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CONTEMPORARY ISSUES IN FOOD LAW

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ABSTRACT

This article addresses several topics that have an impact on how food safety laws are evolving in industrialized and, to a lesser extent, developing nations. While not conclusive, it seeks to draw attention to those elements that are seen as essential to comprehending modern food safety procedures in both the public and private realms. The criteria used to evaluate the necessity or justification of food safety regulation, the connections between public and private food safety control systems, alternative configurations for public food safety regulation, tactical responses to food safety regulation, and the effects of national food safety controls on trade are some of these issues. These topics are introduced in the article and covered in more detail in the other pieces that make up this special issue of Food Policy.

In light of recent human rights legislation, historical precedent, and the glare of contemporary globalization, food law is inescapably worldwide. However, there are still significant differences in national and international policies regarding trade barriers and tariffs, the provision of aid, procedures to control the production of crops as well as the growing, selling, contaminating, labeling, and distributing of food. The same goes for legal reactions, such as criminal culpability, coroner's inquiries, and regulators' civil liabilities.

To explore the potential to reduce inconsistencies, based on scientific approaches to health and safety, and to create coherent approaches to what are essentially transnational dilemmas, there is much to be said for improved discourse about such issues at an international level through an International Association of Food Law and Policy.

KEYWORDS - Health, food policy and law, safety, procedures, quality

I) INTRODUCTION:

As a result of increased, both real and perceived, food safety issues, food safety assurance systems are generally becoming stricter in both developed and developing nations. Changes in both public (such as direct regulation and product liability) and private (such as self- and third-party certification) quality control systems are the cause of this. Additionally, the Sanitary and Phytosanitary (SPS) Agreement under the World Trade Organization (WTO) is being implemented, which is having an impact on how public and private systems interact with one another. This

article highlights some of the key driving forces behind these changes and provides background information for the pieces in this special Food Policy issue on current concerns in food safety regulation.

Numerous fresh and ongoing challenges to food safety are being faced by regulatory systems. Regulatory agencies are currently dealing with potential new food-borne concerns like BSE and genetically modified organisms while also trying to better control existing risks like Salmonella and E. coli O157:H7. Additionally, there is growing political pressure for tighter restrictions as a way to strengthen



public trust in the security of the food supply in the wake of multiple "food scares". However, the economic outlook on food safety regulations is changing, creating pressure for "efficient" rules, particularly for those based on performance standards or information dissemination (Antle, 1995). However, process-based criteria continue to dominate food safety regulations. Similar pressure has grown to guarantee that product liability regimes give food producers, processors, and distributors effective incentives to deliver products with adequate safety.

Private safety control systems, standards, and certification programs are responding to changing regulatory and tort liability requirements, greater customer expectations, and the necessity for safety measures along the vertical chain of distribution. Public and private quality control systems are evolving due to global marketplaces and trade agreements.

II) CONTEMPORARY ISSUES IN FOOD SAFETY REGULATION:

The development of food safety regulation is being influenced by a variety of problems. Although they are most noticeable in rich nations, their influence is increasingly visible in the development and tightening of food safety regulations in emerging nations. This essay outlines five crucial topics that are thought to be essential to comprehending current food safety regulations, however they are not presented in any particular sequence. These concerns range from the standards used to establish laws to the interaction between public and private food safety control systems, the strategy used by governments to regulation, the tactical answers offered by private parties to regulation, and the effects of national food safety restrictions on commerce. Despite the fact that this is by no means an entire list and that other authors may classify and/or split these concerns differently, the study emphasizes the difficult process by which food safety rules are evolving and, consequently, the difficulties that policy-makers must overcome.

The traditional market failure model advanced by economists is now widely acknowledged to be comparatively ineffective at describing the policy interventions actually carried out by governments (McCormick and Tollinson, 1981; Henson et al., 1995; Ogus, 1994). Instead, it is clear that policy is the result of a difficult trade-off between opposing demands that represent the interests of the various groups who could be impacted. Consumers, food manufacturers, food merchants, and farmers, both domestically and overseas, as well as the government and taxpayers, will all be included in the discussion of food policy. Balancing these divergent demands is one of the biggest issues facing policymakers because, in many situations, these various groups use different standards to determine whether food safety regulations are necessary ex ante and whether they are successful or unsuccessful ex post. The policy debate lacks consistency and, in certain situations, transparency because these criteria are frequently not expressed directly. This is especially true when discussing previous policy choices (see, for instance, Bovens and 'That, 1996), as the UK's experience with BSE serves as a good example.

