

ENCOURAGING FOOD SAFETY STANDARD NEGOTIATIONS IN THE ONE-BELT-ONE-ROAD INITIATIVE

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ABSTRACT

Participation and attendance in food safety negotiations such as Codex meetings are of critical importance. Common problems have existed throughout history in the area of food safety standards and their

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formulation regulations. First, there is a lack of interest by the public. Second, the public becomes interested only *after* a food safety crisis. Consequences are two-fold: with lack of public interest, governments often do not allocate enough budget and resources. Then, when the government turns to face the problem with a sudden spike in public interest, it is often too late. The situation becomes more of a crisis management, rather than a risk prevention mechanism. For this reason, participation and attendance in forums such as Codex meetings are of critical importance. Yet, despite their importance, countries have shown drastically different attendance and participation rates in history. This Article aims to take a distinctive view by leaping from Codex meetings into food safety negotiations within the Belt and Road Initiative. Doing so brings much value in reflecting upon lessons for comparative regionalism in the area of food safety law. While this Article proposes some technical considerations to encourage participation in the Belt and Road Initiative, it also does not accuse developing countries of the lack of interest in building a safe food environment for their own people. In fact, it aims to do just the opposite: raise questions on how much room we have left for the developing countries to contribute in negotiating possible food safety standards. In the long run, it is my hope that this will also contribute to the development of the comparative regionalism studies and institutions in law.

I. MOVING BEYOND FOOD SECURITY TO FOOD SAFETY IN CENTRAL ASIAN COUNTRIES

Since the term “food security” was first used in the World Food Conference back in 1974, it was understood and used in line with important policy considerations over time.¹ This meant that at different times and places, people understood the term in accordance with the specific needs of the population. For decades, meeting food security meant that there was “enough” food to feed a country.² Henry Kissinger’s idea that “no child should go to bed hungry” well encapsulated the commitment at that point in time.³ On the international level, whether the generous worldwide supply of food could satisfy the demand by

1 See FAO Agric. & Dev. Econ. Div., *Policy Brief: Food Security*, FOOD & AGRIC. ORG. (June 2006), <http://www.fao.org/forestry/13128-0e6f36f27e0091055bec28ebe830f46b3.pdf>.

2 See Per Pinstrup-Andersen, *Food Security: Definition and Measurement*, 1 FOOD SEC. 5, 5-7 (2009).

3 RICHARD W. MANSBACH & KIRSTEN L. TAYLOR, INTRODUCTION TO GLOBAL POLITICS 514 (2nd ed. 2012).

guaranteeing availability and price stability was a key factor for decades.⁴ Then, almost thirty years later at the World Food Summit in 1996, “food security” was viewed to exist, “when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”⁵ In essence, along with this definition, more countries placed importance not merely on the supply and demand aspects of food production, but the quality and safety of the food available to the nation’s population. Since then, whether people have safe and healthy food has become the predominant understanding of food security.

Today, more than two decades after 1996, China has taken an initiative with constructing the One-Belt-One-Road Initiative. In many ways, it runs parallel to the development of the term “food security” becoming responsive to societal needs. The One-Belt-One-Road Initiative (“OBOR”) is designed to increase industrial cooperation in various aspects and propel “unimpeded trade.”⁶ With this, Central Asian countries will no longer benefit from simply increased volume of trade, but rather improved and modified versions of the food safety regulations will allow the local population to have access to safer and healthier food. More specifically, this is attained when countries start to engage in trade and the importers and exporters are required to follow stricter local laws and regulations in the target market.⁷ In fact, China has made engagement in healthy, safe food trading within the Belt and Road initiative one of its top priorities.⁸ This has been proposed to work on numerous levels and various agencies in an attempt to unify food safety standards.⁹ Equally important, this priority is set to work with certain awareness in place: “mutual learning and mutual benefit.”¹⁰

This Article aims to make constructive proposals on the ways food safety standards are to be exported and imported among the Belt-and-Road countries: with a practical support for multilateral discussions in an

4 EYASU DESTA MENAMO, IMPACT OF HOUSEHOLD FOOD INSECURITY ON ADHERENCE TO ANTIRETROVIRAL THERAPY (ART) AMONG URBAN PLHIV 13 (2015).

5 World Food Summit, *Rome Declaration on World Food Security and the World Food Summit Plan of Action*, ¶ 1, U.N. Doc. FAO(063)/F688 (Nov. 13, 1996).

6 *Xi’s statements on the Belt and Road Initiative*, CHINA DAILY (Apr. 15, 2017), http://usa.chinadaily.com.cn/a/201704/15/WS59bb7a1ca310d4d9ab7e8849_1.html.

7 *See id.*

8 *Id.*

9 *Id.*

10 Press Release, China National Development and Reform Commission, Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road (March 25, 2015), http://en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html [hereinafter OBOR Initiative].

effort to centralize means of establishing food safety standards based on the prior lessons learned from Codex Alimentarius Commission (“Codex”) meetings. While the article purports that negotiation within the OBOR initiative will, in fact, be negotiating “reality,” much is at stake and it is imperative that all countries become involved in setting food safety standards together. This is because no country is free from the outcome of food safety negotiations when they are related to risk analysis and important scientific evidence. Additionally, trade can be heavily influenced by these negotiation outcomes.¹¹ For this reason, while it is difficult to ignore the importance of understanding the “law” at issue, it is impossible to reject context and the practical choices that governments make when it comes to food safety negotiations. Pure legalism, for this very reason, many times will fail as the sole explanation behind “reality.” A joint effort is especially critical for those Central Asian countries that are in a relatively unstable state following the dissolution of the Union of Soviet Socialist Republics. Major sets of ideas behind this Article were inspired by lessons learned from Codex meetings. Part II will begin by introducing some aspects of the agricultural trading in Central Asia. Part III will cover some issues related to developing countries’ lack of participation in Codex meetings, and I will provide some possible explanations for the phenomenon. I then propose some technical considerations for OBOR in Part IV.

Throughout this article, I argue that unlike Codex meetings in which food safety standard negotiations are often decentralized, OBOR countries should endorse a “centralization approach” in developing food safety standards. This Article proposes a novel analogy centralization approach for this new form of comparative regionalism.¹² In a larger picture, this implies that similar efforts can be institutionalized in other forms of regional food safety negotiations. This Article, however, will mainly focus on Central Asian countries.

II. AGRICULTURAL TRADING IN CENTRAL ASIA AND THE BELT-AND-ROAD INITIATIVE

Much scholarship has been conducted by lawyers, political scientists, economists and businesspeople alike when it comes to understanding the impacts of OBOR. It is important to review and

¹¹ Frode Veggeland & Svein Ole Borgen, *Negotiating International Food Standards: The World Trade Organization’s Impact on the Codex Alimentarius Commission*, 18 *GOVERNANCE* 675, 682 (2005).

