1-1-2009

Consumer Protection in an Era of Globalization

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Chapter 1

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Society has long tolerated some risk in the products consumers buy, especially when the risks are understood to be inherent in the products' use. By their very nature, for example, cigarettes and fat-laden desserts pose risks to consumers, and, although some car models may be more crashworthy than others, driving any automobile introduces a degree of risk. But when two identical products sit side by side on a shelf, and one of them might be deadly and the other benign, we have a recipe for serious public health problems as well as major economic consequences from diminishing consumer trust.

The problem of unsafe food, pharmaceuticals, and consumer products coexisting with goods the public assumes to be safe has recently become more acute as a consequence of the boom in global trade. For example, in the span of just two recent years, consumers in a number of countries have endured a series of health crises from products imported from China:

- In 2006, Panama imported from China syrup for cough medicine that contained diethylene glycol—a chemical compound used in antifreeze—instead of glycerin. More than 250,000 bottles of cold medicine were manufactured from the toxic syrup, which fatally poisoned more than 100 people (Bogdanich and Koster 2008). The same poisonous ingredient also made its way into more than 6,000 imported tubes of toothpaste sold in Panama in 2007 (Bogdanich and McLean 2007).
- Multinational toy manufacturers recalled tens of millions of toys in 2007 in response to the discovery of lead paint or unsafe magnetic parts on many popular toys—from Barbie to Thomas the Tank Engine—that were produced in China and sold worldwide (Story 2007).

- A toy product manufactured in China and marketed in the United States as "Aqua Dots" and in Australia as "Bindeez" was found in 2007 to contain beads manufactured with a glue that, when ingested, converted to an analog of the so-called date rape drug, putting at least several children into comas (Bradsher 2007).
- In 2008, milk and milk products from China, including infant formula, were found to contain melamine, a chemical used as a fire retardant that had been illegally added as a thickening agent to increase and mask the protein content of diluted milk. Melamine contamination led to hundreds of thousands of illnesses and numerous deaths in China, as well as to massive product recalls throughout Asia, the Americas, and Europe (Oster et al. 2008). A similar scare in 2007 involved imported pet food contaminated with melamine (Nestle 2008).
- Nearly 150 deaths have occurred globally from the contamination of Chinese-manufactured heparin, a blood thinner used for patients undergoing certain types of kidney dialysis and cardiovascular surgeries (Powell 2008). The heparin manufactured in China was found by the U.S. Food and Drug Administration (FDA) to contain a lower-cost substance—oversulfated chondroitin sulfate—that mimics the anticoagulant effects of pure heparin but may have lethal side effects (Powell 2008).
- An estimated 100,000 homes throughout the United States may contain Chinese-manufactured drywall linked to indoor air pollution—specifically "rotten egg" odors—and to the corrosion of copper piping and air-conditioner coils (CPSC 2009; Lee and Semuels 2009; Schmit 2009). Residents and public health officials are concerned about eye, skin, and respiratory irritation, as well as other health and safety risks, including the possibility of fire or shock from corroded piping and wiring.

China is not the only source of alarm about unsafe products. Government officials around the world have raised safety concerns about products imported from other countries. In 2008, for example, the U.S. FDA barred for safety reasons the importation of more than thirty generic drugs produced by Ranbaxy Laboratories Ltd., an Indian pharmaceutical manufacturer (Dooren and Favole 2009).

The need to protect consumers from unsafe food, drugs, and other products is a persistent one—and is certainly not limited to imported products. As with the Chinese deaths resulting from the recent melamine contamination of milk products, the citizens of the countries that export unsafe products can be just as much affected as those in the importing country (Powell 2008). Moreover, national regulatory apparatuses for monitoring domestic producers have been in place around the world for

most of the last century to address the same kind of risks that arise from unsafe imports (Vogel 2007). Even in developed countries with long-standing regulatory regimes, domestic products can be as dangerous as any import (Moss and Martin 2009). The same market pressures and consumer demands for cheap goods that may lead some producers to cut corners on safety apply whether products are made at home or abroad: the expansive recall of peanut-based products throughout the United States in early 2009, for example, targeted a Georgia-based processing facility of the Peanut Corporation of America (Zhang 2009). When in 2007 the U.S. National Highway Traffic Safety Administration (NHTSA) sought to recall defective tires manufactured in China (sold by the aptly named Foreign Tire Sales), the underlying concern was not much different from when NHTSA took action in 2000 against the U.S.-based Firestone company for defective tires produced at a plant in Decatur, Illinois (Aeppel 2007).

