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New China Retail e-Commerce Regulations

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普华永道

In brief

China has substantially changed certain policies applicable to retail e-commerce imports in a joint circular issued by the Ministry of Commerce, the National Development and Reform Commission, the Ministry of Finance, the General Administration of Customs (“GAC”), the State Administration of Taxation and the State Administration for Market Supervision, with effect from 1 January 2019.

In conjunction with this joint circular, GAC issued implementing regulations. These new retail e-commerce import regulations introduce significant opportunities in certain consumer good categories as well as some new requirements and obligations about which interested parties should be aware. These new regulations advance China’s efforts to diminish the role of so-called grey market channels, commonly referred to as Daigou.

Impact from new regulations

- From 2014, China has permitted overseas sellers to sell consumer goods directly to Chinese consumers through registered e-commerce platforms such as Tmall.hk or JD.com. Sales made through this mode of trade have benefited from expedited customs clearance, duty-free importation, and import VAT payable at only 70% of ordinary rates. From 1 January 2019, imports under this trade mode have been granted expanded benefits such as:
- A permanent exemption from product registration requirements applicable to certain imported products such as cosmetics, infant milk formula, health foods, and medical devices amongst others.
- When first implemented in 2014, imports under this trade mode were limited to CNY2,000 per shipment with an annual limit per customer of CNY20,000. These value thresholds have been increased to CNY5,000 and CNY26,000 respectively.
- The scope of tariff headings included within the so-called positive list under this trade mode has been significantly expanded.
- Overseas sellers can utilize the Free Trade Zone facilitations to stage inventory for consumer order fulfilment. Those sellers not registered appropriately under this regulation will not be able to utilize this fulfilment model.

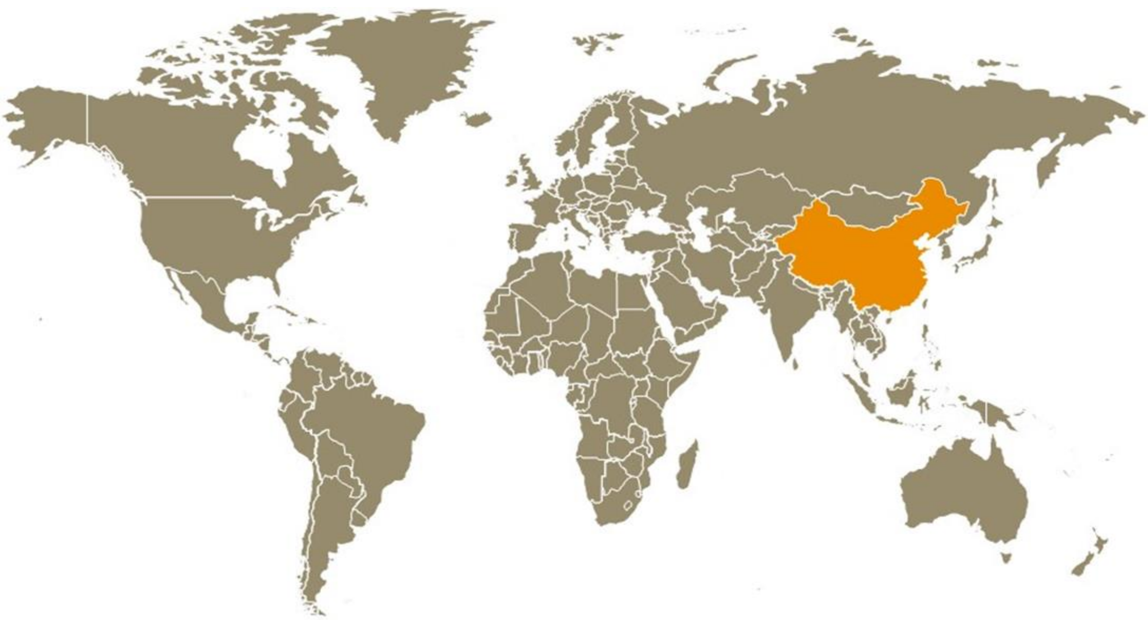
With these benefits come certain restrictions and newly established obligations on sellers under this trade mode:

