterfuge for political motivation. Based on the reaction to the rule, the reality of BSE has finally hit home. We now know how to avoid BSE, to track it, to recognize it, and to test for it. But we don't know how to create a global trade infrastructure that incorporates this reality. This we must learn, and the rule gives us the tools to take us there.

Almost completely unnoticed are the market imbalance created by the border situation and the unfair ramifications created by post-discovery public policy. Canadian packers should not be given a competitive edge to undersell their southern counterparts through shipments of boxed beef, no matter the age. I'll admit that, since the closure, this imbalance has been felt primarily by the packers. But in the long run, it will be the producers who suffer through lost markets and global boycotts.

The situation is best illustrated by using facts we are all now familiar with: A Canadian packer could buy a cow for about \$17 (U.S.) per hundred-weight (cwt) and sell the processing-grade beef for about \$123 (U.S.) per cwt. He also could buy a fed steer or heifer at about \$67 U.S. per cwt and sell the beef for about \$132 (U.S.) per cwt. In the United States, the cow would cost a packer about \$55 per cwt and the beef would sell for about \$125 per cwt; a fed steer or heifer would cost about \$85 per cwt and the beef would sell for about \$135 per cwt. This imbalance has led, in part, to the layoff of thousands of people in the processing industry across our nation.

The current findings should not be used as an excuse to stop trade resumption. Beef trade with Canada should move forward because measures by both the United States and Canada are working as planned to ensure detection of BSE and that the beef is safe and wholesome. Canada meets the requirements for a minimal-risk region based upon a number of its actions:

- Prohibition of specified risk materials in human food.
- Import restrictions sufficient to minimize BSE exposure.
- Surveillance for BSE at levels meeting or exceeding international guidelines.
- Ruminant-to-ruminant feed ban in place and effectively enforced.
- Appropriate epidemiological investigations, risk assessment and risk mitigation measures imposed.

The finding of a second case of BSE in one month in Canada proves the Canadian BSE surveillance system is working. A second case was not entirely unexpected, given that cattle predating the feed ban are still alive in both countries. The extensive risk assessment conducted as part of USDA's rulemaking process took into careful consideration the possibility Canada could find additional BSE cases. The Secretary of Agriculture has conducted a thorough analysis and review of the few cases of BSE that have been diagnosed in the United States and Canada. Based on that review and on accepted international standards established by the Organization of International Epizootics and other scientific bodies and experts, USDA has promulgated a final rule to allow cattle and beef from Canada to enter the United States. It is time to move forward.

The U.S. has taken strong steps to protect the safety of the food supply system. Opening the border to trade with Canada will normalize the relationship with one of our strongest trade partners and bring science into the trade discussion.

As a veterinarian, I know we have the world's safest food supply. As a senator, I will work with federal agencies to assure compliance. As a parent, I will continue serving American beef at dinner.

Thank you, Mr. Chairman.

**Senator Conrad Burns**  
**Testimony for the Record**  
**Before the Senate Committee on Agriculture, Nutrition, and Forestry**  
**February 3, 2005**

Mr. Chairman, I'd like to thank you for agreeing to hold this hearing today. As you know, USDA's decision to open the border to Canadian beef imports on March 7 has been controversial in my state of Montana, and many others. Our cattlemen are genuinely concerned about the impact of these regulations on their industry. Right now, thousands of cattle producers from all over the country are meeting in San Antonio, and I expect they will emerge from those meetings with some recommendations for resuming trade with Canada.

I appreciate Secretary Johanns' willingness to appear before this Committee so soon after his confirmation. I imagine he has heard more than enough about this border, but there are some concerns about Canadian beef that must be addressed. I have been concerned for some time about whether or not Ottawa is taking this BSE issue seriously. I know the Canadian producers are hurting, but USDA needs to look out for the interests of our domestic herds first.

I have three primary concerns with the regulation as it is currently written: the decision to allow beef and beef products from cattle of any age in to the country; the impact of feed ban violations; and the continued lack of export markets for U.S. beef. These issues must be addressed. I can not support the rule as it is currently written.

When USDA put out its proposed rule in 2003 to reopen the border, eligible beef and beef products were limited to cattle slaughtered at under 30 months. Now, the final rule has come out and that limitation has been moved. That's the wrong thing to do. We need to move forward at a reasonable pace on resuming trade, and that means limiting the available products until we are certain it is the right thing to do. That's no different than Canada is treating us right now. I realize they have proposed rules to allow more U.S. cattle and beef in, but those rules will likely take some time. That means on March 7, Canada can send all the boxed beef to us that it wants, but Montana's cattle producers have access to a much more limited market. Given how recent some of Canada's feed ban violations are, we need to hold off on allowing in beef and beef products from cattle over 30 months of age at this time.

In general, Canada seems to have a problem with its feed ban. USDA asserts that Canada has high levels of compliance with its feed ban, USDA's own risk assessment states that in 2002, 8 percent of feed mills were not in compliance with the feed ban. We have heard reports of feed that is mislabeled and feed that contains unidentified animal parts. Given that feed is the way we think BSE is most likely transmitted, rigorous enforcement of a ruminant feed ban is a must for the resumption of trade with Canada.

Finally, we must open up foreign markets to U.S. beef. We have never had a domestic case of BSE, so there is no scientific reason for those borders to remain closed to our beef. Japan and Korea are key markets, and we need to get them back opened. I know we are making some progress in Japan, but more remains to be done. I sent a letter last week to Ambassador Kato, urging Japan to take the actions necessary to get the border opened up. I also understand USDA has committed to working with Japan to help restore confidence in U.S. beef, and I thank the Secretary for that. There is no good reason for our cattle producers to have such limited market access. Our beef is the best in the world, and we need to be allowed to reach global markets.

Again, Mr. Chairman, thank you for holding this hearing. I look forward to working with you on this important issue.

MARIA CANTWELL  
WASHINGTON



## United States Senate

WASHINGTON, DC 20510-4705

**Statement of Senator Maria Cantwell  
Oversight Hearing of the Senate Committee on Agriculture, Nutrition and Forestry  
on the Effects of Bovine Spongiform Encephalopathy (BSE)  
on U.S. Imports of Cattle and Beef**

**Thursday, February 3, 2005  
11:00 a.m.  
Dirksen 106**

Mr. Chairman, I appreciate the opportunity to share my views, and those of my state's beef industry and Washington consumers, on this important topic. I commend the Committee for making this hearing to examine the effects of bovine spongiform encephalopathy (BSE) on U.S. imports and exports of cattle and beef its first oversight activity of the 109<sup>th</sup> Congress.

Since the December 23, 2003 discovery of a cow with BSE in Mabton, Washington, my state's beef industry continues to suffer considerable economic losses. As the members of this Committee know, most of our major trading partners responded to the discovery by closing their markets to U.S. beef exports.

Washington state has been particularly hard hit, with a diverse beef sector comprised of ranchers, processors, and packers. In 2003, Washington beef exports totaled more than \$270 million. In 2004, Washington beef exports fell to under \$30 million. And more than a year later, the Washington state beef industry, like the U.S. beef industry at large, still has not recovered. Although negotiations with the Japanese have yielded some progress, there has been little indication that the U.S. and Japan will return to normalized trade in the coming months.

People in my state have evaluated the United States Department of Agriculture's final Minimal-Risk rule January 2005 through the lens of the economic hardship that continued border closure has caused. The Washington beef industry has made a critical and timely review of this rule because its effective date – March 7, 2004 – is quickly approaching.

I am hear to share with the Committee that, despite our economic losses in Washington, my state's beef industry is unified. They believe USDA must carefully investigate the most recent Canadian BSE case, and leave the option of postponing implementation of this rule, and keeping the border closed, on the table while the investigation is on-going. The recent discoveries of BSE in Alberta raise serious questions regarding the extent to which BSE is a problem in Canada. These issues must be fully and fairly investigated without rushing to find an answer to meet the implementation deadline.

First, the Canadian BSE cases raise questions as to whether Mad Cow disease is more prevalent in Canadian herds than had originally been detected.

USDA's proposed classification of Canada as a minimal-risk region is largely based on an analysis of risk conducted by USDA's Animal and Plant Health Inspection Service (APHIS) entitled: "Risk Analysis: BSE Risk from Importation of Designated Ruminants and Ruminant Products from Canada into the United States."

Second, these cases also raise questions as to whether considerable non-compliance with Canadian feed regulations is occurring. Canada's latest discovery of BSE on January 11 was detected in a cow born after the 1997 ruminant-to-ruminant feed ban was put in place.

And, most importantly, the discoveries raise questions concerning the reliability of Canada's overall enforcement of its BSE firewalls.

I believe, and my state's beef industry agrees, that these questions must be addressed and reconciled before USDA allows this rule to go into effect.

Although segments of the Washington state beef industry remain divided over the timing of reopening the Canadian border, their support for a thorough investigation of the circumstances surrounding Canada's latest BSE cases is unequivocally clear.

Mr. Chairman, the Washington beef industry wants to be assured that opening our border to Canadian live cattle and beef products will not increase the chance that another case of BSE is discovered on U.S. soil. Their concerns are certainly warranted.

There is however, no doubt that reopening our border – prior to determining the existing BSE risk in Canada – will cause Japan and other countries to cautiously reevaluate their assessment of the BSE risk in the U.S.

This is why, on January 12, 2005 I sent a letter to Secretary Veneman and then Governor Johanns, requesting that the audit being conducted by APHIS inspectors, be given time for a full and fair analysis.

It is imperative that APHIS inspectors conduct a robust and comprehensive investigation so that consumers both here and abroad can feel confident in their assessment of Canada – even if this means delaying implementation of the Minimal-Risk rule.

The APHIS investigation must show that Canada's latest discoveries were isolated and that reopening our borders does not compromise the health of consumers or the reputation of U.S. beef. If not, I believe that USDA must halt the reopening of the border.

Additionally, I would urge USDA to delay implementation of its rule until the Canadian Food Inspection Service has issued findings from its internal audit to assess compliance on feed regulations and the effectiveness of Canada's feed inspection program. According to the Inspection Service, a report will be issued later this month.

As Secretary Johanns stated during his confirmation hearing, reestablishing trade to Japan is our number one priority. However, this will only be achieved when we prove to the Japanese that BSE has been identified and eradicated through the implementation and enforcement of dependable BSE firewalls.

That being said, I believe that there are some measures that have not yet been taken that would fully ensure the safety of ruminant feed.

Existing loopholes in the 1997 ruminant-to-ruminant feed ban continue to pose a risk – while small – that ruminant materials may find their way into cattle feed.

Although the U.S. Food and Drug Administration promised to close these loopholes and stated that it had reached a preliminary conclusion last July to remove Specified Risk Materials from all animal feed, the agency has failed to act.

Therefore, to address this issue, I have introduced legislation entitled the Animal Feed Protection Act of 2005 (S.73), which would ban SRM's from being used in any animal feed. This would eliminate the possibility that ruminant materials are knowingly or accidentally fed to cattle.

Banning SRM's from all animal feed is an important step we can take to fully ensure the safety of ruminant feed and I hope that the Committee will hold additional hearings to address this specific issue in greater detail.

As I've previously stated, reestablishing a dominant global market share is ultimately about product reliability and consumer confidence.

Therefore, it is vital that we address Canadian safety issues now, so that we prevent the possible importation of BSE into the U.S. While reopening the border may be important to the Canadian beef industry, our responsibility is to ensure the safety of our food supply here at home and protect the integrity of the U.S. beef industry.

And with that Mr. Chairman, let me express my appreciation once again, for the opportunity to submit testimony. I look forward to working with the Committee to address the issue of BSE in the future.

**Statement  
Senator Larry E. Craig  
to Senate Committee on Agriculture  
Hearing on Effects of BSE on U.S. Imports & Exports of Beef & Cattle  
Thursday, February 3, 2005  
Dirksen Senate Office Building, Room 106  
11:00am**

Mr. Chairman and Members of the Committee, thank you for allowing me to provide testimony at the first of possibly a few hearings regarding “Mad Cow,” or BSE, and the U.S. Department of Agriculture’s final rule to resume beef trade with Canada. This issue has had a major impact in Idaho since the initial discovery on May 20, 2003 of an infected animal in the Canadian province of Alberta, which shares a border with my State.

The issue hit even closer to home when the first case in the U.S. was confirmed in December 2003 just west of Idaho in neighboring Washington State. The rest of the story is familiar to you all, and especially to my State’s livestock industry and the consumers who support them. Both found themselves literally surrounded by this problem and its unavoidable impact on public safety and economic vitality.

Swift and decisive action to strengthen safeguards taken by former Secretary Ann Veneman and the Administration caused public safety to become a non-issue. Her leadership and the work of all in the industry turned a potentially devastating problem into a situation where consumer demand for beef has actually strengthened since the initial diagnosis. Under the strong leadership of our newly confirmed Secretary, Mike Johanns, I am confident that the USDA will continue to place the safety of both our consumer and animal populations at the top of his list.

Since 2003, this issue has taken front and center in Idaho’s livestock sector. Idaho’s beef and dairy industry represents \$1.1 billion annually in economic activity, near the top of the list of all industries in my state. We also are fortunate enough to have several processing facilities in-state, and others just across our state lines. These facilities add value to the bottom line of producers and feeders who benefit from low transportation costs to ship fat cattle to slaughter. Additionally, they provide jobs to many in Idaho’s mostly rural communities.

Both producers and processors have a major stake in the topic of today's hearing to discuss USDA's final rule to resume trade of live cattle and expanded beef products with Canada. The rule issued on January 4, 2005 was unfortunately nearly synchronized with two more confirmations of BSE in Canada on January 7<sup>th</sup> and 11<sup>th</sup>. These new cases have caused concern among producers and others who question Canada's compliance with established safeguard measures to prevent BSE from damaging our domestic industry and the consumers it serves.

Recently I was able to personally relay the concerns that I have heard from those in my State to the Secretary. I mentioned to Secretary Johanns that the final rule to be implemented on March 7, 2005 has Idaho's producers, feeders, and some processors concerned with the impact this regulation could have on their livelihoods and sustainability. I also expressed my concern that the rule will adversely affect Idaho's beef industry in several ways, both directly and indirectly.

While I believe that resumption of beef trade between Canada and the U.S. should progress, it is imperative that the steps taken to do so are thoroughly accurate and in the best interest of our nation. The goal must be to implement a policy that protects the safety of consumers and preserves the economic vitality of all sectors of our domestic industry.

It is my concern that the proposed policy falls short of upholding the goal. The rule specifically prohibits importation of live Canadian cows over thirty months of age, but permits imports of meat from these same animals. This provision not only sends mixed signals to consumers and the international community, but also unfairly discriminates amongst those in our own industry. If upheld, this action could cause an unintentional shift in infrastructure from the U.S. to Canada thereby moving jobs north and creating a direct competitor and not a mutual trading partner.

Idaho's producers understand the importance of trade to their industry, and in the Secretary's short time on the job he has proven his understanding and value of it as well. He has already shown strong leadership and commitment to regain our beef export markets with our foreign trading partners.

As those of us are only too familiar, this job is not easy nor simple and I commend the Secretary for his efforts. However, I believe that implementation of the final rule without re-establishment of our export markets could devastate U.S. producers just beginning to experience profitability after years of continual losses. Without time-definite assurances from our foreign partners to resume beef trade, our

domestic market will be burdened with an oversupply of slaughter cattle and boxed beef without export outlets.

I believe the final rule poses serious problems that cannot be ignored. It is important that we resume beef trade with Canada, but not in a way that unfairly discriminates nor inflicts significant economic harm on our domestic beef industry. I would urge the Secretary to strongly consider revisions to the final rule to address these concerns.

Thank you Mr. Chairman and the Committee for providing me with an opportunity to address my concerns. I look forward to working with the Committee and our very capable new Secretary as we move forward on this issue.



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**DOCUMENTS SUBMITTED FOR THE RECORD**

FEBRUARY 3, 2005

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**Examining the Effects of Bovine Spongiform Encephalopathy (BSE) on U.S.  
Imports and Exports of Cattle and Beef**

**Committee on Agriculture, Nutrition and Forestry  
Statement for the Record  
U.S. Senator Rick Santorum  
February 3, 2005**

Mr. Secretary, thank you for being here today to discuss the impact of the BSE on our trade relations, particularly as it relates to beef trade with Japan and Canada. I am grateful to you for the commitment to this issue that you expressed at your confirmation hearing last month. I appreciate the steps you have already taken to resume limited live cattle trade with Canada and to reopen the Japanese market to U.S. beef exports. As you know, the reopening of the Japanese market is critical to the U.S. cattle and beef industry.

In addition to reopening the Japanese market, we must consider how the risks of BSE should be addressed in all aspects of our cattle and beef trade. We should remain cognizant of possible repercussions--both in terms of maintaining a safe domestic food supply and in establishing rational and sustainable trading practices. Food safety concerns must be addressed in the context of sound scientific principles and analysis, instead of protectionist trade philosophies.

In the case of Japan, this means not arbitrarily agreeing to test protocols that far exceed what is necessary to determine the presence of BSE. Similarly, in the case of Canada, we must evaluate the effectiveness of the safeguards in place in both countries with an eye toward reopening our trade if those safeguards are working.

In the context of the final rule, as published, I am looking to you to explain how these recent cases were taken into account in the extensive analysis supporting the final rule and how those cases warrant further scrutiny. I am eager to hear the conclusions reached by the USDA team that was tasked with assessing the effectiveness of Canadian safeguards.

