

China

New Rules on Cross-Border E-Commerce Retail Imports

Compiled by:

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China Cross-Border E-Commerce (hereafter CBEC) is booming since years. Recently two new rules “Tax Policy for Cross-Border E-Commerce Retail Imports” and “List of Imported Commodities for Retail in Cross-Border E-Commerce” coupled with stronger implementation from the Chinese authorities have caused concerns.

➤ Tax Policy for Cross-Border E-Commerce Retail Imports

On 24th March 2016 Ministry of Finance (MOF www.mof.gov.cn), General Administration of Customs (www.customs.gov.cn) and State Administration of Taxation (www.chinatax.gov.cn) jointly issued the “Tax Policy for Cross-Border E-Commerce Retail Imports” (Cai Guan Shui [2016] No. 18) to adjust the tax policy for CBEC retail (B2C) imports **effective from 8th April 2016**.

This new tax policy applies to:

- Goods imported via CBEC platform with data exchange linked to the Chinese Customs (information of transaction, payment and logistics) &
- Goods imported via CBEC platform not linked to the Chinese Customs. In this case, the express delivery companies should provide the information related to transaction, payment and logistics and should take responsibilities for the goods imported

The changes are primarily

- **Adjustment of tax:** Goods imported under both the direct mailing model and the bonded warehouse model need to pay import taxes including tariffs, import value-added tax (VAT), and consumption tax (if applicable). Prior to the effective date of the circular, such goods were taxed with reference to the tax rate of personal articles and postal items.
- **Introduction of a limit transaction:** The limit for a single transaction of imported cross-border e-commerce retail goods is RMB 2,000, and the limit for an individual’s yearly transactions is RMB 20,000.
- **New tax rate:** Within this transaction limit, the interim **import tariff** of 0% is applied to CBEC imported goods, but **import VAT** and **consumption tax** will no longer be exempt and will be levied temporarily at 70% of taxable amounts. A transaction that exceeds the limit for a single

transaction (RMB 2,000), or the limit for an individual's yearly transactions (RMB 20,000) will be levied in full as general trade.

Since the new tax policy has cancelled parcel tax for CBEC retail imports, **an adjusted parcel tax scheme now only applies to goods brought back into the country (China) for personal use or for parcels via C2C direct mailing model (daigou model)**. According to the Circular of the Customs Tariff Commission of the State Council on Issues Pertaining to the Adjustment of Import Tax for Imported Articles (Shui Wei Hui [2016] No. 2) on 16th March 2016, starting from 8th April 2016, Chinese residents' bringing goods for personal use with a value exceeding RMB 5,000 and non-residents' bringing goods for personal use with a value exceeding RMB 2,000 need to pay tax. The tax brackets have been reduced from four categories (10%, 20%, 30% and 50%) to three. Details are shown below:

	Item	Tax rate
Category I	Books and newspapers, publications, audio and video materials for educational use; computers, video cameras, digital cameras and other IT products; food and beverages; gold and silver; furniture; toys, gaming products, and festive and other recreational products;	15%
Category II	Sporting goods (excluding golf balls and clubs), fishing tools; textiles and their manufactured goods; TV cameras and other electrical appliances; bicycles; other goods not included in Category I and III	30%
Category III	Alcohol and tobacco; valuable accessories, jewelry and gemstones; golf balls and clubs; luxury watches; cosmetics (make-ups).	60%

➤ **List of Imported Commodities for Retail in Cross-Border E-Commerce (Positive List)**

On 7th April 2016, 11 ministries and commissions of China including Ministry of Finance (MOF www.mof.gov.cn), China Food and Drug Administration (CFDA www.sfda.gov.cn), General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ, www.aqsia.gov.cn), Ministry of Agriculture (MOA, www.moa.gov.cn), General Administration of Customs (GACC, www.customs.gov.cn) co-released the "List of Imported Commodities for Retail in Cross-Border E-Commerce". This **"Positive List"** includes **1142 different tariff lines** covering food and beverages, clothing, footwear, hats, home appliances, cosmetics, diapers, children's toys and other items commonly purchased by Chinese consumers on e-commerce platforms.

