

US Criminalization Of Import Violations Continues

Law360, New York (August 02, 2012, 1:41 PM ET) -- On July 23, 2012, the U.S. Department of Justice filed a criminal complaint in a California federal district court, accusing eight individuals and three business entities of operating a fraudulent scheme to evade customs duties on imported goods produced in a foreign country.

Since 2010, there has been an increasing effort to criminalize customs violations, which has focused to date on importers and consignees allegedly circumventing anti-dumping duty orders or food safety laws.[1] However, unlike other recent criminal actions, this new criminal complaint demonstrates a broadening of the alleged violations that U.S. Customs and Border Protection will refer to the DOJ for prosecution.

In *United States v. Chavez, et al.*, the DOJ alleges that the named defendants operated a “diversion scheme”: They imported dutiable Chinese-made textiles, foreign-made cigarettes, and Mexican food products without paying any customs duties by claiming that the goods were not entering the U.S. for consumption.

According to the customs paperwork and database entries filed by the defendants, the foreign products at issue were to be shipped “in-bond” to Mexico (i.e. transiting U.S. territory but not being consumed in the United States) or, for a limited time, be held in a U.S. bonded warehouse or U.S. foreign trade zone pending export to that country.

In-bond merchandise to be re-exported is not subject to U.S. customs duties. However, the DOJ alleges that the foreign-made products were delivered to Los Angeles and other locations throughout the United States for sale and consumption. In addition, the DOJ claims that the defendants understated the value of certain imported Chinese apparel and misrepresented foreign-made cigarettes as American goods.

Notably, the DOJ again has employed a rather obscure criminal statute, 18 U.S.C. §1519, to indict domestic and foreign individuals and companies subject to its jurisdiction for obstruction of justice. Section 1519 states:

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.”

In Chavez, it was alleged that the defendants knowingly forged perforation marks and filed false customs documents misrepresenting the final destination of the goods, with a culpable obstructive intent. If found to violate Section 1519, the Chavez defendants may become subject to a maximum of 20 years in prison among other penalties. By comparison, 18 U.S.C. §542, the traditional criminal statute relied upon to pursue criminally fraudulent import customs violations, limits incarceration to a maximum of two years.

The Chavez case demonstrates the U.S. government’s interest in criminalizing customs enforcement concerning a wide range of customs violations. In this environment, it is very important that U.S. importers and consignees carefully review their import compliance procedures and implementation to ensure full compliance with U.S. customs laws and international trade laws. Consignees that are not otherwise importers of record should take particular note, as they are typically not subject to civil customs enforcement.

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[1] For more information, see our legal updates: “The ‘Wolff’ at Importers’ Doors: Criminal Statute Is New Tool in Trade Enforcement Cases” and “Imports and Consignees Increasingly Facing Criminal Prosecutions in Trade Remedy and Customs Enforcement Cases.”