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Customs Enforcement Tightens: Are you Prepared for the Scrutiny?

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With the imposition of sweeping new tariffs and the government's prioritization of customs enforcement–both civil and criminal—the risks for importers have never been higher. The evolving legal landscape, as illustrated by recent court cases and enforcement actions, underscores that liability for customs violations can extend beyond the corporate entity to individuals. This article unpacks the latest developments in customs enforcement—including aggressive government audits, the rise of whistleblower actions, and the real possibility of civil and criminal penalties for individuals—while providing practical insights and strategies needed to navigate this new era, protect your organization, and safeguard yourself from costly missteps.

Whistleblower and False Claims Act actions are powerful tools for uncovering and penalizing noncompliance. In this environment, importers must not only exercise "reasonable care" but also proactively review and strengthen their customs compliance program, and ensure accurate reporting, *inter alia*, on customs valuation, classification, and country of origin. Companies should adequately educate employees about their responsibilities and potential personal liability exposure. As trade policy and enforcement continue to evolve, diligent compliance is not just a best practice, it is an essential safeguard for any business engaged in importing merchandise into the US.

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The New Trade War Era

In his second inaugural address, President Donald Trump renewed his call to reshape US trade policy, pledging to "immediately begin the overhaul of our trade system…we will tariff and tax foreign countries to enrich our citizens." Since then, the administration has aggressively expanded its use of tariffs under various statutes as a tool of economic policy, often at a dizzying pace.

Key actions have included:

- 25% tariff on imports from Mexico;
- 35% tariff on imports from Canada;
- 30% tariff on imports from China, layered on top of existing Section 301 tariffs;
- 50% tariff on imports from Brazil and India;
- 50% tariffs on steel, aluminum and copper, including derivative articles;
- 25% tariffs on automobiles and automobile parts;
- 10% tariffs on softwood lumber;
- 25% tariffs on upholstered wooden products, furniture, kitchen cabinets and vanities (with potential increases on January 1, 2026);
- A slate of reciprocal, country-specific tariffs; and
- Elimination of *de minimis* exemptions for all imports.

Further, Section 232 "national security" investigations have been initiated on semiconductors, critical minerals, pharmaceuticals, lumber, large trucks, and commercial aircraft—signaling the potential for more tariffs to follow in these industrial sectors.

Enforcement Heats Up

Tariffs are only part of the story. The administration has matched its tariff campaign with a dramatic escalation in enforcement actions by US Customs and Border Protection ("CBP").

For example, Presidential Proclamation 10895, which increased aluminum tariffs, directed CBP to prioritize reviews of the classification of imported aluminum articles and derivatives. CBP was also instructed to "assess monetary penalties in the maximum amount permitted by law" when importers have misclassified goods to avoid tariffs. Similarly, Presidential Proclamation 10962, which introduced copper tariffs, provided that CBP would issue guidance "mandating strict compliance" with requirements and "outlining maximum penalties for non-compliance."

The proclamation warned that non-compliant importers "may be subject to severe consequences" including monetary penalties, suspension of import privileges, and even criminal liability. Moreover, pursuant to Presidential Proclamation 10908, misstatements (e.g., overstatements) by the importer concerning the tariff-exempt US-content in automobiles could result in the punitive application of the 25% tariff to the full value of the automobile, both retroactively and prospectively, to all similar models imported by that importer, plus potential additional penalties.

This compliance and enforcement escalation is also evident in the country-centric tariffs issued pursuant to the International Emergency Economic Powers Act (IEEPA). For instance, in Executive Order 14326, the president introduced 40% tariffs specifically on goods that have been determined by CBP to have been transshipped to evade applicable reciprocal tariffs, and directed CBP to not mitigate penalties in such cases—representing a major shift toward stricter, less negotiable enforcement. A similar "transshipment" penalty is included in Executive Order 14325, increasing the tariffs on Canada from 25% to 35%.

These measures indicate that the Trump administration intends to make tariff circumvention and non-compliance a costly endeavor for violating importers. Initial CBP enforcement and audit data suggests these are not hollow measures.

Surge in Audits and Revenue

This enforcement push is not theoretical—it is producing real numbers. As of June 30, 2025, for FY25 (October 1, 2024, through September 30, 2025):

- 348 customs audits were completed—on-pace to meet or exceed the five-year average of 438.
- $192.77 million has already been recovered—far surpassing the $117.7 million collected in all of FY 2024.
- Of this, $37.88 million came from penalties and liquidated damages alone.

CBP attributes the surge in audits and revenue in part due to investments in trade enforcement targeting tools. One of these tools, the Advanced Trade Analytics Program, uses data analytics, machine learning, and AI to aggregate and analyze vast amounts of historical and current trade data to identify patterns and trends in the trade environment that allow for greater insights into detecting and deterring non-compliance. US Customs and Border Protection-AI Use Cases| Homeland Security.

