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Complaint Against Uniform Company for Customs Duties Underpayment Highlights False Claims Act Risks for Tariff Compliance

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As we discussed in this April 7 blog post, the US Department of Justice (DOJ) can pursue civil penalties for tariff evasion under the False Claims Act (FCA), including against companies that are aware of tariff evasion by their supply chain partners. The FCA risks are significant not only due to the high monetary penalties (treble damages plus a civil penalty for each false claim), but also because of the financial incentives for whistleblowers to bring claims on behalf of the government.

These risks are not speculative, as demonstrated by an FCA complaint filed by DOJ last month. In *US v. Barco Uniforms, et al.*, DOJ intervened in a whistleblower lawsuit against a uniform company and its top suppliers for underpaying customs duties on apparel imported from China. A former senior employee of the uniform company initiated the lawsuit in 2016. The case serves as a reminder that companies should consider evaluating their internal compliance programs – including strengthening their internal reporting systems for tariff compliance – to mitigate against whistleblower risks.

False Claims Act background

The FCA is the primary mechanism to recover federal funds from those who knowingly and falsely seek or receive payments through a government contract or federal program, or – as relevant here – knowingly and falsely make a statement material to an obligation to pay money to the government (such as customs duties). Under the FCA, the term "knowing" includes both "actual knowledge" and "deliberate ignorance" or "reckless disregard" of the truth or falsity of the claim. Since its amendment in 1986, the FCA provides that claims may be brought by DOJ or by individual whistleblowers (referred to as "relators") on behalf of the government. As mentioned above, the FCA provides a strong incentive for whistleblowers to take action: A relator who brings a successful qui tam suit may be awarded 15% to 30% of the recovery.

Allegations against Barco Uniforms

According to the government's complaint, Barco Uniforms is a US company that sells uniforms to large businesses, including restaurant chains and healthcare providers. Barco's top suppliers included companies operated by father-son duo Kenny and David Chan. The Chans operated factories in China that produce the uniforms, which are subject to customs duties when imported to the US.

The government alleged that Barco and the Chans conspired to fraudulently withhold the correct amount of duties owed on the uniforms by falsely underreporting their value to customs officials. Barco and the Chans used a double-invoicing scheme involving one set of invoices presented to US Customs and Border Protection (CBP) that fraudulently undervalued the goods, and another set of invoices that reflected the actual prices. Barco benefited from the scheme by underbidding competitors, and the Chans benefited by securing Barco's business and pocketing the money that was legally due to CBP for duties.

The government's complaint focused on Barco's knowledge and participation in the scheme. According to the government, the chairman of Barco's board directed business to the Chans at a price lower than other competitive bids. The chairman allegedly told Barco employees that the negotiated price was possible by altering the duty cost. Further, after the government served a civil investigative demand on Barco in 2018, Barco engaged a third-party auditor to review its accounting records. The auditor found irregularities in customs duties, instructed Barco to double-check its duty calculations, and advised Barco regarding the legal ramifications of underpayment of duties. Despite this advice, Barco redesigned its cost sheets to improperly exclude "vendor profit" from the calculation of item value subject to customs duties in order to arrive at a lower amount of duties.

The whistleblower who initiated the FCA action served as Barco's director of product commercialization. She alleged that she had brought up the underpayment issue with her supervisor and several other Barco executives in 2014, but they ignored her. She also claimed that Barco terminated her in March 2015.

Whistleblower risks and the importance of effective compliance programs

The Barco complaint follows a record year for FCA enforcement. DOJ reported that in fiscal year 2024, settlements and judgments under the FCA exceeded **$2.9 billion** – the highest amount since 2021. DOJ also reported a record-setting number of whistleblower-initiated actions: 979 qui tam actions were filed last year, up from the 713 filed in 2023. Actions filed under the FCA's whistleblower provisions brought in a total of $2.4 billion in settlements and judgments in 2024, accounting for more than 80% of last year's total take, with **$400 million+** going to the whistleblowers. In comparison, DOJ-initiated actions brought in about $503 million in 2024 (up from $363 million in 2023). All told, the 2024 results reflect robust FCA enforcement.

In addition to the 2024 results, in February of this year, DOJ made clear that it intends to focus on FCA enforcement of tariffs to align with the president's policy priorities, promising to "aggressively" pursue civil remedies for tariff evasion. In light of this statement and the Barco complaint, companies should consider evaluating their compliance programs, including implementing a functional internal reporting channel that would allow for the prompt investigation of whistleblower complaints. Often, whistleblowers who report to the government do so **after** attempting (and sometimes, failing) to raise concerns internally. As the saying goes, "An ounce of prevention is worth a pound of cure," and an effective compliance program may preempt or mitigate civil and criminal exposure.

Key takeaways

- The new tariffs implemented by the Trump administration are expected to put significant pressure on the supply chain, and some participants in the supply chain may be tempted to undercut competitors by falsely underpaying the amount of tariffs owed on goods.
- US companies that import goods may be liable under the FCA if they knew (or were reckless in not knowing) about tariff underpayment by their supply chain partners.
- Companies should consider evaluating and strengthening their compliance programs in light of these heightened risks.

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