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REVIEW

## No country is an island in regulating food safety: How the WTO monitors Chinese food safety laws through the Trade Policy Review Mechanism (TPRM)

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### Abstract

Established within the framework of the World Trade Organization (WTO), the Trade Policy Review Mechanism (TPRM) reviews periodically the trade policies of all WTO Members. The review includes many aspects of food safety regulation. China's trade policy is reviewed every two years. This paper analyses in detail the reviews of China's trade policy in 2006, 2008, 2010, 2012 and 2014. It focuses in particular on food safety laws and types of standards, alignment of domestic standards with international standards, the role of different domestic institutions, transparency and notification of food safety measures under the WTO agreements on Sanitary and Phytosanitary Measures (SPS) and on Technical Barriers to Trade (TBT Agreement), import and export, and geographical indications (GIs). It concludes that the WTO TPRM can contribute, within its mandate, to reform of Chinese food safety laws and improvement of food safety in China. It notes that China has already undertaken substantial reforms of its system for regulating food safety. It recommends that China should continue to participate actively in the TPRM, follow its own path with regard to alignment and learn selectively from other WTO Members.

**Keywords:** food safety, food standards, public health, consumer welfare, China, Chinese food safety laws, World Trade Organization, WTO law, Trade Policy Review Mechanism (TPRM), SPS Agreement, TBT Agreement

## 1. Introduction

No country is an island in regulating food safety. Food

safety regulation today is the handiwork of multiple sites of governance (Snyder 2010, p. 49). China is no exception. The 2008 melamine baby formula scandal marked the integration of China into the world of global legal pluralism about food safety regulation (Snyder 2015). Previously, China's accession to the World Trade Organisation (WTO) on 11 December 2001 signalled its desire to benefit from and contribute to global trade regulation. It laid the basis for subsequent developments such as the wide-ranging impact of WTO law in China (e.g., Zhang 2005; Lam 2009), the 2009 *Food Safety Law of China* and subsequent reforms, very active Chinese participation in international food standards bodies, and increasing openness to legal developments from

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other countries and international organisations.

Highly visible trade disputes represent only a small part of China's participation in the WTO, which now has 160 Members. They do not convey fully how WTO agreements about food safety are enforced and implemented and international food safety standards and best practices are diffused. The WTO dispute settlement mechanism is only one aspect of relations between the WTO and China. Here I consider another aspect: the WTO Trade Policy Review Mechanism (TPRM). Specialists in fields other than law—and indeed many lawyers and most citizens—may be very surprised indeed to learn to what extent WTO law, and the TPRM in particular, affects food safety regulation in China.

The paper argues, first, that food safety regulation in China today is part of global legal pluralism. Second, the TPRM transforms what otherwise would be bilateral relations into multilateral relations. Third, the specific structural features of the TPRM monitoring process affect relations between the TPRM and China, as well as between China and other WTO Members. Fourth, the relations between the TPRM and China have effects on Chinese food safety regulation. In other words, institutions matter.

The remainder of the paper discusses in turn the TPRM, reviews of China's trade policy, and main trends and implications. A brief conclusion makes recommendations.

## 2. Multilateral monitoring within the WTO

### 2.1. China's WTO rights and obligations

On joining the WTO, China benefitted from the rights of membership and undertook numerous obligations. These obligations included those in the WTO agreements, to which all WTO Members are subject. On food safety, they included the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) regarding measures concerning human, animal and plant health and the Agreement on Technical Barriers to Trade (TBT Agreement) regarding legally binding measures (technical regulations in WTO terminology) and non-legally binding standards (standards in WTO terminology). In addition, China accepted other obligations, known as WTO plus, which went beyond the WTO agreements and beyond obligations ever imposed previously on any other Member (WTO 2003a, b).

China's trade policy was subject to two types of WTO monitoring. First, a Transitional Review Mechanism (TRM) was part of WTO plus and expired at the end of 2011; it is not discussed here. This paper focuses on the second type, the TPRM, to which all WTO Members are subject and in

which China, as a WTO Member, is required to participate (WTO 2012c). It highlights systemic relations between the WTO and the Chinese food safety regime, omitting discussion about market access for specific products. Questions regarding systemic issues, however, often mask pragmatic market access concerns.

### 2.2. The Trade Policy Review Mechanism

The TPRM was originally established on 12 April 1989 under the 1947 General Agreement on Tariffs and Trade (GATT 1947) (WTO 2012e, p. 2043; Mavroidis 1992; Stewart 1993, p. 1027, n 59), hence before the WTO began on 1 January 1995 and before Chinese accession to the WTO on 11 December 2001. In 1994 the Marrakesh Agreement establishing the World Trade Organization (WTO Agreement) expanded the GATT 1947 TPRM to cover intellectual property rights and trade in services (WTO 2012e, 2043). TPRM is a basic function of the WTO. Its objectives (WTO 1999, pp. 434–437) are “to contribute to improved adherence by all Members to [WTO] rules, disciplines and commitments ... and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members”. The TPRM makes possible a “regular collective appreciation and evaluation of Members” trade “policies and practices and their impact on the functioning of the multilateral trading system”<sup>1</sup>.

The WTO General Council, composed of representatives of all WTO Members (WTO 1999, WTO Agreement, Article VI: 2, discharges the responsibilities of the Trade Policy Review Body (TPRB) to carry out the TPRM (WTO 1999, WTO Agreement, Article IV: 4). It reviews the trade policies and practices of each WTO Member periodically, with the frequency depending on the Member's share of world trade. The first four trading Members (now including China, the United States, the European Union as one Member and Japan) are reviewed every two years, the next ten Members every four years and other Members every six years, except that least-developed country Members may be reviewed less frequently (WTO 1999, WTO Agreement, Annex 3, Section C(ii)). Reviews are based on a full report by the Member being reviewed and a WTO Secretariat report, which is based on information provided by the reviewed Member, together with any other information available to it (WTO 1999, WTO Agreement, Annex 3, Section C(v)). The Secretariat's report provides the centre of the discussion (Van Grassteek 2013, pp. 279, 284). One or two discussants are chosen, in collaboration with the

<sup>1</sup> All quotations in this paragraph are drawn from WTO (1999, p. 380, Annex 3).

Member under review, to introduce the discussions, in a personal capacity rather than in an official capacity. The reviews and the minutes of the relevant TPRB meeting are to be published “promptly after the review” (WTO 1999, WTO Agreement, Annex 3, Section C(vi)). However, the TPRM “is not ... intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members” (WTO 1999: WTO Agreement, Annex 3 Section A(i)).

### 3. WTO reviews of China’s trade policy

#### 3.1. The TPRM and food safety regulation in China

So far, there have been five reviews of China’s trade policies: 19 and 21 April 2006, 21 and 23 May 2008, 31 May–2 June 2010, 12 and 14 July 2012 and 1 and 3 July 2014 (see China’s Member page on the WTO website: [www.wto.org](http://www.wto.org)). This section presents these reviews insofar as they concern food safety, which for present purposes is interpreted broadly to embrace all matters concerning food from farm to table, including import procedures, food safety laws, standards and related matters that have a more or less direct effect on food safety (see Snyder 2014 for more detailed discussion).

