

รายการอ้างอิง

ภาษาไทย

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สถาบันวิทยบริการ
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ก

Rio Declaration on Environment and Development**Preamble**

The United Nations Conference on Environment and Development, Having met at Rio de Janeiro from 3 to 14 June 1992,

Reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972, and seeking to build upon it,

With the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people,

Working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system,

Recognizing the integral and interdependent nature of the Earth, our home,

Proclaims that :

.....

Principle 2

States have, in accordance with the Charter of the United Nations and the principles of international law the sovereign right to exploit their own resources pursuant to their own environment and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute and integral part of the development process and cannot be considered in isolation from it.

Principle 7

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

Principle 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and development context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 12

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 country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

Principle 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Principle 14

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Principle 16

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment

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สถาบันวิทยบริการ
จุฬาลงกรณ์มหาวิทยาลัย

บทบัญญัติ

Environmental Provision in the 1994 Agreement Establishing the World Trade Organization

1. WTO Preamble

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development....

2. Article III : 1,2,4 and 5, Article XI : 1, Article XX (a), (b),(d) and (g), and Article XXV : 5 of GATT 1947

Article III

National Treatment on Internal Taxation and Regulation

1. The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

2. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other

internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

....

4. The Products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

5. No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.

....

Article XI

General Elimination of Quantitative Restrictions

1. No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

Article XX

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures :

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- ...
- (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including..;
- ...
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

Article XXV

Joint Action by the Contracting Parties

...

5. In exceptional circumstances not elsewhere not elsewhere provided for in this Agreement, the CONTRACTING PARTIES may waive an obligation imposed upon a contracting party by this Agreement; Provided that any such decision shall be approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the contracting parties. The CONTRACTING PARTIES may also by such a vote

- (i) define certain categories of exceptional circumstances to which other voting requirements shall apply for the waiver of obligations, and
- (ii) prescribe such criteria as may be necessary for the application of this paragraph.

ภาคผนวก ค

The 1994 Uruguay Round Decision on "Trade and Environment"

Decision on Trade and Environment

Ministers,

Meeting on the occasion of signing the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations at Marrakesh on 15 April 1994,

Recalling the preamble of the Agreement establishing the World Trade Organization (WTO), which states that members' "relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,"

Noting :

- the Rio Declaration on Environment and Development, Agenda 21, and its follow-up in GATT, as reflected in the statement of the Chairman of the Council of Representatives to the CONTRACTING PARTIES at their 48th Session in December 1992, as well as the work of the Group on Environmental Measures and International Trade, the Committee on Trade and Development, and the Council of Representatives;
 - the work programme envisaged in the Decision on Trade in Services and the Environment;
- and

- the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights,

Considering that there should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other,

Desiring to coordinate the policies in the field of trade and environment, and this without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its members,

Decide:

- to direct the first meeting of the General Council of the WTO to establish a Committee on Trade and Environment open to all members of the WTO to report to the first biennial meeting of the Ministerial Conference after the entry into force of the WTO when the work and terms of reference of the Committee will be reviewed, in the light of recommendations of the Committee,
- that the TNC Decision of 15 December 1993 which reads, in part, as follows:
 - *(a) to identify the relationship between trade measures and environmental measures, in order to promote sustainable development;
 - (b) to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system, as regards, in particular:
 - the need for rules to enhance positive interaction between trade and environmental measures, for the promotion of sustainable development, with special consideration to the needs of developing countries, in particular those of the least developed among them; and

- the avoidance of protectionist trade measures, and the adherence to effective multilateral disciplines to ensure responsiveness of the multilateral trading system to environmental objectives set forth in Agenda 21 and the Rio Declaration, in particular Principle 12; and
 - surveillance of trade measures used for environmental purposes, of trade-related aspects of environmental measures which have significant trade effects, and of effective implementation of the multilateral disciplines governing those measures;"
- constitutes, along with the preambular language above, the terms of reference of the Committee on Trade and Environment,
- that, within these terms of reference, and with the aim of making international trade and environmental policies mutually supportive, the Committee will initially address the following matters, in relation to which any relevant issue may be raised;
 - the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;
 - the relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system;
 - the relationship between the provisions of the multilateral trading system and;
 - (a) charges and taxes for environmental purposes;
 - (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling;
 - the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects;
 - the relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreement;
 - the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions;
 - the issue of exports of domestically prohibited goods,

- that the Committee on Trade and Environment will consider the work programme envisaged in the Decision on Trade in Services and the Environment and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights as an integral part of its work, within the above terms of reference,
- that, pending the first meeting of the General Council of the WTO, the work of the Committee on Trade and Environment should be carried out by a Sub-Committee of the Preparatory Committee of the World Trade Organization (PCWTO), open to all members of the PCWTO,
- to invite the Sub-Committee of the Preparatory Committee, and the Committee on Trade and Environment when it is established, to provide input to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO.



