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Hughes Hubbard Assists Canada in Winning WTO Ruling in Dispute Over US Duties

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Aug. 2, 2018 — The firm's International Trade group, working with Canada's in-house lawyers, achieved a big win for the government of Canada at the World Trade Organization (WTO) in a dispute over U.S. duties on Canadian exports of glossy paper.

On July 5, a WTO panel found that the U.S. Department of Commerce acted inconsistently with the Subsidies and Countervailing Measures Agreement in its countervailing duty determination on supercalendered paper from Canada. Supercalendered paper is used in glossy magazines, catalogues, corporate brochures and advertising inserts.

Canada filed the complaint in 2016, arguing that the U.S. made a number of errors in its determination that Canada was subsidizing its paper industry. The WTO panel found for Canada on virtually every count.

In doing so, the WTO overturned several Commerce Department practices, which will be of significant importance to countries challenging the United States in future subsidies cases at the WTO. Among the practices overturned are:

- o Asking respondents to report all "other assistance" (an undefined term) and penalizing them if Commerce "discovered" an unreported government payment in a company's books or records, without providing respondents with the opportunity to prove that the unreported payment would not be actionable under countervailing duty law.

- o Holding that general regulatory requirements were sufficient government involvement to make a privately owned electricity company's provision of electricity to producers countervailable.

o Imposition of countervailing duties on input products that were not used in the production of the product under investigation.

The ruling made headlines in Reuters, Law360 and other news outlets.

Joanne Osendarp led the HHR team, which included Lynn Kamarck, Alan Kashdan and Dan Witkowski.

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