On 15th April, the **"Positive List-2nd Batch"** was announced. This list includes **151 items** covering meat, fruit, grain, cooking oil, health food and medical devices.

The commodities included in the positive list are exempted from submitting "Import Licence" (specimen see attached document) to the Chinese customs. **But the registration for products under CFDA rules, such as infant formula, cosmetics, health food, foods for special medical purpose (FSMPs), medical devices sold via CBEC channels to China is now mandatory prior to import.** Supervision, inspection and quarantine for commodities sold via CBEC channels will be performed by AQSIQ and its local bureau-CIQ. AQSIQ's "Record-Keeping Management System of CBEC Operators and Products" require the submission of CFDA approval documents.

On 6th April, General Administration of Customs released the GACC Announcement [2016] No. 26 on the Customs regulatory rules of commodities sold via CBEC channels **effective on 8th April 2016**.

Chinese customs will have the electronic information on transactions, payment and logistics for commodities sold via CBEC channels. "Customs Declaration Form for CBEC Import and Export" in

electronic file will be used for customs clearance. GACC Announcement [2016] No. 26 has the detailed requirements for the data needed in the “Customs Declaration Form”.

- Imported under direct mailing model: “Customs Declaration Form” will not be required and checked.
- Imported under the bonded warehouse model: When entering the bonded warehouse, the “Customs Declaration Form” will be checked accordingly, but the “Form” will not be needed when leaving the bonded warehouse.

The positive list prohibits the import of the goods not on the list. Furthermore the mandatory registration request for products under CFDA rules has set a higher barrier for commodities using the CBEC channels. The new rules will greatly influence Swiss companies in different sectors.

- **Dairy products:**

Dairy products listed in the “Positive List” mainly include:

- Condensed unsweetened or sweetened non-solid milk and cream (HS code 04029100)
- Yogurt (HS code 04031000)
- Buttermilk (HS code 04039000)
- Whey and modified whey (HS code 04041000)
- Butter (HS code 04051000)
- Fresh cheese (HS code 04061000)
- Processed cheese (HS code 04063000)

Liquid milk (HS code 04012000) and milk powder (excluding formulated milk powder, HS code 04022100) are listed in the “Positive List-2nd Batch”, but **can only be imported under the bonded warehouse model.**

- **Infant formula:**

According to the new rules, infant formula shall be registered with CFDA prior to entry into China in accordance with the Food Safety Law, and any infant formula that has not been registered will not be allowed to be imported through CBEC channel. On 13th April, after consulting CFDA’s opinions on this issue, the China Ministry of Finance announced that a grace period will be granted as CFDA has not finalized the “Administrative Measures for Registration of Infant Formula Formulations” yet. **The import of unregistered infant formula through CBEC is therefore still allowed until 1st January 2018.**

- **Cosmetics:**

Starting from 8th April, cosmetics imported via CBEC need to obtain relevant filing or registration license at CFDA. No grace period has been granted. According to the Chinese authorities, there is already a sufficient choice of approved cosmetics (so far 136,000 cosmetics got approved in China), therefore there is no need to allow any other unregistered cosmetics to be imported through CBEC.

For imported cosmetics, CBEC will no longer be an option to circumvent China’s animal testing & Chinese labelling requirements.

- **Health food:**

Health food is limited to following commodities:

- Coenzyme Q10 (HS Code 29146910)
- Fish oil (HS Code 15041000, 15042000, 15043000), but only limited to commodities imported via CBEC under the bonded warehouse model.
- Oleinic acid, linoleic acid or linolenic acid and its salt and ester (HS Code 29161500)
- Lecithin and other phosphorus-/ammonia-based fat (HS Code 29232000)
- Vitamin supplement (HS Code 29362100, 29362200, 29362400, 29362600, 29362700, 29362800, 29362900, 29369010, 29369090)

Most health food are excluded from the positive list. **CFDA filing or registration is a mandatory request.** Health food registration and filing will be carried out according to “Administrative Measures on Health Food Registration and Filing” which will **come into force on 1st July 2016.** For nutrition supplement, like vitamin supplements, minerals etc., they must be **filed** with CFDA, other functional health food must get **registered** with CFDA.