Nevertheless, the challenge of protecting consumers from unsafe imports deserves special and intensive analysis at this time of expanding globalization. Not only are safety crises from imported products not going to disappear, but they are likely to increase with international trade. When the world recovers from its recent economic downturn, the flow of goods moving across borders will continue to expand. Already the U.S. economy depends on more than $2 trillion worth of imported goods per year, with more than half coming from Canada, China, Mexico, Japan, and Germany (HHS 2007a). The sheer volume of international trade creates a vast and complex network of the sources of safety problems. More than 825,000 different exporting companies bring products into the United States through more than 300 airports, seaports, and border crossings (HHS 2007a), straining the capacity of national regulatory authorities to inspect products at the borders and monitor facilities at the site of manufacture.

The benefits of international trade are clear: the lowering of trade barriers creates new market opportunities and enhances welfare by lowering costs to consumers. But global trade also contributes to added vulnerabilities. The Indian pharmaceutical company cited by U.S. regulators in 2008 for safety problems was reportedly the sole source of a key children's antibiotic supplied to the New Zealand health system (Das 2008). Even a country such as the United States, which has long placed restrictions on the importation of drugs produced from outside its borders (ostensibly for safety reasons), currently relies on imports for more than 80 percent of the active pharmaceutical ingredients used by its drug manufacturers (GAO 1998). In addition to the vulnerabilities citizens face from goods manufactured in parts of the world not subject to their common "social contract," the combination of global

trade with modern technology's constant innovation in manufacturing techniques, product designs, and formulas makes the challenge all the greater for the regulator of imported products. As Professor Li Shaomin has observed, "When millions of people experiment with new ways to make money without moral self-constraint, the chance of new products that can evade existing testing methods is pretty high" (Xin and Stone 2008: 1311).

The challenge of import safety calls for new policy ideas and analysis. The former U.S. Secretary of Health and Human Services, Michael Leavitt, noted that "just as the volume of trade has changed, so must the strategies to regulate safety. Simply scaling up our current inspection strategy will not work" (Leavitt 2008: 4).

This book is premised on the view that global trade poses both quantitatively and qualitatively distinct problems for consuming publics around the globe and for those governments charged with protecting them. Although consumers can be harmed just as much by domestic products as by imports, the import safety problem raises a variety of jurisdictional, legal, cultural, political, and practical issues that are not present with domestic product regulation. The research in this book casts a needed light on the distinct nature of the import safety problem, analyzes a variety of innovative solutions to it, and addresses the implications these solutions hold for important social values, ranging from accountability to efficiency.

This book also treats the problem as a general one confronting the food industry, the pharmaceutical industry, and all other industries that manufacture consumer products of all kinds, from tires to toys. In much of the world, separate regulatory laws and institutions have been created to deal with safety problems in different industries. Policy research has often tracked these divisions, with distinct communities of experts focused on food safety, drug regulation, and consumer safety. In editing this volume, we have certainly been mindful of these divisions of expertise, as well as of the varied industrial processes, economic conditions, and sources of safety problems that exist across these domains. The contamination of food products from the *E. coli* bacterium is obviously quite a different policy problem than the risks of tread separation in automobile tires. The risks to different subpopulations of the public may also vary depending on the type of product, ranging from children with toys to the elderly and immunocompromised populations with pharmaceuticals. Yet, as much as we recognize these differences, we also resist dividing the import safety issue into separate problems of regulating the safety of imported food, drugs, and consumer products. Decision makers and analysts in each of these domains confront the same fundamental policy choices and, broadly speaking, the same

kinds of challenges. Those with a particular interest in one domain can learn from the experiences in other domains and from efforts, such as this book represents, to generalize across different domains.

