

GIBSON DUNN

False Claims Act Update

April 14, 2025

## New Tariffs Promise Increased False Claims Act Scrutiny on Importers and Other Companies in the Import Chain

*Tariffs and customs compliance is an area of rapidly increasing risk for companies under the federal False Claims Act given the steep tariffs imposed on key U.S. trading partners by the Trump Administration that affects a broad swath of industries.*

### ***Introduction***

The U.S. Department of Justice (DOJ) has signaled its intent to ramp up use of the FCA—DOJ's primary tool for redressing fraud against government agencies—to police customs and tariff compliance.<sup>[1]</sup> Regardless of the particulars of country-specific tariff levels, the effect is likely to be a redoubling of the government's already aggressive application of the FCA to trade matters, fueled by tariffs' status as a top policy and political priority. The risks for businesses are significant and likely will affect a broader range of industries than DOJ has historically targeted with trade-related FCA investigations and litigation.

### ***Tariff Developments Under President Trump***

President Trump has imposed unprecedented and far-reaching tariffs on imports from some of the United States' largest trading partners. The president imposed a 10% tariff on all Chinese imports on February 4.<sup>[2]</sup> He did so again on March 4, also assessing a 25% tariff on most imports from Canada and Mexico.<sup>[3]</sup> On a broader scale, President Trump levied a 25% tariff on

all aluminum and steel imports beginning on March 12.<sup>[4]</sup> And on April 2, the president announced the most sweeping tariffs yet: a universal baseline tariff of 10% on all countries and reciprocal tariffs “on the countries with which the United States has the largest trade deficits.”<sup>[5]</sup> Although Canada and Mexico will be exempt from the new measures, they will remain subject to the 25% tariff on products that do not qualify for preferential treatment that was imposed on March 4.<sup>[6]</sup> On April 9, President Trump announced a 90-day freeze on tariffs for goods from some countries—leaving reinstatement of some or all of those tariffs a distinct possibility.<sup>[7]</sup> The same day, the president increased duties on goods from China, further advancing an escalating trade war between the world’s two largest economies. You can find additional analysis of the president’s tariffs in [this recent client alert](#).

While the tariffs have implications for international politics and the global economy, their economic impact is being felt most immediately by companies that import goods from other countries. Under the new tariff regime, any company importing virtually any item from anywhere now owes at least 10% of the value of that item to the U.S. government—and up to 145%, or more, for goods from China.<sup>[8]</sup> Particularly for companies that import expensive products and materials in large volumes, this can mean massive sums in financial obligations to the U.S. government. All told, tariffs owed on goods imported into the United States could surpass \$1 trillion—a nearly 13-fold increase compared to last year’s \$78 billion figure.<sup>[9]</sup>

### ***FCA Enforcement Against Alleged Customs Fraud***

The FCA prohibits, among other things, the fraudulent retention of monies that a person or company is obligated to pay to the United States.<sup>[10]</sup> DOJ and *qui tam* relators have brought such allegations based on alleged avoidance of tariffs, customs duties, and similar “obligations” in a wide variety of contexts. For example, DOJ has frequently deployed this “reverse” FCA theory against companies that receive payments from the government in the ordinary course of business that the government then seeks to recoup. The thrust of DOJ’s allegations in those scenarios is typically that the company was required to return the money and knowingly or recklessly failed to satisfy that obligation. The reverse FCA often features in cases against health care companies and government contractors, which regularly receive payments from the U.S. government.<sup>[11]</sup> Courts have acknowledged the viability of reverse FCA theories premised on allegations of customs avoidance.<sup>[12]</sup>

Consistent with the nature of tariffs as money owed to the U.S. government in the first instance, use of the reverse FCA across industries and with significant financial consequences has been a hallmark of the statute’s enforcement in the trade arena. Since 2011, there have been over 40 resolutions of FCA matters involving alleged customs violations, with nearly half of those resolutions occurring since 2023. The resolutions since 2011 have netted the government nearly \$250 million in recoveries, with larger settlements reaching into the tens of millions of dollars. In a trend generally consistent with the relative numbers of FCA matters brought by *qui tam* relators versus by DOJ without relator involvement, 35 of the resolutions involved relators, the majority of whom were former employees of the defendant companies.

