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False Claims Act Alert

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Trump's trade policy and enforcement implications under the False Claims Act

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Current trade policy heightens FCA risks for international businesses and underscores the need for strict compliance.

What's the impact?

- Companies engaged in international trade must stay alert to shifting tariff requirements.
- Evasion of tariff requirements, including via false representation of countries of origin and undervaluation or misclassification of goods, creates the risk of substantial liability under the False Claims Act.
- Those involved in the healthcare supply chain should anticipate and prepare for forthcoming pharma-specific tariffs.
- Companies should promptly investigate reports or complaints of noncompliance with customs rules to reduce exposure.

Change has come swiftly since President Trump returned to the White House on January 20, 2025, on multiple fronts. Yet by all measures, the president's trade policies appear to be having the

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farthest-reaching impact. A recent flurry of tariff requirements has roiled both global and domestic markets and strained decades-long relationships between the United States and key international trading partners, including Mexico, Canada, the European Union, and especially China.

Multinational companies are well aware that failure to comply with duties and tariffs carries potentially costly civil and criminal penalties. At the same time, given the Department of Justice's (DOJ) continued emphasis on the False Claims Act (FCA) as a critical enforcement tool (which Attorney General Pam Bondi emphasized during her confirmation hearings), all market participants must understand the interplay between evolving trade obligations and potential FCA exposure arising from their evasion. Failing to fulfill customs and tariff obligations carries significant enforcement and financial risk, ranging from the costs of responding to a federal investigation to treble damages, penalties, and criminal liability. Accordingly, companies engaged in international trade should act promptly to strengthen their compliance frameworks and ensure their customs and tariff practices are both current and tailored to mitigate potential liability under both the FCA and underlying civil enforcement statutes.

President Trump's tariffs

The central role of tariffs in the Trump administration's approach to global trade has been apparent since the first day of President Trump's second term when the president issued a memorandum setting forth an America First Trade Policy with the stated intention of enhancing national security, addressing trade deficits, and promoting American economic interests and public health. Since then, President Trump has fleshed out these priorities with a series of memoranda, executive orders, and proclamations concerning increased tariffs, including:

RECIPROCAL TARIFFS

On April 2, 2025, after mandating the development of a comprehensive plan aimed at restoring fairness in US trade relationships, President Trump issued Executive Order 14257, declaring a national emergency due to US goods trade deficits, which he attributed to non-reciprocal trade practices by foreign partners. To address the declared national emergency, with limited exceptions, the president imposed a 10% tariff on all countries, effective April 5, 2025, with higher tariffs for countries with significant trade deficits taking effect on April 9, 2025.[1] Executive Order 14257 provides that such tariffs will remain in effect until the Trump administration determines that the threats posed by trade deficits and underlying non-reciprocal treatments are satisfied,

[1] Executive Order 14257 excepts from reciprocal tariffs: (1) articles subject to 50 USC § 1702(b), including donations of food, clothing, and medicine intended to be used to relieve human suffering; (2) steel/aluminum articles and autos/auto parts already subject to tariffs; (3) copper, pharmaceuticals, semiconductors, and lumber articles; (4) all articles that may become subject to future tariffs; (5) bullion; and (6) energy and other certain minerals that are not available in the US.

resolved, or mitigated. On April 9, 2025, the president announced a 90-day suspension of reciprocal rates higher than 10% (with the exception of the tariff rate on Chinese imports, which he increased). Two days later, he issued a presidential memorandum excluding certain electronic devices (including smartphones) from Executive Order 14257's reciprocal tariffs, though the administration has previewed an upcoming tariff specific to semiconductors, which would apply to electronic devices.

CHINA

Separate and apart from Executive Order 14257, the Trump administration had already ordered a 10% tariff (increased to 20%) on Chinese imports, which were further specifically increased by an additional 84% and then 125%, effective April 10, 2025. The president also ended the duty-free *de minimis* treatment for low-value Chinese imports, effective May 2, 2025.

CANADA AND MEXICO

On February 1, 2025, President Trump imposed a 25% tariff on Mexican imports and Canadian imports (except for Canadian energy resources, which were subjected to a 10% tariff). These tariffs were initially set to take effect on February 4, 2025, but paused until March 4, 2025. The president subsequently suspended the 25% tariff for goods that qualify for duty-free treatment under the US-Mexico-Canada Trade Agreement (USMCA). Goods that do not qualify for this treatment under the USMCA are subject to the additional 25% tariff.

ALUMINUM AND STEEL

On February 10, 2025, President Trump issued two proclamations restoring a 25% tariff on steel imports and elevating the tariff on aluminum imports to 25%. He also expanded these tariffs to include derivative steel and aluminum articles (such as nails, staples, wires, cables, and bumpers) and terminated previous international agreements and exemptions for certain countries.

COPPER, TIMBER AND LUMBER, AND CRITICAL MINERALS

President Trump directed the Secretary of Commerce to investigate the national security risks posed by imports of copper, timber and lumber, and critical minerals (and their derivatives) and issue a report with findings and recommendations on actions to mitigate such risks, including potential tariffs.

