

TRADE DEFICIT IN FOOD SAFETY

Proposed NAFTA Expansions Replicate
Limits On U.S. Food Safety Policy That Are
Contributing To Unsafe Food Imports



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EXECUTIVE SUMMARY

Revelations of significant safety threats posed by imported foods have dramatically heightened public awareness that current policies are failing to protect consumers from exposure to dangerous – and potentially deadly – imported food and products. The recent discovery of tainted imports of pet food ingredients that sickened or killed some 39,000 animals should be a wake-up call for all Americans. A steadily increasing amount of food on U.S. dinner plates is imported. The massive growth in imports and current trade rules that limit domestic safety standards on imported products and border inspection are forcing U.S. consumers increasingly to rely on foreign governments to regulate the food and other products they will bring into their homes.

As Congress steps up action to address the threat and Democratic presidential candidates prioritize new food safety plans, proposed trade pacts now pending before Congress would replicate and lock in limits on the U.S. government's ability to ensure imported food safety. Included in proposed "Free Trade Agreements" (FTAs) with Peru, Panama, Colombia and South Korea are limits on what safety standards the United States can require for imported foods and how much inspection is permitted. U.S. laws that extend beyond the FTAs' limits that have the effect of limiting access of imported food to the U.S. market are subject to challenge as "illegal trade barriers" before foreign trade tribunals.

This report, which includes new analyses of seafood import safety problems from prospective FTA countries Peru and Panama, presents the food import and safety trends that are fueling the import safety crisis:

- **Today nearly \$65 billion in food goods are imported into the United States annually – nearly double the value imported when the North American Free Trade Agreement (NAFTA) and World Trade Organization (WTO) went into effect in the mid-1990s.** Today, over 80 percent of the seafood Americans eat is imported. In the NAFTA-WTO era from 1995 to 2005, seafood imports increased 65 percent. Between 1995 and 2005, shrimp imports alone jumped 95 percent.
- **The U.S. International Trade Commission (ITC) projects that U.S. imports of Peruvian food products will increase if the proposed Peru FTA is implemented. For certain categories of food, such as beef, ITC models show that the increase could be substantial, once tariff cuts are phased in.** The ITC also notes that imports of goods could be expanded even more than their models project, due to businesses significantly ramping up their production geared for the U.S. market – an outcome consistent with the experience following implementation of past U.S. FTAs. The ITC report on Colombia makes similar projections, while ITC reports on the Panama and South Korea FTAs are not yet completed.
- **This report explains the rules incorporated into the proposed FTAs with Peru, Panama, Colombia and South Korea that limit food safety standards and border inspection.** The agreements prioritize facilitating access for imports over consumer safety – requiring the United States to rely on foreign regulatory structures and foreign safety inspectors to ensure that food imports are safe. Unfortunately, data show that many foreign regulatory systems are simply not up to the task. Passage of the pending FTAs would elevate, not lessen, the threat to the safety of the U.S. food supply. The FTAs could have been an opportunity to create a new model for enhanced food safety in trade. Instead, the agreements, if implemented as written, may well generate the next spate of news reports about problems with food products from these countries.

- **Contrary to what consumers believe, the vast majority of imported foods that end up on the dinner plates of U.S. consumers is unexamined and untested. Today, the Food and Drug Administration (FDA), estimates that it will only conduct border inspections on .6 percent of the food that it regulates (vegetables, fruit, seafood, grains, dairy and animal feed) at the border in 2007 – down from an already disconcerting eight percent prior to NAFTA and WTO. FDA data makes clear that Americans are three times more likely to be exposed to dangerous pesticide residues on imported foods than on domestic foods.** Even though FDA inspectors have only examined a tiny fraction of imports in recent years, inspectors have caught numerous dangerous substances in imports from Peru. The FDA has found illegal pesticide residues on fruits and vegetables, the parasite cryptosporidium in salad vegetables and basil, unknown and unapproved drugs and capsules (including filthy and unapproved shark cartilage capsules and unapproved cats claw capsules), *Listeria* in avocados, and unsafe color additives in chocolate bon bons and soft drinks. Similarly, they have caught dangerous products from Panama.
- **Only 11 percent of beef, pork and chicken imported so far in 2007 has been inspected at the border by the U.S. Department of Agriculture (USDA).**
- **While over 80 percent of seafood eaten by Americans is now imported, in 2006, the FDA was able to inspect only 1.93 percent of total seafood imports.** The vast majority of these inspections were visual. For 2006 only .16 percent of the 859,357 shipments of seafood were refused entry into the United States. The estimated annual incidence of infection with *Vibrio*, a diarrheal disease associated with seafood, increased 78 percent from 1996 to 2006, according to the Centers for Disease Control (CDC). *Vibrio* is associated with eating oysters, which are imported increasingly into the United States from South Korea, Colombia, Peru and other nations.
- **Of particular concern regarding the Peru, Panama and Colombia agreements is the anticipated increase in seafood imports. Peru, Panama and Colombia are three of the world's top 20 exporters of shrimp to the U.S. market.¹ New analysis of government data obtained by Food & Water Watch under a Freedom of Information Act Request shows that FDA inspectors have rejected seafood from Peru and Panama for numerous reasons including filth, adulteration, misbranding and the presence of various dangerous food-borne pathogens.** Both Peru and Panama have major export fishing sectors. Peru's marine and inland capture fisheries production is the second highest in the world at 9.6 million tons in 2004 – second only to China.² Currently, the United States is the primary importer of all Panamanian seafood and is one of the main importers from Peru.³ The FDA's database has documented the discovery of poisonous swordfish, *Salmonella* in shrimp, dangerous histamines in Mahi Mahi and just plain filth in shipment upon shipment of dried, canned, frozen and fresh fish products from Peru. Similarly, FDA inspectors have documented problems with Panamanian seafood exports to the United States including *Listeria* in smoked salmon, *Salmonella* in shrimp and lobster tails, poisonous swordfish and shark loin, and obvious filth in dried, fresh and frozen fish. The report contains startling charts and graphs, including those that break down the reasons for rejection of Panamanian and Peruvian seafood over the past nine years.
- **While currently the four prospective FTA countries' governments have the ability to challenge U.S. food standards in government-to-government WTO disputes, the proposed FTAs would newly empower the over 10,000 food exporters currently registered from Peru, Panama, Colombia and South Korea to pursue challenges directly against U.S. food safety laws if they believe such laws undermine their FTA-granted foreign investor rights.** This is

not a speculative threat. Already under NAFTA, Canadian cattle producers have used such foreign investor private enforcement rights to demand \$235 million in compensation from the U.S. government over the U.S. temporary ban on Canadian beef imports when several Canadian cattle were initially found to be infected with mad cow disease.

- **The pending FTAs establish new committees to speed up implementation of mechanisms to facilitate trade rules, including “equivalence determinations,” that require the United States to permit imports of meat and poultry products that do not meet U.S. safety standards.** Once so-called equivalence is achieved, products to be imported into a country must only meet the standards of the exporting country – not those of the importing country. The Peru FTA specifically provides for consultations on trade in chicken and the Peruvian government is already starting to prepare for this chicken trade. Both agreements include dozens of tariff lines on cuts of beef that will permanently drop to zero when the agreements are fully implemented.
- **While many consumer products, such as Thomas the Tank Engine toys, have mandatory country-of-origin labeling, consumers are none the wiser regarding many food products because the implementation of a federal law passed in 2002 requiring country-of-origin labeling on beef, pork, lamb, fresh fruits and vegetables, seafood and peanuts has been delayed time and time again by intense industry lobbying.** Currently only prepackaged retail-ready foods, and certain non-processed seafood sold in the United States are required to have country-of-origin labeling. Hopefully, an agreement just forged by House Agriculture Committee Chair Collin Peterson (D-Minn.) will lead to country-of-origin labeling (COOL) of imported beef and other red meat. The prospects for labeling of other foods remain unclear. Meanwhile, a newly released *Consumer Reports* study says an astounding 92 percent of U.S. consumers support country-of-origin labeling.

The report concludes with tips for consumers on how to protect themselves from unsafe imported food. However, these recommendations cannot replace desperately needed reforms to U.S. trade and food safety policies – including the specific recommendations in this report.

INTRODUCTION

Revelations of significant safety threats posed by imported foods has dramatically heightened public concern and triggered a flurry of congressional action. Most recently, the FDA announced that 60 people, mostly toddlers, in 19 states were made ill after consuming a snack product called Veggie Booty.⁴ The U.S. manufacturer of the snack food claimed that *Salmonella*⁵ was found in seasoning imported from China.⁶ Also in recent weeks, the FDA was forced to crack down on farm-raised catfish, basa, shrimp, dace (related to carp), and eel from China due to the presence of residues from drugs not approved in the United States for use in farm-raised aquatic animals.⁷ Earlier this year, melamine and cyanuric acid – industrial chemicals not approved for pet foods or human consumption – were found in imported pet food ingredients from China and in the human food chain when it was fed to pork, chicken and fish.⁸ Like canaries in the coal mine of global food trade, an estimated 39,000 pets were sickened or died from this contamination.⁹ Fortunately – this time – human exposure was minimal. This frightening scenario should be a wake-up call for all Americans: the contaminated ingredients could just as easily have been destined for human consumption.

Yet, many of the reform measures now being promoted in Congress, including higher inspection rates and enhanced regulatory powers, could be challenged as “nontariff barriers to trade” under existing trade agreement rules. Further, trade rules incorporated into the Peru, Panama, Colombia and South Korea FTAs would not only replicate and lock in such limits on the U.S. government’s ability to ensure imported food safety, but establish new rights for the over 10,000 companies registered to import food from these countries to directly challenge U.S. food safety laws in foreign tribunals. This is not a speculative threat – already, under NAFTA, Canadian cattle producers have used such foreign investor private enforcement rights to demand \$235 million in compensation from the U.S. government over the U.S. temporary ban on Canadian beef imports when several Canadian cattle were initially found to be infected with mad cow disease.

Given the enormous increase in the volume of U.S. food imports, weak and/or unenforced food production safety standards in some importing countries, and minimal U.S. border inspection, the recent scandals are likely only the tip of the iceberg. Since the 1994 implementation of NAFTA and the 1995 establishment of the WTO, imports of food into the United States have doubled.¹⁰ Not surprisingly, given the trade patterns emerging after implementation of past U.S. FTAs, the U.S. ITC projects that food imports from Peru and Colombia would increase – substantially for categories of food like wheat, paddy rice and beef – if the proposed NAFTA expansions are implemented.¹¹ (The ITC has not yet completed a study of the Panama or South Korea FTAs.)

Democratic Presidential Candidates Prioritize Food Safety as a Campaign Issue

Several top tier democratic Presidential candidates have prioritized imported food safety.

Sen. John Edwards (D-N.C.): In mid-July 2007, former senator and presidential candidate Edwards unveiled his plan to protect America’s food supply: *“We have all these very public instances of problems with food products that are being imported into the United States. Now there’s nothing abstract about it. We know that there’s real risk for American consumers, particularly with products that have been imported from China. Food safety is a very serious issue for America. It’s time, I believe, that we stop giving in to big agribusiness and food importers and stop the delay in laws that can help provide for food safety.”*¹²

Sen. Hillary Clinton (D-N.Y.): In May 2007, the *New York Times* reported that Clinton was the first presidential candidate to make food safety reform part of a campaign platform.¹³ In taking U.S. food safety agencies to task for their failure to *“test, track and monitor”* food and feed materials coming from overseas, Clinton called on them to develop and implement a national food safety strategy: *“There are countless problems with our current monitoring program including outdated practices, internal fragmentation and inadequate resources that have resulted in a situation where we simply do not know what kind of food or feed material is coming in from overseas and what kind of risks it poses to our livestock and our safety. It is tragic that we have seen again and again how vulnerable our nation’s food supplies are without proper regulation and inspection and yet we haven’t learned any lessons from our past mistakes. I am extremely concerned about the recent instances of food contamination and I strongly urge the FDA and the USDA to create a proper food safety program, especially when it comes to imported food and feed materials.”*¹⁴

Yet as Congress steps up action to address the threat, proposed trade agreements now pending before Congress would increase food imports while undermining Congress’ ability to ensure imported food safety. Included in the proposed FTAs with Peru, Panama, Colombia and South Korea are rules that both limit what safety standards the United States can require for imported foods and how much border

inspection is permitted. U.S. laws that extend beyond the agreements' limits that operate to restrict access of imported food to the U.S. market are subject to challenge as "illegal trade barriers" by foreign governments before foreign trade tribunals. The FTAs would also newly empower foreign firms to directly challenge in foreign tribunals U.S. food safety laws that affect their expected profits.

Thus, as Congress considers the Peru, Panama, Colombia or South Korea FTAs, the issue of food safety should be of the utmost concern. These agreements will escalate the threats on our food supply by increasing food imports – placing further stress on already overworked border inspectors – and by increasing the pressure on U.S. food safety agencies to weaken our food safety regulations to comply with "trade" rules.

It did not have to be this way. The four pending FTAs could have set new standards in food safety and consumer protection to reassure a public anxious about import safety. Indeed, when Democrats engaged with the Bush administration in early 2007 about changes needed to the Bush-negotiated pacts, food safety improvements were included among the core demands tabled by U.S. civil society groups and many in Congress. Unfortunately this opportunity was missed, and the May 10, 2007 trade deal announced between the Bush administration and some Democratic congressional leaders did nothing to address the race to the bottom in food safety embodied in the four proposed FTAs.

