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2016 China Food Law Update

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2016 CHINA FOOD LAW UPDATE

Michael T. Roberts & Ching-Fu Lin

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I. INTRODUCTION

A. China's 2015 Food Safety Law and Beyond: An Important Step to Modernization

This update of China food law builds on a unique feature for the *Journal of Food Law & Policy* that has been provided since the *Journal's* inception – separate food law updates for both the United States

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The authors acknowledge the excellent research for this article of Man-Ning Wang, LL.M. candidate at the Institute of Law for Science and Technology, National Tsing Hua University, Taiwan.

and European Union. "Recognizing the globalness of the modern food system, these updates have served an invaluable role in keeping scholars and practitioners abreast of the world's leading food regulatory systems." China's emergence as a developed, modern food regulatory system with the potential of being a leading food regulatory system makes sense given its position as a world economic powerhouse.¹ China's role in the recent food safety debate over the veterinary drug ractopamine hydrochloride points to the increasingly visible leadership by China in international food law debates that are both complex and polarizing.² The central issue confronting China's development of food law is whether it can move fast enough in a complex modern food system to create, refine, and streamline a food regulatory regime that befits its place as a world-leading economy.³

Due to several vexing, highly publicized food safety incidents, China's food safety regulations receive particular attention.⁴ In response to continuous public criticisms and calls for strengthening food safety governance, the Chinese government has gone through years of drafting, commenting, reviewing, revising, and wrestling between di-

1. See Michael T. Roberts, *The Beginnings of the Journal of Food Law & Policy*, 11 J. Food L. & Pol'y 1, 7 (2015).

2. See generally, Ben Carter, *Is China's economy really the largest in the world?*, BBC News Magazine (Dec. 16, 2014), <http://www.bbc.com/news/magazine-30483762>; David Acheson, *What Impact Will China's Food Safety Law Have?* Quality Assurance and Food Safety (June 8, 2015), <http://www.qualityassurancemag.com/article/qa0615-china-food-safety-law-regulations/>.

3. See Helena Bottemiller, *Codex Adopts Ractopamine Limits for Beef and Pork*, FOOD SAFETY NEWS (July 6, 2012).

4. See generally Lutz-Christian Wolff, *Chinese Outbound Investments in the Food Sector: Hungry for Much More!*, 69 FOOD & DRUG L.J. 399, 405-408 (2014); Tara Garnett and Andreas Wilkes, *Appetite for Change: Social, Economic, and Environmental Transformations in China's Food System*, FOOD CLIMATE RESEARCH NETWORK (sponsored by University of Oxford) (Feb. 2014), http://www.fcrrn.org.uk/sites/default/files/fcrn_china_mapping_study_final_pdf_2014.pdf. The changes in China's food systems include (1) a large increase in the volume and diversity of foods produced in China; (2) changes in supply chains, including scaling up of production operations and various forms of horizontal and vertical integration; (3) growth of new forms of food retailing, including the emergence of supermarkets and fast food restaurants; (4) greater international engagement, including imports and exports, as well as inward investment by foreign manufacturers and retailers and outward investment in food production; (5) and rapid growth in incomes and urbanization, leading to more diverse diets, processed foods, and eating out of the home. (Emphasizing that there is no one "food system" in China, but rather a diversity of food systems, including smallholder agriculture and traditional wet markets that coexist with large-scale industrialized production and a burgeoning supermarket sector).

vergent interests before finally creating a series of fine-tuned institutional designs, culminated in the 2015 Food Safety Law (2015 FSL).⁵ The 2015 FSL replaced the 2009 Food Safety Law (2009 FSL), which served as China's first comprehensive food safety regulation.⁶ The 2009 FSL was preceded by regulations dating back to 1965 when the State Council issued the first food regulation - the Food Hygiene Law.⁷ This law mainly dealt with the unsanitary conditions in which food products were stored, manufactured, and transported. It did not set forth requirements for food content because China was still recovering from a famine, in which an estimated thirty million people died of malnutrition between 1960 and 1962. Rather, the government's primary concern was to maintain an adequate food supply.⁸

Following a series of updates, the China's National People's Congress Standing Committee passed the 2009 FSL, the nation's first comprehensive Food Safety Law.⁹ The 2009 FSL was the first piece of Chinese food legislation to use the word "safety."¹⁰ The transition from the 2009 FSL to the 2015 FSL was facilitated by the State Council's release in July 2012 of the *12th Five-Year Plan for National Food Safety Regulation*, which provided guidance on ten essential dimensions of food safety governance and recommended further amendments to the 2009 Food Safety Law.¹¹

As with the United States' passage of the Food Safety Modernization Act (FSMA) in 2011— the first major overhaul of the US food safety regime in decades¹² — bringing China's new law into effect re-

5. See generally, Fangqi Lu, Xuli Wu, *China food safety hits the "gutter"* 41 FOOD CONTROL 134 (2014), <http://dx.doi.org/10.1016/j.foodcont.2014.01.019>.

6. *2015 Food Safety Law of People's Republic of China*, NPC, <http://www.npc.gov.cn/npc/cwhhy/12jcw/2015-04/25/content-1934591.htm>. [hereinafter, *2015 FSL*].

7. *Id.*

8. Bian Yogmin, *The Challenges of Food Safety in China: Current Legislation is Unable to Protect Consumers from the Consequences of Unscrupulous Food Production*, <http://chinaperspectives.revues.org/819>.

9. Chenhao Jia, David Jukes, *The national food safety control system of China – A systematic review*, 32 FOOD CONTROL 236, 238 (2013).

10. *Id.*

11. Pinghui Xiao, *China's Food Standardization System, Its Reform and Remaining Challenges*, 3 EUR. J. RISK REG. 507, 515 (2012).

12. People's Republic of China, *12th Five Year Plan for National Food Safety Standard* (informal translation), United States Foreign Agricultural Service, Global Agricultural Information Network, Gain Report Number 12041 (June 28, 2012), <http://gain.fas.usda.gov/Recent%20GAIN%20Publications/12th%20Five%20Year%20Plan%20for%20National%20Food%20Safety%20Standard->

quires skillful governance. China's overall performance will be an important gauge on how developing countries' regulatory regimes can and should regulate food. As in all food regulatory regimes, it is critical that China extends beyond the adoption of sound rules, and also adopts norms, approaches, and practices to food safety governance.

*B. UCLA Resnick Program Food Safety Governance Initiative:
Platform for Collaboration Beyond the Law*

This Update is developed largely through the prism of a China Food Safety Governance Initiative launched in 2015 by the UCLA School of Law Resnick Program for Food Law and Policy. Specifically, the initiative aims to promote cross border collaboration, communication, and mutual learning among food safety professionals and academics in both China and the United States. In short, the UCLA Initiative aspired to enhance food governance in China, with the ultimate aim of ensuring safe and healthy food for consumers. Working closely with the UCLA Resnick Program on this Initiative were two of China's premiere law schools: Renmin University School of Law, China's top ranked law school and home to an innovative, interdisciplinary food safety program; and East China University of Science and Technology School of Law (ECUST), the leading law school in Shanghai on food regulation, with unique and innovative good governance classes and programs.¹³ The Initiative consisted of several interconnected activities, including workshops, roundtables, lectures, publications, communications, and research development.

