

GOH Bee Chen · Rohan Price *Editors*

Regulatory Issues in Organic Food Safety in the Asia Pacific

 Springer

Regulatory Issues in Organic Food Safety in the Asia Pacific

GOH Bee Chen • Rohan Price
Editors

Regulatory Issues in Organic Food Safety in the Asia Pacific

 Springer

Editors

GOH Bee Chen
School of Law and Justice
Southern Cross University
Gold Coast, QLD, Australia

Rohan Price
School of Law and Justice
Southern Cross University
Gold Coast, QLD, Australia

Faculty of Law
Chiang Mai University
Chiang Mai, Thailand

ISBN 978-981-15-3579-6 ISBN 978-981-15-3580-2 (eBook)
<https://doi.org/10.1007/978-981-15-3580-2>

© Springer Nature Singapore Pte Ltd. 2020

This work is subject to copyright. All rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors, and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, expressed or implied, with respect to the material contained herein or for any errors or omissions that may have been made. The publisher remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

This Springer imprint is published by the registered company Springer Nature Singapore Pte Ltd.
The registered company address is: 152 Beach Road, #21-01/04 Gateway East, Singapore 189721, Singapore

Preface

In late 2017, Southern Cross University established the newly formed Centre for Organics Research. And, in early 2018, the coeditors of this book were awarded an internal seed grant for a collaborative industry research project with the Van Horne Institute in Canada to investigate organic food security in China. Beyond this research project, the idea of a book was conceived to canvass regulatory issues in organic food safety in the Asia Pacific.

We are grateful to all the chapter contributors from across the various select jurisdictions in the Asia Pacific for coming on board in this meaningful book project. In an era where health and well-being are key and climate change an urgent agenda, organic food safety on a global scale has become all the more important. Law plays a significant regulatory role in organics. It is hoped that this book is able to make a major contribution to an understanding of regulatory issues affecting organics in our region.

We would like to thank Southern Cross University Centre for Organics Research for seeding this research project and the School of Law and Justice for extending collegial support.

Bee Chen would especially like to thank the Faculty of Law at Chiang Mai University, Thailand, for her Visiting Professorship in late 2019 and, prior to that, for arranging beneficial field trips in 2018 to organic farms and markets to obtain an understanding of Thai organic agriculture and the regulatory framework surrounding certification and distribution of organic foods. During the course of the preparation of this edited volume, in particular, she is grateful to her husband, Chamkaur, for his abiding support and to their daughter, Mindy, for shining her own light in her poetic calling. They remain always her pillars of strength and inspiration in Bee Chen's academic endeavours.

The ongoing support of Rohan's wife, Tameeka Stewart, is noted with heartfelt gratitude.

Gold Coast, Australia
31 December 2019

GOH Bee Chen
Rohan Price

Contents

1	Introduction: Issues Affecting the Regulatory Environment for Organic Food Safety in Asia Pacific	1
	GOH Bee Chen	
Part I International Perspectives on Organics Regulatory Framework		
2	Understanding the Regulation of Ecological Food in China: Regulatory Intermediation, Path Dependence and Legal Pluralism	11
	Francis Snyder	
3	Organic Labelling Influencing Consumerism in China and Thailand: A Case for Collaborating with Mature Organic Economies.	35
	GOH Bee Chen	
4	Chinese Organic Food Law and Its Impacts on Climate Change	51
	Ying Shen	
Part II Histories and Influences on Standards		
5	Evolution of the Organic Japanese Agricultural Standard System: A 20-Year History	77
	Satoshi Kodera	
6	Science and Food Production: Reviewing the Red Revolution of China Through a Green Lens (1950–1979)	89
	Rohan Price	
7	Managing Food Waste, Improving Food Safety? The Case of Gutter Oil in China	105
	Natalie W. M. Wong	

Part III National Regulatory Jurisdictions

8	Regulatory Issues on Organic Food in China	119
	Hui Li	
9	Regulatory Framework for Organic Food Safety in India	135
	Suhail A. Nathani and Mehfuz Mollah	
10	Organic Food Policy and Regulation in Malaysia: Development and Challenges	151
	Mohammad Firdaus Bin Abdul Aziz, Muhamad Shakirin Bin Mispan, and Febri Doni	
11	Understanding Production and Safety Situations of Organic Food in Thailand	171
	Thararat Chitov	
12	Perception of Challenges in Opportunities for Organic Food Research and Development in Vietnam	199
	Van Kien Nguyen	
13	Food Safety Law in the United States: Risk Management in the Organic Food Supply Chain	217
	Anastasia Telesetsky	
14	Regulation of the New Zealand Organics Sector	229
	Tracey Epps and Danae Wheeler	
15	Canadian Organics: Enhancing Food Safety and Trade Growth Through Regulatory Harmonization and International Collaboration	249
	Alexander C. Phillips	
16	Concluding Observations: Perspectives and Prospects for the Regulatory Environment of Organic Food Safety in Asia Pacific	263
	Rohan Price and GOH Bee Chen	
	Index	275

Contributors

Mohammad Firdaus Abdul Aziz is a senior lecturer in the Faculty of Law at the University of Malaya (UM) in Kuala Lumpur, Malaysia. He is a coordinator for a number of courses namely Medical Law and Ethics, Biosafety Law, Biodiversity Law, Law and Society, and Ethical Issues of Emerging Sciences. He holds BSc (Hons) in Genetics and Molecular Biology from the University of Malaya, MA in Biotechnological Law and Ethics from the University of Sheffield and DPhil in Public Health from the University of Oxford. For his doctoral research, he examined the regulatory techniques adopted by selected Commonwealth countries to regulate human stem cell research and proposed an appropriate regulatory framework for Malaysia. He is also currently a researcher and production editor at Centre for Law and Ethics in Science and Technology (CELEST) at the University of Malaya; an academic affiliate at the Centre for Health, Law and Emerging Technologies (HeLEX) at Oxford; and an affiliate member of Young Scientists Network – Academy of Sciences Malaysia working on policy and governance. His research interests are in the legal and ethical issues of emerging technologies. He is also actively involved with UNESCO Bioethics as a trainer for the UNESCO Ethics Teachers Training Course (for Higher Education) in the region.

GOH Bee Chen A former Malaysian Rhodes Scholar, GOH Bee Chen is Professor of Law and Director of the Judge-in-Residence Program, School of Law and Justice, Southern Cross University, Australia. Bee Chen has recently been a Visiting Professor at the Chiang Mai University Faculty of Law in Thailand. She is a Director and Fellow of the Australian Academy of Law, Fellow of Cambridge Commonwealth Society and Fellow of the Society for Advanced Legal Studies in London. Besides Organics regulatory framework, Bee Chen's current collaborative research project deals with Law and Theatre. Her scholarly interests include Mediation and ADR, especially on Cross-Cultural (Sino-Western) Dispute Resolution and International Law of Peace. Her publications include *Negotiating with the Chinese* (Dartmouth/Routledge, 1996), *Law Without Lawyers, Justice Without Courts: On Traditional Chinese Mediation* (Ashgate/Routledge, 2002), Goh, Offord and Garbutt (eds) *Activating Human Rights and Peace: Theories, Practices and Contexts* (Ashgate/

Routledge, 2012); Farrar, Lo and Goh (eds) *Scholarship, Practice and Education in Comparative Law: A Festschrift in Honour of Mary Hiscock* (Springer, 2019).

