

Fall 9-17-2000

The International Review | 2000 Fall

Michael Rhee

Follow this and additional works at: https://digitalcommons.nyls.edu/international_review_newsletter



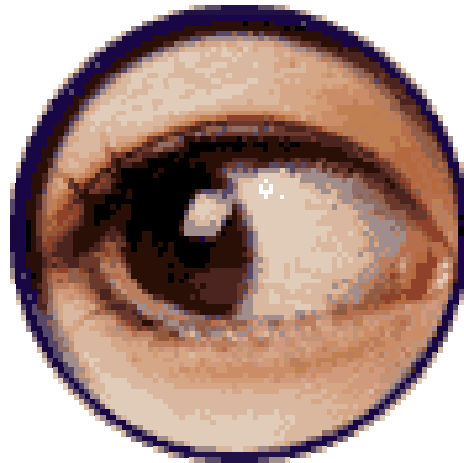
Part of the International Law Commons

The International Review

NYLS Center for International Law

Are you the only person who
has access to your
date of birth, social security
number, political affiliation,
religious background,

Balancing Online Privacy and Global E- Commerce



unlisted telephone number,
racial makeup, genetic
predisposition to certain
diseases, credit history,
sexual lifestyle,
and recent online
video purchases?

Balancing Online Privacy and Global E-Commerce: Does One Threaten the Other?

What happens when you surf online and disclose your personal information over the Internet? Will the intimate details of your life -- including your date of birth, social security number, political affiliation, religious background, unlisted telephone number, racial makeup, genetic predisposition to certain diseases, credit history, sexual lifestyle, and recent online video purchases -- be an open book for people to read?

It seems that everyone -- including financial institutions, the telecommunications industry, online service providers, insurance companies, and e-retailers -- is collecting droves of personal information. Millions of people don't even realize that this information is being gathered and, in many cases, sold to the highest bidder.

With so many eyes peering over your privacy at home, can you protect your privacy when it crosses international borders? The European Union (EU) and the United States recently emerged from a two-year dispute on how best to protect online privacy while promoting the growth of e-commerce. In this case, weak online privacy guidelines at home exposed a rift with trading partners abroad.

E-Commerce: A New Threat to Personal Privacy?

In the course of just a few years, the volume of e-commerce -- the selling of goods and services over the Internet -- has reached immense proportions. The US Department of Commerce reports that American consumers

purchased almost \$20 billion of products and merchandise online last year. Industry analysts estimate that the number of worldwide Internet users will increase from 349 million users today to 490 million people in 2002.

In the process of transacting business, many companies collect personal information using online registration, order, and application forms. But once that information is collected, does it stay safe and is your privacy secure? Even when companies post their privacy and information-gathering policies online -- indicating whether it will sell personal information to third parties and how it will protect that information from misuse -- these policies are often vague or, in many instances, quietly ignored.

In 1997, America Online, the nation's largest online service provider, abandoned plans to sell its customer telephone number lists to telemarketers only after public outcry. The Federal Trade Commission (FTC) announced in July 2000 that it would sue the bankrupt e-retailer Toysmart.com after the company planned to sell its customer database, although it had promised customers that "your information will never be shared with a third party."

Are consumers concerned about protecting their online privacy? In recent surveys, 71 percent of all US households say that privacy concerns and the selling of their personal data discourage them from making online purchases, and 80 percent want the government to regulate how corporations use personal data. The FTC concluded that "the online marketplace is unlikely to reach its full potential until consumers are confident that adequate protections are in place" to protect their privacy.

Online Privacy: Hands-On or Hands-Off Approach?

Protecting online privacy has also become a global concern. Representing the largest online market outside of the US, European consumers purchased almost \$300 million in goods and services in 1998, according to industry analysts. Currently, 98 million people in Europe regularly use the Internet. But the US and the EU have "deep philosophical and legal differences concerning online privacy protection," say independent privacy groups and analysts.

The 15 member nations of the EU rely on new laws and government agencies to specifically protect personal information and privacy. Several EU countries have had tough privacy policies for years, including strict limitations (critics say prohibitions) on unsolicited telephone sales. US officials say that the EU approach relies too heavily on "privacy czars and bureaucracies, and that kind of top-down approach would probably be regarded as a violation of privacy rights by many people in the US." For example, the Data Protection Agency in Spain is authorized to investigate complaints regarding mishandled personal information and to criminally prosecute offenders.

