

the failure of governments to justify the necessity for differentiating between domestic and imported products.

A second problem may arise if the measure regulates the process by which a product is produced, rather than the product itself. If the domestic and imported products is indistinguishable but the process by which they have been produced are different, the temptation to insist that imported products must meet the same process standards will be very high. Producers that do not meet the necessary process standards, and their governments, may well complain that the trade measure being used to enforce the process standard is discriminatory. In effect, extending process standards to imported products amounts to an extraterritorial extension by one state of its laws. The result is likely to be conflict, particularly if there is not broad international consensus on the objectives being pursued by means of the process standard. Recent cases such as the US-EC dispute about beef hormones, the US-Mexico dispute about yellowfin tuna and Canada-EC differences on clear-cut versus selective cut forestry management practices illustrate the difficulties that can be encountered when one country adopts a different process standard from another.

A third problem may be encountered if one country is determined to conserve a particular natural resource and takes steps at its border to enforce such a policy, either through import or export measures that have the effect of differentiating between domestic and foreign producers. Both Canada and the United States, for example, restrict the export of logs. Several Canadian provinces have further processing requirements for minerals extracted in that province. Such measures may serve important environmental objectives but may also serve protectionist ends.

As we shall see below, while there are problems that may be encountered in the application of border measures to enforce domestic environmental laws and regulations, the international trade regime has to date proved adequate to the task of insisting that such measures meet certain basic standards aimed at avoiding intergovernmental conflict. There remains, however, room for improvement by, for example, developing clearer definitions and procedures attuned to new circumstances.

Trade Measures to Enforce Compliance with International Agreements

The use of trade sanctions to enforce internationally agreed environmental standards has a mixed history as regards their effectiveness and conformity with trade rules. As with any international sanctions, their effectiveness is directly related to the degree of international agreement and commitment they enjoy. Sanctions applied by only a few states to influence the behaviour of many states are unlikely to be successful. Sanctions applied by many states to influence the behaviour of a few states are much more likely to succeed.