

“MEATING” THE DEMAND OF CHINA’S PORK MARKETPLACE: A LEGAL ANALYSIS TO EXPORTING IOWA PORK PRODUCTS TO CHINA

*Matthew Kaufman**

I. Introduction	469
II. History of Hog Production in the U.S	471
A. Industrialization of the Pork Industry	471
B. Cost Advantages of Industrialization: Economies of Size	472
C. Furthering Economies of Size through Contract Farming	473
D. Negative and Positive Effects of Contract Farming	473
III. History of Hog Production in China	474
A. Current Market Trends.....	475
B. Competition between China and the United States Competitive Advantages	476
C. Marketplace Impacts on China’s Joining the WTO.....	476
D. Chinese Market for U.S. Pork Products.....	477
IV. Applicable Meat Regulations: United States and China	479
A. History of Food Regulations in China	479
B. China’s Importing Regulations, Procedures, and Rules	479
C. Steps in the Right Direction: New Zealand Example	482
V. Conclusion	482

I. INTRODUCTION

The hog industry has been witness to some dramatic changes over the last fifteen to twenty years.¹ These changes have resulted in consolidation of the

* J.D. Candidate, Drake University, May 2010. The author has worked in all production phases of the hog industry including breeding, gestation, farrowing, nursery, wean-to-finish, finishing operations, and marketing. Experiences include working on a small family run breeding to farrowing operation, and also working for a larger corporate family run farm working with Contract Growers as a Field Manager.

1. WILLIAM D. MCBRIDE & NIGEL KEY, USDA ECON. RESEARCH SERV., ECONOMIC & STRUCTURAL RELATIONSHIPS IN U.S. HOG PRODUCTION I (2003), *available at* <http://www.ers.usda.gov/publications/aer818/aer818.pdf> [hereinafter STRUCTURAL RELATIONSHIPS];

industry, which is indicated by a shift from the traditional family farm to the industrialized corporate farm model.² This shift has been brought about because of one major realization—the economies of industrialization.³ These economies of industrialization have been realized through the use of consolidation, technological advances, and contract farming.⁴ In the simplest of terms, hog producers in the United States are very good and efficient at what they do.

These efficiencies in the production of pork will enable the industry to take advantage of new international markets as trade barriers begin to fall.⁵ China is the World's largest producer⁶ and consumer of pork products,⁷ and traditionally has held very protectionist policies towards importing agricultural products.⁸ Trade barriers to exporting pork products to China have been curtailed by the country's acceptance into the World Trade Organization,⁹ and also because of current market problems associated with pollution and disease.¹⁰ Chinese import regulations, while still protectionist in nature, are becoming more liberalized¹¹ as the need for meat imports increases. For these reasons, the Chinese government will need to curtail its protectionist policies even further than those required by the WTO, and in doing so will create a huge new marketing opportunity for pork producers in the United States.

see NIGEL KEY & WILLIAM MCBRIDE, USDA ECON. RESEARCH SERV., *THE CHANGING ECONOMICS OF U.S. HOG PRODUCTION 5* (2007), available at

<http://www.ers.usda.gov/publications/err52/err52.pdf> [hereinafter *CHANGING ECONOMICS*].

2. STRUCTURAL RELATIONSHIPS, *supra* note 1, at 1.

3. *Id.* at 1-2.

4. *Id.* at 2.

5. Fred Gale, *How Does Growing U.S.-China Trade Affect Rural America?*, RURAL AMERICA, Winter 2002, at 63, available at <http://www.ers.usda.gov/publications/ruralamerica/ra174/ra174i.pdf> [hereinafter *U.S.-China Trade*].

6. *Id.* at 66 (indicating that China produces nearly half of the world's pork products).

7. William A. Amponsah, et al., *China as a Potential Market for U.S. Pork Exports*, 25 REV. AGRIC. ECON., 259, 260 (2003), available at <http://www.jstor.org/stable/pdfplus/1349876.pdf>.

8. *U.S.-China Trade*, *supra* note 5, at 67.