A. BACKGROUND ON FOOD SAFETY AND TRADE

The CDC estimates that some 76 million people a year suffer from food-borne illness. An estimated 325,000 are hospitalized and an estimated 5,000 die.¹⁵ It is impossible to estimate what percentage of the cases of serious food-borne illness is due to imports, but since imports are at record high dollar levels, it is safe to say that the numbers of food illness attributable to food imports is on the rise.¹⁶

The rapid growth in imported food, and the current trade rules governing imports, are forcing U.S. consumers to increasingly rely on foreign governments to regulate foods destined for U.S. supermarket shelves. Unfortunately, many foreign regulatory systems are simply not up to the task.

In the decade-plus since the implementation of the NAFTA and the WTO, as well as the eight other U.S. FTAs, food imports have risen from a trickle to a flood. Figure 1, on page 10, shows that today nearly \$65 billion in food goods are imported into the United States annually – nearly double the level when NAFTA went into effect in 1994. Moreover, in 2005, the United States, formerly known as the world's bread basket, became a net food importer for the first time, with a food deficit of nearly \$370 million.¹⁷

Trade rules contained in NAFTA, the WTO and incorporated into the new FTAs pending before Congress forbid special safety requirements for imports. Even though border inspection of imports may be the only food safety check on imported foods relative to the domestic food safety system which includes several levels of oversight, trade agreement "non-discrimination" or "national treatment" rules require that the United States not inspect imported foods at a greater rate than domestic foods.¹⁸ Further, the trade agreements require the United States to rely on foreign regulatory structures and foreign safety inspectors to ensure that food imports are safe. This includes rules that obligate the United States to find the different – perhaps less safe – meat and poultry inspection systems of importing countries to be "equivalent" to the U.S. system, and then allow "free passage" of products

from such countries.¹⁹ Non-meat or poultry food products under the jurisdiction of the FDA that are being imported into the United States are not required to even meet this unsatisfactory USDA-style equivalence standard, nor must countries importing non-meat food be approved by U.S. regulators for produce, grains, processed foods or seafood to be imported.

Under this haphazard system, U.S. border inspectors are the last line of defense for U.S. consumers. Yet they are only able to grant the most cursory type of physical inspection to a small percentage of imported foods. Border inspectors' ability to use sophisticated testing for food-borne pathogens, illegal pesticide residues and toxins is even more limited. **Today, the FDA estimates that it will only inspect .6 percent of the food that it regulates (vegetables, fruit, seafood, grains, dairy and animal feed) at the border in 2007.²⁰ Only 11 percent of beef, pork and chicken has been inspected at the border by USDA in 2007.²¹ Contrary to what consumers believe, the vast majority of imported foods that end up on the dinner plates of U.S. consumers is unexamined and untested.**

In recent weeks, newspapers have produced numerous in-depth exposés of dangerous food and consumer products entering the U.S. market. While many non-food consumer products, such as Thomas the Tank Engine toys, have mandatory country-of-origin labeling, consumers are none the wiser regarding most food products because the implementation of a federal law passed in 2002 requiring country-of-origin labeling on beef, pork, lamb, fresh fruits and vegetables, seafood and peanuts has been delayed time and time again by intense industry lobbying.²² Currently only prepackaged retail-ready foods and certain non-processed seafood sold in the United States are required to have country-of-origin labeling. Thanks to an agreement forged in late July by House Agriculture Committee Chair Collin Peterson (D-Minn.), labeling for red meat appears imminent. The country-of-origin labeling law is currently scheduled to go into effect for all products on September 30, 2008, but industry has started an effort to further delay implementation. Meanwhile, a new *Consumer Reports* study says an astounding 92 percent of U.S. consumers support country-of-origin labeling.²³

Rather than directly addressing the hazards that foreign food imports pose to consumers either by radically beefing up inspection rates or by putting in place a comprehensive regulatory structure to address the issue, the Bush administration would exacerbate the problem by pushing Congress to approve Peru, Panama, Colombia and South Korea FTAs, which will increase imports while replicating past trade agreements limits on standards and inspection.

Of particular concern regarding the Peru and Panama agreements is the anticipated increase in seafood imports.²⁴ Seafood is already the food group responsible for the largest number of food-borne disease outbreaks in America today. Also of concern are the pesticides that are poorly regulated, but liberally used in these countries. Finally, the trade agreements open the door to future trade in beef and chicken from these countries. Below we examine these issues in more detail beginning with the overall numbers on food imports and inspections.

B. MINIMAL U.S. BORDER INSPECTION OF THE GROWING FLOOD OF FOOD IMPORTS

Domestically, billions of dollars annually are invested in efforts by the state and federal governments to protect the U.S. food supply from contamination, but breakdowns are common.²⁵ Still, few developing countries can compete with even the United States' already inadequate resources or the

U.S. laws that establish mandatory inspection authority and strict rules on adulteration that are the foundation of the U.S. system.

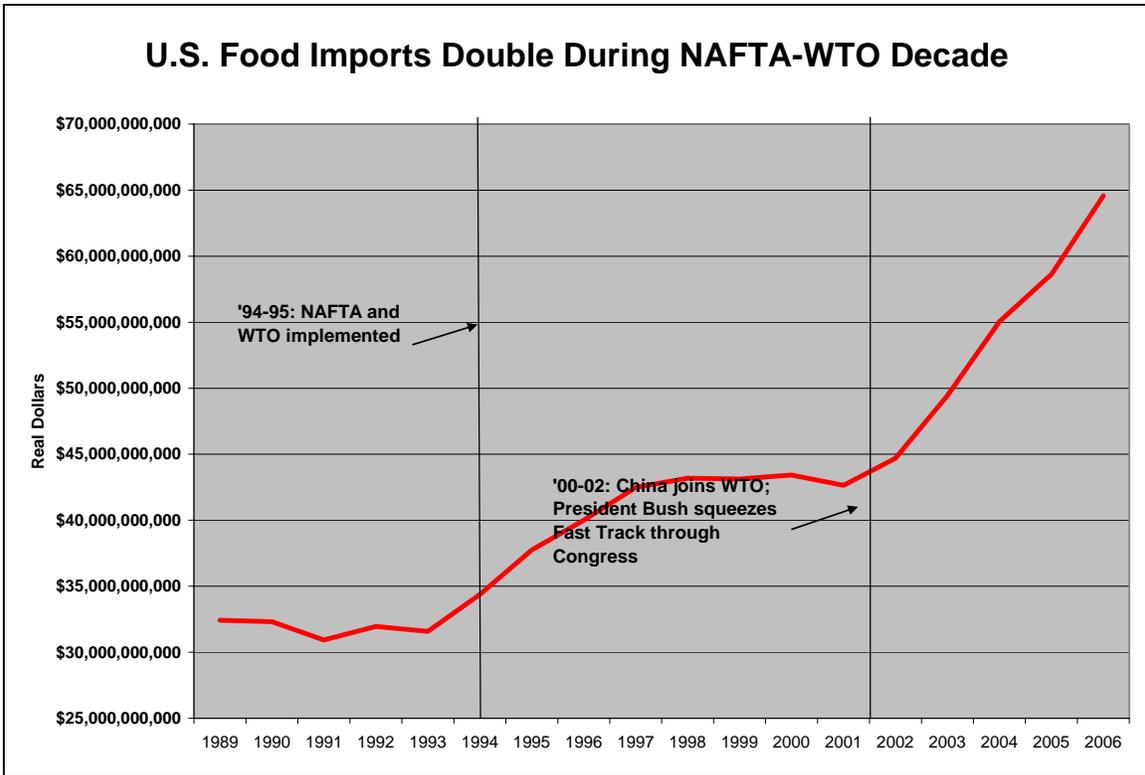
In the United States, the primary responsibility for ensuring the safety of domestic and imported foods has been given to two agencies, USDA and FDA. Other federal agencies, such as the Environmental Protection Agency (EPA), play a supporting role. USDA is responsible for ensuring that beef, pork, and chicken on the U.S. market are safe, wholesome and properly labeled. The FDA is responsible for protecting against impure, unsafe and fraudulently labeled foods including: seafood, vegetables, fruits, dairy, eggs, beverages, grains, nuts, spices, and baby foods. No food or feed item may be marketed legally in the United States if it contains a food additive, color additive or drug residue not permitted by the FDA, or a pesticide residue without an EPA tolerance, or a residue in excess of an EPA-established tolerance. However, enforcing such requirements is another matter.²⁶

As Americans are increasingly reliant on food imports, they are also increasingly reliant on regulatory systems of our foreign trading partners. Some countries have superior food safety systems; however, a significant share of U.S. food imports comes from poor developing countries where limited regulatory resources are stretched to the breaking point. Under the trade agreement rules, the safety of U.S. food imports that come from developing countries relies almost exclusively on those countries' often weak and woefully ill-funded domestic food safety standards and inspection systems.

The charts below graphically illustrate the hazards posed to the public by the flood of foreign food imports. Figure 1 shows the jump in U.S. food imports when NAFTA and the WTO agreements went into effect in the mid 1990s. These agreements resulted in a sharp rise in food imports, a rise that continues unabated today. The FDA is responsible for monitoring an estimated 80 percent of the nation's food supply.²⁷

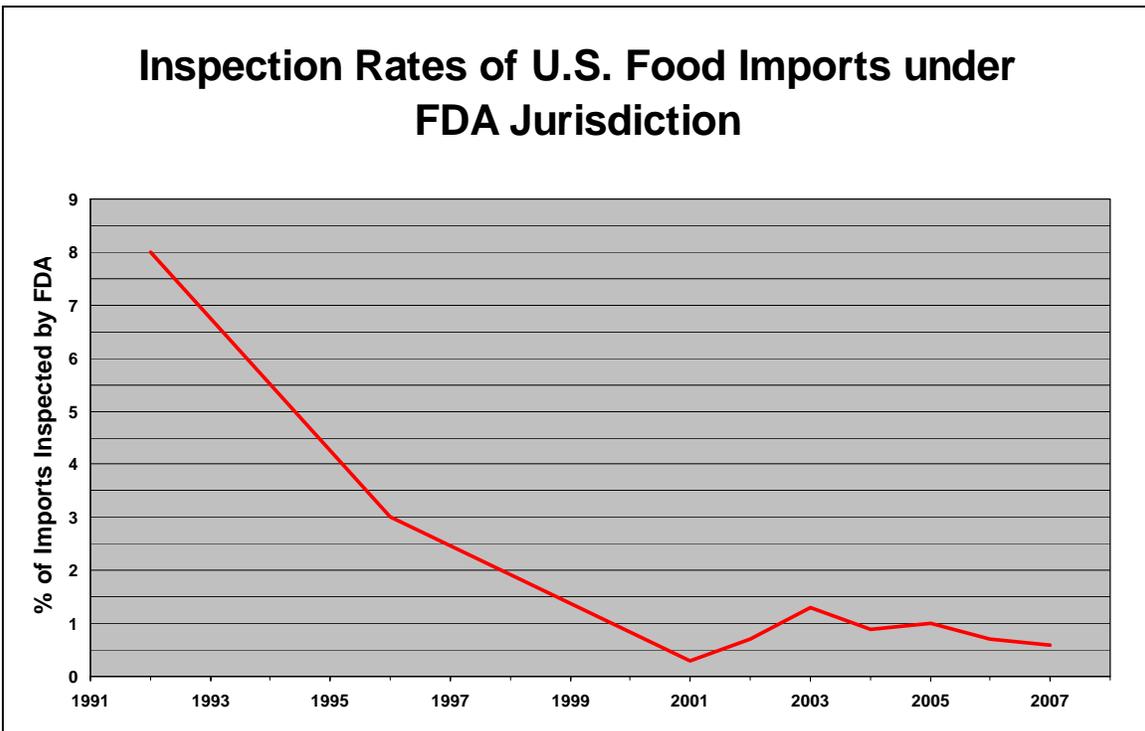
For comparison purposes, Figure 2 shows the amount of foods the FDA was able to *inspect* during a similar time period. **The FDA was able to inspect some 8 percent of the food products entering the country in 1992, but today that number has dropped to a miniscule .6 percent.**

FIGURE 1



Source: USDA Economic Research Service's FATUS Import Commodity Aggregations.

FIGURE 2



Source: Food and Drug Administration and General Accounting Office

The figures above demonstrate that the FDA's ability to protect the public with regard to imports has essentially ceased to exist. The lack of FDA authority regarding ensuring the safety of overseas production, and the abysmal level of the FDA's import inspection funding, reflect a disconnect between the reality of a food supply comprised of a significant amount of imported food and a regulatory mindset that predates WTO and NAFTA and the import flood they set off. The FDA's budget for food safety has failed to keep pace with the increase in foreign food shipments. The percent of U.S. food safety dollars going to the FDA has remained flat over the last five years and the FDA's budget for inspecting foreign seafood processing facilities dropped to zero in the 2007 budget.²⁸ All that remains as a last line of defense for consumers are a few border inspectors looking at less than 1 percent of FDA-regulated products entering the United States.

The Illogic Of Current Food Trade Rules – We Import Often Unsafe Versions Of The Same Foods We Export...

