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SELECT COMMITTEE ON INTELLIGENCE
SMALL BUSINESS
SPECIAL COMMITTEE ON AGING

May 21, 2007

Andrew C. von Eschenbach, M.D.
Commissioner
U.S. Food and Drug Administration
5600 Fishers Lane
Room 1471
Rockville, Maryland 20857

Dear Dr. von Eschenbach:

I urge you to exercise the rights our country enjoys under the World Trade Organization (WTO) to restrict imports of medicines, food, and food ingredients from countries that have failed to institute an adequate safety regime. Recent deaths of Panamanian children from a recurring problem with tainted cough syrup imported from China illustrate a problem that we have failed to adequately address.

International trade and investment can be a dynamic engine for growth and job creation. Economic engagement achieves broader objectives as well, including building political alliances, increasing cultural understanding, and ultimately breaking down the walls separating countries and people. Yet in the face of expanding commerce, we cannot lose sight of our fundamental responsibility – protecting American citizens from imports that pose significant health and safety risks.

Over the past several years the United States has blocked numerous contaminated food imports from China. Government reports list repeated instances where Food and Drug Administration (FDA) inspectors have rejected produce with banned pesticide residues, seafood with banned antibiotic residues, mushrooms laced with filth, and other contaminated foods, all from China. Many of our trading partners have endured similar problems. The U.S. Department of Agriculture (USDA) reports that since 2001, Chinese imports of shrimp, poultry, honey, frozen spinach, tea, and fermented cabbage have been rejected by the European Union, Japan, and South Korea.

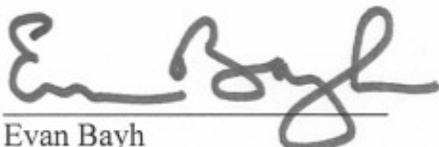
While our over-stretched FDA inspectors have been vigilant in policing this problem, recent evidence indicates that a firmer approach is needed. In recent weeks, an unknown but undoubtedly large number of family pets have died of kidney failure after eating pet food containing wheat gluten from China that was tainted with melamine, a chemical used in plastics, fertilizers and flame retardants. Melamine-contaminated feed has subsequently been found on 38 Indiana chicken farms. There is fear of a similar problem on swine farms in California, Kansas, North Carolina, New York, South Carolina and Utah, and of melamine-tainted fishmeal whose distribution is now being investigated.

According to the USDA, Chinese farmers use many highly toxic pesticides, including some that are banned in the United States. Chinese farmers depend heavily on chemicals to enhance production and combat pests, a practice that contributes to food safety problems. China has one of the world's highest rates of chemical fertilizer use per acre. Widespread pollution in China risks contaminating Chinese farms and the international food supply chain. The recent tragedies in Panama demonstrate that Chinese safety measures for bulk ingredients used in medicines are also flawed. These pervasive problems call for immediate action.

To safeguard the health of American families and to effectively target the limited resources of the FDA, it is time to consider restricting the importation of food and bulk ingredients used in foods and medicines from China – especially those commodities with track records of repeated safety problems – until it can be established that they meet U.S. levels of health and safety protection. The USDA's Food Safety and Inspection Service requires that each country seeking to export meat and poultry to the United States demonstrate that its inspection system is equivalent to the U.S. system. All foods should be held to the same standard. I realize that not all foods from China and other countries of concern pose the same potential level of risk, and that completing agreements with all countries covering all products would require substantial resources. I therefore suggest a targeted risk management approach – focusing efforts on specific products from specific sources in those countries that have been a perennial problem for our FDA inspection teams.

Under the multilateral Agreement on Sanitary and Phytosanitary (SPS) Measures, countries may restrict imports to ensure food safety and animal and plant health protection. To prevent health and safety from becoming an excuse for protectionism, the SPS Agreement requires, among other things, that the restriction be grounded in science. I believe that restrictions on higher-risk Chinese imports could and should be designed to meet the spirit and letter of the SPS agreement and withstand any trade challenge.

Sincerely,

A handwritten signature in black ink, appearing to read "Evan Bayh". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Evan Bayh
United States Senator

CC: Ambassador Susan C. Schwab
United States Trade Representative