Working Paper I

Food Safety Law and Policy in China and the European Union

June 2013

Center for Research on Transnational Law
School of Transnational Law
Peking University
Email: CTL@stl.pku.edu.cn

Supervisor: Professor Francis SNYDER

Researchers: Kaixiang ZHANG, Xinghai LI, Xing’er LIU, Shuang LIU, Yuan LIN, Limei HAN, Yun TANG, Kaichen ZHOU, Chong QI, Yi LU

Editor: Yi LU
# Table of Contents

**Introduction** .......................................................................................................................... 1

**Part I: International Perspective of Food Safety Law** .............................................................. 2

1.1 International Organizations in the Field of Food Safety ...................................................... 2

**Part II: The EU Perspective of Food Safety Law** ............................................................... 6

2.1 European Food Safety Authority (EFSA) and Court of Auditor ........................................ 6

2.2 Research on EU Case Law on Relations between EU and Member States Regarding Food Safety .................................................................................................................... 14

2.3 The Network Organization of Food Safety Authorities in EU ........................................ 36

**Part III: The Chinese Perspective of Food Safety Law** ..................................................... 44

3.1 Diversity in Chinese food safety administration ................................................................. 44

3.2 Chinese Regulations on Food Small Workshop and Street-vended Food I ....................... 47

3.3 Chinese Regulations on Food Small Workshop and Street-vended Food II .................... 53

3.4 Enforcement of Chinese Food Safety Law ........................................................................... 55

3.5 Private Standards and Relations to Public Standards concerning China’s Food Safety .... 69

3.6 Comparison of EU and PRC Food Safety Laws and Implementing Legislation ................ 82

**Part IV: Proposals for Reform of Chinese Food Safety Regulation System** ................... 84

4.1 Legislation and institutional framework ................................................................................. 84

4.2 Information sharing ............................................................................................................... 85

**Conclusion** ........................................................................................................................... 87
Introduction

Food safety issues are crucial to people’s life. Food safety concerns are moving into Chinese policy makers’ top agenda. In 2011, Prof. Francis Snyder, Co-director of Center for Research on Transnational Law (CTL), initiated the research project “Food Safety Law and Policy in China and the European Union”.¹ The main objectives of this research project are, first, to contribute to the development of food safety law and policy in China and, second, to compare Chinese food safety law and policy with the food safety law and policy of the European Union (EU). A subsidiary objective is to examine the extent to which domestic food law principles, laws, regulations and other rules originate from a variety of sources, including domestic, regional, transnational and international institutions, and to consider how different regions or countries manage the resulting institutional and normative pluralism. The project is based on the assumptions that, on the one hand, China and the EU have much to learn from each other with regard to food safety law and policy, and that, on the other hand, each of these two major trading partners is increasingly influenced both by regional, transnational and international standards and by public and private standards. This research project is still ongoing.

This working paper is the first work product presenting the group’s comprehensive literature research and preliminary on-site investigation. It evaluates the current food safety law from international perspective, the EU perspective and Chinese perspective and finally proposes feasible suggestions to Chinese food safety law. This working paper will keep updated alongside the group’s research activities on the next stage based on interviews or discussions with food industry practitioners, governmental officials and scholars. Your comments and suggestions are welcome. Please send your comments to CTL@stl.pku.edu.cn.

¹ All of the research assistants are from Peking University School of Transnational Law. They are Dingmin LIU (graduated in 2012), Yi LU, Kaixiang Zhang (graduating in 2013), Kim Yiseul (left the group in 2012), Xinghai LI, Xing’er LIU, Shuang LIU, Yuan LIN, Limei HAN, Yun TANG, Kaichen ZHOU and Chong QI. CTL wants to take this opportunity to thank all research assistants for their hard work and frequent inspiring discussions. Special thanks to Peking University Shenzhen Graduate School for its generous financial support.
Part I: International Perspective of Food Safety Law

1.1 International Organizations in the Field of Food Safety
By Kaixiang ZHANG

1.1.1 The development and prospect of China's Food Hygiene²

Part IV (2) of this article summarizes China’s achievements of in the Codex Alimentarius Commission (“CAC”). First, China assigned nearly 200 representatives to join into CAC conferences since 2010. The participations brought great effects. For instance, in 2003, our representatives provided more than 1000 documents demonstrating that there is no Chloride alcohol pollutant in natural fermentation soy sauce. Thus greatly eliminate global market's misgiving to our soy sauce products.

Secondly, China took a leading role in some of the CAC standard formulating process. For instance, China led to make the code of practice for the prevention and reduction of aflatoxin contamination in tree nuts.

Thirdly, China acts as host countries in two general subject committees, the Codex Committee on Food Additives (“CCFA”) and the Codex Committee on Pesticide Residues (“CCPR”). China applied to be the host countries of these two committees in April 2006. Ministry of Health set up CCFA secretariat at National Institute of Nutrition and Food Safety for CCFA's daily routines. [中国疾病预防控制中心营养与食品安全所]

It should be noted that the author of this article, Liu Xiumei, is the vice group leader of Codex experts group of Ministry of Health(卫生部食品法典专家组).

1.1.2 http://www.caqs.gov.cn/gjspfd/ is the website of China Codex Contact Point. (Note: the web could not be accessed directly. To enter the web, you may first link to http://www.caqs.gov.cn/, then you may find the column for China Codex Contact Point[国际食品法典中国联络处]). On this


This English document is issued by JECFA (Food addictive committee of Codex) calling for experts. The experts will serve the position for 5 years and work either to serve as the member of the committee or to assist the Secretariat with preparatory work. The FAO places value to technical qualification, independence of the experts and the transparency of the selection process. To eliminate conflicts of interest, before participating in meetings, the invited experts will be required to declare potential interests conflicts with the given substances by replying a standard form sent by FAO. The domain of conflicts of interest including: "employment (past or present) by any commercial enterprise or private or civil sector association; a recipient of research or other study grants from such enterprises or associations; or shareholdings in commercial enterprises active in fields related to food safety."

2) Notice on selecting delegates to join in 2012 CAC conferences

Even though it is an official notice, it still reveals some useful information. First, the members of the delegates are selected from 8 government entities and trade associations. The government entities include Food safety and food hygiene supervision Bureau, Food Safety Department of State Food and Drug Administration, WTO department of Ministry of Commerce, Food and Environmental Hygiene Department, etc. The trading associations include China General Chamber of Commerce and All-China Federation of Supply and Marketing Cooperatives. Based on my
further study on the delegates of the Thirty-fifth Session Codex Meeting. China sent 24 delegates. The majority are the governmental officials as listed above. Three of them are from institutions or universities. Three of them are from private companies. It is interesting to find that the three private company delegates are all from big international company's China branch. Two of them are from Nestle. 1 is from Kraft.

1.1.3 The Secretariat of China CAC is located at National Institute of Nutrition and Food Safety. (http://www.chinacdc.cn/nfs/gywm.html) However, there are not enough informations on this web and I failed to find information on CAC there.

China was elected as the member of CAC executive committee [我国首次当选国际食品法典委员会亚洲区域执委]7

This information reveals that China was selected as sole Asian representative to the Codex Executive Committee on the 34th CAC conference in July 2011. It is first time that China is elected to this post and will serve for two years.

1.1.5 http://www.doc88.com/p-672129619829.html8
The list for the Agriculture expert group for CAC China.

This list informs us all the background of the Agriculture expert working for CAC China. Similar to the Chinese Representative of CAC, the majority of the experts are from university and research institution.

1.1.2 Food Safety education in Hong Kong
During my trip to Montreal, I passed by Vancouver where I met some friends there. A local Canadian’s daughter is now studying on Food Safety in British Columbia University in Vancouver. She is pretty interested in having a further education in Hong Kong. I also informed her of our food safety project in Shenzhen invited her to come to our project if she could study in HK later. After I

---

6 The Secretariat, Codex Alimentarius Commission, Report on JOINT FAO/WHO FOOD STANDARDS PROGRAMME CODEX ALIMENTARIUS COMMISSION (Thirty-fifth Session), Page 50
8 The list for the Agriculture expert group for CAC China [中国食品安全委员会农业专家工作组名单], http://www.doc88.com/p-672129619829.html (last visited on 18th Dec. 2012)
arrived at Montreal, I did some research on the status of the Food Safety education in Hong Kong. I found that HK University is the leading institution in this area and it is now having three programs on this subject as listed below. Of these three, the Advanced Certificate in Quality Control and Food Safety Management seems like an interesting one, which will introduce the international regulation on Food Safety and the HACCP. Besides this university, I also found Hong Kong Polytechnic University is also majoring in this field. For further information, I have attached the links below. Concerning the convenient transportation between HK and Shenzhen, a visit to their project might be useful to our study in Shenzhen.

**Hong Kong University**

1. *Food Safety and Toxicology Laboratory:*

http://www.biosch.hku.hk/staff/eln/Index.htm

http://www.scifac.hku.hk/pg/current/tpg/fstx/programme

2. *MSc in Food Safety Management*


3. *Advanced Certificate in Quality Control and Food Safety Management*


**Hong Kong Polytechnic University**

1. *Food Safety and Technology*

Part II: The EU Perspective of Food Safety Law

2.1 European Food Safety Authority (EFSA) and Court of Auditor

Li Xinghai Alexander

European Food Safety Authority (EFSA)

In this part, I will provide basic knowledge of EFSA and related thoughts in study.

2.1.1 Basic knowledge of EFSA

The European Food Safety Authority (EFSA) is an independent European agency funded by the EU budget that operates separately from the European Commission, European Parliament and EU Member States.

EFSA Management Board

EFSA is governed by an independent Management Board whose members are appointed to act in the public interest and do not represent any government, organisation or sector. The 15-member Board sets EFSA’s budget, approves the annual work programme and is responsible for ensuring that EFSA works effectively and co-operates successfully with partner organisations across the EU and beyond.

Executive Director

EFSA’s Executive Director, currently Catherine Geslain-Lanéelle (appointed in July 2006 for a five year term), is the legal representative of the Authority. She is responsible for all operational matters, staffing issues and drawing up the annual work programme in consultation with the European Commission, European Parliament and EU Member States.

EFSA Scientific Panels and Directorates

EFSA’s Scientific Committee and Panels deliver scientific advice for Europe’s decision-makers in the areas of food and feed safety, nutrition, animal health and welfare, plant protection and plant health. Within its remit, EFSA also assesses environmental safety. A growing part of the Authority’s work relates to the safety assessment of regulated products, substances and claims submitted for authorisation in the EU, thereby supporting agrofood innovation.
EFSA’s Scientific Panels are composed of highly qualified, independent scientific experts with a thorough knowledge of risk assessment. All members are appointed through an open selection procedure on the basis of proven scientific excellence. The Scientific Committee and the Scientific Panels are supported by EFSA staff from three scientific directorates.

EFSA monitors and analyzes information and data on biological hazards, chemical contaminants, food consumption and emerging risks. These areas of work are carried out by EFSA’s scientific units supported by working groups and networks. The Authority also supports the development of risk assessment approaches.

- Organisational structure
- Scientific Committee and Panels
- Networks

Advisory Forum
EFSA’s Advisory Forum connects EFSA with the national food safety authorities of all 27 EU Member States. Iceland and Norway, with observers from Switzerland and the European Commission. The Forum is at the heart of EFSA’s collaborative approach to working with the EU Member States. It constitutes a mechanism for exchange of information on potential risks and the pooling of knowledge. Members use the Forum to advise EFSA on scientific matters, its work programme and priorities, and to address emerging risk issues as early as possible. The Advisory Forum members are supported by Focal Points acting as interfaces between EFSA and the national food safety authorities and facilitating outreach in the Member States.

2.1.2 Organisational structure

Reorganization of the Authority
EFSA has grown quickly since its creation in 2002. In order to ensure that EFSA can respond to and anticipate changes in its environment and growing demands, the Authority started an internal restructuring programme in 2011.

The aim of the reorganisation is to improve efficiency and effectiveness while optimising the use of the Authority’s resources. The overall objectives are to:

- Consolidate resources for public health priorities, such as chemical and biological contaminants, and for animal and plant health.
• Reflect the increasing workload on applications and improve the service to applicants.
• Reinforce strategic coordination and support of scientific activities for cross-cutting issues.
• Reinforce the strategic approach to communications activities.
• Optimise the use of resources by building on internal scientific expertise, consolidating related activities and centralising some support activities.

The first two phases of this reorganisation were completed as of January 2012.

EFSA organisational structure

The European Food Safety Authority is organised in five directorates overseen by EFSA’s Executive Director:

- Science directorates:
  - Risk Assessment and Scientific Assistance
  - Scientific Evaluation of Regulated Products
  - Science Strategy and Coordination
- Communications Directorate
- Resources & Support Directorate.

The scientific directorates support the work of EFSA’s Scientific Committee and Panels. EFSA employs approximately 450 staff members.

- Scientific Panels
Risk Assessment and Scientific Assistance

The Risk Assessment and Scientific Assistance Directorate (RASA) carries out risk assessments on general health and safety priorities in areas such as biological hazards, chemical contaminants, plant health and animal health and welfare. Its units focus on the following specific areas:

- Animal health and welfare, including support to the AHAW Panel
- Biological hazards, including support to the BIOHAZ Panel
- Biological monitoring
- Contaminants, including support to the CONTAM Panel
- Dietary and chemical monitoring
- Plant health, including support to the PLH Panel
- Scientific assessment support

Scientific Evaluation of Regulated Products
The Scientific Evaluation of Regulated Products Directorate (REPRO) supports EFSA’s work in the evaluation of substances, products and claims intended to be used in the food chain in order to protect public, plant and animal health as well as the environment. Its units focus on the following specific areas:

- Feed, including support to the FEEDAP Panel
- Food ingredients and packaging, including support to the ANS Panel and CEF Panel
- GMO, including support to the GMO Panel
- Nutrition, including support to the NDA Panel
- Pesticides, responsible for the EU peer review of active substances used in pesticides, scientific advice on setting Maximum Residue Levels and support to the PPR Panel

Science Strategy and Coordination

The Science Strategy and Coordination Directorate (SCISTRAT) takes strategic leadership of EFSA’s scientific activities and the implementation of the Authority’s science strategy. It coordinates, together with the two operational scientific Directorates, EFSA’s risk assessment activities and manages cross-cutting scientific issues. The Directorate organizes and relies on the work of the Scientific Committee and the Advisory Forum. It also fosters cooperation with national and international partners by supporting cooperation with EU Member States and at the international level as well as by consolidating dialogue with stakeholders. Its units focus on the following specific areas:

- Advisory Forum & scientific cooperation
- Emerging risks
- Scientific Committee

Communications

The Communications Directorate (COMMS) is responsible for risk communication - a central part of EFSA’s core business. By communicating on risks associated with the food chain in an open and transparent way based on the independent scientific advice of its scientific expert panels and its own expertise, the Authority contributes to improving food safety in Europe and to building public confidence in the way risk is assessed. EFSA communicates with risk managers, national authorities, stakeholders and the public at large using on- and offline communications tools, such as the
corporate website, publications and information materials and information for the media. Its units focus on the following specific areas:

- Editorial & media relations
- Communication channels

Resources and Support

In order to successfully carry out its mission, EFSA depends upon the administrative and support services provided by the Resources and Support Directorate (RESU). Key services include a strategic approach to human capital and knowledge management, developing efficient IT systems in support of the scientific work, and providing sound financial management and procurement services in support of, for instance, networking with competent organisations across the EU. Its units focus on the following specific areas:

- Accounts
- Corporate services
- Finance
- Human capital & knowledge management
- IT systems
- Legal & regulatory affairs

2.1.3 Thoughts on EFSA study

Enlarging basic knowledge on food safety

To obtain basic knowledge of food safety, I focus on reading some thesis and articles which give introduction on food safety legal study history and current situation in EU and China. Up to now, I have read following materials:

Parts of borrowed book from Prof. Snyder, *Report of the Director of Studies, Section 3 FOOD Safety*. It covered the concept of food safety, the impact of international law and institutions, food safety in EU law, and food safety in developing countries. Through the introductions, I got basic ideas about food safety and international study history on this subject, besides, I found the content about Chinese food safety regulation is outdate, so that I further look for new movements of Central Government, then discover an important new agency China National Center For Food Safety Risk Assessment.
(CNCFFSRA). This center is a public hygiene institution permitted by State Commission Office for Public Sector Reform which is directly controlled by highest central leaders of China like Xi Jinping, operated with a model of council decision making and supervising. This Center is a national level technical institution responsible for risk assessment, risk supervising, risk early warning, risk communication and standard measurement of Food Safety. Establishment of the center is a specific enforcement of PRC Food Safety Law, and fundamental works to improve capability of Chinese scientific management of food safety. What’s more, it is also a big step to connect mature international food safety authority like EFSA. I would like to collect more information of the center to compare with EFSA, as it seems to learn some similar organization methods from EFSA but still keep traditional Chinese administrative style. So I wonder whether it can efficiently take the heavy responsibility to handle the food safety risk analysis for the most complicated country in the world.

