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Campaign Finance Reform – Russian Federation

Embryo Research – France

Human Trafficking – Lithuania

Internet & Copyright Infringement – Germany, Taiwan

PLUS:

NEW FOREIGN LAW ISSUE BRIEFS:

Capital Punishment in Foreign and International Law

Health Care—Recent Legal Developments in Japan

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WLB, No. 2001.08

***The* WORLD LAW**

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EUROPE

Czech Republic–Law against defacers of property

France–Embryo research

Georgia–Tax reforms

Germany–Internet and copyright infringements

Lithuania–Measures to stop human trafficking

Russia–Campaign finance reform

–Land reform

SOUTH PACIFIC

Australia–Law online

–Subsidized Viagra?

INT’L LAW & ORGANIZATIONS

China/Russia–Friendship treaty

China/US, EU–WTO-related agreements reached

GUAM Agreement formalized

PLUS: Law Library product listings & a bibliography of items from the United Kingdom available through the Law Library.

Feature:

! WTO–update

Table of Contents

AMERICAS

Mexico–Environment in federal offices

ASIA

Cambodia–Legislation for Khmer Rouge trial

China–Foreign firms’ listing on stock market

–Tobacco suit rejected

Hong Kong–Right of abode

–Chief Executive election

Japan–Compensation for forced laborer

Taiwan–Financial reform measures

–Internet ruling

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AMERICAS

MEXICO—Environment in Federal Offices

On March 8, 2001, the Mexican government issued an Accord establishing guidelines and general strategies for better environmental management of offices in agencies of the federal government. The Accord also states that in their endeavors federal agencies must not harm the ecology, the soil, national waters, forests, wildlife, biodiversity, or natural resources of Mexico. (*Diario Oficial*, Mar. 15, 2001).

The bulk of the Accord refers to the environment in public office spaces. It aims to instill in public servants a culture of conservation, especially of drinking water, and to diminish the amount of solid wastes disposed of by workers in each agency. It suggests that agencies should establish conservation goals for workers. It also sets forth criteria for federal agencies to use in monitoring the eco-friendliness of the bureaucracy towards the environment and in compiling annual surveys. The criteria include: statistics on the amount of water consumed; volume of paper consumed; volume of paper used for photocopying; number of employees with access to the Internet; and number of tons of solid wastes generated. The Secretariat of the Environment and Natural Resources must make available to agencies technical assistance and electronic means to report their findings.

[GLIN] (Sandra Sawicki, 7-9819)

ASIA

CAMBODIA—Legislation for Khmer Rouge Trial

On July 11, 2001, the National Assembly of Cambodia passed legislation necessary for holding a tribunal to prosecute former leaders of the Khmer Rouge. Although the approval of the Senate and of King Norodom Sihanouk is

still required, neither is expected to block the legislation's final passage. Once the law has been adopted, it will also be necessary for the United Nations to sign a memorandum of understanding with the Cambodian government in order for the tribunal to take place. The Cambodian Parliament had passed the tribunal legislation in January-February 2001, but the Constitutional Council then objected on February 12 to references in it to the 1956 penal code, which refers to the death penalty, abolished in Cambodia a decade ago.

It is expected that some of the senior leaders of the former Pol Pot regime, including Pol Pot's army chief of staff Ta Mok and former national security chief Kang Kek Ieu, now in jail, will face the tribunal. There is ongoing debate as to whether "brother number two" Nuon Chea (Pol Pot, "brother number one," died in April 1998), former Prime Minister Khieu Sampan, and former Foreign Minister Ieng Sary should be tried. Ieng Sary defected from the Khmer Rouge in 1996 and was granted a royal pardon by King Sihanouk. (Hong Kong AFP, July 11, 2001, via FBIS.)
(W. Zeldin, 7-9832)

CHINA—Foreign Firms' Listing on Stock Market

The Ministry of Foreign Trade and Economic Cooperation (MOFTEC) issued a circular in May that allows foreign-invested joint stock enterprises in China to apply for "A" or "B"-shares issuance, implying that foreign limited companies may list on the domestic market. The domestic A-share market heretofore has been reserved for domestic investors only. (The B-share market is primarily for foreign investors, but as of Feb. 19, 2001, domestic individual investors were permitted to engage in B-share trading ("Come on in: China Opens B-Share Market," <http://www.chinaonline.com>, Feb. 20, 2001).) Once specific operating rules have been worked out it is expected that there will be listings of the foreign firms. The first regulation of its kind,

the circular “has been hailed by experts as a major step forward by the Chinese government to open up the domestic market to overseas investors” (“PRC Drafting Rules To Allow Overseas-Invested Firms To Be Listed on Stock Market,” *China Daily*, July 17, 2001, via FBIS).

(W. Zeldin, 7-9832)

CHINA–Tobacco Suit Rejected

The Xuanwu District Court, a local court in Beijing, rejected a lawsuit brought by a teenager against a tobacco company. According to Tong Lihua, the lawyer for the plaintiff, the case concerns a child addicted to nicotine from the age of 13. The teenager claims that the tobacco company should have warned the public of the risks of smoking when they advertised tobacco products on the Internet. The suit is seeking an order forcing tobacco companies to post health warnings on their Internet sites. The Court cited a lack of jurisdiction when it refused to hear the case.