¹² See generally Francis Snyder, *We Need a Global Food Safety Agency: Reflections on the Hidden Jurisprudence of the WTO*, 2 *PEKING U. TRANSNAT’L L. REV.* 162 (2014).

understand the status quo of agricultural trading in Central Asia and how OBOR will develop to affect the countries involved. While much is still unfolding and at a stage of anticipation, the Belt-and-Road outreach works in two ways: on land and at sea. A Eurasian Land Bridge is to be constructed and economic corridors built on international transport systems are to connect areas going from Mongolia, Russia, Central Asia, West Asia, and the Indochina Peninsula economic corridors.¹³ On waterfronts, major seaports are aimed to be connected for mutual economic progress.¹⁴ Such connection will embody ideas of stronger communication and cooperation from East to West, and the Silk Road Economic Belt aims to bring together China, Central Asia, Russia and Europe (the Baltic). The Persian Gulf and the Mediterranean Sea would be connected through Central Asia and West Asia.¹⁵

Among other areas covered by OBOR, Central Asia warrants special attention. This area became subject to fragmentation following the collapse of the Union Soviet Socialist Republics. Such fragmentation and political instability led to fractured food safety policies, as is often the case in other parts of the world. This phenomenon is neither new nor rare. With such fragmentation, policy considerations related to ensuring food safety naturally developed to differ among and within these countries and the rest of Asia. As discussed earlier, different understandings of the term “food security” based on policy considerations suggest that countries at varying degrees of socio-economic levels would have had different priorities in food production and consumption. When the challenge is more on being able to provide enough food and gain access, concerns for food hygiene and safety are seen more of secondary issues. This becomes not just a domestic challenge, but it poses a threat to the development of an “area-based knowledge,” as coined by Katzenstein. Having different levels of efforts put into food safety management often creates gaps in the law, and scholars and practitioners will find it more difficult to synthesize a common trait or “specialized knowledge” and hence will make it more complicated to engage in “broader disciplinary debates.”¹⁶ Long run, we end up with problems like we do at the Codex meetings.

¹³ OBOR Initiative, *supra* note 10.

¹⁴ *Id.*

¹⁵ Jean-Marc F. Blanchard & Colin Flint, *The Geopolitics of China's Maritime Silk Road Initiative*, 22 *GEOPOLITICS* 223, 230 (2017).

¹⁶ Alberta Sbragia, *Comparative Regionalism: What Might It Be?*, 46 *J. COMMON MKT. STUD.* 29, 31 (2008).

In Central Asia, where socio-economic instability raises concerns related to meeting food demand with the adequate supply,¹⁷ the problems of not having stringent food safety standards become a less pressing concern. Specifically, lack of infrastructure and human force to enforce strong food safety regulations and standards create the challenge.¹⁸ Fragmentation among agencies also is pointed out as an obstacle to creating a stronger set of food safety regulations.¹⁹ The consequences of all these are placed on the shoulders of the public in a form of “lack of nutritional value.”²⁰

Among many other parts of OBOR, this Article focuses on Afghanistan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan as model regions where the discrepancy in food safety standards creates more opportunities for China to export its food safety standards to the region. The socio-economic instability together with food self-sufficiency policies in Central Asia may be seen to have opened doors for China to export its food safety standards to the area.²¹ Hence, there is more room for food safety negotiations and more opportunities have been created for the participating countries. This produces a positive outcome both ways: Central Asian countries now have to conform to a higher standard of food safety in order to export to China, which also would benefit the local population. On the other hand, China can take advantage of imports coming from Central Asia, where certain commodities are well developed. These two goals are the fundamental principles and purposes of food trade.

One consideration to be made is that Central Asia has the exponential potential for growth in the agricultural sector.²² According to a study conducted in 2000, forty percent of Uzbekistan’s population was engaged in some form of agricultural work.²³ While the total agricultural market size and the location production amount fluctuate, the importance of the agricultural market in the country remains high. In Tajikistan, 42%

17 Suresh Babu & Valerie Rhoe, *Food Security, Regional Trade, and Food Safety in Central Asia – Case Studies from Kyrgyz Republic and Kazakhstan*, INT’L FOOD POL’Y RES. INST. 1 (2001), http://www.ifpri.org/pubs/confpapers/2001/babu_090501.pdf [<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.1.5013&rep=rep1&type=pdf>].

18 *Id.* at 1-6.

19 *Id.* at 6. While a similar problem existed in China, this comparative analysis is beyond the scope of this Article and will be separately addressed in another Article.

20 *Id.*

21 *Id.* at 3.

22 *Id.* at 4.

23 *Id.* at 4 (citing A. Tashmatov et al., *Food Policy Reforms for Sustainable Agricultural Development in Uzbekistan, the Kyrgyz Republic, and Tajikistan*, 26 FOOD POL’Y 719, 720 (2000)).

of its population was engaged in some form of agriculture work.²⁴ In 2016, the country's total agricultural market valued at approximately \$1.1 million U.S. dollars ("USD") and the local production was estimated to value around \$800,000.²⁵ Both of these numbers reflected a 10% increase from the previous year. In 2015, Tajikistan's market size and total local production were estimated to value \$999,800 and \$800,000, respectively. In particular, with a high percentage of the population being related to the agricultural production, a high ratio of its gross domestic product ("GDP") derived from agriculture as well.²⁶ Foreign currency earned from exporting agricultural products accounted up to 55% of the total foreign currency in the country. In the case of Kyrgyzstan, in 1999, 45% of its national GDP came from the agricultural sector.²⁷ According to a study done in 2000, approximately 25-30% of its national GDP in 2016 derived from the agricultural sector.²⁸ Furthermore, 55% of all its foreign currency was earned from its related export.²⁹ While not much public information is currently available on the inter-regional trade of agricultural goods, one research shows that only "main commodities" such as those like cotton from Uzbekistan makes it to the inter-regional trading platform.³⁰

The potential growth in both the agricultural market and trade show us the possibility and the importance of ensuring that the countries share a common understanding of food safety standards. Benefits of a uniform food safety standard in place that acts as a threshold to trade will be large and extensive. This article presumes that a uniform food safety standard serves as a fundamental step to a successful trade.

The Ministry of Commerce of China in March 2015 made it very clear what the intended purpose of the OBOR Initiative is:

We should expand mutual investment areas, deepen cooperation in agriculture, forestry, animal husbandry and fisheries, agricultural machinery manufacturing and farm produce processing, and promote cooperation in marine-product farming, deep-sea fishing, aquatic

24 *Id.* (citing Tashmatov, *supra* note 23, at 722).

25 Int'l Trade Admin., *Tajikistan – Food Processing and Packaging*, U.S. DEP'T OF COMMERCE (Apr. 17, 2016), <https://www.export.gov/article?id=Tajikistan-Food-Processing-and-Packaging>.

26 Babu & Rhoe, *supra* note 17, at 4.

27 *Id.*

28 *Id.*

29 *Id.* (citing Tashmatov, *supra* note 23, at 719).

30 *Id.* at 6.

product processing, seawater desalination, marine biopharmacy [sic], ocean engineering technology, environmental protection industries, marine tourism and other fields.³¹

This initiative was set to be “jointly built through consultation” with other participating countries and to create development strategies that benefit all participating countries.³² Justifications for joint efforts like these can be traced back to Panikkar, who wrote in 1948 that “the conditions of different regions in the world differ so much that the promotion of higher standards of living, for example, has a different meaning in relation to the people” of other areas.³³ As a concern then is the question of whether programs designed for specific purposes will carry the intended purpose and meaning in other parts of the world.

