

# Organics in Chinese Food Law

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*The organics market in China has grown fast since the turn of the Millennium both within the internal market and international trade. New regulations and their effective enforcement have instilled more transparency and trust among stakeholders. The mutual recognition of standards in bi- and multi-lateral international agreements can be seen as the next step of the steep growth of organic production in China as well as a sustainable way to control environmental pollution.*

## I. Introduction

In June 2012 the Chinese Minister for Administration of Quality, Supervision, Inspection and Quarantine (AQSIQ) and the European Commissioner for Agriculture and Rural Development agreed to open negotiations on a mutual recognition agreement in the field of organic food products.<sup>1</sup> Their aim is to facilitate trade focusing on assessing and harmonising standards and controls applied to organic foods.

China is among the world's largest producers of organics and a growing market for their consumption. According to the 2013 IFOAM<sup>2</sup> report on Organic Agriculture in Asia, 1.9 million hectares are dedicated to organic agriculture in China. This makes China the second largest country in the world in terms of arable, organic land surface – just after Australia. However, Chinese consumers do not seem to trust organic foods originating in China as much as organic foods imported from western countries. Substantial imports of organic products, processed foods in particular, come from the USA, the EU and Australia.<sup>3</sup>

The aim of this article is to provide an overview of Chinese organic food law. It sets the scene, introduces the major stakeholders involved, and outlines the regulations that relate to production, the domestic and international commercialisation and the certification process of organic production.

The article is organised as follows: The remainder of this introduction provides the general background regarding the political and legal system of the People's Republic of China (PRC) needed to place Chinese organic food law in its proper context. Section I.1 discusses the political, legal and regulatory environment in general; section I.2 focuses on the development of food law in particular.

Section II sketches the development of organic farming in China. The core of this article is section III. It provides an overview of the actors involved in and regulations relating to organics. Section III.1 addresses the public authorities, section III.2 looks at the producers and section III.3 focuses on the certifiers. Section IV addresses market and trade issues. Section V concludes this article with a discussion of the challenges and opportunities and a short conclusion. Section V.1 concentrates on consumers while section V.2 highlights standards.

## 1. Political, legal and legislative specifics of the PRC

The PRC is the most populated country in the world with a population of over 1.35 billion. The PRC is a singular party State, governed by the Communist Party of China (CPC)<sup>4</sup> with its seat of Government in the capital city of Beijing. Its jurisdiction encompasses 23 provinces, 5 autonomous regions, 4 municipalities, and 2 mostly self-governing special ad-

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1 European Commission, Agriculture and rural development, "EU and China roadmap toward a mutual recognition of organic products", 12 June 2012, available on the internet at: <[www.ec.europa.eu/agriculture/newsroom/82\\_en.htm](http://www.ec.europa.eu/agriculture/newsroom/82_en.htm)> (last accessed 1 May 2014).

2 International Federation Organic Agriculture Movement.

3 Helga Willer and Lucas Kilcher, "The World of Organic Agriculture. Statistic and emerging Trends", (IFOAM: Bonn&FIBL 2011), pp. 199 *et seq.* at p. 205.

4 The Constitution of PRC states that leadership is through the working class, which in turn is led by the CPC.

ministrative regions, namely Hong Kong and Macau.<sup>5</sup>

The Chinese legal system is primarily based on a civil law model. The National People's Congress (NPC), which is the highest organ of state power in the PRC, with the Standing Committee acting as its permanent organ, is empowered with the rights of legislation. The NPC has the right to enact and amend the Constitution (1982)<sup>6</sup> as well as "basic laws"<sup>7</sup> which include General Principles of Civil Law (1986), Contract Law (1999), Property Law (2007),<sup>8</sup> Civil Procedural Law (1991), Criminal Law (1979), Criminal Procedure Law (1979) and Administrative Procedure Law. Law other than "basic laws" are adopted by the Standing Committee of the NPC, such as Patent Law (1984), Company Law (2005), Employment Contract Law (2008), and special laws on foreign investment.<sup>9</sup>

The State Council of the PRC is the highest executive organ of the State power as well as the highest organ of the State administration. It has the power to issue administrative regulations for the implementation of laws enacted by the NPC and its Standing Committee. For the sake of further implementation of the administrative regulations, the ministries and commissions under the State Council can make more detailed regulations within their authority. In reality, the ministerial-level regulations provide clarifications and guidance on specific matters to the stakeholders. For instance, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM), which have the authority to approve foreign-invested projects in China, have issued the Foreign Investment Industry Guidance Catalogue ('the Catalogue') which classifies foreign-invested projects into three categories: encouraged industries, restricted industries and prohibited industries. In the absence of other rules that state the contrary, industries not listed in the Catalogue are permitted automatically.

