

MVP: Covington's Jay Smith

By Rae Ann Varona

Law360 (September 7, 2022, 2:02 PM EDT) -- Jay Smith has moved from academic to trade advocate, leading Covington & Burling LLP teams in securing product exclusions and a major Commission for Environmental Cooperation recommendation to protect a species of North Atlantic whales, earning him a spot among Law360's 2022 International Trade MVPs.

HIS BIGGEST ACCOMPLISHMENT THIS YEAR:

In June, Smith helped railcar pooling company TTX defeat an anti-dumping and countervailing duty petition at the U.S. International Trade Commission that was lodged by the Coalition of Freight Coupler Producers in September 2021. The producers were seeking to impose steep tariffs on freight rail couplers from China.

With Smith serving as lead counsel for the company, the ITC this year voted unanimously to issue a negative determination, finding no material injury or threat to the domestic industry from the imports and ultimately terminating the case both at the ITC and the U.S. Department of Commerce.

The determination allowed TTX partner Strato Inc. to continue producing certain freight rail component parts in China and allowed TTX to avoid duties that were calculated at 382.69%.

Given that unanimous negative injury determinations are relatively rare at the ITC — especially when focusing exclusively on China — Smith said he saw that determination as a big win.

"It was a high-stakes issue for our client and others in the industry, and we were able to help tell TTX's story to the ITC, and we think it kind of informed their ultimate determination," Smith said. "It was a major challenge and a welcome result."

WHY HE'S AN INTERNATIONAL TRADE ATTORNEY:

Before becoming a lawyer, Smith was a political science and international relations professor at George Washington University. But his interest in international trade sparked earlier as he pursued his



doctorate at Stanford University, where his dissertation focused on international trade dispute settlement, the creation of dispute settlement mechanisms in the World Trade Organization, and other regional trade agreements and bilateral free trade agreements.

"I kind of had an interest in the field established for several years and had written about and studied this area before I decided that I wanted to try practicing in it, and I've enjoyed that transition very much," Smith said.

He described his transition from the world of academia to private practice as a transition from being an analyst to an advocate. What he likes most about the shift is the opportunity to help clients solve specific and often difficult problems.

"The tools — research, analysis, writing — are very similar in both professions," Smith said. "And the challenge in both is often to master complex or novel issues and make them understandable, which I enjoy trying to do."

WHAT MOTIVATES HIM:

In describing the international trade field as a "dynamic" area of law, especially given the innovations it has seen in the last 10 years or so, Smith said the novelty and difficulty of the challenges faced in the field motivate him the most in his practice.

"We've seen governments in both the U.S government and others innovate in terms of their policy approaches, and that's created new problems for our clients [that have] been a challenge to address," he said. "That kind of intrinsic difficulty or variety has been something that I think motivates me to want to work in this field."

As an example, Smith pointed to the use of Section 232 of the Trade Expansion Act — which the Trump administration imposed in 2018 and is still in use by the Biden administration — to increase the levels of capacity utilization for the domestic steel and aluminum industries.

"This was a novel use of that statute, and it had major implications for downstream purchasers and users of steel and aluminum in the United States," Smith said. "We've spent a lot of time assisting clients with how to secure product exclusions where the products of issue aren't made by the domestic producers or aren't made in sufficient volumes by the domestic producers."

OTHER NOTABLE CASES HE'S WORKED ON:

In the past year, Smith has been instrumental in several big deals. He helped companies, including HP Enterprise, successfully reinstate expired Section 301 product exclusions in March, with the U.S. trade representative granting 10 reinstatement requests filed by a Covington team led by Smith.

In November, he helped Occidental Petroleum secure Section 232 product exclusions to import steel pipe products — which are subject to U.S. tariffs of 25% — for a deep-water project in the Gulf of Mexico.

But one case Smith said he's particularly proud of is a pro bono case in which he served as lead counsel in helping environmental nongovernmental agency Oceana with enforcement submissions to the Secretariat of the Commission for Environmental Cooperation under Chapter 24 of the United States-Mexico-Canada Agreement.

Oceana, which focuses on protecting the world's oceans, filed a submission in October, but was unsuccessful.

Smith and a team at Covington helped the NGO craft a revised submission that was filed in January. The revision made it clear that the U.S. failed to enforce domestic laws to protect endangered North Atlantic right whales from gear entanglement and vessel strikes.

Despite the government filing a formal response to Oceana's revised submission, the CEC secretariat made a formal recommendation to develop an actual record concerning the NGO's claims, marking the first time the secretariat had made such a recommendation with regard to the U.S. under Chapter 24 of the USMCA.

Smith said he was proud to work on that case because it involved a large and diverse team of associates at Covington who had expertise in areas outside of trade law, such as environmental law.

"The team came together seamlessly and did an excellent job getting over both procedural and substantive hurdles in that process," he said.

HIS ADVICE FOR JUNIOR ATTORNEYS:

Smith encourages junior attorneys to seek out diverse opportunities.

Getting exposure to different parts of the practice as early as possible will help them stay ready for opportunities and build confidence in their ability to handle different tasks, he said.

"We have policy advisory matters, litigation matters, agency investigations, or questions of customs compliance that come up very often," Smith said. "These are different both substantively and procedurally and to be a well-rounded trade lawyer, it's very important to try and gain exposure to as many different parts of the practice as you can."

— *As told to Rae Ann Varona.*

Law360's MVPs of the Year are attorneys who have distinguished themselves from their peers over the past year through high-stakes litigation, record-breaking deals, and complex global matters. A team of Law360 editors selected the 2022 MVP winners after reviewing more than 900 submissions.