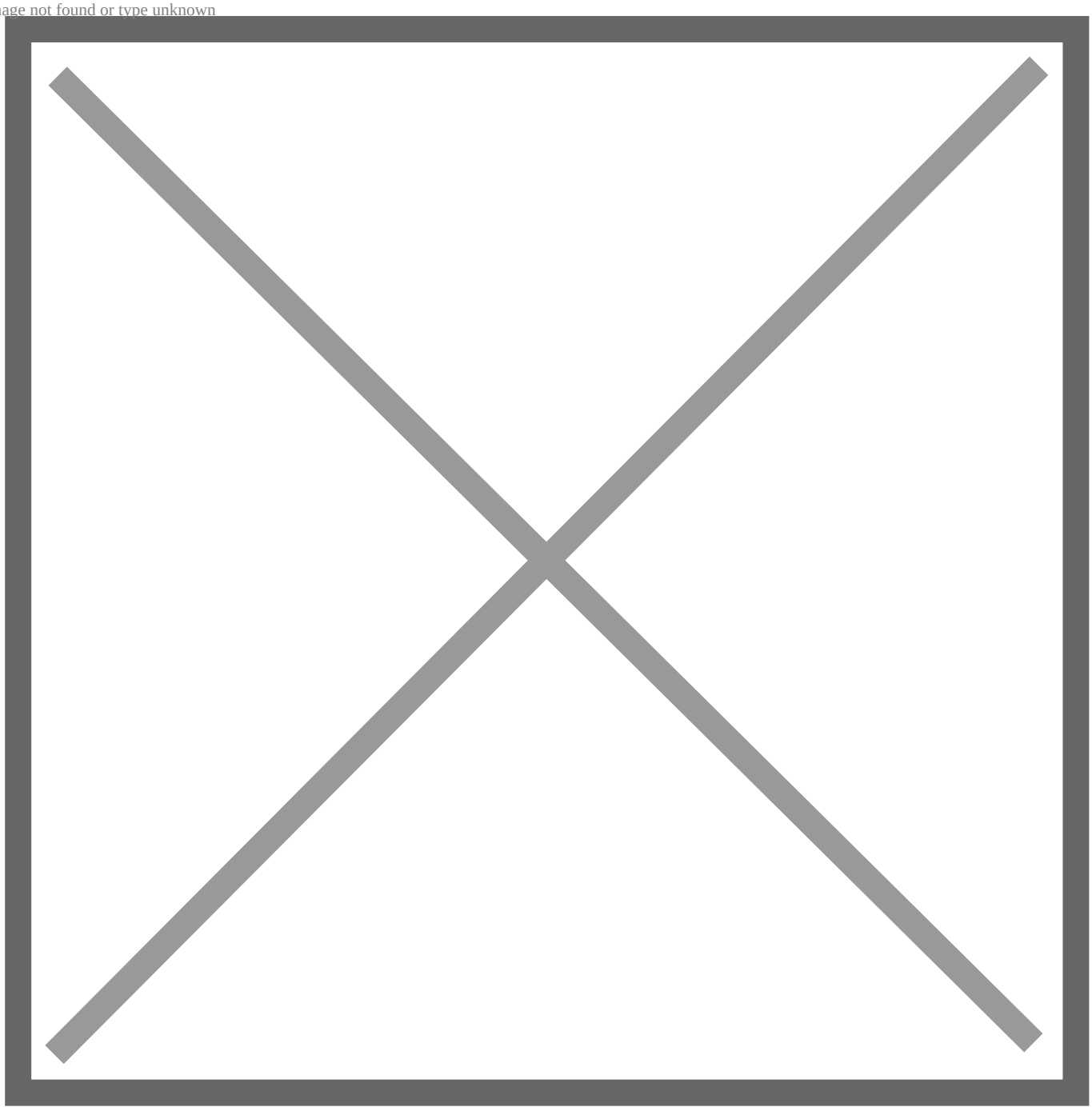
China's New Food Safety Law: Benefits for Chinese Consumers, Challenges for European Exporters?

