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Update to China's Cross-Border eCommerce Policy

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Report Highlights:
On November 28, 2018, various Chinese agencies jointly issued a policy update (no. 486) for the regulation of cross-border eCommerce (CBEC) retail imports. The CBEC policy update will enter into force as of January 1, 2019. The CBEC policy notice states that retail goods imported via cross-border e-commerce platforms will be regulated as imported items for personal use and not be subject to the requirements for licensing, registration or filing related to goods imported through traditional trade. The notice also describes the responsibilities for various parties involved in regulating CBEC in China, including government departments, CBEC enterprises, CBEC platforms, domestic service providers and consumers. The following report contains an unofficial translation of the CBEC policy notice.

– BEGIN TRANSLATION –

Notice: Improving the Regulation of Cross-border E-commerce Retail Imports [2018] No.486
Date: November 28, 2018

In order to put together policy updates after the transition period for regulation of cross-border e-commerce retail imports (the "cross-border e-commerce retail imports") and promote the healthy development of cross-border e-commerce retail imports, upon approval of the State Council, the relevant regulatory arrangements after the transition period are hereby notified as follows:

Section 1:
For the purpose of the Circular, cross-border e-commerce retail imports refer to a type of consumption behavior where customers in China buy goods from abroad through a third-party cross-border e-commerce platform operator and have the goods transported into China under the "bonded import model for online shopping" (Customs supervision code: 1210) or under the "direct purchase import model" (Customs supervision code: 9610).

The aforementioned goods shall meet the following requirements:

1. The goods shall be listed on the List of Cross-border E-commerce Retail Imports; the goods shall be only for personal use and meet the requirements set forth in the tax policies for cross-border e-commerce retail imports;

2. The goods shall be traded via the e-commerce transaction platform connecting with the Customs system; and shall be verified through the record of transaction information, payment information and logistics information.

3. For the goods which are not traded via the e-commerce transaction platform connecting with the Customs system, operators of postal and courier enterprises may accept the authority on behalf of the relevant e-commerce enterprises and payment enterprises, thereby bearing the corresponding legal responsibility, and transmitting the electronic information on transactions and payments to the Customs.

Section 2:
Cross-border e-commerce retail imports mainly involve the following participants:

1. Operators of retail goods imported via cross-border e-commerce platforms (hereafter called the "cross-border e-commerce enterprises") refer to overseas registered enterprises, which are the owners of the goods and sell retail goods imported via cross-border e-commerce platforms from abroad to domestic consumers.

2. Operators of cross-border e-commerce third-party platforms (hereafter called the "cross-border e-commerce platforms") refer to the operators which have their business license registered in China, provide such services as webpage spaces, virtual business premises, trading rules, trade matching and information dissemination for both trading parties (consumers and cross-border e-

commerce enterprises), and establish an information network system for both trading parties to independently conduct trading activities.

3. Domestic service providers refer to the entities, which have their business license registered in China and have relevant operation qualifications, accept responsibility on behalf of cross-border e-commerce enterprises to provide services such as Customs declaration, payment, logistics and warehousing for them, directly provide the relevant information on payment, logistics and warehousing to the Customs, accept the follow-up supervision of such departments as the Customs and market regulation departments, and undertake the corresponding responsibility;

4. Consumers refer to the domestic purchasers of retail goods imported via cross-border e-commerce platforms.

Section 3:
Retail goods imported via cross-border e-commerce platforms will be regulated as imported items for personal use and not be subject to the requirements for licensing, registration or filing related to goods imported for the first time. However, this regulatory mode does not apply to commodities in the epidemic areas that relevant departments have banned for import; it is not applicable to products where an emergency response scheme is activated to deal with major quality safety risks.

Section 4:
Following the principle of "government departments, cross-border e-commerce enterprises, cross-border e-commerce platforms, domestic service providers and consumers shall undertake their respective responsibilities", responsibilities of all parties shall be specified and effective supervision shall be implemented.

