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Gibson Dunn & Crutcher, LLP

Sanctions and Export Enforcement Trends 2025

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- Approved for 1.0 hours General PP credit.
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- Form Link: https://gibsondunn.qualtrics.com/jfe/form/SV_bpCI3pTGmrVVztc
- Most participants should anticipate receiving their certificate of attendance in four to eight weeks following the webcast.
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Overarching Enforcement Trends

Companies should take a holistic approach to assess all aspects of regulatory and compliance risks.

- **Continued, if not increased, emphasis on interdepartmental enforcement actions**
- **Increased willingness to leverage any and all kinds of regulatory risks to extract conformity and concessions from private companies**
- **Less regard to boundaries between different regulatory and compliance regimes**

Agenda

01 Sanctions Enforcement

02 Export Controls Enforcement

03 Antiboycott Enforcement

04 Customs Enforcement

Sanctions Enforcement

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Sanctions Enforcement: Agenda

- The Basics

- Recent Enforcement Actions

- Going Forward

- Mitigation Strategies

The Basics

Who enforces U.S. sanctions?

- U.S. sanctions are primarily administered and enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**").
- The U.S. Department of Justice enforces against **criminal violators** of U.S. sanctions.
- Sanctions enforcement oftentimes overlaps with export controls enforcement, as well as anti-money laundering and related regimes. As such, **sanctions enforcement is oftentimes a multi-agency effort.**

Designation vs. Enforcement

- OFAC is arguably most widely-known for **designating** persons to its Specially Designated Nationals and Blocked Persons list (the "SDN List"). OFAC also maintains several other "non-SDN" lists.
- Designation is primarily a **policy function**, where OFAC (or, as the case may be, the Dep't of State) need only have a **reasonable basis to believe** that a party to be listed (i.e., designated) is engaged in certain proscribed conduct (i.e., "**designation criteria**").
  - E.g., "operating in the petroleum sector of the Iranian economy"
- Designation results in the imposition of sanctions – typically blocking/asset freezes.
- Enforcement is primarily a **law enforcement function** (although policy concerns weigh heavily), targeting persons or entities that OFAC (or DOJ) believes have **violated applicable prohibitions**.
  - E.g., providing financial services to an entity that has been designated for "operating in the petroleum sector of the Iranian economy"

Regulatory Jurisdiction

- The bulk of U.S. sanctions prohibitions ("**primary**" sanctions) only apply given a "**U.S. Nexus**."
  - Many "secondary" sanctions, which apply regardless of a U.S. Nexus, only target "foreign financial institutions" that (usually, knowingly) engage in so-called "significant transactions."
- OFAC has historically been aggressive in defining/asserting a U.S. Nexus – for example, OFAC has found that back-end technical services that are performed outside the United States but that **utilize computers/servers located within the United States** can form a sufficient basis for a "U.S. Nexus."
- OFAC also frequently enforces "primary" sanctions against foreign entities transacting with other foreign entities on the basis that they "**caused**" a U.S. person to violate applicable sanctions prohibitions.

U.S. Jurisdictional Nexus

U.S. sanctions primarily apply to U.S. persons, wherever located:

- U.S. persons include citizens and permanent residents of the United States, plus entities organized under U.S. state or federal law (including their foreign branches)
- Under a small minority of sanctions regulations/Executive Orders, "U.S. Person" is defined to include foreign-person subsidiaries of U.S. companies

Non-U.S. Persons as a general matter do *not* fall under U.S. jurisdiction

- But non-U.S. persons may be under an obligation to comply with U.S. sanctions in certain circumstances, for instance where:
  - Engaging in a transaction with a U.S. touchpoint or “nexus” (such as the use of U.S. based-servers, or the use of the U.S. dollar, which usually transits through the U.S. financial system)
  - When they “cause” a U.S. person to violate OFAC sanctions (e.g., by causing a U.S. financial institution to process a payment to, for, or on behalf of a blocked party)

Civil Enforcement Guidelines

Base Penalty – Calculated per Transaction

- Egregious?
- Voluntarily self-disclosed?

Mitigating and Aggravating Factors

- Willful or reckless
- Awareness of conduct
- Management involvement
- Pattern of conduct and repeat violations
- Harm to sanctions program objectives
- Volume of transactions
- Size and sophistication of violating person
- Existence and adequacy of compliance program
- Remedial response
- Cooperation

BASE PENALTY MATRIX

Voluntary Self-Disclosure	Egregious Case: NO	Egregious Case: YES
YES	(1) One-Half of Transaction Value (capped at lesser of $188,850 or one-half of the applicable statutory maximum per violation)	(3) One-Half of Applicable Statutory Maximum
NO	(2) Applicable Schedule Amount (capped at lesser of $377,700 or the applicable statutory maximum per violation)	(4) Applicable Statutory Maximum

- Civil monetary penalties available under IEEPA include $377,700 or twice the value of the underlying transaction, whichever is greater

- **Willful violations of IEEPA can lead to criminal enforcement**, which can result in substantially higher monetary penalties and, for individuals, up to 20 years in prison.

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Recent Developments in Sanctions Enforcement

- OFAC has not concluded a civil settlement since Trump's inauguration (Haas Automation, January 17, 2025).
  - By this time in its first year, the Biden administration had already concluded **6 enforcement actions** with a total settlement value of over $4.2 million.
  - The first Trump administration had concluded 2 enforcement actions with a total settlement value of over $100 million by this time in its first year.

- The Trump administration has indicated that the historical mainstays of OFAC enforcement—**Iran, terrorism, and narcotics**–will not only continue to be priorities but will likely be **prioritized to an even greater degree than before.**

- Additionally, **recent DOJ actions** suggest that these remain enforcement priorities. For example:
  - On April 1, 2025, DOJ **charged an Iranian company and two Iranian nationals** with conspiring to provide material support to Iran's Islamic Revolutionary Guard Corps (IRGC)
  - On March 27, 2025, DOJ secured a guilty verdict against a talent agency and its CEO for dealing with a **"cartel-linked" concert promoter**

Designation has largely followed the increases in enforcement promised by the Trump administration.

- So far in 2025, OFAC has issued **over 1,000 new designations.**
- 2025 is apace to see potentially the **second-largest increase in designations ever.**
- **2025 has already seen more Iran-related designations than any year under the Biden administration.**
  - Roughly **75%** of new designations since Trump's inauguration have been **Iran-related.**
- The Trump administration has also designated multiple cartels and criminal organizations as FTOs.

OFAC and DOJ have shown a clear focus on cartel-related activity and similar sanctions violations.

