Surviving the Sino-US Trade Dispute: Recommended Strategies

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With the US ramping up trade tensions not just with mainland China, long seen as its prime adversary, but also with many of its closest allies, the export environment has seldom seemed so forbidding. For concerned Hong Kong businesses, however, there are a wide range of customs strategies, international regulations and export options that should allow them to ride out this particular storm and ensure they do not get caught in the crossfire between these two feuding giants.

In an interview with Louis Chan, HKTDC Assistant Principal Economist (Global Research), Sally Peng, Member and Asia Pacific Practice Leader of Sandler, Travis & Rosenberg, Limited, shares some tips on how Hong Kong and mainland Chinese companies can make use of some lesser used customs tools to overcome these new hurdles.

Chan: How can Hong Kong and China companies avoid the Section 232 and Section 301 tariffs the US has imposed?

Peng: There are several things that companies can do. First and foremost, they can try to get a company-specific exclusion from the tariffs, once the procedure for doing that has been set out and made clear.

Secondly, manufacturers in Hong Kong and the mainland should see whether there is another potential classification for their product that might be more appropriate; or whether a slight modification to their product could move it into a classification that isn't subject to the tariffs. This is sometimes called "tariff engineering" – importers restructuring their products to try to get favourable duty treatment.

Thirdly, companies can use the rules of origin to shift the official origin of a product from Hong Kong or mainland China to a country which isn't subject to the tariffs. But they have to take into account that US Customs determines a product's origin according to where the most substantial transformation takes place or where the components become a final product.

Chan: What about if the goods are still subject to the quotas? Are there any ways to minimise the impact of the tariffs? How about the so-called "first sale rule"?

Peng: If the tariffs can't be partially or completely avoided by any of these means, then it's worth considering trying to lower the price on which the tariffs are assessed. You can do this by using a middleman to buy your product and sell it on. That middleman can legitimately be the same company as long as the arrangement is properly set up according to the "First Sale Rule", or FSR.

While it might seem that a relationship between the middleman and the factory would make it difficult to prove to the US government that an FSV was legitimate, it can actually provide an opportunity for the US buyer to make additional savings. CBP allows certain expenses unrelated to the production of the goods to be shifted from the books of the manufacturer to those of a related middleman. This means the First Sale price can be cut even further without affecting the purchase price between the US buyer and the middleman. And that means more savings on duty.

Other than using the FSR, if you're importing goods into the US and using it as a distribution base before re-exporting them, you could consider using a foreign-trade zone or bonded warehouse. This will allow you to avoid duty on the goods destined for re-exportation, or to defer paying duties for goods that enter the US at a later date. The goods will still be subject to the tariffs when and/or if they enter the US economy, but deferring or delaying paying those duties until you have to, can help manage cash flows better.

For more details, please visit https://shar.es/a13gp4.