Tong said an appeal would go to the Beijing Intermediate People’s Court. He claimed that “The case is sensitive. The tobacco industry is rich and powerful in China.” Tobacco is a large source of revenue for the government via taxation. In the year 2000, Hongtashan, a single large company, paid 12 billion *yuan* in taxes (about US\$1.5 billion). (*China News Digest* Weekly e-mail edition, July 6, 2001). (Constance A. Johnson, 7-9829)

HONG KONG–Right of Abode

On July 20, 2001, the Court of Final Appeal (CFA) handed down rulings in three test cases concerning the right of abode in the Hong Kong Special Administrative Region (SAR).

- In the landmark case involving Chong Fung-yuen, a child (now three years old) born in Hong Kong while the mainland China parents

were visiting on two-way permits, the Court unanimously ruled that SAR-born children of mainlanders did qualify for the right of abode. This effectively grants that right to 2,200 children born in the SAR to Mainland parents, and, according to Secretary for Security Regina Ip, may lead to future immigration problems if the number of mainlanders who try to enter Hong Kong to give birth increases. (“China: Abode Appeal to Beijing Ruled Out,” *South China Morning Post*, July 22, 2001, at 1, via FBIS, July 23, 2001.)

- In another landmark case, the Court ruled by a 4-1 majority that adopted children of permanent residents did not qualify for the right of abode. It is unclear, however, whether the three claimants in the case will be sent back to the Mainland; the Director of Immigration has the discretion to enforce the removal order or to allow the claimants to stay in Hong Kong on humanitarian grounds. There are reportedly 8,000 plaintiffs in residency cases that have yet to be decided by the Hong Kong courts. (“No Hong Kong Residency for Adopted Children,” UPI, July 20, 2001, via LEXIS/NEXIS.)

Although the end result of the Chong case and that of the adoptive children differed, in the view of legal observers the Court’s reasoning was legally consistent. In both judgments, the Court found the language in the relevant articles of the Basic Law to be unambiguous about who qualified for abode: Chinese citizens (persons of whom at least one parent is a Chinese national) born in Hong Kong before or after the establishment of the HKSAR have the right of abode (art. 24, para. 2, item 1). (www.hk-imaail.singtao.com, July 21, 2001.) (See also WLB2000.01-3a, 2000.08-6a)

- In a third case, concerning the issue of whether or not a prison term in Hong Kong could count towards the required period of continuous residency for the right of abode, the Court found that it cannot; that non-Chinese citizens must be

ordinarily resident in Hong Kong for seven years immediately before applying for permanent residence. (*Id.*; Hong Kong RTHK Radio 3, July 20, 2001, via FBIS.)

In other developments, the Court of Final Appeal ruled in June that non-permanent residents do not lose their right to remain in Hong Kong just by leaving the SAR. The judgment reportedly might affect a million people in Hong Kong (Hong Kong RTHK Radio 3, June 29, 2001, via FBIS). On June 27, 2001, the Legislative Council passed an amendment to the Immigration Ordinance to the effect that children born out of wedlock in Mainland China to Hong Kong permanent residents may be required to take DNA tests at specified laboratories to prove their relationship with the parents. (“Law Amendment May Require Abode Seekers To Undergo DNA Testing,” *China Daily*, June 28, 2001, via FBIS.) (W. Zeldin, 7-9832)

HONG KONG—Chief Executive Election

On July 11, 2001, the Legislative Council passed the Chief Executive Election Bill. It was formulated on the basis of the Basic Law, Hong Kong’s “mini-Constitution” and sets forth the term of office (five years, with eligibility for re-election for one additional term), the election of the Chief Executive in March 2002, the composition of the Election Committee, the ballot date, and nomination. Subsidiary legislation is also being drafted (“Hong Kong Legislative Council Passes Chief Executive Election Bill,” *Xinhua*, July 11, 2001; “Officials Working on HK Chief Executive Election Guidelines,” *China Daily* Hong Kong edition, July 19, 2001, both via FBIS).

Two provisions of the Bill have created controversy. One clause says that an election is to be held “if the Central People’s Government [in Beijing] removes the Chief Executive in accordance with the Basic Law.” The Basic

Law provides for the appointment of the Chief Executive by Beijing but does not explicitly provide for the power of removal. According to a Hong Kong government official, the Basic Law implies that Beijing can oust the leader if he is unable to fulfill his duties and the new Bill “merely spells out” this power. Opponents, however, claim that the clause fails to explain limits on the power it gives the CPG to remove the Chief Executive. Under the Basic Law, the Chief Executive must resign if he cannot function or if he refuses three times to sign a bill passed by the SAR legislature, or if he is impeached for breach of the law or dereliction of duty. (“Hong Kong Legislature: Beijing Can Fire Political Leader of Capitalist Enclave,” AP, July 11, 2001, via LEXIS/NEXIS; “Legislator Says Chief Executive Law Questions SAR’s Autonomy,” *South China Morning Post*, July 19, 2001, via FBIS.)

