Steve Charnovitz, Environmental Trade Measures: Multilateral or Unilateral, 23 ENVTL. POL'y & L. 154 (1993).

7) N.A.Robinson, "A Legal Perspective on Sustainable Development", in O.Saunders *The Legal Challenge of Sustainable Development* (Canadian Institute of Resources Law, Calgary, 1990) at p.15.
8) See *e.g.* Manwood's *Treaties of the Forest Law* (C.Sutt, London, fourth edition by William Shelton, of the Middle Temple, 1717).
9) See the essay by Georges Scelle, *Précis de Droits des Gens* (1932), and more generally his *Droit International Publique*; *Manuel élémentaire avec les textes essentials* (Domat-Mont chrestian, Paris, 1944).
10) *Union Electric Co. v. EPA*, 427 US 246, 96 S.Ct. 2518, 49 L.Ed. 474 (1976).

Environmental Trade Measures: Multilateral or Unilateral ?

by Steve Charnovitz *

Introduction

Barely an issue three years ago, the appropriateness of using unilateral environmental trade measures (ETMs) has erupted into a major controversy for the General Agreement on Tariffs and Trade (GATT). There is widespread agreement that multilateral ETMs, such as those in the Montreal Protocol on Substances that Deplete the Ozone Layer, are preferable to unilateral ETMs. But there is considerable disagreement as to what actions nations can take in the absence of multilateral agreements. One school of thought posits that governments should be able to use whatever unilateral ETMs they want so long as they are not discriminatory or protectionist. Another school posits that unilateral measures are disallowed by the GATT, or should be. This article will attempt to bridge the gap between the two schools by showing that the choice between multilateralism and unilateralism is, in many respects, a false one.

ETMs come in several different forms. There are import bans (*e.g.*, ivory), export bans (*e.g.*, pesticides), product standards (*e.g.*, recyclability), process standards (*e.g.*, driftnet-caught fish), and taxes (*e.g.*, energy). Some ETMs are simply the extension of a domestic regime to imports (*e.g.*, food safety). Other ETMs provide special rules for international trade (*e.g.*, endangered species). ETMs can also be used as sanctions on unrelated products, but this has not yet occurred.

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Tuna Dolphin Decision

In the recent tuna-dolphin dispute between the United States and Mexico, a GATT panel devised a new distinction between (1) ETMs relating to the domestic environment and (2) all other ETMs which the panel termed "extrajurisdictional."[1] The panel's decision, which was not adopted by the GATT Council, provoked universal criticism from the environmental community which disagreed with the notion that ecological problems can be segregated by political boundaries. As Hilary F. French noted, "It will be ironic indeed if animals like dolphins and whales, which live largely in international waters, are abandoned to the demands of commerce on the grounds that their protection violates national sovereignty."[2] In the legal community, the panel's decision received a mixed reaction. Many commentators have criticised the decision for its weak reasoning.[3]

Within the GATT, the decision was greeted with acclaim. The GATT Secretariat's annual report included a 25-page essay on "Trade and the Environment" which commended the views expressed by the panel .[4] The GATT Council was eager to adopt the report, but was prevented from doing so by the plaintiff, Mexico, which realised belatedly that winning the battle over dolphins would mean losing the battle for environmentalist support of the North American Free Trade Agreement. Once it became clear that Mexico had other fish to fry, the EC Commission filed its own complaint against the U.S. Marine Mammal Protection Act (MMPA) which is now pending before a GATT panel. The Commission took this action despite support by the European Parliament for an import ban similar to that of the United States.[5] The Commission has also disregarded a recent Parliament resolution calling for a "two-year moratorium on all GATT panel judgements concerning the environment, pending the strengthening of GATT articles and practices."[6]

