

NAFTA DEPLOYED (ENDNOTE):
DEFENDING CANADIAN BEEF —YES, NAFTA DOES COVER BSE
(and hoof and mouth and pseudorabies and blue tongue and...)

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It is interesting how those who have so vociferously defended NAFTA in the past ("it levels the playing field") seem now so bewildered as to how NAFTA can be used to force the Americans to open the border to Canadian beef.

International protocols and/or conventions notwithstanding, the FTA and NAFTAⁱ take precedence in all matters of trade between the Parties.ⁱⁱ

In the case of BSE, what constitutes a "level playing field" is defined in FTA/NAFTA Sanitary and Phytosanitary provisions - measures taken by a Party to preserve human, animal and plant life and health. And the referee is SOUND SCIENCE. Not protecting markets in Japan.

The fact that any BSE-related trade measures must comply with the Sanitary and Phytosanitary provisions of FTA/NAFTA is further evidenced by the explicit mention of Hoof and Mouth, Rinderpest, Blue Tongue and Pseudorabies in FTA Schedule 4: Animal Health. (BSE was not a concern in 1988, when the FTA was implemented; NAFTA drops reference to specific diseases in favour of more general wording).

American refusal to open the border to Canadian beef is also impacting Canada's dairy industry (veal and culled cows) and producers of goat, lamb and other ungulates for breeding and meat. Grain farmers too will be hit hard. While government has put some relief programs on the table, they only apply to fat cattle (ready for market) and offer no support to cow-calf producers (the mainstay of BC's industry) and other industry players.

Unless the border is quickly re-opened, Canada's \$11 million a day in losses will escalate, causing a dramatic contraction in our domestic beef industry. Gone will be the medium-sized, independent ranchers and breeders — the backbone of our domestic industry; the stewards of our communities.

There are some in the Canadian industry who feel it would be a mistake to challenge the Americans under NAFTA, preferring "persuasion" to "confrontation". They should speak to Canada's softwood lumber sector. On a trade level, the Americans respect only one thing: strength.

The report of the international panel investigating Canada's response to the BSE scare and the safety of Canada's beef sector was filed in on June 26th. We got top marks. Under NAFTA, there are now only two possible outcomes: the Americans must either re-open the border to Canadian beef or they must compensate Canada for their failure to do so. It's called a level playing field. NAFTA provides the weapons and the ammo to bring the Americans to heel on this one. Any further delays in the defense of Canada's farm communities and one has to question what exactly it is Canada's trade negotiators are holding in their hands...

ⁱ While most of the agricultural sections of the FTA were "ported" into NAFTA, nothing in NAFTA extinguishes the FTA. Nor have governments done anything to retract the FTA since the implementation of the NAFTA.

ⁱⁱ With the exception of the matters arising under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, the *Montreal Protocol on Substances that Deplete the Ozone Layer* and the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes* (exempted by NAFTA Article 104), NAFTA pre-empts all other agreements: NAFTA Article 103: Relation to Other Agreements 2. *In the event of any inconsistency between this Agreement and... other agreements, this Agreement shall prevail...*