5. The framework for the export of cattle, beef and cattle-derived products

Introduction

5.1 In the remainder of this volume we consider the impact of BSE on the export from the UK of products falling within the following categories:

i. live cattle;
ii. beef;
iii. bovine semen and embryos;
iv. MBM and feedstuffs containing MBM;
v. tallow and gelatine, as products potentially derived in whole or in part from bovine by-products; and
vi. medicines and cosmetics potentially containing products of bovine origin.

These categories are dealt with in Chapters 6 and 7; in this chapter we give an overview of the volume of relevant UK exports, the regulation of exports under UK law, EU law and international obligations.

Volume of relevant UK exports

5.2 Trade is vitally important to the UK economy. Between 1986 and 1996, exports of goods and services constituted between 20 and 30 per cent of UK Gross Domestic Product (GDP).\(^{184}\) Beef and veal exports,\(^{185}\) as a proportion of GDP, never rose above 0.1 per cent in the period.\(^{186}\)

5.3 Between 1986 and 1996, UK beef and live cattle exports more than doubled in value, reaching £720 million at their peak in 1995, as shown in Figure 5.1 below.\(^{187}\) However, the overall volume of exports in that period increased by less than 70 per cent (Figure 5.2).

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184 M11F tab 17
185 When discussing export figures, this volume classifies beef and veal together, because the trade statistics do not differentiate between the two meats
186 M11F tabs 8 and 10 and M11F tab 17
187 M11F tab 10
5.4 Between 1986 and 1996, total slaughter of UK cattle decreased slightly,\textsuperscript{188} but domestic consumption of beef and veal also fell for a variety of reasons that are discussed in detail in Chapter 3.\textsuperscript{189} New markets for UK beef were found abroad.

5.5 The proportion of UK beef and live cattle exported to the European Union fluctuated between about 80 and over 90 per cent, by value, of the total. Beef and live cattle exported to France made up about half of the value of all beef and live cattle exports, and there were also substantial exports to the Netherlands.

5.6 On 27 March 1996 the European Commission prohibited all UK exports of beef and cattle, and their by-products, to all other EU Member States and the rest of the world.\textsuperscript{190} What had become a beef export market worth almost £600 million per year collapsed, leading to severe economic difficulties for those dependent on it.

\textsuperscript{188} IBDS tab 17 p. 3
\textsuperscript{189} Table 3.1 illustrates the decline in beef and veal consumption in the UK
\textsuperscript{190} Commission Decision 96/239/EC OJ No L 78/48 of 28.3.96 (L4 tab 7)
Regulation of exports under UK law

5.7 Exports are legally controlled by the terms of the Import, Export and Customs Powers (Defence) Act 1939, as amended by the Import and Export Act 1990. Under these Acts, the Department of Trade and Industry (DTI) has broad powers to prohibit or regulate, or exempt from regulation, the export from the UK of any types of goods.

The European Union

The framework for exports to the EU

5.8 The Treaty of Rome, establishing the European Economic Community (EEC), provided for the establishment of a Common Agricultural Policy among the Member States (the CAP). A fundamental feature of the CAP was the free movement of animals and agricultural products within the Community. In order to achieve this, differences in the health requirements of Member States which hindered intra-Community trade needed to be eliminated, and this was done progressively for different commodities. By 1986 the CAP included live cattle, beef, and bovine semen and embryos. Products not covered by the CAP were animal feed, MBM, tallow (and products containing tallow) and gelatine (and products containing gelatine).

5.9 Among the first acts of the Community was the adoption of Directives providing for common health standards throughout the Community for animals and meat intended for export to other Member States. Relevant Directives sought to ensure that these products would not be a source of contagious disease. Meat for export was required to come from officially approved slaughterhouses satisfying certain conditions.

5.10 These Directives were amended on a number of occasions to strengthen the provisions governing intra-Community trade. Directives were adopted in 1972 authorising a Member State, ‘where there is an outbreak of an epizootic disease’ in another Member State, to prohibit temporarily the introduction of animals or meat from that Member State. These Directives enabled the European Commission to adopt measures to ensure coordination of action among Member States. They were in force on 1 January 1973, when the UK’s accession to the European Community took effect. In 1982 Member States were required to notify the Commission within 24 hours of the outbreak in its territory of certain animal diseases. In 1983 Community control measures were introduced to ensure that common health standards were uniformly applied in all Member States.

