

D.C. Circuit Affirms Dismissal of FCA Claims Based on Avoidance of Customs Duties

In *United States ex rel. Doe v. Staples, Inc.*, the Court of Appeals for the District of Columbia Circuit recently affirmed the dismissal of claims alleging that three major office retail suppliers falsely declared to U.S. Customs and Border Protection (“Customs”) that imported pencils manufactured in China were in fact made elsewhere in Asia, in order to avoid otherwise applicable customs duties. The appeals court held that the relator’s allegations triggered the public disclosure bar because the truth of the pencils’ origin was evident from a combination of publicly available administrative reports and the pencils’ physical appearance. The *Staples* case is one of a rising number of False Claims Act (“FCA”) lawsuits based on alleged violations of customs obligations. A copy of the D.C. Circuit’s decision can be found [here](#).

The District Court Decision

The relator, a self-identified pencil-industry insider, alleged that defendant retail suppliers imported pencils they knew were manufactured in China, but then falsely declared different countries of origin to Customs to avoid paying substantial antidumping and countervailing duties imposed on Chinese-made pencils. These duties are aimed at protecting U.S. industries from unfair trade practices, including the sale of products below the market price or cost of production in their home country (“dumping”), as well as financial benefits provided by foreign governments to their countries’ local producers (“countervailable subsidies”). The relator alleged the defendants must have been on notice as to the pencils’ true origin based on certain telltale physical characteristics resulting from the unique manufacturing processes used in China.

The district court dismissed the claims based on the “public disclosure bar,” which is intended to prevent windfalls by opportunistic relators who lack any firsthand knowledge of fraud. The FCA bars claims where “substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed” in certain channels unless the relator “is an original source of the information.” 31 U.S.C. § 3730(e)(4)(A) (1986). The district court concluded that the alleged customs misrepresentations – which the relator discovered in an online database – and the pencils’ true country of origin – which could be determined by comparing the physical appearance of the pencils with public administrative reports – were both based upon publicly disclosed information. The relator challenged only the latter aspect of the decision on appeal.

The D.C. Circuit Affirms

The relator argued on appeal that the complaint identified and catalogued a large number of characteristics of Chinese-manufactured pencils that were not mentioned in the reports of the United States International Trade Commission (“ITC”) – the administrative reports relied upon by the district court in dismissing the claims under the public disclosure bar. The D.C. Circuit rejected this argument, emphasizing that a public disclosure inquiry focuses not on the relator’s own allegations but only on whether any information already in the public sphere was sufficient to “set government investigators on the trail of fraud.” In this case, the relator doomed his own claims by asserting that the defendants were on notice of the pencils’ true origin because pencils manufactured in China can

be readily identified by their unique physical features. At least some of these “unique” features were described in the ITC’s publicly disclosed reports. As the D.C. Circuit noted, the relator effectively “pled himself out of court” by alleging facts that confirmed the essential elements of his claim had been publicly disclosed.

The appeals court also rejected the relator’s belated attempt to argue that he qualified for the “original source” exception to the public disclosure bar. Having declined to raise this argument in the district court, the relator had thereby forfeited it.

If you have further questions about the implications of this decision, please consult your usual Ropes & Gray advisor or an attorney in our [False Claims Act](#) practice.

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