PACIFIC RIM ADVISORY COUNCIL

OCTOBER 2004 e-BULLETIN

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Send member contributions to susan.iannetta@fmc-law.com on or before the 15th of each month

Visit the PRAC web site www.prac.org to view this edition and other information on line

CLAYTON UTZ Asia Pacific Region Product Liability Survey

Clayton Utz is undertaking a survey of product liability risks in the Asia Pacific region. Specifically, it seeks to examine the impact of legislative reforms in the area of product liability throughout the Asia Pacific region ("the Reforms") during the last 10 years.

The survey constitutes academic research and is being conducted by Clayton Utz Partner Jocelyn Kellam, the author of Product Liability Law in the Asia Pacific (2nd edition, Legal Books), in conjunction with Professor David Harland, former Emeritus Professor of Law at the University of Sydney and a consultant to Clayton Utz. The results are intended to be published in a legal journal.

At present, there is a general lack of information about product liability trends across the region. The purpose of the survey is to provide a quantitative analysis in relation to the following issues:

- To identify product liability trends which, with other sources of information, will assist Governments in determining whether there is any further need for law reform;
- To assist manufacturers with risk management;
- To assist insurers in setting premiums; and
- To provide a baseline to compare trends in the future.

A similar survey was undertaken in 2002 in the European Union to assess the impact in Europe of laws based upon the EC Directive on Product Liability, 1985. This survey is quite separate although it has been constructed to allow a direct comparison of results with the European survey.

A report will be published at the conclusion of the survey, a copy of which will be made available to you.

Please access the link below to find out more information on the survey and the version best suited to your industry.

www.claytonutz.com/surveys/ProductLiabilitySurvey.html

If you have any questions, please contact us by email at the following address: plsurvey@claytonutz.com

GOODSILL ANDERSON QUINN & STIFEL LLP NAMES NEW COUNSEL

Goodsill Anderson Quinn & Stifel LLP is pleased to announce KahBo Dye-Chiew and Natalie S. Hiu have been named the firm's newest Counsel.

KahBo Dye-Chiew concentrates her practice in the areas of immigration and nationality law. She represents foreign and local companies, assisting them in seeking classification as multinational corporations, treaty-investor companies and immigrant-investor companies pursuant to immigration law, and in maintaining appropriate immigrant or nonimmigrant employment-authorized visas for key employees. Dye-Chiew also handles all aspects of family related immigration matters, as well as real estate and business transactions involving immigration and nationiality law.

Natalie Hiu concentrates her practice in the areas of real estate transactions, business and commercial transactions. She advises clients in the negotiation and documentation of land acquisitions and sales, commercial leases, residential leasing issues, development matters, residential condominium development projects, land registration and real estate licensing issues. Hiu also assists in representing and advising multinational and local companies in corporate documentation, contract matters and various legal issues. In addition, she represents clients in dealings with City and County governments, including procurement matters, land use issues and proceedings befo re the Liquor Commission.

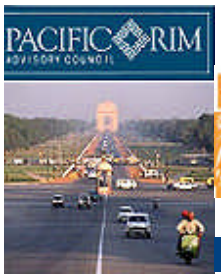
"We are pleased to name KahBo and Natalie as Counsel with Goodsill," said Miki Okumura, managing partner at Goodsill. "Each brings stature and experience in her area of expertise and we are certain that they will continue to provide tremendous support and service for our clients."

Dye-Chiew graduated magna cum laude from Wartburg College with a B.A. in economics, international business and political science and received her Juris Doctor degree from George Washington University. Originally from Malaysia, Dye-Chiew has personal experience in seeking immigration benefits. She initially entered the United States as a foreign student, applied for classification as a specialty occupation worker and became a citizen of the United States in April, 1999. She contributes more than fourteen years of experience in immigration law to Goodsill.

Hiu graduated from the University of Hawaii with a B.B.A. in business administration with an emphasis in travel industry management and received her Juris Doctor from the William S. Richardson School of Law at U.H. She rejoined the firm after working for three years with the City and County of Honolulu as a Deputy Corporation Counsel, where she handled real estate transactions and construction matters on behalf of the City and advised and represented the administration, the City Council and certain commissions on various matters. Hiu originally joined Goodsill in 1992.

About Goodsill Anderson Quinn & Stifel LLP
Goodsill Anderson Quinn & Stifel LLP traces its roots to 1878 and has grown from a one-man operation to a firm of more than 70 full-time attorneys. In keeping with client demands, Goodsill attorneys have a depth of knowledge and expertise in all of the traditional areas of civil law such as corporate law and securities, banking, real estate, tax, trusts and estates, international matters, public utilities and all types of civil litigation, and in specialized areas such as: health care, labor and employment, aviation, maritime, media, entertainment, environmental, administrative law, and technology.

