

# POULTRY FROM CHINA: IS THE UNITED STATES VALUING TRADE INTERESTS OVER PUBLIC HEALTH?

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## I. INTRODUCTION

Despite years of food safety scandals surrounding China and strong protests by political figures and American consumers,<sup>1</sup> the United States Department of Agriculture (USDA) approved four Chinese processing plants to begin processing U.S. origin chicken and selling the chicken back to the U.S.<sup>2</sup> The shock-

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1. *See, e.g.*, Letter from Wenonah Hauter, Exec. Dir., Food & Water Watch, to Senator Herb Kohl, Congresswoman Rosa DeLauro, Senator Mark Pryor, Tom Vilsack, Sec’y of Agric., (Sept. 15, 2009) (on file with author) *available at* <http://documents.foodandwaterwatch.org/doc/chinesechicken.pdf> [hereinafter Letter from Hauter].

2. Press Release, USDA, FSIS Reaffirms Equivalence of China Poultry Processing System (Aug. 30, 2013), <http://www.fsis.usda.gov/wps/portal/fsis/newsroom/news-releases-statements-transcripts/news-release-archives-by-year/archive/2013/nr-08302013-01>; Letter from Andreas Keller, Dir., Food Safety & Inspection Serv., to Li Chunfeng, Deputy Dir. Gen., Inspection & Quarantine (Aug. 30, 2013) (on file with author), *available at*

ing, yet anticipated, news spread like wildfire in newsrooms throughout the United States<sup>3</sup> after the USDA delivered a press release on August 30, 2013.<sup>4</sup>

The USDA's Food Safety Inspection Service (FSIS) officials on March 4, 2013, began inspecting and preparing an audit of the People's Republic of China's (PRC) poultry plants.<sup>5</sup> Initially, the chickens will be raised and slaughtered in the U.S., or another country eligible to export slaughtered poultry to the U.S., and then shipped to China for processing and re-export.<sup>6</sup> This announcement by the USDA has initiated significant press coverage since it was leaked before a holiday weekend, and there are many individuals and organizations who strongly oppose the USDA's decision.<sup>7</sup>

Opponents of the USDA's decision contend that hazardous chicken could possibly enter the U.S. market, thereby endangering the health and safety of U.S. citizens, and potentially undermining the confidence in the entire nation's food safety standards.<sup>8</sup> Under the current proposal, there will be no USDA inspectors on-site at the Chinese poultry processing centers to verify the proper procedures are being followed.<sup>9</sup> Coupled with the above criticisms, the poultry imports will not be required to bear country of origin labeling, which presents a problem because American consumers will not have the information available to know which poultry products were processed in China.<sup>10</sup>

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[http://www.fsis.usda.gov/wps/wcm/connect/c3dab827-151d-4373-917f-139db6a2466d/China\\_2013\\_Poultry\\_Processing.pdf?MOD=AJPERES](http://www.fsis.usda.gov/wps/wcm/connect/c3dab827-151d-4373-917f-139db6a2466d/China_2013_Poultry_Processing.pdf?MOD=AJPERES).

3. See, e.g., Bill Tomson & Tarini Parti, *Audit Oks Chinese Poultry Plants*, POLITICO, (Aug. 30, 2013, 1:40 PM), <http://www.politico.com/story/2013/08/audit-gives-china-green-light-to-process-us-chicken-96091.html> [hereinafter *Audit Oks Chinese Poultry Plants*].

4. Press Release, USDA, *supra* note 2.

5. FOOD SAFETY & INSPECTION SERV., USDA., FSIS AUDIT OF THE FOOD SAFETY SYSTEM GOVERNING THE PRODUCTION OF PROCESSED POULTRY INTENDED FOR EXPORT TO THE UNITED STATES OF AMERICA 6 (2013), available at [http://www.fsis.usda.gov/wps/wcm/connect/c3dab827-151d-4373-917f-139db6a2466d/China\\_2013\\_Poultry\\_Processing.pdf?MOD=AJPERES](http://www.fsis.usda.gov/wps/wcm/connect/c3dab827-151d-4373-917f-139db6a2466d/China_2013_Poultry_Processing.pdf?MOD=AJPERES).

6. Letter from Andreas Keller to Li Chunfeng, *supra* note 2.

7. Tarini Parti & Bill Tomson, *Chinese-Raised Chicken Could be on U.S. Tables Soon*, POLITICO (Sept. 9, 2013, 4:34 PM), <http://www.politico.com/story/2013/09/chinese-raised-chicken-96490.html> [hereinafter *Chinese-Raised Chicken*].

8. Letter from Sherrod Brown, U.S. Senator, to Tom Vilsack, Sec'y of Agric., USDA, (Sept. 19, 2013), available at <http://www.brown.senate.gov/newsroom/press/release/sen-brown-presses-usda-over-inadequate-food-safety-inspection-of-processed-meats-from-china> [hereinafter Letter from Brown].