#### 3.2. The 2006 Trade Policy Review (TPR)

The first China TPR was held almost five years after Chinese accession. The Chinese Government report (WTO 2006f) did not mention food safety directly (WTO 2006f, pp. 12–13, paras. 45–47). The Ministry of Commerce of China was the notification authority for SPS measures. The SPS enquiry point was in the General Administration for Quality Supervision, Inspection and Quarantine of China (AQSIQ). The State Food and Drug Administration of China (SFDA), established in 2003, was responsible for overall supervision of food safety. In addition, the Ministry of Agriculture of China (MOA), the Ministry of Health of China (MOH), AQSIQ and the General Bureau of Industrial and Commercial Administration (i.e., The State Administration for Industry and Commerce of China (SAIC)) were responsible for supervision of specific food products and processed food products (WTO 2006d, p. 93).

The WTO Secretariat report noted a decline in non-tariff measures and a simplification of the import licensing and other border measures. However, China still had many SPS measures, and border examination and approval procedures were not clear (WTO 2006d, p. 60). More critically, the Secretariat report remarked that, in the TBT and SPS committees, other Members had expressed concerns about adoption of international standards (alignment) and

apparent use of SPS measures to hinder market access (WTO 2006d, p. 88, footnotes omitted). As of 2005, “32% of [Chinese] standards were based on international standards: as a result of a current review, 44% of current standards are to be revised to ensure their conformity with international standards, while 11.6% are to be abolished” (WTO 2006d, p. xi, para. 12). According to the Secretariat, the percentage of Chinese standards of all types which were equivalent to international standards had remained static at about 32% since 2000 (WTO 2006f, p. 60; WTO 2006d, p. 90, Table III. 4).

In discussion, all Members noted China’s extraordinary economic growth, but numerous participants identified what they considered to be shortcomings of China’s food safety regime. The United States was concerned that “China had not fully embraced international SPS standards and science-based rulemaking” and did not notify many SPS measures (WTO 2006c, p. 12, para. 41). Switzerland expressed concern about alignment (WTO 2006c, p. 13, para. 43). New Zealand, Brazil and Kenya commented on the scale and complexity of Chinese quarantine and other SPS measures (WTO 2006c, p. 15, para. 58 [New Zealand]; p. 20, para. 82 [Brazil]; p. 28, para. 123 [Kenya]). The European Communities noted that “the legitimate expectations of market access at the time of China’s entry to WTO had not been fully fulfilled”, and it concluded that various SPS requirements amounted to non-tariff barriers (NTB) (WTO 2006c, p. 24, para. 97).

China’s representative pointed out that Chinese terminology for standards differed from that of the WTO (see also Snyder 2015). He emphasised that “around 45% of national standards were equivalent to international standards”. For standards newly developed in 2005, the rate of alignment was stated to be almost 54% (WTO 2006c, p. 35, para. 155); the EC questioned these percentages (WTO 2006c, p. 36, para. 159).

#### 3.3. The 2008 Trade Policy Review

2008 was an updating exercise. The 2006 TPR had provided other WTO Members with the general architecture and main features of China’s food safety regime. With the beginning of the financial crisis, notably in western countries, the world economy was sliding into recession, resulting in increased protectionism by China’s main trading partners (see WTO 2008e, p. 5, para. 1). China’s report, criticised the impact on China’s export markets (WTO 2008e, p. 14, para. 61). The TPRM is not a one-way street: the reviewed Member can also air its own concerns.

China reported that it had adopted a unified system for conformity assessment. It confirmed its intention to reform its standards setting procedures and encourage the de-

velopment of enterprise standards. It planned to facilitate adoption of international standards and advanced foreign standards (WTO 2008e, p. 17, para. 77), as provided in the *State Council Regulations for Implementing the Standardisation Law* (State Council of China 1990, Article 4).

The Secretariat report, devoting considerable attention to food safety standards for the first time, identified specific concerns: administrative fragmentation, normative complexity, alignment, relation between food safety and environmental protection and labelling. It noted that “boundaries of regulatory responsibilities between the central and local governments are not clearly defined” and that central-local coordination remained weak (WTO 2008d, p. 31, para. 30). There were more than 1800 national food safety standards and more than 2900 sectoral standards for the food industry. Responsibility for food standards was fragmented between the Standardization Administration of China (SAC), MOA, MOH, SAIC, AQSIQ, SFDA. Administrative responsibility for labelling was divided among SAC, AQSIQ and MOA, which was responsible for agricultural GMOs (WTO 2008d, pp. 69–70, paras. 94 and 96).

The food safety regime remained very complex (WTO 2008d, p. xi, paras. 15, 43 and 4). Leaving aside quarantine and the entry/exit system (WTO 2008d, pp. 67–68, paras. 85–92), as well as the *Law on Agriculture*, China's main SPS measures included the *Food Hygiene Law*, the *Law on Animal Disease Prevention*, the *Law on Import and Export Commodity Inspection*, the *Law on Frontier Health and Quarantine*, the *Law on the Entry and Exit of Animals and Plant Quarantine* and implementing measures and rules (WTO 2008d, p. 67, para. 85). Special rules applied to GMOs (WTO 2008d, p. 69, para. 92). Starting in 2001, food processing enterprises were required to apply for permits, involving consideration of national standards and inspection of production sites and post-production facilities (WTO 2008d, p. 65, para. 75). Alignment with international standards was increasing, with 46.4% of national standards aligned and an objective of 85% alignment fixed for 2010. China had reduced non-tariff barriers and taken measures to increase alignment (WTO 2008d, p. 9, para. 41).

The Secretariat noted the connection between food safety and environmental policy, noting that counterfeit food products could affect the environment (WTO 2008d, p. 65, para. 73). In 2001, China began to implement the Hazard-free Food Action Plan, especially concerning pesticide residues in vegetables and violations of residue standards (WTO 2008d, p. 65, para. 75). According to the Chinese Government, special attention was being paid to environmental

pollution, which otherwise could have very deleterious effects on food production (WTO 2008d, p. 65, para. 76). The Secretariat also noted that as of 2007 China was formulating a food certification and accreditation system, including good agricultural practices (GAP), organic products, food quality and Hazard Analysis Critical Control Point (HAACCP), and that China had set up a food inspection and testing network (WTO 2008d, pp. 66–67, para. 82)<sup>2</sup>.

Labelling was regulated by the *Standardisation Law*, the *Food Hygiene Law* and the *Law on Product Quality* (WTO 2008d, p. 69, para. 93). Labelling requirements were mostly product-based, not sector-based (WTO 2008d, p. 69, para. 95). Food labels were required to include “ingredients in descending order by weight or volume, net weight and solid content, date of manufacture, and best before and expiry date”. Starting in May 2006, food importers no longer had to submit manufacturing country certificates to apply for Chinese-language labelling (WTO 2008d, p. 69, para. 94).

