



# WORLD LAW BULLETIN

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UPDATES FROM **THE WTO** AND **THE EUROPEAN UNION**

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**WLB, No. 2001.05**

## *The* **WORLD LAW**

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## **AMERICAS**

### **CANADA—Penalties for Failing To Report Election Expenses**

Under Canada's electoral system, candidates and parties can qualify for partial reimbursements of the expenses they incur during an election or special by-election. The actual amounts of the reimbursements depend on a number of factors, including the percentage of the votes that the candidates and parties received, the number of candidates fielded, and the size of a particular electoral district or "riding." In Canada, election expenses are limited, and they must be reported within approximately four months of the polling day. Historically, most reporting problems have involved unsuccessful candidates. However, the apparent failure of three Members of Parliament to comply with this requirement was recently reported in the capital city's leading newspaper, the *Ottawa Citizen* (Apr. 7, 2001). Once the filing deadline has passed, it cannot be extended by Elections Canada, the government agency responsible for conducting federal elections. In such cases, the intervention of a judge is necessary. Until such time as a retroactive extension is granted, MPs who have failed to file an election expenses report are prohibited from participating in parliamentary business. Members who fail to obtain an extension within the 30-day period allowed by the law can also be expelled from the House of Commons. In the courts, violators can be fined and barred from running in another federal election for a period of five years. In 1998, a candidate was so barred after pleading guilty to the charge of failing to file required financial reports. Although this resolution was a fairly rare one that will probably not be repeated in the ongoing cases, it demonstrates that the reporting requirements in Canada are viewed as an important responsibility. ([Http://www.ottawacitizen.com/national/010407/5051547.html](http://www.ottawacitizen.com/national/010407/5051547.html)) (Stephen Clarke, 7-7121)

### **MEXICO--Women's Institute**

President Vicente Fox Quesada signed a Law on January 10, 2001, that sets forth the goals and governs the structure and operations of the National Institute of Women, a federal agency located in Mexico City. The Institute aims to guarantee Mexican and foreign

women and girls residing in Mexico and Mexican women living abroad, their rights to equality in the national politics, culture, economy, and social structure. (*Diario Oficial*, Jan. 12, 2001.)

The Institute is empowered to promote, follow up on, and evaluate public policies, programs, and activities that have a bearing on women and to coordinate these initiatives among federal, state, and municipal public and private institutions. It will promote a culture of nonviolence toward women and monitor the fulfillment of international treaties in this area concluded by Mexico. All national plans that concern equal opportunity and nondiscrimination will be evaluated periodically by the Institute. The Law calls for the Institute to establish links with the federal legislative bodies, the state congresses, and the Legislative Assembly of the Federal District to encourage legislation on women's rights. It will also promote studies and research on the condition of women.

[GLIN] (Sandra Sawicki, 7-9819)

### **VENEZUELA—Indian Lands**

On January 12, 2001, the Venezuelan government enacted a law to draw boundaries and guarantee the habitat and lands of Indian peoples (Law No. 14). This issue is also a concern in other Latin American nations. These lands are defined as physical and geographic areas that have been traditionally and ancestrally occupied by one or more Indian communities and zones where they have developed their physical, cultural, spiritual, social, economic, and political lives. They comprise areas where the Indians have farmed, fished, hunted, and settled. (*Gaceta Oficial*, Jan. 12, 2001.)

The Ministry of the Environment and Natural Resources will be in charge of coordinating, planning, executing, and supervising the entire process of establishing these boundaries, with the direct participation and consultation of the Indian communities. Mechanisms are set in place that will protect Indians who live on land separated from that of their community and who are displaced in the drawing of boundaries. If ancestral lands are occupied by non-Indians, the Venezuelan government will support the rights of Indians

through a settlement process and in the courts. The environmental ministry must inform the Attorney General's Office once the boundaries have been established, and the latter will issue the titles to the collective lands. The titles then may be inscribed in municipal property registries. The Law identifies over 40 Indian communities in Venezuela, listed according to state.

**[GLIN]** (Sandra Sawicki, 7-9819)

## **ASIA**

### **CHINA—Mad Cow Disease**

The Ministry of Health and the State Administration for Entry-Exit Inspection and Quarantine issued a joint notice on April 3, 2001, on preventive measures against the entry into the People's Republic of China (PRC) of mad cow disease (bovine spongiform encephalopathy, or BSE). According to the notice, China will prohibit the direct and indirect import of and trade in food made from beef, carcasses, and entrails from livestock in countries where the disease has appeared. Banned products include cattle brain, spinal cord, eyes, meat, bone, bowels, placenta, and foods made from them, such as hamburger and canned beef. Dairy products are exempted from the ban.

The notice mandates that all importers and traders of the banned products are to immediately halt related processing and trading activities, recall and destroy all sold commodities, and make timely reports to local departments concerned. The Ministry of Health has called for public health departments at various levels to publicize information about the disease.

The PRC Ministry of Agriculture, in a report released on February 14, 2001, stated that cattle in China are fed primarily straw and soybean meal, not the meat and bone meal that is linked to the spread of BSE. In addition, it said that because entrails are commonly used in Chinese dishes and are often sold at prices higher than meat, there is not enough offal to be processed in animal feed.

The PRC has banned the import of cattle and cattle products from BSE-infected countries since 1990. In early 2000, a nation-wide investigation was launched to survey Chinese cattle, and no cases of BSE were found among imported cattle and their offspring. On January 1, 2001, it stopped importing feed made from ground animal carcasses in the European Union. China's first BSE Control Laboratory is also reportedly being set up in Beijing by the city's Administration for Exit-Entry Inspection and Quarantine. (Xinhua, Apr. 3, 2001, via FBIS, Apr. 3, 2001; *China Daily*, Internet version, Feb. 9, 2001, via FBIS, Feb. 9, 2001.) (W. Zeldin, 7-9832)

### **CHINA—Regulation of Investments**

On April 2, 2001, the China Securities Regulatory Commission (CSRC) issued two regulations designed to increase supervision of the securities market and protect investors. ("PRC Commission Issues Regulations To Strengthen Securities Supervision," Xinhua, Apr. 2, 2001, via FBIS, Apr. 2, 2001.) In another move that will add protection for investors, clauses covering civil compensation for investors in funds that are professionally managed are being considered for the law on investment funds that is now being drafted ("China Considers Compensation Rules To Ensure Investment Interests," Xinhua, Apr. 4, 2001, via FBIS, Apr. 4, 2001).

One of the new CSRC regulations concerns the examination of listed companies and replaces a 1996 regulation on the subject. It imposes a new supervisory system of two categories, routine inspection (which covers disclosure of information on a listed company, provisions on its corporate structure, financing and assets, and use of accumulated funds) and inspection of specific items (examination of the listed company's use of funds marked for specific purposes, of investors' complaints, and of any major asset restructuring). Five days after each examination, the CSRC will issue a circular listing any irregularities that were found and giving a deadline for corrections. Serious irregularities will be referred to the judiciary for investigation.

The second CSRC regulation establishes a “conversation” system involving the inspector and the head of a listed company. If a company is unable to pay off debts, has its assets frozen or sealed for any reason, fails to keep operating, or has a major change affecting the shareholders, the head of a company’s board of directors and other personnel may be called to explain the situation to the CSRC.

The investment fund legislation is expected to be submitted to the Standing Committee of the National People’s Congress in June 2001, and the completed law on investment funds is expected to be issued next year. The rules now being considered would allow investors to be compensated for financial losses if those losses were the result of mistakes or misconduct by the fund managers or custodian banks. The compensation payment would be paid directly by the managers or bankers, not from the assets of the funds. The purpose of the provisions would be to pressure fund managers to act professionally. (Constance A. Johnson, 7-9829)

### **HONG KONG–Copyright Law Amendments**

On April 1, 2001, the Intellectual Property (Miscellaneous Amendments) Ordinance (IPO) 2000, which was enacted in June 2000, came into effect. It applies to all kinds of copyrighted work, including but not limited to computer software, music, videos, books, magazines, and newspapers. The two main purposes of the revised law are to combat corporate copyright piracy and to prevent bootlegging of copyrighted works in places of public entertainment. However, the Ordinance has created a public outcry because lawmakers reportedly failed to take into account its social impact and because it leaves many gray areas unexplained.