While much has been said on the importance of reopening the Japanese market to American beef, reopening the Canadian border to beef imports will have a significant positive impact on U.S. beef packers, some of which are located in Pennsylvania and have recently struggled to maintain their businesses following the halt in trade. The collective losses, estimated at more than a billion dollars, have impacted many states.

Further delays on efforts to reopen the border to Canadian cattle will result in a restructuring of the Canadian industry, permanently decreasing the benefits and efficiencies of an integrated market. I am not suggesting that reopening the border should occur regardless of public health and food safety concerns. Rather, it is my position that in the absence of valid threats, we should move to reopen the border. Carefully implemented and rigorously enforced safeguards are critical in this matter and we are looking to you to for reassurance that the right steps are being taken. Thank you

for your Department's detailed explanation of the risk analysis relative to the final rule set to take effect on March 7, 2005. If sound science dictates that we should not delay in reopening our border to Canada, then Japan should be required to do likewise in its trade with the U.S. I urge you to remain unwavering in your efforts to reopen the Japanese market to our beef exports.

Again, thank you for testifying before the Senate Agriculture Committee today. In order to address several other areas of interest, I have included several questions for the record. Thank you in advance for your attention and for your written responses.



**Opening Statement  
Senator Debbie Stabenow  
February 3, 2005**

Thank you Chairman Chambliss and Ranking Member Harkin for convening today's hearing on BSE. I am pleased we are focusing the committee's attention on this critical issue. I would like to once again welcome now-Secretary Johanns and I look forward to his testimony.

Michigan is home to 5,000 beef and dairy farmers, and 26 USDA inspection facilities who process cattle. They all share a border with Canada, therefore, reopening trade with Canada is important to my home state. However, I believe it is critical to ensure the safety of our food supply before doing so. Last month, two new Canadian cattle were diagnosed with BSE. These incidents have raised serious doubts as to the safety of the Canadian beef supply. Any hasty action could have serious repercussions with our international trading partners. In 2003, prior to the discovery a Canadian-born U.S. cow who tested positive for BSE, U.S. beef held 18% of the international market. In 2004, after the discovery of Mad Cow within our borders, we held 3% of the international market. Prematurely reopening borders could further defeat attempts to reopen international markets to U.S. beef.

I am also concerned that in the haste to reopen the border, international standards are not being met. According to the Office of International des Epizootics (OIE), a ruminant feed ban should be in place for eight years, and a mandatory requirement for investigating and reporting must be place for seven years prior to the country's first case of BSE. USDA's final rule adopts less stringent measures. The Food and Drug Administration has raised concerns about animal tissue in vegetarian feed products from

Canada, and Canada itself is in the process of issuing new regulations to move to a stricter feed ban, suggesting that even Canada itself questions the effectiveness of its current feed ban.

In addition to complying with international standards, it is critical we implement our own laws. The 2002 Farm Bill required the implementation of country of origin labeling. Consumers have both a right and a need to know their food source. The United States has a reputation of high food safety standards. Country of origin labeling will enhance this reputation and re-open foreign markets to our beef. I also believe that an animal identification system would further enhance our food safety standards.

Thank you, Mr. Chairman.

Statement of Senator Max Baucus  
Senate Agriculture Committee  
BSE Hearing  
February 3, 2005

I grew up on a ranch outside of Helena. We took our job to raise the best animals possible very seriously. Ranching is our livelihood and our way of life---just like it is for thousands of other families in Montana and across the United States.

I have serious concerns about reopening the Canadian border at this time. The decision to reopen the border should be made based on sound science in a transparent process with producer participation. We must not cut any corners when ensuring the safety our livestock industry. We need more information to be confident that reopening the border will not expose the United States to a greater risk of BSE.

I'm glad that President agreed to my request to send an investigative team to Canada to evaluate the situation. Secretary Johanns, I'm hopeful that you will carefully scrutinize the information that was gathered.

I am truly disappointed in the way USDA has handled this situation. Ranchers have lost significant amount of trust in USDA. There has been complete disregard for transparency and public input or participation from the department that is supposed to work and advocate for America's producers.

On December 29, 2004, USDA announced the final rule regarding the reopening of the border, knowing that Canada was about to announce another case of BSE. Another case was discovered a week later, yet USDA stated that it was going to proceed with the rule as scheduled even though the investigations had not been completed.

Additionally, the rule on January 4, 2005 was much broader than the proposed rule that was issued in November 2003 without an opportunity for agricultural producers, organizations, packers or companies to comment on the expansion.

This final rule MUST be delayed until the necessary steps are taken.

First, transparency must be improved at the USDA. Just like I am a public servant to my constituents, USDA officials are public servants to U.S. agricultural producers. That means that the policies that affect our producers' everyday lives must be made with their active participation and in the most transparent way possible. It is deplorable that USDA would proceed with a rule that will have such a significant impact on ranchers, their bottom lines, consumers, and the packing industry without an opportunity to comment on the expansion of the content of the rule. This cannot continue. The USDA must establish a process in which both public and the Congress are included in these discussions. In addition, new information must be considered in a final rule. Since the proposed rule was issued on November 4, 2003, two additional cases of BSE have been discovered in

Canada. The final rule should take into account any pertinent findings in these two additional investigations. A tremendous amount of new scientific research has also occurred which should also be taken into account.

To increase transparency and public input, I propose that the USDA establish a panel of cattle producers from the top cattle producing states as well as representatives from the cattle industry, including packers, to consult on a new final rule. Their suggestions and concerns need to be taken into account as a new final rule is drafted.

The USDA also needs to continue working with Japan and our other trading partners in Asia to re-open our important beef export markets. Steps are being taken and I appreciate that, but we must keep working around the clock to make sure sound science is followed and that we re-open these markets.

Secretary Johanns must earn the respect of this nation's agricultural producers back and by handling this situation the right way—stepping back, increasing transparency, and accepting public input before issuing a new final rule—he will do that.

I will continue watching this situation very closely and I urge USDA to delay reopening the border at this time until the steps I have mentioned above are taken.



Senator Thad Cochran  
BSE Hearing Statement  
Committee on Agriculture  
February 3, 2005

Mr. Chairman, thank you for holding this hearing. I also want to thank Secretary Johanns for appearing before the Agriculture Committee. The issue of BSE in cattle is a matter of great importance to America's consumers, US cattle producers, and the meat processing industry. All of these segments could be impacted by the decision to reopen the US border to Canadian beef.

The most important aspect of reopening the border is to ensure the health and safety of the US consumer. I have been pleased with the cooperative efforts USDA and Canadian officials have shown thus far in guaranteeing best science is used to order to make this decision.

USDA should take into consideration the process by which the border is reopened. There appears to be some question as to how many cattle are expected to move across the border. We should make every effort to ensure the domestic cattle market is not adversely affected.

In recent weeks we have seen several US beef slaughter plants either temporarily close or reduce their operations. At the same time we have seen Canada's slaughter capacity increase over 20 percent. This shift in jobs to Canada could have a long term impact on our US domestic slaughter industry.

Mr. Secretary, I have confidence that USDA will take all of these issues under consideration as it moves forward with its proposed rule. It will be important to for USDA to continue to keep this committee apprised of the information that is gathered from its investigation into the recent cases of BSE in Canada. I appreciate the hard work you and the staff at USDA have done to protect our domestic food supply and I look forward to your testimony.

**TESTIMONY BEFORE THE UNITED STATES  
SENATE AGRICULTURE COMMITTEE  
Thursday, February 3, 2005**

**Presented by Mr. Bill Donald, President  
Montana Stockgrowers Association  
Melville, Montana**

Chairman Chambliss and members of the Senate Agriculture Committee, my name is Bill Donald, a third generation Montana rancher from Melville, Montana. I currently serve as president of the Montana Stockgrowers Association. On behalf of the more than 2,000 members of that organization, I want to thank you for scheduling this hearing on the Bovine Spongiform Encephalopathy: Minimal-Risk Regions and Importation of Commodities; Final Rule and Notice, and for providing an opportunity to comment on these critical regulations. Without a doubt, the ultimate discussion that Congress makes on this regulation could be one of the most significant decisions to impact the United States livestock industry in many years. Unfortunately, this hearing comes during the annual 2005 convention of the National Cattlemen's Beef Association and the majority of our leadership will be discussing industry issues at that meeting and therefore are unable to attend and provide personal testimony at your hearing. As an alternative, we are providing the following comments.

Since the discovery of the first case of Bovine Spongiform Encephalopathy (BSE) in Canada in May of 2003, the United States beef industry has experienced significant financial hardship. The December 23, 2003, case, confirmed in Washington State but traced back to Canada, resulted in the loss of a \$3.5 billion export market for U. S. beef. Loss of that export market has resulted in an overall loss in value of our beef products of \$125/ head, an amount that could easily spell the difference between financial success and failure for many livestock operations. We must ensure that the decision made on this final regulation doesn't further challenge the livestock industry in this country.

Earlier this month I was chosen as one of nine members of a fact finding trip to Canada organized by the National Cattlemen's Beef Association. The purpose of that trip was to address the following:

- Number of cattle that could be imported to the U.S. if the border should re-open.
- Canadian Compliance with the ruminant feed ban.
- Testing protocol for the discovery of BSE.
- Status of Harmonization of health requirements between the two countries with respect to anaplasmosis and bluetongue.

Upon my return, I discussed my observations with the Board of Directors of the Montana Stockgrowers Association. After considerable discussion, the Board agreed on the following position regarding re-establishing cattle and beef trade with our neighbors to the north:

- 1) No beef products from animals over 30 months of age be imported into this country. If there is any backlog of cattle in Canada, it is in older cattle. Importation of this beef would devastate the U.S. cull cow and bull market.
- 2) No Canadian feeder cattle may be imported until total harmonization of the health requirements for that country is accomplished. We have worked on this issue for nearly twenty years with little or no cooperation from the Canadian government. Now is the time to negotiate a workable solution. That solution must be finalized before we open the border to their imports.
- 3) No heifers shall be imported unless spayed. The importation of fetal bovine serum from Canada is currently banned in the United States. Some heifers destined for slaughter may actually be carrying a fetus. The rule doesn't detail how to deal with those fetuses. This is an inconsistency in the rule due to a concern with fetal bovine serum
- 4) Re-establishment of our export markets with Japan and South Korea before allowing beef products or livestock from our Canadian neighbors. Basic international negotiations and economics indicate that we need to address this issue multilaterally.
- 5) Limit the use of the USDA grade stamp to U.S. beef products only. Prior to the border closing, carcasses derived from cattle imported for immediate slaughter from Canada were allowed to be given the USDA Grade stamp. This practice must cease if the border is reopened.

We are very concerned that USDA did not resolve these issues prior to announcing this rule and are thankful for your leadership in reviewing the agency's action. Until the above issues are addressed, we must strongly demand that no further action be taken on the final rule and the March 7, 2005, proposed implementation date be indefinitely postponed.

Thank you for the opportunity to provide these comments.



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**QUESTIONS AND ANSWERS**

FEBRUARY 3, 2005

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**RESPONSE TO QUESTIONS SUBMITTED TO SECRETARY MIKE JOHANNIS  
BY SENATOR SAXBY CHAMBLISS**

1. The Food Safety and Inspection Service last November apparently changed a small but important interpretation of its alternative packaging procedures for imported meat and poultry products. Previously, importers could place a placard on a pallet entering US commerce that contained the "shipping mark," or health certificate number to ensure the food products were properly inspected. The purpose of this procedure is to certify that individual shipments meet USDA requirements at the time of shipping. Other information, including lot numbers, is still required on individual cartons. However, unless that pallet is being moved intact to the end user, such as a retail outlet, under the revised procedure, importers must now stamp the health certificate numbers, along side other information, on each carton within a pallet. Previously, the placard alternative was considered acceptable for shipment to the immediate customer, usually a distributor in the United States. Since health certificate numbers are often impossible to obtain until the product is already packed into cartons, this adds a tremendous new and expensive burden to importers without any clear benefit to US consumers. The health certificate information is clearly available as the pallet enters US ports of entry for inspection, and furthermore, it is not necessary for tracing or recalling adulterated product. This appears to represent a non-tariff trade barrier that will increase costs to US consumers without conferring any benefit, and could result in trading partners erecting new barriers of their own to US agricultural and food exports. Will you direct the FSIS to reconsider this new procedure?

**Response:** This alternative packaging procedure was developed in the mid-1990s at industry's request in regard to stores that do not shelve their product. Under Federal regulation, immediate containers and shipping containers are required to be fully labeled. The shipping container must also have a shipping mark, which is important for tracing product once it has entered the country. In some cases countries use the health certificate number as the shipping mark, but that is not a requirement. The alternative packaging procedure allows the importer to identify the pallet as the "shipping container" and, thus, allows the company to place one shipping mark on the pallet.

FSIS discovered that some parts of the industry had expanded the interpretation and were moving product into distribution centers where pallets are broken into smaller shipments prior to sending product to the stores. This presents serious concerns to FSIS regarding our ability to trace product in the event of problems and to verify that a shipment was cleared by FSIS import inspectors when it entered the country. The modification of the procedure was for the purpose of assuring that the alternative packaging procedure was correctly applied and ensure our ability to trace product.

**RESPONSE TO QUESTIONS SUBMITTED TO SECRETARY MIKE JOHANNIS  
BY SENATOR HARKIN**

1. Dr. DeHaven and APHIS have stated that the USDA firewalls are “a series of interlocking, overlapping and sequential steps to prevent the introduction and establishment of BSE.” Furthermore, he and APHIS have stated that these firewalls have “redundancies” and have suggested that these measures are not required to be in compliance or effectively enforced for a scientifically determined amount of time specified in the OIE guidelines.

Is APHIS suggesting that as long as Canada is strong in one firewall then they can be weaker in another?

**Response:** USDA’s proposed rule, the final rule and the risk analysis documents published for public comment contain an exhaustive analysis of all the relevant risk factors, including risk factors and mitigations in Canada, specific mitigations required by our import restrictions, and additional mitigations that are in place in the United States. As such, individual ‘firewalls’ that Canada has in place are simply one part of one factor that must be considered when evaluating the overall risk. The standards for a minimal risk region as listed in the final rule include whether an effective feed ban has been in place, import controls and restrictions, surveillance, epidemiological investigations of identified cases and additional risk mitigations that may be applied as a result of such investigations with concurrent risk analyses. USDA’s minimal-risk criteria are designed to consider an individual country’s specific situation and to analyze risk based on the overall effectiveness of all actions taken by a country to prevent the introduction and spread of BSE. It allows for some flexibility, such that a region may apply slightly different risk mitigation measures and still achieve the same final result. In regions where BSE has been diagnosed, USDA bases its evaluation on the overall effectiveness of control measures in place, as well as all subsequent mitigation measures taken after the first BSE case has been detected. Using science as our guide, USDA’s risk analysis found that Canada’s mitigation measures are more than effective to resume safe trade in products listed in the minimal-risk rule between our two nations.

2. OIE standards recommend that protective anti-BSE measures are in place and effective for 8 years to assure that BSE is eradicated. Why would we want to cut this protective process short and risk keeping BSE around?

**Response:** The 8-year standard refers only to one specific article of the OIE guidelines defining the status of a minimal risk country, where it recommends as one option the amount of time that an effective feed ban should be in place. While USDA has acknowledged that Canada’s feed ban is 8 months shy of the 8-year recommendation, it is only one of a series of mitigation measures in place to prevent the introduction and spread of BSE. The eight-year time frame does not relate to other standards that are part of Canada’s overall BSE safeguards, including specified risk material removal and surveillance. As was mentioned in the answer above, USDA’s minimal-risk criteria are designed to consider an individual country’s specific situation and to analyze risk based

on the overall effectiveness of all actions taken by a country to prevent the introduction and spread of BSE. USDA conducted a thorough and exhaustive risk analysis and our decision to allow live cattle imports from Canada is based on science with the protection of public and animal health being our highest priority.

We recognize that, at the time the proposal was published, Canada's feed ban had been in place since 1997, less than the 8 years recommended by the OIE. Based on an analysis of data collected in the UK, the Harvard-Tuskegee Study (Harvard-Tuskegee 2003) estimates that the variability distribution for the BSE incubation period in cattle has a median (50<sup>th</sup> percentile) of approximately 4 years and a 95<sup>th</sup> percentile of approximately 7 years. Based on the best-fit parameter values provided in the Harvard-Tuskegee study (Harvard-Tuskegee 2003), the mean (expected value) of the incubation period distribution is estimated at 4.2 years, and 7.5 years (August 1997 through January 2005) represents the estimated 97.5<sup>th</sup> percentile of the incubation period. Therefore, we determined that the 7-year duration of the feed ban in Canada adequately exceeds the expected BSE incubation period, taking into consideration all of the actions Canada has taken to prevent the introduction and control the spread of BSE (e.g., import controls, level and quality of surveillance, effectiveness of feed ban, epidemiological investigation of detected cases, and depopulation of herds possibly exposed to suspected feed sources).

3. It is my understanding that 1) the feed ban is in place to stop the spread of BSE in animals; 2) SRM removal is in place to prevent the spread of BSE in humans and animals; and 3) surveillance is in place to monitor the prevalence of BSE and to assess the effectiveness of the firewalls.

Are you suggesting that these measures have redundancies and are interchangeable or overlapping enough that we don't have to worry how effective they are? If we start weakening them, how do we ensure our anti-BSE measures are still effective?

