

**Economy Report: Canada
Trade and Environment Policy and Practice**

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A. Background on Canada's Trade and Environmental Regime

The government of Canada's perspectives on the issues of trade and environment need to be understood in the context of the economy's strong dependence on trade as an engine of growth and a backbone of economic activity. Roughly one of every three jobs in Canada depends on exports, and exports of goods and services in 1997 were equivalent to more than 40% of GDP -- the highest ratio of goods and services exports to economic output among the G-7 nations.

Canada thus has a keen interest in ensuring fair and stable rules of trade, and in working with other economies to dismantle and prevent tariff and non-tariff barriers that hamper trade and investment flows. In the early stages of the trade-environment debates, Canada saw the issue of environment as one more in a list of potentially harmful non-tariff barriers, and proceeded cautiously in discussions in the WTO, the OECD and elsewhere on the interface of these two policy spheres. This caution was in no small part due to the predominance of natural-resource-based products in Canada's export trade. A Counsellor in Canada's Mission to the WTO recounts:

“For Canada, the initial approach to the issues was largely defensive but not in a negative sense. Given the importance of our natural resource sector, the focus was on concerns over efforts by other countries to determine Canadian domestic environmental policies through trade measures. The dangers of protectionist abuse of environmental policies were clear. The challenges faced by the forest products sector to adapt to changed market requirements, whether these be with respect to harvesting practices, bleaching processes, or recycled content were the clearest examples. Canada had good reason to approach the discussions with some caution.”¹

Recent years have brought an evolution of the thinking on these issues, however. The Canadian government recognizes that there are legitimate policy issues linking trade and environment, and not simply in a negative sense. The North American Commission for Environmental Cooperation, of which Canada is a member along with the USA and Mexico, recently wrote in the context of North America:

“The association of environmental and trade questions is simply the logical consequence of an economic union's evolving dynamics. The further the North American partners move toward economic integration, the more they will have to deal collectively with a host of matters that are the logical consequences of the development of economic integration (e.g., transportation, and agriculture, common economic policies, environmental and labour policies, communications, education and scientific research). In

¹ Griffith, Andrew. “Market Access and Environmental Protection: A Negotiator's Point of View”, Department of Foreign Affairs and International Trade Reference Document #3, mimeo, October 1997.

other words, once a decision is taken to move beyond an arm's-length trading relationship – typified by the General Agreement on Tariffs and Trade in the early seventies – it becomes necessary to deal with such new “non-trade” issues.”²

The Honourable Lloyd Axworthy, Minister of Foreign Affairs, repeated the same theme in a recent address:

“If there is one characteristic that defines this new landscape, it is integration. We have realized that the issues we once dealt with separately are in fact interlinked. Out of this realization came a set of new concepts: globalization, human security, sustainable development.”³

Canadian policy now recognizes that the trade and environment linkage can be either positive or negative, and the desire is to exploit the synergies where they exist, while avoiding conflicts where possible. It is true that without clear and appropriate trade rules environmental regulations can become unfair barriers to trade, and that in the absence of appropriate environmental regulations, increased trade can be environmentally detrimental. But it is also true that greater openness in trade and investment regimes can bring greater efficiencies of resource use (through increased competition), and new environmentally preferable technologies (through FDI and joint ventures), as well as bringing to bear on domestic industries the demands of green-minded foreign consumers and retailers. In the sense that the Canadian position on trade and environment has come to appreciate these dynamics, the changes in recent years can be characterized as a “maturing” of policy.

A key feature of the Canadian trade and environment-related policy, both at the international level and the national level, is an emphasis on what has been called the principle of openness.⁴ This principle comprises both civil society's participation in the process of decision-making, and the transparency necessary to make such participation meaningful. According to Minister Axworthy:

“Political action and expressions of political will at the highest level are vitally important. But governments can not — and should not — act alone on sustainable development. If we are to achieve our goals, it will only be with the active involvement of all sectors of society. That is why we have made inclusion of stakeholders a key feature of the Canadian approach.”⁵

² Dispute Avoidance: Weighing the Values of Trade and the Environment Under NAFTA and the NAAEC. The NACEC's Environment and Trade Series, No. 3. Ottawa: Prospect Inc., 1996, p. 15.

³ Address by the Honourable Lloyd Axworthy, Minister of Foreign Affairs, on sustainable development in Canadian Foreign Policy. Vancouver, British Columbia April 17, 1997.

⁴ For a full exploration of this principle, see International Institute for Sustainable Development, Principles for Trade and Sustainable Development, Winnipeg: IISD, 1994.

⁵ The Honourable Lloyd Axworthy. See *supra* at 3.

This paper describes a number of Canadian instruments for openness in trade and environment-related policy making at the national and international level (see section D below). As well, Canada has been one of the strongest proponents of this principle in discussions in Geneva at the World Trade Organization (WTO).

