

2. Administrative Law

The Food Safety Basic Law

Law No.48, May 23, 2003 (Effective on July 1, 2003).

Background:

In recent years, Japanese eating habits have become more affluent and varied, as the society has grown economically. The situation surrounding these eating habits has been changed by the development of science and technology concerning foods and the internationalization of the manufacture and distribution of foods. Several events affecting food safety have occurred, including the outbreak of Bovine Spongiform Encephalopathy (BSE) in 2001 and the discovery of pesticide residues on imported vegetables. As a result of these events, the public has become more concerned about food safety than it was.

On November 6, 2001, the government established “the Investigation Committee on the BSE Problem”, which was a private advisory committee for both the Minister of Agriculture, Forestry and Fisheries and the Minister of Health, Labour and Welfare, in order to respond to public requests for food safety. On April 2, 2002, after the holding discussions eleven times, the Committee made its report public, which proposed ① comprehensive legislation concerning food safety for the sake of consumers and ② the establishment of a new administrative agency on food safety, independent of other administrative agencies, which would carry out mainly risk assessments and coordinate the functions of the other administrative agencies.

In response to this proposal, the government held “the Meeting of Cabinet Ministers Concerned with Food Safety Administration”. On June 11, 2002, after four meetings, the government reached an agreement, “The Food Safety Administration in the Future”, which accepted ① legislation of “the Food Safety Basic Law ” and ② establishment of “the Food Safety Commission”.

In February 2003, the government introduced a bill to the Diet. After a few amendments were made, on May 16, 2003, the Diet passed “the Food Safety Basic Law”.

Main Provisions:

In response to the Agreement discussed above, “The Food Safety Basic Law” consists of two parts, ① the “Basic Law” part (Chapters I and II), which contains the provisions concerning such things as the philosophy the law is based on, the responsibility and roles of those involved, and the principles for making policies, and ② the “Agency Law” part (Chapter III), which provides for the establishment of “the Food Safety Commission” under the Cabinet Office.

(1) The “Basic Law” part

1) The philosophy the law is based on [Chapter I, §§3–5]

These provisions show the philosophy concerning food safety administration (a) which must take measures in view of public health being the most important interest, (b) which must take reasonable measures at each stage of the food provision process, and (c) which must prevent the public from suffering harmful influences by taking reasonable measures on the basis of scientific knowledge, taking into consideration international trends and public opinion.

2) The responsibility and the role of those involved [Chapter I, §§6–10]

These provisions provide for the responsibility and the roles of those involved in Food Safety Administration. (a) The central government must reasonably make and execute comprehensive policies throughout the country. (b) The local governments must reasonably make and execute policies according to each district. (c) “Food related business operators” must recognize that they share “the most important responsibility” for food safety. (d) Consumers shall play an affirmative role in understanding the information concerning food safety and in giving clear voice to their opinions.

3) The principles in making policies [Chapter II]

Chapter II shows the principles adapted in making food safety policies taking into consideration the philosophy discussed above.

(a) Introduction of a risk analysis approach.

First, the government must generally make “a food health impact assessment”, which assesses scientifically what impact the biological, chemical and physical factors that the foods will have on the human body,

before making policies concerning food safety. Second, on the basis of this assessment, the government must make a policy taking into consideration “the situation of the public eating habits and otherwise”. Third, during the policy-making process, the government must take reasonable measures, which includes the disclosure of information, the provision of opportunities for the public to express their opinions, and the assistance to the exchange of information and opinions among those involved, in order to secure fairness and transparency in the process and to reflect public opinion in the process. Each of the processes discussed above correspond to the chief elements of risk analysis, which consists of risk assessment, risk management, and risk communication.

(b) Other Principles that shall be taken very seriously.

Other principles that the government must consider are ① the establishment of a system to take measures in an emergency, ② close cooperation among the administrative agencies among those involved, ③ the establishment of experimental and research systems, ④ collection, arrangement, and practical use of domestic and foreign information, ⑤ keeping the operation of a food indication system in proper order, ⑥ promotion of the food education, ⑦ consideration concerning the effects on the environment.

