FOREIGN AND INTERNATIONAL

U.S. SUPREME COURT UNMOVED BY CANADIAN GOVERNMENT BRIEF ON URANIUM MARKETING

The United States Supreme Court has refused to hear an appeal by General Atomic Company against a decision by a New Mexico court that G.A.C. was in default for failing to produce uranium documents housed in Canada (General Atomic Company v. United Nuclear Corporation, NO. 80-1360, April 20, 1981). The Canadian Government had filed a brief as amicus curiae calling for a judgment by the Supreme Court to resolve issues of international law and comity concerning the propriety of assertions by U.S. courts of jurisdiction over actions by Canadian uranium producers outside the United States and in accordance with the Canadian law and policy.

The case concerns a suit by United Nuclear over uranium supply contracts with G.A.C., in which company Gulf Oil Corporation has a partnership. United alleged monopolization by G.A.C., and subsequently added a charge relating to Gulf's part in the international uranium marketing arrangements. The New Mexico trial court entered a default judgment because of Gulf's failure to produce document's housed in Canada relating to the cartel. United's efforts to discover the documents began before the passage of the Canadian Uranium Information Security Regulations. In March, 1980, the Supreme Court of Canada rejected an application by Gulf which would have authorized it to produce the documents. The New Mexico trial court, whose decision was affirmed by the New Mexico Supreme Court, took the view that Gulf had kept the documents in Canada deliberately to prevent discovery, and that the extent to which Gulf's actions flowed from Canadian acts of state could not be determined without the documents.

The Canadian brief, while recognizing the appropriateness of judicial inquiry into allegations of conduct going beyond the Canadian government's involvement, stated in part:

> "In the Canadian Government's view, it is highly objectionable that actions of the Canadian uranium industry, taken outside the United States in accordance with Canadian law and in response to its declared national policy, should give rise to judicial inquiry in the United States and to possible liability under United States law. It is likewise objectionable for courts in the United States to impose discovery and sanctions orders the effect of which is to compel persons to produce documents from Canada contrary to Canadian criminal law or to face massive default judgments. Such actions by courts in the United States are inconsistent with firmly established doctrines of comity and international law, and cannot but have deleterious effects upon the relations of the two countries.

> "Canada was endeavored to inform the various courts in the U.S. in which these issues are presented of its role in the international uranium marketing arrangement, and to describe the scope of Canadian laws, policies and actions respecting regulation of its uranium trade. This was first done by diplomatic notes; thereafter, on the advice of the State Department resulting from the guidance of this Court, such representations have taken the form of amicus filings. Regrettably, the courts have failed to fully consider and to accord appropriate weight to Canada's official statements. Supreme Court guidance is called for on the jurisdictional issues presented by this appeal, on the propriety of judicial sanctions for non-production of documents because of prohibition of foreign law, and on the deference to be accorded official statements of a friendly foreign government.
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> "The courts appear to assume that the lack of Executive Branch comment indicates either lack of interest or lack of importance of the foreign government's views and thus lack of a foreign relations dimension. This suggeststst that the Court should consider encouraging the United States Government to resume its position of intermediary for the presentation of the views of foreign governments and should comment upon the foreign policy implications of the views so presented."

There are several other proceedings pending in which U.S. courts will be asked to inquire into the international uranium marketing arrangements and in which similar jurisdictional issues will arise. However, out-of-court settlements have now terminated the direct involvement of Canadian uranium producers in the uranium cases. The last of the settlements reached were in March when Rio Algom, Noranda and Dennison settled with Westinghouse and Tennessee Valley Authority. Those two cases, which still involve other defendants, are scheduled for trial in Chicago next September.

U.S. CONGRESS DEBATES MEASURES TO ENCOURAGE EXPORT TRADING FIRMS

The U.S. Senate approved Bill S. 734 on April 8. The bill would protect export trading companies approved by the Department of Commerce from being sued under the antitrust laws. It would also allow banks, presumably including Canadian banks, to participate financially in export trading companies. The bill has been sent to the House of Representatives, but action on it is considered unlikely until 1982. The House of Representatives also has under consideration its own bill, H.R. 2326. The exemption proposed in the latter bill is more limited.