



# WORLD LAW BULLETIN

September 2003

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## AFRICA

### ANGOLA–Criminal Code To Be Revised

On August 5, 2003, Angola's Justice Minister, Paulo Tjipilica, opened the process to revise the country's Criminal Code, which has been in effect since 1880. Speaking at a press conference in Luanda, the Justice Minister predicted that the modernized code will include provisions against organized crime, money laundering, drug trafficking, narcotics and related substances, abuses against children, high tech crimes involving intellectual property and copyright, and abuses of human rights. Local legal experts will be assisted in this process by a noted professor of law from the Law Faculty of Coimbra University in Portugal. The Law Faculty of the State-run Agostinho Neto University in Angola has agreed to assist the Justice Ministry in this work by exchanging legal information and opinions. ("Reformation Process of Country's Criminal Code Opened," *allAfrica.com*, Aug. 7, 2003, via <http://allafrica.com/stories/printable/200308070169.html>). The Angolan Coalition for the International Criminal Court welcomed the government decision to open the revision process and released a statement that this initiative will support citizens' rights, civil liberties, and legal guarantees. ("Coalition Welcomes Penal Code Revision," *allAfrica.com*, Aug. 14, 2003, via <http://allafrica.com/stories/printable/200308140098.html>)

(Sandra Sawicki, 7-9819)

## AMERICAS

### CHILE–Divorce Bill Advances

The Chilean Senate recently approved, by a 33 to 13 vote, a bill on civil matrimony that would legalize divorce to replace the current provisions on annulment of matrimony. The bill now passes to committees for analysis of each article. If approved, the new law would replace legislation that has been in force since 1884. The debate lasted through seven sessions before the Senate vote was taken. Women's advocates praised the vote as an historic step, but opponents in the Senate called the prospect of legal divorce the "maximum expression of individualism, and a time bomb against society," and the Catholic Church has also expressed its opposition to the new bill. ("Chile se acerca a una ley de divorcio," *BBC Mundo.com*, Aug. 14, 2003, via [http://news.bbc.co.uk/hi/latin\\_america/newsid\\_3150000/3150755.stm](http://news.bbc.co.uk/hi/latin_america/newsid_3150000/3150755.stm))

(Sandra Sawicki, 7-9819)

### COLOMBIA–Senate Votes Against Bill on Same Sex Unions

On August 26, 2003, the Senate voted 55 to 32 to reject a bill that would extend inheritance, pension, and similar rights to the survivors of homosexual couples. Conservative, liberal, and independent politicians joined to defeat the bill that was sponsored by the co-director of the Liberal Party and supported by Senate members on the left and three former presidents of Colombia. Senator Enrique Gomez Hurtado, who opposed the bill, commented that the extension of social security and other rights to same sex couples would drain a system that is already in dire financial straits. He also stated that when two men or two women go before a notary, say they are a couple, and become beneficiaries of health services subsidized by the State, a fraud is committed. Senator Carlos Gaviria, who supported the initiative, said the defeat of the bill is a blow to democracy in Colombia, and indicates the extent of conservative trends there. Senator Piedad Cordoba, the bill's sponsor, announced she will reintroduce the bill within the year. ("Senado colombiano rechaza proyecto de ley en favor de los homosexuales," *CNNenEspanol.com*, Aug.

27, 2003, via <http://www.cnnenespanol.com/2003/americas/08/27/colombia.homosexuales.ap/index.html>) (Sandra Sawicki, 7-9819)

### **MEXICO–Indians Given Language Rights**

On March 10, 2003, the General Law on the Linguistic Rights of the Indian Peoples was signed. Its stated objectives are to regulate the recognition and protection of the collective and individual language rights of Indian peoples and communities and to promote the use and development of Indian languages. In May, Guatemala passed a similar law (see *WLB* July 2003). Article 9 of the new Law grants to all Mexicans the right to communicate in their native language, without public or private restrictions, orally or in writing, in all social, economic, political, cultural, religious, and other activities. It encourages the use of Indian languages by mass media when needed, the creation of libraries and cultural centers that will serve as depositories to conserve linguistic materials in national Indian languages, and bilingual education for teachers who will work in Indian communities. It also provides for the creation, organization, and operations of the National Institute of Indian Languages. (*Diario Oficial*, Mar. 13, 2003.) [GLIN] (Sandra Sawicki, 7-9819)

### **MEXICO–*Maquiladora* Export Industry Program Decree**

Extensive amendments to the Decree for the Encouragement and Operation of the *Maquiladora* [in-bond] Export Industry were promulgated recently. This preferential customs treatment program has been the basis of Mexico's export manufacturing capability since 1965. The amendments include the following: the definitions of *maquila* and *submaquila* operations were modified; new formalities and requirements to obtain a *maquila* program authorization were established; the term for which such authorization would be granted or denied was changed; and the regime for temporary importation of administrative development equipment was liberalized. Other modifications were made in the prohibition of refunding, exempting, or reducing duties set forth in several of Mexico's multilateral free trade agreements; the exceptions to the country's obligation to pay duties related to international commitments; obligations for *maquila* companies; annual reports; the types of goods that will not be allowed to be imported under the *Maquiladora* Decree or that will be subject to specific requirements; and the circumstances and procedures applicable for the cancellation of *maquila* programs. Several provisions of the original Decree were repealed. (*Diario Oficial*, May 12, 2003.) (Norma C. Gutiérrez, 7-4314)

## **ASIA**

### **BANGLADESH--Lawyers' Strike**

The country's courts ground to a halt as 30,000 lawyers went on strike on August 6, 2003, in protest against the Government's new rule requiring them to obtain trade licenses in addition to their Bar Council registrations. The strikers demanded an end to Government control of the judiciary through the establishment of an independent body for all judicial appointments and transfers of judges. The Government describes their demands, which are supported by the Opposition parties, as "purely politically motivated." (*The Hindu*, Aug. 6, 2003.) (Krishan Nehra, 7-7103)

### **CHINA–Foreign Investment in Ports**

Under the latest investment guidance for foreign capital, a limitation that set foreign ownership of ports at 50% or less has been ended. The change is expected to greatly increase investment in both the construction and the operation of Chinese ports, according to the Ministry of Communications. One United States company, United Yield International, has just invested a 51% share in a port project in the eastern Chinese city of Lianyungang; two Chinese businesses control the remaining shares. In addition, wholly foreign-funded projects in the key infrastructure port operations for the first time. China will be issuing a series of regulations on procedures for these overseas investments. (Xinhua, Aug. 6, 2003, via FBIS.) (Constance A. Johnson, 7-9829)

### **CHINA–Freedom of Movement Measures**

On August 7, 2003, the Ministry of Public Security (MPS) (police) announced 30 new reforms on household registration, traffic management, travel, and fire control. The aim of these reforms, as well as some other recent steps, is to improve ties with the public and enhance the image of the police, which has suffered as a result of instances of corruption and abuse of power. The seven measures on household registration and five measures on travel introduce greater mobility in a country which as yet has no constitutional guarantee of freedom of movement.

