

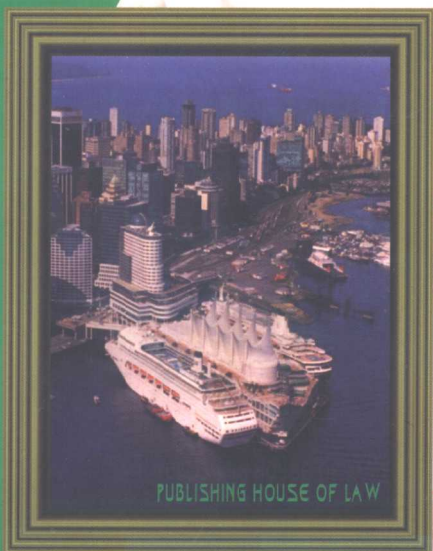
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English Readings in Legal Studies

贸易 与 环境

Trade and the Environment

高风毛毛/编



律出版社



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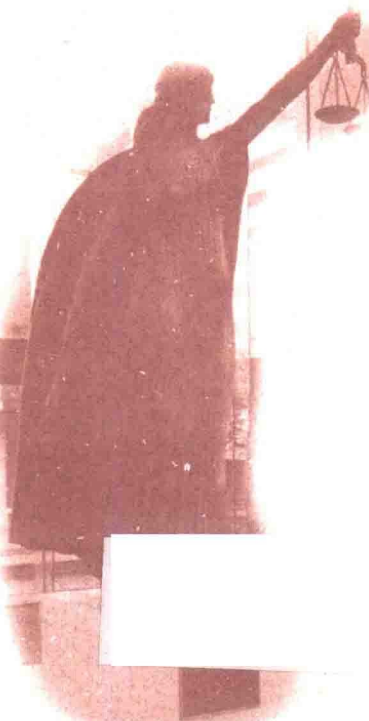
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出版者的话

1755年,在英语——作为一种文字的发展史上,是具有里程碑意义的。这一年,英国的第一部《英语大辞典》问世。她的作者便是英国著名的作家和词典编纂学家撒缪尔·约翰逊(Samuel Johnson)。他在这部大辞典的序言里写下了这样一句话:The great pest of speech is frequency of translation. ... this is the most mischievous and comprehensive innovation. (语言最大的祸害就是频繁的翻译,这是一种最有害且最综合意义上的“再炮制”。)

“炮制”常常会差强人意,甚至于以讹传讹,而法学译作更在一定程度上是件“不可为而为之”的作品。英美法的一些概念、术语实难在汉语中有完美的匹配。于是我们推崇读原文。

原文闪烁着作品本身质朴而灵动的光芒,而地道的语言传送着的是英语中“法言法语”独特的个性化色彩。

少有机会读到英美法学原篇的中国学子们,将会从这套丛书中看到真正的英文法学篇章是个什么样子。这里既有严谨、典型的英美法学学术篇章,也有法庭上唇枪舌剑的审判实录,更有闻名于世的英美法“案例学习”。

这套辑录自90年代以来的“原汁原味”的法律英语读物,我们相信她带给您的会是这样的阅读体验——语言一百分,思想不打折。

1997年12月

导 言

环境与贸易的关系是当前国际学术界乃至政治界的一项热门话题。它之所以热,原因当然首推七、八十年代兴起的绿色浪潮——环境保护。世界重量级的政治头面人物一夜之间面目皆绿,发达国家中某些政治派别更以绿党自诩,以便尽可能地获取民意的支持。可见,在这些国家,环境保护的口号已相当深入人心,又相当具有感召力。

在国际政治方面,1992年召开于巴西的里约热内卢的地球首脑会议标志着几十年来这一席卷全球的浪潮达到顶点。100多位国家元首和政府首脑云集里约,共同宣示其向环境恶化宣战的决心和为人类及其子孙后代造福的责任。他们为指导人类本世纪最后几年和整个下世纪的行动通过了成百页的政策文件和法律文件,其中心思想可以用五个字来概括——可持续发展。别国姑且不论,中国政府和人民已从自己的实际生活中真切地感受到了这五个字的份量。离开可持续发展,中国人民要想实现真正的现代化,享有高质量的生活,只能是一句空谈。

近三十年来,国际间谈判和制订的关于环境保护的条约比以往任何时候都多,其涵盖的对象大至地球,远至太空,深至大洋洋底及其底土,微至病毒和遗传基因,涉及了人类生活的方方面面,其影响已无时不在,无处不在。于是国际法的一个新分支——国际环境法便应运而生了。目前,这一新分支的发展正方兴未艾,并正有力地影响着传统国际法的各个领域。国际贸易体制的一项基本原则——贸易自由,也明显地感受到了它的震动。