In contrast, the US (with the full-backing of the private sector) relies on a self-regulatory approach where companies are expected to police themselves by voluntarily disclosing their privacy policies and information-gathering techniques.

Continued on next page

The International Review

Fall 2000

**Center for International Law
New York Law School
57 Worth Street, New York, NY 10013-2960
Tel: (212) 431-2865 • Fax: (212) 966-6393
<http://www.nyls.edu/CIL/> • Email: mrhee@nyls.edu**

Director: Professor Sydney M. Cone, III
Assistant Director: Michael Rhee
Research Assistant: Annette Baltgian '02

Founded in 1996, the Center for International Law supports teaching and research in all areas of international law and concentrates on the law of international trade and finance. The Center organizes events whereby students, faculty, and guests of New York Law School may interact with experts who link theory and practice.



Is your personal information an open book for people to read online? Oliphant ©2000. Reprinted with permission of UNIVERSAL PRESS SYNDICATE. All rights reserved.

In fact, American privacy laws (both online and off) have been described by privacy analysts as "far more lax" and also as "a hodgepodge of statutes and regulations enforced by various state and Federal agencies charged with oversight of other industries." As of April 2000, only one federal statute (prohibiting online marketers from collecting personal information from children under the age of 13) protected online privacy.

Does the self-regulatory approach effectively protect online privacy? In a 1998 report, the FTC concluded that the self-regulatory approach has left consumers with "little privacy on the Internet." In its survey of over 1,400 popular web sites, the FTC found that while "85 percent of all sites collect personal information from consumers, 14 percent provided any notice of their information collection practices, and only two percent provided a comprehensive privacy policy" on their sites.

The Mother of All Privacy Laws

Concerned over protecting online privacy for its consumers (and aware of the shortcomings of the US approach), the EU adopted comprehensive online privacy legislation known as the "Directive on Data Protection" (the "Directive") in 1995 which each EU member nation must implement by passing its own law. The Directive: (i) prohibits any company operating and doing business in the EU from transmitting personal data to a third country that does not guarantee "adequate" online privacy protection (such as the US); (ii) requires that companies tell people when they collect personal information about them, disclose

how it will be used, and obtain consumer consent before using the data; and (iii) requires companies to give people access and an opportunity to correct their information.

Originally scheduled to go into force on October 25, 1998, the Directive would have blocked trans-Atlantic data transfers by companies that did not adequately protect consumer privacy online. A Commerce Department official warned that the effects of prohibiting data flow across the Atlantic could be "so severe as to affect trade flows and perhaps even internal economies." The Commerce Department reported that the EU and US traded nearly \$2 trillion in goods and services last year.

A Safe Harbor for Online Privacy and E-Commerce

While the US agreed, in principle, with the importance of protecting online privacy, it did not want to enact new regulations requiring US companies to comply with the Directive. Instead, the US pushed for creating a self-regulatory system that would give US companies a "safe harbor" (i.e. protection) from legal action arising from the Directive so long as the companies adhered to strict privacy principles. After first rejecting the US proposal, the EU later responded that the Directive could accommodate a self-regulatory approach if it contained meaningful provisions in protecting online privacy.

During negotiations, the US Department of Commerce drafted a plan where companies would qualify for "safe harbor" if they voluntarily joined a strict privacy program developed by the private sector or if they were already "subject to a statutory, regulatory, administrative, or other body of law that effectively protects personal privacy."

Furthermore, online privacy programs must adhere to certain "safe harbor principles" (SHP) such as: (i) obtaining consumer consent in gathering and using personal data; (ii) informing consumers if their personal information will be sent to third parties; (iii) giving consumers a choice to "opt-out" in sending personal information; and (iv) taking reasonable measures to protect personal information from "loss, misuse, and unauthorized access." Companies adopting SHP but failing to comply with them would be subject to sanctions under the Commerce Department's guidelines.