9. Ivan Pentchoukov, *Schumer Calls for Strict Oversight of Chinese Chicken Imports*, EPOCH TIMES (Sept. 15, 2013), <http://www.theepochtimes.com/n3/288539-schumer-calls-for-strict-oversight-of-chinese-chicken-imports>.

10. Adam Minter, *Minter: Don't Trust a Chicken Nugget That's Visited China*,

However, despite all the widespread criticisms of the USDA's decision, there are proponents of the decision. The supporters of the USDA's decision argue China's system is equivalent to and has met U.S. standards.<sup>11</sup> "Consumers should know that any processed poultry from China will be produced under equivalent food safety standards and conditions as U.S. poultry."<sup>12</sup> Proponents also suggest this new trade relationship with poultry could allow China to look at U.S. exports—particularly—more favorably.<sup>13</sup> Authorities suggest the USDA is pursuing this agreement with China for some type of "quid pro quo" so China will open up its beef market to allow in U.S. beef.<sup>14</sup>

## II. A LOOK INTO CHINA'S FOOD SAFETY HISTORY

It is commonly acknowledged that "China has an appallingly poor record when it comes to food safety"<sup>15</sup> because China has experienced a list of disturbing incidents such as maggots in pasta, deadly dog food, and recent bird flu outbreaks.<sup>16</sup> A Chinese article published in 2012 outlined China's checkered food safety history, and the Chinese correspondent even confirmed that "unregulated markets are chaotic, waste is widespread and anything goes as long as it cuts costs."<sup>17</sup> The Chinese have been struggling with food safety issues for decades, and by 2005, China experienced scandals involving commonly eaten foods such as rice, pickles, chives, and noodles.<sup>18</sup> The food safety crisis became widespread, common, and affected many food products.<sup>19</sup> The melamine milk scandal, in 2008, left 860 babies hospitalized and destroyed China's already severely diminished food safety reputation.<sup>20</sup>

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BLOOMBERG (Sept. 03, 2013), *available at* [djembe.imthird.org/front-page/dont-trust-a-chicken-nugget-that-visited-china](http://djembe.imthird.org/front-page/dont-trust-a-chicken-nugget-that-visited-china).

11. See FOOD SAFETY & INSPECTION SERV., *supra* note 5, at 2.

12. Brian Wingfield & Shruti Date Singh, *Chicken Processed in China Triggers U.S. Food Safety Protests*, BLOOMBERG (Sept. 26, 2013), <http://www.businessweek.com/printer/articles/599846?type=bloomberg>.

13. Bill Tomson & Tarini Parti, *USDA Closer to Chinese Chicken*, POLITICO (Aug. 15, 2013, 4:06 PM), <http://www.politico.com/story/2013/08/usda-chinese-chicken-95586.html> [hereinafter *USDA Closer*].

14. Pentchoukov, *supra* note 9.

15. *Id.*

16. See, e.g., *id.*

17. Nan Xu, *A Decade of Food Safety in China*, CHINADIALOGUE (June 8, 2012), <https://www.chinadialogue.net/article/show/single/en/5083-A-decade-of-food-safety-in-China>.

18. *Id.*

19. *Id.*

20. *Id.*

Following a decade of unsafe food and related scandals, China made a concerted attempt to tackle the problem posed to human health by improving the country's legislative framework, research capabilities, and coordination efforts.<sup>21</sup> These attempts, including the passage of the Food Safety Law in 2009, were ill-met and considered, in retrospect, a "historic step backwards," further validating how deeply rooted and difficult to resolve the food issues are in China.<sup>22</sup> China has continued to work through the food safety issues as the society has already paid a high price.<sup>23</sup> This on-going food safety crisis has become so severe that consumers smuggle infant milk formula from foreign countries into China in order to avoid buying potentially dangerous Chinese dairy products.<sup>24</sup> China's food safety reputation is the largest point of contention between U.S. consumers and the USDA, and will likely continue to be a hot issue until China's food safety standards can be deemed, and be accepted, as equivalent to U.S. standards.

### III. THE 2013 AUDIT REPORT

An audit was conducted by the USDA's Food Safety and Inspection Service (FSIS) to determine whether China's food safety system governing poultry was equivalent to the U.S. standards.<sup>25</sup> The audit was concerned with China's ability to produce products that are "safe, wholesome, unadulterated, and properly labeled."<sup>26</sup> The FSIS was simultaneously conducting an on-site investigation of China's poultry slaughter plants.<sup>27</sup> In pursuit of the objective, the FSIS specifically addressed the findings from an audit performed in 2010 that were not deemed equivalent to U.S. standards.<sup>28</sup> In addition, the FSIS placed emphasis on China's Central Competent Authority's ability to provide oversight of inspection personnel through supervisory reviews in order to comply with Title 9 of U.S. Code of Federal Regulations, and the in-plant inspector's ability to regulate this compliance with the laws.<sup>29</sup>

