

Standards for Food Safety in an Era of Globalized Trade

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Hosted by the World Food Law Institute, the International Food & Agricultural Trade Policy Council and the American Society of International Law

At this roundtable, government and private sector proposals for improving the safety of US food imports were presented and discussed, with a particular focus on their repercussions on international trade.

Dr David Acheson, Assistant Commissioner for Food Protection at the FDA, presented the FDA's Food Protection Plan, which was released on November 6, 2007 - <http://www.fda.gov/oc/initiatives/advance/food.html>. Acheson explained that the FDA plan which applies both to domestic production and imports, dovetails with the food-related components of the Administration's Import Safety Action Plan, also released on November 6 – www.importsafety.gov, and highlighted those parts of the plan which apply to imports.

Acheson spoke of the tremendous increase of imported foods and ingredients over the last decade. Some 15% of the overall US food supply is imported, with greater percentages in certain food categories, i.e. some 60% of fruit and vegetables consumed in the US are imported and more than 75% of seafood. Stating that imports are arriving from countries with less sophisticated food safety systems and the possibility of intentional contamination, the Food Protection Plan places more emphasis on prevention and intervention. Some 189,000 registered foreign facilities manufacture, process, pack or hold food consumed by Americans, and Acheson emphasized the need to have more information about these facilities. HHS/FDA are proposing that FDA can require via regulation preventive control measures to address risks that might occur from unintentional and intentional contamination of both domestic and foreign foods. The plan also proposes that Registration requirements for foreign facilities instituted via the US Bio-terrorism Act be amended so as to require re-registration every two years. FDA presently inspects 1% of food imports and the Plan sets forth proposals to better target inspection resources. The Plan calls for import certification programs to be instituted for designated products imported from certain countries, to demonstrate compliance with FDA requirements. The Plan also proposes an additional voluntary certification program, participation in which would facilitate expedited entry of imports. Also of relevance for imports, the Plan proposes that FDA be granted the authority to refuse admission to products originating from firms which do not allow FDA inspections.

Cal Dooley, President and CEO of the Grocery Manufacturers' Association, spoke of the alignment of FDA's plan with GMA's Action Plan for Strengthening Imported Food Safety - <http://www.gmabrands.com/news/docs/NewsRelease.cfm?DocID=1772>. He emphasized the tremendous importance food manufacturers attach to food safety and concern regarding a recent consumer poll which showed declining confidence in the safety of the US food supply from 82% to 66%. Dooley stressed the need for an effective public-private partnership. He welcomed FDA's proposal to require importers to have

supplier quality plans in place and its proposal for an additional voluntary program, adherence to which would lead to expedited entry. Indicating that the US imports a substantial amount of food from developing countries, many of which have less sophisticated food safety systems, Dooley called on improved public and private commitment to building capacity in these countries, and pointed out that there is tremendous expertise in the private sector that could be put to good use in this regard.

Referring to insufficient funding of FDA as a travesty, he spoke of a coalition of food, drug and medical device manufacturers which is pushing for a doubling of FDA resources within five years.

Dooley also outlined a number of concerns about elements of legislative proposals to improve food import safety. He questioned the WTO compatibility of requiring import user fees and the feasibility of FDA certifying other countries or individual foreign suppliers as providing an equivalent level of food safety, and spoke out against requiring country of origin labeling of food imports or imported food ingredients.

Jay Taylor of McDermott Will & Emery LLP, Joe O'Mara of O'Mara & Associates, Daniel Brinza, Assistant USTR for Monitoring and Enforcement and Ambassador Al Johnson of Allen F. Johnson and Associates served as commentators, highlighting potential implications of both sets of proposals in terms of trade and trade rules. Main points, also from subsequent Q&A session, included:

- Food safety is in fact enhanced through international trade and competition among manufacturers, eager to protect their brand image and share of the marketplace.
- By differentiating legitimate food safety measures from protectionist measures, trade and food safety can be mutually supportive.
- An emphasis on “sound science” must be maintained when new import safety measures are put into place, as per the SPS Agreement.
- Whereas the reach of the TBT agreement over private sector standards is far from clear, it is conceivable that when private standards are certified by government, as is the case in both FDA’s and GMA’s proposals, that private companies can be considered as non governmental standardizing bodies.
- The importance of outreach to and capacity building in developing countries was re-emphasized. Capacity building is essential since testing alone will not lead to compliance with food safety standards.
- Some participants questioned the lacking focus on equivalence in the FDA and GMA proposals, arguing that rather than imposing compliance with specific US standards, more emphasis should be given to determining whether a country’s food safety system achieves the same level of protection as that of the US.