To understand the policies of the Chinese government, the formal documents issued by the Central Committee of the CPC (Central Documents) cannot be disregarded. The "No. 1 Central Document", which is issued every January as the barometer of policy priorities, will in particular attract special attention. Since 2003, the No. 1 Central Document has focused on rural matters.

According to the No. 1 Central Document issued in January 2014, China's top policy priorities for 2014 will be improving the rural environment and main-

taining food security.<sup>10</sup> The document also focuses on the development of "modern agriculture" and lays out improvements to the way rural areas are governed. The document states that China will continue to pursue "basic grain self-sufficiency" while increasing the use of overseas markets and allowing an "appropriate" amount of imports, but it underlines that it "will not relax domestic food production at any time". It will also work throughout the rest of the year to strengthen food security, set up mechanisms to ensure sustainable rural development and deepen reforms to allow the transfer of land. An efficient management of contaminated land will help China ensure that at least 120 million hectares of land are reserved for farming, a policy known as the "Red Line".

## 2. Development of food related regulations in general

Since the 1990s, the rapid urbanisation and industrialisation have dramatically changed the food system in China. The key problems related to food issues were the low level of governmental control and a set of poorly coordinated food safety standards, both important co-factors in food safety incidents (among which the melamine crisis had a worldwide impact).<sup>11</sup> To a large extent the continuous improvement through legislation reforms and harmonisation

5 US Central Intelligence Agency, "The World Factbook", available on the internet at: <[www.cia.gov/library/publications/the-world-factbook/geos/ch.html](http://www.cia.gov/library/publications/the-world-factbook/geos/ch.html)> (last accessed 1 May 2014).

6 Since the foundation of PRC, four Constitutions have been enacted – in 1954, 1975, 1978 and 1982. The 1982 Constitution was amended in 1988, 1993, 1999 and 2000 to better fit the rapid development of China.

7 Pursuant to Article 7 of the Legislation Law of PRC, basic laws should govern criminal offence, civil affairs, state organs and other matters.

8 There is no civil code in the current Chinese legal system. The core areas of private law are governed by the "basic laws" dealing with civil affairs.

9 The most important legislation governing foreign investment in PRC are Law on Equity Joint Venture (1979), Law on Cooperative Joint Venture (1988) and Law on Wholly Foreign Owned Enterprise (2000).

10 Reuters, "Food security, rural environment top China's policy agenda in 2014", 19 January 2014, available on the internet at: <[www.reuters.com/article/2014/01/19/us-china-agriculture-idUSBREA0104920140119](http://www.reuters.com/article/2014/01/19/us-china-agriculture-idUSBREA0104920140119)> (last accessed on 1 May 2014).

11 Lu Xiaojing, "The Cause and Effect Analysis of the Melamine Incident in China" 5 *Asian Journal of Agricultural Research*, (2011), pp. 176 et sqq, at p. 185.

of standards for primary production and food safety issues can be seen as a response to food safety concerns but also as an expression of the strong interest the PRC takes in accessing international markets.

In 2006 the Standing Committee of the NPC adopted the Law on Agricultural Product Quality and Safety (LAPQS).<sup>12</sup> The law was formulated in order to guarantee control over primary production with a view to quality, safety and public health. The Ministry of Agriculture (MoA) and AQSIQ are responsible for the application of this law. It provides requirements on production management and the connected safety criteria in order to guarantee safety of consumption. The law covers issues like the license to use pesticides,<sup>13</sup> the mandatory record keeping of inputs and processes,<sup>14</sup> packaging and labelling.<sup>15</sup> Responsibilities and legal liabilities of the agricultural product testing institute,<sup>16</sup> producers<sup>17</sup> and sellers<sup>18</sup> are also covered.