Many foods do not fare well when subject to long hauls. Decomposed, poisonous, filthy and unhealthful products are regularly turned away at the border. Ironically, most of the foods we import, we export as well. This raises questions about the rationality of exposing consumers to increased risk from poorly regulated products abroad when they could be consuming relatively well-regulated domestic products. Equally concerning are the global warming implications of shipping food products around the world solely to fulfill NAFTA-WTO trade model dictates.

At an unusually frank hearing on food safety and the threat posed to Americans by the FDA's inability to keep up with the flood of foods from around the world, former FDA head Lester Crawford expressed frustration with the FDA's low inspection numbers frankly admitting that "because of free trade agreements and because of the World Trade Organization Agreement of 1994, the amount of food moving in international trade is increasing greatly, and at the present time in the United States we have [two] times the number of imports we did before 1996, and it is still going up."²⁹

The Bush administration-proposed FTAs will increase the imports of food into the United States, as various seafood items, dairy and cheese, fruits and vegetables, and eventually perhaps even beef and chicken start to pour into the United States on a permanent duty-free basis from Peru and Colombia (for which the ITC has prepared projections),³⁰ and likely also for Panama and Korea (for which the ITC hasn't yet prepared projections).

Consider the case of Peru, where six categories of beef and three categories of processed tuna will receive newly duty-free treatment once the FTA with that country is fully phased in.³¹ Meanwhile, under WTO tariff rules, only 13 percent, 27 percent and 34 percent respectively of Peru's fruit and vegetable; beef; and processed food tariff lines are already duty free, while under the proposed FTAs 100 percent of these goods will newly become permanently duty free – some immediately and some over various phase-in periods.³² Of particular concern from a safety perspective is seafood from Peru, which would receive newly permanent duty-free status in 22 categories if the FTA is fully implemented.³³

"...because of free trade agreements and because of the World Trade Organization Agreement of 1994, the amount of food moving in international trade is increasing greatly, and at the present time in the United States we have [two] times the number of imports we did before 1996, and it is still going up."

– Former FDA head
Lester Crawford

Beyond those goods which already receive duty-free treatment under WTO rules, most other exports from the South American countries to the U.S. market already receive duty-free treatment, much of that treatment conditional on Congress periodically reauthorizing limited-duration preference programs, such as the Generalized System of Preferences (GSP) and the Andean Trade Promotion Act (ATPA). (Meanwhile, Panama also qualifies for GSP, and some of the duty-free status for Panama's U.S. exports requires congressional reauthorization of the non-permanent parts of the Caribbean Basin Initiative.) As the ITC noted in its report on the Peru FTA, its projections of food import increases made be underestimates, because businesses often ramp up their investments in sectors geared for U.S. exports when preferences are made permanent, *even though in some instance tariff levels have been at zero*. Such increases are not captured by the trade projection models, which gauge only *changes* in tariff treatment, not changes in business practices when tariff cuts are made permanent.³⁴

Even though FDA inspectors have only examined a tiny fraction of imports in recent years, inspectors have caught numerous dangerous substances in imports from Peru. The FDA has found illegal pesticide residues on fruits and vegetables, the parasite cryptosporidium³⁵ in salad vegetables and basil, unknown and unapproved drugs and capsules (including filthy and unapproved shark cartilage capsules and unapproved cats claw capsules), *Listeria*³⁶ in avocados, and unsafe color additives in chocolate and soft drinks.³⁷ Similarly, they have caught dangerous products from Panama including numerous unapproved drugs and filthy seafood.³⁸

The combination of the trade agreement rules that require countries to rely on each other's domestic safety systems and extraordinarily low border inspection rates indicate that the FDA is unable to protect U.S. consumers against common and known threats such as food pathogens, banned veterinary drugs, illegal pesticide residues, dangerous food and color additives and just plain filth. The FDA would certainly be helpless in the face of a deliberate attempt to contaminate the food supply. Former U.S. Secretary of Health and Human Services Tommy Thompson commented on this threat at his last press conference before leaving office. "For the life of me, I cannot understand why the terrorists have not attacked our food supply because it is so easy to do," Mr. Thompson said.³⁹

USDA Import Safety Process Is Flawed, Yet FDA Has Even Less Authority But Is Responsible for Safety of All Food but Meat and Poultry

Under U.S. law, beef, pork and poultry may only be imported from countries whose regulatory standards have been approved as "equivalent" by the USDA to U.S. law and regulation.⁴⁰ The good news is that there is some limited pre-screening of in-country facilities seeking to export to the United States. The bad news is that *prior* to the implementation of WTO and NAFTA, meat could only be imported into the United States if the country had *equal* standards for handling of meat that was designated for export. Because the trade agreements required the United States to accept imports from countries that declare their standards to be "equivalent," the United States weakened the existing standard. There is no definition of "equivalent" in the trade agreements or in the U.S. law that implemented both the agreements and the resulting weaker standard. This allows for subjective and nontransparent decision-making by USDA officials, who judge whether differing foreign standards are similar enough to U.S. standards for trade to be permitted.⁴¹

Under USDA regulations, equivalence determinations begin with USDA conducting a paper review of a nation's regulatory structure. Then USDA auditors travel overseas to audit a small percentage of plants desiring to export to the United States. If upon this cursory review, USDA judges the system to be equivalent, it posts a notice in the Federal Register for public comment. USDA has determined 44 countries

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to have equivalent safety systems that allow them to export meat and/or poultry to the United States.⁴² Once a country is declared equivalent, any plant in that country approved by the foreign government is allowed to export. As a final check on imported product, USDA inspectors give a cursory exam to some 11 percent of meat imports at the border.⁴³ A smaller sample set receives a microbial inspection.

For a country to maintain eligibility to export, USDA sends back an audit team on a periodic basis to inspect a small percentage of plants. When individual plants are found to be violating U.S. sanitation requirements, those plants can be de-listed (i.e. taken off the list of approved plants) and if computer databases are updated in a timely manner, the product can be flagged and rejected at the border. Unfortunately, when systematic problems have arisen in the past with a country, USDA has been reluctant to take action. In fact, USDA has failed to declare a single country “nonequivalent” or ineligible for export.

The USDA Office of the Inspector General (OIG) has been quite harsh in critiquing USDA’s performance on equivalency, documenting USDA’s sloppy performance, which has placed American consumers at risk.⁴⁴ Most recently the U.S. OIG released a damning report on the failings in the process of how USDA reviews and maintains Canada’s equivalency status.⁴⁵ Given what the OIG found about USDA’s performance regarding Canada – a country whose regulatory system is very similar to our own and whose main language is English – the implications of such practices being applied to countries with significantly different systems is worrisome.

While this system is weak, nontransparent and riddled with significant problems, it does limit the number of countries eligible to export to the United States and gives border inspectors a fighting chance to look at imported product. In contrast, the FDA has no similar authority to review countries’ regulatory standards, perform audits or declare countries eligible for export to the United States.

With regard to food under FDA jurisdiction, foreign plants simply register with the FDA and provide a certain amount of basic information per the requirements of the 2002 Bioterrorism Act.⁴⁶ They must also provide prior notice of a shipment arriving, but as a general rule, the food then simply enters the country. As Figure 2 above shows, only .6 percent of the food under FDA jurisdiction is given a cursory inspection at the border. A smaller sample received chemical and microbial testing. While the FDA used to make some attempt to visit foreign plants and inspect their activities, those overseas visits have virtually ceased due to the tremendous number of food and feed plants now exporting to the United States. In July 2007, the FDA reports that some 188,936 plants from 174 countries now export to the United States.⁴⁷

C. GLOBAL TRADE RULES PLACE CONSTRAINTS ON FOOD SAFETY

Not only are food imports flooding in at a rate with which federal food safety inspectors cannot keep pace, the rules contained in the FTAs and in related global agreements have the potential to undermine the food safety laws that we do have in place.

The food chapters of the Peru, Panama, Colombia and South Korea FTAs obligate the parties to promptly establish a Committee on Sanitary and Phytosanitary (SPS) matters. The committees’ objective is to help each party implement the requirements of the WTO’s SPS agreement and to ramp up trade in foods between parties.

The SPS agreement is one of 17 agreements enforced by the WTO. It sets criteria that WTO signatory nations must follow regarding their *domestic* policies designed to protect human, animal, or plant life and health. The agreement sets limits on all domestic policies and measures that affect trade – from standards and inspection to labeling for the protection of human life or health risks arising from

additives, contaminants, toxins, veterinary drug and pesticide residues or other disease-causing organisms in food or beverages.⁴⁸

The pending FTAs could have been a bilateral opportunity to remedy some of the limits on consumer health and safety included in than the WTO SPS Agreement. The parties to the agreements could have pledged not to challenge each others' food safety standards, to agree that only food produced in "equal," not "equivalent," safety conditions could be traded, and to work together cooperatively to raise standards rather than lower them. Unfortunately, this opportunity was missed when the May 10, 2007 deal in Congress to facilitate passage of at least the Peru and Panama pacts failed to address these deficiencies in the FTAs.

Instead, the FTAs incorporate the WTO limits on food safety standards. The primary goal of the WTO SPS Agreement is to facilitate trade by eliminating differences in food, animal and plant regulations from country to country and ease the entry of imported food. Once the United States begins to accept a country's food imports, these rules make it very difficult to cut off those imports. Decisions to stop imports, due to concerns about weak regulatory structures or poor track records in ensuring food safety, could result in a trade suit if they violate the trade rules, including:

- National treatment rules which forbid U.S. regulators to have higher standards for imports to make up for a trading partner's deficient regulatory structure. For instance, a higher inspection rate for imports over domestic product or additional regulatory requirements for a problem country would be forbidden.⁴⁹ The USDA, for instance, in order to conform to this requirement, has already specifically and voluntarily weakened a U.S. policy requiring monthly supervisory inspections of foreign meat plants producing meat for export to the U.S. market.⁵⁰
- Constraint on what food safety policy goals a country can seek⁵¹ and the level of protection a country can choose for its citizens.⁵² U.S. Rep. Rick Larsen (D-Wash.) has called for "a food-safety system that is preventative," not just reactive.⁵³ This is made much more difficult by trade rules that do not permit countries to take a precautionary approach to food safety, but require nations to prove there is a problem before taking any action. In the meantime, irreversible harm may result.
- Affirmative obligations to "harmonize" or conform their domestic standards to international standards and to find other countries' differing standards to be "equivalent" to U.S. standards⁵⁴ – a process the FTAs' SPS Committees are designed to facilitate. Bowing to this mandate also contained in previous FTAs, the FDA has engaged in extensive harmonization efforts with regard to both food and pharmaceutical products under its jurisdiction.⁵⁵ USDA developed its equivalency rule in 1995 and has subsequently determined 44 countries to be equivalent and eligible to export meat to the U.S. market⁵⁶ even though many of these countries' systems clearly violated basic U.S. safety requirements.⁵⁷
- Requirement that a food safety policy not be any more restrictive to trade than is necessary to obtain an allowed goal.⁵⁸ Even if Congress wanted to introduce an entirely new regulatory structure for imports (for instance, by giving the FDA the power to approve and disapprove countries as eligible to export), our trading partners could argue that there are less restrictive means of achieving the same goal (for instance by modestly increasing inspections.)

If the United States restricted food imports, the action could be challenged as a trade barrier on the above grounds and many more. Numerous WTO rulings against domestic food standards and quarantine rules – no one such law has been upheld – demonstrate how the rules have limited the

ability of governments to protect the public from actual and potential health threats and to respond to consumer demands for safe food.

While currently the four prospective FTA countries' governments have the ability to challenge U.S. food standards in government-to-government WTO disputes, the proposed FTAs would newly empower food exporters from the countries to pursue challenges directly against U.S. food safety laws if they believe such laws undermine their FTA-granted foreign investor rights.

The FTAs all contain extensive foreign investor rights that empower corporations operating within the FTA countries to demand compensation from the U.S. government in foreign tribunals if U.S. regulatory actions undermine their expected future profits.⁵⁹ At first glance, this would seem to only be relevant to foreign firms operating within the United States who seek to avoid meeting domestic laws on their operations, Yet, Canadian cattlemen are currently suing the United States for approximately \$235 million⁶⁰ in compensations under NAFTA rules (replicated in all four of the proposed FTAs,) because in May 2003 the United States halted imports of beef and cattle from Canada after a case of bovine spongiform encephalopathy (BSE or mad cow disease) was found in a bull in Alberta.⁶¹ At the time, no U.S. cattle had been found to have mad cow disease. Subsequently, a cow imported from Canada was found to have mad cow disease in Washington State. The Canadian cattlemen argue that the U.S. border closure (which was both prudent and required by U.S. law) was “trade discrimination” and a violation of their NAFTA-granted investor rights. Unfortunately, the broadness of the rules contained in the FTAs and the discretion of foreign tribunals hearing these investor-state cases have allowed this case and others which seem premised on dubious investor “rights” to proceed. Even if the United States wins this NAFTA case, it will spend millions in legal fees defending the case – funds which would be better used in enhancing imported food safety.