UNCTAD and UNCED

Some of what Mexico failed to win at the GATT has been attained along other fronts. In February 1992, UNCTAD adopted a resolution declaring that "Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided."[7] This initiative was included in the Rio Declaration on Environment and Development (Principle 12) and, to underline the point further, was replicated in three places within Agenda 21 .[8] Nevertheless, the United States does not appear chastened.[9] In apparent disregard of these UNCED declarations, the U.S. Congress passed (and President Bush signed) three new extrajurisdictional ETMs in late 1992 regarding dolphins, wild birds and driftnet fishing. [10]

Synopsis

This article reaches four main conclusions. First, ETMs come from a wide spectrum of different sources. Thus, unilateralism versus multilateralism is not a black and white issue. Second, regardless of where standards originate they are virtually all enforced unilaterally. Third, the GATT is not hostile to unilateralism in general. Fourth, by polarising the issue, the GATT Secretariat has made it difficult to reconcile the

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competing views. Moreover, the recent submission to the GATT by the EC Commission was not fully constructive.

Sources for Standards

In thinking about the sources for environmental standards, it is useful to consider the full range of gray-scale. At one end is a purely unilateral measure like the U.S. MMPA which forbids tuna imports from countries whose fishing methods are over 25 percent more lethal than American methods.[11] See Table 1.

Next along the spectrum are standards related to treaties. The best known example is the U.S. Pelly amendment which authorises unilateral trade sanctions against countries whose nationals "diminish the effectiveness" of a multilateral agreement to protect living resources of the sea or endangered animal species.[12] In 1991, the Bush Administration threatened Japan with Pelly sanctions for trade in endangered sea turtles listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).[13] It should be noted that Japan was in full compliance with its obligations under CITES because it had invoked a reservation on these turtles when it joined. Nevertheless, the U.S. threat succeeded in persuading Japan to change its environmental policy.[14] No sanctions were imposed.

Another standard-setting source is a treaty which mandates unfavoured nation treatment for countries that fail to sign it. For example, the Montreal Protocol requires discrimination against non-signatories. But the Protocol does not and cannot derogate any nation's rights under the GATT not to be discriminated against. There is a legalistic difference between ETMs adopted by numerous countries — for example, 109 nations have ratified the Montreal Protocol — and ETMs adopted by one country. Yet from the point of view of a target nation that fails to meet an externally-imposed standard, there is

Table 1

SOURCES FOR ENVIRONMENTAL TRADE MEASURES

TYPE	EXAMPLE
National standard	Marine Mammal Protection Act
National standard relating to treaty	Pelly amendment
Multilateral standard requiring discrimination against non-parties, national enforcement	Montreal Protocol
National standard responding to treaty violation	Lacey Act
Multilateral standard responding to treaty violation, national enforcement	CITES finding on Thailand
Foreign standard, national enforcement	Tariff Act wild mammal prohibition

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no practical difference.

Further along the spectrum are standards responding to treaty violations. For example, the U.S. Lacey Act prohibits trade in fish, wildlife or plants taken or transported in violation of any treaty.[15] Because the U.S. government acts as both prosecutor and judge, target countries are critical of this kind of unilateral finding.

ETMs against treaty violators can also be triggered by a multilateral finding. In 1991, the CITES Standing Committee recommended that CITES parties prohibit all trade in endangered species with Thailand.[16] Although Thailand was a party to the treaty, it was ignoring treaty rules and, according to the CITES Secretariat, was serving as a "revolving door" for illegal trade. Shortly thereafter, the U.S. Department of the Interior used its Lacey Act authority to refuse such imports.[17]

The final point on the spectrum is a purely foreign yardstick. For example, the U.S. Hawley-Smoot Tariff of 1930 forbids the importation of wild mammals or birds (or products thereof) from a country if that country prohibits their exportation.[18] This means that unilateral action is taken to enforce a standard that a foreign government has an exclusive role in writing. Thus, it is the direct opposite of the starting point of the spectrum — that is, standards (like the MMPA) which a foreign government has little or no role in drafting.