- The Criminal Division's stated **priorities in investigating and prosecuting white-collar crimes** now include:
  - "financial institutions and their insiders that **commit sanctions violations** or enable transactions by **Cartels, TCOs, hostile nation-states, and/or foreign terrorist organizations**" and
  - "**Material support** by corporations to foreign terrorist organizations, including recently designated Cartels and TCOs."

- DOJ clarified in the same memo that: "Cases impacting victims, involving cartels, TCOs, or terrorist groups, or facilitating drug money laundering or sanctions evasion **shall receive highest priority**."

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

May 12, 2025

MEMORANDUM

TO: All Criminal Division Personnel

FROM: Matthew R. Galeotti
Head of the Criminal Division

SUBJECT: Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime[1]

The core mission of the Department of Justice (Department) is to do justice, uphold the rule of law, protect the American public, and vindicate victims' rights. The Department's efforts to carry out this mission are multi-faceted. Prosecutors and investigators in the Criminal Division are currently working tirelessly to, among other things, pursue the Total Elimination of Cartels and Transnational Criminal Organizations (TCOs),[2] dismantle human smuggling organizations, curb the flow of fentanyl and other dangerous drugs, and neutralize child predators and violent criminals, including by securing significant charges and prison sentences against the worst criminal actors.[3]

China, Russia, Iran, and … Syria?

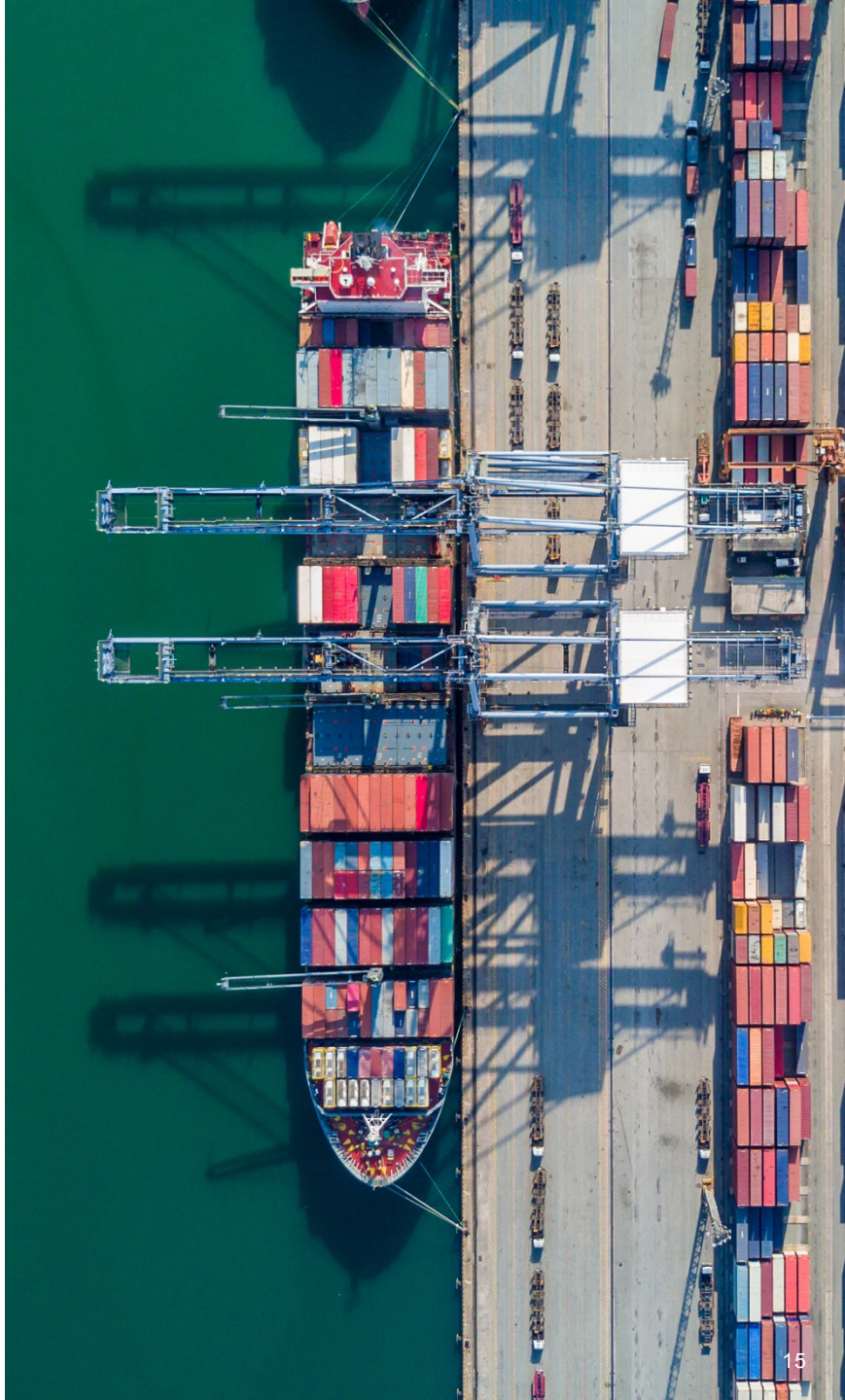
- As the Trump administration appears to gear up to use sanctions and export controls more aggressively in economic conflict with China and Iran, it is unclear whether it will ease sanctions targeting Russia.
  - It is broadly anticipated that **China will be an across-the-board enforcement priority.** Iran is already clearly a priority.
  - But there is tension between this policy and a potential easing of Russia-related sanctions.
  - Specifically, it is unclear how the Trump administration might pursue aggressive enforcement targeting Chinese and Iranian entities **without also inflicting collateral damage** on the Russian nationals with which Chinese and Iranian entities circumventing sanctions and export controls frequently transact.

- Additionally, the recently-promulgated **General License 25** and U.S. State Department **waiver of Caesar Act sanctions** were a far broader initial step to ease Syrian sanctions than many experts anticipated.
  - Critically, though, **General License 25 broadly exempted from its authorizations most blocked persons. As such, there is sill substantial work to be done in easing Syrian sanctions.**
  - It is still unclear, however, **whether the U.S. will enforce against conduct that was violative when it took place but is since no longer prohibited.** (EU authorities will not enforce under these circumstances).