- These new regulations formalize a longstanding practice of requiring overseas sellers to designate a Chinese Responsible Party to be the market-facing responsible entity to the Chinese consumers for product safety and quality.
- The regulations now require a product trace mechanism to facilitate recalls. Products should be traceable back to the overseas point of initial sale or manufacture and at a minimum must be traceable back to the initial port of export.
- Both the overseas seller and the Chinese Responsible Party will be held jointly and severally liable in civil lawsuits arising out of the sale and use of the imported products.

Significantly, GAC has announced several additional obligations intended to strengthen the enforcement of the limitations under this trade mode. Specifically, this trade mode strictly prohibits redistribution activities undertaken by the Daigou. As such, Customs has announced specific obligations and broad enforcement powers affecting all parties along the supply chain, including the foreign sellers, platform providers and the logistics service providers as follows:

- The Chinese Responsible Party must post a warning against redistribution of retail e-commerce imports in a conspicuous location on the website.
- Platform providers such as Tmall and JD must verify the identity information of each individual buyer and implement a control system to restrict suspicious and high-volume purchases with unmatched billing and shipping details.
- Logistics service providers must identify delivery orders where the recipient's address is different from the address declared on the customs clearance documents, and take immediate action to suspend the delivery and report the incident to customs.
- All the parties involved in the retail e-commerce supply chain, including the foreign sellers have an affirmative obligation to report violations to customs and cooperate in any investigation of suspected redistribution. Customs has been specifically granted enforcement powers against all of these entities, including the foreign sellers.

For its part, Customs has implemented a new IT system to enable it to verify buyers' information on the import declaration with the information provided to the payment platform. In addition, Customs has full access to the transactional data maintained by the Chinese Responsible Parties and platform providers. Finally, it is important to note that whilst product registration requirements are indeed permanently waived for imports properly made under this trade mode, that customs and the market supervision authorities are still conducting selective product quality and safety tests on a random selectivity basis.



Our views

These new regulations provide a greater opportunity for overseas brands to access to Chinese consumer market. Particularly in product categories that were previously subject to burdensome product regulatory restrictions, such as infant milk powder or cosmetics, these regulations provide a new and lasting pathway to expansion into China.

In addition, GAC has confirmed the availability of the duty free and VAT-reduced treatment of imports properly made under this trade mode irrespective of whether the country of origin is the US. As a result, these new regulations may provide another tool or alternative to explore in fulfilling orders to China without the additional cost burdens of retaliatory tariffs against US origin products.

Finally, these regulations provide substantial obligations and direct liabilities to overseas sellers. We continue to be of the view that Chinese regulators may not be able to effectively enforce such obligations directly on overseas sellers. However, the Chinese Responsible Party is clearly within the jurisdictional reach of the Chinese authorities. A principal-agent relationship between the overseas seller and its Chinese Responsible Party may also raise the possibility of liability of the overseas seller for damages caused by its Chinese Responsible Party in a civil action within China.

We would therefore recommend:

- Intentional design of the supply chain structure and the related operating model to ensure compliance as well as tax efficiency;
- Due diligence in selecting Chinese business partners, including the designated Chinese Responsible Party and other service providers;
- Including contractual terms that address the supply chain responsibilities and risks, indemnities, and limitations where possible; and
- An internal compliance program to specifically address the retail e-commerce sales channel and the parties and service providers involved.

Contact us

To learn more about the above or other support provided by PwC Worldtrade Management Services, please feel free to contact us.

North

Susan Ju
Partner
+86 (10) 6533 3319
susan.ju@cn.pwc.com

Central

Frank Wu
Partner
+86 (21) 2323 3864
frank.j.wu@cn.pwc.com

South

Derek Lee
Partner
+86 (755) 8261 8218
+852 2289 3329
derek.wc.lee@cn.pwc.com

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