On May 25, 2016, the US Senate passed a resolution of disapproval under the Congressional Review Act (CRA) to overturn the recently finalized US Department of Agriculture rule requiring the inspection of catfish and catfish products by the Food Safety Inspection Service (FSIS). The Senate’s bipartisan vote of 55-43 marks Congress’ first step toward providing the legislative fix necessary to eliminate the wasteful inspection program it created in 2008. Acknowledging the need for such correction is no small feat in a time of heightened partisanship, and now it is time for the House to take up the CRA resolution and reel in the wasteful and (likely) unlawful catfish inspection program.

In an effort to provide a bit of background, this rule shifted regulatory responsibility for catfish inspection from the US Food and Drug Administration to the USDA, an agency with no experience overseeing seafood safety. This shift was purportedly due to the risks presented by Salmonella, and it will result in the application of the USDA’s inspection regime — intended for meat, poultry, and egg products — to both domestic and foreign catfish producers following an 18-month transition period.

Though seemingly innocuous, this shift in regulatory oversight will subject catfish producers to a new and different regulatory regime and will require nations that export catfish to the United States to establish their own new and different inspection systems that are “equivalent” to those of the United States.

If this unique and specialized treatment of catfish seems out of place, it’s because it is. There is no sound policy rationale — scientific or otherwise — to explain the need for this rule. Furthermore, the problems associated with the rule include the wasteful and duplicative use of government resources, the potential for World Trade Organization proceedings adversely impacting US businesses, and negative consequences to our relationships with Vietnam and other critical allies in Asia.

To begin with, neither the Bush nor the Obama administrations requested or supported the creation of the catfish inspection program. In fact, the Government Accountability Office has noted on 10 separate occasions over the course of the last five years that the catfish inspection program, if implemented, “would result in duplication of activities and an inefficient use of taxpayer funds.” It argues that the inspection accomplished by the USDA will duplicate work already conducted by the FDA, negatively impacting seafood processors — who now will have both FDA and USDA inspectors in their facilities if they want to process or export catfish — and taxpayers alike. President Obama also sought elimination of the nearly $20 million program in his 2014 budget proposal, and recently, USDA Secretary Thomas Vilsack expressed his indifference on the catfish inspection issue, saying his “only request to Congress is that they make up their mind” over who should handle the inspections.

The rule further fails to comply with the World Trade Organization’s Agreement on Sanitary and Phytosanitary Measures. The agreement requires, among other things, that laws, regulations and policies enacted by member states be supported by scientific evidence, based on a risk assessment and not function as “protectionist policies.” The Centers for Disease Control and Prevention considers catfish to be a “low risk” food and the FSIS even acknowledges in its risk assessment that the baseline risk of Salmonella-contamination in catfish is “unknown” and estimates an average probability of illness of 1.5 x 10.6 (0.0000015) salmonellosis cases per serving.
The risk assessment also contains substantial uncertainty about the program’s effectiveness, positing that the program may be “more than 90 percent effective” or it may be “less than 10 percent effective.” Therefore, not only is the risk unknown (and, by all accounts, low), but the established program may be entirely ineffective. More than that, the de minimis risk does not warrant such an inspection regime. As such, by implementing this congressionally mandated rule, the United States jeopardizes its moral high ground that its SPS rules are based upon sound science.

As Congress approached the current appropriations season, it had a unique opportunity to remedy the problems caused by the USDA catfish rule. Instead, the Senate Agriculture Appropriations Subcommittee ensured that language was included to continue the development of this program. The appropriations report directs FSIS to complete a determination of equivalence for a foreign country exporting catfish and catfish products to the United States “not later than 180 days after the end of the 18-month transition period.” This effectively accelerates the timeline under which countries must comply and be deemed “equivalent” with the USDA’s inspection regime — a process that bars foreign catfish producers from entering the United States market. It can often take years to achieve equivalence, and the shortened timeline serves as a clear indication that the program is meant, not to protect public health, but to function as a trade barrier to protect domestic US catfish interests.

At a time when the United States is preaching about the virtues of free trade and working toward the adoption of the Trans-Pacific Partnership, this report language, and, more generally, this rule that erects a clear barrier to trade without scientific or health justifications, makes the US advocacy for removing trade barriers around the globe seem hypocritical. Moreover, implementation of the USDA catfish program creates friction with Vietnam and other Association of Southeast Asian nations — many of which are catfish producers — at a time when the United States needs to be furthering stronger partnerships to offset China’s maneuvers in the South China Sea.

Vietnam initiated consultation proceedings before the WTO in March 2016, and it is only a matter of time before Vietnam moves to dispute settlement proceedings. Given the problems surrounding this rule, Congress can either wait for the WTO to find against the United States or use the currently pending CRA resolution to overturn the USDA catfish rule and avoid a WTO decision that would be embarrassing to the United States and call into question its commitment to free trade.

Following the Senate’s action, the House has a rare opportunity to ensure that the United States is not seen as a protectionist nation that enacts policies to the benefit of domestic producers and to the detriment of all others. It is time for Congress to repeal this controversial program.

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