

The evolution of China's food control system and its implications for a future EU-China food trade relationship

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1.- Introductory remarks

With increase of the globalized market, the supply chain transcends international borders.

Consumers benefit from worldwide trade through lower prices, year-round supplies and a greater quality and variety of food. At the same time, however, globalization of the food supply could introduce new food safety risks, revive previously controlled risks and spread contaminated food wider.

Food safety hazards are one of the fundamental risks to public health that have grown into a top concern in both domestic and global food markets. In response, governments have recognized a responsibility to establish an effective domestic food control system that ensures food safety "from farm to table". The development of relevant and enforceable food laws and regulations is an essential component of a modern food control system.

National food legislations have evolved spontaneously and independently over the last forty years, reflecting a blend of scientific, societal, political and economic forces and the inevitable effect of creating quite different sets of standards.

The different perception of the food safety risks among the countries and different food safety standards by individual nations have had the effect of

becoming "technical barriers to trade" for both importing and exporting countries, leading a persistent trade frictions and even reducing food trade.

The creation of the World Trade Organisation (WTO) and the adoption of the Agreement on Sanitary and Phytosanitary (SPS) measures have provided an opportunity to enhance trade based on the agreed standards of the *Codex Alimentarius*¹. More precisely, member countries are encouraged to use international standards, guidelines, recommendations and measures which result in higher standards if there is a scientific justification.

Although these standards might appear to present a rationale framework for the improvement of international food trade, in practise they may be difficult to apply². Notably, there are many new or fast developing food safety risks, like the "dioxin" and "BSE" and "GMO" crisis, for which the level of scientific understanding is insufficient to undertake a rigorous risk analysis.

On a parallel perspective, some multinational companies, that desire to exceed the regulatory requirements for food safety, have made efforts on setting Hazard Analysis Critical Control Point (HACCP) based standards for certifying company's food management system³. It is evident that development of private standards by large international companies with specific audit requirements generates further heterogeneity in international food trade. This demonstrates the need of establishing clearly defined and harmonized standards and procedures, which, respecting international trade, allow the national authorities to identify the most effective measures to prevent, reduce or eliminate a risk for human health and to manage food crises efficiently. In this risk society, responding to various domestic public health issues⁴ and the additional challenges

(¹) The *Codex Alimentarius* recognises that "governments have the right to adopt regulations to protect human [...] health – including food safety regulations [...] – and to establish the levels of protection from risk they deem appropriate". See *WTO Sanitary and Phytosanitary Agreement*, "Provisions, Basic rights and Obligations", Introductory part, 1995.

(²) See S. Henson - J. Caswell, *Food safety regulation: an overview of contemporary issues*, *Food Policy*, 1999, 24 (6): 589-603.

(³) J. Lu – R. Gilmore, *Regimes: A patchwork of surveillance and enforcement mechanisms*, *The China path to global food safety*, August 2011, online at www.globalsafefood.org.

(⁴) The most known example is the 2008 milk scandal, where an estimated 300,000 infants were fed milk contaminated with melamine (MOH, (2008), *Ministry of Health announcement on 'Sanlu' formula*, 2 December 2012). Apart from this incident, others have included the finding of pesticides in jam; the production of pork with paraffin and industrial salts camouflaged for beef; the use of oil derived from slaughterhouse fats or similar residues from the sewers of gastronomy and street vendors. In this respect see, L. Wu – Y. Zhong – L. Shan – W. Qin, *Public risk perception of food additives and food scares. The case in Suzhou, China*, *Appetite*, 2013, 2, 70.

posed by a gradual expansion of its economy in international markets, China has implemented new food safety laws to improve its food safety control system and reduce national and international concerns.

This review process has pushed many countries, among them the Europe, to intensify trade relations with China with the aim of ensure important economic benefits to its business operators.

We must not forget that, over the years, Europe and China have already signed sectoral agreements, such as the Customs Cooperation Agreement, which provides for reinforced EU-China cooperation on Intellectual Property Rights (IPR) controls and supply chain security.

However, many trade barriers relating to safety issues, standardization and traceability (including fraud) in agri-food products persist and hamper trade predictability. In addition, there is a need to contribute to the prevention of major food safety crisis throughout the whole food chain, to meet consumer expectations for international standards.

Starting from these premises, the main objective of this paper is to explore the China's food control system as a case study to examine the Chinese way of combating food safety risks. The European experience will be used as a comparison to check the possibility of a future and effective EU-China food safety trade relationships.

