Holland & Knight

WEBINAR

The New Era of U.S. Customs Enforcement

Trade Fraud and Customs Enforcement: What Companies Need To Know





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Today's Agenda

1 The Customs Enforcement Landscape

2 Internal Investigations and Disclosure Options

3 Emerging Issues

4 How We Can Help and Q&A

Trade Fraud: A Presidential Priority

DIRECTION FROM THE WHITE HOUSE

"Customs enforcement is essential to the national security, foreign policy, and economy of the United States."

President Donald J. Trump, Executive Order 14411, June 3, 2026

Presidential direction

The order calls for comprehensive customs reform and identifies undervaluation, concealed importer information, and duty-evasion schemes as threats.

DOJ has made trade and customs fraud, including tariff evasion, a high-impact enforcement priority under the Administration's agenda.

Sources: Executive Order 14411, § 1 (June 3, 2026); DOJ White Collar Enforcement Plan (May 12, 2025).

Three Agencies, One Coordinated Push

THE ENFORCEMENT ECOSYSTEM

CBP

U.S. Customs and Border Protection

Front-line enforcement: entry review, audits, CF-28 requests for information, penalties and seizures at the port of entry.

HSI

Homeland Security Investigations

Criminal investigations into duty evasion, transshipment, smuggling and false origin claims — often the precursor to DOJ charges.

DOJ

Trade Fraud Task Force

Cross-agency civil and criminal enforcement combining False Claims Act theories with traditional customs and fraud statutes; received added funding in FY26.

Key Takeaway

These agencies now share leads, data, and staff in ways they didn't five years ago. A CF-28 request that looks routine can be the opening move in a parallel HSI criminal inquiry — and a civil FCA case can run alongside a criminal referral. *Companies should assume any customs inquiry could widen.*

One alleged scheme, three enforcement tracks

	Tariff Act penalty (§ 1592)	False Claims Act	Criminal
Who brings it	DOJ Civil, on CBP referral	DOJ or a qui tam whistleblower	USAOs and DOJ Fraud Division
Forum	Court of International Trade	Federal district court	Federal district court
Standard	Fraud, gross negligence, or negligence	Knowingly avoiding duties owed	False statements, smuggling, wire fraud, conspiracy
Exposure	Up to domestic value of goods (fraud)	Treble damages + per-claim penalties	Fines, forfeiture, prison
Time limit	5 years (fraud: from discovery)	6 years, up to 10	Generally 5 years

A prior disclosure to CBP is not a voluntary self-disclosure to DOJ — and does not resolve FCA or criminal exposure.

The Legal Theories that the DOJ is Asserting Against Companies

Civil, criminal, and administrative authorities used against importers

- **31 U.S.C. § 3729 — False Claims Act**
- **18 U.S.C. § 542 — Entry by False Statements**
- **18 U.S.C. § 545 — Smuggling**
- **19 U.S.C. § 1592 — CBP Civil Penalties**
- **Wire Fraud and Conspiracy, 18 U.S.C. §§ 1343, 371**

The Takeaway: One entry file can be a penalty case, an FCA case, or a criminal case — and the government now chooses.

How prosecutors will decide whether to charge a company

Directive 26-12 tells prosecutors to give "great weight" to:

- Conduct lasting three or more years
- Conduct involving three or more federal districts
- Management knowledge or involvement
- Concealment from agencies or auditors
- Threats to American safety or security
- Dollars flowing to foreign adversaries

Why most customs cases clear the bar

- The same wrong origin, value, or code repeats on every entry — three years arrives by default
- One port of entry, national distribution: three districts is easy
- An entry is a statement to a government agency; shell importers are concealment by design

Data analytics are generating leads

Origin shifts right after a tariff increase, unit values far below market, new suppliers in transshipment hubs.

When Should A Company Investigate?