B. Canada's Regulatory Framework

1. Trade and Environment-Related Laws and Regulations

Tables 1 and 2 provide a list and summary of Canada's laws, regulations and administrative regulations pertaining to trade-related environmental measures and environment-related trade measures at the national level. Two qualifications should be made regarding this list.

First, the list does not include measures enacted at the sub-national (provincial) level. The level of research necessary to compile such a listing is beyond the scope of this paper. Second, the list does not include taxes, subsidies and other non-regulatory measures that are in force for addressing trade and environment-related concerns, though a number of these exist.

For the reader's sake, it should also be explained how the measures were separated into trade-related environment measures and environment-related trade measures. Any measure which directly banned or restricted the import or export of a good or service was considered a trade measure. Any measure which indirectly affected trade by mandating certain environmental practices (for example, a restriction on the use and sale of certain grades of gasoline) was considered an environmental measure. There are cases where the distinction blurs; a ban on the export of hazardous waste is clearly both an environmental measure and a trade measure. But the distinction is not, in any case, such an important one.

TABLE 1: Environment-Related Trade Measures

| Short Title, Associated Statute | Description | Enacted by | Date Enacted/ last amended | Implementing Dep't | Align with WTO | Align with MEAs |
|---|---|-------------------|-----------------------------------|---------------------------|-----------------------|--------------------------|
| Chlorobiphenyls Regulations (SOR/91-152) (CEPA) | Prohibition on import other than for specified uses. This includes a prohibition on their import as a constituent of products, other than specified electrical equipment. | Federal | 02/1991 | Environment Canada | Full -- TBT | No |
| Chlorofluorocarbon Regulations, 1989 (SOR/90-127) (CEPA) | Prohibition on import of chlorofluorocarbon for use as a propellant in hair sprays, deodorants and antiperspirants. | Federal | 02/1990 | Environment Canada | Full -- TBT | No |
| Contaminated Fuel Regulations (SOR/91-486) (CEPA) | Prohibition on import and export of contaminated fuel as defined by the Regulations. Exceptions for import if intent is to legally destroy, dispose of, or recycle. In such cases, certain records must be maintained. Exceptions for export if importing country grants ascent. | Federal | 08/1991 | Environment Canada | Full -- TBT | No |
| Diesel Fuel Regulations (SOR/97-110) (CEPA) | Importers of diesel fuel are required to report quarterly, and keep 5 years' records of: volume of fuel imported and the concentration of sulphur by weight in said fuel. | Federal | 02/1997 | Environment Canada | Full -- TBT | No |
| Export and Import of Hazardous Wastes Regulations (SOR/92-637) (CEPA) | A hazardous waste may be exported for purposes of disposal only if it complies with the provisions of Section 6 of the Regulations. The conditions include: 1) the countries of import or transit must not have notified Environment Canada that the importation of that hazardous waste into that country is prohibited; 2) the country of import must be a party to the Basel Convention or the Canada-U.S.A. Agreement on the Transboundary Movement of Hazardous Waste; | Federal | 11/1992 | Environment Canada | Full -- TBT | Full -- Basel Convention |

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| | <p>3) the importing and exporting entities must have a written contract with certain specified characteristics and undertakings;</p> <p>4) the goods to be exported must be properly packaged and labelled;</p> <p>5) the country of disposal is not south of 60° south latitude.</p> | | | | | |
| <p>Export and Import of Hazardous Wastes Regulations (SOR/92-637) (CEPA)</p> | <p>A hazardous waste may be imported for purposes of recycling only if it complies with the provisions of Section 12 of the Regulations. The conditions include:</p> <p>1) the province of import must notify Environment Canada that the importation of that hazardous waste into that province is allowed under its laws, and consent of the competent authority in any country of transit has been successfully solicited;</p> <p>2) the country of export must be a party to the Basel Convention, the 1992 OECD decision concerning the control of transfrontier movements of wastes destined for recovery operations or the Canada-U.S.A. Agreement on the Transboundary Movement of Hazardous Waste;</p> <p>3) the importing and exporting entities must have a written contract with certain specified characteristics and undertakings;</p> <p>4) the goods to be exported must be properly packaged and labelled.</p> <p>If Canada is a transit country, packaging and labelling requirements must be met, and the countries of export, import subsequent transit must have been notified Environment Canada of their consent to the shipment.</p> | Federal | 11/1992 | Environment Canada | Full -- TBT | Full -- Basel Convention |

