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# Webcast: Tariff Evasion

**Presenters:** Matthew Axelrod, Nicola Hanna, and Chris Timura

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# Today's Presenters



**Matthew Axelrod**

Partner; Washington, D.C.

Matthew (Matt) S. Axelrod is a white-collar partner in Gibson Dunn's Washington, D.C. and Co-Chair of the firm's Sanctions & Export Enforcement practice. Matt is the only person to have previously served as both Principal Associate Deputy Attorney General at the U.S. Department of Justice and Assistant Secretary for Export Enforcement at the U.S. Department of Commerce's BIS. His over 25 years of government enforcement, white-collar defense, and crisis management experience are why clients consistently rely on Matt to help them navigate their most sensitive and complex matters.



**Nicola Hanna**

Partner; Los Angeles

Nicola (Nick) T. Hanna is a partner in Gibson Dunn's Los Angeles office and Co-Chair of the firm's White Collar Defense and Investigations Practice Group. He represents Fortune 500 companies and executives in high-stakes civil litigation, white collar crime, and regulatory and securities enforcement – including internal investigations, False Claims Act cases, and compliance counseling. A former United States Attorney for the Central District of California, Nick draws on his extensive government and trial experience to advise boards and senior executives in matters involving the DOJ, SEC, and other enforcement agencies.



**Chris Timura**

Partner, Washington, D.C.

Christopher (Chris) T. Timura is a partner in Gibson Dunn's Washington, D.C. office and a member of the International Trade and White Collar Defense & Investigations Practice Groups. He advises clients on complex matters at the intersection of U.S. national security, foreign policy and international trade regulation — including export controls, economic sanctions, and import-related investigations — and regularly represents companies before agencies such as OFAC, BIS and CBP. Chris currently serves on the Department of Commerce's Regulations and Procedures Technical Advisory Committee.

# AGENDA

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**01** Introduction to Tariffs

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**02** Enforcement Framework

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**03** Practical Considerations

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# Introduction to Tariffs

01

# Tariff Fundamentals

## What is a **tariff**?

- A “tariff” imposes a duty (similar to a tax) levied by the government on imported goods

## Who pays the **duty** and when is it **paid**?

- The importer of record pays estimated duties at the time the imported goods clear Customs (“entry”), with any increases or decreases finalized when the entry is “liquidated”, which occurs no more than 310 days after the date of entry

## How is the tariff **calculated**?

- Applicable tariff is determined by three elements: (i) the product’s tariff classification, (ii) its customs value, and (iii) the product’s country of origin

