

embargo, is probably justifiable under international law on the grounds of Cuba's change to a communist regime and a non-market economy. The United States may also invoke GATT Article XXI, the national security exception, on the basis of a concern for national security, with or without a mutual declaration of suspension authorized by the Contracting Parties. A waiver to permit the embargo may be requested under Articles IX:3 and IX:4 of the WTO Agreement and GATT Article XXV:5, but may not be readily granted.

If we can be of further assistance, please let us know.

MARGARET MIKYUNG LEE,  
Legislative Attorney.●

#### FOOTNOTES

<sup>1</sup> General Agreement on Tariffs and Trade of 1994 as defined in Annex 1A of the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations, concluded April 15, 1994 (reprinted at H. Doc. No. 103-316, Vol. I, 103d Cong., 2d Sess. 1339 (1994)).

<sup>2</sup> The article and paragraphs refer to the provisions of the General Agreement on Tariffs and Trade originally concluded Oct. 30, 1947, 61 Stat. (5) & (6), T.I.A.S. 1700, 55 U.N.T.S. 194, and annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee on the United Nations Conference on Trade and Employment (excluding the Protocol of Provisional Application) as amended before the entry into force of the Agreement Establishing the World Trade Organization. Hereinafter, these provisions will be referred to as "GATT Article \_\_\_\_."

<sup>3</sup> It accepted the 1947 Protocol of Provisional Application on Jan. 1, 1948. M. Bowman & D. Harris, "Multilateral Treaties: Index and Current Status" 133 (1984).

<sup>4</sup> Proclamation 3447, 27 Fed. Reg. 1085 (1962) (embargo proclaimed pursuant to §620(a) of the Foreign Assistance Act of 1961, 75 Stat. 445, authorizing the President to establish and maintain an embargo against Cuba and also pursuant to the Final Act of the Eighth Meeting of Consultation of Ministers of Foreign Affairs, Serving as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, which resolved that the present Cuban government was incompatible with the Inter-American system and urged member states to take those steps they considered appropriate for their individual and collective self-defense, in light of the offensive of Sino-Soviet communism with which the Cuban government was publicly aligned).

<sup>5</sup> "GATT Activities 1992" 57 (1992) (Cuba protested the Cuban Democracy Act of 1992 reinforcing the trade embargo of the U.S. against Cuba); Council Hears Cuban Complaint on U.S. Sugar Imports, EC Protest on Manufacturing Clause, 3 International Trade Reporter 723 (BNA 1986) (Cuba complained that the U.S. requirement that sugar beet imports through a Third World country must be certified as not being from Cuba discriminated against Cuba and termed the measure "a clear case of aggression against Cuba"); Nicaragua Charges U.S. is "Undermining" Trading System by Cuts in Sugar Quota, 8 International Trade Reporter 330 (1983) (Cuba supported Nicaragua's protest against the U.S. embargo against Nicaragua, saying "we, too, have suffered for more than 20 years from U.S. discrimination").

<sup>6</sup> There do not appear to be any statements recorded in the official supplements to the Basic Instruments and Selected Documents nor reference to unpublished documents concerning such a statement. However, at the time of the suspension of MFN treatment for Poland, some GATT parties recalled that the United States-Poland dispute was the first time a suspension of MFN treatment had been brought before the GATT since the United States-Cuba breach in trade relations. Poland Unsuccessful in Attempt to Get GATT Censure of U.S. for MFN Suspension, 7 International Trade Reporter 187 (1982).

<sup>7</sup> U.N. Adopts Resolution Favoring Free and Fair Trade with Cuba, 9 International Trade Reporter 2045 (BNA 1992). Although it may seem that expropriation of property requires some sort of compensation under international law, the developed and developing countries have not been able to agree on this point, with the developed countries insisting on an international minimum standard and the developing countries insisting that expropriation is a domestic matter to be regulated by the expropriating country under its own laws. D. Harris, "Cases and Materials on International Law" 422-433 (1983).