#### A. Legal Basis for the Audit

The audit was conducted in accordance with U.S. and China's specific laws

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21. *Id.*

22. *Id.*

23. *Id.*

24. Minter, *supra* note 10.

25. FOOD SAFETY & INSPECTION SERV., *supra* note 5.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 6-7.

and regulations<sup>30</sup> including: the U.S. Poultry Products Inspection Act,<sup>31</sup> the Poultry Products Inspection Regulations—concerning the eligibility to import to the U.S.,<sup>32</sup>—and China’s 2009 Food Safety Law.<sup>33</sup>

China initially requested an equivalency check in 2004, and the FSIS granted the request and performed an on-site audit.<sup>34</sup> In 2006, the FSIS determined the PRC’s systems were equivalent and allowed them be included on the list of acceptable countries eligible to export to the U.S. following certain stipulations in accordance with the prescribed laws and regulations.<sup>35</sup> A verification audit was required to reinstate China’s export eligibility, and in 2010, the verification audit revealed several findings that needed corrective actions.<sup>36</sup> Corrective actions were taken and verified by the auditors prior to determination of equivalence for the current 2013 inspection.<sup>37</sup>

### *B. Audit Components*

The audit focused on six components for review to determine if the processes and facilities are equivalent to U.S. standards, including: government oversight, statutory authority, sanitation, hazard analysis and critical control point systems, chemical residue programs, and microbiological testing programs.<sup>38</sup>

The evaluation of government oversight included an extensive review and analysis of the corrective actions in response to the 2010 findings.<sup>39</sup> The 2013 audit was vastly concerned with addressing the findings from the top three components that presented the most difficulty in 2010: the government oversight, statutory authority, and microbiological testing programs.<sup>40</sup> The 2013 audit corrected many items that were of concern in 2010, such as: (1) determining the inspection personnel who perform the oversight are the appropriate employees hired to perform the work;<sup>41</sup> (2) the inspection procedures and current manuals are standardized across the offices and establishments;<sup>42</sup> and (3) the supervisory

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30. *Id.* at 7.

31. *See generally* Poultry Products Inspection Act, 21 U.S.C.A. §§ 451-72 (West 2014).

32. *See generally* Poultry Products Inspection Regulations, 9 C.F.R. § 381.196 (2015).

33. FOOD SAFETY & INSPECTION SERV., *supra* note 5 at 7.

34. *Id.* at 8.

35. *Id.*

36. *Id.*

37. *Id.* at 8-9.

38. *Id.* at 6.

39. *Id.* at 8.

40. *See id.* at 8-13, 17-19.

41. *Id.* at 9.

42. *Id.* at 10.

staff demonstrate the ability to effectively assess a subordinate's job duties, and implemented a process to remove those who did not conform.<sup>43</sup>

### C. Audit Findings

The FSIS found through the 2013 audit that China has adequately addressed and corrected all previously identified concerns reported, and China's poultry processing system meets FSIS equivalence criteria for all six systems components.<sup>44</sup> Therefore, the PRC may now certify a list of establishments that are verified and eligible to export processed—heat-treated and cooked—poultry products to the U.S. as long as the raw poultry is from approved countries.<sup>45</sup>

## IV. IS THIS A “QUID PRO QUO” SITUATION?

Given China's lack of favorable food safety history, many Americans are wondering what the USDA was thinking when it signed off on the processed imports from China. Currently, China has a ban on U.S. beef products<sup>46</sup> since the mad cow disease was discovered in 2003 in Washington State.<sup>47</sup> It is debatable as to whether the recent decision by the USDA could be considered a “quid pro quo” tactic, namely a chicken-for-beef swap.<sup>48</sup> New York Senator Charles Schumer spoke out on September 15, 2013, and presented the “outrageous” situation as such: “[The U.S.] wants China to do something, and China says, ‘[i]n return, let us import these chickens.’ And then the USDA is forced to do it, even though they don't have the inspections.”<sup>49</sup> China's beef imports have been skyrocketing since 2011, and beef prices in China have increased 60% since 2011, indicating a growing need for beef imports because of the tight domestic supply.<sup>50</sup> A spokesman for the U.S. Poultry and Egg Export Council stated “I'm cautiously optimistic this is good news for our industry.”<sup>51</sup> One professor from

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43. *Id.* at 11.

44. *Id.* at 20.

45. *Id.*

46. *Export Requirements for the People's Republic of China*, FOOD SAFETY & INSPECTION SERV., USDA (May 11, 2015), <http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/exporting-products/export-library-requirements-by-country/Peoples-Republic-of-China> [hereinafter *Export Requirements*].

47. Rich Bindell, *Is the USDA Engaged in a Chicken-for-Beef-Swap?*, FOOD & WATER WATCH (Jan. 20, 2011), <http://www.foodandwaterwatch.org/blogs/is-the-usda-engaged-in-a-chicken-for-beef-swap/>.

48. *Id.*; Pentchoukov, *supra* note 9.

49. Pentchoukov, *supra* note 9.

50. *Audit OKs Chinese Poultry Plants*, *supra* note 3.