Case Studies: Administrative/Civil Enforcement

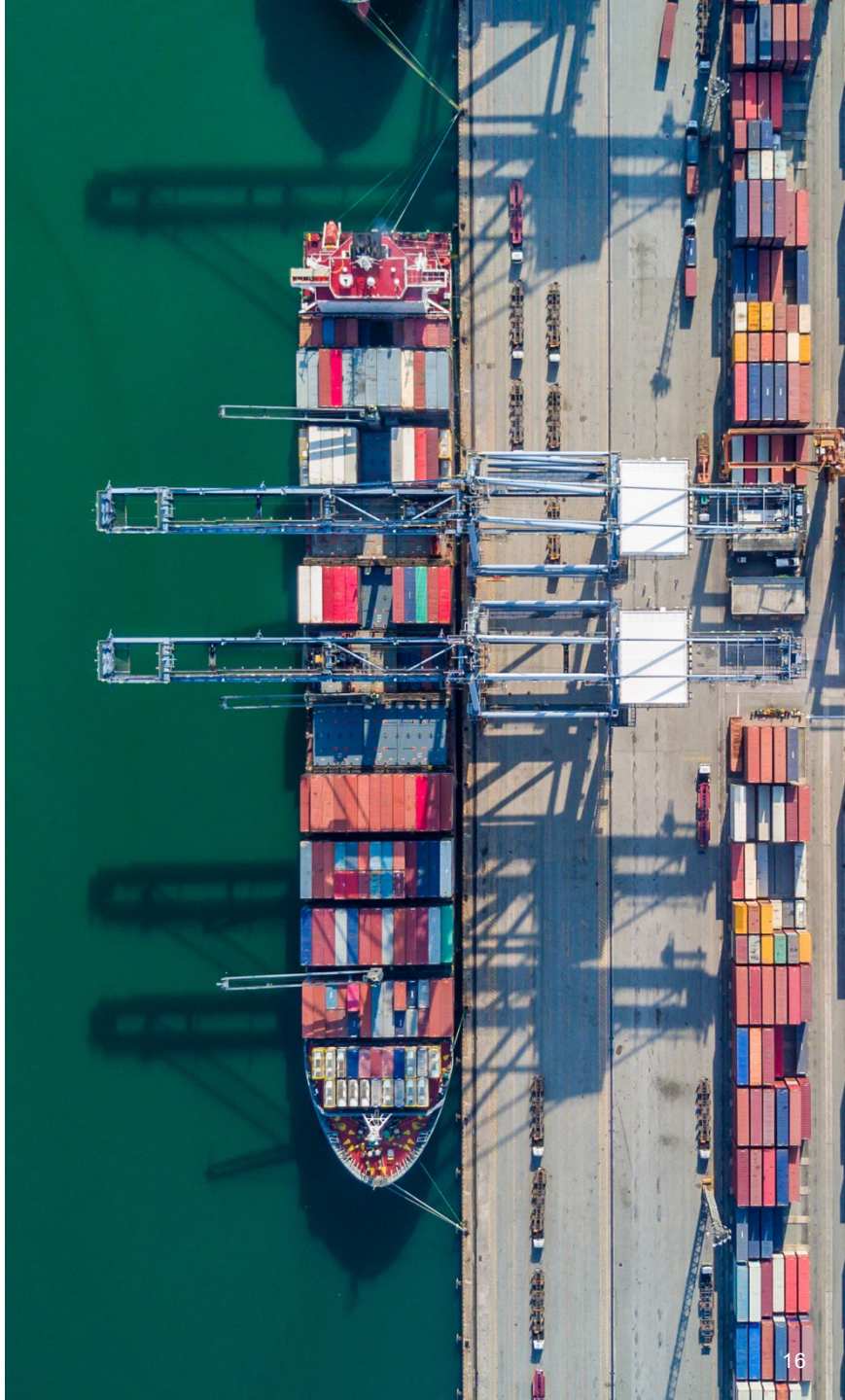
- **Société Internationale de Télécommunications Aéronautiques SCRL ("SITA")** – *the broad jurisdictional hook under even nominally "primary" sanctions.*
  - OFAC asserted jurisdiction over transactions that took place **entirely outside the United States** on the basis that SITA used **back-end commercial and technical services** that utilized physical infrastructure (e.g., **servers**) located within the United States

- **SCG Plastics Co. ("SCG")** – *"causing" liability.*
  - OFAC asserted jurisdiction to enforce against SCG, a non-U.S. entity doing business outside the United States with non-U.S. persons, on the basis that SCG "**caused**" U.S. financial institutions to process wire transfers in violation of U.S. sanctions targeting Iran.



Case Studies: Criminal Enforcement

- **Mohammad Bazzi** – *Individual enforcement action; willingness to charge **conspiracy** to violate IEEPA.*
  - In this case, DOJ charged conspiracy and enforced on an extraterritorial basis **against an individual who had already been designated.**
- **Suez Rajan** – *First-ever criminal resolution involving the sale and transport of Iranian oil in violation of U.S. sanctions.*
  - In connection with this case, DOJ **seized the *Suez Rajan* and its cargo of 980,000 barrels of oil.**
- **British American Tobacco** – *Significant penalty ($629 million) resulting from extraterritorial enforcement.*
  - British American Tobacco, through its Singapore subsidiary, received **dollar-denominated payments** from North Korean front companies in exchange for leaf tobacco.



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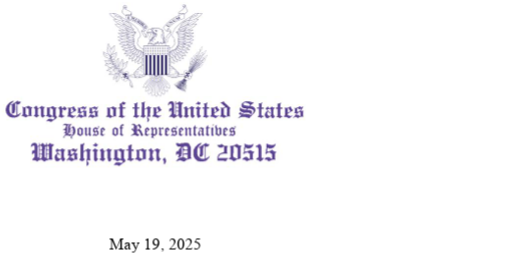
Where we're going: Broader Trends

Aggressive Criminal Enforcement

- Sanctions enforcement is already receiving **increased criminal prioritization.**
  - Recent DOJ Criminal Division guidance (May 12) listed sanctions as a **priority corporate enforcement area.**
  - On the same day, the head of DOJ Criminal Division Matthew Galeotti indicated that "violations involving sanctions, material support of foreign terrorist organizations, or those that facilitate cartels and TCOs" are now **priority areas for DOJ to receive tips** under its whistleblower program.

- There is very little **corporate** enforcement precedent regarding prosecution for "material support" to FTOs.
  - But it could be significant in the coming years, including for **non-U.S. companies operating entirely outside the U.S.** (see, e.g., *Lafarge*).
  - Especially in the case of cartels, which are collectively Mexico's **fifth-largest employer**, the risk of criminal enforcement appears to be high and increasing.

