

**The BSE Crisis in Canada: A Trade Perspective on Sanitary Barriers**

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### **Abstract:**

The discovery of BSE in Canada's cattle herd on May 20, 2003 has led to lost market access for Canadian cattle and beef in many countries. The Canadian cattle industry is extremely export dependent, and the loss of almost all of major export markets has had a devastating impact. Over a year later, many of these markets have still not removed their restrictions on Canadian cattle and beef. The severity of the restrictions and their long-term continuance are far in excess of what is recommended by the international organisations that set the standards for trade in animals and animal products. This has led many in the Canadian industry to wonder why these sanitary barriers are being misused and abused. The illegitimate and legitimate reasons for creating a sanitary barrier are examined, along with the potential for abuse of trade barriers which may have been imposed for legitimate reasons. Some suggestions for what the Canadian industry should have done and what they should do now are also offered.

## **The BSE Crisis in Canada: A Trade Perspective on Sanitary Barriers**

### **Introduction**

May 20, 2003 marked the beginning of the bovine spongiform encephalopathy (BSE) crisis in Canada. That was the day the Canadian Food Inspection Agency (CFIA) announced the discovery of the first non-imported case of a BSE positive cow in Canada. Markets around the world immediately closed their borders to live cattle and beef exports from Canada, including Canada's largest customers – the U.S., Mexico and Japan. These initial restrictions were a legitimate response in the face of a threat to human and animal health. The retention of these barriers for more than a year, however, calls into question the efficacy of the international agreements pertaining to the management of human and animal health issues in a trade context.

The Canadian beef and cattle industry is extremely export dependent. Although Canada had only 1.2 percent of the world cattle inventories in January 2003, in 2002 it had 15 percent of world exports (Canfax Research Services, 2003). This is partially attributable to the North American Free Trade Agreement (NAFTA), which has contributed to significant integration of the North American market. The loss of such large export markets caused the price of cattle to plummet. Almost all sectors of the Canadian industry suffered severe short-term losses. Fifteen months later, the industry is still reeling from the discovery of BSE. The United States and Mexico, Canada's two largest markets, have partially opened their borders to certain cuts of beef. However, neither NAFTA partner will accept live cattle exports. Japan, formerly Canada's third largest market, is still completely closed to all beef and cattle exports. Many countries

remain completely closed and almost all countries around the world still have some restrictions in place (Canadian Cattlemen's Association, 2004).

Bovine spongiform encephalopathy, often referred to in the media as 'mad cow disease', is one variation of a progressive fatal disease of the nervous system that can affect a variety of animals such as cows, sheep, deer, elk, cats, mink and humans. Collectively, they are known as transmissible spongiform encephalopathy (TSE). Serious study of these diseases is relatively new and existing research is unable to provide important details regarding the disease's cause, transmission and progression. Scientists have still not fully characterized the causative agent – some believe it is an unusual virus, a misshapen protein (called a prion) or a virino (nucleic acid with a protein coating). In addition, they are unable to determine why some animals have shown an incubation period as short as two years and some an incubation period of eight years. There is no test to determine the presence of a TSE in a living animals or humans, no vaccination to prevent the disease and no treatment for the disease (APHIS Veterinary Services, 2002).

The disease was first identified in the United Kingdom in 1986 which has been the centre of an ongoing epidemic since that time. When the epidemic peaked in 1993, 1000 new cases were being reported every week. It is believed to have originated from cows eating rendered sheep parts that had a TSE known as scrapie. It is now the most accepted hypothesis that the disease is spread through contaminated feed (APHIS Veterinary Services, 2002). The outbreak of the disease and British officials' (mis)handling of it were widely publicized around the world but especially in the British media. Many British citizens lost faith in their food safety systems and the incident was a significant

factor in increasing the profile of food safety issues around the world. The epidemic in the UK has had serious long-term consequences for the domestic industry (Kerr, 2002).

In March 1996, British officials announced they had discovered a previously unrecognized human disease called variant Creutzfeldt-Jakob disease (vCJD), almost 10 months after the death of the first known victim of vCJD (APHIS Veterinary Services, 2002). Like BSE, there is no test available for live patients, no vaccine and no cure. The clinical and pathological signs of vCJD in humans are very similar to those of BSE in cattle and although there was no scientific evidence of a link between BSE and vCJD, even at that early stage, British scientists believed the most likely explanation for the disease was the consumption of BSE contaminated meat. As of December 1, 2003, a total of 153 cases of vCJD had been reported around the world. Of these cases, 143 were in the United Kingdom, six in France and one each in the U.S., Canada, Ireland and Italy. The cases in Canada, Ireland and the U.S. all involved persons who had lived in the United Kingdom during the time of key exposure to the population in that country. Current available evidence still cannot prove a direct link between BSE contaminated beef and vCJD, but evidence shows it is still the most probable explanation (National Center for Infectious Diseases, 2004).

