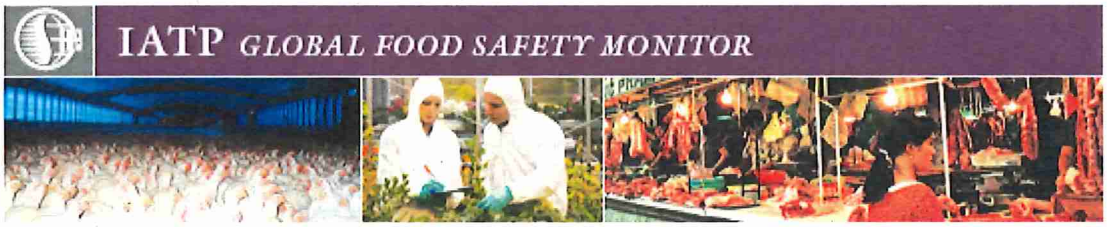

Global Food Safety Monitor
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Introduction: The Fruits of Deregulation

On November 16, the U.S. General Accountability Office (GAO) announced its 13 most urgent priorities for the incoming Obama administration. GAO is the U.S. government auditing office that responds to congressional requests to review the performance and budgets of U.S. federal agencies. Hence, when GAO lists food safety among the top 13 (others include the war in Iraq, the economic crisis unleashed by the financial services industry, education and health care reform), the message will be sent up the chain of Obama administration command. But what about the rest of the world and its food safety priorities?

This second issue of the *Monitor* finds that the U.S. food safety management crisis identified by GAO has its analogues around the world. The European Food Safety Authority, which carries out risk assessments required for approval of novel foods, is in disarray. Yet the European Commission is under U.S. pressure to adopt the U.S. deregulatory model for fast-tracking the commercial approval of genetically modified seeds. The weakness of Chinese food safety management, in the case of global contamination of dairy, feed and infant formula products by melamine, marks another unhappy chapter in the saga of making sales at any cost. Listeria contamination in a Canadian meat processing plant, resulting in at least 26 deaths, comes on the heels of a Canadian government decision to emulate the U.S. system in letting industry self-

regulate meat hygiene. The suspension of U.S. meat imports from Mexico due to the failure of exporting plants to comply with food safety equivalence agreements is a small but important step toward restoring the rule of U.S. law. But as the fallout from the U.S. financial services deregulatory debacle ravages economies around the world, strengthening the food safety infrastructure to comply with the law will be a difficult, though necessary, budget choice.

- Editor, Steve Suppan

The Private Standards Debate at the WTO and Codex

In addition to complying with public SPS standards, such as those of the Codex Alimentarius Commission (Codex), exporters are increasingly required to also conform to the private standards of international food retailers, typically standards concerning food quality (e.g., appearance, size and texture of a vegetable) and pesticide residue limits. At the October 8-9 meeting of the World Trade Organization's Committee on Sanitary and Phytosanitary Measures (SPS Committee), the 200 participating delegates decided to investigate possible conflicts between international private SPS standards and the public standards presumed to be authoritative in the WTO's SPS Agreement. The investigation could result in an SPS Committee decision about whether public standards prevail in the event of a conflict with private standards. In June, the Standards and Trade Development Facility, a project of several intergovernmental organizations including the WTO, held an "information session" for WTO members on private standards. There, a World Bank representative argued that private standards could be understood as reinforcing, rather than conflicting, with the SPS Agreement.

The SPS Committee's decision came more than three years after Jamaica, St. Vincent and the Grenadines had complained that private pesticide residue requirements for British import of their bananas were in conflict with Codex pesticide residue standards. Since then many developing countries have argued that a proliferation of private SPS standards by international food retailers, including standards pertaining to production methods, violate Article 13 of the SPS Agreement, thereby constituting a disguised barrier to trade. Developed country members claim that Article 13 does not oblige them to prohibit private standards, but is merely a "best endeavor" clause to encourage private firms to comply with the Agreement. The European Union indicated that a trade dispute ruling on private standards and Article 13 might be required to clarify the different views of WTO members. But no such WTO challenge has been filed. Such a challenge could not only prove expensive for the litigants but for any exporter who decided to await the results of what would likely be a lengthy dispute process and perhaps non-compliance with the resultant dispute ruling.