On numerous occasions, China made it clear that this OBOR Initiative would be established based on mutually shared understandings, and implied that it would be unlikely to be a one-way street. Such an approach would indeed produce valuable assets when it comes to international trade. In June 2017, at the Eighth Belt and Road Eco-Agriculture and Food Safety Forum that took place in Beijing, mutually shared understanding of food safety standards and the necessary improvement in the standards were placed as a priority.³⁴ Further, in order to upkeep and maintain food safety, the adoption of unified safety standards through exchange and enhanced communication was discussed as a critical success factor.³⁵ At this point in time, however, not much public information is available on the practical and precise steps that the countries would engage in. China Friendship Foundation for Peace and Development was established with the intention to develop and realize OBOR goals and to foster agricultural and industrial exchanges.³⁶ Despite many problems to solve and questions to answer, calls for mutual learning and benefit clearly indicate the potential for centralized structural properties that will be discussed later in this Article.

Understanding OBOR within a theoretical context makes this discussion even more interesting. Given that OBOR might even now

³¹ OBOR Initiative, *supra* note 10.

³² *See id.*

³³ K. M. PANIKKAR, REGIONALISM AND SECURITY 5–6 (1948).

³⁴ Wang Xiaodong, *Chinese Officials Promote Food Safety*, CHINA DAILY (Jun. 29, 2017, 8:22 PM), http://www.chinadaily.com.cn/china/2017-06/29/content_29938034.htm.

³⁵ *Id.*

³⁶ Guo Xiaohong, *Maritime Silk Road Conference Held in SE China*, CHINA INTERNET INFO. CTR. (Sept. 7, 2016), http://www.china.org.cn/china/2016-09/07/content_39253552.htm.

escalate to being an institution with “principles, norms, rules, and decision-making procedure,” it would be an interesting test to see whether actors’ expectations over time do indeed converge and become a subpart of the greater interest for all.³⁷ This view almost equates these institutions to regimes,³⁸ while others would prefer to use another very different terminology “comparative regionalism” to describe OBOR. On the quest to find practical structural properties, this Article aims to leap further into providing a preview of how negotiation functions within this theoretical context of institutions³⁹ with decision-making procedures matter in place.

III. LACK OF CONTRIBUTION IN THE NEGOTIATIONS OF THE FOOD SAFETY STANDARD SETTING

Modeling OBOR food safety standard negotiations on Codex meetings would first require a careful review of the latter. The Codex Alimentarius, which is the body of standards and guidelines produced by the Codex Alimentarius Commission, has become the “global reference point” for all stakeholders.⁴⁰ When the Food and Agriculture Organization of the United Nations (“FAO”) and World Health Organization (“WHO”) set up the Codex Alimentarius Commission, the expectation was that Codex standards would effectively serve as the “single most important international reference point for development associated with food standards”⁴¹ as supported in the Agreement on the Application of Sanitary and Phytosanitary Measures (“SPS Agreement”).⁴² The standards would serve as guidance and reference to all stakeholders in the food chain: from “consumers, food producers and processors, [and] national food control agencies.”⁴³ Its influence was to

³⁷ Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, 36 INT’L ORG. 185, 185 (1982).

³⁸ Veggeland & Borgen, *supra* note 11, at 676-77.

³⁹ See *id.*; see also Krasner, *supra* note 37, at 185 (“International regimes are defined as principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area.”).

⁴⁰ *Codex Alimentarius Commission (CODEX)*, INT’L EGG COMM’N, <https://www.internationalegg.com/representing-the-industry/relationships-with-global-organisations/codex> (last visited Aug. 28, 2018).

⁴¹ FOOD & AGRIC. ORG., UNDERSTANDING THE CODEX ALIMENTARIUS 7 (4th ed. 2016), <http://www.fao.org/3/a-i5667e.pdf>.

⁴² Agreement on the Application of Sanitary and Phytosanitary Measures art. 3, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 493 [hereinafter SPS Agreement].

⁴³ FOOD & AGRIC. ORG., UNDERSTANDING THE CODEX ALIMENTARIUS, at i (3rd ed. 2006).

reach the entire international food trade system.⁴⁴ For this reason, since its establishment in 1963, meetings at Codex have been the place where states convened to discuss and agree on food safety standards and guidelines.⁴⁵ Today, the SPS Agreement recognizes Codex Alimentarius Commission as the official health-related standards formulation organization, along with International Office of Epizootics and International Plant Protection Convention.⁴⁶ Additionally, as an institution, Codex manages the Joint Food Standards Program of the FAO and the WHO.⁴⁷

Codex is jointly sponsored by the WHO and the FAO.⁴⁸ While the standards agreed upon by the member states at the meeting do not immediately become binding on the states, it serves to become a very strong ground for national regulation.⁴⁹ As briefly described above, the SPS Agreement in effect requires that Member States takes a careful look into the Codex standards in cases of SPS-related trade disputes.⁵⁰ In this aspect, the institution has a great outreach into not only food safety but also quality, hygienic and technological practices.⁵¹ It even entered the realm of private standards when the Hazard Analysis and Critical Control Point was developed by Codex, and in turn, this was then incorporated by ISO 22000.⁵²

The purpose of the Codex meeting is to contribute to trade development in the long run in this situation.⁵³ With Codex Alimentarius,

⁴⁴ *See id.*

⁴⁵ FOOD & AGRIC. ORG., *supra* note 41, at 5.

⁴⁶ *See* SPS Agreement, *supra* note 42, art. 3 (“Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.”).

⁴⁷ Veggeland & Borgen, *supra* note 11, at 675.

⁴⁸ *What is Codex and Who Runs It?*, FOOD & AGRIC. ORG.: CODEX ALIMENTARIUS, <http://www.fao.org/fao-who-codexalimentarius/about-codex/faq/faq-detail/en/c/454460> (last visited Nov. 29, 2018).

⁴⁹ *Are Codex Standards Mandatory?*, FOOD & AGRIC. ORG.: CODEX ALIMENTARIUS, <http://www.fao.org/fao-who-codexalimentarius/about-codex/faq/faq-detail/en/c/454753> (last visited Nov. 29, 2018).

⁵⁰ F. Edward Scarbrough, *Codex—What’s all the Fuss?*, 65 FOOD & DRUG L.J. 631 (2010).

⁵¹ INT’L TRADE CTR., INFORMATION RETRIEVAL ON SANITARY AND PHYTOSANITARY MEASURES (SPS) 5 (2008), http://www.intracen.org/uploadedFiles/intracenorg/Content/Exporters/Exporting_Better/Quality_Management/Redesign/EQB81_SPS_eng_October%202007_5_final.pdf.

⁵² *See id.* at 11.

