

International Trade Group Of The Year: Covington & Burling

By Jess Krochtengel

Law360, Dallas (January 27, 2017, 4:37 PM EST) -- Covington & Burling LLP's international trade group guided clients from across the world through billions of dollars worth of transactions, tough Foreign Corrupt Practices Act investigations and highly sensitive national security trade reviews, earning it a spot as one of Law360's 2016 Practice Groups of the Year.

"It was an exhausting year," said David Fagan, who co-chairs the firm's practice on cross-border investment and national security matters. "We had more volume in bigger, complicated transactions than we've ever had."

The firm tends to have high deal volume each year and is a go-to resource for clients facing challenging transactions. But the volume of capital flowing from China drove an enormous amount of deal volume, with China facing the threat of currency devaluation and a need to expand beyond domestic growth, Fagan said.

Covington's international trade practice includes 125 senior lawyers, policy advisers and associates spanning the firm's offices in the U.S., Europe, China and South Korea. Its partners describe the firm as truly global, with incredible strength in Washington, D.C., that can be attributed to the many former government officials in the firm's ranks.

"Our practice in general is distinguished by the sheer number of former senior enforcement officials we have at the firm," said Steve Fagell, co-chair of the firm's global anti-corruption group. "Having that complement of senior enforcement officials really gives us unique insight into how to approach these cases when they become matters of enforcement for the U.S. government."

Having government experience enables the firm's international trade lawyers to practice what partner Peter Lichtenbaum said is known around Covington's offices as "Law-Plus" — core legal services, complemented by policy knowledge, experience and judgment honed by decades of involvement in the field.

In the trade remedies area, former U.S. International Trade Commission Chairman Shara Aranoff brought home two "negative injury rulings" at the ITC in 2016 for clients who faced potential



trade duties. Aranoff's 2014 hire increased Covington's profile in that sector, where the firm expects to continue expanding, particularly under the Trump administration, Lichtenbaum said.

In Foreign Corrupt Practices Act work, Covington represented Anheuser-Busch InBev in a multipronged investigation into allegations a subsidiary joint venture paid Indian government officials to increase how much beer the subsidiary could brew and sell. The matter raised novel questions of liability for a minority owner in a nonconsolidated joint venture, and after years of investigation, ABI was able to avoid criminal prosecution under the FCPA's anti-bribery provision. The U.S. Department of Justice ended a three-year investigation in June without prosecuting ABI and the U.S. Securities and Exchange Commission wrapped a five-year investigation of the India matter in September with ABI paying \$6 million under a no-admit, no-deny cease-and-desist order tied to alleged violations of the FCPA's accounting provisions.

"We as a practice are always laser-focused on the facts," Fagell said. "We advocate very forcefully against theories of liability we don't believe are supported under the statute. We're honest brokers on the facts with the government, but we're also tenacious advocates. We brought that approach to the table on the ABI matter."

Covington's 2016 work before the Committee on Foreign Investment in the United States, the federal interagency panel, includes a number of significant client victories.

It earned CFIUS approval for Altice NV's \$9.1 billion acquisition in 2015 of a controlling stake in Suddenlink and later, its \$17.7 billion acquisition of Cablevision Systems Corp. The firm also worked to secure approval for both transactions from an interagency telecommunications group including the U.S. Department of Defense, DOJ and the U.S. Department of Homeland Security.

The firm represented Neptune Orient Lines before CFIUS and the Defense Department in connection with its acquisition by CMA CGM SA for approximately \$2.4 billion, the combination of two of the largest shipping container companies in the world. It represented Dutch chipmaker NXP Semiconductors NV in the \$2.75 billion sale of its Standard Products unit to investors that included state-owned investment firm Beijing Jianguang Asset Management Co. Ltd. and private equity firm Wise Road Capital Ltd.

And it represented Dutch chipmaking equipment company ASML Holding NV in its \$3.1 billion purchase of Taiwanese semiconductor inspection equipment manufacturer Hermes Microvision Inc. The ASML deal secured CFIUS approval in just 30 days — rare for semiconductor transactions of such significance.

Fagan said the deal's speedy approval is attributable both to preparation and how the firm was able to position the transaction. Before filing with CFIUS, the firm met with the DOD and U.S. Department of Energy, along with representatives of the White House, to provide briefing on the transaction and on how ASML — considered the leading supplier of semiconductor manufacturing equipment — envisioned the roadmap for the industry involving, explaining why the deal is actually good for the chip manufacturing base, he said.

"We were able to reassure people up front," he said. "That was very helpful. There are not many firms that could do that — the relationships with the security side, having the understanding and being able to explain those policy issues."

Fagan said CFIUS, with its completely confidential proceedings and the government not required to share its information, is “the ultimate in Washington inside baseball.” Covington’s combination of expertise and connections allows the firm to deal with the straight-line issue, but also to help on the side through policy advocacy, Fagan said.

Covington also advises high-profile clients across the globe on export control and economic sanctions matters. It provides behind-the-scenes insight to major corporations into the implications of Brexit, changes in policy involving China, Iran and Russia, and on many other sensitive trade issues.

“It’s very gratifying we can add that value to the client across all these extremely complex areas and at the top level in each area,” Lichtenbaum said. “That’s something that makes Covington unique.”

Lichtenbaum said that while other firms have practitioners with dedicated strengths in some international areas, it’s rare to find a firm that can advise across the full sweep of international disciplines at such a high level, both in the U.S. and in Europe.

“I’m not aware of any other firm that can match us with the breadth and depth of compliance expertise,” Lichtenbaum said.

--Editing by Jill Coffey.