

## Non-Party Discovery Involving a U.S. Entity and Its Foreign Affiliate: A Comparison of the Commission's Approach to Subpoenas and the Hague Evidence Convention

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### INTRODUCTION

The U.S. International Trade Commission ("Commission") is responsible for investigating unfair methods of competition and unfair acts in the importation of articles or in the sale of such articles.<sup>1</sup> The Commission has the authority to issue subpoenas *ad testificandum* and *duces tecum* for the purpose of "carrying out its functions and duties in connection with any investigation authorized by law."<sup>2</sup> The subpoenas may be issued to a non-party, such as a U.S. entity, its foreign affiliate, or both.<sup>3</sup> Also, the Commission has the authority to issue requests for international judicial assistance during discovery under the Hague Evidence Convention.<sup>4</sup> This article discusses Commission decisions on non-party discovery directed to a U.S. entity and its foreign affiliate.

### DISCUSSION

#### A. *How Much Control Does a U.S. Subpoena Recipient Have Over Its Foreign Parent Corporation?*

"Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books or other physical exhibits for use in evidence, or for both purposes."<sup>5</sup> In general, discovery is permissible only to the extent that it is "not unreasonable or unduly burdensome or expensive."<sup>6</sup> In determining whether a subpoena is reasonable, an Administrative Law Judge ("Judge") should balance (1) the relevance of the discovery sought, (2) the need of the requesting party, and (3) the potential hardship to the party responding to the subpoena.<sup>7</sup> The non-party status of the subpoena recipient should be given special weight in determining whether a motion to quash a subpoena should be granted.<sup>8</sup> The

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<sup>1</sup> 19 U.S.C. § 1337.

<sup>2</sup> *Id.* § 1333(a).

<sup>3</sup> *Certain Set-Top Boxes and Components Thereof*, Inv. No. 337-TA-454, Order No. 14 at 2 (June 25, 2001) (citing *Katz v. Batavia Marine & Sporting Supplies, Inc.*, 984 F.2d 422, 424 (Fed. Cir. 1993)).

<sup>4</sup> *Certain HSP Modems, Software and Hardware Components Thereof, and Products Containing Same*, Inv. No. 337-TA-439, Order No. 23 at 5 (Mar. 16, 2001).

<sup>5</sup> 19 C.F.R. § 210.32(b).

<sup>6</sup> *Id.* § 210.27(d)(2)(iii).

<sup>7</sup> See *Certain EPROM, EEPROM, Flash Memorandum and Flash Microcontroller Semiconductor Devices and Productions Containing Same*, Inv. No. 337-TA-395, Order No. 25 at 2 (Nov. 6, 1997); see also *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1323 (Fed. Cir. 1990).

<sup>8</sup> *Set-Top Boxes*, Inv. No. 337-TA-454, Order No. 14 at 2.

party seeking information has the burden to establish the relevance and substantial need for the information sought from a non-party.<sup>9</sup>

“When used for discovery purposes, a subpoena may require a person to produce [] documents, papers, books or other physical exhibits [] that are in the possession, custody, or control of such person.”<sup>10</sup> The crucial question for purposes of this article is what constitutes “control” in the context of a U.S. parent-foreign subsidiary relationship. In such a relationship, control is defined as “the legal right, authority or ability to obtain documents upon demand.”<sup>11</sup>

It is not uncommon that a subpoena is issued to a U.S. subsidiary for the purpose of seeking information from its foreign parent.<sup>12</sup> To order production in this context, the Commission must establish that the subsidiary has control of the subpoenaed documents.<sup>13</sup> Both federal district courts and the Commission have found that a U.S. subsidiary “has the requisite control of documents that are in a parent company’s possession where: (1) the alter ego doctrine . . . warranted ‘piercing the corporate veil;’ (2) the subsidiary was an agent of the parent in the transaction giving rise to the lawsuit; (3) the relationship is such that the agent-subsiary can secure documents of the principal-parent to meet its own business needs and documents helpful for use in litigation; (4) there is access to documents when the need arises in the ordinary course of business; and (5) the subsidiary was a marketer and servicer of the parent’s product (aircraft) in the United States.”<sup>14</sup>