9. See Press Release, WTO News, WTO Successfully Concludes Negotiations on China's Entry (Sept. 17, 2001), http://www.wto.org/english/news_e/pres01_e/pr243_e.htm [hereinafter WTO Press Release].

10. See Liz Peek, *China's Pork Problem*, N. Y. SUN, May 31, 2007, available at <http://www.nysun.com/business/chinas-pork-problem/55600/>.

11. See generally MARK PETRY ET AL., USDA FOREIGN AGRIC. SERV., PEOPLES REPUBLIC OF CHINA: FOOD AND AGRICULTURAL IMPORT REGULATIONS AND STANDARDS: AQSIQ QUARANTINE IMPORT PERMIT CHANGES 3 (2007), available at <http://www.fas.usda.gov/gainfiles/200706/146291376.doc> (examining the AQSIQ permit system); USDA FOOD SAFETY AND INSPECTION SERV., EXPORT REQUIREMENTS FOR PEOPLE'S REPUBLIC OF CHINA (2009), http://www.fsis.usda.gov/regulations_&_policies/China_Requirements/index.asp [hereinafter EXPORT REQUIREMENTS] (explaining the requirements for labeling, certification, and plant eligibility of exported products).

The purpose of this Note is to address the state of the pork industry in the United States, the state of the pork industry in China, and the current market trends that are making exporting pork products to China possible and profitable to pork producers from the United States. This article will focus on how the economies of industrialization have given the pork industry in the United States a unique competitive advantage and how this competitive advantage can be utilized as Chinese agricultural markets and regulations become liberalized and open to international trade. Specifically, this Note will address China's laws for the import of meat products.

II. HISTORY OF HOG PRODUCTION IN THE US

A. *Industrialization of the Pork Industry*

The pork industry has historically centered itself around one important crop: corn.¹² Hog operations in the United States have traditionally been located in the "Corn Belt States," where there is an abundant and ready supply of cheap corn for feeding livestock.¹³ The pork industry was composed of small farmers throughout the Corn Belt who grew the corn they needed for their traditional farrow-to-finish operations, and sold their hogs in local markets.¹⁴ The last twenty-five years has been witness to some drastic changes in the pork industry throughout the United States, with the historical small farm model leaving the industry and being replaced with large scale specialized operations.¹⁵ This trend has been evidenced by the fleeting number of hog farms in the United States during this industrialization period.¹⁶ In the time period from 1992-2004, the industry saw an exodus of small farms, shown by the pure numbers, which represent a decrease of over seventy percent, decreasing from around 240,000 farms during the early nineties to less than 70,000 total farms by the end of 2004.¹⁷ Even with this significant decline in the number of hog farms during this time period, the number of hogs remained relatively constant throughout the period.¹⁸ The proper inference drawn from these facts shows considerable consolidation throughout the industry during this time period, from the many small independent producers who were getting out of the industry, to their large industrial producer counter-

12. STRUCTURAL RELATIONSHIPS, *supra* note 1, at 2.

13. *Id.*

14. *Id.* at 1-2.

15. *Id.* at 1.

16. *Id.* at 5.

17. CHANGING ECONOMICS, *supra* note 1, at 5.

18. *Id.*

parts.¹⁹ Later we will discuss how this exodus has helped to further the industrialization of hog farming throughout the industry.

The large-scale industrialization process took roots in the 1970's with the creation of confinement farming.²⁰ Since the creation of confinement buildings—from the traditional, open front buildings to modern, completely enclosed tunnel ventilated buildings—the hog industry has continued to implement new technologies in both operations and management.²¹ These scientific advancements and the profits that they realize have led to the emergence of large specialized factory hog production.²² Large-scale operations become specialized by doing only one part of the typical four part hog production process of: (1) breeding and gestation; (2) farrowing; (3) nursery; or (4) finishing.²³