**Response:** A feed ban, specified risk material removal and surveillance are all key components of an effective BSE prevention and monitoring program. While strong on their own, each additional mitigation measure is like a layer offering added assurances against BSE. These measures are further strengthened when one considers all of the actions taken by the United States at home to prevent the introduction and spread of BSE, including strict import rules, specified risk material removal, feed ban regulations, and slaughter standards. As mentioned in earlier responses to your questions, USDA conducted a thorough and exhaustive risk analysis of all the risk factors outlined in the OIE guidelines, including risk factors in Canada, specific mitigations required by our import restrictions, and additional mitigations that are in place in the United States. In keeping with the OIE standards, these risk mitigation measures are considered in their totality for their ability to work as a series of interlocking, overlapping and sequential steps to prevent the introduction and establishment of BSE. USDA's decision to allow live cattle under 30 months from Canada is based on science and the existence of a series of firewalls both in Canada and in the United States that will protect the public and U.S. agriculture.

4. OIE guidelines for a BSE minimal risk country or zone require that a ruminant to ruminant feed ban be effectively enforced. All of us know that an effectively enforced feed ban does not happen overnight. Just because a feed ban is put in place in 1997 does not mean that is effective in 1997 or 1998 as the most recent incidence of a BSE positive cow being born after the implementation of the feed ban would indicate.

How does APHIS determine, under its risk assessment if a country's feed ban is effective? What level of compliance is required to be considered to be effective? 75%, 80%, 90% compliance?

**Response:** Under its final rule, USDA uses several standards in considering whether or not a region is a BSE Minimal-Risk region. One of these standards is whether a region maintains risk mitigation measures adequate to prevent widespread exposure and/or establishment of the disease. In the case of regions where BSE has been detected in an indigenous ruminant, they must have had these risk mitigation measures in place prior to the detection.

An effectively enforced ruminant-to-ruminant feed ban is considered a risk mitigation measure. Determining whether a feed ban has been effectively enforced involves a review of a number of interrelated factors, including: the existence of a program to gather compliance information and statistics; whether appropriate regulations are in place in the region; the adequacy of enforcement activities (e.g., whether sufficient resources are commitment and dedicated to enforcing compliance); a high level of facility inspections and compliance; accountability of both inspectors and inspected facilities; and adequate recordkeeping. Canada provided information to USDA demonstrating that such a feed ban is effectively in place.

In addition to the points addressed in the preceding paragraph, information derived from BSE surveillance and information from epidemiological investigations of specific cases must also be considered when evaluating the feed ban. Thus, information about the case recently identified in an animal born shortly after the implementation of Canada's feed ban is an important factor to consider, although it must be considered in an appropriate context with all other information available. While we remain confident in the animal and public health measures that Canada has in place to prevent BSE, combined with existing U.S. domestic safeguards, USDA sent a technical team to Canada to evaluate the circumstances surrounding these recent finds of BSE in Canada. We appreciated Canada's willingness to cooperate and assist us in these efforts. The result of our investigation and analysis will be used to evaluate appropriate next steps in regard to the minimal risk rule published on January 4, 2005.

5. The key to eradicating BSE is not only to have an effective feed ban but having it for a long enough period of time, eight years according to the OIE, to assure that the number of new cases is declining and that the spread of BSE has ceased.

Given the importance of the eight-year OIE requirement, why has USDA left it out? What does USDA believe is the minimum period a feed ban must be in place?

**Response:** The OIE standards are not intended to be used as a check list, rather they are intended as a set of guidelines that allow countries the flexibility to develop their own tailored regulations for protecting public and animal health. It would be incorrect to

assert that USDA “left out” the 8-year feed ban when considering Canada’s risk. A strong feed ban is a key component of the OIE standards set forth to establish a country as a minimal-risk region for BSE. USDA has acknowledged that Canada’s feed ban falls 8 months short of the 8-year recommendation. However, Canada has had a comprehensive feed ban in place for more than 7 years. Based on the Harvard-Tuskegee study cited above, we determined that the 7-year duration of the feed ban in Canada adequately exceeds the expected BSE incubation period. Furthermore, a feed ban is just one component of a much larger system of safeguards that includes, among others, surveillance and specified risk material removal. In keeping with the OIE Code, these risk mitigation measures are considered in their totality for their ability to work as a series of interlocking, overlapping and sequential steps to prevent the introduction and establishment of BSE.

Finally, USDA has not established a minimum period that a feed ban must be in place. The OIE guidelines allow for the flexibility to deal with nations on a case-by-case basis. Asserting a one-size fits all approach would limit the ability of the United States to evaluate a nation’s BSE status by considering the totality of its risk mitigation measures. You can be assured that USDA will always base its trade decisions on sound science and use the OIE code as a guide in order to protect both public and animal health.

6. Originally, USDA planned to test 20,000 aged but apparently normal cattle in their enhanced surveillance plan. It is my understanding that USDA included testing normal cattle because this was strongly recommended by the expert scientific panel that assessed USDA’s handling of our case of BSE. To date, USDA has made no progress on testing normal cattle and it has been suggested that USDA is no longer planning on testing aged but apparently normal cattle.

Is USDA planning on testing aged, but apparently normal cattle? Since older cattle born before or shortly after the feed ban are most at risk of BSE, shouldn’t USDA get a statistically valid sampling of this population?

**Response:** As part of the original surveillance program, USDA planned to randomly sample 20,000 apparently normal, aged animals. Our initial surveillance efforts, however, have focused on sampling as many animals from the high-risk population as possible. Those high-risk populations include: nonambulatory cattle; cattle exhibiting signs of a central nervous system disorder; cattle exhibiting other signs that may be associated with BSE, such as emaciation or injury; and dead cattle. The encouraging results received to date from sampling the targeted population do not indicate a significant need to sample clinically normal animals. Our program experts are currently evaluating whether to review the original plan.

7. Specified risk material (SRM) removal is a critical safeguard to prevent the transmission and spread of BSE. Recently, FSIS inspectors have raised questions about whether USDA has effective guidelines in place for ensuring that slaughter plants are appropriately marking carcasses of 30-month-and-over cattle so that SRMs are removed. Specifically, the inspectors believe that every carcass should be checked to make sure it is properly marked. The only effective way for inspectors to do this, it appears, would be for on-line inspectors conducting post-mortem examinations of cattle heads to check dentition.

USDA policy, however, is that on-line inspectors are not told to check dentition, leaving verification to periodic checks by the off-line inspector or public health veterinarian on the premises. However, there appears to be no USDA guidance regarding the number of

checks or frequency of checks that inspectors and veterinarians must do to verify that carcasses are being marked correctly and SRMs removed properly.

Have there been noncompliance reports (NR) written regarding the mismarking of carcasses as to the age of the animal?

**Response:** FSIS off-line personnel verify that the plant has within its HACCP, SSOP, or pre-requisite program, a system to assure the requirements at 9 CFR 310.22 with regard to specified risk material removal are met. NRs have been written to address noncompliances related to age determinations, and for noncompliance with the regulations. FSIS personnel verify that corrective action is taken by the establishment.

8. Does USDA have clear guidance for inspectors and veterinarians regarding how many checks must be done to verify that carcasses are correctly marked as to age and SRMs are removed from appropriate carcasses?

**Response:** Verification for the required written procedures for removal, segregation, and disposition of specified risk materials (SRMs) are scheduled in the existing assignment system (PBIS) under established HACCP or SSOP procedures.

The instructions to FSIS personnel are in FSIS Notice 9-04 and FSIS Notice 10-04. FSIS Notice 9-04 provides Veterinary Medical Officers (VMOs) with the methodology to use when verifying that an establishment has properly designed procedures to meet the requirements of 9 CFR 310.22 for the removal, segregation, and disposition of SRMs. Also, this notice provides inspection program personnel with instructions for verifying that an establishment is executing its programs so that there is proper removal, segregation, and disposal of SRMs. This Notice describes actions for on-line inspectors to take. FSIS Notice 10-04 clarifies: 1) That documentation, rather than dentition, can be the primary means of determining the age of animals and to describe the types of documentation that have proven to provide an accurate and reliable basis for making this determination; and, 2) How inspection program personnel should verify that sanitation of equipment has been properly conducted when there is a possibility of contamination by SRMs.

The agency believes both notices provide clear guidance.

9. Do we know how Canada verifies the proper marking of carcasses as to age? Has USDA audited or otherwise reviewed their system?

**Response:** In December 2004, FSIS conducted an on-site audit of Canada's compliance with the BSE requirements of the U.S., with particular attention to the removal of specified risk materials. During the audit, FSIS visited six beef slaughter plants and five beef and veal plants, all of which slaughter only cattle under 30 months of age. FSIS determined that the plants effectively implemented the BSE regulations (i.e., the small intestines and tonsils are removed, and non-ambulatory disabled cattle are prohibited from the human food supply). During February 2005, FSIS conducted a similar BSE

audit of Canadian plants that slaughter cattle 30 months of age and older. The audit showed that BSE requirements were being implemented effectively and correctly.

Canada's inspection system with regard to BSE requires that the age of each and every animal to be verified through a dentition check. In addition, each and every carcass of animals over 30 months of age has the entire spinal cord/column marked with blue dye.

10. Can an on-line inspector write a noncompliance report regarding SRM removal? In order to avoid ambiguity, don't you think that it would make sense to add this responsibility to the on-line inspectors' official duties?

**Response:** On-line inspectors focus their activities on critical statutory inspection duties. Verification of all HACCP and SSOP requirements and documentation of noncompliance records is work that FSIS assigns to off-line inspection personnel. Off-line inspection personnel receive specialized training in HACCP and SSOP verification and documentation on noncompliance through the Food Safety Regulatory Essentials training.

Under FSIS Notice 9-04, on-line inspection program personnel are to notify the VMO or, if unavailable, other off-line inspection program personnel when there is evidence that an establishment's SRM control program is ineffective (for example, when repeated presentation of contaminated heads or carcasses for post-mortem inspection at the rail and head inspection station indicates failure to control SRM contamination). The VMO or other off-line personnel will perform the appropriate HACCP or Sanitation SOP procedures to evaluate the process.

11. Can you please explain the current verification process for SRM removal, and what happens when a mismarked (regarding age) carcass is identified by an on-line inspector? Is a noncompliance report always required to be written?

**Response:** The Agency has determined that the best determination of age can be made by review of age records rather than dentition of individual animals. This is clarified to inspection personnel in both FSIS Notice 10-04 and FSIS notice 9-04 described above. On-line inspection personnel focus on critical statutory inspection of each carcass. If while performing their on-line duties they observe anything that is not in compliance with agency standards, off-line personnel should be notified to conduct possible verification procedures.

Off-line inspection personnel would document a noncompliance record whenever the required written SRM procedures are not followed. Where records are not available, inspection program personnel are to verify, in establishments using dentition, that the establishment's determinations are consistent with the guidance provided in FSIS 5-04. If the determinations made by the establishment are not consistent with the guidelines, inspection program personnel are to verify that the establishment takes the appropriate corrective action under 9 CFR 417.3(a) or (b).

12. Would you please provide the Committee with copies of all NRs issued by FSIS related to SRM removal since the FSIS SRM rules went into effect?

**Response:** FSIS does not have actual copies of NRs in a single location. Copies of the relevant NRs must be retrieved by requesting them from each of our 15 District Offices. The NRs along with the plant's responses to the NR's are maintained in the USDA files located at the pertinent establishments. The Agency is currently gathering the requested NRs in response to FOIA requests and can provide them when they are available, if desired.

13. Why did USDA not respond promptly to Mr. Charles Painter's original letter to Mr. Bill Smith detailing concerns about verification of SRM removal? What actions has the department taken to review the policy concerns identified in Mr. Painter's letter? Please provide documentation to demonstrate the steps taken thus far.

**Response:** The Agency took these allegations seriously and devoted substantial resources to investigating them. The union chairman was informally interviewed by the Agency, but did not provide specific information to support the letter's allegations. He was formally interviewed on two occasions in January, and has not provided any evidence to substantiate the allegations he raised in his December 8th letter to the Agency. FSIS initiated an in-depth investigation and found no basis for the allegations. In addition, USDA's Office of the Inspector General (OIG) has interviewed Mr. Painter, and his comments will be included as part of OIG's audit of the BSE surveillance program and the implementation of the rule regarding specified risk materials. The audit is expected to be released early this summer.

14. The BSE final rule requires that live feeder cattle be branded, have health certificates and be individually identified by an eartag before entry into the U.S. from Canada. However, since a national animal identification system in the U.S. is not yet functioning, there are questions as to how tagged Canadian live cattle will be tracked once in the U.S., and how USDA will ensure they are slaughtered by 30 months of age. Imported Canadian feeder cattle are only allowed to be sent to one feedlot before slaughter, but cattle will most likely be intermixed with U.S. cattle.

How does USDA plan to ensure that imported Canadian live cattle are in fact slaughtered by 30 months of age?

**Response:** When the owner of the feedlot decides to ship the cattle to slaughter, an accredited vet must examine the cattle. This examination will include assessing the age of the animals. The veterinarian will then provide the appropriate paperwork, necessary for slaughter. The cattle will be transported to slaughter as a Canadian-only group and under a U.S. government seal, where the paperwork will be verified again by USDA to ensure that they meet the requirements for slaughter. In addition to the records, USDA can also verify the age of the cattle at the time of slaughter through dentition. If USDA finds that cattle suspected of being 30 months of age or older have been offered for slaughter, appropriate enforcement action will be taken as necessary.

15. How will USDA ensure compliance so that Canadian live cattle are sent to only one feedlot and then slaughtered by 30 months of age?

**Response:** Cattle entering the United States from Canada must be in a truck sealed with a government seal. In addition, cattle must also be branded with a "CAN" on the animal's right hip and an eartag of the country of origin be applied to bovines before the animals' entry into the United States.

If the USDA veterinarian at the port of entry determines that the animals must be offloaded, the government seal would be broken and the shipment would have to be resealed after inspection. The cattle will then move directly to the feedlot. The seal can be removed at the designated feedlot by an accredited veterinarian or a state or USDA representative or his or her designee. As mentioned above, when the feedlot owner decides to ship the cattle to slaughter, paperwork and dentition checks will ensure that the cattle are the ones identified and they are under 30 months of age.

16. How does USDA plan to utilize a national animal identification system with ear tags on Canadian live cattle if the U.S. identification system is not in place yet? Will USDA have access to Canadian animal identification records for traceback capability? How will health certificates be used? Will there be one health certificate per animal? Would a health certificate paper trail alone allow for a 48 hour traceback of a diseased animal?

**Response:** Under the final rule, all feeder cattle and feeder sheep and goats imported from minimal-risk regions must be individually identified by an official eartag of the country of origin. The eartag must be applied before the animal's arrival at the port of entry into the United States, meet U.S. eartag standards, and be traceable to the animal's premises of origin. No person may alter, deface, remove, or otherwise tamper with the individual identification while the animal is in the United States or moving through the United States. There will be a health certificate for each shipment of animals; the number on the eartag will be listed on the health certificate. This health certificate will accompany the animals as they move to the feedlot and/or to slaughter. This certificate, with the record of specific individual identification, will allow us sufficient information to communicate with our Canadian colleagues as necessary to access their records for tracebacks. Specifically in reference to BSE, it is important to note that since this is not a highly contagious disease, some of the time constraints in rapid traceback are not as critical.

USDA has relied on a long history of communication and cooperation with CFIA. This cooperation has been evident in past animal disease investigations as tracebacks occur back and forth across our border. We anticipate that this collaboration will continue in the future.

17. When will USDA have a national animal identification system up and running in the U.S. and what species will first be tracked with the system? When does USDA plan to start phase II for implementation of the national animal identification system?

**Response:** The first step in implementing the National Animal Identification System is identifying and registering premises that house animals. Such premises would include locations where livestock and poultry are managed, marketed, or exhibited. APHIS has provided a Standardized Premises Registration System—or SPRS—to states that requested it. In addition, several other states are using compliant premises registration systems administered by a state and/or through a third party. APHIS will support the interface of all compliant systems with the premises number allocator and premises information repository. The goal is to have all states operational for premises registration by mid-year 2005.

In mid-2005, USDA plans to design and develop an animal identification number (AIN) management system to administer the assignment of AINs to tag manufacturers and to record the distribution of the animal numbers to a producer's premises. Individual animal identification and tracking animal movements can then be implemented.

18. I understand you met with the Japanese ambassador to the U.S. last week and through him pressed the government of Japan to set a date certain for re-opening their market to U.S. beef products. My understanding is that in order to allow U.S. beef in without requiring universal testing for BSE, the government of Japan will have to change their domestic laws and regulations.

Do you believe Japan is prepared to do this, and how long will it take them to do so?

**Response:** You are correct. Beef trade with Japan cannot resume until Japan completes its regulatory process, which includes changing two internal regulations. The Japanese government must change its regulation from testing cattle of all ages to testing only those older than 20 months of age, as well as pass a rule to lift the ban on U.S. beef imports. On March 31, 2005 the Food Safety Commission (FSC) made public a proposal to lift the country's domestic requirement that cattle under 20 months of age need to be tested for mad-cow disease and is seeking public comment. The public comment period will be open until April 27, 2005. After that, the Food Safety Commission will review the comments and complete a final report that will be passed to Japan's Agriculture and Health ministries. The rule to lift the import ban is not as far along. Be assured we will continue to press the Japanese government at every opportunity to move forward with its regulatory process as quickly as possible.

19. What countries other than Canada might be eligible to apply for designation as a minimum risk region for BSE under the rule now scheduled to take effect on March 7? Has USDA received any requests for such designations from other countries?

**Response:** To date, USDA has not received any official requests for a BSE minimal risk designation from any country besides Canada. We can not speculate on a country's ability to meet these requirements until a formal petition has been made and the appropriate risk analysis has taken place.