***1. The Commission Will Not Enforce Subpoenas Directed to a U.S. Subsidiary When the Subsidiary Has No Control Over Requested Information in the Possession of Its Foreign Parent***

To establish control by a U.S. subsidiary over documents in its foreign parent’s possession, there must be a nexus between the subpoenaed documents and the subsidiary’s business relationship and responsibilities with its parent companies.<sup>15</sup> In *ASAT*, upon the respondent’s request, the Judge issued subpoenas seeking information from non-party ASAT, Inc. (“ASAT”).<sup>16</sup> ASAT, a California company, is a wholly-owned subsidiary of its foreign parent companies, ASAT Ltd. and ASAT Holdings Ltd.<sup>17</sup> ASAT’s activities in the U.S. include “the selling, marketing, and provision of customer services for its

<sup>9</sup> *Id.*

<sup>10</sup> *HSP Modems*, Inv. No. 337-TA-439, Order No. 23 at 5.

<sup>11</sup> *USITC v. ASAT, Inc.*, 411 F.3d 245, 254 (D.C. Cir. 2005) (citing *Camden Iron & Metal, Inc. v. Marubeni America Corp.*, 138 F.R.D. 438 (D. N.J. 1991)).

<sup>12</sup> *Id.* at 246-247. When a subpoena is issued to a U.S. parent company and seeks information from its wholly-owned foreign subsidiary, courts have found that the U.S. parent company has control over the requested information. *See, e.g., Certain Lens-Fitted Film Packages*, Inv. No. 337-TA-406, Order No. 12 at 10-12 (Aug. 20, 1998).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 255.

<sup>16</sup> *Id.* at 247. Subpoenas were also issued to ASAT Ltd. and ASAT Holdings Ltd. These subpoenas were quashed because of improper service. *Id.* at 254. Further, the parties do not dispute that “the subpoenaed documents are not in ASAT, Inc.’s possession or custody, but instead are possessed by one of ASAT, Inc.’s parent companies.” *Id.* at 254.

<sup>17</sup> *Id.*

parent companies' integrated circuits."<sup>18</sup> The subpoena sought technical and legal information related to the prosecution and licensing of the asserted patent, which was assigned to ASAT Ltd.<sup>19</sup> The Judge found ASAT was "the exclusive distributor for ASAT Holdings services" in the U.S. and that there was a "close business relationship between the three ASATs."<sup>20</sup> The Judge ruled, and the U.S. District Court for the District of Columbia affirmed, that ASAT had control of the documents held by the foreign parent companies because the fourth and fifth factors in *Camden* applied.<sup>21</sup>

The Court of Appeals for the D.C. Circuit reversed.<sup>22</sup> The D.C. Circuit first held that venue, subject matter jurisdiction, and personal jurisdiction were proper when the Commission sought enforcement of the subpoenas in the D.C. district court.<sup>23</sup> The court rejected ASAT's argument that the Northern District of California, where the requested information would be produced, was the only district that had jurisdiction to enforce the Commission's subpoenas.<sup>24</sup> According to the D.C. Circuit, the D.C. district court had subject matter jurisdiction and was the proper venue because "the District of Columbia, where the Commission maintains its headquarters, was the hub of the Commission's investigative activity," such as signing, sealing and issuing subpoenas, ruling on subpoena-related motions, and certifying for judicial enforcement of subpoenas.<sup>25</sup> The D.C. Circuit further explained that the D.C. district court had personal jurisdiction because section 336(b) of the Tariff Act impliedly authorizes nationwide service of process for Commission subpoena enforcement actions.<sup>26</sup>