Thararat Chitov has had teaching and research experience in the fields of food microbiology and food safety for more than 20 years. Her passion in food safety began when she studied at the University of Strathclyde, Glasgow, United Kingdom, and continued to grow during her years of academic service at the Department of Food Technology, Maejo University, and at the Department of Biology, Chiang Mai University, Thailand, where she currently works. Some of her other experiences include science education, consultancy services for food industry and analytical laboratory, working with dairy farms and mixed crop-livestock farms to assist transitioning from non-organic to organic farming, and, together with her family, running the family's own organic pomelo orchard.

Febri Doni is a research fellow at the Institute of Biological Sciences, Faculty of Science, University of Malaya. He obtained his PhD in microbiology from the School of Biosciences and Biotechnology, Faculty of Science and Technology, The National University of Malaysia. His research interest includes plant-microbe interactions, agroecology and plant pathology. He published dozen of papers focusing on microbe-rice plant interactions, System of Rice Intensification (SRI), organic agriculture and agroecology. He is the executive secretary of the Malaysian Agroecology Society (SRI-Mas) and is involved in various social activities in South East Asia in promoting agroecology and sustainable agriculture.

Tracey Epps is a Trade Law Consultant at Chapman Tripp in Wellington, New Zealand. Previously, she was a senior advisor in the New Zealand Ministry of Foreign Affairs (MFAT) Legal Division. At Chapman Tripp, she advises government and private sector clients on all aspects of international trade and investment law. Tracey has authored and edited a number of books and articles on topics related to international economic law, including climate change and international trade, subsidies, sanitary and phytosanitary measures, and technical barriers to trade. She teaches International Trade Regulation and International Investment Law in the Faculty of Law at the University of Otago. She is Chair of the International Trade Committee in the Inter-Pacific Bar Association, and regularly attends international conferences in the field of international economic law.

Satoshi Kodera is a professor of the Department of Law in Seinan Gakuin University, Fukuoka, Japan. His work focuses specifically on public international law, international economic law and international law of development. He is a co-author of *The Introduction to WTO and FTA Law* (Horitsu Bunkasha, 2016, in Japanese).

Hui Li PhD, Associate Professor, School of Law, Dalian University, China. Projects presided: Research on Allocation and Coordination Mechanism of Authorities and Functions Relating to Banking Supervision – based on Deposit

Insurance Ordinance of China, project supported by the National Social Science Foundation of China, 2015. (Grant No. 15BFX174); Research on Banking Deposit Insurance Legislation, Project Supported by Humanities and Social Science Foundation for Young Scholars, Ministry of Education of China, 2014. (Grant No. 14YJC820029).

Muhamad Shakirin Mispan is currently a senior lecturer at the Institute of Biological Sciences, University of Malaya, Malaysia, teaching Bachelor degree courses on Ecology and Management of Weeds, Soil Ecology and Management, and Quantitative Ecology and Applied Weed Science and Pest Management in Organic Crops for Master of Science in Crop Protection. He is also the coordinator of Glami Lemi Biotechnology Research Centre, University of Malaya, where part of the Centre's responsibilities is to promote sustainable agriculture and develop new agriculture technologies for local farmers. He is a PhD holder from South Dakota State University working on QTL mapping for weedy adaptive traits in rice, haplotype analysis for a major seed dormancy QTL region in rice, and seed longevity and photoperiod sensitivity in weedy rice. His current research focuses are mainly on ecological genetics of weedy rice focusing on adaptation to various ecological systems, seedbank dynamics and longevity, environmental impact from various weed management, integration of sustainable agriculture for rice production, and precision agriculture in rice farming.

Mehfuz Mollah is a lawyer with a background in economics. At Economic Laws Practice, he regularly advises clients on regulatory and policy issues. He has a degree in law from Delhi University, a Master's Degree in Economics from the Delhi School of Economics and an LLM from the London School of Economics. He is also a visiting Professor at NMIMS University, India.

Suhail A. Nathani is the Managing Partner of Economic Laws Practice and has over 25 years of experience spanning corporate and commercial laws, international trade and customs, and competition law and policy. He has been widely recognised as a leading lawyer and has been named as a top 30 International Trade practitioners in the world by the Best of the Best Expert Guides 2016 and India Business Law Journal's A List as India's Top 100 Lawyers in 2017 and 2018. He has appeared before the WTO Panel and Appellate Body on behalf of the Government of India. Suhail earned his Master's Degree at Cambridge University, England, and has also received an LLM from Duke University, USA. Apart from India, he is also admitted to the State Bar of New York. He is an Adjunct Professor at the Jindal Global Law School in India.

Van Kien Nguyen grew up in a small-scale rice-based farming family in Soc Trang province of Mekong Delta, Vietnam. Kien is a current honorary senior lecturer in agroecology at Fenner School of Environment & Society and the Australian National University as well as the founder of the company Mekong Organics Pty Ltd. Kien received a BSc in Land Management in 2000 (Cantho University), a master's degree

in Environmental Management and Development in 2006, a PhD in Sociology in 2013 from the Australian National University (ANU), and a post-doctoral fellowship (2014–2016) from Luc Hoffmann Research Institute (LHI) at ANU Fenner School of Environment & Society. Kien has been leading the Research Centre for Rural Development in An Giang University, Vietnam, for 5 years (2013–2018). His research focuses on agroecology, sustainable agriculture and livelihoods, food security and water governance, and climate change adaptation of rural households in the Mekong Region. Since 2017, Kien has been involved in linking Australia and Southeast Asia in promoting organic farming.

Alex Phillips is the President and CEO the Van Horne Institute and a trade and transportation lawyer based in Calgary, Alberta, Canada. The Van Horne Institute is a national ‘think tank’ focused on growth issues related to trade, transportation, infrastructure and sustainable resource development. In his 35-year career, Alex has provided law, economics and regulatory policy advice to carriers, shippers, forwarders, airports, ports, electricity grids and related supply chain stakeholders. He holds a BComm(Hons) and LLB degree from the University of Manitoba; a Master of Laws degree in aviation deregulation from the London School of Economics, the United Kingdom; and a Doctorate (SJD degree) in infrastructure privatisation, trade access rights and dispute resolution from Bond University in Australia.

