

Update on food safety governance in China after organizational reform in 2018

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1.- *The new State Administration for Market Regulation (SAMR) in China*

One of organizational arrangements during the latest administrative reform in 2018 was the replacement of previous China Food and Drug Administration (China FDA) by the State Administration for Market Regulation (SAMR) while the latter has also integrated the departments of the State Administration for Industry and Commerce (SAIC), the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), etc..¹ Such reorganization did have far-reaching influence in the official control for food safety.

Firstly, the newly established SAMR at the central level has ended the chaos resulted from a large number of different regulatory models at the local levels, in particular, the disputes on which was appropriate for food safety regulation between the integrated model for market regulation as a whole and the single agency model in the form of food and drug administration. As a result, the organizational reforms at the local levels have taken the example of SAMR to smooth the vertical communication. Secondly, separated from drug regulation, food safety regulation has become part of market regulation. On the one hand, the integrated regulation can reduce the regulatory confu-

sion due to several involved departments. For example, by combining the advertisement regulation and food product regulation, it does improve the food safety regulation in flight against misleading information distribution, which has been a very serious issue in China, in particular for the health product. On the other hand, it has given rise to the concern whether food safety is still key priority as to official control. In this aspect, the answer “yes” has been confirmed by a series of arrangements inside and outside of SAMR. Thirdly, it is still inevitable that the market oriented regulation by emphasizing better regulation for business under the reforms to delegate power, streamline administration and optimize government services² did bring about de-regulation in the food domain and thus controversies over which is priority between safety guarantee and economic development, notably the regulatory purposes and tools are quite different between them.³

In view of the aforementioned development, this article will address the updates on food safety governance introduced by the new regulator of SAMR for food safety at the first part, institutional reinforcement for “food safety is everyone’s business” in the second part, and regulatory improvement in food domain for better business at the third part.

2.- *New regulator of SAMR for food safety*

When food safety regulation is only one function of the newly established SAMR, general responsibilities like comprehensive legislation and investigation for market regulation as whole also involve the official control of food safety on the one side, and direct responsibilities for food safety on the other side.⁴ For the latter, SAMR

(¹) Notably, the previous Entry-Exit Inspection and Quarantine Bureaus under the AQSIQ has been moved into the Customs administration.

(²) “放管服”改革(fàngguǎnfú gǎigé):Reforms to delegate power, streamline administration and optimize government services, China Daily, May 12 2016, available at: http://www.chinadaily.com.cn/opinion/2016-05/12/content_25224754.htm.

(³) Wei Ji, *The application of food safety supervision law in the background of institutional integration: comparative analysis based on the perspective of administrative rule of law*, in *Administrative Law Review*, 2018, 3, pp. 62-74.

(⁴) Provisions for the functional allocation, internal institutions and staffing of the State Administration of markets, it had come into effect on July 30, 2018.

takes the responsibility for comprehensive coordination of the food safety supervision and management, such as organizing the development of major food safety policies and their implementation, constructing food safety emergency system and guiding crisis management. Besides, it is also responsible for food safety supervision and management at national level, such as establishing the regulatory system covering the whole process of food production, distribution and consumption and preventing regional or systematic food safety risks, organizing the sampling and testing for official control as well as risk monitoring, alert and communication, carrying out the registration and supervision of special food like infant formula or health food. Accordingly, the internal organizational setting and initiatives after its establishment as well as commitments from department directors have confirmed that food safety is still kept as a priority.

As far as internal organizational setting is concerned, five bureaus are designed directly to carry out food safety regulation, including the bureau for supervising the stage of food production, the bureau for supervising the stage of food distribution, the bureau for supervision and management of special food, the bureau for food sampling and monitoring as well as one for comprehensive coordination. Comparatively, the bureau for food sampling and monitoring is relatively new to put risk-based regulation into practice. Therefore, the national wide food sampling and testing is to find out under-standard food in which food operators can prevent risks by recalling these under-standard food and consumers may make an informed choice by learning the sampling and testing results in regularly published notices on official website or applications in phones. More importantly, a big-data has been developed to plan precise sampling on foods of higher risk or operators with greater risk of violations. Besides, this bureau also engages in risk alert and communication to

