

Proposed components of federal legislation to prohibit water exports

- The federal government should pass a law to prohibit large scale water exports, including by diversion and by tanker, while permitting exports of bottled water. As a cutoff point, we suggest water should not be exported in containers larger than 20 litres. There is a precedent for this in the 1995 British Columbia Water Protection Act.
- The federal government has well-recognized jurisdiction over international trade. Therefore, the federal government has the constitutional authority to prohibit water exports (under s. 92(2) [trade and commerce] of the Constitution Act, 1867).
- The main rationale for this legislation is to protect the environment. There are sound environmental reasons for prohibiting large scale water exports, including by tanker.
- As we have noted in the past, the legislation is bound to run afoul of trade agreements. In our view the best way to avoid this is to change the agreements. Nevertheless, we have structured our proposal in a way that offers the smallest possible target for a challenge under GATT or NAFTA. This is done by means of providing a strong environmental rationale for the prohibition of water exports.
- This legislation must fit into the context of a broad national water policy that promotes water conservation in Canada and discourages major diversions of rivers. Otherwise, a prohibition of water exports will be regarded as hypocritical.