20. Last fall, USDA officials announced that an agreement had been reached to re-open the Japanese market to U.S. beef. I commented at the time that it appeared there was less

to the announcement than meets the eye. We are now more than three months past that date, and no firm decision has been made as to when U.S. beef exports will resume to Japan. In retrospect, was not the October announcement in fact premature, and shouldn't USDA officials wait until they have concrete agreements on these issues before they make announcements, which can move commodity markets?

**Response:** U.S.-Japanese BSE discussions and negotiations have been highly publicized since the first bilateral engagement. As such, press releases and official public announcements from both sides are expected and important to keep everyone informed of progress of the negotiations. We believe it is important to be as transparent as possible regarding the negotiations, and as such, the U.S. beef industry has been consulted on a regular basis throughout the process. The October framework understanding represented a significant breakthrough in our bilateral discussions in that Japan agreed to eliminate the requirement for BSE testing for animals under 21 months of age. As we continue negotiations with Japan and other countries to resume beef exports, we will continue to release information regarding significant progress as appropriate to keep all interested parties informed

21. Last October, I wrote a letter to Secretary Veneman urging USDA to station scientific personnel from APHIS and FSIS in key overseas posts, to help "identify and address problematic SPS rules", so as to minimize the risks that SPS issues will turn into lost export opportunities. I was informed in a response we received a few weeks ago that USDA has 179 APHIS staff overseas at present (65 of them American citizens), but no one from FSIS.

In light of the problems we have had re-opening our beef export markets across the world due to our BSE case in late 2003, in addition to recent trade stoppages resulting from porcine and avian disease, shouldn't USDA seriously consider stationing FSIS veterinarians overseas?

**Response:** FSIS has considered this idea, but concluded that establishing and maintaining overseas offices is very expensive and that the public would be better served by stationing Agency staff in Washington and dispatching them to countries as the need arises. In fact, FSIS inspection officials frequently participate in bi-lateral meetings with APHIS and FAS to resolve trade issues. In addition, FSIS will be selecting a senior level scientist, who will be responsible for liaison with foreign government inspection officials to resolve problems and build productive relationships.

22. In the proposed rule, USDA required a minimal risk region to have dedicated facilities or accepted procedures for segregated lines at slaughter and processing plants to segregate cattle that were 30 months and older and required SRM removal, from cattle under 30 months that did not. In the final rule this requirement has been dropped. It is my understanding that the dedicated facilities and segregated lines were not just to identify which cattle required SRM removal but were an important safety measure to prevent cross contamination of SRMs to edible beef products.

Given that prions are resistant to conventional and even extraordinary disinfection procedures, why has USDA dropped this safeguard against cross contamination by removing the requirement for dedicated facilities or approved segregated lines?

**Response:** In the interim final rule on Specified Risk Materials (SRMs), effective in January 2004, FSIS required all establishments to address sanitary dressing procedures, including cross-contamination with Central Nervous System (CNS) tissue, as part of their Hazard Analysis Critical Control Point (HACCP) plan and their Sanitation Standard

Operating Procedures (Sanitation SOPs). FSIS initially determined that customary controls through HACCP and Sanitation SOPs were adequate to minimize any potential for cross-contamination when it issued the interim final rule. The Agency issued a press release in March of 2004, during the comment period on the interim final rule, seeking to obtain information on methods that are used by industry for sanitary dressing of carcasses and their ability to minimize cross-contamination. Furthermore, FSIS jointly issued an Advanced Notice of Proposed Rulemaking (ANPR) with APHIS and HHS-FDA about additional BSE safeguards in July 2004, which sought additional comments on the issue. FSIS continues to review the comments we have received and will take them into account when issuing the final rule.

23. The Bioterrorism Preparedness and Response Act of 2002 (the "Act") requires food importers to provide prior notice of food shipments into the United States. Simply put, this rule requires that the USDA (APHIS), Department of Homeland Security (DHS, former U. S. Customs), and FDA receive prior notice of food imported or offered for import into the U.S. Under the rule, notice must be made by noon the calendar day prior to the day that the imported food arrives at the border crossing port of entry. If prior notice is absent, the food may be refused entry into the country and the importer or owner is responsible for transportation and storage expenses. Importation without prior notice is a prohibited act. Additionally, the Act, through its record-keeping requirements effectively requires the traceability of processed foods.

These requirements were enacted by Congress so that FDA could better ensure the safety of the foods it regulates. In the context of beginning to trade with other countries at risk, even minimal risk, of an animal disease as envisioned by USDA's final rule, it would seem to make sense to ensure that USDA had prior notice of shipments of meat or poultry coming into the United States, and that there was traceability of meat and poultry products. Past experience has shown that FSIS can have great difficulty during recalls tracking recalled product through the distribution chain.

Currently, the Act does not apply to foods regulated solely by USDA such as the vast majority of meat and poultry products not used in animal feed. Does USDA require prior notice of meat and poultry imports under its current regulations? If not, does it have the statutory authority to do so, and do you think it makes sense as a matter of policy that prior notice be required for FDA-regulated foods but not USDA-regulated foods?

**Response:** FSIS has the authority under the Federal inspection laws and regulations to require prior notice of meat and poultry imports. However, FSIS does not require prior notice because all meat and poultry imports are required to be presented to an FSIS import inspector, who checks documentation and general condition and may conduct further examinations if directed by the Automated Import Information System (AIIS), FSIS' centralized import database which catalogues information on imported products and selects certain shipments for reinspection verification.

24. Do USDA record-keeping regulations provide USDA with the same authority FDA will have, once FDA implements the Act, to effectively require traceability for meat and

poultry products? If not, wouldn't requiring record-keeping sufficient to trace meat and poultry products back to their sources aid USDA in tracking potentially contaminated food?

**Response:** FSIS already maintains records on all imported shipments in the Automated Import Information System (AIIS), FSIS' centralized import database which catalogues information on imported products and selects certain shipments for reinspection verification. This includes country of origin, exporting establishment, name of product, weight and quantity, shipping marks, and Customs Entry number. This information is linked to the exporting country's export certificate and the inspection application, which are on file in the import inspector's office.

25. Would it be workable to have a system where inspectors would be responsible for separating out which cattle are non-ambulatory due to illness versus due to injury? Could they accurately distinguish which belong in each category? How would they tell when an injury may have occurred because of some underlying disease that caused the animal to become weak or disoriented and fall down?

**Response:** In the absence of clinical information on individual animals, it would be difficult for FSIS Public Health Veterinarians (PHVs) to consistently segregate non-ambulatory disabled cattle with acute injuries, from those with an underlying disease that precipitated the injury. Under the current system, if an animal becomes acutely injured following antemortem inspection, the FSIS PHV may pass the animal for slaughter after confirming that the injury was in fact acute.

26. If changes were made to the current comprehensive downed cattle ban to allow downer cattle with injuries to be slaughtered for human food, what impact would that have in the field? Do you think it would undo the incentives that Dr. Temple Grandin has described, where producers may seek to take extra care to keep cows from becoming non-ambulatory?

**Response:** USDA believes that the non-ambulatory disabled cattle ban has been helpful in encouraging improved animal handling practices in an effort to avoid causing cattle to become injured. If, at some point in the future, USDA were to determine that the non-ambulatory disabled cattle ban was no longer necessary, USDA would need to pursue rulemaking. In addition, USDA likely would have to develop new training material for inspection program personnel in order for them to distinguish conditions in which injured cattle can be humanely presented for slaughter. Making such distinctions could be complicated and subjective, unless, for example, criteria were limited to readily identifiable acute injuries that occurred at the official establishment or during transport. Moreover, the handling of cattle may not be as humane as is the current situation, in part because non-ambulatory animals could again be transported to slaughter plants.

27. If the current ban on slaughter of downed cattle is reconsidered, will USDA consider whether it is possible to transport non-ambulatory animals to the point of slaughter in a humane manner in making such revisions?

**Response:** I support Secretary Veneman's decision to take the emergency measure to ban non-ambulatory disabled cattle from the human food supply after finding the BSE-infected cow in Washington State. From the European experience with BSE, we have learned that certain high-risk cattle, such as those that are non-ambulatory disabled, have a higher probability of testing positive for BSE than other cattle.

Public comments about the ban and the other interim final rules are currently being reviewed. In addition, once the Department completes the BSE surveillance program later this year, we will have a much clearer picture of BSE in this country, and at that time we will be able to make fully informed regulatory decisions.

**RESPONSE TO QUESTIONS SUBMITTED TO SECRETARY DESIGNATE  
MIKE JOHANNIS BY SENATOR THOMAS**

1. We have heard reports that Canada's BSE cattle feed restrictions have not been strictly enforced. The most recent case of BSE seems to confirm this problem. To ensure the safety of Canadian beef, it is essential that Canada's feed bans and other BSE safety standards must be strictly and properly enforced. How can you ensure that this is the case?

**Response:** USDA remains confident that the animal and public health measures that Canada has in place—combined with existing U.S. safeguards and the additional safeguards announced as part of USDA's BSE minimal-risk rule—provide the utmost protection to U.S. consumers and livestock.

We understand that questions have been raised regarding the recent cases of BSE in Canada and the efficacy of that country's ruminant-to-ruminant feed ban. We assure you that this matter is one of USDA's highest priorities, and that we are devoting the resources necessary to ensure rapid and effective evaluation of the situation. In that regard, we sent technical teams to conduct an epidemiological review as well as a review of Canada's feed ban. The technical teams included top Animal and Plant Health Inspection Service experts in the areas of epidemiology and transmissible spongiform encephalopathies, as well as an auditor from USDA's Agricultural Marketing Service. Additionally, we continue to work closely with our colleagues at the Department of Health and Human Services' Food and Drug Administration (FDA). FDA technical experts accompanied USDA's technical teams in an advisory capacity. We anticipate making the results from these teams' reviews available in the near future. The results of our reviews and analysis will be used to evaluate appropriate next steps with regard to the minimal-risk rule and those provisions of the rule that have been delayed.

With regard to specific questions about Canada's feed ban, we would like to provide some context and background information on testing methods intended to detect the presence of animal proteins in feeds. Test results cited in recent media reports are from a small pilot study conducted by the Canadian government regarding inspection of ruminant feed. Unfortunately, press coverage has focused on data from the pilot study's preliminary screening of feed, and has not included results of the followup testing conducted by Canadian officials.

Currently, the basic testing method used in the United States and Canada is feed microscopy. As the name implies, this entails the use of a microscope to examine a feed sample and look for evidence of animal protein. This is a very nonspecific method of examination and does not differentiate or identify the species of origin of most animal proteins. It can differentiate between avian and mammalian proteins in some instances, but even this difference is sometimes impossible to identify with this testing method. If evidence of mammalian muscle, bone, or hair is present, it may have originated from any mammalian species, including swine, cattle, rodents, or even human hair. In a feed mill

environment, it is relatively easy for rodent protein to be incorporated into finished feed. More specificity can be obtained by further testing to help identify the species of origin.

Under Canada's pilot study, Canadian officials were sampling ruminant feed or ruminant feed ingredients. We must clarify that under current feed regulations, ruminant feed can include avian protein, purely porcine or equine protein, and ruminant blood protein. Any of these ingredients could produce a positive result for animal protein in a feed microscopy test, yet they all can be legally included in ruminant feed. The Canadian Food Inspection Agency (CFIA) has published the results of its investigation. We will consider CFIA's findings as USDA's technical teams complete their review.

2. Has USDA completed its own independent verification of the level of compliance and enforcement of the Canadian ban on the feeding of ruminant animal protein?

**Response:** After the most recent case of BSE was detected in an animal that was born shortly after the implementation of Canada's feed ban, and to determine if there are any potential links among this and the previously detected positive animal, USDA sent technical teams to Canada to evaluate the circumstances surrounding these BSE detections. The teams reviewed Canada's ruminant-to-ruminant feed ban. The technical teams included top Animal and Plant Health Inspection Service experts in the areas of epidemiology and transmissible spongiform encephalopathies, as well as an auditor from USDA's Agricultural Marketing Service. Additionally, we continue to work closely with our colleagues at the Department of Health and Human Services' Food and Drug Administration (FDA). FDA technical experts accompanied USDA's technical teams in an advisory capacity.

On February 25, USDA released the final report of the feed ban technical team. Overall, the technical team found that Canada has a robust feed ban inspection program, that overall compliance with the feed ban is good, and that the feed ban is reducing the risk of transmission of BSE in the Canadian cattle population. It should be noted that the risk analysis did not assume 100 percent compliance with the feed ban, as that is not realistic in any situation. The information provided by the U.S. team verifies the information cited in the risk analysis, and supports the conclusion in the risk analysis that the feed ban is effective.

The team's report on Canada's epidemiological investigation will take longer to finalize, and we will make these findings available as soon as it is appropriate.

3. Since USDA is proposing to allow the importation of boxed meat from cattle over 30 months of age, what independent analysis have you done regarding the Canadian level of enforcement and compliance with the requirement for the removal of all SRM (Specified Risk Material)?

**Response:** In December 2004, FSIS conducted an on-site audit of Canada's compliance with the BSE requirements of the U.S., with particular attention to SRM removal. During the audit, FSIS visited six beef slaughter plants and five beef and veal plants, all of which

slaughter only cattle under 30 months of age. FSIS determined that the plants effectively implemented the BSE regulations (i.e., the small intestines and tonsils are removed, and non-ambulatory disabled cattle are prohibited from the human food supply). During February 2005, FSIS is conducting a similar BSE audit of Canadian plants that slaughter cattle 30 months of age and older. Since the ongoing investigations into the recent finds of BSE in Canada in animals over 30 months are not complete, USDA will be delaying the effective date for allowing imports of meat from animals 30 months and over. In May, FSIS will conduct a verification audit of Canada's entire inspection system.

4. USDA has in the past asserted that the Canadian and American beef industry is fully integrated. If that is the case, why do you think every case of BSE in North America has come from Canada? How many more cases of BSE do you expect Canada to have?

**Response:** The United States is still in the midst of an intensive one-time surveillance effort that will provide a snapshot of the domestic cattle population to help define whether BSE is present in the United States, and if so help calculate at what level. It is possible that during the course of this intensive surveillance that we may find a case of BSE from a cow that originated in the United States. When USDA kicked off our enhanced surveillance in June, we were clear in stating this possibility. At the same time our current results are promising. We have tested approximately 274,000 cattle as of March 15, 2005 and all have tested negative for BSE.

USDA has not made a prediction about the number of cases the United States or Canada might find as a result of ongoing surveillance. Rather, it is intended to give the United States a better understanding of the prevalence of the disease and the same is true for Canada. Surveillance is a key component of any BSE program, providing a way to monitor the effectiveness of the various risk mitigation measures.

5. When BSE was first discovered in Canada and then in Washington State, USDA seemed much more concerned with BSE, responding quickly to stop Canadian beef imports, placing new restrictions on animal feed, and beginning an intensive testing program. Now USDA seems determined to open the Canadian border even in the face of new cases of BSE and reports that Canada is not complying with its own safety measures. What has changed USDA's attitude toward BSE and its threats to human health?

**Response:** In response to the cases found in 2003 – first in Canada and then in Washington State – USDA analyzed the animal health and public health risk mitigation measures in place in the United States. This analysis incorporated an understanding of current scientific knowledge about BSE and the relevant disease control measures, and an assessment of international standards that address different levels of risk that exist in various situations. Another part of this analysis was to evaluate the consistency of any restrictions applied to other countries with restrictions that would apply domestically in the same situation. This analysis led to not only changes in domestic control measures – such as prohibiting the use of SRMs in the human food chain – but also proposed changes to allow a more consistent approach for imports.

We believe that the only appropriate basis for trade is science. This is true when we are looking to reopen vital U.S. export markets, such as the Japanese market, and it is also true when it comes to imports. We know so much more about the science behind BSE than we did when the disease first started emerging in the United Kingdom and Europe. Back then, the international community—and the United States was a party to it—took the position that a single case of BSE in a country was an indefinite death sentence for that country's exports.

Since Canada reported its first case of BSE in May 2003, USDA has completed a comprehensive risk analysis evaluating the threat posed by BSE in Canada. The results of that analysis confirmed that Canada has the necessary safeguards in place to protect U.S. consumers and livestock against BSE. These mitigation measures include the removal of specified risk materials (SRMs) from the human food chain, a ruminant feed ban, a national surveillance program and import restrictions. This extensive risk assessment also took into careful consideration the possibility that Canada could experience additional cases of BSE and again found, given the safeguards mentioned above, the overall risk to be minimal.

We cannot stress enough that USDA is in the midst of its own intensive BSE surveillance program and it is possible that we too may find additional cases of BSE. We need to maintain a consistent, science-based approach that accurately portrays the risk of disease transmission, whether it relates to disease occurrence in another country or the same disease occurrence in the United States. It is my hope that countries will adhere to sound science and follow the lead USDA has taken in establishing trade relationships with those countries that present a minimal risk for BSE.

6. USDA's own economic analysis indicates that the reopening of the border to Canadian live cattle will have significant short-term impacts on U.S. fed and feeder cattle prices. What efforts have been made to structure the reopening so as to lessen these impacts?

**Response:** The minimal risk rule was accompanied by a detailed cost-benefit analysis that examined the potential effects on the U.S. cattle and beef industry under a range of assumptions. The analysis compared the rule with the current situation of no cattle imports from Canada. Based on data on Canada's cattle population, more fed cattle are expected to be exported to the United States than feeder cattle. For all of 2005, fed cattle prices were projected to be about 3.2% (about \$2.70/cwt) lower than if no increase in trade were to occur. Feeder cattle prices in 2005 were projected to be 1.3% (about \$1.20/cwt) lower than if no expansion in trade were to occur. While the imported beef and cattle are forecast to reduce cattle prices, prices would still be strong compared with historical levels. For example, the 2005 annual average fed cattle price would still be the third highest ever.

