



AUSTRALIAN
**FOOD &
GROCERY**
COUNCIL

AFGC CHINA MARKET INDUSTRY GUIDE

A GUIDE TO THE CHINESE MARKET
INDUSTRY



Australian Government
Department of Agriculture
and Water Resources

This project is supported by funding from the Department of Agriculture and Water Resources.



Published October 2018.
Australian Food and Grocery Council.

This report was prepared for the Australian Food and Grocery Council by Peloris Consulting, through funding provided by the Department of Agriculture and Water Resources.

The report contains general information only. The Australian Food and Grocery Council is not, by means of this publication, rendering business, financial, investment, trade, legal, tax, or other professional advice. Professional advice should be sought independently, including advice on regulatory requirements of exporting to and selling food and groceries in China. The Australian Food and Grocery Council will not be held responsible for loss or damages sustained by any person or entity relying on the information in this publication.

No part of this publication may be reproduced in any manner or form without written permission from the Australian Food and Grocery Council.

Table of Contents

Introduction	3
Part A: - China Food Safety Regulations	4
China Food Safety Law (2015) of The Peoples' Republic of China	4
E-Commerce Law of The Peoples' Republic of China (2018)	4
Part B: - China Food Import Regulatory Bodies	6
Part C: - China Food Safety Management Systems & Controls	12
China Customs Safety Management Systems for Imported Foods.....	12
China Customs Imported Food Inspection & Quarantine Escalation Management.....	13
Part D: - China Import Pathways	15
General Trade Overview:.....	15
<i>Benefits & Opportunities:</i>	15
<i>Risks and Constraints:</i>	15
<i>General Trade Import Flow:</i>	15
Cross border E-commerce (CBEC) Overview:.....	15
<i>Benefits & Opportunities:</i>	16
<i>Risks & Constraints:</i>	16
<i>Direct Mail Model:</i>	17
<i>Free Trade Bonded Zone Model:</i>	17
The Daigou Phenomenon	17
<i>Daigou (C2C) Model:</i>	18
Comparison of Pathways	18
Part E: Case Study For Securing China Market Access for Australian Foods.....	19
Introduction	19
Market Access Blueprint.....	19
Entity Compliance	20
Legal Structure	20
Intellectual Property	20
Licenses & Accreditations	20
Infrastructure & Facilities.....	21
Product Compliance	22
Ingredients Compliance	22
Product Compliance.....	22
Label Compliance	23
Shipment Compliance.....	24
First Time Import Shipment.....	24
Export - Import Documentation.....	24
Customs Clearance.....	24
Goods that fail import clearance	25

INTRODUCTION

This Industry Guide and accompanying Case Study is intended to provide the reader with a general understanding of what is required to secure sustainable China market access for food exports. Many exporters find themselves overwhelmed by the complexity of China's food import regulations and bureaucracy. Coupled with the geographical, cultural and language barriers, it can appear there is no rhyme or reason to many of the rules imposed on China food imports.

In fact, China's food import rules and regulations, whilst complex, are logical and based on the fundamental premise of consumer health and safety. The defining point of reference for exporters should be the China Food Safety Law (2015) to which most China food import controls and regulations are subordinate to. Part A of this Guide provides a general overview of the role and scope of the China Food Safety Law with key elements detailed in Annex 2 of this Guide.

The recently released China E-Commerce Law (2018) specifically addresses e-commerce trade to ensure convergence with other trade channels and this is also summarized in Part A of this Guide. This Law is due to come into effect from 1 January 2019 and exporters are strongly encouraged to seek professional advice on the impact of both these Laws on their China export strategies.

Another source of confusion for exporters is the seemingly endless number of Chinese agencies involved in administering food import regulations. This has been exacerbated with the recent restructuring of a number of China import

agencies. In Part B of this Guide the relevant China regulatory bodies are outlined along with key roles and responsibilities.

Exporters are often unaware of the nature and workings of China's internal import food safety management systems and are subsequently surprised and perplexed should penalties or sanctions be imposed. Part C of this Guide illustrates the General Administration of Customs of China food import management systems, controls and sanctions.

There are several China import pathways available to exporters, ranging from the China Daigou ('shop on behalf of') model through to the General Trade import model. Part D of this Guide describes how each model works and highlights the strengths, weaknesses, opportunities and risks associated with each option. Exporters need to take into consideration their export strategy and goals in choosing which pathway(s) best suits them.

Lastly, Part E of this Guide walks the exporter through a case study of the steps and actions required to secure China food import compliance. This case study highlights general market access requirements from product compliance through to ongoing commercial shipments with special requirements for several food categories highlighted. This case study is intended to illustrate the steps that need to be undertaken by exporters to secure sustainable China market access for their produce. As always exporters are strongly encouraged to reference the relevant source documents and seek professional advice when in doubt.



PART A: - CHINA FOOD SAFETY REGULATIONS

CHINA FOOD SAFETY LAW (2015) OF THE PEOPLES' REPUBLIC OF CHINA

There are currently over 30 laws, regulations, and measures governing the safety of China food export and imports (Refer Annex 1: the General Administration of Customs of China food import and export Laws, regulations & measures) however the most important Laws for exporters to be familiar with is the China Food Safety Law (2015) of the People's Republic of China and the E-Commerce Law (2018) of the Peoples Republic of China (the latter to come into effect on 1 January 2019).

When the China Food Safety Law was introduced in May 2015 (effective from October 2015), it was described at the time as the strictest food safety law in Chinese history. It reflects the proactive attitude of the Chinese government in cracking down on food scandals leading to poor consumer confidence in domestic products. The scope includes both domestically produced and imported foods and it provides policy guidelines to the regional and port-based authorities and agencies on how food safety must be managed. Of course, because these are guidelines only, there will always be some ambiguity on interpretation and application across a country as large as China.

The Food Safety Law places more emphasis on the supervision and control of every step of food production, supply chain, distribution, product sale, and recall. Special provisions are also set out for food products which have been a focus in food safety incidents in recent years, especially health foods and infant milk formulas. The new law also takes into account the more recent types of food

trading activities, including food sold on third-party trading platforms and food imported through e-commerce channels.

The law also empowers national, provincial and local regulatory bodies with more authority, sets harsher penalties for violations and introduces more guidelines for consumer product manufacturing and production.

You should seek professional advice to understand the requirements of the China Food Safety Law (2015) and how they apply to your food and beverage exports.

A review of the various sections of the China Food Safety Law is provided in Annex 2 of this Guide.

E-COMMERCE LAW OF THE PEOPLES' REPUBLIC OF CHINA (2018) (Adopted at the Fifth Session of the Standing Committee of the 13th National People's Congress on August 31, 2018)

On 31 August 2018, China's legislative body passed the country's first e-commerce law to "protect the legal rights of all parties" and "maintain the market order". This Law comes into effect on 1 January 2019.

The new e-Commerce Law focuses on consumers' privacy and rights while at the same time putting more emphasis on the obligations and responsibilities of the e-commerce platforms. For example, the Law requires China e-commerce platform operators to guarantee consumer rights are protected in online business transactions and the platform operators must now share responsibility, along with the e-commerce dealer (i.e. the merchant), for sales of substandard and counterfeit products. Previously e-commerce dealers were solely liable for any counterfeit products distributed via the online platforms.

China's goal is to promote e-commerce development whilst ensuring its convergence with other trade channels. To ensure this convergence on tax collection for example, the Law requires platform operators to validate the business license and identity information of individual web shops on their platform, and to transmit this information to the Chinese tax authorities. This means that e-commerce dealers will now be required to pay taxes on their e-commerce revenue whereas previously this was not always the case, especially for individual web shops.

E-commerce platform operators are also required to record and store product and transaction information, to maintain the confidentiality and integrity of this data, and are also required to set up a convenient and efficient reporting and complaint mechanism for customers.

After 1 January 2019, all merchants selling online, including individuals and companies based in China and abroad will need to register for an online selling certificate to be displayed in their online store. Further details on this registration progress have not yet been published.

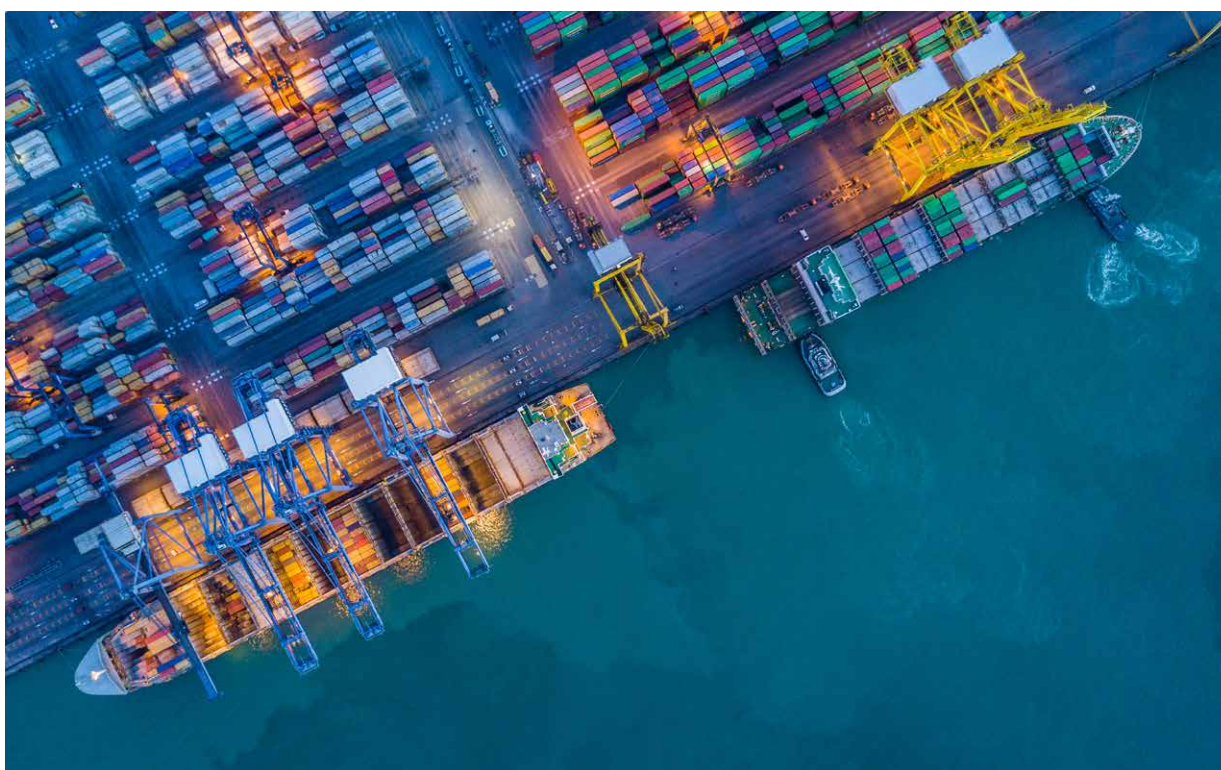
E-commerce dealers also face tighter regulatory requirements with most (there are some exceptions) being required to register as a business

to be able to engage in "...the commercial activities of selling commodities or providing services through the internet or any other information platform."

