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WTO CASE REVIEW

Raj Bhala and David A. Gantz 457

This is the second in an annual series of articles reviewing the "reports" (decisions) of the Appellate Body, the highest judicial entity of the World Trade Organization, in this instance covering the reports adopted by the WTO's Dispute Settlement Body during 2001. Since its inception in 1995, the Appellate Body has issued more than forty reports, currently at a rate of eight or nine a year. These reports, applying and interpreting various provisions of the General Agreement on Tariffs and Trade and the other WTO agreements, are perhaps the most significant single source of WTO jurisprudence. It is the authors' intention to provide a comprehensive, critical summary of each of the reports as a useful and reliable record of WTO case law.

ARTICLES

INTERVENOR FUNDING AS THE KEY TO EFFECTIVE CITIZEN
PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING:
PUTTING THE PEOPLE BACK INTO THE PICTURE

Michael I. Jeffrey 643

This Article examines the role of "intervenor funding" as a tool for facilitating effective public participation in environmental decision-making processes. It first explores the importance of the public interest and citizen participation in environmental

matters, and the myriad ways these fundamental tenets have been recognized and enforced in the administrative proceedings and jurisprudence of three jurisdictions: the United States, Canada and Australia. Although various models of funding citizen participation are canvassed, particular attention is given to the legislative funding initiative undertaken by the Province of Ontario, Canada in the late 1980s and its innovative role in transferring the burden of funding intervenors to the project proponent, thereby internalizing the cost of intervention as a project cost. This in turn resulted in more effective public participation and arguably better environmental decisions.

**POLITICAL SYMBOLS IN TWO CONSTITUTIONAL ORDERS:
THE FLAG DESECRATION DECISIONS OF THE UNITED STATES
SUPREME COURT AND THE GERMAN FEDERAL
CONSTITUTIONAL COURT**

Ute Krüdwagen 679

This article considers the background, the doctrinal approach, and the broader implications of the flag desecration decisions of the United States Supreme Court and the German Federal Constitutional Court, the Bundesverfassungsgericht. On the one hand, citizens of the United States often treat the flag as an almost sacred symbol. In contrast to this, German citizens consider the flag as the symbol of the German nation, but it gains little public attention. The German flag as a symbol can be defaced, while in the United States such an act engenders a more negative public response. The author labels this situation the "flag enigma," illustrated in the fact that one Court does not protect what the public considers to be worth protecting, whereas the other Court protects what the public regards with indifference. The author explains the "flag enigma" by analyzing the different concepts of democracy in the United States and Germany. Further, the article compares the approaches of the Supreme Court to flag desecration with those of the Bundesverfassungsgericht, and concludes that German constitutional jurisprudence is moving towards its American counterpart.

NOTES

IMPACT OF THE 2000 CHILD LABOR TREATY ON UNITED STATES CHILD LABORERS

Celeste Corlett 713

This note examines the 2000 Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (the "Child Labor Treaty") and its potential impact on child farm workers in the United States. While the United States strives to eliminate child labor in other countries, its own labor laws leave virtually unprotected child laborers in the agriculture industry. The author discusses the 2000 Child Labor Treaty that prohibits children from working under hazardous conditions, and the United States nullification of those protections through its ratification process. Finally the author concludes that the United States labor laws exempting child laborers in the agricultural industry must be eliminated.

DÉJÀ VU ALL OVER AGAIN? COLLECTIVE BARGAINING AND NAFTA: CAN MEXICAN AND UNITED STATES NATIONAL UNIONS FOSTER GROWTH UNDER THE NAALC?

William F. Pascoe 741

Although ultimately unsuccessful, vigorous resistance by the established unions in both Mexico and the United States to the implementation of the North American Free Trade Agreement (NAFTA) did influence the adoption of the North American Agreement on Labor Cooperation (NAALC) in conjunction with NAFTA. Since then, U.S. unions have undertaken to use the NAALC protocols to influence labor practices of various U.S. and Mexican corporations. This Note begins from the perspective of the historical political power bases of unions in each nation, and compares the first NAALC public submission with a public submission of only five years later. The comparison illustrates that U.S. unions, along with established, and newer independent Mexican unions must learn to establish new power bases, and make the transition from domestic collective bargaining strategies and tactics of private entities, winning and losing, to those of an international relations approach, more focused on nations and consensus. The

transition has required organized labor to collaborate more with organizations that focus less on organized labor issues than on human rights and basic economic rights. The price U.S. unions may pay for progress on this front may be a trade-off between increasing membership and increasing public awareness of the situations of workers in developing economies.

R_x: TAKE TWO OF THESE AND SUE ME IN THE MORNING;
THE EMERGENCE OF LITIGATION REGARDING PSYCHOTROPIC
MEDICATION IN THE UNITED STATES AND EUROPE

Angela M. Walker 775

The recent success and expansion of the psychotropic drug industry has been closely followed by the appearance of psychotropic medication in the legal arena. This note examines both product liability litigation against drug manufacturers and the use of psychotropic medication as a criminal defense. It compares such developments in the United States with those in European countries. This note concludes that primary responsibility, both in civil and criminal cases, must be determined according to the specific circumstances of each case. However, to at least some extent, liability will essentially always be attributable to the user.