Two UCLA Initiative events in particular – a two-day roundtable and a five-day workshop – identified the general, current thinking in China relative to the 2015 FSL and food safety regulation.¹⁴ The two-day roundtable was held in December 2015 in Shanghai and was comprised of panel discussions addressing the connection between “social governance” – a new concept in China – and food safety.¹⁵ The second

final_Beijing_China%20-%20Peoples%20Republic%20of_6-28-2012.pdf; see also State Council, *Notice of the General Office on Issuing National Food Safety Supervision System Plan for 2012-2017* (June 28, 2012), available at http://www.gov.cn/zwgk/2012-07/21/content_2188309.htm.

13. UCLA School of Law, Resnick Program for Food Law and Policy: The China Food Safety Initiative, <http://law.ucla.edu/media/Assets/Resnick/Documents/China%20Food%20safety%20Initiative%20Brochure.ashx>

14. *Id.*

15. UCLA, *supra* note 14, at 1-2.

event – a week long workshop – occurred in May 2016, when the law schools at UCLA, Renmin, and ECUST and their respective food law programs co-sponsored the workshop in Shanghai as part of the Initiative.¹⁶ Food safety experts from the United States and China presented on a range of topics – corporate social responsibility; how to create a sustainable and effective food safety culture and behavioral change; the differences between Chinese and Western approaches to managing operational, regulatory, and reputational risk of food safety; and how to integrate farm food safety into the overall food safety regime. The experts facilitated discussion on how certain principles of food governance can be incorporated more fully into the regulation of food across the entire food system – not just during the manufacturing phases, but rather from the farm to the plate.¹⁷ Case study problems that replicated real food safety and governance challenges in China presented for discussion, ensuring a deeper analysis of existing or potential problems in China’s food system

III. UPDATE

A. *Social Governance and Food Safety*

As noted, at the 3rd plenum of its 18th party congress in November 2013, the Communist Party of China introduced the concept of “Social Governance” (shehui zhili, 社会治理), a notion that recognizes social actors’ role in governance, alongside government and businesses.¹⁸ Social interests, such as food safety, are encompassed within the connotation of social governance. Defining “social governance” outside its Chinese context is difficult. It is important to note that the term social governance recently replaced the expression, “social management” (shehui guanli, 社会管理), an expression used in China for more than twenty years. “Social management,” meanwhile, shared the same goal as social governance, but differed in other aspects such as the means to accomplish the goal. Though a change in only a single word, the difference is significant as it signifies a new cooperative role

16. *Id.* at 2.

17. *Id.*

18. Michael T. Roberts, *The China Food Safety Governance Initiative*, UCLA SCHOOL OF LAW (2015), <https://law.ucla.edu/-/media/Assets/Resnick/Documents/China%20Food%20Safety%20Initiative%20Brochure.ashx>.

in China of social actors in governance. In essence, social governance implies that all social actors can regulate and manage social affairs as equal, cooperative partners according to law, in order to eventually capitalize on the public's interest.

The UCLA Initiative roundtable panel discussions referenced herein focused on the application of social governance as it relates to achieving food safety in China. The roundtable discussions quickly moved beyond conceptual definitions to practical applications of social governance on making food safer in China. In his concluding remarks, Renmin Law's Dean Han Dayuan reminded the attendees of comments made by President Xi Jinping in May 2015 – that food safety is the most fundamental issue to achieve real development in China.¹⁹

The predicate for both the concept of social governance as defined and applied in China and the concept of preventive controls as expressed in FSMA in the United States appears similar: the government alone cannot ensure food safety for its citizens. Limited resources and limited scope of government controls push both regulatory regimes to share responsibility and to collaborate with non-government stakeholders in the pursuit of safe food. While the nature of the relationships respectively between the China and US authorities and non-government stakeholders are markedly different, the need for these relationships to ensure safe food appears to be the same.

B. *Notable 2015 FSL Provisions*

The 2015 FSL reflects several rounds of revisions, and three drafts that the government published for notice and comment, including two published by the National People's Congress itself in 2014. The effective date for the 2015 FSL was October 1, 2015. The China Food and Drug Administration (CFDA) and other agencies with jurisdiction over food, such as the National Health and Family Planning Commission (NHFPC), were given responsibility to draft or revise implementing regulations.²⁰ Some of the more notable provisions of 2015 FSL are noted below. These provisions and the implementing regulations as they developed will be detailed more completely in fu-

19. See *Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening Reform*, November 12, 2013, USC US-CHINA INSTITUTE (Nov. 12, 2013), <http://china.usc/decision-central-committee-communist-party-china-some-major-issues-concerning-comprehensively>.

20. Roberts, *supra* note 19, at 2.

ture updates.

- **Food Safety Risk Assessments** – Introduces a number of new requirements applicable to food-related products (e.g., food packaging). Food-related products are now subject to food safety risk evaluations with regard to biological, chemical, and physical risks. Authorities are obligated to conduct risk assessments for potentially hazardous food-related products. Where the food-related products are shown to be unsafe for use, relevant authorities may stop the production of these products.²¹

- **Food Additives** – Specifies the scope of producer responsibilities. Notably, the Law eases the burden on producers by allowing their products to be tested by a contracted third party.²²

- **Traceability** – Requires manufacturers and distributors to establish a food tracing system and to perform self-audits while encouraging manufacturers and distributors to participate in a food safety liability insurance system. CFDA is developing the insurance system along with the All China Insurance and Regulatory Commission, which is China's insurance regulator.²³

- **Online Sales** – Contains some limited provisions on online food sales, including the requirement that third-party e-commerce platforms register the names of the food distributors that sell products on their platforms and examine their licenses.²⁴

- **Pesticides** – Bans the use of all highly toxic pesticides in specified agricultural products (e.g., vegetables, fruit and tea leaves, traditional Chinese herbal medicines).²⁵

- **Genetically Modified Foods** – Producers and traders of genetically modified food must label the food prominently following the rules required by law.²⁶ The current legal framework regulating GMO

21. See *CFDA Announces Draft Regulations to Implement China's New Food Safety Law*, KELLER AND HECKMAN LLP (Dec. 21, 2015), <https://www.khlaw.com/8654>.

22. *Zhonghua Renming Gonghegou Xiping Anquanfa* [People's Republic of China Food Safety Law] (compiled by Nat'l People's Cong., Apr. 24, 2015, effective Oct. 1, 2015), arts. 17-18; *Food Safety Law of the People's Republic of China*, USDA FOREIGN AGRICULTURE SERVICE (2015), http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Amended%20Food%20Safety%20Law%20China_Beijing_China%20-%20Peoples%20Republic%20of_5-18-2015.pdf.

