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Q&A With Arnold & Porter's Lawrence Schneider

Law360, New York (September 25, 2009) -- Lawrence A. Schneider is a Washington, D.C.-based senior partner with Arnold & Porter LLP, where he heads the firm's international trade practice. He represents clients in a full range of international trade, customs, legislative and policy issues, including disputes under various import laws.

Schneider also advises government and private entities on issues related to the World Trade Organization and various free trade agreements. He has more than 27 years of experience representing companies, trade associations and governments in anti-dumping, countervailing duty and other international trade proceedings before administrative agencies, courts and international dispute settlement panels.

Q: What attracted you to your practice area?

A: In the early 1980s, U.S. industries were filing a steadily increasing number of petitions seeking additional duties on imported products to offset "dumping" and/or "subsidies." I was one of the lead attorneys on the Arnold & Porter team that was selected to represent the entire Canadian lumber industry in one of the earliest, and largest, of these new cases involving billions of dollars worth of imports of softwood lumber from Canada.

The primary issue was whether the Canadian provincial governments, which own most of the forests in Canada, were providing subsidies by selling the rights to cut timber at too low a price to the sawmills that used the wood to make lumber and whether hundreds of millions of dollars in "countervailing duties" should be imposed to offset any such subsidies.

Not only did the administrative and judicial proceedings in that case allow me to take advantage of the litigation skills that I had previously developed, but they also involved other challenging (and interesting) elements at the intersection of law, business and policy: developing strategy and arguments with respect to novel legal issues in a newly developing area of the law; addressing issues in relations between two countries and

their governments; responding to intense media interest; and dealing with U.S. industries (such as the homebuilders and the lumber wholesalers) that supported the Canadian position — and, from start to finish, all within less than a year.

Although our arguments prevailed and that investigation was terminated, it turned out to be only the first of four Canadian softwood lumber cases that have been fought over the last quarter of a century. It also was the beginning of a long string of major countervailing duty, antidumping, and other international trade matters that I have handled since then.

Q: What is the most challenging case you've worked on, and why?

A: For more than four years (and still counting), I have been battling before the U.S. Department of Commerce and the U.S. Court of International Trade on multiple, complex issues in an anti-dumping review on imports of steel concrete reinforcing bars (rebar) from Turkey.

Seeking to obtain and then maintain a revocation for our client in that review, we have had to address Commerce's repeatedly shifting rationales and policies, numerous rounds of briefs and hearings, and remands from the Court to Commerce. With each new stage of this case, we have had to address new issues and develop new arguments for different decision makers.

Q: What are the most challenging legal problems currently facing clients in your practice area?

A: Many of the major current legal issues are found in the growing series of U.S. countervailing duty investigations on a wide range of products imported from China.

Although there always have been numerous anti-dumping cases against imports from China, the U.S. Department of Commerce took the position for more than 20 years that it could not investigate subsidy allegations against imports from a "nonmarket economy" country such as China. That changed in 2007. Since then, there has been a steady stream of about twenty CVD investigations (in addition to antidumping investigations) relating to products from China.

These cases raise significant issues as to whether Commerce's change in position (without any change in legislation) is consistent with U.S. law and with WTO rules, whether the imposition of both antidumping duties (using a special "nonmarket economy" methodology) and countervailing duties on the same products impermissibly provides a "double remedy" against any subsidies that are found, whether Commerce is properly dealing with alleged subsidies involving state-owned enterprises, and whether Commerce is using appropriate benchmarks for measuring subsidies when it rejects internal Chinese benchmarks in favor of external benchmarks.

These challenging and novel legal issues will continue to be fought before Commerce, the courts and the WTO as existing cases are appealed and as new cases are filed.

Q: How do you see your practice area evolving in the next five years?

A: I think import relief proceedings (anti-dumping and countervailing duty investigations) will continue to be a significant area in the United States, and increasingly significant in other countries, with many of the cases targeting Chinese products. WTO dispute settlement proceedings may well increase as more countries become accustomed to that still relatively new forum for resolving trade disputes between countries.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: For more than 25 years, I repeatedly have been impressed by Professor John H. Jackson, who is University Professor at the Georgetown University Law Center and has been widely recognized as one of the foremost experts on international trade, the GATT and the World Trade Organization.

While all of his books, articles, awards and honors are impressive indeed, it is Professor Jackson's wide-ranging abilities to analyze specific issues with keen insight and clarity, to synthesize overall developments and trends, and to envision future possibilities that have most impressed me.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: Handling anti-dumping cases, countervailing duty cases and other international trade proceedings requires a broad range of skills. So, develop your litigation-type skills, possibly through other types of litigation in which you can advance your written, oral, analytic and other capabilities. Enhance your knowledge of economics and accounting. Improve your foreign language skills. Become expert in the substantive rules (including the WTO agreements), domestic laws and agency regulations that apply to international trade matters. And make sure that your passport is ready (and not expired) when you need it on a moment's notice.