

# Trade & Manufacturing Alert

May 1, 2012

## U.S. Government Intervenes In Action Alleging Evasion Of Import Duties by Rebecca Woodings

The U.S. Department of Justice intervened in a lawsuit alleging falsification of country-of-origin documents to U.S. Customs and Border Protection. At issue is whether a Japanese company, Toyo Ink International Corp., two U.S. affiliates, and a Mexican joint venture partner (collectively “Toyo”) misrepresented the country of origin for U.S. imports of carbazole violet pigment number 23 (“CVP-23”) in order to evade antidumping and countervailing duties. According to the lawsuit, Toyo falsely certified that its CVP-23 imports were of Mexican and/or Japanese origin and improperly marked the products’ packaging as being made in Mexico or Japan, rather than China.

The United States has imposed antidumping duties on imports of CVP-23 from China since 2004. Although a few Chinese companies have lower rates, the “all others” antidumping rate applicable to most Chinese exporters of CVP-23 is 241 percent ad valorem. Significant antidumping and countervailing duties also apply to CVP-23 imported from India.

Two U.S. producers filed the cases against CVP-23 from China and India in 2003. One of the petitioners, National Ford Chemical Company (“National Ford”), has identified itself as the only current U.S. producer of crude CVP-23. The second petitioner, Sun Chemical Corporation, operates as a toll producer for National Ford, converting its crude CVP-23 to a finished form for sale.

The lawsuit at issue was filed in October 2009 by the Chairman of the Board and Chief Executive Officer of National Ford. The suit was filed under the whistleblower provisions of the False Claims Act, which permits private parties to sue, on behalf of the United States, companies or individuals that are alleged to have falsely claimed federal funds. In such actions, the U.S. Government may intervene, as it has done in this case. The whistleblower provisions of the False Claims Act enable the whistleblower to share in any funds recovered by the Government.

The lawsuit asserts that Toyo failed to pay tens of millions in duties by fraudulently misreporting the country of origin of its imports. In announcing its intervention in the lawsuit, a Department of Justice spokesperson stated that “Companies taking advantage of United States markets must comply with the law, including the payment of import duties levied to protect domestic manufacturers and producers from unfair competition abroad.”

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