B. *Cost Advantages of Industrialization: Economies of Size*

One of the driving forces resulting in this industry shift from the traditional model has been the recognized economic benefits of the new industrialized model. This shift in the industry from small farms to large scale, industrialized farms has occurred largely due to the cost advantages economies of size can bring to farmers.²⁴ Smaller, higher cost farming operations are disadvantaged by periods of low hog prices, which have tended to force these farms out of the industry.²⁵ This became apparent in 1998, which marked a period where hog prices bottomed out forcing around 15,000 hog producers (14%) out of the pork industry.²⁶ The benefits of these economies of size have forced a shift from smaller farms to larger industrialized farming in order to recognize costs savings to survive low price periods.²⁷ These economies have been realized through increases in technology within the hog industry and a change in the organizational structure of industry participants, which has allowed farms to make increased capital investments to further realize the cost advantages of economies of size.²⁸

19. *Id.*

20. STRUCTURAL RELATIONSHIPS, *supra* note 1, at 2.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 1.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 5.

C. *Furthering Economies of Size through Contract Farming*

Increases in capital investments throughout the industry have been made possible through contract farming, which occurred in response to industrialization of the industry, coupled with the workforce of small farmers who were part of the industry exodus during the late 1990's. Contract farming has furthered the industrialization of the hog industry.²⁹ Contract farming allows large scale corporate farming operations, referred to as "integrators," to contract out certain phases of the production process.³⁰ These production contracts between integrators and growers/producers "have been the major vehicle of organizational change in hog production," and have been the main driving force for corporations within the industry for "achiev[ing] unprecedented size."³¹ Exactly how this size is achieved is really quite simple. The grower/producer, an independent farmer, contracts with an integrator and is then paid to be the caretaker of the livestock through that specific phase, or phases, of the production cycle.³² Typically in these contract relationships, while producers provide the labor and management, integrators provide most of the inputs for the livestock such as feed, antibiotics, and managerial assistance.³³ This trend toward contract farming between integrators and producers has resulted in a separation between the producers who care for the livestock and the corporate companies who own the livestock.³⁴ Furthermore, contracts are not only being used between integrators and growers/producers, but the industry is increasingly seeing marketing contracts between integrators and the meat packing industry, as the hog industry continually tries to realize the benefits of economies of size by becoming even more consolidated.³⁵

D. *Negative and Positive Effects of Contract Farming*

While large scale operators in the hog industry have made significant gains through contract feeding operations, both positive and negative effects have

29. *Id.* at 2.

30. *Id.*

31. *Id.* at 5.

32. *Id.* at 2.

33. *Id.*

34. *Id.*

35. From this author's experience in the hog industry, most hog producers currently have contracts with meat processing plants. These contracts usually set a pricing agreement and even the number of hogs a producer will supply to the processing facility on a daily, weekly, or monthly basis. *See also id.* at 2-3.

been realized throughout the industry.³⁶ Some of the more negative treatment allocated to contract feeding operations has been associated with large-scale corporate farms and livestock packers having significant control and power over the entire industry, including individual producers.³⁷ Other concerns center on this same issue of corporate control over contract farmers, as well as the fact that producers have not been educated as to their rights and duties under these production contracts.³⁸

Even with some of these negative treatments, contract farming is still a driving force in the industry because of the advantages it offers potential contract producers. Advantages contract farming might offer producers include: (1) decreasing risk associated with industry lows that have historically forced small farmers out of the industry; (2) increasing the implementation and use of new technologies, leading operations to realize both efficiency and operating gains; and (3) as well as increasing product quality for marketing to pork processing operations.³⁹

III. HISTORY OF HOG PRODUCTION IN CHINA

Not unlike the pre-industrialization status of the pork industry in the United States, China's pork industry has remained fairly traditional.⁴⁰ The majority of all farming in China is based off the small farm model, with subsistence agriculture as its base point.⁴¹ China has about half of the World's hogs, with 80% of those hogs being raised in rural areas, where farmers typically raise only a handful of pigs.⁴² In order to support their huge population, which is over 4.5 times the size of the American population,⁴³ under this subsistence system, Chinese farmers apply substantial amounts of chemicals to their crops in order to keep production as high as possible to feed both their people and livestock.⁴⁴

36. *Id.* at 5-8.

37. *Id.* at 2.

