Takeaways From DOJ's Latest FCA Customs Fraud Intervention

By **Denise Barnes, Lindsey Brown and Thad McBride** (May 8, 2025)

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On April 18, the U.S. Department of Justice filed a complaint-in-intervention in a customs-related False Claims Act case, U.S. ex rel. Lee v. Barco Uniforms Inc., pending in the U.S. District Court for the Eastern District of California.

The complaint alleges, among other things, that the defendants engaged in a scheme to defraud the government of monies owed to the U.S. through their fraudulent undervaluation, declaration and underpayment of customs duties related to commercial apparel imported from China.

According to the DOJ, the matter was originally brought under the qui tam provisions of the FCA by a former employee of the defendant, Barco Uniforms Inc.

According to the complaint, Barco sells uniforms to large businesses, including restaurants and fast-food chains, and health care providers. The defendants Kenny Chan and David Chan were two of Barco's top suppliers.

Originally operating in a factory in California, Kenny Chan moved the various Chan companies to China in approximately 2003 to reduce manufacturing costs and provide lower prices to customers, including Barco.

Since at least 2004, the garments sold to Barco have been manufactured in China and then imported into the U.S.

Barco in turn supplied the garments to large chain restaurants, retailers and other businesses in the U.S. Its customers are U.S.-based companies with licensed or trademarked brands prominently featured on the imported garments.

As noted by the government, commercial apparel imported from China has been subject to international duties and tariffs for decades.[1] Generally speaking, customs duties are determined based on the declared value of the imported goods — typically the transaction value — as reported to U.S. Customs and Border Protection in the entry summary.

Here, the government alleges that the Chans, Barco and the Chan companies engaged in a conspiracy scheme to withhold rightfully owed customs duties on imported commercial apparel by undervaluing it. Because the duties owed are based on the transaction value of the apparel, the fraudulently low values the defendants allegedly caused to be submitted led to fraudulently low calculations of the customs duties owed.

In particular, the government alleges that the defendants maintained two sets of invoices for the same transactions: one set of real invoices that reflected the actual price of the garments sold to Barco by one of the defendant Chan companies, and one set of fake invoices provided to customs brokers.

The fake invoices caused the brokers to misrepresent to CBP artificially low prices on the relevant entry summaries. The misrepresented values on the entry forms caused by the fake invoices resulted in fraudulently low duties. The real invoices were never provided to customs brokers or CBP as part of the import process.

Barco allegedly benefited from the underpayment of customs duties because it allowed Barco to underbid competitors and secure business.

The government referred to this scheme as "double invoicing." Presumably, the discounts obtained by the false submissions to CBP enabled Barco to win business in a competitive industry by "edging out law-abiding competitors" at the expense of millions of dollars in duty revenue that should have been paid to the U.S. under customs law.

The government is seeking damages and penalties related to the alleged underpayment of customs duties based on Barco's purchases from the Chan defendants between January 2012 and December 2021.

Reverse False Claims Liability

The basis for liability in Barco and similar customs enforcement cases is a theory called reverse FCA liability. Reverse FCA liability arises when a person or company knowingly avoids paying money owed to the government.

Under Title 31 of the U.S. Code, Section 3729(a)(1)(G) — the reverse false claims provision of act — liability can attach for either: (1) knowingly concealing, avoiding or decreasing an obligation to pay the government; or (2) knowingly creating or using (or causing another to create or use) a false record material to an obligation to pay the government.

The crux of a reverse false claim is whether the defendant owed an obligation to the government. A defendant must have a clear, established duty to pay the government.

An "obligation" is defined as "an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment."

Unlike a typical affirmative false claim, reverse false claims act liability involves fraudulently keeping money that rightfully belongs to the government, not just fraudulently obtaining it.