In 2009 the Food Safety Law of the PRC (FSL)<sup>19</sup> came into force. It focuses on food production, process and catering services as well as food additives, packaging materials and safety management. The core objective of the law is to fill the void that existed at that moment between standards in relation to product and process, labelling, licenses, inspection, recalls and liability. It is administered by both AQSIQ and China Food and Drug Administration (CFDA). In 2013 a draft amendment to the FSL was circulated for comments. Improvements were proposed especially on traceability, use of chemicals, food related products, online trading and the like.<sup>20</sup>

Following the principles drawn in the FSL, other regulations were implemented since it came into force such as the inspection on imported food and additives by AQSIQ in 2009; administrative measures on food import/export, registration of overseas manufacturers by AQSIQ in 2012, and labelling of pre-packed food by Ministry of Health (MoH)<sup>21</sup> in 2012.

### 3. Green Food program

In 1989, MoA initiated the Green Food program. The program addresses, in particular, certified voluntary quality systems like organics and other low input production systems.<sup>22</sup> From the start it has been very successful. In 2003 already more than 3000 products were certified as Green Food products. These Green Foods enjoyed a consistent share in the retail market. In that year the total sales of Green Food products in the export markets (USA, Japan and Europe) were comparable with the total value of sales of organic produce in the USA.<sup>23</sup> The Green Food innovation can be seen as one of the first attempts to facultative food standard application and certification. In addition to residues testing, it includes field inspection and inspection of processing procedures. The government has also established tracking and traceability systems, recently using electronic systems.<sup>24</sup>

The Chinese government indicated that it will continue its commitment to green food and pollution-free products<sup>25</sup> and will provide more financial in-

12 The complete text of the law is available on the internet at: <www.npc.gov.cn/englishnpc/Law/2008-01/02/content\_1387986.htm> (last accessed 1 May 2014) Here after: the LAPQS.

13 Article 21 LAPQS.

14 Article 24 LAPQS.

15 Chapter V LAPQS.

16 Article 44 LAPQS.

17 Articles 46 & 47 LAPQS.

18 Articles 48-50, 54 LAPQS.

19 The complete text of the law is available on the internet at: <www.proceduralaw.cn/english/law/200903/t20090320\_196425.html> (last accessed 1 May 2014).

20 USDA Foreign Agricultural Service, "Food Safety Law Draft for Comment (Compared to 2009 Food Safety Law)" GAIN report no. 13064, 8 November 2013, available on the internet at: <www.gain.fas.usda.gov/Recent%20GAIN%20Publications/Food%20Safety%20Law%20Draft%20for%20Comment%20\_Beijing\_China%20-%20Peoples%20Republic%20of\_11-8-2013.pdf > (last accessed 1 May 2014).

21 In 2013 the ministry has been dissolved and its functions integrated into the new organ called the National Health and Family Planning Commission.

22 USDA Foreign Agricultural Service, "Organic Products and Agriculture in China" GAIN report no. CH6405, 21 June 2006, available on the internet at: <www.flex-news-food.com/files/china220606.pdf> (last accessed 1 May 2014).

23 Daniele Giovannucci and Timothy Purcell, "Standards and Agricultural Trade in Asia", ADB Institute Discussion Paper no. 107 (2008), available on the internet at: <www.adbi.org/files/dp107\_standards.agricultural.trade.asia.pdf> (last accessed 1 May 2014).

24 EU-China Trade Project, "Organic Agriculture in China. Current situation and challenges", May 2008, available on the internet at: <www.eu-china.net/web/cms/upload/pdf/materialien/EUCTP%20A0171%20organic%20Food%20Report%20EN\_09-10-16.pdf> (last accessed on 1 May 2014).

25 Since 2001, MoA has carried out the Action Plan of Pollution-Free Agricultural Products across the country. Pollution-free agricultural products is the production in which area, production process and product quality meet the national requirements of the relevant standards. The certification system of pollution-free agricultural products is separate from Green Food.

centives for farmers to switch from intensive agriculture. It is clear that the authorities have a positive attitude towards low input food production. No substantial investment has come forward yet,<sup>26</sup> but the authorities do consider the general benefits of organic farming in terms of conservation of resources. In general organic practices are seen as a concrete way to reduce the possibility of environmental contamination, to minimise the use of chemical inputs (often imported) and to reduce the public health costs of pesticide poisoning.