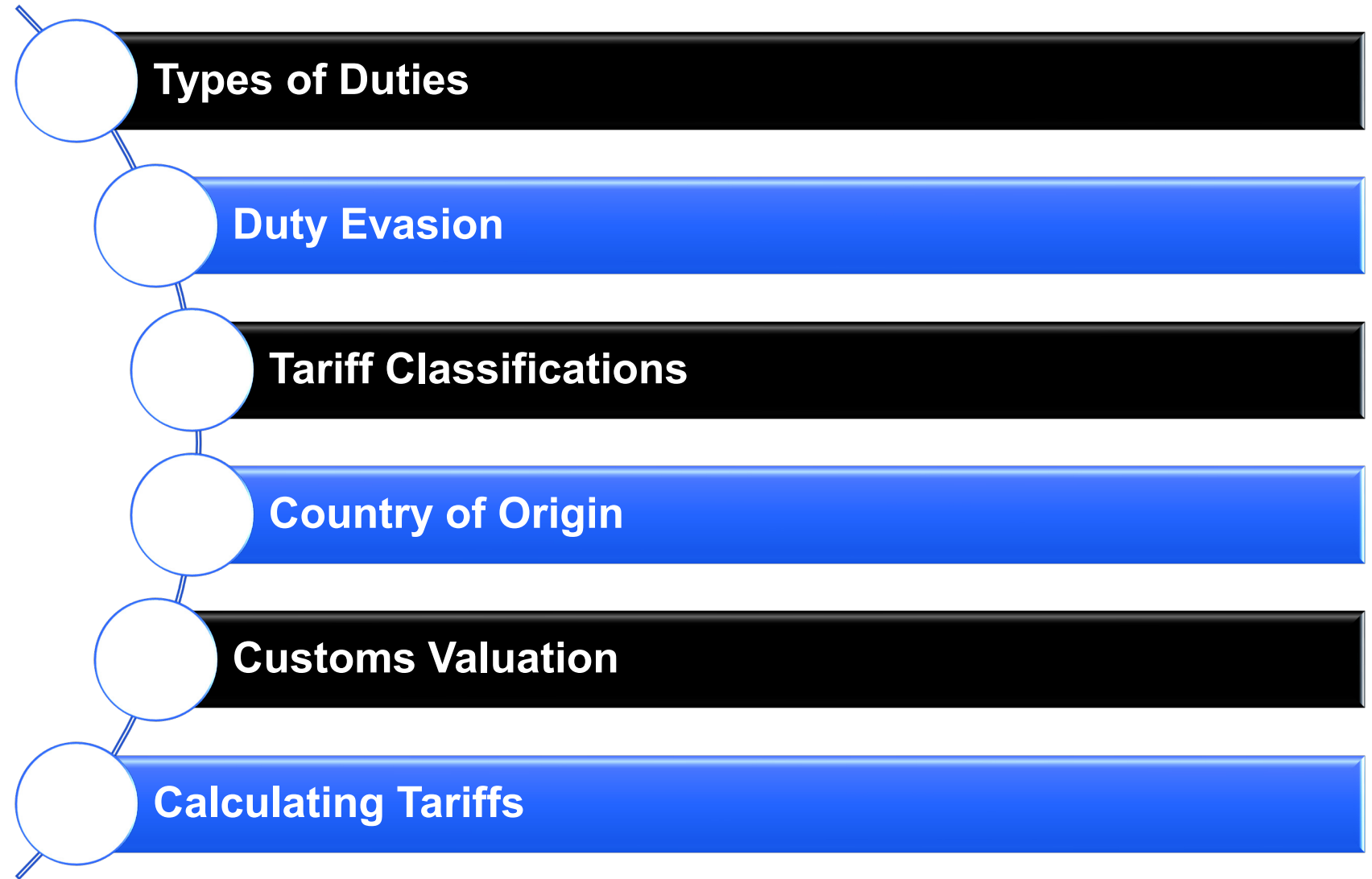
## What is the **country of origin**?

- Where an article was harvested, mined, or manufactured; where it obtained its essential character and use; or was last “substantially transformed” into an item with a new character, name, and use
- The country of origin is not altered by simple transshipment

## Are there tariffs on **services**?

- The U.S. imposes tariffs only on tangible goods, though in some cases the value of a repair performed outside of the United States may be dutiable

# Tariff Fundamentals



# Tariffs at the Supreme Court

- President Trump has declared three national emergencies to impose tariffs on **Canada**, **Mexico**, and **China**, and a fourth national emergency to impose a 10% tariff on **most U.S. trading partners** and up to 50% on **certain trading partners**
- The Administration has argued these tariffs are necessary to **combat threats**, including the flow of drugs into the country and other economic threats
- Several corporations and state Attorneys General have challenged the tariffs in federal court
  - At issue is whether Trump has power under the **International Emergency Economic Powers Act (IEEPA)** to impose these tariffs
  - Supreme Court heard oral argument on November 5<sup>th</sup>
- Even if the Supreme Court rules the challenged tariffs are unlawful, potential civil and criminal liability still exists for evasion of the tariffs **while they were in effect**



