

One Minute Memo®

President Trump Signs Executive Orders on Trade and Designates Trade and Customs Law Violations as Law Enforcement “High Priority”

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Seyfarth Synopsis: Fulfilling early-made campaign promises, President Donald J. Trump issued two Executive Orders on March 31, 2017 that demonstrate his administration’s commitment to combatting unfair trade practices. In particular, and with far-reaching implications, one of the President’s Executive Orders directs the Attorney General to “ensure that Federal prosecutors accord a high priority to prosecuting significant offenses related to violations of trade laws.” The same Executive Order also directs the Secretary of Homeland Security, through the Commissioner of Customs and Border Protection, to “develop and implement a strategy and plan for combating violations of United States trade and customs laws.”

These Executive Orders are of significant consequence because federal law prohibits any person or company from receiving, concealing, buying, selling, or in any manner facilitating the transportation, concealment, or sale of imported merchandise knowing the merchandise to have been imported into the United States contrary to law. As we have been predicting -- and borrowing from other areas of law enforcement success, such as the enforcement of the Foreign Corrupt Practices Act (FCPA) -- we believe these Executive Orders will lead to increased criminal and other enforcement actions involving trade, customs, antidumping duties, and countervailing duties practices.

On March 31, 2017, President Trump issued two Executive Orders in furtherance of his campaign promises to combat unfair trade practices that contribute to the United States’ trade deficit and “expose United States employers to unfair competition and deprive the Federal Government of lawful revenue.” Among the Executives Orders’ clear announcements is this: Federal prosecutors and other law enforcement partners must “vigorously enforce[e] our Nation’s trade laws.”

In this regard: The first Executive Order focuses on studying and better understanding the scope and magnitude of the problem; among other actions, it directs the Secretary of Commerce and the U.S. Trade Representative to submit a report to the President on the foreign trading partners with which the United States has a significant trade deficit. In particular, the report is to “address the major causes of the trade deficit, including, as applicable, differential tariffs, non-tariff barriers, injurious dumping, injurious government subsidization, intellectual property theft, forced technology transfer, denial of worker rights and labor standards, and any other form of discrimination against the commerce of the United States or other factors contributing to the deficit.”

The second Executive Order announces a law enforcement policy shift: “The Attorney General, in consultation with the Secretary of Homeland Security, shall 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.” Similarly, the Executive Order directs the Department of Justice’s law enforcement partners, Homeland Security Investigations and Customs and Border Protection, to “develop and implement a strategy and plan for combating violations of United States trade and customs laws for goods and for enabling interdiction and disposal, including through methods other than seizure, of inadmissible merchandise entering through any mode of transportation[.]”

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In announcing this new law enforcement priority, the Executive Order singles out the assessment and collection of antidumping and countervailing duties as areas especially prone to fraud and abuse. Antidumping duties are owed when a foreign manufacturer sells goods in the United States 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 manufacturers that export goods to the United States, enabling the manufacturers to sell the goods cheaper than domestic manufacturers. The Order notes the past difficulties the United States has had in collecting these duties, especially where companies lack assets in the United States. To improve the United States government's collection of antidumping and countervailing duties, the Executive Order directs the Secretary of Homeland Security and others to develop a system whereby certain importers would be required to post a bond as security for any potential duties before being allowed to import to the United States.

From an enforcement standpoint, the implications of the President's Executive Orders are far-reaching and extend well beyond abuses in antidumping and countervailing duties. This is because federal law criminalizes **both**:

- the fraudulent and knowing importation of merchandise **"contrary to law" and**
- the **receipt, concealment, purchase, or sale** (or any action that "in any manner facilitate[s] the transportation, concealment or sale") of any imported merchandise knowing the merchandise entered the United States **"contrary to law."**

That means that federal prosecutors not only can prosecute those involved in abuses involving the importation of goods into the United States, but anyone in the supply chain who receives, conceals, buys, sells, or transports those goods after importation. And, the government's ability to investigate and prosecute individuals and companies is not just limited to violations involving tariffs and duties, but extends to a wide spectrum of violations involving imported merchandise, including: intellectual property theft; counterfeiting activities; violations involving country-of-origin markings, product substitutions, and product labeling requirements; food fraud; and forced, child, or abusive overseas labor practices, among others.

Click on the links below to read the full text of these Orders.

[Establishing Enhanced Collection and Enforcement of Antidumping and Countervailing Duties and Violations of Trade and Customs Law](#)

[Omnibus Report on Significant Trade Deficits](#)

Seyfarth Shaw's White Collar, Internal Investigations and False Claims Team is unmatched in its experience handling criminal trade, customs, and antidumping duty investigations and government enforcement actions. If you would like additional information, please contact your Seyfarth attorney or the firm's National Co-Chair of the White Collar, Internal Investigations and False Claims Team, [Andrew S. Boutros](mailto:Andrew.S.Boutros@seyfarth.com) at aboutros@seyfarth.com or White Collar Team Member [John R. Schleppenbach](mailto:John.R.Schleppenbach@seyfarth.com) at jrschleppenbach@seyfarth.com. As an Assistant United States Attorney, Mr. Boutros successfully investigated and prosecuted what are regarded as the nation's largest criminal customs, trade, and antidumping duty fraud cases, which Bloomberg Businessweek also described as "the largest food fraud in U.S. history." He and the rest of Seyfarth's White Collar Team have decades of diverse experiences as prosecutors and regulators to bring to bear in handling any compliance, enforcement, or investigative matter relating to the President's new Executive Orders.

We will continue to monitor these developments and will keep you informed of changes. If you would like to subscribe to receive our Presidential Pulse alerts, [click here](#).

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