Through the Green Food program China searches for answers to the challenges posed by the more common “green revolution” approach of intensive farming,<sup>27</sup> where maximized outputs are reached with external inputs like fertilizers, irrigation and synthetic agro-chemicals. To elaborate on these phenomena, China owns less than 10% of the world’s arable land but utilizes 30% of the world’s nitrogen fertilizers.<sup>28</sup> The Green Food experience has clearly paved the way for organic agriculture.

## II. Organics in China

Organic farming and other forms of sustainable agriculture fit well within the Chinese tradition going back over 4000 years. Chinese farmers have long employed simple methods like crop rotation and compost application or more elaborated forms of ecological and fertility maintenance traditions, like the combination of mulberry trees with fish ponds.<sup>29</sup>

According to the Organic Food Development Center (OFDC) in China, “organic farming is defined as a kind of plant and animal production system that rejects synthetic chemical substances such as pesticides, fertilizers, growth regulators, fodder additives, etc. and genetically modified organisms (GMOs) and products thereof, and instead, by following the law of nature and the principle of ecology, harmonizes crop cultivation with animal rearing and by adopting a series of sustainable-development-oriented agricultural techniques maintains a stable sustainable agriculture”.<sup>30</sup>

Foreign investment helped steer the Green Food program towards organic agriculture.

In 1990, for example, the Dutch Company SKAL certified a production of green tea, which was a green food label at that time and became China’s first certified organic export.<sup>31</sup>

In China there is a farm-offset system in place in 24 provincial-level regions. Where an urban or industrial development is proposed for farmland, there is a planning approval requirement to offset that loss of farmland by bringing an equivalent area of new farmland into production.<sup>32</sup> This kind of system, in which the new farmland must be found in remote areas, can promote the adoption of organic agriculture since organic agriculture is less dependent on external inputs that must be brought in over long distances. Stakeholders are likely to positively consider the feasibility of organic conversion due to the already favourable environment where pollution or contaminants are relatively low.<sup>33</sup>

## III. Actors and regulation

### 1. Public authorities

In the beginning of April 2005, the first national standard dealing with organics, the Chinese National Standard for Organic Produce,<sup>34</sup> which was jointly issued by Standardization Administration of China (SAC) and AQSIQ, became effective. It is subdivid-

26 Willer, “The World of Organic Agriculture. Statistic and emerging Trends”, *supra* note 6, at pp. 132 *et seq.* at p. 135.

27 Xu Jun Ye, Zhao Qian Wang and Qing Sheng Li, “The ecological agriculture movement in China”, *Agriculture, Ecosystem and Environment*, 2002, 92(2-3), pp. 261 *et seq.*, at p. 281.

28 IFAD, “Organic Agriculture and Poverty Reduction in Asia: China and India Focus”, report no. 1664, 2005, Table of Content VIII.

29 Willer, “The World of Organic Agriculture. Statistic and emerging Trends”, *supra* note 6, at p. 133.

30 FAO, “China-Country profiles for Organic Agriculture”, 30 June 2006, available on the internet at: <[www.fao.org/organicag/display/work/display\\_2.asp?country=CHN&lang=en&disp=summaries](http://www.fao.org/organicag/display/work/display_2.asp?country=CHN&lang=en&disp=summaries)> (last accessed on 1 May 2014).

31 Huilai Zong, “The role of agriculture and rural development in China”, in United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), *Organic agriculture and rural poverty alleviation, potential best practices in Asia*, (Bangkok, 2002), pp. 52 *et seq.*, at p. 54.

32 SEPA, “Report on the state of the environment in China 2003”, 2004, available on the internet at: <[www.english.sepa.gov.cn/SOE/soechina2003/land.htm](http://www.english.sepa.gov.cn/SOE/soechina2003/land.htm)> (last accessed 1 May 2014).

33 USDA Foreign Agricultural Service, “South China organic food market brief”, GAIN report no. CH6608, 9 June 2006, available on the internet at: <[www.apps.fas.usda.gov/gainfiles/200606/146197941.pdf](http://www.apps.fas.usda.gov/gainfiles/200606/146197941.pdf)> (last accessed on 1 May 2014).