38. *Id.*

39. *Id.*

40. See Michael T. Roberts, *Introduction to Food Law in the People's Republic of China*, NAT'L AGRIC. LAW CTR., Nov. 2007, 3, http://www.nationalaglawcenter.org/assets/articles/roberts_chinafoodlaw.pdf.

41. *Id.* (citing FRED GALE, USDA ECONOMIC RESEARCH SERVICE, CHINA AT A GLANCE: A STATISTICAL OVERVIEW OF CHINA'S FOOD AND AGRICULTURE, 8 (2002), available at <http://www.ers.usda.gov/publications/aib775/aib775e.pdf>.)

42. John Skorburg, American Farm Bureau Federation, China Briefing Book – Issue 7 (2002), available at <http://www.thepigsite.com/articles/6/production-and-mgmt/1170/china-briefing-book-issue-7>.

43. *U.S.-China Trade*, *supra* note 5, at 64, 66.

44. Roberts, *supra* note 40, at 3.

This large application of chemicals and fertilizers used to maximize agricultural production in the country is having substantial environmental impacts, which may result in China having to open up its markets to foreign agricultural imports to curb the harmful environmental effects.⁴⁵ Small farmers in China take their products to local processing facilities that are also mainly composed of small, family run operations.⁴⁶

A. *Current Market Trends*

The market for pork products in China's booming and advancing economy represents a very large potential for the United States pork industry.⁴⁷ The growth potential lies with two demographics that comprise nearly 90% of the Chinese population—both rural and urban lower-middle class consumers.⁴⁸ This demographic is important for two reasons. First, income growth in China has been projected to grow steadily among the two groups at approximately 10% every year.⁴⁹ Second, along with this economic boom of the middle class throughout China, the population of the country is expected to grow at a rate of 1.2%.⁵⁰ With both incomes and population increasing, it is projected that demand for pork products by Chinese consumers should increase between 6 and 7% for every 10% increase of income growth.⁵¹ Models have shown that with per capita incomes rising, meat consumption tends to increase, which means that China will be importing more pork.⁵² While admittedly, imports for pork may not increase by huge percentages, due to the huge population of China even small percentage increases mean huge market potential for United States pork producers.⁵³ From an economic standpoint, with the increase in demand there are only three options available for the Chinese government: (1) increase prices for pork products; (2) produce more pork internally; or (3) turn its back on protectionist policies and begin to import more pork products.⁵⁴

45. *U.S.-China Trade*, *supra* note 5, at 66.

46. Roberts, *supra* note 40, at 3-4.

47. DERMOT J. HAYES & ROXANNE CLEMENS, CTR. FOR AGRIC. AND RURAL DEV., THE CHINESE MARKET FOR U.S. PORK EXPORTS 3 (1997), *available at* <http://www.card.iastate.edu/publications/DBS/PDFFiles/97bp14.pdf>.

48. *Id.* at 4.

49. *Id.*

50. *Id.*

51. *Id.*

52. Skorburg, *supra* note 42.

53. *Id.*

54. HAYES & CLEMENS, *supra* note 47, at 4.

B. *Competition between China and the United States:
Competitive Advantages*

The demand and increases in consumption of pork in the Chinese marketplace will depend on one important influence—the Chinese government.⁵⁵ Analysis of the demand of agricultural imports is frustrated because the Chinese government has been less than transparent, not allowing accurate data to flow out of the country, another problem associated with their protectionist policies.⁵⁶ The Chinese government has tried to hold back the reins on opening up the country's agricultural markets to imports on the theory that staying self-sufficient in food production is in the nation's best interest.⁵⁷ One key factor in not opening up import markets has been the government's attempts to provide a certain amount of stability in the rural farming economy—a goal originally meant to stabilize small farmer income that has not yet materialized.⁵⁸ In order to level the playing field and to keep Chinese pork competitive in world markets, the Chinese government has heavily subsidized the pork industry in the past, through both feed subsidies to individual producers and also subsidies to pork processors to bring the processors out of the red, which typically operate at a loss.⁵⁹ The Chinese government's protectionist practices regarding the pork industry will come at a price for all consumers in the country. In 1996, the cost of feed alone in China was equivalent to the total production costs of producing pork in the United States.⁶⁰ Added to this feed cost advantage, there are also significant advantages throughout the various stages of the production cycle.⁶¹ The quality of American hogs can realize as much as a 30% differential when marketing hogs to processors, mostly due to the different diets fed to the livestock, as China feeds less protein.⁶²

C. *Marketplace Impacts on China's Joining the WTO*

One indication suggesting that China's government could be changing some of its protectionist policies occurred in November of 2001, when China

55. *Id.* at 4-5.