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| <p>Export and Import of Hazardous Wastes Regulations (SOR/92-637) (CEPA)</p> | <p>Importers or exporters of hazardous wastes must give notice within one year of their intent to do so. Importers must notify Environment Canada, and exporters must notify the official point of notification in the country of export.</p> | <p>Federal</p> | <p>11/1992</p> | <p>Environment Canada</p> | <p>Full -- TBT</p> | <p>Full -- Basel Convention</p> |
| <p>Export and Import of Hazardous Wastes Regulations (SOR/92-637) (CEPA)</p> | <p>A hazardous waste may be imported for purposes of disposal only if it complies with the provisions of Section 7 of the Regulations. The conditions include:</p> <ol style="list-style-type: none"> 1) the province of import must notify Environment Canada that the importation of that hazardous waste into that province is allowed under its laws, and consent of the competent authority in any country of transit has been successfully solicited; 2) the country of export must be a party to the Basel Convention or the Canada-U.S.A. Agreement on the Transboundary Movement of Hazardous Waste; 3) the importing and exporting entities must have a written contract with certain specified characteristics and undertakings; 4) the goods to be exported must be properly packaged and labelled. <p>If Canada is a transit country, packaging and labelling requirements must be met, and the countries of export, import subsequent transit must have been notified Environment Canada of their consent to the shipment.</p> | <p>Federal</p> | <p>11/1992</p> | <p>Environment Canada</p> | <p>Full -- TBT</p> | <p>Full -- Basel Convention</p> |

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|--|--|----------|---------|--------------------|-------------|--------------------------|
| Export and Import of Hazardous Wastes Regulations (SOR/92-637) (CEPA) | A hazardous waste may be exported for purposes of recycling only if it complies with the provisions of Section 11 of the Regulations. The conditions include: 1) the countries of import or transit must not have notified Environment Canada that the importation of that hazardous waste into that country is prohibited; 2) the country of import must be a party to the Basel Convention, the 1992 OECD decision concerning the control of transfrontier movements of wastes destined for recovery operations or the Canada-U.S.A. Agreement on the Transboundary Movement of Hazardous Waste; 3) the importing and exporting entities must have a written contract with certain specified characteristics and undertakings; 4) the goods to be exported must be properly packaged and labelled; 5) the country of disposal is not south of 60° south latitude. | Federal | 11/1992 | Environment Canada | Full -- TBT | Full -- Basel Convention |
| Export and Import of Hazardous Wastes Regulations (SOR/92-637) (CEPA) | All importers, exporters and carriers of hazardous waste must have adequate insurance as specified in the regulations. Exporters must arrange to take back exports of hazardous waste that cannot be delivered to, or will not be accepted by, the destination facility. | Federal | 11/1992 | Environment Canada | Full -- TBT | Full -- Basel Convention |
| Export of Logs Permit (C.R.C., c. 612) (Export and Import Permits Act) | Permits are needed to export logs of all kinds of wood. Permits will only be granted for peeled logs of less than 11 inches top diameter. | Federal | 05/1989 | | Full -- TBT | No |
| Fish Health | Requires an import permit for the importation of wild | Federal/ | 08/1997 | Fisheries | Full -- | No |

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| Protection Regulations C.R.C., c. 812 (Fisheries Act) | fish, live cultured fish or eggs of wild fish. The regulations presently apply only to salmonid species. To obtain such a permit, the importer must be granted a certificate, based on an inspection, which lists any diseases or disease agents found. The permit is granted if none of these is thought to be harmful to the conservation and protection of fish in the province of importation. | Provincial | | and Oceans/Provincial Fish Health Officers | SPS | |
| Fresh Fruit and Vegetable Regulations (C.R.C., c. 285) (Canada Agricultural Products Act) | No person may import fresh fruits and vegetables as food if they are “contaminated”, meaning: containing a chemical, drug, food additive, heavy metal, industrial pollutant, ingredient, medicine, microbe, pesticide, poison, toxin or any other substance not permitted by, or in an amount in excess of limits prescribed under the Canadian Environmental Protection Act, the Food and Drugs Act or the Pest Control Products Act | Federal | 08/1997 | Canadian Food Inspection Agency | Full -- SPS | No |
| Gasoline Regulations (SOR/90-247) (CEPA) | The maximum concentration of lead in imported gasoline is 5 mg/L, other than for prescribed specialty uses. The maximum concentration of phosphorus in unleaded imported gasoline is 1.3 mg/L. Importers of leaded gasoline must submit quarterly information sheets to the Minister, and maintain records for two years, regarding the quantities and composition of the gasoline in question. | Federal | 04/1990 | Environment Canada | Full -- TBT | No |

