Trade Litigation Before the WTO, NAFTA and U.S. Courts: A Petitioner's Perspective

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The article discusses trade litigation of agency determinations in antidumping and countervailing duty cases. It notes that these cases are not limited to disputes before the courts, but may also encompass disputes before the World Trade Organization (WTO) and where trade with Canada and Mexico are involved, before a binational panel of the North American Free Trade Agreement (NAFTA). Variations in the rules that apply and the results that flow from litigation in these different venues have significant repercussions to parties depending on the forum selected for the litigation.

The article provides insight from the perspective of a petitioner or a domestic industry involved in antidumping or countervailing duty cases. In these cases, the forum options are much more limited for petitioners than for a respondent or foreign producer/importer. For example, the WTO is not an option for a petitioner to challenge an agency decision. Additionally, while the NAFTA chapter 19 process is technically available, it is rarely a choice of the domestic industry for litigation. In most cases, domestic industry petitioners almost always choose to pursue judicial action before the U.S. courts if they wish to appeal an agency’s decision. Nonetheless, domestic industries often become involved in supporting the U.S. Government decision, and on occasion offensively before NAFTA panels, even where they did not chose that forum. In those instances, it suggests that close coordination with Government counsel in respondent challenges before the WTO and NAFTA panels will best ensure the strongest presentation of arguments in the U.S. industry’s favor.