56. See FRED GALE, USDA ECON. RES. SERV., CHINA'S FOOD AND AGRICULTURE: ISSUES FOR THE 21ST CENTURY, 51 (2002), available at <http://www.ers.usda.gov/publications/aib775/aib775.pdf> [hereinafter CHINA'S FOOD].

57. *U.S-China Trade*, *supra* note 5, at 67.

58. *Id.*

59. HAYES & CLEMENS, *supra* note 47, at 4.

60. *Id.*

61. *Id.*

62. *Id.*

rejoined the World Trade Organization (WTO).⁶³ We should see some liberalization of China's marketplaces through their joining and compliance with the rules of being a member of the WTO.⁶⁴ Pursuant to China's agricultural agreement with the WTO, China agreed to limit agricultural subsidies by capping the subsidies at a rate of 8.5% of farm output.⁶⁵ Following the first year of membership with the trade organization, it appeared that China had made significant steps in opening up their markets to the international community.⁶⁶ Under the agreement with the WTO, China agreed to lower tariffs on pork products from the pre-WTO rate of 20%, down to 12%.⁶⁷ At the end of 2002, U.S exports to China increased 12% as compared with the previous year, when China had yet to become a full member of the WTO.⁶⁸ Manufacturers throughout the United States are likely to be the main beneficiaries of China's accession with the WTO, with many exporting opportunities opening up to small companies.⁶⁹ Thus opportunities for American pork producers of any size should be substantial in China's marketplace since the country joined the WTO as well as other market and environmental challenges that have effected pork production and consumption in China.

D. *Chinese Market for U.S. Pork Products*

China is a world leader in both agricultural production and in production of pork.⁷⁰ China is the world's biggest producer and consumer of pork and individually accounts for around one-half of the world's pork production.⁷¹ China also grows and produces around 20% of the world's corn crop as well.⁷² Driving the agricultural sector in China is the huge population of the country, which is nearly 4.5 times the size of the United States, combined with the fact that they have less farm land available for agriculture than the U.S.⁷³ Other driving factors contributing to China's need for imported agricultural products relate to the

63. WTO Press Release, *supra* note 9.

64. *U.S.-China Trade*, *supra* note 5, at 67.

65. WTO Press Release, *supra* note 9.

66. Skorburg, *supra* note 42.

67. *Id.*

68. Tim Wineland, *Exporting to China: New Opportunities, New Resources*, EXPORT AMERICA, Feb. 2003, at 25, available at http://www.trade.gov/exportamerica/NewOpportunities/no_china_0203.pdf.

69. *Id.* (small and medium sized firms made up 83% of those exporting to China in 1999, with over half of these firms having fewer than twenty employees).

70. *U.S.-China Trade*, *supra* note 5, at 66.

71. *Id.*

72. *Id.*

73. *Id.* at 64.

country's problems coping with an inadequate water supply and water pollution.⁷⁴

An additional problem currently plaguing the hog industry in China has been the significant increase in disease outbreaks throughout the country.⁷⁵ Millions of pigs throughout the country are dying from the emergence of two different diseases—the so called mysterious “blue ear” disease and hoof and mouth disease.⁷⁶ These disease problems have directly caused a 30% raise in pork prices in China.⁷⁷ After the announcement of these mysterious disease occurrences in China, one company took advantage of the problems suffered by China's agricultural community, to open up market opportunities within the country.⁷⁸ Smithfield Foods, one of the largest pork producers in the United States, made an agreement with China in August of 2007, to export \$60 million pounds of pork into the country.⁷⁹

