Country/Region Reports -- United States of America

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In 1993, there was a marked shift in U.S. international environmental policy under the Clinton administration. Among other developments, the new administration reversed the Bush administration's position regarding the Convention on Biological Diversity, took a more aggressive approach under the Climate Change Convention, and lent greater support to technology sharing and financial arrangements for improvement of the international environment. A new post of State Department Counselor for Global Issues was created and filled by former Senator Timothy Wirth.

The Northern America Free Trade Agreement (NAFTA)

In November of 1993, the House of Representatives and the Senate approved NAFTA. Part of the NAFTA package was the North American Agreement on Environmental Cooperation, a supplemental accord addressed specifically to the environment. Under this side agreement, a Commission on Environmental Cooperation, composed of officials from Canada, Mexico and the U.S., will oversee environmental law enforcement. The environmental side agreement for NAFTA sets up a dispute resolution process if one country consistently fails to enforce its domestic environmental laws; establishes the tri-national Commission; sets forth a plan for coordinating environmental infrastructure along the U.S./Mexico border; and requires each country to inform the others of any domestic decision to ban or severely restrict any chemicals or pesticides, among many other provisions. Persistent failure to enforce domestic laws can be grounds for the Council to impose sanctions against the U.S. or Mexico, and fines against Canada. The tri-national Commission includes a council to deal with disputes and develop recommendations for coordinating environmental standards. A two-thirds vote of the council is needed to establish an arbitral panel to settle any dispute the parties cannot settle themselves.

Before the passage of NAFTA, in June 1993, a federal district court had held that the agreement required preparation of an environmental
impact statement (EIS) under the National Environmental Policy Act (NEPA), and required the office of the U.S. Trade Representative to prepare such an EIS for submission to Congress along with the agreement (Public Citizen v. U.S. Trade Representative, 822 F. Supp. 21 (D.D.C. June 30, 1993, amended July 11, 1993), rev’d, 5 F.3d 549 (1993)). The U.S. Court of Appeals for the D.C. Circuit overruled this decision in September (Public Citizen v. U.S. Trade Representative, 5 F.3d 549 (1993)). The court held that only final agency action triggers the EIS requirement and that final action would not occur until the President submitted the trade agreement legislation to Congress. Because the President is not an agency, his actions are not subject to judicial review under the Administrative Procedure Act, given that NEPA itself has no provision for judicial review. On 11 January, 1994, the U.S. Supreme Court refused to review the decision.

2 U.S./MEXICO BORDER ISSUES

In late 1993 the administration was putting together an eight billion dollar package financed by the federal governments, states, and private industry to be overseen by a U.S./Mexico Border Environment Cooperation Commission and a border environmental financing facility, the North American Development Bank, to improve the environmental infrastructure in the region (Agreement between the Government of the United States of America and the Government of the United Mexican States concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank).

In September, U.S. and Mexican officials announced plans to create an international air pollution control zone in the El Paso-Juarez region. The U.S. Environmental Protection Agency (EPA), the U.S. State Department, and Mexican environmental officials want to establish the district to enforce standards for air quality, with the ability to regulate growth. In Alvear v. Leonard Electric Products Company, 16 families filed suit against 88 mostly U.S.-owned companies, alleging birth defects from improper handling of hazardous waste in the region.

3 GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)

Throughout the year, the U.S. was involved in several environmental disputes under GATT. For example, in May a panel was named to resolve a complaint brought by several European countries over U.S. fuel economy taxes. The complaint against the U.S. "gas guzzler" tax and the corporate average fuel economy (CAFE) tax was that the taxes were unfair to
European luxury car companies and that most, if not all, the revenue collected by the U.S. government came from European cars.

4 ANTARCTICA

The D.C. Circuit Court reversed a district court ruling that had exempted federal agencies from preparing an EIS in Antarctica before the National Science Foundation could build an incinerator at the McMurdo station research facility. The U.S. controls air transportation and conducts all search and rescue operations there, creating a special position of responsibility in this area of the global commons. According to the court, the presumption against extra-territorial application of U.S. laws is weaker when the U.S. exerts such controls in a sovereignless area. The court remanded the case to the lower court to determine if an adequate EIS had been prepared by the National Science Foundation (Environmental Defense Fund v. Massey, 986 F.2d 528 (D.C. Cir. 1993)). The Clinton administration decided in March not to appeal the decision.