Although a foreign government would seem unlikely to challenge a U.S. action of this type, the GATT justification for the U.S. law is unclear. Perhaps it could be justified under the GATT Article XX(d) exception for laws "not inconsistent with provisions of this Agreement, including those relating to customs enforcement..." Exceptions for the "enforcement of police or revenue laws" were common in pre-GATT bilateral trade agreements.[19] But this exception was not carried forward into the GATT.

Enforcement of Standards

Authorship of a standard is one thing; enforcement is another. But except in rare cases, *all trade measures are taken unilaterally* at the borders of either the importing or exporting country. Although the dichotomy between unilateral enforcement and multilateral enforcement is often presented as fundamental, it is useful to recall that in actuality, multilateral treaties like CITES are enforced by the individual actions of nations. While it is true that participating nations have obligated themselves by treaty to follow CITES rules in a coordinated way, any enforcement at the border is intrinsically a unilateral action taken under the authority of national laws like the U.S. Endangered Species Act.[20] There are no international CITES inspectors empowered to control trade at any border. What distinguishes CITES from the MMPA, therefore, is not the uniforms of the customs agents. Rather, it is the genealogy of the yardstick. Laws like the MMPA present the greatest challenge to the GATT because they represent the unilateral enforcement of a domestic standard.

In contrast to the implementation of treaties like CITES, there can be instances in which enforcement takes on a truly multilateral character. Recall the U.N. trade embargo of Iraq. There are also procedures in the GATT whereby the CONTRACTING PARTIES can authorise one or more GATT members to suspend the application of part or all of the General Agreement in respect to a particular member.[21] But this procedure is virtually a dead letter; it was used only once (against the United States) in 1952. Moreover, such a sanction would probably result from a situation where a country persists in using a trade restriction. There is nothing in the GATT directing sanctions against nations for persisting in "dirty" trade.[22] Thus, it seems unlikely that multilateral trade enforcement will play an important role in environmental protection.

Although the Tuna-Dolphin panel passed judgment only on the implementation of a domestic standard, the logic of the decision could rule out every method of standard setting in the spectrum discussed above. While it is often averred that imposing a multilateral restriction would be GATT-consistent, nothing in Article XX or any other GATT article gives any special status to multilateral restrictions.[23] Nor is there anything in the drafting history of Article XX(b) or (g) — GATT's environmental exceptions — to suggest special treatment for multilateral agreements.[24] Thus, if an import ban under the MMPA is GATT-illegal, an import ban under a similar Marine Mammal Protection treaty would be analogously illegal.[25] If Country A wants to export a product and Country B bans the importation of that product, then A can claim a GATT violation regardless of whether B has signed a treaty with Countries C, D, *etc.* to ban such imports.

International Obligations

There is only one circumstance in which the GATT recognises that international obligations might impinge on MFN — U.N. sanctions. GATT Article XXI (Security Exceptions) states that "Nothing in this Agreement shall be construed. . .to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security." The GATT thus differs from older trade agreements which did bow to other international obligations.

The Protocol to the International Convention Relating to the Simplification of Customs Formalities of 1923 provides that the obligations under the Convention do not in any way affect obligations under past or future international treaties relating to the "preservation of the health of human beings, animals or plants (particularly the International Opium Convention) . . ."[26] The Treaty of Commerce and Navigation between Great Britain and Germany of 1924 provides that nothing shall affect measures in pursuance of "general international conventions. . .relating to the transit, export or import of particular kinds of articles, such as opium or other dangerous drugs or the produce of fisheries . . ."[27] Since it has no provisions like these, the GATT grants no special status to trade measures taken pursuant to a treaty obligation.

