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Farm to fork food safety: Three dilemmas

The battle over the Food Safety Enhancement Act of 2009 (passed in the U.S. House of Representatives on July 30) illustrates some of the problems in realizing the now decade-old global call for an integrated food safety system from "farm to fork." The Global Food Safety Monitor has reported on the difficulties of implementing such an integrated system through bilateral food safety "equivalency" agreements, such as the agreement between the U.S. Food and Drug Administration and China's General Administration of Quality Supervision Inspection and Quarantine (AQSIQ). That agreement covered mainly Chinese horticulture and aquaculture exports to the U.S. The main Chinese jurisdictional problem with implementing the agreement is that the Ministry of Agriculture, not AQSIQ, was responsible for on-farm food safety measures, such as determining pesticide residues and the use of antibiotics in aquaculture feed. Hence a major dilemma of the agreement: How is an agreement negotiated by one agency to be implemented when that agency does not have authority over the farm end of "farm to fork?" The Food Safety Enhancement Act of 2009, outlined below, shows that jurisdictional conflicts are not limited to China.

Another "farm to fork" dilemma concerns the increasing privatization of food safety and quality standards. As we note in our micro-summary of the annual meeting of the Codex Alimentarius Commission, private standards, agreed by transnational corporate representatives, are displacing publicly determined standards, particularly for horticulture exports. Nevertheless, governments continue to bear legal responsibility for ensuring that food products are produced safely, while their resources for doing so, including Codex resources, continue to diminish relative to the amount of food traded. As international supply chains become longer and more complex, how will governments carry out these legal responsibilities if de facto control over food safety, including the food safety certification of farms, has passed into private hands? As the resource note on [Food and Water Watch's "Where's the Local Beef?"](#) summarizes, one alternative for restoring government control over food safety is to shorten the supply chain and focus food safety inspection and testing indiscriminately on very large, as well as very small, facilities.

Another dilemma related to the private takeover of food safety management is how to prevent an outbreak of food contamination when company testing data is classified as "confidential business information." This issue is highlighted in our brief summary of the mid-June contamination of Nestlé USA Toll House cookie dough by *E. coli* O157:H7, a pathogen of animal origin which sickened about 70 people, half of whom were hospitalized. While salmonella in eggs (a cookie dough ingredient) is widely reported, Professor Craig Hedburg of the University of Minnesota said that it appeared *E. coli* O157:H7 had evolved in a way that enabled it to survive the cookie dough manufacture and refrigeration process. Perhaps because of past Nestlé USA refusals to allow FDA to review the testing records of the Danville, Virginia plant (suspected of producing the contaminated cookie dough) the Food Safety Enhancement Act includes

a provision (Section 207) that prohibits U.S. and foreign food facilities from delaying, refusing or limiting facility and records inspection by FDA personnel.

These three dilemmas are by no means the only ones that must be resolved to realize the promised farm to fork integrated food safety system. But unless they are resolved, "farm to fork" will remain a public relations slogan used to instill false confidence in the efficacy of food safety management.

Sources: ["U.S.-China Food Safety Agreement: Can It Work?"](#) *Global Food Safety Monitor*, August 4, 2008; ["The Private Standards Debate at the WTO and Codex."](#) *Global Food Safety Monitor*, November 25, 2008; Joan Murphy, "Microbiologist troubled by *E. coli* O157:H7 discovery in processed food," *Food Chemical News*, June 29, 2009; Shirley Wang, ["Nestlé Said No to FDA Inspectors in the Past."](#) *The Wall Street Journal*, June 26, 2009.

U.S. Food Safety Enhancement Act passes after major changes to earlier draft

To get enough votes to approve the Food Safety Enhancement Act of 2009, the first major amendment to the FDA's food safety authority since 1938, required substantial amendments to an earlier draft of the bill. The amendments stipulate that the FDA has no authority over food safety surveillance and intervention concerning pathogens of animal origin. "Section 5, U.S. Department of Agricultural exemptions" was included at the insistence of Representative Collin Peterson (D-MN), chair of the House Agriculture Committee, following fierce agribusiness lobbying against the prospect of FDA inspection of livestock, slaughter and meat processing facilities. The bill also prohibits FDA regulation of grain and oilseed operations, which remain under the authority of the Congressional agriculture committees and the USDA. This predictable jurisdictional fight does not provide the integrated food safety management needed to prevent and mitigate the increasing incidence of contamination of horticultural products under FDA's authority by pathogens of animal origin under USDA's authority.