⁵³ Veggeland & Borgen, *supra* note 11, at 676.

participants aimed to coordinate all food standards across borders both in the private and the public sector.⁵⁴ Participants could actively attend meetings and contribute by making inputs to the discussions. As of July 2016, following the 39th Session of the Codex Alimentarius Commission, there were seventy-six guidelines and one hundred and ninety-one commodity standards discussed and agreed upon at Codex meetings.⁵⁵ Four decades ago, approximately two hundred and fifty representatives from sixty countries attended a typical Codex Alimentarius Commission session.⁵⁶ This number has risen drastically, and today there are more than five hundred delegates from one hundred and twenty countries that typically attend a session.⁵⁷ This considerable increase in the numbers reflects the market size of global food exports, which now exceeds one trillion dollars.⁵⁸

It is also important to trace the significance of participating in Codex activities in international agreements. Article 3 of the SPS Agreement calls for Members' participation in the meetings. It states:

Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular, the Codex Alimentarius Commission, . . . to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.⁵⁹

As the language suggests, the Codex Alimentarius is aimed to foster important and practical discussions.⁶⁰ The Codex Alimentarius Commission Procedural Manual goes a step further and encourages "adoption or amendment of standards by consensus."⁶¹ At these meetings, a project document presented by a Member is reviewed by the entire Commission. The Commission determines whether a proposed

⁵⁴ FOOD & AGRIC. ORG. & WORLD TRADE ORG., TRADE AND FOOD STANDARDS 3–5 (2017), https://www.wto.org/english/res_e/booksp_e/tradefoodfao17_e.pdf.

⁵⁵ *Id.* at 6.

⁵⁶ *See id.* at 30.

⁵⁷ *See id.*

⁵⁸ *Id.*

⁵⁹ SPS Agreement, *supra* note 42, art. 3.

⁶⁰ *See id.*

⁶¹ CODEX ALIMENTARIUS COMM'N, PROCEDURAL MANUAL 18 (26th ed. 2018), <http://www.fao.org/3/i8608en/I8608EN.pdf> [hereinafter CODEX ALIMENTARIUS COMM'N PROCEDURAL MANUAL].

standard in the project document is to be selected for further development into a formal standard.⁶² Once this is given a positive sign to move forward, the Codex Secretariat prepares the proposal and distributes it to both member governments and observer organizations.⁶³ The proposal is subject to two rounds of comments.⁶⁴ When the standards involve a discussion of a special issue such as “labelling, hygiene, additives, contaminants or methods of analysis” the proposal is also sent to the relevant Codex committees.⁶⁵ After all these stages are followed, the proposed standard receives recognition and title as a “Codex standard.”⁶⁶

Over the years, participants have included private actors, academics, and non-governmental organizations to other stakeholder groups. They attend meetings at particular sessions of interest and subject. These sessions become the contextual boundary for all participants to discuss and share Codex texts, both existing and new ones.⁶⁷ At this stage, as abovementioned, guidelines put forth by Codex serve as non-binding guidelines only and it is still left up to national governments to determine its binding effect on the country domestically.⁶⁸ Some argue that Codex standards may be seen as a trade barrier,⁶⁹ but attending the meetings nevertheless remains critical. The Preamble of the SPS Agreement well encapsulates this philosophy behind the Codex meetings.⁷⁰

However, countries across Asia have contributed to food safety standard negotiations at varying degrees, and participation in the discussions per se have become a study topic for many practitioners and scholars alike. Many times, Central Asian countries' participation rate has been extremely modest. As a result, Codex meetings have often been criticized as a political tug-of-war ground.⁷¹

A. Textual Reading of the Law

Reading the SPS Agreement allows us to understand the lack of participation from a legal context. It can be said that participation

⁶² See FOOD & AGRIC. ORG., *supra* note 41, at 17.

⁶³ See *id.*

⁶⁴ See *id.*

⁶⁵ *Id.*

⁶⁶ FOOD & AGRIC. ORG. & WORLD TRADE ORG., *supra* note 54, at 9.

⁶⁷ *Id.* at 8.

⁶⁸ See *supra* note 49 and accompanying text.

⁶⁹ Lucinda Sikes, *FDA's Consideration of Codex Alimentarius Standards in Light of International Trade Agreements*, 53 FOOD & DRUG L. J. 327, 327 (1998).

⁷⁰ SPS Agreement, *supra* note 42, pmbl.

⁷¹ See Lewis Rosman, *Public Participation in International Pesticide Regulation: When the Codex Commission Decides, Who Will Listen?*, 12 VA. ENVTL. L. J. 329, 333 (1994).

problems were not entirely unforeseen as the SPS Agreement provides leeway for developing countries in their participation in the Codex meetings. Article 3 allows Members to determine the limits of their resources when it comes to playing their “full part” at Codex.⁷²

It *de facto* also allows special and differential treatment for developing countries in all the preparation, discussion and application of food safety standards.⁷³ Whether such a mechanism would survive within the OBOR context is questionable, when even the European Union (“EU”) has often been attacked and criticized as lacking institutional power to enforce its rules when it comes to food safety.⁷⁴ Institutionalizing different levels of participation *tout court* would in effect permit members to exercise discretion, and it has. This also suggests that uniformity in the degree of participation is unattainable and maybe even less preferred in some cases. In addition, without the necessary monitoring mechanism that is in place for other organizations such as the World Trade Organization, the above language of the SPS Agreement eventually raises concerns regarding whether there have been sufficient contributions made by the developing countries that constantly face resource and budget problems.

A study done by the National Bureau of Agricultural Commodity and Food Standards, Ministry of Agriculture and Cooperatives in Thailand, showed us very interesting numbers: when the WTO had four Codex Committees (Codex Committee on Pesticide Residues, Codex Committee on Residues of Veterinary Drugs in Foods, Codex Committee on Food Additives and Contaminants, and Codex Committee on Food Hygiene), the participation rate of member countries in “at least one meeting of the above Codex Committee” was only 39.4%.⁷⁵ More importantly, the participation rate also differed between developed countries and developing countries, with the former’s rate being higher at fifty-five compared to forty-five of the developing countries.⁷⁶ The ratio between these two groups was strikingly imbalanced when it came to participation in drafting groups/working groups that would prepare

⁷² SPS Agreement, *supra* note 42, art. 3(4).

⁷³ *Id.* art. 10.

⁷⁴ Emilie H. Leibovitch, *Food Safety Regulation in the European Union: Toward an Unavoidable Centralization of Regulatory Powers*, 43 TEX. INT’L L. J. 429, 440 (2008).

⁷⁵ *Regional Coordination in Strengthening Countries’ Participation and Implementation of International Food Safety Standards*, FOOD & AGRIC. ORG. & WORLD TRADE ORG. 2 (May 2004), <http://www.fao.org/tempref/docrep/fao/meeting/006/ad702e.pdf> [hereinafter *Strengthening Countries’ Participation*].

⁷⁶ *Id.*

working documents in the Codex Committees.⁷⁷ Developed countries were four times more likely to attend these working group meetings.⁷⁸ In particular, this problematic tendency came under the spotlight when in 2003, the ratio of data submission for putting together pesticide residue standards in the year 2003 was nine to one.⁷⁹

Many have tried to study the reasons behind the lack of participation. A plausible explanation is the lack of resources available for the developing countries in attending and participating in the discussions.⁸⁰ Another fundamental reason could simply be the absence of focus placed on the importance of food safety standard negotiations. In effect, at the Codex meetings, there was a split among the countries according to their development level when it came to participating in food standard setting and negotiating tables. While the spirit and the philosophy of special and differential treatment may have a certain value, we have ultimately left the developing countries in the shadows as further explained below. It is important to conduct a failure analysis to prevent a localized replicate within the OBOR Initiative. In fact, this Article argues that a tailored planning is necessary. A much-needed careful analysis of the four main possible reasons behind such a low participation rate is as follows.

