IATP *GLOBAL FOOD SAFETY MONITOR*

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Summer 2008, Edited by Steve Suppan, Institute for Agriculture and Trade Policy back to top

Welcome to our inaugural edition! Food safety news is usually bad news and typically alerts readers with headlines, e.g. "19 People Dead from Contaminated Hot Dogs" or "143 Million Pound Beef Recall: Largest in U.S. History." A 19th century German politician once said that nobody likes to see sausage or legislation made. But if you don't know the sausage-making rules, you won't understand why contamination in the sausage can kill you.

Food safety should be a public health program whose rules and enforcement are beyond the influence of lobbying to minimize regulation perceived to reduce commerce. The public pays a high price for the elimination of safeguards, many of which are often characterized as unjustified barriers to trade. According to a 1999 U.S. Centers for Disease Control study, an estimated 76 million people in the United States are afflicted annually by food-borne illness, with 5,200 of them dying. No such U.S. study has been carried out since the doubling of U.S. food imports that has occurred since the creation of the World Trade Organization in 1994. The WTO requires that food safety "measures" (legislation, rules, implementation and enforcement practices) have to be shown to be "necessary" and "least trade restrictive." The increase in food-borne illness, particularly in developing countries, cannot be attributed solely to the increase in trade. Nevertheless, as international food supply chains grow longer and more complex, it is no longer sufficient to watch the domestic legislative sausage being made: oversight of the international sausage is necessary too.

This bulletin will provide analytic context for what might otherwise appear as "isolated incidents" of food contamination, livestock abuse, regulatory violations and/or complaints of the unfair use of standards to block trade. Many of these incidents are not isolated after

all. They are symptoms of a broken global food system that urgently needs broad reform. Here we'll report on the reform that affects food safety, animal health and plant health. When there are uncertainties, e.g. about a new technology or policy, we will report what we know and no more. We won't neglect good news. If a new pathogen detection test shows promise, if good food safety legislation is approved or if a company does more than required by law to ensure that traded food is safe, we will endeavor to report it. We hope that the readers of this bulletin will not only respond critically to it, but send some of that good news our way.

As a U.S.-based NGO with a Geneva office and an international reach, IATP will try to explain U.S. food safety, animal health, and plant health policy and events for an international audience. The U.S. government and food industry are very influential through their participation in international standards setting bodies, such as the Codex Alimentarius Commission, through industry standards, and through bilateral food safety agreements and technical assistance programs. In this issue, we analyze a U.S. government claim to use a World Animal Health Organization standard to export beef to South Korea. The recent U.S.-China food safety agreement is parsed to see whether both sides can implement it. The U.S. attempt to use officials from its National Security Council to gain EU acceptance of chlorine rinse chicken didn't work this time, but the gambit might work elsewhere. This issue concludes with a resource section that will be a regular feature of the bulletin.

- Editor, Steve Suppan

Food Safety Issues in the U.S.-South Korean Beef Trade Dispute back to top

Two months of dramatic photos and video of frequent and massive protests against the U.S.-South Korean beef trade agreement, announced by President Lee Myung-Bak on April 19th during a visit with President George Bush, have fueled the impression that Koreans are merely venting nationalist or anti-American sentiments. President Myung-Bak's statement on June 3 that "we do not import beef from cattle older than 30 months as long as the public is worried about it" suggested that there was neither scientific nor regulatory basis for that worry.

Cattle older than 30 months have a higher, albeit very low, probability of having BSE (Mad-Cow Disease). But consumption of beef from such cattle is a very likely cause of the invariably fatal Creutzfeldt-Jakob disease in humans. During beef trade negotiations, the U.S. refused the South Korean demand to institute a cattle identification system to show Korean officials that all beef exported from the U.S. came from cattle younger than 30 months. Instead, major beef exporters offered to label beef according to the alleged age of the cattle slaughtered and processed. Rebutting Korean concerns, the U.S. cites the U.S.-sponsored World Animal Health Organization standard on BSE that qualifies U.S. cattle as of "negligible risk" for BSE. The standard would enable U.S. beef trade, provided that the beef came from cattle younger than 30 months old, and that cattle are slaughtered in a way that prevents contamination of meat by tissues most likely to be BSE infected.

