

Trump Likely To Prioritize Trade, Customs Fraud Enforcement

By **Andrew Boutros and Jay Schleppenbach** (January 29, 2025)

With the election of a new president of the U.S. invariably come predictions about what that president's enforcement priorities are likely to be. When it comes to President Donald Trump's second term, the blueprint of his first term and his various subsequent campaign promises and public statements provide ample evidence of exactly where he and his administration intend to apply the nation's ample prosecutorial muscle.

From these sources, it is clear to us as we look ahead, that in a second Trump presidency, the U.S. Department of Justice, U.S. Department of Commerce and U.S. Department of the Treasury, along with their enforcement partners, such as Homeland Security Investigations and U.S. Customs and Border Protection, will make trade and customs fraud enforcement a high priority.

We wrote about this some seven years ago, when Trump became the 45th President of the U.S.[1] We now write about it again shortly after Trump was sworn in as the nation's 47th president.

Thus, the predictions contained in this article are not only based on what Trump has said he wants to do and will do, but also on what we understand the enforcement officials can actually do based on our own training and experience.



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Trade and Customs Fraud Emphasized in Executive Orders Early in 1st Trump Term

Within three months of taking the oath of office in his first term, on March 31, 2017, Trump issued two executive orders emphasizing his commitment to prosecuting violations of U.S. trade and customs laws.

One of the orders focused on better understanding the scope and magnitude of the country's trade problems."[2]

The other order explicitly stated that unfair trade practices "expose United States employers to unfair competition and deprive the Federal Government of lawful revenue" and therefore federal prosecutors and other law enforcement partners must "vigorously enforce[e] our Nation's trade laws," making it a "high priority." [3]

Accordingly, that order directed the attorney general, in consultation with the secretary of homeland security, to "develop recommended prosecution practices and allocate appropriate resources to ensure that Federal prosecutors accord a high priority to prosecuting significant offenses related to violations of trade laws." [4]

It also directed Homeland Security Investigations and CBP to develop and implement a strategy for combating violations of trade and customs laws and for enabling interdiction and disposal and directed the secretary of the Treasury and the secretary of Homeland Security "[t]o ensure the timely and efficient enforcement of laws protecting Intellectual Property Rights (IPR) holders from the importation of counterfeit goods." [5]

In short, the orders set out a significantly more aggressive approach to enforcement of trade and customs laws violations, although superseding, intervening events, such as COVID lockdowns, may have muted the first Trump administration from fully focusing on that mandate.

Federal Law Gave Trump's DOJ Significant Power to Pursue Trade and Customs Fraud

Trump's executive orders urged the DOJ to make use of its powers to combat trade and customs fraud, and indeed those powers were significant.

Under Title 18 of the U.S Code, Section 545, for example, it has long been a felony punishable by up to 20 years in prison, in addition to fines and forfeitures, to (1) import merchandise contrary to law, or (2) handle merchandise after its importation knowing it was imported into the U.S. contrary to law.[6]

Under this statute, the latter prohibition applies to any person or company that "receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of [imported] merchandise" knowing that it was imported "contrary to law." [7]

Significantly, the standard for "knowledge" is not a high one. As is commonplace in the criminal laws, actual knowledge is not required, so long as there are red flags that a company or individual can be said to have willfully ignored or deliberately avoided.

For example, as the U.S. Court of Appeals for the Seventh Circuit puts it in its "Pattern Criminal Jury Instruction 4.10" on knowledge, a jury "may find that the defendant acted knowingly if [it] finds beyond a reasonable doubt that [the defendant] had a strong suspicion that [state fact as to which knowledge is in question, e.g., 'drugs were in the suitcase,' 'the financial statement was false,'] and that he deliberately avoided the truth." [8]

So, as it has done in the past, [9] the government could prove "willful blindness," or the legal equivalent to actual knowledge, from circumstantial evidence, such as general information about the market for the goods in question, prior public statements about similar enforcement actions involving the same products or companies, or even evidence that the price paid by the defendant for the goods was simply too good to be true.

Significant Enforcement Actions

In the trade and customs arena, the first Trump administration placed particular focus on antidumping and countervailing duties as areas especially prone to fraud, abuse and criminal conduct. [10]

Antidumping duties are owed when a foreign manufacturer sells goods in the U.S. at less than fair value, causing injury to the domestic industry for those goods.

Countervailing duties occur when a foreign government provides assistance and subsidies, such as tax breaks, to foreign manufacturers that export goods to the U.S., enabling them to sell the goods at lower prices when compared to U.S. manufacturers.