23. *Id.* at arts. 53; 59-60.

24. *Id.* at arts. 42; 63.

25. *Id.* at art. 62.

26. *Id.* at art. 69.

is the *Administrative Regulations of Agricultural Genetically Modified Organisms Safety*, and the accompanying regulations, which were promulgated by the State Council and the Ministry of Agriculture a decade ago. These regulations establish an inventory of products subject to mandatory GM labeling.²⁷

- Record Keeping – Food wholesalers are required to set up an internal food sales record system for the first time to record certain detailed information, including the food's name, specifications, production date, sale quantity, shelf life, buyer's name, buyer's contact information, etc. Such records must be kept no less than two years.²⁸

- Whistle Blowing – Establishes a reward system for whistleblowers, provided that the case is ultimately verified. Governmental agencies, which have the authority to handle the tip-off, must nonetheless protect the personal information and legal rights of the whistleblower. The employer cannot, by any means, retaliate against the whistleblower, especially via labor contract termination or modification.²⁹

- Changes Affecting Special Foods – Contains a revised chapter on “special foods,” which are now subject to a number of different heightened regulatory requirements. These special foods include health foods, foods for special medical purposes and infant formula.³⁰

- Organization – Many of the previous functions of government agencies – the NHFPC (National Health and Family Planning Commission, replacing the Ministry of Health), SAIC (State Administration for Industry and Commerce), and AQSIQ (General Administration of Quality Administration) – are transferred to CFDA (China Food and Drug Administration), which has become the primary regulator over China food and food products.³¹ The Law also requires trade and consumer association representatives to serve as members on the National Food Safety Standard Review Committee.³² The Ministry of Agriculture regulates farm products, poultry, livestock and genetically modified foods.³³

27. *Id.*

28. See generally, Xiao Zhu, Michael T. Roberts, and Kaijie Wu, *Genetically Modified Food Labeling in China: In Pursuit of a Rational Path*, 71 *FOOD & DRUG L.J.* 30 (2016).

29. See *supra* note 23 at arts. 50;53.

31. *Id.* at art. 115.

31. *Id.*

32. *Id.* at art. 28.

33. *Id.* at arts. 27;115.

• **Enforcement** – Increased the administrative penalties for violations. These penalties include confiscation of unlawful gains and illegally produced or distributed foods, fines, orders to cease manufacturing, revocation of licenses and/or blacklisting from the industry. Specific provisions on civil liability are also stronger. For example, whereas previously consumers were permitted to seek up to 10 times the purchase price of the food in punitive damages for substandard food products, they are now permitted to seek 10 times the purchase price or three times the amount of compensation for loss, and the damages must not fall below 1,000 RMB (approximately 162 U.S. dollars).³⁴ In addition, CFDA and other administrative agencies are expressly required to report promptly suspected food safety crimes to the Ministry of Public Security (China's police force), which must then timely review and investigate the allegations.³⁵

C. Going Beyond Law: Consumer Trust, Social Governance, and Behavioral Change

Much of the remainder of this article balances the observations and synthesis that emerged during the UCLA roundtable and workshop discussions between the food law academics and policy makers from China. This analysis goes beyond the technical changes instituted in the 2015 FSL. Indeed, it remains to be seen if the 2015 FSL would adequately address the challenges faced by the country. The lack of business ethics, weak law enforcement, and distrust of consumer over the fragmented governance framework seem to call for a more bottom-up, long-term, and incremental approach to food safety governance in China. Indeed, more weight has to be given to initiatives that can promote corporate social responsibility, create a sustainable and effective food safety culture and behavioral change. At the same time, the initiative must bridge the differences between the Chinese and Western approaches to risk regulation while integrating farm food safety into the overall food safety regime. Premised upon such understanding, this Article looks into five of the most crucial aspects, with the aim to depict the current development as well as to facilitate future discussion on food safety governance in China.

1. Effective Coordination among Government Agencies

34. *Id.*

35. *Id.* at arts. 123-124.

The lack of consumer trust in the government has resulted from the ineffectiveness of regulatory activities in general³⁶ – due to the underlying issues such as weak law enforcement, local protectionism, unequal resource distribution, and corruption.³⁷ On the industry level, a decentralized market structure, a lack of reputational incentives,³⁸ a focus merely on economic performance in business³⁹, and unethical practices conducted by various food companies are also contributing factors.⁴⁰ Such overall regulatory ineffectiveness has been exacerbated by the fact that the government agencies in charge of overseeing food safety are a part of a fragmented system. Indeed, the social and agricultural development premises on the formation of institutions and rules governing individuals' behaviors and expectations regarding the supply of food.⁴¹

The coordination and collaboration between government agencies, such as cross-departmental, cross-sectional, or multi-provincial/state authorities pose challenges to the efficiency and effectiveness of food safety governance, not only in China, but other nations as well.⁴² In China, there have been a few organizational chang-

36. See Michael T. Roberts, *A Perspective on Emerging Law, Consumer Trust and Social Responsibility in China's Food Sector: The "Bleaching" Case Study*, 66 FOOD & DRUG L.J. 405, 405 (2011). "Trust" is one of the fundamental norms in the society in China, which has a Confucianism orientation in the country's long history, and has more recently been cited to frame general expectations of China's regulatory food system. See Michael T. Roberts, *A Perspective on Emerging Law, Consumer Trust and Social Responsibility in China's Food Sector: The "Bleaching" Case Study*, 66 FOOD & DRUG L.J. 405, 405 (2011).

37. See e.g. Chenglin Liu, *The Obstacles of Outsourcing Imported Food Safety to China*, 43 CORNELL INT'L L.J. 249 (2010); Benjamin van Rooij, *The Peoples Regulation, Citizen and Implementation of Law in China*, 25 COLUM. J. ASIAN L. 116 (2012); Ching-Fu Lin, *Global Food Safety: Exploring Key Elements for an International Regulatory Strategy*, 51(3) VA. J. INT'L L. 637 (2011).

38. See Ching-Fu Lin, *Taking China's Food Safety Problem Seriously*, Bill of Health (Oct. 11, 2013), <http://blogs.harvard.edu/billofhealth/2013/10/11/taking-chinas-food-safety-problem-seriously-ii/>.

39. See Yonghong Han, *A Legislative Reform for the Food Safety System of China: A Regulatory Paradigm Shift and Collaborative Governance*, 70 FOOD & DRUG L.J. 453 (2015).

