
Encouraging Environmental Cooperation Through the Pelly Amendment

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How can sovereign nations encourage each other to cooperate on the environment? This is not a new question, but it has taken on greater importance in each new decade. There are three methods used for attaining cooperation - ropes, carrots and sticks. The article focuses on one type of stick — unilateral vigilantism through trade sanctions. In particular, it focuses on the history and operation of the U.S. Pelly amendment. Based upon case studies, it finds that since the Pelly amendment was enacted in 1971, this law has proven relatively effective in encouraging nations to join or adhere to international environmental treaties. In the 18 episodes reviewed, 50 percent were successful, 11 percent were partly successful, and 39 percent were unsuccessful. The overall success average success rate is 56 percent. In recent years, the success in using the Pelly amendment has declined. The Clinton Administration has been the least successful of any Administration in using this leverage. There are many valid grounds for objecting to the threatened use of such sanctions. But the objection most commonly raised — that such sanctions will be ineffective — appears to be invalid. The Pelly amendment should remain available as a tool of last resort. The U.S. government should aim to achieve a better balance between caution and credibility in the use of this tool.

Introduction

A central issue of environmental policy today is how to attain and maintain international environmental agreements. The need for such cooperation appears to be growing as “domestic” ecological issues transmogrify into global ones and as world population increases. This article addresses the role of trade sanctions in encouraging transnational cooperation. In particular, it considers the history and application of the U.S. Pelly amendment (of 1971) to the Fishermen’s Protective Act.

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International cooperation is needed for two reasons. One, environmental problems involve global commons (e.g., the ocean and atmosphere) and many others involve transboundary impacts. Nations acting alone cannot solve such problems. This insight developed early in the environmental movement, with the first international treaty on birds signed in 1902, and on whaling, in 1931.

Two, in the absence of transboundary impact, appropriate national action may be hindered by competitiveness fears. In other words, because international trade exists, governments may be wary of regulating more heavily than their trading partners.¹ (Similarly, firms also may be wary of raising their own standards because of competition.) This competitiveness concern was one of the primary motivations for the creation of the International Labour Organization (ILO) in 1919. Even before the ILO, countries began to make pacts regarding minimum health standards for production (e.g., the Phosphorus Match Treaty of 1906).

Treaties are a solution when countries agree to the necessity for common action.² But when countries do not agree, the treaty approach is less useful. Why do nations sometimes fail to agree on common or complementary environmental policies?³ There are four main reasons.⁴ First, nations refuse to join an agreement out of self-interest.⁵ For example, a nation in a cold region may prefer some global warming. Second, nations may bluff opposition to an agreement as a tactic for securing compensation to join it. Several international organizations may encourage such behavior by promoting the concept of the "victim-pays principle" and "carbon absorptive services."⁶

Third, nations may support the purpose of an agreement but seek to avoid incurring its cost. They may refuse to join an agreement or join but deviate from it.⁷ Such nations are termed "free riders." They want to continue externalizing their own costs even as other countries require cost internalization.

Fourth, nations may refrain from joining an agreement because of ambivalence. For example, Mexico did not accede to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) until September 1991, and then only because the politics of the North American Free Trade Agreement (NAFTA) demanded it.⁸ When a nation joins a treaty under pressure, it may be labeled a "forced rider."⁹

In an ideal world, there would be a perfect global government to legislate on the environment or perfect markets to value natural resources properly.¹⁰ But on our imperfect planet, given the four reasons above, one must anticipate that the coverage and responsiveness of

environmental agreements will be less than optimal. This can result in serious problems:

- the potential benefits of an environmental agreement may be nullified by the action of non-participants, and
- the attainment or maintenance of an agreement may be made difficult as participants (or potential participants) fear a loss of economic competitiveness to non-participants.

Therefore, nations that want greater environmental cooperation must devise innovative strategies for attaining it.

The first part of this article will lay out a conceptual framework for thinking about how to encourage cooperation, particularly through the use of trade sanctions. The second part will review the U.S. experience of applying pressure through the Pelly amendment. The third part will discuss policy implications of the use of environmental sanctions.

Methods for Attaining Cooperation

Nations use many methods to influence the policies of other countries. For analytical purposes, these methods can be grouped into ropes, carrots, and sticks.¹¹ Ropes are rules agreed to by a core group of like-minded countries to guide their own behavior and lessen uncertainty.¹² Because the benefits of mutual cooperation are evident, they often do not require special enforcement.¹³ While ropes may be negotiated, adherence to them is not based on explicit carrots or sticks.¹⁴

Carrots are payoffs to other countries to cooperate. This may take many forms such as financial compensation, debt-for-nature swaps, technical assistance, or greater market access. Although often one-directional, they may be two-directional, like the Fur Seal treaty discussed below.

Sticks are penalties against countries that fail to cooperate. They usually take the form of trade or financial sanctions, but can take more militaristic forms.

All three methods are employed in environmental treaty-making.

ROPES

One of the earliest trade ropes occurred in the Convention of 1916 between Great Britain (i.e., Canada) and the United States for the Preservation of Migratory Birds.¹⁵ Under this treaty, the two countries agreed to prohibit international trade in birds captured, killed, taken, or shipped contrary to the laws of the state or province of origin.¹⁶ This is a rope because it established a clear trading rule that benefited both parties so long as both followed it. Neither party needed a special inducement (e.g., a carrot) to follow this new rule.

Another rope is the double certification system. In the Convention for the Preservation of Fauna and Flora of 1933, the parties agreed to prohibit the export of animal trophies in the absence of a certificate from a competent authority and to prohibit their import (from treaty parties) without a certification of lawful export.¹⁷ This double certification system became the basis for CITES 40 years later. Another example of a rope is the "prior informed consent" provision in the United Nations Environmental Programme London Guidelines on chemicals. Under this provision, governments may predicate exportation of certain chemicals on prior informed consent by the government of the receiving country.¹⁸

Ropes can also promote substantive standards. For example, the recent Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean prohibits fishing for anadromous fish in the North Pacific and commits parties to prevent trafficking in fish taken in violation of the Convention.¹⁹ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal requires parties to ensure that transboundary movement of hazardous waste is "conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement."²⁰

CARROTS

There is a long history of the use of carrots to secure environmental treaties. In 1911, the International Fur Seals Convention prohibited pelagic sealing (i.e., hunting in the sea) and the importation of seals unlawfully taken.²¹ To encourage fulfillment of the treaty, the four parties agreed to the carrot of sharing their domestic catch with each other.²² As one commentator notes, Japan "insisted on compensation for giving up something not forbidden to Japan by international law."²³

In 1935, the International Convention Concerning the Export and Import of Animal Products provided duty-free treatment for countries that ratified the International Convention for the Campaign against Contagious Diseases of Animals.²⁴ This is one of the earliest examples of international health objectives being pursued in a trade treaty.

