Cooley

Tariffs Are Here – Be Aware of Criminal and Civil Enforcement Risks

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On April 2, 2025, President Donald Trump, citing national security concerns, used authority granted under the International Emergency Economic Powers Act of 1977 to announce a sweeping new tariff regime, with a 10% baseline tariff for all countries, plus higher "reciprocal tariffs" for approximately 90 countries. These tariffs are "stackable" or in addition to those currently in place. For example, under the reciprocal tariffs plan, goods from China will be levied a 34% tariff on top of the 20% tariff already in effect, bringing the tariff rate to 54%. For Vietnam, the tariff rate will be 46%, while Japan will be subject to a 24% rate, and the European Union will be subject to a 20% rate. The 10% baseline tariff took effect on April 5, and the reciprocal tariffs will begin on April 9.

The new tariffs will no doubt put significant pressure on the supply chain, especially with respect to Asian countries that are significant exporters of manufactured goods to the US. As explained in this March 12 Cooley alert, the impact of the Trump administration's tariffs will be felt by US companies across the board, and many will immediately encounter rising material costs and reduced profit margins. Companies will need to confront and address these business challenges.

At the same time, to enforce the new tariffs, the US Department of Justice (DOJ), in conjunction with the Department of Homeland Security (DHS), is expected to use traditional criminal statutes – such as conspiracy, smuggling and wire fraud – to investigate and charge companies and individuals for alleged trade violations. Moreover, DOJ has made clear that it also intends to "aggressively" pursue civil remedies against tariff evasions through the False Claims Act (FCA), which allows the government to recover money it is owed. As supply chain pressures increase, companies should consider conducting due diligence of their supply chain partners and strengthening compliance programs to mitigate criminal and civil enforcement risks.

Significant risk areas for tariff violations: country of origin, valuation and classification

Companies should be aware that participants in their supply chains – from sourcing agents, suppliers, third-party partners and customs brokers to the companies' own procurement departments – may seek to mitigate the impact of tariffs by engaging in evasive practices. There are three areas that pose significant risks of trade violations:

1. **Country of origin**. The "country of origin" of imported goods is where the goods were manufactured, grown or underwent "substantial transformation" into the final product being imported. Because the new reciprocal tariffs impose different tariffs based on the country of origin of the imported goods, participants in the supply chain may be tempted to engage in "transshipment" – routing goods produced in a high-tariff country through a lower-tariff country before shipping to the US, and presenting the goods as originating from the lower-tariff country.

- **Valuation**. Tariffs are typically calculated as a percentage of the value of the imported goods. To minimize tariffs, some importers may be tempted to deliberately understate the value of the imported goods when declaring them to customs officers.

- **Classification**. The US customs tariff system – known as the Harmonized Tariff Schedule (HTS) – sets forth the tariffs on imported products based on categories for classification. One common tactic of tariff evasion involves misclassifying the imported goods by moving them from a higher tariff category to a lower or exempted tariff category.

Misrepresentation in any of these areas exposes companies and individuals to potential criminal and civil penalties, as discussed below.

Criminal exposure for tariff evasion

US Customs and Border Protection (CBP) has primary responsibility for tariff enforcement. CBP frequently refers suspected violations to DOJ for civil and criminal investigation and enforcement. With the administration's focus on

tariffs, companies should expect CBP and DOJ to place increased emphasis and resources on tariff enforcement to deter and penalize evasion and maximize the effect of administration policy priorities.

Recent cases illustrate that DOJ can and will pursue criminal charges for tariff evasion:

- In September 2024, DOJ charged an importer of truck tires with conspiracy to smuggle tires made in China (which were subject to a 73.99% tariff) by transshipping them through third countries, including Canada and Malaysia. DOJ alleged that the defendant filed documents with CBP that fraudulently represented the Chinese-origin tires as originating in countries other than China. The defendant also was alleged to have created two sets of invoices – one set that fraudulently undervalued the tires (which was presented to CBP) and another that reflected the actual value of the tires. The scheme resulted in a $1.9 million loss of revenue to the US. The defendant pleaded guilty to one count of conspiracy and cooperated in the government's investigation. He was sentenced to time served followed by three years of supervised release and ordered to pay $1.9 million in restitution.

- In October 2023, a Florida couple pleaded guilty to conspiracy and smuggling charges, and both were subsequently sentenced to nearly five years in prison for evading more than $42 million in duties in connection with illegally importing plywood from China. According to DOJ, the defendants falsely declared the species, country of origin and country of harvest of the wood from which the plywood was made. The defendants' scheme included sending containers of plywood from China to Malaysia or Sri Lanka, where the wood was taken out of the original containers and put into a second set of containers to conceal the origin of the wood. In addition to imprisonment, the defendants were ordered to pay $42 million in forfeiture, as well as $1.6 million in storage costs incurred by the government for maintaining the seized wood.