While the GATT does not automatically yield to another treaty, there may be ways that an environmental treaty can supersede GATT's jurisdiction. Under the Vienna Convention on the Law of Treaties, a more recent treaty could prevail over the GATT in certain circumstances.[28] For instance, it is often suggested that the 1973 CITES

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treaty would take priority over the 1947 GATT in areas where their provisions conflict.[29]

There are several problems with this scenario. First, CITES could be read as yielding to other international agreements relating to trade. CITES states: "The provisions of the present Convention shall in no way affect...the obligations deriving from, any treaty, convention or international agreement relating to other aspects of trade, taking, possession, or transport of specimens...including any measure relating to the Customs, public health, veterinary or plant quarantine fields."[30] Second, consideration must be given to the 20 members of GATT who are not members of CITES. Their GATT rights cannot be extinguished by a treaty they do not sign.[31] Third, the numerous holes in CITES in the form of 160 reservations by 27 countries would greatly complicate an attempt to "graft" CITES onto the GATT.

Another way GATT's jurisdiction can be overridden is if customary international law or the international environmental "regime" supersedes GATT rules. In a few cases, no dilemma exists because environmental treaties explicitly yield to international law. For example, under the Wellington Convention on Driftnets, both the mandatory and discretionary import restrictions are required to be "consistent with international law."[32] Further discussion of customary international law is beyond the scope of this study.[33]

Unilateralism and the GATT

The GATT is not inherently hostile to unilateralism. It gives automatic authorisation for the unilateral imposition of antidumping duties against foreign private pricing decisions that cause economic harm to one's industry.[34] It gives automatic authorisation for the unilateral imposition of countervailing duties against foreign government subsidisation that causes economic harm to one's industry.[35] In both cases, such duties are discriminatory since subsidised and unsubsidised widgets are "like" products. In both cases, such duties are extrajurisdictional.

The GATT also entertains monetary unilateralism. GATT parties may undertake currency interventions on a unilateral basis even though such actions have extrajurisdictional impact and have a direct effect on trade flows.[36] In addition, the GATT authorises unilateral suspension of obligations under the "escape clause," and unilateral retaliation against an escape clause action so long as the GATT Council does not disapprove.[37]

If the GATT is not hostile to commercial unilateralism for the protection of domestic industry, why should it be hostile to non-commercial unilateralism for the protection of the planet's environment? One answer is that the GATT was never meant to be hostile to the environment. GATT's environmental exceptions in Article XX exist expressly to allow governments to impose unilateral trade restrictions. (Of course, such action is subject to the specific prerequisites in Article XX's headnote.) Indeed, the unilateral and extrajurisdictional character of Article XX was rarely questioned until the Tuna-Dolphin dispute.

Ban Unilateralism School

The songbook of the "Ban Unilateralism School" is the recent report by the GATT Secretariat.[38] As legal scholar Richard B. Stewart has observed, "Its tone is disappointingly defensive and doctrinaire, reinforcing environmentalists' antipathy to GATT."[39] Yet the Secretariat's report appears to be in sync with the thinking of the EC Commission, which recently told GATT's Group on Environmental Measures and International Trade that "there is no justification to require by unilateral trade restrictions that imported products conform with domestic regulations relating to the production method if production abroad is unrelated to environmental damage caused in the country of importation."[40] This leads to the following question: Would forbidding unilateral ETMs be fruitful from an environmental or economic perspective?

While it is sometimes argued that a ban on unilateralism would foster multilateralism, this proposition lacks any empirical support. If the nations utilising ETMs were the ones dodging multilateral rule-making, then banning unilateralism might be efficacious. But if the nations objecting to unilateral ETMs are the same ones resisting multilateral agreements, then forbidding unilateralism will simply sustain environmental gridlock. Far from fostering multilateral cooperation, a ban on unilateralism would tend to frustrate treaty-making. After all, many key environmental agreements were preceded by national unilateral action, such as fur seals, CITES, and driftnet fishing.

