

In the event of any inconsistency, specific trade obligations set out in certain multilateral and bilateral environmental and conservation agreements would prevail, to the extent necessary to comply with the inconsistent obligation, over the provisions of the NAFTA. The precedence of trade obligations contained in multilateral environmental and conservation agreements over the trade disciplines of the NAFTA was a very high priority of Canadian environmental organizations throughout the NAFTA negotiations. Furthermore, should a dispute arise that involves a specific trade obligation set out in a designated multilateral or bilateral environmental or conservation agreement, the responding party would have the option of having the dispute considered exclusively under the terms of the NAFTA dispute settlement mechanism.

The Agreement would guarantee the right of governments in Canada to select the level of environmental protection appropriate to Canadian environmental conditions and Canadian priorities. Standards could be more stringent than those recommended by international bodies or by the other parties.

Not only would the NAFTA prohibit a lowering of standards to the lowest common denominator or to the middle ground, it would require that the three countries work jointly on improving the level of environmental protection on a continental basis. In the event of a disagreement, the responding party could elect to have a dispute concerning the protection of its environment resolved exclusively under the provisions of the NAFTA dispute settlement mechanism. The complaining party would have the burden of proving that an environmental measure was inconsistent with the provisions of the NAFTA. In other words, in the event of a dispute, the environment would be given the benefit of the doubt.

Extensive notification and transparency provisions would allow Canadians to influence the environmental standards of all NAFTA members. For the first time, therefore, individual Canadians would have a guaranteed opportunity to influence decisions that will affect the environment of all of North America.

A trilateral Committee on Standards-Related Measures, that could involve provincial representatives, would be charged with enhancing co-operation on the development, application and enforcement of standards-related measures. Representatives of non-governmental organizations could be consulted or participate directly in its subcommittees or working groups.

Co-operation would extend to both product-related and process-related environmental standards. It would encompass the full range of activities that could affect the environment, from good manufacturing practice to environmental compliance.

Consistent with the provisions of the Agreement, a party could take any measure that it deemed appropriate to ensure that investment activity in its territory was undertaken in a manner sensitive to environmental concerns. For example, projects will remain subject to the laws and requirements for environmental impact assessment in Canada.

The NAFTA countries would formally acknowledge that environmental derogations should not be offered for the purpose of encouraging the establishment, acquisition, expansion or retention of an investment. Should one party believe that another intended to offer such an encouragement, the latter could be obligated to consult with a view to avoiding any