The international reaction to BSE, both from consumers and politicians, can be classified, in many cases, as hysteria. The risk of contracting vCJD from BSE contaminated beef is extremely small. It is smaller than the risk of contracting the classic version of CJD, which occurs sporadically and is many thousands of times smaller than that of such everyday activities as driving a car or smoking. However, consumer fears have been fuelled by several factors. The disease is still not very well understood and

consumers are receiving conflicting messages about beef's safety from experts around the world. In addition, the issue has garnered a great deal of media coverage and stigma aided by a made for media name – mad cow disease. Consumers have continually been confronted with disturbing images of cattle afflicted by the disease. Perhaps most regretfully, certain groups with vested interests have fuelled these fears for their own benefit and some politicians have responded in an effort to be seen to be doing something to protect citizens. The result has been that unscientific and, frequently, foolish measures have often been put in place.

### **How Could This Happen?**

This incident has led many to wonder “How could the discovery of BSE in one cow devastate the industry like this?”. Many people also questioned the point of having rules-based trade agreements like the WTO and NAFTA if one diseased cow could result in the long term closure of over 30 markets. The simple answer, unfortunately, is that the beef industry acted like the proverbial ostrich that buried its head in the sand in the face of danger. The unpleasant possibility that BSE could occur in Canada was ignored. The lessons from the British BSE crisis should have been clear. However, the Canadian industry did little to encourage improvements to the international regime and, in many cases, countenanced dangerous precedents regarding how countries should be treated after the discovery of a BSE case within their borders.

The existing weak rules regarding sanitary barriers in trade agreements allows illegitimate uses of sanitary barriers as well as legitimate barriers to be captured by protectionist interests. In addition, Canada's own regulations regarding beef and cattle imports from countries with BSE were, and still are, much stricter than recommended by

the World Organisation for Animal Health – originally known as the Office International des Epizooties (OIE) – which sets the standards for trade in animals and animal products. Canada’s regulations include a complete ban of beef and cattle imports from any country that has had a domestic case of BSE within the last seven years (Canadian Food Inspection Agency, 2003), even though the OIE does not recommend a complete embargo, even for countries with a high risk of BSE (OIE, 2003).

In addition to lack of foresight by the Canadian industry (and counterparts around the world), this crisis has been affected by the rising profile of food safety issues, aided and abetted by a number of factors including enhanced electronic communication, the growing cross-border movement of people and commodities, the appearance of new diseases (such as BSE) and the apparent failure of existing systems to protect consumers. As a result, animal diseases and food safety issues have become important political issues in many countries around the world, and food safety concerns have shifted from the low profile concern of scientists into the high profile arena of politicians (Kerr, 2002).

### **Legitimate and Illegitimate Use of Sanitary Border Measures**

In order to understand why trade law does not prevent there being more restrictions on Canadian beef and cattle exports than are justified by proper disease management practices, illegitimate and legitimate reasons for sanitary measures need to be reviewed, as well as how border measures put in place for legitimate reasons can be abused.

#### *The Trouble with Borders*

Starting from the perspective of an international trade economist rather than that of a policy maker charged with the management of an animal disease or a threat to food

safety, the use of border measures<sup>1</sup> to restrict trade suggests, first and foremost, opportunities to extend economically motivated protection to domestic vested interests. It has long been recognised that sanitary regulations justified on the basis of human or animal health can also provide economic protection. While the policy maker may perceive border measures as one of the tools available to ensure health and safety, trade economists see border measures as opportunities for protectionism and those who make health security or safety policy in isolation probably ignore the trade implications of their actions. On the other hand, those making trade policy need to understand how trade measures can be used to bolster science-based animal health and food safety regimes. If they do not, opportunities to better manage threats in these areas may be lost in the pursuit of the benefits of trade. Of course, good public policy requires that both objectives be taken into account when putting border measures in place. In general, the international regimes put in place to regulate animal health and food safety represent reasonable compromises between the two objectives. The policy environment is dynamic, and the rising profile of animal health and food safety issues over the last few years, and the politicisation of those issues has resulted in there having been some progress and some slippage in the trade facets of the public policy regimes (Kerr, 2002).