The Import Safety Problem

We begin with a straightforward understanding of the problem of import safety. The ultimate concern is to avoid the adverse health effects that arise from lapses in safe practices. Such lapses could arise from a variety of possible sources, some intentional, others simply accidental. The schematic shown in Figure 1 provides a highly simplified model of the various links in the causal chain that leads to consumer harm from imported products. At each step along the way there is the possibility for tampering and contamination—from the initial creation of ingredients or other product inputs to the manufacturing, shipment, and sale of the product. As the schematic shows, protecting import safety requires oversight of a complex welter of inputs on both sides of the border.

The actual causal chain for unsafe imports is much more complex. Ingredient and input production is often undertaken by entities separate from those involved in manufacturing itself (Neef 2004). Con-

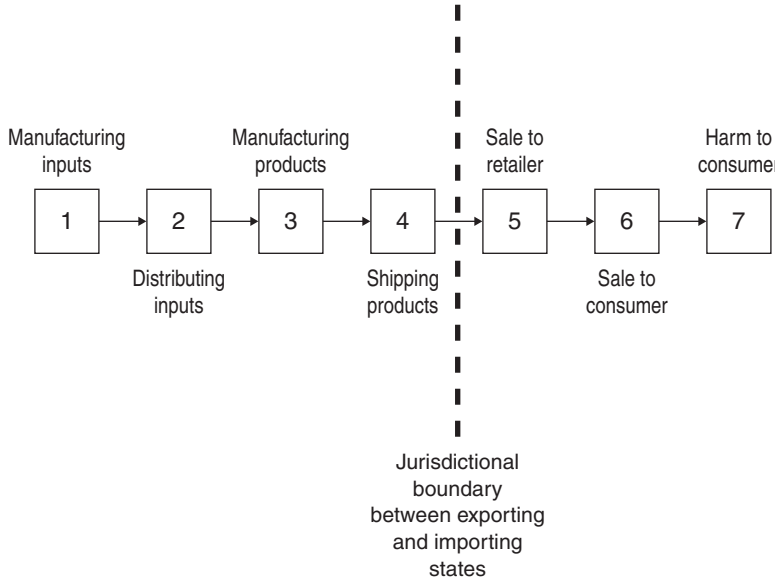

Figure 1. Causal steps to import safety problems.

sumer products can contain many components, drugs often include numerous different ingredients, and food products comprise the outputs of numerous farmers and ranchers. Supply chains, especially in countries as large as China, can be vast and complicated. The schematic in Figure 1 fails to represent this complexity. Furthermore, in reality, the vertical jurisdictional line in the figure can be placed at more than one step in the more complex chain that leads to real consumer harm. Manufacturing can even take place in the importing state, with just product components imported. Large manufacturers and large retail operations, such as "big box" stores, rely on many different sources around the world. As a result, the number of individuals who could tamper with or contaminate a product can be quite substantial. For any given imported product, each step in the causal chain can involve numerous different actors, each with their own incentives, constraints, knowledge, capacity, and motivations.

At some point from the initial ingredient production to the sale and use by consumers, an imported product moves from one jurisdiction to another. That movement over a jurisdictional border—from the exporting state to the importing one—qualitatively distinguishes the problem of import safety from the "ordinary" problems all governments face in policing the safety of food, drug, and consumer products within their borders. What the dotted vertical line in Figure 1 represents is the qualitatively different problem of import safety, one that brings with it an additional set of regulatory challenges. These challenges can be legal, cultural, and even practical. Just identifying who manufactured an ingredient can sometimes be difficult when records are kept in another country and in another language. For example, in 2001 a pair of FDA inspectors were reportedly unable to conduct an inspection of a Chinese facility producing acetaminophen imported into the United States because they simply could not find where the facility was located (Harris 2008). Even when harm can be practically traced back to sources in other countries, regulatory and legal liability may not extend overseas, effectively giving importers a "free ride" on the harm that their products impose on consumers.

