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## The International Review | 1999 Fall

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# The International Review

## NYLS Center for International Law

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Fall 1999

A Quick Guide to  
Current Issues in  
International Trade and  
Finance for Busy  
Law Students,  
and Information on  
Career and Faculty  
Resources at  
New York Law School.



# 50 Foreign Policies for 50 States?

## Important terms to be reviewed:

- **The foreign commerce and supremacy clauses** of the United States Constitution
- **Selective purchasing laws**
- **Agreement on Government Procurement** of the World Trade Organization (WTO)

In recent years, a growing number of state and local governments have passed laws restricting trade and commerce with countries whose policies they disapprove of or deplore. These **selective purchasing laws** have allowed state and localities to make purchasing policy based on factors other than price. Last year, California, New Jersey, and New York City passed laws restricting their officials from doing business with Swiss banks because of the banks' handling of accounts belonging to Holocaust survivors. Dade County, Florida, enacted a selective purchasing law against Cuba. Oakland, California, targeted its law against Nigeria.

In 1996, the Massachusetts legislature enacted the *Act Regulating State Contracts with Companies doing Business with or in Burma* also known as the Massachusetts Burma Law. The law: (1) restricts the state and its agents from purchasing goods or services from anyone having a business in or doing business with Burma (now known as Myanmar) and (2) authorizes the state to maintain and update a list of those companies (including foreign companies) conducting business in

*Continued on next page*

## The International Review

**Fall 1999**

**Center for International Law**

**New York Law School**

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**Director:** Professor Sydney M. Cone, III

**Assistant Director:** Michael Rhee

**Research Assistant:** YoHan Choi '01

Created 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.

## CIL Symposium: Should the ABA Approve MDP?

**Monday, October 25, 1999, 1:30 pm to 5:00 pm**, The Stimson Room, The Association of the Bar of the City of New York, 42 West 44th Street (between 5th and 6th Avenues).

The American Bar Association will be confronting proposals to allow lawyers to engage in multidisciplinary practice ("MDP") with other professionals. These proposals would permit MDPs to be controlled by non-lawyers and lawyers alike. Firms such as the Big Five would be permitted to offer legal services to their clients, as well as accounting, consulting and other services. MDPs could be established in which lawyers form teams with professionals such as financial advisors, elder-care advisors, and social workers. The MDP proposals raise difficult issues relating to the interests of clients, the legal system, and the professional responsibilities of the bar. The purpose of this Symposium is to discuss and analyze these issues.

**Moderator:** Sydney M. Cone, III, C.V. Starr Professor of Law and Director, Center for International Law, New York Law School.

### Faculty:

- Alison Crawley, Head of Professional Ethics, The Law Society of England and Wales, London.
- L. Harold Levinson, Professor of Law Emeritus, Vanderbilt University Law School.
- Lucinda A. Low, Partner, Miller & Chevalier, Washington, D.C.
- Deborah H. Schenk, Marilyn and Ronald Grossman Professor of Taxation, New York University School of Law.
- Bernard Wolfman, Fessenden Professor of Law, Harvard University School of Law.

*There will be no charge for admission. But seating is limited. To RSVP, send an e-mail to [mrhee@nyls.edu](mailto:mrhee@nyls.edu) or call Michael Rhee at (212) 431-2865. ❖*

## Summary of Upcoming Events

Jessup International Law Moot Court Competition Recruitment meeting (Sept. 16); International Law Career Panel (Oct. 6); CIL Symposium – States' Rights v. International Trade (Oct. 13); CIL Symposium: Should the ABA Approve MDP? (Oct. 25). ❖

Myanmar. The legislation, adopted in response to alleged human rights abuses in Myanmar, quickly faced many challenges at home and abroad.

In 1998, the European Union (EU) and Japan asked the Dispute Settlement Body of the WTO (the world's foremost trade dispute resolution body) to rule on the legality of the Burma Law. They argued that the Burma Law violated the WTO's **Agreement on Government Procurement** which prohibits member nations from imposing requirements that are not essential to a company's ability to fulfill a contract or provide a service. Simply because many European and Japanese companies have businesses in or do business with Myanmar, they would essentially be excluded from selling their goods and services to Massachusetts under the Burma Law.



