

Prepared Statement

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Good afternoon Chairman Cardoza, Ranking Member Neugebauer, and Members of the Committee. My name is Tom Stenzel and I am President and CEO of the United Fresh Produce Association. Our organization represents more than 1,500 growers, packers, shippers, fresh-cut processors, distributors and marketers of fresh fruits and vegetables accounting for the vast majority of produce sold in the United States. We bring together companies across the produce supply chain from farm to retail, including all produce commodities, both raw agricultural products and fresh ready-to-eat fruits and vegetables, and from all regions of production.

Thank you for holding this hearing to begin a detailed examination of what has been one of the most frustrating and damaging investigations ever of a foodborne disease outbreak. This investigation has been damaging to consumer confidence in our food safety system, damaging to consumer health in scaring the public away from healthy produce while failing to properly identify the source of contamination, and damaging, of course, to the entire tomato industry.

Let me state again for the record something you've heard many times before, and will hear many times in the future. Food safety is our industry's top priority. The men and women who grow, pack, prepare and deliver fresh produce are committed to providing consumers with safe and wholesome foods. And let me add, they are also committed to compliance with the traceability requirements of the Bioterrorism Act and ensuring our ability to track fresh produce from the retail store or restaurant back to the farm.

As today's hearing is focused on traceability, let me begin with this – I believe that traceability worked in this outbreak. Despite some hurdles which I will address later, FDA in fact was able to trace tomatoes eaten by sick consumers back to the farm. The only problem was those tracebacks kept pointing to different farms. Rather than complaining about the complexity of the tomato industry and so-called false leads sending the search to myriad farms across two countries, the evidence was staring government in the face. There was no common point where all of these tomatoes could have been contaminated, whether at the farm or in repacking at the wholesale level. Traceback worked; it just didn't confirm the hypothesis that the Centers for Disease Control had advanced, and that we now know was most likely wrong.

For weeks and weeks, investigators were on the trail of the wrong product. That speaks to a fundamental need to reassess how CDC conducts its initial assessment of potential foods that might be linked to an outbreak, the degree of certainty they affix to inexact science, how decisions are made on when to warn the public and what to say, and when to admit a mistake and find the real culprit rather than fear for embarrassment in changing course. These are questions for another day, but we urge this and other committees to seriously tackle each of those issues.

Let me turn specifically to a discussion of traceability in our industry. As context, let me suggest that an individually packaged food item with a UPC code and lot number provides about the most complete traceability possible. You simply punch in that code and the company can tell you when the item was packed, in what facility, and usually even whether it was packed on the morning or afternoon shift. Ironically, that's the specific case with the E coli outbreak associated with spinach two years ago. The only contaminated spinach ever in the marketplace was bagged on one shift, on one day, in one processing plant, with the same lot code appearing on every bag.

Yet, who can forget the four-week nightmare for consumers and industry with FDA first saying to avoid all spinach, then supposedly narrowing the focus to "counties of concern" where spinach may have been grown? Never mind that 95% of the spinach in the marketplace was grown in these counties. Here we had the most immediately traceable food product individually labeled with a lot code, and it took weeks before FDA finally began to tell consumers they could eat spinach again. Contrast that with the peanut butter Salmonella outbreak. After months of investigation, a recall of certain lot codes from one manufacturer was launched, and consumers merely switched to a different brand the next day. No intense search for where the peanuts were grown, and whether potentially contaminated peanuts were elsewhere in the distribution system or other products.

My point is this – even with perfect traceability with an individually packaged produce item with a lot code on the bag, there is still a flaw in the way in which CDC and FDA are going about produce investigations. They just do not seem to understand what can admittedly be a complicated sourcing and distribution system required to assure the quality of fresh perishable foods to consumers. But broad brush warnings not to consume an entire commodity group make no sense when a better understanding of produce distribution systems and the traceability systems in place today can effectively narrow the point of concern. FDA should work much more closely with industry, and with USDA, to better understand produce distribution systems. Today, each investigation seems a totally new learning experience rather than the execution of a well-prepared and well-drilled crisis plan.

I mentioned in the beginning that produce industry members are committed to full compliance with the Bioterrorism Act and its "one-step-up; one-step back" requirements. Industry members take that responsibility seriously. While produce often changes hands between farm and table, industry members are able to track a majority of produce from retail back to farm source. Stories in the press about having to pore through reams of paper records and mysterious spider webs in the supply chain just don't ring true to industry members who track produce pretty efficiently everyday. And, that's not just industry talking. One of the more interesting developments in this outbreak investigation was the report from Minnesota health officials that they quickly identified jalapenos as the real culprit, not tomatoes, and then quickly traced the peppers back from a small restaurant in Minneapolis, to the distributor, wholesaler and farm. The Minnesota investigator is quoted in the media saying it takes "a few phone calls and you can work it fairly quickly back to the grower."

So why is this proving so difficult for FDA? In my conversations with both FDA and with member companies who have had FDA field investigators in their facilities, it appears that

the demand for paper records may be FDA's doing. Even when a wholesaler can tell FDA where a product came from, it seems that FDA is dependent upon a legal trail of paperwork, seeking to make sure that all the details such as number of boxes, brand names, lot codes, ship/receive dates, etc. correlate exactly on invoices, bills of lading, etc. I'm told of field staff faxing hundreds of pages of records to FDA headquarters for someone to try to read through and connect the dots. No wonder they complain about that process. This overly legalistic approach may be appropriate to build a court case two years from now, but it is not conducive to rapid protection of public health. Perhaps that's one explanation why most industry members throughout the distribution chain can report who they've received produce from, and keep tracking back to the farm.

