



K&L GATES

Trade & Customs Enforcement and Investigations: Understanding and Preparing for Government Activity

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Agenda

- Tariff Authority Overview
 - U.S. Tariff Overview
 - IEEPA and Supreme Court
- Trade Fraud Enforcement
 - DOJ Prioritization and New Initiatives
 - False Claims Act (FCA)
 - U.S. Customs and Border Protection Enforcement
- Practice Tips
 - Government Inquiries and Enforcement
 - Internal Investigations

Tariff Authority Overview

U.S. Tariff Overview

Autos, Auto Parts
As of May 3: 25%
25% on passenger vehicles and light trucks and auto parts of all countries (except USMCA for parts). Section 232

MHDVs
As of November 1: 10–25%
25% medium- and heavy-duty vehicles and parts (except USMCA for parts), 10% buses of all countries. Section 232

Copper
As of August 1: 50%
50% on semi-finished copper products and intensive copper derivative products of all countries. Section 232

Steel
As of June 4: 50% 50% on steel (including derivatives) of all countries. Section 232

Aluminum
As of June 4: 50%
50% on aluminum (including derivatives) of all countries, except Russia (200%). Section 232

Timber, Lumber
As of October 14: 10–25%
10% softwood timber and lumber, 25% upholstered wooden products, 25% cabinets/vanities and their parts of all countries. Section 232

China/Hong Kong
As of November 10: 10%
10% on all goods. Additional IEEPA reciprocal rate of 10%. IEEPA

Canada
As of August 1: 35%, 10% Energy & Potash
35% on all goods except 10% on energy and potash; exemptions for USMCA-originating goods. IEEPA

Mexico
As of March 7: 25%, 10% Potash
25% on all goods except 10% on potash and exemptions for USMCA-originating goods. IEEPA

Brazil
As of November 13: 40%
40% on all nonexempted goods, in addition to reciprocal rate of 10%. Exemptions for some agricultural products. IEEPA

Reciprocal
As of November 13: 10–41%
10% to 41% for 95 countries; 10% for rest of countries. Exemptions for certain products, including agricultural products. IEEPA

Russian Oil (India)
As of August 27: 25%
25% on all nonexempted goods of India, in addition to reciprocal rate of 25%. Exemptions for certain products, including agricultural products. IEEPA

See U.S. Customs and Border Protection (www.cbp.gov) (Last Modified: Jan 23, 2026).

IEEPA and Supreme Court

- Only IEEPA-based tariffs are under challenge
 - Reciprocal tariffs, Fentanyl, Border, secondary tariffs, etc.
 - Not Sec. 232 or Sec. 301 tariffs
- Issue: Does IEEPA authorize President to impose tariffs?
 - Statute mentions regulating trade but only used for sanctions and export controls in the past
- Lower courts found IEEPA did not authorize tariffs
- Supreme Court could:
 - Rule that the IEEPA tariffs are lawful
 - Rule that only certain IEEPA tariffs are unlawful
 - Rule that IEEPA does not allow for any tariffs
- Supreme Court probably will not rule on refunds

IEEPA Refunds – Key Considerations

- The refund process remains uncertain
- Refunds will not be automatic—U.S. importers will need to take affirmative steps to preserve rights and pursue available remedies
- Recommended actions:
 - Obtain the full and complete records for all entries on which you have paid IEEPA tariffs
 - Monitor liquidation status and likely liquidation dates for those entries
 - Request extensions of liquidation where appropriate, understanding that CBP has been routinely denying such requests
 - Consider filing a complaint at the Court of International Trade (CIT)
- Potential pathway for refunds after the Supreme Court's decision:
 - Post Summary Corrections (for non-liquidated entries)
 - Protests (for liquidated entries)
 - Complaints at the CIT (for finally liquidated entries)

Trade Fraud Enforcement: *DOJ Prioritization and Initiatives*



DOJ Criminal Division Enforcement Plan (12 May 2025)

- Identifies “trade and customs fraud, including tariff evasion” as a key, high-impact priority area for criminal enforcement
 - Charges could include conspiracy, smuggling, trade fraud
- Whistleblower Awards Pilot Program revised to add “trade, tariff, and customs fraud by corporations” as a priority area
 - Provides financial incentives to corporate whistleblowers to report information about alleged criminal misconduct
- Realignment within Criminal Fraud section
 - Combining resources across units to focus on major frauds, market integrity, tariff evasion, and consumer protection
 - Recently renamed Market, Government, & Consumer Fraud (MGC) Unit
 - Prioritizing cases involving long-running frauds, senior executives, and large alleged losses from unlawful tariff evasion schemes