Figure 1 illustrates the more complex case of animal disease management, although much of it could be applied to border measures put in place for food safety reasons, such as restrictions on meat from countries known to have BSE. An international trade economist might address the question of animal disease management by beginning with a world without borders – i.e. how the disease would be managed within a single unified

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<sup>1</sup> The term ‘border measures’ is used broadly in this paper and may include measures that are not applied directly at the border; e.g. inspection of foreign slaughter plants or requirements for veterinary certification that, while not applied at the border, hinder the cross-border movement of livestock or meat products.

state.<sup>2</sup> In this ‘no borders’ scenario, the veterinary service would manage the disease on the basis of the dynamics of the disease within the animal population alone. For example, bans on the movements of animals or animal products would be based on the requirements of scientific management. Animals in areas of low risk would not be affected by the policy and commerce would not be disrupted in those areas. When examining what happened in Canada, if this disease management centred approach had been taken, animal and beef movements would likely have been restricted only for the areas identified in the epidemiological investigation as being connected to the BSE cow – as opposed to movements out of the entire country. While there may be arguments among members of the veterinary profession regarding the degree of precaution necessary to ensure that a disease is managed, commerce in animals and animal products would not be artificially restricted (Kerr, 2002).

In the science of animal disease control, international boundaries are artificial constructs – mere lines on a map that have no bearing on the dynamics of a disease in an animal population. In a sense, either the lines on the map are non-binding on the scientific management of the disease or they represent an artificial constraint on scientific management.<sup>3</sup> In either case, they should have no bearing on the management of the disease (Kerr, 2002). Borders, however, divide government responsibilities and controlling borders is a central aspect of sovereignty. This means that governments carefully preserve the right to impose border measures. This does not mean that they will not, at times, voluntarily agree to limit their control of borders by international

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<sup>2</sup> The assumption of a unified state is made to abstract from the administrative borders and shared governance that arise in federated countries with state or provincial administrations.

<sup>3</sup> Of course, it may be that by chance the international boundary conforms to a natural place to initiate disease management activities on the basis of good science. This case is dealt with below.

agreement. This is the essence of trade agreements such as the WTO and NAFTA.

However, what is voluntarily agreed to can be abrogated or re-negotiated. Even in the EU, where countries have agreed to eliminate border measures, individual member states retain the ultimate right to leave the Union and re-assert their sovereign right to control their borders (Kerr, 2002).

International trade agreements can be seen as attempts to reduce the level of risk arising from the imposition of trade barriers by governments for firms that wish to engage in international commerce. This is done by mutually agreeing to limits on the ability of governments to impose trade barriers and by making the circumstances under which they can be imposed transparent to those that wish to make investments in international commercial activities. Governments, have voluntarily agreed to limit their ability to impose trade barriers e.g. to eliminate all tariffs under NAFTA and, more importantly, never to impose them again. When faced with political pressure from domestic vested interests seeking protection, governments will try to find ways to provide protection without incurring the penalties specified to in the trade agreement. As governments have over time agreed to limit their use of traditional border measures such as tariffs and import quotas, they have increasingly turned to non-tariff barriers to satisfy demands for protection. Non-tariff barriers tend to be much less transparent than traditional border measures and more complex because they often have a legitimate domestic policy goal as their rationale – they come in shades of grey rather than being black or white. Border measures put in place for the purposes of animal disease management and food safety concerns fall into this category, and hence are viewed with suspicion by international trade economists.

Returning to Figure 1, once an animal disease problem arises in, for example, a livestock or meat exporting country (and assuming the existence of borders) opportunities are created to provide protection and border measures can be imposed for illegitimate or legitimate reasons.

### *Illegitimate Use of Border Measures*

Traditionally, the reason underlying the imposition of illegitimate border measures is the economic benefit to domestic producers that results from protection from imports. An obvious example would be to impose a barrier on imports when there is zero or minimal risk such as a prohibition on imports into a country with a temperate climate from a country with a tropical disease that cannot survive in a temperate environment. The potential abuse of sanitary regulations has long been recognised. According to the OIE:

The ratification of the 1924 Agreement creating the OIE reflects a desire clearly expressed by the Secretary General of the League of Nations that year. He invited various governments to designate veterinary experts “to examine the health guarantees that could be provided by cattle-exporting countries, the facilities that importing countries could accord on the basis of these guarantees and, in general, to determine the most effective means of enabling statutory veterinary measures to be applied, taking into account the economic interests of exporting countries and without prejudicing the interests of countries wishing to protect themselves against animal diseases”.