For additional information visit our web site at www.goodsill.com



PRAC INDIA 2004 CONFERENCE

New Delhi / Agra October 30 - November 5, 2004

Hosted by Kochhar & Co.
New Delhi . INDIA

HOST FIRM MESSAGE

October 14, 2004

Dear PRAC Members,

It gives us great pleasure to host the 36th Pacific Rim Advisory Council Conference in New Delhi from 30th October to 3rd November, 2004 and a follow-on in Agra from 3rd November to 5th November, 2004.

We have endeavoured to prepare what we hope will be an interesting and exciting programme for all the delegates. Delhi, the capital of India, is a fascinating old and new city. For almost 3000 years, India has witnessed the rise and fall of various rulers - the Aryans, the Mauryas, the Guptas, the Turko-Afghan Slave Dynasty, the Mughals and the British - each of these rulers have left an indelible print on this historic city, the centre of power for much of this period. Delhi's culture, architecture and its cuisine reflects these various influences. We have attempted to prepare a programme that we hope would enable the delegates to experience some of these influences.

The business programme will cover multiple Practice Group meetings and include a Public Seminar on "International Finance", featuring guest and PRAC speakers and be attended by local industry leaders.

By now, all formal registrations have been received and confirmations are ongoing. For those of you requiring a visa letter, please request same from us at your earliest convenience (details below) .

This is the first time PRAC is coming to India and we are looking forward to welcoming you all to our country.

Host Committee:

Rohit Kochhar
Manjula Chawla

KOCHHAR & CO.
ADVOCATES & LEGAL CONSULTANTS

Please Send Visa Letter Request to rachna.advani@kochhar.com
Delegate Information available On Line @ PRAC Web Site www.prac.org

LOVELLS WINS EMPLOYER OF CHOICE AND MANAGING PARTNER OF THE YEAR AWARDS

October 5, 2004

Lovells won Employer of Choice and Managing Partner of the Year at the Asian Legal Business Awards presentation ceremony in Hong Kong on 24 September, 2004. The awards were presented in recognition of its employee care programmes and management.

In awarding Lovells Employer of Choice award it was recognised that Lovells is a caring, nurturing and supportive employer with an accommodating and friendly approach to staff. This has attracted some of the most distinguished lawyers to its team and continues to draw in the profession's top talents.

As an affirmation of Lovells' outstanding management, it also took home the Managing Partner of the Year Award - a testament to the management team led by Allan Leung, senior partner and Tim Hill, managing partner of the Hong Kong office.

Don Kelly, regional managing partner for Asia commented:

"I am delighted that we have won these awards. They are wonderful recognition of the achievements of the Hong Kong team. Ours is a people business: the members of our firm are our most valuable asset and we believe that our collaborative culture brings out the best in everyone. Allan, Tim and their colleagues put great emphasis on developing and caring for our people, and they in turn bring excellence to their work for our clients: it is a virtuous circle."

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Notes for editors:

? The winners of the Asian Business Awards 2004 were selected by an independent panel of judges after reviewing information submitted by the finalists along with a research report based on nominations from hundreds of senior in-house counsel and lawyers in practice.

? Lovells was also finalists in the banking, construction, intellectual property and structured finance/securitisation categories.

? Lovells is a leading international business law firm, with over 340 partners, 1,600 lawyers worldwide, and a total of more than 3,200 staff across 27 offices in Europe, Asia and North America.

? In Asia Lovells has 19 partners and over 100 lawyers based in its six regional offices.

? Lovells' Asian offices are: Hong Kong, Tokyo, Beijing, Ho Chi Minh City, Singapore and Shanghai.

WILMER CUTLER PICKERING HALE AND DORR GROWS CORPORATE DEPARTMENT

October 7, 2004

Thomas A. Beaudoin joined the firm's Corporate Department in its Boston office on October 7, 2004. Mr. Beaudoin is a nationally and internationally recognized expert in private equity and fund formation, governance and regulatory compliance.

Mr. Beaudoin has represented principals and investors in both US and non-US fund formation projects, internal governance issues, distributions and secondary transactions. He joins Wilmer Cutler Pickering Hale and Dorr after 15 years at Testa, Hurwitz & Thibeault LLP, where he was a partner and member of the Business Practice Group.

As a premier lawyer in the field of private equity and an active participant in the global and private equity community, Mr. Beaudoin is a frequent lecturer and panel participant at private equity industry-sponsored events both in the US and abroad. He also frequently writes for several prominent private equity publications.

Mr. Beaudoin received his B.A., *cum laude*, from Boston University in 1978 and his J.D., *with honors*, from The National Law Center, George Washington University in 1986. He is a member of the American, Boston and Massachusetts Bar Associations. Mr. Beaudoin is admitted to practice in Massachusetts.