Potential use of Sanctions to target Universities



Congress of the United States
House of Representatives
Washington, DC 20515

May 19, 2025

Alan Garber
President
Harvard University
Massachusetts Hall
Cambridge, MA 02138

Dear President Garber,

We write today to request detailed information about Harvard's activities, detailed below, that create risks to U.S. national security and further the Chinese Communist Party's (CCP's) genocide in Xinjiang. Specifically:

- On May 19, 2025, the House Select Committee on the Chinese Communist Party published a letter sent to Harvard accusing the university of, in part:
  - Providing services to the Xinjiang Production and Construction Corps "multiple times **after the Department of the Treasury placed XPCC on the Specially Designated Nationals and Blocked Persons (SDN) List in 2020,** including as recently as 2024" and
  - Collaborating with China-based academics on research **funded by an agent of the Iranian government.**

- The Select Committee's letter stopped short of accusing Harvard of violating applicable sanctions regulations or related laws.

- However, it underscores the risk that sanctions enforcement may be used to:
  - "Name and shame" **domestic political opponents** in academia and other sectors that were traditionally not enforcement priorities or
  - Build pressure towards negotiated resolution/settlement **under unrelated areas of law.**

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Mitigation Strategies Under a "Risk-based Approach"

- Conduct **heightened due diligence** when transacting business in or near areas where designated FTOs (including cartels) are known to operate. This may include background checks (or similar), and/or requiring counterparties to present documents/information **confirming their bona fides.**

- Ensure that sanctions compliance commitments appear in contractual arrangements with counterparties, suppliers, vendors, and other relevant parties.

- Revise your Sanctions Compliance Program to expand the scope and frequency of sanctions-related screening. For example, confirm that counterparties are not owned 50% or greater by sanctioned persons.

- Mitigation strategies might also include, where relevant and to the degree proportionate to the risks faced by the company:
  - Adopting IP geoblocking and VPN detection (if customers/related parties may be located in a sanctioned jurisdiction)
  - Requiring all counterparties to provide identifying information sufficient to conduct sanctions screening
  - Introducing/expanding automated "red flag" indicators for heightened manual review

Export Controls Enforcement

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Export Controls Enforcement: Agenda

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Penalties for Export Control Violations

The **Export Administration Regulations (EAR)** are a set of rules promulgated under the **Export Control Reform Act (ECRA)** that control the export of commercial, dual-use, and less-sensitive military items. The EAR is administered by the Department of Commerce's Bureau of Industry and Security (**BIS**).

Violations of **EAR** or **ECRA** can result in monetary and non-monetary penalties.

- **Administrative penalties** include:
  - **Civil monetary penalties** that can reach up to $374,474 (as of 2025).
  - The **denial** of violators' export privileges and seizure of the property/items involved in any violations.
- **Criminal penalties** for willful export control violation can range up to $1 million and 20 years of imprisonment.

Voluntary self-disclosure (VSD) of possible violation can serve as a mitigating factor.

The **International Traffic in Arms Regulations (ITAR)** are a set of rules promulgated under the **Arms Export Control Act (AECA)** that govern the export and import of items on the United States Munitions List (**USML**), which includes defense articles and services. The ITAR is administered by the Department of State's Directorate of Defense Trade Controls (**DDTC**).

Violations of **ITAR** or **AECA** can result in monetary and non-monetary penalties.

- **Civil monetary penalties** under ITAR can reach up to $1,271,078 (as of 2025) per violation.
  - Additionally, violators may be simultaneously subject to **statutory debarment**, which prohibits from participating in the export of defense articles.
- **Criminal penalties** under AECA can range up to $1 million and 20 years of imprisonment.

Voluntary self-disclosure (VSD) of possible violation can serve as a mitigating factor.

Export Controls Basics: Universities

The **BIS Academic Outreach Initiative** (2022) supports universities in managing export control risks through:

- (1) **Targeted engagement** with academic institutions with sensitive EAR-controlled research, or ties to foreign universities that are on the Entity List;
- (2) **Dedicated outreach agents** assigned to build long-term compliance partnerships with high-risk universities;
- (3) **Background briefings** by outreach agents to educate universities on risks linked to specific foreign collaborators; and
- (4) **Tailored trainings**, including a compendium of resources to help universities build effective export compliance programs.

See BIS's **Export Compliance Resources for Academic Institutions** (2024) for more.

Voluntary Self-Disclosure (VSD) trends in Academia over the last decade (2024):

- Export of **controlled biological materials** without a license;
- Shipping to restricted parties on the **Entity List** due to screening gaps;
- Unauthorized sharing of EAR-controlled technology with foreign students and staff without a license (**deemed exports**);
- **Improper use of License Exception Temporary Imports, Exports, Reexports, and Transfers (TMP)**, including hand-carrying items abroad or missing the one-year return deadline; and
- Failure to file **Electronic Export Information (EEI)** or maintain complete and accurate export records as required under the EAR.

Deemed Export Risk

"Proprietary research is often subject to the EAR . . . a '**deemed export**' license may be required before technology or source code controlled for export can be released to a professor, student, or visitor whose most recent country of citizenship or permanent residency is not the United States."

– BIS Policy Memo, *Addressing the National Security Risk that Foreign Adversaries Pose to Academic Research Institutions*, June 28, 2022.

Export Controls Basics: Financial Institutions

- Post-2022, financial institutions (FIs) face increased EAR exposure, especially linked to **Russia, China, and military end users**.
- **General Prohibition 10**: Financial institutions (FIs) may not finance or otherwise support any transaction involving items subject to the EAR if they have knowledge (actual or inferred) that a violation has occurred, is occurring, or is intended to occur. This includes transactions involving exports, reexports, or in-country transfers, and applies even if no U.S. party is directly involved. No license exception applies.

Bureau of Industry and Security Issues New Guidance to Financial Institutions on Best Practices for Compliance with the Export Administration Regulations

Compliance Best Practices:

- EAR-related due diligence at onboarding and throughout the relationship;
- Restricted party screening using BIS's Consolidated Screening List (CSL);
- Heightened review of parties linked to Common High Priority List (CHPL) shipments to Russia;
- Post-transaction red flag reviews, especially where new risk indicators emerge; and
- When applicable, real-time screening is recommended for cross-border payments and other likely export-related transactions against footnote 3 or footnote 4 Entity List entries, Denied Persons, and military-intelligence end users identified in 15 CFR § 744.22(f)(2).

