

FOOD SAFETY AND THE DEVELOPMENT OF REGULATORY INSTITUTIONS IN CHINA*

Waikeung Tam and Dali Yang

Consumer safety has become an increasingly salient issue for China's rising middle class and regulatory state. This article elucidates the challenges of regulatory development in China through a study of food safety regulation, paying special attention to a scandal involving the sale of fake and sub-standard milk powder. It highlights some of the deficiencies of the regulatory regime and addresses some salient issues concerning regulatory state building, including the regulatory chasm between urban and rural areas, the appropriate role of the state in socioeconomic regulation, the uncertainties created by government reforms, and the conflict between food safety and employment.

Key words: China, economic development in East Asia

* Earlier versions of this article were presented at the workshop on "Regulatory Compliance in China: The Lessons of Regulatory Effectiveness," Georgetown Law Center, November 2-5, 2004, and at the 2005 Annual Meeting of the Association for Asian Studies, Chicago, Illinois. We are grateful to the workshop and panel organizers, discussants and participants, especially Michael Dowdle and Jean Oi, for their encouragement and suggestions.

Food Safety and the Development of Regulatory Institutions in China

Much of the American literature on regulatory politics has emphasized the principal-agent relationships between citizens and their elected representatives and between the representatives as legislators and the regulatory agencies. Particular attention has been given to the issue of bureaucratic autonomy and accountability in electoral democracies.¹

Like the United States in the Progressive Era, regulatory issues have also come to the fore of public policy in China. Yet, unlike the United States then or now, the regulatory developments in China are occurring within an authoritarian context, where the executive branch has predominated in the formulation and implementation of regulatory laws and policies. Thus it stands to reason that the theories and approaches developed for democratic political settings cannot be easily transplanted to China without much adaptation. Moreover, China's status as a late developing economy also implies that regulatory developments there may share more features with other developing economies than with economies that have well-established regulatory systems.

Though not elected via competitive elections, China's national leaders have not been oblivious to popular support and political legitimacy. Throughout the reform era, the Chinese leadership has made economic reform and development the core of their mission in order to sustain communist party rule and improve the legitimacy of the Chinese Communist Party (CCP). Today, however, China's elites increasingly recognize that the single-minded focus on GDP growth has occurred at the expense of other important measures of development. The SARS crisis of 2003 drove home the message to China's new generation of leaders—notably President Hu Jintao and Premier Wen Jiabao—that economic growth must be complemented by more attention to broader measures of social development.² In this

1. See, for example, John D. Huber and Charles R. Shipan, *Deliberate Discretion?: The Institutional Foundations of Bureaucratic Autonomy* (Cambridge: Cambridge University Press, 2002).

2. See, for example, Joseph Fewsmith, "Promoting the Scientific Concept,"

context, issues of public health and safety have gained in prominence. In the age of market uncertainty, the state must not only promote growth but also provide support for the disadvantaged and protect the interests of consumers.

In this article, we draw on recent developments in food safety regulation, which has become an increasingly salient issue for China's rising middle class, to elucidate the patterns of Chinese regulatory development. We pay special attention to a scandal involving the sale of fake and substandard milk powder. We begin with a discussion of the food safety situation in post-Mao China and of how the regulatory regime operates. We then highlight some of the deficiencies of that regime. Next we address some salient issues concerning the building up of a regulatory state in China, including the regulatory chasm between urban and rural areas, the appropriate role of the state in socioeconomic regulation, and the conflict between food safety and employment. Finally, we review some of the institutional responses to the crises of food safety.

The Milk Powder Scandal and the Growing Concern over Food Safety

In April 2004, a scandal involving fake infant milk powder in Anhui's Fuyang municipality brought China's food safety regulation into the international spotlight.³ The scandal, which China Central Television (CCTV) revealed to the national audience on April 19, involved the deaths of at least twelve babies and hundreds of cases of serious infant malnutrition (e.g., big head and small body symptoms) arising from the consumption of fake and substandard milk powder. The day after the CCTV

at www.chinaleadershipmonitor.com, Issue 11 (Summer, 2004); H. Lyman Miller, "The Hu-Wen Leadership at Six Months," www.chinaleadershipmonitor.com, Issue 8 (Fall, 2003).

3. Jim Yardley, "Infants in Chinese City Starve on Protein-short Formula," *New York Times*, May 5, 2004; Yardley, "Tainted Milk Scandal Grows: Chinese Infant Deaths Highlight Lack of Consumer Protection," *International Herald Tribune*, May 5, 2004; "China 'Fake Milk' Scandal Deepens," *BBC News: Asia-Pacific*, April 22, 2004, online at <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/asia-pacific/3648583.stm>.

broadcast, Premier Wen dispatched a special investigation team to Fuyang. This local scam quickly evolved into a nationwide scandal. Authorities soon uncovered massive amounts of fake and substandard milk powder in at least ten other provinces.⁴

The milk powder scandal has highlighted major weaknesses in China's food safety regulatory regime, especially in rural areas. The first big-headed baby was admitted to the Fuyang People's Hospital in January 2003. The Fuyang Administration for Industry and Commerce, the government regulator of retail markets, began to receive complaints about the quality of infant milk powder in May 2003. Yet for months the Fuyang authorities failed to take any action. They finally launched an initiative to rectify the problem in late December 2003 only after the media began to report on fake milk powder sales in Fuyang.⁵ Even then the local initiative was at best ineffectual and the number of babies suffering from serious malnourishment caused by the consumption of fake milk powder continued to rise.

By April 2004, the Fuyang milk powder scandal had become a national one. Between April and August 2004, the State Administration of Quality Supervision, Inspection and Quarantine undertook a nationwide drive to inspect 496 milk powder producing firms. As a result of this drive, fifty-four firms were ordered to terminate production for having produced milk powder that failed to meet national standards on protein content and other trace elements. Of those cases, thirty were transferred to the police for further investigation; ten people were detained for criminal violations and five others were put on the police wanted list.⁶

The Fuyang milk powder scandal is not an isolated case, and the national attention it has received is indicative of how food

4. Major web news portals in Chinese have followed this development with dedicated channels. See, for example, <http://news.sina.com.cn/z/milkpowder/index.shtml>.

5. Fu Zimei and Hu Jian, "Liezhi naifen baolu chu shenme" (What Does Substandard Milk Powder Reveal), *Renmin ribao* (People's Daily, Beijing), May 17, 2004; Fan Lixiang, "Anhui Fuyang sharen naifen shijian zeren luoshengmen" (Shirking of Responsibility in the Fatal Milk Powder Incident in Anhui Fuyang), *Ershiyi shiji jingji baodao* (21st Century Business Herald), April 26, 2004.

6. *Beijing yule xinbao* (Beijing Star Daily), August 13, 2004, online at <http://news.sina.com.cn/c/2004-08-13/04274022884.shtml>.

safety has in recent years become a growing concern among ordinary Chinese. For 2003, the Ministry of Health received reports of 379 severe food poisoning cases; these cases affected 12,876 people, including 323 deaths. The 2003 numbers were up by 196 percent, 80 percent, and 134 percent respectively from 2002.⁷ In 2003 the General Administration of Quality Supervision, Inspection and Quarantine conducted a nationwide inspection of some 2,000 types of foodstuffs and found that almost one-fifth failed to meet government standards. Even in Beijing, almost a quarter of the pork in markets was found to be unfit for consumption.⁸

A good indication of the public concern over food safety is the popularity of the CCTV program "Weekly Quality Report" (*Meizhou Zhiliang Baogao*), which counts as its cosponsor the General Administration of Quality Supervision, Inspection and Quarantine. Shortly after its debut in 2003, Weekly Quality Report became one of the CCTV's most-watched programs.⁹ The state's failure to protect the public from unsafe foodstuffs and its sluggish response to food poisoning cases have even provoked public demonstrations. In March 2003, more than 3,000 schoolchildren in Liaoning's Haicheng became sick from drinking a soy milk product in school. Some 1,000 angry parents blocked the railroad to protest the local government's response.¹⁰

7. "Babuwei lianshou shipin anquan jianguan fengbao" (Eight Ministries Join Hands to Unleash Storm of Food Safety Regulation), *Ershiyi shiji jingji baodao*, May 17, 2004; Elaine Kurtenbach, "Polluted, Fake, Unsafe Foods Alarming Food-loving Chinese," Associated Press, May 20, 2002.