TAGS Food & Beverage

ARTICLES | 3 May 2016

Image not found or type unknown



Written by Dr Martina Gerst – Standards & Conformity Assessment Advisor at the EU SME Centre

Chinese consumers' appetite for foreign foodstuffs is unbowed. In 2014, imported food trade was valued at EUR 42 billion. 35 million tonnes of imported food were inspected and quarantined in China. Food and Beverage (F&B) imports from the EU were worth EUR 8.2 billion, with an expected market growth for organic food of more than 20% in the next few years. **The top five exports from Europe to China are beverages (spirits/vinegar/wine), pastries, meat, dairy, and seafood.**

For specific information about exporting meat and dairy products to China, download the guidelines below:

- Exporting Meat Products to China
- Exporting Dairy Products to China

As China's F&B market continues to grow, there are remaining concerns over the country's food safety issues. To address that, the Chinese government has been restructuring its mechanisms to supervise food production and distribution over the past two years. On October 1st 2015, the New Food Safety Law (NFSL) entered into force. It is considered to be the most stringent Food Safety Law ever passed in China.

In the past few months, the National Health and Family Planning Commission (NHFPC), the China Food and Drug Administration (CFDA) and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), along with other administrative agencies, published several important regulations, national food safety standards, and measures.

It currently looks like China is shifting its emphasis from supervision and inspection at ports (which is already extending the supervision work of AQSIQ) towards the control of manufacturers in the country of origin using CNCA and post-market inspection by CFDA to all food commodities. More documentation and recordings of foreign manufacturer credentials, as well as inspection and testing of food imports for exporters are required.

The new law is meant to clean up China's entire food supply chain – from banning toxic pesticides, regulating labelling, distribution, and, importantly, increasing punishments for those who violate existing laws. There is a new burden of responsibility placed on everyone involved in the food chain- from farms to restaurants in China as well as on European SMEs exporting their foodstuffs to China.

Although the NFSL is still a draft version, expected to undergo changes until it comes finally into force, it is worth taking a look at important articles as well as at some of the measures mentioned concerning EU SMEs.

The NFSL now contains ten chapters including 154 articles, compared to the previous 104 articles. This amended version of the law provides the regulatory framework that will shape the operations of traditional F&B and online operators in China, and as mentioned, all the other players involved in import and export activities. There are several other related rules and administrative measures that have already come into force or are still on a draft status. These measures expand some of the articles of the food safety law.

EU SMEs should pay particular attention to Chapter 6 of the NFSL: the "**Food Import and Export**". The different articles cover the following:

- AQSIQ regulates the safety of food imports and exports. In practice, the China Entry-Exit Inspection and Quarantine (CIQ) is implementing and interpreting the regulations (Article 91).
- Imported foods, food additives and food-related products shall comply with China's national food safety standards. Imported foods and food additives shall pass inspection by the CIQ. Foods and food additives shall be accompanied by inspection certificates, as required by AQSIQ (Article 92).
- In the event of the importation of food without a national food safety standard, the overseas exporter/producer, or its entrusted importers shall submit relevant national (regional) standards or international standards of the exporting country (region) to the NHFPC. The importation of food with new food raw materials shall be in accordance with the Law (Article 93).
- Importers need to **examine** the exporters and producers and if food is found to be not compliant, they need to stop importing and recall these products (Article 94).
- **CFDA supervises imported food**, food additives and Food-related products sold in the domestic market. If serious issues are found, CFDA will communicate it to AQSIQ so they can take action (Article 95).
- Foreign food producers will be **removed from AQSIQ's registration list** if they provide false materials or cause a major food safety incident (Article 96).
- **Labels and instructions** shall indicate the country of origin, name, address, and contact information of the domestic agent (Article 97).
- Food importers need to **keep an import and sale record** including information such as the product name, specification, quantity, production date, production or import batch number, shelf life, name and contact information of the exporter and buyer, as well as the delivery date, for no less than six months after the expiration of shelf life or in the absence of an indicated shelf life, for at least two years (Article 98).
- AQSIQ shall establish and publish **credit records** of importers, exporters, and producers of food for export and shall **tighten inspections** and quarantines of importers, exporters, and producers of food for export that have an **unhealthy credit** (Article 100).
- AQSIQ may determine the corresponding inspection and quarantine requirements of **each country** individually (Article 101).

