Understanding China's Food Safety Law and its Effect on Cross-border E-commerce

- China.direct.biz, By Noam David Stern, Partner (December 7, 2017)

China is today the world's largest market for food and beverage (F&B) products with an average annual growth rate of 15% between 2012-2016. The US based 'Association of Food Industries' (www.afius.org) predicts that China in 2018 will become the largest importer of foreign food with an estimated total value of RMB 480 billion (USD 73 billion) compared to RMB 310 billion (USD 47 billion) in 2016, up 35.4%.

The rapid growth of imported F&B products is mainly driven by continued urbanization, problems with pollution, rising disposable incomes, demand for higher quality and authentic products, and not least lingering concerns about food safety. As a result, imported F&B products sell at a premium price in China because they are often perceived as healthier and safer by the more affluent urban consumers.

To rebuild trust and stimulate demand for domestic F&B products, China introduced its new 'Food Safety Law' (FSL) on 1 October 2015 that is meant to clean up the entire food supply chain and thus ensure public health and life safety. The FSL has introduced stricter monitoring and control mechanisms, tougher national food safety standards, more rigorous onsite inspection and testing, tougher import-export procedures and severe punishments for offenders including fines, compensation, detention and cancelation of licenses.

Scrutiny and Uncertainty

With the rapid expansion of e-commerce in China, many domestic online platforms are selling imported F&B products. According to industry estimates, 10-30% of all retail imported F&B products are sold via e-commerce in China. As a result, online F&B sales have come under scrutiny to ensure that imported F&B products meet the same food safety requirements as imposed on domestic ones by the FSL.

This has raised some concern and uncertainty about the current cross-border e-commerce policies in China with reduced taxes and simpler inspection and labelling requirements. It has prompted the authorities to delay and gradually implement the planned regulatory changes to be completed through 2017-2018.

Food Safety Law (2015)

In the wake of the many high-profile food scandals that have swept over China the last ten years, the current FSL was implemented on 1 October 2015 to further strengthen supervision and control. The newly restructured 'China Food and Drug Administration' (CFDA) was given the authority to regulate and oversee food production and distribution. On 19 October 2016, the 'Draft Implementing Rules for the Food Safety Law' was published and on 14 August 2017 submitted to the WTO for comments, and awaits final approval.

Please check the 'Global Agricultural Information Network' at https://gain.fas.usda.gov/Pages/Default.aspx for unofficial English translations (Gain Report No. CH 15016) of China's Food Safety Law (2015) and Draft Implementing Rules for the Food Safety Law (Gain Report No. CH 17046).

Key Takeaways

The current FSL consists of ten chapters and 154 articles, and is considered the strictest ever in China. One of the biggest changes is the shift in emphasis from supervision and inspection of products at the port in China to the monitoring and control of the actual food production. It places the responsibility of food safety on both the producer and distributor.

The FSL also introduces specific regulations on Special Foods such as infant formula and imposes severe penalties on offenders including fines, business license revocation and detention. If a company breaches the FSL, the employees directly responsible will also face heavy fines.

When it comes to food imports, the draft implementing rules require the food importer to review whether the foreign food producer and exporter comply with the FSL and what food safety risk control measures are in place to ensure compliance. The food importer shall also declare and submit product-related documents and compliance materials to the China Inspection Quarantine (CIQ) authorities for inspection and approval.

E-commerce Platform Obligations

Despite the rapid growth of e-commerce in China, the current FSL and the draft implementing rules only say little about the actual sales of F&B online and instead focuses on the obligations of the third-party platform providers (e-commerce sites). These are specified further in the 'Measures for the Investigation and Punishment of Illegal Acts Concerning Online Food Safety' that took effect on 1 October 2016.

According to Article 62 in the FSL, any third-party platform providers of online food trade shall register the real names (and contact information) of the admitted food distributors/vendors, specify their food safety management responsibilities, carry out due diligence, inspect their licenses, and report any breach of law.

