

Statement of Martin Ley,
Director of Operations, Delcampo Gargiulo, Nogales, Arizona, and
Vice Chairman, Fresh Produce Association of the Americas,
before the FDA International Meeting in Washington, DC,
On Microbial Safety of Produce
December 8, 1997
Hubert Humphrey Bldg., 200 Independence Avenue, Washington, DC

Docket No. 97N-0451

My name is Martin Ley. I am the head of the Nogales, Arizona, operations of Delcampo-Gargiulo, an international company. We ship produce to all 50 states from a variety of sources, including Florida and California. My responsibility in Arizona is primarily to oversee the importation of fresh winter vegetables from the west coast growing areas of Mexico. I also serve as the elected vice chairman of the board of the Fresh Produce Association of the Americas which represents the interests of American companies involved in two-way agricultural trade mostly with Mexico. My family has been in the produce business for generations and I personally have more than a decade of hands-on experience in the produce industry.

In general, I would like to say that this project to create a voluntary guidance for the produce industry is moving too fast, that there should be field trips to foreign and domestic growing areas, and that more attention should be paid to science and hard data. When President Clinton announced this initiative, I thought he asked for a status report in 90 days, not a finished product that bristles with specific do's and don'ts authored by an agency that doesn't usually get involved with the farming side of agriculture.

If the FDA is going to author a guidance document on farming, the authors of it should visit farms and growing areas, especially foreign farms, to see how farms that specialize in exporting are different from farms that do not. Farms that produce fruits and vegetables for export are organized from beginning to end to meet whatever standards are set by their overseas customers. At least in Mexico, there is a difference between local farms for domestic consumption and export farms. The difference is simply a matter of practicalities--farming is expensive, and so is exporting. Failure to meet US standards is not just a matter of embarrassment. It is a matter of finance and credibility in the long run. Mexican farms that I deal with are serious about safety, about health, about sanitation, and about quality and meeting the competition.

Traceback, now called positive lot identification, is difficult and potentially very costly but not impossible. We already have it, and some producers have better systems than others. Mexican growers use traceback systems to allow the FDA to determine exactly which producer would be subject to any particular limitations on shipping as a result of a violation detected by existing FDA inspections, rather than shutting down the entire

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industry for the actions of a single grower. In addition, our firm creates a unique ID number for each pallet of produce shipped to allow for the better verification of product related to claims for quality problems and discrepancies with federal inspections.

Nevertheless, when certain citrus have been marked with an identify for years, it is not believable for growers and shippers to say we can't do this and we can't do that. There is almost always a technological solution, but there are serious questions of cost and value. Is traceback meaningful in terms of consumer safety when the incubation times for food borne pathogens can be multiple days or even weeks.

In those time frames, PLU labels as well as shipping cartons with ID numbers will be discarded and long gone. The only lasting document will be the shipping documents which will be kept by retailers, food service establishments, and wholesalers. While growers and shippers might be able to provide traceback information, those on the receiving end--such as, wholesalers, terminal markets, retailers, and restaurants--may not be able to keep up with the increased information retention requirements. Retailers and others, therefore, should be involved in this guidance-writing process to make sure that the grower and shipper are not asked to do something which has no value once the produce is beyond their control.

I am sure this point also has been made, but it is worth repeating. Any proposal to mandate country of origin labeling to assure consumer safety is the height of irresponsibility and the abandonment of government's role to conduct tests and inspections. Mandatory country of origin labeling puts the consumer in the untenable position of having to make choices based on rumors, innuendo, and hearsay. Country of origin labeling does nothing more than give protectionists and isolationists opportunities to segregate imports and denigrate them through unsubstantiated talk. The system gives no meaningful information to consumers, misleads them into making unscientific choices, and imposes additional costs on growers, retailers, and consumers with no safety benefits. Proposals for mandatory country of origin labeling should be rejected as not meeting the laughability test. It is absolutely ludicrous to assume that consumers can make an informed and scientific decision on safety based on country of origin labeling in the current environment of disinformation.

On the subject of labeling, I might also add that 80 percent of the fresh winter tomatoes from Mexico are of the vine ripe type and are handpacked in two-layer cartons. They are usually larger than the gassed-green type which are shipped by Florida in the winter months. The gassed greens are jumbled packed in 25-pound boxes and are favored by food service operators who want to run the tomatoes through slicers without having to remove PLU labels from each tomato. I also might point out that gassed-green tomatoes often go to repackers who re-sort the tomatoes for even color because the artificial gassing process does not affect all the tomatoes in a carton in the same way. I might also add that the re-sorting and re-packing operations would expose the fruit to additional handling and opportunities for contamination. Those operations also would tend to make the traceback system much more difficult to use for the gassed green Florida tomatoes.