CBP Form 28 or 29

Request for information or notice of action

Subpoena or CID

Grand jury subpoena or civil investigative demand

Agent visit

HSI agents contact employees or executives

Pre-penalty notice

CBP penalty or liquidated damages claim

Internal complaint

Hotline report, departing employee, audit finding

Importer number voided

Form 5106 or IOR eligibility problem

Supplier red flag

Origin, value or invoice inconsistencies

A deal or tariff change

M&A diligence, sudden sourcing shifts

Best case: investigate before any of these happen — while every option and the ability to mitigate is still on the table.

What an investigation looks like, step by step

1 Scope and preserve

- Define the question and time period
- Issue legal hold
- Set privilege protocol and reporting lines

2 Collect the data

- ACE entry data and 7501s
- Invoices, payments, supplier and broker files
- Emails and messaging

3 Analyze and interview

- Test origin, value and classification
- Trace money and goods
- Interview employees with Upjohn warnings

4 Assess exposure

- Quantify duties, penalties and FCA risk
- Identify root causes
- Evaluate individual exposure

5 Decide and remediate

- Disclose, correct or defend
- Fix processes and controls
- Brief management and the board

A focused review can take weeks; a full investigation responding to a subpoena takes longer.

Pre-Investigation

Defining the Purpose and Scope of an Investigation

Purpose

- Define investigation purpose and goals, considering the potential policy and practical implications of the issue

Scope

- Identify relevant time periods, witnesses, and subject matters
- Avoid a meandering approach and “scope creep”
- Do not be blind to new and unrelated issues that may surface along on the way

Fact Gathering: **Document and Data Collection**

Sources and Locations of Potentially Relevant Data

Objective: Identify, preserve and collect potentially relevant data to enable assessment of the issues

Sources: paper files, data servers, hard drives, laptops, shared drives, off-site storage, home offices, and personal devices

- Consider the most likely sources of information based on the nature of issues and internal ways of communicating
  - Consider which devices those involved use to communicate and where data from those devices is stored
- Consider the system's BYOD Policy and what information can be accessed

Fact Gathering: **Document and Data Review**

Strategies for Efficient, Cost-Effective Document Review

- Processing and reviewing documents is often time consuming and expensive
- Leverage internal company resources to help identify and extract key documents and data (e.g., specific email exchanges, chats, company records, company policies, training records, meeting minutes)
- If available, consider whether to use sampling, predictive code, and other technologies to identify the most important data quickly and to short-circuit lengthy document reviews

Fact Gathering: **Witness Interview Strategies**

Different Investigations Require Different Strategies

- Do you need to speak with witnesses quickly, before word of the investigation gets out?
- Should you wait to start interviews until you've reviewed documents?
- If so, how many documents need to be reviewed before starting?
- Should you start at the top and work down or vice versa?
- Should you begin speaking with less sensitive stakeholders?
- Would initial scoping interviews add value or important context?

Fact Gathering: **Witness Interview Considerations**

In-Person vs. Virtual Interviews

- Virtual interviews have become more common post-COVID
- Still might be necessary to conduct some interviews in person

In-Person Interview Considerations

- Witness Comfort
- Minimize Disruption

Potential Interview Attendees

- In-house legal counsel, compliance, internal audit, HR, supervisors
- Important to consider how the attendees may impact the content of the discussion

Interview Style

- Important to align on interview style with all interviewers
- Avoid searching "cross-examinations" of current employees

Interview Coordination

- Notifying the witnesses of the interview
- Messaging considerations
- Should interviewees' managers be given a heads up?

Upjohn Warning

What a privileged investigation does for you

Learn the facts before the government does

Know what happened, who knew, and what documents say — on your timeline.

Protect the work

Counsel-directed review preserves attorney-client privilege and work product.

Put a number on exposure

Model lost duties, § 1592 penalties, and FCA damages entry by entry.

Keep the disclosure option open

Disclosure credit depends on timing; investigating early preserves it.

Earn cooperation and remediation credit

DOJ and CBP reward companies that self-identify, fix and cooperate.

Protect people and the board

Address individual exposure and satisfy fiduciary oversight duties.