Looking for support for exporting to China? Learn more about EU SME Centre's complete services for European exporters.

As mentioned before, the regulatory environment does not only include the implementation rules of the NFSL but is also supported by a number of Administrative Measures. One of them is the AQSIQ draft version on the "Administrative Measures for Foreign Food Importer's Review and Inspection of Overseas Enterprises". These measures strengthen the role of the importer as guarantor of the food safety of the products they sell in China.

The Law imposes the new requirements that importers shall review relevant documents by their foreign suppliers – exporters and producers. If the imported food products fall in one of the seven categories below that must have on-site inspection, the importers are required to conduct an on-site inspection of the exporters and producers too. The review/inspection records shall be kept properly, otherwise, importers will be punished. Besides guidance for food safety risk control, the

draft measures include the “Catalogue of Products that Must Have On-site Inspection” across the following seven product categories:

- Infant formula products;
- Food for special medical uses;
- Health food;
- Meat;
- Fresh and frozen seafood for direct consumption;
- Rice;
- Bulk vegetable oil.

Infant formula

Infant formula products from Europe are high in demand. According to the catalogue, the law specifically requires infant formula importers to carry out on-site inspections either by themselves or by an authorised third party once every three years.

However, Article 81 of the NFSL specifically deals with infant formula. Of note:

- Formula of infant formula powder shall obtain the CFDA’s registration certificate. The CFDA will publish a list of approved testing organisations to carry out the registration.
- Infant formula producers need to meet relevant standards and file the materials, food additives, product formula and labels before selling their products in China.
- Infant formula producers shall not sell only with their foreign label but also with the Chinese label.
- Infant formula producers can only register 9 formulas out of 3 series and all of them must be different from the others already registered.
- Infant formula producers can only use milk or milk products from cows or goats.
- Infant formula producers cannot limit their sales geographically to any specific region in China or tailor their products for a specific trader.
- Food traders of infant formula must verify the registration certificates and the consistency of the product label. In theory, since traditional and online traders shall follow the same rules, this puts to an end cross-border sales of unregistered infant formula.

In this context it should also be mentioned that the CFDA has published the draft version of the “ **Administrative Measures for Registration of Infant Formula Formulations**”. Currently, those measures only affect domestic Infant Formula producers, not European ones. However, in the future it could be extended to foreign producers.

New Rules for Online Food Retailers

Infant Formula is not the only product that gained popularity being sold online. Online shopping for food has become a major trend in China, which made the changes in the new FSL a must.

The new provisions adopted for online platform operators that sell food products include:

- The obligation to register the real contact information such as name and ID of the trader;

- Carrying out due diligence on their vendors and food distributors and ensuring that they have obtained all relevant licences if required.

Online food retailers will be held liable if they cannot provide this type of information. To comply with these requirements, they have to set up new systems, revise registration procedures and do due diligence. In addition, the online retailers have to report to CFDA any illegal activities sellers commit on the platform and act accordingly.

