



CHINA TARIFFS WEBINAR Q&A
July 11, 2018
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Question 1: Is any consideration given to goods on the water when tariffs are implemented?

Generally speaking, a nation's tariffs and other laws apply to imported goods once those goods enter that nation's territorial waters (territorial sea). In the US, the applicable tariff rate in effect at the time the goods enter US territorial sea are the applicable rate when entry is made. If a shipment enters US territorial waters before the ad valorem duty (or other tariff change) becomes effective, the ad valorem duty (or other tariff change) will apply.

This is also generally true for import shipments entering China. However, its application can be inconsistent. There have been instances where tariff changes occurring while goods still laden on the vessel in port were applied to the goods during Customs entry process.

Question 2: Can you please repeat the option of selling to a third country?

HS codes vary significantly with respect to their purpose and design. One of the nuances is that some HS codes focus on a careful definition of manufacture origin (such as when a special low duty rate applies under a free trade or trade promotion agreement), while others apply based on shipment origin. Where an import classification in China or in the US applies to the shipment origin of an imported good, and not to the manufacture origin of that good, the sale of products to distributors in third countries can change the applicability of the tariff rate associated with that classification.

Question 3: What is the best way to explore point of origin versus point of transaction?

The distinction intended was between manufacture origin and shipment (sometimes termed transaction) origin. Exploration of this concept hinges on careful identification of which origin is intended to apply in the scope of a given classification. Mishandling this distinction can result in fines and other penalties.

Question 4: My understanding is that the tariff applies on US Origin products. How can you avoid paying/having the customer avoid paying tariffs by exporting to China through Canada?

This is only a potential option in very select circumstances. It requires careful evaluation of applicable country of origin rules. Please also see responses to Questions 2 and 3.

Question 5: It is my understanding that country of origin is the overriding basis of defining duties and tariffs. How does transshipping avoid any tariff as the COO does not change?

The resale of product by a foreign distributor (not through mere transshipment) can reset the “origin” where the applicable China tariff classification is applied to shipment origin. If the tariff classification is tied to a manufacture origin (which is specifically defined, as in Trade Agreements) then there is no benefit. Please see responses to Questions 2 and 3.

Question 6: Do tariffs apply even if product is transferred without charge to an owned subsidiary?

The applicability of the classification or tariff rate is not typically based on the import value or valuation method. However, the actual duty charged is based on the import value, and the valuation method must be permitted and appropriate. The question seems to anticipate use of a transaction value method of valuation, which is not always appropriate in the circumstance described.

Question 7: If shipping to intermediate country then re-shipping to China, which countries would you suggest?

The selected country should make sense to your distribution model for the region. Key considerations are proximity to the destination(s) intended to be served by the distributor, confidence in the security of product sold to the distributor, integrity of the distributor (including regulatory considerations relevant to US export controls, relevant anti-corruption laws, and other third party risks), and overall confidence in the ability of the distributor to perform as you intend. Singapore, Taiwan, South Korea, areas in Malaysia, and others evoke high confidence for many shippers. All destinations pose competing risks and rewards that must be considered.

Question 8: How about shipping to Hong Kong or Singapore as they don't have import tax in general?

Both are considered by many to be good choices, but keep in mind that Hong Kong is a Special Administrative Area of the PRC. Typically, Hong Kong Customs enforcement and related laws function independently from the rest of China. Nevertheless, fear of Mainland influence persists.

Question 9: Can you please clarify the benefit of shipping from Canada or EU to China vs shipping from the US?

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Question 10: If we are to reclassify, would it help at all to rename the product and call it a "new" product?

Reclassification would need to be premised on a legitimate distinguishing factor concerning the nature, composition or use of your product. If a new name is appropriate to marketing the distinguishing characteristic, then renaming might help. However, the import classifications described by the US and China are sufficiently broad that the distinguishing factor must be sufficient to avoid the associated description. The specific circumstance would strongly influence whether renaming the product would be helpful.

Question 11: If importing into China from another AP region country, for example Korea, but through a US company as the parent company of the receiving subsidiary in China, would a penalty tariff apply? Country of Origin would be Korea for this example.

If I understand the details to this question correctly, a US parent company to a subsidiary in China purchases product in Korea (made in Korea) and instructs the Korean supplier to drop-ship the order directly to the subsidiary located in China. In that situation, the penalty tariff should not apply. If the shipping papers, including the Bill of Lading and commercial invoice, avoid mention of the US parent company that placed the order, that will be the result. If mention is made of the US parent company on the shipping papers, there is a risk that China Customs enforcement might cause the penalty rate to be applied anyway.

Question 12: Do you recommend a website that provides updated details about the Tariff scope and implementation dates?

The USTR website (ustr.gov) is a good source to monitor the US effective dates and other updates. Details on China activity is harder to find, as most sources are long on commentary and short on actual tariff details. So far, I have found the better sources to be those not affiliated with large media outlets. But they are not easy to find.

Question 13: Any idea when the second wave of tariffs will be implemented after the July 23rd deadline?

That's too difficult to anticipate. There have been instances where China has already enforced at least some of their second list, but I don't have any statistics to identify the number of instances. It is possible that neither country will apply their second list.

Question 14: While these tariffs are in effect, would it be preferable to attempt to recover the cost from customers through a surcharge rather than as a general price increase?

NOTE: Question was not included in the audio portion of the webinar due to potential antitrust considerations.

I personally dislike the general price increase, because I believe it can easily send a message of permanence than can erode the customer relationship. Instead, I have used and seen others employ a "special surcharge" quite successfully in circumstances involving unexpected cost increases caused by uncontrolled factors. This is usually preceded by a special notification to the importing customer by the exporting supplier that explains the intended surcharge, the reason it is being implemented, and its intended temporary duration. Sometimes the entire increase is passed on, but many choose to share the cost increase to varying degree. Naturally, this requires clear understanding of the commercial terms that apply to the transaction, which might need to be addressed before the surcharge is implemented.