At the Codex meeting in early July in Geneva, Codex members and the United Nations Food and Agriculture (FAO) representative suggested that the rise of private standards threatened not only the utility of individual Codex standards but the validity of all Codex work. Ezzedrine Boutrif, FAO's representative to Codex, departed from diplomatic decorum to remark, "We should ask ourselves what is the future of public standards if

this trend [toward more private standards] continues or is even amplified. . . We have to protect Codex from this risk." World Animal Health Organization (OIE) Director General Bernard Vallat reported that the annual OIE Assembly had adopted a resolution calling for cooperation between public and private standards organizations. Uganda and Argentina argued that Codex had to develop a position paper on private standards for the WTO. The Argentine delegate stated, "We must do everything in our power to make sure Codex standards prevail on the international market, otherwise our work here would be meaningless." Outgoing Codex Chair Claude Mosha said that the Codex executive committee had requested that the FAO and the World Health Organization (WHO), Codex's parent bodies, prepare a comprehensive report for the 2009 Codex meeting on private standards and on fair trade accreditation schemes.

Sources: "WTO to Tackle Private Sector Standards." *Bridges*. International Centre for Trade and Sustainable Development. November 2008; "Debate on Private Sector Standards Continues in SPS Committee." *Bridges Trade BioRes* July 6, 2007; "Report of the STDF Information Session on Private Standards (June 26 2008)" WTO Secretariat note. G/SPS/R/50. July 24, 2008. Sara Lewis. "Private retail standards seen threatening Codex standards." *Food Chemical News*. July 14, 2008.

A Technological Solution to the U.S.-EU Poultry Dispute?

The first edition of the *Monitor* reported on a U.S.-EU trade dispute over U.S. poultry exports washed with a chlorine rinse to kill pathogens such as Salmonella. (See "Chicken Exports: A U.S. National Security Interest?") On October 17, European Commission Vice President Guenther Verheugen, co-chair of the TransAtlantic Economic Council (TEC) declared at a press conference in Washington that the Bush administration had erred in making resolution of the poultry dispute a litmus test for the future viability of the TEC. Verheugen opined that there was no scientific basis for EU member state support for the import ban against U.S. poultry exports. However, chlorine is a cancer-causing agent and EU consumers do not trust U.S. claims that chlorine residues on poultry are too small to promote cancer.

Though the impasse over the safety of U.S. poultry exports may trigger a WTO dispute, a new anti-microbial rinse to kill dangerous bacteria on food may soon replace chlorine in the U.S. food safety arsenal and thus displace any need to use the dispute settlement process. University of Georgia researchers, who have applied for a patent on the rinsing solution, anticipate rapid commercial adoption, since the U.S. Food and Drug Administration (FDA) has approved commercial use of the rinse's ingredients as Generally Recognized As Safe. Michael Doyle, director of the University's Center for Food Safety, characterized chlorine as an unreliable defense against pathogens.

Sources: "Verheugen Sees No Quick Solution for Top U.S. Trade Complaints in TEC." *Inside U.S. Trade*. October 24, 2008. "Antimicrobial wash ready for licensing." *Feedstuffs*. July 14, 2008.

European Food Safety Agency: Unhappy Staff Under EU and U.S. Trade Pressure

In August, European Food Safety Authority (EFSA) staff sent Members of the European Parliament (MEPs) a long, anonymous list of complaints covering everything from the management of the school for children of EFSA employees to EFSA contracts and staff evaluation reviews. The letter stated that a third of senior management had left the agency in 2008. One departing manager's letter of resignation called EFSA working conditions unbearable. EFSA's executive director, accused of painting a rosy picture of the Parma, Italy based agency to the MEPs who approve EFSA's budget, rebutted the staff charges. However, in early November, MEPs of all political parties called for an external evaluation of EFSA. As EFSA is petitioned to approve new genetically modified organisms (GMOs) and novel food ingredients, EFSA staff are embroiled in a fight to ensure the agency's capacity to carry out its statutory responsibilities.

