



Fox Rothschild Podcast

The Presumption of Innocence

Episode 79: Tactical Playbook: Surviving the Tariff Enforcement Blitz

Featuring Matt Adams and Brittney Powell of Fox Rothschild

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Matt: Welcome back to "The Presumption of Innocence," a podcast brought to you by the White-Collar Criminal Defense and Regulatory Compliance Practice at Fox Rothschild. Tariffs have been a frequently discussed topic in legal circles these days as the Trump administration has used them in a range of ways to achieve its stated policy objectives.

And with that emphasis on tariffs has come a whole host of activity on the enforcement front to put teeth behind the administration's use of them as a foreign trade tool. In 2025, criminal and civil enforcement planning documents and DOJ speeches, tariff evasion and broader trade fraud were explicitly elevated as top enforcement concerns for the Criminal Division and the Civil Division of the Department of Justice alike, now akin to areas like health care or procurement fraud under the False Claims Act. In 2025, the DOJ and Department of Homeland Security launched a trade task force aimed at coordinating enforcement against tariff evasion, duty underpayment, misclassification, undervaluation and smuggling.

This announcement came with public DOJ statements committing the department to the aggressive pursuit of violators using a whole host of civil, criminal and FCA tools. DOJ has publicly signaled this expanded enforcement strategy, particularly with respect to the FCA, to target tariff and customs duty evasion, using the treble damages and penalties under that statute to recover losses on behalf of the U.S. government.

This is a seismic shift from traditional tariff enforcement, which has almost exclusively been historically brought about through U.S. Customs and Border Protection Civil Penalty Mechanisms under 19 USC section 1592. By the end of 2025 and the beginning of 2026, we saw DOJ putting its

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proverbial money where its mouth is with a host of high-profile enforcement actions against alleged foreign trade fraudsters.

It is 100% clear that tariff evasion and the broader notions of trade fraud that we're discussing this morning have been elevated among the top priorities of the DOJ under this administration. In episode 66 of this program, we explored the accounting challenges that the then-proposed tariff regimes placed on businesses with Marina Gentile, the leader of the accounting and advisory firm Withum's Global Transfer Pricing Strategies Practice.

Today my guest is my colleague Brittany Powell, a partner here at Fox Rothschild, and a member of the firm's International Trade Practice. Brittany, welcome to the program and thank you so much for joining us.

Brittney: Hi, Matt. Thank you for inviting me to appear on the podcast. It has certainly been exciting times for international trade lawyers and trade professionals as tariffs have become part of the national conversation. I think most every businessperson and many consumers have some basic understanding of tariffs as it's widely discussed in the news, and so I'm happy to talk about that with you today.

Matt: So Brittany, let's work from the bottom up and explain for our audience what tariffs are from a technical perspective, how they work, who pays them, what does it require of those engaged in international commerce?

Brittney: So tariffs are a type of tax imposed by the government on imported goods. They're collected at the port of entry by the U.S. Customs and Border Protection, or CBP for short. We also use the word "duties" interchangeably with "tariffs." It's important to understand that tariffs are paid by the importing company, which we refer to as the importer of record.

They're generally not paid by the foreign company that's exporting goods to the United States. However, there are some circumstances in which a foreign company can serve as the importer of record and would be responsible for payment of the tariffs. Tariffs are generally calculated as a percentage of the value of the imported goods. So if a tariff rate is 25% and the value of the good being imported is a thousand dollars, then the tariff or the tax to import that good into the U.S. would be \$250. And these costs are frequently passed on to consumers by the importing companies in the form of higher prices for the finished product.

Matt: So when we start talking about enforcement, if the proverbial microscope is on this-- is it a tax? I guess it's a tax-- a tariff, a duty, a levy, this payment. If the focus is on this payment, what are the key areas of concern that come right off the page from the outset when it comes to the government's seemingly laser focus on, on these tariffs?

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Brittney: So tariffs are a tax. They're a form of revenue generated for the benefit of the government. And if parties-- bad actors --seek to evade the tariffs, particularly in this environment where tariffs are imposed on almost every product from nearly every country, then the government would be concerned that the revenue that they would be entitled to has been foregone. And there are means for the government to target parties that are participating in any kind of fraud or evasion of the tariffs or the taxes upon the government.

So as you mentioned in the introduction, the False Claims Act is one mechanism for the government to bring actions against parties that would be participating in any kind of tariff evasion scheme. And there's a difference between lawful mitigation strategies-- which we can talk about a little bit more -- and overt, you know, acts, to evade duties that are unlawful.