<sup>8</sup> Art. 62, May 23, 1969, UN Doc A/Conf 39/27, 8 I.L.M. 679, 63 A.J.I.L. 875 See also Restatement (Third) of the Foreign Relations Law of the United States §336 (Am. Law Inst. 1987) [hereinafter Rest. 3rd].

<sup>9</sup> Rest. 3rd, supra note 8, §337, cmt. f, and 337 (Am. Law Inst. 1987) [hereinafter Rest. 3rd].

<sup>10</sup> Rest. 3rd, supra note 8, at §336(a), cmt. e and Reporters' Note 4 (1987). Although even actual, overt acts of hostility do not necessarily constitute a fundamental change of circumstances sufficient to terminate or suspend the operation of an agreement between the parties engaged in hostilities, where the agreement at issue concerns trade relations and trade is essentially disrupted by political or military tension, the agreement probably could be considered terminated or suspended between the concerned parties. Other types of agreements probably would not be considered terminated by any of the parties because of either overt hostility or political and military tensions. For example, the U.N. Charter prohibits the use of force and was intended to end war as a solution to international disputes, but obviously force is still used to resolve disputes and the Geneva Conventions on the Law of War are considered applicable for humanitarian reasons during hostilities.

<sup>11</sup> Ya Qin, China and GATT: Accession Instead of Resumption, 27 J. of World Trade 77, 95-97 and note 89 (1993); Rest. 3rd, supra note 8, at §336, cmt. f.

<sup>12</sup> Rest. 3rd, supra note 8, at §333, Reporters' Note 3.

<sup>13</sup> "Nothing in this Agreement shall be construed . . . to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests . . . taken in time of war or other emergency in international relations. . . ."

<sup>14</sup> See supra note 4.

<sup>15</sup> M. Bowman & D. Harris, supra note 3, at 133.

<sup>16</sup> Philip Brenner & William M. LoGrande, Congress and Nicaragua: The Limits of Alternative Policy Making, in "In Divided Democracy: Cooperation and Conflict Between the President and Congress" 219, 222-225 (James A. Thurber ed., 1991).

<sup>17</sup> Proclamation No. 5104 of September 23, 1983, 48 Fed. Reg. 44057 (1983).

<sup>18</sup> Dispute Settlement, United States—Imports of Sugar from Nicaragua, 31 B.I.S.D. 66, 73-74 (1985).

<sup>19</sup> Id. at 72.

<sup>20</sup> GATT Council Hears Attack on FSCs and Other U.S. Moves, Delays Work Program Evaluation, 1 International Trade Reporter 586 (1984); Impass Occurs at Opening of Annual Meeting as U.S. Threatens to Link Funding to Work, 1 International Trade Reporter 644 (1984).

<sup>21</sup> GATT Council Hears Attack on FSCs and Other U.S. Moves, Delays Work Program Evaluation, supra note 20, at 586.

<sup>22</sup> Exec. Order No. 12513, 50 Fed. Reg. 18629 (1985).

<sup>23</sup> U.S., Nicaragua Unsuccessful in Getting GATT Action on Trade Embargo Dispute, 2 International Trade Reporter 765 (1985); U.S. Again Blocks GATT Dispute Panel Sought by Nicaragua to Investigate Trade Embargo, 2 International Trade Reporter 965 (1985); GATT Council Appoints Panel to Study U.S. Nicaragua Embargo, Reviews Other Disputes, 2 International Trade Reporter 1313 (1985).

<sup>24</sup> International Court of Justice: Judgment on Merits in Case Concerning Military and Paramilitary Activities In and Against Nicaragua (*Nicaragua v. United States*), June 27, 1986, 25 I.L.M. 1023 (1986); "GATT Activities 1986" 59 (1987).

<sup>25</sup> "GATT Activities 1985" 47-49 (1986); "GATT Activities 1986," supra note 24, 58-59. See also supra note 23.

<sup>26</sup> "GATT Activities 1985," supra note 25, at 47; U.S., Nicaragua Unsuccessful in Getting GATT Action on Trade Embargo Dispute, supra note 23.

<sup>27</sup> "GATT Activities 1985," supra note 25, at 57-49; "GATT Activities 1986," supra note 24, at 58-59; U.S., Nicaragua Unsuccessful in Getting GATT Action on Trade Embargo Dispute, supra note 23.