Coupled with these problems, China's population is becoming wealthier with more disposable income available to purchase food goods.⁸⁰ These increases in income along with increased food consumption in China further burden an already heavily strained agricultural environment.⁸¹ China has limited opportunity for growth because of the large population of the country, limited availability of farm land, and pollution problems.⁸² Therefore, the increased demand for food products will lead to China needing to import food products from other countries.⁸³ Further, as a result of this increase in income, there will likely be an increase in demand for pork products, for which China will have to look outside the country to satisfy.⁸⁴ In 2001, China imported over \$500 million in meat products from the U.S.⁸⁵

74. *Id.*

75. Peek, *supra* note 10.

76. China's so called “blue ear” disease is likely to be a disease known to most producers in the U.S. as porcine circo-virus. This disease causes mass casualties in a herd and one of the main symptoms of this disease is a bluing of the ears. This author has personally experienced this disease in the confinement setting. Not only are there production losses in rate of gain and uniformity of the livestock grade, but death loss from the disease can reach upwards of over 60%. *See* Peek, *supra* note 10.

77. *Id.*

78. Mike Shepard, Smithfield Foods to Export Pork to China, The Washbiz Blog, http://voices.washingtonpost.com/washbizblog/2007/08/smithfield_foods_to_export_por.html (Aug. 24, 2007, 14:58 EST).

79. *Id.*

80. HAYES & CLEMENS, *supra* note 47, at 4.

81. *U.S.-China Trade*, *supra* note 5, at 67.

82. *Id.* at 66.

83. *Id.* at 67.

84. HAYES & CLEMENS, *supra* note 47, at 5.

85. *U.S.-China Trade*, *supra* note 5, at 67.

Both economic and market pressures are sure to put pressure on the Chinese government to address the problems associated with the pork industry. With the combination of land availability and production problems, pollution, increased disease problems, growing individual incomes, and population growth, there will need to be changes in China's pork industry. These changes could create huge opportunities for market expansion should the Chinese government decide to put away the protectionist policies of the past, thus allowing market pressures to create more competitive markets in their agricultural sector.

IV. APPLICABLE MEAT REGULATIONS: UNITED STATES AND CHINA

A. *History of Food Regulations in China*

When the People's Republic of China came into being in 1949, the government effectively abolished all previous regulations and codes then enacted within the country.⁸⁶ The Chinese government began to re-establish the legal system in the late 1970's when the country's economy shifted from its pure socialist form to what is considered its "socialist market economy" of today.⁸⁷ While this movement to the "socialist market economy" has had a huge impact on the formation of laws, China's decision to join the WTO has had a significant impact on the government's willingness to adapt and modify their legal system, adopting a more liberal and market economy approach to their legal and regulatory system.⁸⁸ These marked changes in the willingness of the Chinese government to liberalize some of its regulations could prove to open many new market opportunities, especially if individual income growth and environmental pollution caused by agricultural production have the effects stated previously in this Note.

B. *China's Importing Regulations, Procedures, and Rules*

The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), is the agency developed by the Chinese government having the responsibility for "overseeing food imports, exports, and quarantines" throughout the country.⁸⁹ Under the AQSIQ, any import company wanting to import agricultural goods into China will first need to obtain a "Quarantine Inspection Permit" (QIP).⁹⁰ Import companies will need to apply for, and obtain, a QIP from the

86. Roberts, *supra* note 40, at 4.

87. *Id.* at 4-5.

88. *Id.*

89. *Id.* at 5.

90. See PETRY, *supra* note 11, at 3.

AQSIQ prior to signing any contracts with exporters for shipping agricultural goods into the county, and the permit applied for will need to cover the contracted amount.⁹¹ Permits granted by the AQSIQ are generally valid for a six month period.⁹² This means that pork processing facilities will need to develop relationships with export and import companies that do business in China in order to avail themselves of possible market opportunities.