Carrots are also used to encourage membership in the Montreal Protocol on Substances that Deplete the Ozone Layer.²⁵ The treaty provides for a multilateral fund for technology transfer to assist parties in complying with chloroflourocarbon control measures.²⁶ It should also be noted that carrots play a central role in the General Agreement on Tariffs and Trade.²⁷ The GATT's requirement for unconditional most-favoured-nation treatment applies to parties only.²⁸ This is one

reason why the GATT has attracted so many new members in recent years.

Some commentators would stop the analysis here on the grounds that ropes and carrots are all that nations need to secure their goals. From a theoretical stance, this may be right. Any cooperation elicited by a stick could also be elicited by a carrot. But there is a practical limit to the use of carrots because they require the commitment of domestic resources. A carrot given away cannot be enjoyed at home.

STICKS

Sticks can also be used to secure international cooperation. The central difference between carrots and sticks is that sticks are non-consensual in their eventual application (but can be negotiated consensually). Sticks are used to change misbehavior into good behavior — for example, by punishing nations that do not join or do not comply with an agreement. An early example of a stick was the fines on ships using the Suez Canal that violated health regulations written by the International Sanitary Conference of 1892.²⁹ Sticks can be softened if the penalties collected are used to improve the environment in the country being penalized.³⁰

Sticks are currently incorporated in several international environmental treaties.³¹ For example, the Montreal Protocol requires parties to refrain from granting subsidies, aid, credits, or insurance guarantees for the export of technology to non-parties that would result in producing controlled substances.³² The Basel Convention prohibits trade in hazardous or other wastes with non-parties.³³ Although such sticks are clearly discriminatory (in violating the MFN principle), they are properly viewed as “government policy” prohibitions rather than sanctions since only environmentally insensitive trade is prohibited.³⁴ Trade sanctions are penalties on unrelated products. In 1993, two of the parties to the NAFTA supplemental accord agreed to subject themselves to trade sanctions if their enforcement of their own environmental laws is adjudged inadequate by a dispute panel.³⁵

Although sticks and carrots are to some extent interchangeable, the degree of perceived moral legitimacy of a stick will depend upon the extent of international agreement as to what correct behavior is. Thus, while few target nations would probably agree that a stick against it is justified, the antipathy to the stick may vary. A nation punished by Country X for not signing the Basel Convention would probably not be angered as much as a nation punished by Country X simply because X did not like its environmental policy. (The morality of carrots is different; nations seem willing to accept “bribes” without regard to an international agreement.)

All international commitments, narrowly viewed, result in a loss of "sovereignty." So any nation considering an international agreement will weigh its "loss" of freedom versus its gain from the joint action contemplated by the agreement. Yet many agreements, particularly environmental ones, enable nations to attain goals that they would be unable to attain in the absence of cooperation.³⁶ Thus, a more realistic view is that one kind of sovereignty is being exchanged (or, as they say in Brussels, "pooled") for another.

ENVIRONMENTAL VIGILANTISM

One school of thought in the "trade and environment" debate is that global environmental problems should be addressed exclusively through international agreements. But this point of view may be dangerous in a world where such agreements are difficult to obtain. As Larry Summers has noted

A forlorn search for interjurisdictional agreement could absorb time and resources that would be better spent in defining and implementing sound domestic environmental policy. In this sense, the harmonization objective could embody its own antienvironmental dynamic and actually prove counterproductive in reducing pollution, allowing domestic producers to postpone locally appropriate action while waiting for international consensus.³⁷

Summers seems to be addressing so-called "domestic" environmental problems, but the same point holds (with perhaps greater saliency) for international environmental problems.

So far, the carrots and sticks discussed have been aspects of environmental agreements.³⁸ But carrots and sticks can also be used before an agreement or later, outside of an agreement, in order to increase or sustain participation in it. When such vigilantism occurs after an agreement is achieved, this is an indication that some parties believe that the ropes of the agreement, as well as any internal enforcement sticks, are inadequate.³⁹

Since the use of external carrots is rare, this article will focus on external sticks — in particular, trade sticks.⁴⁰ Trade sticks are often objected to on grounds of efficacy and morality. The efficacy objection is that trade sticks do not work. For example, the GATT Secretariat's report on *Trade and Environment* states that: "Negative incentives — in particular, the use of discriminatory trade restrictions on products unrelated to the environmental issue at hand — are not an effective way to promote multilateral cooperation."⁴¹ The moral objection is that sticks are wrong because they are coercive. From this perspective, carrots are better than sticks because they are voluntary.

In summary, the promotion of environmental cooperation can be carried out through ropes, carrots, and sticks. Although this article focuses on sticks, and in particular one stick, we started with a more general framework because the appropriateness of sanctions depends on the availability of alternatives. A persuasive case for a sanction should start with a feasibility analysis of ropes and carrots.

The next section presents case studies for the most well-known instance of environmental vigilantism — the U.S. Pelly amendment. Before proceeding, it should be noted that although the application of such trade measures is often characterized as “enforcement,” this terminology presupposes the existence of something to enforce. It is one thing for individual countries to take action against other parties that violate a treaty.⁴² But the trade penalties discussed in this article do not typically involve treaty violations. Thus, the term “enforcement” will be avoided.

The Pelly Amendment

This section will proceed in the following way. First, I will discuss the legislative history of the Pelly amendment. Second, I will discuss the experience with the Pelly amendment since 1974. Third, I will assess the efficacy and morality of the Pelly amendment and consider some arguments against it.

LEGISLATIVE HISTORY

The Pelly amendment of 1971 is named after Congressman Thomas M. Pelly (R-WA.) who proposed the law in 1971 at the end of his 20-year House career. This law revised the Fishermen’s Protective Act of 1967. That Act (actually passed in 1968) had no previous trade provision.

The Pelly amendment was enacted in response to unsuccessful U.S. efforts to persuade Denmark, Norway, and West Germany to comply with the ban on high seas salmon fishing promulgated by the International Commission for the Northwest Atlantic Fisheries.⁴³ After Pelly became law, all three countries agreed to phase out their salmon fishing. As enacted, the Pelly amendment provided that:

When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President. Upon receipt of such certification, the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of fish products of the offending country for such duration as the President determines appropriate and to the extent that such

prohibition is sanctioned by the General Agreement on Tariffs and Trade.⁴⁴

It should be noted that the process is triggered by acts of foreign persons, not foreign governments.⁴⁵

In 1978, the U.S. Congress added a new track to Pelly for "engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species...whether or not such conduct is legal under the laws of the offending country."⁴⁶ This provision is triggered by a subjective determination of either the U.S. Secretary of Commerce or the Secretary of the Interior. Following certification, the President could order an embargo of any or all wildlife products from the certified country.

