

Sen. Rodney L. Whittemore, Chair
Sen. Lisa Keim
Sen. David Miramant
Rep. Craig Hickman, Chair
Rep. Stephen Stanley
Rep. Stacey Guerin

Christy Daggett
Sharon A. Treat



John Palmer
Linda Pistner
Ryan Hamden
Randy Levesque
Dr. Joel A. Kase

Ex-Officio
Wade Merritt
Pamela Megathlin
Christina S. Hodgeman
Jeffrey Wiley

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

June 22, 2018

Secretary Sonny Perdue
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington DC
20250

re: USDA rule on importation of processed chicken from the People's Republic of China

Dear Secretary Perdue:

The Maine Citizen Trade Policy Commission is writing to state its concern regarding a recently adopted rule from the Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA). The Maine Citizen Trade Policy Commission (CTPC) is established in Maine statute "to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, during its May 30, 2018, meeting, the Commission voted unanimously to send this letter outlining our position.

As you know, the FSIS recently proposed a rule allowing the importation of poultry processed in China into the United States. Most recently, according to an article dated May 10, 2018 published in Food Chemical News, the FSIS also plans to adopt a rule which would allow China to send poultry slaughtered in that country to the United States. Based on several presentations to the CTPC, we have learned a number of facts first-hand from poultry farmers based in Maine. Based on our understanding of this issue, we urge you to consider the following:

- In testimony dated February 26, 2018, a nonprofit private organization, the Maine Farm Bureau (MFB) stated that, "*Farming in Maine has grown, and Maine continues to lead the New England states with 8,200 farms and over 1.4 million acres of farmland. Maine's agricultural enterprises provide more than \$764 million through the sale of farm products and contribute more than \$2 billion annually to the State's economy.*";

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/online/citrc.html>

- The MFB testimony also stated that, “Maine was once a leading producer of poultry for the United States. Today, however, there are very few poultry farmers in Maine. The majority of poultry producers operate on a very small scale and primarily sell at farmers’ markets.”;
- In addition, the MFB testimony stated that, “The success of the few poultry farmers in Maine is due, in part, to a national movement to “Know Your Farmer”. There is a growing interest in Maine by consumers to purchase locally produced food, either directly from farmers or in retail markets. The Maine poultry market has a large potential for growth, but the importation of chicken from China raises many questions about the feasibility of market expansion in Maine.”;
- As a part of a “100 day action plan” with the Peoples Republic of China (PRC), the U.S. committed to permit the export to the U.S. of poultry products from birds slaughtered in the PRC;
- Subsequently, FSIS proposed by rule to allow such products to be exported to the U.S. without labeling by deeming Chinese food safety laws “equivalent” to those in the U.S.¹;
- The regulatory oversight and enforcement of the Chinese government of food safety protection laws compares poorly to those in the United States;
- While Chinese food safety laws are purported to be equivalent to U.S. regulations, the Chinese enforcement level is clearly sub-standard to the U.S. effort;
- The USDA has only 2 inspectors located in China to inspect approximately 500,000 food processing facilities;
- Recent inspections of the Chinese poultry slaughter system by the FSIS found that the Chinese system continues to have serious deficiencies. Recent laws enacted in China have achieved theoretical equivalence which have satisfied FSIS standards but serious doubts remain regarding overall food safety and sanitary requirements regarding processed poultry which is exported to the U.S.;
- AsiaInspection, which audits the supply chains of food multinationals, found four in 10 of the several thousand Chinese facilities audited in 2016 failed their safety checks, with more than 500,000 food safety violations over 9 months²;
- The Chinese government has a relatively poor record in enforcing regulations regarding allowable food additives and what is then sold to consumers in the United States;
- In particular, there appear to have been numerous instances in which illegal food additives such as melamine and beta-agonists such as clenbuterol and ractopamine have been found in food processed in Chinese facilities;
- Chinese chickens are potentially contaminated with bacteria that resists the effects of a prominent antibiotic that goes by the name of colistin. While this bacterium has yet to show up in any significant way in American poultry and other farm animals, the potential threat to human health in the United States is significant; and
- In the interest of fairness, it is important to emphasize that when China imports meat, it requires extensive labeling requirements, including country of origin, to be included on both the exterior and interior of meat packaging.³

Given these and other public health concerns, the CTPC is most concerned that under current USDA regulations and laws, processed poultry products can be imported into the United States without any