The other controversial provision says that an elected candidate is to withdraw from a political party, if he/she is a member of one, by making a written declaration to that effect within seven working days of election. The person is also to declare that he/she no longer is bound by political party discipline. (“China Daily Article Discusses Hong Kong’s Chief Executive Election Bill,” *China Daily*, July 12, 2001, via FBIS.) (W. Zeldin, 7-9832)

JAPAN—Compensation for Forced Laborer

In the first such ruling of its kind, on July 12, 2001, the Tokyo District Court ordered the Japanese Government to pay 20 million *yen* (US\$161,432) to the family of a deceased Chinese forced laborer. Liu Lianren had escaped from a Japanese labor site in a mining town toward the end of World War II and had hid in the mountains in Hokkaido for about 13 years, unaware that the war had ended. According to the presiding judge, Seiichiro Nishioka, the then Health and Welfare Ministry failed to carry out its obligation to rescue Liu. After the war, the

Japanese government was to protect persons who had been forcibly brought to Japan; the General Headquarters of the Allied Forces had ordered that they be sent home.

Liu lodged the lawsuit in March 1996, but died in September 2000, whereupon his son took over the suit. The Court dismissed the government's claim that the plaintiff had forfeited the right to seek compensation because he failed to file a lawsuit before a 20-year statute of limitations, stipulated in the Civil Code, expired. Judge Nishioka said that "the state was aware of Liu's damages. But it left the case unattended." (Gov't Told To Pay 20 Mil. Yen to Forced Laborer's Family," *Kyodo*, July 12, 2001, via FBIS).

The Japanese Government, after consulting with the ministries involved in the case, filed an appeal of the court order on July 26, 2001. An official with the Ministry of Health, Labour and Welfare said that the court's finding that officials had an obligation to search for Liu was "groundless" ("Japan Appeal Reflects Refusal of Responsibility," *China Daily*, July 26, 2001, via FBIS).
(W. Zeldin, 7-9832)

TAIWAN—Financial Reform Measures

On June 26 and June 27, in an extraordinary session, the Legislative Yuan passed six financial reform bills aimed at cleaning up bad loans and liberalizing Taiwan's financial industry.

The Financial Holding Company Law, singled out by the Cabinet and the Ministry of Finance as the centerpiece of the reforms, is expected to spur consolidation among banks, insurance companies, brokerages and to attract foreign capital to Taiwan. However, the new law will not take effect until a proposed Financial Supervisory Board, with powers of broad supervision over the financial industry, is

created. Once the Board is established, a company with a controlling interest in a bank, insurance company, or brokerage firm will be required to establish a holding company.

Amendments to the Business Tax Law provide that in January 2006 the 2 percent tax will be abolished.

Under the Statute for the Establishment and Management of a Financial Rehabilitation Fund, which will create an NT\$140 billion (US\$4.06 billion) fund similar to the U.S. Resolution Trust Company, the bad loans of grassroots financial institutions, especially local farmers' cooperatives, will be cleaned up. The major source of funding will be the 2 percent tax on financial institutions, which will be put into the Fund over the next four years, the term of its operational life. The other source of funding will be higher deposit insurance premiums, raised from part of the premiums collected by the state-run Central Deposit Insurance Company from local financial institutions.

The Deposit Insurance Act was also revised.

The new Bills Finance Management Law allows expansion into brokerage activities by bills finance companies.

Amendments to the Insurance Law broaden the range of investments for insurers, allowing them to invest in banks and bills finance, securities, and investment trust companies. They will also be permitted to raise investment in real estate from the current 19 percent of their investment funds to 30 percent, and to offer new types of policies such as earthquake insurance. ("Taiwan Legislators Pass Financial Reform Bills," *Taipei Times*, June 28, 2001, via FBIS; "Taiwan Parliament Passes 'Bad Debts' Bill," Hong Kong AFP, June 27, 2001, via FBIS.)
(W. Zeldin, 7-9832)

TAIWAN—Internet Ruling

In its opinion on appeal of a suit against a website operator charged with aiding copyright violations of a man who had posted advertisements to sell pirated CDs on the website, the Taiwan High Court upheld a Taipei district court ruling denying the service provider's liability for contributory infringement. The Court noted that while those who abuse Internet technology to commit crimes should be punished, "the judicial system should keep a 'liberal mind' in order not to kill future technological developments."

The defendant, Wang Chieh-yuan, operator of "Ants Market," an online platform for message-posting and advertising, had been charged with being an accessory to illegal transactions involving pirated products. The prosecution held that Wang had control over what was posted on his website, and that websites, like traditional media, are responsible for monitoring content and deleting anything that is in violation of the law. Wang argued that he had no criminal intention to assist copyright infringements and that it was not possible for him and his sole colleague to monitor all the messages posted on the site. The Taipei district court had found the seller guilty but had acquitted the service provider of the accessory charge. ("Taiwan Court Rules on Internet Liability," *Taipei Times*, July 7, 2001, via FBIS, July 8, 2001). (W. Zeldin, 7-9832)

EUROPE

CZECH REPUBLIC--Law Against Defacers of Property

The Law of April 3, 2001 (No. 139, *Collection of Laws*), Against Defacers of Property was incorporated in the Criminal Code as article 257b. It states that the defacing of

someone else's property by spraying, painting, or writing in paint or any other substance is punishable by: 1) imprisonment for up to one year or a fine. 2) imprisonment from six months to three years or a fine if the offense is committed repeatedly or as a member of a group, if the property defaced is protected by law, like public monuments, or if considerable damage is caused; 3) imprisonment from two to eight years if extensive damage is caused.

