

# Client Alert

International Trade &amp; Litigation Practice Group

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## The Federal Circuit Endorses the Application of Section 337 of the Tariff Act of 1930 to Misappropriation of Trade Secrets

For more information, contact:

**Gilbert B. Kaplan**  
+1 202 661 7981  
gkaplan@kslaw.com

**Ethan Horwitz**  
+1 212 556 2377  
ehorwitz@kslaw.com

**Kevin M. Dinan**  
+1 202 661 7916  
kdinan@kslaw.com

**Jeffrey M. Telep**  
+1 202 626 2390  
jtelep@kslaw.com

**King & Spalding**  
*New York*  
1185 Avenue of the Americas  
New York, New York 10036-4003  
Tel: +1 212 556 2100  
Fax: +1 212 556 2222

*Washington, D.C.*  
1700 Pennsylvania Avenue, NW  
Washington, D.C. 20006-4707  
Tel: +1 202 737 0500  
Fax: +1 202 626 3737

[www.kslaw.com](http://www.kslaw.com)

The U.S. Court of Appeals for the Federal Circuit recently reaffirmed the broad application of Section 337 of the Tariff Act of 1930. In *TianRui Group Co. Ltd. v. U.S. Int'l Trade Comm'n*, 2010-1395 (Fed. Cir., Oct. 11, 2011), the court held that the International Trade Commission's statutory authority over "[u]nfair methods of competition and unfair acts in the importation of articles ... into the United States" under Section 337(a)(1)(A) of the Tariff Act applies to instances where goods are imported into the United States after they are produced through the exploitation of trade secrets, where the misappropriation of trade secrets occurs abroad. Amsted Industries, a domestic manufacturer of cast steel railway wheels, licensed its manufacturing process to several firms with foundries in China. After licensing negotiations between Amsted and TianRui failed, TianRui hired nine employees from one of Amsted's Chinese licensees who were familiar with Amsted's manufacturing process and who then disclosed confidential information about that process to TianRui. The hiring occurred in China, the trade secrets were disclosed in China, and the railway wheels were made in China. The court recognized that where misappropriated trade secrets are used in manufacturing imported goods, the misappropriation will frequently occur overseas, and that it was appropriate for the Commission to find a Section 337 violation based on trade secret misappropriation occurring overseas.

The court further held that a single federal standard should be used to determine whether there has been a misappropriation of trade secrets sufficient to establish an "unfair method of competition" under Section 337. The court also affirmed the Commission's determination that the imported wheels would injure a domestic industry, even though no domestic manufacturer is currently practicing the protected process. In cases not involving infringement of a valid U.S. patent, trademark, copyright, or mask work, the Commission must find that the unfair trade practice injures a domestic industry or prevents the establishment of a domestic industry before it can find a violation of Section 337. In this case, the Commission found that the importation of TianRui wheels that could directly compete with the wheels domestically produced by Amsted constituted an injury to a domestic industry under Section 337(a)(1)(A).

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The potential application of this holding is very broad, and could apply to numerous unfair competition methods used to produce goods that are imported into the United States. If you have any questions about the application of Section 337 or ways in which it might be used to address unfair competition methods used overseas to produce products that are imported into the United States, please contact us.

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