Although the Commission criticises unilateral extrajurisdictionality, its real view is better indicated by what it does, not what it says. Consider the EC regulation banning fur imports (effective in 1995) from countries which permit the use of leg-hold traps.[41] By delaying the effective date, the regulation is designed to put pressure on the United States and Canada to cooperate in the development of "internationally agreed humane trapping standards."[42]

Since the production method of fur in Alaska is surely "unrelated to environmental damage caused" in Europe, this regulation contradicts the EC's submission to the GATT. In an interesting role reversal, the Bush Administration criticised this regulation last year for not allowing enough time (it allows over three years) for the development of new international standards.[43] Thus, it appears that although both the EC and the U.S. act as though unilateralism can facilitate multilateralism, neither party can resist objecting to the other's unilateralism when it is convenient to do so.[44]

Hardly anyone who opposes unilateralism would endorse the opposite dictum - namely, that no government should act on the environment unless all other governments are prepared to take equivalent action. Denying environmental self-defense would be unthinkable. Nevertheless, there is support for a rule that no government should act on the environment *whenever that affects another country' s exports* unless all governments are prepared to take equivalent action. There is also support for a rule that no government should act on the environment *outside its jurisdiction* unless all governments are prepared to take equivalent action. But both of these rules would infringe upon the right (and perhaps the obligation) of governments to protect the life and health of their populations and to

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preserve the sustainability of the ecosystem.

Uruguay Round

The campaign against unilateralism is also problematic from an economic perspective. There is a chance that the long-stalled Uruguay Round can be completed this year. Doing so is important because a new wave of trade liberalisation could pull the world economy out of the doldrums. But support for the Round has been threatened, particularly in the United States, by GATT's anti-environment reputation and by the new restrictions on ETMs being proposed in the pending agreement.[45] Consider what Governor Clinton and Senator Gore said during the recent electoral campaign: "We also believe that no trade agreement should preclude the United States from enforcing non-discriminatory laws and regulations affecting health, worker safety, and the environment. We will not allow the Uruguay Round to alter U.S. laws and regulations through the back door."[46]

In evaluating the economic impact of ETMs, one needs to consider what could happen to the world economy if more nations utilised them. Perhaps the trading system can absorb a little unilateralism by the U.S. and the E.C. But what if every nation acted unilaterally to safeguard its "sacred cows"? Unlike trade protectionism which diminishes general welfare, high environmental standards will not reduce world commerce significantly or undermine the trading system so long as two prerequisites are met. First, an ETM must apply to all countries equally, including the country which imposes it. Second, an ETM must not be protectionism in disguise. Happily, both of these prerequisites are already contained in GATT Article XX.

GATT and Multilateralism

As explained above, the idea that multilateralism is good and unilateralism is bad is simplistic and misleading. First, there is no rigid dividing line between the two. All ETMs are at least a little unilateral. Second, unilateral measures can be a stepping stone to more effective multilateral measures. Without unilateralism, there may be much less multilateralism. Third, the campaign against unilateralism is undermining the GATT.

In addition to these reasons, there is another problem with pure multilateralism. If the Tuna-Dolphin report is correct about ruling out extrajurisdictionality, then, by the same logic, most multilateral environmental treaties (using trade controls) are GATT-illegal too. Given the GATT Council's unwillingness to reject the Tuna-Dolphin report environmentalists have drawn the conclusion that GATT presents an ecological threat. To quote an environmental primer on trade, "While reporters flocked to Rio, a small group of bureaucrats in Geneva were at work on a document that could nullify all of the treaties and declarations signed at the Earth Summit."[47]

Although the EC's report recognises the potential GATT- inconsistency of environmental treaties, the Commission suggests, in effect, that treaty participants can just bully the GATT via a "collective interpretation" of Article XX.[48]

To defend multilateral treaties, the Commission could have pointed out the historical errors in the Tuna-Dolphin report or its logical fallacies. The Commission could also have shown how the report is unacceptable on environmental grounds, citing leg-hold traps as an example.

Instead, the Commission rejects a rules-based approach to trade law in declaring that "The concept of unilateral 'extrajurisdictional' protection is of no relevance" with respect to treaties.[49] What the Commission seems to endorse is a Most Favourite Treaty approach. The more popular a treaty, the less one cares about GATT rules.

