

Food Safety, Public Health and Information Access in the PRC

**Mr. Drew Thompson,
Director of China Studies and Starr Senior Fellow
The Nixon Center
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I would first like to thank the members of the Commission for the opportunity to testify on this timely and important topic. Since June of this year, I have served as the director of China Studies at The Nixon Center, a non-partisan think tank founded in 1994 by the late President Nixon. The China Studies department promotes dialogues among U.S. and Chinese scholars, policymakers, businesses, and nongovernmental organizations (NGOs) that address critical issues facing Chinese and U.S. national interests. In addition to broader US-China subjects of security and trade, we have programs focusing on energy, climate change, and public health issues including food safety.

I was invited to discuss the issue of access to information in the People's Republic of China and food safety. I will divide my remarks into four parts; progress and developments, structural challenges to establishing a safe food processing environment in China, the outlook for U.S-China engagement, and finally, recommendations.

Progress and Developments

While the Chinese government has made progress to increase transparency over the past decade, there are clearly areas where improvement is needed. This is particularly vital in sectors where inadequate transparency threatens U.S. national interests, such as public health, the environment, and food safety. It is helpful to consider recent crises and responses, as they will help us develop strategies and policies that will ultimately contribute to increased transparency and safer consumer products in both China and the U.S.

The outbreak of Severe Acute Respiratory Syndrome (SARS) in 2003 and China's bungled handling of the crisis was a seminal event for the new leadership of China. It was also a salient learning experience for the entire bureaucracy about the fallacy of attempting a cover-up, which ultimately damaged the country's reputation. SARS was a positive catalyst in several ways. Besides spurring investment and reforms in the healthcare sector and the establishment of programs to address other infectious diseases such as HIV/AIDS, the experience led to increased openness and transparency from the government. The government learned that a lack of transparency caused rumors and panic and undermined its own credibility. Subsequently, laws were revised, a network of

government spokespersons was established and the government made a more concerted effort to release information in a timely fashion to the public.

More recently, there has been widespread media coverage of cases of adulterated foodstuffs and consumer products from China. The vast Chinese bureaucracy, rarely effective at timely crisis management, responded awkwardly to initial reports of unsafe toothpaste and pet food contaminated with adulterated wheat gluten from China. Initial denials further fueled speculation and negative press internationally. In China, it is likely that some officials ordered editors not to report on the evolving situation, reflecting the still widely held concern that the release of information to the public can cause chaos and social disruption. However, as the consumer product safety story developed, Chinese officials from the numerous agencies responsible for food safety increased the frequency of public statements at press conferences, through state-controlled media and even informal remarks on the sidelines of public conferences. Importantly, much of the officially released information pertained not only to the facts related to product recalls in North America, but also to the complex food processing situation within China and the ongoing efforts to more effectively regulate it.

Chinese officials, particularly in the health sector, recognize that the free flow of information is a critical tool for public health management. More broadly, Chinese officials are increasingly savvy about media management, using press conferences, interviews and the internet to communicate essential information to the public. However, many officials, particularly at county and provincial levels do not embrace this new approach. It is also a relatively new phenomenon. The State Council only made public the list of spokespersons from all ministries (except defense and state security) in December 2004.¹

There is a framework in China that legalizes the reporting and release of public health information, particularly from local-level government officials to higher-levels and from officials to the public. For example, the 1998 Infectious Disease Law was updated in 2004 following the SARS outbreak, requiring local officials to report disease outbreaks to superiors. The updated law devotes an entire chapter outlining reporting responsibilities, with article 38 requiring that information “shall be announced without delay and accurately.”² Subsequently, the Ministry of Health has regularly released information on its website detailing reported infectious disease cases. The State Council has recently issued regulations which will come into effect May 1 authorizing officials to release important information to the public, specifically mentioning “information on inspection and monitoring for environmental protection, public health, production safety, food and medicine safety and product quality.”³

While there are signs that the situation is improving, like much of the reform process in China, it is neither unconditional nor unequivocal progress. The day after its founding director was executed for bribe taking, the Chinese State Food and Drug Administration (SFDA) released new rules that require transparency and independent oversight of the drug approval process. The current deputy director of the SFDA was quoted by state media as saying, “Transparency is the enemy of corruption. That’s why we have

introduced the new regulation."⁴ These are encouraging developments for the Chinese political system.