help the public improve risk perception and thus increase confidence in food safety regulation. When it comes to the initiatives regarding food safety taken by the SAMR, it has inherited from the China FDA to fight against food fraud and false presentation. As early as 2017, Notice from 9 central departments on fight against food fraud and false presentation has highlighted official control against four main behaviors, including the production and distribution as well as import of food and health food without authorization, false labeling and claim in the case of food and health food, publicity and distribution of food and health food by illegal means like conference marketing, tv shopping, and publish of advertisement without authorization and with false or illegal information. Besides, as a new department, its own initiatives has placed the emphasis on catering service, in particular school canteen. In this regard, it has provided *Code for Food Safety Operation of Catering Services* to specify the requirements on business practice in school canteen and group meal delivery for school. Also, the newly provided *School Food Safety and Nutrition Health Management Rules* (学校食品安全与营养健康管理规定)⁵ not only clarifies the regulatory principle of prevention, food chain approach, responsibility allocation between territorial governments but also establish the cooperative mechanism between involved departments. Under the *Campus Food Safety Defense Action* introduced by SAMR, it continues to increase the inspection at the school canteens by joint work with education departments.

3.- Institutional reinforcement for “food safety is everyone’s business”

With the introduction of social governance as regulatory principle by revised Food Safety Law in 2015 and concrete institutional arrangements like

⁽⁵⁾ Order No 45 from the Ministry of Education, State Administration for Market Regulation, and the National Health Commission, put into effect on April 1, 2019.

reporting system, credit system, risk communication, “*Food safety is everyone’s business*” has become a reality and is still improving in China.⁶ In the celebration of the first World Food Safety Day on June 7 in this year, SAMR has addressed the theme “*Food Safety, everyone’s business*” from responsibility. Generally speaking, for one thing, food safety is everyone’s business. Food safety involves all producers and distributors from the sector of soil environment management, usage of agricultural inputs like feed and pesticide, planting and breeding, production and processing, transportation and warehousing, wholesale and retailing, cater services as well as provider, consumers and regulators for related product and service. There is no “zero risk” and contamination by biological, chemical and physical hazards may present in all areas, all aspects and levels along food supply chain. For another thing, food safety is everyone’s responsibility. Safeguarding food safety requires all participants in food supply chain to work together and coordinate, strictly implement the “most stringent requirement on standard-setting, regulation, punishment and accountability”, prevent food safety risks from farm to table and ensure public confidence in food safety. In so doing, the public sense of fulfillment, happiness and security can be gradually enhanced.

To put responsibility from the legal perspective, Food Safety Law has established a sound legal responsibility system, including the newly introduced preventive responsibility and liability for online platform as new arrival in food supply chain.⁷ Besides, there are also institutional innovations for accountability.

3.1.- *Bipartite punishment from the perspective of administrative fine*

The so-called bipartite punishment from the perspective of administrative fine is imposed not only on food operators as organization but also individuals inside organization with responsibilities for decision-making or implementation regarding food safety. In this aspect, *A Notice on Strengthening the Law Enforcement for Food and Drug Safety and Strictly Implementing Punishment of Individuals in the Case of Organization Violations* (关于加大食品药品安全执法力度严格落实食品药品违法行为处罚到人的规定) has been jointly issued by the China FDA and Ministry of Public Security in 2018. Accordingly, if a food operator as individual engages in illegal activities in food domain, he shall be held accountability in term of legal liability. In the case of violation committed by organization like legal person, in addition to the punishment against such non-compliant organization, there will be punishment for the person at high ranking with direct responsibility for food safety in this organization and other persons with direct responsibility for operation.

Among the others, the persons at high ranking with direct responsibility for food safety in this organization refer to those in charge of the decision, approval, inspiration, connivance, command in the illegal activities carried out by the organization, usually those in charge of the organization. Other persons with direct responsibility for operation are those who specifically carry out illegal activities in the violation and play important roles, including managers responsible for production and distribution for organization at issue or employees for operation. Notably, with the coming of the Implementing Regulation on Food Safety Law,⁸ this so-called bipartite punishment has been clarified as follows. In addition to the sanction against the company as a unite, the legal

⁽⁶⁾ J. Lepeintre, J. Sun (eds), *Building food safety governance in China*, Publications Office of the European Union, Luxembourg, 2018; available at: https://eeas.europa.eu/sites/eeas/files/building_food_safety_governance_in_china_0.pdf

⁽⁷⁾ Juajuan Sun, Jasmin Buijs, *Online food regulation in China, the role of online platform as a critical issue*, in *European Food and Feed Law Review*, 2018, 6, pp.1-11.

⁽⁸⁾ Implementing Regulation on Food Safety Law, Order 721 of State Council, announced on October 31, 2019, and put into effect since December 1, 2019.

person, responsible director of this company is subjected to be fined from 1 to 10 times on the basis of his salary in the past year as long as the situation meets one of the following conditions: violation on purpose or serious violation or severe damage.

