Country/Region Reports -- United States of America

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X. COUNTRY/REGION REPORTS

1. UNITED STATES OF AMERICA

(1) Introduction

In 1994, the pace of international environmental activity in the United States was significantly slower than during the previous year. The likelihood of ratification of the Biodiversity Convention and the Law of the Sea Convention diminished considerably as the year ended. While the Clinton Administration proposed a number of new policies, few were implemented. The Senate confirmed William Nitze to head the Environmental Protection Agency’s (EPA) Office of International Activities, which had been without a director for more than 18 months. Prior to his appointment, interest in international environmental affairs had been waning at EPA. Under Nitze, it announced plans to shift from a program-based to an ecosystem-based approach within the next five years. The Clinton Administration also announced a new policy identifying four situations in which the United States would consider trade sanctions unilaterally against a country harming the environment: when trade sanctions are required by an international environmental treaty to which the United States is a party; when the detrimental environmental impact is partially within US jurisdiction and there is a reasonable scientific basis for concern; when a species, wherever located, is scientifically considered endangered or threatened; and when the effectiveness of a scientifically based international environmental or conservation standard is being diminished.

(2) The North American Free Trade Agreement (NAFTA)

On January 1, 1994, NAFTA went into effect in the United States; nevertheless, implementation of the side agreements intended to safeguard the environment proceeded slowly. By the end of the year, the Border Environmental Cooperation Commission (BECC) and the North American Development Bank were not yet in operation. Disagreements between the United States and Mexico over which country would lead each agency and how they would work have slowed down the process. The only clear sign of progress was President Clinton’s naming of three officials to sit on the BECC.

The North American Commission for Environmental Cooperation (NACEC) met for the first time in July 1994. It heard from public interest groups about their concerns regarding the adverse effects on air quality along the Mexico/Texas border of emissions from a coal-fired plant, Carbon II, and its sister unit near the southern border of Texas. NACEC also approved a modest budget for 1994 of $2.1 million. In addition, the
Clinton Administration established two advisory committees to advise the EPA Administrator in her role as NACEC counsel member.

(3) United States/Mexico Border Issues
Most activity aimed at the resolution of environmental problems last year was between individual US states and Mexico. Colorado and Mexico signed an agreement encouraging businesses in each state to exchange technical environmental information and personnel. The governors of the US and Mexican states of California set up an alliance to address infrastructure needs along the border. They agreed to build an international wastewater treatment plant along the border to treat Tijuana River wastes and to create a laboratory to test pesticide residues. Also, governors from Mexican and US border states met in May and issued a statement on a broad range of environmental issues related to NAFTA, with proposals for funding environmental training and monitoring.

An EPA official said steps were being taken to create binational air quality districts along the border to allow for emissions trading. EPA also announced a cooperative enforcement plan that is expected to focus on protecting ecosystems and endangered species.

Finally, EPA issued 95 US companies with manufacturing plants along the border subpoenas requesting data on release of chemicals into the New River basin. EPA is seeking to determine whether the facilities are contaminating the New River in California.

(4) General Agreement on Tariffs and Trade (GATT)
In May, ruling on a petition by the European Union (EU) and the Netherlands, a GATT panel concluded that the secondary embargo by the United States on imports of tuna from intermediary nations was inconsistent with its GATT obligations because the ban was too attenuated to the preservation of dolphins to be “necessary” to protect the life or health of dolphins, or to be “related to” conserving dolphins. The US trade representative indicated the United States would ask for a full review or reconsideration of the GATT panel report, citing the failure to provide a fair hearing and due process through public hearings which allowed non-governmental organizations to participate. In July, Japan and the EU, among others, demanded that the United States lift its ban. Mexico and the United States continued to try to bilaterally work out their problems involving the primary ban on tuna imports previously found to be inconsistent with GATT by another panel.

A GATT dispute settlement panel rejected an EU claim that US fuel conservation and tax measures were discriminatory against European auto imports. The EU had challenged the US corporate average fuel economy (CAFE) requirements, the “gas guzzler” tax, and the luxury tax on cars
over $30,000. The decision upheld these taxes and the 19-year-old CAFE standards, but the panel agreed with the EU that the CAFE accounting rules, which established separate domestic and import fleets for determining overall fuel economy, were discriminatory.