Matt: Is this the, is this the old law school paradigm, Brittany, that there's a difference between tax evasion and tax avoidance?

Brittney: For sure. Absolutely. That's a, that's a perfect parallel, yeah. Because, you know, there are lawful ways to, you know, to implement strategies to mitigate the tariffs and the amount of duties that would be paid. But by and large, you know, tariffs are owed on most products today, right? So tariffs are gonna be owed, and it's just a matter of whether the product is appropriately classified, whether it's appropriately valued. And the customs is gonna be looking at some of those issues and trying to find bad actors who are seeking to evade the payment of those tariffs.

Matt: So let's roll the layer, peel back that layer one more of that, of that proverbial onion. Let's go back one more layer. What types of record-keeping requirements does the importer of record have as it pertains to these regulatory tariffs, this regulatory tax, that is being owed by the importer of record, as you mentioned, when discussing the technical specifics here? Because in my experience, these are paper cases, these are-- maybe digital cases these days when records are stored electronically-- but the height of what did or did not happen at the time it was supposed to happen, rises and falls on the record keeping. So what kind of record keeping requirements do we see with these types of tariff regimes?

Brittney: Yeah, absolutely. So the importer of record is the party that's responsible for declaring the merchandise to customs. And I want to be clear that although an importer uses their customs broker to submit documents to the authorities, the liability still rests with the importer of record, so they have an obligation to be in connection with their customs broker to check the records that their customs broker's filing, and the declarations that their custom brokers are filing on their behalf.

In general, when an importer enters merchandise into the United States, the customs broker has to file a form that's called a CDP Form 7501. That is the entry summary. It's like a two-page form where they officially declare the merchandise. They have to classify the merchandise according to a

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schedule. There's a, a long tariff schedule for every kind of product made in the world, and they have to be classified according to this code that is universally applied around the globe. And that is one area for concern: Where and how the merchandise is classified by the customs broker.

As I mentioned, the importer of record is responsible for the declarations. Too many times, importers will depend on their customs brokers to select the correct code when they enter merchandise, and that's not the way to do it. The importer must be aware of the codes that are being reported to customs. They need to engage with trade professionals and their lawyers to make sure that they're selecting the correct codes. Because there are many nuances, in the code system and depending on the classification of a code, duties could be you know, overpaid or underpaid. So that's very important and key area, uh, for importers to be paying attention.

In addition to the 7501 entry summary, the typical document trail consists of a commercial invoice-- which would be issued by the foreign supplier-- a packing list, a bill of lading for merchandise that is shipped across the ocean. Oftentimes the entry package documents would include a certificate of origin, declaring the country of origin in which the merchandise was produced. And there may be other documents depending on the kind of product that's being imported. If it's a product that might have some chemical substance they have to report certain certifications associated with that, for example. Or food products for example. So, that's the general set of documents that get submitted to the customs.

An importer is engaged in international trade with their foreign supplier. And in general, they should be aware of these documents, right? Because it's part of their transaction. The, the commercial invoice they receive from the supplier. Typically they'll also receive all of the packing lists, documents, and the bill of lading and other documents from their supplier. So the importer bears the obligation of checking those records to make sure that the information provided is consistent with their understanding of the terms of the transaction.

For example, they should make sure that the material that's being imported is correctly described on the commercial invoice. That the quantities and the values are consistent with their understanding for what they thought they were buying and importing into the United States.

And ultimately, you know, that's just the beginning of the, of the paper trail. But the obligations for the importer of record extends much deeper than that, right? They, because the importer of record is responsible for what's being declared to customs, they should be doing a lot of due diligence prior to making a decision to buy from a certain supplier. They should make sure that the supplier is actually making the goods in the country that they, you know, told them they'd be making the goods in. That is another area that's ripe for review and investigation by the authorities: Whether the merchandise is actually being produced in the origin that's declared is the country of origin.

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Importers don't always have the best means for insight into their supply chain or the supplier's upstream supply chain. For example, there are very special rules about, you know, what country of origin should be associated with a, the production of a good. And many times the origin of a very key or critical component-- rather than the finished article-- is actually the country of origin of the merchandise under customs rules and laws. So importers have to be aware of those potential traps and make sure that their compliance measures allow for them to assess the correct country of origin.

