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Companies Must Prepare for Heightened Trade Enforcement Risks

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On Dec. 6, 2024, Miami businessman Hector Esquijerosa pled guilty to federal smuggling charges in *U.S. v. Esquijerosa*, in the U.S. District Court for the Southern District of Florida. His guilty plea is a reminder of the tools available to the incoming Trump administration to aggressively enforce tariffs and other key elements of trade policy.

In light of the administration's commitment to increased use of tariffs, importers and related companies are advised to start thinking carefully about how to minimize any potential risks of civil and criminal exposure for tariff evasion.[1]

The U.S. Department of Justice (DOJ) brought criminal smuggling charges against Esquijerosa, who evaded tariffs on Chinese truck tires by shipping them through countries such as Canada and Malaysia, and representing to U.S. Customs and Border Protection (CBP) that the tires originated in those countries. According to the authorities, the defendant and his co-conspirators created a duplicate set of invoices that falsely undervalued the truck tires, and presented those duplicates to CBP for calculation of the appropriate duty. The defendant was able to avoid paying CBP nearly $2 million through the scheme, which involved brokers, suppliers and wholesalers of truck tires located in China, Canada, and the U.K.

After an investigation by the U.S. Department of Homeland Security (DHS), supported by CBP's Automotive and Aerospace Center of Excellence and Expertise (CEE), the defendant pled guilty to conspiracy to smuggle by presentation of fraudulent invoices to CBP, and is facing up to five years in prison. The government is also seeking forfeiture of the amount of unpaid duties, as well as the goods in question.

The case against Esquijerosa followed guilty pleas in March 2024 by Akua Mosaics and its president Kenneth Fleming for conspiracy to defraud the U.S. by smuggling goods made in China and evading applicable duties. According to the plea documents in *U.S. v. Akua Mosaics Inc.*, in the U.S. District Court for the District of Puerto Rico, the defendants imported porcelain mosaic tiles manufactured in China and falsely stated to CBP that the merchandise did not originate in China. As in *Esquijerosa*, the scheme in the Akua Mosaics case made use of a network of individuals and companies, and misrepresentations that the country of origin of the porcelain tiles was Malaysia. Among other acts in furtherance of the conspiracy, after the relevant containers were transshipped through Malaysia, the defendants falsely labeled boxes of merchandise "Made in Malaysia." DHS conducted the investigation, drawing on resources from its San Juan Global Trade Investigations Group, and Akua and its president both pleaded guilty in federal court in Puerto Rico to charges of conspiracy to smuggle, with the goal of evading duties. As in *Esquijerosa*, the guilty plea included criminal forfeiture of proceeds and property traceable to the offenses.

Criminal enforcement actions like *Esquijerosa* and *Akua* are part of a broader trend of increased scrutiny on importers by regulatory and law enforcement officials. In September 2023, members of the U.S. House of Representatives Select

[1] For further discussion of potential use of tariffs in 2025, see Miller & Chevalier podcast EMBARGOED!, Episode 78.

Committee on the Chinese Communist Party wrote a letter to then-DHS Secretary Alejandro Mayorkas expressing concerns that certain importers of Chinese-made goods were moving production to Thailand to avoid U.S. tariffs. A few months later, in January 2024, DHS executed a search warrant on Harco Manufacturing Group, the Ohio-based U.S. subsidiary of Chinese auto parts manufacturer Qingdao Sunsong, apparently seeking evidence of efforts to evade U.S. tariffs.

As these cases show, where the facts and circumstances warrant, the DOJ will pursue criminal investigations against importers who intentionally smuggle material into the U.S. in violation of governing trade restrictions — including for smuggling, criminal False Claims Act (FCA) violations or false statements made in connection with representations to federal agencies. Such cases can originate from whistleblower claims, including whistleblower suits filed under seal under the FCA, as well as information that the DOJ obtains in investigations of other companies that may be cooperating with authorities in an effort to obtain leniency. Criminal investigations can also be triggered by disclosures to CBP.

In particular, the DOJ may become involved if a company voluntarily discloses customs violations that result in the underpayment of customs duties and fees in violation of Title 19 of the U.S. Code, section 1592. Although a voluntary disclosure can be the basis for reduced penalties, CBP guidance also confirms that if a prior disclosure "gives CBP reason to believe that a criminal violation has occurred," the agency is legally obligated to refer that information to the appropriate U.S. attorney's office for investigation and possible prosecution.

Importantly, target companies may not be aware when a criminal investigation is underway. The DOJ will often begin an investigation by gathering evidence covertly before ultimately determining whether to proceed with a request letter, a subpoena for documents, a search warrant or other measures.

The last several years have likewise seen a notable increase in civil customs fraud enforcement under the FCA, with a corresponding increase in settlement amounts. These settlements include reverse false claims cases, in which the defendants were alleged to have knowingly prevented the government from receiving money it was owed — including through evasion of tariffs by underreporting the value of imports, misclassifying goods or misrepresenting the country of origin. In January 2023, the underreporting case *U.S. ex rel. Welin v. International Vitamin Corp. Inc.*, in the Southern District of New York, settled for $22 million, a record high. More recently, in August 2024, the DOJ announced two more FCA settlements, of $7.6 million in *U.S. v. Alexis LLC*, in the the Southern District of Florida,[7] and $10 million in *U.S. ex rel. Grob v. Precision Cables Assemblies Inc.*, in the Eastern District of Wisconsin.[8] Both cases concerned undervaluation of imported goods in order to avoid customs duties and tariffs.

Trade enforcement only stands to increase under the Trump administration. In December, the Republican-controlled House passed the Protecting American Industry from International Trade Crimes Act, mandating that the DOJ establish a new task force dedicated to investigation and prosecution of trade-related crimes. Although that bill did not pass the U.S. Senate, its provisions may well be reconsidered by the current Congress, and its enforcement priorities are likely to be shared by incoming DOJ officials.

As tariff enforcement continues to increase, companies should assess their risk profile and consider proactively taking steps to prepare — including reviewing their trade compliance programs, document retention and communication policies, and protocols for response to a subpoena or search warrant. Companies that are subject to enforcement activity should conduct an internal investigation to ascertain the scope of potential exposure, and evaluate remedial measures — including the possible benefits of making voluntary disclosures to authorities.