

Newsletter

February 2017

In This Issue:

1. Customs new rules for supervision on outward processing
2. GAC new rules on bonded transfer
3. State Council issued Tariff Adjustment Plan for 2017
4. The Standing Committee of NPC issued the draft E-commerce Law for public opinion
5. Catalogues related to import and export
6. Tax incentives to new-type display devices manufacturers in China
7. Additional Levy of Consumption Tax on Ultra-Luxury Cars

www.bakermckenzie.com

Beijing

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

Hong Kong

14th Floor, Hutchison House
10 Harcourt Road
Central, Hong Kong
Tel: +852 2846 1888
Fax: +852 2845 0476

Shanghai

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

1. Customs new rules for supervision on outward processing

On 28 November 2016, the General Administration of Customs ("GAC") introduced new rules for regulating outward processing by issuing the *GAC Announcement [2016] No. 69* ("**Announcement 69**") which took effect on 30 November 2016.

Announcement 69 can be briefly summarised as follows:

1.1 Definition of outward processing

"Outward processing" refers to business activities where qualified enterprises in China consign raw materials, parts, components or semi-finished goods to overseas enterprises for manufacturing or processing, and subsequently re-import the processed goods within the prescribed period and pay the processing fee, price of materials sourced from overseas, and other related fees to the overseas enterprises.

1.2 Requirements for Chinese enterprises engaging in outward processing

- The Chinese enterprises must have a credit rating of "general" or above under the customs credit authentication system;
- The exported and re-imported goods are not prohibited or restricted from being exported or imported;
- The exported goods are not subject to export duties;
- The Chinese enterprises must not be, due to suspected involvement in any cases of smuggling or breach of regulations, under customs investigation or audit, where such investigation or audit has not yet been concluded;
- The Chinese enterprises must report to the customs authority any expired customs accounts within the prescribed period; and
- The port of exit through which the materials to be processed are exported and the processed goods are re-imported must be the same.

1.3 Documents and information required for establishing a customs account for outward processing

A Chinese enterprise must provide the following documents and information to the competent customs house where it is registered in order to establish a customs account for outward processing:

- Contract for outward processing;
- Production process description;
- Pictures or samples of the goods to be exported or re-imported;
- Information including the port for import/export, description, tariff code, quantity, type and specification, price, and country of origin of the imported/exported goods;



- Quantity and value of materials sourced overseas, if applicable; and
- Other documents and materials required by the customs.

1.4 Verification and cancellation of a customs account for outward processing

The valid period of each customs account for outward processing is one year. The Chinese enterprise must report the actual export and re-import information to the competent customs house for the verification and cancellation of its customs account within 30 days after the expiration of the customs account.

1.5 Tax implications

Re-imported goods under an outward processing arrangement are subject to import tax. The customs will determine the dutiable value of the re-imported goods based on the amount of processing fee, price of raw materials sources from overseas, freight and insurance fee.

Announcement 69 should be able to supplement regulatory gaps in the customs supervision of outward processing activities in order to enable more flexibility in such activities in China. However, some provisions of *Announcement 69* conflict with the provisions stipulated in the *Administrative Measures of the Customs for the Levying of Duties on Imported and Exported Goods (Revised in 2014)* (the "**Measures**"). For example, the *Measures* allow goods which are subject to export customs duty to be exported for processing upon a bank guarantee provided by the exporter. It is still unclear which regulation will prevail in case there is such a conflict.

2. GAC new rules on bonded transfer

On 30 December 2016, the GAC issued the *Announcement [2016] No. 86* ("**Announcement 86**"). *Announcement 86* lays down some new rules for the transfer of bonded goods between two enterprises located in different customs special supervised zones or Type B bonded logistics centres ("**Bonded Transfer**").

2.1 Declaration Form for Transfer of Bonded Goods between Different Zones ("**Bonded Transfer Form**") (海关保税货物区间流转申报表)

Enterprises engaging in Bonded Transfer must have a customs e-account and go through a recordal process by submitting a Bonded Transfer Form to the competent customs. Generally, the validity period of a Bonded Transfer Form is 6 months, and would not exceed 12 months. The basic requirements of filing the Bonded Transfer Form are as follows:

- Each Bonded Transfer Form must correspond to one e-account of the transfer-out enterprise and one e-account of the transfer-in enterprise;
- The description, tariff code and unit of measurement of the goods entered in the Bonded Transfer Form must be consistent with that recorded in the corresponding e-account;
- The unit of measurement and the quantity declared to customs by the transfer-out enterprise and the transfer-in enterprise must be consistent.