The inclusion of 'other information networks' as part of the definition for e-commerce dealers means that social media platforms such as WeChat will now also be covered by this legislation when used to buy and sell goods. This, along with the requirement for e-commerce dealers to be registered as businesses, may have a significant impact on the current Daigou business model.

Article 38 of the E-Commerce Law also places responsibility on the e-commerce platform operators to validate not only e-commerce dealer business registration but also product compliance with other relevant China food health and safety regulations. This could mean products such as infant formula and vitamins may be subject to additional import controls in line with general trade regulations although this is not yet clear at the time of publication.

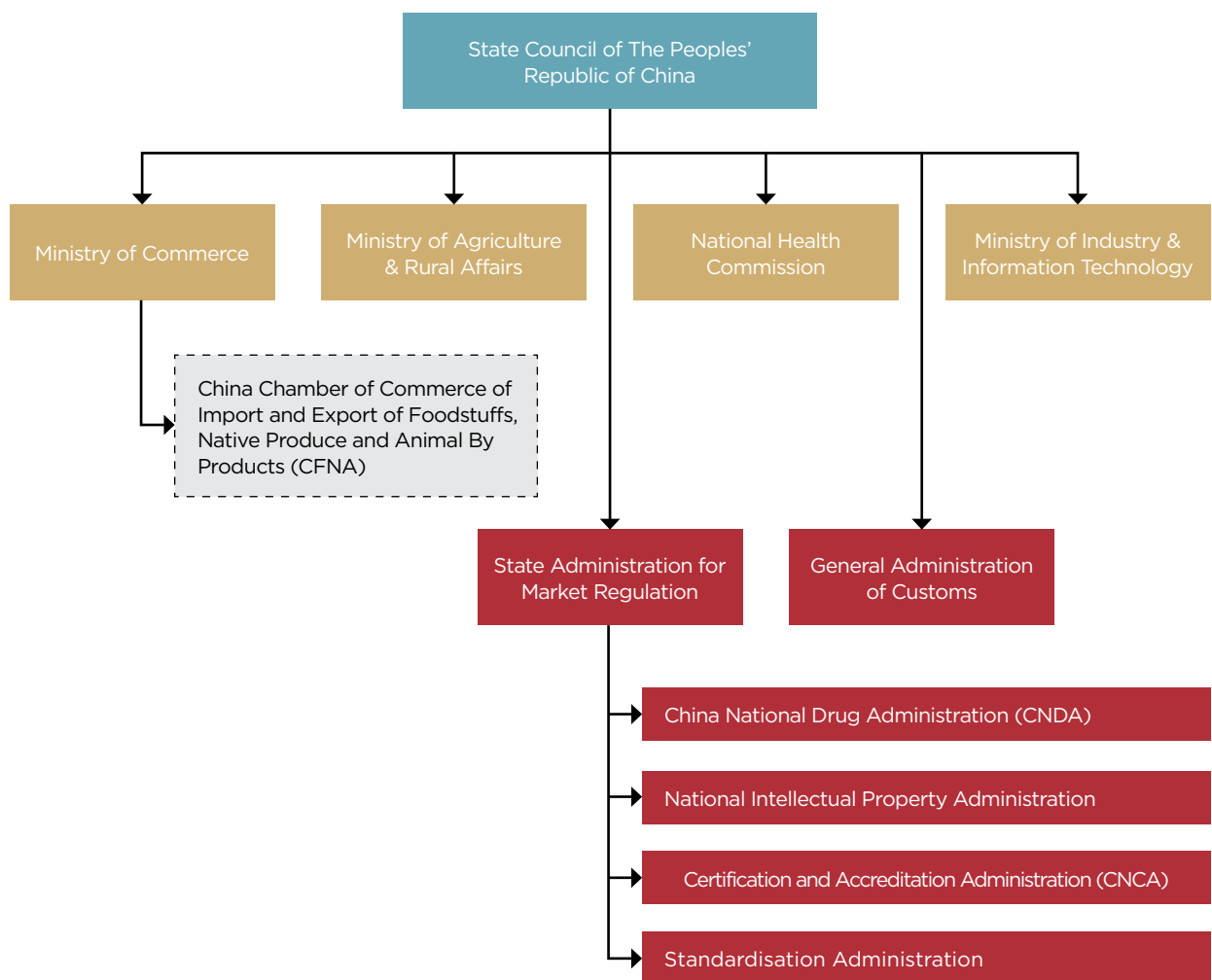
You should seek professional advice to understand the requirements of the China E-Commerce Law (2018) and how they apply to your food and beverage exports.



PART B: - CHINA FOOD IMPORT REGULATORY BODIES

Overview of Regulatory Authorities

China food import regulatory bodies fall under the authority of the 'Ministries of the State Council' and the 'Departments of the State Council'. Broadly speaking, the former is responsible for policy development, safety standards, audits and accreditations whereas the latter is responsible for the implementation, management and oversight of the various policies, procedures and practices.



- Generally responsible for policy development and standard setting
- Generally responsible for implementation, management and oversight of policies, procedures and practices
- Import / export industry advisory role to the Ministry of Commerce

Overview of Regulatory Functions and Responsibilities;

Ministries of the State Council		
Ministry	Key Business Functions	Key Responsibilities
Ministry of Commerce	China Chamber of Commerce of Import and Export of Foodstuffs, Native Produce and Animal By-Products (CFNA)	<p>Primary agricultural products (meat & dairies) import reporting & company registration</p> <p>Coordination of trade disputes, safeguarding interests of Chamber members</p> <p>Lobby on behalf of Chamber members to address trade barriers within their industry</p> <p>Import & export status research and development of Chamber member industries</p> <p>Strengthen connection between government and Chamber members</p> <p>Consultation to chamber members on policy, law, marketing, technology and management</p> <p>Organisation of international trade related conferences, exhibitions and seminars</p>
Ministry of Agriculture & Rural Affairs		<p>Quality, safety supervision and management for edible agricultural products from cultivation and breeding prior to manufacturing and/or processing and entering the wholesale and retail markets</p> <p>Quality, safety supervision and management of animal and plant disease prevention and control.</p>
Ministry of Industry and Information Technology		Electronic business management
National Health Commission	<p>Laws & Regulations</p> <p>Food Safety Standard Monitor and Assessment</p> <p>Drug policy and basic drug system</p> <p>Disease prevention and control</p> <p>Medical policy and management</p> <p>International Cooperation</p>	<p>Manage the State Administration of Traditional Chinese Medicine;</p> <p>Achieve medical and central health care objectives;</p> <p>Advise local hygiene and health work;</p> <p>Family planning management and services;</p> <p>Develop management methods for the medical institute and medical service industries and supervise their implementation.</p> <p>Develop national health policy;</p> <p>Deepen reform of the medical and health system;</p> <p>Develop and organize the implementation of disease prevention and control planning;</p> <p>Develop and coordinate the implementation of policies and measures for population aging;</p> <p>Develop national drug policy and national basic drug system;</p> <p>Supervision and management of occupational health, radiological health, environmental health, school health, public places sanitary, drinking water hygiene etc.</p>

Departments of the State Council		
Ministry	Key Business Functions	Key Responsibilities
General Administration of Customs of China (GACC)	Policy and Legal Services Health Quarantine Animal and Plant Quarantine Import and Export Food Safety Anti-smuggling Commodity Inspection Port Supervision Company Management and Inspection Free Trade and Special Areas Development Risk Management Supervision and Internal Audit Tariff Collection and Management	Manage Customs function across the country; International cooperation and communication of Customs practices; Develop and organize Customs science and technology development, laboratory establishment and technology insurance planning; National management of anti-smuggling activities; Customs statistics of export goods trade; Customs risk management; National customs work practices; Develop and promote the establishment of “Integrated Customs Clearance” ports; Customs supervision; Management of import and export tariffs and other taxes and fees; Entry/exit health quarantine, entry/exit animals and plants quarantine and inspection; Legal testing of imported / exported commodities.
State Administration for Market Regulation (SAMR)	Policy and Legal Services Laws and Regulations Product Quality & Safety Supervision & Management Food Manufacturing Safety Supervision & Management Food Safety Sampling Inspection and Monitoring Price Supervision & Inspection Special Equipment Safety Supervision Advertisement Supervision Food Safety Coordination Standard Technology Management Standard Innovation Management Measurements Registration Anti-Monopoly Quality Development Law Enforcement International Cooperation	Manage China National Drug Administration (CNDA) State Intellectual Property Bureau; Establishment of science & technology market monitoring and management, news publicity, international communication and cooperation; Manage, monitor and coordinate accreditation work to ensure uniformity across the country; Manage inspection and testing uniformity; Manage standardization uniformity; Manage metering work uniformity; Manage food safety supervision; Coordinate food safety supervision management; Market supervision and management; Market entity registration; Organize and advise enforcement of market supervision and management; Enforcement of antimonopoly law; Supervise and manage market order; Product quality and safety supervision and management; Special equipment safety supervision and management;