DOJ’s use of the FCA against alleged customs fraud has historically targeted three main areas of conduct, the consequence of which is typically an alleged underpayment of tariffs to the government: (1) misclassification of imported products; (2) undervaluation of imported products;

and (3) misrepresentation of imported products' countries of origin. The following are representative examples of FCA resolutions that DOJ has reached with companies based on these theories. They provide a window into the kinds of cases DOJ is likely to pursue in higher volumes, and with greater potential financial consequences, in the future.

- **Misclassification.** In March 2024, DOJ reached a \$3.1 million settlement with a U.S. chemical products company which allegedly imported hazardous chemicals into the United States and misclassified them as non-hazardous goods.[\[13\]](#)
- **Undervaluation.** On consecutive days on August 2024, DOJ settled for over \$10 million with wiring and power products companies and almost \$7.7 million with a clothing manufacturer, each of whom allegedly altered the prices on the invoices they submitted to the government.[\[14\]](#)
- **Country of origin.** In November 2023, a German cutting tools manufacturer paid \$1.9 million to settle allegations that it manufactured tools in a Chinese factory, shipped them to Germany to perform additional processing on some (not all) of the products, and then shipped them to the United States as “German” products to avoid certain tariffs on Chinese goods.[\[15\]](#) Several years earlier, a printing inks manufacturer reached a \$45 million settlement with DOJ for allegedly misrepresenting its imports' countries of origin as Japan and Mexico, rather than China and India, to avoid paying antidumping and countervailing duties.[\[16\]](#)

The FCA also imposes liability on companies that cause fraudulent underpayments to the government or conspire with others to fraudulently underpay.[\[17\]](#) Consistent with these provisions, DOJ also has sought recoveries from businesses elsewhere in the import chain, including upstream foreign exporters and suppliers as well as downstream U.S.-based companies. The upstream and downstream entities in these cases did not themselves owe customs duties, but they faced similar enforcement consequences under a conspiracy theory.

For example:

- In 2016, both the importer and manufacturer of clothing goods agreed to pay \$13.375 million to settle claims that they conspired to underpay customs duties using invoices that misrepresented the value of the goods at issue.[\[18\]](#)
- The same year, a U.S. defense contractor paid \$6 million for allegedly using ultrafine magnesium imported from China in flares it manufactured and sold to the U.S. Army in violation of its contract with the military.[\[19\]](#) While it was the importer who allegedly misrepresented the magnesium's country of origin, DOJ alleged that the contractor conspired with the importer to sell the government the nonconforming goods.

At least one customs case under the FCA has gone to trial—resulting in a more than \$8 million jury verdict.[\[20\]](#) In that case, Island Industries, Inc. accused its competitor Sigma Corporation of avoiding antidumping duties on “carbon steel butt-weld pipe fittings,” by falsely certifying to customs agents that the pipe fittings were “steel couplings.”[\[21\]](#) Island Industries pursued the FCA litigation notwithstanding the government's decision not to intervene in the matter, and a vigorous dispute is still ongoing in the Ninth Circuit over whether the Court of International Trade has exclusive jurisdiction over the FCA claims in the suit.[\[22\]](#)

## ***Implications for Industry***

The Trump Administration's new tariffs mean that the frequency and financial stakes of customs-related FCA cases are likely to increase. By the same token, DOJ's past experience with similar cases means that this shift will be building on a foundation of existing enforcement activity, with little of the learning curve that the government often experiences in pursuing brand-new FCA theories. Prior cases have already given DOJ and relators the ability to test the factual and legal theories discussed above. Those theories will continue to feature in the government's investigations, with both DOJ and relators likely to be emboldened by the potential for significantly higher monetary recoveries and by the perceived enforcement flexibility afforded by the application of the new tariff regime to all companies and all imports. We expect DOJ and relators will seek the same nine- and ten-figure monetary recoveries in customs-related cases that they have long sought—and frequently obtained—in cases in the health care and government contracting spaces.

