

Focus | International/Immigration Law

DOJ's Increasing Role in the Enforcement of U.S. Trade Laws

BY DERRICK KYLE

Multiple federal agencies are charged with enforcing U.S. international trade and national security laws. These agencies include the Department of Commerce Bureau of Industry and Security (BIS) and the Department of State Directorate of Defense Trade Controls (DDTC), which enforce export control laws, and the Department of the Treasury Office of Foreign Assets Control (OFAC), which administers and enforces U.S. economic sanctions programs. U.S. Customs and Border Protection (CBP) is tasked with collecting customs duties and enforcing U.S. import laws.

In recent years, the Department of Justice (DOJ) has become more involved in trade-related enforcement through collaboration with these administrative agencies. Notably, DOJ involvement in these actions can result in more extensive investigations, higher reputational risk for companies, and more significant penalties than those imposed solely by regulatory agencies.

Export Control and Economic Sanctions Violations

The DOJ's National Security Division (NSD) investigates and prosecutes cases implicating U.S. national security and is the primary DOJ division that enforces export control and economic sanctions violations. The NSD often collaborates with other DOJ components, including regional U.S. Attorneys' Offices (USAOs) and inter-agency task forces.

For example, on April 4, 2024, the DOJ announced the prosecution of two Florida residents for conspiring to illegally send sensitive aircraft technology to Russia. The

prosecution involved attorneys from the NSD, two USAOs, and assistance from the Disruptive Technology Strike Force and Task Force KleptoCapture, which are inter-agency law enforcement task forces established in the wake of the Russian invasion of Ukraine. The individuals pleaded guilty to conspiracy to export items in violation of the Export Control Reform Act (ECRA) and conspiracy to commit international money laundering. BIS, CBP, FBI, and Homeland Security Investigations (HSI) field offices were also credited for their work in the joint investigation of the matter. This action exemplifies the collaborative approach the DOJ takes to export control enforcement. A U.S. Attorney involved in the case noted that "[d]isrupting the illegal export of sensitive American goods and technologies to sanctioned foreign actors is a critical priority requiring a whole-of-government approach."

DOJ settlements of export control and sanctions cases are often accompanied by parallel administrative settlements with BIS, DDTC, or OFAC. In 2021, a German multinational software company settled export control and sanctions violations with the DOJ for unlicensed transfers of software and services to Iranian parties. That company also entered into concurrent administrative agreements with BIS and OFAC, paying \$8 million in combined penalties. Notably, the company was able to mitigate penalties through extensive remediation, cooperation with investigations, and submission of Voluntary Self-Disclosures (VSDs) to BIS, OFAC, and the NSD.

Customs Violations

Recent actions also demonstrate the DOJ's involvement in import violation cases. In March 2024, the DOJ announced

a settlement with an automobile company for \$365 million over alleged violations of Customs regulations—the alleged violations related to misclassification and undervaluation of imported cargo vans from Türkiye. The DOJ's Trade Fraud Task Force, as well as attorneys within the Civil Division's National Courts Section and International Trade Field Office, were credited for their assistance in the matter.

Similarly, in December 2023, the DOJ, through the USAO for the Eastern District of Texas, settled with a furniture manufacturer for \$798,334 in connection with alleged False Claims Act ("FCA") violations involving the undervaluation of furniture imported from China. In recent years, the DOJ has benefitted from the FCA's *qui tam* (or whistleblower) provision in reaching settlements with parties that have knowingly avoided payment of import duties owed to the government. The alleged customs duty evasion began after the United States imposed tariffs on Chinese-origin goods, which is similar to fact patterns in many other duty evasion enforcement cases brought by both DOJ and CBP.

The above cases illustrate the DOJ's use

of different federal laws and the involvement of various DOJ components in the investigation and prosecution of Customs-related violations.

Conclusion

The DOJ's increased involvement in enforcing U.S. international trade laws creates higher legal risk for parties involved in global business, especially those that self-blind to violations or lack effective internal compliance mechanisms. Companies that discover violations of international trade and national security laws can often mitigate severe enforcement actions or penalties by submitting VSDs to BIS, DDTC, or OFAC, or "prior disclosures" to CBP. However, certain egregious cases or whistleblower situations may lead to DOJ involvement. When violations are discovered, affected parties should promptly implement remedial measures and consult legal counsel to understand their exposure to potential enforcement actions by the primary trade agencies as well as the DOJ.

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