China practices a rather strict system of residence registration, under which people who change their place of permanent residence must transfer their residence registration, losing their original one. Under the reforms, college graduates, investors, entrepreneurs, and skilled workers who go to China's west to work may choose to register their residence in the new place or transfer the residence registration back to the original domicile upon returning there to work or live. Professionals from large and medium-sized cities who decide to work in small towns or rural areas may retain their urban residence registration. Persons who have been abroad for more than one year (unless they permanently reside abroad) or who have been sentenced to imprisonment or given reeducation through labor will no longer have to cancel their residence registration. As for travel reforms, applications for visas for individual trips overseas can now be made at will, with only an ID card and residence registration, from 100 large and medium-sized cities, expanded from 25. Travel requirements for personal trips to Hong Kong and Macau have also been eased. ("Xinhua: PRC Announces New Residency Registration Rules To Allow Better Mobility," *Xinhua*, Aug. 7, 2003, via FBIS; MPS website, news section, Aug. 7, 2003, <http://www.mps.gov.cn>) (W. Zeldin, 7-9832)

### **INDIA--Campaign Finance**

The Election and Other Related Laws (Amendment) Bill, 2003, passed earlier in the Lower House of the Indian Parliament, was approved on August 4, 2003, by the Upper House. The bill, which amends the Representation of People Act, the Income Tax Act, and the Companies Act, will legalize funding of political parties and make it more transparent. The objective of the bill, according to Law Minister Arun Jaitley, is not to legalize corporate donations or corruption in the political parties, but to bring accountability to the campaign finance process. (*The Hindu*, Aug. 4, 2003; *The Hindustan Times*, Aug. 5, 2003.) (Krishan Nehra, 7-7103)

**INDIA--Witnesses No Longer To Be Hostile**

On August 11, 2003, the Union Cabinet of India approved an amendment to the Code of Criminal Procedure, 1973, and legislation to give effect to it will be introduced in the current session of the Parliament. The amendment will prevent witnesses from turning hostile because it will require that all witness statements be recorded in the presence of a Magistrate; if a witness were to change the statement, he or she might become liable for perjury. (*The Hindu*, Aug. 11, 2003.) (Krishan Nehra, 7-7103)

**INDONESIA–Anti-Money Laundering Measure**

Effective July 15, 2003, Indonesia's Corporate Market Supervisory Agency (Bapepam) implemented a "know your customer" ruling. Its purpose is to tighten control of investors or customers of securities companies, mutual funds, and custodian houses as part of government efforts against money laundering. Institutions that fail to implement the regulation may lose their licenses. Under the ruling, the companies, funds, and houses must have a record of customer identities, their objectives in investing, and the identities of third parties should customers represent such parties. They must also request from personal customers supporting documents that make clear their profession, source and use of funds, and citizenship; corporate clients must provide their corporate statute, operating license, taxpayer identification number, financial report, management structure, and explanation of the source and use of funds. The regulation states that the institutions have an obligation to report suspicious transactions no later than 7 days after being detected.

In mid-June, the G7 Financial Action Task Force grouped Indonesia with eight other nations as non-cooperative countries in combating money laundering practices; the eight were viewed as having failed to make adequate progress in that fight during the previous year. The head of Bapepam hopes that consistent implementation of the ruling will significantly contribute to efforts to have Indonesia removed from the grouping. ("Indonesia To Implement Rule To Tighten Control on Investors from July 15," *AFX*, June 23, 2003, via LEXIS/NEXIS.) (W. Zeldin, 7-9832)

**JAPAN–Amended Pharmaceutical Affairs Law in Effect**

Many drugs approved for use in foreign countries have not been approved in Japan. As a result, some cancer patients, for example, import such drugs from abroad by themselves. One of the reasons that many drugs are not approved in Japan is that pharmaceutical companies are not willing to file applications for drug approval if the drugs will not have a large enough number of consumers. Conducting clinical studies and gathering data needed for the drug application are typically very costly.

In the Pharmaceutical Affairs Law (Law No. 145 of 1960) as amended in 2002, which became effective on July 30, 2003, some of the strict regulations on clinical studies have been loosened. Formerly, a drug maker could not provide unauthorized drugs to a doctor for a clinical study, even if the drug maker itself had obtained approval for such a study from the Ministry of Health. Now, not only the drug makers, but also doctors can initiate studies on new drugs. A doctor can ask a drug maker to provide him or her with an unauthorized drug for a clinical study, the data from which will be used for the drug approval application. The Ministry of Health funded 850 million *yen* (US\$7 million) to support such doctor-led studies for this fiscal year. The revised Law also stipulates that doctors are now obliged to report any side

effects of a drug to the Ministry. In the past, only drug makers were obliged to report the side effects of its drugs to the Ministry; doctors were merely encouraged to do so. (*Asahi Shimbun*, July 23, 2003; Health Ministry website, in Japanese, at <http://www.mhlw.go.jp/qa/iyaku/yakujihou/point3.html>) (Sayuri Umeda, 7-0075)

### **KOREA, SOUTH–New Foreign Worker Permit System**

The National Assembly of Korea adopted a law on July 31, 2003, which creates a work permit system for foreigners. Korea has had an industrial trainee system since 1993, which allows foreign nationals to work in Korea for two years after completion of a one-year training program. It is not abolished by the new law and will co-exist with the new work permit system. The latter requires foreign workers to renew their employment contracts annually and bans them from working in the country for more than three years. Foreigners who stay for more than three years cannot re-enter Korea for at least a year before being re-employed in Korea. The work permit system will give qualified foreign laborers various benefits, including industrial accident insurance and minimum wage guarantees. In March 2003, the government extended the stay of illegal workers until late August, on the assumption that the work permit bill would be passed by the National Assembly by that time. (“Labor Market To See Drastic Change,” *Korea Times*, July 31, 2003, at <http://times.hankooki.com/>) (Sayuri Umeda, 7-0075)

### **MONGOLIA–Draft Election Law**

The Electors’ Education Center of the Women’s Movement for Social Progress (WMSP), a non-profit non-governmental organization, has drafted a Mongolian election law. The draft combines into one the election laws for the President of Mongolia, the State Ih Hural (Parliament), and local elections and has been made available for public discussion. The WMSP is planning to hold other open discussions in the future in order to gather public opinions on such issues as the funding of elections, the media and elections, the legal rights of election observers, and means of internal supervision and control. (“Mongolia: Email Daily News 13 Aug,” *EDN*, Aug. 13, 2003, via FBIS.) (W. Zeldin, 7-9832)

### **PHILIPPINES–Dual Citizenship Law**

On August 25, 2003, the Senate ratified the bicameral conference report on a dual citizenship bill, with only one dissenting vote. The Citizenship Retention and Reacquisition Act is designed to allow natural-born Filipinos to keep or regain their citizenship while holding another citizenship. The issue of voting rights for such dual citizens was the most contentious point; the new Act will limit voting rights to dual citizens who are not in the service of a foreign military and are not holding an appointed or elective post in a foreign government. The legislature is also considering legislation on voting by citizens who are overseas. (*ABS-cbnNEWS.com* at [http://www.abs-cbnnews.com/abs\\_news\\_body.asp?section= National&oid= 31645](http://www.abs-cbnnews.com/abs_news_body.asp?section= National&oid= 31645), Aug. 25, 2003.) (Constance A. Johnson, 7-9829)