I also read some Chinese Scholars’ articles with Chinese view and consideration, like *Study on EU food Safety Legal System, Responsibility and Task of EFSA* etc. However, I want to read more foreign scholars’ articles to widen my view and catch out more practical and non-obvious viewpoints.

2.1.4 New Movement on EFSA and Court of Auditors

2.1.4.1 Recently, EFSA cares about “health claim” issues.

An increasing number of foods sold in the EU bear nutrition and health claims. A nutrition claim states or suggests that food has beneficial nutritional properties, such as “low fat”, “no added sugar” and “high in fibre”. A health claim is any statement on labels, advertising or other marketing products that health benefits can result from consuming a given food.

In December 2006 EU decision-makers adopted a Regulation on the use of nutrition and health claims for foods which lays down harmonised EU-wide rules for the use of health or nutritional claims on foodstuffs. For the first time, harmonised rules were laid down across the EU for the use of nutrition claims such as “low fat” and “high fibre” or health claims such as “reduces blood cholesterol”.

The European Commission was required to draw up a list of permitted health claims that refer to: “general functions” of the body, psychological and behavioural functions, and weight management; and those relating to disease risk reduction, and child development and health. EFSA was asked to provide scientific advice to support this process.
2.1.4.2 What did EFSA do?

Between 2008 and 2011 EFSA’s Panel on Dietetic Products, Nutrition and Allergies (NDA Panel) assessed 3,000 food-related health claims to determine whether they were supported by sound scientific evidence. These approved claims can help European consumers to make more informed choices about their diet. EFSA will continue to evaluate claims from industry and re-evaluate some general function claims.

Timeline of publications of EFSA’s general function evaluations:

1) 1 October 2009, 521 claims addressed in 94 opinions
2) 25 February 2010, 416 claims covered in 31 opinions
3) 19 October 2010, 808 claims, addressed in 75 opinions
4) 8 April 2011, 442 claims, addressed in 63 opinions
5) 30 June 2011, 536 claims, addressed in 73 opinions
6) 28 July 2011, 35 claims addressed in 5 opinions

The NDA Panel has also adopted 27 scientific opinions on “new function” claims (those based on newly developed scientific evidence and/or for which protection of proprietary data is requested) and 75 opinions on claims relating to disease risk reduction and child development or health.

Throughout the process the Authority has engaged regularly with stakeholders to explain and clarify the process followed by the NDA Panel in the evaluation of claims, and has provided advice through guidance, briefing documents and the holding of scientific meetings.

2.1.4.3 What was the impact?

EFSA’s work is helping to ensure that health claims used in food labeling and advertising in the EU are clear and substantiated by scientific evidence, and that European consumers are protected from misleading or potentially harmful claims.

2.1.4.4 The Court of Auditors published 2011 REPORT ON THE FOLLOW-UP OF THE EUROPEAN COURT OF AUDIORS’ SPECIAL REPORTS.
This report reviews the extent to which the Commission has implemented the recommendations in seven of the Court’s special reports selected from the period 2003-09. The special reports followed up were in respect of three budgetary areas: agriculture, energy and external actions. The seven reports contained 51 audit recommendations, of which 45 are still relevant. While the Commission has a system in place to follow-up all recommendations of the Court and the requests of the Parliament and the Council, the Court considers that the follow-up of recommendations/requests needs to be strengthened to enable the Commission to respond in a timely, efficient and effective manner to the underlying weakness uncovered as well as to the recommendations/requests of the Court and the discharge authority. The review has shown that the Commission takes action to implement the Court’s recommendations and 13(29%) of the recommendations dealt with in this report are fully implemented. A large number are still being implemented, although for a further 22(49%) of the recommendations the actions already taken by the Commission implement these in most respects.
2.2 Research on EU Case Law on Relations between EU and Member States Regarding Food Safety
By Xing’er LIU

Questions Presented:

1. What are the relations between EU and its Member States regarding food safety in case law?
2. Is there any network organisation dealing with food safety problems in EU? If so:
   a. How does it work?
   b. What if the system fails, who takes the responsibility?
   c. What does it have to do with Chinese food safety problem?

2.2.1 Introduction

This part is to analyze some of the important food safety cases in EU concerning relations between EU and its Member State. First I will list some of the important cases concerning food safety, especially focusing those brought in the Court of Justice of the European Union after 2009 (except one case on Rapid Alert System for Food and Feed (hereafter “RAFSS”)). Second, I will focus on important issues like the EU communication network organisation for food safety, and some related legal issues. Last, I will make some proposals to Chinese food safety development based on experience of the EU food safety law.

2.2.2 The Cases

EU cases on food safety can be classified based on various criteria.

First, they may be categorized according to different products involved, as in the Appendix I listing all food safety cases decided by the The Court of Justice of the European Union (“CJEU”) after 2009. The important cases I will discuss are categorized into Genetically Modified Organisms, milk and milk products, and pesticides.

Second, they may be categorized according to different legal and policy aspects like risk assessment, accountability, relation to international standards and RASFF.

---

9 All the research of cases is conducted using the Euro-Lex database.
The first case is Republic of Hungary v. European Commission (Case T-240/10), brought on 27 May 2010\(^{10}\). The applicant asks for annulment of two Commission Decisions concerning: 1) the placing on the market of GM potato product\(^{11}\); and 2) authorizing the placing on the market of feed produced from the GM potato\(^{12}\).

The applicant has two claims: First, concerning the authorization of placing the GM potato on the market, the GM potato entails a risk to human and animal health and the environment. Second, the authorization is based on a risk assessment, which is unsubstantiated or deficient and has implications for the legality of the Commission Decision. Last, the second Regulation in question does not envisage any safety margin or allow the Commission to apply any safety margin in the event of the adventitious or technically unavoidable presence of genetically modified organisms.

The second case is PAN Europe en Stichting Natuur en Milieu v. Commission (Case T-574/12) brought on 18 December 2012\(^{13}\). The applicant are a Dutch individual and Pesticide Action Network (PAN) Europe, Belgium, the regional centre of PAN, which is “a network of over 600 non-governmental organizations, institutions and individuals worldwide working to minimize the negative effects and replace the use of harmful pesticides with ecologically sound alternatives” according to its description on the official website\(^{14}\). It claims that the maximum residue levels (MRLs) of products set forth in a regulation amendment were declared admissible but unfounded\(^{15}\). The applicants dispute that the MRLs were set at the lowest achievable level consistent with good agricultural practice; that the dossiers were not assessed in a thorough manner; that the cumulative exposure of consumers was not taken into account; and that a large number of temporary MRLs exceeds health limits.

The third case is an important case concerning RASFF: Bowland Dairy Products v. Commission (Case T-212/06), Fifth Chamber, 29 October 2009, which involves milk and milk products.\(^{16}\) The


\(^{11}\) Commission Decision 2010/135/EU of 2 March 2010

\(^{12}\) Commission Decision 2010/136/EU of 2 March 2010


\(^{14}\) [http://www.pan-europe.info/About/index.html](http://www.pan-europe.info/About/index.html)


applicant, a UK cheese company, whose curd cheese was notified as “improper production of dairy product” by the Food Standards Agency (“the FSA”), after the inspection of the Food and Veterinary Office (“the FVO”), a directorate within the Health and Consumer Protection Directorate-General (DG) of the Commission of the European Communities. Then the applicant closed its premises. After this, the FSA did an audit of premises but concluded that the resumption of the operations “did not present public health issue or contravene Community law” and authorized the applicant to resume production.

The applicant has two claims: first is annulment of the alleged refusal by the Commission to circulate, which is dismissed by the court; and second, for compensation for the loss as a consequence of that refusal.

It is settled case-law that in order for the Community to incur non-contractual liability, a number of conditions must be satisfied, namely: the unlawfulness of the conduct alleged against the institutions, the fact of damage and the existence of a causal link between the alleged conduct and the damage complained of.

The court noted that Article 50(1) of Regulation No 178/2002 establishes the RASFF and the Commission is responsible for managing the network. The competent authority of the Member State concerned has sole responsibility for drafting the notifications under Article 50(3), and also for transmitting them to the Commission for communication. Also, concerning the Commission’s opinion expressed in the email, it is not binding.

The last case also concerns pesticide residue levels. In Malagutti-Vezinhet SA v. Commission of the European Communities (Second Chamber), 10 March 2004 (Case T-177/02)21, the applicant is a French company, who exported apples treated with the pesticide dicofol to a Netherland company. However, those apples has discovered to have 40 times greater than the MRLs amount permitted and were decided to be withdrawn and disposed by the Icelandic authority. Immediately, the Commission

17 Para. 4-9 of the full text.
18 Para. 37 of the full text.
19 Para. 39 of the full text.
20 Para. 43 of the full text.
was informed of it under the Rapid Alert System for Food and Feed (RASFF). Then the Commission sent the message to all state members, before the Netherlands contact point gave applicant’s name to the Commission to circulate as an additional notification. The applicant subsequently found that its trade had been tremendously damaged and claimed that the French authorities detected no dicofol in those apples.

The court considered the two procedures for checking product safety laid down in a directive. First, where national authorities take measures they must inform the Commission of the measure and the Commission must enter into consultations with the parties concerned as soon as possible, check whether the measure that has been taken is justified, and inform the national authorities immediately. The second procedure concerns the RASFF system. The court found that the Icelandic authorities contacted the Commission not in order to ask it whether the withdrawal and disposal of the apples were justified under the directive. After it was informed, the Commission reacted strictly within the limits of the RASFF by transmitting this alert message and subsequent messages to all RASFF contact points.

Under the RASFF, it is only the national authorities, and not the Commission, which are responsible for establishing whether there is serious and immediate risk to health and safety of consumers. The applicant who is a victim of the RASFF system must accept its adverse economic consequences, since the protection of public health must take precedence over economic considerations. The court concludes that the applicant has not established that the Commission acted wrongfully in such a way as to incur liability. Therefore the application is dismissed.

2.2.3 Legal Issues

After the detailed description of the four cases, to further classify them according to different legal issues, reference can be made based on the table below:

<table>
<thead>
<tr>
<th>Issues</th>
<th>Case name and Number</th>
<th>Related Claims or Court Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk Assessment</td>
<td>Republic of Hungary v. European Commission</td>
<td>The authorization is based on a risk assessment which is unsubstantiated or deficient and has implications for the legality of the Commission</td>
</tr>
</tbody>
</table>

22 Para. 43-54 of the full text.

23 Para. 67 of the full text.
<table>
<thead>
<tr>
<th>International Standard</th>
<th>(Case T-240/10)</th>
<th>Decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>PAN Europe en Stichting Natuur en Milieu v. Commission (Case T-574/12)</td>
<td>1. MRLs were set at the lowest achievable level consistent with good agricultural practice. 2. A large number of temporary MRLs exceeds health limits</td>
<td></td>
</tr>
<tr>
<td>Accountability</td>
<td>Bowland Dairy Products v. Commission (Case T-212/06)</td>
<td>1. The Commission is responsible for managing the network. 2. The competent authority of the Member State concerned has sole responsibility for drafting the notifications under Article 50(3), and also for transmitting them to the Commission for communication. 3. The Commission’s opinion expressed in the email is not binding.</td>
</tr>
<tr>
<td>RASFF</td>
<td>Malagutti-Vezinhet SA v. Commission of the European Communities (Second Chamber)</td>
<td>The claim for compensation can only concern the liability that the Commission must assume under the RASFF. However, this accountability is limited under the RASFF system. The applicant has not established that the Commission acted wrongfully in such a way as to incur liability.</td>
</tr>
<tr>
<td>RASFF</td>
<td>Bowland Dairy Products v. Commission (Case T-212/06)</td>
<td>Article 50(1) of Regulation No. 178/2002 establishes the RASFF and the Commission is responsible for managing the network. The Committee’s opinion is not binding.</td>
</tr>
<tr>
<td>RASFF</td>
<td>Malagutti-Vezinhet SA v. Commission of the European Communities (Second Chamber)</td>
<td>This case’s RASFF is based on Council Directive 92/95/EEC of 29 June 1992 on general product established on a Community level a general safety requirement for any product placed on the market that is intended for consumers or likely to be used by consumers. This is the ‘Community rapid alert system for food and feed’ (RASFF), in which the States signatories to the Agreement on the European Economic Area (EEA), including the Republic of Iceland, also take part.</td>
</tr>
</tbody>
</table>

### 2.2.4 Rapid Alert System for Food and Feed

It was then replaced by the Regulation No. 178/2002 as in the Bowland case.
This RASFF is especially worth noticing because it is a very significant in the European Union food safety law system. It also has many lessons to be learnt by China.

2.2.4.1 Introduction to RASFF

RASFF is primarily a tool to exchange information between competent authorities on consignments of food and feed in cases where a risk to human health has been identified and measures have been taken. Measures include: withholding, recalling, seizing or rejecting products.

Consumers can also get access to an online database allowing them to see information relating to RASFF notifications at the latest 24 hours after their transmission into the RASFF network.

The RASFF network includes: all EU Member States, EEA countries (Norway, Liechtenstein and Iceland), the EFTA Secretariat coordinating the input from the EEA countries, the European Food Safety Authority (EFSA) and the European Commission as the manager of the system.

The legal basis of the RASFF is Regulation EC/178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. In Articles 50, 51 and 52 scope and procedures of the RASFF are defined.

2.2.4.2 How Does RASFF Work In Practice

First the problem is notified by the member of the network who has information relating to the existence of a serious direct or indirect risk to human health deriving from food or feed. This information is immediately notified to the Commission through RASFF who in turn immediately transmits to the other members of the network. Once the information is received, other Member States will check to see if they are concerned. If the product is on their market they will be able to trace it using the information in the notification. They will report back on what they have found and what measures they have taken. This allows other Member States to take rapid action if needed.

---

2.2.4.3 Commission’s Responsibilities

The Commission, responsible for managing the system, is providing knowledge and a technological platform to facilitate transmission and handling of the RASFF notifications. It receives all notifications from members of the network and performs the following checks on them, prior to making them available to all members of the network:

- a completeness check
- legislative requirements
- verification if the subject of the notification falls within the scope of the RASFF
- translation into English of the information on the notification form
- classification of the notification
- members of the network flagged for action
- recurrences of similar problems relating to the same professional operator and/or hazard/country of origin.

The Commission must inform a non-member of RASFF (third countries) if a product subject to a notification has been exported to that country or when a product originating from that country has
been the subject of a notification. In this way, the country can take corrective measures where needed and appropriate.26

2.2.5 Latest development

According to the RASFF 2011 Annual Report, RASFF plays a key role in ensuring safety from "farm to fork", by triggering a rapid reaction when a food safety risk is detected. RASFF plays a key role in ensuring safety from "farm to fork", by triggering a rapid reaction when a food safety risk is detected.

In a European Commission press release in Brussels, 20 July 2012 “Food: Latest Report shows EU Controls ensure our food is safe”27, it is reported that in 2011, 9157 notifications in RASFF related to non-compliances with EU food legislation were reported, of which 617 concerned serious risks. Most of the notifications were follow-ups (5345) rather than new (3812) notifications. This reflects an increased effectiveness of the system with a better targeting and a more extensive follow-up.

