

environmentally sensitive services such as water and waste handling. This surely is achievable, given the sensitivity of social measures for all governments.

Rogue States - the Free-Rider Issue

The question here is whether governments should have access to trade sanctions when they cannot negotiate common standards with another country, and that country insists on using a production process about which there is broad multilateral consensus expressed in treaty form that the process damages the global environment (the failure of Pakistan to ratify the 1987 Montreal Protocol on ozone depleting substances, or Korea's failure to ratify the 1990 London Amendment to this Protocol come to mind).

Frankly, this is a judgement call. We need to keep a careful eye on what such a practice, ostensibly aimed at extending international consensus, might mean with regard to our forest management practices in light of the role forests play as carbon sinks. On the one hand, we can make a strong case that governments should have the option to discipline actions having a significantly negative impact on the global commons taken by a "rogue" state in the face of broad and representative international consensus that a particular production process is inappropriate. On the other hand, the question of what constitutes such a "consensus" requires careful thought. Presumably any such consensus must be based on sound science and should include most, but not necessarily all, the major producer countries capable of using the condemned process. As a practical matter, such consensus is likely essential if the sanctions imposed on a non-Party are to be successful in modifying the behaviour of that country. Canada should take the lead in defining the terms of such consensus, given our economic stake in the result. If we do not, others will do it for us, with the result perhaps not to our liking.

In addition, if the sanctioned country is also a GATT Contracting Party (CP) its rights under the General Agreement remain intact, including the right to seek redress if other CPs block its exports pursuant to the provisions of a broadly-based international environmental agreement. This situation is unsatisfactory. Canada should work with other CPs to rectify this matter by seeking an appropriate amendment to Article XX or through the formal waiving of obligations under GATT to ensure the effectiveness and primacy of specific trade obligations set out in consensual international environmental agreements. The GATT provides for both amendments and waivers. For the former, two-thirds of CPs must agree; for the latter, two-thirds of the countries casting a vote must concur.⁶⁷ These voting

⁶⁷ See GATT Articles XXX:1 and XXV:5 respectively.