According to FDA data, there are currently 2,296 plants exporting foods to the United States from Peru, 575 from Panama, 2,826 from Columbia, and 4,800 from South Korea. Any one of these 10,497 exporters could launch attacks on U.S. food safety policies that undermine their expected future profits under the terms of the FTAs.⁶²

D. SEAFOOD IMPORTS REJECTED FROM PERU AND PANAMA, EXCLUSIVE ANALYSIS OF FDA DATA

In the United States, seafood is one of the major causes of food-borne illness, representing some 20 percent of known food-borne illness outbreaks.⁶³ Americans are consuming more seafood than ever. The average American ate almost 30 percent more seafood in 2005 than in 1980.⁶⁴ Once a rare delicacy, seafood chain restaurants now serve up billions of pounds of shrimp and other seafood at an astonishingly low cost. They are able to do this because the vast majority of this seafood is imported.

In the NAFTA-WTO era, from 1995 to 2005, imports of U.S. seafood have increased from 3.1 billion pounds in 1995 to 5.1 billion pounds in 2005 – an increase of 65 percent.⁶⁵ Between 1995 and 2005, there was a 95 percent jump in shrimp imports alone.⁶⁶ Today, over 80 percent of the seafood Americans eat is imported.⁶⁷

The total amount of seafood that FDA inspectors examine is miniscule. The FDA was able to inspect only 1.93 percent of total seafood imports. The vast majority of these inspections – detailed in Figure 6 on page 19 – were sensory examinations (testing color, texture and odor). In

stark contrast to the FDA, the European Union physically inspects either 20 percent or 50 percent of all imported seafood shipments depending on the risk of the individual product.⁶⁸

Peru, Panama and Colombia are three of the world's top 20 exporters of shrimp to the U.S. market, and shrimp represents Panama's second most important U.S. export by dollar value.⁶⁹ Both Peru and Panama have major export fishing sectors. Peru's marine and inland capture fisheries production is the second highest in the world at 9.6 million tons in 2004 – second only to China (with 16.9 million tons) and ahead of the United States (at 5 million tons),⁷⁰ and fishery exports account for half of Panama's merchandise exports.⁷¹ Currently, the United States is the primary importer of all Panamanian seafood and is one of the main importers from Peru.⁷²

While certain forms of food-borne illness have remained constant or declined, the estimated U.S. annual incidence of *Vibrio*, a diarrheal disease associated with seafood, increased 78 percent from 1996 to 2006, according to the CDC. *Vibrio* is associated with eating oysters, which are imported increasingly from South Korea, Colombia, Peru and other nations.⁷³

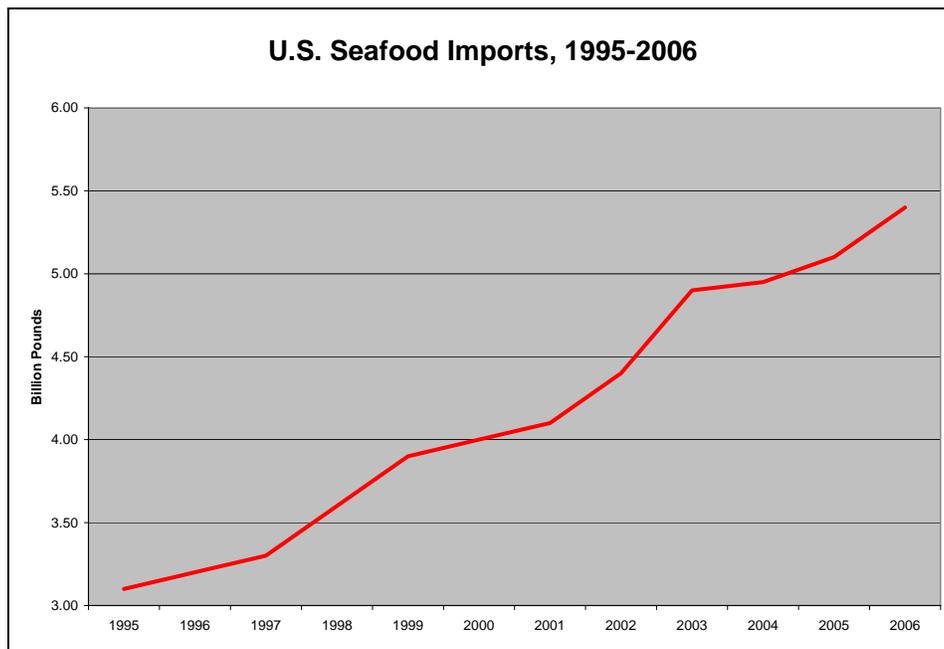
How the Government Attempts to Track Food Shipments

Foods imported under FDA jurisdiction is subject to the requirements of the Federal Food, Drug, and Cosmetic Act which bans certain pathogens and toxins from food; regulates the safety of substances added to food, e.g., food additives and color additives; regulates the safety of veterinary drugs in foods; and requires proper labeling of foods including ingredients, nutritional information and health claims.⁷⁴ (While these requirements are in place and enforced by approximately 1,300 FDA domestic inspectors,⁷⁵ Figure 2 above and Figure 6 below show that the FDA has very little ability to police imports.)

The Bioterrorism Act of 2002, amended the Federal Food, Drug, and Cosmetic Act, to require domestic and foreign facilities to register with the FDA if they manufacture, process, pack, or hold FDA-regulated foods for human or animal consumption in the United States. Although the registration requirements are minimal, the Act has resulted in the compilation of a database listing exporters of food to the United States that serves as a first step towards tracing back problem foreign foods to their source. Summary information about these exporters has been made available to the public.⁷⁶

The FDA regularly rejects food imports that appear to be packaged and prepared under unsanitary conditions, that have decayed into a filthy putrid or poisonous condition, that contain dangerous pathogens such as *Salmonella* or histamine,⁷⁷ contain illegal pesticide or veterinary drug residues, is improperly labeled or misbranded in some manner, or is from a manufacturer not registered with the FDA in conformity with the Bioterrorism Act.⁷⁸ To sell canned food for interstate commerce in the United States, producers must register each establishment and file information on the manufacturing process used with the FDA for each product due to concerns over botulism, a severe form of food poisoning caused by poor manufacturing processes.⁷⁹

FIGURE 3



Source: National Marine Fisheries Service

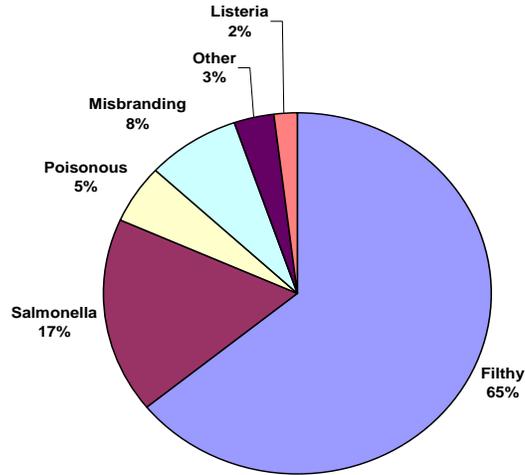
FDA inspectors have rejected seafood from Peru for numerous reasons. The FDA’s database on import rejections, called the Operational and Administrative System for Import Support (OASIS), has documented the discovery of poisonous swordfish, *Salmonella* in shrimp, dangerous histamines in Mahi Mahi, and just plain filth in shipment upon shipment of dried, canned, frozen and fresh fish products from Peru.⁸⁰ Similarly, FDA inspectors have documented problems with Panamanian seafood exports to the United States, including *Listeria* in smoked salmon, *Salmonella* in shrimp and lobster tails, poisonous swordfish and shark loin, and obvious filth in dried, fresh and frozen fish.⁸¹

Given that seafood is the main source of food poisoning, one would assume that consumers would have ready access to information about the testing and safety of seafood from various sources. However, in fact, that information is not publicly available.

The pie charts below represent an exclusive analysis of import rejection data provided to Public Citizen by the nonprofit watchdog group Food & Water Watch (FWW). FWW obtained the data after resorting to a Freedom of Information Act (FOIA) request of the FDA. The pie charts below break down the reasons for the rejection of Panamanian and Peruvian seafood over a period of nine years. The percentages refer to the total number of rejected shipments, which included 207 Panamanian shipments and 182 Peruvian shipments. However, the data that the FDA released even after a FOIA request gives far from a complete picture, listing only the number of shipments and cause, but failing to list the dollar value or the volume of the rejected products on the shipments.

FIGURE 4⁸²

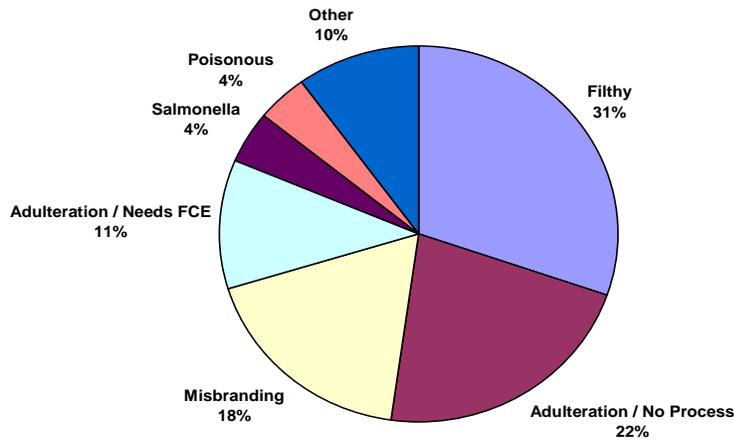
U.S. Rejections of Panamanian Seafood, 1997-2006, by cause



Source: FDA Data courtesy of Food and Water Watch

FIGURE 5

U.S. Rejections of Peruvian Seafood, 1997-2006, by cause



Source: FDA Data courtesy of Food and Water Watch

For Panama, filth again was the number one reason for rejection, closely followed by *Salmonella*, and misbranding. The FDA rejection numbers for seafood overall show that *Salmonella* is particularly a problem with shrimp.⁸³ Misbranding, lack of required information, lack of English labels and the like were problems for both nations.

For Peru, the primary reasons for rejection were obvious filth and adulteration problems including manufacturers that were not registered to export to the United States and manufacturers who failed to provide information on how their seafood was processed according to the requirements of U.S. law. Processed seafood makes up an even greater percentage of imports than ever before, but unfortunately processed seafood is not currently subject to the requirements of the country-of-origin labeling law (as is unprocessed seafood).

FIGURE 6⁸⁴

FDA Inspections of Import Shipments							
Year	# of Import Shipments	Sensory Examination		Laboratory Inspection		Sensory + Lab Inspections	
		Number	Percent	Number	Percent	Number	Percent
2003	746,657	9,151	1.23	6,556	0.88	15,707	2.10
2004	849,420	10,616	1.25	5,476	0.64	16,092	1.89
2005	848,685	9,903	1.17	5,762	0.68	15,665	1.85
2006	859,357	11,534	1.34	5,071	0.59	16,605	1.93

Source: "Import Alert," a 2007 publication of Food & Water Watch

With the FDA inspecting only 1.93 percent of total seafood imports for 2006, only .16 percent of the 859,357 shipments of seafood were refused entry into the United States. The rest made it onto supermarket shelves and may have contributed to the 17,252 laboratory-confirmed cases of food-borne illness confirmed by the CDC, a number that represents only a portion of the total amount. Some 6,655 of these cases were *Salmonella*, a disease closely associated with shrimp and other seafood.⁸⁵

If the Peru and Panama FTAs are implemented, seafood imports from the two countries into the U.S. market would likely increase. The FTAs would implement *permanent* trade preferences for those nations, thereby decreasing permanently the United States' normal tariff rates for at least 22 categories of seafood.⁸⁶ Because of the permanent and special treatment for Peru and Panama, their export capacity in these areas is likely to expand significantly and permanently.

E. THE CIRCLE OF POISON: UNAPPROVED PESTICIDE RESIDUES ON PERUVIAN IMPORTS

Another major food safety concern is the use and misuse of pesticides. Though pesticides are known to cause cancer, infertility, miscarriage, birth defects and damage to the brain and nervous system, the damage wrought by pesticides is generally not accounted for in studies related to food-borne illness. Infants and children are especially sensitive to the health risks posed by pesticides. Not only are their brain, nervous, hormonal and respiratory systems still developing, but in relation to their body weight, infants and children eat and drink more than adults, increasing their exposure to pesticides in food and

water. While a patchwork of state and federal law seeks to protect children from pesticide exposure domestically, the cash-strapped FDA is charged with protecting adults and children from overexposure to illegal pesticide residues on imported food entering the U.S. market under various trade pacts.