Another point that needs to be repeated is the matter of confusing kitchen sanitation with the wholesomeness of a fruit or vegetable. Recently, a high state government official and apparently a microbiologist declared that she would not eat imports from third world countries because she wouldn't eat salads and other uncooked produce in those countries. Would she then eat American-grown produce that had been washed and prepared in third world country kitchens? I think the answer would be, "Of course not." That's because third world countries often do not yet have dependably clean water at every food service establishment. The problem is primarily with the water and the general inability to always maintain sanitary conditions in every food service establishment in those countries. I am deeply saddened when a person's eagerness to support the local farmer causes an otherwise knowledgeable person to babble nonsense. We are as a whole a highly educated and enlightened society. When those in leadership positions in our country play fast and loose with facts for insular reasons, I am not surprised when other countries do the to us. We must always deal in correct and appropriate facts if we want other countries to treat our exports fairly.

Speaking of health and hygiene, the guidance calls for monitoring of worker health. The idea is commendable but it also calls for non-professionals to make medical decisions. Some object to the monitoring of worker health on the basis of privacy rights but I see it more as a technical problem of untrained people trying to diagnose worker maladies. Diarrhea is generally considered a symptom of serious illness, especially from food borne pathogens. But judging from TV ads for over-the counter medication, diarrhea seems to be fairly common. Is every case of diarrhea a positive indication of infectious disease? Is it fair for a grower to deny a farm worker the right to earn a living because of diarrhea? I don't know, but I hope clear answers are available before this guidance goes into effect.

Out of curiosity, I looked in "The Columbia University College of Physicians and Surgeons Complete Home Medical Guide." It says one of the ill effects attributed to excessive caffeine consumption is diarrhea. The book also notes that reactions to food allergies can cause diarrhea. It also says prolonged diarrhea can be the result of magnesium deficiency, and it further notes that histamine released in the digestive system can cause stomach cramps and diarrhea. It seems, therefore, that diarrhea is not necessarily an indication of infectious disease.

Facts do not seem to support the presumption that imports are the sources of food borne illnesses. Of the 13 foodborne outbreaks traced to fresh produce from 1990 to 1996 that are cited by the Center for Disease Control and Prevention (CDC), only four were traced to imports. In other words, two thirds of the cases cited were traced to domestic produce. Unfortunately, many ardent food safety advocates would be happy to let the public reach wrong conclusions and form incorrect assumptions about the safety of imported food. Even if there were no imports, there still would have been nine outbreaks, all from domestic produce.

I believe the proposed guidance will affect more American farmers than foreign farmers. There are several reasons. One is that foreign growers are already subject to rigid inspections at the border and they have always adhered to established US standards. For foreign growers, meeting phytosanitary standards is simply one of the costs of doing business, but they will want to know if the standards are based on science and if they are cost-effective.

Foreign growers and shippers probably will do whatever is necessary to meet US standards in order to continue shipping to America. And, without doubt, Americans want imported fruits and vegetables for variety and to assure year-round supplies.

Foreign shippers will live up to any standard, but at some point, they are going to expect domestic American agricultural products to meet the standards of their own country. That is why the proposed guidelines must be non-discriminatory towards foreign agricultural products and in conformity with international trade agreements. The proposed guidelines must not become, or be perceived as, non-tariff trade barriers.

American trade negotiators have been fighting discriminatory regulations overseas and they have succeeded in getting our trading partners to drop or change many protectionist regulations and so-called administrative guidances. Years of work by our trade negotiators will be unraveled if our trading partners see the proposed guidance as a thinly disguised non-tariff barrier.

This determined march by the FDA towards a comprehensive guideline is quite baffling, given that there is no apparent reason to do so much in so little time. The official notice of these meetings were published in the Federal Register just three days before the first one in Grand Rapids, Michigan. The text of the proposed guidance finally became available on the FDA website on December 1, but not everyone has easy access to the website. American farmers, therefore, have not been given much time to study the guidance or to analyze its impact. ,

Instead of assuring Americans that the produce industry is safe, the hurry-up efforts of the FDA is probably creating a food scare. Consumers are likely to wonder if there is a hidden reason for the rush. It is important, therefore, to have a slower and more deliberate process in creating the guidance. Research and detailed studies should come first, and the guidelines should reflect science and facts.

We need fair and even-handed implementation of the existing laws so that both domestic and imported foods are inspected in non-discriminatory ways and so that consumers are reassured about the safety of their foods.

I do not think the FDA has made a case to convince the food industry that there is a crisis. Both the FDA and CDC, however, are possibly correct in making the point that there could be problems with increased food borne illnesses or from new pathogens. That does not mean that a conclusive case has been made that immediate action is necessary. I urge

the FDA to proceed slowly in adopting the guidelines and to keep in mind that it could have unexpected repercussions, especially for American agricultural exports.

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