

# **Food Safety in China: New Strategies**

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*Following a spate of adulterated foodstuff exports from 2005 to 2007, China's food processing industry and regulatory system faced intense international scrutiny. Chinese leaders have responded with high-profile efforts to improve oversight. Likewise, major importers of Chinese food products and ingredients have responded with new safety regimes to monitor the rapidly growing volume of imported products from China. However, China lacks many of the critical components that contribute to safe, quality-centric manufacturing environments in Western economies, including an independent legal system and a robust civil society that represents the interests of consumers and manufacturers. China is further challenged by decentralized manufacturing and distribution systems and weak government capacity at local levels. Despite these challenges, high-level political attention in both China and importing countries indicates that mutually agreeable safety regimes are possible and the trend towards expanded international trade in foodstuffs is probable.*

## **INTRODUCTION**

Long plagued by food safety scandals at home, China now faces greater international pressure to effectively and transparently address concerns over the quality of food exports. Spurred by a widely publicized recall of pet food in the US, a major dialogue between the US and China has been initiated to establish a framework to assure product safety of internationally traded foodstuffs. In April 2007, dogs and cats in the US began dying at an unexpectedly increased rate, prompting an investigation which determined that adulterated ingredients imported from China had contaminated the formulation of approximately 150 brands of pet food. With upwards of 70 percent of American families having one pet or more, the contamination incident caused widespread concern, heightened by the strong bond between pet-owners and their animals. Concerns were heightened when investigators discovered that the affected pet food manufacturers had sold scrap pet food to chicken and pork processors, inadvertently allowing the original contaminated product to enter the human food chain. Though no humans were sickened or died from this incident, the case revealed the extensive links between global food production and domestic consumption as well as regulatory shortfalls to assuring a safe food supply.

This paper will consider challenges facing US and Chinese governments to achieving a safer food trade environment. It will reflect on Hong Kong's experience in regulating Chinese food imports and implications for the US, making recommendations to increase the safety of products imported from China.

## **CHINA'S FOOD SAFETY: A GROWING CONCERN**

Following the adulterated pet food incident and resulting crisis of confidence among US consumers, Chinese officials at the highest levels

recognized the potential threat to China's exports, upon which its economy is so dependent. President Hu Jintao<sup>1</sup> and Premier Wen Jiabao publicly pledged to improve food safety and product quality and in the wake of the pet food contamination crisis, worked to mobilize the vast Chinese bureaucracy.<sup>2</sup> Employing speeches, revising regulations and forming interagency committees, the Chinese government has mounted an aggressive campaign to reassure consumers that it is making efforts to improve the food safety environment. However, despite the political activity, major structural challenges remain while officials have not put forward proposals that substantively change practices and underlying causes of unsafe practices.

China's food safety problems are not a recent phenomenon. However, as China's international trade has ballooned, its farming and food processing practices have had a substantially greater impact on international consumers. China's total food exports reached \$53.3 billion in 2005, compared to \$7.5 billion exported in 1980.<sup>3</sup> As China's food exports have grown, so have cases of adulterated or substandard products. In 2002, the European Union banned all imports of animal origin from China after finding residues of veterinary medicines in Chinese imports.<sup>4</sup> In 2003, Japan blocked imports of Chinese frozen spinach for 8 months after finding pesticide residue in two batches from Shandong province that were 180 times higher than Japanese standards.<sup>5</sup> In 2005, the cancer-causing anti-fungal agent, malachite green, was widely found in farmed fish; resulting in the bans of Chinese eels and processed seafood products in several major markets including South Korea, Japan, and Singapore. Just a year later, China faced new international bans of turbot fish after inspectors in Shanghai found excessive levels of cancer-causing veterinary drugs.<sup>6</sup> These events helped shape new procedures in China and Hong Kong which provide potential insights for US regulators currently formulating their own regulatory responses.

Import safety concerns were elevated among US consumers in 2007, due largely to widespread media coverage of the pet food recall, as well as media coverage of violative Chinese-made consumer products such as toys made with lead paint. Congress and the administration responded to the attention with hearings and increased testing of imports. Total US import values have doubled between 2000 and 2007, reaching a projected \$2.2 trillion in 2007. US total agricultural imports in 2006 amounted to \$65 billion.<sup>7</sup> Consistent with China's overall export trends, seafood exports to the US have increased from \$550 million in 2001 to \$1.9 billion in 2006, representing about 22 percent of US seafood imports.<sup>8</sup> Along with this increase in volume has come increased scrutiny from US regulators. The chronic misuse of veterinary drugs led the U.S. Food and Drug Administration (FDA) to announce an "import alert" on five types of farm-raised fish from China, halting importation until importers can prove that the products do not contain banned or excessive-levels of veterinary drugs.<sup>9</sup>

Spurred by consumer fears and political necessity, the US government has expended substantial attention to adapting existing regulatory regimes and allocating new resources to better police a growing volume of food imports not only from China but other major exporters as well. China looms large in planning processes however, as consumer confidence lags and the political environment favors a vigorous approach. In July 2007, the US government formed an interagency committee headed by the Secretary of Health and Human Services to make recommendations to the President and present a strategy to protect US consumers. Food and product safety has figured prominently in the "Strategic

