

and oral submissions to the government. Canada has preserved these rights in the NAFTA.

Two different provisions of the NAFTA would explicitly recognize Canada's existing rights and obligations under all of the international agreements to which one or more of the NAFTA countries is a party. Paragraph 103.1 states that "the Parties affirm their existing rights and obligations with respect to each other under the General Agreement on Tariffs and Trade and other agreements to which such Parties are party." In addition, Article 903 of the chapter on Standards-Related Measures states that, "Further to Article 103 (Relation to Other Agreements), the Parties affirm with respect to each other their existing rights and obligations relating to standards-related measures under the GATT Agreement on Technical Barriers to Trade and all other international agreements, including environmental and conservation agreements, to which such Parties are party."

However, in certain instances, the NAFTA would go well beyond simply preserving existing rights with respect to environmental and conservation agreements. Article 104 of the Agreement states that "In the event of any inconsistency between this Agreement and the specific trade obligations set out in:" (a.) the CITES; (b.) the Montreal Protocol; (c.) the Basel Convention, upon its entry into force in all three parties; (d.) the Canada-U.S. agreement concerning the transboundary movements of hazardous waste; (e.) the Mexico-U.S. border area environment agreement; and (f.) any subsequent international environmental or conservation agreement that the parties agree shall be included, the international agreement will prevail. In other words, these international environmental or conservation agreements will take precedence over the NAFTA.

Collectively, the provisions identified above would ensure that the NAFTA parties would maintain all of their respective existing rights and obligations under those multilateral environmental and conservation agreements of which they are members. Furthermore, in the case of trade among the NAFTA countries, the specific trade obligations set out in the agreements identified in Article 104 would generally take precedence over the disciplines contained in the NAFTA.

In addition to the foregoing, should a disagreement arise concerning the interpretation or implementation of Article 104, Paragraph 2005.3 states that "the responding Party" could elect to have the dispute considered exclusively under the dispute settlement provisions of the NAFTA, rather than under the GATT, for example.

These provisions would constitute broad and significant exceptions to the existing international trade law for two reasons. First, because trade provisions in the named international environmental and conservation agreements would normally take precedence over the disciplines contained in an international trade agreement. Second, because the responding party, rather than the complaining party, would have the option of choosing the forum for resolving a dispute. Furthermore, should Canada adopt an environmental standard under these international agreements, the burden of proof would be with any country challenging the provision.