For additional information visit our web site at www.wilmerhale.com

CLAYTON UTZ PLAYS PIVOTAL ROLE IN AUSTRALIAN RAIL INFRASTRUCTURE

Sydney, 20 September 2004: With the 'take up' by Australian Rail Track Corporation Ltd (ARTC) of the long term lease of the NSW Interstate Mainline and Hunter Valley rail freight corridors in early September, national law firm Clayton Utz has concluded another round of successful infrastructure activity.

Clayton Utz, led by partner Murray West, successfully advised on the signing of the historic $1.32 billion agreement between its client, the ARTC and the NSW and Commonwealth Governments. Under the agreement ARTC has taken a long term lease of the NSW mainline track and Hunter Valley rail freight corridors.

Mr West said the transaction provides the bedrock for the overhaul of the rail freight industry in Australia.

"It is historic in that it brings together the rail freight infrastructure in the states of NSW, Victoria, South Australia, Western Australia and Queensland under a 'one stop shop' access regime for the first time since those rail networks were established," Mr West said. "The agreement also underpins the re-organisation of the NSW rail organisations which was announced earlier this year," he continued. "The consequence of the transaction will be that the transport of interstate freight in Australia will shift significantly from road to rail."

The signing is the culmination of more than 2 and a half years of intense effort by the ARTC and Clayton Utz who acted on all legal aspects of the transaction which involved a range of NSW and Commonwealth government departments as well as relevant unions.

Mr West says the transaction was complex in its funding arrangements. "The agreement delivers a joint Australian and NSW Government funding package, and unlocks about $1.32 billion in federal funding for ARTC to be invested in the NSW rail freight network over the next five years. As part of the package ARTC will invest approximately $200 million into the south-western metropolitan network for the construction of a new 24 km freight line from Campbelltown to the Port of Botany. This will free-up additional capacity on the metropolitan passenger network."

Whilst much of the Clayton Utz activity was carried out by the Sydney Structured and Property Finance Group, the resources of other practice groups within the firm were also called upon to provide advice, particularly in relation to property, construction, environmental, planning, taxation, employment and superannuation, IP issues and other matters.

Although the bulk of the matter has now been completed Mr West says there will still be considerable activity in the next six months post completion of the transition stage.

For additional information visit www.claytonutz.com

HOGAN & HARTSON SUCCESSFULLY DEFENDS CHINESE BATTERY MANUFACTURERS AGAINST INDUSTRY GIANT; PREVAILS IN FEDERAL CIRCUIT APPEAL OF ITC'S LARGEST PATENT CASE EVER

WASHINGTON, October 5, 2004? Ensuring the vitality of nine Chinese battery manufacturers, Hogan & Hartson has successfully defended our clients against industry giant Eveready in a U.S. International Trade Commission proceeding. The Commission's decision, which ruled Eveready's patent 'indefinite and invalid', leaves our clients free to continue importing batteries to the United States.

The International Trade Commission announced October 1, 2004 that it has terminated Investigation No. 337-TA-493, In the Matter of Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same, finding that there is no violation. The Commission held that Eveready's U.S. Patent No. 5,464,709 (the "'709 patent") is invalid for indefiniteness. This determination effectively reverses the Initial Determination of The Honorable Charles Bullock that respondents, principally Chinese battery manufacturers, infringe the valid and enforceable claims of the Eveready patent, and his recommendation that the Commission issue a general exclusion order, barring importation of the allegedly infringing batteries.

Eveready previously had sued battery industry competitors Duracell, Rayovac, and Matsushita in separate federal court actions charging them with infringing the "709 patent". Each of the lawsuits was settled. According to Eveready itself, "many of the largest battery manufacturers in the world paid significant sums of money to Eveready to take a license" for the "709 patent". These licensees included Duracell, Rayovac, Matsushita, FDK, Gold Peak and Hitachi Maxell, among others.

Steve Hollman of Hogan & Hartson's D.C. office and William E. Thomson, Jr. and Wei-Ning Yang of the firm's Los Angeles office served as counsel on behalf of nine Chinese battery companies, through the China Battery Industry Association. Roy Zou, Jun Wei, Steve Robinson, and Jenny Duan of the Beijing office; Olga Berson, Yoncha Kundupolglu, Manuel Nelson, and Minda Schecter of the Los Angeles office; and Susan Cook, Jessica Ellsworth, Robert Wolinsky, Sarah Berger, Lisa Cylus, Steve Mitra, Michelle Morris, Rob Gruwell and Keefe Johnson of the D.C. office, also assisted in the litigation. This demonstrates the firm's ability to draw on legal resources around the globe in order to provide the best legal representation for our clients.