# Enforcement Framework

02

# Increased Enforcement Exposure

## Enforcement Exposure

- The second Trump Administration's **reciprocal, country-specific tariffs and sectoral surcharges** create parallel exposure to civil, criminal, and administrative enforcement

## Launch of Cross-Agency Trade Fraud Task Force

- On August 29, 2025, DOJ and DHS launched a cross-agency Trade Fraud Task Force, designed to coordinate **DOJ's Civil and Criminal Divisions with various DHS components**, including U.S. Customs and Border Protection and Homeland Security Investigations, to identify and pursue customs fraud and tariff evasion

## Market, Government, and Consumer Fraud Unit

- DOJ created the **Market, Government, and Consumer Fraud Unit** within the Criminal Division's Fraud Section to prioritize investigations and prosecutions of tariff evasion and trade fraud

## Expansion of Whistleblower Incentives

- DOJ has expanded its **Corporate Whistleblower Awards Pilot Program** to include trade, tariff, and customs fraud

# Enforcement Landscape: Agencies and Coordination

## U.S. Customs and Border Protection (CBP)

- The **U.S. Customs and Border Protection** leads customs enforcement
- CBP can resolve civil violations administratively and refer suspected violations to DOJ for **civil and criminal investigation and enforcement**
- **Title 19 of the U.S. Code**, enforced by CBP, governs trade and customs requirements, such as accurate duty payment and proper country-of-origin marking
- Customs fraud often implicates multiple statutes because it frequently **involves money transfers** and **statements to the U.S. government via customs entries**

## Department of Justice

- DOJ leads tariff-evasion enforcement through the **Criminal Division's Market, Government and Consumer Fraud Unit** and the **Civil Division's Fraud Section**
- DOJ has indicated it will bring both **civil actions** under the False Claims Act and the Tariff Act and **criminal prosecutions** under statutes such 18 U.S.C. §§ 541, 542, 545, 1001, 1343, and 371

## Trade Fraud Task Force

- The Task Force expressly targets misconduct involving **misclassification, undervaluation, improper country-of-origin claims, and misuse of duty-mitigation programs** that result in underpayment of tariffs and duties

# Civil Enforcement

- **Tariff Act of 1930** (19 U.S.C. § 1952): Imposes civil liability on importers for materially false statements or fraudulent omissions, including undervaluation, misclassification under HTSUS, and misrepresenting country of origin
  - **Standard**: Must operate with “reasonable care”
  - CBP can pursue actions under the Tariff Act
  - If gross negligence is found, recovery could be up to **four times** the avoided amount
  - These actions are subject to a **five-year statute of limitations**
- **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.
  - FCA is used to combat customs fraud, typically cases involving false designation of country of origin, tariff classification, or value of imports
  - Can result in treble damages and a civil penalty for each violation
- FCA also allows for private citizens to file “**qui tam**” lawsuits, in which the government can investigate the matter and choose to intervene
  - **Financial incentives exist** for individuals to bring *qui tam* lawsuits because they are entitled to a portion of the government’s recovery if the lawsuit is successful
  - *Qui tam* lawsuits can be brought by former employees, business competitors, or anyone with knowledge of the fraud

# Ford Motor Company Settlement (DOJ Civil Division, March 2024)

- Illustrates **coordination** between CBP and DOJ Civil Division's International Trade Field Office and National Courts Section

## Allegations

- Ford allegedly violated the **Tariff Act** by misclassifying and understating the value of its Transit Connect vehicles to avoid higher duties
- The government alleged that from 2009 to 2013, Ford imported **cargo vans** from Turkey with sham rear seats and other temporary features to make the vans appear to be **passenger vehicles**
- Government alleged that Ford included these seats and other features to avoid the **25% duty rate** applicable to cargo vehicles and instead pay the **2.5% duty rate** applicable to passenger vehicles
- Ford allegedly submitted entry papers to CBP declaring the vehicles were “motor cars and other motor vehicles **principally designed for the transport of persons**”
- The government alleged that after customs, the vehicles were stripped of the rear seats and returned to two-seat cargo vans

