

Such sanctions are not automatically at odds with international trade rules. The experience in enforcing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) offers a positive example of the use of trade measures to enforce environmental objectives. Depletion in the numbers of an endangered species such as the African elephant may be directly linked to demand for and trade in ivory. In such an event, the solution lies to a large extent in eliminating or strictly controlling that trade through trade restrictions. There has not been much international conflict about either the goal or the means in such an obvious trade-linked example. The Convention is a well established instrument and the need to use trade restrictions along these lines is well provided for in international trade law.<sup>11</sup> Similarly, many countries have since 1906 enforced an international ban on trade in matches made with white phosphorus as a result of an international agreement that recognized the dangers in the manufacturing process involved.<sup>12</sup>

Conflict may arise, however, when there is insufficient international consensus on either the environmental objectives being sought or on the need for trade restrictions to ensure compliance. Trade restrictions aimed not only at enforcing compliance by signatories but also at gaining broader participation may be challenged by non-participants on grounds of discrimination. The Montreal Protocol on Substances which deplete the Ozone Layer, for example, imposes more onerous trade restrictions on non-signatories than signatories in an effort to expand participation and prevent the relocation or expansion of production of the banned substances in non-signatories. Its trade provisions may well be open to challenge by non-signatories.

Even more difficult is the use of trade sanctions by one state or a few in order to influence the environmental policies of other states. Whatever the merits of the environmental objective being sought, the unilateral use of sanctions by a powerful country or by a group of countries sets a potentially dangerous precedent for the validity of international rule making and enforcement. It undermines the important principle that trade measures should not be used to force acceptance of other countries' policies and values except under extreme circumstances and then only when sanctioned by an international body such as the UN Security Council.

The effective use of trade sanctions to enforce compliance with internationally agreed environmental standards thus requires at least three elements: wide acceptance of the standard being enforced, broad consensus on the most appropriate and effective instrument needed to gain compliance, and broad agreement

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11 "Trade and Environment: Factual Note by the Secretariat," GATT document L/6896 of 18 September, 1991 provides a good description of CITES from a trade policy perspective.

12 Steve Charnovitz, "Exploring the Environmental Exceptions in GATT Article XX," *Journal of World Trade Law*, vol. 25, no. 5 (October, 1991), provides a number of historical examples of successful environment-based trade restrictions.