The existing Copyright Ordinance already criminalizes corporate copyright piracy activities, making it an offense to possess, without the copyright owner’s license, an infringing copy of a copyright work “for the purpose of trade or business” with a view to committing any act infringing the copyright. The amended law clarifies the original provision by stating that an offense is committed even if there is no

selling or dealing in the infringing copies; that is, if there is possession of the infringing copies in the course of, in connection with, or for the purpose of their trade or business, with a view to infringing the copyright. For example, a clothing sales company that buys one set of computer software to support its business activities, licensed for use in one computer only, and then installs that same software in the computers of all its employees or in a network server for shared use will have committed a criminal offense under the amended law. Under the unrevised law, it was not absolutely clear whether the company’s acts would be a criminal offense, since its business was selling clothing, not pirated software.

In regard to bootlegging, the IPO 2000 act makes it an offense to possess, without lawful authority or reasonable excuse, any video recording equipment in a place of public entertainment that is used primarily as a cinema, theater, or concert hall for the showing of films or performances. The punishment for first convictions is a fine; second or subsequent convictions will incur a fine and imprisonment for three months. Managers of such places of entertainment are required to display warning notices to alert the public to the prohibition; failure to do so will constitute an offense punishable by a fine.

Small and medium enterprises are hit hard by the new legislation, and they blame the government for not sufficiently publicizing the amendment of the law. They had only a month to determine the origins of their computer software. The enterprises have also charged that software suppliers are taking advantage of the situation by raising software prices by 20-30 percent. Educators are unhappy because the revised law makes unauthorized photocopying of textbooks and newspapers for teaching purposes unlawful. The media have not yet established a standard fee schedule for duplication of press articles.

Government bureaus and departments may also suffer from the new prohibition against photocopying press clippings without authorization. Before the revised law went into effect, press

officers in the government's Information Services Department made many photocopies of news clippings of interest to circulate to top officials on a daily basis. As of April 1, 2001, they will have to order multiple copies of various newspapers to circulate internally. The government has announced that it plans to table a bill to freeze those parts of the Copyright Ordinance on photocopying of newspapers and magazines, a move that a Legislative Council legal adviser warns may breach the Hong Kong Special Administrative Region's Bill of Rights by creating differential treatment. (Http://www.info.gov.hk/ipd/eng/faq/copyrights/ip\_misc\_amend\_c.htm; *China Daily*, Internet Version, via FBIS, Apr. 7, 2001; Hong Kong RTHK Radio 3, via FBIS, Apr. 25, 2001.)

(W. Zeldin, 7-9832)

### **MONGOLIA—Draft Laws on Foreigners, Firearms, Administration, and Labor**

The Prime Minister, N. Enkhbayar, has sent a bill to Mongolia's legislature, the *Hural*, introducing a proposal to amend the Law on the Legal Status of Foreign Citizens. The amended law on foreign citizens would simplify procedures for foreigners going through registration at the border. In the first three months of this year, about 2,500 foreign citizens who arrived in the country were registered by the Civil Registration and Information Center. Bills on government administration and labor law were introduced at the same time. (Montsame News Agency, Apr. 18, 2001, via <http://www.mol.mn/montsame/news/english/Wednesda.htm#4>.)

In addition, the *Hural* is considering a draft law on firearms that would create a center that would be the sole institution selling firearms in the country. ("Parliament Supports Draft Firearms Law," E-mail Daily News, Apr. 9, 2001, carried by BBC Worldwide, via LEXIS/NEXIS, Asiapc library.) (Constance A. Johnson, 7-9829)

### **TAIWAN—Draft Referendum Law**

The Executive *Yüan* (Cabinet) approved a draft initiative and referendum law put forward by the Ministry of Interior on March 28, 2001. The draft

law would give voters on Taiwan the power to decide major policy issues at the ballot box, with the exception of certain sensitive matters--the debate over unification with or independence from mainland China, national security, and foreign and military affairs. A similar law that would have allowed the public to vote on national issues was introduced in the Legislative Yuan in 1993, but it failed after a first reading in March 1994. Impetus for the new draft law appears to have come from the recent heated debate over whether to halt construction of Taiwan's fourth nuclear power plant; nearby residents called for the decision to be put to a popular vote. The rights of initiative and referendum are accorded to the people under article 17 of the Constitution of the Republic of China (adopted on Dec. 25, 1946, promulgated on Jan. 1, 1947, and effective from Dec. 25, 1947, as last amended on Sept. 4, 1999); article 136 stipulates that the exercise of the those rights shall be prescribed by law.

The proposed law provides that a review committee would decide, if a referendum were proposed, whether or not to hold it. The committee, headed by the Minister of the Interior and composed of a group of other government officials, would also decide which administrative districts would take part in the referendum. For a local referendum, the committee would determine whether a second vote should be held nationwide to finalize the outcome. The same referendum proposal could not be voted on within a two-year period. Under the draft law, a referendum on a major construction project could not be held until eight years after its completion if the public has already voted for the project's continuation. This could frustrate possible voter attempts to halt construction of controversial projects such as nuclear power plants.

Televised public debates are required for a referendum—at least one for a local referendum and two for a nation-wide referendum. For a nation-wide referendum, the signatures of six percent of all eligible voters would be required to send the proposed referendum to the review committee; for a local level referendum, the requirement is 12 percent of the total eligible voters in the

constituency. The draft law stipulates that a majority vote and a turnout rate of at least 50 percent is required for policies proposed in a referendum to be affirmed. (*Taipei Times*, Internet version, via FBIS, Mar. 29, 2001; *Taipei Journal*, Apr. 6, 2001, at 1.) (W. Zeldin, 7-9832)

## EUROPE

### CZECH REPUBLIC--Insider Trading Law

Provisions on insider trading of the Securities Law have been modified by a September 14, 2000 statute (Law No. 362, modifying art. 81 of Law No. 591/1992). The affected article is entitled "the use of confidential information." Information is deemed confidential if it is not publicly known or if it concerns one or several securities accepted for public trading or one or several of its issuers or other facts important for the development of the rate of exchange or the price of some of the securities, which, if publicly known, might significantly influence the rate of exchange, the price, or the yield of the securities accepted for public trading. A person who, due to his employment, profession, function, or part in the capital stock or voting rights, has access to confidential information concerning securities and actually obtains such information ("the informed person") is prohibited from making use of the information for personal benefit or the benefit of another person. In particular, he or she is not allowed to acquire or dispose of the securities. The prohibition also applies to persons who acquire confidential information directly or indirectly from the informed person. The informed person must observe confidentiality in respect to the acquired information, unless the disclosure of such information forms part of his duties or employment. He is specifically prohibited from directly or indirectly advising another person to acquire or dispose of the securities referred to in the confidential information. The duty of confidentiality continues to apply even after the termination of the function of the informed person. These provisions do not apply to the Czech National Bank within its monetary or foreign exchange policy

function nor do they affect the management of the Republic's public debt.

Breaches of the above provisions are punishable by the Securities Commission by a fine of up to 20 million crowns (US\$1 equals about 38 crowns). The Commission may also impose measures aimed at eliminating ascertained shortcomings and may restrict or terminate certain activities, suspend or prohibit for the duration of up to one year the public issue of or trading in a security, and suspend for up to one year or withdraw for good the license to trade in securities.

The Securities Commission is an administrative authority established by Law No. 15 of January 13, 1998. Its chief function is to supervise the securities market. It consists of a chairperson and four members appointed by the President of the Republic at the proposal of the Council of Ministers. (George E. Glos, 7-9849)

### FRANCE--Compensation to Orphans of Jewish War Deportees

The *Conseil d'Etat* (France's highest administrative court) ruled on April 6, 2001, that providing compensation to orphans of World War II victims on the sole ground that they were Jewish was not discriminatory towards children of non-Jewish victims. It also rejected appeals by orphans of political deportees against a decree of July 13, 2000, that provided compensation specifically to Jewish orphans.

In its ruling, the *Conseil d'Etat* stated that "the government had not violated either the principle of equality or the ban on discrimination based on race in providing for reparations only for the benefit of orphans of the victims of anti-Semitism." The court agreed with the government's view that minors whose parents had been deported as part of anti-Semitic persecution were in "a different situation from that of orphans of victims of other criminal deportation occurring during the same period."