### **SINGAPORE–Air Marshals**

On August 14, 2003, as an anti-terrorist measure, the Singapore Parliament amended the Police Force Act that will allow armed air marshals to be deployed on flights operated by Singapore Airlines and

its subsidiary SilkAir. Under the amendments, the commissioner of police may appoint any police officer to serve as an air marshal on board any Singapore-registered aircraft. An Air Marshal Unit will be formed within the Singapore Police Force, and the officers selected as marshals will undergo specialized training. Airlines will be required to accept deployment of the marshals and to provide seating for them at no cost to the government; the penalty for non-compliance will be a fine of up to S\$50,000 (US\$29,000). The marshals, who will travel incognito on selected flights, will have police powers to act on board an aircraft both within and outside Singapore territory. The Government is also holding discussions with other governments to allow the air marshals to fly into and out of their countries. (“Singapore Passes Law Allowing Air Marshals on SIA, Silk Air,” *Agence France Presse*, Aug. 14, 2003; “Singapore Passes Law Allowing Air Marshals,” *Air Transport Intelligence*, Aug. 15, 2003, both via LEXIS/NEXIS.) (W. Zeldin, 7-9832)

### **TAIWAN–Asylum Bill**

The Ministry of Interior (MOI), in consultation with the Ministry of Foreign Affairs (MFA), has drafted a bill on political refugees that may be presented to the legislature in September. The bill would compel the government to protect foreigners or stateless persons who are persecuted or under the threat of persecution in their home country due to their race, religion, nationality, or political views. It provides for a panel comprised of officials from the MOI, MFA, and National Security Bureau and well-respected civilians to review the asylum applications. Persons granted political asylum would be allowed to work in Taiwan and receive National Health Insurance coverage. (“CNA: Political Refugee Bill Worked Out by Interior Ministry,” *Taipei Central News Agency*, Aug. 1, 2003, via FBIS.) (W. Zeldin, 7-9832)

### **TAIWAN–Reforms May Raise Local Government Borrowing**

On August 4, 2003, the Ministry of Finance announced that it is considering a revision of the law on public debt to permit city and county governments to do more borrowing. There had been reports, not confirmed by the Ministry, that the cap on local governments’ combined debt, currently set at 2% of the average of the gross national product (GNP) of the last three years, may be raised to 3%. Additional restrictions exist in the current law, including the provision that the amount borrowed in a given year by a local government not be greater than 15% of its own annual spending and that accumulated debt not exceed 45% of annual expenditures. By the end of 2003, the total city and county government debt will reach NT\$167 billion (about US\$4.5 billion), NT\$35 billion below the ceiling. According to the Ministry, most local governments are experiencing financial difficulties. (Central News Agency, Aug. 4, 2003, via FBIS.) (Constance A. Johnson, 7-9829)

### **THAILAND–Anti-Terrorism Decrees**

In a sudden reversal of policy, two anti-terrorist decrees were rushed into effect by the Cabinet of Prime Minister Thaksin Shinawatra upon publication in the Royal Gazette on August 11, 2003, without the approval of the Thai Parliament. The government’s stated reason for haste was to win the confidence of world leaders due to attend the Asia-Pacific Economic Cooperation (APEC) meeting in Thailand in October. (“Thailand: Anti-Terrorism Decrees To Be Submitted for House Approval After 21 Aug,” *Bangkok Post*, Aug. 13, 2003, via FBIS.)



One of the decrees amends the Criminal Code. This is the first time that Criminal Code amendments have been implemented by the executive branch. The decree defines a terrorist act as any violent act that causes damage to life, personal freedom, public infrastructure, or state or private property, as well as serious harm to the economy. A significant change is that the amendment allows authorities to arrest foreign suspects instead of deporting them. The other decree amends money-laundering laws to permit the government to freeze suspected terrorists' assets. Punishment for violation of the provisions ranges from 20 years' imprisonment to death. University law lecturers issued a declaration criticizing the decrees, contending that they violate the Constitution and human rights and were issued to please the United States. On August 19, 2003, the Constitutional Court stated that it would review their legality. ("Thailand: Newly Adopted Anti-Terrorism Decrees Meet Fierce Resistance" and "Thailand: Legal Scholars Issue Declaration Criticizing Terrorism Decrees," Bangkok *The Nation*, Aug. 13 & 14, 2003, respectively, via FBIS; "Thai Court To Review Controversial Counterterrorism Decrees," *Associated Press Worldstream*, Aug. 19, 2003, via LEXIS/NEXIS.)  
(W. Zeldin, 7-9832)

## EUROPE

### **BELGIUM–Law of Universal Jurisdiction Repealed**

The Law on the Repression of Grave Breaches of International Humanitarian Law of June 16, 1993, as amended by the Law of April 23, 2003, was repealed by the August 5, 2003 Law on Grave Breaches of International Humanitarian Law (*Moniteur Belge*, Aug. 7, 2003). The new Law relegates the contents of the repealed Law to the Criminal Code and the Code of Criminal Procedure and makes pertinent modifications in the Judiciary Code. The Criminal Code provisions cover the crime of genocide, crimes against humanity, and war crimes, with punishments ranging from 10 years' imprisonment to imprisonment for life. In addition, sections now in the Code of Criminal Procedure provide that heads of state, prime ministers, and ministers of foreign affairs of foreign states during their tenure in office and other persons having immunity under international law cannot be prosecuted in Belgium, nor can they be detained in Belgium if staying there at the invitation of the Belgian Government or of an international organization having its seat in Belgium.

If the alleged offense was not committed on Belgian soil, if the presumed offender is not Belgian, and if the victim is not Belgian and has not resided in Belgium for at least three years, prosecution can be initiated only at the request of the federal procurator. There will be no prosecution if the claim is manifestly unfounded, if the facts alleged do not fall within the provisions of the Law and public prosecution could not be founded on them, or if it appears that for the sake of the administration of justice and Belgium's international obligations the matter should be brought before an international court or a court of another country connected with the alleged offense or the offender. If the case is not prosecuted in Belgium, the procurator will notify the Minister of Justice who may transfer the case to the other jurisdiction. If the International Criminal Court declines jurisdiction, jurisdiction of the Belgian courts is reestablished. All pending cases have been transferred to the Court of Cassation for a decision on jurisdiction.

(George E. Glos, 7-9849)

**BULGARIA–Notary Law**

Newly promulgated amendments to the Notary Law establish much stricter rules for the protection of documents and extend the deadlines for their preservation. The new Law states that the original documents may be taken out of the notary's archive only if needed for the preparation of an examination and in the presence of the notary who certified them. The provision of the previous Law that the original documents could be taken out only with a written order by a judge or a prosecutor remains in force. If a copy of a document is to be taken from the notary's office, the notary must give the copy only to an official determined by the magistrate. The amendments also extend the obligation to keep all documents, registers, claims, and copies for from five to ten years. After the deadline expires, the documents are to be destroyed in coordination with the respective State archive. Issues regulating admission to the profession and professional ethics are also regulated by the amendments. (*Standart*, (Bulgarian daily), Aug. 20, 2003, <http://www.standart.bg>)  
(Peter Roudik, 7-9861)

**GERMANY–Medical Disclosure to be Timely**

According to the German Supreme Court, medical disclosure has to be timely. In the case of a serious medical risk, this means that, to be effective, disclosure should be made at the time a date is set for surgery, 2003 (docket number VI ZR 131/02), in which the Court interpreted the general torts clause of the Civil Code (*Bürgerliches Gesetzbuch*, *Reichsgesetzblatt* 1896 at 195, as amended, §823) to the effect that medical disclosure serves the purpose of allowing the patient to make an informed decision on the course of his or her medical treatment. The case involved a patient whose spinal disk was operated on and to whom disclosure had been made only on the day of the operation that in rare cases it may result in paralysis of the bladder. After the operation, the plaintiff suffered from a paralyzed bladder.  
(E. Palmer, 7-9860)