In addition to the challenges of monitoring and enforcing safety abroad, international trade complicates consumer protection still further when nations exhibit different cultural postures toward risk and place different domestic priorities on the use of government regulatory resources (Douglas and Wildavsky 1982; GAO 2008b). Even if some cross-cultural risk threshold exists above which no consumer should be expected to suffer, it is still undoubtedly the case that the consuming publics in wealthy importing nations will often have different expectations for safety than consumers in developing countries. Even wealthy

publics in different parts of the world—Europe versus the United States, for example—can differ in their perceptions of what product safety means, both across countries and within them (Ansell and Vogel 2006; Hanrahan 2001; Meijer and Stewart 2004). These differences factor not only into differences in government-imposed safety standards, but also into political and institutional choices about what types of domestic regulatory organizations to create and how to fund them, choices that are affected by competing priorities for scarce government resources.

Policy Challenges

As with any regulatory problem, import safety can be addressed by attending to the various links on the causal chain that lead to consumer risk. Of course, if it were possible to test each and every individual pill, product, or morsel of food just before it came into contact with the ultimate consumer, then in principle the regulator could address risk only at that end point and not worry about the causal chain leading up to it. But it is obviously impossible for any government to have the equivalent of a "royal taster" (or other inspector) to check each consumer's intake or purchase in advance. Moreover, import safety is simply not an achievable goal absent some form of international cooperation or interaction. If nothing else, it is that interaction, in the form of international trade, that gives rise to imports, and hence to the problem of ensuring their safety. Because the traditional tools of domestic regulation cannot, alone, address the totality of the problem, any proposal for innovative new protections must not only overcome domestic regulatory hurdles but also survive in the international environment as well.

It is possible, of course, to impose tort liability when consumers are harmed by products, but such liability by itself will be insufficient for several reasons. Although the threat of ex post imposition of liability can create incentives for manufacturers to ensure safety ex ante (Moore and Viscusi 2001), the incentives from tort liability are usually below the socially optimal level because of the costs and practical difficulties in assigning responsibility when consumers are harmed. Consider someone who gets sick or injured from a product with different components—say, even something as simple as a hamburger: it will often not be possible to identify which specific component caused the problem. Was it the meat, the bun, the ketchup, the pickles? Even if the specific component can be identified, when supply chains are long and complex, with suppliers entering and exiting the market, it will often be difficult to trace back the source of the harm to hold the appropriate party liable. Even if the retailer or manufacturer were to be held strictly liable for any harm from products within its purview, that still means that

the direct incentives from such liability arise only *after* consumers have been harmed—when the ideal objective would be to prevent such harm from occurring in the first place (Bamberger and Guzman 2008). To the extent that the decision makers at retail and manufacturing firms underestimate the risk of being held liable, or to the extent that the impact of tort liability is reduced to below the socially optimal level because of the existence of insurance, the possibility of bankruptcy, or the ability to negotiate damage awards downward, the need for preventive regulation remains.

Each of the various steps along the causal chain then becomes a potential target of regulatory intervention. At each of these steps, at least three types of decisions about regulatory intervention must be made:

1. What is the appropriate level of safety to strive for? In other words, how safe is safe enough (WTO 1998)?
2. What form should regulatory standards take? Regulators can specify the end point to achieve by adopting performance standards (e.g., from general standards such as "drugs shall be safe" to specific standards such as "foods shall contain no more than 0.01 ppm [parts per million] residues of each listed pesticide"). Another option would be to impose requirements that firms adopt certain safety practices or use specified technologies ("pasteurize milk to a temperature of 161 degrees Fahrenheit for at least two separate 15-second periods," or "keep fish refrigerated at or below 34 degrees Fahrenheit"). A still further, more recent alternative would be to impose management standards that essentially require firms to develop their own performance and technology standards (Coglianese and Lazer 2003).
3. How should compliance with the applicable standards be monitored and enforced? Possibilities range from record-keeping and reporting requirements by businesses to inspections by third-party auditors or government officials.

