Baker & McKenzie

Client Alert

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China Revamps The Cross-Border E-Commerce Regime

From April to May 2016, the Ministry of Finance ("**MOF**"), General Administration of Customs ("**GAC**"), China Food and Drug Administration ("**CFDA**") and State Administration of Taxation ("**SAT**"), published several new regulations to revamp China's cross-border e-commerce regulatory regime.

This regulatory regime was initially introduced by GAC in early 2014, in order to regulate the sale of goods by overseas retailers directly to Chinese customers through approved e-commerce platforms (referred to as the "**Pilot Program**"). In parallel, China continued to allow individual consumers to purchase consumer goods through foreign websites not falling under the Pilot Program, and have the goods imported into China through traditional courier or postal channels, so long as the goods satisfied the quantity and value requirements for "personal articles" (referred to as the "**Personal Article Program**").

The recent regulatory changes have substantial impact on both programs. We set forth below the key aspects of these changes.

Pilot Program

1. Tax policy

Before the new regulations came into effect, goods imported under the Pilot Program were subject to Personal and Postal Article Tax ("**PPT**"), which is a single duty applied to the importation of personal articles through postal and courier services or carry-on luggage. If the amount of PPT payable is less than RMB 50 (approximately USD 8) per shipment, PPT would be exempted.

Starting from 8 April 2016, all qualifying goods imported into China under the Pilot Program are exempt from customs duty, but subject to import VAT and consumption tax ("**CT**"), and the exact CT and VAT rates vary depending on the tariff classifications of the goods. Both taxes, if applicable, are collected at a 30% discount under the Pilot Program, but cannot be exempted regardless of the value of the goods.

2. Value limit and quota

The new regulations provide that the value of each shipment of goods under the Pilot Program should not exceed RMB 2,000 (approximately USD 320), and the annual quota of goods imported by each individual under the Pilot Program is RMB 20,000 (approximately USD 3,200).

Beijing
Suite 3401, China World Office 2
China World Trade Centre
1 Jianguomenwai Dajie
Beijing 100004, PRC
T: +86 10 6535 3800
F: +86 10 6505 2309

Hong Kong
14/F Hutchison House
10 Harcourt Road
Central, Hong Kong
T: +852 2846 1888
F: +852 2845 0476

Shanghai
Unit 1601, Jin Mao Tower
88 Century Avenue, Pudong
Shanghai 200121, PRC
T: +86 21 6105 8558
F: +86 21 5047 0020

The new value limit and quota are bright-line rules that leave no room for discretion. Consequently, the portion of imported products in excess of such limit or quota will be subject to customs duty, import VAT and CT that apply as if the goods are imported as ordinary commercial goods. In the case where a shipment only contains one inseparable product that exceeds RMB 2,000, the entire product would be deemed to be an ordinary commercial good, and full import duties and taxes should apply, regardless of the end-use of the goods.

3. New product regulatory requirements

Previously, the regulations did not articulate whether the goods imported under the Pilot Program should meet China's product regulatory requirements, including labelling and other applicable national standards.

The new regulations introduced a "positive list" regime, whereby only products listed as "permitted" on the two tariff code-based catalogues can be imported under the Pilot Program, subject to the regulatory requirements specified in the relevant portions of the catalogues.

Whilst the two "positive lists" cover all the major categories of consumer goods (food, cosmetics, infant milk formula, health food, medical device, electric appliance, apparels, bottled wine, etc.), the product regulatory requirements specified on these two lists would constitute a substantial constraint to some of these products, in particular, cosmetics, infant milk formula, health food, non-diary infant formula and medical formula products, medical devices, etc. ("**Special Products**"). The requirements that apply to these products include:

a. Special Products should be subject to the same pre-importation registration or approval requirements as those that apply to ordinary commercial goods imported into China; and

b. All imports through the "bonded sale" model of the Pilot Program should undergo the same commodity inspection and quarantine ("**CIQ**") procedures as ordinary commercial goods, which would involve labelling inspection, laboratory testing and other examinations based on China's national standards, where applicable.

As background, "bonded sale" and "direct shipment" are two models of shipment permitted under the Pilot Program. The second requirement above only applies to the "bonded sale" model, where the goods are routed through a free trade zone before being dispatched to the individual Chinese buyers. The "direct sale" model in contrast refers to goods that are shipped directly to the individual Chinese buyers by designated courier service providers, are not subject to this requirement,.

