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ANIMAL WELFARE STANDARDS AND AUSTRALIA'S LIVE EXPORTS INDUSTRY TO INDONESIA: CREATING AN OPPORTUNITY OUT OF A CRISIS

I. INTRODUCTION

In June 2011, ABC TV's *Four Corners* program aired footage of the outrageous cruelty and living conditions live cattle within the Australian live export industry experience when exported from Australia to Indonesia.¹ *Four Corners* viewers witnessed Indonesian slaughterhouse workers beating and whipping cattle before slaughtering them and to the horror of many, actually dismembering cattle while they were still conscious. The footage generated significant public outcry, leading the Australian government to suspend the live export of cattle to Indonesia.² While animal activists and the general public praised the suspension, the agricultural industry, particularly beef producers, were angered and worried. The industry argued that the government's suspension threatened a \$300 million industry,³ including thousands of Australian jobs.⁴ Animal activists have rebutted the agricultural industry's position, arguing that the current live exports industry actually harms, or at least undermines, the Australian agriculture industry.⁵ These activists further contend that converting to a processed meat industry would actually benefit Australian

1. See *Four Corners* (ABC television broadcast May 30, 2011), available at http://www.abc.net.au/4corners/special_ed/20110530/cattle/; see also Mark Dodd, *Lawyers Call for Livestock Watchdog*, THE AUSTRALIAN (July 18, 2011), <http://www.theaustralian.com.au/national-affairs/lawyers-call-for-livestock-watchdog/story-fn59niix-1226096403380>; *Horrific Film Footage Sparks Move to Ban Live Exports*, ABC NEWS (May 30, 2011), <http://www.abc.net.au/news/2011-05-30/horrific-footage-sparks-move-to-ban-live-exports/2737908>.

2. Dodd, *supra* note 1.

3. *Id.* In 2005, the Australian live exports of cattle industry was worth nearly \$350 million, and the Australian live exports of sheep were worth nearly \$250 million. HASSALL & ASSOCIATES AUSTRALIA, THE LIVE EXPORT INDUSTRY: VALUE, OUTLOOK AND CONTRIBUTION TO THE ECONOMY 4-5 (2006), available at <http://www.mla.com.au/CustomControls/PaymentGateway/ViewFile.aspx?zj6ruA8UZcKxd130i0ydAIsTJJy7a2ZHkUT9SU2YwFq7T+CO1jcxP4jdnGmtnjK3EYMKKAfsht7d1Tnt3BqiA>. From 2001 to 2006, the Australian livestock export industry was worth \$4.19 billion, almost all of which came from the export of cattle and sheep. *Id.*

4. It is estimated that the industry provides approximately 13,000 jobs. Malcolm Caulfield, *Live Export on Animals*, in ANIMAL LAW IN AUSTRALASIA: A NEW DIALOGUE 153, 154 (Peter Sankoff & Steven White eds., 2009).

5. Among the groups taking a stand are Animals Australia and the RSPCA. *Live Exports to Indonesia: Overview*, BAN LIVE EXPORT [hereinafter BAN LIVE EXPORT], <http://www.banliveexport.com/documents/FactSheet-Overview.pdf> (last visited Feb. 16, 2012).

live exports farmers.⁶ Animal activists cite New Zealand as an example of a country that once had a strong live exports industry but has now nearly banned the practice, while simultaneously preserving farmers' jobs.⁷ Experts in the industry worry, however, that the rise in live exports coming from Brazil, Australia's chief competitor, will lower the demand for both Australian live exports and for any Australian substitution products, such as processed meat.⁸

The debate over the live exports industry in Australia is particularly contentious given Australia's preeminent animal welfare standards. Australia is among the world's leaders in the fight to protect animal rights;⁹ for instance, Australia has strict standards for animals slaughtered within its borders.¹⁰ Despite its leadership role, Australia still exports thousands of cattle and sheep per year to countries that lack stringent animal welfare standards, especially livestock regulations.¹¹ Australia has, accordingly, grappled with how to balance economic concerns with animal welfare concerns,¹² resulting in a continuous cycle of Australian live

6. *Id.*

7. ACIL TASMAN, AUSTRALIAN LIVE SHEEP EXPORTS: ECONOMIC ANALYSIS OF AUSTRALIAN LIVE SHEEP AND SHEEP MEAT TRADE 64–66 (2009), available at http://www.rspca.org.au/assets/files/Campaigns/ACIL_Tasman/WSPA_live_exports_report071009_FINAL.pdf; see also *Australia—Dr Petersen Blasts Cattlemen's Association Claims*, MEAT TRADE NEWS DAILY (June 26, 2011) [hereinafter MEAT TRADE NEWS DAILY], http://www.meatradenewsdaily.co.uk/news/200611/australia_dr_petersen_blasts_cattlemens_association_claims.aspx.

8. See Miranda Devine, *Live Trade on the Horns of a Dilemma*, THE TELEGRAPH (June 30, 2011), <http://www.dailytelegraph.com.au/live-trade-on-dilemma-horns/story-fn6b3v4f-1226084713238> (“Australia’s biggest competitor . . . Brazil ha[s] been in talks with Indonesia and [is] expected to lock [Australia] out of the market—some fear forever.”); see also Peter Alford, *Rising Indonesia Beef Market Must Remain Open*, THE AUSTRALIAN (June 14, 2011), <http://www.theaustralian.com.au/business/opinion/rising-indonesia-beef-market-must-remain-open/story-e6fgr9if-1226074506149> (“Now Indonesia’s authorities, facing a probable 25 per cent shortfall in beef supply by late September because of suspended Australian cattle exports, are re-examining the embargo on imports from [South America].”).

9. See, e.g., IAN WHAN ET AL., ALLIANCE RESOURCE ECONOMICS, WORLD LIVESTOCK EXPORT STANDARDS: A COMPARISON OF DEVELOPMENT PROCESSES, SYSTEMS AND OUTCOMES ACHIEVED, FINAL REPORT (2006), available at <http://www.mla.com.au/CustomControls/PaymentGateway/ViewFile.aspx?A+q6hZrK0iH0cfNH6pGFr4asKWNlifyd3h9HuLVVrI/ukOBS0DvltU8+jAI0H2bA3EYMKKAFsh7d1Tnt3BqiA==>. The 2006 final report by Meat and Livestock Australia found that “there are no formal systems in place in other countries that would add significantly to the effectiveness of the Australian livestock export standards” and that Australian “standards should be considered ‘high quality’ and not requiring immediate or drastic revision.” *Id.* at 2.

10. AUSTRAL. DEP’T OF AGRIC., FISHERIES AND FORESTRY (DAFF), INDEPENDENT REVIEW OF AUSTRALIA’S LIVESTOCK EXPORT TRADE 64–98 (2011), available at http://www.livestockexportview.gov.au/_data/assets/pdf_file/0018/2030625/independent-review.pdf.

11. *Id.* Thus, Australia can control how cattle are treated within its borders, but it cannot ensure that cattle are treated according to Australian standards once they are transported to an importing country.

12. See discussion *infra* Parts II.B.1, IV–V.

exports trade suspensions followed by resumptions. This continuous cycle exposes an ongoing battle of priorities between parties interested in preserving animal welfare and those that profit from live exports.

This Note will explore whether Australia can remain a leader in the adoption of animal welfare standards while also preserving the viability of Australian farmers' jobs and livelihoods. Part II analyzes the history of the Australian live exports industry and outlines current industry standards and regulations. Parts III and IV discuss New Zealand's live exports industry and how New Zealand's model would work for Australia. Part V analyzes the impact that Brazil's industry could have on Australia, why Australia should implement a live exports policy like New Zealand's and how to accomplish this, and the positive economic impact a ban on the live exports industry would have on Australia's agriculture industry. This Note concludes by encouraging the Australian government to use the recent live exports industry crisis as an impetus for policy change. The Australian government can simultaneously implement an agricultural policy that reflects its stringent animal welfare standards and protects the livelihood of Australian farmers. The Australian government can accomplish this balance by passing legislation that would ban the live exports industry in progressive stages, giving farmers and export markets time to adjust to the ban, and by developing new markets, industries, and substitute exports.

II. AUSTRALIA'S LIVE EXPORTS INDUSTRY

A. *History of the Industry*

Australia has exported live cattle and sheep, primarily to the Middle East and Southeast Asia, for over thirty years.¹³ To meet the growing demands for live cattle in Southeast Asia and live sheep in the Middle East, many Australian livestock farmers turned their focus to live exports production.¹⁴ Farmers failed, however, to maintain the meat processing

13. FRANK DRUM & CAROLINE GUNNING-TRANT, AUSTL. BUREAU OF AGRIC. & RES. ECON. (ABARE), *LIVE ANIMAL EXPORTS: A PROFILE OF THE AUSTRALIAN INDUSTRY* iii, 1 (2008), available at http://adl.brs.gov.au/data/warehouse/pe_abarebrs99001420/liveexports.pdf.