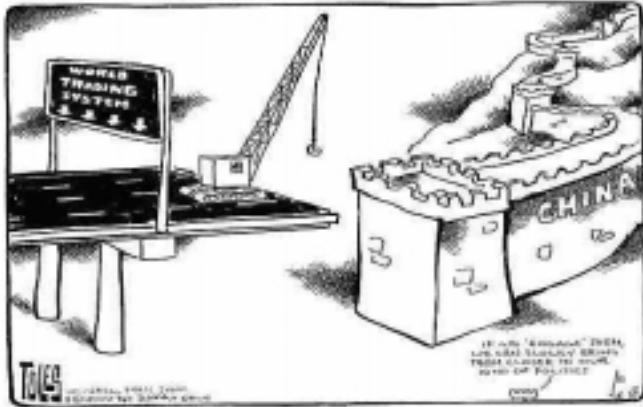
The EU-US Data Privacy Agreement

Negotiations in drafting guidelines to protect online privacy for EU consumers stalled for months at a time over several issues. Citing high costs, the US balked on giving consumers absolute access to their personal information. The US also demanded a two-year grace period for companies to comply with SHP while the EU insisted on six months.

After two years of fitful negotiations, the EU and the US reached an agreement in March 2000 where US companies adhering to SHP would be considered in compliance with the Directive. Under the agreement, US companies will have to undergo an annual recertification process to ensure compliance with SHP. Individuals will also have access to and be able to correct personal information "except where the

Continued on page 8

China and the WTO: Ready for Each Other?



TOLES ©2000. The Buffalo News. Reprinted with permission of UNIVERSAL PRESS SYNDICATE. All rights reserved.

Within the next year, a new member may join the 137-member World Trade Organization (WTO). And this isn't just any new member. This is a new member with the fastest growing economy in the world. This is a controversial new member known for its potentially huge markets as well as its alleged abuses of labor and human rights. China is currently applying for membership in the WTO, the world's foremost international trade policy and dispute resolution body. Given the sheer size of its economy, China will not be just one more country joining the trade group. China's admission to the WTO poses difficult questions: Is China ready to join the WTO? And is the WTO ready for China?

China: On the Road to Reform?

After years of stagnant growth under a Soviet-style economy, China began, in 1978, to shift its economy toward a more market-oriented system emphasizing trade and foreign investment. According to US State Department figures, in 1998, China had a gross domestic product of \$964 billion (compared to over \$8 trillion for the US) and its economy grew at an annual rate of 7.8 percent (compared to 3.9 percent for the US).

The US Department of Commerce reports that, in 1999, the US had a \$68 billion trade deficit with China (i.e. the US bought \$68 billion more in goods and services from China than China bought from the US). Last year, the US purchased 36 percent of China's total exports which included 60 percent of all US shoe imports, 95 percent of all US stuffed toys, and 27 percent of all wooden furniture.

In an effort to further reform and spur the growth of its economy, China began the process of joining (or "acceding to") the WTO in 1986 (when the organization was known as the General Agreement on Tariffs and Trade). China's reform leaders -- President Jiang Zemin and Prime Minister

Zhu Rongji -- seem to believe that further market competition and foreign investment will help close down unproductive state factories and provide more opportunities for its population of 1.3 billion people.

China: On the Road to Accession?

In its preparations to join the WTO, China must first negotiate trade agreements (also known as "accession agreements") with other WTO members to further open its markets and make commitments to adhere to WTO rules. In return, these WTO members would support China's bid to join the trade group. (Read the box below on how to join the WTO.) China has already concluded accession agreements with the European Union (EU), Japan, and several countries in South America.

Beijing and Washington concluded its accession agreement in November 1999 which the *New York Times* described as "breathtaking in scope." In addition to bringing down Chinese tariffs from an average of 22 percent to 17 percent, the agreement will allow US companies to expand dramatically its sales of goods and services throughout China within five years of China's joining the WTO.

The accession agreement, for the first time, will allow: American banks to offer consumer loans to Chinese customers; foreign goods to be sold directly to Chinese consumers rather than through middlemen; film imports to increase eventually to

Continued on next page

How to join the World Trade Organization

(1) **Fact-finding:** After contacting the WTO, the applicant nation provides a detailed Memorandum describing its foreign trade rules and practices. A WTO "working party" (composed of all members) reviews the Memorandum, submits questions, and requests additional information.

(2) **Negotiation:** After the working party further studies the Memorandum, the applicant engages in bilateral negotiations with individual members on gaining access to the applicant's market. Concessions and promises made by the applicant are considered "payment for the entry ticket into the WTO."