The Law was enacted in response to acts of vandalism committed against public and private property such as means of transport, buildings and monuments. The perpetrators are usually young persons, minors (persons between 15 and 18 years of age) and young adults. For minors, the term of imprisonment indicated in the Law is cut by one half except in cases under (3) above, and a fine can be imposed on them only if they have their own income. Persons over 18 are adults and fall fully within the provisions of the Law. Both types of perpetrators can apply for probation. The court must also award damages. In the case of minors, damages are awarded against parents or persons who are responsible for the minors.

(George E. Glos, 7-9849)

FRANCE--Embryo Research

During the June 20, 2001, Cabinet meeting, the Labor and Solidarity Minister, Elisabeth Guigou, unveiled a draft law on bio-ethics. It is designed to update the three "bioethical laws" passed in 1994. The draft prohibits discrimination based on genetic characteristics (the Labor Code and Penal Code will be modified accordingly) and provides that the study of the genetic characteristics of a deceased person cannot be done if he/she had expressly made known his/her opposition while living.

The draft law further addresses organ transplantation and organ donation. Since 1994, organs from living donors can only be

transplanted to a patient if the patient is a close relative, such as a parent or a sibling, of the donor. The draft extends this option to other persons under the condition that the donor and the patient have a “close and stable relationship.”

Finally, the draft law focuses on cloning and embryos research. Reproductive cloning--creating a human embryo fostering its growth into a living foetus--would remain illegal and punishable by imprisonment for up to twenty years. The draft does not lift the ban on therapeutic cloning and research would be allowed only on surplus embryos, for stem cell research. Any research on these embryos would require the informed consent of the parents. The draft law also proposes the creation of a “national agency for procreation, embryology and human genetics” to supervise and provide guidance on the ethical and scientific issues raised by such research.

French Minister Lionel Jospin and Health Minister Bernard Kouchner would have liked to allow therapeutic cloning. However, the French Committee for Human Rights and the *Conseil d'Etat* (France's highest administrative court) have expressed their opposition to therapeutic cloning. In addition, President Jacques Chirac has categorically rejected any form of cloning and stated that although stem cell research should be regarded as a priority, alternative methods to therapeutic cloning can be developed. This strong opposition has forced the government to compromise. The draft law will be discussed by Parliament early next year. (www.premier-ministre.gouv.fr/ & *Le Monde*, June 21, 2001.)
(Nicole Atwill, 7-2832)

GEORGIA--Tax Reforms

With the purpose of reforming small and mid-sized businesses in the country, the

Parliament of the Republic of Georgia approved a package of radical amendments to tax legislation submitted by the Government and agreed upon with the International Monetary Fund. According to the new law, a single flat tax for small businesses with an annual turnover of under US\$50,000 is established, with the revenue to be equally distributed between the State and local governments. After these amendments enter into force, individual entrepreneurs' annual income will be taxed at a rate of 5%. The same tax for corporate businesses varies depending on the type of industry. The list of excise-taxable goods is shortened from seven to four categories and now includes tobacco products, alcoholic beverages, automobiles, and petroleum products. A proposal to abolish tax breaks for enterprises was also introduced and is currently under the legislators' consideration. (Info-Nova Press Digest, published by Internet Securities, Inc., www.securities.co.uk, June 21, 2001.)
(Peter Roudik, 7-9861)

GERMANY--Internet and Copyright Infringements

An Appeals Court of Munich ruled that providers of Internet services are liable for copyright infringements perpetrated by the users of the service. The decision was issued on March 8, 2001, by the higher regional court of Munich (Oberlandesgericht Munchen, docket number 29 U 3281/00) and it upheld the decision of the regional court of Munich of March 30, 2000 (Landesgericht München, docket number 7 O 3625/98). The latter had decided that the Internet provider AOL was liable for damages to copyright holders of music that had been downloaded without royalty payments by users of a music exchange service provided by AOL on the Internet (see “Germany--Internet Piracy,” WLB2000.06-9b).

The decision of the appeals court held the Internet provider liable to the same extent as did the trial court, albeit under different reasoning and statutory interpretations. The trial court had based its decision on section 5, paragraph 2 of the On-Line Services Act of 1997 (Bundesgesetzblatt I at 1870), which makes the provider of services responsible for the content of materials distributed by the user of the service only if the provider knew or had reason to know of the content and had the technical capability to prevent its distribution and if this prevention could be reasonably expected of the provider. The trial court had held that AOL knew that copyright infringements would be perpetrated on a website that exchanges music and that AOL had the technical capability to filter out the offending distributions.

