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Five strategies for reducing tariff costs in the global supply chain



By Jaclyn Jaeger | Wed, Oct 27, 2021 3:38 PM

Global supply chains are responding to a whole new compliance regulatory landscape, fraught with trade restrictions and tariffs. But there are plenty of cost-savings opportunities available if you know where to look.

"There are still a lot of people who haven't taken advantage of all the potential tariff mitigation opportunities," said Joel Rogers, associate general counsel of international, supply chain, and regulatory at The Home Depot, during a panel discussion Tuesday at the Association of Corporate Counsel's **2021 virtual annual meeting**. It's important to be mindful of what those opportunities are, Rogers said.

From tariffs on steel and aluminum (Section 232) to solar panels (Section 201) to a wide range of Chinese products (Section 301), the last few years have been a supply chain nightmare. Concerns about U.S. manufacturing shortcomings created by tariffs still apply today—only exacerbated further by a global pandemic, factory lockdowns, workplace shortages, backed-up cargo ships, congested ports, and so on.

Krista Thompson, deputy general counsel at Airbus OneWeb Satellites, noted companies traditionally have responded to tariffs in one of three ways: absorb the costs and attempt to remain competitive, pass costs onto customers, or rework their supply chain.

Whatever decision is made, the first step is to gain a comprehensive understanding of your supply chain. You cannot comprehensively analyze supply chain tariffs without first understanding the supply chain itself, Thompson said.

Country of origin savings: Part of a comprehensive analysis of the supply chain includes properly identifying and classifying a good's country of origin. Incorrectly stating this can result in supply disruptions and sanctions, including the seizing of goods by customs and the imposition of fines.

On the flip side, correctly identifying and classifying a good's country of origin can result in reduced tariffs, as well as the avoidance of compliance risk. "If you can find a new country of origin for your product that results in lower tariffs, that's a win-win for your company," said Kristi Zentner, a partner at law firm Cozen O'Connor.

Evaluating country of origin should be done periodically. "We have businesses that are changing due to disruptions in the supply chain, and we have partners down and up the chain that make adjustments on the fly—sometimes strategically, but often tactically—in response to global issues," Thompson said. "So, we need to continue reshaping and reframing those and make sure we are accurate in our justification of such."

Free trade agreement (FTA) savings: Establishing the correct country of origin is also beneficial in taking advantage of FTAs, which are agreements between partner countries that help companies more easily compete in the global marketplace through reduced trade barriers, including the reduction or total elimination of tariffs between member countries. Currently, the United States has **14 FTAs in force with 20 countries**.

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"Those provide huge benefit savings," said Guy Moreno, vice president of compliance at Progress Rail Services (a Caterpillar company). FTA due diligence is no easy task, however, as it requires understanding and navigating various and complex rules of origin that describe how exported goods shipped to a country, or a region, may qualify for duty-free or reduced-duty benefits under the applicable trade agreement.

For a global company that manufactures potentially thousands of goods across multiple markets, FTA due diligence is an arduous compliance task, to say the least, but if you are willing to do the legwork, you might find that it's worth it, Moreno said.

Alternative sourcing savings: Reevaluating your global sourcing strategy could also result in lower costs.

"My company sources from 17 different countries to make one piece of hardware," Thompson said. Because of Section 232 tariffs on aluminum and steel, the decision had to be made whether adjustments to the supply chain were necessary. "You have to balance that with the risk to your business, the mission critical nature of that particular component," she said.

Looking to alternative sourcing is a great place to start but not always an option. Airbus OneWeb Satellites, for example, has few eligible suppliers, Thompson said. "That is not the case for most companies' supply chains, where you are looking at a broad range of potential suppliers," she said.

Zentner advised companies "take advantage of lessons learned from the COVID-19 pandemic and diversify your supply chain as much as its feasible to do so."

Exclusion savings: Regarding China tariffs, companies should carefully determine how they can apply for exclusions, if available. One way to do this is to make sure you're paying the right tariff.

"Using the right HTS code is a great way to ensure this is done right," Zentner said.

In simple terms, the U.S. Harmonized Tariff Schedule (HTS) comprises a hierarchical structure for describing all goods in trade for duty, quota, and statistical purposes. "It comes into play when you're looking to use product exclusions," Zentner said.

She cited an example of a client who makes pushcarts for home improvement stores but was using an HTS code for toaster ovens. "It wasn't right at all," she said.

Zentner further recommended looking at exclusions creatively. Let's say, for example, you import a set of table and chairs from China, and you see folding tables and folding chairs are granted exclusion. Perhaps it makes sense to unbundle that set to receive the tariff exclusion, she said.

"There is a bit of smoke and mirrors with regard to what kind of exclusions were granted and which were denied during the Trump administration," Zentner said. "You never know if you're going to get one if you don't apply for one."

"First sale rule" savings: Use of the "first sale rule" is another potential cost-saving opportunity that was discussed by the panelists. As explained by the U.S. International Trade Commission (USITC), items imported into the United States may be subject to

several transactions, with each interim buyer adding to the ultimate price paid by the U.S. importer.

"Current law allows U.S. importers, under certain conditions, to base the valuation of a product entering the United States on the first or earlier sale in a series of transactions, rather than the last one," the USITC **stated**.

For example, if an item is produced in China; sold to a middleman in Hong Kong; and in turn, sold to an importer in Los Angeles, the first sale rule would allow the U.S. importer to declare the product's value for import duty purposes as the price of the original China-Hong Kong transaction.

"Customs origin law is fraught with peril," Rogers said, "but there is also potential for mitigating tariffs if you know what you're doing."