14. See *id.* at 2–3; SG HEILBRON ECON. & POLICY CONSULTING, *THE FUTURE OF THE QUEENSLAND BEEF INDUSTRY AND THE IMPACT OF LIVE CATTLE EXPORTS* 10–13 (2010), available at <http://www.rspca.org.au/assets/files/Campaigns/Heilbron%202010%20-%20QLD%20beef%20industry%20&%20impact%20of%20live%20cattle%20exports.pdf>. The live cattle export industry doubled between 2004 and 2009 alone. Rosanne Ransley, *International Trade Statistics: Live Cattle Exports 2004–2009*, LIVECORP, <http://www.livecorp.com.au/Public%20Files/Intern%20stats/GTIS%20CattleExp2009.pdf> (last visited Sept. 30, 2012).

side of the agriculture industry at the same rate¹⁵ and resulted in Australian farmers' dependence on the live exports industry.¹⁶ Naturally then, the Australian government's decision to suspend live cattle exportation to Indonesia in June 2011 had a devastating impact on Australian farmers.¹⁷

The suspension of live cattle exports to Indonesia was not the first time the Australian government had suspended the trade to an importing country. From 1991 to 2000, the Australian government suspended the exportation of live sheep and cattle to Saudi Arabia after transportation conditions caused hundreds of sheep and cattle to perish from heat stress.¹⁸ In February 2006, the Australian government suspended its live exports to Egypt after the TV program *60 Minutes* aired disturbing footage showing the inhumane treatment of exported animals.¹⁹ Australia resumed

15. SG HEILBRON ECON. & POLICY CONSULTING, *supra* note 14, at 13. In 2005, Surveys estimate that seventy-five percent of Australian farms carrying over 300 cattle were "partially or substantially reliant" on the live export trade. *Id.*; DRUM & GUNNING-TRANT, *supra* note 13, at 4. It is likely that this dependence has increased, as the live cattle industry has increased significantly since that then. SG HEILBRON ECON. & POLICY CONSULTING, *supra* note 14, at 13; *see also* Milanda Rout, *Don't Fear Foreign Investors, Crean Tells the Regions*, THE AUSTRALIAN, Sept. 26, 2011, at 6.

16. Rout, *supra* note 15, at 6.

17. Press Release, Rabobank, Concerns 'Outside Farm Gate' Shake Australian Rural Confidence (Sept. 5, 2011) [hereinafter Concerns Outside Farm Gate], available at http://www.rabobank.com.au/Research/Documents/Rural_confidence_survey/Sept_2011/National.pdf. The suspension's negative impact on farmers has led to record pessimism regarding the future outlook of the Australian agriculture industry. *Id.* Of the farmers surveyed in a poll by Rural Confidence Survey in August 2011, thirty-five percent of farmers believed that the agricultural industry's economic situation would worsen in the upcoming year, while only eighteen percent believed the economic situation would improve. *Id.* When questioned specifically on what factors contributed to their opinion, farmers weighed external factors more heavily than internal ones. *Id.* Twenty-five percent of farmers' main concern was the government's "threat to live exports." *Id.*

The suspension of live exports has impacted some regions of Australia more dramatically than others. HASSALL & ASSOCIATES AUSTRALIA, *supra* note 3, at 6. Farmers from Western Australia and the Northern Territory have struggled the most. *Id.* Western Australia produces over seventy percent of Australia's live sheep exports and over forty percent of live cattle exports. *Id.* The Northern Territory produces over thirty percent of Australia's live cattle export industry. *Id.* Northern Queensland plays a large role in Australia's beef industry and was heavily impacted by the suspension of the live exports to Indonesia. Penny Timms & David Lewis, *Australia Should 'Stop Policing' Live Export Cattle Cruelty*, ABC NORTH WEST QUEENSLAND (June 1, 2011, 8:43:00 AM), <http://www.abc.net.au/news/stories/2011/06/01/3232368.htm?site=northwest>.

In another survey, the Rabobank Rural Confidence Survey, fifty-five percent of farmers believed the economic situation of the agricultural industry would worsen over the next year. Press Release, Robobank, North Queensland Farmer Confidence Slides Back Into Negative Territory (Sept. 5, 2011) [hereinafter NQ Farmer Confidence Takes a Dive], available at http://www.rabobank.com.au/Research/Documents/Rural_confidence_survey/Sept_2011/NthQLD.PDF. Fifty-eight percent of those farmers said that the government's policies, including the suspension of live exports, contributed to their pessimistic outlook. *Id.*

18. *Australia Suspends Live Cattle Exports to Indonesia*, OUR BUS. NEWS (June 8, 2011), <http://ourbusinessnews.com/australia-suspends-live-cattle-exports-to-indonesia>.

19. Memorandum from Graeme McEwen, Live Animal Exports 1-2 (Aug. 17, 2010), available at <http://www.bawp.org.au/current-issues/live-exports>.

exporting livestock to Egypt in October 2006 after both countries issued a Memoranda of Understanding (“MOU”).²⁰ The MOU clarified and reaffirmed the animal welfare standards that demand compliance from all parties to the export chain in order to resume the livestock trade.²¹ Immediately after the issuance of the MOU, however, the Australian government reinstated the suspension because industry members breached the MOU during the first shipment following the resumption of trading with Egypt.²² The exports resumed in November 2008, this time with greater restrictions replacing the MOU.²³

B. New Regulatory Requirements

The footage that aired on ABC’s *Four Corners* TV program in June 2011 renewed the debate over the humanity of the Australian live exports industry and the adequacy of the industry’s regulations. The recurring need to suspend the live exports industry following reports of the industry’s inhumane conditions illustrates the inadequacy of the regulatory scheme.²⁴ The Australian government’s decision to suspend live exports to Indonesia in 2011 emphasized Australia’s concern for animal welfare. In response, however, Australian officials were uncertain whether the government needed to merely heighten the animal welfare standards or ban the live exports industry altogether.²⁵ In June 2011, Australia explored both options.²⁶

20. *Id.* at 2.

21. *Id.* The MOU on Handling and Slaughter of Australian Live Animals mandated compliance with the World Organization for Animal Welfare (“OIE”) Code, which prescribes international welfare guidelines. *Id.* In reality, though, MOUs do not hold much weight. The MOU and the OIE guidelines it imposes are not enforceable because states and the OIE have no enforcement mechanisms. *Id.* In addition, the terms of the MOUs are confidential, preventing MOUs from being “exposed to public scrutiny.” *Id.*

22. McEwen, *supra* note 19, at 3. Animals Australia discovered the breaches and unveiled the video footage to the Australian government in early 2007. *Id.*

23. *Id.* at 6–7. Australia issued an Executive Order to resume exportations, which replaced the MOU but allowed the exportation of cattle to only one port of destination. *Id.*

24. *60 Minutes* (CBS News television broadcast Feb. 26, 2006). In addition to national broadcasting of acquired footage, Animals Australia has undertaken numerous investigations into the live animal export industry. See Animals Austl., *Watch the Videos*, LIVE ANIMAL EXPORT: INDEFENSIBLE, <http://liveexport-indefensible.com/video.php> (last visited Oct. 14, 2012). These include Kuwaiti investigations in 2003 and 2010, Middle Eastern investigations in 2006 and 2007, and an Egyptian investigation in 2006. *Id.* Video footage that Animals Australia has captured throughout its investigations are posted on its website. *Id.*

25. See *Gradual Opening of Indonesia Trade Being Examined, As Pastoralists Lobby in Canberra*, ABC RURAL (June 22, 2011) [hereinafter *Gradual Opening of Indonesia Trade*], <http://www.abc.net.au/rural/news/content/201106/s3250433.htm>. For example, the Australian Trade

1. Legislation

The Australian Parliament's Greens party has led the movement to pass legislation banning the live exports industry. On June 23, 2011, the Australian Parliament introduced two bills proposing to halt or limit the live exports industry.²⁷ The Greens introduced The Live Animal Export (Slaughter) Prohibition Bill 2011 [No. 2], which sought to amend the Export Control Act of 1982 and completely prohibit the export of livestock for slaughter.²⁸ The second bill, the Live Animal Export Restriction and Prohibition Bill 2011 [No. 2], introduced by independent Parliament member Andrew Wilkie, sought to amend the Australian Meat and Livestock Industry Act of 1997 to establish a gradual restriction schedule with stricter regulations leading up to the complete prohibition of

Minister, who was on one side of the debate, was quoted as stating, "the Federal Government wants to initially resume exports of Australian cattle to a handful of Indonesian abattoirs." *Id.*

Independent senator Nick Xenophon and independent federal Member of Parliament ("MP") Andrew Wilkie, in contrast, prefer a gradual cessation of the live export industry. *See* discussion *infra* Part II.B.1. Mr. Wilkie went as far as to say: "Heads should roll at MLA . . . They've really let us down." *Live Export Ban Viable, Independents Say*, THE SYDNEY MORNING HERALD (June 20, 2011) [hereinafter *Live Export Ban Viable*], <http://news.smh.com.au/breaking-news-national/live-export-ban-viable-independents-say-20110620-1gb56.html>.