That same year, the National Foreign Trade Council (NFTC), an American trade association dealing with trade and investment policy, filed a lawsuit in US District Court in Massachusetts to overturn the Burma Law on three grounds: (1) **Art I, § 8, cl. 3** of the US Constitution ("foreign commerce clause") forbids state laws from discriminating or burdening foreign commerce; (2) **Art. I and II** of the US Constitution give the federal government, not the states, exclusive control of foreign policy; and (3) the Burma Law stands in conflict with federal sanctions aimed at encouraging political change in Myanmar. In the face of such conflict, must state law give way to federal law (**US Constitution, Art. VI, cl. 2**, also known as the "supremacy clause")?

The Massachusetts Assistant Attorney General, Thomas A. Barnico, argued that the provisions of the Burma Law did not violate the Constitution: "The Constitution does not expressly grant exclusive power to conduct foreign policy to the federal government or deny general power to affect foreign affairs to the States."

In November 1998, Chief US District Court Judge Joseph L. Tauro ruled that the Burma Law was unconstitutional on the grounds that it infringed upon the federal government's exclusive control of foreign policy. Judge Tauro also ruled that the law violated the Constitution's foreign commerce clause. "State interests, no matter how noble, do not trump the Federal Government's exclusive foreign affairs power," he wrote in his decision. In June 1999, a federal appeals court affirmed Judge Tauro's ruling, citing the reasons given by

the NFTC. "The conduct of this nation's foreign affairs cannot be effectively managed .... if each of the many state and local governments pursues its own foreign policy," the court concluded.

In the wake of these decisions, the EU and Japan suspended their challenge to the Burma Law but threatened to reopen the case if the rulings were overturned. Massachusetts plans to appeal to the US Supreme Court. In the meantime, the law remains "out-of-effect," according to Barnico.

This case continues to raise important issues under federal and international law. May states and localities pass laws impinging upon foreign commerce and obligations under international trade agreements? If the Supreme Court upholds the Burma Law, what implications will it have for the WTO? These questions will be addressed during a symposium sponsored by the Center for International Law. (See box below.) ❖

## CIL Symposium on

States' Rights v. International Trade:  
The Massachusetts Burma Law

**Wednesday, October 13, 1999, 7:00 pm to 9:00 pm,**  
The Stimson Room, The Association of the Bar of the  
City of New York. 42 West 44th Street (between 5th and  
6th Avenues).

**Moderator:** Sydney M. Cone, III, C.V. Starr Professor of  
Law and Director, Center for International Law, New  
York Law School.

### **Faculty:**

- Thomas A. Barnico, Assistant Attorney General, Commonwealth of Massachusetts.
- Paul R. Dubinsky, Associate Professor of Law, New York Law School.
- Peter J. Spiro, Associate Professor of Law, Hofstra University School of Law.
- Joel P. Trachtman, Professor of International Law, The Fletcher School of Law and Diplomacy, Tufts University.

**Sponsors:** Center for International Law, New York Law School. The Association of the Bar of the City of New York. Customs and International Trade Bar Association.

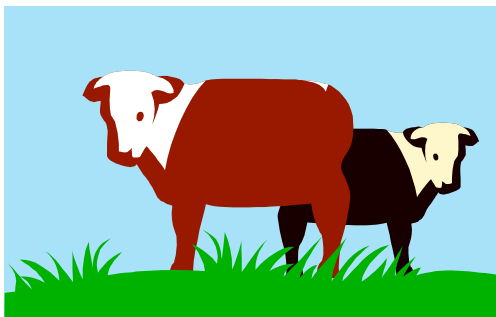
*There will be no charge for admission. But seating is limited. To RSVP, call Michael Rhee at the Center for International Law at (212) 431-2865 or send an e-mail to [mrhee@nyls.edu](mailto:mrhee@nyls.edu) ❖*

# A 10-Year Beef: Unfair Trade Ban or Serious Health Concerns?

## Important term to be reviewed:

- **Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)** of the World Trade Organization (WTO)

In recent years, many Europeans have been questioning the safety of their imported food. France, Belgium, the Netherlands, and Luxembourg banned the sale of Coca-Cola products in June 1999 when scores of people fell ill after drinking the beverages. In 1996, over 10 European countries banned the import of British beef over fears of "mad cow" disease. Now, in a high-profile dispute pitting health concerns against international trade, the US and Canada are threatening the European Union (EU) with millions of dollars in trade sanctions for its failure to lift a 10-year import ban on hormone-treated beef.



