

Importer and Its Executives Pay \$5.2 Million Under FCA for Evading U.S. Tariffs

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by Dave Townsend and T. Augustine Lo

An importer recently agreed to pay \$5.2 million to settle a False Claims Act (“FCA”) case alleging evasion of antidumping duties (“AD”) on wooden bedroom furniture from China. The importer, Blue Furniture Solutions, LLC (now doing business through its successor, XMillenium LLC), allegedly imported merchandise into the United States using false descriptions and invoices that claimed the merchandise was outside the scope of the China wooden bedroom furniture AD order, and therefore not subject to a 216.01% AD rate. Using the FCA’s qui tam provisions, the importer’s competitor brought the case in the Western District of Texas as a “relator” (i.e., whistleblower) in 2015, claiming that U.S. Customs and Border Protection (“CBP”) was deprived of \$1.7 million in AD payments because of the importer’s intentional misrepresentations. After investigating the allegations, the U.S. Department of Justice (“DOJ”) decided to intervene under the FCA.

On April 14, 2020, DOJ announced the \$5.2 million settlement, which includes a \$4.7 million payment by the importing company, and a \$550,000 payment by the importer’s former corporate executives as their personal liability. In addition, the former corporate executives pleaded guilty last year in a related criminal prosecution for their roles. The FCA settlement appears in the civil case, *United States ex rel. University Loft Company v. Blue Furniture Solutions, LLTC et al.*, No. 15-CV-588-LY (W.D. Tex.). The related criminal matter appeared under the case name *United States v. Zeng*, No. 19-CR-64-DCN (D.S.C.).

The FCA permits actions against importers and other parties involved in importations for knowingly evading duties owed to CBP. Under the FCA, liability is three times the amount of import duties that should have been paid to CBP, and the relator in a qui tam action may be entitled to a portion of the U.S. Government’s recovery as an award.

The U.S. Government has a variety of tools to investigate and prosecute alleged duty evasion. Under the FCA, importers’ competitors may become “whistleblowers,” file a complaint in federal district court alleging duty evasion, and seek an award from any

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recovery. Separately, CBP and DOJ can charge importers with civil and criminal penalties for duty evasion and recover unpaid duties under customs law. CBP and its sister agency, U.S. Immigration and Customs Enforcement, use investigative resources to help detect underpayment of duties to pursue those cases. The Department of Commerce also frequently investigates evasion of AD and countervailing duty (“CVD”) orders.

The Trump administration has imposed tariffs on a variety of imports from China and the European Union under Section 301 of the Trade Act of 1974, subject to certain exclusions. In addition, new duties have been placed on imports of aluminum and steel products from all countries under Section 232 of the Trade Expansion Act of 1962, with certain exceptions. These tariffs can lead to significant liability for importers that incorrectly declare the tariff classification, origin, valuation, liability for additional duties such as AD/CVDs, or applicability of tariff exclusions to CBP.

Dorsey & Whitney attorneys can help review a company’s imports to assess risks and potential mitigation measures for any inaccuracies in import declarations, as well as respond to any FCA or other U.S. Government claims of unpaid import duties.