2.- China food safety legal and regulatory system: a framework in transition

As already pointed out, the last few years have seen a series of food safety incidents reported in the Chinese and international media, raising consumers' concerns both domestically and abroad.

Spurred by a widely publicized recall of food in the US⁵ and EU⁶, China has implemented, during the years, its food safety laws and management systems to improve its national food safety control system, in accordance with international standards. Notably, the Chinese legislator has drawn inspiration from the European Rapid Alert System, adopting from the outset a very broad interpretation of the concept of food security, referring to all phases of production, processing and distribution of food-stuffs.

However, until 2009, the notion of "food safety" was not prevalent in China. Before the promulgation of 2009 Food Safety Law (FSL)⁷, indeed, China had three national food standard systems, each based on different national laws and with different responsible ministries. In addition to the Food Hygiene Standards promulgated by the Ministry of Health based on the Food Hygiene Law (FHL)⁸ issued in 1995, there also were Food Quality Standards promulgated by AQSIQ based on the Product Quality Law⁹, as well as the Agricultural Products Quality and Safety Standards promulgated by the Ministry of Agriculture based on the Agricultural Product Quality Safety Law¹⁰. All three sets were national standards and all were mandatory with hygiene indicators (e.g., total bacteria count) and safety indicators (e.g., limit for lead). However, these three sets of standards did not converge and in some cases, they contradicted each other. The biggest problem was the boundary between hygiene standards and quality standards was unclear.

This put the Chinese food business in a very difficult situation.

A new era of food safety regulation was introduced by subsequent Food Safety Law ("FSL 2009"), the first "Food Safety Law" in China's regulatory history in the real sense¹¹, that regulated, as the first, food

(⁵) See the following link: http://www.accessdata.fda.gov/cms_ia/default.html. In 2007, dogs and cats in the United States began dying because of the use of adulterated ingredients imported from China. In this respect see, D. Thompson - H. Ying, *Food safety in China: new strategies*, *Global Health Governance*, 2007, 2, 1-19.

(⁶) See the following link: <http://webgate.ec.europa.eu/faff-window/portal/?event=SearchForm&cleanSearch=1#>.

(⁷) For Food Safety Law see the following link: <http://apps.fas.usda.gov/gainfiles/200903/146327461.pdf>.

(⁸) For Food Hygiene Law see the following link: http://www.gov.cn/banshi/2005-08/01/content_18960.htm.

(⁹) For Product Quality Law see the following link: http://www.aqsiq.gov.cn/xxgk_13386/jgfl/zfdcs/zcfg/201210/t20121017_265702.htm.

(¹⁰) For Agricultural Products Quality and Safety Law see the following link: http://www.gov.cn/flfg/2006-04/30/content_271633.htm.

(¹¹) J. H. Liu, *The six major bright spot of Food Safety Law*, *Cina.Com*, 5 April 2009, online at http://news.022china.com/2009/04-05/57452_0.html Accessed 26.09.12.

safety instead of “food hygiene” and established a risk analysis system centred on precaution¹².

Even though the FSL have made lots of improvements, several shortcomings remained above all in the structure of food safety management. It has been noted¹³, for example, that FSL has reduced the numbers of relevant governments and has specified the responsibility for each government, but it didn't abandon the old segmented supervision system.

Moreover, FSL didn't define the responsibilities of competent authorities for each step of the food chain, so within the them there have been subdivisions which have had some gaps.

Since 2013, China has been undergoing massive legal reform. Following this trend the legislature promulgated the FSL 2015 on October 1, 2015 that is claimed to be the strictest food safety law in Chinese history.

The FSL 2015 marked a transition from a demonstrative preventive food safety management regime to a more effective precautionary regime¹⁴, adding the precautionary principle as one of its overall principles and specific provisions in order to carry out it¹⁵.

The amended law places more emphasis on the supervision and control of every step of food production, distribution, sale and recall, resolving to unify existing standards and address missing ones. More specifically, it has been harmonizing and consolidating nearly 5,000 existing food standards¹⁶.

Further, in creating a considerable number of new standards, two areas have received sustained attention: items in the general standards category and products implicated in known food safety incidents or with potential risks for high consumption

within the product standard category¹⁷. Notably, compliance with national standards now unequivocally extends to imported products.

