TRUMP DOJ ELEVATING CRIMINAL PROSECUTION OF TARIFF EVASION

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As part of the Trump administration's broad repositioning of US international trade policy toward higher tariffs and enhanced customs enforcement, on 12 May 2025, the head of the Criminal Division of the Department of Justice (DOJ) instructed all federal prosecutors to "focus resources on threats to the US economy, American competitiveness, and our national security" and pursue "trade and customs fraudsters, including those who commit tariff evasion[.]"[1] To carry out this priority, the DOJ appears to be turning to the Fraud Section, which takes the lead on investigating and prosecuting complex economic and white-collar crimes for the United States.[2] To bolster the Fraud Section's ranks, the DOJ has added personnel from DOJ's Consumer Protection Branch to the Fraud Section's Market Integrity and Major Frauds Unit to increase total personnel focused on tariff evasion. The DOJ had already elevated tariff evasion as a priority "subject area" within the Criminal Division's Corporate Whistleblower Awards Pilot Program. This effort goes alongside similar priorities on enforcing export controls, which involves close interagency cooperation with the Department of Commerce and Homeland Security.

The shepherding of resources to criminally prosecute tariff evasion and the elevation of the same into the DOJ's much-publicized whistleblower program should put companies and senior leaders on notice. Whereas previous tariff violations may have been addressed through civil administrative penalties assessed by US Customs and Border Protection (CBP), the Trump administration is now signaling that such conduct could lead to the heavy hammer of a DOJ investigation, massive criminal penalties, and imprisonment for individuals involved. Companies and their officials should proactively assess their customs compliance programs, including ongoing monitoring, internal reporting structures and self-reporting procedures, and establish sufficient remediation measures if and when noncompliance occurs.

TRUMP ADMINISTRATION'S EVOLVING DOJ DIVISION PRIORITIES

Prioritization of tariffs continues DOJ's internal reassessment of its prior investigation and enforcement priorities and aligns the DOJ with the president's focus on serious criminal conduct and key national and economic security interests.

For example, in February 2025, President Donald Trump ordered the freeze of Foreign Corrupt Practice Act (FCPA) investigations and prosecutions, directed Attorney General Pam Bondi to assess each existing case and within 180 days issue new enforcement guidance, and narrowed FCPA enforcement focus to cartels.[3] On 12 May 2025, Acting Assistant Attorney General Matthew Galeotti issued a memorandum outlining the Criminal Division's new white-collar enforcement priorities that specifically focused on complex white-collar fraud, foreign advisory company fraud, and companies involved with foreign terrorist organizations.[4] On 9 June 2025, Deputy Attorney

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General Todd Blanche issued a memorandum outlining the new FCPA focus on cartels and transnational criminal organizations, safeguarding fair competition for US companies, advancing US national security, and prioritizing serious misconduct.[5]

TRUMP ADMINISTRATION'S TARIFFS AND TARIFF EVASION CRIMINAL AND CIVIL LIABILITY

The Trump administration has taken numerous actions to enhance tariff policies, including imposition of "reciprocal" tariffs covering substantially all goods imported into the United States, and even higher tariffs on specific product classes such as steel, aluminum, and autos. These higher rates are putting pressure on importers to minimize tariff exposure by reconfirming product classification, valuation, and countries of origin, including redirecting supply chain sourcing to take advantage of export countries with lower dutiable rates. Unfortunately, the higher tariffs increase opportunities for errors and enhance the impact of violations.

Import compliance errors can already result in serious civil penalties that can be multiples of unpaid tariff amounts. With repositioning of DOJ assets, such violations will now incur the increased risk of criminal enforcement as well. This could impact not only importers of record, who bear responsibility for correct duty payments, but also parties that facilitate erroneous entries such as brokers and freight forwarders as well as foreign suppliers and downstream US buyers.

DOJ prosecutors have been instructed to work closely with interagency partners like CBP to investigate and prosecute corporations and individuals involved in tariff evasion and look for conduct like misclassifying and undervaluing imported goods, intentionally or inadvertently misrepresenting the country of origin, rerouting the import path of goods to conceal the true country of origin, or manipulating import and export or ship tracking data. In response, DOJ prosecutors will pursue criminal, civil, and administrative remedies. Criminal charges could involve conspiracy, smuggling, and trade fraud, with the potential for prison sentences if found guilty.[6] Civil charges could also involve violations of the False Claims Act, with the potential for significant monetary restitution—up to three times the amount of unpaid tariffs—and penalties—a minimum of US$14,308 and maximum of US$28,619 per false claim.[7]

RECENT ENFORCEMENT ACTIONS ALIGN WITH DOJ'S STATED TARIFF EVASION PRIORITY

DOJ prosecutors are moving quickly to execute the new tariff evasion priority through investigations, enforcement actions, settlement agreements, and litigation. For example, on 23 July 2025, DOJ announced a US$6.8 million settlement agreement with a US-based global plastic distributer to resolve False Claims Act liability for allegedly "failing to pay customs duties on certain plastic resin imported from the People's Republic of China (PRC)."[8] This settlement agreement not only demonstrates the stark False Claims Act liability for tariff evasion, but also highlights the benefits in the form of penalty reductions that can be gained from significant cooperation with the DOJ. Notably, DOJ described what conduct is viewed as "significant" cooperation that entitles a company to cooperation credit—timely voluntary self-disclosures of the alleged violations; thorough and independent internal

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investigations; preservation, collection, and disclosure of relevant facts not known to the DOJ; and implementing appropriate remedial actions like disciplining personnel and improving compliance procedures.[9]

With the criminal prosecutors now engaged, stay tuned for similar press releases brought by the DOJ's Fraud Section.