Where the above is not consistent, the quantity required by law must be consistent; and

- The first eight digits of tariff code of the same goods correspondingly declared by the transfer-out enterprise and the transfer-in enterprise must be consistent.

2.2 "Batch delivery, centralised declaration" method

Under a Bonded Transfer arrangement, enterprises can deliver or receive goods on a batch basis according to their business arrangement. Enterprises are required to report to the competent customs house for each batch of delivery or receipt within 30 days from the day of delivery or receipt. All deliveries made within 30 days are allowed to be combined such that only one centralised declaration has to be made. However, cross-calendar-year declarations are not permitted.

2.3 Restrictions for engaging in Bonded Transfer

The customs authority will not accept the Bonded Transfer Forms of the following enterprises:

- Enterprises which have failed to comply with the relevant customs supervision requirements and were ordered by customs to make rectification, but have not completed the rectification;
- Enterprises placed under customs investigations due to suspected involvement in any cases of smuggling or breach of regulations, where the investigations have not yet been concluded. Enterprises which have obtained customs agreement and paid a guarantee sum are not so restricted;
- Enterprises which have not made customs declaration or have not delivered the goods in accordance with the relevant regulations;
- Enterprises which have their relevant e-account frozen by customs for import and export; and
- Enterprises classified as a "dishonest enterprise" in the customs credit authentication system.

Announcement 86 came into effect on 30 December 2016. It is anticipated that it will help to simplify the procedures, reduce costs and improve the efficiency of Bonded Transfer.

3. State Council issued Tariff Adjustment Plan for 2017

On 19 December 2016, the Customs Tariff Commission of the State Council issued a notice to announce the *2017 Tariff Adjustment Plan* ("**2017 Plan**") which took effect on 1 January 2017.

- The first round of duty reduction on imported information technology products, which are listed in the *Amendment to Tariff Concession Schedule of the Accession of the People's Republic of China into the WTO* ("**Amendment**"), was initiated on 15 September 2016 and will be implemented continually from 1 January 2017 to 30 June 2017. Starting from 1 July 2017, the second round of duty reduction will be implemented.



- The conventional duty rate of certain products under the Free Trade Agreements between China and Australia, Pakistan, Switzerland, Iceland, Costa Rica, South Korea, New Zealand, and Peru, and the Closer Economic Partnership Arrangements ("**CEPA**") between the Mainland and Hong Kong, and Macao have been further reduced.
- The products subject to export customs duty have been reduced from 250 items of 2016 to 213 items. Certain minerals (such as fused magnesia, cobalt ores and concentrates), fertilisers (such as urea) and raw materials (such as non-alloy tin) are no longer subject to export customs duty.

4. The Standing Committee of NPC issued the draft E-commerce Law for public opinion

On 27 December 2016, the Standing Committee of National People's Congress ("**NPC**") issued the draft *E-commerce Law* for public opinion.

The draft *E-commerce Law* can be briefly summarised as follows:

- The draft *E-commerce Law* shall apply to e-commerce activities which occur within the territory of the People's Republic of China and e-commerce activities involving domestic e-commerce business entities or consumers;
- The definition of e-commerce refers to business activities in which goods or services are traded through information networks such as the Internet. However, financial products and services, the use of information networks to broadcast audio and video programmes and web content services, including network publishing services, are not subject to the draft E-commerce Law. Where laws and administrative regulations contain provisions governing goods and services transactions, such provisions shall apply;
- E-commerce business entities, including third-party e-commerce platforms and e-commerce operators, shall apply for business registration in accordance with the law. Business registration is not required for e-commerce business entities involved in (a) the provision of personal services, cottage industries, and the sale of self-produced agricultural products for which it is unnecessary to obtain licenses; and (b) other industries where industrial or commercial registration is not required in accordance with the law;
- E-commerce business entities are responsible for ensuring that they are carrying out their businesses in accordance with the law. In particular, they shall ensure that relevant licenses are obtained, when necessary;
- Third-party e-commerce platforms are responsible for verifying the identity and administrative licenses, as well as registering the businesses, of e-commerce business entities using their platforms. Such information should be verified and updated by third party platforms on a regular basis;
- Third-party e-commerce platforms shall formulate platform service agreements and transaction rules which clearly delineate the rights and obligations of each party. The platform operators shall prominently display these terms on their respective platforms for the benefit of e-commerce operators and consumers. Third-party e-commerce platforms



are also required to make records of their platform service agreements and transaction rules with the relevant government agencies;