1. Reason 1: Lack of National Coordination

This Article does not aim to accuse developing countries' lack of interest in building a safe food environment for their own people. In fact, its goal is just the opposite: raise questions on how much room we have left for the developing countries to contribute. An assessment carried out under the auspices of the WHO outlined the absence of national coordination as a key factor leading to a drop-in participation in the Codex meetings. While the lack of national coordination was seen as a cause behind lack of participation, the rate of respondents who pinpointed to this reason was particularly high for Asian countries. Seventy-five percent of the respondents from Asia named lack of national coordination as the "principal challenge faced by the region."⁸¹ While it is noted that there is not much information or data available on what these particular challenges are, it would be reasonable to assume that this can be interpreted as political pressure or structural disagreements within the

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ CODEX TRUST FUND, COUNTRY REPORTS ASSESSMENT 24 (2009), http://www.who.int/foodsafety/codex/KD-ParticipantReportsAssessment_August07-Dec08.pdf.

country on the degree of participation. It may also be an indicator of lack of food safety policy directions.⁸² It is undoubtedly true that the Codex Secretariat would have limited control over internal factors. Every nation has its own agency that determines who would participate in the meetings; the political structures may differ; policy responses may differ especially depending on public's interest; and lastly, there may also be certain burdens of bureaucracy involved. However, certainly, there is room for improvement and interference from Codex. The direct and first evidence is that Codex did not study further what these national coordination problems, however intriguing it is, were when it first learned of the problem categorized as so.

When the reality is that countries lack information on how others are implementing Codex agreements, "much more has to be done than simply maintaining the status quo."⁸³ Simply relying on diffused disorders and decentralized information sharing will not alleviate the problem. Calls for centralization and harmonization when it comes to the food safety regime have been made on numerous occasions.⁸⁴ This Article argues that Codex will need to first implement a strong investigation into identifying the precise causes of non-participation using different channels, including surveys with strong modes.

2. Reason 2: Lack of Resources

Another frequently cited reason for lack of participation is the financial restraints developing countries face. A low level of the state budget is in and itself a problem for politically young and unstable countries, and it is not difficult to understand the burden this may pose for the food safety regime domestically. On the other hand, a budget problem is a rather special one—where a straightforward key exists. Willingness or the intent to skip participation is often seen as much less relevant to the reason behind the actual missing out. Where there no or relatively low budget allocated for conference participation, it would naturally make it more challenging to become more actively involved in discussions even if a representative willing to attend. While solving this problem is often difficult it is never an impossible one, it would still require a clear understanding of the required expenses and a

⁸² *Id.*

⁸³ See Marsha Echols, Remarks, 102 AM. SOC'Y INT'L L. PROC. 266, 266-67 (2008).

⁸⁴ See Leibovitch, *supra* note 74, at 435 (citing *Federal Food Safety and Security System: Fundamental Restructuring Is Needed to Address Fragmentation and Overlap: Hearing Before the Subcomm. on Civil Serv. and Agency Org.*, 108th Cong. 1-2 (2004) (statement of Lawrence Dyckman, Director, Natural Resources and Environment, Gen. Accounting Office)).

comprehensive budget planning in advance. Attending meetings would require international traveling, accommodation and other minimum allocation of stipend. Acquiring the necessary funding sources would most likely be the solution. Given that the lack of resources was the second most frequently cited challenge to attending meetings, after lack of national coordination, it would be important to understand where countries stand in regard to the problem.⁸⁵ This problem, at the same time, is a much-anticipated one as even the United States is not free from this concern.⁸⁶

For Codex meeting attendance, the FAO/WHO Trust Fund for Participation of Developing Countries (the "Trust Fund") was established during the 26th Session of the Codex Alimentarius Commission in 2004.⁸⁷ The Trust Fund was primarily designed to encourage increased attendance and participation⁸⁸ of developing countries in Codex meetings. This Article presumes that while participation and attendance can vary in meaning, these two are often concurrent.

For this particular trust, there were calls for increasing funding, promoting transparency, and ensuring efficiency. For all three purposes, greater private sector involvement may be a source of assistance. In terms of increasing availability of funding to attend Codex meetings, member states requested that the periods of granting funds be extended. For transparency purposes, the Trust Fund was requested to disclose more information regarding the application procedure and the decisions being made.⁸⁹ At the same time, the percentage of those asking the Trust Fund to "review its criteria for funding participants" was 19%.⁹⁰

Diving into the problem of resources is better understood when utilizing the agency theories. In the literature of agencies, it is often understood that an agency with a centralized decision-making system in effect gives less power to a single manager and reduces the probability of producing information meant for him or herself.⁹¹ This is an important point to cover because of its implication on the Trust Fund. Centralizing

⁸⁵ CODEX TRUST FUND, *supra* note 81, at 17.

⁸⁶ Scarbrough, *supra* note 50, at 633-36.

⁸⁷ FAO/WHO Codex Trust Fund, FOOD & AGRIC. ORG.: CODEX ALIMENTARIUS, <http://www.fao.org/fao-who-codexalimentarius/about-codex/faowho-codex-trust-fund/en> (last visited Aug. 27, 2018).

⁸⁸ *Id.*

⁸⁹ Marcin Kacperczyk & Amit Seru, Does Firm Organization Matter? Evidence from Centralized and Decentralized Mutual Funds, 1-2 U. NOTRE DAME FALL FIN. SEMINAR SERIES (Sep. 28, 2012), <https://www3.nd.edu/~finance/020601/news/2012FallFinanceSeminarSeries-MarcinKacperczykArticle.pdf>.

⁹⁰ CODEX TRUST FUND, *supra* note 81, at 19.

⁹¹ Kacperczyk & Seru, *supra* note 89, at 1-2.

financial resources and the decision-making power may alleviate the problem and will further become a source of study even outside the context of comparative regionalism such as OBOR.⁹² The downside of a decentralized decision-making organization is the lack of coordination in decisions across the agents in the firm.⁹³ Nevertheless, with other problems that exist that affect or lack to incentivize attendance, some suggest that even when we employ this agency view, the Trust Fund has not and will not be able to attain its initial goal for which it was designed and created for.⁹⁴

For such pooling of resources or financial centralization or harmonization, it is important to acknowledge that this funding-related question is not a one-dimensional one. It requires understanding that this is a comparative question of whether countries, especially developing countries, are “receiving commensurate value.”⁹⁵ As long as the participating countries deem that the budget invested in participation in different committee sessions is worthy, it would become a much simpler task to encourage future participation.⁹⁶ This can be attained when countries commit to not only attendance but also full participation.

3. Reason 3: No Horizontal Uniformity In Participation

First, irregular individual participation in Codex meetings proved to result in countries missing out attendance. From 2004 to 2008, 79% of the participants had no record of attending the same meeting previously.⁹⁷ This lack of experience in attending the same meeting also meant that they were less likely to actively participate in the meeting when they did attend.⁹⁸ The percentage of participants who were self-proclaimed first-time attendees was 83% for the above period.⁹⁹ For 51% of the national reports submitted during these meetings, there was no previous record of the same country participating in the same meeting.¹⁰⁰ Fifty-seven percent of them were different representatives sent to the Codex meetings during this period, which can be problematic.¹⁰¹

⁹² *Strengthening Countries' Participation*, *supra* note 75, at 5.

