

Navigating the U.S. tariff enforcement framework under the False Claims Act, Section 592, and other civil and criminal enforcement mechanisms

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On November 5, 2025, the U.S. Supreme Court heard arguments in *Trump v. V.O.S. Selections, Inc.*, which involves a challenge to the recent tariffs imposed by the Administration under the International Emergency Economic Powers Act ("IEEPA").

While the case raises significant questions about the scope of the President's authority to impose tariffs, the IEEPA tariffs reflect just a small part of the duty regime to which U.S. importers are subject and as to which the government can bring claims to enforce payment and customs compliance. Accordingly, however that challenge is resolved, importers will continue to face a range of continuing tariff obligations and tariff enforcement scrutiny.

Since the beginning of its term, the Second Trump Administration has announced new tariffs, increases to existing tariffs, and removals of tariff exclusions, while signaling an increased emphasis on tariff enforcement.

The Administration's recent efforts to curb and redress tariff evasion include:

- On May 12, 2025, the Department of Justice's ("DOJ") Criminal Division issued a memorandum (<https://bit.ly/4q128q1>) identifying "[t]rade and customs fraud, including tariff evasion" as one of its "high-impact" White Collar enforcement priorities.
- On August 29, 2025, DOJ announced (<https://bit.ly/44fPCeE>) the launch of a cross-agency Trade Fraud Task Force with the Criminal Division of the Department of Homeland Security ("DHS") to pursue claims under the False Claims Act ("FCA"), Section 592 of the Tariff Act of 1930, and other civil and criminal remedies for trade and customs violations.
- Since the beginning of the Administration, DOJ has resolved five trade evasion related cases (with Evolutions Flooring (<https://bit.ly/450kZtl>), MGI (<https://bit.ly/4q0wp8Y>), Grosfillex (<https://bit.ly/4pwtF3y>), Allied Stone (<https://bit.ly/4pDyPLe>), and Harmon International), and filed an

intervenor complaint (<https://bit.ly/3MElBit>) in a sixth matter under the FCA.

As companies involved in the U.S. importing process navigate the application of new or increased tariffs, it is critical that they also understand and account for the existing U.S. tariff enforcement framework anchored by the FCA and Section 592.¹

With frequent changes and complexities in how new and updated tariffs apply to any given import, companies face increased risks of errors and corresponding exposure to investigations, penalties, and other government responses to perceived misreporting of their tariff obligations to U.S. Customs & Border Protection ("CBP").

False Claims Act (31 U.S.C. § 3729 et seq.)

As noted, the new Trade Fraud Task Force expressly references the FCA as a potential enforcement mechanism for pursuing trade fraud.

The FCA is a federal statute that seeks to remedy frauds committed against the United States by authorizing the government or private whistleblowers (in suits called *qui tam* actions) to seek damages sustained by the government and penalties. If a private whistleblower (called a relator) is involved, that person may receive part of the government's recovery.

In the context of U.S. customs obligations, the government may seek to pursue claims for customs fraud under the FCA's "reverse false claims" provision. Under this provision, an importer may be subject to liability if it knowingly makes, uses, or causes the making or use of a false record or statement to underpay the government. The FCA defines knowingly to include not just actual knowledge, but also deliberate ignorance or reckless disregard.

Unlike some of the Administration's other FCA priorities — such as the civil rights fraud initiative (<https://bit.ly/3KmMHdq>) — the government's use of the FCA to pursue customs violations is not new.

The government has long used the FCA to pursue customs violations, and as the U.S. Court of Appeals for the Ninth Circuit recently recognized, the 2009 amendments to the reverse false claim provision were driven primarily by Congress' desire to ensure that the FCA broadly covered the underpayment of tariffs and duties.²

Examples of potential FCA violations in the customs context include where an importer knowingly avoids paying import duties by misrepresenting to CBP information about applicable tariff classification, customs value, country of origin, free trade agreement ("FTA") or trade preference program eligibility, Foreign Trade Zone ("FTZ") status, antidumping and countervailing ("AD/CVD") duties, or special duties (e.g., Section 301 duties, Section 232 duties, or IEEPA duties).

