

requirements will ensure that CPs will not create exceptions lightly and that the debate will be thorough and transparent, and in the context of sound science and non-discrimination.

Verifying the Facts

If a government can invoke trade sanctions because commonly agreed or generally accepted environmental standards are not met or because user charges do not represent the full cost of a given resource, then governments must accept some method for verifying the facts. This raises the spectre of investigators entering other jurisdictions, violating sovereignty. Yet this already occurs to varying degrees by mutual consent.

Customs audit teams and agricultural inspectors routinely visit other jurisdictions (the Canada-U.S. experience is useful in this regard) and carry out on-site reviews at specific firms. Authorities undertaking subsidy/countervail or dumping investigations may carry out their work in the territory of other signatories under certain conditions and may even do so on the premises of a firm, examining its records if the firm agrees. Mutually agreeable (and this is the key) procedures have been and can be developed to assist in verifying the facts in other countries.

Dispute Settlement Procedures

When governments raise environmental issues at the level of state-to-state dispute settlement, they could allow non-governmental parties (including environmental organizations) to present briefs, as is already done with regard to domestic emergency safeguards, anti-dumping and subsidy/countervail hearings. This procedure would go considerably beyond what is nonetheless an innovative feature of the NAFTA, whereby a panel may request technical advice on environmental and other scientific issues from a Scientific Review Board selected by the panel itself from among highly qualified, independent experts.

Whether NGOs should be present during government-level presentations and debate is perhaps more questionable. Nevertheless, allowing the presentation of outside briefs would increase the transparency of the dispute settlement process and ensure that interested parties can present their views.