Pursuant to Articles 92 and 93 of the amended Food Safety Law, imported food and food additives, and food-related products must comply with China's national food safety standards.

In the case of importing food for which national food safety standards are not available, overseas exporters, overseas producing enterprises or their entrusted importers submit their implemented national (regional) standards or international standards to the health administration under the State Council. The health administration, under the State Council, reviews relevant standards and decides whether to temporarily apply such standards if they comply with the requirements for food safety.

Increased inspection is another prominent feature of the legal reform. Routine and unannounced food supervision and inspection has been intensified by central government.

In line with the emphasis on industry self-regulation, the amended Food Safety Law requires regular self-inspection for food producers, distributors and wholesale market operators.

Additionally, governmental agencies are obliged to redouble their efforts in inspection through random and regular inspections.

With reference to imported food and food additives, the new law states that they shall be inspected by entry-exit inspection and quarantine administrations in accordance with relevant laws and administrative regulations and shall be accompanied with a quality certificate as required by state entry-exit inspection and quarantine administration. Notably, food impor-

(¹²) F. Tan, *On the Precautionary Principle in Food Safety Law*, *Hebei Law Science*, 6, 2010, 147–150; F. Kong, *On the Application of the Precautionary Principle in Food Safety Law*, *Contemporary Law Review*, 4, 2011, 27–33.

(¹³) Y. Li – S. Song – J. R. Wang – M. Tong, *The Food Safety Law of the People's Republic of China: Guideline of paraphrase and application*, 1st ed., Beijing, China Market Press, 2009; C. Jia – D. Jukes, *The national food safety control system of China. A systematic review*, *Food control*, 32, 2013, 236–245.

(¹⁴) Lu Yi, *Critical thinking about the precautionary principle in China's food safety law*[j], *Front. Law China*, 2016, 11(4), 692–717.

(¹⁵) Article 3 of FSL 2015 states that: “The work in connection with food safety shall follow the principles of prevention first, risk management, whole-process control, and joint public oversight and a scientific and strict supervision and administration system shall be established”.

(¹⁶) So far, more than 1,000 new national food safety standards have been published. For more, see the following link: http://www.gov.cn/zhengce/content/2017-02/21/content_5169755.htm.

(¹⁷) K. Kuhlmann – M. Wang – Y. Zhou, *China Food Safety Legal and Regulatory Assessment*, online at <https://www.syngentafoundation.org/food-safety-china>, March 2017.

ters are issued an Inspection and Quarantine Certificate for Entry Commodity once their product pass the inspection and quarantine procedures at port.

When imported food is found to be not compliant with applicable standards, the importers must stop the import and recall the product¹⁸.

Like in other issue areas, however, the challenge is not in setting laws but in implementing them.

So, after two versions of the Draft Implementing Regulation of new Food Safety Law on December 2015 and on October 2016, recently (August 2017) CFDA issued G/SPS/N/CHN/1055 Notification about revising the Regulations on the Implementation of the Food Safety Law of the People's Republic of China (Revised Draft). It is the third version submitted for WTO Notification and the final date for comments is October 13, 2017¹⁹.

Compared to the previous draft announced in December 2015, the revised Draft Regulation has streamlined the regulation from 200 to 98 articles.

Food labelling and imported food are among the most significantly changed areas.

Notably, the new Draft Regulation no longer contains labelling requirements such as the prohibition of sticker use on imported food products and that all pre-packaged foods must be directly printed with a Chinese label before being imported into China.

According to the previous Draft, imported foods will be managed and controlled based on a number of factors such as food safety risk, enterprise safety control capacity and food safety conditions in the exporting countries (regions). Specifically, foods of higher risk are subject to more comprehensive inspection at ports.

Although this language no longer exists in the current Draft, the same spirit of risk management endures. Specifically, China's General Administration of Quality Supervision, Inspection and Quarantine (referred to as "AQSIQ") is authorized to promulga-

te inventories of imported foods for designated ports. However, the regulatory importance of these inventories remains unclear to the public.

It is important to note, however, that in June 2017, AQSIQ notified WTO for comments the Administrative Measures on General Certification of Imported Food (hereinafter "Administrative Measures"). Under the Administrative Measures, all imported foods shall be accompanied with a certificate issued by authorized agencies or designated organizations in the exporting country.

The certification is designed to prove that all imported foods are produced, processed, stored, transported and exported under appropriate supervision and suitable for human consumption.

