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GROWING TRADE, GROWING VIGILANCE: IMPORT HEALTH AND SAFETY TODAY AND TOMORROW

HEARING

BEFORE THE

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UNITED STATES SENATE

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FIRST SESSION

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CONTENTS

OPENING STATEMENTS

WITNESSES

ALPHABETICAL LISTING AND APPENDIX MATERIAL

COMMUNICATIONS

GROWING TRADE, GROWING VIGILANCE: IMPORT HEALTH AND SAFETY TODAY AND TOMORROW

THURSDAY, OCTOBER 18, 2007

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Lincoln, Stabenow, Salazar, Grassley, Snowe, Bunning, and Roberts.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The hearing will come to order.

Eduardo Arias went shopping and saved thousands of lives. Last May, Eduardo Arias walked into a store in Panama City. He picked up a tube of toothpaste. He read the ingredients. Two words caught his eye: diethylene glycol. Eduardo Arias recognized the poisonous chemical used in antifreeze, and he took action. Eduardo Arias spent the next 2 days alerting Panamanian officials about the contaminated toothpaste.

At first he got the brush-off. He took a vacation day to press his concerns, but eventually he succeeded and an alert spread through Panama and across the world. The danger had slipped by government regulators, it eluded trade inspectors; the system had failed. But thanks to Mr. Arias, people found potentially lethal contaminated toothpaste in Canada, New Zealand, Japan, and here in America. When it was over, Eduardo Arias said, "At least I contributed something."

We could all learn a lesson from Eduardo Arias: he was alert to danger where it was unexpected; he was persistent when others were complacent; he asked tough questions; he knew right from wrong; he put the welfare of others above his own; he found what so many sophisticated regulatory systems let pass by.

Every year, Americans import nearly $2 trillion in goods from 150 countries. That is more than 10 times what we imported just 10 years ago. When Americans sit down at the dinner table, a growing percentage of what we eat comes from abroad. We import 85 percent of our fish and half of non-citrus fruits.

More often than not, the televisions, stereos, and toys in American households are made abroad. Imports are sourced globally, as-

sembled in several countries, and ultimately shipped to their final destination. These imports come through our Nation's 326 ports. Ships, trucks, and airplanes carry imports across our borders about 13 million times every year. Twenty-one thousand people at Customs and Border Protection work these ports. Specialized agricultural inspectors and other specialists assist them.

Growing trade brings American jobs, prosperity, and choice. Yet, import growth also brings responsibility. It brings the responsibility to remain vigilant. It brings responsibility to safeguard Americans' health and safety. Today, a growing number of Americans fear that the government is not living up to its responsibility: they hear about pets poisoned by imported pet food; they hear about kids playing with lead-painted toys; and they hear about imported toothpaste that contains poison.

It is our responsibility to identify every risk, hidden or obvious, and it is our responsibility to find solutions, no matter how complex. This hearing is part of living up to that responsibility. Dozens of bills and proposals have been floated on these important issues. We must work through them very carefully with all interested parties, including our colleagues on the committee, in Congress, and in other countries.

This process will not be easy. It will take time. Today we need to look at every aspect. We need to make sure that import safety is at the core of everyone's mission. We need to find resources and manpower to back the mission, but, like Eduardo Arias, we must persist. We must keep our eyes open, as he did walking around shopping down there in Panama City. We must know what is right. If we do our jobs and work together, we, too, will be able to say, like Eduardo Arias, that we contributed something.

We are very fortunate today to have at this hearing witnesses who have great expertise and will put a lot of this into perspective. Today's panel begins with the Assistant Commissioner for Customs and Border Protection, Daniel Baldwin. Following Commissioner Baldwin is Congressman Cal Dooley, who is president and chief executive officer of the Grocery Manufacturers Association. Mr. Dooley is a former colleague, having represented California's 20th District from 1991 to 2005. The third witness is Sandra Kennedy, who is president of the Retail Industry Leaders Association. Finally, Jean Halloran, who is director of Food Policy Initiatives at Consumers Union.

As you know, it is customary in this committee to put all of your statements in the record automatically, and to speak about 5 minutes, if you could, please.

We will start with you, Mr. Baldwin.

STATEMENT OF HON. DANIEL BALDWIN, ASSISTANT COMMISSIONER, OFFICE OF INTERNATIONAL TRADE, U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC

Mr. BALDWIN. Thank you, Mr. Chairman and members of the committee. I am pleased to appear before you today to discuss the actions we are taking at Customs and Border Protection to ensure the safety of imported products.

My name is Daniel Baldwin, and I am the Assistant Commissioner in the Office of International Trade at CBP. My office has the responsibility for formulating CBP's trade policy, developing programs, and enforcing our U.S. import laws.

The recent increase in discoveries of tainted consumer products is an issue that falls within the purview of my office. In response to recent dangers, the President established an Interagency Working Group on Import Safety. That working group, chaired by Health and Human Services Secretary Michael Leavitt, is comprised of senior officials from 12 Federal departments and agencies, each with unique and critical import safety responsibilities.

CBP is actively participating in the working group and has assigned one of our key senior managers to work full-time with that group. She and other CBP staff assisted with the development of the Strategic Framework for Continual Improvement in Import Safety released by the President on September 10, and we will be making major contributions to the recommendations due in November.

In recent years, CBP has worked extensively to coordinate activities and enforcement actions with other government agencies such as USDA and HHS. As the guardian of our Nation's borders, CBP has broad authority to interdict imports at the port of entry. We identify, target, and interdict high-risk shipments using our data, along with information from other agencies.

It is important to note that, long before the recent headlines, CBP had been working with these agencies, such as the Consumer Product Safety Commission, on identifying and interdicting unsafe products, such as flammable children's sleepwear and other products that present a danger to our citizens.

CBP has several tools to interdict potentially unsafe imports. Our diverse workforce on the front line enables CBP to mount rapid and effective responses by utilizing specialized expertise of CBP officers, agricultural specialists, import specialists, international trade specialists, and laboratory technicians.

Additionally, CBP uses various targeting mechanisms that are specifically designed to incorporate the safety concerns of other agencies in identifying high-risk imports. CBP currently uses several targeting systems, including the Automated Targeting System, or ATS; the Automated Manifest System; and the Automated Commercial System. CBP uses these three systems to target high-risk cargo, screen inbound merchandise, and process import entries.

In addition to these CBP automated systems, CBP maintains the National Targeting Center. The NTC is the facility at which personnel from a number of government agencies are co-located to review advance cargo information on all inbound shipments.

CBP shares the committee's sense of urgency in addressing import safety. This is underscored by CBP's recent interdiction of melamine-tainted pet food and toothpaste laced with diethylene glycol. Every day we are looking for additional ways to use existing tools and data from CBP and other agencies in the pursuit of improved targeting and interdiction.

The International Trade Data System, or ITDS, is a key component in improving agency cooperation and data exchange. The recently enacted Security and Accountability For Every, or SAFE,

Port Act of 2006 established a requirement for an electronic interface among all Federal agencies that monitor or control the movement of imported products in domestic commerce. The ITDS allows for the single-window environment in which importers, transportation carriers, and other government agencies can exchange information on imported products.

CBP has also led the way in partnering with industry to address cargo security and other import issues with programs such as the Customs-Trade Partnership Against Terrorism (C-TPAT) and the Importer Self-Assessment Program. These programs require that importers have in place controls over the supply chain security and importing process such that the government can focus on the areas of greatest risk. We believe C-TPAT, Importer Self-Assessment, and our other partnership programs are models that should be emulated to address import safety.

These partnership programs and other initiatives have helped CBP shift from reliance on snapshots where unsafe products are simply interdicted at the border, to a cost-effective, prevention-focused video model that identifies and targets those critical points in the import life cycle where the risk of unsafe products is greatest and verifies the safety of products at those important phases.

In the years and months since 9/11, we have been partnering with industry and overseas colleagues to push out the borders for our imported products for safety, for security, and now for import safety.

CBP remains committed to partnering with our other Federal agencies in order to refine our targeting skills and increase coordination of government personnel and to ensure the prevention of contaminated and dangerous products from entering the United States.

The CHAIRMAN. I am going to have to ask you to sum up, Mr. Baldwin.

Mr. BALDWIN. I thank you for the opportunity to testify, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. BALDWIN. Thank you.

[The prepared statement of Mr. Baldwin appears in the appendix.]

The CHAIRMAN. Mr. Dooley, welcome.

STATEMENT OF HON. CALVIN DOOLEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, GROCERY MANUFACTURERS ASSOCIATION, WASHINGTON, DC

Mr. DOOLEY. Thank you. It is an honor to be joining all of you today.

I have the privilege, as the president of the Grocery Manufacturers, to represent companies that manufacture food, beverage, and consumer products that are responsible for putting the vast majority of the products that you see on grocery store shelves.

Senator Baucus, in his opening statement, talked about how we are seeing an increased number of those products coming from other countries. If you think back, when I was a child when you went into a grocery store and you walked down the produce aisle in the middle of winter, your choices were pretty limited. You had

maybe some citrus that might have been from California, and a few apples.

Today, you walk down that same produce aisle of any grocery store in the country in the middle of winter, you have grapes that are coming from South Africa, blueberries that might be coming from Chile, you have asparagus that will be coming from Peru, you might have the bananas from Colombia, the pineapples from Costa Rica, the kiwis from New Zealand.

Consumers today have a vast number, an additional number, of choices, and they have those choices because they desire them, they demand them. The challenge I think we face now—all of us—is not that we in any way put up barriers to those imported products coming into the United States, but it is that, how do we ensure that food products, whether they are produced domestically or internationally, are safe and nutritious for consumers?

That is what the Grocery Manufacturers are truly dedicated to. We understand, and though we think we have a strong foundation of having the safest food supply in the Nation, there is more that we can do. The recent evidence that we have seen on the front pages of our headlines all too often in the last few months is a validation of that.

So what we think, though, is a challenge facing Congress today is, how do you really define that public/private partnership that is going to, in fact, enhance the level of food safety we can provide consumers? We suggest that we have to rely primarily on the private sector, and taking a more preventative-based approach, understanding that the private sector has the capacity and expertise to enact some practices and protocols that can contribute to a higher level of food and product safety.

We also acknowledge that the public sector, and primarily our regulatory agencies of the Food and Drug Administration, need the additional resources and need to be an effective partner to provide that level of oversight that also can contribute to a greater level of food safety.

The way we suggested going about this was embodied in our "Four Pillars for Food Safety" that we released a couple of weeks ago. It really takes an approach where we are suggesting that the vast majority of our companies today that are manufacturing food products are employing the best practices. They are not contributing to the problem. They have, in fact, the supplier quality audits, the chain of custody, the testing protocols that ensure we have a high level and a minimum number of food safety problems.

But what we are suggesting under our proposal is, let's take that another step forward. Let us mandate that all importers of record, regardless if they are small, medium, or large, regardless of what food product they are producing, will have to put together a mandatory supplier quality assurance program that will embrace some protocols that will ensure that you have those third party audits, that ensure you have the testing protocols that can again give us a greater assurance of food safety.

We also have another pillar that is focused on those suppliers that are willing to partner to a greater extent with FDA and the regulatory agencies in sharing additional information, whether it be the actual report on the supplier quality audit or, in fact, dem-

onstrating that they have some testing procedures in place that minimize the risk of a food safety outbreak so that they, in fact, could have an expedited entry similar to what Customs is doing now with some of their activities.

The third pillar really focuses on, how can the United States play a more effective role in expanding the capacity of some of these countries that we are importing food products from to ensure that they have the regulatory policies in place, as well as the enforcement mechanisms, to ensure that we are achieving an equivalent level of protection to what we have in the United States.

Our fourth pillar is really focused on FDA resources. We have joined with a broad coalition of interests and stakeholders of FDA, saying that it is time for us to commit to doubling the FDA budget over the next 5 years.

I would just like to close on a couple of issues which we think are important, and where the Senate Finance Committee has jurisdiction. Some of the proposals that we have seen being promoted to address this issue, we think, have the potential to have significant adverse trade impact on the United States.

When we talk about implementing user fees, which many of us think are problematic and also would result in a reciprocal action by the countries that we are exporting to, we think that is something we are very concerned with.

When we start talking about having FDA certify every company that might be exporting a product into the United States, we have to understand that, if we implement something of that nature, we are going to be faced with other countries, to which we are exporting maybe $80 billion worth of agricultural products we have in the United States, that could impose that same regime on us and could become, in fact, an impediment to our ability to export the products that are important to our economy.

So, we think we have to be very judicious in considering any action that we take in our efforts to enhance food safety, and put it in the context of a broader trade understanding too to make sure we are being compliant with WTO obligations.

So, I thank you. I want to make a commitment that GMA is committed to working with all of you as we try to move forward.

The CHAIRMAN. Thank you very much, Mr. Dooley.

[The prepared statement of Mr. Dooley appears in the appendix.]

The CHAIRMAN. Ms. Kennedy?

STATEMENT OF SANDRA KENNEDY, PRESIDENT, RETAIL INDUSTRY LEADERS ASSOCIATION, ARLINGTON, VA

Ms. KENNEDY. Good morning, Chairman Baucus, Ranking Member Grassley, and other committee members. My name is Sandy Kennedy, and I am the president of the Retail Industry Leaders Association. RILA represents the largest and fastest-growing companies in the retail industry. Our members provide millions of jobs and operate more than 100,000 stores domestically and abroad.

I appreciate this opportunity to highlight what retailers are currently doing to assure product safety, the response to recalls, and the policies they support going forward that will strengthen import and consumer safety.

RILA is eager to work with this committee to identify ways to strengthen the import safety process, recognizing that the benefits of trade permeate every aspect of our economy. Indeed, there is no higher priority than product safety for our members.

RILA believes that ensuring product safety is a shared responsibility between and among manufacturers, retailers, the U.S. Government, and other governments. Manufacturers are the first line of defense, and they must be diligent in designing and building safety into the products they make. Retailers work with their suppliers to ensure safety standards are implemented through contracts and specifications.

With respect to products imported into the United States, the Federal Government has two important responsibilities: trade facilitation and trade enforcement. RILA believes that U.S. Government policy should advance these two goals, and to do so they must emphasize collaborative programs with importers that facilitate legitimate trade while focusing enforcement efforts on those who attempt to evade U.S. safety standards.

Further, RILA believes that product safety standards should apply equally to all products, regardless of whether they are produced domestically or abroad. Product safety should not be used as the pretext for erecting trade barriers.

While no two RILA members sell exactly the same merchandise, they are equally committed to the safety and integrity of supplier operations and place the highest priority on ensuring the products they sell are safe. Retailers' first line of defense is the vigorous quality assurance requirements and enforcement mechanisms that they set forth for their suppliers that manufacture goods for their stores.

RILA members require their suppliers and manufacturers to understand and adhere to U.S. Government standards and regulations, operate secure factory environments, and rely on known and approved subcontractors to produce safe, quality products.

RILA members require suppliers and manufacturers to maintain and document production processes that conform to safety standards beginning at the design phase and continuing through completion of the finished product. Finally, members require suppliers and manufacturers to open their factories and production processes to periodic quality and safety audits.

Retailers seek to identify and remedy product safety problems before the product enters the supply chain or reaches U.S. stores. Therefore, RILA believes the critical point in the supply chain where the product safety compliance efforts should be focused is at the point of design and manufacture. Safety must be built into the products as they are made.

When a product is recalled, retailers take prompt action to remove the products from the stream of commerce and properly dispose of them so they cannot be resold. After implementing a recall, our members also review their supplier's testing protocols to minimize the potential for future problems and take appropriate action or levy sanctions as needed.

As Congress considers how to protect consumers, particularly children, from dangerous products, whether imported or produced domestically, I want to outline some of the public policies that

RILA supports. We support increased Federal funding for the CPSC, Consumer Product Safety Commission. We support mandatory recall authority for the CPSC and a legal prohibition against knowingly selling a recalled product. We support the proposal to include tracking information on children's products to promote traceability. We support heightened lead standards for children's products, and we support the establishment of clear and predictable safety standards for all products.

Additionally, RILA welcomes the administration's Interagency Working Group on Import Safety's innovative approach to the issue of import safety, which characterizes the flow of commerce as a life cycle where risks are identified and mitigated throughout the supply chain rather than focusing simply on the port of entry.

Finally, RILA believes a public-private partnership is critical to establishing an effective product safety regime. Such a partnership would recognize the shared goals and responsibilities of government and industry to ensure that the products entering the United States are safe for consumers.

RILA appreciates the opportunity to provide comments to the committee as it considers ways to improve import safety. RILA stands ready to work with Congress and the administration to enact policies that strengthen consumer confidence and that advance the production of safe, high-quality products that are affordable and readily available to consumers.

Thank you for this opportunity.

The CHAIRMAN. Thank you, Ms. Kennedy.

[The prepared statement of Ms. Kennedy appears in the appendix.]

The CHAIRMAN. Ms. Halloran?

STATEMENT OF JEAN HALLORAN, DIRECTOR, FOOD POLICY INITIATIVES, CONSUMERS UNION, YONKERS, NY

Ms. HALLORAN. Thank you for the opportunity to testify on what has become a serious crisis in import safety. In addition to my food policy work, I also oversee a new Consumer's Union website we have launched this week on recalls called *notinmycart.org.* Almost daily we are seeing new reports of safety problems in imported food, toys, lipstick, toothpaste, cribs, and other consumer products.

Just 2 weeks ago, Halloween cups painted with lead-laden scary faces were recalled after testing requested by Senator Sherrod Brown. This raises the obvious question: how did we get in this situation? We see two causes of the problem. One, is that two of the most important Federal agencies that the public relies on to ensure that everything in our marketplace is safe, the Food and Drug Administration and the Consumer Product Safety Commission, have not kept up with globalization. On the contrary, quite the opposite. Congress has repeatedly cut the budget of the CPSC so it now has half the number of employees it had when it opened in 1973.

It now has 15 inspectors to police the millions of toys and consumer products coming into this country through hundreds of entry points. FDA is equally hamstrung. Today it inspects less than 1 percent of food imports entering the country. There is no FDA inspector stationed at many of the ports, leading to a phenomenon known as "port shopping," where, if your import is rejected at one

port by an FDA inspector, the importer is free to go elsewhere and try to bring it in where there is no inspector on site.

In the absence of adequate FDA and CPSC capacity, Customs and Border Protection becomes the fallback consumer protection agency at the border. However, they are not adequately coordinated with the other agencies. It has been pointed out that USDA and CBP databases cannot communicate with each other.

The U.S. Government, further, does not protect the public from unsafe imports as well as other governments. The European Union physically inspects 20 percent of fish imports and prohibits imports of seafood except from countries and facilities that have been preapproved by food safety authorities. We do not do this. Japan has a similar program.

Overall, Consumers Union recommends that Congress consider three major steps to address these problems: mandate a major increase in border inspection staffs at both CPSC and FDA, and increase overseas inspection of manufacturing and processing plants. We believe that user fees could be an appropriate way to fund such inspections. We should require FDA and CPSC to establish federally supervised systems for independent third-party certification of imports similar to the OSHA-supervised system for Underwriters Laboratory certification for electrical products. Companies' self-certification alone, as we have seen from experiences with California spinach and Mattel products, are not enough. Company quality control will not get us there.

A second major cause of import problems we are currently seeing lies with our current trade policy. For many years, U.S. trade policy, at the direction of Congress and the executive branch, has proceeded with blinders on towards just one goal: that of gaining U.S. companies access to markets in other countries.

Safety standards are typically viewed as potential barriers to U.S. exports rather than measures that assure the quality of imports and assure a level playing field for both domestic producers and imports. We, therefore, recommend that Congress enact broadening of the many advisory committees that give marching orders to the U.S. Trade Representative so they include members of the public, not just the business community.

Two, Congress should examine the four pending trade agreements, as well as past and future ones, to see if they protect the safety of citizens. We would call your attention especially to the chapter 11 agreement in NAFTA as a problem.

Three, our trade and policy negotiators should make import safety a top priority. For example, they are heavily concerned about copyright and counterfeiting of CDs. How about looking into counterfeiting of safety-related labeling, such as the Underwriter's Laboratory logo, which is a significant problem?

Four, Congress should ensure that where trade negotiators seek harmonization, they seek harmonization up, not down. Rather than trying to force our untested beef on Japan, USDA could allow domestic producers to test for Mad Cow Disease in the way that Japan requires of its own industry.

Finally, U.S. trade and WTO rules, in general, provide that one company cannot impose stricter standards on imported products than it imposes on our own. Much of our USDA regulations are in

the form of guidance, which is widely adhered to but is not mandatory. This cannot be legally required of imports.

In sum, in recent years, while imports have ballooned, regulatory capacity has shrunk. Our regulatory capacity must be overhauled to meet the import challenge, and our trade policy must be designed with food and product safety in mind.

Thank you very much.

[The prepared statement of Ms. Halloran appears in the appendix.]

The CHAIRMAN. Thank you, Ms. Halloran. I thank all of you very much.

I would just like to ask each of the four of you, what mistakes have been made? Someone once said, and I think there is something to it, "Wisdom is experience, and experience is mistakes." So, what mistakes have we made here, and what do we need to shore up, in each of your areas, to minimize reoccurrence of some of the problems that we all know about? Speak candidly. We have to solve this. We cannot just talk.

Mr. BALDWIN. I would suggest, from my perspective, one of the biggest mistakes we made is—how to put this? We did not see this problem coming. I am sure my other panel members would agree with me that this is not a new problem. I think we have been seeing this for quite a while. I do not think we have understood it to quite this magnitude. I do not think we ever quite got to the point that we realized that components in antifreeze were actually finding their way into our toothpaste.

The CHAIRMAN. Why is that? Why did you not?

Mr. BALDWIN. Well, I will certainly just speak from the Customs and Border Protection perspective, in that obviously, since 9/11, our focus has been—and correctly so, I would argue—on our physical security of this Nation. I think a lot of our attention and our resources have been directly devoted to making sure that we keep terrorists and terrorist weapons of mass effect out of this country.

However, I think from the traditional trade perspective and the legacy of the U.S. Customs Service responsibilities, we have been focusing a lot on our trade mission as well. But again, remember that CBP is primarily enforcing other regulatory agencies' laws. However, when we saw what was going on with the melamine-tainted wheat gluten in pet food, when we saw what was going on with toothpaste, when we saw the fungicide antibiotics being put on seafood, CBP, I think, expanded our role a little bit and took a much more proactive approach.

The CHAIRMAN. So you are too focused on terrorism and not enough on product safety?

Mr. BALDWIN. That was not my comment.