The U.S. ambassador prompted a backlash by urging South Koreans to "begin to understand more about science and about the facts of American beef." This undiplomatic remark points to a need to clarify the scientific and regulatory issues that have kept U.S. beef out of Korean markets since the 2003 discovery of a BSE-infected U.S. cow. BSE stopped U.S. beef exports to South Korea, valued at U.S. $850 million in 2003. Senator Max Baucus, the chair of the Senate committee overseeing trade agreements and from the cattle producing state of Montana, has said that no U.S.-South Korean Free Trade agreement will be approved until and unless U.S. beef exports to South Korea resume. Although trade is the primary U.S. concern motivating its beef diplomacy, the scientific and regulatory issues impeding that trade have not been resolved and yet are capable of resolution. Here is a quick outline of some of the issues:

- The U.S. has sought to build confidence in the safety of U.S. beef through assurances from an array of officials with no food safety or animal health responsibility, e.g. the U.S. Trade Representative Susan Schwab and National Security Council spokesman Gordon Johndroe. Officials with these responsibilities are bit players in the U.S.-Korean Free Trade Agreement drama.

- The U.S. rulemaking and enforcement process to prevent BSE has been remarkably tardy and incomplete. Only after the beef deal was concluded did the U.S. Department of Agriculture announce on May 20th that it would start a rule-making process to ban the slaughter of non-ambulatory ("downer") cattle. Inability to walk is often a symptom of animal disease, including BSE. The Food and Drug Administration (FDA) rule to ban the use of cattle remains in animal feed for cattle will not be implemented until April 27, 2009 and even then the FDA has yet to issue guidance on how it will be implemented. The feeding of processed cattle remains to cattle is a likely cause of BSE. The General Accountability Office has criticized past FDA implementation of BSE rules for having failed to provide verifiable data showing feed mill compliance with the rules.

- One defense against regulatory implementation failure would be to allow meat exporters to test cattle they slaughter for BSE. The USDA currently tests about one tenth a percent of all cattle slaughtered for BSE. Japan tests all cattle. Creekstone, a small meatpacker, sued the USDA in 2006 for permission to use the USDA's testing kit to test all cattle it slaughters and label its beef "tested for BSE," so that it could recover its export markets in Japan and South Korea. Creekstone won at the district court level, but the USDA has appealed to a Washington, D.C. circuit court to overturn the district court ruling. The USDA argues that private use of the rapid testing kit could lead to false testing results that would turn all consumers against U.S. beef, and would add unnecessarily to the retail cost of beef.

- Consumers Union (CU), in a June 10 press release, has called on the USDA to drop its legal appeal against Creekstone, adding that the European Union has used the same test kits to prevent 1,100 BSE-infected cattle from reaching supermarkets between 2001 and 2006. CU notes that rapid testing results must be confirmed by more extensive laboratory testing. In a CU survey, Japanese consumers have indicated they would pay for the estimated ten cents a pound that testing would add to the retail price of beef. The Appellate Court ruling is expected within weeks. Given the USDA's and large meatpackers' desire to

avoid more BSE testing, if the USDA loses in the appellate court, it would likely appeal to the notoriously business friendly U.S. Supreme Court.

The Appellate Court ruling is unlikely to be implemented in time to alleviate the concerns of South Korean and Japanese consumers over the safety of U.S. beef, at least during the tenure of the Bush Administration. More importantly, for the long-term viability of animal health and food safety programs, USDA compliance with a court ruling to allow private testing of cattle for BSE could be a first step in alleviating the deregulatory pressure that has not only left consumers more vulnerable to food-borne illness, but has created a massive trade impasse.