If the third-party platform provider fails to comply, Article 131 states that the CFDA can confiscate illegal gains, impose fines, suspend operations and revoke the business license. Moreover, any consumer whose lawful rights and interests are damaged from the online purchase can claim compensation from the producer or distributor.

In the draft implementing rules, Article 36 states that the third-party platform provider shall keep the registration and trading data secure but make it available to the CFDA during a food inspection, case investigation or incident handling.

If the third-party platform provider experiences multiple illegal activities by its online food operators, Article 69 states that the CFDA can invite the legal representative or principal of the online platform to a meeting about their accountability.

Cross-Border Tax Policy

To regulate the fast growing cross-border e-commerce market, the Chinese authorities have issued several decrees aimed at creating a more level playing field with traditional trade. In April 2016, the existing tax policies for cross-border online sales were revised whereby all products purchased are subject to import tariffs, VAT (17%) and for some Consumption Tax (5%).

However, a temporary tax policy was introduced that set import tariffs at zero with VAT and Consumption Tax applied at 70% of the actual tax rates equal to 11.9% and 3.5% respectively. However, this only applies to a total of 1,293 products placed on a 'Positive List' of which 360 are food related. Moreover, it is limited to single transactions of up to RMB 2,000 and with an annual individual limit of RMB 20,000.

E-commerce Law of China

Although not directly linked to the FSL, the '2nd Draft E-commerce Law of China' published on 7 November 2017 makes it clear that overseas retailers and brands will no longer be allowed to generate direct sales in China via their own online sales channels or through foreign operated e-commerce platforms. Instead, they must rely on Chinese-owned and controlled online platforms like Tmall.com (Alibaba), JD.com (Jingdong) and WeChat (Tencent) that have been sanctioned by the Chinese authorities.

Any overseas e-commerce platform looking to operate in China is required to safely store all collected personal data on servers inside China with restrictions imposed on exporting the data overseas which is in line with China's new Cyber Security Law that took effect on 1 June 2017.

It is also evident that all cross-border online sales will be directed through the current 13 pilot zones for cross-border e-commerce including Chengdu, Chongqing, Dalian, Guangzhou, Hangzhou, Hefei, Ningbo, Qingdao, Shanghai, Shenzhen, Suzhou, Tianjin and Zhengzhou that will handle everything from import procedures and duty payments to warehousing and distribution.

New Normal

The obligations on third-party platform providers in the FSL are clearly made to prevent the unauthorized import of food for online sales that circumvent the Chinese food safety regulations and payments of import duties, VAT and taxes. The stated mission is to re-establish public trust in the Chinese food supply chain.

By centralising the control, supervision and operations of the rapidly expanding cross-border e-commerce market in China, the authorities are also sending a strong signal about their intentions to lead and direct to ensure that imported F&B products sold online comply with the FSL and related implementing rules.

Nevertheless, the allure of the vast consumer market and the growing appetite for overseas F&B products will continue to attract more foreign brands to sell via the Chinese cross-border e-commerce platforms. However, by placing the responsibility on the third-party platform providers to ensure the F&B producers and distributors comply with the FSL, it will get costlier for overseas brands to sell online in China.

It seems inevitable that the FSL will sooner or later be enforced on all online sales of F&B products in China. Overseas food producers and local importers should already now prepare for the impending changes. The recent import tariff reductions on 187 products including 33 food items that took effect on 1 December 2017 are perhaps the first step towards China normalizing its F&B imports whether sold offline or online.

Please check the article **'Understanding China's Cross-border E-commerce Market (B2C)'** for more details about cross-border e-commerce in China.

CONTACT

Noam David Stern, Partner
noam@china-direct.biz
Mobile: +86 136 1169 1358
www.china-direct.biz

China-direct.biz is a business advisory & service firm in Shanghai that offers practical advice and support to mostly Scandinavian SMEs that seek market access or want to develop their China businesses further. Our experienced management team have over the years been advising and supporting many foreign-invested enterprises with their market entries, company set-ups and daily operations in China.