40. See Roberts, *supra* note 36, at 408-11.

41. Peter Barton Hutt, *Food Law & Policy: An Essay*, 1 J. FOOD L. & POL'Y 1 (2005).

42. See e.g. Renée Johnson, *The Federal Food Safety System: A Primer*, Congressional Research Service, at 1 (Jan. 17, 2014), <http://www.fas.org/sgplers/misc/RS22600.pdf>. For example, the United States has a fragmented regulatory system on food safety, involving over a dozen government agencies at the federal level.

es made to tighten up overlapping or even conflicting regulatory competences in the past dozen years. In 2004, the State Council decided to improve the inefficient multi-agency regulatory system which resulted in responsibility avoidance.⁴³ The State Council designated five principal agencies at the central government level – the Administration for Industry and Commerce (SAIC), the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), the Ministry of Agriculture (MOA), the Ministry of Health (MOH), and the State Food and Drug Administration (SFDA) – to oversee different aspects of food safety regulation.⁴⁴ In 2010, the Food Safety Committee was created in response to further calls for stronger agency coordination,⁴⁵ serving as the coordinating body for national food safety law and policy. Nevertheless, the MOH is mandated by the 2009 Food Safety Law to take the lead,⁴⁶ though the system is comprised of multiple loosely coordinated agencies, regulating different sections of the food supply chain.⁴⁷ Including the five principal central agencies, there were some fourteen other agencies involved in all sorts of food safety regulatory activities.⁴⁸ Therefore, a further institutional change was made in 2013, which greatly consolidated the existing food safety agencies in China to the China Food and Drug Administration (CFDA) at the ministerial level.⁴⁹

While under the 2015 FSL, the CFDA is directed to provide a streamlined regulation of food and drug safety, the new law has not

43. State Council, Decision of the State Council about Further Strengthening Food Safety (Sept. 1, 2004), <http://www.lawinfochina.com/display.aspx?lib=law&id=3739&cgid=&EncodingName=big5>.

44. *Id.*

45. State Council, Notice of the State Council on Establishing the Food Safety Committee of the State Council (Feb. 10, 2010), <http://www.lawinfochina.com/display.aspx?lib=law&id=11452>.

46. M. Melinda Meador & Jie Ma, *The Food Safety Management System in China*, USDA FOREIGN AGRICULTURAL SERVICE, http://gain.fas.usda.gov/Recent%20GAIN%20Publications/The%20Food%20Safety%20Management%20System%20in%20Beijing_China%20-%20Peoples%20Republic%20of_4-26-2013.pdf.

47. See generally Neil Collins & Jörn-Carsten Gottwald, *The Chinese Model of the Regulatory State*, IN HANDBOOK ON THE POLITICS OF REGULATION (DAVID LEVI-FAUR ED., 2011).

48. Yongning Wu & Yan Chen, *Food Safety in China*, 67(6) JOURNAL OF EPIDEMIOLOGY & COMMUNITY HEALTH 478, 478-79 (2013).

49. State Council, Plan for the Institutional Restructuring of the State Council and Transformation on Functions (Mar 10, 2013), <http://www.lawinfochina.com/display.aspx?lib=law&id=13554&CGid=>.

fully addressed the issue of fragmentation.⁵⁰ The MOA and the CFDA, in some cases, oversee the same product simultaneously. For example, regulatory jurisdiction over agricultural products shifts back and forth along the farm-to-table continuum: the MOA is responsible for the safety of products on farm and the CFDA has authority over the safety of agricultural products at retail. Problems brought on by the shifting of authorities with different food safety and quality standards as well as the ambiguous boundaries of regulatory jurisdiction still remain to be solved. Such fragmentation may create blind areas and loopholes in routine control and thus frustrate timely response and cooperation in time of crisis.

Facing the various challenges posed by the complex global supply chain and regulatory fragmentation at different levels, practitioners and scholars in both China and the United States have assessed the case of the single agency approach to regulatory governance.⁵¹ Specifically, they have considered whether the approach truly promises a more effective and efficient institutional design and whether its implementation in China is feasible. Although a single food safety agency is a worthy goal, it may not be politically feasible in China. Instead, for the time being, tightening up regulatory fragmentation and reinforcing vertical and horizontal coordination may be a pragmatic alternative in China.

2. A Focus on Appropriate Risk Communication

As China has gradually adapted toward risk analysis as a central element in its food safety governance⁵² - as evidence by the 2015 FSL - a focus on effective risk communication via social media or other tools is a desirable move. In this vein, three critical issues need to be considered: first, the efficiency and effectiveness of various approach-

50. *Id.*

51. See e.g. Administrative Law, *Reforming the Food Safety System: What if Consolidation isn't Enough?*, 120 HARV. L. REV. 1345 (2007).

52. *Supra* at note 45. (Although governments have incorporated risk analysis in their food safety regulatory systems, there exist various nodes of divergence in terms of design and implementation. In China, the 2015 FSL highlights risk prevention, risk management, and risk communication. Nevertheless, the issues about what risk analysis really entails and how it should be constructed in practice have been debated for a long time. In particular, practitioners and scholars have deliberated on whether to learn from the European Union model of organizational separation and the precautionary principle, or the United States holistic approach and the emphasis on sound science.)

es to risk analysis in managing food safety issues and in restoring public trust; second, the possibility of adopting measures to promote joint responsibility between citizens and the government, and consumer food safety awareness and self-protection; and third, the role of social and mainstream media as well as its difference from the role of traditional media channels.

Like many of its foreign counterparts, the China food safety regulatory authority has been seeking more efficient and effective ways to manage different food safety risks. In China, the 2015 FSL adopted the risk analysis approach,⁵³ following the pattern set by many modern food safety regimes, such as those in the European Union and United States. As a general principle, a lately formed National Health and Family Planning Commission under the State Council is responsible for risk assessment, while the CFDA has the mandate to conduct risk management and risk communication.⁵⁴ However, as stipulated by the 2015 FSL, the CFDA “shall, together with other relevant departments under the State Council, carry out a comprehensive analysis of food safety based on the risk assessment results concerning food safety and supervision and administration of food safety.”⁵⁵ Accordingly, there seems to lack a clear division of labor among corresponding institutions and operational procedures to facilitate different stages of risk analysis (especially risk communication),⁵⁶ which poses challenges to meaningful implementation of the risk analysis approach. In order to respond to public criticisms and restore public trust after a series of food safety scandals in China, there is a legitimate need for establishing individual and well-organized risk analysis platforms. In this regard, the relevant international standards, recommendations, or guidance may serve as a useful blueprint for science-based and policy-based methodologies.⁵⁷

53. See *supra* note 23 at chap. 2.

54. See e.g. Han, *supra* note 39, at 461-63.

55. See *supra* note 23, at art. 22.

56. *Id.* (For example, more procedural rules and day-to-day operational practices have to be further drafted or refined in areas such as the transparency mechanism, independence of scientific experts, conflict of interest and codes of conduct, selection of experts, admission of scientific evidence, consideration of other legitimate factors, and procedures for comment and review.)