Departments of the State Council		
Ministry	Key Business Functions	Key Responsibilities
China National Drug Administration (CNDA)	<p>Policy and Legal Services</p> <p>Cosmetics Supervision and Management</p> <p>Drug Registration and Management</p> <p>Drug Supervision and Management</p> <p>Medical Apparatus and Instruments Registration</p> <p>Medical Apparatus and Instruments Supervision</p>	<p>Directing the work of provincial drug administration departments;</p> <p>External exchange and cooperation of supervision and management techniques for drugs, medical apparatus, instruments, and cosmetics;</p> <p>Admission management of licensed pharmacists</p> <p>Safety supervision and management of drugs, medical apparatus and instruments, and cosmetics;</p> <p>Standards management of drugs, medical apparatus and instruments, and cosmetics;</p> <p>Registration management of drugs, medical apparatus and instruments, and cosmetics;</p> <p>Post-marketing risk management of drugs, medical apparatus and instruments, and cosmetics;</p>
National Intellectual Property Administration		<p>Draft and implement policies, laws and regulations</p> <p>Determine products requiring compulsory certification and safety quality permission systems;</p> <p>Assessment and registration of manufacturers of imported/exported foods and cosmetics;</p> <p>Approve and supervise the certification of accreditation institutes;</p> <p>Manage the certification of testing laboratories;</p> <p>Manage and coordinate international activities relating to certification and accreditation;</p> <p>Research, publicize and implement international rules, instructions and standards relating to certification and accreditation;</p>
Certification and Accreditation Administration (CNCA)		<p>Draft and implement policies, laws and regulations</p> <p>Determine products requiring compulsory certification and safety quality permission systems;</p> <p>Assessment and registration of manufacturers of imported/exported foods and cosmetics;</p> <p>Approve and supervise the certification of accreditation institutes;</p> <p>Manage the certification of testing laboratories;</p> <p>Manage and coordinate international activities relating to certification and accreditation;</p> <p>Research, publicize and implement international rules, instructions and standards relating to certification and accreditation;</p>

Departments of the State Council		
Ministry	Key Business Functions	Key Responsibilities
Standardisation Administration		<p>Draft and implement laws and regulations relating to national standardisation;</p> <p>Draft and amend national standards;</p> <p>Coordinate and manage the work of the national standardisation technology commission;</p> <p>Participate in activities and initiatives of international standardisation organisations;</p> <p>Manage national organisation and commodity coding activities;</p> <p>Facilitate and publicize the implementation of national standards;</p> <p>Manage national standardisation activities;</p>



PART C: - CHINA FOOD SAFETY MANAGEMENT SYSTEMS & CONTROLS

CHINA CUSTOMS SAFETY MANAGEMENT SYSTEMS FOR IMPORTED FOODS

The General Administration of Customs of China has implemented a range of safety management systems to ensure the health and safety of imported foods. The General Administration of Customs of China has a general target set in the 13th Five-Year Plan (2016-2020) to realize modernisation of the imported foods safety management system and capability before the Year 2020. (Refer Annex 7 China Customs Safety Management Systems for Imported Foods).

BEFORE IMPORT

Objective: Identify exporters' Governments' responsibilities

1. System of auditing Food safety management system of countries or regions exporting foods to China
2. System of attaching official certificates to foods exporting to China
3. Quarantine approval system for animal and plant derived foods exporting to China

Objective: Identify manufacturing / business enterprises' responsibilities

4. Registration system for manufacturing enterprises exporting foods to China
5. Registration system for exporters exporting foods to China
6. Registration system for importers importing foods to China
7. System of Importers auditing overseas exporters and processors

Objective: Encourage manufacturing / business bodies to identify responsibilities

8. Overseas pre-testing system for foods exporting to China
9. Excellent food importers identification system

DURING IMPORT

Objective: Identify Manufacturing / business enterprises' responsibilities

10. Foods exporting to China inspection & quarantine declaration system
11. System of importer attaching qualified certificates

Objective: Identify inspection & quarantine departments' supervision responsibilities

12. System of inspection and quarantine at ports for goods exporting to China
13. Safety risk monitoring system for foods exporting to China
14. Risk pre-alert and quick response system of inspection and quarantine for foods exporting to China
15. System of designating quarantine port for foods exporting to China

Objective: Encourage manufacturing / business bodies to identify responsibilities

16. Recognition System of qualified 3rd testing institution for foods exporting to China

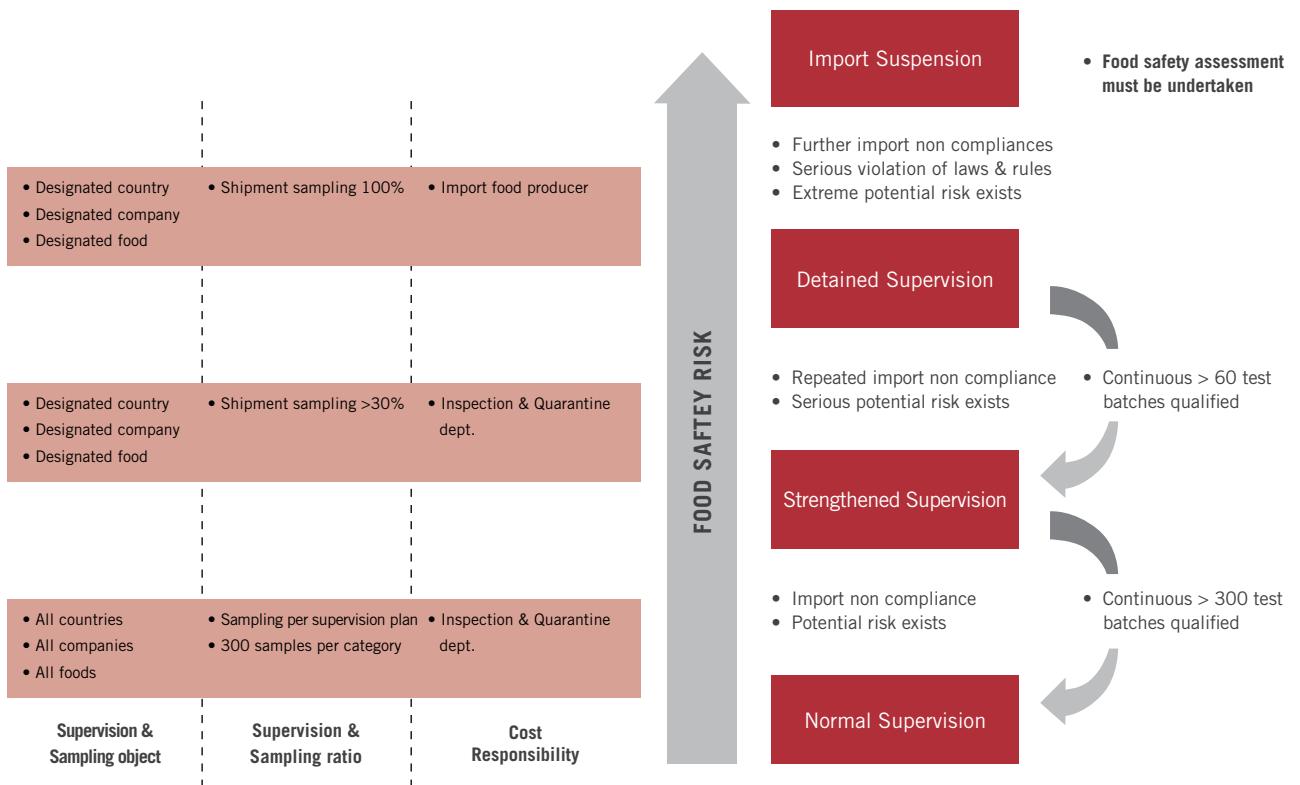
AFTER IMPORT	
Objective: To implement export government responsibilities	
17. Retrospective examination system to food safety management system of processors and countries or regions exporting foods to China	
Objective: To implement manufacturing business responsibilities	
18. Non-compliance recording system of food importers, exporters and producers	
19. Food importers or agents interview System	
Objective: To implement supervision responsibilities of inspection & quarantine dept	
20. Food Import and sales recording system	
21. Food Recall system	

CHINA CUSTOMS IMPORTED FOOD INSPECTION & QUARANTINE ESCALATION MANAGEMENT

The General Administration of Customs of China has provided some clarity around non-compliance escalation and consequences. Essentially exporters will face increased costs and border clearance

delays as a consequence of repeated breaches of China import regulations; the ultimate sanction being import suspension.

China border clearance failures are recorded on the publicly available China Customs 'Blacklist' each month (<http://www.customs.gov.cn/customs/jyjj/jckspaq/fxyj/index.html>)



Reference: 'Top Level Design of Safety Management System for Imported Food', China Inspection & Quarantine Bureau

PART D: - CHINA IMPORT PATHWAYS

For food exporters, there are two main pathways to China; via general trade or Cross Border E-commerce (CBEC) trade.

Exporters should validate food products have market access. The Department of Agriculture and Water Resources maintains a database of importing country requirements for agriculture products—the Manual of Importing Country Requirements or MICO_R, which can be accessed through this link: micor.agriculture.gov.au.

If importing country requirements of a particular agricultural commodity are not contained in MICO_R, exporters should seek information regarding any specific quarantine requirements of the importing country from the relevant quarantine authority.

GENERAL TRADE OVERVIEW:

For general trade imports, a China legal entity is required to import the goods and clear customs and quarantine (if required). Duties and taxes payable on the CIF (cost, insurance, freight) price must be paid before the goods can be released from bonded storage. The goods can then be sold in the China market.