The issue of the GATT-legality of trade discrimination in environmental treaties has become more important in view of new evidence regarding the effectiveness of such discrimination. During the first nine months of 1992, twelve nations ratified the Montreal Protocol. But during the last three months of the year, twelve more did. And in January 1993, an additional five nations ratified. Why the sudden increase? Probably because as of 1 January, the treaty prohibited the export of CFCs to non-parties.[50]

Conclusion

The choice between unilateral and multilateral ETMs is a false one. Both approaches are useful and necessary. Either approach would be less effective were the other not to exist. Determining the proper mix between the two is a difficult problem. Unfortunately, the recent reports by the GATT Secretariat and the EC Commission becloud more than they enlighten.[51]

In an effort to boost the Uruguay Round, many government officials and trade policy gurus are attempting to seduce the support of environmentalists by promising that their concerns will be addressed in an upcoming "Green Round" of trade negotiations. Whether such promises should be taken at face value is unclear. For environmentalists, there may be both good news and bad news. The good news is that the GATT has finally recognised that it must deal with the reality of trade-led environmental degradation. The bad news is that the Uruguay Round may be GATT's last.[52] ❐

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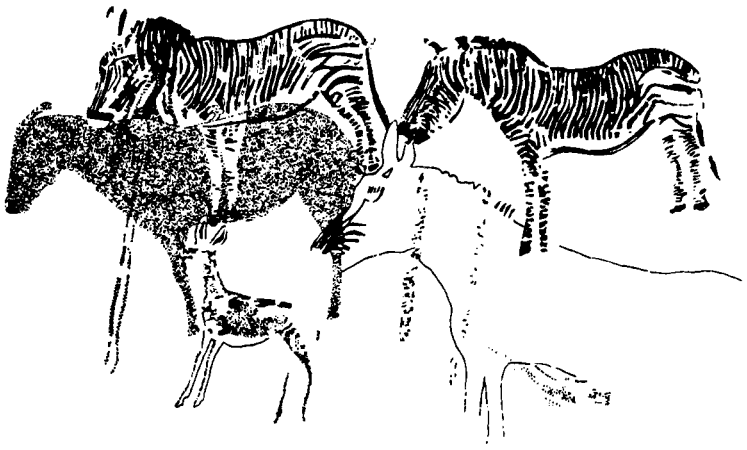
Notes