In 1989, the EU imposed a ban on American and Canadian beef treated with growth hormones, citing alleged long-term carcinogenic risks. The US, however, claims that scientific studies don't support the EU's claims and that the EU's ban on hormone-treated beef is simply unfair and discriminatory. In the US, 63 percent of all cattle and 90 percent of feed cattle are fitted with hormone implants to hasten growth. According to the National Cattlemen's Beef Association, since 1989, the US cattle industry has lost about \$250 million in annual sales in Europe because of the EU's ban on hormone-treated beef.

In 1996, the US asked the Dispute Settlement Body of the WTO (the world's foremost trade dispute resolution body) to determine the legality of the EU's beef ban under the **Agreement on the Application of Sanitary and Phytosanitary Measures** ("SPS Agreement"), making it the first trade dispute involving this agreement. The SPS Agreement allows WTO member nations to restrict, when necessary, the import of foodstuffs in order to protect

animal, plant, and human health. But restrictions must be based on strong scientific evidence, thus making it difficult for a member nation to use public health and safety concerns as a guise for protectionism.

In June 1997, a WTO dispute settlement panel ruled that the EU's ban on hormone-treated beef violated the SPS Agreement because it (1) wasn't based on compelling scientific evidence and (2) didn't include an evaluation of the potential adverse effects of hormones on human health. After the Appellate Body upheld the decision, the WTO set a deadline of May 13, 1999, for the EU to comply with its ruling. Under WTO dispute resolution procedures, the EU had one of three options to follow: (1) comply with the WTO ruling by lifting its 10-year ban on hormone-treated beef; (2) if the ban were to remain, negotiate compensation with the countries affected by the ban; or (3) face US and Canadian trade sanctions in the hundreds of millions of dollars if one of the first two options wasn't followed.

With the deadline looming for compliance, the EU declared that it would be unable to lift its beef ban until it completed further scientific studies (17 in all) on the effects of growth hormones on human health.

On June 3, 1999, the US and Canada asked the WTO for permission to approve \$253 million in trade sanctions (which represent the damages supposedly suffered by US and Canadian exporters because of the beef ban) against the EU. In July 1999, a WTO arbitration panel reduced that amount to \$125 million. Once implemented, the sanctions will specifically target European gourmet foods, including Dijon mustard, truffles, goose liver, and chocolate, doubling the price for these goods. Discussions on these matters are expected to continue in the fall. ❖

## Recruitment Meeting Jessup International Law Moot Court Competition

**Thursday, September 16, 1999, 1:00 pm, Room A-700, New York Law School. All students are invited.**

Guest speaker Dennis S. Prah '89, a Jessup Competition award recipient, will describe his participation and experience in the competition. Professor Gerald Lebovits, NYLS Moot Court Advisor and also a former Jessup Competition participant, will review rules and eligibility requirements and other important matters.

For more information and background on the Jessup Competition or to read this year's Jessup problem, visit the official website at <http://www.kentlaw.edu/ilsa/> or see Michael Rhee in Room C-301. ❖

# Four Steps to a Career in International Law

For the career-minded individual, think of law school as a two-year program. Although there are three years of classroom instruction during law school, your job search begins during your second year. So future employers will look at grades and job experiences from your *first two years* of law school. To prepare yourself for your job search, follow these steps *today*:

**1 Find an area of interest:** What particular field of international law do you want to study and practice? Visit the Center for International Law's (CIL) website at <http://www.nyls.edu/CIL/> to read career advice and essays from actual practitioners. Hard copies are available on the bulletin board outside C-302. Attend international law career events in New York City (dates are listed in CIL's website). Speak to professors and alumni and ask for practical advice. And read the *NYLS Alumnus Profile* column on page 6 for more specific advice from an NYLS alumnus.



**2 Get more work experience NOW:** Apply for internships, externships, clerkships, research and work-study positions, and other opportunities in your area of interest. CIL's website contains over 70 links to international law internships and job opportunities. Also visit the Office of Career Services. Conduct your search before you get swamped with papers and finals (preferably before mid-November). *And don't forget that many internships have very early deadlines and require security clearances and recommendations. So you'll need time to prepare.* Here are a few deadlines: US Department of Justice (9/27/99); US Central Intelligence Agency (10/1/99); US Department of State, Office of the Legal Adviser (11/1/99).