The CHAIRMAN. Oh. I thought you said you——

Mr. BALDWIN. We have been focused on it.

The CHAIRMAN. You had been.

Mr. BALDWIN. We have focused on security, and I would argue, still, correctly so. What I am suggesting is, now we recognize what an imperative problem import safety is across the supply chain that relates to the consumer products as well, and we need to be a little bit more aggressive on that.

The CHAIRMAN. Mr. Dooley, what mistakes, from your perspective? What can we learn?

Mr. DOOLEY. I would say that, if you go back into the grocery store, an average grocery store today has 15,000 different products on its shelves. The overwhelming majority of those products are safe. So before I say we have made a lot of mistakes, I would say we have had a lot of successes. We have the safest food supply in the world.

The CHAIRMAN. Yes. But poisoned toothpaste is not very safe.

Mr. DOOLEY. No. We are not saying that there is not additional work that needs to be done. But what I would also say is, in part, we have not necessarily contributed the resources in order to effectively deal with the globalization of the marketplace. Also, we have not necessarily committed our regulatory agencies to really embrace a risk-based approach. I mean, if you look at FSIS and USDA, and FDA, to an extent, they are not necessarily allocating their inspections programs in a manner that is consistent with the relative risks that a product might pose.

The CHAIRMAN. For example?

Mr. DOOLEY. If you look at, even on FSIS, the fact that we now have inspectors that are placed at facilities to inspect by visual, sensory inspection and we are not really acknowledging that some of the new developments and technology can minimize the risk that would reallocate those inspection resources to perhaps areas that pose a greater risk, we are impeded from doing that.

That is what we think when we move forward. We are always going to have limited resources in FDA, so the challenge going forward is, how are we going to also identify where the greatest risks on food safety problems are and allocate those resources there, and how does the private sector engage in programs where we can minimize that?

The CHAIRMAN. Ms. Kennedy?

Ms. KENNEDY. We believe it is a shared responsibility.

The CHAIRMAN. No, no. What are the mistakes? Where are the weaknesses?

Ms. KENNEDY. Clearly, there are challenges with CPSC in terms of response time on recalls. When one of our members identifies a challenge or an issue with a product, it takes way too long for the CPSC to respond with recalls on that product.

The CHAIRMAN. Why does it take so long?

Ms. KENNEDY. I would suspect that it has to do with resources. They need to be strengthened. They need additional funding.

The CHAIRMAN. Ms. Halloran?

Ms. HALLORAN. I think we cannot talk about poor allocation of resources when CPSC has 15 inspectors to allocate. We need a huge beefing up of FDA and CPSC to deal with globalization. We all failed to really anticipate what it would mean when China moved from the 19th century into the 21st century in a decade or so and became our second major trading partner. They just do not have the kind of regulatory infrastructure that we have developed here over a century to keep our people safe, and we just have to address that.

The CHAIRMAN. So how do we begin addressing it, in your view?

Ms. HALLORAN. We need a fairly massive upgrading of budget for the CPSC and FDA, as well as increase in authority. A bill in the House of Representatives has proposed user fees that would provide $500 million additional to FDA for this. We are supporting that bill, for example.

The CHAIRMAN. All right. Thank you.

Senator Grassley?

OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM IOWA

Senator GRASSLEY. I am going to put a statement in the record, but I would like just an extra minute to emphasize a part of my statement. I want to say a few words about our international trade obligations. I understand that some have claimed that our trade agreements prevent us from adopting measures to protect the health of Americans. That is flat-out wrong.

There is nothing in our trade agreements that prevents us from determining our own level of protection for products sold in the United States. We set our own safety standards, and no other country can force us to lower our standards. That is the law. That is the reality. No one should be misled by false allegations that our trade agreements have anything to do with not protecting the safety of our people.

The rest of the statement, I would put in the record. I apologize for not being here at the opening, because I was across the hall asking questions of the new Attorney General.

[The prepared statement of Senator Grassley appears in the appendix.]

Senator GRASSLEY. Before I ask questions, and this will come out of my time now, I wanted to point out something to Congressman Dooley, if I could. I read, over the weekend, where you are piling on, like everybody else is, in ethanol now on the price of food. I know you understand agriculture enough that you do not intend to do damage to agriculture.

But stop to think in terms of $4 corn. In June, the price of corn goes up, so everybody says the price of food goes up. But when corn got down to $2.85 2 months later, the price of food did not go down. So that direct relationship, because ethanol raises the price of corn, it has nothing to do with the price of food. You can understand that sweet corn is not used for ethanol.

You can understand as well, where a farmer gets a nickel out of a box of cornflakes and the consumer spends 9 percent of their income on food, that ethanol is not going to be a big problem. Just be a little bit patient. When we get to cellulosic ethanol, we get bigger feedstocks, and we are not getting everything from kernel corn, the marketplace is going to take care of these problems that you might be complaining about right now.

So I hope that you will not join the American Meat Institute. I hope you will stick with the farmers, as you always have. Until now, for 25 years, all of agriculture was together on ethanol. Everything about ethanol was good, good, good. Nothing has changed because of $4 corn.

Mr. Baldwin, I want to refer to Ms. Halloran's testimony. She states that she is unaware of efforts to address the counterfeiting

of consumer products such as the Underwriter's Laboratory logo. That is a problem that raises significant safety concerns.

Could you respond? What efforts is your agency engaged in to combat such counterfeiting? What other government agencies are involved? Does your agency specifically target and inspect cargo for health and safety concerns?

Mr. BALDWIN. Thank you, Senator. I would love to respond to that, because I think that we have, in CBP, set a tremendous benchmark, both domestically and internationally, in our fight against intellectual property rights infringement. As a key component to our IPR enforcement strategy, we do focus very heavily on health and safety issues.

You have already mentioned Underwriters Laboratory. I am sure they would be happy to join with me in saying we have been incredibly successful in interdicting, seizing, and destroying infringing wire cords, light bulbs, and other electronic products that UL typically would certify for safety issues that we are finding, destroying, and keeping out of the marketplace.

I draw an interesting analogy that I try to give when I talk about our efforts in IP enforcement, that one of the predominant items that we do seize quite a bit of are circuit breakers. I find it rather amazing that, in our local markets, we could be importing dangerous circuit breakers that we would install into our homes, and that would be the very element that ends up burning down your house and killing your children.

I think it is critical that CBP stay out in front and take an active role in that kind of work on intellectual property infringement as it relates to health and safety.

Senator GRASSLEY. You testified, Mr. Baldwin, that it is not currently possible to share information among U.S. Government agencies because they use non-integrated systems that lack connectivity. You describe this as a major operational challenge. The Import Safety Working Group also cites problems of siloed information systems; it reminds me of the FBI and the CIA not connecting with each other in the war on terrorism.

To what extent will implementation of the International Trade Data System resolve this problem?

Mr. BALDWIN. Providing that single window into our ability to review import entries, target more effectively, is absolutely critical. I must applaud the Import Safety Working Group in working to expedite the process of getting over 34 other government agencies to sign on and more proactively address getting involved in ITDS. It is one of the most critical components in having an integrated, uniform, and effective automated targeting system throughout the Federal agencies.

Senator GRASSLEY. All right.

And, Mr. Dooley, our trading partners can play a vital role in preventing and detecting safety concerns. For example, in 2001, when Basa fish were found to be contaminated with banned antibiotics, the Government of Vietnam helped trace the problem and imposed a 100-percent testing requirement on that type of fish bound for the United States.

What more can our trading partners do to ensure the safety of our products in the United States?

Mr. DOOLEY. Well, I should point out that what Vietnam did in that case was to ensure, as is the case with all products you are importing into the United States, that they meet our existing standards that we have in the United States. What we find, though, in countries such as Vietnam and others that are in that stage of development, that they do not have the internal capacity, oftentimes, to effectively enforce compliance with those regulations. That is where I think there is an important role for the United States to be playing in helping to provide the resources, as well as the training, to ensure that some of our new trading partners are, in fact, in compliance.

What we also suggest, though, in our proposal, is that there is a private sector role here that can also be very cost-effective, and that, if we mandate that any importer of record has to have in place these mandatory quality assurance programs that have third-party audits that could be a part of them, also have testing protocols that could do a similar analysis as Vietnam did, we could then have the private sector be able to demonstrate to FDA and other U.S. regulators that we are, in fact, playing a role to provide a level of compliance and assurance that these products are safe.

The CHAIRMAN. Thank you, Senator.

Senator Stabenow?

Senator STABENOW. Thank you, Mr. Chairman. And welcome to all of our witnesses, particularly Congressman Dooley. It is wonderful to see you. We worked together on many issues when we were both in the House of Representatives.

I know that no one has more to gain by a safe food supply than our grocers and our retailers, from a product standpoint. But I need to start, first, by saying that the headlines we have heard, whether it is toys, toothpaste, or food products, really are not new from a Michigan perspective. We have been expressing grave concern now for a number of years.

There is a counterfeit auto parts industry that has not been addressed now for a number of years. It now equals $12 billion. If someone is going into the secondary market to buy brakes, you do not know whether or not they are meeting safety standards, or other kinds of auto parts, which is one of the reasons that those of us in Michigan have been deeply concerned about the lack of oversight in terms of safety.

We saw last summer, 255,000 imported tires were recalled because of a death in Pennsylvania. So, unfortunately, these headlines are not new to us in Michigan. That is one of my concerns, frankly, about entering into new trade agreements without fixing this, because this is serious. We need to get this fixed.

So I guess I would start by asking, and I would ask anyone who wants to respond to this, why should we not say that, if you want to do business with U.S. consumers, the biggest consumer pool in the world—everyone wants to sell to us—why should you not have to meet our food safety regulations or other product regulations, or auto part standards? Why should you not have to meet our standards if you want to sell to the American people?

Mr. DOOLEY. Well, maybe I can start. For any food product that is being imported into this country, it does, in fact, have to meet our existing standards. That is a requirement that is currently in

law and is not in any way, as Senator Grassley said, undermined by any of the FTAs that are being proposed, or any of the trade agreements that we have in place.

I think that what we are finding, though, is that we do not necessarily have the infrastructure in place to ensure compliance with those regulations, and that is where we are suggesting that we have to give additional resources to the public sector in that regulatory community, and we also have to ask more of the private sector to put in place some practices that can ensure greater compliance with existing standards and regulations.

Senator STABENOW. But when we have seen legislation proposed that would require equivalent food safety standards, there has been opposition. So I am wondering, is it just because of the way it is being proposed to pay for it with the fees? Is that the issue at this point? Because there certainly have been efforts to say explicitly, not only with food but with other products, you have to meet our safety standards. Then we need to beef up enforcement.

I mean, clearly, if we are talking about staffing, as Ms. Halloran was saying, which is below the 1970s levels, when we have had the explosion in the global economy, on its face that does not make any sense. So, clearly, as all of you are saying, we need to beef up those eyes and ears with people who are directly involved in oversight.

But are you saying that at this point you support, or would continue to support, equivalent food safety standards? I guess then I would ask the others about other product standards. I mean, we are not allowing lead in toys. We have certain standards that clearly are not being met. Are you suggesting it is just a matter of enforcement, that the standards themselves are all in place? That is my question.

Mr. DOOLEY. Yes. Just very briefly. We support existing law, which requires any food product that is imported into this country to meet our standards in terms of whether it is the chemical residues standards, as well as other food safety standards that we have in place. They key here is, you have to have equivalent domestic standards. Whatever domestic standards we have in place, we can require that of an imported product.

Senator STABENOW. Yes?

Ms. HALLORAN. Thank you. If I could respond to a couple of your points. There are a number of standards that are not adequate, of which the lead standard is probably the most prominent. It currently applies only to lead paint on toys, for example. It does not apply to unpainted toys, like plastic or vinyl, which can also contain lead. So, it is important to extend it. Also, the standard is too high. It is a 1975 standard of 600 parts per million. Experts have said it should be perhaps a tenth of that, perhaps even lower.

But on this other problem of trade, the mentality we have had is, if we go and we push harder on these safety issues, if we say, all right, every fish production facility in China has to be certified by FDA before they can have permission to export to the U.S., the concern is that, what if they retaliate and come back and say, all right, we are going to go look at your production of oranges, or something, and that they might impose protectionist measures.

This is certainly a risk, but it is one that we have to fight through our trade rules. We cannot sacrifice safety because we are

afraid that the other country will not abide by the WTO system. We have to really be aggressive on these food safety issues and then make the other countries also toe the line.

Senator STABENOW. Thank you.

Anyone else? Excuse me. I am sorry.

Senator GRASSLEY. Oh. You wanted another person to respond?

Senator STABENOW. Well, I thought there was someone else that wanted to.

Senator GRASSLEY. Because if you have an additional question——

Senator STABENOW. No other questions, but I thought someone else wanted to respond.

Ms. KENNEDY. I would just like to let you know that there is no higher priority for our retail members than consumer safety. I mean, we have to make sure that the products on our shelves are safe. In many cases, we have very strict contractual relationships, we have requirements that are actually higher in terms of safety requirements than what the U.S. guidelines recommend. We take this very seriously. We are stepping up a lot of our own individual testing, validation, verification programs to make sure that we do not do anything to violate the trust of our customers.

Senator STABENOW. Thank you.

Senator GRASSLEY. Senator Bunning, now.

Senator BUNNING. Yes. Thank you, Senator.

Ms. Halloran, in your testimony you said that the Customs and Border Protection Agency is not being used in the best way possible to address threats to consumer safety, including the defective children's cribs imported from China and the 20 million children's toys with high levels of lead. These are the threats that we now know about.

What about other threats to consumer safety that are out there, and what should the Customs and Border Protection Agency do about it now?

Ms. HALLORAN. I believe my colleague has adequately pointed to the first step that absolutely needs to be taken, which is to get all the computer systems talking to each other so that they know what they are doing. That is the very first thing.

Senator BUNNING. Would that also stop the port shopping?

Ms. HALLORAN. No, it would not. I think we cannot assume—well, perhaps you could comment, but I do not think CPB can adequately, all by itself, take on the food and consumer product protection role. We need the specialists from the food and consumer protection agencies. I think we should not be allowing food in through ports where there is not at least one FDA inspector stationed.

Senator BUNNING. All right.

You also said in your testimony, you talked about the practice of port shopping to avoid inspectors from the Food and Drug Administration. You also pointed out that other countries inspect a much higher percentage of food imports than we do today. How serious, first of all, is this problem? Should Congress consider restricting the number of ports that can accept food products just to FDA-inspected food ports? How do you get the communication from one to the other, between the FDA and our current agency that does the inspections?

Ms. HALLORAN. I think we need to consider some kind of policy for what happens when a shipment is rejected.

Senator BUNNING. That is the secret. That is, first of all, the secret of not allowing them in another port and making sure the other ports know they are out there.

Ms. HALLORAN. Right. I mean, it should not just be sent back where it came from. I think if it poses a hazard, it should be destroyed or condemned in some way. I think we also have to find a balance. Yes, we should probably have a smaller number of ports, but it would be a serious impediment to trade if we went to some minuscule number of ports; so much food is coming in, we need a lot. What we have to do is beef up the capacity to police those ports. So, if it is not 300 perhaps 150. Or if it is 300, then we have to bite the bullet and finance the inspection at the 300 ports by FDA.

Senator BUNNING. Thank you.

Welcome, Mr. Calvin Dooley. It is good to see you back here, in front of our committee.

In your written testimony you proposed increasing the FDA's budget, but you opposed paying for it with user fees. You say that user fees would violate our trade commitments. Would you care to elaborate on this?

Mr. DOOLEY. In regards to how we contend that they will violate our trade agreements, if you are only applying the user fee on products that are being imported into the United States and that same user fee is not also charged to domestic production, you are not then complying with the national treatment that we are subject to under WTO.

Senator BUNNING. China has written all the laws that were necessary to get into WTO, but I can tell you, after being in Beijing, they do not apply the laws in China. So you are saying that we should do it on our own without the other side doing it, too?

Mr. DOOLEY. I think our concern with user fees is, if you look at where the vast majority of the products—and especially food products—we are importing into this country are coming from, they are not coming from China, they are coming from Canada and Mexico.

Senator BUNNING. Well, how about cigarettes with lead from China?

Mr. DOOLEY. Cigarettes with lead should not be allowed to come into this country.

Senator BUNNING. Well, they are here. Right now, you can get the cigarettes that are being black-marketed into the United States of America. Six hundred thousand cartons were discovered in New York. If you inspected the cigarettes, first of all, they had lead in them, and secondly, they had phony Kentucky and two other States' revenue stamps on them, and they were all produced in China. So it has to be, we have to have something to say about who is importing what. If it is going to be an equal, level playing field, you have to have control on both ends.

Mr. DOOLEY. And we very much would agree with that. It is my member companies that are suffering to the greatest extent when people are counterfeiting their products, or if they are facing competition from fraudulent commercial trade. So we are totally supportive of that greater enforcement to ensure that our consumers

and U.S. manufacturers are not subject to unfair competition and consumers are not subject to products that do not meet our existing standards.

Senator BUNNING. Thank you very much, Mr. Chairman.

Senator GRASSLEY. This will be the order, unless Senator Roberts comes back: Senator Lincoln, then Senator Salazar, then Senator Snowe.

Senator LINCOLN. Thank you, Senator. Again, thanks to you and Chairman Baucus for once again bringing us together on such an important issue. As the chair of the Subcommittee on International Trade, I am always pleased when the committee really focuses on these issues. I have also been a consistent supporter of free trade, and am grateful that we are having this hearing today.

Each of us are so well aware of the recent and numerous occurrences of tainted and dangerous imports coming into our country from our trading partners around the world. As the mother of twin 11-year-old boys, it hits home for me, I think, and for many of our constituents. Also with a puppy, and seeing as a pet owner how important it is to me, to my family, and our household, I think it really hits home to us as individuals how confident can we be that our Nation is providing the kind of inspection that is necessary and that we are making adequate demands of our trading partners. It is plain and simple. I think our system is definitely failing the American people.

I believe the consequences of not taking action are simply too high. I mean, already innocent lives have been lost and consumers' uncertainty has grown as the support for international trade among the American people is beginning to dwindle. As a free trader, and certainly from a State where I think many of my constituents have always been very supportive of free trade, there is a level of alarm among consumers. Those are the very consumers that have, in the past, been good free traders.

So having, throughout my career, supported trade agreements and trade promotion authority, I have done so assuming that we would do what was necessary to ensure our children's safety, our families' safety, and the health of our citizens throughout the process. But, unfortunately, the evidence is now pointing the other way, and we do have to take action. We appreciate you all being here with us today.

I think Mr. Dooley's testimony points out that we are importing more and more of our food. In fact, the Department of Agriculture indicates that we are on the verge of a trade deficit in agriculture, which is probably the first time in the history of our country. I guess, said more frankly and something that people can understand a little better, just like foreign oil, we are becoming dependent on foreign food as well.

I do not think it is anything that the American people are comfortable with at all, and that is why I have been an ardent supporter of our domestic farm policy. I think it helps level the disparities in global agricultural trade, which continues to be the most heavily distorted industry in the world.

So I think I speak for many members of the committee, and certainly the agriculture community, and certainly the vast majority of my constituents, when I say that I am anxiously awaiting the

report from the recently established Interagency Working Group on Import Safety. Hopefully that will give us some assistance in terms of where we can go and what we can do. We are certainly grateful to all of you all for your insight.

Just a couple of questions. The interoperability that Ms. Halloran mentioned, and I think Senator Bunning brought up, has existed for a long time. The reason that our dual eligibles in the prescription drug component of Medicare could not get their prescription drugs when they should have was because Social Security and the Medicare system could not talk to each other. We have sophisticated agencies that are using not only 1970s levels of staffing, but 1970s technology. It is inexcusable.

It is a huge investment that we have to make. If we do not bite the bullet and go ahead and do it, we are going to continue to stay behind, because the business industry continues to upgrade and modernize in terms of those investments in better technology, and as a Nation and as a government, we have to do the same thing. I would just applaud you bringing it up, because I think it has consistently been a problem for us when we see that the things that we try to implement in law cannot happen because we have not made the investment in our government.

Mr. Baldwin and Ms. Halloran. Ms. Halloran, I am hoping that at some point you will expand on your comments about chapter 11 and NAFTA. I think you were the one who made that comment about that. And Mr. Baldwin, terrorism. You mentioned your focus, from your agency's perspective, on terrorism. I also wonder, and I completely agree with Ms. Halloran, that you cannot do it all. You have to have the resources from the other agencies with the expertise to be able to do what you need to do.

But I also know that coming from rural America, when we have talked of terrorism and we have researched or seen a lot of the reports after 9/11, knowing that a lot of those terrorists were training in rural America, particularly with aviation, agricultural aviation, the possibilities of contaminating food sources, bioterrorism, and other things like that, has that not been a focus in terms of your focus on terrorism and our food source?

Mr. BALDWIN. Well, I would add that some of the issues you just raised, I am sure, would be looked at—are looked at—very carefully by our Department of Homeland Security and by our sister agency, Immigration and Customs Enforcement. Again, just to refresh, Customs and Border Protection's primary focus is at the physical border, so when goods, people, whatnot come into the country, that is when we have our biggest challenge.

But, of course, CBP has taken such an active role in trying to make sure that we understand the entire supply chain, that we extend the borders both for security and for trade issues, that we understand what is going on internationally and domestically and follow the supply chain of the commodity as it is being imported through the country until it ends up in the final destination, or the ultimate consignee.

Senator LINCOLN. Ms. Halloran?

Ms. HALLORAN. Well, on this chapter 11 issue, it is a provision that allows a company that invests in another country and whose profits are damaged by a foreign regulatory action, to be com-

pensated for their loss. I think what they had in mind when they first instituted this measure was economic regulatory actions, like nationalization of oil, or telecom, or something like that.

But it can be applied to safety and consumer regulation. Cases have been brought, one by a Canadian funeral parlor company who sought compensation when they were regulated in terms of having fraudulent consumer practices. They did not win that case. Cases have not been won yet, but these kinds of cases can have a chilling effect on regulation because people are afraid of a case.

There is one pending now where a Canadian cattleman's organization has filed for compensation because of the decision of the USDA to exclude Canadian cattle from the United States. We really think that consumer protection and health and safety, at the very least, should be excluded from these chapter 11 agreements, and those are being included in other trade agreements.

The CHAIRMAN. Thank you, Ms. Halloran, very much.

Senator Salazar?