1. Cross-border e-commerce enterprises
    a. Cross-border e-commerce enterprises shall undertake the principal responsibility for product quality and safety, and fulfill the relevant obligations as required. A cross-border e-commerce enterprise shall entrust an enterprise that has its business license registered in China to register with Customs, bear the responsibility of truthful declaration, accept the regulation of the relevant departments in accordance with the law, and jointly bear associated civil liability.

    b. Cross-border e-commerce enterprises shall take the responsibility for the protection of consumers' rights and interests, including but not limited to the disclosure of information on the goods, the goods return and exchange services, the establishment of a system of unqualified or defective product recalls, and the compensation for the damage to consumers' rights and interests because of the quality of the goods. Where a cross-border e-commerce enterprise finds that the relevant goods have risks or problems in regard to quality and safety, it shall stop selling the goods immediately, recall the sold goods and properly handle them to prevent them from entering the market again, and report the recall and handling to the Customs and other regulatory authorities in a timely manner.

c. Cross-border e-commerce enterprises shall fulfill the obligation to remind and inform consumers, and provide risk notifications to consumers on the product purchasing webpage or other obvious position in the cross-border e-commerce platforms, so that consumers may place orders after their appropriate confirmation and consent. A notification shall contain at least the following information:
    i. The relevant goods meet the standards for quality, safety, hygiene, environmental protection and labeling or requirements for technical specifications of their country/region of origin, but those standards may differ from the standards of China. Consumers will bear the relevant risks by themselves;
    ii. The relevant goods are purchased directly from abroad and may not have Chinese labels. Consumers may view the Chinese electronic labels of the goods via relevant websites; and
    iii. The goods purchased by consumers are for personal use only and may not be resold.
d. Cross-border e-commerce enterprises shall establish a risk prevention and control mechanism for the sake of products quality and safety, including quality control of receiving and delivery of the products, quality control within the warehouse, and supplier management.
e. Cross-border e-commerce enterprises shall establish and improve the quality traceability system for goods subject to the bonded import model for online shopping. The traceability information shall cover at least the complete logistics traces from the overseas departure place to the domestic consumers. Furthermore, the upstream traceability to overseas shippers and producers shall be encouraged.
f. Cross-border e-commerce enterprises shall transmit to Customs the real-time electronic data of cross-border e-commerce retail import trading with electronic signatures. The cross-border e-commerce enterprise may declare the list to the Customs itself or by its proxy, and shall bear the corresponding responsibilities.

2. Cross-border e-commerce platforms
    a. Operators of the platforms shall have their business license registered in China; shall register with Customs in accordance with relevant provisions; shall be subject to supervision from relevant departments, and be cooperative in follow-up management and law enforcement.
    b. Cross-border e-commerce platforms shall transmit electronic data of cross-border e-commerce retail import transactions with electronic signatures to Customs in real time, and review the authenticity of the transaction and the consumer's identity and undertake corresponding responsibilities.
    c. Cross-border e-commerce platforms shall establish management systems for such areas as platform trading rules, transaction security guarantee, protection of consumers' rights and interests, and bad information processing. Operators of the platforms shall review the authenticity of the identity of cross-border e-commerce enterprises applying to join the platform, publicize their identity information as well as consumers' comments and complaints on the website, and provide information of the participating merchants to the regulatory authorities. An operator of the platform shall sign an agreement with the cross-border e-commerce enterprise that applied to join the platform to clarify the responsibilities, rights and obligations of both parties in the areas of the responsibility of

the main body for the quality and safety of the goods, the protection of consumers' rights and interests and other relevant requirements in this Circular.