The appellants' aim in filing suit was not to contest the just compensation to orphans of Jewish

war deportees but to extend this compensation to the orphans of members of the Resistance Movement who died for France.

The tenor of the court's ruling is in line with the report submitted in April 2000 to Prime Minister Lionel Jospin by the Commission on the Plundering of Jewish Assets in France, known as the Mattéoli Commission (see WLB2000.05). (*Le Monde*, Apr. 8/9, 2001, at 10.)  
(Nicole Atwill, 7-2832)

### **FRANCE--Electronic Signature Implementation Decree**

On March 13, 2000, the Parliament adopted Law 2000-230, which recognizes the legal value of electronic signatures and their probative force. In addition, the use of electronic signatures is facilitated by the establishment of a presumption of reliability for electronic signature procedures that meet certain security requirements. These requirements are spelled out in Decree 2001-272 of March 30, 2001.

The Decree provides that secure signature-creation devices must, by appropriate technical and procedural means, ensure that the signature-creation data used for signature generation: (1) can occur only once, and that their secrecy is reasonably assured; (2) cannot be derived, and that the signature is protected against forgery; and (3) can be reliably protected by the legitimate signatory against use by other persons. In addition, secure signature-creation devices must not alter the data to be signed or prevent such data from being presented to the signatory prior to the signature process.

The Decree further provides that secure signature-creation devices must be certified either by the Prime Minister's offices in charge of information systems security or by an organization designated to that effect by an E.U. Member state. A committee attached to the Prime Minister will supervise the implementation of the certification procedures. The Decree also lists in its Chapter II the conditions that signature verification devices must meet to be certified. Finally, Chapter III addresses qualified electronic certificates and certification-service providers.

The Decree complies with the provisions of the Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. (Decree 2001-272, *Journal Officiel* (J.O.) Mar. 31, 2001, at 5070, & Directive 1999/93/EC *Official Journal* L 013, Jan. 19, 2000, at 12-20.)  
(Nicole Atwill, 7-2832)

### **GERMANY--Extradition**

Germany amended its Constitution to allow for the extradition of German nationals to other countries of the European Union or to international tribunals. The amendment was enacted on November 29, 2000, and went into effect on December 2, 2000. Before this reform, article 16, paragraph 2, of the German Constitution (*Grundgesetz für die Bundesrepublik Deutschland*, May 23, 1949, *Bundesgesetzblatt* at 1, as amended) categorically stated that "no German may be extradited to a foreign country." The amending provision (*Gesetz zur Änderung des Grundgesetzes*, Nov. 11, 2000, *Bundesgesetzblatt* I at 1633) adds the sentence:

By legislation, an exception may become enacted for extraditions to a member state of the European Union or to an international court of justice, provided that the principles of the rule of law are guaranteed.

One month after this constitutional change, Germany ratified the Rome Statute of the International Criminal Court (UN Doc. No. A/Conf. 183/9, July 17, 1998, 37 *International Legal Materials* 999 (1998)). At an earlier date, Germany had already enacted legislation to ensure the cooperation with the International Criminal Tribunal for the Former Yugoslavia (*Bundesgesetzblatt* 1995 I at 485) and the International Criminal Tribunal for Rwanda (*Bundesgesetzblatt* 1998 I at 843).



The German exception to the ban on the extradition of nationals will become effective only after implementing legislation has been enacted. Even after such enactments, Germany intends to extradite its nationals to international tribunals or to member states of the European Union only if these extraditions would not lead to a violation of the basic tenets of the German Constitution. Among these is a prohibition of the death penalty (art. 102) and an insistence on a high level of due process in criminal proceedings (A. Zimmermann, "Die Auslieferung Deutscher," 56 *Juristenzeitung* 233 (2001)). However, the currently existing international tribunals and the current members of the European Union appear to live up to these human rights criteria.

(E. Palmer 7-9860)

### **THE NETHERLANDS–Euthanasia Legislation**

On April 10, 2001, the Upper House of Parliament approved by a large majority of votes a bill on termination of life upon request and assisted suicide. Under the Law, these two acts are still criminal offenses, but the Criminal Code has been amended to exempt doctors from criminal liability if they report their actions and show that they have satisfied the due care criteria formulated in the Law. The actions of doctors in such cases are assessed by review committees appointed by the Minister of Justice and the Minister of Health, which focus in particular on the medical and decision-making procedures followed by the doctor. If a doctor has reported a case and a review committee has decided on the basis of his report that he has acted with due care, the Public Prosecutor will not be informed and no further action will be taken. But if a review committee finds that a doctor has failed to satisfy the statutory due care criteria, the case will be reported to the Public Prosecution Service and the Health Inspectorate. These two bodies will then consider whether or not the doctor should be prosecuted.

The aim of the new Law, which is expected to come into effect before the end of the year, is to bring the handling of euthanasia cases into the open, to apply uniform criteria in assessing every case in which a doctor terminates life, and to ensure that maximum care is exercised in such cases. The question of

whether and how criminal liability for euthanasia should be restricted has been the subject of wide-ranging political and public debate for the past thirty years in the Netherlands. The new Law has broad but definitely not uncritical support within Dutch society. (NRC-Handelsblad, Apr. 11, 2001, <http://www.nrc.nl/W2/Nieuws/2001/04/11/Opi/>) (Karel Wennink, 7-9864)

### **THE NETHERLANDS–Special Measure for Drug Addicts**

Drug-addicted criminals are responsible for the majority of frequent property and nuisance crimes in the major Dutch cities. On April 1, 2001, a special measure giving criminal courts the power to place persistent drug-addicted criminals in a unit specifically intended to receive drug users came into effect. The measure can be imposed if other methods used to help drug addicts have proven ineffective. The offenses for which such persons are sentenced usually justify only brief sentences; however, they have been criticized as being too short to effectively help addicts change their behavior.

The new measure, which may be imposed for a maximum of two years, comprises a package of intensive care and supervision provided in a special unit, followed by the provision of local extramural care. The supervision and treatment program starts with placement in a closed setting for approximately six months. Subsequently the person progresses to a semi-open regime for six to nine months, after which he or she enters the last phase: staying outside the unit in a follow-up program, which is organized by the municipality in question. A personal program advisor, employed by the probation service and specializing in addicted criminals, is the link between the addict and all persons and institutions involved. The program gives considerable attention to training, to help the addict work towards participation in the labor market, make constructive use of leisure time, live

in supervised housing, and manage money. It is expected that successful completion of this program will increase the delinquent's chances of social rehabilitation. (Press Release, Ministry of Justice, Apr. 2, 2001, [http://www.minjus.nl/c\\_actual/persber/pb0736.htm](http://www.minjus.nl/c_actual/persber/pb0736.htm)) (Karel Wennink, 7-8764)

### **RUSSIA--Amendments to the Stock Market Law**

Amendments to the Stock Market Law approved by the Russian Parliament on April 13, 2001, give a new definition of a "bond" and take into account various forms of receiving income on bonds, depending on market conditions. These amendments also create the basis for issuing bonds and returning money using methods stipulated in the Civil Code, such as underwriting, bank guarantees, and mortgages.

The amended Law states that a secured bond includes not only the main liability, the loan, but also additional collateral and permits a bondholder to present a bond as a confirmation of his claim to a person presenting the collateral without referring to the inaccessible contract between the issuer and guarantor. Along with this, the procedure for fulfilling collateral liability is subordinated to the general rules stated in the Civil Code. An opportunity for the issuance of options as management incentives is also created by the Law.

