

International Trade Group Of The Year: Steptoe & Johnson LLP

By Sarah Martinson

Law360 (January 22, 2020, 3:29 PM EST) -- Steptoe & Johnson LLP has successfully represented international companies in the pipeline and plastics industry in trade investigations, securing its place as one of Law360's 2019 International Trade Groups of the Year.

The firm's international trade group has four subdivisions with 24 attorneys across the world in Washington, D.C., London, Brussels and Beijing. The group focuses on international trade remedies, trade policy, disputes before the World Trade Organization and investor-state arbitration.

Eric Emerson, a partner and chair of Steptoe's international trade group, said the firm's trade practice doesn't have the highest headcount but is a "crown jewel" of the firm.

"We have a particular focus on litigating some of the hardest, biggest, most cutting-edge cases in this practice area," Emerson said. "If you were to ask people what Steptoe is known for, international trade is probably the first thing they'd say."

For nearly 30 years, Steptoe has been representing the British Columbia Lumber Trade Council in litigation over the Canadian government's lumber cutting fees in what Emerson said is "the biggest and most difficult trade case that the United States has ever had."

The case has gone through multiple international trade forums, including the U.S. Court of International Trade and the World Trade Organization, questioning what is a fair price for Canada to charge lumber companies to cut timber from government-owned land, Emerson said.

Steptoe has also been extensively involved in the Canadian pipeline industry successfully representing its longtime client Enbridge Inc., the largest pipeline company in Canada, in the crosshairs of an anti-dumping probe.

The U.S. Department of Commerce initially launched an anti-dumping investigation solely into international pipeline supplier Evraz Inc. But Enbridge was pulled into the probe after Commerce concluded in its preliminary determination that it was an affiliate company of Evraz based on the terms of their contracts, Emerson said.



In a matter of weeks, Emerson and his team had to collect enough evidence to show Commerce that the language of Enbridge's contracts with Evraz was common and that they didn't have an ownership or equity relationship, he said. Commerce reversed its determination in February, finding that the two companies were not affiliated, the firm said.

"When Commerce makes a significant legal judgment at the preliminary phase, it is pretty rare for the department to reverse it, because they had staked out their position and looked through the evidence," Emerson said.

Steptoe achieved another victory in September by freeing Mexico from an anti-dumping probe into thermoplastic sheet imports in the U.S. International Trade Commission's preliminary phase of the investigation, said Tom Trendl, a Steptoe partner.

Three U.S. companies filed a petition to the ITC and Commerce Department claiming that polyethylene terephthalate sheet imports from South Korea, Oman and Mexico were hurting their sales, prompting the agencies to launch separate anti-dumping investigations.

Steptoe carried the weight of proving that Mexico's PET exports were "negligible" — of less than 3% of total U.S. imports — by representing one of the country's largest PET exporters, Inter Plas Industries S.A., Trendl said.

Trendl said it is unusual for the ITC to terminate an anti-dumping investigation in the preliminary phase, because responding companies are at a disadvantage in the beginning. Petitioners have months to construct their complaint, but respondents only have weeks to build their story before the ITC issues its preliminary determination, he said.

"[This case] should give other respondents the incentive to attack the assumptions that petitioners included in their petition, and not just assume that the International Trade Commission is going to accept those assumptions and move forward to a final [determination]," Trendl said.

The firm scored a win representing Brazil before the WTO Appellate Body by proving that subsidies the Brazilian government provided its domestic producers were not forbidden under international trade agreements, the firm said.

Japan and the European Union requested WTO consultations in 2013, alleging that Brazil was unlawfully subsidizing its domestic automotive and technology industries, and a WTO panel issued a report in 2017 finding that Brazil was violating its trade obligations, said Amy Lentz, a Steptoe partner.

Brazil challenged the report, and the WTO Appellate Body determined in December 2018 that a WTO panel wrongly concluded that Brazil was unlawfully subsidizing its domestic producers under the Agreement on Subsidies and Countervailing Measures and Article III of the General Agreement on Tariffs and Trade, Lentz said.

Lentz said the Appellate Body's ruling made the important distinction between subsidizing products, subsidizing producers and requiring domestic companies to follow certain production methods.

"The legal significance going forward is telling members that the payment of subsidies to domestic

producers, in particular, is not enough to say you are in violation of your obligations under Article III," she said.

Emerson said Steptoe's international trade practice has had a strong year as a result of its increased workload caused by changes to trade policy made by the Trump administration. The administration has opened the door for the U.S. and other countries to use trade in ways never contemplated before that creates future unpredictability for businesses, he said.

"Companies forevermore are going to need to think harder about trade policy issues," Emerson said. "They are going to need to be able to take into account this uncertainty in their business planning, and that's really what we are here to do."

--Editing by Nicole Bleier.