34 GB/T19630-2005. See: USDA Foreign Agricultural Service, “National Standards for Organic Products”, GAIN report no. CH5054, 6 July 2005, available on the internet at: <[www.apps.fas.usda.gov/gainfiles/200507/146130183.pdf](http://www.apps.fas.usda.gov/gainfiles/200507/146130183.pdf)> (last accessed on 1 May 2014).

ed into four parts: production, processing, labelling and marketing, and management system.

Due to several food safety issues, highlighted both by the national press and by public authorities, in connection with the deceptive use of organic labels in food in spite of the use of ingredients from the conventional production chain, a need was felt to apply stricter standards and a more severe implementation of the rules. The National Standard for Organic Produce was modified. The new standard GB/T19630-2011 and its implementing rules became effective on the 1<sup>st</sup> of March 2012.<sup>35</sup>

From that date onwards organic means only “the products for human consumption and edible animals, which are produced, processed and sold according to this standard”.<sup>36</sup> Major changes included a zero-tolerance policy towards certain residues, traceability via a numeric code printed on the label and an increased frequency of field inspections. Several agro-managerial standards were modified too in order to lower the cropping pressure, especially on rice.

The Certification and Accreditation Administration of China (CNCA), a subordinate body to AQSIQ is responsible for issuing the official organic label (via certifiers). It also controls and supervises the accreditation process of all certification bodies and grants licenses to individual organic inspectors employed by certifiers. Since the 1<sup>st</sup> of April 2005, there has been only one organic label for all of China and

for all categories of products, and the text is provided in Chinese and English. Initially, there were two versions of this label: “Organic” and “Conversion to Organic”.<sup>37</sup> In light of the misuse of the latter by some producers to confuse the public, the revised “Administrative Measures for Organic Product Certification”<sup>38</sup> that came into force on the 1<sup>st</sup> of April 2014 (AMOPC) abolished it and only allows for the use of the “Organic” label shown in Figure 1.

AMOPC, which was issued by AQSIQ, covers a wide range of aspects that encompass the competences of the certification bodies as well as the responsibilities of the competent authorities on monitoring the functioning of the certification activities. Local counterparts of AQSIQ shall supervise foreign invested certification bodies that deal with import/export while the local quality and the technical supervision departments shall supervise Chinese-funded certification bodies that deal with the internal market.<sup>39</sup>

This regulation will be discussed in more detail here below.

## 2. Producers

For Chinese agricultural producers, the conversion to organic agriculture and the related procedural issues are quite similar as for farmers in other parts of the world. The most important issues concern a decrease in the use of fertilizers and in an increase of agricultural strategies to keep high yields, assuring at the same time the conservation of soil fertility. The three years of transition were marked by lower incomes as well as the uncertainty whether the market would provide an extra bonus. The health and farm environmental benefits are also quite important from a political point of view.<sup>40</sup>

Producers, especially the ones not yet connected with international or reliable national markets, often encounter great difficulties including facing the certification costs and the loss of income during the three-year conversion period. The first year losses in yields are often considerable. By the third year, yields have typically stabilised. Although some stabilise at a yield level lower than before, some of the more committed farmers are able to actually improve yields with organic methods.<sup>41</sup>

For China, the attraction to organic agriculture was mainly price driven and focused on exports. Much of the market-oriented organic farming businesses

35 USDA Foreign Agricultural Service, “New Certification Regulations on Domestic Organic Product”, GAIN report no. CH12025, 16 March 2012, available on the internet at: <www.globalorganictrade.com/files/g\_files/GAIN\_China\_New\_Certification\_Regulations\_on\_Domestic\_Organic\_Products\_Beijing\_China\_-\_Peoples\_Republic\_of\_3-16-2012-1.pdf> (last accessed on 1 May 2014).

36 Complete text available on the internet at: <www.globalorganictrade.com/files/g\_files/GB19630-2011-1.pdf> (last accessed on 1 May 2014).

37 USDA, “South China organic food market brief”, *supra* note 36.

38 USDA Foreign Agricultural Service, “Revised Administrative Measures for Organic Product Certification”, GAIN report no. 14001, 1 January 2014, available on the internet at: <www.gain.fas.usda.gov/Recent%20GAIN%20Publications/Revised%20Administrative%20Measures%20for%20Organic%20Product%20Certification%20\_Beijing\_China%20-%20Peoples%20Republic%20of\_1-7-2014.pdf> (last accessed on 1 May 2014).