57. See e.g. Codex Alimentarius Commission (CAC), *Working Principles for Risk Analysis for Food Safety for Application by Governments*, CAC/GL 62-2007 (2007); WHO & Food and Agriculture Organization of the United Nations (FAO), *Food Safety Risk Analysis: A Guide for National Food Safety Authorities*, 7-8 (FAO Food and Nutrition Paper No. 87, 2006).

As the efficiency of risk analysis approach in managing food safety issues are contingent upon effective risk communication – a crucial element to restore public trust⁵⁸ – the China regulatory authority has to evaluate the possibility of adopting measures to promote joint responsibility between citizens and the government, and consumer food safety awareness and self-protection. Some scholars have suggested that China has started to incorporate other nongovernmental entities in order to facilitate “collaborative governance” in the field of food safety regulation.⁵⁹ For example, the 2015 FSL gives members of food industry associations and consumer organizations opportunities to participate in certain governance spheres.⁶⁰ It has been heatedly debated whether the government is the only supervisor over the food industry as well as the general allocation of responsibilities amongst stakeholders. To be sure, in order to fulfill its legal mandates, the government is, at a minimum, expected to facilitate the involvement of consumer groups in co-supervising the food industry. The government can promote joint responsibility with consumer groups by ensuring transparency in food safety risk analyses so that the public is well informed. Likewise, transparency can be enhanced by establishing educational programs to increase the basic understanding and awareness of food safety among consumers.

The emergence of new media, especially internet-based social media, such as WeChat and Weibo in China, has transformed the way people perceive food safety information. In fact, it has surpassed the government-run media in terms of gaining the attention of consumers. Although social media may sometimes be a hindrance to food safety regulation for weaknesses, such as lack of control on accurate information, low trust, and the risk of overloaded information,⁶¹ it has altered the way the general public perceives foodborne risks. As a result, it has also changed the way the government should conduct risk communication. Based on a sample of 1,360 adult Weibo users across China, researchers found that the use of Weibo greatly impacts one’s cognitive and behavioral responses to food safety concerns.⁶² Emo-

58. See Roberts, *supra* note 38, at 406-09, 410.

59. See *e.g.* Han, *supra* note 39, at 465-75.

60. See *supra* note 23, at arts. 23;28.

61. See Pieter Rutsaert et al., *Social Media as a Useful Tool in Food Risk and Benefit Communication? A Strategic Orientation Approach*, 46 *FOOD POLICY* 84, 87 (2014).

62. See Yi Mou & Carolyn A. Lin, *Communicating Food Safety via the Social Media: The Role of Knowledge and Emotions on Risk Perception and Prevention*,

tional response toward the food safety incidents was a stronger predictor of food safety risk prevention relative to food safety incident awareness. In 2012, 72% of Internet users searched online for food safety and health information.⁶³ More importantly, the technical features of user-generated content allow average people to have a say in public affairs.⁶⁴

Therefore, with billions of people having access to the Internet and a large and increasing percentage of citizens using Internet-based social media, risk communication should be more aligned with traditional outreach models. However, the roles of and differences between social and mainstream media certainly merit further research questions. For example – what is the role of social and mainstream media in recent food safety incidents, such as the gutter oil case?;⁶⁵ How does social media impact food safety risk communication?; How should government agencies at different levels review and evaluate risk assessment and management in light of public perception affected by social media? Given their limitless scope of information dissemination, it is certain that social and mainstream media play a critical and irreplaceable role for the government to address issues of consumer risk perception, food safety risk communication, and public trust in the world today.

3. Facilitating Social Governance and Responsibility

A vexing food safety problem (likely the most challenging one) in China is rampant food fraud, or economically motivated adulteration, undertaken by unethical companies. Given the underlying complexity of food fraud,⁶⁶ tackling the issue highlights the intertwined overlaps of different regulatory spheres, such as food safety law, consumer protection law, anti-trust law, criminal law, and constitutional

36(5) SCIENCE COMMUNICATION 593, 593 (2014).

63. See Susannah Fox & Maeve Duggan, *Health Online 2013*, Pew Research Center (Jan. 15, 2013), http://www.pewinternet.org/files/old-media/Files/Reports/PIP_HealthOnline.pdf.

64. See Yi Mou, *Social Media and Risk Communication: The Role of Social Networking Sites in Food-Safety Communication*, <http://digitalcommons.uconn.edu/dissertations/AAI3529448>.

65. See China Probes “Gutter Oil in Medicine” Claims, BBC NEWS (Sept. 3, 2012); 32 Held in “Gutter Oil” Crackdown, CHINA DAILY (Sept. 14, 2011). In 2012, the Chinese police detained 32 suspects who allegedly produced “gutter oil” and sold it to various restaurants. More than 100 tons of such gutter oil was seized after the exposure of a criminal network spanning 14 provinces in China.

66. See MICHAEL T. ROBERTS, *FOOD LAW IN THE UNITED STATES* 82-83 (2016).

law. In the 2015 FSL, China embraced the strictest food safety law ever instituted in the country.⁶⁷ However, while China food law and regulation have yet to locate the optimal approach to rigorous enforcement, effective implementation, and efficient coordination at various levels of governments, other emerging activities, such as class action litigation or consumer advocacy, are also in place as gap fillers (especially in cases of economically motivated violations). As the recent regulatory reforms have yet to prove the ability to abate the reoccurrence of food fraud and other problems with safety and quality, China has begun emphasizing the role of social responsibility and ethics in the making of food products.⁶⁸ There is certainly a need for greater understanding and undertaking of corporate social responsibility (CSR), which is a governance tool that encompasses legal, policy and ethical dimensions,⁶⁹ by all members of the long-term food industry.

CSR generally embodies the principle that corporate purposes are not and should not be solely about pursuing profits, but also about involving in the provision of various social benefits for the broader public.⁷⁰ There is no settled definition of CSR, yet researchers have pointed out that CSR has three basic dimensions—human responsibility, product responsibility, and environmental responsibility.⁷¹ More specifically, CSR suggests that businesses should do more than their legal obligations under food safety laws and regulations, and that businesses should take into account the interests of, not only share-

67. Andrew Sim and Yilan Yang, *China: An Overview of the New Food Safety Law*, FOOD SAFETY MAGAZINE, Apr. 2016.

68. See Roberts, *supra* note 38, at 409-09.

69. See *id.* CSR is a socially constructed, multi-dimensional concept as well as a policy tool, making a comprehensive understanding of CSR in different national contexts a challenging task.

70. See Rosita Dellios, Xiaohua Yang, Nadir Kemal Yilmaz, *Food Safety and the Role of the Government: Implications for CSR Policies in China*, 1 SCIRES iBUSINESS 75, 76 (2009).