Meatpacker margins have been low and their operating costs high due to low capacity utilization. A number of packers have announced plant closings or layoffs reflecting the low availability of slaughter cattle in the United States after 9 years of steadily declining herd numbers. Imports of Canadian cattle under 30 months of age would boost U.S.

slaughter activity, reduce plant closings and layoffs and increase employment for packers slaughtering fed cattle.

In addition, USDA announced on February 9 that the effective date for allowing imports of meat from animals 30 months (cow beef) and over will be delayed, and trade in those products will not commence March 7 as previously announced. The announcement will provide some economic relief to packers that specialize in cow slaughter and would not have been able to purchase Canadian cows but would have faced more competition from Canadian cow beef. In the absence of a market for over 30-month old beef, Canadian packers might be expected to concentrate on slaughtering fed steers and heifers instead of cows as discussed in the Regulatory Impact Analysis. This may result in increased competition between U.S. and Canadian packers for the available pool of North American cattle, helping support U.S. cattle prices.

7. What is the status of negotiations with Japan and other nations to open their borders to U.S. beef back?

**Response:** We have been engaged with Japan at the technical and political level since it banned U.S. beef in December 2003. On February 8, a Japanese technical expert panel concluded that U.S. maturity grading would be an acceptable method of determining cattle age. This was a major technical issue we had to overcome before trade can resume. We have now exhausted technical discussions. It is time for Japan to take the political action and complete its regulatory process to change its BSE cattle testing requirements and other procedures, which will allow U.S. exporters to sell beef and variety meats from animals less than 21 months of age.

With regards to other markets, we are currently negotiating conditions for resuming beef exports with all of our important trading partners. In other markets, we continue to address questions and concerns about BSE and U.S. measures to ensure beef safety and are working to advance these discussions to the market-opening stage.

8. Have USDA and/or USTR visited with our export market countries, both those that are open and those that remain closed, to determine how implementation of this rule will affect their attitudes and actions regarding beef trade with the United States?

**Response:** We have discussed the minimal risk rule with our trading partners and are not aware of any potential negative impacts on U.S. beef exports. On the contrary, we believe implementation of the rule will help build support internationally for science-based approaches to BSE. In fact, we think the rule provides a template for the type of science-based regulations that we are asking our trading partners to adopt. Our goal is to make North America a model for how to resume trade after a BSE finding and implementing appropriate risk mitigation measures to safeguard human and animal health.

9. Was USDA aware of the discovery of the third and/or fourth Canadian cases of BSE in Canadian born cattle at the time that the final rule was published?

**Response:** No, USDA was not aware of these cases at the time we announced that the minimal-risk final rule would be published in the *Federal Register*. What officials said at that time—and continue to say—is that the detection of additional cases of BSE in Canada would not alter the implementation of the final rule that recognizes Canada as a minimal-risk region. In the extensive risk analysis conducted as part of the rule making, we thoroughly considered the possibility of additional cases of BSE in Canada, as well as the corresponding risk to the U.S. cattle population. Because of the mitigation measures that Canada has in place, however, we continue to believe the overall risk is minimal.

**RESPONSE TO QUESTIONS SUBMITTED TO SECRETARY DESIGNATE  
MIKE JOHANNIS BY SENATOR CRAPO**

1. I understand that the rule would require Canadian cattle entering the United States to be moved directly from the port of entry to a feedlot or slaughtering establishment in a sealed container. The regulation states that a state or USDA representative or an accredited veterinarian must open the truck once they arrive at the feedlot and slaughter facility. In addition, the regulation stipulates that when Canadian cattle go from the feedlot to a slaughter facility, they must be loaded at the feedlot on a truck sealed by a state or USDA representative or his or her designee or an accredited veterinarian.

Many feedlots in the western states are located in remote areas and, in Idaho, they are geographically dispersed. In addition, a high percentage of cattle are hauled during evening hours and may arrive at the feedlot at all hours of the day and night. In Idaho, there are only four state veterinarians and feedlots typically do not have accredited veterinarians on staff. They often act as outside consultants and are located some distance from the facilities. It would be impractical to leave the cattle on the truck waiting for the official to unseal the truck.

Since the larger slaughter facilities typically have full-time USDA representatives on staff while the feedlots do not, this rule appears to place a higher burden on the feedlot industry than the larger packers. Why was the same protocol not established that exists today, such as USDA's Processed Verified Programs and the Quality System Assessment (QSA) program currently being proposed to verify the age of cattle eligible for shipment to Japan? This would not require additional state resources and could be easily audited by USDA.

**Response:** We recognize that this rule will require more coordination than in the past and may cause some inconvenience. However, with better communication between transport trucks, feedlots, and slaughterhouses, and more upfront planning, we believe that the certification requirements in this rule will not pose any undue constraints upon feedlots. Rather, the rule will benefit many feedlots in the western United States by bringing more cattle into their facilities

The establishment of a Processed Verified Program is not applicable under the current rule because it uses independent, third party audits to review written production and manufacturing processes. Having a USDA, state or accredited veterinarian in place to document the offloading of cattle from Canada allows the United States to keep closer track of imported animals and ensure the proper paperwork and mitigation measures are in place. In addition to the safeguards in place in Canada, this requirement is one in a series of firewalls or checkpoints established in the United States to prevent the importation of cattle, sheep, and goats that are ineligible under the minimal-risk rule. These post-import safeguards begin when the cattle arrive in the United States. In addition to inspections upon entry, a secondary inspection at the feedlot ensures that all animals arrive in a sealed container, accompanied with VS Form 17-29 "Declaration of Importation," and proper health certificates. If the seal is broken or any paperwork is

incomplete or missing, the transport vehicle will be stopped immediately and USDA officials will be contacted. Similarly, when moving from the feedlots to the slaughterhouses, the containers must again be sealed and all paperwork documented by a USDA, state or accredited veterinarian. USDA's multiple firewalls are designed to keep any Canadian cattle that don't meet our strict criteria out of the United States livestock production system.

Finally, with regard to the Quality System Assessment program, it is being designed around standards set forth by Japan for the importation of U.S. cattle. These requirements have been detailed by Japan during ongoing technical discussions aimed at reestablishing this critical market for U.S. producers.

1b. Additionally, as USDA and the cattle industry work to implement an animal ID program, could a validated animal identification system be used by companies as a more cost-effective control system?

**Response:** The purpose of a National animal identification system is to provide animal health officials with the ability to identify all animals and premises that have had contact with a foreign or domestic animal disease of concern within 48 hours after discovery. At this time, it is not intended to be used as a means to house additional information about livestock even for validation or marketing purposes. The creation of a National tracking system is such a huge undertaking in and of itself, that to try and add other features at this time could potentially derail the original intent of the system, which is critical to safeguarding animal health in the United States.

2. Canada's announcement of two additional cases of BSE led many U.S. cattle producers to question Canadian compliance with its regulations – especially given that one of the two new cases was from an animal born after the feed ban. Given this information, what do USDA and the Canadian Food Inspection Agency (CFIA) believe are the most likely reasons for the case of BSE in an animal born after the feed ban took effect?

USDA and FDA are conducting additional inspections of Canada's system. What can you say about these ongoing inspections and do they suggest that Canada is in compliance with their own regulations?

**Response:** On January 11, 2005, Canada announced that a case of BSE had been diagnosed in an animal born in April 1998. The feed ban in Canada was initially implemented in August 1997, with certain actions grandfathered until October 1997. This animal was born approximately 6 months after the full implementation.

Achieving full compliance with a feed ban inevitably takes time, due to complexities of the regulations and the industries involved. International authorities generally recognize that it may take 6 months or longer to completely clear out any remaining feed from the old system after a feed ban is implemented. In addition, USDA and Canadian officials recognize that compliance with a feed ban is fairly low at the start of a program.

USDA continues to be confident in Canada's enforcement of its feed ban and has been working closely with the Canadian Food Inspection Agency (CFIA) and FDA in monitoring the recent situation in Canada. USDA sent a technical team to Canada to evaluate the Canadian feed ban. USDA recently released the final report on Canada's feed ban. The report was based on an evaluation conducted by a USDA technical trade team that visited Canada in January, 2005. Overall, our technical team found that Canada has a robust feed ban inspection program, that overall compliance with the feed ban is good, and that the feed ban is reducing the risk of transmission of BSE in the Canadian cattle population.

3. The rule states that cattle are eligible to enter the U.S. if they are certified as "less than 30 months of age for immediate slaughter" or "imported for feeding and then slaughter at less than 30 months of age." How can U.S. producers who purchase Canadian cattle be assured that those cattle will be less than 30 months of age when slaughtered? Will that age be determined at the slaughter facility based upon the Canadian birth certification or from dentition? What if there is a conflict between those two aging determinations?

**Response:** Under the minimal-risk final rule, all feeder animals imported from Canada must be branded, have been inspected by an accredited veterinarian in Canada prior to shipment, loaded into officially sealed containers, and certified by the Canadian Food Inspection Agency as being under 30 months of age. Similar verification of these animals and these requirements will be done by port inspectors with the Department of Homeland Security's Customs and Border Protection, as well as APHIS veterinarians. These veterinarians will ensure that all shipments from Canada are in order, and can off-load animals if necessary for further scrutiny. If for any reason the requirements mandated in the final rule are not met, APHIS will refuse the entry of shipments.

It is important to note as well, that approved shipments are only allowed to move under seal to slaughter facilities, or to one feedlot in the United States before moving to slaughter. In order to move Canadian animals to slaughter, feedlot owners must contact an accredited veterinarian to examine the cattle prior to moving them to slaughter. After inspection, the veterinarian will provide the appropriate paperwork necessary for shipment. At slaughter, the paperwork will be verified again by USDA personnel to ensure that the animals meet the age, identification, and other requirements for slaughter. If any discrepancies are found, USDA personnel can also verify the age of the cattle at the time of slaughter through dentition. If USDA finds that cattle suspected of being 30 months of age or older have been offered for slaughter, the animals will be disposed of appropriately and will not enter the human or animal food chain, and APHIS will initiate an investigation and take any necessary enforcement actions.

4. We have one of the safest and most bountiful food supplies in the world. Contributing to our abundant food supply, Idaho is one of the largest milk producing states in the nation. In just ten years, Idaho's dairy industry has come close to tripling in size, in terms of sales and number of cows. This growth has meant new jobs and more money for Idaho's economy. Concerning the safety of milk, the scientific data indicates that milk from BSE cows does not transmit BSE. The World Health Organization, the United

Nations' Food and Agriculture Organization, the U.S. Food and Drug Administration and other major health organizations have affirmed and reaffirmed that milk and milk products do not contain or transmit BSE.

Does USDA support the conclusions of the national and international public health organizations that have consistently stated that milk and milk products are safe regardless of whether the country producing them has had cases of BSE?

**Response:** USDA supports the conclusion that milk and milk products pose a low risk of spreading the BSE agent. This is reflected in USDA regulations 9 CFR 94.19, which exempts milk and milk products from the list of products that are prohibited entry from countries where BSE exists.

**RESPONSE TO QUESTIONS SUBMITTED TO SECRETARY DESIGNATE  
MIKE JOHANNIS BY SENATOR COLEMAN**

1. Each and every day that our export market is closed to places like Japan and South Korea, a huge competitor – Australia – is the main beneficiary grabbing an even bigger share of the world market – that it's going to fight to keep. In other words, even when we get Japan and other places opened up to us, we're still going to have to work like heck to regain what we lost and that's going to be tough, especially with transportation advantages Australia has. Given the importance of reopening our own export markets, I'd like to know if, in your opinion, the proposed rule moves us forward or sets us back in our attempts to reopen our exports markets to places like Japan? In other words, how will the Japanese view what we do with Canada?

**Response:** We have discussed the minimal risk rule with our trading partners and are not aware of any potential negative impacts on U.S. beef exports. On the contrary, we believe implementation of the rule will help build support internationally for sound science-based approaches to BSE. In fact, we think the rule provides a template for the type of science-based regulations that we are asking our trading partners to adopt. Our goal is to make North America a model for how to resume trade after a BSE finding and implementing appropriate risk mitigation measures to safeguard human and animal health.

2. In terms of economics, I think a lot of my cattlemen would feel a lot better about any liberalization in beef and cattle trade between the U.S. and Canada if they saw the Japanese, South Korean, and other key export markets opening up at the same time...

(a) Where are we at in terms of opening our export markets, particularly Japan, but also the others? Can our trade relations with Japan and the others be timed with Canada's?

**Response:** We have been engaged with Japan at the technical and political level since it banned U.S. beef in December 2003. On February 8, a Japanese technical expert panel concluded that U.S. maturity grading would be an acceptable method of determining cattle age. This was a major technical issue we had to overcome before trade could resume. We have now exhausted technical discussions. It is time for Japan to take political action and complete its regulatory process to change its BSE cattle testing requirements and other procedures, which will allow U.S. exporters to sell beef and variety meats from animals less than 21 months of age.

With regards to other markets, we are currently negotiating conditions for resuming beef exports with all of our important trading partners. In several markets, we continue to address questions and concerns about BSE and U.S. measures to ensure beef safety as we advance these discussions to the market-opening stage.

With regards to the timing of the reopening of export markets, we are aggressively pursuing resumption of trade in all of our key markets. It is USDA's goal to reopen these

export markets as soon as possible. At the same time Canada has proven it can comply with all of our BSE control requirements to produce safe beef and beef products. Delaying implementation of the minimal risk rule would be inconsistent with our science-based approach to recovering our own beef export markets.

(b) What steps have you taken to coordinate the efforts of USDA with those of the State Department, the U.S. Trade Representative and others?

**Response:** USDA has been working with agencies throughout the U.S. Government to make the opening of export markets for U.S. beef a priority. The Administration has worked around the world to both address trading partners' technical questions as well as to apply political pressure to assist in this process. Approximately 60 percent of our total ruminant and ruminant export market is currently opened based on 2003-export values. The Administration will continue to make this a top priority in our bilateral discussions and relationships with these countries.

3. Has USDA re-evaluated its economic analysis lately relative to the proposed rule and, if so, what have you concluded about the number of cattle that could actually enter the U.S. and the impact on U.S. beef prices?

**Response:** Although USDA has not formally reevaluated the Regulatory Impact Analysis since its publication, cattle import assumptions are considered as part of the monthly forecasting process that produces the *World Agricultural Supply and Demand Estimates (WASDE)* report. Based on available information and assumptions at the time of the latest report's publication in March 2005, Departmental analysts believed that the impacts suggested by the Regulatory Impact Analysis were generally consistent with current market conditions. Although it is recognized that there has been an increase in Canadian slaughter capacity, when the border is opened to trade in live cattle, it is expected that U.S. meat packers, many of which are operating at less than desired levels of capacity, will be aggressive bidders for Canadian cattle. At the time the minimal risk rule was released in January 2005, imports of cattle from Canada were estimated at 1.5-2.0 million head. Fed cattle prices were projected to be \$82 per cwt., compared with \$84.75 in 2004.

USDA announced on February 9 that the effective date for allowing imports of meat from animals 30 months (cow beef) and over would be delayed, and trade in those products would not commence March 7 as previously announced. As a result, USDA reduced the estimate of Canadian cattle imports for 2005 to 1.3 million head. In the absence of a market for over 30-month old beef, Canadian packers might be expected to concentrate on slaughtering fed steers and heifers instead of cows, as discussed in the Regulatory Impact Analysis. This change may result in increased competition between U.S. and Canadian packers for the pool of North American fed cattle, leading to fewer imported cattle thus mitigating possible declines in U.S. cattle prices.

On March 10, 2005, USDA released revised estimates of U.S. cattle and beef markets for 2005. These estimates reflect strong cattle prices during the first quarter of 2005 and

assume the preliminary injunction preventing cattle imports would be in place for March only (USDA will assess this assumption on a month to month basis with the issuance of each WASDE report). The March WASDE raised the cattle price forecast for 2005 to \$83.50 per cwt.

4. Has USDA analyzed the economic distortion that might be caused by the provision of the rule that allows Canadian beef in from cattle over 30 months of age while excluding live cattle over 30 months of age? If so, what is your assessment?

**Response:** In addition to presenting the impacts of the final minimal-risk rule, USDA's Regulatory Impact Analysis presented an alternative scenario based upon importing beef only from cattle under 30 months of age. Analysis of that alternative indicated that in the absence of trade in beef from cattle over 30 months of age, there would be less incentive for Canadian packers to shift the slaughter mix to cows. Thus a larger number of steers and heifers would be slaughtered in Canada and fewer slaughter cattle might be shipped to the U.S. for slaughter. USDA's February 9 announcement limiting trade in beef to that from cattle less than 30 months of age beginning March 7, 2005, may increase competition between U.S. and Canadian packers, thus mitigating possible declines in U.S. cattle prices. Meat packers that specialize in cow slaughter would continue to be unable to import Canadian cows but would face reduced import competition from processing beef from Canada.

5. Some argue that a better approach would be to hold back this portion of the rule until such time that beef from cattle over 30 months and cattle over 30 months could open simultaneously, preventing any distortion. What's your response to this line of reasoning?

**Response:** On February 9, we announced that USDA's investigations into the recent finds of BSE in Canada in animals over 30 months are not complete. Therefore, I feel it is prudent to delay the effective date for allowing imports of meat from animals 30 months and over. This action also addresses concerns over the portion of the minimal-risk rule that would reopen the Canadian border for beef from animals 30 months and over, while keeping it closed for imports of older live cattle for processing in the United States. Some have suggested that this part of the rule does not reflect the evidence that beef from animals 30 months and over processed in Canada has the same risk profile as beef from Canadian animals 30 months and over processed in the United States.

