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Voluntary Public

Date: 10/27/2015

GAIN Report Number:

China - Peoples Republic of

Post: Beijing ATO

China announces draft rules on cross-border e-commerce

Report Categories:

Policy and Program Announcements

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Report Highlights:

Online retail sales hit \$250 billion, about 11.4% of total retail sales in China. The number of online shoppers rose 19.1% to 417 million. Cross-border e-commerce is the hotpot in the industry. Cross-border e-commerce is a direct business to consumer sale from overseas at reduced duties, without Chinese-language labels, and with reduced inspection requirements. As such, cross-border e-commerce has offered new-to-market companies a relatively easy entry to the Chinese market. In 2014, the total cross-border e-commerce transactions were \$60 million, an increase of one-third over 2013. The increase in 2015 is expected to be higher yet.

In late October 2015, the Chinese inspection agency, AQSIQ, announced new draft regulations on

cross-border e-commerce. These draft regulations would add inspection and labeling requirements on imported products, thus negating much of the benefit of this market channel. The following report contains an unofficial translation of this draft regulation. Comments can be sent to the China AQSIQ website at www.aqsiq.gov.cn by 10/30/2015.

In addition, interested parties are also welcomed to submit comments through the U.S. SPS Enquiry Point below so that comments can be considered as part of the U.S. Government official comment submission to the WTO:

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General Information:

Executive Summary:

The following report contains an unofficial translation of this draft for soliciting the advices on detailed rules of supervision and administration on the safety of the food imported via cross-border e-commerce under the bonded internet shopping model. You are welcome to input your comments on the website of China AQSIQ at www.aqsiq.gov.cn by 10/30/2015.

Detailed Rules of Supervision and Administration on the Safety of the Foods Imported via Cross-Border E-Commerce under the Bonded Internet Shopping Model (Draft for soliciting the advices)

Article I [Objective and Basis] To standardize the supervision and administration on the safety of the foods imported via cross-border e-commerce under the bonded internet shopping model, and guarantee the safety of the imported foods, these Detailed Rules are developed in accordance with Food Safety Law of the People's Republic of China and the implementation regulations, Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine and the implementation regulations, Law of the People's Republic of China on Import and Export Commodity Inspection and the implementation regulations, as well as the Normative Documents, such as "Opinions of the State Council on Developing E-Commerce with Great Efforts and Accelerating the Cultivation of New Economic Motives" (Guo Fa [2015] No. 24), "Guiding Opinions of General Office of the State Council on Promoting Healthy and Rapid Development of Cross-Border E-Commerce" (Guo Ban Fa [2015] No. 46), "Opinions of General Administration of Quality Supervision, Inspection and Quarantine on Bringing the Inspection and Quarantine Functions into Further Play to Promote the Development of Cross-Border E-Commerce" (Guo Zhi Jian Tong [2015] No. 202).

Article II [Scope of application] These Detailed Rules apply to the supervision and administration on the operation and safety of the foods imported via cross-border e-commerce under the bonded internet shopping model (hereinafter referred to as "imported via bonded internet shopping"). Import via bonded internet shopping refers to the cross-border e-commerce import model that the commodities are declared as being imported in the form of the cross-border e-commerce and are not formulated with separate package as per the customer order at the time of entry, but are delivered in whole batch to special supervision zone for storage, and the cross-border e-commerce operator formulates independent package and delivers the commodities to the domestic consumers, no matter whether the consumer order is formulated for the commodities at the time of entry. The products delivered into China via international courier or mail are not included in the scope of these Detailed Rules.

Article III [Subject Responsibility] The operation activities of the operator of the foods imported via bonded internet shopping shall observe the related laws and regulations in China, and the operator shall guarantee that the foods imported via bonded internet shopping comply with the Chinese laws

and regulations and national food safety standards.