The notion of "financial consultant on the securities market" is introduced in order to define persons who provide services to the issuer to prepare a prospectus. According to the Law, any person might perform the function of a financial consultant on the securities market, but the right to sign the prospectus of issue is given only to financial consultants who are also brokers and dealers. The prospectus of issue and quarterly issue reports must be signed by the executives and other persons who, due to their professional activities, can confirm the authenticity of the information contained in the documents. The Law also implements a list of requirements that must be met by issuers. Each issuance must be approved by the Expert Council of the Federal Securities

Commission. (*Rossiiskaia Gazeta*, Apr. 17, 2001, at <http://www.rg.ru>) (Peter Roudik, 7-9861)

### **RUSSIA--Criminal Liability for Disclosure of Confidential Information**

The State *Duma* (lower chamber of the Russian legislature) approved an amendment to the Russian Federation Criminal Code implementing criminal liability for the illegal use of confidential economic information, so-called insider information, which influences the market prices of shares, securities, and currencies. According to the revision, a person who has access to confidential information due to his or her powers as a state official or an official of a local self-government body is recognized as an insider. This amendment establishes punishment as revocation of licenses, ban on working in the field for a number of years, or imprisonment for a period of up to two years. If a crime is committed by an organized group or by a recidivist, the Law calls for imprisonment for a period of two to five years. (*WPS Russian Business Monitor*, Apr. 18, 2001, at <http://www.securities.co.uk>) (Peter Roudik, 7-9861)

### **UKRAINE--New Criminal Code**

On April 5, the *Verkhovna Rada* (Parliament) of Ukraine adopted a new Criminal Code by a vote of 379 to 3, with 2 abstentions (<http://www.rferl.org/newsline>, Apr. 6, 2001). Despite Ukraine's current executive branch crisis, in which the Rada's Communists ousted reformist Prime Minister Yushchenko on April 26, the new Code replaces the much amended Soviet-era Code and ushers in a more Western approach to what constitutes a crime and how offenders should be punished. The prison terms for many crimes were shortened, fines were established for petty offenses, and new economic crimes were instituted. New guidelines and guarantees in the Code aim at generally fairer treatment of defendants than in the past and at lowering Ukraine's high prison population. Another

major change is the elimination of the death penalty; those found guilty of capital crimes now face life in prison, although persons younger than 18 or older than 65 years of age may not be imprisoned for life. An additional major lessening of punishment under the new system is the greatly restricted use of confiscation of property. Under the old Code, dating from April 1, 1961, many people were sentenced to prison and simultaneously to confiscation of their homes, causing them severe hardships when their prison terms were over.

Slander or defamation, a charge often brought against journalists in Ukraine, is decriminalized under the new Code and is only a civil offense. At the same time that President Kuchma has been accused of seeking to control the press and has been forced to defend himself against the major scandal caused by the murder of dissident journalist Heorhiy Gongadze (see WLB2000.10), the new Code imposes criminal sanctions on those who obstruct journalists in the legal pursuit of their professional activities in its article 171. One observer jovially described this development as such a "gift..that [the Ukrainian] Journalists' Day should be moved to the date when this Code comes into effect (Olesander Prymachenko, "We Will Be Living Now in a New Way" [in Ukrainian], *Dzerkalo Tyzhnya* on the Web.)

Forcible overthrow of the constitutional system or seizure of state power and conspiracy to carry out such aims is punishable with 5 to 10 years of imprisonment. Holding a second professional position while occupying the post of a Member of Parliament is also punishable under this new document. The new Code criminalizes those who violate the copyright of others or engage in illegalities concerning trademark use, thus establishing a much needed reform in the country and bringing Ukraine more into line with international norms.

An important innovation in the new Code is expected to have far-reaching economic consequences. The head of the Rada's committee for law enforcement, corruption, and organized crime, Yuriy Karmazin, noted that "no one has ever been charged for failing to

meet his investment obligations...if a person steals 100 *hryvnyas* [about \$US 542] he will be put in jail. But if he fails to pay 100 m[illion] *hryvnyas* or dollars in his investment obligations (which are often part of the deal during privatization in Ukraine), he has nothing to fear—now such things are a criminal offence." Failure to pay employees' wages on time may also subject a manager to prison. (*Lviv Ekspres*, via FBIS online, Apr. 10, 2001.)

Other new crimes include the violation of the confidentiality of a person's medical-biological profile or psychological health information and forcing someone to give blood or taking a sample of a person's blood unbeknownst to that person. A new type of punishment introduced into the Code includes unpaid community service. Observers expect that President Kuchma will sign the new Code into law.

(Natalie Gawdiak, 7-9838)

### **UKRAINE—Professional Army**

A decree "On the Concept of Ukrainian Armed Forces' Transition to Manning by Professional Servicemen for the Period until 2015" was signed on April 9, 2001, by President Leonid Kuchma. Envisioned as the first of three transition stages, the Decree aims to increase the number of professional servicemen to 30,000 by 2005, reaching almost 30% of the Ukrainian armed forces personnel. At the same time, the Ukrainian Defense Ministry will consider shortening the term of active duty in the armed forces to 12 months and the term of junior specialists training in educational establishments to three to four months. This Decree will be followed by a series of legal and regulatory acts that will be elaborated and approved in order to create a professional military service system (GUUAM News online, Apr. 20, 2001).

(Natalie Gawdiak, 7-9838)

### **UNITED KINGDOM--Highest Court Adopts US-Style Law Clerks**

The British judiciary has long been firmly set against employing qualified lawyers as law clerks to assist judges in legal research and to help them write opinions. The traditional view is that judges are supposed to obtain all the help they need from the lawyers appearing in the case before them. In support of this approach, the head of the judiciary once said that "It's the judge's mind you're entitled to get, not some clerk's idea."

Now a year-long experiment with the first four legal assistants attached to the judges in the House of Lords, known as law lords, has been declared a success and the appointments are to be continued. Each of the assistants was attached to one of the senior judges and concentrated on that judge's cases. The assistants also handled petitions for leave to appeal to the Court by putting the papers in order and summarizing the issues and did research for the lectures that the judges are expected to give. Advertisements for the replacements of the first four assistants will be published in May.

Lord Bingham, the senior law lord, does not think that the assistants posed a threat in the short term to the practice under which judgments are entirely written by the judges themselves. If the assistants were employed at all levels in the judiciary, he accepted that a new generation of judges might emerge who would put their signature to a draft prepared by somebody else. However, he emphasized that he did not think it was a "realistic threat" in the short term. (Joshua Rosenberg, "Four Pioneers in Step with the Law Lords," *Daily Telegraph*, Apr. 10, 2001.)  
(Kersi Shroff, 7-7850)

### **UNITED KINGDOM--Proposals To Seize Assets of "Crime Barons"**

The National Criminal Intelligence Service (NCIS) has reported that the number of "crime barons" has risen by a third in each of the past five years. A

group of 150 of these so-called "super-criminals" has been identified, and it is estimated that 39 of them have combined assets worth £220million (about US\$316 million). A report by another government agency also showed that criminals and their associates are able to keep their ill-gotten gains, even after conviction and imprisonment.

Two proposals have been made to seize assets derived from criminal activity that are presently beyond the reach of criminal courts. The first, described in a consultation paper with draft clauses of a new bill, concerns the establishment of a Criminal Assets Recovery Agency (CARA) to investigate and recover offenders' wealth, such as cash, cars, and real estate, derived from criminal activity. The bill provides new powers at the start of a criminal investigation to trace and recover assets derived from crime and to avoid their being hidden or dissipated. At present this can be done only by a prosecutor after charges have been brought or are about to be brought. The bill also introduces a scheme for recovering the assets through civil proceedings rather than in the criminal courts. CARA would be given authority to carry out tax investigations when there are reasonable grounds to suspect that a person's income or gains have been derived from crime.

The government has already allocated initial financial resources for three years to set-up CARA, including an amount earmarked to fund a "center of excellence for financial investigation" within CARA. The money is also to be used for the training and accreditation of financial investigators in law enforcement agencies. CARA is expected to be established by 2003, and it is estimated that it could seize £650million a year.

The other proposal being considered by the government is for a new law based on the U.S. Racketeer Influenced Corrupt Organizations Act (RICO). It is reported that the Home Office has commissioned a professor of criminology to assess RICO-style legislation around the world to determine if it could be used in the United Kingdom.

An unpublished Home Office study is stated to warn that the war against organized crime is being lost in the United Kingdom because it is “almost impossible” to link leading criminals with criminal activities under current wiretapping laws. The massive police surveillance operations allowed under RICO are considered to be essential for the successful prosecution of the crime barons. (*Proceeds of Crime*, Cm. 5066; “Proposals To Remove Criminals’ Ill-Gotten Gains Published,” *Taxes*, Mar. 16, 2001; “New Law To Tackle Crime Barons,” *BBC News*, Apr. 20, 2001.)  
(Kersi Shroff, 7-7850)

## **SOUTH PACIFIC**

### **AUSTRALIA--Census, Religion, and Jedi Masters**

The next Australian census will be held on August 7, 2001. The form includes an optional question on religious affiliation. The Australian Bureau of Statistics (ABS) explains that the religion-question is included because religious organizations provide such services to the population as schools, hospitals, and care for the elderly. Around 30% of Australian children attend schools operated by religious groups.