As a result of the 1978 law, Pelly was divided into two tracks. Diminishing the effectiveness of an international fishery program could lead to sanctions against fish products (including marine mammals). Diminishing the effectiveness of an international endangered species program could lead to sanctions against wildlife products. Although the goal being pursued is a multilateral one, the determination under Pelly of when actions diminish the effectiveness of international programs is solely unilateral.

It should be noted that "diminishing the effectiveness" is a rather broad and subjective test. Many factors could trigger such a finding, including non-ratification of a treaty, non-observance of a treaty, or even actions unrelated to a treaty, such as domestic sales of an endangered species. Pelly is not predicated on the violation of a treaty. For example, the Whaling Convention permits member nations to avoid being bound by a quota by entering a reservation to it.⁴⁷ Such a reservation is legal under the treaty and international law, but could trigger an adverse Pelly ruling.

Although Pelly certifications are mandatory, sanctions by the President are discretionary.⁴⁸ Nevertheless, the President is required to report to Congress within 60 days on any action taken and on the reasons why a full embargo of fish or wildlife products was not ordered.⁴⁹ In 1988, the Congress modified the fishery penalties to "any aquatic species" exported from that country regardless of whose nationals caught the fish.⁵⁰

In 1992, the Congress revised the Pelly amendment to expand the range of products a President could include in carrying out countermeasures. This change was needed, according to one House committee, because Pelly was "drawn so narrowly that an embargo under it could quite likely harm the United States more than the embargoed nation..."⁵¹ Under the new law, the President can craft trade sanctions to have maximum impact. He can order an embargo

against any products from the offending country in both the fish and wildlife tracks.⁵² The two tracks remain distinct, however. The fishery track relates only to fishery operations, not to trade.⁵³ The wildlife track relates both to “taking” wildlife and to trade in it.

PELTY EPISODES

This section provides a short case history for all Pelly episodes relating to fishery or wildlife agreements.⁵⁴ These certifications cover eight different countries from 1974 to the present. Each episode is given a rating as to the level of success. An episode can be successful, partly successful, or unsuccessful.⁵⁵ By successful, I mean that the Pelly threat led to a significant concurrent change in the policy of the target country in the direction sought by the U.S. government. Thus, a commitment to greater adherence to international standards by a foreign government would be deemed a success. The symbol **W** refers to whaling cases, **E** to endangered species, and **DN** to driftnet cases

1974–W–Japan and Soviet Union.

In 1974, Japan and the Soviet Union were certified for exceeding the International Whaling Commission’s (IWC) quota for 1973-74 with respect to the minke whale.⁵⁶ Both countries had objected to the IWC quota, however, and were therefore not legally bound by it. In announcing that he had decided against imposing a sanction, President Ford explained that both countries had voted for the 1974-75 quotas, which incorporated conservation improvements. He also explained that imposing a sanction against Japan would result in higher prices for American consumers.⁵⁷ These episodes are rated as *successful* because the two countries agreed to the IWC quota for the next year.⁵⁸

1978–W–Chile, Peru, and South Korea.

In 1978, Chile, Peru, and South Korea were certified for violating IWC quotas. None of the three countries had been members of the IWC. As a result of negotiations with the Carter Administration, all three countries agreed to join the IWC.⁵⁹ Therefore, President Carter decided not to impose trade sanctions. These episodes are rated as *successful* because the countries joined the IWC.

1985–W–Soviet Union.

In 1985, the Soviet Union was certified for violating the IWC’s whale quota for the 1984-85 season.⁶⁰ The Soviet Union had objected to the IWC quota. Nevertheless, the certification stated that the Soviet actions were “inconsistent with this international conservation standard.”⁶¹ President Reagan declined to impose a trade sanction

against the Soviet Union. His decision noted no remedial steps by the Soviets, but explained that a sanction would "have a negligible effect" as Soviet exports were marketable elsewhere.⁶² It should be noted that the Soviet Union was also certified under the Packwood-Magnuson amendment under which the Soviet fishing allocation in the U.S. exclusive economic zone had been cut in half. Thus, ongoing countermeasures were already in place. This episode is rated as *unsuccessful* because the Pelly threat did not affect Soviet behavior.

1986–W–Norway.

In 1986, Norway was certified for violating the IWC moratorium on commercial whaling. Norway had objected to the zero quotas and was therefore not bound by them.⁶³ Less than a month after the Pelly certification, Norway announced that it would suspend commercial whaling after the 1987 season and would reduce its catch for that year.⁶⁴ Thereafter, President Reagan decided not to impose any sanction. This episode is rated as *successful* because Norway agreed to suspend commercial whaling after that season.

1988–W–Japan.

In 1988, Japan was certified for conducting "research" whaling in contradiction to an IWC resolution.⁶⁵ Finding no evidence that Japan was bringing its whale hunting program into conformance with the IWC, President Reagan decided to deny fishing privileges to Japan in the U.S. exclusive economic zone under Packwood-Magnuson.⁶⁶ No Pelly sanctions were imposed, however. This episode is rated as *unsuccessful* because Pelly did not affect Japan's behavior.

1989–DN–Taiwan.

In 1989, Taiwan was certified for failing to enter into the cooperative scientific monitoring and enforcement agreement called for in the U.S. Driftnet legislation.⁶⁷ Following certification, Taiwan entered into an agreement. Therefore, President Bush did not impose a sanction.⁶⁸ This episode is rated as *successful* because a U.S.-Taiwan agreement was reached.

1989–DN–South Korea.

In 1989, South Korea was certified for failing to enter into the cooperative scientific monitoring and enforcement agreement called for in the U.S. Driftnet legislation. Although Korea had not yet concluded an agreement, President Bush decided not to impose a sanction at that time.⁶⁹ But he did intimate that he might impose trade sanctions at a later date if "significant movement" was not made.⁷⁰ Later that year,

Korea concluded an agreement. This episode is rated as *partly successful*. The Pelly threat was unsuccessful within the 60-day period between certification and presidential decision. But a rating of unsuccessful would seem unwarranted because the U.S. goal was soon attained. Still, it is unclear how much one can credit the latent threat of the Pelly certification versus other diplomatic leverage the U.S. government may have used.

1990–W–Norway.

In 1990, Norway was certified for taking minke whales in violation of IWC research criteria. In announcing that he would impose no sanction, President Bush stated that Norway was making progress in its “program and presentation” and noted the efforts being made to “improve U.S.-Norwegian scientific consultations.”⁷¹ This episode is rated as *unsuccessful* because Pelly did not affect Norway’s whale-hunting behavior.

1991–E–Japan.

In 1991, the Secretaries of the Interior and Commerce certified Japan for engaging in trade in hawksbill and olive ridley sea turtles, both of which were listed in CITES Appendix I. Japan had reserved on these turtles when it joined CITES in 1981 and, therefore, its action did not violate the treaty. After the Bush Administration announced a list of products that it might retaliate against, Japan agreed to limit its imports of both turtles in 1991 and to end all trade by the end of 1992.⁷² Therefore, President Bush decided to impose no sanction.⁷³ This episode is rated as *successful* because Japan committed to end its turtle trade.