Benefits & Opportunities:

The general trade channel, whilst requiring more initial investment in time and resources, is the most stable and sustainable pathway for Australian food exports to China. Once the China health certificate

has been secured, the product can be sold into brick-and-mortar retail outlets or via e-commerce platforms. Larger shipment volumes can leverage economies of scale to reduce shipping and clearance costs meaning lower ‘delivery duty paid’ (DDP) unit pricing and more competitive price positioning to end consumers.

Exporters can execute their export strategies more easily by delineating market channels, managing distributors and targeted brand support and promotion.

Risks and Constraints:

Pre-market approval can be complex and time consuming with the requirement to meet China product formulation and labelling compliance, testing methodologies and, in some cases, China accreditation of production, processing and supply chain capability.

Also critical is the requirement for a reliable China import and distribution partner(s), the majority of food import border clearance failures are the result of oversights or omissions by the China importer and/or distributor

This risk can be mitigated somewhat through the exporter having a comprehensive understanding of China food import regulations and a transparent supply chain rather than relying on third parties to ‘do the right thing’

General Trade Import Flow:



CROSS BORDER E-COMMERCE (CBEC) OVERVIEW:

For CBEC trade, which is officially a Chinese pilot program operating in 35 Chinese cities, the exporter can export goods to China utilising either a bonded warehouse model or via direct mail model. The exporter is able to take advantage of special channels (known as cross-border e-commerce) and the preferential policies of special economic zones and bonded warehouses.

China's Ministry of Commerce maintains two 'positive lists' that include products like packaged foods, UHT milk, infant formula and wine. Until the end of a grace period on 31 December 2018, products on the positive lists will generally not be required to comply with China's product standards and import regulations. Products must legally be able to be sold in Australia.

The exact regulatory requirements differ according to each product and may differ between CBEC pilot cities—exporters are strongly encouraged to seek professional advice from an import agent, a logistics company, law firm or regulatory affairs advisory. The product clears China Customs only when there's an order from an online customer who has to pay duties and taxes on the retail price prior to delivery. Different tax and duty rates apply to CBEC trade and goods generally must comply with less onerous import regulations than via general trade. Goods can only be sold on e-commerce platforms directly to the end consumer however and consumers must declare their personal identification for every transaction.

Benefits & Opportunities:

The CBEC channel simplifies the process for getting a product into the China market and for most food categories there is significantly less pre-market approval and border clearance requirements. The channel also enables the exporter to connect directly to the end consumer, cutting out the traditional in-country distribution network and consequently facilitating a direct connection with the end consumer.

The channel provides a great opportunity for exporters to evaluate consumer demand for their brands and products prior to undertaking potentially costly and time consuming pre-market approval measures to enable access to the general trade channel.

Risks & Constraints:

The key risk is the potential for changes to China Government policy. The CBEC model is a relatively recent innovation by the Chinese Government and is still in a pilot phase. As with any new process, there have been a number of unforeseen issues and unexpected consequences that have impacted on China's food health and safety. With the passing of the E-Commerce Law (2019), the China government is seeking to further protect consumer rights by addressing a number of issues (Refer Part B China Food Regulations).

Other constraints include the fact that the goods must be sold direct to consumer which eliminates the opportunity to grow export volume through servicing the Business to Business (B2B) market. The need to 'pick and pack' for individual consumer delivery, either prior to shipping (direct mail model) or upon shipment arrival in the China free trade bonded zone, is an additional supply chain cost and also adds a layer of administrative complexity that must be taken into consideration by exporters.

Individual consumer purchase limits also apply; currently these are set at CNY2,000 per transaction with an annual ceiling of CNY20,000. Consumers must provide personal identification for every transaction and these limits are closely monitored. Consumers can view their current annual balance via an online website.

The direct mail Business to Consumer (B2C) and Daigou model cannot be used for foods requiring a phytosanitary license.

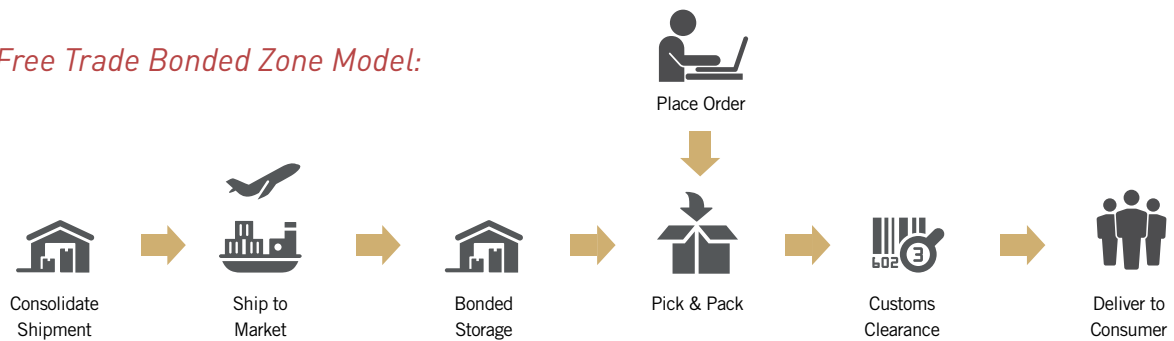
¹ CBEC positive list 1 (released 6 April 2016) in Chinese: http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201604/t20160401_1934275.html
CBEC positive list 2 (15 April 2016) in Chinese: http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201604/t20160415_1952574.html



Direct Mail Model:



Free Trade Bonded Zone Model:



THE DAIGOU PHENOMENON

Technically this is not a separate pathway but rather a subset of the CBEC direct mail (B2C) model however because of its impact on Australian food exports to China, it is worthwhile outlining the growth, potential and risks of this model. The term ‘Daigou’ comes from the Mandarin for a buying agent, and literally means to “buy on behalf of”. It was originally a term applied to Chinese nationals on holiday, studying or working overseas who would purchase goods (usually well-known brands) and post them back to China for their family, friends and, more recently, followers on social media.

The concept is based on the ‘circle of trust’ where the recipient has a high degree of confidence in the authenticity of the goods because they know the daigou buyer personally. The commercial viability of the model is based on the fact that the cost of purchasing the product in Australia and mailing it to the China consumer is less than the cost of the same product retailing in China supermarkets. In many cases the product may not even be available in China supermarkets.

Nowadays, in addition to the tens of thousands of individuals purchasing products from Australian retail outlets each week to post back to China, the

channel has become commercialised with over 1500 daigou gift shops across Australia and New Zealand, many providing full service ‘pack and send’ services through partnerships with logistics companies.

Clearly this is an opportunity for Australian brands to gain China market exposure and generate export sales with minimal upfront investment. However, the daigou model, while growing exponentially and becoming more legitimised, poses a number of risks.

The daigou model is based on trust and, as it has become more commercialised, the threat of product counterfeits has been steadily increasing. A brand’s reputation may be compromised before it is even officially launched in the China market.

Similarly, as the China consumer develops more confidence in the integrity of the imported products on their supermarket shelves, demand for daigou services will be impacted. In addition, the model does not build brand loyalty; recent case studies have shown that the China consumer is more loyal to their daigou than the brand.

But perhaps the biggest risk is that this model only remains viable for as long as the Chinese government permits online shopping from international markets - note the impact of the recently passed China E-Commerce Law (2018) outlined in Part B China Food Regulations above).

Daigou Consumer to Consumer (C2C) Model:



COMPARISON OF PATHWAYS

	Export Flexibility	Pre Market Approval	Policy Risk	Brand Control	Business Risk	Shipment Volumes	Export Cost (per unit)
Normal Trade	Complex	Yes	Low	High	Low	Large	Low
CBEC	Simple	Limited	High	Medium	High	Small - Med	Med - High
DAIGOU	Simple	No	High	Low	High	Small	High





PART E: CASE STUDY FOR SECURING CHINA MARKET ACCESS FOR AUSTRALIAN FOODS

INTRODUCTION

Developing commercially viable and sustainable market access into China is regarded by many food producers and exporters as the foundation stone of their export strategy. For many years the lure of 1.4 billion consumers, with rapidly increasing disposable incomes and a taste for western foods, has attracted producers from around the world looking to cash in on this lucrative market.

The signing and entry into force of the 2015 China–Australia Free Trade Agreement (ChAFTA) is progressively reducing tariffs to make Australian foods more commercially competitive on Chinese supermarket shelves however the non-tariff challenges facing exporters largely remain.

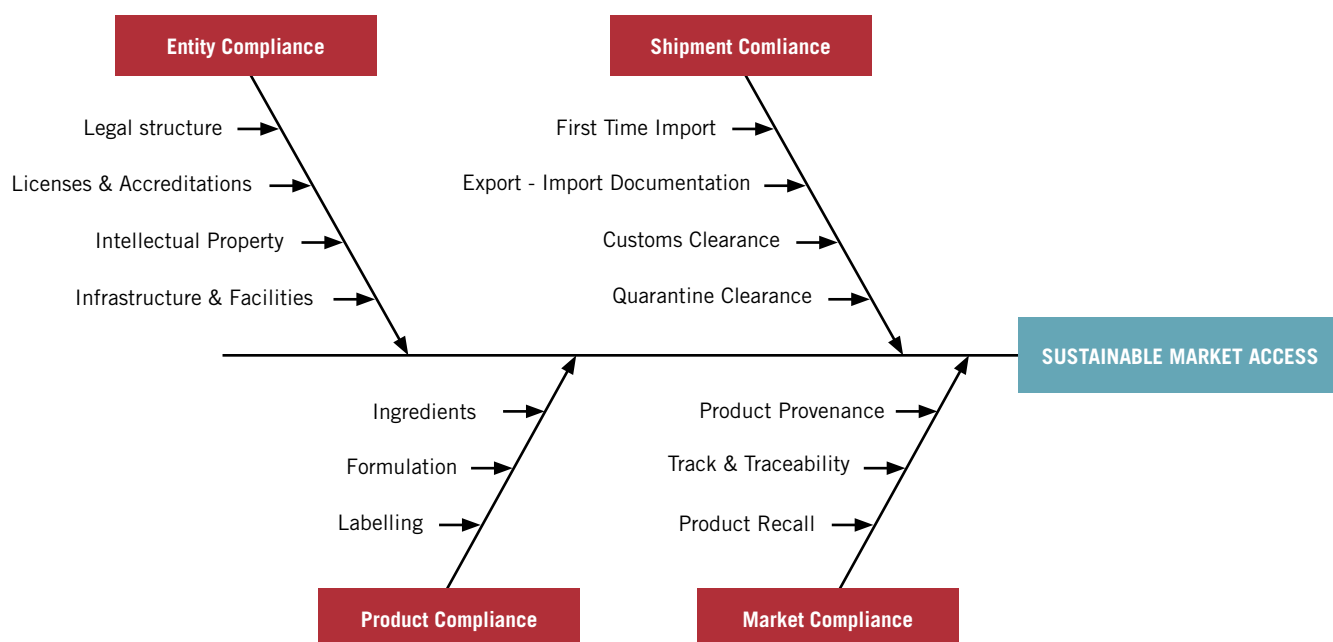
Market access for agriculture products is negotiated on a government-to-government basis using science-based risk assessment principles and occurs outside the ChAFTA process.