比起国际法的其他领域来,现行国际贸易体制仍然称得上年轻。它源自1947年在日内瓦缔结的《关税及贸易总协定》(以下简称《总协定》)。人们知道,战后初期,世界经济秩序基本上是按照

美国四十年代的经济理论构建的,最终是为美国的利益服务的,《总协定》就是这一经济秩序的三大支柱之一。它的基本要求是,在成员国间实现无条件、无差别的最惠国待遇和互惠原则,取消国家间的关税壁垒和差别待遇,从而达到全球范围内的贸易自由化。国际货币基金组织和世界银行则各司其职,通过各自的货币、金融体制与运作为全球贸易自由化提供便利和保障。战后半个多世纪以来,尽管世界经济局势与战后初期相比已不可同日而语,但世界经济秩序的基本框架没有发生大的变化。应当承认,这一经济秩序对战后世界经济的繁荣所起的作用是不可低估的。

但是,国际环境法的兴起却对贸易自由原则形成了挑战。一些国际环境多边条约直接禁止某些危害环境的物质或产品的国际贸易,或对此类物质或产品的国际贸易实行严格控制,还有一些环境条约,为了保证条约的规定得到遵守,规定了一些强有力的贸易条款,旨在迫使某些违反条约义务的缔约国因面临其他缔约国的贸易措施而改弦更张。更有一些发达国家在国内法中规定了一系列环境保护措施,限制不符合其环境标准的产品的国际贸易,特别是进口,从而引起国际贸易方面的摩擦和争端,特别是依赖产品出口的发展中国家的不满。但另一方面,不少发达国家却以贸易自由为借口将不符合其环境标准的污染物质或污染工业转移到发展中国家,成为这些发展中国家的一大祸害。这是国际环境法和国际贸易法发展上的一个新的课题。

围绕这一课题,国际上形成了两大阵营。环境保护主义者称《总协定》为“魔鬼”,认为贸易自由原则瓦解了全球环境保护的努力,应当对全球环境恶化承担重要责任,因而应当摒弃或加以严格限制。贸易自由主义者则认为贸易自由原则对全球经济的发展和人民的福利至关重要,它不但不会有碍于,反而将有利于全球的环境保护。因此这一原则应加以坚持。两大阵营各持己见,各种学说异彩纷呈,比较极端的主张虽不鲜见,但主调似乎是力求使两种主义能够并行不悖,各司其职,优势互补,为人类的繁荣与发展共同作出贡献。应该说,这个问题确实事关人类的前途和子孙万代的福利,其重要性是不言而喻的。

为此,对《总协定》的相关条款作必要的修改,对国际贸易体制的有关部分作必要调整看来已势在必行。由于这是当今国际关系和国际法的一个热门话题,国际上有关这方面的学术成果颇丰,学术研究呈一派欣欣向荣的景象。与此形成对照的,我国国际环境法的研究、发展现状,应当承认,就总体而言,同国外相比还有不小的差距,在国际环境保护与国际贸易规则的关系的方面,这个差距也许更大一些,甚至可以说,这个领域还是我国国际法研究中的一块待开垦的处女地。为此,我们编选了这本小册子,希望打开一扇帮助国内的读者了解国际上这一领域的学术和政策动向的窗户。文中我们对主要学术问题、背景、术语和难点适当加了注释,对读者自己可以查字典解决的语言问题便未多再代劳。

目前我国的现代化建设正在飞速发展,如何实现可持续发展的任务已严峻地摆在我们面前,可谓时不我待。而国际环境法与国际贸易规则的协调发展可以说是这方面一个不容忽视的、非研究不可的课题。我国对这一课题研究比较落后的状况必须尽快改观。仅此,我们能为将这门在国际上方兴未艾的学科介绍给国内的读者,并促进其在中国的繁荣与发展做一点基础性的工作,而深感荣幸。

高风于纽约

1997年10月

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1. Trade and the Environment¹

There are several important questions on the issue of trade and the environment that need to be addressed by the international community:

First, should trade restrictions be used to inhibit "production pollution"²? By "production pollution" I mean the pollution that arises from making something, as distinct from "consumption pollution"³, which arises from the use of a product.

The GATT⁴ allows trade restrictions on products whose use or very presence causes pollution. But there is nothing in the GATT or in the draft Uruguay Round text which permits trade restrictions based on production methods.⁵

Should there be? This is a question which governments will have to address, no doubt with a lot of input from you. Apart from the environmental arguments that have to be carefully thought through, restricting trade on the grounds of how a product has been harvested or manufactured raises fundamental commercial issues that business interests will have to weigh carefully and take a position on.⁶

Second, if trade measures are to be used to enforce production pollution standards, who should set those standards? Individual governments, or the international community, acting through negotiated agreements?⁷

It seems to me that we cannot have a system in which individual governments, however wise, however well intentioned, can set standards not only for themselves but for other nations as well. That

would be a prescription, I should think, for continuous conflict.