(c) Deciding “basic matters”

Because the principles discussed above (a) and (b) are very abstract, the government must decide “basic matters” in the form of a cabinet decision to give shape to these principles, listening to the opinions of the Food Safety Commission. These “basic matters” must be made public.

(2) The “Agency Law” part

First, as a risk assessment agency, the Food Safety Commission under the Cabinet Office must carry out “the food health impact assessment” objectively and fairly on the basis of scientific knowledge independent of the risk management agencies, such as the Ministry of Agriculture, Forestry and Fisheries and the Ministry of Health, Labour and Welfare. The Commission will carry out “a food health impact assessment” on the request of the Ministers or by virtue of its authority. Generally the Ministers must request the advice given by the Commission, before they make policies concerning the matters that are expressively provided for in this law, §24 part 1. After the assessment,

the Commission must notify the result to the Ministers as quickly as possible. This result must be made public.

Second, the Commission plays a role of surveillance, checking whether the Ministries take measures on the basis of the Commission's assessment. To be concrete, the Commission not only can issue improvement recommendation to the Ministers when it recognizes that policies on the basis of the Commission's assessment are not appropriate, but also can recommend measures that should be taken by the Ministers on the basis of this assessment. However, these two rights of recommendation must be exercised through the Prime Minister.

Third, the Commission plays the role of a promoter of risk communication.

The Food Safety Commission is a council system that consists of seven men of learning and experience, in which four members must be full-time. Their terms of office are four years. The Prime Minister with the consent of Parliament files their appointments.

Editorial Note:

According to the traditional idea of Japanese administrative law, "political regulation", the government has to show "any dangers" scientifically in the operation of personal business in order to regulate it. This "political regulation" derives from the modern view of the liberal state, in which the governmental intervention in citizen's liberty must be no more than negative and minimum.

Because this idea is based on the legal relations between the government regulator and the regulated citizen, such as business operators, the public interest of regulating those businesses cannot be evaluated properly in these relations. But, after World War II, in our country, because of cases of pollution such as Minamata disease or Kanemi oil disease, the idea that "irreplaceable" interests, such as human life or health, should be more legally protected more than the business operators' liberties to do business has been discussed.

Today, foods whether safe or danger for human body cannot be determined scientifically, such as food additives and genetically modified food products, are being distributed. This situation compels the government to take measures in order to protect the public on the basis of the ambiguous

danger, in other words at the stage of “risk”. However, traditional political regulation cannot fully respond to this situation.

Given this situation, the Food Safety Basic Law provides for “risk analysis” as the regulation method. Above all, it is noteworthy to separate the agency that assesses risks on the basis of science from the agency that manages risks on the basis of policy. An administrative agency, which is given the ambivalent duty both to promote businesses and to regulate businesses, would often have a cozy relationship with the business operator. It is also noteworthy that it provides for the distribution of information and opinions not only from the government but also from the business operators and the public on the idea of risk communication, in view of both the speedy collection by the government of information concerning food safety and the transparency of food safety administration process.

3. Law of Property and Obligations

Amendment of Civil Code etc.

Law No.134, August 1, 2003 (Effective on April 1st, 2004).

Background:

The provisions concerning real security rights in the Civil Code were established in 1897, and have not been revised except for when the maximal-hypothec was newly incorporated in the Civil Code in 1971. It has been pointed out that as a result the existing laws cannot meet actual social and economic circumstances which have become highly complicated and diversified. What has triggered this revision directly has been the fact that, along with the bursting of the bubble economy from the '90s onward, various system fatigues have become obvious. In other words, with the aim of effective recovery of bad debts, which highly increased with the marked decline in the value of real property and the chronic recession, a review of the laws was needed. Then this Amendment of Civil Code was carried out in order to remove obstacles