**GREECE--Athens Bar Association Institutes Legal Action Against British Officials**

In early August 2003, the Athens Bar Association filed a suit with the International Criminal Court (ICC) against the British Prime Minister Tony Blair and other high officials, alleging violations of international treaties including the Charter of the United Nations, the Geneva Convention, and the statute of the ICC. The suit cites 22 crimes against humanity committed by the British officials during the war in Iraq, such as the killing of civilians, the deprivation of drinking water in certain areas, the destruction of food supplies and the natural environment, and the bombardment of residential neighborhoods. The Bar Association claimed that the suit symbolizes “an act of conscience on the part of the Greek legal profession.” The suit is being reviewed by the Chief Prosecutor of the ICC, who will determine whether the case falls under the Court's jurisdiction. (<http://www.greekembassy.org>)  
(Theresa Papademetriou, 7-9857)

**POLAND--First Lobbying Law Draft Introduced**

In the wake of several political scandals that resulted from extensive, sometimes secret, lobbying activities, the government has drafted the nation's first comprehensive lobbying law. If the Polish Parliament passes the law, Poland will become the first Eastern European country to monitor lobbying activities. The law's intention is to create a more open and transparent public life. It provides a broad definition of lobbying, describing it as any action aimed at exerting influence on public authorities related

to legislation as well as to the issuance of administrative decision having to do with the granting of privileges, licenses, write-offs, permits, etc. Any person applying for an administrative decision and discussing that matter with a public functionary would be considered a lobbyist and would have to comply with all the requirements for a lobbying organization. The law creates a lobbying register and allows only those who are registered to conduct lobbying activity.

The law obliges employees of government institutions to report all contacts with any individual who conducts lobbying activity. Thus, an employee would have to report any contacts with any petitioner. The law also requires that ministers, deputy ministers, heads of central offices, *viovods* (heads of local territorial units), and other local government authorities inform their superiors about “every case of lobbying activity directed at them.” Deputies and Senators must inform the Sejm (lower house) and Senate speakers about being approached by a lobbyist. The law does not apply to diplomats employed in Poland or to some NGOs. (*Gazeta Wyborcza* (Polish daily), Aug. 26, 2003, at 12-13, via FBIS.) (Bozena Sarnecka-Crouch, 7-9851)

### **RUSSIA–Abortions Restricted**

The Government of the Russian Federation issued a new regulation that significantly limits, based on the term of the pregnancy, the possibility of undergoing an abortion. Since August 15, 2003, when the Regulation entered into force, abortions without restrictions or special permission are allowed only within the first 12 weeks of pregnancy. The Regulation introduces a complete ban on all abortions after 22 weeks of pregnancy. During the period between the 12<sup>th</sup> and the 22<sup>nd</sup> week, the pregnancy can be terminated for medical or social reasons. Medical circumstances are those which may cause life-threatening consequences for the mother and/or child. The Regulation also provides for four situations in which a late-term abortion may be allowed for social reasons: if there is a court ruling denying or restricting parental rights; if death or incapacitation of a pregnant woman’s husband occurred during the pregnancy; if a pregnancy is the result of a rape; or if a woman is imprisoned. The new Regulation denies the right to a late-term abortion to unemployed, homeless, resettled, or unmarried women and to women who live below the poverty level, a right which had been granted to them under the previous regulation of 1996. Local health care authorities are authorized to issue late-term pregnancy termination permits. At present the abortion rate in Russia is about 2 million cases a year, five percent of which are late-term abortions. (*Rossiiskaia Gazeta*, Aug. 13, 2003, <http://www.rg.ru>) (Peter Roudik, 7-9861)

### **RUSSIA--Police Informers Legalized in Moscow**

The Moscow city government ruled that house wardens will act as police informers in order to implement the decree of the mayor on Measures for Eliminating Shortcomings in Registration of Residents in Places of Temporary and Permanent Residence and on Regulating Payments for Housing Maintenance Services. According to the ruling, house wardens are obliged to inform local police and housing authorities of persons temporarily residing in their houses, blocks, or apartments as of August 2003. The reason for the measure is the increasing difficulty experienced by city authorities in registering those who arrive in Moscow from Russian provinces and former Soviet republics. (Foreigners are subject to mandatory police registration everywhere on Russian territory.) Large-scale inspections, in line with the mayor’s decree, will be carried out once every three months. District councils are required to provide information on any newly registered non-resident to the city’s main police directorate and on charged maintenance payments to the Moscow city government, within a week of registration. House wardens, who are elected by their

neighbors, do their jobs on a voluntary basis and are responsible for ensuring safety and order in their housing blocks. They are not entitled to remuneration for their services; however, they receive certain privileges when paying housing fees. Human rights activists have denounced the decree as a violation of citizens' privacy. (<http://www.gazeta.ru>"MACROBUTTONHtmlResAnchorwww.gazeta.ru, Aug. 5, 2003.) (Peter Roudik, 7-9861)

### **UKRAINE–Child Visits to Computer Clubs Restricted**

The Ukrainian Government issued a regulation that tightens operating conditions of all types of property of computer clubs. Under the new rules, those who are under 18 years of age are not allowed to be in computer-equipped facilities after 10 p. m. The regulation prescribes the total duration of worktime allowed on a computer based on the age of the child and the sanitary conditions of the premises. Children aged 8 to 10 may work on a computer no longer than 45 minutes per day; those aged 11 to 14 can stay for no longer than two sessions of 45 minutes each. The Regulation states that on premises where children are working, the sale of tobacco and alcohol, smoking, and the sale or distribution of products of erotic content are forbidden. Computers used by the minors will be equipped with filters limiting access to pornographic and violent websites. The Regulation makes the personnel of computer clubs responsible for checking patrons' identification documents to confirm a child's age. ("Ukrainian News On-line," *Ukrainian News Agency*, Aug. 21, 2003, <http://www.site.securities.com>) (Peter Roudik, 7-9861)

### **UKRAINE--Government Program on Migration**

On August 20, 2003, the Cabinet of Ministers of Ukraine issued a decree approving a Program for Regulating Migration in 2003-2005. The Program is aimed at the consistent and comprehensive implementation of the State's migration policy. The Program notes that migration patterns have shown that over the last ten years Ukraine took an active part in the global migration process. As stated in the decree, the goal of the Program is to introduce an effective mechanism to manage migration flows based on Ukraine's national interests. The Program makes the following its main tasks: completion of the formation of a legal framework for dealing with migration issues, definition of the concept of a coordinated administrative mechanism for State regulation of migration and of its implementation and effective functioning, protection of the rights of people who receive refugee status or asylum in Ukraine, and establishment of a legal and socio-economic basis for regulating migrant labor. A special part of the program is devoted to the issue of repatriation of ethnic Ukrainians and their descendants. A number of measures to develop international cooperation in the field of migration are also proposed. (*BBC Monitoring*, Aug. 21, 2003, <http://www.site.securities.com>) (Peter Roudik, 7-9861)

### **UNITED KINGDOM–Children and Asylum Detention Centers**

In a report on asylum detention centers in the UK, the Chief Inspector of Prisons stated that children should not be held in the centers for long periods, since facilities for children are limited and long-term detention is likely to have a negative impact on children's welfare and development. The report further stated that detention of children, if necessary, should only be for a limited number of days. The report was published shortly after the high-profile deportation of a Turkish-Kurd mother and her four children, who had been held for more than a year at Dungavel detention center in Scotland, the only center in Britain where children are regularly kept for long periods. The government has stated in a response to

the report that it is regrettable, but necessary, to detain children in asylum centers. It also noted that while the report was recently published, it was based on information that was 10 months old and that improvements to facilities for children have been made since then. (“Home Office Response to HMCIP Report on Dungavel Immigration Removal Centre, Re: 221/2003,” Aug. 15, 2003, at [http://www.homeoffice.gov.uk/n\\_story.asp?item\\_id=576](http://www.homeoffice.gov.uk/n_story.asp?item_id=576); “Asylum Centers Not For Children,” at <http://news.bbc.co.uk/1/hi/scotland/3151535.stm>)