Matt: What sounds like to me is a pretty significant burden if you want to be an importer of goods, that you have some insight into what's going on offshore. It's not just, let's keep blinders on as long as the product shows up at the port, I don't care, no questions asked, you know, ought to sight, ought to mind kind of thing. You actually have affirmative legal obligations to inject yourself into what's going on offshore. Is that, is that fair?

Brittney: That is absolutely correct. So the standard of care is a reasonable care. Customs hold importers of record to that standard, where reasonable care means conducting these kinds of compliance reviews, making sure that they oftentimes go visit the factory to make sure that they're actually making products at the facilities that they're alleging to be making the products. You know, there's, there is a concern about forced labor being used in the production of many products, so importers would be advised to at least visit the factories or hire professionals to investigate that there's no forced labor in the supply chain, which can stop their goods from being imported into the United States if there's an allegation or suspicion of forced labor.

So yes, they have an obligation to exercise reasonable care and to conduct adequate due diligence of their supply chain prior to importing merchandise into the United States. Companies that fail to do that often find themselves at risk for significant enforcement action.

Matt: So DOJ has touted their use of sophisticated data analytics strategies to detect tariff evasion and to create investigative leads for themselves.

How is big data employed in the tariff space by the government? And conversely, I guess, how can it be used to defend the parties engaged in international trade who, what we've been talking about for the last couple of minutes, have this enormous burden, this enormous legal responsibility to understand what's going on way before this good comes to the U.S. shores?

Brittney: It's very true that the use of data analytics is growing. The Department of Justice and customs authorities are increasingly relying on data analytics to uncover evasion schemes. In December of last year, CBP issued a press release alerting the import community of its use of these technologies.

Sometimes companies believe they're doing everything by the book, so to speak, that they're classifying the merchandise correctly or paying the correct amount of duties, and even using their

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best efforts to conduct due diligence, they may potentially still be at risk for fraud upon them by the foreign supplier. So importers are exposed to that risk, as they have to rely on and trust the information being provided to them. And since the federal government is using these tools to detect illegal activities, it may be prudent for importers or companies with significant import operations to also deploy certain advanced technologies as a risk-mitigation practice.

So, for example, data analytics is being used to identify an incorrect commodity or harmonized tariff codes, or potential undervaluation. It's also being used to analyze and identify anomalies and trade patterns to ensure that the suppliers do not misrepresent the country of origin of the merchandise. And importers who begin to collect that data can use it to conduct internal audits to identify any potential compliance gaps in their reporting before the customs authorities do.

Matt: So, I frequently advise corporate clients under what we refer to as the Principles of Corporate Prosecution, which is a series of guideposts issued by the Department of Justice as to when they're gonna go after an organization, and when, you know, sanction-- potentially criminal sanction-- can go to an actual organization as opposed to certain individuals. And one of the key components to effectively mitigating against organizational liability like that is to have effective compliance programs in place to avoid the potential array of civil and criminal enforcement penalties that might flow from not having your house in order, for lack of a better term, but, that could lead to ultimately criminal prosecution at the corporate level. Game changing for a company potentially existential threat in many instances to a company. Is now the time with the proliferation of these tariff regimes, the extensive focus on these tariff regimes, for organizations involved in international trade to start to reevaluate their compliance programs? And if so, how?

Brittney: Matt, thanks for that question. It really is critical for importers to evaluate their customs compliance programs. Unfortunately, many importers don't even have a customs compliance program, and they only begin to think about it after it's too little, too late and the customs are--

Matt: Proactive, is is the way, the way, the way to go about this, not --

Brittney: Yeah.

Matt: Not reactive, right?

Brittney: Yeah. Proactive is, is the key, right? So, yes, implementing a customs compliance program, a policy, a manual or having procedures in place is critical. And the extent of them depend on how large the company is. How many people they have in the organization, how often they're importing.

And so it just should be catered to their actual import operations. It doesn't have to be as extensive as, you know, some programs would be for multinational companies that are importing daily, for example. But especially as companies are reporting their payments of duties on, on tariff or seeking

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to mitigate or reduce their potential tariff liability, it's important to make sure that they are doing everything by the book, so to speak. That their mitigation strategies comply with the law, and that they have adequate documentation to support what they report to the customs authorities if they ever receive a request for information from customs.

A failure to comply with customs laws can result in very serious financial penalties, shipment delays and even legal action. So, implementing a, a monitoring program or a compliance program, continuous monitoring of trade regulations and assessing their controls to adapt to the evolving tariff landscape is critical.

