



Customs & International Trade Bar Association

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WHAT IS AN “INTERNATIONAL TRADE” LAWYER ANYWAY?

CITBA’S SUMMARY OF INTERNATIONAL TRADE PRACTICE AREAS FOR YOUNG LAWYERS AND LAW STUDENTS

International trade lawyers represent domestic and foreign firms involved in the movement of goods, services, and investment across borders, or work for the national governments or multilateral organizations that administer the laws and agreements that govern such movements.

While every international trade lawyer will likely develop a unique body of experience and specialization, we set out below the primary areas of international trade practice. Depending on where you end up practicing, you may specialize in just one of these areas or practice more broadly across two or more. As such, international trade practice gives you significant opportunity to tailor your practice to your interests and skillset.

Finally, because international trade practice requires the development of specialized subject-matter expertise and often the ability to work in an international context and with clients from all over the world, international trade lawyers tend to be harder to replace than generalists such as commercial litigators or M&A lawyers. Because of the special challenges of an international trade practice, young lawyers may find new opportunities for advancement in an area where skill and diversity are prized.

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Trade Remedies

“Trade remedies” are the laws used by the United States and other countries to protect domestic industries from injury or threatened injury caused by the competitive effects of international trade.

By far the most prevalent of these are antidumping (“AD”) laws intended to prevent foreign products from being sold at artificially low prices, and countervailing duty (“CVD”) laws intended to offset certain subsidies that foreign governments may be offering to exporters. In the United States, the AD/CVD laws are jointly administered by the Department of Commerce, which is responsible for determining whether dumping is happening or whether a countervailable subsidy exists, and the International Trade Commission, which is responsible for determining whether the domestic industry is injured or threatened by such allegedly unfair trade. A third important form of trade remedy, known as a “safeguard,” is intended to temporarily protect domestic industry from increases in fairly traded imports.

In the United States there are also a number of other trade remedy laws, many of which saw significantly expanded use since 2017 and will likely continue to play a larger role in the future. For example, Section 301, which is intended to respond to alleged unfair practices by trade partners, was the basis for the recent tariffs imposed on most imports from China. Similarly, Section 232, which allows the United States to impose trade restrictions to protect national security, was the basis for the tariffs imposed in 2018 on imports of steel and aluminum products from most countries.

Trade remedy lawyers function primarily as litigators, and government lawyers also have significant administrative responsibilities. They participate in AD/CVD and other trade remedy investigations before the Department of Commerce and International Trade Commission, and in the judicial review of such investigations before the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit.

As such, trade remedy law is unique among the international trade legal specializations in that it is primarily an adversarial practice, with practitioners broadly serving in one of three camps: petitioners’ lawyers who represent domestic industries, respondents’ lawyers who represent foreign producers and importers, and the government lawyers in the middle. Trade remedy lawyers may also be involved in challenging or defending the actions of a national government in proceedings before the dispute settlement arm of the World Trade Organization.

The trade remedy field is a good option for lawyers who want to litigate, but are not interested in the significant discovery that characterizes most commercial litigation in the United States, Trade remedy litigation is generally conducted “on the agency record,” meaning that administrative and judicial review proceedings are decided based on the information provided by interested parties in response to questionnaires issued by the relevant government agencies.

The trade remedy practice area is also a natural fit for lawyers interested in international affairs, economics, business strategy, and how manufacturers, exporters, and importers conduct their businesses and compete globally. Some trade remedy lawyers may become involved in the formulation of U.S. trade policies. They may advise clients on how a proposed trade agreement may affect them or on what options they have if a country’s violation of an agreement adversely affects them. Lawyers who work for the government may be involved in the negotiation and drafting of trade agreements and in determining if an agreement has been violated. Both private sector and

government lawyers may become involved in drafting legislations setting forth U.S. trade policy objectives and how they will be implemented.

At least in private practice, compared to practitioners in other areas of international trade law, trade remedy lawyers tend to have a relatively small number of active matters at a time, each of which can last for years and involve trade valued in the tens or even hundreds of millions of dollars (and, in some cases, billions).

Customs

Customs laws regulate the entry of goods into a country. In the United States, customs laws fall primarily under the jurisdiction of U.S. Customs and Border Protection (“CBP”). U.S. Customs laws serve both to control the entry of goods that may be harmful or otherwise unlawful (such as counterfeit merchandise) and to raise revenue for the government.

CBP also serves as the border enforcement agency for laws administered by about 50 other government agencies that play a role in the importation of specific goods that fall under their purview, including the Department of Agriculture, Food and Drug Administration, Environmental Protection Agency, Fish and Wildlife Service and Bureau of Alcohol, Tobacco, Firearms and Explosives. As a result, customs law practitioners are often very knowledgeable in multiple areas of administrative law and use that expertise to secure the release of merchandise, mitigate or cancel penalties, and help importers develop business processes to ensure compliance with these laws.