(3) **WTO decision:** The working party reviews the "Protocol of Accession" which summarizes the applicant's concessions and commitments to join the WTO. Along with its own report, the working party submits the entire application to the WTO General Council (composed of all members) for approval.

(4) **Implementation:** Once the General Council approves and adopts the application, the Protocol of Accession enters into force. The applicant becomes a WTO member 30 days after filing its acceptance. ❖

Sources: World Trade Organization and the United States General Accounting Office.

50 films each year from the current 10 films; foreigners to invest in Chinese Internet businesses and to own 50 percent of Chinese telephone service providers; and insurance company giants such as American International Group (AIG) to sell insurance all over China. Maurice "Hank" Greenberg, chairman of AIG and a trustee emeritus of New York Law School, recently predicted that AIG revenues in China will "grow to a very big number in the future."

One Congressman described the accession agreement as a "one-way street" in which China made all of the concessions in order to join the WTO. Unlike the terms reached under the North American Free Trade Agreement (NAFTA), the US-China accession agreement will not provide China with greater access to the American market -- China will have the very same access as any other US trading partner but will have to make the concessions listed in the previous paragraph. In return, the US would have to fulfill two of China's own requests. First, the US would support China's bid to join the WTO. Second, the US would establish normal trade relations with China.

Does China Deserve Normal Trade Relations?

Although China was assured of the first request, the second request turned into a national debate involving labor unions, conservative groups, human rights activists, and corporate lobbies who made their voices heard in what eventually became the most important international trade vote in Congress since its approval of NAFTA and the WTO.

Congress does not directly approve the accession agreement or even China's entry into the WTO. Instead, for the accession agreement and its accompanying benefits to go into effect, Congress must first grant permanent normal trade relations (PNTR) to China. Title IV of the 1974 Trade Act prohibits normal trade relations with countries that forbid its citizens to emigrate freely (such as China) unless the President waives this restriction on an annual basis. Congress can vote to overturn the President's recommendation but has never done so since the first vote was taken in 1980. Since that time, many members of Congress have used the annual review to criticize China's human rights and labor policies.

By granting PNTR to China, the US promises permanently and unconditionally to exempt China from Title IV (and thus the annual review) and to treat it as it would any other trading partner. China is currently the only nation which has to undergo an annual review process to keep its normal trade status with the US. Both the House of Representatives and the Senate must approve the exemption by a two-thirds vote (a minimum of 218 votes in the House and 67 votes in the Senate).

Without PNTR, China announced, it would not implement the China-US accession agreement. In fact, when China joins the WTO (which it can do as long as two-thirds of the WTO membership approves), China could extend more trade benefits to other countries than it does to the US. According to the US Trade Representative, the annual review



Will trade prove to be a Trojan horse for democracy (and profits) in China? AUTH ©2000. The Philadelphia Inquirer. Reprinted with permission of UNIVERSAL PRESS SYNDICATE. All rights reserved.

of China's trade status would also violate WTO rules which require that a member treat all other members on a most-favored-nation basis. Because no other WTO member needs to go through an annual review of its trade status except for China, US law could be held WTO-incompatible.

Opponents of granting PNTR argue that they would lose their main leverage in pressuring China to improve its human rights and labor policies. Unions such as the AFL-CIO say that any trade agreement with China must include core labor standards for Chinese workers such as the right to safe working conditions. Human rights organizations (with the exception of Human Rights Watch) argue that free trade hasn't promoted democracy in China and cite the recent jailings of pro-democracy activists and members of religious groups. The US State Department reported that human rights violations in China actually increased in 1999. Conservative groups argue that the US should not reward a Communist regime which has militarily threatened Taiwan and allegedly spied on US nuclear weapons installations.

In contrast, supporters of granting PNTR to China, including the Clinton administration, 47 state governors, Human Rights Watch, and over 200 CEOs of major US corporations, argue that the accession agreement will increase US exports to China and also create more jobs at home. Corporate executives scoff at the notion that unions care about the working conditions of foreign workers.

