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H.R. 3610, The Food and Drug Import Safety Act
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Chairman Pallone and Members of the Committee, I am honored to appear before you today to present our views and suggestions on House Bill 3610, the Food and Drug Import Safety Act. I am Dr. Jill Hollingsworth, group vice president of the Food Marketing Institute (FMI). I have been in charge of food safety programs at FMI for the past ten years

FMI is a national trade association that has 1,500 member companies made up of food retailers and wholesalers in the United States and around the world. FMI members operate approximately 26,000 retail food stores with combined annual sales of $340 billion, representing three quarters of all retail food store sales in the United States. FMI's retail membership is composed of national and regional chains as well as independent grocery stores. Our international membership includes some 200 companies from more than 50 countries.

In my capacity at FMI, I often draw upon my past work experience at the U.S. Department of Agriculture (USDA). I spent 15 years there and led the investigation of the Jack-in-the-Box *E. coli* outbreak in 1992. I subsequently set up food safety and recall programs and a liaison program with the Centers for Disease Control and Prevention (CDC) in Atlanta and the U.S. Public Health

Service. While there I also served as a Veterinary Inspector, Special Assistant to the Administrator of Food Safety and Inspection Service (FSIS) and Assistant Deputy Administrator of FSIS.

Presently, I work closely with supermarkets and their wholesalers to ensure we are doing all we can to guarantee a safe food supply — operating clean and safe stores; adhering to science-based best practices; responding to emergency situations; educating the public about safe food handling practices; and, working with our federal, state and international partners to improve food safety programs.

In 2007, consumer confidence in the food supply reached its lowest point since 1989. FMI's own survey of consumers, *U.S. Grocery Shopper Trends,* found that consumer confidence in the safety of foods purchased at supermarkets dropped from 82 percent in 2006 to 66 percent in 2007. And for restaurants, the drop in confidence was down to 43 percent. Recalls and the lack of confidence in both the food system and government have caused consumers to actually change their purchasing habits, with 38 percent of consumers saying they have stopped buying certain food items because of food safety concerns. For example, in January of this year, 71 percent of consumers reported they no longer buy spinach.

We realize that restoring consumer confidence and strengthening our food safety system is of paramount importance. We understand and support your goals. Enhancing the safety of the food supply requires the active effort and aggressive support of the business community — such as food wholesalers and retailers – as well as government. This includes our work with suppliers, especially beyond our borders, our commitment to train our own people and our outreach to consumers. It is a farm-to-table challenge that needs a farm-to-table solution. It is both a domestic and an international problem we must address together.

Accordingly, the retail food industry is actively involved in improving food safety in the U.S. We are doing this through four focused programs: SQF (Safe Quality Food program); SuperSafeMark; the Partnership for Food Safety Education; and, our Board Level Food Safety Task Force.

I would like to highlight a few of the retailer/wholesaler food safety initiatives in place. First, we work with our suppliers to ensure that they are following best practices. We have been aggressively implementing a new auditing and certification program for food safety — one based on science, for all suppliers, from the smallest farm to the largest manufacturing plant. This program is called Safe Quality Food, or SQF. SQF is one of only five programs in the world that has received recognition from the Global Food Safety Initiative, a group of international food safety experts. What makes SQF unique is that we require suppliers to carry out risk assessments, and after they have put their food safety

program in place, we monitor their performance through third-party audits. Only those companies in compliance with recognized international standards and practices can receive SQF certification.

Second, on the domestic front, we train and certify our supermarket employees in safe food handling through a program especially designed for retail called SuperSafeMark. Currently, we train and certify about 15,000 store managers a year and we train thousands of store employees so that they comply with the FDA Food Code.

Third, we provide consumers with practical, science-based advice on food-handling in the home. We do this through The Partnership for Food Safety Education. This is a joint private-public sector project that brings together consumer groups, the FDA, USDA, CDC and a wide variety of other industry associations. Our president, Tim Hammonds, is the founding chair and immediate past chair of the partnership. The Partnership is responsible for the FightBAC campaign to teach food safety to children and others; the Chill Out program to remind consumers about keeping their home refrigerators cold; and, most recently, the Be Food Safe promotion providing retailers with the tools they need to educate their customers about safe food practices.

