



China-U.S. Poultry Dispute

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Summary

In April 2006, the U.S. Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) published a final rule allowing certain poultry products processed in China to be imported into the United States. However, USDA appropriations measures for recent years have prohibited FSIS from using funds to implement the rule. In October 2009, Congress enacted the FY2010 Agriculture appropriations bill (P.L. 111-80), which contains language that seeks to address this issue. Instead of continuing this prohibition, the FY2010 Agriculture appropriations bill allows USDA to use appropriated funds to implement the FSIS rule permitting U.S. imports of certain processed poultry and poultry products from China, if specified preconditions are met.

The appropriations language is intended not only to ensure the safety of Chinese poultry imports but also to address trade concerns. The Chinese government has strongly criticized the ban on implementation of the rule as a violation of trade rules, and on April 17, 2009, it formally requested World Trade Organization (WTO) consultations on the issue, the first step toward referral to a dispute settlement panel. This panel was established later in 2009 and said it will issue its final report by July 2010.

Many food safety advocates have supported the ban on the poultry rule, arguing that China—the third-leading foreign supplier of food and agricultural imports into the United States—lacks effective food safety protections. They have noted that China has experienced outbreaks of highly pathogenic avian influenza, and have argued that USDA's determination, that Chinese-processed poultry was appropriately regulated, was flawed. These advocates have argued, among other things, that China has been the source of a number of unsafe consumer products, including dairy products, infant formula, and wheat gluten (used in pet and animal feeds) intentionally contaminated with melamine to heighten measurable protein levels, and farmed seafood with illegal levels of antibiotics.

Earlier, a coalition of U.S. animal product exporters had opposed appropriations language banning the China poultry rule. This group argued that the ban had fueled trade retaliation by China, where a rising quantity of U.S. poultry products are now being marketed and where U.S. meat exporters have been seeking expanded sales of their products. Meanwhile, China announced on September 14, 2009, that it was launching anti-dumping and anti-subsidies investigations regarding chicken meat (and automobile parts, after the United States imposed import safeguard tariffs on Chinese tires) produced in the United States, which Chinese manufacturers allege have harmed them domestically due to unfair competition. A Chinese ministry in early February 2010 released a preliminary ruling against U.S. poultry products, including anti-dumping penalties on individual U.S. companies ranging from 43.1% to 80.5%.

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Background

The U.S. Department of Agriculture (USDA) published a final rule in April 2006 that would have permitted processed poultry products from China to be imported into the United States. However, an amendment to the FY2007 USDA appropriation prohibited the Department from implementing the rule. Subsequent appropriations measures have continued this prohibition, which proponents have argued is needed to protect U.S. consumers from unsafe food, and opponents have countered is an unjustifiable barrier to trade. In April 2009, China took the first steps toward challenging the ban under the auspices of the World Trade Organization (WTO).

In October 2009, Congress enacted the FY2010 Agriculture appropriations bill (P.L. 111-80), which contains language that seeks to address this issue. Instead of continuing the prohibition, the FY2010 Agriculture appropriations bill allows USDA to use appropriated funds to implement the USDA rule permitting U.S. imports of certain processed poultry and poultry products from China, if specified preconditions are met. Whether the appropriations agreement will ease trade tensions, including reports of potential Chinese retaliation against exports of U.S. meat and poultry products to China, remains to be seen.

U.S.-China Agricultural Trade

Agricultural products are one of the few major areas in which the United States maintains a large trade surplus with China. The value of U.S. food and agricultural exports to China more than doubled from \$6.8 billion in calendar year 2003 to \$15.9 billion in CY2009. China's food and agricultural exports to the United States also doubled, from \$2.4 billion in CY2003 to \$4.9 billion in CY2009.¹ About three-fourths of U.S. food imports from China have consisted of various fish and shellfish, juices, canned and other fruits, vegetable, and nut products.²