Economic Dialogue” between the US and China. The US and Chinese governments stated their commitment to drafting Memorandums of Understanding (MOUs) that address food and consumer product safety. On December 11, 2008 at the third Strategic Economic Dialogue in Beijing, a detailed and binding Memorandum of Agreement on food and animal feed was signed between the Chinese General Administration of Quality Supervision Inspection and Quarantine (AQSIQ) and the US Department of Health and Human Services. The US Congress is also drafting legislation that will enhance food safety and protect consumer safety. However, despite increased political attention to the issue, the US government is limited in its ability to address the immense challenge of guaranteeing safe food imports. The FDA only tests about one percent of imports and is heavily reliant on self regulation amongst US processors and importers. Primarily focused on a domestic agenda, the FDA and USDA are ill-equipped to police international food exporters. While the USDA has some staff posted abroad, the US FDA has no staff stationed overseas and few staff with the necessary language skills and cultural knowledge to effectively inspect overseas factories and their shipments destined for US ports.

### **FOOD SAFETY PROBLEMS REFLECT ECONOMIC REFORM PROCESS**

China’s social and economic reforms coupled with the relentless march of globalization has changed the way Chinese farmers produce agricultural products and get them to market. The state controlled production and distribution system has given way to more open market processes, resulting in a proliferation of small cottage processors, reducing the government’s ability to conduct effective oversight. Moreover, China lacks key mechanisms that play an important role in encouraging compliance with regulations and development of industry standards, including the lack of an independent legal system, weak consumer product laws, and a lack of civil society and private sector actors. Product safety has therefore suffered, resulting in a series of domestic and international scandals over food safety. One particular 2004 food safety case involving farmed seafood and misuse of therapeutics is particularly instructive and will be reviewed in this section.

#### *Changes in Chinese agriculture practices*

Following the economic reforms launched in 1979, Chinese farmers were allowed to engage in private business for the first time. To supplement incomes from farming, many rural families have turned to simple food processing to increase their income. Rural income growth has lagged behind urban growth, resulting in new government policies designed to close the rural-urban income gap. Recently, agricultural taxes have been eliminated, social subsidies have increased and government policies encourage farmers to be more productive. This poses a dilemma for local officials confronted with a micro-enterprise which is not up to standard but contributing to local economic growth. Another factor is the dismantling and “marketization” of the state-owned monopoly trading system that was once a fundamental part of the planned economy in China. While this has provided new opportunities for local farmers and international companies to enter the Chinese market, it has also reduced oversight and quality control of commodities bound for international trade.

### *Recent food safety crises*

Since the transition to a market economy, numerous food safety scandals have occurred in China and internationally, due to poor agricultural or food handling practices, as well as counterfeit products being manufactured and distributed through a largely unregulated and chaotic distribution system. Chinese farmers have regularly used dangerous or illegal pesticides and fertilizers to increase yields, used improper antibiotics and hormones to improve livestock and fish growth and employed illegal preservatives to increase marketability of semi-processed products.<sup>10</sup> Moreover, counterfeit products regularly enter supply chains, both as agricultural inputs and as ready to consume food products.<sup>11</sup> While substandard Chinese food products made headlines in the US in 2007, the problem is not new to Chinese consumers and has attracted widespread attention in Chinese media. In a highly publicized 2004 tragedy, 13 babies died in Anhui province from counterfeit milk powder that had virtually no nutritional value.<sup>12</sup> Chinese food products that are exported are subject to greater scrutiny, resulting in more violative products reaching Chinese store shelves than international markets. While Chinese regulators point out that less than 1 percent of exports to the US, EU and Japan fail quality tests, up to 15 percent of products sampled in Chinese markets fail.<sup>13</sup>

The Chinese government's inability to more effectively regulate a decentralized food production industry has led to reduced confidence among international regulators who have enacted a series of bans of Chinese food exports over the past five years. The 2002 European Union ban on animal product imports was only partially lifted in 2004.<sup>14</sup> Following the 2005 malachite green crisis, in 2006, China faced new international bans on turbot fish after inspectors in Shanghai found excessive levels of cancer-causing veterinary drugs in farmed fish from Shandong province.<sup>15</sup> In 2007, the chronic misuse of veterinary drugs in aquaculture caused the U.S. Food and Drug Administration (FDA) to halt imports of five types of farm-raised fish from China until importers could prove that the products do not contain banned or excessive-levels of veterinary drugs.<sup>16</sup>

### *Challenges faced by the Chinese government*

Despite the fact that President Hu Jintao and Premier Wen Jiabao have publicly pledged to improve food safety and product quality, the underlying challenges that the Chinese government face are complex and unlikely to be solved by speeches, corruption crackdowns, updated regulations and the formation of interagency government committees known as "small groups."<sup>17</sup> There are three key challenges that hinder the establishment of effective oversight of the food processing industry. First, the food processing industry in China is dominated by small processors. Second, local governments lack capacity or incentive to establish effective oversight. Third, China's political system differs from Western nations and lacks structures that contribute to product safety in other countries.

