

International Trade Group Of The Year: Covington

By Jennifer Doherty

Law360 (February 20, 2024, 4:31 PM EST) -- Covington & Burling LLP scored important wins across the international trade space last year, including shepherding bet-the-company deals through national security review, challenging fertilizer tariffs and guiding Seagate Technology LLC through a record-breaking export control settlement, earning the firm a spot among Law360's 2023 International Trade Groups of the Year.

While Covington's website boasts a trade practice of 96 attorneys and advisers spread across four continents, the firm also brings the full force of its regulatory, public policy, litigation and other teams as needed to each case through its ingrained culture of collaboration.

"It's all geared towards: How do we strategize to get the best result for the client? And then: Who are the right resources internally?" said partner David Fagan, co-chair of Covington's cross-border investment and national security practices. "We don't think about who's getting credit for it. It's just not the mindset."

Last year, Fagan and an interdisciplinary team of attorneys led Taiwanese firm AcBel Polytech through its \$505 million bid to acquire the Texas-based power conversion division of ABB.

The deal, which required approval from the Committee on Foreign Investment in the United States, was under review as U.S.-China relations hit a low point after the U.S. shot down a Chinese surveillance balloon off the coast of South Carolina and amid growing tensions over Taiwan.

AcBel, a firm new to the intensive scrutiny that CFIUS applies to foreign buyers, cleared the committee's review with Covington's guidance and the deal closed in July.

"The geopolitics of the region are taken into consideration on any M&A transaction. It requires you to really dig in and make sure that everybody's comfortable, including, in this case, the seller, and we were able to get there," Fagan said.

Another boon to client confidence comes from the roster of former government officials who are now members of Covington's regulatory and public policy groups.

For example, when Moroccan fertilizer giant OCP SA, a longtime Covington client, was targeted for duty investigations by the U.S. International Trade Commission and the U.S. Department of Commerce starting in



2020, former public servants from both agencies were on hand to lead its defense.

The strategy first paid off with a duty rate that was lower than the one posited by the domestic competitors who petitioned for the duties. Then, in September, OCP won backing from a U.S. Court of International Trade judge who kicked the tariffs back to the government, calling portions of its duty calculation "nonsensical." The rate Commerce returned with in its remand results last month was more than 60% lower.

William Isasi, who heads the Commerce side of OCP's defense, previously worked on countervailing duty investigations as a Commerce Department assistant chief counsel. He credited teamwork with international trade practice group Chair Shara L. Aranoff, a former ITC chair, for their success so far in the ongoing litigation.

"I think that both Shara and I brought our years of government experience to the table in helping to develop an immediate as well as long-term defense strategy for OCP in the matter," Isasi told Law360.

Having so many team members with hands-on experience from the other side of the public-private divide gives Covington "a sophisticated understanding of highly technical areas" that sets it apart from competitors, he added.

Covington partner Peter Lichtenbaum brought his own experience as former assistant secretary of Commerce for Export Administration as co-lead of Seagate Technology LLC's defense team after the Bureau of Industry and Security determined the company violated the export administration regulations by selling hard drives to Chinese technology giant Huawei.

Seagate and BIS settled the case last year with Seagate agreeing to pay \$300 million — the largest civil penalty in the agency's history but one that was a mere fraction of the \$2.2 billion maximum fine BIS initially sought.

Teamwork along with a clear-eyed understanding of the regulator's perspective were instrumental in securing the milder penalty.

"The collegial culture of Covington," according to Lichtenbaum, is "probably the most important value that the firm has, and it means a lot in cases like this. I could not have done this case by myself. No lawyer could. You need, not just associates working with you, but other senior colleagues who are going to be treating this case as important as anything else that they do."

In the Seagate case, Lichtenbaum and co-lead Eric Sandberg-Zakian worked closely with colleagues from the firm's white collar, litigation and administrative litigation teams.

"Developing those arguments fully and making clear to the agency that we were able and prepared to litigate was a fundamental part of our strategy in the negotiation," Lichtenbaum said.

That readiness for anything, paired with government experience that allowed Covington attorneys to "articulate things in ways that resonated" with the officials on the other side of the table and an attention to detail that Lichtenbaum called "the standard in Washington for lawyerly care," were the three keys to wresting Seagate from a sticky situation, Lichtenbaum said, and they continue to serve Covington teams well.

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