How Companies Can Adapt and Thrive in an Uncertain Trade Environment

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PROFESSIONALS

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President Trump returned to office for a second non-contiguous term in January 2025 with a much more coherent and methodical trade plan than during his first administration.

This term, he aims to prioritize strict enforcement of U.S. trade laws against perceived economic competitors with the goal of forcing U.S. companies and those of the competitors to set up businesses domestically. It has been just over 40 days since the administration returned to office and the flurries of executive orders and other trade actions furthering America First Trade Policy provides a glimpse of what we can expect over the next four years and perhaps beyond should the policies prove successful.

Based on its implementation and roll out so far, trade policy appears difficult to predict. However, with adequate preparation through the implementation of existing trade tools, businesses can avoid, mitigate, and even recover tariffs.

Strategies to Avoid Tariffs

PRODUCT EXCLUSIONS REQUESTS

Exclusion requests are official requests that businesses send to the U.S. government asking for certain products to be exempt from tariffs or trade restrictions. Companies typically make these requests if:

- The tariffs cause financial strain; or
- The products are not easily available from U.S. suppliers or essential for important industries.

Currently, U.S. Trade Representative is accepting comments on potential exclusions for hundreds of specific subheadings under the Harmonized Tariff Schedule of the United States (HTSUS) chapters 84 and 85 through March 31, 2025. There are also more than 150 products from China that remain eligible for exclusions from the existing section 301 tariffs on China.

PRODUCT CLASSIFICATION

U.S. Customs and Border Protection (CBP) can only charge duties based on the condition of goods when they enter the country. Therefore, it can legally use classification rules to qualify for lower or even zero tariffs. For example, importing individual components separately might place them in a different category than the finished product, potentially reducing the tariff. Additionally, certain U.S. and foreign products may qualify for special tariff rules under HTSUS Chapter 98. These rules allow importers to lower or avoid higher tariffs based on how the goods are used or whether they include U.S. or previously imported parts.

COUNTRY OF ORIGIN DETERMINATION

Like in product classification, it may be possible to modify a product's country of origin. For example, in a scenario where many parts are put together to create a finished machine, the product's country of origin may become the place where significant assembly operations occurred. Moving this process to a country with lower or no tariffs could help reduce costs. However, the rules vary depending on the product.

FTAS AND PREFERENCE PROGRAMS

The U.S. has 14 free trade agreements ("FTA") with several countries. FTAs lowers a wide range of non-tariff barriers on goods and services trade between the U.S. and partner countries. Additionally, preference programs like the Generalized System of Preferences, the Caribbean Basin Initiative, and the African Growth and Opportunity Act allow unilateral duty-free and reduced duty treatment to imports from more than 100 developing countries.

"DE MINIMIS VALUE" $800 PACKAGE RULE

The U.S. CBP collects tariffs on all imports products valued at $800 or more. Imported products valued below $800 are exempt from customs clearance and import duties subject to certain conditions. Although this rule is currently under review by the U.S. government, it remains valid.

Strategies to Mitigate Tariffs

VALUATION

Importers should consider whether certain amounts typically included in the commercial invoice price, such as buying commissions, shipping-related charges, inspection fees, and post-importation assembly charges, can be excluded from dutiable value.

FIRST SALE

First sale valuation allows importer to lower their duty costs by paying based on the price a middleman trading company pays the manufacturer rather than the higher price the importer pays the middleman. To qualify, the transaction must meet certain requirements, such as proving the goods were always intended for the U.S. and the sale was conducted fairly between independent parties. Once approved, this method can lead to significant and ongoing savings.

TRADE REMEDY REVIEWS

The U.S. has over 700 antidumping/countervailing duty ("ADD/CVD") orders that place high, sometimes extreme, duties on imports from many countries to prevent unfair pricing or subsidies. Each year, the government reviews these orders to update the information they are based on, and new foreign suppliers can also request reviews to secure lower duty rates. Importers can also ask for special rulings to determine whether certain products should be excluded from these trade orders, which could remove the extra duties altogether.

FOREIGN TRADE ZONES DUTY DEFERRAL

Goods brought into a foreign-trade zone ("FTZ") under "privileged foreign status" keep their original tariff classification, even if they are turned into a product that would normally face higher tariffs. This means they can be exported from the U.S. without paying those higher tariffs. Similarly, goods that would normally face high tariffs can be stored, repackaged, or relabeled in a bonded warehouse for up to five years without paying duties. Businesses can avoid these tariffs if the goods are (1) exported directly from the warehouse, (2) destroyed, or (3) brought into the U.S. after the tariff expires or an exemption is granted. Another option, called temporary importation under bond, allows companies to avoid tariffs on goods that are passing through the U.S. or being processed before being shipped out again.

Strategies to Recover Tariffs

POST-ENTRY PROCEDURES

If a business realizes that they overpaid duties after importing goods, they can request a refund in two ways: post-summary corrections (before CBP liquidates the entry) or protests (after liquidation). As long as the request is made on time and includes the right legal arguments and supporting documents, these methods can help recover significant amounts of overpaid duties.

TRANSFER PRICING

Transfer pricing is the price one company charges a related company, like a parent company selling to its subsidiary, for goods and services. If these prices are adjusted later, those changes may affect the customs value of already-imported goods and must be reported to CBP. If the adjustment increases the customs value, the importer may need to pay additional duties. But if the adjustment lowers the value, the importer might be able to get a refund on some of the duties paid.

RECONCILIATION

CBP's reconciliation program allows importers to submit initial entry paperwork using the best available information and then update it later with final details. This process is used to correct information about product classification, value, certain special tariff provisions (HTSUS 9802), and FTA eligibility. If the updated information shows that a product qualifies for a lower duty rate, lower customs value, or FTA benefits, the importer may get a refund on any extra duties or tariffs that were originally paid.

Although the above trade tools are not exhaustive or mutually exclusive, they provide short- and long-term solutions for companies to adapt and thrive in this very uncertain trade environment.

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