To address these concerns, USDA officials will move forward in consideration and development of a plan to allow imports of animals 30 months and older for slaughter as well as beef from over 30-month animals as the next step in resuming full trade with Canada. As always, decisions will be made based on the latest scientific information and with the protection of public and animal health the highest priority.

6. Given that one of the two new Canadian cases of BSE was from an animal born after the feed ban, what do USDA and the Canadian Food Inspection Agency (CFIA) believe are the most likely reasons for the case of BSE in an animal born after the feed ban took effect?

**Response:** On January 11, 2005, Canada announced that a case of BSE had been diagnosed in an animal born in April 1998. The feed ban in Canada was initially implemented in August 1997, with certain actions grandfathered until October 1997. This animal was born approximately 6 months after the full implementation.

Achieving full compliance with a feed ban inevitably takes time, due to complexities of the regulations and the industries involved. International authorities generally recognize that it may take 6 months or longer to completely clear out any remaining feed from the old system after a feed ban is implemented. In addition, USDA and Canadian officials recognize that compliance with a feed ban is fairly low at the start of a program.

Canada's investigation into this case included a detailed inquiry into the feed sources early in the animal's life. The investigation revealed that this animal was exposed to four commercial feed sources that may have been the source of infection. Specific manufacturing dates could not be confirmed, and therefore the possibility remains that one or more of these sources may have contained ruminant meat-and-bone meal. As mentioned in the previous paragraph, a complex feed ban that requires restructuring of various operations can not be implemented instantly. As the necessary changes were being developed and implemented, it is possible that some ruminant feed produced shortly after the feed ban became contaminated with prohibited materials. In addition, it is also possible that feed manufactured prior to the feed ban was still in use.

7. USDA and FDA are conducting additional inspections of Canada's system. What can you say about these ongoing inspections and do they suggest that Canada is in compliance with their own regulations? Have you consulted with our National Cattlemen who I believe also sent a delegation of U.S. cattlemen to check out the situation in Canada and, if so, what have they determined about Canadian compliance with the feed ban?

**Response:** USDA continues to be confident in Canada's enforcement of its feed ban and has been working closely with CFIA and FDA in monitoring the recent situation in Canada. USDA recently released the final report on Canada's feed ban. The report was based on an evaluation conducted by a USDA technical trade team that visited Canada in January, 2005. Overall, our technical team found that Canada has a robust feed ban inspection program, that overall compliance with the feed ban is good, and that the feed ban is reducing the risk of transmission of BSE in the Canadian cattle population.

We appreciate the proactive work of the National Cattlemen's Beef Association (NCBA) on this issue. The report you mention and its conclusions are currently under review and discussion at USDA. Among other things, NCBA's report questions the numbers used by USDA in its economic analysis, stating that USDA actually overestimated the numbers of cattle the might be due to come over the border. After closer examination, it was determined that NCBA was working with more current data; USDA is studying this analysis.

**RESPONSE TO QUESTIONS SUBMITTED TO SECRETARY DESIGNATE  
MIKE JOHANNIS BY SENATOR SALAZAR**

1. The rule specifies that imported cattle must be no older than 30-months of age by time of slaughter. Is there a specific methodology that the Department plans on using to verify the age of each cow and is there a mechanism in place to provide for enforcement? Further, while requiring a brand, ear tag, or other identification on each Canadian animal, there is no process articulated in the rule that involves off-loading cattle at the border to ensure that they are properly identified. How will APHIS veterinarians at the border be sure that all incoming cattle are properly identified?

**Response:** When a producer decides to export live animals to the United States, he or she must contact the Canadian Food Inspection Agency (CFIA) or an accredited veterinarian. The veterinarian will visit the producer to examine the animals, ensuring that they meet all criteria necessary to export the animals to the United States.

The veterinarian must state that the cattle are under thirty months on the export certificate, after examining birth records or dentition. The veterinarian will verify that the animals have been subject to the ruminant to ruminant feed ban. The veterinarian will also ensure that the animals have been branded as required and will check the identification tag, noting the identification information on the export certificate. Finally, if all these requirements are in order, the veterinarian will sign the export certificate, which must also be endorsed by CFIA.

After the animals have been fully examined by the accredited veterinarian, they can be loaded on the truck, which must be sealed with a government seal. The animals will be transported to one of the 20 U.S. border stations approved for the entry of cattle. At the border stations, the shipment will encounter officials with the Department of Homeland Security's Customs and Border Protection (CBP). In turn, CBP officials will contact an APHIS port veterinarian, who will examine the shipment of cattle. The port veterinarian will examine the paperwork and will determine if the shipment can be verified without unloading the truck. If the veterinarian determines that the animals must be offloaded, the government seal would be broken and the shipment would have to be resealed after inspection. If, for any reason, the shipment does not comply with these requirements, it will be refused entry into the United States. The port veterinarian will document the number of animals in the shipments that are rejected and will contact the appropriate officials with CBP and CFIA to inform them of the refusal of the shipment.

It is important to note that approved shipments are only allowed to move under seal to slaughter facilities, or to one feedlot in the United States before moving to slaughter. In order to move Canadian animals to slaughter, feedlot owners must contact an accredited veterinarian to once again examine the cattle. Should everything be in order, the veterinarian will then provide the appropriate paperwork necessary for slaughter. At slaughter, the paperwork will be verified again by a USDA official to ensure that the animals meet the identification, age, and other requirements. Again, if for any reason the accredited veterinarian or USDA official cannot determine that all of the animals meet all

entry requirements, the shipment will not be certified, and the animals will not move to slaughter. Appropriate APHIS officials will also be notified.

2. Even before the confirmed case of BSE in Canada, Dr. Collins, you were quoted as saying, "Cattle prices in the U.S. are likely to have a slight decline in 2005, with imports of some 2 million animals from Canada expected." The Canadians have strongly disputed this figure saying that there are not even close to 2 million cattle available to enter the U.S. In fact, they believe that only about 900,000 head will be ready to enter the U.S. if the border reopens March 7<sup>th</sup>.

Dr. Collins, you yourself have stated that there definitely will be an economic impact on America's farmers and ranchers if the border is reopened, and obviously, 2 million head coming across the border is extremely different than 900,000 head. Why is there such a discrepancy in USDA's and Canada's estimates? What is your plan to ensure that U.S. producers are economically protected if the border is reopened?

**Response:** The USDA economic analysis that accompanied the minimal risk rule estimated that live cattle imports from Canada would likely range from 1.5 to 2.0 million head in the 12 months following resumption of trade. Other estimates, such as the 900,000-head estimate cited, are for the calendar year 2005. Thus, one difference between the estimates is due to time differences. An important part of the USDA estimate was based on the provisions in the final rule that permitted imported beef from animals over 30 months old but prohibited imported live animals over 30 months old. The USDA analysis concluded these provisions would cause Canadian meat packers to shift from slaughtering steers and heifers toward slaughtering relatively more cows. This shift was estimated to displace as many as 460,000 steers and heifers from slaughter that would then be available for export to the United States. We do not know what assumptions regarding this issue were made by other organizations that have estimated the number of live cattle that might be imported by the United States. With the delay in opening the border to beef from animals over 30 months of age, as announced on February 9, 2005, these steers and heifers would more likely be slaughtered in Canada than exported to the United States. Consequently, on February 22, 2005, USDA reduced its estimate of Canadian cattle imports to 1.3 million head during 2005.

Another assumption behind the USDA estimate relates to the expansion of slaughter capacity in Canada. Although it is recognized that there has been an increase in Canadian slaughter capacity, when the border is opened to trade in live cattle, it is expected that U.S. packers, many of which are operating at less than desired levels of capacity, will be aggressive bidders for Canadian cattle.

Regarding the issue of mitigating economic effects, USDA's February 9 announcement provides some economic relief to meat packers that specialize in cow slaughter and would not have been able to purchase Canadian cows but would have faced more competition from Canadian cow beef. In addition, as noted above, Canadian meat packers are expected to slaughter more fed cattle and fewer cows as a result of this announcement. Thus, fewer Canadian fed cattle will likely be imported than estimated in

the economic analysis accompanying the rule, and price effects on U.S. fed cattle would be reduced.

3. In 2003, after one case of BSE in Canada, USDA closed its borders to imports of Canadian beef. Since 2003, three additional cases have been reported in Canada. Some scientific data shows that new cases should be expected, but that the overall prevalence of BSE in Canada is not known. How many cases of BSE from one country does it take before USDA would not classify a country as a “minimal-risk” region? And, if the scientific community is uncertain of the overall prevalence of BSE in Canadian herds what is the rationale for reopening the border?

**Response:**

We believe that the only appropriate basis for trade-related sanitary and phytosanitary measures is science. This is true when we are looking to reopen vital U.S. export markets, and it is also true when it comes to imports. We know so much more about the science behind BSE than we did when the disease first started emerging in the United Kingdom and Europe. USDA remains confident that the animal and public health measures that Canada has in place to prevent BSE, combined with existing U.S. domestic safeguards, provide the utmost protections to U.S. consumers and livestock.

USDA published the final BSE minimal-risk rule only after first conducting a thorough risk assessment, an economic analysis, an environmental assessment, and a lengthy rulemaking process. The risk analysis is based on the World Organization for Animal Health (OIE) Code as a set of guidelines and recommendations (as they are intended to be used) for classifying a country’s BSE status and not a prescriptive approach to regulation. In fact, the OIE standards are not intended to be used as a check list, rather they are intended to serve as a basis or a set of guidelines for determining a potential trading partner’s BSE risk.

USDA’s BSE minimal-risk proposed rule, final rule and the risk analysis documents published for public comment contain an exhaustive analysis of all risk factors considered as USDA defined the standards for minimal-risk regions and how Canada meets each individual standard. These minimal-risk criteria are designed to consider an individual country’s specific situation and to analyze risk based on the overall effectiveness of actions taken by the country to prevent the introduction and spread of BSE. Criteria include the number of years an effective feed ban has been in place, import controls and restrictions, surveillance, epidemiological investigations of identified cases and additional risk mitigations that may be applied as a result of such investigations with concurrent risk analysis. In keeping with the OIE Code, these risk mitigation measures are considered in their totality for their ability to work as a series of interlocking, overlapping and sequential steps to prevent the introduction and establishment of BSE. Specifically, in regions where BSE has been diagnosed, USDA bases its evaluation on the overall effectiveness of all control measures in place, as well as all subsequent mitigation measures taken after the first BSE case has been detected.

The results of our risk analysis confirmed that Canada has the necessary safeguards and mitigation measures in place to protect U.S. consumers and livestock against BSE and are more than effective to resume safe trade in products listed in the minimal-risk rule between our two nations. Furthermore, the extensive risk assessment conducted as part of USDA's rulemaking process took into careful consideration the possibility that Canada could experience additional cases of BSE.

It is important to note that while there are still many unknowns related to BSE, sufficient knowledge has been gained to adequately address disease control measures and to understand that the transmission of this disease is different from highly contagious disease models. Since this disease is not transmitted via direct animal contact, different disease control measures or mitigations must be considered. The USDA risk analysis outlined a series of five barriers that must be crossed to transmit disease to an animal in the United States. The number of cases that may be identified in Canada is only a part of one of these barriers, and while it is an important factor, it should not be considered in isolation or separately from all of the other barriers.

4. As you're well aware, currently, there is no national animal id program implemented in the U.S. American producers and consumers are relying on the government to protect them from BSE and, without a tracking mechanism in place, USDA has a hard time tracing suspect animals. For example, in the 2003 case in Washington, only 29 of the 80 animals in the suspect imported herd were located. More recently, in the Canadian cases, USDA is still searching for more suspect animals imported in to the U.S. Given the lack of tracking methods, do you plan to identify and track every imported animal, and , if not, how do you plan on responding to any health emergency that should arise?

**Response:** Under the final rule, all feeder cattle and feeder sheep and goats imported from minimal-risk regions must be individually identified by an official eartag of the country of origin. The eartag must be applied before the animal's arrival at the port of entry into the United States, meet U.S. eartag standards, and be traceable to the animal's premises of origin. No person may alter, deface, remove, or otherwise tamper with the individual identification while the animal is in the United States or moving through the United States.

Cattle entering the United States from Canada must be in a truck sealed with a government seal. If the USDA veterinarian at the port of entry determines that the animals must be offloaded, the government seal would be broken and the shipment would have to be resealed after inspection. The cattle will then move directly to the feedlot. The seal can be removed at the designated feedlot by an accredited veterinarian or a state or USDA representative or his or her designee. When the feedlot owner decides to ship the cattle to slaughter, paperwork and dentition checks will ensure that the cattle are the ones identified and they are under 30 months of age.

**RESPONSE TO QUESTIONS SUBMITTED TO SECRETARY MIKE JOHANNIS  
BY SENATOR LINCOLN**

1. When is the President going to make this a priority in the White House and get personally involved?

**Response:** The President is well aware of this issue and is regularly briefed on its status. On September 21, 2004, President Bush raised the issue with the Prime Minister of Japan and they both agreed that they wanted the issue to be resolved quickly. USDA has been working with the entire U.S. Government to make the opening of export markets for U.S. beef a priority. The Administration (WH, USDA, USTR, State, and Commerce ) has worked around the world to both address trading partners' technical questions as well as to apply political pressure to assist in this process. Approximately 60 percent of our total ruminant and ruminant export market is currently open based on 2003-export values. The Administration will continue to make this a top priority in our bilateral relationships with these countries.

2. In regard to the rule with Canada, is this going to move the process with Japan and South Korea and others faster or is it going to set us back in terms of opening our export markets?

**Response:** We believe implementation of the rule could help our discussions with Japan and South Korea by demonstrating our commitment to science-based approaches to regulating imports from countries with reported cases of BSE. In fact, we think the rule provides a template for the type of science-based rules we are asking our trading partners to adopt.

3. Have you done a comparison of what the economic impact would be on the U.S. cattle industry if we opened our border to Canada at the same time we opened our export markets to Japan and other key markets, compared to opening up Canada first and then down the road the others? Should we be coordinating these a little?

**Response:** The quantity of exports lost in Japan and other key Asian markets due to BSE is larger than the increase in 2005 beef production currently forecast by USDA resulting from opening our border to Canadian cattle under 30 months of age and expanded trade in beef. Thus, if the Asian market could be fully restored at the same time Canadian trade resumes, U.S. cattle prices would increase, compared to the situation of no increase in trade with Canada and no beef exports to Asian markets. Initially, opening trade with Canada first, then reopening key Asian markets, would likely lead to lower U.S. cattle prices, followed by a gradual strengthening of prices. These price impacts would depend on how quickly the United States could regain its market share in Asia. Cattle prices would rise as U.S. exports increased and as the backlog of Canadian cattle dissipated. As imports of cattle from Canada decline to historical trends over time, increased beef exports to Asia combined with continued strong U.S. demand would push prices higher. While opening both markets at the same time could mitigate the initial price declines, the actual impacts will depend on the speed at which the U.S. regains its market share.

4. Mr. Secretary, how can we make these scientific standards that hundreds of countries have pledged to live by more controlling or binding so we don't have this mess we are in today? How can we cut to the chase as a global community and once we arrive at sound science that protects human health, as I thought we have already done, put all the smoke and mirrors that disrupt markets and trade behind us?

**Response:** It is critical that we take the lead at home in establishing the concept of minimal-risk regions based on scientific risk analyses for animal pests and diseases and push to have other countries base their BSE measures on the OIE guidelines. In implementing the BSE minimal-risk rule, the United States is taking a stand and seeking to ensure that all countries adopt science and risk-based import and export standards and apply them equivalently and without discrimination. The United States cannot protest effectively unjustified measures applied to our products if we similarly apply the same virtually impossible measures to others.

**RESPONSE TO QUESTIONS SUBMITTED TO SECRETARY DESIGNATE  
MIKE JOHANNIS BY SENATOR BAUCUS**

1. Last year, I asked Secretary Veneman to appoint a special envoy whose primary job would be to re-open our beef markets in Asia. That was never done. I commend USDA for the work that has been done to re-open the markets, but I think there should be greater emphasis placed on the goal of re-opening these crucial markets. What will you do to make sure this goal remains on the front-burner at USDA?

**Response:** The Administration has made the BSE issue a top priority since the closing of our export markets. As you know, the President is well aware of this issue and is regularly briefed on its status. On September 21, 2004, President Bush raised the issue with the Prime Minister of Japan and they both agreed that they wanted the issue to be resolved quickly. USDA has been working with agencies throughout the U.S. Government, especially the State Department, to make the opening of export markets for U.S. beef our top priority and to engage in BSE collaborative scientific research under the US-EC Food Safety Workshops and the US-EC Biotechnology Task Force. The Administration has worked around the world to both address trading partners' technical questions as well as to apply political pressure to assist in this process.

While recovering access to our Asian beef markets will continue to be our major focus, approximately 60 percent of our total ruminant and ruminant export market is currently opened based on 2003-export values.

2. The USDA has admitted that when it announced the final rule on December 29, 2004, it was aware that Canada would possibly be announcing another discovery of BSE in the near future. Why was the final rule announced prior to the January 2<sup>nd</sup> announcement of the discovery of another case of BSE in Canada? And why did USDA not wait until the investigation was complete before issuing the rule?

**Response:** We are not aware of any such statements to this effect made by USDA personnel. What officials have said repeatedly, however, is that the detection of additional cases of BSE in Canada would not alter the implementation of the final rule that recognizes Canada as a minimal-risk region. In the extensive risk analysis conducted as part of the rule making, we thoroughly considered the possibility of additional cases of BSE in Canada, as well as the corresponding risk to the U.S. cattle population. Because of the mitigation measures that Canada has in place, combined with the import restrictions and mitigation measures in the United States, however, we continue to believe the overall risk is minimal.