To be sure, these decisions apply to the regulation of products produced domestically as well as to those imported from another country. However, when regulation seeks to protect against harm experienced in one country but caused by manufacturing and shipping practices in another country, there will be jurisdictional choices.

One choice for the importing country might be simply to rely on the exporting country to set the safety standards and to enforce them. Another choice for the importing nation is to screen products when they cross the border and enter its jurisdiction—but then, since only the product itself is observed, the only option available to the importing nation is to apply performance standards and assess whether the prod-

uct is unsafe, rather than dictating anything about how it was manufactured (Sullivan 2007). Of course, in an era of expanding global trade, the task of inspecting and testing each product entering from international trade would be monumental, if not Sisyphean. Yet another option, then, would be for exporting and importing countries to share regulatory responsibilities, cooperating in standard-setting, enforcement, or both. Importing and exporting countries could harmonize their standards, or at least enter into mutual recognition treaties on the substantive standards to apply to products available in both countries (Horton 1998; Merrill 1998; Nicolaïdis 1996; Shaffer 2002). They could share enforcement intelligence and monitoring reports, or even allow each other's government inspectors to visit production plants inside the others' borders. And, of course, they could also combine several of these or other approaches into a portfolio of interventions.

International cooperation over import safety poses important, even at times novel, challenges. The challenges are greatest when the exporting and importing countries do not share the same substantive safety standards. If the exporting country will accept foods that contain higher pesticide levels, for example, to what extent should it be permissible for the importing country to enforce more stringent standards? If such differences in standards grow out of real differences in risk tolerances, and are not just a cover for protectionism, they will be permissible under global rules, but nevertheless they might still affect the willingness of an exporting country to engage in forms of regulatory cooperation with an importing country.

In addition to bilateral regulatory cooperation between exporting and importing countries, other institutional arrangements could involve the creation of transnational institutions that would possess standard-setting authority or enforcement powers (or both). Or perhaps such arrangements could involve attempts to leverage private-sector institutions to address product safety, either through greater reliance on private standard-setting and auditing bodies, through trade associations, or even through large manufacturers or retailers that could use their purchasing power to impose safety-related demands on their suppliers.

In considering the appropriate form of intervention, a further question arises concerning the consequences that should be imposed on those who violate safety standards. Some of these consequences may be imposed by the marketplace itself. If Europeans want to avoid foods with genetically modified organisms (GMOs), and they know that U.S. foods have GMO ingredients, they may simply avoid buying foods produced in the United States. When it comes to nonmarket or government consequences, though, these can be blunt instruments, such as

applying trade sanctions or product bans against the exporting country rather than specific manufacturers—effectively punishing responsible producers in the same industry from the same country along with the offending manufacturers of the dangerous products. More specific consequences might involve targeted penalties or liability judgments against the specific actors who created and sold unsafe products (Bamberger and Guzman 2008).

New Directions in Domestic Regulatory Strategy

In the wake of the recent safety scares and scandals, both importing and exporting countries stand at a crossroads. As the subsequent chapters in this book demonstrate, solving the import safety problem will require new ideas. It will also require careful analysis by a broad range of scholars from a variety of disciplines such as those represented in this volume. Import safety is a regulatory problem as well as a trade problem, a domestic problem as well as an international problem.

The range of solutions available to policy makers is a testament to the size and scope of the import safety problem. A country might try to improve its enforcement program by deploying limited resources more effectively. Or it might try to improve outcomes by encouraging consumers themselves to take more care—and ensuring that they can do so by requiring more and better labeling on products, highlighting their risks, their origins, and their ingredients. Countries might improve safety by turning away, to some degree, from border interdiction and facilitated consumer self-help and turning instead toward improving the government's responsiveness when outbreaks of unsafe products are identified. Probably no small part of the solution to import safety problems will continue to be responsive and reactive in form—though more effectively than at present—rather than purely preventive.