¹ Eligibility of the People's Republic of China (PRC) To Export to the United States Poultry Products From Birds Slaughtered in the PRC, A Proposed Rule by the Food Safety and Inspection Service, 06/16/2017: <https://www.federalregister.gov/documents/2017/06/16/2017-12554/eligibility-of-the-peoples-republic-of-china-prc-to-export-to-the-united-states-poultry-products>

² China uncovers 500,000 food safety violations in nine months, Reuters, December 24, 2016: <https://www.reuters.com/article/us-china-food-safety/china-uncovers-500000-food-safety-violations-in-nine-months-idUSKBN14D046>

³ <https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/exporting-products/export-library-requirements-by-country/peoples-republic-of-china>

labeling as to the origins of where the meat was raised, slaughtered and processed. While the importation of these unlabeled poultry products from China raises serious health concerns, the CTPC is also troubled that these unlabeled poultry products are produced with fewer costs associated with food safety than in the United States, costs that we pay here to ensure a safe product, thereby threatening the ability of Maine's poultry farmers to fairly compete and even survive as a sustainable business.

During their most recent meeting on May 30, 2018, the CTPC voted unanimously to support a motion which urges the imposition of rules requiring the clear labeling of chicken meat that is imported from China with regards to where the chickens were raised, where they were slaughtered and where the meat was processed. The CTPC believes that the imposition of such a labeling rule would improve the prospects of public health and safety in the United States, ultimately improve the quality and fairness of trade between China and the United States and create a level playing field by which Maine poultry farmers can more fairly compete. The CTPC also plans to sponsor a Joint Resolution to this effect that will be submitted to the Maine State Legislature for its approval.

Please do not hesitate to contact us with any questions that you may have regarding our concerns on this issue.

Sincerely,


Senator Rod Whittamore, Chair


Representative Craig Hickman, Chair

cc:

Senator Susan Collins

Senator Angus King

Representative Bruce Poliquin

Representative Chellie Pingree

Sen. Rodney L. Whittemore, Chair
Sen. Lisa Keim
Sen. David Miramant
Rep. Craig Hickman, Chair
Rep. Stephen Stanley
Rep. Stacey Guerin

Christy Daggett
Sharon A. Treat



John Palmer
Linda Pistner
Ryan Harnden
Randy Levesque
Dr. Joel A. Kase

Ex-Officio
Wade Merritt
Pamela Megathlin
Christina S. Hodgeman
Jeffrey Wiley

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

March 23, 2018

Ambassador Robert E. Lighthizer
United States Trade Representative
600 17th Street NW
Washington DC
20508

re: ISDS in NAFTA

Dear Ambassador Lighthizer:

The Maine Citizen Trade Policy Commission writes to strongly support your efforts during the current renegotiation to remove Investor State Dispute Settlement (ISDS) from the North American Free Trade Agreement (NAFTA) and to limit the scope of "minimum standard of treatment" and other investment chapter provisions. The Maine Citizen Trade Policy Commission (CTPC) is established in Maine statute "to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, during its February 26, 2018, meeting, the Commission voted unanimously to send this letter outlining our position.

Over the 15 years of its existence, the Commission has repeatedly called for the elimination of ISDS. We are, therefore, supportive of your position that NAFTA 2.0 should limit ISDS, and urge you to remove it altogether from this and other free trade and investment agreements. As you know, concerns about overbroad investor protections, and about the ISDS process in particular, are long-standing. ISDS provides foreign investors the right to bypass domestic courts (including constitutionally-created Article III courts) and challenge the U.S. government directly before an international arbitration tribunal; a right that home-grown investors do not share. The ISDS panels are neither democratically selected nor accountable to any public entity, nor are they required to consider basic principles of U.S. law (such as sovereign immunity or the "rational basis" standard), nor must they weigh the public interest against the alleged violation of an investor's rights. Under this system, the U.S. government can only be a defendant (the investor takes on no corresponding

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/onla/citnal.htm>

responsibilities), and even when the U.S. government "wins," the U.S. people lose because valuable government resources (an average of \$8 million a case) are expended to defend these often meritless claims.