3. The final rule allows meat products from cattle over 30 months to enter the United States. These products were not included in the proposed rule. Why were these products added to the final rule?

**Response:** In November 2003, APHIS issued a proposed rule to allow the importation of

live bovines and meat products from bovines less than 30 months of age, among other things. Subsequent to this publication and comment period, APHIS re-opened the comment period on the proposed rule and stated its intent to make changes to the proposed rule. This was published in the Federal Register on March 8, 2004. In this notice, APHIS announced a proposed modification of the scope of the rule to cover beef from cattle of all ages. The final rule issued on January 4, 2005, was not significantly changed from the proposed rule as modified on March 8.

However, on February 9, we announced that USDA's investigations into the recent finds of BSE in Canada in animals over 30 months are not complete. Therefore, we feel it is prudent to delay the effective date for allowing imports of meat from animals 30 months and over. This action also addresses concerns over the portion of the minimal-risk rule that would reopen the Canadian border for beef from animals 30 months and over, while keeping it closed for imports of older live cattle for processing in the United States. Some have suggested that this part of the rule does not reflect the evidence that beef from animals 30 months and over processed in Canada has the same risk profile as beef from Canadian animals 30 months and over processed in the United States.

4. There were times in the past year when USDA allowed certain banned beef products from Canada into the United States without notifying the public or Congress. What steps are you taking to make sure transparency at USDA is improved?

**Response:** We believe that transparency is key to ensuring public confidence in the steps USDA has taken—and will continue to take—with regard to imports of live animals and animal products from Canada. I will ensure that this transparency and effective communication with our stakeholders continues in the coming years. A valuable lesson was learned last year when it was revealed that some processed meat products not specifically announced by USDA as enterable had indeed been shipped to the United States from Canada. While properly employing risk mitigation measures for animal and public health, APHIS should have alerted the public to the further processing of permitted products deemed enterable under APHIS permit. And APHIS should have made clear the processing safeguards employed in Canada to negate the risk of cross-contamination. Nevertheless, USDA acted immediately to clarify the protocols by which these determinations are made and publicized, and, again, we will continue to focus efforts on transparency and effective communication.

**RESPONSE TO QUESTIONS SUBMITTED TO SECRETARY MIKE JOHANNES  
BY SENATOR CONRAD**

The USDA rule establishes conditions under which Canada may be designated as a minimal-risk region for BSE. USDA has indicated it has followed the World Organization for Animal Health (OIE) guidelines in establishing this designation for Canada:

1. Does USDA believe the OIE standards are a reasonable approach to safely govern trade among nations when one more countries have confirmed a case of BSE?

**Response:** The OIE code currently identifies specific products that can be traded freely without BSE restrictions; it outlines 5 categories with respect to a country's BSE status; and it provides guidelines for trade in live cattle and various products from countries in any of the 5 categories. Thus, it provides for appropriate and safe trade that mitigates the relevant risks as necessary through a combination of country of origin status and further mitigations applied as trade requirements. Through the minimal-risk rule, the United States has taken a step towards adopting this risk-based approach to trade related to BSE. BSE risk mitigation measures – as outlined in the USDA minimal risk rule or the guidelines in the OIE code chapter – are to be considered in their totality for their ability to work as a series of interlocking, overlapping and sequential steps to prevent the introduction and establishment of BSE. The guidelines established by the OIE enable safe trade while also allowing countries the flexibility to establish guidelines that are applicable to their trading partners.

2. Does USDA support the uniform application of the OIE standards on a global basis?

**Response:** The OIE framework for BSE represents a strong consensus among the veterinary officials of 167 OIE member countries and is based on the most recent research and best available science. We believe that increased use of the OIE BSE guidelines as the basis for a country's BSE regulations will help reduce the current unpredictability that has affected global trade in cattle products following BSE detection in North America.

3. Specifically, where has the USDA rule deviated from the OIE guidelines?

**Response:** The OIE Terrestrial Animal Health Code contains standards, guidelines and recommendations for the use of national veterinary authorities to guide BSE risk analysis and the determination of specific measures to protect animal health and to prevent introduction of BSE as a result of trade while avoiding unjustified sanitary barriers. Adherence to the OIE Code on BSE varies because of the unique circumstances with respect to the structure of each country's beef industry

USDA based this regulation on OIE guidelines, but after careful consideration of the science they chose to depart from recommendations in several areas. In most instances, the USDA chose to use requirements that are more stringent than those recommended in

the OIE guidelines. For example, the OIE guidelines for trade in live cattle from countries that meet the OIE minimal risk criteria do not have an age limitation. The USDA minimal-risk rule, however, limits live cattle imports to only animal less than 30 months of age. In addition, USDA's list of specified risk materials is more extensive than that in the OIE Code.

In one instance—the length of the feed ban—USDA deviated from the OIE guidelines by not requiring a specific time frame that a feed ban must have been in place. Because of the variability in the incubation period of BSE, APHIS chose to recognize that measures taken with regard to other factors (e.g., inspection practices and level of compliance with the feed ban) may provide more positive evidence than simply the length of the feed ban. This is an approach supported by OIE. David Wilson, International Trade Director for OIE, has stated:

“In applying these criteria, an importing country should identify and evaluate through a risk assessment all of the potential factors for BSE occurrence and management, and their historic perspective, in the exporting country. OIE would not consider it appropriate for the importing country to apply each criterion as an item on a checklist and to conclude that the exporting country fails to qualify for a particular risk status merely because it does not meet a listed criterion within that particular status. In such a situation, the importing country would be expected to utilize the outcomes of its risk assessment in determining whether an alternative risk management measure could be applied to achieve the same level of protection.”

4. What are the reasons for these deviations?

**Response:** The OIE guidelines are not intended to be used as a check list, rather they are intended as a basis and set of guidelines for determining a potential trading partner's BSE risk and the appropriate mitigations to address that risk. USDA's proposed rule, the final rule and the risk analysis documents published for public comment contain an exhaustive analysis of all risk factors under OIE guidelines, including risk factors in Canada, specific mitigations required by import restrictions, and additional mitigations that are in place in the United States. In keeping with the OIE Code, these risk mitigation measures are considered in their totality for their ability to work as a series of interlocking, overlapping and sequential steps to prevent the introduction and establishment of BSE. Overall, the combination of Canada's mitigation measures, import requirements, and U.S. mitigation measures are completely effective to resume safe trade in products listed in the minimal-risk rule between our two nations.

5. Does this not suggest other countries should also be allowed to introduce conditions that are inconsistent with the OIE guidelines in re-establishing trade with a country that has confirmed the presence of BSE in its cattle herd?

**Response:** We recognize and respect the fact that countries are going to establish their own sanitary measures for trade with BSE countries. However, these measures must be

based on the guidelines set forth by the OIE and, they must be scientifically valid. The OIE guidelines allow for a flexible approach that enables individual countries to develop regulations on a case-by-case basis. At the same time, those regulations must be based on the framework established by the 167 member countries of the OIE.

6. Why does USDA support a less restrictive set of standards in the case of Canada, while negotiating what are reported to be a more restrictive set of rules that would govern our future cattle exports to Japan?

**Response:** Resumption of U.S. beef trade with Japan and reopening the border to live cattle from Canada are separate and distinct trade issues. The BSE minimal-risk rule is based on sound scientific principles in accord with OIE guidelines for trade with BSE-affected regions. Negotiations with Japan have focused on smaller steps to reopen a critical international market for U.S. producers. In October, USDA announced an understanding with Japan to export meat from cattle 20 months of age or younger. This age limit falls outside of the internationally recognized 30-month guideline at which age you are likely to find BSE. It is important to make clear that while we have agreed to the 20-month age limit as a marketing program, we continue to work with Japan on a technical level regarding the specific terms of the understanding. In addition, an international body of experts is expected to review the terms of the export marketing program in July 2005, at which time we expect to make a strong case to move Japanese officials toward 30 months.

It's critical that even while USDA is accommodating Japan's standards, we must take the lead at home in establishing the concept of minimal-risk regions based on scientific risk analyses for animal pests and diseases and push to have other countries base their BSE measures on the OIE guidelines. In implementing the BSE minimal-risk rule, the United States is taking a stand and seeking to ensure that all countries adopt science and risk-based import and export standards and apply them equivalently and without discrimination. The United States cannot protest effectively unjustified measures applied to our products if we similarly apply the same virtually impossible measures to others.

7. As part of its effort to reduce the risk of BSE, Canada imposed a ban on livestock feed products containing Specified Risk Material (SRM) in 1997. Canada did not require a recall and disposal program for feed products that could contain SRM.

After a feed ban, such as the one implemented in Canada in 1997, is implemented, how many months must elapse before the more restrictive feed regulations would be considered totally effective throughout the industry?

**Response:** The 1997 Canadian feed ban restricts the use of most mammalian-origin protein in ruminant feed. Achieving full compliance with a feed ban inevitably takes time, due to complexities of the regulations and the industries involved. International authorities generally recognize that it may take 6 months or longer to completely clear out any remaining feed from the old system after a feed ban is implemented; USDA and Canadian officials believe that feed manufacturers abruptly discontinued formulating

ruminant feed with prohibited material even though they may not have discarded what was already produced. It also took some time before the feed and livestock industries were fully meeting the record-keeping and labeling requirements in the feed ban, and the requirements for preventing cross-contamination.

8. Is it possible that these cattle consumed feed contaminated with BSE containing material that was manufactured after the feed ban was implemented?

**Response:** The feed ban in Canada was initially implemented in August 1997, with certain actions grandfathered until October 1997. This animal was born approximately 6 months after the full implementation. Canada's investigation into this case included a detailed inquiry into the feed sources early in the animal's life. The investigation revealed that this animal was exposed to four commercial feed sources that may have been the source of infection. Specific manufacturing dates could not be confirmed, and therefore the possibility remains that one or more of these sources may have contained ruminant meat-and-bone meal. As mentioned in the previous paragraph, a complex feed ban that requires restructuring of various operations cannot be implemented instantly. As the necessary changes were being developed and implemented, it is possible that some ruminant feed produced shortly after the feed ban became contaminated with prohibited materials. In addition, it is also possible that feed manufactured prior to the feed ban was still in use.

However, since concerns have been raised about the recently identified positive animals in Canada and to determine if there are any potential links among these animals, USDA sent a technical team to Canada to evaluate the circumstances surrounding these recent finds. The technical team was led by Dr. John Clifford, USDA's Chief Veterinary Officer, and was split into two groups. One group focused on the feed ban; the other group focused on Canada's epidemiological investigation.

On February 25, USDA released the final report of the feed ban technical team. Overall, the technical team found that Canada has a robust feed ban inspection program, that overall compliance with the feed ban is good, and that the feed ban is reducing the risk of transmission of BSE in the Canadian cattle population. It should be noted that the risk analysis did not assume 100 percent compliance with the feed ban, as that is not realistic in any situation. The information provided by the U.S. team verifies the information cited in the risk analysis, and supports the conclusion in the risk analysis that the feed ban is effective.

The team's report on Canada's epidemiological investigation will take longer to finalize, and we will make these findings available as soon as it is appropriate.

9. There are numerous press reports that suggest Canadian livestock feed manufacturing companies are not in full compliance with Canada's feed regulations and that tests have confirmed the presence of animal proteins in vegetarian feed products. In addition, the U.S. Food and Drug Administration has issued import alerts concerning several Canadian livestock manufacturers due to contamination with banned animal proteins. Canadian

Food Inspection Agency has indicated that part of the need for these changes is to reduce the potential for cross contamination or inappropriate use of feed products in a way that could result in continued ruminant to ruminant feeding.

To what extent did USDA investigate reports that Canadian feed supplies have been contaminated with animal protein prior to proposing the final rule?

**Response:** Because of its close working relationship with Canada, USDA was aware that CFIA had been considering animal feed testing as a potential part of their feed ban compliance program, and they trained laboratory analysts to perform this testing. These considerations led CFIA to implement a pilot project to test feed during January, February, and March of 2004. Under this pilot project, CFIA inspectors accepted feed samples – some from feed ingredients intended for use in ruminant feed and some from finished ruminant feed products – and tested those samples for the presence of animal protein. Instructions were to obtain approximately half of the samples from domestic products and half from imports.

Officials found that multiple samples contained evidence of animal protein, but the type of testing was not specific enough to identify the species of origin of such protein. In other words, while the tests could identify animal protein they could not determine whether or not the animal protein was prohibited material (like ruminant meat-and-bone meal) or whether it was animal protein allowed under the feedban (such as blood or porcine protein). Additional analysis and follow-up inspections at firms where the sampled feed was produced had to be conducted to determine if the feed actually contained prohibited material. These inspections found that only a small percentage could have contained prohibited material, and CFIA has taken actions to correct this possibility.

10. To what extent did USDA consult with the U.S. Food Drug Administration concerning its import alerts prior to proposing the final rule?

**Response:** USDA has consulted closely with FDA since they began sampling imported feeds in 2001. It is important to note that the import controls are conducted utilizing authorities from both agencies. The sampling of imported feeds is done under FDA authority, but, depending on findings, detention and/or prohibition of entry of products may be done by FDA or under USDA authority. APHIS regulations prohibit the entry of processed animal protein from any BSE-restricted country, with only certain exceptions allowed.

Specifically in reference to the Canadian situation, USDA did consult with FDA regarding the FDA import alerts on Canadian feed. Beginning in 2003, FDA sampled animal feeds and feed ingredients imported from Canada and found that some of those samples tested positive for the presence of animal protein. In certain situations with repeated findings in single ingredient plant-based feeds, FDA worked closely with CFIA officials to investigate the situation and found that this apparent contamination may have

occurred during transport. Efforts by the Canadian and U.S. feed industry trade associations appear to have resolved these problems.

11. What investigation, testing or analysis has USDA conducted to determine the level of efficacy and compliance with Canada's feed ban and other feed regulations across the Canadian cattle industry?

**Response:** USDA considered all aspects of the effectiveness of Canada's feed ban as part of the evaluation in drafting the minimal-risk final rule. This included a review of many interrelated factors, including: whether appropriate regulations are in place; the program to gather compliance information and statistics; the level of facility inspections and compliance; accountability of inspectors and facilities; adequate recordkeeping; and evidence derived from epidemiological investigations. APHIS' review of all these factors indicated good compliance with the feed ban.

As part of its recent review of the BSE detections in Canada, USDA dispatched a technical review team to Canada to conduct, among other things, a review of Canada's feed ban. USDA recently released the final report on Canada's feed ban. The report was based on an evaluation conducted by a USDA technical trade team that visited Canada in January, 2005. Overall, our technical team found that Canada has a robust feed ban inspection program, that overall compliance with the feed ban is good, and that the feed ban is reducing the risk of transmission of BSE in the Canadian cattle population.

12. Did USDA conduct its own test of Canadian feed samples to determine the presence of any banned animal proteins prior to the proposing the final rule?

**Response:** USDA did not conduct its own test of Canadian feed samples. While testing feed samples can be considered as part of a compliance verification program, it can not be used by itself as a method of verification. In addition, limitations recognized in current testing methods (i.e., feed microscopy) and the fact that certain animal proteins, including ruminant proteins such as blood, are allowed in ruminant feed under current regulations can lead to the conclusion that such testing is not necessarily a useful tool even as part of a compliance program. As mentioned above, FDA does conduct limited testing of imported animal feed and consults with USDA as necessary concerning any results from such tests.

13. Do Canada's own stated concerns about feed contamination contained in the documents that discuss its newly proposed feed regulations suggest that the current regulations are less effective in eliminating the potential for BSE than it believed would be the case when the ruminant to ruminant feed ban was implemented in 1997?

**Response:** We remain confident in the animal and public health measures that Canada has in place to prevent BSE, combined with existing U.S. domestic safeguards. Immediately after the identification of their first case of BSE in May 2003, CFIA stated that they would consider changes to their existing feed regulations. Vulnerabilities generally exist in any type of regulation and the feed ban regulations are no exception. In

both the United States and Canada, feed ban regulations were initially imposed in 1997 as proactive preventive measures. With the confirmation of disease, however, Canada has examined the existing vulnerabilities inherent in their regulations and have proposed amendments to address some of these. This does not indicate that the existing regulations have been ineffective; rather, it indicates Canada's willingness to consider improvements that may further shorten the time necessary to achieve complete elimination of BSE from their country.

USDA sent a technical team to Canada to evaluate the circumstances surrounding these recent finds of BSE in Canada. This technical team looked at Canada's investigation as well as its feed ban. We appreciated Canada's willingness to cooperate and assist us in these efforts. USDA recently released the final report on Canada's feed ban. The report was based on an evaluation conducted by a USDA technical trade team that visited Canada in January, 2005. Overall, our technical team found that Canada has a robust feed ban inspection program, that overall compliance with the feed ban is good, and that the feed ban is reducing the risk of transmission of BSE in the Canadian cattle population.

14. Canada has engaged in a modest livestock testing program that is similar to the program being utilized in the U.S. Many livestock producers have voiced concern about the market effects of USDA announcements concerning "inconclusive" results of the rapid BSE tests.

How many "inconclusive" test results has Canada registered since it initiated its testing program?

**Response:** Canadian officials have not shared the number of inconclusive results with USDA. With the exception of the inconclusive announced on December 29, Canada only announces detection of BSE confirmed by IHC testing. (In the December 29th case, the Government of Canada felt that "given the unique situation created by the United States' border announcement on December 29 it was decided that the most prudent action would be to publicly announce the available information and provide stakeholders with a full understanding of the current situation.")

