Congress of the United States
Washington, DC 20515

January 5, 2005

The Honorable Michael Johanns
Governor
State of Nebraska
Office of the Governor
P.O. Box 94848
Lincoln, NE 68509-4848

Dear Governor Johanns:

On January 4, 2005, the U.S. Department of Agriculture announced that it would lift the ban on cattle imports from Canada, effective on March 7. A principal rationale for USDA's decision is that Canada has a "rigorous" and "effective" feed ban in place, which prevents the spread of "mad cow disease" by preventing protein derived from cattle from being fed to cattle.

It appears, however, that USDA has failed to review significant evidence that calls into question the effectiveness of the Canadian feed ban. If, as expected, you are confirmed as Secretary of Agriculture, we urge you to assess this new information carefully before proceeding with the plan to reopen the U.S. border to the importation of millions of Canadian cattle.

We have learned that:

- **U.S. regulators have discovered animal muscle, hair, blood and bone in Canadian feed**. Over the last 15 months, the U.S. Food and Drug Administration (FDA) has issued "import alerts" blocking the importation of products from 17 Canadian companies, including two of the largest feed manufacturers in the country. FDA found muscle tissue in 15 products, animal hair in five, blood in eight, and bone in two. Eight "import alerts" on Canadian feed are still active today.

- **Recent tests have shown that Canadian feed often contains unanticipated animal protein**. Over two-thirds of samples of vegetarian animal feed manufactured in Canada and recently tested by the Canadian regulators contained "undeclared animal materials." In an internal memo, a senior regulator called the test results "worrisome."

- **Major noncompliance with Canadian feed rules persists.** Recent inspections have revealed that seven Canadian feed mills had "major non-compliance" issues, and three were failing "to prevent contamination of … feeds." In one recent case, potentially contaminated feed was consumed by cattle.

- **Canada recognizes gaps in its own feed ban.** On December 10, 2004, Canadian regulators concluded that "the current framework provides opportunities for prohibited proteins to be accidentally included in or cross-contaminate feeds." Canada then proposed changes to its feed ban.

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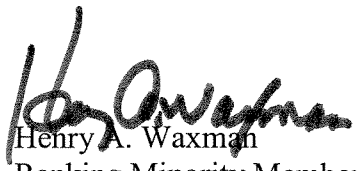
These findings, which are discussed in detail in the attachments to this letter, have significant implications. The recent discovery of another case of mad cow disease in Canada underscores the potential risk of inadequate measures to prevent the spread of the disease. If Canada's feed ban is not effective, then Canada does not qualify as a "minimal risk" country under the new definition put forward by USDA, and the importation of Canadian cattle cannot resume. It is imperative that these issues be thoroughly investigated before authorizing Canadian imports.

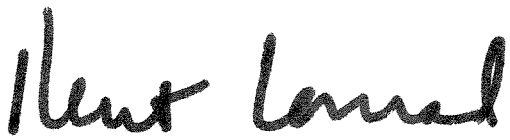
For these reasons, we urge you to consult with FDA about the "import alerts" against Canadian feed suppliers and assess their implications for the effectiveness of the Canadian feed ban. We also urge you to review the Canadian documents questioning industry's compliance with the feed ban and to talk to Canadian officials about the limitations of their current feed ban.

After undertaking this investigation, we urge you to appear before Congress to communicate your findings.

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives



Kent Conrad
Senator
U.S. Senate

Attachment 1:

New Evidence Raises Questions about Cattle Imports from Canada

On December 29, 2004, USDA announced plans to permit the importation of cattle and specific beef products from countries that pose "minimal risk" for introducing bovine spongiform encephalopathy (BSE), commonly known as "mad cow disease," into the United States.[1] On January 4, 2005, USDA ruled that Canada is a "minimal risk" country, and that Canadian imports, which were suspended after the discovery of a Canadian cow with BSE in May 2003, will resume on March 7, 2005.[2]

This attachment explains USDA's new import policy and reviews the new evidence that raises questions about the effectiveness of Canada's feed ban.

USDA's "Minimal Risk" Standard

At the center of USDA's recent actions are criteria for countries to qualify as "minimal risk." According to senior USDA officials, these criteria make the U.S. approach consistent with the science-based standards of the World Organization for Animal Health, known as the OIE. For example, Agriculture Secretary Ann M. Veneman stated, "Our approach is in line with the guidelines issued by the World Organization for Animal Health."[3]

In fact, regarding measures to prevent transmission through animal feed, the USDA definition of "minimal risk" departs significantly from OIE standards.