(Clare Feikert, 7-5262)

#### **UNITED KINGDOM–Individual Banned for Life from Using Racist Word**

An individual has been given an anti-social behavior order banning him for life from using a specific racist term and other language that is threatening or insulting in public. The individual is also prohibited from acting in an anti-social manner. Anti-social behavior orders were introduced in 1998 by the Labour Government and are designed to stop serious and persistent anti-social behavior. While the orders are civil sanctions, anyone found in violation of the restrictions set out in them faces a criminal penalty of up to five years’ imprisonment. (Chris Marritt, “Racist Faces Jail Under First British Court Order To Ban Use of a Word,” *The Independent* (London), Aug. 13, 2003, at 6.)

(Clare Feikert, 7-5262)

#### **UNITED KINGDOM–Transsexuals Lose Discrimination Case**

Five male-to-female transsexuals lost their discrimination claim against a landlord of a public house who required that they leave the premises after one of them used the female toilets. The individuals were described by the judge as “men clothed and behaving as women.” Only one of them had undergone sex change surgery at the time of the incident. The law currently only extends protection from discrimination to “trans” people in the workplace. The Equal Employment Opportunities Commission, which supported this test case, is hoping to extend the law to apply to the provision of goods, facilities, and services to transsexuals. (Equal Opportunities Commission, *Decision in Lalor et al v Gawthorp*, at [http://www.eoc.org.uk/cseng/news/14\\_august\\_lalor.asp](http://www.eoc.org.uk/cseng/news/14_august_lalor.asp); Sam Coates, “Transsexuals Lose Fight Over Ejection From Ladies’,” *The Times* (London), Aug. 15, 2003, at 12.)

(Clare Feikert, 7-5262)

### **NEAR EAST**

#### **TURKEY–Law on Forest Sale Vetoed**

A law that would have allowed the sale of State-owned forest land was vetoed by President Ahmet Necdet Sezer. The sales were considered by the ruling Justice and Development Party to be key to raising revenue and avoiding further borrowing by the government. The President stated that in addition to his concern to preserve the environment, he vetoed the law because the definition of forest land it contained was vague. The sales could have been a boon to those who seized land illegally. Turkey has large areas of land around major cities officially classified as forests that, as cities have grown, have been used for unauthorized shanty towns.

The next session of the national legislature is scheduled for October 2003; if the law is adopted again, it cannot be vetoed. However, the President could call for a referendum on the issue. (*Emerging Markets Online*, Aug. 19, 2003, via LEXIS/NEXIS, Asiapc library.)  
(Constance A. Johnson, 7-9829)

## **SOUTH PACIFIC**

### **AUSTRALIA–Electoral Fraud Brings Three Years Behind Bars**

Australian electoral laws at both the federal (Commonwealth) and state level provide for public funding of electoral expenses for registered candidates and political parties. Parties receive a set amount for each vote gained in an election. In the election for the Queensland State Parliament in 1998, a new nativist party that advocated halting immigration by Asians, stopping alleged preferential treatment of Aboriginal Australians, and withdrawing from the United Nations, won 23% of the vote and 11 seats in the State Parliament. The party, One Nation, received A\$500,000 (about US\$326,000) from the Queensland Electoral Commission. A trial in Brisbane in August 1999 before the Supreme Court of Queensland determined that the party did not have the minimum of 500 voters as members and its registration, being based on fraud and misrepresentation, was invalid. The party leader, Pauline Hanson, who had actually received and kept the money, was ordered to repay the complete sum. She and her co-leader were subsequently charged with the criminal offense of fraud. On August 20, 2003, a Brisbane District Court jury found the two leaders guilty of fraudulently registering the party and Hanson guilty of dishonestly obtaining the A\$500,000 in electoral reimbursements. Both were sentenced to three years' imprisonment. ("Hanson Jailed for Three Years," *News.Com.Au*, Aug. 20, 2003, at <http://www.news.com.au/>)  
(D. DeGlopper, 7-9831)

### **AUSTRALIA–New Internet Offenses**

Australia's government will introduce amendments to existing telecommunications legislation to make it a criminal offense to use the Internet to provide offensive material, such as child pornography; to menace another person or to advocate violent protests. If passed into law, the amendments will impose a penalty of two years' imprisonment. Among the targets of the proposed laws are the "ratbag sites" that advocate attacking police in the course of protests and provide instruction in such tactics as slashing tendons in the legs of police horses. The new laws will permit police to request Internet service providers to remove offensive sites before pursuing those responsible for the offensive content. Service providers will face no penalty if they were not aware of the content. Another communications legislation amendment bill, passed by the House of Representatives on August 18, 2003, and sent to the Senate, would authorize the Attorney-General to order telephone companies or Internet service providers to cut off service to groups or individuals regarded as threats to national security. (Joint Media Release, Minister for Communications and Minister for Justice and Customs, Aug. 20, 2003, at <http://152.91.15.12/www.justiceminister.Home.nsf/Web6+Pages21>; *Sydney Morning Herald*, Aug. 20, 2003, at <http://www.smh.com.au/>)  
(D. DeGlopper, 7-9831)

## INTERNATIONAL LAW AND ORGANIZATIONS

### ANGOLA/CAPE VERDE–Pact To Improve Police Services

On July 28, 2003, Angolan and Cape Verdean officials signed an agreement for the betterment of each nation's national police. The countries hope the pact will benefit the fight against terrorism, drug trafficking, arms smuggling, and other illegal activities, and help boost their economic development. Cristina Fontes Lima, the Justice and Internal Administration Minister of Cape Verde, traveled to Luanda, Angola to sign the agreement. ("Accord with Cape-Verde to Better Police Performance," *allAfrica.com*, July 29, 2003, via <http://allafrica.com/stories/200307290353.html>) (Sandra Sawicki, 7-9819)

### ANGOLA/UNITED STATES–Modernization of Courts

A cooperative agreement on the modernization of the Angolan judicial system, primarily the courts of law, was signed on August 18, 2003, between Angola's Justice Ministry and the U.S. Department of Commerce. Both parties intend to work together to promote meetings and exchange of information on efficient archival techniques, training, computerized court data, and a comparative study of the Angolan and American judicial systems. The pact also covers exchanges of experienced judges, lawyers, clerks, and other specialists. Minister Paulo Tjipilica of Angola expressed the hope that modernization of the courts and the judicial system will ultimately lead to confidence among investors and ordinary citizens to risk their money in the development of Angola. ("Acordo de cooperacao entre Angola e EUA moderniza sector judiciario," *Angola Press*, Aug. 18, 2003, via <http://www.angolapress-angop.ao/noticia.asp?ID=198099>, and "Agreement with USA Will Modernize Judicial Sector," *allAfrica.com*, Aug. 18, 2003, via <http://allafrica.com/stories/printable/20030818059.html>) (Sandra Sawicki, 7-9819)

### CHINA/UNITED STATES–Container Security Initiative

China and the United States signed a declaration of cooperation on the Container Security Initiative (CSI) on July 29, 2003. China had already agreed in principle to join the CSI on October 25, 2002. Under the terms of the agreement, the United States will send customs officials to ports in Shanghai and Shenzhen, and Chinese customs officers can be sent to US ports. Working with the US officials, the Shanghai and Shenzhen customs agents will be responsible for screening containers identified as posing a potential terrorist risk.