Rohan Price A lecturer in the Southern Cross University School of Law and Justice, Dr Rohan Price has established a reputation as a foremost historian of the role of nationalism in the British/Chinese colonial encounter. Rohan was awarded a Doctor of Philosophy from the University of New England (Australia) for his thesis on the use of property law to encourage civic loyalty to colonial Hong Kong between the world wars. His books including *Reading Colonies: Property and Control of the British Far East* and *Resistance in Colonial and Communist China (1950–1963)* are based on extensive archival and digital repository research. His books have been described in reviews as ‘passionate, containing ‘argumentative strength and forthright originality’ and ‘enormous attention to historic, theoretical and political detail’. Rohan has enjoyed lengthy stints as a visiting professor in three Chinese universities over the last decade, teaching in fields including common law history, maritime law and the law of trusts. His interest on Chinese food safety issues was prompted by a friend in Hong Kong who, in 2008, casually mentioned he should not buy the same brand of noodles every time he went to the supermarket. Rohan has finished the year 2019 with a new monograph published by City University Press Hong Kong, *Violence and Emancipation in Colonial Ideology: Hong Kong and British Malaya*. It has been described in an academic review as ‘a major contribution to the literature’.

Ying Shen is an early career researcher with multijurisdictional educational qualifications, having earned her LLB, LLM and PhD from China, Germany and Australia, respectively. Her expertise lies in the field of Environmental Law, with a special focus on climate change issues. She was an Endeavour Research Fellow and

the first Australia-APEC Women in Research Fellow representing China in 2015 and has since held different research positions in several universities and institutions in both Australia and Germany. She was awarded the German Chancellor Fellowship by the Alexander von Humboldt Foundation in 2019. Dr Shen is the author of *China's Way to Carbon Emissions Reduction: The Choice of Regulatory Instruments and Its Legal Challenges*, a monograph published by Wolters Kluwer in 2015.

Francis Snyder C.V. Starr Professor of Law, EU Jean Monnet Chair ad personam and Director, Centre for Research on Transnational Law, Peking University School of Transnational Law, Peking University Shenzhen Graduate School, China; Adjunct Professor, University of Macau; Emeritus Professor, CERIC/Faculty of Law and Political Science, Aix-Marseille University; and Visiting Professor, College of Europe, Bruges. Previously Fellow, Wissenschaftskolleg (Institute of Advanced Study), Berlin; Centennial Professor of Law, London School of Economics; Professor of EU Law, European University Institute (Florence); Professor of Public Law Aix-Marseille University; and Professor of European Law University College London. Publications include more than 40 books and 200 articles, including *Food Safety Law in China: Making Transnational Law* (E.J. Brill, Leiden, 2016) and *The EU, The WTO and China: Legal Pluralism and International Trade Regulation* (Hart, 2010). Invited by Chinese Central Government in 2013 to serve as lead foreign expert on reform of food safety system in China, leading to 2015 Chinese Food Safety Law. Educated at Yale University, Sciences Po Paris, Harvard Law School, and Université de Paris I (Panthéon-Sorbonne). In 2018, he was awarded the People's Republic of China Friendship Award and also the Peking University Friendship Award.

Anastasia Telesetsky is a tenured professor at the University of Idaho College of Law, United States of America, where she is a core faculty member for the Natural Resources and Environmental Law Program. She has published numerous articles and chapters on matters involving marine living resources and food law and co-authored and edited books on ecological restoration and disaster relief and planning law. She is a former co-chair of the International Environmental Law Committee for the American Bar Association's Section of International Law and a current member of the IUCN World Commission on Environmental Law. She is a former Fulbright Scholar (Philippines) and Axford Fellow (New Zealand). She has taught food law at the University of Auckland in New Zealand and The Chinese University of Political Science and Law in Beijing, China.

Danae Wheeler is a solicitor at Chapman Tripp in New Zealand. Danae has experience advising clients on arbitration and litigation proceedings and international trade and investment law. Having lived and studied in 6 countries over the past 8 years, she has a strong interest in how organisations operate in different cultural and legal settings. Before joining Chapman Tripp, she completed honours degrees at the Chinese University of Hong Kong (LLM in Chinese Business Law), Melbourne Law School (JD) and New York University (BA). In 2018, she was

awarded the AMINZ-AUT Arbitration Young Practitioner Scholarship. She wrote her Master's thesis on the enforceability of arbitral awards under the New York Convention in the People's Republic of China. Her undergraduate thesis explored the relationship between the rule of law and economic development, for which she was awarded the European and Mediterranean Studies Award at New York University. Danae speaks Spanish, Mandarin and Cantonese.

Natalie W. M. Wong currently is Visiting Fellow at Department of Public Policy, City University of Hong Kong. She completed her PhD in Politics at The University of York, United Kingdom, and her dissertation mainly focuses on incinerator and waste policy in China. Despite her working experiences in academia, Natalie was a researcher at a Hong Kong-based labour NGO, which concerns the labour conditions in Pearl River Delta of China, and an international environmental NGO to investigate the air quality of Beijing before commencement of the Olympic Games in 2008. She has published extensively on topics on environmental governance and environmental activism in *China Information*, *Voluntas*, and the *Journal of Environmental Planning and Management*.

Chapter 1

Introduction: Issues Affecting the Regulatory Environment for Organic Food Safety in Asia Pacific



GOH Bee Chen

Abstract As organic production and consumption continue to be on the rise globally, and specifically in the Asia Pacific region for the purpose of this book, the regulatory environment for organics has become all the more relevant and significant. Concerns for food safety, animal welfare, and climate emergency propel a drive for organics worldwide. Yet, as contributors of this edited volume have observed, there is no consistency across jurisdictions in the Asia Pacific for the regulation of organics. For instance, the regulatory framework that exists for organic certification, and for organic labelling, may be mandatory or voluntary. International trade, whether bilateral or multilateral, can be enhanced by way of regulatory harmonization or through mutual recognition regimes in organics. Historical accounts leading to an organic regulatory regime for organic agriculture and organic food products have also demonstrated the challenging issues involved in complying with standards and market distribution. It is hoped that this book will make a major contribution to the reader's understanding of the regulatory issues involved in organic food safety in the Asia Pacific.

Keywords Organic agriculture · Organic food safety · Regulatory framework · Asia Pacific

GOH Bee Chen (✉)

School of Law and Justice, Southern Cross University, Gold Coast, QLD, Australia

Faculty of Law, Chiang Mai University, Chiang Mai, Thailand

e-mail: beechen.goh@scu.edu.au

© Springer Nature Singapore Pte Ltd. 2020

GOH Bee Chen, R. Price (eds.), *Regulatory Issues in Organic Food Safety in the Asia Pacific*, https://doi.org/10.1007/978-981-15-3580-2_1

1.1 Introduction

In a world of organics, images of good health and well-being immediately come to mind. The contributing factors that have brought forth the surging trend in organics include the world's concern for food safety, strive for a cleaner planet, and a compassionate treatment of animals. With the rampant occurrences of worldwide natural disasters like earthquakes, floods or bushfires, a climate crisis is undoubtedly at hand. The Stockholm Declaration of 1972 which was hailed as a clarion call for humanity to act in aid of environmental protection will soon be celebrating its 50th Anniversary. It then was, and still is, 'Only One Earth'.¹ Such a climate urgency has now been translated into a climate emergency. It can no longer be left to a dire situation of 'too little too late'. In this connection, the phenomenal rise of organic agriculture on a global scale may thus be seen as a positive contributor in our world of rapid climate change.