The Australian Greens have taken an even stronger stance, demanding an immediate cessation of the live export industry. *See* discussion *infra* Part II.B.1. Australian Greens leader Bob Brown said in regards to Mr. Wilkie and Senator Xenophon's bill, "They [Mr. Wilkie and Senator Xenophon] say three years is enough, (but) it isn't, (the trade) should be stopped now." *Live Export Ban Viable, supra*. Supporters of a complete or even gradual ban of live exports support a transition to a processed meat trade industry. *Id.*

26. *See* Bob Brown et al., *Greens 'Fully Committed' to Live Export Ban*, THE AUSTRALIAN GREENS (May 30, 2011), <http://greensmps.org.au/liveexports> (discussing parliamentary action following the live export ban to Indonesia). The Australian Greens parliamentary party has also attempted to get to the bottom of the violations, acting on allegations that MLA played a contributing role in, or at least enabled, the inhumane treatment of animals exported to Indonesia. *Id.* On June 16, 2011, the Australian Parliament passed the Australian Greens' motion for a Senate inquiry into the live export industry, and specifically, the contributions MLA has made to the industry and breaches of animal welfare standards. *Id.* The Senate Rural Affairs and Transport Reference Committee, who conducted the inquiry, were supposed to submit the report by August 25, 2011, but the deadline has been pushed back. *Id.*

27. Mary Goode, *Major Parties Reject Bills to Ban Live Exports*, ABC RURAL (Aug. 18, 2011), <http://www.abc.net.au/rural/news/content/201108/s3296349.htm>. Senator and Agriculture Spokesperson Rachel Siewert (Australian Greens) and MP Adam Bandt led the introduction of the bills. *Id.*; *see also* *Greens Want Blanket Ban on Live Exports*, THE SYDNEY MORNING HERALD (June 6, 2011), <http://www.smh.com.au/environment/animals/greens-want-blanket-ban-on-live-exports-20110606-1fote.html>.

28. *Id.*; *Live Animal Export (Slaughter) Prohibition Act 2011* (Cth) (Austl.), available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4595_first/toc_pdf/11121b01.pdf;fileType=application%2Fpdf.

the trade on July 1, 2014.²⁹ On August 18, 2011, Parliament defeated both bills.³⁰

2. Australia's Animal Welfare Standards

Before Parliament defeated the two bills, Federal Minister for the Department of Agriculture, Fisheries and Forestry ("DAFF") and Senator Joe Ludwig announced that Australia would lift the suspension of live cattle to Indonesia on the condition that exporters proved their compliance with new animal welfare standards.³¹ The government established the Industry Governing Working Group ("IGWG") to develop the new regulatory system that the DAFF would oversee.³² The new standards established the Exporter Supply Chain Assurance System ("ESCAS"), which placed a greater emphasis on ensuring that cattle receive humane treatment throughout the entire export chain.³³ The new standards expand

29. *Live Animal Export Restriction and Prohibition Act 2011* (Cth) (Austl.), available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4594_first/toc_pdf/11120b01.pdf;fileType=application%2Fpdf; see also Goode, *supra* note 27. Under the amendments, the bill provides that exportation of livestock must satisfy the new regulations. *Live Animal Export Restriction and Prohibition Act 2011* (Cth) (Austl.), *supra*. Exporters must hold a license, which they can only acquire if "the Secretary is satisfied either that the livestock will be treated satisfactorily in the country of destination or that there are grounds for a transitional exemption." *Id.* pt. II.B. Livestock animals are "treated satisfactorily" in the destination country if they are "kept . . . in holding premises that comply with the Holding Standards; and transported to slaughter, unloaded, kept in lairage and slaughtered in accordance with the OIE Guidelines; and stunned using appropriate humane restraints immediately before slaughter." *Id.* In determining whether these conditions will be met, the Secretary may consider the following factors: "any undertaking . . . or . . . obligations on, persons who will control the livestock in the country of export; any history of exports of livestock for slaughter to the same persons or the same country; and any other matters that he or she considers relevant." *Id.*

30. See Goode, *supra* note 27.

31. Press Release, Live Corp, Joint Industry Statement: Live Export Trade Recommencement (July 6, 2011) [hereinafter Live Corp Press Release], available at <http://www.nff.org.au/read/2130/industry-statement-live-export-trade.html>.

32. *Exporter Supply Chain Assurance System (ESCAS)*, DAFF [hereinafter *ESCAS*], <http://www.daff.gov.au/aqis/export/live-animals/livestock/escas> (last visited Aug. 29, 2012). Under the new framework, exporters are required to prove that an "acceptable Exporter Supply Chain Assurance system (ESCAS)" is in place and to receive the approval of DAFF. *Id.*

33. Live Corp Press Release, *supra* note 31. The Australian government developed these standards under the guidance of the Australian Veterinary Association. Press Release, Australian Government, New Welfare Assurances for Livestock Exports 1 (July 2011), available at http://www.liveexports.gov.au/__data/assets/pdf_file/0005/1957316/factsheet-lae-210711.pdf.

The supply chain standards break down into five requirements: (1) meet international welfare standards of the OIE at all times; (2) control in the supply chain; (3) traceability of each animal; (4) reporting of individual animals when requested; and (5) independent audits that will be made public. *Id.* See also Press Release, MAFF, Gillard Government Reforms Live Export Trade (Oct. 21, 2011) [hereinafter Gillard Government Reforms], available at http://maff.gov.au/media_office/media_releases/media_releases/2011/october/gillard-government-reforms-live-export-trade; *ESCAS*, *supra* note 32.

upon the pre-existing Australian Standards for Export of Livestock, which required exporters' compliance with the standards as a precondition to receiving certification by DAFF and authorization to resume exportation to Indonesia.³⁴ In August 2011, the first company received certification to resume exportation in compliance with the new standards.³⁵

All participants in the exportation of livestock must satisfy each supply-chain standard throughout the entire export chain to receive and maintain certification. *Australian Position Statement for the Export of Livestock 2011* (Cth) paras 3.2, 5 (Austl.), available at http://www.daff.gov.au/_data/assets/pdf_file/0010/1904365/australian-standards-v2.3.pdf. The eight steps of the export chain are as follows: (1) planning the consignment; (2) sourcing and on farm preparation of livestock; (3) land transport; (4) pre-embarkation assembly; (5) vessel preparation and loading of the vessel; (6) sea/air voyage; (7) disembarkation or unloading; and (8) post-disembarkation. *Id.* para 3.2. The exporter is responsible for the health and safety of the livestock until the final step, post-disembarkation. *Id.* Upon post-disembarkation, this responsibility is transferred to the importer, under the authority of the importing country. *Id.*

On October 21, 2011, the Australian government announced the new standards to be gradually implemented by the end of 2012 for all importing countries, not just Indonesia. Gillard Government Reforms, *supra* note 33. The new standards, similar to those already implemented for Indonesia, were directly in response to, and in compliance with, the findings and recommendations of the Independent Review of Australia's Livestock Export Trade (the Farmer Review) and the IGWGs. *Id.*

34. See, e.g., *Australian Position Statement for the Export of Livestock 2011* (Cth) (Austl.), *supra* note 33. The Australian Standards for Export of Livestock is regulated by Meat and Livestock Australia ("MLA") and LiveCorp. MLA "delivers marketing and research and development services for Australia's cattle, sheep and goat producers." *About MLA, MEAT & LIVESTOCK AUSTRALIA*, <http://www.mla.com.au/About-the-red-meat-industry/About-MLA> (last visited Oct. 15, 2012). To fulfill its mission, MLA markets and provides research and development services to 47,000 cattle, sheep and goat producer members to help them meet community and consumer expectations. *Who We Are, MEAT & LIVESTOCK AUSTRALIA*, <http://www.mla.com.au/About-MLA/Who-we-are> (last visited Mar. 11, 2013).

"LiveCorp is responsible for live export industry service delivery. It is funded through statutory levies on exporters and is accountable to industry members under a constitution, and to the Australian Government under a Statutory Funding Agreement." *LiveCorp, AUSTRALIAN GOVERNMENT*, <http://australia.gov.au/directories/australia/livecorp> (last visited Oct. 15, 2012).