Effective policies will require smart, well-functioning regulatory institutions to carry them out. In the United States, this kind of institutional support is widely thought to be hamstrung by the extensive patchwork of agencies with overlapping and incomplete jurisdictions (GAO 2007; O'Reilly 2004). Nearly a dozen different entities at the federal level bear responsibility for food safety alone (GAO 2008a). General principles for reorganization might include: (1) centralizing authority (e.g., the same agency should inspect "the entire pizza," not just the cheese underneath the pepperoni); (2) establishing robust, shared databases and integrated communications systems in which multiple agencies must be involved; and (3) separating organizational units that promote and subsidize industries from those that manage risks.

However difficult to achieve, institutional reform may not be enough. Hoffmann (2007: 15) argues that in the realm of food safety "incremental solutions like restoring funding, appointing a food safety czar, consolidating agencies, and even eliminating the 'silos' around regulation of different food products, will not do the job." Hoffmann, like others, emphasizes the need for the implementation of Hazard Analysis and Critical Control Point (HACCP) systems, through which companies essentially develop their own internal regulatory systems (Coglianese and Lazer 2003). HACCP regulations require companies to identify the potential hazards associated with their processing operations and to identify methods for addressing these hazards. Companies must identify all "critical control points" in their operations at which risks can be monitored and addressed, and then they must create internal plans and procedures for ensuring that risks can be minimized. Under an approach like HACCP, any importer of food, drugs, or consumer products could be required to develop its own plan for monitoring its suppliers and ensuring that any products sold within the importing nation meet that country's standards. Such a management-based approach holds much promise for conditions like those that apply to imports, where product performance is costly for the government to measure and where one-size-fits-all solutions do not apply (Bennear 2007; Coglianese and Lazer 2003).

The sheer volume, heterogeneity, and changing nature of products that pass through the global trade network make it virtually impossible for the government to regulate products through more conventional means. Thus, imposing mandates or otherwise encouraging importers to develop their own private forms of regulation holds great appeal. Of course, the same vastness and complexity that make it difficult for governments to impose and enforce traditional regulatory standards will also undoubtedly hamper to some extent efforts to ensure that firms' management systems are operating well and that other forms of public-private partnerships are delivering substantive results rather than just symbolism (Coglianese and Lazer 2003).

Toward a Global Consumer Protection System

That so many import safety responses are located at the international level presents a paradox. Although imports can come from the other side of the globe, the goal in any safety regime is to protect the most local of experiences—the relationship between individuals and the food they eat, the drugs that keep them healthy, and the products that enrich their lives. Taking the very personal and making it multinational

is hard enough as a matter of institutional design. But doing so without fostering alienation and discouraging the security of relationships between people and what they consume may be especially daunting (Esty 2006).

Managing the very local within the very global is what makes some of the otherwise most promising international import safety ideas particularly challenging. In the United States, the possibility that personal safety could be delegated to an international regime that would evolve on its own to respond to new threats, with new tools of its own devising, has raised fears about the delegation of power and authority that last held prominence when the Supreme Court gave the nondelegation doctrine its one good year in the 1930s (*A.L.A. Schechter Poultry Corp. v. United States* 1935; *Panama Refining Co. v. Ryan* 1935). Despite predictable fears and resistance to the delegation of regulatory authority to international institutions, the creation of such institutions, or other forms of international cooperation, either through formal treaty or informal networking, would appear nevertheless inevitable. After all, in a world of food scares, drug poisonings, and producers who do not have to bear the cost of the injuries they inflict on the other side of the world, certainly the marketplace by itself does not seem equipped to handle the problem, and, as noted above, national governments cannot hope to patrol all the goods entering their borders.