Discussion questions concerned the complexity of the SPS regime and inspection measures, alignment, the development of purely Chinese standards and import procedures (WTO 2008a, p. 12, para. 55 [Brazil], p. 12, para. 62 [Switzerland], p. 15, para. 80 [United States], p. 18, para. 107 [EC], p. 21, para. 127 [Honduras], p. 223, para. 129 [Norway]) Compared to 2006, the 2008 TPRM saw more specific questions about food safety. For example, the EC asked about the definition of “foreign enterprise”, and in effect whether China's rule that foreign enterprises could participate in SAC Technical Committees as an observer was contrary to the WTO principle of national treatment. China confirmed that “[f]oreign enterprises are welcome to participate in China's standardization activities” (WTO 2008b, p. 190). The Philippines requested further information about the main features of China's forthcoming *Food Safety Law*. China replied that “this food safety law aims to improve food safety of both domestic and imported food and it complies with China's obligations under the WTO, both on procedure and on substance” (WTO 2008c, p. 299).

The Chinese representative noted that China planned to align 85% of its standards with international standards under the 11th Five-Year Plan of China (2006–2010) (WTO 2008a, p. 26, para. 164). She also emphasised that China would discuss SPS issues with the US bilaterally but that, with regard to geographical indications (GIs), “China did not see the inconvenience of the regulation” (WTO 2008a, p. 29, para. 185, p. 31, para. 201). As for the complexity of China's SPS regulatory regime, the Chinese Representative replied that it was consistent with the SPS Agreement:

<sup>2</sup> The Secretariat report does not list these institutions but instead refers merely to State Council Information Office, *State Council White Paper: The Quality and Safety of Food in China* (<http://www.china.org.cn/english/news/221274.htm>).



“... there has been no uniform international mode and modes by different Members are different from each other” (WTO 2008c, p. 197).

### 3.4. The 2010 Trade Policy Review

The 2010 China TPR provided the most extensive WTO review so far, reflecting China's increased role in the world economy. It also followed the melamine saga, which was evoked indirectly in the Review.

Largely as a result of the melamine crisis (Snyder 2015), China in 2009 enacted its first *Food Safety Law*, which replaced the 1995 *Food Hygiene Law of China* and entered into force on 1 June 2009. In principle, under the *Food Safety Law of China* all food standards were mandatory, though reality was more complex because national, professional and local standards could be either mandatory or voluntary (WTO 2010e, pp. 35–36, para. 43; see also p. viii, para. 14), and enterprise standards applied only to the enterprise. China's trading partners expressed concerns that the new law was not notified to the SPS Committee before implementation (WTO 2010e, p. 37, para. 49; WTO 2010a, para. 179). The Secretariat report noted that China had strengthened its regime for testing of dairy products (WTO 2010e, p. viii, para. 14). China notified numerous dairy measures to the SPS Committee (WTO 2010e, p. 37, para. 50; p. 15, para. 22; pp. 116–118, Table All. 2). The notifications included China's acceptance of the TBT Code of Good Practice (WTO 2010e, p. 118). Altogether, China submitted 7 SPS notifications in 2008 and 90 in 2009 together with 184 TBT notifications in 2008 and 199 in 2009 (WTO 2010e, p. 36, para. 44); all of the SPS notifications, but not all of the TBT notifications, concerned food safety.

The WTO Accession Protocol required China to liberalise the right to trade (WTO 2003a, Article 5). Certain food exports, including rice and maize, continued to be subject to state trading (WTO 2010e, p. 46, para. 89). For certain products, China imposed global or destination-specific quotas (WTO 2010e, p. 73, para. 21). AQSIQ had reformed its entry-exit inspection system, though food, animal and plants and their products were not eligible for exemption from inspection and quarantine requirements (WTO 2010e, pp. 37–38, paras. 52–53). Certain listed products could be inspected where they were produced, but goods not meeting SPS requirements could not be exported (WTO 2010e, p. 42, para. 73). Following a January 2009 revision of SAC procedures, foreign-owned companies could participate in technical standards-setting committees as voting Members, not simply as observers as previously (WTO 2010e, p. 36, para. 46); it appears that this concerned only TBT standards, not SPS standards.

Labelling requirements provided that labels must be in

Chinese, except for products manufactured in China for export (WTO 2010e, p. 39, para. 60). The *Patent Law* was revised in light of the *Convention on Biological Diversity* to require patent applicants to disclose the direct and original source of genetic resources if the invention to be patent depended on these resources (WTO 2010e, p. 65, para. 160). However, at least as of 2010, the *Patent Law* did not require Access and Benefit Sharing (ABS) or Prior Informed Consent (PIC) for a patent application (WTO 2010b, p. 28, Question 1; p. 29; on this problem, see Snyder 2010, pp. 410–413). China planned to enact a law on geographical indications (GIs) in 2010, but as of the date of the Review, GIs were regulated by the State Trademark Office, AQSIQ and the Ministry of Agriculture (for statistics, see WTO 2010e, p. 67, paras. 169–172).

China was a Member of the Codex Alimentarius Commission, the leading international food standard-setting body, the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC). In 2007 and 2008, China signed more than 60 bilateral or regional agreements on standards and SPS measures with WTO Members, including EU, Japan, and the United States (WTO 2010e, p. 38, para. 54).

Affirming China's central role in the WTO (WTO 2010c, p. 8, para. 46), the discussant noted that China's standards regime was very complex, especially regarding voluntary standards, and asked about further alignment (WTO 2010c, p. 10, para. 56). The point about alignment was echoed by Mexico, Norway, the EU and the US (WTO 2010c, p. 25, paras. 249–250 [Mexico]; p. 15, para. 91 [Norway]; p. 19, para. 125 [EU]; pp. 26–27, paras. 173, 175, 176, 177 [US]).

The EU complained that China replied to some questions with two years delay and urged China to respect transparency (WTO 2010c, p. 19, para. 125, p. 20, para. 126). The US, emphasising that China's market liberalisation seemed to have slowed down (WTO 2010c, pp. 26–27, paras. 173, 175, 176, 177), also remarked that China had not fully adopted alignment and science-based rule making (WTO 2010c, p. 28, para. 186). It noted the importance of bilateral relations, such as the US-China Joint Commission on Commerce and Trade and the US-China Strategic and Economic Dialogue (WTO 2010c, p. 28, para. 188). Canada also encouraged China to adopt a more science-based approach to regulation (WTO 2010c, p. 33, paras. 230, 231) and to follow the TBT Code of Good Practice (WTO 2010c, p. 33, para. 227). However, Brazil and Hong Kong considered that in these respects China had made good progress (WTO 2010c, p. 12, para. 67 [Brazil]; p. 22, para. 138 [Hong Kong]).

The Chinese Government Representative clarified China's policy by saying that, generally, China used relevant international standards, except when they were ineffective or inappropriate. It gave priority to fundamental and testing

method standards. The alignment rate as of end 2009 was 68% (WTO 2010d, p. 56, para. 406). This rate referred to both international standards and advanced foreign standards, echoing the terminology of the *Standardization Law Implementing Regulation* (see also WTO 2010b, p. 153 Follow up to Question 59 and Question 60).