2.2.5.1 An Example - When Chinese Milk and Milk Products Are Involved

In the RASFF portal database provided in official website28, which can be used for further data collection. I chose "milk and milk products" in Category and "China" in Origin and found that in result pages, four of them involve melamine in milk product:

---

26 http://ec.europa.eu/food/food/rapidalert/about_rasff_en.htm
27 http://ec.europa.eu/food/food/rapidalert/index_en.htm
28 https://webgate.ec.europa.eu/rasff-window/portal/?event=SearchForm
### Notification detail - 2008.1180

**Illegal import of milk drink containing melamine (25.6 mg/kg - ppm) from China**

- **Reference**: 2008.1180
- **Notification date**: 03/10/2008
- **Last update**: 14/10/2008
- **Notification type**: food - information = official control on the market
- **Action taken**: obsolete
- **Notification from**: AUSTRIA (AT)
- **Distribution status**: distribution restricted to notifying country
- **Product**: milk drink
- **Product category**: milk and milk products

#### Follow-up:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Follow-up from</th>
<th>Data</th>
<th>Follow-up type</th>
<th>Info</th>
</tr>
</thead>
</table>

#### Hazards:

<table>
<thead>
<tr>
<th>Substance / Hazard</th>
<th>Category</th>
<th>Analytical result</th>
<th>Units</th>
<th>Sampling date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illegal import</td>
<td>adulteration / fraud</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>melamine</td>
<td>industrial contaminants</td>
<td>25.6 mg/kg - ppm</td>
<td></td>
<td>22/09/2008</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Distributed to:

- AUSTRIA

Origin:

- CINA

*Close this window*
Notification detail - 2008.1184

illegal import of milk drink from China containing melamine (14.4 mg/kg - ppm)

<table>
<thead>
<tr>
<th>Reference</th>
<th>2008.1184</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notification date</td>
<td>03/10/2008</td>
</tr>
<tr>
<td>Last update</td>
<td>08/10/2008</td>
</tr>
<tr>
<td>Notification type</td>
<td>food - information - official control on the market</td>
</tr>
<tr>
<td>Action taken</td>
<td>destruction</td>
</tr>
<tr>
<td>Notification from</td>
<td>SLOVAKIA (SK)</td>
</tr>
<tr>
<td>Distribution status</td>
<td>distribution restricted to notifying country</td>
</tr>
<tr>
<td>Product</td>
<td>milk drink</td>
</tr>
<tr>
<td>Product category</td>
<td>milk and milk products</td>
</tr>
</tbody>
</table>

Follow-up:

<table>
<thead>
<tr>
<th>Reference</th>
<th>Follow-up from Date</th>
<th>Follow-up type</th>
<th>Info</th>
</tr>
</thead>
</table>

Hazards:

<table>
<thead>
<tr>
<th>Substance / Hazard</th>
<th>Category</th>
<th>Analytical result</th>
<th>Units</th>
<th>Sampling date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illegal import melamine</td>
<td>industrial contaminants</td>
<td>14.4</td>
<td>mg/kg - ppm</td>
<td>23/09/2000</td>
</tr>
</tbody>
</table>

Distributed to:

1. SLOVAKIA

Origin:

1. CHINA
Illegal import of milk and yoghurt containing melamine (22; 7; 18 mg/kg - ppm) from China

Reference: 2008.1246
Notification date: 18/10/2008
Last update: 21/10/2008
Notification type: food - information - official control on the market
Action taken: seizure
Notification from: ITALY (IT)
Distribution status: distribution restricted to notifying country
Product: milk and yoghurt
Product category: milk and milk products

<table>
<thead>
<tr>
<th>Reference</th>
<th>Follow-up from</th>
<th>Date</th>
<th>Follow-up type</th>
<th>Info</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008.1246</td>
<td>01/11/2008</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2008.1246</td>
<td>18/10/2008</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Hazards:

<table>
<thead>
<tr>
<th>Substance / Hazard</th>
<th>Category</th>
<th>Analytical result</th>
<th>Units</th>
<th>Sampling date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Melamine</td>
<td>Industrial contaminants</td>
<td>22; 7; 18 mg/kg - ppm</td>
<td>23/09/2008</td>
<td></td>
</tr>
</tbody>
</table>

Distributed to:

[ ITALY ]

Origin:

[ CHINA ]
From these results we can see that RASFF has reacted quickly to the Chinese problematic milk and milk products and has greatly prevented further harm within EU efficiently.

Appendix I – Table of all CJEU case summaries concerning food safety (sorted by products and important issues)

1. Plant Protection

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Date</th>
<th>Case Name (Parties)</th>
<th>Summary</th>
</tr>
</thead>
</table>
## 1. First Plea in Law

The Commission has erred as a matter of law in:

a. justifying the contested act on the grounds of hypothetical concerns: (i) the three unidentified metabolites and (ii) processed commodities

b. asking for the identity of the unidentified metabolites in stored apples whereas this was technically impossible, and by asking the applicants to demonstrate an absence of risk in relation to low risk compounds found below the Limit of Quantification (LOQ) in processed commodities.

## 2. Second Plea in Law

a. An EFSA report introducing a new requirement — the submission of a fully validated analytical method — at a very late stage of the evaluation procedure

b. the applicants were not given an opportunity to address the issue due to the Commission's misunderstanding of Commission Regulation (EC) No 33/2008 concerning the submission of new data

## 3. Third Plea in Law

a. Disproportionate

b. the Commission could have adopted an inclusion decision with less restrictive measures

### 2. GMO

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Date</th>
<th>Case Name (Parties)</th>
<th>Request</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>T-240/10</td>
<td>27 May 2010</td>
<td>Republic of Hungary v European Commission</td>
<td>Annulment of Commission Decision 2010/135/EU of 2 March 2010 concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a GMO</td>
<td>In the grounds for its application the applicant alleges, as its first plea in law, that the Commission made a manifest error of assessment and infringed the precautionary principle in authorising the placing on the market of the genetically modified potato known as &quot;Amflora&quot; (&quot;GM potato&quot;) despite the fact that, when the risks were assessed, well-founded objections were raised to the effect that the authorisation — having regard to the objectives of guaranteeing a high level of protection of health and the environment — could cause</td>
</tr>
</tbody>
</table>
potato product (Solanum tuberosum L. line EH92-527-1) genetically modified for enhanced content of the amylopectin component of starch.


- In the alternative, if the claim for annulment of Decision 2010/136/EU is dismissed, annulment of Article 2(b) and (c) thereof.

damage to the health of humans and animals and to the environment. In the view of the applicant, the marketing authorisation is based on a risk assessment which is unsubstantiated or deficient in many respects, which has implications for the legality of the Commission Decisions.

As regards the risks to health caused by the GM potato at issue, the applicant alleges that the antibiotic-resistance marker gene present in the GM potato and the transfer of that gene from GM crops to bacteria entail a risk to human and animal health and the environment which is unacceptable, especially having regard to the obligation to ensure a high level of protection for health and the environment, and that there is, at the least, significant scientific uncertainty regarding the risks, which the Commission has not adequately allayed. The applicant concludes that the marketing authorisation infringes the precautionary principle and breaches Article 4(2) of Directive 2001/18/EC, [3] which gives that principle concrete legal expression. Moreover, the scientific opinion issued by the European Food Safety Authority (EFSA) which served as a basis for the Commission Decisions also contradicts the views held in this matter by the World Health Organisation, the World Organisation for Animal Health and the European Medicines Agency.

In the view of the applicant, the assessment of the risk to the environment posed by the GM potato is deficient and inadequate having regard to:

- The lack of any open-air trials relating to all the bio-geographical regions of the European Union;
- The lack of any assessment of impact, or of cumulative long term impact, on untargeted organisms, or of impact on the dynamic of species populations and genetic diversity;
- The inadequacy of the assessment of possible impact on animal health and possible consequences for the food chain.

As its second plea in law the applicant alleges that the Commission breached Regulation No 1829/2003/EC. [4] In
that regard, the applicant argues that Article 2(b) and (c) of Decision 2010/136/EU, which authorises the adventitious or technically unavoidable presence, in food or crops, of genetically modified organisms in a proportion no higher than 0.9%, is contrary to law, given that, as far as authorisation is concerned, Regulation No 1829/2003/EC does not envisage any safety margin or allow the Commission to apply any safety margin in the event of the adventitious or technically unavoidable presence of genetically modified organisms.

3. Nutrition and Health

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Date</th>
<th>Case Name (Parties)</th>
<th>Request</th>
<th>Summary</th>
</tr>
</thead>
</table>
| T-354/12    | 3 Aug. 2012 | Afepadi and Others (Spain) v Commission | 1. annul recitals 11, 14 and 17 in the preamble to Commission Regulation (EU) 432/2012 as they are seriously detrimental to the applicants’ interests 2. in the interest of legal certainty, declare that the rejection of the health claims listed in Article 13 of Regulation (EC) 1924/2006 of the Parliament and of the Council must result from a legislative act | - For the first request:  
  - establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children’s development and health  
  - applicant: the principle of legal certainty has been infringed  
  - For the second request:  
    - a large number of statements remain to be evaluated for the first time or to be evaluated more extensively, including evaluations of botanical substances which the applicants frequently use in their foodstuffs.  
    - operators in the foodstuff production sector and users of botanical substances know, with certainty, which health claims are based on generally accepted scientific data (the 222 authorised health claims) and which may be used in their products. However, they have not been informed in the same way (by means of a regulation) of the situation as regards claims which are not on the authorised list, that is to say, whether they are pending evaluation or require further evaluation, whether they have been rejected, whether they have been authorised or not, or when and in what time-frame. |
<table>
<thead>
<tr>
<th>Case</th>
<th>Date</th>
<th>Parties</th>
<th>Issue</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>T-296/12</td>
<td>2 July 2012</td>
<td>Health Food Manufacturer’s Association and Others (UK &amp; Netherland) v Commission</td>
<td>- Annul Commission Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children’s development and health (OJ L 136, p. 1); - Annul Commission Decision of 16 May 2012 adopting a list of permitted health claims and creating a list of so-called on-hold health claims that are neither rejected nor authorised by the Commission</td>
<td>Three grounds: 1. First plea in law - the adoption of a permitted list of general function health claims while keeping certain claims under the transitional measures of Article 28 of Regulation (EC) No 1924/2006 (i.e. splitting the assessment process and adopting a partial list of claims under article 13(1)) lacks any legal basis. It further infringes the principles of good administration, legal certainty and non-discrimination for a number of reasons 2. Second plea in law - the non-inclusion of many health claims in the permitted list infringes Regulation (EC) No 1924/2006 by applying improper assessment criteria, infringes the principle of good administration, legal certainty and the duty of collaboration with national food authorities and the obligation to provide adequate reasons. 3. Third plea in law - if the pleas submitted above are not upheld, the applicants allege that the Regulation (EC) No 1924/2006 itself is void because of breach of the right to be heard and breach of legal certainty.</td>
</tr>
<tr>
<td>30 July</td>
<td>Clasado (UK) v</td>
<td>Annul those parts of Commission Regulations (EU) No 382/2010 [1] and No 384/2010</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
T-322/10 2010 Commission [2] of 5 May 2010 relating to health claims submitted by the applicant in respect of BimunoBT (BGOS) Prebiotic; and Applicant seeks the annulment of those parts of Commission Regulations (EU) No 382/2010 and No 384/2010 of 5 May 2010: has been decided that health claims submitted by the applicant in respect of BimunoBT (BGOS) Prebiotic, a prebiotic food supplement designed to support the immune system and gastrointestinal health in humans, and reduce the risk of travellers’ diarrhoea, do not comply with the requirements of Regulation (EC) No 1924/2006 [3], and thus should not be authorised.

Case T-126/09 24 Mar. 2009 Italy v Commission Annullment of Notices of open competitions EPSO/AD/144/09 (public health), EPSO/AD/145/09 (food safety (policy and legislation)), and EPSO/AD/146/09 (food safety (audit, inspection and evaluation)) for the drawing up of a reserve from which to recruit 35, 40 and 55 administrators (AD 5) respectively, with Bulgarian, Cypriot, Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Romanian, Slovak and Slovenian citizenship, in the field of public health.

Similar: Case T-166/07 Italy v Commission. (available only in France)

Corrected by Joined Cases C-171/07 and C-172/07 (see below)

Joined Cases C-171/07 and C-172/07 19 May 2009 (references for a preliminary ruling from the Verwaltungsgericht des Saarlandes — Germany) — Apothekerkammer des Saarlandes, Marion Schneider, Michael Holzapfel, Fritz Trennheuser, Deutscher Apothekerverband eV (C-171/07) and Helga Neumann-Seiwert (C-172/07) v Saarland and Freedom of establishment — Article 43 EC — Public health — Pharmacies — Provisions restricting the right to operate a pharmacy to pharmacists alone — Justification — Reliability and quality of the provision of medicinal products to the public — Professional independence of pharmacists

Articles 43 EC and 48 EC do not preclude national legislation, such as that at issue in the main actions, which prevents persons not having the status of pharmacist from owning and operating pharmacies.
<table>
<thead>
<tr>
<th>Case</th>
<th>15 Jan. 2009</th>
<th>Ministerium für Justiz, Gesundheit und Soziales</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-38</td>
<td>3/07</td>
<td>Reference for a preliminary ruling — Bayerischer Verwaltungsgerichtshof — Interpretation of Article 1(2)(d) and (e) and (3) of Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients (OJ 1997 L 43, p. 1) — Novel character of a food marketed in a limited geographical area of the Community (San Marino) shortly before the entry into force of the regulation when the food is manufactured from ingredients the habitual human consumption of which is disputed or can be established only by reference to a non-member country (Japan) — Obligation to subject a food to a control</td>
</tr>
</tbody>
</table>

Operative part of the judgment:

1. Importation of a food product into San Marino before the entry into force of Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients is not a relevant factor for assessing whether that product meets the requirement relating to human consumption to a significant degree within the European Community within the meaning of Article 1(2) of that regulation.

2. The fact that all the individual ingredients of a food product meet the requirement laid down in Article 1(2) of Regulation No 258/97, or have a safe history, cannot be regarded as sufficient for that regulation not to apply to the food product concerned. In order to decide whether that food product should be classified as a novel food within the meaning of Regulation No 258/97, the competent national authority must proceed on a case-by-case basis, taking into account all the characteristics of the food product and of the production process.

3. The fact that all of the algae contained in a food product within the meaning of Article 1(2)(d) of Regulation No 258/97 meet the requirement relating to human consumption to a significant degree within the European Community, within the meaning of Article 1(2) of that regulation, is not sufficient for that regulation not to apply to that product.

4. Experience regarding the safety of a food product existing exclusively outside Europe is not sufficient to establish that the product concerned falls within the category of food products "having a history of safe food use" within the meaning of Article 1(2)(e) of Regulation No 258/97.

5. It is not incumbent upon an undertaking to initiate the procedure laid down in Article 13 of Regulation No 258/97.

4. Pesticides
<table>
<thead>
<tr>
<th>Case Number</th>
<th>Date</th>
<th>Case Name (Parties)</th>
<th>Request</th>
<th>Summary</th>
</tr>
</thead>
</table>
| T-574/12    | 18 Dec. 2012 | Pesticide Action Network Europe (PAN Europe) (Brussels, Belgium) and Stichting Natuur en Milieu (Utrecht, Netherlands) v. Commission | - Maximum residue levels (MRLs) were set at the lowest achievable level consistent with good agricultural practice  
  - the dossiers were not assessed in a thorough manner.  
  - the cumulative exposure of consumers was not taken into account.  
  - a large number of temporary MRLs exceeds health limits.  
 Court: Annuls the decisions of the Commission of 1 July 2008 rejecting as inadmissible the requests |
| T-212/06    | 29 Oct. 2009 | Bowland Dairy Products (UK) v. Commission                                            | Action for damages — Regulation (EC) No 178/2002 — Rapid alert system — Supplementary notification — Competence of the national authorities — Commission’s opinion not binding — Modification of the subject-matter of the dispute — Inadmissibility Application, first, for annulment of the alleged refusal by the Commission to circulate, under the rapid alert system provided for in Article 50 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1), a supplementary notification declaring that the United Kingdom’s Food Standards Agency was content for the curd cheese produced by the applicant to be marketed and, second, for compensation for the |                                                                                                                                                                                                                                                                   |
loss allegedly suffered by the applicant as a consequence of that refusal. Court dismisses the action as inadmissible.