FCA liability may also arise from knowing and improper failures to pay import-related fees owed to a CBP partner government agency ("PGA"), like the U.S. Environmental Protection Agency ("EPA"), Department of Agriculture ("USDA"), or Food & Drug Administration ("FDA").

PGAs have specific requirements for imports of products that are under their purview within the territory of the United States. To the extent these requirements involve an obligatory payment to the government, the government may elect to use the FCA to investigate whether a company has knowingly avoided payment through false records or statements.³

FCA jurisdictional oddity

In assessing their risk of FCA liability, companies should consider that a continuing jurisdictional wrinkle exists with respect to customs-related FCA cases in the Ninth Circuit.

In *Island Industries, Inc. v. Sigma Corp.*,⁴ the Ninth Circuit confirmed earlier this year that *qui tam* actions filed by whistleblowers alleging customs fraud may be filed in district court, but that cases brought by the government must be pursued in the U.S. Court of International Trade ("CIT").

The Ninth Circuit relied on its prior holding in *United States v. Universal Fruits & Vegetables Corp.*,⁵ where the appellate court concluded that because cases brought by the government under the FCA seek to recover lost duties, the CIT has exclusive jurisdiction over such cases.

In a subsequent stage of the *Universal Fruits* case, however, the CIT disagreed with the Ninth Circuit that it had jurisdiction over FCA cases alleging customs fraud. The CIT reasoned that the FCA provides for damages whereas the CIT's authority is limited to actions to recover customs duties.⁶

The CIT's decision was later appealed to the U.S. Court of Appeals for the Federal Circuit but was summarily dismissed on appeal. That dismissal, coupled with the Ninth Circuit's recent reaffirmation of its prior ruling in *Universal Fruits*, leaves a continuing question regarding the proper forum for the government to bring an FCA case based on tariff related misconduct in the Ninth Circuit.

Section 592 (19 U.S.C. § 1592)

In addition to FCA liability, companies that fail to pay the proper amount of tariffs for U.S. imports could face potential civil liability under Section 592 of the Tariff Act of 1930.

Section 592 provides the government with authority to recover unpaid duties and impose penalties where a person fraudulently, grossly negligently, or negligently sends customs documents to CBP containing material misstatements or omissions.

Section 592 also provides the government with authority to recover unpaid duties where any person — even if not the U.S. importer — aids or abets the submission of such misstatements or omissions.

Violations of Section 592 can be based on the same type of conduct giving rise to FCA claims. However, Section 592 differs from the FCA in several notable respects.

First, Section 592 allows the imposition of penalties for negligence, an even lower level of culpability than under the FCA. Section 592 provides that if the government alleges negligence by an importer, the government need only show that a materially false statement or omission took place before the burden shifts to the importer to disprove that the statement or omission resulted from negligence.⁷ To disprove negligence, importers have to show that they acted with "reasonable care" under the circumstances.⁸

Second, where the importer's conduct rises to the level of fraud, Section 592 allows a court to impose penalties in an amount up to the domestic value of the imported merchandise — which in some cases may greatly exceed the amount of lost duties.⁹

The applicable penalties in cases of gross negligence are up to the lesser of the domestic value or four times the amount of lost duties, and in cases of negligence are up to the lesser of the domestic value or two times the amount of lost duties. And notwithstanding the importer's level of culpability, Section 592 also allows for the government's recovery of unpaid duties plus interest.

By contrast, the government's recovery under the FCA is damages of up to three times the value of unpaid duties and penalties of up to \$28,619 per false claim.¹⁰ Thus, depending on the circumstances, Section 592 may result in a more powerful recovery for the government. Indeed, last year the government reported a recovery of \$365 million under Section 592 in a single case.¹¹

Given this context, in some cases the government may elect to proceed under Section 592 instead of the FCA to pursue potential tariff evasion, and importers in turn should keep this alternative source of liability in mind.

In other cases, however, the government may focus on bringing claims under the FCA, particularly given its less

cumbersome procedural requirements and longer statute of limitations provision, as further discussed in the table below.

