
Hughes Hubbard & Reed

US Antidumping Order Revoked

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Hughes Hubbard & Reed recently won revocation of the US antidumping order imposed six years ago on Thai Plastic Bags Industries' (TPBI) exports of plastic bags from Thailand. The revocation freed the company from paying border taxes on \$25 million in annual sales. The move also positioned TPBI to become one of the few foreign manufacturers in any major source country not subject to the antidumping measures, affording the company a distinct global competitive advantage. This revocation is one of only a handful of Section 129 proceedings where a foreign manufacturer was ultimately successful against significant US-industry opposition.

During the investigation, the U.S. Department of Commerce employed a controversial calculation methodology commonly known as "zeroing," akin to calculating a grade point average without including A's and B's. In a similar case, zeroing was found by the World Trade Organization (WTO) to be inconsistent with the United States' international obligations. The United States was reluctant to follow the WTO findings in the Thai plastic bags case, however. In 2009, TPBI brought in Hughes Hubbard to replace its former counsel.

Working with the client's main US customer, Hughes Hubbard designed and implemented a strategy that caused the United States Trade Representative (USTR) to accept the WTO findings and also eliminate zeroing in the Thai plastic bags case. The result was a zero antidumping margin for the client, under which revocation would be required. During the Section 129 implementation phase, however, opposing counsel at the U.S. Department of Commerce raised new objections and sought to have a wholly different methodology applied to block revocation. Hughes Hubbard had anticipated this argument and countered it before it was even advanced. As a result, the different methodology argument was dead on arrival. Soon thereafter, the Department of Commerce revoked the antidumping order for TPBI on an expedited basis.

TPBI's defense at USTR and the Department of Commerce was spearheaded by Ken Pierce and Victor Mroczka, with coordinating support from the Thai Government.

In addition to Pierce and Mroczka, Andres Castrillon and Alicia Winston worked on the matter for TPBI. Other related work for TPBI continues, handled primarily by Winston.

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Kenneth Pierce

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