51. *Id.*

Iowa State has faith in the equivalency determination and thinks the USDA is just “following scientific protocol,” and the officials “are not willing to compromise their standards due to outside forces.”<sup>52</sup> Encouraging China to lift the ban on beef products is a reasonable goal that the USDA should pursue, but not at the expense of U.S. food safety.<sup>53</sup> An official from the U.S. Meat Export Federation noted, “[c]learly, our intent is restoring beef access to China, so our hope is China will look at that issue.”<sup>54</sup> It is clear the U.S. authorities have thought about this situation as some sort of trade relationship with China and they are hopeful for healthy trade relations.

## V. FOOD SAFETY ISSUES AND CONCERNS

This situation is “deeply worrisome to American consumers”<sup>55</sup> since FDA has been struggling for many years to guarantee the food safety of imports, and Chinese plants may not yet be equivalent to U.S. standards.<sup>56</sup> The U.S. and China have been involved in an on-going struggle since 2004, when the first equivalence test was administered.<sup>57</sup> After correcting the findings from the 2010 audit, the 2013 FSIS audit approved four processing plants and contends they have met U.S. standards.<sup>58</sup> Many still question whether China’s inspection system is equivalent to the U.S standards, and they are especially concerned with the future since there will be no USDA inspector at the processing facilities to make sure they are complying with the stated requirements.<sup>59</sup>

### A. *Stated Equivalency Requirements*

Al Almanza, the administrator of the FSIS is confident the Chinese facilities are up to U.S. standards and maintains that “[i]t’s the same [set of standards] we use for any other country. We’re not treating China any differently in deter-

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52. Yu Wei, *USDA’s OK of Chicken Processing Challenged*, CHINADAILY (Sept. 16, 2013, 11:10 AM), [http://usa.chinadaily.com.cn/epaper/2013-09/16/content\\_16972585.htm](http://usa.chinadaily.com.cn/epaper/2013-09/16/content_16972585.htm).

53. Minter, *supra* note 10.

54. *USDA Closer*, *supra* note 13.

55. *Chinese-Raised Chicken*, *supra* note 7.

56. Maryn McKenna, *USDA: Chicken Processed in China can be Sold in the US Without Labels to Say so*, WIRED (Sept. 04, 2013, 5:31 PM), <http://www.wired.com/wiredscience/2013/09/china-chicken-usda/>.

57. See FOOD SAFETY & INSPECTION SERV., *supra* note 5, at 8.

58. See *generally id.*

59. Press Release, Wenonah Hauter, Exec. Dir. Food & Water Watch, Next Labor Day, You Could be Serving Chicken from China at Your Holiday Picnic (Aug. 30, 2013), <http://www.foodandwaterwatch.org/pressreleases/next-labor-day-you-could-be-serving-chicken-from-china-at-your-holiday-picnic/>.

mining equivalency for exporting to the United States.”<sup>60</sup> The simple solution is to visit the processing plants, but this simple solution will not make the food system safer, or ensure food safety issues do not arise in the future.<sup>61</sup>

In 2009, the Food and Water Watch consumer group warned members of Congress of the lack of food safety in China and called for a continued ban on Chinese poultry.<sup>62</sup> A petition was signed by “17,113 citizens from all 50 states” and delivered to the authorities urging that they retain the language in section 723 of a proposed House bill in order to prohibit use of funds for importation of processed poultry from China because the citizens believed the equivalency determination was flawed.<sup>63</sup> The citizens in 2009 were worried about “simply lift[ing] the ban with no strings attached.”<sup>64</sup> The letter to the members of Congress and the Secretary of Agriculture address these concerns and states that the “PRC’s food safety system is virtually non-existent.”<sup>65</sup> In a short seven month span, the FDA refused entry of food items shipped from China for reasons such as: “filth, illegal [additives] used, . . . unsafe color additives, lack of labeling, . . . salmonella contamination,” unsafe packaging, and poisonous products.<sup>66</sup>

Even though the processing facilities are now “equivalent” to U.S. standards, Representative Rosa DeLauro believes this situation “puts the health of U.S. consumers at risk,” and suggests that the “USDA is more concerned with trade than food safety.”<sup>67</sup> DeLauro’s concerns stem from the fact there is no way to ensure that Chinese chicken is not used in the process.<sup>68</sup> She is quite hesitant especially since she pointed out that the FDA found thousands of pets were made sick from eating treats that included contaminated chicken from China.<sup>69</sup> Furthermore, China has experienced another “outbreak of avian influenza in its chicken”<sup>70</sup> and a Chinese chicken jerky manufacturer of dog treats later had their

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60. *Chinese-Raised Chicken*, *supra* note 7.

61. Ana Radelat, *DeLauro Says She’ll Keep Fighting USDA-China Agreement on Chicken*, THE CT MIRROR (Sept. 12, 2013), <http://www.ctmirror.org/story/2013/09/12/delauro-says-shell-keep-fighting-usda-china-agreement-chicken>.

62. See Press Release, Food & Water Watch, Hands Petition to Members of Congress Calling for Continued Ban on Chinese Chicken (Sept. 15, 2009), <https://www.foodandwaterwatch.org/pressreleases/food-water-watch-hands-petition-to-members-of-congress-calling-for-continued-ban-on-chinese-chicken/>.