The Appeals Court, on the other hand, held that section 5 of the On-Line Services Act was not applicable to copyright violations on the Internet. Instead, the Court held that the liability of an Internet services provider for copyright violations arose directly from the general principles of German copyright law. Furthermore, the Court explained that an Internet provider that made a forum for the exchange of music available without exercising editorial control over that process was at least grossly negligent by facilitating the commission of copyright infringements and was therefore liable for the same.

(E. Palmer, 7- 9860)

LITHUANIA--Measures To Stop Human Trafficking

In order to avoid U.S. sanctions against countries that do not fight human trafficking or do not provide for victims' safety, Lithuania, which, according to the U.S. State Department Annual Report on Human Trafficking Worldwide is among the states that have failed

to meet minimum criteria in the war on human trafficking, recently stepped up efforts to stop the practice.

On July 2, 2001, the Government of Lithuania approved the Prostitution and Human Trafficking Control and Prevention Program in order to bring Lithuanian law enforcement and other government institutions up to date, encourage anti-trafficking actions by non-government organizations, and intensify efforts to fight criminal gangs specializing in human trafficking. It also aims to create a social support system to keep people from entering prostitution, to institute social, psychological, and legal help for victims, to develop a system for searching for lost and missing persons, and to expand international cooperation.

The Lithuanian State Border Security Service has also introduced a new digital database containing information on people detained with false passports, suspected of forcing others into prostitution, and/or suspected of engaging in trafficking. It also contains information on missing persons and on people deported from and to Lithuania. The Criminal Code of Lithuania was recently amended by the addition of a section that penalizes human trafficking with a term of imprisonment of from 4 to 8 years. Recommendations contained in international agreements for controlling human trafficking and sex trade are also scheduled for implementation by Lithuanian authorities. (Baltic News Service report, *BNS Daily News*, July 20, 2001.) (Peter Roudik, 7-9861)

RUSSIA--Campaign Finance Reform

On June 21, 2001, Russia's Parliament (the Duma) approved the Law on Political Parties, which seeks to establish order in post-Soviet politics. Under the Law, only political parties are allowed to nominate candidates in elections,

and they must do so regularly to continue functioning. This provision is aimed at reducing the profusion of parties currently competing for parliamentary seats. Parties must have a minimum of 10,000 members nationwide and branch offices in at least 50 of Russia's 89 regions with a minimum of 100 members each. If membership numbers drop below the required minimum, the party's registration can be revoked. Regional parties and grass-roots groups are barred from nominating candidates for elections to legislative bodies.

The Law provides State financing for parties clearing the five percent minimum of the popular vote required for participation in the Duma as well as for parties that garner from three to five percent of the vote and those that elect 12 or more members in constituencies not linked to party lists. The Law requires parties to supply tax officials with regular financial reports. It allows individuals to make annual cash contributions up to the equivalent of US\$30 to political parties. Non-cash contributions can reach the equivalent of US\$30,000 for individuals or US\$300,000 for companies. (*The Moscow Times*, July 3, 2001.) (Peter Roudik, 7-9861)

RUSSIA--Land Reform

The lower house of the Russian Parliament approved the new Land Code on July 10, 2001. It sets out the guidelines for sale and purchase of non-agricultural land and gives foreigners the right to buy land.

The Code confirms the parity of civil legislation and land legislation pertaining to the ownership, purchase, sale, and use of private land. The Code describes the various categories of land in the Russian Federation and the procedure for classification. The Code demarcates the powers of the Federation and those of the regions and of the local self-

government bodies concerning land ownership and use. It establishes the procedures for permanent use, inherited possession, and leasing of plots of land. In particular, it stipulates that citizens holding plots of land in permanent (indefinite) use have the right to acquire the land as their own property. The lessees will enjoy the preferential right to buy State or municipally owned plots of land if and when they are sold.

The Code contains a provision under which foreign citizens, stateless persons, and foreign corporate bodies--owners of buildings and facilities--have the right to acquire plots of land as property according to the procedures stipulated in the Code. The only existing restriction in regard to foreigners is that foreign individuals and legal entities cannot own plots of land in border regions and other regions to be determined by the President of Russia. The Code states that the transfer of State or municipally owned plots of land to the ownership of citizens and corporate bodies is, as a rule, carried out in exchange for payment.

Even though the new Code allows the sale of just two percent of the land, while 98 percent of the country's territory is regulated by other legislative acts, the land controlled by the Code attracts up to 75 percent of all foreign investment. (www.gazeta.ru, July 16, 2001.) (Peter Roudik, 7-9861)

SOUTH PACIFIC

AUSTRALIA--Law Online

On June 21, 2001, the Australian federal government inaugurated its Family Law Online website (www.law.gov.au). This is intended to provide quick and easy access to family law information, as well as referral to services and expert advice. Managed by the Commonwealth

Attorney-General's Department, it is the first component of a planned Australian Law Online program, which is intended to provide legal information and services for a wide range of civil law matters. A telephone hotline provides equivalent services for those without Internet access.

The project, the result of the government's "Law by Telecommunications" initiative, has two primary goals. The first is to improve the delivery of legal services to regional, rural and remote areas of Australia; the second is to provide information on alternatives to litigation, such as counseling and mediation, which may often be less costly than going through the courts. ("New Hotline and Website Now Available for Legal Information," News Release, Office of the Attorney-General, June 21, 2001, at <http://law.gov.au/ghome/agnews.htm>) (D. DeGlopper, 7-9831)

AUSTRALIA--Subsidized Viagra?