DOJ / DHS Trade Fraud Task Force (29 Aug. 2025)

- Cross-agency:
 - DOJ Criminal Fraud Section
 - DOJ Civil – Commercial Litigation Branch
 - DHS: Customs and Border Protection, Homeland Security Investigations
- Aim is to “advance the America First Trade Policy” through:
 - Duty and penalty collection actions (Tariff Act of 1930)
 - False Claims Act (FCA)
 - Parallel criminal prosecutions, penalties, and seizures
- Encourages private enforcement (including through use of the *qui tam* provisions of the FCA) and self-reporting

DOJ Criminal Enforcement in 2025

- *Able Groupe Inc. (Nov. 2025)* – European infant formula maker charged with passing false documents through customs and smuggling goods
- *UBS Gold (Nov. 2025)* – Indonesian jewelry company, co-owner, employees charged with conspiracy to commit wire fraud in scheme to evade \$86m in customs duties and tariffs by misclassifying country of origin and transshipping
- *Endless Sales & Octane Forklifts (Aug. 2025)* – charged for importing Chinese-manufactured goods while falsely claiming them to be “Made in America”
- *Sport LA (May 2025)* – CEO and CFO charged with smuggling and fraud scheme involving bribes and kickbacks to Mexican drug cartels, submission of false export data

Trade Fraud Enforcement: *False Claims Act (FCA) Overview*

FCA: Overview

Prohibits any person from *knowingly*:

- Submitting or causing to be submitted a **false or fraudulent claim** for payment to the government.
- Using a **material false statement** in connection with a false or fraudulent claim for payment to the government.
- **Retaining monies or reducing obligations owed** to the government.
- **Conspiring** to commit a violation of the FCA.

False Claim

- Factual falsity
- Express certification
- Implied certification
- Fraud in inducement

Knowledge

- Actual knowledge;
- Deliberate ignorance; or
- Reckless disregard

Materiality

FCA: Consequences

Civil

Up to \$28,619 *per claim*.

Potential for *treble* damages.

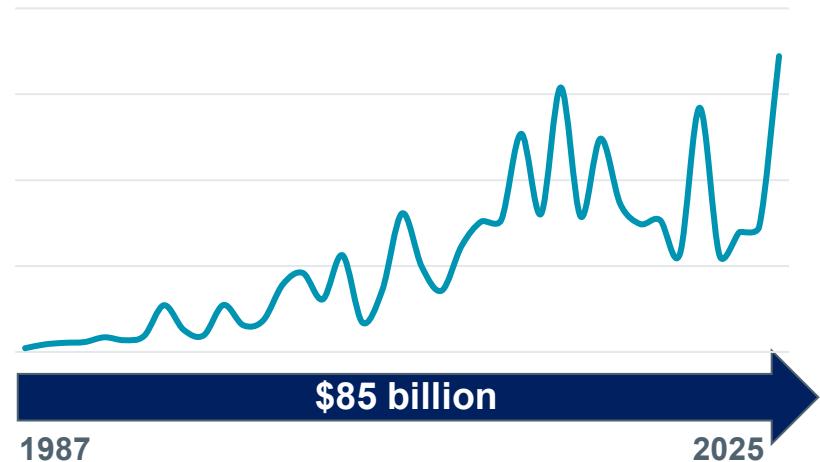
Reputational and customer issues.

Criminal

Up to five years imprisonment

Criminal fines.

Requires knowledge that the claim was false, fictitious, or fraudulent.



2025: \$6.9B recovered, 400 new cases, 1,297 qui tam actions

2024: \$2.9B recovered, 425 new cases, 979 qui tam actions

2023: \$2.8B recovered, 505 new cases, 713 qui tam actions

FCA: *Qui Tam* Provision

- Allows a private citizen (i.e., “relator”) to bring an FCA suit.
 - Must be “original source” / public disclosure bar.
- Cases are under seal while DOJ decides whether to “intervene.”
- Relators can otherwise proceed with lawsuit at its own expense.
- Protections from retaliation.
- Meaningful financial incentives: 15% to 30% of the ultimate proceeds recovered.

The DOJ Trade Fraud Task Force “encourages whistleblowers to utilize the *qui tam* provisions of the FCA to alert the government to credible allegations of fraud.”