Food security issues, generally speaking, and organic food safety issues in particular, are a major concern for consumers worldwide. It is not just a matter of eating healthily, or about the consumption of nutritious foods devoid of chemicals or artificial ingredients. Accessibility and affordability are the prime considerations when approaching the matter of food safety. Organic food safety further adds another layer to this consideration. The consumption of organic food, no doubt, contributes to the consumer perception of eating nutritious food and healthy eating. However, although there is a general grasp of what 'organic' entails, there is no universally defined terminology for 'organic'. Added to this is a fringe category of 'wild' collection of food products.² It may be said that the underlying understanding about what may be claimed as organic is that there is a refrain from utilizing chemicals or synthetic materials in food production. As a consequence, consumer safeguard against inauthentic claims has to fall within the purview of consumer protection laws where national jurisdictions have extended such consumer protection.³

The future of organic food products appears to be bright indeed. Global growth has been exponential and phenomenal. The most recent available report in 2017 has shown that the region covering Asia, Australasia, Latin America and Africa held a

¹Slogan used at the 1972 Stockholm Declaration at the conclusion of the United Nations Conference on the Human Environment held in Stockholm, 16 June 1972.

²See Helga Willer, Julia Lernoud and Laura Kemper, 'The World of Organic Agriculture 2019: Summary' in Helga Willer and Julia Lernoud (eds), *The World of Organic Agriculture: Statistics and Emerging Trends 2019*, Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM Organics International, Bonn, 2019, at page 26; Julia Lernoud and Helga Willer, 'Current Statistics on Organic Agriculture Worldwide: Area, Operators and Market' in Helga Willer and Julia Lernoud (eds), *ibid*, at page 55; Julia Lernoud, Helga Willer and Bernhard Schlatter, 'Asia: Current Statistics' in Helga Willer and Julia Lernoud (eds), *ibid*, at page 200.

³For instance, in Australia, section 18 of the Australian Consumer Law deals with misleading or deceptive conduct in trade or commerce. The Australian Consumer Law is contained in Schedule 2 of the Competition and Consumer Act 2010.

combined total value of US\$8.7 billion dollars of the organic food market.⁴ Relevantly, in 2015, all Member States of the United Nations adopted the Transforming Our World: the 2030 Agenda for Sustainable Development containing, *inter alia*, the much celebrated 17 Sustainable Development Goals (SDGs). A future in organic foods plays a critical role in helping to achieve several of the SDGs such as the first three SDGs like SDG 1 (No poverty), SDG 2 (Zero hunger) and SDG 3 (Good health and well-being). To this end, it is of note that, in 2017, the IFOAM Strategy was adopted which seeks to promote sustainable food production systems in aid of the SDGs.⁵ It has also been keenly observed that organic agriculture can beneficially contribute to the reduction of poverty and hunger.⁶ Again, the latest statistics in 2017 indicate that worldwide, there were 69.8 million hectares of organic agricultural land, with Oceania accounting for the largest share at 35.9 million hectares.⁷ Relevantly for the Asia Pacific region covered in this book, a combined total of 45.2 million hectares of organic agricultural land were in countries in Oceania, Asia and North America.⁸ Overall, Australia would appear to be the leading country in terms of ownership of organic agricultural land, followed by Argentina and the United States of America.⁹

1.2 The Regulation of Organics

Laws and regulations play an integral role for the protection of the environment, animal welfare, and organic food safety. As an organic claim is regarded as a credence claim,¹⁰ it is highly critical that there be a framework surrounding its regulation. In the domain of organics, it is even more important that the regulatory environment for standards compliance in respect of organic agriculture and organic food production and distribution be stringent in formulation and strict in implementation. After all, we are dealing with the vital matter of food safety.

Currently, the regulatory environment for organic food safety across jurisdictions has been found to be varied.¹¹ In this connection, mention must be made of the

⁴Amarjit Sahota, 'The Global Market for Organic Food and Drink' in Helga Willer and Julia Lernoud (eds), note 2, at page 147.

⁵The new IFOAM Strategy adopted by IFOAM – Organics International: Helga Willer, Julia Lernoud and Laura Kemper, 'The World of Organic Agriculture 2019: Summary' in Helga Willer and Julia Lernoud (eds), *ibid.*, at page 33.

⁶See China's Poverty Reduction Online: http://p.china.org.cn/2017-08/24/content_50003182.htm

⁷See Julia Lernoud and Helga Willer, note 2, at page 40.

⁸*Ibid.*

⁹*Ibid.*

¹⁰M Canavari, N Cantore, E Pignatti and R Spadoni, 'Role of Certification Bodies in the Organic Production System' in Haas et al (eds), *Looking East, Looking West: Organic and Quality Food Marketing in Asia and Europe*, Wageningen Academic Publishers, 2010, at pages 85–86.

¹¹Beate Huber, Otto Schmid, Verena Batlogg and Flavia Moura E Castro, 'Public Standards and Legislation' in Helga Willer and Julia Lernoud (eds), note 2, at pages 152–156.

immense efforts made by the International Federation of Organic Agriculture Movements – Organics International, a non-governmental organization established in the early 1970s, for conscientiously steering the world of organic agriculture in terms of, *inter alia*, certification standards for organic food production and distribution.¹² Alongside domestic or international legislative measures, public standards or applicable organics guidelines, there also exist Participatory Guarantee Systems as a complementary certification tool.¹³ According to the definition provided by IFOAM – Organics International, ‘Participatory Guarantee Systems are locally focused quality assurance systems. They certify producers based on active participation of stakeholders and are built on a foundation of trust, social networks and knowledge exchange.’¹⁴ Given such a plethora of compliance platforms, it would be desirable, both for the protection of food safety and promotion of international trade in organics that there be a harmonization of applicable laws, rules and regulations for governing standards.

When consumers purchase food labelled ‘organic’, ‘certified organic’, or ‘100% organic’, or other descriptions alike, there is the element of trust associated with such purchase. Such trust is based fundamentally on a regulatory system assuring consumers of the authenticity of claims at the risk of legal penalties imposed on the producers or distributors. As stated earlier, an organic claim on food products is a credence claim, owing to the fact that information concerning organics is asymmetrical in that organic food producers are the ones knowledgeable about the inherent quality of the organic foods being distributed for purchase. Since organic food products can generally command premium pricing, organic food trade can thus be perceived as quite a lucrative business enterprise. There is inevitably fraud in global organic trade. Countries such as the United States of America recently set up the Global Organic Supply Chain Integrity Task Force through the Organic Trade Association in an effort to combat fraud.¹⁵ In the interests of safeguarding organic food safety, the regulatory regime ought to be clear and uniform in order to gain effective consumer trust.