...“the Economic Committee of the League of Nations thus proposed to facilitate international trade in animals and animal products to try and reverse the *often highly overt tendency of numerous countries to use sanitary arguments purely for the purpose of economic protection*” (emphasis added) (OIE, 2000)

It should be remembered that in the early part of the 20<sup>th</sup> century governments had not yet encumbered themselves with international trade agreements and thus, the unilateral imposition of tariffs and import quotas was easily managed. Even during this period,

there was considerable temptation to impose trade barriers in the name of sanitary concerns for the sole purpose of providing economic benefit.

The second illegitimate reason for the imposition of border measures for reasons of human health and animal disease is what can be termed ‘political precaution’. It has come to the fore recently as a direct result of rising awareness of these issues among civil society and their subsequent politicisation.<sup>4</sup> Political precaution arises when politicians are pressured to ‘do something’, or need to be ‘seen to be doing something’ in the face of strongly expressed concerns by members of civil society, even when risks are very low or largely speculative.<sup>5</sup> One example might be the EU ban on the importation of beef produced using growth hormones where the concerns relating to human health are speculative (Kerr and Hobbs, 2002).<sup>6</sup> A similar argument might be made regarding the EU’s evolving policy toward genetically modified organisms (Gaisford, et al, 2001). Politicians, fearing an adverse voter reaction either from ‘inaction’ on their part or because voters do not have a sufficient ‘comfort level’ with the existing scientific consensus, are encouraged to impose border measures even in the absence of any group seeking economic protection<sup>7</sup> (Kerr, 2002). This has had a profound impact on the

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<sup>4</sup> This is not to suggest that political precaution is a new phenomenon, only that it does not become an important reason for the imposition of trade barriers unless an issue is politicised.

<sup>5</sup> Isaac (2002) provides the following taxonomy of risks: “Another important debate associated with the Risk Analysis framework involves the type of risk targeted where three types may be identified: recognisable risks, hypothetical risks and speculative risks... . Recognisable risks can be identified through experience (data) and the application of accepted analytical methods such as statistical inference and probability theory, and they include a clear causal-consequence mechanism. Hypothetical risks lack experience or data, but, with the help of assumptions and/or likelihood functions they can be assessed within an accepted analytical method. Speculative risks lack experience, data, a causal-consequence mechanism and an accepted analytical method for assessment. They are logical possibilities; irrefutable, but untestable as well”.

<sup>6</sup> North Americans tend to perceive the beef hormone ban as purely ‘economic protection’. While the ban provides positive economic externalities for some EU interests, the primary motivation appears to be ‘political precaution’ (Gaisford and Kerr, 2001).

<sup>7</sup> For example, there seems to be little pressure for economic protection from either the biotechnology industry or agricultural producers in the European Union (Gaisford, et al 2001). It is easy to see how civil

Canadian beef industry, as politicians around the world resist decreasing or eliminating restrictions on exports of beef and cattle to give the impression that they are diligently protecting food safety. Certain protectionist groups, particularly in the United States, have expended considerable effort to foster consumer anxiety and, as a consequence, trigger this type of reaction by politicians.

The imposition of trade barriers for reasons of political precaution affects exporters in exactly the same way as barriers put in place to provide economic benefits to domestic producers. If the ability to impose trade barriers for reasons of political precaution is unconstrained, or not transparent, then risks are created for exporters and investments in international commercial activities are reduced (Kerr, 2002).

#### *Legitimate Use of Border Measures*

While sanitary regulations can be used to justify the imposition of illegitimate trade barriers, there are also legitimate reasons for a country to put border measures in place. These are found on the left side of Figure 1. The problem with the legitimate imposition of border measures, from the point of view of a trade economist, is that they may be open to abuse to provide economic protection in either their design or application.

Borders divide administrative responsibilities. Public veterinary services are constituted nationally. If, for example, professional veterinarians in an importing nation consider the veterinary service and/or its co-requisite enforcement administration in an exporting country to be incompetent, then the importing country has a legitimate reason to impose border measures. This may be particularly applicable to developing countries that do not have the resources to ensure the safety level required by a developed nation.

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society's 'comfort level' with the existing scientific consensus on animal diseases can be reduced. From the perspective of a politician, the reversal of the official 'scientific' position on BSE represented a clear electoral danger.