63. Letter from Hauter, *supra* note 1.

64. *Id.*

65. *Id.*

66. *Id.*

67. Radelat, *supra* note 61.

68. *Id.*

69. *Id.*

70. Brian Wingfield & Shruti Date Singh, *Chicken Processed in China Triggers U.S.*

treats recalled; further, the FDA found ties to more than 2,500 animal illnesses.<sup>71</sup> These shortcomings were due to mislabeling, import shortcuts, and falsified documents.<sup>72</sup>

### *B. Meeting United States Food Safety Standards*

Is China really going to meet the strict food safety standards the U.S. imposes? When the Chinese government was asked in a press conference when China would meet developed world-standards, the Chinese official said that it would instead meet “China’s ‘national condition’ as a developing country”—insinuating they are unable to meet U.S. standards.<sup>73</sup> Thus, with no USDA officials regulating China’s import activities, will China’s infamous reputation as one of the world’s worst food safety offenders continue? Over 100 people in 2013 have contracted bird flu, a disease that circulates in poultry and is transmissible to humans, and over 40 have died from the disease.<sup>74</sup> Nevertheless, USDA officials have only considered allowing poultry imports that have been thoroughly cooked, thus killing any bird flu virus.<sup>75</sup> Unfortunately, the problem still remains that there will be no on-site inspection by the USDA to oversee or confirm these various procedures are being followed.<sup>76</sup>

### *C. Lack of Labeling Requirement*

Another well-noted concern is the labeling procedure: under the USDA’s current rules processed meat products do not have to be labeled to identify their country of origin.<sup>77</sup> Per federal labeling regulations, Country of Origin Labeling (COOL), only applies to food that originated outside of the U.S., not the food that was only processed outside the U.S.<sup>78</sup> Regardless of what is done with the poultry over-seas, if the poultry originated in the U.S., it bypasses the label require-

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*Food Safety Protests*, BLOOMBERG (Sept. 26, 2013), <http://www.businessweek.com/printer/articles/599846?type=bloomberg> [hereinafter *Chicken Processed in China*].

71. Samantha Olson, *Chicken from China is Approved by USDA for Import into US*, MED. DAILY (Sept. 5, 2013, 5:06 PM), <http://www.medicaldaily.com/chicken-china-approved-usda-import-us-255727>.

72. *Id.*

73. Minter, *supra* note 10.

74. *USDA Closer*, *supra* note 13.

75. *Id.*

76. *Id.*

77. Minter, *supra* note 10.

78. Agricultural Act of 2014, Pub. L. No. 113-79, § 12104, 128 Stat. 649, 979; *see also* 7 U.S.C.A. § 1638(a) (West 2013).

ment.<sup>79</sup> Inevitably, this leaves U.S. consumers no way to discern where the food was processed, and without the choice of whether to engage in buying meat that has been processed at the Chinese processing facilities.<sup>80</sup> Representative De-Lauro and other authorities are working on persuading Congress to approve and fund a new country-of-origin labeling law so the consumers will at least be aware when they are purchasing a poultry product from China.<sup>81</sup>

## VI. IS THE UNITED STATES PUTTING TRADE BEFORE HEALTH?

Do the allegations concerning the U.S. putting trade interests before health have merit? Since the FDA has been struggling for years with guaranteeing the safety of U.S. imports,<sup>82</sup> why is the USDA lifting the ban on poultry processed in China when food safety in China is still an issue? Some suggest the U.S. is currently ranking trade interests above health and safety, especially because some consumers in China already smuggle in products in order to avoid potentially dangerous products.<sup>83</sup> Others suggest the current situation is more of a slippery slope and “trade interests will trump health at the end of this process,”<sup>84</sup> and this is “deeply worrisome to American consumers.”<sup>85</sup>

### A. Senator Brown’s Letter addressed to the USDA

United States Senator Sherrod Brown summarized the opponent’s viewpoints succinctly in his letter to USDA’s Secretary Tom Vilsack on September 19, 2013.<sup>86</sup> The Senator has been a strong advocate in food safety and was instrumental in passing legislation that gives the FDA authority to recall dangerous foods, improve safety of imports, and establish a traceability system to track tainted food in the event of an outbreak.<sup>87</sup> The contents of Brown’s letter ad-

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79. McKenna, *supra* note 56.

80. Minter, *supra* note 10; *see also* FOOD SAFETY & INSPECTION SERV., USDA, A GUIDE TO FEDERAL FOOD LABELING REQUIREMENTS FOR MEAT, POULTRY, AND EGG PRODUCT (2007), available at [http://www.fsis.usda.gov/shared/PDF/Labeling\\_Requirements\\_Guide.pdf](http://www.fsis.usda.gov/shared/PDF/Labeling_Requirements_Guide.pdf).

81. Radelat, *supra* note 61; *see also* *Country of Origin Labeling Faces Questions From Many Sides*, FARM PROGRESS (Jan. 27, 2014), <http://farmprogress.com/story-country-origin-labeling-faces-questions-many-sides-0-107827>.

