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The Art of the Trade Deal- Top Five Strategies to Avoid or Reduce Section 232 and 301 Duty Increases

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U.S. importers, exporters, and manufacturers are looking for ways to mitigate the impact of the 10 to 25 percent additional tariffs the U.S. has levied on tens of billions of dollars' worth of imported goods, including steel and aluminum from all global sources and hundreds of products from China, as well as the retaliatory tariffs U.S. trading partners have begun to impose on U.S. exports. There are a number of proven and legitimate ways to avoid or reduce these duties that have been used for many years with great success. This article highlights five duty-busting strategies that companies can use in structuring their own trade deals.

(Click here to register for ST&R's July 27 webinar offering a more in-depth discussion of these issues. Click here for ST&R's new web page providing information on the U.S. tariffs as well as the retaliatory tariffs trading partners are levying on U.S. goods.)

Exclusion Requests. Both the Department of Commerce (for aluminum and steel) and the Office of the U.S. Trade Representative (for China goods) have set forth processes to request that specific products be excluded from the tariffs. These processes offer companies or trade associations an opportunity to explain how and why such imported goods are critical to the U.S. economy and could not be sourced elsewhere. As the DOC has been slow to respond to the thousands of submitted requests and has outright rejected any claims that do not adhere to the specific criteria, we remain cautiously optimistic about the speed and manner with which USTR will review the China-related exclusion requests. Nevertheless, as this process may allow for an outright exclusion from the duties on a per product and per company basis, it is worth serious consideration.

Tariff Engineering. As much as U.S. Customs and Border Protection has resisted it in the past, the courts have affirmed for years that CBP can only levy tariffs on the condition of goods as imported. This has led importers in a variety of industries where high duties prevail to import products in unfinished or embellished forms to legally take advantage of classification provisions carrying a lower or free rate of duty. For instance, turbine generators are typically imported into the U.S. as large unassembled structures consisting of the turbine and generating components and as such will now likely fall prey to an additional 25 percent tariff. However, if the components are imported separately they would fall into an entirely different tariff provision that is currently excluded from that tariff increase.

Operational Engineering. If you cannot modify the tariff provision for the imported product, consider changing its country of origin. For instance, CBP has found that the assembly of numerous parts to create various modules, and the assembly of these modules to produce aircraft engines, result in a substantial transformation of the parts so that their country of origin would be the country where the engine was produced. So, in the case of the China tariffs, and in some cases the aluminum and steel tariffs, shifting operations away from one country to another may enable your company to escape the duty increase. These concepts are particularly useful for certain U.S. or other products that fall within the special HTSUS Chapter 98 provisions, many of which are wholly or partially exempt from the additional tariffs.

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Valuation. A strategy that has proven useful to the apparel and footwear industries, which have been subject to high duties for years, involves first sale valuation. Here importers only pay duty on the price that a trading company pays the manufacturer instead of the higher price the importer pays the trading company. While the additional tariffs would still apply in this scenario the dutiable value is significantly lower, resulting in a lower duty bill.

Various criteria must be met to ensure the first sale price reflects a sale that is clearly destined to the U.S. and conducted at arm's length, but, once validated, a viable first sale value can provide substantial duty savings. It can also serve as a type of long-term annuity; i.e., even once the additional tariffs expire, use of first sale valuation would continue to provide a lower declared value and thus reduce the regular duties assessed on a company's products.

Bonded Facilities. For those companies involved in manufacturing as well as import for export trade, bonded facilities can provide a safe haven from the additional tariffs. Goods admitted to a foreign-trade zone in privileged foreign status will retain their character and tariff classification as admitted even if they are manufactured into a product affected by the additional tariffs that may be withdrawn from the zone and entered for U.S. consumption. In addition, goods otherwise subject to the additional tariffs could be entered and stored in a bonded warehouse for up to five years to avoid those duties if they are (a) exported directly from the warehouse or (b) entered for U.S. consumption once the additional tariffs have lapsed or a product-specific exclusion has been granted.

When assessing particular duty savings models, importers, exporters, and manufacturers need to consider the art of crafting their own trade deals to effectively escape or limit the impact of the section 232 and 301 tariffs. A bit of flexibility and ingenuity can have a profound impact on a company's bottom line when facing substantial duty exposure.

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