

The Trump Administration's Sweeping New Tariffs Heighten False Claims Act Risks for U.S. Importers

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As the business community adjusts to the reality of the Trump Administration's sweeping new tariff regime, importers and other organizations that rely on imports should be mindful that with the expansion and sharp increases to import tariffs come increased risks under the False Claims Act (FCA). Given the administration's public commitment to "aggressive" FCA enforcement, organizations should assess their risks now to get ahead of potential liability or threats of FCA claims down the road.

The False Claims Act

The familiar application of the FCA is where a party is liable for knowingly submitting false claims for payment to the federal government, often pursuant to a contract with an agency or for medical services under Medicare or Medicaid.

The FCA also establishes liability for what is called a "reverse" false claim, 31 USC § 3729(a)(1)(G), which occurs where a person or entity makes some false statement for purposes of *avoiding or decreasing* an obligation to pay (non-tax) money lawfully owed to the federal government. Therefore, if a company misrepresented a material fact about an imported product to decrease import tariff obligations, that misrepresentation could subject the company to an FCA investigation or litigation.

Just as with other FCA litigations, "reverse" false claims can be brought by relators, often a whistleblower employee, but also potentially a competitor. Under the FCA's *qui tam* provisions, relators bring FCA claims in federal court, under seal, and out of the public eye until the U.S. Department of Justice (DOJ) completes an investigation and decides if it will intervene in the case. DOJ also directly initiates FCA actions on behalf of the government.

FCA liability may be three times the amount of loss to the United States (i.e., three times the amount of obligations avoided) plus an additional \$14,308 to \$28,618 in penalties for *each* FCA violation (i.e., each imported good for which the full tariff amount was not paid), and in some case the defendant may be liable for a relator's attorneys' fees.

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Examples of False Claims and Imported Goods

As importers know well, whenever any good is imported into the United States, there are a wide range of representations that importers must submit to the United States for customs release of those goods. FCA risk exists among the importers and other organizations who provide information necessary to import merchandise. (Separate enforcement actions and penalty demands by U.S. Customs and Border Protection (“CBP”) are possible under customs law, and potential criminal liability as well for any knowing or intentional violations.)

A few common representations may create exposure:

Country of Origin of Imports. Given the United States imposition of tariffs on goods from all countries, with varying tariff rates applicable depending on the country of origin, it is more critical to accurately report the country of origin for their imports.

- Example: In March 2025, the U.S. Department of Justice, Civil Division, Commercial Litigation Branch, Fraud Section and the U.S. Attorney’s Office for the Central District of California announced a \$8.1 million settlement with an importer of multilayered wood flooring. The United States alleged the importer misrepresented, among other things, the country of origin for multilayered wood flooring manufactured in the People’s Republic of China. This settlement stemmed from a whistleblower lawsuit brought by one of the importer’s competitors.

Valuation of Imports. Importers should carefully and accurately report the value of the goods they import into the United States. The dutiable value of imports is governed by customs law and CBP regulations. Overrepresenting the value leads to the obvious downside of increased tariffs, but undervaluation leads to tariff underpayment and FCA exposure.

- Example: In January 2023, the U.S. Attorney’s Office for the Southern District of New York announced a \$1.3 million settlement against an apparel design and import company for undervaluing 67 different apparel shipments. The apparel company had recently accepted responsibility for U.S. customs clearance, which required the company to submit accurate customs value information to CBP.

Tariff Classification of Imports. The Harmonized Tariff Schedule of the United States (“HTSUS”) classifies imported goods for purposes of determining applicable duty rates. CBP takes the position that the HTSUS provides only one correct tariff classification number for each imported good. However, tariff classification is not always straightforward, because the HTSUS contains numerous notes, and there could be CBP rulings and judicial cases that should be consulted to determine the correct classification. Importers should be careful in verifying the applicable tariff classification to avoid overpayment or underpayment of duties, including by consulting with knowledgeable trade attorneys.

- Example: In March 2022, the U.S. Attorney’s Office for the Northern District of Iowa announced a \$525,000 settlement with an importer of chain saw chains and blades. The United States alleged the importer misclassified the imported chain saw chains

and blades, resulting in underpayment of applicable duties. This settlement stemmed from a whistleblower lawsuit brought by one of the importer's competitors.

What Importers Can Do to Limit Exposure

The best time for importers to mitigate FCA liability is before the DOJ issues a subpoena or a relator files an FCA action. If your organization is an importer of goods or deals with imported goods, here are some potential key steps:

- *Review your import practices.* Organizations should review the lines of responsibility for ensuring the accuracy of customs declarations for imported goods, and the process for confirming the accuracy of key information, such as country of origin, value, and tariff classification. This should include written internal procedures for purchases, invoicing, and logistics to avoid errors.
- *Monitor Changes.* Although the most recent tariff hikes have been broad, in many cases the Administration has imposed different tariff rates by country, has expanded certain product-specific tariffs, and issued novel interpretations of U.S. customs law. The ground shifts nearly daily. Importers should take care to make sure that they are declaring their goods in alignment with publicly available interpretive guidance.
- *Evaluate oversight of partners.* Many importers work with partners, like customs brokers, to help navigate the difficulties of customs clearance. Delegating duty payment and declaration responsibilities to a third party may not insulate importers and other organizations from liability under the FCA, so it is important for organizations to evaluate relationships with third-party partners.
- *Consult with an attorney.* If you have questions about how federal authorities will likely see certain import practices or if you just want to make sure that you are engaging in best practices, speaking with attorneys knowledgeable in trade and the FCA can help you get ahead of problems before they grow into an investigation or lawsuit.