Clients will often seek the advice of customs lawyers to implement policies that simultaneously minimize the tariffs they pay and ensure that they have robust customs compliance policies in place that allow them to import goods lawfully and efficiently. In this advisory role, customs lawyers will also help their clients to classify their imports under the “harmonized system” used by 183 countries around the world—including the U.S. implementation of that system in the Harmonized Tariff Schedule, properly assess the value for their imports, determine the country of origin of their imports, and determine whether the imports are subject to any additional duties imposed as a result of trade remedies actions.

Customs lawyers acting in an advisory role also have additional tools available to help their clients streamline their imports and minimize customs duties, such as the use of free trade zones, bonded warehouses and duty drawback. Customs lawyers have to also be experts in free trade agreements such as the new USMCA, and other preferential trade regimes such as the United States’ Generalized System of Preferences, which may allow importers of certain goods to not pay generally-applicable duties.

Customs lawyers also represent their clients before government agencies in customs enforcement matters, ranging from relatively routine requests for information to formal administrative proceedings such as customs protests and audits. Customs lawyers also litigate challenges to agency determinations before the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit (and in certain instances in other federal courts). Compared to the trade remedies litigation discussed above, customs litigation is far more likely to include discovery, including depositions and document production, and may include trials with evidentiary hearings.

Within the government, customs lawyers perform the counterpart of the roles described above, ensuring that imports are being correctly classified, valued, and marked with their country of origin, that importers are paying the correct duties, and that unsafe or unlawful items are not allowed into the country. Attorneys within the government who specialize in customs matters can be responsible for drafting and issuing rulings and decisions, promulgating agency regulations, and advising the agency on policy and litigation matters.

Customs practice is a good option for lawyers who want to occasionally engage in litigation but prefer to work on many relatively short and discrete matters than on a handful of large and long-lasting cases. Customs practitioners deal with the widest range of products of any of the international trade practices, as all goods that cross borders must pass through customs. Customs lawyers also have good opportunities to move in-house at companies that engage in significant amounts of import activity, particularly large manufacturers, retailers and shipping/logistics companies.

Export Controls

Export control laws limit the ability of foreign governments and persons to access sensitive technology and strategically important items. Accordingly, export control laws operate on both a country-wide basis—with higher or lower levels of control applicable to countries based on their strategic relationship—and on specific persons and entities who may pose a special concern. Unlike customs laws, which deal only with physical goods, export control laws also apply to intangible goods such as software and to underlying technology. Export control laws deal with both traditional exports—*i.e.* the movement of an item across a national border—as well as constructive or “deemed” exports—when a foreign national is allowed access to controlled technology.

In the United States the primary export control regimes are the International Traffic in Arms Regulations (“ITAR”) administered by the Department of State’s Directorate of Defense Trade Controls, which concerns items with primarily military applications, and the Export Administration Regulations (“EAR”) administered by the Department of Commerce’s Bureau of Industry and Security, which concerns most other items. Export control lawyers may also deal with other more limited programs, such as nuclear trade controls administered by the Department of Energy.

Export control lawyers help clients negotiate these laws. They ensure that the goods, software or technology that clients produce are correctly classified under the EAR, ITAR, or other applicable regime, and help clients obtain export licenses from those agencies when necessary. Accordingly, export control lawyers play a primarily advisory role, usually assisting clients with internal compliance matters or non-adversarial interactions with government regulators. However, they are also called upon to represent those clients in agency enforcement matters. Unlike trade remedies matters or even customs matters, however, export control enforcement matters almost never end up in court.

Within the government, export control lawyers may perform the counterpart of the roles described above but are especially likely to be involved in drafting new export control regulations and identifying new persons and entities to be added to lists of prohibited parties.

Export control lawyers also frequently practice in other areas within the national security space. Their practice frequently includes economic sanctions administered by the Treasury Department's Office of Foreign Assets Control ("OFAC"), the Department of State, and the United Nations. And thanks to recent changes to the laws governing foreign investment in U.S. businesses, export control lawyers now play a critical role in shepherding such transactions through review by the Committee on Foreign Investment in the United States ("CFIUS").

Export control practice is a good option for lawyers who like working with cutting edge technology and want a great deal of direct client contact. Export control practice is characterized by long relationships with clients who consult with the lawyer on an as-needed basis, with individual matters often taking a few days or weeks to resolve. Export control lawyers are especially likely to deal with start-ups and other small companies and are therefore as likely to take calls from a C.E.O. as from an in-house counsel. They also need to be able to quickly grasp—and become conversant in—highly technical areas ranging from supersonic aircraft engines, to semiconductor design, to encryption.

Export control practice also offers the most mobility of all the international trade practices. Every law firm that works on cross-border transactions needs at least one export control lawyer in its roster, especially firms that cater to the tech sector. Export control lawyers also have excellent opportunities to move in house, especially due to their significant access to their clients' executive teams.