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Justices Won't Hear Chinese Trade Secrets ITC Case

By **Bill Donahue**

Law360, New York (January 9, 2017, 3:13 PM EST) -- The U.S. Supreme Court on Monday said it will not tackle a case that saw the U.S. International Trade Commission sanction a Chinese company for stealing trade secrets, a penalty that the Chinese government warned was a dangerous extension of the trade agency's jurisdiction.

The justices denied a petition for certiorari from Sino Legend Chemical Co. Ltd., which was **hit with an import ban** after the ITC ruled that the company poached an employee from an American chemical company in Shanghai to steal the company's proprietary information.

Sino Legend's plea to the high court was joined by the Chinese Ministry of Commerce, which **warned the justices in September** that the ITC's "disregard for the sovereignty of China risks the very international discord underlying the presumption against extraterritorial application of U.S. law."

As is customary, the justices did not offer any explanation for why they declined to take the case.

The ITC launched its investigation in 2012 on a complaint from New York-based SI Group Inc., which claimed that Sino Legend had lured away one of its employees in order to misappropriate a proprietary method for making so-called tackifier. The case drew the attention of Sen. Charles Schumer, D-N.Y., and Rep. Paul D. Tonko, D-N.Y., who urged the ITC to review the case.

The agency did more than review the case. After finding that Sino Legend had indeed misappropriated SI Group's trade secrets, the ITC handed down a 10-year ban on imports of copycat substances into the U.S.

Sino Legend unsuccessfully took the case to the Federal Circuit, questioning whether the ITC's IP statute — Section 337 of the Tariff Act of 1930 — gave it the authority to adjudicate an alleged violation of a trade secret when the conduct occurred entirely outside the U.S. When that failed, it took the same argument to the high court.

"Review of this question is essential because the Federal Circuit's error has enormous practical consequences," the company wrote. "Its misreading of Section 337(a)(1)(A) allows the ITC to police the misappropriation of trade secrets worldwide, even where the acts alleged to violate Section 337(a)(1)(A) are legal under the laws of the country where they occurred."

Sino Legend is represented by Andrew J. Pincus, Gary M. Hnath, Paul W. Hughes and John

T. Lewis of Mayer Brown LLP.

The Chinese government is represented by William Eugene Bradley of Michael Best & Friedrich LLP.

The ITC is represented by Ian Heath Gershengorn of the U.S. Department of Justice.

SI Group is represented by Lawrence T. Kass of Buchanan Ingersoll & Rooney PC.

The case is Sino Legend (Zhangjiagang) Chemical Co. Ltd. et al. v. International Trade Commission et al., case number 16-428, at the Supreme Court of the United States.

--Editing by Stephen Berg.

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