Senator SALAZAR. Thank you very much, Chairman Baucus. I want to thank the witnesses for coming here today. My bottom line question is, who is in charge and what are we doing about the problem? We heard Senator Baucus's question to all of you about what mistakes have been made. When I look at the FDA's role, the Consumer Product Safety Commission's role, and I look at the Department of Homeland Security, Commissioner Baldwin, I have to ask the question, who the hell is in charge?

I mean, here we have a situation in our country where we have poisoned toothpaste, we have lead coming across in toys into our country, we have Ms. Halloran's description, which is an accurate description, that we have gone to a world of globalization and yet our regulatory resources are about the same as they were in 1970 or less, so imports have mushroomed, yet the ability to do the inspections and to make sure we have regulatory compliance have not kept up with the changing world.

So who is in charge? Is this a problem that President Bush should be an "F" on? Is it a Secretary Chertoff problem, where he should get an "F" on? What is the nature of who is in charge? Now, you know the problem. We know the facts, just like you know the facts, here. So what is it that the administration is doing to try to deal with this problem going forward? That is to you, Mr. Baldwin.

Mr. BALDWIN. Thank you, Senator. I think that is probably one of the key questions being addressed by the Import Safety Working Group we mentioned before. I think it is pretty clear that the administration recognized that this was a tremendous problem. With 12 different Federal departments and agencies all having a role with import safety to some degree, I think the underlying question might be the one you just asked. I think that is a fundamental issue that they will be trying to address.

But I do want to point out something my panel members have also been talking about, though, which is what the role of CBP and Homeland Security is at the border. Again, even though we enforce other government agencies' laws, we have been doing our best, in exigent circumstances, to step to the plate and actually try to complement, or even supplement, a lot of what the FDA inspectors have not been able to get to, what the USDA inspectors have been

having challenges with, to try to leverage our various resources at the border, and even domestically, to try to answer some of these questions.

Senator SALAZAR. Let me ask you just a follow-up question on that. In terms of, if we have to do some kind of a Congressional fix, it seems to me that part of it may be providing the necessary resources so that we can make sure that the inspections are taking place and that the regulatory agencies are doing what they have to do.

But in your view, Commissioner Baldwin, what are the other kinds of changes that we need to take on to try to transform our inspection and regulation of imports that are coming in? If you look at what we did in the post-9/11 world, it was the 9/11 Commission that led probably to the most significant restructuring of government since World War II. Is that the kind of action that we need to take, to look at how we are organized at the Federal level to try to bring about the kind of change that will protect American consumers from the burgeoning imports that we have?

Mr. BALDWIN. I do not believe the Safety Working Group, nor would I, be encouraging a discussion about massive reorganization for the government. I think one of the key components that I think has been alluded to earlier is the tremendous globalization of our international trade role right now. Perhaps a lot of our regulatory agencies have not all kept pace, and at the same pace.

I think concepts such as risk management have been bandied about, and I would just offer that not all agencies are on the same page with that at the same point in time. We have talked about supply chain management and quality assurance programs. Again, I think we need to work on all being in lock step and at the same stage to address the new international trade environment, as opposed to discussing reorganization of the Federal Government.

Senator SALAZAR. Mr. Baldwin, you know the problems out there. My colleagues here have been asking questions and panelists have been describing what is happening out there. So if I were to ask you, when will we have an action plan from the administration in terms of addressing these problems that we have seen during the last year, what is the timing of us getting some recommendations from you?

Mr. BALDWIN. The Import Safety Working Group is scheduled to have their recommendations prepared for the White House in November, so you should see a fairly short turnaround time as to what the direct deliverables are that are expected of the various agencies. That is based on the strategic framework that has already been published.

Senator SALAZAR. I look, very much, forward to receiving that report, and I am sure the other members of this committee do as well.

Thank you very much, Chairman Baucus.

The CHAIRMAN. Thank you, Senator.

Senator Snowe?

Senator SNOWE. Thank you, Mr. Chairman.

I want to thank all of our panelists here today. Welcome, Mr. Dooley. It is probably interesting to be on that side of the dais. Thank you all very much. This is obviously a critical issue. I know,

Ms. Halloran, you raised, I think, some very interesting points regarding China and the fact that imports have skyrocketed, and the preponderance, for example, of the toys that are sold in the United States that come from China.

I think you said 80 percent are imported from China, 80 percent of all toys sold in America, which I think is a critical issue, and certainly, I think, underscores some of the challenges that we are facing. Eighty-three percent of the seafood we eat is imported, 21 percent from China. All of the food we consume, 13 percent is imported overall, including the developing countries.

I think the point is that we really do have to look at, in addition to inspectors, more funding for the Consumer Product Safety Commission. I think that that is critical. But on the other hand, we are also looking at some of our trade-related mechanisms. I know, Mr. Dooley, you mentioned in your testimony that the free trade agreements do not impose any additional limitations on the United States to implement the enforcement of its own safety regulations, but the problem is through the WTO and many of our relationships that exist through the World Trade Organization to which we have no remedies. There is no obligation under the WTO to enforce a member to uphold its own domestic laws. That is, frankly, where we have, I think, a significant challenge.

If you look at China, for example, or India, or Brazil, these are the three largest manufacturers outside of the United States and Europe, and these are all World Trade Organization relationships. So how do we enforce a remedy against countries like China that, frankly, have demonstrated time and again, whether it is counterfeiting—for example, appropriating intellectual property rights—that they have not enforced their own domestic laws and regulations. So I think, frankly, that is an issue that needs to be addressed.

So, Mr. Baldwin, is that a subject of the Import Safety Working Group?

Mr. BALDWIN. I know international agreements and international negotiations with other countries are going to be part of the recommendation process. I cannot say that engaging the WTO is, though.

Senator SNOWE. Well, I think that that is really a huge vacuum, to be honest with you. If it is not and you have a country like China that really has, I think, demonstrated, as I have said, consistently in the past that they have not upheld their own domestic laws, I mean, we have huge challenges on counterfeiting of CDs that we have seen, as well as intellectual property rights. Now we are discovering it in areas that affect the life, safety, and well-being of American consumers. So if we cannot get it addressed through a remedy in WTO, which is currently the situation, I think that that presents a gaping hole in addressing this whole critical question.

Now, for example, would you agree that perhaps we should consider China's lack of enforcement as an unfair and anti-competitive subsidy to its businesses? I mean, that is another way we could address it through our own laws unilaterally if we cannot do it through the WTO in any changes that could be orchestrated through that organization.

Mr. BALDWIN. I am afraid that question is outside my realm of expertise. I think it is probably best addressed through the U.S. Trade Representative or the Department of Commerce.

Senator SNOWE. But is it going to be a subject? I mean, I think it has to be a subject of the Import Safety Working Group, otherwise we are just ignoring a preponderance of arrangements that we have globally with respect to importing goods in this country.

Mr. BALDWIN. Using China as an example, though, I do know they are spending quite a bit of time talking about our international negotiation and verification processes, so that they could talk about things like third-party validations in-country, or perhaps even joint verifications in-country, for registered companies in China, certifying their processes, evaluating exactly how they are doing their production of food products and other import products. I know those negotiations are going on and are topics of the Import Safety Working Group.

Senator SNOWE. Ms. Halloran, what is your view on this?

Ms. HALLORAN. Well, we are very concerned. I mean, as we have seen from many news reports, corruption is rampant in China. It will be very difficult. They have a long way to go before they have effective enforcement. I think your concept of this as an unfair trade subsidy is a very interesting one.

We were very disappointed in the first draft of the report of the Import Safety Working Group. There was not one single, concrete recommendation for either increasing of resources or a change in authority in that report. It was all about frameworks and strategies, which of course we need, but we also need some, I think, on-the-ground, specific changes.

Senator SNOWE. Well, I appreciate that, because I do think it is essential. I think we have to be very aggressive and we have to be very proactive to avert any catastrophes or tragedies in the future.

Mr. Dooley, what is your comment? I know you addressed the free trade agreements, and that is true that that governs the relationships we have on a bilateral basis. But it does nothing to address the issue regarding our membership in the World Trade Organization, and other members.

Mr. DOOLEY. That is correct. I guess when you have the importation of seafood—and Senator Grassley used the example of Basa coming in from Vietnam, which was not in compliance with our standards in terms of the level of antibiotics that were not registered for use in the United States—we were able to put in place a barrier to the entry of that product because it did not meet those standards. There is nothing in the WTO or our FTAs that precludes us from enforcing that.

That is where I think we are asking, under pillar three and pillar four, for additional resources for FDA to be able to interdict those products when they are coming into the United States, when they are not in compliance. Then our pillar three, which is in the capacity building, a lot of these countries, such as Vietnam, I think, have an interest and understand that it is in their own economic interests to be in compliance. So, the degree that we can help in building their capacity is, I think, another important contribution to enhancing the product safety coming into the United States.

Senator SNOWE. All right. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

With the world changing so much and so quickly, there are a lot of opportunities here to kind of do things a bit differently. This is not directly on point, but let us take intellectual property. We have a TRIPS regime which requires consensus under WTO. The trouble is, it is hard to get consensus with so many countries. One thought would be—and this is just IPR, maybe it could be expanded a little bit in this area—to get countries together that really want to boost up IPR.

I would like to ask you something else. I am a bit surprised, frankly, that the industries here have not rushed to come to this committee to testify and explain that they understand the problem and they are really doing something about it, with real vigor and energy, as, say, the Tylenol company did when those caps were adulterated. They knew they had a problem and they just jumped on it right away, big-time. Huge, big public effort explaining what they were doing to get consumer confidence back.

Ford Motor made a similar effort. I have forgotten exactly when it was, but a couple, 3 years ago there were some roll-overs, a tire issue, and Ford just addressed it firmly. They said, we have a problem, we have to deal with this. We know that. Here is what we are doing. It passed the smell test. It was not just words, it was real.

I am just surprised, frankly, that industries here, whether toy manufacturers, grocery manufacturers, or other companies that import a lot of products that are sold to consumers in the United States, have not rushed forward to say, hey, here is what we are doing, we are addressing this thing frontally because we want to get consumer confidence back. I resay right now that American consumer confidence in a lot of imported products is pretty low, whether it is food, whether it is toys, or whatever it is.

A key here is consumer confidence. How do you get consumer confidence? Clearly, Mr. Baldwin, your agency is part of it; all of you are. It just seems to me, without getting too much into the public/private partnership and mechanics of how you do all this, if the companies themselves were to show that they have some really good ideas, and, first of all, they get it. They show they get it and are fully addressing it, honestly, directly. That is, I think, necessary. I am just surprised we do not see more of that up to this point. I do not know if anybody wants to respond to that or not.

Mr. DOOLEY. Yes, I would like to respond to that. I think that our companies clearly get it. They understand that. Every CEO understands, the greatest equity they have in their company is in their brand. All my member companies compete for the allegiance and loyalty of customers on taste, quality, nutrition, convenience, a whole host of issues.

But they also fully recognize, if any consumer going down that grocery store aisle has any questions about the safety of that product, it is not going to go off the shelf into the shopping cart. So, nobody has a greater vested interest in responding to these challenges. That is where I make my point, too. We have a limited number of problems here. Can we do a better job? Yes. Are we trying to? Absolutely. That is why we came forward with our proposal, that is, asking government to further regulate the industry.

We have set out a policy here that is saying, we want FDA to work with the industry and consumer groups to develop guidance that would be mandated on every importer of record or company that is going to be importing a product into the United States that would include some practices that would further enhance the already high quality of our food supply. So, we think we are responding in a responsible, a constructive manner, and a rapid manner to build upon, I think, our foundation of success.

The CHAIRMAN. I cannot dispute whether your companies get it or do not get it. I am just not in a position to know. But I am in a position to say that I do not see that they get it. That is, I do not see lots of proposals and press conferences or ads that show they get it. I am not talking about fluff. I am not talking about PR. I am not talking about just ads to buy my product. I am saying, hey, we get this, this is a problem, and here is what we are doing.

It has to come across as real. People are pretty smart. They can read between the lines. They can listen to the music as well as the words. They know when it is real and when it is not. I am just saying, I do not see something that is really real so far, and I am surprised.

Mr. DOOLEY. This is the third hearing I have testified at in the last 6 weeks on this issue, outlining the actions that we are taking to further enhance the high quality of food safety we have. We held, 2 weeks ago, a global sourcing conference, where we invited our member companies, as well as the FDA and other interested parties, to a forum where we talked about the best practices that we have in place.

The CHAIRMAN. Maybe. But I do not think it is getting through. The bottom line is confidence, consumer confidence. My guess would be, consumer confidence is not very high right now on imported products coming into the United States.

Mr. DOOLEY. There is no question, there has been a decline in consumer confidence. That is why we are responding. Again, that is why we think we really are seeing a confluence of events that really requires the private sector and the public sector to further develop those programs that are going to respond to this decline in consumer confidence. We are totally committed to working with you and your colleagues.

The CHAIRMAN. Does anybody want to respond to that perception that at least I have?

Ms. KENNEDY. Representing the retail industry, we have taken action. We have been very aggressive on implementing new testing, looking at all of our internal processes and protocols. We have looked at multi-phased testing of products, especially in toys. We have looked beyond just—every manufacturer has been scrutinized. I would think that——

The CHAIRMAN. So what have you discovered in that examination? What has turned up in terms of process, in terms of maybe a new way of doing things?

Ms. KENNEDY. I think that we can always do things——

The CHAIRMAN. No. Obviously we can all do better. I am asking a different question. I am asking, what have your retailers, precisely, discovered in terms of what new processes, what new ways of doing things might be better?

Ms. KENNEDY. I believe that in looking at multi-testing, multi-phased testing where they actually remove products from the line randomly and test them in independent labs all along different processes, they have been much more aggressive in looking at sanctions and severing relationships with people who are not living up to the requirements of their contracts for sourcing.

The CHAIRMAN. I was struck. Somebody said about 20 percent of fish imported into the European Union is inspected. Twenty percent. I do not know if that is accurate. Let us assume it is accurate. Should we be doing that in the United States? Mr. Dooley, how about that? Twenty percent?

Mr. DOOLEY. Currently, I do not know what the percent of fish imports is that we are inspecting today. In food, in general, it is about——

The CHAIRMAN. Let us assume it is 2 percent.

Mr. DOOLEY. Yes. And food, in general, is about 1 percent. Do we need to inspect more of the food products coming in, fish and otherwise? Absolutely. Do we increase it by 10-fold to get to 10 percent, is that enough? I am not sure. Is it 20 percent? I think that, again, goes back to my point, that you are not going to be able to inspect your way out of this problem, but inspection is going to be an important component.

Your most effective response to enhancing food safety is going to be built upon prevention, and how can you most effectively have the private sector utilizing their expertise and capacity to do a better job of preventing food safety incidences, and couple that with the appropriate level of oversight by inspections. So, if you get to 20, maybe that is the right number. But I think that is going to be a resource challenge. The question is, how do you maximize the investment of those resources to make the greatest difference?

The CHAIRMAN. I always found one of the greatest enforcers is the disinfectant of sunshine, transparency. I was thinking off the top of my head now, if there is some way maybe to publish the companies and the number of products that are allowed in that are faulty, and so forth, so there is sunshine on the bad actors, so the public knows who the bad actors are. Years ago in another committee, Congress enacted, as you all know, emissions standard publication. That is, a stationary source of emissions publication.

I have forgotten what the process is called, but naming stationary sources, power plants, sulfur dioxide, nitrous oxide, and so forth. We published the pollutants, the tons of pollutants that came out of each plant. That was public information. That forced the companies—ooh, we do not want to be the world's biggest polluter, so we have to cut down our pollution. It worked. Sometimes it is better than some government action, some regulatory action, and so forth.

So I am wondering if the same process could be applied here somehow, that the bad actors, more of the public knows what they are doing so those companies might be, on their own, more inclined to shape up.

Mr. DOOLEY. Well, I will respond to that. I mean, we can look. A lot of the food safety challenges and problems that we experienced, say, in the last 6 months have not necessarily been strictly imports, although the melamine, you could say that was, in fact.

That cost the pet food industry and the companies there, who were pretty well publicized on the nightly news—there were few that were not uncovered—in excess of $40 million.

You can look at the issue that we had with salmonella in peanut butter. That cost that particular company over $66 million. You can look at the E. coli in the spinach industry that had significant impacts on the baggers of that product, and they still have not recovered in terms of the sales of the category. You can look at the chili sauce issue we had, which was pretty well publicized, $35 million. I mean, there is a significant public response and a penalty that these companies are paying today by having a problem that could have been handled, perhaps, with greater or improved practices.

The CHAIRMAN. What metrics do you think make sense here as we try to address and solve it? That is, what standards, what metrics, what data, what benchmarks, by what date do you think tends to make sense so we have an idea of how well we are progressing here, whether it is agency consolidation, whether it is computers talking to each other, whatever it might be? Just kind of a free-flowing discussion here. What kinds of metrics, benchmarks, data do you think would be good for the country to know about, or for at least the agencies and this committee to know about, if anybody wants to respond?

Mr. BALDWIN. I would like to take a first shot at it. I first want to address the comment that was made earlier about, 1 to 2 percent of food is actually inspected when it comes into the country. I know it is a challenge that we face in CBP when we talk about our targeting for our security purposes. And again, I always want to make mention that simply doing more exams is not necessarily a good thing, and oftentimes it can actually be a detriment to what we try to do in our risk management policies.

I would suggest the following metrics you should consider, at least at the 50,000-foot level. First, our facilitation programs and partnership programs where we could identify, who are the good corporate citizens that have good quality assurance programs, who have the internal controls, who are randomly selecting products off of the assembly line and testing them for the safety standards that have been established?

Second, you do obviously need to have a detection process at the physical border, but perhaps even internationally and domestically, too, to go out and do basic oversight to make sure the companies and other players are doing the right thing.

The CHAIRMAN. So what metrics would you like to see from your perspective so you know whether you are doing a good job or not?

Mr. BALDWIN. The very first thing that I would try to suggest, as I tried to allude to in my testimony, is again looking at how we can do a better job from the regulatory process: stronger data processing through our International Trade Data System so we have that under way; better targeting so that we have a better idea of how to target both internationally and domestically and at the physical border; and stronger actions taken on bad corporate citizens.

The CHAIRMAN. All right. But those are three areas. You just gave goals. How would you measure each of those goals? What data

would you like to have for each of those three goals? Like, X amount of what?

Mr. BALDWIN. For example, I know you were mentioning before that perhaps they do 20 percent more exams in the European Union. But if the discrepancy rate or the number of findings or bad findings that they find does not go up, all that does is really delay legitimate traffic. So I would like to see an increase in our detection abilities.

The CHAIRMAN. What percent, by what amount, by what date?

Mr. BALDWIN. I would be happy to do some research for you. But I think the goal would be, if you are going to do more exams, they have to be more productive exams. I would also say you would want to do that work abroad. Finally, I would still argue that this might be the most critical component, and I think this is what you are talking about in terms of corporate responsibility, is get out there and identify what number of importers and foreign producers are actually producing safe products and are certified as such, and we can have a good idea of what percentage of importers, what percentage of foreign manufacturers are actually on the "good guy" list, how many of them are actually producing safe products. I think that goes a long way to improving your consumer confidence.

The CHAIRMAN. Who else wants to take a crack at data, dates, metrics, et cetera, that will enable us to better know whether, in fact, we are getting a handle on this or not.

Ms. HALLORAN. I am afraid that our capacity is so limited, that we cannot even have baseline data at this point against which we could measure progress. We have to first have the capacity to know the hazards that might be in our marketplace.

For example, China has become a major exporter of garlic and apple juice to the United States. Now, what kind of testing has FDA done for, say, pesticide residues in apple juice? I do not know. I do not know if they have thought of all the things that could be in apple juice that might be coming here to determine that it is not there.

I am also very wary of identifying the good company and putting them on a low-priority list. One reason is, Mattel, in fact, had one of the better, as I understand it, quality assurance programs, but there were serious flaws in it. They had trained a certain supplier, they had a trusted relationship, and then, unbeknownst to them, apparently the supplier betrayed that relationship and started using lead paint. So we have to have sampling. We have to have beefed up checking. We have to have third-party certification from non-interested parties without a financial interest in the issue, whose only interest is in accurate information.

The CHAIRMAN. I will press you, too. So what percent, by what date, in terms of numbers, from your perspective, to determine whether we are doing a decent job of getting a handle on this?

Ms. HALLORAN. Right. I think we should be inspecting 10 to 20 percent of the food that comes in that is imported, with the higher percentages for the higher-risk categories, like seafood.

The CHAIRMAN. Ms. Kennedy, let us get down to some numbers here.

Ms. KENNEDY. I think the metrics are a great idea, Senator. I think one of the things that we have looked at is the time between when a retailer identifies an issue with a product and how quickly we can issue that recall so that we can keep our consumers safe. That would be a metric that I think would be very beneficial.

The CHAIRMAN. All right.

Mr. Dooley?

Mr. DOOLEY. I cannot respond to the actual metrics. We had, under our risk-based inspection initiative that we have been working with USDA on, developed a very comprehensive algorithm that had a series of indicators that was going to try to ascertain what facilities might pose a greater risk, and thus should be subject to greater inspection. But I do not know what the components of that algorithm were that would, in fact, embrace some of the metrics that you have, that you are asking for.

I think the issue in terms of what percent, again, I look at this as, we are never going to have the amount of inspections that I think people might like to have, and so how can you be, again, more effective? That is where we go back to; our companies today are instituting better practices to provide greater control over the products that they are sourcing domestically, as well as internationally, because of this decline in consumer safety.

The CHAIRMAN. But would you not like to know how many companies, by what date, are instituting what practices to get a better idea of your risk management, of success?

Mr. DOOLEY. If you look at the vast majority of manufacturers of food products, the vast majority are employing the best practices today which have the third party certification, the audits that are in place that are doing the testing. A good example on melamine. They have developed new testing methodology now to try to intercept any proteins or gluten that might be spiked with melamine, as it was in the past, which they did not anticipate. So they are constantly evolving and developing new protocols to try to respond to challenges and problems that they become aware of.

The CHAIRMAN. Here is what I would like. I appreciate the executive branch's interagency program to find solutions to this problem. I guess you said there were recommendations coming to the White House in November, and then to be public when?

Mr. BALDWIN. Soon after.

The CHAIRMAN. Soon after. All right. That is the executive branch. We have a co-responsibility here in the Congress. So here is what I would like. I would like each of the four of you, over the next 2 months, indicate to this committee what you think the metrics, the standards, the data should be. Not the exact data, but just the benchmarks, the kind of benchmarks you think would make sense to help address solutions here.