However, there are contrasting incidents where information that is relevant to the public was tightly controlled, such as the outbreak of an infectious pig disease in Sichuan province in 2005 where officials were subsequently fired for attempting a cover-up. Despite punishing four officials for the cover-up, other officials ordered local media to only rely on official media releases.⁵ More recently, China has been accused of covering up reports on bird flu, even issuing official denials.⁶ Uneven progress can be attributed to several factors. Primarily, local officials remain fearful of releasing information that might reflect badly on their performance or negatively affect outside investment in their jurisdiction. Senior officials often prefer to control information and release only what they feel is appropriate, often omitting critical details and statistics, creating what they refer to as a “correct understanding” of the situation.

Not all branches and departments of the government share the same enthusiasm for transparency. Ministries and departments in China have unique organizational cultures and some take a more conservative view to controlling information than others. For example, the Ministry of Agriculture is often reluctant to release information to the public, while the Ministry of Health and its agencies tend to be more open and see the media as a tool for improving public health by disseminating information. Disturbingly, a new epidemic is currently affecting swine populations in 22 provinces, but World Health Organization officials have complained that little valuable information is being released by agriculture officials.⁷

Lastly, the regulations governing “state secrets” are ambiguous, allowing for broad interpretation when it comes to decisions about what data to release to the public and what can be considered a “secret” whose release might harm the national interest. Officials often use “national interest” or “social stability” arguments in the broad context of “state secrets” when refusing to make information public. Reassuringly, there is open debate amongst intellectuals and in the media about accountability and transparency, with some even debating shortcomings of the state secrets regulations.⁸ This will hopefully ensure that steady progress continues to be made over time.

Structural Challenges Hindering an Effective Regulatory Environment in China

Understanding the structure of the food industry in China will help us better engage counterparts and develop strategies and policies that have a higher likelihood of achieving success. There are four key challenges that hinder the establishment of effective regulation of the food processing industry. First, the food processing industry in China is dominated by small processors. Second, local governments lack capacity or incentive to establish effective oversight. Third, globalization is changing the social and economic landscape in China. Finally, China’s political-economic system lack structures that contribute to product safety in other countries. Additionally, these challenges among other factors act as a constraint on internal efforts to increase transparency as well as safety.

Perhaps the highest risk to U.S. consumers is presented by food products produced by small, unlicensed factories whose outputs find their way into the international market through a series of brokers and resellers. These micro-enterprises, often family businesses run out of homes or small rental spaces have little access to technology, are often unknowledgeable about food safety science and international standards, have little capital investment, and do not have brand names or reputations to protect. Following the reform and opening policies established in 1979, farmers were allowed to engage in private business for the first time. To supplement incomes from farming, many families have turned to simple food processing to increase their incomes. Rural income growth has lagged behind urban growth, resulting in new government policies designed to close the rural-urban income gap. Recently, agricultural taxes have been eliminated, social subsidies have increased and government policies encourage farmers to be more productive, which poses a dilemma for local officials confronted with a micro-enterprise which is not up to standard but contributing to local economic growth. Another factor is the dismantling and “marketization” of the state-owned monopoly trading system that was once a fundamental part of the planned economy in China. While this has provided new opportunities for local farmers and international companies to enter the Chinese market, it has also reduced oversight and quality control of commodities bound for international trade. In light of these structural reforms, government regulators have not adequately adapted their top-down oversight approach to a sector which is increasingly “bottom-up.”

Like many things in China, the scope of the food processing industry is huge and hard to measure. Citing experts, the China Daily recently put the number of food processors at 1 million, with 70 percent of those operations having less than 10 persons.⁹ The General Administration of Quality Supervision, Inspection and Quarantine stated that it was preparing to step up “enforcement” in the sector, claiming that it includes 448,153 business, with 352,815 having fewer than 10 employees. They also pointed out that half of all business had improper licenses and 164,000 had no license at all.¹⁰ To put these numbers in perspective, the US FDA estimated that about 210,000 domestic firms were required to register in the U.S. in compliance with the “Public Health Security and Bioterrorism Preparedness and Response Act of 2002.”¹¹