39 Article 38 AMOPC.

40 John Paull, “China’s Organic Revolution”, in S. Bhaskaran & Suchitra Mohanty (Eds.), *Marketing of Organic Products: Global Experiences*, (Hyderabad: The Icfai University Press 2008), pp. 260 *et seq.*, at p. 275.

41 IFAD, “Organic Agriculture and Poverty Reduction in Asia: China and India Focus”, *supra* note 31.



Figure 1: Chinese "Organic" label

are forms of joint entrepreneurship between trading companies and farmers. This form of enterprise is more common in the coastal regions of China and has provided useful opportunities for farmers in these areas where agriculture is under intense pressure from industrialization and urban expansion as well as from environmental pollution caused by fertilizers and pesticides.<sup>42</sup>

Three main forms of ownership can be observed among organic businesses:

- State owned: Organic production represents only a very small part of their overall business, but it gives them a higher profile market presence;
- Private Chinese: Mixed production, conventional and organic. Their major markets cover domestic and export depending on the product.
- Private international: Initially set up by foreign investors targeting precise demands from internal and external markets.

Different structures of the production system are present. Some organic producers own the entire production while some apply a mix of owned and contractual production. The latter companies contract production with local farmers, through the village committee or with a farmer cooperative.<sup>43</sup>

Land, contracted on the base of the "Rural land contracting law",<sup>44</sup> issued in 2002, is on average available for a 30-year term, but this ranges from 20 to 50 years. There are no substantial subsidies for organic

agriculture set at country level. Provincial and local authorities give a small range of monetary help, mainly consisting of technical advice and financial support for purchasing bio-pesticides and bio-fertilizers.<sup>45</sup>

Producers and processors of organic products have to entrust and submit documentation to a certification body in order to receive certification, the label and the subsequent permit to commercialise it.<sup>46</sup> Tracking and tracing systems, as well as a complete record of all the operations, must be in place<sup>47</sup> both for product quality and safety. On the one hand, these new measures can be seen as effective efforts to reach a high level of reliability and trust. On the other hand, they will be difficult to face for most of the small producers, especially if they are not supported with economic and managerial subsidies.

### 3. Certification institutes

Back in 1994 SEPA<sup>48</sup> founded OFDC<sup>49</sup> with the specific objective to comply with international standards on organic agriculture. At that time two divergent philosophies coexisted: Green Food, which followed the certification on the product and Organic, more focused on the process and on international standards. OFDC is the first specialized organization in China engaged in organic agriculture research, certification, training, and promotion.<sup>50</sup> Today the OFDC is accredited by IFOAM.

In 2002, MoA appointed COFCC<sup>51</sup> to certify and promote the organic food sector. Since then COFCC

42 IFAD, "Organic Agriculture and Poverty Reduction in Asia: China and India Focus", *supra* note 31.

43 EU-China trade Project, "Organic Agriculture in China. Current situation and challenges", *supra* note 27.

44 The complete text is available on the internet at: <[www.english.gov.cn/laws/2005-10/09/content\\_75300.htm](http://www.english.gov.cn/laws/2005-10/09/content_75300.htm)> (last accessed on 1 May 2014).

45 EU-China trade Project, "Organic Agriculture in China. Current situation and challenges", *supra* note 27.

46 Article 8 and Article 14 AMOPC.

47 Article 41 AMOPC.

48 Nanjing Environmental Research Institute of Chinese State Environmental Protection Agency.

49 SEPA Organic Food Development Center.

50 ORCA, "Organic Farming Research in China", 6 September 2010, available on the internet at: <<http://www.orca-research.org/orca-china.html>> (last accessed 1 May 2014).

51 Chinese Organic Food Certification Center.

is responsible for 30% of China's organic production certifications.<sup>52</sup>

To date China has 25 certification institutes all accredited by CNCA.<sup>53</sup> These institutes can be classified into three categories: subordinates to Ministry of Agriculture such as COFCC; affiliates to science research institutes at universities, and private ones,<sup>54</sup> including the Chinese presence of a few global certification organizations such as ECOCERT, TÜV Rheinland and Lloyd's Register.