In late October, officials from the Office of the U.S. Trade Representative (USTR) met with sympathetic EU trade officials to urge the EU to fast-track approvals of GMOs in order to "normalize trade" in agricultural biotechnology products. The USTR had solicited information from biotechnology firms about the status of their applications for commercialization approval in preparation for requesting a WTO compliance panel to enforce the EC Biotech Products ruling. A WTO dispute panel ruled in 2006 that the EC had unduly delayed commercial approval of U.S. GMOs following favorable EFSA risk assessments, a required step in the EU's regulatory review process. On October 20, the president of the EU Environmental Council suggested that EFSA's risk assessments did not take into account peer-reviewed scientific literature on environmental health and that there was no process for settling disputes between EFSA risks assessors and EU member country risk assessors. On October 31, EFSA ruled that France's submission of scientific evidence to justify its ban on planting a GM corn variety did not invalidate EFSA's earlier positive risk assessment of the variety.

The Bush administration is trying to lock in its regulatory legacy by issuing regulations to take effect before they can be undone by the Obama administration and often with a shorter public comment period than is recommended by the Administrative Procedures Act. Among the many fast-tracked rules is one to eliminate "unnecessary regulatory burdens" to commercial approval of agricultural biotechnology products. EFSA management is under pressure from U.S. and EC trade officials, EFSA staff and European Union parliamentarians. Now EFSA and the EC will be under pressure to "harmonize" their risk assessments and commercialization rules for GMOs with the last wave of Bush administration deregulation.

Sources: "EFSA staff fire off letter of complaint to MEPs." *EU Food Law*. August 29, 2008; "EU Parliament members call for review of EFSA." *Food Chemical News*. November 10, 2008. "U.S. To Press EU Officials on Biotechnology Trade Next Week." *Inside U.S. Trade*. October 17, 2008; "USDA proposed biotech regulatory overhaul to mixed reviews." *Inside U.S. Trade*. October 13, 2008; "EFSA urged to consider wider views on biotech crops." *Food Chemical News*. October 27, 2008; "EFSA Rules Against French GMO Ban, Upholds Two More Risk Assessments." *Inside U.S. Trade*. November 21, 2008; "Midnight at the White House: Bush Using Rules to Cement Legacy." OMB Watch. November 4, 2008.

Melamine Contamination Broadens and Investigation Intensifies

Hospitalizations of Chinese children made ill by consuming melamine were estimated to have doubled to 94,000 from the government's initial September 21 estimate. Melamine, an industrial chemical added illegally to boost protein content in animal feed, diluted dairy products and dairy ingredients of other food products. Melamine disrupts kidney function, although there is little research to show how the disruption occurs. The WHO published and updated on October 30 a preliminary risk assessment on melamine, and is organizing with the FAO a December 1-4 meeting of experts on melamine and cyanuric acid toxicology. The acid, which may be a by-product of melamine production, acts with melamine to form crystals that block the kidney's passageways. On October 8, the U.S. National Institute of Health (NIH) released its first report on the extent of U.S. chronic kidney disease, which has increased 30 percent over the past decade and affects 27 million U.S. residents. NIH hopes that the report will increase funding for kidney research.

Throughout the fall, government food safety agencies around the world tested for melamine and issued recalls of food and feed products suspected of incorporating the contaminant. For example, Thailand returned 122 tons of milk powder to China. Brand-name products, such as Chinese-made Snickers bars and Ritz crackers were recalled in South Korea. Our October 6 blog, "No Gold Medal for Food Safety," summarized reporting about how the Chinese government suppressed the contamination scandal, ignored parents' pleas for help for their sick children and even intimidated lawyers not to represent the parents, all for the sake of protecting national prestige and corporate investments in a "harmonious" Olympic Games in Beijing.