Under the Australian Standards for Export of Livestock, the Australian government encourages, but does not require, stunning of animals before their slaughter in the destination country. Gillard Government Reforms, *supra* note 33. This is in contrast with Australian policy for animals slaughtered in Australia, which mandates compulsory stunning except in rare cases of religious practice. Dan Harrison, *Export Report Criticised for No Compulsory Stunning*, THE SYDNEY MORNING HERALD (Oct. 22, 2011), <http://www.smh.com.au/national/export-report-criticised-for-no-compulsory-stunning-20111021-1mcg8.html>. South Australia ("SA") Agriculture Minister Michael O'Brien has moved to require that importing countries of the live animals stun the animals before slaughtering them. Greg Kelton, *Cattle Stunning Proposal Placed on Hold*, THE ADVERTISER (July 15, 2011), <http://www.adelaidenow.com.au/agriculture-minister-demands-mandatory-stunning-for-cattle/story-efrea6u-1226094187730>. Parliament has yet to vote on the issue. *Id.*

The new regulations announced by the Gillard Government on October 21, 2011 do emphasize the government's commitment to promoting the destination countries' use of stunning before slaughtering the animal, but again, do not require it. Gillard Government Reforms, *supra* note 33. The government contends it will promote the use of stunning through several strategies:

[R]aising the inclusion of stunning in the OIE guidelines through the formal OIE process; promoting the use of stunning including through work instructions and improved processes and stunning training through regional OIE forums; pursuing, where possible, bilateral agreements which include stunning with [Australia's] trading partners; supporting industry

Although the Australian government has exhibited an intention to transform and improve the industry's regulatory system, neither government backbenchers³⁶ nor animal activists believe these reforms will prevent future abuses.³⁷ Additionally, while the new ESCAS requires independent auditors, critics worry that these auditors will, in practice, not truly be independent, as private companies will simply hire livestock industry insiders, as opposed to government officials, to conduct the audits.³⁸ Indeed, the animal activist group Animals Australia documented video footage of continued breaches of animal welfare in certified Indonesian abattoirs in February 2012.³⁹ The critics argue that these

efforts to develop and implement voluntary codes of conduct that raise standards above OIE and which include stunning; and funding animal welfare improvements in importing countries with support from Australian industry.

Id.

35. Jared Lynch, *Green Light for Exporter to Resume Cattle Trade to Indonesia*, THE AGE (July 30, 2011), <http://www.theage.com.au/national/green-light-for-exporter-to-resume-cattle-trade-to-indonesia-20110729-1i4en.html>. The agribusiness Elders was the first company to receive certification and government approval to resume shipping. *Id.* Elders is, however, in a unique position. Unlike most Australian exporters, Elders does not export their animals and simply hand them off to Indonesian importers. *Id.* Instead, Elders owns a feedlot and abattoir in Indonesia, so it maintains control over its animals until slaughter. *Id.* All of the Elders facilities are operated in compliance with Australian standards. *Id.*

Since live exports resumed, as of November 2011, Australian exporters have shipped over 100,000 cattle to Indonesia, and it is expected that 100,000 more will be exported by the end of 2011. Press Release, MAFF, Australian Exporters Take to New Regulatory Framework in Drovers (Oct. 18, 2011), available at http://maff.gov.au/media_office/media_releases/media_releases/2011/october/australian-exporters-take-to-new-regulatory-framework-in-drovers. Senator Ludwig stated:

These exports have been approved because applicants demonstrated that animals would be handled and processed at or above internationally accepted animal welfare standards. . . . The fact the number of cattle exported to Indonesia looks set to exceed 100,000 since the lifting of the temporary suspension is a testament to the hard work of industry and of Government since the suspension was lifted.

Id.

36. *Backbenchers*, AUSTRALIAN POLITICS, <http://australianpolitics.com/parliament/backbenchers> (last visited Oct. 15, 2012) ("Backbenchers are those Members of Parliament who are neither party leaders, ministers or shadow ministers. Backbenchers may be members of the House of Representatives or the Senate. They are often known as 'private members.'").

37. Richard Willingham, *MPs Attack Ludwig Over Rules*, THE AGE (July 8, 2011), <http://www.theage.com.au/national/mps-attack-ludwig-over-rules-20110707-1h4t8.html>.

38. *Id.* MP Melissa Parke of the Australian Labor Party expressed her concerns by noting that "this whole matter occurred because of the self-regulatory failure of industry bodies and it shouldn't be forgotten. These groups have not taken responsibility. The fact the resumption has been announced does not mean that these [extra] steps shouldn't take place." *Id.*

39. *Prime Minister Julia Gillard Says Australia's*, THE LAND, May 23, 2012, at 20. Animals Australia submitted the video footage to the DAFF and an investigation followed. DAFF concluded that two Australian exporting companies utilized Indonesian abattoirs that did not comply with the new ESCAS. *Id.* These abattoirs had been certified as humane. Nick Butterly, *Abuse Video Leads to New Cattle Bans*, THE WEST AUSTRALIAN (May 19, 2012), <http://au.news.yahoo.com/thewest/a/-/breaking/13726948/abuse-video-leads-to-new-cattle-bans/>.

breaches illustrate that such self-regulation has failed in the past and will continue to falter moving forward.⁴⁰

3. Indonesia's Animal Welfare Standards

Although Indonesia is a member of the World Organization for Animal Health ("OIE"),⁴¹ it lacks both domestic animal welfare standards and legislation to enforce the OIE Guidelines.⁴² Examining the realities of the domestic slaughter industry, Indonesia's failure to implement animal welfare standards is apparent. The majority of Indonesian workers that slaughter Australian live exports are unskilled and have never received training on proper slaughtering practices. The few who have received proper training likely received it from Meat and Livestock Australia ("MLA") and its animal welfare and training programs in Indonesia.⁴³

C. Economics of the Australian Live Exports Industry

Australia has the largest live exports industry in the world.⁴⁴ In 2003, its cattle exports amounted to ten percent of the global market and its sheep exports amounted to thirty-three percent of the market.⁴⁵ Australia

40. *Greens Demand Cattle Be Stunned*, THE SYDNEY MORNING HERALD (July 7, 2011), available at <http://www.smh.com.au/environment/animals/greens-demand-cattle-be-stunned-20110707-1h48y.html>; see also *supra* note 38.

41. AUSTRALIAN DEPT OF AGRIC., *supra* note 10, at xvi. The World Organization for Animal Health ("OIE") is an intergovernmental organization founded to protect animal welfare around the world. *About Us*, WORLD ORG. FOR ANIMAL HEALTH, <http://www.oie.int/about-us/> (last visited Oct. 15, 2012). There were 178 member countries and territories as of 2011. *Id.* The OIE has established a set of internationally accepted standards for animal welfare that its member countries are expected to follow by creating and implementing animal welfare guidelines that meet these standards. AUSTRALIAN DEPT OF AGRIC., *supra* note 10, at xvi.

42. Senator Rachel Siewert, Speech for the Second Reading of the Live Animal Export (Slaughter) Prohibition Bill 2011 (June 15, 2011) (transcript available at <http://www.rspca.org.au/asets/files/Campaigns/16601032.pdf>). The OIE Guidelines on animal welfare can be found on the OIE website. *The OIE's Achievements in Animal Welfare*, WORLD ORG. FOR ANIMAL HEALTH, <http://www.oie.int/animal-welfare/animal-welfare-key-themes/> (last visited Oct. 15, 2012).

43. *Australian Beef Cattle Farmers Urge Caution on Indonesia Ban*, ASIA PULSE (June 1, 2011) [hereinafter *Australian Beef Cattle Farmers Urge Caution*] (on file with Lexis). The MLA and LiveCorp have spent over \$3 million in Indonesia, *inter alia*, to train Indonesian abattoirs on how to properly slaughter the animals to reduce the pain inflicted. *Id.* Much of this money comes from the levies the MLA charges per head on the cattle and sheep. Darren Gray, *Tough Questions for an Industry Feeling the Heat*, THE AGE (June 18, 2011), <http://www.theage.com.au/national/tough-questions-for-an-industry-feeling-the-heat-20110617-1g7pl.html>. From 2009 to 2010, the MLA generated \$96.4 million from these levies. *Id.*

44. Caulfield, *supra* note 4, at 154. In 2003, Australia's live cattle exports amounted to ten percent of global cattle exports. PRODUCTIVITY COMM'N, TRENDS IN AUSTRALIAN AGRICULTURE 73 (2005) (Austl.), available at http://www.pc.gov.au/_data/assets/pdf_file/0018/8361/agriculture.pdf.

45. Caulfield, *supra* note 4, at 154.

exported approximately 4.1 million sheep at a value of \$280 million from 2007–2008.⁴⁶ Nearly ninety-five percent of the live sheep exports to the Middle East come from Australia.⁴⁷ In 2010 alone, Australia exported approximately 715,000 cattle to Indonesia.⁴⁸ The value of these exports amounted to \$437.4 million⁴⁹ and constituted sixty percent of Australia's live cattle exports.⁵⁰ In addition, the industry has been a significant source of employment—it has created approximately 13,000 jobs concentrated in the Northern Territory and Northern Queensland parts of Australia.⁵¹

Thus, the Australian government's decision to temporarily suspend the live exports of cattle to Indonesia had a devastating impact on farmers, making news headlines and adding gloom to the already dismal economic outlook.⁵² The Australian government recognized that it could not ban the industry entirely when livestock farmers had no substitute industry to which it could turn.⁵³ Thus, to appease the concerns of farmers while also upholding Australian animal welfare standards, the Australian government provided some assistance to farms that lost significant profit from the suspension.⁵⁴ Simultaneously, farmers and government officials began to

46. ACIL TASMAN, *supra* note 7, at 6.

47. *Id.* at 4.