With China's participation, 19 of the world's 20 major ports in terms of exports to the United States have joined the initiative, and 15 of those are now operational. Initiation of formal negotiations have been scheduled for September 2003 between the United States and Taiwan in order to bring the 20<sup>th</sup> port, Kaohsiung, into the CSI, as phase II of the program—extension to other key ports beyond the 20 (begun in June 2003)—gets underway. ("Xinhua: China, US Strengthen Anti-Terrorism Cooperation in Container Security," *Xinhua*, July 29, 2003, and "CNA: Kaohsiung To Implement US-Initiated Container Security Initiative," *Taipei Central News Agency*, Aug. 2, 2003, both via FBIS; "China Joins U.S. Box Security Program," *Journal of Commerce Online*, July 29, 2003, "China Joins US Drive To Secure Container Trade: Shanghai and Shenzhen Are the First Mainland Ports To Sign the Initiative," *South China Morning Post*, July 30, 2003, and "China Formally Joins U.S. Container Security Initiative," *China Energy Report*

*Weekly*, Aug. 1, 2003, all via LEXIS/NEXIS.)  
(W. Zeldin, 7-9832)

### **COUNCIL OF EUROPE–Total Abolition of Death Penalty**

Protocol 6 of the European Convention of Human Rights and Fundamental Freedoms, as initially written, abolished the death penalty in peace time. However, it gave the States Parties the right to reserve the death penalty in exceptional circumstances, such as in times of war. On July 1, 2003, Protocol 13 of the Convention, which was signed by 41 Members of the Council of Europe, abolished the death penalty under all circumstances. (“Council of Europe Outlaws Death Penalty, Even in Wartime,” *Agence France Presse*, July 1, 2003, via LEXIS/NEXIS.)  
(Theresa Papademetriou, 7-9857)

### **DOMINICAN REPUBLIC/UNITED STATES–Free Trade Talks**

United States Trade Representative Robert B. Zoellick recently notified Congress of the Bush administration's intent to initiate negotiations for a free trade agreement (FTA) with the largest economy in the Caribbean, the Dominican Republic. The administration will seek to integrate the Dominican Republic into the FTA being negotiated between the United States and five nations in Central America. The Administration could then send Congress one agreement covering the six countries. The markets of the Dominican Republic and Central America would create the second largest U.S. trading partner in Latin America. The Dominican Republic also enjoys strong trade and business ties with Puerto Rico that would be enhanced by the FTA. (<http://www.ustr.gov/releases/2003/08/03-51.htm>)  
(Gustavo E. Guerra, 7-7104)

### **ORGANIZATION OF AMERICAN STATES–Anti-Corruption, Humanitarian Law Meetings**

A National Conference on the Inter-American Convention against Corruption and Its Implementation in Belize opened in Belize City on August 26, 2003. The conference is part of a hemispheric initiative by the OAS to promote the incorporation of the anti-corruption treaty's provisions into national criminal legislation and to facilitate the convention's application and implementation. Adopted in Caracas, Venezuela, in March 1996, the treaty entered into force a year later. To date, 29 OAS member states have ratified it. (“OAS Convenes National Anti-Corruption Conference in Belize,” *Organization of American States*, Aug. 8, 2003, via <http://www.oas.org>)

The first meeting of the National Commissions on International Humanitarian Law of the Americas took place in Antigua, Guatemala, from August 27 to 28, 2003. Besides the representatives of these commissions, all OAS member states were invited to participate. Organized jointly by the International Red Cross and the OAS, the meeting brought together government representatives to evaluate existing national legislation in light of obligations under international humanitarian law and to make recommendations on national implementation and the operations of each commission and on cooperation among all of them. Internationally there are 62 national commissions for the application of international humanitarian law, of which 14 pertain to states in the Americas: Argentina, Bolivia, Canada, Chile, Colombia, El Salvador, Guatemala, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Trinidad and Tobago, and Uruguay. Brazil and Costa Rica are about to establish similar commissions. (“Regional Meeting on International Humanitarian Law,” *Organization of American States*, Aug. 13, 2003, *id.*)  
(Sandra Sawicki, 7-9819)



**TAIWAN/PANAMA–Free Trade Agreement**

President Chen Shui-bian signed a free trade agreement–Taiwan’s first–with Panamanian President Mireya Moscoso on August 21, 2003. If approved by the legislatures of the Republic of China (on Taiwan) and Panama, it will take effect on January 1, 2004. The pact provides for a mutual 95 percent cut in tariffs on goods over the next 10 years. In 2002, Taiwan exported goods valued at US\$127 million to Panama and imported Panamanian products valued at US\$4.81 million. The agreement will give Taiwan access to the American Free Trade Zone, scheduled for establishment in 2005, and Panama access to the Asian Pacific market. Taiwan has also sought to sign free trade agreements with Singapore, Japan, and the United States. (“CNA: Taiwan’s Chen Shui-bian, Visiting Panama President Sign Free Trade Agreement,” Taipei *Central News Agency*, Aug. 21, 2003; “AFP: Taiwan Signs First Free Trade Pact with Panama, Chen Shui-bian Comments,” Hong Kong *AFP*, Aug. 21, 2003; “Taiwan, Panama Sign FTA Agreement,” *Taipei Times*, Aug. 22, 2003, all via FBIS.)  
(W. Zeldin, 7-9832)

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### **Some Recent Publications of Interest from Great Britain**

House of Commons. Foreign Affairs Committee. FOREIGN POLICY ASPECTS OF THE WAR AGAINST TERRORISM. H.C. 405. London: July 2003. 85 pp.

This is the third report in an ongoing inquiry initiated after the September 11, 2001, attacks in the United States. The report examines the condition of the Al Qaeda network and acknowledges that it continues to pose a major threat to British citizens in the United Kingdom and abroad. The report also reviews the events that led up to the decision to invade Iraq and the impact the decision had on other countries, Britain's alliances, NATO, and the United Nations.

House of Lords *and* House of Commons. Joint Committee on the Draft Corruption Bill. DRAFT CORRUPTION BILL. H.L. 157. H.C. 705. 104 pp.

This report reviews the draft Corruption Bill. The process culminating in the Corruption Bill has been underway for nearly 30 years. The Committee received many criticisms of the bill, ranging from its lack of clarity to the approach adopted in it. The report considers a number of these criticisms. It notes that there is a need for such a bill and proposes a new definition for corrupt conduct. It recommends that parliamentary privilege should be waived for prosecutions under the bill in narrower circumstances than currently proposed and that current exemptions to prosecution for members of the Intelligence Services be reconsidered to ensure compatibility with international law.

## RECENT DEVELOPMENTS IN THE EUROPEAN UNION

Prepared by Theresa Papademetriou, Senior Legal Specialist, Western Law Division

### **Biometrics–Working Document<sup>1</sup>**

The Working Party, an advisory body on personal data and privacy established by Directive 95/46/EC, adopted a document on biometrics on August 1, 2003. The document analyzes whether the use of biometrics for identification/verification purposes may infringe EU rules on protection of personal data and privacy. It concludes that since biometrics use and process personal data, it is necessary to respect the rules on privacy provided for in the above-named Directive, especially those related to the collection of personal data without the knowledge and consent of the data subject, to storage of personal data, and to the use of sensitive data that reveal ethnic and racial origin. The Working Party plans to review the document in the future based on information gathered from the use of biometrics.