8. "Lianghui fangtan: yifa baozheng shipin anquan" (Interviews of the National People's Congress and the Chinese People's Political Consultative Conference: Using Law to Protect Food Safety)," *Yangshi guoji wangluo* (CCTV International Network), March 7, 2004, online at www.southcn.com/news/community/shzt/consumer/core/200403180608.htm; Vivien Cui, "Quarter of Capital's Pork is Unfit to Eat," *South China Morning Post* (Hong Kong), February 3, 2004; Liang Qiwen, "Expert Warns Food Safety Could Affect Nation's Birth Rate," *China Daily* (Beijing), April 26, 2004.

9. Launched in 2003, the "Weekly Quality Report" focuses on muckraking counterfeit products, particularly foodstuffs. See *Singtao Daily* (Hong Kong), May 17, 2004.

10. Ma Tao and Wu Peishuang, "Erqianwubai xuesheng dounai zhongdu konghuang" (Soy Milk Poisoning of 2,500 Schoolchildren Causes Panic),

The Evolving Architecture of Food Safety Regulation

The discussion above suggests that food safety regulation has emerged as a major governance issue in China. It also begs the question of what's wrong with China's food safety regulatory regime.

The most salient feature of China's food safety regulatory system is the fragmentation of regulatory authority among different government agencies.¹¹ Currently the Ministry of Health (MoH), the Ministry of Agriculture (MoA), the General Administration of Quality Supervision, Inspection and Quarantine (GAQSIQ), the State Administration for Industry and Commerce (SAIC), the Ministry of Commerce (MoC), and the State Food and Drug Administration (SFDA) are actively involved in regulating food safety. This fragmentation of regulatory authority is in sharp contrast with the regulatory regime in the United States. Except for meat and poultry, which are regulated by the U.S. Department of Agriculture (USDA), the U.S. Food and Drug Administration regulates almost the entire food chain. Its principal duties include regulating drugs and feed given to animals to be used as food for humans, enforcing the limits on how much pesticide may remain on food crops, establishing standards of identity and quality for foodstuffs, developing food labeling laws, inspecting food processing plants to check for adulteration and mislabeling, determining the safety of food additives and food colors, and initiating court proceedings against lawbreaking entities.¹²

The fragmentation of the food safety regulatory regime in China is partly a legacy of stop-and-go changes in both legislation and institutional reforms. China's Food Hygiene Law (*Shipin weishengfa*), promulgated in 1995, puts the Ministry of Health in charge of supervision and management of food hygiene. The MoH's principal regulatory authorities include: issuing hygiene license to businesses engaged in food production, marketing or

Zhongguo xinwen zhoukan (China Newsweek), April 14, 2003.

11. For discussion of the fragmented structure of bureaucratic authority in China, see Kenneth Lieberthal and Michel Oksenberg, *Policy Making in China: Leaders, Structures, and Processes* (Princeton, N.J.: Princeton University Press, 1988).
12. William Patrick, *The Food and Drug Administration* (New York: Chelsea House, 1988), ch. 5.

sales; monitoring, inspecting, and providing technical guidance for food hygiene; appraising and publicizing the status of food hygiene; investigating and dealing with food poisoning or food contamination incidents; and imposing financial penalties or revoking the hygiene license of violators of the Food Hygiene Law.¹³ The Ministry of Agriculture is responsible for formulating and enforcing quality and safety standards for agricultural inputs and farm products. For instance, the MoA sets the limits for pesticide residues in agricultural products and monitors compliance with such standards.¹⁴

The GAQSIQ and the SAIC are also influential players in food safety regulation. The Product Quality Law (*Chanpin zhiliangfa*), enacted in 1993 and amended in 2000, authorizes the GAQSIQ to take the lead in regulating product quality, including the quality of foodstuffs. The GAQSIQ issues production permits for food processors and producers, supervises licensed food enterprises for compliance with regulations concerning food manufacturing, packaging, and labeling, and is empowered to crack down on unlicensed food processing and production. It can issue fines, confiscate products, and ban food manufacturers from continuing production if they have violated the relevant rules.¹⁵ The SAIC oversees food safety in the "circulation" area: It issues business licenses and oversees food hygiene in urban and rural markets. Like the GAQSIQ, the SAIC is empowered to fine and revoke the business license of violators.¹⁶ The Ministry of Commerce can enact and amend standards and rules regarding the procedures for food processing, packaging, storage, transportation, and sales.¹⁷

It should be noted that other bureaucratic agencies are sometimes involved in food safety regulation as well. For example, the China Petroleum and Chemical Industry Association

13. The Food Hygiene Law of the People's Republic of China. Available on the Ministry of Health's website at www.moh.gov.cn.

14. See the Ministry of Agriculture's website at www.agri.gov.cn/MOA/zhize.htm.

15. See the website of the General Administration of Quality Supervision, Inspection and Quarantine at www.adsiq.gov.cn.

16. See the website of the State Administration for Industry and Commerce at www.saic.gov.cn.

17. Dai Yan, "System to Safeguard Food Safety," *China Daily* (North American ed.), November 28, 2003.

(formerly the Ministry of Chemical Industry) and the Ministry of Public Security have the authority to oversee the production, storage, and sales of methanol and industrial alcohol.¹⁸

The Chinese leadership has recognized the fragmentation of the food safety regulatory regime. As part of the 2003 government streamlining program, food regulation was put into the State Food and Drug Administration (SFDA)—an apparent effort to emulate the U.S. FDA.¹⁹ The SFDA is authorized to exercise comprehensive supervision over the safety of food, health products, and cosmetics. Its portfolio includes coordinating the relevant bureaucracies to draft laws and administrative regulations concerning food safety. Two of its six specialized departments are dedicated to food regulation: Food Safety Coordination and Food Safety Supervision. The Food Safety Coordination Department coordinates with other departments and agencies to devise and enforce the annual plan and other programs for food safety, to set unified food safety standards, to collect and analyze information on food safety, and to disseminate food safety information to the public. The Food Safety Supervision Department is empowered to design regulatory measures and means, investigate major food safety incidents, and coordinate campaigns to combat counterfeit foodstuffs.²⁰

Continuing Fragmentation of Regulatory Authority

Despite the Chinese leadership's desire to remodel the SFDA after the U.S. FDA, this approach was stymied even before the SFDA's creation.²¹ Resistance from other bureaucratic interests has limited the transfer of power and responsibility to the SFDA.

18. Cheng Gong, "Geji jianguan bumen ruhe jinjie dushi" (How Should the Regulatory Agencies Eradicate Poisonous Food), *Nanfang zhoumo* (Southern Weekend), May 20, 2004.

19. For various other initiatives to rationalize the government setup, see Dali Yang, *Remaking the Chinese Leviathan* (Stanford, Calif.: Stanford University Press, 2004), ch. 2.

20. See the website of the State Food and Drug Administration at www.sda.gov.cn.

21. The discussion below is primarily based on Tang Yuankai, "Doctor's Orders: Medicine Regulation," *Beijing Review*, May 29, 2003, pp. 23-4; Josephine Ma, "New Agency Set to Rein in Food and Drug Market," *South China Morning Post*, March 19, 2003, p. 8.

As noted earlier, the Food Hygiene Law authorizes the Ministry of Health and local health bureaus to supervise food hygiene and to impose fines on lawbreaking enterprises and collect the fines as a source of revenue. Not surprisingly, the MoH jealously guarded its power to oversee food safety and strongly resisted the creation of a U.S.-style FDA.²² In the process of establishing the SFDA, the MoH argued that the FDA is an executive organ of the Department of Health and Human Services and lobbied national leaders to put the SFDA under its control. Other relevant agencies similarly feared that a powerful SFDA will take over their revenue-generating regulatory powers. Opposition from these bureaucratic interests helps to explain the SFDA's limited authority.

For its part, the SFDA leadership was keenly aware of these competing interests and was careful with its first steps. In an interview shortly after the SFDA's establishment, former SFDA Director General Zheng Xiaoyu stressed that the SFDA would not take over the food safety regulatory functions of agricultural, industrial and commercial, health, and technical agencies.²³ Instead, the SFDA will concentrate its authorities on comprehensive oversight, coordination, and strengthening of law enforcement.²⁴ This was at best an ambiguous definition of the SFDA's mission, however, and indicates the challenges ahead for the SFDA. Although the SFDA was given ministerial rank to facilitate its interaction with other ministries, it has nonetheless faced substantial obstacles in securing the cooperation of other agencies.