48. LIVECORP, ANNUAL REPORT 2009–2010, at 10 (2010) [hereinafter LIVECORP ANNUAL REPORT], available at <http://www.livecorp.com.au/Public%20Files/Publications/Annual%20Report%2009-10%20Final.pdf>.

49. *Id.*

50. *Australia Suspends Live Cattle Exports to Indonesia*, OUR BUS. NEWS (June 8, 2011), <http://ourbusinessnews.com/australia-suspends-live-cattle-exports-to-indonesia>.

51. Caulfield, *supra* note 4, at 154; *Australia Bans Some Live Cattle Exports to Indonesia*, EU TIMES (May 31, 2011), <http://www.eutimes.net/2011/05/australia-bans-some-live-cattle-exports-to-indonesia/>.

52. See *Concerns Outside Farm Gate*, *supra* note 17; see also *NQ Farmer Confidence Takes a Dive*, *supra* note 17.

53. See *Australian Beef Cattle Farmers Urge Caution*, *supra* note 43. “The Australian cattle industry and rural communities dependent on live exports have urged caution, as the federal government faces pressure to impose bans on Indonesia. . . . Charters Towers Mayor Ben Callcott, whose region is a large exporter of live cattle, said it was important to keep the trade going.” *Id.*

54. Kym Agius, *Double Whammy for Struggling Producers*, THE SYDNEY MORNING HERALD (Sept. 1, 2011), <http://www.smh.com.au/business/double-whammy-for-struggling-producers-20110831-1jlyp.html>. In June 2011, “the [Australian] government announced \$30 million in cash support to businesses affected by the [suspension of live exports to Indonesia], in the form of \$25,000 in cash grants per enterprise.” *Id.* Mid-year reports found that the offered \$30 million was grossly inadequate, as losses to the live cattle exports industry could reach upwards of \$200 million. Gemma Gadd, *\$200 Million Claim for Live Ban*, THE WEEKLY TIMES, June 13, 2010, at 20. At any rate, few farmers have taken advantage of the program. HYDROS CONSULTING, FINANCIAL IMPACT OF CATTLE EXPORT RESTRICTIONS TO INDONESIA 8 (2011), http://www.liveexports.gov.au/_data/assets/pdf_file/0009/1984383/financial-impacts-of-export-restrictions-report.pdf. Analysts blame social stigma and lack of knowledge about the benefits for the low level of applications for assistance. *Id.*

Further, to the chagrin of members of Parliament and livestock farmers, MLA originally refused to use its levies to contribute \$5 million to alleviate the cost of the export suspension. *Gradual*

recognize and accept that Australian farmers needed to find and develop alternative industries and markets.⁵⁵ One possible alternative is to follow the successful New Zealand model: substitute live animals for meat processed in Australia, and then export the processed meat product to the destination countries.

III. NEW ZEALAND AS A MODEL FOR AUSTRALIA

A. *History of New Zealand's Live Exports Industry*

New Zealand instituted a total ban on live exports in the early 1980s.⁵⁶ Once New Zealand resumed the trade in 1985, the number of sheep exported grew rapidly, doubling by 1989.⁵⁷ The rapid growth of the industry likely hindered New Zealand's ability to adequately regulate and ensure the welfare of the animals. The lack of regulation became heavily publicized when twelve percent of the sheep in a single shipment to Saudi Arabia died en route in 1990.⁵⁸ In response, New Zealand suspended the live exports industry until it developed a code of welfare in 1991.⁵⁹ The code required the Ministry of Agriculture and Forestry ("MAF") to approve a veterinarian to accompany each shipment of sheep to the importing country and established a reporting system for each shipment.⁶⁰ In the wake of the new regulations, the industry continued to grow, reaching its peak volume in the mid-1990s.⁶¹

Opening of Indonesia, *supra* note 25. Subsequently, however, the Australian government budgeted \$5 million to assist exporters implementing the new ESCAS. *Govt Nod to Continue Live Trade*, COUNTRYMAN, July 19, 2012, at 5. It also allocated \$10 million for distribution among importing countries that are their improving animal welfare standards. *Id.*

55. *See Saudi, Japan Markets in Doubt*, COUNTRYMAN, Aug. 23, 2012, at 10. Australian live exports farmers have been seeking alternative live export markets in the Middle East, Europe, and China in an attempt to subvert the consequences of the Indonesian live export ban and the subsequent fallout. *Id.*; *see also* Trevor Chappell, *AACo Looks Toward Meat Market in China*, THE AUSTRALIAN (Aug. 8, 2012), <http://www.theaustralian.com.au/business/breaking-news/aaco-narrows-losses-in-first-half/story-e6frg90f-1226445707754>; *Cattle Kings Focus on Chinese Growth*, HOBART MERCURY, Aug. 10, 2012, at 47.

56. *See* ACIL TASMAN, *supra* note 7, at 64.

57. *Id.*

58. *Id.* at 64–65.

59. *Id.* at 65. The Animal Welfare Advisory Committee developed the code, which established standards to ensure the protection of each animal's welfare and to reduce the mortality of the live animals to less than one percent. *Id.*

60. *Id.* at 65.

61. *Id.* At the industry's peak, New Zealand live exporters were trading over one million sheep annually. *Id.*

By 2000, however, the number of shipments of live sheep fell to just one shipment per year.⁶² After 2003, all shipments ceased.⁶³ The New Zealand government then imposed a Customs Export Prohibition Order in 2007 after a review of the country's live export policies.⁶⁴ The Order prohibited all exports of live animals without the approval of the Director-General of MAF, based on applications from desiring exporters.⁶⁵ There has not been a single application to export live animals since the government issued the Order.⁶⁶ New Zealand's agricultural industry has instead transformed itself into a frozen, processed meat industry.⁶⁷

B. Economics of the New Zealand Livestock Industry and the Viability of Substituting for Processed Meats

When the number of live sheep exports to the Middle East began declining in the late 1990s and then ceased in 2003, processed sheep meat from New Zealand did not adequately substitute for the loss of live sheep exports to the region.⁶⁸ Statistics show that the most drastic decrease in New Zealand meat exports occurred in the 1990s upon the commencement of live exports in the Middle East after a suspension of the trade.⁶⁹ Once the live exports trade started declining, there were only modest recessions in the trade of processed meat.⁷⁰ After the live exports industry ceased entirely, the economic environment completely changed.⁷¹ Processed sheep meat exports from New Zealand to the Middle East have actually

62. *Id.*

In 2000, approval for shipments came under the Animal Welfare Act, and the responsibility for approving shipments [began to lie] with MAF's Director-General. Shipments dwindled to one a year (approximately 40,000 sheep) due to a combination of economic factors, falling New Zealand sheep numbers, higher costs from New Zealand, and the age restriction on lambs. Deaths on these shipments remained consistently below 0.8 percent.

Id.

63. *Id.* at 67.

64. *Id.* at 65. The review focused on "the treatment and handling of livestock and slaughter practices in importing countries." *Id.* It also "examined the potential impact on New Zealand's reputation as a responsible exporter of agricultural products. The conclusion was that improvements were needed to manage the risks of potential ill-treatment of animals and any economic consequences that might result from that." *Id.*

65. *Id.*

66. *Id.* at 66.

67. *See id.* at 66–67; *see also* MEAT TRADE NEWS DAILY, *supra* note 7.

68. ACIL TASMAN, *supra* note 7, at 66–67.

69. *Id.*

70. *Id.*

71. *Id.*

risen and are now viewed as a viable substitute to the previous live exports industry.⁷²

IV. FITTING THE NEW ZEALAND MODEL TO AUSTRALIA

While an immediate cessation of the live exports industry would cause substantial financial harm to Australian farmers and their communities, a gradual reduction leading to an eventual termination of the entire industry could improve the long-term economic condition of farmers and their communities by expanding the domestic meat processing industry and Australia's domestic and international trading markets.⁷³ Critics of the meat processing substitution model argue that Australia could not substitute all of its live exports to Indonesia, particularly live cattle, with processed meat.⁷⁴ These critics claim that the Indonesian market lacks demand for processed meat for various reasons. These reasons include Indonesia's current level of economic development, such as the widespread lack of food refrigeration and low gross national income per person,⁷⁵ and the competition from other exporting countries such as Brazil and India.⁷⁶

Although processed meat exports may not be a perfect substitute for live cattle, Australia has the infrastructure to transition its agricultural industry from one dominated by live exports to a diversified industry that includes processed meat and alternative markets domestically and

72. *Id.* "The New Zealand experience suggests that processed meat and live sheep are substitutes, which was the conclusion of the Meat and Wool Economic Service of New Zealand: 'The trade of live lambs and sheep is in direct competition with export slaughter stock.'" *Id.* See also MEAT TRADE NEWS DAILY, *supra* note 7.

73. At least two studies have concluded that the live export industry is undermining Australia's meat processing industry. See ACIL TASMAN, *supra* note 7, at 67. See also SG HEILBRON ECON. & POLICY CONSULTING, *supra* note 14, at 3-9. The SG Heilbron Economic & Policy Consulting report found that live cattle exports have the capacity to threaten \$3.5 billion worth of assets, \$5 million in turnover, and 36,000 jobs in the beef-processing industry in Queensland. *Id.* at 3.