⁹³ Kacperczyk & Seru, *supra* note 89, at 2.

⁹⁴ *Strengthening Countries' Participation*, *supra* note 75, at 2.

⁹⁵ Scarbrough, *supra* note 50, at 633.

⁹⁶ *See id.* at 633-36.

⁹⁷ CODEX TRUST FUND, *supra* note 81, at 9.

⁹⁸ *See id.* at 12.

⁹⁹ *See id.* at 13.

¹⁰⁰ *See id.* at 9.

¹⁰¹ *See id.*

Having repeat participants is important as it is known to influence both individual behavior and conduct. Repeat participants took greater efforts in taking active participation by preparing relevant documents and materials beforehand. The percentage of repeat participants who gathered such materials for meeting preparation was 40%, which is comparable to 32% of first-time attendees.¹⁰² The rate of repeat participants who undertook “technical consultation with partners” was 32% while for first-time attendees the number was as low as 18%.¹⁰³ The rate of repeat participants who prepared national positions was 56% while for first-time attendees the number was as low as 48%.¹⁰⁴ Empirical study sheds light to a problem: there is no concrete and systematized network of personnel or former participants in place. There is a vacuum of a central control of invitees at the same time.

A centralized approach may be considered by the Codex Secretariat in which it tries to bring together the different and separate individual participants. It could also maintain a central roster of individuals who participated and marked them as a contact point in the future. Doing so would encourage certain individuals to continue participating in the meetings. Likewise, it could devise ways to introduce and continue a training program for those who participated in the previous session.

4. Lingering Concerns and Consequences of Missing Out of the Meetings

Another reason behind the lack of participation by developing countries is the increasing number of working groups and therefore, meetings to attend.¹⁰⁵ Meetings also take place in various parts of the world at different times. While in 1963, the Codex Alimentarius Commission held three meetings (with two in June and the other in July in Italy), the number of meetings rose the following year to fourteen (all in Italy and Washington D.C.). From February 2011 to February 2015, there were seventy FAO meetings and there is no record of Central Asian country attendance during this period. In one instance, at the Codex Committee on Food Additives that took place in March 2010 in Beijing, data regarding the control of dairy products in Afghanistan for *Escherichia coli* was discussed while Afghanistan did not attend the

¹⁰² *Id.* at 12.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 12.

¹⁰⁵ *Trade and Food Standards*, FOOD & AGRIC. ORG. 34 (2017), <http://www.fao.org/3/a-i7407e.pdf>.

meeting. In 2017 alone, there were twenty meetings in total, in Geneva, Rome, Mexico City, Beijing, Nairobi to name a few.¹⁰⁶

This has created a situation in which scholars have argued that the process has lost democracy and open participation.¹⁰⁷ This has become a ground for criticism that “[s]ecrecy pervades the entire system” of international trade.¹⁰⁸ Trade officials operate behind closed doors with no public record of their activities when they negotiate or implement trade agreements or when they resolve disputes arising under them.¹⁰⁹ As a result, there are no mechanisms for the public to monitor the development or implementation of international trade policy.¹¹⁰

There may be various ways to address this. One option is for the Secretariat to consider a seamless and cost-efficient way of maintaining contact over the internet. For instance, online video-conferencing that would ensure that personnel from developing countries would also participate might be an effective idea. Making real-time discussions available to government officials, as well as private food corporations and nonprofit organizations might be a possible option. Various channels and forms of communication can also be considered as the attendees for the Codex meetings drastically vary. Up to 80% of the nongovernmental attendees participated in the capacity of representing the industry. As a drastic comparison, only 1% of the attendees were representing public international organizations.¹¹¹

Although Codex obviously manages matters of noteworthy importance that affects the wide public, it has, by and large, worked without disclosing much of its decision-making process. Codex meetings are generally taken to be less receptive to public participation for this specific reason. Drafts of standards are not disclosed online or circulated offline until well into the procedure when the public does not much have the opportunity to participate. One possible way for individuals to learn of discussions and progresses being made at the Codex would be to request a legislative member to introduce their situations to the Codex. Some purchaser and nation-wide public associations have gone to Codex gatherings and have tried to make Codex more open and participatory.

¹⁰⁶ *Meeting Archives*, CODEX ALIMENTARIUS INTERNATIONAL FOOD STANDARDS, <http://www.fao.org/fao-who-codexalimentarius/meetings/archives/en/?y=2017&mf=07> (last visited Aug. 27, 2018).

¹⁰⁷ See Patti Goldman, *The Democratization of the Development of United States Trade Policy*, 27 CORNELL INT'L L. J. 631 (1994).

¹⁰⁸ *Id.* at 633.

¹⁰⁹ *Id.* at 650.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 644-45.

Nevertheless, Codex has not made much progress in changing procedures to ensure and encourage significant and meaningful public participation.¹¹²

The WTO made a note of five practical benefits of attending Codex meetings that would broadly overlap with discussions to be made among OBOR countries: “broad exposure, access to information, scientific evidence, knowledge, understanding codex procedures, procedures, methods, networking, and access to a leadership role.”¹¹³ The importance of participation in the Codex meetings is well explained in the WTO report which includes critical values such as the opportunity to represent a national position, ability to comment and contribute to other countries’ perspectives, intervention on scientific data compilation, time allowed to raise concerns and participation in both formal and informal meetings and working/drafting sessions.¹¹⁴ WTO additionally states that the most frequent and therefore the most “active” form of participation is countries representing their national position during the meeting.¹¹⁵ This accounts for up to 80% of all the participation forms available within the Codex meetings.¹¹⁶ With this, lack of participation of the developing countries in the Codex meetings suggests that they are deprived of the opportunity to clarify and represent their national perspective when it comes to discussing and setting standards.¹¹⁷ In fact, for those that do participate in the meetings, their lack of resources makes them represent their national views, and comments on reviewing and setting standards are required to be based on evidence, on which they often lack a comprehensive review.¹¹⁸ This comes at a cost to both developed and developing countries in the long term.

The standards published in the Codex Alimentarius represent the shared understanding of the food safety standards. Its role in providing not only explanation of food safety requirements but also ensuring that there is a shared understanding of the definition is critical.¹¹⁹ This has a direct relationship to what is acceptable and safe for consumption and trade. The information is in itself of considerably important for countries to consider in designing national regulations and laws. One success story in the area was in Afghanistan where it was found that the food’s safety

112 *Id.*

113 CODEX TRUST FUND, *supra* note 81.

114 *Id.*

115 *Id.*

116 *Id.*

117 *Id.*

118 *Id.*

119 *See* Veggeland & Borgen, *supra* note 11, at 675, 676.

system had improved substantially when the Codex representatives were able to pass on and advise the national ministries of the trade and certification standards agreed at the Codex level.¹²⁰

Another valuable contribution made by Codex meetings was its influence on planning future action plans and making recommendations.¹²¹ This benefit accounted up to 46% of all the respondents.¹²² While this did not mean any immediate changes in the national law or the implementation of the law, this can certainly be viewed as a head start. For example, Gambia noted that its participation gave guidance to the National Codex Committee regarding its responsibilities and duties.¹²³ Insufficient negotiations on standards can certainly result in public concern and fear of inequality¹²⁴ and certainly more tangible losses in trade. Concurrently, decentralized Codex negotiation policies will result in governments exercising discretion to use their domestic policies and regulations much to its own domestic benefit.¹²⁵ In turn, countries also enter into competition by using food safety standards as a tool to gain a comparative advantage.¹²⁶