Oilseeds such as soybeans and soybean products and cotton top the list of U.S. exports by value to China. However, livestock, meat, and poultry products account for the next most important commodity groups, and exports of these commodities have increased rapidly. Overall, the export value of all animals and animal products to China grew from \$746 million in CY2003 to \$2.233 billion in CY2008, before declining to \$1.743 billion in CY2009. Within this broad category, U.S. poultry product exports to China grew from \$118 million in CY2003 to \$773 million in CY2008, before declining to \$735 million in CY2009. China was the second most important export destination for poultry after Russia. Many of these products are items that U.S. consumers generally do not favor: for example, the Chinese reportedly purchased \$280 million worth of chicken feet for use in soups, stews, and snacks.³

¹ Source: USDA, Foreign Agricultural Service (FAS), trade data, accessed March 25, 2010, at the Global Agricultural Trade System Online at <http://www.fas.usda.gov/gats/default.aspx>.

² See also Fred Gale and Jean C. Buzby, *Imports From China and Food Safety Issues*, July 2009, USDA, ERS.

³ General agricultural trade data are from the U.S. Trade Internet System; the estimate for chicken feet is from the USA Poultry and Egg Export Council as reported by Reuters on July 8, 2009.

U.S. Regulation of Poultry Safety

USDA's Food Safety and Inspection Service (FSIS) is responsible for inspecting most red meat animals and poultry, and the food products from them, for safety, wholesomeness, and proper labeling. Pursuant to requirements of the Federal Meat Inspection Act (FMIA) as amended (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) as amended (21 U.S.C. 451 *et seq.*), federal inspectors or their state counterparts are present at all times in virtually all U.S. slaughter plants and for at least part of each day in establishments that further process meat and poultry products.

Under Section 17 of the PPIA (and Section 20 of the FMIA), FSIS is also responsible for determining the equivalence of other countries' meat and poultry safeguards. A foreign plant cannot ship products to the United States unless FSIS has determined that its country has a meat and/or poultry program that provides a level of protection at least equivalent to the U.S. system. FSIS visits the exporting country to review its rules and regulations, meets with foreign officials, and accompanies them on visits to establishments. When a foreign program is approved, FSIS relies on that government to certify the eligibility, and to conduct the regular inspections, of the individual establishments. FSIS periodically reviews foreign government documents and conducts on-site audits at least annually to verify continuing equivalence. These determinations are generally specific to groups of products (e.g., processed poultry products; fresh/frozen beef, etc.), not sweeping approvals of a country's entire food safety system. Thirty-three countries held such determinations from FSIS as of December 2009, but not China.⁴

China Poultry Rule

After China requested a determination of equivalency to establish eligibility to ship poultry products to the United States, FSIS conducted its review following the procedures spelled out in federal regulations (at 9 CFR 381.196). Upon completion of its review, FSIS published in the November 23, 2005, *Federal Register* a proposed rule that would permit processed poultry products from establishments in China. FSIS said these products could only come from birds slaughtered in certified establishments elsewhere—either in the United States itself or in countries already eligible to export to the United States—not in China. FSIS estimated at the time that 10 to 25 processing establishments in China would export no more than 2.5 million pounds of shelf-stable cooked poultry products to the United States in the first year under the proposal.

Comments on the proposed rule were accepted until January 23, 2006. Most opponents stated their concerns about outbreaks in Chinese poultry of the infectious H5N1 strain of avian influenza and questioned whether plants would consistently cook the product to kill any virus in it. Other concerns included how to ensure that no Chinese-raised or -slaughtered poultry was used in processing and questions about the adequacy and effectiveness of the country's food safety controls.⁵

⁴ In addition, FSIS operates a reinspection program at 150 import houses located near approximately 35 border entry points, where all such imports must first go before gaining release into U.S. commerce. See also CRS Report RL34198, *U.S. Food and Agricultural Imports: Safeguards and Selected Issues*, and CRS Report RL32922, *Meat and Poultry Inspection: Background and Selected Issues*.

⁵ 71 *Federal Register* pp. 20867-20871, April 24, 2006.