1991–DN–South Korea.

In 1991, South Korea was certified for violating the terms of its driftnet agreement with the United States.⁷⁴ Following certification, Korea recalled to port the vessels of its nationals that were fishing in contravention of the agreement. As a result, President Bush decided not to impose a sanction.⁷⁵ This episode is rated as *successful* because Korea took immediate action against its nationals.

1991–DN–Taiwan.

In 1991, Taiwan was certified for violating the terms of its driftnet agreement with the United States. Following certification, Taiwan did not recall its vessels, but stated in a letter to the U.S. government that it would end driftnet fishing by June 30, 1992. As a result, President Bush did not impose a sanction.⁷⁶ This episode is rated as *partly successful*.

Taiwan did not take immediate steps to abide by its agreement with the United States. But it did agree to abide by the U.N. Driftnet Resolution in the future.

1992–W–Norway.

In 1992, Norway was certified for killing whales for “research” purposes in a manner inconsistent with IWC criteria. In issuing his decision, President Bush noted that he was “greatly concerned” that Norway had announced that it would resume commercial whaling. Nevertheless, he declined to impose a sanction.⁷⁷ This episode is rated as *unsuccessful* because Pelly did not affect Norway’s behavior.

1993–W–Norway.

In August 1993, Norway was certified for violating the IWC zero catch limit for minke whales by killing 160 whales.⁷⁸ Norway argued that the minke whale was adjudged by the IWC Scientific Committee to be neither endangered nor threatened.⁷⁹ Still, the minke whale is on CITES Appendix I.⁸⁰ Norway also argued that it was not legally bound by the zero catch limit since it had entered a reservation under IWC procedures.

In October 1993, President Clinton stated that although “Norway’s action is serious enough to justify sanctions,” he would nevertheless not impose them.⁸¹ This episode is rated as *unsuccessful* because Pelly did not affect Norway’s behavior. According to press accounts, Norway’s role in the Middle East peace process influenced the administration’s decision against trade sanctions.⁸²

1993–E–China and Taiwan.

In November 1992, two environmental groups petitioned the Secretary of the Interior to invoke the Pelly amendment against Taiwan, China, South Korea, and the Republic of Yemen for continuing to engage in trade of rhinoceros horn.⁸³ Following discussions with the U.S. government, both Korea and Yemen agreed to accede to CITES and to close down their domestic rhino trade.⁸⁴

In September 1993, the Standing Committee of CITES adopted a decision stating that:

measures taken by the People’s Republic of China and the competent authorities in Taipei are not adequate to sufficiently control illegal trade in rhinoceros horn and tiger parts, including failure to comply with measures outlined in Resolution Conf. 6.10. Parties should consider implementing stricter domestic measures up to and including prohibition in trade and wildlife species now.⁸⁵

The earlier Resolution (6.10) of 1987 had urged all parties to adopt a complete prohibition on all sales and trade, internal and well as international, of rhinoceros parts and to destroy all government and parastatal stocks of rhinoceros horns.⁸⁶ It also recommended that the Parties “use all appropriate means (including economic, political and diplomatic) to exert pressure on countries continuing to allow trade in rhinoceros horn...”⁸⁷

Concurrently with the CITES meeting, the Secretary of the Interior certified China and Taiwan for trade in both rhino horn and tiger bone.⁸⁸ (All of these species are listed in CITES Appendix I.) Although China agreed to outlaw trade in these species, the U.S. government had pressed for China to commit to the destruction of existing stockpiles of rhino horns as recommended by CITES Conference Resolution 6.10.⁸⁹ Although Taiwan had banned domestic and international trade of both species since 1985, the U.S. Fish and Wildlife Service found that Taiwan’s enforcement efforts were “not sufficiently effective” and that its penalties were “weak.”⁹⁰ The certification stated that both countries fell short of international conservation standards.

In November 1993, President Clinton decided against imposing trade sanctions.⁹¹ Although noting that the rhino and tiger “population will likely be extinct in the next 2 to 5 years if the trade in their parts and products is not eliminated,” President Clinton concluded that both countries had, since the Pelly certification, “undertaken some positive legislative and administrative steps.”⁹² The President expressed his hope that China and Taiwan could both “demonstrate measurable, verifiable, and substantial progress by March 1994. Otherwise import prohibitions will be necessary...”⁹³

This episode is rated as *unsuccessful* because neither country took remedial action within the 60-day period. President Clinton indicated that some actions were taken, but that these “efforts, however, have yet to yield effective reductions in trade.”⁹⁴ (This rating could be upgradable to partly successful after March 1994.)

ASSESSMENT OF THE PELLY AMENDMENT

Since no Pelly penalties have ever been imposed, this section can only evaluate the effectiveness of the *threat* of trade retaliation, that is, the extent to which Pelly led to policy reform or commitments thereto. It should be noted that a number of countries took action following a threat of Pelly *certification*, and thus were never certified.⁹⁵ These “successes” are not included here.⁹⁶ It should also be noted that there are only a handful of data points, based on admittedly subjective judgments, so the conclusions drawn here should be viewed as suggestive only.

Utilization of the Pelly amendment has increased greatly in recent years:

Episode and Rating of Success-1974-1993

1974-W-Japan and Soviet Union	Successful
1978-W-Chile, Peru, and South Korea	Successful
1985-W-Soviet Union	Unsuccessful
1986-W-Norway	Successful
1988-W-Japan	Unsuccessful
1989-DN-Taiwan	Successful
1989-DN-Korea	Partly Successful
1990-W-Norway	Unsuccessful
1991-E-Japan	Successful
1991-DN-South Korea	Successful
1991-DN-Taiwan	Partly Successful
1992-W-Norway	Unsuccessful
1993-W-Norway	Unsuccessful
1993-E-China and Taiwan	Unsuccessful

W=Whaling

DN=Driftnet

E=Endangered Species

In the first eight years of the program (1971-78), there were five episodes.⁹⁷ In the next eight years (1979-86), there were two episodes. In the most recent seven years (1987-93), there were eleven episodes.

In the 18 episodes discussed above, 50 percent were successful, 11 percent were partly successful, and 39 percent were unsuccessful. The overall average success rate is 56 percent. As the following shows, the success rate has declined (but not steadily) since the beginning of the program:

Rolling Average Success Rate 1974-1993

1974 through 1984—100%
1985—83%
1986/7—86%
1988—75%
1989—75%
1990—68%
1991—71%
1992—67%
1993—56%

If the success rate is viewed by Administration, the results are: Ford 100 percent, Carter 100 percent, Reagan 33 percent, Bush 57 percent, and Clinton 0%. If the success rate is viewed by issue, the results are: whales 55 percent, driftnet-caught fish 75 percent, and endangered species 33 percent. If the success rate is viewed by country, the results are: Chile 100 percent (one case), China 0 percent (one case), Japan 67 percent, South Korea 83 percent, Norway 25 percent, Peru 100 percent (one case), Soviet Union 50 percent, and Taiwan 50 percent.