Nevertheless, on the control issue, the D.C. Circuit ruled in ASAT's favor. The court noted that ASAT's activities are "sales, marketing and customer services."<sup>27</sup> No evidence explained why ASAT, a subsidiary, would have access to or need for documents related to the prosecution and licensing of a patent that was not assigned to the subsidiary.<sup>28</sup> The D.C. Circuit held there was no nexus "between the subpoenaed documents and ASAT, Inc.'s relationship with its parent companies."<sup>29</sup> Similarly, the mere fact that ASAT was the exclusive distributor and servicer of its foreign parent's products was not sufficient to establish control.<sup>30</sup> It is "quite conceivable that ASAT, Inc. does not have routine access to these documents because they do not seem to relate directly to its principal activities."<sup>31</sup> The D.C. Circuit reversed the district court's order enforcing the subpoenas.<sup>32</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 247.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 256.

<sup>23</sup> *Id.* at 246.

<sup>24</sup> *Id.* at 249.

<sup>25</sup> *Id.* at 249. The subject matter jurisdiction and venue inquiries under section 333(b) of the Tariff Act merged.

<sup>26</sup> *Id.* at 250-252.

<sup>27</sup> *Id.* at 255.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 256.

Similarly, a Judge is likely to grant a motion to quash when the party seeking information from a non-party fails to prove the burden of establishing control.<sup>33</sup> In the investigation of *Certain Optical Disk Controller Chips*, the Judge issued a subpoena to non-party Oki Semiconductor (Oki America) at the request of the respondent.<sup>34</sup> Oki America argued that the requested information was in possession of its foreign parent, Oki Japan.<sup>35</sup> The respondent asserted that Oki America was the marketer and servicer of Oki Japan's products, and thus would have routine access to information for Oki Japan.<sup>36</sup> The Judge held that "the identification of Oki [America] as a sales and service company of Oki Japan, without more, [did] not establish Oki [America]'s control over documents and information in the possession of Oki Japan."<sup>37</sup> The Judge granted the motion to quash because the respondent did not provide evidence to establish that Oki America had control over documents that were in the possession of Oki Japan.<sup>38</sup>

The Commission also has held that a non-party is not in control of its foreign parent company's documents unless it has "a legal right to obtain [the] parent company's documents."<sup>39</sup> In *Certain Recordable Compact Discs And Rewritable Compact Discs*, the respondent attempted to enforce a subpoena seeking from Taiyo U.S.A. information in the possession of its foreign parent, Taiyo Japan.<sup>40</sup> Taiyo U.S.A. represented, and the respondent failed to refute, that Taiyo U.S.A., the U.S. subsidiary, did not have a close working relationship with its foreign parent company.<sup>41</sup> The Judge thus held that the U.S. subsidiary did not have a right to obtain documents from its foreign parent company.<sup>42</sup> The Judge granted the motion to quash or limit.<sup>43</sup> Similarly, if a seeking party fails to offer any evidence to establish the legal right of a non-party U.S. subsidiary to obtain documents from its foreign parent, the U.S. subsidiary's motion to quash or limit a subpoena would be granted to the extent it seeks documents in the possession of the foreign parent company.<sup>44</sup>

**2. A U.S. Subsidiary Has Control If It Has the Practical Ability or Legal Right to Obtain the Information from Its Foreign Parent Company**

In *Certain Voltage Regulators, Components Thereof and Products Containing Same*, the complainant served subpoenas upon all three LG entities: LG Electronics Inc. (LG Korea), LG

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<sup>33</sup> *Certain Optical Disk Controller Chips And Chipsets And Products Containing Same, Including DVD Players And PC Optical Storage Devices*, Inv. No. 337-TA-506, Order No. 18 (Aug. 26, 2004).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Certain Recordable Compact Discs And Rewritable Compact Discs*, Inv. No. 337-TA-474, Order No. 9 (Dec. 23, 2002).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*; *Certain HSP Modems, Software and Hardware Components Thereof, and Products Containing Same*, Inv. No. 337-TA-439, Order No. 13 (Feb. 9, 2001).