With China joining the WTO in late 2001, the government committed to making the permit process more transparent and less burdensome.⁹³ But this transparency was minimal as export/import companies still faced burdensome requirements under the QIP system.⁹⁴ Agreements made after China's accession into the WTO have allowed for improvements in the QIP system, but substantial uncertainty still remains in the permit system.⁹⁵ Uncertainty exists in the considerable discretion given to the AQSIQ in issuing and extending permits under the QIP system.⁹⁶ While the AQSIQ may grant a permit, they still obtain unyielding discretion to suspend issuance of further permits arbitrarily, without providing notice to affected import companies.⁹⁷ It seems that the Chinese government, through the AQSIQ, is able to circumvent its WTO obligations with the QIP system, allowing the government to continue its protectionist policies of the past.⁹⁸ Furthermore, the AQSIQ issued new changes in 2006 regarding meat imports through the QIP system.⁹⁹ The new regulations require importers to satisfy 75% of their current contract before applying for a new permit.¹⁰⁰ This new regulation has proved to be problematic for importers for various reasons: (1) they restrict importers by requiring them to do business with only one supplier and for only one item at a time; (2) they raise costs for importers by forcing them to import these items when market conditions are not favorable; and (3) they create a market for companies to sell their QIPs, which affects competition within the industry.¹⁰¹

Additionally, the USDA's Food Safety and Inspection Service (FSIS), provides a list of the applicable rules and regulations the Chinese government

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.* (showing that even though there has been a gain in improving the validity of the permit from three to six months, the QIP system is still arbitrarily enforced upon companies).

96. *Id.*

97. *Id.*

98. *Id.* at 4 (companies within the QIP system have been subjected to quantity requirements that are used to limit amounts of agricultural commodities flowing into China).

99. *Id.*

100. *Id.*

101. *Id.*

requires of any company wishing to export meat products into the country.¹⁰² There are three general requirements listed by the FSIS that need to be satisfied in order to export meat into China: (1) labeling requirements; (2) certification requirements, and (3) plant eligibility requirements.¹⁰³

Standardized labeling requirements for products going into commerce were promulgated under the China's Food Hygiene Law.¹⁰⁴ The general labeling requirements for food products include: listing the correct and full name of product, both the country of origin and country of destination, an establishment number, the date of production and any expiration dates, storage temperatures and procedures, and the net contents and weight of the product—all in the Chinese language.¹⁰⁵ There are also some pork specific labeling requirements. Companies exporting pork products into China will want to include relevant information about the processing facility meat products have been manufactured at including: the facility name, address, and also the applicable establishment number for the facility.¹⁰⁶ Producers will also be required to provide the “date (Month/Year) of Slaughter and Inspection” for unprocessed carcasses or carcass parts, and the “Date (Month/Year) of Manufacture” for processed meat products.¹⁰⁷ The statement, “[t]he USA is free of hog cholera; vaccination against hog cholera is prohibited; and importation of pigs vaccinated against hog cholera is prohibited,” must also be included on any exports coming into the country from the United States.¹⁰⁸

Certification requirements must be met for both fresh and frozen meat products being exported to China.¹⁰⁹ There are two forms exporters must obtain from FSIS to satisfy these certification requirements: Form 9060-5 “Meat and Poultry Export Certificate of Wholesomeness and FSIS Form,” and Form 9295-1 “Meat and Poultry Export Certificate of Wholesomeness for Export to the People's Republic of China.”¹¹⁰ Exporters also need to provide advanced notice of any shipments to China's Administration for Quality Standards, Inspection, and Quarantine.¹¹¹

102. EXPORT REQUIREMENTS, *supra* note 11.

103. *Id.*

104. *See generally* The Food Hygiene Law of the People's Republic of China (promulgated by Standing Comm. Nat'l People's Cong., Oct. 30, 1995, effective Oct. 30, 1995), *available at* <http://www.cnca.gov.cn/rjwzcyjgb/flfg/images/20061016/476.pdf>.