Several questions focused on the new 2009 *Food Safety Law of China*. Both the EU and the US asked why the Chinese Government did not notify the new *Food Safety Law of China* to the WTO before implementation (WTO 2010b, p. 187 Questions 61–62 [EU], p. 215 Question 22(a), p. 216 Answer (a–c)). The Chinese Government Representative replied that the new Law was based on the earlier *Food Hygiene Law* and did not have “major impact on international trade” (WTO 2010b, p. 87). The EU was not very satisfied by this reply (see WTO 2010b, p. 155 Follow up to Question 61), which was based on a very narrow interpretation of WTO legal obligations.

The 2009 *Food Safety Law of China* essentially retained the system of institutional fragmentation, which had been consolidated by the 2004 Decision of the State Council about Strengthening Food Safety. In reply to a question by Egypt (WTO 2010b, pp. 163–164), the Chinese Representative briefly described “specialised supervision” with regard to food safety regulation (WTO 2010b, pp. 164–165). The US asked whether it was correct that food safety regulation under the new law involved 12 different ministries (WTO 2010b, p. 215 Question 21), to which the Chinese Government Representative replied by describing briefly the then fragmented regulatory system (WTO 2010b, p. 215 Answer (a–b)). In follow-up questions, the US urged China to establish a mechanism to monitor the performance of individual ministries and agencies in their use of the notice-and-comment procedure, which China had made mandatory for new laws, regulations and other measures (WTO 2010c, p. 59, para. 428).

On food safety standards, Brazil asked which measures the Government had taken to strengthen testing of dairy products after the melamine crisis (WTO 2010b, p. 15 Question 24). In fact, the State Council promulgated a *Regulation on Supervision and Administration of Dairy Product Safety* (State Council Decree No. 536, 9 October 2008), issued a *Notice on Strengthening Production Licensing of Dairy Products* (No. 757 of 2008) and enacted *Rules on Supervision of Dairy Products Producing Enterprises on Their Implementation of Quality Safety Responsibilities* (No. 437 of 2009). The Ministry of Health on 27 April 2010 “issued 66 new national standards on the safety of dairy products, which included 15 new standards for dairy products, 2 production rules and 49 standards for inspection methods”. AQSIQ strengthened inspection procedures, and other measures were taken (WTO 2010b, pp. 15–16).

### 3.5. The 2012 Trade Policy Review

The fifth China TPR opened in an extremely unfavourable global economic climate (WTO 2012d, p. 5, para. 4; p. 6, para. 9). The Chinese Government report concentrated on the economic and trade environment, macroeconomic policy direction and trade and investment, not mentioning food safety directly. Indirectly, however, it highlighted several structural and institutional conditions for food safety: the multilateral trading system (WTO 2012d, p. 5, para. 3); the rule of law, meaning that “China needs to bring into being a comprehensive system of laws with Chinese characteristics so as to ensure that there are laws to abide by for the carrying on of state affairs and social life” (WTO 2012d, p. 13, para. 41); and the historically unprecedented scale of China’s economic and legal reforms (WTO 2012d, p. 20, para. 127). These three factors help to shape many features of Chinese food safety regulation.

The Secretariat report took a more critical approach. While recognising that China had taken “some small steps” to improve transparency, it remarked that “many aspects of China’s trade and investment regime remain complex and opaque, leaving scope for administrative discretion and corruption” (WTO 2012c, p. 11, paras. 4–5). With regard to public participation in policy making, it referred to the OECD view (OECD 2010a, p. 220) that “public participation in policy formulation in China is still at a relatively early stage, characterized by informing the public rather than collecting opinions for improving policy making” (WTO 2012c, p. 13, para. 14). It pointed out, again following the OECD (OECD 2010b, p. 222), that China has “a shared governance structure that requires continuous negotiation among different levels of government” (WTO 2012c, p. 14, para. 17), but “coordination between the agency and the central level and its counterparts at the local level remains weak, raising issues of policy coherence” (WTO 2012c, p. 14, para. 19).

This report presented clearly institutional and legal arrangements for food safety regulation, for example regarding measures directly affecting imports (WTO 2012c, pp. 24–42, paras. 1, 44–45), exports (WTO 2012c, pp. 57–63, paras. 134, 148–149, 152–153), standards and other technical requirements (WTO 2012c, pp. 45–53, paras. 80–98), SPS measures (WTO 2012c, pp. 49–52, paras. 99–108), labelling (WTO 2012c, pp. 52–53, paras. 109–110) and GIs (WTO 2012c, p. 93, paras. 308–311). Under the 2009 *Food Safety Law of China*, all national food safety standards must, as a matter of law, be mandatory (People’s Republic of China, National People’s Congress, Standing Committee 2009: *Food Safety Law of China*, Article 19). However, the Secretariat report also recorded the continued fragmentation of administrative responsibility for SPS measures between (as of 2010) the SFDA, MOH, MOA, MOFCOM, AQSIQ

and other agencies (WTO 2012c, pp. 49–50, para. 99), as well as the many different laws dealing with SPS matters (WTO 2012c, pp. 50–51, para. 100). China was an active participant in the SPS Committee, making 376 notifications between 1 January 2009 and 31 October 2011. However, Members expressed concerns about notifications in particular following adoption of the 2009 *Food Safety Law of China*, when mainly as a result of the melamine scandal China notified almost 100 measures during a 15-d period (WTO 2012c, p. 51, para. 102).

The report of the Chairperson of the TPRB meeting identified standards, SPS measures and other technical requirements as among the specific topics of most interest to Members (see WTO 2012b, p. 3, para. 7). However, in his opening remarks the Discussant commented that the Secretariat sometimes was not able to gather sufficient information; some rules were very complex, implementation of law was not always clear and local administration was sometimes cumbersome (WTO 2012b, Closing remarks by the Discussant p. 10, para. 56).

Many Members reiterated earlier concerns, such as delay in adopting science-based decision making or international standards, overly complex regulatory regime, lack of transparency, China Compulsory Certification (CCC) system (which mainly concerns non-food products) and inspection and quarantine protocols (see WTO 2012b, p. 13, para. 69 [US]; p. 18, para. 108 [Brazil]; p. 28, para. 181 [Canada]; p. 29, para. 193 [Costa Rica]; p. 36, paras. 239, 242 [EC]; p. 49, para. 337 [Australia].)

China's Representative affirmed that 68% of national standards had adopted international or advanced foreign standards by end 2011, "far above our WTO commitment which is 50%" (WTO 2012b, p. 57 para. 402). He also remarked that "we believe it is unfair to say that China is developing its own standards and violates the TBT Agreement just because it does not follow the standards of some other Members in a few areas" (WTO 2012b, p. 57, para. 403). He also stated China's openness to further discussions and its support for more WTO dialogues on international standards (WTO 2012b, p. 57, para. 405). With regard to notifications, he commented that China made the most SPS and TBT notifications in the WTO. Regarding criticisms of late notification, he remarked that "our staff had different opinions on whether the technical regulations should be notified under the TBT Agreement" but these were simply "technical issues".... (WTO 2012b, p. 58, para. 407). Nonetheless, the EU voiced its surprise that China seemed to have no recent statistics on alignment (WTO 2012b,

p. 61, para. 435).