Massive investment in infrastructure in China has fueled economic growth and provided new opportunities for these small processors. In 1988, China had 100 kilometers of expressways. By early 2006 it had 41,005 km.¹² This has enabled farmers in once remote areas to now get their products to urban markets. A 300 kilometer journey that took 9 hours in 1994 took under three hours by 1997. Major improvements in infrastructure, coupled with other logistics developments including remarkable penetration of mobile phone technology, has intensified the “reach” of globalization to all parts of China. Globalization has created immense prospects for small rural food processors and farmers, particularly those engaged in fish farming, animal husbandry, and fruit or vegetable cultivation. Rural markets are increasingly linked with urban ones. U.S. markets are now connected with Chinese markets like they have never been before.

While the Chinese government plays a dominant role in regulating food as well as pharmaceutical production, it has had limited success in establishing a culture of safety in the industry and ensuring that unlicensed and unqualified processors and their products do not enter the market. Government capacity is particularly weak at local levels, and new regulations and dictates from Beijing are often ignored by local officials. Where some local governments might have the will to enforce regulations and standards, they often lack the means. Corruption within the Chinese government poses a further challenge. The State Food and Drug Administration has been wracked by a corruption scandal involving its founding director and over 60 people, including local officials. The former director's conviction and execution five weeks later mark a turning point for the agency which will undoubtedly seek to improve its reputation and effectiveness.

Most troubling, however, is the impact of this legacy on the willingness of processors of all sizes to adhere to government-established standards. Manufacturers often see government oversight as capricious and corrupt, spending more energy trying to outwit and avoid the system rather than "buying in" and focusing on compliance and good manufacturing practices. The purchasing of licenses and entertainment of officials and inspectors is common and undermines confidence in regulators' authority. For larger processors, poor public sector governance often leads to collusion with local officials who protect firms from stringent oversight. At its worst, it is an environment where producers of counterfeits and substandard products can prosper, legitimate processors are not accountable, and transparency is precluded by all.

Government officials in China are further challenged by the uneven development of political reforms which have not kept pace with social and economic reforms. Regulators are hampered by the lack of strong consumer protection laws and independent courts that place consumer protection above local economic and political interests. Additionally, China lacks a robust civil society that collectively represents the interests of consumers as well as manufacturers. Without these structural elements, particularly a network combining a powerful legal system, insurance companies, industry associations and "consumer watchdogs" in place, the Chinese regulatory system lacks powerful tools to ensure food and drug processors adhere to good manufacturing practices after the government inspector has left the premises. Without these elements in place, there is little incentive or capacity for companies to develop "industry standards" or "voluntary standards" which would raise the bar for quality and safety. The Chinese leadership views the potential development of an independent judiciary, robust civil society, and political checks and balances as threatening. However, even with the dramatic changes in China's society and the economy over the past 30 years, political reforms have been slow, and no alternative to a strong non-governmental presence in political society, has emerged.

Outlook for U.S. Engagement with China

Encouragingly, food security and free trade are common, core interests of both the U.S. and China. The Chinese government recognizes that it will have to take significant steps to improve its domestic food and drug safety if it is to maintain access to international

markets. The recent spate of consumer product crises has stimulated action on the part of the Chinese bureaucracy, though it is unclear if the measures they are employing today will have a more substantial impact than past pledges to clean up the industry. Senior officials starting with the Premier are leading the drive to update laws and standards, including establishing new penalties for non-compliance. They are cracking down on illegal and unregistered processors, particularly ones that intentionally adulterate or counterfeit products for financial gain. China garners no benefit from shipping sub-standard or dangerous products to the U.S., so we should view these efforts as genuine. The leadership is keen to reduce future embarrassing incidents that tarnish the “made in China” brand and reduce competitiveness and market access for Chinese companies. China’s motivations to improve its governance of the food and drug sector present a potential opportunity for the U.S. to strengthen collaboration which will contribute to increased transparency as well as a safer food supply.

In July, both the U.S. and the Chinese governments each formed *ad hoc* inter-agency committees to coordinate food safety efforts. While the near simultaneous announcement of the formation of these committees appears to be coincidental, it reflects the serious concern with which both countries view the situation.