5.11 Following the introduction of the Single European Act in 1987, Directives were adopted ‘with a view to the completion of the internal market’ in animals and...
animal products. Their ultimate aim was to ensure that veterinary checks should be carried out at the place of dispatch only and not at the Community’s internal borders. This involved strengthening the regime for checking animals and livestock products at the place of dispatch, and making provision for protective measures to be taken promptly by the Member State of dispatch and, if necessary, the Commission to deal with outbreaks of disease threatening animal or human health. Responsibility was placed on Member States to ensure that animals and products intended for intra-Community trade conformed to Community rules. Each Member State was required to notify other Member States and the Commission of any outbreak in its territory of an epizootic disease or a contagious or infectious animal disease likely to constitute a serious hazard to animals or human health, and to implement any control or precautionary measures provided for in Community rules. In all such cases the Commission was required to act quickly, making on-the-spot visits and, in cooperation with the Standing Veterinary Committee (see below), reviewing the situation and adopting any measures considered necessary in addition to those already taken by the Member State concerned. It is under these powers that the various measures were adopted by the Commission restricting and ultimately banning the export of cattle and meat from the UK on account of BSE.

5.12 Thus, in relation to particular categories of product, export to the EU was governed by Community legislation as follows:

i. Live cattle: Council Directive 64/432/EEC of 26 June 1964 set down the health requirements for intra-Community trade in bovine animals for breeding, production or slaughter. The Directive required that all bovine animals intended for export ‘show no sign of clinical disease on the day of loading’. Further, it required that the animal intended for export come from a holding within an area in which there had been no incidence of specified disease in swine or bovine animals within the 30 days prior to loading. The Directive also described the requirements for transport of animals between states and required that animals be segregated into ‘animals for breeding or production and animals for slaughter’.

ii. Beef: Council Directive 64/433/EEC was introduced to standardise the health requirements relating to the production of meat in slaughterhouses and during storage and transportation. The specific requirements for veterinary certification of fresh meat exports to EU countries were contained in the Fresh Meat Export (Hygiene and Inspection) Regulations 1981. These Regulations required that meat for export be examined and passed as fit for human consumption in accordance with the criteria they set out. The requirements for export certification were different from, and more onerous than, the requirements for domestic production. Both domestic and export Regulations are discussed in detail in vol. 14: Responsibilities for Human and Animal Health.


iv. MBM and feedstuffs containing MBM: At the time of the emergence of BSE there were no specific standards of production which had to be met in order to export MBM to other Member States. The domestic standards for the production of MBM are discussed in vol. 14: Responsibilities for Human and Animal Health.

Domestic production and sale of animal feed was regulated under the Agriculture Act 1970. Part IV of the Act dealt with the composition and description of finished feed compounds for sale in the UK. The Act incorporated the requirements laid down in Council Directive 70/524/EEC concerning the use of ‘additives’ in feedstuffs (and amendments to that legislation introduced over time). As a result, there were no additional requirements which needed to be met for the export of compound feed to other EU countries.

UK Permanent Representation to the European Union

5.13 The UK Permanent Representation to the European Union (UKRep) played a significant role in the export issues that arose with the emergence of BSE. The Permanent Representative is the UK’s ambassador to the EU and serves on the Committee of Permanent Representatives (COREPER – see below).

5.14 The Permanent Representative is always a senior government official from the Foreign and Commonwealth Office. He or she heads an office comprising officials from a range of Government Departments specialising in different policy areas.

5.15 A senior official from MAFF has the role of Agriculture ‘Minister’ and sits on the Special Committee on Agriculture (SCA). The SCA handles proposals made within the framework of the CAP, namely policy on the organisation and management of agricultural markets.

5.16 It is, however, the Deputy Permanent Representative who represents the Government on the Committee, called COREPER I, which discusses animal health matters and the harmonisation of agriculture legislation.

5.17 Staff in UKRep report to the Permanent Representative but are in active communication with officials in their Whitehall Departments.

Organisational structure and decision-making

5.18 Although the functions of the EU are carried out by five bodies (the European Parliament, the Council of the European Union, the Commission, the Court of Justice and the Court of Auditors), only the Commission and the Council, and
certain of their advisory committees, had a significant direct bearing on the EU’s interactions with the UK about BSE.201

**The European Commission**

5.19 The European Commission is the executive arm of the European Union and, as such, has responsibility for ensuring that the provisions of the EC Treaty and measures taken pursuant to it are applied. It also has the power to take enforcement proceedings against Member States in the Court of Justice. Further, the Commission has the sole right to initiate legislative proposals for consideration by the Council and Parliament.

5.20 Although the Commissioners are nominated by their respective national governments, they are required to act in the general interests of the Union and are not to take instructions from their national government.202 Each Commissioner holds a portfolio for a particular area, much like a member of the UK Cabinet.203

5.21 Extensive powers have been conferred on the Commission by the Council to take decisions providing for the detailed implementation of legislation adopted by the Council.204 Many of the measures taken in response to BSE were adopted in this fashion.

