

April 23, 2008

The Honorable John Dingell, Chairman
House Committee on Energy and Commerce
U.S. House of Representatives
2328 Rayburn House Office Building
Washington, DC, 20515

Dear Chairman Dingell:

We share your commitment to ensuring the safety of our nation's food supply and agree that a strong, adequately funded Food and Drug Administration (FDA) is fundamental to achieving this goal. Your willingness to work with us in strengthening the food safety system is appreciated.

Farmers and food companies already implement a variety of food safety measures and controls to ensure the safety and quality of our products and ingredients. At the same time, we recognize that Congress and the Administration must address new challenges posed by rising food imports and changing consumer preferences. We believe the prevention of contamination should be the foundation of a food safety system. Science and risk-based application of resources are the best way to improve the safety of our food supply.

An approach of broad-based regulatory requirements and heavy-handed enforcement tools will increase costs to food companies but is unlikely to result in improved food safety. For this reason, we wish to share our concerns with the Discussion Draft of the *Food and Drug Administration Globalization Act of 2008*. Many provisions of the Discussion Draft, if adopted, would place enormous new burdens on FDA, farmers, food importers, and the food industry. The resulting increase in food prices – which could be substantial – is a big price tag that comes with little consumer benefit since it fails to address the sources of contamination or significantly improve food safety.

Placing a \$2,000 annual tax on each food facility and a \$10,000 annual tax on each food importer to finance FDA operations is a significant step in the wrong direction. All Americans, not simply food companies and farmers, benefit from improvements to our nation's food safety programs. We believe the costs of FDA inspections and research should be paid from general tax revenue, not from taxes imposed on food importers or facilities. While we support increased resources for FDA through Congressional appropriations, we strongly oppose food taxes and "fees" that are not tailored to provide a government service to our industry and that will likely compound food costs at a time of record food inflation.

The Draft's new limits on food imports seem particularly unworkable. We strongly oppose the facility certification requirement, which is essentially the privatization of food safety responsibility and oversight. In particular, we are concerned that a proposal to require all foreign and domestic food facilities to "voluntarily" seek certification from

FDA-accredited certifying agents would exhaust FDA resources and would improperly delegate FDA responsibilities. Because importers who fail to seek certification would face severe import limitations and testing requirements, this “voluntary” program is effectively mandatory. A massive across-the-board certification requirement is unwieldy and wasteful of public and private sector resources. Instead, facility certification should be targeted to those instances in which high risk foods are being produced and there is demonstrated need for the additional level of regulatory control that certification entails. Turning the oversight of food safety over to private certifiers (in addition to foreign governments) is tantamount to creating a “shadow government.” This is unwise.

The Draft’s new regulatory requirements, including provisions that provide FDA inspectors with broad authority to review the adequacy of food safety plans, to mandate specific controls for each facility, to establish performance standards for each facility, and to require labeling for food treated with carbon monoxide are quite troublesome and carry significant costs. These prescriptive new regulatory and labeling requirements, including country of origin monitoring and posting, will stifle innovation, divert resources from proven but not prescribed food safety measures, and dramatically increase food costs beyond what consumers are already experiencing.

While we believe that some facilities deserve greater scrutiny than others, we believe that FDA inspections should be based upon risk and not on a rigid inspection schedule. We also strongly oppose the Draft’s excessive civil penalties and giving FDA the power to suspend registration. Food companies already have powerful incentives to ensure the safety of food products and ingredients and current law already provides a wide range of enforcement tools, including seizure, injunction, and civil and criminal penalties. Requiring food companies to notify FDA of all adulterated or misbranded food and giving the agency the power to order recalls when there is little or no risk to human health will overwhelm the agency with information and grant FDA overly-broad new powers we strongly oppose.

Mr. Chairman, we appreciate the opportunity to work with you to promote a risk based approach to food safety regulation and to allow FDA the flexibility to respond to emerging risks in the manner that most efficiently uses the agency’s resources. We look forward to working with you to develop and implement improvements that will make prevention the focus of our nation’s food safety systems.

Sincerely,

American Bakers Association
American Beverage Association
American Frozen Food Institute
American Meat Institute
American Spice Trade Association
Bush Brothers and Company
Cadbury Schweppes PLC
Campbell Soup Company

Cheese Importers Association of America
Clear Springs Foods, Inc.
Frozen Specialties, Inc.
Grocery Manufacturers Association
Hormel Foods Corporation
Independent Bakers Association
International Bottled Water Association
International Dairy Foods Association
International Foodservice Distributors Association
Land O'Lakes, Inc.
Little Lady Foods, Inc.
National Association of Manufacturers
National Chicken Council
National Coffee Association
National Customs Brokers and Forwarders Association
National Confectioners Association
National Fisheries Institute
National Meat Association
National Oilseed Processors Association
National Retail Federation
National Turkey Federation
Nestlé USA
Nestlé Purina Pet Care Company
Nestlé Waters North America
North American Millers' Association
PepsiCo, Inc.
Perdue Farms
Pet Food Institute
Produce Marketing Association
Retail Industry Leaders Association
Ruiz Food Products, Inc.
The Hershey Company
The Schwan Food Company
Snack Food Association
Superior Foods Inc.
Superior Foods International, LLC
United Fresh Produce Association
United States Chamber of Commerce

cc: Members of the House Committee on Energy and Commerce