d. If there are both cross-border e-commerce enterprises and domestic e-commerce enterprises on the platform, independent sections or channels shall be established to provide platform services for these two types of enterprises, or obvious signs will be established to distinguish retail goods imported via cross-border e-commerce platforms from domestic goods to prevent misleading consumers.
e. Cross-border e-commerce platforms shall establish a self-managed system for settling trading disputes and protection of consumers' rights and interests. When consumers purchase goods on the platform and their legitimate rights and interests are damaged, the platform shall actively assist consumers to protect their legitimate rights and interests and fulfill the responsibility for compensation in advance.
f. Cross-border e-commerce platforms shall establish a risk prevention and control mechanism for quality and safety of the goods, and shall release risk monitoring information of the goods and alerts issued by the regulatory authorities in a prominent position on the website in a timely manner. The platform shall supervise and encourage the cross-border e-commerce enterprises to strengthen the prevention and control of risks in regards to quality and safety of the goods. When quality and safety problems occur, the platform shall urge cross-border e-commerce enterprises to implement product recalls, handlings, and reporting. For cross-border e-commerce enterprises that do not take active recall measures, penalties such as suspending their cross-border e-commerce business may be imposed on them.
g. Cross-border e-commerce platforms shall establish a risk control system to prevent false trading and secondary sales of retail goods imported via cross-border e-commerce platforms, and strengthen monitoring of abnormal trading behaviors such as repeated and considerable large number of orders by the same purchaser, the same payment account, with the same receiving address, or the same receiving phone number in a short period of time and making orders by using other person/entity's identity. Cross-border e-commerce platforms shall take the corresponding measures to control such behaviors.
h. According to the requirements of the regulatory authorities, cross-border e-commerce platforms shall effectively manage the goods sold on the platform, and timely shut down the display and trading pages on the platform of the retail goods that are prohibited from being imported via the cross-border e-commerce platforms, and report the relevant information to the relevant departments.

3. Domestic service providers

a. Domestic service providers shall have their business license registered in China; shall submit relevant qualifications to Customs and register with Customs. Specifically, a banking institution providing the payment service shall have the Financial License issued by the China Banking and Insurance Regulatory Commission or the former China Banking Regulatory Commission; a non-banking payment institution shall have the Payment Business License issued by the People's Bank of China, and the payment business scope shall include the "payment via the Internet"; a logistics enterprise shall obtain the Business License of Courier Services issued by the State Post Bureau.
b. A payment or logistics enterprise shall truthfully transmit the electronic information on the cross-border e-commerce retail import payment or logistics affixed with the

electronic signature to the supervision department in a real-time manner, and bear corresponding liability for the authenticity of the data thereof.

c. The customs declaration enterprise accepting the authority on behalf of a cross-border e-commerce enterprise to declare the list to the Customs shall bear the liability to make a truthful declaration.

d. The logistics enterprise shall make the real-time tracking information of the logistics available to the Customs, and carry out the domestic delivery of retail goods imported via cross-border e-commerce platforms strictly in accordance with the logistics information issued in the transaction process. When the logistics enterprise finds that the actual domestic delivery is inconsistent with the logistics information (including the addressee and address) declared in the customs clearance, the delivery shall be terminated, and the logistics enterprise shall report to the Customs in a timely manner.

4. Consumers

a. The customers shall be the obligatory tax payers of retail goods imported via cross-border e-commerce platforms. The cross-border e-commerce platforms, logistics enterprises or customs declaration enterprises shall be the tax withholding agents that are responsible for providing the tax guarantees to Customs and bearing the corresponding obligations of payment of unpaid tax and related legal liabilities.

b. Before the purchase, the customers shall carefully read the notice of risks on the e-commerce website in detail, and make judgments based on their own risks-taking capabilities. Only after consumers giving consent to the notice of risks, an order can be made.

c. For the purchased retail goods imported via cross-border e-commerce platforms, they may not be resold.

5. Government departments

a. Customs shall carry out the quality safety risk monitoring of the retail goods imported via cross-border e-commerce platforms, and conduct necessary quarantine measures in accordance with laws and regulations before the sale of goods, and issue risk alerts as appropriate. Customs shall establish an emergency response mechanism for the major quality and safety risks of retail goods imported via cross-border e-commerce platforms. The market supervision and administration authorities shall enhance the supervision of product recalls of retail goods imported via cross-border e-commerce platforms, and supervise and encourage the cross-border e-commerce enterprises and cross-border e-commerce platforms to eliminate potential safety hazards of sold goods and implement product recalls in accordance with the law. The Customs shall order the relevant enterprises to take risk mitigation measures for unqualified products or products with defects in quality and safety. Customs shall supervise unsold goods, and investigate the relevant liabilities of operators according to the relevant laws and regulations. The supervision measures for the retail food imported via cross-border e-commerce platforms shall be optimized and improved to effectively prevent and control the product quality and safety risks.