As we have seen earlier, globally, there are no universal standards governing the regulation of organic foods. And, across jurisdictions, compliance with organic standards may also either be mandatory or voluntary. Consumers who are willing to pay a premium price for organic food products can be forgiven for mistakenly presuming that the market distribution of certified organic foods or foods labelled as organic have undergone a mandatory compliance regime by the so-called organic food producers and distributors. By way of an example, organic food labelling in Australia for domestic consumption is voluntary. It has keenly been remarked that, in Australia, it is more a case of ‘market demand, rather than regulation, [which]

¹²For information on IFOAM – Organics International, see <https://www.ifoam.bio/>

¹³Ibid, at page 152.

¹⁴<https://www.ifoam.bio/en/organic-policy-guarantee/participatory-guarantee-systems-pgs>

¹⁵Barbara Fitch Haumann, ‘United States: New Sales Records’ in Helga Willer and Julia Lernoud (eds), note 2, at page 279.

drives certification'.¹⁶ And so is the case with New Zealand where a voluntary regime prevails in the organic food domain. Interestingly, both these countries are considered to be mature organic economies. The increased flow of international trade in organic food products and the increased consumption of domestic organic food products definitely call for the timely harmonization of enacted rules and regulations affecting organics. Consumers worldwide need the clarity, certainty and consistency of a regulatory environment in organics.

1.3 Structure of the Book

It may be said that a book canvassing the issues of regulation in relation to organics is timely, given the current significance of worldwide organic food production and consumption, and cross-border trade in organics. Its relevance is particularly compelling due to the rise of emerging organic economies in the Asian region. Hence, the deliberate focus of this edited volume on select jurisdictions in the Asia Pacific.

The book is arranged thematically in three parts. Part I takes an overarching approach on international perspectives in relation to organic foods. In Chap. 2, Snyder comprehensively investigates the scenarios of food safety in China under the brand of Ecological Food, and proceeds to suggest that the Chinese model could usefully be adopted by other countries seeking to improve food safety and food quality. Goh, in Chap. 3, then proceeds to examine the issues of labelling, and consumer trust, in the contexts of emerging organic economies (using China and Thailand as the country examples) and mature organic economies (primarily centred on Australia as the country example). In Chap. 4, Shen examines the various impacts of Chinese organic food law on climate change, and in particular, discusses regulatory impacts on climate change mitigation and adaptation.

Part II traces relevant history and other factors influencing organics, with contributors focusing on Japan and China. In Chap. 5, Kodera takes a twenty-year view over the development of the system of organic Japanese Agricultural Standard, and alerts us to the associated challenges. In Chap. 6, Price casts a historical eye on a near-three decades of the science in relation to food production in China, with a cautionary note that the Organic Guarantee imported from the West may be the answer to China's future food production. In looking also at China, in Chap. 7, Wong uses the case study of gutter oil in food waste management as a rising concern in food safety.

Finally, Part III canvasses organics regulatory framework across select jurisdictions in the Asia Pacific. Continuing with China is Li's Chap. 8 on the regulatory issues on Chinese organic food, raising challenges and deficiencies of the current legal regime. Another major player in Asian organics is India, with its organic food

¹⁶Andrew Lawson, Amy Cosby, Derek Baker, Shawn Leu, Ed Lefley, Amarjit Sahota and Nick Bez, 'Australia' in Helga Willer and Julia Lernoud (eds), note 2, at page 298.

safety laws examined jointly by Nathani and Mollah in Chap. 9. Moving across to South-east Asia, in Chap. 10, we have Firdaus, Shakirin and Febri jointly investigating the development and challenges of organic food policy and regulation in Malaysia where the organic food economy is still at its nascent stage. In Thailand, in Chap. 11, Chitov employs a scientific approach in investigating Thai organic food safety. In Chap. 12, Nyugen takes us on an evidence-based journey of organics qualitative research in Vietnam examining opportunities for education and research in organics. Part III concludes with an overview of three Pacific nations, i.e. the United States of America, New Zealand and Canada. In Chap. 13, Telesetsky examines food safety law in the United States through the risk management of the organic food supply chain. In Chap. 14, Epps and Wheeler jointly walk us through the New Zealand organics regulatory environment and its voluntary regime, shedding light on the legislative reform proposal. Finally, in Chap. 15, Phillips outlines the scenario of Canadian organics and further explores organic food safety from a collaborative trade approach.

The foregoing Parts I to III are framed by an introductory chapter by Goh and a concluding chapter by Price and Goh.

1.4 Conclusion

Across the world, and the Asia Pacific region in particular, organic agriculture is increasingly making a major contribution to our sense of good health and well-being, environmental protection and animal welfare. However, the regulatory framework for organic foods is neither uniform nor consistent. In some cases, claims by food producers, that their products are organic, may appear also to be intuitive, rather than strictly scientific. In the case of an intuitive claim, it could be based on a belief that food production is natural, and therefore organic, because there is no or little application of artificial ingredients or chemicals or other toxic substances.¹⁷ Agricultural small-holders or small-scale family-owned enterprises involved in organic agriculture are prone to making such organic claims, in the absence of an overarching stringent regulatory framework. In an allied fashion, consumer approach to what is labelled as organic, depending on the national legal framework, may be attributed to a matter of trust, and the fact that there is consumer protection legislation against misleading, deceptive or fraudulent trading conduct.

With the contemporary significance of organic food safety, it is hoped that the regulatory environment for organics can be harmonized across jurisdictions to achieve a more satisfying outcome for organic food producers, distributors and consumers alike in both domestic and international trade arenas.

¹⁷ For instance, the current regulatory regime in New Zealand allows organic food growers to determine for themselves if they believe their production methods adopted are organic.

References

- Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2020), section 18
- Canavari M, Cantore N, Pignatti E, Spadoni R (2010) Role of certification bodies in the organic production system. In: Haas R et al (eds) *Looking east, looking west: organic and quality food marketing in Asia and Europe*. Wageningen Academic Publishers, Wageningen
- China's Poverty Reduction Online. http://p.china.org.cn/2017-08/24/content_50003182.htm
- Haumann BF (2019) United States: new sales records. In: Willer H, Lernoud J (eds) *The world of organic agriculture: statistics and emerging trends 2019*. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM Organics International, Bonn, p 276
- Huber B, Schmid O, Verena Batlogg V, Castro FME (2019) Public standards and legislation. In: Willer H, Lernoud J (eds) *The world of organic agriculture: statistics and emerging trends 2019*. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM Organics International, Bonn, p 152
- IFOAM – Organics International. <https://www.ifoam.bio/>
- Lawson A, Cosby A, Baker D, Leu S, Lefley E, Sahota A, Bez N (2019) Australia. In: Willer H, Lernoud J (eds) *The world of organic agriculture: statistics and emerging trends 2019*. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM Organics International, Bonn, p 294
- Lernoud J, Willer H (2019) Current statistics on organic agriculture worldwide: area, operators and market. In: Willer H, Lernoud J (eds) *The world of organic agriculture: statistics and emerging trends 2019*. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM Organics International, Bonn, p 36
- Lernoud J, Willer H, Schlatter B (2019) Asia: current statistics. In: Willer H, Lernoud J (eds) *The world of organic agriculture: statistics and emerging trends 2019*. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM Organics International, Bonn, p 199
- Participatory Guarantee Systems by IFOAM – Organics International. <https://www.ifoam.bio/en/organic-policy-guarantee/participatory-guarantee-systems-pgs>
- Sahota A (2019) The global market for organic food and drink. In: Willer H, Lernoud J (eds) *The world of organic agriculture: statistics and emerging trends 2019*. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM Organics International, Bonn, p 146
- Willer H, Lernoud J, Kemper L (2019) The world of organic agriculture 2019: summary. In: Willer H, Lernoud J (eds) *The world of organic agriculture: statistics and emerging trends 2019*. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM Organics International, Bonn, p 25