82. McKenna, *supra* note 56.

83. Minter, *supra* note 10 (explaining that food-safety problems have become so bad in China, “some consumers now smuggle quantities of infant milk formula from foreign countries into China trying to avoid buying potentially tainted Chinese dairy products”).

84. *USDA Closer*, *supra* note 13.

85. *Chinese-Raised Chicken*, *supra* note 7.

86. *See generally* Letter from Brown, *supra* note 8.

87. Press Release, Sen. Brown presses USDA over inadequate Food Safety Inspection of Processed Meats from China, Sherrod Brown Senator for Ohio, (Sept. 19, 2013),

dresses American's concerns with granting China equivalency status and outlines the concerns with China's egregious food safety record.<sup>88</sup> Senator Brown requested nine questions be answered in order to fully inform Americans.<sup>89</sup> The questions focused on how the labeling concerns may be remedied, whether there will be intensified port-of-entry inspections for products imported from China, and the outlook on Chinese origin poultry.<sup>90</sup>

The opponents of the USDA's decision to lift the ban insist the dangers of certifying these Chinese plants outweigh the potential benefits of China *possibly* loosening restrictions of U.S. beef imports.<sup>91</sup> The dangers are characterized as somewhat of a slippery slope because "[e]xperts suggest that this could be the first step towards allowing China to export its own domestic chickens to the U.S."<sup>92</sup> The prospects for increased poultry production in China have always been rising, and China has been long thought to be the main competition for future U.S. exports.<sup>93</sup>

### *B. Slippery Slope*

The slippery slope concern is not misplaced as U.S. Senator Charles Schumer found it necessary to address these concerns to Secretary Vilsack after hearing of the USDA's decision to report to Congress that they are taking steps to allow poultry both raised and slaughtered in China to be exported to the U.S.<sup>94</sup>

Could the USDA's most recent move be the first step to allowing China to export its own chicken to the U.S.? American consumers should not anticipate the influx of Chinese-bred raw poultry into the U.S. market in the foreseeable future.

We have outsourced the poultry processing to China, but we haven't sourced

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<http://www.brown.senate.gov/newsroom/press/release/sen-brown-presses-usda-over-inadequate-food-safety-inspection-of-processed-meats-from-china>.

88. See generally Letter from Brown, *supra* note 8.

89. *Id.*

90. *Id.*

91. *USDA Closer*, *supra* note 13.

92. McKenna, *supra* note 56.

93. Nancy Morgan, *Selling Poultry in China: No Longer Chicken Feed*, FAS ONLINE, (last updated Oct. 14, 2004) (article from 2004 discussing the outlook on poultry in connection with China) (on file with author).

94. See Press Release, Charles Schumer, Schumer Urges USDA to Reverse Course and Prevent Potentially Tainted Meat From Entering U.S.—Chinese Processing Plants Are Rarely Inspected (Dec. 16, 2013) (on file with author), <http://www.votesmart.org/public-statement/832047/letter-to-secretary-of-the-department-of-agriculture-tom-vilsack-urges-usda-to-reverse-course-and-prevent-potentially-tainted-meat-from-entering-us-chinese-processing-plants-are-rarely-inspected#.VNOGMqPnaUk>.

raw poultry from China—the chickens will still be raised and slaughtered in the United States, Canada, or Chile. Also, it takes time for China to be given the green light to export its domestic poultry to the U.S., in part because raw poultry import is audited through a system different from the processed audit, and there is no guarantee that China will pass the audit.<sup>95</sup>

The USDA's report revealed that Chinese slaughter systems may be granted equivalence to the U.S. systems, which would allow poultry raised and processed in China to be exported to the U.S.<sup>96</sup> Schumer believes this movement “is shocking . . . given China's poor track record with regard to food-safety” and remarks that “the USDA should reconsider its efforts and make sure the chicken we eat here in America is safe.”<sup>97</sup> He outlines that in just three consecutive months in 2013, China experienced dead pigs “floating in a river in China that supplies drinking water,” the avian influenza virus, and sixty three Chinese people being arrested for selling rat, mice, and mink flesh as mutton.<sup>98</sup>

In a letter dated December 16, 2013, Schumer wrote to Vilsack and pointed to the abundant amount of disturbing incidents in China's food safety history, and he urged the USDA to not follow through with these new rules allowing for imported chicken from China.<sup>99</sup> Schumer specifically expresses his concern that the issues in the Chinese poultry processing plants that were inadequate in 2010 may still pose a threat to U.S. consumers, and he requests the FSIS explain how they addressed the deficiencies in detail.<sup>100</sup> With the current country of origin labeling laws the U.S. employs, chicken originating in China to be exported to the U.S. would have to comply with the labeling requirement.<sup>101</sup> If the chicken is being raised, slaughtered, and processed in China, the country of origin labeling laws apply,<sup>102</sup> and thus, U.S. consumers will have the information available to them in order to choose whether to purchase poultry from China. Some Americans could see the possibility of opening up U.S. markets to import chicken grown from China to be a good thing because then China will at least be required

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95. Yanzhong Huang, *Should American Consumers Worry About Chicken Imported from China?*, THE ATLANTIC (Sept. 30, 2013), <http://www.theatlantic.com/china/archive/2013/09/should-american-consumers-worry-about-chicken-imported-from-china/280123/>.