The milk powder scandal is an apt illustration of problems of coordination. In July 2003, the SFDA issued a directive "Notice on Implementing the Food and Drug Safety Project." The directive stipulated that relevant agencies should update the SFDA on a bimonthly basis on the implementation of the project. Among the key products included in the Project were milk products.²⁵

22. Some mainland academics also fear that the MoH would be the most formidable challenge to SFDA's supervisory function. Josephine Ma, "Sweeping Food-Safety Law Needed," *South China Morning Post*, March 6, 2004.

23. In June 2005, Shao Mingli replaced Zheng Xiaoyu as the Director General of the SFDA.

24. Tang Yuankai, "Doctor's Orders."

25. State Food and Drug Administration, "Guanyu yinfa shipin yaopin

The fake milk powder incident in Fuyang, however, revealed that the SFDA did not receive adequate cooperation from the health and industry and commerce departments or from the Quality Administration. Partly to help break down the walls among these government agencies, the SFDA has worked through Vice Premier Wu Yi and Secretary General of the State Council Hua Jianmin to coordinate policy making and implementation on food safety.²⁶ This is similar to developments in several other areas, such as the protection of intellectual property rights.

Although the Chinese leadership has sought to emulate the FDA in establishing the SFDA, the SFDA's resemblance to the U.S. FDA is skin-deep at best. The SFDA is far from being an agency with enough authority to exercise unified and comprehensive supervision over food safety. Instead, regulatory authority over food safety remains divided among different government departments. Meanwhile, the SFDA and local food and drug bureaus complain about inadequate resources. Sometimes their quest for revenue conflicts with the optimal regulatory goals.

The fragmentation of regulatory authority and responsibility for food safety among at least six government ministries and administrations (MoH, MoA, GAQSIQ, SAIC, MoC, and SFDA) offers a daunting challenge for regulatory implementation. In certain aspects, there may be excessive enforcement; in others, shirking of responsibility and shifting of blame may be the outcome. Jin-Wook Choi, for example, has observed that blurred responsibilities and authorities of regulators and the resultant regulatory failure was one of the most significant underlying causes of the financial crisis in South Korea in 1997.²⁷

In important respects, the milk powder scandal provides a striking illustration of these bureaucratic symptoms. First, the fragmentation of regulatory power reduced the information flow on food safety issues and stymied cooperation among different regulatory agencies. While the Fuyang health bureau had

fangxin gongcheng shishi fangan de tongzhi" (Notice on the Implementation of Food and Drug Safety Project)," July 21, 2003, online at www.sda.gov.cn/cmsweb/webportal/W945325/A33066084.html.

26. "Badawei guanbuhao yitou zhu?" (Are Eight Ministries Unable to Regulate a Pig?), *Ershiyi shiji jingji baodao*, May 17, 2004.

27. Jin-Wook Choi, "Regulatory Forbearance and Financial Crisis in South Korea," *Asian Survey*, vol. 42, No. 2 (March-April, 2002), pp. 263-66.

compiled a list of unqualified milk powder for its anti-counterfeiting initiative, this list was not shared with the industry and commerce bureau. The latter missed various targets in its drive to root out fake milk powder. It was not until after the State Council's interdepartmental investigation team had arrived in Fuyang that information sharing among these bureaus truly improved.²⁸ If these bureaus were not sharing information well, they were truly mercenaries in sharing resources. A senior official of the Fuyang Administration for Industry and Commerce (AIC) complained that the local Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) had asked his office to pay 382,000 yuan for tests that the AQSIQ performed for the AIC during the fake milk powder investigation. The Fuyang AIC suffered from budget problems and found these charges quite burdensome.²⁹

Second, the fragmentation of regulatory authority is reflected in incongruities among the regulations and standards adopted by the different agencies. When it comes to food, the diverse opinions of different government agencies can be downright confusing to the consumer. For instance, after CCTV exposed the use of cancer-causing chemicals in vermicelli (*longkou fensi*) production in Yantai, the GAQSIQ announced that about thirty brands of vermicelli were fit for consumption. But the Ministry of Health's list included only seven brands.³⁰

Third, the poor delimitation of regulatory authority among government departments provides fertile ground for shirking and buck-passing. When asked by journalists why his office took almost a year to take action against fake milk powder, a bureaucrat at the Fuyang AQSIQ blamed the Fuyang AIC, claiming that "according to the Product Quality Law and State Council's regulations, the AIC should hand the case to the Quality Administration when it uncovered unqualified foodstuffs in the production sphere (*shengchan lingyu*). The Fuyang AQSIQ did not act because the AIC

28. "Liezhi naifen baolu chu shenme."

29. "Guanyuan shizhi haishi zhidu quehan, liezhi naifen dangwen shuize" (Official Negligence or Institutional Defects—Who Should be Held Responsible for Unqualified Milk Powder?), *Dongfang wang* (Eastern Net), May 17, 2004, at www.southcn.com/news/community/shzt/mp/view/200405190543.htm.

30. "Babuwei lianshou shipin anquan jianguan fengbao."

had not transferred the case to it." The Industry and Commerce Administration, however, blamed its inaction on the Health Bureau. A deputy director of the Fuyang AIC denied that his office should be held accountable for the fake milk powder. He contended that although the Product Quality Law and State Council's regulations stipulate that the SAIC oversees product quality in the circulation arena, the Food Hygiene Law also assigns regulation of food hygiene to the Ministry of Health. In accordance with the principle that specialized law (*zhuanmen fa*) should have precedence over generalized law (*putong fa*), this deputy director contended, the supervision over milk powder quality should primarily be the responsibility of the MoH and local health bureaus. The SAIC, at most, plays a complementary role in the supervision of food safety.³¹ Officials at the Health Bureau, however, also sought to evade the blame. Although the Food Hygiene Law puts the health department in charge of supervision and management of food hygiene, the Fuyang health bureau maintained that the severe malnutrition problems arising from the consumption of fake and substandard milk powder should be handled by the AIC.³²

The overlapping and unclear delineation of regulatory authority and the subsequent shirking of responsibility explain why victims of the fake milk powder in Fuyang had to resort to the mass media. The intervention of CCTV helped capture the attention of national leaders and elicited a vigorous response from the national government.³³

31. "Guyuan shizhi huanshi zhidu quehan, liezhi naifen dangwen shuize."

32. "Anhui Fuyang sharen naifen shijian zeren luoshengmen."

33. Frustrated by the inability and unwillingness of Fuyang officials to solve the problem of fake milk powder, Gao Zheng, whose infant niece was hospitalized, complained to the mass media. His complaints helped in the mass media's uncovering the severity of the problem. See "Shei diyige jiekailiao Fuyang liezhi naifen shijian de neimu?" (Who is the First Person to Uncover the Inside Story of the Fuyang Fake Milk Powder Incident?), *Xiandai jinbao* (Contemporary Golden News), April 28, 2004, online at www.southcn.com/news/community/shzt/mp/latest/200404280684.htm. The Fuyang People's Hospital informed Fuyang TV stations, rather than Fuyang health officials, of fake baby formula and its widespread harm. *Xinxi Shibao* (Information Times), April 30, 2004, online at <http://cn.news.yahoo.com/040430/250/2246v.html>.

The Revenue Imperative

Money Over Safety

As counterfeiting activities can bring considerable economic benefits to localities, such as increased government revenue and employment opportunities, many local officials (especially those at or below county level) have tolerated them. In most cases, fake and substandard products are not sold around the places where they are made. Instead, they are transported to other localities. This further reduces the incentives for local authorities to crack down on counterfeiting businesses.³⁴

Local governments may protect counterfeiting businesses by laxly enforcing regulations over food safety. As local governments vie for investment, some officials (particularly those in poorer areas) have even embraced investment that engaged in counterfeiting. It is reported that a large proportion of the fake milk powder uncovered in Fuyang was actually produced in parts of Zhejiang province as well as Heilongjiang province and Inner Mongolia. Pengxi Town in Zhejiang's Taishun County alone had eight businesses that produced counterfeit and substandard milk powder. These businesses were able to obtain hygiene licenses in spite of poor sanitation. The director of the Taishun Health Bureau maintained that, in issuing the hygiene licenses, the economic imperatives for attracting outside investment overrode other considerations. The deputy head of Pengxi Town also noted that these firms provided almost 100 jobs.³⁵

Similar dynamics also appear to be at work within the regulatory institutions. A vice mayor of Fuyang suggested that regulatory forbearance (*zeren bu daowei*) led to the fake milk powder