74. DRUM & GUNNING-TRANT, *supra* note 13, at 24-26.

75. *Id.* at 19-20. In addition to developmental factors, critics cite religious and cultural factors as crucial reasons for why Australia could not successfully substitute meat processed in Australia (beef in boxes) for live cattle exports. *Id.*

Another factor that affects the viability of Australia's substitution of processed meat is the exchange rate between the Indonesian rupee and the Australian dollar. *Id.* at 10-11; see also HASSALL & ASSOCIATES AUSTRALIA, *supra* note 3, at 39.

76. HASSALL & ASSOCIATES AUSTRALIA, *supra* note 3, *Executive Summary*. The ABARE report concluded that because Australian beef does not carry the threat of foot in mouth disease, unlike Indian or Brazilian beef, Australia does have the advantage of processed meat substitutes over its competitors. DRUM & GUNNING-TRANT, *supra* note 13, at 11; HASSALL & ASSOCIATES AUSTRALIA, *supra* note 3, at 38.

abroad.⁷⁷ Admittedly, such a transition would need to be gradual and would require substantial collaboration between the industry and the government to ensure that farmer livelihoods are protected.⁷⁸ In addition,

77. See, e.g., SG HEILBRON ECON. & POLICY CONSULTING, *supra* note 73. Australia's processed beef industry is already expansive—Australia is already the second largest exporter of beef in the world and is the largest exporter to markets free of foot and mouth disease (“FMD”). *Id.* at 25. In addition, “the beef industry is the biggest rural industry in Australia worth \$7.1 billion in 2008–09.” *Id.* at 24. In Queensland alone, the beef processing industry employs 36,000 people, “accounting for around 2% of total State employment and making it the largest manufacturing industry employer in the State.” *Id.* at 25. Of those 36,000, nearly one-third of them (10,920) were full-time employees in 2008–2009. *Id.* at 29.

And the Australian processed beef industry still has the significant potential for future growth. *Id.* at 24. Its potential is particularly strong if the investment and human capital currently devoted to the live export industry transitions to the beef processing industry. *Id.* at 30–35. The SG Heilbron Economic & Policy Consulting report calculated that “if all the cattle exported live from Queensland in 2008–09 had instead been processed in the state, there would have been an estimated increase in [full-time equivalent] FTE employment of 1,213 jobs and an additional \$139 million in Gross State Product.” *Id.* at 31. The increase in employment would not only provide job opportunities for those directly in the beef processing sector, but also for those Queensland residents in “other sectors such as retail trade, property and business services, health and community services and transport.” *Id.* The cattle processing industry in the Northern Territory would similarly increase employment opportunities and the Gross State Product. *Id.* at 31–32 (finding that there would be an additional 3,112 full-time jobs and \$382 million in Gross State Product). This additional employment would enable Queensland to process five percent more cattle per year than if they were exported live to markets abroad. *Id.* at 30.

Remarkably, these figures reflect the potential growth for only one of Australia's beef processing states. Adding the Northern Territory to its calculations, the SG Heilbron Economic Policy & Consulting report also calculated that “if all the cattle that were exported live in 2008–09 had in fact been processed in Queensland, this would have resulted in a 14% increase in the number of cattle slaughtered.” *Id.* at 31. Fortunately, Australia is starting to realize its potential and has started this process. In May of 2012, the Australian Agricultural Company (“AACo”) proposed to build an \$83 million abattoir in Darwin. *AACo to Establish Darwin Abattoir*, THE ADVERTISER, May 31, 2012, at 58 [hereinafter *AACo to Establish Darwin Abattoir*]. The abattoir will create up to 260 jobs, including jobs for indigenous and female workers and will be able to process 1,000 head of cattle per day. *Id.*

In addition, Australian beef is in high demand because of its FMD-free status. SG HEILBRON ECON. & POLICY CONSULTING, *supra* note 73, at 25 (“Australia is perfectly positioned to take advantage of rising demand for premium beef from fast-growing Asian markets such as Indonesia which are concerned about allowing beef from FMD-endemic countries [sic].”). The FMD-free status of Australian beef increases not only the demand for it, but also its market value, and thus, the potential profit of the industry. *Id.* For instance, Brazilian beef, which is not FMD free, has an average unit value of approximately \$2.20 per kilogram. *Id.* Australian beef, in comparison, has an average unit value of approximately \$3.00 per kilogram. *Id.* Although beef prices have risen since 2011, causing a negative demand shift, the reduction in the global supply of cattle and Australian farmers' second successful cattle season offset the price increase and helped increase the demand for Australian cattle. MEAT AND LIVESTOCK AUSTRAL., AUSTRALIAN CATTLE INDUSTRY PROJECTIONS 2012, at 1 (2012). The MLA also reported that the global demand for cattle is expected to grow and the demand for Australian cattle, in particular, is predicted to remain steady. *Id.* at 2.

Further, unlike the live export industry, Australian beef processors are not faced with harsh competition from other beef processing countries. SG HEILBRON ECON. & POLICY CONSULTING, *supra* note 73, at 24. Its largest competitor is the United States, but given the North American cattle industry's continual mad cow disease problem, Australia has “outstanding growth prospects and virtually no competition.” *Id.* at 24–25.

78. For more information on the assistance the Australian government has offered to farmers, see

the Australian government will need to continually consult with its current and potential future trading partners to ensure that its transition from live exports does not permanently harm its trade relationships or cause trade to cease altogether.⁷⁹ Consultation with trade partners, such as Indonesia, whose food security currently relies on Australian live exports, is particularly critical if Australia has any chance of making the transition to an industry of processed meat exportation.⁸⁰

The Australian-Indonesian beef trade relationship, in particular, is politically complex, notwithstanding the 2011 live exports suspension.⁸¹ As reported, “[e]ven before the live export ban . . . [Indonesian] [b]eef importers and processors were trying to maintain imports, consumers wanted to keep prices down, local beef producers wanted to limit imports to reduce competition, and the government wanted the country to produce its own beef but also guarantee supply and keep prices down.”⁸² The Australian government will need to thoughtfully strategize to alleviate the legitimate concerns of the Indonesians.⁸³

supra note 54.

79. The need for Australia to closely monitor and nurture its trade partnerships is not isolated to the decision to completely ban the live export trade. *See* INDUS. GOV'T WORKING GROUP ON LIVE CATTLE EXPORTS, REPORT TO THE AUSTRALIAN GOVERNMENT MINISTER FOR AGRICULTURE, FISHERIES, AND FORESTRY (2011), available at http://www.liveexports.gov.au/_data/assets/pdf_file/0015/2030361/igwg-cattle-report.pdf. The Australian government already acknowledges the importance of its existing trade relationships and is now implementing steps to closely monitor and nurture those relationships after the implementation of the new regulatory framework. *Id.* at 12. The Industry Government Working Group on Live Cattle Exports (“IGWG”) concluded in its August 2011 report that “while there is no need for foreign governments to change their regulations, nor to do anything to facilitate the changed arrangements, it remains crucial for the Australian Government to work with overseas governments to raise awareness of what the Australian Government is pursuing and to seek their support.” *Id.*

80. *Id.* The IGWG pointed out that the need to consult with the governments of trading partners was “particularly important in those markets that are either key markets for Australian exports or depend on Australian imports for food security.” *Id.* Indonesia is a country that relies heavily on Australia for its food security. Australian beef accounts for twenty-five percent of the country’s meat; for this reason, many industry commentators viewed the live exports suspension as irresponsible, risking the critical trade relationship between Australia and Indonesia by not consulting with the Indonesian government before executing the suspension. *See* David Leyonhjelm, *Slaughtering Indonesia’s Cattle Trust*, BUS. SPECTATOR (Aug. 16, 2011), <http://www.businessspectator.com.au/bs.nsf/Article/live-cattle-export-Indonesia-Australia-ban-permits-pd20110815-KR4BQ?OpenDocument>; *see also* Clive Phillips, *Time for a Cattle Exports Apology*, BUS. SPECTATOR (Dec. 19, 2011), <http://www.businessspectator.com.au/bs.nsf/Article/cattle-government-Indonesia-live-export-ban-beef-pd20111219-PP64M?opendocument&src=rss>.

81. *See* Leyonhjelm, *supra* note 80.

