China Releases Draft Measures for the Administration of Imported and Exported Food Safety

By Liza L.S. Mark | August 18, 2020

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On June 11, 2020, the General Administration of Customs ("GAC") released the Measures for the Administration of Imported and Exported Food Safety [draft] (General Administration of Customs of People's Republic of China, 2020) ("Draft Law") to solicit public comments until July 11, 2020. In comparison with the current version – Measures for the Administration of the Imported and Exported Food Safety (General Administration of Customs of People's Republic of China, 2018) ("2018 Version"), the scope and the contents of the Draft Law are greatly expanded. With 38 new sections added, the Draft Law establishes a more comprehensive and detailed regulatory regime on the administration of imported and exported food safety. A few key points of the Draft Law include:

1. Conformity Assessment

The Draft Law first requires that GAC conduct a **conformity assessment** on all imported foods in accordance with the relevant laws and regulations.[1] It stipulates that the conformity assessment should include, but is not limited to, the following items: evaluation and inspection of the food safety management systems of the exporting countries/regions, registration of overseas manufactures of imported food[2], animal and plant quarantine approval, import documentation review, on-site inspection, and sampling inspection.

2. Review and Evaluation of the Exporting Countries/Regions of the Imported Food

Art.14 - Art.21 of the Draft Law introduces a new regulatory review and evaluation process which focuses on the exporting countries/regions of the imported food. This is the first time for China to impose certain requirements or obligations directly based on the countries/regions of the importers and their related governmental authorities. The Draft Law further sets forth the conditions triggering the review process, as well as the subjects, methods, materials, and results of the review.

According to the Draft Law, GAC will initiate such review and evaluation process under the following circumstances:

a. A foreign country/region applies for the first time to export a certain type of food to China;

b. Food safety, animal and plant quarantine regulations and organizational structures of the foreign countries/regions have undergone major adjustments;

c. The authorities of exporting countries/regions apply for adjustments of the inspection and quarantine requirements on certain type of imported food to China;

d. Major animal and plant epidemics or food safety incidents have occurred in those exporting countries/regions;

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e. GAC finds serious problems leading it to believe that there is an animal or plant epidemic disease or a hidden food safety hazard for food import from that exporting country/region;

f. Other situations where evaluation and review are warranted.

Undoubtedly, the Draft Law would significantly increase the regulatory burden for importing food to China.

3. Pre-Examination System of Imported Foods Before Importation

As provided in Art.27 of the Draft Law, "Food importers or their agents can apply for a pre-examination of imported foods before importation. Based on the examination result, qualified imported food may enjoy a faster customs clearance process offered by GAC." In other words, importers can apply for this pre-examination before shipping, and China will recognize its examination result and quicken the customs clearance process for the qualified food products.

In fact, the pre-examination system is not new and has already been implemented in some ports. GAC is now formalizing this practice in written regulations and expanding the practice to more ports. According to the Draft Law, detailed application scope, procedures, and requirements will be further formulated and published by GAC.

4. New Documentation Requirements on Importers

The Draft Law also sets forth a new set of documentation requirements for importers. According to Arts.31-33, customs documentation for imported foods include:

a. License or certificate from the relevant supervision authorities, including the registration/filing certificate for health food, registration certificate for infant formula and FSMP (Foods for Special Medical Purpose) products, safety certificate for GMO (Genetically Modified Organisms) food;

b. Quarantine license, certificate or approval for imported animals and plants;

c. Documents certifying the qualification, such as declaration of conformity, examination report, certificate or document issued by competent authority or a recognized institute in the exporting countries;

d. Documents to show that the overseas manufacturers have registered on the GAC system and the importer and agents have completed the formalities for record-filing with GAC.

5. New Labeling Requirements on Imported Food

The Draft Law also introduces new labeling requirements on imported foods, particularly on the aquatic products and frozen products in response to the recent new surge of COVID-19 cases linked to these two categories of imported foods.

For imported aquatic products, the inner and outer packaging is required to have firmly fixed, clear, and easily distinguishable labels in both Chinese and English, indicating the product name, specifications, production date, storage conditions. The destination must be marked as China.

In addition to the aquatic and frozen products, the Draft Law also imposes new labeling requirements on health food products for infants and toddlers.

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6. Liabilities and Penalties

As compared with the 2018 Version, the Draft Law significantly expands GAC's authorities and powers to impose penalties and sanctions on violators. For example:

a. GAC could impose a fine on the importer in the amount of 10 to 20 times of the value of the imported goods, if such importer is found to have provided fake documentation or imported food that does not comply with related regulations.

b. Importation of food from unregistered (GAC registration) overseas manufacturers will be suspended, and illegal gains will be confiscated. Moreover, the relevant importer will face a fine, which is 10%-50% of the value of the goods. GAC registration can be revoked if overseas manufacturers fail to rectify the unqualified items in time.

c. For imported products without Chinese labels or with non-compliant labels, food importers who refuse to destroy goods, return goods, or adopt other treatments in time will face a warning or a fine of less than 10 thousand yuan.

Implications

The COVID-19 pandemic prompted China to tighten its regulation of food safety, especially since mid-June 2020 when a new surge of COVID-19 infections in Beijing was found to have been linked to the imported salmon in a wholesale food market. The Draft Law, if adopted in its current format, would have a significant impact on importers, as they face more complicated customs compliance obligations and requirements. If you conduct international trade importing foodstuff into China, this is an area that bears watching.

For more information, please see the following resources:

- China Updates page
- U.S. Listed Chinese Companies: Regulatory Scrutiny and Strategic Options, July 30, 2020
- China Passes Controversial Hong Kong National Security Law, July 9, 2020
- China's Relaxed Financial Sector May Aid Foreign Investors, June 18, 2020
- Is There a Law in China Similar to the US Defense Production Act?, May 8, 2020
- Coronavirus Brings Force Majeure Claims to LNG Contracts, March 4, 2020
- The Rise of China, March 4, 2020
- Coronavirus Fears Cast Cloud Over Dealmaking, February 27, 2020
- Is Your China Chemical Plant in Danger of Being Shut Down, December 2019

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[1] The relevant laws and regulations include: (1) *Customs Law of the People's Republic of China* (Standing Committee of the National People's Congress ("**SCONPC**"), Nov.15, 2017), (2) *Food Safety Law of the People's Republic of China* (SCONPC, Dec.29, 2018), (3) *Law of the People's Republic of China on Import and Export Commodity Inspection* (SCONPC, Dec.29, 2018), (4) *Law of the People's Republic of China on Quality and Safety of Agricultural Products* (SCONPC, Dec.26, 2018), (5) *Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine* (SCONPC, Apr.1, 1992), (6) *Special Rules of the State Council on Strengthening Supervision and Administration of the Safety of Food and Other Products* (State Council, Jul.26, 2007).

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[2] According to Art.4 of the 2018 Version, “GAC shall implement registration management over the overseas manufacturers of imported food, record-filing management over the exporters or agents that export food to China”.

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