China is the largest supplier of non-rechargeable or primary batteries, providing more than 33 percent of the global battery output. Worth over $4 billion, the battery industry has been identified as a key development area by the central government and since 1999 has had an annual growth rate of 10 percent. Firm clients, Sichuan Changhong Electric Co., Ltd., Fujian Nanping Nanfu Battery Co., Golden Power Industries, Ltd., Guangdong Chaoan Zhenglong Enterprise Co., Ltd., Guangzhou Tiger Head Battery Group Co., Ltd., Hi-Watt Battery Industry Co., Ltd., Ningbo Baowang Battery Co., Ltd., Zhejiang 3-Turn Battery Co., Ltd., and Zhongyin (Ningbo) Battery Co., Ltd., are all members of the China Battery Industry Association, which has more than 280 members and over 40 companies that produce alkaline batteries. These companies all are based in the People's Republic of China, with seven headquartered on the mainland and two in Hong Kong.

WASHINGTON, October 1, 2004 — Hogan & Hartson intellectual property litigators Morris Waisbrot, William F. Haigney, and Douglas A. Donofrio have won a significant victory in an appeal of what was reportedly the largest patent case ever brought before the International Trade Commission. The appeal was prosecuted on behalf of Gemstar-TV Guide, International.

On September 15, 2004, the Court of Appeals for the Federal Circuit ruled that the ITC had erred in construing the claims of two Gemstar patents relating to the company's Interactive Program Guide (IPG) technology. Although the Federal Circuit rarely overturns ITC decisions, in this instance the Court held that the ITC had misconstrued all four disputed claim terms of one patent and both disputed claim terms of another. As a result, the Court vacated the ITC's rulings that intervenor Scientific-Atlanta, Inc., did not infringe the two patents. The Court also reversed the ITC's ruling that one of the patents was unenforceable for failure to name a co-inventor. In addition to reviving Gemstar's infringement claims in the ITC, the Federal Circuit's decision paves the way for Gemstar to pursue substantial infringement awards in pending private actions involving these two patents.

Hogan & Hartson, which is national patent litigation counsel for Gemstar-TV Guide, also represented the company in the ITC action and in private actions against Pioneer Corporation and EchoStar Communications Corporation. All of those litigations were settled earlier this year on confidential terms, but it was publicly reported that Gemstar-TV Guide would be receiving more than $200 million.

The intervenors in the ITC action were represented by a cadre of more than 150 lawyers from, among others, Kirkland & Ellis, King & Spalding, Morrison & Foerster, and a number of boutique IP/ITC firms.

The Hogan team is currently representing Gemstar in six other patent cases.

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SIMPSON GRIERSON and CLAYTON UTZ Assist Origin Energy on bid for New Zealand's Contact Energy

Clayton Utz and Simpson Grierson are assisting Origin Energy on its bid for New Zealand's Contact Energy.

Sydney partner Graham Taylor is advising Origin on the Australian aspects of the bid, with Peter Hinton and Richard Nelson of Simpson Grierson advising on the New Zealand law issues.

Origin Energy agreed in July to acquire Edison International's 51% stake in Contact Energy. According to the ASX, it will offer $NZ5.57 ($5.24) a share to all remaining Contact shareholders from September 24, with the offer period remaining open until October 26.

The offer values Wellington-based Contact at NZ3.2bn.

For additional information visit Simpson Grierson at www.simpsongrierson.com or Clayton Utz at www.claytonutz.com

ARGENTINA – Allende & Brea – Requirements for Preferential Tax Treatment of Public Debt Offerings

The Argentine Securities Commission (Comisión Nacional de Valores, or "CNV") and the Tax Authority (Administración Federal de Ingresos Públicos, or "AFIP") have issued a joint resolution regulating, among other things, the requirements for achieving preferential tax treatment in public offerings of debt securities (either corporate bonds or debt instruments issued by financial trusts). Even though the preferential treatment (mostly referring to VAT and income tax exemptions) had been granted by specific laws in the 90s aimed at boosting capital markets in Argentina, the interpretation of what constituted a "placement of securities through a public offering mechanism" was the subject of many arguments. Moreover, the AFIP had lately questioned the use of these tax benefits by several corporations in past years, on the grounds that no actual placement efforts were undertaken at the time of selling the securities.

The resolution, which bears number 470 for the CNV and 1,738 for the AFIP (the "Joint Resolution") was published in the Official Gazette on September 14, 2004, and is effective starting one day after publication. The Joint Resolution establishes a number of requirements and specifications for public offerings of debt, concerning placement method, subscription period, publicity of the offer, minimum subscription amount, use of proceeds, prospectus disclosure, underwriting agreements, allocation of offers and debt restructuring schemes.