- Electronic contracts and electronic payments are allowed, and subject to the relevant requirements stipulated by the draft E-commerce Law. In the absence of provisions in the draft E-commerce Law, the provisions in Contract Law and Electronic Signature Law shall apply. E-commerce business entities are responsible for establishing and improving their internal control system and technical management measures in order to prevent information leakage, loss, damage, and to ensure the safety of e-commerce data and information;
- E-commerce business entities are responsible for protecting intellectual property rights and consumers' interests. In a product quality case, where a third party e-commerce platform cannot provide e-commerce operator's real name, address and other contact information to consumers, consumers may seek compensation from the third party e-commerce platform;
- The relevant import and export government agencies shall establish a coordinated system dealing with cross-border e-commerce customs clearance, taxation, inspection and quarantine, in order to promote the construction of a single-window system, realise information sharing and mutual supervision, improve customs clearance efficiency, protect trade safety and improve trade facilitation;
- The government shall promote the digitalisation of cross-border e-commerce related import and export declarations, tax payments, and inspection and quarantine processes. Electronic documents, such as electronic lists and electronic tax bills will have the same legal effect as paper documents; and
- Where an e-commerce business entity violates the provisions in the E-commerce Law, the relevant government agencies may impose a warning or a fine (ranging from CNY 30,000 to CNY 500,000) on the entity, order the entity to make rectifications, or suspend or revoke the business license.

5. Catalogues related to import and export

5.1 Catalogue of Dual-use Items and Technologies Subject to Import and Export License

On 31 December 2016, the GAC and MOFCOM jointly issued the *Catalogue of Dual-use Items and Technologies Subject to Import and Export License* ("**Dual-use Catalogue**") for 2017 which came into effect from 1 January 2017.

Compared to the Dual-use Catalogue for 2016, the new catalogue has made the following substantial changes:

- There are two new items added into the List of Items subject to Catalogue of Monitored Chemicals Administration Regulation under Category 1 of the Import Dual-use Catalogue and Category 4 of the Export Dual-use Catalogue:
 - technology for producing chemicals subject to Class I, II or III monitoring; and



- special equipment for producing chemicals subject to Class I, II or III monitoring.
- There is one item added into the List of Precursor Chemicals under Category 2 of the *Import Dual-use Catalogue* and Category 7(1) of the *Export Dual-use Catalogue*:
 - saps of Chinese ephedra.
- Imports of radioisotopes shall now be subject to the relevant provisions in the *Regulations on the Safety and Protection of Radioisotopes and Radiation Devices and the Measures for the Administration of Import and Export Licenses of Dual-use Items and Technologies*. Such imports shall also be reported to the Ministry of Environmental Protection for examination and approval, before being issued with import licenses for dual-use items and technologies. These import licenses will have to be presented while going through customs procedures.

5.2 Catalogue of Goods subject to Import License

On 30 December 2016, the GAC, AQSIQ and MOFCOM jointly issued the *Catalogue of Goods subject to Import License ("Import Catalogue")* for 2017 which came into effect from 1 January 2017. Under the Import Catalogue, 13 categories of goods are subject to import licensing. Compared to the Import Catalogue for 2016, the new catalogue has not made any substantial changes.

5.3 Catalogue of Goods subject to Export License

On 30 December 2016, the GAC, AQSIQ and MOFCOM jointly issued the *Catalogue of Goods subject to Export License ("Export Catalogue")* for 2017 which came into effect from 1 January 2017. Under the Export Catalogue, 44 categories of goods are subject to either export quotas or export license management.