In developing regulatory responses to import safety problems, critical issues will also arise over how to manage the relationship between the goal of global free trade and the safety demanded by domestic publics. The WTO was designed to encourage freer trade among its members (Nedzel 2008), but the imposition of domestic safety requirements on imported products would seem antithetical to the WTO's raison d'être—even when such requirements are consistent with General Agreement on Tariffs and Trade (GATT) exceptions to the general ban on barriers to free trade. How can the WTO reconcile its recognition that countries have legitimate differences in risk tolerance (WTO 2000–2001) with its emphasis on harmonizing regulatory standards so as to facilitate international trade (WTO 1994)? Will it still be possible for the WTO to accept local *tastes* on safety and health protections if such protections must be based on common transnational standards of scientific evidence and risk analysis, as the WTO also expects?

International solutions also need to take into account the various steps in the causal chain leading to consumer harm. Where on that chain should international efforts aim? Should they aim to stop dangerous products from being created in the first place, to identify unsafe products before they reach the consumer, or both? Although interdiction at the borders would appear to be most compatible with a tra-

ditional international system based on sovereignty, some promising international institutions are starting to focus on prevention of unsafe products at their source, even when doing so means crossing jurisdictional lines. The United Nations Technical Capacity Program, for example, is designed to develop the abilities of regulators in the developing world (WHO 2003).

Other recognizably international solutions to the problems of import safety turn more on the prospect of using international resources to enhance domestic responses to dangerous imports. For example, law enforcement cooperation does not require international harmonization at all; it only facilitates the ability of government regulators to oversee the safety of foreign imports and to investigate injuries even if the causal chain reaches across borders. The United States has avidly pursued this sort of cooperation with China, concluding food, drug, medical device, and animal feed agreements with Chinese regulators in the past decade or so (HHS 2007b). Importing nations have also sought to build capacity among the regulators of exports in other similar jurisdictions. For example, the FDA has made efforts to educate foreign food regulators on food safety, again with particular attention paid to China (Fan 2008).

International networks exemplify an increasingly salient approach in which domestic regulators play the central role (Slaughter 2005). Regulatory networks of varying types are now being put to the task of regulating import risks, including the Codex Alimentarius Commission (an international organization that has become the authorized entity for global food safety standards) and the International Consumer Product Safety Caucus (a transnational organization comprising representatives from domestic regulatory agencies) (DeWaal and Brito 2005). These networks, and other forms of soft law and so-called new governance strategies, all raise advantages and disadvantages that merit full consideration in addressing import safety (Abbott and Snidal 2006).

The various international strategies for addressing consumer protection in a globalized economy raise at least three major sets of questions. The first set focuses on efficacy. How effective are the varied strategies and under what conditions? When should international hard or binding law, and even the creation of supranational institutions, be deployed? When should soft, nonbinding law, or more collaborative forms of governance, be pursued? When are domestic responses more effective than international responses, and vice versa?

The second set of questions focuses on equity. There are, after all, winners and losers to all domestic and international solutions. Who benefits? And who suffers? How should the demands of the developed world be reconciled with the realities of the developing world? Is it mor-

ally just to have the costs of new regulation imposed disproportionately on those who are already struggling in order to reap benefits for consumers in the wealthiest parts of the world? As the global exchange of goods continues to gather momentum, these sorts of questions will only continue to arise.

The final set of questions focuses on accountability. Who exactly are the publics to be served by any international import safety regime? Is it the public in exporting countries, the public in importing countries, or both? How are all of their voices to be heard or represented in the process of setting and enforcing international standards? Solving the market failures inherent in import safety will only give rise to worries about creating failures in democratic governance.