### **Genetically Modified Organisms (GMOs)–WTO Panel on EU Approach<sup>2</sup>**

EU Trade Commissioner Pascal Lamy expressed his regrets over the request by Argentina, Canada, and the United States for the establishment of a WTO Panel to examine the compatibility of EU rules on GMOs with WTO requirements and the impact of those rules on trade. The Commissioner reiterated the EU position that the EU regime, which requires a scientific assessment of the impact of a particular GMO on human and animal health prior to placing it on the market, is “clear, transparent and non-discriminatory.” The EU held consultations with the parties in June 2003 as a first step in a possible dispute settlement.

### **Tobacco Products–Advertising and Sponsorship<sup>3</sup>**

A new Directive was adopted to approximate the laws and regulations of the Member States on the advertising of tobacco products and their promotion in the press and other printed publications or through radio broadcasting and tobacco company sponsorship of public events. The Directive prohibits the following activities:

- radio advertising of tobacco products and airing of radio programs that are sponsored by corporations involved in the manufacture or sale of tobacco products;
- sponsorship by tobacco corporations of events or activities that take place in several Member States; and
- free distribution of tobacco products during tobacco-company sponsored events.

The Directive also limits advertising in the press and other printed publications to those

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<sup>1</sup> [Http://europa.eu.int](http://europa.eu.int) The term biometrics refers to a new field of technology designed to identify individuals through the use of biological traits such as those revealed through retinal or iris scanning, fingerprints, or face recognition. See *Biometrics–A Journal of International Biometric Study*, <http://stat.tamu.edu/biometrics>

<sup>2</sup> [Http://europa.eu.int/rapid](http://europa.eu.int/rapid)

<sup>3</sup> OJ L 152 (June 20, 2003).

advertisements intended for professionals in the tobacco trade and those publications printed outside the EU. It requires that Member States punish any violations of its provisions through effective, proportionate, and dissuasive penalties. It also requires the States to recognize the legal right of those with a legitimate interest in this subject to institute legal actions and to bring complaints to the attention of a designated administrative body.

### **EU Geographic Indications and the Doha Development Agreement<sup>4</sup>**

Due to the vital role of Geographical Indications (GIs) in the EU economy—approximately 4,800 GIs are currently registered (4,200 for wine and spirits and 600 for other products)—the EU aims to achieve the following goals during the Doha Development Agreement ministerial meeting in Cancun, Mexico, September 10-15, 2003:

- creation of a world-wide GI registration system, so that farmers and small and medium enterprises can protect their GIs and
- extension of the protection afforded by GIs to ensure that not only wines and spirits but also other products, such as cheeses, teas, and rice, can benefit from them.

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<sup>4</sup> *Supra* note 2.

**WORLD TRADE ORGANIZATION: Cancun, Mexico 2003\***

The World Trade Organization's (WTO) 5<sup>th</sup> Ministerial Conference is scheduled for September 10-14, 2003, in Cancun, Mexico. The Ministerial Conference is the WTO's highest-level decision-making body. It meets at least once every two years. The Cancun conference will review the progress of negotiations of items on the "Development Agenda" that were agreed upon during the 4<sup>th</sup> Ministerial Conference at Doha, Qatar, in 2001. The declaration that WTO members agreed to at the end of Doha set deadlines and mandates for negotiations on a number of issues that are critical to the purposes of the WTO. Some issues covered in Doha that will be a part of the Cancun Conference and can be considered as principal issues are:

- Agriculture
- Trade Related Intellectual Property Rights (TRIPS)
- General Agreement on Trade in Services (GATS)
- Non-Agricultural Market Access
- The "Singapore Issues," including investment, competition, transparency in government procurement, and trade facilitation

A large number of the deadlines set at Doha for these issues have already been missed. Concern has been expressed that items that should have been agreed upon prior to the conference will slow down negotiations and become "bargaining chips" at Cancun instead of achieving the original purpose of rebuilding trust and easing the work load.<sup>1</sup>

**Agriculture**

Agriculture has been one of the most contentious and pressing issues on the WTO's agenda. It is one of the most important areas for developing countries, whose ability to export is restricted and whose local farmers are affected by excess produce entering their markets from developed countries, resulting in the artificial deflation of prices.

The long-term objective of the WTO in agriculture is to "establish a fair and market-oriented trading system through a program of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets."<sup>2</sup> The WTO is hoping to achieve this objective by reducing and/or reforming

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\* Prepared by Clare Feikert, Legal Specialist, Western Law Division.

<sup>1</sup> House of Commons International Development Committee, TRADE AND DEVELOPMENT AT THE WTO: ISSUES FOR CUNCUN, HC 400-I, at 21.

<sup>2</sup> WTO, *Doha Ministerial Declaration*, WTO/MIN(01) Dec. 2001, ¶ 13. Available online at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm#agriculture](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#agriculture)

agricultural subsidies<sup>3</sup> and tariffs to provide equal access to the markets of all member countries.

The Doha Declaration set a series of deadlines by which formulas and modalities<sup>4</sup> for countries' commitments should be agreed upon. Disagreements among the developed countries, which have been exacerbated by the complicated and diverse interests of the developing countries,<sup>5</sup> have resulted in slow progress in this area, and deadlines have not been met. The developed countries, particularly the United States and the members of the European Union, have made limited moves to reform and reduce some of the agricultural subsidies. Further reforms have been delayed as there have been differences of opinion as to what the most efficient moves are to open agricultural markets. This appears to be primarily due to pressure from the large farming lobbies in both the United States and European Union. The EU conducted a limited reform of its Common Agricultural Policy (CAP), which resulted in some market opening but did not address areas important for developing countries, such as sugar.

One of the priorities in Cancun will be to address the slow progress of negotiations in agriculture in order to further reduce and reform export subsidies and tariff barriers and prevent dumping (under the WTO framework, a company or exporter is said to be "dumping" a product if it exports it at a price lower than the price it normally charges in its home market). There have been reports that the EU and the US have reached a compromise on which subsidies and tariffs to cut in order to open the market.<sup>6</sup> While the compromise has been criticized by many, this development has the potential to lead to more progress in Cancun than has been seen throughout the interim negotiations.

## TRIPS

The 1995 TRIPS Agreement set minimum levels of protection for intellectual property that WTO members are required to meet. Many members now consider that the agreement is not as "development friendly" as was first believed. The system of patents has served to hinder developing countries' access to technologies that can improve public health and help reduce poverty levels. One of the most significant problems with the TRIPS is developing countries' access to inexpensive medicines. The TRIPS Agreement allows patents to be overridden through a system of compulsory licenses that permits countries to produce generic medicines when there are serious public health needs. A serious flaw with this provision is that the TRIPS Agreement only permits generic medicines to be made predominantly for the domestic market, not for export.<sup>7</sup> Many developing countries lack the pharmaceutical capability to produce the medicines themselves, and have been struggling to have the provision interpreted in a way in which they can meet

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<sup>3</sup> Referred to in the US as domestic support, food aid, and export credit and in the EU as domestic support, farming, and export subsidies.