71. See Johan Anselmsson & Ulf Johansson, *Corporate Social Responsibility and the Positioning of Grocery Brands: An Exploratory Study of Retailer and Manufacturer Brands at Point of Purchase*, 35 INT'L J. RETAIL & DIST. MGMT. 835, 849 (2007). Among the three CSR dimensions, human responsibility is often as indispensable since it is able to make an institutional and fundamental impact. A business with adequate human responsibility would procure from suppliers who follow good agricultural practices and provide fair working conditions to their own employees. Furthermore, a business with adequate human responsibility would endeavor to create an organizational culture for good human behavior in food safety.

holders, but also other stakeholders.⁷² In practice, CSR asks companies to upgrade their regulatory compliance and ethics as well as generate social benefits. To be sure, Chinese companies have not been the standard-setter in CSR. However, driven by institutional factors coming from the government, industry, community, media, and civil society, “they are implementing and following best practices, some of which Western companies have been using for some time.”⁷³ In the Chinese context, as pointed out by a recent study on the role of CSR in the Chinese food system, “food safety has to be bound with CSR and the government has a critical role to play by developing comprehensive strategies to make corporations in food industry behave in a socially responsible way.”⁷⁴

Nevertheless, how Chinese companies can and should take responsibility for ensuring safer and healthier food begs several questions, both theoretical and practical. What is the connection between the legal responsibility and CSR in China and even other jurisdictions? Are they simply supplementary, or is one the prerequisite for the success of the other? How should government authorities ask food companies to fulfill their social responsibility in concrete terms?

Article 5 of the 2013 Chinese Company Law requires companies to, not only comply with laws and regulations, but also “observe social morality and business ethics, act in good faith, . . . and bear social responsibilities” in the course of conducting business activities.⁷⁵ In addition, according to Article 4 of the 2015 FSL, “food producers and traders shall engage in production and trade in accordance with laws, regulations, and food safety standards, ensure food safety, have integrity and self-discipline, take responsibility to the society and the public, accept supervision from the society, and assume social responsibilities.”⁷⁶ Hence, CSR is arguably an integral part of legal responsibility in China, apart from its long history and tradition of Confucianism that is against business profit-making.⁷⁷ The recent scandals of sub-

72. See Andreas Georg Scherer & Guido Palazzo, *Globalization and Corporate Social Responsibility*, in OXFORD HANDBOOK OF CORPORATE SOCIAL RESPONSIBILITY (Andrew Crane et al. eds., 2008).

73. Joseph Sarkis et al., *Winds of Change: Corporate Social Responsibility in China*, IVEY BUS. J. (2011), <http://iveybusinessjournal.com/publication/winds-of-change-corporate-social-responsibility-in-china/>.

74. Dellios, Yang & Yilmaz, *supra* note 72, at 82.

75. [Company Law of the People’s Republic of China] (promulgated by Standing Committee 2013), art. 5, 2013.

76. FSL, *supra* note 7, at art. 4.

77. Li-Wen Lin, *Corporate Social Responsibility in China: Windows Dressing*

standard and contaminated food products in China have pointed to the fact that some companies are unethical and irresponsible about making money at the expense of human health. Paradoxically, such prevalent perception of “corporate irresponsibility” of many China food companies may be a key driver for CSR development in China.⁷⁸

The development and realization of CSR may arguably be facilitated by way of shared responsibility across the public-private divide. Due to the emergence of and growing attention to the idea of “social governance” in China, the government, industry, and consumers together bear shared responsibility for ensuring food safety. Social governance, or shared responsibility in food safety regulation, relies on the positive effects of rigorous collaboration between the government, industry associations, and other actors at different levels. The 2015 FSL also indicates a new orientation toward social governance, based on the understanding that “[s]ociety-based implementation of regulation may . . . be . . . the medicine to cure China’s regulatory failures.”⁷⁹ Indeed, cultural and developmental indicators imply that social consciousness and ethics could progressively take root in the Chinese business, including food companies.⁸⁰ Yet, given the massive scope and remarkable complexity of China’s food industry, it may be challenging to integrate various actors at different stages along the food supply chain as to generate a common understanding of and commitment to social governance of food safety. For example, the China National Food Industry Association (CNFIA) plays a crucial role, not only in promoting and ensuring self-discipline of the private sector, but also in cooperating with the CFDA and other local authorities. Due to the limited administrative resources, the balance between efficiency and accountability poses additional challenges in cases of public-private interactions.

4. Nurturing a Food Safety Culture from Bottom up

In order to address the recent food safety challenges in China, constructing and maintaining a food safety culture among various actors engaged in the food supply chain—farmers, companies, industry associations, and government agencies – is also imperative.⁸¹ A food

or *Structural Change?*, 28 BERKELEY J. INT’L. L. 64, 65-68 (2010).

78. Roberts, *supra* note 36, at 406-07.

79. Van Rooij, *supra* note 37, at 142; *see also* Han, *supra* note 39, at 471.

80. Roberts, *supra* note 36, at 410.

81. Frank Yiannas Food Safety Culture: Creating A Behavior-Based Food

safety culture is greatly different from a food safety program.⁸² A food safety culture can be viewed as how and what individuals in an organization perceive food safety issues, rather than what they are required to follow within that organization.⁸³ In the private sector, there is a clear connection between a company's organizational culture and the level of food safety insurance it delivers.⁸⁴ The company's organizational culture will influence how its employees think about food safety, their attitudes toward food safety, their willingness to openly discuss food safety concerns and differing views, and the priority they place on such safety concerns.⁸⁵

Building a food safety culture in China is no easy task, considering all the intractable circumstances. For instance, the history of poverty in contemporary China and strict spending patterns, together with the pressure from export markets for low costs etc., have incentivized food companies to substitute cheaper and substandard materials for regular and standard ones.⁸⁶ Such imbedded irresponsibility in the food system makes it difficult to build a trustworthy culture of regulatory compliance.⁸⁷

Considering China's unique local context, such as a decentralized market structure and different levels of development across regions, Behavior Change Theory is of great importance.⁸⁸ However,

Safety Management System 11-19 (Michael P. Doyle eds. 2009), http://ssu.ac.ir/cms/fileadmin/user_upload/Daneshkadaha/dbehdasht/behdasht_imani/book/Food_Safety_Culture.pdf

82. *Id.* at 14.

83. *Id.* at 12-13.

84. *Id.* at 9.

85. *Id.* at 13.

86. Michael T. Roberts, *A Perspective on Emergin Law, Consumer Trust and Social Responsibility in China's Food Sector: The "Bleaching" Case Study*, 66 *FOOD & DRUG L.J.* 405, 406 (2011).

