



Institute for Agriculture and Trade Policy

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in the Twilight of the Bush Administration**

(Executive Summary)

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EXECUTIVE SUMMARY

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Overview

In May 2007, the U.S. Food and Drug Administration (FDA) advised U.S. companies to recall pet food with contaminated ingredients imported from China.¹ Publicity about the deaths or illness of an estimated 39,000 pets,² combined with dozens of news stories about contaminated and otherwise dangerous toy imports from China contracted for by U.S. companies,³ led the Bush Administration to form an Inter-agency Working Group (IWG) on Import Safety. On July 18th President Bush gave the IWG, composed of representatives of 13 federal agencies, the mandate “within existing resources, to promote the safety of imported products.”⁴ The IWG, working closely with the food industry,⁵ published a preliminary report in September and a final report in November 2007. This short analysis outlines the main tenets of the IWG report with regards to food safety and concludes with alternative policies for safe food imports.

Expand U.S. food safety management practices to all imported products?

Our focus is on just two programs among the 13 agencies of the IWG, the Food and Drug Administration (FDA) and the Food Safety Inspection Service (FSIS). Both FSIS and FDA are under Congressional pressure to fundamentally reform their food safety management practices. Oversight and appropriations committees are not satisfied that the agencies are using Congressional funding effectively and for their authorized purpose.⁶ The focus on FSIS and FDA food safety management is further advised because the IWG recommends that all imported products be managed according to the Hazard Analysis and Critical Control Point (HACCP) program used by FSIS and FDA.⁷ Examples of Critical Control Points include time and temperature controls for cooking processed food products.

HACCP, originally a voluntary industry food quality assurance program, has been controversial since FSIS began to apply it as a food safety program in a pilot project in 1999. In June 2000, a U.S. Court of Appeals found that the pilot project violated the U.S. meat and poultry product inspection acts. The Court ruled the application of HACCP did not allow federal inspectors to inspect products, only the paperwork of the plant inspectors who carried out physical inspection. The acts require federal inspectors to perform continuous inspection alongside plant inspectors.⁸ According to the IWG, adherence to HACCP principles will be the framework for extending U.S. food safety management practice to all products in all countries that export to the United States.

When food safety management programs fail, the public health costs of food-borne illness are very high. In a January 29 letter to the Government Accountability Office (GAO), Senator Edward Kennedy and Representative Henry Waxman noted, “FDA has estimated that illnesses from just 13 food-borne pathogens result in over 13 million [U.S.] illnesses and \$57 billion in costs annually” (*sic*). That estimate, they note, is less than a fifth of total U.S. food-borne disease incidence and mitigation costs, according to a 1999 report, the last year the government estimated U.S. food-borne illness, and prior to the import boom.⁹

GAO believes U.S. government food safety management controls are so flawed that it has included food safety among its series of “high risk” auditing reports. For example, FSIS and FDA verification of voluntary industry food product recalls takes a month or more, often exceeding the shelf life of the recalled foods.¹⁰ Government audits, testimony and correspondence about U.S. food safety management help analyze whether the IWG proposal to export U.S. food safety management practices will result in safer U.S. food imports.

Challenges to import food safety and proposed solutions

Notwithstanding the GAO and other criticisms of U.S. food safety management, the IWG was tasked with providing solutions to the problems of managing a projected tripling of import products from about \$2 trillion in 2006 to \$6 trillion in 2015.¹¹ Imports doubled in value between 2003 and 2006 for the more than 825,000 U.S. importers.¹² The IWG does not disaggregate food product from non-food product data, but according to a former FDA administrator, in 2007 about 60 percent of FDA-regulated import transactions were for food products valued at about \$49 billion (compared to \$417 billion in 2007 domestic production). These FDA-regulated imported foods include about 60 percent of U.S. fruit and vegetable consumption and 75 percent of seafood consumption.¹³

As imports were booming, resources for both food inspection and testing were very low and stagnant both for domestic and imported foods. A former FDA administrator testified to Congress that “for years” there were fewer than 200 full-time FDA inspectors to “conduct entry reviews, collect samples and conduct physical examinations and investigations on all imported goods, including food and drugs” in more than 300 U.S. ports of entry.¹⁴ As a result, for example, the U.S. inspection rate of seafood imports is about 1/20th to 1/50th of the European Union rate, depending on species.¹⁵

The FDA Science Board review of FDA food safety programs concluded that they were “severely eroded” and that the inspection program, which is to verify that the other programs are working, suffers from “an appallingly low inspection rate.”¹⁶ The Science Board effectively dismissed President Bush’s mandate to the IWG to ensure import product safety “within existing resources” by calling for greatly increased resources, as well as a profound restructuring of FDA.¹⁷ (U.S. Department of Agriculture border inspection is likewise crippled, but the IWG puts more emphasis on FDA actions.¹⁸)

Like the FDA Science Board, the Grocery Manufacturers Association, whose members claim an aggregate \$2.1 trillion in global sales last year, has called for more resources for FDA.¹⁹ But unlike the Science Board, GMA opposes more inspection and testing. Instead GMA promotes a “Voluntary Qualified Food Importer Safety Program” that would expedite trade for importers who chose to “participate in a program designed to permit FDA to identify confidently their products as being in compliance”²⁰ with FDA requirements.