PROACTIVE STEPS TO AVOID CRIMINAL AND CIVIL LIABILITY

Recognizing the significant potential criminal and civil penalties associated with tariff evasion, importing companies and their senior leadership should prioritize assessing and proactively updating existing compliance programs and procedures. At minimum, these compliance programs should include:

Counsel

Engagement with industry experts and legal counsel regarding the scope and application of frequently changing tariff schemes.

Policies

Develop, update, and implement policies and procedures to ensure accurate declaration of imported goods, including proper classification, country of origin, and valuation.

Exercise Reasonable Care

When acting as the US importer of record or otherwise directing or arranging for the import of merchandise into the United States, exercise “reasonable care” in accordance with guidance of CBP and the Department of Commerce. Ensure that transactions do not involve attempts to evade or otherwise avoid payment of duties and tariffs, such as by misreporting the country of origin or underreporting of the value of the merchandise. Make sure that filings with US regulators are complete and accurate and obtain licenses and other approvals as required by US import and trade laws and regulations.

Diligence

Conduct due diligence for upstream suppliers and other third parties relied upon for information necessary for making accurate customs declarations and duty calculations.

Training

Provide relevant personnel with adequate training on import compliance, including the proper methods for determining and declaring the origin, classification, and value of imported goods.

Contract Review

Assess and assign risks and responsibility for customs compliance and payment of tariff duties within supply contracts and purchase order terms to reduce tariff costs and exposure to civil and criminal enforcement.

Auditing

Implement internal auditing and reporting procedures and incentive structures to identify noncompliance and any potential tariff evasion by employees or third parties.

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Recordkeeping

Ensure internal records are complete and readily available in the event of a US government inquiry. Any procedures to maintain such records should be actionable, repeatable, and tailored to the company's global transactional footprint.

Disclosures

Consider voluntary self-disclosures and effective remedial measures and corrective actions when potential violations are identified.

Taking these proactive steps will (1) allow your company to avoid potential misconduct related to tariff evasion and (2) position your company to effectively self-report and show adequate remediation in the event that misconduct does occur, which the recent DOJ guidance and settlement agreements indicate may limit or reduce the negative consequences of tariff evasion.

Finally, while the increased tariffs and effective compliance with these tariffs may result in increased costs in the short term, negligent or intentional evasion of these tariffs could result in long-term criminal and civil consequences. The firm has industry leaders in white-collar enforcement and international trade regulation and policy that can effectively help your company navigate the existing tariff scheme and develop a robust compliance program.

FOOTNOTES

[1] Memorandum from Matthew R. Galeotti, DOJ Head of Crim. Div., on Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime to All Crim. Div. Pers. (May 12, 2025), https://www.justice.gov/criminal/media/1400046/dl?inline.

[2] Justin Wise, DOJ Frauds Unit Tasked with Pursuing Evasion of Trump Tariffs, BLOOMBERG LAW (July 10, 2025), https://news.bloomberglaw.com/business-and-practice/doj-frauds-unit-tasked-with-pursuing-evasion-of-trump-tariffs.

[3] For a comprehensive overview of the FCPA freeze and Attorney General Bondi's assessment of existing FCPA cases, see our prior alert: President Trump Orders FCPA Freeze; DOJ Announces Major Policy Realignment De-emphasizing Corporate Investigation and Enforcement.

[4] For a thorough analysis of the memorandum's directives, see our prior alert: Clearer Carrots and More Restrained Sticks: Key Updates to DOJ Corporate Enforcement Policies.

[5] For a detailed overview of the FCPA's priorities, see our prior alert:The FCPA is Back–What Companies Need to Know About DOJ's New America-First Enforcement Priorities.

[6] For example, DOJ recently charged a US importer with conspiracy to smuggle merchandise into the United States after the importer created false and fraudulent invoices to conceal the true country of origin that his imported tires were coming from. The importer pled guilty and faces up to a maximum penalty of five years under the US Sentencing Guidelines. https://www.justice.gov/usao-sdfl/pr/miami-importer-pleads-guilty-scheme-evade-us-tariffs-chinese-made-truck-tires.

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[7] 31 U.S.C. § 3729.

[8] DOJ Press Release No. 25-739, Importers Agree to Pay $6.8M to Resolve False Claims Act Liability Relating to Voluntary Self-Disclosure of Unpaid Customs Duties (July 23, 2025), https://www.justice.gov/opa/pr/importers-agree-pay-68m-resolve-false-claims-act-liability-relating-voluntary-self

[9] *Id*.

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