Sources: "U.S. Korea Resume Beef Negotiations: U.S. Signals Flexibility on Age Cap." *Inside U.S.* Trade. June 13, 2008; Choe Sang-Hun. "An Anger In Korea Over More Than Beef" *The New York Times.* June 12, 2008; "USDA Opposition to Mad Cow Testing Is Anti-Consumer, Anti-Competitive." **Consumers Union** Press Release. June 10, 2008;"Meatpacker and USDA battle over right to test for mad cow disease." ***Consumer Reports***. June 10, 2008; *Inside U.S. Trade.* "Feed Ban Opens Beef Market Despite Failing To Meet Korean Demands." April 25, 2008

U.S.-China Food Safety Agreement: Can It Work? back to top

In December 2007, U.S. Treasury Secretary Henry Paulson, preparing for the U.S.-China Strategic Economic Dialogue (SED), said, "Right now product and food safety is the No. 1 issue." How did product and food safety, normally a technical issue, rise to at least momentary pre-eminence in U.S.-Chinese geo-politics? Following the SED meeting June 17-18, 2008 in Washington, it is helpful to recall some terms of the bilateral food safety agreement on food safety. While bilateral food trade continues unobstructed, officials will discuss, among other matters, the sensitive subject of U.S. on-site audits of Chinese food production, warehouse and shipping facilities.

The occasion of Secretary Paulson's remarks was the negotiation within the SED agenda of an "Agreement Between the Department of Health and Human Services [HHS] of the United States and the General Administration of Quality Supervision, Inspection and Quarantine [AQSIQ] of the People's Republic of China," signed on December 11, 2007 in Beijing. The urgency to negotiate the agreement began in May 2007 when the U.S. Food and Drug Administration (FDA) advised importing companies to recall more than 150 brands of pet food products that had incorporated contaminated ingredients from China. U.S. veterinary officials estimated that 39,000 pets were sickened or died.

Improving product and food safety was no less urgent for China, particularly because Chinese food exports to the U.S. had increased 133 percent from 2003 to $3.3 billion in 2007. New U.S. import food safety requirements, if difficult to implement, might impede further export growth. Responding to the pet food and other contamination incidents, AQSIQ announced in July that it had shut down 152,000 unlicensed food producers and retailers, and had revised more than 1,800 national food standards.

The FDA and AQSIQ officials' meeting in March to begin implementing the agreement decided to focus first on farm-raised fish. Negotiations will begin on terms for FDA inspection of fish farms and the tracing of fishmeal to determine whether drug residues in the feed are safe for human consumption. There are compelling reasons for the U.S. focus on aquaculture exports. In the latest Centers for Disease Control survey of U.S. food-borne illness (1999), about a fifth of 76 million cases were caused by seafood. As a result of the import boom, since 1999, 83 percent of U.S. seafood consumption is imported. Given this increase, it is likely that the share of food borne illness caused by imported seafood has risen as well.

China has been the leading seafood exporter to the United States since 2004, with exports increasing 34 percent between February 2006 and February 2007. Seafood exports from China accounted for an average of 39 percent of all seafood import refusals due to veterinary drug residues, rising to 59 percent in 2006. Yet the FDA refused only 1,786 seafood import shipments of 859,357 in 2006, in part because it collected samples for testing from only 5,071 of those shipments. (But insufficient paperwork or past exporter import rule violations, rather than testing results, are the most frequent reasons for shipment refusal.) In November 2007, the FDA's Science Board reported a 78 percent decline over 35 years in inspection of FDA-regulated products and production facilities—"an appallingly low inspection rate." While the U.S. inspects about one percent of all seafood imports, the European Union inspects 20-50 percent, depending on the degree of species-specific risk.

U.S. importers lobbied the FDA not to increase port of entry food inspection and testing. Instead, they argued, food contamination could be prevented at the point of export, if food production, warehousing and shipping facilities were certified as meeting FDA requirements. Both the FDA's "Food Protection Plan," announced in November, and the AQSIQ-FDA agreement rely on "third party certification" of food facilities to verify that food safety management programs are protecting consumers. "Third party" means neither the exporting nor importing entity, but another entity to which the government agency, in this case the FDA, delegates its legal responsibility for protecting consumers. That entity may be a private certifying organization or an agency within a government recognized by the FDA to follow an agreed program of safety certification. In the FDA-AQSIQ agreement, the FDA delegates its authority to protect consumers to AQSIQ.

