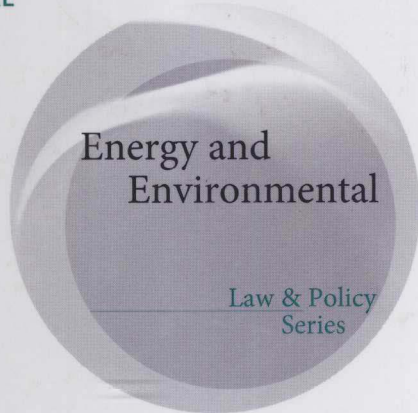


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Prior Informed Consent and Hazardous Trade

Regulating Trade in Hazardous Goods at the Intersection of
Sovereignty, Free Trade and Environmental Protection

By David Langlet



Wolters Kluwer
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Foreword

David Langlet's study is the outgrowth of a doctoral dissertation successfully submitted to the Faculty of Law of the University of Stockholm in December 2007. It offers an in-depth analysis of the challenges posed by today's transboundary hazardous trade, thus of a highly topical and important issue in international law and public policy. The study traces individual states' precarious autonomy in safeguarding the national interest in protecting the environment and public health in an age of globalization, direct foreign investment and, generally, the flow of goods and services across national boundaries. By focusing on "prior informed consent" both as an enabling device for transboundary trade and as a marker of shared responsibility among exporting and importing states, the book canvasses in detail the normative reach of the Basel Convention (hazardous waste), the Rotterdam Convention (hazardous chemicals and pesticides) and the Cartagena Protocol (genetically modified organisms) against the background of general international law for transboundary environmental harm and the GATT/WTO-centered international trade regime.

If this normative landscape presents itself as a veritable thicket of partially overlapping, supplementary and, at times, conflicting international (and national) legal norms, Langlet skillfully guides the reader through it. His expert guidance is all the more impressive as he not only manages to demystify the specific interrelationship of international trade law and international environmental protection norms at a crucial juncture, but, in so doing, offers an illuminating study of the increasing complexity of international regulatory regimes in general. This volume thus clearly deserves a wide readership. For apart from representing a very competent examination of a highly technical, yet central theme of our times – increasing global interdependence as evidenced by transboundary hazardous trade – it is an

examination that Langlet undertakes in a theoretically thorough, readily accessible and, therefore, ultimately convincing manner.

Günther Handl
Eberhard Deutsch Professor of Public International Law
Tulane Law School

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The present book is a revised and updated version of my doctoral thesis, defended at Stockholm University in December 2007. It would not have existed but for Said Mahmoudi, Professor of Public International Law at Stockholm University. Not only did he inspire me to get involved in legal research and proposed prior informed consent as an interesting subject for a doctoral thesis. He has also been relentlessly supportive, encouraging and generous with his time and knowledge during his years as my supervisor.

When I defended the thesis it was my great privilege to have Günther Handl, Professor of Public International Law at Tulane University Law School, New Orleans, as my Examiner. It was a profoundly rewarding and stimulating experience which subsequently enabled me to further improve the text. I am also much indebted to Professors Ellen Hey, Marc Pallemerts, and Timo Koivurova, who served as the Examining Committee. The text has benefited, as have I personally, from their extensive knowledge and intellectual generosity.

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Finally, I am greatly indebted to Annika and Hans Langlet for their loving support and encouragement.

The book takes into account developments up until the beginning of September 2008.

Stockholm, September 2008

Abbreviations

AIA	Advance Informed Agreement
ASIL	American Society of International Law
BCH	Biosafety Clearing-House
BSE	Bovine spongiform encephalopathy
BSP	Biosafety Protocol
BSWG	Biosafety Working Group
CBD	Convention on Biological Diversity
CIEcL	Customary international economic law
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
COP	Conferences of the Parties
CRC	Chemical Review Committee
CTE	Committee on Trade and Environment
DGD	Decision guidance document
DNA	Designated national authority
DNA	Recombinant deoxyribonucleic acid
DPG	Domestically prohibited goods
DSB	Dispute Settlement Body
DSM	Dispute Settlement Mechanism
DSU	Understanding of Rules and Procedures Governing the Settlement of Disputes
EFTA	European Free Trade Association
EIA	Environmental Impact Assessment
EPA	Environmental Protection Agency
ExCOP	Extraordinary Meeting of the Conference of the Parties
FAL	Convention on Facilitation of International Maritime Traffic
FAO	Food and Agriculture Organization

FIFRA	Federal Insecticide, Fungicide and Rodenticide Act
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GC	General Agreement on Trade in Services
GEAC	Genetic Engineering Approval Committee
GEF	Global Environment Facility
GM	Genetically modified
GMO	Genetically modified organism
IAEA	International Atomic Energy Agency
ICJ	International Court of Justice
IEcL	International economic law
IGO	Intergovernmental organization
ILC	International Law Commission
ILM	International Legal Materials
INC	International Negotiating Committee
IRPTC	International Register of Potentially Toxic Chemicals
ITO	International Trade Organization
LMO	Living modified organism
LMO-FFP	Living modified organism for food, feed or processing
MEA	Multilateral environmental agreement
MFN	Most-favoured-nation
MOP	Meeting of the Parties
NAFTA	North American Free Trade Agreement
OECD	Organization for Economic Cooperation and Development
PCIJ	Permanent Court of International Justice
PIC	Prior informed consent
POPs	Persistent organic pollutants
RCRA	Resource Conservation and Recovery Act
UNEP	United Nations Environment Programme
UNIDO	United Nations Industrial Development Organization
UNGA	United Nations General Assembly
SOLAS	International Convention for the Safety of Life at Sea
SPCB	State Pollution Control Board
SPS	Sanitary and phytosanitary measures
TBT	Technical barriers to trade
TRIPS	Trade-related aspects of intellectual property rights
TSCA	Toxic Substances Control Act
WHO	World Health Organization
WTO	World Trade Organization
YbILC	Yearbook of the International Law Commission

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Part I

Issues and Concepts