The U.S. is currently engaged in active diplomacy with its Chinese counterparts on this issue. Spurred by discussions on food safety between the Chinese and U.S. participants at the Strategic Economic Dialogue meeting held this May in Washington, a delegation from the U.S. is in Beijing today discussing this issue with Chinese counterparts. The Chinese are expected to send delegation to Washington in six weeks to reciprocate and continue talks towards signing Memorandums of Understanding on food safety and drugs. The key issue facing the negotiators from Beijing and Washington are whether the resulting MOUs can have enough substance to make them effective and whether both sides can agree on the metrics and evaluation process to determine if each side is meeting its obligations. Unfortunately, whether or not the procedures and standards established by international MOUs will have a tangible impact on the Chinese food and drug production system and export qualification process will likely be determined by the enthusiasm and capacity of local authorities. Unfortunately, there has been little or no engagement with provincial level authorities up to now.

Recommendations

To be successful, Chinese regulators and policy makers will have to take an innovative approach to improve the food processing sector. “Increasing supervision,” re-writing laws, and other top-down strategies are unlikely to substantively transform the industry. Crackdowns and government-led campaigns do not solve underlying problems and are unlikely to prevent crises from reoccurring. Small manufacturers that are shut down in one campaign can easily re-open elsewhere, effectively driving the problem underground. Likewise, creating unrealistic financial and administrative barriers for manufacturers to enter the market legitimately can drive processors into unregulated situations, making certification and traceability extremely challenging. Incentivizing processors to

voluntarily comply with clear and reasonable regulations will be vital to ensure long-term food safety.

There are a number of opportunities for U.S. government agencies and non-governmental organizations (NGOs) to engage Chinese counterparts to help build an environment where safe production is the norm. These efforts will not only benefit Chinese producers and consumers, but further strategic U.S. interests by increasing opportunities for U.S. businesses. Engagement establishes positive government-to-government relationships which will be critical in future crisis situations, including public health emergencies, such as the re-emergence of SARS or Avian Influenza. Confidence and trust between the two sides will increase the likelihood that Chinese authorities will willingly share information in a crisis situation.

Developing non-governmental resources to support safe manufacturing practices in China should be expanded. In the United States, NGOs play a vital role in both policymaking and ensuring food and drug safety. For example, the Grocery Manufacturers Association-Food Products Association represents food processors in dialogues with regulators and provides education and training for processors to ensure that they have the ability and technology to adhere to industry standards and good manufacturing practices. While Chinese associations exist, their roles are substantially different than their global counterparts. The US FDA and non-government agencies have run training programs in China, which should be expanded. Additionally, improving access to information for small processors will increase understanding of U.S. standards and help establish notions of voluntary, rather than compulsory, compliance.

The U.S. government has experience establishing registration and tracking systems which can generally be shared. Engaging central as well as provincial authorities to establish lists of qualified exporters would improve traceability and increase accountability in China. Building this capacity in China would also support more forthright reporting and responses to reported incidents. The Chinese government has pledged to institute increased export testing on products bound for the U.S. Building a mechanism for U.S. authorities to report to Chinese authorities when shipments fail inspection in the U.S. would reduce the chances of disputes escalating into political crises. Harmonizing standards between the two countries on issues including testing methodologies and product tolerances would be a necessary step in this process and would also greatly contribute to transparency.

The U.S. government currently funds programs supporting the judicial reform process in China, which is directly related to the issue of public health, food safety and transparency. Continuing to fund these programs is important to not only foster rule of law within China, but also to build confidence with critical Chinese stakeholders that U.S. intentions towards China are based on common, non-threatening interests broadly intended to encourage China to adhere to international standards and norms.

Lastly, the U.S. FDA has significant resource constraints which inhibit its ability to prevent problems. It is becoming increasingly apparent that preventative strategies need to be considered in addition to the existing capacity to identify, track and trace problem

products. In particular, the U.S. FDA has a very limited capacity to prevent unqualified shipments from reaching U.S. ports. For example, the FDA does not have a permanent presence based in the U.S. embassy or consulates in China. Having a full-time presence in critical exporting countries would increase both transparency and the quality of engagement in developing markets such as China. The FDA has had a largely domestic focus since its founding in 1906 following the passage of the Food and Drug Act, which itself was prompted by public outrage over a chaotic market, epitomized by Upton Sinclair's novel, *The Jungle*. Looking forward, the FDA will have to adapt to enable itself to proactively deal with rising imports from not only China but the rest of the globe as well.