In trying to take the higher ground in the debate, the Clinton administration argued that granting PNTR to China would enhance US national security by strengthening reformers such as President Jiang and Prime Minister Zhu. It says that voting against PNTR would only strengthen hard-liners in the military and the Communist Party who are

Continued on page 8

The Big Stick of US Trade Law Keeps Swinging



Does swinging a big stick to enforce international trade agreements comply with WTO rules?

It has been criticized by the global community as the “judge, jury, and executioner” of international trade law. On the other hand, the U.S. government describes it as the “crowbar” for opening foreign markets and as a way of enforcing trade agreements. The European Union (EU) says it violates world trade rules. Whatever it has been called, Section 301 of the Trade Act of 1974 has come under intense scrutiny at the World Trade Organization (WTO), and managed to evoke domestic US comments from among those who support and oppose the statute.

Section 301 allows the US to enforce the terms of existing international trade agreements with other countries and also to remove unfair trade barriers through the use of several remedies, including the threat of sanctions. Procedures under Section 301 require the US Trade Representative (USTR) to investigate “unjustifiable, unreasonable, and discriminatory” trade practices and to initiate and conclude negotiations in eliminating those practices within 18 months. Despite this strict deadline, USTR argues that Section 301 gives the President wide latitude and discretion in dealing with and taking action against an offending trade partner should negotiations fail.

After the US became a WTO member in 1995, Congress revised Section 301 to make it compatible with Article 23 of the WTO Dispute Settlement Agreement which prohibits a member from taking unilateral action before the WTO issues its own decision in a trade dispute. (When a nation becomes a WTO member, its trade laws must conform to WTO rules and procedures.) Section 301 now requires the President to use the WTO dispute settlement system when resolving a trade dispute with another member. If a “losing” nation refuses to comply with a WTO ruling, the WTO can authorize the “winning” nation to enforce its decision by means which may include the use of sanctions. The WTO itself does not enforce its decisions or impose sanctions; it

only adjudicates disputes. When the US needs to enforce a trade ruling made in its favor, it can turn to Section 301.

The EU requested that the WTO determine the legality of Section 301, claiming that the statute's 18-month time limit will force the US to take unilateral action before the WTO even has a chance to issue its own ruling (a process which can take 19 months to complete). The 18-month deadline, the EU argued, violated Article 23 of the WTO Dispute Settlement Agreement by allowing the US to become the “judge, jury, and executioner” of international trade law and to bypass WTO procedures in settling disputes. The EU Trade Commissioner remarked: “A law that requires resort to [WTO] procedures but expressly stipulates unilateral determinations ... makes a mockery of the WTO dispute settlement system.” The US countered that Section 301 left the President with adequate discretion.

In December 1999, a WTO panel declared Section 301 “WTO-compatible” but added that the statutory language, *in principle*, violated WTO rules. The panel found that the President was obligated under Section 301 to follow the 18-month deadline, leaving him with little discretion. But in upholding the legality of Section 301, the panel further argued that the statute's language “does not, in and of itself, establish a US violation” of WTO rules.

The WTO panel cited a promise made by the US government in 1994 (known as a Statement of Administrative Action - SAA) not to retaliate against its trading partners until the WTO issued a decision in a trade dispute first. “The aggregate effect of the SAA,” the panel noted, “is to provide the guarantees that Article 23 is intended to secure.” The decision also urged the US to keep its threat of using sanctions under Section 301 (i.e. its big stick) under wraps during the WTO dispute settlement process. “Merely carrying a big stick is, in many cases, as effective a means to having one's way as actually using the stick,” the panel warned.

The EU claimed victory in the WTO panel's ruling and later announced that it would not appeal the decision. USTR said that it will continue to use the statute as a “cornerstone” in enforcing its international trade agreements. Still, several countries criticized the panel, arguing that its decision rested on a promise not to use Section 301. One member described the WTO's decision as “turning a blind eye to certain inconsistent aspects of US law.” ❖

Jessup International Law Moot Court Competition Recruitment Meeting

Watch for flyers announcing date and time! Second and third year students are invited to learn more about the Jessup Competition and procedures for trying-out for the NYLS team. For more information, visit the official website at <http://www.ilsa.org/> or contact Joseph Tornberg of the NYLS International Law Society at Ext. 4193. ❖



NYLS Alumnae Profile

Name and Year: Christina M. Storm '77.