FCA: Application to Trade and Customs

- Country of origin misclassifications and transshipping
 - Tungsten carbide distributor - \$54.4 million settlement (Dec. 2025)
 - Also allegations of misclassifying goods, transshipping
 - Wood floor company - \$8.1 million settlement (Mar. 2025)
 - Plastic resin importers - \$6.8 million settlement (July 2025)
 - Voluntary self-disclosure, remediation, and cooperation credit
- Avoiding anti-dumping duties
 - Patio furniture company - \$4.9 million settlement (July 2025)
 - Quartz countertop supplier - \$12.4 million settlement (Aug. 2025)
 - Audio electrics company - \$11.8 million settlement (Nov. 2025)
- Undervaluing or misclassifying goods
 - Uniform manufacturer – multi-million fraud alleged (Apr. 2025)
 - Industrial engineering co. - \$22.2 million settlement (Sept. 2020)

FCA: Application to Trade and Customs

- *Island Industries, Inc. v. Sigma Corp.* (9th Cir. 2025)
 - Held that the False Claims Act is a proper remedy for customs duty evasion.
 - Rejected arguments by defendants that Section 1592 of the Tariff Act prevents use of the FCA to police customs fraud.
 - Confirmed that an importer has an “obligation to pay” a duty to the United States upon the goods entering the country, even if the government does not plan to collect the duties allegedly owed.
 - Found that the Court of International Trade does not have exclusive jurisdiction to hear a *qui tam* FCA case involving customs duties.
 - Defendant communicated plans to file a petition for writ of certiorari to the Supreme Court, but none was filed.

CBP Enforcement

Consequences of Non-Compliance



Civil monetary penalties for revenue and non-revenue loss violations of laws enforced by CBP (statute of limitations up to five years as from the date of entry or from the date of discovery in case of fraud). 19 U.S.C. § 1592



Liquidated damages, i.e., specific sum of money ("damages") that a party pays to CBP when the party breaches a bond agreement (statute of limitations up to six years after the right of action accrues).



Seizures and forfeiture by CBP of merchandise that is introduced or attempted to be introduced into the United States contrary to law.



Referral by CBP to DOJ for criminal prosecution.

Civil Penalties (19 U.S.C. § 1592)

- Principal enforcement mechanism for tariff evasion, historically
- Prohibits importation of merchandise by means of a material false statement or omission
- States of mind include fraud, gross negligence, or negligence
- Only government can bring an enforcement action
- Penalties vary according to the degree of culpability

Degree of Culpability	Penalty Amounts
Fraud	Up to 100% of the domestic value of the merchandise involved
Gross negligence	<ul style="list-style-type: none"> • The lesser of 100% of the domestic value or 4 times the loss of revenue (if revenue loss to Customs) • 40% of the dutiable value (if no revenue loss to Customs)
Negligence	<ul style="list-style-type: none"> • The lesser of 100% of the domestic value or 2 times the loss of revenue (if revenue loss to Customs) • 20% of the dutiable value (if no revenue loss to Customs)

Liquidated Damages

- CBP may assess liquidated damages against importers and their customs brokers.
- Liquidated damages are a contractual matter that arises from breaches of the terms of the customs bond.
 - The breaches of the customs bond include failing to redeliver merchandise to CBP, failure to comply with the Importer Security Filing requirements, among other customs bond conditions.
- To assess liquidated damages, CBP will issue a “Notice of Penalty or Liquidated Damages Incurred and Demand for Payment” (CBP Form 5955A).
- Like penalties, liquidated damages may be mitigated with evidence of mitigating factors.
- To mitigate liquidated damages, importers may submit a petition for relief within 60 calendar days of the date of issuance of the CBP Form 5955A.

2026: Enforcement on All Fronts

Antidumping
and
countervailing
duties

Tariff
classification

Country of
Origin

Customs
Valuation

Preferential
Treatment
Claims

Enforcement Challenges (Section 232 Tariffs)

Proclamations 10895 and 10896 (Section 232 tariffs on Aluminum and Steel)

- “In the event that CBP discovers misclassification resulting in non-payment of the ad valorem duties, it shall assess monetary penalties in the maximum amount permitted by law and shall not consider any evidence of mitigating factors in its determination.”

Proclamation 10962 (Section 232 on Copper)

- “Importers who submit underreported declarations may be subject to severe consequences, such as significant monetary penalties, loss of import privileges, and criminal liability.”

