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## Reflection and perfection of the food recall system in China

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### Abstract

In light of the deficiencies exist in current Chinese food recall system, it is essential to set up an effective mode by a single government agency to undertake the main responsibility of food recall regulations and enforcement. The agency will consist of four departments to conduct the supervision on food recall. In addition, it is necessary to strengthen the administrative liability of food producers in violation of food recall regulation and to establish a reserved fund system on food recall.

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### 1. Introduction

Food recall system is the inevitable outcome of product recall system. On 27 August 2007, the Provisions on the Administration of Food Recall were promulgated by General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ). The Provisions stipulates completely the food recall system including the investigation and assessment of the food safety risks, the implementation of the food recall system, the recall evaluation and supervision and the legal liabilities. It is the first time for China to establish the recall system of food. Due to the consequence of Sanlu milk powder accident, the food recall system is eligible to act a part of the Food Safety Law on 28 February 2009 in China. Thus the Article 53, Article 72 and Article 85 are provided in regard to food recall, which are taken as the legal basis of implementing the food recall.

Undoubtedly the Provisions on the Administration of Food Recall and the related articles in Food Safety Law demonstrated the rapid progress on food recall system of China, which aimed to solve the serious problems in food safety. However, the emergency in establishing the rules and the lack of sufficient theoretical background lead to the deficiencies in current system. The paper will focus on the deficiencies of food recall system and provide the measures to perfect it.

### 2. Deficiencies of Chinese food recall system

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### *2.1. The out-dated mode of food safety supervision*

For a long time, there are around several national government departments that share the responsibility to ensure food safety, including quality inspection department, industry and commerce department, agriculture department and health department. In spite of the arguments in the academic field, Food Safety Law still states these departments have an overall responsibility for food safety. According to Article Four, the State Council has set up the Food Safety Committee, and assigned its obligations. The Ministry of Health is responsible for the unified coordination of food safety, including food safety risk assessment, safety standards development, information dissemination, the development of qualification criteria for food testing agencies and test specification, and investigation of and response to food safety incidents. The agencies authorized by the State Council, such as Bureau of Quality and Technical Supervision, Administration for Industry and Commerce, Food and drug administration will be in charge of overseeing and administering food production, distribution and provision of catering services according to this law and obligations assigned by the State Council. In light of the numerous agencies involved in the food supervision and various laws promulgated by different departments, this unclear division of duties has created conflict and confusion. The implementation of food recall is lack of efficiency.

### *2.2. The indistinctness in the implementation of system*

Although the legal status of food recall system is identified in Food Safety Law, the three articles are too general and ambiguous. Actually the implementation of food recall system is in accordance with the Provisions on the Administration of Food Recall. However the deficiencies still exist in current system, for example, how to handle the recalled food, who will be responsible for handling the recalled food and who will be in charge of monitoring the follow-up handling progress. These issues are critical and are not provided with definite answers. This shows the indistinctness in the practice of system. In response to Sanlu milk powder accident, a large amount of unsafe milk powder has been recalled. People are worried how these recalled milk powder will be handled and whether these recalled milk powder would be redistributed to the market with low price. Recently it is reported that the melamine-tainted milk powder in 2009 were mainly from the recalled milk powder which were not handled in 2008. On 30<sup>th</sup> January 2009, the State Council held a rectification conference to overhaul the food safety around China. However the effect of rectification would be limited if the regulations couldn't provide insurance.

### *2.3. The imperfection of the imputation system*

People often think that the poor supervision has led to the accidents of food safety. It is doubtful that the issues of food safety could be completely solved by the administrative supervision and administrative law enforcement. In his work on public choice theory, James M. Buchanan argues that for a government, market defect is much less than the efficiency loss caused by low efficiency regardless of cost, power expanding and traps derived from rent seeking behaviors by government officials. As the increase of the cost for legislation and law enforcement, it would encounter the high cost of abiding law and the low cost of violating law. The administrative liability of food recall system is not perfect, which needs the establishment of the imputation system so as to reduce the food safety accidents. The paper will provide the suggestions on how to perfect the administrative liability.

### *2.4. The unavailability of supplementary measures*

The supervision on food safety is a systematic project, which needs a close cooperation between various systems. In addition to a complete system of food recall, food recall has to get support from the supplementary measures. Up to now, the lack of supplementary measures leads to the low efficiency of food recall system. Therefore it is essential to establish a whole set of supplementary measures to play the expected function of food recall system. Concerning the length of paper, the author will focus on the setting-up of reserved fund system.

## **3. Attempts to perfect China Food Recall System**

### *3.1. Setting up the supervision mode with a single government agency to undertake the main responsibility of food recall*

For a long time, there are two types of arguments on the supervision mode of food recall in China. The first argument is in favour of a supervision mode with numerous departments to oversee the food safety. That is to say the current mode of food safety supervision is suitable. The latter supports that it should be a single agency which will be responsible for food safety supervision. Thus it is challengeable to decide which mode will be suitable for food safety supervision.