While USDA could certainly request information on inconclusive test results from our Canadian counterparts, we have only asked for information regarding those cases that have been confirmed.

15. Have tissue samples from each animal that failed to pass a rapid BSE test been subject to the same so-called "Gold Standard" BSE test that we utilize in the U.S.?

**Response:** Yes. Canada subjects tissue samples from each inconclusive rapid screening test to immunohistochemistry, or IHC, testing.

16. Does Canada publicly announce instances where an animal has failed to pass one of its rapid tests?

**Response:** No. Canada only announces detections of BSE confirmed by IHC testing.

17. If so, what has been the market reaction in Canada to those announcements?

**Response:** Canada only announces detections of BSE confirmed by IHC testing, so we can not speculate on the reaction of Canadian markets to an announcement of an inconclusive test.

18. If not, don't Canadian producers fear that its cattle markets can be distorted by the possibility of "insider knowledge" among those who are aware of an "inconclusive" result?

**Response:** We do not have this information.

19. Does USDA plan any modifications to its practice of public notification when two inconclusive test results occur?

**Response:** We continue to believe that announcing such results from rapid screening tests would produce fewer harmful effects on U.S. markets than might result from outside speculation or rumor about unannounced inconclusive test results during the 4 to 7 days it takes to complete confirmatory testing. We believe it is important that our procedures avoid any possible perception of significant information being withheld from the public.

20. The economic analysis conducted in conjunction with the proposed final rule indicates that U.S. cattle producers will likely receive lower market returns for their cattle after the rule re-opens the border for live cattle and additional beef product trade with Canada.

Will the Bush Administration propose and support any economic mitigation or assistance program for those producers who suffer economic losses as a result of the rule becoming effective?

**Response:** The economic analysis conducted in conjunction with the minimal risk rule concluded that, based on data on Canada's increased cattle population over the past two years, reopening the border would result in live cattle imports of 1.5-2.0 million head during the 12 months following resumption of trade in cattle under 30 months of age. The analysis concluded that more Canadian fed cattle would be exported to the United States than feeder cattle. For all of 2005, fed cattle prices were projected to be about 3.2% (about \$2.70/cwt) lower than if no expansion in trade were to occur. Feeder cattle prices in 2005 were projected to be 1.3% (about \$1.20/cwt) lower than if no trade were to occur. While the increase in imports of beef and cattle were forecast to reduce U.S. cattle prices, cattle prices were still be strong compared with historical levels. For example, the projected 2005 annual average fed cattle price would still be the third highest ever. Live cattle imports would be higher in 2005 as the Canadian backlog of cattle was worked down and the effects on U.S. fed and feeder cattle prices would likely be less after 2005.

Transportation constraints, delays in establishing the import system and narrowing of the price differences between U.S. and Canadian cattle once trade begins could all serve to moderate the effect on U.S. cattle producers. In addition, having more Canadian cattle available for U.S. meatpackers would help reduce plant closings and layoffs helping to maintain markets for U.S. cattle producers.

On February 9, 2005, pending additional information related to Canada's most recent finding of BSE, USDA announced that the effective date for allowing imports of meat from animals 30 months (cow beef) and over would be delayed, and trade would not commence March 7 as previously announced. The announcement provides some economic relief to meat packers that specialize in cow slaughter, who would not have been able to purchase Canadian cows but would have faced more competition from Canadian cow beef. In addition, Canadian meat packers are expected to slaughter more fed cattle and fewer cows as a result of this announcement. Thus, fewer Canadian fed cattle will likely be imported than estimated in the economic analysis accompanying the rule, and price effects on U.S. fed cattle would be reduced.

21. The Department of Homeland Security (DHS) has issued regulations that require advance notification of export shipments of food products to the U.S. Will the live animals and animal products covered under the rule be subject to the DHS notification requirements?

**Response:** Yes, the live animals and animal products covered under the rule would be subject to DHS notification requirements.

**RESPONSE TO QUESTIONS SUBMITTED TO SECRETARY MIKE JOHANNIS  
BY SENATOR SANTORUM**

1. How does the U.S.-Canadian cattle trade impact our ability to open up markets abroad? Specifically, if we move away from the scientific basis for the rule and give in to political pressure to delay the rule, does that undercut our ability to negotiate the resumption of beef trade with Japan?

**Response:** Resumption of U.S. beef trade with Japan is a very high priority, but completely separate and distinct from plans to reopen the border to Canadian beef. The Canadian rule is based on scientific principles in accord with World Organization for Animal Health guidelines for trade with BSE-affected regions. Negotiations with Japan have focused on smaller steps to reopen this critical international market. For example, we have agreed to develop a marketing program to only export beef from cattle 20 months of age or younger even though this age limit falls outside of the internationally and scientifically recognized 30-month guideline for safe trade with countries that have had one or more cases of BSE. While we have agreed to the 20-month age limit, we continue to press Japan on a technical level regarding the specific terms of the understanding. In addition, an international body of experts is expected to review the terms of the export marketing program in July 2005, at which time we expect to make a strong case to move Japanese officials toward the internationally and scientifically recognized limit of 30 months.

It's critical that even while USDA is accommodating Japan's standards, we must take the lead at home in establishing the concept of minimal-risk regions based on scientific risk analyses for animal pests and diseases, and push to have other countries base their BSE measure on the OIE guidelines. In implementing the BSE minimal-risk rule, the United States is taking a stand and seeking to ensure that all countries adopt science and risk-based import and export standards and apply them equivalently and without discrimination. The United States cannot protest effectively unjustified measures applied to our products if we similarly apply the same virtually impossible measures to others.

2. Should Canada and the U.S. work together in pressing the Japanese, Koreans and others to reopen their borders? Is this happening? If not, is the U.S.-Canada border controversy a hindrance in that regard?

**Response:** The United States and Canada have worked together to assure that our respective regulatory approaches and requirements have been science-based and harmonized. We have been working closely with Canada to ensure our market opening efforts are aligned and complementary. USDA Sub-cabinet officials engage in weekly conference calls with Canadian counterparts to ensure communication and coordination on foreign market opening efforts. Canada has independently addressed the negotiation of any additional requirements established by importing countries, consistent with its respective industry's willingness to implement additional controls.

3. This controversy has distorted cattle trade and trade in beef products between the U.S. and Canada over the past couple of years. What adjustments have already been made that are likely to be permanent? And are these beneficial or detrimental to the U.S. cattle industry?

**Response:** Prior to the discovery of BSE in North America, the U.S. and Canadian beef and cattle industries were highly integrated. There is no question that BSE-related import bans on selected cattle and beef products have resulted in a disruption in U.S./Canada trade, relative cattle and beef supplies and prices in both countries. The permanency of these changes, however, will depend largely on how long export markets of these products remain closed. As a result of BSE-trade disruptions, Canada has increased slaughter capacity while some U.S. slaughter facilities have closed. Once market access is reestablished for all cattle and beef products, cattlemen in the Northwest could benefit from the increased Canadian slaughter capacity in Alberta, while U.S. packers may experience increased competition due to Canada's increased beef production.

USDA continues to work hard to reestablish market access for all cattle and beef products to allow free-market conditions to determine trading patterns. Since the BSE hearing, APHIS has amended the BSE Minimal Risk rule to make it consistent in its application to both beef and cattle imports. At the same time, USDA will continue with the proper rule making procedures to further amend our BSE import regulations to allow greater product access as deemed appropriate through science-based risk assessments.

4. There are rumors of industry restructuring and of the addition of new slaughter capacity in Canada. In the U.S. are we losing production efficiencies?

**Response:** There are plans in Canada for expanding slaughter capacity. Although some of the expansion is still in the design phase or seeking financing, several plants are engaged in construction. To a large extent, the expansion has been driven by the wide margins enjoyed by the Canadian meat packing industry. Without alternative markets for live cattle and limited slaughter capacity, Canadian cattle prices fell relative to beef prices. As a result, margins for Canadian meat packers widened, and packers have had an economic incentive to expand capacity. With the resumption of trade in live cattle under 30 months of age, prices for such cattle in Canada and the United States are expected to equalize. The addition of plant capacity in Canada will result in more active bidding for cattle as U.S. and Canadian plants attempt to maximize their throughput and thus minimize their per unit costs. In general, Canadian plants tend to be smaller than U.S. plants, which are quite efficient. However, the reduction in cattle available for slaughter in the United States due to the cyclical decline in the U.S. cattle inventory and the loss of Canadian cattle imports have caused some meat packing plants to operate below full capacity utilization, thus reducing their operating efficiencies. The minimal risk rule, by allowing imports of younger cattle, will enable higher slaughter levels and improve operating efficiencies.

5. What efforts is your agency undertaking to inform the public as to USDA's actions taken to prevent risks to the general public?

**Response:** We believe that effective communication with all stakeholders, especially the public, is key to ensuring confidence in the steps USDA has taken—and will continue to take—with regard to imports of live animals and animal products from Canada. In this regard, USDA officials have set out to inform the public and other groups through a variety of different forums. We have held numerous teleconference briefings with the media, industry representatives, and state officials to provide information on the rulemaking process and respond to specific questions on steps included in the minimal-risk rule to protect both human and livestock health in this country. In addition, USDA officials have attended countless meetings and conferences across the country to meet with concerned groups and individuals and reinforce our findings that the overall risk to human and animal health in the United States from imports of eligible animals and animal products from Canada is exceedingly minimal. There is also extensive information posted on USDA's website. These outreach and education efforts will continue, and, once again, I certainly appreciated the opportunity to participate in these efforts by testifying on these issues before the full Senate Committee on Agriculture, Nutrition, and Forestry.

6. Since halting the import of live cattle from Canada, beef capacity has increased by at least 20% in Canada and is expected, by Canada's own estimates, to increase further by the end of 2005. Meanwhile in the U.S. there have been plant closures and cutbacks in operating hours. Please explain how this restructuring will affect both the U.S. and Canadian beef sectors, including both ranchers and processors.

**Response:** The expansion in Canada's slaughter capacity likely has been driven by the very favorable margins for Canadian packers. Cattle prices in Canada are US\$15-20 per cwt below U.S. prices. Conversely, U.S. meat packers have been facing poor margins as they have had to pay relatively high prices to attract sufficient supplies of cattle to meet their slaughter schedules. Faced with underutilization of some plants, U.S. packers have reduced shifts or temporarily suspended operations at a number of plants. Resumption of trade in slaughter steers and heifers will increase the prices Canadian packers will have to pay for cattle and provide U.S. packers with increased supplies of cattle. Thus, costs for Canadian packers will increase and costs for U.S. fed beef packers will decline. U.S. cattle producers will face somewhat lower prices as Canadian cattle will compete with U.S. cattle. However, the additional capacity in Canada could mitigate the price declines as demand for cattle by Canadian packers will be higher.

In addition, U.S. slaughter plants will continue to face limited supplies of older animals for slaughter. U.S. cow numbers are coming off their cyclical lows and as animals are retained for breeding, supplies of cows for slaughter will remain tight. Meanwhile, cow inventories are large in Canada, and with trade in beef from cattle older than 30 months of age prohibited, there is no economic incentive to slaughter large numbers of these older animals.

**RESPONSE TO QUESTIONS SUBMITTED TO SECRETARY MIKE JOHANNIS  
BY SENATOR STABENOW**

1. Why are standards less stringent than the OIE recommends being implemented under the Minimal-Risk Rule?

**Response:** The World Organization for Animal Health (OIE) guidelines are not specific international mandates, but rather are intended to be the basis for countries to use to conduct risk assessments on potential trading partners. It is important to note that the OIE Code chapter on BSE currently identifies specific products that can be traded freely without BSE restrictions; it outlines 5 categories with respect to a country's BSE status; and it provides guidelines for trade-related sanitary measures for live cattle and various products from countries in any of the 5 categories. USDA's proposed rule, the final rule and the risk analysis documents published for public comment contain an exhaustive analysis of all the risk factors in the OIE guidelines, including risk factors in Canada, specific mitigations required by import restrictions, and additional mitigations that are in place in the United States. In keeping with the OIE Code, these risk mitigation measures were considered in their totality for their ability to work as a series of interlocking, overlapping and sequential steps to prevent the introduction and establishment of BSE.

USDA's risk analysis is based on the OIE Code in the manner it was intended to be used—that is, as a set of guidelines and recommendations, and not a prescriptive approach to regulation. The risk analysis makes clear that USDA's standards for a minimal risk region differ from some of the numerical guidelines specified by OIE in its recommendations for a BSE minimal-risk country or zone. For example, we have acknowledged that Canada's feed ban falls some 8 months short of meeting the OIE feed ban criterion. However, USDA's minimal-risk criteria are designed to consider an individual country's specific situation and to analyze risk based on the overall effectiveness of actions taken by the country to prevent the introduction and spread of BSE. In regions where BSE has been diagnosed, USDA bases its evaluation on the overall effectiveness of all control measures in place, as well as all subsequent mitigation measures taken after the first BSE case has been detected.

2. Why must the border be reopened by March 7, 2005, allowing for only 30 days of public comments? What would happen if the border reopening was delayed?

**Response:** The proposed rule on BSE minimal risk regions was originally published on November 3, 2003. The public was invited to comment on the proposal until January 5, 2004. However, in order to give the public additional time to submit comments and to take into consideration the detection of BSE in a Canadian cow in Washington State, USDA reopened the comment period on March 4, 2004. In the notice announcing the reopening of the comment period, which closed on April 4, 2004, USDA specifically requested comments on whether to allow the importation from BSE minimal risk regions of beef from cattle 30 months of age or older in which the specified risk materials has been removed. USDA received more than 3,000 comments on the proposed rule. Since

the final rule on BSE minimal risk regions is considered to be significant under the Congressional Review Act, Congress has 60 days to review the rule prior to its taking effect. Therefore, the effective date of the final rule is 60 days after its publication.

On February 9, 2005, Secretary Johanns announced that USDA would delay the effective date for allowing imports of meat from animals 30 months and over. This action also addressed concerns over the portion of the minimal-risk rule that would reopen the Canadian border for beef from animals 30 months and over, while keeping it closed for imports of older live cattle for processing in the United States. In addition, Secretary Johanns asked U.S. officials to move forward in consideration and development of a plan to allow imports of animals 30 months and older for slaughter as well as beef from over 30-month animals as the next step in resuming full trade with Canada.

On March 2, 2005, the U.S. District Court for the District of Montana granted a preliminary injunction to prevent implementation of the minimal risk rule until a lawsuit filed by the Ranchers Cattlemen Action Legal Fund-United Stockgrower of America (R-CALF USA) is considered on its merits by the court.

USDA remains confident that the requirements of the minimal-risk rule, in combination with the animal and public health measures already in place in the United States and Canada, provide the utmost protection to both U.S. consumers and livestock. USDA also remains fully confident in the underlying risk assessment, developed in accordance with the OIE guidelines, and continues to believe that international trade in beef, founded on science-based regulations, should be re-established in an expeditious manner.

3. Are additional testing facilities such as the one in Ames, Iowa, being considered?

**Response:** USDA's National Veterinary Services Laboratory (NVSL) in Ames, Iowa, is the United States' reference laboratory for BSE testing. NVSL conducts all confirmatory testing for BSE using the gold-standard immunohistochemistry (IHC) test. To support the expanded BSE surveillance testing program that began on June 1, 2004, USDA approved 12 other geographically dispersed state and university laboratories to conduct rapid screening tests. These laboratories were chosen based on many considerations, including geographic location; staffing capabilities; and demonstrable experience with quick turnaround, large-scale animal disease testing programs. As the enhanced surveillance program is well underway and on track for meeting our testing goals, there is not a need to approve any other state or university laboratories at this time.

4. In addition to Mad Cow, the Michigan Beef and dairy industries have been devastated with Bovine TB. In December, Senator Levin and myself wrote a letter to USDA asking that the Upper Peninsula of Michigan be designated as "Bovine TB free," due to the fact that TB has not been present in the UP for over 20 years. Due to our current "split-state" status, Michigan is at a trading disadvantage with TB as well as Mad Cow.

Is the USDA planning to take action on my request? When will this request be addressed?

**Response:** Officials with our Animal and Plant Health Inspection Service have received the State Department of Agriculture's application and are reviewing it thoroughly. We will continue to work cooperatively with state officials in eradicating this disease. We are reviewing the progress and procedures being utilized in Michigan in order to make an informed decision regarding the additional split-state status request.

As you know, counties in the Upper Peninsula are among those whose status was elevated to modified accredited advanced (1 TB-positive herd per 10,000 herds) with the April 2004 status change. Increased surveillance on the Mackinac Bridge was crucial to our inclusion of the Upper Peninsula in the modified accredited advanced region. We will need to evaluate whether this surveillance level is adequate to merit our assurance of TB free status for the region. We will look at movement control on the bridge and on the Straits of Mackinac to determine whether cattle would be adequately protected from the risk presented not only by infected livestock, but also infected wildlife such as white-tailed deer, which appear to be a source for bovine TB in domestic cattle herds in the state. While deer and other wildlife, such as coyotes, found to be infected with TB do not swim across the Mackinac Straits, they are reportedly capable of walking across this body of water when it is frozen in the winter months. This is among the factors that we will closely consider as we continue to review the state's application for TB free status for the Upper Peninsula region.

We assure you that we recognize and—to the extent possible—try to lessen the financial burden that TB testing requirements place on producers in affected states such as Michigan. We remain committed to working with producers and state officials toward the eradication of bovine TB from Michigan and U.S. cattle.