This case study is designed to help Australian food producers and exporters identify and overcome these challenges to secure reliable and sustainable access to their China markets. The principles and information outlined in this Industry Guide have been applied to highlight both general and special import requirements for each stage of the China ‘General Trade’ food import process, from initial product compliance through to the first commercial shipment. It is important however for exporters to refer directly to the relevant regulations as requirements will vary over time.

MARKET ACCESS BLUEPRINT

China food import compliance requirements can be classified as relating to the entities involved (e.g. producer, processor, exporter, importer, distributor, retailer), the product itself (including ingredients, formulation and labelling), the shipments (e.g. packaging, documentation, product quality) and perhaps not so obviously, market requirements (e.g. product traceability, process transparency, product recall procedures).

Each of these areas needs to be managed and monitored to achieve a sustainable China market access solution;



ENTITY COMPLIANCE

Legal Structure

General Requirements

The first step any manufacturer, brand owner or exporter (hereafter referred to as the ‘exporter’) must ensure is that they have the most appropriate legal structure in place to achieve their export strategy objectives. This may vary from simply being export registered in Australia (e.g. through the Department of Agriculture and Water Resources for some agricultural commodities) through to the incorporation of a Wholly Foreign-Owned Enterprise (WFOE) in China.

If the exporter chooses to outsource China import and/or market distribution activities to a third party, it is essential to validate the legitimacy of the entity(s) and any licenses they may be required to have in place. Company ‘credit reports’ can be easily accessed which provide a range of information including incorporation details, shareholding, related entities, legal actions etc. It is prudent to insist on sighting relevant licenses to avoid potential compliance issues later on.

If the exporter decides to manage its own import and/or market distribution activities by setting up a WFOE, it is important to get legal advice on China tax and accounting law as there are some significant factors that will influence the nature and structure of the proposed entity

Intellectual Property

General Requirements

A very important consideration is the registration of trademarks and brands in China as China operates a ‘first to file’ trademark registration system. Under the ‘first-to-file’ rule, the first person or company to file a trade mark application in China is generally granted the right to that trade mark and can prevent others from subsequently using it.

It is not unusual for a potential exporter to discover that their brand has already been registered in China despite the product having never been exported to China previously. If this is the case, then the exporter is left with little choice but to negotiate with the ‘squatter’ to try and secure

the transfer of the brand or trademark back or to create and register a new brand or trademark.

Exporters are encouraged to engage an intellectual property lawyer to seek advice in this field.

Licenses & Accreditations

General Requirements

Regardless whether the exporter has established its own WFOE or has chosen to use a China partner, due diligence should be undertaken to ensure both importer and distributor have the correct business licenses in place.

Some producers and exporters of Australian agriculture commodities may need to be registered with the Department of Agriculture and Water Resources (DAWR). For further information on which commodities are subject to production registration, please refer to the Department of Agriculture and Water Resources Manual of Importing Country Requirements (MICoR) database (micor.agriculture.gov.au).

Additionally, some agriculture commodities and products must be prepared for export under Australian government legislation, for example the Export Control Act 1982. For more information about the export of agriculture products, please visit the Department of Agriculture and Water Resources website: agriculture.gov.au/export/from-australia.

The Australian Chamber of Commerce & Industry (ACCI), Australian Industry Group (AIG) and the Australian Grape & Wine Authority (AGWA) for wine-related products, are responsible for issuing Certificates of Origin for Australian businesses for trade purposes or to claim a preferential tariff under the China–Australia Free Trade Agreement (ChAFTA). For further information on ChAFTA Certificates of Origin, please refer to the Department of Foreign Affairs ChAFTA Certificates of Origin website: dfat.gov.au/trade/agreements/

in-force/chafta/doing-business-with-china/Pages/chafta-certificates-of-origin.aspx.

China importers must be registered as such and, if transacting overseas, have the necessary China Foreign Currency Bureau approvals for the currencies being transacted.

China distributors must hold the appropriate business trading licenses including a 'Food Handling & Circulation' permit for the handling, storage and distribution of imported foods. If the exporter is distributing the shipments direct to the end retailer, then the exporter must also be appropriately licensed.

Under China tax law, tiered approval is required for financial trading meaning that if a Chinese entity is registered to issue and receive individual invoice amounts not exceeding CNY10,000 then it cannot claim VAT tax rebates for any amount exceeding this approved limit. It is important therefore for the exporter to confirm their China partner entity has the appropriate financial trading approval to avoid complications such as requests for multiple invoices which may attract the attention of the China Tax Bureau.

Special Requirements

A China national import registration system operates for the import of certain food categories (such as dairy and beef) whereby importers must be registered before they can import these products. Validity period is for 12 months, renewable annually.

For animal and plant-based product imports (e.g. dairy, meat, fruit, vegetables, seafood) the importer must also apply to China Customs for a sanitary and phytosanitary license which will have a predetermined validity period.

For a number of food categories, formal audit and accreditation of the country of origin

manufacturing or processing plant and in some cases even the farm is required by Chinese authorities before the products can be imported. For temperature sensitive food categories, supply chain storage and handling processes and controls are also required to be audited.

The China port of entry must also be accredited and registered for the handling of specific food categories. This means a particular China sea or airport might be accredited for dairy imports but not fruit imports as an example.

In some cases, the exporter must also have an export license for specific food categories. For wine, exporters must be licensed with the Wine Export Authority (WEA) before they can export.

Infrastructure & Facilities

General Requirements

From the General Administration of Customs of China perspective, exporter responsibility is not transferred with product ownership. The China Food Safety Law (2015) specifically outlines the requirement for producers and traders to have appropriately trained technical personnel in place to ensure food safety during production, storage, handling, and transit.

Many exporters assume shipment responsibility ends once ownership is transferred and often have limited knowledge or visibility as to what happens to their product after that point. The Chinese importer may subsequently encounter difficulties in clearing the border or the distributor may have inadequate storage and handling facilities in place, particularly for perishable and temperature sensitive foods.

It is important the exporter conducts some basic due diligence on their China partners (both importer and distributor) to ensure they have the capacity and capability to handle the imported food correctly. Failure to do so will increase the risk of shipment and and/or product non-compliance

which in turn will jeopardise the exporter's market access and growth strategy

Food fraud is another significant risk to the exporter's market strategy and brand reputation. Good supply chain visibility, along with an effective anti-counterfeit packaging solution can significantly mitigate this risk.

Special Requirements

Perishable foods are often temperature sensitive and have a limited shelf life. As such it is essential the exporter has good supply chain visibility with effective product condition monitoring measures in place to ensure China Customs import standards compliance and product quality to the end consumer. Failure to do so jeopardises the exporters' China market access and exposes them to consumer claims for compensation

PRODUCT COMPLIANCE

Ingredients Compliance

General Requirements

The first requirement for exporters is to ensure their product ingredients are approved for import by China. Checking the product's international 'harmonised system' (HS) code will usually determine this, along with applicable tariffs and taxes but complications can arise where a product contains multiple ingredients and when one or more of those ingredients has not been formally classified by the General Administration of Customs of China. In this instance it is necessary to seek validation from a credible Chinese partner who can review the regulations and seek a ruling from China Customs. Such rulings are not binding however, and General Administration of Customs of China may amend their decision following subsequent product testing and/or label compliance assessment.

At a policy level, the China government has

restrictions on the import of a range of food categories from specific countries and/or regions. This can be due to a number of reasons including specific biosecurity concerns (e.g. chicken products from Australia are not presently approved due to avian bird flu concerns), historical non-compliances (e.g. the suspension of Australian chilled beef several years ago due to inconsistent labelling) or trade policies (e.g. free trade agreement status with individual countries).

Securing China import status for food categories not currently on the China approved import list is managed by the Australian government (i.e. the Department of Agriculture and Water Resources) working directly with their Chinese counterparts. This can sometimes be a lengthy process involving multiple Chinese agencies, including those with a responsibility for food safety and biosecurity risk assessments.

Special Requirements

Certain food categories are classed as 'high risk' by the General Administration of Customs of China and as such require additional licenses, testing and controls (such as the accreditation of the manufacturing facility as mentioned earlier).

Product Compliance

General Requirements

The product formulation (i.e. the nutritional information panel) also needs to be compliant with China food health and safety standards. Product ingredients, whilst individually compliant, may also need to meet prescribed limits when combined in a particular product.

These limits, usually defined as a percentage, are detailed in the relevant China national food standards. In the absence of a national food standard, reference may be made to the relevant industry standard. In the absence of any standards, then application must be made to the National

Health Commission (NHC) for the product to be assessed and a national standard developed.

Once the applicable China food testing standard(s) has been identified, the exporter should arrange for a suitably accredited laboratory undertake the full range of tests specified to ensure product compliance. To mitigate the risk of any testing variances the laboratory should follow the testing methodologies prescribed by the China GB standard(s) wherever possible.