Specific questions concerned the implications of the 2009 *Food Safety Law of China*, alignment, certification, and Gl.s. For example, Brazil asked why the *Ministry of Health 4 December 2009 Circular No. 108 on the Conduct of Food Packaging Material Clean-up Operations* was not notified to the WTO so foreign companies could comment on additives (WTO 2012a, p. 40). Invoking once again methods of legal interpretation, the Chinese Representative considered that the Circular did not fall within the scope of the Government's notification obligation, because it was "a campaign... [,], ... not legislation" (WTO 2012a, p. 40). In reply to Mexico's question about participation of consumer organisations in the development of food safety standards (WTO 2012a, p. 290 Question 49), the Chinese Representative pointed out that the China Consumers Association had been invited to participate in drafting and to comment on the 12th Five Year Plan for National Standards on Food Safety (WTO 2012a, p. 290 Answer 48–40). Turkey enquired about quarantine measures and assessment procedures for dairy products and poultry (WTO 2012a, p. 351); both were sensitive products in international trade. The Chinese Representative described relevant institutions, applicable administrative measures and procedures (WTO 2012a, pp. 351–352). Concerning standards, Australia asked what proportion of Chinese standards were more restrictive than Codex standards and, if there is no domestic standard, whether China "could ... consider" adopting a Codex standard until a domestic standard was developed (WTO 2012a, p. 22 Question 13; see also WTO 2012c, p. 51, para. 101). The Chinese Representative, without really answering the question, replied that Chinese standards were based on science, and were not "totally the same" but nonetheless "basically consistent" with Codex standards (WTO 2012a, pp. 22–23).

Certification is a crucial issue for market access. Brazil asked about the requirements to be met by foreign certification bodies in order to be accredited by the China National Accreditation Service (CNAS) (WTO 2012a, p. 49, para. vii). The Chinese Representative replied that China promoted mutual recognition agreements (WTO 2012a, p. 49)<sup>3</sup>. Canada sought to obtain a procedural document regarding registration by foreign food manufacturers and producers who wished to export products to China (WTO 2012a, p. 69). The Chinese Representative pointed out that the procedures could be found in *The Catalogue of Administrative Measures for Registration of Foreign Manufacturers of Imported Food*, issued by AQSIQ as Announcement No. 73 in 2012. Under *China's Administrative Measures for Registration of*

<sup>3</sup> See also *United States—Certain Measures Affecting Imports of Poultry from China*, Report of the Panel, WT/DS/392R, 29 September 2010, Panel Report adopted on 25 October 2010 ([https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds392\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds392_e.htm)).



*Overseas Manufacturers of Imported Food*, the CNCA was responsible for implementation and supervision of registration (WTO 2012a, p. 69 Answer 32–33).

Finally, Australia asked about the coherence of the GI regulatory regime (WTO 2012a, pp. 25–26 Questions 24, 25; WTO 2012c, p. 93, paras. 308, 311). The Chinese Representative, describing the regime in detail, replied that SAIC, AQSIQ and MOA were examining how to establish a joint certification scheme: (WTO 2012a, extract from pp. 25–26) Responsibility for publishing information about trademarks was divided between the Trademark Office and AQSIQ (WTO 2012a, p. 26). As the China Representative explained, the legal basis for protecting GIs was complex, including the “*Trademark Law, Implementing Regulations of Trademark Law, Registration and Management Measures of Collective Marks and Certification Marks, Administrative Measures of Geographical Indications of Agricultural Products, Protection Regulations for Geographical Indication Products* and other laws and regulations”. He considered that all were totally consistent with the WTO TRIPS Agreement (WTO 2012a, p. 26).

### 3.6. The 2014 Trade Policy Review

The 5th WTO review of China’s trade policy was held on 1 and 3 July, 2014. The minutes or records of the meeting are not yet available as of the time of writing, but the main

themes emerge from already available documents (WTO 2014a, b, c; now see Snyder 2014).

China’s report emphasised continuing opening up and deepening of domestic reform, “making progress while maintaining stability” (WTO 2014c, p. 4, paras. 1.1–1.2). However, it did not deal with food safety regulation directly, probably because a major reform of the 2009 *Food Safety Law of China* was then underway. A revised *Food Safety Law of China* was adopted on 24 April, 2015 and will be considered in the 2016 TPRM.

The Secretariat report noted that China had become the world’s largest trader (except for trade within the EU) (WTO 2014b, p. 9, para. 6). There were no changes from previous years in many procedures or institutions, for example regarding establishment of SPS requirements (WTO 2014b, p. 77, para. 3.79) or inspection procedures for imports and exports subject to SPS measures (WTO 2014b, p. 77, para. 3.79). However, the report identified various SPS measures imposed on imports between 2011 and 2013 before the measures had been notified to the WTO. They included “quarantine and testing procedures for salmon; testing methods for food additives; import conditions related to phthalates, import restrictions on beef due to BSE; and registration requirements for foreign companies importing food into China” (WTO 2014b, p. 78, para. 3).

The Secretariat summarised China’s food safety regime at the time (Table 1):

**Table 1** Laws and regulations related to China’s Sanitary and Phytosanitary Measures (SPS) Regime<sup>1)</sup>

| Laws and regulations   | Promulgated/Amended                  |
|--|--------------------------------------|
| <b>Laws</b>  |                                      |
| <i>Law on the Entry and Exit Animal and Plant Quarantine</i>   | 30.10.1991/27.08.2009                |
| <i>Regulations on Implementation of the Law on the Entry and Exit Animal and Plant Quarantine</i>                          | 02.12.1996                           |
| <i>Law on Quality and Safety of Agricultural Products</i>  | 29.04.2006                           |
| <i>Animal Disease Prevention Law</i>   | 03.07.1997/30.08.2007                |
| <i>Regulations on Plant Quarantine</i>   | 03.01.1983/13.05.1992                |
| <i>Regulations on Control of Pesticides</i>  | 08.05.1997/29.11.2001                |
| <i>Regulations on Control of Veterinary Drugs</i>  | 21.05.1987/29.11.2001 and 09.04.2004 |
| <i>Regulations on the Administration of Feed and Feed Additives</i>  | 29.05.1999/29.11.2001 and 03.11.2011 |
| <i>Law on Frontier Health and Quarantine</i>   | No information                       |
| <i>Law on Import and Export Commodity Inspection</i>   | No information                       |
| <i>Food Safety Law</i>   | 28.02.2009                           |
| <b>Rules and administrative measures</b>   |                                      |
| <i>Measures for the Supervision and Administration of Inspection and Quarantine of Import and Export Aquatic Products</i>  | AQSIQ Decree No. 135 of 2011         |
| <i>Measures for the Supervision and Administration of Inspection and Quarantine of Import and Export Meat Products</i>     | AQSIQ Decree No. 136 of 2011         |
| <i>Measures for the Prevention and Treatment of AIDS at Frontier</i>   | AQSIQ Decree No. 139 of 2011         |
| <i>Measures for the Supervision and Administration of Inspection and Quarantine of Import and Export Cosmetic Products</i> | AQSIQ Decree No. 143 of 2011         |
| <i>Administrative Measures on the Safety of Import and Export Food</i>   | AQSIQ Decree No. 144 of 2011         |
| <i>Administrative Measures for Registration of Overseas Manufacturers of Imported Food</i>                                 | AQSIQ Decree No. 145 of 2012         |
| <i>Measures for the Supervision and Administration of Inspection and Quarantine of Import and Export Dairy Products</i>    | AQSIQ Decree No. 152 of 2013         |

<sup>1)</sup> Source: WTO 2014b, p. 76, para. 3.77, Table 3.7 Laws and regulations related to China’s SPS regime; based on information provided by the Chinese authorities.



