

For its part, the North American Agreement on Environmental Cooperation introduces the concept of fines (euphemistically called "monetary enforcement assessments") as the primary penalty waiting at the end of a carefully crafted dispute settlement mechanism meant to address a Party's persistent pattern to effectively enforce its environmental law.⁵⁹ In face of a U.S. or Mexican failure to pay such a monetary assessment, another Party may ultimately suspend NAFTA (i.e., trade-related) benefits no greater than the level of the assessment. This twist was not acceptable to Canada for cases when Canadian practice might be found wanting. Instead, Canada agreed to have the fine (a maximum of U.S. \$20 million) made enforceable by the three country Commission through the appropriate domestic court in Canada on a summary proceedings basis not subject to domestic review or appeal.⁶⁰ When pressed, creative, non trade-related solutions can be found.

The trade and environment debate over recent years is gradually obliging policy makers to review more carefully the range of positive and disciplinary measures that can be brought into play to strengthen the seriousness with which countries enter into binding international environmental commitments. Clearly, the menu of mechanisms is broader than the narrow focus on trade (and especially trade in goods) initially suggested. This is not to say that trade sanctions should not be contemplated in any circumstance. However, for a trade dependent, medium-sized economy such as Canada, it is somewhat reassuring that the international debate on sanctions is gradually widening to focus on a menu of options. Nonetheless, the necessary link to a well constructed, effective dispute settlement mechanism is still insufficiently understood, much less accepted.

5. AFTERTHOUGHTS

One critical litmus test of how the environmental and trade communities have begun to bridge their initial differences is the degree to which both groups can work together to ensure the ultimate compatibility of evolving IEA sanctions with rights and obligations found in other kinds of international agreements. In the case of trade in goods, this means the General Agreement on Tariffs and Trade in the first instance.

⁵⁹ See "North American Agreement", Part Five, and particularly Articles 34-36 and Annexes 36A and 36B. Of course, the environmental side agreement does not address the matter of sanctions against non-Parties.

⁶⁰ *Ibid.*, Annex 36A. Note that the Maastricht Treaty provides (in Article 171(2)) for fines to be imposed by the European Commission if Member States fail to implement judgements of the European Court of Justice. This provision applies, *inter alia*, to environmental laws and regulations at the Community level.