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Domestic Implementation of the Kyoto Protocol: Potential for WTO Conflict.

The Kyoto Protocol provides general terms dictating that members adopt policies aimed at the promotion of sustainable development; however the Protocol does not stipulate the specific methods by which members should design and implement these policies. Lack of harmonization in domestic implementation of the Protocol's commitments makes it more likely that trade conflicts will arise. Though a review of the relevant literature, this paper discusses the potential arenas for conflict between domestic implementation of the Protocol and member obligations under the WTO. For the purposes of this paper, domestic implementation policies fall into two broad categories (1) implementation of the Kyoto Protocol's flexibility mechanisms, and (2) implementation of policies required by Kyoto Protocol Article 2:1(a). With respect to implementation of the Protocol's flexibility mechanisms, this paper focuses on credit allocation, and investment concerns. With respect to domestic implementation of the Protocol's sustainable development requirements (Article 2), this paper discusses how various implementation strategies may create conflict of obligations under the WTO. The specific strategies discussed include government subsidies, product regulations, energy efficiency standards, eco-labeling, carbon taxes, procurement policies, and border tax adjustments. I conclude that while careful domestic implementation of many of these policies may rule out some possibilities for conflict, it is difficult to assess how effective (in terms of problem solving) these policies will be. Furthermore, I conclude that while the Kyoto Protocol is relatively "WTO proof", it weakens regime requirements in terms of problem solving, as well as disharmonizes domestic implementation strategies. In doing so, it displaces the risk of non-compliance onto individual states and effectively removes the protective MEA framework, under which conflict is less likely to occur. Lastly, this paper discusses some options presented in the literature regarding ways in which synergies between the two regimes may be encouraged and discusses areas for further research.