According to scientific and/or economic justification, the justification for food safety legislation as well as its success or failure can be objectively evaluated. Although these criteria might seem to offer a logical framework for the creation of food safety regulations, they might be challenging to implement in actuality. One issue is that many scientific and/or economic factors related to food safety are difficult to assess, and as a result, these inherently objective metrics may actually be quite partial. On the other hand, there may not be much scientific or/and economic support for public requests for food safety legislation, which governments can find difficult to rebuff.

The framework of risk analysis, a structured approach where threats to human health are analyzed and the best means for their control are established, incorporates the scientific



justification for food safety legislation. According to best practices, there should be a three-stage procedure that goes as follows (FAO/WHO 1995, 1997): Risk communication: details about the risk and selected methods of control are shared among interested parties. Risk assessment: an evaluation of the risk to human health associated with a specific food-borne hazard. Risk management: decisions regarding the acceptable level of risk and measures implemented for the control of this risk. The implication is that regulatory decisions based on risk analysis should be consistent across all facets of food safety and, possibly, across various facets of other risk factors, such as environmental protection and transport safety.

Although a structured investigation of the economic effects of regulations pertaining to food safety, such as that given by regulatory impact analysis, may seem fairly alluring, it is rife with practical challenges. Particularly, a number of the costs and benefits of food safety regulation are intangible and challenging to quantify in monetary terms, with human life standing out as the most significant example. Although there have been major advancements in valuation methodology (see, for instance, Caswell, 1995), estimates are still politically sensitive and dependent on the precise techniques used.

III) RELATIONSHIP BETWEEN PUBLIC AND PRIVATE FOOD SAFETY CONTROL SYSTEMS :

For the average food product being sold to consumers in retail stores or food service businesses, a wide range of safety control systems have developed (Henson, 1997; Caswell, 1997; Caswell and Johnson, 1991). Direct ex ante regulation on the public side, which takes the form of standards, inspection, product testing, and other programs, aims to ensure the quality of the product by defining how it is created and/or its final quality. Companies that are found to not fulfill the requirement face penalties, such as a system of financial fines. Product responsibility is ex post legislation that

penalizes businesses who provide subpar products by compensating those injured by their conduct. Direct regulation and product liability may work in conjunction or contrast with one another (or even compete) to create incentives for businesses to practice effective quality control. Strong economic justifications exist for regulating these incentives as a system.

Coordination of public and private quality control system incentives is supported by equally compelling arguments. Self-regulation and various types of third-party certification are both components of private systems. Internal control systems that guarantee product quality are an example of self-regulation. In these systems, the corporation establishes, monitors, and self-certifies the control parameters. It can be implemented by trade organizations that cover the majority of the market supply or at the level of the specific enterprise. Setting standards for product quality and allowing third parties, such as customers, trade associations within the industry, or organizations like the International Organization for Standardization (ISO), to monitor and certify those standards are all part of certification. Such certification could be requested voluntarily by the business or mandated by the parties with whom it transacts business. Self-regulation and certification are both capable of acting defensively and offensively. By providing greater or more reliable quality, for instance, they may operate as a mechanism to grow market share in the first scenario. In the second scenario, they could act as a safeguard against the loss of present market share. In both situations, there are incentives for individual food supply chain operators to adopt private controls.

Among other things, the form of public regulation and the organization of the food supply chain will reflect the relative importance of these public and private systems of food safety control. For instance, the usage of product and tort liability differs significantly between the US and the UK. In the UK, the concept of "due diligence" has been the

cornerstone of the product liability system for food items since 1990. A firm is exempt from liability if there is proof that it took all necessary precautions and exercised all "due diligence" to prevent committing an offense. Due to the need to demonstrate their "due diligence" and rely heavily on third party certification, food corporations have engaged in considerable private quality control activities as a result of this public regulation. In matters involving consumer product liability, exercising reasonable care (roughly comparable to "due diligence") may or may not offer a defense. These claims frequently result in sizable settlements, such as those for compensation for those who contracted a food-borne illness. However, the level of care taken may offer some protection in settlement discussions and in legal actions involving supply chain organizations.