The Draft Regulation echoes the new AQSIQ certification requirements in Article 49, which states that food importers shall report and attach qualified certification materials to the entry-exit inspection and quarantine authorities.

AQSIQ's new Administrative Measures have caused a great stir in the food industry because it places a new burden on every imported food, regardless of risk category.

So, following complaints by the United States, Europe and other trading partners that they would disrupt billions of dollars in trade, China has delayed enforcing sweeping new controls on food imports. Notably, the Administration for Quality Supervision, Inspection and Quarantine of China has decided to grant a transitional period of two years (until October 2019), without specifying what will happen during the transitional period²⁰.

3.- Chinese food control management: an even too complex system

If the precondition to control food safety is a sound legal system, food control management is the next

⁽¹⁸⁾ D. Ettinger – Y. Chen – Y. Dai – W. Feng – E. Gu – C. Hu – J. Li, *China's food safety system in the year of the rooster*, online at <https://www.Law360.com>, March 2017.

⁽¹⁹⁾ *CFDA Submits to WTO the Third Revised Draft Regulation on the Implementation of the Food Safety Law*, *The national law review*, 22 September 2017, online at <https://www.natlawreview.com>.

⁽²⁰⁾ For more see E. Dou, *China Delays Implementation of Food-Import Rule*, *The Wall Street Journal*, 26 September 2017, on line at <https://www.wsj.com/articles/china-delays-implementation-of-food-import-rule-1506430259>.

important key.

The coordination between legislation and operation at the national level, indeed, decides the effectiveness of a food control system²¹.

Compared to the previous Food Hygiene Law (FHL) and the 2009 Food Safety Law, the 2015 revised Chinese Food Safety Law (FSL) made a real breakthrough toward an effective food safety control management.

The legal framework governing food safety in China is composed of hierarchical laws, regulations and standards that allocate responsibilities among different players and regulate their relationships.

During the years, the Chinese national food safety control system has experienced a change from management by a few ministries to management by multiple ministries, a move resulting in fragmentation.

In the 1980s, there were only two ministries in charge of food safety control: the Ministry of Health (MOH) had the overall responsibility of food safety supervision and management, including imported food control and the Ministry of Agriculture (MOA) controlled primary agricultural products production, such as the planting and breeding process²².

In order to reduce regulatory loopholes and delegate clear responsibility, since 2013, the State Council has commenced a structural adjustment for the purpose of establishing a more centralized system, with China Food and Drug Administration (CFDA), under the State Council, responsible for the supervision of food production, distribution and restaurant/catering services. The centralized system is now explicitly provided under the new law.

To ensure food safety, indeed, the Chinese government adheres to the principle of giving priority to prevention and control at its root by monitoring and controlling the whole process and has formed a regulatory format in which the local governments take the responsibility, related departments provide guidance and conduct coordination and different sectors make concerted efforts under the unified national leadership.

Actually, the main food safety actors in China's food safety system are CFDA and local FDAs that are now granted more enforcement powers in addressing food safety issues.

CFDA is the first centralized authority in charge of food safety. It administers and jointly regulates the entire domestic supply chain with the Ministry of Agriculture (MOA), responsible for the supervision and management of edible agricultural products, prior to their processing or circulation in the market. The regulatory remit of CFDA covers production, distribution, safety management, storage, and transportation. To that end, CFDA enjoys comprehensive legislative, supervisory, managerial, investigative, and educational authority.

Another ministerial administrative organ is the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), an independent body of the Ministry of Agriculture directly under the State Council of the People's Republic of China in charge of national quality, commodity inspection, entry-exit animal and plant quarantine, import-export food safety, certification and accreditation, standardization, as well as administrative law-enforcement.

More precisely, the AQSIQ is required to construct the framework of imported food management based on food safety risk, the importer's capacity to control food safety and the food safety status of exporting countries.

The new law specifies three risk levels and obligates the China Inspection and Quarantine Services (CIQ) to undertake different inspections per the risk level. High risk products would be detained for inspection; products of common risks would be subject to sampling tests and products of low risks would go through on-site inspections.

Food importers shoulder a heavy burden to ensure food safety.

First, food importers and manufacturers of imported food products must all register with the AQSIQ.

