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Food Safety and  
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Service

Office of Policy and  
Program Development

Washington, DC  
20250-3700

Ms. Wennonah Hauter  
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1616 P Street NW, Suite 300  
Washington, DC 20036

AUG 30 2013

Dear Ms. Hauter:

This letter is in response to your January 19, 2011, petition requesting that FSIS remove from the regulations the provision that would allow the People's Republic of China (PRC) to export poultry products to the United States (9 CFR 381.196(b)). The petition asserts that such action is needed because the equivalency determination for the importation of processed poultry products from the PRC was flawed on a number of counts. Specifically, the petition states that FSIS made its determination in part because the US wanted to re-open beef trade with the PRC, that the Agency relied on incomplete and outdated information to inform its decision, and that the Agency made procedural and technical errors in issuing the proposed and final rules. We have considered the issues raised in your petition and find that there is no merit to the assertion that FSIS's equivalence determination for the PRC was flawed, or that it was based on by factors other than those required under the Poultry Products and Inspection Act (PPIA) and the implementing regulations. Therefore, for the reasons discussed below, we are denying your petition.

FSIS has engaged in a thorough, objective, and careful review of the PRC's processed poultry inspection system. In April 2006, FSIS determined that China's processed poultry inspection system was equivalent to the US processed poultry inspection system. While there was considerable interest in this decision from a variety of stakeholders, the FSIS equivalence process was conducted in accordance with the requirements in 9 CFR 381.196 and based on an assessment of China's eligibility to export products to the United States per the applicable requirements, not other factors such as a U.S. desire to re-open trade.

FSIS published the November 23, 2005, proposed rule (70 FR 70746) on the equivalence of the Chinese system for regulating processed poultry products following a comprehensive review of the PRC's inspection system. FSIS conducted a detailed review of the PRC's responses to FSIS questionnaires about the PRC's inspection system; the Agency received all applicable laws, regulations and other written documentation about the PRC's processed poultry inspection system; and FSIS experts traveled to the PRC on two separate occasions to view the Chinese system in action. Details of the review were described in the preamble to the proposed rule, and FSIS made the full report of its equivalency review of the PRC available to the public on the Agency's Website at: <http://www.fsis.usda.gov/OPPDE/FAR/China/China2004.pdf>.

FSIS published a final rule adding the PRC to the list of countries eligible to export processed poultry products to the U.S. in April 2006. In the final rule (71 FR 20867), FSIS considered, summarized, and responded to all comments received in response to the proposed rule.

You state that the PRC received preferential treatment concerning the equivalence determination because FSIS expedited rulemaking concerning the equivalency of the PRC inspection system for processed poultry products. As FSIS does with many rulemaking documents, FSIS developed the PRC regulations and sent them through clearance as quickly and as efficiently as possible. The fact that FSIS developed and cleared the rule in this manner does not mean that the PRC received preferential treatment concerning the equivalence determination.

The petition asserts that a majority of the processing plants FSIS audited in 2004 were found to have serious food safety problems, and that FSIS had not independently verified that the problems were addressed before the proposed and final rules published. As a consequence, the petition asserts that the final rule was based on incomplete and outdated information.

It is important to note that the significant serious food safety problems FSIS identified during the 2004 audit were in slaughter establishments rather than processing facilities. FSIS audited processing facilities during the 2004 audit, but did not identify any serious food safety issues in those facilities. Additionally, while FSIS did not conduct an on-site audit to verify the corrective actions put in place by the PRC in processing facilities as a result of the 2004 audit findings, FSIS thoroughly reviewed the detailed corrective actions documentation provided by the PRC. The majority of the processing facility findings observed had the potential to cause a food safety hazard, such as a conveyor belt used for edible product transfer that had deep cuts in it, rather than an observation of actual contamination of product, and the PRC inspectors demonstrated accountability to remedy the findings. FSIS did not deem the findings sufficient to rise to the level of requiring an on-site audit prior to rule-making. Once the PRC was listed, the Agency intended to schedule the PRC for an annual audit immediately following the certification of establishments for export to the U.S., as it does with all countries. This would have provided the opportunity to verify the corrective actions on-site, as well as to ensure that equivalence was being maintained. However, since the PRC did not certify establishments prior to FSIS being prohibited from work on the import of poultry product from the PRC, this audit did not occur as planned. Also, FSIS subjects all shipments to product examinations and appropriate laboratory testing at port-of-entry for a period of time after becoming eligible. As a result of these factors, this process of closing out these issues without an on-site verification audit was appropriate and consistent with how the Agency handles similar audit findings in other foreign inspection systems.

