

CITIZEN PETITION
BEFORE THE
U.S. DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE

January 28, 2008

Mr. Alfred Almanza, Administrator
Food Safety and Inspection Service
United States Department of Agriculture
331-E Jamie L. Whitten Building
12th Street and Jefferson Drive SW
Washington, DC 20250

HAND DELIVERED

PETITION TO REMOVE CANADA AS A COUNTRY ELIGIBLE TO
EXPORT MEAT AND POULTRY PRODUCTS UNDER
9 C.F.R. §§ 327.2 (b) and 381.196 (b)

Dear Administrator Almanza,

On behalf of the non-profit consumer organization, Food & Water Watch, I respectfully submit this petition, pursuant the Federal Meat Inspection Act as amended,¹ the Poultry Products Inspection Act as amended,² the Right to Petition Government Clause of the First Amendment of the U.S. Constitution,³ the Administrative Procedure Act,⁴ and USDA's implementing

¹ 21 U.S.C. §§ 601-695 (2006).

² 21 U.S.C. § 451-47.

³ The right to petition for redress of grievances is among the most precious of the liberties safeguarded by the Bill of Rights. *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222, 88 S. Ct. 353, 356, 19 L. Ed. 2d 426 (1967). It shares the "preferred place" accorded in our system of government to the First Amendment freedoms, and has a sanctity and a sanction not permitting dubious intrusions. *Thomas v. Collins*, 323 U.S. 516, 530, 65 S. Ct. 315, 322, 89 L. Ed. 430 (1945). "Any attempt to restrict those First Amendment liberties must be justified by clear public interest, threatened not doubtful or remotely, but by clear and present danger." *Id.* The Supreme Court has recognized that the right to petition is logically implicit in, and fundamental to, the very idea of a republican form of government. *United States v. Cruikshank*, 92 U.S. (2 Otto) 542, 552, 23 L. Ed. 588 (1875).

⁴ 5 U.S.C. § 533 (e).

regulations,⁵ for a rule issued by the Food Safety and Inspection Service (FSIS) to remove Canada as a country that is eligible to export meat and poultry products to the United States under 9 C.F.R. §§ 327.2 (b) and 381.196 (b) (2006). Food & Water Watch is requesting this action because of the extensive evidence that the Canadian inspection system does not assure compliance with requirements equivalent to all the inspection, building construction standards, and other requirements of the FMIA and PPIA and regulations applicable to official establishments in the United States, and that reliance cannot be placed upon Canada's certificates of eligibility. As a consequence, Canadian meat and poultry processors are exporting products to the United States that may be harmful to U.S. consumers and the United States Department of Agriculture (USDA) is not able to take effective action to prevent those products from entering U.S. commerce.

I. Statement of the Law

Under the Federal Meat Inspection Act (FMIA)⁶ and Poultry Products Inspection Act (PPIA)⁷ and regulations promulgated under these laws, only products prepared in establishments that are certified by a foreign country as meeting equivalent standards and requirements as official establishments in the United States are eligible for importation into the United States. When the Administrator of FSIS determines that a foreign nation's system of meat inspection for establishments exporting to the United States ensures such requirements and standards are met, the country is listed under 9 C.F.R. § 327.2 (b) and the products prepared in such establishments are eligible for importation. The acceptability of a foreign meat inspection system is based on FSIS' determination, under § 327.2 (a)(2)(i), that the country's inspection system provide standards equivalent to those of the Federal system of meat inspection in the United States with respect to:

- (A) Organizational structure and staffing, so as to insure uniform enforcement of the requisite laws and regulations in all establishments throughout the system at which products are prepared for export to the United States;
- (B) Ultimate control and supervision by the national government over the official activities of all employees or licensees of the system;
- (C) The assignment of competent, qualified inspectors;
- (D) Authority and responsibility of national inspection officials to enforce the requisite laws and regulations governing meat inspection and to certify or refuse to certify products intended for export;
- (E) Adequate administrative and technical support;
- (F) The inspection, sanitation, quality, species verification, and residue standards applied to products produced in the United States;
- (G) Other requirements of adequate inspection service as required by the regulations in this subchapter.

⁵ 7 C.F.R. § 1.28 (2006) "Petitions by interested persons in accordance with 5 U.S.C. 553(e) for the issuance, amendment or repeal of a rule may be filed with the official that issued or is authorized to issue the rule." The Food Safety and Inspection Service has been delegated this authority pursuant to 7 C.F.R. § 2.18 (a)(ii)(A)-(B).

⁶ See 21 U.S.C. § 620 (f).

⁷ See 21 U.S.C. § 466 (d).