In short, CBP is auditing just as many companies, but having a more significant impact. The One Big Beautiful Bill Act, which was signed into law on July 4, 2025, also increases $4.1 billion in funding for CBP, some of which is anticipated will be used for trade enforcement. CBP will use the funds to hire and train new Border Patrol agents, CBP field operations officers, and field support personnel (resulting in potentially 5,000 new customs officers) and to procure new artificial intelligence, machine learning, and other innovative technologies.

Reasonable Care and §1592 Penalties

In addition to tariff liability, importers in the US are also subject to potential civil penalties for non-compliance. Typically, penalties imposed by CBP can generally be mitigated or rescinded via a petition by the violating party upon a showing of mitigating circumstances. However, as discussed above, the Trump administration seeks to preclude mitigation in certain circumstances, making the potential of significant penalties more likely.

By way of background, the Customs Modernization Act of 1993 ("Mod Act"), codified at 19 U.S.C. §1484, requires the "importer of record" to exercise "reasonable care" when completing the entry of goods in order to allow CBP to properly assess duties and compliance with US laws, including the correct classification and valuation of the imported goods.

If importers fail to meet this standard, CBP can impose penalties under 19 U.S.C. §1592, which prohibits any "person" from depriving the US of duty, tax, or fee revenue by violating the customs laws. Penalties are tiered by culpability:

- A violation attributable to negligence, which is generally associated with a failure to exercise reasonable care, is subject to a penalty not to exceed the lesser of the domestic value of the imported goods or two times revenue loss (or 20% of the dutiable value of the merchandise if the violation did not affect the assessment of duties).
- A violation attributable to gross negligence is subject to a penalty not to exceed the lesser of the domestic value of the imported goods or four times revenue loss (or 40% of dutiable value of the merchandise if the violation did not affect the assessment of duties).

A violation attributable to fraud is subject to a penalty not to exceed the domestic value of the merchandise. However, these financial penalties can be mitigated if the violating party voluntarily discloses the violation to CBP prior to the commencement of a formal investigation. This is known as a "prior disclosure." If an importer files a valid prior disclosure, the penalty is limited to only the interest on the amount of duties, taxes, or fees owed when the violation is

attributed to negligence or gross negligence. If the violation is attributed to fraud, then penalty is limited to an amount equal to 100% of the lawful duties, taxes, and fees (or 10% of the dutiable value of the merchandise if the violation did not affect the assessment of duties).

Individual Liability: More Than Just the Importer of Record

Penalties imposed pursuant to §1592 are not restricted to, or exclusively applied to, the importer of record or to corporations. The courts have interpreted the term "person" to include individuals, including officers and employees of importing companies—dramatically raising the stakes of personal liability.

In *United States v. Trek Leather, Inc.*, 767 F.3d 1288 (Fed. Cir. 2014), the Federal Circuit Court of Appeals held that the sole shareholder and president of Trek Leather, Inc., was personally liable for introducing goods into the US commerce through false statements, even though he was not the importer of record (the company, Trek Leather, Inc., was the importer of record). Generally speaking, the customs penalty statute, 19 U.S.C. § 1592(a)(1)(A), provides that no person "may enter, introduce, or attempt to enter or introduce" goods into the commerce of the US by fraud, gross negligence or negligence. The court interpreted the term "introduce" broadly, encompassing actions that precede formal entry, such as persons other than the importer of record directing shipments and providing incorrect or false documentation. The company president was found to be jointly and severally liable for gross negligence.

This decision established that individuals can be held liable for customs violations under this statute, even if they are not the designated importer of record.

In *United States v. Greenlight Organic, Inc.*, 280 F. Supp. 3d 1376 (Ct. Int'l Trade 2017), the US Court of International Trade restated that liability under §1592 can include individuals, and corporate status does not shield officers from personal liability where their own actions contributed to the violation, even when the conduct falls within the scope of the officer's authority.

Additionally, §1592(b) provides for penalties to apply to persons found aiding and abetting a person liable under §1592(a). Courts have held that "liability for aiding or abetting requires, *inter alia*, proof of knowledge of unlawfulness" or "intent to violate the law" (*United States v. Hitachi America, Ltd.,* 172 F.3d 1319, 1337 (Fed. Cir. 1999)).

Whistleblowers, Informants, and the Expanding Role of the False Claims Act

Importers must not only be wary of enhanced scrutiny and investigations by CBP, but also guard against potential exposure from competitors, disgruntled employees, and the like. It behooves importers to build robust compliance programs and avoid undertaking risky tariff circumvention efforts.

US customs law awards compensation to informants of import violations. Under 19 U.S.C. §1619, anyone, except employees or officers of the US, who furnishes information concerning a violation that leads to recovery of duties or penalties may be eligible for a monetary award up to $250,000. This is a quiet tipline—the government investigates, and the whistleblower collects if successful.

In addition, the False Claims Act ("FCA"), 31 U.S.C. §3729 and §3730, has also been used to hold importers accountable through its *qui tam* provisions. The FCA is a Civil War-era statute allowing private citizens, called "relators," to sue on behalf of the government when a person "knowingly" causes or makes a false or fraudulent claim. The FCA defines "knowingly" as a person who (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information. Additionally, "knowingly" does not require proof of specific intent to defraud.