Like many things in China, the scope of the food processing industry is huge and hard to measure. Citing experts, the *China Daily* recently put the number of food processors at 1 million, with 70 percent of those operations having less than 10 persons.<sup>18</sup> In the aftermath of the April 2007 pet food scandal in the U.S., the Chinese General Administration of Quality Supervision,

Inspection and Quarantine stated that it would increase “enforcement” in the food processing sector, asserting that it includes 448,153 businesses, with 352,815 having fewer than 10 employees. They also pointed out that half of all business had improper licenses and 164,000 had no license at all.<sup>19</sup> By comparison, the U.S. FDA estimated that about 210,000 domestic firms were required to register in the U.S. in compliance with the “Public Health Security and Bioterrorism Preparedness and Response Act of 2002.”<sup>20</sup>

Regulating these small and mobile processors is difficult, particularly as the task generally falls on township and county-level officials, rather than better funded and trained provincial and municipal administrators. These micro-enterprises, often family businesses, are run out of homes or small rental spaces and have little access to technology, are often unknowledgeable about food safety science and international standards. Likewise, they have little capital investment, and do not have brand names or reputations to protect, negating any incentive to invest in quality. Small processors with little capital not only are quick to close and move locations when they face an adverse situation, but they are able to switch products rapidly, based on what they perceive to be the greatest profit opportunity. This mobility, flexibility and opportunism pose significant challenges to regulators seeking to educate or enforce standards.

Food safety enforcement is complicated by weak government capacity, particularly at local levels where many food processors operate. Often, new regulations and dictates from Beijing are unfunded mandates which are ignored by local officials who argue they lack resources to carry out directives. Where some local governments might have the will to enforce regulations and standards, they often lack the means.

Local level officials face contradictions in attempting to enforce standards among cottage processors. Rural food processing is encouraged by local authorities as a means to increase rural incomes, a policy strongly endorsed, but poorly supported, by central government authorities. Local officials are reluctant to close businesses that contribute to employment in rural areas, where other economic opportunities are limited. This reluctance to enforce standards or regulations set at the provincial or national level makes it unlikely that food safety can be ensured consistently across the country.

Corruption within the Chinese government poses a further challenge. Local officials often collude with local companies, stymieing attempts by higher-level authorities to enforce safety regulations. Corruption in China extends from grass-roots cadres to the highest levels. The State Food and Drug Administration (SFDA) in China has been wracked by a corruption scandal involving its founding director which extends to provincial food and drug administrations.<sup>21</sup> Unscrupulous food and drug producers were able to buy various licenses from the national agency and its provincial and local branches. The astonishing scope of the administration’s inability to effectively monitor industry was revealed when the government reported in 2005 that they had discovered 114,000 unlicensed drug manufacturers and demolished 461 offending factories.<sup>22</sup> Companies that had been issued “Good Manufacturing Practice” (GMP) certificates were later found to be shipping unsafe products. The Chinese government has promised to “clean house.” Premier Wen Jiabao and other senior leaders have publicly vilified corrupt SFDA officials, and the founding director of the SFDA was ultimately executed for corruption.<sup>23</sup>

Corruption at local levels poses a particular challenge to regulators attempting to enforce regulations at the local levels, where processors operate.

Unscrupulous local officials can benefit from illegal or unlicensed manufacturers, creating a disincentive to shutting down violators. Local governments, particularly in poor regions are reliant on fines for income generation, particularly where legitimate tax revenues are inadequate to support government operations. Shutting down an illegal manufacturer effectively cuts off a valuable revenue stream, giving the local officials incentive to “tax” violators, while simultaneously allowing them to continue operating and generating sales revenues. Additionally, local officials are concerned that shutting down employers or denying farmers the ability to make a living can cause social unrest, a state all officials are under pressure to avoid.

Additionally, China lacks a robust and productive civil society that collectively represents the interests of consumers as well as manufacturers. Manufacturer associations in the US, which represent the interests of member companies and work closely with regulators to develop policies, perform a very different role than their Chinese counterparts. In China, industry associations are directly controlled by the government and are managed by a communist party committee, whose primary responsibility is to channel information from the authorities to the relevant constituents. The top-down structure does little to build corporate support amongst Chinese organizations who have little invested in the associations created to “represent” them. In the US, industry associations are a valuable mechanism which promote best practices and disseminate technology amongst members, and provide individual enterprises a greater voice in policymaking processes. This is reflected in the high fees that multinational companies pay to be members of associations in the US, indicating the value that corporations place on their associations. Likewise, the nexus of consumer advocates, an independent court system and the network of checks and balances in western systems do not exist in China. While China’s reliance on government oversight and top-down campaigns to disseminate information and enforce regulations can be effective in many instances, it is a very difficult and costly system to sustain, raising the likelihood that once a rectification campaign is ended, business will “return to normal,” rather than raising the standard to a consistently higher level.

Without the underlying systems that play a critical role western economies, including a strong legal system, insurance companies, industry associations and “consumer watchdogs” in place to support and augment the government’s efforts, the Chinese system lacks many tools that ensure food and drug processors adhere to good manufacturing practices.

### *The 2006 turbot fish crisis*

The 2006 turbot fish crisis highlighted key vulnerabilities in the Chinese political-economic system and deficiencies in a crisis management system that relies heavily on the vigilance, capacity and capability of local governments.