An e-mail message currently circulating in Australia urges recipients to list their religion as Jedi, a reference to the 1970s Star Wars films. The message claims that if 10,000 people state their religion to be Jedi, it will become a recognized, legal religion. The ABS has been moved to publish on its website the definition of a religion it uses and to note that there are no strict numerical criteria. It is also quoted as saying that “it is not the case at all” that the ABS can form a new religion. The Director of Census Field Operations notes that the Census and Statistics Act provides an A\$1,000 (about US\$500) fine for anyone knowingly providing false and misleading information. (“ABS Warns ‘Jedis’ To Take Census Seriously, Australian Broadcasting Corporation, Apr. 18, 2001 at <http://www.abc.net.au/news/>; “2001 Census and the Question on Religion,” Australian Bureau of Statistics, Census of Population

and Housing, FAQ at <http://www.abs.gov.au/website/sdbs/>)  
(D. DeGlopper 7-9831)

### **AUSTRALIA--Greenhouse Gas Reduction**

On April 1, 2001, Australia’s Renewable Energy (Electricity) Regulations 2001 went into effect. They implement the provisions of the Renewable Energy (Electricity) Act 2000, which mandates that providers of electricity purchase increasing amounts of electricity generated from renewable sources. Robert Hill, Minister for the Environment, describes the regulations as part of Australia’s efforts to reach the goals for reduction of emissions of greenhouse gases, such as carbon dioxide, set by the Kyoto Protocol to the UN Framework Convention on Climate Change.

The Act requires energy suppliers to acquire an additional 2% of their electric power from renewable sources by the year 2010 and establishes the Office of the Renewable Energy Regulator to administer a program of renewable energy certificates, which each supplier of electric power must provide to demonstrate compliance. Each Certificate will represent one- megawatt hour of electricity generated from renewable sources and supplied to a power grid or end-user. The Ministry of the Environment, which oversees the Australian Greenhouse Office, a federal agency that coordinates domestic efforts to implement the Kyoto Protocol, expects the new regulations to fuel an investment boom in renewable energy projects. It is hoped that development of technology, which will include such relatively low-cost items as efficient solar water heaters and small-scale electric power generators fueled by biomass such as the “black liquor” produced in sugar refining, will result in export earnings and additional employment in the renewable energy sector.

Australia’s per-capita emissions of greenhouse gases are relatively high, and its government has held that targets for emissions reduction developed

for densely populated countries such as those of the European Union cannot be directly applied. Its policy has been to reduce greenhouse emissions while protecting Australian jobs and industry with such measures as a special loans and grants program to support the commercialization of renewable energy technology. One goal of the new regulations is to ensure a steady and growing market for renewable energy, which is expected, at least initially, to have higher costs than power from coal-fired generating plants. (“Safeguarding the Future: Australia’s Response to Climate Change--Statement by the Prime Minister the Hon. John Howard, MP,” Nov. 20 1997, at <http://www.greenhouse.gov.au/>; Act No. 124 of 2000 at [http://www.austlii.edu.au/au/legis/cth/Regulations\\_2001\\_No.\\_2](http://www.austlii.edu.au/au/legis/cth/Regulations_2001_No._2) at [http://www.austlii.edu.au/au/cth/num\\_reg/](http://www.austlii.edu.au/au/cth/num_reg/); “\$2 Billion Investment Boom Set To Cut Australia’s Greenhouse Emissions,” Media Release, Minister for the Environment and Heritage, Apr. 4, 2001, at <http://www.environment.gov.au/minister/env/2001/mr4apr01.html>) (D. DeGlopper, 7-9831)

## **INTERNATIONAL LAW & ORGANIZATIONS**

### **CHILE/UNITED STATES--Prospects for Free Trade Accord**

On April 16, 2001, President Bush met in the White House with the President of Chile, Ricardo Lagos, and announced that it is in the national interest of the United States to conclude a free trade agreement with the Andean nation. Mr. Lagos responded that it is essential to press forward with the agreement to strengthen relations with the United States. During a meeting with the United States Chamber of Commerce before going to the White House, President Lagos stated that the signing of a free trade agreement between the two nations would be the best possible signal that Washington could send to Latin America, where there is skepticism about the will of the United States government to widen free trade in an equal manner throughout the Americas.

During his talk with the U.S. business group, President Lagos criticized U.S. anti-dumping laws by saying that they represent “a strong inclination toward protectionism.” Specifically, he spoke out against the Byrd Amendment under which the funds generated by compensatory taxes are handed over to U.S. companies who then sell their products to smaller countries below production costs. Before the amendment was approved last year, the money generated by surtaxes went into the national treasury. The Chilean president stressed that the aim of a free trade agreement is to allow resolution of trade controversies such as those created by anti-dumping laws. (CNNenEspanol.com, Apr. 16, 2001, via <http://www.cnnenespanol.com/2001/econ/04/16/chile.bush/index.html>) (Sandra Sawicki, 7-9819)

### **CHINA/VENEZUELA – Series of Treaties Signed**

The President of the People’s Republic of China, Jiang Zemin, concluded a twelve-day tour through Latin America in Venezuela where he and Venezuelan President Hugo Chavez Frias signed bilateral treaties of cooperation in the fields of energy, culture, technology, agriculture, taxation, and mining. Under one of the pacts, a patented fuel source in Venezuela, called Orimulsion, will be used in Chinese factories. In exchange, China will collaborate in the construction of a new Orimulsion plant in Venezuela to increase production of the combustible to ten tons daily. The Chinese also agreed to open a US\$20 million line of credit to revitalize Venezuela’s agricultural sector. (BBC Mundo, America Latina, Apr. 18, 2001, via [http://news.bbc.co.uk/hi/spanish/latin\\_america/newsid\\_1282000/1282785.stm](http://news.bbc.co.uk/hi/spanish/latin_america/newsid_1282000/1282785.stm))

President Chavez will pay a two-day state visit to Beijing in May in connection with the three-day G-15 Summit Meeting scheduled to be held in Jakarta, Indonesia. China is interested in importing Venezuelan cotton and is planning to send Chinese agricultural technicians to the under-populated and under-developed Orinoco region of southeast

Venezuela to encourage production. (Vheadline.com, Venezuela, Apr. 16, 2001, via wysiwyg://body.44/ <http://www.vheadline.com/P1/latestedition.htm>) (Sandra Sawicki, 7-9819)

**COMMISSION FOR THE CONSERVATION OF SOUTHERN BLUEFIN TUNA/ AUSTRALIA, JAPAN, NEW ZEALAND--Dispute Over "Experimental" Fishing Resolved**

The southern bluefin tuna is a large pelagic fish highly prized in Japan as a source of sashimi. It is also highly endangered, as extensive fishing since the 1970s has pushed the species to the brink of extinction. Recognition of the threat prompted three of the six countries in the fishery--Australia, Japan and New Zealand--to agree in 1993 on the Convention for the Conservation of Southern Bluefin Tuna, which came into force on May 20, 1994. This established the Commission for the Conservation of Southern Bluefin Tuna, with its headquarters in Canberra. The Commission acts to encourage the conservation and optimal utilization of the tuna and to decide the total allowable catch and the amount that each participant may catch. The Republic of Korea agreed to join the Commission in November 2000, and the Commission is attempting to persuade the other two major tuna fishers, Indonesia and Taiwan, to agree to limit their take.