It is interesting to note that the second (and subsequent) certification of a country for a particular issue has almost always been less successful than the initial one.⁹⁸ For example, the Soviet whale certification of 1974 was successful, but the 1985 certification was not. The Japan whale certification of 1974 was successful, but the 1988 certification was not. The 1986 Norway whale certification was successful, but the 1990, 1992, and 1993 certifications were not. Indeed, the non-action by the Bush Administration on "research" in 1992 may have been an important factor in Norway's decision to follow through with its announcement that it would commence "commercial" whaling.⁹⁹

This pattern of declining effectiveness suggests that the "shock" of being certified wears off quickly. One might also expect the Pelly amendment to be less effective over time given the absence of any imposition of sanctions. Whether the Pelly reforms of 1992 — which expand the potential sanctions to all products — will increase the success rate remains to be seen. All four of the certifications under the new law have been failures. The Clinton Administration's decision to draw up a list of seafood products for possible future sanctions against Norway is noteworthy because the administration seems to be avoiding any use of the expanded powers.¹⁰⁰

The Pelly amendment's overall success rate of 56 percent is impressive, particularly in the absence of any actual sanction. This success rate is also noteworthy when compared to experience with other economic sanctions. For example, Hufbauer, Schott, and Elliott found the overall success rate for foreign policy sanctions since World War I to be 34 percent.¹⁰¹ For foreign policy sanctions imposed by the United States since 1973 (coincident with the period of the Pelly amendment), the success rate has only been 17 percent.¹⁰² The threatened use of Pelly sanctions also compares favorably to the threatened use of Section 301 trade penalties for commercial purposes. Data compiled by Thomas O. Bayard and Kimberly Ann Elliott show that, since 1975, the overall success rate for Section 301 is 37 percent.¹⁰³

Implications of Environmental Trade Sanctions

Several objections are commonly raised to unilateral trade sanctions such as the Pelly amendment. First, sanctions are said to be unfair or inappropriate because only large countries can credibly threaten such sanctions and small nations (with a high dependence on trade) are most vulnerable to them.¹⁰⁴ It is true that large countries have a greater ability to impose sanctions.¹⁰⁵ But large countries also have bigger global responsibilities that small countries can avoid.¹⁰⁶ Small countries can more easily engage in free riding.¹⁰⁷ In addition, as the GATT Secretariat has properly noted, "Countries are not clones of one another..."¹⁰⁸ The fact that there may be innate variations in their capacity to carry out sanctions is not, in itself, reason to deny the legitimacy of such sanctions.

Second, a sanction like the Pelly amendment can be objected to for its inherent coerciveness, especially since none of the countries "pellyed"¹⁰⁹ (with the possible exception of China) has been in violation of a treaty obligation.¹¹⁰ Pelly is not coercive in a military sense, but does use economic leverage to induce changes in the policies of other countries. Such leverage is inconsistent with a recent U.N. Resolution.¹¹¹

On the other hand, it should be recognized that carrots are not free from coercion. If one country is to pay (or bribe) others to follow an environmental treaty, the paying country must get the funds from somewhere. If it taxes its citizens to pay the other country, then those citizens are being coerced. This may point to one key reason why industrial countries do not follow the victim-pays principle.

A third objection to sanctions is that they are unilateral. One way to evaluate a unilateral measure is to ask whether the world would be a better place¹¹² if a dozen or more countries became environmental vigilantes like the United States. For example, what if Canada were to impose sanctions against countries that did not follow the Montreal Protocol? What if Switzerland were to impose sanctions against countries that did not follow the Basel Convention? Undoubtedly, this would complicate world politics and probably reduce world trade. But such sticks could be good for the world environment.

It may be helpful to begin distinguishing between "good" and "bad" varieties of unilateralism. Good unilateralism is linked to an international agreement or consensus. Bad unilateralism is beggar-thy-neighbor behavior, unlinked to any international cooperation. On this spectrum, the Pelly amendment is surely good unilateralism.

A fourth objection to sanctions is that they are unstable.¹¹³ It is true that actions linked to threats are less stable than actions linked to mutually agreed objectives. But while an agreement based on ropes

may indeed be stable, it is not clear that an agreement based on carrots is always more stable than an agreement based on sticks. The problem with carrots is that the appetite for them can be insatiable. If all countries knew that sticks are verboten, then obtaining and maintaining an agreement may require an increasing amount of carrots. Eventually, that too will become unstable.

The role of coercive instruments is well recognized in many aspects of life such as child support, traffic enforcement, domestic pollution, and criminal law. It is also commonly used in international political relations (e.g., ongoing UN sanctions against Haiti). Therefore, the notion that coercion has no role to play in international environmental governance is counterintuitive at best. As Gérard Eldin noted several years ago, "In view of the effects on international trade and investment, further efforts should be made to harmonize national decisions...and measures affecting trade (standards, control regulations and procedures) so that discriminatory rules and practices can as far as possible be avoided. More or less *compulsory* international agreements may be considered appropriate."¹¹⁴

Was the Pelly amendment needed in the above cases? Would a rope or carrot have worked as well or better? For all of the cases discussed above relating to whales and endangered species, the ropes of the IWC or CITES were not working. In theory at least, unilateral carrots could have worked. If Pelly had provided for payments instead of trade sanctions, the success rate could have been 100 percent (assuming that a large enough appropriation existed). But in view of the international norms against whaling, it seems unlikely that the U.S. Congress would pay Norway to stop killing whales.

Conclusion

This article began by explaining why needed international agreements will not always be reached and showing how ropes, carrots, and sticks can be used to achieve environmental agreements. When ropes fail, and when carrots are unavailable, policymakers may consider sticks. We examined one such stick, the Pelly amendment, and found a high success rate in comparison to other economic sanctions.

In recent years, the Pelly amendment itself has diminished in effectiveness. Each decision not to impose trade sanctions reduces the value of this threat in the future.¹¹⁵ Already, Pelly seems ineffective against a repeat violator. So far, the strengthening of the Pelly amendment by the Congress in 1992 has not increased the apparent U.S. leverage.

Although the sharp drop in the success rate of Pelly under the Clinton Administration is disappointing, it is too early to draw conclusions. The administration purports to be pro-environment, so Pelly might be used in the future. The 1993 Pelly decisions came at a time when the administration was struggling with foreign policy and with the Uruguay Round. So the decision to avoid taking on new conflict was understandable.