5 PROTECTION OF ENDANGERED SPECIES AND BIODIVERSITY

In a marked reversal of U.S. policy, the Clinton administration signed the Biodiversity Convention on 4 June, 1993. The biotechnology industry officially withdrew its opposition to the treaty when the Clinton administration indicated that it was working on an interpretative statement that would attempt to address industry concerns over patent rights and trade secrets. The statement is to be sent to the Senate along with the treaty, although it is unclear what, if any, international effect such an interpretative statement would have. It is expected that the Senate will ratify the treaty in 1994.

In 1993, the U.S. refused to impose trade sanctions on several countries violating international agreements concerning endangered species. Although Norway resumed commercial hunting of the minke whale in violation of the moratorium on commercial whaling imposed by the International Whaling Commission, President Clinton announced that no trade sanctions would be imposed, but that "good faith efforts" would be utilized to change Norway's policies. The announcement came at the end of the 60 day period within which such a decision for or against sanctions had to be made and after the House of Representatives had unanimously passed a resolution condemning Norway. President Clinton also announced that no trade sanctions would be imposed against China and Taiwan for trading of tiger and rhinoceros body parts, although both are classified as Appendix I species under the Convention on International
Trade in Endangered Species (CITES). The President issued a warning to China and Taiwan to demonstrate “verifiable measures and substantial progress” in stopping such practices by March 1994.

On the other hand, the Tropical Pacific dolphin was added to the depleted species list. A marine mammal is classified as depleted if it falls to less than 60% of its original population. The listing will increase pressure on foreign countries to adopt “dolphin-safe” tuna fishing techniques. The Eastern Spinner dolphin was also listed as depleted in August 1993. Two statutory provisions were enacted to regulate the taking and importing of marine mammals, conferring upon the Secretary of the Interior the authority to prescribe regulations to protect the species (16 U.S.C. §§1371 and 1373 (1993)). A new section 916 to the Whaling Convention Act was also enacted, revising definitions used in the Whaling Convention Act of 1949 (16 U.S.C. §916 (1993)).

The Earth Island Institute brought suit against the Secretary of State to compel enforcement of statutory provisions regarding international protection of sea turtles (Earth Island Institute v. Christopher, 6 F.3d 648 (9th Cir. 1993)). The Ninth Circuit Court of Appeals held that a statute banning importation of shrimp from countries that do not provide adequate protection of sea turtles constitutes an embargo over which the Court of International Trade has exclusive jurisdiction. The court also concluded that the statute requiring the Secretary of State to negotiate with foreign countries that did not protect sea turtles from shrimp trawler fishing nets violates the separation of powers doctrine because the President has the exclusive power to make treaties.

On September 24, 1993, seven environmental groups sued to prevent the U.S. from helping design and build the world’s largest hydroelectric dam on China’s Yangtze River. The complaint, brought in federal district court in Minneapolis, alleges that the Bureau of Reclamation and the Army Corps of Engineers are in violation of the Endangered Species Act by virtue of their involvement in the project. The suit challenges a regulation precluding review for U.S. agency projects overseas under the Endangered Species Act.

The U.S. and Japan have entered into an agreement to help Indonesia to protect wildlife on the island of Java. The agreement contemplates contributions to the Indonesia Biodiversity protection Center and money for research into pharmaceutical and food products.

In June, Colombia and the U.S. agreed upon a debt-for-nature swap by which the U.S. would forgive Colombia’s $46 billion debt in exchange for Colombia’s commitment to establish and implement environmental protection policies.
6 ATMOSPHERE

On Earth Day, President Clinton announced a goal to reduce emissions of greenhouse gases to 1990 levels by the year 2000 in furtherance of the Climate Change Convention, which requires signatories to devise plans one year after the treaty becomes effective. In October, the climate change action plan was announced, outlining more than 50 cooperative projects involving the federal government and private industry. The goal of the plan is to reduce greenhouse gas emissions by approximately 8%, or at least 100 million tons. The plan calls for energy efficiency in residential construction design, increased tree planting, transportation system improvements, increased investments in the electric motor, increased regulation of the chemical industry and harmful gases, and increased use of natural gas, among other measures. The plan is to be funded by $60 million from private investment and $1.9 billion from the federal government. No new taxes were proposed. The plan came under attack from environmentalists because it relies on voluntary efforts and sets forth no new measures to reduce U.S. gasoline consumption. The plan also creates a White House Task Force to oversee progress and a program to assist other countries in developing technology to reduce emissions.