The operators of the foods imported via bonded internet shopping include, the operating enterprise of the foods imported via bonded internet shopping (hereinafter referred to as “the operating enterprise”), third-party platform enterprise for the trading of the foods imported via bonded internet shopping (hereinafter referred to as “the platform enterprise”), and the logistics and warehousing enterprise of the foods imported via bonded internet shopping (hereinafter referred to as “the logistics and warehousing enterprise”).

Article IV [Supervision Subject] General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) shall be responsible for the supervision on the inspection and quarantine of the foods imported via bonded internet shopping.

The local entry and exit inspection and quarantine institutions of AQSIQ shall be responsible for the supervision on the inspection and quarantine of the foods imported via bonded internet shopping within their respective administrative zones.

Article V [Supervision Rules] The entry and exit inspection and quarantine institution shall implement the filing management on the foods imported via bonded internet shopping, implement the supervision and inspection on the operation of the foods imported via bonded internet shopping, and implement the supervision on the quality and safety risks of the foods imported via bonded internet shopping.

Chapter II Obligations of the Operator

Article VI [General obligations of the operating enterprise] The operating enterprise shall observe the related laws and regulations in China regarding the internet-based food operation, build the sound food safety management system, and designate the special personnel to be responsible for the food quality and safety, to guarantee that the operated foods comply with the requirements of the related laws and regulations and the national food safety standards in China. In case that the production and operation license or filing shall be handled according to the laws and regulations, it is required to obtain the food operation license or filing certificate. The operating enterprise shall make the filing to the inspection and quarantine department according to the regulations.

The operating enterprise shall not import the following foods via bonded internet shopping,

The commodities prohibited for entry as described in *Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine*;

The animal and plant-derived foods not granted access without inspection and quarantine;

Other foods prohibited for import by laws, regulations and announcements of General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ).

The operating enterprise shall guarantee that the foods imported via bonded internet shopping comply with the following requirements,

The foods listed in “Implementation directory for registration of overseas manufacturing enterprises of the imported foods” shall come from the registered overseas food manufacturers;

Health foods, genetically modified foods (GMF), the foods without national food safety standard, new food raw material or the food with new food raw material in the ingredient, shall be registered, filed

and pass the safety assessment in the competent departments;

In case that there are the requirements for the approval of animal and plant quarantine, it is required to obtain the animal and plant quarantine license before the entry.

Article VII [General obligations of the platform enterprise] The platform enterprise shall build and execute the management systems on the operating enterprise registration, information review of the foods for sales, food safety emergency handling, complaint and report handling and consumer interest protection, to guarantee that the foods operated on the platform are safe. The platform enterprise shall make the filing to the entry and exit inspection and quarantine institution according to the regulations.

The platform enterprise shall register the operating enterprise with the true name in the platform, define the food safety management responsibilities; review the license for those who shall obtain the food production and operation license.

The platform enterprise shall build the archive for the operating enterprise on the platform, review and record the basic information of the operation enterprise, operation types, brands and manufacturers, and the qualification of the logistics enterprise.

In case that the platform enterprise engages in the operation of the foods imported via bonded internet shopping, it shall obtain the food operation license or filing certification according to law and shall observe the related regulations on the operating enterprise in these Detailed Rules.

In case that the platform enterprise is registered as the overseas enterprise, it is required to entrust the domestic enterprise with legal qualification as the agent. the agent shall undertake the corresponding legal liabilities.

Article VIII [General obligations of the logistics and warehousing enterprise] The logistics and warehousing enterprise shall build and execute the management system on the food logistics and warehousing safety and the management system on the product traceability. The logistics and warehousing enterprise shall make the filing to the entry and exit inspection and quarantine institution according to the regulations.

Article IX [Filing of the operator] The cross-border e-commerce operator shall make the filing in the entry and exit inspection and quarantine institution via the importer and export filing system for food import in AQSIQ. The operating enterprise and the logistics and warehousing enterprise may make the filing on behalf of the platform enterprise. The operator of the foods imported via bonded internet shopping registered in overseas area shall entrust the domestic agent to handle the filing.

