

**Testimony of Jean Halloran  
Director, Food Policy Initiatives  
Consumers Union**

**“Growing Trade, Growing Vigilance:  
Import Health and Safety Today and Tomorrow”**

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

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

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

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<sup>1</sup> Dahlberg, Carrie Peyton, “Vets Survey: Pet Deaths Have Soared” *Sacramento Bee*, April 10, 2007.

<sup>2</sup> FDA News, “FDA Detains Imports of Farm-Raised Chinese Seafood; Products Have Repeatedly Contained Potentially Harmful Residues,” June 28, 2007.

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

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

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

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<sup>3</sup> Newman, Andrew Adam, "What's a Parent to Do?" *The New York Times*, September 29, 2007, p. C1.

<sup>4</sup> News from CPSC, "About 1 Million Simplicity Cribs Recalled Due To Failures Resulting in Infant Deaths", September 21, 2007.

<sup>5</sup> News from CPSC, "Dollar General Recalls Tumblers Due to Violation of Lead Paint Standard," October 4, 2007.

<sup>6</sup> V Dato et al., *Hepatitis A Outbreak Associated with Green Onions at a Restaurant—Monaca, Pennsylvania*, 2003, 52 MMWR 1155-57 (2003)

<sup>7</sup> News from CPSC, "CPSC Announces Recall of Metal Toy Jewelry Sold in Vending Machines," March 1, 2006.

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

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

First, in recent years, imports have skyrocketed, especially from China. The value of all imports increased by 67 percent between 2000 and 2006.<sup>8</sup> This has proceeded to such an extent that now 80 percent of all toys sold in the U.S. are imported from China.<sup>9</sup>

Likewise, 83 percent of the seafood we eat is imported, 21 percent of that total from China, much of the rest from other developing countries in Asia and Latin America.<sup>10</sup> Of all the food we consume, 13 percent is imported.<sup>11</sup>

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

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<sup>8</sup> Interagency Working Group on Import Safety, *Protecting American Consumers Every Step of the Way*, September 10, 2007.

<sup>9</sup> Wenske, Paul, "Toy recalls fuel criticism of consumer safety agency," *Kansas City Star*, August 15, 2007.

<sup>10</sup> Food and Water Watch, *Import Alert*, July 2007, available at [www.foodandwaterwatch.org](http://www.foodandwaterwatch.org).

<sup>11</sup> Bridges, A. "Imported food rarely inspected," *USA Today*, April 16, 2007.

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

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

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

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<sup>12</sup> Lipton, Eric, “Safety Agency Faces Scrutiny Amid Changes”, *New York Times*, September 2, 2007.

<sup>13</sup> Testimony of Caroline Smith DeWaal, House Energy and Commerce Committee, Subcommittee on Oversight and Investigations, *Import Inspection Failures and What Must Be Done*, July 17, 2007.

<sup>14</sup> Interagency Working Group on Import Safety, *Protecting American Consumers Every Step of the Way*, September 10, 2007.

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

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

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

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

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<sup>15</sup> Food and Water Watch, *Import Alert*, July 2007, p. 6.

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

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

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

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

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

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

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

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<sup>16</sup> Public Citizen, *NAFTA’s Threat to Sovereignty and Democracy: The Record of NAFTA Chapter 11 Investor-State Cases 1994-2005*, February 2005.



losses exceeding \$300 million due to the U.S. excluding Canadian cattle in 2003 to prevent spread of mad cow disease.<sup>17</sup>

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

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<sup>17</sup> CBC News, "Cattlemen challenge border closing under NAFTA," March 16, 2005.

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

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

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<sup>18</sup> Reynolds, George, “Private BSE Testing on Hold Following Appeal,” *Food Production Daily-USA*, May 31, 2007.

<sup>19</sup> Consumers Union News Release, “Consumers Union Calls on USDA to Continue Ban on Beef from Canada,” March 12, 2007, available at [www.consumersunion.org](http://www.consumersunion.org).

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

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