One of the most recent reflections can be made on the temporary cheese import ban that China had imposed in 2017. Although this was an import ban on products from Europe, this serves as a very good example of the negative consequences of lack of negotiation of standards. In September 2017, the General Administration of Quality Supervision, Inspection and Quarantine banned Roquefort, Danish Blue, Gorgonzola, and Stilton cheese for containing unapproved bacteria.¹²⁷ The list issued by the Ministry of Health specified the allowed cultures used in food for consumption.¹²⁸ A month later, this ban on was lifted, and EU officials

120 See CODEX TRUST FUND, *supra* note 81.

121 See *id.* at 16.

122 See *id.*

123 See *id.*

124 Roman Kozhevnikov Bustonkala, *Tajik Land Deal Extends China's Reach in Central Asia*, REUTERS (March 25, 2011, 5:50 AM), <https://www.reuters.com/article/us-tajikistan-china-land/tajik-land-deal-extends-chinas-reach-in-central-asia-idUSTRE72O1RP20110325>.

125 Emilie H. Leibovitch, *Food Safety Regulation in the European Union: Toward an Unavoidable Centralization of Regulatory Powers*, 43 TEX. INT'L L. J. 429, 434 (2008) (citing Council Regulation 178/2002, Laying Down the General Principles and Requirements of Food Law, Establishing the European Food Safety Authority and Laying Down Procedures in Matters of Food Safety, art. 1, 2002 O.J. (L 31) 1, 6.

126 *Id.*

127 Alanna Petroff, *China Lifts Ban on Stinky Cheese Imports*, CNN MONEY (Oct. 23, 2017, 11:36 AM), <http://money.cnn.com/2017/10/23/news/china-cheese-ban-import/index.html>.

128 *Weishengbu Yinfa Guanyu Ke Yongyu Shipinde Junzhong Mingdan de Tongzhi* (卫生部印发关于《可用于食品的菌种名单》的通知) [*Notice of the Ministry of Health on the issuance of*

and their Chinese counterparts agreed to hold meetings to discuss standards in the future.¹²⁹

V. CENTRALIZATION FOR FOOD SAFETY STANDARDS DISCUSSIONS AMONG OBOR COUNTRIES

The long-term goal of encouraging participation through centralization efforts would imply that OBOR countries could form a central protection mechanism for the public. Ideally, in the long run, OBOR countries could build a risk alert system like that of the EU's Rapid Alert System.¹³⁰ Keeping the long-term goal of creating a crisis management system in place, the first step to take would be to ensure that discussions and negotiations are held enamored with local government support. The need for such local government support can be borrowed in light of how the Codex rose to public attention after 1995, the year the WTO was founded and when both the SPS Agreement and the Technical Barriers to Trade Agreement came into force.¹³¹

As a managerial principle, one of the pressing tasks is to identify areas that require additional effort based on the lessons learned from previous similar experiences. The Codex meetings may have been a different experience for each and every country, and such experiences may have been a positive or a negative one. Regardless of the outcome, countries should reflect on both ends of the experience spectrum and improve areas that need revisiting. Doing so would allow countries to track improvements, which would be an essential step to design similar negotiation models for further food safety standard discussions. This practice, in the long run, will assist in building a model or a design that is ideal for all participating countries. More specifically, such construction of the design will allow countries to comprehend the strengths and the weaknesses of different models. Only by doing so will the public and other stakeholders fully accept the process, and thus be able to appreciate the value as well.

As a general guideline, it would be important for countries to understand the complex standing of Codex standards.¹³² Codex standards

the "List of Cultures for Foods"], CENTRAL PEOPLE'S GOV. OF CHINA (April 22, 2010), http://www.gov.cn/gzdt/2010-04/28/content_1594897.htm.

¹²⁹ *China Lifts Ban on Stinky Cheese*, BBC (Oct. 23, 2017), <http://www.bbc.com/news/business-41717848>.

¹³⁰ *Rapid Alert System for Food and Feed Timeline*, EURO. COMM'N, https://ec.europa.eu/food/sites/food/files/safety/docs/rasff_timeline.pdf (last visited Feb. 13, 2019).

¹³¹ Veggeland & Borgen, *supra* note 11, at 675-76.

¹³² *Id.* at 689-90.

have not been recognized as part of international law and are only considered a reference point, although the WTO Agreements are binding for all member states. These members are therefore required to comply with the SPS Agreement, which includes references to the Codex standards.¹³³ It is imperative that OBOR countries recognize OBOR as more than mere comparative regionalism, but an institution with standard procedures and rules to follow. When the institution becomes recognized and acknowledged as more than a “gentlemen’s club,” there will be avenues to minimize confusion and challenges.

Removal of trade obstacles has been identified as one of the five pillars of the Belt-and-Road Initiative under the Action Plan.¹³⁴ For this to be carried out, China and other OBOR participating countries should come to an agreement on various aspects including: inspection, quarantine, certification, accreditation, and standard measurement.¹³⁵

A. Efficient Administrative Procedures

Placing Codex meetings as a predecessor in evaluating potential problems for OBOR food-safety discussions brings multiple benefits. It serves as an important reminder of the role and purpose of food-safety-standards discussions. Such discussions are much beyond mere political harmony, but rather an opportunity to contribute to both regional trade and public food safety. At the same time, Codex meetings bring out the important lesson that it is not political unity that the participating countries should aim for, but rather a systematic central planning of administrative burdens of drafting food-safety standards. In a way, mistakes Codex meetings made have become a tuition fee for OBOR countries. Keeping these two points in mind, it would make more sense to briefly outline possible procedures.

Approximately 38% of the participants claimed that the Codex meeting participation could have improved with efficient procedures.¹³⁶ This procedure referred to an array of administrative operations conducted by the Codex Secretariat, such as sending out critical travel information and meeting documents in a timely manner.¹³⁷ Once this is done in a way in which allows countries to prepare for the meetings well in advance, the countries will be better informed of the upcoming agenda

¹³³ *Id.* at 690.

¹³⁴ See *Action Plan on the Belt and Road Initiative*, STATE COUNCIL OF CHINA (Mar. 30, 2015 7:31 PM), http://english.gov.cn/archive/publications/2015/03/30/content_281475080249035.htm.

¹³⁵ See *id.*

¹³⁶ CODEX TRUST FUND, *supra* note 81, at 18-19.

¹³⁷ See *id.* at 19.

and will be incentivized to engage in this stress-free arrangement.¹³⁸ Some pinpointed that having documents in their national language would also improve participation as it could assist in preparing their national positions in advance.¹³⁹ Food safety is a specialized area of the law that would benefit greatly with policy integration.¹⁴⁰ Keeping this in mind, there are certain administrative forms OBOR countries could try to take with the leading help from China. China could arrange a contact point to get in touch with contact offices in Central Asian countries and deliver travel information and necessary meeting documents.