**The Council and the Committee of Permanent Representatives**

5.22 The Council of the European Union is the principal legislative and decision-making body of the EU. It adopts legislation on the basis of proposals submitted to it by the Commission.205 It is made up of ministerial representatives of the Governments of Member States who have the authority to bind their own Government. The composition of the Council varies according to the business under discussion. Thus, for example, the UK Agriculture Minister represents the UK Government in Council meetings at which agricultural issues are under consideration. These Council meetings are called The European Community Council of Agriculture Ministers (the Agriculture Council). As now, it was expected during 1989–96 that Council members would act on behalf of their own Government’s interests and members would be subject to instructions from their respective Governments.

5.23 The Council is assisted in its work by a Committee of Permanent Representatives (COREPER), which consists of the Member States’ Permanent Representatives to the European Union. This committee was responsible for preparing the work of the Council and carrying out tasks assigned to it by the Council. A proposal on which COREPER is able to reach full agreement normally comes before the Council for formal approval only.

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201 The European Parliament exercises only limited powers. Its most important powers include the right to accept or reject the EU budget.
204 Article 145 and 155 of the EC Treaty
205 Depending on the nature of the legislative proposal, decisions may be taken by simple majority, qualified majority or by a unanimous vote
Standing Veterinary Committee

5.24 The Standing Veterinary Committee (SVC) comprised representatives from each of the Member States. These representatives are typically senior civil service staff members from the Agriculture Department of their home country. The actual representative at a given meeting varies depending on the topic under discussion and/or the relative importance of the issues involved. As in the case of the Council, it is expected that the SVC representatives will express the views of their individual Governments.

5.25 The SVC has an important role in exercising the Commission’s powers to deal with outbreaks of animal diseases that pose a threat to animal and human health.\(^\text{206}\) From 11 December 1989 the procedure was:

i. the Commission would submit a draft of a proposed measure to the SVC;

ii. the SVC would deliver an opinion on the draft. Qualified majority voting would apply for the purpose of deciding on the opinion;

iii. if the opinion was in favour of the proposed measure, the Commission would adopt it;

iv. if the opinion was unfavourable, or no opinion was delivered, the Commission would submit its proposed measure to the Council;

v. the Council, acting by qualified majority voting, might then adopt the proposed measure;

vi. if the Council did not adopt the proposed measure within three months, the Commission might then adopt it, unless in the meantime the Council had rejected the proposed measure by a simple majority;

vii. the same procedure applied for the adoption of interim protection measures except that if the proposed measure had to be referred to the Council, the period for it to act was 15 days instead of three months.\(^\text{207}\)

Scientific Veterinary Committee

5.26 The Scientific Veterinary Committee (ScVC) is an independent committee established by Commission Decision 81/651/EEC. Its function is to advise the Commission and the Standing Veterinary Committee on all scientific and technical problems concerning animal health, veterinary public health and animal welfare. It can also draw the attention of the Commission to any animal health, veterinary public health and animal welfare problems. Members of the ScVC are nominated by the Commission from highly qualified scientists specialising in the area covered by the Committee. In practice, the Commission invites Member States to nominate suitable representatives.

5.27 British scientists who attended the ScVC varied during 1989–96. They included Dr Richard Kimberlin, an independent TSE consultant, and Mr Raymond Bradley, the head of the Pathology Department at the Central Veterinary Laboratory.

\(^{206}\) Council Decision 68/361/EEC

5.28 Working groups or subcommittees of the ScVC were formed from time to time in order to address specific issues. In 1990 Mr Bradley was invited by the European Commission to chair a BSE ‘Sub-Group’ of the ScVC in order to update the Committee on the relevant scientific developments.

### International obligations

5.29 The rules of international trade are established by a number of mechanisms including custom, the agreement of the parties, commercial associations, national law, bilateral agreements between countries and multinational agreements. To a greater or lesser extent, each of these mechanisms gives rise to legally enforceable rights and obligations.

5.30 What should be noted here, however, is that by default, international law places the burden on the importing country to prohibit or regulate the importation of particular goods. There is no general international regime which dictates which goods may or may not be traded. When there has been an attempt to regulate or prohibit international trade in a particular commodity, it has been done in a piecemeal fashion. Examples of this approach include the regulation of the trade in fissionable material,\(^{208}\) narcotics\(^{209}\) and endangered species.\(^{210}\) No international treaty was specifically directed to trade in MBM, animal feed, cattle or cattle-derived products.

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