Employer and Title: Lawyers Without Borders, Inc. Founder and Director; Byrne & Storm, PC, Partner.

Describe your work and responsibilities: In my private practice during the last ten years, I spent a great deal of time doing hands-on mediation, negotiation, and conflict resolution in a litigation practice based on employment discrimination and matrimonial matters. Prior to that, I was a general practitioner trial attorney, trying cases in every conceivable tribunal in Connecticut. I have, in the last four years, attempted to transfer my skills to the peacemaking arena in areas emerging from civil strife.

My search for an agency to help me make this transition came up empty handed and so I created *Lawyers Without Borders, Inc. (LWOB)*. As Director of *LWOB*, my time is fully committed to searching out short- and long-term placement opportunities for senior attorneys and recent law school graduates in international settings doing work such as helping to structure and assist court house operations; training judges; forming bar associations; drafting statutes; overseeing grassroots mediation; and advocating human rights issues. *LWOB* intends to concentrate on the Middle East, the Balkans, and India with a focus on the Arab/Israeli conflict, the Kosovo/Serb conflict, and human rights issues particularly in gender-related human rights violations.

LWOB is currently developing connections with other non-governmental organizations (having recently established an affiliation with the International Section of the Connecticut Bar Association); raising the funds necessary to fund stipends for lawyers and interns; and, eventually, establishing our own programs for lawyers in the international human rights field.

Describe a favorite aspect of your job: The favorite aspect of this job is the sense of trying to give back. After years of working hard and being financially rewarded for my efforts and expertise, it occurred to me that the only person feeling good was the client. As one approaches one's fiftieth year, a sense of life's finality begins to take hold. Working in the non-profit arena, and in peacemaking in particular, imbues you with the sense of trying to make and leave the planet a better place ... and if not that, then what?

Career advice for NYLS students: I recommend getting international experience early in your career. A few years of international experience is a general requirement for most senior positions in this line of work, and it is difficult to obtain that experience once family obligations have taken hold. I also suggest: (i) learning a second language; (ii) familiarizing yourself with issues in your geographic area of interest; (iii) taking clinical courses at NYLS, especially in a court house setting where you will be exposed to conflict resolution and negotiation; and (iv) working in a small or moderate size law firm where you will have the opportunity to first chair trials and negotiations early on in your career -- this will provide invaluable hands-on training for understanding the nuances of mediation, negotiation, and conflict resolution.

Contact Information: To learn more about *LWOB* and its programs, please call (860) 525-3700 or visit its homepage at <http://lawyerswithoutborders.gobizgo.com/> ❖



US Supreme Court: Burma Law Unconstitutional

On June 20, 2000, the United States Supreme Court unanimously struck down the Massachusetts "Burma Law" which, because of alleged human rights abuses, restricts that state's government in purchasing goods and services from companies doing business in Myanmar (formerly Burma). Several other jurisdictions, including New York City and Los Angeles, have also adopted similar restrictions.

Last year, the US Court of Appeals for the First Circuit found that the Burma Law interfered with the foreign affairs power of the US government and violated the Supremacy Clause of the Constitution. In its decision, the Supreme Court ruled that, under the Supremacy Clause, a federal law allowing the President to restrict new investments in Myanmar pre-empted the Burma Law. Justice David Souter wrote: "The state act is at odds with the president's intended authority to speak with one voice for the US ... in developing a comprehensive, multilateral strategy to bring democracy ... to Burma."

But commentators noted that the decision did not bar states and municipalities from passing such laws in the future: "[The Court] did not say that the Constitution forbids all such laws. Instead, it said that states ... may not pass laws that conflict with measures enacted by Congress."

In October 1999, the Center for International Law organized a symposium analyzing the Burma Law with Massachusetts Assistant Attorney General Thomas Barnico who defended the law at the Supreme Court. For a complete transcript of the symposium, visit www.nyls.edu/CIL/ ❖

burden or expense of providing access would be disproportionate to the risks to the individual's privacy." The agreement also gives US companies one year (by mid-2001) to create or join an existing privacy program that complies with SHP.



Will seals of approval from privacy programs help to protect privacy online? Sample seals from Truste.com and the Better Business Bureau.