In 1997, Japan proposed an "experimental" program to sample fish stocks outside traditional fishing areas and began taking tuna above its quota of 6,065 metric tons per year in 1998. In June 1999, it began a 65-vessel fishing expedition in the high seas off the western coast of Australia intended to take an additional 2,000 metric tons. In July 1998, New Zealand banned all Japanese tuna boats from using its ports and, after discussions within the Commission reached no agreement, joined Australia in July 1999 in bringing their dispute over Japan's "experimental" program before the International Tribunal for the Law of the Sea, which sits in Hamburg, Germany. Australia and New Zealand acted under Annex VII of the United Nations Convention on the Law of the Sea (LOS). The Tribunal, on August 27, 1999, decided

that unilateral "experimental" fishing should halt, and that the parties to the dispute should resume negotiations. Japan, however, argued that the LOS did not apply to this dispute, and the case ended up being submitted for arbitration by the World Bank's International Center for the Settlement of Investment Disputes, in Washington. On August 7, 2000, the five-member international arbitral decided it lacked jurisdiction, agreeing with Japan's contention that it could not be compelled to arbitrate the dispute under the LOS, as the dispute involved the 1993 Bluefin Tuna Convention. It revoked the interim injunction that the Hamburg tribunal had imposed on Japan's above-quota "experimental" tuna catch.

In December 2000, the three parties to the dispute agreed to have an independent scientific panel investigate the effect of additional fishing on the tuna population. New Zealand lifted its port ban on Japanese tuna boats on December 22, 2000. The Commission met in the Sydney suburb of Bondi on April 18, 2001, and released the report of the scientific panel. This found that experimental fishing served no purpose in protecting the endangered species and suggested alternate and non-lethal ways of assessing the size and composition of the remaining tuna stocks. Japan agreed to halt its experimental fishing, although the Chief Minister for Fisheries noted that his country reserved the right to re-examine the issue in the light of further research. (Fact Sheet, Commission for the Conservation of Southern Bluefin Tuna at <http://www.aone.net.au/ccsbt/facts.html>; Press Release 28, Aug. 27 1999, International Tribunal for the Law of the Sea at <http://www.un.org/Depts/los/Press/ITLOS>; "Arbital Award in the Southern Bluefin Tuna Case," ICSID New Release, Aug. 7, 2000 at <http://www.worldbank.org/icsid/bluefintuna/>; "Japan Cans Experimental Fishing for Rare Bluefin Tuna," *Sydney Morning Herald*, Apr. 19, 2001, at <http://www.smh.com/>) (D. DeGlopper, 7-9831)

**GREECE, EU/UNITED STATES--Settlement of Dispute on Television Piracy**

Greece and the European Union recently resolved a long-standing dispute with the United States concerning television piracy. In 1998, the United States accused Greece of engaging in unauthorized broadcast of audiovisual works on national and local television channels. It consequently requested the intervention of the WTO Dispute Settlement Mechanism against Greece and the European Union on grounds that they had violated their obligations based on the international agreement on the enforcement of intellectual property rights (TRIPS).

Greece's efforts to harmonize its legislation with European Union standards in the copyright field and effectively end television piracy have appeased the United States. As a result, the parties signed a letter to the Chairman of the Dispute Settlement Body requesting the closing of the file. ([Http://www.eurunion.org/news/press/2001/2001014.htm](http://www.eurunion.org/news/press/2001/2001014.htm)) (Theresa Papademetriou, 7-9857)

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### FOREIGN LAW BRIEFS

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### **Recent Publications from Great Britain Obtainable from the Law Library**

Department of Trade and Industry. EXPORT CONTROLS: CONSULTATION ON DRAFT LEGISLATION: THE EXPORT CONTROL AND NON-PROLIFERATION BILL. Cm. 5091. London: The Stationery Office, Mar. 2001. 55 pp.

The report proposes a new legislative framework for both strategic export controls and export controls on cultural objects. The draft bill incorporates provisions to improve Government accountability for export controls, addresses recommendations made in a previous report, and grants new powers that allow for the creation of an updated and more effective strategic export control regimen. The bill addresses various military technology issues, mainly their control and use in compliance with an EU obligation. Options for new measures regarding overseas production are identified. Provisions not included in this draft bill will be included when the bill is introduced in Parliament.

----- . Low Pay Commission. THE NATIONAL MINIMUM WAGE. Cm. 5075. London: The Stationery Office, Mar. 2001. 137 pp.

This report presents a comprehensive analysis of the impact of the minimum wage and its continuing development and recommends that the Main National Minimum Wage for adults 21 and over should be increased to £4.10 per hour in October 2001 and to £4.20 per hour in October 2002. The recommendations are based on 21 research projects and surveys of firms in lower paying sectors and employers participating in the New Deal for the long-term unemployed. Between 1.3 and 1.5 million jobs will be covered by the increase, with a proposed impact on the total wage bill of no more than 0.3%. The low-paying sectors affected as a whole will be significantly fewer than those affected by the initial introduction of the National Minimum Wage.

----- . THE UK FUEL POVERTY STRATEGY: CONSULTATION DRAFT. London: Department of the Environment, Transportation and the Regions, Feb. 2001. 136 pp.

The number of fuel-poor households is thought to have decreased from 5.5 million to 4.5 million from 1996 to 1999. A fuel-poor household is described as one that spends more than 10% of its income to satisfactorily heat a home. The main causes of fuel poverty in the UK are a combination of poor energy efficiency in homes, low incomes, relative dwelling size, number of persons living in a property, and fuel cost. The direct effects are health-related issues. The aged, disabled, those with long-term illnesses, and children are the most adversely affected and are found in most of the fuel-poor households in the UK. The strategy sets interim target dates to assist vulnerable households.

Home Office. PROCEEDS OF CRIME: CONSULTATION ON DRAFT LEGISLATION. Cm. 5066. London: The Stationery Office, Mar. 2001. 336 pp.

The bill brings together in one Act laws governing investigations, money laundering offenses, and confiscation, in addition to establishing a Criminal Assets Recovery Agency. The Agency will be

empowered to recover criminal proceeds in a new form of civil litigation in the High Court and exercise taxation functions delegated from the Inland Revenue. (See related article under United Kingdom in this issue of the *World Law Bulletin*.)

Home Secretary. A REVIEW OF THE VICTIM'S CHARTER. London: Home Office Communications Directorate, Feb. 2001. 19 pp.

This report outlines the steps the Government has taken since 1997 to provide better services and improved support for victims of crime. The first charter was published in 1990 and substantially revised in 1996, to include 27 standards of services that victims could expect to receive. Considerations for the current revision include the introduction of statutory rights for victims, the creation of a Victim's Ombudsman, and key questions to which the Government is inviting response. Possible contents of the new charter are discussed, together with details of how the Government expects victims to be treated by the criminal justice system and what can be expected from each of the criminal justice partners.

House of Commons. REGISTER OF MEMBERS' INTERESTS AS AT 31<sup>ST</sup> JANUARY, 2001. HC221. London: The Stationery Office, Feb. 1, 2001. 159 pp.

This Register provides information on ten categories of registerable interests of Members. Members are required to list their sources of paid outside employment, but not the amount received. On November 6, 1995, the House of Commons resolved that a Member who had existing agreements or entered into new agreements involving the provision of service in the capacity of a Member of Parliament must deposit the agreement in writing to the Commissioner for Standards. The ten types of interests that should be registered are: 1) remunerated directorships, 2) remunerated employment, office profession, etc., 3) clients, 4) sponsorship of financial or material support, 5) gifts, benefits and hospitality, 6) overseas visits, 7) overseas benefits and gifts, 8) land and property, 9) registerable shareholdings, and 10) miscellaneous and unremunerated interests.

House of Commons. Defense Committee. THE SIX-NATION FRAMEWORK AGREEMENT:REPORT AND PROCEEDINGS OF THE COMMITTEE WITH MINUTES OF EVIDENCE AND APPENDICES. First Report. Session 2000-2001. HC115. London: The Stationery Office, Feb. 7, 2001. 55 pp.

The areas covered in this Agreement between France, Germany, Italy, Spain, Sweden, and the U.K. are: 1) Security of Supply, 2) Exports Procedures, 3) Security of Classified Information, 4) Treatment of Technical Information, 5) Research and Technology and 6) Harmonization of Military Requirements. The aim of the agreement is "...to create the political and legal framework necessary in order to promote a more competitive and robust European defense technology and industrial base in the global defense market." The Ministry of Defense describes its role in developing a strong and efficient industry as "indirect." Witnesses highlighted research and technology, rationalizing contract law across European borders, releasing information to facilitate technology transfers throughout the defense supply chain, and establishing security supplies as ways the Ministry of Defense could take a more proactive role in influencing the competitiveness of the European defense industry in the future.