<table>
<thead>
<tr>
<th>Case</th>
<th>Date</th>
<th>Parties</th>
<th>Claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-52 0/11</td>
<td>11 Oct. 2011</td>
<td>European Commission v French Republic</td>
<td>- Declare that, by failing to comply with Commission Decision 2009/726/EC ordering France to suspend the application of certain interim protection measures prohibiting the introduction onto its territory, for the purpose of human consumption, of milk and milk products coming from a holding where a classical scrapie case is confirmed, the French Republic has failed to fulfil its obligations under Articles 4(3) TEU and 288 TFEU. On 25 February 2009, France adopted a measure relating to the prohibition of import of milk and milk products for human consumption from ovine and caprine origin onto the French territory, in the light of transmissible spongiform encephalopathies intended for human consumption. On 24 September 2009 the Commission considered that the interim protective measures adopted by France went beyond what was necessary to avoid a serious risk to human health, even taking into account the precautionary principle, and adopted, on the basis of Article 54(2) of Regulation No 178/2002, Decision 2009/726/EC ordering France to suspend the application of those measures.</td>
</tr>
<tr>
<td>T-485 09</td>
<td>3 Dec. 2009</td>
<td>France v Commission</td>
<td>- Annul Commission Decision 2009/726/EC of 24 September 2009 concerning interim protection measures taken by France as regards the introduction onto its territory of milk and milk products coming from a holding where a classical scrapie case is confirmed. The decision being challenged orders France to suspend the application of interim protection measures which it adopted following the publication of new scientific opinions about a risk of human exposure to classical scrapie due to the consumption of milk and milk products originating from infected herds of ovine and caprine animals in order to prohibit the introduction onto its territory, for the purposes of human consumption, of milk and milk products coming from a holding where a classical scrapie case is confirmed. The applicant argues that the decision being challenged must be annulled on the grounds that it infringes the precautionary principle, as regards both risk assessment and risk management. The applicant claims that the Commission infringed the precautionary principle at the risk assessment stage by ignoring the remaining scientific uncertainties over the risk of the transmission to humans of TSE other than BSE. In the applicant’s opinion, the Commission also infringed the precautionary principle at the risk management stage by failing to adopt any measure in order to restrict the risk of human exposure to classical scrapie.</td>
</tr>
</tbody>
</table>
6. Test Systems

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Date</th>
<th>Case Name (Parties)</th>
<th>Request</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>T-112/10</td>
<td>Mar 1</td>
<td>Prionics v Commission and EFSA</td>
<td>Annul the “Scientific Opinion on Analytical sensitivity of approved TSE rapid tests” of EFSA and the Commission, in so far as that opinion does not currently recommend the use of two tests manufactured by the applicant, the Prionicsâ-Check LIA and the Prionicsâ-Check PrioSTRIP, for monitoring BSE.</td>
<td>The applicant is challenging EFSA’s Scientific Opinion of 10 December 2009 on Analytical sensitivity of approved TSE rapid tests (&quot;the EFSA Opinion&quot;). That opinion recommends inter alia that the analytical sensitivity of two test systems manufactured by the applicant for BSE (Prionics®-Check LIA and Prionics®-Check PrioSTRIP) be re-assessed by appropriate experiments.</td>
</tr>
</tbody>
</table>

7. Food Hygiene

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Date</th>
<th>Case Name (Parties)</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-38/1/10</td>
<td>6 Oct.</td>
<td>Astrid Preissl KEG v Landeshauptmann von Wien</td>
<td>Industrial Policy – Food hygiene – Regulation (EC) No 852/2004 – Installation of a washbasin in the toilets of an establishment which sells food</td>
</tr>
</tbody>
</table>

8. Unfit for Consumption

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Date</th>
<th>Case Name (Parties)</th>
<th>Summary</th>
</tr>
</thead>
</table>
### Case C-63/11

**Reference for a preliminary ruling from the Landgericht München I (Germany) lodged on 9 December 2011 — Karl Berger v Freistaat Bayern**

**Questions referred**

1. Does Article 10 of Regulation (EC) No 178/2002 of the European Parliament and of the Council [1] preclude rules of national law under which the public may be informed, and may be given the name of the food or animal feed product and of the food or animal feed business under the name or corporate name of which the food or animal feed product was produced or handled or placed on the market, if food that is not injurious to health but is unfit for consumption, particularly food that is nauseating, is or has been placed on the market in significant quantities or if, because of its particular nature, such food has been placed on the market only in small quantities but over a lengthy period of time?

2. If Question 1 is answered in the affirmative: Would the answer to Question 1 be different if the situation at issue arose prior to 1 January 2007, but at a time at which national law had already been brought into line with Regulation No 178/2002?
2.3 The Network Organization of Food Safety Authorities in EU

BY Shuang LIU

2.3.1 Introduction

The research on the network organization of the food safety authorities in the EU focuses on the legal provisions in EU legislations. The purpose of the research is to find out how many network organizations has been established in the food and feed law area and how do these organizations work in the law. The memo is a descriptive essay about the findings during the research.

Four Network Organizations will be introduced in this memo, the European Food Safety Authority ("EFSA"), the Rapid Alert System of Food and Feed (RASFF), the Food and Veterinary Office (FVO) audit and the Better Training for Safer Food (BTSF).

2.3.2 European Food Safety Authority ("EFSA")

2.3.2.1 General Introduction of the Institution

The EFSA is the keystone of European Union risk assessment regarding food and feed safety. In close collaboration with national authorities and in open consultation with its stakeholders, EFSA provides independent scientific advice and clear communication on existing and emerging risks.29 The regulation (EC) No 178/2002 of The European Parliament and of The Council is the legal basis of the EFSA. The missions of the EFSA are generally to provide scientific advice and scientific and technical support to the Community’s legislation.30

The EFSA is comprised with (a) a Management Board; (b) an Executive Director and his staff; (c) an Advisory Forum; (d) a Scientific Committee and Scientific Panels. 31 Moreover, the EFSA also consist of several cooperation networks, among which some are networks between the EU and its

31 Id. Article 24
There are the networking of organizations operating in the fields within the Authority’s Mission, and the focal points.

2.3.2.2 Advisory Forum
Advisory Forum is composed by representatives from competent bodies in the Member States which undertake tasks similar to those of the Authority. One member state can only have one representative. The Forum shall advice the Executive Director in the performance of his duties under this Regulation, in particular in drawing up a proposal for the Authority's work programme. The Executive Director may also ask the Advisory Forum for advice on the prioritisation of requests for scientific opinions. The Advisory Forum shall constitute a mechanism for an exchange of information on potential risks and the pooling of knowledge. It shall ensure close cooperation between the Authority and the competent bodies in the Member States in particular on the: (a) avoidance of duplication of the Authority's scientific studies with Member States, in accordance with Article 32; (b) in those circumstances identified in Article 30(4), where the Authority and a national body are obliged to cooperate; (c) in the promoting of the European networking of organisations operating within the fields of the Authority's mission, in accordance with Article 36(1); (d) where the Authority or a Member State identifies an emerging risk.

2.3.2.3 Networking of organizations operating in the fields within the Authority’s Mission
The EFSA promotes the European networking of organizations operating in the fields within its mission. The member states designate capable institutions and the EFSA fosters the scientific cooperation between these organizations by the coordination of activities, the exchange of information, the development and implementation of joint projects, the exchange of expertise and

33 Regulation (EC) No 178/2002, Article 27 (1)
34 Id. Article 27 (3)
35 Id. Article 27 (4)
36 Id. Article 36
best practices in the fields within the Authority's mission. The EFSA generates a list of the organizations according to the designation of the member states.

The EFSA may entrust the organizations for the (a) disseminating best practices and improving methods of collecting and analysing scientific and technical data, particularly for the purposes of facilitating comparability and producing a Community-level summary; (b) collecting and analyzing specific data in response to a common priority, in particular the Community priorities contained in the Authority’s work programmes, and in cases where the Authority’s scientific assistance is urgently needed by the Commission, especially in the context of the general plan for crisis management referred to in Article 55 of Regulation (EC) No 178/2002; (c) collecting and analyzing data with a view to facilitating risk assessment by the Authority, including assessment tasks in the field of human nutrition in relation to Community legislation, especially the compiling and/or processing of scientific data on any substance, treatment, food or feed, preparation, organism or contaminant which may be linked with a health risk, and the collection and/or analysis of data on the exposure of Member States’ populations to a health risk associated with food or feed; (d) producing scientific data or works contributing to the risk assessment tasks, including assessment tasks in the field of human nutrition in relation to Community legislation, for which the Authority is responsible; this type of task must correspond to precise problems identified in the course of the work of the Authority, and in particular that of its Committee and permanent Scientific Panels, and must not duplicate Community research projects or data or contributions which it is the industry’s duty to provide, especially in the context of authorisation procedures; (e) preparing the Authority’s scientific opinions, including preparatory work relating to the assessment of authorisation dossiers; (6) preparing the harmonisation of risk assessment methods; (7) sharing data of common interest, e.g. the establishing of databases; (8) the tasks referred to in Articles 6 and 18(3)(b) of Regulation (EC) No 1829/2003.

---

38 Id.
The network is mainly related to non-official scientific research activities.

2.3.3 Focal points.

Focal Points act as an interface between EFSA and the national food safety authorities, research institutes, consumers and other stakeholders. The Focal Point network is made up of members from all 27 EU Member States, Iceland and Norway, as well as observers from Switzerland and (potential) EU candidate countries.

The Focal Points support their Advisory Forum Members in the practical implementation of activities related to networking and scientific cooperation, including: (a) ensuring the exchange of scientific information between national authorities and EFSA, e.g. through the Information Exchange Platform (IEP); (b) supporting competent organizations under Article 36 of EFSA’s Founding Regulation; (c) promoting the Expert Database and cooperation at national level; and (d) raising EFSA’s scientific visibility and outreach in Member States.⁴¹

The legal basis of the Focal Points is the signature of the Declarations of Intent by the Advisory Forum and the adoption of the Strategy for Cooperation and Networking by EFSA’s Management Board. The annual report on the Focal Points activity can be found on the EFSA’s website.⁴²

The signature of the Declarations of Intent by the Advisory Forum and the adoption of the Strategy for Cooperation and Networking by EFSA’s Management Board consist of the legal basis for the operation of the Focal Points network.

2.3.4 Rapid Alert System of Food and Feed (RASFF)

The legal foundation of the RASFF is the article 50 of the Regulation 178/2002. The network functions in the risk management area of food and feed law in EU as well as outside of EU. The RASFF is established for the notification of a direct or indirect risk to human health deriving from food and feed. The network is open to applicant countries.⁴³

---

Members of the network shall each designate one contact point and communicate that designation to the Commission contact point, as well as detailed information regarding the persons operating it and their contact details. For that purpose they shall use the contact point information template to be provided by the Commission contact point. The Commission contact point shall maintain and update the list of contact points and make it available to all members of the network. Members of the network shall inform the Commission contact point immediately of any changes in their contact points and contact details.\textsuperscript{44}

The network operates by passing notifications. The contact has different responsibilities regard to different types of notifications. The Commission Regulation 16/2011 has detailed rules on the working procedure for different types of notifications, such as alert notifications\textsuperscript{45}, Information notifications\textsuperscript{46}, border rejection notifications\textsuperscript{47}, follow-up notifications\textsuperscript{48}.

The Commission contact point has the responsibility to verify the content of the notifications before sending out concerning a) verify the completeness and legibility of the notification, including whether the appropriate data from the dictionaries referred to in Article 7(2) were selected; (b) verify the correctness of the legal basis given for the cases of non-compliance found; however an incorrect legal basis shall not prevent transmission of the notification if a risk was identified; (c) verify that the subject of the notification falls within the scope of the network as laid down in Article 50 of Regulation (EC) No 178/2002; (d) ensure that the essential information in the notification is provided in a language easily understandable by all members of the network; (e) verify compliance with the requirements laid down in this Regulation; (f) identify recurrences of the same professional operator and/or hazard and/or country of origin in notifications.\textsuperscript{49}

Notifications send by the contact point of member state may subject to withdrawal or amendment in accordance with the Article 9 of the Commission Regulation No. 16/2011.


\textsuperscript{45} See Id., Article 3.

\textsuperscript{46} See Id., Article 4.

\textsuperscript{47} See Id., Article 5.

\textsuperscript{48} See Id., Article 6.

\textsuperscript{49} See Id., Article 8.
2.3.5 Food and Veterinary Office (FVO)

As a Commission service, the Food and Veterinary Office (FVO) plays an important role in fulfilling this task for ensuring that Community legislation on food safety, animal health, plant health and animal welfare is properly implemented and enforced.

The Regulation 882/2004 constitutes the legal basis for the operation of works of the FVO.50 Commission experts shall carry out general and specific audits in Member States. The Commission may appoint experts from Member States to assist its own experts. General and specific audits shall be organised in cooperation with Member States' competent authorities. Audits shall be carried out on a regular basis. Their main purpose shall be to verify that, overall, official controls take place in Member States in accordance with the multi-annual national control plans referred to in Article 41 and in compliance with Community law. For this purpose, and in order to facilitate the efficiency and effectiveness of the audits, the Commission may, in advance of carrying out such audits, request that the Member States provide, as soon as possible, up-to-date copies of national control plans.51

The Commission shall report on the findings of each control carried out. Its report shall, if appropriate, contain recommendations for Member States on the improvement of compliance with feed and food law and animal health and animal welfare rules. The Commission shall make its reports publicly available. In the case of reports on controls carried out in a Member State, the Commission shall provide the relevant competent authority with a draft report for comments, take those comments into consideration in preparing the final report and publish the competent authority's comments together with the final report.52

The Commission shall establish an annual control programme, communicate it to Member States in advance, and report on its results. The Commission may amend the programme to take account of developments in the fields of feed and food safety, animal health, animal welfare and plant health.53

---

51 Id., Article 45 (1).
52 Id., Article 45 (3).
53 Id., Article 45 (4).
Member States has the following responsibilities in response to the audit report: (a) take appropriate follow-up action in the light of the recommendations resulting from Community controls; (b) give all necessary assistance and provide all documentation and other technical support that Commission experts request to enable them to carry out controls efficiently and effectively; (c) ensure that Commission experts have access to all premises or parts of premises and to information, including computing systems, relevant to the execution of their duties.54

The FVO has country to each member state on the most recent audit results available on the website.55 The FVO is a Union level food and feed law supervision network system. It is not a typical network, because the FVO plays the supervision role for ensuring the compliance of each member stats. The commission is on a higher level with is member states.

2.3.6 Better Training for Safer Food (BTSF)

Better Training for Safer Food is a Commission training initiative covering food and feed law, animal health and welfare and plant health rules. It trains Member State and candidate country national authority staff involved in official controls in these areas.56

The Commission may organise training courses for the staff of the competent authorities of Member States responsible for the official controls referred to in this Regulation. These training courses shall serve to develop a harmonised approach to official controls in Member States. They may include in particular training on: (a) Community feed and food law and animal health and animal welfare rules; (b) control methods and techniques, such as the auditing of systems that operators design to comply with feed and food law, animal health and animal welfare rules; (c) controls to be carried out on goods imported into the Community; (d) feed and food production, processing and marketing methods and techniques.57

54 Id., Article 45 (5).
57 Regulation (EC) No 882/2004, Article 51
Third countries may also join the training provided by the BTSF. Moreover, each participating country will designate contact point for the BTSF.\(^58\)

2.3.7 Conclusion

There are separate network organizations among the food safety authorities in the risk assessment, risk management, Union-level supervision and training areas in the European Union. Most of organizations are based on Union legislation. It is unclear about how these network works in their areas by only looking at the legal provisions and further digging in real cases and other materials is needed.

Part III: The Chinese Perspective of Food Safety Law

3.1 Diversity in Chinese food safety administration

By Tracy Yuan LIN

Until now, only 6 provincial or municipal governments which directly under the central government people’s congress enacted their own local regulations on food safety, they are: Beijing, Shanghai, Guangdong province, Heilongjiang province, Guizhou Province, Zhejiang province. While 7 municipal governments enacted government regulations on food safety, focusing on the supervision and administration they are: Hebei, Guangzhou, Chongqin, Shijiazhang, Ninjia, Tangshan, Shanghai.

Beijing municipal food safety regulation (“Beijing Regulation”) 北京食品安全条例

It was passed on Dec. 27, 2012 by the Standing Committee of the 13th Beijing Municipal People's Congress and will take effect on April 1, 2013.

Beijing Regulation was thought to be the strictest local food safety regulation in China ever. Food producers or vendors will be banned from the sector for life if they are found to produce or sell unsafe food, according to Beijing municipal food safety regulation.

The regulation states that those found to be responsible for food safety problems, as well as the executives of companies that commit food safety violations, will not be allowed to operate in the industry for five years after their firms' licenses are revoked.

The regulation also bans the use of discarded oil or fat to process cooking oil, as well as the use of such oil as raw material to make food.

59 Data collected from Chinalawinfo Database, accessed on 2013/3/28
60 Regarding the hierarchy of law, regulations passed by government are lowered than regulations passed by people’s congress
The regulation states that catering businesses will not be allowed to dump or discard kitchen garbage, adding that used oil should be handled using professional facilities and collected by licensed companies.

The municipal government will also set up a food safety accountability mechanism to collect, share and release information regarding food safety and enhance regional cooperation, according to the regulation.

The supervision and management of food safety in the city will also be included as a factor when evaluating the work of governments at all levels.

Shanghai municipal food safety regulation  上海市实施《中华人民共和国食品安全法》办法

It was passed on July 29, 2011 by the Standing Committee of the 13th Shanghai Municipal People's Congress and took effect on September 1, 2011.

The distinctive characteristic of Shanghai regulation is that it would blacklist firms that flout food safety laws. Firms caught using banned substances in food, producing food from inedible ingredients, or illegally making, selling or using banned food additives will be banned from operating for five years in Shanghai, according to city officials.

The regulation particularly uses a whole chapter—chapter 3 to regulate small food processing factories and street pedlars. It is the first time that a local regulation implements specific rules for small food processing factories and street pedlars. This chapter is divided into two parts dealing with small food processing factories and street pedlars respectively. The regulation states clearly the market access, location and operation requirements of these two small food businesses.

Shanghai government set up china’s first food safety tip-off hotline “12331” last year. If the report is accurate, the reporter will be rewarded from 500 yuan to 200,000 yuan. Previously, Shanghai has a lot of hotlines concerning food safety focusing on different fields, such as agriculture, drug, quality

62 full text of Shanghai municipal food safety regulation, 上海市实施《中华人民共和国食品安全法》办法
&EncodingName=&Search_Mode=like, last accessed on April 1, 2013.
inspection. At present, the city united all hotlines together, citizens can call one number to report any instances about food safety.63

Guangdong province food safety regulation 广东省食品安全条例

Guangdong province food safety regulation was enacted on November 30, 2007.64 Because it was enacted before the newly amended national food safety law, so its research value was diminished.