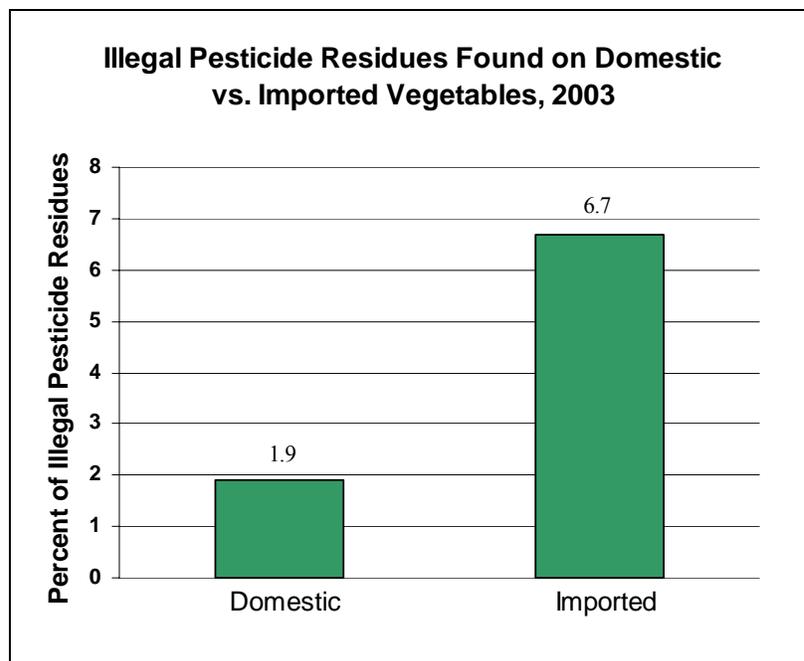
In the United States, the EPA approves the use of pesticides and sets tolerances (or the allowable amount of pesticides) permitted on individual food products. The FDA is charged with enforcing tolerances in imported foods and in domestic foods shipped in interstate commerce, including in animal feed. The FDA has a very minimal pesticide residue testing program for domestic and imported foods, and attempts to publish a report of the results on an annual basis, although the last available report is 2003. The FDA checks the food products it regulates for illegal pesticide residues. An illegal pesticide residue is one that is above the tolerance allowed by the EPA for the product or is one where no tolerance has been established for the specific food/pesticide combination.

The FDA pesticide monitoring program has been roundly criticized for failing to test a statistically representative sample of the food supply; for not having the analytical apparatus needed to detect many of the pesticides commonly applied to food and crops; and for vastly underestimating the problem. However, even the flawed FDA data makes clear that Americans are three times more likely to be exposed to dangerous pesticide residues on imported foods than on domestic foods.

In 2003, the last year for which data is available, the FDA found:

- 1.9 percent of domestic vegetables sampled had illegal pesticide residues as compared to 6.7 percent for imported vegetables;⁸⁷
- 2.2 percent of fruits had illegal pesticide residues as compared to 5.3 percent of imports;⁸⁸ and
- 1.8 percent of domestic animal feed contained residues which exceeded regulatory guidance compared to 5 percent of imports.⁸⁹

FIGURE 7



Source: Food and Drug Administration

Although the FDA's flawed program only chemically samples a tiny portion of food entering the country, data from recent years has documented numerous violations from Peru. In 2006, FDA inspectors found illegal pesticide residues in dried paprika, tangelos, clementines, sugar snap peas, and ancho chiles.⁹⁰ In earlier years, the FDA found illegal residues on lettuce heads, pigeon peas, and green peas.⁹¹ Many of these pesticides are highly toxic and strictly regulated in the United States.

The Circle of Pesticide Poison

No discussion of pesticide usage in Latin America is complete without recognizing that the majority of the pesticides used in Peru and Panama come from the United States and the European Union.⁹² Thus, the developed world is a key player in what many call the circle of poison. U.S. manufacturers ship tons of highly toxic pesticides to Latin America, pesticides that are strictly regulated here, but are treated casually by retailers and farm workers in Latin America. Those pesticides are then put on fruit and produce headed to the United States. In between, it harms farmers and their families, the environment and consumers in Latin America.

Upon implementation of the Peru and Panama FTAs, many tariff duties on common pesticides will drop to zero, such as those on glyphosate, which is commonly used on popular imports to the United States such as asparagus, onion, mango, and grape. Additionally, tariffs on several pesticides that the EPA has banned or severely limited due to public health concerns will also drop to zero upon implementation, thereby encouraging their importation into Peru and Panama for use on export crops. Some examples include captafol, DDT, dieldrin, endrin and methamidophos.

The situation is most hazardous for farm workers and their children. For instance, the International Potato Centre issued a report in 2006 that found that potato farming communities in Peru continue to use extremely dangerous pesticides without any protection. In an examination of five hotspots of hazardous pesticide use, an average of 25 percent of farmers interviewed suffered severe poisoning. In these areas, farming is a family project and young children are usually close at hand while dangerous pesticides are being applied. The study found that in the central highlands of Peru, the highly toxic methamidophos is the most common chemical used.⁹³

Peru was also the site of one of the single most shocking incidents of pesticide poisoning known. In October 1999, 42 school children were poisoned in the remote Andean village of Taucamarca when school workers apparently mistook unlabelled bags of pesticides as powdered milk and mixed it into cereal. Twenty four children suffered immediate and agonizing deaths.⁹⁴ After a nine-month investigation, a Peruvian Congressional Subcommittee placed responsibility for this unimaginable tragedy on the agrochemical company Bayer and on the Peruvian Ministry of Agriculture.⁹⁵ While the industry asserts that the deaths of these children was purely accidental, health and human rights advocates argue that these tragedies are foreseeable consequences of a global trading system where trade takes precedence over human lives and human rights.

While U.S. chemical companies are happy to supply the products and will no doubt take advantage of lower tariffs for chemicals and pesticides through the Peru and Panama FTAs,⁹⁶ they will not make a concerted effort to provide the training and the education needed to handle dangerous substances. Nor are the regulatory systems of developing countries up to the task of restricting and regulating such substances in the public interest. By granting preferential tariff treatment both for U.S. pesticides in Peru and Panama⁹⁷ and for Peruvian and Panamanian fruits and vegetables with pesticide residues gaining access to the U.S. market, the FTAs are a key facilitator of the circle of poison.

F. TRADE RULES MEAN IT IS REALLY NOT “THE SAME” OLD HAMBURGER

As mentioned above, one of the mechanisms required under trade rules to facilitate trade is “equivalence determinations.” Specifically, Article 4.1 of the WTO SPS Agreement, which is incorporated into the pending FTAs by reference, requires countries to “accept the sanitary or phytosanitary measures of other Members as equivalent, even if those measures differ from their own.”⁹⁸ Equivalency agreements are designed to allow goods produced under “equivalent,” possibly less health-protective systems, “free passage” into the importing country’s market, theoretically without the need for re-inspection at the border. Once equivalence is achieved, products to be imported into a country must only meet the standards of the exporting country – not those of the importer.

In the United States, USDA’s Food Safety and Inspection Service (FSIS) is charged with ensuring the safety of domestically produced and imported meats. Prior to the passage of the Uruguay Round Agreements Act in 1994 (which implemented the WTO package of agreements), FSIS required foreign countries to maintain meat and poultry inspection systems “equal to” the U.S. system in order to export meat and poultry to the United States.⁹⁹ This meant that those countries’ meat and poultry laws, regulations, and procedures for conducting inspections essentially had to mirror those of FSIS, and all foreign establishments that exported meat or poultry to the United States had to comply with U.S. inspection requirements. After the passage of the Uruguay Round Agreements Act, FSIS changed the language in its regulations from “equal to” to “equivalent.”¹⁰⁰ Now countries that export meat and poultry products can have laws, regulations, and inspection procedures substantially *different* from FSIS’ and still be eligible to export meat and poultry into the United States.

A coalition of the largest food safety groups on both sides of the Atlantic have characterized the lack of precision and subjective decision-making that goes into deciding what standards are deemed equivalent as a threat to consumer safety.¹⁰¹ A food safety expert at the U.S.-based Center for Science in the Public Interest puts it more bluntly: “equivalency is a method by which nations can create exemptions to each other’s food safety laws to advance trade.”¹⁰²

In 1998 and 1999, for the very first time FSIS conducted country audits and determined that an initial 32 foreign trading partners had “equivalent” food safety systems to the United States (in later years, more countries were determined to be equivalent and the total is now 44, although not all countries may be exporting in any given year). A short time later, the USDA’s independent investigative Office of Inspector General (OIG) decided to review the USDA’s performance in making these historically important equivalency decisions. In 2000, the OIG released a blistering analysis, noting systemic failures in the equivalence determination and enforcement processes for countries representing every inhabited continent. The OIG report was a scathing exposé on the threats posed when food safety prerogatives and policies are trumped by trade goals.

The report documented that FSIS implemented the WTO-required equivalence determination on a vast scale in ill-considered haste. Among the problems:

- FSIS granted equivalency status to six countries without even conducting onsite reviews;¹⁰³
- Foreign establishments that had supposedly lost their eligibility certification were found to have shipped millions of pounds of meat and poultry into the United States, unhindered by border inspectors;¹⁰⁴ and

- Nineteen plants that had not been recertified as meeting U.S. standards were allowed to continue to export meat to the United States.¹⁰⁵

In follow-up reports in 2003, the OIG assessed USDA's performance since 2000, finding that they had satisfactorily addressed only a small portion of their 35 recommendations.¹⁰⁶

The Peru and Panama FTAs do not automatically grant equivalency to those countries to import beef or chicken to the United States, but they do smooth the way. The Peru FTA specifically provides for consultations on trade in chicken after nine years, and Peru's government is already starting to prepare for this chicken trade. Also, both agreements include dozens of tariff lines on cuts of beef that will drop permanently to zero when the agreements are fully implemented. While Panama does not have a large beef market, Peru has significant export potential with an estimated five million head of cattle.¹⁰⁷

Currently, no cattle or beef is allowed into the United States from Peru due to the presence of the animal virus called foot and mouth disease (FMD) in that country. When in the future Peru is able to demonstrate that regions of the county are free of the disease, they would be eligible to apply for equivalency status from the USDA. This process entails public notice that equivalency for Peru is being considered in the U.S. Federal Register, but such notice can be swift when the sensibilities of valued trading partners are in play.

In 2000, Uruguay suffered an FMD outbreak and suspended beef exports. A few years later the country got the virus under control.¹⁰⁸ In 2003, the United States granted equivalency to Uruguay after only a three-month notice and comment period.¹⁰⁹ Subsequently beef from Uruguay has flooded the U.S. market. In 2004-2005, according to Foreign Agricultural Service data, U.S. importers purchased an average of 157,000 metric tons of fresh and frozen beef destined for hamburger from Uruguayan beef processors. That's a five-fold increase over the 32,000 metric tons imported in 2003.¹¹⁰ By 2005, more than 95 percent of Uruguayan exports to the United States were assessed at the 26.4 percent duty because they exceeded the WTO's most favored nation tariff rate quota (TRQ). This means that Uruguayan exporters found it profitable to go well over their TRQ and pay the penalty.¹¹¹ Peruvian exporters in contrast would be granted permanent *duty-free* access in 28 beef categories under the Peru-U.S. FTA immediately with more categories of beef to be phased in later.¹¹²

What could reasonably be expected if free trade in beef commences with Peru? In 2003, Public Citizen conducted an extensive study of foreign country audit reports. Developing countries had a difficult time meeting even the most basic food safety requirements. For instance, in numerous countries:

- Company-paid inspectors were found to be conducting and/or controlling inspection instead of government-paid inspectors as required under U.S. law;¹¹³
- The microbiological testing programs for *E. coli*, *Salmonella*, and *Listeria* were found to be woefully deficient;¹¹⁴ and
- There were serious sanitation deficiencies, including serious "zero-tolerance" problems such as ingesta, fecal and hair contamination found in meat.¹¹⁵

With regard to Mexico, a U.S. auditor found that "un-trained or poorly trained inspectors or employees pose a serious risk to food safety and public health."¹¹⁶ This is a chronic problem in many developing countries. However, once an equivalency determination has been reached, no country has *ever* had this status revoked by the United States – often despite repeated findings of serious problems.

The documented failure of the U.S. government in its implementation of trade agreement equivalence requirements to uphold U.S. law while engaging in equivalency raises serious concerns. Beef from many nations is mixed together in U.S. processing plants and made into hamburger, but consumers are none the wiser due to the delay in implementing country-of-origin labels for beef. In recent days, the House Agriculture Committee Chair, U.S. Rep. Collin Peterson (D-Minn.), has forged an agreement to implement the long-delayed law to ensure that at least red meat products are labeled.¹¹⁷ Not only are U.S. consumers being put at greater risk because the U.S. government is failing to live up to the core standards of its own food safety system, it also is failing to give developing countries the resources they need to ensure the safety of exports and the soundness of their own domestic regulatory policies. Combined, these two policies are a recipe for disaster.

CONCLUSION

Passage of the pending FTAs will elevate, not lessen the threat to the safety of the U.S. food supply. The FTAs could have been an opportunity to create a new model for enhanced food safety in trade. Instead, the agreements if implemented as written may well generate the next spate of newspaper and cable television reports of problems with food products from these countries – problems that could have been avoided if these agreements had been renegotiated to address these problems. Now the only way to avoid extending the failed trade model that is undermining our food safety is for Congress to reject the pending NAFTA expansion agreements.