As these requirements received strong reactions from the industry, GAC issued a notice on 24 May 2016 to postpone the implementation of these two requirements until 11 May 2017.

4. Return of goods

The new regulations facilitate the return of goods under the Pilot Program. Specifically, the import taxes on the imported goods can be deferred until 30 days after they are released by Customs. If the goods are returned out of the customs territory of China within 30 days after the date of original importation, the import taxes would be no longer payable.

5. Withholding agents

The new regulations also provide for "withholding agents" that are responsible for import customs declarations and duty payments for e-commerce goods. Specifically, third party logistics agents ("**3PL**"), e-commerce platforms or other e-commerce operators involved in the supply of e-commerce goods are designated as "withholding agents", which are obliged to withhold the import taxes payable from the payments received from end customers and to pay these over to the Customs authorities. In addition, such withholding agents are responsible for filing import declarations which include, among other information, tariff codes and dutiable values of the imported goods.

Personal Article Program

Goods purchased by Chinese customers from foreign websites not approved by Chinese authorities under the Pilot Program can be imported under the Personal Article Program and are subject to PPT.

Simultaneous with the publication of the new e-commerce regulations for the Pilot Program, the Tariff Committee of the State Council of PRC amended the PPT schedule. The new PPT schedule, also effective from 8 April 2016, provides for substantially higher PPT rates.

We set forth below a chart comparing the import taxes applicable to the goods falling under both programs before and after the regulatory change (assuming, for illustrative purposes, that the value of the goods is $100):

Product categories (examples)	**Pilot Program**		**Personal Article Program**	
	Before 8 April	After 8 April	Before 8 April	After 8 April
Cosmetics 	PPT = 100 x 50% = **$50**	CT (without discount) = 100 / (1-30%) x 30% = $43 CT (with discount) = 43 x 0.7 = $30 Import VAT (with discount) = (100 + 43) x 17% x 0.7 = $17 Total import taxes = **$47**	PPT = 100 x 50% = **$50**	PPT = 100 x 60% = **$60**
Apparel 	PPT = 100 x 20% = **$20**	Import VAT = 100 x 17% x 0.7 = $11.9 Total import taxes = **$11.9**	PPT = 100 x 20% = **$20**	PPT = 100 x 30% = **$30**
Food 	PPT = 100 x 10% = **$10**	Import VAT = 100 x 17% x 0.7 = $11.9 Total import taxes = **$11.9**	PPT = 100 x 10% = **$10**	PPT = 100 x 15% = **$15**

Practical Implications

- The Pilot Program has been implemented for over two years. During this period, there was a clear attempt by the regulators toward standardizing the regulatory requirements for ordinary commercial sales and cross-border e-commerce sales.
- By increasing PPT rates, China Customs also intends to divert sales from unregulated foreign websites to approved and closely supervised e-commerce platforms under the Pilot Program.
- Notwithstanding the one-year grace period on enforcing the product regulatory requirements for goods imported under the Pilot Program, it is very likely that these requirements will be fully enforced once the grace period expires. Therefore, early preparations in this regard would be useful to e-commerce sellers and other participants of the Pilot Program. That should entail an assessment of products currently sold through e-commerce platforms in order to determine whether it is feasible to bring them into full compliance with China's national standards and labelling requirements, where applicable.
- Lastly, as China is tightening the regulation of imports under the Pilot Program, it is uncertain whether the authorities would continue to allow the same products to be imported through the traditional Personal Article Program without appropriate regulatory oversight.

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Should you wish to obtain further information or want to discuss any issues raised in this alert with us, please contact:

Eugene Lim (Singapore)
+65 6434 2633
eugene.lim@bakermckenzie.com

Anne Peng (Hong Kong)
+852 2846 1943
anne.peng@bakermckenzie.com

Frank Pan (Shanghai)
+86 21 6105 8523
frank.pan@bakermckenzie.com

Si Ying Kong (Hong Kong)
+852 2846 1907
siying.kong@bakermckenzie.com

Di Wu (Beijing)
+86 10 6535 3812
di.wu@bakermckenzie.com