

F. ENVIRONMENTAL STANDARDS¹⁴

Consultations between members of the NAFTA Environmental Review Committee and representatives of Canadian environmental organizations, the provinces and the NAFTA negotiators were unanimous in identifying, as the highest priority for Canada's standards negotiators, the retention of the ability of Canadian governments to determine environmental policy and environmental standards according to the environmental conditions and priorities of each jurisdiction. All other recommendations pertaining to standards-related measures were considered to be secondary to the preservation of this multilevel right to regulate. This right would be retained in the NAFTA.

Standards-related measures constitute a key element in the implementation of environmental policy. In view of both their critical importance and their complexity, standards-related measures are examined in relatively greater detail in this chapter than are other issues.

(i) Federal and Provincial Government Rights and Obligations

The basic rights and obligations of the NAFTA chapter on Standards-Related Measures would apply to federal governments. In addition, Article 902 of the Agreement would require each party to "seek" to ensure that provincial or state governments, as well as non-governmental standardizing bodies, also observe the primary rights and obligations set out in the chapter on Standards-Related Measures.

(ii) Right to Regulate on Behalf of the Environment

Under the NAFTA, governments in Canada would retain the explicit right to approve, and to enforce, standards-related measures for the purpose of environmental protection. Paragraph 904.1 of the Agreement would expressly affirm the basic right of each party to "adopt, maintain or apply any standards-related measure." This paragraph goes on to state that, to ensure compliance with their standards-related measures, countries could "prohibit the importation of a good of another Party or the provision of a service by a service provider of another Party that fails to comply with the applicable requirements of those measures or to complete the Party's approval procedures." By retaining the right to refuse entry to polluting products, Canada maintains control over its environment.

14. In the interests of brevity the environmental review uses the common terminology "standards" when referring collectively to "technical regulations," "standards" or "conformity assessment procedures." In the NAFTA, technical regulations, standards and conformity assessment procedures are collectively referred to as "standards-related measures." In Canada, all three levels of government, as well as certain non-governmental organizations, may adopt and enforce standards-related measures.

As defined by Paragraph 915.1 of the NAFTA, a "standard" provides "rules, guidelines or characteristics for products, or related processes and production methods, or for services or related operating methods, with which compliance is not mandatory." A "technical regulation means a document which lays down product characteristics or their related processes and production methods, or for services or operating methods, including the applicable administrative provisions, with which compliance is mandatory." Standards and technical regulations also include provisions specifying terminology, symbols, packaging, marking or labelling requirements. A "conformity assessment procedure" is any procedure used to determine whether a relevant technical regulation or standard is fulfilled, "including sampling, testing, inspection, evaluation, verification, monitoring, auditing, assurance of conformity, accreditation, registration or approval used for such purpose."