



October 22, 2013

Secretary Tom Vilsack
United States Department of Agriculture
Room 200, Jamie L. Whitten Building
12th Street & Jefferson Drive SW
Washington, DC 20250

Transmitted via facsimile: (202) 720-6314

Dear Secretary Vilsack:

I am writing to you again about problems that have been brought to our attention regarding the import inspection program administered by the Food Safety and Inspection Service (FSIS). Specifically, we are concerned with imported meat products from Australia and Canada. We have attempted to raise these issues directly with agency officials, but we have either received no response or agency officials have expressed indifference, so we are writing to you.

Australia

As you know, we have communicated with you in the past about our concerns with the Australian Export Meat Inspection System (AEMIS)¹ that was granted equivalency status by FSIS on March 3, 2011.² That decision reaffirmed the 1999 FSIS equivalency determination of the Australian Meat Safety Enhancement Program (MSEP) that FSIS claimed was similar in design to AEMIS.³ As you know, AEMIS has removed Australian government inspectors from the slaughter lines in red meat plants and turned those responsibilities over to company employees. Under AEMIS, those company “inspectors” are called Australian Government Authorized Officers (AAO) and they are paid directly by the companies for whom they work. In the March 3, 2011 reaffirmation, FSIS stated that it had the authority to grant equivalency status to AEMIS for red meat exports to the United States based on the five-plant HACCP-based Inspection Models Project (HIMP) pilot it was conducting in market hog slaughter plants.⁴ What is remarkable about that logic is the fact

¹ <http://www.foodandwaterwatch.org/pressreleases/despite-food-safety-problems-australias-privatized-meat-inspection-deemed-equivalent-to-u-s-by-usda/>;
<http://www.foodandwaterwatch.org/pressreleases/six-months-later-u-s-still-importing-contaminated-meat-from-australia/>

² 76 FR 11752 - 11755

³ 64 FR 30299

⁴ 76 FR 11753

that both USDA's Office of Inspector General (OIG)⁵ and the U.S. Government Accountability Office (GAO)⁶ recently found that FSIS had no basis to determine whether the HIMP pilot in hog slaughter actually improved food safety when compared to plants that receive conventional inspection. So, FSIS has granted equivalency status to foreign inspection systems based on a domestic pilot project that might be flawed.

We have already reported to you in past letters that the number of FSIS import rejections of red meat shipments from Australia has dramatically increased since AEMIS was fully implemented in 2012. We also pointed out to you in our July 2, 2013 letter that an FSIS auditor who visited the Nolans Meat plant in Gympie, Australia, which was the only plant that piloted AEMIS for meat exports to the United States between 2006 and 2011, made the following observation:

"Employees of the establishment that work as AQIS Approved Officers (AAO) conducting official post mortem inspection, receive financial benefits that are tied to profits generated by the operator of the establishment whose products they inspect. These AAOs receive salaries and profit sharing directly from the establishment. Government officials verify the adequacy of AAO inspection duties and ensure that they meet the expectations of the CCA (Central Competent Authority). However, the fact that AAOs financial benefits are linked to profits generated by their employer appears to be a conflict of interests (sic) that needs the attention of the CCA."⁷

As you recall, FSIS headquarters officials dismissed those concerns. I also remind you that in that same letter, we revealed that we had received information that indicated that the European Union (EU) was about to reject AEMIS as an equivalent inspection model and was threatening to halt meat imports from Australia.

We now have definitive proof that the EU has in fact rejected AEMIS. I have enclosed recent communications between David Larkin of the Australian Meat Industry Council (AMIC) and Greg Read, First Assistant Secretary of the Food Division of the Australian Department of Agriculture, Fisheries and Forestry (DAFF). In a letter dated October 7, 2013, from David Larkin to Greg Read, Mr. Larkin made the following statement:

"The current EU regulations preclude the use of inspectors that are paid by the processor. Based on your advice and our interpretation of the use of

⁵ United States Department of Agriculture Office of the Inspector General. "Food Safety and Inspection Service – Inspection and Enforcement Activities at Swine Slaughter Plants," Audit Report 24601-0001-41, May 2013, p. 17-21.

⁶ United States Government Accountability Office. "Food Safety: More Disclosure and Data Needed to Clarify Impact of Changes to Poultry and Hog Inspections," GAO-13-775, August 2013, p. 15-18.

⁷ United States Department of Agriculture Food Safety and Inspection Service. "Foreign Establishment Audit Checklist, Nolan Meats Pty. Ltd., Australian Establishment 80." March 21, 2011. Received in response to Freedom of Information Act request.

