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NOVEMBER | 2019

Navigating Trade Tariffs

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The global tariff environment is constantly changing, creating a high risk impact for companies affecting their international supply chains, financial exposure, long standing business relationships and sourcing strategies. These changes can also result in trade compliance consequences.

There have been major changes to the collection of tariffs as a result of Section 301 investigations, World Trade Organization (WTO) decisions regarding trade dispute settlements, Section 232 investigations, and a greater emphasis on trade enforcement regarding forced labor and Intellectual Property Rights. The constant flux associated with these issues has created a challenge for the trade community. These changes can also result in trade compliance consequences with enforcement and regulatory government agencies. How can companies cope with these dynamics in a way that doesn't disrupt their business models?

Melinda Damico is Executive Vice President of Vandegrift – a Maersk Company (mdamico@vandegriftinc.com, www.vandegriftinc.com) submitted this month's article sharing her expertise as a licensed Customs House Broker. "The last year has been one of the most volatile years on record affecting U.S. tariffs. U.S. importers and exporters have seen so many increased tariffs and threats to further increase tariffs on an ever expanding number of products. It is a daily challenge for corporate compliance departments to stay ahead of the changes and to understand how they affect their company's business model." Having a Customs House Broker with a proven track record of compliance will enable companies to not only understand the impact of trade policy changes, but how to cope with such changes. Taking advantage of your Customs House Broker as a force multiplier is the first place companies should go to weather the storm.

Here's a brief snapshot of the year's major tariff activities affecting U.S. companies:

The current tariffs levied on China's imports affect about $500 billion in trade. The U.S. has a significant trade deficit with China and the approximately $540 billion dollars of product imported from China is at the center of on-going trade negotiations and the imposition of tariffs.

The Wall Street Journal recently reported:

- *The U.S. imported about **$540 billion** in goods from China in 2018. This figure is at the center of the ongoing trade discussions and tariff activity.*
- *The biggest targets would be mobile phones and laptops, according to a Wall Street Journal analysis of 2018 Census Bureau data on the more than 3,800 categories of goods on which the U.S. has proposed new tariffs. The U.S. imported $43 billion in mobile phones last year from China, and $37 billion in laptops.*
- *Other major categories facing tariffs: $11.9 billion of children's vehicles like tricycles and scooters, $5.4 billion of videogame consoles and $4.6 billion of computer monitors.*

The current tariffs levied on China's imports affect about $500 billion in trade.

- *These major items are almost entirely imported from China—the source of 82% of mobile phone imports, 94% of laptops, 85% of tricycles and scooters and 98% of videogame consoles.*
- *The new round of tariffs will also hit $27.7 billion of apparel and clothing accessories, $14.1 billion of footwear, a total of $26.7 billion of toys, games and sports equipment and $2.3 billion of books.*
- *The tariffs are assessed to U.S. importers, who must pay 25% of the value of their imports to Customs and Border Protection. For example, the $43 billion in mobile-phone imports would be assessed $10.8 billion in tariffs.*
- *Economists have found that in the previous rounds of tariffs the costs have been passed on almost entirely to consumers.*

Here's a quick summary of the current tariff activity in the major U.S. trades:

CHINESE 301 TARIFFS

Tariffs of up to 25% have been levied on billions of dollars of Chinese products since July 2018. These tariffs are in response to China's unfair trade practices related to the forced transfer of U.S. technology and intellectual property to domestic Chinese enterprises. The products are broken out by tranches with 4 tranches subject to duties so far. The second part of the fourth tranche (also known as List 4B) goes into effect at 15% on December 15, 2019. Articles on List 4B include certain consumer electronics, toys, and footwear and apparel items. These items were delayed to minimize the impact to consumers at Christmas. Several tariff subheadings proposed for List 4 were removed from the final lists based on health, safety, national security, and other factors, according to the U.S. Trade Representative (USTR). These items include certain fish, chemicals, bibles, cranes, shipping containers, and child safety seats.

On October 11, 2019, the U.S. government announced a partial trade deal with China. The increase in tariffs originally scheduled to occur on October 15, 2019 will not go into effect. That proposed increase would have raised the Tranche 1, 2, and 3 tariffs to 30%. Further details of the agreement will not be made public for a few weeks.

The USTR has allowed exclusions over the past 10 months for certain products with over 1000 exclusions granted so far for Lists 1, 2, and 3.

Jane Taeger, Head of Trade Compliance Services for Vandegrift – A Maersk Company said "Given the frequency of exclusion postings and the effect it can have on filing claims for refunds, we recommend that importers with affected entries, and those who have applied for exclusions, request extensions of liquidation pursuant to 19 CFR 159.12. Entries of goods on Lists 1 and 2 are starting to liquidate which means the protest period of 180 days has begun."

Importers may want to preserve their ability to file post summary corrections on unliquidated entries, particularly where multiple exclusions may apply. An extension of one year may be requested from the Center of Excellence and Expertise.

SECTION 201 TRADE REMEDY ON SOLAR CELLS AND PANELS, AND WASHING MACHINES AND PARTS

On January 23, 2018, the President issued Presidential Proclamation 9693 and Presidential Proclamation 9694 imposing tariff rate quotas and increased duties

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Representative Robert Lighthizer said in statement: "We expect to enter into negotiations with the European Union aimed at resolving this issue in a way that will benefit American workers."

on imports of solar cells and panels, and washing machines and parts, effective February 7, 2018.