Enforcement Challenges: Illegal Transshipment

“Transshipping is the process of transferring goods from one mode of transportation to another (often from one vessel or port to another) during their journey from origin to destination. *While transshipping itself is legal and common in global trade logistics, it becomes illegal when used deceptively to avoid duties, sanctions, or trade restrictions.*” CTPAT Alert – Illegal Transshipping

EO 14326 (July 31, 2025) – Reciprocal Tariffs

An article determined by CBP to have been transshipped to evade applicable duties shall be subject to:

- An additional 40% ad valorem rate of duty.
- Any other applicable or appropriate fine or penalty, including 19 U.S.C. §1592.
- Any other U.S. duties, fees, taxes, exactions or charges applicable to goods of country of origin.
- CBP shall not allow, consistent with applicable law, mitigation or remission of the penalties assessed on imports found to be transshipped to evade applicable duties.

Trade Enforcement (On the Rise)

Trade Enforcement Activities	2025	2024	2023	2022	2021
Number of audits	465	417	435	430	442
Total collected from audits	\$235.46 million	\$117.67 million	\$114.5 million	\$77.7 million	\$132.2 million
Total collected from penalties and liquidated damages	\$46 million	\$26.2 million	\$33.3 million	\$19.3 million	\$21.7 million

See CBP, Trade Statistics

Prior Disclosure (19 U.S.C. § 1592 Violations)

What Every Member of the Trade Community Should Know:

Prior Disclosure

An Informed Compliance Publication

August 2017



U.S. Customs and
Border Protection

- In cases where an importer concludes that it has made errors in the customs value, classification, among other errors at the time of entry, the importer has the option to submit a voluntary disclosure. This is known as a “prior disclosure” under Customs regulations.
- A valid prior disclosure can significantly reduce potential penalties for violations.
- To obtain maximum mitigation credit, the importer must have no knowledge of the commencement of a formal investigation of the issue by CBP.
- The prior disclosure usually takes the form of a detailed letter describing the circumstances of violations, any mitigating circumstances, and containing a detailed set of calculations quantifying the resulting revenue loss to CBP.

Practice Tips

How These Issues May Arise



Best Practices - Set Up Internal Processes

Review practices

Document any conclusions that actions comply with laws and regulations

Institute an employee hotline for reporting of concerns

Efficiently and effectively review issues that may arise

Establish a policy to handle government / other inquiries

Hold periodic employee trainings
Appoint a designated person to address these issues

