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Trump: If China Furthers Fentanyl Efforts, Will Remove Other 10% Tariff

President Donald Trump, on a flight to Florida for the weekend, told reporters that China is “working very hard” on cracking down on fentanyl precursor trafficking, in the hopes of completely eliminating the 20 percentage points of tariffs the U.S. imposed over that issue. Trump already agreed to reduce it by 10 percentage points.

"I'd love to get rid of the extra 10%,” he said, and said that as soon as U.S. officials see enforcement, “we'll get rid of the other 10%."

Lawyer: CBP Moving Away From Essential Character Test for Origin Rulings

CBP’s analysis of substantial transformation is moving away from its essential character test toward a more holistic review of the final stage of assembly, according to Matthew Bock, managing partner at Bock Trade Law.

Bock, speaking on a webinar hosted by the Massachusetts Export Center, said that CBP is “reversing course” and it’s now “becoming easier to demonstrate that substantial transformation has occurred.” He said this is because, in its country of origin rulings, CBP “tends to be moving away from” a component by component analysis of substantial transformation and toward a “model of more holistic review of what exactly is happening at the final stage” of manufacturing.

Previously, CBP used analysis from the *Energizer Battery Co. v. U.S.* decision for origin rulings, which Bock said allowed companies to “fairly easily game” how CBP would rule on an origin determination. This analysis was changed in a 2022 ruling in *Cyber Power Systems v. U.S.*(see TLD 03/03/2022) when CIT rejected what Bock called Energizer’s “strict component by component analysis” and the essential character test.

Bock said that while many CBP rulings, “particularly out of New York,” still use the “fairly basic analysis” of Energizer, at the headquarters level, rulings “definitely showcase this transition to a more totality of the evidence analysis."

In 2025, Bock said, CBP has a “renewed incentive to promote” findings of substantial transformation and “maybe disallow” findings that transformation hasn’t occurred. This shift, he said, means that it may be worth “revisiting” the strategy of taking goods from a “high tariff country” like China and moving them to a “low tariff country” for finishing operations. He said in the post-*Cyber Power* landscape, “and particularly in 2025, given the current government and current CBP,” that the “policy of trying to shift” manufacturing away from China might be more successful than it has been previously.

The change in CBP’s analysis of origin rulings represents a “sea change,” Bock said, and “needs to be considered by importers” trying to mitigate high tariffs, “particularly if the intention is to stay in somewhere like China and try and source non-Chinese components and make the case that substantial transformation has not occurred."

Lawyers: Importers Should Be Cautious of Tariff Mitigation Advice From Suppliers

In an effort to drive sales, suppliers have been offering dodgy tariff mitigation strategies to importers, lawyers with Foley and Lardner warned during an Oct. 22 webinar. Suppliers, particularly in countries hard-hit by tariffs like China and India, are as desperate as importers to avoid the painfully high tariffs imposed by the Trump administration, and may offer bad advice to importers to drive sales, lawyer John Turlais said.

Turlais said that suppliers can resort to bad advice because “they want to make sure that customers in the U.S.” continue to buy their products. He said that they “often end up offering a lot of advice,” which “is sometimes not very good.” Clients at his firm “have already run into issues" where suppliers recommend "alternate" Harmonized Tariff Schedule codes and suggest that importers should "restructure" invoices with "vague product descriptions," he said.

The suppliers might say, "Don't call it a steel rod. Why don't you call it an installation set, or something like that?" Turlais said, adding that this "always comes up" when importers are working with "an experienced supplier that's been in operation for 50 years." This is a trend his firm has been seeing, he warned, which is dangerous for importers because they are "responsible for providing accurate and complete information" to CBP.

"If your compliance program consists of, 'hey, my broker handles it,' you really want to take a deep dive and see if things" are being done correctly, Turlais said.

Foley lawyer Greg Husisian agreed, saying that companies often overly rely on customs brokers: "People are like, 'Oh, it's OK. Our customs broker is covering all that for us.' But that is not the view of Customs." Customs places liability on the importer of record, he said, so if companies don't have a compliance program "tailored to the individual company's operations," then they "should really be looking into having one of them."

Turlais also noted that CBP is increasing enforcement because it is a "policy feature of the Trump administration" with the goal of raising revenue. He said that CBP has been able to find companies' "creative workarounds" for tariffs because they are "looking for anomalies" and are often using AI software to compare "your entries against those of your competitors."

Another "theme that we're seeing," Turlais said, is "a lot of incentive" to report competitors for customs violations. He said that because of the increased tariff environment, companies "want to make sure that the playing field is level," and the government is encouraging them to report or refer situations "where they see tariff evasion."