Civil exposure from DOJ as well as qui tam plaintiffs

In addition to criminal sanctions, DOJ can pursue civil penalties under the FCA against companies and individuals for "knowing" underpayment of custom duties (known as a "reverse false claim"). Under the FCA, the term "knowing" includes both "actual knowledge" and "deliberate ignorance" or "reckless disregard" of the truth or falsity of the claim. While innocent mistakes cannot form the basis of liability, a company could be liable for a reverse false claim if it learned of a tariff underpayment (or was reckless in not knowing about the underpayment) but took no action to rectify the issue – including an underpayment that resulted from the action of another party within the supply chain. Because the FCA imposes significant monetary penalties, the risk here is substantial. If found liable, a defendant can be ordered to pay three times the amount of underpaid tariffs, plus civil penalties of up to $28,619 per false claim. As such, the FCA exposure for tariff underpayment could far exceed the amount underpaid.

The FCA risk is particularly high because it is not just DOJ that can initiate these cases. Private plaintiffs often bring FCA claims through qui tam actions on behalf of the government. And the incentive to do so is likewise significant. Whistleblowers who bring a successful qui tam action receive a portion of the recovered funds – up to 25% if the government intervenes, and up to 30% if the government does not. In addition, whistleblowers can recover attorneys' fees and expenses. Given these financial incentives, the pool of potential whistleblowers includes not only a company's own employees and companies and individuals in its supply chain, but also competitors, who stand to gain financially both from the whistleblower incentive award and from eliminating unfair competition.

DOJ settled FCA cases relating to tariff underpayment under both the Biden administration and the first Trump administration, as illustrated below. These cases also demonstrate the risk of whistleblower suits, as each was initially brought as a qui tam action.

- In January 2023, DOJ settled an FCA case against a vitamin importer, alleging that the defendant misclassified more than 30 of its products under the HTS in order to avoid paying customs duties. In the settlement agreement, the defendant admitted to retaining a consultant to review its HTS classifications and learning that the correct codes carried higher duty rates than the HTS classifications it had been using. Despite obtaining this information, the defendant admitted that it did not implement the correct classification for more than nine months and never remitted duties that it had previously underpaid. Under the settlement, the defendant owed $22.8 million, of which $10.8 million constituted restitution.

- In September 2020, DOJ settled an FCA case against a German industrial engineering company for misrepresenting the nature, classification and value of imported merchandise. The company allegedly submitted CBP declarations describing Chinese stainless steel pipe products (which were subject to high tariff rates) as carbon-steel products (which were subject to lower tariffs) and avoided millions of dollars in duties. The settlement required the company to pay $22.2 million.

- In April 2020, DOJ settled an FCA case against a furniture importer and its executives, alleging that they falsely described wooden bedroom furniture imported from China as “metal” or “non-bedroom” furniture on documents submitted to CBP. The defendants allegedly manipulated images of their products in packing lists and invoices, and directed their Chinese manufacturers to ship furniture in mislabeled boxes and falsify invoices. The defendants agreed to pay $5.2 million, and the individual defendants separately pleaded guilty to criminal charges of conspiracy.

While using the FCA to enforce tariffs is not new, DOJ has made clear that it intends to focus on FCA enforcement of tariffs to align with Trump’s policy priorities. At the Federal Bar Association’s annual qui tam conference in Washington, DC, in February, Deputy Assistant Attorney General Michael Granston stated that DOJ “plans to continue to aggressively enforce the False Claims Act,” which he views as a “powerful tool” for fighting tariff evasion. Granston noted that enforcement against “illegal foreign trade practices” will be a focus of DOJ, and that DOJ plans to rely on data analysis to identify potential fraud.

Core insights

In light of DOJ’s focus on tariff evasion, companies should consider revisiting their compliance programs and taking reasonable measures to ensure compliance with trade laws. Particularly with regard to newly announced tariffs, companies should consider increasing diligence of third-party suppliers and manufacturers and remaining alert to red flags – such as significant price differentials quoted by different suppliers, especially with respect to products historically sourced from high-tariff countries.

Companies also should be aware that many sophisticated plaintiffs’ law firms specialize in FCA qui tam actions and have the resources to investigate tariff evasion. Companies should consider strengthening their internal reporting systems, which are important tools to mitigate against the risk of whistleblower suits, as they allow whistleblower complaints to be heard and acted upon so that concerns can be investigated and potential violations prevented or mitigated before the exposure becomes significant.

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