

THE GLOBAL TRADE LAW JOURNAL

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Editorial Office

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Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc.,
26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@
meyerowitzcommunications.com, 631.291.5541.

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Parallel Pressure: Private Actors Escalate Risk of DOJ Trade Enforcement Across Industries

Joel M. Cohen, Brent Wible, Jay C. Campbell, and Zach Williams*

The U.S. Department of Justice has intensified its trade enforcement efforts by launching the Trade Fraud Task Force, prioritizing criminal and civil actions against customs and tariff violations across industries. Private actors, including whistleblowers and competitors, play a growing role in reporting trade fraud, leveraging tools like the False Claims Act and the Corporate Whistleblower Awards Pilot Program to drive investigations and potentially receive financial rewards. This article provides an analysis of how private parties—ranging from employees to industry competitors—are increasingly empowered and incentivized to initiate enforcement actions and investigations. The Enforce and Protect Act further empowers industry participants to trigger Customs and Border Protection investigations into antidumping and countervailing duty evasion, which can significantly disrupt importers' operations. As enforcement expands, companies must strengthen compliance programs and internal reporting mechanisms to mitigate risks from both government scrutiny and private reporting.

On August 29, 2025, the Department of Justice (DOJ) announced the establishment of an interagency “Trade Fraud Task Force.” The Task Force—which brings together investigators from the Department of Homeland Security with civil enforcement attorneys and criminal prosecutors from the DOJ’s Civil and Criminal Divisions—plans to reinforce President Donald Trump’s America First Trade Policy through criminal and civil enforcement of customs duties and tariff violations.¹ While the DOJ has pursued some civil and criminal enforcement of trade violations historically, current DOJ leadership—through its messaging and by dedicating substantial resources to the Task Force—has emphasized trade violations as one of its top priorities. Customs duties and tariff violations transcend industries, and prior DOJ enforcement actions have spanned a wide variety of product lines, including military equipment, automotive parts, clothing and apparel, dietary supplements, and construction and industrial components.

Private parties have a key role to play in both civil and criminal enforcement of trade violations. The DOJ relies on private parties—mainly individual whistleblowers, but also industry competitors—to advance its trade fraud enforcement priority. In its press release announcing the Trade Fraud Task Force, the DOJ invited private parties to report allegations of unfair trade practices and trade fraud. The press release appealed specifically to industry competitors, stating that “the Task Force welcomes referrals and cooperation from the domestic industries that are most harmed by unfair trade practices and trade fraud,” because “[d]omestic industries are often best placed to spot fraud that threatens our markets and the livelihoods of American workers and their families.”

The DOJ’s appeal builds on existing statutory and administrative channels for private actors to report—and in some instances receive financial awards for reporting—trade violations. Companies that import products must be mindful not only of increased federal enforcement efforts but also of the role that private actors—ranging from current and former employees to industry competitors—can play.

Whistleblowers and the False Claims Act in Trade Enforcement

Whistleblowers increasingly drive civil enforcement of customs and tariff violations through the False Claims Act (FCA). The FCA has been a long-time staple of the federal government’s offensive civil litigation efforts and the DOJ’s primary civil enforcement tool to police fraud against the government. Over the past decade or more, the DOJ has brought many FCA cases involving trade violations. Using the FCA to punish a party that, via fraud, evades payment of customs duties or tariffs, empowers the DOJ to recover three times actual damages and a statutory penalty for every product for which a tariff or duty was not paid. Now, with the new Trade Fraud Task Force and its public messaging, DOJ leadership has signaled its intention to dedicate even more resources to investigating trade violations and make enforcement in this area a top priority.

A unique and powerful feature of the FCA is the prominent role that whistleblowers (relators) play in the statute’s enforcement. The majority of FCA investigations begins with a *qui tam* complaint filed

by a relator in United States District Court, in which the DOJ can intervene. The relator is entitled to receive a share of the proceeds of any settlement or trial judgment, as well as attorneys' fees and costs, to boot. The FCA also includes a provision protecting relators from retaliation by a defendant.