Would the Pelly amendment work better if it were used more frequently by the United States and actual sanctions were imposed? Would Pelly laws in a dozen other countries produce much better environmental agreements or much less trade? Should the Congress strengthen the law by requiring sanctions rather than leaving them discretionary? These issues bear further study.

Although some commentators deplore the injection of what they view as "non-economic issues" into trade policy,¹¹⁶ trade policy has never been purely about "trade," whatever that might mean. Environmental trade measures have been employed throughout the 20th century. According to John B. Condliffe, "It used to be an axiom of foreign policy that the domestic affairs of a country were matters of purely national concern...It is only in recent years that public opinion, moved by noneconomic considerations, has brought pressure to bear on governments to restrict trade with, and use 'economic pressure' against, countries whose domestic or external policies were disliked."¹¹⁷ Condliffe wrote this in 1940. The past five decades have shown that the trading system can coexist with such economic pressure.

In conclusion, the Pelly amendment can be an effective tool to promote environmental cooperation. It is not a serious threat to the international trading system. Unilateral trade sanctions should not be the tool of first resort. But when properly linked to international agreement, the use of trade vigilantism against environmental scofflaws or laggards ought to continue to be available as a tool of last resort.

Endnotes

THE VIEWS EXPRESSED ARE THOSE OF THE AUTHOR ONLY. THE AUTHOR WISHES TO THANK JANE EARLY, KIM ELLIOTT, TED McDORMAN, ANYA SCHOOLMAN, AND CHRISTOPHER D. STONE FOR THEIR HELPFUL COMMENTS.

1. There is a parallel to the trading system here. Trade agreements make it easier for countries to deregulate trade reciprocally.

2. Treaties are a method for effecting cooperation. As Randall Henning pointed out to the author, whether treaties solve the problem depends upon whether nations agree on the right cooperative solution.

3. For further discussion of the issue of why nations cooperate, see Richard N. Cooper, "International Cooperation in Public Health as a Prologue to Macroeconomic Cooperation," in Cooper et. al, *Can Nations Agree? Issues in International Economic Cooperation* (Washington: Brookings, 1989).
4. For a somewhat different list of reasons, see Richard Blackhurst and Arvind Subramanian, "Promoting Multilateral Cooperation on the Environment," in Kym Anderson and Richard Blackhurst (eds.), *The Greening of World Trade Issues* (London: Harvester Wheatsheaf, 1992): 256.
5. In many cases (particularly trade policy), the self-interest being pursued by nations is, in fact, not in their self-interest. Much of the inability to attain cooperation probably results from misguided pursuits of self-interest.
6. For a discussion of the victim-pays and mutual compensation principles, see Jon Nicolaisen, et. al., "Economics and the Environment: A Survey of Issues and Policy Options," in *OECD Economic Studies*, Spring 1991: 31, 37. See also OECD, *Economics of Transfrontier Pollution* (Paris: OECD, 1976): 88-89. For a discussion of carbon absorption payments to countries that maintain their tropical forests, see GATT Secretariat, "Trade and the Environment" in *International Trade 90-91*, Vol. 1.; 38.
7. Recent findings in game theory show that a strategy of "exploiting a sucker" can prevail in Prisoner's Dilemma simulations. See "Never Give a Sucker an Even Break," *Scientific American*, (October 1993): 22.
8. Mexico was the 112th country to join.
9. The term comes from Charles Pearson.
10. It is interesting to note that as early as 1872 (a century before CITES), Switzerland proposed an international regulatory commission for the protection of migratory birds.
11. See Steve Charnovitz, "Environmental Harmonization and Trade Policy," in "Environmental Harmonization and Trade Policy," in Durwood Zaelke et. al. (eds), *Trade and the Environment* (Washington: Island Press, 1993): 282.
12. See Alice Enders and Amelia Porges, "Successful Conventions and Conventional Success: Saving the Ozone Layer," in Anderson and Blackhurst (1992):138-39 (there is a high probability of coincidence between the actor's interest and the law).
13. Peter H. Sand uses the term "mutual recognition" similarly to the use of the term "rope" here. See Sand, "International Cooperation: The Environmental Experience," in Jessica T. Mathews (ed.), *Preserving the Global Environment* (New York: W.W. Norton, 1991): 259-61.
14. But as Christopher Stone notes, ropes may be viewed as implicit carrots since a treaty makes all participants better off (even if only marginally).
15. 39 Stat. 1702.
16. *Ibid*, Article VI. Note that this can be a process standard when state law dictates how birds should be captured.
17. 172 L.N.T.S. 241, Article 9 (no longer in force).

18. See Gregory Rose, "Prior Informed Consent: Hazardous Chemicals," *Review of European Community & International Environmental Law*, Vol. 1, No. 1, 1992: 64.
19. Senate Treaty Doc. 102-30, Article III.
20. 28 I.L.M. 649, Article 4:2(d).
21. 214 C.T.S. 80, Articles I, III (no longer in force). These provisions are ropes as defined here.
22. *Ibid*, Articles X–XIV. Specifically, the United States was to give 15% each to Canada and Japan. Russia was to give 15% each to Canada and Japan. Japan was to give 10% each to the United States, Canada, and Russia. Canada was to give 10% each to the United States, Japan and Russia.
23. Roger Dingham, "Lessons from the History of Sealing and Whaling in Japanese-American Relations," in John R. Schmidhauser and George O. Totten III (eds.), *The Whaling Issue in U.S.-Japan Relations* (Boulder: Westview Press, 1978): 24. The scheme used gave Japan substantial sums with which to compensate its pelagic sealing industry.
24. 193 LNTS 61, Article 1. The Contagious Diseases treaty is at 186 LNTS 175.
25. 30 I.L.M. 157.
26. *Ibid*, Article 10. For further discussion of multilateral carrots, see Katharina Kummer, "Providing Incentives to Comply with International Environmental Agreements: An Alternative to Sanctions?" (mimeo on file with author).
27. Countries wishing to join GATT have to meet its entry terms. (See GATT Article XXXIII.) Such terms are typically trade concessions, that is, the applicant country must lower its tariffs. This might be viewed as a carrot for existing GATT members.
28. GATT Article 1. Parties may extend MFN to non-parties however.
29. See Neville M. Goodman, *International Health Organizations and their Work* (London: J&A Churchill, 1952): 235-37.
30. For a discussion of proposed legislation along these lines, see Craig Obey, "Trade Incentives and Environmental Reform: The Search for a Suitable Incentive," *Georgetown International Environmental Law Review*, Vol IV. 1992: 421, 427.
31. Other treaties provide non-trade sticks. For example, the Convention on Fishing and Conservation of the Living Resources of the High Seas provides that coastal states may unilaterally adopt conservation measures for high seas fisheries if negotiations with other states have not led to an agreement within six months. See 17 U.S.T. 138, TIAS 5969, Annex III, Article 7.
32. Montreal Protocol on Substances that Deplete the Ozone Layer, Article 4:6, 30 I.L.M. 157. This is implemented in U.S. legislation at 42 U.S.C. 7671m(c).
33. Basel Convention, Article 4:5.
34. For a discussion of the distinction between process standards and sanctions, see Steve Charnovitz, "The Environment Versus Trade Rules: Defogging the Debate," *Environmental Law*, 1993: 475, 491-92.