Special Requirements

For some food categories, a 'Certificate of Analysis' (COA) from the country of origin must accompany the shipment. Whilst it is mandatory for the COA to include the testing items prescribed by the China national food standard(s), it is not mandatory to use the same methodologies outlined in the national standard(s). It is however prudent to do so if possible as it is an effective means of mitigating the risk of import noncompliance.

For health and infant related food categories, such as infant formula and vitamins, additional ingredients and product requirements apply. These requirements are administered by the China Drug Administration and can be quite complex and the compliance process quite long. Exporters should pay close attention to the applicable regulations and seek expert advice.

Label Compliance

General Requirements

For the general trade imports, labels must be physically applied to the individual products, either prior to export or upon arrival in China and prior to border clearance. For cross-border e-Commerce (CBEC) channel imports, a China approved label must be electronically registered with China Customs, but it doesn't need to be physically applied to each product.



Product labels must be compliant with the requirements of the China Food Safety Law and the applicable China national food standard(s); 'General Rules for Labelling', 'General Rules for labelling Nutritional Information' and 'General Rules for labelling Special Dietary Food'. Unqualified product labelling is one of the more frequent causes of food import shipment failures and the challenge exporters face is that China labelling requirements are complex and can be interpreted differently by individual China Port Customs authorities.

Another important factor for the exporter to consider is what information to list on the label. For example, it is a mandatory requirement that either the importer or the distributor be listed on the label, therefore the exporter must decide if they wish to maintain multiple labels listing different importers or distributors, or a single label using a master importer or distributor.

The GB standards listed above specify the type and size of fonts to be used on the label and

nutritional information panel, so care must be taken in designing the China label to ensure compliance. Any information listed on the label must also be able to be validated. If an exporter includes descriptions on its label such as 'award winning', 'natural', 'organic', or 'market leader', then evidence of these claims will need to be provided to China Customs before the label will be approved. This validation extends to the contents of the nutritional information panel where ingredients and percentages listed must accurately reflect what is in the actual product itself.

Securing label approval can be problematic. The exporter can engage a China consultant to assist with label design and format compliance, but final approval is determined by the selected China Port of entry Customs authority. Rulings on label approval is not binding so there is always the possibility that the ruling might be reversed up to and including the clearance of the first commercial shipment. However, once China Customs has issued the health certificate for the first shipment,

² GB stands for Guobiao, which is Chinese for national standard.

SHIPMENT COMPLIANCE

First Time Import Shipment

General Requirements

Once the exporter has completed the actions required to ensure entity and product compliance, they are ready to commence China export shipments. In most cases a 'first time import' shipment should be undertaken. This is effectively a 'test run' to ensure export supply chain and border clearance processes and controls are in place and working effectively.

China Port Customs will usually (but not always) carry out comprehensive inspection and testing of the first time import shipment, so any documentation or product compliance discrepancies will be identified at this time. Because there is still the potential of shipment failure at this point (particularly with label compliance) it is often best to send a small quantity of product for this first time import shipment.

Once the first time import shipment has been cleared and the China health certificate issued, the exporter can confidently proceed with ongoing commercial shipments in the knowledge that subsequent shipments are only at risk if product testing fails or unapproved changes are made to the product ingredients, formulation or label

Ongoing import shipments will be subject to a predetermined testing frequency, depending on the category of food being imported and the credibility of the importer and brand itself. The Port Customs authority has the discretion to increase import shipment testing frequency but cannot reduce beyond the prescribed minimum that has been set nationally for the specific food category. For example, an importer that has incurred repeated import failures will most likely be subject to an increased frequency of testing, up to 100 per cent in some cases. Continued infractions may result in imports being suspended.

Export – Import Documentation

General Requirements

A China import permit may be required, and if so must be applied for and issued for each import shipment. The importer must submit an application listing import details including shipment weight and quantity. This application can take up to one week to process. The import permit is valid for up to six months but only for a single shipment.

Export documentation requirements vary according to the food category being exported, the exporter should check these details with their freight forwarder. The required shipment documentation is sent to the importer electronically as a pre-alert which then triggers the scheduling of the customs and quarantine clearance process. In some cases, original documents (such as the Certificate of Analysis) must accompany the actual shipment.

Customs Clearance

General Requirements

Customs clearance commences upon shipment arrival and is generally completed within 1 - 2 days. Once customs clearance has been completed, the shipment can be released from bonded storage to the import agent, following payment of taxes and duties and authorisation from China Customs.

Some shipments will be selected for inspection or testing by the China Port Customs system, based on the predetermined percentages set for the importer and food category.

Shipment inspection generally consists of a physical inspection of the shipment to ensure the product details match the documentation provided. Shipment testing consists of a small number of products being selected for testing in accordance with the applicable China national standard(s). Several units will be held by China Customs as 'golden samples' in case subsequent

testing is required following the release of the shipment. This may be triggered by a customer complaint for example.

Shipments can be released to the importer immediately following payment of taxes and duties, which, in the case of shipments not selected for inspection or testing, can be within 1 - 2 days of shipment arrival. Exporters should note however that it is illegal for their products to be sold to consumers until the China health certificate has been issued which varies from port to port but can be up to a week after customs clearance has been completed. Note also that the health certificate will not be issued for shipments selected for inspection or testing until this has been completed. This can significantly increase border clearance lead time.

Goods that fail import clearance

Imported food that fails inspection and quarantine are issued with the Unqualified Certificate by China's Inspection and Quarantine agency.

Imported foods that fail clearance may:

- undergo technical treatment under Chinese supervision and then be re-inspected
- be issued a Returns Handling Notice, meaning that the importer must send the product back to the exporter; or
- be destroyed.

Some of the most common reasons for non-compliance include: presence of micro-organisms, incorrect certificates (category 29), non-compliant labelling (category 22) and non-compliant ingredients, additives, vitamins and fortifiers (category 23).

Failure to comply with Chinese import requirements can result in additional costs and border clearance delays and potentially attract a range of sanctions depending on the severity of non-compliance. Products that do not pass import inspection are publicly listed on Chinese

government websites. China also maintains a non-compliance list for products from all suppliers that fail import inspection.

Special Requirements

China Customs recently implemented an integrated clearance model (Announcement 48) which has resulted in the suspension of shipment transfers from port of entry to other bonded zones for customs clearance of some food categories. As a consequence, import shipments must now be cleared in the port of entry unless the importer has secured transfer authorisation from China Customs authorities. This has resulted in some border clearance delays due to congestion at some ports.

MARKET COMPLIANCE

Product Provenance

General Requirements

China food import shipments must be accompanied with a 'Certificate of Origin' to prove product provenance and to take advantage of tariff reductions under the China-Australia Free Trade Agreement, however, from a market perspective, the bar for proving product provenance is set much higher.

Whilst not necessarily a technical barrier, a lack of information on product provenance can certainly hinder a product's success in the China market. The better an exporter is able to answer consumers' questions around product origin and integrity, the less likelihood of products being counterfeited and the stronger the demand in the market.

A major area of concern for exporters and consumers alike is food fraud. This compromises food safety and a brand's commercial viability. There are a number of proven anti counterfeit solutions now available to exporters and adopting one of these should be a key consideration for their export strategy. Exporters should be wary of non-

industry standard solutions; many can be easily circumvented by counterfeiters.

Track & Traceability

General Requirements

The China Food Safety Law specifically addresses the requirement for traceability of imported foods. The exporter is expected to maintain traceability of product at least through to delivery to the China distributor so as to be able to validate product integrity and supply chain controls.

Product traceability is a key component for China Customs clearance risk mitigation procedures. These controls commence before import, with China Certification and Accreditation Administration (CNCA) conducting processing plant and cold chain audits for some food categories and extending to the monitoring of

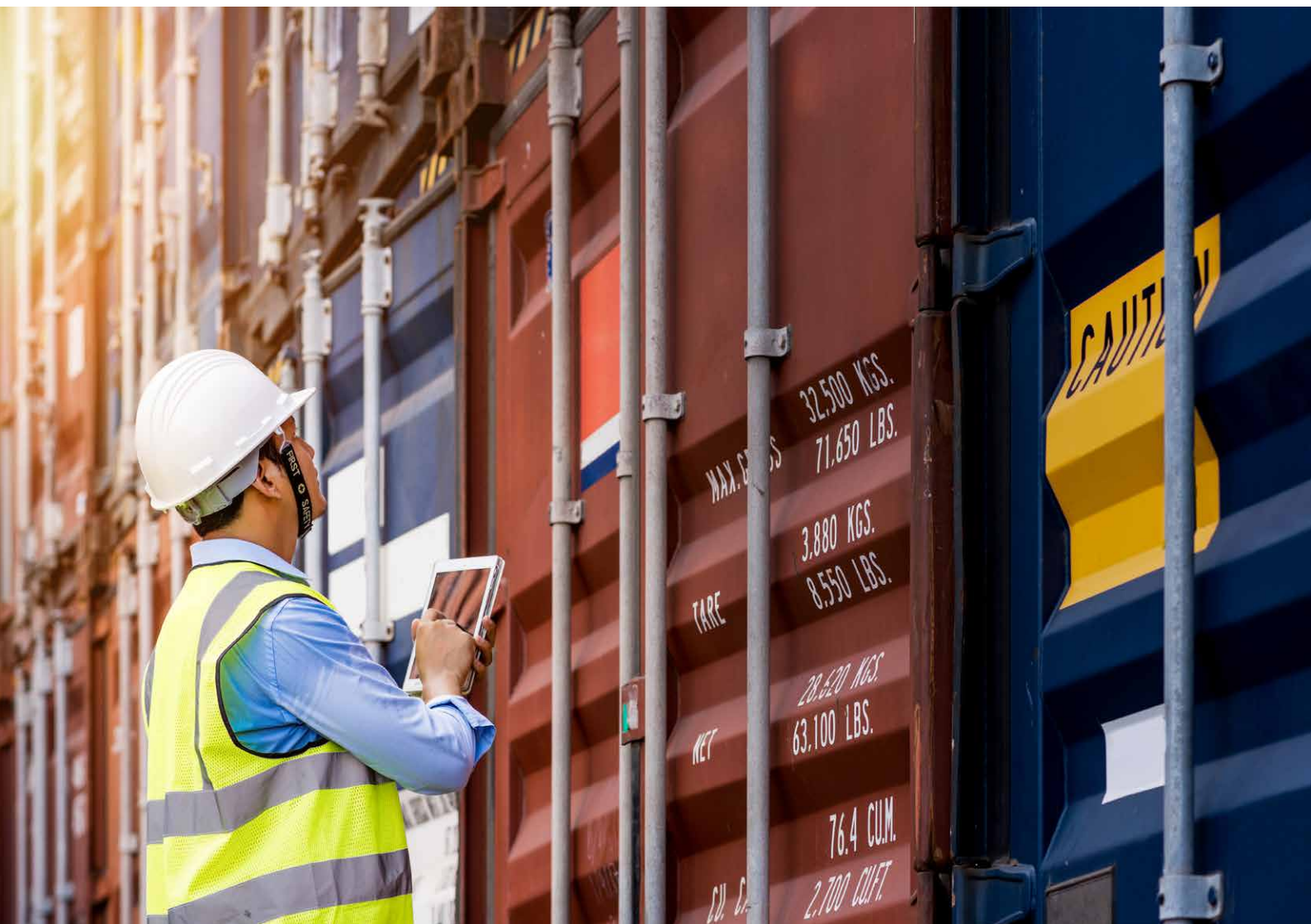
temperature sensitive shipments during import and the requirement for importers to maintain documented product recall procedures following import.