GOH Bee Chen A Former Malaysian Rhodes Scholar, Professor GOH Bee Chen is Professor of Law and Director of the Judge-in-Residence Programme, School of Law and Justice, Southern Cross University, Australia. She has recently been a Visiting Professor in the Faculty of Law, Chiang Mai University, Thailand. She is a Director and Fellow of the Australian Academy of Law and Fellow of Cambridge Commonwealth Society and of the Society for Advanced Legal Studies in London. Besides organic regulatory framework, her current collaborative research project deals with Law and Theatre. Her scholarly interests include mediation and ADR, especially on cross-cultural (Sino-Western) dispute resolution, and international law of peace. Her publications include *Negotiating with the Chinese* (Dartmouth/Routledge, 1996), *Law Without Lawyers, Justice Without Courts: On Traditional Chinese Mediation* (Ashgate/Routledge, 2002), *Activating Human Rights and Peace: Theories, Practices and Contexts* (Ashgate/Routledge, 2012, with Offord and Garbutt); and *Scholarship, Practice and Education in Comparative Law: A Festschrift in Honour of Mary Hiscock* (Springer, 2019, with Farrar and Lo).

Part I
International Perspectives on Organics
Regulatory Framework

Chapter 2

Understanding the Regulation of Ecological Food in China: Regulatory Intermediation, Path Dependence and Legal Pluralism



Francis Snyder

Abstract Ensuring food safety and quality for ordinary people in China is a continuing challenge. Among the major responses to this challenge has been ecological food, which can be defined as the product of ‘ecological agriculture (*shengtai nongye*). Ecological food in China takes three principal forms: hazard-free food (*wu gonghai*, also known as ‘pollution-free’ or ‘no public harm’ food), green food (*lǜse shipin*) and organic food (*youji shipin*). This chapter identifies the major factors which have shaped the regulation of ecological food in China. It first examines how these forms of ecological food have been regulated so far. It then offers a theoretical explanation for the co-existence of these forms by referring to the theories of regulatory intermediaries, path dependence and legal pluralism. The discussion shows that the distinctive Chinese pattern of regulating ecological food tends to perpetuate lack of consumer trust, domestic regulatory competition, tensions between different economic interests, and conflicts among national food policy objectives. It also suggests, however, that the Chinese model may in the short run be a useful template for many other countries seeking to improve food safety and food quality, while in the long run it appears to be consistent with current global developments in the regulation of ecological food.

Keywords China · Food quality · Ecological food · Organic food · Green food · Regulatory intermediary theory (RIT) · Path dependence · Legal pluralism

F. Snyder (✉)

Peking University School of Transnational Law, Peking University Shenzhen Graduate School, Shenzhen, China

College of Europe, Bruges, Belgium

Glossary of Acronyms

AFN	Alternative Food Network
AQSIQ	Administration of Quality Supervision, Inspection and Quarantine
CAA	Certification and Accreditation Administration
CAC	Codex Alimentarius Commission
CCP	Chinese Communist Party
CNAB	China National Accreditation Board for Certifiers
CNAL	National Accreditation Board for Laboratories
CNCA	China National Certification Administration
COFCC	China Organic Food Certification Centre
CSA	Community Supported Agriculture
GFDC	Green Food Development Centre
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IFOAM	International Federation of Organic Agriculture Movements
INR	International normative repertoire
ISO	International Organization for Standardization
MEP	Ministry for Environmental Protection
MOA	Ministry of Agriculture
NDRC	National Development and Reform Commission
NIES	Nanjing Institute of Environmental Science
OBOR	One Belt, One Road
OCIA	Organic Crop Improvement Association
OFDC	Organic Food Development Centre
RIT	Regulatory intermediary theory
SEPA	State Administration for Environmental Protection
SFS	State Farm System
SRI	Silk Road Initiative
TNR	Transnational normative repertoire
WTO	World Trade Organization

2.1 Introduction

Ensuring safe food safety for ordinary people in China is a continuing challenge.¹ Among the major responses to this challenge has been ecological food, which can be defined as the product of ‘ecological agriculture (*shengtai nongye*). Ecological food in China takes three principal forms: hazard-free food (*wu gonghai*, also

¹ I am grateful to GOH Bee Chen, Yi Seul Kim, Ni Lili, Phil McConnaughay, Anne-Lise Strahmann, Tian He and Zhang Xuan for their contributions to this chapter. I thank also Peking University School of Transnational Law and Peking University Shenzhen Graduate School for their support. Any shortcomings in the chapter are my own.

known as ‘pollution-free’ or ‘no public harm’ food), green food (*lǚse shipin*) and organic food (*youji shipin*). This chapter identifies the major factors which have shaped the regulation of these forms of ecological food in China. It first shows how these forms of ecological food have been governed so far and then it provides a theoretical explanation for the co-existence of these multiple regulatory schemes. The chapter focuses on ecological food from China and sold on the domestic Chinese market. It does not deal with food from China that is exported to foreign markets, or food from outside China that is imported into the domestic Chinese market, or food from outside China that is sold on markets outside China. This focus results from the principal objective of the chapter, which is to contribute to the improvement of food quality for ordinary people in China.

2.2 Materials, Methods and Argument

This chapter is based on theory and practice. It involved a thorough search on the law and academic literature in English and Chinese on food safety, food quality and eco-food in China. It gives special weight to recent empirical research. It also takes account of the author’s research and practical experience in China, Europe and Africa concerning law, administrative regulations and standards, both international and domestic, on food safety and food quality. This data makes it possible to construct, in the first part of the chapter, a succinct account of the development of the regulation of eco-food in China. The chapter seeks also to offer a theoretical perspective on this development. Its second part draws on theories concerning standards, inter-institutional competition, and legal pluralism to give a convincing theoretical explanation for the Chinese pattern of regulatory pluralism.

The chapter suggests that the distinctive Chinese pattern of regulating eco-food, based on conflicting standards promoted by different, competing domestic and international interests, tends to perpetuate domestic regulatory competition, lack of consumer trust, tensions between different economic interests, and conflicts among national food policy objectives. Against these shortcomings, however, it is important to balance the very significant facts that, in the context of globalization and China’s Silk Road Initiative (SRI, or One Belt, One Road, OBOR), the Chinese model may be in the short-to-medium terms a useful template for many other countries which seek to improve domestic food safety and food quality, and that in the longer term the Chinese pattern of regulatory pluralism appears to be consistent with current global developments in the regulation of ecological food.