In Australia, the question of subsidizing Viagra continues to be an issue. On July 2, 2001, the full Federal Court overturned a March 2000 lower court decision that Viagra not be included in the list of drugs subsidized by the Federal government. When the Pharmaceutical Benefits Advisory Committee, a statutory body charged with making cost-benefit decisions on which drugs to subsidize, ruled against Viagra, the Pfizer Corporation brought a suit in Federal Court. Pfizer argued that the Committee had made assumptions about the likely high costs of subsidizing Viagra but gave the corporation no opportunity to respond or to question those assumptions. The judge dismissed the suit.

The appeals judges, although in general agreement with the trial judge and recognizing

that this was a borderline case, felt that Pfizer may have been deprived of 'natural justice.' They ordered that Pfizer's appeal be heard and referred the case back to the Pharmaceutical Benefits Advisory Committee for further consideration. (Federal Court of Australia, *Pfizer Pty Ltd v Birkett* [2001] FCA 828 (2 July 2001) at http://www.austlii.edu.au/au/cases/cth/federal_ct/2001/828.html) (D. DeGlopper, 7-9831)

INTERNATIONAL LAW & ORGANIZATIONS

CHINA/RUSSIA—Friendship Treaty

The Treaty on Good Neighborly Friendship and Cooperation Between the Russian Federation and the People's Republic of China (PRC), signed on July 16, 2001, is the first such accord made between the two countries since the 1950 agreement signed between Joseph Stalin and Mao Zedong. It is reportedly the only bilateral friendship treaty that the PRC has with any country, with the exception of a 1961 treaty with North Korea. ("China, Russia Pledge Friendship," *Los Angeles Times*, July 17, 2001, via LEXIS/NEXIS). On the same day that the Treaty was signed, Chinese President Jiang Zemin and Russian Federation President Putin also signed the Moscow Joint Statement of Chinese and Russian Heads of State. Some of the key elements of the Treaty and the Joint Statement are as follows.

- 1) Forging of a strategic and military pact. The Joint Statement implies the two countries' opposition to a uni-polar order dominated by the United States and its allies; one Russian commentator reportedly described the Treaty as "an act of friendship against America" ("Russia and China Sign 'Friendship' Pact," *The New*

York Times, A1, July 17, 2001, via LEXIS/NEXIS; “SCMP Editorial Views Significance of New Sino-Russian Treaty,” *South China Morning Post*, July 17, 2001, via FBIS). The Statement stresses that “the antiballistic missile treaty [ABM] is of crucial importance” and that both sides “are in favor of preserving the current form of the treaty” (Item 8). The Treaty obliges the parties to “immediately make contact and hold consultations” in the event of the threat of aggression from another power (art. 9). It sets forth their opposition to the principle of humanitarian intervention: the two parties oppose “any action of using force to put pressure or intervene under any pretext in the internal affairs of sovereign states...” (art. 11). In addition, China and Russia pledge mutual support for each other’s policies to safeguard national unity and territorial integrity (Treaty, arts. 4 & 5). This includes Russia’s reiteration of its “one China” stance on Taiwan; in addition, it states emphatically that “Russia opposes Taiwan independence in any form” (art. 5).

2) Economic and other forms of cooperation. China and Russia will cooperate in the fields of economy and trade, military technology, science and technology, energy, transport, nuclear power, finance, aviation and space, information technology, and other fields of common interest (arts. 16 & 17). According to the Statement, the two sides will actively promote cooperation in carrying out large projects concerning oil, natural gas, and high technology; developing Western China; and producing civilian aircraft, among others (Item 3).

3) Peaceful resolution of disputes. China and Russia pledge not to use force or the threat of force in their mutual relations or economic or

other means to put pressure on each other, but to resolve their differences through peaceful means in accordance with the provisions of the U.N. Charter. They reiterate that they undertake not to be the first to use nuclear weapons or to aim strategic nuclear missiles at each other (art. 2). The two sides also agreed to further reduce military forces in the border regions (art. 7) and to settle through consultation unresolved issues of border demarcation (art. 6).

The duration of the treaty is 20 years, but it is automatically renewable for another five years if neither side withdraws (art. 25). (“Text of Sino-Russian Treaty,” *Xinhua*, July 16, 2001, as translated in FBIS; “In the Treaty’s Words: ‘International Stability,’” *The New York Times*, July 17, 2001, at A8, via LEXIS/NEXIS; “‘Text’ of Joint Statement Issued by Jiang Zemin, Putin in Moscow,” *Xinhua*, July 16, 2001, as translated in FBIS.)
(W. Zeldin, 7-9832)

CHINA/US, EU-WTO-Related Agreements Reached

In June 2001, China took two important steps toward its goal of entering the World Trade Organization (WTO), by reaching understandings on several outstanding issues with the United States and with the European Union. An agreement was reached with the United States on June 8 covering a number of trade issues that had been obstacles to China’s joining the organization. Chief among the matters covered are that China will be permitted to provide government support to its agricultural sector at the 8.5% level. China had sought to be treated as a developing nation in this matter, which would have meant a 10% subsidy level; the U.S. would not accept that status for China, and the 8.5% figure is a compromise. China has also agreed not to claim the additional exemption for government support for programs to encourage

development efforts for resource-poor farmers, which are sometimes permitted under WTO rules. Other areas of agreement include a definition of “large scale commercial risk” insurance policies, which foreign firms will be permitted to issue, and a timetable for phasing out the current 20% cession requirement for the China Reinsurance Company.