Although Chinese authorities banned melamine as a feed ingredient in July 2007, after the deaths of an estimated 39,000 pets from consuming melamine-contaminated pet food, melamine continued in 2008 to be added to animal feed, according to the Communist Party's *People's Daily*. Chinese authorities announced on November 1 that they had destroyed 3,600 tons of contaminated feed. On November 12, the U.S. Food and Drug Administration (FDA) announced that it would expand its national import alert beyond dairy and products with dairy ingredients, such as bakery products, snack foods and frozen desserts, to include animal feed products. If the import bans and import alerts are extended around the world to Chinese seafood, meat and poultry exports, the trade-related and regulatory failure costs of holding a "harmonious" Olympics Games may be added to the very high public health costs and human suffering of melamine contamination.

Sources: Stephen Clapp. "Chinese tainted milk toll may have doubled, reaching 94,000." *Food Chemical News*. October 13, 2008. World Health Organization. "WHO Expert Meeting to review toxicological aspects of melamine and cyanuric acid" (undated) and "Melamine and Cyanuric acid: Toxicity, Preliminary Risk Assessment and Guidance on Levels in Food." September 25, 2008 (updated October 30); U.S. National Institutes of Health. "Annual Report Targets Chronic Kidney Disease in the United States." *NIH News*. October 8, 2008; C. Nielson Consulting blog. October 25, 2008; David Barboza. "China's Tainted-Food Inquiry Widens Amid Worries Over Animal Feed." *The New*

York Times. November 1, 2008; Stephen Clapp. "Melamine routinely added to Chinese animal feed." Food Chemical News. November 10, 2008; Joan Murphy. "Chinese dairy products, more animal feeds focus of sweeping new FDA import alert." *Food Chemical News*. November 17, 2008.

Meat Contamination in Canada and Suspension of U.S. Meat Imports from Mexico

Regulators' efforts to help create a tri-national meat industry under the framework of the North American Free Trade Agreement continue to be frustrated by pathogens that have undermined the de facto self-regulation of the industry. In mid-September, the Maple Leaf Foods plant in Toronto, whose Listeria-contaminated meat had caused at least 26 deaths and 61 more illnesses over the prior six weeks, reopened. Agriculture Minister Gerry Ritz apologized for ill-considered attempts at humor about the outbreak, whose political costs he likened to "a death by a thousand cuts. Or should I say cold cuts."

While Ritz got to keep his job, the *Canadian Medical Association Journal* said that the fast-tracked investigation into the outbreak proposed by Prime Minister Stephen Harper would be "inferior to every epidemic inquiry in recent Canadian history." In early October, a *Toronto Star*/Canadian Broadcasting Corporation report revealed that in April, Canadian food safety officials had decided that company meat inspectors would no longer be required to report positive tests of contamination to government inspectors, who demanded that the requirement be restored. That same week, right before the October 14 federal elections, the just-reopened Maple Leaf Food plant again tested positive for Listeria. The union representing Canadian Food Inspection Agency (CFIA) inspectors campaigned against the re-election of the Harper administration.

The deregulation of meat inspection is part of a broader deregulatory strategy formulated in a November 13, 2007 strategic review by the Canadian Treasury Board that was leaked to the public in June by a federal food inspector union official who was later fired for doing so. The strategy would be to "shift from full-time CFIA meat inspection presence to an oversight role, allowing industry to implement food safety control programs and to manage key risks." This strategy would "harmonize" CFIA management practices with the USDA approach to inspection under the Hazard Analysis Critical Control Point program that has been sharply criticized by the USDA's inspector general. The memo called for follow-up discussion by the "Cabinet Committee on Economic Growth and Long-Term Prosperity to approve a detailed implementation plan, including risk mitigation and communication strategies." A similar inspection strategy was proposed for the animal feed that has been identified as the likely cause of Canada's 13 confirmed cases of Bovine Spongiform Encephalitis (Mad Cow) disease. Flush with electoral victory, the Harper government continues to execute the strategy, most recently by killing a program that regulated health claims made by companies on food labels.