Second, importers must establish an import and sale record of food, food additives and Food-

(²¹) FAO&WHO, *Assuring food safety and quality: Guidelines for strengthening national food control systems*, Rome: Food and Agriculture Organization and World Health Organization, 2003, online at <http://www.fao.org/docrep/006/y8705e/y8705e00.htm>.

(²²) J. Chen, *China Food Safety Regulatory Framework*, <http://www.raps.org>, 25 August 2016.

Related Products with detailed information such as production date and preservation relevant credentials. Third, importers must operate a review system for overseas exporters and producing enterprises²³.

Among the ministerial administrative organs, the National Health and Family Planning Commission (NHFPC) has two primary roles in food safety: food safety standard setting and risk assessment. Notably, NHFPC hosts the China National Center for Food Safety Risk Assessment (CFSA), twenty a technical institution that conducts food safety risk assessment and provides technical support for food safety risk management and standard development and revisions²⁴.

In addition to these four main actors there are other national institutions that carry out supporting functions: the Ministry of Commerce (MOFCOM) works out plans and policies for catering services and circulation of alcohol products; the State Administration for Industry and Commerce (SAIC) that supervises the advertisement related to food and the Ministry of Public Security that is integral to the enforcement mechanism.

China has a centralized governance system characterized by three levels of local government²⁵: provinces, counties and cities²⁶.

Each levels reproduces the structure of the central administration or the State Council and reports to the next higher level's authority.

Under the supervision and coordination of local people's governments, local branches of national ministries manage food safety in their respective local jurisdictions. National and local actors interact through delegation and supervision.

The overall point is that there are too many administrative and regulatory agencies that supervise food quality and safety. This leads to over complexity in

the food control system because increases the difficulty for food safety authorities to organize the monitoring of food safety chains²⁷.

The fragmented food safety management can result in some weaknesses for future's food safety management. Moreover, the absence of explicit legal bases to guarantee the food safety risk assessment to be completed by independent scientists is another important issue of the Chinese food control management.

The scientists in the CFSA, indeed, are civil servants and are ranked according to administrative titles. In this sort of administrative organization, scientists have to undertake administrative responsibilities apart from scientific work.

This induces to believe that the CFSA, that is within the governmental structure and is subject to political planning, lack of independence from the government²⁸.

4.- *The European food safety control system in light of Regulation (UE) 2017/625*

In the European Union, consumers' health is undoubtedly as important as trade policies and can be considered as a primary objective.

In Europe, food safety is guaranteed, as a general rule, banning the entry into service of unsafe foods and feed whose risks to health and/or the environment are assessed through a scientific evaluation, "of the highest possible level".

Rejecting a conservative approach, however, the EU shows to tolerate situations in which the risk is extremely low, in the knowledge that the application of the precautionary principle can not imply the achievement of a level of "zero risk"²⁹. Europe

⁽²³⁾ K. Kuhlmann – M. Wang – Y. Zhou, *China Food Safety Legal and Regulatory Assessment*, cit.

⁽²⁴⁾ For more see CFSA website: <http://www.chinafoodsafety.net>.

⁽²⁵⁾ Local authorities have wide legislative, administrative and enforcement power.

⁽²⁶⁾ K. Chen – X-X. Wang – H.-Y. Song, *Food safety regulatory systems in Europe and China: A study of how co-regulation can improve regulatory effectiveness*, *Journal of Integrative Agriculture*, 2015, 14(11), 2209.

⁽²⁷⁾ A 2013 survey conducted by the National Health and Family Planning Commission found that 1492 of the 4934 food standards were contradictory or redundant. For more see, W. Xu, *Health agency to trim excess food standards*, January 2014, online at http://www.chinadaily.com.cn/china/2014-01/17/content_17241253.htm.

⁽²⁸⁾ Lu Yi, *Critical thinking about the precautionary principle in China's food safety law*[], cit., 707.

⁽²⁹⁾ See G. Monaco, *Dal Consiglio di Stato quasi un "decalogo" sull'applicazione del principio di precauzione*, in *Urb. e app.*, 2014, 558.

favours indeed a precautionary approach, trying to interpret the scientific propositions and create a discipline teleologically intended to ensure a correct balance of fundamental values, such as economic freedom and scientific research and the protection of health and the environment.

European food safety “integrated approach” started with Regulation (EC) No 178/2002, fixing the food safety principles and establishing the European Food Safety Authority (EFSA), an independent risk assessment body for food and feed safety, which places independence as the top working value. In addition, there are a set of harmonised provisions governing official controls, among them Regulation (EC) No 882/2004, that provides a general framework for official controls in the sectors of feed and food law, animal health and animal welfare rules, laying down rules governing both the organisation and the financing of such controls.