Of course, the type of border measures that typically restrict commercial flows of livestock or meat products may not be effective in controlling disease. For example, in the case of 'blue tongue' the vector may be wild ungulates that do not respect 'official' border crossings. The optimal animal strategy would have little to do with controlling borders. In other cases, border measures, while sub-optimal from an animal disease management strategy, may provide the best line of defence when faced with an incompetent foreign regulatory regime. In the imposition of border measures against Canada, this legitimate reason is not particularly valid as Canada's veterinary service is well regarded around the world, and has the ability to enforce scientifically justified standards (Kerr, 2002).

Even if the veterinary service is competent, as is the case in Canada, there still may be a legitimate reason to impose border measures. If it is not possible to cooperate with the foreign veterinary service, either because of other political concern such as between the U.S. and North Korea, or a clash of professional cultures between the veterinary services, then border measures may be an appropriate way to manage a threat. If, for example, an agreement cannot be reached on the issuance of export certificates by the exporter's veterinary service, then border measures to require quarantine or testing upon import may be appropriate disease management measures (Kerr, 2002). The CFIA has worked hard to cooperate with veterinary services around the world so that measures under these pretences cannot be justified.

If the effective management of a disease is not yet well understood i.e. a scientific consensus does not exist, the national veterinary services in different countries may not agree on the best management strategy to protect their domestic interests. These may be

legitimate disagreements based on the best available scientific information. In these circumstances, countries must have the legitimate right to protect their own interests by acting in a precautionary fashion. This 'incomplete information' rationale for the imposition of trade barriers is well accepted and embodied in the World Trade Organisation Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) (Kerr, 1999). Given that internationally agreed OIE guidelines for the management of BSE already exist, the lack of scientific consensus justification does not pertain in this case.

Finally, border measures may be justified if the border, by coincidence, is where a veterinary service would choose to impose a barrier to movement for strictly animal management reasons. Probably the most obvious example would be oceans or other large bodies of water. This is unlikely to be the case, however, along the arbitrarily drawn U.S.-Canada or U.S.-Mexico border. The efficacy of a natural boundary should not be confused with the administrative convenience of a national frontier, which can become administratively convenient places to implement disease management strategies. The problem with national borders being administratively convenient is that it ignores the economic cost border measures impose on exporters. This can be a major challenge for those charged with managing animal diseases (Kerr, 2002).

#### *Abuse of Legitimate Border Measures*

As suggested above, once the decision to impose regulatory barriers has been taken, those barriers become open to abuse both in their design and implementation. Figure 1 illustrates a number of ways that border measures may be used to provide protectionist economic benefits in excess of those that would naturally arise from the imposition of the

barrier strictly for disease management purposes. The avenues for abuse pertain to timing, geographic extent and the absence of regulatory harmonisation.

Timing relates to an action taken to impose border measures once an exporter has a disease problem which dictate that border measures are appropriate. For example, a decision to close the border to imports may be taken before the disease in the exporting country is confirmed. Abuse most often occurs, however, when the timing of re-opening the border is delayed after the threat has passed. Veterinarians' primary concern is the prevention of the disease outbreak or limiting its extent, not the facilitation of international trade. Thus, while they may not be open to 'other' influences when faced with a threat, once the threat has passed, they have little interest in whether the trade barrier remains in place. In fact, the decision to re-open the border may lie with other officials, subject to their receiving clearance from the veterinary service. There is considerable suspicion in Canada that this was the case in the recent closure of the U.S. border to potatoes originating in the Canadian province of Prince Edward Island (Standing Senate Committee on Agriculture and Forestry, 2002). The rate at which countries receive the 'all clear' in cases of foot and mouth disease has also been contentious. The UK government feels abused in this fashion by some other members of the EU in the case of BSE<sup>8</sup> (Kerr, 2002). The Canadian beef industry certainly feels that the bans on Canadian products have already lasted longer than may be scientifically justified. However, because there are no mechanisms to automatically reopen borders, they become a matter of bilateral negotiations that can become extremely politicised.

The geographic area from which exports are banned, or into which imports are restricted, can exceed those suggested by prudent animal disease management. Exports

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<sup>8</sup> This may, however, be a case of 'political precaution'.

of products from an entire country may typically be banned even if the outbreak has been localised and the veterinary service of the exporting country has the problem contained. Imports into an entire country may be restricted even when a disease cannot thrive in large areas of the importing country (Kerr, 2002). For example, there is no evidence of any BSE connection to the Ontario cattle industry but imports from that province are restricted as well.