If production and process standards are to be enforced by trade restrictions then those standards, I believe, will have to be agreed internationally. And GATT is not the organization in which those standards should be negotiated; that has to be done in international bodies possessing competence on environmental matters.

Third, to what extent should environmental standards be harmonized internationally? This question takes us of course to the level-playing-field argument⁸. If environmental standards in country X are much more lenient than those in country Y, will not producers in X have a competitive advantage over those in Y, and will not producers in Y move plants to take advantage of less demanding regulations?

Perhaps some would argue for harmonization at the highest possible level, but both instinct and experience say that that is not negotiable. Indeed, I noticed that the U.S. Vice President⁹, in his best-seller, *Earth in the Balance*, speaking about "a new generation of international agreements", says, "these agreement must be especially sensitive to the vast differences of capability and need between developed and undeveloped nations". Good advice, it seems to me.

Fourth, should the trade provisions of international environmental agreements be applied to non-signatories with GATT rights? These agreements have trade provisions for good reasons. Of course the signatories can agree to whatever they wish, but problems can arise when those trade provisions are applied to non-signatories.

Fifth, and finally, are trade restrictions the right way or the best way to enforce environmental standards? Many professional economists will argue that trade restrictions should not be used for such a purpose or used only rarely and as a last resort; money and the transfer of technology are, in their view, the preferred options.

All countries have a vital stake in strong environmental protection and thank heaven that organizations like yours are fighting hard for

this goal. But it is also very much in the interest of the international community that the Uruguay Round end successfully.

The question, it seems to me, is not which interest is paramount but how can they be reconciled? What we need to do is to forge a constructive and mutually supporting alliance between trade liberalization on the one hand and environmental protection on the other. That will not be an easy task but if we talk and reason with each other, it can be done.

Notes

1. 本文是原《关税及贸易总协定》副总干事长在美国野生动物基金会的一次全国性会议上的公开致辞。文中提出了贸易与环境之争中的几个主要问题。

2. production pollution: 指由生产引起的污染。

3. consumption pollution: 指由消费引起的污染。“production pollution”与“consumption pollution”是环境与贸易之争的主要焦点问题之一。

4. the GATT: 《关税及贸易总协定》。

5. 这是一个非常关键的问题。现在的《关税及贸易总协定》(以后本书注释中简称为 GATT)中,即使是在乌拉圭回合之后,也只是规定了可对产品(products)引起的污染用贸易的手段进行限制,但却未对因产品的制造方式(production methods)引起的污染作任何规定。

6. 此句意为:如对因产品制造方式引起的污染也作出施行贸易限制的规定,其对商业利益所带来的巨大影响,对各国政府而言,也是不得不慎重考虑的。

7. 另一个重要的问题是,究竟由谁来制定污染的标准呢?是由各国政府各行其是,还是由国际社会通过协议来制定一个较为能各方都接受的标准?现在由于各国环境标准的不一致,导致了

在贸易中的许多冲突。

8. the level-playing field: 意即“竞技场”。此句话意为:这个问题自然会引起竞争是否公平的争论。由于各国环境标准不一,产品中所含的“环境成本”便不同。高环境标准国家的产品,其“环境成本”就高,价格就贵,这就会影响到其在国际市场上的竞争力。因此这就有可能出现生产商将其产品生产由高环境标准国家向低标准国家转移的问题。这也是贸易与环境之争的焦点问题之一。

9. 指美国副总统戈尔。

2. An Introduction to International Trade Institution — GATT /WTO

The WTO: What It Is, What It Does

The world trade organization (WTO)¹ was established on 1 January 1995. It will take charge of administering the new global trade rules, agreed in the Uruguay Round, which took effect on the same day. These rules — achieved after seven years of negotiations among more than 120 countries — establish the rule of law in international trade, which for goods and services together are estimated to have approached some \$ 5 trillion this year². Through the WTO agreements and market access commitments, world income is expected to rise by over \$ 500 billion annually by the year 2005 — and annual global trade growth will be as much as a quarter higher by the same year than it would otherwise have been.

How different is it from GATT? The WTO is more global in its membership than the GATT. Its prospective membership is already around 150 countries and territories, with many others considering accession.

It has a far wider scope than its predecessor, bringing into the multilateral trading system, for the first time, trade in services, intellectual property protection, and investment.

It is a full-fledged international organization in its own right while GATT was basically a provisional treaty serviced by an *ad hoc* Secretariat³.

It administers a unified package of agreements to which all mem-

bers are committed. In contrast, the GATT framework includes many important side agreements (for example anti-dumping measures and subsidies) whose membership is limited to a few countries.