34. Yang, *Remaking the Chinese Leviathan*, pp. 96-7.

35. *Jiaodian fangtan* (Focus), "Jixing fazhangan daozi liezhi naifen beiju" (Distorted concept of development led to the tragedy of fake milk powder), China Central Television, June 16, 2004, at www.people.com.cn/GB/shehui/8217/34282/34284/2577776.html. See also Dai Dunfeng and Liu Jianping, "Zhuicha liezhi naifen haisi yinger chanyelian" (Tracing the Production Chain of Fatal Fake Milk Powder), *Nanfang Zhoumo* (Southern Weekend), April 29, 2004, at <http://cn.news.yahoo.com/040429/119/221kd.html>.

tragedy in Fuyang.³⁶ This regulatory forbearance has at least two origins—the revenue imperative and corruption. The pursuit of revenue by regulatory bureaucracies is an important factor behind the lax enforcement of food safety regulation. As the fiscal situation of many county governments has deteriorated since the 1994 fiscal reforms, county-level regulatory agencies like the industry and commerce bureau have relied on the collection of fines and license fees to cope with inadequate budget support.³⁷ Many regulatory bureaucrats have assigned top priority to these activities, which affect their personal income and welfare benefits.³⁸ Since the late 1990s, as a result of government reforms and the divestiture of businesses affiliated with the armed forces and other government and state institutions, the central government has stipulated that funds for regulatory administrations be covered through government budgets rather than the collection of fees and fines. Yet in poorer areas such as Anhui province, where the local government is likely to be cash-strapped, under-funding for the government bureaucracy remains a common phenomenon. In consequence, the local administrations in less developed areas tend to be eager to engage in revenue-generating regulatory activities.

This emphasis on revenue-generating regulatory activities has perverse effects on the regulation of food safety. First, regulators may put emphasis on imposing financial penalties on law-breakers and be less willing to adopt more effective means of cracking down on counterfeit foodstuffs, such as closing down production lines or initiating criminal prosecution against violators. The substitution of fines for criminal prosecution (*yifa daixing*) is a common practice in Fuyang. In June 2003, the Fuyang AQSIQ found one milk powder producer whose fake milk powder had

36. Ibid. and “Ensuring Food Safety Must be a Priority,” *China Daily*, May 24, 2004.

37. Yongnian Zheng, “State Rebuilding, Popular Protest and Collective Action in China,” *Japanese Journal of Political Science*, vol. 3, No. 1 (2002), pp. 59-62.

38. Industry and Commerce Bureau of Loudi City, Hunan, “Gongshang xingzheng zhifa renyuan guanli tizhi xianzhuang pouxi” (An Analysis of the Current Management System of the Enforcement Personnel of the Industry and Commerce Bureau), January 21, 2004, online at www.saic.gov.cn/gshlt/gshlt_detail.asp?gshltid=420.

caused the death of at least one infant. In spite of the severity of the incident, the Fuyang AQSIQ merely fined that producer a modest amount instead of closing his business down and initiating criminal proceedings against him.³⁹ That producer went on producing substandard milk powder until the following April when the State Council’s investigation team arrived.⁴⁰ In effect, regulators depended on such wayward business illegalities to generate fines and levies; closing such businesses down would be akin to killing the goose that lays the golden egg.

Second, regulators also collected fees and charges by issuing business licenses. According to a member of the State Council’s investigation team, the Fuyang investigation revealed that many unqualified enterprises had obtained all the necessary licenses—business license, hygiene license, hygiene quality report, and taxation registration certificate. An AIC official noted that the health and AQSIQ authorities issued hygiene certificates and quality approval to a famous baby formula enterprise even before that enterprise had started trial production. It turned out that the quality of its products was far below government standards.⁴¹ In short, it appears that regulators had forgotten that their chief mission was the supervision and guarantee of food safety rather than the generation of revenue or the facilitation of business malfeasance.

39. Some wholesalers and retailers of fake milk powder in Fuyang point out that the amount of fines is generally small compared to the high profitability of selling the counterfeiting products. See “Zhuicha liezhi naifen haisi yinger chanyelian.” A number of lawmakers and academics also remark that the financial penalties against counterfeiting are not sufficient enough to serve as an effective deterrence. “Shipin anquan li fa Guangdong yingxianxing yibu” (Guangdong should take the lead in making legislation on food safety), *Nanfang Zhoumo* (Southern Weekend), May 26, 2004; “Lianghui fangtan: yifa baozheng shipin anquan.”

40. “Yige fuqin de zhuiwen: yuanhe zanhuan zhixing guowuyuan guiding” (Inquiry by a father: why postpone implementing State Council’s rule), *Nanfang Zhoumo* (Southern Weekend), April 29, 2004, at <http://cn.news.yahoo.com/040429/119/221ju.html>. For a report of other instances of *yifa daixing* and their impact on the spread of fake milk powder, see “Liezhi naifen baolu chu shenme.”

41. “Badawei guanbuhao yitou zhu”; Zhou Limin, “Fuyang nongcun yinger datou guaibing zhuzong” (Tracking the big-headed disease of infants in rural Fuyang), *Banyuetan* (Fortnightly chat), April 21, 2004, online at <http://news.sina.com.cn/c/2004-04-19/08082343117s.shtml>.

Bureaucratic Competition and Corruption

Third, regulatory agencies have from time to time vied against each other for revenue-generating regulatory activities. Such bureaucratic competition tends to distort central regulatory policies.⁴² In 2001, the State Council issued Circular No. 57, which transfers the responsibility for regulating product quality in the circulation arena (markets) from the GAQSIQ to the SAIC. GAQSIQ is to focus on supervising product quality in the production phase. The Fuyang government also published this circular in the *Fuyang Daily*. However, since Fuyang does not have many production enterprises on which the ACSIQ can levy administrative fines and fees, implementation of Circular No. 57 would substantially erode the revenue base of the Fuyang ACSIQ. To protect the ACSIQ's financial interest, the Fuyang government postponed the implementation of the circular. Both the ACSIQ and the AIC were allowed to regulate the circulation arena. Thus, revenue concerns stymied the central government's effort to clarify the responsibilities among regulatory organs. One grieving parent lamented, "If Circular No. 57 had been implemented so that there was a clear division of labor between the Fuyang ACSIQ and AIC, my daughter might not have died."⁴³

Finally, the factors enumerated above are also compounded by bribery. According to Deputy Procurator General Sun Qian, corruption of state enforcement officials has become a major reason behind the proliferation of counterfeiters in recent years. Official corruption leads to regulatory forbearance as corrupt regulators neglect their tasks and refuse to hand perpetrators to criminal investigation and prosecution.⁴⁴ Official corruption was an important factor in the Fuyang case as well and helps to explain the widespread sale of fake milk powder in Fuyang for more than a year after the initial cases of infant malnutrition had been

42. Information in this paragraph is based on "Yige fuqin de zhuiwen: yuanhe zanhuan zhixing guowuyuan guiding."

43. Ibid.

44. Cheng Jie, "Zuigaojian jiang duban zhijia shoujiaan" (Supreme People's Procuratorate Will Supervise Investigation of Production and Sales of Counterfeit Goods), *Beijing qingnianbao* (Beijing Youth Daily), April 30, 2004, online at www.peopledaily.com.cn/GB/shehui/1062/2477175.html.

reported to government offices. Two Fuyang AIC officials, for instance, were later prosecuted for taking bribes and failing to investigate a fake milk powder case.⁴⁵

Contrary to Andrew Mertha, who claims that the fragmentation of regulatory authority can contribute to successful policy enforcement (of trademarks),⁴⁶ our study of food safety regulation presents an opposing view. Although inter-bureaucratic competition over overlapping jurisdictions and revenue imperative have occurred in both food safety and trademark regulation, anti-counterfeiting enforcement is more effective in the latter. The crux of this difference lies in the fact that the principal consumers of trademark enforcement (foreign firms) have provided enforcement bureaucracies with substantial side-payments, whereas the principal consumers of food safety enforcement (the public and food producers who abide by law) rarely or cannot offer many side-payments to bureaucracies.

The Rural vs. Urban Regulatory Divide

Besides the problems of regulatory fragmentation and organizational conflict-of-interest, the problem of food safety also highlights the regulatory chasm between urban and rural areas, the appropriate role of the state in socioeconomic regulation, and the conflict between different policy objectives.