Framing the Discussion

To begin to answer these questions, this book is organized into four sections, followed by a concluding chapter. In the first section, the chapters provide broad perspectives on the origins, scale, and attributes of the import safety issue. Following this introductory chapter, Jacques deLisle puts China under the microscope. Using his extensive knowledge of that country to shed light on the origins of many recent unsafe imports, deLisle reveals the challenges China's trade partners face in trying to ensure a flow of safe products from that global economic powerhouse. Moving from a focus on the exporters to a focus on the importers, Jonathan Baron examines the import safety issue from the perspective of the consumers in one major importing country, the United States. As well-publicized lapses in import safety sensitize consumers to the possible dangers of products they buy, Baron's survey research on consumer attitudes reveals that Americans are not terribly parochial about unsafe products—they do not like them whether they are made abroad or in the United States. However, when unsafe imports emerge, the American public has a tendency to hold U.S. government officials responsible for the failures of private actors.

The second section of the book examines international trade and its governing institutions as possible venues for—or constraints on—the improvement of import safety. Tracey Epps and Michael Trebilcock emphasize the benefits of the current rules-based system of international trade and the constraints it places on developing innovative solutions to consumer protection. The next two chapters complement the Epps-Trebilcock analysis. Tim Büthe provides a detailed, analytic account of the development of the Codex Alimentarius Commission, suggesting that international standards emerging from a majority-vote process may not preserve the best features of the scientific, economic, and polit-

ical inputs to those discussions. Kevin Outterson suggests the possibility that international intellectual-property standards concerning counterfeit drugs are motivated less by a concern for safety, as often stated, and more by regulatory capture—a general concern for any international regulatory governance regime, just as with domestic regulatory institutions. In the case Outterson considers, ensuring that intellectual property rules do not prevent affordable access to needed drugs in the developing world is itself, he argues, a matter of "importing safety."

The third section of the book develops ideas for smarter government use of data-collection, standard-setting, and enforcement resources to prevent untoward harms from imported products and to respond more effectively to incipient problems that escape preventive intervention. Richard Berk explores the concept of data-driven forecasting, which can lead agencies to deploy enforcement resources where they will most likely detect nascent problems. Lorna Zach and Vicki Bier argue for greater reliance on the modern methods of quantitative risk assessment to improve priority-setting in the selection of competing targets for regulatory intervention and to help firms control their own production processes and improve the safety of their products. Writing from the perspective of the European Union, Alberto Alemanno argues that, when properly designed, a reactive system of dissemination of information about product hazards can yield several advantages over a proactive approach, especially when the comparison is appropriately sober about the limited prospects for truly preventing most problems before they emerge into commerce.

Finally, the fourth section introduces three innovative proposals for harnessing market power and incentives to drive improved product safety. Kenneth Bamberger and Andrew Guzman propose augmenting liability rules to force the domestic firms that benefit from foreign production and low-cost imports to internalize the domestic costs of their activity. Tom Baker develops the concept of bonded safety warranties, wherein importers enter into contracts with insurance companies to compensate consumers if their products fail to meet established health and safety standards, and he then explores the incentives such a system would create to avoid breaches of these warranties. Errol Meidinger evaluates the prospects for the devolution of some regulatory responsibility for product safety onto manufacturers and third-party certification, scientific, and auditing bodies.

In the conclusion, David Zaring and Cary Coglianese suggest that the complex response to the challenges of safe imports can be thought of as the difficult but rewarding task of creating a regime of delegated governance. By this they mean a global system that, in the aggregate, pursues consumer protection by combining targeted public action with private

inspections, public and private standard-setting, and a degree of dependence on consumers to take some responsibility for their own safety.

Together the chapters in this book tackle the problem of unsafe imports from several directions: analyzing its sources and causes, evaluating both government and private-sector actions needed to address it, and considering the constraints under which such solutions must be implemented. Given the complexity of global systems of production, shipment, and sale of consumer goods, domestic governments and private firms will continue to be called on to prevent, interdict, and respond to hazardous imports, whether they are contaminated foodstuffs, unsafe pharmaceuticals, or consumer products with hidden dangers. Ensuring safe imports in an era of globalization will undoubtedly strain traditional domestic regulatory entities. As such, the challenges of the global society require the kind of research analysis—and new ideas about regulation, information dissemination, and policy reform—that are represented in the pages of this book.

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