The first argument has the following main reasons: 1) Food safety is complicated, which cannot be charged by a single agency. 2) The technical requirements of food safety is complicated and several stages such as production, sale, etc. are involved, which is difficult for a single agency to take charge of it; 3) The scope of China is vast, which is also impossible for a single agency to conduct an overall supervision. 4) The mode of a single agency is not consistent with Chinese practice, and is against maintaining the continuity of current law .

However this argument is not eligible to support. The reasons are as follows: Firstly, the complexity of food safety is common in the worldwide and many countries adopt the mode of a single agency on the supervision of food safety. On the contrary, the mode of numerous agencies would lead to the lack of overall coordination and communication. Secondly, the technical requirements of food safety are complicated but different agencies are various on their management and professional knowledge, which will be a barrier for setting up HACCP and food safety traceability system. Thirdly the fact of vast territory asks for the balance, union and high-efficiency of food safety supervision. Taking Canada as an example, its food safety is charged by CFIA and its affiliated 18 regional institutes, 14 experimental labs and food recall office, which sets up a complete system of food safety supervision. Finally the available problems of food safety reflect the bugs of current legal systems, so it is not of significance to keep the current legal systems consistent.

Therefore it is reasonable to establish a mode of single agency to take charge of food safety. At first, in terms of the basic principles in designing food recall system, the Precautionary Principle and the Safety Principle are two essential concepts. In other words, the primary objective of food recall is to prevent food safety accidents and ensure people's health. The involvement of numerous agencies in food safety supervision will lead to the conflicts and compromises with regard to the interests of each agency. Thus the factor of interest balancing can't achieve the objectives of prevention and safety in food recall. In addition, according to the prompt feature of food recall system, when the real and potential accidents of food safety occur, enterprises and related departments should promptly take actions to avoid potential food safety accidents and prevent damages. It is impossible for numerous agencies to take prompt actions because the communication and exchange among agencies takes time and energy. Finally the technical requirements of implementing food recall system ask related departments to be professional and have an overall management. However each agency is only able to focus on the individual aspect. Thus it is the single agency on food recall system which can play the biggest role of system.

It is pity that Food Safety Law still keeps the mode of numerous agencies in food safety supervision. However, According to Article 103, the food safety supervision system may be modified by the State Council in line with practical needs. This provides the possibility for decision-makers to set up the mode with a single agency in charge of food safety.

### *3.2. Setting up an agency consisting of four departments on food recall supervision*

In terms of Article 31 of Provisions on the Administration of Food Recall, food producers shall timely implement the harmless treatment of unsafe food, and timely destroy the food that shall be destroyed according to relevant provisions. According to the Article 53 of Food Safety Law, food producers should take remedial measures or destroy or render harmless unsafe food, and report to local department on food supervision above county level. Both two articles are two general on aftertreatment, which do not provide specific statements on how to monitor and handle the recalled food. Due to the lack of the follow-up measures to recall food, the melamine-tainted milk powder appears again. Therefore, it is quite necessary to allocate the duties of related department on the aftertreatment of recalled food.

At first there is no definite agency to be responsible for supervision and administration of food recall in China. In light of Sanlu milk powder accident, China has adopted the first response level for serious food safety accident and

set up a recall leadership group, which is composed by members from Ministry of Health, AQSIQ and State Administration for Industry and Commerce. These three departments have taken responsibility of food recall. It is just a makeshift solution because the group is not stable and permanent. Secondly, the aftertreatment of recalled food involves various professional fields, which should take into account of the reuse of recalled food and the protection of environment. Thus this needs a professional administrative agency to decide the treatments on defected food and then ask the definite agencies to handle and monitor. This can avoid the illegal circulation of defected food. In addition, the food recall supervision also needs an assessment agency to evaluate the treatment of recalled food and publicize the results. The allocation of duties in decision-making, treatment, monitoring, and assessment can ensure mutual restraint and effectively conduct the aftertreatment of recalled food.