3.2.- Political accountability

The institutional innovation for political accountability is provided for local party leaders and government leading cadres engaged in food safety regulation. In the form of party rule, *Rules on the Food Safety Responsibility of Local Party and Government Leading Cadres* (地方党政领导干部食品安全责任制规定)⁹ reflects the great importance attached by the Party Central Committee and the State Council to food safety regulation, which emphasizes the responsibility of “key persons” to improve food safety governance ability and level at local levels, such as those in charge of the local party committee and the local government as well as members of local party committee and government with responsibility for food safety. The reason for such emphasis is because that their performance as leaders undoubtedly has a model effect and in turn followed by others, that is to say put high attention to food safety regulation by other party members and civil servants when they carry out public administration.

3.3 Credit system and moral accountability

China has emphasized integrity as an important personality since ancient times. As put it, one can make it through without keeping his word (人无信不立). However, the ongoing food safety issues in which economic gain is put ahead of human health indicate the failure of moral discipline. Therefore, to strengthen the rule of virtue and

importance of integrity for social and economic development, the credit system has expanded from financial field to others while a national wide social credit system is under development. With the legislative support, “trust-breaking” individuals would be punished while “trust-keeping” individuals rewarded, such as different treatment on whether has qualification for financial support or not. As provided by Food Safety Law, the food safety supervision and administration department of a people's government at or above the county level shall maintain food safety credit files for food producers and distributors to record the issuance of permits, routine supervisory inspection results, investigation and handling of illegal acts, and other information, which shall be made public and updated in real time. For food producers and distributors with bad credit records, the supervisory inspection frequency shall be increased, and for food producers and traders with serious illegal acts, the competent investment department, the securities regulatory authority, and relevant financial institutions shall be notified.

In practice, governments at central level and local levels are engaged actively in building credit systems for food safety governance, such as the use of name and shame lists and joint punishments and rewards across departments. In addition to the governments' arrangement, the much greater restrictive power of the credit system comes from the responses of the economic operators, consumers and the public, that is to say, food business operators who value reputation can have more development opportunities due to the voting with their feet.

However, with the reorganization, it has become a new challenge to reshape the credit system for food safety governance in the background of comprehensive market regulation. In this aspect, there are challenges in particular, such as whether credit system for food safety governance is built separately or together with other products,

⁽⁹⁾ Rules from the Office of the Central Committee of the Communist Party of China and the Office of the State Council, announced on February 24, 2019.

how to overcome the differences in local credit system for food safety in which credit evaluation systems and reward and punishment arrangements are different. Besides, there are also challenges in general, such as how to share information between different systems in the face of information island problem, and ensure the legitimacy of the credit system since its punishments will substantially affect the rights of the parties at issue.

4.- Better regulation in food domain

As mentioned above, the general reform in public administration is aimed to provide better regulation for business by delegating power in the case of licensing, streamlining administration for putting focus on in-process and ex-post regulation, an optimizing government services such as efficiency and convenience for the sake of regulatees. When it comes to specific fields like food safety domain, the corresponding reforms includes the de-regulation of market approval for small food operators like vendors or factories and restaurants of small-scales, responsive regulation for facilitating business innovation, co-regulation between competent authorities and business operators for data sharing, to mention just a few. Some cases are as follows.

4.1.- De-regulation for small business

Compared with large food companies, food factories and catering service of small scale and street vendors and other small food business operators have their own specialties in terms of social function, risk level and compliance ability. Therefore, the regulation of small and micro-food business operators emphasizes localization and differentiation. In this aspect, Food Safety Law stipulates on its own that specific management measures for food business of small-scale should be formulated by provinces, autonomous regions and muni-

cipalities. In view of this, local regulation has taken advantages of filling, registration without approval to facilitate the market access for food business operators of small-scale while put emphasis on the daily inspection and punishments for their compliance.

Besides, innovative regulatory tools also include government guidance for supporting compliant businessman to upgrade his business scale and negative list for forbidding food service of high risks or forbidding areas in the case of small business. For example, homemade fresh milk product is forbidden for small business in Zhejiang Province.