High-Risk Red Flags:

- Refusal to disclose end use or end users;
- Links to known restricted or diversion-prone entities; and
- Last-minute routing changes through third countries.

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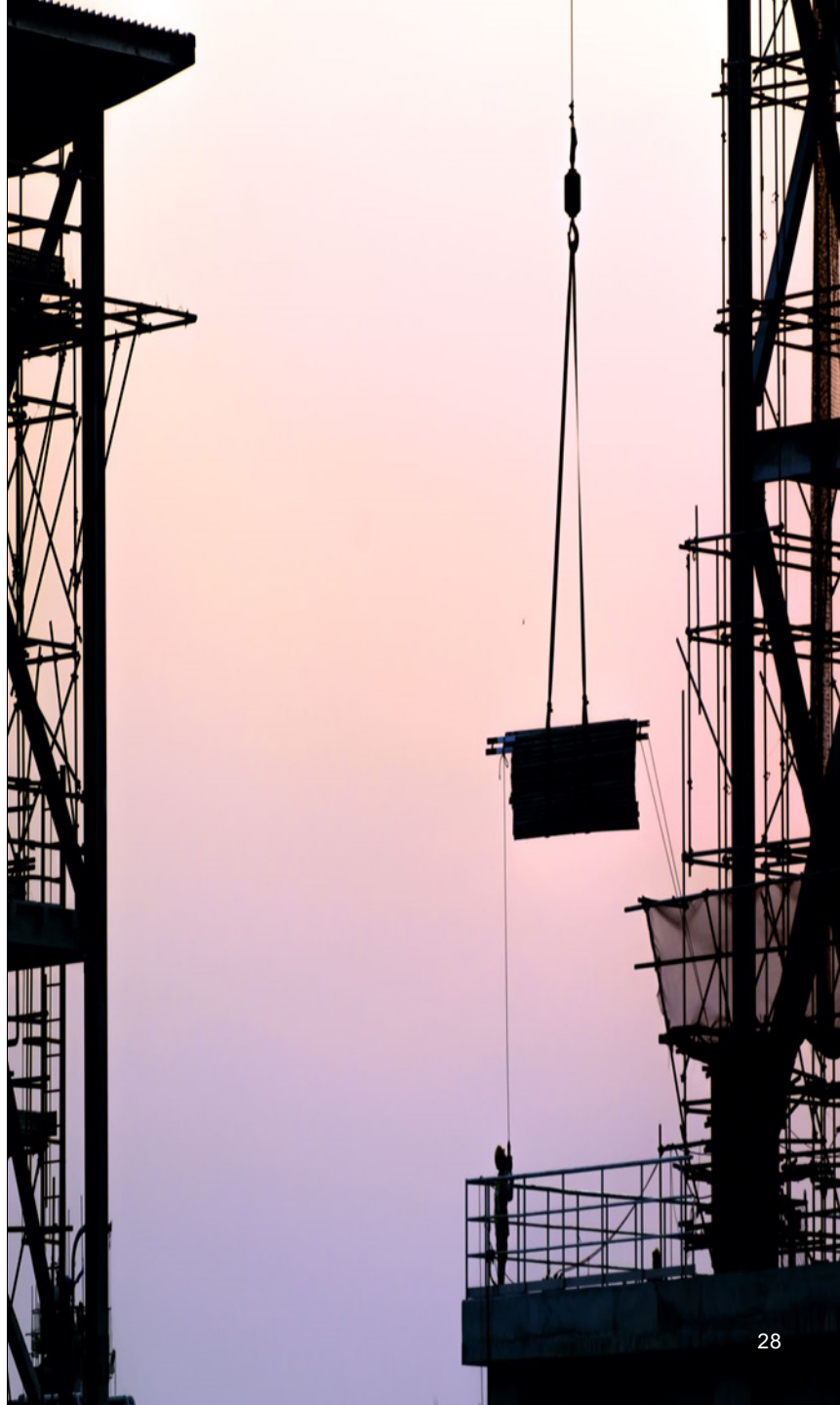
Case Studies

- **Seagate ($300M BIS Penalty):** In Apr. 2023, BIS fined Seagate for **continuing to export hard disk drives to Huawei** after implementation of the Huawei Foreign Direct Product Rule. The penalty also included a 5-year suspended denial order and a multi-year compliance audit.
- **MilliporeSigma (DOJ Declination):** Between 2016–2023, a company employee **exported controlled chemicals to China** through an unwitting university. MilliporeSigma **self-reported** within a week of hiring counsel and received a **declination with no penalties** in May 2024.
- **Indiana University (BIS Admin Penalty):** An IU stock center exported genetically modified fruit flies without the required export licenses. IU voluntarily disclosed the conduct to BIS, cooperated, and took remedial measures – all leading to a non-monetary resolution in June 2024.
- **USRA (DOJ Declination):** In Apr. 2025, DOJ declined prosecution of Universities Space Research Association after a **former employee exported flight control software to China's Beihang University,** a party on the BIS Entity List. USRA **self-reported**, cooperated, and took swift remedial action, leading DOJ to treat the company as a victim of a rogue actor.



Early Indications of Aggressive Enforcement

- DOJ and BIS are already bringing **new enforcement actions.**
  - In February, DOJ charged Ohio-based Flighttime Enterprises and three employees with conspiring to **illegally export aircraft parts and components from the United States to Russia** and Russian airline companies.
  - In February, DOJ obtained a guilty plea in North Carolina from the owner of a Raleigh-based electronics resale business called Components Cooper Inc. for attempting to **illegally export accelerometer technology with military applications to China**.
  - In March, DOJ obtained an indictment in Minnesota charging a dual Pakistani-Canadian national for operating an illicit procurement network through his Canadian company. Alleged aim of the scheme was to **obtain U.S.-origin goods on behalf of prohibited entities in Pakistan** associated with the country's nuclear, missile, and Unmanned Aerial Vehicle (UAV) programs.
  - In March, BIS added 80 new parties to **the Entity List**, including over 50 entities in China for having ties to Chinese military end users and contributing to China's quantum computing capabilities and hypersonic weapons program.

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Where We're Going: Broader Trend

Export Enforcement is a Key Component of the New Administration's "America First" Trade Policy.

