

学校编码: 10384
学 号: 13620081150748

分类号
密级
UDC

厦 门 大 学

硕 士 学 位 论 文

NAFTA 下的环境法制研究

A Research on the Environmental Legislation of North
American Free Trade Agreement

廖 昌 军

指导教师姓名: 韩秀丽副教授
专 业 名 称: 国 际 法 学
论文提交日期: 2011年4月17日
论文答辩时间:
学位授予日期:

答辩委员会主席:

评 阅 人:

2011年04月

厦门大学学位论文原创性声明

本人呈交的学位论文是本人在导师指导下,独立完成的研究成果。本人在论文写作中参考其他个人或集体已经发表的研究成果,均在文中以适当方式明确标明,并符合法律规范和《厦门大学研究生学术活动规范(试行)》。

另外,该学位论文为()课题(组)的研究成果,获得()课题(组)经费或实验室的资助,在()实验室完成。(请在以上括号内填写课题或课题组负责人或实验室名称,未有此项声明内容的,可以不作特别声明。)

声明人(签名):

年 月 日

厦门大学学位论文著作权使用声明

本人同意厦门大学根据《中华人民共和国学位条例暂行实施办法》等规定保留和使用此学位论文，并向主管部门或其指定机构送交学位论文（包括纸质版和电子版），允许学位论文进入厦门大学图书馆及其数据库被查阅、借阅。本人同意厦门大学将学位论文加入全国博士、硕士学位论文共建单位数据库进行检索，将学位论文的标题和摘要汇编出版，采用影印、缩印或者其它方式合理复制学位论文。

本学位论文属于：

1. 经厦门大学保密委员会审查核定的保密学位论文，
于 年 月 日解密，解密后适用上述授权。

2. 不保密，适用上述授权。

（请在以上相应括号内打“√”或填上相应内容。保密学位论文应是已经厦门大学保密委员会审定过的学位论文，未经厦门大学保密委员会审定的学位论文均为公开学位论文。此声明栏不填写的，默认为公开学位论文，均适用上述授权。）

声明人（签名）：

年 月 日

厦门大学博硕士学位论文摘要库

内 容 摘 要

美国、加拿大和墨西哥组成的北美自由贸易区是世界上典型的将贸易投资与环境保护相结合、并致力于促进可持续发展的区域性经济一体化组织。三国签署的《北美自由贸易协定》(North American Free Trade Agreement, NAFTA) 比较注重贸易投资与环境的关系, 并签订了其附属协定《北美环境合作协定》(The North American Agreement on Environmental Cooperation, NAAEC), 作为对 NAFTA 环境法制的补充。

事实表明, NAFTA 有关环境法制的构建, 与此前关于贸易投资与环境的国际条约相比, 有相当大的进步: 如允许缔约国不同的环境标准, 提供环境争端解决机制等。不过, NAFTA 的环境法制在运作过程中也出现了诸多问题: 如国家环境主权与公共政策权威遭遇挑战, NAFTA 中有关环境法制的部分条文及用于比较模糊等。这些问题的存在不同程度的影响了 NAFTA 环境法制的运行效果。在新的经济全球化背景 and 环境保护的潮流之下, 如何看待 NAFTA 取得的成就与存在的问题, 如何对其进行趋利避害的抉择和完善, 就有着重要的理论与现实意义。

在本文中, 笔者将分三大主要部分来深入分析 NAFTA 的环境法制。第一章在世界经济发展潮流的大背景及北美三国间贸易投资、环境、经济发展的个性特征下探讨 NAFTA 下环境法制之源起及其法制建构, 为后章的行文和分析打下基础。在第二章将着重讨论 NAFTA 下环境法制所取得成就及其存在的问题。而在文章第三部分, 作者将对第二章中所分析的有关 NAFTA 存在的问题, 提出解决这些问题的对策和方案。而在文章最后的结语部分, 作者主要讨论对 NAFTA 的研究和分析对目前正在进行的多哈回合环境谈判以及中国正在谈判和将要谈判的自由贸易区之借鉴和参考价值。

关键词: 北美自由贸易协定; 环境法制; 问题与对策

ABSTRACT

North American Free Trade Area, which is combined by United States, Canada and Mexico, is a typical organization of integration of economy that hangs environment, trade and investment to promote sustainable development. NAFTA signed by the above three countries especially pay attention to the relationship between environment and trade(investment),and come into being a side agreement-North American Agreement on Environmental Cooperation, which is the supplement agreement of NAFTA.

