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Q&A With Baker & Hostetler's Elliot Feldman

Law360, New York (October 06, 2009) -- Dr. Elliot J. Feldman is national practice chair in the international trade group at Baker & Hostetler LLP. Feldman concentrates on all forms of trade remedies affecting the movement of goods and services across international borders.

He advises foreign governments, international organizations, American and foreign corporations, and individuals on matters of trade policy and litigates international trade disputes in all relevant forums in the United States and, occasionally, in foreign countries. He has been a frequent legal adviser to the government of Canada in World Trade Organization cases.

Although he has particularly extensive experience in the North American Free Trade Agreement, he also represents clients in Europe, Latin America, Australia and Asia, including acting as counsel to the People's Republic of China.

Q: What attracted you to your practice area?

A: I taught political science and theory, as well as strategic decision-making, in universities for 15 years before going to law school, seeking to change professions before I reached the age when Gauguin gave up banking and became a painter. For the last five of those teaching years I was on the Executive Committee of the Center for International Affairs at Harvard and developed relations with diplomats around the world. Were I to have any value added as a beginning lawyer after all those years, it was going to be in international law, especially (but not exclusively) in trade.

Q: What is the most challenging case you've worked on, and why?

A: We represented Australian interests (and their American subsidiary) who sought, in a safeguard action, to arrest a surge of wheat gluten into the United States from Europe. The legal principle behind safeguards is that the exports of all countries must be treated

equally, so any limitation we might win on European exports ought to have applied equally to the exports from Australia.

Through a careful and novel interpretation of the statute, we won a presidential proclamation (mentioned on an episode of “The West Wing”) that increased Australian exports while cutting the European exports in half. In a second case, we had the U.S. practice of “zeroing,” which inflates dumping margins, struck down by a NAFTA panel even though U.S. courts repeatedly had upheld the practice. We leveraged the NAFTA panel by helping Canada win on the issue at the WTO.

And finally, we are in the midst of an appeal of what we think was an abuse of power by President Bush in a case involving the international border between Canada and the United States. It is an international law case of first impression, and taking on the president of the United States on behalf of an international organization is an obvious challenge.

Q: What are the most challenging legal problems currently facing clients in your practice area?

A: Navigating more creative protectionism resulting from the global recession, and resisting pressures to settle trade disputes with cash.

Q: How do you see your practice area evolving in the next five years?

A: Chinese and some American lawyers are commoditizing the practice, but more sophisticated Chinese clients with greater stakes will require more creativity to overcome growing protectionism, and practice will evolve into other Asian countries as China becomes a more expensive place for manufacturing.

Q: Outside your own firm, name one lawyer who's impressed you and tell us why.

A: Ken Odza of Stoel Rives [LLP] and Mike McKay of McKay Chadwell [PLLC] in Seattle have been local counsel for us in representing the International Boundary Commission in the border dispute and presidential power challenge mentioned above. They have combined creativity and caution with local knowledge and seasoned political instincts to provide careful and sage advice.

Q: What advice would you give to a young lawyer interested in getting into your practice area?

A: Learn a foreign language, preferably one spoken in an Asian country (whether Chinese or Japanese or Vietnamese, as examples), and study accounting and economics.