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Trade Violations Under the False Claim Act

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On February 7, 2023, the U.S. Department of Justice (“DOJ”) announced that settlements and judgements under the False Claims Act (“FCA”) exceeded \$2 billion for the 2022 fiscal year. The 2022 fiscal year also had the second-highest number of settlements and judgments for any given year in FCA history.

This news reflects the increasingly firm stance the U.S. government has taken on cases involving fraud against the government. Notably, President Biden’s most recent State of the Union Address was heavy with themes of holding businesses accountable for fraudulent or exploitive behavior.¹ The FCA serves as an avenue for the government to carry out these broad goals. As stated by Deputy Attorney General Brian Boynton in the DOJ’s announcement, “the False Claims Act remains one of the most important tools for ensuring public funds are spent properly and advance public interest.”

Against this backdrop, we can expect increasingly robust use of the FCA to impose liability on businesses and individuals that falsely claim government funds or knowingly withhold payments to the government. In addition, recent FCA cases also indicate an upward trend in the application of the FCA to cases involving U.S. trade law. Specifically, FCA cases involving customs violations are becoming more and more common. In addition, there has also been an uptick in recent years of cases involving violations of U.S. export control laws and economic sanctions. This article will provide a brief overview of the FCA, detail how it is applicable in cases involving U.S. trade law, and highlight recent trade-related FCA cases.

What is the False Claims Act?

The FCA is codified in Title 31 of the U.S. Code, sections 3729-3733. While the FCA is most well-known for its use in cases where a party has fraudulently claimed money from the U.S. government, it also applies in cases where a party has knowingly avoided payment to the government. The latter application, aptly called the “reverse false claim,” can impose liability on a party that knowingly avoids proper payment of Customs duties.² Importers of goods into the U.S. must provide accurate reporting information to Customs and Border Protection (“CBP”) and pay all required duties. Parties that fail to submit accurate documentation to CBP, resulting in an improper avoidance of customs duties, can be held liable for treble damages and penalties under the FCA.

Importantly, the FCA allows private parties that know of fraudulent behavior to initiate lawsuits under the FCA on behalf of the United States.³ If the government recovers money in the suit, the private party, referred to as a “relator,” can receive a share of that monetary recovery.⁴ Not

¹ “Remarks of President Joe Biden- State of the Union Address,” WhiteHouse.gov [Briefing Room] (Feb. 7, 2023), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/07/remarks-of-president-joe-biden-state-of-the-union-address-as-prepared-for-delivery/>.

² The False Claims Act: A Primer, Justice.gov, https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf.

³ *Id.*

⁴ *Id.*

surprisingly, the number of lawsuits initiated by individuals has “grown significantly since 1986,” with the DOJ reporting an average of more than twelve new cases each week.⁵

FCA Cases Involving Customs Violations

While customs violations in FCA cases generally stem from the underpayment of duties, the facts underlying those violations can vary from case to case. Recent cases provide illustrative examples of two of the most common types of customs violations in FCA cases: submitting false documentation to CBP that undervalues imported goods and misclassifying goods under the Harmonized Tariff Schedule (“HTS”) to avoid duties.

Submission of False Documentation

To pay less in duties, individuals or companies will in some case submit false invoices that do not reflect the true value of the items imported. On December 19, 2022, the DOJ announced that it had settled claims brought under the FCA against [Noble Brand Holdings \(Noble\)](#), a Chinese manufacturer that knowingly underpaid Customs duties by running a double invoicing scheme. Under this scheme, Noble would generate two sets of parallel invoices. The invoices with correct pricing for its products would be sent to the U.S. company purchasing the products, while false invoices with improperly reduced pricing were sent to customs brokers for valuation purposes.

The DOJ announced another settlement agreement involving false documentation on August 11, 2022. This agreement settled claims brought under the FCA against a [menswear company](#) and its manager for knowingly providing incorrect reports to CBP that undervalued apparel items the company imported into the U.S. Ultimately, the parties in this case owed over \$1.8 million in unpaid Customs duties.

Misclassification of Goods

Misclassifying goods under the HTS is another method companies fraudulently use to avoid payment of Customs duties. For example, the DOJ announced on January 30, 2023 that it had settled a lawsuit against [International Vitamins Corporation \(“IVC”\)](#) for incorrectly classifying imported goods to avoid paying full duty amounts. IVC reported improper HTS classifications for imported items for more than four years, even failing to correct the misclassifications after hiring a consultant who confirmed they were incorrect. The DOJ stated that IVC’s actions resulted in the underpayment of “millions of dollars of duties owed to CBP.”

