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RECESSION PROOFING YOUR BUSINESS: CUSTOMS AND INTERNATIONAL TRADE TECHNIQUES

As governments worldwide struggle with the economic crisis, there is developing consensus that the United States and other parts of the world are entering into an economic recession - possibly a severe one. The signs of recession are everywhere for international traders to see. Retailers place smaller orders, and place those orders later in the season. Buyers plead for better terms. Payments come later. Manufacturing managers are under pressure to cut costs and streamline supply chains.

While there isn't much an individual company can do about the greater economic picture, international traders very often can improve their own competitive positions in a recession by paying closer attention to Customs duty planning. Companies concerned about their margins can often do a lot to improve them by conducting an internal review of import and export transactions, to ensure that their supply chains are operating in the most duty-efficient manner possible.

Herewith, some techniques importers and exporters can use - in the United States and elsewhere - to try and ride out stormy economic weather.

Reviewing Tariff Classifications

Correcting improper tariff classifications is one of the best ways to try and "recession proof" your import-export operations. If a product currently bearing a 7% duty rate can be reclassified to a 2% percent rate, this will produce immediate savings in landed costs. These savings can fall right to a company's bottom line, or can be used to lower price points, letting the company keep its market share with cost-conscious customers.

The best thing about a tariff classification saving is that it does not require the importer to re-tool, re-engineer its product, change materials or vendors, or sacrifice product quality. It cleans up an inefficiency in supply chain operations with little cost outlay.

Consider this example: Acme Company has been importing certain motorized gate operators under a dutiable provision for "motors" for several years. An internal review led the company to conclude that the gate openers, which featured remote control radio receivers and actuators, were far more than simple "motors", and should be classified under a duty-free provision

in Harmonized Tariff Schedule heading 8530. The company sought a formal ruling, and Customs agrees with the company's position. The benefit? Acme received a large up-front refund of duties, plus a future cost reduction which would allow it to keep its prices competitive in the face of a declining housing market.

Another example: Beta Company's imported paramagnetic plastic beads, used in immunology testing, have for many years been classified under a tariff provision for "plastics in primary form" carrying a duty rate of 6.5%. An internal review suggested that this classification is incorrect and that a 1991 Customs ruling classifying the product was based on insufficient information. When all information is presented, the product appears to be clearly classifiable under a duty free provision for "reagents". Successful pursuit of the duty free classification will yield savings for the importer and its customers.

A classification review need not be limited to addressing products in their current configurations. Importers are permitted to fashion products so as to receive the lowest lawful duty rate. Thus, an importer of work gloves, who was paying over 19% in ad valorem duties, found that by making a few adjustments to his design, he could qualify the gloves for classification in a temporary duty production provision covering "mechanics gloves", dutiable at 2.8% ad valorem. The cost of making the modified glove was a bit higher, but the duty was much lower, and the importer wound up with an improved product carrying a lower landed cost. Again, a win-win for the importer and its customers.

Customs Valuation

Most imported goods are appraised for duty purposes according to their "transaction value" which is the "price actually paid or payable for the merchandise when sold for exportation" to the United States", plus certain statutory additions. Companies often lose sight of the fact that invoice values used to make entries of goods, may be full of non-dutiable charges which, if broken out separately, can be excluded from the dutiable value.

Thus, if goods are sold on a C&F or DDU basis, international transportation charges, if properly documented, can be excluded from the dutiable value of the goods. Similarly, if prices include non-dutiable items -- for example, royalties paid to third parties who are unrelated to the seller, visa charges, or certain royalties or license fees -- these amounts, to, can be structured so as not to be assessed with duty.

In many cases, importers purchase goods from resellers, who buy the goods from a foreign manufacturer "for export to the United States" and resell them to the importer of record. In these cases, it may be possible to use the "first sale" rule of Customs appraisal, so that the goods can be entered and subjected to duty at the lower price paid by the middleman. In some cases, setting up a "first sale" program may require confidentiality protections, or even routing the documents through a trusted third party such as a law or accounting firm, but the savings can often be very substantial.

Improving the Logistics Path

Companies can also look into improving the logistics chain to save costs, for example by using foreign trade zones or Customs bonded warehouses.

Foreign trade zones can be particularly useful cost-savings tools.

Assume your company manufactures in the United States a product which, if imported, would be duty free -- for example, a pharmaceutical or electronics product. If you import dutiable materials or components to make these goods, you are effectively being penalized for manufacturing in the United States, through the assessment of those duties. After all, you could just make the finished product overseas, and import it without duty payment. By setting up your manufacturing operations in an FTZ or FTZ subzone, and obtaining manufacturing approval from the Foreign Trade Zones Board, a company can effectively eliminate its duty bill for materials and components – having the value of those goods assessed with duty at the rate applicable to the finished product.

Here again, nothing changes with respect to the product - all that changes is the paperwork used to clear the imported components through Customs and to track the manufacturing process.