IV) APPROACHES TO PUBLIC FOOD SAFETY REGULATIONS :

The degree to which public control of food safety restricts freedom of action varies across a range of methods (Fig. 3). At one extreme, informational restrictions don't impose any additional restrictions on behavior but require vendors to give specific information about their items. On the other hand, suppliers might need an official agency's prior approval of a product before being allowed to release it onto the market; this certification will be based on previously established safety criteria. Despite the fact that food safety regulations permit producers to put their goods on the market without any prior oversight, producers who fall short of a set minimum level of safety are breaking the law. Three basic types of food safety standards are available. Target standards establish criminal accountability for pre-specified negative consequences that result from the supplier's products, but they do not specify any specific safety standards for the supplier's products or the methods by which they are created. Performance standards stipulate the minimum levels of safety that

must be met when the product is sold, but providers are allowed to decide how they will meet these requirements.

Specification standards can take positive or negative forms, requiring that products contain specific ingredients or use specific production methods, or they can forbid the use of specific ingredients or production techniques. Specification standards are applied to both products (product standards) and the processes by which those products are made (process standards).

Public food safety regulation typically takes the form of standards. Generally speaking, a target standard specifies that food marketed for human consumption must be safe, and a series of specification standards, which include both products and the manufacturing procedures used to make them, specify how this is to be accomplished. Additionally, performance criteria may be established for certain items, outlining, for instance, the levels of contamination that are deemed undesirable. As a result, food products are frequently subject to multiple layers of regulation, which can result in significant compliance costs for suppliers. Particularly, the frequent application of product and process standards tends to limit suppliers' ability to exercise effective food safety control.

V) STRATEGIC TO FOOD SAFETY REGULATIONS :

It is well acknowledged that there is a connection between the regulatory actions of the government and the strategic behavior of businesses. On the one hand, regulation is a significant component of the environment in which businesses operate and can limit their ability to act strategically, especially in heavily regulated industries and/or industries that see frequent regulatory change. A good illustration of this is the food sector. The capture theory, on the other hand, postulates that businesses can try to sabotage the regulatory system in an effort to acquire a strategic advantage. This might happen at the level of the particular

business or the sector, for instance, through interest groups.

Studies that have looked at how businesses behave strategically in the setting of environmental regulation can shed light on how businesses may respond to food safety regulations. The anticipated economic rewards will determine the corporate reaction in terms of compliance. The extent to which these benefits are driven primarily by anticipated gains in industrial performance (such as market share or profitability) or by penalties for non-compliance is another matter. Firms may opt to voluntarily comply in the first scenario, whereas compliance in the second will rely on how strong the enforcement authorities are. This recognises that depending on the type of legislation and the strategic response of businesses, enforcement may play very varied roles in the regulatory process.

In light of the fact that costs of compliance vary according to compliance efficiency, which in turn depends on factors like firm size, current standards of operation, and cost structure, businesses can strategically benefit from food safety regulations. This gives businesses the chance to get a first-mover advantage, boost their competitiveness in comparison to other businesses in the market, and put up barriers to entry or mobility. However, the costs of compliance associated with food safety regulations can also serve to lower a sector's overall competitiveness in comparison to, say, sectors in other nations with less regulation. As trade obstacles have been lowered thanks to WTO actions when it comes to environmental and animal issues, this is well documented.

VI) CONCLUSION :

This paper sought to introduce a variety of current, connected concerns that are having an impact on the development of food safety regulations, mostly in industrialized nations. It is clear that methods for monitoring food safety are changing, with an ever-complexer interaction between public and private

regulatory approaches. Food safety regulations are being closely examined for their scientific validity and economic viability both domestically and internationally, which is having an impact on how this evolution is progressing. For instance, public food safety legislation is evolving to be more performance- and process-based, emphasizing the obligation of food companies to put in place efficient food safety safeguards.

In an effort to acquire a competitive edge, food companies are, in turn, strategically utilizing food safety regulations.

The six other pieces that make up this special issue of Food Policy expand on these topics. In the first two publications, the benefits and costs of direct government regulation of food safety are estimated (Antle), and the economic ramifications of the broad adoption of HACCP as a regulatory strategy are discussed (Unnevehr and Jensen). The third study (Hooker) focuses on the effects of these and other changes in direct regulation at the national level on trade. Analysis of product liability laws as a means of regulating food safety is then presented (Buzby and Frenzen). The final two studies then discuss corporate responses to regulation (Loader and Hobbs) and private incentives for ensuring food safety (Holleran, Bredahl, and Zaibet). Together, these publications offer a comprehensive analysis of recent changes in the law governing food safety.

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