

## TARIFFS AND TRADE

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### Group on Environmental Measures and International Trade

#### TRADE PROVISIONS CONTAINED IN MULTILATERAL ENVIRONMENTAL AGREEMENTS

##### Note by the Secretariat

1. This Note has been prepared in response to the Group's request at its meeting on 10-11 March 1992 for the Secretariat to prepare a factual review of the trade provisions contained in multilateral environmental agreements.

2. The Secretariat has reviewed the trade provisions contained in eighteen multilateral environmental agreements. The agreements are listed in an annex to this Note.

3. The Secretariat is mindful that one of the Group's aims when requesting this Note was to base its discussion on documentation that would allow it to examine the trade provisions of multilateral environmental agreements generically, without entering unnecessarily into the specifics of any particular agreement. Because of the way in which this Note is structured, therefore, and particularly since an attempt has been made to take the trade provisions in each case out of the context of the individual agreements, it cannot claim to catch all of the nuances which may be involved with regard to the ways in which the trade provisions might be used in practice.

4. Three basic models of trade control are used to illustrate the trade provisions contained in the eighteen agreements reviewed.

(i) Model I

5. This model is based on the issuance of export certificates as the primary control mechanism; in certain instances, the issuance of corresponding import permits also plays an important rôle (see below).

6. In its simplest form, Parties agree that they will issue export certificates verifying that the product concerned meets certain minimum standards of environmental protection; the standards are at least in part stipulated in the agreement as common standards among Parties, but in part they may also be left up to the authorities of the individual exporting country. It is the responsibility of the exporting Party to ensure that the standards are met. In this form, there is no obligation on the part of another Party to accept imports of the product with an accompanying export certificate, nor to reject imports without one.

7. One variation on this theme involves the issuing of phytosanitary certificates by exporting countries. The certificates are designed to verify that the phytosanitary standards imposed by the importing country

have been met. The exporting country is responsible for verification, so that the authorities of the importing country may accept the certificates with confidence. The right to restrict or prohibit imports remains entirely at the discretion of the importing country, even when accompanied by a valid certificate. However, the aim is to minimize interference with international trade by requiring Parties to undertake not to restrict trade unless such action is made necessary by phytosanitary conditions. Provisions on notification and transparency of phytosanitary conditions and requirements prevailing in Parties aim equally to serve this purpose.

8. Regional agreements supplementary to existing multilateral agreements involving phytosanitary certificates have been negotiated. One kind provides for collective regional action to prevent the introduction of specific plant pests and diseases not yet established in the region from anywhere outside the region. It also prohibits the importation of plants of a specific genus under stricter conditions from regions where a particular pest is present than from others where it is not. Another provides for collective regional action to establish uniform local standards and control imports in a co-ordinated way. A further variety involves a self-standing regional agreement, unconnected with any multilateral agreement, to apply uniform phytosanitary regulations for import, export and transit purposes among Parties.

9. Some agreements go considerably beyond the basic model, particularly with respect to the incorporation of stricter, agreed conditions which must be met before an export certificate can be granted or before trade can take place, and include explicit obligations for an importing Party concerning whether it should reject a shipment that is not accompanied by an export certificate.

10. With regard to the conditions to be met before an export certificate may be granted, some agreements prohibit exports in the absence of a valid export certificate.

11. One such variety links the granting of the export certificate to domestic production restrictions, which are themselves regulated explicitly by the agreements. The degree of domestic production control and the corresponding strictness of export regulation is typically graded according to an agreed appreciation of the environmental threat involved. However, some agreements leave that decision up to the competent national authority, for some products at least.

12. Another variety requires that production of environmentally hazardous products be reduced to a minimum, but this obligation is not explicitly linked to the issuance of export permits. Instead, the conditions it sets for issuing export permits are: (a) they must not be issued if the importing Party concerned has notified that it prohibits imports of the product; or (b) they can be issued only if the exporting Party does not have the means to deal with the product in an environmentally sound way, if it is fully persuaded itself that the product will be dealt with in an

environmentally sound way after export, or if the product is required as a raw material or for recycling or recovery industries in the importing Party, and, in both cases, if the importing Party has been informed and has given its prior consent for the trade to take place.

13. A further variety does not cover domestic production restrictions in any way. Instead, it requires, inter alia, the authorities of the exporting Party, before issuing an export permit, to stipulate that export will not be detrimental to the particular environmental objective being sought through the agreement. Where the Parties consider that trade in certain products must be subject to particularly strict regulation and authorized only in exceptional circumstances, the authorities of the exporting Party must satisfy themselves in addition that a corresponding import permit has been issued by the authorities of the importing Party on, inter alia, similar terms applicable to the granting of the export permit (i.e. inter alia, that import will not be detrimental to the environmental objective being sought).

14. With regard to obligations on the restriction of imports, some agreements stipulate that imports from other Parties shall be prohibited unless they are accompanied by a valid export certificate. Another variety requires an importing Party to prevent imports if it believes that the product concerned will not be managed in an environmentally sound way, but it does not make importation dependent explicitly upon the existence of an export authorization.