One of Trump's March 2017 executive orders noted the difficulties the U.S. has had in collecting these duties, especially where companies lack assets in the U.S., and specifically

envisioned increased enforcement of these duties.[11]

To that end, U.S. attorneys prosecuted dozens of cases involving customs violations annually during the Trump administration.[12] The DOJ also reached some notable settlements, including:

- In 2018, Bassett Mirror Co., a Virginia-based home furnishings company, agreed to pay the \$10.5 million to resolve allegations — in the U.S. v. Bassett Mirror Co. lawsuit in the U.S. District Court for the Southern District of Georgia — that it violated the False Claims Act by knowingly making false statements on customs declarations to avoid paying antidumping duties on imports from China.[13]
- In 2020, Linde GmbH, a German company, agreed to pay the U.S. more than \$22.2 million to resolve allegations — in U.S. v. Linde AG in the U.S. District Court for the Eastern District of Pennsylvania — that it violated the False Claims Act by knowingly making false statements on customs declarations to avoid paying duties on imports.[14]

In short, in the first Trump administration, the DOJ followed through on Trump's order to actively pursue trade and customs fraud cases, but did so against the backdrop of a nationwide emergency created by COVID-19 as well as other events that occupied the attention of the administration during its first four years. So, in a second Trump administration, it would be natural to expect that the evasion of tariffs and duties to be a major focus for the DOJ and its enforcement and other agency partners.

Back on the Campaign Trail

During the 2024 campaign, it is perhaps not surprising that Trump continued to emphasize his interest in reducing the U.S.' trade deficit. He called tariffs "the greatest thing ever invented" and pledged to impose across-the-board tariffs on foreign imports.[15]

In particular, he called for a 60% tariff on all Chinese imports and promised that "if a country is not going to behave, we're going to tariff the hell out of that country." [16] Trump also threatened to hit Mexican-made goods with 100% tariffs.[17]

Indeed, Trump's official platform included the so-called Trump Reciprocal Trade Act, which provides that "if any foreign country imposes a tariff on American-made goods that is higher than the tariff imposed by the U.S., Trump will have the authority to impose a reciprocal tariff on that country's goods." [18]

In this same part of his platform, Trump promised "a system of universal baseline tariffs on most imported goods" that would "increase incrementally if other countries manipulate their currency or otherwise engage in unfair trading practices." [19]

But, tariffs and duties are not self-effectuating. To be effective and to have their intended purpose, the DOJ and its enforcement and other agency partners must investigate and enforce them. If one thing is certain, when the U.S. government imposes tariffs and duties on foreign goods entering the U.S., various actors in the supply chain seek to circumvent them.[20] They do so by engaging in various schemes and tricks, such as:

- Tariff and duty avoidance transshipment schemes, where products from one country are shipped to a different country and without substantial transformation are said to originate from that second nation;
- False declaration schemes, where products from certain countries subject to tariffs/duties are declared as originating from different countries not subject to those same levels of tariffs/duties;
- Product substitution schemes, where products subject to tariffs/duties are declared as a different product (for example, honey from China is declared as artificial sweeteners); and
- Weight-skimming schemes, where products subject to tariffs and duties based on their tonnage, are declared as weighing less than they actually do.[21]

Thus, as his campaign trail statements reveal, it is fair to say that Trump's focus on trade and customs issues has not diminished but perhaps even increased and intensified as he enters into this second term in office.

Far-Reaching Consequences

Beyond this, however, the government will have — and can be expected to use — the ability to investigate and prosecute not just customs violations involving tariffs and duties, but also importations that are "contrary to law" as the government sees fit.[22] These could include merchandise allegedly tainted by, among other things:

- Intellectual property theft;
- counterfeiting activities;
- Violations involving country-of-origin markings, product substitutions and product labeling violations;
- Food and product fraud and safety violations; and
- Forced, child or abusive overseas labor practices.

Indeed, as to the latter ill, both the Trump and Biden administrations and Congress have been active. Specifically, in 2020, while Trump was still in office, he announced a ban on the importation of certain products made in China's Xinjiang Uyghur Autonomous Region, where slave labor is believed to be taking place.[23]

The U.S. House of Representatives passed the Uyghur Forced Labor Prevention Act, H.R. 6210, in September of that year, although the bill stalled in committee in the Senate.[24] But, in the next Congress, a slightly revised version of the bill, H.R. 6256, passed the House 428-1, was adopted in the Senate by unanimous consent, and was signed into law by President Joe Biden on Dec. 23, 2021, and went into effect in June 2022.[25]

The government has described the UFLPA as "the strongest tool the U.S. or any other country has forged in the fight against the atrocities of forced labor." [26] It establishes a

rebuttable presumption for purposes of Section 307 of the U.S. Tariff Act that goods produced in the Xinjiang region, or with labor linked to specified Chinese government-sponsored labor programs, are produced using forced labor and therefore not entitled to importation into the U.S.[27]

As of the summer of 2023, CBP had already detained more than 4,600 shipments pursuant to the UFLPA.