In late 2006, Shanghai’s food safety authorities discovered the presence of a carcinogenic antibiotic in 30 out of 30 samples of an aquacultured fish known as turbot, taken from wholesale markets, supermarkets and restaurants.<sup>24</sup> An investigation team from Shanghai traced the source of the fish to farms in Shandong province which accounts for 80 percent of the turbot production in China. Shanghai municipality sent investigators who carried out on-site investigations at major turbot production cities including Weihai and Rongcheng, finding widespread inappropriate use of therapeutics.<sup>25</sup> Within a week, Shanghai,

Beijing, Guangzhou, Hangzhou, and other major cities had banned the sale of Shandong-raised turbot fish.<sup>26</sup>

As the price of turbot dropped and Shandong fish farmers faced financial ruin, Shandong authorities sought to resolve the crises with other provinces which had banned its product. By January 2007, the Shanghai Fisheries Association and the Shandong Fisheries Association signed a cooperation agreement to increase supervision and to improve the quality of turbot shipped to other provinces.<sup>27</sup> Additionally, the two major fish markets in Shanghai signed quality agreements with Shanghai wholesalers, while the Shanghai wholesalers in turn signed agreements with major fish farms in Shandong province.<sup>28</sup>

These agreements put in place for the first time a chain of responsibilities. The retail markets take responsibility for checking a quality certificate issued which accompanies the shipment, while both the wholesalers and the fish farms undertake to assure that no improper drugs are used during the process of production and transportation. Each party in the production and distribution chain put up a guarantee bond of RMB30,000 to ensure their compliance and increasing the likelihood that processors and wholesalers will not cut corners or risk losing their license and bond.<sup>29</sup> Most interestingly, this management process was initiated, coordinated, and implemented by individual municipalities and provinces, rather than the central government. Each province set their own "import" bans and resolved the ban through direct agreements. The State Food and Drug Administration, apart from sending its own investigation team to Shandong province, appeared to take a passive role, allowing individual provinces and cities to negotiate the terms of their own agreements that allowed turbot from certified fish farms to re-enter their local markets. While this regime is innovative, it is relatively new and unproven and needs to be monitored for effectiveness. It is also "bilateral" in nature and focused on specific products, rather than covering broader geography and entire industries. Additionally, the bond size is small compared to the capital investments and values of consignments involved and might not prove to be enough of a disincentive to intentional misuse of drugs and chemicals.

## **HONG KONG'S EXPERIENCE**

Perhaps nowhere else in the world is more concerned about China's food safety than Hong Kong. According to deputy director of the Hong Kong Food Council, its 7 million people rely on daily imports of food, 80 percent of which come from mainland China.<sup>30</sup> Valuable lessons can be learned from Hong Kong's bittersweet experience working with central government authorities Beijing as well as Guangdong province, through which most of the imports enter Hong Kong. Hong Kong seeks to ensure that only products from reputable food producing companies are eligible to enter into the Hong Kong market by limiting the number of suppliers and requiring health certificates to accompany shipments. This system is enforced by compulsory checks at the point of importation in Hong Kong. Food imports are limited to certain border crossings and wharfs, providing for the concentration of inspection resources.

Hong Kong and Guangdong provincial authorities agreed to establish a food safety notification system, prompted by a widely reported seafood safety crisis in September 2005.<sup>31</sup> Subsequently, a framework agreement on exchanges and co-operation in food safety was signed in April 2006.<sup>32</sup> Key points of this agreement include enhancing information exchange, designating liaison points

on both sides (the Guangdong Provincial Food and Drug Administration and the Hong Kong Health, Welfare & Food Bureau), holding regular meetings and urgent high-level meetings in the event of significant food safety incidents, as well as technical expert exchange. Some of the major progress during the last two years of cooperation manifests itself in four product categories: vegetables, aquatic products, eggs and egg products.

A key premise of Hong Kong's imported food safety regime is restricting imports to mainland producers who are certified to provide specified products to the Hong Kong market. All vegetables supplied by the mainland can only be supplied by approximately 190 registered farms and purchasing stations, accompanied by pesticide declaration certificates issued by mainland authorities. Additionally, all vegetable shipments are required to enter Hong Kong by truck through the Man Kam checkpoint.<sup>33</sup> Freshwater fish can only be provided by registered fish farms licensed by mainland authorities and approved by the Hong Kong Food & Environmental Hygiene Department. Like vegetables, all shipments of freshwater fish are required to be accompanied by certificates guaranteeing the shipment is free from harmful chemical substances.<sup>34</sup> Effective May 1, 2007, all fish tanks carrying live fish from Guangdong to Hong Kong are sealed with Radio-frequency identification (RFID) technology used to trace the point of origin.<sup>35</sup> All shipments of poultry and poultry products are inspected and tested. Eggs and egg products must carry labels showing details of their farms and companies, production dates and batches for tracking purposes; all are required to bear health certificates.<sup>36</sup>

### *Implications of the Hong Kong experience*

Hong Kong's experience establishing an improved import regime with mainland China illustrates the importance of working directly with individual provinces, particularly in the immediate aftermath of a crisis and taking full advantage of the sense of urgency brought on by high-level political and public attention. Hong Kong's provincial-focused strategy was developed in response to a failure by central government officials to adequately regulate provincial activities. Immediately following a 2005 crisis involving fish farms using malachite green, a carcinogen, central government authorities sought to restore trade and consumer confidence by certifying fish farms and providing a list of 18 approved farms to Hong Kong authorities. However, journalists, followed by Hong Kong inspectors traveled to Guangdong to inspect the 18 farms, but found that among them, two were abandoned, two had their licenses revoked and six were not even in the local phone directory.<sup>37</sup> Subsequently, Guangdong provincial authorities stepped in, registering all freshwater fish farms exporting to Hong Kong at the end of 2005.<sup>38</sup>