In the 2004 edition of the *Terrestrial Animal Health Code*, OIE requires that a "minimal risk" country with occasional cases of BSE have a feed ban that (1) prevents protein derived from ruminants (including cattle) from being fed to other ruminants and that (2) "has been effectively enforced for at least 8 years."[4] The requirement that the country effectively enforce the feed ban for eight years is stringent for two reasons. First, an effective feed ban is an essential protection against a disease that can be transmitted by the ingestion of just 1 milligram of infectious material. Second, BSE infection can remain latent inside cattle for as long as eight years. Under the OIE standard, a country assures that BSE will not spread by having an

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[1]U.S. Department of Agriculture, *News Release: USDA Releases Rule to Establish Minimal-Risk Regions for Bovine Spongiform Encephalopathy* (Dec. 29, 2004).

[2]U.S. Department of Agriculture, *Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities*, 70 Federal Register 459–553 (Jan. 4, 2005) (hereinafter "USDA Rule").

[3]U.S. Department of Agriculture, *Transcript of Tele-News Conference* (Dec. 29, 2004).

[4]World Organization for Animal Health, *Terrestrial Animal Health Code, Bovine Spongiform Encephalopathy* (2004) (online at http://www.oie.int/eng/normes/mcode/en_chapitre_2.3.13.htm).

extended, effective feed ban in place. When USDA recently urged OIE to change the standard to five years, this proposal was rejected.[5]

The new USDA approach to "minimal risk" does not require countries to have an effective feed ban in place for eight years as OIE requires. USDA requires only the existence of a feed ban "that is in place and is effectively enforced."[6] This feed ban must, at a minimum, be equivalent in scope to the feed ban in place in the United States.[7] This equivalency standard applies even to countries such as Canada, which has now experienced three indigenous cases of BSE, compared to none in the United States.

USDA has justified its departure from the OIE approach on the grounds of flexibility. The Department chose to adopt an "integrated approach to evaluating the BSE status of a country [that] considers the length of a feed ban within the context of all control measures in place."[8] The absence of a set time period provides considerable discretion for USDA.

The Canadian Decision

Earlier this week, USDA exercised this discretion to classify Canada as a country at "minimal risk" of introducing BSE into the United States. Contrary to the OIE standards, Canada has not had a feed ban in effect for eight years. The Canadian feed ban was implemented in August 1997, seven and a half years ago, and was followed by a "grace period . . . to allow feeds in the marketplace manufactured pre-ban to clear the system."[9] Prior to the ban, appropriate feed practices were not in place. Indeed, Canadian regulators have concluded that a dairy cow was likely infected with BSE soon after its birth in April 1997.[10] This cow was identified six years later in Washington State.

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[5]USDA Rule at 474.

[6]*Id.* at 550.

[7]*Id.* at 504.

[8]*Id.* at 496.

[9]Canadian Food Inspection Agency, *Regulations Amending Certain Regulations Administered and Enforced by the Canadian Food Inspection Agency*, Canadian Gazette (Dec. 11, 2004).

[10]Canadian Food Inspection Agency, *CFIA's Investigation into the December 2003 BSE Case found in Washington State, US* (2004) (online at http://www.inspection.gc.ca/english/anima/heasan/disemala/bseesb/americ/amerinveste.shtml). The most recent discovery of BSE in a Canadian cow is also assumed to have originated from feed produced and consumed prior to the implementation of the feed ban. But as in the case of the cow identified in Washington State, no definitive evidence has been produced to demonstrate conclusively when the infection occurred.

Aside from the duration of the Canadian feed ban, there are significant questions about its enforcement. In deciding to re-open U.S. borders to millions of Canadian cattle, USDA characterized the enforcement of the Canadian feed ban as "rigorous" and "effective."[11] There is mounting evidence — which USDA apparently did not review —that conflicts with these findings.