87. *Id.*

88. See Generally B. F. Skinner, *SCIENCE AND HUMAN BEHAVIOR* (1953), https://books.google.com/books?id=Pjjknd1HREIC&pg=PR3&source=gbs_selected_pages&cad=2#v=onepage&q&f=false; Alfred L. McAllister, *How Individuals, Environments, and Health Behavior Interact: Social Cognitive Theory*, in *HEALTH BEHAVIOR AND HEALTH EDUCATION: THEORY, RESEARCH, AND PRACTICE* 169 (Karen Glanz et al. 4d eds. 2008); Victorial L. Champion & Clette Sugg Skinner, *The Health Belief Model*, in *HEALTH BEHAVIOR AND EDUCATION* 45; Daniel E. Montano & Danuta Kasprzyk, *Theory of Reasoned Action, Theory of Planned Behavior, and the Integrated Behavioral Model*, in *HEALTH BEHAVIOR AND EDUCATION* 67; Jim Prochaska & Carlo DiClemente, *Toward a Comprehensive Model of Change*, in *TREATING ADDITIVE BEHAVIORS: PROCESS OF CHANGE 3* (William R. Miller & Nick Heather eds., 1986); and ALAN R. ANDREASEN, *MARKETING SOCIAL CHANGE: CHANGING BEHAVIOR TO PROMOTE*

changing behaviors, especially those pertinent to health and food safety, can be quite difficult. There are four major differences between traditional food safety management and behavior-based food safety governance. First, traditional food safety management emphasizes processes, while behavior-based food safety governance places emphasis on people.⁸⁹ Second, traditional food safety management has an overly simplistic view of behavior change while behavior-based food safety governance appreciates the complexity of behavior change.⁹⁰ Third, traditional food safety management is premised on linear case-and-effect thinking, whereas behavior-based food safety governance is premised on system thinking.⁹¹ Lastly, traditional food safety management focuses on establishing a food safety program, while behavior-based food safety governance focuses on creating a food safety culture.⁹²

It should be noted that nurturing a food safety culture across the country and facilitating behavioral change in all the actors from farm to table (with special and tailored assistance to local vendors and small-scale companies) would be a promising first step. Also, building a food safety culture with real behavioral change will depend upon the progress of “the maturation of a social consciousness by food enterprises in China,” which seems to be “inexorably linked to the level of consumer demand for safe and quality food.”⁹³ Moreover, constructing a food safety culture also has important implications for the government, especially when some officials are complicit with the food industry as it concerns food safety scandals.⁹⁴ In the long term, a regulatory approach that is focused on facilitating a food safety culture as well as behavior-based food safety management⁹⁵ (not only behavior-

HEALTH, SOCIAL DEVELOPMENT, AND THE ENVIRONMENT (1995).

89. Yiannas, *supra* note 83, at 79.

90. *Id.* at 79-80.

91. *Id.*

92. *Id.*

93. Roberts, *supra* note 38, at 406.

94. See generally Tom Levitt, China's Top-Down Food Safety System is Failing, *China Dialogue* (Sept. 24, 2013), <https://www.chinadialogue.net/article/show/single/en/6369-China-s-top-down-food-safety-system-is-failing>.

95. YIANNAS, *supra* note 81, at 21-39. A behavior-based food safety management system is an approach based on the scientific knowledge of three principal disciplines—human behavior, organizational culture, and food safety. To be sure, hundreds of thousands of employees in numerous companies have received food safety training, but foodborne hazards in the food industry have not been reduced considerably. It is therefore important to note and realize that training

based food safety management in the food company, but also behavior-based governance tools in the regulatory regime) can be viewed as a long-term, fundamental solution to the increasingly complex food safety problem.⁹⁶

Assisting Farmers at the Primary Level

Because of the transformed patterns of food production, distribution, and consumption, “the technical intricacies in the making and handling of food raise safety risks at each segment of supply chain, including the production, manufacturing, processing, packaging, marketing, distribution, and consumption of food.”⁹⁷ Such an extended and complicated supply chain has necessitated “legal tools employed from the farm to the fork to safeguard food at each of the critical points” therein.⁹⁸ Among these critical points, managing upstream risks is considered to be much more important (and relatively easier) than others.⁹⁹ Therefore, the regulation of food safety at the farm level is indispensable.

China is certainly on the way to developing an effective and efficient infrastructure that can better ensure product safety after a series of food safety scares,¹⁰⁰ such as the adulterated pickled vegetables case in 2004, the pesticide residue on vegetables case in 2006, and the contaminated ginger case in 2011. To cope with the challenge, food safety regulations in China have recently focused on establishing and implementing standards related to agricultural product safety. According to Article 2 of 2015 FSL, “the quality and safety management

per se does not change behavior. Changing people’s behaviors goes hand in hand with building a food safety culture—that is, they are mutually reinforcing elements.

96. Yiannas, *supra* note 83, at 34-35. Nevertheless, it should be noted that how and how far the approach to food safety culture and behavioral change can go is contingent upon China’s position in the global context of historical and regulatory settings, which certainly poses unique challenges. Issues as such are beyond the purview of this Article, and certainly merit further in-depth studies.

97. ROBERTS, *supra* note 66, at 3-4.

98. *Id.*

99. *The Food Production Chain – How Food Gets Contaminated*, Centers for Disease Control and Prevention, CDC, <http://www.cdc.gov/foodsafety/outbreaks/investigating-outbreaks/production-chain.html>. Since contamination is likely to occur at an early stage along the entire production chain, such as during growing, harvesting, manufacturing, processing, packing, holding, or transportation, how to prevent such contamination from happening is considered to be key for the setting and implementation of the farm level food safety rules.

100. See FDA, *China Offices Focus on Product Safety*, <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm284461.htm>.

of edible primary products sourced from agriculture shall be governed by the Agricultural Product Quality Safety Law," which is the primary source of law with regard to food safety regulation at the farm level.

The MOA is the central-level agency charged with promoting food safety at the farm level. The MOA, in consultation with other relevant departments, shall bear "the responsibility to organize the implementation of agricultural product quality safety standards."¹⁰¹ Food safety and quality standards as such include *intern alia* pollution-free food standards (proposed by the National Agricultural Technical Extension and Service Center, NATESC), green food standards (proposed by the China Green Food Development Center, CGFDC), and organic food standards (proposed by the China Organic Food Certification Center, COFCC).¹⁰² In addition, the law requires a producer of agricultural products to "reasonably use the agricultural input products, strictly implement the provisions on safe intervals or withdrawal period for using agricultural input products, so as to prevent the agricultural input products from endangering the agricultural product quality safety"¹⁰³ pursuant to the laws, regulations, and other relevant provisions of the MOA.

The government's inspection and monitoring system has been a significant part of food safety regulation in China.¹⁰⁴ However, the inspection and monitoring system operates primarily by sampling and testing end-products, and is therefore limited in terms of food safety regulation. In addition to inspection and monitoring, it also seems crucial to establish and standardize a set of production practices to be followed by farmers, since incidents such as the abuse of pesticides have been quite common at the farm level.