3.2 Chinese Regulations on Food Small Workshop and Street-vended Food I
By Xinghai LI

This part will offer three parts content: First how I planned for the research and key issues; Second current collected materials and general evaluation; Third the problems I am facing and strategies to overcome.

3.2.1 Threshold of the research

Today study on Chinese food safety has a new but very important topic “regulation on food producing and processing small workshop and street-vended food peddler” (direct translation from Chinese expression, abbreviate as “small workshop” and “food peddler”). Why is it a serious topic? Without considering food service establishments, there are currently around 450,000 different enterprises engaged in food production and processing in China. Of these, around 350,000 are small enterprises with less than ten employees which have a collective market share of less than ten per cent but present many of greatest food safety challenges.

Considering developed countries had gone through the hardship of dealing with food safety challenges caused by small workshop and food peddler, and many developing countries are also struggling with similar problems as Chinese, I planned for figuring out whether China can learn experience from those countries and areas; whether there are special obstacles for Chinese utilizing strategies or methods of EU or other states on regulation small workshop and food peddler; what advantages and disadvantage to authorize local governments to define the two objects and make regulations rather than central government’s uniform management. So food safety law will be my first target, and then I will search local regulations and foreign resources.

Although 2009 China enacted the Food Safety Law of the People’s Republic of China, in this law, there is no direct definition on small workshop and food peddler. Article 29 mentioned that “To engage in food production or business operation, a food producing or processing small workshop or a street-vended food peddler shall meet the food safety requirement of this Law, namely adapting to its production or business operation scale and conditions, so as to ensure that the food which it (he)

produces or operates is hygienic, nontoxic and innocuous.”\textsuperscript{66} This is an authoritative legal basis for local government making regulations on small workshop and food peddler, so my research starting-point turns to be provincial existing regulations and on-going legislation.

3.2.2 Key step to clarify definitions of two concepts

I collected current 15 provincial formal regulations, official legal drafts and governmental opinion on making regulations according to Food Safety Law. Definitions on small workshop and food peddler are my focuses at first, because they directly reflect how government understands the two objects and what characteristics they respectively have. With knowledge of the definitions, I can compare them with considerations of foreign countries or international organizations.

The definitions in earliest regulation are general even a little ambiguous like Ningxia Autonomous District’s:

“Article 3, Small Workshop in this regulation is unit or individual who operates food producing and processing, having fixed business sites, fewer workers, small scale. Food Peddler in this regulations are individuals who operates food sales or on-site food producing and selling in streets or in other public occasions”\textsuperscript{67}

However, when later provinces given their version, the definitions become more specific and practical, like Hunan province regulation:

“Article 3, Small Workshop in this regulation is operator who operates food producing and processing, in fixed shops or business sites, having fewer workers, small processing scale and simple producing conditions, including small workshops separating producing from processing and small workshop on-site producing and processing. Small workshop separating producing from processing means its producing site separates from processing site; small workshop on-site producing and

\textsuperscript{66} Food Safety Law of the People's Republic of China, Art.29 also states the relevant departments shall intensify the supervision and administration of such small food production or processing workshops and food vendors. The specific measures shall be formulated in pursuance of this Law by the standing committee of the people's congress of the province, autonomous region or municipality directly under the Central Government. “

\textsuperscript{67} Ningxia Hui Autonomous District Regulation on Manage Small Workshop and Peddler of Food Producing and Processing (2010)
processing means its on-site producing, processing and direct retailing are in the same place or close connected places.

Food Peddlers in this regulation are operators who runs food circulation or offer food and beverage service without fixed business sites, including circulating food peddler and food beverage service peddler. Circulating food peddler is food peddler who retails pre-package food or food in bulk; food beverage service peddler is food peddler who on-site produces and sell instant eating food with all kinds of cooking methods or offer food and beverage services.”

Through comparison of above examples, here I clarify the difference between small workshop and food peddler. This point is very important, because many Chinese scholars usually blur the two objects using only one term which is not accurate such as “small business, small enterprise and small operators”. The progress in legal expression on these definitions shows development of understanding and know-how in China’s food safety legal works. This finding also provides basis for further comparison with foreign legal concepts.

Before making sure the basic meaning of small workshop and food peddler, searching foreign resource is very difficult. You almost could not directly use the two Chinese terms as key words to identify related foreign secondary resource, as foreign scholars used to different terms and expression to speak of the same or similar objects.

For instance, British Scholars Charlotte Yapp and Robyn Fairman studied factors affecting food safety compliance within small and medium-sized enterprises: implications for regulatory and enforcement strategies. Their study showed that empirical research assessed the factors affecting compliance with food safety legislation within small and medium-sized enterprises. This showed that whilst some of the barriers identified within other research were present within food business (specifically time and money), there were also a number of complex, underlying issues that prevented compliance with regulatory requirements and which have implications for regulatory and enforcement policy. These barriers included the lack of trust in food safety legislation and enforcement officers; a lack of motivation in dealing with food safety legislation; and a lack of knowledge and understanding. This finding based on the fact that small and medium-sized enterprises (SMEs) form a vial part of the economy: there are 20 million SMEs in the European Economic Area. The Department of Trade and Industry (DTI) estimates that there were 3.8 million

---

68 HuNan Province Regulation on Manage Small Workshop and Peddler of Food Producing and Processing (2013)
SMEs in the UK at the beginning of 2002, employing around turnover of £2200 billion (DTI, 2003). So even ten years ago, within the UK’s food industry, 99.8% of the hotel and restaurant sector are SMEs. 87.7% of business in this sector are micro-business employing less 10 staff (DTI, 2003)⁶⁹

There is no single, clear and widely accepted definition of Small and Medium Size Enterprises (SMEs); rather, definitions vary from country to country. These variations depend largely on the size of the economy, types and structure of businesses, and the levels of development. Indicators such as annual turnover (sales) and number of workers are generally used to categorize SMEs. The SMEs nomenclature is used to mean micro, small and medium enterprises and is sometimes referred to as Small and or Less Developed Businesses (SLDBs)⁷⁰ (FAO/WHO, 2005).

Within the food business sector in most countries, SMEs account for the highest proportion of the Gross Domestic Product (GDP) and are responsible for producing a large share of the food consumed in a country. SMEs provide a significant proportion of the total employment in the food sector and make a vital contribution to the economic well being of the community at the local level (FAO/WHO, 2005).

SMEs promote industrial and economic development through the utilization of local raw materials/resources and the production of intermediate goods, through appropriate technologies and traditional practices. SMEs contribute to the economies of many countries worldwide and provide opportunities for job creation and rural development. In countries with food insecure populations, SMEs can assist in maximizing the use of local produce and providing an important source of food.

The SME sector is extremely diversified. At one end of the spectrum is the micro-enterprise sector, often referred to as the informal sector, which is made up of entities employing one or two persons, including the owner (includes the street food sector). Small enterprises have a somewhat broader scope and many operate on a more structured basis. Some have established links with medium and large firms as their market for goods and services. Medium-size firms tend to have developed a more outward looking approach to market their products or services, often looking beyond their country’s borders to seek new markets. They also may establish linkages with larger firms to create

---

⁶⁹ Charlotte Yapp, Robyn Fairman, Factors affecting food safety compliance within small and medium-sized enterprises: implications for regulatory and enforcement strategies. King’s Centre for Risk Management, King’s College London, Strand Bridge House, 138-142 Strand, London WC2R 2LS, UK. Received 3 April 2004; accepted 2 August 2004.

⁷⁰ http://www.fao.org/docrep/meeting/010/a0215e/A0215E26.htm#ref24.31, access until 2013/4/1
opportunities. In general however, SMEs cater for the local markets and are normally not involved in international trade.

SMEs have similarities with Chinese Small Workshop, like UK SME’s numbers of staff and percentage in industry. But there are still difference in understanding of scale and classification. So when we want to compare them, more specific items need to be comparable.

As to understanding definition of Chinese Food Peddler, I got inspiration from definition of Street-Vended Foods by World Health Organization. “street-vended foods” are defined as foods and beverages prepared and/or sold by vendors in streets and other public places for immediate consumption or consumption at a later time without further processing or preparation. This definition includes fresh fruits and vegetables which are sold outside authorized market areas for immediate consumption.71

In WHO’s report, benefits and shortcomings of Street-Vended Foods are listed so that we can understand more how developing country like China will balance the demand of food safety and other social interests. In my opinion, China will take graduate actions to regulated food peddler rather than rush removing much food beverage services which are convenient to many communities. Though EU and other developed countries don’t worry about negative influence of street-vended food so much as developing countries, China can still learn experience form both kinds, What’s more, international organizations like WHO are also sharing vital information with its members.

3.2.3 Problems and Strategies.

3.2.3.1 It’s hard to search related resource within regular databases like westlaw, and I need some gateways and tips on more efficient searching for EU materials.

3.2.3.2 Considering more and more local governments are coming up with official regulations on small workshop and food peddler, I need not only watch the latest news of the regulations, as well as observing practical results of implementing within provinces which had enacted the law.

71 Essential Safety Requirements For Street-vended Foods, Food Safety Unit, Division of Food and Nutrition, WHO.(1996)
3.2.3.3 This topic strongly relates practice in local government, so I should do actual investigation and survey to get first hand material on the two objects, to wholly realize both their advantages in local communities and risks to food safety.
3.3 Chinese Regulations on Food Small Workshop and Street-vended Food II
By Kaichen ZHOU

The small food business discussed can be divided into two categories. According to the English version of the Food Safety Law of PRC, the first is called “small food production or processing workshop” (“small workshop” here after) and the second is called “food vendor”.

As to the administrative definition about the small workshop and food vendor, the upcoming “Guangdong local regulation on small food production or processing workshop and food vendor” has a definition clause. It defines the small workshop as the private industrial and commercial households, which has fixed work place, conducts simple work processing and produces traditional Chinese food. The traditional foods are such as boiled chicken and roast duck. It defines the food vendor as the food business operator makes and sells food on site outside the market and fixed place while within the government specified place.

In article 29 of Food Safety Law, the PRC adopts licensing system in food business. There are three kinds of licenses: food production license, food circulation license and food catering license. However, the third paragraph in article 29 specifies that the supervision and administration upon small workshop and food vendor will be left to provincial people’s congress to identify.

Thus the Administrative Measures for the Licensing of Catering Services issued by the ministry of health in 2010 and the Shenzhen local implementing administrative measures both will give licenses to neither the food vendor according to the text of these regulations, nor the small workshop because it generally does not provide catering service but only sells packaged food on site.

After I go through the Guangdong local regulation on small food production or processing workshop and food vendor, I find the following content which might be interesting. The first is that it creates two types of registrations for the small workshop and food vendor respectively. The certificate for small workshop lasts 3 years while food vendors 1 year. The second is it specifies the punishment of different violation about the small workshop and food vendor business. In the past, although the Food Safety Law has part specifying the punishment, due to the content in article 29 and the amount of fine, generally it will not apply to food vendors or small workshops. The third is that the local regulation directs the local government to specify and arrange places for the food vendors to operate their business, however, such specified place shall not within 200 meters around the primary and middle schools. The forth is that it has more detailed rules about inspection. It also requires the food
safety supervision and administration department or agency to organize the owners of small workshop and food vendor for free training program, however, it does not specify where the funds come from.

As to the specific administrative in Pingshan village, it is one administrative part of Taoyuan street office, which is in the lowest level of government. I go through the website of the street office for its information disclosure part back to July 1, 2011. There are not many news directly or mainly focused on the food safety issues of small workshops or food vendors. The reasons or aims for conducting the inspection generally about fire protection, waste control, order on the street and noise/smoke/smell impact. I also check the 2011 and 2012 annual report of the Taoyuan Street Office. There are content about the food safety issue. However, they focus on issues such as making and selling faked food, gutter oil refining and usage, illegal slaughter business, but not directly on the issues we concern.
3.4 Enforcement of Chinese Food Safety Law
By Limei HAN

This Memo is to give an overview of the enforcement of Chinese food safety law, including the Food Safety Law of the People's Republic of China (the Law) and the provisions included in other laws relating to food safety. It will deliver the roles that administrative department and judicial branch should play and how they play in the reality. Moreover, it will present another essential force, the media, in disclosing food safety accidents and in influencing consumers’ reaction to food safety problems.

3.4.1 Role of Administrative Office

According to the Law, in China, food safety affairs are mainly entrusted to administrative departments. From the approval of food product manufacturing to the sale of it, administrative admission is indispensable. To take Beijing for example, Beijing Administration of Industry and Commerce ("BAIC") is the Beijing Government's direct department administering market supervising and executing administrative institution. Its function is to protect the market economic order by different means, including but not limited to, affirming the operators' entity qualification, supervising or taking parting in supervising different kinds of markets, specifying market exchange

---

72 Article 5 of the Law: A local people's government at or above the county level shall undertake the overall responsibility for the food safety supervision and administration within its own administrative region, uniformly lead, organize and coordinate the work of food safety supervision and administration within its own administrative region, establish a sound whole-process food safety supervision and administration mechanism, uniformly lead and exercise command in responses to food safety emergencies, improve and execute the food safety supervision and administration accountability system, and appraise, discuss and evaluate the performances of the food safety supervision and administration departments.

A local people's government at or above the county level shall, in accordance with this Law and the provisions of the State Council, determine the food safety supervision and administration functions of the health administrative department, agriculture administrative department, quality supervision department, industry and commerce administrative department, food and drug supervision and administration department at the same level. These departments shall, within the scope of their respective functions, be responsible for the food safety supervision and administration within that administrative region.

The agency established within an administrative region at a lower level by a department of the people's government at a higher level shall do a good job in the food safety supervision and administration under the uniform coordination of the local people's government.
behavior, protecting fair competition, handling law-breaching behaviors and clamping down illegal operation. Furthermore, Beijing Municipal Administration of Quality and Technology Supervision ("BMAQTS") is mainly responsible for checking and supervising the quality of product which includes food, taking care of reports and complains, mediating the disputes arouse from product's quality, administrating the establishing offices of product quality checking and clamping down the illegal operation and handling counterfeit or fake products.

BAIC distributes the unqualified food products information on an irregular basis on its website after it checks some out. From January 1 to December 14, 2012, it has distributed information 49 times (sometimes together with BMAQTS) in which 383 unqualified products (includes 64 items distributed by BMAQTS) were found. Each time, it indicates the unqualified food products found during its checking and normally it stops the sale. In the whole year of 2011, BAIC distributed information 55 times.

3.4.2 Role of Judicial Branch
Administrative offices, like BAIC or BMAQTS normally take actions actively, supervising or checking food safety, although they commence actions because of others’ report sometimes. Compared with administrative force, judicial force plays a role in the punishment of the serious food safety crime, but it is not the main force to supervise the food safety. It happens when an individual has cause of action arouse from food safety dispute, for example, a customer may claim damage after have a meal, which is rotten, in a restaurant, but it is not the case here. Civil action is not included in the Law enforcement in this Memo, and here I focus on criminal enforcement when I talk about the function of the court in the enforcement of the Law.

After the Law went in to effect, June 1, 2009, it has been mentioned only in 2 food safety criminal cases, but it was not the basis of the judgments. Criminal cases about food safety are determined

74 See the results distributed on 7th Nov. 2011 in Appendix.
75 Art. 98 of the Law: For a violator of this Law, if any crime is constituted, it (he) shall be subject to the criminal liabilities
76 All the cases' data is from http://www.pkulaw.cn (北大法宝网) which is a legal resource most used in China. It does not include all the precedents.
77 王生平等生产、销售伪劣产品案(WANG Shengping Deng Shengchan Xiaoshou Weilie Chanpin An, WANG Shengping's Crime of Manufacturing or Selling Unqualified or Fake Product), January 18 2012, (2011)济刑初字第 203
by Article 140, Article 143 and Article 144 of Criminal Law of the People's Republic of China. In the 3 articles, Article 140 could be applied to other products that are unrelated to food, and the

Art. 140: Any producer or seller who mixes impurities into or adulterates the products, or passes a fake product off as a genuine one, a defective product as a high-quality one, or a substandard product as a standard one, if the amount of earnings from sales is more than 50,000 yuan but less than 200,000 yuan, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention and shall also, or shall only, be fined not less than half but not more than two times the amount of earnings from sales; if the amount of earnings from sales is more than 200,000 yuan but less than 500,000 yuan, he shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the amount of earnings from sales is more than 500,000 yuan but less than 2,000,000 yuan, he shall be sentenced to fixed-term imprisonment of not less than seven years and shall also be fined not less than half but not more than two times the amount of earnings from sales; if the amount of earnings from sales is more than 2,000,000 yuan, he shall be sentenced to fixed-term imprisonment of 15 years or life imprisonment, and shall also be fined not less than half but not more than two times the amount of earnings from sales or be sentenced to confiscation of property.

