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Husch Blackwell Prevails in Refrigerant Import Matter

Husch Blackwell's International Trade team has prevailed in a contentious year-long anticircumvention proceeding conducted by the Department of Commerce covering the antidumping duty order on hydrofluorocarbon (HFC) blends from the People's Republic of China. A win for U.S. importers, the U.S. government issued its final negative anticircumvention finding on Friday, August 14, 2020.

The original investigation leading to this inquiry resulted in a final antidumping duty order that only covered certain HFC refrigerant blends but due to a "no injury" finding by the International Trade Commission (ITC), it specifically excluded the HFC components when the components were imported individually. Prior to bringing this anti-circumvention petition to the Department of Commerce in April 2019, a U.S. domestic industry coalition challenged that finding on appeal and lost. The U.S. industry coalition appealed its loss with respect to the ITC's original injury determination but lost the appeal as well.

The key issues in the anti-circumvention proceeding were whether or not an HFC component that was excluded from the antidumping duty order could be subject to duties at the time of importation if the components were utilized to blend five specific HFC refrigerants in the U.S. after importation. The arguments presented by Husch Blackwell's team focused on this nuanced distinction. Given that the statutory and case law mandate that a product can only be covered by an antidumping duty order if there is both a finding of dumping and injury, coupled with the fact that the ITC had previously determined that the importation of components were not causing injury to the U.S. domestic industry precluded a finding that imported components were circumventing the existing antidumping duty order on HFC blends from China.

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The U.S. government ultimately agreed with Husch Blackwell's arguments because after an unprecedented move, the ITC requested formal consultations and issued a letter to Commerce that an affirmative circumvention finding would be in conflict with the ITC's final decision in the original investigation that components were not causing injury to the U.S. domestic industry. This is the first negative circumvention determination in recent years after numerous circumvention proceedings that have resulted in affirmative findings by the Department of Commerce.

The Husch Blackwell team was led by Nithya Nagarajan and included Stephen Brophy and Jeffrey Neeley.