



Legal & Policies COMMITTEE

1993/94 Legal & Policies Committee

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Welcome to a new edition of the Legal and Policies page, formerly the Legal and Tax page; re-named to reflect the Chamber's emphasis on policies that affect our members.

As well as keeping you abreast of legal & policy matters a major focus for this year's committee is its plan to assess the delivery of Canadian government services to the Hong Kong business community in light of reduced Canadian government budgetary allocations. This will involve an active dialogue with the business community, the Canadian Commission in Hong Kong, and various provincial representatives. If you have any comments on the delivery of Canadian government services in Hong Kong, please feel free to write them down and fax them to the Legal & Policy Committee c/o the Chamber.

The committee will also be tackling other legal and policy issues of importance to the Chamber, assessing those issues from the point of view of Canadian business in Hong

Kong, and making recommendations to the Chamber's executive.

Of course, in addition, the Legal & Policy Committee will be presenting topics of concern to the Canadian community in luncheon, seminar and other formats. And if you're interested in becoming involved in any of these, we're more than happy to have you aboard, so please let us know by contacting the Chamber.

TRANSFER PRICING :

CUSTOMS DUTIES VERSUS INCOME TAX ISSUES

Importers of goods to Canada are beginning to realize that two branches of Revenue Canada are pulling importers in opposite directions, and the tug of war is just beginning. In general, Revenue Canada (Taxation) requires that a Canadian company which imports goods from its foreign affiliate take into account a cost of such goods which does not exceed the price which would have been paid had the purchase been made from a third party.

Revenue Canada (Customs) has a completely opposite agenda. This branch of the same government department is prone to consider that the import price is too low, thereby artificially reducing customs duties, and Revenue Canada (Customs) may then seek to increase the import price.

Furthermore, there may be a dispute as to the import price from the point of view of the tax authorities of the country of the affiliated exporter, which may consider the original price to be deficient, and those tax authorities may seek to adjust the export price and profits of the foreign affiliated exporter.

The bad news is that there are no rules for this tug of war, the Information Circulars of Revenue Canada are singularly unhelpful, and to the knowledge of this writer, there are no court decisions on the point.

However, a Canadian company importing from its foreign affiliate may take solace in a recent Federal Court decision. In that case, the Court held that a Canadian importer of goods from a foreign affiliate who, as a result of either its own initiated price increase for cus-

tom duty purposes or one required by Revenue Canada, incurs an increased price for custom duty purposes could choose to pay its foreign affiliate the difference between the increased price and the original price. This payment is deductible to the Canadian company in the year paid, even though the Canadian company had no obligation to pay the additional monies to its foreign affiliate and the payment did not relate to the current but prior year's operations.

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TRADE AGREEMENTS UNDER ATTACK

The judiciary in the US has recently indicated its willingness to intervene on environmental grounds in decisions by the executive to conclude multinational trade agreements. Witness the decision by Judge Ritchie of the US district court that the US government was in breach of the National Environmental Policy Act by not drafting an environmental impact statement on the effects of the proposed Canada - US - Mexico trade agreement.

The environmental groups that succeeded in the action overlook the fact that presently nothing aside from erratically enforced Mexican pollution legislation restricts US companies from setting up factories in Mexico now. Presumably their voices would have a better chance of being heard if a NAFTA was concluded, since that agreement compels Mexico to enforce its environmental laws, and these same groups could lobby for enforcement of that agreement.

The court challenge is a worrying one for both Canada and Hong Kong, not so much for the immediate risk to NAFTA (the administration's chances on appeal are rated highly), but as a precedent for judicial interference in other multinational treaties. It would be a sad day for Canada and Hong Kong, both of which depend on trade for their livelihood, if such a challenge succeeded in killing the comatose but essential GATT negotiations. ♦

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