The Secretariat commented, however, that “some of these laws are outdated and repetitive” (WTO 2014b, p. 76, para. 3.77).

The report noted that Central Government trade-related laws and regulations are published on the website of the China Legislative Information System, Legislative Affairs Office of the State Council ([www.chinalaw.gov.cn](http://www.chinalaw.gov.cn)), which since 2008 has also published all draft administrative regulations for public comment (WTO 2014a, p. 36, para. 2.12). In the ensuing discussion, however, several Members reiterated the WTO Secretariat’s remark about the difficulty of obtaining adequate information (WTO 2014a, p. 23, para. 4.101 [EU], p. 24, para. 110 [US], p. 33, para. 4.179 [Peru]). Many questions focused on transparency in standard-setting and implementation (WTO 2014a, p. 9, para. 3.12 [Statement by the Discussant]). For example, the EU noted that there was “much room for improvement” with regard to transparency (lack of availability or lack of translations), notifications and consistent implementation of legislation (WTO 2014a, p. 23, para. 4.101, see also p. 62, paras. 5.56–5.57; see also WTO 2014a, p. 32, para. 4.177 [Canada], p. 33, para. 4.185 [Peru], p. 62, para. 5.49 [Russia]). The US stated quite directly that Chinese policies and practices were often not clear or information was not available (WTO 2014a, p. 24, para. 4.110). It identified specific problems as being China’s implementation of its WTO commitments regarding translation, public comments on draft measures and publication in China’s official journal (WTO 2014a, p. 64, para. 5.78).

The Secretariat also summarised China’s institutions for dealing with SPS matters (Table 2).

In its view, the fragmentation of administrative responsibility might lead to lack of clear responsibility and lack of accountability (WTO 2014b, p. 77, para. 3.78). Only much later in the report did the Secretariat note the major reform of China’s SPS regulatory institutions, namely the creation of the China Food and Drug Administration (CFDA) (WTO 2014b, p. 125, Table 4.2), which is part of a gradual process of institutional consolidation and clarification of rules with regard to food safety. Strangely however, the table did not

reflect important institutional reforms already accomplished at the time and mentioned below.

Apparently unaware of major 2013 institutional reforms or the draft new *Food Safety Law of China* then in circulation, several Members evoked China’s fragmented regulatory system. Colombia referred to “[d]ifferent layers of regulation, making it difficult to unravel which sectoral policies are being applied” and to “conflicting guidelines for policy implementation, reflecting different institutional agendas” (WTO 2014a, p. 30, para. 4.162). Israel asked “whether SAC holds the sole responsibility for standards in China, or whether other units of the Government have a mandate to develop standards at various levels” (WTO 2014a, p. 52, para. 4.381; see also WTO 2014a, p. 52, para. 4.382). The US again remarked that China was not fully using international standards and science-based rulemaking for SPS measures (WTO 2014a, p. 25, para. 4.117), but it noted that it was working bilaterally with China to try to resolve any problems (WTO 2014a, p. 26, para. 4.118).

The Representative of China pointed out in his reply that the Government was proceeding with translation of laws, regulations and other measures. The National People’s Conference (NPC) Legislative Affairs Commission publishes an English edition of the laws. The State Council Legislative Affairs Office promulgates “periodically” laws and regulations on “foreign-related matters” in Chinese and English. The State Council General Office, on 24 February 2003, “issued the Notice on Enhancing the Verification of Official English Translation of Administrative Regulations, requiring government agencies at all levels to enhance efforts in the verification of official English translation of administrative regulations based on the requirement in the notice” (WTO 2014a, p. 58, para. 5.15). Regarding lack of uniformity of customs procedures, he noted that legislation and enforcement is unified but that “in practice, a few local customs [authorities] may have different understandings of the regulations due to different levels of economic development and geographical conditions” (WTO 2014a, p. 58, para. 5.22). He undertook to improve the official Gazette

**Table 2** Institutions in charge of the SPS system in China<sup>1)</sup>

| Institutions   | Responsibilities   |
|--|--|
| Ministry of Health (MOH)   | Responsible for food safety risk assessment and the formulation of food safety standards   |
| Ministry of Agriculture (MOA)  | In charge of implementing entry and exist animal and plant quarantine  |
| General Administration of Quality Supervision and Quarantine (AQSIQ) | In charge of national quality, entry-exit commodity inspection, entry-exit animal and plant quarantine, import-export food safety, certification and accreditation                 |
| State Administration for Industry and Commerce (SAIC)                | In charge of regulating product quality and safety in the market   |
| State Food and Drug Administration (SFDA)                            | In charge of draft laws, regulations and rules to supervise food safety (including food additives), drugs (including traditional Chinese medicines), medical devices and cosmetics |

<sup>1)</sup> Source: WTO 2014b, p. 77, para. 3.78, Table 3.8 Institutions in charge of the SPS system; based on information provided by the Chinese authorities.

and translation of measures according to China's Accession Protocol (WTO 2003a; Zhang 2005, pp. 59–61).

#### 4. Discussion

The TPRM deals with the institutional and normative parameters of food safety which are related directly or indirectly to trade. Following the WTO mandate, it does not deal directly with unintentional (e.g., microbial) or intentional threats to food safety, unless they are evoked in conjunction with domestic legislation, international standards or risk assessment in the context of international trade. Nevertheless, its mandate is extremely wide and concerns many aspects of domestic food safety regimes, as indicated by the titles of the WTO press releases for the China reviews (WTO 2006a, 2008f, 2010f).

The TPRM is not a negotiating forum. Nor is the TPRB a mediator, an arbitrator or a court. The TPRM provides a way of seeking information, airing grievances, putting pressure on the Member being reviewed and revisiting familiar themes, which usually if not always are of considerable economic interest to the Member asking the question. Carefully phrased questions and equally carefully phrased answers convey much information and part of reality, often using legal code words or subtle legal interpretations. The scope, depth, continuity and sometimes intensity of the questions indicate the importance which all participating WTO Members give to the TPRM.

Questioners and questions in reviews of China's trade policy, including food safety, evolved over time, but they also demonstrated considerable continuity, which is not surprising if we consider that a small number of countries, including China, dominate world trade (Table 3). Numbers for questions asked are based on the TPRB listing

of questions; a single question may occasionally contain several more specific questions, so the numbers are best understood as indicators of magnitude.