You state that the rule included a faulty economic analysis because FSIS provided different data sets for the potential economic impacts of processed poultry imports from the PRC in the proposed and final rule. When conducting an economic analysis, FSIS uses the most recent and accurate available data to estimate the economic impacts of a

proposed or final rule. If the Agency becomes aware of more accurate data after it issues a proposed rule, it revises its estimates in the final rule to reflect the more recent data. Thus, the analysis is sound. It was simply updated in the final rule.

You also state that both the proposed rule and final rule made assertions that U.S. consumers would be able to distinguish between imported poultry products from the PRC and domestic products. You stated that at the time of the final rule, there were no country of origin labeling requirements for poultry products. However, under 9 CFR 381.205, which was in effect at the time of the final rule discussed above, immediate containers of poultry products imported into the United States must bear a label showing the name of the country of origin. Because the processed product is to be cooked, FSIS's belief in 2006, as it is now, was that the product would not be re-packed at an official establishment. Therefore, consumers would know if they purchased product from the PRC. Ultimately, however, if China is able to export processed product to the US, and that product is repacked, what is most significant is that FSIS will have determined that the PRC's poultry processing inspection system is equivalent to that of the United States, and cooked poultry from the PRC would be produced under equivalent conditions as cooked poultry in the United States.

The petition also states that the equivalence process was flawed because the final rule was not cleared by the USDA Office of Civil Rights before the Agency published the final rule as required by Departmental Regulation 4300-004. This was a procedural oversight that did not affect the FSIS's equivalence audits or its equivalence determination for the PRC. When FSIS learned of the oversight, it prepared a Civil Rights Impact Analysis for the final rule that was reviewed and cleared by the USDA Office of Civil Rights on May 16, 2006. The analysis did not identify any civil rights issues.

You noted that since FSIS issued its initial equivalence determination, no processed poultry products have been exported from the PRC to the United States. FSIS suspended the ability of the PRC to certify their establishments as eligible to export processed poultry products to the United States because the congressionally imposed spending restriction left FSIS unable to verify on-going equivalence. Congress prohibited FSIS from expending any funds to "promulgate or implement a poultry products inspection rule allowing processed poultry or processed poultry products to be imported into the United States from the People's Republic of China." This restriction continued through October 21, 2009, when P.L. 111-80 lifted the prohibition on work related to the PRC's equivalence requests.

While the restriction was in effect, a new Food Safety Law (FSL) was adopted by the PRC. Therefore, in December 2009, FSIS initiated formal communications with Chinese poultry inspection officials to evaluate the impact of the new FSL on FSIS initial equivalence determination for Chinese processed poultry. Consistent with FSIS on-going equivalence verification process, FSIS completed its document review then proceeded with the on-site audit of the PRC's poultry processing inspection system in December 2010. Proposed corrective actions from the PRC in response to observed deficiencies

from the audit were included in the final audit report, which was posted on the FSIS website on October 6, 2011. All corrective actions were addressed and outstanding issues from the 2010 FSIS audit were resolved in 2012. The final audit report and the corrective actions offered by the PRC are accessible at: ([http://www.fsis.usda.gov/OPPDE/FAR/China/China2010\\_Poultry\\_Processing.pdf](http://www.fsis.usda.gov/OPPDE/FAR/China/China2010_Poultry_Processing.pdf)).

Again, consistent with FSIS's on-going equivalence verification process, in March 2013, FSIS conducted an on-site verification audit of the PRC's processed poultry inspection system to ensure full implementation of all corrective actions from the 2010 FSIS audit. A copy of the FSIS audit report, summarizing the findings this audit, will be available on the Agency's website when it is finalized.

FSIS conducted its equivalence process for the PRC in the same way it has conducted the process for all other countries. For the reasons discussed above, we have concluded that your petition does not contain evidence to demonstrate that the PRC should be removed from the list of countries eligible to export processed poultry products to the United States. Therefore, as stated above, we are denying your petition. If you have questions on the information in this letter please contact Dr. Andreas Keller at (202) 690-5646.

Sincerely,



Rachel Edelstein  
Assistant Administrator  
Office of Policy and Program Development