Analysis: Trading companies can fight back in trade wars

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It takes a bit of work, but there are ways for companies to legally circumvent tariff challenges that have been brought about by the recent imposition of trade barriers.

Following much interest **in a previous conversation on the matter, GTR** speaks once more to Robert Silverman, partner at law firm Grunfeld Desiderio Lebowitz Silverman & Klestadt and a member of IR Global, about the opportunities available in global customs and trade laws to minimise the impact of new tariffs and quotas.

In the US, for example, Silverman explains that the current administration has created a hostile environment and a great deal of uncertainty with respect to importing goods into the country. Additional duties and quotas have been placed on aluminium (10%) and steel (25%) importations from many countries, additional duties ranging from 10% to 25% have been placed on all products from China and are also expected to be assessed on goods from the EU, and a number of US anti-dumping duty (ADD) and countervailing duty (CVD) cases have been filed against importations from many countries.

"The dramatic growth in the number of US ADD and CVD cases is a direct result of the protectionist attitude exhibited by the administration. And the country's trading partners are not taking this without a fight," he says.

hit by restrictions

"China has imposed its own trade sanctions and outright refused to buy certain products from the US, other countries have filed complaints at the WTO, and so on."

But in the context of all this turmoil, what can companies do to ensure ongoing profitability in trade? What mistakes have they made in the past trying to mitigate trade barriers, and what alternative methods are available to them? **GTR** sat down with Silverman to find out.

GTR: What are some of the problems that have been created by the efforts of certain international traders to avoid these trade sanctions?

Silverman: All of the additional duties and quotas and sanctions are based on the country of origin of the goods and their classification under the harmonised tariff schedules (HTS), a universal set of tariff provisions that most countries use as a basis for tariff assessments. Traders create problems for themselves in three areas: origin, classification and valuation.

The most serious origin violation involves transshipment, where factories make the goods in a country that is subject to sanctions, but then ship the goods to the US from an intermediate country and thereby claim that the goods are made in a country that is not subject to sanctions. Other variations on this theme involve repacking goods in an intermediate country, performing minor operations in the intermediate country, or shifting some operations to the intermediate country which are not sufficient to shift origin.

In terms of classification violation, importers simply misclassify or mis-describe their goods to avoid the sanctions.

Finally, with regards to undervaluation, this is also used, but this only eliminates part of the sanctions to be imposed.

An importer's obligations regarding the veracity of the data in their entries are not something to take lightly. Customs authorities will penalise traders who make mis-declarations, with penalties ranging from shipment seizures, huge monetary penalties, and even criminal prosecution.

GTR: So how can companies properly shift country of origin to minimise the impact of these new trade sanctions?

Silverman: If the additional duties are keyed to goods from a certain country, then sourcing from a different country is the easy out, but this is often impossible to achieve. As an alternative, find out the origin rules for the country of importation and see if you can shift the country of origin to an intermediate country consistent with those rules.

But note that there is a tremendous amount of mis-information about these standards, so even well-meaning people can get it wrong. Some believe that 51% of the value of the product has to be added in the intermediate country to shift the origin. Others believe that 30% of the materials has to come from the intermediate country to shift the origin. It is important to note that the origin rules are not the same in all countries. For example, the US has a substantial transformation test, which means that processing in the intermediate country must create a new product with a new character, name and identity.

In the case of goods subject to an ADD/CVD order, however, the standards to change the country of origin to avoid these assessments are tougher. In China, the standard is substantial transformation *plus* a tariff shift test, which is even more difficult to meet.

Once you think you have a method to shift the country of origin to avoid the sanctions, consider requesting the customs authorities to sign off on your programme. It's better to know before you make major shifts in your processing that your plan will achieve your goal of shifting country of origin.

GTR: How can companies change harmonised tariff schedule (HTS) classifications to minimise the impact of these new tariffs and quotas and trade sanctions?

Silverman: All of the additional duties and quotas that are imposed are expressed in terms of HTS provisions that are applied to imported goods. In the past, many of these HTS provisions were duty free, so few paid attention to their classifications. Now it makes sense to see if you can find a better HTS number for the product without making major changes to it.

Alternatively, some tariff engineering is permitted to change the product to bring it within a different HTS provision. It is perfectly legal for an importer to fashion their merchandise in a way to obtain favourable tariff treatment, as long as they are transparent with customs about

the features of their products. As an example, if a completed article is covered by sanctions, but parts are not, then you can import parts and assemble them after importation to avoid the sanction duties. Or you can consider adding features to your product that would result in a change in HTS classification. Once again, a binding ruling can be requested from customs to confirm your tariff classification change to avoid any potential penalty liability.

GTR: What part does dutiable value play in minimising the impact of new tariffs?

Silverman: Most duty rates are ad valorem rates, which are expressed as a percentage of dutiable value. If the dutiable values can be reduced, then customs will be applying their punitive tariff hike percentage to a smaller number, so duties will be reduced. This can be accomplished through two different methods. One is to unbundle the selling price from the seller to the buyer to exclude non-dutiable elements built in the price. In other instances, where goods are purchased from trading companies or parent companies which do not make the goods, an alternative option is to have the goods appraised at the lower factory prices to save duties. There is also the opportunity to use a foreign importer of record to lower duty prices. Finally, where goods are sold through e-commerce, and the vendor/importer can work with us, programmes can be set up where the goods will be absolutely duty free.