What You Can Do to Protect Against Unsafe Imported Food and Products

- **Buy local. There are several easy ways to buy produce, meat and poultry produced locally.** Not only will you get fresher foods, but you will strengthen you local economy and help the environment as well. And even domestically produced food can travel thousands of miles before reaching your dinner table.
 - **For instance, at www.ams.usda.gov/farmersmarkets/map.htm, you can find farmers markets in your community and their dates and schedules.** Be sure to ask if the food being displayed is local, as some participants buy products from brokers to re-sell. Often you can arrange to buy larger quantities of meat or poultry from the sellers at a farmers market for a lower bulk price.
 - **Alternatively, you can join a CSA – Community Supported Agriculture farm program – and have locally-grown food delivered weekly throughout the growing season!** Check out www.localharvest.org to find a CSA farm near you. Many of these farms are organic. This system has consumers “buy in” as farm shareholders in the spring, and then delivers to them a portion of each week’s harvest. The cost is less than buying similar food at a grocery store. And, you get produce picked that morning – and you can choose eggs, flowers, honey, etc. You can also decide how many shares you want to buy depending on the size of your household.
- **Check labels on products and signs in stores to see if you can learn a product’s country of origin and also to discern if a product labeled as a reliable brand name may be a counterfeit.** If a country has had significant food or product safety problems, you might choose to avoid products from that country. While many non-food consumer products have mandatory country-of-origin labeling, implementation of a federal law passed in 2002 requiring country-of-origin

labeling on beef, pork, lamb, fresh fruits and vegetables, seafood and peanuts has been delayed until 2008. Currently only prepackaged retail-ready foods, and certain non-processed seafoods sold in the United States are *required* to have country-of-origin labeling. Some stores and grocery chains have adopted voluntarily country-of-origin labeling. You can shop at stores that voluntarily include country-of-origin labeling or give you more information about the food source. Request that stores you frequent start labeling products *now*. Unfortunately, with import inspection rates so low, checking the product's origin is not sufficient. The recent problems with contaminated toothpaste from China involved counterfeit products – they were labeled to look like a major brand and listed South Africa as the origin. Many counterfeit products can be detected by simply reading the label. Look for spelling errors or anything that seems out of the ordinary and if you find anything unusual, don't use it. Call the U.S. Consumer Product Safety Commission at 1-800-638-2772 ext. 650 to report suspect products. Look at the ingredient label to determine if any of the ingredients have been recently reported as tainted. When problem ingredients are uncovered, you can visit <http://www.foodsafety.gov/> for more information.

- **Make a habit of checking recall lists and signing up for safety alerts.** Go to recalls.gov to get connected with lists of the latest recalls of everything from food and medicine to motor vehicles. Bookmark this page in your web browser and check it regularly to stay informed. Bookmark watchdog groups such as consumersunion.org, pirg.org and foodandwaterwatch.org – and, where available, sign up for alerts – to get more information about the latest unsafe food and products.
- **Advocate for improved trade policies, food safety policies and country-of-origin labeling in Congress.** Find out more at <http://www.citizen.org/trade/afta/articles.cfm?ID=16945> and sign up at <http://action.citizen.org/signUp.jsp> to get food safety and trade related news from Public Citizen's Global Trade Watch division. What steps do we recommend?
 - ***No more new NAFTA expansions adding to the trade and food safety crisis.*** If a majority of either the House of Representatives or the Senate vote no on the four pending FTAs (Peru, Panama, Colombia, and South Korea), they cannot go into effect.
 - ***A thorough review is needed now of our existing trade agreements to carefully identify the provisions that are causing problems so that we can make the vital fixes to the existing agreements – and do better in the future.*** It is unacceptable that trade agreements set limits on the food or product safety standards or the amount of border inspection. If we are to enjoy the benefits of trade, we must remove these non-trade limits on our basic health and safety that have been inserted into recent trade agreements. Specifically, our current trade agreements must be modified to remove provisions that:
 - ◆ Limit the ability of countries to inspect imported foods at whatever rate government safety agencies determine is needed to ensure safety;
 - ◆ Require countries to import food that is equivalent, not equal, to domestic safety requirements; and
 - ◆ Limit the level of food safety protection countries choose to implement.

These changes are vital so that the various proposed improvements to U.S. food safety policy relating to imports are not subject to challenge under U.S. trade agreements.

- ***A new process for formulating our trade policy so that we can get good agreements.*** These four NAFTA expansion agreements were negotiated using a procedure called “Fast Track,” which delegates Congress’ exclusive constitutional authority over trade to the president. This system empowers a few special interests to make the rules – short-circuiting normal legislative processes and stifling the voice of consumers and others who must live with the results. The Fast Track procedure is how we got into NAFTA and WTO. In the future, we need to replace Fast Track with a new process that allows Congress and the public to ensure our future trade agreements suit our needs – including a key power that Fast Track removes: ensuring that Congress gets to vote *before* a president can sign a trade agreement.
- ***The FDA needs new authority to examine and approve other nation’s regulatory systems and food safety laws as the same as ours or better, before imports from a country can enter the U.S. market.*** Currently, 80 percent of food products we eat come under FDA jurisdiction. They do not need any pre-approval from the FDA to be imported. In contrast, the USDA, which regulates less than 20 percent of the foods we eat, has authority to approve or disapprove countries and inspect plants abroad. With similar authority, FDA border inspectors might have a fighting chance against the flood of food imports.
- ***Border inspection of imported food and products must be dramatically increased.*** Congress must require – and fund – greatly increased FDA and USDA border inspection. Other developed countries such as Japan and the European Union inspect a much larger percentage of high risk imports than we do. It is unconscionable – and dangerous – that the U.S. inspection rates for produce and seafood is less than one percent and meat and poultry inspection is only 11 percent. The percent of U.S. food safety dollars going to the FDA has remained flat when the growth in imports requires greatly increased oversight by U.S. officials and increased inspection funding.
- ***Accessible consumer information about what imported foods are rejected and why.*** In preparing this report, we became vividly aware of how difficult it is for consumers to access the necessary information about imported food and U.S. inspection findings to ensure their own safety. The FDA and USDA must establish public and easily searchable databases that list, by food and country, what products are rejected and for what reasons.
- ***Country-of-origin labeling of ALL imported products so consumers can make informed choices.*** Congress should immediately implement fully the 2002 law that requires such labels on meats, fruit and vegetables. 92 percent of Americans demanded country-of-origin labeling which has been stalled by agribusiness, food processing and mega-retail interests.

ENDNOTES

- ¹ Public Citizen analysis of U.S. International Trade Commission data, for tariff line 03061300.
- ² Food and Agriculture Organization of the United Nations, “State of World Fisheries and Aquaculture 2006,” 2007, at 44.
- ³ Food and Aquaculture Department, “Fishery and Aquaculture Country Profile – Peru,” Food and Agriculture Organization of the United Nations website, accessed June 14, 2007. Available at http://www.fao.org/fi/website/FIRetrieveAction.do?dom=countrysector&xml=FI-CP_PE.xml&lang=en. Food and Aquaculture Department, “Fishery and Aquaculture Country Profile – Panama,” Food and Agriculture Organization of the United Nations website, accessed June 14, 2007. Available at http://www.fao.org/fi/website/FIRetrieveAction.do?dom=countrysector&xml=FI-CP_PA.xml&lang=en.
- ⁴ U.S. Food and Drug Administration “Update on Tainted Veggie Booty Snack Food: FDA Testing Confirms Presence of Salmonella Contamination,” press release, July 13, 2007. Available at <http://www.fda.gov/bbs/topics/NEWS/2007/NEW01666.html>.
- ⁵ The Salmonella germ is a group of bacteria that causes diarrheal disease in humans. Salmonellosis is the disease resulting from the bacteria and causes diarrhea, fever, and abdominal cramps. Most people recover within 7 days without treatment, but some people may require hospitalization. In these cases the bacteria can spread to the blood stream and cause death if not treated. Division of Bacteria and Mycotic Diseases, “Salmonellosis,” Centers for Disease Control and Prevention, Nov. 4, 2006. Available at http://www.cdc.gov/ncidod/dbmd/diseaseinfo/salmonellosis_g.htm#What%20is%20salmonellosis.
- ⁶ Andrew Bridges, “Supplier of Recalled Snacks Identified,” *Associated Press*, July 12, 2007.
- ⁷ U.S. Food and Drug Administration, “FDA Detains Imports of Farm-Raised Chinese Seafood: Products Have Repeatedly Contained Potentially Harmful Residues,” press release July 28, 2007. Available at <http://www.fda.gov/bbs/topics/NEWS/2007/NEW01660.html>.
- ⁸ Steven Reinberg, “Farmed Fish Ate Melamine: FDA,” *Washington Post*, May 8, 2007. Available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/05/08/AR2007050801423.html>.
- ⁹ “Thousands of Pets Probably Sickened by Food, Veterinary Chain’s Data Estimates 39,000 Animals Were Affected,” *Associated Press*, April 9, 2007.
- ¹⁰ U.S. Department of Agriculture’s Foreign Agricultural Service food import numbers, accessed and inflation-adjusted July 2007.
- ¹¹ See U.S. International Trade Commission, “U.S.-Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects,” Investigation No. TA-2104-20, USITC Publication 3855, June 2006, at 3-2; and U.S. International Trade Commission, “U.S.-Colombia Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects,” Investigation No. TA-2104-023, USITC Publication 3896, December 2006, at G-10.
- ¹² O. Kay Henderson, “Edwards Wants “COOL” Labels on Foods,” *Radio Iowa*, July 11, 2007. Available at <http://johnedwards.com/iowa/20070711-edwards-wants-cool-labels/index.html>.
- ¹³ Marion Burrows, “Who is Watching What We Eat?” *New York Times*, May 15, 2007.
- ¹⁴ “Senator Clinton Urges Administration to Strengthen Food Safety: Calls for Stricter Testing and Monitoring of Imported Food and Feed Materials,” Press Release, May 4, 2007. Available at <http://www.senate.gov/~clinton/news/statements/record.cfm?id=273600>.
- ¹⁵ The Centers for Disease Control and Prevention, “Foodborne Illness, Frequently Asked Questions,” U.S. Department of Health and Human Services website, Oct. 25, 2005. Available at http://www.cdc.gov/ncidod/dbmd/diseaseinfo/foodborneinfections_g.htm.
- ¹⁶ Roughly 20 percent of the foods we eat are now imported. Number derived from the ratio of the dollar sum of Foreign Agricultural Service’s Agricultural (Food) Import Commodity Aggregations to the dollar sum of food expenditures calculated by the U.S. Department of Agriculture’s Economic Research Service, for 2005.
- ¹⁷ The U. S. Department of Agriculture’s Foreign Agriculture Service offers aggregations of commodity groups. The United States ran a nearly \$370 million food deficit in 2005 for the sum of the following aggregations: dairy products, fruits & preparations, grains & feeds, livestock & meats, oilseeds & products, other horticultural products, planting seeds, poultry & products, sugar & tropical products, tree nuts & preparations, and vegetables & preparations. These are the products featured in Figure 1. The United States then ran a slight food trade surplus the following year. In recent years, the United States has been on the verge of having an annual agriculture trade deficit, which refers to a wider category that includes farm machinery and other non-food items.
- ¹⁸ WTO Sanitary and Phytosanitary Agreement, Article 2.3. Available at: http://www.wto.org/english/docs_e/legal_e/15sps_01_e.htm.
- ¹⁹ WTO Sanitary and Phytosanitary Agreement, Article 4.
- ²⁰ Andrew von Eschenbach, Testimony to the U.S. House, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations for 2007*, (Feb. 16, 2006), at 457.

²¹ U. S. Department of Agriculture, "United States Department of Agriculture Food Safety and Inspection Service Quarterly Enforcement Report, January 1, 2007 - March 31, 2007," at 12.

²² A law, dubbed "COOL" after the initials of what it required - country-of-origin labeling - mandated labeling for beef, pork, lamb, fresh fruits and vegetables, seafood and peanuts. COOL was passed by Congress as part of the 2002 Farm Bill. Labeling was made voluntary for two years, then mandatory in 2004. Department of Agriculture Secretary Anne Veneman called the measure "unfortunate" and a likely violation of U.S. trade agreements. Major industry opponents of the measure included the National Cattlemen's Beef Association and the Grocery Manufacturers Association. USDA subsequently dragged its feet on implementation of the bill. In 2003 and again in 2005 appropriations bill amendments offered by former Rep. Henry Bonilla (R-Texas) were passed that delayed implementation of COOL by cutting off funding to implement the program. For a detailed history of these events, please see Andrew Martin, "Labels Lack Food's Origin Despite Law," *New York Times*, July 2, 2007. On June 15, 2007 USDA re-opened a comment period for the promulgation of regulation implementing the law. For more information please see <http://www.ams.usda.gov/cool/>. Seafood labeling received separate treatment and was eventually pushed through in 2005 by Sen. Ted Stevens (R-Alaska).

²³ Consumers Union, "Food Labeling Poll," *Consumer Reports*, June 25, 2007 at 13. Available at http://www.greenerchoices.org/pdf/2007.41_labeling_poll_v.2.6_public_release.pdf.

²⁴ U.S. International Trade Commission, "U.S.-Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects," Investigation No. TA-2104-20, USITC Publication 3855, June 2006, at F-4.

²⁵ According to the Government Accountability Office, in fiscal year 2003, four agencies U.S. Department of Agriculture, Food and Drug Administration, Environmental Protection Agency and the National Marine Fisheries Service spent \$1.7 billion on food safety-related activities. U.S. Government Accountability Office, "High-Risk Series: An Update," January 2007, at 29. Available at http://www.gao.gov/new_items/d07310.pdf

²⁶ See U.S. Food and Drug Administration, U.S. Department of Agriculture, "United States Food Safety System," Food and Drug Administration website, published on March 3, 2000, accessed July 19, 2007. Available at: <http://www.foodsafety.gov/~fsg/fssyst2.html>.