In this context European official control rules are a key element of the governance of the agri-food chain in Europe, which are world-wide recognised as an example of best practice. Those rules provide national enforcers and the Commission with the necessary powers to ensure effective enforcement of regulatory requirements and with mechanisms that allow full cooperation of all parties involved in ensuring the correct application of the law across national borders.

According to article 17, paragraph 2, Member States apply food law and monitor and verify compliance with the relevant provisions by food business operators and feeders at all stages of production, processing and distribution.

To this end, they organize an official control system and other appropriate activities in the circumstances, including communication to citizens on food and feed safety and risk, food and feed safety monitoring and other control activities which embrace all phases of production, transformation and distribution.

However, evidence gathered has shown shortcoming stemming.

On the hand from the design of official controls framework from the incomplete implementation of certain principles/objectives laid down in Regulation (EC) No 882/2004 and from the fact that the integrated approach to official controls across the agri-food

chain is consolidated only partly; on the other hand, from uncertainties as to availability of sufficient resources to adequately finance official controls.

With the aim to increase member States’ ability to prevent, eliminate or reduce health risks, Europe has reviewed the previous legislation on official controls. The new rules replace Regulation (EC) No 882/2004 on official controls and other legislations which have governed the control and enforcement of rules along the agri-food chain.

The scope of the new Regulation has been extended and will now cover official controls to verify compliance with food and feed law, animal health and welfare, plant health and animal-by products rules.

The extension of the scope to also cover plant health and animal by-products will introduce a more harmonised and coherent approach to official controls and relevant enforcement actions along the entire agri-food chain.

Regulation (UE) 625/2017 maintains the risk-based approach already contained in Regulation No 882/2004.

The provisions clarify that competent authorities, when planning their controls, need to take into account the operator's past record of compliance and the reliability of the operator's own checks, including those performed by the operator or performed by a third party at the operator's request, like in the case of private quality assurance schemes.

A new provision clarifies that official controls must be performed in a manner that minimises the burden on businesses.

Moreover, the new Regulation clarifies that competent authorities have the power to carry out official controls on all operators at all stages of production, processing, distribution and use of animals, goods, substances, materials or objects that are governed by agri-food chain rules.

In order to maximise the efficiency of controls, the Regulation requires competent authorities to set up and keep an up-to-date register of operators subject to official controls.

Controls will be performed without prior notice, unless this is necessary.

With this risk-based approach the frequency of controls will be linked to risks that a product or process presents with respect to fraud, health, safety, animal

welfare or in certain cases the environment.

Such targeted controls will free up resources to focus on areas where enforcement needs to be prioritised. The new rules, also, require increased transparency and greater accountability from Member State authorities, who are also obliged to publish annual reports.

Transparent rules for the calculation of fees for official controls will ensure that Member States can safeguard proper financing of their services, and operators can avoid being overcharged.

A common set of rules will apply to border controls carried out on animals, products of animal origin, plants and other products and goods which pose a risk to health, safety, animal welfare or in certain cases the environment, and which need to be channelled through Border Control Posts (BCPs) that will replace the different Border Inspection Posts (BIPs) and Designated Points of Entry (DPEs) which currently carry out border control tasks.

All consignments to be presented at the border control posts will undergo documentary checks. Identity and physical checks will be carried out at a frequency depending on the risk linked to the specific animals or goods.

The import control system will be more risk-based and targeted. Hence it will be less burdensome for competent authorities and businesses alike.

5.- Challenges and opportunities for a future EU-China food trade partnership: EU-China food safety project to focus on food fraud

The Chinese government sets great store by cooperating with other countries, regions and international organizations regarding food safety, as well as by learning advanced management expertise and monitoring technology, to improve the overall quality of its foodstuffs.

The food safety cooperative mechanisms established between China and other countries have greatly promoted bilateral and multilateral cooperation to ensure the safety of foodstuffs traded among them

and ease the wide concerns about food safety.

Since 2001, notably, China has conducted many rounds of technological training and exchanges on food safety, especially the implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), with many countries, among them the Europe.

Really, Europe and China have been working for forty years, or since they have started diplomatic contacts. Since then, cooperation has become increasingly narrow, especially in the field of environmental and health protection, enabling the EU to build a deep relationship with one of its major trading partners.

