

(ii) Trade Policy Responses:

Four considerations might be of use when addressing trade and environment policy decisions in future.

First, the trade policy community often casts the debate in terms of concern over extraterritoriality. It might be more helpful to identify consistently and up front that the essence of the danger is unilateral action, one country deciding to apply its (perhaps appropriate, perhaps not) standards on another country with no rule or procedures except its own. However, if trading partners can develop common rules, then the extraterritorial reach of sanctions is unobjectionable in principle.

Second, the public and political pressures to use trade sanctions and to reflect environmental concerns more clearly in trade agreements can only increase.

Third, there is a crying need for the trade policy community to get out in front of the environmental wave with innovative, well-reasoned proposals if it hopes to shape public debate effectively so that fundamental Canadian trade and economic interests are not jeopardized.

Fourth, the domestic consultative process on NAFTA and the environment initiated in mid 1991 clearly demonstrated that trade negotiators and environmentalists can work together constructively. The NAFTA usefully breaks ground in a number of areas and in a manner sensitive to both trade and environmental concerns, including the broad precedence of the trade provisions of selected international environmental agreements to the extent of any inconsistency with NAFTA obligations, the right of the responding Party in a formal dispute raising a range of trade-related environmental issues to choose the trade forum where the dispute will be heard (either GATT or NAFTA), and an important statement of principle that Parties should not derogate from their domestic environmental standards in order to attract a specific investment.

More specifically:

Domestic Environmental and Health Standards

Current GATT Article XX exceptions permitting import restrictions to protect domestic human, animal or plant life or health and to conserve natural resources, as well as GATT disciplines on industrial standards and phytosanitary measures (as improved in the MTN and NAFTA), generally strike the right balance between trade and the environment. These provisions clearly provide a government with powerful,