A big area is adequate training of the professionals who are responsible for engaging with customs authorities and the customs brokers. It's important for companies to know who has the record keeping authority and who has knowledge of the supply chain so that they can respond promptly in a timely manner to any inquiries from customs, and be able to document and substantiate the information they provided to the customs authorities.

I often recommend that companies with a significant import operation develop a compliance procedure. I think that one key way to do that is, is just to have a trade professional or their lawyer assess their current practices, uh, measure it up against best practices and identify any potential gaps and risks that they can mitigate before there is an issue with customs.

Matt: Uh, if I've said it once, I've said it probably a million times to clients over the years, and that is, you know, it's bad enough not to have a policy in place. It's worse to have a policy in place that's either out of date or that's not being implemented appropriately. And I want to stick with this thread for a minute about the compliance program and talk about, this is such a rapidly evolving area.

Almost every day we're hearing about additions, subtractions, modifications to these tariff regimes. And it, it strikes me that it's a huge burden on an importer to be able to keep up with the times, so to speak. This is no longer a scenario where you, you could look at this, you know, annually or you know, every couple of years.

Brittney: Right.

Matt: This, this is a rapidly evolving landscape that's literally changing daily. And if we go with the premise that it's worse to have a compliance program that's, like, wrong on your books and records to say, you know, you're supposed to turn left when the law says you're supposed to turn right and you have it memorialized in a compliance program that you want people to turn left, that's actually worse than not having a compliance program at all, right?

Brittney: Very true. It is a huge amount of time to manage a company's import operations. A lot of companies have not only one or two professionals who do this as their full-time job, but larger

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teams, just depending on the extent of their operations. But even small importers should be monitoring their compliance policy and updating it frequently. And it can amount to a full-time job in some instances.

As you mentioned, changes are occurring very rapidly, and so often importers will go through the exercise of identifying all the products that they import, classify them once and then forget about it. But the harmonized tariff codes are updated annually. Their codes are ever shifting, and so at least annually a company should be updating their compliance policy and making sure that nothing has changed significantly that would potentially expose them to liability.

So, again, it is, you know, a, a large responsibility. It takes up a lot of time. If companies don't have the internal resources to do it themselves, they should definitely be outsourcing it and it's just the cost of doing business. They've got to make sure that they protect themselves in this way.

Matt: We're talking with international trade lawyer here at Fox Rothschild, Brittney Powell, about this evolving area of international trade tariffs. In 2025, Brittney, the U.S. government reported record recoveries under the False Claims Act, something in the ballpark of \$6.8 billion with a B. What role do you see FCA whistleblowers and relators having with respect to tariff evasion --and tariff fraud more generally --in light of the government's obvious push in this area of investigative priorities?

The way I see it, Brittney, is this opens up this sort of competitive jealousy --and maybe jealousy is too strong of a word-- but U.S. importers doing the right thing, doing things by the book-- our clients, right, Brittney, our clients, the ones that are doing things by the book-- that are being undercut in the marketplace by those that are not. And to me, when it comes down to it, this type of dollars and cents economic issue is the type of thing that reads False Claims Act relators.

Brittney: Yeah.

Matt: This, it, it, maybe jealousy is not the right word, but this idea that I'm doing things by the book and I'm still priced out of my market because those guys over there are doing the wrong thing. Those guys over there are not being as diligent with respect to their compliance program. They're not documenting the sources of all of their component parts that are going into their good. Is that risk as real as I think it is?

Brittney: If I'm not hearing it every day, I'm hearing it at least weekly from importers who are doing things the right way, by the book, that they're being priced out of the market, that they can't compete because their competitors are undervaluing the merchandise and paying lower duties. And it's, they're losing millions of dollars because of this. And so they're looking to us to help them level the playing field so that they can compete as they continue to do business, you know, in compliance with the law.

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I, I do want to step back for a moment and, and just sort of tease out this difference in the, um, FCA settlements and judgments. You said in 2025, the government recovered \$6.8 billion, was it? And so the stat that I have is that in 2024, the government recovered \$2.6 billion. So tariffs were largely the, the latest round of tariffs were largely imposed at the beginning of last year, so in the beginning of 2025. And so all of that increase, it's \$4.2 billion of increase over the previous period is --

Matt: Q4, Q4 of 2025 based on tariff regimes that were then implemented, yeah. And, and I think they're going gangbusters on this issue because it's just such a good-- from an enforcement situation-- to be able to tout the recovery of these, these monies is, is just like a no-brainer. It just has a positive ring if you are in the business of law enforcement to be able to say, we recovered this much in in funds.