In fact, the contracture of NAFTA on environment legality presents fairly improvements comparing to the international environment and trade law signed before such as respecting the environment sovereignty of signatory states, providing a reasonable environmental conflict's solution mechanism. However, NAFTA also appears a few problems in process of operation, for example: national sovereignty and public policy suffer challenges; Investor to State Dispute-settlement Mechanism (short for ISDM) exists many bugs etc...Existence of these defects more or less effects the operation of NAFTA. Under the age of a new world, how to treat the imperfections and achievements that existed in NAFTA, how to tend benefits and avoid the flaws of NAFTA, have important realistic significance.

This text will be divided into three parts to analyze the environment law of NAFTA. The first chapter will discuss NAFTA's environmental legal system under the new back ground of world economy and own character of North American. The second chapter will analyze NAFTA of its problems and achievements. In last chapter, I will put forward solutions to counterplan these problems on the basis of the second part, in order to provide available ideas for NAFTA in a totally new society. And in the part of conclusion, the author will mainly discuss the value and importance of researching the environmental

legality of NAFTA on the FTA that China has been negotiating with other countries such as Australia, Iceland and the Doha round negotiation of environment that WTO members have being going on.

Key Words: NAFTA; Environment; Problems and Measure.

厦门大学博硕士论文摘要库

缩略语表

North American Free Trade Agreement	NAFTA
North American Agreement on Environmental Cooperation	NAAEC
North American Committee of Environment Cooperation,	NACEC
Investor-State Dispute-settlement Mechanism	ISDM
State-State Dispute-settlement Mechanism	SSDM
Joint Public Advisory Committee	JPAC
National Advisory Committee	NAC
Governmental Advisory Committee	GAC
The Border Environment Cooperation Commission	BECC
North American Development Bank	NADB
Sanitary and Phytosanitary Measures	SPS
Technical Barriers to Trade	TBT
Multi-Environment Agreements	MEAs
Free Trade Commission	FTC
Environmental Non-governmental Organizations	ENGOs
North American Fund of Environment Cooperation	NAFEC
Multi-Environment Agreements	MEAs

文中援引的法律条文和案例表

条款及案例	条文及案例内容及其中文翻译
NAFTA (NAFTA) 条款	
Preamble	<p style="text-align: center;">The Government of Canada, the Government of the United Mexican States and the Government of the United States of America, resolved to:</p> <p style="text-align: center;">PROMOTE sustainable development; TRENGTHEN the development and enforcement of environmental laws and regulations;</p> <p style="text-align: center;">译文：加拿大、墨西哥和美国三国签订此协定，并致力于：促进可持续发展及加强环境法律法规的制定与实施。</p>
Article 103	<p style="text-align: center;">(2) In the event of any inconsistency between this Agreement and such other agreements, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.</p> <p style="text-align: center;">译文：如果这个协定（NAFTA）与其他某些协定不一致的，则此协定所确定的内容效力优先，本协定另有规定的除外。</p>
Article 104	<p style="text-align: center;">Relation to Environmental and Conservation Agreements</p> <p style="text-align: center;">1. In the event of any inconsistency between this Agreement and the specific trade obligations set out in:</p> <p style="text-align: center;">a) the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3,1973,as amended June 22,1979,</p> <p style="text-align: center;">b) the Montreal Protocol on Substances that Deplete the Ozone Layer, done at Montreal, September 16,1987,as amended June 29, 1990,</p>

	<p>c) the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, done at Basel, March 22, 1989, on its entry into force for Canada, Mexico and the United States, or</p> <p>such obligations shall prevail to the extent of the inconsistency, provided that where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement.</p> <p>译文：与其他环境保护条约的关系</p> <p>如果缔约国依据 NAFTA 下应承担的义务与下述条约中所应承担的义务有任何不一致的情况下：</p> <p>a)1973 年 3 月在华盛顿签订的《濒危野生动植物种国际贸易公约》；</p> <p>b)1990 年 6 月在蒙特利尔签订的《蒙特利尔破坏臭氧层物质管制议定书》；</p> <p>c)以及 1989 年 3 月在瑞士巴塞尔签订的《控制危险废料越境转移及其处置巴塞尔公约》</p> <p>成员国应优先承担上述三个条约中的有关义务。但如果存在更加有效的措施能够降低 NAFTA 与国际环境协定之间的冲突，各缔约国应采取最小冲突的方式。</p>
Article 904	<p>Each Party may, in pursuing its legitimate objectives of safety or the protection of human, animal or plant life or health, the environment or consumers, establish the levels of protection that it considers appropriate in accordance with Article 907(2).</p> <p>译文：每个成员国都可在追求其本国的人身健康、动植物安全、环境保护或者消费者权益保护方面的目标为前</p>