Companies across the industry spectrum will face these enforcement risks, and we anticipate importers and manufacturers in the following industries will face particularly close scrutiny:

- Automobile and automobile parts;
- Medical devices;
- Pharmaceuticals and dietary supplements;
- Furniture, textiles, and other retail products;
- Steel, aluminum, and other metals or metal alloys; and
- Technology hardware.

While it is difficult to predict where these cases will arise, we can expect to see at least some cases being pursued by U.S. Attorneys' Offices in the jurisdictions that are home to the country's largest ports. Of the ten largest U.S. ports by annual container volume, seven are in jurisdictions where there has been at least one FCA customs enforcement case since 2011.<sup>[23]</sup> Accordingly, U.S. Attorneys' Offices in the Southern and Eastern Districts of New York, the District of New Jersey, the Central District of California, the Eastern District of Virginia, the Southern District of Texas, the District of South Carolina, and the Southern District of Georgia may prove to be sites of particularly rapid expansion in this area. As in other areas of FCA enforcement, significant risks and costs are likely to be felt by companies given the relator and DOJ scrutiny that invariably accompanies the long investigative period preceding active litigation and dispositive briefing on legal issues.

To mitigate risk, companies should ensure that they have robust mechanisms in place to detect, report, and remedy instances of noncompliance with customs requirements. Such mechanisms should include comprehensive training on relevant legal requirements and the consequences of noncompliance. Companies should also review their compensation practices to ensure that any incentive compensation tied to cost reduction and process optimization is not incentivizing inappropriate attempts to reduce customs duty obligations. It will also be critical for companies to review the terms of their contractual relationships with upstream and downstream business partners, to ensure that the risk of government scrutiny is appropriately allocated and, where

appropriate, to require contractual counterparties to comply with company policies and procedures.

[1] For example, at the February 2025 *qui tam* conference of the Federal Bar Association, DOJ Commercial Litigation Branch director Jamie Ann Yavelberg characterized customs fraud as a “key area” FCA enforcement.

[2] See [Executive Order No. 14195](#) of Feb. 1, 2025, *Imposing Duties To Address the Synthetic Opioid Supply Chain in the People’s Republic of China*, 90 Fed. Reg. 9121 (Feb. 7, 2025).

[3] See [Executive Order No. 14228](#) of March 3, 2025, *Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People’s Republic of China*, 90 Fed. Reg. 11463 (Mar. 7, 2025); [Executive Order No. 14193](#) of Feb. 1 2025, *Imposing Duties To Address the Flow of Illicit Drugs Across Our Northern Border*, 90 Fed. Reg. 9113 (Feb. 7, 2025); [Executive Order No. 14194](#) of Feb. 1, 2025, *Imposing Duties To Address the Situation at Our Southern Border*, 90 Fed. Reg. 9117 (Feb. 7, 2025).

[4] [Proclamation No. 10896](#), *Adjusting Imports of Steel into the United States*, 90 Fed. Reg. 9817 (Feb. 10, 2025); [Proclamation No. 10895](#), *Adjusting Imports of Aluminum into the United States*, 90 Fed. Reg. 9807 (Feb. 11, 2025).

[5] Fact Sheet, The White House, *President Donald J. Trump Declares National Emergency to Increase our Competitive Edge, Protect our Sovereignty, and Strengthen our National and Economic Security* (Apr. 2, 2025), <https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge-protect-our-sovereignty-and-strengthen-our-national-and-economic-security/>.

[6] *Id.*

[7] See *Stocks surge after 90-day pause announced for most countries*, NBC News, Apr. 10, 2025, <https://www.nbcnews.com/politics/trump-administration/live-blog/trump-administration-live-updates-global-tariffs-china-rcna200346>.

[8] See Sean Conlon, *Trump’s triple-digit tariff essentially cuts off most trade with China, says economist*, CNBC, Apr. 10, 2025, <https://www.cnbc.com/2025/04/10/trumps-triple-digit-tariff-essentially-cuts-off-most-trade-with-china-says-economist.html>.