105. EXPORT REQUIREMENTS, *supra* note 11.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

Lastly, United States meat processing plants must be eligible before their products will be considered for export. To be eligible to export to the People's Republic of China, a meat processing facility must be federally inspected by the USDA.¹¹² This eligibility requirement along with the certification requirement were part of regulations developed in March of 2000, where China agreed to accept pork products exported from the United States that have been "certified as wholesome by USDA."¹¹³ Currently, there are eleven different processing facilities that are authorized to export their meat products to China.¹¹⁴

C. Steps in the Right Direction: New Zealand Example

New Zealand provides us with an example of how good negotiations can economically benefit both countries in the form of new trade agreements. In April 2008, New Zealand and China entered into a free trade agreement.¹¹⁵ This agreement was the first of its kind between China and a developed country. The agreement eliminated tariffs as barriers to trade between the two countries.¹¹⁶ New Zealand should recognize millions of dollars of economic gain as a result of this bilateral agreement with China, as tariffs will be reduced periodically from now until 2019.¹¹⁷ This agreement suggests a new willingness of the Chinese government, showing a promising future for those countries willing to negotiate free trade agreements.¹¹⁸ With the economic and population growth in China, countries that are able to enter into agreements should realize significant advantages.

V. CONCLUSION

Hog production in the United States has significant cost advantages that have been realized largely due to economies of scale through large scale, indu-

112. *Id.*

113. Hktdc.com, *China's New Import Rules for U.S. Citrus, Wheat, Meat Draw Mixed Reviews*, BUS. ALERT UPDATE (H. K. Trade Dev. Council, Wanchai, Hong Kong), Apr. 10, 2000, available at <http://www.hktdc.com/info/mi/a/baus/en/1X00Q6SQ/1/Business-Alert-%E2%80%93US/China-s-New-Import-Rules-for-US-Citrus--Wheat--Meat-Draw-Mixed-Reviews.htm>.

114. USDA FOOD SAFETY & INSPECTION SERV., *supra* note 11 (two of these facilities are located in Iowa: Cargill Meat Solutions in Ottumwa, and Tyson Fresh Meats in Waterloo are eligible processing plants for exporting pork products to China).

115. *FTA Removes Chinese Tariffs*, COMPETITION & REGULATION UPDATE, (Minter Ellison Rudd Watts Law Firm, New Zealand), Apr. 15 2008, at 1, available at <http://www.minterellison.co.nz/publications/CompetitionNewsletter-April2008.pdf>.

116. *Id.*

117. *Id.*

118. *Id.*

ustrialized production. The availability of cheap inputs coupled with the emergence of new technologies and contract farming has further increased these economies, providing hog producers in the United States with significant competitive advantages. These advantages are significant considering the current state of the hog industry in China. With rising middle class incomes and increases in population, pollution caused by increased chemical usage to grow feed crops and disease problems suffered by China's hog farmers, demand for pork products will likely grow.

The key factor influencing the Chinese marketplace for pork imports will be the Chinese government. It seems likely the Chinese government will have to end its protectionist agricultural policies of the past because of pressures associated with a growing economy and population. This end is evidenced by the government's accession into the WTO and willingness to enter into new trade agreements with foreign governments. While these facts show there are market opportunities available for U.S. pork producers, companies wanting to export products into China will certainly face some hurdles to doing so.

The Chinese agency responsible for managing imports and exports is the AQSIQ. Through this agency, the Chinese government has been able to continue protectionist policies through the QIP, an import permit system. While accession into the WTO has proved to lower some of the barriers of the permit system, it is acknowledged that the QIP system still remains substantially uncertain and is arbitrarily enforced by the AQSIQ. Future pressure on the Chinese government is necessary to ensure that WTO obligations are met and for the QIP system to continue to become less burdensome for importing companies wishing to export pork products from the United States. Also, pork processing companies in the United States need to be aware of the requirements under China's Food Hygiene Law. These requirements include labeling, certification, and plant eligibility. Processing facilities should work and consult with the FSIS of the USDA to ensure they are meeting these requirements before trying to reach agreements with import companies doing business within China.

The market opportunities available with China's booming economy and rising income offer great potential for the American pork industry. In order to tap into these emerging markets, the pork industry will need to keep up to date on the ever changing import regulations implemented by the Chinese government. As the Chinese government becomes more liberal and pushes protectionist policies of the past aside, this should open up huge opportunities for American pork producers who put themselves into position to take advantage.