Best Practices - Investigate When Issues Arise

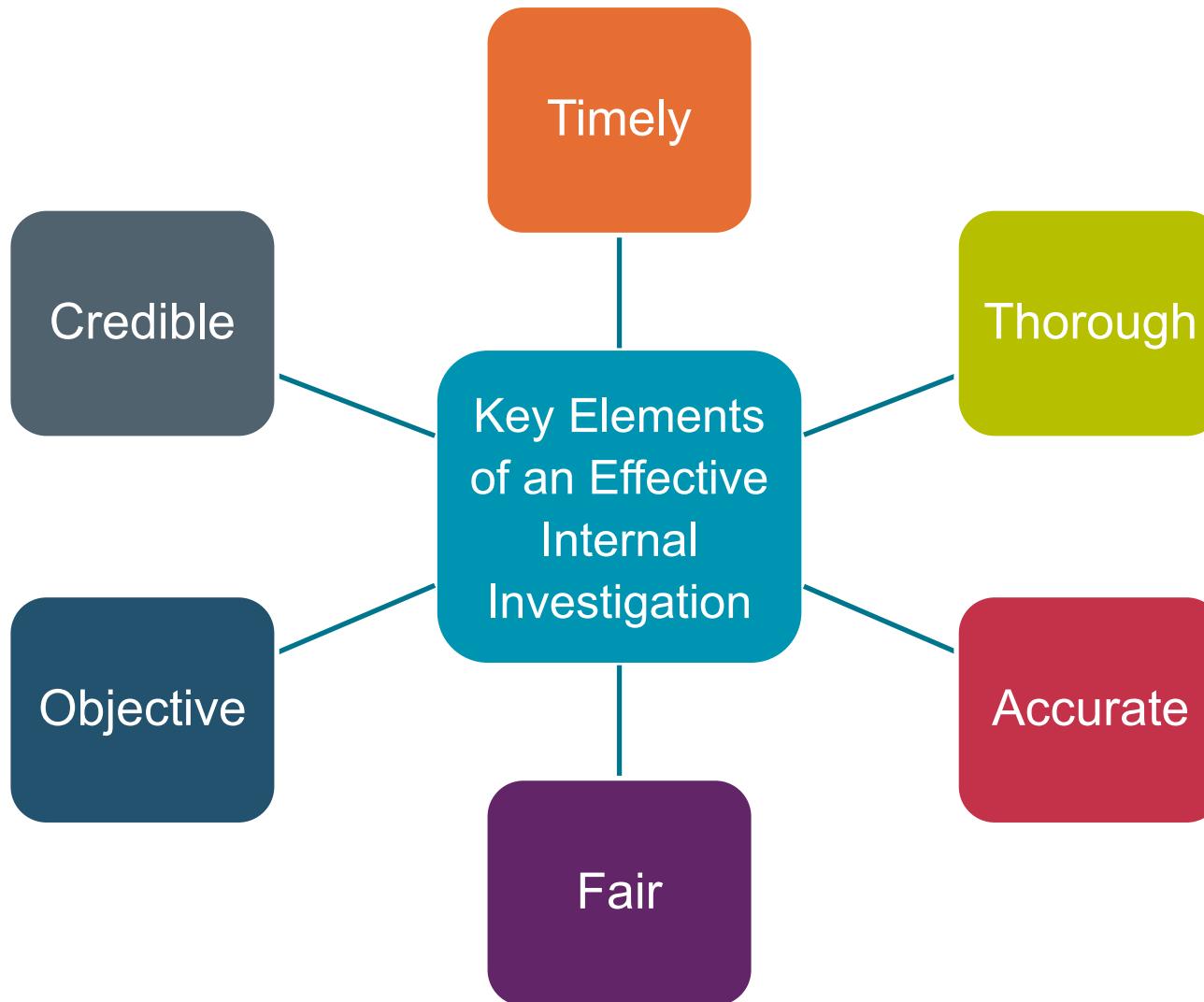


Best Practices - Responding to Government Inquiries

***Early Interactions
Are Critical – Set the
Right Tone, Build
Trust, and Send a
“Good Company”
Message***

- Dialogue with the government can help:
 - Learn more about the investigation, including its focus; how far it has developed; whether it is criminal, civil, or administrative
 - Identify if the company or employees are “targets,” “subjects,” or “witnesses”
 - Negotiate scope and deadlines of information requests
- Take steps to preserve documents and respond to requests for information

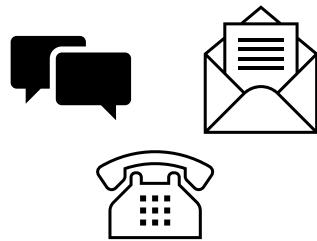
Conducting an Effective Investigation



Conducting an Effective Investigation

- No one-size-fits-all.
 - Assess the seriousness and reliability of the allegations, whether regulators are aware, the persons involved.
- Typical steps:
 - Determine who should conduct the investigation
 - Management, the board, a board committee
 - HR, in-house counsel, outside counsel
 - Take efforts to preserve relevant documents
 - Interview witnesses
 - Gather and review relevant documents
 - Report findings internally (consider format)
 - Evaluate potential remedial actions

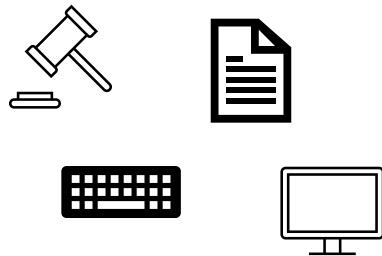
Internal Investigations and Privilege



Attorney-client Privilege

Protects confidential communications between attorney and client from release to third parties if made to obtain or provide legal advice

Can cover communications among employees



Work Product Protection

Protects documents prepared in anticipation of litigation

Near-absolute protection for “opinion work product”
(attorney mental impression, opinions, theories, strategy)

Fact work product may be discoverable

Privilege best practices:

- Work closely with in-house or outside counsel
- Protect confidentiality of information
- Be cautious about disclosure to third parties

Reporting and Cooperation

Government Reporting Programs and Incentives

- Self-Reporting and Cooperation Credit
 - Mandatory Disclosure Rule - government contractors obligated to “timely” self-report “credible evidence” of criminal and FCA violations
 - DOJ Civil FCA and Criminal cooperation credit programs
- Reporting Others
 - CBP trade violation reporting through e-Allegations program
 - DOJ whistleblower incentives

Trade Fraud Task Force explicitly welcomes whistleblower submissions and “*encourages all importers and their agents to conduct thorough audits of their importing practices and voluntarily self-disclose and remediate unlawful behavior.*”

DOJ Civil FCA Cooperation Credit

DOJ policies incentivize cooperation in civil FCA matters

Maximum credit requires “a timely self-disclosure that includes identifying all individuals substantially involved,” “full cooperation,” and remedial steps to prevent future wrongdoing.