State governmental actions subject to ISDS challenges under NAFTA have included complaints against state laws banning the aquifer-polluting gasoline additive MTBE, tobacco regulations, and state court judgments. ISDS presents both a direct threat to state government sovereignty, and indirectly chills future policy making. A current and timely example of the latter is the threat by Cooke Aquaculture, a Canadian company, to file an ISDS suit against the state of Washington,¹ seeking \$76 million in damages, unless the state backs down from enacting a proposed ban on the farming of Atlantic salmon, an invasive species, in the state's waters. The Washington state proposal follows the escape of over 200,000 Atlantic salmon from the Cooke's fish farms in the Puget Sound last August, the latest in a series of such accidents. Washington's proposed ban on Atlantic salmon farming would apply to all companies, domestic and foreign.

Moreover, as the Intergovernmental Policy Advisory Council stated in its report assessing the Transpacific Partnership,² there are significant monetary costs associated with ISDS cases. Even though these cases are brought against the U.S. government, states and localities incur legal costs when assisting in the defense of investor-state disputes. As the IGPAC report stated, "the possibility that state or local laws may be challenged (by way of an action against the United States) is itself a chilling factor for those governments considering legislative and regulatory action. While the federal government is responsible for defending investor challenges that are lodged against state and local measures, state resources are heavily taxed during the course of such disputes." IGPAC noted that at the close of the Methanex dispute challenging California's MTBE ban, the federal government was awarded full payment of the millions of dollars in fees and costs that it incurred while defending the case, but the state was not similarly compensated.

We urge you to take this step to ensure that U.S. trade policymaking is at least as inclusive as that of our trading partners.

We look forward to hearing from you.

Sincerely,



Senator Rod Whittmore, Chair



Representative Craig Hickman, Chair

cc:

Governor Paul LePage

Senator Susan Collins

Senator Angus King

Representative Bruce Poliquin

Representative Chellie Pingree

¹ <http://www.cookeseafood.com/cms/wp-content/uploads/2018/02/Press-release-CAP-Senate-hearing-on-HB-2957-Feb.-19.pdf>

² <https://uschinatradewar.com/files/2015/12/Intergovernmental-Policy-Advisory-Committee-on-Trade.pdf>

Sen. Rodney L. Whittemore, Chair
Sen. Lisa Keim
Sen. David Miramant
Rep. Craig Hickman, Chair
Rep. Stephen Stanley
Rep. Stacey Guerin

Christy Daggett
Sharon A. Treat



John Palmer
Linda Pistner
Ryan Hamden
Randy Levesque
Dr. Joel A. Kase

Ex-Officio
Wade Merritt
Pamela Megathlin
Christina S. Hodgeman
Jeffrey Wiley

Staff:
Lock Kiermaier

STATE OF MAINE

Citizen Trade Policy Commission

March 23, 2018

Ambassador Robert E. Lighthizer
United States Trade Representative
600 17th Street NW
Washington DC
20508

re: USDA rule on importation of processed chicken from the People's Republic of China

Dear Ambassador Lighthizer:

The Maine Citizen Trade Policy Commission is writing to state its concern regarding a recently adopted rule from the Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA). The Maine Citizen Trade Policy Commission (CTPC) is established in Maine statute "to assess and monitor the legal and economic impacts of trade agreements on state and local laws, working conditions and the business environment; to provide a mechanism for citizens and Legislators to voice their concerns and recommendations; and to make policy recommendations designed to protect Maine's jobs, business environment and laws from any negative impact of trade agreements." In seeking to fulfill its statutory mandate, during its February 26, 2018, meeting, the Commission voted unanimously to send this letter outlining our position.

As you know, the FSIS recently proposed a rule allowing the importation of poultry slaughtered and processed in China into the United States. Based on several presentations to the CTPC, we have learned a number of facts first-hand from poultry farmers based in Maine. Based on our understanding of this issue, we urge you to consider the following:

- In testimony dated February 26, 2018, a nonprofit private organization, the Maine Farm Bureau (MFB) stated that, "*Farming in Maine has grown, and Maine continues to lead the New England states with 8,200 farms and over 1.4 million acres of farmland. Maine's agricultural enterprises provide more than \$764 million through the sale of farm products and contribute more than \$2 billion annually to the State's economy.*";
- The MFB testimony also stated that, "*Maine was once a leading producer of poultry for the United States. Today, however, there are very few poultry farmers in Maine. The majority of poultry producers operate on a very small scale and primarily sell at farmers' markets.*";

Citizen Trade Policy Commission
c/o Office of Policy & Legal Analysis
State House Station #13, Augusta, ME 04333-0013 Telephone: 207 287-1670
<http://www.maine.gov/legis/onla/citpol.htm>

