

## CLIENT ALERT

### Attempted Country of Origin Engineering to Avoid Antidumping Duties Leads to False Claims Act Exposure

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The U.S. Department of Justice (DOJ) announced on Tuesday that it is intervening in a lawsuit, *U.S. ex rel. Dickson v. Toyo Ink Mfg. Co., Ltd.* (W.D.N.C. 3:09-cv-438), brought under the whistleblower provisions of the False Claims Act. The suit alleges that a U.S. importer of Carbazole Violet Pigment 23 from China, which is subject to antidumping duties, misrepresented the country of origin of the product as Mexico in order to avoid paying the duties. The defendants allegedly moved certain pigment processing steps to Mexico and thereafter claimed the imported product was of Mexican origin. Even if the defendants relied on country of origin determinations from Customs & Border Protection ("CBP"), they likely will need to contend with the Commerce Department's independent authority to make origin determinations for the purpose of determining whether antidumping duties apply. Those determinations are often designed to ensure that importers do not "circumvent" antidumping duty orders, and as a result Commerce may find these products to be of Chinese origin even if CBP might not.

The trade laws establish substantial fines and penalties for importers who evade customs and antidumping duties – these fines and penalties are separate and in addition to the ultimate duty assessments themselves, which can be for multiples of the value of the imported merchandise. The treble damages and penalty provisions of the False Claims Act amplify these already enormous potential liabilities and create incentives for whistleblowers to raise them to the agencies' attention. Given the possible consequences, importers should seek expert advice -- and possibly a ruling -- before concluding that changing the location of certain manufacturing steps will be sufficient to remove a product from the scope of an antidumping duty order.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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