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MEMORANDUM

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BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: 2026 Trade Enforcement Priorities for Importers

U.S. agencies are entering 2026 with a stronger mandate and more tools to police imports, including False Claims Act (FCA) suits, civil penalties, criminal prosecutions, and AI driven targeting of supply chains. At the same time, forced labor enforcement is broadening, Section 232 national security tariffs are expanding into strategic sectors, and a pending Supreme Court decision on emergency tariff authority could create both refund opportunities and new legal uncertainty.

1. Enforcement Surge: FCA, Criminal Exposure, and AI

A cross agency Trade Task Force anchored by Homeland Security and the Justice Department has made customs fraud a priority, securing large FCA settlements over misclassification, origin marking failures, and transshipment going back years. Whistleblowers are in the driver's seat through qui tam suits, and DOJ is layering civil penalties and, in some cases, criminal charges against companies and individual executives for duty evasion schemes. Customs also using advanced analytics and AI based supply chain mapping, which is already translating into more CF 28/CF 29 queries, audits, and focused assessments.

For executives, the message is clear: customs risk must be mapped, owned, and monitored at the enterprise level. Priority actions include targeted reviews of classifications and origin for key product families, clear "reasonable care" documentation, and a coordinated response plan for agency inquiries and whistleblower allegations.

2. Forced Labor: From Niche to Core Risk

Forced labor enforcement, including under the Uyghur Forced Labor Prevention Act (UFLPA), is now a central customs priority rather than a niche issue. While the total value of detained goods declined in 2025, the number of detained shipments increased, particularly in lower value electronics and industrial inputs. More sectors—such as lithium, steel, copper, and other basic materials—have been tagged as high priority, and forced labor obligations are being written into bilateral trade arrangements and are expected to feature prominently in the USMCA review.

Executives should expect that "know your supply chain" now means multiple tiers deep, with documentation robust enough to withstand CBP scrutiny. That implies systematic supplier diligence, contractual commitments, audit rights, and alignment between trade compliance, ESG reporting, and human rights policies.

3. Section 232: Strategic Sectors in the Crosshairs

Section 232 tariffs have moved beyond metals into strategic sectors, including semiconductors, pharmaceuticals, and critical minerals. In January 2026, a 25% tariff was imposed on certain advanced computing chips and derivative products, with exemptions for chips that support U.S. technology supply chains such as data centers, repairs, and R&D. Critical minerals are the subject of ongoing negotiations around price floors, and new country specific carve outs and tariff rate quotas for metals and autos are embedded in bilateral deals with key partners.

For both mid market and multinational importers, complexity—not just rate level—is the risk driver. Companies must track which products, origins, and derivative goods are covered; understand how to value metal content in finished goods; and plan scenarios for new tariffs in semiconductors, pharmaceuticals, and industrial equipment.

CIT Section 232 Lawsuit—Refunds Possible for Value Advances on Derivative Products

A new CIT case (Express Fasteners v. US) challenges CBP value advances that applied Section 232 tariffs to the full appraised value of steel derivative articles (e.g., fasteners), overriding importers' steel content only declarations.

The challenge puts into question CBP's Base Metals CEE interpretation requiring Section 232 duties on steel derivative articles using an "all-in" valuation (raw steel cost + labor, overhead, profit). In the case, Express Fasteners declared Section 232 duties only on the manufacturer's steel purchase cost (following prior CBP guidance) and IEEPA reciprocal tariffs on non-steel value (fabrication, etc.); CBP then liquidated at 50% Section 232 on the entire entered value, reclassifying manufacturing costs as part of "steel content." The suit seeks reliquidation at original entry rates and refunds of only the excess duties (all-in value minus raw steel cost)—not a full Section 232 refund.

This impacts importers who either (a) faced CBP value advances to all-in steel valuation at liquidation, or (b) now deposit Section 232 on all-in basis per CEE guidance. To preserve refund

rights, file protests within 180 days of liquidation arguing Section 232 applies to raw steel cost only. Please send recent steel derivative entry/liquidation summaries for exposure review and strategy discussion with our team.

4. USMCA Review and Bilateral Deals

The USMCA six-year review formally begins in July 2026, with mixed political messaging but strong stakeholder pressure for renewal. Renewal, however, is likely to come with tighter rules of origin—especially for autos and electronics—stronger forced labor commitments, and closer coordination on investment screening and export controls. In parallel, multiple framework arrangements with partners like the EU, Japan, South Korea, and the UK set tariff ceilings and principles, but detailed rules often appear later in official notices and customs guidance.

Executives should not base strategy solely on high level announcements. Instead, organizations need disciplined monitoring of binding rules and a clear view of how potential changes to origin, content thresholds, and critical minerals rules will affect sourcing and pricing.

5. IEEPA Tariffs and Potential Refunds

A pending Supreme Court ruling on whether emergency economic authorities can support broad tariffs could reshape part of the current tariff architecture. If the Court confirms that such tariffs are unlawful, importers could pursue significant refunds of duties collected since 2025 under "reciprocal" and "fentanyl" tariff programs, with procedures likely structured by the Court of International Trade. At the same time, the Administration has other tools—Section 232, Section 301, and lesser used powers—to keep tariffs central to trade policy even if emergency tariffs fall.

Companies should monitor liquidation dates, consider protests or protective litigation where exposure is material, and ensure entry and payment data are complete and accessible to support potential claims. Refunds could represent meaningful upside—but only for those who have preserved their rights.

6. Action Checklist for 2026

For mid-market importers and multinationals alike, leadership should ensure that:

- Customs and trade risk is routinely reported at the executive and board level.
- High risk product lines are reviewed for classification, valuation, origin, and forced labor exposure.
- Supply chain mapping and supplier diligence are formalized and documented.
- A process is in place to track Section 232, USMCA, and court developments and to respond quickly to new tariffs or refund opportunities.

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We will continue to monitor this situation closely and will report all significant developments. In the interim, please do not hesitate to reach out to us with questions or requests for additional information at Jessica Rifkin (jrifkin@ofwlaw.com) or Denise Calle (dcalle@ofwlaw.com).

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