Almost all fake milk powder was produced and sold in rural areas and the victims tended to be villagers. As regulatory prowess in urban areas has improved and as urban consumers have become more savvy, villages have in recent years become the dumping grounds of fake and substandard products. A 2003 survey by the China Consumers Association reports that villagers are most worried about product quality and substandard and

45. "Shexian xunsi wubi, Fuyang liang gongshang suo fusuo zhang yin naifen shijian beixingju" (Two Deputy Directors of the Fuyang AIC were Arrested for Alleged Corruption in Fake Milk Powder Incident), *Beijing yule xinbao* (Beijing Star Daily), May 18, 2004, online at www.southcn.com/news/community/shzt/mp/investigation/200405180386.htm.

46. Andrew C. Mertha, "Policy Enforcement Markets: How Bureaucratic Redundancy Contributes to Effective IPR Policy Implementation in China," *Comparative Politics* (forthcoming).

fake products. Villagers identify seeds, pesticide, and food as having the greatest quality problems.⁴⁷ Some analyses attribute the prevalence of counterfeit products in rural China to the low purchasing power of many villagers (which creates a huge demand for cheap and substandard goods), weak rights consciousness, and the lower education level of rural residents. Although these analyses contain some elements of truth, they are only partial explanations.⁴⁸

In the Mao era, a comprehensive network of supply and marketing cooperatives (*gongxiaoshe*), generally collectively owned, existed in rural areas. The state exercised close supervision over the *gongxiaoshe* as well as the producers. During the reform era, the *gongxiaoshe* have failed badly and most of them have been privatized, leased, or closed down after 1997.⁴⁹ They have been replaced by numerous small wholesale markets, household-based shops, and mobile peddlers. The state, however, has not instituted an effective regulatory framework in rural areas to catch up with the drastic market transformation. The SFDA so far has only established its presence at the provincial level and

47. The survey was based on face-to-face interviews with 13,948 village household heads. The sample covered Hubei, Jilin, Zhejiang, Anhui, Fujian, Jiangxi, Shandong, Chongqing, Guizhou, Shaanxi, Qingdao, Xiamen, and Chengdu. Hu Yongping, "Zhongzi nongyao he shipin yi chengwei nongmin xinzhong zhidatong" (The Quality of Seeds, Pesticide and Food has Become an Agonizing Issue to Peasants), *Zhongguo wang* (China Net), December 26, 2003, online at www.southcn.com/news/community/shzt/mp/rural/200404210797.htm.

48. The average market price of a bag of qualified milk powder is 15 yuan and a new-born baby needs to consume about 120 bags in the first year. Thus, the cost of feeding a new-born baby amounts to 1,800 yuan, which is far above the average household income (1,600 yuan) in rural Fuyang. On the other hand, the average market price of a bag of substandard milk powder is a more affordable 10 yuan. See Zhou Renjie and Shi Shilun, "Nongcun repan wumei jialian naifen" (Villages are Eager to Have Qualified Milk Powder at Low Price), *Yangshi guoji wangluo* (CCTV International Network), May 3, 2004, at www.southcn.com/news/community/shzt/mp/rural/200405030053.htm.

49. Tian Yi and Wang Fengjun, "Weilie naifen quanguo liutonglian" (The National Circulation Chain of Fake and Substandard Milk Powder), *Ershiyi shiji jingji baodao*, April 29, 2004; "Anhui Fuyang sharen naifen shijian zeren luoshengmen."

in selected cities.

Thus the SFDA was largely absent in the early stage of the Fuyang fake milk powder case until the scandal drew Beijing's attention. The GAQSIQ only reaches the county level. Only the SAIC has extended its reach down to the township and village levels in the form of the *gongshangsuo*, or industry and commerce offices; yet the *gongshangsuo* is limited in the number of personnel or resources relative to the huge regulatory needs in rural China. The rural areas in Ruyuan County (a poor locality in north Guangdong) have three *gongshangsuo* only and each is responsible for about four towns or townships. Employees from these *gongshangsuo* have rarely visited several outlying villages let alone conducted inspections on foodstuffs on sale there. A senior official at the Shaoguan AIC admitted that given the relatively small number of staff and limited resources, his office was unable to handle complaints from villagers in a timely manner. This regulatory vacuum has led counterfeiters to believe that rural localities are beyond the reach of the SAIC and other regulatory agencies. As a retailer who had sold substandard milk powder in a Fuyang town noted, "the Fuyang AIG generally does not extend its regulatory arms to this remote town."⁵⁰ Consequently, it is more likely to find counterfeit and substandard foodstuffs and goods in rural markets than in metropolitan areas.⁵¹ A sort of Gresham's Law has prevailed.

Whereas regulation of sales and production in rural areas is spotty, consumer-oriented regulatory action in urban areas has improved. Regulatory agencies prioritize food safety issues in urban areas for the following reasons. First, given the better communication and higher population density in cities, the impact of severe food safety incidents tends to be more visible in urban versus rural areas and may even dent a city's reputation and affect its ability to attract investments. Moreover, unlike in more remote rural areas, it is also easier for urban residents to

50. "Zhuicha liezhi naifen haisi yinger chanyelian".

51. Wang Haiyan, "Yige yuebei shancun de shangpin liutong muoshi jiedu" (An Analysis of the Mode of Commodity Circulation in a Rural Mountainous Village in North Guangdong), *Nanfang dushibao* (Southern Metropolitan News), April 24, 2004, online at www.southcn.com/news/community/shzt/mp/rural/200404240109.htm.

organize collective action such as demonstrations against an inept official response. The demonstration and blocking of the railroad in Haicheng is a vivid illustration.⁵²

The political salience of food safety has prompted municipal authorities to devote more and more resources to food safety regulation. Following massive media exposure of problems with hot-pot condiments, the Chongqing municipal government immediately sprung into action. The Chongqing AQSIQ purchased new testing equipment and recruited a dozen experts to test whether hot-pot condiments were contaminated with paraffin wax.⁵³ In Guangzhou, the municipal government acquired thirteen vehicles in early 2004 to monitor the quality and safety of foodstuffs in urban markets. These vehicles are installed with food-testing equipment capable of conducting twelve kinds of instant tests, such as measuring the presence of carcinogenic materials and formaldehyde levels. The vehicles are dispatched to markets to conduct inspection in response to calls to a telephone hotline.⁵⁴

Second, the organization of the food retailing industry in cities makes it more amenable to regulatory action. In contrast with the countryside, where retail is generally scattered and populated by mom-and-pop stores, urban retail networks tend to be concentrated and increasingly dominated by supermarkets or chain stores. Jealous of their own reputation, the supermarkets and chain stores have generally set up and implemented detailed procedures and mechanisms to monitor food safety. Some supermarkets have their own quality controllers to scrutinize foodstuffs in the stores.⁵⁵ It is thus relatively easy for regulators of urban markets to monitor and regulate the urban retail

52. "Erqianwubai xuesheng dounai zhongdu konghuang."

53. Cheng Bizhong and Wu Xiangquan, "Chongqing zhijianju: huoguo zhong jia shila nan chachu" (Chongqing AQSIQ: Difficult to Combat the Addition of Paraffin Wax to Hot-pot Condiments), *Ershiyi shiji jingji baodao*, May 17, 2004.

54. *Nanfang dushibao*, April 2, 2004; "Food-testing Vehicles Arrive on Call," *China Daily*, March 18, 2004.

55. "Wenti shipin pinfan chuxian, jidai chutai yiguan daodi de haofa" (The Frequent Recurrence of Problematic Foodstuffs Urgently Begs for a Comprehensive Law), *Xinhua wang* (Xinhua Net), May 12, 2004, online at www.agri.gov.cn/gndt/t20040512_203008.htm.

network.

In contrast, the household-based shops in the countryside, unable to use scale to drive down the costs of their purchases, tend to be less attentive to quality. They rarely require wholesalers to present production permits or hygiene certificates, and often do not provide receipts to consumers.⁵⁶ Faced with intense competition, it is tempting for them to sell fake and substandard products for a quick profit. With the proliferation of rural stores and with limited resources, regulators settle for minimal regulation of the retail scene in the countryside.

The Role of the State in Socioeconomic Regulation

The Fuyang fake milk powder tragedy raises the question of the appropriate role of the state in socioeconomic regulation as well. As noted above, many villagers have very limited purchasing power; according to one estimate, villagers were willing to pay about 10 yuan for a bag of milk powder, whereas a bag of milk powder that meets government standards on nutrition cost 13 yuan.⁵⁷ The relatively low rural purchasing power discourages supermarkets from setting up their sales network in villages to meet the lower end of market demand.