The New Evidence

To evaluate the Canadian feed ban, USDA appears to have relied principally on two documents. The first is Canada's BSE risk assessment, which was published in December 2002. USDA characterizes this document as showing "high levels of compliance with the feed ban by routine inspections of both renderers and feed mills."[12]

In fact, Canada's risk assessment showed that in 1999, of 65 feed mills inspected, 20 (31%) were not in compliance, including four that did not have written procedures to prevent contamination of feed. In 2000, 108 feed mills were inspected, of which 38 (35%) were not in compliance, including 14 that did not have written procedures to prevent contamination.[13]

USDA also cited a July 30, 2004, memo from Canada's chief veterinarian to Dr. John Griffen, deputy administrator of USDA's Animal and Plant Health Inspection Service. USDA described the memo as indicating that:

> [W]ith respect to the Canadian commercial feed industry, non-compliance of "immediate concern" has been identified in fewer than two percent of feed mills inspected during the period April 1, 2003, to March 31, 2004. Those instances of noncompliance of "immediate concern" are dealt with when identified.[14]

USDA explained that "noncompliance of 'immediate concern'" includes cases where prohibited materials contaminate feed. The Department did not disclose the amount of feed involved or how problems have been "dealt with."[15] The Department also has neither released the June 30, 2004, memo to the public nor provided complete information about compliance with the feed ban from 2001 to 2004.

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[11]USDA Rule at 515 and 467.

[12]*Id.* at 514.

[13]Canadian Food Inspection Agency, *Risk Assessment on Bovine Spongiform Encephalopathy in Cattle in Canada* (Dec. 2002) (online at http://www.inspection.gc.ca/english/sci/ahra/bseris/bserise.shtml). This report concluded that the chance of a single case of BSE originating in Canada was 7 in 1000. Subsequently, three cases have been identified.

[14]USDA Rule at 515.

[15]*Id.*

Recently, evidence has emerged to suggest that USDA's assessment of the Canadian feed ban may be mistaken. Three developments in particular raise serious questions about the effectiveness of the ban.

Import alerts. On several occasions since October 2003, and most recently on August 24, 2004, FDA has issued formal "import alerts" that permit the detention of animal feed that could cause the spread of BSE in the United States.[16] These alerts, which are based upon "random sampling and analysis . . . for the presence of animal tissues," have repeatedly cited feed made by Canadian companies.[17]

FDA has found muscle tissue in 15 Canadian products, animal hair in five (including bovine hair or apparent bovine hair in two cases), blood in eight, and bone in two. Over the last 15 months, FDA has cited products from 17 Canadian companies, including some of the largest feed producers in the country. A summary of these import alerts is included as Attachment 2.

To be removed from FDA's "import alert" list, companies must show corrective actions, including, at a minimum, "a description of the current processes being used to prevent contamination" and "verification that the processes are adequate."[18] But not all Canadian companies have apparently been able to meet this standard. Nine "import alerts" on animal feed because of BSE risk are still active today — eight are against feed companies based in Canada.[19]

Contaminated "vegetarian" feed. On December 16, 2004, the *Vancouver Sun* reported that "secret tests" by Canadian regulators of 20 of 28 samples of vegetarian animal feed manufactured in Canada contained "undeclared animal materials." The tests found that more than half of all samples of feed used in Canada were contaminated. In an internal memo, a senior government regulator called the test results "worrisome."[20]

In response to this disclosure, Canadian officials stated that the tests did not prove the presence of dangerous animal proteins (such as those derived from cattle).[21] However, according to the *Vancouver Sun*, Canada decided against conducting additional testing that may have determined whether the contamination was from cattle protein.[22]

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[16] *Id.*

[17] See, *e.g.*, Food and Drug Administration, *Import Alert #71-02* (Nov. 3, 2003, Feb. 5, 2004, and Aug. 24, 2004)

[18] Food and Drug Administration, *Import Alert #71-02* (Aug. 24, 2004).

[19] *Id.*

[20] *Secret Tests Reveal Cattle Feed Contaminated by Animal Parts*, Vancouver Sun (Dec. 16, 2004).

[21] *Tests Didn't Show Mad Cow Risk, Chief Federal Vet Says*, Edmonton Journal (Dec. 17, 2004).

[22] *Agency Opted Not to Use DNA Test on Feed*, Vancouver Sun (Dec. 17, 2004).

Additional problems with enforcement of the feed ban have also recently come to light. According to the *Vancouver Sun*, another memo written by a senior Canadian regulator stated that more than one in five Canadian feed mills continue to be out of compliance with the feed ban requirements.[23] The *Vancouver Sun* also reported that in 2003, seven facilities were found to have "major noncompliance," including three that were "failing to prevent the contamination" of cattle feed.[24] In one of these cases, the contaminated feed was actually consumed by cattle.[25]

Canada's own assessment. On December 10, 2004, the Canadian Food Inspection Agency — Canada's food safety agency — proposed changes to its feed ban. In explaining the need for these changes, the agency described gaps in its current approach.