AMOPC sets forth the responsibilities of certification institutes and procedures that they must undergo toward CNCA.<sup>55</sup> Among other responsibilities, a certifier is required to ensure the integrity, objectiveness and truthfulness of the certification process, and make a complete record for archive retention to ensure that the certification process and results are traceable.<sup>56</sup> The records of all activities shall be kept for 5 years.<sup>57</sup> Furthermore, the certification institute shall implement effective follow-up inspection of the certified products and their production and processing processes to ensure that the certification conclusions can continue to meet the certification requirements.<sup>58</sup> In certain cases of non-compliance or fraudulent practice by the producer, the certifier shall suspend or revoke the certificate and publicise it.<sup>59</sup> The certifier can be fined or even disqualified in case it fails to do so.<sup>60</sup>

#### IV. Market and trade

Most of China's organic products are exported to foreign markets like the USA, the EU and Japan. The

main part of these products are grains (pulses and cereals) and some fresh vegetables and tea.<sup>61</sup> According to COFCC the value of exported organic products increased from 0.3 million USD in 1995 to 350 million USD in 2004, accounting for 1.7% of the total value of China's agricultural export.<sup>62</sup>

Since 2000 China's internal market has been growing as well. Beijing has the largest domestic market, followed by some other mega-cities such as Shanghai, Guangzhou, Nanjing and Shenzhen. The main channel for organic food sales are specialised stores, supermarkets and home delivery systems, which are new and have become popular over the last couple of years.

The price of some organic products is up to three times that of the price of conventional products like grains or meat but for organic vegetables, the price can be as much as 10 times higher than for conventional products.<sup>63</sup>

Under the current organic regulations and standards, food products cannot be called organic unless they are certified by a Chinese certification body. This rule has been in place since 2005 and generally has been enforced more on domestic labels than foreign. Foreign organic labels (American, European, Australian) were informally allowed to be sold on the Chinese market. Since 2011 CIQ<sup>64</sup> enforces regulations imposed on local importers and foreign exporters to cover any word that comprises "organic" meanings in any language unless the product is certified by a Chinese certification body.<sup>65</sup>

Accordingly, with certification procedures, besides complying with Chinese standards, to obtain full cer-

52 USDA Foreign Agricultural Service, "Organic Report", GAIN report no. 10046, 26 October 2010, available on the internet at: <[www.gain.fas.usda.gov/Recent%20GAIN%20Publications/Organics%20Annual\\_Beijing\\_China%20-%20Peoples%20Republic%20of\\_10-14-2010.pdf](http://www.gain.fas.usda.gov/Recent%20GAIN%20Publications/Organics%20Annual_Beijing_China%20-%20Peoples%20Republic%20of_10-14-2010.pdf)> (last accessed on 1 May 2014).

53 CNCA, "List of accredited certification institutes", available on the internet at: <<http://ffip.cnca.cn/ffip/publicquery/certSearch.jsp>> (last accessed on 1 May 2014).

54 Fang Pey, "China's Organic Industry: Winter Just Over, Chills Still Ahead", English.eastday.com, 11 July 2013, available on the internet at: <<http://english.eastday.com/e/130711/u1a7514109.html>> (last accessed on 1 May 2014).

55 See Chapter II and Chapter IV AMOPC.

56 Article 12 AMOPC.

57 Article 12 AMOPC.

58 Article 12 AMOPC.

59 Articles 30 & 31 AMOPC.

60 Article 54 AMOPC and Article 60 of the Regulations of the People's Republic of China on Certification and Accreditation.

61 Willer, "The World of Organic Agriculture. Statistic and emerging Trends", *supra* note 6, at p. 135.

62 Zhang F., Y Qiao, F. Wang and W. Zhang, "A perspective on Organic Agriculture in China-Opportunities and Challenges", 9th German Scientific conference on Organic Agriculture "Between tradition and globalization", Berlin 2007 available on the internet at: <[www.orgprints.org/10388/1/10388\\_Zhang\\_Vortrag.pdf](http://www.orgprints.org/10388/1/10388_Zhang_Vortrag.pdf)> (last accessed 1 May 2014).