On the criminal side of the spectrum, I'll note that in addition to normal wire fraud and conspiracy statutes-- the sort of bread and butter of a white-collar criminal case-- there are also specific federal criminal statutes that are focused exclusively on this notion of tariff evasion. They include 18 USC section 542, which are false statements and importation, similar to like a bank fraud statute that would impose a industry-specific type of false statement penalty. And also 18 USC section 545, which is the smuggling statute, if we want to get even what seems like a more serious, less of a paperwork crime and more of a intentional, overt, manipulation of the flow of commerce.

We've seen some very, very large and high-profile criminal enforcement cases as, as 2025 came to a, to a close. I'm sitting right now in the District of New Jersey where one of the largest tariff evasion cases was prosecuted or charged at the end of last year. It remains to be seen what happens of that particular case involving items of jewelry coming from offshore. But where do you see this going? If my point is that the toolkit of criminal prosecutors in this particular area is fairly expansive on the criminal enforcement side, do you agree with me that this is about to blow up?

Brittney: I, I do, Matt. It, it's only going to become more prominent and pronounced. I think the trend will be that more and more importers are bringing-- or not just importers, but other companies --are bringing FCA cases, or initiating them as private individuals and acting as whistleblowers, because they can't compete.

I think oftentimes that is the initial motivation for them to bring fraudulent activity to the attention of the government. But then once they learn that they can recover, they can partake in some of the recovery, they have the added incentive to help the authorities develop the evidence that they would need to prosecute these claims. And so, there are lots of reasons for companies that are following the law and are harmed to pursue False Claims Act cases.

But there are other ways for companies to bring fraudulent activity to the attention of the government. Not with as much of the control that they would have under a False Claims Act case.

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But I, I would like to mention that there has been increased activity of reporting customs fraud on Customs' e-allegation website. So Customs maintains an e-allegation system online for parties to report tips or allegations of customs fraud or a duty evasion. The parties that use that system to report are not able to recover any money, as I, as I mentioned, as they would under the FCA cases, but it is sort of a low-hanging fruit, like easy method, for parties to bring potential unlawful activity to Customs' attention, and Customs is taking that information and conducting their own investigation. So there are lots of different ways to bring fraudulent activity to the government's attention. And we will continue to see enforcement activity increased as, you know, the tariff regimes evolve in the coming months and days, weeks, years.

Matt: Take the temperature of, of, of industry right now for me. The companies that are involved in international trade right now, is there any particular industry that is more vulnerable than others? Or is this truly an industry-agnostic type of thing where if you are importing, this has got to be something on your radar and this has got to be something that keeps you up at night.

Brittney: I think if you're importing, this is something that should keep you up at night and you've got to pay attention to the developments. You've got to make sure that your compliance protocols are up-to-date and consistent with best practices. There are some industries that have been the target of more increased tariff activity and also investigation or reviews by the authorities.

As I mentioned, the last April, the administration imposed sweeping tariffs on virtually every country and most products on what we refer to as the reciprocal tariffs. So, importers of products from any country are generally going to be paying tariffs on products that they're importing into the United States. And the tariffs imposed under that authority are currently being challenged at, in the courts and is under review by the Supreme Court. But aside from that, the administration has also imposed other tariffs under other regimes, including Section 232 of the Trade Expansion Act of 1962. That authority has been held to be lawful, and the administration has imposed tariffs on specific goods and industries under Section 232, which allows the president to impose trade restrictions if the Department of Commerce finds that imports threatened national security. And the industries that are currently subject to Section 232 tariffs or actions include steel, aluminum and copper, which are subject to 50% tariffs. So in general, a 50% tariff is being applied to most any steel, aluminum or copper product imported into the United States from most any country.

There's also a 25% tariff that was introduced on imported cars and auto parts from most countries. In October 2025, a 100% tariff was imposed on some pharmaceuticals, specifically branded or patented pharmaceutical products, unless the companies were breaking ground or had under construction pharmaceutical manufacturing plants in the United States. And other industries affected by 232 tariffs are softwood, timber and lumber, kitchen cabinets, bathroom vanities, upholstered furniture, the list goes on and on. And I believe that the administration is going to continue to use the Section 232 law to impose additional tariffs, particularly if the Supreme Court finds that the reciprocal tariffs

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are unlawful. So importers in all industries should really be aware of the potential enforcement activity and be very careful.