It contains a much improved version of the original GATT rules plus a lot more. The new version, called GATT 1994, clarifies and strengthens the original GATT rules for trade in goods.

It reverses policies of protection in certain "sensitive" areas which were more or less tolerated in the old GATT. Under various agreements, export restraints on textiles and clothing will be dismantled, trade in agriculture reformed and "grey-area" trade measures — so-called voluntary export restraints — phased out.

What Does It Do?

The WTO administers, through various councils and committees, the many agreements contained in the Final Act of the Uruguay Round⁴, plus a number of plurilateral agreements⁵, notably on government procurement and civil aircraft. It also oversees the implementation of the significant tariff cuts⁶ (averaging 40 per cent) and reduction of non-tariff measures⁷ agreed to in the negotiations.

It is a watchdog⁸ of international trade, regularly examining the trade regimes⁹ of individual members. In its various bodies, members flag proposed or draft measures by others that can cause trade conflicts. Members are also required to notify various trade measures and statistics, which are maintained by the WTO in a large data base.

As in any partnership, conflicts can arise among members. The WTO, from the very start of these conflicts, provides several conciliation mechanisms for finding an amicable solution. Trade disputes that cannot be solved through bilateral talks are adjudicated under the WTO dispute settlement "court". Panels¹⁰ of independent experts are established to examine disputes in the light of WTO rules and provide rulings. This tougher, streamlined procedure ensures equal treatment

for all trading partners and encourages members to live up to their obligations.

The WTO is also a management consultant for world trade. Its economists keep a close watch on the pulse of the global economy, and provide studies on the main trade issues of the day.

Finally, the WTO will be a forum where countries continuously negotiate exchanges of trade concessions to further lower trade barriers all over the world.

Who Is in It?

All the 128 members of the old GATT automatically become WTO members upon acceptance of the Uruguay Round Agreements and submission of commitments on trade in goods and services. On the assumption that negotiations on the current membership applications of over 20 countries are ultimately concluded successfully, then the WTO will cover virtually the whole of world trade.

Participating and presiding over WTO meetings are representatives from members' diplomatic missions in Geneva and specialists from capitals.

The WTO Secretariat — numbering 420 of many nationalities — services all meetings of WTO bodies at its headquarters in Geneva. The Secretariat works with developing countries and countries undertaking economic reform to help them negotiate accession and draw maximum benefit from the WTO.

Notes

1. GATT / WTO 是全球最大的国际贸易组织。本文的目的旨在提供给读者一个有关 GATT / WTO 的概括性了解。需要提醒大家注意的是——这在后文中大家还将多次看到, 选用此文的目的

的是为了从环境的角度出发对 GATT / WTO 中的贸易原则进行评价。作为全球最大的国际性贸易组织, GATT / WTO 所确立、体现的法律原则成了规范国与国之间贸易活动的基本法律规范。GATT / WTO 在确立了促进公平、自由的贸易准则的同时, 其原则中体现对环境保护的规定却很不完善。因此, 要求对 GATT / WTO 进行改革, 在其中增加环境保护的内容, 便成了“贸易自由论”与“环境论”争执的焦点。众多学者呼吁对 GATT / WTO 进行体制改革, 修订其法律原则, 使得自由贸易与环境保护能共同、和谐地发展, 而不致使自由贸易成为一种竭泽而渔的掠夺式发展, 从而达到“可持续发展”的最终目的。

GATT: The General Agreement on Tariffs and Trade, 《关贸及贸易总协定》, 订立于 1947 年 10 月 30 日, 总部设在瑞士日内瓦。

WTO: The World Trade Organization, 世界贸易组织。GATT 订立之后, 曾经 8 次修订, 每次修订称一个“回合”, 作为第 8 个回合——“乌拉圭回合”(Uruguay Round) 的成果之一便是成立了 WTO。WTO 成立于 1995 年 1 月 1 日, 但她并没有完全代替 GATT, 两个组织目前仍同时工作, 因此后文将同时称 GATT / WTO。作为一个新的组织, WTO 里新设立了一个永久性的机构——环境与贸易委员会。

2. 指 1995 年。

3. ad hoc: [拉]特别的(地), ad hoc committee 特别委员会。

Secretariat: 指 GATT 的秘书处。

4. the Final Act of the Uruguay Round: 乌拉圭回合最后文件。

5. plurilateral agreements: 多边协议。

6. tariff cut: 关税减让。

7. non-tariff measures: 此处指非关税贸易壁垒。

8. watchdog: 监察者。

9. the trade regimes: 贸易体系。

10. Panel: 专家小组。由独立专家组成的专家小组是 GATT / WTO 争端解决机制中最重要的组成部分。