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| <p>New Substances Notification Regulations (SOR/94-260) (CEPA)</p> | <p>Importers of new substances not covered by other statutes, including organisms and polymers, and where the imports exceed a certain amount, must provide specified information including extensive test data. Those found on the NDSL (the Non-domestic Substances List compiled by Environment Canada) have less onerous reporting requirements, as do product development substances. Certain products of biotechnology have more onerous reporting requirements.</p> <p>Importers of micro-organisms to be introduced to non-indigenous ecozones must also provide data from tests conducted to determine the effects of the micro-organism on plant, invertebrate and vertebrate species likely to be exposed.</p> <p>There is a specified assessment period in which the Minister will consider the information provided.</p> | <p>Federal</p> | <p>03/1997</p> | <p>Environment Canada</p> | <p>Full -- TBT</p> | <p>No</p> |
| <p>PCB Waste Export Regulations, 1996 (SOR/97-109) (CEPA)</p> | <p>The export of PCB waste, as defined in the Regulations, is banned for any other purpose than disposal. Export to the U.S.A. is permitted under conditions which include:</p> <ol style="list-style-type: none"> 1) the U.S.A. authorities must not have notified Environment Canada that the importation of that hazardous waste into that country is prohibited; 2) the Canada-U.S.A. Agreement on the Transboundary Movement of Hazardous Waste must be in effect; 3) the importing and exporting entities must have a written contract with certain specified characteristics and undertakings; 4) the exporter must receive licence, permit or other written authorization for the export from the U.S.A. authorities; 5) exporters must arrange to take back exports that | <p>Federal</p> | <p>02/1997</p> | <p>Environment Canada</p> | <p>Full -- TBT</p> | <p>No</p> |

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| | <p>cannot be delivered to, or will not be accepted by, the destination facility;</p> <p>6) within 12 months before the intended export, the exporter must submit to Environment Canada a PCB Waste Notice, as described in the Regulations.</p> | | | | | |
| <p>Ozone-depleting Substances Products Regulations (SOR/95-584) (CEPA)</p> | <p>Prohibits the import of 10 kg of any chlorofluorocarbon in a pressurized container. Exceptions apply for specialty uses, and for essential uses established under the Montreal Protocol. Also exempted are chlorofluorocarbons in certain azeotropic mixtures, used as refrigerants.</p> <p>Prohibits the import of any container or packaging material for food or beverages that is made of plastic foam in which any chlorofluorocarbon has been used as a foaming agent.</p> <p>Prohibits the import from non-parties to the Protocol of certain products, where they contain any chlorofluorocarbons or bromofluorocarbons.</p> | Federal | 12/1995 | Environment Canada | Full -- TBT | Full -- Montreal Protocol |
| <p>Ozone-depleting Substances Regulations (SOR/95-576) (CEPA)</p> | <p>Prohibits export to or import from non-parties to the Montreal Protocol of certain controlled ozone-depleting substances. Certain exceptions apply, as for essential uses as established under the Protocol. As well, transferable consumption allowances are established for those current users of controlled substances.</p> <p>Prohibitions for each substance are applicable only over specified timetables.</p> <p>Imports or exports of recovered, recycled, reclaimed or already used controlled substances are allowed by the granting of a permit, where the proposed import or export does not contravene the terms of the Montreal Protocol, or other laws of Canada.</p> <p>Any importer or exporter of controlled substances must</p> | Federal | 12/1995 | Environment Canada | Full -- TBT | Full -- Montreal Protocol |

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| | annually report to Environment Canada. Those using consumption allowances must also report quarterly. | | | | | |
| Pest Control Products Regulations (C.R.C., c. 1253) (Pest Control Products Act) | Certain types of control products (including 2, 4-D; organisms; and those control products not registered as of January 1, 1984) must apply for registration with Environment Canada before being imported. The Minister may refuse to register those control products that may lead to an unacceptable risk of harm to public health, plants, animals or the environment. The packaging and labelling of registered imported control products must conform to the conditions set out in the Regulations. Certain chemical combinations are prohibited in control products, as elaborated in Section 47. | Federal | 12/1997 | Agriculture Canada | Full -- SPS | No |
| Plant Protection Regulations (SOR/95-218) (Plant Protection Act) | The import of any thing that is a pest, that is or could be infested with a pest or that constitutes or could constitute a biological obstacle to the control of a pest, is banned unless the importer has obtained a valid permit number and, as applicable, a foreign Phytosanitary Certificate or foreign Phytosanitary Certificate for Re-export. The pest risk assessment takes into account, <i>inter alia</i> , whether the import has a significant adverse effect on the environment, and has the objective of minimizing the degradation of environmental quality with respect to Canadian flora. | Federal | 04/1995 | Agriculture Canada | Full -- SPS | No |