96. Press Release, Charles Schumer, *supra* note 94.

97. *Id.*

98. *Id.*

99. *See id.*

100. *See id.*

101. *See* Agricultural Act of 2014, Pub. L. No. 113-79, § 12104, 128 Stat. 649, 979 ; *see also* 7 U.S.C.A. § 1638(a) (West 2013).

102. *See* Agricultural Act of 2014, § 12104; *see also* 7 U.S.C.A. § 1638(a).

to engage in the country of origin labeling.<sup>103</sup>

The cornerstone that drives the labeling requirement is the concept of consumer choice. The labeling requirement provides valuable information to consumers and provides the opportunity to choose what they eat to know, where the food comes from, and how it was produced. The labeling requirements also give the opportunity for producers from different countries to distinguish their food products from each other.<sup>104</sup> China's food safety history, coupled with U.S. citizen's negative viewpoints of allowing China to exporting their own home-grown chickens to the U.S., would not be in society's best interest.<sup>105</sup>

### *C. Questionable Time to Release Information*

The timing of the USDA's press release did not go unnoticed as many media sources made mention to the ban being lifted and the information being strategically released on the Friday before the long Labor-day weekend.<sup>106</sup> Since it is "common practice for Government agencies to release information they hope to sneak past consumers on Friday afternoons before a holiday weekend," this may be indicative of USDA's tactics surrounding the morality of their decision.<sup>107</sup> This decision to release the information before a long weekend gives rise to the questionable tactics the USDA is employing.

### *D. Possible Benefits of Releasing the Ban*

On the other hand, some view the poultry trade agreement to sell chicken to China as potentially beneficial because it will increase capacity for U.S. producers.<sup>108</sup> In addition, this agreement may create more jobs, and more exports for the U.S. economy.<sup>109</sup> Supporters argue that the U.S. already allows seafood imports from China.<sup>110</sup> In fact, the U.S. imported 1.9 billion worth of seafood from China in 2012.<sup>111</sup> The benefits of importing poultry processed in China may outweigh the possibility of there being any food safety scandals. Due to the nature of this agreement, the uncertainty about the future, and the unknown potential benefits, there are too many factors at this time to reflect on whether the

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103. See Agricultural Act of 2014, § 12104; see also 7 U.S.C.A. § 1638(a).

104. See generally Agricultural Act of 2014, § 12104.

105. See, e.g., Press Release, Charles Schumer, *supra* note 94.

106. See, e.g., Press Release, Hauter, *supra* note 59.

107. See *id.*

108. Olson, *supra* note 71.

109. *Id.*

110. *Chicken Processed in China*, *supra* note 70.

111. *Id.*

USDA is valuing trade over public health.

#### VII. IMPACT ON AGRICULTURE INDUSTRY

Despite the multitude of concerns raised by American citizens over the USDA's decision to allow products to be shipped to the U.S., it is likely that the "quid pro quo" idea will be a devastating reality.<sup>112</sup> Since the U.S. has now opened its market up to China, it is not going to be such a surprise when China opens their market up to U.S. beef products.<sup>113</sup> China will be able to justify their decision because beef imports in China have been skyrocketing since 2011, and their demand for beef is increasing.<sup>114</sup> If China does allow U.S. beef imports, this will impact our industry and possibly make several Americans happy because "[w]e have been dying to get into that market."<sup>115</sup> There is no doubt that China is going to look heavily at the issue,<sup>116</sup> but if the ban of beef products is lifted, hopefully it will not be at the expense of U.S. food safety.<sup>117</sup>

Even with the wide-spread criticism, the USDA is seriously considering allowing China to both raise and slaughter their own home-grown chicken and have it exported to the U.S.<sup>118</sup> The USDA reported to Congress that they were taking steps to allow this to happen.<sup>119</sup> If the Chinese slaughter plants are granted equivalence to the U.S. systems, this would allow poultry raised and processed in China to be exported to the U.S.<sup>120</sup> It is highly likely that there will be a reexamination of the FSIS's most recent findings to ensure Chinese processing facilities and safety system adhere to high food safety standards before all the plants will be granted equivalence.<sup>121</sup> Once this re-examination takes place, China will be on the fast track to exporting its own chicken to the U.S. Again, given China's food safety history and the backlash the USDA has already received from U.S. citizens, allowing China to export their own home-grown chickens to the U.S. would not be in the American public's best interest.<sup>122</sup>

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112. See Bindell, *supra* note 47.

113. *Export Requirements*, *supra* note 46.

114. *Audit Oks Chinese Poultry Plants*, *supra* note 3.

115. *USDA Closer*, *supra* note 13.