b. It shall not be allowed, in principle, for bonded imported goods purchased online to be sold in the way of "online purchase of bonded goods and picking up the goods in an offline store" outside the special zones under the supervision of the Customs.

c. The enterprises related to the cross-border e-commerce retail imports shall be incorporated into the customs creditability management, and the differentiated customs clearance management measures shall be taken according to different creditability ratings. For those enterprises that are recognized as good faith enterprises, convenience of customs clearance shall be granted to them according to the law; for those enterprises that are recognized as discreditable enterprises, strict supervision measures shall be taken against them according to the law. The information on the advanced certified enterprises and the discreditable enterprises shall be shared in the national creditability information sharing platform, and be made available to the public through the website of "Credibility China" and the national enterprise creditability information publicity system. Joint incentives and joint punishment shall be implemented in accordance with the relevant provisions.
d. The cross-border e-commerce enterprises, platforms or domestic service providers suspected of smuggling or violating the supervision provisions of Customs shall cooperate with Customs in the investigation, and share the transaction production data (ERP data) or original record data.
e. Customs shall, in accordance with the law, punish the enterprises that participate in making-up or transmission of false information on the " transaction information, payment information and logistics information " in violation of the Circular, or that facilitate secondary sales, or that fail to perform due diligence to verify the authenticity of the identity information of the purchaser, which result in the embezzlement of the personal identity information or the annual purchase quota, secondary sales or other violations of the supervision provisions of Customs. Any enterprise suspected of smuggling or violating the rules shall be handled by Customs according to the law. If it constitutes a crime, criminal liability shall be investigated according to the law. Enterprises illegally engaging in cross-border e-commerce retail import business by using identity information of other citizens shall be handled by the Customs according to the smuggling violation, and shall be handed over to the relevant departments for handling in accordance with the relevant legal provisions on the illegal use of citizens' information. Enterprises that are not suspected of smuggling violations or are discovered for the first time shall be requested for a meeting or be ordered to suspend their business for rectification; if the aforesaid circumstance is found again, the enterprises shall not be allowed to engage in cross-border e-commerce retail import business within a certain period, and shall be handed over to the relevant authorities of to conduct the investigation and impose punishment according to the law.
f. For goods that are included in the List of Cross-border E-commerce Retail Imports and are sold by enterprises and individual business in the domestic market, and have no legal import certificate or relevant certificates showing the goods which are purchased from the cross-border e-commerce retail import channel, the market supervision and administration authorities shall conduct the investigation and handling based on their duties.

Section 5:

As the responsible entity of the pilot work of the policy on the supervision of the cross-border e-commerce retail import in the region, the government of all pilot cities (e.g., the Administrative Committee of Pingtan Comprehensive Experimental Zone) shall be responsible for organizing,

implementing, promoting, coordinating, supervising as well as the providing support to the pilot work, so as to ensure the smooth implementation of the pilot work in the region. Any major problems or circumstances arising in the pilot work shall be reported to the Ministry of Commerce and other relevant departments in a timely manner.

Section 6:
The Circular shall apply to the cross-border e-commerce retail import business in 37 cities (regions) including Beijing, Tianjin, Shanghai, Tangshan, Hohhot, Shenyang, Dalian, Changchun, Harbin, Nanjing, Suzhou, Wuxi, Hangzhou, Ningbo, Yiwu, Hefei, Fuzhou, Xiamen, Nanchang, Qingdao, Weihai, Zhengzhou, Wuhan, Changsha, Guangzhou, Shenzhen, Zhuhai, Dongguan, Nanning, Haikou, Chongqing, Chengdu, Guiyang, Kunming, Xi'an, Lanzhou and Pingtan, and shall come into force as of January 1, 2019. The direct-purchase import business of non-pilot cities shall comply with the relevant provisions hereof.

In order to help enterprises to make a smooth transition, enterprises failing to meet the notified supervision requirements shall be allowed to be continuously subject to the supervision arrangement in the transitional period prior to March 31, 2019. Enterprises that fall outside of the scope of application hereof and enjoy the import tax policy on cross-border e-commerce retail as required shall be continuously subject to the supervision requirements set forth in the endnotes of the List of Cross-border E-commerce Retail Imports (2018 Edition).