The most relevant aspects may be summarized as follows:

1. n offerings made in connection with a debt restructuring, the tax benefits enjoyed by the original bonds will pass to the new bonds only to the extent they are subscribed by the same holders of the bonds being replaced.

2. When debt offerings are placed through a "book building" system, the following requirements apply:

2.1 A definitive prospectus must be published.

2.2 An invitation for acquisition of the securities must be published for at least 9 days, including information on the reference price or the parameters that will be used for determining the final price. Non-binding offers (called "expressions of interest") may be received during this period.

2.3 A special computerized record must be maintained with all expressions of interest received, detailing potential investor, date and time of the contact, amount of securities, offered price and other relevant data.

2.4 In order to purchase the securities, the investors who have expressed their interest must ratify their offer in the subscription period, which may be as short as one day.

3. Other placement mechanisms may be accepted by the CNV, as long as they guarantee transparency and equal treatment among investors. In such cases, the subscription period must be open for at least 5 days.

4. When the debt offering is also directed to foreign markets, it will be considered a "public offering" for Argentine law purposes (and independently of foreign legislation requirements or categorization) as long as the issuer or the placement agent undertake "effective placement efforts," and such efforts are described in detail in the prospectus.

5. If an underwriting agreement has been executed, the issue will be considered as a placement through public offering for tax purposes if the placement agent has made a "public offering" in accordance with Argentine law requirements (in particular, Law 17,811). The placement agent shall evidence in writing to the issuer the placement procedures used, as well as its specific expertise and professional qualifications for placement of securities.

6. Minimum subscription amount shall not exceed AR$10,000, or its equivalent in foreign currencies, except for certain debt securities issued by banks, in which case the minimum amount is AR$100,000.

7. In case of oversubscription, a system for proportional allocation among the offers must be observed, in which no offer may be excluded.

8. The offer prospectus must describe the placement mechanism and efforts to be undertaken, and provide a detailed discussion of the use of proceeds from the issue.

Alll of these All of these requirements must be met in order to benefit from the preferential tax treatment granted by Law. However, it is yet uncertain to what extent the requirements will be applied (or used as general guidelines) by AFIP in its review of placements completed before publication of the Joint Resolution.

For additional information visit www.allendebrea.com.ar

Tozzini Freire Teixeira e Silva Advogados

TFTS News

No. 22/2004

August 17, 2004

Tax Matters and Capital Markets

Latest Issues

- Brazil: New Regulations on the Issuance of Debt Securities Denominated in Brazilian Currency
- Brazil: New Bankruptcy Law Bill Approved in the Senate
- Compliance Review in Brazil
- Energy in Brazil – Investment Opportunity New Energy Transmission Lines

BRAZIL: CHANGES IN TAXATION OF FINANCIAL AND CAPITAL MARKETS

The recent edition of Provisional Measure no. 206, of August 6, 2004 ("MP 206") introduced important changes in taxation of financial and capital markets, to be enforced as of January 1st, 2005.

Fixed yield investments: MP 206 established different rates of withholding income tax, depending on the term of the investment:

Term of Investment	Rate
Up to 6 months	22.5%
From 6 to 12 months	20.0%
From 12 to 24 months	17.5%
More than 24 months	15.0%

Investment Funds: investment fund in which at least 67% of its portfolio is formed by stocks negotiated in spot markets of Brazilian Stock Exchange will benefit from reduction of withholding income tax from 20% to 15%.

Variable Yield Investments: these investments, which comprise transactions carried out in Brazilian stock, futures, commodities or similar exchanges (including over-the-counter market of stocks, gold or other securities), will also benefit from reduction of income tax from 20% to 15%, except in relation to day-trade transactions.

These investments will also be subject to withholding income tax of 0,005%, to be withheld and collected by the intermediary in the operations (financial institution; stock, futures or commodities exchange; clearing houses). This withholding tax can be offset against the 15% income tax mentioned in the previous paragraph.

Exemption for Individuals: (i) on transactions in which their total value, in each month, does not exceed R$ 20,000; (ii) on income arising from certificates of real estate receivables ("certificado de recebíveis imobiliários"), real estate credit notes ("letra de crédito imobiliário"), and mortgage-backed security ("letra hipotecária").

Foreign Investors: MP 206 expressly maintains the tax benefits granted to foreign investors registered under the regime of Resolution no. 2,689 (exemption of income tax on transactions carried out in Brazilian Exchanges and reduction of income tax to 10% on variable yield income, or 15% on any other income), which are applicable only to those foreign investors who are not resident in a tax haven jurisdiction. Foreign investors not registered as so, or residing in a tax haven jurisdiction will be subject to the same rules of taxation applicable to Brazilian individuals in their investments in Brazilian financial and capital markets.

