

Environmentalists, and many others, have legitimate concern. As the comprehensiveness of IEAs continues to evolve, it is disturbing that a non-Party to a particular IEA (the "rogue" State issue) or a Party "in bad standing" might successfully use GATT cover to fight the imposition of a trade sanction currently or eventually deemed necessary under an IEA to ensure that governments do not undermine global commons and other environmental commitments.

On the other hand, many trade policy specialists have a fundamental concern that the possible combination of trade sanctions with loosely drafted obligations and, in particular, the lack of effective compliance provisions including a dispute settlement mechanism creates an environment in which the market and economic power of the few may well prevail over a rules-based system, the latter being the bed-rock of Canadian foreign policy. The "power" approach stacks the deck against Canadian interests.

Many observers are understandably hesitant to exchange the reasonably well developed and effective dispute settlement mechanisms found in modern trade agreements for the lesser discipline of their environmental counterparts until the latter become more sophisticated and effective. This concern is especially important if the policy intent is to ensure that disputes over measures taken to underpin a Party's compliance with an environmental obligation normally be adjudicated under an IEA rather than under a trade agreement. There is considerable merit in such an approach: there should be a presumption that a measure (even a trade measure) taken pursuant to an IEA is used to pursue a legitimate environmental objective under the same agreement and, therefore, that disputes in this regard should be resolved by mechanisms established in the IEA. Moreover, a broader range of sanctions could be marshalled under an IEA than under a trade agreement. The key, nonetheless, is whether there is an effective dispute settlement mechanism in place to adjudicate reasonably clear rights and obligations. These issues were directly addressed, with positive results, in the North American Agreement on Environmental Cooperation.

Work is also actively underway internationally (especially in GATT and OECD working parties) to explore the issue of consistency between trade and environmental agreements, as well as other aspects of the trade and environment debate. A few voices state that the GATT as it stands is already sufficiently flexible to accommodate "legitimate" environmental enforcement matters. Nonetheless, most participants accept that some change is likely required, focussing on two approaches:

- the use of the GATT Article XXV:5 right to seek a waiver from certain obligations under the General Agreement (e.g., permitting the use of a discriminatory trade measure against a non-Party to an IEA); or