Tariff Increase Mitigation Strategies

The following is a compilation of mitigation strategies for dealing with tariff increases on imported goods coming into the United States. Importers can consider avoiding tariffs, mitigating tariffs, and recovering paid tariffs through the various strategies outlined below. This should not be considered legal advice, and may not be an exhaustive list of potential strategies.

Tariff Avoidance

There are multiple options to avoid tariffs, including the use of an ATA Carnet, tariff engineering, special classification provisions, the country of origin, free trade agreements (FTA) and trade preference programs, the miscellaneous tariff bill, de minimis shipments, and China exclusions.

ATA Carnet

The ATA Carnet (merchandise passport) is an international customs document that simplifies customs procedures by allowing the temporary import of commercial samples, professional equipment, and goods for trade shows. An ATA Carnet allows for a single document to be used for all customs transactions and for import arrangements to be made in advance at a predetermined cost. For more information, contact the U.S. Council for International Business.

Tariff Classification Engineering

It may be possible to avoid higher tariff classifications through the use of Harmonized Tariff Schedule (HTS) codes. U.S. Customs and Border Protection (CPB) strictly enforces the proper classification of goods, and companies must fully comply with using the correct code. A small change to a product may result in a different classification code with a lower tariff. In addition, importing components of a product rather than a finished product may be a way to avoid higher tariffs.

Special Classification Provisions

Goods classified in Chapter 98 of the Harmonized Tariff Schedule (HTS) may have significantly lower duties or no duties at all. Examples of Chapter 98 special duty provisions include articles donated for charity and U.S. goods exported and returned, among others.

Country Of Origin

Country of origin rules are well defined and enforced by CBP. They vary by product, so companies must carefully assess their inputs and end products crossing borders to determine if shifting production of overseas products or components from one country to another is a viable option.

Free Trade Agreements And Trade Preference Programs

The United States has 14 free trade agreements (FTA) in place that include 22 countries. FTAs eliminate duties on trade between the U.S. and its partner countries and may also lower a wide range of non-tariff barriers on products and services between partner countries. The U.S. also maintains several trade preference programs that provide free or reduced tariffs for specific products meeting the unique rules for each program.

Miscellaneous Tariff Bill

The Miscellaneous Tariff Bill (MTB) temporarily reduces or suspends import tariffs that are paid on particular products imported into the United States. Typically, companies importing the products request the duty reductions or suspensions by submitting a petition for each concerned product. Congress has let MTBs lapse, but it is working on a package of renewed MTBs that would cover thousands of products.

De Minimis Shipments

De Minimis shipments (low-value shipments) have a value of $800 or less and are duty-free, informal entries for goods. While these entries are currently allowed for most products, Congress is assessing the rules and how importers are utilizing the program. Certain types of shipments, including those subject to antidumping or countervailing duties, absolute quotas, certain types of alcohol and tobacco products, and merchandise covered under Section 201, 232, or 301 tariffs are not eligible for De Minimis import.

China Exclusions

The U.S. has assessed higher duties on a wide range of products from China through Section 301 tariffs since 2017. Assessments of the products on the exclusion list are made on a regular basis; companies are given an opportunity to request exclusions as well as extensions to exclusions that have been previously implemented.

Tariff Mitigation

Tariff mitigation can be accomplished through first sale valuation, product valuation, duty deferral for goods admitted to a foreign trade zone (FTZ) or bonded warehouse, and trade remedy reviews.

First Sale Valuation

First sale valuation is particularly useful for industries that are subject to high tariffs because it allows duties to be assessed on the price that a middleman pays to the manufacturer instead of the price the company pays to the middleman or a trading company handling the import. Tariffs still apply, but the dutiable value is often significantly lower, resulting in a lower duty bill.

Product Valuation

Duty is assessed on the value of products being imported into the U.S., so companies should assess whether any costs that have typically been included in the price can be excluded. For example, buying commissions, shipping-related charges, inspection fees, and post-importation assembly charges could potentially be excluded from the declared value of the good resulting in significant cost reductions.

