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Trade Enforcement Risks Escalate with Increasing Tariffs: What Companies Should Do to Mitigate Risk

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The increase in tariffs and export control actions by the Trump Administration has led to additional reporting and compliance obligations for companies that import and export goods. To ensure these new tariffs and rules are effective and not evaded by bad actors, the Trump Administration has directed resources to increase trade enforcement actions. To that end, federal agencies – particularly U.S. Customs and Border Protection (CBP), the Bureau of Industry and Security (BIS), and the Department of Justice (DOJ) – are increasing investigations into trade evasion schemes on both imported (CBP) and exported (BIS) goods. The DOJ also becomes involved when these investigations turn criminal. Companies should ensure that their compliance policies are up to date and seek counsel when they receive information requests from these federal agencies.

Directives to Increase Enforcement

President Trump has largely deployed his trade policy through memoranda, executive orders, and presidential proclamations. In many of these announcements, the administration has clearly designated its intent to strictly assess, enforce, and review the existing international trade laws. These include:

- In the America First Trade Policy Memorandum, the Secretaries of Commerce and State were instructed to "assess and make recommendations regarding export control enforcement policies and practices, and enforcement mechanisms to incentivize compliance by foreign countries, including appropriate trade and national security measures."
- In the presidential proclamations related to Section 232 tariffs on steel and aluminum, President Trump directed CBP to prioritize investigating potential instances of misclassification and assess monetary penalties in the maximum amount permitted by law and not consider any evidence of mitigating factors in its determinations. He also stated that "importers who submit underreported declarations may be subject to severe consequences, including but not limited to significant monetary penalties, loss of import privileges, and criminal liability."
- The DOJ's White Collar Enforcement Plan identifies trade and customs fraud, including tariff evasion, as an enforcement priority to "ensure that American businesses are competing on a level playing field in global trade and commerce."

Companies may receive requests or directions to engage in actions to reduce tariff and other trade related exposure from overseas partners. Actions could include transshipment to disguise country of origin, deliberate undervaluation, and misclassification of goods under the Harmonized Tariff Schedule. CBP has been directed to prioritize these violations and to impose maximum penalties where misconduct is found. As a result, U.S. companies should proceed with caution under such circumstances and ensure they are accurately reporting information to CBP.

Serious Consequences

Given the heightened awareness, enforcement is sure to be more common. The consequences are serious. In recent years, the DOJ has pursued both criminal prosecutions and civil penalties against companies and individuals attempting to circumvent tariffs. In one case, a tire importer paid \$1.9 million in restitution after transshipping Chinese truck tires through third countries and submitting false documents. In another, a Florida couple received nearly five-year prison sentences and was ordered to pay \$42 million for a plywood import scheme involving fraudulent origin claims and manipulated invoices.

The DOJ is similarly enforcing export control laws, imposing steep criminal consequences. For example, three individuals were charged with violating export controls for shipping approximately \$2 million worth of aviation parts to Russia and Russian end users by mislabeling shipments, providing false certifications, and using intermediary companies and countries to obscure the true end destination and end users. In another case, two individuals who ran a freight forwarding company were charged with conspiring to illegally export more than \$5 million worth of goods and technology from the United States to Russia by transshipping them through three countries bordering or near Russia. Convictions for these violations carry up to 20 years' imprisonment.

Even in cases where misconduct doesn't result in criminal charges, the DOJ continues to leverage the False Claims Act (FCA) to impose substantial civil liability. Under a "reverse false claim" theory, companies can be held liable for knowingly – or recklessly – underpaying tariffs. Penalties include treble damages and civil fines for each false submission. Many of these cases are brought by whistleblowers, including former employees or business partners, who are entitled to a portion of the government's recovery.

How Companies Can Mitigate Risk

Given the current enforcement environment, companies with exposure to potential trade enforcement should act now. That includes:

- Assessing supply chain transparency
- Verifying classification and valuation practices
- Documenting compliance procedures

Strengthening internal controls and reporting mechanisms can also reduce whistleblower risk and support good-faith defenses if questions arise.

Additionally, if you believe you or your employees may have engaged in unlawful conduct, voluntary disclosure can reduce exposure and may even result in non-prosecution.

Bottom Line

With increased tariffs firmly in place and enforcement actions on the rise, trade compliance is more critical than ever. Companies should take proactive steps to minimize exposure and ensure they are well-positioned to respond if enforcement comes knocking.

For assistance assessing your compliance posture or supply chain risks, please contact [P. Lee Smith](#), [Sean O'Connell](#), [Matthew McGee](#) or any member of Baker Donelson's [International Trade and National Security](#) team.