The following table summarizes these and other key differences and similarities between these two enforcement mechanisms:

Summary of Procedural and Substantive Differences between FCA and Section 592 Remedies for Potential Tariff Evasion		
	FCA Investigation	Section 592 Investigation
Statute	31 U.S.C. § 3729 et seq.	19 U.S.C. § 1592
Time period covered	Generally, 6 years from date of the violation, but may be extended up to 10 years from the violation if an FCA claim is made within 3 years of when the government knew (or should have known) about material facts	Generally, 5 years from the date of the violation; if fraud, then 5 years from the date that CBP discovers the violation
Initiation	May start with a whistleblower's qui tam action, followed possibly by a government intervenor complaint; or can start with the government's own FCA complaint	Can be triggered by a response to CBP request(s) for information, a CBP notice of action, an e-allegation filed with CBP, an EPAA allegation filed with CBP, a standard CBP audit, a violation report directly to a CBP Center of Excellence and Expertise ("CEE"), or a referral from a partner government agency via ACE
Government agencies involved	DOJ leads with the subject-matter support of CBP	CBP drives the investigation, with DOJ becoming involved if the penalty demanded is unpaid
Procedural burdens on the government	No penalty notices or requests for information are needed before either the government (DOJ) or a whistleblower may file an FCA claim	The government (CBP) faces procedural obligations before it can recover duties or penalties – CBP must issue a pre-penalty notice (if a violation involves a claim over \$1,000) and a penalty notice, and provide an opportunity for responses to each
Statutory standard	Knowingly concealing or avoiding an obligation to pay import duties or making a false statement material to the payment of such duties	Without regard to whether there is any loss of duties, taxes, or fees to the U.S. Government, entering (or aiding or abetting the entry of) an import into U.S. commerce by fraud, gross negligence, or negligence using documents with material misstatements or omissions
Required mental state for liability	A "knowingly" standard, which means having acted with actual knowledge, deliberate ignorance, or reckless disregard for the truth or falsity of the claim	3 levels of culpability available to support recovery of duties or penalties: (1) negligence (failing to exercise reasonable care); (2) gross negligence (ignoring or failing to inquire about suspicious circumstances); and (3) fraud (taking voluntarily and intentionally false or misleading actions)
Risk of financial penalties	Penalties of up to \$28,619 for each false claim, and damages of 3x the government's lost duties	Restitution of any underpayment of customs duties, taxes, and fees, plus interest Plus penalties up to the domestic value of imported merchandise under a penalty structure based on level of culpability and whether violation involved a loss of duties to CBP • Without loss of duty: from 20% of dutiable value for negligence; 40% of dutiable value for gross negligence; to domestic value for fraud • With loss of duty: from lesser of domestic value or 2x lost duties for negligence; lesser of domestic value or 4x lost duties for gross negligence; to domestic value for fraud
Expected time to a settlement resolution	No fixed timeline; can take a few months to several years	No fixed timeline; can take many months to several years
Non-financial risks and other risks under distinct authorities	Possible parallel criminal charges, investigation, and fines or imprisonment Possible seizure of merchandise or forfeiture of merchandise or proceeds traceable to the violation Reputational damages as information is regularly made public Substantial burden on company resources Heightened future scrutiny from CBP on importing activities	Possible parallel criminal charges, investigation, and fines or imprisonment Possible seizure of merchandise or forfeiture of merchandise or proceeds traceable to the violation Reputational damages if information is made public Substantial burden on company resources Heightened future scrutiny from CBP on importing activities
Where cases may be filed	U.S. District Court (putting aside the jurisdictional quirk in the Ninth Circuit)	U.S. Court of International Trade
Potential liability of others	Liability potentially extends to other parties in a supply chain, including customers and suppliers, if they made or caused a false statement material to an obligation to pay	Liability potentially extends to other parties in a supply chain, including customers and suppliers, if they directed, assisted financially or otherwise, or were involved in the events

Combined risks of FCA and Section 592 enforcement

In some cases, the government may choose to recover unpaid customs payments under both the FCA and Section 592.