The absence of regulatory harmonisation can lead to abuse of border measures in aid of economic protection. This problem can manifest itself in a number of ways. For example, if testing procedures are not harmonised, requiring specific tests prior to export may inhibit exports if the tests are not available in the exporting country, or raise costs if additional, but redundant, testing is required. The certification of export facilities, the effort required in the certification process for live animals for export, and verification of certificates and border inspections are all open to abuse (Hayes and Kerr, 1997; Kerr, 1988; Kerr, et al. 1986). Part of the problem with certification and related barriers is that the rules cannot be sufficiently well defined to limit individual latitude in their application. As a result, control of abuse may require removal of the measure entirely. If animal disease protocols are not harmonised, countries may be able to impose barriers to trade based on differing standards or procedures. Although NAFTA contains provisions for Canada, the U.S. and Mexico to work together to harmonise sanitary standards, after 10 years, no consensus has been reached (Kerr, 2002). This has allowed discrimination against Canadian products in the U.S. and Mexican markets – two of Canada’s largest markets – after the discovery of BSE.

While the taxonomy of opportunities for abuse of legitimate border measures presented in Figure 1 may not be comprehensive, it does suggest a wide range of protectionist opportunities. Non-tariff barriers to trade are limited only by the inventiveness of the bureaucrats charged with devising them and hence are difficult to anticipate once border measures have a legitimate *raison d'être* (Kerr, 2002).

### **In Hindsight: What the Canadian Industry Should Have Done**

An old adage states that “hindsight is always 20/20”. In hindsight, the Canadian industry should have adopted a very different approach to sanitary barriers and BSE. The first, and most fundamental, mistake the industry made was failing to believe that BSE could occur in Canada. This attitude not only left the industry unprepared to deal with the ensuing crisis but also contributed to the severity of it. Canada set an unforgiving standard for how a country should be treated once BSE has been discovered within its borders. Canada’s import policies state that live ruminants and meat and meat products of ruminant origin may be imported only from countries designated free from BSE. Canada recognises Argentina, Australia, Brazil<sup>9</sup>, Chile, New Zealand, the United States and Uruguay as being BSE-free (CFIA, 2003). The OIE, which sets the standards for trade in animals and animal products, does not recommend a ban on exports from countries known to have BSE. Rather, it outlines the safety measures that must be taken. As the level of risk present in a country increases, the precautions that must be taken also increase (OIE, 2003). On January 9, 2004, the OIE issued a press release which stated:

The World Organisation for Animal Health (OIE) has become increasingly concerned about reports of international trade disruptions involving the misinterpretation of OIE standards... While the Code provides increasingly restrictive recommendations which are commensurate with the level of

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<sup>9</sup> Requires health certification guarantees provided by the Brazilian authorities

BSE risk in each of the country status categories, it does not recommend any other ban than [on meat and bone meal] on trade of animals or specific animal products....Except for short trade suspensions during investigation period following a new epidemiological event, it is of particular concern to the OIE that many countries apply trade bans when an exporting country reports its first case of BSE, without having conducted a risk analysis as described in the Code (OIE, 2004 pp 1-2).

The Canadian industry should have also tried harder to limit opportunities for the misuse and abuse of border measures. The primary reasons they did not do this are lack of political will, and the weakness of the existing regulatory regime was convenient for the industry in the absence of BSE in Canada. The primary target for improvement should be the OIE as it is recognised by the WTO as the international authority for setting standards. All regional trade agreements, such as NAFTA, are expected to conform to WTO disciplines. NAFTA may go further in a particular area than is required by its WTO commitments but it cannot contradict them. It appears that NAFTA partners have been unwilling to exceed OIE/WTO norms in many areas affecting trade in cattle and beef (Kerr, 2002). This suggests that progress must be made at the multilateral level.

The first potential for abuse that could have been addressed was the timing problem. The OIE does not specify when a country must lift its trade restrictions once the embargoed country completes its epidemiological investigation and can provide the required information for countries to undertake a risk assessment. Over the last few years, a great deal of progress has been made in the area of the 'geographic extent' of protection. Agreements affecting cattle trade have been signed between Canada and the U.S. that allow sub-national zones to be cleared to engage in international trade. However, the industry failed to ensure that BSE was one of the diseases addressed (Kerr, 2002). The SPS Agreement also has provisions that allow a region of a country to be

declared disease free, even if the whole country is not. The final area mentioned above that presents a potential for abuse, but was not dealt with by the Canadian industry, is harmonisation. While this process can be extremely slow, Canada has failed to push the issue at the OIE or NAFTA. The time to secure agreement at the NAFTA, in particular, would have been before any of the countries had a case of BSE and the issue became politicised.