116. *See id.*

117. Minter, *supra* note 10.

118. Press Release, Charles Schumer, *supra* note 94.

119. *Id.*

120. *Id.*

121. *See id.*

122. *See, e.g., id.*

*A. Will the United States Take Advantage of this Opportunity?*

Poultry producers are comforting American consumers when they say “almost all the chicken eaten in the U.S. will still be produced and processed domestically.”<sup>123</sup> The authorities do not expect things to change any time soon, as ninety-nine percent of the chicken consumed in the U.S is currently hatched, raised, and processed in the U.S.<sup>124</sup> The National Chicken Council has said that Chinese-processed chicken in the U.S. will be a rarity because “few American poultry suppliers will take advantage of the opportunity.”<sup>125</sup> In fact, McDonalds and Tyson foods are two large companies that have no plans to use imported poultry from China.<sup>126</sup> The statistics show there is a likelihood that chicken from China will not be in high demand in our economy.<sup>127</sup>

Authorities hope the Chinese will look a little more favorably on our chicken products and on other U.S. agricultural imports.<sup>128</sup> This could be a breakthrough for the other agricultural products that would like to come from the U.S.

*B. Suggestions*

Schumer calls “for annual inspections to be conducted at the Chinese [processing] plants”, and has asked that “imports be rigorously and frequently retested before being sold to consumers in the [U.S.]”<sup>129</sup> In accordance with the Poultry Products Inspection Regulation, there needs to be more on-site visits, more detailed and thorough reports conducted, and random sampling of the poultry products.<sup>130</sup> The Poultry Products Inspection Act requires inspections of poultry products, permits the Secretary of Agriculture to set standards for processing or slaughtering facilities, and to issue standards concerning labeling procedures.<sup>131</sup> The U.S. authorities need to take full advantage of the powers given to them and enact higher standards to protect American citizens. In order to prevent contamination in processed chickens, the USDA should negotiate with the Chinese Government to send U.S. personnel to China to conduct these on-site inspections.

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123. *Chicken Processed in China*, *supra* note 70.

124. *Id.*

125. Bettina Elias Siegel, *Chinese Chicken, Big Ag's Influence and What We Can Do*, THE LUNCH TRAY (Oct. 1, 2013), <http://www.thelunchtray.com/chinese-chicken-big-ags-influence-and-what-we-can-do/>.

126. *Chicken Processed in China*, *supra* note 70.

127. *See generally id.*

128. *See USDA Closer*, *supra* note 13.

129. Pentchoukov, *supra* note 9.

130. Poultry Products Inspection Regulations, 9 C.F.R. § 381.196(a)(iv)(A)-(C) (2015).

131. *See generally* Poultry Products Inspection Act, 21 U.S.C. § 451-72 (2012).

According to Bill Marler, a publisher of the Food Safety News newsletter, “[f]ood safety in China probably won’t get better until consumers can freely speak out against or sue the government and corporations without fear of retribution.”<sup>132</sup> Mr. Marler also believes that until there is a real change in the rule of law in China, he is going to be suspect about the imported food from China.<sup>133</sup>

Chinese consumers are not savvy about making choices, getting their voices heard, and the Chinese system lacks a mature and modern consumer movement.<sup>134</sup> This is a key reason for China’s worsening food safety problem, and China needs to enact adequate laws, rules, and regulations that manufacturers, producers, and consumers will abide by.<sup>135</sup> The profit motive needs to take a back seat until the PRC can gain a reputation of positive food safety standards. There needs to be a balance of information between producers and consumers. A more constructive approach would call for the U.S. and Chinese governments to work together to construct a functioning product safety regulatory framework that could work to build an effective and enforceable rule of law.

#### VIII. CONCLUSION

The USDA is going to have to continue to field questions from both the supporters and the opponents of the USDA’s decision to allow chicken to be processed in China. Opponents are going to continue to be skeptical about hazardous chicken possibly entering the U.S. market, and thus potentially undermining the confidence in the entire nation’s food safety standards.<sup>136</sup> The opponents present a valid objection to this decision since there will be no USDA inspectors on-site at the Chinese poultry processing centers to verify the proper procedures are being followed, nor will the processed poultry imports have to bear country of origin labeling.<sup>137</sup> The proponents of the USDA’s decision will continue to assert that China has met U.S. standards,<sup>138</sup> and this allows a new trade relationship with China and could allow China to look at other U.S. exports more favorably.<sup>139</sup>

The Chinese and U.S. Governments need to work together to prevent any adulteration in chicken. The USDA needs to be proactive and negotiate sending

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132. *Chicken Processed in China*, *supra* note 70.

133. *Id.*

134. Xu, *supra* note 17.

135. *See id.*

136. Letter from Brown, *supra* note 8.

137. *See, e.g., id.*

138. *See generally* FOOD SAFETY & INSPECTION SERV., *supra* note 5.

139. *See USDA Closer*, *supra* note 13.

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our own U.S. personnel over to China to conduct the on-site inspections to ensure safety. Establishing an authoritative and regulatory authority and building an effective and enforceable rule of law will tackle the high safety risk.