Taxation of financial income by Taxes on Total Revenues ("PIS" and "COFINS"): Since August 2nd, it is applicable a reduction from 9.25% to zero of PIS and COFINS levied on financial income obtained by Brazilian companies adopting the non-cumulative system to calculate those taxes.

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King & Wood China Bulletin

October 2004

Highlights of Recent Developments in International Trade Law Concerning China

*By: Susan Ning and Scott Liu**

China has become one of the world's most important traders since it adopted the "open door" policy. In 2003, China's trade volume surged, ranking it fourth in the world behind the United States, Germany and Japan. Naturally, this sharp rise raises certain concerns with China's trading partners. Practitioners and commentators are often quick to label China as an "unfair trader" or "protectionist economy" before examining the actual facts and figures. However, it is easy to overlook the fundamental reality that liberal trade is fully in compliance with China's interest, which is commensurate with its current level of development. China intends to continue its support for the current WTO regime and implement liberal trade policy. We expect that China will soon become an active force in shaping the rules for global trade, especially liberal global trade.

To celebrate China's National Day of October 1st, we highlight some recent developments in international trade law concerning China.

I. Elimination of Textile Quota in 2005

The Agreement on Textiles and Clothing ("ATC") will end on January 1, 2005, which marks a full integration of textile trade back to the GATT regime. India, Pakistan, and China support the end of ATC. During the Uruguay Round Negotiations, developing countries insisted that integration of textile trade was a condition to the acceptance of disciplines with regard to both intellectual property protection and trade in services. Recognized as a one-time agreement, the last sentence of the ATC states "[t]here shall be no extension of this Agreement." Two groups of WTO Members now seek to extend the quota system under the ATC. The first group consists of developed countries, represented by the United States and the European Union. The governments of this group are under significant pressures from their domestic producers to extend the ATC as long as possible to sustain their profitability. The second group consists of low-income developing countries, which depend heavily on textile trade. If the quota system is eliminated, these countries will likely see their market share in the textile trade decline significantly.

The United States' official stance regarding the elimination of the quota system is still positive. Although a formal notification on quota elimination has been filed with the WTO, two new trends are emerging. First, the United States has made several attempts to reach a bilateral deal on textile trade with China, which would require China to voluntarily restrict her own textile export. To date, all public records indicate that the Chinese government expresses no interest in negotiating such a covenant with the United States. Second,

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US domestic textile producers recently spent significant lobbying efforts to put pressure on the US government to impose "threat-based" textile safeguard measures. There is some dispute among US officials on whether a modification of current US law is necessary in order to use "threat-based" measures.

In contrast to the US practice, the European Union tends to favor the use of antidumping measures against imported Chinese textile products. Early this year, the European Commission accepted a petition against 35 kinds of polyester filament apparel fabrics from China.

II. Export Restraint of Coke Coal

Coke Coal is one of the key inputs of iron and steel production. Due to restrictive environmental regulations, the production of coke coal in many developed countries is either cost-inefficient or, in fact, prohibited. Thus, the majority of the world's steel production is fed by Chinese coke. In 2003, China produced about 180 million metric tons of coke, which accounted for 45% of worldwide coke production. In the same year, China exported 14.75 million tons of coke, which accounted 60% of worldwide export. However, Chinese export of coke was subject to trade barriers of many jurisdictions by 2003. For example, the European Union and India imposed antidumping duties on Chinese coke. Ironically, due to the skyrocketing levels of steel production last year, the European Union not only lifted those restrictions on Chinese coke imports but also vigorously challenged China's export restraint regime. The European Union demanded that China to supply EU steel producers with 4.5 million tons of coke or else the EU would institute a WTO complaint about the Chinese export quota system.

III. Non-market Economy Status

Granting China "market economy status" is probably the best gift a WTO member state can give to the current Ministry of Commerce of China. The Ministry of Commerce is actively soliciting this status from many of its key counterparts. More than twenty nations, including the New Zealand and ASEAN members, have recognized that China meets the requirements of a market economy. However, the United States and the European Union are still reluctant to follow suit. Actually, only the recognition by these two jurisdictions makes sense because they use the so-called non-market economy ("NME") methodology in dealing with Chinese exports in antidumping proceedings. It is a common knowledge that, under the NME methodology, the investigating authority may use analogue country's data to calculate the normal value of Chinese products for purposes of determining antidumping duties. However, it also means much more. For instance, under US law, the "all other" rate for market economy countries is a weighted average margin of those respondents that have been individually investigated. On the contrary, Chinese exporters have to overcome the so-called "Chinese entity" or "Chinese enterprise" presumption to avoid the highest rate of antidumping duty. Otherwise, they have to suffer the all-other "country wide" rate, which is either the highest rate applicable to the cooperative respondents or the best information available ("BIA") rate, whichever is higher.