While the provincial registration system is novel and an improvement over the first attempt, it has proven imperfect. Products containing excessive antibiotics residues were found in fish supplied by registered farms in Guangdong not long after the system was established. However, the registration system did enable authorities to track the sources of suspect fish and expeditiously prevent additional contaminated lots from being shipped.<sup>39</sup>

In addition to designing a more effective import qualification regime for mainland food products, Hong Kong companies can seek legal redress against mainland companies, further increasing the level of responsibility placed on mainland suppliers. Hong Kong has achieved a recent breakthrough in assuring

recognition of Hong Kong legal judgments in mainland China, establishing a potentially feasible method of protecting corporate interests against loopholes in Chinese laws. One of the major difficulties that foreign companies have when involved in disputes with Chinese companies whose assets lie in China is that they can rarely avail themselves of the jurisdiction of foreign courts. This is because China has signed very few judicial-assistance treaties and seldom recognizes judgments of foreign courts.<sup>40</sup> As a result, foreign companies have to take pains to bring a lawsuit in a Chinese court and run the risk of being awarded insignificant compensation either due to the vagueness of Chinese commercial law provisions or the *de facto* difficulty in enforcing even a favorable judgment.

In 2006, the Chinese Supreme Peoples Court and the government of Hong Kong published the “Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters.”<sup>41</sup> The arrangement, once it is enforced by a ratifying ordinance in Hong Kong, will enable companies to obtain civil and commercial awards in Hong Kong and have them enforced against assets in China.<sup>42</sup> This will potentially reduce transaction costs for foreign companies that are unfamiliar and uncomfortable with Chinese judicial system. This presents a mainland registered supplier or processor a potentially significant disincentive to intentionally “cheat.” A legitimate firm which improperly uses chemicals or makes a false declaration or certification could soon face legal damages awarded by a Hong Kong court.

#### *Updating food safety laws in China*

China is not short of food safety regulations. Currently, there are 11 laws, 16 administrative regulations, 78 departmental regulations and a five year plan at the national level. In China, laws, which can only be enacted by the National People’s Congress (NPC) spell out general principles in broad terms. In practice, laws must be supplemented by more detailed administrative or departmental regulations and directives issued by various Ministries or departments under the State Council. Often new regulations are hastily issued by individual departments to deal with particular emerging problems, as is the case with the latest draft food safety law, the revision of which was hastened by the recent crisis.<sup>43</sup> As a result, despite numerous laws and regulations, many key technical issues are not effectively covered, and provisions are often not consistently enforced. For example, the current Food and Hygiene Law from 1995 does not include provisions on crop planting or breeding, which are crucial to food safety; nor does a food safety crisis management system or a nationwide recall system exist.<sup>44</sup> Moreover, the penalty for non-compliance is astonishingly low—a maximum fine of 50,000 RMB is not enough to deter potential offenders who are attempted to cheat customers to increase their profits. A draft of the new food safety law was passed to the standing committee of the NPC in late October 2007 for deliberation. While a timeline was not provided suggesting when the new law might be promulgated, official descriptions of the draft law indicate that it will support an enhanced licensing and registration system and increased fines for violators. The law is also expected to affirm that exported products must comply with standards set by the importing country.<sup>45</sup> While an updated national food safety law will hopefully improve upon the current regulations, local officials will still have to consider whether guidances, directives and other regulations issued by various departments under the State Council will take precedence over provincial regulations which might not completely agree or be as up to date.

Provincial governments have extensive law-making power, enabling local officials to adapt broad guidelines set out by Beijing to suit local conditions. According to the “Legislative Law” passed by the NPC in 2000, provincial authorities have clearly defined legislative powers, known as “advanced law-making power” which empowers local authorities to draft and pass laws that suit local conditions, so long as they do not infringe on the broad brief reserved by central government authorities.<sup>46</sup> This allows local officials to institutionalize innovative legal solutions at local levels to tackle food safety problems which are otherwise unresolved at the central level.

Provincial laws are vital to establishing a framework that will ultimately improve manufacturing and food safety for three reasons; they are fast, flexible and customized. Provincial laws can be drafted by provincial government offices based on drafts previously issued by the central government. The provincial draft can be passed to the provincial people’s congress for approval, and then rapidly disseminated to provincial bodies that have authority over different food safety sectors. In a conformist system, the existence of a national law forming the base for a provincial law can speed the drafting and approval process. The dissemination process from the province to the prefectures and counties can be slow, but the “distance” in political as well as geographic terms is shorter between the provincial capital and the counties. The NPC’s deliberative process is cumbersome, with many laws taking years to pass. After being placed on the NPC’s legislative agenda as part of the 10<sup>th</sup> NPC session starting in 2003, the proposed food law received over three thousand recommended motions, with 1,000 members making recommendations during the NPC meeting in May 2007.<sup>47</sup> By comparison, Guangdong province began drafting its own food safety law in 2005, which has already come to the final stage of its third review by the provincial People’s Congress and is expected to pass in 2008. While there is no timetable for the national law to pass, the process can take two to three or more years. However, there is precedence for rapid passage of new laws, particularly when spurred by crisis. For example, the revised infectious disease law was squeezed into the NPC’s 2003 legislative agenda due to outbreak of SARS, and was subsequently approved and became effective December 1 2004.<sup>48</sup>

Provincial food safety laws can be revised and up-dated more easily and more regularly to match changing conditions in individual provinces, particularly as the economy evolves and new industries quickly spring up. For instance, the “blue revolution” and rapid dissemination of aquaculture technology has made a significant impact on many provincial economies. Fish farming and processing has expanded into new rural areas away from the sea coast. The current National Food and Hygiene law, on the other hand, has not been revised since its promulgation in 1995 despite significant changes in food production, infrastructure, and technology since then.