----- Defense Committee. THE STRATEGIC DEFENSE REVIEW:POLICY FOR PEOPLE. Second Report. Vol. 1. 77 pp. MINUTES OF EVIDENCE AND APPENDICES. Vol. 2. 264 pp. Session 2000-01. London: The Stationery Office, Feb. 14, 2000.

This committee report focuses on the recruiting and retention of quality personnel in the all-volunteer forces. On a monthly basis, attrition levels are higher than recruitment levels. While the deficits are not critical, they have placed pressure on the trained strength of the services. Women represent less than 10% of the trained strength of the armed forces, and ethnic minorities represent less than 3%. The report provides suggestions to the Ministry of Defense, including improved support for dependent families and more support and monitoring of the revised Code of Social Conduct regarding issues of gender, homosexuality, and sexual harassment. Volume 2 contains the witness lists, written evidence, and appendices.

-----, -----, STRATEGIC EXPORT CONTROLS: ANNUAL REPORT FOR 1999 AND PARLIAMENTARY PRIOR SCRUTINY. Third Report. HC 212. London: The Stationery Office, Mar. 6, 2001. 42 pp.

This Quadripartite Committee report contains revised proposals for parliamentary scrutiny of the implementation and operation of the European Code of Conduct, recommending that all future bilateral discussions with countries applying for arms and other military equipment conform to the Code. The report also stresses greater scrutiny of the strategic export controls on several individual states, specifically China, Israel, Morocco, Southern Lebanon and Zimbabwe.

-----, Foreign Affairs Committee. HUMAN RIGHTS ANNUAL REPORT 2000. First Report. Session 2000-2001. HC 79. London: The Stationery Office, Jan. 23, 2001. 28 pp.

This annual report makes the recommendation that future reports include statistics and information on a country-by-country basis. Information should include the country's human rights record, documented improvements, and projects and outlines of proposed activities. Future editions should also include monetary expenditures, explanations of how policies and actions are addressed when human rights shortfalls are discovered, and the placing of the report on the World Wide Web. The current report supports the increase of serious treatment for Partnership and Co-operation Agreements (PCAs), repeating the recommendation from the prior report that "PCAs should have teeth and when appropriate, the teeth should bite...". Clarity is sought in the description of instances that would lead the Government to press for suspension of a trade agreement with a country that is in violation of its human rights obligations. Reports on forced marriage and citizenship education are recommended to be continued features in future reports, along with coverage of child soldiers, slavery, bonded labor, and other global issues.

-----, Treasury Committee. THE INTERNATIONAL MONETARY FUND: A BLUEPRINT FOR PARLIAMENTARY ACCOUNTABILITY. Fourth Report. Session 2000-01. HC162. London: The Stationery Office, Mar. 6, 2001. 33 pp.

This report supports the IMF in its efforts to make its operations and policies as clear as possible. At £6.9 million in 1999-2000, the UK became the fifth largest shareholder in the Fund. Part of its quota will be used in support of IMF crisis packages. The report strongly suggests holding UK representatives at the Fund, as well as the IMF itself, more strictly accountable, publishing the Executive Board meeting minutes, and immediately making the UK voting record at the IMF public.

Law Commission. DOUBLE JEOPARDY AND PROSECUTION APPEALS. Law Comm. No. 267. Cm. 5048. London: The Stationery Office, Mar. 2001. 135 pp.

This report is a follow-up to the recommendations of the Macpherson Report (1999, Cm. 4262) on the Stephen Lawrence Inquiry regarding prosecution after acquittal. The report recommends that the rule of double jeopardy should be subject to exceptions in cases when new evidence is discovered after acquittal, but only when the defendant was acquitted of murder, and when acquittal took place before a statute of limitations was imposed. There are 36 new recommendations, on, among others, the rules of new evidence, the interest of justice test, selection of the appropriate court, evidence previously ruled as inadmissible, retrials, tainted acquittals, and the codification of the double jeopardy rule.

Lord Chancellor's Department. EMERGING FINDINGS: AN EARLY EVALUATION OF THE CIVIL JUSTICE REFORMS. London: Lord Chancellor's Department, Mar. 2001. 36 pp.

This report presents the early findings on the Civil Procedure Rules introduced in April 1999, following Lord Woolf's report on Access to Justice. The report finds a decline in the number of claims issued and settlements "at the door of the court." Settlements before the hearing day have increased. Implementation of new methods such as Alternate Dispute Resolution and changes in the use of experts have rendered the court system less cumbersome. The Civil Justice Reforms are ongoing; future reports will include major initiatives not dealt with by Lord Woolf and qualitative information on the impact of the reforms on a long-term basis.

## THE WORLD TRADE ORGANIZATION: RECENT DEVELOPMENTS

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

### DISPUTE SETTLEMENT<sup>1</sup>

#### *Implementation Status of Adopted Reports*

The Dispute Settlement Body (DSB) granted Canada's request for arbitration regarding the level of suspension of concessions and related obligations in the dispute with the United States and New Zealand over Canadian measures affecting the **importation of milk and the exportation of dairy products** (Mar. 1, 2001).<sup>2</sup>

The arbitrator's report requested by the European Communities and by Japan in the dispute with the United States over the **Anti-Dumping Act of 1916** was circulated (Feb. 28, 2001) The arbitrator decided that the reasonable period of time for implementation in the case is 10 months and that it will expire on July 26, 2001.<sup>3</sup>

In the dispute between Canada and the United States over the **Canadian patent protection term**, the arbitrator decided that the reasonable period of time for implementation by Canada is 10 months and that it will expire on August 12, 2001.<sup>4</sup>

Korea announced it had already initiated implementation of the DSB recommendations in the **dispute with the United States and Australia over measures affecting imports** of fresh, chilled, and frozen beef and that a reasonable period of time was needed in order to complete the process (Feb. 2, 2001).<sup>5</sup>

The EC requested that the reasonable period of time for implementation by the United States of the recommendations and rulings issued in the dispute over definitive safeguard measures on **imports of wheat gluten** from the EC will be determined by arbitration (Mar. 20, 2001).<sup>6</sup>

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

<sup>2</sup> See WLB WTO Update, WLB01.04, Apr. 2001, at 24.

<sup>3</sup> See WLB WTO Update, WLB01.01, Jan.2001, at 17.

<sup>4</sup> See WLB WTO Update, WLB00.12, Dec. 2000, at 26.

<sup>5</sup> See WLB WTO Update, WLB01.02, Feb. 2001, at 15.

<sup>6</sup> *Id.* at 16.



The United States announced its intention to implement the recommendations of the DSB concerning **anti-dumping measures on stainless steel** plate in coils and stainless steel sheet and strip from Korea, indicating that it needs a reasonable period of time to do so (Mar. 1, 2001).<sup>7</sup>

#### *Appellate and Panel Reports Adopted*

The DSB adopted the Panel Report as modified by the Appellate Body Report which found against the EC in the dispute with India concerning **anti-dumping duties on imports of cotton-type bed-linen** (Mar. 12, 2001).<sup>8</sup>

#### *Appellate Body Reports Issued*

The Appellate Body, in a report circulated on March 12, 2001, upheld most of the findings of the Panel in the dispute over anti-dumping duties imposed by Thailand on angles, shapes, and sections of **iron or non-alloy steel H-beams** from Poland.<sup>9</sup>

The Appellate Body circulated its report in the dispute between the EC and Canada concerning measures imposed by France prohibiting **asbestos and asbestos products**, including a ban on imports of such products.<sup>10</sup> The Body reversed most of the findings of the Panel; however, it upheld the finding that the asbestos prohibition is necessary to protect human life or health within the meaning of article XX(b) of GATT 1994. It also upheld the Panel's finding that the measure may give rise to a cause of action under article XXIII:1(b) of GATT 1994 (Mar. 12, 2001).

#### *Active Panels*

Panels were established on March 12, 2001, in the following disputes:

- Argentina with Chile over the price band system and safeguard measures relating to certain **agricultural products**;
- United States with Belgium concerning administration of measures establishing customs duties for **rice**; and
- Brazil with Canada concerning export credits and loan guarantees for **regional aircraft**.

#### *Pending Consultations*

Consultations are pending in the request by Colombia concerning definitive safeguard measures relating to **sugar** imposed by Chile and the request by Chile concerning **taxes on cigarettes** under Peruvian legislation.

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<sup>7</sup> *Supra* note 2.

