

E. ENVIRONMENTAL EXCEPTIONS

Under certain conditions the GATT permits exceptions for environmental measures that would otherwise contravene its trade rules. The NAFTA provides greater clarity.

The General Agreement on Tariffs and Trade contains two exceptions that are of particular relevance to environmental concerns. Article XX (b) of the GATT provides an exception, from certain of its disciplines, for trade measures that are "necessary to protect human, animal or plant life or health." Article XX (g) provides a similar exception for trade measures "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption."

Experts familiar with the GATT and international trade law jurisprudence advised the Committee that the combination of the existing GATT Articles XX (b) and XX (g) provide an exception for a broad range of environmental measures. Nevertheless, some environmental organizations recommended that this understanding be clarified in the NAFTA.

Paragraph 2101.1 of the NAFTA would incorporate GATT Articles XX (b) and XX (g) into the NAFTA. The same paragraph would confirm explicitly that, for the purposes of trade measures affecting goods, Article XX (b) would include "environmental measures necessary to protect human, animal or plant life or health" and that Article XX (g) would include "measures relating to the conservation of living and non-living exhaustible natural resources."

The incorporation of GATT Articles XX (b) and XX (g) into the NAFTA is significant from another perspective in that it would permit any disagreements involving the use of these exceptions to be considered under the terms of the NAFTA Dispute Settlement subchapter. Although a complaint under either the GATT or the NAFTA dispute settlement mechanisms should be judged according to very similar principles, the NAFTA, unlike current GATT practice, would permit a dispute settlement panel, with the concurrence of the parties, to meet directly with environmental experts or to establish a scientific review board to advise the panel on the factual matters related to an environmental issue. Hence, environmentalists could, for the first time, have an opportunity to present their views directly to a panel.

As noted in Annex 8, the environmental provisions of the GATT are currently being examined at the multilateral level. It is possible that this activity will result in a clarification of the applicability of GATT Articles XX (b) and XX (g) to the environment. Furthermore, the Government of Canada has indicated its support for a new round of multilateral trade negotiations once the Uruguay Round discussions have been completed. In Canada's view, environmental concerns would be a focal point of the new round. Article 2101 of the NAFTA would automatically incorporate into the NAFTA any future improvements to GATT Articles XX (b) or XX (g).