In August 2007, U.S. Congressional investigators visited China to interview AQSIQ officials and inspect AQSIQ testing laboratories and Chinese food production facilities. In October, they reported to Congress that AQSIQ testing laboratories were of FDA caliber and AQSIQ officials sincere in wanting to improve food safety. However, they doubted whether AQSIQ directives would be followed by local food safety officials overseen by Communist Party members whose priority was economic growth and not consumer protection.

Yet the FDA likely will have difficulty implementing the agreement. As the FDA negotiates terms for placing eight officials in China to oversee AQSIQ food facilities safety certification, draft legislation in both the Senate and the House of Representatives would overhaul the FDA. The final terms of the legislation and the budget to implement it will very likely be decided in a new administration. In the meantime, the Bush administration will strive to

ensure that contamination of U.S. food imports from China does not become an election issue.

Sources: This article is mostly based on "U.S.-China Food Safety Agreement: Terms and Enforcement Capacity." Institute for Agriculture and Trade Policy (May 27, 2008) and IATP's May 19th commentary on third party certification to the FDA.

Chicken Exports: A U.S. National Security Interest? back to top

On June 6, the senior vice president of the [U.S.] National Chicken Council said he preferred to resolve a food safety-related trade dispute with the European Union through the Transatlantic Economic Council (TEC), rather than through the WTO's dispute settlement system. The dispute concerns risks posed by rinsing slaughtered poultry with a chlorine solution to kill salmonella pathogens, a widely used U.S. poultry industry practice. The EU banned chlorine treated chicken imports in 1997. On June 2, 26 of 27 EU member states had voted against a European Commission proposal to repeal the ban. The U.S. had harshly criticized the proposal, which required labeling and measures to minimize exposure to chlorine, a carcinogen. The TransAtlantic Consumer Dialogue, to which IATP belongs, sent recommendations for the TEC meeting on May 13 in Brussels. TACD opposed lifting the EU Import ban and supported the poultry "farm to fork" food safety measures that have reduced salmonella contamination sharply in the EU.

The TEC was created in November 2007 as a forum for high level trade and economic policy discussions between the United States and European Union. The lead U.S. agency in the TEC is the National Security Council. National Security Advisor Stephen Hadley (an architect of the Iraq War) said that enabling trade of the chlorine-treated chicken would be a test of the TEC's viability. The Office of the U.S. Trade Representative referred all questions concerning the TEC to the National Security Council, which said it would not comment on the EU member state vote.

Trade policy became a formal part of the U.S. National Security Doctrine in September 2002, with specific reference to negotiations toward a Free Trade Area of the Americas (FTAA). While the FTAA negotiations have floundered, U.S. trade-related initiatives carried out in the name of national security include the North American Security and Prosperity Partnership, and Bilateral Investment Treaties that define natural resources in other countries as U.S. "investments." But pushing poultry exports as a U.S. national security interest evidently did not impress 26 of 27 EU member states (the United Kingdom abstained). It appears that the next step for the National Chicken Council is to persuade the U.S. government to charge the EU with violating its WTO commitments.

Sources: Gary Yerkey. "U.S. Poultry Producers Do Not Plan to Urge U.S. File Case at WTO Over EU Import Ban." Bureau of National Affairs. June 9, 2008; "TEC Agenda Suffers As Poultry Ban, Cosmetics Barrier Remain." Inside U.S.Trade. June 6, 2008. Jeremy Smith. "U.S. Poultry Ban Stays." Reuters. June 2, 2008; TransAtlantic Consumer Dialogue. "Comments on Draft OMB EC Regulatory Impact Assessment Guidelines." February 28, 2009.