Then I am going to come back and ask to see what that data actually shows maybe 6, 8, 10 months from now. But at the very least, let us get a good process lined up here, something that is responsible, to get the job done. So within 2 months. What is today, the 18th? Great. The 18th. December 18th. That is the deadline that we have to get that in to this committee. All right? All right.

Obviously the subject is very important. It is complicated and very important. It is going to become more important as the world

becomes more complex as the years go by, so let us get a good handle on it right now.

The committee is adjourned.

[Whereupon, at 11:40 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Statement of

Daniel Baldwin
Assistant Commissioner
Office of International Trade
U.S. Customs and Border Protection
Department of Homeland Security

United States Senate
Senate Finance Committee

"Growing Trade, Growing Vigilance:
Import Health and Safety Today and Tomorrow"

October 18, 2007

INTRODUCTION

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you today to discuss the actions we are taking at Customs and Border Protection (CBP) within the Department of Homeland Security, to ensure the safety of imported products. My name is Dan Baldwin and I am the Assistant Commissioner in the Office of International Trade at U.S. Customs and Border Protection. My office holds the responsibility of formulating CBP's trade policy, developing programs, and enforcing U.S. import laws.

NATIONAL TRADE STRATEGY

As a general rule CBP has not targeted imports based on import safety criteria alone. Pursuant to our twin goals of fostering legitimate trade and travel while securing America's borders, CBP has developed a National Trade Strategy to help our agency successfully fulfill our trade facilitation and trade enforcement mandate. CBP trade enforcement focuses on the collection of import duties and the enforcement of trade laws. Our National Trade Strategy is based upon six Priority Trade Initiatives (PTI). These PTI's are: Antidumping and Countervailing Duty, Intellectual Property Rights, Textiles and Wearing Apparel, Revenue, Agriculture, and Penalties. Under the terms of our trade prioritization strategy we focus CBP resources in our efforts to address areas of key trade importance.

In recent years, CBP has worked extensively to coordinate activities and enforcement actions with USDA and HHS, and in particular the FDA. As the guardian of our nation's borders, CBP has broad authority to interdict imports at the Port of Entry. We identify, target, and interdict high-risk shipments using our data along with information from other agencies. For instance, we frequently interact with USDA and FDA on questions regarding food enforcement action, as those departments house the subject matter expertise on food and agriculture admissibility standards. CBP enforces safety regulations by relying on the statutory authority of other federal agencies with the specific mandate of safety issues. It is important to note, also, that long before the recent headlines CBP had been working with agencies such as the Consumer Product Safety Commission (CPSC) on identifying and interdicting products such as flammable children's sleepwear and other products that present a danger to our citizens.

As the value and volume of our imports continue to grow, CBP recognizes the challenges we face in maintaining safe and secure imports. To meet these challenges, President Bush issued Executive Order 13439 on July 18, 2007, establishing an Interagency Working Group on Import Safety (Working Group). The Working Group, chaired by Health and Human Services Secretary Michael O. Leavitt, is comprised of senior officials from 12 federal departments and agencies, each with unique and critical import safety responsibilities. The review was ordered by the President to ensure that our work with the private sector and foreign counterparts would be comprehensive and effective in promoting the safety of imported products.

CBP is actively participating in the Working Group and has assigned a senior manager to work full time with the group. She and other CBP staff assisted with the development of the "Strategic Framework for Continual Improvement in Import Safety" released by Secretary Leavitt on September 10, 2007.

The Strategic Framework developed by the Working Group is a risk-based approach and consists of three Organizing Principles: 1) Prevention, 2) Intervention, and 3) Response. Within these three principles the Working Group has targeted six Building Blocks for further Administration action. Some of these Building Blocks specifically focus on enhancing current CBP capabilities and programs.

CBP CAPABILITIES

CBP has several tools to interdict potentially unsafe imports. In my testimony today, I would like to highlight two of these tools that CBP can utilize in order to interdict unsafe imports: CBP Personnel and CBP Targeting.

PERSONNEL

CBP maintains a diverse workforce that works to assist, detect and interdict imports that may be harmful to the health of the American public. For instance, CBP Officers and CBP Agriculture Specialists receive specific training on ag/bio-terror incidents. We currently have the ability to deploy more than 18,000 CBP Officers, 2,000 Agricultural Specialists, and 1,000 Import Specialists in response to emerging threats to American consumers. Furthermore, CBP's Laboratory and Scientific Services (LSS) maintains seven separate laboratories around the country, with a 24/7 technical reach back center and employs approximately 220 chemists, biologists, engineers, and forensic scientists.

Our workforce enables CBP to mount rapid and effective responses by utilizing the specialized expertise of CBP Officers, Agriculture Specialists, Import Specialists, International Trade Specialists, and Laboratory Technicians. Within existing authorities, each of these CBP occupations can work together to gather intelligence, establish target criteria, gather and test samples, and analyze and report results.

TARGETING

In addition to our skilled workforce, CBP uses various targeting mechanisms to ensure the compliance of products imported into the U.S. These mechanisms are specifically designed to incorporate the safety concerns of other agencies in identifying high-risk imports.

One of the systems used is CBP's Automated Targeting System (ATS). ATS, which is based on algorithms and rules, is a flexible, constantly evolving system that integrates enforcement and commercial databases. ATS is the system through which we process advance manifest information to detect anomalies and "red flags," and determine which cargo is "high risk" and should be scrutinized at the port of arrival. ATS is essential to CBP's ability to target high-risk cargo entering the United States.

Another system CBP uses is the Automated Manifest System, which provides us with advance cargo information to be used for targeting and screening of all imported merchandise. This advance information allows CBP to identify shipments of interest in advance of arrival. By identifying shipments early, CBP is better able to focus resources on those shipments that may be of concern, prevent their introduction into the commerce and ensure appropriate coordination with other regulatory agencies.

The Automated Commercial System (ACS), CBP's automated system of record for entry processing and cargo clearance, allows us to screen for additional food and agricultural risks. The majority of the targeting criteria present in this system are used to prevent the introduction of contamination, pests, or diseases.

In addition to these CBP automated systems, CBP maintains the National Targeting Center (NTC). The NTC is the facility at which personnel from a number of government agencies are co-located to review advance cargo information on all inbound shipments. At the NTC, CBP personnel are able to quickly coordinate with personnel from other federal agencies such as the FDA, Food Safety and Inspection Service (FSIS), and Animal Plant Health Inspection Service (APHIS) to target high-risk food shipments.

Furthermore, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (know as the Bioterrorism Act, or BTA) authorized FDA to receive prior information to target shipments of food for humans or animals prior to arrival. The Bioterrorism Act gave CBP the opportunity to assist FDA with the prior notice requirements. CBP worked in concert with FDA to augment an existing automated interface to institute a prior-notice reporting requirement with minimal disruption to the trade. In addition, under the Bioterrorism Act, we worked with FDA to commission over 8,000 CBP officers to take action on behalf of the FDA. This commissioning allows FDA to assert a 24/7 presence to enforce the Act at all ports.

A major challenge we face in our operations is the need for interoperability. Interoperability is the ability of one system to communicate with another. Too often, we build sophisticated data systems without ensuring the systems' ability to interface with one another. We need to finalize implementation of interoperable data systems, already under development, that facilitate the exchange of relevant product information among parties within the global supply chain to ensure import safety.

Government agencies should share the information they collect about activities occurring along the global supply chain to prevent, identify, mitigate, and respond to product safety hazards. Manufacturers test products to ensure that they comply with relevant performance and safety standards; government agencies inspect and test products to ensure that they meet regulatory requirements associated with public health, environmental safety, and consumer protection. Marketplace recalls are conducted to remove faulty or unsafe products from commerce. Information about these activities is often collected and recorded, and should be shared among individual actors in the import life cycle or aggregated and analyzed as a whole.

Information technology has improved the availability and exchange of information on imported products. The import entry process is one area where information technology is being used to improve the exchange of import supply chain information. Throughout most of U.S. history, a revenue-centric import system focused largely on the collection of customs duties on imported goods. In the post-9/11 environment, however, government and industry have recognized the need to expand the focus of the import system to encompass security and safety.

The International Trade Data System (ITDS) is a key component to improve systems interoperability. The recently enacted Security and Accountability for Every (SAFE) Port Act of 2006 established a requirement for an electronic interface among all federal agencies that monitor or control the movement of imported products in domestic

commerce. The ITDS will create a single-window environment in which importers, transportation carriers, and government agencies can exchange information on imported products. When fully implemented, ITDS will facilitate the processing of legitimate import transactions, improve how imported products are identified and classified, strengthen entry screening capabilities, and help to target inspection resources to areas of greatest risk.

CONCLUSION

The Working Group has set out a sound framework for developing specific ways to improve the safety of American imports, and we are assisting the Working Group in developing a follow-on Action Plan. The Working Group has highlighted the need to shift from reliance on "snapshots" wherein unsafe products are simply interdicted at the border, to a cost-effective, prevention-focused "video" model that identifies and targets those critical points in the import life cycle where the risk of unsafe products is greatest and verifies the safety of products at those important phases.

CBP remains committed to partnering with other federal agencies in order to refine our targeting skills and increase coordination of government personnel and to ensure the prevention of contaminated and dangerous products from entering the U.S.

Responses to Questions for the Record from Hon. Daniel Baldwin
Senate Finance Committee Hearing of October 18, 2007

Question: I appreciate the many proposals all panelists have put forward to improve the health of safety of U.S. imports. As we evaluate and implement these proposals, it is essential that we have metrics to measure whether or not we are making progress in the short- and long-term.

I would ask that within two months, each of you report back to me with metrics that we can use to measure our progress in making U.S. imports safer. These metrics could include increasing the percentage of import inspections at the border, increasing the number of inspectors, or increasing funding, within a certain timeframe.

I would also ask that within six months, each of you report back to me whether, using the metrics you propose, the United States has made progress in improving import health and safety.

Answer: CBP concurs that metrics are vital to evaluating progress on plans to improve import safety. On November 6, 2007, the President's Import Safety Working Group issued an Action Plan for Import Safety. U.S. Customs and Border Protection (CBP) is developing the agency's response to this plan, which will include an assessment of progress on improving import safety through establishment of appropriate metrics. A copy of the CBP plan will be provided to you upon completion.

In the interim, CBP has taken a proactive stance addressing food and consumer import safety issues, by coordinating with the Food and Drug Administration (FDA), to address issues such as contaminated pet food and adulterated toothpaste. During the recent pet food contamination event, CBP, in consultation with FDA, significantly increased sampling and testing of imported products from countries other than China. All samples tested negative for the presence of melamine. This scientific data gives the government and the public assurance that the melamine issue related to imports was isolated to a few suppliers.

Question: Counterfeits of many medications that Americans rely on every day have been found in the U.S. supply chain. Last October, for example, fake Lipitor pills made in Costa Rica were mingled with genuine Lipitor illegally imported from Brazil, then distributed to pharmacies in at least 15 states. Last fall, counterfeit diabetes test strips from China also flooded the U.S. market. More than 1 million fake test strips were distributed and were being sold in 700 pharmacies in 35 states. An investigation traced the counterfeit goods through importers in Florida and Canada to a company in Shanghai.

These are only two examples. How is Customs stepping up its enforcement efforts to prevent fake medications from entering the U.S.?

Answer: CBP has undertaken a number of measures to protect U.S. residents from potentially dangerous pharmaceuticals manufactured abroad. Specifically, CBP chairs an inter-agency task force, which works cooperatively with the Drug Enforcement Administration (DEA), the Food and Drug Administration (FDA), U.S. Immigration and Customs Enforcement (ICE), and the Office of National Drug Control Policy (ONDCP) to interdict illicit shipments of pharmaceuticals and inform the public of restrictions related to the importation of prescription drugs. To identify areas of risk, the task force conducts periodic enforcement blitzes, known as "Operation Safeguard," at the international mail branches and express consignment facilities, which are designed to identify the type, volume, and quality of illicit pharmaceutical shipments entering the U.S. from abroad. These operations enable CBP, in collaboration with FDA, to identify trends in the manufacture and distribution of counterfeit pharmaceuticals, and target specific products from the source.

Separate from "Operation Safeguard," CBP also has a compliance measurement program in place in the international mail branch and express consignment environments. Illicit pharmaceuticals discovered under either "Operation Safeguard" or during a CBP compliance measurement program are traced back to the point of origin and the intelligence information is provided to front line officers for use in supporting CBP's pharmaceutical enforcement strategy. The information collected from these random exercises is folded into targeting criteria in CBP automated databases, which helps to flag for inspection future suspect shipments falling within the criteria.

There are 8 full service laboratories dealing with lead. Each laboratory in addition to its full service laboratory in-house also operates 2 or 3 mobile laboratories. Every laboratory (8) and each mobile laboratory (approximately 20) have the capability to analyze for lead. The 8 full service labs can quantitate down to the ppb levels.

Also, CBP has worked with the FDA to develop public service announcements communicating the potential dangers of foreign-made drugs. These announcements have been posted on both CBP's and FDA's websites. In addition, CBP has worked with Google, Inc. to provide consumers searching for on-line pharmaceutical companies the ability to obtain information on importation restrictions concerning prescription drugs. Specifically, individuals who query Google for items such as steroids or specific pharmaceuticals are provided with a link to a page on CBP's website, http://www.cbp.gov/xp/cgov/travel/clearing_goods/restricted/medication_drugs.xml, that informs them that under the Federal Food, Drug, and Cosmetic Act, it is nearly always illegal for individual citizens to import prescription drugs into the United States.

Question: Mr. Baldwin, the United States recently concluded an arrangement with New Zealand to increase cooperation and coordination between our supply chain security programs. Do you envision any similar initiatives aimed at health and safety issues? If so, should we involve the World Customs Organization, the World Trade Organization, or the International Organization for Standardization, in such efforts?

Answer: Yes, I envision similar initiatives for health and safety. The Import Safety Working Group, which was set up in response to the President's Executive Order issued

in July 2007, has recognized the importance of this. One of the immediate action recommendations of this group is on global collaboration and another is on agreements with foreign governments with an emphasis on import safety. The Departments of State, Commerce, HHS, the CPSC and other Federal departments and agencies are encouraging the inclusion of import safety in regional in international dialogues. For example, import safety issues are being discussed in the following: bilateral discussions between federal agencies, foreign governments and private sector entities, U.S.-EU High Level Regulatory Cooperation Forum, the Transatlantic Economic Council, Asia-Pacific Economic Cooperation (APEC), Association of Southeast Asian Nations (ASEAN), Codex Alimentarius, World Organization for Animal Health (OIE). These are just a small example of efforts being undertaken across the federal government to address import safety concerns at the national, regional, and international level. In this context, CBP will continue to work with its partners in support of the recommendations made to address import safety issues.

Question: As you are well aware, increasingly, Americans are worried about the safety of the products they purchase. It's no wonder – it seems that every other week there is yet another recall of a product due to some safety concern. From your testimony here today, I applaud your efforts at the Department and your commitment to redouble your efforts to keep unsafe products from reaching store shelves. I am aware that much has already been done to more proactively catch the "bad products" from being imported; I wonder if you have an opinion as to if the Department needs additional statutory authority to do more to ensure the safety of consumer products?

Answer: CBP has broad authority at the border to examine, detain and seize merchandise for violations of U.S. laws. This broad authority has served us well and interfaces with the authority of other regulatory agencies to deny entry of imported products found to be unsafe. As part of the Working Group on Import Safety's Action Plan, which was issued on November 6, 2007, CBP has requested additional authority, which it believes will help to ensure the safety of consumer products. CBP will seek legislation that will provide CBP authority to extend the data collection standards under the SAFE Port Act for maritime shipments to all modes of transportation. It is critical to CBP's risk-based targeting and its efforts to prevent unsafe products from entering the U.S. commerce to receive as much security data as possible in advance of arrival of the shipment. Extending the SAFE Port Act reporting requirements for all modes will assist us in this significant endeavor.

6-Month Followup

Question: I appreciate the many proposals all panelists have put forward to improve the health of safety of U.S. imports. As we evaluate and implement these proposals, it is essential that we have metrics to measure whether or not we are making progress in the short- and long-term.

I would ask that within two months, each of you report back to me with metrics that we can use to measure our progress in making U.S. imports safer. These metrics could

include increasing the percentage of import inspections at the border, increasing the number of inspectors, or increasing funding, within a certain timeframe.

I would also ask that within six months, each of you report back to me whether, using the metrics you propose, the United States has made progress in improving import health and safety.

Answer: The issue of import safety has been a great concern for Customs and Border Protection (CBP) in the last six months, and the focus of several efforts to improve our inspection process and coordination with other agencies. The main focus of our inter-agency strategic framework is that import safety requires more than just inspections. To accurately measure our progress, we must measure our ability to work jointly to share information and risk priorities with other agencies and industry in a coordinated manner.

Given CBPs role in the inspection and release of cargo, we have focused over the last six months on increasing operations related to import safety and on coordinating our testing capabilities with other agencies.

First, we conduct a number of special operations each year in addition to our routine operations. Of the eight special operations conducted so far this year, four have been dedicated to import safety issues, three of which have been coordinated with other agencies under Operation Guardian. Special operations targeting integrated circuits have resulted in 144 seizures out of 895 exams conducted, a 16% targeting rate. Additionally, one of the operations targeting for shrimp contamination has resulted in three detentions pending further coordination with Immigration and Customs Enforcement (ICE). As part of this operation, the Food and Drug Administration authorized CBP to seize these shipments on their behalf using CBP authorities, an action that represented a streamlining of the seizure process that set a significant precedent advancing our ability to stop harmful shipments. We are still awaiting the results of testing on samples from exams conducted for cigarette lighters and circuit breakers.

We have also dedicated resources to the purchase of new lab equipment for testing specific import safety issues, and are making good progress coordinating and adopting test protocols and standards used by other agencies responsible for import safety. Specifically, we have coordinated with the Consumer Product Safety Commission (CPSC) and are finalizing the adoption of two critical testing protocols for lead paint and small parts that pose a choking hazard to children. This level of coordination again means that we will be able to rapidly make jointly accepted determinations of risk for certain products such as toys.

As CBP continues to implement our action plan for import safety, I hope to be able to measure further progress in the areas coordinated for targeting with partner agencies, increase penalties related to product safety violations, and improve the management of risk through safety audits and partnerships with the importing community.

STATEMENT OF SENATOR JIM BUNNING
SENATE COMMITTEE ON FINANCE
"GROWING TRADE, GROWING VIGILANCE, IMPORT HEALTH AND SAFETY TODAY AND TOMORROW"
October 18, 2007

Thank you Mr. Chairman.

During the past 50 years, world trade has grown more than 14 times, and the United States is the world's largest trading nation. In 2006, we imported nearly $2 trillion in food, industrial products, and consumer goods. Gone are the days when American products typically were made in America, and American consumers could appeal to the federal government to resolve quality problems with consumer goods.

Today, parts of products are made all over the world. They cross the globe to be assembled into a final product and placed in a shipping container that arrives at a busy American port. Tens of millions of such containers leave China every year, for example.

The last line of defense against faulty or dangerous products is control at our borders, and I am pleased that we will hear testimony today from the Department of Homeland Security about what the Administration is doing to address the growing problems in this area.

I am also pleased that President Bush has established an Interagency Working Group (IWG) to promote the safety of imported products. The IWG will coordinate the work of DHS, the Food and Drug Administration, the Department of Agriculture and other federal agencies and it has released a preliminary report to the President that outlines six building blocks for ensuring import safety. This is a step in the right direction.

I thank the Chairman for holding today's hearing and I look forward to the testimony and discussion today.

Thank you.

Written Testimony of the Honorable Cal Dooley
Grocery Manufacturers/Food Products Association
President and Chief Executive Officer

Before the Senate Committee on Finance
Growing Trade, Growing Vigilance: Import Health and Safety Today and Tomorrow
October 18, 2007

Chairman Baucus and Senator Grassley, thank you for the opportunity to appear before you and your colleagues today. I am Cal Dooley, President and CEO of the Grocery Manufacturers /Food Products Association. I am here today to discuss an issue of paramount importance to our members—ensuring the safety of imported foods.

The Grocery Manufacturers Association (GMA) represents the world's leading food, beverage and consumer products companies. The association promotes sound public policy, champions initiatives that increase productivity and growth and helps to protect the safety and security of the food supply through scientific excellence. The GMA board of directors is comprised of chief executive officers from the association's member companies. The $2.1 trillion food, beverage and consumer packaged goods industry employs 14 million workers, and contributes over $1 trillion in added value to the nation's economy.

Food producers have an abiding interest in safe food. Maintaining consumer confidence in our products, our brands, and our companies is the single most important goal of the food, beverage, and consumer packaged goods industry, and product safety is the foundation of consumer trust. My industry devotes enormous resources toward this goal,

and effective regulation and oversight by federal regulatory agencies such as the FDA are critical and complementary elements of the fabric of consumer protection.

In September, GMA/FPA issued "*Commitment to Consumers: The Four Pillars of Imported Food Safety*," a comprehensive proposal designed to protect consumers by strengthening, modernizing, and improving the system governing food imports. Our proposal envisions new mandatory requirements for the food industry to assure the adequacy of foreign supplier food safety programs and new responsibilities for FDA. Other elements include a new program to help identify and prioritize imports of potential concern, new efforts by FDA to help enhance the capacity of foreign governments to prevent and detect food safety issues, improvements to FDA's scientific capabilities and its use of information technology, and a significant increase in FDA resources.

Underlying this comprehensive set of proposals is a fundamental emphasis on prevention.

Let me put the challenge before us in plain terms. As the volume of imported food steadily increases, the FDA's job at the border can be compared to trying to find a needle in a haystack. We need to approach this task from different angles: (1) by reducing the number of needles to find; and (2) by reducing the size of the haystack in which to find them.

I will take just a few minutes to briefly outline each of the four pillars for you now.

Pillar One: Mandatory Foreign Supplier Quality Assurance Program – Under this pillar, all U.S. importers of record would be obligated to adopt a foreign supplier quality assurance program that assures that all imported ingredients and products meet FDA food safety and quality requirements. As U.S. importers of record, companies, including GMA members, would utilize FDA guidance to adopt food safety programs and practices needed to ensure food safety, such as audits, testing, good manufacturing practices, good agricultural practices, HACCP plans, food defense programs, product management systems, and recall programs. Requiring importers of record to ensure the safety and quality of their supply chain – and giving FDA the authority to review the effectiveness of these programs – would reduce the number of needles in the haystack.