The rapid evolution, expansion and regional specialization that occur in China make regular revision of local laws imperative. A provincial food safety law can be adapted to suit local circumstances, particularly when new technologies and industries emerge. Different provinces produce different food, adopt different means of production, and vary significantly in terms of customs and habits. Local governments are better equipped with relevant knowledge to fully address and tackle specific local problems and set standards that fall within the broader guidelines set out by central government authorities. Provinces can also benefit from the experiences of other provinces and be quick to incorporate successful

legislative innovations. Ultimately, these provincial efforts can collectively influence and shape national laws.

The newly proposed draft of Guangdong's food safety regulation has several facets which, if proven effective, can potentially inform national regulations. The Guangdong law includes detailed provisions for a food recall system, sets up cogent guidelines on inspection of raw materials sourcing processes, and contains strict rules on food production documentation.<sup>49</sup> Guangdong's regulation likely inspired other progressive provincial laws, such as the Beijing municipal government's proposed regulations establishing its own food recall system.<sup>50</sup> Following the increased central government attention on food safety spurred by the recalls and seafood import alert in the US, several national-level meetings have been held, providing opportunities for provinces to share experiences, creating greater potential that successful practices will be expanded beyond the initiating province.

Improving Chinese food safety and increasing the quality of exports will be a long-term challenge which likely hinges on the success of local efforts to implement standards and employ new technologies. Focusing resources at local levels to build regulatory capacity as well as the knowledge of individual farmers and processors is one necessary step that will contribute to overall success. For example, in order to improve the safety and reliability of aquaculture, several long-term initiatives will be necessary, each requiring local government cooperation and the commitment and efficient use of resources.

A logical initial step would be a government-sponsored program to raise fish farmers' awareness and to improve their access to technology. Often, banned and inappropriate therapeutic products are used by fish farmers to increase yields, (frequently in polluted water) without understanding the safety ramifications.<sup>51</sup> In some cases, there are affordable substitutes for banned products, but knowledge of these is not diffused effectively.<sup>52</sup> Likewise, many banned substances are widely available, pointing to ineffective oversight and enforcement of existing regulations. While government crackdowns will temporarily cleanse a market of banned products, only the reduction of demand, through farmer and processor education will ensure that banned and inappropriate products are not used. Increased funding and capacity of agriculture extension agencies and farmers associations would contribute to improved food safety and increase processor knowledge of regulations and standards. This increased knowledge would boost rural incomes and local economies as well.

## **US APPROACHES TO ENSURE THE SAFETY OF FOOD IMPORTS**

In response to widespread publicity from the previously mentioned pet food recall and other import safety incidents including the recalls of several batches of lead-painted toys, the US government has focused greater effort to improve the safety of future imports. Efforts are underway by both the executive and congressional branches of government to identify and address shortcomings in regulatory capacity and improve international mechanisms to improve regulatory "up" global the supply chain. Efforts being undertaken are not limited to imports from China, underlying their objective of improving safety and rebuilding consumer confidence, rather than promoting a protectionist agenda. This section will review the efforts of the Interagency Working Group on Import Safety and one proposed act known as the "Food and Drug Safety Act of 2007."

The Interagency Working Group on Import Safety (Working Group) was formed by President Bush on July 18, 2007 under Executive Order 13439. The Working Group is chaired by the Secretary of Health and Human Services and includes Secretaries of State, Commerce, Treasury, Agriculture, Transportation, Homeland Security, the Attorney General, and other executive branch agencies and officers. Tasked with issuing a report with recommendations to the President “within 60 days”, the Working Group consulted with numerous “stakeholders” in the private sector and issued its first report which set out a “strategic framework” for enhancing import safety on September 10, 2007. A more detailed “Action Plan” with additional recommendations was released a month later.

Recognizing that the recommendations set out in these recommendations are focused on imports from global suppliers, in December 2007, the executive branch of the US government has signed a series of agreements with the Chinese government, primarily bilateral agreements between respective departments. Agreements covering food and drug trade create a framework for closer cooperation between Chinese and US authorities. While these agreements with Beijing-based central authorities will likely do little to address structural challenges within China, they are a necessary step towards creating an environment where the Chinese bureaucracy can accept greater involvement of US officials in Chinese manufacturing sectors. For instance, having frameworks and agreements agreed to is necessary for an increased in-country presence of US FDA or USDA inspectors.