สถาบันวิทยบริการ
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ๔

Excerpts from the Marine Mammal Protection Act of 1972**Definitions**

Section 3 For the purposes of this Act-

...

(5) the term "intermediary nation" means a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B).

Moratorium and Exceptions

Section 101. (a) Imposition : exceptions - There shall be a moratorium on the taking and importation of marine mammal products, commencing on the effective date of this Act, during which time no permit may be issued for the taking of any marine mammal and no marine mammal product may be imported into the United States except in the following cases:

- (1) (scientific research etc.)
- (2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 104 of this title subject to regulations prescribed by the Secretary in accordance with section 103 of this title. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching zero mortality and serious injury rate; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically

practically practicable. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States Standards. For the purposes of applying the preceding sentence, the Secretary

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

(B) in the case of yellowfin tuna harvested with purse seines in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that

(i) the government of the harvesting nation has adopted a regulatory program governing the incidental taking of marine mammals in the course of such harvesting that is comparable to that of the United States; and

(ii) the average rate of that incidental taking by the vessels of the harvesting nation is comparable to the average rate of incidental taking of marine mammals by United States vessels in the course of such harvesting,

except that the Secretary shall not find that the regulatory program, or the average rate of incidental taking by vessels of a harvesting nation is comparable to that of the United States for purposes of clause (i) or (ii) of this paragraph unless

(I) the regulatory program of the harvesting nation includes, by no later than the beginning of the 1990 fishing season, such prohibitions against encircling pure schools of species of marine mammals, conducting sundown sets, and other activities as are made applicable to United States vessels;

- (II) the average rate of the incidental taking by vessels of the harvesting nation is no more that 2.0 times that of United States vessels during the same period by the end of the 1989 fishing season and no more that 1.25 times that of United States vessels during the same period by the end of the 1990 fishing season and thereafter;
- (III) the total number of eastern spinner dolphin (*Stenella longirostris*) incidentally taken by vessels of the harvesting nation during the 1989 and subsequent fishing seasons does no exceed 15 percent of the total number of all marine mammals incidentally taken by such vessel in such year and the total number of coastal spotted dolphin (*Stenella Attenuata*) incidentally taken by such vessel in such seasons does no exceed 2 percent of the total number of all marine mammals incidentally taken by such vessels in such year;
- (IV) the rate of incidental taking of marine mammals by the vessels of the harvesting nation during the 1989 and subsequent seasons is monitored by the porpoise mortality observer program of the Inter-American Tropical Tuna Commission or and equivalent international program in which the United States participates and is based upon observer coverage that is equal to that achieved for United States vessels during the same period, except that the Secretary may approve an alternative observer program if the Secretary determines, no less than sixty days after publication in the Federal Register of the Secretary's proposal and reasons therefor, that such and alternative observer program will provide sufficiently reliable documentary evidence of the average rate of incidental taking by a harvesting nation; and
- (V) the harvesting nation complied with all reasonable requests by the Secretary for cooperation in carrying out the scientific out

the scientific research program required by section 104(h) of this title;

- (C) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);
- (D) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fisherman's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as such ban is in effect

International Commitments

Sec. 305 (a) Limitation on Application of Ban on Imports.-- Except as provided in subsection (b), the Secretary of the Treasury shall not, under section 101(a)(2)(A) and (B), ban the importation of yellowfin tuna or yellowfin tuna products from a country that transmits to the Secretary of State a formal communication in which the country commits to--

- (1) implement a moratorium of at least 5 years duration beginning March 1, 1994, on the practice of harvesting tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals unless the moratorium is terminated in accordance with section 301(c);
- (2) require an observer on each vessel of the country larger than 400 short tons carrying capacity which engages in purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, and ensure that at least 50 percent of all such observers are responsible to, and supervised by, a competent regional organization

- (3) reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in 1992 to a level that is lower than such mortality in 1991 by a statistically significant margin; and
- (4) reduce the dolphin mortality resulting from purse seine net operations conducted by vessels of the country in the period beginning January 1, 1993 and ending February 28, 1995, to a level that is lower than such mortality in 1992 by a statistically significant margin.

(c) **SUBSEQUENT BANS ON FISH AND FISH PRODUCT IMPORTS FOR FAILURE TO COMPLY WITH COMMITMENTS.-**

- (1) **BAN ON IMPORTS OF YELLOWFIN TUNA AND YELLOWFIN TUNA PRODUCTS.-** The Secretary, in consultation with the Secretary of State, shall periodically determine whether each country which has transmitted a formal communication expressing the commitments described in subsection (a) is fully implementing those commitments. If the Secretary determines that any such country is no implementing those commitments-

- (A) the Secretary shall notify the President and the Congress of that determination and

- (B) 15 days after such notification, the Secretary of the Treasury shall ban the importation from that country of all yellowfin tuna and yellowfin tuna products.