FSIS issued the final rule on April 24, 2006, effectively adding China to the list of countries eligible to export processed poultry products to the United States (at 9 CFR Part 381), but again noting that such products could only be from poultry slaughtered in approved establishments outside of China.⁶ In the preamble to the rule, FSIS stated that it had determined, among other things, that processing procedures in China were adequate to destroy the avian influenza virus, that USDA had adequate controls to ensure there would be no adverse effect on either U.S. animal health or human health, and that at least annual random FSIS audits of certified Chinese establishments would continue to verify compliance with all requirements. The agency also argued that the final rule would facilitate poultry trade between the two countries in a manner consistent with U.S. obligations under the WTO (see below) and benefit U.S. consumers (although the volume of trade would be so small that there should be little effect on U.S. supply and prices and therefore little adverse effect on U.S. poultry producers).

However, no eligible plants were approved, and no poultry meat was shipped from China, between issuance of the rule and the start of the congressional ban to implement it (see below).

The Congressional Ban

The prohibition against implementing the rule first appeared in May 2006 in the House-reported version of the FY2007 USDA appropriation (H.R. 5384). The provision (Sec. 747, sponsored by Representative DeLauro during action by the House Appropriations Subcommittee on Agriculture, which she currently chairs) states: “None of the funds made available in this Act may be used to implement the final rule published by the Secretary of Agriculture on April 24, 2006, amending part 381 of title 9 of the Code of Federal Regulations to add the People’s Republic of China to the list of countries eligible to export poultry products to the United States.”

Earlier, when the final rule was issued, Representative DeLauro was quoted as calling it “an outrage that the U.S. is going to open our borders to imports of poultry from China—a country that lacks the fundamental safety functions in its processing plants, has questionable export practices, and a country where a deadly animal disease and possible pandemic is running rampant.”⁷ Food safety advocates have strongly supported the DeLauro amendment, arguing that FSIS rushed the rule through the process without adequately addressing its deficiencies in advance of a meeting between then-President George W. Bush and the Chinese president.

The provision, which was not in the Senate version, eventually was adopted by Congress, which folded the USDA funding provisions into a series of government-wide continuing funding resolutions culminating with a long-term continuing resolution (H.J.Res. 20, signed into law as P.L. 110-5). Because this ban was only effective for FY2007, it was renewed in the FY2008 agriculture appropriation bill (H.R. 3161), which was combined with 10 other appropriations bills into the Consolidated Appropriations Act, 2008 (P.L. 110-161). It was further renewed in the FY2009 agriculture appropriation (part of the FY2009 Omnibus Appropriations Act, P.L. 111-8; only the Senate reported a freestanding agriculture appropriations bill, S. 3289, for that year).

⁶ Ibid.

⁷ Source: “FSIS Announces Final Rule to Permit Export of Poultry Processed in China,” *Food Chemical News*, April 24, 2006.

FY2010 USDA Appropriations Language

The treatment of poultry imports from China was among the more publicized and notable policy differences between the House- and Senate-passed USDA appropriations bills for FY2010.

As noted, USDA had published a final rule in 2006 allowing certain poultry products processed in China to be imported into the United States; however, USDA appropriation measures for recent years have prohibited USDA from using funds to implement the rule. The House-passed USDA appropriations bill (H.R. 2997, Section 723) would have continued to prohibit USDA from implementing the rule. In contrast, the Senate-passed bill (S. 1406, Section 744) permitted such imports, but only under specified preconditions.

On October 21, 2009, Congress enacted the FY2010 Agriculture appropriations bill (P.L. 111-80), with language that seeks to address this issue. In P.L. 111-80, conferees followed the Senate's approach regarding poultry imports by allowing imports under specified preconditions. The Obama Administration had noted concern about the provisions in both bills restricting imports of poultry products from China.⁸

House versus Senate Proposal

The House-passed FY2010 USDA appropriation (H.R. 2997) would have continued the prohibition. However, an amendment by Senator Pryor during the Senate Appropriations Committee's markup of the bill (S. 1406) appeared to recognize the food safety concerns but also provide a process for ending the ban. Under the Senate's committee-reported bill, Section 744 stated:

None of the funds made available by this Act may be used to establish or implement a rule allowing poultry products to be imported into the United States from the People's Republic of China unless the Secretary of Agriculture formally commits in advance to conduct audits of inspection systems, on-site reviews of slaughter and processing facilities, laboratories and other control operations before any Chinese facilities are certified as eligible to ship fully cooked poultry products to the United States, and at least once annually in subsequent years: Provided, That the Secretary commits in advance to implement a significantly increased level of port of entry re-inspection: Provided further, That the Secretary commits in advance to conduct information sharing with other countries importing poultry products from China that have conducted audits and plant inspections.

Accompanying report language of the Senate bill (S.Rept. 111-39) expressed the committee's concern that China "may not have in place the tracing mechanisms required to guarantee that only eligible raw material is used in further processing, that raw inputs or final products destined for the United States market are not commingled with ineligible inputs or products, or that the end product is sufficiently cooked so that all pathogens have been killed." The Senate committee report asserted that "standards relating to food safety (including the safety of imported products) must be based on a strong scientific basis."

⁸ Office of Management and Budget, "Statement of Administration Policy on H.R. 2997," July 7, 2009, at http://www.whitehouse.gov/omb/assets/sap_111/saphr2997r_20090707.pdf.

Conference Language

Conferees adopted language that appears to be closer (but not identical) to the Senate approach. More specifically, Section 743 of the final measure states that funds cannot be used to implement the rule unless the Secretary of Agriculture formally notifies Congress that

- China will not receive any preferential consideration of any application to export poultry or poultry products to the United States;
- the Secretary will conduct audits of inspection systems and on-site reviews of slaughter and processing facilities, laboratories, and other control operations before any Chinese facilities are certified to ship products to the United States, and subsequently such audits and reviews will be conducted at least annually (or more frequently if the Secretary determines it necessary);
- there will be a “significantly increased level” of reinspections at U.S. ports of entry;
- a “formal and expeditious” information sharing program will be established with other countries importing Chinese processed poultry products that have conducted audits and plant inspections;
- a report will be provided to the House and Senate Appropriations Committees within 120 days and every 180 days thereafter, indefinitely, that includes both initial and new actions taken to audit and review the Chinese system to ensure it meets sanitary standards equivalent to those of the United States, the level of port of entry reinspections being conducted on Chinese poultry imports, and a work plan incorporating any agreements between FSIS and the Chinese government regarding a U.S. equivalency assessment; and
- it will meet specified requirements (in Section 743) for notifying the public about audits and site reviews in China and of lists of certified Chinese facilities.

Section 743 also requires that a poultry rule must be treated as a significant rule as specified under Executive Order 12866, and must be applied in a manner consistent with U.S. international trade obligations.⁹

Many food safety advocates were supportive of the House appropriations language banning the poultry rule, arguing that China—the third leading foreign supplier of food and agricultural imports into the United States—lacks effective food safety protections, and that the 2006 rule was rushed into approval without an adequate safety evaluation. Opponents of a ban, particularly those in the U.S. animal industries, argued that it would undermine U.S. trade commitments, and lead to trade retaliation by the Chinese.

⁹ Executive Order 12866 requires covered agencies to submit their significant rules to the White House Office of Management and Budget for review before they become final, and requires those rules to meet certain minimal standards. For details see CRS Report RL32240, *The Federal Rulemaking Process: An Overview*.

Trade Implications and Outlook

The Chinese government has reacted strongly to the unconditional ban in the appropriations bills. In March 2009 it criticized the ban as a violation of trade rules and stated its intention to challenge it in the WTO. China also pointed out its significant imports of chicken products from the United States, which it said accounted for 73.4% of its total chicken imports. Many in the United States viewed this as a thinly veiled threat of trade retaliation.¹⁰

On April 17, 2009, China formally requested WTO consultations on the issue, considered the first step toward referral to a dispute settlement panel.¹¹ The Chinese request argued that the U.S. restriction, because it does not similarly prohibit the imports of like products from other WTO member nations, is contrary to Article 1.1 of the General Agreement on Tariffs and Trade (GATT), which essentially states that the imports and exports of a country are to be treated no differently than those of other countries. The request argued that the U.S. prohibition also violates GATT Article XI as well as Article 4.2 of the WTO's Uruguay Round Agreement on Agriculture (URAA), which generally provide that no import restrictions other than duties and charges are to be maintained by member nations.

