

## The 'Wolff' At Importers' Doors — §1519

Law360, New York (November 09, 2010) -- U.S. importers have long been subject to civil penalties for violating U.S. trade law. However, with the recent indictment of 11 individuals and six corporations for allegedly conspiring to illegally import goods into the U.S., the U.S. government may be signaling a sea change in its enforcement strategy by subjecting trade law violators to severe criminal penalties as well.

In Sept. 2010, the U.S. government employed a fairly recent, but rarely used, criminal obstruction provision to indict corporate executives of foreign and domestic corporations for their participation in an alleged scheme to evade nearly \$80 million in anti-dumping duties on honey imported from China.

In *U.S. v. Alexander Wolff, et al.*, the U.S. Department of Justice charged 11 corporate executives and six corporations in a wide-ranging, 44-count indictment, which included a charge that the defendants obstructed justice in violation of 18 U.S.C. §1519 as a result of their destruction of various records before they knew they were the subject or target of any investigation into their alleged conduct.

This obstruction statute is part of a provision of the Sarbanes-Oxley Act of 2002. To date, the section has resulted in few prosecutions. The DOJ's use of this statute in an anti-dumping duty circumvention case marks a new tactic in the enforcement of U.S. trade law that importers should monitor carefully.

### **Obstruction Under Section 1519**

Titled "Destruction, Alteration, or Falsification of Records in Federal Investigations and Bankruptcy," Section 1519 provides in part:

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, ... any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States ... or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both."

This language departs from traditional obstruction statutes that require the existence of a pending federal investigation or judicial proceeding. The tactical advantage in charging this statute is that the government may not have to prove that a defendant undertook his obstructive act with the intent to affect a particular government proceeding. Thus, under Section 1519, falsifying, mishandling or obstructing access to any record, at any time, could well invite criminal prosecution if that record relates to the "investigation or proper administration of any matter within the jurisdiction of any department or any agency."

The indictment in *Wolff* suggests that the U.S. government believes that the defendants coordinated efforts to circumvent U.S. anti-dumping duties on honey from China. Anti-dumping duties are imposed by the U.S. government when it determines, through an investigation requested by competing U.S. producers, that imports are being sold at less-than-fair-

value in the U.S., and that these sales are threatening to cause, or are in fact causing, material injury to the U.S. industry. An anti-dumping duty order has been in place on imports of honey from China since 2001, with anti-dumping duties as high as 221 percent.

The defendants in Wolff are accused of transshipping Chinese-origin honey through third countries before exporting it to the U.S. When the honey arrived in the U.S., it allegedly was declared to U.S. customs authorities as non-Chinese origin and, thus, not subject to the anti-dumping order. The Wolff defendants also allegedly imported honey falsely labeled as "organic" when, the indictment alleges, the honey contained antibiotics and sugar.

The specific actions that led to the Section 1519 obstruction charges against the Wolff defendants include: falsifying U.S. Customs entry forms and sales documentation; seeking out customers that do not adequately test the products they purchase; and instructing alleged co-conspirators to not write e-mails about their activities and to delete documents and e-mails in case the U.S. Department of Commerce visited their offices.

### **A New Approach in Trade Enforcement**

Wolff represents a break from the way the U.S. government has traditionally enforced its trade laws in several respects.

First, for the most part, importers who evade anti-dumping duties or other trade regulations typically pay a civil penalty and do not face criminal prosecution. For instance, 19 U.S.C. § 1592 subjects importers to monetary penalty if, through fraud, gross negligence or negligence, they submit documents or data to U.S. customs authorities that contain materially false information or omit material information. The amount of the penalty varies depending on whether the importer acted by fraud, gross negligence or negligence.

Second, Section 1519 is not a trade-specific criminal statute. Another criminal statute, 18 U.S.C. § 542, although not commonly used, does include sanctions for presenting false information to U.S. Customs officers, as well as penalties of a maximum of two years imprisonment, a fine or both, for each violation involving importation or attempted importation. In contrast, Section 1519, which provides a potential 20-year maximum penalty, is much broader in scope. It is not limited to import transactions or even trade violations, and most importers likely are not even aware of its existence.

Finally, the potential criminal penalty facing the Wolff defendants under Section 1519 is much more severe than the criminal sanctions usually faced by importers: a maximum of 20 years instead of only two years. If Wolff becomes the model for trade enforcement cases, importers will confront much steeper consequences for trade violations prosecuted under Section 1519.

### **Conclusion**

Whether the approach taken in Wolff and the use of Section 1519 marks the beginning of a new method of enforcing U.S. trade laws remains to be seen. In the meantime, however, importers should carefully review their compliance with U.S. anti-dumping duty orders and other trade laws to avoid any future civil or criminal liability.

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