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|---|---|---------|---------|---|-------------|---------------------------|
| Prohibition of Certain Toxic Substances Regulations (SOR/96-237) (CEPA) | Imports of prohibited toxic substances are banned. Schedule I of the CEPA, periodically amended, constitutes the List of Toxic Substances which are prohibited. | Federal | 04/1996 | Environment Canada | Full -- TBT | No |
| Toxic Substances Export Notification Regulations SOR/92-634 (CEPA) | These regulations cover exports of substances on the List of Toxic Substances Requiring Export Notification (periodically amended) in Part II of Schedule II of the CEPA. Before export, exporters must notify Environment Canada as required in UNEP's London Guidelines for the Exchange of Information on Chemicals in International Trade. | Federal | 11/1992 | Environment Canada | Full -- TBT | Full -- London Guidelines |
| Transport Packaging of Radioactive Materials Regulations (SOR/83-740) (Atomic Energy Control Act) | All fissile material, or devices or packaging of a certain level of radioactivity, that is imported or exported must be packaged and labelled as specified in the Regulations. The importer or exporter must obtain a certificate from the Atomic Energy Control Board before transporting such material, devices or packaging. | Federal | 03/1992 | Atomic Energy Control Board | Full -- TBT | No |
| Wild Animal and Plant Trade Regulations (SOR/96-263) (Wild Animal & Plant Protection and Regulation of International & Interprovincial Trade Act) | Species of plant or animal, or derivatives thereof, listed under Appendices I - III of the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) require either an import permit, or a permit or certificate that satisfies the requirements of the Convention and is granted by a competent authority in the exporting country. | Federal | 05/1996 | Canadian Wildlife Service, Environment Canada | Full -- TBT | Full -- CITES |

TABLE 2: Trade-Related Environmental Measures

| Short Title, Associated Statute | Description | Enacted by | Date Enacted/ last amended | Implement -ing Dep't | Align with WTO | Align with MEAs |
|--|--|---------------------|-------------------------------------|---|-----------------------------------|-----------------------|
| Benzene in Gasoline Regulations (SOR/97-493) (CEPA) | The sale of gasoline with benzene concentrations exceeding 1.5% by volume is prohibited. Effective July 1, 1999, this figure is 1.0%. Importers must keep certain records of all batches imported. | Federal | 11/1997 | Environment Canada | Full -- TBT | No |
| Energy Efficiency Regulations (SOR/94-651) (Energy Efficiency Act) | All energy-using products as defined in the regulations (mostly household appliances) are assigned a minimum standard for energy efficiency. All such products when imported must bear a label which describes their efficiency of energy use, as specified in Schedule II of the Regulations. | Federal | 10/1994 | Energy, Mines and Resources Canada | Full -- TBT | No |
| Environmental Choice Program | An ecolabelling program which grants the right to use its EcoLogo™ to products and services which comply with its criteria. Criteria are based on environmental impact, such as improved energy efficiency, reduced hazardous by-products, use of recycled materials or reusability of the product itself. | Federal/ Private | 1988 | TerraChoice Environmental Services Inc.; Environment Canada | Full – TBT, Code of Good Practice | No |

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|---|--|---------|---------|----------------------|-------------|--------------------------------|
| Fishery (General) Regulations (SOR/93-53) (Fisheries Act) | A license is needed for the transfer of live fish into a fish rearing facility, or the release of live fish into a fish habitat. The license, which carries no fee, is issued if, <i>inter alia</i> , the release or transfer of the fish will not have an adverse effect on the stock size of fish or the genetic characteristics of Canadian fish or fish stocks. | Federal | 02/1993 | Fisheries and Oceans | Full -- SPS | Full – Biodiversity Convention |
| Fuels Information Regulations, No. 1 (C.R.C., c. 407) (CEPA) | Importers of certain types of fuels (primarily vehicle fuels) are required to keep quarterly records and submit them annually to Environment Canada. Records specify the volumes imported, and their sulphur content. | Federal | 02/1980 | Environment Canada | Full -- TBT | No |
| Motor Vehicle Safety Regulations (C.R.C., c. 1038) (Motor Vehicle Safety Act) | Imports of light-duty vehicles, light-duty trucks, heavy-duty vehicles, heavy-duty engines and motorcycles must conform to the emissions standards set for the vehicle's model year. This part of the Regulations (Schedule V) in effect harmonizes Canada's standards and test procedures for those vehicles with those of the United States Environmental Protection Agency. | Federal | 12/1997 | Transport Canada | Full – TBT | No |

2. International Agreements and Conventions

Table 3 contains the trade and environment-related international agreements and conventions to which Canada is a party. Following the table is a brief description of each, with some explanation of those elements of the agreement that relate to trade and environment.

TABLE 3: Survey of Bilateral and Multilateral Agreements on Trade and Environment-Related Matters Signed by Canada.

| Multilateral Agreement | Signature | Ratification/ Accession |
|---|------------------|--------------------------------|
| CITES | 10/04/75 | 09/07/75 |
| Vienna Convention | 22/03/85 | 04/06/86 |
| Montreal Protocol | 04/06/86 | 05/07/90 |
| London Amendment | | 16/03/94 |
| Copenhagen Amendment | | 27/03/98 |
| Convention on Biological Diversity | 11/06/92 | 04/12/92 |
| UN Framework Convention on Climate Change | 12/06/92 | 04/12/92 |
| Kyoto Protocol | 29/04/98 | Not yet ratified |
| Rio Declaration | 06/92 | n/a |
| Basel Convention | 22/03/89 | 28/08/92 |
| North American Free Trade Agreement | 17/12/92 | 01/01/94 |
| North American Agreement on Environmental Cooperation | 13/09/93 | 01/01/94 |
| WTO Final Act | 15/04/94 | 01/01/95 |
| Prior Informed Consent | * | * |
| POPs Protocol to the Convention on Long-Range Transboundary Air Pollution | ** | ** |

* Open for accession September, 1998, at which time Canada is expected to accede.