Compared to the Export Catalogue for 2016, the new catalogue has made the following substantial changes:

- Certain categories of goods, such as natural magnesium, talc lump (or powder), tin and tin products, antimony and antimony products, are no longer subject to export quota. Instead they are subject to export license management. Categories of goods that are subject to export quotas include wheat, corn, rice, wheat flour, corn flour, coal, crude oil, refined oil, cotton, silver and sawn timber;
- When applying for either export quota or export license for processing trade commodities under the Export Catalogue, exporters are no longer required to provide a Certificate of Approval for Bonded Processing (加工贸易业务批准证). Instead, they must provide a Certification of Production Capacity (加工贸易企业经营状况及生产能力证明); and
- Export of corn, rice, tungsten and tungsten products, antimony and antimony products, coal, crude oil, refined oil, cotton, silver and other commodities will be subject to export trade management.



6. Tax incentives to new-type display devices manufacturers in China

On 5 December 2016, the GAC, SAT and MOF jointly issued the *Notice regarding Import Tax Policies for Supporting the Development of New-Type Display Devices Industry* ("**Cai Guan Shui [2016] No. 62**").

According to *Cai Guan Shui [2016] No. 62*, from 1 January 2016 to 31 December 2020, new display devices manufacturers in China can enjoy the following tax incentives:

- Raw materials and consumables, which cannot be produced domestically, imported by manufacturers of new-type display devices (including thin film transistor liquid crystal display device and organic light-emitting diode display panel) to be used for their own production (including R & D) are exempt from import duties;
- Supporting systems, which cannot be produced domestically to meet comparable performance standards, imported for construction of purification rooms are exempt from import duties and VAT;
- Components and parts imported for the maintenance of certain imported production equipment are exempt from import duties and VAT; and
- Raw materials and consumables, which cannot be produced domestically, imported by manufacturers of key raw materials and spare parts of the new display industry in the upper reaches (such as colour filter film and polaroid), which meet the domestic industry independent development plan, are exempt from import duties. Raw materials and consumables imported by manufacturers for the production of colour filters and polarisers, which are key upstream raw materials and spare parts of new-type display devices, are exempt from import duties, as long as they are in line with domestic industry development plans.

A list of raw materials, components, parts and consumables which can be imported on a duty-free basis under this program has been issued together with the *Cai Guan Shui [2016] No. 62* and will be adjusted by MOF from time to time based on the developments in the relevant industries.

7. Additional Levy of Consumption Tax on Ultra-Luxury Cars

In order to guide rational consumption, and promote energy conservation and emissions reduction, the SAT and MOF jointly issued the *Notice regarding Additional Levy of Consumption Tax on Ultra-Luxury Cars* ("**Cai Shui [2016] No. 129**") on 30 November 2016. The notice took effect on 1 December 2016.

Cai Shui [2016] No. 129 defines "ultra-luxury cars" as passenger cars or medium and light commercial vehicles with a retail price of CNY1.3 million and above (excluding value-added tax).

Consumption tax continues to be levied at the current rate at the production or import stages. The additional consumption tax is levied at the rate of 10% at the retail stage.



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

Entities and individuals selling ultra-luxury cars to consumers are the taxpayers liable to pay the 10% consumption tax at the retail stage.

The formula for consumption tax payable on ultra-luxury cars at the retail stage is:

$$\text{Tax payable} = \text{sales revenue at retail stage (excluding value-added tax)} \times 10\%$$

Ultra-luxury cars sold directly by domestic automobile manufacturers to consumers are subject to consumption tax that is calculated at the aggregate of the rates at the production stage and the retail stage. The formula for consumption tax payable on direct sales of ultra-luxury cars by domestic automobile manufacturers is:

$$\text{Tax payable} = \text{sales revenue} \times (\text{tax rate at production stage} + 10\%)$$

This publication has been prepared for clients and professional associates of Baker & McKenzie. Whilst every effort has been made to ensure accuracy, this publication is not an exhaustive analysis of the area of law discussed. Baker & McKenzie cannot accept responsibility for any loss incurred by any person acting or refraining from action as a result of the material in this publication. If you require any advice concerning individual problems or other expert assistance, we recommend that you consult a competent professional adviser.

©2016 Baker & McKenzie. All rights reserved. Baker & McKenzie International is a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.