The Chinese media has called on qualified businesses to enter the rural market and provide villagers with safe and affordable products.⁵⁸ The SFDA also emphasizes that a prerequisite for effective food safety regulation is to encourage large food enterprises to organize sales networks in the countryside and act as the dominant food suppliers there.⁵⁹ An important issue ensues,

56. "Yige yuebeishancun de shangpin liutong mushi jiedu."

57. "Nongcun repan wumei jialian naifen."

58. Wang Chao and Li Na, "Zao da chengshi fengsha, liezhi chanpin zai nongcun zhici jialian maidehuo" (Being cracked down in large cities, unqualified products are sold cheaply in villages), *Xi'an wanbao* (*Xi'an Evening News*), May 13, 2004, online at <http://www.southcn.com/news/community/shzt/mp/rural/200405130482.htm>. See also "Liezhi naifen baolu chu shenme"; "Nongcun repan wumei jialian naifen."

59. Zhao Peng and Fu Zimei, "Naifen jiagongchang: Yumu zahui hunzhu" (Milk powder processing plants: How unqualified ones pretend to be qualified), *Renmin wang* (People's Net), June 7, 2004, at <http://www>.

namely, the appropriate ways to achieve the aforementioned goal. What role should the government play? Should it take up the responsibility to guide qualified enterprises to enter the rural markets and produce affordable goods for rural residents, as some analysts suggest?⁶⁰ If so, what types of policy instruments should the government adopt? Will not the presence of such stores further weaken the household stores and thus the government's objective of helping create employment in rural areas? The last question brings out another crucial issue in constructing an effective regulatory state—conflict between divergent policy objectives, in this case between food safety and employment.

Policy Conflict between Food Safety and Employment Creation

China's food processing industry has been dominated by numerous and scattered family workshops (*jiating xiaozuofang*), which have fewer than ten employees.⁶¹ These workshops have become major sources of fake and substandard food because of their poor production conditions and quality control.⁶² To elimi-

peopledaily.com.cn/GB/guandian/183/6103/6104/2546592.

60. Zhang Tianwei, "Naifen xianxiang: shichang nengbuneng yu daoyi jianrong" (The phenomenon of milk powder: Can market and morality co-exist), *Beijing qingnian bao* (Beijing Youth Daily), May 5, 2004, at <http://www.southcn.com/news/community/shzt/mp/view/2004050211.htm>.
61. Family workshops accounted for about 70 percent of China's food processing enterprises. See Xinhua, "Lawmakers Urge Food Safety from Cropland to Table," *China Daily*, March 2, 2004.
62. In Henan province, for instance, the vast majority of family workshops do not have production permits and the necessary quality test facilities. Their employees generally lack the sanitary knowledge or consciousness required for safe production. See "Henan: bacheng shipin qiye wu shengchan xukezheng" (Henan: 80 Percent of Food Production Enterprises Lack Production Permits), *Dahe bao* (Great River News), January 25, 2005, at www.tech-food.com/news/2005-1-25/n0029413.htm. In Guangzhou, many cooking oil processing plants operate within residential buildings and each only possesses one oil-squeezing machine. See "QS zhidu yuandan luoshi, Guangzhou yu qicheng shipin qiye tieding chuju" (The QS System Will be Carried Out in the New Year, About 70 Percent of Food Enterprises in Guangzhou to be Closed Down), *Xinxi shibao* (Information Times), December 26, 2003, online at www.tech-food.com/news/2003-12-26/n0017468.htm.

nate these major sources of unsafe foodstuffs from markets, the Chinese government initiated the market access system (*shipin shichang zhunru zhi*) in August 2002. Food producers will be issued production licenses only when they have met the official standards concerning production conditions and facilities, and the quality of foodstuffs. The government divides foodstuffs into twenty-eight categories with 555 varieties. The system was initially applied to five categories: rice, wheat flour, vinegar, sauce, and cooking oil. In 2003 it was extended to ten new categories such as meat products, milk, and instant noodles.⁶³

With the outbreak of the Fuyang fake milk powder scandal and the subsequent calls for greater state efforts to rectify the food market, some local authorities have hastened the implementation of the market access system.⁶⁴ In late 2004, the Guangzhou AQSIQ declared that it would place all categories of foodstuffs under the system within two to three years.⁶⁵

The market access system has nonetheless undermined another important government policy objective—employment generation. Most of the family workshops have neither the necessary capital nor the expertise to upgrade themselves to meet the requirements of the market access system.⁶⁶ By substantially raising the thresh-

63. See "Lawmakers Urge Food Safety from Cropland to Table"; "Market Access Set for Food Producers," *China Daily*, March 3, 2005; "Zhongguo ershiba lei shipin niandi quanbu naru zhiliang anquan shichang zhunru zhidu" (28 Categories of Food in China will be Placed Under the Market Access System Next Year), *Zhongguo xinwen wang* (China's News Network), December 19, 2004, at <http://finance.sina.com.cn/roll/20041219/04501235380.shtml>.
64. See for example, "Lawmakers Urge Food Safety from Cropland to Table."
65. "Zhongguo ershiba lei shipin niandi quanbu naru zhiliang anquan shichang zhunru zhidu."
66. As an owner of an alcohol-producing workshop in rural Guangxi complained, "it was prohibitive for my small business to bear the 100,000 yuan upgrading fee, which was several times higher than my workshop's fixed assets." See "Xiao shipin qiye ruhe maiguo shichang zhunru guan?" (How Can Small-scale Food Enterprises Step Over the Hurdle of the Market Access System?), *Zhongguo shipin xinxi wang* (China's Food Information Net), September 22, 2004, at www.tech-food.com/news/2004-9-22/n0025372.htm. Moreover, fierce market competition and the resultant small profit margins in some categories of foodstuffs

old for entering the food processing industry, the market access system has forced many family workshops to close down. In Chongqing, among the 12,000 food enterprises whose products have been placed under the market access system, only 345 had obtained production licenses by late 2004.⁶⁷ In Guangxi, 90 percent of alcohol-producing enterprises have been denied market access and this has raised serious employment concerns.⁶⁸ By the end of 2003, the market access system in Guangzhou had eliminated nearly 70 percent of the family workshops that produced rice, wheat flour, vinegar, sauce, and cooking oil.⁶⁹

The above examples show that to a certain extent, a more effective food safety regulatory system (the market access system) has been constructed at the expense of employment opportunities. If, as the Guangzhou AQSIQ declared, the market access system is applied to all categories of foodstuffs in the next few years, the unemployment problem is likely to worsen. Local authorities may need to choose between the promotion of food safety on the one hand, and generation of employment on the other. Indeed, this dilemma is not confined to food safety regulation. Fubing Su and Tim Wright have demonstrated that local governments are also facing a dilemma in choosing between the advancement of coal mine safety (closing down small, unsafe coal mines) on the one hand, and job creation and a healthy local economy on the other.⁷⁰

like cooking oil and sauce also discourage many family workshops from making further investment to comply with the market access system. See "QS zhidu yuandan luoshi, Guangzhou yu qicheng shipin qiye tieding chuju."

67. "Chongqing: Shipin zhunru qixiao?" (Chongqing: The Market Access System is Unfavorable to Small-scale Enterprises?), *Chongqing qingnian bao* (Chongqing Youth News), November 12, 2004, online at www.tech-food.com/news/2004-11-12/n0026726.htm.

68. "Xiao shipin qiye ruhe maiguo shichang zhunru guan?"

69. "QS zhidu yuandan luoshi, Guangzhou yu qicheng shipin qiye tieding chuju."

70. Fubing Su, "The Political Economy of Industrial Restructuring in China's Coal Industry, 1992-1999," in Barry Naughton and Dali Yang, eds., *Holding China Together: Diversity and National Integration in the Post-Deng Era* (Cambridge: Cambridge University Press, 2004); Tim Wright, "The Political Economy of Coal Mine Disasters in China," *The China Quarterly*, No. 179 (September, 2004), p. 644.

Crisis and Institutional Development

The spate of severe food safety cases in recent years and the failure of the government to stem them demonstrate an urgent need to strengthen the food safety regulatory regime. The recurrence of serious food safety incidents and the exposure of many food safety scandals by muckraking journalists in the late 19th and early 20th centuries in America helped prompt the United States government to pass the Federal Food and Drug Act of 1906 and establish the FDA.⁷¹ The situation with respect to food safety in today's China bears some similarity to that episode in U.S. history. Caught between political censorship on one side and intense competition in the media marketplace, editors and journalists have eagerly reported on consumer-related stories such as food safety incidents. Aside from the widely acclaimed CCTV's Weekly Quality Report program, investigative reports related to food safety have proliferated in the Chinese media and Chinese news portals have set up dedicated areas or channels devoted to this topic. These reports both reflect and contribute to the growing public concern with food safety and other public safety issues.