Pillar Two: Voluntary Qualified Importer Food Safety Program – To help prioritize FDA resources and to relieve congestion at ports, we further propose that U.S. importers of record who are able and willing to meet additional standards and conditions than those required under Pillar One could voluntarily participate in a program entitling them to expedited entry at U.S. borders. This is similar to the Safe and Secure Food Importation Program Chairman Dingell has proposed in the Food and Drug Import Safety Act introduced last month and builds upon the C-TPAT program currently in place. In addition to demonstrating the presence of well-designed and implemented food safety systems, importers could demonstrate a secure supply chain and conduct and share additional testing and program data with FDA to be eligible for expedited entry. By permitting expedited entry for imported foods that pose no meaningful risk, Congress can further reduce the size of the haystack needing closer scrutiny by the FDA.

Pillar Three: Build the Capacity of Foreign Governments – FDA would work with foreign governments to improve their capacity to prevent and detect threats to food safety. FDA would work with foreign governments to expand training, accelerate the development of laboratories, ensure the compliance of exports with U.S. regulations, permit appropriate FDA inspections of foreign facilities, and ensure adequate access to data and test results conducted abroad. In addition, FDA would be encouraged to use Codex to harmonize requirements among countries. The food industry has long supported international harmonization through Codex, and we believe that FDA must once again provide international leadership towards the adoption of strong, science-based international food safety standards. All of these foreign capacity building steps would further reduce the likelihood of contamination and thereby further reduce the number of needles for FDA to find at the border.

Pillar Four: Expand the Capacity of FDA – Expanding FDA resources – including personnel, equipment, laboratory capacity, and scientific expertise – is an essential component of an effective food safety system. FDA resources have not kept pace with the demands posed by rising imports and current food safety challenges. To meet these needs, Congress must provide new funds to dramatically improve FDA's analytical testing capabilities, to increase and better target inspections conducted by FDA, to obtain real-time test results, and to enhance communications during crisis events. With additional resources that are well-deployed, FDA should be much better positioned to find any remaining needles before they cross the border and enter U.S. commerce.

We believe that the adoption of these four pillars of food safety will result in significant improvements in our food safety net. By focusing our efforts on prevention, and by leveraging the expertise and resources of the industry, we believe that our proposal will do far more to ensure the safety and quality of imported food products and ingredients than would the adoption of many of the legislative proposals pending before Congress, including the recently introduced Food and Drug Import Safety Act.

Food companies recognize that the growth of the global marketplace with increasing imports from many countries pose new challenges. We welcome the opportunity to work with Congress to put in place comprehensive prevention-based measures to ensure the safety of imported foods and food ingredients.

Trade Commitments and Food Safety

I would like to take a moment to address an issue that has been raised recently regarding the impact of U.S. trade commitments on the ability of the U.S. to set and enforce food safety standards. Most immediately, this issue has been raised in the context of the U.S.-Peru Free Trade Agreement (FTA). In large measure, the FTAs entered into by the United States reconfirm each country's commitments under the WTO Sanitary and Phytosanitary Measures Agreement (SPS). As you know, the SPS Agreement does not limit, and in fact explicitly permits, a country's ability to establish measures to protect health and safety, as long as these measures are science-based, non-discriminatory, based

on international standards and not merely intended to disrupt trade. And in fact, the SPS Agreement has been successful in creating a framework for food safety regulations.

FTAs do not impose any additional limitations on the U.S.' ability to implement standards and regulations to protect the food supply in our country and no provision of the FTAs limits the ability of the U.S. to set and enforce U.S. food safety standards. In fact, FTAs should be viewed as an important tool to build the capacity of foreign governments, to harmonize food safety standards, and to facilitate cooperation to improve current food safety regimes and ensure safer imports to the United States. In addition, the trade negotiations themselves provide a great opportunity to address pending SPS issues between countries.

All food products entering the United States are required to meet the same food safety and quality standards as those products produced domestically. FTAs do not weaken U.S. food safety standards, prohibit the U.S. from imposing new science-based standards or prohibit the U.S. from enforcing border inspection measures on imported food products.

Legislative Proposals

Several proposals have been introduced in Congress to address the issue of imported food safety. We have reviewed these proposals, and I would like to take a moment to discuss the concerns that we have with some of these proposals. One of the proposals that seems

to have generated great interest is the imposition of user fees on U.S. importers of food and food ingredients, including GMA members. While we would agree that inspecting products at the border is an important element of a comprehensive approach to food safety, we believe that inspections alone will not provide enough improvement to the safety of our food supply. We strongly agree with efforts to find more resources for FDA, which needs to restore its scientific base as well as its capacity to conduct an appropriate level of inspection and examination, and have urged Congress and the Administration to do so for the past several years. However, we strongly oppose the user fee proposals that have been introduced in the House and Senate. We have five significant concerns with user fees.

We believe that the benefits of a safer food supply accrue to the public generally, much like the benefits of a strong national defense, and believe that the costs of providing FDA with sufficient resources to perform the various responsibilities to protect the public health that have been given to it by the Congress should come through general revenues, not user fees. As you know, a user fee is appropriate when the benefits of the government service flow to an individual (such as postage stamps, recreation fees, or public transportation) or to a particular business (such as harbor maintenance fees, accelerated review of prescription drugs, or bankruptcy filing fees). The benefits of inspection, effective science-based standards, and research and enforcement activities clearly flow to all Americans, not simply to food companies.

Second, the proposed user fees would impose significant financial burdens on U.S. companies, not just on importers. This is especially true for companies with facilities in both the U.S. and Canada, for example, where there is a steady flow of ingredients and finished products, all of which would be subject to import user fees. We are in the process of collecting data to estimate the added costs to U.S. businesses, but we have reason to believe they would be substantial.

Third, the imposition of user fees on imported products and ingredients could have the unintended consequence of encouraging companies to locate production facilities outside the United States. Let me provide an example of why this is so. Suppose a company makes a product in the United States that consists of 20 ingredients, half of which are imported. Under the user fee proposal, a fee would be imposed on each one of those ten ingredients each time they are imported. If, on the other hand, the production facility was located in Mexico or Canada, for example, the fee would only be imposed once: when the finished product was brought into the United States.

Fourth, we are concerned that a user fee on imports would violate our trade commitments by creating a preference for domestic sources of food products and ingredients, violating our national treatment commitments. Finally, we are also concerned that such a fee could invite other countries to place similar fees on our food exports.

We strongly agree that FDA needs more resources to increase inspectors, improve its scientific capabilities, and meet other critical needs. For the past year, GMA/FPA has

worked with the Coalition for a Stronger FDA to substantially increase FDA funding. In our view, FDA does not simply need "more" resources, but needs the "right" resources. In particular, we believe that the agency needs additional resources for both its "science" and its "compliance" activities. The agency cannot operate effectively without both. Our goal is to double FDA's food-related spending over five years.

We have serious concerns with other proposals that have been introduced in Congress, and I would like to highlight some of these today.

We are concerned that proposals to limit imports to certain ports and to require the development and implementation of certain tests could create havoc at the border and create costly and unachievable new burdens on FDA and the food industry. In particular, we are concerned that the proposal to limit food imports to ports of entry located in the same metropolitan area where FDA has a laboratory could unintentionally block food imports to many ports. While there are more than 300 ports of entry, there are only 13 FDA labs. As a result, many ports – including all ports in Texas and Florida – would no longer be able to import food products and ingredients. We believe a better course would be to expand and better target FDA inspectors, as we have proposed in our second "pillar", and to expand FDA's capacity to quickly analyze food products and ingredients.

We are also concerned about new labeling requirements being proposed, such as in the Food and Drug Safety Act. These proposals appear to be redundant of current law in many respects, which already requires country of origin labeling for virtually all imported

products, including packaged food. Moreover, Congress passed the Country of Origin Labeling Act of 2002 (COOL) to address some of the products that had been exempted from the broader statutory requirements. The recently House-passed Farm Bill includes provisions that will allow COOL to be implemented after several years of delay. We believe that current statutory requirements for country of origin labeling are sufficient and that proposals that would require specific ingredients to be labeled would be very costly to implement and provide no safety benefit. Further, such steps could spur copy-cat measures in our export markets.

In addition, we are concerned that a requirement that all foreign facilities importing food into the U.S. obtain FDA certification would place enormous new burdens on FDA, would likely violate trade commitments on national treatment, and would invite reciprocal demands by our trading partners. Further, the cost of such a program, requiring FDA to certify products from nearly 150 countries, would be prohibitive, and unlikely to be funded adequately. We believe that there are much more cost effective ways to achieve the goals we all share.

Conclusion

In conclusion, we share your commitment to improving the safety of imported food. We are also committed to working for increased FDA resources, including resources to increase the ability to detect adulterated food at the border. However, we believe that far more emphasis must be placed on the prevention of threats to food safety throughout the

supply chain and look forward to working with you to make a safe and secure supply chain the responsibility of every importer of record and to expand the capacity of foreign governments to detect and deter threats to public health.

Our "Four Pillars" proposal builds on the long history of public-private responsibilities and cooperation in ensuring food safety, while providing new and innovative approaches to the latest challenges to our nation's food safety net. Its focus on prevention would be complemented by an enhanced ability to quickly detect and address public health threats. Meeting the challenges of the modern supply chain requires additional public resources for FDA and related agencies and demands an integrated approach that leverages the significant investment of the private sector in product safety. We look forward to working with the Committee to fashion a comprehensive solution that will address the new challenges posed by rising food imports and will continually improve the safety of our food products and ingredients.

The Honorable Max Baucus
Chairman, Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200

April 24, 2008

Dear Chairman Baucus:

Thank you again for the opportunity to appear before the Senate Finance Committee on October 18, 2007, to testify on behalf of the Grocery Manufacturers Association (GMA) regarding imported food safety. Per your request, please find enclosed with this cover letter a six month update on the metrics developed by GMA for measuring progress in improving food safety. I hope that you find this information useful, and look forward to continuing to work with you on this important issue. Thank you.

Sincerely,

Cal Dooley

Cal Dooley
President & CEO
Grocery Manufacturers Association

GROCERY MANUFACTURERS ASSOCIATION
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Six Month Update on Metrics for Measuring Progress in Improving Food Safety
April 25, 2008

Last year, GMA submitted for the record a series of possible metrics for the Committee to use in assessing progress in achieving improvements in U.S. food safety. At the time, Chairman Baucus requested that we provide a six month review of those metrics and provide an assessment of whether improvements had been made. In general, while we believe that there has been some incremental progress, many of the efforts that have been put in place to achieve improvements are still works in progress.

GMA highlighted three primary metrics that should be considered in any effort to make improvements to the U.S. food safety system. These included: (1) sufficient resources for the Food and Drug Administration and other agencies with responsibility for food safety; (2) a system/plan to ensure the rapid hiring, training and deployment of additional resources by the FDA; and (3) measuring the health outcomes or incidence of food-related illness.

Immediately preceding GMA's submission of these metrics, the administration released the FDA Food Protection Plan, and the interagency Import Safety Action Plan, which encompass many of the metrics that we suggested be examined. At that time, we also pointed out that a continuing short-fall of resources for FDA to fulfill its mandate continued to be a serious problem in achieving real improvements. We still strongly believe that unless sufficient resources are made available, FDA and the other agencies involved will not be able to fulfill the mandate of the new plans in a timely fashion.

A. Funding

The funding for FY '08 was not yet finalized when GMA submitted its original response to the Committee. In that response we called for an increase in FDA funding for FY '08. While FDA did receive a modest increase in appropriations for FY '08, this funding level still falls short of what is needed to achieve real improvements. Specifically, funding for food-related activities at FDA increased by $56 million from $457 million in FY '07 to $509 million for FY '08. However, only half of this amount, $28 million, was released to FDA for the entire fiscal year, and that amount is needed just to meet FDA's inflationary needs. The remaining $28 million will not be made available until July 1, 2008-September 2009 and only then if the Appropriations Subcommittee receives and approves a comprehensive food safety performance plan. The delay in providing FDA with the amount of the food safety increase above the base inflationary needs means that real progress in meeting this goal is not yet being achieved.

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We also recommended additional increases in FDA funding for FY '09. The President's budget request includes a request of $32.6 million above the FY '08 funding level for food-related activities at FDA, which approximates FDA's annual inflationary needs. While an increase in the funding request is a positive step, GMA and the Alliance for a Stronger FDA believe the President's budget does not go far enough, and we are proposing an increase of $150 million over the FY '08 funding level, which we believe represents the level of funding that FDA needs to fulfill its mandate to improve U.S. food safety programs. The Alliance is also recommending an additional $100 million to apply to FDA-wide information technology needs, which is also needed to support the foods program.

GMA also continues to support successive increases of funding through FY 2012 to achieve doubling of the FDA budget. The "doubling" of the FDA foods budget, which is approximately $460 million in FY '07, needs to be over and above the 6 percent annual inflationary costs of just maintaining FDA's current level of services.

B. FDA Actions

GMA recommended examining the FDA's efforts to hire, train and deploy new resources in an accelerated fashion, and consistent with a scientific, risk-based approach to regulation; improve FDA's process for the rapid procurement of necessary laboratory equipment and supplies to support the agency's research and analytical needs; and for the rapid development of vastly improved information technology with a focus on interoperability between agencies to support the agency's risk-based food safety program.

In November, 2007, FDA released its Food Protection Plan, which addressed many of these goals. While we know that FDA is in the process of devising and executing an implementation plan for the Food Protection Plan, we are not aware that any of these goals has been achieved to date. We believe that FDA is endeavoring to reach many of these goals, but that funding short-falls limit their progress.

The President's budget request for FY '09 calls for increased funding to hire and deploy new scientific and inspection staff, as well as new technologies. The details of the FDA budget request, including the number of additional employees and new technologies that would be acquired with new funding, can be found in the Congressional Justification document submitted with the President's budget request earlier this year:

dethttp://www.fda.gov/oc/oms/ofm/budget/2009/FDA_Online_Appendix.htm

Finally, GMA recommended that FDA establish, within 1 year, a voluntary qualified importer program to expedite the entry into the U.S. of food products that meet specified FDA criteria. Such criteria would include the type of food, the compliance history of the company exporting the food to the U.S., and the degree of regulatory oversight provided

by the exporting country. This proposal is a part of GMA's Four Pillars of Food Safety, and was designed to allow for a more targeted use of scarce funds for import inspections. While FDA has not undertaken actions to begin implementation of such a program, it was a component of the FDA Food Protection Plan, and we hope to see action on this initiative this year.

C. Health and Human Services – Healthy People 2010

The third metric that we recommended was to measure health outcomes to assess if food safety measures are improving human health, and adjust the FDA Food Protection Plan based on findings. Specifically, we mentioned the HHS Healthy People 2010 project. While we note that this is an on-going project, the 2007 FoodNet data are available and show that in 2007 little progress was made in reducing food-borne illness. The data confirm our view that additional resources for FDA need to be provided so that additional progress can be achieved. In addition, we believe that the FDA should adjust its Food Protection Plan annually to adjust for the findings in the Healthy People 2010 (and beyond) reports as well as the annual FoodNet data reports. This would involve enhancing/modifying the agency strategy in areas where sufficient progress is not being achieved.

Responses to Senator Grassley's Questions for the Record From Calvin Dooley
October 18, 2007 Import Safety Hearing

1. Mr. Dooley, the members of your association share a vested interest in ensuring that the products they import meet U.S. health and safety standards. How does your membership feel about 3rd party validations as a tool to advance that vested interest?

Answer: GMA supports better supplier auditing programs, and believes that third party auditors can play an important role in ensuring a safer food supply by identifying gaps and nonconformances. However, GMA does not believe that third party certifiers can replace specific quality assurance programs, such as the Mandatory Foreign Supplier Quality Assurance Program, that is proposed as a part of GMA's four Pillars proposal. There is a role for third party audits in this program, but no requirement for third party certification. Historically, GMA member companies have found that modifying operational procedures to conform to third party standards such as ISO 22000 (Food Safety Management Systems) adds an additional cost with little or no improvement in food safety. A successful quality assurance program must be developed around the specific needs of a company's products.

At the end of the day, the value of third party certification on imported food products is only as good as the credibility of the certifying authority and the standard to which the products are certified. Third party certification would not eliminate the need for testing and verification in this country, but could perhaps play a limited role with appropriate oversight by U.S. food safety regulators.

2. Mr. Dooley, physical inspection of 100 percent of the cargo destined for the United States does not appear to be commercially feasible. International trade would probably come to a standstill. So, we have to have alternatives. In your testimony, you mention the creation of a voluntary program similar to the Customs-Trade Partnership Against Terrorism (C-TPAT) program, but focused on health and safety issues. How do you envision such a program working?

Answer: GMA agrees; enhanced capabilities at the U.S. border are critical but "we can't inspect our way out of this problem." GMA proposes a broader approach that is focused on prevention at the source and targeted risk based inspection at the border. GMA proposes a Voluntary Qualified Importer Food Safety Program to be developed by FDA. Importers would apply to participate and submit information to demonstrate that the product poses minimal risk and has been controlled through a safe and secure supply chain. FDA approval would take into consideration a variety of factors including compliance history, product type and origin and shipping patterns. Qualified status would require periodic review and would not be permanent but would expedite entry of the product and effectively reduce the inspection pool at the border to allow FDA to target resources to higher risk products.

United States Senate *Sen. Chuck Grassley · Iowa*
Committee on Finance *Ranking Member*

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Opening Statement of Senator Chuck Grassley
Hearing, "Growing Trade, Growing Vigilance: Import Health
and Safety Today and Tomorrow"
Thursday, October 18, 2007

American consumers derive great benefit from our open system of international trade. Lower prices. More choices. Year-round access to seasonal foods. Our markets allow us to choose from among the best products that the world has to offer. Last year, we consumed almost $2 trillion in foreign goods. That number is expected to triple by 2015. As global economic integration increases, the challenges facing our government increase too. One of those challenges is before us today.

How do we ensure that imported products are safe for our consumers? There have been a number of stories in the news recently. Lead content in imported toys. Harmful chemicals in imported toothpaste and pet food. We may have one of the safest supply chains in the world, but we can't be complacent. We need to remain focused. And by "we" I mean not just our government agencies. Companies that import into the United States are responsible for any deficiencies in the safety of products they put on the market. We also need to make sure that foreign governments are doing their part as well.

Today's hearing provides an opportunity for the Committee to examine the current practices of our government regulators and businesses, as well as the practices of our trading partners to ensure the safety of products imported into the United States.

Earlier this year, the Administration created an interagency working group on import safety. The working group issued a framework for import safety that focuses on risk-based assessments targeting the life-cycles of individual products. The framework stresses prevention and increased communication among agencies. I look forward to reviewing more detailed recommendations from the working group when they become available later this year.

Information is key to both facilitating trade and ensuring import safety. Last year, the Finance Committee contributed significantly to the development and enactment of the Security and Accountability for Every Port Act of 2006. One of the elements we included was an authorization of the International Trade Data System as a principal element of the Automated Commercial Environment operated by U.S. Customs and Border Protection.

The Office of Management and Budget recently directed each participating federal agency to complete a plan for utilizing the International Trade Data System by 2009. Those plans are due by November 12th, and I look forward to reviewing the results as part of this Committee's jurisdictional oversight of these information systems.

Finally, I want to say a few words about our international trade obligations. I understand that some have claimed our trade agreements prevent us from adopting measures to protect the health of Americans. That's just flat-out wrong. There's nothing in our trade agreements that prevents us from determining our own level of protection for products sold in the United States. We set our own safety standards and no other country can force us to lower our standards. That's the reality. No one should be misled by such a false allegation.

Testimony of Jean Halloran
Director, Food Policy Initiatives
Consumers Union

"Growing Trade, Growing Vigilance: Import Health and Safety Today and Tomorrow"

UNITED STATES SENATE
COMMITTEE ON FINANCE
WASHINGTON, D.C.
October 18, 2007

Thank you for the opportunity to testify today on what has become a serious crisis in import safety. My name is Jean Halloran and I am Director of Food Policy Initiatives for Consumers Union, non-profit publisher of *Consumer Reports*.

Almost daily, we are hearing new reports of safety problems with imported food, toys, cribs and other consumer products. In the spring, we discovered that pet food imported from China contained wheat flour that was contaminated with melamine. According to one veterinarian website, thousands of pets may have died as a result.[1] In June, the FDA put five types of farm-raised fish and seafood from China under a "detain and test" order, due to repeated findings that the fish contained chemicals banned from seafood in the United States.[2]

Over the summer, more than 20 million toys manufactured in China were recalled because of various hazards that included lead levels that exceeded U.S. lead paint

[1] Dahlberg, Carrie Peyton, "Vets Survey: Pet Deaths Have Soared" *Sacramento Bee*, April 10, 2007.
[2] FDA News, "FDA Detains Imports of Farm-Raised Chinese Seafood; Products Have Repeatedly Contained Potentially Harmful Residues," June 28, 2007.

standards established thirty years ago.[3] In September, one million cribs made in China were recalled due to design and construction defects that could cause babies to strangle. The cribs are believed responsible for the deaths of two infants.[4] Two weeks ago, Halloween cups painted with scary faces were recalled after testing requested by Senator Sherrod Brown found that the paint contained even scarier illegal amounts of lead.[5]

This raises the obvious question, how did we get in this situation? Why do we suddenly seem to be inundated with unsafe and substandard products? Many of the most well publicized examples are coming from China, but they are not the only source. In 2003, 555 people became sick and at least 3 died from hepatitis A in green onions imported from Mexico.[6] There have also been recalls of millions of pieces of children's jewelry made in India that contained large amounts of lead.[7]

We see two causes of the problem. One is that two of the most important federal agencies that the public relies on to ensure that everything in our marketplace is safe—the Food and Drug Administration and the Consumer Product Safety Commission-- have not kept up with globalization of the marketplace. In fact, while new demands on their expertise have arisen, these agencies have experienced budget cutbacks. In addition,

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[3] Newman, Andrew Adam, "What's a Parent to Do?" *The New York Times*, September 29, 2007, p. C1.
[4] News from CPSC, "About 1 Million Simplicity Cribs Recalled Due To Failures Resulting in Infant Deaths", September 21, 2007.
[5] News from CPSC, "Dollar General Recalls Tumblers Due to Violation of Lead Paint Standard," October 4, 2007.
[6] V Dato et al., *Hepatitis A Outbreak Associated with Green Onions at a Restaurant—Monaca, Pennsylvania*, 2003, 52 MMWR 1155-57 (2003)
[7] News from CPSC, "CPSC Announces Recall of Metal Toy Jewelry Sold in Vending Machines," March 1, 2006.

Customs and Border Protection, which also plays an extremely important role, is not being utilized in the best possible way to address threats to consumer safety.

