

Q&A With Hughes Hubbard's Joanne Osendarp

Law360, New York (March 22, 2013, 2:46 PM ET) -- Joanne Osendarp is a partner in Hughes Hubbard & Reed LLP's international trade and customs and international arbitration practices in New York. She advises and represents governments, industry associations, export credit agencies, and companies in international trade and investment matters, including in countervailing, anti-dumping and other trade remedy proceedings, dispute resolution proceedings under the World Trade Organization and the North American Free Trade Agreement, investment and state-to-state arbitrations and international trade negotiations.

Q: What is the most challenging case you have worked on and what made it challenging?

A: The most challenging project I had the good fortune to work on was the negotiation of the North American Free Trade Agreement that went into effect in 1994, facilitating trade and investment between the United States, Mexico and Canada. I was a fifth-year associate at a law firm in Toronto practicing commercial litigation in 1991 when I received a call from my old international law professor asking me to join him as assistant principal counsel for Canada. I had earlier worked on the FTA negotiations between Canada and the United States, and the NAFTA team believed that that experience put me in a good position to assist the principal counsel in negotiating and drafting the legal text of the NAFTA. I jumped at the opportunity, and my law firm thankfully agreed to an executive interchange with Canada's Department of Foreign Affairs and International Trade. To successfully negotiate an agreement between three countries the size of Canada, the U.S. and Mexico was daunting. And then to try and develop a consensus among these countries on such a huge range of issues was incredibly challenging. That said, all three countries wanted an agreement, so that made the entire experience of negotiating, and concluding the deal satisfying and very rewarding.

Q: What aspects of your practice area are in need of reform and why?

A: Adequate representation for developing and least-developed countries in both domestic cases and at the WTO. Often, developing and least-developed countries, and their industries, who are respondents in trade remedies proceedings in the United States or at the WTO, are unable to adequately defend themselves and do not have the resources to hire firms that can effectively defend them. The WTO, some considerable time ago, recognized this and established the Advisory Centre on WTO Law in Geneva, which assists developing and least-developed countries on all issues of WTO law, including providing support in WTO dispute settlement proceedings at discounted rates. The center also has a roster of external firms that have been approved to provide legal advice to these countries. While this has gone some way toward remedying the problem, the center and its roster of external firms can be overwhelmed at times, making this an issue that is still very current and that requires further action.

Q: What is an important issue or case relevant to your practice area and why?

A: Much of my current practice involves representing the government of Canada in disputes involving Canadian softwood lumber. Since 2006, there has been an agreement in place between the United States and Canada — the Softwood Lumber Agreement or SLA — that regulates trade in softwood lumber and that prohibits the United States from bringing any trade remedies actions against Canada or its producers. The SLA does, however, allow both countries to request arbitration if they feel that the agreement is being violated. This is significant because it is the first time that two sovereigns have agreed to arbitrate their disputes in a commercial forum — the London Court of International Arbitration.

The United States has brought four such arbitrations in the last six years alleging that Canada was violating or circumventing the SLA. Of these, the last two — LCIA 81010 and LCIA 111790 — provided interpretations of several significant portions of the treaty in Canada's favor that will be immensely helpful in arguing for specific interpretations of the treaty should future arbitrations occur. These interpretations could also be helpful to Canada in future domestic trade remedies disputes concerning softwood lumber when the SLA expires.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Jonathan T. Fried, the current ambassador and permanent representative of Canada to the World Trade Organization and former Canadian ambassador to Japan. Jon was my international law professor at the University of Ottawa and instilled in me a love of international trade law. He also was responsible for my involvement in the negotiation of the Canada — U.S. FTA and the NAFTA and has been my mentor throughout my legal career. He has a wealth of knowledge, is brilliant and is a gifted teacher. In addition to his ambassadorships, Jon has also served as executive director for Canada, Ireland and the Caribbean at the International Monetary Fund, senior foreign policy adviser to the prime minister of Canada, member of the board of directors for Export Development Canada and Canada's deputy for the G-7. I have learned more from Jon than from any textbook and am eternally grateful for the friendship and guidance that he has provided throughout my legal career.

Q: What is a mistake you made early in your career and what did you learn from it?

A: I went to law school in Canada, which meant that when I finished my degree I had to "article" or apprentice at a firm before I could be called to the bar. A number of different firms — both big and small — gave me offers, and I made the decision to go to a firm where I thought I would be a big fish in a small pond and feel more comfortable rather than on the basis of the quality of the articling program that the firm provided.

After a month of bringing partner's robes to the cleaners and being the substitute mail delivery person, I contacted Borden Ladner Gervais (then Borden Elliot) — a firm that I had turned down — and moved over to them. There I had a tremendous and full articling experience, rotating through the litigation, corporate, labor and intellectual property practice groups. I am grateful to Borden for having taken me in, after I had made my initial very bad decision, and for providing me with the kind of articles that got me off to a very good start when I began practicing (at Borden, which hired me back as an associate and where I worked for five years).

The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

All Content © 2003-2013, Portfolio Media, Inc.