Currently, US FDA does not have staff stationed in China, or elsewhere outside of the United States at this point. In order for the US FDA to develop the capacity to increase inspections and certifications of international suppliers, significant resources will need to be allocated, necessitating the involvement of Congress. The “Food and Drug Safety Act of 2007” aims to increase the US FDA’s capacity to address the growing tide of food and drug imports. Proposed by Representative John Dingell (D-MI), Chairman of the House Committee on Energy and Commerce, the act proposes the initiation of fees levied on imports to fund the expansion of the FDA’s capacity to make overseas inspections. The act also seeks to establish a certification system for suppliers and limits the number of US ports where food can be imported, allowing the FDA to more effectively concentrate its laboratory and inspection resources. The act requires the enforcement of Country of Origin labeling and gives the FDA and USDA the authority to issue a mandatory product recall, a power the agencies currently do not possess.

While this proposed legislation would significantly increase the FDA and USDA’s capacity to manage the growing volume of imports, it presents some potential drawbacks as well. Limiting the number of ports where food can be imported will likely increase the logistics costs of importing materials for some food processors. Likewise, increasing fees on imports is a tax which invariably will be passed on to US consumers. Food taxes are regressive and place a disproportionate burden on lower income families, posing a dilemma for politicians who vote to pass the bill. Additionally, the bill does not address other FDA-regulated imports including cosmetics and medical devices, which have recently been the subject of recalls and are attractive targets for counterfeiters.

Regardless of the strategy ultimately employed, it is clear that the US government will need to increase its capacity to effectively regulate imports of food, drugs and ingredients. The numerous recent crises demonstrate that the agencies are effective in responding to a crisis, but have little capacity to prevent a

problem from occurring. The US manufacturing environment creates effective disincentives for domestic manufacturers to ensure they engage in safe practices, but foreign companies are not subject to the US court system or under the jurisdiction of US regulators. Expanding the capacity of US regulators to more effectively police exporters will further ensure that food and drugs imported to the US meet standards as well as the expectations of US consumers.

## **CHALLENGES, RECOMMENDATIONS AND CONCLUSIONS**

Food safety is a complex issue in China, presenting challenges to central government regulators as well as international trading partners. A deteriorating environment, lack of up-to-date food safety laws, ineffective governmental supervision, lack of general public awareness, all contribute to the problem. An effective approach to increasing compliance of Chinese products will require greater understanding of their challenges and innovative responses, including building the capacity among US agencies to more effectively address international challenges.

Working closely with provincial and local authorities will improve the effectiveness of implementing future strategies, whether they are focused on certification or inspection processes. The central government recognizes that the willingness of local officials to comply is critical. Vice Premier Wu Yi, the chairwoman of China's interagency product safety committee chaired a meeting with provincial authorities in August 2007, emphasizing in her speech that local level officials could not evade responsibility for product safety or protect illegal or sub-standard enterprises.

According to the "who is in charge and who is responsible" principle, the detection and elimination of potential safety problems is the assigned responsibility of each department, each region, each county, each township, every street, every community, every business and shop. We must strictly assure accountability in the system.<sup>53</sup>

The lack of local government willingness to enforce central government dictates is a problem in multiple sectors and attributable to the lack of progress achieved in various government initiatives such as the campaign to eliminate counterfeiting and improve air and water pollution. As demonstrated by the Hong Kong experience, provincial participation in implementation is necessary for success. This is particularly true if a system is in place where a limited number of suppliers are licensed to export specific products to the US market in a regime where both Chinese and US regulators recognize the certification. Currently, the US FDA does not recognize Chinese certifications, which reflects a justifiable lack of faith in Chinese certification processes. However, this leaves the US market open to shipments from any supplier, regardless of whether they are subject to even marginal Chinese oversight. An ideal scenario would include a certification that is recognized by both Chinese and US authorities, backed by periodic inspections carried out by US FDA employees. The Memorandum of Agreement between the Chinese AQSIQ and US FDA establishes that AQSIQ is responsible to certify all food exports to the US, though that certification serves mostly as a screen to ensure only legitimate companies export products and does not alter US standards, nor does it exempt products from further inspection in the US. The agreement does not establish a cartel system of suppliers, nor does it require US inspectors to certify exporters or shipments prior to exporting.

This cartel and inspection paradigm resembles elements of the Hong Kong, as well as Japanese regulatory system for overseeing Chinese exports. Following a 2002 crisis caused by contaminated spinach imported from Japan, regulators there reformed their import regulation system, establishing approved supplier lists and sending Japanese inspectors to visit Mainland factories. Receiving a certificate limits the farm to exporting only products grown on their own farms, prohibiting subcontracting or consolidation with products grown on other farms. Like in Hong Kong, Japan also has an aggressive testing program, with testing rates between 10 and 15 percent of shipments, compared to the one percent tested by US authorities. In the case of spinach, the cause of the 2002 crisis, every batch is tested for pesticide residues. This import regime, relying on supplier cartels and extensive testing is expensive, but effective.