** Open for accession December, 1998, at which time Canada is expected to accede.

Table 3 (continued).

| Bilateral Agreement | Signature | Ratification/ Accession |
|--|------------------|--------------------------------|
| Canada-U.S.A. Agreement on the Transboundary Movement of Hazardous Waste | 28/10/86 | 1986 |
| Canada-Chile Free Trade Agreement | 06/02/97 | 05/07/97 |
| Canada-Chile Agreement on Environmental Cooperation | 06/02/97 | 05/07/97 |

Basel Convention: The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention) was adopted in 1989 and entered into force on 5 May 1992. It strictly regulates the transboundary movements of hazardous wastes (wastes which are hazardous to people or the environment because they are toxic, poisonous, explosive, corrosive, flammable, eco-toxic, or infectious), and provides obligations to its Parties to ensure that such wastes are managed and disposed of in an environmentally sound manner. The third Conference of the Parties in 1995 agreed to ban trade in hazardous wastes from OECD to non-OECD member states.

CBD: The Convention on Biological Diversity commits signatories to certain measures for the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources. As such, some of its components cover issues of technology transfer and trade-related intellectual property rights.

CCAEC: The Canada-Chile Agreement on Environmental Cooperation is a side agreement to the CCFTA, signed by Canada and Chile. The agreement is identical in many respects to the NAAEC.

CCFTA: The Canada-Chile Free Trade Agreement is a trade agreement between the two signatories designed to lower tariff and non-tariff barriers and promote increased trade and investment flows. Like the NAFTA, it contains a warning (but not an obligation) not to lower environmental standards in order to attract investment. It incorporates the general environmental exceptions from the GATT, with some strengthening language. And it contains an explicit deference to three existing MEAs: CITES, the Montreal Protocol and the Basel Convention.

CITES: The Convention on International Trade in Endangered Species of Wild Fauna and Flora entered into force on 1 July 1975 and now has a membership of 143 countries. These countries act by banning commercial international trade in an agreed list of endangered species and by regulating and monitoring trade in others that might become endangered.

CUATMHW: The Canada-U.S.A. Agreement on the Transboundary Movement of Hazardous Waste sets out specific conditions for the export and import of hazardous wastes between the two countries including prior notification provisions.

Kyoto Protocol: The Kyoto Protocol to the UNFCCC obliges developed and transition country signatories to achieve an overall reduction in greenhouse gas emissions to below 1990 levels by 2008-2012, with different countries meeting various specific targets. Options for flexibility under the Protocol include credits for carbon sinks, a Clean Development Mechanism for joint implementation, and emissions trading between developed countries. While the Protocol does not specifically provide for the use of trade measures, it is likely that some states will use some form of them to help achieve their targets.

Montreal Protocol (and amendments): A protocol to the Vienna Convention, the Montreal Protocol on Substances that Deplete the Ozone Layer was agreed to by Governments in 1987 and has been amended (broadened and accelerated) three times so far, in London in 1990, in Copenhagen in 1992 and recently, in Montreal in 1997. The Protocol sets specific targets to reduce and eventually eliminate the emissions of man-made ozone depleting substances. Trade in such substances and products incorporating them is prohibited with non-parties, and transfer of technology for producing and using the substances to non-parties is to be discouraged.

NAAEC: The North American Agreement on Environmental Cooperation is a side agreement to the NAFTA, signed by Canada, the US and Mexico. The side agreement aims to create collaboration among the three countries on continent-wide environmental improvement through harmonization of efforts, research and procedures, coordination of public input, public education, and by helping to achieve the environmental objectives of the NAFTA. The NAAEC establishes a Secretariat, one of the duties of which is to hear complaints about lack of enforcement of environmental standards.

NAFTA: The North American Free Trade Agreement is a trade agreement among Canada, the US and Mexico, designed to lower tariff and non-tariff barriers and promote increased trade and investment flows. The Parties undertake (non-binding commitment) to not lower environmental standards to attract investment. The Agreement incorporates the general environmental exceptions from the GATT, with some strengthening language. And it contains an explicit deference to three existing MEAs -- CITES, the Montreal Protocol and the Basel Convention -- and two bilateral agreements.