4.2.- Responsive regulation for innovation

As an innovative business model, Starbucks Reserve Roastery is a new retail mode by combining production and cater service, which provides consumers with multi-sensory retail experiences by an environment including roasting, packaging and brewing. However, when it was introduced into Shanghai, the challenges from regulation was the licensing for production and cater service in a separated way. And for the former, one of conditions to obtain production license is to separate the plants by setting physical barriers such as walls, sanitary barriers, masks or separate rooms. On the contrary, the guarantee of multi-sensory retail experiences in the Starbucks Reserve Roastery relies on an open space, that is to say, breaking the barriers like walls between different plats. While such licensing requirement is aimed to prevent contamination, Starbucks Reserve Roastery has redesigned a new equipment for satisfying this purpose. In other words, Starbucks Reserve Roastery did not take legal provided tools to prevent risks since it was incompatible with innovation, but it also met the regulatory purpose. In view of such self-regulation, the regulators in Shanghai had replaced legal provided tools of “one-size-fits-all” by responsive regulation. Generally speaking, regulators have granted permission for this new business model by

carrying out corresponding risk assessment and taking regulatee's compliance management into account. Indeed, legal requirements may lag behind the innovation in food business, precautionary regulation by practice based risk assessment rather than rigid and even out-of-date rules can better balance the risks and benefits resulted from the innovation.

4.3.- Co-regulation for data sharing

In the governance for e-commerce business with multiple participation, the role of governments is twofold, namely the role of regulators and facilitators. Therefore, the co-regulation between governments and business operators has become a smart option for promoting food safety governance. For example, *Guiding Opinions on Encouraging Online Delivery Platform to Collect and Apply Government Food Safety Data* (关于鼓励网络订餐第三方平台采集和应用政府食品安全数据的指导意见)¹⁰ has been issued by Shanghai Food and Drug Administration in 2015. Accordingly, online delivery platform can make use of the local government's licensing data to better fulfill his obligations like license review when operators for catering service engage in online business via his platform. Notably, such co-regulation between public and private parties is two-way and win-win. As in the case of cooperation between Meituan as online delivery platform and competent authority in Jilin Province, the data provided by the former to the latter includes the license information of online business operators, negative comments of these operators and consumers' complaint information. With these data, regulator can strengthen regulation by focusing on precise targets and in a preventive way. More importantly, the data sharing is in a dynamic way and thus contributing to real-time risk monitoring for both sides.

5. Conclusion

Since the first Food Safety Law in 2009, there has been ten years' efforts to update science based food safety governance in a risk preventive way. Achievements are substantial in both legislation and enforcement. For example, in 2018, SAMR completed 249,000 batches of national inspection as well as sampling and testing, covering all 33 categories of food. Based on this, 5965 batches of unqualified samples were detected, and the average unqualified rate of samples was 2.4%, which was the same as that in 2017 and 2.9 percentage points lower than that in 2014. When it comes to meat, egg and milk, rice noodles and other daily consumption of bulk, the food sampling pass rate is higher. As indicated in the Notice of the State Administration of Market Regulation on the Analysis of the Food Safety Inspection and Sampling in the First Quarter of 2019, the overall unqualified rate was 2.2%, which was 0.4 percentage points lower than that in the same period of 2018. Despite this, the ever-changing regulatory environment requires the update of official control in a timely and responsive way, such as the newly emerged technology and novel model of production and distribution from it, constantly expanding international food trade both offline and online, and transformation in the official control for better and smart regulation. In view of these, governments at both central and local levels are engaging in improving food safety governance while exploring different models of coordination and cooperation.

In light of the remaining challenges and political, economic and social importance of food safety in China, food safety governance is and will kept as a national key regulatory area while safety is regarded as a priority. This recognition has been confirmed by the opinions from highest political level, namely, the *Opinions on Deepening Reform and Strengthening Food Safety Task* issued by

⁽¹⁰⁾ Announcement from Shanghai Food and Drug Administration, No. 803 order from internal catering service regulatory bureau, December 16, 2015.

the Central Committee of the Communist Party of China and the State Council (中共中央 国务院关于深化改革加强食品安全工作的意见.¹¹ Last but not least, advanced experiences at international level are still important reference for China to continually improve food safety governance, but at the same time, China' experiences in this aspect have also been "exported" and appreciated at international level. Therefore, more and more international dialogues are needed to promote the sharing, in order to achieve international expectations. As claimed during the First World Food Safety Day, Food safety is key to achieving several UN Sustainable Development Goals and is a shared responsibility between governments, producers and consumers.

ABSTRACT

The newly established State Administration for Market Regulation has introduced a comprehensive regulatory system for food safety regulation in China. To keep food safety as a high priority, there are responsibility based institutional reinforcement, including administrative fines against responsible individuals within food companies, political accountabilities for local leaders and credit system by combining moral responsibility and legal liability.

Meanwhile, better regulation has been put into practice to improve the responsiveness of official control to the innovation in the food industry and technological advancement.



⁽¹¹⁾ May 9, 2019.