## Resolution

- Ford agreed to settle the case for \$365 million



# Criminal Enforcement

- **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 statute of limitations. Many of the new tariffs fall under IEEPA
- **False Statements** (18 U.S.C. § 1001): Criminalizes knowingly making materially false, fictitious, or fraudulent statements or representations to federal authorities
- **Wire Fraud** (18 U.S.C. §§ 1343 & 1349): Criminalizes transactions involving fraud, deception or deceit, that utilize U.S. wire communications
- **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
- **Money Laundering** (18 U.S.C. §§ 1956, 1957): Criminalizes transactions using criminal proceeds to promote or conceal unlawful activity; § 1957 separately bars transactions over \$10,000 involving criminally derived funds, with robust forfeiture remedies and extraterritorial reach

# ***United States v. Zhongtian Liu, et al. (C.D. Cal., May 2019)***

- Enforcement action that is highly relevant to current tariff and trade-fraud priorities

## **Allegations**

- Quintessential AD/CVD-evasion scheme
- Defendants **misdescribed** unfinished Chinese aluminum extrusions as finished “pallets” to evade duties imposed on certain types of extruded aluminum imported from China
- Aluminum extrusions were spot-welded to resemble functional pallets, which would be finished goods **not subject to the duties**
- Zhongtian Liu and his co-defendants orchestrated the “bogus sales” of aluminum to Liu-controlled companies to falsely inflate value of China Zhongwang and engaged in other fraudulent behavior
- Charged with **conspiracy, wire fraud, passing false and fraudulent papers through a customhouse**, and **international promotional money laundering**
- DOJ pursued **civil forfeiture** actions targeting the four warehouses and **criminal forfeiture** of the same assets
  - Demonstrates DOJ’s willingness to pursue parallel civil and criminal forfeiture
- Court ordered six companies associated with the scheme to pay **\$1.83 billion** in restitution for evading aluminum duties

# ***United States v. Endless Sales, Inc., et al. (D. Colo., August 2025)***

- Recent indictment secured against forklift companies and executives that allegedly engaged in multi-year scheme to misrepresent **Chinese-made forklifts** as **American-made** to evade tariffs
- Case shows the relationship between Buy American/Trade Agreements Act certifications and customs valuation/origin issues

## **Allegations**

- DOJ alleges defendants rebranded forklifts made in China as “OCTANE” and falsely certified Buy American Act and Trade Agreements Act compliance
- Indictment also details an **undervaluation scheme**, in which defendants allegedly directed false commercial invoices (~70% of actual cost) to reduce duties, fees, and Section 301 tariffs that applied to certain China-origin goods
- Charged with **conspiracy to commit wire fraud, wire fraud, making materially false statements, conspiracy to enter goods by means of false statements**, and **forfeiture**
- DOJ’s Antitrust Division’s **Procurement Collusion Strike Force** is leading the case, which signals coordinated civil-criminal actions in this space

# *United States v. UBS Gold, et al.* (D.N.J., November 2025)

- Recent case related to **improper origin manipulation** and **transshipment tactics**
- Case also illustrates how rapid policy changes (e.g., new tariffs) creates heightened risk of control failures

## **Allegations**

- Government alleges that an Indonesian jewelry company, UBS Gold, evaded duties imposed on jewelry imported from Indonesia to the U.S. by making the jewelry in Indonesia, shipping it to Jordan (which had a Free Trade Agreement with the United States), and **falsely claiming the jewelry was manufactured in Jordan**.
- Then, in 2025, the U.S. imposed tariffs on Jordan. To avoid these tariffs, government alleges defendants shipped scrap gold from the U.S. to Jordan, which they falsely claimed was gold jewelry that simply was assembled in Jordan. Instead, UBS Gold swapped this scrap gold for jewelry made in Indonesia.
- Charged with **conspiracy to commit wire fraud**
- Illustrates need to conduct **supplier diligence** and ensure documented **origin determinations**

