
Former International Trade Commissioner Shrugs Off ‘Doomsday’ Predictions

Author: [Rebecca Beyer](#)

Published: March 16, 2017

Trade became a hot topic this year: Out on the campaign trail, President Donald J. Trump railed against the threat of products imported from countries such as China and Mexico, and vowed to impose tariffs.

He and Hillary Clinton both denounced the Obama Administration’s 12-nation Trans-Pacific Partnership. On his first full day in office, Trump followed through and announced the U.S. would withdraw from it.

“Everybody is reexamining assumptions,” said Dean Pinkert, who joined Hughes Hubbard & Reed last week after serving ten years on the International Trade Commission, including two years as vice chairman.

Pinkert added, “There are always foreign policy considerations in trade policy, but we’re having more discussions of economic impact. That’s right in my wheelhouse.”

He said the renewed focus on the economic impact of trade is a good thing, giving a shout out to the book *Hillbilly Elegy* and its analysis of the struggles of America’s white working class.

“Everybody has to think about how ordinary people are being affected by trade and technology,” Pinkert said.

Below is an interview, edited lightly for length and clarity, with Pinkert about the new national conversation on trade.

Big Law Business: *What was your sense of all the talk about trade during the campaign and after Trump’s election?*

Pinkert: There are some very serious problems in adjusting to changing trade patterns. You can look at the data. Nobel Prize winner Angus Deaton has done some work on what’s happening to communities in Middle America. Whether you blame that on trade or technology or some combination of trade and technology, there are some very serious adjustment issues that are calling out for responses from government.

Big Law Business: *What’s happening in Middle America as a result of trade that’s unique to the rest of the country?*

Pinkert: Many of these parts of the country that are experiencing problems, whether it's opioid drug use or changes in fatality rates and so on and so forth, may have been affected by trade trends; they may have been affected by changes in technology and the downsizing of the workplace. Whether you're talking about international trade, whether you're talking about technology, whether you're talking about taxes, let's keep in mind that there are real people in many parts of the country who are in some kind of distress.

Big Law Business: *At the ITC, you worked on a study of the Trans-Pacific Partnership, which was released in May 2016. What did you think of Trump's decision to drop out of the deal?*

Pinkert: I think the decision has to be evaluated in terms of what comes next. If we have a vigorous trade agenda from the administration involving bilateral agreements, for example, with Japan or with the UK if and when they're able to do that, then it could be a very positive thing. I think it's very contingent.

Big Law Business: *What if those deals don't get made? Will we be better or worse off?*

Pinkert: I'm not a doomsday person when it comes to this issue. We do have existing trade relationships and trade arrangements that aren't going to go away simply because TPP is not on the table or because of bilateral agreements not coming to fruition. There's an opportunity cost in not seeking to advance a 21st century trade agenda. Over the last 20, 25, 30 years, as tariff levels have come down or been eliminated, the issues have shifted in trade negotiations to other things, whether it's IP or services trade or non-tariff barriers. I would think that the Trump administration would want to address those kinds of issues in trade negotiations with our partners.

Big Law Business: *Where will you focus your practice?*

Pinkert: There are two areas that will be my primary focus. One is the antidumping and countervailing duty and safeguard cases, the traditional trade remedies cases. There are lots of opportunities there to represent U.S. companies or, in some instances, foreign companies or governments that have issues related to dumping, countervailing duties, and safeguards. I've got some ethics restrictions: For one year, I can't represent a foreign government, and for one year I can't appear in front of my old agency. Nevertheless, there are other agencies that deal with those issues as well. The other area is international intellectual property or Section 337 cases. Those are cases that are filed at the ITC to deal with intellectual property infringement and there are four areas under that umbrella: patents, copyright, trademarks, and trade secrets.



Big Law Business: *What are countervailing duties and safeguards?*

Pinkert: Dumping and countervailing duties both involve allegations of a foreign unfair trade practice. In the case of dumping, it has to do with the pricing; in the case of countervailing duties, it has to do with foreign government subsidies. That's different from safeguards, which are also a traditional trade remedy, but do not involve allegations of foreign unfair trade practices. Safeguards involve allegations that there's been an influx from around the world of such a magnitude of a particular product that it's injured or seriously disrupted the U.S. markets. Typically, safeguards don't last as long as antidumping and countervailing duties because the objective is to give the U.S. industry a chance to adjust to that market disruption.

Big Law Business: *You participated in an unprecedented number of Section 337 cases at the ITC, including the 2013 Apple/Samsung case in which the White House reversed an ITC exclusion order on Apple products that you had opposed. What's the impact of these types of cases?*

Pinkert: There's a huge impact. Whenever there's an exclusion order at issue or even a cease-and-desist order, the impact can be enormous. In that particular case, the iPhones and iPads that were potentially to be excluded were some of the older models, but they were models that in many cases represented entry-level products for the less sophisticated or less well-off consumers. You can imagine how people would have felt if in fact that segment of the market was closed off to them. It doesn't mean that in the right case there shouldn't be an exclusion order, but, under the statute, the impact on consumers and the impact on competition in the U.S. market has to be taken into account.

Big Law Business: *Will Section 337 cases slow down?*

Pinkert: After 2011, the smartphone wars settled down a little bit. Part of that is you have a lot of fighting when folks are trying to sort out who's got the rights and who's got the leverage. Now we're seeing another boom or boomlet across the board, including chemical products and technology products and miscellaneous products that folks are interested in protecting from IP infringement. I would also say we're having increased interest in the trade secret area. We've had a couple of appeals decisions that have helped people to understand how Section 337 works for trade secrets. Now that we have that guidance, there's a real opportunity for companies that have an interest in protecting their trade secrets to use Section 337 if there is an imported product that they think violates their trade secrets.

Big Law Business: *What was the guidance?*

Pinkert: We got a decision [in January from the U.S. Supreme Court in *Sino Legend Chemical Co. et al v. International Trade Commission, et al*] denying cert where the court said if the trade secret infringement occurred outside of the U.S., that was not an impermissible application of U.S. law extraterritorially under Section 337. If that had gone the other way, that would have been a real problem for parties claiming trade secret violations abroad.

Big Law Business: *What are you most excited about as a practitioner in this field?*

Pinkert: Everybody is reexamining assumptions and trade policy is being evaluated at least in large part based on its economic impact. There are always foreign policy considerations in trade policy, but we're having more discussions of economic impact. That's right in my wheelhouse, and it's right in the wheelhouse of my law firm.

Big Law Business: *Is there anything that concerns you in this area?*

Pinkert: I think I'm always interested and enthusiastic about folks and policies that look to the data. If we look to the data and if we focus on economic impact in part — as I said foreign policy is also in the mix—I think we're going to be fine.