

Abstract of paper on Law and Food Safety in China

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Following the outbreak of the contaminated milk powder incident in late 2008, Chinese government has tried to intensify the risk assessment system and change the policy conditions for agri-food safety. Given that agri-food safety issues are a great concern within and outside China, and that the current legal framework is not in line with the dynamics of modern society, it is necessary to reform the legal system with regard to food safety regulation. Furthermore, it is also an international trend to develop and refine food safety law by developed or developing countries. Therefore, when developing food safety law in China, several issues should be kept in mind.

The first and most important issue is to ensure the legal guarantee for food safety regulation. The effective law enforcement and law compliance are two key issues to ensure the rule of law in the field of agri-food safety regulation together with the appropriate punishment for food safety violations. To this end, attention should be paid to two important points. One is the organization of the regulatory activities conducted by the relative competent authorities at all levels, the other is the role played by the food businesses involved in the food chain from farm to consumption. The reasons have been stated above and one suggestion presented here is to lay down clearly the accountability system for the both parties - those that are meant for the competent authorities who are responsible for official control and the food business operators responsible for self control.

Secondly, agri-food safety standards should be compatible with the development of the agri-food industry and take into account the generally recognized standards made by the departments of the United Nations or other international organizations. As far as China is concerned, it is a difficult task to ensure the same level of protection for all consumers within the country in light of the unbalanced development of regions, especially the disparity between the rural and urban areas. However, every one is entitled to enjoy safe and nutritional food, and so when it comes to the issue of agri-food safety, basic standards such as hygiene or nutritional requirements should be applied equally to different regions. Furthermore, with the rapid development of the economy and the enhancement of living standards in China, even the relatively higher standards set for agri-food exports in which most are determined by other developed countries can be integrated with the ones established for agri-food products meant for the domestic market, in other words - one China, one standard.

Thirdly, the ultimate purpose of implementation of food safety law and other specific laws are to

protect the safety and health of the public and uphold the interests of consumers. Therefore, the food safety law has set forth the article that consumers have the right to demand compensation according to the law for any physical and property damage caused by consumption of food, food additives or food-related products. To this end, apart from the obligations placed on the regulators and regulatees, the mechanism for the remedy and compensation of victims will also need to be put in place for the public and consumers to claim their rights. It is worth mentioning here that consumers could claim their compensation by collective litigation as the compensation is often too low when claimed by individuals. Although collective litigation is quite a powerful tool for consumers to protect their interests as showed in the American situation, the practice has not yet been extensively applicable within China. Aside from this, education and training with regards to agri-food safety is also an effective way to improve the ability of consumers to protect themselves. In this regard, it is not only the government's responsibility to provide appropriate education for consumers from a very early age, but it is also the responsibility of the whole society to make efforts to improve public awareness of food safety. Civil society and community groups are encouraged to conduct food safety educational activities on understanding food safety, laws, regulations and standards; to advocate healthy diets and to raise consumer awareness of food safety and to look after their health. Additionally, food safety information, laws, regulations and standards shall be publicized by the media free of charge.

Last but not least, one of the most far reaching points in the forthcoming is to make national food safety committee well worked. Given previous experiences, especially the failure of the State Food and Drug Administration, it is worth noting that the composition of this committee should not only be open to government officials but also to other stakeholders as well. Transparency and accountability principles should also be applied to its work. As a committee responsible for coordinating the work of government departments, it cannot be avoided that compromises would only be reached based on the interests of the departments rather than the public if participation is only restricted to government representatives and without supervision from the outside in its work. In this sense, the participation of stakeholders, involving representatives from the scientific community, consumers, producers, processors, retailers, etc, can introduce a mechanism for check and balance. The institutional arrangement in this regard can refer to the experience on the multilateral review of experts in food safety regulation within the EU.