Perhaps most encouraging is the behavior change amongst suppliers (and to a lesser extent, buyers) that the cartel system fosters. A limited number of exporters who obtain a permit to export enjoy a privilege, as well as an obligation to meet the buyer's standards, which are ostensibly articulated as part of the licensing process. Privileged market access and a limited number of suppliers will undoubtedly cause prices to increase, which will encourage farmers and processors to avoid "cutting corners" through adulteration or mis-use of drugs or chemicals to boost profits that parsimonious buyers would otherwise absorb. The loss of a valuable export license is a significant disincentive for an exporter to cut corners. Like an organic farmer supplying customers willing to pay a premium, US consumers will have to pay for safety. In a large country like China, a realistic objective might be to establish supplier cartels for specific products, ensuring that certified suppliers are distributed in each province. Ensuring that some licenses are earmarked for less-wealthy provinces will be a priority for Beijing, concerned about a coastal-inland wealth gap. However, inland provinces, farther from seaports and lacking in infrastructure will be less competitive than coastal suppliers. The allocation of licenses in a cartel system should not devolve into an extension of the state macro-economic planning process, where an imbalance between quota and capacity will undoubtedly lead to inefficiencies and black market behaviors which are antithetical to a transparent, high-quality supply chain driven by voluntary, rather than coercive commercial behaviors.

The issue of cost and capacity are central to the deliberation over quality assurance. Regardless of the regime, consumers will pay for increasing capacity to provide effective oversight by regulators, whether it comes in the form of higher taxes, duties or fee-for-service levies on specific consignments entering the country. Likewise, the cost of encouraging safe practices by farmers and processors in exporting nations, including China, will be affected by pricing mechanisms and the willingness of buyers to take greater responsibility in managing their supply chains and paying reasonable prices for quality products. Technology provides some solutions, such as RFID tracking, but the market is likely to determine that the value added by some technologies is not equal to the cost.

Regardless of the balance of technology and process in the strategy that is ultimately developed, transparency will be a critical factor in the regime's long-term success. Most Chinese government processes are exceedingly opaque, particularly compared to US systems. A lack of transparency enables local protectionism, inconsistent application of rules and generally undermines trust. For instance, a licensing process, as well as the maintenance of "black lists" will need to be a collaborative effort. While potentially cumbersome, a transparent

and collaborative process of determining which companies are able to export specific products has political ramifications for both sides. Ensuring enough exporters have access to the US market is a political priority for the Chinese side, while accessibility of the process and reliability of the exporters is a necessity for the US side. Achieving a level of transparency that is satisfactory to US regulators will likely be a challenge. Conflicting political interests and a culture of secrecy within the government will work against efforts to establish a collaborative and transparent system. That said, the central government has made dramatic strides to increase transparency over the past 10 years, including the naming of ministerial spokespersons and creation of government websites at national, provincial and county levels. “Pushing” the notion of transparency, particularly with outsiders, on provincial, prefectural and county governments will be a major challenge for Beijing. However, gaining privileged, and therefore profitable access to the US market is a compelling incentive for local-level authorities to cooperate with the central government and US agencies in a better managed export regime.

Unfortunately, there is the conspicuous lack of an effective non-governmental capacity in China to facilitate the establishment and maintenance of an effective export safety regime in China. Public-Private Partnerships (PPPs) can potentially contribute to improving manufacturing safety in China in the future. Broadly defined, a PPP is an enterprise combining government and private sector inputs to deliver a public good. The National Council for Public Private Partnerships defines a PPP more narrowly:

A Public-Private Partnership is a contractual agreement between a public agency (federal, state or local) and a private sector entity. Through this agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service and/or facility.<sup>54</sup>

The Chinese government is more focused on generating revenue and ensuring economic growth at the expense of delivering public goods effectively and efficiently. The poor performance of the Chinese healthcare system and the inability of the government to control environmental degradation are a case in point. As the government takes stern measures to “rectify” the export safety problem, an opportunity exists for the Chinese government to increase its capacity, increase transparency and engender greater “buy-in” from farmers, manufacturers and importers abroad. Strengthened PPPs, or industry associations can play a greater role in developing new laws and scientific standards, as well as helping members adhere to new and higher standards. Furthermore, PPPs or expanded government contracting can quickly build government’s oversight capacity, such as employing private sector laboratories or universities to carry out third-party testing, training or certification programs. The US can help China achieve greater participation of civil society in China by fostering and encouraging exchanges between universities, industry associations and even encourage Chinese corporations to join certain US associations, enabling them to better understand the benefits and services that representative associations provide. Greater representation in policymaking processes and improved technical support provided by civil society involvement will increase “buy in” amongst farmers and food processors, further ensuring that they will adhere to accepted and established quality standards.

While the challenges to establishing a safe food, drug and consumer product manufacturing environment in China are many, there are reasons to be optimistic. The Chinese government has expressed their concern about the situation and by all accounts is addressing the issue aggressively. Both the US and China have very different cultures and approaches to regulating markets which will undoubtedly make the negotiating process towards establishing an equitable and effective system arduous at best. Hopefully, the integrity of a future system will not be undermined by excessive compromises made in pursuit of an agreement.

Collaboration between US and Chinese regulators is vital and should continue as part of a regular product safety agenda. The collaboration process builds trust, particularly from the Chinese perspective, which enables progress to be made towards establishing a functioning regime which achieves the ultimate objective of ensuring that only safe products enter international trade. That trust, and successful engagement with Central government officials will need to be followed up with provincial level engagement. Thankfully, food and product safety is a mutual, core interest that is shared by both the US and China, ensuring that officials from both sides will adapt to a changing global economy and establish an appropriate and effective food and product safety regime that ultimately protects the interests of Chinese exporters and US consumers.

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