<sup>28</sup> Id.

<sup>29</sup> "GATT Activities 1986," supra note 24, at 58-59. "GATT Activities 1985," supra note 25, at 48.

<sup>30</sup> See also Decision Concerning Art. XXI of the General Agreement, Decision of 30 November 1982, 29 B.I.S.D. 23 (1983). The Decision stated that the Contracting Parties should consider the third party interests that may be affected in taking action under Article XXI. When such action is taken, all affected GATT parties retain full rights under the GATT (hereinafter Decision Concerning Art. XXI). GATT decisions will become part of the GATT 1994 according to the General Agreement on Tariffs and Trade 1994, ¶ 1(b)(iv), but this provision is hortatory.

<sup>31</sup> Philip Brenner & William M. LoGrande, supra note 16, at 242.

<sup>32</sup> Proclamation No. 6120, 55 Fed. Reg. 17744 (1990).

<sup>33</sup> International Court of Justice: Judgment on Merits in Case Concerning Military and Para-

military Activities In and Against Nicaragua (*Nicaragua v. United States*), June 27, 1986, supra note 24.

<sup>34</sup> Agreement Establishing the World Trade Organization, as reprinted in H. Doc. No. 103-316, Vol. I, 103 Cong., Sess. 1327 (1994).

<sup>35</sup> See also Article XXV—Guiding Principles to be Followed by the Constructing Parties in Considering Applications for Waiver from Part I or Other Important Obligations of the Agreement, Procedures adopted on 1 November 1956, 5 B.I.S.D. 25 (1957).

<sup>36</sup> It signed the 1947 PPA on April 20, 1948. M. Bowman & D. Harris, supra note 3, at 133. The 1947 PPA was laid open for signature from Oct. 1947, to Nov. 15, 1947 for eight principal countries, and until June 30, 1948, for all other signatories to the General Agreement. None of the countries discussed in this section were among the eight who signed by Nov. 15, 1947.

<sup>37</sup> M. Bowman & D. Harris, supra note 3, at 133.

<sup>38</sup> Article XXI, United States Export Restrictions, Decision of 8 June 1949, II B.I.S.D. 28 (1952) (GATT parties rejected the complaint by Czechoslovakia under Articles I and XXI that U.S. export restrictions did not conform to Article I); Note, East-West Trade: The Accession of Poland to the GATT, 24 Stan. L. Rev. 743, at note 7 (1972); Czechoslovakia Renews Effort to Regain MFN, Says U.S. Firms Losing Out in Modernization, 5 International Trade Reporter 117 (BNA 1988).

<sup>39</sup> Suspension of Obligations between Czechoslovakia and the United States under the Agreement, Declaration of 27 September 1951, II B.I.S.D. 36 (1952).

<sup>40</sup> See the cumulative index at the back of all B.I.S.D. issues which list the suspension of GATT application between the United States and Czechoslovakia as an action under Article XXIII.

<sup>41</sup> J. Jackson & W. Davey, "Legal Problems of International Economic Relations: Cases, Materials and Text on the National and International Regulation of Transnational Economic Relations" 916 (2d Ed. 1988).

<sup>42</sup> Suspension of Obligations between Czechoslovakia and the United States under the Agreement, supra note 40.

<sup>43</sup> 18th Supp. B.I.S.D. 24 (1972).

<sup>44</sup> Australia and products of Papua-New Guinea, Decision of 24 October 1953, 2 B.I.S.D. 18, 93 (1954); Italy and products of Libya, Decision of 26 October 1951, II B.I.S.D. 10 (1952), Decision of 9 October 1952, 1 B.I.S.D. 14 (1953); Italy and the products of Somalia, Decision of 19 November 1960, 9 B.I.S.D. 40, 229 (1961) and other decisions listed in the cumulative index in every volume of the B.I.S.D.

<sup>45</sup> See supra note 5.

#### MANUEL T. SANCHEZ

● Mr. BINGAMAN. Mr. President, it is with pleasure that I ask the Senate to recognize Manuel T. Sanchez for his service to my home State of New Mexico. Manuel has distinguished himself as a successful family man, businessperson, and community leader.