More recently, the DOJ announced a settlement agreement it reached with a [footwear company](#) on February 7, 2023. Similar to IVC, the footwear company admitted to providing its customs brokers with documentation that incorrectly classified the items

⁵ “False Claims Act Settlements and Judgements Exceed \$2 Billion in Fiscal Year 2022,” DOJ Press Release (Feb. 7, 2022), <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-2-billion-fiscal-year-2022>.

under the HTS so it could underpay customs duties. A U.S. attorney involved in the case stated that his office “is committed to combatting customs fraud by holding companies accountable when they misclassify goods and evade paying their legally required duties.”

In addition to false documentation declaring incorrect values and incorrect HTS classifications, FCA customs cases over the past several years have shown that companies are also willing to use other schemes to avoid paying duties, including the failure to properly declare costs for customs [assists](#) (e.g., parts or components, tooling, or molds used in the production of the merchandise) or transportation, the false representation of a [country of origin](#), and the fraudulent classification of goods as [samples](#).

Settlements in Customs Violation FCA Cases

A review of 2022 settlement agreements reflects robust penalties imposed on companies found liable for customs violations under the FCA. In fact, in FCA cases, a multiplier may be added to the amount the responsible party owes in unpaid duties.⁶ Multipliers vary case by case, but recent settlement agreements show that parties in FCA customs violations settlements can expect the unpaid duties to be multiplied by at least two.

For example, Noble Brand Holdings was required to pay a [settlement](#) amount of \$500,000, roughly two and a half times the restitution owed to the government. International Vitamins Corporation paid \$22,856,055 in [settlement](#) of its FCA case, which was also more than double the amount it owed in restitution.

Individuals and companies should take these cases as a warning that schemes to avoid payment of Customs duties can have dire consequences. For companies aware of potential Customs or other trade violations, they should carefully consider the potential benefits of submitting [voluntary disclosures](#) to the government. It should also be noted that many FCA Customs cases involve a relator. Unlike for CBP informant awards, there is no cap on the total amount of money a relator may recover under the FCA. In fact, relators in FCA cases can receive up to 30% of the amount the government recovers, a solid incentive to report fraudulent behavior. As such, companies should always maintain strong systems of compliance and avoid cutting corners when it comes to paying customs duties.

FCA Application in Other Trade-Related Cases

In the trade context, cases involving customs violations make up the majority of FCA cases. However, it is important to note that the FCA may also apply in cases involving violations of U.S. export laws and economic sanctions.

⁶ The False Claims Act: A Primer, *supra* note 2.

For example, the U.S. Attorney’s Office for the Northern District of Texas announced on February 27, 2023, that it had settled claims under the FCA with 3D Systems Corporation (“3D Systems”) for violations of export control laws, including the Export Administration Regulations (“EAR”) and the International Traffic in Arms Regulations (“ITAR”). According to the [press release](#), 3D Systems was either directly or indirectly involved in manufacturing contracts issued by the Department of Defense and the National Aeronautics and Space Administration. 3D Systems exported certain items and intellectual property covered in the contracts to the People’s Republic of China without obtaining the proper licenses and/or authorization required under U.S. export laws.

Similarly, the Second Circuit case *U.S. ex rel. Brutus Trading LLC v. Standard Chartered Bank et al.*, offers an example of how violations of U.S. sanctions may also give rise to liability under the FCA.⁷ In that case, Standard Chartered Bank, a London-based multinational bank, faced FCA claims for violations of U.S. sanctions against Iran. Standard Chartered Bank allegedly failed to pay billions of dollars in penalties to the U.S. government for its unlawful facilitation of transactions for Iranian businesses and individuals made through U.S. financial institutions.⁸ Although the status of this case is still pending and may be dismissed,⁹ the facts demonstrate how the FCA may pose a liability risk for companies engaged in actions that violate U.S. economic sanctions.

As these cases show, the FCA is likely to be used as a tool to enforce import *and* export laws as long as the circumstances involve a fraudulent claim of money or failure to pay money to the U.S. government.

If you have questions related to the False Claims Act or compliance with U.S. trade laws, please contact the attorneys at Torres Trade Law, PLLC.

⁷ See *United States ex rel. Brutus Trading LLC v. Standard Chartered Bank*, 18 Civ. 11117 (PAE) (S.D.N.Y. Oct. 13, 2021).

⁸ *Id.*

⁹ *United States ex rel. Brutus Trading LLC v. Standard Chartered Bank*, Case No. 20-2578 (2d Cir. Jan. 24, 2023).



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