²⁷ Alexei Barrionuevo, "Food Imports Often Escape Scrutiny," *New York Times*, May 1, 2007.

²⁸ Food & Water Watch, "Import Alert: Government Fails Consumers, Falls Short on Seafood Inspections," FWW report, May 2007, at 3. Available at <http://www.foodandwaterwatch.org/fish/pubs/reports/import-alert>.

²⁹ Lester Crawford, Testimony to the U.S. House, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations for 2005*, (March 11, 2004), at 72. Crawford used non-inflation adjusted numbers, and the original quote said food imports had doubled.

³⁰ See U.S. International Trade Commission, "U.S.-Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects," Investigation No. TA-2104-20, USITC Publication 3855, June 2006, at 3-2; and U.S. International Trade Commission, "U.S.-Colombia Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects," Investigation No. TA-2104-023, USITC Publication 3896, December 2006, at G-10.

³¹ These categories include HTS lines 02011050, 02012080, 02013080, 02021050, 02022080, and 02023080 for beef, and HTS lines 16041410, 16041422, 16041430 for processed seafood.

³² Office of the U.S. Trade Representative Fact Sheet, Summary Fact Sheet on Peru FTA, December 2005.

³³ Public Citizen analysis of U.S. International Trade Commission data and Peru-U.S. FTA text.

³⁴ The ITC noted this in the case of asparagus in Peru, and the argument holds more broadly. See U.S. International Trade Commission, "U.S.-Peru Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects," Investigation No. TA-2104-20, USITC Publication 3855, June 2006, at 3-2.

³⁵ *Cryptosporidium* is a parasite that causes a diarrheal disease of the same name. Symptoms of the disease include diarrhea, dehydration, weight loss, stomach cramps or pain, fever, nausea, and vomiting. Division of Parasitic Disease, "Cryptosporidium Infection," Centers for Disease Control and Prevention website, accessed July 12, 2007. Available at http://www.cdc.gov/ncidod/dpd/parasites/cryptosporidiosis/factsht_cryptosporidiosis.htm#1.

³⁶ *Listeria monocytogenes* is a bacterium commonly found in raw and pasteurized milk, cheeses, ice cream, raw vegetables, fermented raw-meat sausages, raw and cooked poultry, raw meats, and raw and smoked fish. If contracted it may cause nausea, vomiting, and diarrhea, or more seriously, septicemia, meningitis (or meningoencephalitis), or encephalitis. Center for Safety and Applied Nutrition, "Foodborne Pathogenic Microorganisms and Natural Toxins Handbook," U.S. Food and Drug Administration website, Jan 1992, accessed July 10, 2007. Available at <http://vm.cfsan.fda.gov/~mow/chap6.html>.

³⁷ Information for cryptosporidium on basil from U.S. Food and Drug Administration Import Alerts, Peru, 1992. Available at http://www.fda.gov/ora/fiars/ora_import_ia2811.html. Information for other items from Import Refusal Reports for OASIS, U.S. Food and Drug Administration, Refusal Actions by FDA as Recorded in OASIS for Peru, June 2006-May 2007. Available at http://www.fda.gov/ora/oasis/ora_ref_cntry.html.

³⁸ OASIS, U.S. Food and Drug Administration, Refusal Actions by FDA as Recorded in OASIS for Panama, July 2006-June 2007. Available at http://www.fda.gov/ora/oasis/ora_ref_cntry.html.

³⁹ “U.S. Orders Tighter Tracking Of the Food Supply Chain,” *New York Times*, Dec. 7, 2004.

⁴⁰ 9 CFR §327.2 (Chapter 3, Subchapter A).

⁴¹ For more information about United States Department of Agriculture’s track record and performance on equivalency, please see the Public Citizen report, “The WTO Comes to Dinner: U.S. Implementation of Trade Rules Bypasses Food Safety Requirements,” 2003. Available at: <http://www.citizen.org/documents/PCfoodsafety.pdf>.

Also see, U.S. Department of Agriculture website “Import Information: Equivalency Process.” Available at: http://www.fsis.usda.gov/regulations_&_policies/equivalence_process/index.asp

⁴² List of equivalent countries is available at 9 CFR §327.2 (Chapter 3, Subchapter A).

⁴³ United States Department of Agriculture, “United States Department of Agriculture Food Safety and Inspection Service Quarterly Enforcement Report, January 1, 2007 - March 31, 2007,” at 12.

⁴⁴ See U.S. Department of Agriculture, Office of Inspector General, “Food Safety and Inspection Service, Imported Meat and Poultry Inspection Process, Phase I,” Report No. 24099-3-Hy, June 2000, available at

<http://www.usda.gov/oig/webdocs/imported.pdf>; U.S. Department of Agriculture, Office of Inspector General, “Food Safety and Inspection Service, Imported Meat and Poultry Reinsertion Process,” Phase II, Report No. 24099-04-Hy, February 2003; Available at <http://www.usda.gov/oig/webdocs/24099-04-Hy.pdf>.

U.S. Department of Agriculture, Office of Inspector General, “Food Safety and Inspection Service, Imported Meat and Poultry Equivalence Determinations, Phase III,” Report No. 24099-05-Hy, December 2003. Available at <http://www.usda.gov/oig/webdocs/24099-5-HY.pdf>.

⁴⁵ U.S. Department of Agriculture, Office of Inspector General, “Food Safety and Inspection Service Assessment of the Equivalence of the Canadian Inspection System,” Report No. 24601-05-Hy, December 2005. Available at <http://www.usda.gov/oig/webdocs/24601-05-HY.pdf>.

⁴⁶ Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act) 21 U.S.C §381 (Chapter 9, Subchapter VIII).

⁴⁷ U.S. Food and Drug Administration, “Registration of Food Facilities Compliance Information; Registration,” Department of Health and Human Services website, July 3, 2007. Available at:

<http://www.cfsan.fda.gov/~furls/ffregsum.html>.

⁴⁸ World Health Organization (WHO) and World Trade Organization (WTO), “WTO Agreements and Public Health: A Joint Study by the WHO and the WTO Secretariat, WHO ISBN 92 4 156214 5, 2002 at 63.

⁴⁹ WTO Sanitary and Phytosanitary Agreement, Article 2.3.

⁵⁰ In 2004, the Food Safety and Inspection Service (FSIS) changed its requirement that supervisory visits by inspectors take place every month at foreign plants eligible to export to the United States after numerous countries were found to be out of compliance with this basic safety standard. Supervisory visits are needed because without them, plant inspectors can be bullied by firms, bribed and otherwise compromised. FSIS has itself documented many instances, when foreign meat inspectors had their salaries provided by companies and not the government. FSIS amended 9 CFR §327.2(a)(2)(iv)(A) and 9 CFR §381.196(a)(2)(iv)(A) to require that foreign supervisors make “periodic visits.” FSIS clearly stated that it was making this move to comply with WTO requirements citing SPS Article 2.3. FSIS stated “The effect of Article 2.3 is that FSIS, acting as a regulatory agency of the United States, may not impose import requirements on inspection systems or establishments in an exporting country that are more stringent than those applied domestically.” 69 Federal Register 51194, (Aug. 18, 2004.)

⁵¹ WTO Sanitary and Phytosanitary Agreement, Article 2.

⁵² WTO Sanitary and Phytosanitary Agreement, Article 5.

⁵³ Alex Fryer, “House Agriculture Committee Reacts to Ban on Downer Cows,” *The Seattle Times*, Jan. 22, 2004. Available at <http://archives.seattletimes.nwsourc.com/cgi-bin/taxis.cgi/web/vortex/display?slug=agcommittee22m&date=20040122&query=House+Agriculture+Committee+Reacts+to+Ban+on+Downer+Cows>.

⁵⁴ WTO Sanitary and Phytosanitary Agreement, Article 3 and 4.

⁵⁵ For more information about the FDA’s harmonization efforts, please see Public Citizen’s “Harmonization Handbook,” 2000. Available at <http://www.citizen.org/trade/harmonization/handbook/>.

⁵⁶ 9 CFR 327.2 (Chapter 2, Subchapter A). Although 44 nations have been deemed equivalent, not all of the 44 nations may be exporting to the United States at any one time.

⁵⁷ For more information about U.S. Department of Agriculture’s track record and performance on equivalency, please see the Public Citizen report, “The WTO Comes to Dinner: U.S. Implementation of Trade Rules Bypasses Food Safety Requirements,” 2003. Available at: <http://www.citizen.org/documents/PCfoodsafety.pdf>.

⁵⁸ WTO Sanitary and Phytosanitary Agreement, Article 5.6.

⁵⁹ See, Investment Chapters (Chapter 10) of the proposed FTAs. See e.g. Peru FTA Article 10.7 and Section B.

⁶⁰ The information regarding the total amount claimed is from the U.S. State Department website on NAFTA Investor-State arbitrations, “Cases Regarding the Border Closure due to BSE Concerns.” Available at: <http://www.state.gov/s/l/c14683.htm> accessed on July 17, 2007.

⁶¹ For more information about this case, please see the Public Citizen report “NAFTA’s Threat to Sovereignty and Democracy: The Record of NAFTA Chapter 11 Investor-State Cases 1994-2005,” February 2005. Available at <http://www.citizen.org/documents/Chapter%2011%20Report%20Final.pdf>. Also visit the U.S. State Department website <http://www.state.gov/s/l/c14683.htm>.

⁶² For information about plants exporting to the United States please see the FDA’s website Registration of Food Facilities available at <http://www.cfsan.fda.gov/~furls/ffregsum.html> accessed on July 17, 2007.

⁶³ Center for Science in the Public Interest “Outbreak Alert: Closing the Gaps in the Federal Food-Safety Net,” CSPI report,” December 2006, at i. Available at: http://www.cspinet.org/foodsafety/outbreak_alert.pdf.

⁶⁴ National Marine Fisheries Services, “Fisheries of the United States, 2005,” February 2007, at 74. Available at http://www.st.nmfs.gov/st1/fus/fus05/fus_2005.pdf. According to the study, in 1980, the average American consumed 12.5 pounds of fish, while in 2005, that quantity had increased to 16.2 pounds.

⁶⁵ National Marine Fisheries Services, “Fisheries of the United States, 1995.” Available at <http://www.st.nmfs.gov/st1/fus/fus95/index.html>. For 2005 numbers, see National Marine Fisheries Services, “Fisheries of the United States, 2005,” February 2007, at 48-49.

⁶⁶ National Marine Fisheries Services “Fisheries of the United States, 1995.” National Marine Fisheries Services, “Fisheries of the United States, 2005,” February 2007, at 48. According to these sources, there were 597.2 million pounds of shrimp imported in 1995 and 1.2 billion pounds in 2005 – a 95 percent increase.

⁶⁷ William T. Hogarth, Written Testimony Before the Senate Committee on Commerce, Science and Transportation, National Marine Fisheries Services of National Oceanic and Atmospheric Administration, July 18, 2007, at 3.

⁶⁸ Food & Water Watch, “Import Alert: Government Fails Consumers, Falls Short on Seafood Inspections,” FWW report, May 2007, at 6.

⁶⁹ Public Citizen analysis of U.S. International Trade Commission data, for tariff line 03061300.

⁷⁰ Indeed, according to FAO, the gap between China and Peru may be even smaller than these numbers indicate, as China is thought to have inflated statistics. See Food and Agriculture Organization of the United Nations, “State of World Fisheries and Aquaculture 2006,” 2007, at 5 and 9. Available at <http://www.fao.org/docrep/009/A0699e/A0699e00.htm>.

⁷¹ Food and Agriculture Organization of the United Nations, “State of World Fisheries and Aquaculture 2006,” 2007, at 44.

⁷² Food and Aquaculture Department, “Fishery and Aquaculture Country Profile – Peru,” Food and Agriculture Organization of the United Nations website, accessed June 14, 2007. Available at http://www.fao.org/fi/website/FIRetrieveAction.do?dom=countrysector&xml=FI-CP_PE.xml&lang=en. Food and Aquaculture Department, “Fishery and Aquaculture Country Profile – Panama,” Food and Agriculture Organization of the United Nations website, accessed June 14, 2007. Available at http://www.fao.org/fi/website/FIRetrieveAction.do?dom=countrysector&xml=FI-CP_PA.xml&lang=en.

⁷³ Centers for Disease Control and Prevention, “Preliminary FoodNet Data on the Incidence of Infection with Pathogens Transmitted Commonly through Food – 10 States, 2006,” *Morbidity and Mortality Weekly Report* 56(14), April 13, 2007. For oyster import data, see data from U.S. ITC Data web for tariff line 03071000.

⁷⁴ See Federal Food Drug and Cosmetic Act, U.S. Code Title 21, Chapter 9 available at: <http://www.fda.gov/opacom/laws/fdact/fdctoc.htm>.

⁷⁵ Sue Kovach Shuman, “Cause for Concern in Chinese Bulbs,” *Washington Post*, June 20, 2007. Available at http://www.washingtonpost.com/wp-dyn/content/article/2007/06/19/AR2007061900423_pf.html.

⁷⁶ For information about plants exporting to the United States please see the FDA’s website Registration of Food Facilities available at <http://www.cfsan.fda.gov/~furls/ffregsum.html>, accessed on July 17, 2007.