- The "America First" Trade Policy Memorandum directed the Secretaries of State and Commerce to review the U.S. export control system, recommend modifications to **maintain and enhance the U.S. technological edge**, and close loopholes enabling the **transfer of strategic goods, software, services, and technology**.
- Commerce Secretary Howard Lutnick, in his keynote address at the BIS Annual Update Conference on Export Control and Policy, indicated:
  - (1) a **ramp-up in BIS enforcement**; and
  - (2) a **heightened focus on China**.
- Under Secretary Kessler has similarly expressed a desire for a **"massive increase"** in enforcement.
- On May 2, 2025, the White House requested a **$134 million budget increase** **to strengthen trade enforcement** signaling that export enforcement will be a top priority. But, for now, a hiring freeze remains at BIS.

Where We're Going: Broader Trend

DOJ corporate enforcement focus will prioritize national security crimes.

- (1) **National Security Division** continues to emphasize export enforcement work. Criminal enforcement in other areas, like FARA, has been scaled back. But not export enforcement.
- (2) **Criminal Division** is focused on national security work as well. Sanctions enforcement, where investigations also can have an export enforcement piece, is explicitly included as a Criminal Division priority.

- While some DOJ national security enforcement initiatives have been eliminated, like Task Force KleptoCapture, **initiatives focused on export enforcement remain**, at least so far.
- Continued criminal enforcement is **consistent with the Administration's expressed policy goals** and consistent with the enforcement posture in the first Trump Administration.
  - (1) First Trump Administration had **aggressive criminal enforcement** for export violations.
  - (2) The recent Executive Order on overcriminalization **excludes national security crimes**. Plus, criminal export enforcement cases already require a mens rea of "willfulness."

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Mitigation Strategies

- The export enforcement landscape is evolving. Make sure your compliance program is evolving with it.
- Important to **match compliance resources** to the Trump Administration's **most pressing enforcement priorities**.
- Also, important not to just "set it and forget it." Compliance policies **need to adjust as BIS policies change**.
  - Will help avoid violations and enforcement actions.
  - If violation does happen, important to be able to show the government what efforts you took to prevent it.
- Voluntary self-disclosures (VSDs) are typically difficult decisions that need to be assessed carefully and strategically.
- But **internal investigation and remediation will position you well**, regardless of whether or not you choose to also disclose.
- BIS has procedures where a company can seek guidance in advance. As with VSDs, the question of whether to use such procedures should be carefully analyzed on a case-by-case basis.

Antiboycott Enforcement

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Antiboycott Enforcement: Agenda

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Antiboycott laws: Prohibitions

In 2018, Congress passed the Antiboycott Act of 2018, 50 U.S.C. 4841-4843, providing renewed statutory authority for the Commerce Department's Antiboycott Regulations, originally added to the Export Administration Act in 1977.

Internal Revenue Code Section 999 was added as part of the Tax Reform Act of 1976.

Purpose:

- The Commerce and Treasury antiboycott regulations discourage, and in some cases prohibit, U.S. companies and their affiliates from participating in a foreign boycott of a country friendly to the United States. In addition to prohibitions, both statutes require reporting of relevant requests.

Activities that may be prohibited include:

- **Refusing** or agreeing to refuse **to do business** with or in a boycotted country, its business concerns or nationals, or with **blacklisted companies**.
- **Furnishing information** or agreements to furnish information about business relationships with or in a boycotted country or with blacklisted companies.
- Furnishing information about the **race, religion, or national origin** of a U.S. person.
- Antiboycott regulations require that the boycott request arise from a **legal requirement** in the boycotting country.
- Legal requirements that are **short of a boycott**—e.g. a limitation on participating in public procurement—may not qualify as a "boycott."

Antiboycott Laws Today

"Boycott request" is defined broadly and includes almost any requirement to participate in or cooperate with a foreign boycott.

- **U.S. Commerce Department** antiboycott regulations apply to activities of "U.S. persons," undertaken with boycott "intent" in the "interstate or foreign commerce of the United States." Activities that **only involve non-U.S. persons**, including foreign affiliates of U.S. companies, and do not have any connection to U.S. commerce **may be excluded**. Penalties consists of **civil or criminal fines**.

- **U.S. Treasury Department** antiboycott regulations apply to U.S. taxpayers, members of their controlled group, and U.S. shareholders of foreign corporations (with 10% or more ownership), ***regardless of a nexus to U.S. commerce.*** Penalties consists of **loss of certain tax benefits.**

U.S. Department of Commerce Boycott Requester List

- In March 2024, the Commerce Department's Office of Antiboycott Compliance (OAC) published the first **Requester List**—a list of companies that have made boycott-related requests in the past and may be more likely to make reportable boycott-related requests in the future. The **Requester List** is periodically updated, either by addition of new entities or removal of the already listed companies.

- A party's inclusion on the Requester List does not mean that U.S. persons are restricted from engaging in transactions involving the named party.

- As a result, contracts, purchase orders, sales orders, shipping documents, and letters of credit involving parties on this list should be carefully reviewed for boycott language, and employees who manage these accounts should be trained to recognize boycott language.

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Antiboycott Laws: Enforcement

- Antiboycott violations are categorized into three tiers: **Category A, B, and C.**
- In October 2022, the Office of Export Enforcement (**OEE**) announced a revised penalty policy further reflecting BIS's intention to impose penalties commensurate with the harms caused.
- In line with this policy, **BIS** updated its **Antiboycott Penalty Guidance** (Supplement No. 2 to 15 CFR Part 766), making certain revisions and clarifications to **Categories A** (to include most serious violations) and **B** (to include most common, but less severe violations).
  - **Category A violations** are the **most serious** and include actions such refusing to do business, providing information about U.S. persons' race, religion, sex, or national origin, and furnishing details about associations with charitable or fraternal organizations that support a boycotted country. **Violations involving these elements are subject to the highest penalties.**
  - **Category B violations** include agreeing to boycott, requiring others to boycott, implementing boycott clauses in letters of credit, disclosing business relationships with boycotted countries or blacklisted persons, and recordkeeping failures.
  - **Category C violations** involve purely procedural violations: failure to timely report receipt of a boycott request.
- In July 2023, OEE announced that it would start collecting the name of **boycott *requesters*** from U.S. firms that submit reports and that **U.S. government contractors** would be reminded on SAM.gov of their obligations to comply with the antiboycott regulations.

