Chapter 4

Transnationalisation of Chinese Dairy Standards

Introduction

The melamine crisis revealed major gaps in Chinese food safety standards, specifically milk and dairy product standards. The Chinese State Council pledged in July 2012 to resolve China’s food safety problems within three years. Its plan included better regulation, improved supervision, particularly of production, institutional improvements and more effective sanctions. A key element in the plan was the enactment and application of improved food safety standards.\(^1\) The role of standards in China’s search for food safety is the subject of this chapter.

This chapter explores the impact of the melamine crisis on the development of Chinese food safety standards, focusing on the dairy sector. Building on preceding chapters, it traces the development of the legal and regulatory framework governing Chinese standards. It shows how the melamine crisis stimulated a rapid but nonetheless partial transnationalisation of Chinese dairy standards. The process of transnationalisation also contributed to a vigorous debate about the relationship between domestic and international standards, known as alignment, which is noted here and explored in more detail later in the book.

The chapter emphasizes the types of domestic standards, relations between these different types, the changing relationship between domestic standards and international standards,\(^2\) and the participation of private actors in making public (governmental) standards.\(^3\) It underscores the extent to which food safety standards, as any standards, are a double-edged sword: on the one hand, they are intended to ensure product quality and safety; on the other hand, they serve as barriers to entry into the market. The post-crisis debate about dairy standards was also imbricated in what some readers might consider to be a


\(^2\) For further discussion, see the later chapter on the review of Chinese food safety law in the framework of the WTO Trade Policy Review Mechanism (TPRM).

contradiction between two levels of central government policy; a more concrete level, referring to the more specific, more short-term objectives of reassuring the public, ensuring product quality and restructuring the dairy sector, and a more abstract meta-level, referring to the continuing, overriding objective of the Chinese party-state of preserving social stability.

The first main section sketches the WTO agreements which provide an international legal framework for Chinese standards today. The next section considers the set of Chinese legal and administrative norms within which standards in China have been developed since 1988. A third section analyses the impact of the 2009 Food Safety Law on standards. The next two sections are concerned with the transnationalisation of China’s dairy standards, first by looking at aspects of politics of making standards and then by examining the standards themselves. A brief conclusion summarises the argument.

The Normative Framework for Standards before Melamine

**WTO SPS and TBT Agreements**

We can situate the reform of Chinese dairy standards in a broader legal framework by referring briefly to two WTO agreements, the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement). These agreements are significant for present purposes for four reasons. First, they provide the de facto international normative framework for national standards-making. Second, they lay down requirements and procedures for WTO Members to notify their standards to other WTO Members. Third, they supply the internationally recognized terminology for referring to standards. Fourth, they constitute an indispensable parameter for the continuing debate about alignment. Chapters 6 and 7 analyse these Agreements as they are used in WTO dispute settlement.

The SPS Agreement applies to food safety measures, as defined in Annex A of the Agreement:

*Sanitary or phytosanitary measure* – Any measure applied:

(a) to protect animal or plant life of health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;

(b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs: