

Enforcement Under the Current Administration – A New Formula

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“America First” Trade Policy

[A]a robust and reinvigorated trade policy that promotes investment and productivity, enhances our Nation’s industrial and technological advantages, defends our economic and national security, and — above all — benefits American workers, manufacturers, farmers, ranchers, entrepreneurs, and businesses.

A NEW FORMULA TO CONSIDER

$$E=M/C_2$$

E=Enforcement; M= Money

C=Compliance

CBP POLICY OBJECTIVES

Data Focused with FULL VISIBILITY & AI Analysis

- AI Driven Targeting
- Automated information requests and enforcement actions
- Reduced human review
- Traceability – Not just for UFLPA anymore
 - Origin
 - Materials/Inputs
- Pre-vetting of supply chains / “product passports”
- ACE Importer Accounts – more critical than ever

CBP MISSION OBJECTIVES

Revenue Driven

- Focused on stopping
 - Bad actors affirmatively seeking to evade accountability (shell companies)
 - Undervaluation
 - Misdescription
 - False/Incorrect Origin Declarations
 - Traditional Illegal Transshipment

TRADITIONAL STANDARDS OF REASONABLE CARE

- All import transactions must be conducted with “reasonable care.”
 - Supply Complete Information
 - Due Diligence
- “Reasonable Care” depends on the circumstances
 - Number of transactions
 - Complexity of Transactions
 - New & Different Transactions
 - Prior history of errors/compliance
 - Reasonable Care Checklist

A DISTINCTION BETWEEN THE STANDARDS OF CARE?

Importer of Record

- Reasonable Care
- Make entry filing w/ info needed for CBP to determine release
- Complete entry filing w/ CBP value, classification and other info for duties, stats, other legal requirements

Customs broker

- Responsible supervision and control
- Over customs business
- Sufficient # licensed brokers
- CBP may consider 13 criteria

WILL REASONABLE CARE CONTINUE TO BE RECOGNIZED? WHAT DOES THIS MEAN FOR BROKERS AND RESPONSIBLE SUPERVISION AND CONTROL?

- Trump Administration trade policy explicitly includes trade enforcement
- IEEPA and Section 232 trade remedies include enforcement language that reads of “strict liability.”
- What is the Broker’s role in this environment?

REDEFINING THE RELATIONSHIP – BROKERS, IMPORTERS & CBP

- POA: Authority to perform acts in fiduciary capacity (principal/agent); not a contract
- Terms & Conditions: contractual agreement between broker and importer for services (responsibilities, fees, payment, obligations, liability limitations)
- Service Contract: define obligations; broker prepare, file entry; importer provide timely, accurate information
- 19 CFR 111.36 – Relations with unlicensed persons. Waiver of charges. Entry docs?
- 19 CFR 111.32 – False information (can't knowingly assist in filing false claim/document, nor knowingly give false/misleading info to Govt. Report separation due to attempted fraud, criminal act)
- 19 CFR 111.39 – Due diligence re correctness of any info to client. If known noncompliance or error/omission, must advise re corrective action and retain record of communication

Aluminum Section 232

(Proclamation 10895, Feb. 10, 2025)

- Sub-Section 12:
 - **“CBP shall prioritize classification reviews** CBP shall prioritize reviews of the classification of imported aluminum articles and derivative aluminum articles and, **in the event that it discovers misclassification resulting in loss of revenue of the ad valorem duties proclaimed herein, it shall assess monetary penalties in the maximum amount permitted by law.”** (emphasis added)
 - CSMS #65236645, #64384496, #64348288: “CBP expects full compliance from trade community for accurate reporting and payment of additional duties. CBP will take enforcement action for non-compliance.”

Steel Section 232

(Proclamation 10896, Feb. 10, 2025)

- Sub-Section 12:
 - “CBP **shall prioritize reviews** of the classification of imported steel articles and derivative steel articles and, in the event that it discovers misclassification resulting in non-payment of the ad valorem duties proclaimed herein, it **shall assess monetary penalties** in the maximum amount permitted by law and **shall not consider any evidence of mitigating factors** in its determination.” (emphasis added)
 - CSMS #65236374, #64384423, #64348411: “CBP expects full compliance from the trade community for accurate reporting and payment of the additional duties. CBP will take enforcement action on non-compliance.”

Copper Section 232

(Proclamation 10896, July 30, 2025)

- Sub-Section 4: “CBP **shall** issue authoritative guidance mandating **strict compliance** with declaration requirements for copper content in imported articles and outlining maximum penalties for noncompliance, including that importers who submit underreported declarations **may be subject to severe consequences**, such as significant monetary penalties, loss of import privileges, and criminal liability, consistent with United States law.” (emphasis added)
- CSMS #65794272: “Importers who submit underreported declarations may be subject to severe consequences, such as significant monetary penalties, loss of import privileges, and criminal liability, consistent with United States law.”

Canada Fentanyl IEEPA (EO 14325, July 31, 2025)

- Section 3(a): All articles of Canada that do not qualify as originating under USMCA and are determined by CBP to have been transshipped to evade the applicable duties shall be subject to:
 - An additional 40% ad valorem rate of duty.
 - Any other applicable or appropriate fine or penalty, including under 19 U.S.C. §1592.
 - Any other duties, fees, taxes, exactions, or charges applicable to goods of the country of origin.
 - CBP shall not allow, consistent with applicable law, mitigation or remission of the penalties assessed on imports found to be transshipped to evade applicable duties.

IEEPA Reciprocal Tariffs

- EO 14326 (July 31, 2025):
- **Transshipment Provision** –(Section 3(a)):
 - An article determined by CBP to have been **transshipped to evade** applicable duties under this order shall be subject to:
 - An additional 40% *ad valorem* rate of duty.
 - Any other applicable or appropriate fine or penalty, including those assessed under 19 U.S.C. §1592.
 - Any other U.S. duties, fees, taxes, exactions or charges applicable to goods of the country of origin.
 - CBP shall not allow, consistent with applicable law, mitigation or remission of the penalties assessed on imports found to be transshipped to evade applicable duties.

IEEPA Reciprocal Tariffs

- CSMS #65829726 (August 4, 2025):
 - **TRANSSHIPMENT**

“Goods determined by CBP to have been transshipped to evade applicable IEEPA Reciprocal duties are subject to an additional ad valorem duty of 40 percent. CBP will direct a correction of the entry and/or entry summary to be filed, replacing the IEEPA Reciprocal HTSUS number with heading 9903.02.01 or take action upon liquidation to collect the 40% applicable duties. The 40% duties are in addition to any other applicable or appropriate fine or penalty, and any other duties, fees, taxes, extractions, or charges applicable to goods of the country of origin.”

DOJ “Trade Fraud Task Force”

- Launched August 29, 2025
 - “The Task Force will augment the existing coordination mechanisms within the Department of Justice and leverage expertise from both the Civil and Criminal Divisions, as well as the Department of Homeland Security, to aggressively pursue enforcement actions against any parties who seek to evade tariffs and other duties, as well as smugglers who seek to import prohibited goods into the American economy. This Administration is fully committed to holding parties accountable for their attempts to undermine honest American competitors.”

ENFORCEMENT WE ARE SEEING NOW

Imports and Revenue Collection	FY 2025 ¹	FY 2024	FY 2023	FY 2022	FY 2021	FY 2020
Total Import Value for Goods	\$3.31 trillion	\$3.36 trillion	\$3.32 trillion	\$3.35 trillion	\$2.8 trillion	\$2.42 trillion
Total Entry Summaries	43.1 million	38.3 million	36.6 million	39.1 million	36.9 million	32.8 million
Total Section 321 BOL's and Mail (de minimis)	945.3 million	1.36 billion	1 billion	685.4 million	771.5 million	636.7 million
Total Duty, Taxes, and Fees Collected*	\$195.9 billion	\$88.07 billion	\$92.3 billion	\$111.8 billion	\$93.7 billion	\$78.8 billion

ENFORCEMENT WE ARE SEEING NOW

Trade Enforcement Activities	FY 2025 ¹	FY 2024	FY 2023	FY 2022	FY 2021	FY 2020
Number of Audits Completed	348	417	435	430	442	466
Total Collected as a result of Importer Audits	\$192.77 million	\$117.67 million	\$114.5 million	\$77.7 million	\$132.2 million	\$44.6 million
Net Revenue Recovered due to Entry Summary Reviews (ESF)	\$32.95 billion	\$667.55 million	\$256.3 million	\$267.3 million	\$473.6 million	\$371.2 million
Total Trade Penalties Issued	2,218	2,204	2,592	2,121	2,394	2,035
Total Trade Liquidated Damages	46,835	22,399	19,832	18,667	19,834	18,932
Total Collected from Trade Penalties and Liquidated Damages	\$37.88million	\$26.21 million	\$33.3 million	\$19.3 million	\$21.7 million	\$26.2 million

ENFORCEMENT WE ARE SEEING NOW

Seizures	FY 2025	FY 2024	FY 2023	FY 2022	FY 2021	FY 2020
Total Number of Trade Seizures ²	52,398	48,444	44,558	46,111	83,402	73,708
Total Number of IPR Seizures	23,128	20,516	19,522	20,813	27,115	26,490
Total MSRP Value of IPR Seizures	\$6.7 billion	\$5.5 billion	\$2.4 billion	\$2.98 billion	\$3.3 billion	\$1.3 billion
Total Number of Import Safety Seizures	8,350	6,888	6,183	4,484	9,145	8,208
Total Value of Import Safety Seizures	\$132.4 million	\$60.6 million	\$44 million	\$62.4 million	\$105.5 million	\$12.68 million

OTHER CBP ACTIONS WE ARE SEEING NOW

- Entry Rejections (300 days)
- CF 28/29s concerning classification and origin
- CBP scrutiny of IEEPA exceptions
 - Annex II inclusion
 - “Donations... to relieve human suffering” (HTSUS 9903.01.21)
- CBP Policing Illegal Transshipment
 - Using AMS and ACE data
- CBP Policing Section 232 Product Exclusions
 - 1592(d) penalties for exceeding quantities
 - Potential 1592(a) penalties
- USMCA Verifications
- Liquidated Damages Assessments
 - Late and non-filed entries
- Letters of Investigation w/o prior CF 28s/29s

ANTICIPATED ENFORCEMENT

- Customs Surveys and Audits
- Customs Value Scrutiny
 - 232 metal values
 - Lowered values
 - “First Sale” methodology
- Civil Penalty & Criminal Enforcement
- False Claims Act

False Claims Act

31 U.S.C. §§ 3729 - 3733

- Allows private right of action to encourage assistance in combating fraud.
- Percentage of award available for “relators”
 - 15% to 25% if government intervenes
 - 25% to 30% if no government intervention
- Plus attorneys’ fees and cost

False Claims Act

31 U.S.C. §§ 3729 - 3733

- Elements of a Violation - Knowingly presenting, or causing to be presented, a claim that is false or fraudulent
- No proof of specific intent to defraud is required
- Criminal and civil (damages may be trebled, plus \$14,308 to \$28,619 per claim) penalties apply (plus program exclusion)
- Government can make claims up to 6-10 years from the date of false claim.
- Whistleblowers get up to 30% of first \$100 million (presume at least of first \$10 million)
- In addition to 1592 claims!

Reverse False Claims

31 U.S.C. § 3729 (a)(1)(G)

Makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an “obligation”

- Essentially Gross Negligence standard
- Could encompass misclassification, false country of origin to avoid duties/quotas

Criminal Enforcement

- DOJ has signaled increased use of criminal penalties going forward.
- DOJ consolidated civil and criminal enforcement under a new “Market, Government, and Consumer Fraud” (MGCF) Unit within the Criminal Division focused on investigating and prosecuting complex trade frauds, such as tariff evasion, classification, false country-of-origin declarations, and transshipment.

“Broker First” Trade Policy

- Revenue Collector
- Force Multiplier
- Eyes and Ears
- Address/Redirect Non-Compliance
- Licensed, Reliable, Trusted Partner
- Continuing Education
- Information Sharing
- Build Efficiencies
- Embrace Technology
- Responsible Party