TRANSFER PRICING

Outline – Krishen Mehta

1. Important that we try to understand the perspective of the multinational companies on the subject of transfer pricing if we are to have a constructive dialogue on this subject.

2. The seriousness of the situation is very clear: Transfer mispricing can result in capital outflows from developing countries. Such outflows have a direct effect on economic deprivation. And, as we know, there is a clear connection between economic deprivation and human rights.

3. Supreme Court Ruling, US vs Pasquantino provides judicial guidance, which was originally argued in a case involving customs duties, also effects transfer mispricing. This makes the situation even more serious.

4. Review of transfer pricing rules in Russia, China, OECD countries, Mexico, Argentina, Brazil, Asia, and Africa - Basically, the rules are all across the board, and are complex.

5. Recommendations for us to consider:

(a) For countries that have no transfer pricing rules, adopt the OECD guidelines,

(b) Need for countries to accept that Intellectual Property has a price that needs to be paid, if investment is to be obtained in exchange.

(c) Adoption of country-by-country reporting for industries sensitive to transfer pricing, such as the extractive industries,

(d) Need for countries to be smarter about their natural resources,

(e) Merit to good negotiations between countries and MNC's that can override the transfer pricing rules.

(f) Need for Responsible Tax Advising, important role of accountants and lawyers on tranfer pricing advice.