Or consider the case of a company that imports finished products, warehouses them, and then distributes them to customers throughout the United States. The company might pay, say, \$300,000 per year in merchandise processing user fees on the imported goods. However, if its distribution facility were operated as an FTZ, the company could file “weekly” entries, covering goods removed from the FTZ during a seven day period. The \$485 per entry MPF “cap” would be applied to each of these weekly entries. The importer could reduce its annual MPF expenditure from \$300,000 to no more than \$24,520 - a substantial savings. In addition, if the importer has good inventory controls, it should be able to achieve savings in Customs brokerage costs and defer payment of duties on slow-moving inventory.

Duty Drawback

We’ve heard (and lived) most of the horror stories – duty drawback claims are complex, annoying, fraught with paperwork, and the rules concerning allowance of drawback are arcane. Customs and Border Protection doesn’t like drawback, has been shutting down its drawback processing centers, and generally making it difficult for companies to collect duty refunds.

Funny how, in a recession, those considerations often tend to be overcome by the promise of a fat refund of Customs duties, merchandise processing fees and/or Harbor Maintenance Taxes. And perhaps that clerk in Operations – who maybe doesn’t have as much to do right now, since orders are lighter-than-usual – has some time to work on duty drawback claims.

Drawback is basically a 99% refund of duties paid in certain cases. Manufacturing drawback can be claimed where imported goods, or substituted goods of the “same kind and quality” are used in manufacturing goods for export. Unused merchandise drawback may be claimed where imported goods are subsequently exported without having been used in the United States – or where “commercially interchangeable” domestic or foreign goods are exported in their stead. Relatively recent changes in the drawback law, making refunds of merchandise processing fees and Harbor Maintenance Taxes available for unused merchandise drawback claims make it possible for companies to consider drawback even if their goods are otherwise duty free. Even if your company files a “one time” claim, a refund check of tens or hundreds of thousands of dollars can help tide a firm over during a recession.

And who knows? Maybe you’ll find out that drawback’s not as awful as advertised, and that you’ll want to keep it as an integral part of streamlining your supply chain.

Watching Out For Special Duties

When times get tough, hard-pressed domestic industries often seek relief against import competition they believe to be “unfairly traded”. They may seek the imposition of antidumping duties to offset “unfair” pricing practices, or may seek countervailing duties to offset the effect of unfair foreign subsidization of production or exports.

At present, the relative decline of the United States dollar has made it fairly easy for domestic industries to establish margins of dumping in respect of imported goods. Of course, the weak dollar has also made imported products comparatively more expensive for United States consumers. If foreign producers and exporters have increased their market share under these conditions, domestic industries have a fairly good chance of being able to have antidumping or countervailing duty imposed.

As the recession intensifies an uptick in the filing of antidumping and countervailing duty petitions can be expected. These filings rarely come as a complete surprise to the companies affected by them, but many prudent foreign manufacturers and importers will conduct internal reviews to determine whether and to what extent their products might be affected by antidumping margins at current pricing levels.

Importers searching for a bargain should also be careful to avoid products which may be attractively priced, but which may draw antidumping or countervailing duties. Those Chinese candles may be cheaper than the Taiwanese ones, for instance – but not after the substantial antidumping duties currently in place are assessed!

Fighting Counterfeits and Knock-Offs

Whenever cash becomes tight, counterfeiters and knock-off artists step up their activities to sell illegitimate goods to cash-strapped United States consumers. If your trademark or

other valuable intellectual property is being counterfeited or infringed, you bear the full brunt of this illegal activity - an added burden which is intolerable in a recession.

Fortunately, Customs plays an active role in enforcing trademarks and copyrights with respect to imported goods. Customs has authority to seize, forfeit and destroy “counterfeit” goods, and to impose substantial civil fines on persons involved in trafficking such goods. In addition, Customs will exclude goods which infringe registered United States trademarks, provided the trademark owner “records” its mark with Customs for import protection.

Recording a trademark or copyright is a simple process involving the submission of certain documents to Customs and the payment of a \$190 filing fee. Thereafter, Customs will direct its officers nationwide to exclude from entry goods which bear infringing versions of the copyrights, including “confusingly similar” versions. In certain cases, Customs will even keep out “gray market” versions of genuine goods.

Customs has an Intellectual Property Rights Branch based in Washington, D.C., which coordinates activities with ports of entry across the country, and investigates tips regarding possible imports of counterfeit or infringing goods. Owners of intellectual property rights should not only record their marks and copyrights for import protection, but should also work closely with Customs to help investigators identify and seize counterfeit and infringing goods.

And if patent infringement by imports has become a problem, Section 337 of the Tariff Act of 1930 provides a means for excluding such goods from the United States market for the life of your patent.

Exploring Export Markets

The weak dollar makes United States goods attractively priced to foreign destinations. Companies that have never considered export markets are well advised to consider developing them now.

Entering a foreign market means researching tariffs and quotas in those markets. However, because virtually all of the world’s economies used the same tariff classification system and Customs valuation code as the United States, skills and techniques learned in evaluating United States Customs compliance can be brought to bear, productively, on export planning as well.

Staying Afloat in Stormy Weather

Recessions must be endured and survived. However, for international traders, the otherwise grim process can be made less onerous by careful attention to Customs and international trade planning. The professionals at Neville Peterson LLP stand ready to help your company evaluate and realize your potential savings.