About 50 U.S. companies (including IBM, Ford, Disney, and Microsoft) recently created a privacy program called the Online Privacy Alliance (OPA) which provides a stamp of approval to companies adhering to strict privacy guidelines. Others have joined established privacy programs under the auspices of the Better Business Bureau which also provides seals of approval.

But many have pointed out flaws in the EU-US agreement. Some companies criticized the agreement as creating a new non-tariff barrier: "Apart from the United States, the EU has yet to negotiate equivalent safe harbor agreements with any other nation." Calling the agreement a "sellout to corporate interests," privacy advocates say that the agreement's provisions protect online privacy for only EU consumers and still don't restrict companies from selling personal data. Despite the criticism, an EU official voiced satisfaction over the agreement: "We are at the beginning of a new information society ... and privacy and trust are important parts of this society." ❖

China and the WTO Continued from page 5

distrustful of the US and are opposed to any kind of economic reform.

Other supporters say that PNTR would put China back on the road to democracy, especially with greater Internet access and greater transparency in the Chinese legal system required under WTO rules. Human Rights Watch said of the accession agreement: "China's membership in the WTO could increase pressure for greater openness, more press freedom, enhanced rights for workers, and an independent judiciary." Supporters also point out that the annual review has not changed China's policies on human or labor rights.

On May 24, 2000, the US House of Representatives voted 237-197 (nineteen more votes than necessary) to grant PNTR to China and to end the annual review of China's trade

status. The US Senate is also expected to approve PNTR for China in September 2000.

China and the WTO: Ready for Each Other?

Even before the ink began to dry on the final accession agreement, many critics predicted that China would be unable (or even unwilling) to carry out the requirements for joining the WTO. Legal scholars point out that many Chinese laws and regulations are unpublished or vague in meaning. China's Foreign Trade Minister Shi Guangsheng countered that regulations on imports, exports, and investment would be revamped and "built from the bottom up."

Other critics charge that China routinely breaks its international agreements. American music executives recall that even though Beijing promised in 1995 to crack down on pirated CD's and software programs, it has done so reluctantly. They report that 95 percent of the software being used today in China has been copied illegally.

Political analysts fear that once China becomes a WTO member, it will shift the dynamics of the trade organization to reflect the concerns of developing nations which comprise 75 percent of the WTO membership. With China in its corner, these analysts contend, developing nations will prevent the creation of labor, environmental, and human rights standards under the auspices of the WTO.

The US and its supporters reply that once China becomes a member, it will have to comply with WTO decisions or face pressure and possible sanctions from the other 136 members. China had never faced such comparable pressure in the past. Dismissing predictions that China won't comply with WTO decisions, the US pointed out that members such as the EU haven't complied with several WTO decisions made in the last century. Supporters also respond that most developing nations are already vigorously opposed to the creation of WTO labor and environmental standards and that China's joining the group will not change their stances.

Financial analysts fear that China will devalue its currency, the yuan, once it realizes that it cannot compete in the short-run with foreign products and services. By devaluing its currency, China will make its exports less expensive while increasing the price of foreign imports. A currency devaluation in China may also set off currency devaluations throughout the region as other countries try to stay competitive. Some legal scholars fear that China's admission to the WTO will lead to an increase in the WTO caseload and thus clog up the system. Supporters counter that a strict timeline governs the WTO dispute settlement process and that an increase in the caseload would be a sign of continued trust in the WTO dispute settlement process.

When will China join the WTO? While the WTO predicts a date of January 2001, the US Trade Representative hopes that China will join by the end of the year. But whenever China takes its seat at the WTO, many foresee a rough transition period for China filled with years of "tears and sweat" as it opens its markets to the world and agrees to abide by WTO rules. ❖

Election 2000: The Presidential Candidates on International Trade and Finance



Ralph Nader



Al Gore



George W. Bush



Pat Buchanan

PAT BUCHANAN (EMBATTLED NOMINEE FOR THE REFORM PARTY)

- **Trade philosophy:** Advocates America First policy where "all trade deals should be judged by whether they: (1) maintain US sovereignty; (2) protect vital economic interests; and (3) ensure a rising standard of living for all our workers."
- **China:** Will ask Congress to end normal trade relations with China until that country "closes its concentration camps, stops coercive abortions, and ceases the persecution of its people."
- **World Trade Organization (WTO):** Will withdraw US membership from the WTO. "The WTO elevates trade to the highest good ... Trade trumps the environment ... It trumps the sovereignty of countries. It should never have been created."
- **International Monetary Fund (IMF):** Does not indicate whether he supports withdrawing US membership but adds "not one dime from the IMF will go to prop up corrupt foreign regimes or countries hostile to the United States."

