

**Yearbook
of
International Environmental Law**

Volume 3
1992

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Members of the Kluwer Academic Publishers Group
LONDON/DORDRECHT/BOSTON

Graham & Trotman Limited
Sterling House
66 Wilton Road
London SW1V 1DE
UK

Kluwer Academic Publishers Group
101 Philip Drive
Assinippi Park
Norwell, MA 02061
USA

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First published 1993

British Library Cataloguing in Publication Data

Yearbook of international environmental law.
Vol. 3 (1992)—
1. Environment. International law
341.762

ISBN 1-85333-791-9

Series ISBN: 1-85333-587 8
ISSN 0965-1721

This Yearbook should be cited as: *3 Yb. Int'l Env.L.* (1992)

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This volume is accompanied by a 3.5 inch diskette containing various Documents - Conventions, Declarations, etc - see list on pp. 661-662. Subscribers may obtain a copy of the diskette by completing the enclosed card and returning it to Graham & Trotman in London.

Typeset in Bembo by BookEns Ltd, Baldock, Herts.
Printed and bound in Great Britain by Hartnolls Ltd, Bodmin, Cornwall

IX. INTERNATIONAL ECONOMY AND THE ENVIRONMENT

1. INTERNATIONAL TRADE RULES, WORLD MARKET CONDITIONS AND ENVIRONMENTAL EFFECTS

1992 saw a number of significant developments reflecting the increasing attention of international organizations, national governments, interest groups, scholars and others to the relationship between the legal rules governing the international trading system and the environment. Doubtless the most significant of these developments was the adoption of legal instruments at the United Nations Conference on Environment and Development (UNCED). Also of great importance were activities within the General Agreement on Tariffs and Trade (GATT) concerning environmental matters and the signing of the North American Free Trade Agreement (NAFTA).

1 United Nations Conference on Environment and Development

A number of legal instruments were adopted by the state parties attending the UNCED Conference at Rio de Janeiro, June 3-14. These included the (→) Rio Declaration on Environment and Development, two treaties (the Conventions on (→) Biodiversity and (→) Climate Change), and Agenda 21. These legal instruments, the status of their ratification (where applicable) and their binding or non-binding character are discussed in detail elsewhere in the Yearbook. This report will therefore focus on the specific elements of certain UNCED instruments which directly concern the relationship between the international trading system and the environment.

Many of the Principles set forth in the Rio Declaration are directly or indirectly applicable to matters involving the international trading regime. Principle 12 specifically addresses the relationship between trade and the environment as follows:

States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing countries should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on international consensus.

Principle 12 embodies several important concepts relevant to international (including regional) and national trading regimes. First, Principle 12 is supportive of the fundamental purpose of the GATT, namely the promotion of global economic development and welfare through the reduction of tariff and non-tariff barriers to trade. Second, Principle 12 supports the view that gains in global economic welfare are likely to aid in efforts to effectively address problems of environmental degradation. This is consistent with the views expressed by the GATT Secretariat in its 1992 Study on Trade and Environment

Environment. This detailed study emphasizes the results of economic studies showing a correlation between economic development and, after a crossover point has been reached, decreasing environmental degradation.

The GATT Council had not adopted the Panel report concerning U.S. restrictions on imports of tuna because Mexico did not bring the matter before the Council. However, at the request of the European Community the GATT Council agreed to convene a second panel to consider U.S. measures prohibiting direct and indirect imports of yellow-fin tuna caught using purse-seine nets. The United States in 1992 enacted the International Dolphin Conservation Act pursuant to which the United States will agree to lift its embargo on yellow-fin tuna caught by Mexican and Venezuelan fleets if those countries will agree to a five year moratorium on purse-seine tuna fishing. Mexico has so far refused to agree to the terms established by the U.S. legislation as a prerequisite for removal of the import ban.

3 The North American Free Trade Agreement

On December 17 the heads of State of Canada, Mexico and the United States signed the North American Free Trade Agreement. However, the Agreement will not enter into force until it is approved by the legislatures of the three countries. If the Agreement is approved and enters into force, it will become effective January 1, 1994. In the United States, NAFTA approving and implementing legislation should be transmitted to the Congress under the fast track procedure. Because Congress has indicated its intention to consider NAFTA implementing bill a revenue-related measure, it will be subject to approval or rejection within 90 legislative days. Unless the fast track rules are amended by Congress, it must vote to either approve or reject the agreement and implementing legislation without amendment.

With respect to the environment, the NAFTA provides that each country is entitled to maintain technical standards and sanitary and phytosanitary measures more stringent than international standards, and shall not be required to decrease its level of protection. Although the NAFTA permits each party to challenge the others' regulations on the grounds they are disguised barriers to trade, *e.g.*, because unsupported by scientific data, the agreement places the burden of proof on the complaining party. The NAFTA expressly provides that certain international treaties with respect to the environment, *e.g.*, the Basel Convention on Transboundary Movement of Hazardous Waste, will prevail over it. In addition, the investment chapter provides that each party will refrain from seeking to attract or retain investments by offering to lower its health, safety or environmental standards. Among the eight committees and six working groups established by the NAFTA will be a Committee on Sanitary and Phytosanitary Measures and a Committee on Standards-Related Measures, each with principally consultative, advisory and technical information sharing functions.

Disputes among the NAFTA parties will be settled by recourse to binding arbitration. Although the decisions of the panels are nominally binding, they do not require a losing party to modify its laws or regulations, but give the prevailing party the right to withdraw concessions if the other does not comply with the decision. Ordinarily under the NAFTA, a complaining party may elect to bring a claim under either the NAFTA or GATT dispute settlement mechanism, and this choice controls. However, with respect to environment-related disputes, the responding party may force the dispute to be resolved under NAFTA procedures.

In September the senior officials of Canada, Mexico and the United States responsible

for the environment announced the intention of their governments to create a North American Commission on the Environment which would provide a formal mechanism for environment-related cooperation among the three countries. It appeared that the primary functions of the Commission would be to monitor environment-related developments and provide a forum for consultation.

In a campaign speech on October 4, then-Presidential Candidate Clinton proposed the creation of a trilateral environmental protection commission with resources to prevent and clean-up pollution, as well as with enforcement powers. He indicated that negotiations for such a commission would be undertaken on a parallel track with the NAFTA negotiations and should not require a reopening of the primary agreement. As of the end of 1992, additional details of the proposed commission had not been released, and the issue of how its activities would be funded had not been resolved.

In February 1992, the United States and Mexico jointly adopted an environmental plan to clean-up the border between the two countries (Integrated Environmental Plan for the Mexican-U.S. Border Area (First Stage, 1992-1994)). The border plan calls for substantial financial commitments by both the United States and Mexico. In its fiscal 1993 appropriation for the Environmental Protection Agency, Congress cut \$47 million from \$80 million requested to control border area sewage flows.

Last year's report identified a suit brought by several environmental interest groups, *i.e.* Public Citizen, Friends of the Earth and the Sierra Club, to force the U.S. Trade Representative to prepare environmental impact statements with respect to the proposed NAFTA and Uruguay Round trade agreements. In August 1992 the Court of Appeals for the District of Columbia Circuit upheld a District Court dismissal of the suit. The Court of Appeals held that only final agency action under the terms of the Administrative Procedure Act is subject to judicial review, and that the interest groups had failed to identify final agency action.

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