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Practice Update

Tariff Threats Could Send Manufacturers Country-Hopping

June 14, 2019

Just when moving manufacturing from China to Mexico seemed like an option, the threat of U.S. tariffs on Mexico emerged. Despite a reported agreement by Mexico and the Trump administration, the tariff threat admittedly remains an option the administration could use as a negotiating tool in the future. While Mexico has most recently been in the headlines, other countries could be subjected to these tariff threats as well. So what tariffs may lie ahead, and how can companies plan for strategic sourcing when there are so many unknowns? In the face of uncertainty, companies can stay one step ahead by understanding the various agreements in place, reviewing potential cost saving measures, and reevaluating their company's import policies and procedures.

Free Trade Agreements (FTAs)

It is not clear whether the US-Mexico-Canada Agreement (USMCA) could have possibly protected U.S. importers against the previously proposed 5 percent tariff against Mexico. Manufacturers have the option of moving operations and taking advantage of duty savings under one of the bilateral or multilateral agreements. The U.S. has free trade agreements with 20 countries altogether. Economical sourcing alternatives might include Guatemala, Honduras, or Peru, to cite a few examples.

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Nonetheless, it may not make business sense to carry on with shifting sourcing locations to adapt to unexpected, new tariffs. We continue to see sweeping changes such as the removal of India from the Generalized System of Preferences (GSP) duty savings program. Under the U.S. GSP program, U.S. importers can enter certain products duty-free if the beneficiary developing countries meet certain eligibility criteria established by Congress. India has been a beneficiary of GSP since 1974, but the United States has now determined it is no longer eligible. The effect of terminating GSP on Global corporations is increased tariffs on U.S. imports from India, one of our largest trading partners.

Importers are re-assessing their Import Compliance Programs (ICPs) from a variety of creative angles. We have already begun seeing target markets shift from the United States to alternative destination countries. Below are a few other ways in which importers are coping with the various tariff changes.

Other Duty Savings Programs

One area to consider with regard to savings is the duty-free provisions in Chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS). For example, products of the U.S. that are exported and then returned to the U.S. without having been advanced in value or improved in condition while outside the U.S. may be returned duty-free. Products of any origin meeting these conditions are also duty-free as long as they are exported and returned within three years. To rely on duty free provisions such as Chapter 98, it is important that importers have written policies and procedures for claiming and documenting duty free treatment. Unsubstantiated claims for duty free treatment can lead to significant fines and penalties by U.S. Customs and Border Protection (CBP).

For example, assume a U.S. oil and gas company wants to claim preferential duty treatment under Chapter 98 of the HTSUS. In this hypothetical, qualifying goods typically fall under HTSUS code 9801.00.6500. This category allows for the duty-free import of items that were exported temporarily for the rendition of geophysical or contracting services abroad in connection with the exploration for, or the extraction or development of, natural resources. In order to use this classification, the U.S. importer must establish that the entity that initially exported the parts is the same entity that is now importing the parts. They must have sufficient documentation to support the duty-free claim, such as the commercial invoice evidencing the export.

Verifying Your Product Classification

Correct product classification under the HTSUS is now more important than ever for duty assessment. For example, China tariffs are organized by tariff code and by list (i.e., List 1, 2, or 3). We expect to file List 3 exclusion applications this summer, but whether an exclusion application is even an option depends in part on the applicable tariff code. If you have the wrong tariff code, you may not realize you qualify for an exclusion. On the opposite side of the coin, you may think you qualify for an exclusion, only to discover later that you do not.

Checking Your Customs Valuation

Under U.S. Customs laws and regulations, the value of an import determines the amount the importer will pay in duties. But what looks like the value may not actually be the Customs value. Wherever the importer might be over-valuing its products, Customs valuation merits a second look. Importers are taking a second look at their Customs valuation methodologies to determine whether they are using the correct value by Customs standards. Companies should know whether they are applying the transaction value method, computed value, deductive value, or another Customs-appropriate method. Sometimes the Customs method has nothing to do with the Internal Revenue Service (IRS) methods of valuation. Above all, importers will want to be aware that overvaluing can be a costly mistake.

Sharing the Load

It is not uncommon to ask the manufacturer or the buyer to share the burden. Some companies opt to transfer additional costs to manufacturer, for instance. Others opt to transfer part of the cost to the buyer. In such cases it is necessary to understand what contractual terms are in place with business partners, and how best to share the expenses of rising duties.

Next Steps

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) was signed into law on February 24, 2016. It is the first comprehensive authorization of U.S. Customs and Border Protection (CBP) since the establishment of the Department of Homeland Security in 2003. The main objective of the TFTEA is to ensure a fair and competitive trade environment. Along with the passage of the TFTEA, Congress enhanced CBP's measures targeting high-risk imports. Increased automation through the Automated Commercial Environment (ACE) continues to broaden CBP's ability to monitor imports and seize high-risk goods at the border. We have already seen CBP directing letters to targeted importers. The new administration's heavier focus on imports could lead to more administrative penalties proceedings, seizures of goods, and inspections at the border. Given the current enforcement climate and the ever-changing tariff landscape, now is the time to reevaluate import policies and procedures.

Please contact Akerman's International Trade and Customs practice with any questions you may have on the recent tariff developments or other international trade developments.