⁷⁷ Histamine fish poisoning results from the bacterial breakdown of certain fish products. Eating tainted fish can result in rash, diarrhea, flushing, sweating, headache, vomiting, burning or swelling of the mouth, abdominal pain, or a metallic taste. Division of Bacterial and Mycotic Diseases, “Marine Toxins,” Centers for Disease Control and Prevention website, Oct. 12, 2005. Available at http://www.cdc.gov/ncidod/dbmd/diseaseinfo/marinetoxins_g.htm.

⁷⁸ A full list of FDA’s possible reasons for import rejections is available in a document called “Violation Code Translation” at http://www.fda.gov/ora/oasis/ora_oasis_viol_rpt.html.

⁷⁹ 21 CFR §108 (Chapter 1, Subchapter B, Part 108).

⁸⁰ Import Refusal Reports for OASIS, U.S. Food and Drug Administration, Refusal Actions by FDA as Recorded in OASIS for Peru, June 2006-May 2007. Available at http://www.fda.gov/ora/oasis/ora_ref_cntry.html.

⁸¹ Import Refusal Reports for OASIS, U.S. Food and Drug Administration, Refusal Actions by FDA as Recorded in OASIS for Panama, June 2006-May 2007. Available at http://www.fda.gov/ora/oasis/ora_ref_cntry.html.

⁸² The percentages refer to the total number of rejected shipments over the 1997-2006 period, which includes 207 Panamanian shipments and 182 Peruvian shipments. The group “misbranding” includes shipments where “the food is in package form and appears to not have a label containing an accurate statement of the quantity of the contents in terms of weight, measure or numerical count and no variations or exemptions have been prescribed by regulations; the food is in package form and appears to not bear a label containing the name and place of business of the manufacturer, packer, or

distributor; Required label or labeling appears to not be in English; It appears that the label does not bear the common or usual name of the food; It appears the food is fabricated from two or more ingredients and the label does not list the common or usual name of each ingredient;” and other instances of false shipment or nutritional labeling. The group “other” includes shipments where “The article appears to have been manufactured, processed, or packed under unsanitary conditions; The article appears to bear or contain histamine, a poisonous and deleterious substance in such quantity as ordinarily renders it injurious to health; The product appears to have been prepared, packed, or held under unsanitary conditions, or it may be injurious to health, due to failure of the foreign processor to comply with 21 CFR 123; The article appears to consist in whole or in part of a filthy, putrid, or decomposed substance or be otherwise unfit for food. Contains an off odor; The food appears to be represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by section 401 and the food does not appear to conform to such definition and standard;” and instances where veterinary drugs were found in the shipments, or there were concerns related to the Hazard Analysis Critical Control Point regulations for seafood. For Peru, “other” includes listeria as well.

⁸³ Food & Water Watch, “Import Alert: Government Fails Consumers, Falls Short on Seafood Inspections,” FWW report, May 2007, at 8.

⁸⁴ Some shipments are given sensory exams *and* laboratory inspection, so the overall number likely overestimates the total shipments given one or both of these inspections.

⁸⁵ Centers for Disease Control and Prevention, “Preliminary FoodNet Data on the Incidence of Infection with Pathogens Transmitted Commonly through Food – 10 States, 2006,” *Morbidity and Mortality Weekly Report* 56(14), April 13, 2007. Available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5614a4.htm>.

⁸⁶ The 22 categories of seafood are sole, fresh or chilled; sole, frozen; fish, nesi; fish, nesi in brine or salted; sturgeon roe, fresh or chilled; sturgeon roe, frozen; flat fish; sardines; dogfish and other sharks, frozen; frozen fish meat; flours, meals and pellets of fish, fit for human consumption; sturgeon roe, dried or smoked; fillets of herring dried, salted or in brine; fillets of mackerel; smoke Pacific, Atlantic and Danube salmon; herrings in brine or salted; anchovies in brine or salted; mackerel in brine or salted; salmon in brine or salted; crabmeat, frozen; crabmeat, not frozen; snails. Peru FTA Annex 2.3. Panama FTA Annex 3.3.

⁸⁷ U.S. Food and Drug Administration, “Food and Drug Administration Pesticide Program Residue Monitoring 2003,” May 2005 at 5. Available at: <http://www.cfsan.fda.gov/~dms/pes03rep.html>.

⁸⁸ U.S. Food and Drug Administration, “Food and Drug Administration Pesticide Program Residue Monitoring 2003,” May 2005 at 6.

⁸⁹ U.S. Food and Drug Administration, “Food and Drug Administration Pesticide Program Residue Monitoring 2003,” May 2005 at 9.

⁹⁰ U.S. Food and Drug Administration, Import Refusal Reports for OASIS, Refusal Actions by FDA as Recorded in OASIS for Peru Dec. 2006, downloaded June 15, 2006. Available at http://www.fda.gov/ora/oasis/12/ora_oasis_c_pe.html.

⁹¹ In 2003 the U.S. Food and Drug Administration found illegal pesticide residues, chlorpyrifos, on lettuce heads from Peru. In 2002, it was chlorpyrifos on pigeon peas, methamidophos on green peas, and methomyl on lettuce. The Food and Drug Administration is still compiling this data, but no reports have been published for 2004, 2005 or 2006.

⁹² Carl Smith, “Pesticide Exports from U.S. Ports, 1997-2000,” *International Journal of Occupational and Environmental Health*, Volume 7, Number 4, October /December 2001, 266-274. Available at http://www.fasenet.org/pesticide_report97-00.pdf.

⁹³ International Potato Center, “Hazardous pesticides commonly used in the Andes,” press release, Dec. 4, 2006. Available at http://www.cipotato.org/pressroom/press_releases_detail.asp?cod=30.

⁹⁴ Erika Rosenthal, “The Tragedy of Taucamarca: A Human Rights Perspective on the Pesticide Poisoning Deaths of 24 Children in the Peruvian Andes,” *International Journal of Occupational and Environmental Health*, Volume 9, Number 1 January /March 2003, at 40. Available at http://www.ijoeht.com/pfds/0901_rosenthal.pdf.

⁹⁵ Pesticide Action Network, “Bayer Found Responsible for the Poisoning of 24 children in Peru,” Pesticide Action Network Updates Service, April 30, 2002, available at http://www.panna.org/resources/panups/panup_20020830.dv.html. Also see Erika Rosenthal, “The Tragedy of Taucamarca: A Human Rights Perspective on the Pesticide Poisoning Deaths of 24 Children in the Peruvian Andes,” *International Journal of Occupational and Environmental Health*, Volume 9, Number 1 January / March 2003, at 40.

⁹⁶ Examples of pesticides that will have tariffs dropping to zero at the implementation of the Peru FTA: methamidophos, captafol, glyphosate, fenthion, and dimethoate. Peru FTA Annex 3.3.

⁹⁷ Upon implementation of the Peru and Panama FTAs, many tariff duties on common pesticides will drop to zero, such as glyphosate, which is commonly used on popular imports to the United States such as asparagus, onion, mango, and grape. Additionally, tariffs on several pesticides which the EPA has banned or severely limited due to public health concerns will also drop to zero upon implementation; thereby encouraging their importation to Peru and Panama for use on export crops. Some examples include captafol, DDT, dieldrin, endrin, and methamidophos. See Pesticide Action Network, “PAN Pesticide Database,” accessed July 19, 2007. Available at <http://www.pesticideinfo.org/Index.html>. Also see U.S.

Environmental Protection Agency, “UN PIC and U.S. PIC-Nominated Pesticides List,” May 2, 2006, accessed July 19, 2007. Available at <http://www.epa.gov/oppfead1/international/piclist.htm>.

⁹⁸ WTO Sanitary and Phytosanitary Agreement, Article 4.1.

⁹⁹ 60 Federal Register 38667 (July 28, 1995).

¹⁰⁰ 60 Federal Register 38667 (July 28, 1995).

¹⁰¹ Transatlantic Consumer Dialogue’s paper on equivalency and harmonization states “the very notion of equivalence allows for imprecise, subjective comparisons that are not appropriate when dealing with issues as important as public health and safety.” Transatlantic Consumer Dialogue, “Principles of Harmonization,” February 2000. Available at: <http://www.tacd.org/cgi-bin/db.cgi?page=view&config=admin/docs.cfg&id=31>.

¹⁰² Bruce Silverglade, “The WTO Agreement on Sanitary and Phytosanitary Measures: Weakening Foods Safety Regulations to Facilitate Trade,” *Food and Drug Law Journal*, Vol. 55 No. 4, at 517.

¹⁰³ U.S. Department of Agriculture, Office of Inspector General, “Food Safety and Inspection Service, Imported Meat and Poultry Inspection Process, Phase I,” Report No. 24099-3-Hy, June 2000, Section III, page iii, available at <http://www.usda.gov/oig/webdocs/imported.pdf>.

¹⁰⁴ U.S. Department of Agriculture, Office of Inspector General, “Food Safety and Inspection Service, Imported Meat and Poultry Inspection Process, Phase I,” Report No. 24099-3-Hy, June 2000, Section III, page 37.

¹⁰⁵ U.S. Department of Agriculture, Office of Inspector General, “Food Safety and Inspection Service, Imported Meat and Poultry Inspection Process, Phase I,” Report No. 24099-3-Hy, June 2000, Section III, page ii.

¹⁰⁶ U.S. Department of Agriculture, Office of Inspector General, “Food Safety and Inspection Service, Imported Meat and Poultry Reinsertion Process, Phase II, Report No. 24099-04-Hy, February 2003, at iii-vi. The report found that USDA had only fully addressed 4 out of 18 recommendations. Available at <http://www.usda.gov/oig/webdocs/24099-04-Hy.pdf>. U.S. Department of Agriculture, Office of Inspector General, “Food Safety and Inspection Service, Imported Meat and Poultry Equivalence Determinations, Phase III,” Report No. 24099-05-Hy, December 2003, at Exhibit A. Available at <http://www.usda.gov/oig/webdocs/24099-5-HY.pdf>.

¹⁰⁷ R-CALF USA, “R-CALF USA 2007 Stampede Fact Sheet: International Trade in Cattle and Beef.” Available at <http://www.r-calfusa.com/FTAA-TPA/02-09-07%20R-CALF%20USA%20Stampede%20Fact%20Sheet%20Trade.pdf>.

¹⁰⁸ Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Center for Emerging Issues, “Foot and Mouth Disease: Uruguay Impact Worksheet,” Oct. 27, 2007. Available at http://www.aphis.usda.gov/vs/ceah/cei/taf/iw_2000_files/foreign/fmd_uruguay1000e.htm.

¹⁰⁹ 68 Federal Register 6673-6677 (Feb. 10, 2003).

¹¹⁰ Clint Peck, “Looming Large,” *Beef*, Nov. 1, 2006. Available at: http://beef-mag.com/mag/beef_looming_large/.

¹¹¹ Gregg Doudd and Julie McWright, “2006 Imports Are Up, but Slowed from Record Pace Set in 2004,” Cattlemen’s Beef Board and National Cattlemen’s Beef Association, May/June 2006. Available at <http://www.beef.org/uDocs/imports107.pdf>.

¹¹² Also of concern to U.S. beef producers is the weak rule of origin in the Peru FTA. Brazil has the largest cattle herd in the world, more than 200 million head. R-CALF has serious concerns that Brazilian beef could make its way into the United States duty-free by way of neighboring Peru. See R-CALF, “Peru, Panama Trade Deals Don’t Address Agricultural Concerns,” press release, May 15, 2007. Available at <http://www.r-calfusa.com/News%20Releases/051507-peru.htm>.

¹¹³ U.S. Department of Agriculture, Food Safety and Inspection Service, Technical Service Center, “Audit Report for Mexico, November 5 through November 26, 2001,” at 4. Available at <http://www.fsis.usda.gov/OPPDE/FAR/Mexico/MexicoNov2001.pdf>.

¹¹⁴ U.S. Department of Agriculture, Food Safety and Inspection Service, Technical Service Center, “Audit Report for Mexico, April 28 – May 20, 1999,” at 7.

¹¹⁵ U.S. Department of Agriculture, Food Safety and Inspection Service, Technical Service Center, “Audit Report for Mexico, April 28 – May 20, 1999,” at 7.

¹¹⁶ U.S. Department of Agriculture, Food Safety and Inspection Service, Technical Service Center, “Audit Report for Mexico, April 28 – May 20, 1999,” at 10.

¹¹⁷ “Just before the House Agriculture Committee finished marking up the 2007 farm bill late Thursday, Agriculture Chairman Peterson called the committee into executive session to explain that the meat industry had agreed to resolve one of the longest-running disputes in American agriculture: implementation of the 2002 law requiring country-of-origin labeling for red meat at the final point of retail sale. Ranch and farm groups promoted labeling, but meat processors, retailers and the Canadian government bitterly opposed it. Under GOP control of Congress, Republicans repeatedly delayed implementation through the appropriations process. Under Democratic control, Peterson and Agriculture Appropriations Subcommittee Chairwoman Rosa DeLauro, D-Conn., said labeling is so popular among members and the public they would not stand in the way of implementation.” See Jerry Hagstrom, “As Peterson Engineers Compromise On Meat Labeling,” *Congress Daily PM*, July 20, 2007.