The bill requires a wide array of U.S. food facilities (excluding restaurants, non-profit facilities and farms) to register with the FDA and pay an annual \$500 per facility registration fee. Registered facilities must develop a food safety management plan by 2011 (2012 for small facilities) and a food defense plan, to guard against the intentional contamination of food. FDA is to inspect all registered facilities every one to five years, depending on the risk category in which the facility is placed. These rules would apply to all U.S. food import facilities. The bill requires that FDA inspect foreign food facilities exporting to the United States (Section 208). The Congressional Budget Office estimates that about \$1.4 billion will be collected from 2010-2014 in registration fees from an estimated 360,000 food facilities (There is a \$175,000 per company annual cap on registration fees.) and that the total cost for implementing the bill will be about \$2.2 billion during the same period.

Hence, Congress would have to appropriate \$800 million beyond registration fees and civil penalties for violating FDA rules (just \$10 million estimated over 2010-2014) during the implementation period. However, the leading Senate version of the bill proposes no fees, meaning that all \$2 billion would come from the taxpayer. Given the aversion of many in Congress to taxes, it is likely that a Senate food safety bill would be stripped of many of the authorities granted in the House bill due not only to ideological opposition, but to lack of money for implementation.

Sources: Joan Murphy, "House passes landmark food safety bill amid protests from Ag Committee Republicans," *Food Chemical News*, August 3, 2009; Joan Murphy, "Farmers, ranchers sound off against extending on-farm authority to FDA," *Food Chemical News*, July 20, 2009; [Section by Section Summary of H.R. 2749, "The Food Safety Enhancement Act of 2009."](#) Committee on Energy and Commerce, U.S. House of Representatives, July 2009; ["H.R. 2749: Food Safety Enhancement Act of 2009 Cost Estimate."](#) Congressional Budget Office, July 24, 2009; Lyndsey Layton, "House Passes Food Safety Bill: Law would greatly expand FDA's power," *The Washington Post*, July 31, 2009; ["Salmonella in Peanut Butter: Business As Usual?"](#) *Global Food Safety Monitor*, February 29, 2009; Rod Leonard, ["Food Safety in the Legislative Grinder."](#) Institute for Agriculture and Trade Policy, August 10, 2009.

No traceability: *E. coli* O157:H7 in cookie dough

On June 19, the FDA alerted consumers not to eat Nestlé Toll House refrigerated cookie dough, because of the risk that it had been contaminated with *E. coli* O157:H7. On June 19, Nestlé announced that it was

recalling 300,000 cases of cookie dough products and warned consumers not to eat raw cookie dough. While praising Nestlé for its rapid recall, Bill Marler, a lawyer representing 16 of the pathogen's victims, said that the press release would not provide a substantive legal defense. By June 25, at least 69 people from 28 states were reported to be ill because of the pathogen and 34 of those had to be hospitalized. As recently as March 12, State of Virginia inspectors, delegated by FDA to inspect the Danville, Virginia, facility suspected to be the locus of the contamination, had reported "no insanitary conditions noted." Nestlé's own sampling data for contamination has been classified as "confidential business information" by plant managers who have denied FDA-delegated inspectors access to plants and data pertaining to public health.

FDA worked with Nestlé officials for a week to determine whether the contaminated cookie dough had originated from the Danville facility. By July 10, the FDA had closed the investigation and the facility had reopened for production. FDA's associate commissioner for food safety, David Acheson, said that the FDA's testing had not been able to find a DNA match between the contaminated cookie dough and about a thousand samples taken from the Danville facility. Acheson said, "This will be one of those situations where we won't know definitely what went wrong."