Partly in response to a growing public concern, the Chinese central government announced that it would hold local leaders and the heads of relevant departments accountable for serious food safety incidents.⁷² In Fuyang, three senior officials were ordered to resign (*zeling cizhi*) for their roles in the milk powder scandal.⁷³ Many subprovincial governments have started to adopt

71. James Harvey Young, *Pure Food: Securing the Federal Food and Drugs Act of 1906* (Princeton, N.J.: Princeton University Press, 1989).

72. "Wu Yi tan naifen shijian" (Wu Yi Discusses Milk Powder Incident), *Zhongguo xinwenshe* (China News Agency), May 13, 2004, at <http://cn.news.yahoo.com/040513/72/22e9e.html>.

73. The three Fuyang officials are the deputy mayor in charge of industry and commerce affairs, the AIC director, and the deputy health bureau director responsible for food safety regulation. Xia Changyong, "Jianchabu yansu chachu Fuyang liezhi yinger naifen shijian youguan zerenren" (The Ministry of Supervision Seriously Investigates and Punishes Responsible Officials in the Fuyang Fake Milk Powder Case), *Renmin ribao*, June 9, 2004, online at www.peopledaily.com.cn/GB/shizheng/1027/2558651.html.

the food safety jurisdictional responsibility system (*shipin anquan shudi zerenzhi*) to drive local leaders to expend more effort to maintain food safety within their jurisdictions. In January 2005, for example, the Guangzhou municipal government implemented this system, under which the leadership of county and district governments and of the relevant departments are held accountable for serious food safety incidents and the operation of unlicensed food enterprises within their jurisdictions.⁷⁴ Meanwhile, authorities also began to bring some of the producers to justice. Since the courts began to hear the fake milk powder cases in August 2004, twenty-eight people have been convicted of manufacturing or selling fake milk powder and sentenced to imprisonment from six months to eight years.⁷⁵

The media coverage on the Fuyang fake milk powder tragedy prompted much reflection on ways to enhance food safety regulation. Some commentators have noted that the SFDA lacks the power to effectively regulate food safety, and that its ability to coordinate policy is hindered by its lack of resources below the provincial level.⁷⁶ The State Council Development Research Center, in particular, released a report, *Study on China's National Food Safety Strategy*, which offers a series of recommendations to remedy the food safety problems. Among its suggestions is the establishment of a super-ministerial State (or National) Food Safety Commission (*Guojia Shipin Anquan Weiyuanhui*) that would be empowered to advise the central leadership on food safety policy and coordinate various government agencies in food safety regulation.⁷⁷

74. "Guangzhou shipin anquan shudi guanli zerenzhi yuanze tongguo" (Guangzhou Food Safety Jurisdictional Responsibility System has been Approved)," *Xinxi shibao*, January 25, 2005, at www.tech-food.com/news/2005-1-25/n0029425.htm.

75. See the following news reports:
<http://news.sina.com.cn/c/2004-12-06/00214439946s.shtml>;
<http://finance.sina.com.cn/money/x/20041208/08431209480.shtml>;
<http://news.sina.com.cn/c/2005-01-02/17275403430.shtml>;
<http://news.sina.com.cn/c/2005-01-07/07235453651.shtml>.

76. Tian and Wang, "Weilie naifen quanguo liutonglian"; Zhao and Fu, "Naifen jiagongchang: Yumu zahui hunzhu."

77. See "Zhongguo Shipin Anquan Zhanlue Yanjiu Baogao—Zhengce Pian" (Study on China's National Food Safety Strategy—Policy Concerns) at

In an era of administrative rationalization and with successive ministerial upgrading of all regulatory administrations and commissions, it may be difficult to persuade the national leadership to accept such a proposal. Nonetheless, the SFDA has actively promoted the establishment of local food safety commissions as levers to break down interdepartmental boundaries and promote regulatory coordination. As of July 2005, food safety commissions had been established in all provinces (except Tibet and Xinjiang), as well as major subprovincial cities such as Guangzhou and Shenzhen. The provincial (municipal) food safety commissions are invested with substantial powers and responsibilities: formulating food safety policy and general planning, handling major food safety incidents, establishing an emergency system to respond to serious food safety incidents, managing and disseminating regulatory information, and most importantly coordinating and solving major problems in food safety regulation. Led by the first deputy governor, a provincial food safety commission is composed of government agencies involved in food safety regulation. The commission's office is generally located in the provincial FDA building and the head of the provincial FDA often serves as the commission's deputy chairman.⁷⁸ These arrangements reflect the substantial influence the local food and drug administration has in these commissions and allow it to invoke the authority of the provincial leadership to elicit cooperation and compliance from other agencies involved with food safety regulation.⁷⁹

Meanwhile, the State Council has adopted measures to clarify the regulatory responsibilities of different agencies. In Sep-

www.food-safety.cn/show_news.jsp?id=1326. The study is a collaboration of more than 150 researchers from fifty research and government bodies in China. See Qin Chuan, "Forum Focuses on Increasing Food Safety," *China Daily*, November 19, 2004.

78. "Jiangsu sheng chengli shengzhengfu shipin anquan weiyuanhui" (Jiangsu Establishes Provincial Food Safety Commission), February 5, 2005, at www.sfda.gov.cn/cmsweb/webportal/W4291/A64001544.html.

79. "Guizhou jiaqiang jieri shichang shipin anquan zhifa jiancha" (Guizhou Strengthens Food Safety Inspection During Holidays), February 5, 2005, online at www.sfda.gov.cn/cmsweb/webportal/W4291/A64001582.html.

tember 2004 the State Council promulgated the "Decision on Further Strengthening Food Safety." This decision directed the Ministry of Health to transfer the regulation of food hygiene in the production and processing stages to the GAQSIQ beginning in 2005. The Ministry of Health remains the regulator of the food retailing sector (including catering and dining halls) while the SAIC oversees the circulation arena. The SFDA is in charge of comprehensive supervision, policy coordination, and investigation of serious food safety incidents.⁸⁰

Moreover, the Chinese government plans to institute a food recall system (*shipin zhaohui zhidu*) after a spate of food safety incidents involving multinationals KFC, Heinz, and Nestle and domestic producers such as Guangming Dairy. The incidents showed that even the most reputable firms may not always put the interest of customers first.⁸¹ Existing national laws relating to food safety did not have specific regulations governing product recall and thus left a regulatory void that the food producers took advantage of. When it was revealed that Nestle's best-selling infant milk powder contained too much iodine by Chinese government standards, the company initially refused to issue a recall. The company grudgingly pulled its product from store shelves only after mounting pressure from the Chinese media and officials.⁸²

To fill the regulatory void, the draft Food Safety Law (*Shipin*

80. State Council, "Guowuyuan guanyu jinyibu jiaqiang shipin anquan gongzuo de jue ding" (Decision on Further Strengthening Food Safety Work) (September 29, 2004), online at www.tj.xinhuanet.com/shkj/2004-09/29/content_2957607.htm.

81. In March 2005, a cancer-causing dye "Sudan-1" was detected in products sold by KFC (a fast food giant) and Heinz (an international sauce producer) in China. In May, the Guangzhou AQSIQ found that some brands of Nestle milk powder contained excessive levels of iodine. The foodstuffs sold by these companies are circulated nationwide. For a detailed report on the development of these food safety incidents, see <http://finance.sina.com.cn/nz/yicsdhyh/index.shtml>; and <http://finance.sina.com.cn/nz/lncqndhlc/index.shtml>.