The total number of questions, including but not limited to food safety, began with approximately 1 100 questions in 2006 and rose to about 1 700 questions in 2014. Questions concerning food safety fluctuated, with a high point in 2010 following the melamine scandal and the enactment of China's first *Food Safety Law* in 2009. In 2006, 11 countries asked a total of 35 questions (Table 3). Food safety in the broad sense accounted for about 3% of total questions (35 of 1 100). China's major trading partners among developed countries asked almost 60% of the questions: USA 8, EU 8, Australia 7, followed by South Africa 4. The main concerns were China's domestic standards and GIs. In principle, WTO law provided a foundation for the questions, for example, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in relation to GIs (WTO 1999, TRIPS, Article 22).

In 2008, questioners increased slightly and questions about food safety matters almost tripled; 14 countries asked a total of 95 questions. With one important exception, most questions were asked by China's major developed country trading partners: EC [now EU] 22, USA 13 and Canada 13 asked more than 50% of questions. However, Mexico, for whom China is the most important market outside NAFTA, asked more than 10% of questions (10); this was the first time that a developing country joined the ranks of major questioners. Note that the EC in 2008 comprised 27 countries, each of which is separately a WTO Member, but since EC votes are equal to the number of EC Member States and the EC [now EU] usually replaces the Member States in WTO meetings, the EC is counted as one unit in the table.

In 2010, compared to 2006, the number of questions

**Table 3** Evolution of questions about food safety in reviews of China's trade policy, 2006–2014<sup>1)</sup>

| Year of TPRM | Total questions | Number of members asking questions about food safety | Number of questions about food safety | Members asking the most questions                             | Main concerns   |
|--------------|-----------------|--|---------------------------------------|---|---|
| 2006         | >1 100          | 11   | 35                                    | US 8, EU 8, Australia 7, South Africa 4                       | Domestic standards, labelling   |
| 2008         | >900            | 14   | 95                                    | EU 22, US 13, Canada 13, Mexico 10                            | Domestic standards, alignment, imports  |
| 2010         | 1 508           | 20   | 123                                   | Mexico 40, Canada 19, EU 15, US 8, Brazil 8                   | Alignment, administrative organisation, imports, geographical indications (GIs) |
| 2012         | >1 700          | 19   | 57                                    | EU 11, Australia 8, Indonesia 6, US 5, Brazil 5               | Imports, alignment  |
| 2014         | 1 700           | 25   | 146                                   | EU 19, Canada 18, India 15, Australia 14, Indonesia 14, US 13 | Standards, administrative organisation, notification                            |

<sup>1)</sup> Source: Calculated by the author from WTO (2006b, c, d, e, 2008a, c, d, 2010a, d, e, 2012a, b, c, 2014a, b), except the figure of >900 for total questions in 2008 is from Yang (2011), p. 1.

about food safety tripled from 35 to 123. Those who asked questions were again among China's main trading partners, with the addition of Mexico. Mexico asked the most questions (40) and indeed almost one-third of the questions (40 of 123), mainly about market access. Mexico and the other NAFTA countries, the US and Canada, also asked a joint question. Among major developed countries, Canada led with 19, followed closely by the EU with 15, whereas the USA tied with Brazil with 8 questions. Their main preoccupations were the types of technical regulations and standards used in China, alignment, transparency of China's SPS measures, the multiplicity or fragmentation of administrative authorities dealing with food safety regulation, the 2009 *Food Safety Law of China*, geographical indications, and import measures and export measures.

In 2012, compared to 2010, there was a decline in the use of the Review to gather information. Approximately the same number of WTO Members asked questions as in 2010 (2010, p. 20; 2012, p. 19), though there was a slight change in the identity of the specific Members asking questions. However, there was a considerable decrease in the number of questions (2010, p. 123; 2012, p. 57), mainly because that Canada and particularly Mexico asked far fewer questions in 2012 than in 2010. Three years after the enactment of the 2009 *Food Safety Law of China*, the Chinese regulatory system and the Chinese Government's position were well-known to most if not all WTO Members. Larger Members continued to encourage China to make reforms. Some Members, such as the EU, continued to seek more details about Chinese policies. Others, such as the US, were more involved in seeking solutions through bilateral relations. Members such as Mexico and others mainly concerned with import procedures already knew China's basic policies, institutions and market access rules. It is possible that some issues were also aired within the context of NAFTA.

In 2014, the first WTO Review of China's trade policy since the election of the new leadership in China, all WTO Members recognised the tremendous achievements of the

Chinese Government, its continuing domestic reforms, the importance of China in the world trade, and its significance for the WTO multilateral system (WTO 2014a, pp. 59–60, paras. 5.33–5.36 [comments by the Discussant]). Forty-five delegations intervened in the discussion on 1 July 2014, most taking the 7 minutes maximum time for each Member (WTO 2014a, p. 59, para. 5.30). Thirty-one Members submitted a total of 1 700 written questions (WTO 2014a, p. 56, para. 5.2, see also p. 2, para. 1.3). As the Discussant point out, "[i]f not a new record for the TPRB, it surely must be among the most extensive exchanges that have occurred in this important body" (WTO 2014a, p. 59, para. 5.30).

Table 4 indicates the evolution of main subjects of questions in the reviews from 2006 to 2014.

Questions came principally from China's main trading partners, both developed countries (US, EU, Canada, Australia) and leading BRICS (South Africa, Mexico, Brazil). Previously, WTO Members sought basic facts about how the Chinese food safety system functioned, though some, for example the US or the EU, asked precise questions based their companies' specific experiences of access to the Chinese market. Later, the questions frequently became more wide-ranging. From 2006 to 2012, the most frequent topics of questions have been alignment (39 questions), types of standards (24), administrative organisation (25), transparency (16), CCC (14), imports (59), GIs (31) and dairy products (5). Very recent 2014 data are analysed elsewhere (Snyder 2014). The main factors leading to these changes would appear to be increase in knowledge due to changes in questioners.

Throughout the period, each Member asked questions from its own perspective and interests. Reflecting the rapid development of China's role in world trade, the Secretariat reports, Chinese Government reports and discussion and questions tended to become increasingly detailed, indeed legalistic. For example, it would appear that WTO Members increasingly put their concerns in the form of leading questions, which, together with more or less detailed comments, tended to suggest relevant answers. The decline in ques-

**Table 4** Main subjects of questions in reviews of China's trade policy, 2006–2014<sup>1)</sup>

| Subject matter              | 2006 | 2008 | 2010 | 2012 | 2014 | Total |
|-----------------------------|------|------|------|------|------|-------|
| Types of standards          | 0    | 16   | 6    | 2    | –    | 24    |
| Alignment                   | 2    | 19   | 10   | 8    | –    | 39    |
| Administrative organisation | 0    | 9    | 14   | 2    | –    | 25    |
| Transparency                | 1    | 8    | 4    | 3    | –    | 16    |
| CCC                         | 1    | 6    | 3    | 4    | –    | 14    |
| Imports                     | 2    | 8    | 21   | 28   | –    | 59    |
| GIs                         | 9    | 9    | 10   | 3    | –    | 31    |
| Dairy products              | 0    | 1    | 4    | 0    | –    | 5     |

<sup>1)</sup>Source: Calculated by the author from WTO (2006b, c, d, e, 2008a, c, d, 2010a, d, e, 2012a, b, c, 2014a, b).

