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Q1: Respondent details

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Q2: Country or Customs territory

SWITZERLAND

Q3: Organization

Private sector

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Q4: Title of case story

Pro Bono Legal Advice for Trade Facilitation

Q5: Case story focus

Trade Facilitation.

Q6: Case story abstract

In 2012, Sidley Austin LLP, an international law firm, launched the Emerging Enterprises Pro Bono Program. This program provides free legal support to small and medium-sized enterprises and market-focused NGOs, aiming to impact poor, rural and disadvantaged communities. Indeed, for many pro bono clients, legal barriers represent a key hindrance to trade. By advising small enterprises on how to overcome legal hurdles, Sidley's pro bono program operates as a trade facilitator. Not only does Sidley advise small businesses on market access requirements, it also provides free legal advice that helps materialize innovative ideas that will enable hundreds of small enterprises in developing countries overcome their trade barriers.

Q7: Who provided funding?

Other (please specify)
 We are a pro bono program operating within Sidley Austin so any funding comes directly from the firm itself

Q8: Project/Programme type

Multi-country

Q9: Your text case story

In 2012, Sidley Austin LLP, an international law firm, launched the Emerging Enterprises Pro Bono Program. This program provides free legal support to small and medium-sized enterprises and market-focused NGOs with a clear social impact in Africa, Asia, Central and South America and the Caribbean. The program aims to impact poor, rural and disadvantaged communities, particularly women, by supporting local businesses that provide enhanced employment and livelihood opportunities.

Since the launch of the program, Sidley has provided legal advice to over 115 clients. For many clients, legal barriers represent a key hindrance to trade. For instance, Sidley lawyers have represented an African pineapple producer in a situation where the international buyer failed to pay for because they were damaged during shipping. Or an enterprise that cannot sell chocolate into the EU market because its formula does not meet the EU's minimum cocoa requirements. Or Shea producers, who are unable to sell chocolate containing Shea to Indian buyers because of regulatory restrictions. Or an African clean cook stove enterprise entangled in an intellectual property dispute with a Chinese company. By helping small enterprises overcome these and other legal challenges, Sidley's pro bono program operates as a trade facilitator.

Sidley's pro bono program also facilitates trade indirectly. One client that comes to mind is the ECom Coop, an initiative pioneered by the International Trade Centre (ITC) to enable SMEs in developing countries to participate in digital trade – including selling their products on E-bay or Alibaba. The geographical focus of the first ECom Coop is on SMEs from Rwanda, Senegal, Ethiopia and Morocco.

Currently, enterprises from least developed countries are effectively excluded from participating in such e-commerce platforms due mainly to financial compliance concerns. The ECom Coop, registered in the UK, address these compliance concerns, thus providing small businesses in developing countries an online platform.

The ECom Coop also aims to serve as a trade facilitator by allowing African businesses to minimize costs and logistical hurdles – often a key constraint for small businesses to benefit from e-commerce. This enables small businesses to retain a higher price premium. Moreover, by creating business to consumer contact, e-commerce allows entrepreneurs to directly brand their product to consumers.

However, to make this innovative and promising idea a reality, many legal hurdles must be overcome. For instance, it is essential to have an effective privacy policy that protects producers and buyers during the online transaction. Likewise, online business transactions must be carried out on the basis of enforceable and internationally recognized buyer-seller contracts. In addition, the cooperative structure must comply with the operative legislation and regulation in the country where it is established. Intellectual property must be protected. And the products must comply with market access requirements in the jurisdictions where they will be bought, including compliance with non-tariff measures such as SPS and TBT requirements.

Under the pro bono program, lawyers from many different practice areas are currently advising the ECom Coop on the above issues, including: privacy and corporate lawyers, international trade and custom lawyers, and transactional lawyers. In addition, a number of law students, qualified to practice law in relevant African countries, help advise on local law issues.

Thus, providing legal support to clients such as the ECom Coop multiplies the trade facilitation effect of Sidley's Emerging Enterprise pro bono program.

Q10: Lessons learnt

After four years of providing pro bono legal advice, we have managed to refine our approach based on what has worked and what has not.

For instance, we have learned that we need to tailor the work product to the client's needs. A small enterprise in Malawi does not need a 100-page loan agreement when engaging an investor. Likewise, elaborate memoranda on market access regulation may not be the most time-effective way to communicate to various businesses what they must be aware of when importing their products into a high value market.

Moreover, having represented clients for a number of years now has helped Sidley lawyers be more proactive – as opposed to reactive. Often enough, pro bono clients seeking legal advice do not have a comprehensive understanding of the different types of legal support they would need. Having built up significant experience in representing small businesses in various parts of the world has helped Sidley lawyers be more proactive when approached by pro bono clients.

Finally, we have learned the importance of establishing partnerships with other service providers. Often, our clients need a lot more than legal advice. They may require accounting advice, or they may require a market analysis before deciding which market to enter. Thus, we are increasingly trying to serve as a hub through which we can connect our clients to other service providers.
