

Although highly qualified, the intention of these disciplines would be to ensure consistency between the treatment of domestic and imported goods and services. They would restrain the ability of governments to use environmental measures for primarily protectionist purposes. However, they would not limit the fundamental right of Canadian governments to choose the level of environmental protection that they would deem appropriate.

(v) Right to Adopt More Stringent Standards

Closely associated with maintaining the right of Canadians to adopt and to enforce their own environmental standards, and to choose the level of environmental protection appropriate to their own circumstances and priorities, is the right to adopt standards that are more stringent than those suggested by international standards-setting bodies. While the NAFTA would require the parties to consider international standards, they would also have the express right to adopt and to enforce environmental standards more stringent than those suggested at the international level.

The flexibility of a jurisdiction to exceed the level of environmental protection that would be conferred by the adoption of international standards is recognized in Article 905 of the NAFTA. Although Paragraph 905.1 begins by requiring that a party use international standards as the "basis" for its own standards-setting activities, the same paragraph would explicitly permit it to set aside international standards "where such standards would be an ineffective or inappropriate means to fulfil its legitimate objectives, for example because of ... the level of protection that the Party considers appropriate." The right to implement standards that would be more stringent than those suggested by international bodies is reconfirmed by Article 905.3 which states that a party may, in pursuing its legitimate objectives, adopt, maintain or apply "any standards-related measure that results in a higher level of protection than would be achieved if the measure were based on the relevant international standard."

(vi) Standards Harmonization

A concern frequently mentioned by environmental organizations, and by individual Canadians, was that the NAFTA might require "standards harmonization," that is, making Canada/Mexico/U.S. standards the same. This concern was not based on a fear that harmonization, per se, would be prejudicial to the environment, but rather that the NAFTA could result in environmental regulations being harmonized on the basis of either the lowest common denominator or the average level of protection. This was often referred to as "downward harmonization."

The NAFTA chapter on Standards-Related Measures does not prescribe "harmonization." Article 906 would, however, call on the three parties to work toward the related concepts of "compatibility" and "equivalence" among the standards of the three countries. Nevertheless, it is important to note that, while the NAFTA would oblige the parties to work toward the adoption of similar standards, the Agreement would prohibit a lowering of standards.

Paragraph 906.2 would require that, "to the greatest extent practicable," increased compatibility be sought among the standards-related measures of the parties, but "without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers." The latter is significant as it would, in effect, establish the