1. GATT 1991, paras. 5.24-5.34.
2. French 1993, pp. 45-46.
3. For example, see Dunoff 1992, pp. 1415-21.
4. GATT Secretariat 1992, pp. 19-43.
5. *"European Parliament Calls for EC Ban on Imports of Tuna Caught in Purse-Seines"*, International Trade Reporter 8:1739(1991).
6. Parliament Resolution A3-0329/92. See *"EC Parliament Proposes Two-Year Moratorium on GATT Panel Environmental Decisions,"* International Trade Reporter 10:136 (1993).
7. UNCTAD 1992, para. 152.
8. UNCED 1992, Chapters 2:22(i), 17:118, and 39.3(d).
9. See Buckley 1992, p. 327, who suggests that democratically governed nations may be expected to ignore the Tuna-Dolphin panel's interpretations.
10. For an analysis of these new laws, see Charnovitz 1993.
11. Marine Mammal Protection Act, codified at 16 U.S.C. 1371 (a)(2)(B)(II).
12. The Pelly amendment (85 Stat. 786-87) amends the Fishermen's Protective Act of 1967 (enacted in 1968), current version codified at 22 U.S.C. 1978.
13. See *"Message to the Congress on Japanese Importation of Sea Turtles,"* Weekly Compilation of Presidential Documents, 17 May 1991, p.621.
14. See David E. Sanger, *"Japan, Backing Down, Plans Ban on Rare Turtle Import,"* The New York Times, 20 June 1991, p.A1.
15. Lacey Act Amendments of 1981, codified at 16 U.S.C. 3372(a)(1).
16. CITES Secretariat, Thailand Ban on Wild Fauna and Flora, 12 April 1991, Lausanne. This restriction on Thailand has since been lifted.
17. See 56 Federal Register 32260.
18. Tariff Act of 1930, § 527, codified at 19 U.S.C. 1527. The Lacey Act can also be used. About 100 shipments of foreign coral are seized each year by the U.S. Fish and Wildlife Service.
19. For example, the Reciprocal Trade Agreement between the United States and the United Kingdom, 1938, 54 Stat.1897, 1904 (not in force).
20. There may be monist regimes in which CITES is self-implementing and provides sufficient authority for trade controls.
21. Article XXIII:2 (Nullification and Impairment). While the GATT cannot mandate retaliation, it can authorise countries to undertake unilateral or coordinated retaliation.
22. But the GATT as written is flexible enough to justify such a sanction if the CONTRACTING PARTIES decide that such dirty trade "nullified or impaired" GATT benefits. Moreover, under Article XXIII:1, while a violation of the GATT can justify retaliation, so can "any other situation."
23. See the point made by the United States in GATT 1991, para.3.32.
24. See Charnovitz 1991, p.54.
25. The Tuna-Dolphin panel (para. 5.28) indicates that "international cooperative arrangements" would be GATT-consistent. But this refers to an arrangement to stop dolphin killing, not to an arrangement to use trade restrictions to prevent commerce in dolphin-unsafe tuna.
26. 30 L.N.T.S. 373, 409, para.1. Under the International Opium Convention, parties were to prohibit the importation of prepared opium at once and its exportation as soon as possible.
27. 119B FSP 369.
28. Vienna Convention on the Law of Treaties, 1969, Article 30, reprinted in 8 I.L.M. 679, 691. The more recent treaty rule (Article 30:1) applies to treaties on the same subject-matter. It is unclear whether GATT and CITES concern the same subject.
29. For example, see McDorman 1992, pp.484-87.
30. CITES, 993 U.N.T.S. 243, Article XIV:2. It could be argued that the GATT relates to "other aspects of trade...of specimens... relating to the Customs" regime.
31. Imagine that a small group of GATT parties got together and agreed upon a treaty to impose autarkic trade policies. It would be a difficult claim that such a treaty overrides the GATT obligations of this group to other GATT parties.
32. Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, 1990, reprinted in 29 I.L.M. 1454, Articles 3(1)(b) and 3(2). The GATT probably qualifies as "international law", but the matter is not completely clear.
33. See McDorman 1991, pp. 507-11 and Cameron 1991, pp.15-18.
34. GATT Article II:2b.
35. These national actions are reviewable by the GATT under Article XV:4 and XV:5. They are also reviewable by the International Monetary Fund under IMF Article IV.
37. See GATT Article XIX:1 and XIX:3.
38. For a critique of the GATT report, see Charnovitz 1992.
39. Stewart 1992, p. 1349.
40. European Community 1992, p.S-3.
41. Council regulation No. 3254/91, 1991 O.J.(L.308).
42. *Id.*
43. U.S.Trade Representative 1992, p.73.
44. It is interesting to note that under EC law, the notion of "environment" is not limited to the national environment of each Member State. See Krämer 1993, p.136.
45. For a discussion of the agreement, see WWF 1993.
46. Clinton, B. and Gore, A. 1992, p.157.
47. Wathen 1992, p.1.
48. European Community 1992, p.S-3.
49. *Id.* p.S-4.
50. Montreal Protocol, Article 4:2, reprinted in 26 I.L.M 1541 and 30 I.L.M. 537.
51. This is not to suggest that the U.S. government's actions have been positive. Throughout 1991 and 1992, the Bush Administration failed to present a coherent trade and environment policy and also failed to work with Congress in revising U.S. ETMs that clearly violate the GATT.
52. See von Moltke 1993.



Cave drawing in Brandberg. Source : Bild der Wissenschaft

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