Despite opposition from environmental and consumer groups as well as some local governments, Congress approved implementing legislation for the Uruguay Round of the GATT near the end of the year. Environmentalists expressed concern that the GATT implementing legislation, unlike NAFTA's, contains no environmental provisions and therefore leaves US conservation laws open to attack as unfair trade barriers.

A suit filed by public interest groups to require the Office of the US Trade Representative to prepare an environmental impact statement for the Uruguay Round of GATT was dismissed by the District of Columbia federal district court (Public Citizen v. Kantor, 864 F.Supp 208 (D.D.C. 1994)). The court relied on Public Citizen v. US Trade Representative, 5 F.3d 549 (1993), cert. denied, 114 S. Ct. 685 (1994), in which a federal appeals court had dismissed a similar challenge to NAFTA because there was no "final agency action" to trigger judicial review under the Administrative Procedure Act.

(5) Arctic/Antarctic

A bill introduced in November in the United States House of Representatives to implement provisions of the 1991 Madrid Protocol to the 1959 Antarctic Treaty failed to pass by the end of the year. As introduced, HR 3532 would have allowed citizen suits for environmental damage caused by US activities in the Antarctic.

On December 16, the United States and the Russian Federation signed (→) an Agreement on Cooperation in the Prevention of Pollution of the Environment in the Arctic.

(6) Protection of Endangered Species and Biodiversity

In 1994, the United States Senate failed to ratify the UN Convention on Biological Diversity despite the support of President Clinton. Key members of Congress continued to question how the Convention would affect biotechnology and pharmaceutical industries. Because the Senate did not consent to the Convention, the United States was unable to participate as a voting party at the first meeting of the conference of the parties in November 1994.

For the first time, the United States imposed trade sanctions to protect endangered species. In April, the Clinton administration announced that it would impose penalties against Taiwan for its failure to stop the trade in tiger and rhinoceros products. While the sanctions—a ban on American imports of wildlife products from Taiwan—will cut off approximately $20
million in trade, Taiwan’s total exports to the United States are valued at $25 billion.

At the Conference of the Parties of the Convention on International Trade in Endangered Species (CITES), the United States supported South Africa’s successful proposal to permit limited trade in white rhinos, with a continuing prohibition on trade in rhino horn. The United States, the world’s largest importer of mahogany, also voted in favor of a defeated proposal to list mahogany on Appendix II. Among other actions, the conference restricted trade in American box turtles, including three Florida varieties.

In the International Whaling Commission, the United States voted to establish a sanctuary around Antarctica that will permanently bar commercial whaling, even if the existing worldwide moratorium on whale hunting is lifted. The measure was approved over objections from Japan and Norway.

(7) Atmosphere

The Clinton Administration continued to work on its October 1993 Climate Change Action Plan. As of October 4, the Administration began accepting joint implementation proposals from domestic businesses to offset greenhouse gas emissions in other countries as part of a pilot initiative developed by the State Department. The pilot program is expected to serve as a model for global and domestic joint implementation programs in other nations. To meet the greenhouse gas emissions goal of reaching 1990 levels by the year 2000, the federal government may have to spend $1.9 billion. Greenhouse gas emissions in 1992 increased slightly over the 1990 ones. The Administration suggested that no emissions offsets gained through joint implementation would count toward the year 2000 goal.

Joint United States/Canadian efforts to reduce acid rain pollution appear to be having a favorable impact, according to a report released by the two governments. The report concludes that emissions of sulfur dioxide, nitrogen oxides, and volatile organic compounds are either declining or leveling out in both countries.

As an outgrowth of unsuccessful trade talks, the United States and Japan signed an agreement to engage in joint research on climate change and air pollution. The talks also led to a commitment by Japan to contribute $1 billion in loans and credits to help Eastern and Central European countries clean up their environments.