The second problem lies with the direction that Congress and the Executive Branch have given to our trade policy, which has largely ignored the problems of unsafe and hazardous imported products. I would like to discuss both of these problems and how we can remedy them.

First, in recent years, imports have skyrocketed, especially from China. The value of all imports increased by 67 percent between 2000 and 2006.[8] This has proceeded to such an extent that now 80 percent of all toys sold in the U.S. are imported from China.[9] Likewise, 83 percent of the seafood we eat is imported, 21 percent of that total from China, much of the rest from other developing countries in Asia and Latin America.[10] Of all the food we consume, 13 percent is imported.[11]

While these imports pose new safety challenges to both importers and all regulatory agencies, FDA and CPSC, in particular, have not kept pace with this new challenge. In fact, quite the opposite. Congress has repeatedly cut the budget of the CPSC so that it now has half the number of employees it had when it opened in 1973. It now has 15 inspectors to police the millions of toys and consumer products coming into the country

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[8] Interagency Working Group on Import Safety, *Protecting American Consumers Every Step of the Way*, September 10, 2007.
[9] Wenske, Paul, "Toy recalls fuel criticism of consumer safety agency," *Kansas City Star*, August 15, 2007.
[10] Food and Water Watch, *Import Alert*, July 2007, available at www.foodandwaterwatch.org.
[11] Bridges, A. "Imported food rarely inspected," *USA Today*, April 16, 2007.

at hundreds of entry points. And, according to the New York Times , it has only one full-time toy tester, named Bob.[12]

The FDA is equally hamstrung. Today, it inspects less than one percent of food imports entering the country. There are over 300 ports (many landlocked) where food can enter. At the peak of its funding, there were FDA inspectors stationed at only 90 of them, and the number of inspectors has dropped since then.[13] This has led to a phenomenon known as "port shopping." Indeed, if a shipment of seafood is rejected by FDA inspectors at one port because it has begun to decompose, there is nothing at all to prevent the importer from trying another port where FDA simply may not be present.

In the absence of adequate FDA and CPSC capacity, Customs and Border Protection becomes the fallback consumer protection agency at the borders. In fact, when FDA issued its "detain and test" order for Chinese seafood in June, CPB appeared with FDA to discuss how it would be implemented. Until recently, however, little was being done to coordinate these fragmented inspection efforts, or to determine if there could be efficiencies developed through better coordination and communication. The Report to the President of the Interagency Working Group on Import Safety identified "siloed systems" and in particular the inability of CPB and USDA's data bases on imports to connect with each other, as problems that needed to be addressed.[14]

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[12] Lipton, Eric, "Safety Agency Faces Scrutiny Amid Changes", *New York Times*, September 2, 2007.
[13] Testimony of Caroline Smith DeWaal, House Energy and Commerce Committee, Subcommitte on Oversight and Investigations, *Import Inspection Failures and What Must Be Done*, July 17, 2007.
[14] Interagency Working Group on Import Safety, *Protecting American Consumers Every Step of the Way*, September 10, 2007.

It appears the U.S. government does not protect the public from unsafe imports as well as governments of other developed countries do. While the FDA inspects just 2 percent of seafood imports, the European Union physically inspects 20 percent of fresh, frozen, dried and salted fish and 50 percent of clams and similar shellfish. Japan physically inspected 12 percent of fresh seafood and 21 percent of processed seafood in 2005.[15]

The U.S. has been focusing inspection efforts on security matters, and that is critically important. It is essential that we prevent chemical and nuclear threats that might be hidden in shipments coming across our borders. But food can also be a vehicle for doing serious damage to the health of the U.S. population. So far, the health threats we have found in food seem to be the result of neglect, carelessness, or greed. But deliberate contamination could also occur. The CPB, FDA, CPSC, and the U.S. Dept of Agriculture must coordinate better, and get the resources they need to protect the borders.

Overall, Consumers Union recommends that Congress consider three major steps to address these problems:

1. Mandate a major increase in the border inspection staffs at both CPSC and FDA, and increase overseas inspections of manufacturing and processing plants.
2. Surely we can afford levels of inspection comparable to those in Europe and Japan, which currently inspect imported seafood much more frequently then the FDA does. The Grocery Manufacturers Association believes that increased inspection should be funded out of the general tax base. However we believe that

[15] Food and Water Watch, *Import Alert*, July 2007, p. 6.

user fees could also be an appropriate way to fund increased inspection. If imports pose special problems and require special scrutiny, that cost should be borne by those who do business in these products.

3. Require the FDA and CPSC to establish federally supervised systems for independent third party certification of imports, and require that those imports be certified to meet U.S. safety standards. The Grocery Manufacturers Association has proposed a system of self-certification: companies should implement individual quality assurance programs and certify themselves as meeting U.S. standards, and that the FDA should be authorized to assess their performance. In our view, this would fail to assure the safety of imported foods and products. Our current system for ensuring the safety of domestically grown or produced foods is not working – indeed, because it is relies so heavily on industry policing itself. Consider California spinach as an example. The FDA spent ten years urging and encouraging spinach producers to adopt "best practices" to prevent bacterial contamination, with little effect, culminating in the severe outbreak of e coli 0157:H7 that we saw last fall. If we look at toys, we see that Mattel had a quality assurance program; it didn't work either. We therefore believe that an independent third party, supervised by a government agency—similar to the Underwriters Laboratory certification which is overseen by OSHA—should be instituted to make sure that imported goods are meeting U.S. standards.
4. Give USDA and FDA explicit authority to recall contaminated food; currently recalls involving these agencies are voluntary.

The second major cause of the import problems we are currently seeing lies with our trade policy. I also sit on the State Department Advisory Committee on International Economic Policy and Trade, and work closely with sister consumer organizations who belong to Consumers International in other countries. For many years, U.S. trade policy, at the direction of Congress and the Executive Branch, has proceeded with blinders on towards just one goal—that of gaining U.S. companies access to markets in other countries—with little consideration to the impact on the domestic economy or marketplace. Safety standards are typically viewed as potential barriers to U.S. exports, rather than measures that assure the quality of imports and assure a level playing field for domestic and foreign producers. That approach to trade policy needs to change.

Congress has begun to think about looking at the impact of trade agreements on labor standards and the environment. We must also, however, look at how trade agreements affect the safety of the products we give to our children, eat for breakfast, feed our dogs and cats, and sleep on. Unless we look more closely at the impact our trade policy has on safety issues, our quality and standard of living will decrease, rather than increase as it can and should do. Our trade policy has to take a more holistic approach.

Consumers Union would like to make several recommendations as a way to begin to improve our trade policy.

1. A simple, yet important change would be to broaden the many advisory committees that provide the marching instructions to the U.S. Trade Representative, to include representatives of consumer, environment, and labor

organizations and the general public. Currently those advisory committees include only representatives of the business community. A bill to do this, HR 3204, was recently introduced in the House of Representatives by Representative Chris Van Hollen.

2. Congress should examine the four pending trade agreements, past trade agreements, and any new agreements negotiated in the future to determine whether they adequately protect the right of federal, state and local governments to protect the safety of their citizens. One type of provision that should not be included in such agreements is the "Chapter 11" agreement that is part of NAFTA. This provision allows companies who invest in another country, and whose profits are damaged by a foreign regulatory action, to be compensated for their loss. This probably sounded good in the context of possible nationalization of American investments in telecom infrastructure or oil fields in foreign countries. However, one must always consider how such provisions will work when they are turned around and applied at home. A Canadian company operating funeral parlors in Mississippi sought compensation under NAFTA when new state regulatory actions forced it to end certain anti-competitive and predatory business practices. The case was dismissed, but only because the company had reorganized as a U.S. corporation, and was thus no longer eligible for a claim as a foreign investor.[16] A Canadian cattlemen's organization filed a demand for compensation under Chapter 11 in 2005 that is still pending, for

[16] Public Citizen, *NAFTA's Threat to Sovereignty and Democracy: The Record of NAFTA Chapter 11 Investor-State Cases 1994-2005*, February 2005.

losses exceeding $300 million due to the U.S. excluding Canadian cattle in 2003 to prevent spread of mad cow disease.[17]

3. Our trade policy and our trade negotiators in the State Department, USTR, and U.S. Dept of Agriculture, should be directed by Congress to give attention not just to copyright and counterfeiting problems that cut into U.S. company profits, but also to the counterfeiting of safety-related labeling. I have been at many meetings where I have heard how hard the U.S. is working to address exporter's problems with counterfeit CDs in foreign countries. We also think counterfeiting of consumer products is a problem. However I have never heard much talk about working hard to address the problem of counterfeiting of the Underwriters Laboratory logo. This is an extremely serious safety problem, one that can result in serious injury or death to a consumer who buys a defective electrical product. Yet although there are numerous State Department and USTR initiatives on intellectual property, and enforcement of copyrights related to movies and CDs, I am aware of no such efforts on this important safety-related counterfeiting issue.
4. Congress should ensure that where trade negotiators seek harmonization of standards, they seek to harmonize up, and not down. Where our standards are lower than another country's, we should always see how we can improve, not try to force or encourage others to reduce their protection. For example, the U.S. has been involved in a protracted trade dispute with South Korea and Japan about exports of our beef. Japan has stricter standards than we do about testing for mad cow disease—every animal over the age of twenty months is required to be tested at slaughter. We only test about a tenth of a percent of U.S. cattle that die or are

[17] CBC News, "Cattlemen challenge border closing under NAFTA," March 16, 2005.

slaughtered. One simple solution to our trade problem with Japan would have been to allow U.S. companies who export to Japan to test the cows they slaughter for that market. However, the USDA has actually forbidden one company, Creekstone, from taking that step.[18] Indeed, the government appears to be trying to deepen the divide between us and Japan by opening our border further to Canadian cattle and beef, which have had significantly more cases of mad cow disease than U.S. cattle.[19] To us this seems like the wrong approach to solving trade disputes.

Congress should investigate whether WTO rules may hamper the ability of federal regulatory agencies to protect the public, and if so, address the issue. It is important that all trade agreements, and our trade policy in general, allows for targeted, risk-based enforcement actions against products from particular countries when warranted. WTO trade rules in general provide that one country cannot impose stricter, or differing safety standards on products of other countries than it imposes on its domestic production. In the area of food safety, this may pose a number of dilemmas. As noted previously, our agencies are seriously understaffed. If agencies see a greater incidence of violations in products from a particular area—as they recently did with seafood from China—it is important that they continue to be able to target such problem areas for increased inspection and testing. In addition, many U.S. food regulations are actually in the form of guidance, which is not mandatory, but which is widely followed by U.S. industry

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[18] Reynolds, George, "Private BSE Testing on Hold Following Appeal," *Food Production Daily-USA*, May 31, 2007.

[19] Consumers Union News Release," Consumers Union Calls on USDA to Continue Ban on Beef from Canada," March 12, 2007, available at www.consumersunion.org.

nevertheless. It may be necessary, in some cases, for such guidance to become regulation, so that other countries are obligated to conform under WTO rules.

In sum, in recent years, while imports have ballooned, regulatory capacity has shrunk. Our regulatory capacity must be overhauled to meet the import challenge. In addition, our trade policy must be more holistic, and trade agreements must be designed with protection of food and product safety in mind. Thank you for considering these important issues.

Consumers Union
NONPROFIT PUBLISHER OF CONSUMER REPORTS

October 30, 2007

Senator Max Baucus
Chair

Senator Charles E. Grassley
Ranking Member

Senator Orrin G. Hatch

Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200

Dear Senators:

Thank you very much for the opportunity to testify before the Finance Committee on October 18, 2007 on the issue of Import Safety. By this letter, I wish to respond to the questions that each of you posed at the hearing. My answers to each of your questions are below.

Senator Baucus's Questions

1) *As we evaluate and implement these proposals, it is essential that we have metrics to measure whether or not we are making progress in the short- and long-term.*

I would ask that within two months, each of you report back to me with metrics that we can use to measure our progress in making U.S. imports safer. These metrics could include increasing the percentage of import inspections at the border, increasing the number of inspectors, or increasing funding, within a certain timeframe.

To the maximum extent practicable, Consumers Union will work to develop metrics that will assist the Committee's request to measure progress in making U.S. imports safer. Consumers Union will also attempt to use such metrics to determine any progress in strengthening import health and safety.

Senator Grassley's Questions

1) *Ms. Halloran, you suggest that Congress should investigate whether the rules of the World Trade Organization (WTO) hamper the ability of federal regulatory agencies to protect the public. But I'm not aware of a single case where our trade agreements have forced us to relax our product inspection and safety regime. Can you provide any concrete examples?*

I am primarily concerned about the chilling effects of WTO rules and trade agreements on new safety measures, rather than weakening of existing rules. For example, when Canadian cattle farmers file for compensation in response to the U.S. border closing after the discovery of mad cow disease in Canada, U.S. regulators may hesitate in the future to impose such appropriate and necessary precautionary measures.

2) *Ms. Halloran, in your testimony you are critical of U.S. trade policy for not addressing such issues as the counterfeiting of the Underwriters Laboratory logo. Putting aside whether I agree with your criticism, do you think we should seek to negotiate new trade agreements to go after that kind of counterfeiting?*

I do not believe that we necessarily need new trade agreements to address counterfeiting that compromises product safety, so much as we need a different emphasis in enforcement of our existing trade agreements. Out trade officials have put immense effort into trying to persuade foreign governments to stop counterfeiting of CDs. We need equal or more zeal applied to preventing counterfeiting that threatens consumer safety, from electrical product certifications to toothpaste (one of the toothpaste products that contained antifreeze had a Colgate logo that the company said was counterfeit, for example).

3) *Ms. Halloran, you suggest that we should consider funding inspections of foreign production facilities with user fees, even though we fund domestic inspections from general revenues. Putting aside potential trade concerns, can you explain what you have in mind? Would you impose a user fee to fund all foreign inspections, or would it be case-by-case, industry-by-industry?*

We support user fees to fund inspections of imported food, although we would also support funding from general revenues. However, we believe it is appropriate to impose user fees at the border because such products impose special problems and risks. Inspection and certification of production facilities may be valuable as well. We support case-by-case imposition of fees as long as the fees are mandatory for all importers in an industry and the fees go into a general fund to support the program.

Senator Hatch's Questions

1) *Ms. Halloran, I saw that your group started a new website to share information on product safety. As I understand it, your website will post consumer experiences, good and bad, on the site. I believe that educating the public about product safety is a laudable effort. At the same time, the quality of information is equally as important as the quantity. Is Consumers Union planning to check the veracity of consumer complaints that will appear on your website? If not, isn't Consumers Union implicitly endorsing the complaints by hosting them on your website?*

Don't you have an obligation to ensure the information is correct? Isn't misinformation worse than no information at all?

Currently, we are not yet publishing personal stories received from individual consumers through our "Share Your Story" service on the www.NotInMyCart.org website. Prior to publication on this website, we will fact check the stories. If they do not meet our rigorous fact-checking standards, then the comments will not be posted on the www.NotInMyCart.org website.

2) *Ms. Halloran, you have suggested that there should be increased inspections at the port to improve product safety. However, is it not true that once a product is at the port, it's already too late to* ***improve*** *product safety?*

Wouldn't it be more effective to work with private industry to ensure that safety is designed and built into products as they are made?

We do not think Congress or the public should be asked to choose between working to ensure safety is designed and built into products, and increased inspections at the ports. Both approaches are important and necessary. For beef imports, we already have a relatively good system where we use both approaches. USDA reviews an importing country's beef safety system to see if it is as good as ours, and approves specific facilities to export to us. Then, in addition, it inspects incoming beef at a limited number of designated ports at a rate of about 10%. We should require a similar approach for farmed fish.

For consumer products, we should urge industry to improve their quality control, urge exporting countries to improve their safety standards and enforcement, mandate independent third-party certification that products meet U.S. standards, and greatly increase inspection at the borders. U.S. retailers should also verify the safety of products that they put on their shelves. We may need U.S. officials to travel to other countries to inspect production facilities. With 80% of our toys coming from China, and huge increases in imports of all kinds of consumer products, we need a multi-pronged approach, with many reinforcing measures, to restore safety to the marketplace.

I hope these answers are helpful to the Committee. Please let me know if I there is any other information that I can provide.

Sincerely,

Jean Halloran
Director of Food Policy Initiatives

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Testimony of the

Retail Industry Leaders Association (RILA)

before the

United States Senate
Committee on Finance

Hearing on

"Growing Trade, Growing Vigilance, Import Health and Safety Today and Tomorrow"

October 18, 2007

Good morning Chairman Baucus, Ranking Member Grassley, and Members of the Committee.

My name is Sandy Kennedy, and I am the President of the Retail Industry Leaders Association, or RILA. RILA represents the largest and fastest growing companies in the retail industry. Together, RILA's members account for more than $1.5 trillion in annual sales, and provide millions of jobs and operate more than 100,000 stores and distribution centers domestically and abroad.

I appreciate this opportunity to highlight the steps that our members are taking to protect consumers by ensuring product safety and integrity all along the supply chain, and to provide recommendations on policies to improve product safety. Retailers place the highest priority on the safety and quality of the products they sell to their customers, regardless of whether the products are produced domestically or abroad.

Retailer Efforts to Assure Safe Products

RILA believes that ensuring product safety is a shared responsibility between and among manufacturers, retailers, the U.S. government, and other governments. Implementation and verification of product safety protocols are rightly the roles of private industry. Manufacturers are the first line of defense, and they must be diligent in designing and building safety into the products they make. Retailers work with their suppliers to ensure safety standards are implemented through contracts and specifications. Congress and the Administration can help by establishing clear guidelines and regulations that facilitate product safety, and they can provide important oversight and inspections to ensure that such regulations are met.

In the private sector, retailers' first line of defense is the vigorous quality assurance requirements and enforcement mechanisms that they set for their suppliers that manufacture goods for their stores.

Optimally, retailers seek to identify and remedy any product safety problems long before the product enters the supply chain or reaches U.S. stores. Therefore, RILA believes the critical point in the supply chain where product safety compliance efforts should be focused is at the point of design and manufacture. Safety must be built into products as they are made, whether that is overseas, or here at home.

To assure product safety, many RILA members require their suppliers and manufacturers – through contracts and product specifications – to:

- Understand and adhere to U.S. government standards and regulations for the particular products they produce. Many of our members' specifications actually exceed U.S. government standards for product safety;
- Operate secure factory environments, and rely on known and approved subcontractors to produce safe, quality products;
- Maintain and document production processes that conform to U.S. safety standards beginning at the design phase and continuing through completion of the finished product; and

- Open their factories and production processes to periodic and sometimes unannounced quality and safety audits.

Individual member companies have taken even further steps to ensure greater accountability from manufacturers in light of several recent high-profile product recalls.

Because no two RILA members sell exactly the same merchandise, they each have slightly different protocols and procedures for evaluating the safety and integrity of supplier operations, as well as the safety of products on their shelves. In light of recent incidents, many of our members have taken the following steps to ensure supplier compliance:

- Enhanced product testing;
    - For example, some retailers are now requiring testing and verification of safety compliance for all toys, regardless of the manufacturer. Others are implementing more rigorous protocols to confirm the safety of toys through multi-layered testing and documentation.
- Reviewed their internal policies and procedures for product testing, supplier compliance and the sanctions for noncompliant suppliers and manufacturers; and
- Joined with other allies seeking better government standards and guidelines for product safety, with a particular focus on products manufactured for children.

Retailer Efforts to Assure Food Safety

Food safety is also a high priority for retailers. RILA members use a multi-layer approach to assure the highest food quality and safety. Individual RILA members require their suppliers to:

- Adhere to USDA, FDA and other applicable government standards for food products sold in the United States.
- Hold an independent, accredited factory certification based on internationally recognized standards and undergo periodic certification audits to maintain approved supplier status;
- Proactively undertake due diligence to assure the safety of all products and materials used in products; and
- Submit product samples for independent testing for compliance with chemical, physical, microbiological, nutritional, shelf life, safety, labeling, and packaging standards.
    - Such tests are conducted on preliminary samples as well as samples pulled from actual lots to be shipped to stores.

Retailer Actions in the Event of a Recall

While most product safety issues are identified early in the process, RILA members are prepared to take action in the event of a product recall. RILA members proactively monitor and research recalls and U.S. regulatory agency alerts to keep apprised of product safety issues, and take action if needed. In fact, some retailers have an entire department devoted solely to this effort. When a product is recalled – either at the insistence of the government or a supplier – retailers take action:

- To immediately remove the product or products from the stream of commerce, and properly dispose of them so that they are not resold;
- To notify purchasers, when possible, that they should return the product for a refund or replacement;
- To ensure that retailer inventory systems produce an error message at the point of sale if such products reach check-out cash registers, preventing recalled products from being inadvertently sold to consumers; and
- After implementing a recall, RILA members review their suppliers' testing protocols to minimize the potential for future problems, and take appropriate action, or levy sanctions, as needed.

Policies to Improve Import Safety

RILA welcomes the opportunity to provide comments on ways to improve import safety. As the title of this hearing recognizes, trade is growing—and at an unprecedented rate. Last year, nearly $2 trillion of imported goods entered the United States, and some experts predict that trade volumes could triple by 2015. This expansion of trade has allowed retailers to provide their customers with a wider variety of goods at affordable prices.

Retailers expect high standards on product safety from their suppliers, regardless of whether the products are produced domestically or abroad. On that note, RILA believes that product safety standards should apply equally to all products, and that product safety should not be used as the pretext for erecting trade barriers that apply to goods imported from one country or one region.

With respect to products imported into the United States, the federal government has two important mandates – trade facilitation – to promote the exchange of goods in international commerce – and trade enforcement – to ensure that all actors adhere to internationally recognized trade rules.

RILA believes that U.S. Government trade policies should advance these two goals by emphasizing collaborative programs with importers that facilitate legitimate trade while focusing enforcement efforts on those who attempt to evade U.S. safety standards.

RILA welcomes the Interagency Working Group on Import Safety's innovative approach to the issue of import safety by characterizing the flow of commerce as a life-cycle "video," where risks are identified and mitigated throughout the supply chain, rather than focusing on the port of

entry. Design and manufacture are the most effective points in the supply chain to ensure product safety, and a retailer's primary goal on product safety is to identify and remedy any problems long before a product enters the supply chain and reaches U.S. stores.

Furthermore, public-private partnerships such as those forged through the Customs-Trade Partnership Against Terrorism (C-TPAT) program can serve as an effective model to achieve the shared product safety goals of U.S. Government and industry. At the same time, I caution the committee against expanding C-TPAT to address product safety because that program may not be the best way to ensure stronger product safety. For example, C-TPAT focuses on the physical security of the supply chain and the container, not an individual product. Moreover, the fundamental focus of product safety should be to ensure that safety is designed and built into a product. This objective would be difficult to achieve through C-TPAT.