Fourth, FMI's Board has appointed a food safety task force made up of the chief executives from retail and wholesale companies around the world. The task force

is looking at how we can make our nation's food recall communications system more effective and efficient. We are working in concert with our trading partners and will be glad to communicate with this committee on our progress as we work toward improvements in the recall system.

As I mentioned earlier, there is a need to restore consumer confidence and to reduce the burden of foodborne illness; to that end we want to work with the committee to accomplish our shared goals but in a way that does not hinder our ability to serve our customers and ensure an affordable and abundant food supply. Many of the proposals in H.R. 3610 are well founded, but we must be sure that any changes to our current food safety system meet certain criteria. They must:

- Be supported by science,
- Have measurable benefits,
- Be affordable,
- Be realistic and practical,
- And, be implemented without unintended consequences.

Mandatory Recall Authority

Regarding mandatory recall authority, we realize that under our current voluntary system of recalls, companies do not refuse to withdraw adulterated product at FDA’s request or they take action on their own. However, if the Secretary is given

the *option* to mandate a recall in the event a company did refuse, we can see where this would build confidence in the recall system. We note that this approach differs somewhat from the current bill language, which would *require* FDA to issue a cease distribution order upon a finding of food adulteration.

Rapid Testing Techniques for Use in Inspection of Imported Foods

Another area of potential agreement is the development of rapid testing techniques for use in inspections of imported foods. We urge the committee to pursue this avenue as long as scientists and researchers prioritize this work. Developing rapid or screening tests should take into account: the seriousness of the threat posed by the pathogen or chemical; how frequently it occurs as a food contaminant; and, the likelihood that a rapid test methodology would be successful. We would also encourage FDA to work with USDA, CDC, and other public and private entities to share expertise, resources and laboratories in pursuing this.

Safe and Secure Importation Food Program

The provision for a safe and secure importation of food program that recognizes those companies that comply with new FDA guidelines in exchange for expedited review of their product is a good idea. Here is an area where the private sector can be of assistance if companies demonstrate their compliance to a food safety standard through an accredited certification program such as SQF. SQF requires that a company be in compliance with the regulatory requirements of both the

exporting and importing country, in addition to the standards set by the retail buyers. Although not intended to be a substitute for government oversight, the private sector can add an additional layer of "policing" for products entering into the U.S. food supply. We would need to see the details of FDA's plan as many factors such as tracking compliance, the security of the company's supply chain, etc., would need to be taken into consideration. It would also be important to coordinate these efforts with USDA, Customs and other Agencies.

Continued Operation of FDA Field Laboratories

We fully support the continued operation of FDA Field Laboratories. These labs provide needed scientific support and credibility. One consideration for reform would be to determine the capabilities at each of the labs and designate certain ones as a "center of excellence" for a selected type of test or procedure.

User Fees on Imported Foods and Drugs

Although we strongly agree that FDA and its food safety programs are under-funded, FMI cannot support the proposal to impose user fees on imported foods and drugs. Not only will this raise the cost of food, but we also consider such fees to be a conflict of interest by the Agency in charge of inspecting and raising money for its own budget. We are unsure what direct impact user fees on food will have on our retailers and have asked them to review this.

Restricting the Ports of Entry for Imported Foods

FMI and its members are very concerned about the provision to restrict U.S. ports of entry for imported foods. We understand that the provision is modeled on the USDA system, but when applied to the broad spectrum of products under FDA supervision, it becomes unworkable and prohibitively expensive.

Mr. Chairman, U.S. ports are already busy to the point of congestion. And there is increasing concern in the retail community that the growth in port capacity is simply not keeping pace with the growth in demand. Limiting the number of ports food can enter into through legislation will not only aggravate congestion and delays, it could also increase the cost of food for the American consumer.

As you know, quite a bit of food that enters the country is perishable and needs to be shipped, sold and consumed in a limited period of time. A shipment of apples or pears cannot be left sitting on a dock for an extended period of time. As delays increase, so does shrinkage, waste and — unfortunately — costs.