2.3 Evolution of Eco-Food Regulation in China

Two key benchmarks, despite certain precursors (Schmalzer 2016; Eisenman 2018) marked the historical development of concepts, standards and certification for organic food, green food and hazard-free food: the beginning of China's reform and opening in December 1978; and Chinese accession to the World Trade Organization (WTO) on 11 December 2001. Shortly after the December 1978 beginning of Reform and Opening, the Chinese State Council advanced the idea of building up eco-agriculture in the country' (CCIC 1996, see also Sanders 2000). However, no concrete action on eco-food was taken at the time, despite the existence of serious environmental pollution. For the next decade, the main priority of national agricultural policy was to guarantee food security by increasing food production, with greater use of agro-chemicals.

In 1990, the Nanjing Institute of Environmental Science (NIES), together with the Dutch organic certification body Skal (now Skal Biocontrol (2019)) issued China's first organic certification (Sternfeld 2009: 8). 'Organic' meant the products of organic agriculture, which is

a production system that sustains the health of soils, ecosystems and people. It relies on ecological processes, biodiversity and cycles adapted to local conditions, rather than the use of inputs with adverse effects[, and] combines tradition, innovation and science to benefit the shared environment and promote fair relationships and a good quality of life for all involved. (IFOAM 2019a, b)

NIES was a small state-sponsored *shiye danwei*, 'government-funded, not-for-profit' institution (Yang 2005: 26), 'service unit' (Foster 2015: 93) or 'service organisation....' (Lam and Perry 2001), founded in 1978 as a research institute by the newly established State Environmental Protection Agency (SEPA). SEPA then did not yet have ministerial status and, in a period of severe environmental disasters, it sought to develop environmental policy outside the control of the Ministry of Agriculture (MOA). In 1994, 'SEPA set up the Organic Food Development Centre (OFDC), attached to Nanjing Institute of Agricultural Science' (Sternfeld 2009: 5). NIES established close links with the international (but American-based) NGO, the Organic Crop Improvement Association (OCIA) (OCIA International 2019; Wikipedia 2019). Between 1997 and 2003 the project was supported by the German international cooperation agency GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit). In 2002 OFDC with German support 'qualified to become the first Chinese organic certifier accredited by the International Federation of Organic Agricultural Movements (IFOAM) and the International Organization for Standardization (ISO-65)' (Sternfeld 2009: 8). As early as 1995, SEPA promulgated 'Technical Norms on Organic Food and an Approach to Management of Organic Certification (Sternfeld 2009: 8). In 2001 SEPA's OFDC published 'some guidelines and regulations for organic certification and production which were closely following' IFOAM guidelines (Sternfeld 2009: 8); in 2002 IFOAM accredited OFDC. Academic research reported in 2005 that an 'OFDC staff serves on the important IFOAM standards board' (Thiers 2005: 7). Consequently, 'OFDC was

simultaneously a subunit of a Chinese state ministry and a chapter of an international NGO' (Thiers 2009: 154).

Partly for domestic reasons (Pauli 2007: 11), and partly in response to state-supported NIES success in creating international links and obtaining international financial support, for example from the Rockefeller Brothers Fund (RBF) (Thiers 2009: 151–154), the Ministry of Agriculture (MOA), in the early 1990s, introduced a Green Food label and then in 1992 established a Green Food Development Centre (GFDC) (Sternfeld 2009: 8; Chen et al. 2018: 41) as part of the existing State Farm System (SFS) (Thiers 2006: 198–199). Described as broadly comparable to Integrated Crop Management in western countries (Sternfeld 2009: 6; CABI 2019), Green Food was never intended to be the same as organic food (Zhu 2008). Green Food certification was more likely to be within the capacity of domestic producers. The conditions for qualifying for the Green Food logo were:

- (1) The environment in which the product or product raw material is produced meets the environmental quality standards of the green food producing area; (2) The use of pesticides, fertilizers, feedstuffs, veterinary drugs and other inputs meets the guidelines for the use of green food inputs; (3) The product quality meets the quality standards of green food products; and (4) Packaging, storage and transportation are in line with the storage and transportation standards for green food packaging. (MOA Order No. 6, Article 9)

As with organic food, products must comply with China's Food Safety Law and with the Law on Agricultural Product Quality and Safety. However, Green Food, unlike organic food, allows limited use of chemical fertilisers and pesticides and thus is based on product standards rather than process standards (Denmark 2015: 32).

The Green Food logo is a registered trademark of the GFDC (MOA 2012). According to the 2012 Administrative Measures on Green Food Marks, it designates 'safe, high-quality edible agricultural products and related products that are produced from an excellent ecological environment, produced in accordance with green food standards, and implemented full quality control and access to green food signs' (Article 2). Green Food was regulated first through the Green Food A Standard and then in 1995 by the Green Food AA Standard 'for premium products mainly designed for export and rarely found in the local markets' (Sternfeld 2009: 5). Originally intended mainly for exports (Thiers 2005, 2006; Yasuda 2018: 60–77), the development of Green Food represented a typical strategy for developing countries, such as China or Brazil (Snyder and Kim 2018: 24) which give priority to exports because they wish to break into more expensive, higher-quality foreign markets, as well as a feasible policy in a highly polluted agricultural environment, populated by many small farms. Green Food joined IFOAM in 1993 (Thiers 2006: 205). However, Green Food was not accepted internationally as organic food, but, as Paul Thiers (2006: 199) points out, 'legitimacy, access and subsidies provided by association with the central government made it unnecessary for Green Food officials to consider market access and the possibility that external standards might contest Green Food authority'. The AA Standard was abandoned in 2002 when the GFDC 'set up its own organic certification body, the China Organic Food Certification Centre (COFCC)' (Sternfeld 2009: 6; Thiers 2006: 200–201; COFCC 2019) GFDC became China's leading organic certifier with about 30% of all organic farms and

enterprises. Local governments subsidised certification if done by certifiers attached to government institutions; this included both OFDC and COFCC (Sternfeld 2009: 6).

In 2001 the MOA launched the Hazard-free Food Action Plan, which it had bruited in the 1980s (AQSIQ 2001; MARA 2012; Marchesini et al. 2010: 156). Hazard-free food consists of ‘agricultural produce that is grown using chemical pesticides and fertilisers that are applied in quantities that meet or fall below maximum accepted limits’ (Cody 2019: 89). In some settings the term ‘hazard free food’ might seem to be an oxymoron, but in China the level of agricultural pollution, overuse of toxic pesticides, lack of knowledge of and respect for standards, and food fraud resulted in the creation of a food quality category that, while suggesting perhaps that ordinary food was not hazard-free, urged producers to meet national standards. The Hazard-free Action Plan focused on control of highly toxic pesticides and on use of clenbuterol hydrochloride in meat production. It was intended to encompass stricter supervision of agricultural production and marketing, consumer education, and greater standardisation of product quality and safety (MOA 2012). It was based on a catalogue promulgated by the MOA and the Certification and Accreditation Administration (CAA) which included products for which producers could apply for certification (PRC 2003a) Initially voluntary, it reportedly became mandatory in 2006 (Berti 2015: 50; but see Scott et al. 2013; 7, 20). Since 2007 the MOA has abolished more than 100 industrial standards for hazard-free agricultural products, which meant that the MOA no longer reviews and supervises this category of products, which now are governed only by national standards (Sun 2018: 110). Recent research indicates increased regulation and considerable improvement in control of pesticide residues but nevertheless a continuing high level of use of toxic pesticides (Snyder and Ni 2017a, b).