35. North American Agreement on Environmental Cooperation, Article 36, 32 ILM 1480.
36. See, for example, Leonard S. Woolf, *International Government* (New York: Brentano's, 1916):149 (international interests are far stronger and far more real than national interests).
37. See Patrick Low (ed.), *International Trade and the Environment*, The World Bank, at iv.
38. Carrots can also be used by one international institution to foster participation in another. For a suggestion of how the World Bank might be enlisted in such an effort, see David Mulenex, "Improving Compliance Provisions in International Environmental Agreements," in Lawrence E. Susskind et. al. (eds.), *International Environmental Treaty Making*, Harvard Law School, 1992:186-87.
39. Lash views the United States as "the unelected international environmental policeman." See William H. Lash III, "NAFTA and the Greening of International Trade Policy, Center for the Study of American Business, CIS 60, September 1993: 3. But a policeman must have a law to police. Thus, vigilantism is used here.
40. One example of an external carrot came in 1993 at the International Whaling Commission meeting in Kyoto. Japan apparently used promises of economic assistance to secure votes in favor of a relaxation of the commercial whaling ban. See Andrew Pollack, "Commission to Save Whales Endangered, Too," *The New York Times*, 18 May 1993: C4. Japan's gambit was unsuccessful.
41. GATT Secretariat, "Trade and the Environment," in *International Trade 1990-91*, Vol. I: 21. As with much in the Report, no evidence was offered.
42. In August 1993, Congressman Pete Stark (D-Cal.) introduced a bill (H.R. 3006) to require U.S. trade embargoes against nations failing to honor U.N.-sponsored sanctions. For the U.N. Charter provisions on economic sanctions, see 59 Stat. 1031, Article 25.
43. See Gene S. Martin Jr. and James W. Brennan, "Enforcing the International Convention for the Regulation of Whaling: The Pelly and Packwood-Magnuson Amendments," *Denver Journal of International Law and Policy*, Winter 1989: 293-94.
44. 85 Stat. 786. For an international fishery program to qualify, the United States had to be a signatory party.
45. Thus, Pelly is a production process standard, rather than a government policy standard.
46. 92 Stat. 714-15. The international program had to be in force with respect to the United States.
47. International Convention for the Regulation of Whaling, 161 U.N.T.S. 72, Article 9.
48. But see the Supreme Court 5-4 decision in *Japan Whaling Association v. American Cetacean Society* (478 U.S. 221) which found no mandatory obligation for a certification. See also the dissent by Justice Marshall (the regulation of

future conduct is irrelevant to the certification scheme, which affects future violations only by punishing past ones).

49. The embargo would be a sanction unless the fish or wildlife product being banned was the same species at issue.

50. 102 Stat. 4772.

51. House Report 101-580, Part 1: 4.

52. 106 Stat. 4903, codified at 22 U.S.C. 1978.

53. The law defines a fishery conservation program as one that protects "the living resources of the sea." See 22 U.S.C. 1978(h)(3). Thus, non-fish resources such as whales are included.

54. In the case listings below, W signifies whaling, DN driftnet fishing, and E harvesting of endangered species.

55. Successful is scored as 1.0, partly successful as 0.5, and unsuccessful as 0.

56. Unless otherwise noted, all certifications are solely by the U.S. Department of Commerce.

57 *Public Papers of the Presidents of the United States*. Gerald R. Ford, 1975: 47.

58. Simon Lyster, *International Wildlife Law* (Cambridge: Grotius, 1985), at 35 and House Report 95-1029: 9.

59. *Public Papers of the Presidents of the United States*. Jimmy Carter, 1979: 265.

60. The Soviet Union was also certified under the Packwood-Magnuson amendment for actions by its nationals that diminish the effectiveness of the Whaling Convention.

61. *Public Papers of the Presidents of the United States*. Ronald Reagan, 1985: 704.

62. *Ibid* : 705.

63. International Convention for the Regulation of Whaling, Schedule, 10(3), November 1992.

64. *Public Papers of the Presidents of the United States*. Ronald Reagan, 1986: 1051.

65. The whaling apparently did not violate the Convention however. Japan was also certified under the Packwood Magnuson amendment for whaling operations.

66. *Public Papers of the Presidents of the United States*. Ronald Reagan, 1988: 424-25.

67. Although Taiwan and Korea were included in the same certification and Presidential decision, the two episodes are separated here because the outcomes are different. Compare to the 1974 and 1978 certifications where the outcomes were the same.

68. *Public Papers of the Presidents of the United States*. George Bush, 1989:1112.

69. *Ibid*

70. *Ibid* Bush did not explicitly threaten sanctions. Rather he said he would "be prepared to exercise my substantial authorities under the Pelly Amendment..."
Ibid

71. *Public Papers of the Presidents of the United States*. George Bush, 1990:1811-12.
72. Keith Schneider, "U.S. Moves to Punish Japan for Trade in Turtles," *The New York Times*, 21 March 1991, at A12 and David Sanger, "Japan, Backing Down, Plans Ban on Rare Turtle Import," *The New York Times*, 20 June 1993, at A1.
73. *Public Papers of the Presidents of the United States*. George Bush, 1991: 521.
74. Although Korea and Taiwan were included in the same certification and Presidential decision, the two episodes are separated here because the outcomes are different.
75. *Public Papers of the Presidents of the United States*. George Bush, 1991:1306-08.
76. *Ibid*
77. *Weekly Compilation of Presidential Documents*, 1992: 2381-82.
78. "Commerce Department Certifies Norway for Commercial Whaling Resumption," Press Release, 5 August 1993. See also *Inside U.S. Trade*, 10 November 1993: 1912. Norway also killed 136 whales for "research" purposes. Abuses of research whaling was the subject of the 1992 Pelly certification. The 1993 certification covered only commercial whaling, not research whaling.
79. "See "Brown Raises Threat of Sanctions Against Norway in Whaling Dispute," *Inside U.S. Trade*, 13 August 1993: 8. See also "Whale Management Body Irks Scientists," *Science*, 18 June 1993: 1711 (IWC favors politics over science). But see Robert Thomson, "Culture Clash Creates an Endangered Species," *Financial Times*, 15-16 May 1993: 9 (IWC scientific report made no clear recommendations).
80. Minke whales caught off the coast of west Greenland are on Appendix II.
81. "Message to the Congress on Whaling Activities in Norway," *Weekly Compilation of Presidential Documents*, 1993: 2000. He ordered that a list of potential trade sanctions in seafood products be drawn up.
82. Hugh Carnegie, "Norway seeks US go-ahead for whaling," *Financial Times*, 6 October 1993: 6 (Norway will try to persuade the US at the IWC meeting in May 1994 to support a resumption of commercial whaling). See also "Is this really a good time to punish Norway," *The Washington Times*, 23 September 1993: A22 (urging President Clinton to take into account Norway's behind the scenes assistance to Israeli and Palestinian negotiators).
83. Edward R. Ricciuti, "Rhinos at Risk," *Wildlife Conservation*, September/October 1993: 22.
84. "People's Republic of China, Taiwan Cited for Illegal Trade in Rhinos, Tigers," U.S. Department of Interior, Press Release, 7 September 1993.
85. "Rhinoceros and Tiger: Time for a Decision," CITES Press Release, 9 September 1993.
86. Resolution of the Conference of the Parties Conf. 6.10, 1987.
87. *Ibid*.
88. Letter from the Secretary of the Interior to the President, 7 September 1993.

