

THE COMMERCIAL LAW DEVELOPMENT PROGRAM

LOWERING OVERSEAS BARRIERS FOR U.S. EXPORTERS

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Commercial Law Development Program

Exporting can be a daunting experience, especially if your company's target market lies in a country riddled with corruption, inadequate laws and enforcement mechanisms to protect commercial interests, and a bureaucracy that is anything but transparent. The U.S. government has many initiatives to assist exporters, some of which are less obvious than others. The Commercial Law Development Program (CLDP) of the U.S. Department of Commerce (DOC) is working behind the scenes, in developing democracies that have nascent but risky overseas export markets, to alleviate the legal and administrative barriers that U.S. exporters face.

The CLDP helps developing countries modernize their commercial legal systems to enable them to take advantage of opportunities in the global economy by creating or enhancing laws, regulations, and administrative practices that affect domestic and foreign investment and trade. These development efforts benefit U.S. exporters by increasing the stability and predictability of foreign legal regimes.

While working at the Overseas Private Investment Corporation (OPIC) in the late 1980s on deals to finance U.S. investment in developing countries, Linda Wells, chief counsel and co-founder of the CLDP, encountered many recurring legal and administrative obstacles. Ms. Wells and other U.S. government officials had been providing commercial law technical assistance on a sporadic basis, but it became apparent that a more consistent and comprehensive program would be more effective. The DOC's Office of the General Counsel and the United States Agency for International Development (USAID) agreed, and the CLDP was launched. The CLDP began work in Eastern Europe and the former Soviet Union. From there, it expanded throughout Africa and the Middle East. It is now in the initial stages of developing programs in Latin America and the Caribbean.

DEVELOPING A WORK PLAN

The CLDP is distinguished from non-governmental assistance providers because it utilizes current or former government experts to provide government-to-government assistance. When an actual need and a practical way to effect change is identified, the CLDP develops a work plan through consultations with interested U.S. government entities, foreign governments, and

private sector representatives abroad. Working with stakeholders to design the program ensures client support and commitment.

Every CLDP program is likely to include one or more of the following activities: advisors sent overseas to work with a small group of host government representatives; consultations in the United States for a select group of foreign government officials; or consultations overseas for a large number of individuals. While those three techniques are most common, the CLDP also uses other methods. For example, the CLDP recently conducted a public awareness campaign in Egypt designed to inform the public of the types and benefits of insurance, to increase the sales of policies provided by domestic and foreign insurers. This involved working with the Insurance Information Institute to produce television commercials and informational brochures for public dissemination in Egypt.

HANDS-ON TRAINING

Perhaps the best way to illustrate CLDP activities is to look at a recent month. In May 2002, the CLDP trained Algerian judges to adjudicate intellectual property cases, worked with Egyptian standards officials on internationally accepted conformity

assessment and quality control practices, facilitated the creation of government procurement rules in Nigeria, helped create an Albanian Center for International Trade, and trained Angolan judges on case management techniques, as discussed below.

INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT ABROAD PROMOTES U.S. EXPORTS

Insufficient protection of intellectual property rights is a major deterrent to foreign investment and trade. U.S. companies' losses arising from piracy were estimated to be over \$8 billion in 2001. For this reason, the CLDP has spent considerable time working with Algerian judges on proper adjudication of intellectual property cases. The CLDP has also worked with several other clients on developing intellectual property legislation and educating government officials and the public on the economic importance of protecting intellectual property rights and institutional capacity building. CLDP efforts contribute to governments' abilities to more effectively implement and enforce their intellectual property laws, which reduces the number of knock-off drugs, bootleg compact discs, and unlicensed copies of software that are produced. As the black market shrinks, the demand for legitimate versions of drugs, software, and artistic works increases, which ultimately benefits the host country as well as U.S. producers who wish to operate in emerging markets.

PROMULGATION OF U.S. STANDARDS SIMPLIFIES TRADE

Each country utilizes a system of standards, which dictates the specifications that imported products must meet. For example, a product created according to American standards may encounter obstacles when exported to a country that uses European standards. Often, the goods will simply be rejected at the border regardless of whether the difference is obvious or very subtle. The

CLDP recently hosted an Egyptian delegation of standards officials to familiarize them with the American standards system. This program is just one example of CLDP efforts to promote functioning standards regimes in developing countries in order to help create systems that are both practical for the countries and compatible with the standards U.S. exporters employ.

TRANSPARENCY IN GOVERNMENT PROCUREMENT PRACTICES OPENS MARKETS

Procurement practices vary widely among and within countries, making it difficult for U.S. exporters to sell products to foreign governments. Further complicating the process of identifying the procedures necessary to win a government tender are corrupt regimes that allow government officials to accept bribes, or favor certain suppliers over others. Almost always, it is the foreign supplier that is disadvantaged. Realizing that a more competitive and transparent process is beneficial for the government and the public, countries like Nigeria have solicited the CLDP to work with them to improve their processes. The CLDP has assisted countries in creating corruption oversight bodies, propagating new and equitable procurement rules, improving enforcement mechanisms, and training officials on government ethics and transparency.

CASE MANAGEMENT TECHNIQUES HELP PROTECT U.S. INTERESTS OVERSEAS

One of the paramount concerns of U.S. companies doing business abroad is whether they will have recourse to courts if they have disputes when dealing with local businesses. While a particular country may be a good market for U.S. exports, its court system may be antiquated and overburdened, often to the degree that the risk of non-recourse makes doing business in that country not worth the effort.

The CLDP's Angola program has tackled judicial deficiencies by introducing the Angolan legal community to case management techniques that create efficiencies and reduce opportunities for corruption. In September 2002, with CLDP support, Angola will launch a pilot project in which an Angolan court will implement case management techniques and serve as a model for other courts. With modern case management techniques implemented, a U.S. business will be more likely to have recourse through the courts.

These examples simply highlight CLDP involvement in behind-the-scenes export promotion in a single month. Throughout the year, the CLDP conducts long-term programs such as these as well as others that concentrate on helping countries accede to the World Trade Organization (WTO) and implement laws that comply with the WTO agreements.

So, when the day comes when your products suddenly meet Senegal's standards, when the government of Albania is soliciting your tenders, or when Ukrainian sales of your new CD hit the roof, you need not wonder why. It is likely that long-term CLDP reform strategies have helped pave the way for your expanded business overseas. ■

For more information about the Commercial Law Development Program, contact Joan MacKenzie at (202) 482-2400 or e-mail JMackenzie@doc.gov.

The CLDP Web site is under construction and will be operational by December 2002. It will be accessible through www.doc.gov.