Food safety deregulation can be exported through bilateral food safety equivalence agreements called for in the WTO SPS Agreement. Although the Maple Leaf plant did

not export to the United States, the U.S. and Canada have an equivalence agreement in which the governments are required to submit documents and allow on-site audits of exporting food plants and testing facilities to ensure that exporting country standards and practices are "equivalent" to importing country standards and practices. Despite having negotiated at least 36 equivalence agreements, the USDA has not published criteria according to which exporting plants can be de-listed from eligibility to export. In mid-September, the USDA's Food Safety and Inspection Service announced that by the end of October it would publish such criteria in response to a 2005 USDA inspector general recommendation. Citing several Canadian meat hygiene failures in violation of the U.S.-Canada equivalence agreement, in January the U.S. non-governmental organization Food and Water Watch filed a petition to remove Canada from the list of countries eligible to export meat and poultry to the United States. As of mid-November, the USDA had neither responded to the petition nor published criteria for removing plants from the list of those eligible to export to the United States.

Notwithstanding the lack of a formal U.S. process for banning exports from countries that fail to comply with equivalence agreements, on August 29, Mexico suspended beef, pork and poultry exports to the U.S. after USDA audits of 11 Mexican processing plants found numerous food safety deficiencies. The suspension followed a month's debate between Mexican and U.S. officials about the extent and severity of the deficiencies. Mexican officials and exporters remain angry over the false FDA attribution of their horticulture exports as the source of Salmonella during 2008. USDA's Food Safety Inspection Service, which must revalidate the plants as eligible to export, began to re-audit the exporting plants in September. However, there is no date set for allowing the plants to resume exports. The 35 percent fall of the value of the peso against the dollar since August, due to the financial crisis, will make it difficult for the plants to pay for food safety upgrades.

Sources: Alex Binkley. "Maple Leaf reopens plant behind *Listeria* outbreak." *Food Chemical News*. September 22, 2008; Robert Cribb. "Bacteria reporting must be reinstated, critics say." *The Toronto Star*. October 7, 2008; Bill Curry. "Listeriosis bacteria found at Toronto plant." *Toronto Globe and Mail*. October 9, 2008; Alex Binkley. "CFIA union campaigns against Harper government. *Food Chemical News*. October 11, 2008. "Decision of the [Canadian] Treasury Board Meeting of November 13, 2007" (Stamped May 6, 2008) at http://www.foodsafetyfirst.ca.; "Behind the curve on regulation." *The Edmonton Journal*. November 8, 2008. "USDA Promises Formal Policy To Evaluate Food Safety Equivalence." *Inside U.S. Trade*. September 19, 2009; "Petition to Remove Canada as a Country Eligible to Export Meat and Poultry Products . . ." Food and Water Watch. January 28, 2008. "Mexico Halts Meat, Poultry Exports to U.S. Pending Safety Fixes." *Inside U.S. Trade*. September 5, 2008; Matilde Pérez et al. "La FDA levantó alerta sanitaria contra el jitomate mexicano." La Jornada. July 18, 2008; "U.S. Re-Audits Mexican Meat Plants; Timing To Open Border Uncertain." *Inside U.S. Trade*. September 12, 2008; Steven Lewis. "Market instability threatens Mexican food producers." *Food Chemical News*. October 20, 2008

Resources

"Climate Change: Implications for Food Safety." United Nations Food and Agriculture Organization. 49 pages. November 2008.
This FAO consultants and staff report attempts to survey the known and likely effects of climate change on various segments of the agricultural sector and on food safety management. This clear and concise introduction to the topic covers crop production, animal product, fisheries (including aquaculture), and food handling, processing and trading. The authors review how bacteria, viruses and parasites evolve according to what is known about the effects of extreme weather events, seasonality, and temperature and humidity fluctuations on food-borne disease. They list zoonotic (animal to human transmissible) agents and animal disease factors that are likely to be affected by climate change. Likewise listed and analyzed are pests, molds and mycotoxins that will harm plant health and reduce crop yields. The authors give an overview of how climate change-damaged algae and algal communities, and contaminated sea waters will affect toxins in fish and shellfish.