Exporters should make every effort to ensure they have clear visibility of export shipments along the entire supply chain. This not only facilitates China market access but helps to protect their brand and reputation in the market.

Product Recall

General Requirements

China Customs requires the exporter and importer to manage an efficient and effective product recall procedure. This procedure must be documented and registered by the importer with the applicable China Port Customs authority.



ANNEX 1: CHINA CUSTOMS FOOD IMPORT AND EXPORT LAWS, REGULATIONS & MEASURES

DESCRIPTION
<i>Food Safety Law of the People's Republic of China;</i>
<i>Regulation on the Implementation of the Food Safety Law of the People's Republic of China;</i>
<i>Law of the People's Republic of China on Import and Export Commodity Inspection;</i>
<i>Regulations for the Implementation of the Law of the People's Republic of China on Import and Export Commodity Inspection</i>
<i>Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine</i>
<i>Regulations for the Implementation of the Law of the People's Republic of China on the Entry and Exit Animal and Plant Quarantine</i>
<i>Regulations of the People's Republic of China on the Origin of Import and Export Goods (State Council Decree No. 416)</i>
<i>Special Rules of the State Council on Strengthening the Supervision and Management of the Safety of Food and Other Products (State Council Decree No. 503)</i>
<i>Administrative Measures for the Quarantine Approval of Imported Animals and Plants (China Customs Decree No. 25)</i>
<i>Administrative Regulations for Risk Analysis on Imported Animals and Animal Products (China Customs Decree No. 40)</i>
<i>Administrative Regulations for Risk Analysis on Imported Plants and Plant Products (China Customs Decree No. 41)</i>
<i>Regulation on Inspection and Quarantine of Import and Export Genetically Modified Commodities (China Customs Decree No. 62)</i>
<i>Measures for Supervision and Administration of Inspection and Quarantine in Free Trade Zone (China Customs Decree No.71)</i>
<i>Measures for the Re-inspection of Import and Export Commodities (China Customs Decree No. 77)</i>
<i>Administrative Measures on Import and Export Food Safety (China Customs Decree No. 144)</i>
<i>Provisions on the Administration of Registration of Foreign Enterprises Producing Imported Food (China Customs Decree No. 145)</i>
<i>Measures for the Administration of Organic Product Certification (China Customs Decree No. 155)</i>
<i>Decision on Amending the Administrative Measures for the Quarantine Approval of Imported Animals and Plants (China Customs Decree No.170)</i>
<i>Administrative Measures for the Import and Export Certificate of Wild Animals and Plants (Decree No.34 of the General Administration of Customs, State Forestry Administration of the People's Republic of China</i>
<i>Administrative Regulations on the License of Imported Foods without Established Chinese National Food Safety Standards (WEIJIANDUFA [2010] No. 76)</i>
<i>Administrative Measures for the Safety Review of New Food Raw Materials (Decree No.1 of the National Health and Family Planning Commission of the People's Republic of China)</i>

DESCRIPTION
<i>Regulations on Supervision and Administration for Label Inspection of Prepackaged Import and Export Foods (China Customs Announcement [2012] No. 27)</i>
<i>Announcement on Publishing the Provisions on Registration Management for Importers and Exporters of Imported Foods and the Administrative Regulations for the Import and Sales Records of Foods (China Customs Announcement [2012] No.55)</i>
<i>Notification of the Ministry of Health of the People's Republic of China on Further Standardizing the Administration of Health Food Raw Materials (WEIFAJIANFA [2002] No.51.)</i>
<i>Measures for the Administration of the Registration and Recordation of Dietary Supplements (Decree No. 22 of the China Food and Drug Administration)</i>
<i>Administrative Measures of FSMP Registration (Decree No.24 of China Food and Drug Administration)</i>
<i>Announcement of the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China on Publishing the Registration and Implementation Catalogue for Overseas Production Enterprises of Imported Foods (China Customs [2013] No.62)</i>
<i>Announcement on Executive Time of New Standards with Regard to Imported Foods (China Customs Announcement [2012] No. 41)</i>
<i>Notification on Issuing Administrative Measures for Entry-exit Inspection and Quarantine Certificate (GUOZHIJANTONG [2009] No.38)</i>
<i>Announcement of the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China on Further Standardizing the Issuing of Inspection and Quarantine Certificate Documents for Imported Foods and Cosmetics (China Customs [2015] No.91)</i>
<i>Measures for Supervision and Administration of the Inspection and Quarantine of Imported and Exported Grain (China Customs Decree No.177)</i>
<i>Measures for Supervision and Administration of the Inspection and Quarantine of Imported and Exported Traditional Chinese Medicinal Materials (China Customs Decree [2015] No.169)</i>



ANNEX 2: OVERVIEW OF CHINA FOOD SAFETY LAW (2015)

Chapter 1: General Principles

This chapter reinforces the purpose of the China Food Safety Law; being to assure food safety and safeguard people's health and life and defines the scope of business activities covered. It is important to note that the Law applies to business activities involving food production, processing, handling, and storage through to marketing and distribution.

The focus of this Law is based on the principle of 'prevention first' backed up by process-based risk management and oversight. It is also explicitly stated that food producers and traders are jointly responsible for food production and trading activities. This responsibility has been defined as;

- following laws, regulations and food standards in their operations
- ensuring food safety
- acting honestly and in good faith
- assuming social responsibilities, and
- accepting public oversight

Whilst various national, regional and local regulatory bodies have been assigned responsibility for the implementation and oversight of this Law, industry associations, consumer advocates and the media have also been empowered as having the social powers to oversee and report any activity that violates this law and harms the consumers' lawful rights. This reinforces the need for exporters to establish direct consumer engagement mechanisms to be able to react

quickly to their feedback on product quality issues for example.

Exporters therefore need to be cognizant of the fact that responsibility for food import compliance, from production through to consumption, cannot be transferred along with ownership and consumers are being encouraged (and rewarded) for highlighting any China food import regulatory breaches they may encounter. The actions of their China import, and distribution partners will reflect on the integrity and credibility of the exporter and the brand.

Chapter 2: Food Safety Risk Surveillance and Assessment

Chapter Two details the requirements of food safety risk surveillance and assessment systems to monitor and prevent food borne diseases, food contamination and other food related hazards. In addition to the national risk surveillance plan, regional regulatory bodies are required to develop subordinate plans that take into account regional particularities.

Food safety risk surveillance officials have the right to enter farms, food production and trading facilities to collect data and samples for testing in accordance with the relevant provincial risk surveillance plan.

The China National Health Commission is responsible for conducting food safety risk assessments. It is composed of experts on medical science, agriculture, food, nutrition, biology and environment that conduct science-based food safety risk assessments. These food safety risk assessments are published regularly and publicly available.

Should the food safety risk assessment conclude that a food, food additive, or food related product is unsafe, China Customs are required to immediately inform consumers to cease

consumption or usage of the product and take actions to recall any existing inventories and cease the import and trading of the food, food additive and food-related product.

Chapter 3: Food Safety Standards

The primary objective of China's national food safety standards is to safeguard public health. National food safety standards are mandatory and take precedence over any existing industry or enterprise standards.

Identifying the national food safety standard(s) that is applicable to the type of food the exporter is seeking to import is a critical step in ensuring China food import compliance and so careful laboratory testing in accordance with the correct standards and methodologies will mitigate the risk of import non-compliance. China national food safety standards include the following criteria;

1. Limits of pathogenic microorganisms, pesticide residues, veterinary drug residues, heavy metals, biotoxins, contaminants, and other substances hazardous to human health in food, food additives and food-related products;
2. Varieties, scope of application, and dosage of food additive use;
3. Requirements for nutritional ingredients in staple and supplementary food dedicated to infants and other specific populations;
4. Requirements for labelling, identification and instructions relevant to food safety including hygiene and nutrition;
5. Hygienic requirements related to food production and trading;
6. Quality requirements related to food safety;
7. Methods and procedures for food testing that relate to food safety; and



8. Other items necessary for developing food safety standards.

The development of national food safety standards takes into consideration the results of any food safety risk assessments that may have been undertaken (Refer Chapter 2 above) and any relevant international standards and food safety risk assessments.