Electronics U.S.A. Inc. and LG Electronic MobileComm U.S.A. Inc. (the U.S. subsidiaries).<sup>45</sup> The complainant requested “documents and related testimony that would show products that the LG companies had imported, sold or offered for sale in the United States, and how the accused devices work in the LG companies’ products.”<sup>46</sup> The foreign parent, LG Korea, had possession and custody of the requested information, over which the two U.S. subsidiaries argued they had no control.<sup>47</sup>

The U.S. subsidiaries’ activities included design and support of the products.<sup>48</sup> They had only component-level information and service manuals for the products under investigation.<sup>49</sup> Under these circumstances, the complainant asserted that the third, fourth and fifth *Camden* factors were satisfied.<sup>50</sup> The Judge noted that in view of the nature of the U.S. subsidiaries’ business in the sale and service of “hi-tech” equipment, it would be “unreasonable to suppose that they would not have access to” the requested information.<sup>51</sup> The Judge concluded that the U.S. subsidiaries had control of such information because they had the practical ability to obtain the information.<sup>52</sup>

**3. *Traditional Non-Party Discovery Principles, Not Specific to the Parent-Subsidiary Relationship, Could Affect the Disposition of a Motion to Quash***

Subpoenas served upon non-parties could be quashed on other grounds.<sup>53</sup> For example, a Judge may grant a motion to quash or limit a subpoena where the subpoena is overbroad, has no temporal limit, should have been served on parties rather than on non-parties, creates a financial burden on a non-party, or is unduly delayed.<sup>54</sup> Conversely, if a party limits the scope of subpoenas to seek information that is in the possession of its U.S. subsidiary, even if it is information that came from a foreign parent company, a Judge could deny the non-party’s motion to quash.<sup>55</sup>

<sup>45</sup> *Certain Voltage Regulators, Components Thereof and Products Containing Same*, Inv. No. 337-TA-564, Order No. 7 (Oct. 26, 2006).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> See 19 C.F.R. §§ 210.32(d) and 210.34(a).

<sup>54</sup> See, e.g., *Voltage Regulators*, Inv. No. 337-TA-564, Order No. 7; *Micro Motion, Inc. v. Kane Steel Co.*, 894 F.2d 1318, 1328 (Fed. Cir. 1990) (“A litigant may not engage in merely speculative inquiries in the guise of relevant discovery.”); *Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players and PC Optical Storage Devices*, Inv. No. 337-TA-506, Order No. 16 at 12 (Sept. 17, 2004); *Guy Chem. Co. v. Romago AG*, 243 F.R.D. 310, 313 (N.D. Ind. 2007).

<sup>55</sup> See, e.g., *Certain Nitrile Gloves, and Certain Nitrile Rubber Gloves*, Inv. Nos. 337-TA 608 and 337-TA-612, Order No. 52 (Jan. 23, 2008); *Certain NAND Flash Memory Circuits And Products Containing Same*, Inv. No. 337-TA-526, Order No. 6 (Mar. 8, 2005); *Certain Phenylene Sulfide Polymers And Polymer Compounds And Products Containing Same*, Inv. No. 337-TA-296, Order No. 95 (Oct. 5, 1989).

**B. Can the Commission Issue a Subpoena Directly to a Non-Party Foreign Parent Company?**

**1. Service May Not Be Proper If A Subpoena Is Issued to the Foreign Parent Company but Served Upon Its U.S. Subsidiary**

Attempts to seek information from a non-party foreign parent company by serving a subpoena issued to that foreign company upon its non-party U.S. subsidiary usually fail.<sup>56</sup> In *ASAT*, the respondent attempted to serve subpoenas issued to ASAT Ltd. and ASAT Holding Ltd. upon their wholly-owned U.S. subsidiary, ASAT.<sup>57</sup> The Judge held that “service of process on a wholly-owned [U.S.] subsidiary does not effect service on the [foreign] parent corporation where separate corporate identities are maintained.”<sup>58</sup> The Judge ruled, and the D.C. Circuit agreed, that the subpoenas issued to ASAT Ltd. and ASAT Holding Ltd. were not properly served and thus quashed.<sup>59</sup>