To support the NFSL, the draft version of the "**Administrative Measures for Supervision on Operation of Foods Sold Online**" has been published last year.. It follows the articles laid out in the NFSL with regards to online food traders and platforms. It stresses the importance of the implementation of a traceability and supervision system, holding them accountable if there's any discrepancy between the information shown on the website and the actual products. In more detail:

- Third-party E-commerce platforms and operators of food must ensure that **the information of the products sold is true and consistent**.
- They are required to **check** that their suppliers and retailers **comply** with the regulations.
- Operators of food must obtain **a certificate from the CFDA** and display it on their websites.
- Operators of food are responsible for an **adequate delivery** of the products by using logistics companies that ensure the appropriate transportation conditions.

Related to the online selling of food, Cross-Border E-commerce (CBEC) via Free-trade Zones (FTZ) has become very popular; with Chinese consumers as well as with European businesses. In October 2015, AQSIQ published the Draft of the detailed "**Rules of Supervision and Administration on the Safety of the Foods Imported via Cross-Border E-commerce under the Bonded Internet Shopping Model**".

Once these measures come into force, the online platform or trader will need to declare to the local entry and exit inspection and quarantine institution the following documents (article 14):

1. The list of the product names and the corresponding HS code, model and specification.

2. The official quarantine (health) certificate to be submitted from the exporting country as required by the laws and regulations, bilateral agreement, protocol and other regulations.

3. Self-certification information of the products. This self-certification, as explained in article 13, must be issued by a qualified laboratory.

4. The filing number of the operating enterprise.

5. The qualifications of registration, filing and safety assessment that shall be obtained for the product.

It is also required for online platforms and traders to keep a sales record and a traceability system of the food products sold. In addition to this, platforms will also be responsible for daily inspection, the recall of uncompliant products, and civil compensation for damages on the consumers' legitimate interests.

It is important to highlight that the products delivered directly to the Chinese consumer by international courier are not included in the scope of application of these measures.

Register on our website today and keep yourself updated with more China market insights. Top Tips for European Exporters – How to Comply with Chinese Requirements

All these changes to the food safety law in China are clearly a move in the right direction to strengthen food safety for Chinese consumers. While they are unfolding over time, our recommendations and key takeaways are as follows:

- **Compliance is essential.** You must face all the aspects required in China from a legal perspective from the very first moment and not grope in the dark with the hope that everything will be alright. That might happen a few times but it is definitely not a solid strategy.
- To achieve compliance according to Chinese standards you may want to **establish a special China food safety team**, ideally consisting of members from the legal department, food technology department, product management, and quality assurance departments before exporting. This formation will ensure the understanding of the complexity of these issues and may have the capacity to take necessary action.
- In addition, to **establish and record a specific internal Chinese food safety working procedure** as a useful reference for employees involved in various stages of handling a food safety issue is also considered to be useful.
- **Keep Organised Written Records for All Activities**; investigation dossiers should include written records such as correspondence, meeting minutes, testing reports, findings of investigations, conclusions reached by the investigation team, and corrective measures, if any, that have been taken, etc.
- **Pay Close Attention to Chinese Legal Updates**; whether with internal or external resources. Keep yourself informed about the regulatory changes and their enforcement. Some of the regulations and measures are still under review, meaning that they will probably change in the very near future. It is also advisable to know what is the actual implementation of these regulations at the entry points of your products. Different CIQ offices or even officers have a different interpretation of the regulations. Being accurately informed of the legal and regulatory updates in China is crucial for your business success there.
- Linked to the previous point, **watch out about different enforcement levels and local regulations across the country**. While the central government has published or is drafting regulations to enforce the NFSL, local governments also are actively developing new implementing rules, which should be closely monitored by the industry. You can expect tighter control and inspection in some cities (e.g. Beijing) while others could still delay the application of the new rules or enforce them in a more relaxed way.

Chinese consumers will definitely benefit from a strengthened food safety law when implemented and enforced as it also provides stricter rules for domestically manufactured foods, whereas European SMEs are facing more and complex pre-market approvals for general and special foodstuffs.

To gain the latest overview of the food & beverage market in China, download our sector report. To learn about the specific labelling requirements for food and beverage products in China, download the guideline here.