

International Trade Group Of The Year: Sidley

By **Samuel Howard**

Law360, New York (February 1, 2011) -- Last year, Sidley Austin LLP represented Airbus SAS at the World Trade Organization, South Korea during follow-on negotiations of a 2007 trade agreement with the U.S. and Hartford Fire Insurance Co. in a \$1 billion class action over customs bonds, making it one of Law360's International Trade Groups of 2010.

Sidley Austin's international trade practice group enjoys a trailblazing reputation as well as the attentions of governments and clients worldwide. The group boasts 60 attorneys who combine a litigator's steel, a statesman's canniness and a legal scholar's expertise.

Sidley's ability to draw on vast litigation experience while providing incisive analysis of the political angles has shaped trade policy and integrated multinational companies into the global market.

With attorneys concentrated in Washington, Brussels and Geneva, the practice group spans a platform that is truly global, integrating regulatory and transactional lawyers in offices across Europe and Asia, including Singapore, Beijing and Tokyo.

Andrew Shoyer, chair of the firm's international trade practice, said the size and reach of the group not only lures top talent but enables it to address trade issues in all of their geopolitical and legal complexity.

"Our lawyers cover the complete range of international trade issues, from soup to nuts," Shoyer said. "We of course have a strong grounding in the substantive law, understand the international treaties and trade agreements at issue, but our attorneys also have an acute understanding of the geopolitical context."

Led by the insight of senior partner Daniel Price, Sidley's group was among the first IT practices to really seize on the interplay of law and international affairs. Emerging as a powerhouse in the 1990s, the group is still the go-to firm for clients when the stakes are highest.

"Rather than rest on our laurels the firm is continually pushing its practice and working to stay ahead of the competition," Shoyer said. "We always take the position that no matter how good the past year has been, the next year is going to be better."

In 2010, Sidley Austin continued to predominate at the WTO, representing stakeholders in 18 ongoing disputes at that forum, including Airbus in the dispute with the U.S. over subsidies for commercial aircraft, Brazil in a dispute over U.S. cotton subsidies and Japan in numerous challenges to the U.S.' zeroing policy in anti-dumping proceedings.

Airbus and Boeing Co. have been in a drawn-out feud over respective subsidies the rivals receive from the U.S. and the EU.

Both sides have appealed the WTO's June determination that Airbus subsidies harmed Boeing, that infrastructure built by member states constitute subsidies to Airbus, and that the airline received \$20 billion in launch aid and other subsidies. Airbus is also challenging subsidies received by Boeing from the U.S.

The dispute came back into view Monday as the WTO found that Boeing relied on illegal subsidies to launch its 787 Dreamliner aircraft.

With more than 30 WTO disputes under his belt, Todd Friedbacher, partner in the Geneva office, said the latest Airbus case is unusually complex, involving a mountainous record and issues that cut across the civil and defense aircraft industries.

"We're dealing with two entities that are central to their government's respective economies and defense industries," Friedbacher said. "That means figuring out how the dispute over subsidies for the commercial aircraft fits into the larger geopolitical picture and impacts the defense operations."

Friedbacher noted that the last appeal comprised 40 different grounds for appeal and introduced a raft of novel legal issues involving treaty provisions that have never been scrutinized in WTO litigation.

The group's policy expertise also led Korea to turn to Sidley for counsel on the trade law implications of the proposed U.S.-Korea Free Trade Agreement.

The group has an equally robust customs and export controls practice in Europe and the U.S., and notched a sweeping win in March for Hartford Fire Insurance Co. in a closely watched \$1 billion putative class action over surety bonds.

In a case of first impression, a number of U.S. producers sued Hartford and other insurers at the U.S. Court of International Trade, alleging the bond insurers were obligated to pay up for importers that defaulted on duty payments.

The court roundly backed Sidley's position, holding that nothing in the Byrd Amendment expressly speaks to the imposition of surety bonds and the role of third parties as potential beneficiaries.

For all the group's accolades and front-page appearances, however, many of its greatest accomplishments keep clients out of the headlines and in compliance with the array of trade regimes, Shoyer said.

The familiarity with treaties, anti-dumping measures and trade legislation in turn makes the attorneys particularly adept at structuring cross-border transactions for major corporations, Shoyer said.

For instance, if a U.S. client wanted to acquire a company in India, the group might suggest conducting the transaction through a Dutch subsidiary in order to take advantage of a strong bilateral investment treaty, Shoyer said.

"We are able to help governments and companies think beyond the four corners of the case at hand and understand not only the immediate issues, but also the economic implications 10 years out and how their positions affect disputes in other fora," Friedbacher said.

"That sort of expansive understanding can only be gained through time and experience," Friedbacher said. "We've been involved with hundreds of cases and assembled a team that includes standout litigators, as well as lots of attorneys who have held senior positions in government."

The firm is highly involved at the legislative level, advocating for clients as the EU develops policies that will shape their respective industries. Sidley attorneys have numerous tools at their disposal, advancing arguments to legislators as they go through the formal rulemaking process as well as using litigation to gain leverage on a policy issue.

"New legislation has immense consequences for non-European companies seeking market access," said Arnoud Willems, partner in the Brussels office, who advises governments, industries and corporations on trade legislation, market access and trade agreement negotiation. "We have a presence at the legislative level and know how to help stakeholders take an active role in the creation of trade policy."

Willems is closely involved with the group's customs practice, helming Unilever's recent challenge to anti-dumping calculations on monosodium glutamate, ENRC PLC's fight to annul anti-dumping measures, and three Korean companies' battle against allegations they evaded duties on wire rope from China.

Additionally, Sidley is representing a consortium of shoe importers and retailers in a high-profile suit by exporters seeking refunds of anti-dumping duties.

What's more, LG Electronics has Sidley to thank after the group convinced regulators that LG refrigerators deserve to be excluded from import duties.

Willems said that for all the group's know-how and finesse, the mastery of the legal and political contexts, it has distinguished itself for a pioneering approach to trade law.

"We frequently find creative and novel solutions to stubborn problems," Willems said. "We open new avenues by finding new arguments and asking unasked questions. We don't accept that certain practices or outlooks are absolute."

This pioneering bent has led the group to test product bans and taxation issues at the WTO export committee, scrutinize the EU's power to impose sanctions and explore the role of bilateral investment treaties in energy fuel directives, Willems said.

Methodology: In mid-November Law360 solicited submissions from over 300 law firms for its practice group of the year series. The more than 400 submissions received were reviewed by a committee of four editors. Winners were selected based on the number of significant wins the group had in litigation or the size, number and complexity of deals the group worked on in 2010.

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