82. See Dwight Daniel, "Nestle's Apology: Too Little, Too Late," *China Daily*, June 10, 2005; and "Quechao Zhongguo qu zongcai xiang xiaofeizhe daoqian, xuanbu zhaohui wenti naifen" (President of the Nestle Greater China Region Apologizes to Consumers and Announces Recall of Defective Milk Powder), *Xiandai kuaibao* (Contemporary Express), June 6, 2005, online at <http://finance.people.com.cn/GB/1039/3444000.html>.

anquanfa) reportedly includes a provision that requires food producers to promptly recall defective products.⁸³ Some local authorities such as the Beijing municipal government have already made similar provisions in local food safety regulations.⁸⁴ These initiatives will contribute to a food safety credibility system (*shipin anquan xinyong tixi*) that national planners hope to build during the Eleventh Five-Year Plan period.⁸⁵

Last but certainly not least, local authorities in parts of China have come up with a variety of initiatives to mitigate the vulnerability of rural China to food safety issues. The Decision on Further Strengthening Food Safety named the rectification of rural food markets as one of the critical tasks for the near future.⁸⁶ Zhejiang, one of China's most developed provinces, has taken the lead in devising new institutional mechanisms for improving food safety regulation in rural areas. Under a new program initiated in fall 2004, some 3,000 shops, most of which are household-based and small in scale, are certified to have met government regulatory requirements and named "demonstration shops" (*fangxin shifan dian*) where customers may buy with assurance. These demonstration shops have reportedly attracted many rural consumers. Moreover, 32,000 wholesale food markets, small shops, shopping centers, and supermarkets have reportedly adopted food safety

83. "Shipin anquanfa chugao chengxing, shipin zhaohui jiangyou fayi" (The Food Safety Law has been Drafted, Law Governing Food Recall will be Available), *Diyi caojing ribao* (First Financial Daily), June 27, 2005, online at <http://chanye.finance.sina.com.cn/sp/2005-06-27/254888.shtml>; "Shipin anquan tiaoli kaishi zhengqiu yijian, chanpin zhaohui wenti huo lieru" (Consultation on the Food Safety Law Begins, Issues of Product Recall Included), *Zhongguo xinwen wang*, June 28, 2005, at <http://news.sina.com.cn/o/2005-06-28/06256284451s.shtml>.

84. "Guojia gongshang zongju: zhongguo jiang dui qiye zhaohui wenti shipin lifa" (The State Administration for Industry and Commerce: China will Legislate on Enterprise Food Recall)," *Dongfang zaobao* (Oriental Morning News), April 26, 2005, at <http://finance.sina.com.cn/g/20050426/10031550873.shtml>.

85. "Dui shipin wenti chu zhongquan, xinyong tixi naru guojia shiyiwu guihua" (Putting Great Emphasis on Food Safety Problems, Credibility Network is Included in the State Eleventh Five-Year Plan)," *Guangming wang* (Illumination Net), June 27, 2005, at <http://finance.sina.com.cn/roll/20050627/1050154930.shtml>.

86. "Guowuyuan guanyu jinyibu jiaqiang shipin anquan gongzuo de jue ding."

standards in their procurement processes. Additionally, there are about 12,000 rural consumer rights protection points (*weiquan jiandudian*) where consumer rights protection assistants may help residents seek redress from producers or sellers of fake or sub-standard products.⁸⁷

The SFDA and the SAIC have also taken measures to boost information gathering in rural areas. By mid-2005, the SFDA in Hainan had recruited and trained about 300 voluntary coordinators (*xieguanyuan*) and monitors (*xinxiyuan*) to help monitor the food safety situation at selected townships and villages respectively.⁸⁸ In the Huairou district of Beijing, the AIC established and trained a team of 610 voluntary food safety supervisors in early 2005. Each village has two supervisors who are responsible for reporting underground food producers (*heiwodian*) to law enforcement authorities such as the AIC and AQSIQ. These food safety supervisors so far have helped law enforcement authorities to ferret out seventy-seven underground food producers.⁸⁹ Similar systems will be extended to all rural areas of Sichuan as well following the completion of an experimental program at the end of 2005.⁹⁰

87. "Zhejiang luxian jianli sanzhangwang zonghe zhili nongcun shipin anquan" (Zhejiang Establishes Three Networks to Rectify Rural Food Safety), *Renmin wang* (People's Net), December 7, 2004, at <http://news.sina.com.cn/o/2004-12-07/14564457692s.html>.

88. "Hainan sheng nongcun shipin yaopin jiandu wangluo jianshe gongzuo zhashi tuijin" (The Construction of Food and Drug Regulatory Networks in Villages is Proceeding Smoothly in Hainan), June 8, 2005, online at www.sfda.gov.cn/cmsweb/webportal/W4291/A64003123.html.

89. "Huairou cuncun douyou shipin anquan jianduyuan" (Every Village in Huairou Has Food Safety Supervisors), *Beijing wanbao* (Beijing Evening News), May 17, 2005, online at <http://news.sina.com.cn/o/2005-05-17/12545911384s.shtml>.

90. "Sichuan sheng zhaokai nongcun shipin anquan jianduwang jianshe shidian gongzuo xianchanghui" (Sichuan Convenes Meeting on the Experiment of Constructing a Regulatory Network of Food Safety in Villages), July 4, 2005, at www.sda.gov.cn/cmsweb/webportal/W4291/A64003466.html.

Conclusions

By studying food safety regulation, this study has illustrated some salient issues and difficulties that China faces in building up an effective regulatory state. First is the fragmented and ambiguous authority and responsibility among diverse regulatory bureaucracies, a situation that exists in other regulatory arenas as well. The cases show not only how ambiguous responsibilities may stymie regulation, but also why it is important to construct proper mechanisms to adjudicate conflicts among regulatory agencies. This study also points to the divergence in regulatory capability in urban versus rural areas.

Second, this study shows that government reform has tended to generate short-term uncertainty and a regulatory vacuum. The SFDA was built by expanding the former State Drug Administration and it was supposed to provide coordination among several government agencies in food safety regulation. Yet, the SFDA initially focused on pharmaceutical regulation and this created a regulatory vacuum in the food sector. It was not until the Fuyang fake milk powder scandal that the SFDA began to put more emphasis on food regulation.⁹¹

Finally, the study demonstrates the conflict between the promotion of food safety regulation and employment generation, much like what has occurred in the coal mining sector.⁹² The market access system involves the closing down of numerous family workshops, which do not have sufficient capital and expertise to upgrade to meet the official requirements regarding production conditions and facilities, and the quality of food-stuffs. The subsequent rise of unemployment contradicts another

91. Dali Yang also examines how government reform led to short-term confusion and a regulatory vacuum in a number of other areas, such as workplace safety. *Remaking the Chinese Leviathan*, pp. 54-55.

92. "Yuezhankai chaozai yunshu dazhili, zhifa bu xiezai jiufangxing yao zhuijiu," ("Guangdong launches rectification of overloaded transportation and tackles the practice of fining without requiring the overloaded vehicles to unload"), *Nanfangwang* (Southern Net), May 28, 2004. <www.southcn.com/news/gdnews/zwdyx/200405280427.htm>; "Huoyun: chaozao sansibei caineng baoben" ("Goods transportation: overloaded three to four times can cover the cost"), *Guangzhou ribao* (Guangzhou ribao), May 25, 2004.

important policy objective: employment generation. This series of dilemmas raises serious questions about the appropriate role of the state in socioeconomic regulation.

Principal References

- Choi, Jin-Wook. "Regulatory Forbearance and Financial Crisis in South Korea," *Asian Survey*, vol. 42, No. 2 (March-April, 2002), pp. 251-75.
- Huber, John D. and Charles R. Shipan. *Deliberate Discretion?: The Institutional Foundations of Bureaucratic Autonomy*. Cambridge: Cambridge University Press, 2002.
- Lieberthal, Kenneth. "'The Fragmented Authoritarianism' Model and its Limitations," in Lieberthal and David Lampton, eds., *Bureaucracy, Politics, and Decision Making in Post-Mao China*. Berkeley, Calif.: University of California Press, 1992.
- Lieberthal, Kenneth and Michel Oksenberg. *Policy Making in China: Leaders, Structures, and Processes*. Princeton, N.J.: Princeton University Press, 1988.
- Patrick, William. *The Food and Drug Administration*. New York: Chelsea House, 1988.
- Su, Fubing. "The Political Economy of Industrial Restructuring in China's Coal Industry, 1992-1999," in Barry Naughton and Dali Yang, eds., *Holding China Together: Diversity and National Integration in the Post-Deng Era*. Cambridge: Cambridge University Press, 2004.
- Wright, Tim. "The Political Economy of Coal Mine Disasters in China," *The China Quarterly*, No. 179 (September, 2004), pp. 629-46.
- Yang, Dali. *Remaking the Chinese Leviathan*. Stanford, Calif.: Stanford University Press, 2004.
- Zheng, Yongnian. "State Rebuilding, Popular Protest and Collective Action in China," *Japanese Journal of Political Science*, vol. 3, No. 1 (2002), pp. 45-70.