He was born on November 15, 1901 in Las Vegas, NM, 11 years before New Mexico was admitted into the Union. Needless to say, Manuel has witnessed New Mexico flourish and change during his lifetime.

In the early 1920's, Manuel and his family moved to a section of Albuquerque known as Martineztown. There they started a grocery store to serve the community. This store is still in operation today and it still serves as an unofficial meeting place for social and political gatherings.

In 1933, Manuel was elected Democratic ward chairman of Ward 11 B. During those early years he worked closely with my uncle John Bingaman in helping Governor Tingley succeed in his campaigns. For over 60 years, he has continued to serve in this capacity as ward chair. His success is a result of his dedication to the work ethic and in the belief that a person's word is as good as a written contract. It would

have been impossible for Manuel to represent his community as Democratic ward chairman for such an extended period of time if people did not put trust in his word.

Although much about New Mexico has changed since Manuel's childhood years, one characteristic that has not changed is a strong sense of community. He is very central to that feeling in Martineztown. Whether in the grocery store or at the Barelaz Cafe eating some combination of green chile, I believe he deserves recognition and our thanks for his service to the community over the years. It is with this thought that I wish Manuel many more years of health and happiness on this his 94th birthday. •

#### ISRAELI PRIME MINISTER YITZHAK RABIN

• Mr. GRAMS. Mr. President, although the period of official mourning in Israel for slain Prime Minister Yitzhak Rabin has ended, the time for reflection on his legacy has not. Supporters of Israel in America and around the world continue to ponder the incredible sacrifices made by Yitzhak Rabin during his relentless pursuit of peace in the Middle East. Many people continue to draw great personal strength and inspiration from the way Rabin conducted his heroic life until his tragic and untimely death.

Mr. President, I ask unanimous consent that the following statements on Yitzhak Rabin by leaders of the Jewish community in my home State of Minnesota be included in the RECORD.

Mr. Frank R. Berman: "It is with much grief that we mourn the tragic assassination of Prime Minister Yitzhak Rabin. I had the honor of knowing the Prime Minister and came to hold him in the highest regard. He was a great leader and visionary for Israel as well as for peace-loving people everywhere. I know that the Jewish community and all citizens of Minnesota join me in expressing our deeply felt condolences to the government and people of Israel and to his family. We pray that his noble goal of peace in the Middle East will be fulfilled."

Margo and Fred Berdass: "We offer our heartfelt condolences to Mrs. Rabin and her family and to the people of Israel. We pray God give them the strength and wisdom to unite as a people and to overcome their great loss. May we all hope Israel may forge a policy all can support and that will lead to peace."

Mr. Mike Fiterman: "Prime Minister Rabin was more than a leader within his country—he was more of a visionary on how to make the world a better place. Although he was viewed as a brilliant military strategist, his role in the military only befits him as really a champion of peace and not war. His desire was never one of victory over opponent, but rather a desire to bring peace and security to his beloved country and the Israeli people. I had the great privi-

lege of attending the historic peace signing on the White House lawn between the people of Israel and the Palestinian people. No one watching that day could help but be moved by the significance of that event whether you were personally present or watching from places around the world. It was one of the most emotional events I have ever been privileged to witness. With all of the various speeches, I think it was Prime Minister Rabin's words of 'enough killing, enough war' that were the most moving. It was not the words he spoke, but the emotion in his voice that spoke volumes. He spoke not only of his desire for peace, but also of the enormous sacrifice he personally knew was needed to earn a lasting peace. None of us knew that day the ultimate sacrifice Yitzhak Rabin would make in the name of peace for his country, his people and the world. The sacrifice that Yitzhak Rabin made that day on the White House lawn was a true exhibit for all people around the world that nothing could ever be more important than people living in harmony with one another throughout the world. He showed us if two peoples warring over the centuries could put down their weapons and pick up a pen to sign a peace agreement, it was possible for all people around the world to achieve peace with their neighbors. Prime Minister Rabin's granddaughter during the memorial service, however, remembered him for all of us as not a statesman or a general, but as a warm person who loved his family and who tried to make the world a little better for all of us. Yitzhak Rabin will be missed by all peace loving people and will be a lasting reminder to all of us that we can never stop working toward a goal to do whatever we can to make the world a little better everyday and to continue to strive to bring peace to all the people of the world." •

#### GLOBAL CASINOS POSE VIRTUAL MESS; LAWMAKERS SAY ELEC- TRONIC GAMBLING DIFFICULT TO REGULATE

• Mr. LUGAR. Mr. President, I ask that the following article be printed in the RECORD.