Originally targeting military procurement fraud, the FCA has been increasingly used in customs cases—especially since its expansion under the Fraud Enforcement and Recovery Act of 2009 ("FERA"), which added liability for "knowingly and improperly avoiding" obligations to pay the government. Unlike a §1592 claim, which must be brought in the Court of International Trade, FCA actions can be brought in district courts.

The reward the relator is entitled to depends on whether the US government decides to join the civil action:

- If the government decides to join the civil action, the relator is entitled to at least 15% but no more than 25% of the proceeds. The amount is dependent upon the relator's contribution to the prosecution.
- If the government decides not to join the civil action, the relator is entitled to at least 25% but no more than 30% of the proceeds.

FCA Meets Trade Enforcement

In *United States ex rel. Customs Fraud Investigations, LLC v. Victaulic Co.*, 839 F.3d 242 (3rd Cir. 2016), the court considered the application of the FCA in a matter involving the avoidance of marking duties pursuant to 19 U.S.C §1304(c) and (i). Here, the relator was a customs fraud investigation firm composed of trade professionals that had provided support to the US International Trade Commission and the Department of Commerce on issues in the piping industry. The Third Circuit rejected the district court's dismissal, holding "the statutory text, legislative history, and policy rationale underlying the regulatory scheme all lead to one conclusion, FCA liability may attach as a result of avoiding duties."

Similarly, in *Island Industries v. Sigma Corp.*, 2025 WL 2422455 (9th Cir. 2025), the Ninth Circuit held that an importer's fraudulent evasion of antidumping duties can give rise to liability under the FCA, rejecting the argument that 19 U.S.C. §1592 is the exclusive remedy for customs violations. Island Industries, a competitor of Sigma, acted as a whistleblower and sued Sigma under the FCA. The court affirmed a jury verdict against Sigma for knowingly making false statements on customs forms to avoid paying duties on welded outlets from China and clarified that the FCA and §1592 can coexist and be brought concurrently, as Congress did not intend for the customs statute to preclude FCA claims.

FCA investigations can also run parallel to criminal investigations. In March 2024, the owner of a fragrance and chemical manufacturing company pleaded guilty to criminal wire fraud charges. The company also agreed to a $3.1 million civil settlement brought under a FCA action filed by a whistleblower that alleged the company falsified documents and mislabeled chemicals imported from China.

Whistleblower cases like these can result in treble damages (i.e., triple actual damages) and statutory penalties—and the whistleblower may receive up to 30% of the recovery.

Civil and Criminal Enforcement on the Rise

Recent actions by the US Department of Justice ("DOJ") further underscore the government's intensified focus on customs fraud:

- March 25, 2025: DOJ settles with a flooring importer for $8.1 million over duty evasion on multilayered wood flooring from China. The FCA lawsuit was filed by a competitor of the importer and the relator received $1.2 million of the settlement proceeds.

- May 12, 2025: DOJ's Criminal Division announced "trade and customs fraud, including tariff evasion" as a top white-collar enforcement priority. Additionally, the DOJ added customs fraud to its Corporate Whistleblower Awards Pilot Program, further incentivizing insider reporting and recognizing its significance as an area of potential corporate misconduct.
- July 24, 2025: DOJ settles with a patio furniture company for $4.9 million over evading antidumping and countervailing duties on items made of extruded aluminum imported from China. The FCA lawsuit was filed by a former employee of the company and the individual will receive $962k of the settlement.
- August 12, 2025: DOJ settles with a countertop importer and its president for $12.4 million over evading antidumping and countervailing duties on quartz surface products imported from China. The FCA lawsuit was filed by a relator who will receive $2.17 million of the settlement proceeds.
- August 15, 2025: CBP announced that it uncovered more than $400 million in unpaid duties under the Enforce and Protect Act ("EAPA"), which authorizes CBP to investigate and stop duty evasions such as illegal transshipment.

It is notable that on August 29, 2025, the criminal and civil divisions of the DOJ and Homeland Security announced the formation of a cross-agency Trade Fraud Task Force that will work closely with CBP towards "improved enforcement and deterrent outcomes." More specifically, the Task Force prioritizes tariff evasion and will utilize a range of enforcement tools, including but not limited to the collection of all applicable tariffs, imposition of civil penalties, actions under the FCA, and, where appropriate, criminal prosecutions. This effort is aligned with Trump's America First Trade Policy aimed at protecting the US's domestic industrial and manufacturing base. The announcement also encourages domestic industries to submit referrals through DOJ's Criminal Division Corporate Whistleblower Program or through the *qui tam* provisions of the FCA.

The message is clear: Customs violations are no longer "just" civil matters—they now carry real criminal risk.

Takeaways

To safeguard your organization and its personnel, businesses should prioritize robust compliance processes, conduct regular internal audits, and ensure accurate reporting on all customs matters. In addition, it is important to educate and train employees on their responsibilities and potential

personal exposure, respond swiftly to any suspected violations, and your consult trade advisor early when issues arise. In the current customs enforcement environment, compliance is key to a successful import program.

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