Tariff Tides

Navigating the Atlantic Squall: Preparing for Looming US Tariffs

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Tariffs of 30% on EU goods – this scenario could become reality in just a few days. Until then, diplomatic efforts for a transatlantic agreement (15% tariffs on all goods like the Japan deal?) continue. However, companies should not sit idly by and wait for foreign policy developments to unfold since customs law provides them with tools that can be used effectively, especially in uncertain times. These tools, the three pillars of customs compliance, include tariff classification, product origin and customs value. Understanding how these elements interact can help reduce cost risks and improve competitiveness in the US market.

Tariff Classification: Understanding Your Products

The classification of products under the US Harmonized Tariff Schedule (*HTSUS*) dictates the applicable tariff measures. In addition to the applicable tariff, the classification forms the basis for applicable taxes, trade restrictions, approval and licensing procedures, among other things. The correct tariff classification of goods prior to importation into the US is therefore essential to reduce cost risks right from the outset. At the political level, particular attention should be paid to possible preferential treatment that could result from negotiations between the EU and the US. Currently, i.e. before August 1, a basic customs duty of 10 per cent applies to all imports from the EU in addition to the HTSUS customs duties.

Product Origin: The Key to Preferential Treatment and Duty Avoidance

The origin of goods plays a pivotal role in transatlantic trade, as the threatened US tariffs only apply to products from the EU, not the US itself. According to the principles of origin of goods, products can be wholly or partly (e.g. through processing) obtained or manufactured in a specific country ("made in").

Even partial production of final assembly in the US may be sufficient to benefit from the protection of American products based on their place of origin. Depending on the product, free trade agreements with the US may also lead to preferential tariffs. In any case, companies should consider restructuring their supply chain regarding the origin of goods so that a sufficient "US content" is present and the products concerned are thus subject to the additional duties. Particular attention should be paid here to determining the place of the last "substantial transformation".

Customs Value: Optimizing Your Duty Base

Finally, another component of customs principles is the customs value as basis for calculating the amount of customs duty. The transaction value (purchase price) is usually decisive here. Since both overvaluation and undervaluation can significantly impact transatlantic trade, the valuation procedure must be carefully examined in each case. This is particularly important considering the suspension of the *de minimis* rule until July 2027.

To optimize the assessment, companies can determine the customs value based on a transfer price agreed between related companies, provided that the applicable tax regulations are complied with. In view of the threatened US tariff increases, it may also be advisable for companies to apply the "first sale rule" when determining the customs value. This rule allows the customs value to be based on an earlier sale in the supply chain at a lower price within systems involving intermediaries. To give an example: An EU manufacturer sells to an intermediary for EUR 100, who then sells on to a US company for EUR 120. The customs duty applicable in the US is calculated based on EUR 100 and not EUR 120, which leads to considerable savings if a customs duty rate of 30% applies.

The implementation of this mechanism requires strict compliance with conditions relating to logistics, traceability and documentation, which necessitates careful advance planning at both the contractual and operational levels. All of this will need to be considered when – preferably – switching to B2B models.

(Legally) equipped to face the Tariff Tides?

Transatlantic trade remains overshadowed by the threat of tariffs for the time being, and the situation for European companies remains tense. This makes it even more important for companies to create leeway for themselves right now by structuring their operations in accordance with customs fundamentals. A closer look at these principles shows that the right customs code can help avoid unnecessary duties. With the right "origin strategy", the application of a higher tariff rate can be avoided. And "first sale" models effectively reduce the customs value as basis of assessment. Companies can therefore use the wait for signals from the US to optimize their own systems and make themselves as invulnerable as possible in the eyes of the trade storm.

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BLOMSTEIN will closely monitor further developments and keep you informed. If you have any questions regarding these looming tariffs and how to prepare Leonard von Rummel and the entire team is ready to assist you.

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