The fact that the foreign parent company is aware of the subpoena served upon its U.S. subsidiary is irrelevant.<sup>60</sup> The Judge noted that subpoenas should be served at a company’s principal office (which is in a foreign country where the foreign parent is located), not merely a “principal” office of its subsidiary in the United States.<sup>61</sup> There is no adequate foundation for holding that the foreign parent company can be effectively served through a U.S. subsidiary.<sup>62</sup>

**2. The Commission May Lack Subpoena Power When the Subpoena Is Directly Served upon a Foreign Company**

The Commission does not have subpoena power over a foreign non-party when that party has no minimum contact or significant presence in the United States.<sup>63</sup> In *Certain Personal Computers and Digital Display Devices*, the Judge found that the statute clearly states that the production of documentary evidence “may be required from any place in the United States at any designated place of hearing,” and not from anywhere in the world.<sup>64</sup> Further, the Judge noted that the D.C. Circuit has “repeatedly noted” the territorial limitation in cases involving enforcement of Commission subpoenas.<sup>65</sup> The mere fact that the foreign company has a U.S. subsidiary will not support Commission subpoena power over the foreign parent company.<sup>66</sup>

<sup>56</sup> *USITC v. ASAT, Inc.*, 411 F.3d 245, 254 (D.C. Cir. 2005) (citing *Camden Iron & Metal, Inc. v. Marubeni America Corp.*, 138 F.R.D. 438 (D. N.J. 1991)).

<sup>57</sup> *Certain Encapsulated Integrated Circuit Devices And Products Containing Same*, Inv. No. 337-TA-501, Order No. 29 (Apr. 13, 2004).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*; *ASAT, Inc.*, 411 F.3d at 247.

<sup>60</sup> See *Voltage Regulators*, Inv. No. 337-TA-564, Order No. 7.

<sup>61</sup> *Encapsulated Integrated Circuit Devices*, Inv. No. 337-TA-501, Order No. 29.

<sup>62</sup> *Id.*

<sup>63</sup> *Certain Personal Computers and Digital Display Devices*, Inv. No. 337-TA-606, Order No. 5 (Jul. 12, 2007)

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* (citing *In the Matter of an Application to Enforce an Administrative Subpoena of the Commodity Futures Trading Comm’n v. Naji Robert Nahas*, 738 F.2d 487 (D.C. Cir. 1984)).

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However, when a non-party foreign company has sufficient presence in the United States, the Commission can exercise personal jurisdiction over the foreign company,<sup>67</sup> including the issuance of a subpoena to the non-party foreign company.<sup>68</sup> In *HSP Modems*, the foreign parent company had at least three manufacturing facilities, operated a sales force, and conducted research and development—all in the United States.<sup>69</sup> More than twenty percent of the foreign company's revenue came from North America.<sup>70</sup> The Judge denied the foreign company's motion to quash the subpoena, finding that the Commission had personal jurisdiction based on the foreign company's systematic and continuous contacts in the United States.<sup>71</sup>

**C. *The Advantages and Limitations of Seeking Evidence from a Foreign Non-Party Under the Hague Evidence Convention***

An alternative path for seeking discovery from a foreign non-party in a Section 337 investigation is the Hague Convention on the Taking of Evidence in Civil or Commercial Matters (the Hague Evidence Convention).<sup>72</sup> A party to the Section 337 investigation must obtain Commission approval to seek evidence under the Hague Evidence Convention. The effect of the request heavily depends on the national law of the foreign country where the non-party is located because production of documents under the Hague Evidence Convention is carried out by the judicial authority of the foreign state.<sup>73</sup>