	<p>提下，建立其本国的环境保护水平。</p>
Article 1118	<p>The disputing parties should first attempt to settle a claim through consultation or negotiation.</p> <p>译文： 争端成员国之间必须首先通过磋商和谈判的形式来解决其间存在的争议。</p>
Article 2006	<p>1. Any Party may request in writing consultations with any other Party regarding any actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.</p> <p>2. The requesting Party shall deliver the request to the other Parties and to its Section of the Secretariat.</p> <p>译文： 只要当其他成员国存在任何或者将要实施某种有损于本协定实施的措施，任何一方都可以书面请求与其他成员国进行磋商。</p>
NAAEC (NAAEC) 条款	
Preamble	<p>Government of Canada, the Government of the United Mexican States and the Government of the United States of America: Convinced of the importance of the conservation, protection and enhancement of the environment in their territories and the essential role of cooperation in these areas in achieving sustainable development for the well-being of present and future generations;</p> <p>译文：加拿大、墨西哥与美国政府都意识到保护其本国领土范围内环境之重要性，也认识到在北美地区为达到当前与后代之可持续发展的重要性。</p>
Article 1	<p>Objectives: The objectives of this Agreement are to:</p> <p>(a) foster the protection and improvement of the</p>

	<p>environment in the territories of the Parties for the well-being of present and future generations;</p> <p>(b)promote sustainable development based on cooperation and mutually supportive environmental and economic policies;</p> <p>(c)increase cooperation between the Parties to better conserve, protect, and enhance the environment, including wild flora and fauna;</p> <p>(d)support the environmental goals and objectives of the NAFTA;...</p> <p>译文：《北美环境合作协定》之目标</p> <p>为了保护当代以及子孙后代之可持续发展而保护和改善三国领土范围之内环境；</p> <p>促进在环境与经济政策方面的合作与互助基础之上的可持续发展；</p> <p>增加三国之间关于保护环境与提高包括野生动植物在内的环境质量之合作；</p> <p>以及实现和支持 NAFTA 中所设定的环境目标和任务。</p>
<p>Article 3</p>	<p>Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and regulations, each Party shall ensure that its laws and regulations provide for high levels of environmental protection and shall strive to continue to improve those laws and regulations.</p> <p>译文：考虑到成员国都有权利建立起自己国内的环境保护标准与环保政策的优先级别，以及制定或修改其有关环境法规的权利，每个国家都应该保障其所制定的环境法</p>

	<p>规致力于高水平的环境保护之建设，并且要不断地更新和完善这些环境法规。</p>
<p>Article 8 (1)(2)</p>	<p>1.The Parties hereby establish the Commission for Environmental Cooperation.</p> <p>2. The Commission shall comprise a Council, a Secretariat and a Joint Public Advisory Committee.</p> <p>译文： a) 成员方一致建立环境合作委员会(NACEC) b) 委员会由理事会，秘书处和 JPAC 组成。</p>
<p>Article 16 (1)(2)</p>	<p>1. The Joint Public Advisory Committee shall comprise 15 members, unless the Council otherwise decides. Each Party or, if the Party so decides, its National Advisory Committee convened under Article 17, shall appoint an equal number of members.</p> <p>译文： JPAC 一般由 15 个成员组成，理事会另有决定除外。每个成员国派出的人员数目是相同的，由成员国国民咨询委员会召集商讨委任。</p>
<p>Article 17</p>	<p>Each Party may convene a national advisory committee, comprising members of its public, including representatives of non-governmental organizations and persons, to advise it on the implementation and further elaboration of this Agreement.</p> <p>译文： 每个成员国可以召集由其国民公众组成的国民咨询委员会，具体包括非政府环境组织的代表以及个人等。其功能是对 NAAEC 的实施或者对本协定的进一步解释提供建议。</p>
<p>Article 18</p>	<p>Each Party may convene a governmental committee, which may comprise or include representatives of federal and state or provincial governments, to advise it on the implementation and further elaboration of this Agreement.</p>

