

International Trade Group Of The Year: Covington & Burling

By Kelly Knaub

Law360, New York (January 19, 2018, 4:20 PM EST) -- Covington & Burling LLP's international trade group advised on acquisitions worth billions, defended Bombardier against allegations it sold aircraft in the U.S. at unfairly low prices, and represented Chinese respondents in a rare price-fixing case at the International Trade Commission, placing it among Law360's 2017 Practice Groups of the Year.

Peter Lichtenbaum, who heads the practice, told Law360 that choosing which case in the past year has been the most significant is "like choosing between your children," but he added that the Bombardier trade remedies case was one of the group's biggest.

The case, which was brought by Boeing Co. and has billions of dollars at stake, "presents very significant economic, legal and political issues," Lichtenbaum said, noting that both Canadian Prime Minister Justin Trudeau and U.K. Prime Minister Theresa May have discussed the case with President Donald Trump.

Covington's international trade attorneys have defended Bombardier Inc. against accusations by Boeing that it sold its C-Series aircraft into the U.S. market at unfairly low prices and that it was illegally subsidized by the Canadian government. The ITC is expected to rule this month on whether Boeing is threatened with injury, according to the firm.

"The company remains confident that the ITC will conclude that Boeing will not be harmed by the C Series, in light of the very substantial evidence presented, including the company's decision to partner with Airbus to invest in U.S. production of the aircraft," Lichtenbaum said.

Another noteworthy case in the last year is one brought by U.S. Steel at the ITC — the first price-fixing probe in more than four decades, according to Covington — against a number of Chinese companies that the firm represented as lead counsel.

That case involves a trade secret claim based on alleged cyber theft, a Lanham Act claim, and an antitrust claim, which is "rare" for the ITC, according to Sturgis Sobin, a partner at Covington.

"One of our challenges was to assemble and effectively manage the right team to tackle these three very distinct bodies of law combined with very extensive discovery requests of our clients in China — all



in a venue that moves extremely fast," Sobin said, noting that attorneys from six of the firm's offices, including three in Asia, ended up on the case.

Another challenge, he said, was to break up the distinct claims in order to avoid having to litigate them on the same timeline, adding that while it's rare for the commission to bifurcate cases, the Covington team convinced the ITC to do so, resulting in what he called a "tremendous tactical benefit."

The firm was up against "very strong headwinds blowing in favor of protection of the domestic industry," Sobin said, but ultimately all three claims were defeated.

"In the end, while one claim — antitrust — which was dismissed by the [administrative law judge], remains pending on review, we believe that the ALJ and the commission adhered to their charter as an independent agency and based their decisions on the record and applicable law," Sobin added.

The firm has also advised on transactions valued at billions of dollars, including representing chipmaker Intersil Corp. in its \$3.2 billion sale to Tokyo-based rival Renesas Electronics Corp.

The transaction, announced in September 2016, was consummated in a year that saw numerous rejections by the Committee on Foreign Investment in the United States of similar deals, according to Covington.

Ultimately, Renesas was permitted to exercise direct operational control of the company, which Covington called "an extraordinary outcome not even originally contemplated."

Covington has about 150 attorneys and advisers in its international trade group, which represents roughly 14 percent of the firm's total attorneys, according to Lichtenbaum. This number includes those working in the areas of Section 337 investigations, CFIUS, trade law, export control and economic sanctions, and the Foreign Corrupt Practices Act — the five areas identified by Law360 for the international trade arena in its Practice of the Year Group series.

Lichtenbaum said the group has focused on targeted expansion, particularly in the area of trade enforcement in light of the Trump administration's focus, and that although it has already grown significantly in the trade enforcement area, it plans to expand even further.

The group is based domestically in offices in Los Angeles, New York, San Francisco, Silicon Valley and Washington, and in Beijing, Brussels, London, Shanghai and Seoul abroad.

What makes Covington's international trade practice stand out from those of other firms is its breadth and depth, Lichtenbaum said, adding that the firm has "top practices" in all five areas.

Sobin echoed that idea, noting that the group is distinguished by the depth of its bench and that there is a dedicated team that works almost exclusively on 337 cases.

"That kind of scale and breadth has been critical to our success in handling some of the largest and most complex global disputes that are brought before the agency," Sobin said. "Covington's culture also enables us to work effectively as one team across many different offices, languages and time zones."

--Additional reporting by Chuck Stanley, Kyle Jahner and Benjamin Horney. Editing by Jeremy Barker.
All Content © 2003-2018, Portfolio Media, Inc.