With respect to ozone depletion, an amendment to the Clean Air Act authorizes the President to pursue international agreements to protect the stratosphere (42 U.S.C. §7671p). The section also authorizes appropriations of $30 million in 1991, 1992, and 1993, and such sums as necessary in 1994 and 1995 to support developing countries which have signed the Montreal Protocol. Executive Order 12843 details the procurement requirements and policies federal agencies must follow when ozone depleting substances are involved (58 Fed. Reg. 21881 (1993)). EPA also promulgated a rule to reduce the amount of ozone-depleting substances emitted when air conditioning and refrigeration units are serviced. CFC and other Class I substances must be recycled during the servicing process. EPA also proposed adding methyl bromide to the list of Class I substances and limiting trade with countries not parties to the Montreal Protocol. EPA banned the use of nonessential products containing CFC's including aerosol cans and party streamers. EPA and the National Institute of Standard Technology created a U.S./Canada/Europe ozone monitoring network in October.

7 THE PRESIDENT’S COUNCIL ON SUSTAINABLE DEVELOPMENT

At the June meeting of the United Nations Commission on Sustainable Development, President Clinton formed the President’s Council on
Sustainable Development to formulate policy targeted at economic growth, job creation, and environmental protection. The U.S. also agreed to work with Colombia, the acting head of the Group of 77, to create guidelines for technology transfers between the U.S. and developing nations. Finally, the Clinton administration urged Congress to authorize a contribution of $30 million to the Global Environment Facility (GEF).

8 HAZARDOUS MATERIALS AND PESTICIDES

The U.S. proposed to the UN Subcommittee of Experts on the Transport of Dangerous Goods the creation of international criteria for transporting environmentally hazardous materials to replace the existing three-tier system of national, regional, and international requirements. The Department of Transportation Research and Special Programs Administration announced on October 13 that it would make efforts to adjust U.S. transport requirements to meet international standards.

EPA listed 12 pesticides that must conform with the UN prior informed consent program. The 12 pesticides are aldrin, BHC, chlordane, chlordineform, cyhexatin, dieldrin, DDT, dinoseb, ethylen, dibromide, florocetamide, heptachlor, and mercury compounds. In February 1993, EPA published a final rule under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) in response to concern that American companies were exporting pesticides that were either banned or not registered in the U.S. The rule eliminates an exemption from a requirement that exporters obtain purchaser acknowledgement statements from the importing country; clarifies certain labeling requirements; and eliminates an exemption for unregistered products with compositions similar to registered products.

In October, EPA sued a Swedish company, Nobel Industries, for groundwater pollution problems caused by a U.S. based subsidiary. The suit was brought under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) pursuant to which current owners of a site are liable for cleanup operation, including parent corporations of subsidiaries.

9 NUCLEAR ENERGY AND WASTE

The Department of Energy (DOE) announced a proposal in October to take back spent fuel that originated in the U.S. used by foreign research reactors. The DOE declared its intention to prepare an environmental impact statement on the proposal. The United States has indicated it will accept spent fuel only from nations it believes to be a potential proliferation risk. The proposal calls for the U.S. to subsidize costs associated
with fuel return, but there will be a charge for developed nations that return spent fuel to the U.S. The U.S. also joined 37 other countries in a ban on the dumping of nuclear wastes at sea.

I0 FORESTS

In April, June and October, talks were held in Geneva to re-negotiate the 1987 International Tropical Timber Agreement. In contrast to the previous administration’s opposition, the Clinton administration indicated a willingness to discuss expansion of the agreement. The U.S. agreed to establish sustainable managed forestry practices by the year 2000, urging the Europeans to do the same. The U.S. also indicated its willingness to revive talks with developing countries on forestry management practices.

I1 OUTER SPACE

In September 1993, the United States and Russia signed agreements with respect to environmental monitoring from space. The joint statement on each observation, environment, and space science calls for U.S./Russian cooperation in earth observation and environmental monitoring. Specifically, the international space station will contain research facilities to study the problem of space debris.

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