Last but not least, working with local farmers at the primary level is not only a social and distributional justice issue, but also a necessary condition for regulatory success. China intends to develop an effective and efficient infrastructure that can better ensure produce safety after a series of food safety scares. Moreover, due to the changes in consumer habits and preferences, eating fresh produce raw

101. Agricultural Product Safety Law of the People's Republic of China (promulgated by the Standing Comm. People's Cong. Beijing Municipality, Apr. 29, 2006, effective Nov. 1, 2006), Art. 14, CLI.1.76285(EN)(Lawiinfochina).

102. JIEHONG ZHOU AND SHAOSHENG JIN, FOOD SAFETY MANAGEMENT IN CHINA: A PERSPECTIVE FROM FOOD QUALITY CONTROL SYSTEM 50 (2013).

103. Agricultural Product Safety Law of the People's Republic of China, *supra* note 13, at art. 25.

104. ZHOU AND JIN, *supra* note 104, at 50.

(especially salad, as opposed to eating fully cooked dishes) has grown popular, posing a new challenge to the regulatory authorities. The more people that realize fresh produce safety standards play an important role in protecting consumer safety and health, the more they will call for stricter standards. Therefore, to cope with various challenges to farm level safety, China has more recently emphasized the establishment and implementation of standards related to agricultural practice and produce safety and quality.

Nevertheless, it seems difficult to locate the optimal corresponding measures for small-scale farmers in establishing and standardizing production practices at the local level where enormously diverse cultural, geographical, and climatic conditions are commonplace. Given China's vast territory and diversity, it remains challenging to establish and standardize production practices in "a sector composed of 200 million farm households who typically have 1-2 acres of land divided into 4-6 noncontiguous plots."¹⁰⁵ The reasons may be twofold: first, the compliance costs incurred by the implementation of such standards are high and far from affordable for most small-scale farmers;¹⁰⁶ and second, despite the importance of standardization, its key points are not readily understandable for the majority of the Chinese farmers, since many of them are not adequately educated.¹⁰⁷ It is therefore desirable that the government and non-governmental organizations have joint responsibility for promoting farm-level safety despite the traditional food law-agricultural law divide,¹⁰⁸ with financial and technical support, as well as educational programs.

III. CONCLUSION

Food safety governance in China is more than a law and policy task, for it inherently holds significant economic, political, cultural, and social implications. With the enactment of the 2015 FSL (after a series of reforms in the past decade), China seems politically charged

105. *Id.*

106. *Id.*

107. *Id.*

108. Stephanie Tai, *Food Systems Law from Farm to Fork and Beyond*, 45(1) SETON HALL L. REV. 109, 110 (2015). This applies not only to China but also the United States. In the United States, for example, food law has traditionally been regarded as a field of law on the making and marketing of final food products, and agricultural law has been seen as a field of law on farmers, agri-businesses, and food processors.

to develop and reinforce various regulatory tools – comprehensive risk analysis, tightened government network, and stringent sanctions and penalties, to name a few. While there are areas of law and regulation that need to be further addressed, such as vigorous enforcement, effective implementation, and efficient coordination at various levels of governments, this Article calls for more attention to areas that go beyond law and regulation – social governance, consumer trust, and behavior change.

This Article provides an update on the recent development of China's food safety governance in light of the 2015 FSL, and identifies five specific aspects of crucial importance, from effective coordination among government agencies, social governance, culture, and responsibility, to providing assistance to local farmers. With such a preliminary mapping, this Article concludes by recommending five research directions worthy of future scholarly discussion on food safety governance in China.

First, harmonization of risk analysis implementation in China – The 2015 FSL incorporates the fundamental elements of risk analysis in line with the general regulatory philosophy of risk prevention. Nevertheless, the issues about what risk analysis really entails and how it is constructed in practice have been debated for a long time. As China's food safety regulatory authority is seeking more efficient and effective ways to manage different food safety risks, the lack of corresponding institutions and harmonized procedures to implement risk analysis poses a crucial challenge. Therefore, more has to be explored by scholars and policymakers in order to build up a well-organized risk analysis platform to facilitate harmonization in implementation as well as to restore public trust in the long run.

Second, legal responsibility and CSR – The recent scandals of substandard and contaminated food products in China have their roots partly in the serious lack of CSR in the food industry. Governance issues as such merit further studies, especially in the Chinese context. The 2015 FSL stipulates that food producers and traders shall assume social responsibilities, but it stops short of more nuanced questions regarding the connection between CSR and legal responsibility in China, both in theory and in practice.¹⁰⁹ This Article therefore recom-

109. Jennifer Clever & Ma Jie, China Published Food Safety Law (Second Draft for Public Comments), USDA Foreign Agricultural Service, <http://gain.fas.usda.gov/Recent%20GAIN%20Publications/China's%20Food%20Safe->

mends that scholars and policymakers look into potential institutional designs with which government authorities can nudge food companies to fulfill their CRS in concrete terms.¹¹⁰

Third, alignment of regulatory bodies' food safety jurisdictions – Problems brought on by the abovementioned shifting of authorities with different food safety and quality standards as well as the ambiguous boundaries of regulatory jurisdiction still remain to be solved. The fragmentation problem with China's regulatory framework, however, cannot be easily solved. Although a single food safety agency is a worthy goal, it may not be politically feasible in China for the time being. The challenges then arise in locating the optimal level of consolidation and alignment of regulatory bodies at both the central and local levels. Facing the various challenges posed by the complex global supply chain, further studies are recommended to seek pragmatic approaches to tightening up regulatory fragmentation and reinforcing coordination.

Fourth, relevance of the Behavior Change Theory – Considering China's unique context, such as a decentralized market structure and different levels of development across regions, the Behavior Change Theory is of great importance in promoting food safety governance. Regarding the possible roles this theory can play in China, scholars and policymakers are suggested to evaluate both behavior-based regulatory tools that can be selected and implemented by government agencies at different levels, along with behavior-based management techniques that can be adopted by different types of producers in the private sector. Some preliminary research focuses may include surveying various actors along the entire food supply chain, mapping their divergent characteristics (*e.g.* size, nature, role in the supply chain, institutional capacity, etc.), and identifying ways to facilitate behavioral change (albeit gradually) in all the actors from farm to table.

Last but not least, in addition to legislating legal mechanisms to facilitate food safety, implementing a food safety culture is imperative in order to address the food safety challenges in China in a comprehensive manner. Yet, constructing and maintaining a food safety culture among various actors engaged in the food supply chain (farmers,

ty%20Law%20(Second%20Draft%20for%20Public%20Comments)_Beijing_China%20-%20Peoples%20Republic%20of_1-9-2015.pdf.

companies, industry associations, and government agencies, etc.) calls for effective and efficient legal mechanisms. A food safety culture requires a long-term legal and social process of nurturing and internalizing core principles in various actors along the supply chain. Further studies on how to increase awareness of food safety practices, what elements to be included in the legal mechanisms to facilitate a food safety culture, and how to institutionalize collaboration between the government and industry associations are recommended.

