

International Trade Group Of The Year: Gibson Dunn

By **Ben James**

Law360, New York (January 25, 2012) -- The international trade team at Gibson Dunn & Crutcher LLP scored a victory for the Japanese steel industry in anti-dumping proceedings over hot-rolled steel, and secured an Office of Foreign Assets Control general license unblocking a state-owned Libyan shipping company's funds, two of the achievements that won Gibson Dunn a place among Law360's International Trade Groups of 2011.

Not only do Gibson Dunn's international trade lawyers cover the gamut of trade-related issues, but the firm's expertise on each respective topic runs deep, said Judith A. Lee, co-chairwoman of Gibson Dunn's international trade and regulation compliance practice group.

"We have not only a wide range of subject areas that we touch on, we've got a real depth in each of these areas," Lee said. "We have a very strong customs practice. That's something you don't find at other major firms."

Gibson Dunn helped a number of clients — like Facebook Inc., the Internet Corp. for Assigned Names and Numbers, the National Bank of Abu Dhabi and Libya's General National Maritime Transport Co. Ltd. — deal with OFAC last year.

The firm also had noteworthy wins in U.S. trade cases for companies like Sekisui Specialty Chemicals America LLC, and represented Honda's U.S. manufacturing and distribution companies in anti-dumping and countervailing duty actions launched by the Chinese government against U.S. automobile imports.

Earlier this year, General National Maritime Transport found itself on OFAC's Specially Designated Nationals List as a result of U.S. sanctions against Libya.

SDN designation, which has been referred to as an "economic death penalty," means that a company's assets are blocked and that they are barred from doing business with the U.S.

As the result of the SDN designation, GNMT's economic resources were inaccessible and creditors quickly became incensed. Gibson Dunn started representing the company soon after President Barack Obama issued an executive order freezing assets of the Gadhafi family and others in February. As a state-owned entity, GNMT was subject to the sanctions announced in February, though it was not added to the SDN list until June.

After months of negotiations, Gibson Dunn got OFAC to issue a general license which allowed the company to pay its creditors and employees. The Nov. 18 license said that all GNMT funds — including cash, securities, and bank and investment accounts — that had been blocked under the February executive order or the Libyan Sanctions Regulations could be released.

“A general license that lists your client by name is not something that you often get, so we were very happy,” Lee said. “It was touch and go for a while. We didn't know what was going to happen in Libya.”

Gibson Dunn has also been helping Facebook navigate potential issues stemming from the use of its gaming services by parties that may be located in countries targeted by U.S. trade sanctions.

Gibson Dunn will be advising Facebook in negotiations with OFAC to minimize any possible penalties and make sure the company implements a screening program that will allay any concerns on the part of regulators.

The government wants to maintain tight control over embargoes and trade restrictions, but the ubiquity of online services and the broad access to those services the Internet affords means “it's really a new era for OFAC,” said Lee.

“OFAC and the State Department are walking this really interesting tight rope,” Lee noted. “Obviously, these Arab spring developments were facilitated by the availability of Facebook, Twitter and other online services.”

On the U.S. International Trade Commission front, Gibson Dunn represented the Japanese Steel industry — specifically, a group of respondents including JFE Steel Corp., Kobe Steel Ltd. and Nippon Steel Corp. — in a sunset review proceeding involving hot-rolled steel from Brazil, Japan and Russia.

Gibson Dunn argued that revoking an anti-dumping duty order wouldn't be likely to lead to a continuation or recurrence of material injury to the U.S. hot-rolled steel industry. In May, the ITC commissioners voted 4-2 in favor of removing the anti-dumping order on Japanese hot-rolled steel that had been in place since 1999.

The matter was a prominent case when it was originally brought back in the late 1990s, and the sunset review proceeding was heavily contested, according to Gibson Dunn partner John C. Wood, who appeared for the Japanese respondents at an April hearing.

“It was a keystone case for the domestic steel industry,” Wood said. The 4-2 vote was “quite significant because it was such a high-profile order,” Wood said.

Gibson Dunn also represented Nippon, JFE, Kobe and Sumitomo Metal Industries Ltd. in a sunset review related to anti-dumping duty orders on cut-to-length carbon-quality steel plate, in which the ITC determined in December that the anti-dumping duty order aimed at the Japanese products should be revoked.

Gibson Dunn's multiyear efforts on behalf of polyvinyl alcohol manufacturer Sekisui Specialty Chemicals also bore fruit in 2011. In February, the ITC determined that Taiwanese PVA imports — which the U.S. Department of Commerce previously concluded were being sold at less than fair value in the U.S. — materially injure the domestic PVA industry.

The determination paved the way for an anti-dumping duty order, which Commerce's International Trade Administration published in March.

The PVA investigation was launched in 2004 at the behest of domestic producer Celanese Chemicals Ltd.

That same year, the ITC determined that there was no reasonable indication the U.S. industry was threatened by Taiwanese companies, a finding that led Commerce to drop its investigation.

Celanese appealed the negative determination to the U.S. Court of International Trade, and in 2007, the court remanded the determination to the ITC. The commission voted to reverse its earlier determination and found a reasonable indication of injury to domestic producers.

The CIT upheld the affirmative determination, but chemical giant DuPont Co. then appealed the case to the Federal Circuit. In 2009, the Federal Circuit affirmed the CIT's decision without comment.

Celanese sold its PVA unit to Sekisui in 2009. Commerce resumed its investigation of Taiwanese PVA imports in March 2010.

The case is noteworthy because of its “unusual procedural posture,” said Wood.

When the investigation got back underway, Gibson Dunn coordinated Sekisui's responses to briefs from the foreign PVA manufacturers and defended the company's bid for protection by U.S. anti-dumping law.

In addition, Gibson Dunn represented Honda's U.S. manufacturing and distribution companies in anti-dumping and countervailing duty actions launched by China's Ministry of Commerce over automobile imports from the U.S.

In May, MOFCOM assessed a zero countervailing duty rate and a relatively small anti-dumping margin for the Honda exports.

“We're very pleased with the results we got for Honda,” said Wood. “Relative to other companies that were investigated, Honda did well.”

Methodology: In November, Law360 solicited submissions from over 500 law firms for its practice group of the year series. The more than 550 submissions received were reviewed by a committee of Law360 editors. Winners were selected based on the significance of the litigation wins or deals worked on; the size and complexity of the litigation wins or deals worked on; and the number of significant, large or complex deals the firms worked on or lawsuits the firm had wins in. Only accomplishments from Dec. 1, 2010, to Dec. 1, 2011, were considered.

--Editing by John Quinn.