CHAPTER 8
Multilateral Monitoring of Chinese Food Safety Law

Introduction

No country is an island in regulating food safety. China is no exception. The 2008 melamine baby formula scandal marked the real integration of China into the world of global legal pluralism regarding food safety regulation. Even before then, China’s accession to the World Trade Organization (WTO) on 11 December 2001 signalled China’s desire to join, benefit from and contribute to the world of global legal pluralism about trade. It laid the basis for subsequent developments such as the wide-ranging impact of WTO law on law, economy and society in China,¹ the 2009 Food Safety Law and subsequent reforms of legislation and standards, very active Chinese participation in international food standards bodies such as the Codex Alimentarius Commission, and increasing openness of Chinese governmental institutions to legal developments from other countries and international organisations.

We live in a world of global legal pluralism. By ‘global legal pluralism’, I mean ‘the totality of strategically determined, situationally specific and often episodic conjunctions of a multiplicity of sites of governance throughout the world’.² Food safety regulation today is the handiwork of multiple sites of governance. A site of governance is ‘a locus of decision-making with the authority to settle disputes’.³ In origin, sites of governance may be public, private or hybrid, that is, mixed public-private. In scope, they may be international, transnational, regional, national or local. Each site of governance ‘has two dimensions: a structural dimension, comprising institutions, norms and dispute-settlement processes, and a relational dimension, which refers to relations between the site and other sites of governance’.⁴ These two dimensions are interconnected, because the institutions, norms and dispute-settlement processes of a site of governance will affect or condition its relations with other

² Snyder, Legal Pluralism, supra Chapter 2 note 7, p. 49.
³ Ibid., p. 49.
⁴ Ibid., p. 49.
sites, and conversely a site’s relations with other sites of governance will affect or condition its institutions, norms and dispute-settlement processes. Sites of governance may be but are not necessarily, and indeed not usually, co-terminus with nation state boundaries; instead, they are best conceived as belonging to distinct semi-autonomous social fields.

China participates actively in the WTO Dispute Settlement Mechanism (DSM). As of 2 September 2014, China has been a complainant in 12 dispute cases, a respondent in 31 cases and a third-party participant in 112 cases. However, highly visible international trade disputes represent only a small part of China’s participation in the WTO. Nor do they convey the full spectrum of the ways in which the WTO agreements are enforced and implemented, and by which international food safety standards and best practices are diffused. In theoretical terms, they are only one aspect of relations between these two sites of governance. In this chapter I consider another aspect of these relations: the WTO Trade Policy Review Mechanism (TPRM). I focus on the role of the TPRM in monitoring of food safety regulation in China. Specialists in fields other than law – and indeed many lawyers – may be very surprised indeed to learn to what extent WTO law, and the TPRM in particular, affects food safety regulation in China.

It is useful to situate the TPRM in a broader institutional perspective. We can distinguish between three different levels of implementation of WTO law in China. The first level consists of international law, in particular the implementing mechanism and instruments of the WTO. This level comprises monitoring, supervision and enforcement by WTO institutions, notably the TPRM, the General Council and various committees, and the dispute settlement mechanism, respectively. The second level concerns the constitutional law of the People’s Republic of China. Among the central issues at this level are the constitutional

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5 For numerous examples, see ibid., p. 49.
7 See China and the WTO, World Trade Organization, http://www.wto.org/english/thewto_e/countries_e/china_e.htm (last accessed 28 December 2014) (In addition to its participation as a third party in panel stage of the WTO dispute settlement procedure, China has participated several times in the consultation phase). See Chapter 6 of this book.
8 Zhang Xin, Implementation, supra note 1.