According to the Chinese request, the prohibition may also violate various sections of the Uruguay Round Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS agreement), which among other things prohibits the adoption of measures not based on scientific principles or not supported by sufficient scientific evidence.¹² No formal consultations were held during the WTO-prescribed time frame of 60 days. The next step was establishment of a dispute panel on July 31, 2009, followed by composition of the panel on September 23, 2009. On March 23, 2010, the panel formally estimated that it would issue its final report to the parties by July 2010.¹³

Earlier, a coalition of nearly 40 mostly food and agricultural groups in the United States filed comments in support of the Chinese position with the Office of the U.S. Trade Representative (USTR).¹⁴ Noting that its members are heavily involved in both domestic and international

¹⁰ See, for example, "China Blasts 'Discriminative' U.S. Measure on Chinese Poultry Imports," March 13, 2009, on the Chinese Government's official web portal at http://www.gov.cn/misc/2009-03/13/content_1258409.htm.

¹¹ The text of the Chinese request and status of the dispute (DS392) can be accessed through the WTO website at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds392_e.htm.

¹² SPS measures refer to any of the laws, rules, standards, and procedures that governments employ to protect humans, other animals, and plants from diseases, pests, toxins, and other contaminants. Multilateral trade rules allow governments to adopt measures to protect human, animal, or plant life or health, provided that they do not discriminate or use them as disguised protectionism. The SPS agreement sets out the basic rules for ensuring that each country's food safety and animal and plant health laws and regulations are transparent, scientifically defensible, and fair. For more information see CRS Report RL33472, *Sanitary and Phytosanitary (SPS) Concerns in Agricultural Trade*, by Geoffrey S. Becker.

¹³ For updates on status, see the WTO website at http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds392_e.htm.

¹⁴ The signatories were the American Meat Institute, Animal Health Institute, Grocery Manufacturers Association, National Cattlemen's Beef Association, National Chicken Council, National Foreign Trade Council, National Meat Association, National Pork Producers Council, National Retail Federation, National Turkey Federation, Shelf-Stable Food Processors Association, USA Poultry & Egg Council, U.S. Chamber of Commerce, U.S.-China Business Council, U.S. Dairy Export Council, U.S. Hide, Skin and Leather Association, U.S. Meat Export Federation, and U.S. Poultry and Egg Association, and 21 individual companies.

markets and stressing its belief in “the observance of the rule of law in international trade,” the coalition remarked

U.S. exporters expect that other countries that are WTO Members will abide by those standards, and know that their success in the export arena depends upon strict observance of these important rules of law. If another country acts to deprive U.S. exporters of market opportunities under the guise of unjustified SPS measures, we expect that our government will take immediate action to redress these problems by insisting that the rights of the United States under the WTO Agreements be observed. Equally important, the members of the Coalition expect the United States to observe the rule of law in its dealing with other WTO member countries. We will have little ability to insist on adherence to the rule of law if we do not do so ourselves.¹⁵

In its own letter to President Obama, a coalition of groups that want to maintain the ban both questioned the effectiveness of China’s food safety system and argued that the FSIS equivalency determination was flawed. On the latter point, the coalition cited a report by the agency’s own auditors, who found a series of major deficiencies when they visited Chinese poultry plants. These included regulators’ failure to exercise control over all food processing establishments, no consistent enforcement by veterinarians of FSIS safety standards, and differing and inadequate residue and bacterial testing. The coalition noted that the “overwhelming majority” of the 34 comments that FSIS received on the proposed poultry rule were in opposition. The coalition also asserted that U.S. officials in 2006 were seeking additional rulemaking that would expand the original equivalency status to allow Chinese-slaughtered poultry to be imported as well.¹⁶