In turn, FDA’s new “Food Protection Plan” will “promote increased corporate responsibility to prevent foodborne illnesses” through “the adoption of voluntary preventive controls.”²¹ The FDA plan is listed as integral to the IWG work plan.²² Along with adherence to HACCP principles, a key feature of the “voluntary preventive

controls” is food safety certification of exports by an entity other than the exporter or FDA. According to the IWG, “third party certification” will prevent food contamination and preclude the need for burdensome inspection and testing of the ever greater import flow.²³

What is to be done?

Given the perilous state of U.S. food safety management, further delegation of FDA and FSIS authority to third parties, whether private, private/public or governmental, for U.S. food imports is very unlikely to improve food safety. A new Administration should reform the import food safety system to reassert federal authority. Reforms should include at a minimum:

- A corps of food safety inspectors adequate in number, equipped with cutting edge inspection technology, specially trained in import food product re-inspection, and fairly remunerated at every U.S. port of entry;
- Legislative authority to allow regulators the discretion to reduce the number of ports of entry for high risk products when import food safety controls prove inadequate to ensuring safe trade;
- Legislative authority to allow regulators to suspend import licenses or put importers on conditional probation for failure of their suppliers to comply with U.S. federal import requirements, including food safety requirements;
- Food safety budgets adequate not only to pay the costs of regulation, inspection, testing and other programs, but also with dedicated funds for research into emerging pathogens and other hazards, and for mitigating public health harms resulting from food safety management failures;
- Legislative authority for federal agencies to cooperate with the food industry on equipping developing country food safety authorities with training and infrastructure to verify that their government certified export establishments comply with U.S. import requirements, including food safety requirements;
- An importer performance bond to help ensure that importer suppliers outside the United States comply with U.S. import requirements. Infrequent importers could contribute to a bond pool. The bond would be returned with interest to importers at the close of the fiscal year, provided that the importer traded safely and without violating U.S. requirements.

Resources:

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- 3 "Santa's Sweatshop: 'Made in D.C.' with Bad Trade Policy." Public Citizen. December 2007. <<http://www.tradewatch.org>>
- 4 Interagency Working Group on Import Safety. "Action Plan for Import Safety: A roadmap for continual improvement." Appendix A. November 2007. p. 60. <<http://www.importsafety.gov>>
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- 6 *Inside U.S. Trade*. "FDA Must Develop Food Safety Plan to Receive Some Omnibus Funding." January 11, 2008.
- 7 Interagency Working Group on Import Safety. "Protecting American Consumers Every Step of the Way: A strategic framework for continual improvement in import safety." September 2007. p. 16. <<http://www.importsafety.gov>>
- 8 Allison Beers. "Union once again appeals HIMP ruling." *Food Chemical News*. February 19, 2001. *American Federation of Government Employees et al. v. Ann M. Veneman, Secretary of the U.S. Department of Agriculture et al. Appeal from the U.S. District Court for the District of Columbia* (98cv00893) <<http://www.ll.georgetown.edu/federal/judicial/dc/opinions/01opinions/01-503a.html>>
- 9 Letter from Representative Henry Waxman, Chairman, House Committee on Oversight and Government Reform and Senator Edward Kennedy, Chairman, Senate Committee on Health, Education, Labor and Pensions to David Walker, Comptroller General of the United States, U.S. Government Accountability Office. January 29, 2008. <<http://www.oversight.house.gov>>
- 10 Statement of Lisa Shames, Acting Director, Natural Resources and Environment, General Accountability Office. "Federal Oversight of Food Safety: High-Risk Designation Can Bring Attention to Limitations in the Government's Food Recall Programs." Testimony before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce. U.S. House of Representatives. April 24, 2007. GAO-07-785T.
- 11 Interagency Working Group on Import Safety. "Protecting American Consumers." op. cit. p. 4.
- 12 Ibid. p. 5.
- 13 "Statement of Benjamin L. England, JD," to the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, U.S. House of Representatives. November 1, 2007.
- 14 Ibid.
- 15 "Import Alert: Government Fails Consumers, Falls Short on Seafood Inspections." Food and Water Watch. July 2007. 6. <<http://www.foodandwaterwatch.org>>
- 16 U.S. Food and Drug Administration. *FDA Science and Mission At Risk: Report of the Subcommittee on Science and Technology*. November 2007. p. 21. <http://www.fda.gov/ohrms/dockets/ac/07/briefing/2007-4329b_02_01_FDA_Report_on_Science_and_Technology.pdf>
- 17 "FDA Science and Mission At Risk: Estimated Resources Required For Implementation." FDA Science Board's Subcommittee on Science and Technology. February 25, 2008. 5-7.
- 18 Joan Murphy. "Cardoza says U.S. border inspection program in dire straits." *Food Chemical News*. October 1, 2007.
- 19 "GMA Calls For More FDA Resources To Focus On Food Risk." *Inside U.S. Trade*. September 21, 2007.
- 20 Grocery Manufacturers Association. "A Commitment to Consumers to Ensure the Safety of Imported Foods: Four Pillars of Public-Private Partnership." September 2007. p. 6 <http://www.bipac.net/gma/Four_Pillars_Combined_FINAL.pdf>
- 21 Interagency Working Group on Import Safety. "Protecting American Consumers. . ." op. cit. p. 3 and 12-18.
- 22 Interagency Working Group on Import Safety. "Action Plan for Import Safety." op. cit. p. 11.
- 23 Ibid. p. 20.