	<p>译文：成员国还可以建立政府咨询委员会，其成员可由包括各联邦以及州政府官员或者省级政府的官员代表组成。其功能相同于国民咨询委员会，也是对 NAAEC 的实施或者对本协定的进一步解释提供建议。</p>
Article 22	<p>1. Any Party may request in writing consultations with any other Party regarding whether there has been a persistent pattern of failure by that other Party to effectively enforce its environmental law.</p> <p>2. The requesting Party shall deliver the request to the other Parties and to the...</p> <p>译文：成员国如果认为其他任何一方存在或者认为存在有实施其环境法律构成持续不利的情形时，均可请求与其进行书面的磋商。</p>
文中所涉案例	
Metalclad Corp. v. Mexican	<p>The Metalclad Corporation, a U.S. waste disposal company, instituted arbitration proceedings against Mexico under the ICSID Additional Facility Rules. Metalclad alleged breaches of NAFTA Articles 1102, 1103, 1104, 1105, 1106(1)(f), 1110 and 1111. Its notice of arbitration asserted that Mexico wrongfully refused to permit Metalclad's subsidiary to open and operate a hazardous waste facility that Metalclad had built in La Pedrera, San Luis Potosi, despite the fact that the project was allegedly built in response to the invitation of certain Mexican officials and allegedly met all Mexican legal requirements. The notice sought damages of US\$43, 125, 000 “plus damages for the value of the enterprise taken.”...</p>
Methanex Corp.	<p>Methanex Corporation, a Canadian marketer and distributor of methanol, submitted a claim to arbitration under</p>

<p>v. United States of America</p>	<p>the UNCITRAL rules on its own behalf for alleged injuries resulting from a California ban on the use or sale in California of the gasoline additive MTBE. Methanol is an ingredient used to manufacture MTBE. Methanex contended that a California Executive Order and the regulations banning MTBE expropriated parts of its investments in the United States in violation of Article 1110 denied it fair and equitable treatment in accordance with international law in violation of Article 1105, and denied it national treatment in violation of Article 1102. Methanex claimed damages of \$970 million....</p>
<p>Ethyl Corp. v. Government of Canada</p>	<p>On April 15, 1997, Ethyl Corporation, a Virginia corporation with a Canadian subsidiary, submitted a claim under the UNCITRAL Rules on its own behalf to arbitration against Canada. Ethyl claimed that a Canadian statute banning imports of the gasoline additive MMT for use in unleaded gasoline breach Chapter Eleven's requirement of national treatment (Article 1102), prohibition of expropriation (Article 1110) and prohibition of performance requirements (Article 1106).</p> <p>A Canadian court subsequently found the act to be invalid under the Canadian law, and Canada and Ethyl settled the Chapter Eleven claim.</p>

目 录

引 言.....	1
第一章 NAFTA 环境法制总体分析	2
第一节 NAFTA 环境法制的源起.....	2
一、NAFTA 签订前北美三国的环境合作	2
二、北美三国多边环境法制的正式形成.....	4
第二节 NAFTA 的环境法制建构.....	5
一、NAFTA 环境法制的机构建设	5
二、NAFTA 环境法制与相关领域的协调	7
三、NAFTA 环境争端解决的多重机制	10
第二章 NAFTA 环境法制建构的辩证分析	18
第一节 NAFTA 环境法制的成就.....	18
一、NAFTA 环境法制自身的成就	18
二、NAFTA 签订后的经济与环境效益	25
第二节 NAFTA 环境法制存在的问题.....	26
一、NAFTA 环境法制实体方面的问题	27
二、NAFTA 环境法制程序方面的问题	30
第三章 NAFTA 环境法制主要问题之对策	33
第一节 实体方面的解决对策	33
一、协调 NAFTA 及其附属协定中的环境条款	33
二、平衡私人投资者及国家公共利益以维护国家环境主权.....	34
三、增强 NAFTA 环境法制的透明度	36
第二节 程序方面的解决对策	38
一、促进 FTC 与 NAAEC 间的交流与合作	38

Degree papers are in the "[Xiamen University Electronic Theses and Dissertations Database](#)". Full texts are available in the following ways:

1. If your library is a CALIS member libraries, please log on <http://etd.calis.edu.cn/> and submit requests online, or consult the interlibrary loan department in your library.
2. For users of non-CALIS member libraries, please mail to etd@xmu.edu.cn for delivery details.

厦门大学博硕士学位论文摘要库