
Selective Enforcement of Trade Laws: A Problem in Need of Fixing to Advance Environmental Goals?

by

Jay C. Campbell
Partner, White & Case LLP

ELPAR Presentation

[29 March 2019]

Can evenhanded enforcement be achieved?

□ **WTO Reform – Centralized Enforcement**

- Identification of “**similarly situated products**”
 - Determination of **competitive products**
 - Relies on private market actors (purchasers)
 - No subpoena power to compel cooperation

Can evenhanded enforcement be achieved?

□ **WTO Reform – Centralized Enforcement**

➤ Identification of “**similarly situated products**”

- Determination of whether the competitive products benefit from the same unlawful trade practice
 - **Subsidization:** problem of “fuzzy” subsidies
 - **Dumping:** requires a company-specific analysis

Can evenhanded enforcement be achieved?

□ **WTO Reform – Centralized Enforcement**

- **Strong version** – WTO prosecutor
- **Weak version** – up to individual WTO members to bring cases
- **Bottom line issue:**
 - WTO members remain subject to the same political and diplomatic pressures that prevent them from enforcing trade rules against imports of fossil fuels and wild-caught fish in the first place

Can evenhanded enforcement be achieved?

□ **Trade Remedy Reform**

- Consider the impact on consumers
 - Good idea
 - But how would this encourage trade remedy investigations of fossil fuels and wild-caught fish?

Would evenhanded enforcement solve the problem?

- **Problem:** Governments *under*invest in renewable energy and aquaculture AND *over*invest in fossil fuels and wild fisheries
- **Evenhanded enforcement:**
 - Trade actions against renewables and aquaculture would continue
 - Trade actions against fossil fuels and wild-caught fish: unlikely to be sufficient

Would evenhanded enforcement solve the problem?

□ **What would work?**

- **Renewable energy** – “green light” subsidies that promote price competitiveness with fossil fuels
- **Aquaculture** – “green light” subsidies that promote environmentally friendly practices
- **Fossil fuels and wild fisheries** – phase out subsidies

Conclusion

- Skeptical that trade enforcement can advance environmental goals
- Sometimes the obvious solution is the best solution
- Increased subsidization of renewables/aquaculture and phased out subsidization of fossil fuels/wild fisheries needed to prevent climate change and overfishing from reaching catastrophic levels