Collaboration between the European Union and China to ensure food security is going to intensify. This is demonstrated by the project "EU-China-Safe" among European Horizon 2020 program and Chinese Ministry of Science and Technology (MOST) program, one of the world's largest food safety projects across Europe and China to improve food safety and tackle food fraud.

The overall goal of EU-China-Safe is to develop and implement a shared vision of best practice within the EU and China that will enhance food safety, deter food fraud, restore consumer trust, deliver mutual recognition of data and standards and support the flow of agri-food trade between the two trading blocks to promote economic growth.

The project dedicates specific attention to food fraud that has manifested itself in many ways, from horse meat labeled and sold as beef like the scandal in Europe in 2013, to illicit oil which saw slaughterhouse waste and sewage used in cooking oil, known as the 2014 "gutter oil" scandal in China.

As it is known, food safety regulations are based on safety of food, not necessarily on authentic food. However, fraudulent practices can lead to unsafe situations and increase the risks of serious food borne illness³⁰.

Food fraud is therefore a global issue demanding a global response.

Recently, both country have taken new measures aimed to prevent food fraud and enhance the inte-

⁽³⁰⁾ Reported instances of food fraud are on the increase and occur on a global scale, worth an estimated \$52 billion globally each year. Food fraud is a global issue demanding a global response.

grity of their food supply chains.

The Official Controls Regulation (EU) 2017/625, for instance, states regular unannounced official controls directed at identifying intentional violations (fraud), establishing that the financial penalties applicable to infringements of the rules committed by fraudulent or deceptive practices are sufficiently deterrent and possibly higher than the unjustified advantage that the perpetrator would derive from such practices.

A new key element to strengthen the fight against frauds is the requirement for Competent authorities to take into account the likelihood of fraudulent and deceptive behaviours when deciding the appropriate frequency of controls.

In particular, competent authorities in performing controls and adjusting their frequencies must take account of the likelihood that consumers might be misled about the properties, quality, composition or country of provenance of the food they buy.

In addition, the Regulation provides for the setting up of EU reference centers for the authenticity and integrity of the agri-food chain, with the aim of providing EU countries with up-to-date and reliable technical data and research results to help them effectively carry out their control tasks.

Similar measures against food fraud have been also adopted by China. Notably, in February 2017, the CFDA has published its draft Measure to Handle Acts of Food Safety Fraud.

The Measure defines and targets ten categories of food safety fraud violations. For each of these, the Measure specifies penalties and the government entity (mainly County-level and above FDAs, Public Security Bureau, Certification and Accreditation Administration - CNCA) responsible for handling the violations.

In particular, the Measure covers food products, including edible agricultural products and food additives and applies to practically the entire supply chain.

In addition, the Measure mandates whistle-blower rewards and requires food safety fraud violations to be noted in producers' and traders' food safety credit records³¹.

The project EU-China-Safe is, therefore, added to these new preventive measures that, of course, in addition to a wider range of confidence building measures towards food safety, authenticity and transparency, could facilitate an expansion of EU-China food trade.

6.- Concluding remarks

The growing emphasis attributed to food sanitation seems to highlight the importance of health protection as a sine qua non condition to ensure the safety of global food trade.

This creates tensions between the need to protect life and health and the aim of fostering free and fair trade³².

In recent years, the Chinese government has done a lot of work on comprehensive supervision of food safety and has accumulated rich experience in this area.

The amended Food Safety Law marked a historic turning point in Chinese food safety policy, with adoption of key international standards and a range of new and innovative policy mechanisms unique to China.

According to the white paper on China's food safety issued by the Information Office of the State Council³³, China now has a complete law regime providing a sound legal foundation and a good regulatory environment for guaranteeing food safety, improving food quality and controlling food imports and exports³⁴.

The innovations introduced in the Chinese system demonstrate that the food safety issues it aims to resolve are common to those experimented in the European Union and the political-regulatory respon-

⁽³¹⁾ For more see B. Marterer, *The China FDA's Draft Measure to Handle Acts of Food Safety Fraud*, February 2017, Online at <https://www.pwccn.com>.

⁽³²⁾ A. Schibler, *The issue of food safety in EU-China food trade relations*, Issue 4, online at www.coleurope.eu, 2014, 23.