Of particular relevance in Barco is that courts have held that an importer's failure to pay duties on imported products, as required by the Tariff Act, is sufficient to give rise to a reverse false claim since the FCA's reverse claims provision imposes liability on those who knowingly conceal, or knowingly and improperly avoid or decrease, an obligation to pay or transmit money or property to the government.[2]

Customs Fraud Enforcement

Given courts' favorable view of FCA liability in the customs context, the government has continued to intensify its enforcement efforts against customs-related fraud over the past decade.

In one early FCA-related settlement in 2012, Toyo Ink Manufacturing Co. Ltd., a Japanese company, agreed along with its affiliates to pay $45 million to resolve allegations that it misrepresented the country of origin of certain imported goods to avoid higher duties.

In 2023, the DOJ announced the **settlement** of an FCA case involving the underpayment of customs duties allegedly owed on imported vitamins and other supplements. The DOJ alleged that International Vitamins Corp. defrauded the government by misclassifying more than 30 of its products under the Harmonized Tariff Schedule in order to avoid paying customs duties and by failing to pay back duties owed after the company corrected its long-standing misclassifications.

Apparently, even after International Vitamins was informed by a consultant that it had been misclassifying the relevant products, it did not implement the correct classifications for over nine months, and never remitted the duties it had underpaid due to the misclassification.

More recently, on March 25, the DOJ announced an $8.1 million settlement with Evolutions Flooring Inc. and its owners based on alleged customs violations. The DOJ claimed that the company caused false information to be submitted to CBP regarding the identity of the manufacturers and the country of origin of imported multilayered wood flooring. As a result, duties were substantially underpaid.

Notably, this matter involved a relator — a private party who stood in the shoes of the government under the FCA's qui tam provisions and collected over $1 million as part of the government's overall recovery.

These cases, and the most recent filing of the complaint in Barco Uniforms, reflect the DOJ's ongoing commitment to enforcing the FCA in the context of customs fraud, and holding companies and individuals accountable for schemes that deprive the U.S. of revenue.

Key Takeaways

With the new administration's emphasis on tariffs, companies and individuals can expect heightened enforcement efforts in this area. A few key takeaways are implicated by the complaint filed in Barco Uniforms.

Based on the allegations, the Chan companies arguably engaged in egregiously fraudulent conduct. Keeping two sets of entry summaries can be used to show fraudulent intent or scienter, falsity, and materiality.

As with most developing legal theories, the DOJ tends to intervene or pursue allegations where the government does not face a lot of exposure, to avoid the creation of bad law. In other words, it's no surprise that the government decided to intervene here, where the allegations, if true, would demonstrate a straightforward theory of liability.

That said, we have merely read the government's allegations, and we do not have the benefit of the defendants' defenses. Companies are entitled to set prices, and engage in discounting practices in ways that account for the economic realities of their industry and the relationship between the vendor and the purchasing importer. Companies may engage in business practices that support their financial goals and the development of long-standing vendor relationships.

Again, with the changing regulatory environment, companies should expect increased scrutiny related to any information submitted to CBP that may affect the amounts paid to the government, including information related to the classification of products, country of origin and pricing.

Unlike other FCA exposure, enforcement risk is not limited to health care companies, government contractors or grant recipients — instead, this risk implicates all companies that import goods into the U.S.

In light of this risk, companies should ensure that information provided to CBP accurately reflects the transactions at issue. FCA liability does not arise if an individual simply makes a mistake. Rather, the scienter element requires either an intent to engage in the conduct, the burying of one's head in the sand in the face of a substantial risk, or a reckless disregard for the falsity of the information provided.

And, given this administration's increased attention to tariffs, companies should also anticipate enhanced monitoring of imports coming from China, Mexico and Canada — countries currently at the center of the trade war.

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[1] See Tariff Act of 1930; 19 U.S.C. § 1 et seq.; 19 U.S.C. § 1202 et seq.

[2] See U.S. ex rel. Customs Fraud Investigations, LLC v. Victaulic Company, 839 F.3d 242, 254 (3d Cir. 2016).