**3 How can I get more work experience if I won't get hired without prior work experience?** Participate in student activities where you'll learn skills helpful in the practice of law. Some activities at NYLS include:

- Law journals (Journal of International and Comparative Law – see *Up Close* column on page 6; Journal of Human Rights; and the Law Review).
- Moot court (Jessup International Law Moot Court Competition – see recruitment meeting notice on the bottom of page 4; Froessel Moot Court Intramural Competition).
- International Law Society.

**4 Get to know at least one professor:** Many internships and job applications require an academic reference. Never get caught in a situation where you are well qualified to apply for an internship or job but then realize that you don't have a single reference from law school to back you up.

So if you want a good job after graduation, study hard and build up your résumé. Don't forget – for every job applicant with wonderful grades, you'll find another applicant with the same wonderful grades and also with a great résumé. Whom would you hire? ❖

## The best website at NYLS for international law careers

- **Read advice and essays from actual practitioners.**
- **Get dates for international law career events in and around the New York City area.**
- **Find over 70 links to internships and job opportunities.**
- **Read transcripts from past Center for International Law symposia events and get information on upcoming events.**

<http://www.nyls.edu/CIL/>





## NYLS Alumnus Profile

**Name and Year:** Dennis S. Pahl (Class of 1989)

**Firm Name:** Ladas & Parry, New York.

**Area(s) of Practice:** International Trademark, Copyright and Unfair Competition Law.

**Favorite International Law Courses at NYLS:** International Law, Comparative Law, International Business Transactions.

**Extracurricular Activities and Awards at NYLS:** Moot Court Association (Chairman); Student Bar Association (Senator); International Law Society; 1989 Jessup International Law Moot Court Competition – Alona E. Evans Award for International Round Best Brief (Second Place), Brunson McChesney Award for USA National Champion (USA Eastern Division Regional Champions), Final four teams in the world.

**Career advice for students interested in international law:** Get a well-rounded education in law school in the major "core" US law courses. Take a few international law courses, including at least one course requiring a paper. Learn or practice a foreign language. Consider working abroad as an intern. Use the NYLS mentor program for informational interviews with practicing attorneys or professors in a broad range of international law fields in order to understand what options are available. (Handouts on how to conduct informational interviews are located on the bulletin board outside of C-302 – *Editor's note.*)

*Mr. Pahl will be speaking at the Jessup International Law Moot Court Competition Recruitment meeting on September 16, 1999. See details on page 4. ♦*

**Correction:** The Spring 1999 newsletter inadvertently omitted Professor Lenni Benson's course on Immigration Law (offered in Spring 2000) from its list of international law courses offered at NYLS. The American Immigration Lawyers Association recently presented Professor Benson with the *Elmer Fried Excellence in the Teaching of Immigration Law* award. ♦



## Up Close: Journal of International and Comparative Law

The *New York Law School Journal of International and Comparative Law* is a student-run academic journal dedicated to the publication of articles, notes, case comments, and book reviews concerning international and comparative law. Since 1979, the Journal has sought to provide a forum for a wide spectrum of views and has published articles by prominent scholars and practitioners. As a co-curricular activity, the Journal also aims to promote student scholarship in these fields.

Students become Journal members in one of two ways listed below:

- First-year students ranked in the top 25 percent of their class are invited to join the Journal staff.
- The three student-run publications at NYLS (including the Journal) hold a "write-on" competition after spring semester finals. The write-on competition consists of writing a memo on a topical legal issue and concludes with a *Bluebook* and grammar quiz. (*The Bluebook* is a guide to legal citation.) The Journal staff judges participants, and then offers spots to top candidates.

During the first year of membership, student members:

- Participate in the editing process by retrieving sources, checking cites for accuracy, and ensuring that cites comply with the *Bluebook*.
- Write and submit their own student note or case commentary (which also satisfies the NYLS writing requirement) for possible publication in the Journal.

Successful completion of these requirements entitles student members to two credits during their first year of membership.

During their second year on the Journal, student members participate on the editorial staff and supervise the work of the incoming staff. Those students who seek greater responsibilities may run for Executive Board positions, which are voted upon by the outgoing Board in the spring semester. In addition to Editor-in-Chief and Managing Editor, other Executive Board

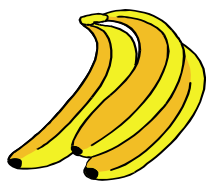
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positions include Topics Editor, Executive Editor, Executive Notes and Comments Editor (for student submissions), Executive Articles Editor, and Technology Editor.