### *3.3. Strengthening the administrative liability of food enterprises in violation of food recall obligations*

According to Provisions on the Administration of Food Recall, Chapter Four states the legal liabilities on the food producers' violation. As the Provisions are administrative regulations, so the legal liabilities are mainly related with administrative responsibilities, including warning, correction within a time limit and fine. The first two means are the least punishment and the function is very limited. To some extent, the amount of fine is directly related with the power of fine. In terms of Provisions on the Administration of the Recall of Defective Auto Products, the upper limit of fine is RMB 30, 000, which is just a very tiny loss for auto producers. According to the recall provisions promulgated by AQSIQ, the upper fine is RMB 30,000 too. In terms of Food Safety Law, the upper fine is set as RMB 50,000. However the effect of fine is doubtful. If the fine with RMB 50, 000 is decided on the basis of local economic conditions, the author proposes that the fine could be revised between RMB 10, 000 and RMB 100, 000. Article 85 of Food Safety Law includes the punishment of revoking business license. But the factual effect will be impaired due to the law evasion action of the enterprises. Therefore the law should include an imposition of forbidding business on the violation enterprises. This means that if any organization with production of defective food has been subject to the revocation of the business license or has taken the responsibility of producing defective food but has not paid off the debt, they should be restricted in applying new business license. For instance, in five years the organizations can't apply for the business license of food enterprises or can't have the possibility to apply for the business license before paying off debts. In addition, if the relatives of the chief responsible worked in the enterprises and also took the main responsibility for production of defective food, these relatives are forbidden to apply for business license.

### *3.4. Setting up the reserved fund system on food recall*

The reserved fund system on food recall is similar to the loan loss provision of social insurance fund. Due to the poor management or illegal activity of food enterprises, the unsafe food should be recalled but they have no related economic capability to conduct food recall. The reserved fund aims to avoid the big scope of food safety risk and ensure the effective implementation of food recall. The accident of Sanlu milk powder indicates the necessity of establishing this system. As over 700 tons of milk powder was recalled, the enterprise got into bankruptcy. However it raises a question that who will pay for the recall fee. From the perspective of risk society, the risk responsibility is featured as "the irresponsibility of organization", which will lead to the possibility that nobody takes the responsibility and the government is blamed. To some extent, the reserved fund system could solve the poor efficiency of government administration and the difficulty of solving the public crisis by government.

#### *3.4.1. The source of fund*

The reserved fund reduces the risks of enterprises which are unable to pay the recall expense or although enterprises have the capability to pay the recall expense but they are unwilling to pay, so at the first place all food enterprises pay reserved fund according to a certain percentage. Secondly the percentage of reserved fund could be changed in regard to the records of enterprises' food safety. For example, if an enterprise has no bad records during three or five years, the reserved fund can be reduced. On the contrary, the fund will be increased. The accident of Sanlu milk powder reminds us that there would be serious food recall accidents in an enterprise with good reputation. Therefore at the first payment the percentage is decided on the basis of equal subject of civil law without making any difference among big or small enterprises.

### 3.4.2. *The management of fund*

A similar agency to the Housing Fund Management Center should be established. The reserved fund on food recall should follow the related procedures from the payment to utilization. This can avoid the rent-seeking. It is important that the management agency on reserved fund should be separated from the food safety supervision agency, which could be good for allocating power and controlling each other.

### 3.4.3. *The usage of fund*

There are three main cases for using the reserved fund on food recall. The first case is for voluntary recall, in which the enterprise submits its application and food recall plan. The management agency on reserved fund oversees it and decides whether the enterprise can use the reserved fund and what percentage the enterprise can use. Moreover, the management agency monitors the usage of reserved fund. The second case is for mandatory recall. In this case, the enterprise submit the receipt of a compulsory recall notice and the recall report approved by related supervision agencies, and then the fund management agency reviews and provides the fund. Thirdly, if an enterprise is unable to pay the food recall expense because of bankruptcy or other special reasons, the bankruptcy liquidating department or related government departments develop a food recall plan, then the management agency review it and appropriate the fund.

### 3.4.4. *The function of fund*

The two main functions of reserved fund on food recall are as follows:

The first function of the reserved fund can promote the recall progress of enterprises. At present, the food or product recall cases in China are triggered by the blame of public media. Most enterprises are not willing to conduct a voluntary recall in terms of its cost. Upon the receipt of a compulsory recall notice, the limitation of supervision from supervision agencies can't monitor all of recall cases. Thus to guarantee the consumers' interest by promptly implementing the recall procedures mainly depends on the awareness and willing of food produces and sellers. In addition, due to various objective factors, the reaction and treatment from the related chief responsible agencies can not be consistent or sometimes lag after the society. It is not doubtful that the increase of consumers' awareness and the power of public media show the progress of society. However, the most essential factor in keeping the market stable is to set up a complete system, which helps the food enterprises take a voluntary recall or take a compulsory recall. The system of reserved fund on food recall can ask enterprises with defective food to actively adopt the recall measures. As the reserved fund can only be used at a certain time and a certain percentage, the enterprises are able to use it as they are involved in the recall situation. As the enterprises can avoid the administrative punishment and civil compensation, most of them will adopt the voluntary recall measures. The second function is to avoid the serious food safety crisis. If serious food safety accidents occur and enterprises are unable to pay the recall expense due to the decrease of its finance, the related agencies can promptly initiate recall measures and recall the unsafe food, which thus can avoid the extension of loss and the appearance of serious food safety crisis.

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