89. CITES Conf. 6.10. Although CITES has no authority over internal trade, the Conference urged all Parties to take steps to establish a complete prohibition on all sales and trade, internal and international. See also Jeremy Mark, "Trade Sanctions Against Taiwan, China Weighed," *The Wall Street Journal*, 11 June 1993: A5D.
90. U.S. Department of Interior, Press Release, 7 September 1993.
91. *Weekly Compilation of Government Documents*; 2300.
92. *Ibid.* The author contacted both the White House and the Interior Department to learn what these steps were but could not obtain any specific information. In the absence of specifics, this analyst cannot credit Pelly with any impact.
93. *Ibid.*
94. *Weekly Compilation of Government Documents*: 2300.
95. For example, see Gene S. Martin Jr. and James W. Brennan, "Enforcing the International Convention for the Regulation of Whaling: The Pelly and Packwood-Magnuson Amendments," *Denver Journal of International Law and Policy*, Winter 1989: 299-301. There was also a Japan whaling case in 1985 when Japan agreed to withdraw its objection to the IWC moratorium if the United States did not complete its certification of Japan. See *Japan Whaling Association v. American Cetacean Society*, 478 U.S. 221, 229.
96. This is a provisional rating. If Taiwan and China take significant steps by March 1994, then the success of this threat might be upgraded by future analysts. Of course, one would need to look at whether the steps come in time to save the species. See "Clinton Threatens to Impose Sanctions on China, Taiwan for Tiger, Rhino Trade," *Daily Report for Executives* (BNA) 9 November 1993: A17.
97. Certifications with three countries are counted as three episodes.
98. Nevertheless, one must note that there are not many data points. There are also many independent variables that could be more important than a "repeat certification" variable.
99. In research whaling, whales are studied and then eaten. In commercial whaling, the studying is skipped.
100. *Weekly Compilation of Presidential Documents*, 1993: 2000-01.
101. Gary Clyde Hufbauer, Jeffrey J. Schott, and Kimberly Ann Elliott, *Economic Sanctions Reconsidered* (Washington: Institute for International Economics, 1990): 93. This study did not include the Pelly amendment.
102. *Ibid.*, :108.
103. Unpublished data. The authors calculate a success rate of 52% using a different methodology that counts a partial success as a total success. The 37% figure is an adjustment to conform to weighted methodology used here. Forthcoming in Bayard and Elliott, *Reciprocity and Retaliation: An Evaluation of Tough Trade Policies* (Washington: Institute for International Economics, 1994).
104. One principle of the Atlantic Charter (of 1941) is that nations will endeavor "to further the enjoyment by all States, great or small...of access, on equal terms.

to the trade and to the raw materials of the world which are needed for their economic prosperity." See 3 *Bevans* 686.

105. Given the contemporary attention to maintaining exports, small countries may also have leverage. Malaysia, not a large country, was successful recently in threatening Austria with trade sanctions in opposition to a new Austrian tax on tropical timber. See "Parliament Rescinds Tropical Wood Tax, Maintains Product Eco-Label Requirement," 15 *International Environment Reporter* (BNA) 830. Of course, Malaysia is larger than Austria. Moreover, Malaysia was helped by announcements of other ASEAN nations that they would follow Malaysia's example.

106. For example, every account of the International Trade Organization of 1948 points to the non-approval by the U.S. Congress as the reason for the ITO demise. The other signatories that did not go ahead to establish the ITO without the United States are never mentioned. For example, see "GATTery v Greenery," *The Economist*, 30 May 1992: Survey 15.

107. Of course, large countries can also try to avoid their global responsibilities.

108. GATT Secretariat, "Trade and the Environment" in *International Trade* 90-91, Vol. 1: 22.

109. As in *Pelly vt -ED/ -ING/ -ES*. To certify a country under the Pelly Amendment.

110. The CITES Standing Committee adopted a decision that the measures taken by Taiwan and China "are not adequate to sufficiently control illegal trade in rhinoceros horn and tiger parts, including failure to comply with measures outlined in Resolution Conf. 6.10." See CITES Press Release, 9 September 1993. But this does not necessarily imply that Taiwan and China violate CITES obligations. First of all, Taiwan is not a CITES party so cannot violate the treaty. Second, CITES is not a centrally directed treaty. It grants considerable leeway to the judgments of officials in the importing country. See Article III:3. Third, the Standing Committee did not explicitly declare that China is violating CITES. Fourth, it is unclear what authority the Standing Committee (as opposed to the Conference of the Parties) would have under the treaty to make such a declaration. Fifth, CITES Resolution Conf. 6.10 *urges* parties to take some steps not required by the treaty, such as a prohibition on internal sales of rhinoceros parts and the destruction of existing stocks. See CITES Resolution Conf. 6.10. Thus, a declaration that China has not followed such steps is not conclusive on the question of whether China violates CITES.

111. GA. Res. 44/215.

112. This mode of analysis is Kant's categorical imperative.

113. See Piritta Sorsa, "GATT and Environment: Basic Issues and Some Developing Country Concerns," in Patrick Low (ed.), *International Trade and the Environment*, The World Bank: 325, 332.

114. Gérard Eldin, "The Need for Intergovernmental Co-Operation and Co-ordination Regarding the Environment," *OECD Observer*, February 1971, at 3, 6 (emphasis added). Eldin was Deputy Secretary General of the OECD.

115. See Andrew Moravcsik, "Introduction" in Peter B. Evans, et. al. (eds.), *Double-Edged Diplomacy* (Berkeley: U. California Press, 1993): 29.

116. For example, see William H. Lash III, "Green Gang's GATT Holdup," *The Journal of Commerce*, December 10, 1993, at 6A.

117. J.B. Condliffe, *The Reconstruction of World Trade* (New York: W.W. Norton, 1940): 151-52.