Those not serving on the Executive Board serve as either Notes and Comments or Articles Editors. All students receive two credits per semester for fulfillment of their duties during the second year of Journal membership.

In addition to academic credit, participation on the Journal offers other benefits. NYLS awards a scholarship to the Editor-in-Chief and Managing Editor. The Journal also organizes a symposium and hosts a yearly banquet for the staff. Most importantly, student members receive the opportunity to hone their writing and editing skills. Most top employers seek candidates with Journal experience for this very reason. They know that these individuals have gained the skills necessary for clear and professional legal writing.

If you have any questions about the *Journal of International and Comparative Law*, feel free to visit Room A-806 or call Mike Nordskog (Editor-in-Chief) or Bert Ross (Managing Editor) at 431-2113. ❖



## Slipping into a trade war over bananas

The Spring 1999 newsletter described a looming trade war between the US and the European Union (EU) over bananas. For many years, EU trade regulations favored bananas imported from former European colonies over bananas from certain Latin American companies. Although the World Trade Organization (WTO) has ruled that the regulations were discriminatory and in violation of WTO rules, the US has accused the EU of avoiding compliance with the ruling. So what happens when a WTO member refuses to comply?

The US argues that under **Article 22(2) of the Dispute Settlement Understanding (DSU)** of the WTO, it may retaliate against a non-complying member nation. The EU, however, argues that under **DSU Article 21(5)**, the US must again go through the regular dispute settlement process to verify whether the EU has or has not complied with the WTO ruling. The US countered that this would lead to an endless spiral of litigation as the EU would only make cosmetic changes to its regulations.

On April 6, 1999, the WTO declined to issue a finding concerning DSU Articles 21(5) and 22(2). Instead, it decided that the proper "sequencing" of the two articles should be resolved through the WTO's ongoing review of the DSU which is to be completed by July 2000. In the meantime, the EU has outlined new options to revise its banana import regulations to bring it into compliance with the WTO ruling. Negotiations are expected to continue in the fall. ❖



## Cooling off hot tempers over steel imports

The Spring 1999 newsletter also brought the story of twelve US steel companies filing trade complaints against Russia, Japan and Brazil for "dumping" or selling steel at unfair prices. The US steel industry urged President Clinton to use his authority under the **Trade Act of 1974** to impose quotas (i.e. specified limits) on steel imports. Instead, the Clinton administration proposed tax breaks for the steel industry. WTO rules prohibit the use of quotas.

Dissatisfied with the President's response, the US House of Representatives approved a bill in March 1999 to limit steel imports to pre-July 1997 levels. But in July 1999, the US Senate killed its version of the House bill that would have restricted steel imports.

While trying to address the concerns of the steel industry, the Clinton administration may actually be taking other actions which violate WTO rules. In July 1999, the US signed "suspension agreements" with both Russia and Brazil whereby the latter two countries would cut back on their steel exports in exchange for the US agreeing not to slap punitive tariffs on their steel. Yet WTO rules prohibit suspension agreements. (The agreement with Russia won't violate WTO rules since Russia is not a member of the WTO. On the other hand, Brazil is a member of that organization.)

In the meantime, the US Senate is likely to take up an alternative bill in the fall that would strengthen American anti-dumping laws to address the problems associated with rising steel imports. ❖

**CIL Trivia:** Can an American citizen volunteer to fight on foreign soil under a foreign flag? **Answer:** Consult a lawyer. *The Neutrality Act of 1794* bars anyone from taking part in or aiding any military expedition against "any foreign prince or state, or of any colony, district or people with whom the United States is at peace."



# NYLS International Law Career Panel

Are you interested in a career in international law? What kinds of courses should you take? 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? Should I study abroad next summer? Will I need an LLM degree? Come and ask the experts.

**Sydney M. Cone, III**  
C.V. Starr Professor of Law

**Lenni Benson**  
Associate Professor of Law

**Paul R. Dubinsky**  
Associate Professor of Law

Wednesday, October 6, 1999  
1:00 pm to 1:50 pm in Room A-700

*Sponsored by the Center for International Law and the Office of Career Services.*



**New York Law School**  
**Center for International Law**

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New York, New York 10013-2960

