



Customs & Import Controls

Customs and import controls is a complex field of statutes and regulations that is frequently changing and violations can lead to detained, excluded, seized, and forfeited shipments, as well as significant civil penalties, False Claims Act litigation, and criminal prosecutions.

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) granted new authority to US Customs and Border Protection (CBP) to enforce US customs and import controls laws and regulations, including through the Enforce and Protect Act (EAPA) which gives CBP authority to investigate allegations of antidumping/countervailing duty evasion.

In 2022, the Uyghur Forced Labor Prevention Act (UFLPA) came into effect to prohibit the importation into the US of any goods that are mined, produced, or manufactured wholly or in part by forced labor, particularly from the Xinjiang Uyghur Autonomous Region (XUAR) of the People's Republic of China or by an entity on the UFLPA Entity List, created by the US Department of Homeland Security (DHS), Forced Labor Enforcement Task Force (FLETF). The UFLPA created a rebuttable presumption that goods from the XUAR were produced with forced labor. The UFLPA is in addition to CBP's issuance of Withhold Release Orders (WROs) that similarly prohibit the importation of goods made from forced labor. In 2024, the FLETF announced that aluminum, polyvinyl chloride (PVC), and seafood as new priority sectors that it will target, joining a list of sectors previously identified, being: apparel; cotton and cotton products; silica-based products (including polysilicon); and tomatoes and downstream products.

While CBP, Homeland Security Investigations (HSI) and other agencies continue to focus attention on traditional trade enforcement priorities such as forced labor and intellectual property rights (IPR), they are also enforcing newer trade remedies relating to Section 232 duties on steel and aluminum products, Section 301 duties on goods of Chinese-origin, and duty-free claims under the United States-Mexico-Canada Agreement (USMCA) and other Free Trade Agreements.

The number of criminal cases investigated and charged relating to alleged violations of import laws has grown significantly in recent years. There also has been a significant increase in False Claims Act/*qui tam* litigation arising from relating to violations of import and related laws. If the matter involves suspected criminal activity, the Firm's attorneys are prepared to represent clients from investigation and grand jury

subpoena responses through declination, indictment, non-prosecution and plea agreements, trial, appeal, and post-conviction relief, complemented by trusted co-counsel.

The Firm's attorneys advise and represent US and foreign companies on a full range of matters involving the importation of goods into the United States, including representing clients before CBP, the US Department of Homeland Security, Homeland Security Investigations (HSI), the US International Trade Commission (ITC), the US Trade Representative (USTR), the Canada Border Services Agency (CBSA), Mexico's Servicio de Administración Tributaria (SAT), and the US Department of Justice and US Attorneys' Offices.

The Firm's attorneys, Trade Advisor, and Paralegal respond to a wide-range of sensitive inquiries, requests for information, proposed notices of action, liquidated damages notices, negligence, gross negligence, fraud, wood packing materials, and other civil penalty notices, administrative and grand jury subpoenas, notices of detention, seizure, and forfeiture, as well as conduct internal investigations, prepare complex and high-dollar prior disclosures, litigate duty and penalty enforcement actions and other Customs law disputes.

The Firm also prepares ruling requests, including country of origin ruling requests for US Government Procurement compliance with the Buy American Act and the Trade Agreements Act, scope ruling requests, analyzes classification, substantial transformation/country of origin, and valuation issues, conducts due diligence reviews in connection with merger and acquisitions, and advises on duty-saving strategies.

Yormick Law is trusted and we frequently receive referrals from and work with licensed customs brokers, freight forwarders, trade consultants, and accountants to handle sensitive Customs and import control matters for their clients.

Our Experience

CUSTOMS & IMPORT CONTROLS

Advising a Pennsylvania developer of sensor and automation systems on a wide-range of importation issues, including the eligibility of products for duty-free treatment under Nairobi Protocol and defending position before CBP to secure decision and avoid Section 301 duties under Chapter 98 of HTSUS, including representation in a CBP Risk Analysis and Survey Assessment (RASA), filing of protests, and prior disclosures, and litigation in the US Court of International Trade

Successfully represented a New York State customs brokerage in a prior disclosure submitted to CBP relating to the entry of goods from Canada for trade shows and US and foreign goods returned compliance, limiting the exposure to 10% of the total number of potential entries involved

Advised a New York State project management services company on CBP regulations and importation issues, Made in USA claim, and contract matters relating to the importation of Chinese-origin components for the US manufacture of cryptocurrency mining machines

Obtained a favorable country of origin ruling from CBP for the New York State subsidiary of an Australian communications equipment manufacturer regarding US Government procurement and compliance with the Buy America Act (BAA) and the Trade Agreement Act (TAA)

Represent US and non-resident importers before CBP in responding to investigations and assertions of goods being subject to antidumping/countervailing duties, including successfully demonstrating certain goods as outside the scope of orders or within scope exclusions, avoiding evasion allegations

Defended US and Canadian non-resident importers in high-dollar CBP civil penalties and US Department of Justice duty and penalty enforcement litigation in cases involving allegations of fraud, gross negligence, and negligence ('592 penalties) successfully resolving cases for amounts less than allegedly due

Successfully represented US and Canadian non-resident importers in several high-dollar prior disclosures submitted to CBP, involving material false statements and omissions in classification, valuation, country of origin, resulting in penalties limited to accrued interest on underpaid duties

Successfully defended Wood Packaging Materials (WPM) and counterfeiting civil penalties, and Automated Export System (AES) violation liquidated damages assessed by CBP, obtaining significantly mitigated penalties and liquidated damages to minimal amounts

With Mexican co-counsel, successfully represented US manufacturers in NAFTA Verification proceedings conducted by SAT and supported Mexican counsel in litigation in Mexican federal courts challenging adverse SAT resolutions

Served as co-counsel in the successful defense of a US business and its owner in a criminal antidumping duty evasion case involving the importation of Chinese-origin tires, resulting in the dismissal of all charges against the company and a successful non-incarceration sentence for the owner, with no restitution ordered

Advised a former company officer on potential individual civil and criminal liability exposure on an importer's willful undervaluation of Chinese-origin automotive accessories

Represented an Ohio company and owners in an ICE criminal investigation of alleged undervaluation and misclassification of imported goods from China and Korea, resulting in a declination of any criminal charges against the business owners and successfully defended a CBP '592 civil penalty case, negotiating a settlement under terms of promissory note

IF WE CAN ASSIST YOUR COMPANY WITH CUSTOMS & IMPORT CONTROLS, PLEASE CONTACT US AT ATINFO@YORMICKLAW.COM