AUTOMOBILES

On March 26, 2025, President Trump proclaimed tariffs on imports of automobiles and certain automobile parts due to national security concerns. He imposed a 25% tariff on imports of passenger vehicles, light trucks, and key automobile parts (except for automobile parts

compliant with the USMCA, which presently remain tariff-free pending the establishment of further processes).

PHARMACEUTICALS

To date, President Trump has excepted pharmaceutical products from reciprocal tariffs (though they are not exempt from the universal 10% tariff on imports from all countries). However, the administration has hinted at forthcoming pharma-specific tariffs in the "not too distant future."

Direct penalties and criminal liability for customs violations

The president has signaled his intention to vigorously enforce new tariff requirements and directed US Customs and Border Protection (CBP) to pursue maximum penalties against violators. Given this directive and the administration's emphasis on tariffs as a core policy initiative, a potential first line of concern for individuals and businesses engaged in cross-border trade is an increase in direct federal enforcement of customs and import laws and criminal liability. Under Section 592 of the Tariff Act of 1930, 19 USC § 1592(a), the United States may file suit in the US Court of International Trade to collect lost revenue and civil penalties for the fraudulent, grossly negligent, or negligent entry of merchandise into the United States by means of material false information or material omission.[2] This civil enforcement mechanism exposes violators to significant penalties, as well as payment of any avoided taxes or duties. Potential civil penalties depend on an importer's culpability but range from multiples of the duties avoided to the total value of the goods at issue.[3] Further, violators who knowingly falsely classify imports or knowingly make false statements to evade tariffs are subject to severe criminal penalties, including fines and potential imprisonment of up to 20 years given the president's invocation of the International Emergency Economic Powers Act.[4]

Companies engaged in cross-border trade, therefore, must assess their compliance and training regimes to ensure that documentation, reporting, and classification of imports and related practices keep pace with the changes set forth by the president and that any corporate incentives or actions do not contribute to any employee's decision to knowingly violate tariff-related regulations.

Tariff evasion and False Claims Act implications

Because importing merchandise into the United States requires making representations and payments to the government, tariff and import noncompliance exposes companies and

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[2] *United States v. Wanxiang America Corp*, Case No. 22-00205, 654 F.Supp.3d 1279 (Ct. Intl. Trade 2023).

[3] 19 USC § 1592(c).

[4] 50 USC § 1705.

individuals to FCA liability. The FCA is one of DOJ's oldest and most versatile enforcement statutes and the government's principal civil tool for combatting fraud against the government. The FCA both imposes liability for knowingly submitting false claims for payment to the government and knowingly avoiding obligations to pay money to the government (known as "reverse false claims"). In recent decades, DOJ and *qui tam* relators have leveraged the FCA primarily to pursue recoveries for noncompliance with federal healthcare program requirements. That enforcement trend, however, should not obscure the fact that the FCA is a multipurpose enforcement mechanism that is regularly employed by both DOJ and whistleblowers to target conduct across every economic sector. This includes defense, government procurement, and customs noncompliance, which triggers the FCA's "reverse false claims" provision.

US importers must declare, among other things, their goods' country of origin and value, whether the goods are covered by antidumping duties (i.e., tariffs on imported goods priced below their fair market value in the exporting country) or countervailing duties (i.e., tariffs that offset the effects of foreign government subsidies on exports), and the amount of duties owed. CBP relies on these representations to determine the correct amount of any duties. Thus, importers bear an affirmative duty to use "reasonable care" to ensure that such information is accurate. Importers who fall short and knowingly provide false information to CBP risk FCA liability. Critically, because the FCA's knowledge standard embraces not just actual knowledge but also deliberate ignorance or reckless disregard, taking affirmative measures to ensure reporting accuracy when goods cross US borders is essential to minimizing potential FCA exposure.

Indeed, recent sizeable settlements of FCA actions premised on alleged avoidance of customs duties and import violations reflect increased use of the FCA by both relators and the government. These cases include claims that importers falsely represented countries of origin and undervalued or misclassified goods to avoid tariff obligations. Several cases carried significant financial consequences.

For example, just one week before President Trump issued his April 2, 2025, reciprocal tariff order, Evolutions Flooring (Evolutions), a California-based importer, and its owners agreed to pay $8.1 million to settle allegations that they violated the FCA by knowingly and improperly evading customs duties on wood flooring manufactured in China and imported into the US. Illustrating a key risk factor under the FCA—namely that virtually anyone can bring an action alleging FCA violations—Urban Global LLC, an Evolutions competitor, sued Evolutions under the FCA's *qui tam* provisions, alleging Evolutions submitted false information to CBP regarding the wood flooring's manufacturers and country of origin.