Partial credit is available for meaningful assistance in investigation, even if full credit is not warranted.

- DOJ will credit companies and persons that provide “proactive, timely, and voluntary self-disclosure” and that cooperate with DOJ investigation.
- Factors DOJ will consider in evaluating the value of the disclosure / cooperation:
 1. the timeliness and voluntariness of the assistance;
 2. the truthfulness, completeness, and reliability of any information or testimony provided;
 3. the nature and extent of the assistance; and
 4. the significance and usefulness of the cooperation to the government

Examples of FCA Cooperation Credit

- Global Plastics (2025) – falsified country of origin on imports of plastic resin from People's Republic of China
 - Voluntary self-disclosures to CBP and U.S. Attorney
 - Cooperation: thorough and independent internal investigation, preserving and disclosing facts, conducting damages analysis
 - Remedial actions (personnel discipline, enhanced compliance)
 - Settlement figure supports a 1.5x multiplier
- Verizon (2023) - alleged failure to meet cybersecurity requirements for services performed pursuant to government contracts
 - Multiple “detailed and thorough” self-disclosures
 - Cooperation: independent investigation with regular updates to government, identifying culpable individuals, disclosing evidence
 - Prompt, significant remedial measures
 - Settlement figure supports a 1.5x multiplier

DOJ Criminal Division Cooperation Credit

Several programs to incentivize timely disclosure and cooperation.

Trump Administration is building on prior DOJ efforts, but with emphasis to more “transparently describ[e] the benefits that a company may earn through voluntarily self-disclosing misconduct” and cooperating with an investigation.

- Declination of prosecution if:
 - Voluntary self-disclosure of misconduct
 - Full cooperation with investigation
 - Timely and appropriate remediation
 - No “aggravating circumstances” as to nature or seriousness of offense, pervasive or egregious misconduct, severity of harm, prior misconduct
- Non-prosecution agreement and reduced fine if:
 - Self-report in good faith (even if it does not qualify for declination)
 - Full cooperation with investigation
 - Timely and appropriate remediation
 - Some aggravating factors, but none particularly egregious or multiple circumstances

Examples of Criminal Cooperation Credit

- *MGI Int'l (2025)* – declined prosecution against plastic resin distributor alleged to falsify country of origin to avoid paying duties.
 - Timely and voluntary self-disclosure
 - Full and proactive cooperation
 - Timely remediation (termination & disciplinary actions, internal review of the misconduct and compliance program, thorough and systematic root-cause analysis, enhancements to compliance program)
 - Repayment of evaded tariffs
 - Note: former Chief Operating Officer pled guilty
- *Liberty Mutual (2025)* – declined prosecution where subsidiary allegedly paid bribes to foreign banks to obtain or retain business
 - Timely and voluntary self-disclosure
 - Internal investigation with provision to DOJ of all known relevant facts
 - Timely remediation
 - Disgorgement of ill-gotten gains

DOJ Corporate Whistleblower Pilot Program

- Created in 2024.
- Criteria:
 - Eligible individual (no entities)
 - Voluntarily provides “original information” (i.e., derived from the person’s knowledge or independent analysis) that is:
 - Non-public
 - Previously-unknown
 - Truthful and complete
 - The information leads to forfeiture exceeding \$1,000,000
 - The person did not meaningfully participate in the criminal activity
- Applies only to a defined list of legal violations
 - Trump Administration added: “trade, tariff, and customs fraud”

Conclusion

Considerations Moving Forward

Key Takeaways:

→ IEEPA refunds will not be automatic, and U.S. importers should consider taking steps to preserve their rights.

→ There is increased enforcement/litigation risk for U.S. importers:

DOJ is prioritizing trade and customs fraud and tariff evasion, is willing to use the FCA as a tool for enforcement, and is encouraging whistleblower reporting.

CBP enforcement is anticipated on all fronts in 2026.

→ Conduct a thorough investigation when issues arise. Cooperation credit may be available for voluntary self-disclosure and full cooperation with government investigations.

If you:

- Have questions regarding compliance with tariffs and customs obligations
- Are unsure of activities by your trading partners, suppliers, or competitors
- Receive a high-risk hotline call
- Receive any government inquiry on these topics



Consult legal counsel

Thank you!



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