⁽³³⁾ State Council Information Office of the People's Republic of China, *China's Food Quality and Safety*, 2007, Online at http://www.gov.cn/gongbao/content/2007/content_764220.htm.

⁽³⁴⁾ H.G. Ni – H. Zeng, *Law enforcement is key to China's food safety*, *Environmental pollution*, 2009, 1990-1992.

se tend, especially in recent years, to converge.

As the European Union, indeed, China's new Food Safety Law has legitimated the Precautionary Principle in food safety governance.

The new law adds specific provisions in order to carry out this principle, that include risk classification and management by food agencies, risk communication among all food industry participants, a food safety self-inspection system established by food producers and business operators, regulatory talks conducted by food agency officers, a system for whole-process traceability of food established by the State Council and a recall system including both food producers and business operators³⁵.

Despite the approach of the Chinese food security system to the European system, however, there are still some gaps, such as the lack of independence of the food safety risk assessment from both political and financial influences and the too many administrative and regulatory agencies that supervise food quality and safety.

Moreover, despite the innovative cooperation projects between the two countries, trade barriers and political tensions continue to represent major obstacles to a deeper and more extensive cooperation.

It currently looks like China is shifting its emphasis from supervision and inspection at ports (which is already extending the supervision work of AQSIQ) towards the control of manufacturers in the country of origin using China National Certification and Accreditation Administration (CNCA) and post-market inspection by CFDA to all food commodities. Under the rule, due to take effect as early as October 2019, each consignment of food would require a certificate from a foreign inspector confirming it meets Chinese quality standards³⁶.

Given the fact that many other countries require

such inspections only for meat, dairy and other perishable items, it is needless to say that this creates an alarm in foreign suppliers that complain China already uses safety rules in ways that hamper access for beef and other goods in violation of its market-opening commitments.

In particular, EU officials believe requiring health certificates for all products is not scientifically justified and that the rules would be a burden on foreign suppliers and "a waste of the precious control resources" that should focus on risky products, despite China contends that the inspection requirements are supported by the Codex Alimentarius, the "Food Code" of the U.N. Food and Agriculture Organization (FAO) and World Health Organization (WHO).

Definitely, it seems that food safety is not yet a purpose for China, but rather a means to achieve protectionist purposes³⁷.

This is also demonstrated by the fact that China applies different standards and requirements to different European companies, depending on their country of origin.

This means that, although all European products have to comply with the same standards, China restricts imports according to their geographical origin within Europe³⁸.

This results in high compliance costs and extended delays for business which impact on their ability to sell on the China market, affecting above all EU small and medium-sized enterprises.

Hopefully the project EU-China-Safe, that involves key players in the food industry, research organisations and governments across two of the world's largest trading areas, will be able to empower the food industry to provide safer, authentic food and boost consumers' confidence and ultimately facilitate the expansion of EU-China food trade.

⁽³⁵⁾ Lu Yi, *Critical thinking about the precautionary principle in China's food safety law* [j], cit., 702.

⁽³⁶⁾ J. McDonlad – G. Wong, *China's Trading Partners Alarmed by Food Import Controls*, online at <http://www.foodlogistics.com/news/12317266/chinas-trading-partners-alarmed-by-food-import-controls>, March 2017.

⁽³⁷⁾ Recently, for instance, China has banned imports of soft European cheese over worries the bacteria colonies found on some varieties aren't officially approved for import. China health regulations permit only a few types of bacteria in dairy products, but there is an exemption for "cultures that are traditionally used for food production". That exemption does not apply to imported goods, but it is not clear what made authorities crackdown on cheese now. For more see: *The Guardian*, September 2017, Online at <https://www.theguardian.com/World/China>.

⁽³⁸⁾ A. Schibler, *The issue of food safety in EU-China food trade relations*, cit., 26.

ABSTRACT

Over the years, Europe and China have signed sectoral agreements which provides for reinforced their cooperation on Intellectual Property Rights (IPR) controls and supply chain security.

However, many trade barriers relating to safety issues, standardization and traceability (including fraud) in agri-food products persist and hamper trade predictability. In addition, there is a need to

contribute to the prevention of major food safety crisis throughout the whole food chain, to meet consumer expectations for international standards.

Starting from these premises, the main objective of this paper is to explore the China's food control system as a case study to examine the Chinese way of combating food safety risks. The European experience will be used as a comparison to check the possibility of a future and effective EU-China food safety trade relationships.