- (2) **BAN ON IMPORTS OF OTHER FISH AND FISH PRODUCTS.-**

- (A) **IN GENERAL**> -if-

- (i) a country does not, within 60 days after the establishment with respect to that country of a ban on importation under paragraph (1)(B), certify and provide reasonable proof to the Secretary that the country has fully implemented the commitment described in subsection (a) (1) or has taken the necessary actions to remedy its failure to comply with the commitments described in subsection (a)(2),(3) and (4); and

- (ii) the Secretary does not, before the end of that 60-day period, certify to the President that the country has provided such certification and proof;

the President shall direct the Secretary of the Treasury to ban the importation from the country of all articles (other than those subject to an importation ban under paragraph (1)(B) that are classified under on or more of those fish product categories that the President, subject to subparagraph (B), considers appropriate to carry out this paragraph

(B) BAN CRITERIA- The one or more fish and fish product categories to which the President imposes and import ban under subparagraph (A) with respect to a country must be a fish and fish product category or categories with respect to which the articles classified thereunder and imported for that country in the base year had an aggregate customs valuation equal to 40 per cent of the aggregate customs valuation of all articles classified under all fish and fish product categories that were imported from the country during the base year.

(C) DEFINITION OF BASE YEAR- For purposes of subparagraph (B), the term 'base year' means the calendar year immediately occurring before the calendar year in which the import ban under subparagraph (A) commences with respect to the country

(3) DURATION OF IMPORT BANS.- Ban on importation imposed under paragraphs (1) and (2) with respect to a country shall continue in effect until the Secretary determines that the country is implementing the commitments described in subsection (a).

(4) IMPLEMENTATION OF IMPORT BANS. - The Secretary of Treasury shall take such action as may be necessary or appropriate to implement importation bans imposed under paragraphs (1) and (2)

(c) REVIEWS AND REPORTS.- The secretary, in consultation with the Secretary of State, shall

- (1) periodically review the activities of countries which have transmitted to the Secretary of State Formal communications expressing the commitments described in subsection (a), to determine whether those countries are complying with those commitments. And
- (2) include the results of those reviews in annual reports submitted to the Congress pursuant to section 304(a)



สถาบันวิทยบริการ
จุฬาลงกรณ์มหาวิทยาลัย

ภาคผนวก ๑

Excerpts from the Vienna Convention on the Law of Treaties**Article 30 : Application of successive treaties relating to the same subject-matter**

1. The rights and obligations of States and international organizations parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.
2. When a treaty specifies that it is subject to, or that it is not be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is no terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.
4. When the parties to the later treaty do no include all the parties to the earlier one:
 - (a) as between two parties, each of which is a party to both treaties, the same rule applies as in paragraph 3;
 - (b) as between a party to both treaties and a party to only one of the treaties, the treaty to which both are parties governs their mutual rights and obligations.
5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any question of responsibility which may arise for a State of for an international organization from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards a State or an organization under another treaty.
6. The preceding paragraphs are without prejudice to the fact that, in the event of a conflict between obligations under the Charter of the United Nations and obligations under a treaty, the obligations under the Charter shall prevail.

Article 31 : General rule of interpretation

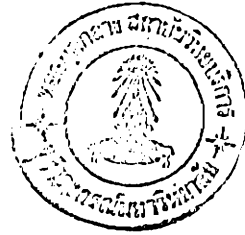
1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
 - (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account together with the context :
 - (a) any subsequent agreement between the parties regarding the interpretation of the treaty of the application of its provisions;
 - (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretations;
 - (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32 : Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstance of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31 :

- (a) leaves the meaning ambiguous or obscure; or
- (b) leads to a result which is manifestly absurd or unreasonable

ประวัติผู้เขียน



นางสาวมณฑาทิพย์ ลิ้มชนะกิจ เกิดวันที่ 16 ตุลาคม พ.ศ. 2518 ที่กรุงเทพมหานคร สำเร็จ
การศึกษาระดับปริญญาตรีในศาสตรบัณฑิต ภาควิชาจิตวิทยา คณะศึกษาศาสตร์ มหาวิทยาลัยธรรมศาสตร์
ในปีการศึกษา 2538 และได้รับประกาศนียบัตรของสำนักอบรมกฎหมายแห่งเนติบัณฑิตยสภา สมัยที่ 51
เข้าศึกษาต่อในหลักสูตรวิทยาศาสตรมหาบัณฑิตที่จุฬาลงกรณ์มหาวิทยาลัย เมื่อ พ.ศ. 2539 ปัจจุบันทำงาน
ตำแหน่งนิติกร ศาลอุทธรณ์ กระทรวงยุติธรรม



สถาบันวิทยบริการ
จุฬาลงกรณ์มหาวิทยาลัย