–, not yet available.

tions about types of standards is likely to be due to the fact that now the Chinese standards system is better known to China's trading partners. Alignment of domestic standards with international standards, however, remained a major concern. Increasing questions about transparency, administrative organisation and imports are doubtless a reflection of the increasing openness of the Chinese domestic market, together with concerns with remaining barriers to market access. These questions are often put in terms of concerns for the WTO system. In addition to being phrased in systemic terms, they are systemic concerns also in the sense that playing for principles is often the best strategy for dominant players in the market (for an analogue, see Galanter 1974). Changes in types of question are also correlated more or less directly with changes in which Member is asking the questions; an example is the role of Mexico. The increase in questions about dairy products reflected the melamine crisis. Questions about administrative organisation, which all focus on the fragmentation of administrative authority and responsibility in the field of food safety regulation as a whole, have also increased dramatically. The TPR appears to have contributed, however, to increased inter-departmental cooperation among Chinese administrative authorities (on the first three TPR, see also Yang 2011, pp. 15–16). During the period from 2006 to 2014, the replies of the Chinese Government grew increasingly sophisticated, testifying not only to the rapid development of a very complete and complex institutional and normative system for food safety matters in China but also to an increasing knowledge on the part of Chinese Government officials in dealing with the WTO institutions, the interpretation of WTO law and the TPRM in particular.

## 5. Conclusion and recommendations

China has made tremendous strides since the 1995 *Food Hygiene Law* in improving its system of food safety regulation, including the draft *Food Safety Law of China* before the National People's Congress. Institutional reforms are still continuing. For example, in 2013 the China Food and Drug Administration (CFDA) replaced the SFDA; the National Health and Family Planning Commission (NHFP) became responsible for evaluating food safety risks, through the National Centre for Food Safety Risk Assessment (NCFSRA) and for formulating food safety standards (Snyder 2015, Conclusion).

For WTO Members, including China, the TPRM represents an invaluable process of mutual learning. The TPRM can spread best practices, contribute to alignment on the basis of international norms, put pressure on Members to address specific problems in national systems of food safety regulation and create the preconditions for regulating food

safety in a more coherent, more effective way. It does not create legal rights or obligations (see also Mavroidis 1992, p. 392; Chaisse and Chakraborty 2007; Froese 2014, p. 369). Within the WTO framework, it is therefore a relatively risk-free forum, despite the normal interest of Members in controlling the type and amount of information which they provide. The TPRM can, should and does serve as a vehicle of negotiated, gradual social change (Snyder 1993, p. 26) toward improved regulation of food safety and public health in the interest of all citizens. In this respect, the WTO TPRM can contribute to improvement of food safety regulation in China.

We can draw several conclusions from this brief review. First, the TPRM reviews of China's trade policy exemplify relations between different sites of governance. Second, the TPRM provides a means of encouraging and stimulating the reviewed Member to provide information, engage in peer discussion of common issues and attempt to channel desired reforms in a contextually acceptable direction. Third, the TPR may appear to be heated at times, but its effectiveness relies on discussion and peer pressure, not on legal challenges or on third-party dispute settlement institutions. Fourth, relations between the TPRM and China are reciprocal in their effects. This kind of "structural reform" (see Snyder 1993) is a common feature of legal pluralism. Within the TPRM, China's major trading partners, acting within this specific multilateral forum, often seek to promote reform of Chinese policies, institutions and laws. As this paper has suggested, nowadays China consents and cooperates, within limits, in its own changes (compare Spence 1980). This is broadly consistent with the conclusions of Daly's research on more than 90 TPRs of Asia-Pacific countries during a 20-year period (Daly 2011), and Valdés' study of TPRs in the western hemisphere between 1989 and 2009 (Valdés 2010). China and its trading partners within the WTO are changing China together, again with limits, perhaps because of China's increasing openness, perhaps because the utility of international, transnational or even foreign law, standards and best practice in the context of food safety regulation in China, and perhaps most of all because China is committed to the WTO and the multilateral forum of the TPRM.

Based on this discussion and research leading up to it, it is possible to identify several challenges in the reform of Chinese food safety law: to provide consistent, coherent and effective laws, regulations and standards; to establish optimum institutional arrangements; to bring small enterprises under the food safety umbrella; and to improve enforcement and public education. To help to meet these challenges, I wish to make several general and specific recommendations.

The general recommendations are as follows:

- The Chinese Government should continue to participate



actively in the WTO TPRM, not only as a Member being reviewed but also including all other occasions.

- China should practice and insist on scrupulous respect for notification requirements and for WTO canons of interpretation, both of which will greatly enhance China's international credibility and soft power.

- China should find its own path to guarantee food safety on the basis of its own priorities, for example in selective adoption of international standards and best practices which are appropriate for the Chinese context.

- China may learn much from other WTO Members, not only those with very advanced systems of food safety regulation, which might supply useful models or helpful suggestions, but also from those at the same level of per capita income, which can provide necessary comparators for domestic reforms.

The specific recommendations are as follows:

- China's food safety regime should be based on clearly articulated principles: (a) national strategy, goals and substantive principles, (b) focus on prevention, (c) traceability, (d) enterprise responsibility, (e) local enforcement, (f) strategic alignment with international standards and (g) diversity, experimentation and adaptation.

- Risk management should be based on a precautionary principle.

- Special efforts should be made to improve consistency and economy of legislation.

- Relations between different types of standards need to be clarified.

- An integrated institutional framework is essential in order to preserve safety in the entire food supply chain.

- Public-private partnerships should be encouraged in developing and applying standards.

- All enterprises operating in the market should be required to have an appropriate license.

- Small workshops should be given high priority, with attention to social justice.

- Transparency, information sharing and reporting should be encouraged and supported.

- Much more importance should be given to public education and preservation of integrity.

- China should adopt a specific national food safety strategy, which would set down goals, means, benchmarks and procedures for the short term (1–4 years), medium term (5–9 years) and long term (10 years or more)

A number of these recommendations are echoed in the recently adopted 2015 *Food Safety Law of China*, which will come into force as of 1 October 2015. Examples are risk monitoring and risk assessment and institutional reforms, especially the creation of the CFDA, to overcome the previous pattern of institutional fragmentation. In considering these recommendations, it is useful to recall that law reform

cannot be reduced to legislative reform. Law reform takes account of reform of legislation, implementation of legislation and compliance with legislation. In other words, it involves much broader social processes and refers to the real meaning of law in society.

## 6. Materials and methods

This paper is based mainly on library research and interviews. Basic materials include WTO official publications and records of TPRM meetings (WTO Secretariat reports, Chinese Government reports, minutes/records of the meetings) and secondary literature. Some formal and informal interviews were carried out in China, particularly in Beijing, and in Europe, particularly in Brussels. The paper also takes account of the author's experience as the leading foreign expert advisor to the Government of the People's Republic of China in the field of food safety and reform of the 2009 *Food Safety Law of China* in his capacity as a Member of the Foreign Experts Advisory Committee (FEAC) under the aegis of the State Administration of Foreign Experts Affairs (SAFEA).

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