<sup>8</sup> *Supra* note 3, at 18.

<sup>9</sup> *See* WLB WTO Update, WLB00.11, Nov. 2000, at 22.

<sup>10</sup> *Id.* at 23.

**RECENT DEVELOPMENTS IN THE EUROPEAN UNION**  
by Theresa Papademetriou, Senior Legal Specialist, Western Law Division

**Stockholm European Council Presidency Conclusions<sup>1</sup>**

The European Council convened in Stockholm, Sweden, on March 23-24, 2001, to work on a number of economic and social questions. The Council focused on the following priorities:

- Full employment in a competitive Union. The European Council agreed to establish intermediate targets for employment rates across the Union for January 2005 of 67% overall and 57% for women. It also agreed to increase the average EU employment rate among older women and men between the ages of 55-64 by up to 50% by the year 2010.
- **Creation of more and better jobs, and acceleration of economic reform.** To achieve this goal, the European Council urged the Member States to transpose internal market directives; welcomed the Commission's proposals for further liberalization of the gas and electricity markets; and reaffirmed its intention to create a Single European Sky. It also noted the Commission's proposals to amend the rules on airports' slot allocations.
- **Implementation of the Financial Services Action Plan.** The European Council approved a resolution on more effective securities market regulation and supported the establishment of a risk capital market by 2003.
- **Modernization of the European Social Model, promotion of social inclusion, and encouragement of corporate social responsibility.**

The European Council also expressed its concern about the dire situation in the agricultural sector and stressed its commitment to eradicate foot-and-mouth disease and Bovine Spongiform Encephalopathy. It called on third countries to lift any disproportionate measures that have been taken in response to the current crisis.

In regard to external matters, the European Council called **on international donors to provide financial assistance**, along with the European Union, **to the Palestinian budget**. It also expressed its support for the resumption of negotiations between Palestine and Israel for an agreement within the framework of UN Security Council resolutions. In regard to Russia, the Council stated its **support for the Partnership and Cooperation Agreement between the EU and Russia** and called for Russia's eventual accession to the WTO.

The European Council made a declaration on climate change and **reaffirmed its commitment to reduce emissions as called for in the Kyoto Protocol** to the United Nations Framework Convention on Climate Change. It called on the negotiating partners to come to an agreement to implement the Protocol. The Council made a declaration on the Former Yugoslav Republic of Macedonia (FYROM) in which it expressed its support for and solidarity with the FYROM government in the areas of the sovereignty and territorial integrity of FYROM.

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<sup>1</sup> [Http://ue.eu.int/Newsroom/LoadDoc.cfm?MAX= 1&DOC= !!!&BID= 76&DID= 65786&G](http://ue.eu.int/Newsroom/LoadDoc.cfm?MAX=1&DOC=!!!&BID=76&DID=65786&G)

## **Swordfish Agreement Between the European Union and Chile<sup>2</sup>**

In January 2001, the European Union and Chile signed a provisional agreement regarding their long-standing dispute over swordfish fisheries in the South Pacific. Under its terms, the parties suspend the proceedings that were pending before the Chamber of the International Tribunal of the Law of the Sea (ITLOS) and the WTO. The root of the controversy lies in the fishing practices of EU vessels in the South Pacific area and in Chile's refusal to allow port access to EU vessels. Chile claims that for the last ten years, EU vessels have not taken conservation measures with regard to swordfish, a highly migratory fish, and have failed to cooperate with the coastal state to ensure the conservation of swordfish. Consequently, pursuant to an earlier agreement reached in December 2000, by which the parties agreed to establish a special five-judge Chamber, Chile requested that the ITLOS Chamber ascertain whether the EU is in violation of certain articles of the United Nations Convention on the Law of the Sea (UNCLOS). The allegedly infringed articles relate to cooperation in ensuring conservation of highly migratory species, conservation of living resources of the high seas, and dispute settlement. On the other hand, the European Union claims that Chile violated several provisions, including the freedom of the high seas; freedom of fishing, subject to conservation obligations; and the provision that bans any State from treating any part of the high seas as its own. The proceedings before the WTO were initiated by the European Union in April 2000, after a round of bilateral negotiations between the two parties bore no result.

Pursuant to the provisional agreement, which became effective in March 2001, the Parties must resume bilateral negotiations. There are three major elements of the agreement: a) port access for fish caught under a new scientific fisheries program; b) reestablishment of a bilateral technical commission; and c) creation of a multilateral conservation forum for the Southeast Pacific.

## **Banana Dispute Between EU and US Comes to an End<sup>3</sup>**

The banana dispute between the United States and the European Union originated in 1993 when the EU adopted a Common Market Organization for bananas that accorded preferential status to banana suppliers from Asian, Caribbean, and Pacific (ACP) countries. In 1997, at the instigation of the US, the import regime was found to be in violation of WTO rules. A revised import system was also found to be inconsistent with the WTO, which authorized the United States to impose trade sanctions against EU products. A new regulation was proposed that comes into force on July 1, 2001, and provides the following:

- Quota A: 2.200.000 tons at a tariff of *euros* 75/T
- Quota B: 353.000 tons at a tariff of *euros* 75/T
- Quota C: 850.000 tons at a tariff of *euros* 300/T

These quotas are a transitional measure and apply to bananas regardless of origin. Banana suppliers from ACP countries are accorded a tariff preference both within and outside the quota of *euros* 300/T. Based on this regulation, the two parties came to the following agreement. The Commission will implement the new

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<sup>2</sup> [Http://www.asil.org/insigh60.htm](http://www.asil.org/insigh60.htm)

<sup>3</sup> [Http://www.Eurunion.org/news/press/2001/2001027.htm](http://www.Eurunion.org/news/press/2001/2001027.htm)

system as of July 1, 2001, by allocating licenses on the basis of historic preferences. The US agreed to suspend the trade sanctions on a number of EU exports. At a later stage, the Commission must increase the B quota, while the C quota will be reduced by the same quantity. The C quota will be reserved for bananas of ACP origin, subject to a WTO waiver. At this point, the US will remove the sanctions imposed.

### **EU Guidelines Against Torture**<sup>4</sup>

The European Commission has been actively involved in the fight against torture. Since 1994, under the European Initiative for Democracy and Human Rights, the Commission has allocated 24 million *euros* to finance projects, especially in the area of prevention and of rehabilitation of victims of torture. Recently, the Commission adopted guidelines designed to identify appropriate steps to prevent and eliminate ill-treatment and torture in third countries. The guidelines against torture and the previously adopted guidelines against the death penalty fall within the framework of the EU's common foreign and security policy and aim to encourage third countries to take measures towards the eventual elimination of torture.

### **Cyprus/EU Membership**<sup>5</sup>

Cyprus moved one step closer to becoming a European Union Member. During a recent meeting of the Inter-Governmental Conference at the deputy level, held in Brussels, the Republic of Cyprus announced that it had harmonized its laws on the movement of capital with European Union legislation. Since the accession talks began in 1998, Cyprus has completed work on 18 of the 29 chapters that need to be harmonized. This achievement places Cyprus in a leading position in comparison to other candidate countries. To date, the Central Bank of Cyprus has liberalized capital movement, direct investment by residents of the EU, and medium- and long-term borrowing in foreign currencies by Cypriots. It has also abolished blocked accounts.

### **EU Best Practice Document for Police Forces**<sup>6</sup>

On April, 3, 2001, following an initiative sponsored by Greece and England, the European Union Political Committee adopted guidelines establishing standards for police responding to terrorist shootings and bombings. The initiative was prompted by the assassination of a British defense attaché by two terrorists in Athens last June. The "November 17" terrorist group that operates in Greece claimed responsibility. The guidelines emphasize the significance of preserving evidence at the site of the crime, restricting access to the site, and rapidly deploying experts on terrorism to the site. It also contains recommendations on how to handle the victims and their families, as well as the media.

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<sup>4</sup> [Http://europa.eu.in/comm/external\\_relations/human\\_rights/news/ip01\\_530.htm](http://europa.eu.in/comm/external_relations/human_rights/news/ip01_530.htm)

<sup>5</sup> [Http://www.greekembassy.org/press](http://www.greekembassy.org/press)

<sup>6</sup> [Http://www.greekembassy.org/press](http://www.greekembassy.org/press)