15. With regard to trade with non-Parties, in most cases there is no limitation on the destination of exports once a valid export permit has been issued. There is also no exception to the export prohibition in terms of where the product can be shipped in the absence of such a certificate. In certain cases it is clear that no import prohibition is called for in the case of imports from non-Parties which do not have an accompanying export certificate.

16. In one case, all trade with non-Parties is prohibited. In another, Parties undertake to prohibit trade in products in violation of the agreement; the import and export authorities of Parties receive formal recognition under the agreement as solely responsible for issuing authoritative trade permits, but there are provisions for trade to take place with non-Parties as long as comparable export and import documentation is used which conforms substantially with the requirements of the agreement.

(ii) Model II

17. This model is based upon prohibition of one or other of the internal transport, sale, offering for sale, purchase, supply, giving, possession, hunting, killing, capturing or trafficking of the product(s) in question in all or specific parts of the territories of Parties. In all cases the basic product coverage is stipulated in the agreement, but local exceptions or additions in some agreements are permitted at the discretion of individual exporting Parties.

18. One variation requires designated authorities of each participating country to notify internal prohibitions and severe restrictions of use of the concerned products to a central authority, which then transmits this information to the designated authorities of all participating countries. This central authority further invites those participating countries, which so desire, to formally record with it decisions regarding future imports of each notified product, which would also be transmitted to designated authorities of all participating countries. All participating exporting countries are expected to respect these decisions of the participating importing countries and, in addition, transmit them to their exporting industry.

19. Further, if an export of a covered product subject to an internal prohibition or severe restriction of use in the participating country of export occurs, the participating country of export should ensure that relevant information (as stipulated in the agreement) is provided to the participating importing country prior to exportation, the purpose being to remind the participating importing countries of the original notification of internal control. This variation is entirely voluntary and is designed primarily for information exchange and transparency purposes.

20. Another variation stipulates that, in addition to the internal controls covered in paragraph 17 above, importation and exportation of the product is prohibited. No limitations on origin or destination of the product itself are expressly provided for. However, in one case exports of reproductive material of the product concerned is also prohibited except to other Parties for research and/or repopulation purposes.

21. Another variation prohibits importation into or traffic within Parties' territories of the product in question, with the exception, inter alia, of certain production identified as having taken place within certain parts of the territories of certain Parties.

22. Another variation does not explicitly stipulate trade restrictions among Parties; the prohibition on sale and purchase would seem to exclude the possibility of such trade occurring. It does, however, stipulate explicit terms for trade with non-Parties. For imports or exports to be permitted, prior authorization of the Party in which the trade operation takes place is required.

23. One regional agreement stipulates that Parties shall endeavour to take appropriate and necessary legislative and administrative measures whereby trade and possession of the covered products are regulated whenever such regulations meaningfully contribute to the implementation of more general regulations for the covered products.

(iii) Model III

24. This model is based on the control of domestic production and consumption. Since domestic consumption is defined as domestic production plus imports minus exports, trade flows might be considered to be regulated implicitly. However, there are no explicit conditions attached to trade among Parties.

25. Explicit trade provisions are included only to cover trade between Parties and non-Parties. They are not applicable to non-Parties which, in spite of not having acceded to the agreement, are nevertheless applying equivalent measures to control the domestic production and consumption of the covered substances. Otherwise, the provisions require Parties to prohibit imports of the covered substances, and of products containing those covered substances, from and exports of the covered substances to non-Parties; they require Parties, to the fullest extent possible, to discourage the export to non-Parties of technology for producing and utilizing the covered substances; and they require a future determination of the feasibility of prohibiting imports from non-Parties of products produced with, but not containing, the covered substances.

ANNEX

LIST OF MULTILATERAL ENVIRONMENTAL AGREEMENTS  
COVERED IN THIS NOTE

1. Convention Relative to the Preservation of Fauna and Flora in Their Natural State, London, 1933
2. Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, Washington, 1940
3. International Convention for the Protection of Birds, Paris, 1950
4. International Plant Protection Convention, Rome, 1951
5. Plant Protection Agreement for the South-East Asia and Pacific Region (as amended), Rome, 1956
6. Interim Convention on Conservation of North Pacific Fur Seals (as amended), Washington, 1957
7. Agreement Concerning Co-operation in the Quarantine of Plants and Their Protection Against Pests and Diseases, Sofia, 1959
8. Phyto-Sanitary Convention for Africa South of the Sahara, London, as amended 1961 (NB This agreement was superseded in 1967 by the Phyto-Sanitary Convention for Africa. However, the Secretariat has not been able to date to procure a copy).
9. African Convention on the Conservation of Nature and Natural Resources, Algiers, 1968
10. European Convention for the Protection of Animals During International Transport, Paris, 1968
11. Benelux Convention on the Hunting and Protection of Birds (as amended), Brussels, 1970
12. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973
13. Agreement on Conservation of Polar Bears, Oslo, 1973
14. Convention for the Conservation and Management of the Vicuna, Lima, 1979
15. Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985  
Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1987  
Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, London, 1990
16. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Basel, 1989

17. ASEAN Agreement on the Conservation of Nature and Natural Resources, Kuala Lumpur, 1985.
18. Amended London Guidelines for the Exchange of Information on Chemicals in International Trade, London, 1989.