The agreement with the European Union, reached on June 20, 2001, guarantees that China will give foreign service companies the right to choose a joint venture partner, rather than requiring them to accept assigned partners picked by the Chinese government. Rules on foreign investment in hypermarkets and chain stores will be liberalized, the process of registration of foreign service companies will be accelerated, and a timetable for the issuance of insurance licenses to a number of EU companies was announced. (*China Law Briefs*, <http://www.chinalegalchange.com/Archiv01/C0112039.html> and <http://www.chinalegalchange.com/Archiv01/C0112040.html>; *The Washington Post*, July 5, 2001, at E01.) (Constance A. Johnson, 7-9829)

GUUAM AGREEMENT FORMALIZED

The presidents of the five member nations of GUUAM, Heydar Aliyev of Azerbaijan, Eduard Shevardnadze of Georgia, Leonid Kuchma of Ukraine, Islam Karimov of Uzbekistan, and Vladymyr Voronin of Moldova, met in the Ukrainian city of Yalta on the Crimean peninsula on June 6 and 7, 2001, to sign a Charter formalizing their agreement. The agreement sets forth GUUAM’s vision and principles, including the peaceful settlement of any disputes according to the precepts of international law and a declaration of member nations’ common interests and goals in such

areas as trade and regional energy security. The presidents also signed a Consular Convention, which establishes a legal basis for multinational cooperation in the field of “protecting rights and interests of physical and legal entities of member states in the territories of third states.” Among the subjects discussed were the “effective functioning and safety of the infrastructure of transport communications that pass through...their countries, including the transport corridor Europe-Caucasus-Asia (TRACECA).” The group established a format and regular schedule for future summits, the next to be held in Yalta in 2002. (www.guam.org)

Among several high-level observers commenting on the GUUAM agreement during a conference of the Center for Strategic and International Studies held in Washington, D.C., on July 11, General William Odom of the Hudson Institute urged that GUUAM seek a dialogue with other multinational entities such as the United Nations, the European Union, and the Council of Europe (*id.*). (Natalie Gawdiak, 7-9838)

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Department for Culture, Media, and Sport. Gambling Review Body. GAMBLING REVIEW REPORT. Cm. 5206.

London: The Stationery Office, July 2001. 256 pp.

This report of the Gambling Review Body makes recommendations for the simplification of the regulation of gambling and extension of choices for adult gamblers, while keeping gambling free of crime, providing information for gamblers so expectations are clear, and protecting children and others considered to be vulnerable. It covers current statutory provisions for various forms of gambling, online gambling, and the social impact.

Messenger Davies, Marie *and* Mosdell, Nick. CONSENTING CHILDREN?: THE USE OF CHILDREN IN NON-FICTION TELEVISION PROGRAMMES. Broadcasting Standards Commission. London. June 2001. 120 pp.

This study examines the use of nonprofessional children (rather than child actors and models) in non-fiction television programs and evaluates how the images of these children were perceived by children and parents in the television audience. The issues in the report are whether children are competent enough to make their own decisions in giving or withholding consent to take part in television programs and whether parents or other care-taking adults have the right to overrule a child's decision. The study found that, overall, parents are more enthusiastic about their children being on television than the children themselves. In the authors' view, this increases the necessity for a child's consent. A children's program ("Mad for It") in which the children were featured in a number of ways provided useful suggestions on how children can be meaningfully consulted to more effectively use public participation in television programming.

The report recommends that the principle of informed consent be applied to children who take part in television programs. It suggests that children at least six years of age possess the competency to understand the issues involved in privacy, and they should be helped to understand the terms of consent, their right to refuse, and the expectation that a refusal will be honored regardless of how this may affect the adults concerned.

Prime Minister. THE NATIONAL ASSET REGISTER. Cm. 5221. London: The Stationery Office, July 2001. 921 pp.

This large volume contains a comprehensive list of the assets of each Government department and sponsored body. The Register, instituted in 1997, is intended to assist each government department to make the best use of everything it owns and to determine whether assets are still needed. The Register helps ensure that resources are allocated where they can be used most productively.

Secretary of State for Trade and Industry. THE NATIONAL MINIMUM WAGE--MAKING A DIFFERENCE: THE NEXT STEPS. THIRD REPORT OF THE LOW PAY COMMISSION. Vol. 2. Cm. 5175. London: The Stationery Office, June 2001. 213 pp.