Conclusions

China has a very traditional notion of state sovereignty that is increasingly out of place as globalization intensifies and China becomes integrated with world markets. As the U.S. encourages China to be a "responsible stakeholder," it is gradually realizing that this concept means more than encouraging North Korea to continue bargaining away its nuclear arsenal. The concept implies that China must adapt to the world, just as the world is adapting to China. What takes place in a backyard processing plant in a distant province potentially affects consumers around the globe, a notion which challenges China's traditional conceptions. Senior officials are slowly realizing that China's most vital interests, such as access to markets and free trade in goods and services, requires a level of engagement and transparency with the international community that conflicts with its long-standing, though increasingly outdated concept of sovereignty. For example, prior to 1980, agricultural output, economic data and other social statistics were considered state secrets and not published. From the Chinese perspective, they have come a long way in openness, transparency and media freedom, even if they do not always meet our expectations. Government spokespersons, websites for each government department, public consultations on policy matters, and a commercialized press, while commonplace in the U.S., all represent significant paradigm shifts for China.

Understanding China's internal challenges while encouraging policies and practices that conform to international norms is in our best interest as well as theirs. Food and product safety is a key sector where the U.S. has valuable experience and technology to share with our trading partners. Chinese leaders recognize that unsafe products, especially food, challenges their own credibility, undermines their authority and undercuts social stability. Therefore, we have every reason to work together on this issue. Effective collaboration will ultimately build confidence between the U.S. and China, which will also improve transparency.

Hopefully, the widespread global media coverage of unsafe food products in China will spur reforms and new ways of thinking in China about how it manages food safety and information control, much as the SARS epidemic spurred investment in public health programs and the expansion of the government spokesperson network.

¹ "China makes public names of government spokespersons for first time", *China Daily*, December 29, 2004.

² "Law of the People's Republic of China on Prevention and Treatment of Infectious Diseases," promulgated by the State Council August 28, 2004.

³ Article 10, clause 11 of the "Ordinance on Openness of Government Information", State Council Document number 492. (*zhonghua renmin gongheguo zhengfu xinxi gongkai tiaolie*) Accessed July 20, 2007 at: <http://news.sina.com.cn/c/2007-04-24/060012850265.shtml>

⁴ "China Tightens Approval of New Medicines," *China Daily*, July 14, 2007.

⁵ "Report: China bans media from 'swine flu' sites," *Associated Press*, July 31, 2005. See also: "Chinese officials fired for pig disease cover-up," *Reuters*, August 08, 2005.

⁶ "Chinese health official denies cover up of bird flu data," *Xinhua*, April 29, 2006.

⁷ Keith Bradsher, "China Tells Little About Illness That Kills Pigs, Officials Say," *New York Times*, May 8, 2007.

⁸ Zhou Xiaohong, "Freedom and Secrecy of Government Information," *Journal of Jiangnan Social Studies University*, Vol.7, 2005 (in Chinese). See also: Ma Guochuan, "Media Freedom is a Positive Factor in Social Stability Transition: An Interview with Cai Dingjian, Director of the Constitutional Government Research Institute at the University of Politics and Law," *Economic Observer News*, July 2, 2007. (in Chinese).

⁹ Liu Wei, "Safe food for all should be the recipe," *China Daily*, March 15, 2007.

¹⁰ "State Administration of Quality Supervision, Inspection and Quarantine issued 'further strengthening food production and processing small workshops and supervision work' three prominent regulatory systems to ensure the quality and safety of food," July 10, 2007. (in Chinese) Accessed July 11, 2007 at: http://www.aqsiq.gov.cn/zjxw/zjxw/zjftpxw/200707/t20070711_33419.htm

¹¹ U.S. Food and Drug Administration, "Guidance for FDA Staff, Registration of Food Facilities, Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002." Accessed July 25, 2007 at <http://www.cfsan.fda.gov/~furls/cpgreg3.html>

¹² National Bureau of Statistics. Accessed July 9, 2007 at <http://www.stats.gov.cn/tjsj/ndsj/2006/indexch.htm> (Note: China's highway system is reportedly the second longest in the world, after the U.S. with 260,667 km).