Article X [Filing of product information] The operating enterprise shall guarantee that the foods imported via bonded internet shopping come from the legal overseas manufacturer, and make the filing in the entry and exit inspection and quarantine institution via the importer and export filing system for food import in AQSIQ.

Article XI [Quality and safety commitment] The operating enterprise shall make public commitment to the quality and safety of the products being operated in the conspicuous place of the homepage of their own website or the main page for the third-party platform operation activity.

Article XII [Product label description] The infant formula milk powder imported via bonded internet shopping shall be provided with the Chinese label, which shall be directly printed on the minimum sales package before the entry, and shall not be attached in China. The foods with special requirements on consumption, or storage, or containing allergen should be attached paper-based Chinese label and Chinese instructions. While for other foods imported via bonded internet shopping, the operating enterprise could use the paper-based Chinese label and Chinese instruction, or provide the electronic information of the Chinese label and Chinese instruction through the cross-border e-commerce transaction platform. These means shall be chosen by the consumer when filling in the order. The electronic information shall include the detailed contents that shall be marked according to the requirements in the Chinese laws and regulations and the national food safety standards, and shall indicate the name and contact information of the platform enterprise and the operating enterprise. The platform enterprise shall announce the above basic information on the website for a long time, to facilitate the understanding and inquiry of the consumer at any time.

Article XIII [Self-certification] The operating enterprise shall make the self-inspection on the foods imported via bonded internet shopping, and provide the self-certification documents during the declaration to the entry and exit inspection and quarantine institution. The self-certification documents shall be issued by the qualified laboratory, and the test items for the product imported for the first time shall cover all safety and hygienic items required in the national food safety standard for this product; the test items for the product imported for next times shall include the safety and hygienic items with medium and high risks determined by the entry and exit inspection and quarantine institution.

Article XIV [Product entry declaration] At the entry of the foods imported via bonded internet shopping, the operating enterprise or its inspection declaration agent enterprise shall make the declaration to the local entry and exit inspection and quarantine institution, and provide the following information,

- I. The list of the product names and the corresponding HS code, model and specification;
- II. The official quarantine (hygiene) certificate to be submitted from the exporting country (region) as required by the laws and regulations, bilateral agreement, protocol and other regulations;
- III. Self-certification information of the products;
- IV. The filing number of the operating enterprise;
- V. The qualifications of registration, filing and safety assessment that shall be obtained for the product.

Article XV [Storage of information record] The operating enterprise shall build the sales record and full-process information traceability system for the foods imported via bonded internet shopping, recording the name, brand, specification, quantity, date of manufacture, manufacturing or import batch number, official certificate number, shelf life, overseas manufacturer, overseas exporter, domestic consumer name, address and contact information, and the entry date, and shall build the information archive. The record in the information archive shall be true, and the storage period of the record shall be at least six (6) months after the expiry of the shelf life of the product; in case that there

is no shelf life, the storage period shall be at least two (2) years.

The platform enterprise shall review, record and store the food safety information contents and the issuing date on the platform. The record and storage time of the license and business license information of the operator on the platform shall be at least two (2) years as of the end of the operation activity in the platform, and the backup storage time of other information record, such as transaction record, shall be kept for at least six (6) months after the expiry of the product shelf life, and in case of no definite shelf life, shall be kept for at least two (2) years.

The platform enterprise shall take technical approaches, such as data backup and fault recovery, to ensure the integrity and security of the internet food transaction data and information, and shall guarantee the authenticity of the original data.

Article XVI [Daily inspection report] The platform enterprise shall build the inspection system, set the designated management institution or designate the full-time management personnel to carry out the inspection on the foods sold on the platform and their information, and shall curb the fake information, exaggerative dissemination, the operation beyond the operation scope, and food quality and safety problems or other hidden trouble in safety in a timely manner, and report to the local inspection and quarantine department; in case of any serious illegal behavior, shall immediately stop providing the internet food transaction platform service.