82. *Id.*

83. *See* Phillips, *supra* note 80. Clive Phillips, a professor at the Centre for Animal Welfare and Ethics at the University of Queensland, has suggested several strategies that Australia might consider when trying to persuade the Indonesians to welcome more Australian processed meat and become less focused on becoming beef self-sufficient. *Id.* For starters, for Indonesia to become self-sufficient in its beef supply, it would need to cut down native forests on some of its less habited islands. *Id.* Not only

Although Australia has the physical capability to transition to a processed meat industry, demand for the product is still needed to make processed meat a viable alternative. Australia can learn from the promotional campaigns New Zealand launched when it transitioned itself from a live exporting country to a meat processing country.⁸⁴ Given the success of New Zealand's marketing campaign, Australia would be wise to implement a similar campaign if it were to make the transition to processed meat exportation.⁸⁵ MLA has already instituted promotional campaigns for processed beef in Korea and Japan, as well as in emerging markets in the Middle East, Southeast Asia, and Europe.⁸⁶

Indonesia has welcomed some beef exports from Australia over the last five years, undermining critics' arguments that banning the live exports industry would completely eradicate the Australian cattle industry.⁸⁷ It is likely that Indonesia will remain a market for Australian processed beef products if Australia prioritizes its trade relationship with Indonesia. Even if Indonesia does remain open to resuming a trade relationship, however, there is no guarantee that Indonesia will accept processed beef as a

do these rainforests provide significant ecological benefits to Indonesia and the rest of the world, but the farming land on these islands is not sustainable for maintaining livestock. *Id.* "Australia can far more efficiently produce the beef that Indonesians desire . . ." *Id.*

In addition, the Australian government must remind Indonesia of its increasingly developed refrigeration capacity. *Id.* The recent increase in demand for Australian processed beef, particularly in the "hotel, restaurant and supermarket outlets," suggests the growing capability of Indonesia to refrigerate imported processed meat. SG HEILBRON ECON. & POLICY, *supra* note 14, at 16.

While the Australian government negotiates with the Indonesian government, however, they will have to take caution and approach the Indonesians "with great humility and respect." Phillips, *supra* note 80. It will also require "major initiative to place the trading and cultural exchange activities between the two countries on a strong growth trajectory over the next decade" to solidify Indonesia as a reliable consumer of processed Australian beef. *Id.*

84. ACIL TASMAN, *supra* note 7, at 60–62. New Zealand has used promotional campaigns to market its "grass-fed, healthy, clean green image." *Id.* at 61. The campaigns have been tailored to each market based on consumer preferences and demands, including religious requirements. *Id.* at 62. Many of New Zealand's export markets have responded positively to these campaigns, as the consumers in these markets value strict animal welfare standards. *Id.*

85. *Id.* at 60–62.

86. *Id.* at 60. MLA issued these campaigns under the Industry Collaborative Agreement ("ICA") program. *Id.* The program is a partnership between the MLA and individual companies with a 50:50 investment ratio. *Id.* Individual retail companies included twenty top Southeast Asian retailers and one European retailer. *Id.* at 61. The program's goal is to "position Australian beef . . . as the dominant imported product and ensure industry is positioned to maximiz[e] new market opportunities." *Id.* at 60. The model the program undertook centered on education programs and in-store consumer promotions. *Id.* at 61.

87. *See, e.g.,* SG HEILBRON ECON. & POLICY CONSULTING, *supra* note 14. Beef exports to Indonesia have increased significantly over the last five years. *Id.* at 15–16. Exports of fresh or chilled beef grew 260 percent and frozen beef grew by 442 percent. *Id.* These statistics imply that previous arguments that Indonesia would be an unfit market for processed meat, for reasons such as the lack of refrigeration, were inaccurate. *Id.*

substitute. If it does not, Australian farmers will need to develop alternative markets for the processed beef (with the help of promotional campaigns) to recover for the loss in trade.⁸⁸

Even if Indonesia and other live exports markets import processed meat from Australia, Australia would still benefit from developing new markets for its beef. Research has shown that substituting processed meat for live exports would benefit the Australian livestock industry in the long-term, particularly if Australia expands its trading partners.⁸⁹ The SG Heilbron Economic & Policy Consulting report estimated that the live exports trade costs Australia nearly \$1.5 billion in lost GDP per year.⁹⁰ The lost GDP stems from several factors. First, slaughtering the live animals in the destination country potentially outsources thousands of jobs associated with the slaughtering and processing of those animals.⁹¹ Second, the live exporting industry receives significant subsidies from the Australian government.⁹² Lastly, these two Australian products—live cattle exports and processed beef—are competing directly with one another.⁹³

V. THE IMPACT OF BRAZIL AND OTHER EXTERNAL FACTORS ON AUSTRALIAN LIVE EXPORTS POLICY DECISIONS

Brazil has recently become one of Australia's primary live exports competitors.⁹⁴ Brazil's live exports industry has grown rapidly; from 2004 to 2009, its industry expanded from exporting slightly over 15,000 cattle to exporting over 530,000.⁹⁵ Although the majority of Brazil's live exports

88. See *infra* discussion Part VI regarding finding alternative markets, including China, the Middle East, and the Philippines; see also *infra* notes 114–16 and accompanying text.

89. SG HEILBRON ECON. & POLICY CONSULTING, *supra* note 14, at 3–7.

90. *Id.* at 5. “In 2008–2009 alone live cattle exports . . . cost Queensland \$140 million in lost value added and 1,200 lost jobs.” *Id.* at 6.

Cessation of the live cattle trade from Queensland and the NT would generate an additional \$382 million in gross state product for Queensland. This is actually more than the total value of live cattle exports from Queensland and the Northern Territory in 2008–09. Furthermore there are an additional 3,112 jobs that would be generated.

Id. at 6.

91. *Id.* at 6.

92. SG HEILBRON ECON. & POLICY CONSULTING, *supra* note 14, at 7. Examples of subsidies include those received through infrastructure support provided by governments and subsidies received “through foreign aid and trade promotion.” *Id.* In addition, “[t]he live trade faces significantly lower government influenced taxes and charges—for example, [sic] export inspection charges for beef are a multiple of those for live exports.” *Id.*

93. *Id.* at 17. As the SG Heilbron report reveals, “[i]n an environment of rapid growth in modern retail outlets where consumers are indifferent to the source of beef, imported Australian beef and beef processed in Indonesia from Australian live cattle are increasingly competing head-on.” *Id.*

94. Devine, *supra* note 8.

95. Ransley, *supra* note 14.

have gone to Venezuela and Lebanon,⁹⁶ the potential for Brazil to threaten Australia's dominance in the Indonesian market is real.⁹⁷ Australian farmers worry that Brazil might not even need to export *live* animals to Indonesia to threaten Australia's market dominance.⁹⁸ These farmers argue that the perception in Indonesia that Australia "abrupt[ly]" suspended the exports to the detriment of Indonesian farmers may influence the Indonesian government to alter its trade policy and choose to import processed meat products from Brazil rather than Australia.⁹⁹

Immediately after the Australian-Indonesian live exports trade resumed, statistics seemed to indicate that Indonesia would refrain from altering its trade policy with Australia, despite the detrimental impact on Australia's reputation. By October 2011, only two months after the Australian government lifted the suspension, Indonesia had already imported 100,000 head of cattle.¹⁰⁰ The numbers indicated that the Australian live exports industry's ability to "bounce back" so quickly had contributed to the restoration of Australia's reputation.¹⁰¹ Regional Affairs Minister Simon Crean stated that the ability of the Australian live exports industry to bounce back re-confirmed Australia's "'reliability' as a food source."¹⁰² Accordingly, it appeared that if the Australian government banned live exports, Indonesia would remain a market for processed beef.¹⁰³ In addition, it also appeared that Indonesia would not necessarily

96. *International Trade Statistics: Live Cattle Exports from Brazil*, LIVECORP, <http://www.livecorp.com.au/Public%20Files/Intern%20stats/BrazilCattleExp0510.pdf> (last visited Oct. 15, 2012).

97. Alford, *supra* note 8.

98. *Id.*

The main threat to Australia's biggest live cattle market is . . . beef in boxes. Allowing India—and Brazil if it has enough spare product—into the beef market is the most powerful retaliation available to Indonesia in response to Australia's ban. . . . Wherever Indian and Brazilian meat has been allowed into developing markets, Australia's share has been hammered—and quickly."

Id.; see also Devine, *supra* note 8.

99. Devine, *supra* note 8.

Australia's biggest competitors, Brazil and Chile, Canada and India, have been in talks with Indonesia and are expected to lock [Australia] out of the market—some fear forever. Indonesian noses are so out of joint at the abrupt way Australia suspended trade . . . that South Americans who have been trying to muscle in on the growing Indonesian appetite for protein are in the box seat, despite their herds being infected with foot and mouth.

Id.

100. Press Release, MAFF, Australian Exporters Take to New Regulatory Framework in Drovers (Oct. 18, 2011), available at http://www.maff.gov.au/media_office/media_releases/media_releases/2011/october/australian-exporters-take-to-new-regulatory-framework-in-drovers.

101. Rout, *supra* note 15.

102. *Id.*

103. *Live Export Ban Hurts Indonesia*, THE KONDININ GROUP (Sept. 28, 2011), <http://www.kondinigroup.com.au/StoryView.asp?StoryID=2489797>.

replace Australian products with Brazilian live or processed meat products.¹⁰⁴

But just a few months later, in January 2012, Indonesia announced it would cut its 2012 imports from Australia nearly in half.¹⁰⁵ The Indonesian government stated that the reduction in trade was pursuant to its goal to become beef self-sufficient.¹⁰⁶ Even though Indonesia is not publicly admitting that its decision was due to Australia's trade suspension, common sense suggests otherwise. Reasons independent of the trade suspension fallout also justify diversification, including the fact that "[i]mport demand from Indonesia for Australian live cattle remains highly sensitive to changes in the exchange rate and Australian saleyard prices of cattle."¹⁰⁷ Australia should thus diversify and transition itself even if Brazil is not truly a threat to the Australian-Indonesian beef trade.