<sup>4</sup> Modalities are frameworks for negotiations that provide targets to meet objectives set during negotiations. WTO, *Non-Agricultural Market Access Negotiations*, available online at [http://www.wto.org/english/news\\_e/news03\\_e/market\\_acc\\_16may03\\_e.htm](http://www.wto.org/english/news_e/news03_e/market_acc_16may03_e.htm)

<sup>5</sup> *Supra* note 1, at 21.

<sup>6</sup> Guy De Jonquieres, *US-EU Farm Proposals Leave WTO Members in a Quandary: Observers Say Lack of Specifics Makes Plan a Skeletal Effort*, FINANCIAL TIMES (London), Aug. 15, 2003, at 7.

<sup>7</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, art. 31f, available online at [http://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](http://www.wto.org/english/docs_e/legal_e/27-trips.pdf)

WTO obligations but obtain generic medicines.

The deadline for an agreement on how to tackle the issue of exporting generic drugs passed with no resolution amidst continuing arguments over the rights of patent holders and the rights of countries with serious public health problems. The developed countries considered a number of ways to clarify the position of patent holders in cases where generic drugs were needed. Methods that were considered included restricting the list of diseases for which generic drugs could be produced, or specifying which countries could be exempt from WTO patent obligations. In order to reduce potential abuse of the system, developed countries also posited that developing countries should not be able to independently declare that they are experiencing serious public health problems. In the view of some governments, all that is required to overcome the patents and public health problem is that members “honour the letter and spirit of the Doha agreement.”<sup>8</sup> This appears to be occurring, at least temporarily. The United States, Canada, and Switzerland have been implementing a temporary moratorium during which time they will not challenge countries’ breaking WTO rules to export generic pharmaceuticals to developing countries with serious public health problems. The uncertainty of the duration of the moratorium makes it necessary to have either an addition to the TRIPS agreement or at least a firmer understanding of how the current agreement applies.

Attaining an agreement at Cancun over the TRIPS is considered by many to be an important part of the conference. It would complete the mandate set in Doha and might serve to improve relations between developed and developing countries by “restoring faith in the WTO process and the ability of developed countries to keep their promises.”<sup>9</sup> Substantial progress on the issue has recently been made among WTO members. On August 30, 2003, an agreement was reached that essentially waives the restriction requiring that generic drugs be produced predominantly for the domestic market. A result of this agreement is that it will allow the export of generic drugs to poor countries where there are serious health problems and which lack the ability to manufacture the drugs themselves.<sup>10</sup>

## GATS

The aim of GATS is to progressively liberalize services on a bilateral basis.<sup>11</sup> To help meet this objective, the WTO wants to establish a multilateral framework of rules to clarify the position of members. The rules would allow members to use a system of bilateral agreements under which they request that services in specific countries be opened and, in return, offer to open some of their own services. A number of members have already submitted offers under GATS in conformity with such a system, and the Conference in Cancun will gauge its progress.

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<sup>8</sup> *Supra* note 1, at 52.

<sup>9</sup> *Id.* at 53.

<sup>10</sup> Council for TRIPS, “Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health,” IP/C/W/405, available at [http://www.wto.org/english/tratop\\_e/trips\\_e/implem\\_para6\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm)

<sup>11</sup> WTO, General Agreement on Trade in Services, Part IV, art. XIX, ¶ 1.

## Non-Agricultural Market Access

At the Ministerial Conference in Doha, it was agreed that members would undertake negotiations with the aim of reducing or eliminating tariffs and non-tariff barriers, taking into account the needs of developing countries.<sup>12</sup> There was no timetable set at Doha for modalities to be produced in this instance, although target dates set by the governments passed without any agreements being reached due to strongly divergent opinions among the members. A draft of modalities was produced in mid-May and is being used as a basis for continuing negotiations. Cancun will be used to look at progress that the governments have made in this area.

## The “Singapore Issues”

The “Singapore Issues” (investment, competition, transparency in government procurement, and trade facilitation) arose as a result of a working group at the WTO’s Ministerial Conference in Singapore, 1996. The WTO objectives in relation to these issues include:

- developing multilateral rules to increase transparency and stability in investment practices;
- developing a multilateral framework to further competition policy’s contribution to international trade and development;
- developing a multilateral framework to enhance transparency in government procurement; and
- facilitating trade by clarifying and improving relevant WTO agreements on issues such as import and export fees and formalities and customs procedures.<sup>13</sup>

Many developed economies, particularly in the EU, were in favor of having these new issues on the negotiating agenda at Cancun, but there was widespread opposition from developing countries. The developing countries were persuaded by the EU to agree to place the items on the agenda, provided that the modalities of negotiations and even the question of whether such negotiations will occur at all, will be decided by explicit consensus at Cancun.”<sup>14</sup> Until the countries agree upon the modalities, the role of the working group on investment, competition, transparency in government procurement, and trade facilitation remains exploratory and analytical.

The British government has been critical of including the Singapore Issues on the agenda at Cancun, stating that it may overload the already full timetable and undermine the capacity of developing countries’ negotiators. Investment and competition appear to be the most contentious issues, particularly for the British government, which argues that there is no evidence that multilateral or bilateral investment agreements will increase investment flow to developing countries.<sup>15</sup>

Concerns have also been expressed that developing countries will be unable to participate

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<sup>12</sup> *Supra* note 2, ¶ 16. Available online at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm#agriculture](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#agriculture).

<sup>13</sup> *Supra* note 1, at 46.

<sup>14</sup> *Supra* note 2, ¶ 23. Available online at [http://www.wto.org/english/tratop\\_e/comp\\_e/comp\\_e.htm](http://www.wto.org/english/tratop_e/comp_e/comp_e.htm)

<sup>15</sup> *Supra* note 1, at 47.



effectively in negotiations on competition as they have little exposure to, or experience with, that complex area of the law.<sup>16</sup> To combat this problem, provisions in the Doha Agreement addressing the Singapore Issues contain a specific commitment by the WTO to work with intergovernmental organizations to provide assistance to developing countries in this area.<sup>17</sup> In addition, the Doha Agreement contains a number of WTO Member States' commitments on the provision of technical assistance to developing countries, to help them to adjust to WTO rules through technical cooperation and capacity building.<sup>18</sup> A report of progress made in meeting these various commitments will be made in Cancun.

### **Other Issues**

Cancun will also address a number of other issues, including:

- clarifying WTO rules on anti-dumping and subsidies
- taking stock of progress in regional trade agreements
- considering a report from the Trade and Environment Committee on the relationship between WTO trade rules and the environmental treaties to which members are parties and taking stock of progress made in negotiations in this area
- reviewing trade-related issues in electronic commerce
- recommending measures to improve the participation of small economies in world trade
- looking at recommendations for solutions to trade debt and finance issues in developing countries, and
- reviewing trade and technology transfer between developed and developing countries.

The WTO's Agenda in Cancun is substantial. It is being criticized for being so overloaded that developing countries' negotiators may be placed at a disadvantage in effectively, particularly in the more complex areas. It appears that the issues of agriculture, TRIPS, and public health will be the most contentious, although the recent compromise on reductions on tariffs in agriculture between the EU and the US demonstrates that reaching an agreement is not impossible.

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

<sup>17</sup> *Supra* note 2, ¶ 24. Available online at [http://www.wto.org/english/tratop\\_e/comp\\_e/comp\\_e.htm](http://www.wto.org/english/tratop_e/comp_e/comp_e.htm)

<sup>18</sup> *Id.*, ¶ 38-41. Available online at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm#cooperation](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm#cooperation)