In *Island Industries*, the federal appeals court held that Section 592 does not displace the FCA by giving a mechanism for the government to recover fraudulently avoided customs duties. The Ninth Circuit explained that Section 592 “undoubtedly overlaps with the FCA,” but their co-existence is supported by statutory language and the history of each.

For example, the FCA indicates that FCA cases may proceed in parallel with “any alternate remedy,” and Congress specifically enacted an amendment to the FCA to make it clear that the FCA reaches customs duties despite Section 592 already providing a pathway for reaching those duties.

Given this risk of combined enforcement, companies should also be mindful that tools that minimize penalties under one mechanism may not protect the company from the other, and indeed may expose the company to added risk.

For example, a company may file a voluntary, confidential, pre-investigation “prior disclosure” to formally report potential violations to CBP and reduce its penalty under Section 592 to underpaid duties, taxes, and fees, plus interest. However, a prior disclosure does not block a government FCA complaint (and may not even block a whistleblower’s *qui tam* complaint).¹²

Invoking a prior disclosure may even increase the company’s FCA profile and penalty risk, especially as to issues beyond those identified in the disclosure.

Conversely, an FCA settlement that minimizes a company’s exposure to severe penalties may not protect the company from a Section 592 investigation, depending on the scope of any government release. With that, even where there are two investigations, the government may not be entitled to excessive or duplicative recovery.¹³

A real-world example of the exposure that entities face under both the FCA and Section 592 is highlighted by the July 2025 settlement entered into by MGI International LLC’s (“MGI”) subsidiaries — Global Plastics, LLC and Marco Polo International, LLC.

In July 2025, MGI’s subsidiaries entered an FCA settlement with the government for alleged customs fraud despite having submitted related prior disclosures to CBP the prior year. The companies received cooperation credit for their disclosures to CBP (along with other actions including a voluntary disclosure to a U.S. Attorney’s Office and implementing remedial actions), but these disclosures did not preclude the government from a recovery under the FCA.

Notably, the FCA settlement did explicitly release the companies from further civil claims under the Tariff Act of 1930.¹⁴

Similarly, in 2020, Linde GmbH and its U.S. subsidiary entered an FCA settlement with the government for alleged customs-related misrepresentations despite having previously submitted a prior disclosure under Section 592 on overlapping misrepresentations.¹⁵ The government similarly considered the prior disclosure in the FCA settlement as cooperation warranting a settlement discount.

Parallel criminal enforcement

As shown by the recent announcements made by DOJ’s Criminal Division, the government may also use criminal enforcement mechanisms in response to suspected customs fraud and evasion. And there is no prohibition on the concurrent application of both civil and criminal enforcement to these violations.

In 2020 (<https://bit.ly/3KAR6cL>), 2021 (<https://bit.ly/492KtsS>), and 2023 (<https://bit.ly/4iOwMkF>), DOJ consummated settlements under the FCA alongside separate criminal charges for individuals associated with alleged customs violations. The government has also sought to pursue criminal charges separately from Section 592 claims, as reflected in a 2013 (<https://bit.ly/3KPYP6K>) default judgment from the CIT and illustrated in a 2020 criminal indictment by DOJ filed with a parallel Section 592 civil complaint in the CIT.¹⁶

Among the criminal enforcement mechanisms available to the government are statutory prohibitions on:

- **Conspiracy** (18 U.S.C. § 371): Two or more parties conspiring to commit any offense against the United States in any manner or for any purpose. This could include but is not limited to an offense against CBP to avoid customs duties owed.

- **False entry** (18 U.S.C. §§ 541–542): Knowingly entering goods falsely classified (§ 541) or entering goods through false statements (§ 542).

- **Smuggling** (18 U.S.C. § 545): Knowingly and willfully importing merchandise unlawfully into the United States. Examples of potential smuggling violations include intentionally misreporting the classification or origin of merchandise to avoid customs duties owed.

- **Wire fraud** (18 U.S.C. §§ 1343 & 1349): Defrauding the United States through interstate or foreign wire communications (including emails). An illustration of this violation is a scheme in which communications are used to undervalue imports to avoid payment of customs duties owed.