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IV. The Issue of the Antidumping Duty Collection Loophole in the United States

The 2003 Annual Report of the Customs and Border Protection on Byrd Amendment Implementation discloses a big loophole in antidumping duty collection process. According to this report, the US Customs and Border Protection ("CBP") should have collected US $320 million in antidumping duties, of which only $190 million was actually collected. That means the CBP failed to collect $130 million, which, according to the Byrd Amendment, should have been distributed to the domestic industries supporting those antidumping petitions. These Industries forcefully blame the CBP of its failure.

The so-called loophole rests in the "new exporter review" procedure. According to the relevant provision of the Uruguay Round Agreement Act ("URAA"), importers have an option to post a bond for importation of merchandise from new exporters who did not export the merchandise under investigation to the United States during the period of investigation ("POI"). In order to take advantage of this provision, existing exporters established new exporting entities in the exporting country. Many new exporters are thus alleged to have disguised connections with existing exporters, who are subject to high antidumping duties. Importers, by providing a cheap bond, which may cost pennies to the dollar, are able to import a massive amount of product. After sufficient importation transactions were made, importers or bond issuers may file for bankruptcy in order to avoid payment of the anti-dumping duty balance.

This issue concerns the Chinese legal community because the report indicates that $104 million out of the $130 in uncollected duties relate to Chinese imports. Thus, Chinese trade lawyers in particular, are concerned with the possibility that the United States will adopt discriminatory measures against future Chinese imports. United States Senators Thad Cochran and Robert Byrd introduced a new amendment bill, S.2425 to the Senate on May 14, 2004, asking for the exclusion of the bond option for new exporter review. Despite the fact that China was not named in the bill, the Department of Commerce may have imposed discriminatory deposit rates against new Chinese exporters.

Is there a real loophole in the new exporter review procedure? Perhaps, but it may far less significant than claimed. We has examined the data on those uncollected duties and discovered that of the 103 cases involved, only 24 relate to Chinese imports. Significantly, $85.4 million of uncollected duties stem from a single case, "crawfish tail meat from China." We also examined the database of the US International Trade Commission, which indicates that the total value of imported crawfish under HTS 0306.1900.10 and 0306.2900.00 was about US $2.5 million in 2003. Even if the maximum rate of antidumping duty were as high as 223%, the uncollected duty could not exceed $5.6 million. The $85.4 million figure could be a typo in the Annual Report, which is not only troubling to the Customs and Border Protection ("CBP") but also to Chinese importers. Unfortunately, China does not have a voice in the United States.

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V. Other Issues

Many other issues are within our sight. Currency and intellectual property rights, inter alia, are still hot topics within the trade law community. US industry groups actively seek Super 301 measures against Chinese products claiming that the "tagging dollar" policy is an unfair trade practice by the Chinese government. The reasoning is that the Chinese government's alleged failure of enforcement of intellectual property rights is a deliberate method to distort trade and infringe US interests. The US Trade Representative, on behalf of the US government, quickly rejected the claims. However, in late September, the US government circulated a questionnaire to the US industry groups to solicit information about their losses resulting from intellectual property rights infringement in China.

Every country has her own path to development. As a new player in the international trade community, China's participation in regulating the trade order, complying with the existing rules, progress with the development in trade relationship will definitely contribute to the benefit of international community.

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UNITED STATES – Davis Wright Tremaine LLP – New Law Permits Washington State Non Profit Corporation to Use Electronic Communication

New Washington state legislation (ESB 6188) effective June 10, 2004, permits corporations formed under Washington's Nonprofit Corporation Act (the "Act") to use electronic communication for notices, consents, waivers, and other corporate acts. The provisions parallel recent amendments to Washington's Business Corporation Act. These amendments permit nonprofit organizations to make cost-effective use of efficient email and Internet technology.

To take advantage of these new tools, many nonprofit organizations will need to amend their bylaws.

Highlights of what the new law permits

- Directors and members may now receive notices of meetings by electronic transmission, if they consent to do so.
- Members may now receive notices of meetings by fax.
- Where permitted by an organization's bylaws, members may conduct elections by mail or by electronic transmission. The corporation must set forth in a record accompanying the meeting notice the name of each candidate and the text of each proposal to be voted upon, and designate an address, location or system to which the member may electronically transmit the ballot.
- Corporations may give notice of a meeting by posting notice on an electronic bulletin board or website if the corporation delivers a separate record of the posting, with details on how to access the posting, to the members or directors who are invited to attend the meeting.
- For membership organizations that permit voting by proxy, members may submit electronic proxies.
- Directors and members may use electronic transmissions to execute written consents, rather than a manual signature, provided that the transmission provides sufficient information to determine the sender's identity.
- Where the Secretary of State's rules permit, the amendments change filing requirements to accommodate electronic filing of records with the Secretary of State.