# Practical Considerations

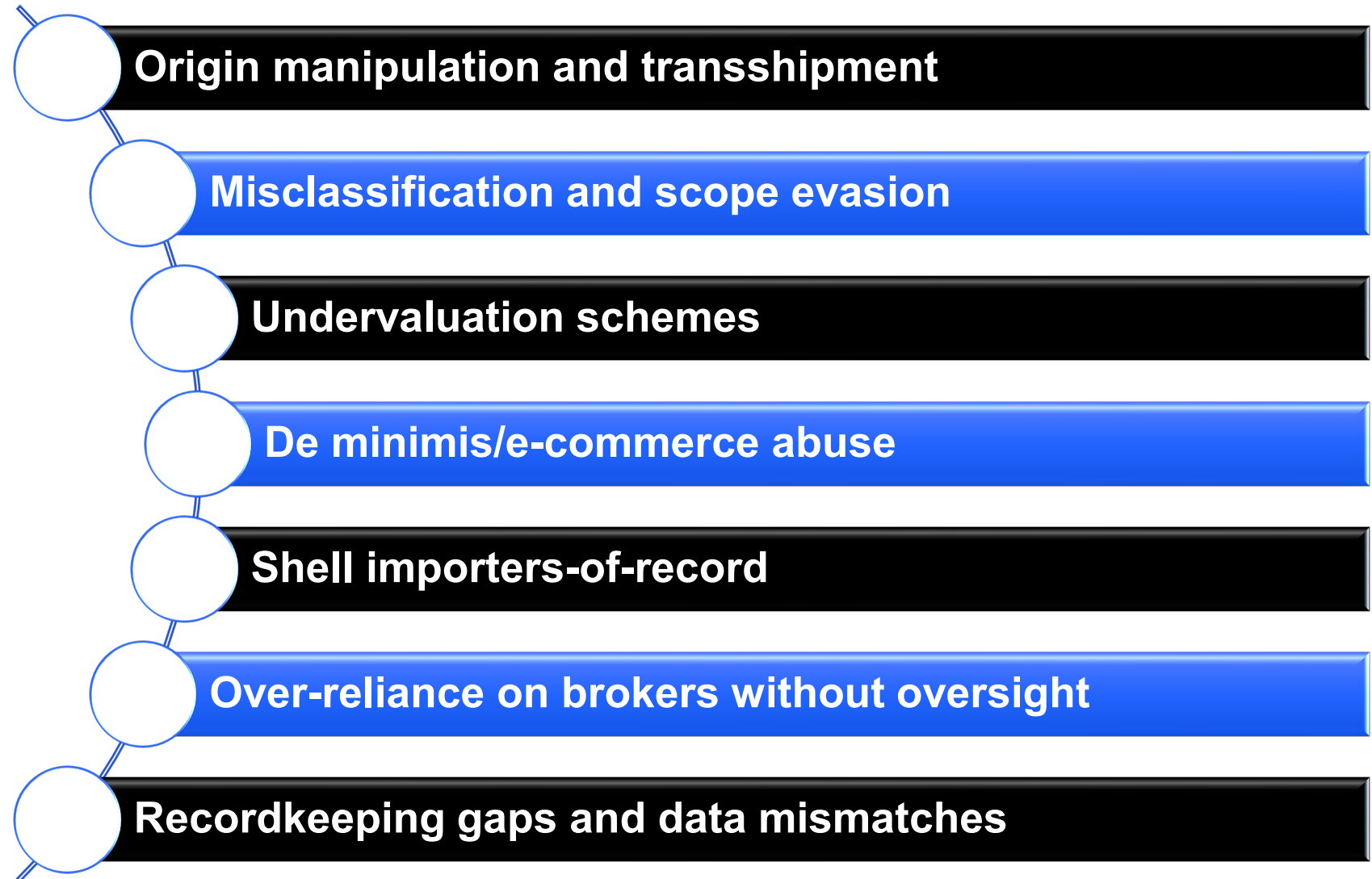
03



# Compliance Considerations for Non-Importers-of-Record

- Liability can extend beyond the importer of record
- Common carriers, freight forwarders, customs brokers, and other similarly situated companies can face liability based on theories of **knowledge**, **willful blindness**, **aiding and abetting**, or **conspiracy**
- Agencies expect **reasonable oversight** and **due diligence** by any company in the chain, not just the importer of record. For example, companies should at minimum:
  - Ensure complete and accurate manifests
  - Independently investigate red flags in shipper-provided data
  - Escalate any anomalies
- Executives, employees, brokers, and third-party logistics providers may also face **individual exposure**, including under willful blindness theories

# High-Risk Scenarios



# Compliance System Design

## Developing an Internal Controls Baseline

- Define governance for customs decisions
- Publish SOPs covering HTSUS classification, origin determinations, and valuation
- Set escalation criteria for ambiguities and high-duty-risk items
- Implement control-testing (*e.g.*, pre-entry checks, post-entry audits)
- Establish KPIs to demonstrate reasonable care

## Country-of-Origin and Classification Validation

- Establish governance with engineering and product teams to capture design or supplier changes
- Sampling and re-validation of HTSUS codes and origin (*e.g.*, AD/CVD scope checks)
- Direct/supervise brokers with written instructions and periodic audits of entries
- Obtain supplier origin attestations

## Data Integrity and Documentation

- Assess record keeping for classification, origin and valuation
- Implement retention policies consistent with CBP requirements

# Mitigation Strategies: What You Can Do to Reduce Risk

- **Review compensation practices**
