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Food Fumble

China can't regulate away its safety problems.

By STEVEN M. DICKINSON | From today's Wall Street Journal Asia.

The world has discovered in the past two years, and Chinese consumers have known for much longer, that China has a food-safety problem. The case of tainted milk from the Shijiazhuang Sanlu Group, which killed at least six infants and sickened 300,000 more, is just the latest example. But after all this time, Beijing is no closer to a lasting solution. Witness the Food Safety Law approved by the Standing Committee of the National People's Congress on Saturday. It's a perfect example of how Beijing still is barking up the wrong regulatory tree.



Reuters

A woman whose child died from drinking tainted milk protests outside Shijiazhuang Intermediate People's Court, January 2009.

The government seems to believe that the food-safety problem arises from inadequate central control and from a lack of clear standards and procedures. So the new law creates a Beijing-based National Food Safety Commission to coordinate the work of the five ministries that will retain day-to-day supervision over different phases of the food production process. The law also mandates a major round of rulemaking to regulate thoroughly every phase of the food production process. National standards will be set for food quality and safety in food additives and related items such as pesticides, herbicides and heavy-metal content. Finally, the law requires central government ministries to develop a unified national program for addressing food safety emergencies such as the Sanlu disaster.

All this activity looks good on paper, but it probably won't work. Even if one accepts that China's problem is a lack of centralized food regulation, there are few signs that any of these steps would address that shortcoming in practice. The law's text provides absolutely no details about how it will be implemented. The law includes no standards, no timeline, no budget, no procedure for obtaining the input of regulated parties and no clear way to resolve disputes. In China today, laws adopted on controversial topics are often vague and leave all the details to later regulation. Often such

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regulations never appear, rendering the law essentially meaningless. The standards and procedures portion of the Food Safety Law will likely meet the same fate.

But the bigger problem with the new law is that a lack of regulation per se is not Beijing's problem. Generally comprehensive regulations are already on the books. But as with most countries, China simply does not have the funding or expertise to hire enough qualified inspectors and regulators. China has more than 200 million farmers and more than 500,000 food production companies. The food production system is too vast to allow for meaningful inspection at all stages of the food production process.

It would have been better for Beijing to improve incentives for individual farmers and companies to control their own quality instead of simply retreating into more impressive-sounding regulation.

One of the most important reforms would be to allow the effective operation of the existing system of private civil litigation and bankruptcy that would allow injured parties to take action independent of the government. It is only when the citizen can use the court system to obtain damages that the food-safety system will ever affect the behavior of food producers. As further support, the producer must know that the producer will be forced into bankruptcy if the frequency or extent of litigation is too great.

The Sanlu case has shown all too clearly that the threat of private sanction doesn't work in today's China. Courts have refused to accept lawsuits parents have attempted to file. In general, the tort law system is undeveloped and regulators strongly discourage its use in safety- and health-related matters. The bankruptcy system is even less developed, providing no real threat to any company owner under the current system. Bankruptcies that occur are orchestrated by the government to avoid private access to offending company assets. The bankruptcy of Sanlu is an example of this process. Bankruptcy as protection for independent creditors and outside of government control is still virtually unknown

in China. Without these effective private sanctions, the standards imposed by the new food-safety law are unlikely to have any real effect.

A true solution to China's food-safety problem also would recognize certain economic facts on the ground in the agricultural sector. Chinese farmers and herders are poor and uneducated. Most operate at a loss and only survive by supplementing their income through nonagricultural activities. The same is true of many primary food processors, who sell into a market where partially controlled prices rarely allow them to recoup their costs of production and who are frequently on the verge of going out of business. These people and businesses do not believe they have the luxury of being concerned with standards and rules and procedures. Experience has shown that some will violate the law if they believe this will give them some financial benefit. This is why even the death penalty has not been a sufficient deterrent.

Since these problems are getting worse in China during the current economic situation, no new set of even more detailed rules is likely to have any impact. The only true solution to this element of the food-safety problem is a broader reform of China's agricultural sector geared toward strengthening property rights and allowing the market to set food prices. Such a broader reform would start by giving producers greater incentives to care about quality, as well as allowing those who can build reputations for safety and quality to earn sufficient returns to pay for higher-quality production.

China's food-safety problem has taken on international dimensions in recent years with melamine in pet food, bacteria in fish and various poisons in manufactured food products. Food safety is a rare case where both foreign and domestic interests are united in facing a major problem within the Chinese system. But first Beijing itself must understand the true nature of the problem, and implement reforms accordingly. From this perspective, the new food law represents another missed opportunity.

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