Case Studies

- In September 2024, **BIS** imposed a $151,875 civil penalty on **Quantum Corporation**, a data storage company based in California, for failing to report 45 boycott-related requests under EAR from a UAE distributer between 2018 and 2019. **The requests asked the company to avoid importing Israeli-origin goods, in violation of EAR Section 760.5.** The company voluntarily disclosed the violations, took remedial steps and cooperated with the investigation, resulting in a reduced penalty.
- In August 2024, **Streamlight, Inc.**, a Pennsylvania-based manufacturer of portable lighting products, was fined $44,750 for alleged violations of the antiboycott provisions under EAR. The violations stemmed from an incident in 2019 in which the company, while preparing for a trade show in Bahrain, **certified in shipping documents that its goods were not of Israel origin and not manufactured by a company on the Israel Boycott Blacklist**. The company also failed to report such boycott requests. Streamlight voluntarily disclosed the violation to BIS and fully cooperated with subsequent investigation, leading to a reduced penalty.
- In June 2024, **Airbus DS Government Solutions Inc.**, a Texas-based satellite communications and networking systems company, was fined $44,750 for allegedly violating EAR antiboycott regulations. The violation involves a similar fact-pattern as seen in the **Streamlight** case—**the company certified, in shipping documents for a 2019 trade show in Kuwait, that its goods were not of Israeli origin**. The request itself came from a freight forwarder, demonstrating that antiboycott obligations apply regardless of who makes the request. The company made voluntary disclosures to BIS and received a reduced penalty.

Antiboycott Enforcement: Agenda

- The Basics
- Recent Enforcement Actions
- Going Forward
- Mitigation Strategies

Where We're Going: Broader Trends

Washington, D.C. — Today, the Department of Commerce's Bureau of Industry and Security (BIS) is publishing an updated list of foreign companies that have made boycott-related requests, including requests to comply with the Arab League boycott of Israel. BIS is adding 30 parties, in addition to removing 18 entities who certified that they have stopped making boycott-related requests in transactions with U.S. persons. BIS maintains anti-boycott regulations that discourage and, in certain circumstances, prohibit U.S. persons or businesses from participating in unsanctioned foreign boycotts, focusing on the Arab League boycott of Israel.

"We will not tolerate boycotts of Israel in this Administration," said Under Secretary for Industry and Security Jeffrey I. Kessler.

- In April 2025, BIS updated its Boycott Requester List, adding **30 parties** and **removing 18 entities** from the list. BIS currently maintains **186 entities** in the List.
- Under Secretary of Commerce for Industry and Security Jeffrey I. Kessler, in conjunction with the press release of the updated Boycott Requester List, stated: "***We will not tolerate boycotts of Israel in this Administration***". Such statement signals potentially **more proactive enforcement posture** toward antiboycott violations by BIS and suggests that **broader and more aggressive enforcement activity may be forthcoming.**
- **In January 2025, the House of Representative introduced a bill to expand the existing antiboycott law** to include certain boycotts imposed by international governmental organizations (IGOs) against Israel.

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Mitigation Strategies:

Identifying and Responding to a Boycott Request

Boycott language can be found in any type of document or correspondence, and it can even be conveyed in an oral conversation.

- Common examples include **contracts, purchase orders, sales orders, letters of credit, and shipping documents**.
- Such request may have been incorporated into the local language and/or may be on the back side of printed documents or buried in boilerplate.
- Emails and verbal requests may also be reportable.

To mitigate antiboycott enforcement risk, U.S. persons may take the following steps:

- **Conduct training** to familiarize business and legal personnel with identifying boycott-related requests
- **Remove the boycott request** from the document or clarify in correspondence that you do not agree to the term.
- Add a "**savings clause**" if the boycott is not explicitly mentioned, such as "*to the extent not prohibited or penalizable under U.S. law.*"
- Clarify that **ambiguous requests** are not being requested for boycott reasons—*e.g.*, for quality concerns or to ensure access to benefits.

Customs Enforcement

GIBSON DUNN

Customs Enforcement: Agenda

- The Basics

- Recent Enforcement Actions

- Going Forward

- Mitigation Strategies

Customs Basics: Tariffs

- **What is a tariff?**
  - A "tariff" is a duty or tax levied by the government on imported products.
- **Who pays it?**
  - Tariff is paid by importer of record.
- **When is it paid?**
  - The importer of record pays any duties and fees owed at the time of customs clearance ("entry") of the imported goods.

How is the tariff calculated?

- Tariff rates are determined by the **(1)** classification, **(2)** value, and **(3)** country of origin of the goods imported.

What is the country of origin?

- Where an article was harvested, mined, or manufactured; where the article obtains its essential character and use. Not affected by transshipment.

Are there tariffs on services?

- No. Other charges could apply to services, e.g. taxes. But the U.S. only imposes tariffs on tangible goods.

Violations may result when an importer fails to exercise the duty of reasonable care to ensure the accuracy and compliance of information provided to U.S. Customs and Border Protection (CBP) when importing goods.

Current State of U.S. Tariffs

Three kinds of tariffs presently proposed or effective

Emergency (Fentanyl/Illegal Migration) Tariffs

- Tariffs based on International Emergency Economic Powers Act (IEEPA) require a presidential declaration of a "national emergency" implicating the foreign policy or national security of the United States.
- Announced in February and March, these actions impose tariffs of 25% on goods of Canada and Mexico and 20% on goods from China (including Hong Kong).
- The duties on Canada and Mexico were later amended to exempt goods that qualify for the United States-Mexico-Canada Agreement (USMCA).

Emergency ("Reciprocal") Tariffs

- Announced via Executive Order of April 2, impose a 10% universal baseline tariff on goods from all countries, excluding Canada and Mexico. Additional country-specific rates (between 11% and 50%) are subject to 90-day pause until 9 July 2025, *except* for tariffs on China.
- Tariffs on China under the order were increased to 125% (cumulative 145%). In response, China imposed duties of 125% on U.S.-origin goods entering China, among other measures.
- To date, there are at least seven lawsuits in U.S. federal courts challenging the president's authority to use IEEPA to impose tariffs.
- On May 12, U.S. and China announced deal to lower tariffs by 115% while negotiations continue.

Tariffs Imposed Under Traditional Trade Authorities

- The Congress has delegated to the president authority to impose tariffs in response to threats to national security (Section 232), unfair trade practices (Section 301), and in other specified circumstances. These statutes generally require the executive branch to investigate prior to recommending tariffs or other remedial measures (e.g. quotas, fees).
- Trump Administrations has imposed duties on steel and aluminum (including derivative products), automobiles and auto parts, and Chinese shipbuilding industry under these measures to date. Additional investigations are underway with respect to *timber/lumber*, *copper*, *pharmaceuticals*, *semiconductors*, *trucks*, *rare earths & critical minerals, and aircraft & jet engines.*

Primary Enforcement Statutes

US Customs and Border Protection (CBP) is primarily responsible for tariffs enforcement and can refer suspected violations to the Department of Justice for civil and criminal investigation and enforcement.