- In addition, the MFB testimony stated that, *“The success of the few poultry farmers in Maine is due, in part, to a national movement to “Know Your Farmer”. There is a growing interest in Maine by consumers to purchase locally produced food, either directly from farmers or in retail markets. The Maine poultry market has a large potential for growth, but the importation of chicken from China raises many questions about the feasibility of market expansion in Maine.”*;
- As a part of a “100 day action plan” with the Peoples Republic of China (PRC), the U.S. committed to permit the export to the U.S. of poultry products from birds slaughtered in the PRC;
- Subsequently, FSIS proposed by rule to allow such products to be exported to the U.S. without labeling by deeming Chinese food safety laws “equivalent” to those in the U.S.¹;
- The regulatory oversight and enforcement of the Chinese government of food safety protection laws compares poorly to those in the United States;
- While Chinese food safety laws are purported to be equivalent to U.S. regulations, the Chinese enforcement level is clearly sub-standard to the U.S. effort;
- The USDA has only 2 inspectors located in China to inspect approximately 500,000 food processing facilities;
- Recent inspections of the Chinese poultry slaughter system by the FSIS found that the Chinese system continues to have serious deficiencies. Recent laws enacted in China have achieved theoretical equivalence which have satisfied FSIS standards but serious doubts remain regarding overall food safety and sanitary requirements regarding processed poultry which is exported to the U.S.;
- AsiaInspection, which audits the supply chains of food multinationals, found four in 10 of the several thousand Chinese facilities audited in 2016 failed their safety checks, with more than 500,000 food safety violations over 9 months²;
- The Chinese government has a relatively poor record in enforcing regulations regarding allowable food additives and what is then sold to consumers in the United States;
- In particular, there appear to have been numerous instances in which illegal food additives such as melamine and beta-agonists such as clenbuterol and ractopamine have been found in food processed in Chinese facilities;
- Chinese chickens are potentially contaminated with bacteria that resists the effects of a prominent antibiotic that goes by the name of colistin. While this bacterium has yet to show up in any significant way in American poultry and other farm animals, the potential threat to human health in the United States is significant; and
- In the interest of fairness, it is important to emphasize that when China imports meat, it requires extensive labeling requirements, including country of origin, to be included on both the exterior and interior of meat packaging.³

Given these and other public health concerns, the CTPC is most concerned that under current USDA regulations and laws, processed poultry products can be imported into the United States without any labeling as to the origins of where the meat was raised, slaughtered and processed. While the importation of these unlabeled poultry products from China raises serious health concerns, the CTPC is also troubled that these unlabeled poultry products are produced with fewer costs associated with food safety than in

¹ Eligibility of the People's Republic of China (PRC) To Export to the United States Poultry Products From Birds Slaughtered in the PRC, A Proposed Rule by the Food Safety and Inspection Service, 06/16/2017: <https://www.federalregister.gov/documents/2017/06/16/2017-12554/eligibility-of-the-peoples-republic-of-china-prc-to-export-to-the-united-states-poultry-products>

² China uncovers 500,000 food safety violations in nine months, Reuters, December 24, 2016: <https://www.reuters.com/article/us-china-food-safety/china-uncovers-500000-food-safety-violations-in-nine-months-idUSKBN14D046>

³ <https://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/exporting-products/export-library-requirements-by-country/peoples-republic-of-china>

the United States, costs that we pay here to ensure a safe product, thereby threatening the ability of Maine's poultry farmers to fairly compete and even survive as a sustainable business.

During their most recent meeting on February 26, 2018, the CTPC voted unanimously to support a motion which urges the imposition of rules requiring the clear labeling of chicken meat that is imported from China with regards to where the chickens were raised, where they were slaughtered and where the meat was processed. The CTPC believes that the imposition of such a labeling rule would improve the prospects of public health and safety in the United States, ultimately improve the quality and fairness of trade between China and the United States and create a level playing field by which Maine poultry farmers can more fairly compete. The CTPC also plans to sponsor a Joint Resolution to this effect that will be submitted to the Maine State Legislature for its approval.

Please do not hesitate to contact us with any questions that you may have regarding our concerns on this issue.

Sincerely,



Senator Rod Whittemore, Chair



Representative Craig Hickman, Chair

cc:

Sonny Perdue, U.S. Commissioner of Agriculture

Senator Susan Collins

Senator Angus King

Representative Bruce Poliquin

Representative Chellie Pingree