### **Strategy to Move Forward**

Now that Canada is in middle of a crisis and mistakes have already been made, progress is more difficult but not impossible. The most important issue for the industry now is to get former markets around the world reopened to Canadian exports of both beef and cattle. This is made more difficult by weak rules, a high profile and political precaution. The messages that the Canadian industry and government send out must be firm, low key and science-based. It will be very important to try to depoliticise the issue and to have decisions made on the basis of science and OIE guidelines rather than political precaution. One key component is to never threaten retaliation. No politician can appear to be giving in to foreign political or economic pressure when issues of food safety are concerned. If markets continue to remain closed for a long period of time, the industry may consider petitioning the Canadian government to present a case against foreign countries' sanitary measures to the WTO. A case of this nature under the SPS Agreement may be successful but Canadians must be aware of the risks involved. Firstly, Canada itself has regulations that would likely be found to contravene the SPS. Secondly, consumers in Canada's former export markets may see a case of this nature as an attempt to undermine the safety regulations and force unsafe beef and cattle onto their

markets. If this sentiment is particularly strong, countries which lose at the WTO may choose to not remove the sanitary measures and accept retaliation, as the European Union did when facing a order to remove their ban on meat produced using growth hormones (Kerr and Hobbs, 2002). If this were to happen, it would effectively guarantee that the ban would not be removed any time in the near future.

The most important step that can be taken is to engage in the longer-term process of changing trade agreements and rules regarding sanitary barriers. Making progress will not be easy, quick or inexpensive but the industry must continue to work on it after the current crisis has passed. All elements of the beef supply chain in countries all around the world must cooperate and work together if meaningful progress is going to be made. NAFTA would seem like the perfect place to start as the ‘large numbers’ problem in negotiations with many countries can be avoided. Unfortunately, NAFTA lacks the necessary mechanisms to force progress. There are no deadlines or closure mechanisms built into the NAFTA Committee on SPS Measures. As a result, it can be a place simply to raise and discuss issues rather than resolve them. Given that non-trade ministries have shown little interest in concepts such as ‘deepening economic integration’, they give them only a low priority. As a result, NAFTA looks very much like a ‘one-shot’ deal rather than a mechanism for promoting further economic integration and regulatory harmonisation among the member countries (Kerr, 2002).

Real and effective progress will likely only be made by working at the OIE to change the standards the WTO will enforce. One of the most important issues that needs to be addressed is the abuse of timing. Countries need to create mechanisms that make the removal of restrictions or bans more automatic and science-based. In addition, more

harmonisation is required for BSE protocols so that there is less potential for disputes between domestic veterinary services concerning appropriate safeguards and procedures. Two things that could most easily be harmonised are testing requirements (currently a major issue between Japan versus the United States and Canada<sup>10</sup>) and certification. It is very important to remember, however, that this will be a long, difficult and costly process. Some progress has already been made in discussions regarding changing the BSE risk classification system<sup>11</sup>. As more exporting countries discover BSE within their borders, the political push to achieve reforms will increase. Canada must work to ensure this momentum continues.

## **Conclusion**

The Canadian beef industry has been hit hard by the discovery of BSE. Countries around the world have put sanitary border measures in place that have restricted or eliminated access to their markets. While these border measures may have initially been legitimate measures to manage the disease and to protect human health, their long-term continuation is not supported by a scientific approach to disease management and human health. In general, Canada was not prepared for the discovery of a case of BSE in Canada and had not done enough to prevent abuses of the international sanitary measures system. Canada should now use science-based arguments to regain market access and

