

The text acknowledges and indeed allows for higher prices for export sales arising from the application of a quantitative restriction but specifies that it should not be imposed by government action.

In the Elements of the Agreement, Canada undertook to eliminate only one of the three price tests the National Energy Board applies to exports. The least cost alternative test is being eliminated. In addition the text makes clear that surplus tests can continue to be operated by either party.

Article 902: Import and Export Restrictions

902.1 and 902.2 make clear that the trade agreement's rights and obligations with respect to energy trade restrictions are the GATT reasons for which such measures can be taken. The obligations apply to imports and exports, and apply equally to both Parties.

902.4 provides for consultations about actions to be taken in circumstances where either Party might create a distortion in bilateral trade by implementing a restriction (e.g. an oil import fee) against third country products.

Article 904: Other Export Measures

904(a) clarifies the way in which proportionality and export price disciplines will apply in any situation in which either Party implements export controls for such GATT reasons as short supply, conservation, or domestic price stabilization schemes. The proportionality test for energy is identical to that provided in Article 409 for other goods.

904(b) acknowledges that higher prices for export sales might arise from the application of a quantitative restriction but, otherwise, should not be imposed by government action.

904(c) provides that if energy export restrictions are put in place for reasons relating to conservation, short supply or domestic price stabilization schemes, then governments may not require disruption of normal channels of supply or normal product mixes.

Article 908: International Obligations

This article refers to the International Energy Agency's Agreement on an International Energy Program (IEP) relative to oil, to which both Canada and the U.S. are already signatories; it makes clear that, in the event of any unavoidable inconsistency between the FTA and that 1974 Agreement, the provisions of the IEP will apply.