Because technology advances at a rapid pace, the Act does not refer to the "Internet," "websites," or "email." Instead, the amendments define "electronic transmission" as a communication not directly involving the physical transfer of a record in a tangible medium, in a communication that may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by a sender and recipient.

What the new law does not permit

The new law does not change underlying substantive principles regarding board meetings and the need for directors to discuss any issues where there is not unanimous agreement. Specifically:

- Directors may not vote by proxy.
- An "email" vote by directors that is not unanimous is not a valid action of the board.

A quorum of directors must be present to hear one another's views at a meeting or telephone conference; or directors may act by unanimous written consent, including unanimous consents by email.

Prior consent to receive electronic transmissions and other protections

The amendments incorporate a variety of protections regarding the use of electronic communication. Organizations, directors and members are not *required* to use electronic communications.

Members and directors must consent to receive electronically transmitted notices and must provide direction on the address to which such transmission should be sent and the format in which it must be transmitted. Without such prior consent, electronic notice is not effective. A member or director may revoke his or her consent at any time. The consent is presumed revoked if there is a failure to transmit two consecutive notices and the person responsible for transmitting the notice is aware of the failure. If the corporation inadvertently does not treat such a failure as a revocation, however, the corporate action is not invalidated.

The definition of "electronic transmission" has safeguards as well. A record is not electronically transmitted within the meaning of the Act unless both the sender and the recipient can retain, retrieve, review and reproduce the communication.

Welcome news

The amendments were drafted by the Nonprofit Corporations Committee of the Washington State Bar Association Business Law Section with input from the Attorney General's Office and the Secretary of State's Office. The Act's amendments will pave the way for the Secretary of State's Office to develop more efficient on-line filing systems. In general, the Act's amendments are a welcome validation to practices that were already prevalent among many of our state's 45,000 nonprofit organizations.

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This TEO Advisory Bulletin is a publication of the Tax-Exempt Organizations Practice Group of Davis Wright Tremaine LLP, under the supervision of LaVerne Woods, Editor. Our purpose in publishing this Advisory is to inform our clients and friends of recent developments in tax-exempt and nonprofit organizations law. It is not intended, nor should it be used, as a substitute for specific legal advice as legal counsel may be given only in response to inquiries regarding particular situations

update

International Trade

September 2004

WTO Arbitrator Authorizes Retaliation Against the United States for Byrd Amendment Violations

On August 31, 2004, a World Trade Organization (WTO) arbitrator issued a decision authorizing the retaliation against U.S. exports for failure to bring the Continued Dumping and Subsidy Offset Act (the Byrd Amendment) into compliance with WTO rules. The arbitrator ruled on requests from the EU and seven countries (Brazil, Canada, Chile, India, Japan, Korea, and Mexico) to determine the amount of trade damage to those countries from the Byrd Amendment.

The requesting countries argued that the amount of the distributions was the appropriate measure of the trade harm. By contrast, the United States argued that there was no ascertainable trade effect, which means no retaliation would be appropriate.

The arbitrator largely sided with the requesting countries, ruling that the countries could use the Byrd Amendment distributions to calculate the amount of retaliation; but less than 100 percent of the Byrd Amendment distributions was the appropriate measure. Based on economic models supplied by the parties, the arbitrator set the damage at 72 percent of the distributions on a country-by-country basis for a given year. If Byrd Amendment distributions increase, the amount of retaliation may increase in proportion.

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Analysis

The ruling authorizes the eight WTO members asking for the right to retaliate against the United States for failure to implement the Byrd Amendment decision to take action at any time, but retaliation is not imminent. European Union Trade Commissioner Pascal Lamy, for one, indicated that retaliation is not desirable and that the EU would much prefer the repeal of the law. The Japanese Ministry of Economy Trade, and Industry minister issued a similar statement.

The ruling creates a significant incentive for the United States to repeal or fundamentally alter the Byrd Amendment or face significant retaliation. However, the law is extremely popular in the U.S. Congress because government payouts of millions of dollars are involved for powerful constituents in the manufacturing belt.

The authorized retaliation is somewhat less than the requesting parties asked for, but not significantly less. Other complaining parties (Thailand, Indonesia, and Australia) may retaliate after December 27, 2004. Securing repeal of the Byrd Amendment will require credible threats of retaliation from those trading partners, plus active cooperation from U.S. constituencies. Repeal is not likely until next year at the earliest.

Please contact the Hogan & Hartson attorney with whom you work or the attorney listed below if you have any questions or would like additional information about these new developments.

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