

CASE STUDY

Kivlan Group and Fluorofusion Specialty Chemicals, Inc.

CAMP HILL, PA AND CLAYTON, NC OVERVIEW

The U.S. domestic refrigerant producers brought a complaint in April 2019 alleging that importers, such as Kivlan and FluoroFusion were circumventing the antidumping duty order on Hydrofluorocarbon Blends from China by importing refrigerant components without posting antidumping duties. At the time the action was filed, the Department of Commerce had specifically excluded imports of refrigerant components as not being subject to the order based upon a finding by the International Trade Commission (ITC) that imported components were not causing injury to the domestic industry. Faced with these allegations of circumvention and the potential of having to post close to 300% in duties, Kivlan and FluoroFusion engaged Husch Blackwell to defend them.

Challenges

A circumvention inquiry hinges on demonstrating that under a specific section of the statute, the product that is being imported was not intended to be included within the scope of an existing antidumping duty order. Given that the U.S. Department of Commerce is the ultimate arbiter of the scope of antidumping duty orders, and defers to the domestic U.S. industry in crafting the scope, the challenge in this case was convincing the agency that the case-specific administrative precedent, the language of the existing scope, and the legal precedent precluded a finding that refrigerant components were circumventing the existing order.



Service

International Trade & Supply Chain

Legal Team

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Solution

Working closely with Kivlan and FluoroFusion, Husch Blackwell developed unique legal arguments that effectively demonstrated that any affirmative finding would be contrary to law and case precedent and would therefore be an *ultra vires* decision by the agency.

Result

After carefully laying out the legal arguments, case law, and case precedent to Commerce, we won the case thereby ensuring that duties of 285 percent were not imposed on the clients imports of refrigerant components.