Foley lawyer Matt Krueger noted that DOJ is "willing to go after" companies and individuals that it "believes are responsible for promoting tariff evasion." He also said such cases have "a long tail," and that he suspects they may not "ultimately be resolved and brought public well into the 2030s, which is somewhat frightening to think about." — ***Oren Dennett***

Importers Need to Prepare Middleman Documentation Supporting First Sale Claims

As CBP ramps up enforcement and seeks to ensure that importers' claims of first sale are valid, expect the agency to pay close attention to the documents of the middleman, said tax consultants with KPMG during an Oct. 27 presentation on first sale at the International Compliance Professionals Association's annual conference in Texas.

When a CBP import specialist first looks at whether a first-sale transaction has occurred, the import specialist will be focusing primarily on the transaction itself because "they're appraisers for classification. Then they do valuation, but not at the level of audit," said Teresa Halpin, KPMG director of trade enforcement and advisory services. Halpin was previously with CBP as the New York field director for CBP's Office of Trade Regulatory Audit.

She continued, "When an import specialist conducts these transactional analyses, they're determining whether you're actually filing for first sale. Because they don't know. They don't know until they ask the questions. And once they determine there's this multi-tier transaction, they have to determine whether they're going to accept it at the [CF-] 28, [or] whether they're not accepting it [and will] issue a [CF-29 form] ... If they refer to audit, basically it's, it'll be a comprehensive review."

CBP is able to use this approach through an expanded interpretation of Treasury Department Decision 96-87, said Rodrick Lawlor, KPMG director of trade enforcement and advisory services.

If an importer is under audit, it may need to ask its middleman for more information, such as journal entries of transactions from the middleman, according to Irina Vaysfeld, principal at KPMG.

"We've been asking for journal entries for many, many years. We can also do first sale in the context of when the middleman is not buying finished goods. They may be buying assembly services of some sort, and the middleman may be providing materials free of charge or at a reduced cost," Vaysfeld said. "So in those cases, we're building up that first-sale value through a cost worksheet, customs value worksheet summary. So, it's very case dependent on the documentation that you may need to support for sale."

Importers may need to have conversations with their vendors about making these types of documents available. This may divert from how both sides have traditionally interacted in the past, Vaysfeld said.

As companies consider using first sale as a means to mitigate the impact of higher tariffs, they need to address the areas where CBP has elevated its trade enforcement efforts. Two areas in particular where CBP has homed in are valuation and country of origin, according to Halpin.

"Even in just the last two months, in working with KPMG, it's seeing a significant uptick in the CF-28s guided towards country of origin. And that's even within the context of a first sale transaction," Halpin said. CF-28 forms are those that CBP sends out as a formal request for information to ensure compliance.

According to Halpin's presentation, importers' value mitigation strategies have been subject to higher degrees of scrutiny from CBP, particularly as it relates to transfer pricing and first sale for export declarations. KPMG has also seen a "significant rise" in country of origin inquiries related to country-specific AD/CVD orders and China Section 301 risks, according to Halpin. Emerging enforcement activities also could occur with Section 232 steel and aluminum content declarations, the presentation said.

Based on CBP rulings, there is an increasing focus on bona fide sales, the transfer title of risk of loss and arm's length sales, according to Lawlor.

"The lessons that I think all can learn from some of these recent adverse first sale rulings, is it's really a substance over form," Lawlor said. "So, as a starting point, yes, you want those purchase orders, those invoices, to be separated. You have to demonstrate that there's been succinct or distinguishing factors of each sale level. But CBP is starting to lean in a little bit more into determining, okay, what would be the overriding factors? What are the commercial trends?" CBP may be looking at information confirming Incoterms, multi-tier transactions indicating a risk of loss, master supply agreements and insurance documents listing beneficiaries, he said.

"What they're looking to do is identify what the margin was recognized on that individual commodity, and compare that margin to that related seller's overall margins of like kind merchants during a set period," Lawlor said. "So when we talk about some of the challenges in doing that, you have to work with a team like KPMG to really identify the structure of that transaction, get the cost sheet manufacturer, identify the raw material inputs, the labor inputs. ... and then, using accounting principles, rolling that back up the corporate structure as you move up the corporate chain."

He continued: "Because remember, sometimes a seller could be a related entity of another foreign holding company, right? So it becomes a very complicated process, and one that CBP recognizes that companies will often get tripped up on."

As importers respond to potential audits, being able to demonstrate that an importer has taken reasonable care might help its case, Lawlor later said.

"It still carries a lot of weight from the CBP perspective," Lawlor said. Actions such as providing the right documentation with the right data shows that a company has taken due diligence, and that can serve as a basis for mitigating penalties, he continued.

"When you have this evidence of the programs and procedures you have put into place, it goes a long way," Lawlor said. — ***Joanna Marsh***

Thai Goods Will Continue to Face 19% Reciprocal Tariffs

The U.S. and Thailand issued a joint statement on a trade framework over the weekend, which says Thailand will eliminate tariff barriers on about 99% of U.S. exports, while the U.S. will exclude some products from the Sept. 5 Annex III (see ITT 09/05/2025) to spare them from 19% reciprocal tariffs. Those goods will still be subject to most-favored nation duties, and the 19% is added to MFN, as well. The final agreement will be negotiated over coming weeks, the statement says.