I would like to add that with respect to the 232 tariffs on steel, aluminum and copper, there's a lack of clarity or general consensus among the tariff community or the trade community and the customs authorities about how merchandise should be reported-- or the value of the merchandise that should be reported-- that's subject to those tariffs. I don't want to get into it because it's just very nuanced and it's unresolved, but it's something that importers of products in those industries should be aware of and they should be seeking the guidance of their lawyers and other trade professionals to make sure that they're compliant with the rules.

Matt: You alluded to it, there is a constitutional challenge up before the United States Supreme Court. In fact, in recent days, Justice Ketanji Brown Jackson has said quote, "we're writing the decision," when, when, when asked specifically about the decision forthcoming from the United States Supreme Court on the tariffs.

Let's talk to the audience about that just a little bit so that we have a bit of a primer on how this all could change by action of the court or, or not.

Brittney: So for those who haven't been paying attention-- although anyone who's importing is well aware of the reciprocal tariffs-- last April, 2025, the president imposed sweeping tariffs on virtually every product from any country, invoking the International Emergency Economic Powers Act. These are called reciprocal tariffs and plaintiffs filed a lawsuit at the Court of International Trade to challenge the president's authority to impose such broad and sweeping tariffs because the Constitution provides that, under Article Two, that Congress has the authority to tariff. And the argument is that the president has exceeded president's authority under the International Emergency Economic Powers Act, which we refer to colloquially as an IEEPA, when imposing broad tariffs on all products from all countries.

The lower courts, namely the Court of International Trade and the Court of Appeals for the Federal Circuit, have already held that IEEPA does not authorize the president to impose sweeping tariffs on nearly every good from every country in the world. The Federal Circuit relied on the text of IEEPA, its history and other similar statutes to find the president's authority to quote "regulate importation" under the statute does not include the ability to impose sweeping tariffs. As you mentioned, Justice Ketanji Brown Jackson appeared in an interview where she explained there was a lot of nuance legal issues and the court is thoroughly considering and in the process of reaching a decision and writing the opinion, and that takes time. So we're all anxiously awaiting for the court to issue its decision. And ultimately that could change the landscape with respect to the reciprocal tariffs and how the administration goes about imposing new and additional tariffs. As I mentioned before, in my view, if the Supreme Court finds that reciprocal tariffs imposed in the manner that they were is unlawful, I

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don't think that is going to absolve the country from any additional tariff actions. I think the administration will find creative ways to impose tariffs on maybe particular industries or countries and will use various mechanisms to do that. So I think the import community is obviously looking to this decision to see if reciprocal tariffs are upheld, but that's not going to resolve the level of a tariff activity that I think we should continue to expect from this administration.

Matt: So if I'm hearing you correctly, the Supreme Court is gonna rule exclusively on reciprocal tariffs. That's correct?

Brittney: Correct, yeah.

Matt: Okay. So the nonreciprocal tariffs, or the tariffs that fall outside of what the court is about to rule on, how much prevalence do they have? Is this going to knock out, you know, a significant portion of the tariff regimes that are, that are being implemented and we're hearing about in the news every day? Or is this only just a small sliver of a bigger pie?

Brittney: So I would not say that the IEEPA tariffs constitute a small sliver of a bigger pie, because the scope is broad. There are tariffs imposed on virtually every product, every industry from every country. And so the, the breadth of it is significant. But ultimately, though, there are other mechanisms and other types or regimes under which tariffs are being imposed. For example, I mentioned already Section 232, but there are also tariffs that are imposed and investigations being conducted under Section 301 of the Trade Act of 1974. There are tariffs that have been imposed under Section 301 on Chinese goods since 2018, and those tariffs continue to remain in effect with no expectation that they'll be lifted anytime soon. I think that the administration will continue to use those laws to impose tariffs on certain industries or products and countries in lieu of the more sweeping or broad tariffs that are currently imposed under IEEPA. And so ultimately, while a Supreme Court finding that IEEPA tariffs are unlawful would provide some relief to importers who were buying products from various countries or various kinds of products. Ultimately, the high priority or targeted sectors will still be the focal point for additional tariff activity. And so those importers should obviously stay very abreast of any developments.