This action was taken after the respective U.S. industries filed petitions under Section 201 of the Trade Act of 1974 with the U.S. International Trade Commission (ITC), and the ITC found that these U.S. industries were injured by imported goods.

These measures have a duration of four years for solar cells and panels, and three years for washing machines and parts.

These measures cover imports from all countries, except certain developing countries. Canada is also excluded from the washing machines/parts measures.

SECTION 232 TARIFFS ON ALUMINUM AND STEEL

On March 8, 2018, the President issued Proclamations 9704 and 9705 on Adjusting Imports of Steel and Aluminum into the United States, under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), providing for additional import duties for steel mill and aluminum articles, effective March 23, 2018. These tariffs were imposed on the grounds of national security.

Canada and Mexico were removed from the imposition of these tariffs in order to help ease the passage of the U.S.MCA, the program slated to replace NAFTA.

There is an exclusion process where parties can submit requests for exclusions from these tariffs.

EUROPEAN TARIFFS

In April 2019, the USTR published a list of tariff numbers for goods from the European Union (EU) that could be subject to retaliatory tariffs.

Representative Robert Lighthizer said in statement: "We expect to enter into negotiations with the EU aimed at resolving this issue in a way that will benefit American workers."

The USTR has announced retaliatory tariffs of 10% on large civil aircraft and 25% on other EU products such as certain apparel, cheese, and wine from the EU effective October 18, 2019.

These duties stem from a 15-year dispute with the EU in the World Trade Organization over Europe's subsidies to Airbus. The WTO "confirmed that the United States is entitled to impose countermeasures in response to the EU's illegal subsidies," according to a statement by the USTR. The statement goes on to say that the USTR has the authority to impose duties of 100%, but is limiting them to 10% and 25% at this time. The U.S. does have the authority to increase the tariffs at any time, or change the products affected.

INDIA TARIFFS

India placed higher tariffs on U.S. goods – in response to aluminum and steel levies by the U.S. and the removal of the Generalized System of Preferences (GSP) eligibility for Indian imports.

India's GSP status was removed in June 2019 as the country had failed to provide the U.S. with assurances that it would provide equitable and reasonable access to its markets in numerous sectors. Because India has implemented multiple trade barriers that negatively affect U.S. commerce, it failed to meet GSP criteria.

The landscape is constantly changing and importers need to be more vigilant than ever to stay on top of their compliance programs.

MISCELLANEOUS TARIFF BILL

The American Manufacturing Competitiveness Act of 2016 allows companies to file a petition with the U.S. International Trade Commission to seek a temporary tariff suspension or reduction for a period of 2 years.

The MTB would reduce column 1 (regular) duties only. Other duties such as Section 301, Section 232, EU tariffs, antidumping, or countervailing duties would still apply. Petitions are to be filed through the ITC's portal starting October 11, 2019 through December 10, 2019. Petitioners may also seek a renewal for products included in the current MTB due to expire December 31, 2020. The product should not be produced in the U.S., and duty savings may not be more than $500,000 per year per product.

Once the petition period closes, the ITC will publish the petitions on its website (the process does allow users to claim certain details as confidential business information) in January 2020. There is a 45-day public comment period and then the final approved petitions are submitted to Congress. The MTB could then be approved by fall 2020. Correct tariff classification and a concise product description are critical to a successful MTB petition.

CONFUSED BY TARIFFS?

The landscape is constantly changing and importers need to be more vigilant than ever to stay on top of their compliance programs. There are version 301 tariffs from China with hundreds of exclusions, version 232 tariffs on steel and aluminum, EU tariffs, the loss of Generalized System of Preferences (GSP) from a major trading partner (India), and a Miscellaneous Tariff Bill (MTB).

To help importers and exporters navigate the maze of tariffs we designed services that have data at their core and we use technology to place companies in a better position through analytics.

Our brokerage service has the technology and people expertise to make sure every entry is processed with customized business rules which support their individual business model.

As part of this process, our Brokerage Service and Consulting Group are essential to being a force multiplier for companies that are adjusting to the changing trade dynamic. Our services provide a thinktank process meant to support our operations and our clients, enabling the day-to-day operations teams to focus on the entries and challenges of the day.

For example, clients come to us for research on a commodity classification – The Consulting Trade Services team take the client question and develop it in light of what the client is trying to achieve. Our teams work side by side with the client to provide an approach that helps the client make effective and efficient business decisions.

Another service we provide is project related work; examples include but are not limited to: developing compliance manuals, assisting companies in leveraging free trade agreements, opportunities to improve processes, tariff engineering and training for clients using webinars and onsite seminars. As an example, Janet Labuda a Trade Executive at Vandegrift and former U.S. Customs Officer prepared and presented detailed information on the African Growth and Opportunity Act (AGOA) Free Trade Agreement for a client's Compliance and Sourcing teams.

Another example is the development of a global classification tool and library ensuring that company's keep an up-to-date list of product lines. We also provide clients with onsite staffing when there might be a need for a classification compliance expert, or other expertise.

Our Drawback team focuses on the specialized processes of retrieving drawback duties. Companies must have a verifiable process to attain duty drawback. It provides companies with another avenue for duty savings. The process is quite cumbersome and is under a great deal of scrutiny by Customs and our process is a tried and true approach for our clients.

Using the service of a Customs House Broker committed to trade compliance allows companies to expand their own compliance departments and stay ahead of trade challenges.