In a section of the proposal called "vulnerabilities of current feed ban regulatory framework," the agency stated that "the current framework provides opportunities for prohibited proteins to be accidentally included in or cross-contaminate feeds for ruminants."[26] The agency explained that assessing compliance with the current feed ban "remains difficult" because of the absence of "definitive testing methods."[27] The agency also found that "opportunities for misuse of feed on farms with multiple species represent an area of vulnerability."[28] The agency concluded that "[t]he present feed ban might have been acceptable without the incidence of BSE in this country; but with it, there is a need to strengthen the key points crucial to preventing the spread of the disease."[29]

Based on this analysis, the Canadian government has proposed prohibiting specified risk materials, such as brains and spinal cords, from animal feed and prohibiting the use of dead stock or condemned carcasses for animal feed. Canada has also proposed extending these prohibitions to pet food, segregating specified risk materials during the slaughter process, and using new procedures to identify specified risk materials and dead stock.[30]

A 75-day comment period for the proposal, which has yet to take effect, ends February 24, 2005.[31]

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[23] *Secret Tests Reveal Cattle Feed Contaminated by Animal Parts*, Vancouver Sun (Dec. 16, 2004).

[24] *Id.*

[25] *Id.*

[26] Canadian Food Inspection Agency, *supra* note 9.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *New Regulations Proposed for BSE Feed Controls*, Canada NewsWire (Dec. 10, 2004).

Conclusion

USDA's decision to allow imports of cattle from Canada rests in significant part on its determination that the enforcement of the Canadian feed ban has been "rigorous" and "effective." There is significant evidence that calls these findings into question. This evidence includes a series of import alerts from FDA, as well as internal Canadian documents. It does not appear that this new evidence has been reviewed by USDA.

Attachment 2:

Canadian Feed Companies Subject to FDA "Import Alerts," October 2003 to Present

Company	Date	Products Cited	Reason for Import Alert
Archer Daniels Midland Co.	October 3, 2003	Medicated and non-medicated animal feeds	muscle tissue
Agricore United	January 2, 2004	Medicated and non-medicated animal feeds	muscle tissue, blood material
Agricore United*	May 10, 2004	Medicated and non-medicated animal feeds	muscle tissue, blood material
Bio Biscuit, Inc.	February 5, 2004	Dog biscuit	mammalian bone, bovine hair
Cascadia Terminal	October 28, 2003	Medicated and non-medicated animal feeds	suspect muscle tissue and unidentified animal hairs
Cereales D.L. Ltee*	April 6, 2004	Medicated and non-medicated animal feeds	blood, bone material present
Dawn Food Products*	December 30, 2003	Medicated and non-medicated animal feeds	muscle tissue, feather barbule material
Landmark Feeds, Inc.*	August 24, 2004	Macintosh Beef Calf Grower with corn	contains suspect muscle and blood tissue
Louis Dreyfus Canada, Ltd.*	December 30, 2003	Medicated and non-medicated animal feeds	muscle tissue
Macloud Feed Mill	January 2, 2004	Medicated and non-medicated animal feeds	muscle tissues, feather barbule
Masterfeeds*	October 3, 2003	Medicated and non-medicated animal feeds	blood material
New Life Feeds	January 2, 2004	Medicated and non-medicated animal feeds	muscle tissue, blood material
Pacific Elevators, Ltd	October 3, 2003	Medicated and non-medicated animal feeds	muscle tissue, feather barbules
Ritchie Smith Feeds, Inc.*	October 3, 2003	Medicated and non-medicated animal feeds	blood, muscle tissue, and feather barbule
Saskatchewan Wheat Pool	January 2, 2004	Medicated and non-medicated animal feeds	muscle tissue, feather barbule
Sure Crop Feeds	October 3, 2003	Medicated and non-medicated animal feeds	striated muscle tissue, apparent bovine hair, and feather barbules
The Puratone Corporation	October 30, 2003	Medicated and non-medicated animal feeds	suspect muscle tissue and feather barbule
Unifeed Limited	October 3, 2003	Medicated and non-medicated animal feeds	muscle tissue, feather material and sheep hair
Unifeed*	October 3, 2003	Medicated and non-medicated animal feeds	blood and unidentified animal hair

Sources: Food and Drug Administration, Import Alert #71-02 (Nov. 3, 2003; Feb. 5, 2004; and Aug. 24, 2004)
* Import Alert Active as of January 2005