U.S. Code Title 19 - Customs Duties

- trade and customs laws enforced by CBP.

False Claims Act (FCA) (31 U.S.C. § 3729 & 18 U.S.C. § 287)

- imposes civil and criminal liability on, among other things, the fraudulent retention of monies that a person or company is obligated to pay to the United States.

Wire Fraud (18 U.S.C. §§ 1343 & 1349)

- criminalizes transactions involving fraud, deception or deceit, and utilize U.S. wire communications.

False Statements (18 U.S.C. § 1001)

- criminalizes knowingly making materially false, fictitious, or fraudulent statements or representations to federal authorities.

International Emergency Economic Powers Act (IEEPA) (50 U.S.C. §§ 1701–1705)

- criminalizes the willful evasion of regulations issued under national emergency declarations; has a Whistleblower Program and 10-year statue of limitations.
- many of the new tariffs fall under IEEPA

Smuggling (18 U.S.C. § 545)

- criminalizes knowingly and willfully importing merchandise into the U.S. contrary to U.S. law.

Conspiracy (18 U.S.C. § 371)

- criminalizes an agreement among two or more persons or entities to commit any offense against the United States, to defraud the United States, or to “impair or impede” the lawful functions of the federal government.

Customs Enforcement: Agenda

- The Basics
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Case Studies

- In **April 2025**, DOJ intervened in a *qui tam* case brought by a former employee of an apparel company, alleging **FCA violations** in connection with underpaid duties on imported apparel. DOJ alleged that Barco Uniforms Inc. ("Barco") utilized invoices containing false entry summaries to **undervalue** imported goods to avoid or reduce the duties Barco paid on the products. Barco allegedly continued to underpay customs duties after a third-party auditor advised the company of risks associated with the underpayment of duties and recommended that Barco "double-check" duty calculations.

- In **March 2024**, Akua Mosaics, Inc. and its president, Kenneth Fleming, pleaded guilty to a **conspiracy to smuggle goods into the United States** by **falsely representing** to CBP that certain porcelain mosaic tiles manufactured in China were of Malaysian **origin** to avoid paying anti-dumping duties. Fleming and Akua admitted that they conspired with a Chinese national to place "Made in Malaysia" labels on boxes containing tiles manufactured in China, and then shipped the tiles from Malaysia to Puerto Rico, **misrepresenting the country of origin** as Malaysia. The defendants were ordered to pay restitution of $1,040,000 and were sentenced to two years of probation.

- In **January 2023**, International Vitamins Corporation settled a civil lawsuit with the U.S. government for **defrauding the United States** by **misclassifying** more than 30 of its products under **the Harmonized Tariff Schedule ("HTS")** in order to avoid paying duties and by failing to pay back duties owed after finally correcting the misclassifications. Under the settlement agreement, the defendant owed $22.8 million, of which $10.8 million constituted restitution.

Customs Enforcement: Agenda

- The Basics
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Where We're Going: Broader Trend

CBP and **DOJ** are placing ***increased emphasis and resources*** on ***customs enforcement*** to deter tariffs evasion, penalize violations, and maximize the effect of the current administration's focus on **tariffs as a policy and political priority**.

Where We're Going:

More CBP Enforcement Actions

Customs and Border Protection

- collects all duties assessed on imported merchandise
- implements and administers all duties, including those created under IEEPA
- can bring **civil administrative enforcement actions**, can seize the implicated merchandise, and can issue fines, penalties, forfeitures, and liquidated damages
- can **refer suspected violations to DOJ** for civil and criminal investigation

"CBP remains steadfast in the **enforcement of these measures** designed to return manufacturing to U.S. shores. CBP is uniquely positioned to **implement and enforce the President's tariffs using all our enforcement and revenue collection authorities**. Since the start of the Administration, CBP has successfully implemented **21** related presidential actions, tariff actions."

"CBP's enforcement for trade laws is **a critical component to national security**. …… Securing the America front line, CBP **strictly enforces all laws** in presidential directives to secure our economic sovereignty. …… CBP is **working closely with other government agencies** to implement changes to trade policy. We will continue to provide detailed guidance to promote, compliance, and uniform enforcement across the nation."

– CBP Acting Commissioner Pete Flores

May 6, 2025

Where We're Going:

More DOJ Enforcement Actions

U.S. Department of Justice

- **investigates suspected violations** of customs and trade laws, as well as suspected violations of other related criminal and civil statutes
- can bring **civil and criminal enforcement actions**, issue penalties and forfeitures, and impose compliance monitors in appropriate cases
- can bring **civil litigations** and **criminal prosecutions**

At the **February 2025** *qui tam* conference of the Federal Bar Association, Deputy Assistant Attorney General Michael Granston identified **customs and tariff evasion** as an area of **increased FCA enforcement**. DOJ Commercial Litigation Branch director Jamie Ann Yavelberg also characterized **customs fraud as a "key area" of enforcement**, with **a focus on country of origin and declared value of imported goods.**

In **May 2025**, **DOJ Criminal Division** announced, in its new white-collar enforcement plan, that **trade and customs fraud**, including **tariff evasion**, will be an **enforcement priority.** The Division also revised its Corporate Whistleblower Awards Pilot Program to include **whistleblower tips on trade, tariff, and customs fraud** that lead to **forfeiture**.

Customs Enforcement: Agenda

- The Basics
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Mitigation Strategies

- **Contract Analysis/Renegotiation**

✓ *Ad hoc* contract analysis and renegotiation of key terms – costs, taxes, force majeure, tariff shifting, tariff sharing

✓ M&A due diligence

- **Classification/Country of Origin (COO) Reviews**

✓ Especially with respect to China supply chains but also in light of impending reciprocal tariffs and possible exemptions, misclassifications and COO can have significant impacts

- **USMCA Analysis**

✓ Country of Origin rules can differ in surprising ways

- **IEEPA Analysis**

✓ This is a new authority for tariffs, and the statute contains certain exemptions, which can be used to exempt certain imports from tariffs.

- **Duty Drawback**

✓ Significant duty refunds are available for importers who manufacture goods for export from the United States

- **Foreign Trade Zones**

✓ Companies with existing undercapacity FTZs can increase U.S. production

✓ Consider the value in creating FTZs

- **Valuation/First Sale Rule**

✓ Duties assessed based on value of imports; First Sale Rule is supply chain construct that allows value to be based on first internal sale in non-U.S. country

- **Judicial Challenges**

✓ The legality of certain duties may be challenged on statutory or constitutional grounds

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