

2. It is understood that a Party has not failed to “effectively enforce its environmental laws” in a particular case where the action or inaction in question by agencies or officials of that Party:

- (a) reflects a reasonable exercise of discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or
- (b) results from *bona fide* decisions to allocate resources to enforcement in respect of other environmental matters determined to have higher priority.