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Challenges and Opportunities Arising From Private Standards on Food Safety and Environment for Exporters of Fresh Fruit and Vegetables in Asia: Experiences of Malaysia, Thailand and Viet Nam. **United Nations Conference on Trade and Development. 2008.**

The rise of private standards in international food trade was first discussed in the World Trade Organization's Committee on the Application of Sanitary and Phytosanitary Measures (SPS) in a June 2005 meeting. Developing country WTO members have complained that private "voluntary" standards, such as those of GlobalGAP, are displacing international public SPS standards recognized as authoritative by the WTO. Compliance with the "voluntary" standards is required to become a qualified supplier of international food retailers, such as Wal-Mart or Tesco. The WTO SPS Committee has yet to agree on whether negotiations are needed to amend the SPS agreement or to provide a guideline on what WTO members should do when a private standard is more stringent than the public standards that are often justified by an international risk assessment. Companies have complained that international risk assessment and public standard setting do not occur rapidly enough to benefit their products. This monograph assumes that at least until there is a WTO ruling concerning conflicts between public and private standards, the use of private standards will proliferate.

The authors offer a detailed examination of how three developing countries have tried to adjust to the creation of regional and global supply chains enforced by private standards, particularly as these standards affect small-scale growers (farming a hectare (2.2 acres) of land or less). Much of the analysis concerns how governments have responded to international private standards by drafting their own Good Agricultural Practices (GAP) standards in stages, according to the capacity of farmers or farm cooperatives to implement those standards. Small-scale growers cannot contract to supply global or sometimes even national food retailers, unless they are certified as meeting private or public GAP (e.g. ThaiGAP) standards that mostly focus on agricultural chemical use. Because governments design and audit their own certifications, some international retailers have refused to accept the national GAP-certified products, resulting in a small industry of third-party (neither exporting country nor importing firm) certifiers.

"Out of the Laboratory and On To Our Plates: Nanotechnology in Food & Agriculture." Friends of the Earth Australia, Europe and & U.S.A. March 2008. 62 pp.

Perhaps this decade's most remarkable story of market entry without regulation has been the commercialization of at least 104, and perhaps as many as 600, products with nano-particles, including processed foods, nutritional supplements, food packaging and agricultural chemicals. These particles are presently defined as measuring 100 nanometres (nm) or less (compared to the 80,000 nm thickness of a human hair). Most major transnational agribusiness and food processing companies are undertaking nanotechnology projects, e.g. to increase food shelf life; produce more potent pesticides and fertilizers; increase the protein, fiber or vitamin content of foods; create edible nano-coatings to prevent bacteria and spoilage; and use nano-emulsifiers to give a "creamy" feeling to low fat and calorie foods.

Friends of the Earth's (FoE) survey of scientific and regulatory literature lists the known agricultural and food nano-products in an appendix. Despite the documented risks of ingesting or inhaling these particles, governments assume they are safe because the macro versions of the particles are Generally Regarded As Safe (GRAS). For example, titanium oxide, which in its macro form is an inert additive to food supplements, is highly toxic to cell tissue in its nano form. But relying on the GRAS doctrine, governments have been persuaded that there is no need to regulate nano-products as novel foods.

In line with a 2004 recommendation of the United Kingdom's Royal Society and Royal Academy of Engineering, FoE calls for a moratorium on further commercialization of nano agricultural and food products until there is adequate data on occupational safety, food safety and environmental risks associated with these products, and public participation in decision-making about the future of the technology. The report pithily summarizes its overview of products and risks: "No data, no market." But such data may not always be at hand when a regulatory decision must be made about an application to commercialize a nano-product, hence the call for a moratorium. Some nano-particle-induced diseases appear to take longer to develop than the two-year lifespan of most laboratory animals, while other particles create toxicity effects for which there are no diagnostic protocols. The report concludes with recommendations to prevent harm to consumers, food workers and the environment from nanotechnology and to instead foster sustainable agriculture and food systems.