Art. 143: Whoever produces or sells food not up to the food safety standards which may cause any serious food poisoning accident or any other serious food-borne disease shall be sentenced to imprisonment of not more than 3 years or criminal detention and a fine; if any serious damage is caused to the people's health or there is any other serious circumstance, shall be sentenced to imprisonment of not less than 3 years but not more than 7 years and a fine; or if there are especially serious consequences, shall be sentenced to imprisonment of not less than 7 years or life imprisonment and a fine or forfeiture of property.

Art. 144: Whoever mixes poisonous or harmful non-food raw materials into food produced or sold or knowingly sells food mixed with poisonous or harmful non-food raw materials shall be sentenced to imprisonment of not more than 5 years and a fine; if any serious damage is caused to the people's health or there is any other serious circumstance, shall be sentenced to imprisonment of not less than 5 years but not more than 10 years and a fine; or if any human death is caused or there is any other especially serious circumstance, shall be punished according to the provisions of Article 141 of this Law.

Art. 141: Whoever produces or sells bogus drugs shall be sentenced to imprisonment of not more than 3 years or criminal detention and a fine; if any serious damage is caused to the people's health or there is any other serious circumstance, shall be sentenced to imprisonment of not less than 3 years but not more than 10 years and a fine; or if any
other two are specialized for food products. Article 144 is a more serious crime, compared with Article 143. When I do research by the term of "不符合卫生标准的食品" (food not up to hygiene standards, which used to be a part of the crime name of Article 143), there are 25 results, in which 1 for 2012, 2 for 2011, 4 for 2010, 1 for 2009, 1 for 2008, 2 for 2007, 1 for 2006, 0 for 2005, 0 for 2004, 2 for 2003. We could tell that Article 143 has not been applied often. When I do search by the items of "有毒、有害食品罪" (crime of poisonous or harmful food, which is a part of crime name of Article 144), totally 73 results show up and it has been applied more.

3.4.3 Administrative Force and Media
A criminal case about food safety is taken into a court by the procuratorate in China. The procuratorate bring a crime case on food safety when there is an influential food accident happened, or the food is found that it would lead to an influential accident is still held by producers, distributors or sellers. If the food has not been sold to consumers, we depend on administrative officers take their roles checking the quality and safety standard of food. If they didn’t find the problems, the food will be sold to the public smoothly and it may not be found by any one even if the food harm people’s health chronically. Some may caused serious disease but most of the problems are never found. Therefore, the proactive function of the administrative office is essential to disclose the problems existing in the food. However, instead of administrative offices, it was the media brought some human death is caused or there is any other especially serious circumstance, shall be sentenced to imprisonment of not less than 10 years, life imprisonment or death penalty and a fine or forfeiture of property.

Fake medicines as mentioned in this Article refer to medicines or any non-medical substances that fall under the category of or are regarded as fake medicines under the Pharmaceutical Administration Law of the People's Republic of China.

81 Amendment VI to the Criminal Law of the People’s Republic of China went into force on May 1, 2011. It Amended Art. 143 to the crime of Produce or Sell Food Not Up To the Food Safety Standards. Before the amendment, it is known as the crime of Produces and Sells food Not Up to Hygiene Standards and it goes like this: “Whoever produces or sells food not up to food hygiene standards, thus sufficient to cause serious food-poisoning accidents or any other serious disease caused by food-borne bacteria, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and be concurrently given a fine. If serious harm to human health is caused or there are other grave circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and be concurrently given a fine. In the case of especially serious consequences, he shall be sentenced to fixed-term imprisonment of not less than seven years or life imprisonment and be concurrently subject to a fine or confiscation of property.”

82 Includes 1 cases determined by the Crime of Producing or Selling Poisonous or Harmful Food, because it was prosecuted by the Crime of Producing Food Not Up to Hygiene Standards.
influential problems to the public attention and then crimes are determined in the court, at least for part of these 73 cases illustrated above.

In the 73 cases relating to poisonous or harmful food crime, there was no such crime in the years of 2003, 2004, 2005 and 2008. There were 1 in 2006, 1 in 2007 respectively, 3 in 2009 and 6 in 2010. However, it exploded to 35 in 2011. (Table 1)

<table>
<thead>
<tr>
<th>Total</th>
<th>Other years</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>73</td>
<td>20</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>6</td>
<td>35</td>
<td>7</td>
</tr>
</tbody>
</table>

In the same 73 results, there are 39\(^{83}\) of them are about clenbuterol, 5 of them are about melamine (see Table 2) that aroused the influential Sanlu poisonous milk powder case. 2 of these 5 results are respectfully first instance and second instance of same case\(^{84}\).

[83] The data is from [www.pkulaw.cn](http://www.pkulaw.cn) (北大法宝), however it is said that there were 58 cases about clenbuterol pork in Henan were determined. See 李丽静(LI Lijing), 河南“瘦肉精”系列案 113 人获刑 1 人被判死缓 (114 persons were sentenced, including 1 was sentence to death sentence with a two-year reprieve and forced labour), [http://news.jcrb.com/jxsw/201111/t20111112_760914.html](http://news.jcrb.com/jxsw/201111/t20111112_760914.html), accessed 13 April 2013.


Up to 8am, Sept. 21, 2008, because of having its milk powder, more than 10,000 infants are in hospital, and 4 were dead, confirmed officially\(^84\). ZHANG Yujun and ZHAN Yanzhang were detained because they are suspects of Producing or Selling Poisonous or Harmful Food crime, but later were prosecuted and judged by the crime of Art. 115, which is the Crime of Using Dangerous Means Endangering Public Security. See 马慧娟(MA Huijuan), 三鹿三聚氰胺奶粉事件全过程回放 (Sanlu Sanjuqing’an Naifen Shijian Quanguocheng Hufang, An Overview of Sanlu Melamine Milk Powder Incident’ Whole Course), [http://news.sohu.com/20090101/n261527309.shtml](http://news.sohu.com/20090101/n261527309.shtml), accessed 13 March 2013.
Table 2

<table>
<thead>
<tr>
<th>Total</th>
<th>Clenbuterol</th>
<th>Melamine</th>
</tr>
</thead>
<tbody>
<tr>
<td>73</td>
<td>39</td>
<td>5</td>
</tr>
</tbody>
</table>

In the 39 clenbuterol cases out of 73, 26 are determined in 2011. (See Table 3)

Table 3

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>39</td>
<td>5</td>
<td>26</td>
<td>4</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
</tbody>
</table>

From the table 1 to table 3, we could find that among the 35 crimes which are relating to poisonous or harmful food and which are determined in 2011, 26 cases were caused by clenbuterol. It means that 74% of poisonous and harmful food cases are clenbuterol cases. It also means 67% of those cases relating to clenbuterol were determined in 2011. Readers may ask why the year of 2011 is the

Art 115: Whoever commits arson, breaches a dike, causes explosion, spreads poison or inflicts serious injury or death on people or causes heavy losses of public or private property by other dangerous means, shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Whoever negligently commits the crime mentioned in the preceding paragraph shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if the circumstances are minor, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.

85 Clenbuterol is a growth-promoting drug in the beta-agonist class of compounds. Its use in show animals is linked to its ability to induce weight gain and a greater proportion of muscle to fat. Clenbuterol residues can affect lung and heart function in persons who have eaten liver or meat of animals given the drug. See Food Safety and Inspection Service, United States Department of Agriculture, [http://www.fsis.usda.gov/OA/background/clenbute.htm](http://www.fsis.usda.gov/OA/background/clenbute.htm), accessed 29 March 2013.
time clenbuterol cases exposed so widely, though it has been known for many years and it is has been banned for from 2002.\(^{86}\)

People in China would not be shocked by it since almost everyone was impressed that it was CCTV, the China Central Television, that exposed clenbuterol was widely used in pig cultivation industry in Henan Province. The day was March 15 2011, International Day for Protecting Consumers’ Rights. The places and judgement time also deliver the same opinion. When we look at those 26 cases (see Table 4), it is easy to find that all of them are happened and judged in Henan Province, a main pork produce place, where exactly the place exposed by the media. To have a further look at those cases, 3 were judged in late September and 22 were in October (see Table 5 and Table 6). Normally, the first instant of a criminal case takes about 5 to 7 months. From the exposure of clenbuterol incidents in March, late September and October should be the date finishing the first instance. Courts reacted promptly to the media. Based on the subject and time of criminal cases judgments, we cannot neglect the relationship between courts' action and Chinese media. It was media, instead of administrative office, that found the pork with clenbuterol. And then, they are prosecuted and criminals were sentenced by the court.

| Table 4 |
|------------------|---------|---------|---------|---------|---------|---------|---------|
| Henan Province (2011) | Mengzhou | Qinyang | Wenxian | Hebi | Fugou | Huosu | Jiaozuo | Jiyuan |
|------------------|---------|---------|---------|---------|---------|---------|---------|
| 26 (total) | 14 | 6 | 1 | 1 | 1 | 1 | 1 |

---

\(^{86}\) 农业部新闻办公室 (Nongyebu Xinwen Bangongshi, Ministry of Agriculture News Office), 农业部立即派出督查组赴河南严查“瘦肉精” (Nongyebu Liji Paichu Duchazu Fu Henan Yancha “Shouroujing”, Ministry of Agriculture Sent Inspection Team to Henan to Find Out Clenbuterol Strictly).

3.4.4 Neglecting Duties of Administrative Officers

Could the prosecutions have been taken earlier than the time when the public was informed by the media or even before the food was taken to people’s table? After people were informed that the Henan pork was produced by the fodder mixed with clenbuterol, they asked the reason why the pork would be sold so smoothly under a so-called complete pork quarantine inspection and supervision system. There are many reasons and DONG Xiyuan, LIU Pan and their colleagues gave one of them detailedly. They used to administer quarantine inspection of pork in the Zhaohe County Animal Quarantine Inspection Center that is administered by Henan Province Mengzhou Stock Farming Office. When he worked there, he did not follow the plan to check and inspect the clenbuterol, and they forged clenbuterol verification of conformity. They were testified that they even never have been to a pigpen. They were sentenced by the Crime of Neglecting Duties.  


Art. 397: Any functionary of a State organ who abuses his power or neglects his duty, thus causing heavy losses to public money or property or the interests of the State and the people, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years, except as otherwise specifically provided in this Law. Any functionary of a State organ who engages in malpractice for personal gain and commits the crime mentioned...
The media exposed the inspection problems in the administrative system and promoted its inspection when the media disclosed the food safety problems. When LIU Peizhi, vice director of the State Council Food Safety Committee Office responded to Henan clenbuterol problem, he pointed out 4 suggestions: (1) punish the criminals more quickly and more seriously; (2) ascertain the responsibility of the administrative officers; (3) must establish full process inspection mechanism, to avoid this kind of problems happen again; and (4) enhance construction of responsibility inspection.

Accordingly, 5 cases relating to functionary neglecting duties in Henan clenbuterol pork were prosecuted in April and they were determined by the Crime of Neglecting Duties. Furthermore, May 25 2011 China Food and Drug Administration issued the clenbuterol rectification and improvement plan for the food & beverage service.

Clenbuterol is not the only case. Administrative offices were “forced” by the media to take measures when the poisonous milk accident was disclosed. It was JIAN Guangzhou, the journalist of Dongfang Zaobao (东方早报, which is Oriental Morning Post), who initially reported that Sanlu Group was the manufacturer of milk powder with melamine. He emblazoned blasting fuse of the national milk product accountability seeking and policymaking. 13 September 2008, the national food safety accident level I was activated by the central government of China and emergency handling group was formed. Ministry of Health of The People’s Republic of China delivered information that every healthcare department should treat the sick infants free of charge.

in the preceding paragraph shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years but not more than 10 years, except as otherwise specifically provided in this Law.


September 2008, General Administration of Quality Supervision, Inspection and Quarantine of the People’s Republic of China decided repeal Measures for the Administration of Exempting Products from Quality Supervision and Inspection\(^91\). 9 October 2008, prime minister Wen Jiabao signed Decree of the State Council of the People's Republic of China (No.536), Regulations on Supervision and Administration of the Quality Safety of Dairy Products\(^92\).

3.4.5 Loss of Consumers’ Confidence

From drainage oil dishes to clenbuterol pork, from eggs with tonyred to pork with beef extract, from poisonous milk powder to plasticizer wine, all of them were disclosed by the media. As soon as the public was informed, several prosecutions were being taken and administrative offices responded promptly accordingly. People have been waiting a reliable system that could check the quality of the food and guarantee the food safety. However, before it comes out, some people say that they are DUAN Yu\(^93\) who cannot be invaded by the poison and some changed their consuming habit.

After the Sanlu poisonous dairy accident was known, procurement service of milk powder with foreign brands increased tremendously because couples seek to buy the infant milk powder manufactured overseas. September 18 2008, the journalist noticed that there were more than 1,000 pieces of news about procurement service in websites of Taobao and Yiqu, influential online shopping websites\(^94\). 3 years after the incidents, parents still do not have confidence on the milk powder produced by mainland manufacturers. Whenever I went to Hong Kong in the last year, I could see many traders collect milk powder from the bootleggers at the Luohu checkpoint, a

---


\(^{92}\) 乳品质量安全监督管理条例(Rupin Zhiliang Anqu an Jiandu Guanli Tiaoli, Regulations on Supervision and Administration of the Quality Safety of Dairy Products), The text of regulation is available at [http://www.gov.cn/zwgk/2008-10/10/content_1116657.htm](http://www.gov.cn/zwgk/2008-10/10/content_1116657.htm), accessed 13 March 2013.

\(^{93}\) DUAN YU is a character of the Marshal novel, the Eight Creatures, written by Louis Cha. DUAN Yu was immune to poison after ate an animal similar to the frog, which is virulent. People invoke him to describe that they have eaten too much food not up to safety standard and have lost confidence with Chinese food. It is also an irony of Chinese food safety circumstance.

checkpoint between Hong Kong and Shenzhen. Most of the traders go and forth between Shenzhen and Hong Kong as many time as they could, just for buying milk power in Hong Kong and selling it to the mainland traders.

Fruit sold in Hong Kong is popular also since it is considered that less pesticide residence. Snacks, like chocolates, sugars, and chips, are also taken to Mainland China if consumers’ bags have spare space since buyers think those products are checked by higher standards.

Consumers’ confidence is not easy to rebuild. Nowadays, the administration do take actions to supervise the quality of the dairy products, the consumers did not reduce the purchase quantity of purchase in Hong Kong. In the dairy association’ infant milk quality report, officers of dairy association announced that the quality of milk powder had been better than ever, and 99% of the dairy is approved\(^95\). Consumers and professionals did not believe it and even questioned it\(^96\), though they didn’t check the quality of the dairy product, because they lost the confidence over the domestic milk powder\(^97\). Therefore, the disclosure of administrative officers neglecting their duties by the media did influent consumers’ confidence and it is difficult to rebuild.

Consumers’ confidence over Chinese food has been lost and that is difficult to rebuild could be reflected by the Hong Kong market and law changing. Due to the great number of milk powder traders, it has become difficult for Hong Kong residents to buy milk powder for their babies. Many Hong Kong residents complained about formula shortages because of that trade. “LAN Xiu-ling, 31, a teaching assistant at a primary school, from Fanling in the New Territories of Hong Kong, says her

---


\(^96\) 广州日报(Guangzhou Ribao, Guangzhou Daily), 奶粉质量“史上最好”引网友和专家热议 (Naifen Zhiliang ‘Zhiliangzuihao’ Yin Wangyou he Zhuanjia Reyi, Netizen and Professional Had a Hot Discuss on “Milk Powder Quliaty Has Been the Best”), [http://www.foodmate.net/news/guonei/2012/05/206959.html](http://www.foodmate.net/news/guonei/2012/05/206959.html), accessed 13 March 2013.

year-old son goes through a can in five days. She said the formula shortage was once so acute that it took her two days to find a store with a supply.”

To guarantee supply of local milk powder, Hong Kong's export and import law was amended, “from March 1, a person can carry only two cans, or 1.8 kg, of baby formula out of Hong Kong, and the person must be at least 16 years old. Violators face fines of up to HK$500,000 ($64,500) and two years in jail.” “The law amendment was passed to prevent the influx of traders who buy milk powder in Hong Kong and resell it on the mainland for a profit, mainly to families who have no faith in mainland-produced infant formula.”

This law went into force almost for one month and it restricted the milk powder trading to certain extent, but the milk powder still is not easy to buy in Hong Kong, though it is easier than before, since more mainland consumers have their own methods reacting to the law. One of my friends used to buy it from the traders online, but she asked my help after the law was enforced. She told me to buy 2 cans of milk power for her whenever I go to Hong Kong. Therefore, there is long way to reestablish consumer’s confidence over Chinese domestic products.

3.4.6 Conclusion
In this Memo, most of data is from http://www.pkulaw.cn. Although the website is the one most Chinese lawyers use and the appointed website by Beijing Lawyers Association, it does not collect all cases. However, they are enough to reflect that administrative branch did not fulfill the responsibility in the food safety supervision and administration required by the Art. 5 of the Law.