Despite a continuing fragmentation of administrative authority (*zhengchu duomen*) for supervising food safety, which was consolidated by the State Council’s 2004 Decision about Strengthening Food Safety (PRC 2004), these developments concerning food quality occurred within a gradual centralisation of national rules about standardisation and certification, which directly affected eco-food production and marketing. They were influenced also by the WTO Agreements and the WTO Trade Policy Review Mechanism (Snyder 2015). The 1988 Standardization Law provided for the formulation of standards and supervision of implementation of standards and sought to ‘encourage active adoption of international standards’ (PRC 1988: Article 4). Implementing Measures adopted in 1990 opened the Chinese standardization world further by providing that ‘The State encourages the adoption of international standards and advanced standards abroad and takes an active part in the formulation of international standards’ (PRC 1990).

State Council 2001 administrative reforms resulted in the ministerial-level Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) (for organisational history, see Mertha 2005: 173–194), [now part of the State Administration for Market Regulation], attached directly to the State Council. In 2003 the State Council adopted Regulations on Certification and Accreditation (PRC 2003b), which established a unitary system for certification and accreditation,

led by the newly created China National Certification Administration (CNCA) as a vice-ministerial-level (<http://english.aqsiq.gov.cn/AboutAQSIQ/>) department attached to AQSIQ. The Regulations stated that only certification bodies registered at the CNCA and duly accredited by the relevant State Council department (then the China National Accreditation Board for Certifiers, CNAB) could ‘engage in certification activities’ (PRC 2003b: Article 9). They also required certification bodies to be independent of government departments (PRC 2003b: Article 9). The former requirement fitted MOA’s GFDC/COFCC but not SEPA’s OFDC, while the latter corresponded to the interests of the OFDC but was directly contrary to the interests of the GFDC/COFCC; both agencies remained within the jurisdiction of the MOA, though some researchers state that formerly governmental certification agencies are now third-party certification agencies (Chen et al. 2018: 45). COFCC was the first to be registered (Sternfeld 2009: 6). It became the main Chinese partner for BioFach, ‘the world’s leading organic trade fair’ (CNAS 2019). Then in 2006 the China National Accreditation Service for Standardization (CNAS) was founded to merge the CNAB and the National Accreditation Board for Laboratories (CNAL); the CNAB itself resulted from an earlier merger of four administrative bodies (CNAS 2019). In principle, this spelled the end of a period of administration fragmentation concerning certification and accreditation. In practice, it marked an attempt to restore the role of central government in the regulation of food quality.

In 2015 AQSIQ revised the Administrative Measures on Certification of Organic Products (AQSIQ 2013; PRC 2015), which are still in force. The Measures are mandatory for all ‘[p]ersons engaging in *certification* of organic products and manufacturing, processing, importation and sale of *certified* organic products in the People’s Republic of China’ (PRC 2015: Article 2, emphasis added). ‘Organic products referred to in these Measures shall mean products manufactured, processed, and sold for human and animal consumption which *comply with the Chinese national standards* for organic products’ (PRC 2015: Article 3, emphasis added). Reflecting the interests of central government, the Measures bind very closely together three terms: ‘organic products’, ‘certification’ and ‘manufacturing, processing, importation and selling’. As a result, if we take the words seriously, the Measures do not apply to organic products which are not certified as organic or to products which do not comply with Chinese national standards for organic products.

2.4 Explaining the Chinese Regulatory Model

2.4.1 Introduction

We can understand the principal features of the Chinese regulatory model for eco-food by focusing on standard-setting, institutional competition and normative diversity. For this purpose the chapter draws on three bodies of theory: regulatory intermediation, path dependence and legal pluralism.

2.4.2 Standards

Standardisation is the subject of a vast literature, which deals with rules, rule-making and rule-makers (eg Braithwaite and Drahos 2000; Grindley 2002; Delimatsis 2015a, b). The theories of international normative repertoires (INR) or transnational normative repertoires (TNR) focus on the creation of international standards and their links to domestic law and politics. Research on anti-dumping law (Snyder 2001), competition law (Wu 2013) and food safety regulation (Snyder and Kim 2018) reveals the existence in each field of ‘a handful of basic principles [involving] the constitution of a conceptual and normative repertoire, drawing on [international or transnational law], national legislation, multilateral negotiations, and administrative [and judicial] decisions in several jurisdictions within a specific historical context’ (Snyder 2001: 419–420). This complex framework may be called an ‘normative repertoire’, using an analogy to musicians or theatre companies, which typically have a repertoire from which they select elements for specific performances. In some contexts, an INR or TNR may be implemented more or less directly in a national legal system, to the extent that we can speak of a ‘transnational legal order’, in which international, regional and national sets of substantive norms are essentially identical (Halliday and Shaffer 2015); a good example is regulation of pesticides in China (Snyder et al. 2019). In other circumstances, the connections between the different sites of governance which contribute to or are linked to the INR/TNR may be more tenuous or more indirect (Snyder and Kim 2018).

Theories of regulatory intermediation help us understand how international standards are made. Instead of a command-and-control model of regulation, they posit relationships between regulator, intermediary and regulatory target (R-I-T) (Abbott et al. 2017a, b). In the field of food quality, the regulator is usually assumed to be an international organization. For example, the Codex Alimentarius Commission (CAC, or Codex) is the principal source of international food safety standards, according to the WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) (Scott 2009; Arcuri 2015). Codex now has highly developed standards for organic food (WHO and FAO 2007). Codex standards are proposed by committees composed of national government delegations, which tend to be dominated by ‘international food manufacturers and agrochemical corporations’ (Braithwaite and Drahos 2000: 408; see also Smythe 2009) which together with trade associations in fact played a key role as both regulators and intermediaries even before the establishment of Codex in 1963 (Snyder 2016: 217–218). In principle, Codex standards are not legally binding, but in practice the WTO Appellate Body decision in the *EC-Hormones* case gave them legal effect (Snyder 2006).

The striking fact about the eco-food sector, however, is that international standards stem essentially from an international non-governmental network, the International Federation of Organic Agriculture Movements (IFOAM), which was founded in 1972 and which amalgamated standards from numerous national associations (Lockeretz 2007). It acted (and acts) as both regulator and intermediary in developing an international normative repertoire for organic agriculture and organic