Happily, there are some predictive mathematical models that can assist in food-borne disease prevention, surveillance and control for animal and plant health and food safety. However, as the authors frankly note, mustering political will to implement climate change-informed food safety controls, even for something as globally damaging as mycotoxin contamination of crops, will not be easy. Nor, we would add, will it be easy to finance implementation and the technology transfer to developing countries to enable the prevention or control of climate change-induced food-borne illness in local and global agricultural commerce.

Zapped!: Irradiation and the Death of Food. Wenonah Hauter and Mark Worth. Food and Water Watch Press. 212 pages. 2008.
On September 18, the U.S. Department of Agriculture held a hearing on a proposal by the American Meat Institute (AMI) to allow irradiation of meat and poultry products as an unregulated "processing agent" that would require no labeling. Food and Water Watch (FWW) executive director Wenonah Hauter writes in the preface to this very timely and important book that while just two U.S. irradiation plants currently focus their rays solely on food, 80 more plants would have to be built just to zap the 8billion pounds of hamburger consumed every year in the U.S.

AMI's petition, if granted, will not only revive the irradiation industry but expose U.S. consumers to well-documented health risks and enable hazardous production practices of the de facto self-regulating meat industry to continue. Furthermore, U.S. food safety deregulation practices have been exported. Irradiation is among the technologies that companies such as Kraft, ConAgra, DelMonte, Cargill and Tyson plan to use to increase global trade in foods, e.g., to import pork from China. While the book focuses more on the U.S. government and industry attempts to commercialize radiated food in the U.S., one chapter on the transnational effort to legitimize irradiation as a safe food technology shows how publicly financed international agencies, such as the World Bank, the World Health Organization and the International Atomic Energy Agency, have helped the industry promote irradiation.

Throughout the book the authors review scientific studies concerning the alleged safety of irradiation. For example, laboratory animals fed irradiated foods in research centers in England, Belgium, Sweden, Germany and India resulted in embryo death, mutations and chromosomal damage in the 1970s and early 1980s. A few FDA scientists, alarmed by studies showing that cancer-causing chemicals were produced by the radiation of meat, left the agency by the mid-1980s. In 2001, Public Citizen (the progenitor of FWW) and the Center for Food Safety published a study detailing the FDA management pressures on government scientists to ignore more than two decades of alarming data. On December 23, 2004, the FDA very quietly announced that it would allow a 50 percent increase in the maximum amount of radiation used to treat FDA-regulated foods. And now the Obama administration will have to decide whether the USDA should be allowed to extend the FDA's deregulation of irradiation by applying the technology to meat and poultry products.

"Sowing the Seeds: Opportunities for U.S.-China Cooperation on Food Safety." Linden J. Ellis and Jennifer L. Turner. Woodrow Wilson Center for International Scholars. Bilingual edition. 66 pp. (English) September 2008.
This report depicts in frequent and sometimes stunning detail the challenges faced in building food safety capacity in China both for export purposes and to protect domestic consumers. For example, the difficulty of regulating pesticide use is compounded by registering products under so many names that agricultural experts cannot identify the pesticide to be regulated, when that pesticide has not been counterfeited. China's new food safety law, which comes into effect this fall, provides for punishment of officials for not enforcing the law! Since China is the global leader in food exports, the vulnerability of its trade system to food contamination and outbreaks resulting in import bans is exceeded only by the vulnerability of Chinese consumers to contaminated food products. Because local officials are responsible for implementing and enforcing national food safety laws, the authors make the bold suggestion that the United States emulate the European Union and international business approach to building food safety control capacity, particularly at the local level. Given its comparative food safety management analysis, this report tells a lot more than is indicated in its modest title.