- **False statements** (18 U.S.C. § 1001): Knowingly and willfully making false statements or representations to a federal government officer. This would include but is not limited to misrepresentations to a CBP officer.

Should the U.S. Supreme Court uphold the President’s IEEPA tariffs, the IEEPA statute’s own criminal (and civil) penalty provisions (50 U.S.C. § 1705) could serve as additional enforcement mechanisms to pursue the non-payment of IEEPA tariffs specifically.¹⁷

Managing risks of tariff enforcement

As the Administration continues to place a high priority on trade-related enforcement, companies involved in the U.S. importing process should consider the following steps for minimizing future tariff enforcement risk:

- (1) Importers should ensure they have an import compliance program. That program should include, among other things, an import compliance manual, recordkeeping procedures, regular entry monitoring, broker monitoring (if applicable), periodic program assessments, regular training and communications, internal risk assessments and audits, and internal reporting mechanisms.
- (2) Importers should consider, albeit with caution, whether to proactively self-report potential customs errors to CBP

and to DOJ. In doing so, companies should keep in mind as discussed above that a prior disclosure may increase rather than reduce their risk of liability under the FCA and Section 592.

- (3) Importers should consider preparing “reasonable care” memoranda on significant U.S. customs law questions, submitting informal written inquiries to their CBP account manager or the agency’s Office of Trade, or requesting formal customs rulings from CBP. In any of these cases, companies should consider that each of these tools is fact specific and their utility in minimizing risk may depend on the degree to which the disclosed facts are accurate and complete.
- (4) Importers should ensure that any settlement resolution of either FCA or Section 592 liability is as broad as possible and ideally addresses the importer’s risk under both provisions. As in the recent FCA settlement involving MGI, for example, importers in an FCA settlement should consider negotiating a release from further government action under Section 592.

Notes:

¹ Other authorities used for tariff enforcement are more specialized than the FCA and Section 592. Such authorities include but are not limited to the Enforce and Protect Act (“EAPA”) for potential evasion of antidumping and countervailing (“AD/CVD”) orders, and penalty provisions for aiding unlawful importation (19 U.S.C. § 1595a), improperly marking country of origin (19 U.S.C. § 1304), and filing false drawback claims (19 U.S.C. § 1593a).

² See *Island Industries, Inc. v. Sigma Corporation*, 151 F.4th 1003 (9th Cir. 2025).

³ Such requirements could include, depending on the circumstances:

- EPA’s fee requirements under the Toxic Substances Control Act (“TSCA”) for imports of certain chemical substances, see EPA, TSCA Fees for Test Rules, (Oct. 15, 2025), <https://bit.ly/48KJk89>;
- EPA’s payment requirement for applicants of a TSCA Environmental Release Application (or “TERA”) in connection with microorganism imports, see EPA, TSCA Environmental Release Application (TERA) for *Pseudomonas putida* (P. Putida), (July 31, 2025), <https://bit.ly/3KVuyn3>;
- USDA’s import inspection fees charged by the Agricultural Marketing Services (or “AMS”) for imports of fresh fruits, vegetables, and other products, see 19 C.F.R. § Part 51; USDA, Section 8e Import Inspection Fee Structure, (Jan. 29, 2025), <https://bit.ly/3XNkM9A>;
- USDA’s Agricultural Quarantine and Inspection (or “AQI”) user fees required for the arrival of certain commercial vessels, trucks, railroad cars, and planes at U.S. ports, see 19 C.F.R. § 354.3, USDA, Agricultural Quarantine and Inspection (AQI) User Fees Explained: A Small Entity Compliance Guide, (Oct. 1, 2025), <https://bit.ly/3XNkZcS>;
- FDA’s user fee requirements including fees for imported tobacco products, see U.S. Food & Drug Admin., FDA: User Fees Explained, (May 22, 2024), <https://bit.ly/4iVFcXK>; and
- FDA’s establishment registration fees for medical device imports, see U.S. Food & Drug Admin., Who Must Register, List and Pay the Fee, (Sept. 27, 20218), <https://bit.ly/48Hbi4A>.