With respect to ozone depletion, EPA exempted products such as aircraft cleaning fluids and portable fire extinguishers from the ban on non-essential goods made with hydrochlorofluorocarbons (58 Fed. Reg. 69638 (Dec. 30, 1993)). The agency also issued a proposed exemption from labeling rules for ozone-depleting substances for parties under the Montreal Protocol using approved destruction technologies (58 Fed. Reg. 69568
In a final rule issued in March, EPA set up a Significant New Alternatives Policy (SNAP) to assess the use of safe substitutes for substances slated to be phased out under the Montreal Protocol. Although the final rule covered substitutes even if produced for export only, in December EPA announced it would delay coverage of chemicals for export for three months while reconsidering whether such chemicals should be subject to the SNAP program (59 Fed. Reg. 63255 (Dec. 8, 1994)). A coalition of companies and trade associations had filed for exemption under the proposed SNAP rule, and had also filed suit against EPA in the US Circuit Court for the District of Columbia. In other action, EPA also added several compounds to the list of safe substitutes (59 Fed. Reg. 44240 (Aug. 26, 1994)).

(8) Sustainable Development

At the Summit of the Americas in December, the United States signed a joint agreement (⇒) (the Conjunto Centroamerica USA) with Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama establishing a framework for sustainable development. The participating nations also agreed to phase out leaded gasoline. In October, the Chairman of the President’s Council on Sustainable Development announced that the Council would make its policy recommendations in April 1995.

(9) Hazardous Materials

Efforts by the Administration to develop and pass implementing legislation for the 1989 Basel Convention on the Transboundary Movement of Hazardous Wastes and their Disposal stalled after treaty parties agreed to an international ban on the shipment of hazardous waste from Organisation for Economic Cooperation and Development (OECD) countries to non-OECD countries (⇒)(Decision II/12)).

A South African company, Thor Chemicals, bowed to political pressure and sent a shipment of waste mercury back to Borden Chemicals in the United States. The Department of Justice later brought charges against Borden for, among other alleged violations, shipping over 300,000 pounds of hazardous waste to South Africa without notifying EPA, as required by the Resource Conservation and Recovery Act. In December, EPA proposed a rule that would forbid the import of virtually all fluids and transformers containing polychlorinated biphenyls from Canada. (59 Fed. Reg. 62875 (Dec. 6, 1994)).

Canada, Mexico, and the United States entered into several new emergency response agreements. In July, the United States and Canada signed a contingency plan to deal with environmental accidents along their border. Sister cities along the US/Mexico border agreed to collaborative planning to promote preparedness for chemical emergencies. Officials from all three countries
also agreed to a plan of action for bringing each country's Emergency Response Guidebook into harmony with those of its neighbors. The Guidebook also deals with shipment of hazardous materials across borders.

(10) Nuclear Energy and Waste
The United States and the Russian Federation agreed to cooperate in developing improved processing and storage of Russian liquid radioactive waste as a means to help protect the Arctic environment. In August, Russian and American scientists met for three weeks to exchange information on nuclear waste cleanup technologies.

In an unusual arrangement, a Japan-US energy and environmental consulting group will begin offering services in China. The group will initially collect data and later give advice on both coal-burning and nuclear power plants. It will also provide environmental impact assessments for nuclear fuel facilities.

(11) Water and Ocean Pollution
The United States signed the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (UNCLOS). Congress continued to express concerns, however, about US access to deep sea minerals. While the agreement had been expected to lead to the United States' signing and ratifying UNCLOS early in 1995, by year's end, the newly elected, Republican-dominated Congress made prospects for adoption uncertain.

By year's end, the US Coast Guard was set to begin enforcing provisions of the 1990 Oil Pollution Prevention Act vis-a-vis any oil tanker navigating US waters. The Coast Guard also promulgated a final rule requiring all US flag vessels over 400 tons and all US flag oil tankers over 150 tons to carry approved oil spill response plans (59 Fed. Reg. 51332 (Oct. 7, 1994)).

A report by the International Joint Commission (IJC), recommending a consensus plan to achieve eventual elimination of manufacture, use, and disposal of persistent toxic substances that threaten the Great Lakes Ecosystem, generated controversy in the United States. While the governments of Canada and Ontario signed agreements to implement the IJC's recommendations, the State of Michigan found a 30-year phase-out of chlorinated compounds possible, but not under the IJC's regulatory scheme.

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