Executives and employees are often the most effective relators because they bring the government inside information, such as company documents and a roster of potential witnesses. Critically, though, the DOJ's encouragement of industry participants to report competitors' trade practices also fits hand and glove with FCA trade cases. Customs fraud is one of the few areas of FCA enforcement in which competitor companies have filed *qui tam* complaints against the importation practices of industry competitors. In what may be the largest FCA settlement involving customs fraud allegations, the Board chairman and CEO of Nation Ford, a U.S. producer of ink pigment, brought an FCA *qui tam* suit against an importer and distributor of ink pigments, Toyo Ink, alleging that the defendant misstated the country of origin of pigment imported from India and China to avoid paying antidumping duties (AD) and countervailing duties (CVD). Those AD/CVD duties had been imposed after a Department of Commerce investigation triggered by a petition filed jointly by the relator's company and another U.S. producer of ink pigment, Sun Chemical.² The United States intervened in the case, and the defendant settled for \$45 million.

Crucially, the FCA is singular among whistleblower-driven enforcement schemes in the statutory litigation rights afforded to relators. If, after investigation of a *qui tam* complaint, the DOJ declines to enter the litigation, the relator can continue the litigation against the defendant. The government remains the real party-in-interest and recipient of most of the resolution proceeds, but the relator drives the litigation. A critical risk that the FCA poses to importers is that, should the company persuade the DOJ not to intervene, the relator can continue to pursue litigation against that company.

DOJ Extends Criminal Corporate Whistleblower Awards Pilot Program to Trade Violations

The DOJ also has criminal enforcement tools to combat trade violations, including a separate whistleblower program that

provides potential financial awards to individual whistleblowers, although there is a lack of clarity how the DOJ Criminal Division's whistleblower program will interact with the FCA. In May 2025, the DOJ Criminal Division announced its white-collar criminal enforcement priorities, including tariff evasion. Following that announcement, the DOJ moved prosecutors from the Civil Division's Consumer Protection Branch to the Criminal Division's renamed Market, Government, and Consumer Fraud Unit. This expanded unit will now be responsible for fraud prosecutions involving trade, customs duties, and tariffs. Criminal prosecutors have at their disposal a host of statutes covering trade violations.

Along with these changes, the DOJ expanded the DOJ's Corporate Whistleblower Awards Pilot Program to supplement its increasing focus on trade fraud violations. Under the Program, an individual who provides original, truthful, non-public information previously unknown to the DOJ that leads to a forfeiture exceeding \$1 million may receive a monetary award for reporting, so long as the individual did not meaningfully participate in the misconduct. In May 2025, the DOJ added trade, tariff, and customs fraud to the list of offenses covered by the Program.

Unlike with the FCA, only individuals are eligible to receive an award under the Corporate Whistleblower Awards Pilot Program; companies are ineligible. Moreover, there is some ambiguity regarding how this program will interact with the FCA's *qui tam* provisions, given that the Corporate Whistleblower Awards Pilot Program excludes from eligibility individuals who would be eligible for an award through another federal whistleblower program or statute, such as the FCA's *qui tam* program. As a practical matter, it is likely that the DOJ expanded the criminal whistleblower program to encourage whistleblowers to come forward and make reports to both the Criminal Division and the Civil Division so that the DOJ would pursue both criminal and civil investigations of alleged trade violations. Indeed, the Trade Fraud Task Force press release explicitly invited individuals with knowledge of trade fraud allegations to report them to the Criminal Division's whistleblower program, indicating that the DOJ views the Pilot Program as an additional channel for individuals or groups to report potential criminal trade violations. The likely result is that the DOJ will increasingly pursue parallel civil and criminal investigations and enforcement actions for trade violations.

Private Actors' Role in Investigations of AD/CVD Evasion

As another tool to combat tariff evasion, the Enforce and Protect Act (EAPA) allows industry participants to file an allegation with Customs and Border Protection (CBP) that one or more importers evaded AD and CVD owed on the imported goods. Typically, U.S. producers allege evasion, although the EAPA also empowers foreign manufacturers, importers, trade or business associations, and unions to report allegations of AD/CVD evasion by the targeted importers. Even if CBP ultimately determines that evasion did not occur, its initiation and conduct of an EAPA investigation can severely disrupt an importer's operations.