⁴ 151 F.4th 1003, 1013 (9th Cir. 2025).

⁵ 370 F.3d 829 (9th Cir. 2004).

⁶ See *United States v. Universal Fruits & Vegetables Corp.*, 433 F.Supp.2d 1351 (Ct. Int’l Trade 2006).

⁷ See 19 U.S.C. § 1592(e)(4).

⁸ See, e.g., *United States v. Ford Motor Co.*, 463 F.3d 1267, 1279 (Fed. Cir. 2006); *United States v. Titan Metals Corp.*, 378 F. Supp. 3d 1325, 1333 (Ct. Int'l Trade 2019). CBP expands on "reasonable care" in guidance titled *What Every Member of the Trade Community Should Know: Reasonable Care (An Informed Compliance Publication)*, (Sept. 2017), <https://bit.ly/44T3cER>.

⁹ Notably, lost duties are based on a percentage of import value, a value that may be less than the domestic value of a product.

¹⁰ See *Civil Monetary Penalty Adjustments for Inflation*, 89 Fed. Reg. 106,308, 106,310 (Dep't of Commerce Dec. 30, 2024), <https://bit.ly/4pwzNJ6>.

¹¹ Dep't of Justice, *Ford Motor Company Agrees to Pay \$365M to Settle Customs Civil Penalty Claims Relating to Misclassified and Under-Valued Vehicles*, (Mar. 11, 2024), <https://bit.ly/44QjNcq>; Dep't of Justice, *Settlement Agreement between the United States and Ford Motor Company*, (2024), <https://bit.ly/4rMZGFW>.

¹² Under the FCA, a public disclosure bars *qui tam* actions with overlapping issues unless the relator was the original source of the information. 31 U.S.C. § 3730(e)(4)(A). Thus, if a prior disclosure to CBP is publicly disclosed, it could qualify as public disclosure that blocks a subsequent *qui tam* complaint. However, a prior disclosure may never leave CBP's office and therefore may not trigger the public disclosure bar. See, e.g., *United States ex rel. Chiba v. Guntersville Breathables, Inc.*, 421 F. Supp. 3d 1241, 1259-60 (N.D. Ala. 2019).

¹³ U.S. federal courts have recognized that the government (or a relator filing on the government's behalf) is limited in its ability to seek excessive or duplicative

FCA damages. See, e.g., *United States v. Bornstein*, 423 U.S. 303, 314 (1976) (recognizing contractor's entitlement to a credit for compensatory payments to the government by another contractor); *United States v. Honeywell Int'l Inc.*, 47 F.4th 805, 815-19 (D.C. Cir. 2022) (holding it appropriate to provide credit against one defendant's common damages liability for damages the government already recovered through settlements with co-defendants); see also *United States ex rel. Grant v. Zorn*, 107 F.4th 782, 797 (8th Cir. 2024) ("The FCA's combination of treble damages with per-claim penalties constitutes a punitive sanction that falls within the reach of the Excessive Fines Clause.").

¹⁴ The companies were not released from liability risks under criminal, IRS, and other claims. See Dep't Justice, *Settlement Agreement between the United States and Global Plastics, LLC and Marco Polo International, LLC*, <https://bit.ly/44VTOLJ>.

¹⁵ See Dep't of Justice, *Multinational Industrial Engineering Company To Pay \$22 Million To Settle False Claims Act Allegations Relating to Evaded Customs Duties* (Sept. 25, 2020), <https://bit.ly/4pVGHqY>.

¹⁶ See Dep't of Justice, *15 Named In \$26 Million International Trade Fraud Scheme* (Dec. 15, 2020), <https://bit.ly/4pvBtCt>.

¹⁷ IEEPA provides for significant civil penalties — up to the greater of \$377,700 or twice the value of the transaction — for IEEPA violations on a strict liability basis, meaning that penalties might apply for nonpayment of tariffs without regard to any level of culpability. It also provides for criminal penalties of up to \$1 million or 20 years in prison for willful IEEPA violations. 31 C.F.R. § 578.7

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