VI. CONCLUSION

Australia must not let the possibility of losing ground in the Indonesian marketplace determine how it can adequately espouse Australian animal welfare standards—whether it merely overhauls the live exports regulatory system or bans the practice altogether. Although certain regulatory changes were made following the three-month suspension of live exports to Indonesia, the devastating economic effect such a short trade hiatus had on the Australian livestock economy should prompt a more proactive response. Australian farmers must diversify to prevent another round of suffering from a future live exports ban, which is

104. *Id.* In addition, although the competition from Brazil's cattle industry is real, logistical realities make it unlikely that Indonesia would immediately convert to Brazilian live export products over Australian processed meat. *Id.* It takes nearly three weeks at \$250 per head to ship cattle from Brazil to Indonesia, while it takes only four to six days to ship processed meat from Australia. *Id.*

105. *Indonesia Starts to Slash Cattle Import*, EASTDAY (Jan. 11, 2012), <http://english.eastday.com/e/120111/u1a6305107.html>. In 2012, Indonesia reduced its number of imports from 400,000 to 283,000 heads of cattle. *Id.*

106. *Id.* On January 10, 2012, Indonesian Agriculture Minister Suswono Arsyaf stated that the government was starting to reduce live cattle imports because "the domestic supply [had] been sufficient. The government ha[d] decided to gradually slash cow importation from about 400,000 [in 2011] to 283,000 [in 2012]." *Id.* The Indonesian government confirmed its commitment to its new reduced quota in July 2012 when it announced that it would only take 98,000 more head of cattle for the remainder of 2012. Colin Bettles, *Live Exporters' Quota Fears Realised*, FARM WEEKLY, July 19, 2012, at 12.

107. DRUM & GUNNING-TRANT, *supra* note 13, at 11. The Indonesian demand for beef is extremely sensitive to changes in import prices. If the price for beef becomes too expensive, Indonesian consumers switch to either cheaper suppliers or to other sources of protein, such as poultry and fish. *Id.* at 11. *See also supra* note 75 (discussing other factors that affect Indonesia's decision to import Australian beef).

extremely likely based on recent patterns in the Australian live exports industry. Further, even if Australia continued its live exports industry, it could still lose its position in the Indonesian marketplace by virtue of economic factors outside of the Australian government's direct control, such as currency exchange rates and its effect on export prices.¹⁰⁸

Paradoxically, the strength of the Australian live exports industry—its homogeneity—is also its weakness. The Australian live exports trade bounced back quickly from the trade suspension to Indonesia because the majority of the Australian livestock industry's infrastructure is dedicated solely to the live exports industry.¹⁰⁹ Australian farmers were desperate to resume shipments as quickly as possible. To do so, farmers invested all of their energy and capital into satisfying the new trade regulations. The farmers' investment in the industry indeed allowed them to meet the new regulatory demands, but such a response only serves as a short-term band-aid to the problem. Continuing the near homogeneous nature of the Australian livestock industry will only continue to put the livelihoods of Australian farmers in long-term jeopardy.¹¹⁰

While the Australian government did respond to the 2011 breaches in animal welfare standards by taking affirmative steps to safeguard the exported animals, these steps are not enough. Exporters and abattoirs have already breached the stricter animal welfare standards. The Australian government must ban the live exports industry entirely if it is serious about its commitment to animal welfare standards.¹¹¹

Economically intelligent farmers must learn from the past and realize that more suspensions are inevitable; otherwise, they will only continue to

108. See *supra* note 107.

109. See *supra* notes 14–17 and accompanying text.

110. See Rout, *supra* note 15. Regional Affairs Minister Simon Crean stated in September 2011, “You are vulnerable if you rely on one industry and one market. . . . The northern Australian beef industry is a real opportunity for a broader diversification within the territory, particularly if we can move to killing facilities there and the packing of meat.” *Id.*

The statistics reveal northern Australia's intense vulnerability to the live export market: “75 percent of properties in the northern regions that carry more than 300 beef cattle were either partially or substantially reliant on receipts from live export cattle over the ten years 1995–96 to 2004–05.” DRUM & GUNNING-TRANT, *supra* note 13, at 4.

111. While many animal activists are lobbying the Australian government to ban the live export trade, other concerned parties demand that Australia actually continue as an active participant in the trade. *Australian Beef Cattle Farmers Urge Caution*, *supra* note 43. McKinlay Shire Mayor Paul Woodhouse has argued, “Australia needs to stay in there to regulate this and to fix it.” *Id.* Mayor Woodhouse reasoned that, unlike Brazil, Australia cares about animal welfare standards. *Id.* The author of this Note, however, would respond to this argument: If Australia, the world's leader in animal welfare standards, cannot guarantee the humane treatment of its live exports, it is irrational to believe that other countries will be able to guarantee the humane treatment of live exports, even if Australia remains a voice in global animal welfare discussions.

place their livelihoods at the whim of the Australian government. But because the farmers are so reliant on the live exports industry, change will likely not be achieved through industry self-regulation. The Australian government must force farmers to gradually abandon the live exports industry, starting with diversifying the Australian livestock marketplace.

Australia could dedicate itself to maintaining and improving the strong animal welfare standards it espouses if the livestock industry diversified. Diversification would help mitigate the influence on Australian policymaking from the threat that a Brazilian takeover poses. Instead of simply continuing to export live animals to Indonesia and other markets or attempting to substitute processed meat for the live exports in the same markets in which it currently trades, Australia could expand its beef processing industry to current, as well as new, international and domestic trading partners. If there is a deficiency in Indonesian demand for the processed meat, Australia can ship the processed meat to a new market by forging a new trading partnership. Further, Australia can capitalize on its trade partnerships in other ways; instead of only exporting cattle and beef products, Australia can expand its investment in other countries' cattle industries and offer its expertise and guidance to the developing industries. In fact, Indonesia has already stated an interest in such a project.¹¹²

There are viable alternatives to the current system, and Australia is taking some steps to pursue them. For instance, it is considering expanding its trade partnership with Indonesia to support the Indonesian domestic cattle industry, exploring options in China,¹¹³ the Middle East,¹¹⁴ and the Philippines.¹¹⁵ But the Australian livestock industry is still largely concerned with maintaining and expanding its live exports practice rather than developing a plan to convert to a processed meat industry like New Zealand. While Australian farmers have learned some lessons from the ban—for example, that they cannot rely solely on one market and one industry—they have failed to recognize that the live exports industry will continue to cause them instability. The instability derives not just from animal welfare concerns, but also economic concerns. Importing governments may choose to slap quotas or tariffs on Australian live export

112. *AACo to Establish Darwin Abattoir*, *supra* note 77. Indonesia's President Susilo Bambang Yudhoyono has stated that Indonesia would welcome, and encourages, Australian investment in its cattle industry in to support its goal of beef self-sufficiency. *Id.*

113. See Chappell, *supra* note 55; *Cattle Kings Focus on Chinese Growth*, *supra* note 55.

114. Matt Brann, *Live Exports to the Middle East a Big Relief for Northern Pastoralists*, ABC RURAL (June 5, 2012), <http://www.abc.net.au/rural/news/content/201206/s3518464.htm>.

115. Amy Phillips et al., *New Markets Being Found for Live Export Cattle*, ABC RURAL (July 23, 2012), <http://www.abc.net.au/rural/qlld/content/2012/07/s3551271.htm>.

products at any moment, as the Indonesian government has already pursued.¹¹⁶ Further, the new ESCAS is costly for the importing countries, pushing current live export trading partners toward cheaper suppliers or self-sufficiency.¹¹⁷ A larger domestic beef industry in Australia would remove many of these variables and provide Australian farmers with a steady demand of cattle within its own borders, while also allowing it to expand its current beef exportation success in the international market. Australia must capitalize on these opportunities before they cease to exist.

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116. In July 2012, the Indonesian government imposed a new five percent tariff on Australian cattle imports. Naomi Woodley, *Indonesia Slaps New Tariff on Cattle Imports*, ABC NEWS (July 19, 2012), <http://www.abc.net.au/news/2012-07-19/indonesia-slaps-new-tariff-on-cattle-imports/4140242>. Indonesia also imposes a 350-kilogram weight limit per cattle head. Brann, *supra* note 114. And since its announcement that it will seek beef self-sufficiency, Indonesia has reduced its quota for number of Australian cattle imports it would take for 2012 nearly in half. *See Bettles, supra* note 106.

117. Indonesian importers are "being weighed down by . . . additional cost burdens from ESCAS" that may add up to an extra \$5 per cattle head. *Id.*

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