RILA also offers some more specific policy recommendations that are not necessarily within the jurisdiction of the Finance Committee, but which we believe would greatly improve product safety.

- RILA supports increased federal funding for the Consumer Product Safety Commission (CPSC);
- RILA supports swift, mandatory recall authority for the CPSC, and a legal prohibition against knowingly selling a recalled product;
- RILA supports federal legislation to promulgate the lead standards for all types of jewelry, similar to those enacted under California law;
- RILA supports a requirement to provide tracking information on products to enhance traceability for children's products; and
- RILA also supports a requirement that private safety testing laboratories be credentialed by an independent third party such as the American National Standards Institute (ANSI) or the International Organization for Standardization (ISO). Such an accreditation would give the U.S. Government and consumers confidence that private testing is effective and objective, and it would complement government testing efforts.

Conclusion

RILA appreciates the opportunity to provide comments to the Committee as it considers ways to improve import safety. RILA stands ready to work with Congress and the Administration to enact policies that strengthen consumer confidence and advance the production of safe, high-quality products that are affordable and readily available for consumers.

Thank you for the opportunity to testify today.

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October 30, 2007

Dear Chairman Baucus,

Thank you for the opportunity to testify before your committee on steps that retailers are taking to protect consumers by ensuring product safety and integrity all along the supply chain, and to provide recommendations on policies to improve product safety. Below please find the answers from the Retail Industry Leaders Association (RILA) in response to Member questions for the record from Committee on Finance October 18, 2007 hearing on import safety.

BAUCUS QUESTIONS ON METRICS TO MEASURE IMPORT SAFETY

We are actively working with member companies to identify the best metrics to measure improvements in product safety. We will provide you with such suggestions by December 18.

GRASSLEY QUESTIONS

Ms. Kennedy, your testimony focused on what manufacturers, retailers and the U.S. government can do to ensure the safety of our imports.

In your view, what's the role of foreign governments in this process? What should we expect from our trading partners to ensure the safety of their exports to the United States?

Foreign governments should be expected to enforce their domestic law and enforce their obligations in trade agreements. The United States Government and foreign governments should also work together to weed out actors who actively seek to circumvent product safety standards. At the same time, manufacturers and the U.S. government have the primary responsibility to monitor and enforce safety standards among products that enter the United States. Finally, retailers must hold their suppliers accountable if they defy products safety terms in their contracts.

Ms. Kennedy, if you had to prioritize what your membership is looking for in terms of working with our government agencies to ensure the safety of imports into the

United States, what would their priorities be? How can that relationship be improved?

RILA believes that any future product safety regime should be one that continues and builds upon the collaboration that currently exists, and that a public/private partnership on product safety is critical. No one party can ensure product safety alone, and our goals are the same in this regard. There is no higher priority to RILA members than ensuring the products we sell are safe. We'd like to see better collaboration between and among government agencies and private industry through the full implementation of programs such as the International Trade Data System.

We also welcome more resources for the Consumer Product Safety Commission (CPSC) to accelerate the timeline for recalls to be announced and to better disseminate information to the public.

HATCH QUESTION

Ms. Kennedy, can you describe what steps retailers have in place to ensure that the products they sell are safe?

Retailers place the highest priority on the safety and quality of the products they sell to their customers, regardless of whether the products are produced domestically or abroad. Manufacturers are the first line of defense, and they must be diligent in designing and building safety into the products they make. Retailers work with their suppliers to ensure safety standards are implemented through contracts and specifications as well as vigorous quality assurance requirements and enforcement mechanisms. Optimally, retailers seek to identify and remedy any product safety problems long before the product enters the supply chain or reaches U.S. stores.

To assure product safety, many RILA members require their suppliers and manufacturers – through contracts and product specifications – to:

- Understand and adhere to U.S. government standards and regulations for the particular products they produce. Many of our members' specifications actually exceed U.S. government standards for product safety;
- Operate secure factory environments, and rely on known and approved subcontractors to produce safe, quality products;

- Maintain and document production processes that conform to U.S. safety standards beginning at the design phase and continuing through completion of the finished product; and

- Open their factories and production processes to periodic and sometimes unannounced quality and safety audits.

Individual member companies have taken even further steps to ensure greater accountability from manufacturers in light of several recent high-profile product recalls. In light of recent incidents, many of our members have taken the following steps to ensure supplier compliance:

- Enhanced product testing;
    - For example, some retailers are now requiring testing and verification of safety compliance for all toys, regardless of the manufacturer. Others are implementing more rigorous protocols to confirm the safety of toys through multi-layered testing and documentation.

- Reviewed their internal policies and procedures for product testing, supplier compliance and the sanctions for noncompliant suppliers and manufacturers; and

- Joined with other allies seeking better government standards and guidelines for product safety, with a particular focus on products manufactured for children.

Sincerely,

Sandra L. Kennedy

Sandra L. Kennedy
President

Statement of Senator Ken Salazar
Senate Finance Committee Hearing
"Growing Trade, Growing Vigilance:
Import Health and Safety Today and Tomorrow"
October 18, 2007

Thank you, Chairman Baucus and Ranking Member Grassley, for holding this morning's hearing on the safety of the products we import into the U.S.

Over the past few decades, we have witnessed a remarkable expansion in both the U.S. and the global economy. The technological revolution that has driven much of that expansion has helped the world economy become exponentially more interconnected by lowering economic barriers between nations and different regions of the world.

These forces have combined to provide Americans and their families with access to a wide array of products and services from all over the world. The products we use are cheaper and better today than they were a generation ago, and they have raised our standard of living by leaps and bounds.

Here in the Finance Committee we work hard to improve even further on this economic dynamism by lowering trade barriers that remain between nations through free trade agreements and commercial dialogues with our trading partners.

However, in the desire to bring cheaper, better, and more efficient products into our nation and into our homes, and to expand opportunities for American businesses and our economy as a whole, we must not overlook the dangers that arise when we import products from countries whose safety and quality standards may be different from our own.

This past summer, I was deeply troubled by reports that a rash of products imported into the U.S. from China were deemed to be unsafe for our families. Toothpaste, pet food, tires, children's toys – these are products found in almost every American household. Because they have become such a fundamental part of our daily lives, we take for granted that they are safe for us and for our loved ones to use.

And it is not only China – in 2006, the U.S. rejected large numbers of food shipments from Mexico, India, the Dominican Republic, Indonesia, Vietnam, Japan, and Italy, among others. We owe it to our constituents to do everything we can to prevent unsafe products from entering our borders, and worse, their homes.

This morning's hearing provides us with an opportunity to air some of the concerns that have arisen recently around the issue of import safety. We must also examine whether the mechanisms we currently have in place are adequate to ensure the safety of the products we import, or whether there are deeper economic factors that may have helped to cause us to let our guard down, and that we need to address.

I would like to thank today's witnesses for appearing before the Committee this morning and look forward to hearing their views on this important matter.

Thank you.

COMMUNICATIONS

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October 31, 2007

The Honorable Max Baucus
Chairman
Finance Committee
U.S. Senate
Washington, DC 20510

Reference: Comments from Michael Payne, Executive Director
International Association of Airport Duty Free Stores
For the Record of the October 18, 2007 hearing entitled:
"Growing Trade, Growing Vigilance: Import Health and Safety Today and Tomorrow"

Dear Chairman Baucus:

The International Association of Airport Duty Free Stores is pleased to submit these comments for the record of your October 18, 2007 hearing on Import Health and Safety.

IAADFS represents operators of airport duty free stores. Our members import a narrow range of products for sale duty-free to travelers exiting the United States. Strict government regulations apply to our operations to ensure that *only* ticketed passengers traveling to a foreign destination may purchase products in a duty free store. As a further precaution, items purchased in a duty free store cannot be carried out of the store by the traveler, but instead must be delivered directly to the departing aircraft at a point of no return. As such, the products never enter the stream of US commerce.

As the Committee exercises its jurisdiction over the serious issue of import product safety, we encourage you to remain aware of its impact on the import process, including the very unique environment of airport duty free stores. Legislation should reflect the fact that:

* Products sold in a duty-free store never enter US commerce. The products are imported, held in a highly regulated customs bonded warehouse that is subject to stringent security standards, and sold only to passengers leaving the US, as described above.

* The duty-free industry was subject to rigorous security and accounting procedures long before the nation became concerned about terrorist threats or unsafe products. These procedures were established initially to protect the

revenue of the US Treasury, but now serve to assure protection against security or safety concerns, as well. The government recognized the need to facilitate personal purchases by individual travelers crossing international boundaries. Therefore, the law creates the framework for US duty-free stores to sell imported products duty- and tax-free to these individual travelers leaving US soil. However, in return, virtually every aspect of a duty free store's operation – from import to export – is subject to the highest regulatory requirements to make certain these products do not enter US commerce but are sold for export only.

* Products sold in duty fee stores are low-risk products. They tend to be high-end luxury items. The range of food products is very narrow and includes items such as expensive chocolates or gourmet packaged food. The supply chain is also very secure, with CBP regulating and overseeing each movement within the US.

With the volume of imports at an all-time high, it does not make sense to devote scarce FDA or other agency resources to this highly regulated niche of low-risk, imported products that never enter the stream of US commerce. We therefore urge the committee to apply any new import safety rules to products "*imported for consumption in the US*".

Similarly, any product safety legislation should also provide a narrow exclusion for products brought back to the US by returning citizens and US residents under the personal use allowances (Chapter 98 of the Harmonized Tariff System). There would be no purpose served by subjecting individual Americans bringing back small personal use quantities, purchased during their travels overseas, to the fees, rules, restrictions and penalties that may apply to commercial importers.

Thank you for the opportunity to submit these comments and please let me know if you require additional information and/or have any questions.

Sincerely,

Michael Payne
Executive Director

NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA

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October 31, 2007

The Honorable Max Baucus
Chairman, Committee on Finance
U.S. Senate
Washington, D.C. 20510

Reference: Comments of Mary Jo Muoio, President
National Customs Brokers and Forwarders Association
For the Record of the October 18, 2007 hearing entitled:
"Growing Trade, Growing Vigilance: Import Health and Safety Today and Tomorrow"

Dear Chairman Baucus:

The National Customs Brokers and Forwarders Association (NCBFAA) welcomes the opportunity to submit comments for the record of your October 18, 2007 hearing on import health and safety.

The Committee's attention is rightly focused on ways to strengthen the safety of products imported into the United States. The Finance Committee has an important role to play in the search for a solution. This is an issue with profound implications on both the import process and international trade policy – matters over which Finance has primary jurisdiction and where the Committee's expertise is imperative.

Any legislation in this area must above all be guided by a sharp realism – a recognition that we live in a global economy. The world's food supply is our food supply and vice versa. It will only compound the problem to look at the issue in a fragmented, narrow way that focuses on inspection at the border as the primary solution.

Finding effective answers requires a clear understanding of the supply chain – of the diverse and complex transactions that accompany the flow of goods. It demands refined systems and programs grounded in the reality of today's port environment, where up to 20,000 containers can arrive at the largest US ports every day. Without this, we will end up with elaborate solutions that make us feel good but will not ensure the safety of imported products, or simplistic answers that become a blunt and ineffective instrument that disrupts this vital segment of our economy.

Members of the NCBFAA are in a unique position to offer insights into this process. As customs brokers, we serve as the interface between the importing public and CBP, FDA and other government agencies, facilitating the entry of goods and complying with government rules. Beyond the traditional role of interaction with the various government agencies, we also have insight into the various supply chain processes from start to finish. It is from this perspective that we offer the following recommendations.

Targeted Risk Assessment: Any redesign of the government's inspection program *must* rely on modern risk assessment procedures, where critical data about shipments, suppliers, importers and processors is analyzed and manipulated to better target an agency's resources to identify high risk imports. This should be at the heart of a reengineered FDA food inspection program, as well as any other agency's imported product safety program.

A point that seems to be lost in many discussions of the issue: the tools to conduct robust targeting are close at hand. CBP's Automated Commercial Environment (ACE) -- a state of the art system with sophisticated targeting capabilities -- is nearing completion. ACE is the centralized access point that will connect CBP, the trade community and other government agencies. It represents an unprecedented integration of vital information that can be accessed in real-time by other agencies to improve its import regulatory responsibilities.

In addition, the International Trade Data System (ITDS), an interagency system, assists agencies involved in border transactions to identify and execute their plan to leverage ACE for their own agency's needs. The ITDS vision is for a "single window" that will reduce redundant information collection, provide a seamless automated approach to border enforcement, and greatly facilitate the efficient flow of information between and among federal agencies at the border.

As the Committee looks to improve and promote the safety of imported products, it should ensure that ACE and ITDS are integral components of the overall strategy. At the same time, every agency involved in the import process must make certain that their own automated systems are not only capable of data interchange with ITDS and ACE, but also have the capacity to do the job once its gained access to the critical ACE data. For example, it is our experience that FDA's automated system – OASIS – is largely outdated and very limited. The focus, therefore, should be squarely on enhancing each agency's automation capabilities, harmonizing data interchange and utilizing ITDS to gain real-time access to ACE.

In addition to improving the technological capability through automation, the core agency processes must also be analyzed to make the best use of all available resources. Congress must insist that any process changes within the agencies incorporate input from all stakeholders. An efficient and effective food safety program must incorporate and leverage private sector resources.

Agency Resources: While technology is the cornerstone of this effort, there must be a corresponding emphasis on enhancing resources to put more people "on the ground." We do not live in a virtual world and there must be real people in the field and at the computers 24/7 to make this work. Without the critical human component, technology is a lifeless tool that can only go so far. The addition of human resources must also take into account the present and future supply chain needs. Any food safety program must provide the right resources, at the right positions, at the right time to avoid disruption in the orderly flow of commerce.

Enforcement: Many are proposing additional authority and increased penalties to punish bad actors. We all agree that anyone responsible for negligently introducing contaminated food or any other unsafe product into the US market should have the book thrown at them. For the culprits, penalties should be severe. At the same time, however, we must caution Congress against an overly broad application of these new harsh penalties. The penalty structure should clearly differentiate between those truly responsible for an unsafe product versus those who are simply present in the supply chain with no knowledge or control over the contents of a container.

Penalties should also differentiate between adulterated foods that are not injurious to public health and can be brought into compliance versus products introduced knowingly or negligently that *are* harmful to public health. For example, a can of peaches with pit fragments may be considered "adulterated," yet FDA may allow it to be relabeled or otherwise reconditioned to meet FDA standards. This should not be in the same penalty category as toothpaste containing a poisonous chemical or dried apples preserved with a carcinogenic substance.

In short, the tough new penalty provisions should be narrowly focused, so that it is the bad actors with the bad products who are punished and not other participants in the import process with neither knowledge nor control over the contents of a shipment.

Certification of Foreign Food Facilities: Many of the legislative solutions introduced in Congress calls for certification of foreign food facilities that send their products to the US, unless the facility is located in a country that has been certified as having a food safety regulatory framework equivalent to the US. We urge the Committee to resist any such proposals as a means to ensure food or other product safety. When you consider that our own US food producers often go 15 to 20 years between inspections, it defies common sense to expect the FDA or any agency to provide any meaningful certification of millions of food producers around the globe.

Nor is certification of a foreign facility the most efficient approach to individual product safety. A facility changes its product structure and processing procedures over time. An alternative approach would be to enhance and increase the use and enforcement of the "Hazard Analysis and Critical Control Point" (HACCP) now being used by the FDA. This program was developed for the NASA Space Program food protection and is very effective if followed. This program places the responsibility for quality and standards on the manufacturer, producer and grower without physical foreign intervention by FDA.

* * * *

NCBFAA appreciates this opportunity to comment on import health and safety.

Sincerely,

Mary Jo Muoio
President

U.S. SENATE COMMITTEE ON FINANCE
HEARING

"GROWING TRADE, GROWING VIGILENCE: IMPORT HEALTH AND SAFETY TODAY AND TOMORROW"

COMMENTS OF THE NATIONAL RETAIL FEDERATION

OCTOBER 24, 2007

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On behalf of the U.S. retail industry, the National Retail Federation (NRF) is pleased to provide the following comments to the U.S. Senate Committee on Finance for its hearing on import health and safety.

NRF is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.6 million U.S. retail establishments, more than 24 million employees - about one in five American workers - and 2006 sales of $4.7 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations. Retailers take the issue of product safety very seriously, particularly with respect to products intended for use by children.

Defining the Nature and Scope of the Problem

American retailers take very seriously the need to ensure that products sold to the American public, particularly those intended for use by children, meet all applicable health and safety laws and regulations. Recent, highly-publicized recalls involving toys, food, and other consumer products, such as pet food, toothpaste, and tires, demonstrate the effectiveness of our system for identifying and removing potentially dangerous products, but also reveal some shortcomings that clearly need to be addressed.

In order to craft appropriate and effective policy responses, however, it is first necessary to define the nature and scope of the problem. Unfortunately, many in the press and on Capitol Hill have mischaracterized the situation as a problem with imports generally, and imports from China specifically.

That the nature of the problem has been largely misperceived is supported by the fact that most of the big food recalls over the past 2 years have involved domestic products – *e.g.*, lettuce and spinach from California (E. coli), ground beef from Iowa (E. coli), canned chili from Georgia (botulism), peanut butter from Georgia (salmonella), vegetable booty snacks from New York (salmonella), and chicken pot pies from Missouri (salmonella).

Even with respect to consumer products, a closer examination of the facts is revealing. For example, approximately 20 million imported toys from China have been recalled. However, some of these were ultimately found not to have a problem, and over half were recalled due to design flaws, not manufacturing problems. As a rule, these products are designed in the United States and Europe, not China. For example Hasbro redesigned its Easy Bake Oven to cook with a heating element, instead of the light bulb, which had been used in the product for decades. It was manufactured in

China according to Hasbro's specifications, but recalled after the heating element burned several children. Also, a number of other toys (e.g., Mattel's Polly Pocket) were designed with small, very strong, ingestible magnets that posed serious safety risks for young children. Even the highly publicized recall of cribs from China involved a design, not a manufacturing flaw. Unfortunately, the U.S. press reported these stories as yet more examples of dangerous children's products imported from China.

Faced with a growing volume of such stories, U.S. consumer confidence in Chinese-made products has been seriously eroded. While the Chinese Government and manufacturers clearly must take immediate and effective steps to redress this situation, particularly with respect to lead paint on toys and other children's products, it is important to keep a few points in mind. First, China is the United States' largest trading partner. With approximately 80 percent of all imports from China into the United States consisting of consumer goods, any problem that arises is likely to be significant, but not necessarily substantial. For example, 80 percent of all toys sold in the United States are made in China. Although a recall of 20 million Chinese-made toys may seem large, it is actually a very small portion (0.07 percent) of the roughly 3.5 billion toys the United States imports each year from China.

Rather than an import or China problem, retailers more accurately view the product safety issue as a matter of effective quality control and proper supply chain management on the part of manufacturers. A lapse in either, which has clearly occurred in all of the product recall cases, can potentially result in the introduction of tainted or unsafe products into the marketplace, no matter where they originate – the United States or any other country.

In addition, retailers are also concerned that the issue of product safety is being hijacked by protectionist industries – from steel and textiles to shrimp and pistachios – all claiming that their foreign competition is producing tainted and unsafe products. Their goal is to advance their political agenda of severely restricting imports from the U.S. market, many of which are already subject to antidumping, countervailing duty or safeguards actions. These trade measures have nothing to do with the question of product safety, yet that is the current spin from those seeking to keep those measures in place. In one notable bit of hyperbole, a steel industry representative recently claimed that the United States is being "flooded" by "toxic" imports.

What Government Should Do

It is clear that certain key government regulatory agencies in the area of product health and safety have insufficient resources to do their job at the level of effectiveness expected by the American public. For example, over the past 20 years, this and previous Administrations and Congresses have reduced budget and staff of the Consumer Product Safety Commission (CPSC) by 60 percent. Congress and the President must rectify this situation and provide the CPSC, the Food and Drug

Administration, and other agencies adequate staff and financial resources. However, how those resources are generated and used must be defined and set in a constructive and effective manner.

1. Fund Enforcement through General Revenue, Not User Fees

Several pieces of legislation have proposed user fees on imported products to fund the cost of increased inspection and enforcement. Retailers strongly oppose additional fees on imports aimed at increasing inspections. It is an approach that poses several serious problems.

First, such user fees unfairly imply that U.S. importers are a root cause of the problem, and therefore should bear the financial costs of additional government enforcement. As we have seen, however, the issue is not one limited to imported products.

Second, regulation is a fundamental task of government, the benefit of which accrues to the American public as a whole. Therefore, the costs associated with that responsibility should be funded through general revenue, not through tax increases in the form of "user fees" levied on one segment of the public – in this case, importers.

Third, the burden of user fees will fall most heavily on small businesses, and may even erode their profit margin to the point that they can no longer stay in business. This point is particularly true for those U.S.-based companies importing commodity products as critical inputs that are subject to a world market price. Under such circumstances, an added cost of this sort could effectively price them out of the market.

Finally, a tax on imports of this sort would violate several obligations that the U.S. has under the rules of the World Trade Organization (WTO). Those rules specify that a fee imposed on imports must approximate the cost of a service rendered to the person paying the fee and may not constitute a tax on imports for fiscal purposes.[1] As stated above, the "benefit" of enforcement falls to the public as a whole, not the importer, and would be imposed for fiscal purposes – *i.e.*, to offset the general cost of regulatory enforcement. Moreover, the fee would be assessed on all imports, even those not receiving the "benefit" of an inspection or other enforcement action. WTO rules also prohibit discriminatory treatment against imported products as opposed to domestic products, which would not be subjected to the fee.[2] In addition, to the extent the fee is assessed against importers on a tariff-line basis, it would be viewed as an import tariff that would violate U.S. tariff bindings in the WTO.[3]

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[1] General Agreement on Tariffs and Trade (GATT), Art. VIII (1)(a).
[2] GATT Art. III (2).
[3] GATT Art. II (1).

2. Reject Requiring Import Bonds

Retailers also strongly oppose legislative proposals to require that importers post import bonds to cover the costs of any product recalls or inspections. Requiring import bonds to cover the costs of a recall is simply not necessary when any problem of this sort can be addressed more simply, effectively, and at a lower cost through the private insurance market. In addition, these issues will be addressed when the recall is being negotiated with the CPSC.

This proposal would also violate WTO rules in that it would apply only to imported, but not domestic products.