The Decision Point: Disclose, Correct, Or Defend (or do nothing)

CBP prior disclosure

19 U.S.C. § 1592(c)(4)

- Sharply reduced penalties — interest only for negligence
- Must be filed before, or without knowledge of, a formal investigation
- Does not bind DOJ on FCA or criminal exposure

DOJ voluntary self-disclosure

Corporate Enforcement Policy

- Path to declination with cooperation and remediation
- Disclosure only to CBP generally does not qualify
- FCA disclosure can reduce damages to double

Correct and remediate

Without a formal disclosure

- Post-summary corrections on unliquidated entries
- Fix processes, controls and broker instructions
- Document the decision and the rationale

Sequence matters: coordinate the CBP and DOJ strategy before filing anything with anyone.

The Risk Areas That Drive Cases

Country of origin
Substantial transformation, transshipment

Section 232 / 301 stacking
Metal content, exclusions, duty stacking

Valuation
Assists, royalties, first sale, related-party pricing

Forced labor
UFLPA presumption, supply-chain tracing

Classification
Patterns of HTS codes that lower duty rates

IOR and DDP structures
Who really owns, pays for and imports the goods

AD/CVD scope
Whether goods fall within an order's scope

Brokers and forwarders
Instructions, powers of attorney, oversight

Misclassification is not on DOJ's priority list by name — but a pattern of knowingly wrong codes is treated like false origin or value.

Other customs issues companies should be watching

IEEPA refunds

CAPE Phase 3 opened Oct 6 for court-ordered refunds on finally liquidated entries. A refund claim puts your entries under review — clean them up first.

New certifications

Proposed supply-chain disclosures and certifications create new statements that can be false — and new criminal exposure.

Low-value shipments

CBP's Oct 8 proposed rule would reshape low-value entry; comments due Dec 7.

Forced labor

UFLPA detentions and forced-labor priorities extend tracing deep into the supply chain.

Transshipment and origin

Stacked tariffs raise the incentive to evade — and analytics are flagging origin shifts.

Tariff diligence in M&A

Successor liability, open entries, and reps, escrows and indemnities for customs exposure.

By the numbers

$1B+

Trade Fraud Task Force recoveries, penalties, forfeitures and charged losses in its first year

$549.5M

Perfectus Aluminum FCA settlement — the largest trade-related FCA resolution to date

$290M+

Sought from Uni-Tile & Marble and its CEO: $67.9M in duties plus $222.5M in penalties

15–30%

Whistleblower share of an FCA recovery — a powerful incentive for competitors and insiders

Penalty demands routinely dwarf the duties at issue — and executives are being named personally.

Engaging Outside Counsel: What To Expect

What you receive

- Privileged findings, delivered orally or in writing
- Entry-level exposure model
- Recommendation on disclosure and sequencing
- Remediation plan and compliance upgrades
- Board or audit committee briefing
- Disclosure filings and government presentations, if needed

Phased budget

Start with a targeted assessment; expand only if the facts warrant

Data first

Use entry data to focus document review and interviews

Minimal disruption

Work with legal, trade, and finance teams on their schedules

Former prosecutors' judgment

We anticipate how DOJ, CBP, and HSI will view the facts – and we'll work to mitigate any investigation

Holland & Knight's Trade Fraud Enforcement Defense and White Collar Teams

Experience in customs law and enforcement defense

Our team combines former federal prosecutors — including the former leader of DOJ's Trade Fraud Task Force — with customs, trade litigation, and white collar lawyers across the firm.

Contact us for a confidential conversation.

- Privileged internal investigations
- Compliance risk assessments
- CF-28 / CF-29 responses
- Prior and voluntary self-disclosures
- FCA and qui tam defense
- Criminal and HSI investigations
- IOR and DDP restructuring
- EO 14411 comments and opinions
- IEEPA refund recovery
- Court of International Trade litigation
- Tariff diligence in M&A
- Board and audit committee advice

QUESTIONS?

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