CBP will initiate an EAPA investigation if the allegation "reasonably suggests" that AD/CVD duties have been evaded. Moreover, within 90 days of initiating an EAPA investigation, CBP can impose "interim measures" based on only a "reasonable suspicion" that evasion occurred. As interim measures, CBP can take actions that impose potential AD/CVD liability on the importer's prior importations of the merchandise allegedly subject to AD/CVD orders and that effectively prevent the importer from continuing to import the merchandise in question going forward—at least for the duration of the EAPA investigation. An EAPA investigation can take up to 360 days (with an extension), but may take longer if CBP asks the Department of Commerce to decide whether the imported merchandise falls within the scope of an AD/CVD order (such that the goods are subject to AD/CVD). Consequently, CBP's interim measures can disrupt the targeted importer's business operation for over one year. If CBP ultimately finds that the importer under investigation entered merchandise through evasion, it will collect the AD/CVD owed (pursuant to the Department of Commerce's instructions), and may refer the allegation for further Tariff Act Enforcement or criminal or civil enforcement by the DOJ.

CBP maintains an increasingly active EAPA enforcement docket. From January 20, 2025 to August 8, 2025, CBP has identified over \$400 million in unpaid AD/CVD duties.³ This figure includes the largest EAPA case since the statute was adopted in 2015, involving 23 importers and Chinese companies found to be transshipping goods through southeast Asian countries. Some alлегers have bolstered their cases by substantiating allegations in

advance of reporting to CBP, hiring investigators to visit the facilities of foreign exporters to gather evidence of evasion. Moreover, during the EAPA investigation, the alleged can (like the targeted importer) submit additional evidence, review CBP's administrative record, and submit affirmative and rebuttal briefs. CBP's final EAPA determination may be appealed to the U.S. Court of International Trade.

Conclusion

The expansion of DOJ trade enforcement and the empowerment of private actors mean that importers face scrutiny not only from the government but also from competitors and insiders motivated to report potential violations. Companies should maintain robust trade compliance programs that proactively identify and address customs and tariff risks before outsiders do, and to avoid whistleblower allegations. Regular internal audits, clear reporting channels, and strong whistleblower response protocols are essential. In practice, that means establishing confidential mechanisms for employees to raise concerns, responding promptly and transparently to internal reports, and demonstrating that legitimate complaints lead to corrective action rather than retaliation. Even if a private actor reports the company to the government, being able to produce contemporaneous documentation of compliant practices and corrective measures can be the strongest defense against enforcement. By staying ahead of both federal enforcement priorities and private reporting incentives, companies can better safeguard themselves against costly investigations and reputational harm.

Notes

* The authors, attorneys with White & Case LLP, may be contacted at joel.cohen@whitecase.com, brent.wible@whitecase.com, jcampbell@whitecase.com, and zach.williams@whitecase.com, respectively.

1. Dep't of Justice, Departments of Justice and Homeland Security Partnering on Cross-Agency Trade Fraud Task Force (Aug. 29, 2025) ("This Task Force will advance the America First Trade Policy by pursuing those who violate customs laws through duty and penalty collection actions under the Tariff Act of 1930, actions under the False Claims Act, and, wherever

appropriate, parallel criminal prosecutions, penalties, and seizures under Title 18's trade fraud and conspiracy provisions.”), <https://www.justice.gov/opa/pr/departments-justice-and-homeland-security-partnering-cross-agency-trade-fraud-task-force>.

2. Amended Complaint, *United States ex rel. Dickinson v. Toyo Ink Manufacturing Co., Ltd.*, No. 3:09cv438, Dkt. No. 8 (W.D.N.C. May 14, 2010).

3. U.S. Customs and Border Protection, CBP uncovers more than \$400 million in duty evasion by bad actors who undercut American workers (Aug. 15, 2025), <https://www.cbp.gov/newsroom/national-media-release/cbp-uncovers-more-400-million-duty-evasion-bad-actors-who-undercut>.