FMI is particularly concerned about the ability of these ports to handle the spike in imports of perishable commodities during the winter months, when the U.S. growing season for a number of products is over. The only way to meet demand for certain fruits and vegetables during this period is through imports. But again, delays at the port-level threaten our ability to bring these products to market in a timely manner and increase costs. And unfortunately, it is the American consumer who bears the brunt of this increase, particularly poorer Americans. As prices rise, consumers do not just pay more, they often consume

less. When talking about fruits and vegetables, this is clearly not the desired outcome.

I would also note that there are significant costs involved with closing ports of entry and shifting freight elsewhere. Food importers that have distribution centers at or around the ports that will no longer accept food will have to move their operations and face the expense of building and setting up new centers. Long-established supply lines will have to be reworked, which can be both expensive and costly. And the impacted districts are likely to see a decline in employment and tax revenues as the importers shift employees to their new operations.

As an example of the disruption of trade, ninety percent of seafood shipments enter through 14 ports (Los Angeles; New York; Miami; Portland ME; Seattle; Boston; Norfolk; Tampa; Savannah; San Francisco; Houston; Philadelphia; New Orleans; and, Nogales, AZ), according the National Fisheries Institute. Of the 14 ports, only four are co-located with FDA laboratories: New York, Seattle, Savannah (Atlanta laboratory) and San Francisco. This would render states such as Florida unable to accept seafood products.

Country of Origin Labeling

Section Six of the bill would require labeling to identify the country of origin of food, drugs, and medical devices and would require FDA to promulgate final regulations within 180 days of the law's enactment that would likewise take effect

within 180 days of enactment. We have several concerns with this provision in terms of timing, necessity and efficacy.

In terms of timing, based on our experience with the regulations for country of origin labeling for seafood alone, we can report that the development of regulations for the 80 percent of the food supply that falls within FDA's jurisdiction within 180 days would be virtually impossible. Moreover, the Tariff Act already requires imported food products to bear country of origin labeling, leaving open the question of what additional service this provision would apply and what standard the bill intends for the industry to use. That is, given the breadth of countries that may be involved in sourcing ingredients (and ingredients of ingredients) for processed foods, what country should be listed as THE country of origin for any given food product if a different standard is to apply? More importantly, however, identifying one — or twenty — countries from which food or its ingredients derives does not enhance the safety of the underlying food product. The resources that would be required to develop and implement the complex system that such labeling would entail would be far better spent on measures that would actually have the potential to improve the safety of the product.

Certifying Foreign Governments and Companies

The concept of certifying foreign governments and companies by FDA sounds promising as a nod toward a risk-based system, but it gives rise to many questions. For example, how would FDA implement a mandate of this

magnitude? FDA does not have the financial or personnel resources to take on this endeavor even with the $300 to $500 million projection from the user fee provision of the bill. Before moving forward with this, FDA, USDA and others should map out a plan for how such a system might work.

We would also encourage the committee to remember that a number of developing countries may face severe difficulties in meeting the requirements of any certification programs. At the very least, both FDA and USDA need to be prepared to provide both technical and monetary aid to support capacity building in those areas.

We agree that foreign governments should be held accountable for demonstrating that they have regulatory systems in place equivalent to those in the U.S.; evaluating other government programs might be a more realistic starting place. We would also suggest using some of the existing resources of USDA, APHIS and others who are already in those countries and ask them to take part in inspections and possible certifications.

Adequate Testing of Processed Food Products

Providing adequate testing of processed food products post-production presents challenges because there is no objective way to ensure testing is truly "adequate." It is more effective to implement and monitor prevention programs, and use testing as a measure of how well those food safety programs are performing. This approach supports risk-based systems where resources are directed toward making sure products are safe through process control, such as

HACCP (Hazard Analysis Critical Control Points) and certified third party audit programs.

Carbon Monoxide Labeling for Meat, Poultry and Seafood

We do not support the proposed provision for carbon monoxide labeling of meat, poultry and seafood. Both FDA and USDA have recognized that carbon monoxide is generally recognized as safe for its intended purpose. We are not aware of any scientific basis for singling out this one technology for labeling.

Thank you for the opportunity to testify. We appreciate the efforts set forth in H.R. 3610 to help restore confidence in the food safety system and reduce foodborne illness. We remain available to the committee for further discussion and information should you need it.