For example, some countries do not interpret the Hague Evidence Convention as extending to discovery in administrative proceedings. In *Certain Systems for Detecting and Removing Viruses or Worms, Components Thereof, and Products Containing Same*, the respondent requested approval to seek discovery from a non-party German company under the Hague Evidence Convention.<sup>74</sup> The Judge denied the respondent's motion, noting that the German government does not regard the Hague Evidence Convention as applying to administrative proceedings.<sup>75</sup>

However, the Commission has sometimes been more permissive in allowing parties to use the Hague Evidence Convention when the requests are "likely to be the only effective means of obtaining needed information" from foreign non-parties.<sup>76</sup> For example, one Judge added the staff attorney in an investigation as a party to a Hague Convention letter of request with the hope of giving the request more

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.* (citing *Certain HSP Modems, Software and Hardware Components Thereof, and Products Containing Same*, Inv. No. 337-TA-439, Order No. 23 (Mar. 16, 2001)).

<sup>68</sup> *Id.*

<sup>69</sup> *HSP Modems*, Inv. No. 337-TA-439, Order No. 23.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Certain Systems for Detecting and Removing Viruses or Worms, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-624, Order No. 14 (Jul. 2, 2008).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Certain Home Vacuum Packaging Machines*, Inv. No. 337-TA-496, Order Nos. 38, 39 (Jan. 12, 2004).

legitimacy.<sup>77</sup> In *Certain Home Vacuum Packaging Machines*, the respondent requested approval to seek discovery from several non-parties in Italy under the Hague Evidence Convention.<sup>78</sup> The respondent sought production of documents from the Italian non-parties, “to be conducted by and through the appropriate judicial authorities of the Italian government.”<sup>79</sup> However, the Office of Unfair Import Investigations (OUII) Staff noted that “it is not clear whether Italy will entertain a request for assistance in pre-trial discovery from a U.S. administrative agency such as the Commission.”<sup>80</sup> The Judge granted the respondent’s motion, but requested the Staff attorney assigned to the investigation be included in the request as a party to the investigation.<sup>81</sup>

To ensure success, it is vital for a party seeking discovery under the Hague Evidence Convention to understand the local law of the foreign country and its interpretation of the Convention when assessing whether the foreign country would enforce the request. The best approach usually is to consult with a knowledgeable associate in the foreign country. This should be done before making a request to the Commission so that the request may be tailored to meet any particular requirements imposed by the local laws and practices of the foreign country.

In addition, it is worth noting that the timing of discovery requests under the Hague Evidence Convention may make them impractical in a Section 337 investigation. Because of the multiple layers of communication required to seek discovery under the Hague Evidence Convention (*i.e.*, involving the parties, the Commission, the central authority in the foreign country, and perhaps even a local court in the foreign country), the process can be extremely slow. In some cases, obtaining a single deposition under the Hague Evidence Convention may take longer than an entire Section 337 investigation.

## CONCLUSION

When a party in a Section 337 investigation seeks information in the possession of a non-party foreign parent company by serving a subpoena upon its non-party U.S. subsidiary, it has to prove the U.S. subsidiary has control of the information. The mere fact that the U.S. company is a wholly-owned subsidiary of the foreign parent, an exclusive distributor, or the marketer and servicer of the parent company’s products in the United States is not sufficient to establish control. There must be a nexus between the U.S. subsidiary and its foreign parent’s business relationship and responsibility such that the U.S. subsidiary has the practical ability or legal right to obtain the requested information from its foreign parent company. Alternatively, a party to a Section 337 investigation can seek information directly from a non-party foreign company, but only if the foreign company has sufficient contacts in the United States to support personal jurisdiction at the Commission.

As a last resort, a party in a Section 337 investigation may consider seeking discovery from a non-party foreign company under the Hague Evidence Convention. As a practical matter, discovery requests under the Hague Evidence Convention might be of limited effect because of the time it takes to enforce the requests. If a party chooses this path, it is also critical to understand the local laws of the foreign country, including whether or not the country permits Hague Convention requests from an administrative agency.

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*; *Certain Home Vacuum Packaging Machines*, Inv. No. 337-TA-496 (Mar. 24, 2004).