The statement underlined this section: "Thailand will address and prevent barriers to U.S. food and agricultural products in the Thai market, including expediting access for U.S. Food Safety and Inspection Service (FSIS)-certified meat and poultry products. Thailand will additionally address trade irritants and ensure requirements imposed on U.S. horticultural products, including for distiller dried grains with solubles, are science- and risk-based."

Thailand also promised to amend its customs laws "to remove the customs reward system related to customs breaches and penalties."

The statement notes that Thai companies have committed to buy "feed corn, soybean meal, and dried distiller grains with solubles with an estimated value of $2.6 billion per year," energy products worth $5.4 billion a year, and 80 aircraft, worth $18.8 billion. **— *Mara Lee***

Trump: 'We'll See What Happens' on 50% Brazilian Tariff

President Donald Trump told reporters Oct. 27 that he had a good meeting with Brazil's president while he was in Malaysia. "We'll see what happens. I don't know if anything's gonna happen, but we'll see. They'd like to do a deal. We'll see. Right now they're paying, I guess, a 50% tariff. But we had a great meeting."

The 50% tariff is a combination of the original 10% tariff and 40% additional tariff. That latter amount has hundreds of carve-outs, including orange juice, Brazil nuts, iron ore, pig iron, oil products, wood and more.

President Lula da Silva posted on X, according to an unofficial translation, "I had a great meeting with President Trump on this Sunday afternoon in Malaysia. We discussed the bilateral trade and economic agenda in a frank and constructive manner. We agreed that our teams will meet immediately to advance in the search for solutions to the tariffs and sanctions against Brazilian authorities."

He later wrote, "I return to Brazil satisfied with the meeting I had with President Trump. If it depends on him and me, we will have a deal. We are willing to ensure that Brazil and the United States continue with the relationship we have already cultivated for 201 years."

In a press conference interpreted into English in Malaysia, da Silva said his impression of the meeting was that "soon we will not have any more issues between the U.S. and Brazil."

FMC Boosting Enforcement Against OTIs, Panelists Say

RANCH MIRAGE, Calif.—The Federal Maritime Commission is increasing its enforcement action against ocean transportation intermediaries (OTIs) to promote adherence to licensing and tariff regulations, speakers said at the Pacific Coast Council's Western Cargo Conference last week.

The FMC collected $2.9 million in penalties in FY 2024 to address shipping violations, "and I think we're going to see an increase in that once the government gets ruling again," said Roberts & Kehagiaras lawyer Cameron Roberts. The agency's operations are currently suspended as part of the federal government shutdown (see ITT 10/02/2025).

FMC enforcement enjoys broad bipartisan support in Congress, according to Gabriel Padilla, principal consultant at Padilla Maritime Consulting and a former FMC employee.

"In the polarized world that everybody's talking about in Congress, one thing that doesn't seem to be as polarized is maritime enforcement," he said. "I think you're going to start seeing increased penalties with all these activities," especially on the "unlicensed side."

Roberts said he expects that stepped-up enforcement will result in more letter audits, as the Trump administration's government downsizing has left the FMC with fewer field personnel. "They have to do everything by remote control, but they're still entitled to send you a letter demanding the documentation."

Padilla said the agency is becoming more "creative" in how it imposes penalties, such as by recently requiring an OTI for the first time to fund an independent monitor of its business practices as part of a settlement with the agency (see ITT 02/10/2025). The settlement also included a $165,000 penalty. "This kind of trend will continue," he predicted.

The agency also might turn to AI to compensate for its loss of personnel, Padilla said. "Probably in the not-too-distant future, you're going to have a lot of AI analysis of the documents coming in, and that exposes a lot more of where the issues are and where they need to concentrate their efforts, because they have less available staff to do what they need to do."

Roberts recommended that OTIs help themselves avoid shipping violations by developing a "proactive compliance culture," such as by having and following a compliance manual; implementing internal controls and conducting regular audits; continuously holding training for staff; and responding to inquiries in a timely manner.

While the panel mostly discussed the FMC, Roberts said the Bureau of Industry and Security is also ramping up its enforcement efforts, and he urged exporters to be certain they know where their products are going, especially if sensitive technology or luxury items are involved.

"Right now, I have a guy who swears that he was shipping these three items to a woman in [South] Korea, and that's what the paperwork says," Roberts said. "But if you go on that woman's LinkedIn page, she flatly states that she's your gateway to Kamchatka, which is in Russia. So she was sourcing luxury automobiles for shipment from the United States to Busan. She was going to simply transship them—I'm sure this is what the government would say—to Kamchatka and on to some Russian oligarch somewhere."
— Marc Selinger

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