B. National Coordination

As the WHO noted, one way to ensure that countries reap the most benefits by attending the meetings to allow the countries to present their national position to the fullest.¹⁴¹ This is attainable when different government departments can coordinate and put together food safety experts. Trade representatives and consumer groups should also have their voices heard during the process of gathering opinions and perspectives on the nation's needs.¹⁴² Reflecting on the WHO recommendation on establishing a national Codex committee, the OBOR countries could try to create a national office that could interact and communicate with the central OBOR food safety Contact Point, which could perhaps function as a national Codex committee at the same time. This would prevent double workload and ensure uniformity checks with international standards as well. Such office would act as a liaison and advise the national government on issues regarding food safety standards.¹⁴³ As learned from Codex meetings, more regional training on food safety was requested by attending participants. While there is not much data on whether this particular request was made by Central Asian countries due to their absence in Codex meetings, it is reasonable to assume that assistance for building national capacity in understanding the status of standards.

Moreover, a significant amount of resources should be spent on identifying rule observation status of different countries once decisions on appropriate food safety standards are in place.

¹³⁸ *See id.*

¹³⁹ *See id.*

¹⁴⁰ *See* FOOD & AGRIC. ORG. & WORLD TRADE ORG., *supra* note 54, at 34.

¹⁴¹ *See id.*

¹⁴² *See id.*

¹⁴³ *See id.* at 34.

There must also be an understanding of the domestic command work chain. One of the common problems in the food safety regime of politically young and unstable countries face is the fragmented governmental structure and command chain.¹⁴⁴ Much focus must be placed on increasing and guaranteeing transparency. One way to handle this would be to maintain a central roster of participants and personnel working in related departments and routinely update the roster. In addition, creating a central panel of experts and coordinators who will select the most appropriate person to represent the country and participate to the maximum level needs to be established.

Currently, the broad range of duties that has fallen on Codex Contact Points have been working to link the Codex Secretariat and Member countries (including playing the role of a messenger), putting together Codex activities within their own countries, receiving and sending comments on Codex documents or proposals to Codex and relevant bodies, staying in contact with the national Codex committee. Most related to the participation issue, it also received the invitation to Codex sessions and informed the relevant chairpersons and the Codex Secretariat of the names of participants from their own countries.¹⁴⁵ In addition to all these functions, given that national coordination may be a key to solving the low participation and attendance problem, understanding and clearing the local agency coordination problems may be a question worth asking. Over the past decades, we have seen agencies having overlapping jurisdictions. Understanding and delineating the roles of these Contact Points might be worth taking into consideration.

C. Improved Public Participation

The importance of having strong public participation cannot be understated. The EU has taken efforts to bolster its communication and to improve efficiency throughout the past decades. In 1979, the EU Rapid Alert System for Food and Feed first had its member states work and communicated over telephone lines. It then introduced TELEX to improve communication in 1980. In 1992, facsimile was used perhaps due to its low cost and improved speed. Eight years later, communication became much faster as the members benefited from the internet and email in 2000. The EU Rapid Alert System then introduced a “performant

¹⁴⁴ FRANCIS SNYDER, *FOOD SAFETY LAW IN CHINA* 66-67 (2015).

¹⁴⁵ See CODEX ALIMENTARIUS COMM'N PROCEDURAL MANUAL, *supra* note 61, at 7.

internet/PC-based system” in 2009, until the “new collaborative on-line system” was introduced in 2011.¹⁴⁶

For the OBOR food safety negotiations to thrive, it would also be important to invite both the “good will of the delegation and scientific advice given by a series of FAO/WHO Expert Groups.”¹⁴⁷ Food safety is related to various aspects of not only legal definition but understanding scientific assessments and evaluating quality of nutrition. In addition to inviting experts to conduct scientific assessments and understand the legal obligation under the SPS Agreement, it would be helpful to diversify participant categories. As Codex has maintained an “Observer Status” for international non-governmental organization, OBOR countries could certainly consider doing the same to reap similar benefits.¹⁴⁸ These organizations with observer status could receive the same amount of information as any other state, and it would be more likely that they are more approachable by civil societies with certain interests and experience.¹⁴⁹

D. Uniformity in Horizontal Participation

Encouraging horizontal participation of individuals who previously attended meetings is also seen as a critical step forward. There have been concerns raised by having different participants for each session and the absence of repeat participants makes it harder for a country to better represent its position. Individuals’ capacity building is an important relevant factor in making sure that individuals are incentivized and feel comfortable attending meetings each year.¹⁵⁰ As to the question how many and who gets delegated to the meetings is a decision made at the national level, it would be ideal for the OBOR countries to agree on the uniform number of officials or delegates sent. This would ensure that voices are heard from well informed and capable delegates from each participating country. This would require identifying individuals who have the required language and background knowledge to represent the country in the meetings. They would most ideally be able to take an active role during the meetings.

¹⁴⁶ See EURO. COMM’N, *supra* note 130.

¹⁴⁷ Hiroshi Yoshikura, *Debate on Foods Derived from Biotechnology in Codex Alimentarius*, JAPAN MINISTRY OF HEALTH, LAB. & WELFARE 4 (Feb. 2011), <https://www.mhlw.go.jp/english/topics/foodsafety/dna/dl/02-03-03.pdf>.

¹⁴⁸ CODEX ALIMENTARIUS COMM’N PROCEDURAL MANUAL, *supra* note 61.

¹⁴⁹ See *id.*

¹⁵⁰ CODEX TRUST FUND, *supra* note 81.

In particular, respondents requested that the Codex Trust Fund send more than one delegate per country to meetings. According to Zambia's report for the 29th Codex Committee on Methods of Analysis and Sampling, no two people are of the same capability and for this reason, it would make much more sense to assign the participation task to two different people. This is particularly true for food safety standard negotiation as much of the discussions are highly technical and cover a broad range of the society. While cross-border centralization and harmonization efforts may create restrictions on bureaucracies, such efforts would indeed minimize fragmentations in horizontal participation.

VI. CONCLUSION

It is important to reflect on the lessons learned over two decades of experience and synthesize the information we collected from the WTO framework and the Codex sessions. This Article aims to take a distinctive view by leaping from Codex meetings into food safety negotiations within the Belt and Road Initiative. Doing so brings much value in reflecting upon lessons for comparative regionalism in the area of food safety law. While the Article proposes some technical considerations to encourage participation in the Belt and Road Initiative, it also does not accuse developing countries of the lack of interest in building a safe food environment for their own people. In fact, it aims to do just the opposite: raise questions on how much room we have left for the developing countries to contribute in negotiating possible food safety standards. In the long run, it is my hope that this will also contribute to the development of the comparative regionalism studies in law.

Virtually all components that affected participation in the Codex meetings are expected to become factors to consider when OBOR countries engage in food trade and food safety standards with Central Asian countries. In order to handle future obstacles and struggles that discourage developing countries to become involved in discussions, we have learned that it is imperative for the process to be both cost-efficient and effective. This is because engaging in food trade and negotiating food safety standards is a combined effort from multiple countries involved in the trade. Preparing these in advance by taking measures proposed in the Article will lead to increased participation, fair trade and increased trade as a whole. The author hopes that the discussions in this Article will serve as organizational gap fillers in the realm of food safety negotiations along the Belt and the Road. Realizing that the OBOR is still a work in development and that food safety standard negotiations is a subset of the

entire OBOR system, negotiations should develop in the direction of encouraging safe food consumption.