As of May 2024, CBP had examined more than 8,000 shipments valued at more than \$3 billion under the UFLPA, with particular emphasis on high-priority sectors such as apparel and cotton products being subject to more than 1200 CBP examinations.

This action led to some 800 shipments being denied entry into the U.S.[28]

Another statute, Title 18 of U.S. Code, Section 1589(b), imposes criminal penalties of up to 20 years' imprisonment for those who "knowingly benefit, financially or by receiving anything of value" from the use of slave labor in goods and services. Again, knowledge is defined to include "reckless disregard of the fact that the venture has engaged in the providing or obtaining of labor or services by any of such means." [29]

Conclusion

Based on Trump's record during his first term and subsequent public statements, businesses should expect significant civil, administrative, and criminal focus on trade, customs, and adjacent violations in the second Trump administration and carefully monitor their supply chains to avoid enforcement targeting.

Moreover, the relevant laws will give the government broad discretion to potentially prosecute a wide range of companies large and small, public and private, such as distributors, packers, wholesalers, retailers, industrial end-users, and transporters, among others.

It could also potentially prosecute corporate executives and employees, so long as they "know" that the imported merchandise entered the country "contrary to law" and had something to do with it.

Given this likely enforcement focus, companies, their executives and counsel should be attuned to these risks and be prepared to avoid them.

Doing so does not require corporate America to operate from a blank page; instead, companies can incorporate supplier due diligence procedures and periodic supply chain audits to their existing corporate compliance programs, such as those that prohibit improper payments to foreign officials under the Foreign Corrupt Practices Act.

Moreover, companies, their executives, and counsel can turn to the government's guidance in this area, as reflected in Exhibit B of an early deferred prosecution agreement in the trade and customs fraud space.[30]

In short, with a prior playbook to study, we believe Trump has made clear his willingness to use all available tools, whether the False Claims Act, Section 545, or other civil, administrative, or criminal laws for customs and trade enforcement.

Given that, those who receive goods and merchandise from overseas should be careful to avoid what could foreseeably become the next enforcement hot spot.

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[2] Exec. Order No. 13,786, 82 Fed. Reg. 16721 (March 31, 2017).

[3] Exec. Order. No. 13,785, 82 Fed. Reg. 16719 (March 31, 2017).

[4] Id.

[5] Id.

[6] 18 U.S.C. § 545.

[7] Id.

[8] The Committee on Federal Criminal Jury Instructions of the Seventh Circuit, The William J. Bauer Patter Criminal Jury Instructions of the Seventh Circuit 4.10 (2023 Ed.).

[9] See, e.g., U.S. Attorney's Office, Northern District of Illinois, Two Companies And Five Individuals Charged With Roles In Illegal Honey Imports; Avoided \$180 Million In Anti-Dumping Duties (Feb. 20, 2013), <https://www.justice.gov/usao-ndil/pr/two-companies-and-five-individuals-charged-roles-illegal-honey-imports-avoided-180>; Edicio Martinez, Honey Laundering? US Indicts 11 executives for Smuggling Chinese Honey, CBS News (Sept. 3, 2010), <https://www.cbsnews.com/news/honey-laundering-us-indicts-11-executives-for-smuggling-chinese-honey/>.

[10] Exec. Order. No. 13,785, 82 Fed. Reg. 16719 (March 31, 2017).

[11] Id.

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[19] *Id.*

[20] Congressional Research Service, *Trade Remedies: Antidumping and Countervailing Duties* (Oct. 3, 2024), <https://crsreports.congress.gov/product/pdf/if/if10018>.

[21] *Id.*

[22] 18 U.S.C. § 545.

[23] United States Department of Homeland Security, *DHS Cracks Down on Goods Produced by China's State-Sponsored Forced Labor* (Sept. 14, 2020), <https://www.dhs.gov/archive/news/2020/09/14/dhs-cracks-down-goods-produced-chinas-state-sponsored-forced-labor>.

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[25] See Secretary of State Anthony Blinken, *Implementation of the Uyghur Forced Labor Prevention Act* (June 21, 2022), <https://www.state.gov/implementation-of-the-uyghur-forced-labor-prevention-act/>; U.S. Customs & Border Protection, *Uyghur Forced Labor Prevention Act* (Dec. 6, 2024), <https://www.cbp.gov/trade/forced-labor/UFLPA#:~:text=Effective%20June%2021%2C%202022%2C%20CBP,U.S.%20importation%20under%2019%20U.S.C.>

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