

# Kelley Drye Successfully Represents Domestic Wire Rod Industry in Appeal

September 26, 2008

Represented by International Trade partner Kathleen W. Cannon, the domestic wire rod industry filed an appeal challenging the ITC's negative injury determination regarding imports of wire rod from Trinidad and Tobago. This appeal followed an antidumping investigation that began in August 2001 when several domestic producers of steel wire rod filed antidumping petitions with the ITC. In their petitions, the domestic producers alleged that less than fair value (LTFV) imports of steel wire rod from 12 countries, including Trinidad and Tobago, caused material injury to the domestic industry. The ITC concluded in its initial determination that LTFV imports from Trinidad & Tobago alone had caused material injury to the U.S. industry, as had cumulated imports from all 12 countries. On remand from the appellate court, however, and based expressly on its application of a new "replacement/benefit" test, the ITC found that LTFV imports from Trinidad and Tobago had not caused material injury to the domestic industry.

Members of the domestic wire rod industry argued that the ITC's initial conclusion stemmed from the application of the rigid Bratsk "replacement/benefit" test, which has created a substantial impediment to proving injury. The appellate court ultimately agreed with members of the wire rod industry that application of the new test and of a "rebuttable presumption" against the domestic industry was inappropriate.

The appellate court has made it clear that the ITC is not obligated to issue any particular result, is not to apply a rebuttable presumption against the U.S. industry, and is not required to apply any new, rigid test. The removal of this unwarranted obstacle to determining injury is a significant development for U.S. industries that are injured by unfairly traded imports.

The result of the case was recently covered in the *Law360* article, "ITC May Find Trinidad Steel Has Been Dumped: Court."