Duty Deferral - Foreign Trade Zone (FTZ) / Customs Bonded Warehouse

Goods admitted to a Foreign Trade Zone (FTZ) or a customs bonded warehouse may enter duty free based on specific rules. An FTZ is a secure area in the U.S. where companies can import and export goods with reduced or delayed tariffs. When companies are approved to use an FTZ, foreign and domestic merchandise can enter the zones (subject to governing rules) for things like storage, exhibition, assembly, manufacturing, and processing. When the finished product leaves the FTZ and is entered into the customs territory of the U.S., the company has the option to pay the duty on the finished product or the inputs (whichever is lower). The company would pay no duties if the finished product is exported directly from the FTZ to another country. The import of goods to a customs bonded warehouse enables companies to avoid higher tariffs for products transiting or undergoing processing prior to exportation out of the U.S. Upon entry of the goods into the warehouse, the warehouse proprietor incurs liability for the goods under a warehouse bond. This liability is generally cancelled when the merchandise is exported, withdrawn for supplies to a vessel or aircraft, destroyed under U.S. Customs supervision, or withdrawn for consumption within the U.S. after the payment of duties.

Trade Remedy Reviews

There are more than 700 antidumping and/or countervailing duty (AD/CV) orders that are maintained by the U.S. that impose substantial and even prohibitive duties on imports from dozens of countries. Annual administrative reviews of these orders and ad-hoc new shipper reviews of foreign companies not involved in an initial AD/CV proceeding can be effective at obtaining lower duties. Importers can also request scope rulings and changed circumstances reviews that may result in the exclusion of specific goods from the coverage of an order and thus eliminate associated AD/CV duties.

Tariff Recovery

Strategies for tariff recovery include refunds, transfer pricing, reconciliation, and post-entry procedures.

Refunds

Importers of List 3 and List 4A goods from China can preserve their rights to possible refunds of tariffs paid on such goods by joining a lawsuit that was first filed in 2020. The lawsuit argues that Section 301 tariffs on List 3 and List 4A goods from China were wrongly imposed. Additionally, there may be a possibility of refunds of duties paid on goods for which exclusions are in effect. The case is currently before the Court of Appeals for the Federal Circuit.

Transfer Pricing

Transfer pricing represents the price one company (e.g., a parent company) charges a related company (e.g., a subsidiary company) for its goods and services. Retroactive transfer pricing adjustments are generally considered part of the customs value of previously imported goods and may need to be reported to CBP. In such cases, importers may need to tender additional duties to CBP if the adjustment increases the customs value of the imported goods, but they may also seek a refund for adjustments that decrease that value and thus the duties owed. Companies should note that certain procedures and processes need to be in place prior to adjusting such values to ensure compliance with CBP rules.

Reconciliation Program

Under the CBP's Reconciliation Program, importers may file entry summaries with the best available information available to them and file a reconciliation entry at a later time that provides the final and correct information upon which the entry is liquidated. If the reconciliation entry shows a preferred classification, lower dutiable value, or FTA eligibility, the excess duties deposited at entry may be refunded.

Post-Entry Procedures

Post-summary corrections (prior to entry liquidation) and protests (after liquidation) can be used to secure refunds when duty recovery opportunities are discovered after entry of the goods. If proper legal arguments and supporting information are submitted and applicable time frames are met by the importer, these mechanisms can yield substantial refunds.

VEDP International Trade offers a number of export-related services to Virginia businesses, including trade missions, supply chain services, and market research by our Global Network of in-country consultants. These services are available to all Virginia exporters. For more information, please visit ExportVirginia.org.

Additional Resources

- Sandler, Travis & Rosenberg, P.A. – Responding to Tariff Increases - A Three-Pronged Approach: Avoid, Mitigate, Recover

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