Sources: "FDA Warns Consumers Not to Eat Nestle Toll House Prepackaged, Refrigerated Cookie Dough," Food and Drug Administration press release, June 19, 2009; Joán Murphy, "Microbiologist troubled by *E. coli* O157:H7 discovery in processed food," *Food Chemical News*, June 29, 2009; Jane Zhang, "[Nestlé Unit Restarts Cookie Facility.](#)" *The Wall Street Journal*, July 10, 2009.

World Animal Health Organization and Codex Alimentarius Commission meetings

The report of the World Animal Health Organization's (OIE, in its French acronym) annual General Assembly, held May 24-29 in Paris, has not yet been posted. However, OIE press releases and editorial statements give some idea of the intergovernmental organization's most pressing concerns. Delegates from 174 member governments endorsed the actions of the OIE secretariat concerning the H1N1 virus. On July 21, OIE Director General Bernard Vallat summarized these actions: "At the very beginning of the [H1N1] crisis, our organization has been actively involved in alerting WHO [World Health Organization] and the international community that it was not justified to name this new disease 'swine influenza.' This incorrect nomenclature has led [...] many countries to impose unjustified ban measure related to the import of pigs and pig products." Dr. Vallat recalled that OIE had issued a joint statement with WHO, WTO and FAO to say that there was no justification for import bans on pork and pork products that complied with international standards. OIE has called on member governments to take measures to ensure that pigs be protected from potentially infected humans and to notify OIE if H1N1 is detected in pigs.

Delegates also reviewed the results of a technical study, with the survey cooperation of 126 OIE members, on the impact of climate change on animal health. Bluetongue, Rift Valley fever and West Nile fever were among the livestock diseases that OIE members identified as re-emergent due to climate change. Delegates authorized further OIE work on the issue, particularly to build technical capacity for surveillance and mitigation of new, or more virulent, animal diseases. Delegates also reviewed the prevalence and severity of more than 100 animal diseases. They approved the disease control status for the priority diseases: foot and mouth disease, rinderpest, bovine spongiform encephalitis (BSE or "Mad Cow") and contagious bovine pleurapneumonia. These approvals will allow for resumption of animal and meat product exports from countries receiving "negligible risk" or "controlled risk" status.

The Codex Alimentarius Commission held its annual meeting (June 29 to July 4 in Rome) in the midst of concerns that the international food standards organization could not afford to continue to hold annual meetings in light of the budget crises of its parent organizations, WHO and FAO. Holding biannual meetings was one of a number of recommendations of a consultant's report on the work of the Codex secretariat, which currently lacks a secretary. (Delegates rejected that recommendation and asked Codex's executive committee to review the other recommendations for their possible implementation.) Delegates also reviewed a FAO/WHO report on the increasing use of private international standards, especially those applied to horticultural exports, that were sometimes in conflict with Codex standards and were

displacing Codex standards as a requirement for trade facilitation. The rise of private standards "has raised profound questions about the role of public and private institutions in establishing and enforcing food safety norms." The report recommended that Codex engage more directly with private standards setting institutions, such as the Global Food Safety Initiative, perhaps by inviting them to become an accredited international non-governmental organization at Codex.

Notwithstanding Codex's budgetary and institutional challenges, according to a draft Codex secretariat report, based on the work of more than two dozen Codex committees and several FAO/WHO risk assessments, the Commission approved 28 new or revised standards, plus dozens of tolerance levels for pesticides and veterinary drugs, and dozens of food additives. While some of these standards, (e.g., for soyabean paste) are to facilitate regional trade, other standards (e.g., on methods for the laboratory analysis of chemicals in food) are intended for global application. The Commission also endorsed new work, including: setting standards that would distinguish "between unavoidable melamine occurrence and deliberate adulteration of food and feed;" new standards to control viruses, such as norovirus and Hepatitis A; and preventing the incidence of aflatoxin in Brazil nuts. The Commission also discontinued some committee work and sent draft standards back to committees for further revision. Among these draft standards was a Code of Ethics, now reduced to one page, which originated ten years ago from an NGO initiative to prevent products that were illegal in the country of export from being legally imported in another Codex member country. Several Codex members object to the draft Code of Ethics because they believe it might violate their commitments to the World Trade Organization's sanitary and phytosanitary agreement.