PIC: The International Legally Binding Instrument for the Application of the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade: Through this treaty governments honoured their commitment

made at the 1992 Rio Earth Summit to negotiate a convention to curb the trade in certain hazardous chemicals and pesticides. PIC replaces two previous voluntary agreements: UNEP's London Guidelines for the Exchange of Information on Chemicals in International Trade, and FAO's International Code of Conduct on the Distribution and Use of Pesticides. It aims to enable importing countries to decide what chemicals they want to receive and to keep out those they cannot manage safely.

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants (POPs): This is a recently-completed (June 1998) Protocol to the Convention on Long-Range Transboundary Air Pollution, adopted in November 1979. Its objective is to control, reduce or eliminate discharges, emissions and losses of persistent organic pollutants. In restricting the use of the dozen chemicals covered, it is likely that parties will legislate trade restrictions.

Rio Declaration: The Rio Declaration on Environment and Development was signed as part of the results of the United Nations Conference on Environment and Development of 1992. It contains a set of principles to which states agree to comply, but has no binding mechanisms or specific commitments. A number of the principles are trade and environment-related, including a prohibition on unilateral environment-related trade measures, and an assertion that states have the right to set their own appropriate levels of environmental standards. It also calls for observance of the precautionary principle, and re-asserts the sovereign rights of states in environmental matters, where these do not have transboundary effects.

UNFCCC: The United Nations Framework Convention on Climate Change provides a framework within which to work toward solving the problems of climate change. Among other things, it commits signatories to providing information about domestic emissions and sinks, and increasing scientific understanding of the problems of climate change. As well, developed countries pledged (without making specific commitments) to reduce greenhouse gas emissions to 1990 levels by 2000, and to assist developing countries through the transfer of technology and financial aid.

Vienna Convention: The Vienna Convention on the Protection of the Ozone Layer entered into force in 1985. Through this Convention, governments committed themselves to protect the ozone layer and to co-operate with each other in scientific research to improve understanding of the atmospheric processes.

WTO Final Act: The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations was the latest of an ongoing set of rounds of negotiations. It strengthened the existing trade rules, particularly in the area of dispute settlement and subsidies, and broadened the scope of coverage to include, for example, intellectual property rights, investment and services. The rules contain certain environment-related general exceptions, and the Final Act creates a Committee on

Trade and Environment with a mandate to recommend changes to the trade rules to make them consistent with the objectives of sustainable development.

C. Transparency

All of the Government of Canada's trade and environment-related regulations and laws are published in the Canada Gazette, the official news bulletin of the Government of Canada. It consists of three parts:

Part I: Published every Saturday, this contains all formal public notices, official appointments, miscellaneous notices and proposed regulations from the government and private sectors that are required to be published by a federal statute or a regulation. Calls for comment on proposed regulations or amendments can be found here.

Part II: Published every second Wednesday, this contains regulations as defined in the Statutory Instruments Act, and certain other classes of statutory instruments.

Part III: Published as soon as is reasonably practicable after Royal Assent, this contains the most recent Public Acts of Parliament and their enactment proclamations.

As well, a number of the international agreements listed in Table 3 have their own reporting and notification requirements. The WTO, for example, through the Technical Barriers to Trade (TBT) Agreement, has the following requirements for transparency of regulations which may affect Members' trading partners:

“2.9 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall:

2.9.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular technical regulation;

2.9.2 notify other Members through the WTO Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale; such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

2.9.3 upon request, provide to other Members, particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;

2.9.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.”

D. Impact of Environment and Trade Measures on Trade and Investment Liberalization

1. Canada maintains a number of import and export prohibitions or restriction measures for the purpose of environmental protection. They are listed and summarized in Table 1. A number of these are measures taken in accordance with Canada’s obligations under various bilateral and multilateral agreements, listed in Table 3.
2. Canada has undertaken a broad range of initiatives in various for a aimed at reconciling the interaction of trade and environmental protection. Some of the best known are listed and summarized below.

Canada provided key funding for two groundbreaking symposia in the WTO. Convened May 20-21, 1997 and March 16-17, 1998, the Symposia brought together NGOs and WTO delegates for the first time to engage in meaningful dialogue on the issues of trade and sustainable development. The funding included resources for a reporting service to cover and the events and broadcast the results in print and via the Internet.

At the national level, Canada’s foreign policy is informed by a multistakeholder group known as the International Trade Advisory Committee. This mechanism for civil society input has established a Working Group on Trade and Environment, which makes recommendations on Canada’s position respecting the issues domestically and at the international level.

Another instrument of openness is the National Round Table on the Environment and the Economy (NRTEE). This is an independent agency of the federal government that reports directly to the Prime Minister’s office. Its members are drawn from business, labour, academia, environmental organizations and aboriginal communities, provide policy advice based on commissioned research. While it is not currently working on trade issues, it has been active on them in the past, particularly during the NAFTA negotiations. The NRTEE is a model for multistakeholder input to decision-making processes.