- Filing procedure:

(1) Sample Test >> (2) Dossier Preparation >> (3) Dossier Submission >> (4) Filing Approval

- Registration procedure:

(1) Sample Test >> (2) Dossier Preparation >> (3) Dossier Submission >> (4) Technical evaluation >> (5) On-site verification and Re-test if necessary >> (6) Registration Approval

- **Food for special medical purpose (FSMP):**

For example FSMP with HS code 21069090 is on the list, but **all FSMPs imported via CBEC have to go through CFDA registration process.**

- **Medical devices:**

Most medical devices are not on the list, with some exceptions, for example:

- HS code 90184990: Other instruments and appliances, used in dental sciences
- HS code 90189020: Sphygmomanometers and appliances
- HS code 90200000: Other breathing apparatuses and gas masks
- HS code 90211000: Orthopaedic or fracture appliances
- HS code 90251100: Directly readable liquid thermometer
- HS code 90251990: Other non-liquid thermometer and pyrometer

Medical devices imported via CBEC must be in compliance with CFDA regulations. **Registration or filing with CFDA prior to import is required.**

- **Alcohol:**

Wine in small packages ($\leq 2L$) (HS code 22042100) is included in the positive list. Other alcohols, such as other packaged wine, beer, and distilled spirits are all excluded.

The Chinese government aims to create a fair competition between domestic retailers and cross border e-commerce platforms. Hence the products not found on the “Positive List” will be restricted from sale via CBEC platforms.

Non-mandatory registration of products and lower price used to be the two main advantages for the CBEC model compared to traditional normal trade. Before the new rules were implemented, some Swiss companies could enter the Chinese market quickly through CBEC, especially manufacturers of health food and cosmetics. Now these companies may be forced to change their trade channels as CBEC channel will face the same market entry barriers for products under CFDA rules as the import through traditional channels. Additionally some CBEC platforms will see costs rise substantially due to higher taxes and tariffs.

In a next step, relevant Chinese government authorities will provide more detailed explanation and release further notice to optimize the supervision and implementing measures. Even the “Positive List” may be revised. We will keep Swiss companies posted on the newest policy trends related to CBEC.

Sources of rules and regulations announced:

Tax Policy for Cross-Border E-commerce Retail Imports (Cai Guan Shui [2016] No. 18)

http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201603/t20160324_1922968.html (in Chinese)

Circular of the Customs Tariff Commission of the State Council on Issues Pertaining to the Adjustment of Import tax for Imported Articles (Shui Wei Hui [2016] No. 2)

http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201603/t20160324_1922971.html (in Chinese)

List of Imported Commodities for Retail in Cross-Border E-Commerce (Positive List)

http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201604/t20160401_1934275.html (in Chinese)

Attached English version for reference

List of Imported Commodities for Retail in Cross-Border E-Commerce (Positive List-2nd Batch)

http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201604/t20160415_1952574.html (in Chinese)

Attached English version for reference

Announcement dated 13th April of China Ministry of Finance after consulting CFDA's opinions on the "Positive List"

http://gss.mof.gov.cn/zhengwuxinxi/zhengcejiedu/201604/t20160413_1948854.html (in Chinese)

Announcement dated 15th April of China Ministry of Finance after consulting CFDA's opinions on the "Positive List-2nd Batch"

http://gss.mof.gov.cn/zhengwuxinxi/zhengcejiedu/201604/t20160415_1952307.html (in Chinese)

GACC Announcement [2016] No. 26 on the Customs Regulatory Rules of Commodities sold via CBEC channels

<http://www.customs.gov.cn/publish/portal0/tab49564/info793779.htm> (in Chinese)

AQSIQ Decree [2015] No.137 dated 24th Nov. 2015 on "Standards of Record-Keeping Management of CBEC Operators and Products", effective from 1st Jan. 2016

http://www.aqsiq.gov.cn/xxgk_13386/jlqg_12538/zjgg/2015/201512/t20151207_455684.htm

(in Chinese)

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