Meanwhile, reports began to emerge during the summer of 2009 that the Chinese had started to refuse shipments of U.S. poultry products in apparent retaliation. According to U.S. poultry officials, the Chinese were not granting import permits for 2009 whenever the application lists the United States as the country of origin. Only those permits issued before July 1 were being honored, they reportedly said.¹⁷ Reportedly the Chinese were explaining to U.S. exporters that they decided to reduce poultry imports by 70% as part of a “Buy Chinese” program—a figure that closely tracks the U.S. share of the import market there. However, no formal notification of the action had been made to the U.S. government.¹⁸

The coalition opposing the import rule argued that the importation of food products from China “is a public health issue that should not be entangled in trade discussions. [Chinese] officials have

¹⁵ The comments of the Ad Hoc Coalition for Fair Trade in Agriculture Products with China were in response to USTR’s May 7, 2009, notice on the dispute published at 74 *Federal Register* 87. The coalition’s comments were accessed July 14, 2009 at http://www.nftc.org/default/Trade%20Policy/Trade_Policy/ USTR%20China%20WTO%20727%20comments.pdf.

¹⁶ The May 15, 2009, letter was signed by 20 groups: the Alabama Contract Poultry Growers Association, Campaign for Contract Agriculture Reform, Center for Food Safety, Consumer Federation of America, Contract Poultry Growers Association of the Virginias, Family Farm Defenders, Farm and Ranch Freedom Alliance, Food & Water Watch, Friends of the Earth, Government Accountability Project, Iowa Citizens for Community Improvement, Land Stewardship Project, Missouri Rural Crisis Center, National Family Farm Coalition, National Farmers Union, Nebraska Farmers Union, Organization for Competitive Markets, R-CALF USA, Rural Advancement Foundation International, and Southeast Asian American Farming Association.

¹⁷ See, for example, “China Blocks U.S. Poultry Imports; Senate Hopes to End Impasse,” *Food Chemical News*, July 13, 2009.

¹⁸ *Ibid.*

tried in the past to make the exportation of poultry products to the United States a quid pro quo for re-opening U.S. beef exports to [China]. Those talks should be separate and distinct.”¹⁹

Another complication was the Obama Administration’s decision on September 11, 2009, to institute import safeguard tariffs on light truck and automobile tires from China for three years, following a finding by the U.S. International Trade Administration (ITA) that the volume of such imports caused or threatened to cause market disruption to U.S. producers. In response, China filed a request for WTO consultations on the tire import tariffs on September 15, 2009.²⁰

Moreover, China announced on September 14, 2009, that it was launching anti-dumping and anti-subsidies investigations into chicken meat (and automobile parts) produced in the United States, which Chinese manufacturers allege have harmed them domestically due to unfair competition. The National Chicken Council, which represents the U.S. industry, charged in a statement that the Chinese allegation of dumping “is obviously in direct retaliation for the U.S. action in putting tariffs on tires made in China” and for the appropriations ban on chicken.²¹ Nonetheless, the China Ministry of Commerce in early February 2010 released its preliminary ruling that dumping of U.S. chicken products had “caused substantial damage to China’s domestic industry,” and the ministry announced anti-dumping penalties ranging from 43.1% to 80.5% on individual U.S. companies.²²

Early expectations that the new language in the FY2010 Agriculture appropriations bill would help to ease trade tensions with China may have been premature. In a letter sent February 22, 2010, to key lawmakers, the Secretary of Agriculture revealed difficulties obtaining more information from China on the equivalency of its system. The Secretary said in his letter that FSIS was “preparing a response to a December 31, 2009 letter from China in which China states it does not need to provide any additional information on its food safety laws.” Updated information on Chinese food safety laws is essential for FSIS to do its determinations, the Secretary’s letter indicated.²³

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¹⁹ May 15, 2009, coalition letter.

²⁰ For more information, see CRS Report RL33536, *China-U.S. Trade Issues*.

²¹ National Chicken Council, September 16, 2009, press release.

²² “China to Impose Anti-Dumping Measures on Chicken Imports from United States,” February 5, 2010, government press release, accessed March 25, 2010, at http://www.insidetrade.com/secure/pdf14/wto2010_0339.pdf.

²³ “USDA Memo to Congress Reveals Snag in China Poultry Efforts,” *Food Chemical News*, March 8, 2010.