63 Willer, "The World of Organic Agriculture. Statistic and emerging Trends", *supra* note 6, at p. 134.

64 Chinese Inspection Quarantine.

65 USDA Foreign Agricultural Service, "Organic Certification Issues Update from East China", GAIN report, 16 April 2012, available on the internet at: <[www.gain.fas.usda.gov/Recent%20GAIN%20Publications/Briefing%20on%20the%20Organic%20Certification%20Issues%20in%20East%20China\\_Shanghai%20ATO\\_China%20-%20Peoples%20Republic%20of\\_4-16-2012.pdf](http://www.gain.fas.usda.gov/Recent%20GAIN%20Publications/Briefing%20on%20the%20Organic%20Certification%20Issues%20in%20East%20China_Shanghai%20ATO_China%20-%20Peoples%20Republic%20of_4-16-2012.pdf)> (last accessed on 1 May 2014).

tification after the so-called transition period (normally three years as discussed above), field inspection is required. In the case of overseas farms/factories a Chinese inspector must visit the facility. Obviously, this raises the costs of certification. Translation of documents and custom papers also create additional costs. The certification must be renewed annually.

Triggered by the melamine scandal, which sparked an increase of demand on the Chinese market for safe products, Korean and European producers of dairies and baby formulas have already applied for Chinese organic certification, because it will enable them to promote and sell their products legally.<sup>66</sup>

AMOPC expresses the needs of mutual recognition<sup>67</sup> but also gives clear indications for situations where no equivalence arrangement is in place<sup>68</sup> as well as the obligation to comply with an importing country's regulations and standards for export products.<sup>69</sup>

## V. Discussion: Challenges and opportunities

The legislative developments and the increased awareness of environmental issues in the PRC both push towards international standards. Consumers enjoy increasing recognition not only regarding their interest in food safety but also in terms of liability. They emerge as an audience to be heard in the law-making process in China.

### 1. Building trust and awareness in consumers

A lack of awareness of organic products together with unethical practices by retailers continues to strain China's organic market. Many Chinese consumers do not understand what organic means. Much confusion is due to the large number of different kinds of labels (official and private).<sup>70</sup> Moreover, limited knowledge on the matter itself complicates the choice between regular and organic products.

### 2. Uniformity of the standards

A practical and common example of the urgent need for multilateral recognition of organic standards ap-

peared on the pages of the *China Daily* in 2013. The report states that the Ocean University of China informed about an improved method to produce bio-fertilizers from algae to be used by organic producers of fruit trees and vegetables.<sup>71</sup> From the other side of the ocean, organic producers in the USA criticised Chinese authorities underlining that for NOP<sup>72</sup> the use of composted plants that may contain synthetic substances, like abnormal quantities of nitrogen derived from contamination from conventional fertilising practices, is banned.<sup>73</sup>

Mutual recognition of standards by bi- or multilateral agreements is at the base of easing the flow of commerce and reducing trade barriers. As indicated in the introduction, the EU and China have established a roadmap towards mutual recognition of organic products. Mutual recognition is an important factor in AMOPC as well which states<sup>74</sup> that the nation shall make efforts to reach an agreement on international cooperation. Similar agreements were already signed by the EU with the USA, Canada, Switzerland and Japan.

## 3. Conclusion

Organic agriculture is a market in a continuous, two-digit, annual expansion. Chinese efforts to make reliable and strict standards must be followed by a similar commitment to enforce them through inspection and transparency. Building trust in consumers, both domestic and foreign, is recognised as a primary necessity to increase the consumption and trade of organic products.

66 USDA, "Organics report", *supra* note 55.

67 Article 6 AMOPC.

68 Article 20 AMOPC.

69 Article 60 AMOPC.

70 EU-China trade Project, "Organic Agriculture in China. Current situation and challenges", *supra* note 27.

71 *China Daily USA*, "Qingdao's algae problem fades after intense cleanup", 10 July 2013, available on the internet at: <[www.usa.chinadaily.com.cn/epaper/2013-07/10/content\\_16756721.htm](http://www.usa.chinadaily.com.cn/epaper/2013-07/10/content_16756721.htm)> (last accessed on 1 May 2014).

72 US National Organic Program.

73 Breitbart, "Department of Agriculture overlooks Chinese organic food violations", 26 July 2013, available on the internet at: <[www.breitbart.com/Big-Government/2013/07/26/Be-extra-careful-when-buying-organic-food](http://www.breitbart.com/Big-Government/2013/07/26/Be-extra-careful-when-buying-organic-food)> (last accessed on 1 May 2014).

74 Article 6 AMOPC.