For imported foods where no China national food standard exists (e.g. 'extended shelf life' milk), China would need to develop an import classification and supporting test standard. The Australian government would be encouraged to present a technical submission to assist China in assessing any food safety risks and to develop

The China regional health body is also responsible for publishing, on its website any national food safety standards, local standards and enterprise standards developed and on record. These are publicly available.

If a food producer, exporter, trader, or even a food industry association believes there is an issue with the implementation of a particular food safety standard, this can be reported through to the relevant regional health body where it will be reviewed and modified if necessary.

Chapter 4: Food Production and Trading

General Provisions

The general provisions of this chapter outline the food production and trading standards applicable to both food producers and traders and their compliance requirements. These apply equally to both domestic and import food production and include the activities of China trading companies. For example, production and trading facilities must have appropriate places for raw material treatment and food processing, packaging, and storage suitable for the variety and quantity of the food being produced or traded.

A list of specific requirements is provided in Article 34 of the Food Safety Law which exporters should familiarise themselves with and take steps to ensure their trading partners are also fully cognizant of.

China food production and licensing requirements are also listed as is the requirement for producers and traders to have appropriately trained technical personnel in place to ensure food safety during production, storage, handling, and transit. Article 42 of the Food Safety Law states that food producers and traders should establish and maintain a food traceability system that covers the complete supply chain process.



Section 2: Process Control of Production and Trading

Exporters and their China trading partners must ensure they have the required production controls in place to ensure food safety from production through to customer delivery. The Law requires food producers and traders to implement effective food safety management systems and take full responsibility for maintaining the food safety standards within their enterprises.

Food producers and traders must also be able to demonstrate they have suitably qualified food safety management personnel in place. The food and drug regulatory bodies reserve the right to conduct random audits of food safety management staff competency and will regularly publish these results.

Food producers (there is no distinction made between domestic or imported food producers) must develop and implement effective control requirements for the following situations to guarantee products produced comply with food safety standards:

1. Raw material control, which covers raw material purchase, acceptance and feeding;
2. Critical point control, including production procedure, equipment, storage and packaging;
3. Inspection control, including inspection of the raw materials, half-finished products and finished products;
4. Control over transportation and product delivery.

Food producers must also maintain a comprehensive inspection record for outgoing food quality and safety. Food traders must check the producer and exporter licenses, compliance certificates or other proving documents are in place and implement a suitable purchase inspection and recording system. Food producers and traders must also store, handle and transport food in accordance with food safety assurance requirements, and regularly check the food in storage and remove the spoiled or outdated food in a timely manner.

It is also important to note there is an obligation on third-party online food trading platform providers to validate the registration of food traders using the platform. The platform must also check the validity of any food production and trading license if the producer or trader is required to obtain such licenses. Exporters using cross border e-commerce platforms should take note of this requirement.

Another important border clearance control is the requirement for food producers and traders to have an effective food recall system. Where a food producer finds that the food being produced

does not comply with food safety standards or has evidence the food may be harmful to human health, the food producer must immediately stop production, recall food product released to the market, notify relevant producers, traders and consumers, and create a record of recalls and notifications. Should the occurrence of the recall be caused by food traders, the food traders will be responsible for the food recall.

Section 3: Label, product description and advertisement

The Law requires all pre-packaged food to be appropriately labelled with prescribed product ingredients and manufacturing information. Article 67 of the China Food Safety Law provides a list of the information required however exporters should note that certain food categories may require additional information. If the national food safety standard sets additional or alternative requirements on a particular food category labelling, such requirements must be followed.

The Law clearly states that labels, instructions and packaging of food and food additives must not contain false or unverifiable statements or information. Food producers are liable for the authenticity and verifiability of any declarations on the label. For example, health food benefit claims must have a scientific basis.

Similarly, food promotion and advertising must provide truthful and verifiable information and must not claim any disease prevention or treatment functions that cannot be verified. China regulatory interpretation of label and advertising claims (for example 'market leading brand' or 'relieves back pain') is very literal and such claims must be verifiable.

Food producers and traders are responsible for the authenticity and legality of the advertisements for their food products. It is prudent therefore that

producers and exporters have full visibility of how their brand is being promoted in the China market to avoid any non-compliances.

Section 4: Special Foods

The State executes strict regulations over special foods including health foods, foods for special medical purposes, and infant formula foods. As such, a number of additional regulations are applied to these food categories (Refer Annex 6 Special Requirements for Conformity Assessment on Imported Foods).

Exporters of special foods should review these special requirements carefully to ensure they fully understand China Customs import food conformity assessment compliance requirements.

Chapter 5: Food Inspection

Chapter 5 outlines food testing responsibilities, practices, and procedures. Food testing can only be undertaken by accredited agencies and in accordance with this Law and test reports shall have the same legal force as this Law. The accreditation conditions and testing procedures for food testing agencies shall be determined by the relevant State Departments.

Sampling and testing guidelines are explained in Article 85 of the China Food Safety Law. Food producers and traders can appeal the original test report and request a re-test if they wish.

Chapter 6: Food Import and Export

Chapter 6 confirms the role of China Customs in regulating the safety of food imports and exports and their role in inspecting food and food additives import and export shipments for compliance with the relevant laws and administrative regulations.

Overseas exporters and producers are required

to guarantee that the foods, food additives, and food related products exported to China comply with requirements of this Law, other Chinese laws, regulations and the national food safety standards and they are also responsible for the content of the food labels and instructions.

Likewise, importers are required to establish and maintain an assessment and verification system of overseas exporters and producers to ensure full compliance of food imports. Should the importer become aware of any imported foods failing to comply with China national food standards, or have evidence that the food may cause harm to human health, they are obligated to immediately stop these imports and recall the products if necessary. Exporters should take note that this importer obligation also applies to out of shelf life products.

Overseas exporters, food producers, export and import agents involved in the export of food to China must be registered with China Customs. Registered overseas food producers, if providing false material, or responsible for serious food incidents, will be removed from the registration list by China Customs, and the removal will be announced by public notice. China Customs regularly publishes the lists of exporters, agents, importers, and overseas food producers who have been recorded or registered. Likewise, China Customs regularly publishes the list of food import non-compliances (the China Customs 'blacklist').

Article 97 of the China Food Safety Law reiterates the requirement for imported pre-packaged food and food additives to have Chinese labels (and instructions, if provided). This is applicable for the General Trade import channel only, the cross-border e-commerce channel has different requirements (Refer Part D: China Import Pathways).

Importer requirements in relation to food and food additive import and sale records are specified in Article 98 of the China Food Safety Law. To

avoid possible disruptions to their supply chain, exporters should ensure these records are being maintained by their importer. Food producers that export products must also guarantee their foods comply with the standards of the exporting country (region) or meet contract requirements.

China Customs is required to carry out credit management for China importers and will tighten inspection and quarantine on importers that have poor credit records. It is advisable for exporters to confirm the credit rating of its China importer to avoid possible supply chain disruptions. This credit information is publicly available within China.

China Customs also has the right to carry out assessment and inspection on the food safety management system and food safety situation of the countries or regions that export food to China; based on the assessment and inspection results, China Customs will determine country specific inspection and quarantine requirements.

Chapter 7: Handling of Food Safety Incidents

Chapter 7 details the roles, responsibilities, and procedures for the handling of food safety incidents. Whilst much of the chapter is directed toward the various China regulatory authorities, food producers and traders are required to develop a response plan for food safety incidents, regularly inspect the implementation of preventative measures related to food safety and eliminate potential food safety risks in a timely manner.

Chapter 8: Regulatory Work

Chapter 8 outlines the procedures to be adhered to by the various regulatory authorities in enforcing this Law, regulating food safety, and supervising the compliance of producers and traders. This includes procedures to be followed for field inspections and audits, document validation, handling and disposing of foods proven to violate food safety standards and suspension of illegal production or trading of food.



In the event that food producers and/or traders find law enforcement personnel's behaviour to be not in accordance with the law, or not consistent, they may report such behaviour to the food and drug regulatory department, quality supervision department, or the discipline supervisory departments of the same or higher-level government.

Any departments that receive complaints and reports shall verify the information and inform the law enforcement department; once the complaints or reports are verified to be true, the law enforcement department will be informed; the person violating rules and disciplines shall be handled according to this Law and relevant regulations.

Chapter 9: Legal Liabilities

This chapter outlines (in considerable detail) the legal liabilities, penalties etc. for breaches of this Law. The key takeaways from this section are;

1. Any gains made through the illegal use of food and food additives used in the unauthorised production or trading activities of food and food additives can be confiscated, and
2. The illegally produced or traded foods and food additives are subject to a range of fines and possible license suspension.

Illegal activities are listed in Chapter 4 (Food Production and Trading) and repeated again in this chapter.

It is also worth noting that consumers purchasing foods through third-party online food trading platforms can take civil action to secure compensation from both the platform operator and the producer if their legitimate rights suffer loss. This has now been specifically addressed in the recently passed E-Commerce Law (2019) scheduled to take effect on 1 January 2019.

Consumers can take civil action to seek compensation from traders, and/or producers for harm caused by food that does not meet food safety or product labelling standards. If the producer is liable, the trader, after compensating the consumer, shall request recovery of the compensation from the exporter.

This does not apply to errors in food label and product descriptions which do not affect food safety or mislead customers.

Chapter 10: Supplementary Provisions

This chapter clarifies a number of terms used in this Law for the benefit of the reader.



红酒
白葡萄酒
洋酒
9

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

纸尿裤
奶粉
8

VISA
银联
10

壹卡会
9

8

6

8

8

8

8

8

8

8

8

8

8

8

8

8

8

8



AUSTRALIAN
**FOOD &
GROCERY**
COUNCIL

© 2018 Australian Food and Grocery Council
2-4 Brisbane Avenue
BARTON ACT 2600
T: +61 2 6273 1466
www.afgc.org.au

ABN 23 068 732 883



Australian Government
**Department of Agriculture
and Water Resources**

*This project is supported by funding from the
Department of Agriculture and Water Resources.*