100 See footnote 27.
101 Jiangxi Dujiaonang An, Jiangxi “Poisonous Capsule” Case, the first instance of which was determined at Nov. 8, 2012, cannot be found there, although it is also an accident infuriated the masses in Chinese. Kunming Ribao (Kunming Daily), “毒胶囊”案5嫌犯获刑(Dujiaonang An Wu Xianfan Huoxing, 5 Criminals of Poisonous Capsule Case Were Sentenced), http://news.163.com/12/1108/04/8FOUOP9N00014AED.html, accessed March 30 2013.
102 See footnote 1.
When those who participate in food producing, individuals or big corporations, do not produce the qualified food, if administrative power, the last defense wall, is blind, it has become normal that Chinese daily meals are chock full of "dyed" steamed buns and poisonous bean sprout. Media has been playing an essential role in disclosing influential food safety accidents, but it cannot replace the administrative branch to unveil every food safety problem.

It is not strange that consumers change their consuming habits when they lost confidence in domestic products, however, it is not acceptable that administrative offices neglect their duty again after they realized there are problems in administrative officers. It is optimistical to see many provincial regulations administering food safety went into enforce successively. Hei Longjiang province was the first one, and it focuses on clenbuterol, pesticide residence, non-food material adding and some other essential food safety problems. Beijing food safety regulation began to be effective on April 1, 2013, and it is said that it has been the strictest one to regulating food safety. It prohibits those who have lost credit in food industry participating food production or selling, after they bear the legal duty. It will establish food traceability system.

However, the lesson we learn from pork with clenbuterol and milk powder with melamine is that we need a “real” administrative office to fulfill the supervision the enforcement of the laws or regulations. There are provisions to punish administrative officers when they didn’t fulfill their duty and caused serious outcomes. But a mechanism to take precautions against neglecting duties may guarantee poisonous or unqualed food flow into people’s table. Food safety is the issue that Chinese

---


104 Shuanghui Group is a large meat-processing Group, headquartered in Luohe City, Henan Province. Its total assets is up to 200 billion yuan; it has more than 60,000 employees; its total meat output is up to 3 million tons; and it is China's largest meat processing base. It ranks 166 among the top 500 Chinese enterprises in 2011. See the introduction in its website: [http://www.shuanghui.net/html/category/about/qyjs](http://www.shuanghui.net/html/category/about/qyjs), accessed March 30 2013.

Shuanghui Group was discovered by the media that it does not check clenbuterol when it purchased pigs.

people care most in 2013\textsuperscript{106}, and what prime minister said may be a good response\textsuperscript{107}, though reconstruction of consumers’ confidence has a long way.


\textsuperscript{107}李克强(LI Keqiang), Chinese prime minister. He urged that efforts be made to unleash job opportunities in the service sector and adopt measures to push green growth to ensure that people have clean air and water and safe food. See Xihua, Premier Calls For Courage In Upgrading Economy, http://www.chinadaily.com.cn/china/2013-03/29/content_16359246.htm, accessed March 30 2013.

He also is the director of State Council Food Safety Committee. Since he obtained Bachelor's degree in law, Peking University, people expect he would promote rule of law in China.
3.5 Private Standards and Relations to Public Standards concerning China’s Food Safety

By Chong QI

By focusing on China’s Food Safety Law, China’s Standardization Law and their implementary regulations, this part is going to analyze the current situation of China’s private food safety standards and discuss their significance from the perspective of enterprises themselves and public food safety standards in China. This part will proceed as follows: the first section is going to briefly introduce China’s food safety standards. Further, the second section will elaborate the current situation of private food safety standards in China and try to point out the existing problems within. Finally, the significance of China’s private food safety standards will be discussed by analyzing the relations to public food safety standards and the positive effects imposed upon enterprises themselves.

3.5.1 Introduction to China’s Food Safety Standards

Since 1960s, China has started to establish a food safety standard system dominated by national standards and supplemented by local standards and enterprise standards. Until 2004, China had already issued 3400 food standards, among which 2619 standards were related to food safety, including 1000 national standards. In 2009, Standing Committee of the National People’s Congress, as the qualified authority, issued China’s Food Safety Law. Regarding this law, there are 33 articles associated with food safety issues. It could be said that China’s Food Safety Law has already established a legal framework of food safety standards system, as one Chinese scholar stated in his article.

3.5.1.1 Definition of China’s Food Safety Standards

Regarding China’s Food Safety Law, it does not provide an explicit definition of the term “food safety standards”, but just explains the connotation of food and food safety in Chapter X. It regulates that “the term ‘food’ refers to the finished products and raw materials for people to eat or drink, and articles which are traditionally food and medicine,” and “the term ‘food safety’ means that the food is nontoxic, innocuous and satisfies the necessary nutritional requirements and does not cause any
acute, sub-acute or chronic hazards to the human health.”

According to one Chinese scholar, the term “standards” refers to the uniform provisions regulating certain repeated things and concepts, which is aiming to provide the public with the optimal choices. Another Chinese scholar Rentian Ji deduces a definition of “food safety standards” from the above statements, saying that “food safety standards is a set of uniform legal provisions approved by qualified authorities to regulate food safety issues based upon the consolidated results of science, technology and experience, in pursuit of optimum food safety order and best social benefits in a certain range.”

3.5.1.2 Purpose and Nature of China’s Food Safety Standards

According to Food Safety Law art.18, the “purpose of formulating food safety standards shall be to ensure the physical health of the general public.” Further, this article and its following one also explicitly state the nature of China’s Food Safety Standards: scientific, reliable and mandatory. Regarding the scientific nature, since standard setting shall not only adapt to current food production, but also promote the development of food production in the future, food safety standards are required to be scientific. Concerning the reliable nature, as with the industry consensus, “food safety standards shall be formulated on the basis of the food safety risk assessment,” it is safe to conclude that once the food production satisfies these standards, the quality and safety could be guaranteed both by manufactures and quality supervision department. Thus, food safety standards are expected to be reliable at the very beginning. In terms of the mandatory nature, food safety law regulates that “the food safety standards are standards for mandatory execution. Except for food safety standards, no other mandatory food standards shall be set down.” It means that once food safety standards enacted, it automatically became the legal and technical bases to be followed, any entity or individual shall not lower them.

111 李春田 Chuntian Li, 标准化概论 Biaozhunhua Gailun [Introduction to Standardization], 12 (4th ed. 2005).
112 季任天 Rentian Ji, 食品生产加工标准化 Shipin Shengchan Jiagong Biaozhunhua [Standardize Food Production], 95 (2005).
3.5.1.3 Categories of China’s Food Safety Standards

Horizontally speaking, the set of food safety standards includes edible agricultural product quality and safety standards, food hygienic standards, food quality standards and so on. Further, vertically speaking, according to Food Safety Law in 2009 art.24 and art.25, the food safety standardization system became a three-level hierarchy: national standards, local standards and enterprise standards. Admittedly, such classification is still controversial because some opponents are holding a different three-level hierarchy: national standards, trade standards and enterprise standards on the basis of China’s Standardization Law. However, since Food Safety Law has already withdrawn trade standards from the China’s food safety standardization system in 2009 and relying on the principle of priority of new law over old law, the current Food Safety Law has the final say on this point. Thus, the paper is going to discuss private standards and public standards based upon the statement above.

3.5.2 Private Food Safety Standards in China

As with the globalization of food supply and increased role of coordination economies, private food safety standards emerged gradually in China, especially recent years. This section is going to discuss private food safety standards in China by analyzing their features, nature, coverage, enforcement and the existing problems within.

3.5.2.1 Features of Private Food Safety Standards by Distinguishing from Public Food Safety Standards

Regarding the unique features of private food safety standards, this part will analyze them from three following aspects: formulating body, scope of application and premise of standards setting.

A. Formulating Body and Scope of Application

118 Pinghui Xiao, China’s Food Safety Standardization System, Its Reform and Remaining Challenges, 3 EJRR. 507, 514 (2012).
119 Standardization Law of the People’s Republic of China §II art.6 (1989).
Admittedly, as two British scholars stated, “private firms and standards-setting coalitions, including companies and NGOs, have created and adopted standards for food safety.”\(^1\) Even, other scholars further specify that private entities, including industry and trade organizations, professional societies, standards-setting membership organization and industry consortia may be all involved in the establishment of voluntary private standards.\(^2\) However, since the private standards established by different kinds of organizations in China are treated as trade standards,\(^3\) and Food Safety Law simplifies the food safety standardization hierarchy by withdrawing the level of trade standards,\(^4\) currently according to Food Safety Law Art. 25, “the enterprise shall formulate enterprise standards as the basis for organizing the production thereof,”\(^5\) it is safe to conclude that the formulating body of private food safety standards is enterprise. The scope of its application is limited to the specific enterprise and its own product circulation link.\(^6\) In terms of national standards and local standards, according to Food Safety Law Art. 21 and Art. 24, the formulating body shall be the health administrative department of the State Council and the health administrative department of the people’s government of a province, autonomous region or municipality directly under the Central Government, respectively.\(^7\) The national standards applied nationwide, while the local standards shall only apply in specific local region.\(^8\)

B. Premise of Standard Setting

\(^{11}\) Id. at 3.


\(^{13}\) 高秦伟 Qinwei Gao, 私人主体与食品安全标准制定 Sizhuti Yu Shipin Anquan Biaozhun Zhiding [Private Formulating Body and Food Safety Standards Setting], 6 (2012).

\(^{14}\) Pinghui Xiao, China’s Food Safety Standardization System, Its Reform and Remaining Challenges, 3 EJRR. 507, 514 (2012).

\(^{15}\) Food Safety Law of the People’s Republic of China §III art.25 (2009).

\(^{16}\) 卢玉平 Yuping Lv et al. 企业标准具有强制性 Qiye Biaozhun Juyou Qiangzhixing [Enterprise Standard is Mandatory], 中国标准化 Zhongguo Biaozhunhua [China Standardization], 22 (1994).

\(^{17}\) Arts.21&24, Food Safety Law of the People’s Republic of China §III (2009).

\(^{18}\) Pinghui Xiao, China’s Food Safety Standardization System, Its Reform and Remaining Challenges, 3 EJRR. 507, 512 (2012).
According to Food Safety Law Art. 25, there are two premises in terms of the enterprise standards setting. First is the absence of upper level standards: national and local standards. Second, even if the national or local standards do exist, enterprises are also encouraged to formulate more stringent ones. Further, regarding the local standards, based upon Food Safety Law Art. 24, the premise of local standard setting is the absence of national food safety standards. As one Chinese scholar stated in his article, for one food safety issue, if both the national standards and local standards are set up, this two standards would either be the same or different. If they are the same, the existence of this local standard is not necessary; if they are different, no matter whether the local standard is more or less stringent than the national standard, this would undermine the harmonization between different levels of standards.

3.5.2.2 Nature of Private Food Safety Standards

In terms of the nature of private food safety standards, this part is going to analyze it from five aspects and discuss why private food safety standards are sort of de facto standard, inner quality standard and mandatory standard.

A. De facto Standard

According to one Chinese scholar, de facto standard is a kind of informal standard, opposite to the statutory standard. It is formulated by a single enterprise or a small number of enterprises without the procedure of legal authorization. These formulating bodies could decide whether to issue their own private standards to other non-participating entities or not. Based upon the statement above, the non-procedural feature within the establishment of standards and private entities’ autonomy

---

129 Food Safety Law of the People’s Republic of China §III art.25: “In the absence of national food standards or local standards for the food produced by an enterprise, the enterprise shall formulate enterprise standards as the basis for organizing the production thereof. The state shall encourage food production enterprises to formulate standards more stringent than the national food safety standards or than the local food safety standards.”

130 Food Safety Law of the People’s Republic of China §III art.24: “In the absence of national food safety standards, local food safety standards may be formulated.”


concerning the publication of standards are two key points in distinguishing de facto standards from statutory standards.  

In China, private food safety standard is equipped with de facto nature. According to Food Safety Law, enterprises shall formulate their own standards for food production in the absence of national or local standards. Even if either national standards or local standards do exist, enterprises are also encouraged to set up more stringent ones. Practically, enterprises set up their own food safety standards as de facto ones by the promotion of their products in the market. To be specific, once one enterprise’s own product has market advantage, it will become competitive and its own food safety standards will become the mainstream in the market. Certainly, such private food safety standards could be transformed as statutory standards as long as it is developed to a certain degree and recognized by the formulating bodies of national or local food safety standards.

B. Inner Quality Standard

Inner quality standard is one kind of technically internal standard established by private entities to enhance their products’ competitiveness, to produce quality products. As the statement above, the formulating body of private food safety standard is the enterprise itself, the scope of application of such private standard is limited to the specific enterprise and its own product circulation link. By setting this kind of technically internal standard, enterprises are more likely to guarantee its food product safety, implement the first responsible person’s obligation concerning food safety in the enterprise and carry out the containment from the source. Thus, it is not difficult to observe that private food safety standard is one kind of inner quality standard.

3.5.2.3 Mandatory Standard

Id.

Food Safety Law of the People’s Republic of China §III art.25.


岳志坚 Zhijian Yue. 全国企业标准化工作会议总结 Quanguo Qiye Biaozhunhua Gongzuo Huiyi Zongjie [Summary of National Conference on Standardization Work in Enterprises], 标准化重要文件汇编 Biaozhunhua Zhongyao Wenjian Huibian [Standardized Compilation of Key Documents], 284 (1982).

In terms of the mandatory aspect concerning the private food safety standard, it is controversial among Chinese scholars of two different schools all the time. Some scholars hold that enterprise’s private food safety standard is equipped with the mandatory nature. Three arguments are supporting this claim. First, enterprises’ private food safety standards have the same legal effect with mandatory standards. Since the national mandatory standards are the basis for enterprises to organize their production and Standardization Law Art.6 regulates that enterprises shall formulate their own standards to serve as the criteria for the organization of production in the absence of both national and trade standards, it is safety to conclude that enterprises’ private food safety standards has the mandatory nature when there is no upper level standards. Second, Standardization Law Art.7 regulates standards “for compulsory execution as prescribed by the laws and administrative rules and regulations shall be compulsory standards.” And Administration Method for Enterprise Standardization Art.17 regulates that once the voluntary standards are adopted by enterprises or once enterprises’ private standards are reported to the relevant departments for archival purposes, these standards shall be enforced strictly, which specifies that such standards, including enterprises’ private standards are mandatory. Third, suppose, if the enterprises’ private standards are not mandatory, enterprises shall not enforce them, then the existence of private food safety standard will be meaningless. Thus, private food safety standard is and can only be mandatory, according to one Chinese scholar’s analysis in his article.

However, scholars of other school disagree to some degree and assist in polishing the opinion above. They claim that it is untenable to define standards themselves as mandatory or not. In fact, standards could only be equipped with mandatory legal effect, rather than they are born with mandatory nature.

3.5.3 Private Food Safety Standards’ Coverage on the Food Chain and Its Enforcement in China

---

138 卢玉平 Yuping Lu et al. 企业标准具有强制性 Qiye Biaozhun Juyou Qiangzhixing [Enterprises’ Standards Has the Mandatory Nature], 中国标准化 Zhongguo Biaozhunhua [China Standard], 22, 22 (1994).
139 Standardization Law of the People’s Republic of China art.6.
140 Standardization Law of the People’s Republic of China art.7.
141 Administration Method for Enterprise Standardization art.17.
142 卢玉平 Yuping Lu et al. 企业标准具有强制性 Qiye Biaozhun Juyou Qiangzhixing [Enterprises’ Standards Has the Mandatory Nature], 中国标准化 Zhongguo Biaozhunhua [China Standard], 22, 22 (1994).
143 汪江连 Jianglian Wang, 行走于破解与重构之间 Xingzouyu Pojie Yu Chonggou Zhijian [Walking between destruction and reconstruction], 行政与法 Xingzheng Yu Fa [Administration and Law], 71, 73 (2009).
According to Food Safety Law Art. 20, the food safety standards contain several kinds of standards in different stages on the food supply chain. To be specific, food hygienic standard, food product standard and other food standards are all included in food safety standards in China. As one Chinese scholar, Suilong Wu, stated in his article, private food safety standards can be defined as the standards made by private entities covers almost every link of the food supply chain, ie. raw material suppliers, producers, retailers, processing controller as well as utilize consumers, though not legally binding in a regulatory, but de facto mandatory for all of them. Thus, based upon the statement above, it is safe to conclude that in China every link of food supply chain is exposed to the governance of private food safety standards.