Canada has been pushing in international fora for recognition of the need for an integrated perspective on trade and environment issues. For example, in the ongoing negotiations on the Biosafety Protocol to the Convention on Biological Diversity, Canada has consistently raised the issues of implications for the WTO SPS Agreement.

Similarly, it has raised the issue of the Biosafety protocol in the Committee on SPS in the WTO.

Also in the WTO, Canada notified its ecolabelling system to the Committee on Technical Barriers to Trade. Although many other countries interpret the obligations of the TBT Agreement such that such notification is unnecessary, Canada did so of its own volition, giving potentially affected exporters the more opportunity to comment on the proposed system.

In concluding the North American Agreement on Environmental Cooperation (NAAEC) Canada, along with the USA and Mexico, broke new ground in recognizing the need for institutional arrangements to reconcile the interaction of environment and trade. It establishes the North American Commission on Environmental Cooperation (CEC), “the only regional environmental organization that has its roots in expanded economic integration brought about by a trade liberalization agreement.”⁶

Among other institutional arrangements, the CEC collaborates with the NAFTA’s Free Trade Commission to achieve the NAFTA’s environmental objectives. Elements of its mandate in that regard include:

- “(a) acting as a point of inquiry and receipt for comments from NGOs and persons concerning those goals and objectives;
- ...
- (c) contributing to the prevention or resolution of environment-related trade disputes by:
 - (i) seeking to avoid disputes between the Parties,
 - (ii) making recommendations to the Free Trade Commission with respect to the avoidance of such disputes, and
 - (iii) identifying experts able to provide information or technical advice to NAFTA committees, working groups and other NAFTA bodies;
- (d) considering on an ongoing basis the environmental effects of the NAFTA; and
- (e) otherwise assisting the Free Trade Commission in environment-related matters.”⁷

Among other efforts meant to fulfil (d) above, the CEC has been working on a framework for assessing the environmental effects of a trade agreement such as the NAFTA. This is groundbreaking work on a methodologically extremely difficult task.

A unique form of collaboration between the CEC and the FTC will be established in the coming year in the form of an Environment and Trade Officials Working Group, consisting of environment and trade experts from the three parties. This will be a formal linkage between what can roughly be characterized as North America’s trade

⁶ CEC’s Environment, Economy and Trade Program 1998 work plan.

⁷ NAFTA, Article 10 (6).

secretariat and its environment secretariat. The potential for positive interaction is great.

The NAAEC also establishes a Joint Public Advisory Committee (JPAC), made up of appointed members from the three Parties, to provide advice to the CEC on any matter within the scope of the Agreement, and on its implementation and further elaboration. The JPAC may also provide technical, scientific or other information to the Secretariat, including for the purposes of resolving disputes.

E. Environmental Cost Internalization/Effect on Competitiveness

It is difficult to describe Canada's "approach to implementing environmental cost internalization", let alone its practice and effect. In fact, all of the measures taken by Environment Canada in its various programs could arguably be characterized as cost internalization measures (with the exception perhaps of outright bans, habitat conservation decrees and strict command and control measures).

Such approaches run the gamut from regulations that specify types of equipment to be used, to innovative new negotiated agreements, or "covenants", between the regulators and specific industries or industry groups. In the regulators' toolkit can be found any number of specific instruments to be used in different contexts, including:

- Specific regulations (command and control)
 - Product bans, restrictions
 - Specified technologies, process methods
 - Mandated emission/effluent levels
- Taxes, charges, levies or fees
 - Emissions or effluent charges
 - Charges on environmentally damaging products
 - User charges for environmental/resource-based services such as water
- Subsidies, grants and tax allowances for environmentally beneficial activities
- Deposit and take-back schemes
- Tradable permits (not used in Canada)
- Voluntary agreements
- Ecolabelling programs

In many cases, a specific environmental problem (most of which can be thought of as problems of uninternalized environmental costs/benefits) will be approached by using a mixture of different types of instruments, depending on the context. Among the factors used to choose the appropriate instrument or mix of instruments are:⁸

⁸ This list is based on the discussion in Jacobs, Michael. The Green Economy: Environment, Sustainable Development and the Politics of the Future, Vancouver: UBC Press, 1993, pp 149 – 162.

1. **Effectiveness** -- how well does it protect the environment?
2. **Motivation** -- does it provide business with incentives to innovate?
3. **Administrative cost** -- how costly is it to implement, monitor and enforce?
4. **Efficiency** -- how costly is it to the firms involved, per unit of improvement?
5. **Political acceptability** -- will it have broad public support?

In any given context the answers to the above questions are likely to be different. The diversity of resulting approaches makes it almost impossible to characterize “the approach” taken by the Canadian economy to environmental cost internalization.

As a general trend, there has over the past two decades been a movement away from prescriptive instruments toward more flexible market-based incentives. But a detailed description of this dynamic and its effects on competitiveness is a major research project in its own right, and is beyond the scope of this paper.