Article XVII [Product recall] In case that the operating enterprise finds that the foods imported via bonded internet shopping operated by itself do not comply with national food safety standard or might endanger human health with the evidence, the operating enterprise shall immediately stop the sales and import, and recall the sold products according to the regulations in *Food Safety Law of the People's Republic of China*. The operating enterprise shall take the measures, such as remedy, innocuous treatment and destruction, on the recalled products, and report the product recall and handling information to the entry and exit inspection and quarantine institution.

The platform enterprise shall take timely measures to stop the sales and assist the recall for the products with quality and safety problems or other hidden trouble in safety announced by the entry and exit inspection and quarantine department.

Article XVIII [Assist the supervision and inspection] The operating enterprise shall actively assist the supervision and inspection of the inspection and quarantine department, and provide necessary technical support with respect to the information inquiry and data extraction.

The platform enterprise shall receive, process and report the food safety information in a timely manner. During the supervision and inspection of the entry and exit inspection and quarantine department, the platform enterprise shall provide necessary technical support with respect to the sales information inquiry and data extraction and stop the service.

In case that the entry and exit inspection and quarantine department requires the platform enterprise to take the measures to stop the behaviors violating the food safety laws and regulations on the third-party platform, the platform enterprise shall provide the cooperation.

Article XIX [Civil compensation] In case that the legitimate interests of the consumers are damaged during the purchase of the foods through the platform enterprise, the consumers may claim for compensation against the operating enterprise on the platform. In case that the platform enterprise

cannot provide the true name, address and effective contact information of the operating enterprise, the platform enterprise shall provide the compensation. After making the compensation, the platform enterprise may be entitled to claim the compensation against the operating enterprise on the platform.

If the platform enterprise knows or should have known that the operating enterprise infringes upon the legitimate interests of the consumers through the platform and the platform enterprise does not take necessary measures or does not perform the review obligations according to these Detailed Rules, the platform enterprise shall undertake the joint liabilities with the food operating enterprise on the platform.

Article XX [Protection of the consumer interests] The platform enterprise shall take measures, build and execute the consumption dispute settlement and consumer interest guarantee system.

Chapter III Safety Supervision

Article XXI [Inspection and quarantine] The entry and exit inspection and quarantine institution shall impose the entry quarantine on the foods imported via bonded internet shopping, to ensure that these foods comply with the quarantine requirements in China.

The entry and exit inspection and quarantine institution shall implement the inspection and supervision on the quality and safety of the foods imported via bonded internet shopping according to the related laws, administrative regulations for the import and export commodity inspection, on the basis of the risk analysis.

In case that the foods imported via bonded internet shopping do not comply with the Chinese laws, regulations and national food safety standards from the inspection and supervision, the entry and exit inspection and quarantine institution shall report the related information to the operating enterprise in a timely manner, and supervise the operating enterprise to take the measures, such as sales stopping and recall.

The entry and exit inspection and quarantine institution shall implement the centralized declaration, centralized inspection and quarantine, and release in batches on the foods imported via bonded internet shopping, to accelerate the product release.

Article XXII [Special spot-check] AQSIQ and the entry and exit inspection and quarantine institution will carry out the special supervision and spot-check plan on the quality and safety of the foods imported via bonded internet shopping, and regularly announce the spot-check results.

Article XXIII [Supervision and inspection] The entry and exit inspection and quarantine institution shall carry out the supervision and inspection on the filing information, product import and sales record, product information traceability and recall of the operating enterprise of the foods imported via bonded internet shopping and the platform enterprise.

Article XXIV [Good-faith record] AQSIQ shall implement the credit management on the operator of the foods imported via bonded internet shopping and build the credit record. For the operator with bad record, it is required to strengthen the supervision on the inspection and quarantine of the foods imported via bonded internet shopping; in serious case, the operator shall not operate the foods

imported via bonded internet shopping.

These Detailed Rules shall be executed as of (Date), and shall be interpreted by AQSIQ. In case of any inconsistency between the related regulations and these Detailed Rules, these Detailed Rules shall prevail. The supervision on the safety of the cosmetics imported via bonded internet shopping shall refer to these Detailed Rules.