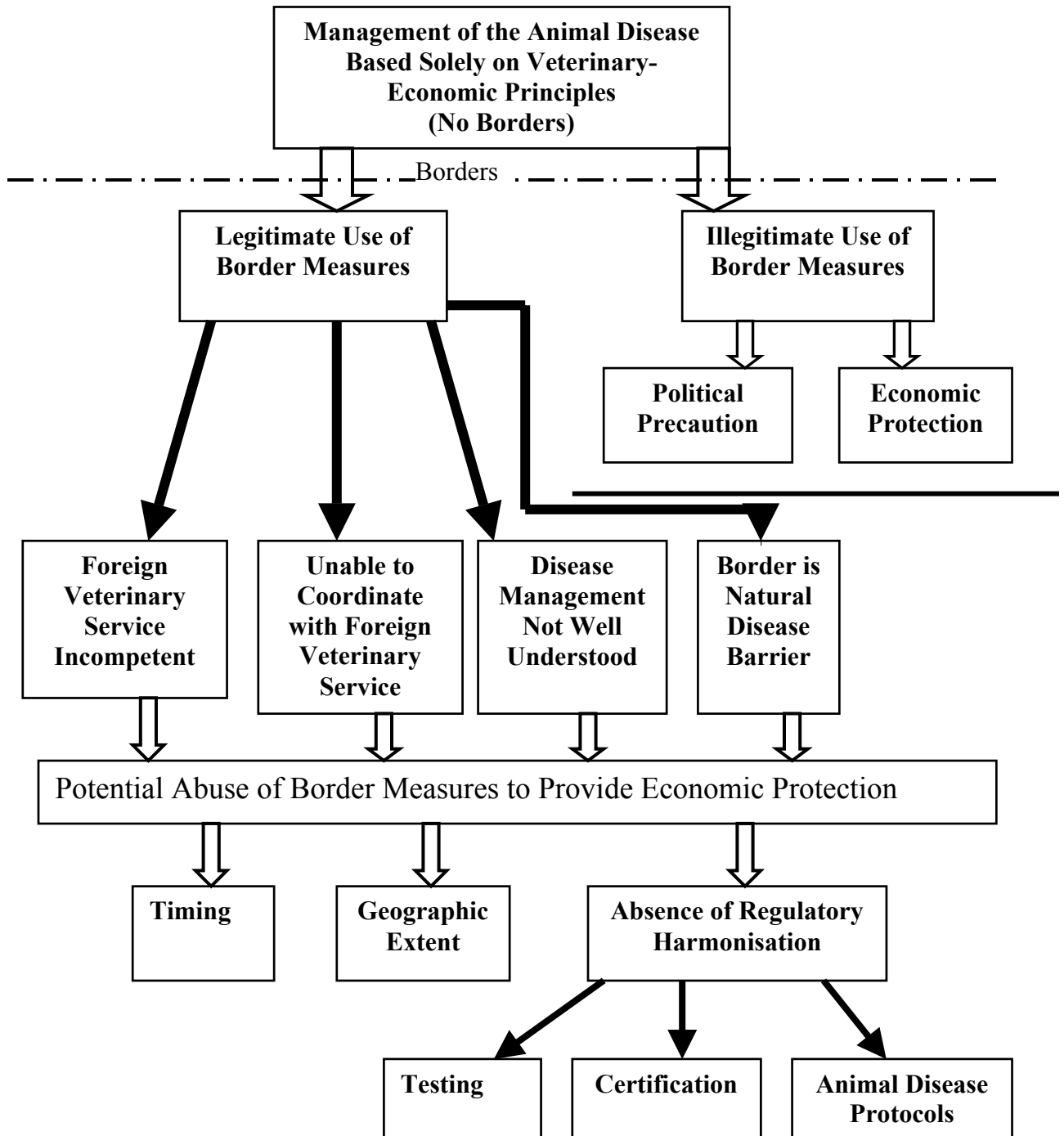
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<sup>10</sup> After discovering BSE within its borders, Japan instituted a policy of testing every animal destined for human consumption. Canada and the United States, however, only test high risk animals – those that are over 30 months of age, show signs of neurological disease or are ‘downers’. The amount of testing undertaken in these two countries is still more than the recommended level of the OIE. However, Japan refuses to allow beef imports from these countries until they agree to test every animal – a costly requirement that exceeds what is scientifically necessary.

<sup>11</sup> The old classification system had five categories: BSE free; BSE provisionally free; minimal risk; moderate risk; and high risk. The new classification system categories would be: negligible risk; controlled risk; and unknown risk. This change is being proposed in recognition of the fact that a country that has reported a case of BSE within its borders may be better equipped to manage the disease than a country that does not have a sufficient surveillance system in place to detect the disease. The issue is currently under further review by a sub-committee of the OIE and its findings will be presented at the General Session in 2005 and may face a vote.

work diligently at the OIE to achieve reforms that will ensure sanitary measures are not again abused or used for illegitimate purposes.

**Figure 1 – Animal Disease Management and Border Measures**



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