Before there is a knee-jerk reaction to pass new laws or requirements for traceability, we urge the Congress to fully examine how FDA today conducts tracebacks, and whether those systems are appropriately designed to protect public health and get back to the farm as quickly as possible. We have asked FDA to show us specifics where they've run into problems, so industry can help. We also urge the committee to ask the agency for specific examples and answers to these questions, rather than a theoretical discussion or generic statement of frustration. This is too important to gloss over the details.

Nevertheless, the produce industry understands better than anyone that we need the most efficient and quickest traceability systems possible. We have the most to gain from isolating produce that may be part of a problem as quickly as possible. The fewer people who get sick, and the quicker a problem is contained, the better off we are. I read one recent news report where someone suggested the industry might not want to trace a problem back to a farm and thus avoid responsibility. Are you kidding? Does anyone remember the angry mob with torches chasing the Frankenstein monster? This industry would storm the barricades to quickly identify the real source of contaminated food, no matter where that finger points.

And that brings me to the other incentive we have to continuously enhance traceability – we have the most to gain by ruling out concerns about produce that is clearly not related to a problem. This past Friday, FDA concluded that jalapenos grown in the United States were not associated with this outbreak, and narrowed their consumer advice accordingly. That was a critically important step, especially for one of our Georgia growers who went from shipping six truckloads of jalapenos a day to nothing. Incidentally, he's testifying before the Ag Appropriations Committee today. But we also urge FDA to narrow their investigation within Mexico as quickly as possible. Clearly, many Mexican producers are not associated with the outbreak either. We should never accept geographical boundaries, whether national, state or county borders, as shorthand for food safety. Our goal in every case of a foodborne disease outbreak must be to find the specific source as quickly as possible, and free the rest of the industry from suspicion.

That's why United Fresh Produce Association joined with the Produce Marketing Association and Canadian Produce Marketing Association last year to launch an initiative to build a common framework and nomenclature for case labeling, better transparency, and streamlined connectivity across the supply chain. That initiative is guided by a Steering Committee of more than 50 produce retailers, wholesalers, distributors, packer-shippers and growers. The committee has met four times this year – before this outbreak – and is now finalizing action plans and timelines for industry adoption.

The Produce Traceability Initiative will help connect the internal traceability systems of each member of the supply chain. This whole-chain connectivity is based on three pieces of information that will be labeled on every case of produce: (1) a Global Trade Item Number (GTIN), which will identify who the originator of the case is and the type of product that is inside, (2) a lot number specifically identifying the produce, and (3) the pack or harvest

date. This information will be labeled on each case so that the numbers may be read and understood universally throughout the supply chain. Labels will also carry a barcode, which each member of the supply chain will be able to scan so that the information can be stored.

This system also works when produce must be re-packed or commingled to ensure the best quality to consumers. When repackers commingle produce from more than one grower into one case, they become the new "manufacturer". As such, they will assign a new coding number to the new case, but will also maintain a link between the new case number and the original incoming cases. In fact, systems to keep track of different incoming product sources are used widely in the tomato repacking business today.

One the key reasons industry is pursuing this approach is to harmonize standards for efficiency. With one common set of standards for case labeling, product tracking can be performed simultaneously in different stages of the supply chain, rather than sequentially.

This is an exciting and important development for industry efficiency, and the best example I know of an industry committed to constant improvement in traceability. But I want to repeat for the committee that traceability was not the problem with this outbreak investigation. And, this or any other traceability system is not the solution to the problems identified over the past two months.

Produce traceability worked in this outbreak. It provided tremendous evidence that tomatoes were not the cause of the outbreak, as there was no single point where contamination may have occurred. And, once investigators began looking for the right commodity, trace backs from Minnesota and from the FDA led to the warehouse of a small produce distributor where an identical sample of the outbreak strain was found. And, FDA even knows which farms supplied this small distributor.

If I may Mr. Chairman, let me conclude with a brief comment about compensation. We all know the error in CDC's initial assessment that fresh tomatoes were the sole cause of this outbreak. While CDC has not yet stepped away from its suspicion that tomatoes might have caused some of the earlier illnesses, this is neither a likely nor plausible position without some real evidence. The fact that consumers didn't know that they had eaten jalapenos chopped up in salsas, garnishes, or other foods is no reason for CDC to cling to the accuracy of their initial food surveys just out of pride. Even good scientists can make a mistake, and there's no shame in admitting that consumers apparently were just unaware of this hidden ingredient in their foods.

There can be no doubt that this has been a disaster for the tomato industry, and we support Congressman Mahoney's HR 6581 as a step toward providing disaster assistance to our agricultural sector just as vital as any hurricane or flood. It's also a fact that this disaster struck every company in the tomato supply chain whether they had to discard full warehouses of perfectly healthy tomatoes, haul product to the dump, watch fruit rot on the vine, or plow fields under. I know well that this is the Agriculture Committee, but I ask you to think about both the growers we represent, and also our growers' customers who had already paid for their produce, but were forced to discard millions of dollars of product.

Our supply chain for fresh perishable foods is truly an interdependent agricultural industry, and now is the time for all of us to stand together for what's right.

Thank you for your time and attention.