Australian Government Authorised Officers (AAO's) within the current Australian Export Meat Inspection System (AEMIS) cannot continue on EU listed establishments.”⁸

The letter goes on to explain that a proposal has been made to the EU to have the AAO's be employed by a third-party entity and not by the companies themselves. In his response, Mr. Read confirmed Mr. Larkin's understanding of the situation. Mr. Read informed Mr. Larkin that DAFF had not received a response yet from the EU on the proposal.⁹

Questions about the legitimacy of the AAO's also seem to have cropped up in Australian meat industry officials' conversations regarding the most recent audit by FSIS, performed earlier this year. I have enclosed copies of e-mails that were written in August 2013 by Australian meat industry officials expressing concern that the equivalency determination for AEMIS is not founded on strong legal grounds. I call your attention to the following observation that was made in an August 27, 2013 e-mail as the contents of the March 3, 2011 Federal Register Notice was being discussed:

“I am unable to see any reference to the AAO or the ‘Establishment employees’ where they ‘perform certain duties traditionally performed by Government inspectors’ where the performance of these so called ‘traditional duties’ extends to the disposition of carcasses. It is noted however that the term, ‘final inspection’ by ‘Government inspectors’ for ‘food safety defects’, is constantly used throughout the document.

Clearly the document is silent on the acceptance by FSIS of the AAO performing any inspection upon a carcass although by implication the question can be asked is there a form of carcass inspection that is prior to ‘final’ inspection (work up?) that is unacceptable?

This document is disturbing in it's (sic) existence. I can see a disturbing similarity between this document and the ability for the FSIS to at any time ‘move away or clarify’ it's (sic) position with respect to the Australian system (stating that it never agreed or approved that any person other than a government inspector could perform the final disposition of a carcass intended for export to the US) and the current outcome that we understand is prevalent in the minds of the EU?”¹⁰

⁸ Letter from David Larkin, Chairman of the Australian Processor Council, Australian Meat Industry Council to Greg Read, First Assistant Secretary, Food Division, Australian Department of Agriculture, Fisheries and Forestry, October 7, 2013, p. 1-2.

⁹ Letter from Greg Read, First Assistant Secretary, Food Division, Australian Department of Agriculture, Fisheries and Forestry to David Larkin, Chairman of the Australian Processor Council, Australian Meat Industry Council, October 9, 2013, p. 1.

¹⁰ Electronic mail from members of the Australian meat industry, August 27, 2013.

As a consequence, I have several questions regarding our equivalency determination for AEMIS:

1. In light of the OIG and GAO findings regarding the HIMP pilot for market hogs, will FSIS revoke all equivalency determinations for foreign inspection systems that were made based on that pilot program?
2. Has USDA entered into any discussions with DAFF about the concerns raised by the European Union regarding AEMIS? If so, what have been the outcomes of those discussions? If the EU accepts the DAFF proposal for third party inspections, will that acceptance impact how meat is inspected for export to the United States? If so, will a new equivalency determination be required? Will public comment be accepted?
3. When will the most recent audit report for Australia be posted on the FSIS website?

Canada

We have learned of two different situations that have raised concerns about how the border inspection program is being managed for products from Canada.

On September 30, 2013, a “failure-to-present for inspection” was filed with FSIS for a shipment of soup that by-passed the border inspection station in Niagara Falls, New York. This soup falls within FSIS jurisdiction. The border inspection station was told the shipment had been located and that it would be returned to Niagara Falls. As of this date, the shipment has been not been returned. The identifying information that we have received is the following:

PHIS Lot ID 196448
Customs Entry Number 144-72784134
Certificate 522964

Food & Water Watch sent an e-mail to FSIS officials on September 30, 2013 asking for a status report on this investigation. We have received no response. We would appreciate a report on what happened to this shipment and whether the Public Health Information System (PHIS) was able to track this shipment from its departure from the food facility in Canada to its ultimate destination here in the United States.

During the last week of September 2013, a shipment of one-pound canned hams arrived at the Niagara Falls border inspection station from Canada. The FSIS import inspectors were instructed to sample 20 cans of the product by opening them. Out of 20 cans opened, they found 21 defects. Among the defects found were flaking can liner and a black greasy substance on some of the hams. These were the same sorts of defects that were found on

these products about a year ago.¹¹ When there was some publicity about the defects last year, the company stopped shipping the hams to the United States. The most recent shipment was held in Niagara Falls for a week until the FSIS inspectors were instructed to release the load per instructions of FSIS headquarters staff because the defects “were not food safety issues.”

There seems to be confusion about what constitutes a defect in imported food that would prevent it from being permitted to enter into U.S. commerce. On October 2, 2013, Food & Water Watch sent an e-mail to key FSIS officials asking for a clarification of the policy. As of this date, we have not received a response. I would appreciate an answer about this situation.

Should you have any questions about this letter, please feel free to contact me.

Sincerely,



Wenonah Hauter
Executive Director

Enclosures

Cc: Senator Debbie Stabenow
Senator Thad Cochran
Senator Kirsten Gillibrand
Senator Pat Roberts
Senator Mark Pryor
Senator Roy Blunt
Representative Frank Lucas
Representative Collin Peterson
Representative Eric “Rick” Crawford
Representative Jim Costa
Representative Robert Aderholt
Representative Sam Farr
Representative Rosa DeLauro

¹¹ <http://www.foodandwaterwatch.org/blogs/maple-leaf-foods-canned-hams-fsis-and-the-47-percent/>