The article follows:

[From the Tampa Tribune, Aug. 27, 1995]

GLOBAL CASINOS POSE VIRTUAL MESS; LAWMAKERS SAY ELECTRONIC GAMBLING DIFFICULT TO REGULATE

(By Ron Bartlett)

So you're sitting at home, somewhere in Florida, and you've got the itch to go casino gambling?

No problem. Chances are by early next year, no matter where you live in the state, such an opportunity will be at your fingertips.

Through a personal computer, you'll be able to glide down the hallways of a glittering casino, passing rooms filled with roulette wheels and slot machines. Once you pick a game, you'll be able to plunk down a bet and take on other gamblers from across the globe.

But this won't be for play. This will be for real, cold, hard cash.

Didn't state voters resoundingly reject casinos in 1994 for the third time?

Sure they did. But savvy entrepreneurs are using electronics to introduce new forms of gambling that are likely to be widely available in Florida and throughout the United States in the coming months.

In a rapidly developing market, offshore companies based mostly in the Caribbean are beginning to offer "virtual reality" casinos and sports book operations on the Internet, the worldwide network of computers.

From your easy chair in Tampa, it soon will be possible to place real bets through your personal computer at virtual casinos in places such as Antigua and St. Martin. Some of these games will come with sophisticated graphics and video that will give players at home the feeling that they are inside a major casino.

While the first such virtual casino isn't yet operating, predictions are that hundreds could be up and running within the next year.

Meanwhile, the Coeur d'Alene Indian tribe in Idaho plans to offer a national lottery by year's end that some experts say ultimately could offer weekly jackpots up to \$200 million.

The tribe wants to set up toll-free 1-800 lines that players would use to dial in numbers and give their credit card information.

And Floridians who want to bet on sporting events already can call Connecticut or New York, which offer national telephone wagering.

The expansion of electronic gambling is not only creating new outlets for players but also bringing wagering directly into the home, which gaming entrepreneurs view as the new frontier. In Florida and other states, the trend is worrying law enforcement officials, regulators and lawmakers.

On one level, there are concerns that electronic gambling will hurt business at existing state lotteries, pari-mutuel facilities, bingo halls and Indian gaming facilities.

On another, there are fears it will be difficult, if not impossible, to regulate offshore casinos operating on the Internet, that consumers won't be adequately protected, and that the new opportunities could increase gambling addiction and all its dangers.

Earlier this month, the chairman of the Florida House Regulated Industries Committee asked state Attorney General Bob Butterworth to investigate what, if anything, the state can do to stop Floridians from betting on the emerging virtual casinos or from calling other states to wager on sports events.

State Rep. Steven Geller, a Hallandale Democrat, said his request wasn't a moral stance against gambling, rather, he wants to protect the state's struggling horse and dog tracks and jai alai frontons, which generate jobs and taxes.

"If you have access to a virtual casino and play blackjack, how do you know that the casino in Antigua is run honestly?" Geller asked. "How do you know that the roulette wheel isn't rigged?"

Butterworth hasn't responded to Geller's inquiry. But with the Internet gambling in particular, he says, any regulatory answers rest in Washington, not Tallahassee.

"How do you stop it from coming into states that don't want it?" Butterworth said. "How do you tax it in states that do want it? I don't know how you do that without the federal government taking the lead."

Some members of Congress are grumbling about online gambling. The Justice Department has declared it illegal in the United States, saying it will act on violators. But to date, the full extent and scope of the federal response—if any—remains to be seen.

Under federal law, it's a crime for anyone in the gambling business to use an interstate