Sources: Various press releases, [World Animal Health Organization](#), May–July 2009; "[Advanced] Report." Codex Alimentarius Commission, July 2009; Stephen Clapp, "Codex Commission adopts than 30 international standards," and "Codex considers impact of private food safety standards," *Food Chemical News*, July 13, 2009.

Resources

["Where's the Local Beef?: Rebuilding Small-Scale Meat Processing Infrastructure." Food and Water Watch. June 2009. 62 pp.](#)

This exceptionally well-documented, written and designed report examines how U.S. food safety rules, drafted and implemented to favor the largest slaughterhouses and meat processors, have helped lead to the decline of "small" scale (fewer than 500 employees) and "very small" scale (fewer than 10 employees) meat and poultry processing operations. U.S. food safety management programs, particularly the [Hazard Analysis Critical Control Point \(HACCP\)](#) program, have been globalized through the Codex Alimentarius Commission and bilateral food safety agreements. Because of this globalization, the report's analysis and recommendations, although specific to the United States, should engage an international readership. Those interested in restoring competition to the meat and poultry industry and in learning how HACCP and other food safety management programs are implemented in U.S. facilities will find in this report a wealth of information and policy options that may be applicable in other countries.

Although U.S. public demand for locally produced food increases, many small-scale operators cannot meet the demand because they cannot afford the expense of complying with proliferating rules and an enforcement scrutiny that is far more intense than that received by the largest operations. For example, between 1998 and 2002, between 52 and 65 percent of the samples [Food Safety Inspection Service \(FSIS\)](#) took to test for *E. coli* O157:H7 came from small plants that account for less than one percent of U.S. ground beef production. For three years of that same period, FSIS did not test for the pathogen at 14 of the largest 20 U.S. plants, which slaughtered 80 percent of the nation's cattle (p. 46). Indeed, FSIS officials advise small plant processors to test for pathogens and hold them responsible for doing so, even as large-scale slaughterhouses refuse to supply meat to processors who test carcasses for pathogens.

Perhaps more disturbing than FSIS's selective and often contradictory enforcement of its own quickly changing rules is the confidence with which lawyers for Cargill, Tyson, National Beef Packing, Swift and other large meat packers threaten FSIS for taking measures to protect public health. For example, in May 6, 2008 comments to FSIS, a lawyer/lobbyist challenged FSIS's regulatory authority to require the packers to supply meat processors who tested the packer carcasses for pathogens: "we believe such blatant interference in business dealings is far beyond any Agency authority," (cited at p. 42). This hardly veiled threat of a lawsuit sufficed to get FSIS to withdraw support for meat processor testing of the packers'

carcasses. Under this reign of legal threat, the meat processor, and ultimately the consumer—not the slaughterhouse, the most likely source of contamination—is responsible for the production and consumption of safe meat. So buyers beware!

[WHO Initiative to Estimate the Global Burden of Foodborne Diseases.](#) World Health Organization. June 2009.

This Initiative aims to systematically review published and unpublished scientific literature, and compile foodborne disease data and food consumption data. Without such data, food safety planning and public health intervention cannot be optimally targeted. This progress report, prepared for the October 29–30, 2009 Foodborne Disease Stakeholder meeting, outlines the methodology and work plans of the [Foodborne Disease Burden Epidemiology Reference Group \(FERG\)](#). The stakeholder meetings will work to turn FERG findings into proposed food safety policy for WHO members.

The five FERG task forces focus on enteric (intestinal) diseases, parasitic diseases, diseases caused by chemicals or toxins in food, methods for determining the sources of foodborne diseases, and country-specific foodborne disease profiles. The source attribution task force is in the process of compiling data for a global atlas of food consumption. The Country Studies task force, which has among its objectives estimating death and disability caused by foodborne disease, begins on the basis of previous WHO research showing that only about 70 countries have adequate cause of death data and recording systems; therefore, establishing such systems for multiple public health purposes will require WHO projects beyond this initiative. While FERG's global profiles will help WHO intervene in cases of cross-border food contamination, it is hoped that the country-specific pilot studies and the generation of data will also be used to initiate or change food safety policy and interventions in the countries studied.