Matt: Do you see any other constitutional challenges coming down the pike and potentially headed for a showdown at the United States Supreme Court in the same manner that we've seen with the IEEPA tariffs?

Brittney: I do think that the administration will try to be creative and perhaps may use IEEPA again to impose tariffs. So the Supreme Court may issue its determination, which upholds the Federal Circuit's finding that IPEEA does not permit the use of tariffs in such a sweeping or broad manner. But it's possible that the administration might try again to use IEEPA to impose tariffs on a more narrow basis, depending on the language that is in the opinion issued by the Supreme Court. So I

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don't think that this would be necessarily the end of the use or attempt to use IEEPA. It will depend, I think, largely on how the Supreme Court writes its decision and what the ultimate holding is. But, ultimately, I think that the administration will find creative ways to maybe use IEEPA or other laws to impose tariffs in a more narrow or constrained way.

Matt: Sure sounds like these issues aren't going anywhere fast. In our waning moments together today Brittney, I want to ask, uh, a favorite kind of question of mine that I ask a lot of our guests here on "The Presumption of Innocence." And that is, I want you to take out your crystal ball for a moment and project into the future a year from now, if we're talking again on this subject, what will we have seen a year into the future that we haven't seen up to this point? Mindful that we are really in the infancy of this tariff enforcement focus by the federal government.

Brittney: Well, I think that using my crystal ball--

Matt: Don't we, don't we wish we all had one of those, right? Don't we wish we all had one?

Brittney: Yeah, but I, I predict that the Supreme Court will find that the use of a IEEPA to impose tariffs in such a sweeping manner is unlawful. I think that the administration's going to go back to the drawing board and potentially will initiate new Section 232 actions to impose tariffs on various goods or industries. Because under Section 232, the administration has been able to impose a tariff on a broader category of merchandise that is applied to all countries. So it allows them to have a more sweeping effect on certain categories of import as compared to other mechanisms that they might pursue to impose tariffs, for example, under Section 301.

So I think we'll see more increased Section 232 activity. I also think that there's going to be a lot of concern by the import community in the coming weeks really, and months potentially, on whether importers are entitled to refunds on duties that have already been paid if the Supreme Court finds that a IEEPA is unlawful.

I, I'd be remiss in mentioning that there is at least some potential --or there's some concern-- that the government will take the position that if the Supreme Court finds that tariffs are found to be illegal, refunds would only be available to parties that are involved in a lawsuit. And so, there has been a lot of, activity by importers to file complaints at the Court of International Trade, they're filing placeholder or protective lawsuits on the same grounds as the current case before the Supreme Court to ensure they're not left out if the ruling applies only to litigants or plaintiffs.

And so, depending on how the court construes its decision, I think there may be more activity in that area for parties to try to recoup some of the, you know, millions of dollars of tariffs that they've already paid in the form of a refund. This is a service our firm has been offering to importer our clients who are interested in obtaining a protection from this scenario. I would just encourage anyone who's concerned about whether they would be entitled to refunds if the Supreme Court rules

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the reciprocal IEEPA's are illegal to reach out to their lawyers, or to Fox Rothschild, to help them assess potential claims. But yes, that's going to be a very big area of concern for a lot of importers in the very near future.

Matt: Well, it, it does beg the question, if this is going to be more focused then on industries and particular products, what are those industries and products?

Brittney: Well, I think a lot of the industries and products were already sort of starting to see the focus turn to them, like semiconductors, for example, electric vehicles, components that are used in advanced technologies, components that, you know, chips, any kind of component that would touch upon the use of artificial intelligence and deploying that kind of technology, I think will be the focal point for additional tariff activity. One area that's always been sort of at risk for potential tariff activity are building and construction materials. And so I think that will continue to be an area of focus, um, and so, you know, those are the, those sort of the big items knows I would be paying attention to.

Matt: It sounds to me, Brittney, like there is a ton more to come on this subject. And do me this favor, promise me that you'll return and, and have an update on this topic once we get some more clarity from the Supreme Court and others.

Brittney: Absolutely Matt, we may be speaking in in the next two weeks to 30 days.

Matt: Yeah, it's a rapidly evolving, purely fascinating, brave new world of tariffs and tariff enforcement. Brittney Powell, thank you so much for joining me on "The Presumption of Innocence." That's all the time we have for this episode. Till next time, I'm Matt Adams. We'll see you then. Take care. Bye-bye.

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