TEXAS GOVERNOR GEORGE W. BUSH (REPUBLICAN PARTY)

- **Trade philosophy:** Calls for "eliminating trade barriers and tariffs everywhere" and believes that "the case for trade is not just monetary, but moral. Economic freedom creates habits of liberty. And habits of liberty create expectations of democracy."
- **China:** Supports China's and Taiwan's admission into the WTO.
- **Fast Track Authority:** Advocates restoring fast track authority to the President which will allow him to negotiate international trade agreements and submit them to Congress for an up-or-down vote without any amendments. Fast track authority for the President expired in 1994 and has yet to be renewed by Congress.
- **WTO:** Supports continued US membership in the WTO.
- **IMF:** Calls for IMF reformation: "The IMF should not impose austerity, bailing out bankers while impoverishing a middle class. These organizations should be promoting sound banking laws" and should "be more transparent and accountable."
- **North American Free Trade Agreement (NAFTA):** Encourages expansion of NAFTA throughout the Americas: "I will work to extend the benefits of NAFTA from the northernmost Alaska to the tip of Cape Horn" (in South America).

US VICE PRESIDENT AL GORE (DEMOCRATIC PARTY)

- **Trade philosophy:** Supports a free and fair trading system that protects worker rights and the environment.
- **China:** Supports normal trade relations with China and its entry to the WTO.

Continued on next page

International Law Career Panel

How difficult is it to break into this area of practice? Are there many opportunities in the public sector?
What are the hot topics in private practice? Is an advanced degree necessary?
How does one prepare for a career in this area of law? Come and ask the experts.

Meryl P. Sherwood '81
International Corporate and Banking Law

Lynette Cunningham '87
United Nations

Dennis S. Prahll '89, Ladas & Parry
Intellectual Property Law

Chan Woo Sung '94, Burke & Parsons
Admiralty and Maritime Law

NYLS Professor Sydney M. Cone, III
Cleary, Gottlieb, Steen & Hamilton
Moderator

Wednesday, October 4, 2000
Room C-400, 12:45 pm – 1:50 pm

Lunch and beverages
will be served

Election 2000 Continued from page 9

- **Fast track authority:** Advocates restoring fast track authority to the President.
- **WTO:** Supports continued US membership in the WTO.
- **IMF:** Supports increased funding to the IMF and stronger IMF efforts to contain economic contagion: "The global capital market itself needs to be better and more cooperatively managed not through new global bureaucracies, and not through the laissez-faire approach but through more ... international cooperation."
- **NAFTA:** Hardly mentions NAFTA on the campaign trail so as to not further anger union supporters who were opposed to granting normal trade relations to China, say commentators. (See article on page 4.)
- **Debt relief for developing countries:** Supports US funding of debt relief for poor, highly indebted nations.

RALPH NADER (GREEN PARTY USA)

- **Trade philosophy:** Says that "there should be trade all over the world" but believes that countries should "focus on building domestic markets through land reform, micro-credit for small businesses, use of local materials for housing ..."
- **WTO:** Green Party platform calls for withdrawing US membership from the WTO. Mr. Nader says that the WTO subverts "our legitimate local, state and national sovereignties" and "imperils our existing health and safety laws."
- **IMF:** Mr. Nader envisions a reduced role for the IMF. The Green Party platform calls for abolishing the IMF and replacing it with a "democratic international financial institution for balancing international accounts and financing short-term current account balances."
- **NAFTA:** Green Party platform calls for canceling the NAFTA agreement. Mr. Nader says: "NAFTA has turned out worse than we predicted."
- **Debt relief for developing countries:** Green Party calls for canceling debt owed by poor countries to global banks.

Sources: ABC News, Democratic National Committee, The New York Times, Republican National Committee, The Washington Post, www.AIGore2000.com, www.Buchanan.org, www.foreignpolicy2000.org, www.GeorgeWBush.com, www.GreenParty.org, www.issues2000.org, and www.VoteNader.org. ❖