[9] Ana Swanson and Tony Romm, *Trump Unveils Expansive Global Tariffs*, N.Y. Times, Apr. 2, 2025, <https://www.nytimes.com/2025/04/02/business/economy/trump-tariffs.html>.

[10] See 31 U.S.C. § 3729(a)(1)(G).

[11] See, e.g., Press Release, U.S. Dep’t of Justice, *Mallinckrodt Agrees to Pay \$260 Million to Settle Lawsuits Alleging Underpayments of Medicaid Drug Rebates and Payment of Illegal Kickbacks* (Mar. 7, 2022), <https://www.justice.gov/archives/opa/pr/mallinckrodt-agrees-pay-260-million-settle-lawsuits-alleging-underpayments-medicaid-drug>; .

[12] See, e.g., *United States ex rel. Customs Fraud Investigations, LLC v. Victaulic Co.*, 839 F.3d 242 (3d Cir. 2016).

[13] Press Release, U.S. Dep't of Justice, *Owner of New Jersey Company Admits to Evading U.S. Customs Duties and His Company Agrees to \$3.1 Million Settlement Agreement* (Mar. 21, 2024), <https://www.justice.gov/usao-nj/pr/owner-new-jersey-company-admits-evading-us-customs-duties-and-his-company-agrees-31>.

[14] Press Release, U.S. Dep't of Justice, *Two Brookfield, Wisconsin-Based Companies and Their Owners Pay Over \$10 Million to Resolve Allegations that They Evaded Customs Duties* (Aug. 8, 2024), <https://www.justice.gov/usao-edwi/pr/two-brookfield-wisconsin-based-companies-and-their-owners-pay-over-10-million-resolve>; Press Release, U.S. Dep't of Justice, *U.S. Attorney Lapointe Announces \$7.6 Million Settlement of Civil False Claims Act Lawsuit Against Womenswear Company for Underpaying Customs Duties on Imported Women's Apparel* (Aug. 9, 2024), <https://www.justice.gov/usao-sdfl/pr/us-attorney-lapointe-announces-76-million-settlement-civil-false-claims-act-lawsuit>.

[15] *Id.*

[16] Press Release, U.S. Dep't of Justice, *Japanese-Based Toyo Ink and Affiliates in New Jersey and Illinois Settle False Claims Allegation for \$45 Million* (Dec. 17, 2012), [here](#).

[17] See 31 U.S.C. § 3729(a)(1)(C), (G).

[18] Press Release, U.S. Dep't of Justice, *Manhattan U.S. Attorney Settles Civil Fraud Lawsuit Against Clothing Importer And Manufacturers For Evading Customs Duties* (July 13, 2016), <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-settles-civil-fraud-lawsuit-against-clothing-importer-and>.

[19] Press Release, U.S. Dep't of Justice, *Tennessee and New York-Based Defense Contractors Agree to Pay \$8 Million to Settle False Claims Act Allegations Involving Defective Countermeasure Flares Sold to the U.S. Army* (Mar. 28, 2016), <https://www.justice.gov/archives/opa/pr/tennessee-and-new-york-based-defense-contractors-agree-pay-8-million-settle-false-claims-act>.

[20] See *United States ex rel. Island Indus. B. Vandewater Int'l Inc.*, 2021 WL 6104402 (C.D. Cal. 2021); *Island Indus., Inc. v. Sigma Corp.*, No. 22-55063 (9th Cir.).

[21] 2021 WL 6104402, at \*1.

[22] See, e.g., *Island Indus., Inc. v. Sigma Corp.*, No. 22-55063 (9th Cir.).

[23] *2024 Port Performance Freight Statistics Program: Annual Report to Congress*, U.S. Dep't of Transportation, Bureau of Transportation Statistics (Jan. 2024), [https://www.bts.gov/sites/bts.dot.gov/files/2024-01/2024\\_Port\\_Performance\\_Report\\_0.pdf](https://www.bts.gov/sites/bts.dot.gov/files/2024-01/2024_Port_Performance_Report_0.pdf).

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