Further, under § 327.2 (a)(2)(ii), the foreign government must maintain a food inspection system equivalent to the system of meat inspection organized and maintained in the United States with respect to:

- (A) Ante-mortem inspection of animals for slaughter and inspection of methods of slaughtering and handling in connection with slaughtering which shall be performed by veterinarians or by other employees or licensees of the system under the direct supervision of the veterinarians;
- (B) Post-mortem inspection of carcasses and parts thereof at time of slaughter, performed by veterinarians or other employees or licensees of the system under the direct supervision of veterinarians;
- (C) Official controls by the national government over establishment construction, facilities, and equipment;
- (D) Direct and continuous official supervision of slaughtering and preparation of product, by the assignment of inspectors to establishments certified [under this section], to assure that adulterated or misbranded product is not prepared for export to the United States;
- (E) Complete separation of establishments certified [under this section] from establishments not certified and the maintenance of a single standard of inspection and sanitation throughout all certified establishments;
- (F) Requirements for sanitation at certified establishments and for sanitary handling of product;
- (G) Official controls over condemned material until destroyed or removed and thereafter excluded from the establishment;
- (H) A Hazard Analysis and Critical Control Point (HACCP) system, as set forth in part 417 of this chapter;
- (I) Other matters for which requirements are contained in the Act or regulations in this subchapter.

Specific regulations under the Poultry Products Inspection Act, 9 C.F.R. § 381.196 (a)(2)(i)-(ii), provide nearly verbatim criteria for evaluating a foreign country's inspection system for poultry products. Countries meeting these requirements for poultry are listed under 9 C.F.R. § 381.196 (b).

The Administrator of FSIS may withdraw a §§ 327.2 (b) and/or 381.196 (b) listing of any foreign country when the Administrator determines that the foreign country's system of meat or poultry product inspection "does not assure compliance with requirements equivalent to all the inspection, building construction standards, and other requirements" of the FMIA and PPIA and regulations applicable to official establishments in the United States, that reliance cannot be placed upon certificates from authorities of such foreign country, or that, for lack of current information, such foreign country should be required to reestablish its eligibility for listing.⁸

⁸ §§ 327.2 (a)(4) and 381.196 (a)(4)

II. Background on Canada's Exports of Meat and Poultry Products

Canada is the largest exporter of meat and poultry products to the United States. During FY 2006, it exported 1,783,882,689 pounds of meat and poultry products to the United States⁹ that accounted for 45.9 percent of all imported meat and poultry products into the United States.¹⁰ There are currently 462 meat and poultry plants in Canada that are certified to export their products to the United States.¹¹

Canada has been deemed to have a food safety system that is equivalent to that of the United States. It has been listed under 9 C.F.R. §§ 327.2 (b) and 381.196 (b) and its food establishments are eligible to export meat and poultry products to the United States.

As it does with all countries that are eligible to export meat and poultry products, FSIS has conducted annual audits of a selected number of Canadian food establishments that are eligible to export to the United States.¹³

As discussed more fully below, FSIS auditors have found repeated violations of U.S. standards and requirements in their annual visits. It has also required multiple visits to Canada in some years to verify that U.S. standards were being met at U.S. taxpayers' expense.¹⁵ While some Canadian food establishments have been delisted, FSIS has failed to delist the country as eligible for export to the United States, thus providing the need for this petition.

III. Statement of the Grounds for Withdrawing Canada as a Country Listed 9 C.F.R. §§ 327.2 (b) and 381.196 (b) as Eligible to Export to the United States.

As discussed in detail below, a December 2005 USDA Inspector General's audit of Canada's meat and poultry inspection system found that Canadian inspection officials do not enforce requirements or maintain inspection intensity at levels equivalent to those FSIS applies, or is required to apply, to official establishments in the United States. In addition, FSIS audits of Canadian establishments in 2003, 2005, 2006, and 2007 show numerous and repeated failures both in terms of establishments' adherence to sanitation and food safety requirements, as well as the inspection system's enforcement of those requirements. Further, FSIS has instituted two large recalls in 2007 of meat and poultry products produced in Canada.

⁹Hearings before United States House of Representatives Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations, Fiscal Year 2008, Part 4, pp. 319-320. According to FSIS, the U.S. imported 696,115,641 pounds of beef products; 29,403,974 pounds of veal products; 383,158 of lamb products; 143,535 of mutton products; 885,644,447 pounds of pork products; 126,411,494 pounds of chicken products; 4,887,113 pounds of duck/geese products; 217 pounds of guinea/squab products; 20,577,440 pounds of turkey products; and 20,215,670 pounds of combination species products in FY 2006 from Canada.

¹⁰ Food Safety and Inspection Service, United States Department of Agriculture. "Quarterly Enforcement Report," July 1, 2006 through September 30, 2006, p. 12.

¹¹ Food Safety and Inspection Service, United States Department of Agriculture. Eligible Foreign Establishments found at http://www.fsis.usda.gov/regulations_&_policies/Eligible_Foreign_Establishments/index.asp.

¹³ See http://www.fsis.usda.gov/Regulations_&_Policies/Foreign_Audit_Reports/index.asp.

¹⁵This occurred in 2005 and 2007.