Regarding the enforcement aspect, as Garry Smith stated in his article, the conformity of private food safety standards shall be guaranteed by enterprises’ internal control or by an independent organization or public agency. While, in China, based upon the features and nature of private food safety standards as stated above, private standard is one kind of de facto mandatory standards and the scope of its application is only limited to the specific enterprise and its own product circulation link. Thus, it is easy to observe that in China the enforcing body of private standards is the formulating body, enterprises themselves. For instance, at present, the famous foreign supermarket Carrefour, as distributor has already selected 150 suppliers as its manufacturing bases in China.

144 Food Safety Law of People’s Republic of China art 20: “The food safety standards shall contain
1. Provisions on limits of pathogenic microorganisms, pesticide residues, veterinary medicine residues, heavy metals, pollutants and other substances hazardous to human health in food and food-related products.
2. ….
8. other contents which are necessary to be formulated as food safety standards.”


up strict food safety standards for its manufactures at the very beginning, including the raw materials standards, production standards and quality standards. During the process of production, it is fully engaged into the quality supervision of its private brand products. Even before the products enter the market, Carrefour would conduct the quality test by a third-party laboratory.\footnote{150}

3.5.4 Existing Problems within Establishment and Enforcement of Private Food Safety Standards

Currently, two main problems do exist within the formulation and enforcement of China’s private food safety standards. This part is going to analyze these problems step by step.

3.5.4.1 Lack of Normalization concerning the Text of Private Food Safety Standards

As one Chinese scholar stated in his article, lack of normalization concerning the text of private food safety standards is reflected from three following aspects: systematic deficiency of private food safety standards, non-standardization within the content of standards and the name of products.\footnote{151} First, a few major content in private food safety standards, such as normative reference files, requirements, method of inspection, inspection rules, package, transportation, storage and shelf life, are all closely related to each other. The absence of any one of them would cause the deficiency of the content of private food safety standard.\footnote{152} Second, sometimes these major content as mentioned are placed in chaos. Third, the name of product stated in the standard is deviating from the true properties of the product, which fails to reflect the essence of truth.\footnote{153}

3.5.4.2 Problems within Technical Requirements

Problems within technical requirements are mainly reflected from three following aspects: lack of indicators of product features, failure to satisfy the requirements of mandatory standards without description and the formulation of unrealistic technical requirements.

A. Lack of Indicators of Product Features

In 2009, Administration Method for Enterprise Standardization brought the fundamental changes to enterprise standard filing system in China, within which the former technical record has been

\footnote{150} Id.
\footnote{152} Id.
\footnote{153} Id.
Since then, due to certain consideration, some enterprises randomly lower their own technical standards, causing the lack of indicators of product features.

B. Failure to Satisfy the Requirements of Mandatory Standards without Description

As with the changes occurred in the review mechanism concerning enterprise standards, some enterprises mistakenly treat current filing system just as a formality and they randomly establish their own food safety standards without any reference to the requirements of mandatory standards. To be specific, some enterprises think that as long as they keep the basic materials about their own standards, they could report them to the relevant departments for archival purpose successfully, no matter whether there is a description of the basis of these standards, or an confirmation of the authenticity of these materials. Other enterprises, during the process of reporting, intentionally avoid the description of the existing upper level standards or keep silent about the deficiency within their private standards compared to upper level standards.

C. Formulation of Unrealistic Technical Requirements

As one Chinese scholar Zengyuan Chen stated in her article, the most proper private standard shall not only satisfy the legal requirements, but also achieve the objective of formulating this standard. Some enterprises mistakenly believe the more stringent they set their technical requirements within, the better their private food safety standard is.

3.5.5 Significance of Private Food Safety Standards in China

Admittedly, as stated above certain flaws and problems do exist within the current private food safety standard system in China, the signification of private standards itself shall not be overlooked. As David Vogel stated in his article, private standard system has gradually emerged as a response to

---


155 Id.

156 Id.

157 Id.

158 Id.
the shortcomings of public standard system in the global economy, but it will not become a substitute at all.\textsuperscript{159}

Prior to 2009 when Food Safety Law was enacted, only the private food safety standards formulated by enterprises in the absence of both national and trade standards shall be reported to the standardization administration department for the record. The other kind of private standards, more stringent than the national or trade standards, could be applied inside the enterprises directly without the process of the record.\textsuperscript{160} However, Food Safety Law brought changes to this previous filing system and regulates that both these two kinds of private food safety standards formulated by enterprises shall be reported to the relevant departments for archival purpose.

Based upon the statement above, this section is going to analyze the signification of private food safety standards in China from the perspective of enterprises themselves, public standard system and the public benefits.

3.5.5.1 From the Perspective of Enterprises

This part is going to analyze the significance of private food safety standards from the perspective of enterprises: set barriers to hinder competitors from entering the market and expand enterprises’ exportation by breaking through foreign standard barriers.

3.5.6 Barriers to Hinder Competitors from Entering the Market

Due to the change in the filing system brought by Food Safety Law in 2009, both two kinds of private food safety standards shall be reported to the relevant departments for the archival purpose. Such legislative change provides enterprises with one possibility that their own private food safety standards for products manufactured by an enterprise, standards for the enterprise shall be formulated to serve as the criteria for the organization of production. An enterprise’s standards for its products shall be reported to the standardization administration department and the competent administrative authorities under the local government for the record. Where national or trade standards have been formulated, the state shall encourage enterprises to formulate their enterprises standards, which are more stringent than the national or trade standards, to be used in these enterprises.”

\textsuperscript{159} David Vogel, The Private Regulation of Global Corporate Conduct Achievements and Limitations, Business & Society, 68, 83 (2010).

\textsuperscript{160} Standardization Law of People’s Republic of China art.6:”Where, in the absence of both national and trade standards for products manufactured by an enterprise, standards for the enterprise shall be formulated to serve as the criteria for the organization of production. An enterprise’s standards for its products shall be reported to the standardization administration department and the competent administrative authorities under the local government for the record. Where national or trade standards have been formulated, the state shall encourage enterprises to formulate their enterprises standards, which are more stringent than the national or trade standards, to be used in these enterprises.”
standards could be recognized as the local or even national standards.\(^{161}\) Once one unified public standard is formulated on the basis of technical requirements within one specific enterprise, this would definitely set the barriers to hinder its competitors from entering the market. Further, this also provides the enterprises with effect ways to make their image advertising and raise the public awareness, which helps them to build the brand and reputation.\(^{162}\)

### 3.5.6.1 Export Expansion by Breaking through Foreign Standard Barriers

Currently, the increasingly stringent international food safety standards and the ones enforced in developed countries have become the biggest obstacle to limit China’s food export.\(^{163}\) However, domestically, it is impossible to replace most of current national food safety standards by the higher ones in a short time, being geared to international standards. In order to solve such problems, enterprises could formulate higher food safety standards compared to the national ones and move closer to the international standards to break through foreign standard barriers.\(^{164}\)

### 3.5.6.2 From the Perspective of Public Standard System: Supplement to Public Standards

As stated above, Food Safety Law brought the changes to the filing system concerning the private food safety standards in China. And both two kinds of private standards formulated by enterprises shall be reported to the relevant administrative departments for the archival purpose. Such legislative change make it possible to recognize the most proper and workable private standards by raising it up to the local standard level or even national standard level.\(^{165}\) By doing this, private food safety standards are more likely to supplement the public food safety standards system in China.

### 3.5.7 Conclusion

At present, China has established a preliminary food safety system dominated by national standards and supplemented by local standards and enterprise standards. Especially the Food Safety Law enacted in 2009 brought the essential legislative changes and made a significant contribution to current China’s food safety system. Relying on China’s Food Safety Law, China’s Standardization

---

\(^{161}\) 刘晨光 Chenguang Liu & 富琪 Qi Fu, 食品安全企业标准的发展与适用 Shipin Anquan Qiye Biaozhun De Fazhan Yu Shiyong [Development and application of enterprise standards for food safety], 上海食品药品监管情报研究 Shanghai Shipin Yaopin Jianguan Qingbao Yanjiu [Shanghai Food and Drug Information Research], 11, 16 (2009).

\(^{162}\) Id.

\(^{163}\) Id.

\(^{164}\) Id.

\(^{165}\) Id.
Law and their implementary regulations, private food safety standards are kind of de facto mandatory standards formulated and enforced by enterprises themselves, which shall only be applied inside the specific enterprise. Admittedly, several flaws do exist in the private food safety standards in China; the significance of private standards shall not be ignored definitely. On one hand, from the perspective of enterprises themselves, it is possible that private standards could help the enterprise set the barriers to hinder its competitors from entering the market and expand export by breaking through foreign standard barriers; on the other hand, from the perspective of public standard system, private standards system is supplementing to the public standards system to certain degree.
3.6 Comparison of EU and PRC Food Safety Laws and Implementing Legislation

By Kaichen ZHOU

I generally go through the main legislation of EU and China, and because I think Professor you are a specialist in EU law, I focus more on the Chinese law part.

The first difference is that the coverage of EC/178/2002 is wider than that of Food Safety Law of PRC. The coverage of the EC/178/2002 generally equals to the Food Safety Law (2009), Agriculture Product Quality Safety Law (2006), Regulation on the Management of Feeds and Feed Additives (last amended in 2011) and other regulations.

The traceability requirement is strict and general in the EU legislation for food and feed. Additionally, the TRACE system is built to monitor the movement of live animals.

Actually the traceability requirement is generally incorporated into the Food Safety Law. It is in article 36, 37 and 39. The responsibility is on “food procedure” and “food business operator” which includes the natural and legal person in stage of production, processing, circulation and catering service, according to article 2.

However, the content of the article 39 seems not suitable for those business operator in the stage of circulation, because it says: “when purchasing food, a food business operator shall...” and “an enterprise engaging in the business operation of food shall establish a check and inspection record system for the purchased food...”. The business operators in stage of circulation does not “purchase” any food production. So even the subject of article 39 covers them, the detailed content does not cover them probably.

As to responsibility of the food business operator, especially the food producer, the Chinese Food Safety Law have more detailed food recall system, which not only requires the food producer recall the food but also must deal with these recalled food and report the whole information to the competent authority.

Another interesting feature of Chinese Food Safety Law is in article 29, which has a part specially aiming to the “small food production or processing workshop or a food vendor”. The requirement on food safety is that they “shall meet the food safety requirement of this Law, namely adapting to its production or business operation scale and conditions.” The existence and scale of these small
workshop in China is substantial. However, the government seems to be very “kind” to them, probably because they usually will not create big event compared with other enterprises.

Another difference is the Precaution Principle and Food Management which are specifically mentioned in EU legislation but not in the Chinese Food Safety Law. The article 16 of Chinese Food Safety Law says: “The result of food safety risk assessment is the scientific basis for formulating and revising the food safety standards, and for exercising food safety supervision and administration.” and article 23 says: “The national food safety standards shall be formulated on the basis of the food safety risk assessment results, by taking into full consideration the quality and safety risk assessment results of edible agricultural products, referring to the relevant international standards and international food safety risk assessment results, and upon soliciting opinions from a wide range of food producers, business operators and consumers.” None of these articles require the consideration of “other factor legitimate to the matter” or precautional principle.

China does not have the organization as independent as EFSA in the EU system. Article 13 mentions the “food safety risk assessment expert committee” and article 23 the “National Food Safety Standard Review Committee”. However, both of them will be organized by the health administrative department of the State Council.

The Chinese Food Safety Law also considers the character of Chinese legislation so that in article 24 and 25 it speaks that in the lack of national food safety requirement, the provincial government can set up its own requirement, and enterprise must set up its internal food safety requirement in the lack of both national and provincial requirement. However, this smart and considerable article might give the government the incentive to be lazy in making requirement because the enterprise is required to make its own.
Part IV: Proposals for Reform of Chinese Food Safety Regulation System

4.1 Legislation and institutional framework

By Yi LU

Based on EU model of legislation and institutions, it is advisable for Chinese government to enact customized regulations targeted to solving specific issues and further transparency and executive power of the supervisory authority.

4.1.1 Pass regulations at the provincial level about supervision food safety standard conformity of small enterprise and name an initiative department (one department of China Food and Drug Administration (CFDA)) with the cooperation of the others. This department hall frequently inspect by sample from these enterprises no matter whether these small enterprises have obtained business license.

4.1.2 Or lower the threshold for issuing a different type of the three licenses for these small enterprises? The CFDA shall conduct regular and irregular inspection.

4.1.3 Or establish a mandatory and regular registration system of self-inspection of these enterprises?

4.1.4 Develop information sharing system between CFDA, National Health and Family Planning Commission (NHFPC), Ministry of Agriculture (MOA) and other administrative departments.

4.1.5 Establish integrity records of the small enterprises.

4.1.6 Increase investment in order to develop inspection and supervision technology, both under the government and independent inspection center, like laboratories in universities.

4.1.7 Based on gap-filling of the laws and regulations as proposed above and the current food safety supervision system reform, the below chart is what the current system looks like. I think it might be better if integrate the risk assessment center into CFDA from Health and Family Planning Commission. Since the current information sharing center is under CFDA, the risk assessment can cooperate with the information sharing platform more closely under the leadership of CFDA. The responsibility of the Health and Family Planning Commission, formerly the Ministry of Health, is to formulate food safety standards and lead the risk assessment center, which is similar to the Center for Food Safety and Applied Nutrition (“CFSAN”) under U.S. FDA. If both the power of formulating standards and assessing risks and supervision are granted to one institute, CFDA, this would combine the real supervision experience and standard formulation and also reduce communication cost between CFDA and Health and Family Planning Commission.
4.2 Information sharing
By Xing’er LIU

Learning from the EU RASFF system, we suggest China to create a corresponding rapid alert system to exchange information as soon as the problem occur, to avoid further damage and to improve transparency and government credibility. Based on the press release mentioned in which some key lessons learnt in 2011, some suggestions can be made in order to further develop the Chinese food safety law. In this press release, it concludes some important lessons learnt in 2011, which is also helpful when thinking of Chinese food safety law development:

4.2.1 Enhance RASFF with the launch of iRASFF – an online notification platform which will help RASFF work faster and more efficiently than ever.

For China, after building up Chinese own corresponding RASFF, a similar iRASFF can be created to exchange information and restore data online. It is also a very good way to collect feedbacks from companies and citizens and interact with them.

4.2.2 Review existing standard operating procedures for crisis management while allowing for sufficient flexibility.

China already has its regulation on food safety, but the problem is implementation. Crisis management reflects a good picture of how RASFF works and China should adopt a standard operating procedure for it and update this procedure at least annually. Flexibility is also a good way to obtain solid implementation.

4.2.3 Revise rules on traceability to increase the speed and efficiency for tracing back dangerous products and withdrawing them from the market.

While traceability is an important part in EU food safety law, China somehow needs improvement in product traceability to guarantee the quality of food.

4.2.4 Provide dedicated trainings on food-borne investigations and outbreak management as well as hygiene in primary production for major trading partners (through the EU Better training for safer food programme and in cooperation with the European Food Safety Authority (EFSA) and the European Centre for Disease Control (ECDC)).

China should adopt a similar training programme to raise citizen’s awareness and knowledge on the Chinese RASFF and in cooperation with related authorities.

166 http://ec.europa.eu/food/food/biosafety/salmonella/index_en.htm, last accessed on April 1, 2013.
4.2.5 Develop specific rules on seeds and sprout production.
4.2.6 Improve coordination in crisis communication activities.

Now China has its own crisis management system. For example, National Plan for Emergency Response to Food Safety Incidents (2011 Revision)\(^ {167}\), Emergency Response Law of the People's Republic of China\(^ {168}\)

When we see the official video of RASFF\(^ {169}\), starting from the third minute it refers to Chinese melamine problem in baby formula after the Sanlu case, and how RASFF has reacted to this problem dealing with related products exported to EU. The RASFF not only deals with milk and milk products immediately, but also examine all Chinese feed products like soya. Later, it talks about the ultimate aim of RASFF – to build a global RASFF into one system to exchange information. China, after building its own RASFF, should join this international network and upgrade its national network.


\(^{169}\) [http://ec.europa.eu/food/food/rapidalert/rasff_video_en.htm](http://ec.europa.eu/food/food/rapidalert/rasff_video_en.htm), last accessed on April 1, 2013.
Conclusion

This working paper I of PKUSTL food safety law research project is completed based on academic research from three perspectives: international, the EU and Chinese perspectives. The cutting off date of this report is June 1, 2013. The paper reflects on international organizations in the field of food safety regulation, cooperative institutional network layout, instant information sharing, detailed regulatory requirements and effective enforcement of the EU practice in regulating food safety issues, among others, and presents the current situation of Chinese food safety. As mentioned above, the Chinese Food Safety Law is under revision recently after the aggressive institutional reform of the central administration in March 2013. Accordingly, feasible suggestions are offered to the revision of the new Chinese Food Safety Law at the end of the paper.

Our research group will follow up the revising thread of Chinese Food Safety Law, which will hopefully be submitted to the Standing Committee of the People’s Congress for approval soon. We will present our updated work product which can reflecting the updated legal reform and social impact of the new Chinese Food Safety Law in working paper II.