  - Ensure practices do not incentivize inappropriate attempts to reduce customs duty obligations
- **Remediation and enhancements to controls**
  - Implement robust mechanisms to detect, report, and remedy instances of noncompliance
- **Development of broker and supply-chain oversight**
  - Review terms of contractual relationships with business partners to ensure risks of government scrutiny are appropriately allocated
  - Where appropriate, require counterparties to comply with company policies and procedures
- **Whistleblower risk management**
- **Agency engagement**
- **Voluntary disclosure strategy**
- **Parallel exposure assessment**

Upcoming  
December  
Programs

2025/2026  
White Collar  
Webcast  
Series

Date and Time	Program	Registration Link
Wednesday, December 3, 2025 9:00 AM – 10:00 AM PT 12:00 PM – 1:00 PM ET	<b>Between DC and the Districts: Charting the US Attorney Landscape</b>  Presenters: Matthew Axelrod, Doug Fuchs, Nicola Hanna, Debra Wong Yang	<a href="#">Event Details</a>
Thursday, December 4, 2025 9:00 AM – 10:30 AM PT 12:00 PM – 1:30 PM ET	<b>Understanding the Trump Administration’s Impact on Government Contractors and Grant Recipients</b>  Presenters: Stuart Delery, Lindsay Paulin, Jake Shields	<a href="#">Event Details</a>
Tuesday, December 9, 2025 9:00 AM – 10:30 AM PT 12:00 PM – 1:30 PM ET	<b>Protecting Your Executives – Enforcement Against Individuals in the Trump Administration</b>  Presenters: Jordan Estes, Doug Fuchs, Nicola Hanna, Dani James, Mike Martinez	<a href="#">Event Details</a>
Thursday, December 11, 2025 9:00 AM – 10:00 AM PT 12:00 PM – 1:00 PM ET	<b>Navigating DOJ’s M&amp;A Safe Harbor: Policy, Practice, and Strategic Implications</b>  Presenters: Matthew Axelrod, Michael Farhang, Alex Fine, Patrick Stokes	<a href="#">Event Details</a>





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