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January 26, 2006

The Honorable Mike Johanns
Secretary of Agriculture
200-A Jamie L. Whitten Building
Washington, DC 20250

Re: Docket No. 05-012P, Food Safety and Inspection Service Proposed Rule, "Addition of the People's Republic of China to the List of Countries Eligible to Export Processed Poultry and Poultry Products to the United States," Federal Register, November 23, 2005, p. 70746.

Dear Secretary Johanns:

The Department of Agriculture's Food Safety and Inspection Service (FSIS) is proposing to list China as a country eligible to export processed poultry and poultry products to the United States. It is my understanding that China has not previously been granted the specific poultry product export eligibility status that it would obtain if it were to be listed as proposed in the rule. This proposal follows an FSIS audit of China's poultry inspection system in December 2004 for the purpose of determining whether it is equivalent to the United States system. Having deemed China's system to be equivalent to that of the United States, FSIS is now proposing to add China to the list of eligible countries so that exports of processed poultry products from China to the United States are allowed actually to occur.

This is a particularly inopportune time for FSIS to propose a new poultry product export eligibility status for China. Early in 2004, China announced it was dealing with outbreaks of the infectious H5N1 strain of avian influenza in its poultry population and has been fighting the disease ever since. In the 2005 calendar year alone, China reported 32 separate avian influenza outbreaks, which have killed 154,600 birds and 10 people and caused the culling of over 22.5 million birds for disease control. In response to H5N1 avian influenza outbreaks in China and other parts of Asia, USDA acted in early 2004 to ban shipment to the United States of poultry, commercial birds, pet birds and unprocessed bird products from those countries.

It is quite obvious from the way in which FSIS has drafted the proposed rule that FSIS acknowledges the serious avian influenza risks associated with shipments of poultry and poultry products from China. Indeed, the proposed rule is largely an exercise in attempting to craft an exception or carve-out for processed products from USDA's general ban on poultry and poultry products shipped from China. But FSIS has not demonstrated that the proposed rule it has come up with will adequately protect the United States against the H5N1 avian influenza strain that is now infecting poultry and humans in China. Clearly, FSIS should not proceed with its proposal to open the United States to processed poultry products from China unless the risks and concerns involving avian influenza are fully and carefully dealt with.

FSIS sets two basic requirements in the proposed rule. First, poultry that is processed in China for export to the United States cannot have been raised or slaughtered in China and must have originated either in the United States or another country allowed to export domestic poultry to the United States. Second, poultry products for export to the United States from China must be properly cooked and shelf-stable in order to ensure the product is free of microbes, including the avian influenza virus. These requirements may seem adequate in the abstract, on paper, but it is readily apparent that making certain the requirements are consistently followed and enforced in actual practice in China is an entirely different matter.

The proposed rule is designed to facilitate China serving as a conduit for poultry from the United States, or other countries without avian influenza, to be processed and then shipped to the United States. It is quite unclear how FSIS will ensure that poultry products processed in China for export to the United States will contain no poultry that was raised or slaughtered in China. It is my understanding that China's poultry plants often process both domestic poultry and poultry from other countries. The proposed rule contains no prohibition against a Chinese plant handling and processing both poultry products eligible for export to the United States and poultry raised or slaughtered in China. In an establishment processing both domestic Chinese poultry and poultry from other countries, how will it be possible for FSIS to make certain that the plant segregates poultry according to country of origin so that no errors are made in exports to the United States? FSIS should not finalize the proposed rule, nor should it approve any Chinese poultry processing establishment or exporter of poultry products, unless it is certain there can be no mixing of domestic Chinese poultry with products exported to the United States.

Similar uncertainties exist concerning the requirement that poultry products have to be adequately cooked in China if they are to be shipped to the United States. It is correct that the scientific evidence shows that processed poultry products do not pose a risk of avian influenza to consumers or poultry if they have been sufficiently cooked to kill the virus. But the proposed rule leaves a lot of doubt whether FSIS can be certain that poultry plants in China are consistently cooking their products sufficiently to kill the avian influenza virus and that no improperly cooked poultry products will be shipped to the United States.

The proposed rule also seems quite clearly to be self-contradictory, and this contradiction strongly suggests that FSIS itself is unsure about the adequacy of what it is proposing. If, as the proposed rule says, proper cooking destroys the avian influenza virus, and if Chinese processing plants can be trusted to cook poultry products properly, then why should FSIS prohibit poultry raised or slaughtered in China from being included in products exported to the United States? Conversely, if, as the rule assumes, poultry from countries without avian influenza can be safely included in products shipped from China to the United States, and if Chinese processing plants can be trusted to keep any poultry raised or slaughtered in China out of products exported to the United States, then why should FSIS require these products to be properly cooked? FSIS may say that these requirements reinforce one another for added protection, but the stronger inference

is that FSIS lacks confidence that Chinese poultry plants will fully and consistently carry out either of the critical requirements in the proposed rule – to keep Chinese poultry out of products to be exported to the United States and to cook those products properly to kill the avian influenza virus. The old adage applies: a chain is only as strong as its weakest link, and here FSIS seems implicitly to concede that both the segregation and the cooking requirements are weak links.

FSIS states in the proposed rule that Chinese poultry processing plants approved to export products to the United States – 25 establishments in total – are required to meet the same food safety standards as U.S. plants and that FSIS will conduct annual onsite reviews while the plants are in operation in order to ensure that the standards are met. It is not entirely clear from the language that FSIS will visit each Chinese plant annually, but even if that is so, because of the risks of avian influenza, the FSIS reliance on annual inspections is misplaced. Inspections once a year are simply too infrequent and, more critically, such inspections are not suited to ensuring and enforcing compliance with the two main requirements of the proposed rule intended to protect the United States against avian influenza. Annual inspections will do very little to make certain that Chinese plants are keeping poultry raised or slaughtered in China out of products to be exported to the United States and properly cooking such products to kill the avian influenza virus. Those two requirements must be met on a constant and continuous basis, but annual inspections will do little or nothing to allow FSIS to make certain the requirements are being met constantly and continuously.

As for FSIS reviews of China's poultry plants, a recent report by USDA's Office of Inspector General (OIG) casts serious doubt on the effectiveness and credibility of FSIS in making certain that foreign meat and poultry processing plants are meeting FSIS requirements. The OIG found that problems identified by FSIS in Canada's meat and poultry inspection system went uncorrected for two years or more while FSIS failed to enforce U.S. standards as it is obliged to do under the law. How can U.S. consumers and poultry producers be assured that FSIS will effectively find and correct deficiencies in distant China when it failed to do so with our neighbor and largest trading partner?

For these reasons, I urge USDA to reconsider this proposed rule, to conduct a full evaluation of the risks the rule would impose on U.S. poultry producers and consumers in the light of the numerous avian influenza outbreaks in China, and to abandon the proposed rule unless its shortcomings are addressed.

Sincerely,

Tom Harkin
Ranking Democratic Member