

International Trade Group Of The Year: Kelley Drye

By Asher Stockler

Law360 (December 8, 2020, 6:07 PM EST) -- Kelley Drye & Warren LLP's success in obtaining trade protections for a broad cross-section of domestic manufacturers, including by convincing a federal judge to rework the findings of the executive branch, earned the firm a slot among Law360's 2020 International Trade Groups of the Year.

The firm won victories for U.S. clients in a multitude of forums, including at the U.S. Court of International Trade and the International Trade Commission.

"It's a chance to really tear the top off of industries and learn about them here in the United States and around the world," Kelley Drye partner John Herrmann II said of the firm's trade practice. "It's something I've always found interesting and enjoyable."

The trade group includes attorneys with a policy-making background, giving clients a more acute familiarity with the business of trade litigation.

Herrmann, for example, first joined Kelley Drye's predecessor in the fall of 1998 after clerking for the CIT's chief judge. In the early aughts he left for the U.S. Department of Commerce, serving as senior adviser to the assistant secretary for import administration, before advising the White House on trade policy and then rejoining the firm in 2009.

"You have an opportunity to see what types of arguments and what types of engagement with decision makers are effective," Herrmann observed. "I think that experience has been very helpful to me as I've moved from being an aide to a decision maker to an advocate. You have a little better sense of what works, what's effective, and what's not."

Over the past year, that kind of bench undoubtedly contributed to Kelley Drye's successes, including on the very trade issues that have been thrust into a harsh political spotlight with the Trump administration's tariff policies.

In 2018, the U.S. Trade Representative began to impose Section 301 tariffs on \$235 billion worth of Chinese imports, including polyester textured yarn. Nevertheless, Kelley Drye discovered that Chinese



exporters had been shoveling this product into the U.S. to get ahead of the tariff schedule.

Using business records, Kelley Drye showed the ITC that depressed import prices were the reason domestic yarn producers were struggling to compete. Ultimately, the Commerce Department slapped the imported product with sizable antidumping and countervailing duties.

"Oftentimes, the foreign producers absorb Section 301 tariffs. The tariff doesn't change the price enough to affect importers," R. Alan Luberdá, the firm's practice group leader for international trade, said. "That's something you can't do with antidumping or countervailing duties. The dumping laws prevent a company from being able to absorb the dumping duties in that way."

Luberdá noted that the Trump administration has been "very strong" on trade enforcement, which has "been good for our clients," largely domestic-side producers.

"We're hoping to see that in the Biden administration as well," he added.

In June, Kelley Drye convinced a CIT judge to revise an adverse finding from the ITC, which had concluded that rising imports of PET resin from South America and East Asia were the result of a domestic shortage rather than unfair pricing. The ITC was charged with reevaluating its conclusions and providing more evidence to supplement the record, a promising result for the firm's clients.

"That does not happen very frequently," Kathleen Cannon, managing partner of the firm's D.C. office, said of the reversal. "Generally, there is a lot of discretion given to the ITC. Their findings tend to be upheld."

The scope of the win was significant, given the level of deference federal courts usually apply to agency fact-finding and adjudication.

"What was unique about the CIT's decision was that they basically sustained us on every single argument we made," Cannon observed. "So, it was a very sweeping remand and broad finding of error by the court."

Kelley Drye's advocacy and diligence is distinguishable from other trade practices because of its holistic approach to cases. Clients are represented not only by attorneys but by a team of practitioners with individualized expertise.

This includes the firm's in-house economics consultancy.

"When we're working on trade cases, we have teams that have partners, associates, economists and paralegals. We're very team-oriented, not very hierarchical, and so it's pretty seamless," Luberdá said. "I've got economists who can write like lawyers and lawyers who can think like economists."

This setup allows the firm to take on big issues and big industries. Some of Kelley Drye's clients include domestic producers of pre-stressed concrete steel wire strand. Litigation over imports of the product has resulted in the firm filing one of the largest cases ever heard by the ITC. And last month, the Commerce Department moved to impose antidumping duties on concrete wire strand from seven countries.

"When the U.S. becomes the dumping ground for imports, for whatever reason, that's what these trade laws are designed to do," Cannon noted. "We are using them increasingly because our clients continue to find them very effective."

--Editing by Gemma Horowitz.

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