Similar settlements of FCA actions brought by relators alleging violations of trade law obligations are increasingly common. In December 2024, after the government intervened, Alexis LLC (Alexis), a womenswear company, paid $7.6 million to resolve FCA allegations initially brought by a former employee's affiliate that Alexis underreported the value of imported goods. Likewise, in

August 2024, two Wisconsin-based sellers of wiring and power distribution products, Precision Cable Assemblies, Inc. (PCA) and Global Engineered Products, Inc. (GEP), along with their principals, paid $10 million to settle allegations by a former PCA employee that PCA and GEP violated the FCA by using false invoices to avoid customs duties on goods imported from China. And at the end of President Trump's first term, Linde GmbH (Linde), a German industrial engineering company, and its US subsidiary agreed to pay more than $22.2 million to resolve a relator's *qui tam* allegations that Linde violated the FCA by knowingly making false statements on customs declarations to avoid paying duties on imports of materials used in the construction of natural gas and chemical manufacturing plants. The relator was a former manager of Linde's US subsidiary who alleged Linde misrepresented the nature, classification, and valuation of imported merchandise, as well as the applicability of free trade agreements.

These are merely a handful of recent examples of wide-ranging customs-based FCA enforcement across multiple industries. Critically, these enforcement efforts have been driven not just by DOJ components in Washington, DC, but by US Attorney's Offices and relators around the country, reflecting a heightened nationwide enforcement effort that will likely continue and expand.

FCA and other civil liability for country-of-origin violations

Apart from these broader concerns, companies that supply federal government purchasers should pay close attention to the domestic-origin requirements imposed by the Trade Agreements Act (TAA), 19 USC § 2501; the Buy American Act, 41 USC §§ 8301-05; and the Berry Amendment, 10 USC § 4862. Broadly speaking, these statutes mandate that certain goods purchased by the federal government, including by the Department of Defense in connection with the military's TRICARE healthcare program and the Department of Veterans Affairs, be made either in the United States or, for some categories of goods, in certain specified foreign countries.

Misrepresentations regarding the country of origin of both finished products and components have served as the basis for FCA enforcement, as well as grounds for common law recoveries by DOJ. In November 2023, London Bridge Trading Company, Ltd. (London Bridge), a tactical gear and supply firm in Virginia, paid $2.1 million to resolve FCA allegations that London Bridge misrepresented the origin of clothing, armor, boots, and other textile items sold to the Department of Defense, including by removing or altering labels that showed the goods' foreign origins. The year prior, Coloplast, a manufacturer of ostomy, continence, interventional urology, and wound care products, paid $15.5 million to resolve FCA liability after Coloplast self-disclosed that it reported incorrect countries of origin for several Coloplast-manufactured products and overbilled the Department of Veteran's Affairs for certain medical and pharmaceutical products, in violation of the TAA. Given the administration's emphasis on using tariff and trade policy to promote domestic manufacturing, it would be unsurprising to see these statutes and their related FCA theories deployed more aggressively by DOJ and relators.

The healthcare supply chain

Chief among those impacted by Trump's trade policies are healthcare and life sciences companies, especially importers of healthcare supplies, medical devices, and pharmaceutical products. Most hospital major equipment, parts, and technology are manufactured outside the US, including ventilators and anesthesia and imaging machines. Many US hospitals also rely entirely on foreign suppliers for routine items, such as surgical gloves and masks, gowns, syringes, intravenous catheters, and other durable medical equipment. Further, a significant portion of active pharmaceutical ingredients (APIs)—used in both generic and brand-name drugs—and finished medications are manufactured abroad, with a substantial percentage of APIs originating from India, China, and Europe.

While the American Hospital Association and many others in the health sector have advocated that medical devices, supplies, and pharmaceuticals be permanently exempted from President Trump's reciprocal tariffs, medical devices and supplies are presently not exempt, and the administration has already signaled that pharma-specific tariffs are imminent. Accordingly, apart from prioritizing compliance with Federal Healthcare Program coverage rules and regulations, companies involved in healthcare supply chains must remain vigilant for tariff developments or risk facing the same fate as Danco Laboratories, LLC, a New York-based pharmaceutical distributor, that recently agreed to pay $765 thousand to resolve *qui tam* allegations that it violated the FCA by failing to pay customs duties on imported pharmaceutical products that lacked country-of-origin markings.

Prioritize compliance to mitigate FCA risk

As President Trump's trade policy continues to evolve, international market participants must stay alert and adapt to shifting tariff obligations. This is especially true for companies importing goods originating in China. Not only does failure to comply with customs requirements carry significant financial risk in the event of an FCA judgment or settlement, but allegations by competitors and whistleblowers can spark lengthy and expensive government investigations, particularly in the absence of effective and well-documented internal compliance and vetting practices.

The administration's use of tariffs to pursue international trade objectives and DOJ's continued reliance on the FCA as a key enforcement tool means international market participants face heightened risk associated with violations of customs laws, particularly in the near term. Accordingly, all companies involved in international trade should take action to assess, track, and ensure compliance with updated tariff and customs rules. Further, given the significant threat of FCA actions by *qui tam* relators, companies should instill a culture of compliance among their workforces through trainings, incentives, and other measures and promptly investigate and address any internal or publicized reports of misconduct. Lastly, although both FCA and more traditional customs penalty exposure for noncompliance can be mitigated through potential

self-disclosure or cooperation with the government, those paths can carry their own potentially serious consequences. Companies considering them should seek the advice of experienced FCA and government investigations counsel.

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