Volume I of this report concluded that the National Minimum Wage was a success, benefitting workers without adverse impact on rates of employment. Volume II is particularly concerned with how the minimum wage is working in practice, with chapters on young people and training, impact on incomes, compliance and enforcement, implementation issues, and notes for the future. The conclusion states that the Low Pay Commission's work would be enhanced by standing terms of reference to use in planning research and expresses concern about the inequity of a lower minimum wage rate for young people.

THE WORLD TRADE ORGANIZATION: RECENT DEVELOPMENTS

by Giovanni Salvo, Senior Legal Specialist, Directorate of Legal Research*

DISPUTE SETTLEMENT¹

1. Bananas
2. Milk and dairy products
3. Hides and leather products
4. Iron or non-alloy steel
5. Lamb
6. Combed cotton yarn
7. Pending consultations: Continued Dumping and Subsidy Offset Act of 2000; pharmaceutical products; matches; sardines; malleable cast iron tube or pipe fittings; steel plate
8. Settled or inactive cases: intellectual property

Implementation Status of Adopted Reports

1. In the dispute concerning the regime of importation, sale, and distribution of **bananas**,² the European Community (EC) reported to the Dispute Settlement Body (DSB) on March 1, 2001, the adoption of new legislation on the common organization of the market in bananas. The EC also reported on May 3, 2001, that intensive discussions with the United States, Ecuador, and other banana-supplying countries have led to the common identification of the means by which the long-standing dispute over the EC's banana import regime will be resolved. According to the new legislation, the EC will introduce a "Tariff Only" regime for imports of bananas no later than January 1, 2006. In the interim period, starting on July 1, 2001, the EC will implement an import regime based on three tariff rate quotas, to be allocated on the basis of historical licensing. An Understanding on bananas between the EC and the United States and an Understanding on bananas between the EC and Ecuador were announced on June 22, 2001, and April 30, 2001, respectively. The EC notified the DSB of the Understandings as mutually satisfactory solutions within the meaning of Dispute Settlement Understanding (DSU) provisions. The United States and Ecuador, however, maintain that such Understandings do not constitute mutually satisfactory solutions and that taking the item off the DSB agenda would be premature.

2. A report was circulated on July 11, 2001, by the Panel requested by the United States and New Zealand on February 16, 2001, in the disputes concerning Canadian measures affecting **the importation of milk and the exportation of dairy products**.³ The Panel found that Canada had acted inconsistently with its obligations under provisions of the Agreement on Agriculture.

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¹ [Http://www.wto.org/wto/dispute/bulletin.htm](http://www.wto.org/wto/dispute/bulletin.htm).

² See WLB WTO Update, WLB00.09, Sept. 2000, at 21.

³ See WLB WTO Update, WLB01.04, Apr. 2001, at 24.

3. On March 12, 2001, Argentina stated its intention to implement the recommendations of the DSB⁴ in the dispute concerning measures on **the export of bovine hides and the import of finished leather**, stating that it needed a reasonable period of time for implementation. The EC requested that such period of time be determined through arbitration.

4. On May 25, 2001, Thailand and Poland informed the DSB of their agreed-upon period of time of six months and 15 days for implementation by Thailand of DSB recommendations in their dispute over **anti-dumping duties on angles, shapes, and sections of iron or non-alloy steel H-beams**.⁵

Appellate and Panel Reports Adopted

5. The DSB adopted on May 16, 2001, the Panel report as modified by the Appellate Body report in the dispute over United States safeguard measures on imports of fresh, chilled, or frozen **lamb** from New Zealand and of lamb from Australia.⁶

Panel Reports Appealed

6. On July 9, 2001, the United States appealed the decision of the Panel circulated on May 31, 2001, in the dispute concerning transitional safeguard measures applied by the U.S. on **combed cotton yarn** from Pakistan.⁷ The Panel found U.S. measures to be inconsistent with provisions of the Agreement on Textiles and Clothing, commended the DSB request that the United States bring the measures at issue into conformity with its obligations under the Agreement, and suggested that this can best be achieved by prompt removal of the import restriction.

Pending Consultations

7. The following complaints have been filed:

- Canada and Mexico against the United States, concerning the **Continued Dumping and Subsidy Offset Act of 2000**, on May 21, 2001;
- India against Argentina, for its measures affecting the import of Indian **pharmaceutical products**, on May 25, 2001; and
- Chile against Mexico, concerning measures affecting the import of **matches**, on May 17, 2001.

The establishment of a Panel was requested by:

⁴ *Id.* at 25.

⁵ See WLB WTO Update, WLB01.06, June 2001, at 1.

⁶ *Id.*

⁷ See WLB WTO Update, WLB00.08, Aug. 2000, at 24.

- Peru, on June 7, 2001, in the dispute with the EC over trade description of **sardines**;
- Brazil, on June 8, 2001, against EC anti-dumping duties on **malleable cast iron tube or pipe fittings**;
and
- India, on June 9, 2001, in the dispute over anti-dumping and countervailing measures on **steel plate** imposed by the United States.

8.. *Settled or Inactive Cases*

The parties to two disputes notified the DSB of a mutually satisfactory solution on the matter at issue:

- Brazil and the United States, in respect of Brazilian measures affecting **patent protection**; and
- Denmark and the United States, in respect of Danish measures affecting the enforcement of **intellectual property rights**.