3. Better Coordination Among Agencies

It is also imperative that regulatory agencies find ways to work together more effectively and efficiently. One proposal that the retail industry strongly supports is for agencies to participate in the International Trade Data System (ITDS), which is being developed by U.S. Customs and Border Protection (CBP) as a front end system to the Automated Commercial Environment (ACE). Participation in ITDS will allow agencies to share key import information that CBP already collects. It will facilitate enforcement efforts, enhance risk based targeting, make the system more efficient, and allow importers to file all necessary information once, rather than multiple times.

Retailers also support efforts to make our enforcement system more efficient, by streamlining the overlapping and redundant jurisdictions of government enforcement agencies, particularly in the area of food health and safety.

4. Work Cooperatively with Business

The retail industry supports the premise that the challenge of ensuring food and product safety is not one that we can simply "inspect" our way through. Government action must, by necessity, be complemented and supported by the business community.

Anyone who is serious about addressing this challenge effectively should reject proposals that create an adversarial "gotcha" environment between government and the private sector.

A more effective approach is for government to foster a cooperative relationship with business to develop procedures that will minimize the possibility of problems arising in the first place. An excellent example of government and business working together to address a similar problem is the Customs-Trade Partnership Against Terrorism (C-TPAT), which is designed to prevent the company supply chains from being compromised and exploited by terrorist organizations. We believe C-TPAT can

serve as a model for an effective public-private initiative to address product safety as well.

5. Expand Ban of Lead in Children's Products

Retailers also support broadening the prohibition of lead from children's products provided that certain questions are addressed. These include how to deal with products that may contain only trace amounts of lead, and whether a uniform and agreed-upon testing methodology can be developed. A uniform standard should preferably be global, developed, for example, at the World Health Organization (WHO) or other international standards-setting bodies.

The CPSC should have the authority to participate in the development of those standards, and should provide both guidance to business while the standard is under development as well as an opportunity for input from the public.

6. Adopt a Targeted, Risk–Based Inspection and Recall System

Retailers oppose legislation that would mandate an arbitrary increase in random inspections of imports for health and safety. Evidence consistently proves the ineffectiveness of enforcement based on random inspections, which is also a very inefficient use of resources. Instead, the retail industry supports a smarter, more effective inspection system that is both risk-based and science-based. This system would target shipments that are deemed to be higher risk for increased scrutiny. It would also ensure that product recalls are based upon scientific evidence of a risk to health and safety, and not, as has occurred in the past, on political pressure or concern primarily over media exposure.

7. Expanded Recall Authority

Retailers support expanded recall authority and improvements in rulemaking authority, especially within CPSC. We believe improving the rulemaking process, including allowing for a "fast-tracking" of rules will benefit both the agency as well as retailers and the American public.

8. Increased Penalties

The retail industry has no objection to increasing penalties as long as guidelines are clear cut. For example, a retailer should not be imputed to have knowledge about whether a product it is selling does not conform to health and safety requirements. This point is especially important when, despite having safety and quality control systems in place, a private label retailer is the subject of fraud or other criminal behavior by the manufacturer.

Civil penalties should be assessed only against repeated violations. Criminal penalties should only be imposed when there are knowing or willful violations of product health and safety laws, such as re-importation and sale of banned or recalled products.

What Retailers Can Do

Manufacturers, importers and retailers recognize that they have a shared responsibility to ensure that the products manufactured for them meet US health and safety laws and standards. It must be recognized, however, that the burden of meeting this responsibility must fall most heavily on manufacturers, who have the most control over and closest relationship to the factories in which products are made, both in the United States and abroad.

Most retailers, particularly small ones, do not have that relationship or control with the factories and, to a large extent, depend upon the manufacturer to do the due diligence to ensure that the products they make meet all health and safety requirements as specified. In some instances, such as private labelers, the retailers will have that relationship and control. However, all retailers regardless of size can and do employ internal procedures and are looking at additional procedures to help ensure that toys and other products they sell are safe and conform to product health and safety laws and regulations. These procedures include monitoring product recall information by the CPSC and other agencies, carrying products that have manufacturer testing labels (e.g., Underwriters Laboratories), gathering comments from their customers regarding products that they can pass on to the manufacturer and government regulators, and taking swift action in the event of a recall to ensure that the problem is addressed quickly and effectively in coordination with the manufacturer and government regulatory authorities.

1. Product Testing

Even before recent toy recalls, some retailers were already engaged in their own, voluntary product testing to verify the compliance of toys and other products they are selling with health and safety requirements. While such actions are laudable, mandating that all retailers undertake such efforts on all products is inadvisable for two reasons.

First, testing and certification of a product already on a store shelf and in the stream of commerce is too late in the process to be effective, and essentially becomes a haphazard effort to find a needle in a haystack. The most effective and proper point for product testing and certification is at the point of manufacture, not the point of sale. For example, looking at automobile sales, a retail sector involving a product that has been subject to numerous recalls, the responsibility is properly placed on the automobile manufacturer, not the automobile dealer, to test and certify safety of the product, and to initiate and bear the financial responsibility for recalls. However, when a

recall occurs, the manufacturer works closely with and supports the dealer to address the problem.

The second reason not to mandate product testing by retailers is the adverse impact it would have on small businesses. For example, many small retailers sell toys and other children's products. The resources required to employ across-the-board testing and certification measures are simply beyond their means. Requiring that they undertake such expense could likely drive some out of business.

2. Limited Ports of Entry

Retailers oppose efforts to limit the importation of food products to a limited number of ports of entry. We would encourage Congress to ensure that agencies such as FDA and CPSC are fully funded as to have the appropriate number of inspectors at all ports of entry where they are needed. Limiting ports of entry would cause significant disruptions and congestion at U.S. seaports and would severely impact retailers' supply chains, as well as those ports and port workers who rely on those imports entering their port. Retailers have opened distribution centers across the U.S. as an effort to maximize supply chain efficiency. Limiting the number of ports through which certain products would have to enter the United States is not a viable or appropriate action to ensure product safety.

3. Third Party Testing/Certification Requirements

Retailers are supportive of third party testing and certification requirements. Many retailers already have such programs in place to ensure the safety of their products. However, we do have some concerns with legislation that calls for independent testing or certification. Who would be responsible for creating the standards or ensuring that the independent certification companies are properly certified? The CPSC does not have the ability to develop such programs at current funding levels. In addition, such programs should take into account the current testing and certification that is already conducted. The focus should be on the "high risk" items and leverage programs that are currently being used. Also, with the exception of those producing private label merchandise, manufacturers, not retailers, should bear the expense of third-party testing and labeling.

4. Increased State Attorney General Authority

Retailers are concerned with efforts to grant state Attorney Generals increased authority for product recalls. We believe that State AGs have an important role to play in enforcing product recalls. However, we believe that they should take direction and act only when directed by the appropriate federal agency, such as the CPSC or FDA. We are concerned with efforts that would grant the State AGs expanded authority to act on their own could result in the states enforcing different interpretations of judgments or

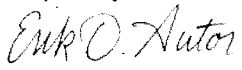
potentially trying to enforce their own recalls which conflict with federal direction or even other states. Under these circumstances, a situation where one State AG decides himself that a product is dangerous and brings action against a retailer even though the federal government has given no such direction and no other state has decided that such action is warranted. State AGs should act as the enforcement arm for the federal agencies when a nation-wide recall is required.

5. Labeling

Retailers support efforts to include labels on consumer products to enhance traceability. Many retailers already require such labels, but including information such as date and batch number will help both consumers and retailers identify affected products when a recall does occur.

NRF appreciates the opportunity to comment on these important issues and is available to answer any questions the committee may have.

Respectfully submitted,



Erik O. Autor
Vice President, Int'l Trade Counsel
National Retail Federation

Testimony of Underwriters Laboratories Inc.

Growing Trade, Growing Vigilance: Import Health and Safety Today and Tomorrow

Committee on Finance
United States Senate
October 18, 2007

Statement of

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Underwriters Laboratories Inc. (UL) is pleased to submit testimony for consideration by the Committee on Finance of the United States Senate. This statement on import safety issues addresses the important role government authorities, including US Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), play in identifying dangerous and noncompliant products at US borders, seizing products, and bringing perpetrators to justice. UL has worked closely with CBP and ICE for more than a decade to identify and seize products bearing the UL Mark and also prosecute offenders to the fullest extent of the law; our experiences working to seize and destroy counterfeit products have shaped the recommendations found in this testimony. UL is pleased to see increased attention being given to product safety in the United States, and believes that US government support in this area will help focus attention on identifying root causes of safety hazards recently associated with certain imports, in addition to crafting proper solutions. The remarks below highlight current product safety challenges and their interaction with standards development and certification issues. It is UL's hope that the committee will strongly consider the recommendations of this submission.

I. Underwriters Laboratories in Brief

Underwriters Laboratories (UL) Inc. is an independent, not-for-profit product safety certification organization that has been testing products and writing safety standards for more than a century. It was founded in 1894 with a mission of testing for public safety, as defined by its Articles of Incorporation, and strives to ensure that public health and safety is protected through its standards development activities and product conformity assessment services. UL has developed and maintains more than 1000 product-based Standards for Safety, approximately 80 percent of which have achieved American National Standards (ANS) status.[1] UL is a global company, with more than 25 affiliates worldwide, serving more than 71,000 manufacturers in 104 countries. In 2006, UL evaluated over 19,000 different types of products, ranging from electrical goods to fire protection equipment, to medical devices and lasers. Food products and non-electrical toys are not among the products that UL currently tests and certifies.

The UL Anti-Counterfeiting Program

Recognizing that consumers, retailers, regulators, manufacturers and distributors look to the UL Mark to determine if products comply with relevant safety standards, UL established a team of professionals dedicated to protecting UL's intellectual property. Since 1995, UL's anti-counterfeiting team has worked with law enforcement and educated customs officials globally about how to identify legitimate UL certification Marks, as well as common elements of frequently counterfeited products.

The cost of product counterfeiting is estimated at $500 billion (USD) annually, or roughly 5 to 7 percent of global trade. Many of the counterfeit products entering the global market can directly and dramatically affect the safety of the people who use them. UL practices a zero-tolerance policy regarding counterfeit UL Marks. UL does not consent to

[1] ANS is a designation conferred by the American National Standards Institute (ANSI) upon standards submitted by ANSI-accredited Standards Development Organizations (SDO). The ANS designation is awarded after the opportunity for public review and comment, and a certification by the SDO that due process was followed in the development of the standard.

the import, export or manipulation of seized merchandise bearing a counterfeit UL Mark. When products with a counterfeit UL Mark are discovered, they are confiscated and disposed of in compliance with all applicable laws.

II. Product Safety Challenges

A. Adulterating Products After Certification

Recent import product safety incidents (e.g. food and toys) require an examination of the current US infrastructure to ensure import compliance and consumer protection. It is important to note that food and (non-electrical) toys are currently not required by any US government agency to be tested and certified by an independent laboratory in order to be sold in the US marketplace. While voluntary standards for toys have been developed by the toy industry, and are widely used today, the Consumer Product Safety Commission (CPSC) does not require that toys be tested and certified by independent laboratories. Therefore, the establishment of working programs involving third-party certification for toys and other products may be considered as a means to provide additional oversight for products that the US government deems as posing significant risks to consumers.

UL believes independent third party testing and certification of products is a proven model for mitigating potential hazards associated with manufactured products. The UL certification process is a closed-loop system, providing a "video perspective" of a product from design to distribution, rather than a mere "snap-shot." During the product investigation phase, UL engineers thoroughly test and evaluate the product to the relevant standards that apply to it. If the product complies with the relevant standards, UL will authorize the manufacturer to use the UL Mark. However, UL's engagement with the product does not end there.

UL's rigorous Follow-Up Services (FUS) program is designed to ensure ongoing compliance of products. UL will conduct an Initial Product Inspection (IPI), or first inspection, at the manufacturer's site for new manufacturers, and also for existing manufacturers when they establish product certification in a new area. Manufacturers who utilize the UL Mark also submit to unannounced factory inspections by UL representatives, where product is pulled from the manufacturing line and tested to make sure that production continues to comply with the relevant standards. As part of the inspection, UL representatives will verify that key elements of the certified product have not changed over time, and that critical components of the product are also compliant with the relevant standards.

The FUS program has been an effective tool for UL to identify and address situations where manufacturers have altered their product without notifying UL. In some cases, changes are made that may not affect the overall safety of the product. However, as the certifier, UL retains the right to evaluate product changes and make this determination if the UL Mark is to be used. In other cases, manufacturers have intentionally adulterated products after certification was issued, in order to cut production costs and maximize profits. Whether the adulteration of products is independently orchestrated by manufacturers or carried out to satisfy the demands of importers for cheaper products, the result often has a major impact on the products' compliance to relevant safety standards.

UL's FUS program is one means for identifying non-compliant and potentially dangerous products. In 2006, UL completed approximately 600,000 inspection visits in over 100 countries. UL also has a robust Field Report System, whereby UL representatives investigate any claims of noncompliance made by consumers, manufacturers, regulatory authorities and others. If UL receives notification that a product bearing the UL Mark is noncompliant or was involved with a safety incident, action is taken to identify the root cause of the concern. UL representatives will evaluate the product to determine whether the issue is the result of unintentional or intentional practices at the manufacturer's site, a flaw in the standard(s) applied to the product, misapplication or misuse of the product in the field, or some other cause. Once this evaluation is completed, UL takes steps to rectify the problem, working closely with the stakeholders involved, including the manufacturer, retailer, and regulatory authority. If necessary, UL will issue a public notice, detailing potential hazards associated with the product and any actions that are being taken to deal with them.

UL also has a proactive Market Surveillance program in place, which involves UL representatives visiting various retail outlets throughout the country each year, and searching the Internet, purchasing products bearing UL Marks and testing them to verify compliance with the appropriate requirements. UL's Market Surveillance program is an effective tool to ensure that products remain compliant when they actually reach consumers.

In some cases, UL has determined that enhanced programs are necessary to ensure compliance for certain products. In recent years, UL has implemented such programs for products such as decorative lighting strings, and flexible cords. In the case of decorative lighting strings, UL's Follow-Up Services Program over the years noted frequent incidences of noncompliance, often because such products were adulterated after certification to make them more cost effective to produce. One common adulteration is to limit the amount of expensive copper used in the wiring of the products, which causes the wire gauges to be thinner than required in the product standards, in effect posing significant fire hazards. After discovering these noncompliance trends, UL put in place a "two-strikes" policy for these products. If a manufacturer's product is found to be noncompliant two times after UL certification is issued, UL will revoke the right of that manufacturer to use the UL Mark. If UL finds that a manufacturer has willfully counterfeited, UL will withdraw certification immediately and will refuse to do business with that manufacturer ever again. It is perhaps an uncommon industry practice to fire one's customers, but UL's enhanced compliance programs are, in fact, designed to do just that if a manufacturer is not acting in good faith or is generally ineffective in maintaining production of compliant products over time.

B. Unbranded, Counterfeit Products in the US Market

Another product safety challenge, beyond products that are adulterated after they are tested and certified, is the proliferation of unbranded and counterfeit products in the US marketplace. Over the years, UL has witnessed a significant and growing problem of counterfeit goods (electrical products in particular) available for sale in the US marketplace. It is clear that counterfeiters can and will penetrate the market with poor quality, noncompliant and hazardous products that can endanger the lives and properties of US consumers.

A good example is low-cost, high-volume extension cords that can typically be purchased for under a dollar at discount stores across the country. These counterfeit products can cause significant property damage, casualties, even death. These types of counterfeit electrical cords are dangerous because to properly conduct current, an electrical cord requires wire of a certain thickness. Counterfeit extension cords have copper wiring so thin that when electrical current is applied they will eventually overheat, melt and potentially catch fire. It is worth noting that CBP vigilance and awareness has been able to determine and seize counterfeit extension cord wiring product and thousands of similar cords. Fire suppression devices, such as fire sprinklers, bearing counterfeit certification marks can also pose a severe health and safety risk to the consumer because life safety is ultimately undermined. Substandard components and shoddy manufacturing processes add to the counterfeiters' profit margin while putting American consumers at risk.

For over a decade, UL has worked-closely with US Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) to identify and seize products bearing counterfeit UL Marks and also prosecute offenders to the fullest extent of the law. Since 1995, more than 1,500 seizures of counterfeit UL products have been made by CBP, resulting in millions of counterfeit products being blocked from entry into the commercial marketplace (a routine inspection at the San Francisco International Airport by a CBP officer of five suitcases containing "undeclared" goods revealed 1500 counterfeit circuit breakers that posed a serious potential fire hazard). UL also continually conducts training for CBP and ICE at key ports of entry throughout the United States, and works closely with the Royal Canadian Mounted Police (RCMP) in Canada.

While UL's Anti-counterfeiting Program, with support from CBP, ICE, DOJ and other government and law enforcement agencies, has amassed several success stories over the years combating counterfeiting problems, additional resources for such groups is necessary in order to continue this positive track-record. With national security concerns such as terrorism stretching the resources and time of our import safety authorities, it is important for the United States to maintain its commitment to safeguarding the public from counterfeit products. UL strongly recommends strengthening CBP with additional personnel, training dollars, and stricter criminal and civil penalties for counterfeiters, especially those that counterfeit third-party certification marks. In the past, UL has observed a general decrease in the number of dedicated CBP officers at US ports, and would encourage additional staff and resources to be stationed at these ports as a deterrent to counterfeiters.

UL also supports measures that would help CBP keep pace with the sophistication of counterfeiters. This means investing in training to help CBP staff understand changing authentication technologies, and investment in equipment to readily assess the authenticity of product and certification marks. This will help CBP capture copies and look for successfully duplicated security features. UL has supported increased risk-based modeling in cargo screening for trafficking of counterfeit goods, and UL supports technology-based solutions that make CBP processes more streamlined and effective. It is important to note that technology works to the benefit of counterfeiters as well: this is why the hands-on inspection of cargo as it crosses our borders is still vitally important.

In June 2007 the Coalition Against Counterfeiting and Piracy (CACP) released a multi-faceted set of recommendations to further combat counterfeit goods. The CACP, of which UL is a member, is a broad group established to increase understanding and awareness of counterfeiting and piracy issues by working with the legislative and executive branches to drive greater government-wide efforts. In general, the CACP proposals provide for an improved strategy, new legal tools and more resources at the U.S. Department of Homeland Security and other agencies and federal entities across the spectrum to better address and respond to counterfeit and pirated goods. Beyond what has been mentioned above, as it relates to CBP and ICE, the CACP proposals call for training and deploying a new cadre of CBP enforcement officials whose primary responsibility is to protect against illegal importation and smuggling of counterfeit and pirate goods. Other recommendations include staffing and office improvements, such as increasing funding for the CBP Fines, Penalties and Forfeitures (FPF) office as well as other needed regulatory and statutory reforms to improve the collection of civil fines imposed on importers of shipments of intercepted counterfeit products. These and other recommendations will contribute to stopping counterfeit goods and to the ultimate goal of increased import product safety. UL urges the legislative adoption of these proposals. UL also supports legislation entitled the "*Intellectual Property Rights Enforcement Act*" (S. 522/H.R. 3578) introduced by Senators Bayh and Voinovich, and Representative Sherman. The legislation increases the coordination among federal agencies charged with intellectual property rights enforcement, strengthens international enforcement, and calls for the creation of a strategic plan to address intellectual property theft.

C. Products Found to be Non-Compliant with Voluntary Standards

Mandatory product safety standards exist for a variety of industries to protect the public from unsafe imports and non-compliant product that may get shipped to U.S. ports. However, recent events have shown that oftentimes products are not compliant with available US voluntary standards widely used by the industry.

The United States is unique to the world in many ways, including the fact that it relies heavily on the private sector for voluntary standards development, as well as product safety testing and certification services. Under the auspices of the 1996 National Technology Transfer and Advancement Act (NTTAA), US government agencies are encouraged to rely on voluntary consensus standards (VCS) and conformity assessment practices whenever applicable and appropriate. While our government generally has not driven the standards development process, it has been an active participant and partner. Federal, state, and local governments develop and issue procurement specifications and mandatory codes, rules, and regulations. The US system, although decentralized, effectively serves the needs of all stakeholders. It promotes comprehensive expertise by encouraging participation of all public and private technical experts. Openness, balance, consensus, and due process are the fundamental principles of the American National Standards process.

Since the private sector drives standards development in the United States, private bodies maintain ownership of the intellectual property contained in most of the standards used in the US marketplace. While this has created challenges to forming one, central repository for US-based standards, private sector standards developers have strived to make their standards readily available to users in the United States, and abroad. All UL standards are available and easily accessible on our public website. UL recently made all of its published standards available to our customers, free of charge. UL also

formalized a memorandum of understanding (MOU) structure in 2006 to provide UL standards, free of charge, to national standards bodies in developing countries, to use in their committees and also reference in their own national regulations.

UL and the US Consumer Product Safety Commission (CPSC) have long been partners in carrying out our common mission to safeguard the public from product safety hazards. With regard to cooperation between the CPSC and the CBP, UL would note the proposal offered by CPSC Acting Chairman Nord entitled the "*Product Recall Information and Safety Modernization*" (PRISM) proposal, address changes to the Commission's original authorizing act. A specific PRISM proposal would further allow CPSC to block non-complying imports into the United States. Currently, CPSC can only block entry of products when imports do not meet mandatory requirements. Under the PRISM proposal, CPSC or CBP could block entry of imports failing to comply with certain voluntary standards (upon which CPSC would formally rely). The provisions, moreover, would require the importer to post a bond sufficient to cover the cost of destroying confiscated shipments of product. UL commends this provision, as it provides added incentives for better supply chain management, and urges strengthening the cooperation between the CPSC and CBP.

III. Conclusion

CBP and ICE officers are an important line of protection in the fight against counterfeit and unsafe products. UL appreciates and applauds the dedication of CBP and ICE to protecting the American public and it is critically important to remain vigilant: while third-party certification works for many industries, and vigorous follow-up is able to catch a significant amount of non-compliant product, it is crucial that port authorities be adequately resourced, staffed and have strong tools to address counterfeit and unsafe products. CBP and ICE must be adequately supported to sustain the fight against not only terrorist activity, but also the more subtle threats of counterfeits that ultimately jeopardize and undermine the American way of life. UL would be pleased to remain a resource to the committee on this and other matters of interest. The UL Government Affairs office is located at 1850 M Street, NW Suite 1000, and may be contacted at (202) 296-7840; Vice President for Global Government Affairs Ann Weeks may also be contacted at ann.weeks@us.ul.com.

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